

Law and Learning. Consultative Group on Research and Education in Law. Report to the Social Sciences and Humanities Research Council of Canada. Ottawa: Minister of Supply and Services, April 1983. ix, 186 p. Catalogue No. CR 22-6/1983. ISBN 0-662-52436-5.

Law and Learning, the report of the Consultative Group on Research and Education in the Law, examines the current state of legal scholarship in Canada. The Committee of Canadian Law Deans and the Canadian Association of Law Teachers, acting with the Social Sciences and Humanities Research Council, were the catalysts in the formation of the Consultative Group. This report is, in effect, a vehicle for expressing the dissatisfaction of the law teaching profession, or at least a segment of that profession, with the absence of a "scholarly discipline of the law" in this country. Its findings and recommendations are directed not so much to the Social Sciences and Humanities Research Council but to the legal "estates" — professional, judicial, and academic. The report touches on the interests of the archival profession in a brief discussion of legal records. Before so doing, however, the report completes its major task of describing factors in the legal environment which are inimical to legal scholarship and proposing changes designed to encourage such scholarship.

The findings of the report should not be surprising. Legal scholarship in Canada is inhibited by an environment which, if not hostile to scholarship, is certainly indifferent to it. Legal education displays a "narrowly professional" bias; graduate programmes in law are limited; law faculties are staffed by a large contingent of practitioner-teachers; and full-time law professors carry a heavier teaching load than other academics over a longer academic year. Consequently, legal research in Canada is dominated by heavily doctrinal and "conventional" legal research which "identifies, analyses, organizes and synthesizes statutes, judicial decisions and commentary." More speculative and critical inquiries into legal theory, law reform, and the fundamental economic, social, and historical implications of the law are simply not encouraged in an environment dominated by the "narrow" research interests of the practitioner. The report concludes that legal knowledge in Canada is comparable to medical knowledge during the time of Pasteur and that the law is "made, administered and evaluated in what often amounts to a scientific vacuum." Providing an environment favourable to a more ambitious legal scholarship is the aim of the various recommendations made by the Consultative Group.

Having gone to great lengths investigating and recommending a wider perspective for legal scholarship, the report turns to the resources available for legal research. This discussion centres on the inadequacy of available published research tools and the plight of Canadian law libraries which, predictably, are underfunded and understaffed. For those who collect archival references, the report contains exactly two; the first appears in the section on legal research and makes reference to "documents hidden in archives" (p. 125); the second appears in the recommendations at the end of the report which encourage the creation of legal archives (p. 159). Perhaps these passing references to archives are understandable since most legal research, including the kinds suggested by the report, will not need to go beyond the resources of a law library. Archives are simply not a central concern of this report. They are mentioned because one field of legal research called "fundamental" research deals with the wider social and historical implications of the law and will have to move beyond published sources to primary documents in order to

accomplish its task. And in this connection, the report focuses on the fear that fundamental research will be inhibited in future by “the absence of certain kinds of data or by the presence of rules that limit access to them.” The report specifically mentions use of judicial statistics which reflect current administrative needs rather than long-term research needs and solicitor-client privilege which inhibits the acquisition of private legal records for research purposes. To solve these problems, the Consultative Group calls on governments and professional organizations to begin discussions with academic researchers in order to amend legislation, professional rules, and administrative policies which “promote the destruction or sequestering of legal records” and to encourage the formation of legal archives with established terms of access and use for legal records. All of this is highly commendable. Presumably there might be a point at which an archivist’s perspective is considered valuable.

What can be expected from this report? Certainly it appears that the Social Sciences and Humanities Research Council is sympathetic to legal scholarship. Yet the main target of the report’s recommendations lies beyond the authority of the Council. Implementing these recommendations can only be the result of a coordinated effort by law schools, governments, and the legal profession. How likely is this? The report itself provides the clue to the answer. The most disheartening discovery for the Consultative Group was the “striking indifference” it encountered from those who should have been interested in the issues raised. The response to the Group’s regional meetings, questionnaires, and requests for briefs was disappointing. The Consultative Group reports caustically that “we have not been overwhelmed by either the extent or intensity of the response to our study.” This is an ominous indication of how the report will be received by those who are in a position to bring about change.

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Essays in the History of Canadian Law, Volume II. DAVID H. FLAHERTY, ed., Toronto: Published for the Osgoode Society by the University of Toronto Press, 1983, 592 p. ISBN 0-8020-3391-1 \$45.00.

In the second volume of the Osgoode Society’s *Essays in the History of Canadian Law*, David Flaherty demonstrates the editorial skill he brought to the first volume — although he ought to have wielded his blue pencil with a little more authority over some of the longer contributions. Reviewing a book of essays is always difficult. One could discourse on the meaning and relevance of the words “Canadian Legal History,” but too many lawyer-historians have been preoccupied with writing reviews of reviews of works on legal history. Indeed, much current legal scholarship seems to be devoted to writing exceedingly long and introspective book reviews. This may be due to the overabundance of that varsity press known as law school journals or the pervasive influence of the *New York Review of Books*.

It should be more useful to give a short sketch of each of the essays. William Wylie starts out with the “Civil Courts in Upper Canada, 1789-1812.” Wylie set himself a very difficult task; the history of legal procedure is very complicated and the archival materials from the period are no doubt sparse. The essay has a tentative and