
**Prairie Discovery and Settlement:
Loyalists and Early Alberta Legal History**
United Empire Loyalists Association of Canada, Calgary Branch
April 22, 2018
Sheraton Cavalier

Good Afternoon.

Thank you for the invitation to speak, here, at the United Empire Loyalists Association of Canada, Calgary Branch. I'm pleased to be here to celebrate this organization's ninetieth year, which was established on February 28, 1928.

Some early Alberta lawyers were involved in the founding of the Calgary Branch: the Hon. Richard Bedford Bennett, Honourary President, Lewis Frederick Clarry, the first President, Clifford Jones, Council, and other Charter members included Thomas Tweedie, Justice of the Supreme Court of Alberta, Trial Division, and Hugh Cragg Farthing, Judge of the District Court of Southern Alberta and Justice of the Supreme Court of Alberta, Trial Division.

Over its ninety years, other Alberta lawyers and judges have been involved with the Calgary Branch. Speeches have been given by Justice Hugh Farthing, Ruth Gorman, and Justice Milt Harradence, married to Catherine Harradence, a descendent of Loyalists.

When Suzanne Davidson asked me to speak at this event, I had to go back to my first year of university when I did my only pre-Confederation Canadian history course. I did so, sadly, because I needed to remind myself who the United Empire Loyalists were and what their contributions were to Canada.

I found this interesting. Their varied circumstances fleeing the Thirteen Colonies in the wake of the American Revolution, and the political and economic contributions made once they arrived in their new land added to my understanding of Canada's history.

What I discovered while preparing these remarks was that the Loyalists were similar to many other groups that made their way to Canada in the late eighteenth century. Some were dependent on the Crown others came independently wealthy. Some were farmers and craftsmen. Others were clerks and clergymen. There were lawyers and labourers. There were soldiers and slaves, Native Americans. Others were college graduates and the less educated.¹

Arriving, starting in 1775, Loyalists fled the Thirteen Colonies for a variety of reasons, including discrimination for remaining loyal to Britain, fear of change with America's newly found push for independence, self-interest, political principles, and emotional bonds.² One reason, or a combination of these reasons, is why many Loyalists remained in British North America following the signing of Treaty of Paris in 1783.

¹ Ann Mackenzie, "A Short History of the United Empire Loyalists," in *United Empire Loyalists – Alberta Bound* eds. Linda McClelland and Lea Storry (Canada, 2013): pg. 6.

² *Ibid.*, pg. 6.

Loyalists had a distrust of democracy, which they believed was a source of “mob rule”. The Reverend Mather Byles was quoted saying, “which is better – to be ruled by one tyrant three thousand miles away or by three thousand tyrants one mile away?”³

There was one aspect of democracy in which Loyalists had faith: the rule of law. The rule of law is what we, today, consider to be the third branch of government. Though there was no formalized system – as we understand it today – in which the rule of law functioned, it, nonetheless, existed.

The *Quebec Act*, based on the seigneurial system of landholding and regulated by an elected assembly, governed the region to which Loyalists fled. Upon their arrival, Loyalists petitioned the British government to replace that system with freehold land tenure based on British laws and governance.

This laid the foundation for the *Canada Act*, also known as the *Constitutional Act*, signed in 1791. It provided for the division of Quebec into Upper and Lower Canada.

Nearly a century after fleeing the Thirteen Colonies, descendants of Loyalists felt the attraction of the west. These descendants, along with others, would have an economic and political influence on the region west of the Canadian Shield. As they moved west, they likely experienced harsh conditions – shortages, a barren environment, isolation, foreboding and wild living conditions – but they were determined to make their new settlements a success.

The area, known as the North-West Territories was sparsely populated with Metis, Aboriginal peoples, and some European settlers. As the Canadian Pacific Railway was completed in Calgary, Edmonton, and Lethbridge there was a significant influx of settlers moving west. These were a diverse group of people. They were farmers, ranchers, horse breeders, businessmen and speculators. They were teachers, clergymen, doctors, lawyers, and other professionals.

The rule of law is central to settlement on the prairies. As settlement expanded west, there was a need for the establishment of a legal system to help keep society orderly, peaceful, generous, and fair. In a democratic society, the rule of law is a commitment to common values, such as freedom, liberty, human rights, dignity, tolerance, sensitivity, and humanity.⁴

The rule of law is central to everything civil society does. In fact, it exists even at the most basic level: Alberta exists because the law tells us it does.⁵

Understanding the early development of law and society in Alberta is more than simply an in-depth analysis of trials and courtroom procedures. In order to better understand the law during this period, we must first appreciate the law’s connection to and its influence on people and society. Historian Louis Knafla wrote:

³ Ibid., pg. 6.

⁴ Jack Watson, “Law and [Fill in the Blanks]” (speech, Edmonton, Alberta, September 29, 2005).

⁵ Ibid.,

legal history that neglects the wider context risks misunderstanding or ignoring altogether the forces that shaped both the legal rules and events to which they were applied.⁶

In other words, to understand the law in Alberta, it is important that we examine the context in which that law developed. The story of early Alberta legal history is more than simply about the law. It is as much a story of politics, business, community, society, and culture.

Before 1870, the area, known as the North-West Territories, was a sparsely populated, unruly region governed by the Hudson's Bay Company Charter based on British law. With the increase of settlement on the prairies, the rise of violence, the illegal alcohol trade, and the exploitation of the native population, it became necessary to have a stable system of law to govern the western region.

The passage of the *Manitoba Act* in 1870 and the *North-West Territories Act* in 1875, along with Treaties 1 through 8, signed between 1871 and 1899, would govern the laws in the area that would become Alberta.

Following the incorporation of the North-West Territories, law continued to arrive in the region intermittently. William F. Butler, the first Canadian government representative to travel to the newly acquired region, reported:

the region of the Saskatchewan is without law, order, or security for life or property; robbery and murder for years have gone unpunished; Indian massacres are unchecked even in the close vicinity of the Hudson's Bay Company's posts, and all civil and legal institutions are entirely unknown.⁷

It was the Cypress Hills massacre, on June 1, 1873, that pressured the federal government to establish the North-West Mounted Police. They arrived in October 1874, led by Lt. Col. James F. Macleod. They set up a police barracks along the Old Man River, near what became Fort Macleod.

More formal law was established in the prairie west with the introduction of the *North-West Administration of Justice Act* in 1886. This *Act* established a Supreme Court of the North-West Territories with five puisne judges and separate trial and appellate divisions.⁸ Though the Court respected English law, the judges took into consideration local social, cultural, and economic conditions.⁹ The last step in a formalized legal system occurred in 1889 with the establishment of the Law Society of the North-West Territories. Many of its original members were from

⁶ Cited in Louis A. Knafla, "Introduction: Laws and Societies in Anglo-Canadian North-West Frontier and Prairie Provinces, 1670-1940," in *Law and Societies in the Canadian Prairie West, 1670-1940* eds. Louis A. Knafla and Jonathan Swainger (Vancouver: UBC Press, 2005), pg. 2.

⁷ William F. Butler cited in Hugh A. Dempsey, "1870: A Year of Violence and Change," in *Alberta Formed Alberta Transformed, Volume One* eds. Michael Payne, Donald Wetherell, and Catherine Cavanaugh (Edmonton: University of Alberta Press, 2006), pg. 217.

⁸ Louis A. Knafla, "From Oral to Written Memory: The Common Law Tradition in Western Canada," in *Law & Justice in a New Land: Essays in Western Canadian Legal History* ed. Louis A. Knafla (Toronto: Carswell, 1986), pg. 51-2.

⁹ *Ibid.*, 53.

central and eastern Canada. And, as we will see, the profession offered lawyers settling on the prairies opportunities beyond the strict practice of law.

For example, R.B. Bennett, in 1903, wrote to a friend in Victoria that southern Alberta had an untapped potential. He wrote, “[f]or pure law there is not the very best chance in the Territories but for law mixed with speculation, real estate etc. there are most excellent openings.”¹⁰ He also wrote to a lawyer friend in Ontario:

the fact is a young man with push and enterprise going into one of the towns along the line of the railway while having to put up with great inconvenience will make more money in a year by speculating in real estate, and going in for life and fire insurance and a little law than he would make in five years in Ontario.¹¹

The types of law experienced in the North-West Territories from 1887 to 1907, reflect Bennett’s statement. Examining the *Territorial Law Reports*, we see that civil actions dominated the courts with nearly 521 civil cases reported. The following list is not exhaustive, but these cases include proceedings involving procedural matters, company laws, actions for damages and negligence, breaches of contracts, real estate, mortgages, and land titles.¹² The *Law Reports* reported ninety-three criminal cases during this period. Again, this is not an exhaustive list, but included murder, theft of cattle, fraud, polygamy, perjury, seduction of a female under the age of twenty-one, assault, illegally selling liquor, and conspiracy to defraud.¹³

Becoming a province on September 1, 1905, Albertans felt the collective identity of shared cultural values and social norms with the rest of Canada. However, the law, courts, and judicial districts remained under the authority of the North-West Territories until 1907 with the introduction of the *Supreme Court of Alberta Act* and the *Legal Professions Act*.

On September 16, 1907, the Law Society of Alberta was established as the governing body for the legal profession in Alberta. At the time, Alberta had an estimated population of 150,000 people. According to the roll books from that period, there were 143 lawyers practicing law in the province. Obviously, they were all males. In fact, the first woman lawyer – Lillian Ruby Clements – was not admitted to the Law Society until 1915.

A majority of the lawyers admitted to the Alberta bar in 1907 had practiced law in the North-West Territories, three of whom were R.B. Bennett, Thomas Tweedie, and Clifford Jones. Two other lawyers, who arrived later, were Lewis Frederick Clarry and Hugh Cragg Farthing. All of these men were involved in the establishment of this organization in 1928.

Arguably, the most prominent individual among this group was Richard Bedford Bennett. Born in Hopewell Hill, New Brunswick on July 3, 1870, he was of Loyalist stock on his father’s side.

¹⁰ Quoted in Henry C. Klassen, “Lawyers, Finance, and Economic Development in Southwestern Alberta, 1884-1920,” in *Beyond the Law: Lawyers and Business in Canada, 1830-1930. Essays in the History of Canadian Law, Volume IV* ed. Carol Wilton (Toronto: University of Toronto Press, 1990), pg. 305.

¹¹ Quoted in *Ibid.*, pg. 305.

¹² Roderick G. Martin, “The Common Law and Justices of the Supreme Court of the North-West Territories: The First Generation, 1887-1907,” in *Laws and Societies in the Canadian Prairie West, 1670-1940* eds. Louis A. Knafla and Jonathan Swainger (Vancouver: UBC Press, 2005), pg. 211-12.

¹³ *Ibid.*, pg. 212.

His Great Grandfather, Benjamin Bennett, came to New Brunswick via Nova Scotia where his father migrated from Rhode Island in 1778. Bennett grew up in New Brunswick where he attended both public and high schools. He received a law degree from Dalhousie University in Halifax in 1893 at the age of twenty-three.

Before entering law school, he was a teacher in Douglstown, New Brunswick at the ripe age of eighteen. His entry into the law was unconventional compared with today's standards. He began his legal studies in Chatham, New Brunswick, with prominent lawyer Lemuel John Tweedie, who encouraged the young Bennett to enroll at Dalhousie.

After practicing law in New Brunswick – as well as an early attempt at politics – he was lured to Calgary by another prominent lawyer, James Lougheed. Lougheed, who was impressed with Bennett after visiting Halifax in 1896, initially had difficulty convincing him to come west. After realizing his prospects for wealth and advancement were limited in New Brunswick, Bennett decided to accept the junior partnership with Lougheed in Calgary. Arriving in mid-January 1897, he stepped off the train into temperatures reaching -40 degrees. As Louis Knafla noted, “[he] came west to pursue his fortune, not the weather.”¹⁴

Once in Calgary, Bennett acquired many prominent client companies, such as Canadian Pacific Railway, Hudson's Bay Company, and the Royal Bank of Canada. He purchased stock in several companies, including Alberta Pacific Grain and Elevator, the Calgary *Albertan*, Calgary Power, and Canada Cement.¹⁵

In addition to his business acumen, Bennett also dabbled extensively in politics. One year after migrating west he was elected to the Legislative Assembly of the North-West Territories and reelected in 1902. When Alberta became a province, Bennett became the first leader of the Alberta Conservative Party and won a seat in the legislature in 1909.

In 1911, he made the switch to federal politics and was elected to the House of Commons that same year. Following a falling out with Prime Minister Robert Borden over the Union Government and conscription during World War I, Bennett did not stand for reelection in 1917. Despite not representing a seat in the Commons under Prime Minister Arthur Meighen, Bennett was appointed Minister of Justice. The Conservative Party was returned to power in 1925 until losing shortly after in 1926. During this short mandate, Bennett was Minister of Finance.

In 1927, Bennett became party leader at the Conservative leadership convention. Approximately three years later, he became Canada's 11th Prime Minister and remained in that position until 1935. His political legacy is ultimately tied to the Great Depression, and horse-powered vehicles known as “Bennett Buggies”.

¹⁴ Louis A. Knafla, “Frontier Lawyers: Origins of the Alberta Law, 1882-1914,” in *Just Works: Lawyers in Alberta, 1907-2007* ed. Michael Payne (Toronto: Irwin Law Inc., 2007), pg. 16.

¹⁵ Louis A. Knafla, “Richard ‘Bonfire’ Bennett: The Legal Practice of a Prairie Corporate Lawyer, 1898-1913,” in *Beyond the Law: Lawyers and Business in Canada, 1830-1930. Essays in the History of Canadian Law, Volume IV* ed. Carol Wilton (Toronto: University of Toronto Press, 1990), pg. 325.

An article from 2015 in the *Globe and Mail* suggests that it is time to rehabilitate R.B. Bennett. If not for the economic hard times Bennett would be considered a good Prime Minister. It was the Great Depression that overshadowed his intellectual and institutional achievements.

If Bennett's political legacy is closely linked to "Bennett Buggies" and the Great Depression, his legal legacy is closely linked to the battles he fought against his partner, James Lougheed, which I will come to shortly.

His photographic memory, his knowledge of the law, and his relentless determination did not help Bennett inside the courtroom. Looking at statistics for the period 1893 to 1913, Bennett was only successful 25% of the time at trial and 39% of the time at appeal.¹⁶ Interestingly, despite his business proficiency, his worst courtroom work involved contracts, warranties, bankruptcy, negligence, workmen's compensation, and provincial laws, rules, and regulations. In fact, his best record – 83% for – was for actions involving theft.¹⁷

But his legal legacy in the province of Alberta came in August 1922 when Lougheed filed a lawsuit against his partner of twenty-five years. Without getting into too much detail, the animosity between the two was considerable, and it came to a head after Lougheed moved to put the assets of the partnership into receivership while Bennett was in England. Bennett sued for damages in the amount of \$50,000 claiming Lougheed's conduct was unbecoming of a barrister and solicitor. Bennett had the assets, except Lougheed personal items, tied up in receivership for years. So much so that a court order was required to access client files.¹⁸

Lougheed's new practice never reached the prominence of his partnership with Bennett. He passed away in Ottawa on November 2, 1925.

Bennett's firm – now Bennett Jones LLP – went on to become a successful national firm with international connections. After leaving politics, Bennett moved to Mickleham, England. He was made a knight of the British Realm taking the title Viscount Bennett of Mickleham, Calgary, and Hopewell. He died on June 26, 1947, in a bathtub on his estate in the South of England.

Records from this period are sometimes sparse, and we do not always have the full picture of individuals lawyers. One such lawyer was Clifford Teasdale Jones. Arriving in Calgary two years after Bennett, he was born in Wolfville, Nova Scotia on April 18, 1873. He received his education in law from Acadia University. Upon first arriving in Alberta, he was school teacher in Banff.

He flirted in politics serving as a city councilor and a school trustee. He was also a provincial Liberal candidate in 1912. He was an energetic community advocate as a member of the Southern Alberta Pioneers' and Old-timers' Association, as well as a founding and active member of the United Empire Loyalists Association of Canada, Calgary Branch.

¹⁶ Ibid., pg. 330.

¹⁷ Ibid., pg. 331.

¹⁸ Everett Bunnell, "The Great Alberta Legal Rift: Lougheed v. Bennett," in *Just Works: Lawyers in Alberta, 1907-2007* ed. Michael Payne (Toronto: Irwin Law Inc., 2007), pg. 30.

After two years in Banff, he moved to Calgary and was admitted to the bar of the North-West Territories on June 19, 1899, and to the Alberta bar automatically on September 16, 1907. He practiced with various partners, and then as a sole practitioner, mainly in the Lancaster Building, until 1947. He passed away on February 24, 1948.

Interestingly, Clifford Jones had a younger brother, Stanley Livingstone Jones, who was also a lawyer in Calgary after 1901. In August 1914, the younger Jones volunteered for King and Empire overseas. In fact, he was the first Calgarian to volunteer for service with the Princess Patricia Canadian Light Infantry. He was commissioned as a Lieutenant and received two battlefield promotions to Major. He was wounded three times with his third wound proving fatal. The younger Jones died in a German prisoner of war camp on June 8, 1916.

Thomas Mitchell March Tweedie was born on March 3, 1872, in River John, Nova Scotia. He graduated with a Bachelor of Arts from Mount Allison University and a law degree from Harvard University in 1905. After practicing briefly in Nova Scotia, he soon found himself in Calgary being admitted to the North-West Territories bar on July 10, 1907. One of the last lawyers to be admitted to that bar. Admitted to the Alberta bar on September 16, 1907, he practiced nearly fourteen years with A.A. McGillivray.

Like many of his contemporaries, Tweedie became involved in politics winning a seat as a Conservative MLA in the Alberta Legislature in 1911, being reelected in 1913. He was defeated in 1917 at which time he was elected a Unionist MP in the House of Commons. He vacated that position in 1921 when he was appointed to the Supreme Court of Alberta, Trial Division, where he was known for his judgements on civil actions including contracts, bankruptcies, and torts.¹⁹ After twenty-three years as a puisne justice, Tweedie was appointed Chief Justice of the Supreme Court of Alberta, Trial Division on August 16, 1944. Not even two months later, on October 4, 1944, Justice Tweedie died in Lethbridge after attending a dinner honouring his appointment to Chief Justice.

Aside from his active involvement with this organization as a founding member, Tweedie also served as President of the Southern Alberta Branch of the Canadian Patriotic Fund. He was a member of the United Church and was involved with its many volunteer organizations and programs. Tweedie also served as Vice President of the Alberta Chapter of the Canadian Red Cross.²⁰

Lewis Frederick Clarry came to Alberta following the establishment of the province and the Law Society of Alberta. He was born in Millbrook, Ontario on April 7, 1874. He graduated from Osgoode Hall in Toronto with a law degree and was admitted to the Ontario bar in 1898. Clarry practiced law in Hastings, Ontario until 1909. During that time, he made an unsuccessful bid for Councillor in East Northumberland, Ontario. He was successfully elected Councillor in Hastings, Ontario in 1909.

¹⁹ Louis A. Knafla and Rick Klumpenhouwer, *Lords of the Western Bench: A Biographical History of the Supreme and District Courts of Alberta, 1876-1990* (Calgary: Legal Archives Society of Alberta, 1997), pg. 183.

²⁰ *Ibid.*, pg. 183.

He moved to Alberta and was admitted to the bar on April 14, 1910. Clarry is an example where sparse records can be problematic. Although records indicate that he settled in Calgary, he became Deputy Attorney General with an office listed in Edmonton. We know that he went non-practicing between 1914 and 1939.

For the years between 1914 and 1933, he was appointed Master-in-Chambers in Calgary. It was also during this time, that Master Clarry became the first President of this organization in 1928. Unfortunately, we have no indication of what Clarry was involved in between the years 1933 and 1939. Following those years, he resumed practice in Calgary taking residence in the Lancaster Building from 1939 until 1945. In 1945, he once again went non-practicing when he and his wife moved back to Millbrook, Ontario to be closer to family. Clarry died just over ten years later, on November 22, 1955.

Hugh Cragg Farthing was born on July 17, 1892, in Woodstock, Ontario. He was of Loyalist descent on his mother's side. He received a Bachelor of Arts from McGill University in 1914. He completed his first year of law school before enlisting as a Lieutenant in the Canadian Expeditionary Force overseas during World War I. He was there from 1915 until 1918. Upon his return, he obtained his law degree from Osgoode Hall in Toronto and was called to the Ontario bar in 1919.

He practiced in Toronto until moving to Calgary in 1923. He was admitted to the Alberta bar on June 5, 1923. Farthing practiced law with various Calgary heavyweights – E.R. Tavender, L.A. Walsh, and F.L. Shouldice – for thirty-five years before being appointed to the District Court of Southern Alberta on February 1, 1958. He remained in that position until he was appointed Justice of the Supreme Court of Alberta, Trial Division just over two years later on April 7, 1960. He retired at the age of seventy-five on July 18, 1967. Farthing passed away eleven months later on June 8, 1968.

Like his contemporary, Justice Tweedie, Farthing was involved in politics and community. He served as a Conservative MLA in the Alberta Legislature from 1930 until 1935. He ran as a Conservative candidate in the 1940 federal campaign and lost.

For twenty-five years, he was the Chancellor of the Anglican Church of the Canadian diocese in Calgary. He was also active with the Red Cross, serving as President of the Calgary Branch in 1928 and President of the Alberta Division in 1947.²¹

In closing, the history of law and the legal profession in the early Alberta is one where lawyers played a role in society beyond the law.

We have seen five lawyers and judges who contributed to Alberta society, through law, business, politics, community, and even military service.

In 2018, we are witnessing a disturbing trend in which history is learned through “sound bites” on the internet and on social media. Ninety years ago, when the five men discussed here today

²¹ Ibid., pg. 41.

helped to establish this organization, they were contributing to the legacy of Loyalists that came to Canada and that of their descendants who ventured west to Calgary.

With the active continuation of this organization, you maintain that legacy. It is impossible to know what a similar event will look like in 2108. But it is my sincere hope that an organization that continues to promote history, and that legacy that began when the first Loyalists arrived in British North America, will exist for another ninety years.

Thank you.