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


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.


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


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.


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.


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


In particular chap. VIII, “Nova Scotia under Halifax rule”.


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


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.


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.


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 Revised Statutes of Nova Scotia, 1923.* Halifax: Queen’s Printer, 1923. 3v.


**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.


3 Sources of the Law

(a) *Texts*

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.

Forsyth, William. Cases and opinions on constitutional law and various points of English jurisprudence, collected and digested from official documents and other sources. London, Stevens and Haynes, 1869.
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.

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

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


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.


See p. 87 for Nova Scotia law.


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)


Oldright, Henry. *Reports ... Vols. 1 & 2, 1860-1867.* Halifax: Compton & Co., 1870; Charles Annand, 1873. (NSR5,6)


Russell, Benjamin and Chesley, Samuel. *Cases argued ... Vols. 1-3, 1875-1879.* Halifax: Wm. MacNab, 1876-1880. (NSR10,11,12)
Toronto: Carswell, 1881-1896. (NSR13-27)

Toronto: Carswell, 1897-1907. (NSR28-39)


Toronto: Carswell, 1908-1929.


All the Courts


(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.


(c) *Election*


(d) *Equity*


2 *Digests*

Armstrong, Bennett H. *A digest of the Nova Scotia reports (vols. 21-34 inclusive) and of all Nova Scotia cases decided in the Supreme*
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.


3 Manuals


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.


4 History of the Courts

(a) Texts


Chap. V. "The judicial function", outlines the establishment of courts of law in the Province.

Fletcher, Mary E. and Russell, B.W. *Crustula juris*, being a collection of leading cases on contract done into verse. Toronto: Carswell Co., n.d.


Nova Scotia. Supreme Court. *Collection of all the publications relating to the impeachment of the judges of His Majesty's Supreme Court of the Province of Nova Scotia*. Halifax, 1788.
In William Inglis Morse Collection, Acadia University Library.


(b) Articles

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


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

See: Nova Scotia reports (First series).


D THE LEGAL PROFESSION

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


E LEGAL EDUCATION


F BIOGRAPHY

The biographies of Nova Scotia barristers whose careers were primarily concerned with politics, as Sir John S.D. Thompson and Sir Robert Laird Borden, are not included.

1 Collective


Contains portraits only.


2 Individual


G BIBLIOGRAPHY


