



## James Phillips University of Toronto Social Sciences Division

### Citation

James Phillips, Professor of Law and History, University of Toronto, is a leading figure in the field of Canadian legal history. Phillips has been an intellectual leader in the expansion of legal scholarship beyond traditional doctrinal limits. His work ranges over intellectual history, socio-legal studies, case studies, and comparative legal history. Phillips' research has made the history of law a dynamic tool for interrogating Canada's past, present, and national identity.

### Detailed appraisal

Professor Jim Phillips' scholarly work is remarkable for the range and sophistication of his writing, which has had a major impact on the field of legal history in Canada. He has been a principal intellectual leader in the development of legal history in Canada and the expansion of legal scholarship beyond its traditional doctrinal limits. Phillips' work ranges over intellectual history, socio-legal studies, case studies, topical histories, professional studies and comparative legal history. Phillips' research exploits all these approaches and makes the history of law a dynamic tool for interrogating Canada's past, present, and national identity.

His most recent major contribution is the publication of two volumes of what will be a three-volume History of Law in Canada, co-authored with Philip Girard. Volume I: Beginnings to 1866, was published in 2018, and Volume II: Law for the New Dominion, 1867-1914 appeared in 2022, with Phillips as the primary author. (The third volume, on the twentieth century, to come out in 2026, will have Professor Blake Brown, the third member of the team as the principal author). A History of Law in Canada is the first scholarly, comprehensive account of the subject. It is a masterful analysis of the history of law in Canada, and will be the standard work for decades to come. The Canadian Law & Society Association's prize citation called Volume I 'a monumental and masterful work ... reflect[ing] an astonishing range of knowledge. It breaks new ground in its sweep and scale ... and will be a ... guide and inspiration to Canadian legal historians for generations to come.' The same body's prize citation for Volume II called it 'a monumental book of legal history

... Comprehensive and meticulously sourced,' a book which 'illustrates how plural legal orders— Indigenous law, common law and civil law—were impacted by the process of developing and consolidating a national legal order in Canada, and how fundamental aspects of the Canadian legal order took form between 1867 and 1914.'

These volumes contribute enormously to our understanding of both law and society. A key insight they collectively give us is how our long history as part of two European empires encouraged the legal pluralism we have today. In contrast, republican nation- states emphasize unitary national law as the prime expression of statehood. Legal pluralism creates space for the renaissance of Indigenous law, now underway in Canada after a long period when it was ignored, suppressed, or outlawed. Quebec civil law flourishes on a continent of common law for the same reason.

Who makes and enforces laws, who is subject to them, with what effect—all change constantly over time, revealing much about a society, and its difference from others. In his many books, book chapters, articles and edited volumes, Professor Phillips has given definitive accounts of a multitude of issues in the history of constitutional, criminal, property, and labour law in Canada, as well as the history of courts. Both lawyer and historian, Phillips emphasises the connections between law and the society in which it is imbedded. In all his work he shows the significance of social standing, gender, ethnic and racial differences, received economic ideas and political agendas, to the way law has developed. The range and originality of this body of work is impressive.

Phillips has provided a persuasive and original account of why sections 91 and 92 of the constitution took the form they did in 1867. Sections 91 and 92 delineate the respective powers of the federal and provincial governments, and have been the subject of a huge by of jurisprudence and political debate over the last 150 years. Yet until now we have not had a persuasive account of why they were framed as they were in 1867. Phillips has shown us how the criminal justice system operated in the decades before the reform of criminal justice in the second quarter of the nineteenth century. By c. 1850 the criminal justice system was underpinned by reliance on physical, especially capital, punishment, and on a relatively perfunctory trial process in which an accused had no right to counsel. By the mid-nineteenth century the system had been transformed into one marked by more procedural safeguards and emphasising rehabilitative imprisonment as the principal sanction. To similar effect, Phillips has examined when and why judges were removed from executive and legislative bodies, and how they obtained true judicial independence (good behaviour appointments) in the colonial period. He has explored the historical background to one of the leading property law cases decided by the Supreme Court of Canada in 1978, a case containing the origins of Canadian de facto expropriation law. And, most recently, he has provided a first ever examination of how parliamentary divorces were obtained in an era when that was the only way for most residents of Canada to get a legal divorce.

While the vast majority of Phillips' legal history work has been about Canada, he has also written a book and some articles on the legal history of early twentieth century United States. Murdering

Holiness: The Trials for Franz Creffield and George Mitchell is a deeply researched study of one murder cases and its background, which encompassed radical religion, vigilantism, and gender. Most notably this book details the operation of the 'unwritten law', the informal law which many as late as the twentieth century believed should override state law and allow a man to kill in the name of family honour and not be convicted of the crime.

An important aspect of Professor Phillips' pioneering contribution to the study of Canadian legal history has been his role as Editor-in-Chief of the Osgoode Society for Canadian Legal History, a position he has held since 2006. During his tenure the Osgoode Society has published 56 books, expanded and diversified its oral history programme, and put on seminars for the legal profession and the public. The Society has become the intellectual 'salon' for scholars in the field. Under Professor Phillips' leadership the Society is the envy of legal historians everywhere in the common law world. No similar Society can match its scholarly output and the success it has had at building bridges between the academy and the legal profession.

I have published several books on Canadian legal history with the Osgoode Society under Professor Phillips' editorial guidance. I can testify that he is not just an editor, he is a mentor, carefully guiding his authors through the writing process with crucial insights and suggestions. He did not write the 56 books published during his time as Editor-in-Chief, but his mark and influence are on every one of them.

Professor Phillips' contributions to legal history have been recognized by two Canadian Law & Society Association awards and the Mundell Medal, given by the Attorney-General of Ontario for 'excellence in legal writing'.