

# The Legal History of British Columbia

The legal history of British Columbia has been greatly neglected. In the wider context of Canadian history, the significance of the law has been indirectly acknowledged: historians have treated its political-constitutional ramifications and have expressed the social and cultural values attributed to the law. Few of these historical considerations, however, have addressed the implicit and explicit role of the legal framework and for most historians the law has remained a residual factor.

To facilitate and to encourage the study of legal history in British Columbia, the Faculty of Law of the University of Victoria established the *British Columbia Legal History Collection Project* in April 1978. Initially conceived as a summer program, the Project was planned to assist the study of legal history by making research materials accessible along three lines. First, a *Judge/Counsel card index*, based on reported cases in British Columbia courts, was prepared. Second, as a guide to records traditionally used by the historian, a *preliminary inventory of manuscript sources* to be found in the Provincial Archives was compiled. Third, the Project initiated an *aural history program*.

The Judge/Counsel card index was designed to organize the reported cases in the province of British Columbia according to the identity of each judge and counsel serving on a particular case. At present the card index covers the years 1930 to 1947 and opens access to information regarding reported cases in an individual lawyer's or judge's career for that period. Prior to these efforts, the lack of such an index has discouraged research in these primary legal materials. This has been particularly true for the historian who may not be familiar with legal terminology and has had to be content with the *Digest of British Columbia Reports*, an earlier Law Society publication which was restricted to a subject approach to reported B.C. decisions.

As the Project's second endeavour, a preliminary inventory of manuscript sources for B.C.'s legal history was drawn from the resource materials housed by the Provincial Archives. As in the case of Judge/Counsel

card index, the inventory has brought together the available resources according to the names of individual persons. The basic criteria for including a name in the inventory were a legal education and qualification, not necessarily a specifically law-oriented career. The final list of legal persons who presently appear in the preliminary inventory was narrowed further by the method used in compiling the manuscript sources.

First, the names of judges and counsel already enumerated by the Judge/Counsel card index (1930-1947) were cross-referenced with the manuscript catalogues and public record indexes of the Provincial Archives. Similarly, the names of those legal persons known to have actively participated in provincial politics were also cross-referenced. Finally, the list of judges and counsel to be cross-referenced with the archival sources was extended to include legal persons relevant to the colonial period. A biographical notation, designed to highlight the individual's background in law and any subsequent career, was then added to complete each entry. Where possible, these notations indicate other potential sources for information in addition to the holdings at the Provincial Archives.

In addition, for future research, the Judge/Counsel card index and the preliminary inventory enable a first step in co-ordinating formerly disparate resource materials. Private and government records relating to a particular person may be correlated with the reported cases in the card index (1930-1947), so that traditional archival sources may now be complemented with one aspect of the legal record. Both finding aids facilitate the study of legal history in British Columbia. The expansion of the Judge/Counsel index to encompass the pre- and post-Confederation years will aid further this contribution to research.

Recognizing the limitations posed by the broken written record of the past, the Project launched an aural history programme in mid-1978. As the third element in the Project's endeavours, the interviews record information and insights which would otherwise be lost. The first two subjects were D. Marshall Gordon, QC, LL.D., and The Honourable Walter S. Owen, QC, LL.D. The interviews closely followed the standards set by the Provincial Archives and in these cases resulted in more than sixteen hours of tape-recorded documentation. The aural history programme encourages an awareness among members of the legal community of the contributions of the profession and the bench to the province's history. On a wider plane, it is hoped that the interviews will provide a perspective to assist the historian in comprehending the place of particular legal issues in the larger social and historical context.

The present orientation of the Project is to encourage and facilitate scholarly research in B.C. legal history by the systematic identification of resource materials and the compilation of decisional and biographical data. It is hoped, for example, that these efforts will prove to be helpful to the writing of legal biography. For the development of legal history, this may prove to be a particular advantage. For example, too frequently in the past, historians have assumed a cause-and-effect relationship between political figures and government policy. This kind of generalization does not take into account the legal structures within which the policy is formulated, and does not realize the constraints that those structures impose. Legal biography can provide a way to redress the misconception by presenting important legal figures and investigating the relationship between judicial decisions and public policy. For the study of British Columbia's legal history, works of this kind would be a start towards addressing the importance of the law in the province's past development.

The initial efforts of the *British Columbia Legal History Collection Project* have been made possible by financial support from the Law Foundation, with assistance from the University of Victoria and the Ministry of the Attorney-General of British Columbia. The Project also benefits immensely from the help and advice of its Advisory Committee, whose distinguished members represent the varied interests of the judiciary, the practising profession, the Provincial Archives and the legal and history academic communities in British Columbia.

Work is now progressing on each of the three aspects of the Project and in anticipation of the Project's activities over the summer months of 1979, a new proposal is being made to seek funding assistance for the development of an administrative history of the Department of the Attorney-General in the years 1858 to 1903, along with a finding guide to the records of the department presently housed with the Provincial Archives.

For further information on all aspects of the Project, kindly direct your inquiries to:

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