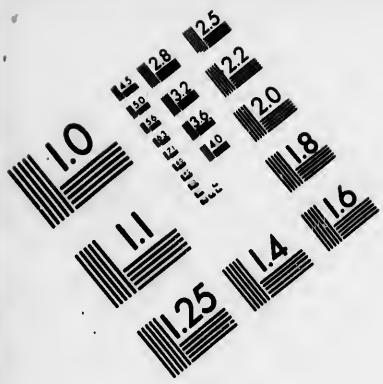
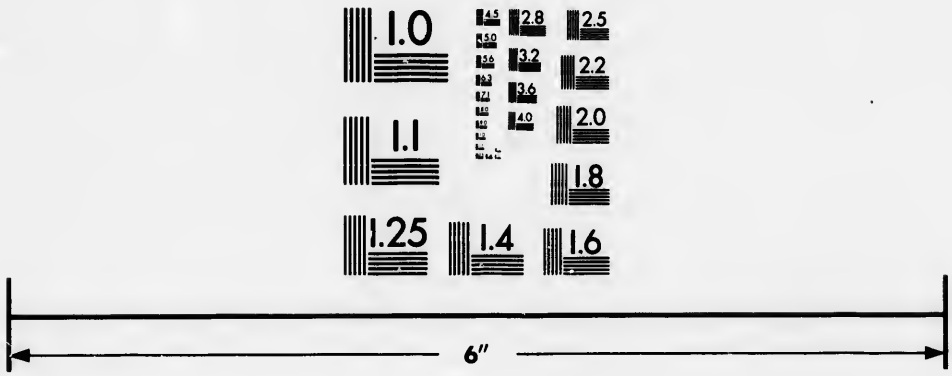
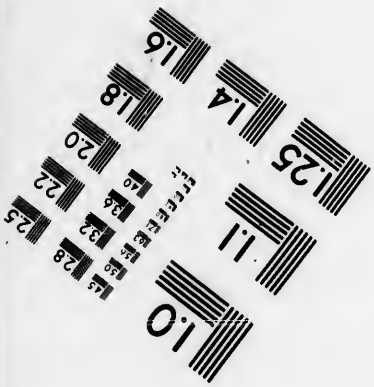
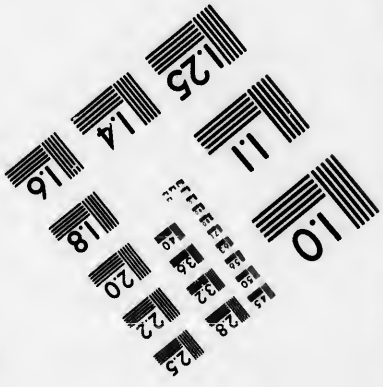


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

CIHM/ICMH
Microfiche
Series.

CIHM/ICMH
Collection de
microfiches.

Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1986

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☑ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					

The copy filmed here has been reproduced thanks to the generosity of:

Medical Library
McGill University
Montreal

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

Medical Library
McGill University
Montreal

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

1	2	3

1
2
3

1	2	3
4	5	6

32X

REPORT OF THE SPECIAL COMMITTEE

APPOINTED BY THE MEDICO-CHIRURGICAL SOCIETY OF MONTREAL TO CONSIDER THE ADVISABILITY OF

AMENDING THE CORONERS' LAW

OF THE PROVINCE OF QUEBEC.

Reprinted from the Montreal Medical Journal, January, 1894.

REPORT OF THE SPECIAL COMMITTEE APPOINTED BY THE MEDICO-CHIRURGICAL SOCIETY OF MONTREAL.

The Coroners' Law of the Province of Quebec.

Your Committee appointed to consider the present system of conducting inquests and the modifications, if any, which may wisely be introduced in the present law relating to inquests, beg to present to the Society the following report:—

The enquiry into and determination of the cause of the death of any individual or individuals, where such death has occurred under circumstances that are out of the common, is a matter that does not come under the cognizance of the Dominion authorities, save and except when the inquest leads to a finding of death by criminal act or criminal neglect. Hence, (with the exception that whenever such a charge is brought, the depositions taken by the coroner must be transmitted to a magistrate or justice of the peace, and the coroner must issue a warrant against the person or persons charged, etc.), the coroner's procedure is a matter outside the Dominion Statutes, and it is in the power of the Legislature of the Province of Quebec to freely modify the existing law. Your Committee desire to draw attention to this fact at the outset, for, this being so, the task of introducing certain urgent modifications, or, indeed, of completely altering the procedure, becomes an easy one, granted that the members of the Provincial Legislature become assured of the need for change.

The present Provincial laws respecting enquiries into the mode and cause of death are based essentially upon the old English Common Law. The enquiries are placed in the control of coroners appointed by the Provincial Government, a coroner

for each judicial district. The coroner need not be a member of either the legal or the medical profession, although in the great majority of cases he belongs to one or the other.

Upon receiving notice of a case of death following upon any act of violence, or of death attended by suspicious circumstances, it is his duty to make a preliminary enquiry.

If, with or without medical aid, he comes to the conclusion that the cause of death is to be made out without the assumption of there having been either criminal act or criminal neglect, he can order the interment of the body. If, on the other hand, he is led to suspect that death has been due to violent or unfair means, or culpable or negligent conduct of others, under circumstances calling for investigation by a coroner's inquest, then, having made a sworn deposition to this effect before a magistrate, he is empowered to hold an inquest. What these "circumstances" are which call for investigation is not defined in our Statutes, they being left to the coroner to determine. Having made the deposition, he now can summon a jury and hold a coroner's court. He is empowered to call before him such witnesses as in his opinion can throw light upon the cause of death.

The jury must view the body of the deceased, and if the majority of the jury desire it, the coroner is directed to instruct that an autopsy be performed to throw some light upon the cause of death. Having heard all the evidence, the coroner sums up, and leaves it to the jury to bring in a verdict, and, when this has been delivered, the coroner gives an order for the interment of the body.

The coroner is paid six dollars for every inquest, and if an inquest occupies more than two days, three dollars for every succeeding day. The practitioner of medicine making an external examination of the body receives five dollars, making an autopsy he receives ten dollars. There are further fixed charges for the constable who summons the jury and the witnesses, for chemical analyses, for hire of room to be used for the inquest, and for guarding the body.

This, put as succinctly as possible, is the present coroners' law for the Province of Quebec.

Several objections have been brought against this method of investigating suspicious deaths, and despite the fact that the law as now administered is much amended, and differs in many respects from the law of a few years back, the objections still retain their force. Your Committee would point out what it considers to be the most serious disadvantages of the present mode of procedure.

1. *The Cost.*—Taking the returns for Montreal alone, as shown by Dr. Wyatt Johnston, the cost per inquest—that is to say, per case—is decidedly greater than in London, New York or Massachusetts. The rate would seem to be $22.00 in Montreal, $15.00 in London, $16.90 in Boston, $12.80 in Massachusetts generally, $10.00 in New York; and this notwithstanding the fact that autopsies, the most expensive individual item in the investigation of suspicious deaths, are from three to four times as frequent in the other cities as they are in Montreal. Here, in Montreal, it costs more to maintain a dead body in the care of the coroner than it does to maintain an ordinary live individual with healthy appetite at a first-class hotel for the same period. Some of the items permitted by law in the coroner's accounts ought to be lessened or removed altogether, others ought to pass into general police accounts. But the fact remains that the system is as expensive as its results are unsatisfactory, and that the chief source of expense is the legal investigation of cases which do not call for legal investigation at all, owing to the fact of death not having been due to violence. The exclusion of cases not calling for inquest by means of a preliminary medical examination seems to be the most rational means of reducing the expenses.

2. *Payment by Fees.*—Your Committee is of opinion that, as a matter of principle, the payment of the coroner according to the number of inquests held by him is most unsatisfactory, and is inimical to the proper carrying out of enquiries into the cause of death.

Your Committee find that of the cases of death calling for a coroner's investigation occurring in the various large towns, from 50 per cent. to 75 per cent. can upon preliminary inves-

tigation be found to be due to natural causes. That is to say, the more careful the preliminary investigation made by the coroner, and the more conscientious and expert he shows himself in the performance of his duties, the fewer the inquests he finds it necessary to hold, and the less his income if he be paid so much per inquest. While if it so happens that his enquiries lead him to suspect the frequent occurrence of any one form of crime at any period, as, for example, child murder, and so to hold an increased number of inquests upon certain classes of cases, immediately he lays himself open to the charge of seeking to increase his income. This ought not to be. In the cities, at least, the coroners ought to receive fixed salaries.

3. *The Jury.*—Under the present system, the jury in Montreal, with rare exceptions, certainly cannot be said to be a capable and representative assembly of citizens. Men engaged actively in any form of business prefer to employ any subterfuge rather than sit for what may be many hours in a morbid atmosphere, for no return whatsoever save discomfort and loss of time. The consequence is that too often the jury is composed of a heterogeneous collection of incapables, gathered from the highways and byeways and bar-rooms of the neighbourhood. The verdict of such incapables is, time after time, at variance with the evidence presented.

4. *Viewing the Body.*—The custom of viewing the body is as old as the coroner system. It arose at a time when violent deaths were as many as doctors were few, and when population was everywhere so sparse that the jury had an important part to play in determining by external examination that death was due to violence, and, again, in identifying the corpse. Now-a-days, in a large town, it is highly probable that not one of the jury will have known the deceased, and the determination of the cause of death may more safely be left to medical men. In any case, it is easy to obtain identification by means other than the irruption of a strange, unseemly rabble into the house of mourning. The general feeling throughout the community is that this intrusion into the circle of bereaved relatives in the very depth of their trouble, permitted by the present law, ought

to be prevented, and your Committee urges strongly that it is as unnecessary as it is unbecoming. It has been superseded in many States by a system of sworn affidavit of the fact of death and the identity of the body, and this course should be followed here.

5. *Suicide.*—The existing law does not demand inquest in cases of *felo de se.* This your Committee, on the whole, is inclined to consider a disadvantage. The general opinion of the community is strongly opposed to suicide, and were it to be recognized that this mode of death necessarily involved a public investigation, there is little doubt that the unpleasant publicity of the subsequent proceedings would act as a deterrent in not a few cases. As a matter of fact, suicide is on the increase in those States where this deterrent does not exist or has of late years been removed.

6. *Medical Evidence.*—A study of the verdicts brought by the coroners' juries shows clearly that the decision of points of medical evidence is a matter that should not be left to non-medical persons. Statements utterly at variance with the cause of death assigned have been time after time accepted blindly by coroner and jury. The appreciation of medical facts, and the opinions to be formed from these facts, come properly within the domain of the medical expert. It cannot be expected that the legal coroner and the jury should without fail form correct opinions upon delicate medical problems.

Another point with regard to medical evidence may here be brought forward. The practitioner who is called to testify as a physician differs from the other witnesses, from the fact that he is called in his professional capacity. The value of his evidence lies in this, that he has studied the condition of deceased prior to death, and his evidence must depend for its value upon the importance of these earlier professional studies in throwing light upon the cause of death. To this extent, therefore, his evidence is expert evidence, and as such it ought to receive a recompense. But under the present system no fee whatsoever is allowed save for external or internal examination of the body

of the deceased. The medical practitioner is wrongly treated as an ordinary witness.

Your Committee strongly approves of the plan adopted in many of the United States, of admitting a written medical deposition of fact or opinion as evidence at inquests in cases where the personal attendance of a medical witness is not considered necessary by the coroner.

7. *The Performance of Autopsies.*—In all the large class of cases now investigated before juries where sudden death occurs without the slightest external lesion, an autopsy is advisable. Nevertheless, with an exception to be presently noted, no autopsy can be performed unless it be demanded by the majority of the jury. That is to say, the jury has to express itself willing to waste an hour or more in the middle of its proceedings, so that a competent medical man may be called, who shall make an examination into the state of the viscera. As a consequence, the jury, in the first place, shows the greatest unwillingness to allow the performance of autopsies, and will the rather return a wholly unreliable verdict. In the second place, the medical man performing the post-mortem is at a great disadvantage, for he is expected to keep the jury waiting as little as possible, and his examination, instead of being deliberate and careful, is hasty and liable to be imperfect Your Committee feel assured that were the coroner allowed full power himself to order an autopsy in all doubtful cases, a very large proportion of cases would be discovered in which there would be no necessity for holding an inquest and summoning a jury. Thereby a very large expenditure would be prevented, and at the same time the cause of death would be satisfactorily established. The exception referred to above is that by the present law the coroner is permitted to order an autopsy if he makes an affidavit that he holds the autopsy to be necessary. Unfortunately, coroners do not seem to have taken advantage of this permission, but prefer to shelter themselves by leaving the matter wholly in the hands of the jury.

A great source of difficulty in connection with the performance of medico-legal autopsies is the absence of any suitable

morgue in Montreal, and some measures should be taken without delay to remedy this defect, which also hampers medico-legal investigation in many other ways.

8. *Preliminary Investigations.*—In all cases of suspicious death, the first question to be settled is what has been the immediate cause of death. In all cases, therefore, the first point to be investigated is purely medical. It is true that frequently the question is one that can be answered by any individual endowed with common sense, as, for instance, when a corpse is discovered upon the railroad track minus its head, though even in such cases serious mistakes have occurred through the bodies of murdered persons being so placed as to give an impression of accidental death. But if the question in certain simple cases can be answered by a layman as well as by a professional man, there is a very large number of cases, and these often the most important from a medico-legal aspect, where a correct determination can only be reached by a well-qualified medical man, and where it is all-important that a correct answer be gained at the outset, not only for the benefit of the relations of the deceased (that they be sheltered from the least breath of unnecessary suspicion), but also for the benefit of the Provincial exchequer, that the Province be not saddled with the cost of an inquest leading to no result. When more than 50 per cent. of all deaths which coroners are called upon to investigate are found to be from natural causes, it is evident that the majority of deaths now investigated require no legal investigation whatsoever, while, on the other hand, as indicated above, all such deaths demand an initial investigation by a medical man.

9. *Criminal Cases.*—Under the existing law, when his jury brings in a charge of murder or manslaughter, or of being accessory to murder before the fact, against any person or persons, the coroner must issue a warrant against such person or persons, and send him or them before a magistrate or justice, if this has not already been done. He must at the same time transmit the depositions taken before him in the matter.

To all intents and purposes, the trial before the magistrate

proceeds as though no previous enquiry had been held. The coroner's depositions are not employed as evidence. In fact, the magistrate treats the case as though he were proceeding under an ordinary warrant.

If the magistrate confirms the charge, the case is sent up to the Grand Jury, and here again all the witnesses are once more summoned and the evidence is repeated, and the Grand Jury finding a true bill, the case goes before the Petit Jury, and again the evidence is repeated.

It appears to your Committee that this procedure is singularly cumbrous, and that, besides harassing the witnesses, it allows an unduly large number of loopholes of escape for those really guilty, upon some legal technicality or faulty observance of legal procedure. Your Committee, considering that the problem of how this procedure may be simplified is a purely legal one, does not offer any suggestions on the matter.

Taking all these disadvantages into consideration, and being especially impressed by the fact that the earliest stages in the investigation of suspicious death must of necessity be of a medical nature, and by the further fact that where the legal proceedings of the coroner lead to a definite charge against an individual or individuals those legal proceedings are practically passed over unnoticed by the higher courts, your Committee have come to the conclusion that a drastic change in the mode of investigation of suspicious deaths is advisable in this Province.

There are two questions which naturally suggest themselves prominently in connection with questions of coroners' reform. The first is, Should the coroner be a physician or a lawyer? and the second, Should the office of coroner be abolished?

With regard to the qualifications necessary for coroners, your Committee does not think it necessary to dwell upon the relative advantages of having medical or legal coroners, although this is a subject of dispute which has now been fruitlessly discussed for more than a century, and will in all likelihood continue to be so as long as the coroner system lasts. We wish simply to state the fact of the existence of diversity of opinion on this matter. That there should be any question as

to whether a physician or a lawyer would make the best coroner, implies that in either case there must be serious disadvantages. The point at issue here is the same as the question, Can a shoemaker make watches better than a watchmaker can make shoes?

In London, a settlement of the question has been attempted by selecting as far as possible coroners who have obtained both legal and medical qualifications. This plan of expecting the coroner to be a Jack-of-all-trades has not much to recommend it; and the fact that in London, in addition to the doubly-qualified coroner, there are the deputy coroners, who are obliged by law to be barristers, and all the medical expert work is done by outside medical men, shows that matters are not in any way simplified even by having the coroners who are at once both lawyers and physicians.

The only rational plan, and one whose advantages appear never to have been questioned, is that adopted on the Continent, as well as in those States which now are under the medical examiners system, of separating as far as possible the medical and legal side of the investigation, and entrusting these to physicians and lawyers respectively. Your Committee is just as firmly convinced that all legal questions should be left wholly to lawyers, as that all medical ones should be entrusted to medical men.

The Abolition of the Office of Coroner.—Your Committee finds that in those States where this has been done, the previous difficulties seem to have been promptly and permanently removed, and it does not appear to have been necessary in any instance to revive the office. The office of coroner was created in England while that country was in a lawless state, and when police regulations and courts of justice were almost non-existent. Since the development of the judicial and police system, the coroner's office has gradually come to fill the important function of fifth wheel to the car of justice. It has been retained through that conservative spirit which retains the cumbrous system of pounds, shillings and pence for the national currency. Many of the United States are still in that primitive and law-

less condition, which makes the office of coroner a useful one. In the more highly civilized States the old coroner system is rapidly disappearing, and it is practically obsolete in five, viz.: Massachusetts, Rhode Island, Connecticut, New Jersey and New Hampshire.

As to whether the office of coroner should be abolished in our own Province, we have no hesitation in stating, as medical men, that, from a medical point of view, the office is simply an absurdity, which constantly interferes with the proper employment of medical science for judicial ends, and that it could be abolished to-morrow with marked benefit to the medical side of criminal cases.

The fact that the appointment of competent medical experts as consultants to the coroner's court of Montreal during the last year has neither prevented nor greatly diminished the number of those palpably absurd and unsatisfactory verdicts, which have made this court a public laughing-stock in past years, shows that something must be radically wrong with the system, which must he remedied, even if this necessitates abolishing the office.

On the other hand, we do not feel, as medical men, competent to decide as to the possible effects which would be produced by this change from a judicial point of view. If the office of coroner were abolished, the legal duties would have to be provided for in some way, the details of which can only be decided by persons thoroughly conversant with the workings of our criminal law. Furthermore, the abolition of the office of coroner does not appear to your Committee to be absolutely necessary in order to secure the necessary medical reforms. All that is really necessary is to do away with the medical functions and responsibilities of the coroner and to make the office a purely judicial one, only dealing with those cases where there are definite grounds to suspect death from violence or negligence and these grounds are either strengthened or not removed by the examination of a medical expert.

We would therefore recommend :—

1. That salaried medical examiners be appointed to investi-

gate all deaths occurring under circumstances calling for medico-legal investigation under any act, and that these officers be given authority to make such medical examination of the body as may be necessary to determine whether death was due to violence or not;

2. That in every case the medical examiners report the result of their examination to the coroner or other judicial officer charged with investigating the legal side of such cases, who, in case of violent death, shall make such investigations and take such measures as are necessary for the proper administration of the law.

If necessary, we are prepared to draft an amendment to the law which would secure the proper carrying out of this system.

(Signed,) G. P. GIRDWOOD.
J. GEORGE ADAMI.
E. P. LACHAPELLE.
JAMES BELL.

At the regular meeting of the Society held on Friday, Dec. 15th, 1893, this report was unanimously adopted, and it was resolved that a copy of the report be sent to the Attorney-General and to each of the medical members of the Legislative Assembly and Council of the Province of Quebec.