
The Peterborough Law Association and Its Library

The Peterborough Law Association and its Law Library are closely intertwined. The physical space of the Library serves as a forum where members gather to discuss their cases and debate the issues; a place where settlements are reached (or not); where the unwritten art of practice is passed from expert to neophyte. The Library contains the research material, print and electronic, for finding legal authorities and precedents for the resolution of the actual problems of real people. It has been essential to the practice of law in Peterborough since its incorporation in 1879.

IN THE BEGINNING

Lawyers arrived in Peterborough not long after the first settlers. In 1839 John Moodie, writing to his wife Susanna¹, mentions his indebtedness to many people in the community, assuring her he has been able to pay the money owed to his lawyer, Kirkpatrick. Stafford Kirkpatrick (1802 - 1869) had arrived from Kingston in 1834 and was one of the first lawyers in the area. He was active in the new community, and particularly in the planning of St. John's Church for which he served on the Building Committee and as warden from 1836-1838. He also served in the local militia during the 1837 Rebellion in Upper Canada as captain in the 2nd Northumberland Regiment. The name of his home "Clonsilla" is preserved in the name of a street in Peterborough. Others followed Kirkpatrick, and by 1864 business cards were posted in the *Peterborough Examiner*

¹ letter dated March 16, 1839; see *Letters of Love and Duty: The Correspondence of John and Susanna Moodie* (University of Toronto Press, 1993), p.

Business Directory for the following lawyers; Dennistoun, Weller, Dean (office over Ormond and Gilmour's Drug Store), George Edmison, James Henson (office over Lech's Furrier), Fairbairn and Dumble (lending money on improved farms) and Sidney Smith. No doubt there were more who did not advertise their practice. As the legal profession expanded in towns, such as Peterborough, which were beyond the larger centres, resources for the fledgling legal profession became a problem.

The governing body of the legal profession in Upper Canada was (and still is) the Law Society of Upper Canada founded in 1797 and located in Toronto at Osgoode Hall. In the early 1870s members of the Law Society had expressed concern about the inadequacy and inaccessibility of legal records and resources. Only the Great Library of the Law Society, located in Toronto, was open to all members of the profession; private libraries were the only resource for lawyers in rural areas. Some private libraries were quite extensive: Sir John A. Macdonald's was the core law library for the first Law School at Queen's University.² The increasing number and complexity of the cases led to the creation of a private reporting system, and selected decisions began to be edited and published in bound books. It was necessary for this information to be available to all those practicing law and advocating in the Courts, but the rural lawyers were seen to be practicing at a disadvantage. As the *Canada Law Journal*³ reported;

² This Law School was dissolved when the Law Society of Upper Canada took over legal education in Ontario, and was not revived until 1957. When I was a student at Queen's in 1952 the Sir John A. Macdonald collection was still identified in the Douglas Library.

³ *Canada Law Journal* New Series 15, 170

....county practitioners do not derive the same measure of advantage from Osgoode Hall Library as is obtained by the Toronto Bar.

In July 1879 the Law Society of Upper Canada issued a Report recommending the incorporation of law associations under the provisions of the *Library Associations and Mechanics Institutes Act*, for the purpose of establishing local law libraries, specifying;

..... the practitioners in any countymay form an association under chapter 168 of the revised Statutes of Ontario by the name of “the (name of county town or the county....) Law Library or Law Association”.

Responding quickly, Peterborough lawyers filed their Application⁴ on November 12, 1879, prefacing the Application for Incorporation with the following objects:

The purpose shall be the formation of a law library for the use of its members and the taking cognizance of all matters relating to the welfare of the legal profession in the Town and County of Peterborough.

⁴ Apparently the Peterborough Law Association allowed their incorporation under the Letters Patent to lapse, probably through not filing corporate returns when they became a requirement, so that the Association is no longer incorporated. Nevertheless, it has continued to exist as an unincorporated association, and to operate the Law Library.

The Association not only sought to create a Library, but to concern itself with the welfare of its membership, a social and regulatory purpose quite apart from the ownership and operation of a Law Library. The By-Laws of the Association set out in detail the officers, membership, meetings, fees and general provisions. One interesting provision states that the books are to be held in trust by the trustees of the Association in case of its dissolution or winding up, when the books are to be sold to repay to the Law Society (of Upper Canada) all sums advanced to the Association. At least one-half of the fees collected by the Association and all the money received from the Law Society were to be applied to the “purchase, binding and repairing “ of books for the Library. Law reports were published as subscriptions in paper parts, to be bound when all the parts for a volume had been received. While publishers now provide the bound volumes as part of the subscription, such was not the case until quite recently, and for some Reports the Library still has the option of receiving only paper parts. Binding therefore made up a significant part of the Library budget.

“LOCATION, LOCATION”

Having taken the first steps to create a Library, its location now became a crucial issue. Since the incorporation was under the provisions of the *Library Associations and Mechanics Institutes Act*, the By-Laws of the Association record that the Library was to be kept in a room secured for the use of the Association in the Mechanics Institute building. This was confirmed in the Special Report on Mechanics Institutes for 1881 with reference

to Peterborough;

There is a large law library in connection with the Institute, the members of which must also be members of the Institute.

Where this large law library came from will follow later.

The Judicature Act of 1881 reorganized the Court structure and administration of justice in Ontario. It was part of the great expansion in the economic growth and population of the Province, particularly beyond the established urban centres. The Act codified the structure, court officials and the administration, and is still in force, with modifications, to this day. The enforcement of the administrative provisions was the responsibility of the new "Inspector of Legal Offices" (a position which still exists). In the 1881 legislation the duty of the Inspector was to make annual inspections of all government legal offices in the Province, including the county law libraries, and issue an annual report for each office inspected. He was a one person Grand Jury for legal services.

At the same time, the Municipal Act was amended⁵ requiring County Councils to provide

All necessary and proper accommodation, fuel, light, stationary and furniture for the provincial courts of justice other than division courts, for the library of the law associations of the County, such last to be provided in the Court House , and proper offices together with fuel, light, stationary and furniture and when certified by the Attorney General to be necessary, with typewriting machines.

⁵ The Municipal Act

New technology very soon entered the picture in the form of telephones. The first telephone was installed in the Law Library in January 1893 when the Secretary of the Association was authorized to order a telephone for the use of the profession in the Court House on the understanding that the Law Society (of Upper Canada) pay two-thirds of the rent. The telephone was installed, but the Law Society refused to pay.⁶ After much discussion, The County also refused to pay for it because a telephone was not included in the statutory list. Finally it was paid for through a local membership levy. Much later these services were assumed by the Ministry of the Attorney General. As for “proper accommodation”, the Report of the County Warden in 1887 noted that with the completion of alterations to the Court House and the “old jail”, chambers for a Law Library had been provided. Sometime between this date and 1890 the Law Library was moved from the Mechanics Institute to the County Court House.

With the amendment to the Municipal Act, permanent premises for the Law Library within the County Court House were assured. The initial “chambers” allocated was a small room at the foot of the main staircase, on the right of the entrance to the building (an area now used for County Offices); adjacent were the Crown Attorney’s office and the Judge’s Chambers. However, as the collection grew, space became a problem. Any expansion involved discussion not only with the County, but also with the Crown Attorney, the Judge and the Inspector of Legal Offices. By 1912 the space for the Library was running out, and the Crown Attorney, R. E. Wood, graciously agreed to vacate his office to allow the Library to expand. Crown Attorneys were allowed (and expected) to continue a private practice in

⁶ Minutes of the Peterborough Law Association

addition to occupying the Crown Office, and both Mr. Wood and his successor, G. W. Hatton, carried on practice from their downtown offices. The County reimbursed them for using their own space while on Crown business, the amount being negotiable. In 1918 the County decided to offer space in lieu of money, but not the space where the original Crown Office had been. The matter dragged on without resolution until Mr. Hatton sued the County both for arrears of rent and for return of the original Crown Office, including the adjacent Law Library. The Minutes of the County Council for December 21, 1918 record:

Mr. Hatton expressed a desire to have the Law Library, stating that upstairs would do for the lawyers, as they used their room principally at night.

The Inspector of Legal Offices declined to intervene. Finally the Attorney General stepped in and settled the matter. Mr. Hatton was assigned an office downstairs in the north wing, and the Library remained intact.

On December 11, 1916 sparks from the Quaker Oats Company fire fell on the roof of the Court House, igniting it. The main Courtroom and centre staircase were severely damaged, and smoke and water reached the Law Library. Some of the books were scorched and many suffered water damage. A few books which suffered only scorched covers were salvaged, but most were packed away in boxes and stored in the basement.⁷

In 1958 an addition to the Court House was constructed for the expanding Land Registry Office and the County Council administration. The Library was moved out from its location after fifty years and into the records section of the former Land Registry Office

⁷ The books were discovered in the basement in 1972, but dampness and the fire damage required they be discarded.

at the north end of the Court House. The Lawyers' Robing Rooms and Lounge were moved into the former public area of the Land Registry Office, and the first "Lady Barristers' Robing Room " was created. The Lounge, Robing Rooms and Library, all the facilities which serve the profession and which had been spread around the Court House, were thus in the same area.

A second move occurred in 1972. Over the Christmas vacation the Library, Lounge and Robing Rooms were relocated without consulting anyone in the Law Association. A contractor had started renovating the former Library into Court offices. Upon the opening of the Courts in January, the contents of the Library were found stacked in the halls and various offices of the lower floor. When the Library was relocated upstairs at the north end the Ministry of the Attorney General, being short of funds, used prisoners from the Peterborough Jail to move the books. In the ensuing chaos, boxes of books were dropped on the stairs, while the "movers", who could not read, mixed up all the sets of law reports. Coffee breaks and head counts took up large parts of the moving process. In the end, upon representation from the Law Association and the Chief Librarian of the Law Society, the Ministry agreed to pay for the re-binding of over one thousand damaged books.

The most recent renovation occurred in 2002 when a new Courtroom was added below the Library, and Barristers' Robing Rooms were relocated to an area which had been part of the Library. A new heating and air conditioning system for the building was installed, replacing the 1910 radiators. As a result the old Probate and Records Vault is

now divided into the Robing Rooms (men and women having equal space), and a conference room which also has the early Reports. The Lounge also contains the computers for electronic research. The main book room and reading room, and the Librarian's office make up a large area above Courtroom 3. The solid cement walls and steel-beam supports allow for book and shelf storage without concern for weight. The facilities permit not only research but also case conferences, consultations and a space for meetings, discussion and relaxation between Court appearances. It is thus much more than a "Library".

The provisions of the Municipal Act which required the County to provide space also required the Council to provide maintenance for the premises. However, as in most legislation, significant details were omitted. Provision for telephones has been mentioned as an adjustment, but several basic items were to become issues between the Association and the Council.

One problem arose when the Librarian discovered that he was to pay for cleaning from his \$60.00 stipend. He refused to do so. The County refused to clean the Library and the Association was told that it could not pay for this service from the Law Society grant, those funds being specifically allocated for books. Finally, in his Report in 1900 the Inspector of Legal Offices reported that

The shelving is so dusty and badly painted that every book taken down leaves its unsightly mark on the user's clothes.

His "recommendation" was that the County maintenance staff clean the Library and

remove the garbage as part of its duties.

Heat was another issue, bearing in mind that the Court House was heated with stoves and fireplaces until 1910. That year a coal-fired hot-water system was installed with radiators in each office. The Law Association sent a Resolution to the County Council advising that the new heating placed in the Library was unsatisfactory, and

..in all likelihood would not be passed by the Inspector of Legal Offices. The old stoves were much to be preferred to the new heating apparatus as it is being placed without ventilation.

Lighting was noted as a problem as early as 1898 when the Association recommended that the “artificial lighting” in the Library be improved, as recommended by the Inspector of Legal Offices, and a Petition to that effect was presented to the County Council. In 1900 the lighting in the Court House was converted from gas to electric, but in the Library;

.....only half the number of electric lights promised has been put in, and there is no switch at the door.

By 1905, again through the prodding of the Inspector of Legal Offices, the lighting was improved, but with each Library expansion and move, it continued to be an issue. When the Library was moved to the north end of the Court House in 1958, Douglas Vaisey, the Librarian, noted in his Annual Report a decrease in the Library use, which he attributed to

- a) inability to find the book room
- b) inability to find the books in the library
- c) poor seating and lighting in the book room

Since the move upstairs and the 2002 renovations to the Court House, it is even more

difficult to find the Library. The lighting is adequate, providing no one tries to use the coffee maker and fax at the same time. Seating is often at a premium.

BOOKS and FUNDING

Funding for the purchase of books was one of the first issues faces by the Law Associations when they incorporated. Initial funding was provided by the Law Society of Upper Canada to assist each Association to purchase a core collection of books. That funding came from membership fees collected from each practicing member of the profession in the Province. Each local Association was required to assess an additional Library Fee against each member. In Peterborough the Library received a portion of the membership fees in the Mechanics Institute as long as the Library was located there. It was little wonder that the collection of these dues fell behind and that early Association records indicate that members were not diligent in paying their local dues. Purchasing new books and keeping the law reports series current became impossible. Ever resourceful, the members arrived at a novel solution: they rented the law library of the firm of Poussette and Rogers, and moved it to the Mechanics Institute.

However, by 1893 that rental arrangement was in jeopardy; books had gone missing, members had not paid their dues, and worse still, the rent was in arrears and in dispute. Poussette and Rogers sued the Peterborough Law Association. A settlement was reached, and some time between March and September of 1893 Poussette and Rogers took back their depleted Library, and were paid \$22.00 in compensation for missing books⁸. The rent and other claims were dropped. The Law Association then

⁸ The average cost of a law book appears to have been about seven dollars at that time.

petitioned the Law Society of Upper Canada for special consideration, and in 1893 the sum of \$345.00 was loaned to the Association, payable over ten years by deduction from the annual grant. The loan was without interest, but the Association had to give a Bond to the Law Society to secure repayment. With this advance, and their own funds the Association was able to purchase a basic collection of Law Reports, recorded in the Annual Report for 1893 as follows;

English Common Law Reports	118 volumes	
English Exchequer Law Reports	47 volumes	
Law Reports 1865 - 1875 (British)	84 volumes	
De Gex Series		23 volumes
Canada Law Journal		38 volumes

With the exception of the *De Gex Series* which was cancelled, and the *Canada Law Journal* which was lost in the Quaker Oats fire, these books are still in the Peterborough collection. In addition to these Reports, the Association purchased twelve textbooks. Two of these books, *Bullen and Leake on Pleadings* and *Widdifield on Executors* remain in the collection. The united effort also resulted in dues being paid up, and an additional levy for new textbooks. The year 1893 ended with a surplus of \$5.55 in the Library Account.

The first records of the Law Association record the payment of a stipend for a librarian, but no person is named until John Edmund Goodwill, one of the members, assumed the duties in 1909. The Library book collection grew steadily, and the Minutes of the Association in 1905 record that the members take a degree of pride in showing their valuable Library to strangers.

THE COLLECTION

Law libraries are the research centres for the legal profession. The collections must

be carefully categorized. Print materials include statutory documents, law reports, abridgments and digests, and textbooks.. With the advent of the electronic age every Law Library now has on-line access to a number of data bases of legislation, reports and commentary. Each Library is equipped with high-speed lines and computers. The Peterborough Law Association Library also provides wireless access in the Courtrooms and in Law Library. All this has evolved from the original Library of a few hundred books in 1893.

The Statutes and Regulations of Canada and Ontario are basic and mandatory for every law library. Until the advent of loose-leaf Statute Citators, it was the duty of the Law Librarian to annotate every amendment to the Statutes of Ontario in the margin of the relevant section of the statute⁹. This was a laborious job, often delegated to a clerk, and led to errors and omissions. The duty of annotating statutes is referred to in the Annual Report of the Inspector of Legal Offices and was diligently pursued by that Officer. Hand-written annotations are still found in the earlier volumes of the Statutes of Ontario in the Association Library. Although the printed Citators are still available, electronically updated statutes and regulations are used for current reference. Print is still required for archival purposes since it is often crucial to know the exact wording of a law at a given date in time, and to be able to trace its historical record.

The Statute collection in the Peterborough Library pre-dates Confederation. It is complete from 1792 to the present, and is one of a few such collections. The

⁹ The Statutes of Canada were not updated by the Librarian. That was left to the individual researcher.

pre-Confederation Statutes were the Statutes of Upper Canada. In addition to the Statutes of Upper Canada, the 1792 Volume contains “such British Statutes, Statutes of the Province of Quebec and Proclamations as relate to the said Province (Upper Canada)”. One of the British Statutes printed in this Volume, in force in Upper Canada and dating from the 1st day of August, 1791 was *An Act for encouraging new settlers in his Majesty’s colonies and plantations in America*. Such a settler might

...import any negroes, household furniture, utensils of husbandry, or clothing, free of duty ...

Although the slave trade was abolished in 1807 in the British Empire, slavery as such was not abolished until 1833. In the long and tragic history of slavery, this Statute did exist at one time in this Province.¹⁰

Law Reports are the written transcriptions of court decisions, printed in a series either by province (*Ontario Reports*), or for a specific court (*Supreme Court Reports*), or by topic (*Criminal Reports*) There are written reports available for nearly every common law jurisdiction. With the exception of the Province of Quebec, Canadian law followed British precedents, and until 1982 the final court of appeal for Canada was the Judicial Council of the British Privy Council. Because British reports were a necessary component of a legal collection, the first sets of reports purchased by the Peterborough Law Association were British reports. One of these sets is the *English Reports*, a set of 176 volumes containing recorded cases dating from 1378 in the reign of Richard II. They were collected by Richard Bellewe in 1585 from earlier records and were written in a curious

¹⁰ Until slavery was abolished, Negro slaves were exchanged by Bills of Sale registered in the Registry Office.

mixture of Norman French and Latin. Gradually they appear in a mixture of legal Latin and English, until by the end of the eighteenth century, they were written primarily in English. Even to-day these early cases are used to explain basic principles of our civil and criminal law. *R. v. McNaughten* stated a principle which became known as “*the rule in McNaughten’s Case*”, setting out the requirements for mental capacity in criminal law (*mens rea*) which is still quoted to-day. The reporting of cases was a very profitable business, and often a sideline for the court officers. Many of the cases reported contain editorial comments of more interest than the cases, and which would certainly not be acceptable in court reporting to-day. The reporter for the 1632 case of *A. G. v. Casen* wrote;

During the hearing of this case a nest of young rats came from behind the Kinge’s Armes and ran about upon the beams, till three or four of them fell down and lighted upon my Lord Richardson’s back. The Archbishop of York observed that as there was a nest of vermin discovered, so that this man and such as he were worse than vermin.

Acquisition of the *Law Reports* referred to in the 1893 purchase was discontinued in 1970 when the cost became too high. They cover British decisions in the Courts of Appeal (including the Irish Appeal Cases), Probate and Ecclesiastical Court, Chancery, Kings/Queens Bench, Probate and Divorce beginning in 1865. Because these cases have now become available electronically, they are once again available to user of the Library.

The Library has a very good collection of Canadian reports, primarily from Ontario and the Federal Courts. The Ontario collection is particularly notable thanks to the John Beverly Robinson gift, referred to later. These pre-Confederation reports are quite rare and of more historical than practical interest, although after the Peterborough flood in 2004 the *Drainage Cases*, reports covering the period 1898 to 1916, proved useful. The *Election Cases*, which begin with *Patrick’s Election Cases* of 1824, have been used to research contested elections during times when elections were serious and exciting events.

Peterborough had its share of contested elections in “East Peterborough” and “West Peterborough”. In 1875 an election in the riding of East Peterborough was contested, James Stratton being the Petitioner. It was alleged that “spirituous liquors” were given out on election day to four or five persons at Galbraith’s Tavern in Westwood by” Francis Birdsall acting as John Sullivan’s agent”. The case turned on whether Birdsall was in fact acting as Sullivan’s agent, and when it was so determined, the election and return were declared void. ¹¹

In 1982 Queen’s University began editing Ontario cases electronically. This resource became known as *QuickLaw* and after struggling for professional acceptance, it has become the Canadian data base for all decisions, current legislation and commentary. Now owned by LexisNexis, the American legal publisher, it is internationally accepted and used. All Law Library users have free access to this resource.

Abridgements and Digests are summaries of the case law arranged and indexed by subject. They enable a researcher to follow the decisions on a specified subject through all levels of the courts. For many years the Law Library kept the leading British and Canadian digests in print form. The leading British digest was *Halsbury’s Laws of England*, which included a Canadian supplement. The *British and Empire Digest*, as the name implies, included cases from many of the British common law jurisdictions, and is still kept on the shelves. The leading Canadian publication, *The Canadian Abridgment* is the only digest for which the Library keeps the current edition; it is available on-line and is

¹¹ 1875 *Hodgin’s Election Cases* 245

updated monthly. Since the data bases have a cut-off time prior to which cases are not recorded, the older print copies of the digests and abridgments are still useful in research, especially in historical research of a case or principle of law.

The Peterborough Law Association Library has an extensive collection of legal textbooks, partly historical and partly current. The books are recorded through the Law Society's *on-line AdvoCat* catalogue. Many of the legal books are now published in loose-leaf format with frequent up-dates. Recently, there has been a trend to publish paperback monographs on single topics i.e. *Voir Dires*, which are reissued annually. The Law Society of Upper Canada, through its continuing Legal Education Department, issues many publications in loose-leaf binders dealing with new issues and procedures. In addition to these textbooks, there are books of forms and precedents.

GIFTS

Many of the books in the Law Library have been acquired as gifts, some with an interesting history. The Minutes of the Annual Meeting of 1894 record the "generous presentation" of law books" by Mr. Hampden Burnham. Some of these were statutes which are still in the collection, and have Burnham's name inscribed on the title page.

In 1899 Christopher Robinson Q.C. gave the Association reports and textbooks. These had belonged to his father, Sir John Beverley Robinson, brother of Peter Robinson who organized the emigration of 1825. Sir John Beverley Robinson who had a distinguished career as Attorney General of Upper Canada and later as the Chief Justice of Ontario, had an extensive private library.

For many years a dusty set of *United States Supreme Court Reports* sat unused on

the shelves. It is reported that William H. Taft, President of the United States while on a fishing trip to this area, was entertained by the members of the Peterborough Law Association of which he was made an honorary member. Surprised that the Library did not have any American law reports, he arranged for this set to be sent to Peterborough. It was lost in a basement flood at the Court House.

The late Judge John deNavarre Kennedy¹² was keenly aware of the importance of historical records. For many years he was the editor of *Chitty's Law Journal*, a well respected periodical. He donated a partial set of these books to the Library. His most significant donation was a collection of framed portraits of all his predecessors. Portraits of all the judges of Peterborough County adorn the walls outside the main Court Room. The Peterborough Law Association has continued this legacy by arranging for portraits of each successor to be added to the collection. Judge Kennedy also gave the Association his collection of "Spy Cartoons". These are caricatures of British judicial officials created by the cartoonist *Spy* for the magazine *Vanity Fair*. Together with a number donated by the late John Bradshaw Q.C., they are one of the best private collections in Canada.

Generous gifts of books and reports, have also been made by the estates of Hon. G.N. Gordon Q.C., Wilfred Huycke Q.C., John Bradshaw Q.C. and Robert Carley Q.C.

When the renovations of 2002 reduced the book-room space, selected books were donated to the National Library in Ottawa. Books which were damaged or of no further use were disposed of. Access to on-line electronic resources has made some print material

¹² Peterborough County Court Judge 1952-1963

redundant. The cross-referencing which electronic programmes have created is both thorough and time-saving. From time to time archived material is required by researchers, and is always available.¹³

ADMINISTRATION

¹³ An example is a recent request for a copy of the Ontario Statute of 1938 incorporating the Sisters of St. Joseph in Peterborough.

The Peterborough Law Association has only one employee - the Librarian - who is responsible for the administration of the Library and the general administration of the Law Association. Work includes purchasing, budgeting, managing the book collection and looking after the financial and general affairs of the Association. Since its incorporation, the Law Association has had five Librarians:

- Edmund Goodwill, 1900 - 1913
- Joseph Wearing, solicitor, 1914 - 1930
- Mabel E. Moore 1930 - 1947
- Douglas Vaisey 1947-1967
- Lois Davidson 1968 - 2008

In the early 1930s the responsibilities previously assigned to the Inspector of Legal Offices were taken over by the Law Society of Upper Canada, and the Chief Librarian of the Law Society became the supervising director of all the County Libraries, including Peterborough. Previously, the Chief Librarian had only been responsible for the administration of the Great Library of the Law Society at Osgoode Hall. This Library is recognized as one of the major law libraries in North America and in its collection is second only to Harvard University's Law Library. The skills required to administer such a library have never related well to the needs of the smaller County and District Law Libraries. Nevertheless, successive Chief Librarians did their best with limited time and resources to supervise the County libraries. The Chief Librarian sat on the *Libraries and Reporting Committee* of the Benchers of the Law Society. The Librarian prepared and advocated for the allocation of funds for the 49 County and District Libraries and the Great Library. Each

Association was required to file with the Chief Librarian an Annual Return which included the Financial Statement of the Association, a budget for the coming year, and a list of all paid-up members. The annual grant from the Law Society was contingent upon the Chief Librarian receiving a satisfactory Financial Statement and the supporting documents from each Association. It was the duty of the Treasurer of the local Association to collect the local assessment, keep the financial records, and prepare the Annual Return. The efficiency of the Treasurer of the local law association was crucial to the financial viability of its library. The maximum Law Society grant was set at \$3,000 per annum and the Province of Ontario added \$200 in addition (the Provincial grant is still \$200.00). The local law association collected a fee from each member to cover the remainder of the library operating budget. In Peterborough, for many years this amount was \$250 per member, and collection was rarely a problem. When a special need arose an additional levy was made for that purpose. However, the Province, through the Ministry of the Attorney General, did assume the County's obligations for space and supplies, and with the support of the Chief Librarian, the Peterborough Library was given funding to replace the previous metal factory-shelving with proper library shelving, study tables and chairs, and generally to refurbish the Library. Across the Province there discrepancies in the willingness of the members to pay fees, the amount actually paid, the efficiency of the Treasurer, and, consequently, in the quality of the Library facility. With lawyers often required to attend to matters in other jurisdictions, with the increase in the number of lawyers, and with the advent of computerized research, it became critical that the administration of the County Libraries be reorganized so as to assure a minimum standard for resources and service in

every Library.

In 1985 the Law Society began the process of examining the state of the County and District Law Libraries. A Committee, known as *The Elliott Committee* was set up to examine the system and to report to the Benchers, with recommendations. In 1989 the Law Society adopted its Report. The Committee recommended a separate corporation be established as the central manager of the Ontario County and District Law Library system, “for the purpose of developing and enhancing skills for the ‘competent lawyer’ in Ontario.” In 2001 a new corporation, named *LibraryCo*, took up the duties of County Library administration. Library dues are now collected by the Law Society as part of the annual practicing fee paid by each lawyer. This ensures that every member pays the same amount. LibraryCo then allocates funds to each County Library according to its designation and need. Reporting is done on a quarterly basis by each County Library using a common computerized bookkeeping system. As part of the reorganization, the libraries in the system were designated according to the number of members in the county or district, and its geographical area. Six “regional” libraries are staffed by full-time professional law librarians; twelve “area’ libraries receive funding for a part-time library staff member; “local” libraries receive basic funding. Peterborough is designated as an “area” library, while the Northumberland and Victoria Libraries (Cobourg and Lindsay) are designated “local” libraries. More responsibility for resources is thus placed on the “area” library , and in particular on the Peterborough Law Library. Peterborough has two Court Houses where cases are heard, the County Court House on Water Street and the Provincial Court House on Simcoe Street. This requires a “satellite library” at the

Provincial Court House. The latter is a “virtual library” consisting of a computer facility with on-line research available to all the lawyers, along with a few basic books.

With the advent of computers and internet research, it is necessary for every Law Library to have up-to-date research facilities with fast on-line access. The Law Foundation of Ontario (funded by interest from members’ trust accounts) has provided funding for computer equipment and internet programs to all the County Law Libraries. In the Peterborough Library there are presently four computers available at all times with access to a number of programs, both on-line and through CD- ROMs. In addition, *LibraryCo* provides continuing education for librarians through regular web-based training on new programs. *LibraryCo*’s centralized accounting programs assist in budget preparation and tax reporting. Inter-library loan within the County and District Law Libraries system is available to each Library, and courier service facilitates such exchanges. The Great Library’s participation in the inter-library loan program makes its resources available now to every practitioner in the Province.

With approximately 10,000 volumes of print material in addition to its electronic resources, the Peterborough Law Association Library serves over 100 lawyers and judges in this area.

“ FOR THE WELFARE OF THE PROFESSION”

The Peterborough Law Association is fortunate to have three Minute Books, recording in varying degrees of detail, the matters dealt with by the Association. The first and most complete Book covers the period from 1893 (the takeover of the Law Library) to

1939. The second contains the Minutes (in less detail) from 1940 to 1958, and the third is more or less current. The early Minute Books also reported such events as the appointments of judges, deaths of members, and members leaving the Association for various reasons. They also record decisions about fee tariffs, practice and disciplinary problems, social events, and Association finances. Until 1918 the Minutes were handwritten by the Secretary of the Association. They included transcripts of the annual financial statements and lists of book purchases. In 1918, with the advent of the typewriter the Minutes became much less discursive and more condensed. It is likely that the typewritten Minutes were produced by office staff of the Association Secretary, and therefore were less open to “editorial comment” by the Secretary.

The first lawyer to practice in Peterborough was Stafford Frederic Kirkpatrick. Kirkpatrick's first partner was Edward Armour Peck who joined the firm in 1881. He was followed by Francis Dean Kerr in 1895, when the firm became *Kirkpatrick, Peck and Kerr*. With later partners and changes to the firm it is known to-day as *Howell, Fleming*.

David William Dumble who served as “Police Magistrate” for thirty-nine years, retired at the age of eighty-four. His life story can be seen as typical of the professional men of that era. He was born in Ireland in 1837 and emigrated to Canada with his family in 1844. His father was an army surveyor who settled in Cobourg where David graduated from Victoria University in 1860, studied law (at that time by articling to a practicing lawyer) and was called to the Bar in 1862. The following year, he married and came to Peterborough to begin his practice. He would have been in practice for about a year when he was listed in the *Peterborough Examiner* in 1864. He was active in George Street

Methodist Church, served on the Town Council and was a member of the Board of Education for 25 years. In 1874 he ran as the Provincial Liberal candidate, losing by only two votes. As with many members of his profession, he made public service an integral part of his life.

The Dennistoun family served in the Peterborough's legal profession for two generations, before emigrating to Manitoba where its members held distinguished public offices. Robert Dennistoun was born in Scotland in 1815 to a wealthy Scottish family. He was tutored privately, then spent three years in banking in Glasgow. In 1834 he emigrated to Upper Canada, purchasing land near Fenelon Falls where he intended to be a "gentleman farmer". A friend of John Langton who had settled nearby, the two soon sought the social life of Peterborough, where Dennistoun found his bride. On December 24, 1839 he married Maxwell Hamilton, the daughter of Major Hamilton a miller and distiller in Peterborough. The story was told that their wedding ring had to be borrowed as no local store had one. Realizing that he could not make a sufficient profit from farming to support the kind of life style he liked, he decided to become a solicitor. He articulated with a solicitor in Toronto for two years while his wife went to Scotland. In 1849 he was called to the Bar and opened a law office in Peterborough. Seven years later he built Inverlea House for his family. He was appointed the County Judge for Peterborough in 1868, serving in that Office until he suffered a stroke in 1886, and moved to Toronto where he died on May 31st, 1895.

Robert's two sons, James Frederick and Robert Hamilton, became lawyers in Peterborough. Together with E. H. D. Hall, they formed the firm of *Dennistoun Brothers*

and Hall, a firm which continued with different partners until 1993. Their original building on Hunter Street is now occupied by the law firm of *Lech, Lightbody and O'Brien*. James' son, Robert Maxwell Dennistoun, was elected a Bencher of the Law Society and practiced law in Peterborough until 1910 when, with fellow lawyer and former Mayor of Peterborough Roland F. McWilliams, he joined the emigration to Manitoba. The Minutes of the Association record the departure of the two members in 1910:

The lure of the West is drawing from us many of our best men, and we would feel greater regret if we did not realize that we are not losing them, but are only lending them to aid in the development and upbuilding of our Great Western Provinces.

Roland F. McWilliams became the Lieutenant-Governor of Manitoba; while Robert Maxwell Dennistoun was leading Justice of the Court of Appeal, serving in that capacity into his eighties. In 1944 an editorial appeared in the *Winnipeg Free Press* complaining that

The men who occupy (the Appeal Court) do not have the collective energy to deal adequately with the litigation before them. Two of the judges, by reason of age and infirmity, are unable to discharge their duties....a condition which approaches a public scandal.

Justice Dennistoun, then 80 and still sitting on the Bench, took this as a personal affront, and broke the rule of judicial silence. Using the occasion of the swearing in of a new Chief Justice, he told the Court that the editorial was

As treacherous as the attack made by the Japanese on Pearl Harbour. It can only be compared to a raid on a hospital ship flying the Red Cross or a mercy ship with all lights burning and no means of defense available..

These were hardly the words of a man suffering from "age and infirmity"! Robert Maxwell Dennistoun died in Winnipeg in 1952 at the age of 88.

Roland McWilliams' career as a lawyer and later Lieutenant-Governor of Manitoba is well documented, but his wife Margaret was an exceptional woman in any age. In 1898 she was the first woman to graduate from the University of Toronto with a degree in political economy. She earned her own living as a journalist in Minneapolis and Detroit for five years before she married McWilliams, an old university friend, and came to live in Peterborough. After they arrived in Winnipeg in 1910 she established herself in many women's organizations. She was founder and first president of the Canadian Federation of University Women, wrote several books including *Women of the Red River* and *Manitoba Milestones*, served four consecutive terms as Winnipeg alderman, and was instrumental in reviving the Manitoba Historical Society, becoming its president in 1944. One can only imagine what her contribution to Peterborough might have been. Such capable and adventurous easterners did indeed contribute to the "development and upbuilding" of Canada's west. These early lawyers were leaders in the political, religious and social lives of their communities. Such was their enduring legacy.

The close fraternal relationship of the members of the Association is borne out in many of the Memorials recorded in the minute Books on the occasion of deaths of members. The first such entry in the Minute Book on December 30th 1897 is the Resolution of the Peterborough Law Association upon the death of John Hampden Burnham Q.C.

...he faithfully served for many years as a Member of Parliament, Warden and County Councillor. His kindly and genial disposition endeared him to every one who had the favour of his acquaintance and made him beloved of all whom he met in any relation of life, but particularly by the Bar of the County with whom he daily associated, who ever recognized his eminent legal attainments and the high sense of professional honour which at all times characterized his discourse with them, and

who now with extreme sadness of heart inscribe this slight memorial upon their records.

The Resolution on the death of the Crown Attorney Robert Edwin Wood shows a similar personal and professional esteem. When he died on September 14, 1914, he had been the Crown Attorney since 1888;

....as Crown Attorney he performed his responsible duties with zeal, but with such a spirit of fairness as left no rankling and yet executed his high duties to the satisfaction of the Crown

During the First World War there were few Meetings of the Law Association, but several members enlisted to serve overseas. The first to leave Peterborough was Sidney Medd, who was presented with a silver bread tray on his "leaving for the front with the 3rd Contingent." While this may seem strange gift for such an occasion, engraved trays seem to have been the usual parting gift of the time. A more suitable gift for departure was presented to Mr. Widdifield of *Gordon and Widdifield* when he enlisted in 1915. He was presented with a travelling bag.

The names of members who served in World War II are recorded on a plaque in the main stairway of the Court House. They included Alex Elliott, MPP, Reginald Chandler and Ralph Standish along with others who either completed or began their legal training after the War. One member, the late James Fitzpatrick Q. C. served in the Korean War as a fighter pilot. There is a "Memorial Wall" in the Library to record and display the record of War Service of the members.

MEMBERSHIP

From the beginning the membership of the Peterborough Law Association has included all lawyers, practicing and retired, in the County Of Peterborough. What is less certain is the status of the County Judges and Magistrates (now Provincial Court Judges). As long as Peterborough had its own County Court Judge, and later Family Court Judge, many of the judges had been practicing law in the area before their appointment. The same was true of Crown Attorneys and Provincial Court Judges (formerly Magistrates). Membership in the Association simply continued after their appointment. After 1918 it would appear that the members of the judiciary were considered to be "honorary members," although several continued to take an active part in Association affairs. Judge Edward Huycke in particular interested himself in ongoing matters before the Association and at the 1926 Annual Meeting he expressed his opinion that

The membership has not taken a sufficiently active interest in many matters which it was the duty of the Association to interest itself such as more frequent meetings, concern for professional welfare and guest speakers.

The Meeting thereupon passed a Motion that Judge Huycke be asked to address the next Meeting of the Association "on some subject of professional interest". It is not recorded when this Meeting took place, nor whether Judge Huycke continued to make such suggestions. At the present time, the Judges are invited to social events and Annual General Meetings as honorary members of the Association.

In 1902 there were 22 members of the Association and this number remained constant until after World War II. Since that time there has been a steady increase in the

membership, from 45 in 1971 to 103 in 1998. Since that time the number has remained at about 100 lawyers.

As to gender, Marion Bulloch was the first woman lawyer in Peterborough. She appears on the membership list in 1934 as practicing with W. J. Arthur Fair Q.C. She is listed in *Vernon's City Directory* (1936) , and apparently boarded with Mina Edwards at 340 Rubidge Street (the Cox Terrace). Thereafter Miss Bulloch appears to have gone to Toronto. In 1963 Lois Davidson returned to Peterborough and practiced law in the City until retiring in 2002. Since then the number of women lawyers has increased until at present there are 22 female members of the Peterborough Law Association: who have their own Peterborough Women's Law Association, primarily for social purposes. The first female judge in Peterborough was Catherine Maloney who was appointed to the Family Court in 1971. At that time membership in the Bar was not a prerequisite for appointment to the Family Court (nor as a Magistrate) and although Catherine Maloney was not a lawyer, her experience in other fields qualified her for the position. Upon Judge Maloney's retirement, Wendy Robson from the firm of Howell, Fleming was appointed to the position.

PROFESSIONAL MATTERS

While the initial purpose of the Association was to see to the "welfare of the legal profession in Peterborough", its interest and service has extended far beyond the professional matters which are its immediate concern.

Some indication of the daily work of a solicitor at the turn of the twentieth century is found in the matters discussed in the meetings of the Association. The early records

indicate that a significant and most remunerative part of a solicitor's practice was the lending of money, usually secured on land - what we now term "mortgages". The solicitor acted as a combination of banker, trustee and mortgage broker. The funds would come from clients and frequently from estates with lifetime trusts. Where a wife or infant children survived, it was common practice to direct that the estate be held in trust for the lifetime of the widow, or in the case of infants, until they reached the age of majority. In some cases funds would come from beneficiaries who wished to invest their inheritance for a return, and there being few investments available to the average person other than bonds or mortgages. This business provided a source of investment capital within the community, in turn fueling the local economy, and contributing directly to its growth and development. The law office would be required to keep records of receipts and payments on these investments, and in many cases provided safe-keeping boxes for the clients for a fee.¹⁴ The practice of investing clients' money was risky and tempting for those who could not resist misappropriating funds. There is, however, no record of such fraud in Peterborough. The risk for clients came when land prices fell, or properties were over-valued and the security evaporated. Eventually the Law Society of Upper Canada imposed such severe restrictions on the profession that the service could only be offered by registered (and insured) mortgage brokers. Until the 1970s it was not unusual to see a sign in a solicitor's window advertising "loans and mortgages available".

¹⁴ As recently as 1990 the office of Hall and Gillespie had a wall of safe-keeping boxes in their vault, which they rented to clients. When the firm was terminated the boxes were sold to another law firm for decorative purposes!

Until the Combines Act prohibited any agreement to set fees, the Association set and published its own Tariff of Fees. The Tariff enumerated various legal services and set a minimum fee for the service, to which each member formally agreed. The Tariff was published in a booklet available in each law office. Members could, and sometimes did charge more than the tariff where the matter involved extra time or significant complexity. Probably because of the small size and closeness of the legal community, it was relatively rare for a solicitor to “break tariff” and charge less. The first Tariff discussions took place in 1910 and 1911, and a “Conveyancing Tariff” was soon agreed upon as recorded on October 1st, 1912. This was followed by a “Surrogate Court Tariff” which covered wills and estate matters. These Tariffs were revised regularly, but were followed less rigorously as the number of lawyers increased. By 1955, however, it was apparent that the Tariff was not being universally followed by the members. A lengthy discussion took place at the Annual General Meeting, as the Minutes record;

There then followed a futile and long drawn out discussion as to the extent to which the association could bind its members and after some heated debate, tempers finally subsided and the matter was dropped with no result reached.

The last Tariff was published in 1975. Such agreements are now illegal.

Other matters dealt with locally included complaints against members of the Law Association before these were regulated by Convocation of the Law Society in Toronto. In the early 1900's several complaints, both by clients and by fellow practitioners, were heard by a panel of the local Association and settled locally. One such complaint was that a solicitor had acted unprofessionally in obtaining an assignment of a mortgage from the client of another solicitor, without that solicitor's knowledge. The client did not have the

benefit of independent legal advice. In this case, having determined that the client had not been harmed, regrets concerning “intemperate language” were expressed and the matter was settled.

The Association also dealt with procedural rules in the Courts, and made representations regarding proposed legislation. In 1919 when the first *Trustee Act* was before the Legislature, the Association sent a Resolution to the sitting member of the Legislature advising that it saw no need for a Public Trustee, a function which they saw as better carried out by private citizens and chartered banks. Such an Office would “cause great disturbance, creation of a centralized bureaucracy at Toronto, introduction of a grave danger of unnecessary political patronage into private and family matters.” Today the Public Guardian and Trustee not only affects many aspects of legal work in the administration of estates, but also is active in the protection of all persons under legal disability, including children and the mentally disabled.

One of the most significant and lasting projects of the Peterborough Law Association has been its involvement in the Ontario Legal Aid Plan. A decade before this Plan was introduced by the Ontario government, the lawyers of Peterborough had a working rota to provide volunteer legal services in the community. Each member of the Association was asked to volunteer his (her) services for one month in the year as duty counsel, operating out of their own office and providing all necessary services for needy clients. In 1967 the Ontario Legal Aid Plan was set up as a program of the Law Society of Upper Canada, at first funded entirely by the profession, and later in part by the Province. A fee scale, paid by the Plan, was set for the participating lawyers and strict criteria for

eligibility were imposed on the applicants. The first “Area Director of Ontario Legal Aid” was the late William Grant. This is now a full-time position with a downtown office location, and staff. Available in the fields of criminal law and family law, Legal Aid is now a widely used service and is well-served by local lawyers.

By 1984 it became apparent that many people needing legal assistance were unable to pay for such services and were ineligible for Legal Aid. In January 1985 the Peterborough Law Association set up its own *Peterborough Legal Services* as a free clinic operating after-hours, three days a week, out of the Legal Aid Office. The Service was staffed by volunteer members of the Association. Statistics were kept, but no person was denied advice for financial reasons. This program operated until the *Peterborough Community Legal Centre* was opened in December 1989, financed jointly by the Law Society of Upper Canada and the Province of Ontario.

The Peterborough Law Association is frequently asked for input into many matters in the administration of justice in this area, particularly with respect to Court House facilities. This advice is freely given, but not always accepted, and discussions about court facilities, formally on committees and informally in meetings, have been frequent and protracted. In 2001 the Law Society of Upper Canada commissioned a survey of all the Court House facilities in the Province. The Peterborough Law Association prepared a detailed brief, as did the County of Peterborough (which owns the Court House), the City police and the judges. The Report of the Law Society published in 2002 listed the Court House facilities in Peterborough among the twelve worst problem areas in the Province. This was borne out by the annual Grand Jury Reports over the years which consistently

condemned parts of the Court House, and particularly the County Jail built in 1864-65. In 2002 the Ministry of Corrections, which operated the Jail, undertook further renovations by way of dividing cells, which were barely large enough for one person, to accommodate two prisoners. By that time most of the men's ¹⁵exercise yard had been taken over by temporary administrative structures, and other problems including lack of any recreational space or facilities, were of long standing. A riot ensued, mattresses and the new cell dividers were destroyed, and the Jail was closed. The prisoners were transferred to the Millbrook Correctional Centre, and after its closure to the new "mega jail", the Central East Correctional Centre in Lindsay¹⁶. From this Centre they have to be transported to Peterborough and other centres for trials or court hearings. The Peterborough Jail, a large limestone structure adjacent to the County Court House, is a place of sad and tragic history. In an earlier age several prisoners were hanged in the Jail Yard and four bodies are supposedly still buried under the women's exercise yard. A grim and dark place, the Peterborough Jail stands empty and abandoned.

The Ministry of the Attorney General undertook some renovations to the interior of the main Court House building following the 2002 Report, but the budget was not adequate to meet the requirements set out in the Report. The security system was

¹⁵ The original and much smaller women's exercise yard remained the one in use. Women had not been held at the Peterborough Jail for many years.

¹⁶ When this facility was completed there was space for a reading centre (library) but no provision for the purchase of books. The Peterborough Law Association sent out a call for used paperbacks (hard covers could be sharpened into weapons) and Marie Moser and Lois Davidson transported two van loads of collected books and magazines to Lindsay, where local volunteers organized the books for the Library.

improved, but the structural alterations made access more difficult, and the clients in the new Family Court waiting room frequently overflow into the parking lot.

The space for lawyers in the Provincial Court Building is even more restricted, with as many as nine or ten persons working in a small room with a desk, computer and four chairs.

GOOD WORKS

In its collective public service, the Peterborough Law Association gives an annual prize for the Legal Assistants' Course at Fleming College. The family of the late Judge Samuel Murphy founded a scholarship in his name at Trent University to which the Law Association has contributed. The "Christmas Gift Program" was initiated by the late William Carruthers, the first Area Legal Aid Director to low-profile charities serving people in need. The Association has now designated this the "Bill Carruthers Christmas Gift", and in keeping with his generous and unassuming character, this gift of between \$3,000 and \$4,000 is made in time for Christmas, without publicity, to a selected charity.

By way of public education, the Peterborough Law Association has regularly participated in the Canadian Bar Association's "Law Week" program, during which seminars and discussions of current legal issues are offered to the public.

The Peterborough Law Association has had a long and proud history of service to the profession and the public. The "welfare of the legal profession" includes, by extension, the welfare of each client and of the court system on which our freedom depends. The individual members of the Association have served in political office at all levels, in community organizations of every kind and for their country in two world wars and in the

Korean War. As the Peterborough Law Association enters its second century of existence it has extended its original purpose “in the formation of a library, and the taking cognizance of all matters relating to the welfare of the legal profession” fulfilling its motto *Discretio est discernere legem* .