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THE CANADIAN BAR REVIEW: A CENTURY

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The first volume of the Canadian Bar Review (CBR) was published in 1923. In commemoration of the centenary of the CBR, this article briefly reflects on the journal's history. In doing so, we highlight the CBR's seminal role as a meeting place for scholarship, practice and legal traditions in Canada.

Le premier volume de la Revue du Barreau canadien (la Revue) est paru en 1923. Pour souligner le centenaire de la Revue, nous présentons dans cet article un regard bref sur son histoire, c'est-à-dire que nous soulignerons son rôle fondateur comme point de rencontre entre la théorie du droit, la pratique professionnelle et les traditions juridiques.

“[T]he lawyer as well as the layman occasionally needs to take stock of himself in relation to the social changes going on around him, otherwise his capacity for orientation is lost. Law viewed in any other light than as a social instrument is a bleak thing.”²

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² “Salutatory” (1923) 1:1 Can Bar Rev 6 at 8 [“Salutatory 1923”].

The first volume of the *Canadian Bar Review* (CBR) was published in 1923.³ In commemoration of the centenary of the CBR, this article briefly reflects on the journal's history. In doing so, we highlight the journal's seminal role as a meeting place for scholarship, practice and legal traditions.

The CBR is published by the Canadian Bar Association (CBA), Canada's largest professional organization for lawyers.⁴ The CBA, which seeks to represent all members of the Canadian legal profession, has existed since 1896 and was incorporated by an Act of Parliament in 1921.⁵ Phillips, Girard and Brown have suggested that the creation of the CBA took place in a context of a change in ethos from the idea of the “gentleman-scholar” to “modern professionalism” and that “[b]y the eve of the First World War the Canadian legal profession, while still featuring relatively distinctive provincial legal cultures, had achieved a significant level of national cohesion.”⁶ Relatedly, these trends were accompanied by an increase in legal literature in the confederated provinces. In the same year as its incorporation, the Association, while meeting in Ottawa, discussed the potential of establishing a CBA journal or magazine.⁷ In 1923, two years after that meeting, the *Canada Law Journal* (founded in 1855 as the Upper Canada Law Journal) and the *Canada Law Times* (founded in 1881), the only two legal journals then providing Canada-wide coverage, merged and created *The Canadian Bar Review*.⁸

The stated aim of the *Review* was to furnish a “means of communication between members of the Bar throughout Canada.”⁹ As the CBA President explained in a foreword to the first issue, the *Review* would translate into action the motto of the Association—*Justitia, Officium, Patria*.¹⁰ It is easy to assume, the incantation of that Latin phrase—meaning Justice, Duty, Country—would have been understood parochially by the editors of the

³ “Foreword by the President” (1923) 1:1 Can Bar Rev 1 [“Foreword 1923”].

⁴ “Who We Are”, online: *The Canadian Bar Association* <<https://tinyurl.com/3zmumc4p>> [perma.cc/26AH-XLEJ].

⁵ Brigitte Pellerin “Over a century of influence: Marking the centenary of the incorporation of the CBA”, *CBA National* (7 Apr 2021), online: <<https://tinyurl.com/mukxeze>> [perma.cc/FCM5-V5PF]. See also “Acts of Incorporation” (15 April 1921), online: *The Canadian Bar Association* <<https://tinyurl.com/2tvdthmf>> [perma.cc/8FKM-4BZV] (“advancing the science of jurisprudence”).

⁶ Jim Phillips, Philip Girard & R Blake Brown, “The Legal Professions, Legal Education, and Legal Literature”, *A History of Law in Canada, Volume Two, Law for a New Dominion, 1867–1914* (Toronto: University of Toronto Press, 2022) 184 at 186 [Phillips *et al.*].

⁷ “Foreword 1923”, *supra* note 3.

⁸ *Ibid* at 1–2. See also, Phillips *et al.*, *supra* note 6 at 184.

⁹ “Foreword 1923”, *supra* note 3 at 2.

¹⁰ “Salutatory 1923”, *supra* note 2 at 6.

CBR.¹¹ On the contrary, in the wake of destruction caused by World War I and broad social change that marked the end of that conflict, the journal's mandate was interpreted broadly by its first editor, Charles Morse. As suggested by the epigraph to this article, although the "machinery" of the law was of keen interest, from the start the journal was oriented beyond mere nuts and bolts of practice. Dr. Morse indicated that while keeping itself grounded in practice, the *Review* would recognize and remember that law is a learned profession and that the *Review's* pages would engage with the compelling issues of the day; not least, emergence of the administrative state.

Throughout its publication, the *Review* has sought to remain true to its purpose, featuring articles written by and for scholars, practitioners and judges alike, with a lens on practice suffused with scholarship. The continuing connection between the *Review* and the practicing bar ensures that the journal does not stray too far into esoteric theory, remains engaged with current problems challenging practitioners, and, concurrently, helps infuse scholarly, reflective and critical analyses into practice.¹² While some journal articles have skewed doctrinal in approach at various times, sociolegal¹³ and critical¹⁴ approaches have also been prominent in recent decades, as has a focus on access to justice.¹⁵ During the first century of the *Review*, roughly half its articles have been authored by academics; and the other half, by practitioners.¹⁶ Many of its authors might be called, however nebulous the term, academic lawyers;¹⁷ scholars who also consider themselves lawyers, or *vice versa*.

¹¹ John W Mohr, "Arthurs, Without the Law: Administrative Justice and Legal Pluralism in the 19th Century; Auerbach, Justice Without Lawyers" (1986) 35 UNBLJ 248.

¹² Douglas Lambert, "The Lambert Report on the Canadian Bar Review: Notes on the Outlook for 1984 to 1990," Note, (1984) at 6 [Lambert] [on file with Canadian Bar Association].

¹³ See e.g., Ronit Dinovitzer, Hugh Gunz & Sally Gunz, "The Changing Landscape of Corporate Legal Practice: An Empirical Study of Lawyers in Large Corporate Law Firms" (2015) 93:2 Can Bar Rev 343; Hilary Young, "The Canadian Defamation Action: An Empirical Study" (2017) 95:3 Can Bar Rev 591.

¹⁴ See e.g., Reem Bahdi, "Arabs, Muslims, Human Rights, Access to Justice and Institutional Trustworthiness: Insights from Thirteen Legal Narratives" (2018) 96:1 Can Bar Rev 72; Danardo Jones & Elizabeth Sheehy, "*R v Desjourdy*: A Narrative of White Innocence and Racialized Danger" (2021) 99:3 Can Bar Rev 611.

¹⁵ See e.g., Anne Levesque, «Les cliniques juridiques communautaires de l'Ontario et l'accès à la justice en français» (2020) 98:2 Can Bar Rev 211; Noel Semple, "Better Access to Better Justice: The Potential of Procedural Reform" (2022) 100:2 Can Bar Rev 124.

¹⁶ Although we detect a trend—one which requires further inquiry—of fewer submissions by practitioners.

¹⁷ For a short but insightful exploration of the term, see David Sandomierski, "Law and Living: Connecting the Dots: The Life of an Academic Lawyer by Harry W Arthurs" (2021) 58:2 Osgoode Hall LJ 467.

Another hallmark of the *Review* has been its pan-Canadian reach. As the first CBA President, Sir James Aikins, contended, “in thought and ideals and soul, our profession is not confined within provincial limits.”¹⁸ Indeed, the CBA and its *Review* were seen as nation-building enterprises. The first issue of the *Review* defended the notion that one could speak of a Canadian bar and not only the separate provincial bars where bar membership formally lay.¹⁹ In the same way that Canada “came of age” in the Great War, the CBA and the *Review* were seen as manifestations of the Canadian bar’s maturity.²⁰ While Aikins undoubtedly was mindful of the importance of communication between lawyers in all provinces and territories, by design, the *Review* has long provided an important forum for the common and civil law traditions in particular.²¹ From the start, Dr. Morse saw an opportunity for “a comparative study of the two great systems of law operative in Canada ... to find points of contact between the two where harmony prevails.”²²

Relatedly, the *Review* prides itself in being a bilingual legal journal. Bilingualism reinforces the dialogue between the common and civil law traditions, though, language and legal “family” do not map identically given the common law tradition in French in New Brunswick and the civil law tradition in English in Quebec. The first issue of the *Review* contained two articles on comparative law, one in English and one in French.²³ In 1961, the executive members of the Canadian Bar Association reaffirmed the journal’s bilingual nature by giving it an official French name—*La Revue du Barreau Canadien*—and taking other measures to enhance the bilingual character of the journal.²⁴ Today, the *Review* is one of several formally bilingual Canadian legal journals, albeit the extent of regular bilingual content varies considerably across those journals. Since 1961, French language content has represented roughly 20% of the *Review*’s content and includes seminal articles on Quebec civil law,²⁵ as well as more explicitly, comparative pieces. The dialogue between legal traditions

¹⁸ “Foreword 1923”, *supra* note 3 at 3.

¹⁹ See e.g., *ibid.*

²⁰ See Lord Shaw, “Law as a Link of Empire” (1923) 1:1 *Can Bar Rev* 19 at 28. Although the idea that legal cosmopolitanism meant maintaining a connection to empire was not lost in the first issue.

²¹ “Twenty-Five Years” (1928) 26:1 *Can Bar Rev* 1 at 2.

²² “Salutatory,” *supra* note 2.

²³ Francis Alexander Anglin, “Some Differences Between the Law of Quebec and The Law as Administered in the Other Provinces of Canada” (1923) 1:1 *Can Bar Rev* 33; Honourable Juge Surveyer «L’association du barreau canadien et L’uniformité des Lois» (1923) 1:1 *Can Bar Rev* 52.

²⁴ Louis St Laurent, «La revue du barreau Canadien» (1961) 39:1 *Can Bar Rev* 1.

²⁵ See Patrice Deslauriers, «Mot du rédacteur-adjoint» (2010) 88:2 *Can Bar Rev* 205; introducing a special issue on the *Quebec Civil Code*.

on the pages of the CBR stands out as a unique source of comparative richness on the Canadian legal landscape.²⁶ In 1981, Chief Justice Bora Laskin called this “cross fertilization” of legal traditions in the *Review* a “national asset.”²⁷

By contrast, Aboriginal law and Indigenous legal orders—indeed Indigenous peoples generally—were largely written out of the *Review* in the first decades of its existence. There are few references in the CBR to Aboriginal law until the 1970s, though the number of pieces increases steadily into the 1980s and beyond. While some progress has been made toward publishing critical analyses on Indigenous peoples and the law,²⁸ much more work is needed to explore the richness of Indigenous legal orders, including in nation-to-nation and comparative perspectives.²⁹ By engaging in a dialogue within and between common, civil and Indigenous legal traditions, we hope in a modest way to contribute to reconciling legal traditions in Canada and to promote, as Patrick Glenn put it, “sustainable diversity in law.”³⁰

Throughout its existence, the *Review* has had the leadership of a relatively short list of accomplished (and obviously the current authors do not purport to place ourselves in that category) editors. The early editors were Charles Morse, Chancellor of the Exchequer Court of Canada, followed by pioneering legal educator Cecil A. Wright and Montreal lawyer George V. V. Nicholls.³¹ Professor Jean-Gabriel Castel, from McGill and then Osgoode Hall, was appointed to the position in 1957, holding it for 27 years.³² In 1984, Professor A. J. McClean from the University of British Columbia succeeded him. A decade later, the position was taken over by Professor Ed Veitch from the University of New Brunswick, who

²⁶ *Ibid.*

²⁷ Bora Laskin, “The Editorship—La Redaction” (1981) 59:3 Can Bar Rev 479 at 481. Some notable examples of cross-fertilization and “legal mixing” include: Daniel Jutras, «Cartographie de la mixité: La Common law et la complétude du droit civil au Québec» (2010) 88:2 Can Bar Rev 247; Rosalie Jukier, “The Impact of Legal Traditions on Quebec Procedural Law: Lessons from Quebec’s New Code of Civil Procedure” (2015) 93:1 Can Bar Rev 211; Andrew Stobo Sniderman & Mariella Montplaisie-Bazan, «La Cour suprême du Canada, le Code civil du Québec et le rôle des juges de common law: une étude des arrêts de 1976–2019» (2022) 100:3 Can Bar Rev 548.

²⁸ See e.g., “Special Issue on the *R v Stanley* Trial” (2020) 98:2 Can Bar Rev 211.

²⁹ See John Borrows, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61:4 McGill LJ 795; Sébastien Grammond, “Recognizing Indigenous Law: A Conceptual Framework” (2022) 100:1 Can Bar Rev 1.

³⁰ Patrick Glenn, “Reconciling legal traditions: sustainable diversity in law”, *Legal Traditions of the World*, (London: Oxford University Press, 2014) 361 at 376.

³¹ Arthur Kelly, “The Editorship” (1957) 35:8 Can Bar Rev 887.

³² Janet M Fuhrer, “Foreword from the President—Canadian Bar Review—First Edition Under New Editors, August 2016” (2016) 94:1 Can Bar Rev 9 [Fuhrer].

similarly held the position for ten years.³³ In 2005, the position went to Professor Robert Flannigan from the University of Saskatchewan and was then passed on in 2006 to Professor Beth Bilson of the same university.³⁴ Late in 2015, Professors David Tanovich and Christopher Waters from the University of Windsor became co-editors to the *Review* under an academic “hosting” model following a call for expressions of interest to law faculties across Canada. In early 2022, Windsor Law’s Professor Wissam Aoun replaced Professor Tanovich as co-editor.³⁵

In 1983, the *Review* created the position of Associate Editor to further publication of articles on civil law and pieces written in French in either legal tradition. Professor Jean-Louis Baudouin, later appointed a judge of the Quebec Court of Appeal, became the first associate editor of the *Review*.³⁶ Baudouin held the position until 1989, when Professor Pierre-Gabriel Jobin from McGill University took over.³⁷ In 2003, Professor Patrice Deslauriers from the Université de Montréal succeeded him and has remained in the post for two decades.³⁸ Over the years, many distinguished assistant editors have also contributed significantly to the success of the *Review*. Early assistant editors included Sidney Earle Smith, who was assistant editor to Charles Morse; Mary Pitts, assistant editor to George Nicholls; Sharon Williams, assistant editor to Professor Jean-Gabriel Castel (Castel was also her doctoral supervisor),³⁹ and Joost Blom, assistant editor to A.J. McClean.

The *Canadian Bar Review* has made several format changes over the years. Between 1923 and 1957, each volume of the *Review* had ten issues annually.⁴⁰ Between 1958 and 1999, the journal would issue quarterly.⁴¹ After 1999, each journal volume would have three issues in a year.⁴² While the *Review* continues to publish shorter pieces, notably case comments and book reviews, the length of articles gradually expanded over the years, and some items—notably correspondence—were largely eliminated. The

³³ See Pierre-Gabriel Jobin, “Tribute to Professor Edward Veitch” (2004) 83:3 Can Bar Rev 581 [Jobin].

³⁴ *Ibid.*

³⁵ Fuhrer, *supra* note 32; “[About the Journal](#)”, online: *The Canadian Bar Review* <<https://tinyurl.com/33vs7xrp>> [perma.cc/2GKA-8RNQ] [“About the Journal”].

³⁶ “[Jean-Louis Baudouin](#)”, online: <<https://tinyurl.com/2n5rxun7>> [perma.cc/BAZ9-5RHQ].

³⁷ *Ibid.*; Jobin, *supra* note 33 at 583.

³⁸ Fuhrer, *supra* note 32.

³⁹ “Appendix—Appendice” (1982) 60:4 Can Bar Rev 833.

⁴⁰ Lambert, *supra* note 12 at 4.

⁴¹ *Ibid.*

⁴² “[Archives](#)”, online: *The Canadian Bar Review* <<https://tinyurl.com/3z45z57m>> [perma.cc/H6NV-BA7F].

Review has also published special issues, including on the 100th anniversary of the Civil Code of Lower Canada (1966), Canada's "politico-legal estate" (1967); the Charter (1983); Banking (1986); the 125th anniversary of the Supreme Court of Canada (2000); Legal Education (2017); the *R v Stanley* trial (2020); and, in the year of the CBR's centenary, a special issue on law and technology (2023).

Over its century, the *Review* has strived to position itself as Canada's premiere bar review journal through periodic strategic introspection. In 1954, the CBA formed a committee on legal research, which strongly supported the continuation of the *Review* as an outlet for the increased scholarship that the Association sought to promote.⁴³ In 1980, assessors from the Social Sciences and Humanities Research Council of Canada found the *Review* to live up to its reputation as the "most widely read and highly regarded of Canadian legal periodicals," affirming the quality and excellence of the journal.⁴⁴ In the same year, a number of judges and law professors submitted largely positive critical evaluations of the *Review* to the Editorial Board.⁴⁵ In 2015, the *Review* again took stock of its place in the legal scholarship marketplace and sought to differentiate itself further.⁴⁶ In 2016, the journal's description on its website was updated to clearly highlight its distinct purpose and mission.⁴⁷ The new description emphasized the collaborative nature of the journal, which seeks to "foster dialogue ... between legal scholars and practitioners" and "provide a space for legal thought leaders to address scholars, practitioners and judges about emerging questions of law and policy."⁴⁸ In 2016, the Editorial Board inaugurated the *Review* as an open access online publication.⁴⁹ Becoming open access would improve the accessibility and discoverability of the journal amidst the rise of online consumerism. The Honourable Thomas Cromwell, the Chair of the Editorial Board at the time, cited a number of reasons for the decision to move to an open access model.⁵⁰ Firstly, Canada's research funding bodies were moving towards open access publishing for all publicly funded research.⁵¹ Secondly, open access "enables wider availability of scholarly legal thinking and encourages a seamless exchange between practitioners and academics," consistent with the

⁴³ Francis Reginald Scott, "Report of the Committee on Legal Research" (1956) 34:9 Can Bar Rev 999 at 1033.

⁴⁴ Lambert, *supra* note 12 at 8.

⁴⁵ *Ibid.*

⁴⁶ Canadian Bar Review Strategic Plan at 2, 8 ["Strategic Plan"] [on file with authors].

⁴⁷ "About the Journal", *supra* note 35.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Thomas Albert Cromwell, "Foreword from the Chair of the Editorial Board" (2016) 94:1 Can Bar Rev 1 at 2.

⁵¹ *Ibid.*

Association's goal to serve the profession.⁵² Lastly, open access promotes "access to justice through enhanced access to legal materials."⁵³ In some ways, this was a bold move, given that access to the *Review* had been a member benefit for the CBA. At the same time, the *Review* developed cross-fertilization strategies to better integrate itself into the Association through features—including author interviews—in the CBA's *National Magazine*.⁵⁴

Between 1940 and 1990, Canada saw a dramatic increase in generalist law review journals.⁵⁵ Since then, additional journals (some generalist, others devoted to particular subjects) have emerged. In the context of the rising abundance of legal periodicals, the *Review* continues to develop, striving to maintain its reputation and remain at the cutting edge of legal scholarship. Since its founding, the journal has consistently made efforts to meet the demands of legal professionals as they have evolved over time. For example, under Prof. Tanovich's co-editorship, the *Review* actively solicited articles on legal ethics, a legacy the current editors hope to continue.⁵⁶

Like most enterprises, the CBR is a work in progress. Reconceptualizing and reinvigorating the editorial board, for example, is a current challenge facing the *Review*. At the time of writing, we are pleased to report that the Hon. Malcolm Rowe of the Supreme Court of Canada will lead a reconstituted board, continuing the tradition of a board led by a sitting

⁵² *Ibid.*

⁵³ *Ibid.* Another benefit of the move to open access has been the ability for authors and others to track the number of downloads of individual articles, offering at least one measure of the impact of scholarship. The most downloaded article—with over 25,000 downloads—is Robert B Pattison, "Overview of the Law of Bidding and Tendering" (2004) 83:3 *Can Bar Rev* 715, followed by Ruth Sullivan, "Statutory Interpretation in a New Nutshell" (2003) 82:1 *Can Bar Rev* 51. The most frequently downloaded French article is Guy Bouthillier, "Profil du Juge de la Cour Supérieure de Québec" (1977) 55:3 *Can Bar Rev* 436.

⁵⁴ "Strategic Plan," *supra* note 46 at 19–20 [on file with authors]. See e.g. Yves Faguy "[A round-up of the Canadian Bar Review](https://tinyurl.com/3pztkrk)", *CBA National* (28 Feb 2021), online: <<https://tinyurl.com/3pztkrk>> [perma.cc/UY4F-RYLR].

⁵⁵ Bruce Ryder, "The Past and Future of Canadian Generalist Law Journals" (2001) 39:3 *Alta L Rev* 625 at 628–629.

⁵⁶ Recent examples include: Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97:3 *Can Bar Rev* 526; Richard Devlin *et al.*, "A Mixed Bag: Critical Reflections on the Revised Ethical Principles for Judges" (2022) 100:3 *Can Bar Rev* 325; Daniel Del Gobbo, "Legal Ethics and the Promotion of Substantive Equality" (2022) 100:3 *Can Bar Rev* 239.

Supreme Court of Canada judge.⁵⁷ However, while the *Canadian Bar Review* continues to evolve, it has endured as a high-quality law journal, uniquely serving as a meeting place for academics, lawyers, and academic lawyers to converge and dialogue, in both official languages.

⁵⁷ The first was the Honourable Claire L'Heureux-Dubé. Sitting Supreme Court of Canada judges have also contributed pieces to the *Review*, usually at the level of theoretical approaches to law, to avoid entanglements with their docket. See e.g., Thomas Albert Cromwell, Siena Anstis & Thomas Touchie, "Revisiting the Role of Presumptions of Legislative Intent in Statutory Interpretation" (2017) 95:2 *Can Bar Rev* 297; Malcolm Rowe & Nicolas Déplanche, "Canada's Unwritten Constitutional Order: Conventions and Structural Analysis" (2020) 98:3 *Can Bar Rev* 430.