



J. MICHAEL
GOODSON
LAW LIBRARY
DUKE UNIVERSITY SCHOOL OF LAW
Research Guides

CANADIAN LEGAL RESEARCH

I. INTRODUCTION	1
II. RESEARCH GUIDES/CITATION FORM	1
III. STRUCTURE OF THE CANADIAN JUDICIAL SYSTEM	2
IV. ENCYCLOPEDIAS AND DIGESTS	2
V. CASE LAW	3
A. Federal.....	3
B. Federal and Provincial.....	4
C. Provincial	4
D. Subject Law Reporters	4
VI. STATUTES	5
A. Federal.....	5
B. Provincial	6
VII. REGULATIONS	6
A. Federal.....	6
B. Provincial	7
VIII. A NOTE ABOUT QUÉBEC	7
IX. DICTIONARIES AND DIRECTORIES.....	8
X. TREATISES.....	8
XI. PERIODICALS	9
XII. CANADIAN LAW ON THE WEB	9

I. INTRODUCTION

The Goodson Law Library has extensive holdings in Canadian law, emphasizing English language material, housed either in the reference collection or on Level 1 under call numbers beginning with KE. The collection is arranged beginning with national statutes, followed by administrative codes, gazettes, case digests and reporters, and then other material, such as treatises. Following the national collection, the provincial collections are arranged in a similar fashion. Canadian law journals are shelved on Level 4 with Law Periodicals, alphabetically by title.

II. RESEARCH GUIDES/CITATION FORM

Best, Catherine P., *Best Guide to Canadian Legal Research* (<http://legalresearch.org>). A good tutorial on Canadian legal research.

The *Canadian Guide to Uniform Legal Citation* (7th ed.) (Ref. KE 259.C25 2010) developed by the *McGill University Law Review* has been adopted by several law reviews and courts in Canada. It provides citation information in both English and French.

Le May, Denis and Dominique Goubau, *La Recherche Documentaire en Droit* (5th ed.) (Ref. KEQ 140.L45 2002). This work provides a concise introduction to researching Canadian federal and Québec provincial law in French. It has some information on other provinces.

MacEllven, Douglass T. et al., *Legal Research Handbook* (5th ed.) (Ref. KE 250.M33 2003). Contains lists of primary sources and an extensive treatment of Canadian law databases. It also provides research check lists.

McCormack, Nancy et al, *The Practical Guide to Canadian Legal Research* (3d ed.) (KE 250.C37 2010). This is a good, concise introduction to Canadian resources which includes checklists to follow in researching.

Tjaden, Ted, *Researching Canadian Law* (<http://www.nyulawglobal.org/globalex/Canada1.htm>). Includes an introduction to the Canadian legal system and information about both print and online resources. The author also publishes *Legal Research and Writing* (Essentials of Canadian Law series), 5th edition available at KE250 .T53 2010.

III. STRUCTURE OF THE CANADIAN JUDICIAL SYSTEM

Canada's judicial system is composed of both provincial courts and federal courts. Provincial courts hear cases involving provincial law and most federal law cases. Although there are variations, all the provinces have developed a system with trial courts of general jurisdiction (whose names vary from province to province) whose decisions may be appealed to courts of appeal.

Canada has a federal court of limited jurisdiction, known until 1971 as the Exchequer Court, which hears such matters as copyright, patents, and claims against the federal government. The decisions of both federal and provincial courts may be appealed to the Supreme Court of Canada, which is also the constitutional court. The website of the **Supreme Court of Canada** provides a good explanation of the Canadian judicial system (<http://www.scc-csc.gc.ca/court-cour/index-eng.asp>).

IV. ENCYCLOPEDIAS AND DIGESTS

A good place to start your research is by consulting one of the digests or encyclopedias of Canadian law. The library has the two basic encyclopedias for Canadian law updated through 2007, when both subscriptions stopped. The *Canadian Encyclopedic Digest (Ontario)* (KEO 142.C35 3rd ed.) focuses on Ontario and federal law. The *Canadian Encyclopedic Digest, Western* (KE 156.2.C21 1978) focuses on federal law and provincial law of the Western portion

of Canada. These two works provide a textual summary of the law with extensive footnotes to primary sources.

The *Canadian Abridgment* (3d ed.) (KE 173.C35 2003 & online in Westlaw ABRIDGMENT database) provides a digest for all reported cases from all of Canada (except Québec civil law cases heard in provincial courts) and many unreported cases. This comprehensive work includes case digests, statute and case citations, a consolidated table of cases and an *Index to Canadian Legal Literature* (Reference Indexes) which includes both treatises and periodicals. The *Guide to Research Using the Canadian Abridgment* (KE 250.G85 1989) and *A Short Guide to the Canadian Abridgment* (KE173 .C352 2007) will help you use this work in print and online.

If you need only a short summary of Canadian federal or provincial law, check the *Martindale-Hubbell International Law Digest* (no longer published in print but available online in LexisNexis).

V. CASE LAW

Finding case law for Canada is similar to finding case law in the United States. There are reporters for the provincial, territorial, and federal courts. Canadian decisions are also available in electronic format on Lexis, Westlaw and the Internet. The reporters available at Duke include:

A. Federal

Supreme Court cases are reported in *Canada Supreme Court Reports* (KE140 .A23). Coverage of this official publication begins in 1867. From 1923 to 1969, the set was entitled *Canada Law Reports: Supreme Court of Canada*. Since 1970 all decisions have been reported in both French and English. Judgments of the Supreme Court of Canada are available on LexisNexis (SCRRCS) and Westlaw (SCC-CS); decisions since 1948 and selected prior judgments are also available on the web at LexUM (<http://scc.lexum.org/en/index.html>) and CanLII (<http://www.canlii.org/en/ca/scc/>).

Since the Federal Court's inception, its decisions have been reported in the official *Canada Federal Court Reports* (KE142. A23). This reporter series contains all appellate cases but only a selection of trial cases. Federal Court of Canada decisions are on Lexis (CANFCR) and Westlaw (CANFC-CS); decisions since 1990 are at the court's website (<http://decisions.fct-cf.gc.ca/en/index.html>) and CanLII (<http://www.canlii.org/en/ca/fct/>).

Exchequer Court decisions are located in the official publication, *Reports of the Exchequer Court of Canada*, from 1875 to 1922, and *Canada Law Reports: Exchequer Court of Canada* (both at KE142 .A23) from 1923 to its demise in 1970. In the Duke collection, the *Canada Law Reports* for 1923 to 1951 bind together both the Supreme Court cases and the Exchequer Court cases and are shelved with the *Canada Law Reports: Supreme Court of Canada* (KE140 .A23). All Exchequer Court decisions are on Lexis (EXCR); cases from 1875 through 1920 are on Westlaw (CAN-ALLCASES).

Beginning with 1974, a commercially produced reporter, *National Reporter* (KE138 .N37), has published all Supreme Court and Federal Court of Appeal decisions and a selection of cases heard by the British House of Lords and the Privy Council. Decisions appear more quickly here than in the official publications. This set also provides headnotes to the decisions and is keyed to a topic index created by one of Canada's major law publishers, Maritime Law Book Company (much like West's key number system).

B. Federal and Provincial

The *Dominion Law Reports* (KE 132.D66) is a weekly report of both provincial and federal cases throughout Canada. It is presently in its 4th series. Beginning with the 2d series this service provides cumulative table of cases for each series and subsequent histories of each case reported. Coverage begins in 1912; it is available online from 1986 on Westlaw (CAN-ALLCASES).

C. Provincial

There are two regional reporters that publish provincial decisions. The *Western Weekly Reports* (KE156 .A2) covers Alberta, British Columbia, Manitoba, the Yukon Territory, the Northwest Territories and Saskatchewan. Its coverage begins in 1911. The provinces of New Brunswick, Newfoundland and Prince Edward Island were earlier covered by *Maritime Provinces Reports* (1929-1968) (KE150 .A22) and *Eastern Law Reporter* (1905-1914) (KE150 .A2). These provinces now have their own reporters and the Law Library does not collect the regional reporter.

The Law Library has a selection of the current provincial reporters and some earlier reporter series. Provincial reporters are published for each of the provinces and territories, except for Prince Edward Island and Newfoundland, which have a combined reporter. Only Ontario and Québec have had uninterrupted reporting for any length of time. Provincial reports for others areas began only in the late 1970s or early 1980s. The provincial reporters will have topic indexed notes if published by Maritime and annotations to the *Canadian Abridgment* if published by Carswell (another of Canada's major publishers of legal material).

To find whether the library has the provincial reporter you want, perform a subject search in the online catalog: *law reporters, digests, etc.--[province name]*. A large number of provincial court decisions are on LexisNexis and Westlaw.

D. Subject Law Reporters

There are many **subject law reporters** for Canada. They include standard areas of law, such as patents, family law and securities, as well as some that you may not expect, such as human rights. The best method of finding out whether such a reporter exists for your area of interest is to check the lists provided in MacEllven's *Legal Research Handbook* (Ref. KE250 .M33 2003), McCormack's *The Practical Guide to Canadian Legal Research* (KE250 .C37 2010), or Banks's *Banks on Using a Law Library* (KE250 .B35 1994). You can also look in the online catalog searching by subject, e.g., *taxation canada cases*. LexisNexis and Westlaw both

include some topical reporters as well.

E. Case Updating

As in United States legal research, all cases must be updated (Canadians generally refer to updating cases as “noting up”). It is possible to update cases from the Supreme Court of Canada and other federal courts, as well as from some specialized and provincial courts, using Shepard’s citators on Lexis. The other method of updating cases is to use Canadian case citators. The end of the *Canadian Abridgment* consists of a series of volumes entitled **Canadian Case Citations** (KE173 .C353). In order to update a case, you must search it in each of the series by case name and then go to the paper pamphlets that update the citations. Although the *Canadian Abridgment’s* citator is the most comprehensive, it does not contain all cases. *Dominion Law Reports* (KE132 .D66) and *Canadian Criminal Cases* (KE8805.8 .C3) annotations should be consulted as well.

Provincial case citators may also be available for the province in which you are interested. This is especially important for Québec because the *Canadian Abridgment* does not contain information on Québec's private law. In fact, there are no completely annotated citators for Québec. This means that most citators for Québec will be only a string of citations without stating whether the cited case was followed, overturned or distinguished. **Researching Canadian Law** (<http://www.nyulawglobal.org/globalex/Canada1.htm>) provides detailed guidance on updating cases.

VI. STATUTES

A. Federal

The **Canadian Constitution** is actually a series of documents beginning with the British North America Act passed in 1867. With the passage in 1982 of the Canada Act, the British Parliament officially removed itself from the legislative structure of Canada. Simultaneously, the Canadian Parliament passed the Constitution Act, 1982, which consolidated all of the various acts that were considered part of the Canadian Constitution and included a schedule of 30 laws, of which 23 are still in effect. It also added to the Constitution the Canadian Charter of Rights and Freedoms, laws analogous to the U.S. Bill of Rights. Since then there has been added to the Constitution the Constitution Act, 1985 (Representation). The best source for the Canadian Constitution is **A Consolidation of the Constitution Acts, 1867 to 1982** (consolidated as of January 1, 2001) (KE4165 2001). The Constitution Acts are also available on the web at <http://laws.justice.gc.ca/en/const>. **The Canadian Charter of Rights and Freedoms = Charte canadienne des droits et libertés** (Gérald-A. Beaudoin & Errol Mendes eds.), 4th ed. (KE4381.5.Z85 C35 2005) is a bilingual commentary with citations to many cases.

Bills are read three times in parliament before becoming statutes. Current bills are available on the House of Commons website at <http://www.parl.gc.ca/common/index.asp?Language=E>. Enacted bills are next published in the **session laws** (KE87. A2), which are bound and chronologically arranged. Until 1984, the volumes were sessional, which means that they did not correspond to the calendar year. Beginning with 1984 they are annual volumes.

Periodically, Canada consolidates its statutes and issues them as *Revised Statutes of Canada* (KE89 1985); the most recent consolidation (in both English and French) was published in 1985. These and some earlier revised statutes are adjacent to the session laws. Federal legislation is available on LexisNexis (CANLEG), Westlaw (CANFED-ST), and on the Canadian Department of Justice web site at <http://laws.justice.gc.ca/en/index.html>. Statutes on this website are updated quarterly.

To update statutes, check *Canadian Statute Citations* (KE173 .C354), then check the issues of the *Canada Gazette Part III* (on the web since May 1998 at <http://www.gazette.gc.ca/index-eng.html>) that post-date the most recent issue. Updating the Constitution will be the same as updating a statute.

For more information on updating statutes see Mary Jane T. Sinclair's *Updating Statutes and Regulations for All Canadian Jurisdictions* (4th ed.) (Ref. KE250 .S54 1995) which provides an organized method of updating any provincial or federal regulation or statute in both French and English.

B. Provincial

The provincial statutes are published in annual volumes. Most of the provinces have also published their statutes in codified form, generally found under the title *Revised Statutes of [Province]* (Manitoba's is slightly differently titled, *Reenacted Statutes of Manitoba*). In order to update the statutes, you may use one of two methods. If the library has a statute citator for the province, you may use that method, searching for the relevant statute in the citator to update it. If no citator is available, the annual session laws volumes of most provinces include tables for updating the statutes. Both of these methods, obviously, update the statute only up to just before the publication date of the latest volume. Check with a reference librarian for help in updating a statute past the date of the latest volume.

For more information on updating statutes and regulations, see *Updating Statutes and Regulations for All Canadian Jurisdictions* (Ref. KE250 .S54 1995).

Some provincial legislation is available on LexisNexis, Westlaw and online (<http://www.law-lib.utoronto.ca/resources/locate/canleg.htm>).

VII. REGULATIONS

Certain statutes enable federal or provincial executive agencies to create rules and regulations to govern various areas. These rules and regulations, together with other subordinate legislation, such as orders and municipal by-laws, may be referred to as regulations or statutory instruments.

A. Federal

In order to find current regulations, you must begin with the most recent consolidation of regulations, the *Consolidated Regulations of Canada, 1978* (KE119 1978). This source

lists regulations under the name of the enabling statute. Unfortunately, this work does not have an index, and access is only through the Table of Contents. However, it is now available on LexisNexis (CANREG), Westlaw (CANFED-REG), and on the Canadian Department of Justice website (<http://laws.justice.gc.ca/en>).

For the very most recent version of a regulation, you must consult the *Canada Gazette Part II* (KE119 .A1 or on the web since Jan. 1998 at <http://www.gazette.gc.ca/rp-pr/p2/index-eng.html>). You can access regulations through the *Gazette's* quarterly publication “Consolidated Index of Statutory Instruments” (<http://laws-lois.justice.gc.ca/eng/IndexStatutoryInstruments/>). This source contains tables that list the regulations and other statutory instruments alphabetically and a table of enabling statutes. Because the changes listed in an issue of the *Gazette* do not include the portion of the old regulations being affected, you must examine each amending regulation, which means looking at each *Gazette* issue.

B. Provincial

Provincial statutory instruments are researched in a similar fashion to federal ones. Each province also publishes official gazettes that contain new regulations and amendments of the older ones. Check the online catalog for library holdings of the particular province in which you are interested. Some provincial regulations are available on LexisNexis, Westlaw, and online (<http://www.law-lib.utoronto.ca/resources/locate/canleg.htm>).

For more information on updating regulations see *Updating Statutes and Regulations for All Canadian Jurisdictions* (Ref. KE 250.S54 1995).

VIII. A NOTE ABOUT QUÉBEC

Québec law is not as foreign to the rest of Canadian law as one might think. After all, Québec is still bound by Canadian federal law. The federal cases decided in Québec provincial courts are decided in the same way as in all other provinces. The major influence of the civil law is in the area of Québec's private law, *i.e.*, that part of the law that regulates the relationships among individuals, associations and corporations. Henri Kélada's *Précis de droit québécois* (KEQ 219 .K44 1997) is a good introduction to Québec law.

Québec enacted the *Civil Code of Lower Canada* in the late 1800s. About a century later it developed the *Civil Code of Québec*, which was a massive revision of the earlier code. Québec phased in part of the *Civil Code of Québec* in the 1980s. In 1991 Parliament passed into law a revision of the *Civil Code of Québec* that replaced both of the earlier codes. This newest code became effective as of January 1, 1994. The code is in ten sections: Persons, Family, Successions, Property, Obligations, Claims and Hypothecs, Evidence, Prescription, Publication of Rights and Private International Law. The library's copies of the code (both in English and in French) are located at KEQ214.5.

Brierly, John E.C. and Roderick A. MacDonald, *Quebec Civil Law: An Introduction to Quebec Private Law* (KEQ 219.Q83 1993) provides a useful discussion of the implications

of the 1994 civil law.

Laws (including the Civil Code) and regulations of Québec are available in French and English at <http://www2.publicationsduquebec.gouv.qc.ca/home.php>.

It is important to remember that case law does not have quite the precedential value that it does for the common law parts of Québec's laws. When researching provincial law in Québec, keep in mind whether you are looking at a civil code or common law subject.

IX. DICTIONARIES AND DIRECTORIES

Canadian Online Legal Dictionary (<http://www.irwinlaw.com/cold>) is a free online glossary of legal terms from the publisher Irwin Law. There are also many Canadian law dictionaries shelved in the reference collection, including *The Dictionary of Canadian Law* (4th ed.) (Ref. KE183 .D85 2011) and *Canadian Law Dictionary* (Ref. KE183 .Y63 2003). Dictionaries useful for researching the law in Québec include *Dictionnaire de droit privé* (Ref. KEQ132 .D52 1985), *Private Law Dictionary and Bilingual Lexicons* (2d ed.) (Ref. KEQ132 .P74 1991), and *Expressions juridiques en un clin d'oeil* (2d ed. 2000) (Ref. K52 .F7 B42 2000). The *Ontario English-French Legal Lexicon* (Ref. KEO149 .L49 1987) gives both English to French and French to English equivalences of legal terms. *Sanagan's Encyclopedia of Words and Phrases, Legal Maxims, Canada* (5th ed.) (KE180 .E522) which is updated annually, provides citations to judicial interpretations of words and phrases.

Canadian Law List (Ref. KE 211.C36), which is issued annually, is a directory of lawyers that also lists addresses and phone numbers of governmental agencies and courts. *Martindale-Hubbell* (Ref. KF190 .M371 2011 & in LexisNexis) lists a selection of Canadian practitioners.

X. TREATISES

The Law Library owns many treatises on Canadian law. Most are classified under KE and are located on Level 1. Among the basic texts explaining the Canadian legal system are:

Atkinson, Paul, *The Canadian Justice System: An Overview* (KE444 .A85 2005)

Fitzgerald, Patrick and Barry Wright, *Looking At Law: Canada's Legal System* (5th ed.) (KE444 .F58 2000). This is a basic overview of the Canadian legal system, with an emphasis on the common law jurisdictions.

Gall, Gerald L., *The Canadian Legal System* (5th ed.) (KE444 .G34 2004). Includes a chapter on the legal system in Québec.

Waddams, S.M., *Introduction to the Study of Law* (6th ed.) (KE445 .W32 2004). Gives basic legal concepts and a description of the Canadian legal system.

XI. PERIODICALS

The major legal literature indexes, *LegalTrac* (<http://search.library.duke.edu/search?id=DUKE002990148>) and *Index to Legal Periodicals* (<http://search.library.duke.edu/search?id=DUKE003350460>) include Canadian legal literature. *Index to Canadian Legal Periodical Literature*, an index devoted solely to Canadian journals, is available on the Index Table. The *Canadian Abridgment* includes as part of its service the *Index to Canadian Legal Literature* (Reference Indexes and Westlaw (ICLL)) which indexes legal periodicals, treatises and law related material. The French language material is organized under French subject headings, which are alphabetized together with the English subject headings. Both LexisNexis and Westlaw include some law journals in their Canadian databases.

XII. CANADIAN LAW ON THE WEB

One of the most useful Internet sources for Canadian law is the **Canadian Legal Information Institute** (<http://www.canlii.org>), a source of Canadian primary legal material. From this site you should be able to find all the primary source material available on Canadian law, in addition to links to government agencies, law firms, etc.

Researching Canadian Law (<http://www.nyulawglobal.org/globalex/Canada1.htm>) also includes links to many websites with primary materials.

rev. 10/2011 jlb