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An Historical Review of Nova Scotia Legal Literature: a select bibliography

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An Historical Review of Nova Scotia Legal Literature; a select bibliography

Comp. by Shirley B. Elliott

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A INTRODUCTION

Expressed in simplest terms Nova Scotia law, generally speaking, is an amalgamation of English common law, English statute law and the provincial statutes which evolved following the convening of the first representative government at Halifax on October 2, 1758.

From the capture of Port Royal in 1710 (which by the Treaty of Utrecht in 1713 guaranteed Acadia to the British), to the establishment of an elected assembly 48 years later, law and order were maintained at first by military law and, following the appointment of Richard Philipps as governor at Annapolis Royal, by the issue of royal instructions dated June 19, 1719. When Halifax was founded in 1749 Governor Cornwallis' instructions from the Lords of Trade, April 29, 1749, granted him more sweeping powers, with the result that the colonists were governed in large measure by executive acts and royal instructions until the first assembly was called nine years later.

It is the purpose of this bibliography to present a compilation of the principal sources and related literature which serve to provide a background to the Nova Scotia legal system as we know it today. It should be emphasized that it does not include the administrative aspect of the law, particularly in the contemporary context.

1 Primary Sources

Campbell v. Hall (1774), 1 Cowper 204; 98 E.R. 1045, 1558-1774. All E.R. Rep. 25a.

Decision whereby an act of the Crown could not deny or deprive a conquered colony of its representative institutions once it had been granted or promised an assembly.

Great Britain. Board of Trade to Lords Justices, June 19, 1719. Commission and set of instructions to Governor Philipps.

Article 10 ordered Philipps to conform to those instructions originally given to the Governor of Virginia, wherever applicable and until such time as government by council and assembly was called. PAC C.O. 217, v. 32, pp. 417-28.

Great Britain. Laws, Statutes, etc., *British North America Act, 1867*, 30-31 Victoria, ch. 3 (sec. 92).

Sets out the powers designated to the four provinces at Confederation.

Houston, William. *Documents illustrative of the Canadian constitution*, ed. with notes and appendices. Toronto: Carswell, 1891.

Labaree, Leonard W. *Royal instructions to British colonial governors, 1670-1776*. New York: D. Appleton-Century, 1935.

Nova Scotia. Archives. *Selection from the public documents of the Province of Nova Scotia*, ed. by Thomas B. Akins. Halifax: Charles Annand, 1869.

Contains His Majesty's Commission to His Excellency Governor Cornwallis, pp. 497-505. Also in PAC C.O. 218, v. 2, pp. 212 ff.

_____. *A calendar of two letter-books and one commission-book in the possession of the government of Nova Scotia, 1713-1741*, ed. by Archibald M. MacMechan. Halifax: Herald Printing House, 1900. (Nova Scotia Archives II).

_____. *Original minutes of His Majesty's Council at Annapolis Royal, 1720-1739*, ed. by Archibald M. MacMechan. Halifax: McAlpine Publishing Co., 1908. (Nova Scotia Archives III).

Includes resolution of Governor Philipps on April 20, 1721 constituting H.M. Council a court, the first court of judicature administering the English common law within Canada. Also in RG1, v. 22, 1720-1736.

Nova Scotia. House of Assembly. *Journals of the House of Assembly, 1758-*

The *Journals* exist in manuscript only previous to 1761, the original held by the Nova Scotia Legislative Library. Before 1765 they were designated *Votes of the House of Assembly* and were thus indexed by Uniacke in 1789.

Nova Scotia. House of Assembly. *Unpassed bills, 1762-1917*. Originals. PANS RG5, Series 0.

Uniacke v. Dickson (1848), 2 NSR 287-302.

C.J. Halliburton ruled that English revenue laws are not applicable in Nova Scotia, except in so far as our legislature has seen fit to adopt their provision.

On October 3, 1758, the second day's sitting of the first assembly, a resolution was recorded 'that a message be sent by a Committee to desire his Excellency will be pleased to order that all the Resolutions of His Majesty's Governor and Council heretofore made and passed may be laid before his Honour, and all the collection of English statutes.' (*Journal of the House of Assembly, 1758*, p. 3).

The extent to which the infant Nova Scotia House of Assembly looked for guidance to the older American colonies in the drafting of legislation is an interesting and debatable subject. There is definite evidence that Massachusetts and Virginia played a role in this regard, notably with the former's "Act for Preventing Trespasses". It is perhaps significant to point out that the Legislative Library has in its collection a number of worn, well thumbed volumes of American colonial statutes, including those of Massachusetts (1714, 1726, 1759, 1788); New

Hampshire (1776); New York (1774); Rhode Island (1767); and Virginia (1752, 1769); as well as *An abridgment of the laws of His Majesty's Plantations in force* (London, 1704).

2 Secondary Sources

Beck, James Murray. *The government of Nova Scotia*. Toronto: University of Toronto Press, 1957. (Canadian government series).

Blackstone, William. *Commentaries on the laws of England*. Oxford: Printed at the Clarendon Press, 1765.

Brebner, John Bartlet. *The neutral Yankees of Nova Scotia: a marginal colony during the Revolutionary years*. New York: Columbia University Press, 1937.

In particular chap. VIII, "Nova Scotia under Halifax rule".

———. *New England's outpost: Acadia before the conquest of Canada*. New York: Columbia University Press, 1927.

Calnek, W.A. *History of the County of Annapolis*, ed. and completed by A.W. Savary. Toronto: William Briggs, 1897.

Haliburton, Thomas Chandler. *An historical and statistical account of Nova-Scotia in two volumes*. Halifax: Joseph Howe, 1829.

Vol. II, chap. 5 gives a description of the courts in the Province and general observations on the laws.

Laskin, Bora. *The British tradition in Canadian law*. London: Stevens, 1969.

Manning, Helen Taft. *British colonial government after the American Revolution, 1782-1820*. New Haven: Yale University Press, 1932.

Chap. II: The colonies and their constitutions; chap. V: Colonial assemblies; chap. VI: Colonial courts, with reference to the ignorance of judiciary and lack of books.

Member of Assembly [pseud.]. *An essay on the present state of the Province of Nova-Scotia, with some strictures on the measure pursued by Government from its first settlement by the English in the year 1749*. London, 1774.

Gives a telling account of conditions in the Province following the founding of Halifax, with particular stress on the form of government and the disposition of certain legislation.

Murdoch, Beamish. *A history of Nova-Scotia, or Acadie*. Halifax: James Barnes, 1865-67. 3v.

Pownall, Thomas. *The administration of the colonies*; 4th ed. London: J. Wilkie, 1768.

Sprague, Alan B. *Some American influences on the law and the law courts of the Province of Nova Scotia from 1749 to 1853*. Submitted for the William Inglis Morse History Prize, 1935-36. Halifax: Dalhousie University, 1936. Typed manuscript.

Stokes, Anthony. *A view of the constitution of the British colonies in North America and the West Indies*. London: B. White, 1783.

In 1829 Thomas Chandler Haliburton, in *An historical and statistical account of Nova Scotia*, commented on the paucity of material relating to the origin of the laws of the province. "In England there are many books written on the constitution of the Country, but in Nova Scotia, the inquisitive reader, while he finds enacted laws, will search in vain for any work professedly treating the origin of the authority that enacts them." Three years later this deficiency was in some considerable measure eliminated when Beamish Murdoch published the first volume of his *Epitome of the laws of Nova Scotia*, that brilliant commentary on the then existing laws, presenting their substance 'in the plainest terms, fresh from the technical language in which they were written'.

Completed the following year, the *Epitome* holds a unique position within the province's legal literature, since no modern counterpart has been produced, nor has any other Canadian province brought forth an equivalent. It is interesting to conjecture that Murdoch, conceding defeat in the 1830 election and saddled with a struggling law practice, may have been prompted by Haliburton's observation into undertaking this remarkable work, which has justly earned for him the epithet, the Blackstone of Nova Scotia.

Murdoch made another significant contribution to the province's legal history when he delivered before the Law Students Society a paper entitled *An Essay on the origin and sources of the law of Nova Scotia* in 1863.

B STATUTE LAW

1 Statutes

The statutes of the Province of Nova Scotia have been issued annually since the first session of the House of Assembly in 1758, with the exception of the years 1788 and 1810, when there was no session.

The printing of the statutes posed a serious problem in the first session of the Assembly. Not without just cause the colonists agitated for their availability, claiming they were severely handicapped through ignorance of the laws which governed their day to day existence. In response to their demand an act entitled "Publication of the Province Laws" was passed on April 7, 1759 which stated: "That the publick

Reading any law of this Province, by the Provost Marshal or his Deputy, on the Parade of Halifax, after notice by beat of Drum, shall be deemed a sufficient Publication thereof (SNS 2 Geo. 32, ch. XXII).

The first revision, the first revised statutes in Canada, was undertaken by Chief Justice Belcher and completed in 1767. Consisting of 206 pages it was the first publication in Canada of a size deemed to be an actual book, rather than a pamphlet.

The Perpetual Acts of the General Assemblies of His Majesty's Province of Nova Scotia. Halifax: Robert Fletcher, 1767.

The Temporary Acts of the General Assemblies of His Majesty's Province of Nova Scotia. Halifax: Robert Fletcher, 1767.

This distinction between *Perpetual* and *Temporary Acts* was continued until 1801, there being two separate series published with each session. A further revision of both the *Perpetual* and *Temporary Acts* was undertaken in 1783 (Halifax: Anthony Henry, 1784).

The Statutes at Large passed in the several General Assemblies held in His Majesty's Province of Nova-Scotia: from the First Assembly ... to ... A.D. 1804. Halifax: John Howe & Son, 1805.

Commonly known as the Uniacke edition, the Attorney General, Richard John Uniacke having been responsible for its compilation and editing.

The Statutes at Large, Vol. II, 1805-1816, by Henry Cogswell. Halifax: John Howe Son & Co., 1816.

The Statutes at Large, Vol. III, 1817-1826, by William Hill and W.B. Bliss. Halifax: John Howe & Son, 1827.

The Statutes at Large, Vol. IV, 1827-1836, by John Whidden and J.F. Gray. Halifax: John Howe & Son, 1836.

The Private and Local Acts of Nova-Scotia. Prepared by William Young, John W. Ritchie, Jonathan McCully, Joseph Whidden. Halifax: R. Nugent, 1851.

The Revised Statutes of Nova Scotia; 1st series. Prepared by William Young, John W. Ritchie, Jonathan McCully, Joseph Whidden. Halifax: R. Nugent, 1851.

The Revised Statutes of Nova Scotia; 2d series. Prepared by Martin I. Wilkins, W.A. Henry, James R. Smith. Halifax: J. & W. Compton, 1859.

The Revised Statutes of Nova Scotia; 3d series. Prepared by Stewart Campbell, Charles F. Harrington and Hiram Blanchard. Published

under the supervision of Hiram Blanchard and William Twining. Halifax: J. & W. Compton, 1864.

The Revised Statutes of Nova Scotia; 4th series. Prepared by Alonzo J. White, Henry C.D. Twining, James W. Johnston. Arranged, prepared for the press, and indexed by Henry C.D. Twining and Lawrence G. Power. Halifax: C. Annand, 1873.

The Revised Statutes of Nova Scotia; 5th series. Prepared by Otto S. Weeks and others. Arranged for the press and indexed by James G. Foster and John T. Ross. Halifax: Queen's Printer, 1884.

The Revised Statutes of Nova Scotia. Prepared by and published under the supervision of Wallace Graham and others. Indexed by William B. Wallace. Halifax: Queen's Printer, 1900. 2v.

The Revised Statutes of Nova Scotia, 1923. Halifax: Queen's Printer, 1923. 3v.

The Revised Statutes of Nova Scotia, 1954. Halifax: Queen's Printer, 1954. 4v.

The Revised Statutes of Nova Scotia, 1967. Halifax: Queen's Printer, 1967. 4v.

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STATUTE LAW

2 Indexes

Bligh, Harris Harding. *The Nova Scotia law index, embracing all the private and local legislation of the Province of Nova Scotia, down to and including the year 1900 (1758-1900).* Halifax: King's Printer, 1901.

Marshall, John George. *A digested index to the statutes of the Province of Nova Scotia, showing all the statutes in force at the end of the session of the General Assembly in the year 1826.* Halifax: Philip J. Holland, 1826.

Murdoch, Beamish. *Epitome of the laws of Nova Scotia.* Halifax: Joseph Howe, 1832-33. 4v.

3 Sources of the Law

(a) Texts

Beck, J. Murray. *The government of Nova Scotia.* Toronto: University of Toronto Press, 1957.

Chap. IV, "The legislative function", gives a thorough treatment of the initial establishment of the legislative process in the Province.

James, Alexander. *Reports of cases argued and determined in the Supreme Court of Nova Scotia*, Vol. I... 1853... to 1855. Halifax: James Barnes, 1855.

In the Preface, pp. v-viii, James discusses the genesis of English common law.

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Contains (1) Joint opinion of the Attorney and Solicitor General... as to how far subjects emigrating carry with them the Statute Law, 1757.

(2) Joint opinion of the Attorney and Solicitor General... as to the Right of the Crown to mines of gold and silver and other minerals in Nova Scotia, 1825.

Murdoch, Beamish. *Epitome of the laws of the Province of Nova Scotia*. Halifax: Joseph Howe, 1832-3.

See "Sources of the law of the Province": Book I, Section VI.

——— *An Essay on the origin and sources of the law of Nova Scotia, read on Saturday 29 August, 1863, before the Law Students' Society, Halifax, N.S.* Halifax, 1863.

Uniacke, Richard John. "Preface." In *Statutes at Large passed in the several General Assemblies held in His Majesty's Province of Nova Scotia: from the First Assembly... to... A.D. 1804*. Halifax: John Howe & Son, 1805.

Uniacke, the Attorney General, pays tribute to the British constitution and British institutions of law. He also describes the method he employed in revising the laws and the importance of bringing them up to date.

(b) *Articles*

Bell, D.G. "A note on the reception of English statutes in New Brunswick." *UNB Law Journal* 28:198 Spring 1979.

SNB 31 George III ch. 2 (1791) "... no law passed in... Nova Scotia before the erection of... New Brunswick shall be in force in this Province." Continued today in the Interpretation Act, RSNB 1973, ch. I-13, s. 6.

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See pp. 626-9 for Nova Scotia.
- Russell, Benjamin. "An old provincial statute book." *Canadian Magazine* 1:609-21, October, 1893.
- Risk, R.C.B. "A prospectus for Canadian legal history." *Dalhousie Law Journal* 1:237-45, December, 1972.
- Williams, Relief. "Poor relief and medicine in Nova Scotia, 1749-1783." *Nova Scotia Historical Society Collections* 24:33-56 (1937).
A review of the first social legislation in Nova Scotia.

C COURTS

1 Law Reports

(a) *Supreme Court*

- Thomson, James. *Law reports ... 1834-1851*. Halifax: A. & W. MacKinlay, 1877. (NSR1)
- James, Alexander. *Reports ... Vol. 1, 1853-1855*. Halifax: James Barnes, 1855. (NSR2)
- Thomson, James. *Reports ... 1856-1859*. Halifax: James Bowes, 1860. (NSR3)
- Cochran, Fitzgerald. *Reports ... Vol. 3, Pt. 1, 1859*. Halifax: James Bowes, 1860. (NSR4)
- Oldright, Henry. *Reports ... Vols. 1 & 2, 1860-1867*. Halifax: Compton & Co., 1870; Charles Annand, 1873. (NSR5,6)
- Geldert, J.M. and Oxley, J.M. *Decisions ... Vols. 1-3, 1867-1874*. Halifax: A. & W. MacKinlay, 1880-1883 (NSR7,8,9)
- Russell, Benjamin and Chesley, Samuel. *Cases argued ... Vols. 1-3, 1875-1879*. Halifax: Wm. MacNab, 1876-1880. (NSR10,11,12)

Russell, Benjamin and Geldert, J.M. *Reports ... Vol. 1-15, 1879-1895.* Toronto: Carswell, 1881-1896. (NSR13-27)

Geldert, J.M. and Russell, F.W. *The Nova Scotia reports, Vols. 28-39, 1895-1907.* Toronto: Carswell, 1897-1907. (NSR28-39)

Wallace, W.B. *The Nova Scotia reports, Vol. 40, 1884-1907.* Toronto: Carswell, 1907. (NSR40)

Geldert, J.M. and Russell, F.W. *The Nova Scotia reports, Vols. 41-44; Geldert, J.M. Vols. 45-59; Geldert, J.M. & Whenyard, L., Vol. 60, 1907-1929.* Toronto: Carswell, 1908-1929.

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All the Courts

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(b) Admiralty

Stewart, James. *Reports of cases, argued and determined in the Court of Vice-Admiralty, at Halifax, in Nova Scotia ... in the time of Alexander Croke.* London: J. Butterworth, 1814.

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(c) Election

Russell, Benjamin. *Reports of cases determined in the Election Court, for the Province of Nova Scotia.* Halifax: Fowler & Patrick, 1874.

(d) Equity

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Court of Canada and the Imperial Privy Council between the years 1888 and 1903 . . . Toronto: Canada Law Book Co., 1903.

Congdon, Frederick T. *A digest of the Nova Scotia common law, equity, vice-admiralty and election reports* . . . Toronto, Carswell Company, 1890.

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Graham, R.H. *A digest of cases in the Nova Scotia Reports, 1907-1929*. Halifax: Nova Scotia Barristers' Society, 1940.

3 Manuals

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Dickson, Daniel. *A guide to town officers, shewing their appointment, duties, liabilities and privileges according to the laws of the Province*. Pictou, N.S.: Bee Office, 1857.

Marshall, John George. *The justice of the peace, and county & township officer, in the Province of Nova Scotia, being a guide to such justice and officers in the discharge of their official duties*. Halifax: Gossip & Coade, 1837. 2d edition 1846.

4 History of the Courts

(a) Texts

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Fraser, D.G.L. "The origin and function of the Court of Vice Admiralty in Halifax, 1749-1759". — *Nova Scotia Historical Society Collections* 33: 57-80 (1961).

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Manuscript.

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Read, Horace E. *The judicial systems of the common law provinces and federal courts of Canada*, by Horace E. Read and John M. Barker.
Halifax: Dalhousie Law School, n.d.

Townshend, Sir Charles J. *History of the Court of Chancery in Nova Scotia*. Toronto: Carswell Co., 1900.

(b) *Articles*

Chisholm, Sir Joseph A. "Our first common law court." *Dalhousie Review* 1:17-24 April 1921.

Also issued as a reprint: Halifax: Review Publishing Co., 1921.

——— "Virginia and Nova Scotia: an historical note." *Virginia Law Register* 6 (n.s.): 744-51 February 1921.

Harris, Reginald V. "Judiciary of Nova Scotia." *Canada East Magazine* 1:21-4 March 1931.

Nedelsky, Jennifer and Long, Dorothy. *Law reporting in the Maritime Provinces: history and development*. Ottawa: Canadian Law Information Council, 1981.

See: Nova Scotia reports (First series).

Patterson, George. "The establishment of a county court in Nova Scotia." *Canadian Bar Review* 21:394-406 (1943).

Townshend, Sir Charles J. "History of the Courts of Chancery in Nova Scotia." *Canadian Law Times* 20:14-21, 37-42, 75-80, 105-117 (1900).

——— "Historical account of the Courts of Judicature in Nova Scotia." *Canadian Law Times* 19:25-37, 58-72, 87-98, 142-157 (1899).

D THE LEGAL PROFESSION

Belcher's Almanac, 1835-1930. Halifax, 1835-1930. Roll of barristers and attornies in Nova Scotia. Beginning in 1835, included annually, the names listed chronologically by date of admittance to the Bar.

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Morgan, Henry James. *The Canadian legal directory: a guide to the bench and bar of the Dominion of Canada*. Toronto: Carswell, 1878.

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- Nova Scotia Barristers' Society. Council. *Minutes*, 1895- . Manuscript.
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E LEGAL EDUCATION

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See: "On the study of the law", Book I, Section I.
- Nova Scotia Barristers' Society. *Preliminary law examination*. Halifax, September, 1877.
- Willis, John. *A history of Dalhousie Law School*. Toronto: University of Toronto Press, 1979.

F BIOGRAPHY

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I Collective

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Doull, John. *Sketches of attorney generals of Nova Scotia, 1750-1926*. Halifax: Queen's Printer, 1964.

——— "The first five attorney generals of Nova Scotia." *Nova Scotia Historical Society Collections* 26:32-48 (1945).

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Harris, Reginald Vanderbilt. *Catalogue of portraits of the judges of the Supreme Court of Nova Scotia and other portraits*. Halifax: Law Courts, n.d.

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MacAlister, Alexander W.G. *The bench and bar of the provinces of Quebec, Nova Scotia and New Brunswick*. Montreal: John Lovell, 1907.

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2 Individual

Archibald, Sir Adams G. "Sir Alexander Croke." *Nova Scotia Historical Society Collections* 2:110-28 (1881).

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