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*Research Guides*

# CANADIAN LEGAL RESEARCH

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## 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. Selected Canadian legal material is also available online, through the research services LexisNexis Quicklaw, Lexis Advance, Westlaw, and HeinOnline, among others.

**Note: Quicklaw** (<https://advance.lexis.com/canadaresearchhome>) currently (as of October 2017) requires individual user registration while issues with IP access are restored. Current Law School students, faculty, and staff may contact the Reference Desk for registration information.

## II. RESEARCH GUIDES

*The Canadian Legal Research and Writing Guide* (<http://legalresearch.org>). Formerly known as “Best Guide to Canadian Legal Research” (for its original author, Catherine Best), this site

from CanLII provides an excellent tutorial on Canadian legal research and legal citation.

MacEIVen, Douglass T. et al., *Legal Research Handbook*, 6th ed. (Ref. KE250.M32 2013). Contains lists of primary sources and an extensive treatment of Canadian law databases.

McCormack, Nancy et al, *The Practical Guide to Canadian Legal Research*, 4th ed. (Ref. KE250 .C37 2015). 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), 3d edition (KE250 .T53 2010 & online in vLex: <https://search.library.duke.edu/search?id=DUKE004081975>).

### III. 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:

- Forcese, Craig, *The Laws of Government: The Legal Foundations of Canadian Democracy*, 2d ed. (KE4219 .F67 2011). Overview of Canada's parliamentary system.
- Gall, Gerald L., *The Canadian Legal System*, 5th ed. (KE444 .G34 2004). Includes a chapter on the legal system in Québec.
- McCormack, Nancy and Melanie R. Bueckert, *Introduction to the Law & Legal System of Canada* (KE444 .M33 2013). Delves into the historical background for Canadian law.
- Waddams, S.M., *Introduction to the Study of Law*, 8th ed. (Ref. KE445 .W32 2016). Gives basic legal concepts and a description of the Canadian legal system.

Additional treatises on particular legal topics can be found in the Duke Libraries Catalog with a subject search for [topic] – Canada; e.g., *constitutional law – Canada; civil procedure – Canada*. The “Essentials of Canadian Law” series, published by Irwin Law, is an excellent starting place for many Canadian legal subjects. The database vLex provides electronic access to many of the recent titles in that series (<https://search.library.duke.edu/search?id=DUKE004081975>), which are also available in print at the library. Other recommended treatises for specific legal topics can be found on the Canadian Legal Research and Writing Guide “**Suggested Textbooks**” page (<http://legalresearch.org/essentials/process/commentary/texts/suggested-textbooks/>).

### IV. ENCYCLOPEDIAS AND DIGESTS

Another good place to start your research is one of the digests or encyclopedias of Canadian law. The *Canadian Encyclopedic Digest* is available to Duke Law students, faculty, and staff on Westlaw, through the path International Materials > Canada > All Canadian Treatises. The online version combines and updates the text of two separate print encyclopedias, both no longer updated in print at the Goodson Law Library: the *Canadian Encyclopedic Digest (Ontario)* (KEO 142.C35

3rd ed. updated through 2007 in print), which focuses on Ontario and federal law; and *Canadian Encyclopedic Digest, Western* (KE 156.2.C21 updated through 2007 in print), which focuses on federal law and provincial law of the Western portion of Canada. Entries in the *Digest* provide a textual summary of the law with extensive footnotes to primary sources.

**Quicklaw** (<https://advance.lexis.com/canadaresearchhome>) provides access to the full text of the encyclopedia *Halsbury's Laws of Canada*. *Halsbury's* began publication in 2006, and consists of topical volumes of commentary written by prominent legal scholars. Quicklaw also contains *JurisClasseur Quebec*, a French-language encyclopedia covering Quebecois law, and the *Canada Digest*, a compilation of various topical digest services. Users may search or browse the various digest subtopics to access the case law summaries, which date back to 1893.

The *Canadian Abridgment*, 3d ed. (KE173.C35 2003, updated in print through 2007) 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* (KE250 .G85 1989) and *A Short Guide to the Canadian Abridgment* (KE173 .C352 2007) will help you use this work in print. To access Canadian case law by topic online, see section V.

## V. CASE LAW

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/sys-eng.aspx>).

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 Quicklaw, Westlaw, Lexis Advance, HeinOnline, and free websites. The reporters available through Duke include:

### A. Federal

Supreme Court cases are reported in *Canada Supreme Court Reports* (KE140 .A23 & online). Coverage of this official publication begins in 1867. Since 1970 all decisions have been reported in both French and English. Judgments of the Supreme Court of Canada are available on

HeinOnline's *Canada Supreme Court Reports* library (<http://search.library.duke.edu/search?id=DUKE004360788>), in **Quicklaw**, as well as on Westlaw and Lexis Advance. Decisions are also available on the web at **LexUM** (<http://scc-csc.lexum.com/scc-csc/en/nav.do>) 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 1971-2003 & online). This reporter series contains all appellate cases but only a selection of trial cases. Federal Court of Canada decisions are on Quicklaw since 1971, Westlaw since 1979, and Lexis Advance since 1986; decisions are at the court's website back to 1990 (<http://decisions.fct-cf.gc.ca/en/index.html>) and CanLII back to 1997, with selected earlier judgments also available back to 1912 (<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. Both reporter sets are available online in PDF via **LLMC Digital** (<http://search.library.duke.edu/search?id=DUKE004917389>). 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 Quicklaw, Lexis Advance, and Westlaw.

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, and also include research headnotes (similar to Westlaw's Topic and 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 began in 1912 and is presently in its 4th series. Historical volumes of *Dominion Law Reports* (1<sup>st</sup> series and New Series, 1923-30) are available online in PDF in **LLMC Digital** (<http://search.library.duke.edu/search?id=DUKE003350980>). *Dominion Law Reports* is the *Bluebook* citation manual's preferred unofficial reporter if official reporters are unavailable (see Table 2.6).

## 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, beginning 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 & online in LLMC Digital, <http://search.library.duke.edu/search?id=DUKE005071922>). 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 other areas began only in the late 1970s or early 1980s. A large number of provincial court decisions are on **Quicklaw** , **Lexis Advance** (International > Canada > Canada Case Law), and **Westlaw** (International Materials > Canada > All Canadian Cases > By Jurisdiction).

#### **D. Subject Law Reporters**

Although searchable online databases like Quicklaw and Westlaw have made it easier to quickly locate case law on a certain topic, many **subject law reporters** are also published 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 .M32 2013), McCormack's *The Practical Guide to Canadian Legal Research* (Ref. KE250 .C37 2015), or *Banks on Using a Law Library* (Ref. KE250 .B35 1994).

#### **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, on **Westlaw** with the “Citing References” tab, as well as with the QuickCITE citator service available on **Quicklaw**. The free website **CanLII** also includes “Citing References” to cases as part of its RefLex citator (<https://www.canlii.org/en/info/reflex.html>).

The other method of updating cases is to use Canadian case citators (or “noter-uppers”) in print. The end of the *Canadian Abridgment* consists of a series of volumes entitled **Canadian Case Citations** (KE173 .C353, 1867-2008). In order to completely update a case in a print citator, 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, and is no longer updated in print at the Law Library. The Canadian Legal Research and Writing Guide includes a comparison and how-to guides for the major case citators (<http://legalresearch.org/essentials/process/keep-current/case-citators/>).

## **VI. STATUTES**

### **A. Federal**

The **Canadian Constitution** is actually a series of documents, beginning with the **British North America Act, 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, 1982 (Representation). The best source for the Canadian Constitution is *A Consolidation of the Constitution Acts, 1867 to 1982* (KE4165 2001 & online: <http://laws.justice.gc.ca/eng/Const/index.html>). *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 site LEGISinfo (<http://www.parl.gc.ca/LegisInfo/Home.aspx?Language=E>). Enacted bills are next published in the **session laws, Acts of the Parliament of Canada** (KE87. A2 & in HeinOnline: <http://search.library.duke.edu/search?id=DUKE006021541>), 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 (R.S.C.)* (KE89 1985 & <http://search.library.duke.edu/search?id=DUKE005419521>); the most recent printed consolidation (in both English and French) was published in 1985. Prior editions of the *R.S.C.* are available in the library and in HeinOnline's Revised Statutes of Canada library (<http://search.library.duke.edu/search?id=DUKE005419521>). Statute consolidation is now an ongoing process at the federal Justice Laws Website (<http://laws.justice.gc.ca/eng/acts/>). Federal legislation is also available on Quicklaw, Westlaw (International Materials > Canada > Legislation), and via CanLII (<https://www.canlii.org/en/>).

Legislation in the online services will include citing references from later case law and from secondary sources. To update statutes in print, check *Canadian Statute Citations* (KE173 .C354 until 2008), 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.

## 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*). Current and historical statutes can also be found in HeinOnline's **Provincial Statutes of Canada** library (<https://search.library.duke.edu/search?id=DUKE003131760>). Some provincial legislation is also available on Quicklaw, Westlaw (International Materials > Canada > Legislation), via CanLII (<https://www.canlii.org/en/>), and online (<http://www.law-lib.utoronto.ca/resources/locate/canleg.htm>).

Quicklaw and Westlaw include citing references to statute sections from later case law and commentary. CanLII also includes a legislative citator feature, which has limited historical coverage but works well for citing cases within its scope of coverage. (Print citators may also be available for a particular province, although the library's citator collections are generally no longer updated in print.)

## 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

Federal regulations are officially published in the *Canada Gazette Part II* (online 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.

The most recent consolidation of regulations, the *Consolidated Regulations of Canada, 1978* (KE119 1978), 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, federal regulations are also searchable online on Quicklaw, Westlaw (International Materials > Canada > Regulations), and on the Canadian Department of Justice website (<http://laws-lois.justice.gc.ca/eng/regulations/>).

### 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 Quicklaw, in Westlaw (International Materials > Canada > Regulations) and online (<http://library.law.utoronto.ca/%3Cfront%3E/current-canadian-legislation>).

## VIII. A NOTE ABOUT QUÉBEC

Québec law is not as foreign to the rest of Canadian law as one might think. After all, the province of 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. *Quebec Civil Law: An Introduction to Quebec Private Law* (KEQ 219.Q83 1993) provides a useful basic background as well. Le May & Goubau, *La Recherche Documentaire en Droit*, 5th ed. (Ref. KEQ 140.L45 2002), provides a concise introduction to researching Canadian federal and Québec provincial law in French. General research guides listed in section III also include chapters on Quebec research.

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, Prior 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. The code, other legislation, and regulations of Quebec can also be found on Quicklaw, Westlaw (International Materials > Canada > Quebec), CanLII (<http://www.canlii.org/en/qc/>), and Justice Quebec (<http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991>). LexUM provides an online *Annotated Civil Code of Quebec* at <http://ccq.lexum.com/ccq/en>, including citing references.

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

**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 2013). 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. (Ref. K52 .F7 B42 2000).

## X. CITATION MANUALS

*The Bluebook: A Uniform System of Citation*, 20th ed. (Reserves KF245 .U55 2015) contains an extensive list of sources and citation guidance for Canadian legal materials in Table 2.6.

The *Canadian Guide to Uniform Legal Citation* (also known as “the McGill Guide”), 8th ed. (Ref. KE 259 .C25 2014). Developed by the *McGill University Law Review*, this guide has been adopted by several law reviews and courts in Canada. It provides citation information in both English and French.

*Guide to Foreign and International Legal Citations*, 2d ed. (Ref. K89 .G85 2009). Contains citation examples for Canadian statutes, case law, and secondary sources.

## XI. PERIODICALS

Research services such as **Westlaw** and **Lexis Advance** include the full text of some Canadian law reviews and legal journals in their legal periodical collections. **vLex** (<https://search.library.duke.edu/search?id=DUKE004081975>) includes several Canadian law journals under Browse > Canada. **HeinOnline's** Law Journal Library



(<https://search.library.duke.edu/search?id=DUKE003131760>) includes 100 titles for Canada, in PDF format dating back to the earliest volumes.

Additional periodical materials can be accessed via the online *Index to Foreign Legal Periodicals* (<http://search.library.duke.edu/search?id=DUKE003131763>). The major U.S. 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>), also include some Canadian legal literature. The Bora Laskin Law Library at the University of Toronto also provides a free monthly service for **Tables of Contents for Canadian Law Journals** (<http://library.law.utoronto.ca/iframe/database-law-journals-available-electronically-and-bora-laskin-law-library/tables-contents>), dating back to 2014.

**Quicklaw** includes a full-text library of All Canadian Legal Journals, dating back to 1989, which can be searched or browsed. Quicklaw also includes electronic access to the *Index to Canadian Legal Literature*, published as part of the *Canadian Abridgment* service. The *Index* service includes both French and English titles and descriptions, back to 1985. This index can also be accessed in print in the Reference Indexes area on level 3. *Index to Canadian Legal Periodical Literature*, another print index devoted solely to Canadian journals, is available in the Reference Indexes area from 1961-2006.

Legal articles may also be included in more general or non-legal Canadian periodical indexes, such as **CPI.Q: Canadian Periodicals Index Quarterly** (<http://search.library.duke.edu/search?id=DUKE002375833>). For more information about general sources for Canadian research, see the Duke University Libraries' guides to **Canadian Government Resources** (<https://guides.library.duke.edu/c.php?g=289806>) and **Canadian History** (<https://guides.library.duke.edu/canadianhistory>).

rev. 11/2017  
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