INTERNATIONAL COMPARATIVE STUDY ON ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of Québec

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1. Profile of the Judicial System

In Canada, there are three types of courts: the “purely federal” courts, to which the federal government appoints the judges and assumes responsibility for its organization and administrative support; the “mixed” courts, for which the federal government appoints and pays the judges, but for which the provincial government is responsible for the logistical and technical support; lastly, the “purely provincial” courts, created by the provinces and for which the provincial governments appoint the judges, set their salaries and working conditions and manage the support services.

The “purely federal” courts with jurisdiction in Quebec are the Supreme Court of Canada, the highest court in the country and the last level of appeal in civil and criminal matters for all of Canada, and the Federal Court, a court that hears cases dealing with violations of federal laws, excluding the Criminal Code.

There are two mixed courts in Quebec: the Court of Appeal, which hears appeal cases stemming from the courts of first instance in Quebec; and the Superior Court, with a general jurisdiction in civil and criminal matters.

As for the “purely provincial” courts, they were brought together in 1998 within a large court called the “Court of Quebec”. The Court of Quebec hears nearly 80% of the civil cases and 95% of the criminal cases. It also judges infractions of provincial laws (Protection of the Environment Law, Highway Safety Code, Labour Code…) ; those infractions are referred as “statutory cases”, while the expression “criminal cases” is reserved for matters defined as such in the Canadian (federal) Criminal Code.

In mid- and large size cities, there are also “municipal courts”, which hear cases related to infractions of municipal by-laws, specific provincial laws (Highway Safety Code) and, in the largest cities, criminal offences. There are also three specialized courts: the Human Rights Tribunal, the Professions Tribunal, and the Labour Court.

There is no unified administrative jurisdiction in Quebec. The Superior Court exercises the role of judicial review of administrative action. However, specialized administrative tribunals were created to arbitrate cases pitting the State versus citizens or to arbitrate certain specific civil cases (rental disputes, for example).

It must be pointed out that each court is independent in terms of its management: there is no link of authority between the courts and they do not have common policies. Each Court is under the exclusive authority of its Head of Court. But its authority covers only judges and judicial activities: the administrative personnel (clerks, secretaries) and the resources used by the courts (budgets, courtrooms, computers…) are managed by court administrators who are not under the authority of the judges. The support structure to the courts is unified (the Superior Court and the Court of Quebec share the same support staff), so each court cannot even know what his operation budget is. So it goes without saying that the Chief Judge of a court has no authority on budget appropriation, since there is no specific budget for the court (except for judges salaries and other expenses directly related to judicial activities – travel expenses, office equipment, etc.).

This paper is focused on the courts which are under the responsibility of the Government of Quebec, the mixed courts and purely provincial courts, unique to Quebec. We will pay attention only to the courts of first instance.

1.1 Superior Court

The Superior Court shares with the Court of Quebec the role of court of first instance in civil and criminal matters. It is a court of general jurisdiction, which means that it includes all matters that are not under the specific jurisdiction of another court. In civil matters, its jurisdiction is based on the amount of the dispute: the Superior Court hears cases with issues that exceed 70,000$ (Canadian dollars); this threshold is established in the Code of Civil Procedure of Quebec\(^2\). The Superior Court has also exclusive jurisdiction in divorce and bankruptcy cases.

In criminal matters, the Superior Court hears only the cases tried by a jury. In accordance with the Criminal Code of Canada\(^3\), certain cases are required to be heard by a jury. However, there is an entire array of instances in which the accused has a right of option, meaning the accused can select to be tried by a judge solely, in this case a judge from the Court of Quebec, or by a jury presided over by a judge from the Superior Court. It must also be said that all procedures undertaken before a case is heard (appearance in court, preliminary investigation, etc.) fall under the jurisdiction of the Court of Quebec, even in cases that are to be heard by a Superior Court judge and a jury\(^4\).

The Superior Court also has the authority of exercising general surveillance over the activities of the courts and the Administration, notably when they overstep the authority conferred to them by the Law. It means, for example, that if an administrative tribunal exceeds its jurisdiction, a judge of the Superior Court may overrule the decision of those inferior courts. The same goes for administrative action: a citizen may challenge in the Superior Court a decision of an administrative body, if it is not covered by the jurisdiction of a specific administrative tribunal.

Lastly, the Superior Court serves as an appeal court for certain infractions of provincial laws heard in first instance before the Court of Quebec.

The Superior Court is composed of 144 judges, including a chief justice, an associate chief justice and a senior associate chief justice. It also includes a maximum of 111 supernumerary judges\(^5\), retired judges practicing part time and serving as a release valve when the demands on the judiciary exceed the court’s production capacity.

The Superior Court is organized, on a territorial basis, in two regional divisions, one for the western part of the province (Montreal division) and the other for the eastern part (Quebec City division). The Court hears cases in 42 localities (local courthouses) in criminal matters and in 43 localities for civil cases. The vast majority of judges are based in Montreal and Quebec City and must travel the territory to render justice.

\(^2\) A Quebec law: R.S.Q ch. C-25

\(^3\) A Canadian law: R.S.C. 1985, ch. C-46

\(^4\) The Superior Court is the one competent in regards to certain extraordinary recourses.

\(^5\) LTJ, art. 21
1.2 The Court of Quebec

The Court of Quebec is competent to hear cases in civil and criminal matters as well as infractions of Quebec laws. It also assumes specific responsibilities in the area of youth protection. Lastly, it also has jurisdiction in administrative matters, in appeals regarding decisions rendered by administrative tribunals.

In civil matters, the Court of Quebec hears cases whose value is under 70,000$. In practice, this represents nearly 80% of civil cases. As for criminal and penal cases, this court assumes almost all of the first instance judicial work (95%).

As for infractions of Quebec laws, the Court of Quebec hears most of the legal actions taken under Quebec Law.

In the area of youth protection, the Court of Quebec plays a double role: on the one hand, it tries youths who have been accused of committing criminal acts or violated Quebec laws, based on a system that is sensibly different than the one established for adults; on the other hand, it makes decisions on protection measures for children considered to be in danger in their home.

The Court of Quebec is composed of no more than 270 judges including the Chief Justice, the associate chief justice and three senior associate chief justices. Ten coordinating judges and eight assistant coordinating judges are responsible for allocating judges and the management of trial dockets in the seventeen regions of Quebec.

Territorially, the Court of Quebec is organized on a regional basis: the judges are established in one of the 10 Quebec regions. In total, they intervene in fifty or so localities. The Court also operates on a travelling basis in other localities, notably the Great North in Quebec.

1.3 Municipal Courts

Municipal courts are small courts established in mid- to large-sized cities. They intervene essentially in penal cases to render decisions in infractions of municipal regulations and certain provincial laws, mainly in road safety matters.

Municipal court judges are “justices of the peace”. Most of them are part-time judges, but full-time judges are found in the largest cities. They have a competence that somewhat overlaps that of Court of Quebec judges: they can hear cases involving infractions of provincial laws, but they can also preside over criminal cases involving certain types of cases with a simplified adversarial procedure. In practice, only municipal courts in Montreal and Longueil (on the south shore of Montreal) have this criminal jurisdiction.
Figure 1:
Quebec’s judicial structure

Figure 2:
Basic statistics on Quebec’s judicial System

<table>
<thead>
<tr>
<th>Human resources</th>
<th>Number/Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population of Quebec</td>
<td>7 millions</td>
</tr>
<tr>
<td>Registered attorneys</td>
<td>11 000</td>
</tr>
<tr>
<td>Professional judges</td>
<td>426</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>297</td>
</tr>
<tr>
<td>Personnel of the civil and criminal courts</td>
<td>1669</td>
</tr>
<tr>
<td>Prosecutors’ office administrative personnel</td>
<td>500</td>
</tr>
</tbody>
</table>
2. Allocation of Cases

2.1 Allocation Between Courts

2.1.1 The Legal Rules

The jurisdiction of each court operating in Quebec is defined quite strictly by the Law.

In civil cases, it is the amount of the dispute that determines the jurisdiction of the court of first instance: the Code of Civil Procedure stipulates that cases where more than $70,000 is at stake fall under the Superior Court, while cases of less monetary value are the responsibility of the Court of Quebec. The Superior Court also has exclusive jurisdiction over bankruptcy and divorce cases.

The amount being disputed also determines which division of the Court of Quebec will hear the case: claims under $7,000 are automatically heard by a judge from the small claims division, according to a procedure that is simplified, less costly and does not require the presence of lawyers; the other cases are heard according to ordinary civil procedure.

In criminal and penal cases, the jurisdiction of the Superior Court only involves criminal infractions heard before a judge and jury. The other cases are heard either in the Court of Quebec or in one of the municipal courts with a competence in criminal and penal matters. It must be pointed out here that, for certain criminal infractions, it is the accused who decides how he/she will be tried: by judge alone (in the Court of Quebec) or by jury presided over by a judge (Superior Court).

As for the sharing of cases between the municipal courts and the Court of Quebec, the municipal police officers in the cities in question choose which court they will address, in the event that the Criminal Code provides them with the possibility of choosing the means of laying charges.

2.1.2 Court choice and “forum shopping”

The Canadian legal system is designed so that there is no jurisdictional conflict between the courts. It is not possible for the legal authorities, even less so the political and administrative authorities, to spread the cases out between the courts based on volume.

The only real exception to this rule involves the role of the municipal courts: we have seen that, in certain large cities, some charges made pursuant to Quebec laws and the Criminal Code can be heard by either the Municipal Court or the Court of Quebec. In practice, this means that the police can choose their court, based notably on case volume or cost of prosecution. Consequently, local authorities may be tempted to encourage police officers to limit criminal charges laid before the Municipal Court, due to the cost of criminal trials; this is not the case in penal matters where trials can generate more than they cost. To avoid prosecution decisions being guided by economic rather than legal criteria, administrative arrangements were made between the Ministry of Justice and the involved cities. However, in order to avoid any temptations in this regard, the ex-

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pert mandated by the Government of Quebec to examine this issue recommended in 2001 that the Law be modified to clarify the jurisdictions of the municipal courts and the Court of Quebec.

2.1.3 The legislative changes to court jurisdiction

Over the last few years, Quebec lawmakers have regularly changed the monetary jurisdiction threshold for civil courts in order to ensure a better distribution of cases based on available resources. The most recent change occurred in 2002: the new Code of Civil Procedure increased the Court of Quebec’s jurisdiction threshold from $30,000 to $70,000, thereby reducing the civil jurisdiction of the Superior Court. This court, which was dealing with barely 25% of civil cases will as a result see its “share of the market” in this field seriously reduced.

It must be pointed out that the extension of the civil jurisdiction of the Court of Quebec does not stem from a diagnostic on court backlogs. In fact, over the last ten years, civil cases heard before the Superior Court have dropped by half; a marked reduction was also observed in the Court of Quebec, although the drop was less significant. In fact, the civil jurisdiction of the Court of Quebec has extended to take into account the sharing of responsibilities within this court: by increasing the amount for claims heard by the small claims division from $3,000 to $7,000, the volume of civil cases normally heard by Court of Quebec judges was considerably reduced; the increase in the jurisdiction threshold compensated for this reduction in the number of regular civil cases, more prestigious than the cases heard in small claims.

The purpose of increasing the jurisdiction of small claims judges was not to reduce the operating of civil courts or to reduce congestion, even though in practice small claims justice is faster and less costly. It was based more on the argument of reducing the cost of access to justice.

The changes in court jurisdiction are the responsibility of the provincial Minister of Justice, in civil matters; if chances occur in criminal matters, which it has not in recent years, it would be the responsibility of the Canadian (federal) Minister of Justice to initiate a change to the Law. In both cases, the provincial (in civil matters) or the federal (in criminal matters) Law has to be amended by the provincial or the federal Parliament.

The case allocation issue does not have an international dimension in Québec.

2.2 Allocation of Cases within Courts

We saw that Quebec courts are all organized on a territorial basis: the judges are appointed to a region in which there are several districts and localities where justice is rendered. The location where a case is to be heard is determined by the Law, meaning that cases cannot be re-allotted to another location based on the amount of cases. However, we will see that the judicial authorities have a means of responding to judicial congestion in a given locality: they can modulate the allocation of judges in the courts based on demand.

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7 ibid., page 7
2.2.1 The legal rules for the territorial allocation of cases

The distribution of cases between the judicial districts does not allow for decisions by judicial authorities. Therefore, in civil matters, the applicant is the one who initially selects the place where the proceedings will be initiated: the general rule is that the applicant is to initiate proceedings with the competent court in the district where the defendant lives; but the Law does permit, in certain circumstances, to initiate proceedings in another district in relation to the case (place of contract, place where cause of action took place…).

In criminal matters, the case must generally be heard in the operating district where the crime was committed. The prosecutor however has the option, in certain circumstances, to ask that the case be heard in the district where the accused lives or in the district where the accused was arrested. The court can also accept, for reasons of public interest, the request from a party to transfer the trial to another judicial district.

Neither the judicial authorities nor the administrative or political authorities have the possibility of transferring a case to another region or locality.

2.2.2 Caseflow Management

At the Court of Quebec, the court policies in the area of case management and allocation are adopted for the court as a whole rather than at the local or regional level. These policies first of all take the form of “rules of practice”, adopted, at the chief justice’s initiative, by all the judges; these rules, imposed on the parties in dispute, become official when published by the Government in the Gazette officielle du Québec. Other internal policies have been adopted by the court, after consultation with the judges. These are notably policies pertaining to objectives in the area of waiting periods before a hearing is held and relative to the workload of judges in terms of standards for days hearing cases.

The court has statistical tools for measuring the “performance” of each region and locality in the area of processing times, average age of cases in waiting, production volume, volume of cases in waiting and effective workload of the judges. The coordinators have this data for managing the appointments.

Moreover, coordinators must regularly transmit a report to the Head of Court (Chief Justice) regarding the judicial activities in their region, including the number of days and hours listening to cases and hearing waiting periods.

Even if the policies are national in scope, the management of activities is still a strictly regional affair: there is no systematic practice for transferring resources from one region to another based on an imbalance in the demand in relation to the offer. Certain judges will listen to cases in another region, but that is based on an exchange program rather than a policy of reallocating resources.

Since all first instance cases are heard by a judge alone, the issue of case distribution exclusively involves the allocation of judges. We already indicated the judges are appointed to a given region, in which they can be called upon to travel around to hear cases in various courthouses where the court operates. By modulating the allocation of judges according to the judicial “demand”, the judicial authorities can respond to a localized work overload.
At the Court of Quebec, judges in one region can sit on average in five local courthouses. It is up to the coordinating judge, under the authority of the Chief Justice, to annually set the days when the court will sit in each of the localities involved. Once the schedule of judicial activities is established, each judge receives its appointments for the year. These appointments are fixed, but they may change during the year if a judge has to spend more time in a site because one case he has to hear exceeds the planned schedule; they may also change if a judge is finished with the cases scheduled before the end of the planned period of hearing. It is then the role of the coordinating judge to reallocate the judge according to these unplanned events.

The coordinating judges thus play a critical role in caseflow management. These judges are appointed among the judges based in the region by the Chief Judge; these appointments have to be approved by Government.

The schedule of activities takes into account the demand for judicial services. Given the hearing delays, the backlog and the statistics from the previous year, the coordinating judge has, at the beginning of the year, a rather good idea of the demand, in the various matters, for a given locality. However, it is rather difficult to reduce the number of hearing days planned for a courthouse, insofar as the local Bar usually reacts quite badly to a reduction in the offer of judicial services in their region. The local Bar, who represents the lawyers of the region, has officially nothing to say about the planning of judicial activities. Informally, though, they may express their concern about what is important issue, for symbolic and practical reasons.

If the needs exceeds the number of hearing days planned, which happens regularly, the coordinating judge has three choices:

- He can defer to the following year the excess cases for the year running, which as a result stretches out judicial delays;
- He can ask some of his colleagues to take on more work by sitting more days than the norm, if they want to; but that only delays the problem until later, insomuch as the judges working overtime will have their workloads reduced later in compensation;
- Lastly, he can reallocate judges who have a task deficit in their regular appointment.

This last measure is by far the most efficient, insomuch as it ensures optimum use of the hearing time demanded from judges; it also ensures a better equity in the distribution of their workload. It consists in moving around from one locality to another judges whose cases took less time than expected and find themselves with open days.

For this, it is necessary that the judge who has a lack of work where he has been appointed informs the coordinating judge that he has some spare time, which in principle he must do. It is considered that the judge “owes” hearing days to the court and can be asked to sit somewhere other than where he has been allocated for a number of days corresponding to his “debt”.

It must be pointed out that the policies of each court define the proportion of time (in days) that each judge must allocate to being present in the courthouse, the rest of the time being spent in the preparation and writing of judgments. This standard varies from court to court and according to
the matter: that is why a judge working in criminal matters will sit proportionally longer than a colleague intervening in civil matters.

The clerical staff supporting the Court has almost no role to play in the allocation of judges: the coordinating judges do not delegate any part of this job to the administrative personnel. Until recently, this job was done in a craftsmanship way, more or less by hand. The Court of Quebec has now an information system which gives the required data on the workload of the judges and on the caseload in the different courthouses.
The clerical staff play a major role in case allocation, though: the court docket is prepared by a clerk, under the instructions of the coordinating judge and using norms and standards established by the Court.

3. Changes in Caseloads and Backlogs

3.1 A Drastic Drop in the Demand for Justice

The table presented on the following page reveals that over the last ten years, there has been very clear reduction (22%) in the number of cases heard in first instance by the Quebec courts, all courts put together.

In regular civil matters, there has been a 34% case reduction over the last ten years. This drop is particularly marked in the case of major civil cases, which was 54%. But it was also quite significant in the Court of Quebec: 27% in regular civil cases and 28% in small claims. It is interesting to note that the increase of jurisdiction for small claims, in 1992, temporarily had the effect of increasing the case volume, but it then began to drop again at the same rate as regular civil cases.
In criminal and statutory matters, over the last 10 years, there has been a very significant drop in the number of cases, with an overall reduction of 18%. Here again, it is the Superior Court that recorded the widest drop: the number of trials with a jury dropped by 49%. The statistics from the Court of Quebec revealed a lower decrease in the number of cases, but was still substantial: -20% in criminal matters and -15% in penal matters.

In family matters (divorces, separations), an exclusive jurisdiction of the Superior Court, the reduction in the activity volume was 12%. Moreover, cases involving youth, extended to the Court of Quebec, dropped by 21%.

The demand for justice systematically went down over the last ten years, after having peaked during the years 1991, 1992 and 1993. At that time, the case volume was rising everywhere, often around 10% per year.

It should also be pointed out that the case volume had not been matched by a proportional reduction in the number of judges, which has remained just about constant.

### 3.2 The Reasons for Caseload Reduction

The reduction in the number of criminal cases heard by Quebec courts is not unique to Quebec: in all of Canada, there has been a comparable drop, linked to the constant reduction in crime since 1994. Apart from the reduction in crime, to explain the reduction in criminal cases, two factors can be put forward: the adoption of measures allowing prosecutors to “dejudicialize” certain minor offences committed by adults, notably in the case of first offences and where the risk of re-offending is low; and the transfer to Municipal Courts of certain minor criminal offences.
In civil matters, the reduction in cases is explained by several factors:

- The general increase in judicial fees, dissuading the middle class from making use of justice;
- The ongoing reduction in the scope of the legal aid plan, applicable to a smaller population and offering less coverage than in the past;
- The implementation of non-judiciary measures for resolving disputes, mostly mediation or conciliation.

### 3.3 Differences in backlogs

It is very difficult to compare the courts to one another in terms of backlogs because their jurisdictions are different. However, it is possible to compare the regions and judiciary districts in terms of their congestion and production delays. This is what makes it possible for the Department of Justice to make its statistics. Those statistics can therefore show the relative productivity, in terms of the number of cases processed per judge and the judicial organization in each region. However, this comparison is not considered to be very meaningful, insomuch as the cases are not identical and there is no common denominator to compare the production in the regions.

The explanation most often used to justify the discrepancies between the regions regarding the backlog and the judicial delays stemming from it is the lack of judges in certain regions. Sociological explanations are also put forward: regional variation in crime rates, economic activity, propensity to prosecute and in the culture of the local Bar. Lastly, the differences in the judges’ attitudes are also involved: in certain regions, some judges are more interventionist, more apt to promote faster processing of cases, while in other regions, judges are more passive; similarly, the productivity of judges, in terms of hours listening to cases, can also vary from one region to another.

### 3.4 Differences in processing times

There are indeed differences from one court to another in terms of processing time. The processing time is systematically measured by the information management system within the Department of Justice; this measure focuses on the waiting periods, at each step of the procedure. However, since the courts do not have the same jurisdiction, comparing them makes no sense. The differences is also seen in each court: the judicial regions and districts do not have the same average processing time.

At least two methods are used to calculate processing time: the “hearing delay method” and the “age of cases” method. The hearing delay method counts the average lapse between the day when the case is ready to be heard and the first date available for hearing; in criminal cases, it is the time lapse between each hearing. The second method consists in measuring the average “age” of the pending cases (in a location, a district and all the Court). A third method, which might be called “anticipated delays”, has also been used to measure the pressure of the caseload on court
resources: it divides the pending cases by the number of cases “processed” (terminated) in an average month; this method does not say anything about the actual delays, but it helps anticipate the backlogs which might occur if nothing is done to reallocate resources or to increase productivity.

In 2000, the average processing time was, in civil cases, 178 days at the Superior Court and 133 days at the Court of Quebec. Processing time for small claims, at the Court of Quebec, was 214 days, clearly superior to ordinary civil trials.

In criminal cases, the processing time was 46 days for preliminary procedures and 75 days for the trials. Each court established objectives regarding hearing waiting periods. The Court of Quebec set the following time targets:

- In criminal cases, the targeted processing times were three months for summary conviction procedures; they were also three months for the preliminary investigation and three months for the criminal trial;
- In penal matters, the processing time is three months;
- In civil matters, the processing time is six months, both for ordinary civil cases as well as small claims.

3.5 Specialization of judges

The Courts of Justice Act stipulates that judges from judicial courts possess all the competence of the court to which they are appointed. For the Court of Quebec, it remains that, despite these provisions, there is a certain specialization in the large urban centres of Montreal and Quebec City. In those larger cities, the large number of judges makes possible for them to concentrate on one large type of matters: civil, criminal, youth. This specialization does not go as far as to overspecialize judges on a more specific type of cases. But, for long or very complex cases, the coordinating judge may choose a judge who, without being formally specialized, is known for his competency in the domain.

In regions with smaller populations, judges generally exercise all of the Court of Quebec’s jurisdiction. This polyvalence in judges leads them for example to hear cases in two, sometimes three distinct matters in the same day. This provides better accessibility to citizens, a more efficient management of dockets and thereby cuts down hearing waiting periods.

Most of the judges of the Superior court are also generalists, who may hear different types of cases. But some judges have a more specialized workload, especially in criminal matters.

3.6 “Easier accessible” Court: the small claim division of the Court of Québec

The Code of Civil Procedure includes particular provisions for small claims demands. Small claims are those that do not exceed $7,000, without taking into account the interest, which can be required from a person, a company (with certain conditions) or an association, in its name or its
personal account. The judicial rate is a lot less than the one that applies to ordinary recourses and the recourse procedure has been lightened. Individuals must represent themselves before the court, without the help of a lawyer, while the State, corporations, companies or associations can only be represented by an executive or an employee.

At the hearing, the judge summarily explains to the parties the rules of evidence they must follow and the procedure he deems appropriate. The judge asks the questions; he provides each party with equitable and impartial assistance in order to demonstrate the law and ensure sanction. If circumstances allow, the judge will try to conciliate the parties.

3.7 “Task forces” to deal with high peaks of caseloads

In the recent history of the Quebec courts, it has happened on a regular basis that committees aimed at improving the processing of cases and waiting periods have been created. Most often, these committees have been created on tri-partite basis: judges, representatives of the Department of Justice and representatives of the Law Society.

The latest of these committees was created, for all of the Court of Quebec, to study the management of judicial cases. This committee, which has just released its report, was exclusively composed of judges.

Most of these committees proposed ways to speed up proceedings by simplifying the judicial process or by asking judges to be active in the “management” of cases. The last committee, whose report is still not public, work more specifically on the improvement of the method for allocating judges.

3.8 The role of ICT applications to remedy bottlenecks in allocation of cases and jurisdiction

Information and communication technologies are essential in these matters to provide the judicial authorities with real-time information on the court’s activities in each region and in each locality and for each judge. They are not particularly used for resource allocation purposes, but they are an indispensable tool in helping with the decisions of coordinating judges.

The Web is used more and more by the courts to inform the parties of the trial dockets or for information exchange purposes. But it is not used as a caseflow management tool.

3.9 Alternative modes of conflict resolution

In Quebec, there is no tendency towards the creation of specialized courts, unless they are administrative courts.

However, the judicial authorities in Quebec have been focusing special attention for some time now on alternative modes of conflict resolution, both in civil and youth matters as well as in criminal and penal matters. Judges from the Court of Quebec, the Superior Court and the Court of Appeal have been trained in these alternative modes of conflict resolution and have been conducting pilot experiences for some time now. These modes have been presented as being more efficient, less costly and faster than making use of the courts. That is why a lot of hope is being placed in these programs. Most of these mediation programs are provided by the courts.
4. Conclusion

The Ministry of Justice and the judicial actors have made a lot of efforts, in the recent years, to improve the capacity of the Courts to process the “demand for justice” in an efficient way. The basic criteria used for judging efficiency and as a source of inspiration for judicial reform is delay: there is a major concern, in the whole system, about the time a citizen has to wait before his case is heard. This concern is especially important in criminal matters, due to judicial interpretation of undue delay: the Supreme Court ruled that the Constitution provisions for fair trial prescribe undue delays. The judges, especially the managing judges, are also preoccupied with the criticisms of the citizens about the slowness of justice.

These efforts seem to be successful, since judicial delays decreased in the recent years and are considered now, in general, as reasonable. It is clear that the drastic drop in the demand for justice in the last ten years helped a lot in reducing delays, since the resources allocated to courts did not decrease proportionally.

The fight against undue delays is still a preoccupation, though. Since those delays vary in place (cities, region, etc.), the focus in the near future will be on improving the allocation of judges to where they are specially needed, considering the caseload. The advantage of the Quebec’s system in this regard is that the judges are mobile and can be moved where they are mostly needed. But to fully benefit from this advantage, the courts have to develop systems which will help the judicial authorities to make an optimal use of judges’ time.

Is this system of judge mobility a threat to the independence of judges and to the quality of justice? There seems to be no real concern about that in our judicial system, even for judges who are especially sensitive to the issue of judicial independence. First of all, this geographic mobility is limited: a judge is always based in one city and he cannot be permanently moved elsewhere without his consent; and his mobility is limited to a specific region, where the Ministry has to pay for his travel expenses. Secondly, the allocation system cannot be used to increase the productivity of judges to the point where the quality of justice might be threatened: the workload of judges is pre-determined and cannot exceed the number of days prescribed in the court policies; since those policies require the consent the assembly of judges, to which all judges participate, there is no way to impose undue productivity standards to the judge.

Case-flow management is and will stay a major concern for managing judges of the Quebec’s courts. But our judicial system gives them the authority to allocate judges where they are mostly needed. If it is well used and supported by a good information system, the mobility of judges on the territory gives our judicial system the flexibility to face cases overload in specific places.