

Forward

Beneath you is a vast plane of white. Some of it is land, and some of it is ice, and often you cannot tell the difference. The sun sits low on the horizon, and you are in a perpetual twilight during the day. The light is golden...You drone above this endless white, realizing more with each passing hour how huge and empty is this Canadian North.¹

Graham was born in Edmonton, Alberta, on April 13, 1947, and grew up in Calgary. Following his graduation from Central High School, he attended the University of Alberta between 1965 and 1968. He completed a general arts degree taking classes in Political Science, Economics, and History. The latter subject sparked what would become a life-long passion for legal history. Graham attended law school at the University of British Columbia (UBC) in Vancouver.

Graham clearly had a passion for history. In 1985, he decided to take leave from his law practice in Calgary and complete a Master's thesis at the University of Manitoba on the constitutional development of the courts in the Northwest Territories (NWT) between 1905 and 1955. Unfortunately, he did not explain in any detail his specific motivations in his 2015 oral history interview with the Legal Archives Society of Alberta. However, with the benefit of this interview, one can speculate that there were three specific moments that would shape his interest in the North.

First, his decision to move to Yellowknife to complete his articles. It was a sense of adventure that drew him to the NWT in 1971 to article at the Yellowknife firm of Searle & Finall. In his oral history interview, Graham revealed that he "didn't have any misgivings." He continued, "it was exciting in the sense that it was a new kind of different." "The courtroom was on the second floor of the post office building – which was not uncommon for the time," Graham explained, and "it was a very vibrant city – lots of things were going on and there was excitement."² Having initially arrived in June in a state of near perpetual sunlight, the summer would change to fall, and the fall would change to winter. Graham recalled, during his interview, taking it all in stride, "I'd bought the regulation winter parka and flight boots and mukluk mitts and a toque."³ It was during that first fall in Yellowknife that Graham also met his future wife, Carol, whom he married on July 21, 1972.

When Graham arrived in 1971 there were only seven private practitioners along with several lawyers working for both the federal and territorial governments. The private practitioners in the NWT did a wide range of legal work, including criminal, family law, wills and estates, and civil work. There was no such thing as specialization. Graham remembered going on criminal circuit nearly every six weeks for up to a one-week period. Using a chartered plane, "the court party – the clerk and the judge and the reporter and the prosecutor and the defence council – would go to

¹ Brian Purdy cited in Graham Price, "Lawyers and Judges on Circuit in Canada's Northwest Territories in the Twentieth Century," *Alberta Law Review* vol. 52, no. 1 (2014): pg. 94-5.

² Graham Price, interviewed by David Mittelstadt, Legal Archives Society of Alberta, May 7 & 12, 2015.

³ *Ibid.*,

various communities,” including Mackenzie River, the Central Arctic, the west part of Hudson Bay, Baffin Island, and Frobisher Bay.⁴

The second occasion was meeting Judge William (Bill) Morrow, the NWT’s resident judge. Judge Morrow used to invite Graham to his private office and lecture him on “ethics, tactics and advocacy.” Graham recalled that “over the years, he generously offered criticism and encouragement; he lent me books from his private library.”⁵ Following Morrow’s passing, Graham purchased his extensive library from the Judge’s widow, Genevieve.⁶ “In short,” he continued, “[Morrow] took an interest in my development as a lawyer and a member of the community.”⁷

The third, and final, experience was taking part, as a young lawyer, in the Paulette Caveat Case in 1973. One of the earlier land claims in Canada, the case dealt with 450,000 square miles of land in the west Arctic. A caveat registered with the Land Titles Office essentially allowed the sixteen signatories to claim title of crown land under NWT’s land system.⁸ As co-counsel for the NWT Indian Brotherhood, Graham argued that the Dene held lawful claim to the land in question owing to aboriginal title. Years later he recalled “this case exposed me to the legal and political issues arising in land claims litigation, but also introduced me to the rich and diverse positions of aboriginal peoples in the countries comprising the former British Empire and the United States.”⁹

At the time Graham completed his thesis, legal history of the Northwest Territories was neglected. There was a lack of interest in the history of the NWT before the Second World War. Canadian history has tended to focus on the political, social, and economic development of the more populated south. But recent attention to not only the physical environment, but also the social, economic, and political conditions, in the North has inspired historians to consider the past growth and development of this distinct region. This provides a unique opportunity for greater scholarly examination of the administration of justice in Canada’s largest but least populated region. As R.C.B. Risk’s suggested, “our understanding of history cannot be complete without some understanding of its legal elements.”¹⁰

Until the 1970s, Canadian historians had largely overlooked the law. But since Risk’s pronouncement, scholars and historians have debated how best to integrate legal history as a sub-discipline of Canadian history. No longer was legal history to be the sole interest of lawyers and judges, nor was it to be limited to anecdotes, traditions, monotonous descriptions of institutions and doctrine, and judicial biographies. For historians to seriously consider legal history, it needed to move beyond a superficial description. Legal history needed to be an analytical and

⁴ *Ibid.*,

⁵ W. H. Morrow (ed.), *Northern Justice: The Memoirs of Mr. Justice William G. Morrow* (Toronto: Osgoode Society for Canadian Legal History, 1995), pg. xiii.

⁶ Price interview, May 7 & 12, 2015.

⁷ Morrow, *Northern Justice*,” pg. xiii.

⁸ *Ibid.*, pg. 156.

⁹ Price interview, May 7 & 12, 2015.

¹⁰ R.C.B. Risk, “A Prospectus for Canadian Legal History,” *Dalhousie Law Journal* vol. 1, no. 2 (1973): pg. 227.

interpretative examination of the interaction between law and society. As David H. Flaherty wrote in 1981, “legal history can find itself closely allied with political, social, economic, or intellectual history.” It must go beyond, he continued, “the narrow aspects of legal developments to focus ultimately on general relationships between law and society.”¹¹

Canadian legal history, in the seventies and eighties, was in its early stages and focused mainly on Quebec and Ontario. The history of the law in western Canada, including the Northwest Territories before 1905, was almost non-existent. However, early scholarly articles by Horace Harvey, Chief Justice of Alberta, and D. Colwyn Williams, a Law Professor at the University of Saskatchewan revealed the potential for the legal history of the NWT.¹² A closer reading of the legal historiography of the Territories reveals a gap in the scholarship. Several studies have considered the legal developments of the NWT from 1870 to 1905. Following the establishment of Alberta and Saskatchewan in 1905, the legal history of the remaining NWT had remained neglected.

Graham’s thesis is one of the first to undertake a history of the law in the Northwest Territories following the establishment of the provinces of Alberta and Saskatchewan. It is a rare examination of the administration of justice in the NWT between 1905 and 1955 with a specific emphasis on the role of Stipendiary Magistrates. Not an exhaustive assessment of the development of law and society in the Territories, it is a balanced mix of description and analysis. Graham wrote in his Preface that his purpose was to “establish a point of reference for subsequent scholars who come to deal with other aspects of the machinery of justice in the post-1905 period in the Northwest Territories” (pg. 2).

The thesis is structured into two parts that work in tandem. The first half is more descriptive providing the historical context for the more analytical second section. Detailing the historical antecedents gives the reader the necessary background to better understand the development of the NWT’s court system in the post-1905 period. He examined court processes, jurisdiction, and the changing role of the justice system over fifty years and twenty-four Magistrates. Who were the Stipendiary Magistrates? How did politics affect the administration of justice? What social changes influenced the court? What role did Territorial economic development have in shaping the court?

With the aim to integrate legal history within the historical context, Graham utilized documents and records that revealed the interplay between the role of the court and the political, social, and economic development of the NWT. The archival documents were generated mainly by the Territorial Administration in Ottawa. He moved beyond using only official court records and engaged with documents uncovering the political, social, and economic development of the NWT that occurred in conjunction with the administration of justice. To counter this Ottawa

¹¹ David H. Flaherty, “Writing Canadian Legal History: An Introduction,” in *Essays in the History of Canadian Law, Volume I* ed. by David H. Flaherty (Toronto: University of Toronto Press, 1981), pg. 4.

¹² John P.S. McLaren, “Meeting the Challenges of Canadian Legal History: The Albertan Contribution,” *Alberta Law Review* vol. 32, no. 3 (1994): pg. 425.

bias, Graham sourced diaries, unofficial court records, and vital oral histories. Graham also immersed himself in the historiography of the NWT as evidenced by the extensive bibliography.

The lack of attention paid to the administration of justice during the period under consideration reflects minimal government interest in the Territories. Graham demonstrates there was a disconnect between what Ottawa imagined and the reality on the ground for the Stipendiary Magistrates and the local population. Though he did not directly compare the administration of justice in the North with the rest of Canada, the disparities were apparent. The Magistrates in the Territories were charged with the same responsibilities as any superior court justice across the country. However, they did not receive the respect nor the privileges of their southern colleagues. In his concluding chapter, Graham examined the debates in the early 1950s in the Territorial Council and in Ottawa about transforming the NWT's ineffective court structure, which would necessitate judges have security of tenure, financial protections, and institutional autonomy.

Graham fleshes out major developments during the period he covered, including changes in the economic, social, and political structures and the interplay with the administration of justice in the North. He explored the court's response to the modernization of the NWT economy. Closely linked were the social changes. The arrival of southern Canadians to the North brought non-Indigenous values and customs. The idea of "civilizing" the peoples of the North was a continuation of a similar initiative that spread across the prairies with settlement of the West. Graham revealed how the Stipendiary Magistrates evolved from relying solely on English Common law to adapting to a more Indigenous legal culture.

As the social and economic environment was shifting in the North, Ottawa recognized the need for political modernization. A move from what has been described as a 'colonial' government to a modern political bureaucracy. As Graham demonstrated, this led to a more formal and sophisticated court system that accelerated in the years after World War II and set the stage for continued modernization of the post-1955 court.

Graham always intended to update and publish his 1986 thesis. In the years since his retirement, I had numerous conversations and encouraged him to do so. I also know others, including Louis A. Knafla and David Mittelstadt, urged Graham to pursue publication. Despite being nearly forty years old, this work remains one of the few academic studies exploring the administration of justice in the Territories between 1905 and 1955. Sadly, Graham Price passed away on January 12, 2024, after a lengthy battle with Alzheimer's.

Graham had an interest and passion for legal history. By making his thesis available online (www.legalarchives.ca) to a wider audience, LASA hopes to inspire future scholars to expand on Graham's work on the administration of justice in the Northwest Territories in the post-1905 period.

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