

The Osgoode Society Oral History Programme 1979-1999

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In 1979, The Osgoode Society Oral History Programme was conceived and after twenty years it remains unique for its enormous contribution to legal oral history in Canada.

The Osgoode Society was the inspiration of the Honourable Mr. R. Roy McMurtry, former Attorney General and present Chief Justice of Ontario. His leadership led to the creation of The Osgoode Society in 1979 and with it one of the most successful legal oral history programmes in the world. The Society's objectives were "to study and promote public interest in the history of the law, the legal profession and the judiciary in the Province of Ontario and to stimulate research and publication on these subjects." The oral history programme from the Society's inception has been vital to these efforts.

The original directors were Archie G. Campbell, now Justice, General Division, Ontario; George Finlayson, then Treasurer of the Law Society of Upper Canada, now Mr. Justice Finlayson, Court of Appeal, Ontario; Professor Jane Banfield Haynes, Division of Social Science, York University; John Honsberger, Q.C., then editor of The Law Society of Upper Canada Gazette; Mr. Justice Allen M. Linden, then of the Supreme Court of Ontario, now of the Federal Court of Canada; the Honourable R. Roy McMurtry, then Attorney-General of Ontario, now Chief Justice of Ontario; Brendan O'Brien, Q.C., former Treasurer of the Law Society and first President of The Osgoode Society; and Dr. Peter Oliver, Department of History, York University who assumed the position of Editor in Chief of The Society.

An initial start-up grant of \$25,000.00 from the Law Foundation of Ontario, a second grant of \$100,000.00 for 1980, both coming mainly from lawyers' trust account interest, and \$15,000.00 from the Attorney-General's office allowed the Society to begin its work. Another

source of revenue was the membership fee of \$25.00 annually, basically to support the publication programme, increased in 1988 to \$35.00. In 1980 The Society had 720 members, which showed a great deal of early interest in the new Society.

Apart from legal history publications, the Oral History Programme was a major incentive for Professor Oliver and the Society's directors and it was in 1979 that I was approached by Professor Oliver to conduct interviews on a part-time basis. The task intrigued me: it offered a measure of relief from the day to day work of the general practitioner and it gave me the privilege of meeting some of the most eminent lawyers and judges.

In 1979-80, the use of oral history as a research tool was viewed skeptically by many historians and this project was quite a radical step. Defining the nature and scope of the oral history programme was an early concern. The Board agreed that priority should be given to interviews with senior prominent members of the legal profession. In effect, with several notable exceptions, those who were elderly or ailing came first; at the beginning, however, the Board generally chose from those they knew to be outstanding lawyers and, because of budgetary constraints, most came from Toronto. In 1979-80 eight persons were interviewed, with transcripts varying in length from 29 to 376 pages. One paid lawyer interviewer, me, (\$15.00 an hour) and two volunteers conducted the interviews. The cost of oral histories in 1980 came to \$4,005.00, including transcribing of tapes and administration.

In 1981, the decision was made to extend beyond Toronto to Ottawa, Bracebridge and Brantford, targeting five interviewees. Again, selections were made according to those known to the Board or to the interviewers based on age and seniority.

By this time, a rudimentary agreement had been negotiated with the Archives of Ontario to preserve the tapes, transcripts and release forms. The releases, initial letters and final letters were composed with the advice of copyright lawyers. However, early problems included the difficulty in having the releases returned by interviewees and the question of how long interviews could remain closed to researchers. Costs in 1981 were \$3,943.00 including travel expenses. The programme was still in its infancy.

The following year the Board of Directors decided they needed some insight into other programmes. At that time, the only other programme in

legal oral history in Canada functioned at the University of Victoria. From May of 1978, several interviews were conducted through their director, Professor Waters. As the lawyer interviewer for The Society, I was sent by the Directors to Victoria to report on their programme. Close friends of the interviewees conducted most interviews with Professor Waters supervising the taping equipment and administration. Most interviews were open. Emphasis was put on “aural” history (i.e. - such factors as sound quality) rather than “oral” history; therefore, the equipment and sound seemed of more importance than the content of the interviews. In fairness, in a perfect world, both sound and historical content should be emphasized.

During this period, I was appointed Director of Oral History for The Osgoode Society. The job description included conducting in-depth interviews with major figures, finding volunteer interviewers to assist in shorter interviews, recommending new interviewees to the Board and completing administrative work. Further, the relationship with the Archives extended to include deposit of legal files and memoranda as ancillary materials. In 1982 for example we were able to obtain the Joseph Sedgwick papers, including files on the Dionne quintuplets. The cost of the programme increased to \$14,425.00. This represented a strong commitment on the part of the Board of The Osgoode Society. TOSOHP, The Osgoode Society Oral History Programme, had made it!

During the next few years the programme was very busy. In 1983 we produced the *Handbook of Oral History for Interviewees - Goals & Procedures* and much more work was completed across the Province of Ontario, but still within the southern Ontario area: places such as Windsor, Meaford, Walkerton, Owen Sound, and Ottawa. Recruiting and teaching volunteers and collections of papers became another priority. In 1984, five volunteers were selected. In 1985 the programme widened to include Supreme Court of Canada judges (Mr. Justice Ronald Martland) and former Attorneys-General of Ontario (Mr. Arthur Wishart).

At this time it was recognized that written documentation was essential to amplify and contextualize the oral histories. In conjunction with the Archives of Ontario, The Osgoode Society set up a Legal Records Committee, composed of Roy Schaeffer, Archivist for the Law of Society of Upper Canada, Catherine Shepard, Senior Archivist at the Archives of Ontario, and myself, Director of Oral History, The Osgoode Society as Chair. Between March of 1984 and October of 1985, the committee undertook a survey of over 120 of Ontario’s oldest law firms;

firstly, to list legal records of archival value presently in existence; secondly, to explore the possibilities of deposit into an archives; and thirdly, to create an awareness among lawyers of the historic value of their files. (See the Law Society of Upper Canada Gazette, March, 1987 for the committee's report and guidelines)

By 1987, with 51 series of interviews and over 10,000 pages of transcript completed, The Society decided it was time to evaluate the work and Professor Frederick Vaughan, a political scientist at the University of Guelph, was retained to make recommendations. In the main, he was most impressed by the results, but suggested that with the growing body of work and the apparent Quixotic nature of the selection of candidates, a supervisory committee be set up to plan the future course of the programme. A further circumstance was that as yet the materials had not been used extensively by academics, who on the whole believed that the written word was somehow more accurate and authoritative than the spoken, a somewhat dubious proposition.

In the result, in 1988 The Society struck a new Oral History Committee chaired by Mr. John Honsberger, Q.C. The Committee laid out a plan of in-depth interviews, and a Regional programme to encourage volunteer work in areas outside of Toronto. As Oral History Director, I helped to train lawyers to interview particularly in Hamilton and Ottawa and produced a 29 page *Oral History Handbook* for potential interviewers.

There were also efforts to find new taping techniques. After eight years of saying "yes" to interviews, yet proving elusive, John Robinette finally acquiesced in 1987 and 1988. The product was a satisfying series of interviews, resulting in 738 pages of transcript. Encouraged by these results, the Committee made its first attempt to videotape using an interview with John Robinette and focussing on the constitutional cases. For various reasons, including cost and quality, the videotape experiment was not a success, and has not been repeated.

As the programme grew, the Committee decided to branch out and in its tenth year the highest level had been achieved. Twenty-eight series of interviews were conducted in that year. Plans were in place to interview minority groups, beginning in 1989 with Black lawyers, judges and police officers. The Regional Programme was to concentrate on Peterborough and Ottawa and a new Topical Programme which would focus on a specialty subject in a single interview process would study in 1989 the development of national and international law firms. The

budget reflected that enthusiasm (fees and disbursements came to over \$38,000.00) and hopes were high. In addition, by the late '80s, scholars were beginning to take more notice of the oral histories and attention had to change from collecting materials to providing access and releases.

Unfortunately, the next years saw the beginnings of financial troubles for lawyers and, therefore, for the programme: interest rates were down, recession was looming and lawyers' trust accounts yielded less for the Law Foundation and ultimately for The Osgoode Society. Also, legal aid expenses ate into funds and a new government was not as receptive to subsidizing historical/academic work generally.

The Society's oral history programme would have gone from a real high to a real low within one year, had it not been for outside funding. After several enquiries, the saviour proved to be the Ministry of Culture and Communications and its newly formed Multi-Cultural Division. The Multi-Cultural Legal Professionals Project was conducted between June, 1990 and March 1991 with an original grant of \$19,000.00.

The project was to interview selected legal professionals from the Ontario Native, Chinese and Japanese communities. The selection was based on a representation of all levels of the justice system including police officers, lawyers, civil servants and judges, with particular emphasis on senior members of the profession. Twenty-five interviewees' histories were completed.

The Osgoode Society itself funded interviews with members of the Jewish legal community, a group not considered to be "multi-cultural" by the government. Seven series of interviews resulted. The Topical Programme also continued with a series of nine single interviews with in-house corporate counsel.

In 1990 the injection of new outside funding to our budget in the form of the government grant and support from patron law firms enabled The Society to create a record number of interviewees, forty-five in all. There was some cost, however, in that The Society lost some control over selection and process for future oral histories. Since that time, control and funding have been a juggling act between The Society and outside funders, but on the whole these co-operative efforts have been highly satisfactory.

1991 reflected the fruits of our labour in the publication of several books through The Osgoode Society and other publishers, all of which acknowledged their appreciation of the Oral History Programme. Further,

as the government contract was winding down in the spring, attention turned to women in the law and a selection of women lawyers called to the Bar before 1951 were interviewed. The topical programme now began to interview Canadian legal authors. A "J.C. McRuer" dinner was held to tape six speakers who recorded their memories of Chief Justice McRuer for the future publication. A further highlight was the Annual Conference of the Canadian Oral History Association hosted by The Society at Osgoode Hall and numbering over 300 members from across Canada. During that same year terms of access for our materials in the Ontario archives were set out. The Society was to retain copyright and discretion with regard to research use.

Again, in 1992 there was a sharp decline in the budget and again a new outside project saved the programme. The Federal Court was celebrating their 25th Anniversary in 1996 and oral histories were commissioned for book purposes only. The contract included deposit of the interviews in The Society's collection at the Archives. This project expanded the programme to include judges and lawyers from across Canada. Also, the project resulted in my first contacts with the Right Honourable John Turner, who kindly consented to a series of interviews pertaining to his legal career and his recollections of the Canadian Judicial Council and the creation of the Federal Court of Canada. Finally The Osgoode Society Oral History Programme was being recognized nation-wide.

The Society itself continued the "women in law" project and conducted interviews with the first Lay Benchers in the Law Society of Upper Canada. In an effort to promote Regional activities, as Director of Oral History, I met with members of the Hamilton Law Association to teach techniques in oral history and to encourage a self-promoted programme. This has since met with mixed results. Although there is much interest in many legal communities in interviewing their most esteemed members, often there is just not the time available for full time practitioners to set up, research and conduct interviews, which can yield professional quality results.

In 1993 the name of The Society was changed to "The Osgoode Society for Canadian Legal History". I was no longer Director of Oral History; indeed, with more limited funding there was no need for a Director. In many ways this change coincided with my own interests. As The Society's oral history fortunes waned, I looked to other projects. The

Supreme Court of Canada and the Canadian Judicial Council were interested in beginning oral history projects.

Separate from The Osgoode Society, I conducted interviews with Chief Justice Antonio Lamer (1994-95), the Hon. Emmett Hall (1992), the Hon. Louis-Philippe de-Grandpré (1992), the Hon. Willard Estey (1993-94), and the Hon. William McIntyre (1991-92) for the Supreme Court of Canada.

The interviews with the C.J.C. resulted in twelve series of interviews including interviews with the Hon. Wilbur Jackett, former President of the Exchequer Court and the Hon. George Gale, the former Chief Justice of Ontario. Both were instrumental in the formation of the C.J.C. Other Chief Justices throughout Canada included the Hon. Jules Deschenes, former Chief Justice of the Superior Court of Quebec, the Hon. Samuel Freedman, former Chief Justice of Manitoba, Mr. Justice James Hugesson, former Associate Chief Justice of Quebec and the Hon. Nathaniel Nemetz, former Chief Justice of British Columbia.

During this period, The Society continued its work on a reduced scale. The Topical programme highlighted Ontario Legislative Counsel and we were eventually able to interview all Counsel since the beginning of the office. We also began a criminal law project, highlighting defense counsel.

Thus throughout the latter part of the '90s, financial restraint and co-operative ventures became the rule. The Supreme Court of Canada project and the C.J.C. project continued, now in co-operation with The Osgoode Society. The Supreme Court of Canada support continued through further interviews with Chief Justice Lamer and former Registrars of the Supreme Court.

Recently, new enthusiastic partners have appeared. In 1994, The Advocates' Society commissioned The Osgoode Society to interview its founders and earliest members. This has spun into a project reflecting the memories of sixteen major figures, including two of the founders and nine past Presidents.

In that same year the Ontario Court of Justice, Provincial Division and the Provincial Court Judges' Association began a major project to interview prominent judges. An opening grant for this work was given by the Ontario Heritage Foundation. This project has become most significant to our programme. Interviews have been conducted with judges from across Ontario and have included Chief Judge Arthur Klein,

Chief Judge Ted Andrews, Associate Chief Judge Harold Rice, Associate Chief Judge Robert Walmsley, and most recently Chief Judge Sidney Linden. This on-going project has added much to the history of pre-trial and trial experience in family, criminal and civil cases. To date, thirty-five interviewees have recorded their memories. Some day this material will serve as the foundation for a history of the Provincial Court, an important institution whose formal history has been unjustly neglected.

A further first for The Society was a commission to interview members of a private law firm. In 1996, I was asked to interview eight senior partners of Gowling, Strathy & Henderson in Ottawa for a possible future history; the interviews culminated in over 1,300 pages of transcript and many reminiscences of the firm retained. Copies of the interview materials were included in The Osgoode Society Collection, Archives of Ontario. Access is subject to the approval of Gowlings.

1997 represented a renewal of life for The Osgoode Society Oral History programme. In-depth interviews were conducted with the Hon. Lincoln Alexander, former Lieutenant Governor for the Province of Ontario, the Hon. Gregory Evans, former Chief Justice, Mr. Justice Sydney Robins and Mr. Brendan O'Brien. Mr. O'Brien was being interviewed for a second time. When I first interviewed him in 1980, I was a fledgling in the oral history craft and rather in awe of the eminent litigation lawyer. This time around I think the two of us had mellowed and the results of the interviews are most profound.

Then too, a new project to celebrate the 20th Anniversary of Parkdale Legal Aid Clinic in Toronto began and work on legal aid and its influence was considered. The Provincial Court Project boasted ten interviews from the family, civil and criminal divisions. The Advocates' Society and the Supreme Court of Canada showed renewed interest in their history.

Although The Osgoode Society Oral History Programme has had its vicissitudes (the acronym is TOSOHP - toss up), through hard work, the help of many volunteers, sometimes just pure stubbornness and the belief that oral history has so much to offer researchers and authors, we have succeeded through our first twenty years.

Our work is used now extensively by historians and writers, including Christopher Moore for his book *The Law Society of Upper Canada and Ontario Lawyers, 1797-1997* (University of Toronto Press,

1997) and Professor Constance Backhouse in some of her work on women and the law and race and the law.

Over the past twenty years having interviewed over four hundred legal professionals throughout Canada and having produced over fifty thousand pages of transcript, I am proud of the programme. Indeed, at a recent American Oral History Conference I was amazed that I could find no one else was in the legal field worldwide. Our programme remains unique. We have a lot to be thankful for: vision, vigilance and the sense that the spoken word has a special reality. But the true value of the programme will only be understood fifty and a hundred years from now, when future generations of scholars discover an invaluable resource available to contribute to their research, make possible their books, and enhance their understanding of law and lawyers in twentieth century Canada.