

CHAPTER 11

WORKING PAPER ON CANADIAN LEGAL PUBLISHING FOR THE CONFERENCE ON

LEGAL LITERATURE IN SMALL JURISDICTIONS

By Paul Murphy and Balfour Halevy***

One suspects that at this Conference Canada is better off than many of the other jurisdictions represented but for all that we still have serious problems. We are a Federal System and the distribution of lawyers and thus of the market for legal literatures is very uneven. Thus our two Territories have 19 and 35 lawyers and our smallest province Prince Edward Island has approximately 70 lawyers. On the other hand Ontario has just over 11,500 lawyers on its Law Society rolls. (Appendix 1). The smaller jurisdictions have no local treatises even where their law differs in substantial respects from the other Canadian jurisdictions. Quebec has its own peculiar problem because of its different legal history and also of a different language than the rest of Canada.¹

Canadian legal publishing is mainly controlled by foreign companies² but the writers have no evidence that now this has any substantial influence on what is and is not published. We suspect this may have had influence in the past where there may have been a tendency to prefer to sell home country products than to encourage indigenous authors.

When one of the writers came to Canada 11 years ago there was no current Canadian treatise on contracts, torts, evidence, procedure or even a book on Canadian constitutional law. These horrendous gaps are now filled but the last only in 1977. Traditionally lawyers and legal academics relied on British legal literature and in more recent years on U.S. material.

The explanation for the above is not clear to the writers but some partial explanation may be found in the fact that as late as 1956 there were only 66 full time law teachers in all of Canada.³ For some reason there has not been a history of legal writing by the Canadian Bar; it is interesting to note that in Australia an entirely different tradition prevails.⁴

Recent work being carried out by a Committee of the Canadian Law Information Council suggests that there are still many areas of law where there are no current Canadian works.⁵ For instance Canada lacks an adequate Canadian legal dictionary in either French or English. In the Common Law provinces where there are treatises they tend to be heavily Ontario oriented because of the size of the Ontario law-book market.

There is no overall plan for soliciting works in areas where nothing is being written; however there is some hope that within the next year or two the work of the Canadian Law Information Council might lead in this direction, similar to the Scottish scheme or a variation thereof.

Periodical literature is adequate but again it should be noted that the Territories and two provinces Prince Edward Island and Newfoundland have no legal periodicals.

Canada is strong in its bibliographical control of the literature. There is a general current bibliography of both books and articles: Boulton, Reynald Bibliography of Canadian Law/Bibliographie du Droit Canadien, Ottawa, Canadian Law Information Council, 1977.

We also have an excellent bibliography directed to non-lawyers: Dykstra, Gail S. Bibliography of Canadian Legal Materials/Bibliographie de Documentation Juridique Canadienne, Toronto, Butterworths, 1977.

Notes on General Legal Tools and the Small Jurisdictions of Canada

Viewed in simple terms of subject accessibility and/or indexing, timeliness of publication and availability of a published item (which is cited elsewhere), the problems of bibliographic control of legal literature in the small jurisdictions of Canada centre around approaches to the primary literature: (1) statutes, (2) regulations, administrative directives and decisions, and (3) court reports.

* Law Librarian and Associate Professor, University of Windsor,

Faculty of Law

** Law Librarian and Professor of Law, Osgoode Hall, Law School,

York University

Statutes

Two major problems, subject accessibility and timeliness of publication, are apparent. Timeliness of publication for sessional statute volumes is easily documented.⁶ This has become an acute problem due to the volume of statutory legal reform introduced in the last five years. This phenomenon has its basis in the rate of social change and in the recent creation of permanent law reform bodies.⁷

This increasingly complex statute output has further exacerbated the problem of subject access to statute law.⁸ These two problems have abetted the proliferation of mainly commercial looseleaf compilations⁹ of statutes (with some indexing and little else) in recent years. The fragmentary subject grouping and expense of these publications provides a poor overall solution, especially for areas of lesser litigation.

Further, the general legal encyclopediae¹⁰ for Ontario and Western Canada provide relatively few direct statute references, although many direct case references, and are particularly weak in coverage of the Maritime Provinces.

Other problems related to statutes include readability,¹¹ current or periodic listing (or indexing) of private acts, and determination of the current status of bills¹² and current acts, which are passed but not proclaimed, particularly for the Maritimes and the Territories.

Regulations, Administrative Rules and Decisions

Where the administrative rule falls within the definition of "regulation" and thus must be published to be effective,¹³ problems regarding what falls outside the definition (and hence what is published and where) arise.¹⁴ Powers of exemption from the necessity of publishing are also broad.

In addition, the periodic consolidation or at least systematic frequent listing of regulations in force, is often lacking in the smaller jurisdictions. Subject indexing is nonexistent -- hence one must know the statute pursuant to which the regulation is made. This leads us back to the problem of poor statute indexing. Tardiness of publication is also a problem.

Publication of administrative board decisions is a great problem¹⁵ -- the listing or indexing of them and the availability of tables highlighting board decisions judicially considering prior board decisions, are nonexistent even in the largest Canadian jurisdictions. The lack of board reports in the smaller jurisdictions is a greater problem, unless one has short distances to travel and can consult the decisions in the board's office.

Court Reports

The issues of non-publication and timeliness of reporting of court decisions are the greatest problems for the smaller jurisdictions in Canada. The law reporters are selective, concentrating upon their 'largest market' jurisdictions. Please note Appendix I in this regard. Quebec, with its civil law system, is the 'large jurisdiction' exception: This phenomenon has recently been commented upon.¹⁶ Generally, all the lower courts are very unreported as well.

Since the time of the study which is the basis for Appendix I, a number of reporters have been started in the Maritimes¹⁷ and in Alberta and British Columbia.¹⁸ These have found their way into the national digest system, Canadian Abridgment, 2d.¹⁹ Similarly, the lack of reporting for the smaller jurisdictions means that they are not represented in Canadian Abridgment, 2d to as great an extent. In Western Canada, a series of precis unreported decisions, arranged by subject, grew up to meet this lack.²⁰ The most interesting recent development has been the introduction of a current digest system of all cases received by the publisher from across Canada, which ultimately may or may not be reported: All Canada Weekly Summaries and Weekly Criminal Bulletin.

The following are excerpts from a study compiled by Mr. Frank Winter of the Faculty of Law Library, University of Windsor, and published in the 1979 C.A.L.L. Newsletter.

- A. All Canada Weekly Summaries (Canada Law Bk.)
Sample: Issue No. 2 (week ending Jan. 14, 1977) to Issue No. 8 (week ending FEB 25, 1977)

No. of Cases: 662 cases. Average Issue: 94.5 cases

All geographic law reports and some specialized law reports up to May 19, 1977 checked.

Select Provinces/
All Courts Cited
(By Size of
Provincial Law
Society, 1974 -
smallest first)

	Number of Cases Digested	Number of Cases Subsequently Reported as of May 19, 1977
1. Yukon & N.W.T.	-	-
2. P.E.I. - Sup. Ct.	8	-
3. Newfoundland - Dist. Ct.	5	-
4. New Brunswick - Co. Ct. - C.A.	1 10	- 2
5. Saskatchewan - Q.B. - C.A.	22 6	1 1
6. Nova Scotia - Co. Ct. - S.C. - C.A.	5 26 15	- - 1
7. Quebec - C.A.	7	-

(Manitoba, Alberta
and B.C. have smaller
bars but more cases
digested & reported.)

- B. Weekly Criminal Bulletin (Canada Law Bk.)
Sample: Bulletin No. 1 (week ending Oct. 22, 1976) to
Bulletin No. 8 (week ending Dec. 10, 1976) and
Bulletin No. 10 (week ending Dec. 31, 1976)
No. of Cases: 247 cases. Average Bulletin: 27.5 cases

All geographic law reports and some specialized law reports up to May 19, 1977 were checked.

Select Provinces/
All Courts Cites
(By Size of
provincial Law
Society, 1974 -
smallest first)

	Number of Cases Digested	Number of Cases Subsequently Reported as of May 19, 1977
1. Yukon & N.W.T.	-	-
2. P.E.I. - C.A.	2	2
3. Newfoundland - Prov. Ct. - Co. Ct.	2 6	- -
4. New Brunswick - Prov. Ct. - C.A.	1 13	- 1
5. Saskatchewan - Q.B. - C.A.	7 -	1 1

6. Nova Scotia		
- C.A.	2	-
7. Quebec		
- C.A.	23	-

It may be readily noted that the smaller jurisdictions and the lower courts are generally unreported, and the timeliness of reporting is a general problem.

Judicial consideration of statutes is also a problem outside of the federal, Ontario, and Quebec jurisdictions. For the western provinces there are a series of looseleaf volumes for Alberta, British Columbia, Manitoba and Saskatchewan published by Burroughs & Co. (of Carswell), although seemingly updated only annually. The Maritime Provinces (New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island) must depend on inclusion of this information in tables contained in the various reporters of the Maritime Law Book Co. These tables are now being cumulated in the Digest and Index Volumes being produced:

1. N.B. Reports-Digest & Indexes for Vol. 1-9 (1969-1975) received by P.M. Law Library in May, 1976.
2. Nfld. & PEI Reports-Digest & Indexes for Vol. 1-7 (1971-1975) received by P.M. Law Library, July, 1976.
3. N.S. Reports-Digest & Indexes for Vol. 1-10 and N.S. Reports 1965-69, and therefore covering 1965 to 1975 received by P.M. Law Library, May, 1978.

FOOTNOTES

1. Much discussion took place at the Conference of efficient informal means of communication of legal information where lawyers are concentrated in a small area. This works in P.E.I. and the Territories. The latter are vast but the lawyers in each are concentrated in one town.

This informal information transfer does not work well in provinces such as Saskatchewan where lawyer population is small but scattered.

2. e.g. Commerce Clearing House, Carswell, Butterworths.
3. Report of the Committee on Legal Research (of the C.B.A.) 34 Can. Bar Rev. 999, at 1023 (1956).
4. See generally on legal research in Canada until the mid 1950's the report cited in footnote 3.

In the course of the Conference there was much discussion of the role of legal academics as producers of legal literature. It is fair to say that in Canada the academics are now doing their fair share of legal writing.

5. This report in a revised form should be available for general distribution in 1980.
6. Simple direct accessing of statute amendments to the statutes contained in the consolidation is another aspect of this problem. The larger jurisdictions (Canada and Ontario) have statute citators providing the text of such statute amendments.

The Paul Martin Law Library, University of Windsor, Ontario, received the following sessional statutes on the following dates. These would be indicative of the delay experienced.

<u>Latest Sessional Statute</u>	<u>Being the Session From</u>	<u>Received By the Library</u>
Statutes of Yukon, 1972	?	July 31/73
Statutes of Nfld., 1977	Feb. 2/77 to Nov. 24/77	June 2/78
Statutes of P.E.I. 1976	Mar. 4/76 to ?	June 24/77
Statutes of N.B., 1977	Mar. 1/77 to June 16/77	May 2/78
Statutes of N.S., 1977	Feb. 22/77 o May 19/77	Mar. 21/78
Statutes of Sask., 1976-77	Nov. 18/76 to May 10/77	Nov. 2/77
Statutes of B.C., 1976	Mar. 17/76 to June 30/76	Mar. 30/77
Statutes of Alta., 1977	Feb. 24/77 to Nov. 10/77	May 25/78
Statutes of Ont., 1977	Mar. 29/77 to Dec. 16/77	Mar. 21/78
Statutes of Que., 1976	Mar. 16/76 to Jul. 24/76	Aug. 11/77
& Dec. 14/76 to Dec. 23/76		

7. The various provincial law reform bodies (and first year of activity) are:
 Alberta - Institute of Law Research and Reform, 1968
 British Columbia - B.C. Law Reform Commission, 1969
 Manitoba - Manitoba Law Reform Commission, 1972
 New Brunswick - Law Reform Division of the N.B. Dept. of Justice, 1971
 Nova Scotia - Nova Scotia Law Reform Advisory Commission, 1972
 Ontario - Ontario Law Reform Commission, 1964
 Prince Edward Island - Law Reform Commission, 1970
 Quebec - Civil Code Revision Office (temporary), 1955-78
 Saskatchewan - Law Reform Commission of Saskatchewan, 1974
8. See: M.L. Friedland, P. Jewitt and L.J. Jewitt, Access to the Law: a study conducted for the Law Reform Commission of Canada. (Toronto: Carswell/Methuen, 1975), particularly Appendices 8 and 9.
9. Legal looseleaf publishers in Canada include the leading legal publishers: Butterworths of Toronto; Canada Law Book Ltd. of Toronto; Carswells Ltd. of Agincourt, Ontario; Commerce Clearing House (Canada) of Don Mills, Ontario; and Richard DeBoo Ltd. of Toronto. Other publishers are producing looseleaf compilations aimed in part at private and public law libraries -- Corpus Publications Ltd. of Toronto and Les Editions FM, à Feuilles Mobiles (a division of Formules Municipales Ltée, of Farnham; Quebec) to name just two.
10. Canadian Encyclopedic Digest (Ontario), 3d edition, published by Carswell Ltd., Agincourt, Ontario, and Canadian Encyclopedic Digest (Western), 2d edition, which

is to be revised and issued as the 3d edition in a new looseleaf format undoubtedly like the Ontario third edition. This latter publication is by Burroughs Ltd. of Calgary, a subsidiary of Carswell Ltd.

11. See Appendix 7 of Access to the Law *supra*.

This may be seen as an aspect of the lack of timeliness of publication for statutes. Yet it is a reasonable compromise to quick publication.

12. In this regard, note the new dead weekly (during the relevant session) publications, Current Legislative Digest-Ontario and Current Legislative Digest-Canada, published and edited by Professor G.L. Starr and former-Professor J.C. Paterson. The Canadian Law Information Council now publishes a status of bills table for the federal Parliament, but omits any digest of the bill and reference to background studies that were contained in the Current Legislative Digest publications. The Alberta Government periodically publishes a status of bills table in their debates.

The Current Bill Service attached only to the Ontario Statute Citator provides even more current information on acts. Also the Carswell Company's Canadian Current Law (monthly) provides a note of the federal and provincial bills, introduced, and when they have received second or third reading. C.C.L. also provides a table of statutes amended, repealed or proclaimed in force for the federal, provincial and territorial governments.

13. Provincial and Territorial regulations acts patterned on the Uniform Regulation Act of the Conference of Commissioners on Uniformity of Legislation in Canada, (Conf. of Com. on U. of Leg. in Canada, Proceedings, 25th Session, 1943) or sections in the Interpretation Act, Evidence Act or Queen's Printer Act (such as for Prince Edward Island).

14. See: Jane Baldock, "The Publication of Regulations in Ontario", C.A.L.L. Newsletter (May-June 1973), pp. 82-89. Alice Janisch, "Regulations in Nova Scotia: Status of Publication", C.A.L.L. Newsletter (Jan.-March 1973), pp. 23-30. David S.M. Huberman, "Searching for Delegated Legislation on How to Find Your 'Red Tape'", (1964-66) 2 U.B.C. Law Review 467-477.

15. See: Alice Janisch, Publications of Administrative Board Decisions in Canada (1972) A Report Compiled for the Canadian Association of Law Libraries. Also note the number of boards with decision-making power, (in Ontario for example, see: Ontario. Royal Commission Inquiry into Civil Rights -- Hon. J.C. McRuer -- in 5 volumes, 1971).

A few specialized administrative board reports produced commercially do, of course, develop in high litigation -- lucrative areas: Land Compensation Reports (Canada Law Bk.), Ontario Municipal Board Reports (Canada Law Bk.), and Labour Arbitration Cases (Canada Law Bk.).

The larger phenomenon of subject reports which contain both administrative board decisions and court decisions will be noted later.

16. Hon. Jules Deschenes (Chief Justice of Superior Ct. of Quebec), "On Legal Separatism in Canada" Law Society of Upper Canada Gazette Vol. XII (No. 1 March 1978), p.1.

17. Maritime Law Book Co. of Fredericton, N.B. publishes:

New Brunswick Reports, 1969

Nova Scotia Reports, 1970 - (and five retrospective volumes covering 1965-1969)

Nfld. & P.E.I. Reports, 1971

and coverage of the Federal Ct. and Sup. Ct. of Canada.

18. Burroughs Ltd., a subsidiary of Carswell Ltd., publishes:

B.C. Law Reports, 1977

Alberta Law Reports, 2d series, 1976

Also, Maritime Law Book Co. publishes a competing series for Alberta, Alberta Reports, 1976 - (see a comparison of the two reports by G.L. Starr in C.A.L.L. Newsletter, Vol. 2 N.S. (No. 3 Nov.-Feb. 1976/77) p.65.

19. Published by Carswell Ltd. and supplemented in the current year by a monthly digest, Canadian Current Law. These services provide the basic "Cases Judicially

Considered" tool and C.C.L. of late provides a cumulative status of bills for all the provinces, federal government and territories and a list of acts recently proclaimed or otherwise brought in force.

20. Western Legal Publications Ltd. of Vancouver, B.C. now publishes the following. Copies of the decisions are available at 50 cents per page from them.

Alberta Decisions (Civil and Criminal)

B.C. Decisions* (Civil/Criminal in separate series), 1972

Manitoba Decisions (Civil and Criminal), 1975

Saskatchewan Decisions (Civil and Criminal), 1976

* formerly B.C. Unreported Decisions

Province/Territory	Law Society Rolls, 1977	Law Offices*, 1977	Individuals*, 1977	% of Reported Civil Cases** 1956 - 1974 from Province	1974 Estimated Population of Province***	1971 Population Per Sq. Miles in Province ***
1. Prince Edward Island	70	30	71	1	117,000	51.11
2. Northwest Territories	100	15	35	1	38,000	.03
3. Yukon	103	10	19	-	19,000	.09
4. Newfoundland	214	82	197	1	542,000	3.65
5. Saskatchewan	730	355	672	10	907,000	4.21
6. New Brunswick (active)	739	282	630	2	662,000	22.80
7. Nova Scotia (active)	775	359	766	4	813,00	38.67
8. Manitoba (active)	1,122	429	1,013	10	1,011,000	4.66
9. Alberta	2,258	732	2,007	11	1,714,000	6.54
10. British Columbia	3,201	1,224	3,217	24	2,395,000	6.08
11. Quebec - Advocates - Notaries	4,939 1,582	2,094	4,458	3	6,134,000	22.80
12. Ontario	11,542	5,296	10,679	30	8,094,000	22.39

Sources: * Canadian Law List, 1977
** C.L.I.C. Draft Report on Law Reporting in Canada (1975?) p. 32
*** Canada Year Book 1975 (Statistics Canada)