

RESEARCHING CANADIAN LAW

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HISTORY AND PURPOSE

CONSTITUTION

The Canadian constitution originated from numerous statutes and is not based on a single document. Prior to April 17, 1982, the written component of the constitution consisted primarily of three British statutes enacted by the Parliament of Great Britain. The three statutes - the **Colonial Laws Validity Act of 1865**, the **British North America Act of 1867 ("B.N.A. Act")**, and the **Statute of Westminster of 1931** - provided the basic framework for the Canadian constitution. The **B.N.A. Act** was the most important component of the written constitution. Any law passed by the Canadian Parliament or a legislature had to conform to the jurisdictional constraints set out in the **B.N.A. Act**.

After a decade of constitutional negotiations between the provinces and the federal government to restructure and modernize the Canadian constitution, Parliament approved and enacted the **Canada Act of 1982**. It contains schedule B, the **Constitution Act, 1982**, which states that the Constitution Acts from 1867 to 1975 and the 1982 Act may be cited together as the **Constitution Acts, 1867 to 1982**. The **Canada Act of 1982** also renames several statutes, renaming the **British North American Act of 1867** to the **Constitution Act of 1867**. The Canadian Charter of Rights and Freedoms comprises Part I of the **Constitution Act, 1982**.

Constitutional documents are printed in several sources, but many of the printed versions are not up to date. The best print source to use for the Constitution Acts is **A Consolidation of the Constitution Acts 1867 to 1982: Consolidated as of 17 April 1982**, published by the federal Department of Justice and updated from time to time. [KE 4165 1983] [<http://canada.justice.gc.ca/en/laws/const/index.html> >] [See Katherine Hinton, **Amending the Canadian Constitution: Lessons from Meech Lake**, 42 U. TORONTO L. J. 139-169 (1992)].

CANADIAN COURTS

Canada has both federal and provincial courts, but they do not constitute two separate systems as in the United States. For example, criminal laws are enacted by the Parliament of Canada, but the laws are administered mainly in provincial courts. Thus, provincial courts may hear cases involving both federal and provincial law. Each province has its own hierarchy of courts. The structure and names vary somewhat from one province to another.

A. Supreme Court of Canada

The Supreme Court of Canada has been the final court of appeal since 1949. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction within Canada. Appeal to the Supreme Court is normally by application for leave to appeal. The federal government may also refer constitutional cases directly to the Supreme Court. Decisions are reported in the **Supreme Court Reports**. [KE 140 .A25]

B. Federal Court of Canada

The Federal Court of Canada continues the old Exchequer Court of Canada. It has both a Trial Division and a Federal Court of Appeal. The Federal Court's jurisdiction is limited: it

does not have any diversity jurisdiction with the provincial superior courts, and it is not a parallel court structure to the provincial superior courts. Although in some matters, the Federal Court and the provincial courts have concurrent jurisdiction. The Federal Court's principal areas of jurisdiction relate to cases arising out of decisions and orders of federal boards, commissions, and other tribunals, and to such matters as copyrights, patents, and inter-provincial railways. Court decisions prior to 1970 are published in the **Exchequer Court Reports**. [KE 142 .A25] Decisions after 1970 are reported in the **Federal Court Reports**. [KE 142 .A26]

C. Provincial Courts

Each Canadian province has superior courts of inherent jurisdiction. The trial level courts may be called the Supreme Court, the High Court of Justice, or the Court of Queen's Bench, depending upon the province. The appeal level may be called the Court of Appeal or the Appellate Division. Some provinces have county or district courts. Most provinces have established special divisions of the superior court at trial, such as the family division or small claims court. While most of the provinces still publish individual provincial reporters (check the Online Catalog for titles and location information), there are several regional reporters:

1. **Atlantic Provinces Reports** - reports cases decided by the courts of New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island. [KE 150 .A23]
2. **Dominion Law Reports** - reports cases decided by both federal and provincial courts and includes numerous cases decided by the superior courts of the provinces. [KE 132 .A125]
3. **Western Weekly Reports** - reports cases decided by the courts of Alberta, British Columbia, Manitoba, Saskatchewan, and the Yukon Territory. [KE 156 .W53]

D. Special Courts

The federal government has established special courts such as the Tax Court of Canada, the Court Martial Appeal Court, the Citizenship Court, and various boards and tribunals appointed under federal statutes.

FINDING A CASE CITATION

To obtain the citation of a case for which you only have the case name or to obtain parallel citations, use the comprehensive **Consolidated Table of Cases** (CTC) provided with the **Canadian Abridgment (2d)**. [KE173 .C35 1966] Use the CTC to locate the volume and page number of every law report in which the case appears and to a digest of the case in the **Canadian Abridgment (2d): Case Digests**. The cases in CTC are organized alphabetically through its four main volumes, and are cross-referenced according to every reported variant of the case name, as well as by the defendant's name. Quarterly and monthly updates supplement the main volumes.

The core of the **Canadian Abridgment (2d)** is an encyclopedic collection of case digests, or summaries, of issues decided by Canadian courts and administrative tribunals from the early 1800s to the present. The **Case Digests** are organized by subject according to the **Abridgment's** Key classification system. Its main volumes contain over 300,000 digests of reported decisions from the common law provinces, as well as cases falling under federal jurisdiction from Quebec. The "Key and Research Guide" and the "General Index" provide guidance in locating cases for the topic being researched. Monthly updates supplement the main volumes. [KE 173 .C35]

UPDATING CASE CITATIONS

There is no Canadian counterpart to **Shepard's Citations**. To obtain citations to subsequent cases that have considered an earlier case, use the **Canadian Abridgment (2d): Canadian Case Citations** service. The cases are arranged alphabetically through the 10 main volumes. Look up the case by name to see its history and how it has been treated in subsequent Canadian cases. Each

main volume is supplemented by a single soft cover volume which is replaced annually on a cumulative basis. Quarterly and monthly volumes are available for the current year.

FEDERAL LEGISLATION

Canada has a parliamentary system of government. The normal legislative process at the federal level is for the government to initiate public bills for approval by the elected House of Commons and the appointed Senate. When both Houses have passed a bill, the bill is submitted for Royal Assent to the Governor or Deputy of the Governor General. Upon Royal Assent, the bill becomes an Act of Parliament.

A. Status of Current Bills

Each issue of the *Abridgment's Canadian Current Law: Legislation* tracks the progress of bills and amendments to statutes and regulations in all Canadian jurisdictions. [KE 173 .C35]

B. Canada Gazette

After a bill has received Royal Assent, it is assigned a chapter number (which has no relation to the bill number) and is first published in the *Canada Gazette, Part III*. In addition to the text of recent statutes, the *Canada Gazette, Part III* periodically issues a table of public statutes in force and a table of proclamations. The information found in the *Canada Gazette, Part III* will eventually be superseded by the next annual volume of statutes. For current issues, see http://canada.gc.ca/gazette/gazette_e.html.

C. Statutes of Canada

Statutes are officially published in an annual volume of statutes. Prior to 1984, statutes were not published in a bound volume until the end of each session of Parliament. A session may have lasted several years; thus, the statutes for that session were published in several volumes. [KE 89]

D. Revised Statutes of Canada

Canadian statutes, both federal and provincial, appear in either sessional or annual volumes and are also consolidated from time to time in volumes called revised statutes. The Statute Revision Commission periodically reviews the public general acts and either repeals acts, deletes expired acts, or makes minor improvements to more clearly bring out the intention of an act. The revision is then authorized by an Act of Parliament. Once proclaimed, the revision becomes the definitive version of the statute, subject to any changes made during subsequent sessions of Parliament. The practical effect of the *Revised Statutes* is to consolidate prior statutory law.

The current public statutes in force are contained in the latest *Revised Statutes* combined with the annual volumes of statutes issued since the last *Revised Statutes*. Since the revision process amends chapter and section numbers, supplements to the *Revised Statutes* republish acts passed while the revision process was under way. Acts passed after 1985 are republished in the supplements with new section numbering conforming to the new *Revised Statutes*. [KE 89 1970, KE 89 1985]

E. Finding a Specific Federal Statute

Detailed subject indexes, such as exist for United States federal and state codes, do not exist for Canadian legislation. The closest equivalent is the subject index to the *Revised Statutes of Canada 1985* produced by the Canadian Law Information Council. In most Canadian jurisdictions, the publication of a loose-leaf edition that provides frequent updating of statutes is one way of ensuring that the researcher can locate a specific statute together with information regarding recent amendments or updates. [KE 89 1985]

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F. Federal Statutes Judicially Considered

The concept of annotated codes is rare in Canada. Certain specialized statutes, like the **Criminal Code**, have commercially-produced codes that provide annotations to case law. The **Canadian Abridgment (2d): Canadian Statute Citations** service summarizes cases that have considered a particular section of a statute. **Canadian Statute Citations** is arranged in separate jurisdictional volumes. To find out how a statutory provision has been interpreted, consult the volume or volumes for the appropriate jurisdiction, and look up the statute alphabetically by name. Find the section number you are looking for and you will see a list of cases in which that section has been discussed and where to find those cases. Each jurisdictional volume is supplemented by a soft cover volume which is replaced annually. Quarterly and monthly updates are also available. [KE 173 .C35]

FEDERAL REGULATIONS

Subordinate legislation is the generic term given to rules, regulations or orders made under statutory authority. Regulations must be published in the **Canada Gazette, Part II** within twenty-three days of registration unless the regulations are exempted from publication by the enabling statute. If publication is required, the regulation is effective as of the date of registration. Every three months, a **Consolidated Index of Statutory Instruments** is published as a separate issue of the **Canada Gazette, Part II**. This index lists citations to all regulations currently in force from 1955 to date.

LEGAL PERIODICALS

The leading Canadian legal periodical indexes are the **Index to Canadian Legal Periodical Literature** and the **Index to Canadian Legal Literature** (ICLL) volumes of the **Canadian Abridgment (2d)**. While both indexes overlap to some extent, they are significantly different. The ICLL contains books, articles, government publications, audio-visual materials, continuing legal education materials, case comments and annotations in English and French. The ICLL is updated eight times a year in **Canadian Current Law: Canadian Legal Literature**. [Bay 3-C, Index Table]

ELECTRONIC ACCESS

- [Constitution Acts, 1867-1982](#)
- [Canadian Charter of Rights and Freedoms](#)
- [Consolidated Statutes and Regulations](#)
- [Canada Gazette](#)
- [Federal and Provincial Case Law](#)
- [Provincial and Territorial Statutes](#)
- [Federal Parliament - Bills](#)
- **Supreme Court** (1989 to date): <http://www.lexum.umontreal.ca/csc-scc/>
- **York University Osgoode Hall Law Library**: <http://info.library.yorku.ca/depts/law/lawhome.htm>
- **University of Toronto Bora Laskin Law Library** <http://www.law-lib.utoronto.ca/resources/intro.htm>
- **LexUM** http://www.lexum.umontreal.ca/index_en.html (from University of Montreal)
- **LEXIS** -- CANADA Library.

REFERENCES

- Margaret A. Banks. **BANKS ON USING A LAW LIBRARY: A CANADIAN GUIDE TO LEGAL RESEARCH** (6th Ed., 1994). [KE250 .B87 1994]
- Barbara A. Cotton. **Basic Legal Research: How to Gather Raw Research Materials**, 15 **ADVOCATES' QTRLY** 332-351 (1993).
- Denis S. Marshall. **An Introduction to Canadian Legal Research**, 81 **LAW LIBRARY J.** 465-488 (1989).

