

ARCHITYPES

Legal Archives Society of Alberta Newsletter

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Natural Resources: Alberta's Past, Present and Future.

Peter Hogg, former Professor and Dean at Osgoode Hall Law School and current "scholar in residence" at Blake, Cassels & Graydon LLP, guided both audiences on a whirl-wind tour covering nearly 100 years of Alberta's history. Prof. Hogg's speech was an intriguing look at the history of Alberta's natural resources and the province's subsequent prosperity.

In his aptly-titled speech "When the West was Won: A Brief History of Alberta's Natural Resources," Prof. Hogg traced the history of Alberta's battle to gain control over its natural resources during four distinct periods: first, Alberta's entry into confederation in 1905; second, The Natural Resources Transfer Agreement of 1930; third, the "oil crisis" period of 1973 to 1981; and finally, the new federal-provincial relationship of 1982 to 2006.

Prof. Hogg aptly illustrated the importance and relevance of understanding history. He explained that the prosperity that Albertans reap today was certainly not inevitable, but was the result of a lot of blood, sweat, and tears. Interestingly, Premier John E. Brownlee, also an Edmonton lawyer, was the key figure in negotiating the Natural Resources Transfer Agreement with Prime Minister Mackenzie King. Unfortunately the significance of Premier Brownlee's contribution is overshadowed in history by the scandals of the mid-1930s.



Calgary's Head Table



Historical Display
at Hotel
MacDonald
September 27,
2006

Prof. Hogg also described how the seeds of western alienation were sown in the battles over control of Alberta's natural resources. It was not until 1947, with the discovery of oil at Leduc, that people began to realize the importance of oil. Although there were some minor skirmishes over control between Edmonton and Ottawa, it was the 1973 oil crisis that resulted in the major schism between provincial and federal authorities.

The speech examined the steps taken to date in healing the wounds in federal-provincial relations, especially in the aftermath of the National Energy Program. Prof. Hogg concluded his talk with a warning to Ottawa to begin taking Alberta's economy and politics seriously, and that a consideration of Western interests is vital for national unity.

At the Hotel MacDonald in Edmonton on September 27th, Garth Fryett, Q.C. was the Master of Ceremony; Ms. Jeneane Grundberg said grace and did a wonderful job as a stand-in for Chief Justice Wachowich who unfortunately could not attend; and Charlie Gardner, Q.C. introduced Peter Hogg. The Head Table was piped in by Cameron Prowse, Q.C., and the Strathcona String Quartet provided the music during the reception. Once again, Graham and Lane Flowers graciously donated the flower arrangements for the dinner. We would also like to thank Janice Agrios, Q.C. for coordinating the Edmonton dinner and Garth Fryett, Q.C. who once again worked tirelessly to sell tickets. It was particularly nice to have Ron Stevens, Minister of Justice and Attorney General, in attendance.

(cont on p. 7)

Reminiscences of the Late Hon. Gordon Hollis Allen, Q.C.

by Brenda McCafferty, Archivist

During the month of September, LASA staff were busy relocating their offsite holdings from the old Calgary Herald Building in downtown Calgary. Many records there were in storage for more than ten years, having been moved offsite shortly after they were acquired and accessioned. In some cases little more than a brief description linking the records with our database existed.

Found among these holdings were a few treasures discovered (rather rediscovered) including a binder containing the recollections of Calgary, 1912-1932 written by the Hon. Gordon H. Allen, Q.C. in about 1980. Memoirs such as these, highlighting members of Alberta's legal community, are certainly treasures worth highlighting.



Photo of the Hon. Justice Gordon Hollis Allen, Supreme Court of Alberta, Appellate Division, 1966-1978

- LASA accession number 96-014

Gordon Allen was born on May 28, 1901 in the Adirondack Mountains of Northern New York State where his father was the accountant, buyer and manager of a fair sized general store. L.T. Mewburn, a well known wholesale grocer in Calgary, whom Allen's father had become acquainted with at a conference, offered him a business opportunity in the fast growing western community of Calgary – a place that conjured up to then ten-year-old Allen fascinating visions of the wild-west and cowboys and Indians. Coincidentally, 1912, the year he and his mother arrived, marked the first year of the Calgary Exhibition and Stampede.

“The event was highlighted by the presence of the Duke and Duchess of Connaught, and their daughter Patricia, as distinguished guests, who came for a day and stayed a week”.

1912 was also the year the Titanic sunk and Allen and his mother traveled to Calgary by train in the spring of 1912, on the heels of the disaster. They began their journey from New York to Montreal and then continued by rail to Calgary on the Dominion train accompanied by a few Titanic survivors.

“We were enthralled, and sometimes horrified, by the stories they told us, which probably lost nothing in the telling, as we sat on the rear platform of the observation car while the train wound its way west.”

There probably was not a more exciting time to arrive in Calgary than in 1912 during the tail end of the economic boom, cultural explosion and growth. Allen's experiences attending Crescent Heights High School, with Principal William Aberhart at the helm, and entering the legal profession is also well documented in his memoirs.

“In the late fall of 1918, studies at High School were interrupted by the epidemic of a most virulent and often fatal type of pneumonia, what was then term[ed] *Spanish Influenza*. When the epidemic broke out, I was in grade twelve; I discovered that my junior matriculation entitled me to enroll as a student-at-law under articles to a local lawyer.”

Reminiscences of a work stint spent in Peace River, details of office buildings, bridges, hotels, and other architectural landmarks dotting the landscape in Calgary and recollections of some of Alberta's most famous personalities from the legal community are also included in this narrative.

“Leading counsel in those days were A.A. McGillivray, KC, A.L. Smith, KC, A. Macleod Sinclair, KC and of course the great Bennett himself...I should mention another of the leading counsel whose bent was in criminal cases. That was McKinley Cameron, KC”.

Gordon Allen articulated for a time with the Broomfield firm before finding an opening in the then prominent Calgary law firm of Taylor, Moffat, Allison and Whetham. He attended the University of Alberta, graduating with an LL.B. in 1923.



The Hon. Justice Gordon Allen and Justice Jimmy Cairns on the occasion of his swearing-in ceremony to the Supreme Court of Alberta, Appellate Division, May 26, 1966.

- LASA Accession Number 99-016

After gaining admittance to the Alberta Bar on November 27, 1923, Allen practiced law in Calgary. He joined the firm of Lent, MacKay and Mann, then Brownlee, Porter, Goodall and Rankin, and finally formed a firm with the prominent litigator Marshall M. Porter in 1932.

Although the memoirs end in 1932, we know that Allen was named KC on December 29, 1945 and was President of the Law Society of Alberta, 1959-1961. Active in the areas of commercial and oil and gas law during World War II he was counsel for the Emergency Coal Production and Oil Boards under C.D. Howe. He was a senior partner in the firm of Allen, MacKimmie, Matthews, Wood, Phillips and Smith when he was appointed to the Bench in Calgary in 1966. Allen retired on May 28, 1978 and died in Calgary on July 30, 1995 at the age of 94.



1956 photograph of the MacKimmie Matthews Law Firm. Individuals include: Ross A. MacKimmie, Marshall M. Porter, Gordon H. Allen, Steve H. Wood, J.A. Millard, F.R. Matthews, R.E. Fenton, E.A. Hutchinson, and F.T. Phillips.

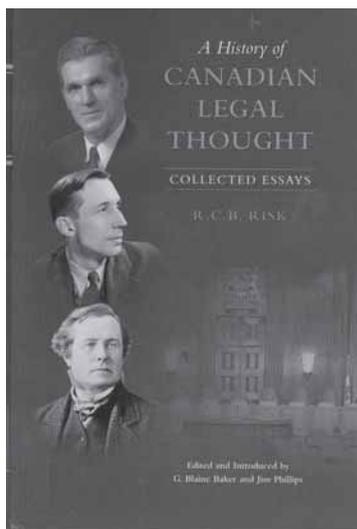
- LASA accession number 99-016



Library News

by Alex Grant

Since the summer our library has acquired a number of interesting books. Our collection of publications from Osgoode Hall has increased with the acquisition of three new books: *History of the Court of Queen's Bench of Manitoba* by Dale Brawn, *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* by Donald Fyson, and *A History of Canadian Legal Thought* by R.C.B. Risk.



University of Calgary professor, Max Foran, has written a new book titled *Trails and Trials: Markets and Land Use in Alberta Beef Cattle Industry, 1881-1948*, which we received in the summer.

We recently added *A History of Bennett Jones Verchere* by Jack Batten (1997) to our library as well as *Harris' Hints on Advocacy, Fifteenth Edition*, by John H. Watts (1920); *A Commentary of the Bills of Exchange Act* by The Honourable Benjamin Russell (1909); *The Advocate's Devil* by C.P. Harvey, Q.C. (1958); *Prisons in Canada* by Luc Gosselin; and *In Time and Place: Master Plan 2005*, a Government of Alberta Publication focused on the preservation of Alberta's history.

In other news, the on-site library has recently been reorganized which has opened much more space for acquisitions. Also, we recently removed the copies of *Western Weekly Reports* and *Halsbury's Laws of England* from our offsite vault. Researchers seeking those publications may enquire at the University Law Library or a courthouse library.



Excerpts from Historical Dinner

When the West was Won: A Brief History of Alberta's Natural Resources

By Peter Hogg, C.C., Q.C., L.S.M., F.R.S.C.

Born Unequal

Alberta was “born unequal” on September 1, 1905. It was created by the Alberta Act, 1905, which carved the province out of what had then become the Northwest Territories. It was born unequal, because the province did not acquire ownership of the public lands in the province. This was also true of the other prairie provinces, namely Manitoba (established 1870) and Saskatchewan (established at the same time as Alberta, 1905). They were also carved out of federal territories and did not acquire ownership of their public lands.

The other seven provinces did own their public lands. By s. 117 of the Constitution Act, 1867, the four original provinces of Ontario, Quebec, New Brunswick and Nova Scotia retained their public property (apart from some specific property transferred to Canada), and s. 109 provided that “all lands, mines, minerals, and royalties belonging to the several provinces” should continue to belong to the provinces. When the other provinces joined Confederation—British Columbia in 1871, Prince Edward Island in 1873 and Newfoundland in 1949—the provisions of ss. 117 and 109 were essentially made applicable to each new province. The three prairie provinces were the odd men out.

There were two reasons for the different treatment of public lands in the prairie provinces. One was the fact that the public lands were federal before the creation of the provinces. The prairie provinces were carved out of federal territories by federal statutes. The public lands in the federal territories were owned by the Crown in right of Canada, and the Alberta Act, by s. 21 (like the equivalent provisions of s. 30 of the Manitoba Act and s. 21 of the Saskatchewan Act) was simply preserving the status quo (which was federal ownership) in providing that “all Crown lands, mine, minerals and royalties incident thereto . . . shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada”. The other seven provinces owned their public lands before Confederation, and ss. 117 and 109 preserved the status quo (which was provincial ownership) in those provinces.

The second reason for excluding public lands from the prairie provinces' control was one of policy. It was not a sinister reason. Indeed, in 1905 it was widely accepted in the West. The consistent policy of federal governments in

the nineteenth and early twentieth century was to develop a nation from sea to sea. Maintaining control of the prairie lands was thought to be necessary to build the Canadian Pacific Railway, to preserve a continued flow of immigration westward, to settle the immigrants on land that they could farm, and generally to maintain the systematic development of Canada as a nation. The prairies were to be a static-free connection between the eastern heartland and the western edge of Canada. A *mari usque ad mare* (‘from sea to sea’) was a national goal that was not to be jeopardized by the vagaries of local governance.

Consequences of unequal birth

Whatever the merits of the national policy of 1905, the fact remained that Alberta and the other prairie provinces lacked the control over their public lands that the other provinces possessed. This meant that the important provincial legislative power in s. 92(5) of the Constitution Act, 1867 was largely ineffective. Section 92(5) confers power over “the management and sale of the public lands belonging to the province and of the timber and wood thereon”. This power could not be used by a province that lacked “public lands belonging to the province”. It also meant that the proprietary powers over public lands as sources of revenue were also denied to the prairie provinces. Nor could the prairie provinces use land grants to induce railway construction and settlement, as the federal government was able to do. These disabilities were recognized by an annual subsidy of \$370,000 per annum from the Dominion, which was provided for by s. 20 of the Alberta Act (which had its counterparts in s. 25 of the Manitoba Act and s. 20 of the Saskatchewan Act). But Albertans quickly realized that the subsidy could not sufficiently compensate for the missing public lands.

And there was a more subtle point too. The prairie provinces had to bear the constitutional markings of second-tier provinces for the greater good of the nation. In 1920, Professor Chester Martin described their relationship with Ottawa as a “colonial subordination”. From its inception as a province, the notion that national goals often led to western burdens was strongly impressed upon Alberta's consciousness. And the national goals, when the rhetoric was stripped away, were seen as benefiting the manufacturing, transportation and financial industries of the more populous eastern provinces.



Speaker Peter Hogg at the Palliser Hotel in Calgary on September 28, 2006

The Natural Resources Transfer Agreement of 1930 - Negotiating the Agreement -

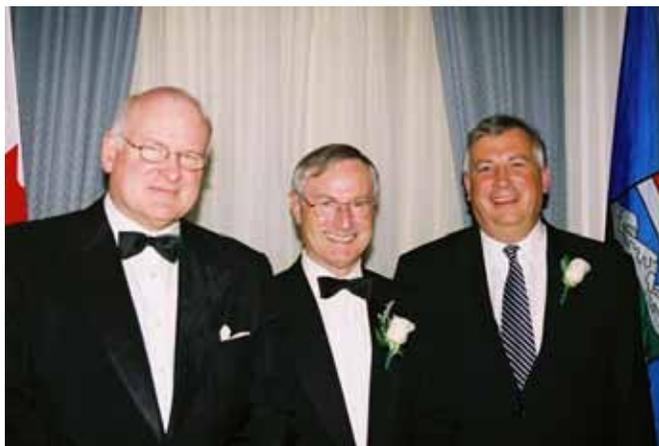
It was not long after 1905 that Albertans started to resent the consequences of their unequal birth. The province found that it could not develop a provincial railway system, because it could not use land grants to induce railway development; nor did it have land to grant to homesteaders. By contrast, the federal government had alienated huge areas of public land within Alberta (much of it to eastern corporations) to subsidize the construction of railways, huge tracts of public lands had been granted to homesteaders, others for Indian reserves, forest reserves and national parks. The federal government had also been granting mineral leases to various mining companies, many of them based in the east. Without ownership of the public lands, the development of the province and the management of its economy was stultified.

Certainly by the 1920s, there was general agreement, in Ottawa as well as in Alberta, that the natural resources of the prairie provinces should be vested in the provinces. However, a confluence of factors combined to contribute to delay in achieving federal support for the required constitutional change. Needless to say, the delay did not sit well in Alberta, where the injustice of the situation was universally appreciated, and its correction seen as a matter of urgency. It was not until December 14, 1929 that Alberta Premier John E. Brownlee and Prime Minister Mackenzie King ended a final series of acrimonious negotiations and executed a Natural Resources Transfer Agreement in which the federal government agreed to vest the province of Alberta with control over its public lands. Similar agreements were entered into with the other prairie provinces. The Constitution Act, 1930 was enacted by the Parliament at Westminster to formally effect the change, and the Agreements were incorporated into the Act. With royal assent to the Act on April 3, 1930, Alberta finally attained a position of constitutional equality with the other provinces.

Aftermath of the Agreement

The Natural Resources Transfer Agreement signified the successful end of Alberta's struggle to attain dominion over the soil within its borders. This agreement would have such an impact upon Alberta's later success that it has been described as Alberta's "forgotten constitution" and Alberta's "real constitution". However, it was also the case that the province had been denied control over its public lands in the first place, and had been forced to wage a long campaign to recover the control. These were troubling indications that the goals of the federal government and those of the province were not always going to be easy to reconcile. The seeds of western alienation had been planted.

In 1930, when the Natural Resources Transfer Agreement was signed, people were not thinking of the value of the oil and gas under the soil. At that time, and until 1950, Alberta's economy was primarily based upon agriculture. Although oil had been discovered in the Turner Valley in 1912, the first major oil discovery occurred in Leduc in 1947, adding oil to Alberta's economy. The period from 1950 to 1973 included some jurisdictional disputes, but on the whole, it was a period of good relations between the two levels of government, both of which agreed on the rapid development of Alberta's oil industry and cooperated to that end. It looked as though the provincial and federal governments had learned to mediate jurisdiction over natural resources. However, the oil shock of 1973 would re-open the debate over control of natural resources and once again divide the two levels of government. ❖



Graham Price, Q.C. (LASA President), Peter Hogg, and Ken Mills
LASA would like to thank Blake, Cassels & Graydon LLP for arranging to have Prof. Hogg speak at this year's Historical Dinners.

This article is an excerpt from an article by Peter Hogg and Mark Heerema on Alberta's Natural Resources which will be included in the Law Society of Alberta 100th Anniversary Publication.

Family Tree of Court of Appeal of Alberta

Chief Justiceship:	Fraser C.J.A. replaced Laycraft C.J.A. Before were W. McGillivray C.J.A., Smith C.J.A., C. Ford C.J.A., O'Connor C.J.A., and Harvey C.J.A. The origin is Scott C.J.A. in 1921 (or arguably the C.J.A. and C.J.N.W.T. before that).
Puisne Judgeship A:	Hunt J.A. replaced Harradence J.A. Before were Sinclair J.A. (became C.J.Q.B.), Johnson J.A., F. Ford J.A. and Mitchell J.A. The origin is Stuart J.A. in 1921 (or arguably Scott J. in 1907).
Puisne Judgeship B:	Paperny J.A. replaced Sulatycky J.A. Before were Kerans J.A., Clement J.A., Porter J.A., Parlee J.A. and Lunney J.A. The origin is Beck J.A. in 1921 (or arguably Harvey J. in 1907).
Puisne Judgeship C:	Ritter J.A. replaced McClung J.A. Before were Haddad J.A., Kane J.A., Smith J.A. (puisne justice), McBride J.A., C. Ford J.A., O'Connor (puisne J.A.), Ewing J.A., A. McGillivray J.A. and Walsh J.A. The origin is Hyndman J.A. in 1921 (or arguably Stuart J. in 1907).
Puisne Judgeship D:	Conrad J.A. replaced Fraser J.A. (who became C.J.A.). Before were Stevenson J.A. (appointed to S.C.C.), Morrow J.A., Allen J.A., H.J. MacDonald J.A., W. MacDonald J.A. and Howson J.A. The origin is Clarke J.A. in 1921 (or arguably Beck J. in 1907).
Puisne Judgeship E:	Watson J.A. replaced Picard J.A. Before were Irving J.A., Laycraft J.A. (who became C.J.A.), and McDermid J.A., who was appointed in 1963 as the first to hold this position.
Puisne Judgeship F:	Côté J.A. replaced Moir J.A. (deceased). Before was J.M. Cairns J.A., appointed in 1965 as the first to hold this position.
Puisne Judgeship G:	Martin J.A. replaced McFadyen J.A. Before were Major J.A. (appointed to S.C.C.), Bracco J.A. and Prowse J.A., appointed in 1972 as the first to hold this position.
Puisne Judgeship H:	Berger J.A. replaced McDonald J.A. (deceased). Before was Stratton J.A.. The origin was Lieberman J.A., who was appointed in 1976 as the first to hold this position.
Puisne Judgeship I:	Costigan J.A. replaced Foisy J.A. Before was Belzil J.A., who was appointed in 1981 as the first to hold this position
Puisne Judgeship J:	Fruman J.A. replaced Hetherington J.A., appointed in 1985 as the first to hold this position.
Puisne Judgeship K:	O'Brien J.A. replaced Wittmann J.A. (on Wittman J.A.'s appointment as Associate Chief Justice of Court of Queen's Bench in 2004). Wittmann J.A. had replaced O'Leary J.A., who was appointed in 1994 as the first to hold this position.
Puisne Judgeship L:	Slatter J.A. replaced Russell J.A., who was appointed in 1994 as the first to hold this position.

- LASA is indebted to The Hon. Justice Côté for undertaking -
the research to comprise this family tree.



100-year Anniversary Survey

2007 marks the 100-year anniversary of the formation of the Law Society of Alberta. All year long LASA will be looking back at the illustrious history and personalities of the legal profession in Alberta. The celebrations will culminate in gala dinners held simultaneously in Edmonton and Calgary on October 2. Featured speakers will include The Rt. Honourable Chief Justice of the Supreme Court of Canada Beverley McLachlin in Edmonton and The Honourable E. Peter Lougheed in Calgary.

This multiple-choice questionnaire is geared to test your memory of lawyers past and present, and hopefully provoke your interest in legal history. There are no right or wrong answers. LASA wants your feedback on these questions covering the past 100 years of Alberta's legal history! We plan to highlight the results (with some expansion) in the next issue of *Archetypes*. Please feel free to provide your own answer if yours is not included.

1. Most notable trial lawyer:

- o A.L. Smith, K.C.
- o J. McKinley Cameron, K.C.
- o Neil D. Maclean, Q.C.
- o A. M. Harradence, Q.C.

2. Best sense of humour:

- o Paddy Nolan
- o C. Stewart Blanchard, Q.C.
- o Leonard Brockington, Q.C.
- o C.D. Evans, Q.C.

3. Most politically accomplished:

- o A.L. Sifton, K.C.
- o R. B. Bennett, K.C.
- o John E. Brownlee, Q.C.
- o Peter Lougheed, Q.C.

4. Played the greatest role in sport development:

- o Clarence Campbell, Q.C.
- o Doug Mitchell, Q.C.
- o John Agrios, Q.C.
- o Bill Warren, Q.C.

5. Greatest contributor to legal history:

- o J.E.A. Macleod, Q.C.
- o Wilbur Bowker, Q.C.
- o Louis D. Hyndman, Q.C.
- o J. J. Saucier, Q.C.
- o John W. McClung, Q.C.
- o Graham Price, Q.C.

6. Contributed most to the community, arts and culture in Alberta:

- o Eric Harvie
- o Sir James A. Lougheed
- o The Hon. Justice William Sinclair
- o Gordon J. Hoffman, Q.C.

7. Best known Alberta law firm:

- o Bennett Jones
- o Milner Steer
- o Parlee McLaws

8. Most memorable court case:

- o Alberta and the Great Waterways Railway Company Case
- o The Persons Case
- o R. v. Emilio Picariello and Florence Lassandro
- o McPherson v. McPherson
- o MacMillan v. Brownlee

9. Best known female lawyer:

- o Lillian Ruby Clements
- o Violet King
- o Marjorie Bowker, Q.C.
- o Catherine Fraser

10. Most memorable Justice of the Supreme Court of Alberta:

- o Horace Harvey
- o J. V. H. Milvain
- o William Carlos (Billy) Ives
- o William McGillivray



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(cont from p.1)

The Calgary dinner was held on September 28th at the Palliser Hotel. Catherine Christopher, Q.C. was our Master of Ceremony; the Honourable Mr. J.W. Laycraft, O.C. Q.C. said grace; and Ken Mills introduced Peter Hogg. Greg Stirling was our piper for the evening. The VAD Ensemble provided the music for the reception and the floral arrangement was donated by Panda Flowers. We would especially like to thank Gordon Hoffman, Q.C. for helping arrange all of the silent auction items, and Ken Mills for coordinating the Calgary dinner. We were pleased that the Benchers were able to attend the Calgary dinner, and we would like to thank them for their continued support.

LASA's former Executive Director, Kirsten Olson, who was with the Society for over 10 years (8 as Director) was

presented with an Honourary Membership for her long and dedicated service to the Legal Archives Society of Alberta.



Thank you to everyone who attended for your support and making the evening a memorable success.



Mark Your Calendar

- LASA's **2007 Annual General Meeting** will be held Wednesday, March 7th at 6:30 p.m. in Calgary. Stay tuned for details about exact location and speaker.
- Members are reminded to check out the Archives Society of Alberta website at: www.archivesalberta.org. Archival descriptions to LASA's textual holdings and our scanned / digitized photograph collection are available for keyword searching on the ANA and Alberta Insights databases.
- Please book **January 30, 2007** in your calendars for LASA's Calgary unveiling of busts for Supreme Court Justices Harry Nolan, Ronald Martland, Williams Stevenson and John Major. Edmonton's unveiling to be announced shortly.
- Please book **October 4, 2007** in your calendars for the Law Society of Alberta's 100th Anniversary Gala Dinners in Edmonton and Calgary. It will be hosted by the LSA, Court of Queen's Bench and Legal Archives Society of Alberta. Guest speakers include Chief Justice Beverly McLachlin (Edmonton) and The Honourable Peter Lougheed (Calgary). Watch this space for more details in coming issues of Architypes.

Architypes is published bi-annually by the Legal Archives Society of Alberta. Submissions, suggestions and any questions should be addressed to:

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