Constance Backhouse, University of Ottawa, Faculty of Law

Presentation
Women Lawyers and Judges: The Progress of Generations

Clara Brett Martin waged a long and wearying campaign to gain entry to the all-male legal profession in Toronto in 1897, the first female in the British Empire to become a barrister and solicitor. Women trickled in until the 1970s and 80s, when a new generation of self-declared feminist lawyers began to enter the profession, transforming its demography and demanding systemic changes. Bertha Wilson and Claire L’Heureux-Dubé opened the doors to the appellate courts in Ontario and Quebec in 1975 and 1979, and then became the first women judges on the Supreme Court of Canada in 1982 and 1987. Were these achievements all part of the same phenomenon? Did the different generations represent different ways of understanding gender and law? Were their strategies and accomplishments distinct? This paper will compare the generations in an effort to analyze the historical processes involved in achieving gender equity within the legal profession.

David G. Bell, University of New Brunswick, Fredericton, Faculty of Law

Presentation
Eighteenth-Century Maritime Treaties in Nineteenth-Century Memory

In 1928 Nova Scotia County Court judge George Patterson, framing reasons for judgement in R v. Gabriel Syliboy could not conceive that 18th-century agreements between the Crown and Maritime Amerindians were real treaties conferring enduring rights. Syliboy proved a landmark, dominating the jurisprudence on the 18th-century Maritime treaties for over half a century. Recently Bill Wicken has published a masterful book of essays contextualizing the Syliboy case from the aboriginal perspective. This present paper looks at the other side of the question – the context of George Patterson’s judgement. It does so as a contribution to understanding how those long-sought 18th-century Maritime treaties could have been so forgotten in the 19th century.

Michael Boudreau, St. Thomas University, Department of Criminology & Criminal Justice

Presentation
Atlantic Canadian Legal History: Past, Present, and Future Trends
This presentation will examine some of the key works and themes in Atlantic Canadian legal history, from the publication of *Law in a Colonial Society: The Nova Scotia Experience*, Peter Waite, Sandra Oxner, and Thomas Barnes, eds. (1984) to James Muir’s, *Law, Debt and Merchant Power* (2016). It may be argued that scholars who have studied the legal history of Atlantic Canada have produced some of the groundbreaking works in the field and helped to broaden the appeal of legal history amongst Canadian historians generally. Moreover, the presentation will offer suggestions for future directions in legal history, including topics and methodological approaches. Similarly, the discussion will be grounded, in part, on my current research on executions in New Brunswick, 1869-1957, and what the history of capital punishment in this province reveals about how the law operated and how it was perceived by New Brunswickers. The presentation will also address why the legal history of Atlantic Canada is integral to Canadian legal history.

**Jacqueline Briggs, University of Toronto, Centre for Criminology and Sociolegal Studies**

**Presentation**

Towards a History of Legal Aid in Canada: An Introduction to the Department of Indian Affairs Legal Aid Program for Status Indians Accused of Murder, 1880 to 1970

From the 1880s to 1970, the Department of Indian Affairs (in partnership with the Department of Justice) operated a legal aid program to fund defence counsel for status Indians charged with capital (and eventually non-capital) murder. My paper will present an introductory overview of the main features of this legal aid program, explaining its emergence following the 1885 executions of 8 Indigenous men for their participation in the North West Rebellion; standardization and internal reviews of the program by DIA bureaucrats in the early and mid-20th century; and finally the decline of the program in the late 1960s as the result of intergovernmental negotiations (but not consultation) for the provision of some provincial services for status Indians. I argue that we can start to understand the separate provision of legal aid for status Indians in this era by transposing Doug Hay’s classic legal ideology analysis of ‘majesty, justice and mercy’ from 18th century England to 20th century settler-colonial Canada, focusing on the DIA’s characterization of the program as an “act of grace and not a constitutional obligation” to identify how both DIA authority and ‘Indian’ legal subjectivities were constituted and reinforced by this dispensation of ‘grace’.

The second part of my paper will present some of the key findings of my study of the over 720 case files which comprise my archival sources for this project, including themes such as the DIA’s ongoing and influential role in clemency considerations for Indigenous peoples sentenced to death; the ways in which residential school education was conceptualized and utilized by crown and defence counsel in trial proceedings for accused persons who attended the schools; as well as the impact of Indian ‘status’ on access to legal aid services, conviction, and sentencing outcomes.
Blake Brown, St. Mary’s University, Department of History

Presentation
“A more disgraceful case it has seldom fallen to our lot to comment upon:” Medical Malpractice in Nineteenth-Century New Brunswick

Canadian legal historians have been busy over the last forty years exploring the nation’s legal past. Yet, many important topics remain largely unexamined. One such subject is the history of medical malpractice law. This paper will examine an aspect of this subject, the tort litigation that arose over issues of consent in advanced surgeries, by offering a contextualized case study of Marshall v. Curry (1933). In the 1920s and 1930s several patients sued when surgeons undertook more invasive procedures than agreed to prior to surgery. In Marshall, a master mariner from Colchester County, Nova Scotia sued for $10,000 in damages for negligence and trespass after a surgeon in Halifax removed a diseased testicle without his prior approval during a hernia operation. He lost at trial, and the Canadian Medical Association Journal called the case “one of the most important in recent years upon the legal responsibility of the surgeon.” Marshall was in some respects unusual, in that most such cases involved a woman suing a surgeon who removed part of her reproductive system without permission. On the other hand, it was typical in that judges consistently deferred to the judgment of doctors. This case study will explore why these kinds of cases became more common in the early twentieth century, tease out the law of consent in Canada in this period, and suggest what the case tells us about judicial attitudes towards patients and doctors.

Andrew Buck, University of Victoria, Faculty of Law

Presentation
“Lost” Case Law in Canada: Vancouver Island, 1849-1871: A Pilot Study

In an article in SLAW in December 2015 entitled “Preservation and Access to Historical Case Law: Who Cares?” Louis Mirando made a powerful case for attention to be directed to the preservation and free access of historical case law in Canada, noting that it is alarmingly undeveloped in comparison other common law jurisdictions. In Australia and New Zealand, for example, there has been extensive work undertaken on recovering unreported colonial cases found in the newspapers and other sources, which have been identified, transcribed, and annotated. The result has been to uncover a wealth of previously unknown jurisprudence, which has informed recent judicial reasoning and stimulated legal history research in Australia and New Zealand. But aside from some excellent thematic studies, such as Dale Gibson’s study of Red River and James Muir’s study of early Halifax, there has been no project on the scale of the Australian and New Zealand undertakings.

This paper will outline the project currently underway at the University of Victoria to uncover and locate online for free access, a comprehensive collection on unreported case law and related examples of dispute resolution on Vancouver Island between the arrival of Richard Blanshard as the first Governor in 1849, through the
establishment of the Supreme Court of the United Colony of British Columbia in 1866 involving the existence of two Supreme Courts, with Joseph Needham as Chief Justice of Vancouver Island, and concluding with the resignation of Needham, the appointment of Matthew Begbie as the Chief Justice of British Columbia, the merger of the two Supreme Courts and the incorporation of British Columbia into Confederation.

This pilot project is designed to establish proof of concept, reveal strengths and weaknesses of approach, and lay the foundations of a broader project committed to the recovery of colonial case law across other provincial jurisdictions, with the dual aim of informing judicial reasoning and stimulating research into the legal history of Canada.

Lyndsay Campbell, University of Calgary, Faculty of Law and Department of History

Presentation
The Jurisdiction of Colonial Legislatures and the Great (Forgotten) Case of Stockdale v. Hansard

The 1839 decision of the court of King’s Bench in Stockdale v. Hansard (1839), 9 Ad. & E. 1, 112 E.R. 1112 (Q.B.) is arguably one of the most important constitutional cases in British history. The facts are worth recounting mainly for their entertainment value. The House of Commons had resolved that a certain report, produced at the instance of the Secretary of State, needed to be published for the public good. The report had been duly published and sold at a low price. It contained the allegation that John Joseph Stockdale was a publisher of obscene books. The authors of the report had discovered that a certain book he had published was popular reading in Newgate prison. Stockdale asserted, probably justly, that the book in question was a serious medical text on the “generative organs,” probably a treatise by John Roberton. Objecting therefore to this characterization of himself in the report, Stockdale sued four members of the Hansard publishing family for damages. The Hansards claimed that they were protected by privilege because the House of Commons had said so – not by statute but by its own resolution. After lengthy argument, Queen’s Bench rejected this claim.

The reason the case was so important was that the House of Commons had purported to extend privilege to the report, not by passing a statute but by an exercise of its privileges. The House of Commons argued, as it had in important cases in the past, that the lex parliamenti was superior to the common law, and that its jurisdiction was so much more illustrious than that of Queen’s Bench that Queen’s Bench in fact had no jurisdiction to determine whether or not privilege could validly be extended to this document. More proceedings followed, including measures taken to punish Stockdale’s lawyer. In the midst of these highly exciting times, in 1844, Thomas Erskine May observed in a treatise “[t]he present position of privilege is, in the highest degree, unsatisfactory.”

A number of episodes in the history of the colonies that became Canada reflect uncertainty about the jurisdiction of the assembly, about the extent to which it could claim the privileges of Parliament. Arguments of this sort emerged in connection with the imprisonment of a member of the Nova Scotia legislative assembly, John Barry, in 1829.
The politics were the opposite of what prevailed in London less than a decade later: conservatives argued that the legislature’s powers were limited and reformers that it was expansive. Recent cases in the Bahamas and the Canadas had generated different dynamics. The Colonial Office’s response to the awkward situations that arose in these cases suggests unease. Americans had already limited the powers of their assemblies, responding to the excesses of the colonial period, and American precedents may turn out to have been important in northern debates. This paper will investigate what happened to *Stockdale v. Hansard* and the constitutional debates over the jurisdiction of courts and legislatures in the British North American colonies.

**Lori Chambers, Lakehead University, Department of Women’s Studies**

**Presentation**

The Historical Development of Children’s Right to Protection from Harm in Canada

The *United Nation’s Universal Declaration of the Rights of the Child* (1959) was one of the first and most influential documents in human rights. As a signatory to this declaration, Canada is officially committed to ensuring that all children are provided with the means to develop “physically, mentally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity” (article 2), without discrimination of any kind (article 1), with access to education (article 7), with special protection for those with disabilities (5) and with protection from neglect and cruelty (article 9). Manifestly, however, we do not meet this standard. While governments have repeatedly declared their determination to end child poverty and to provide greater opportunity to all children, in practice far too many children in Canada do not have their basic needs met and do not live in the conditions of dignity referenced in the United Nations Declaration. Part of the problem lies in the recalcitrance of governments in spending money. In part, however, we fail in this regard because law has not fully come to terms with how we can operationalize the human rights of children who, according to the *Declaration of the Rights of the Child*, “by reason of [their] physical and mental immaturity, need special safeguards and care”. The rights to be accorded to children are the human rights envisaged for all individuals in Western philosophy, but how can rights that are envisaged to belong to independent, rational beings be provided to those who cannot speak for themselves? The default position of law has been that parents exercised rights on behalf of their children because they were believed to be those best situated to understand the individual child and to protect him/her from harm. Simultaneously, however, modern states recognized that some parents fail in this obligation. Through child welfare legislation, states have attempted to prevent parental neglect and cruelty. Modern states have also taken increasing responsibility and power, not only to intervene directly in the family, but also to provide services, such as education and health care, which give concrete meaning to human rights. Despite the obvious fact that children are rights bearers who cannot enforce such rights themselves, they are understudied and under-theorized in human rights discourse and theory. This leads to practical problems in the articulation of the rights of individual children in their own particular contexts. As
part of a larger project beginning the exploration of the history of children’s rights in Canadian law, this paper will focus on the evolution of children’s right to protection from harm.

**Dominique Clément, University of Alberta, Department of Sociology**

**Presentation**

Renewing Human Rights Law: Using Legal History to Guide Legal Reform

Human rights law was one of the great legal innovations of the twentieth century. And yet human rights agencies and practitioners face a backlash that has resulted in regressive legislative reforms in recent years. These reforms have only succeeded in undermining some of the key pillars of the Canadian model for human rights law. The following article places the current backlash within historical context. The author argues that many recent reforms have replicated the deficiencies of past anti-discrimination laws. Commissions and policy-makers must respond by building on the strengths of the original Canadian model by improving public education, engaging with Aboriginal peoples, focussing on prevention, and supporting research and advocacy. 

**Serge Dauchy, Université Lille, Centre d'Histoire Judiciaire, and University of Brussels**

**Presentation**

The Role of Justice and the Judiciary within the French Colonial Enterprise in North America in the 17th Century

The Sovereign Council of New France is the first “colonial” high court of justice created overseas by the French monarchy. It was established in Québec by edict of Louis XIVth in April 1663, the same year the Company of New France was dissolved. Although not called “Parlement”, but “Conseil souverein”, the court established in the city of Québec had the same general characteristics as the metropolitan high courts of justice. This is confirmed by the edict of foundation of April 1663 which appears as a programmatic document exposing not only the overall organization of the court, but also the reasons which led the King to transpose the metropolitan judicial system in his overseas colonies and thus the objectives assigned to the judiciary within French colonial policy. The monarch invested the court with the very same competences and prerogatives as the other parliaments. The Sovereign Council acted as court of appeal and was competent to review the civil and criminal judgments of the lower royal courts in Québec, Montréal and Trois-Rivières. The court also had the responsibility to enact royal ordinances (with a right of remonstrance) and could promulgate decrees enforceable in the province. Those decrees or regulations, as the judicial decisions, concern fur trade, mining development, navigation on the Saint-Laurent, the sale of alcohol to native populations, taxes payable to the church, maintenance of ramparts and even quarrels over precedence between
officials; in other words, they deal with all aspects of the colony’s administrative, judicial, social, religious and economical organization.

The creation of a sovereign or central court in the sparsely populated North-American territories under French rule is a surprising choice and the Edict of creation, insisting on the idea that justice is a necessary prerequisite for good administration and government, “which depends ‘as much on the compliance with the laws and ordinances as on the strength of the armies” has mainly to do with rhetoric. It is therefore important to cross-reference the programmatic discourses with other sources.

The correspondence between the central authorities in Versailles with the various political actors of the colony (the governor, the bishop, the sovereign council and, in particular from 1665 on, the instruction sent by Colbert, in charge of France commercial and maritime policy, to the royal intendant) informs us about the overall objectives of the French monarchy in North America and the particular role of the judicial institutions and actors within the colonial enterprise. These source materials also inform us about the relationship between the colonial actors.

Our purpose is to present this correspondence (held in the Archives Nationales d’Outre-Mer in Aix-en-Provence) and highlight its interest in the study of the role assigned to law and justice in the French colonial policy (from a political as economic point of view) as implementation. It is also a very interesting information source about the relations between statute law (the central government in Versailles and its representative in Québec) and judge-made law (the sovereign council) and between the ecclesiastical and royal authorities.

Shaunnagh Dorsett, University of Technology Sydney, Faculty of Law

Presentation
Excluding the Regular Courts: Martial Law, Imperial Control, and Māori Rebels, 1846-7

In the first half of the nineteenth century, British officials around the Empire struggled to control both settlers and indigenous populations alike. They resorted to a variety of means, both legal and illegitimate. British colonies drew upon a shared repertoire of legal techniques and doctrines. One, which was used in both Canada and elsewhere, was the imposition of martial law. Some commentators saw its use as abhorrent and unconstitutional, yet it was a potent legal tool for colonial governors who sought to control those who challenged the settler state. In Canada it was perhaps most famously invoked in Lower Canada in 1837-8. In the Antipodes, although it was on occasion used against settlers, martial law was not uncommonly brought to bear against indigenous populations. This paper looks the use of martial law just a few years after the Canadian rebellions in 1846-7 against Māori ‘rebels’ and examines the deployment of martial law as tool of colonial administration, designed to bring so-called criminals to justice where doing so would be impeded by the normal processes of the law. In other words, to except them from the very laws to which the settler state was at the same time trying so hard to bring them within.
The Frederick Gerring Jr. v. R is an 1897 Supreme Court of Canada out-of-bounds fishing case in which one of the concurring judgments by Justice Girouard reproduced much of the majority judgment of the famous fox-hunting case Pierson v. Post. The Gerring was an American ship caught bailing fish inside the three-mile limit from a purse seine net thrown and drawn closed outside the three-mile limit. The legal question was whether the ship was “fishing” in violation of s. 2 of the Fisheries Act when apprehended if the fish came from outside the limit. The judges all agreed that yes fishing was “a continuous act” and the Gerring was properly seized for being in violation of the 1818 treaty between Great Britain and the United States prohibiting American fishing inside the limit. The ship owner, a man named Edward Morris from Massachusetts, protested and the diplomatic pressure to obtain compensation for him plagued British-American relations until Mr. Morris was eventually given $9000 in 1914.

One part of the book-project on this case will explore the boundaries issues relating to the case as an international legal and political incident. Another part will explore why this case is not known and taught as Canada’s Pierson v. Post. The boundaries issues here relate to the uptake or reception (as Brian Simpson would call it) of leading cases in different jurisdictions and legal cultures, specifically, what we have here: a leading American case, Pierson v. Post, and what should be a more well-known Canadian leading case, the Frederick Gerring Jr.

On the one hand, the Frederick Gerring Jr. is a leading case in Canadian law on the definition of fishing as a continuous act given in Justice Sedgewick’s opinion. And Sedgewick J. deliberately distanced himself from the question of what point in time the fish became the property of the catchers. On the other hand, Pierson is clearly front and center in the Girouard concurrence (as well as receiving some attention in Justice King’s). The source appears to be the factum of W.B.A. Ritchie, lawyer for the government, who cited to James Kent’s Commentaries on American Law and its discussion of Pierson, which is usually read as support for the standard of impossible escape with respect to wild animals. The capture rule from Pierson is a notoriously anti-environmental rule, not just for animals but other fugitive or unowned resources like oil and gas and groundwater. By contrast, Sedgewick J.’s decision is prescient in terms of its call to protect Canadian oceans from over-fishing, referring to the need for Canadians to protect “the goose that lays the golden egg” for “the benefit of future generations” and the role of Canadians to act as “the world’s trustees” for the North Atlantic Fisheries not just for ourselves but “for humanity.” Yet the destructive purse seine net being used by the Gerring was also widely used by Canadian fisherman, causing us to question the narrative of environmentalism that is celebrated today in the case and see rather a story of budding nationalism expressed in the Supreme Court of Canada’s grandiloquence and use of fancy sources like Pierson and Kent. Yet the way in which the diplomatic negotiation proceeded after the decision and the government’s rejection of the Court’s unanimous determination demonstrates that the nationalism and assertion of territorial sovereignty
was weak at best. Perhaps this was correcting a genuine injustice against Mr. Morris, who probably did not deserve to lose his ship in an international incident for fish that were initially taken outside the three-mile limit. Yet it is also lucky for him that lawyer-politicians as powerful and connected as Rufus Choate and later Secretary of State Elihu Root took an interest in his plight.

Donald Fyson, Université Laval, Département des sciences historiques

Presentation
Families and Felons: Convicts’ Relatives and the Penal Law in 19th-Century Quebec

Quebec civil law has long been recognized as paying particular attention to the traditional family, a stance reinforced in the nineteenth century by the provisions of the 1866 Civil Code. Less attention has been paid to how attitudes towards family influenced the manner in which penal law was applied in Quebec. This paper addresses the issue through a number of specific examples. A first concerns state forfeiture of the property of felons. This practice was in theory received into post-Conquest Quebec with the rest of English criminal law, and thus potentially of central import to Canadien families, but it was not rigorously applied. A second example is that of the families of prisoners. While in theory family members had no particular rights in regard to imprisoned relatives, in practice the frontier between inside and outside in Quebec’s local prisons was porous for families, with for example young children accompanying their parents into incarceration or again, families having the right to reclaim the bodies of deceased prisoners. A third example is the treatment of the families of those executed. Though execution represented the ultimate terrifying vengeance of the state, in Quebec, the terror of execution was accompanied by a strong discourse and practice of mercy towards the families of the condemned, seen among others in their integration into the increasingly elaborate ceremonies that preceded executions as well as the disposal of the bodies of the hanged. A final example concerns the imposition of civil death in the Civil Code, which among others concerned those condemned to death or to life imprisonment. The fate of the families of those struck by civil death figured large in debates over the practice and its abolition. Overall, the examples discussed suggest that while the criminal law as such paid little attention to the families of those caught up in its web, Quebec practice was modulated by the strong desire to preserve the honour of the traditional family, while at the same time denying such accommodation to those who did not easily fit into that category.

Jean-Philippe Garneau, Université du Québec à Montréal, Département d'histoire

Presentation
Household Debts and the Coutume de Paris in Pre-Industrial Montreal (1795-1830): Gender, Capitalism and Legal Cultures
As part of the second British Empire, early nineteenth-century Montreal was a hub for colonial economic development. Credit and debt claims were of crucial importance for the smooth running of big joint-stock companies, often linking Canadian and British interests, as well as small local businesses. Dockets of the court of King’s Bench remind us of the overall importance of commercial litigation and its occasional dreadful results for family welfare when it came to executing judgment against personal or real property. Unlike other British north-American colonies, the coutume de Paris was part of the law of the land in Lower Canada, and, as such, regulated property, including family estate. Many historians have stressed the rather uneasy marriage between the “higher morality” of the French property law, especially dedicated to preserve the family assets from market risks, and the “autonomous will” at the root of freedom of contract advocated mostly by the business community (Kolish, Greenwood, Young). Paying attention to legal and cultural practices of Montreal women of different ethnicity and class, Bettina Bradbury has shown how widows could “negotiate patriarchy”. Women who had been married under the communauté de biens, the property regime of the coutume de Paris, were more likely to be far better off after the death of their husband than the others. That is to say, as long as these widows could draw on a husband’s estate or their personal wealth, as Bradbury reminds us.

Drawing from court records and focusing on married women, my own research offers a bleaker portrait. Most women who had to cope with financial hardship due to their husband’s mismanagement or insolvency could hardly negotiate anything but protection from future debt claims, despite the legal remedy allowing them to recover their matrimonial rights according to the coutume de Paris (judicial séparation de biens or separation as to property). The lack of written documents — marriage contract or any other legal paper providing proof of personal ownership — appears to have been the main pitfall for these women, regardless of the property regime. Although French law seemed to be an almost useless shield from the market, it nevertheless enabled married women to gain legal capacity, even for those who were not married under the community property regime of the coutume de Paris. The extent to which women separated as to property took advantage of their new legal capacity remains to be seen. These findings suggest that taking into account the legal profession “in action” matters a lot in order to understand the real meaning of law, particularly in 19th century Quebec. An all-male legal profession negotiated the rights and wealth of wives in a way that seems to have limited the scope of the coutume de Paris because it threatened the interests of the business class. Court records allow us to go beyond the rule of law, beyond the ratio decidendi of court decisions, and even beyond the legal arguments stated in judicial reports. Looking at the day-to-day practice of lawyers and even notaires enables us to understand how law was worked out, including the misunderstandings and purposely distorting uses of judicial proceedings and legal principles. Not only lawyers but witnesses were also debating gender and marital relationships, reaffirming and sometimes contesting given assumptions about men and women, husband and wife. How women related to legal writing, to the judicial process or even to the legal profession, to state a few questions among others, are crucial to understanding the relationship between law and society.
Shelley Gavigan, York University, Osgoode Hall Law School

Presentation
Getting Their Man: NWMP as Accused in Criminal Courts in the North-West Territories, 1876-1903

The dominant image of law and criminal justice on the nineteenth century Canadian Plains is that of the North-West Mounted Police (NWMP). Their arrival in the North-West Territories has been characterized in the historiography in various terms; but no historian denies the monumental significance of their presence. The NWMP and The Law in the NWT tend to be regarded as the ‘same sides of the same coin’, an understandable reading, given the power and responsibility invested in the force. Senior officers were ex officio justices of the peace and early on the Commissioner also acquired the elevated jurisdiction of Stipendiary Magistrate. Less well known are cases involving criminal prosecutions of policemen and of the role of the NWMP’s internal legal regime. Through either or both legal processes, members of the NWMP found themselves as prisoners in their own guardrooms, convicted of criminal and/or disciplinary offences. This paper adds to knowledge of an under-researched aspect of low law criminal justice in nineteenth century Western Canada through an analysis of two distinct but related low law regimes in which the Mounties got their own man.

Philip Girard, York University, Osgoode Hall Law School

Presentation
Two Cheers for the Constitutional Act of 1791

The British constitution was and is a famously eclectic entity: a collection of statutes, charters, conventions, and judicial decisions, rather than a single document. The constitutions of the North American colonies followed suit, adding even more variety and shifting from corporate forms and proprietorships in the early seventeenth century to a governor-and-council model later on. All of these various forms grew out of the prerogative, while the role of Parliament in colonial affairs remained muted and undefined. That changed on the eve of the American Revolution, as two major acts of 1774, the Massachusetts Government Act and the Quebec Act, tried to reform the constitutions of those colonies, the first one of the oldest British possessions on the continent, the second only recently added to what was now being called the empire. The first act was a disaster, the second was quickly overtaken by events. In the wake of the Revolution another constitutional act, that of 1791, was passed to recreate the government of Quebec, now Lower Canada, and to establish one for the new province of Upper Canada. Yet the new colonies of New Brunswick and Cape Breton, both created in 1784, received constitutions on the old prerogative model, as had Nova Scotia after 1713 and Prince Edward Island in 1769.

This paper will examine the significance of these differing constitutional forms, arguing that the American Revolution had more of an impact on the Constitutional Act of 1791 than has previously been recognized.
Claire Gjertsen, University of Calgary, Department of History, and Stefan Parker, University of British Columbia, Department of Political Science

Presentation

‘Passing the Wine’: Tracing the Struggle of the Calgary Italian Community to Legalize Homemade Wine Production

In November 1964 members of the Calgary Italian Community had their homes raided by police searching for illegally produced homemade wine. Homemade wine production was a central aspect of maintaining cultural practices within the immigrant community, and a fundamental aspect of cultural life in Italy. Although the Calgary Italian Community was confronted by the illegality of this cultural practice, they chose to ignore the law and produce wine covertly. However, following the raids of November 1964, members of the Calgary Italian Community felt threatened by the illegal status of this cultural practice and sought to change Alberta liquor laws to legalize homemade wine production. We trace efforts to lobby legislators and organize support for legalization by framing the production of wine as a matter of cultural significance through a series of interviews conducted with members of the Calgary Italian Community familiar with the raids and the legalization process. This analysis is placed within Habermas’ theory of the separation of facticity of law and the moral legitimacy of law in modern pluralist societies.

Peter Gossage, Université Concordia, Département d’histoire

Presentation

Familles, droit et justice au Québec, 1840-1920 : Aperçu d’un projet en cours

Cette communication présentera les grandes lignes du projet Familles, droit et justice au Québec, 1840-1920, en cours depuis 2013 et fondé sur une collaboration étroite entre les quatre membres du panel : Gossage, Fyson, Nootens et Reiter. Comme équipe de recherche, nous visons par le biais du projet « FDJQ » à reconstituer l'expérience de la justice tant civile que criminelle par les familles québécoises durant une époque cruciale de la formation des sociétés modernes, soit la transition au capitalisme industriel (1840-1920). Ce projet ajoutera de manière significative à la compréhension d'une problématique centrale en histoire, celle des modalités et de l'évolution des rapports entre sphère privée et pouvoir étatique. Nous tenons compte autant des réalités familiales présentes dans les recours aux tribunaux que de la construction des rôles familiaux opérée en retour par les décisions des magistrats, notamment en regard de la condition sociale, du sexe et de l'âge des justiciables. En somme, comment, à cette époque, les familles investissent et sont investies par l'appareil judiciaire, ce mode spécifique de régulation sociale? Les zones à l'étude sont les districts judiciaires de Montréal, Québec et Trois-Rivières. L'ensemble comprend donc l'épicentre de l'urbanisation et de l'industrialisation
au Québec (Montréal), une ville aux multiples fonctions commerciales et politiques (Québec) ainsi qu'une zone essentiellement rurale (la Mauricie). En juillet 2017, au moment du colloque Passé juridique du Canada : les orientations futures de l’histoire juridique canadienne, nous serons en quatrième année de nos travaux dans le cadre du projet FDJQ. Il sera possible ainsi d’offrir aux participants une idée non seulement des méthodes de recherche dans les archives judiciaires et des types de litiges ciblés – à savoir les infractions de nature sexuelle, les manifestations de violence intrafamiliale, les entorses au mariage et aux rôles parentaux et les conflits relatifs au patrimoine familial – mais aussi des grandes tendances et des pistes prometteuses que les analyses du corpus nous ont permis d’identifier. Soulignons en passant que la communication pourra se faire en français ou en anglais, en fonction des circonstances et des préférences du comité organisateur.

Sarah Hamill, University of London, The City Law School, City

Presentation
The Last Gasp of Temperance? Liberalising the Liquor Laws in Post-war Alberta, 1945-1958

During the inter-war period, Alberta was something of a trailblazer in its system of liquor regulation. Not only did it become one of the first North American jurisdictions to end prohibition, it became one of the first to allow a return to public drinking with its licensed hotel beer parlours. Other Canadian provinces typically re-introduced liquor stores and, after a gap of a few years, allowed public drinking to return but Alberta reintroduced both simultaneously. However, having been so apparently liberal in the 1920s, Alberta’s liquor laws then underwent something of a stasis until the late 1950s and saw no significant amendments or alterations until 1958. For almost thirty-five years, how and where Albertans could drink alcohol did not change. The number of outlets may have increased but the kind of outlets remained limited to the liquor stores, licensed clubs, and hotel beer parlours which had been introduced in 1924. Crucially, this stasis remained for over a decade following the end of World War II. While historians agree that World War I played a key role in the spread of temperance sentiment in Canada, they also agree that World War II sped up the liberalization of attitudes towards liquor which was soon reflected in provincial liquor laws following the end of the war in 1945. Alberta’s system may have been more liberal than that of the Maritime Provinces, where public drinking did not return until after 1945, but compared to the other western provinces as well as Ontario and Quebec, Alberta was one of the last to liberalize its liquor laws post-war. In this paper, I set out how the regulation of liquor and attitudes towards liquor liberalized during World War II and in post-war Alberta. The Alberta Liquor Control Board (ALCB) was aware of the changing opinion towards liquor yet it remained relatively hidebound by its increasingly archaic governing legislation and the attitudes of the province’s governing party. Once again, as was the case with both the introduction and abolition of prohibition, Alberta’s government punted the liquor question to the population of the province (though did not rely on the Direct Legislation Act as with the previous two changes). While Alberta’s remaining Temperance Activists saw this as their chance, both they and the government seemed unaware, despite a major report into
Alberta’s liquor system, at just how badly Albertans wanted a more modern system of liquor sales. As such, the example of Alberta’s delay in liberalizing its liquor laws shows how the lingering adherence to temperance ideals by the governing party, allowed an outdated and unpopular system to remain. It also illustrates the gap between the government’s understanding of the law—which remained rooted in ideas of control—and the ALCB’s understanding of its role—which increasingly became geared towards selling and enhancing the prestige of liquor sales.

Robert Hamilton, University of Victoria, Faculty of Law

Presentation

“This Land of Which You Wish to Make Yourself Now Absolute Master”: The Legal Historical Construction of Sovereignty and Empire in Canada’s Maritime Provinces

This paper argues that contemporary understandings of the sovereignty of the Canadian state as extending evenly throughout its current borders are applied retroactively to legitimize the dispossession of indigenous lands. The historical acquisition of sovereignty thereby becomes a central feature of a legal, political, and national origin story that prioritizes a single historical narrative. As Judith Butler argues, “[t]he story of origins is… a strategic tactic within a narrative that, by telling a single, authoritative account about an irrecoverable past, makes the constitution of the law appear as a historical inevitability.” This paper employs a genealogical approach to legal history which construes all history as creating narratives which impact contemporary power relations and undertakes legal-historical analysis as a mode of critiquing the present rather than as a free standing inquiry. Through this, it challenges narratives around sovereignty in the Maritimes, with an emphasis on the impact on indigenous land rights.

Alexandra Havrylyshyn, University of California, Berkeley, Jurisprudence and Social Policy

Presentation

Practicing Law in a Lawyer-less Colony: The Curious Case of Jacques Nouette de la Poufellerie

The conventional wisdom holds that there were no lawyers in early French Canada. Under royal ordinance, licensed lawyers were indeed forbidden from practicing in the colony. However, the case of Jacques Nouette de la Poufellerie urges a deeper examination of colonial legal practice. The younger son of a Parisian lawyer, Nouette professed legal knowledge upon his arrival in Québec. Local authorities recognized him as a legal practitioner or alternately, procurator. Nouette’s clients ran the social gamut, from Sulpician priests seeking to release an Aboriginal woman from the bonds of slavery, to the colony’s principal merchants, François Havy and Jean Lefebvre. Perhaps threatened by the power of Nouette’s legal knowledge, authorities in the military-mercantile establishment complained to Versailles of this man who “solicited
troublesome trials in his exercise of the profession of practitioner.” This quickly spiraled into his banishment from the colony. Nouette’s story opens up an unwritten history of the legal profession in early French Canada. This paper concludes with a database of ninety practitioner-procurators who practiced law in a lawyer-less colony.

Daniel Heidt, *The Confederation Debates and The Centre on Foreign Policy and Federalism*

**Presentation**

“Moving between Classrooms: Mobilizing and Merging Legal, Historical and High School Pedagogies for Canada 150”

Transitioning from university classrooms to primary and high school settings can be challenging. Different pedagogical approaches to chronology, context, learning outcomes and creative learning activities generate tensions for any team trying to mobilize university-led historical and legal research for primary and secondary classrooms. *The Confederation Debates* wrestled extensively with these challenges while developing education and co-curricular opportunities for high school students.

Heidt will share how the project initially struggled to find its way through conflicting legal, historical, and education research and pedagogical norms to develop activities that educated young Canadians about their constitutional history, parliament, federalism, minority rights, voting, and other key aspects of our democracy. Along the way, he will describe how these incongruities led to false starts and heated debates, as the committee members educated each other about their respective pedagogical requirements. He will also showcase the project’s transcription platform in a computer lab where everyone will have brief opportunity to explore the website, describe how he partnered with a local college to develop the platform at no cost to *The Confederation Debates*, and lead a group discussion about how similar features could be build into legal crowdsource projects in the future.

Ian Holloway, University of Calgary, Dean of Law

**Presentation**

The Constitutional Significance of Judicial Biography – the Case of Lord Sinha

Even though there has in recent years been a flowering of the art of legal biography, conventional legal scholarship tends not to make very good use of this form of work. In a modest way, this paper is intended to proffer an argument that legal scholars neglect biography to their detriment. The contention is that our understanding of the constitutional history of the British Empire – specifically, of the legal transformation from Empire to Commonwealth – can be deepened if we look into the life of one lawyer in particular, the Rt Hon Lord Sinha of Raipur. The thesis is that even though Lord Sinha
was an Indian who died before the Great Depression, and who nowadays is almost completely a forgotten person, he had a discernable impact upon the development of the Commonwealth, and that his life’s journey contains a lesson about the nature of legal change and the common law constitution.

**Louis A. Knafla, University of Calgary, Professor Emeritus of History**

**Presentation**
The Historiography of Law and Society in Prairie Canada, 1870-2000

There were three constituent groups who comprised this region in the late nineteenth century: First Nations, the Dominion government and its institutions, and settlers. The major outside influences were the remnants of the Hudson Bay Company regime, and the challenge of Aboriginal peoples from the United States and that country’s westward movement of manifest destiny. Going into the twentieth century, the region became influenced significantly by the advent of British and eastern Canadian financial interests who sought to exploit its natural resources – namely agriculture, mining and forestry for Britain’s colonial project. Later, the discovery of rich oil and gas fields brought the region into the vortex of the world economy which impacted the relations of First Nations, settlers and new immigrants as much as the landscape on which they resided.

This paper will explore the ways in which these external developments and influences have been interpreted by the academic community in terms of the major legal-historical issues. The somewhat ‘closed’ economy of the late nineteenth century faced continuous outside social, commercial and industrial influences related to empire and state-building that affected the social institutions of family, marriage, working conditions and welfare in following generations. In addition, those socio-economic developments which were caused by the influences of global markets have led recently to an ‘anti-colonial’ interpretation that challenges the ‘post-colonial’ world which has formed the framework of most legal-historical studies of, and in, the region. The paper will conclude with suggestions of some of the most fruitful areas for further thought and research.

**Rande Kostal and Erika Chamberlain, Western University, Faculty of Law**

**Presentation**

In two cases in the late 1960s and early 1970s, Canadian common law courts broke from precedent to recognize affirmative duties both of rescue¹ and (with regard to in

---

intoxicated persons) control. In our view, these decisions represent a significant break from the previous (mainly British) doctrinal and normative underpinnings of this sub-field of negligence. Further, in our view, the decisions were symptomatic of a rapid, broad and far-reaching moment of discontinuity in the way that Canadians – Canadian lawyers and judges particularly – thought about moral and legal obligations.

In the absence of an extant historiography of Canadian private law in the post-Second World War era, our paper will use the affirmative duty litigation to map out an original approach to the historical study of private law (common law) litigation and judicial decision-making in this period. We will set forth our operative assumptions about the subject, including the need to pose new kinds of questions and gather previously unexploited kinds of primary evidence. One main assumption in this regard is that a rich and explanatory history of private law will be based not only on questions and sources relating to judicial decision-making, but also the less frequently explored socio-legal processes that cause civil conflict to be litigated in the first place.

How was it, for instance, that in the late 1960s John Menow and the widow of Roland Matthews came to conceive of themselves as victims of legal wrongdoing? Why, in the face of contrary precedent, did their lawyers think their legal cases not only legally plausible but winnable? How were these cases pleaded and perhaps pleaded differently than previous cases? How did the plaintiffs’ lawyers comprehend and plead “policy” in these cases? What strategies did defence counsel adopt in rebutting these claims? What was the legal and normative basis of the judicial decisions in Matthews and Jordan House, and what, if any, theory about moral and legal obligations was at work? How did the judges understand their prerogatives in relation to Canadian and British precedent? Is it right to think of their decisions as moments of doctrinal and or normative discontinuity? If so, what was its cause or causes?

This paper is part of a larger project regarding a hypothesized moment of profound and pervasive discontinuity or “revolution” in private law in Canada between the late 1960s and mid-1980s, one evident not only in many facets of the law of torts, but with regard to key aspects of the law of trusts, contracts (especially regarding employment), vicarious liability and matrimonial property. This larger project will explore the relationship of private law developments and the broader social democratization of Canadian society, politics and public policy.

Marie-Neige Laperrière, Université du Québec à Trois-Rivières, chercheuse postdoctorante en histoire du droit civil

Presentation

Le point de vue des femmes, comme source historique pour comprendre le droit civil québécois. L’exemple de la capacité juridique de la femme mariée, 1913-1965

La critique féministe dénonce les savoirs universitaires comme profondément ancrés dans le point de vue des hommes. Présentées comme des connaissances neutres et universelles,
la recherche universitaire dominante emprunte trop souvent, souvent inconsciemment, la perspective des hommes comme point de départ d’une problématique.

L’histoire, comme discipline universitaire, n’est pas exempte de ce réflexe patriarcal. Nombre d’historiennes déplorent que la très grande majorité des recueils d’histoire ne contiennent qu’au mieux un bref chapitre sur l’histoire des femmes. L’histoire des femmes représentant trop souvent une histoire spécifique en marge de la grande histoire.

Notre proposition suggère donc d’étudier l’histoire du droit civil à partir de l’expérience des femmes. L’étude des luttes et des oppositions aux transformations de la capacité juridiques des femmes mariées permet de mettre en lumière trois choses. Tout d’abord, que l’histoire des femmes est une histoire politique. Elle met en scène des citoyennes et leurs luttes pour transformer le droit étatique. Ensuite, qu’étudier l’histoire du droit à partir du point de vue des femmes donne accès à des connaissances historiques qui concernent l’ensemble de la société. Finalement, au regard de la méthode, une approche féministe de l’histoire du droit civil exige un important travail de réflexivité. Il s’agit en effet de réfléchir sur l’effet des systèmes d’oppression, tels que le patriarcat, le capitalisme et le racisme, sur la constitution des sources historiques utilisées et des possibles résultats à obtenir.

L’approche féministe de l’histoire du droit nous semble donc un champ prometteur pour offrir un regard nouveau sur l’histoire du droit canadien.

**Jean-François Lozier, University of Ottawa, Department of History**

**Presentation**

The Missing and Murdered of 1669

During the early spring of 1669, a Seneca man went missing while on his way to Montreal after a productive winter’s hunt. Around the same time an entire Oneida band similarly failed to return from the Masconhe River, just to the north, where they had spent the winter. It soon became clear that the missing had been murdered. The French and the Five Nations of the Iroquois or Haudenosaunee Confederacy, to which both the Senecas and Oneidas belonged, had ratified a peace treaty barely a year and a half earlier, and these two incidents caused a great strain between peoples who, after a half-century of intermittent war, now strove to coexist peacefully. French colonial justice was swift and decisive. The soldiers who were found to have murdered the Seneca were tried before a court martial and promptly executed; the three civilians who murdered the Oneidas, having absconded from the colony before they could be arrested, were convicted in absentia and broken on the wheel in effigy. In parallel, the governor general of the colony in addition sent wampum belts to the Senecas and Oneidas to ritually “cover the dead”, in keeping with the protocols of intercultural diplomacy and with indigenous customs of restorative justice. The combination of social, political, diplomatic and

---

judicial issues raised by these cases are complex and compelling. Intercultural violence was nothing new, having been a fact of war in the region since the early seventeenth century, but never before had a the killing of Indigenous individuals by Frenchmen been reported or prosecuted as a murder by the colonial state. The case of the “missing and murdered” of 1669 consequently stand as a tragic first in the annals of Canadian history, and invite a modest Early Canadian contribution to one of the country’s great challenges in the early twenty-first century.

**Catharine MacMillan, King’s College London, Dickson Poon School of Law**

**Presentation**
Canada, Commerce and the Judicial Committee of the Privy Council

While there is a wide and diverse body of scholarship concerned with Canada and the Judicial Committee of the Privy Council, only a very small part of this is concerned with private law. This is unfortunate as the development of the Canadian economy is linked to its political and social development. While many of the Judicial Committee’s decisions were, as Leacock quipped, ‘Pickwickian’ it is also clear that the structure of private law provided by the Judicial Committee in Canadian appeal cases had a lasting legacy. An exploration of how Judicial Committee decisions shaped the structure of private rights in Canada informs our understanding how such a large, diverse and physically inhospitable country became a prosperous and stable nation.

This paper seeks to remedy the lack of scholarship into Canadian private law cases before the Judicial Committee of the Privy Council. Drawing upon primary materials from the Judicial Committee of the Privy Council (many of which have only just become publicly available), this paper seeks to understand the impact of the Judicial Committee of the Privy Council upon private law in Canada. In doing so, this study serves not only to understand the Judicial Committee’s impact upon the development of private law but also Canada’s role within the British Empire and how Canadian cases contributed to private law in other jurisdictions.

**Greg Marquis, University of New Brunswick, Saint John, Department of History and Politics**

**Presentation**
What I Learned about Writing True Crime

This presentation is based on the author’s experience in researching, writing and promoting a best-selling true crime book on the 2011 murder of Richard Oland and the 2015 trial of his son for second-degree murder. Academics generally have avoided contributing to the genre of contemporary true crime. Popular books on well-known murder cases and other recent crime topics such as biker gangs tend to be produced by journalists, freelance writers and amateur historians. The reasons for the dearth of true crime writing by academics are professional (research ethics, the need to produce peer-
reviewed material), logistical (the difficulties of attending court during the teaching term, the challenges of covering a case in another city or province) and structural (the format and stylistic expectations of trade or non-academic publishers, the need to turn a profit with a book project and the pressure to go to print in a relatively compressed period of time). Despite these obstacles, work on contemporary true crime cases, when it can be successfully prosecuted, offers a powerful way for academics to mobilize knowledge and reach a wider audience.

Ted McCoy, University of Calgary, Department of Sociology / Law and Society Program

Presentation
Seeking Unruly Women: Breaking The Bond Between Crime and Punishment in Prison History

Unruly and incorrigible women are frequently the most visible individuals in prison archives. They generated more reports, communication, and debate than those prisoners who followed the rules. How do we use their experience to write prison history? Early practices of punishment, and the reform movement that followed, were deeply tied to constructions of women’s criminality that defined and justified their treatment in the early penitentiary. Indeed, over time the penitentiary itself contributed to such constructions—reproducing the very structures of inequality that often led women to criminal conviction in the first place. I argue that we might fruitfully break the legalistic bond between crime and punishment in order to move beyond such justifications and view the experience of imprisonment differently. The history of “unruly” women in Canadian penitentiaries helps to reveal both the constructions of criminality that influenced punishment and also the experience of imprisonment for those women who were constructed and constrained as “the worst of the worst.”

Jeffrey L. McNairn, Queen’s University, Department of History

Presentation
“‘Where Covert Guile and Artifice Abound’: To Know Insolvency and Fraud in Upper Canada, 1794-1843”

Insolvency poses as much an epistemological problem as a legal one. How do you know someone is insolvent? Who decides, using what procedures, and by what measure if someone is sincere in their avowal of an inability to pay a just debt or is mendacious, concealing or fraudulently conveying assets or planning to abscond for the purpose of defrauding a creditor? What were the understandings, both legal and vernacular, of truthfulness and how did the law, both in principle and practice, attempt to produce truth when voluntary contractual relations between private parties went awry?

Using Upper Canada/Canada West as a case study, this paper explores how the law reflected and shaped ideas of what constituted truth and the practices to verify it.
Who was best placed to make such a determination (judges, jurors, creditors or bankruptcy commissioners), what mechanism guaranteed veracity (sworn oaths, securing bail from others, court-ordered interrogatives, trial or the ordeal of imprisonment) and what criteria ought to be used (reputation, visible marks of material possessions, particular acts or countenance and emotional cues on the body)? Shifting legislation respecting imprisonment for debt, the seizure of the property of those who hid or left the province, and the colony’s first bankruptcy statute, public debate about these insolvency laws, debtor petitions, and court cases provide evidence of how understandings of truth production were shared or contested over the first half of the nineteenth century. Cases in which debtors sued creditors for perjury or malicious arrest are especially illuminating in this regard.

The paper thereby also addresses histories of state formation, intellectual and cultural understandings of sincerity, and the law’s imbrication in relations of social, cultural, and economic power.

**Mélanie Méthot, University of Alberta, Augustana Campus, Department of History**

**Presentation**

Analyzing Bigamy Cases without Legal Records: It Is Possible

Using the bigamy cases of Julie Morin (Quebec, 1880) and Lily Strike (Australia, 1905) I will discuss the different methodologies I used to shed light on these two unique cases. I first encountered Julie Morin through the pages of Quebec City Prison’s Ledger, while Lily Strike was revealed through the extensive coverage in Australian newspapers of divorce proceedings, which were followed by an accusation of bigamy. Their respective “extraordinary” story allow one to understand better how individuals, society and the courts perceived the institution of marriage.

**Bradley Miller, University of British Columbia, Department of History**

**Presentation**

Marriage and Transnational Law in British North America/Canada

From the earliest years of the nineteenth century until long into the twentieth, traditions of transnational legal order defined in key ways the legal meaning of marriage in Canada. Ideas about natural law, divine law, and eventually international law expanded the strictures of English and Canadian marriage. This paper will examine court cases and legislative debates involving the recognition of foreign marriages and divorces as well as changes to the prohibited degrees of affinity and consanguinity. It will show how Canadian and even English law was supplemented and in some ways subordinated to notions of law that transcended both colonial and imperial jurisdiction. It will also argue
that, as Canadian legal historiography expands in the coming years, issues of transnational legal order can help us re-make the field.

Michel Morin, Université du Montréal, Faculté de droit

Presentation
La survie et la modernisation du droit civil, 1774-2000

Comment expliquer la reconnaissance de la tradition de droit civil au Québec et sa survie au sein d’une colonie britannique, puis d’une province canadienne ? Il faut dépasser l’image d’Épinal du Conquérant magnanime et éclairé, d’une part, ou celle de la résistance farouche à une volonté persistante d’assimilation linguistique, culturelle et juridique, d’autre part. En effet, si d’un côté le conquérant britannique aurait préféré l’introduction pure et simple du droit anglais, d’un autre côté, plusieurs institutions britanniques sont devenues avec le temps un élément constitutif de l’identité québécoise. Pensons au système parlementaire ou au procès devant jury du droit criminel anglais.


Thierry Nootens, Université du Québec à Trois-Rivières, Département des sciences humaines, et Centre interuniversitaire d'études québécoises

Presentation
« Je donne toujours mes papiers à mon mari » : savoirs féminins, finances domestiques et droit civil au Québec, 1866-1931. Le « retard » québécois à l'épreuve des archives judiciaires

Un simple coup d'œil au Code civil du Bas-Canada montre que la province de Québec, à la fin du 19e siècle et au début du 20e siècle, est largement plus conservatrice que les juridictions de common law voisines en matière de condition juridique et financière des femmes mariées. Les épouses québécoises n'ont pas bénéficié des Married Women Property Laws étudiées entre autres par Lori Chambers et Peter Baskerville. Cela sans parler de l'accès au divorce, alors fort étendu – en vertu des critères de l'époque – dans plusieurs États américains. Bien entendu, il y a une marge entre la lettre de la loi et les pratiques juridiques des acteurs sociaux, de même qu'à l'égard de l'expérience du droit par les populations. À partir d'exemples tirés d'archives judiciaires, nous tenterons de mieux cerner des données clés de cette expérience, du point de vue du genre: le degré d'agency de femmes aux prises avec un droit familial particulièrement contraignant, ainsi que l'étendue et les limites des savoirs féminins en matière d'obligations familiales et de finances domestiques. Ces savoirs constituent l'un des angles morts de l'histoire des femmes mariées. Or, il est possible de mieux les cerner à partir des réponses fournies par des épouses contraintes de témoigner au tribunal à l'occasion de procès divers. Les cas abordés relèvent de recherches en cours au sujet de la situation des femmes mariées de la bourgeoisie québécoise. Nous verrons, au final, que si le concept de « sphères séparées » a récemment fait l'objet de critiques dans l'historiographie, son usage demeure particulièrement pertinent en ce qui a trait à l'histoire des ménages durant la transition au capitalisme industriel au Québec.

Nicole O’Byrne, University of New Brunswick, Fredericton, Faculty of Law

Presentation
“No other weapon except organization”: A Comparative Study of Métis-State Relations in Alberta and Saskatchewan (1930-1964)

The British North America Act, 1930 (the Natural Resources Transfer Agreements or NRTAs) marked the end of a lengthy battle between the provincial governments of Saskatchewan, Alberta, and Manitoba and the federal government of Canada. Prior to 1930, the provincial governments did not have administrative control over their natural resources, which were managed by the federal Department of the Interior. As a result, the three prairie provinces did not share equal constitutional status with the other Canadian provinces that did control their own resources. Under the terms of the new
constitutionalized intergovernmental agreements the provincial governments agreed to fulfill all of the federal government’s continuing obligations to third parties after the transfer. One of these obligations was the redemption of Métis scrip issued by the federal government to extinguish the Métis share of Aboriginal land title. After the transfer, however, the provinces resisted granting more land to satisfy what they considered to be a federal obligation. The provinces refused to redeem Métis scrip entitlements and the federal government did not enforce the terms of the NRTAs. Both the federal and provincial governments failed to live up to the terms of the constitutional agreement and the Métis scrip issue fell through the jurisdictional cracks of Canadian federalism. This paper examines the historical context and consequences surrounding the Alberta and Saskatchewan government’s failure to recognize Métis scripholders’ rights-based claims to land. Each provincial government pursued different avenues with respect to natural resources and Métis policies. The Métis land question in Manitoba has been the subject of much academic study. This purpose of this paper is to examine the different phases of policy development in the two distinct political cultures of Saskatchewan and Alberta.

The transfer of control and administration of the public domain from one level of government to another provides interesting insights into the history of Métis-state relations in the prairie provinces. Aboriginal peoples, including the Métis, were not consulted during the negotiations leading up to the NRTAs; nevertheless (or perhaps as a result), the transfer agreements were a catalyst for political organization in several Métis communities. Métis who had been living on federal crown land were concerned that the transfer of lands to the provinces would negatively impact their right to pursue traditional livelihoods such as hunting, fishing and trapping. In Alberta, the NRTAs sparked the formation of the Métis Association of Alberta, a political lobbying group that advocated recognition of historical claims to land. During this period, parallel Métis living in Saskatchewan created a parallel organization. These political groups represent some of the earliest attempts by Aboriginal people in the prairie provinces to actively voice their concerns and influence government policy. This paper attempts to build on and examine the Seymour Martin Lipset and C.B. Macpherson’s seminal works on the social and political history of Alberta and Saskatchewan. However, neither Martin nor Macpherson address the Métis land question to any significant degree. This paper is an attempt to re-examine the role played by Métis as they actively asserted their rights during this key period after the transfer of the natural resources to the provincial governments of Alberta and Saskatchewan.

Darren Pacione, Carleton University, Department of Law and Legal Studies

Presentation
Defending the Front de Libération du Québec: Self-Representation as Political Strategy in the Courtroom

As part of a larger project that examines strategies of legal self-representation in state trials, this paper marshals the legal encounters of the Front de Libération du Québec (FLQ), which I suggest occupy relatively marginal place in historical literature on the
felquistes, and argues that the FLQ political trials of the late 1960s and early 1970s demonstrate performative tensions inherent to the self-represented political dissident’s (the pro se defendant) contestation of state power. Likewise, ongoing critical and analytical attention paid to the performative dimension of political trials (Meierhenrich and Pendas, 2016; Ertür, 2015; Allo, 2013; and Grunwald, 2012) offers a new lens through which political trials, generally, and the FLQ legal encounter, particularly, may be read. For Allo and Ertür, for example, political trials are performative power struggles between state power those who resist.

How did FLQ members defend themselves in court? Taking cues from Steven E. Barkan’s (2006, 1986, and 1977) historical work on the pro se defendant and protestor trials, this paper asks what a performative reading of two sets of FLQ criminal trials offers to an analysis of the legal defense strategies deployed by prominent FLQ members in Montreal courtrooms? As such, I argue that pro se defendants’ self-representation strategies are read as part of a performative politics in the courtroom. Despite research hurdles faced at the Bibliothèque Archives nationales de Québec (e.g. permanent restrictions of archived court records and solicitor-client privilege roadblocks), roadblocks to the development of a felquistes historiography, this paper contributes to a legal history of the FLQ trials through examination of the La Grenade Affair, a series of manslaughter trials and appeals, and le Procès des Cinq, a ubiquitous seditious conspiracy proceedings against the de facto FLQ leadership. In sum, attending to the performative politics of FLQ, and historical resistance movements generally, further critical interpretation of bi-lingual (legal) histories of indépendantiste and separatist struggle in Quebec is made possible.

Genevieve Painter, ‘Give us his name’: Speech, Temporality, and Dispossession in a 19th Century Settler Colony, McGill University

‘Jurisdiction’, the word describing the legal techniques for determining ‘the home’ of a legal dispute emanates from the Latin ius dicere—to speak the law. Who or what speaks when law speaks? How is that speech enmeshed in accounts of the connections between past, present, and future? How does jurisdictional speech position speakers in relation to land? A 19th century encounter between a nascent settler state and two Indigenous nations offers a setting for exploring the enmeshments between speech, law, time, and dispossession. In 1887, Nisga’a and Tsimshian chiefs traveled to Victoria to meet with provincial officials to discuss the land in present-day northwest British Columbia. This encounter occurred in the context of a recently confederated Canada and the passage of federal laws aimed at assimilating ‘Indians’ and promoting their ‘advancement’ from the past into modern ‘civilization’. During the dialogue with the Nisga’a and Tsimshian leadership, officials from the province of British Columbia declared the Crown’s claim to the territory to be timeless: “All the land belongs to the Queen.”[1] Nisga’a elder Neis Puck replied: “I am the oldest man here and can’t sit still any longer and hear that it is not our fathers’ land. Who is the chief that gave this land to the Queen? Give us his name, we have never heard of it.”[2] In contrast to Canadian officials, Nisga’a leaders referenced inhabited time, based on lived knowledge, and a law-making based on speaking and hearing.
By studying the archive of this encounter, this paper explores two questions. First, I ask if and how relationship to land in a newly confederated Canada took place in a context of diverging understandings of time. Second, in tracing the appearance of diverging conceptions of time in speech about land, I ask whether assertions of jurisdiction rely on presumptions of temporal homogeneity and coherence in a colonial contact zone. Using methods from rhetoric and linguistic anthropology, I analyze how Indigenous and settler speakers characterized the passage of time, the pace and directions of change, and the connections between past, present, and future.

Pooja Parmar and John McLaren, University of Victoria, Faculty of Law

Presentation
Advocating for Unpopular Causes and the Expectations of 'Respectable' Lawering in British Columbia, 1900-1940: An Initial Exploration

During the period 1900 and 1940 the Law Society of British Columbia consolidated its authority over the practice of law in the Province, including control over admission to the Bar, the system of legal education and articling, and the professional behaviour of practitioners. This paper is an exploratory study of the treatment of those lawyers who represented unpopular causes, focusing on the careers of several individuals active in practice at the time. In the analysis attention is paid to the possible impact of ethnicity, political ideology and elite connections on the reception and treatment that these practitioners encountered among their professional peers.

Karen Pearlston, University of New Brunswick, Faculty of Law

Presentation
The State’s Business in the Bedrooms of Lesbian Nation

It is generally accepted that, in contrast to homosexual conduct between men, lesbianism in Anglo-Canadian legal history was not classified as criminal conduct. By the 1950s, this perception began to change, if unevenly, as indicated by the 1955 trial in Yellowknife of a lesbian for indecent assault after she attempted to kiss another woman. A second indicia of such change is found in the 1953-54 amendment to the Criminal Code that rendered the offence of gross indecency gender neutral. Despite these indicia, there are no other known cases in the 1950s or 60s where a woman was prosecuted for sexual assault or gross indecency against another woman. Instead, lesbians appear in the criminal law in relation to prostitution and nuisance offenses. They also make appearances in the realm of family law.

In 1968, when the criminal reforms that eventually led to the Omnibus Bill were under discussion, parliament made an equally important reform to the legal regulation of morality by providing Canada with its first uniform divorce law. The Divorce Act, 1968,
introduced the possibility of no-fault divorce. It also included a list of fault-based grounds for divorce, among them that a spouse had “engaged in a homosexual act” since the celebration of the marriage. In a context where sodomy had long provided grounds for divorce, the homosexual act ground was explicitly aimed at lesbian conduct. It remained part of divorce law until the 1968 legislation was repealed and replaced in 1985. Its repeal was among the earliest demands of the gay liberation movement in Canada but, perhaps because it was repealed as a part of the comprehensive divorce law reform in 1985, it has not attracted much scholarly attention.

The explicit attention to lesbian conduct that was operationalized by the legislation forced the courts to grapple with how to identify the requisite sexual act when it is engaged in by two women. It is clear from reading the cases that the judicial reasoning was influenced by the social and parliamentary processes that resulted in the partial decriminalization of homosexuality in 1969 and by the judicial response to that reform. The paper looks at the effect of the partial decriminalization of homosexuality in the Omnibus bill in relation to the homosexual act ground for divorce with specific focus on how the relevant sexual conduct was defined, especially with reference to lesbianism and to women's sexuality overall.

Jim Phillips, University of Toronto, Faculty of Law

Presentation
Rewarding ‘Unremitting Labour, Industry, and Perseverance’: Legislating Title from Possession in the Maritimes before c. 1850

It is generally assumed that the only substantial controversies over land titles in the eastern colonies pre-1867 involved aboriginal title and the abolition of the seigneurial system in Lower Canada/Canada East. While not denying the significance of these issues, this paper deals with other title problems in the same period, all of which turned on fee simple title. In Upper Canada fee simple title lay at the heart of debates over whether the colony could be truly 'British' rather than one largely peopled by Americans. In PEI the contest was whether landlordism would yield to independent freehold title. On Cape Breton the British government's decision to issue mainly licences of occupation before c. 1820 meant that most residents were squatters until the 1850s. Squatting was also endemic elsewhere in Nova Scotia and in New Brunswick, precipitating debates over whether occupation and 'improvement' should be recognised as conferring title.

Sarah P. Pike, University of British Columbia, Faculty of Law

Presentation
Gilbert Malcolm Sproat, 1834-1913: A B.C. Indian Reserve Commissioner’s attempt to answer the “Indian Land Question”

The B.C. “Indian Land Question” describes the conundrum facing successive governments as a result of their refusal to treat with indigenous peoples for the surrender of lands but their acknowledgement that these peoples needed land under the settler legal
system. The post-Confederation governments gave a constitutional answer to the “Question”: the Province would convey land to the Dominion for Indian reserves.

As a Commissioner with the Joint Indian Reserve Commission (1876-1878) and as the first sole Commissioner (1878-1880), Gilbert Sproat made numerous reserve-allocation decisions, the impact of which are still felt today, and commented on many more related and still-relevant issues.

My paper will examine Sproat in his context: from the ‘macro’ cultural, political and social influences of his time to the ‘micro’ particularities of his life. By better understanding Gilbert Sproat’s role in and views on allocating lands for B.C.’s indigenous people, I hope we will better understand the still-existing “B.C. Indigenous Land Question”.

Graham Price, Independent Scholar

Presentation
A Survey of Legal Archives in Canada

There are many sources of primary and secondary legal materials. Archives are one. Legal archives are a specialized source, not thought of by many and not well known. I will set out how the Legal Archives Society of Alberta was set up and will examine the holdings of the archives of some of the other territories and provinces. The law societies of B.C., Ontario and Newfoundland, for instance, have narrowly focused legal archives. Many law societies have no archives at all but only records management programs. I will update work on Canadian legal archives done by others, including John McLaren, DeLloyd Guth and Lou Knafla.

Eric H. Reiter, Concordia University, Department of History

Presentation
Family Defamation in Quebec: The View from the Archives

Among the 1500 or so archival case files sampled for the project Familles, droit et justice au Québec, 1840-1920 are many involving defamation of (or by) family members. Family honour, as a collective and affective social and legal idea, has been little studied to date. The judicial archives are a rich source for this subject, however, providing historians with access (problematic yet promising) to the family’s emotional identity and its public self-presentation. Alongside what the archives reveal about family honour is another story: what the archives can tell us about how families used the law and the courts to settle family disputes and protect their honour. Unlike the more accessible and more widely used reports of judgments, the judicial archives in civil matters include almost all the cases: those that went to judgment, but also those that settled out of court, those that were withdrawn before trial, and those that were instituted but then abandoned without further activity.

In this paper, after a general overview of the types of cases contained in the sample and their outcomes, I will explore this instrumental use of litigation in civil family
defamation cases. The central question is how the picture from the archives contrasts with the view from reported cases. Case reports represent a select subset of litigation, and privilege a particular view of the legal system, in which courts and judges are central, litigants put themselves in the hands of lawyers and judges, and the authority of the court prevails when final judgment is pronounced. The archival evidence from family defamation cases suggests a different picture, in which the courts become tools used as part of broader domestic strategies for protecting family honour from attacks from both outside and within the family. The latter, cases of infra-family defamation, are particularly interesting and will be the main focus of the paper. Such cases almost never went to judgment. Instead, family members used the courts to apply varying degrees of pressure on relatives in the interests both of affirming boundaries of propriety and censure, and of restoring family harmony.

Mary Stokes, York University, Osgoode Hall Law School

Presentation
Bringing Bylaws into Low Law: Toward the Historical Study of Low Legislation

In the last decade Anglo-Canadian legal historians have become intrigued by the concept of ‘low law,’ law produced and administered by ‘inferior’ parts of the legal system. Paul Craven has examined the low law practised by eighteenth and nineteenth century New Brunswick justices of the peace, Brad Miller has written on the low law enforcers of (high) extradition law, and Jim Phillips has called JP manuals ‘low law’ counter-treatises. So although there are many areas still to explore, judicial low law and low law administration have attracted and continue to attract attention. However, the inheritors of the non-judicial functions of the justices of the peace—municipal governments—and the low legislation they produced—by-laws—have escaped notice. Some promising work has been done on isolated bylaws using the methodology of the case-in-context, but such studies do not lead to the broader analysis that is possible with a longer or wider lens.

In this paper I seek to enlarge the concept of low law to encompass the legislative aspect of law made and administered at the local level.

The first part of the paper looks at a sample of by-laws produced in the middle of the nineteenth century by a few jurisdictions in what came to be Toronto, to consider in what ways they can be considered low law, or indeed law at all. The second part of the paper looks at the historiography and theory of low law, to consider why and how by-laws can or should ‘count’ as law for legal historians.

I argue that the corporate form of local government in Ontario and similar jurisdictions obscures the legal nature of its activities, analogous to the reasons that adjudication by JPs once escaped historicization—that is, lack of high-law type records in

---

the form of case reports, as well as the high law or ‘Mandarin’ bias of legal academics and historians. As corporations, local governments acted entirely through by-laws, so many or most of these would not be categorized as legislative, or even as law. Still, as I demonstrate in the first part of the paper, in many ways nineteenth century by-laws mimicked contemporary statutes in form, procedure, as well as in substance, which leads to theoretical questions: if a commercial corporation such as the Hudson’s Bay Company can be seen as a quasi-sovereign legal power for historical purposes, can democratic, albeit non-sovereign, non-commercial municipal corporations be considered as low governments and their laws low legislation? How crucial is the sovereignty of the law-creating body to the recognition of law for legal historians?

Jonathan Swainger, University of Northern British Columbia / History Program

Dr. Swainger’s first book was on the Canadian Department of Justice, and he has edited or co-edited three edited legal history collections and has published numerous articles in North America and abroad, on Canadian legal and crime history. He has also published on capital punishment, seditious language and teen culture in northern B.C.

Presentation

This research examines the intersection of race, class aspirations, and ideas about the frontier, crime and disorder in the crime history of Prince George, B.C. between 1908 and 1925. Central to this dynamic were ideals about ordered space in settled communities and who embodied the preferred residents of such places. In British Columbia’s northern interior, the Cariboo district, an anxious differentiation between the “old Cariboo” and the “new Cariboo” captured this contest. The latter community, with its preferred ordered space, was to be free of alcohol, criminal excess and violence and peopled with law-abiding White Christians. Reverend Cecil Wright’s hyperbolic claim that his congregation existed near “the very gates of hell” at the confluence of the Nechako and Fraser Rivers suggested that links to the old Cariboo, with its mixed population, liquor, and its riotous approach to life, remained troubling and persistent, despite efforts to fashion the preferred identity.

Barrington Walker, Queen’s University, Department of History

Presentation
The 2012 Danzig Shooting and Zones of Exception in Toronto

On July 24 2012 The Toronto Star published a cartoon in the wake of the infamous Danzig shooting in Toronto on July 16, 2012. The incident, which occurred in Danzig Street in Toronto in a low-income public housing development during a block party and barbeque has been dubbed the worst shooting in the history of Toronto. It was widely considered to be an especially brazen crime (even in a city where gun crimes were, allegedly, becoming increasingly common) that claimed 22 victims. This presentation focuses on issues of the state, law, criminal justice, policing and racial discourse through the prism of the Danzig shooting and argues that Danzing Street was juridically constituted as a ‘zone of exception’. This was evident even in circles and through organs that were considered to be ‘liberal’. This paper is part of a larger book project on Blacks and the social order in North America’s urban landscapes between the years of 2012 and 2016.

Douglas C. Harris, University of British Columbia, Faculty of Law

Presentation
A History of Condominium in the Country

Condominium or strata property facilitates the subdivision of land into multiple private titles. The legal form is used most commonly to subdivide buildings, but in British Columbia it is also used to subdivide undeveloped or bare land. Gated communities and other private residential and commercial subdivisions use this statute-based form of land ownership—labeled “bare land strata property” in British Columbia—to construct separately titled parcels of land, and then to combine them with shares of common property and rights to participate in regimes of private governance.

This paper recounts the history of bare land strata property in British Columbia, including the statutory changes in the 1970s that enabled this form of subdivision and the debates, court cases, and amendments that ensued. It then maps the locations of bare land strata property developments over time as they proliferated in certain regions of the province and became the principal form of suburban and rural land subdivision. Finally, it asks whether the history of bare land strata property helps in evaluating whether the growing number of private communities of property owners creates cause for concern.

Jacqueline Z. Wilson, Collaborative Research Centre in Australian History, Federation University Australia

Presentation
Redress, Records and the Colonial Legal Past: The Equivocal Role of Archives in Determining Reparations

Over recent years in many countries and jurisdictions, governments have begun to acknowledge the historical wrongs inflicted upon children in institutions and under the supposed “care” of official welfare bodies. The programs of child migration from Britain to various of its farthest-flung outposts of Empire, including Australian and Canada, have
become notorious for the suffering inflicted upon children effectively orphaned and exiled by colonial fiat.

In Australia the approximately 10,000 victims of the child-migration scheme have been officially included among the half-a-million survivors of abusive out-of-home “care” now known as the “Forgotten Australians” – which also include the approximately 30,000 Indigenous Australians forcibly taken into Care and now dubbed the “Stolen Generation”.

The institutions involved, whatever the children’s geographical or ethnic origins, may be seen as vestigial bastions of Empire, in their philosophical purport and ethical make-up, in their style of operation, and in the role they played in perpetuating a colonialist status quo long past its demise in mainstream society.

Following the revelations of successive inquiries plus much activist lobbying, redress schemes are being formulated in various jurisdictions. In some ways these are welcome developments, yet they remain inherently flawed, due to their evidentiary reliance on records created and maintained by the agents that perpetrated the abuses. Here the concept of the “legal past” has particular resonance, because the records – which stand for many as their only evidence of a personal narrative and hence identity, however horrific that narrative may be – are viewed as key primary sources upon which acknowledgement of wrongs suffered and judgements of reparation are to be based. As such, these artefacts of the past have a kind of static legal potency that tends to freeze their subject-victims in a perpetual legal present and withhold from them any meaningful future.

Brian Young, McGill University, James McGill Professor of Canadian History (emeritus)

Presentation

Law, Religion, and Civil Society in 19th Century Quebec: The View from the Archbishop’s Palace

Conference organizers have asked us to reflect on the circulation of legal, cultural, and religious ideas and the law’s relationship to ‘faraway’ influences as these affected issues like gender, colonialism, and ethnicity. Students of nineteenth-century Canadian history generally learn of the intersections of Law and Catholicism through the ruts of national-history narratives that wind through the New Brunswick and Manitoba Schools crises, the Guibord affair, the trial of Louis Riel, the division of the parish of Montreal, and the University question. I would like to pursue a different problématique, one that lifts this legal history beyond the strictures of ultramontanism and a clerico-nationalist historiography. Can the complex and historic conjuncture of Law with Protestantism and Catholicism be integrated into debates around legal pluralism as a central characteristic of Quebec legal culture?

Mindful of the historian’s emphasis on time, place, and individual human experience, I propose to deconstruct the legal mind, the instincts, and the socio-cultural understandings of Quebec’s principal Catholic official. In the volatile setting of a new Canadian federation with a Protestant majority, how did a French and Catholic
Archbishop navigate between canon law – universal law emanating from God - and national secular laws established by civil authorities. Beneath his mitre and then his cardinal’s galero, Elzéar-Alexandre Taschereau, Archbishop of Quebec, 1871-98, administered canon law with magisterial voice adjudicating the rights of all Catholic souls in his archdiocese to the sacraments, Christian burial, and to the sanctity of marriage as an ‘indissoluble’ ‘contract between a man and a woman’. Matters apparently more secular but with strong Christian meaning - work, colonization, liberalism, usury, equity, succession, and institutionalization come to mind – were also grist for his legal mill. The Archbishop used his substantial weight in civil society to intervene in debates over labour law, education at all levels, the law of associations, the structuring of social institutions like hospitals and hospices, and over the limits of clerical influence in provincial elections.

As well as a theologian, Elzéar-Alexandre Taschereau was a legal professional and, like his brother, trained in Europe in academic law. A priest, administrator, and professor of theology and canon law, he studied at the pontifical university in Rome for a doctorate in canon law (1856). Late in life, he was named Canada’s first Cardinal with place on the Roman curia. He always seemed comfortable with the obvious contradictions in his legal character. While reiterating that the Church was Roman, universal, and apostolic, a ‘perfect society, distinct and independent from civil society’, he was raised in a gallican geo-political tradition that emphasized collaboration with British officials and Protestants and that gratefully recognized the status of the Catholic Church in Canada as ‘established’. His father had been a Superior Court judge, his brother sat on the Supreme Court of Canada, and his brother-in-law was de-facto president of the three-man codification commission that produced the Quebec Civil Code. His family had century-long experience in cherry picking among civil, canon, and English common law traditions to protect their landed, ecclesiastical, and successoral privileges.

The paper then, will pick at the nuances of his legal culture. What were the ideological effects of his training for church administration and public life at the Séminaire de Québec and of his graduate work in canon law. As a founder and then rector of Laval University, how did he influence legal training in Canada’s first Catholic law faculty? Similarly, as director of Quebec’s Grand Séminaire, what did he impart as civil and canon law culture to priests in-training? And then as archbishop, how did he disseminate ‘legal news’ to priests across his archdiocese. Quebec’s civil, procedural, and criminal law apparatuses were professionalizing through codes, a changing deontology of the bar, and the establishment of legal journals. As religious authorities with civil functions, priests too, needed refreshers in their application of mandates from Rome and the Archbishop’s office, of the Quebec Civil Code, of the Quebec Code of Procedure, and of statute law concerning public health, the gathering of census information, the keeping of civil registers, and clerical role in elections. His office had to distill, integrate, vulgarize, and distribute legal instructions drawn from these sources as well as interpretations drawn from Catholic legal intellectuals like H.L. Langevin and Pierre-Basile Mignault. These instructions took the form of public circulars and publications like the Mandements of the Bishops of Quebec and amendments to historic works like the Rituel du diocèse de Québec (1703). In particular, he re-organized and modernized the presentation of legal knowledge through a work, aptly entitled, Discipline du Diocèse de
Québec. All sorts of legal queries channeled through his office and yearly on-site visits to parishes permitted the inspection of presbytery offices, of civil and parish registers, and of the performance of priests in carrying out their canon and civil legal duties. He named judges and other officials of l’officialité, an active ecclesiastical court in his archdiocese; appeals from this court could be made to Rome. What was the jurisdiction of this court, particularly in civil society?

Legal documents and journals, family and institutional histories, correspondance, and his diary, reveal much about his legal culture and his administration of law. This paper should add new dimensions to our understanding of Quebec’s pluralist legal order.