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Book Review: A Bibliography of Canadian Legal History, by Peter D. Maddaugh

Margaret A. Banks

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A BIBLIOGRAPHY OF CANADIAN LEGAL HISTORY, BY PETER D. MADDAUGH, Toronto: York University Law Library. 1972. Pp. xii, 77. (\$6.50)

Although a survey of Canadian legal history has yet to be written, there is a surprising number of articles and monographs on special topics within the field. Some of the articles have been published in rather unexpected places such as American law reviews. Professor Peter Maddaugh and York University Law Library have done legal historians an important service by providing in *A Bibliography of Canadian Legal History* a compact listing of much of this material.

In his preface, Professor Maddaugh emphasizes the fact that this bibliography is "intended to be a starting place rather than a definitive collection" and he urges readers to bring to his or the library's attention material that has been overlooked. It would be easier for readers to comply with this request if he had indicated the sources and techniques used in compiling the bibliography. One assumes that standard general and legal bibliographies and indexes to periodical literature were consulted, but it would be helpful to know which ones. The bibliography lists many theses, but again there is no indication of the source of the information. Were theses on Canadian legal history selected from published lists or abstracts, or does York University Law Library have copies of those included?

When I received my review copy of Professor Maddaugh's bibliography, it happened that I was trying to check some details concerning the history of the Court of Chancery in Upper Canada. Believing that the value of a bibliography is best determined by using it for the purpose for which it is intended, I decided to see whether it would lead me to the information I needed. The table of contents indicates that a section on courts begins on page 26. Several of the items listed on pages 27-8 looked promising, but some of the titles did not clearly indicate whether the articles dealt with the court in which I was interested. For instance, item 422 is an article by W. R. Riddell entitled "The first court of chancery in Canada." Not knowing whether Upper Canada's was the first, I looked up the article; surprisingly, the first Court of Chancery in Canada was in the old Province of Quebec. According to the Maddaugh bibliography, the article appears in volume 3 of the *Boston University Law Review*, but I found that the article published there is a continuation of one which began in volume 2. Another article of Riddell's which I checked was "The early courts of the province" (item 415); it is cited 35 Can. L.J. 879, 964 (1915). However, volume 35 of the *Canada Law Journal* was published in 1899, not 1915, and it does not contain 964 or even 879 pages. Jones and Chipman's *Index to Legal Periodicals* showed me that the citation in the Maddaugh bibliography was correct except for one letter; the "J" should have been a "T". Thus, the article was published in volume 35 of the *Canadian Law Times*, not the *Canada Law Journal*.

My use of the Maddaugh bibliography in searching for information on the Court of Chancery in Upper Canada led me to certain conclusions. I

eventually found what I wanted, but I could have done so much more quickly if more care had been exercised in preparing the bibliography. One of the errors indicates that articles listed in periodical indexes were not checked against the originals to see whether the citations were correct; the other suggests carelessness in transcribing or typing entries and in proof reading. The bibliography would have been greatly improved by the inclusion of a subject index; this would have enabled me to tell at once which items dealt with the jurisdiction and court I wanted.

If the only mistakes I had found were those listed in items 415 and 422, I would perhaps be rather hasty in accusing the compiler of carelessness. Everyone makes mistakes, and even with careful checking one seldom catches all of them. Apart from using the Court of Chancery in Upper Canada as an example, I have made no attempt even to spot check the bibliography for errors, but I could not help noticing certain obvious ones. For instance, item 522 is alleged to have been published in volume 19 of the *Western Ontario Law Review* (1964). This is impossible, since volume 10 (1971) is the latest published to date. In fact, the article appeared in *Industrial Relations*; the volume and page numbers and the year are correct. The author of *The Blacks in Canada: A History* (item 79) is R. W., not K. W. Winks. My article on marriage with a deceased wife's sister (item 463) was published in 1970, not 1969. "Ne-Temert" in item 476 is incorrect; the reference is to the "Ne Temere" decree. In the same entry, 1912 is not part of the title; it should be preceded by a comma. In items 43 and 782 "Blake, W.R." should be "Blake, W.H.". And why were the initials of "Spragge" (item 430) omitted? I have not seen the letter, but presumably it was written by John Godfrey Spragge, who became Vice-Chancellor of Upper Canada in 1851 and was later Chancellor and eventually Chief Justice of Ontario. Sweet and Maxwell's *Legal Bibliography of the British Commonwealth* lists the author as J. G. Spragge.

No consistent policy seems to have been followed regarding the inclusion or exclusion of certain material. For instance, an article entitled "The Kent Bar" is included (item 681), but I can find no reference to Francis G. Carter's book *The Middlesex Bench and Bar*, published by the Middlesex Law Association in 1969, nor is an earlier *History of the Bar of the County of Middlesex*, published in 1912, listed. It seems curious that a chatty biographical sketch of Edward Blake (item 232) is included, whereas an article of the significance of Frank H. Underhill's "Edward Blake, The Supreme Court Act, and the Appeal to the Privy Council, 1875-6" is omitted. The latter was published in the *Canadian Historical Review* — v. 19 (1938), 245 — a periodical from which other articles on legal history are cited in the bibliography. I see little value in the indiscriminate inclusion of biographies of statesmen who happened to be lawyers; several of the items listed on pages 14 and 15 are basically political biographies. On the other hand, some articles in the series on lawyer Prime Ministers of Canada published in the *Canadian Bar Review* are listed (items 243, 263, 266 and 269), whereas others are not (see 30 Can. B. Rev. 350 n.). Surely in this case all should have been included.

The bibliography would have been improved by the inclusion of annotations, not for every item, but at least for those where such information would greatly assist the reader. For instance, it would be useful to know that Riddell's *Upper Canada Sketches: Incidents in the Early Times of the Province* consists of articles which were originally published in volumes 40 and 41 of the *Canadian Law Times*.

After saying all this, the fact remains that by publishing a bibliography, Professor Maddaugh and York University Law Library have taken a first step towards the compilation of a definitive one. It is hoped that a revised edition, which corrects errors and makes significant additions and some deletions, will appear in due course.

Margaret A. Banks.

Faculty of Law Library,
University of Western Ontario.