

The Acquisition of Lawyers' Private Papers

by DOUG WHYTE

Throughout Canadian history the law has played an important role in shaping our national character. The strains of British and French customs combined with the influence of the new world environment resulted in the evolution of a distinctly Canadian form of law. These regulations developed as the country matured and the patterns of this maturation process provide valuable information about the attitudes Canadians held towards their fellow citizens, their rights, and their property. The field of legal history remains a fledgling area of scholarship in Canada. The work which has been produced to date tends to focus on the individuals who participated in the creation and interpretation of laws along with specific laws or locales, placing these in a particular historical context. Scholars have made use of the rich sources available in archives throughout the country to analyse the official perspective of Canadian legal history as viewed by the legislative and judicial branches of government. Archives have long recognized the historical importance of legislators and have collected large quantities of manuscripts relating to the work of law makers at all levels of government. More recently, provincial archives have expanded existing programmes devoted to the acquisition and preservation of court records. These aid the study of the judiciary's interpretation and application of specific laws. What Canadian archives have failed to achieve is an adequate representation of collections which illustrate the role of the lawyer within the legal process. Such records would illuminate the vital function the lawyer plays as the link between the citizen and the law.

Although the lack of lawyers' private papers in archives is acute, it cannot be stated that individual members of the legal profession are not well represented within archives. At the federal level for example, ten of our sixteen prime ministers have been lawyers. Fifty-two percent of all federal cabinet ministers¹ and sixteen percent of all Members of Parliament and Senators between 1867 and 1967 were members of the legal profession.² The manuscript collections of a large number of these individuals have been preserved. Very few of these collections, however, contain information related to their legal work. Lawyers have been active at the municipal and provincial political levels as well. Many occupied prominent positions within the

1 Richard J. Van Loon and Michael S. Whittington, *The Canadian Political System: Environment, Structure and Process* (Toronto, 1971), p. 351.

2 J.K. Johnson, ed., *The Directory of Parliament 1867-1967* (Ottawa, 1968).

business community while others achieved recognition through their involvement in various associations, charities, and interest groups. These achievements were frequently of sufficient significance to merit inclusion in archival repositories. Yet, when one sets out to examine the accomplishments of these same individuals within the bounds of their legal practice, using existing archival sources, it becomes readily apparent that such a study is virtually impossible. In spite of the high profile that the profession and its individual members have achieved, few collections of lawyers' private papers repose in Canadian archival institutions. It is the purpose of this paper to address the reasons for the present situation and to offer suggestions aimed at improving future acquisition and research use of this type of collection.

The general public tends to view the legal profession as a prestigious but exclusive club, completely self-regulating and ever-sensitive to the public image it projects. Archivists share this stereotypical perception. When asked for a probable cause to explain the lack of private legal papers, many archivists cited lawyers themselves — blaming the insular nature of the group. Yet as the following section will demonstrate, the single most important factor inhibiting the acquisition of lawyers' private papers stems from the client and not the counsel.

Solicitor-Client Privilege

The principle of solicitor-client privilege stands at the very foundation of the legal profession. This cornerstone of a lawyers' relationship with a client instils the necessary trust and confidence which are the prerequisites of a successful association. It allows the vital exchange of information to take place without which a proper defence or effective counsel is made extremely difficult. The origins of privileged communications are not the product of recent jurisprudence nor do they originate in modern civilization. The concept of preserving the confidentiality of information exchanged between individuals and certain recognized professions can be traced to the Roman Empire. Physicians and advocates were exempt from questioning at the trials of former clients and leading members of the religious community were also excused from appearances before courts of litigation.³ The first appearance of privileged communication in the literature of British legal precedent was documented in 1577. The first application of solicitor-client privilege occurred as a result of the courts attempting to "compel reluctant witnesses to testify"⁴ Privilege was extended to the British clergy in matters relating to the confessional, but this expired with the coming of the Reformation. Physicians had been excused from testifying against their patients until the late eighteenth century.⁵ By this time only solicitors were protected by common law against forced disclosure of confidential information about a client. Until the eighteenth century, privilege was recognized as the right of the solicitor, "the right of any gentleman not to violate a pledge of secrecy."⁶ This honour system was gradually modified and the privilege

3 Gerd Schroeter, "Protection of Confidentiality in the Courts: The Professions," *Social Problems* 16 (1969), p. 377.

4 R.A. Kastings, "Recent Developments in the Canadian Law of Solicitor-Client Privilege," *McGill Law Journal* 24 (1978), p. 115.

5 Schroeter, "Protection of Confidentiality," p. 377.

6 "Functional Overlap Between the Lawyer and Other Professions: Its Implications for the Privileged Communication Doctrine," *Yale Law Journal* 71 (June 1962), p. 1228.

was transferred to the client. The resulting form of privileged communications provided greater protection for the client and thereby strengthened the relationship with the solicitor.

During the four hundred years since solicitor-client privilege was introduced into British jurisprudence, an extensive refining process has taken place. These developments have been described by R.A. Kastings:

Originally, under the honour-based theory of privilege, solicitors were exempted from testifying about communications received from clients only from the beginning of the litigation in connection with which the communication was made and for its purposes only. When the philosophical basis of the privilege changed, the temporal scope of the privilege began to expand. First, communications made during previous litigation were protected under the privilege [1791]. Next, a communication was exempted from disclosure if it was made in contemplation of future litigation; this exemption was later extended to any controversy whether with litigation potential or not [1869]. Next, communications made during any consultation for legal advice, irrespective of its litigious or controversial nature were considered privileged [1879]. Finally, the solicitor-client privilege was applied to information obtained upon discovery [1881].⁷

This accumulation of precedence has served as the basis for Canadian and American laws concerning privilege. In law, as in so many areas of North American customs, the debt to Britain is substantial. The United States used the experience generated by the British legal system to model its own laws regarding privilege. Individual state legislatures are empowered to grant privilege. Many have exercised this right to include physicians, members of the clergy, psychiatrists, psychologists, and accountants.⁸ Within the Canadian context, privilege is still recognized as the exclusive right of the legal profession. The confidential relationships between doctor and patient, accountant and client, or journalist and source are not protected by the privilege of non-disclosure.⁹ Only a solicitor or his client may exercise this privilege as defined in a recent Canadian court ruling:

Communications by a person to his solicitor or counsel in any capacity ... are privileged and ... neither the solicitor nor the client can be compelled to disclose the content of such communications where they are intended to be confidential.¹⁰

The courts have become increasingly conscious of the importance of maintaining the confidentiality of communications between a lawyer and a client. This trend is no less evident within the legal profession itself. The profession's code of ethics places a high premium on the protection of a client's confidence. Information received in confidence must remain secret even after the termination of service. If a lawyer is judged to have misused or divulged information entrusted to him, he may be subject

7 Kastings, "Recent Developments," p. 116.

8 Schroeter, "Protection of Confidentiality," Table 1, pp. 380-81.

9 John A.M. Judge, "Confidentiality, Evidentiary and Procedural Developments," in Eric Gertner, ed., *Studies in Civil Procedure* (Toronto, 1979), p. 132.

10 Kastings, "Recent Developments," p. 116.

to disciplinary action by the committee on professional conduct within the provincial bar association. Yet so strong is the sense of protection for the privacy of the client that some members of the profession feel the examination of client files, even by members of the standards committee investigating a solicitor's competence, would constitute a serious weakening of solicitor-client privilege.¹¹ In light of such concerns voiced by the courts and the legal profession, it is understandable that few collections containing privileged material have reached archival repositories.

Acquisition of Private Legal Papers — Problems

Those archives active in the acquisition of public court records have been able to overcome many of the obstacles which previously hampered their programmes. The same success cannot be reported with respect to private legal papers. Because of the issue of confidentiality represented by the special relationship between client and lawyer, relatively few collections of private legal manuscripts have been turned over to archives. Those collections which do exist within various repositories arrived there through a passive collections policy. In many cases the legal material was discovered by accident among business or personal records. In some instances, a lawyer who achieved prominence because of a secondary field of endeavour donated his collection which included scattered records pertaining to the practice of law. There have been situations where the heir to a lawyer's estate turned over the complete collection unaware of the issue of privileged material. Finally, there are lawyers who present their papers to an archives either oblivious to the associated problems or in open defiance of their profession's regulations governing the disposition of client files. In any case, for whatever reason, archives have become the recipients of confidential communications.

The issue of solicitor-client privilege is not widely understood by archivists; thus it is frequently overlooked during the deliberations concerning access restrictions. The privileged material described by law associations and the courts as confidential has occasionally been left open to unrestricted use by the research public. One of the most prominent examples is found at the Public Archives of Canada. Located within the papers of Sir John A. Macdonald are eight volumes devoted to the legal career of Canada's first prime minister. A large portion of the material falls into the category of privileged communications. Despite this fact the volumes in question have been open for over sixty years. In fact, many letters from clients to Macdonald are available in published form in J.K. Johnson's *The Letters of Sir John A. Macdonald*.¹³ This example illustrates the point that private legal records while confidential at the time of their creation can be used for scholarly research after the passage of time has tempered the sensitivity of those communications. In the case of the Macdonald Papers, given the national historical significance of the collection and the fact that the documents are well over one hundred years old, could the various law societies and bar associations, with all due respect for solicitor-client privilege, seriously argue for the destruction of this material? I think not.

11 W.H. Hurlburt, "Incompetent Service and Professional Responsibility," *Alberta Law Review* 18, no. 2, (1980), p. 158.

12 Public Archives of Canada, Sir John A. Macdonald Papers, MG 26 A, series 2 (a), Personal Correspondence, Legal Correspondence, 1835-1873, volumes 538-45.

13 J.K. Johnson, ed., *The Letters of Sir John A. Macdonald, 1836-1857* (Ottawa, 1958).

There are other examples of valuable collections which archives have been forced to turn down due to fear of possible litigation over the confidential legal material they contained. The advice of legal counsel invariably recommends the return of these papers. One such case concerned the Public Archives of Ontario which, acting on the advice of its lawyers, returned the records of an important London, Ontario law firm to the donor.¹⁴ The collection was subsequently destroyed. Even if this type of material was acquired, no archives could afford to arrange and maintain a large collection that according to legal opinion never relinquished its confidential status and therefore could never be made available to the public.

One question which has not been addressed in the limited archival literature on the subject concerns the number of private legal collections presently held by repositories. As a means of providing a concrete basis for discussion, a questionnaire concerning legal collections in archives was prepared and distributed to forty-two archives across Canada. A total of thirty-eight responses were received.¹⁵ Three additional institutions were contacted by telephone and their replies were tabulated along with the others. The survey represented a large sampling of all archives judged to be potential repositories for private legal papers. A cursory examination of the results confirmed some obvious assumptions, such as the probability that larger institutions would be more likely to have records in this category. Several other results were more surprising. The following table reveals the result of the survey.

Number of archives surveyed	45
Number of responses	41
Archives holding private legal collections	19
Archives holding collections containing solicitor-client privileged communications	13
Archives refusing collections due to solicitor-client privilege	3
Archives willing to accept private legal collections if the inhibiting factor of solicitor-client privilege was removed.	23

Although an exact tally is not available, the number of private legal manuscript collections held by the nineteen positive respondents ranges from two to twenty. The size of these collections also varies considerably from a few pages to several hundred volumes. Given these data, it is apparent that many institutions share a common problem: how to deal with confidential communications within the legal collections in their possession.

Some Solutions to the Problems of Acquiring and Using Private Legal Papers

The problems posed by private legal collections are not insurmountable. There are practical steps which archivists can employ to make such collections usable. One

14 Catherine Shepard and Peter Oliver, "The Osgoode Society, the Archivist and the Writing of Legal History in Ontario," *Law Society of Upper Canada Gazette* 8 (June 1980), pp. 193-94.

15 I would like to express my appreciation to all of the institutions which responded to the questionnaire. The response rate was extremely high for this type of survey and many of the additional comments were quite useful. Perhaps the number of responses indicates a general interest in the subject.

example is the procedures used in the arrangement of the papers of the Rt. Hon. John Diefenbaker. The papers are owned by the University of Saskatchewan, but they are being arranged and microfilmed in a joint effort with the Public Archives of Canada. In return for this assistance, the Public Archives of Canada receives a microfilm copy of the papers. One series within the voluminous collection is devoted to Diefenbaker's law career. It contains notes on cases, correspondence with clients and witnesses, memoranda, copies of court documents, and other vital information concerning the cases in which he was involved. Also included in the series are his legal diaries, ledgers, and correspondence with colleagues and various professional associations as well as office "housekeeping" files. Under the terms of the original agreement with the university, the entire legal series was arranged and microfilmed. The intention was to make the complete series available to researchers with some restrictions governing the use of the names of individuals if intended for publication.

Upon further examination of the access problem created by the discovery of solicitor-client privilege, it was decided to adopt stronger restrictions to ensure that confidential information was not made available for research use. Several alternative policies were examined at the time. They were as follows:

1. Destruction of the privileged material. This option was ruled out because of the great historical significance of the papers.
2. Deletion of the controversial material. This was retained as a possible solution but it required further study.
3. Imposition of a sufficiently stringent "affidavit" on researchers. It was decided that the simple act of placing the onus to maintain the confidence of the solicitor-client communications on the researcher did not absolve the Diefenbaker Centre or the Public Archives of Canada of their responsibility. This material was still being made available to a third party.
4. The possibility of contacting all clients or their literary executors in order to obtain a waiver allowing access to their files. This was rejected as an impossible task since there were hundreds of individuals involved.
5. A final alternative was to ignore the problem and run the risk of any potential legal action against the two institutions. This was dismissed as irresponsible.

After considerable deliberation the most acceptable solution was considered to be the deletion of the solicitor-client communications. A set of criteria was established to isolate the documents which were to be removed. The basis of the selection was formed from the regulations described in a number of legal texts.¹⁶ The items to be removed included the following:

1. Documents in existence prior to the retention of the lawyer, delivered to him by the client or a third party.

¹⁶ Among the many works consulted in the preparation of this set of criteria, the most useful was *Cordery's Law Relating to Solicitors* (London, 1968).

2. Documents prepared by the lawyer for the benefit of, and paid for by his client (this would include all drafts and copies).
3. Letters sent by a third party to the lawyer concerning the action.
4. Notes made at interviews with the client.

There was a list of documents within the case files which were exempt from the application of solicitor-client privilege. They are deemed to be the property of the lawyer and therefore exempt from restriction.

1. Court documents in the public domain.
2. Solicitor's notes, other than those made at interviews with clients.
3. Information relating to fees.

With this set of definitions established, the Diefenbaker legal series was examined by University of Saskatchewan and Public Archives of Canada staff members. Lists were drawn up and compared. Additions and deletions were made. The sensitive documents and the affected reels of microfilm were removed from circulation and placed in security storage. Duplicate negatives of the seven reels of the fourteen-reel series which contained the confidential information were produced. The "offending" frames were covered with a light-inhibiting tape and a new set of positive copies was developed. The originals minus the privileged material along with the expurgated microfilm are now available to researchers. Users are also required to sign a form requesting that personal identifiers not be revealed in published works. The benefits of this solution allow the original documents and unaltered microfilm reels to be reintroduced at some future date if circumstances change. This is not an alternative that is applicable to every situation primarily because of the cost and the labour involved. It does demonstrate that there are means available to preserve private legal records until a permanent solution can be found.

While it is true that maintenance of client privacy is the principle reason for the lack of legal collections in archives, lawyers themselves are party to blame as well. Many allow the question of privilege to colour their attitude towards their entire collections. Archivists must convince the legal community that there are important elements of their papers which can be preserved without breaching solicitor-client privilege. Those files affected by the principle can be accommodated by the application of access restrictions of from thirty to one hundred years in duration, according to the sensitivity of the individual cases. From a practical perspective, archivists could argue that their institution can offer beneficial advice on records management and aid in the storage of dormant records. Through a gradual process of education, lawyers can have their fears of misuse of confidential information overcome and replaced by the knowledge that their records will be used responsibly to further historical research.

Other avenues worthy of investigation may provide the answer to the problems inhibiting the acquisition of private legal papers. The passage of provincial legislation would allow law firms and individual lawyers to turn material over to archival institutions. The act would stipulate a specific closure period for confidential documents after which they would be available for research use. In Ontario the Attorney General, through the *Law Society Act* of 1970, is empowered to "act as the guardian of the public interest in all matters ... having to do with the

legal profession.”¹⁷ Under this provision the Attorney General could pass the necessary legislation. This action would only be taken if the Law Society of Upper Canada was prepared to simultaneously amend the section of its Rules of Professional Conduct dealing with confidential communications. In this way lawyers would be free to deposit all of their papers without fear of the repercussions they now face from their own profession. The goal of this possible solution is admirable, but the likelihood of coordinating the necessary changes would, realistically, require more interest and commitment than presently exists among legislators and members of bar associations.

A more likely method of solving the existing archival problem associated with solicitor-client privilege would be to approach the bar associations directly. If a strong case could be put forward, coupled with assurances that adequate safeguards would prevent the misuse of the material, it is possible that the regulations governing the disposal of records could be amended. At present there are such movements within several provincial associations which may achieve this end shortly. In British Columbia, a proposed change to the present professional code of conduct was submitted in June 1983 by David Williams, Q.C., of the University of Victoria. The proposal which he made public at the ACA meeting in Vancouver contained the following recommendations.

1. A member may deliver papers and records not already in the public domain accumulated before or after the coming into effect of this provision while acting for a client to the following bodies:
 - a) The Public Archives of Canada;
 - b) An archives maintained by a Province or Territory of Canada;
 - c) The records management office of any Province or Territory of Canada;
 - d) An archives maintained by any city in Canada which has been established for at least ten years;upon the happening of the later of the following events:
 - (i) the death of the client or, if the client is a corporation, the date such corporation is struck from the applicable Register or;
 - (ii) the expiry of thirty years from the date of conclusion of the matter on which the member was consulted;without liability to the client for breach of solicitor and client privilege and without being in breach of any rulings made from time to time by the Benchers concerning confidentiality.
2. A member may attach restrictions or limitations upon public access to the papers and records so delivered but such restrictions or limitations shall cease upon the death of the last of the following persons to die:
 - (i) The member;
 - (ii) A spouse of the client living at the date of the death of the client;

17 H. W. Arthurs, "Counsel, Clients and Community," *Osgoode Hall Law Journal* 11 (1973), p. 448.

(iii) The children of the client living at the date of the death of the client.

No decision has yet been made, for the matter is still before the committee responsible for amendments to the code of conduct.

Waiver of privilege is a term which may hold the answer for archival institutions interested in overcoming the problems of solicitor-client privilege. The waiver has been used primarily to allow information in this category to be introduced as evidence in legal actions. The client must clearly intend to waive the right to privilege and must be fully aware of the consequences of this act.¹⁸ The waiver can be obtained at the time of the creation of the file or at a later date, freeing the information for research use at a time mutually agreed upon by the client, lawyer, and archivist. The major difficulty with this solution involves locating clients and convincing them of the merits of preserving their files. Lawyers may also be reluctant to alert clients to the possibility of their records being viewed by anyone other than the lawyer. Such an action might be perceived as a potential weakening of the confidence vital to their professional relationship.

The questionnaire sent to various archives included a question about the types of access restrictions presently being imposed on the private legal collections in archives. Attitudes differed considerably. Some archives treated the material as a very low priority and did not know of the possible ramifications of allowing privileged material to be used without restriction. Other institutions advocated selective destruction of the private confidential communications. The majority advocated some period of restriction ranging from twenty to one hundred years, depending on the age and sensitivity of the records. Most archives responded to the question regarding their acquisition of private legal collections by declaring that they have no active programme specifically designed to deal with lawyers' papers. Most management donations, as described earlier, occur spontaneously. There is one notable exception. The Public Archives of Nova Scotia instituted a programme aimed at eliminating the sporadic collection of private legal papers. In 1957 an agreement was reached with a Nova Scotia law firm

whereby the Public Archives of Nova Scotia would hold the firm's records, which will be eventually made accessible to researchers. The Public Archives of Nova Scotia's aim is to have the records of one provincial legal firm in its holdings; there is no intention of making any further agreements, lack of space precludes it.¹⁹

All material is restricted for a minimum of fifty years with the possibility of additional restrictions on more sensitive files. In essence the archives acts as an extension of the law firm's records management programme, offering additional storage space and operating a retrieval service. Eventually ownership will pass to the archives. While this approach is unique in Canada, it is not without its drawbacks. The amount of material is growing rapidly and a decision must soon be made between a selective retention policy or the end of the entire programme.

18 Memoranda prepared by the solicitors of the Osgoode Society, Messrs. Osler, Hoskin and Harcourt, 1979.

19 B.C. Cuthbertson, Public Records Archivist, Public Archives of Nova Scotia, letter dated 21 December 1982 enclosed with the questionnaire.

The journal of the Dutch Society of Archivists contained in the March 1983 issue a draft agreement between the Archives of the Netherlands and the national association of the legal profession. Under the terms of agreement, records would be turned over to an archival repository after selection of material is made by archivists in consultation with the law society. Some types of records such as those relating to divorces, custody, inheritances, and other sensitive areas would not be deposited. The archives would not own the documents. As well, written permission of the directors of the responsible law firm would be required to obtain access to material less than one hundred years old. The agreement lasts for ten years after which it can be extended on a yearly basis. The archives or the law firm can cancel the arrangement at any time with the documents being returned within three months.²⁰ While most archivists in this country would find this arrangement and the concessions exacted too great a price for the records, the fact that such agreements can be reached between archives and private firms is a positive sign.

Legal History in Canada

By this point some readers may be taking heart in the potential solutions put forward in this paper. They are, quite probably, archivists who are presently faced with the conundrum of a manuscript collection containing privileged communications. Many others must be wondering what all the fuss is about. They either have little interest in legal history or they believe that official court records are adequately meeting the demands of their clients. Such doubts overlook both the growing interest in legal history and the valuable information found within private legal records.

Legal history is a burgeoning field of Canadian historiography. It has aroused interest among a number of academic disciplines as well as within the legal profession itself. In the past, developments in this area have lagged behind those achieved in Britain and the United States partly as a result of the lack of scholars possessing the requisite blend of skills and interest, but also because of the inaccessibility of the primary sources. The recent emphasis on a systematic acquisition of court records, coupled with the work of various archives, universities, and bar and historical associations has aided in the identification and collection of numerous sources relating to Canadian legal history. In the last few years, at least six legal history projects have been launched and more are being contemplated. For the most part the work consists of oral histories, production of publications, and surveys of existing sources. Yet these are visible signs of a growing interest in the subject. In Ontario, the Osgoode Society has accomplished a great deal in a short time. Since its inception in 1979, the Society has embarked on an oral history programme, published several books, sponsored conferences and seminars, and has established a funding programme to support scholarly research in the field. Membership has grown to well over eight hundred in four years. The members represent the legal, historical, and archival professions as well as several prominent members of the provincial government. One of the avowed aims of the Society is the encouragement of "lawyers, judges and others in the legal field to carefully consider the historical

20 *Netherlands Archieven Blad* 86 (March 1983), untitled, pp. 64-66. Report on the selection of legal archives. I wish to thank Walter Neutel of the Public Archives of Canada for providing a translation of the notice and sample agreement.

importance of their records and to think of donating them to an archival depository."²¹ The commitment to the preservation of private legal records has been coupled with a strong desire to achieve solutions to the archival problems associated with solicitor-client privilege. In its third annual report, the Society offered the following message of hope:

The Society in 1981 carried on its exploratory work in the area of legal records and the problems posed by solicitor-client privilege and confidentiality and its hopes in 1982 to be in a position to take some important initiatives in this regard.²²

Very valuable historical information is contained in private legal papers, much of which cannot be found in any other source. Court records provide an official view of the application of the law, but they are dry, lifeless accounts of events. The records maintained by the lawyer present a lucid account of the action. The chronology is more detailed, the legal stages are often supplemented by press clippings, and extensive memoranda and notes prepared by the solicitor are included, but above all one gets a vivid sense of the human drama so often lacking in the official court records. The records of a lawyer or law firm contain information about the impact of the law on the individual or on society itself. The training and career development of individual practitioners is more effectively demonstrated through private records. The potential subjects are limited only by the resourcefulness of the researcher. In any case, be it a public or a private source, the desired result should be a fuller understanding of our legal past.

In retrospect, society is largely shaped by the laws it imposes upon itself. From the constitution through civil and criminal codes to municipal bylaws, a country demonstrates its character and that of the citizens which comprise it by its laws and their enforcement. With this in mind, Professor R.C.B. Risk outlined the broad parameters of the study of legal history:

I conceive legal history to be a study of the legal processes, and this conception can be elaborated in three overlapping elements; the influences that shaped law; the effect of law; and the structure, procedures and functions of legal institutions.²³

He went on to indicate eight themes which he felt inter-twined Canadian history and legal history: the expression of Canadian identity as represented in the nation's laws, the impact of the law on the economy and the environment, and the development of legal institutions are examples of the themes which could be analysed more thoroughly through private legal sources than official records.

The theme of this issue of *Archivaria* is "Archives and the Law," and this seems an appropriate point to appeal for the development of an archival standard for the acquisition of papers generated by the Canadian legal profession. This paper has outlined the existing problems and advocated potential solutions, yet it rests with individual archives to initiate the action needed to remedy the issue. Ultimately any

21 Osgoode Society, *Osgoode Society's Third Annual Report* (Toronto, 1981), p. 6.

22 *Ibid.*

23 Richard Risk, "A Prospectus for Canadian Legal History," *Dalhousie Law Review* 1, no. 2 (1973), p. 228.

lasting answer will also require the cooperation of government and law associations. It is unlikely that any one archives will achieve this breakthrough singlehandedly, so it falls upon all interested archivists to share their experiences and knowledge and develop a unified approach. The question of saving the records of a representative sample of the legal profession is an important one. While not all legal collections are important historically, a selection should be retained to preserve a record of the work done by lawyers for future generations. Such collections reveal many interesting facets of Canadian history which are unavailable elsewhere. In spite of the difficulties presented by solicitor-client privilege, therefore, private legal papers should be collected and saved by Canadian archives.