

ARCHITYPES

Legal Archives Society of Alberta Newsletter

Volume 18, Issue I, Winter 2009

RECAP OF THE 2008 HISTORICAL DINNERS

In 2008, after a one-year hiatus, as a result of the Law Society's 100-year anniversary celebrations, LASA once again hosted its annual historical dinners in Calgary and Edmonton.

This year's historical dinners focused on historical characters in Canadian legal history. In Edmonton, Professor Bruce Ziff, of the Faculty of Law at the University of Alberta, spoke about Reuben Leonard and the Leonard Foundation Trust Deed. Based on his 2000 book *Unforeseen Legacies: Reuben Wells Leonard and the Leonard Trust Foundation*, Ziff's talk focused on a scholarship established by Leonard in 1923 which was limited to students who were white Protestants of British nationality or parentage. Ziff examined Canadian values—past and present—by illustrating the importance of Canada's response to race, discrimination, tolerance and respect for difference. He argued that the Leonard Foundation Trust Deed is at the core of those values. In doing so, he intimated that the search for equality begs some tough questions concerning respect for difference, the place of multiculturalism in contemporary Canada, and the justification of affirmative action.

In Calgary, Donald Smith, Professor of Canadian History at the University of Calgary, spoke about William Henry Jackson. Born an Anglo-Saxon Methodist in Southern Ontario, Jackson later served as Louis Riel's secretary during the 1885 Resistance as "Honoré Jaxon." Based on his latest book, *Honoré Jaxon: Prairie Visionary*, Smith detailed Jaxon's extraordinary life from a small boy in Southern Ontario to his later years as a packrat in New York City. He argued that being arrested during the 1885 Riel

Rebellion was the root of Jaxon's identity change. After escaping custody and relocating to Chicago, Jackson identified himself as Jaxon and took on a Métis identity. Over the next several decades, Jaxon battled on behalf of the underprivileged, as well as advocated for aboriginal and worker's rights.

Thank you to everyone who attended for your support and for making the evenings both memorable successes.



Fun was had by all at the 2008 Edmonton and Calgary Historical Dinners.

Clockwise from top: Members of the Law Society of Alberta gather before dinner; Calgary speaker Donald B. Smith, author of *Honoré Jaxon*; and photograph of LASA's historical display.

MEMORIES OF AN OLD FASHIONED PRAIRIE LAW OFFICE

Cairns Ross Wilson & Wallbridge
1946-1952

by Justice William E. Wilson

Part III - L. Y. Cairns, QC

*The following is Part III of a IV part feature series written by the Hon. Justice W.E. Wilson, son of the late Justice Ernest B. Wilson.
In the following segment Justice Wilson recounts the attributes of L.Y. Cairns, QC, a model barrister.*

L.Y. Cairns, Q.C. was a model barrister. He had a very large conveyance practice, acting for many banks, trust companies and mortgage companies. He was a student of the law and compiled a pamphlet on mortgage foreclosure practice in the early days of the depression that became a model for later books on the subject. I still have a typewritten copy of some of his notes. His typewritten notes on foreclosure were a bible in the office.

He was also an accomplished public speaker, with a widely admired sense of humour, and he was much in demand as an after dinner entertainer. He played the piano, and made up his own songs, which he was delighted to play for his friends. Many of his ditties became locally famous. He needed no prompting to sit down at the piano and lustily sing out his own compositions often dealing with a client, such as Burrows Motors or Hainstock and Sons, the Funeral directors. Among his repertoire were "The Jasper Place Tea", "We Never Mention Aunt Clara. (Her Picture is turned to the Wall)", "The Indian Song", "The Hainstock Song (I Want to be Buried by Hainstocks)", "The Mutual Admiration Society" and the "Saturday Night Bath Song". He seldom took his office work home - I never saw him do so, and I knew him from about 1937 on. His son tells me that he never discussed business at home with his family, and did not bring files or office discussion home. In his home on Ravine Drive, in the later years of his life, he had a large study, with a big oak desk, and he kept some bound volumes of case law there and in his living room, as the photo of the office gathering at his home shows. It was in his den that he composed his verses and ditties. He and my father would often discuss business on social occasions, but it was not a home topic for him. Home was for fun and



His Honour Laurence Y. Cairns

L. Y. Cairns, QC was appointed to the District Court of Northern Alberta in 1957.

games. He was an amateur ventriloquist, and had a little doll that he would bring out to entertain friends, young and old. Christmas at the Cairns house was always a full blown and wonderful affair, with the biggest tree, the most big boxes under the tree and lots of colorful entertainment. He kept this up, as best he could, even during the war years, when rationing made it difficult to do so. He was not a handyman, but he loved to garden. He also loved to entertain, and many friends could be found at the Cairns home. His wife Jean was a marvelous cook, whose roast beef dinners on Sunday were a treat. The contribution of the master of the house was to carve the roast, which he did very badly. My mother told me of an occasion when George H. Steer, Q.C., a good

friend of L. Y.'s, gently took the knife and fork out of the latter's hands and took over the job as he could not stand to watch the butchering that was going on.

Before and during the war the Cairns family lived on 88th Avenue, just a half block from 112th Street. Cairns often taught courses at the University in legal subjects, and at one time made up a poem about the Exemptions Act, to assist his students in remembering what items were exempt from seizure. Dean Wilbur F. Bowker took great delight in Cairns' poems, especially that one.

Cairns never drove a car as long as I knew him, and the family did not have one, much to the annoyance of Mrs. Cairns, who had to rely on street cars, friends with cars and taxis to do her shopping. This, despite the fact that Cairns was Counsel for several of the large automobile dealers in town. He always took the street car. It was only well after the war that Mrs. Cairns took the throttle, so to speak, and went down on her own to his client, Burrows Motors and bought a Dodge. Then she learned to drive. I think that Cairns was secretly very pleased that she did so, as it was of course a great convenience for him. She would drive him to work and come downtown to pick him up.

Cairns was much in demand as a barrister. He had a long and distinguished career in the courts. By the 1930's he was established as a leader, and took part in many of the celebrated causes of the day. He defended an Inuit charged with murder in the North West Territories in the period between the wars, (Mr. C. M. McLeod, K. C. Of the Attorney General's office prosecuted), and acted for the University Senate in the Powlett Case. He also took part in the litigation arising out of the Social Credit legislation against banks and financial agencies. His services were much in demand as a counsel, and he was often consulted and retained by other lawyers to conduct cases for them.

University of Alberta Law Dean Wilbur F.
Bowker took great delight in Cairns' poem
about the Exemptions Act

EXEMPTIONS ORDINANCE

*The things the Sheriff cannot seize,
To satisfy a debt are these:
The necessary clothes one wears,
Five hundred dollars worth of chairs,
Or pigs, or chickens, or their ilk,
Or dairy tools for doping milk;
A six months stock of things to eat,
Including dead or living meat;
Three ox, three mules or three cayuses,
Or any three the debtor chooses;
Six cows, six sheep, and fifty hens,
Three pigs to decorate the pens;
(These animals do not include,
The ones the debtor kept for food.)
Grub for the stock, one must remember,
For six months starting with November.
The harness that three beasts would take,
One set of harrows; one horse rake,
One cross plow, if the debtor will,
One set of sleighs and one seed drill,
A sewing machine with all its parts,
One waggon or a pair of carts,
One binder does the law allow,
One mower, and one breaking plow.
A man can keep in his possession,
The books he needs in his profession,
And also by the legal rules,
Two hundred dollars' worth of tools.
A homestead has the law's protection,
In size up to a quarter section;
Also the grain a man may need,
To put one half of this in seed,
And for this purpose is allowed,
Two bushels for each acre ploughed.
The buildings where a man resides,
The lots on which they stand besides,
If they in value don't, indeed,
Twenty-five hundred bones exceed.
When similar things a debtor's got,
Some being exempt and others not.
The debtor is allowed to name
The ones he wishes to retain.
Relief the debtor does not get,
On goods the subject of the debt.
Of these the Sheriff may dispose,
Except for bedding, food or clothes.
In case a judgment debtor dies,
This legislation still applies,
But only if his kids or frau,
Are going to use his stuff right now.
Absconding debtors can't demand
Exemptions on their goods or land,
Unless behind they leave to moan,
Their wives or children all alone.
In cases where the court may say,
A man must alimony pay,
This statute has no application,
So ends this chunk of legislation.*

He was a very organized practitioner. He did not draft his material in handwriting, but would dictate it direct, without notes. His dictation was impeccable; he seldom changed a word. His letters were masterpieces of clarity and good grammar. His pleadings were sparse, to the point, and correct. He conducted his examinations for discovery without a note, and they were usually brief and very effective. He was a devastating cross-examiner. He also conducted his trials the same way. I had the privilege of sitting with him in one automobile accident case. He conducted the case without reference to a note or a brief, and concluded it with dispatch. He had a knack for achieving rapport even with persons whose interest were contrary to those of his clients. I remember seeing files on collections conducted by him, where the correspondence was friendly and sincere, and the debtor almost considered it an act of kindness to have another letter from Cairns reminding him that another payment was due, and promptly sent it in. He was a very effective lawyer.

He was also an exceedingly neat and correct one. At the end of the day, the files that he had been unable to finish were put in a wire basket and carried by him to the vault where they would be locked up for the night. They would be dealt with the following morning, when it was the first duty of the students to unlock the vault door, and open the mail. Cairns' desk was always



Photo of the Cairns' living room on Ravine Drive, showing members of the firm and volumes from his personal law library in the background

clean, no papers were left lying about overnight. Not everyone in the office followed that plan, but he never varied.

His corporate practice, which was very extensive, was just as meticulous. His minute books were marvels of accurate minutes and they were very complete. Each book was a linen wrapped hard covered bound volume. As minutes were completed and signed, they were inserted in the minute book by gluing them to the next blank pages. There were no such thing as loose leaf binders, as in his view they did not meet the requirements of the *Hearts of Oak* case¹. Everything in his books was permanent, and nothing could be removed from a minute book without leaving a telltale trace.

In the days following the war and into the 1950's "dividend stripping" in corporations was a popular and lucrative exercise. It was a perfectly legal method of removing tax paid surpluses from corporations at an advantageous rate of tax. It required a good deal of paper work, as most things connected with income tax did. It required the capitalization of surpluses, and the redemption of the preferred shares to get the funds out of the company at a preferred rate of tax, so that extensive filings with the Companies Branch were required. When I was articling at the office and working there as an associate, I had the pleasure of watching Cairns organize this work for many corporations. I saw him dictate, to two secretaries at once, complicated minutes capitalizing surpluses, and redeeming the shares issued on the capitalization, without hesitation or correction, for groups of 15 or 20 related companies. This complicated work was done with the greatest dispatch and the minimum of fuss, and without copy machines, when everything had to be typed in the original. He was recognized by most observers as a barrister and solicitor without peer. His principal secretary, Miss Margaret Pirie, who is mentioned in Miss Moses' letter, was with him for years and was one of the finest secretaries I ever knew. ❖

(Footnotes)

¹ *Hearts of Oak Assurance Co. Ltd. v Flowers (James) & Sons*, 1936 Ch. 76: "A collection of loose leaves fastened together between two covers is not a "book" within the meaning of the English Companies Act 1929.

New Face at LASA

Kim Horner joined LASA as the Administrative and Operations Officer in December 2008. A graduate of the Library Technician Programme at Lakehead University, she has worked in a variety of libraries in Ontario and Manitoba. Before moving to Calgary, Kim was responsible for Government Publications at the Legislative Library in Winnipeg.

Kim also has Records Management experience, having worked as a consultant on three World Bank projects in Shanghai, PRC, and assisting with the implementation of a Geographic Information System for the City's Construction Department.

She looks forward to her new duties at LASA.



LASA Welcomes Kim Horner to the Legal Archives Society of Alberta

Library News

New Library Acquisition

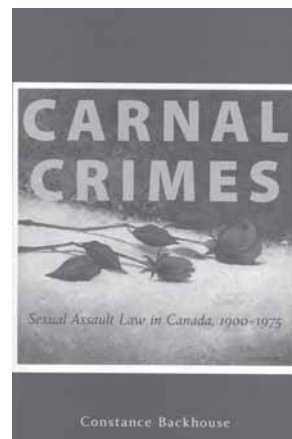
by Kim Horner

Backhouse, Constance. *Carnal Crimes: Sexual Assault Law in Canada, 1900-1975*.

Toronto: Published for the Osgoode Society for Canadian Legal History by Irwin Law, c2008.

Physical description: xi, 443 p. : ill. ; 24 cm. Includes bibliographical references (p. 299-436) and index.

Constance Backhouse shines a light on the 75-year period of the last century through nine important sexual assault cases from across Canada. This is a continuation of the examination of sexual assault legislation in Canada that she began in *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada* (also in the LASA library). For Backhouse, 1975 is a natural cut-off point for the book because it was the year that first saw legislative changes to sexual assault law. She also explains her usage of the phrase "sexual assault," to express the wide range of sexual offences, although it was not a legal term until 1983.



In the introduction, the author outlines her method for examining each case. She delves into the people, places and proceedings and the "illustrative narratives" contribute to an interesting and highly readable book. Researchers will find the extensive endnotes, 137 pages, and photographs useful. In her research, she records from archives across Canada, including LASA. Backhouse has expanded the scope of the book by uploading relevant legislation to her website (www.constancebackhouse.ca) enabling researchers to see any sexual assault law in force from 1892 to 2000 from its inception through to its amendments.

Constance Backhouse was named to the Order of Canada in 2008 and her most recent writing award is the Killam prize.



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Mark Your Calendar

- April 18, 2009 - Law Day, Calgary Courts Centre
- May 14-17, 2009 - Association of Canadian Archivist (ACA) conference. This is Calgary's first time hosting. The conference is being held at the Palliser Hotel. An exciting week of lectures, historical walking tours, and other events are planned. Please consult the official website <http://www.archivists.ca/conference/default.aspx> for more information. The 2009 theme is **Rights, Responsibilities, Trust: Archives and Public Affairs**. Registration for the conference begins March 1, 2009.

The dates for LASA's Historical Dinners have been confirmed

- Thursday, September 24, 2009 in Calgary (Fairmont Palliser Hotel)
 - Wednesday, September 30, 2009 in Edmonton (Fairmont Hotel Macdonald)
- Aritha van Herk, author of *Mavericks: An Incurable History of Alberta*, will speak at both dinners. Her book was recently turned into a permanent display at the Glenbow Museum in Calgary.

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