

An understanding of the past is not going to shackle you, Chris, but rather liberate you to become a better archivist for the future.

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The State of Court Records: Louis Knafla Replies

There are several items in D.H. Bocking's letter in *Archivaria* 19 on my article in *Archivaria* 18 which prompt discussion. First, with regard to the court records destroyed, two of my former students who consulted Saskatchewan court records in their research were under the impression that more than 15 per cent were lost in the floods, and the state of the records was such that one of them decided that the province could not be studied for the court records topic chosen due to the lack of consistent runs of records and their inaccessibility. Some of the early records were also thinned by retaining only specimen files and shredding others, a policy of earlier days (like that of stripping some of the most important information from the Justice of the Peace files) which has since been abandoned. The lack of access and professional archival care for the post-1931 court records are still serious problems, and in this respect the court records of Saskatchewan have less accessibility than those of other common law provinces. In neighboring Alberta, for example, most of the judicial records to 1971 have been transferred to the custody of the Provincial Archives in Edmonton. This has also occurred in many other provinces.

A second item concerns finding aids. Inventories of court records, such as those being prepared in British Columbia, are essential for researchers, and the preservation of docket or process books for civil actions (usually inaccessible in local court houses), together with prosecution books for criminal actions, are no substitute for complete inventories by jurisdiction and court. In particular, the bulk of research into court records has been, and probably will continue to be, on the criminal side, and most prosecution books are useless to researchers as they list only the names of the accused and the date. Seldom do they include the offence, witnesses, prosecutor, and dispositions of the case. It seems, therefore, that inventories and indexes not only make court records accessible to users, but also draw users to the great amount of information which is contained within them. To have records which receive little use is not a healthy situation for the archival profession.

The key to these and other items is the second to last sentence of Bocking's letter, where he states that "we are doing all we can within the limits of our resources to ensure the preservation of these historical records." The key lies in the word "resources." One of the reasons why Alberta has made such significant advances in the transfer of these records to archival custody, and in the preparation of inventories, lists, and indexes, is because the local academic profession convinced the Law Foundation to invest in more than \$100,000 over five years to make a major assault on these problems, and then used matching funds from provincial STEP and federal Summer Career Access programmes to enlarge the effort. Governments these days like to see their funds follow in the wake of others. And when public funds are in scarce supply, they usually track even more closely

funds secured from the private sector. People continually tell me that indexing court records is an impossible task. I would like to suggest that it is not impossible if you take a pragmatic long-range view, and that the cooperation of archival, academic, and professional people and groups can bring a measure of success to bear on these matters. It is significant, for example, that the Osgoode Society in Ontario has made the preservation and use of legal records one of the planks in its platform.

Finally, I would like to emphasize the importance of bringing court records under central and archival care and of organizing, cataloguing, and indexing them. No one can list how many major or minor studies of topics of historical and current interest have not been done because the records are not accessible or practically useable. I would not want my article to be regarded as a piece of academic criticism; I wrote it to inspire action. What is important is not what has been lost, but what we can do with what we have retained. To this end it is my hope that the project being prepared by Professor DeLloyd Guth and myself to undertake a systematic list and guide of all court and other legal records in the provinces, beginning with the four Western ones, can pull together the work of archivists such as Mr. Bocking and make it possible for these records to become known and used. Then we can not only correct the inadequacies of attempts like that of my own to discuss the state of court records in Canada, but also provide a catalyst to develop their employment.

I am reminded of a tale told about F.G. Emmison of the Essex Record Office, England, who brought in school children periodically to look at the records and especially to sign the archives' register book. He not only raised funding, but he also made the archives one of the most prolific in lists, inventories, calendars, and indexes. As a result, the county became the most heavily studied in the country. I doubt that the county councillors begrudged a single pence of the sums expended. Neither did the archival profession when more of its members were hired to handle the flow of traffic. Here in Canada we may not be like England — the world's greatest floating museum. But we may not be far behind it.

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K.E. Garay's Rejoinder

I had expected a response from former *Archivaria* editor Dr. Terry Cook to my letter criticizing both the content and positioning of Gordon Dodds's article "Canadian Archival Literature: A Bird's-Eye View" (*Archivaria* 17). I did not anticipate, however, that in *Archivaria* 19 Cook would resort to page counting in an effort to defend the piece, nor that he would tenuously attempt to establish that this critic "badly misinterprets" a point made by Dodds in the article.

Without wishing to quibble over such minutiae let me respond to Cook's meticulous accounting of the article's varied content by observing merely that by my own reckoning fully two-thirds of this piece (14½ of 22 pages, not 21 as Cook contends) was devoted to an unnecessarily narcissistic litany of the contents of *The Canadian Archivist* and *Archivaria*.