

## REVIEW

### **The Making of Canadian Legal Scholarship: A Retrospective on**

*A Consolidation of Fifty Years of Legal Writings,  
1938–1988, by Wilbur F. Bowker*

Compiled and edited by

Marjorie M. Bowker

Faculty of Law, University of Alberta, 1989

xv, 797 pp.

---

W. Wesley Pue\*

---

THE APPEARANCE OF A well-researched and clearly written collection of essays by a single scholar is a noteworthy event in Canadian legal scholarship. That the essays so collected might have been produced over a scholarly career covering half a century would surely be a highly unusual occurrence anywhere. Such a set of essays produced during the formative period in the development of any state's legal profession is of enduring historical value. In this case, both the author and the editor of the volume are remarkable Canadians in their own right, both entering the Order of Canada during the summer of 1990. They happen to be married to each other.

By any standards the publication of *Fifty Years of Legal Writings 1938–1988*, by Wilbur F. Bowker, compiled and edited by Marjorie Bowker, is an exceptional and quite noteworthy achievement. The editor was a woman lawyer with a major law firm in Alberta at a time when women lawyers were few and far between (especially in major law firms). She served as a Judge of the Alberta Juvenile and Family Court from 1966–1983 (at a time when women judges were novel).<sup>1</sup> A published scholar in her own right,<sup>2</sup> Mrs. Bowker has spoken at several conferences in Canada and elsewhere. She “was instrumental in establishing within the [Alberta] court system a Counselling and

---

\* Faculty of Law, University of Manitoba.

<sup>1</sup> Wilbur F. Bowker, *A Consolidation of Fifty Years of Legal Writings, 1938–1988* (compiled and edited by Marjorie Bowker), (Edmonton: Faculty of Law, University of Alberta, 1989) at 788.

<sup>2</sup> M.M. Bowker, “Juvenile Court in Retrospect: Seven Decades of History in Alberta, 1913–1984” (1985–1986) 24 *Alta. L. Rev.* at 234–237.

Conciliation Service aimed at preventing divorce, reducing divorce and conciliating differences created by divorce, which has become a model for other courts in Canada."<sup>3</sup> In 1968, Korea's Ewha Women's University awarded her an honorary Doctorate in Law.<sup>4</sup> In 1988, when the Canadian government was trying to sneak its so-called free trade agreement with the United States past an unsuspecting public Marjorie Bowker was catapulted into national prominence when she published a simple and straight-forward analysis of the agreement under the title *On Guard for Thee: An Independent Analysis, based on the Actual Text of The Canada-U.S. Free Trade Agreement*. This outstanding little book became the focal point of the 1988 federal election and Mrs. Bowker was transformed into an important national symbol: lionized by many; her ability, intellect, and credentials scurrilously attacked by Ministers whose policies ran into difficulty when exposed to light of day.<sup>5</sup> Virtually the entire process was repeated two years later with the publication of her analysis of the Prime Minister's Meech Lake accord.<sup>6</sup>

Wilbur Fee Bowker, many of whose writings are reproduced and celebrated in this volume is no less remarkable an individual. In an introduction to the collection, retired Supreme Court of Canada Puisne Justice Ronald Martland describes W. Bowker as "a great lawyer and a great teacher."<sup>7</sup> Much honoured, he was awarded an Honorary Doctor of Laws from the University of Alberta in 1972 and is an Honorary Bencher of the Law Society of Alberta, an Honorary Professor at the University of Calgary, and an Honorary Life Member of the Canadian Bar Association. The main offices for the Alberta Attorney General's Department are housed in the "Bowker Building" near to the Provincial Legislature in downtown Edmonton and the Faculty of Law at the University of Alberta has created a "Bowker" visiting fellowship in his honour.

---

<sup>3</sup> Postscript, "About the Author" in Majorie Montgomery Bowker, *On Guard for Thee: An Independent Analysis, Based on the Actual Text of The Canada-U.S. Free Trade Agreement* (Hull: Voyageur Publishing, 1988) at 127.

<sup>4</sup> *Ibid.*

<sup>5</sup> An adequate account of these events remains to be written. See, however, a preliminary account of media coverage in Marjorie Montgomery Bowker, *On Guard for Thee: An Independent Analysis Based on the Actual Text of The Canada-U.S. Free Trade Agreement* (Hull: Voyageur Publishing, 1988) at 106ff.

<sup>6</sup> Marjorie Montgomery Bowker, *The Meech Lake Accord: What it Will Mean to You and to Canada: An Independent Analysis* (Quebec: Voyageur Publishing, 1990).

<sup>7</sup> Ronald Martland, "Introduction," in *Fifty Years*, xiii-xv at xiii.

This all follows a career which has been impressive even leaving aside a scholarly output which would be the envy of most Canadian legal academics. His practising career with the Edmonton firm which became Milner, Steer extended from 1933 to 1942, and included work on some of the most important litigation arising during the last years of the Brownlee administration and the early period of Social Credit in Alberta. Following military service in World War II Bowker joined the Faculty of Law at the University of Alberta as a Lecturer in 1945, taking over the duties of Dean in 1947. He held this position for the next two decades and was thus involved first hand in the phenomenal expansion of the Faculty of Law at the University of Alberta during the post-war period. As Dean of one of the oldest University law schools in the country, Bowker was a prominent participant in the early work of the Canadian Association of Law Teachers and took an active part in their discussions during the years when Ontario legal education was torn apart by its "fiercest debate"<sup>8</sup> over whether to follow the Western/Atlantic Canadian lead by establishing University-based professional education.<sup>9</sup> He served as one of the "Commissioners on Uniformity of Legislation in Canada" between 1952 and 1975 and, upon retiring from the Deanship in 1968 served as Director of the Alberta Institute of Law Research and Reform until 1975. In that year he "re-retired" to work on an important body of work on Alberta and western Canadian legal history.<sup>10</sup>

Even this brief outline suggests that any assessment of Bowker's scholarship is also, in part, an assessment of law, lawyers, and legal education in Canada in the twentieth century. This extraordinary

---

<sup>8</sup> C. Ian Kyer and Jerome E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: The Osgoode Society, 1987); reviewed with an eye to historical inaccuracies by John P.S. McLaren, "Book Review: Kyer and Bickenbach, *The Fiercest Debate: Cecil A. Wright, The Benchers and Legal Education in Ontario, 1923-1957*" (1989) 68 Can. Bar Rev. 193-202.

<sup>9</sup> On the history of legal education in common law Canada see John McLaren, "The History of Legal Education in Common Law Canada," in Roy Matas and Deborah McCawley, eds., *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987).

<sup>10</sup> For further information on the career of Wilbur Bowker see "Biographical Sketch of Wilbur F. Bowker" in *Fifty Years* at 787; D. T. Anderson, "Wilbur Fee Bowker: In Appreciation" (1976) 14 Alta. L. Rev. 199-221 [reprinted, *Fifty Years*, 758-785]. Transcripts of interviews with Wilbur Bowker conducted by Oral History projects of the Calgary Bar Association are kept in the Calgary courthouse, while the Provincial Archives of Ontario keep a copy of the interview conducted by the Osgoode Society Oral History project.

career coincided with the period in which modern lawyer's professionalism took its form in Canada.<sup>11</sup> Given Bowker's work life and also the fact that Alberta has exhibited a quite unusual degree of national leadership in matters touching on the legal profession,<sup>12</sup> the publication of a consolidation of his legal writings provides a useful and convenient source of information on the "making of Canadian legal scholarship" and much more. For the historian of Canadian law the volume is especially intriguing: this collection is valuable both as primary and as secondary source material. The author is simultaneously an historian of law and an important historical subject: the reader is constantly off-balance, left to "shift gears" frequently. Reading the book in these ways is a creative and altogether delightful experience!

The book also promises to be of considerable interest to students of the legal profession in Canada. Post-Larsonian<sup>13</sup> scholarship on the professions has directed attention to the central importance of University-based education and scholarship in establishing "cognitive exclusiveness" and justifying or legitimating professional monopolies to the wider political community,<sup>14</sup> while an emerging body of

---

<sup>11</sup> See Harry W. Arthurs, Richard Wiseman, and Frederick H. Zemans, "Canadian Lawyers: A Peculiar Professionalism" in Richard Abel and Philip Lewis, eds., *Lawyers in Society: Volume One, The Common Law World* (Berkeley: University of California Press, 1988) at 123-163. This is an excellent account apart from the author's general failure to appreciate the significance of Western Canadian leadership in the development of "professionalism."

<sup>12</sup> To name just a few: one of the earliest university law schools in the country; early moves to adopt a code of professional ethics; early assumption of self-regulation in matters of "discipline"; creation of the first "Assurance" fund in North America to compensate clients injured by lawyers' wrong-doing; early abolition of apprenticeship as means of admission to practice; one of the earliest provincial "Bills of Rights" in the country (struck down by the Privy Council); creation of the first "Law Foundation" in North America; creation of one of the earliest provincial Law Research Institutes in Canada; earliest women magistrates, M.L.A.s, and senators in Canada; early admission of women to both university and the legal profession.

<sup>13</sup> By which I mean scholarship produced since and, to one degree or another, inspired by Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977).

<sup>14</sup> The most impressive body of work in this vein which touches upon lawyers has been produced by the International Sociological Association's Working Group on the Legal Profession. Five major texts of collections of essays have been produced by this loose group of scholars during the 1980s: Richard L. Abel and Philip S. C. Lewis, eds., *Lawyers in Society: Volume One, The Common Law World* (Berkeley: University of California Press, 1988); Richard L. Abel and Philip S. C. Lewis, eds., *Lawyers in Society:*

literature which is developing in reaction to the now decade-long pre-eminence of the Larson thesis is coming to more directly address questions of the constitutive character of scholarship and other legal "discourses."<sup>15</sup> In these contexts, the cumulation of the scholarship of the single most important individual in the legal education of an important Canadian province during the quarter century following the Second World War is a uniquely valuable resource.

What is immediately striking on even the most cursory scan of the table of contents of this book is a quite amazing breadth of scholarship. The received wisdom that Canadian legal scholarship prior to the 1980s consisted exclusively (or almost so) of feeble attempts to replicate the stilted, anti-intellectual black-letter tradition of England<sup>16</sup> finds no support in this volume. It should of course come as no surprise that the province which produced Kent Power, *The Alberta Law Quarterly*, and Dr. MacIntyre amongst others provided wide-ranging intellectual inquiry in the scholarship of its law Dean.<sup>17</sup>

---

*Volume Two, The Civil Law World* (Berkeley: University of California Press, 1989); *Lawyers in Society: Volume Three, Comparative Theories* (Berkeley: University of California Press, 1989); Richard L. Abel, *The Legal Profession in England and Wales* (Oxford: Basil Blackwell, 1988); Richard L. Abel, *American Lawyers* (N.Y.: Oxford University Press, 1989); William Felstiner, Richard Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ..." (1980-81) 15 *Law & Socy. Rev.* 631.

Some of my own work has been partially — though only partially — in this vein: W. Wesley Pue, "Guild Training vs. Professional Education: The Committee on Legal Education and the Law Department of Queen's College, Birmingham in the 1850s" (1989) 33 *Amer. J. of Legal Hist.* 241-287.

I have reviewed the "market-control" model of professionalism at length in "Trajectories of Professionalism: Legal Professionalism after Abel" (1990) 19 *Man. L.J.* 384.

<sup>15</sup> M. S. Larson, "Depoliticization and Lawyers' Functions: Reflections for a Comparative Analysis" (1986) 24 *Osgoode Hall Law Journal* 743-774; M.S. Larson, "The Changing Functions of Lawyers in the Liberal State: Reflections for Comparative Analysis" in Richard Abel and Philip Lewis, eds., *Lawyers in Society, Volume Three, Comparative Theories* (Berkeley: University of California Press, 1989) at 478-526.

<sup>16</sup> See: Consultative Group on Research and Education in Law, *Law and Learning* (Ottawa: Social Sciences and Humanities Research Council, 1983). [The "Arthur's Report"].

<sup>17</sup> Only a preliminary and necessarily tentative literature is currently available on the Alberta intellectual tradition in law. See: Louis Knafla, "From Oral to Written Memory: The Common Law Tradition in Western Canada" in Louis A. Knafla, ed., *Law and Justice in a New Land* (Calgary: Carswell Co., 1986) at 31-37; Lillian MacPherson, "The Supreme Court of Alberta: The Early Court" (1988) *CALL Newsletter* 341. See also: Wilbur Fee Bowker, "Malcolm Murray MacIntyre: 1904-1964" in *Fifty Years* at 323-325;

The writings of Dean Bowker span several categories. The most obvious divisions relate to stages of his career: a large portion of his scholarly output has been produced in the two decades after retirement. The book is arranged chronologically with articles written from 1968 onwards taking up the entire portion from page 363–757 (394 pages). Only one article was written prior to his appointment to the Law Faculty (pages 1–13) with the result that some 350 pages of this text were produced during his career as Alberta's pre-eminent law teacher.

The writings vary in subject-matter and in mode of analysis employed (doctrinal vs. historical/jurisprudential). The subject matters addressed range from the law of divorce to legal biography, legal education, professional ethics, medical law, civil liberties, jurisprudence, and legal history. Not surprisingly perhaps given the range of topics addressed, the mode of analysis employed encompasses doctrinal, historical, and theoretical approaches to legal issues.

On the history side alone, Bowker's contribution has been remarkable. "The Honourable Horace Harvey, Chief Justice of Alberta" (59–117) is an exceptional piece of judicial biography and is, possibly, the best article in this genre yet published in Canada. Similarly, each of his works in the field of legal history represents invaluable research. Often, Bowker's contribution is the only scholarship available in the particular area under study. Varied in style and depth of coverage from after-dinner speeches to scholarly articles, each of the following is a significant contribution to the literature: "Malcolm Murray MacIntyre: 1904–1964" (323–325); "Three Alberta Judges"<sup>18</sup> (326–331); "Expeditious Justice: Western Style" (448–459); "Extra-Judicial Writing: The Alberta Law Quarterly, The Alberta Law Review, and Reviews in General" (466–479); "Fifty-five Years at the Alberta Bar: George Hobson Steer, Q.C." (537–594); "A Light-Hearted View of the History and Traditions of the Legal Profession of Alberta" (616–625); "The Sproule Case: Bloodshed at Kootenay Lake, 1885 (650–681); "Stipendiary Magistrates and the Supreme Court of the Northwest Territories, 1876–1907" (691–734); and "Metaphors and

---

"Extra-Judicial Writing: The Alberta Law Quarterly, Alberta Law Review, and Reviews in General" in *Fifty Years* at 466–479; "Fifty-Five Years at the Alberta Bar: George Hobson Steer, Q.C." in *Fifty Years* at 537–594, esp. at 585–588.

<sup>18</sup> Clinton J. Ford, Hugh John MacDonald, and Frank Ford.

other Notable Passages in Judgments" (735–757).<sup>19</sup> "History of the Association of Canadian Law Teachers" (133–161) is the only account of the early years of that association.

Outside of legal history, Bowker's early work on professional conduct, law reform, and human rights protection was pioneering. His work in these fields is of considerable interest for the legal historian as evidence of the state of Canadian legal thought in these areas during crucial periods in Canadian professional and political history. Moreover, all of this is complemented with scholarship of a fairly "straight" doctrinal sort in diverse fields including tort, succession, and medical-legal issues.

All in all, *Fifty Years of Legal Writings* is remarkable contribution to Canadian legal scholarship. Diverse, engaging, informed and informative, it should be read by everyone with an interest in Canadian legal education, Canadian legal history, the Canadian legal professions, or the Law Dean who shaped modern legal education in Alberta.

---

<sup>19</sup> Including, at 750ff. valuable accounts of three Alberta cases arising during World War I which are significant in the the larger Commonwealth history of civil liberties: *R. v. Trainor*; *R. v. Cyr*; and *Re: Lewis* ("coupled with" *Re: Norton*).