

Architypes

To understand the evolution of law and society in Alberta is to understand our past...

Annual Newsletter

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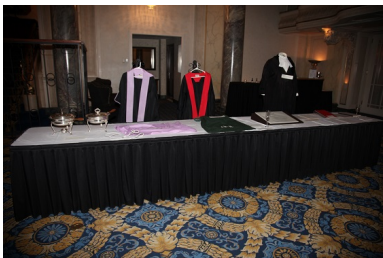


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Historical Dinners

From Magistrate's Court to Court of Queen's Bench: A Quality of Justice Dark Tale



Historical Dinner, Calgary

LASA hosted its Annual Historical Fundraising Dinner in Calgary on October 20, 2016, and in Edmonton on March 23, 2017. We were delighted to welcome the Honourable Jim Foster, Q.C., a former Minister of Justice and Justice of the Court of Queen's Bench as the guest speaker at both dinners.

Mr. Foster's presentation was about the events that led to the contentious, and transformational change, of the Alberta justice system in 1979 with the merger of the District Courts and

the Supreme Court of Alberta into the Provincial Court, the Court of Queen's Bench and the Court of Appeal.

Mr. Foster began his speech by advising the audience that he would like to change the actual title of his presentation to: "From Magistrate's Court to Court of Queen's Bench: A Quality of Justice Dark Tale." The 'Dark Tale' consisted of two historical realities. First, the thirty years of Social Credit government, and second, the forty years of Progressive Conservative government both of which, Mr. Foster asserts, starved the justice system in Alberta.

His speech was an insider's critical look at how he, under the Peter Lougheed government, worked to reinvigorate a justice system that had been deprived of access to an adequate budget for thirty years under the Social Credit. Mr. Foster, as an aside, was blunt in stating that not much changed in the following decades of Progressive Conservative leadership. The lessons he learned that can, and should, be applied to the current Alberta government which, in his view, must revitalize a justice system in dire straits after forty years of Tory inattention. Mr. Foster's blunt argument is that governments only make justice renewal and tackling the need for proper courthouse facilities and personnel resources only when they are pressed by a crisis or an emergency. He believes that, as it was in the late 1970s, Alberta is currently at a major judicial tipping point.

Historical Dinner



Historical Dinner, Calgary



Historical Dinner, Edmonton
Shaun MacIsaac (left) wearing an Edmonton Oilers' jersey after losing a bet in which Edmonton sold more dinner tickets than Calgary.

Mr. Foster detailed the difficulties he encountered, as Minister of Justice, with the creation of the Court of Queen's Bench, including significant opposition from both the Supreme Court of Alberta and the Law Society of Alberta. The major argument against the merger was the alleged quality of justice.

How did the government pass the Court of Queen's Bench with those to major stakeholders unanimously opposed? Mr. Foster asked and answered three key questions during his presentation. First, how and why did a once starved justice system recover with a new Provincial Court, a new Court of Queen's Bench, a new Court of Appeal and a new Department of the Attorney General that included a new Medical Examiners system along with the building of several new court facilities, including in Edmonton and Red Deer? Second, with the merger of the Supreme Court of Alberta and two District Courts, what were the opposing arguments and actions of some prominent lawyers, judges, Benchers, politicians, police and even the *Calgary Herald*? Third, what did we learn from this process and how might today's government, Bench and bar use the past to assist in the future?

Upon being appointed Minister of Justice by the Premier, Mr. Foster struck a committee to study court operations and to determine whether it was in the interest of Albertans to merge the courts. He knew the merger was necessary and vowed to himself that he would move forward regardless of the committee's findings. Mr. Foster's objective for the committee was to get all the relevant stakeholder groups – for and against the merger – talking to each other. Despite Mr. Foster's intentions, the committee was undermined. The Law Society requested that they have a representative on the committee and that meetings would only take place if their representative was present. Mr. Foster thought this was a reasonable request as he believed that the profession should be represented and its views heard. However, with persistent scheduling conflicts it became apparent that the Law Society had no interest in actively participating in the committee's work. Mr. Foster believes that the Law Society wanted to prevent the meetings from happening with the hope that interest in the merger would dissipate. There were also strong objections from the Supreme Court in Calgary. For example, Buzz Fenerty argued that the merger would lower the "quality of justice" Albertans had come to expect from the legal system. In the end, Mr. Foster disbanded the committee and took the decisive step to move the legislation forward.

Despite the Benchers having voted against the Court of Queen's Bench – a fact Mr. Foster was unaware of until the Honourable Jean Côté told him – there was support from the District Courts. The Honourable John Decore, Q.C.,

travelled around Alberta with a group of lawyers generating support for the merger. Mr. Foster also had the support of the Attorney Generals from across Canada. In fact, at the time, Prince Edward Island and Quebec had already done away with their District or County Courts. Although British Columbia and Ontario had backed away from a similar merger, their Attorney Generals supported Alberta's initiative. Most importantly, the Federal Government was behind the merger so long as there was at least one Section 96 court.

Aside from the "quality of justice" argument, there was a second – albeit superficial – disagreement over the new court. Mr. Foster wanted the new court to be named the Court of Queen's Bench. His view was that the court was new and should feature a new name. Moreover, he did not want those District Court judges who would be sitting on the newly merged court to feel like second-class citizens if the court continued to be known as the Supreme Court of Alberta.

During the initial merger process, such disagreements largely occurred away from the public eye, and remained in the hallways of the courthouses and legislature. However, this did not last. Two unnamed individuals from the Supreme Court of Alberta began "badmouthing" the government and its Attorney General. Mr. Foster held his tongue when the first instance occurred. However, he admitted that he overreacted when an article appeared in the *Calgary Herald* condemning his efforts. He strongly told the editor that there is an appropriate and inappropriate way to discuss the issue. In his opinion, the appropriate method is to meet with any member of the government or opposition. However, he felt that it was inappropriate for an unnamed, anonymous source speaking on behalf of the Supreme Court of Alberta and feeding the public inaccuracies about the quality of justice with the proposed merger. He ended the chat with the editor of the *Calgary Herald* with the warning that if this behaviour continued he would publicly call for the resignation of both judges and ask his federal counterpart to remove them both from office. As can be imagined, this threat did not go over well. Mr. Foster noted that he paid the price when he returned to private practice sometime later, and knew he could never appear in the Court of Queen's Bench.

There were two factors that made the merger a pressing issue for Mr. Foster. First, he had only limited time to enact the Queen's Bench legislation before the next election when the Premier would shuffle cabinet. Secondly, he knew there was not a similar level of enthusiasm for this initiative among his cabinet colleague who might inherit the file.

Historical Dinner



Historical Dinner, Edmonton



Historical Dinner, Calgary

As the merger was moving forward, the Honourable Bill McGillivray, then Chief Justice of Alberta, asked Mr. Foster to attend a meeting in Red Deer with the Supreme Court of Alberta to discuss the Court of Queen’s Bench. Mr. Foster believed this would be a good opportunity for a public policy discussion and to hopefully alleviate any concerns of those who were opposed. Unfortunately, the meeting was actually a set up by judges of the Supreme Court to reinforce their “quality of justice” argument. Their view was that the Supreme Court was a quality court producing quality judgements. Their position was that the Supreme Court produces higher quality decisions, and that only the better lawyers are appointed to that higher court. Lesser lawyers go to lower court where they hear less serious matters.

Mr. Foster, although disappointed that the meeting was not what he had expected, responded more diplomatically than his reaction to the *Calgary Herald* incident. He said, that in his opinion, all judges have different skills and abilities, and he could no say that one court, or one of its judges, was better or worse than the other. He felt there was nothing said at the meeting that would change his mind, and that the Queen’s Bench legislation would proceed as expected.

Mr. Foster ended his presentation with a query as to what this time in Alberta’s legal history can teach us that is relevant for today’s justice system? Similar to the starved justice system the Conservatives inherited from the Social Credit government, the NDP has inherited a starved system from the Tories. Mr. Foster reasserted that the only time that a government in Alberta has given priority to Justice was in the period from 1975 to the early 1980s and this was the direct result of the Kirby Report, which was actually three reports that outlined a significant restructuring of the provincial court system. He also lamented that the public never visits their MLA to say: “my courthouse is too small.” Rather, any public discussion about the justice system usually relates to sentencing, parole, crime rates, and access to justice. Moreover, the only people in the government allowed to speak about courthouse infrastructure is Alberta Justice. Mr. Foster concluded that this system fails, and will continue to fail, in dealing with the infrastructure deficit until there is a crisis or an emergency.

Accordingly, Mr. Foster believe that the legal and judicial communities have a choice to make. They can remain quiet or do something. If they chose to do

something, the tools are available. For example, Section 24 of the *Queen’s Bench Act* requires that every year a report be produced on the activities of the courts with recommendations to be filed with the Lieutenant-Governor in Counsel. However, this section is never followed and, to Mr. Foster’s knowledge, a report has never been made or submitted. Admittedly, this process is not very effective, as any such report would be submitted with thousands of other reports and would likely not get appropriate attention.

Accordingly, Mr. Foster made three recommendations that he believes would be more effective. First, have the legal communities’ “Gang of Five” – the Chief Justices from Court of Appeal and Court of Queen’s Bench, the Chief Judge from Provincial Court, the President of the Law Society, and the President of the Canadian Bar Association – meet once a year before the Fall session with the government “Gang of Five” – the Premier, the Leader of the Opposition, the Minister of Justice, Minister of Finance, and the Lieutenant Governor – to discuss the priorities of, and recommendations for, the justice system in the coming year.

Second, he believes it is time for a Kirby Report 2.0. Third, he believes, the Bar Associations throughout the province have an important role to play. MLAs go everywhere the government spends money within their respective ridings. But they seldom ever go near the courthouse. This is because any justice-related conversations are only to occur with staff from the Attorney General’s office. The Bar Association around the province should meet with their respective MLAs at the courthouse on a yearly basis, provide a tour and a briefing about much needed infrastructure.

Mr Foster believes that if such steps were taken, especially those involving the Lieutenant Governor, the reception to change and to revitalize the Alberta justice system and infrastructure might gain some momentum.

On behalf of the staff and Board of Directors for the Legal Archives Society of Alberta, we would like to thank all those who attended both dinners in Calgary and Edmonton, and who continue to support LASA. Also, we would like to thank all speakers who added their own unique contributions to each evening. And, last but certainly not least, a sincere thank you to the Honourable Jim Foster, Q.C., whose knowledge and passion for this significant episode in Alberta’s legal history, as well as his concern for the future of the Alberta justice system, made each dinner a great success.*

From the Vault

A timely donation recently arrived at LASA from the estate of the late Honourable Milt Harradence, QC. His wife, Catherine Harradence, recently passed on February 27, 2017, and LASA extends its condolences to daughter Catherine Harradence, son-in-law Terry Semenuk and the entire Harradence family. Catherine was the beloved matriarch whose kindness and graciousness will be warmly remembered. LASA is indebted to the Harradence family for the materials received this past March and for the earlier donations acquired over several years. All of the materials document the extraordinary career of an esteemed Alberta lawyer and Judge. The Harradence papers at LASA receive much attention and are regularly accessed. These types of donations ensure that the legacy and memory of Alberta legal practitioners, and history, will endure well into the future.



Right: Milt Harradence congratulates Willie deWit on his success. deWit traded in his boxing robes for Judges robes.

LASA Image

Willie's first major boxing victory came in Las Vegas in June 1982 when he knocked out Cuba's Pedro Cardenas to win his first North American title. Then he won gold at the Commonwealth Games; it took him a total of three minutes and 12 seconds to knock out three opponents. In March 1983 he defeated Aleksandr Yagubkin of the U.S.S.R. to win the world title. Then in September 1983 he defended his North American title against highly touted Cuban Aurelio Toyo. Leading up to the 1984 Olympics, a benefit in Calgary starring boxing fans [Ryan O'Neal](#) and [Farrah Fawcett](#) raised \$70,000 to finance Willie's training. He won the silver medal at the 1984 Summer Olympic Games.

Commission of Inquiry into Royal American Shows, 1977 - Milt Harradence and Justice Herb Laycraft were involved in one of the most newsworthy legal events of the 1970s.

Alberta's version of 'Watergate'

The Issue:

Officials from Royal American Shows were allegedly bribing municipal officials throughout Western Canadian in an effort to have them overlook financial rules in the staging of exhibition midways.

Justice James Herbert Laycraft was named to probe Royal American Shows in this public Commission of Inquiry.

The RCMP appeared to be electronically monitoring meetings involving three Edmonton City police officers who were in Winnipeg to gather evidence against Royal American Shows.

Why was an RCMP unit responsible for surveiling subversion, i.e. communist activity in Canada, being used instead to wire-tap the Edmonton police investigators?

Lawyers for the RCMP did everything they could to stonewall, and shake, the story but failed. Lawyers for the Edmonton City Police, as well as Commission Counsel Ron Berger, were determined to substantiate the wire-tapping claim.



LAWYER HARRADENCE VS. MOUNTIE WARDROP
When it was over, the superintendent was trembling.

LASA Image

The only charges against the RCMP arose from evidence contained in two telephone calls. Calgary lawyer Milt Harradence, representing the three Edmonton police officer in the case, grilled RCMP Manitoba Chief D.J. Wardrop in his cross examination. When he was done the superintendent was left trembling. He had categorically denied the charges and accused the

Edmonton police of unethical conduct in making the charges. It was a 15 minute grilling by Harradence.

Justice Laycraft, in his written report, concluded there was no foundation that three Edmonton City police officers were being wire tapped by the RCMP in a Winnipeg Hotel. There was no evidence that the RCMP surveilled Attorney-General Jim Foster. There was no foundation that Royal American Shows received special favours in exchange for monetary gifts.

Finally, the long-awaited inquiry into Royal American Shows: but who the 'bigger fish' might be remains a tantalizing mystery

Though Edmonton city council last week had voted the suppression, Attorney General James Foster called for a judicial inquiry into the mysterious surrounding the activities of Royal American Shows in Edmonton. His decision, announced in the legislature, came at the end of a week of warring rumors, gossip and speculation, all of which had broken out two weeks earlier when Mr. Foster announced the government had stayed proceedings against Edmonton Exhibition Association general manager Al Anderson, charged with fraud and corruption after police raided the Royal American offices at the Edmonton EX 21 months ago. Now, Mr. Foster also announced charges against Mr. Anderson were being dropped, apparently concluding in advance that the judicial inquiry would discover nothing to sustain them. The attorney general's announcement at least halted rumors that the case had seriously split the Longbeard cabinet, but at the same time it raised as many questions as it answered.

Mr. Foster had acted after the following extraordinary events:

- Following his original announcement that proceedings against Mr. Anderson had been stayed, Mr. Foster elaborated. The matter was being investigated by and not by police, but by members of the AG's department staff. Implication: The police does not treat the police in this case. Second implication: The police themselves are involved in it.
- The Journal discovered the evidence collected from Royal American Shows, some 60,000 documents, had been moved from the main police property building, where evidence is usually stored, to one of the police inspector's offices and kept under 24-hour guard. The guards were detectives and were armed. Implication: The evidence was not safe in the usual police custody.
- A former employee of the EXA disclosed he had accepted gifts from Royal American, had been interviewed by police and had not been charged. Implication: The distribution of gifts had been so extensive that prosecution was impractical.
- Police Chief Robert Lunney had been told by the attorney general that the department not to say anything on the matter. Implication: The city police department was involved in the matter.
- A member of Mr. Foster's staff said the case involved "the broad administration of justice." Implication: The police and the AG's department itself were involved.
- Mr. Foster himself had said, in announcing the stay of proceedings in the Anderson case, that information uncovered by the special investigator "casts the evidence" against Mr. Anderson. Implication: The evidence was tampered with or deliberately gathered in an improper manner so that the Crown's case would fall in court.
- Mr. Foster also said that "bigger fish" than Mr. Anderson were involved. Implication: Members of the EXA board, an assembly of volunteer citizens, were involved, or possibly members of the city council. (The council decided last week not to call for an inquiry.)

The reason for all the speculation went, of course, straight back to the attorney general's comments when the stay of proceedings was announced. He had even drawn attention to the unusual nature of his announcement. Since Mr. Foster would know the consequences of his announcement, the rumor easily originated that he wanted the inquiry. Since one wasn't being announced, it became evident that the cabinet was split.

And the comments raised many unanswered questions: Why is a special investigative handling the case instead of the police or a judicial inquiry? What is tainted evidence and how was it tainted? Who are bigger fish? Why was Mr. Anderson not given a preliminary hearing? Has the Royal American Shows still now become involved? Apart from the possibility of cabinet split, one other theory fits the facts. The evidence had involved some public figure of great popularity, but it was not sufficient to convict him, or possibly the man has left the country, is sick, or retired, or dead, and prosecution would be impractical or impossible. The government in releasing the evidence could be accused of smearing the man, and could itself suffer politically for doing so. Only if demand for an inquiry equaled popular preparations could the government then justify its action by pleading that the demand was so serious the government was left with no choice. The political consequences would then be eased. Solution: Disclose part of the story and wait to see what happens. If the nation quickly submits, forget one whole thing. If it doesn't, let the whole

thing out and, when the smears follow, plead there was no alternative. This situation, too, would explain Mr. Foster's conduct.

If the last theory applied, the government had apparently concluded by

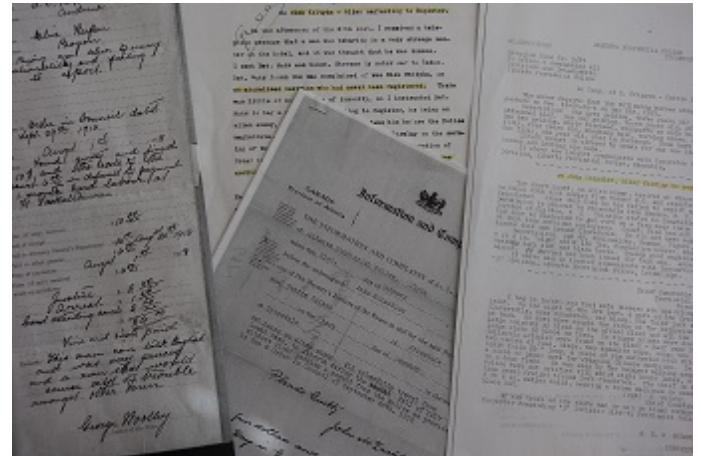
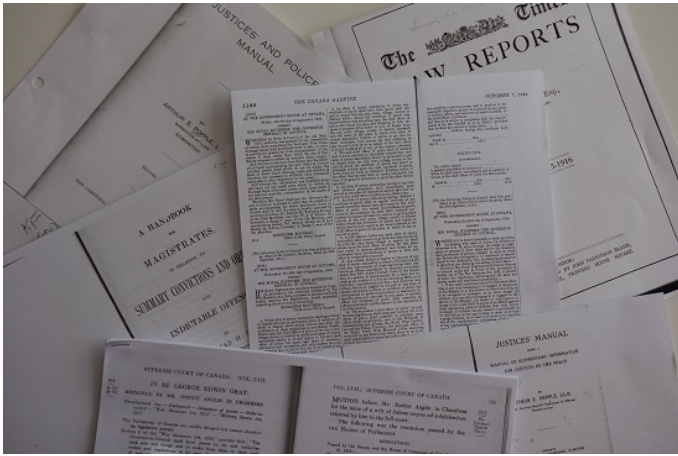


INQUIRY HEAD LAYCRAFT
Could civil action curb his powers?

LASA Image

However, the commission did determine that Al Anderson, former exhibition manager, wrongfully accepted cash payments from Royal American. Mr. Anderson testified that this was an attempt to bribe him. Finally, the RCMP were wrong in placing a listening device in the railway car occupied by the owner of Royal American while in Edmonton in 1975. *

LASA's AGM



Civil Rights and Liberties During Conflict and War

Law Society of Alberta - Edmonton Office

Wednesday, June 7, 2017 at 5:30 pm

In 1919, the editor of the *Canadian Law Times* wrote that one redeeming feature of the Great War was “that its terrific strain puts a vital test on every bolt and rivet in our political, financial, commercial and social machinery.” It also tested the British legal system and traditions which were models for Canada’s system.

The Legal Archives Society of Alberta film “The Agreement” highlights the ultimate sacrifice of Lt. George T. Davidson, a Medicine Hat lawyer. A recent review of the Alberta Deputy Attorney General records found a personal note about the ultimate sacrifice of George Paget Owen Fenwick. He died October 30, 1916. His commanding officer wrote that “as he was in civil life prominent in his profession, so he was out here a most efficient and courageous officer. I never saw an officer who was more interested in the welfare of his men... The Army has lost one of the kind we can ill afford to lose.”

George Paget Owen Fenwick, Roll #426 had been admitted to the Law Society of Alberta just a few years before, on July 4, 1912.

Although many members of our profession volunteered to fight for our rights and freedoms in the battlefields of Europe, many others fought to defend those same rights and freedoms in Canada as a result of the Canadian government’s introduction of the War Measures Act.

When William Sereda was arrested August 28, 1914, and held at a police jail by an immigration officer, A.J.B. Mellish of the B.C. Bar wrote the Prime Minister of Canada urging the Prime Minister to order an inquiry before a competent judge as to the propriety of keeping him a prisoner. Sereda would spend another 3 weeks in jail before being released on parole. The Minister of Justice used his power not to order a trial.

Over the next four years Canada introduced and refined a draconian registration and reporting system to control the alien enemy population, mostly Canadians of Ukrainian descent.

On September 12, 1918, Charles Julius Mickle of the Ontario Bar, wrote the federal Minister of Justice about a situation where the military had arrested a number of peaceful citizens (of German background) and rushed them before a JP without access to a lawyer. “The methods employed are calculated to

destroy confidence in our administration of justice. How the magistrate at Walkerton acquired jurisdiction to deal with an offence, if such it could be called, which took place in another county I do not know but if the object of the proceedings was to bring British justice into disrepute it has certainly been fully attained.”

The hypothesis that the strain of the First World War negatively affected the British legal system and traditions as practiced in Canada and put the administration of justice into disrepute for significant portions of Canadian society is the subject of Mark Minenko’s research.

Documents from over one thousand hours of research in archives across Canada, including evidence of thousands being charged, tried and convicted illegally, are building the case to confirm this hypothesis.

Mark’s presentation will provide an overview of some of the laws introduced pursuant to the War Measures Act, including it being illegal to “be found employed or seeking employment or competing for employment in any community’ as well as discuss some his finding from the Alberta Provincial Archives.

Mark Minenko brings several different perspectives to this subject which finds itself on the intersection of the law, politics and the military’s role in Canada during conflict and war. A lawyer since 1986, he has been called to the bar in Manitoba, Upper Canada, and Alberta. He completed his Bachelor of Laws at the University of Manitoba and pursued additional studies in the area of international law at the University of Alberta, completing his Master of Laws in 2003. He recently retired from the Canadian Armed Forces having served for 36 years in the Medical Corps including a tour of duty in Bosnia. Mark also appreciates the role that politics played during the First World War having worked for the Attorney General of Canada and as the Deputy Speaker and Member of the Manitoba Legislative Assembly from 1988-1990. He survived the Meech Lake crisis in 1990. He will be leaving Alberta this fall. He has accepted a position in the PhD Law program at Kings College London where he will have an opportunity to fully explore this subject under the supervision of a British constitutional law expert. *

More Tough Crimes: True Cases by Canadian Judges and Criminal Lawyers

Excerpt from:

“Hero or Vigilante? The Case of Steven Kesler”

Author:

The Honourable Judge James Ogle,
Assistant Chief Judge, Provincial Court of Alberta

Saturday, November 8, 1986, was an unseasonably cold day in Calgary. A light skiff of snow was already on the ground, signalling an early start to winter. It was also windy, and the wind was causing a problem at the IDA drugstore located on 33 Avenue in the Marda Loop area of southwest Calgary. When customers opened the north-facing door to the store, the frigid wind would catch the door, banging it loudly as it tried to close. And so the drugstore owner, Steven Kesler, who was busy with customers at the checkout counter at the front of the store, had instructed his ten-year-old daughter Patricia to stay by the door and catch it when customers entered so it wouldn't bang.

Patricia's twelve-year-old sister Marlene was also in the store that day, stocking shelves in one of the store's three aisles. Steven's wife, Mary Kesler, was working in the pharmacy section located at the back of the store, accessible by proceeding directly down the westernmost aisle leading directly from the front-store entrance.

Such was the usual Saturday routine for the Kesler family. Steven and Mary, immigrants from their native Yugoslavia in 1977, had purchased the drugstore in early 1984. Mary was a licenced pharmacist and ran the small pharmacy at the back of the store while Steven tended the counter at the front.

The drugstore was meticulously maintained. The Keslers had put their life and savings in to the store, and were proud of their accomplishment. This was a true family owned and family run business, open six days a week. Steven and Mary worked in the store every day, and their two daughters Patricia and Marlene helped out whenever they were not in school. On Sundays, the entire family would deliver store fliers to the neighboring community, in hopes of increasing business.

Saturday was usually a busy but uneventful day at the Kesler drugstore but this particular Saturday was most unusual. Just around 3:00 p.m., as Steven Kesler was serving a customer at the pharmacy's lone front checkout, he heard a commotion at the front door entrance. He looked up to see two men, with toques pulled full-down over their faces, aggressively enter the store. The smaller of the two, the man whose name was Stephen Fleming, had a gun clearly visible in his hand as he immediately rushed down the first aisle toward the pharmacy area where Steven's wife Mary was working. The larger man, Tim Smith, came directly up to the front counter and yelled at Stephen "Give me your money or you're dead." Smith kept one hand in his pocket and was jamming at the keys to the cash register with his other. Kesler handed him the money in the till, which turned out to be \$115. At the same time, he was able to press a secret "panic button" installed under the checkout counter. This sent an alarm directly to the police alerting them that the store was being robbed.

The panic button was not the only thing Kesler kept under his drugstore counter to deal with would-be robbers. As Tim Smith moved back toward the store exit with the stolen money clutched in his hand, Kesler pulled a 12-gauge shotgun from under the counter. He pointed it at Smith and in his thick accent said "Now you listen me!"

Smith didn't listen. Instead he bolted out the door, took a hard left and ran south down the sidewalk along the west side of the pharmacy building. Kesler rushed out the door after him. As Smith continued to run away down the sidewalk, Kesler lifted the shotgun to his shoulder and fired. Of the two-hundred-eight pellets normally contained in the No. 5 shotgun cartridge that Kesler had earlier loaded into the shotgun, approximately a hundred of them struck Tim Smith in the back. Several of those entered his heart. He immediately fell to the sidewalk, mortally wounded, and still clutching the \$115 he had taken from Kesler moments earlier.

Kesler then turned and re-entered the store. He headed down the first aisle toward the pharmacy area where the first man (Fleming) was in the process of robbing Mary Kesler at gunpoint, yelling at her to put all her narcotics in the bag he was holding. When Fleming saw Kesler approaching down the aisle, he pointed his gun at Kesler and opened fire. Kesler responded by discharging the two remaining cartridges in his 3-shot shotgun. Fleming continued to discharge five of the six bullets in his revolver. During this shoot-out, Mary Kesler managed to sneak out of the pharmacy area, run up the aisle adjacent to the one her husband was in and escape the store. In her panic she forgot that her two daughters were cowering in the third aisle of the store.

Miraculously, neither Kesler nor Fleming was struck in this hail of gunfire. In fact, in later testimony at his trial, Kesler stated he thought that Fleming must be firing blanks, or using a replica handgun. But the bullets were real.

When Kesler heard Fleming's gun finally click several times with no apparent discharge, he charged at him and a desperate struggle ensued. Fleming managed to escape up the aisle and out the door, with Kesler in hot pursuit. Fleming ran south in the same direction Tim Smith had gone earlier and as he crossed the roadway he yelled at Smith "Get up, let's go." Not surprisingly, Smith did not move. He was either near death or already dead.*

More Tough Crimes: True Cases by Canadian Judges and Criminal Lawyers

Release Date: May 31, 2017

Paperback \$29.95, available in bookstores or on Amazon

E-book \$16.95, available through Kobo and Indigo.ca

Announcing Durvile 2017 Spring Releases

Join Us for a Reception and Readings

Calgary

May 30, 2017

5:00 - 8:00 p.m.

Readings at 5:30 and 6:30

Danish Canadian Club

727 - 11th Avenue S.W.

Edmonton

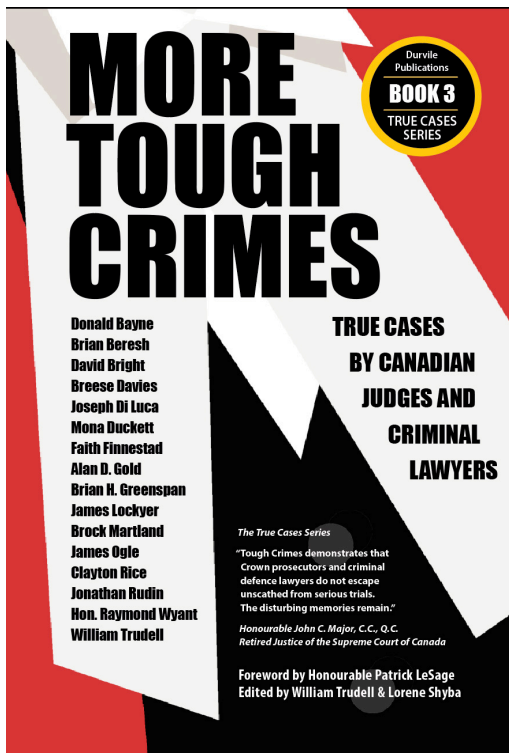
June 14, 2017

5:00 - 8:00 p.m.

Readings at 5:30 and 6:30

Audreys Books

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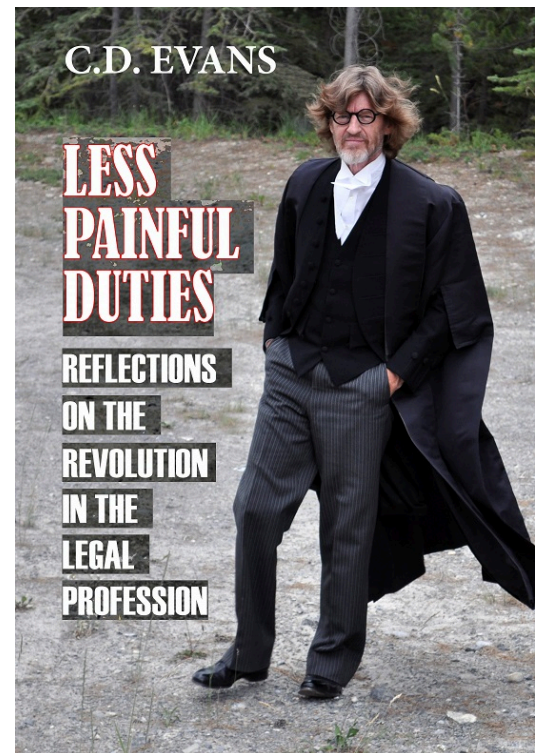


More Touch Crimes: True Cases by Canadian Judges and Criminal Lawyers
 Book Three in Durvile Publications' True Cases Series
 Forward by the Hon. Patrick LeSage. Edited by William Trudell & Lorene Shyba

More Touch Crimes follows the exceptional success of Tough Crimes and Shrunken, the first two books in Durvile's True Cases Series. From notorious cases to sensational strategies, this book provides readers with a window into the insightful thinking of some of Canada's best legal minds.

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Durvile | ISBN: 978-0-994-7352-5-6 | 276 Pages | Release, May 31, 2017



Less Painful Duties: Reflections on the Revolution in the Legal Profession
 Written by C.D. Evans, Q.C.

This book is a sequel to C.D. Evans' memoir *A Painful Duty: Forty Years at the Criminal Bar*. In *Less Painful Duties*, Evans reflects on changes that have come about within the Criminal Bar over the past fifty years. Topics he covers includes ascendancy of women in the profession, effects on the court of the Canadian Charter of Rights, Crown disclosure, Judicial appointments, Law Society governance, and the impacts of cell phones and computer technology.

Durvile | ISBN: 978-0-9952322-1-1 | 276 Pages | Release, May 31, 2017

Remembering Alberta Lawyers

Lawyers, Husband and Wife, Soldier, Widow: The Story of Frederick Stanley Albright and Evelyn Kelly Albright

Continuing LASA's series commemorating Alberta lawyers who fought during World War I, this installment is about two Alberta lawyers, a husband and wife, whose lives were changed by the war in Europe. It is a story of love, sacrifice and courage during a trying time when most young couples – but for the war – looked forward to living a long, happy life.



Courtesy of UWO Archives

Frederick Stanley Albright was born in Beamsville, Ontario, on March 23, 1883. After his childhood in rural Ontario, Frederick moved to Toronto where he attended Victoria College, University of Toronto, where he received a Bachelor of Arts degree in Political Science in 1908. At university he met Evelyn Kelly, born on November 13, 1889, of Owen Sound, Ontario. She graduated with a Bachelor of Arts degree in English and History in 1912.

After receiving his degree, Frederick moved to Calgary in 1909 where he started as a student-at-law with the Walsh, McCarthy, Carson firm (later Macleod Dixon LLP, later Norton Rose LLP) on September 8, 1909. Senior partner, William Leigh Walsh, once described Frederick as "one of the brightest articling students he had ever seen." As a student, Frederick kept interesting company. He shared a living quarters with future Alberta Premier, John Brownlee and future Chief Justice of Alberta, Clinton Ford. He also, on numerous occasions, interacted with R.B. Bennett, prominent Calgary lawyer and future a Prime Minister of Canada.

Frederick seemed to settle nicely in to his new surroundings. In one of nearly 600 letters he exchanged with Evelyn, he described the openness and beauty of the Alberta as having a "peculiar[ly] exhilarating quality that only the West can give." Frederick wrote in another letter that, in his opinion, "ultimately Alberta will be the banner Prairie province and it's good to see a place in the making." He also sent Evelyn postcards from the first Calgary Stampede in 1912, and expressed the view that it was "a wonderful realistic indication of the life of the early days." Despite keeping in regular contact with Evelyn, he greatly missed her. He queried in one letter, "I wonder if you are lonely for me tonight as I am for you."

Though he returned to Ontario for occasional visits, he knew Calgary was the place to call home. Frederick wrote to Evelyn about the property and investment opportunities he saw in the city. However, for some reason he did not invest in those early opportunities that were paying off handsomely for some of his friends who were less conservative in nature.

After completing his articles, Frederick Albright was admitted to the Law Society of Alberta on September 16, 1912 and he continued to practice with the Macleod firm. Frederick and Evelyn were writing married in June of 1914, and settled in Calgary.

While honeymooning in England, the Great War erupted in August 1914. Upon returning to Calgary, it was clear that a normal life was not going to be possible given what was happening across the Atlantic. Reports from the war were swirling throughout Calgary and the Albrights regularly received news reports about friends who had been injured or killed overseas. In 1916, after about two years of conflict, Frederick decided to enlist as a Private. He was initially sent to England and then later to France. He was killed in action during the Battle of Passchendaele on October 26, 1917. The Battle of Passchendaele, part of the third Battle of Ypres, was a major offensive during the First World War. Fought between the Allies and the German Empire, it took place on the Western Front from July to November 1917. Known for the heavy rains and mud that bogged down all troop movements, the first Battle of Passchendaele took the lives of nearly 15,600 Canadian troops. Frederick Albright was killed during his first frontline action.

During his absence overseas, the Albrights continued to exchange letters. The last letter Frederick sent was dated October 19-20, 1917. Evelyn's last letters were returned unopened with the stamp "Killed in Action" on the envelope.

She received official notification of her husband's death via telegram on November 10, 1917, which



Courtesy of UWO Archives

simply said, "4204 deeply regret to inform you eight nine five one seven three PTE Frederick Stanley Albright infantry officially reported killed in action between Oct twenty third and twenty six nineteen seventeen."

According to an editorial in the *Calgary Daily Herald* following his death, Frederick enlisted "not because he loved war, not because the life of a soldier appealed to him, not because he did not have reasons aplenty for remaining home; he enlisted purely out of a sense of duty, because he felt he was called to don the uniform to serve his country and his God."

Another Alberta lawyer, Sydney Raymond Vallance, was injured during the Battle of Passchendaele. In 1918, Sydney Vallance wrote to Charles Adams, Secretary at the Law Society of Alberta, indicating that he was receiving medical clearance and would hopefully be returning to Alberta, and that his "good fortune was due to a dose of gas at Passchendaele, received about the same day that F.S. Albright was killed."

After receiving notification of the death of her husband, the life Evelyn had imagined was forever altered. She was young, well-educated and intellectual. This fact was evident from many of the letters she exchanged with her husband on topics that included feminism, race, eugenics, health, religious, social and political concerns. In one letter she wrote, "what makes me mad, just hot, fighting mad, is for a man or a boy to claim that because he is a man he should vote, because I am a woman, I should not vote." She continued, "that he has any more interest in government then I have I resent and deny, what is implied in that contention, that is the superiority of the man over the woman."

Following Frederick's enlistment in the army, Evelyn was accepted as a student-at-law with the same firm that her husband had practiced with. She completed her articles with A.H. Clarke and was admitted to the Law Society of Alberta on October 16, 1919. She was only the second woman to be admitted to the Law Society of Alberta. However, Evelyn Albright never practiced law. After her admission she returned to Ontario and joined the English Faculty at the University of Western Ontario as its first female instructor. She later earned a Master's degree and taught there until her retirement in 1951.

Evelyn never remarried and rarely spoke of her husband. She passed away at the age of 89 on April 24, 1979. The nearly 600 letters exchanged between the young couple during their courtship, marriage and his military service were donated to the University of Western Ontario. They were organized and transcribed by Lorna Brooke, a library assistant at the university. The letters can be accessed at www.echoinmyheart.ca. *



Courtesy of UWO Archives

*All the letters quoted in this article can be found at www.echoinmyheart.ca.

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■ Please mark your calendars. LASA will be hosting our Annual General Meeting in Edmonton on Wednesday, June 7, 2017, at the Law Society of Alberta.

■ We are happy to report that LASA is taking steps to become more earth friendly, and we are moving toward electronic notifications and communications. If you would like to assist LASA in our effort to go green, please contact us with your email address.

■ Members are reminded to check out the Archives Society of Alberta website at www.archivesalberta.org. Archival descriptions to LASA's textual holding and our scanned/digitized photograph collection are available by keyword searching on the ANA and Alberta Insights databases. Visit www.albertaonrecord.ca

■ Did you know that LASA's 2017 annual fundraising campaign will be underway shortly? Please consider making a donation to preserve legal history!

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