

Chapter 11

Legal Resources

This chapter provides an introduction to legal resources. It includes information on Canadian primary legal sources (case law and legislation) and secondary legal sources (background). It will help you to find legislation or court cases referred to in correspondence, articles in newspapers, journals or books, or in other materials that you come across in your research. It will also help you to find a copy of a current law or case as well as resource institutions, guides and Internet sources.

The law constantly changes. Legislation can be amended (changed) or repealed (cancelled). The courts are constantly reinterpreting laws or previous cases. It is important to keep in mind that you must look at the law as it existed at the time under study, and not the law as it stood at an earlier or later time. For example, if Indian Affairs transferred reserve land in your community to the Province in 1920, you will want to find the relevant sections of the *Indian Act*, and possibly other legislation, as it stood in 1920.

Primary and Secondary Sources of Law

Primary Legal Sources

Primary sources can be divided into two categories: **legislation** (statutes and regulations) and **judicial decisions** (the body of decisions written by judges).

Legislation

Legislation is laws (statutes and regulations) that are enacted by the federal Parliament or provincial legislatures.

The **Constitution** is the supreme law of Canada. All other laws, whether enacted by Parliament or made by judges, must be consistent with the Constitution.

Statutes are laws passed by the federal Parliament or provincial legislatures. They are created and amended by bills, which are introduced in the Parliament or provincial legislatures. Examples are the *Indian Act* (federal) and the *Wildlife Act* (provincial).

Regulations give effect to a specific law or set out specific details. For example, if the *Wildlife Act* states that a minister may establish prohibited hunting zones or hours, a regulation could be passed stating it is prohibited to hunt in area “X” between the hours of 7:00 a.m. to 7:30 p.m. Regulations have the same binding legal effect as statutes. However, unlike statutes, regulations are not made by Parliament or the Legislature. Regulations are made by individuals authorized by Parliament or the Legislature (for example, regulations

made by the Governor in Council). Federal regulations are published in the Canada Gazette and provincial regulations are published in the BC Gazette. For more information on Gazettes, see Chapter 4: Documents.

Judicial decisions

Judicial decisions are called “case law.” Statutes and regulations are subject to interpretation by judges. The law in an area that is governed only by case law (where there is no statute or regulation on the topic) is known as “common law.”

When a case is overturned on appeal, the lower court decision that has been overturned is of little or no precedential value. It is therefore important to know how a particular case has been treated. Second, the case may be used as a precedent for the interpretation or application of a law in the cases that follow it.

The decisions of the appeal courts are binding (must be followed) on the judges of lower courts. Where the facts of the earlier case are different, a court can distinguish the ruling of the earlier case and reach a different result. The decisions of the Supreme Court of Canada are binding on all other courts in Canada. The decisions of the BC Court of Appeal are binding on the BC Supreme Court and on the BC Provincial Courts. See the Courts of BC website: <http://www.courts.gov.bc.ca>.

There are some matters that only the Federal Court system can address. The Federal Court system consists of the Trial Division and the Federal Court of Appeal. Appeals from the Federal Court of Appeal are heard in the Supreme Court of Canada. See the Federal Court of Canada website: <http://www.fct-cf.gc.ca> for more information on the Federal Court system.

Secondary legal sources

There are many textbooks, digests and periodicals that review the law and discuss recent developments. The *Canadian Native Law Reporter* (CNLR) contains most important court decisions in the area of Indian or Indigenous law. It was first published in 1977 and continues to be published quarterly. The CNLR series is available at the UBCIC Resource Centre.

You can use legal dictionaries to find the meaning of a legal word or term. The legal meaning of words is often quite different or distinct from the ordinary, plain language meaning. These sources are available at law libraries. Also check your local public library.

Research Tools

Legal Resource Institutions

There are several locations throughout the province that offer access to law libraries and legal materials. BC Courthouse libraries throughout the province are open to the public. Their website (<http://www.bccls.bc.ca>) has links to judgments from BC courts, BC statutes and regulations, regional courthouse libraries around the province, and a number of online legal services.

The Union of BC Indian Chiefs Resource Centre has a small collection of legal materials, including texts and a complete set of the *Canadian Native Law Reporter*.

You can also find published legal materials in law school libraries. There are two in BC: the University of British Columbia and the University of Victoria. Their catalogues are accessible on the Internet. See Chapter 3: Resource Institutions for contact information. They provide an excellent starting place for learning about legal research and for providing links to law-related resources.

If you are unable to travel to the libraries at the law schools, your local public library may have a loan arrangement that allows it to arrange an **inter-library loan** for the materials you need.

The most important resource at any law library is the library staff. Explain your research issue to the librarian and ask for assistance in locating materials.

Legal Research Guides

All of Canada's law school libraries and the BC Courthouse libraries have their own legal research guides available on the Internet. These can be very helpful. Their websites also provide links to law-related resources.

See also the *First Nations Research Guide* for finding relevant law-related information: <http://www.law-lib.utoronto.ca/resguide/aborig.htm>.

Legal Resources in Electronic Format

Many excellent law-related resources are available at no cost on the Internet. Governments, courts, universities, law firms and law-related organizations are all good online sources.

Commercial online legal databases (such as QUICKLAW, Westlaw and Lexis-Nexis) and Internet subscription services (such as eCarswell and CCH *i*Works) can be quite expensive and are generally not available to community researchers with limited budgets. In addition, these online services can be difficult to use.

Many online resources do not keep historical, archival or older information in their databases. Recent judgments from various federal and provincial courts are now available on the Internet. However, many Canadian databases have cases only from about 1986 onward and only recent legislation. This means that for historical research, electronic resources (especially those that are free) are often only a first step. Be prepared to use law libraries and consult your local library to see what holdings they might have.

It is easy to overlook important information if your search is restricted to the computer. The information you find depends on the search words you enter. For example, if you list the word "Indian," decisions that use the words "aboriginal," "native," and "Indigenous" will not be called up. If the search terms you enter are not indexed in the computer's database, you could miss valuable information. Spend time thinking of alternative search terms, including alternative spellings.

Finding Legislation

You can find legislation at law libraries or through a computer search. The federal and provincial governments now provide access to legislation on the Internet. However, the scope and coverage of materials available at these websites varies.

You may need to find out if the statute you are researching has been amended (changed) or repealed (cancelled). Tracing the history of a statute or regulation (or a section of either one) as it has been published over the years will help you to understand its history and how it has changed over time. The *Canadian Abridgment*, available at law libraries, is a legal tool that can assist you. Ask a librarian for help.

Annotated versions of legislation contain the actual text of the legislation along with section-by-section commentary. The commentary explains how the legislation has been interpreted and if there are regulations that accompany the legislation. The commentary usually contains the legislative history of the section, or references to cases considering the section, or both.

Useful examples of annotated legislation relating to Indigenous issues and Aboriginal Title and Rights are:

1. Shin Imai (Ed.), *2004 Annotated Indian Act and Aboriginal Constitutional Provisions* (Toronto: Carswell, 2003).
2. Sharon Helen Venne, *Indian Acts and Amendments 1868-1975 - an indexed collection* (Saskatoon: University of Saskatchewan Native Law Centre, 1981).

Federal Statutes

Federal statutes are published in bound volumes each year called the *Statutes of Canada*. The most recent revised version is the *Revised Statutes of Canada, 1985*. There are indexes to assist you in searching for a federal statute, with listings by subject or name. Free web access is available from the federal Department of Justice website: <http://laws.justice.gc.ca>. In addition, this site has a “Related Statutory Resources” section that provides access to information about federal Parliament, including **bills**. Check the listings on the Parliamentary Internet website: <http://www.parl.gc.ca> to find current bills.

The Library of Parliament’s LegisInfo website (<http://www.parl.gc.ca/LEGISINFO>) provides a wide range of information about individual bills from parliamentary sessions from January 2001 onwards. Information on this site includes the text of the bill at various stages, plus legislative summaries from the Parliamentary Research Branch, and important speeches at second reading. The full text of all bills introduced during a current session of Parliament can be found at the Canadian Parliamentary website.

Examples of citing federal statutes

Indian Act, R.S.C. 1985,¹ c.I-5,² ss. 35(1), 52.³

Nisga’a Final Agreement Act, S.C. 2000, c.7, s.15.

- 1 If the Act was passed after the publication of the 1985 revision, cite the sessional or annual volume for the year that the statute was enacted.
- 2 Chapter number including the first initial of the Act.
- 3 Reference to any particular section (s.) or sections (ss.) mentioned.

Federal Regulations

Federal regulations are published in the “Consolidated Index of Statutory Instruments” in Part II of the *Canada Gazette*.

Examples of citing federal regulations

*Pacific Herring Fishery Regulations*¹, SOR²/84-324³, s. (3).

Indian Oil and Gas Regulations, C.R.C.⁴ 1978, c.963.

- 1 Name of the regulation.
- 2 *Subordinate Legislation, Ordinances and Regulations* published in Part II of the *Canada Gazette*.
- 3 Number of the regulation.
- 4 C.R.C. is the *Consolidated Regulations of Canada*

BC Statutes

BC statutes are published each year in bound volumes called the *Statutes of British Columbia*. Every few years, all the Acts are printed in one set called the *Revised Statutes of British Columbia* (the most recent version was published in 1996). These are available at law libraries and courthouse libraries. Your local library may also have copies.

Free web access to the *Revised Statutes of British Columbia* is available online at public libraries, government agent offices, and select university and college libraries. Online access from anywhere else requires a subscription. For more information, check the website at <http://www.qp.gov.bc.ca/statreg>. Always check the currency date (the statutes are updated to the date posted at the top of the website page) when using this site as it may be less current than the published bound volumes.

Examples of citing provincial statutes

Treaty Commission Act,¹ R.S.B.C. 1996,² c. 461,³ s. 5.⁴

Wildlife Act, S.B.C. 1982, c.57, s.29.⁵

- 1 The short title of the statute, as provided in the statute itself.
- 2 Whenever possible, cite a statute as it appears in the latest revision of provincial statutes. For B.C., the latest revision was *Revised Statutes of British Columbia 1996* published in 1996. If the Act was passed after the publication of the 1996 revision, cite the sessional or annual volume for the year when the statute was enacted.
- 3 Chapter number, as listed at the beginning of the statute.
- 4 Reference to any particular section or sections mentioned.
- 5 This is now the *Wildlife Act*, R.S.B.C. 1996, c.488. However, for the time period of interest to the researcher, she needed to find s.28 of the Act in force in 1983.

BC Regulations

BC regulations are published in the *Consolidated Regulations of British Columbia* and the BC Gazette, Part II. These are available at law libraries and BC Courthouse libraries. Most current BC regulations are available online at <http://www.qp.gov.bc.ca/statreg>. Again, free public access is available at public libraries, government agent offices, BC Courthouse libraries, and select post-secondary institutions. Always check the currency date (the regulations are updated to the date posted at the top of the website page) when using this site, as it may be less current than the published bound volumes.

Examples of citing provincial regulations

Wildlife Regulation,¹ B.C. Reg. 340/82,² s. 16.01(b)³.

Adult Guardianship (Abuse and Neglect) Regulation, B.C. Reg. 13/2000.

- 1 The title of the regulation as it appears in the regulation.
- 2 The regulation number as it appears on the regulation. From 1958 through 1999 the number took the form of B.C. Reg. 15/83. Commencing with January 2000, the numbers are in the form B.C. Reg. 111/2000.
- 3 The reference to any particular section (s.) or sections (ss.) mentioned.

Old Legislation

If you are researching an historical issue (for example, reserve allotments made in the 1880s) you will have to find a copy of the *Indian Act* (and possibly other legislation) that was in force at that time. Although public libraries and computer searches are good tools, for historical research you may have to go to a library that actually has copies of old legislation.

Here are some helpful resources for obtaining copies of historic legislation and other materials:

1. Early Canadiana Online. This is a digital library containing a variety of early Canadian materials. Their website is: <http://www.canadiana.org/eco>.
2. Sharon Helen Venne. *Indian Acts and Amendments 1868-1975* (Saskatoon: University of Saskatoon Native Law Centre, 1981).
3. Derek G. Smith, (ed.), *Canadian Indians and the Law: Selected Documents, 1663-1972* (Ottawa: Carleton University Institute of Canadian Studies & McClelland and Stewart Ltd, 1975). This includes copies of the Royal Proclamation of 1763, the Jay Treaty, as well as pre- and post-confederation legislation.
4. *Consolidated Native Law Statutes, Regulations and Treaties* (Scarborough, ON: Carswell, 2000).
5. *Indian Treaties and Surrenders: from 1680 to 1890* (Saskatoon: Fifth House Publishers, 1992). This is a reprint of a series originally published by the Queen's Printer in 1891. This series of books contains the text of the pre-confederation treaties, including maps and commentary of participants.

Legislative Materials

One of the best starting points for finding links to federal and provincial legislative materials available on the Internet is the Department of Justice website (<http://laws.justice.gc.ca>). Federal resources such as *Consolidated Statutes and Regulations of Canada* (updated until December 31, 2000), Canada Gazette (Parts I, II, III), and the full text of constitutional documents are available on this site.

The Parliamentary Internet, maintained jointly by the Senate, the House of Commons, and the Library of Parliament is a good site for locating debates, bills, minutes and proceedings of parliamentary committees, and Status of House Business.

The House of Commons Daily Debates, more commonly known as Hansard, is the edited verbatim (word for word) report of proceedings in the House of Commons. The Canadian House of Commons has had a full Hansard report since 1880. British Columbia's Hansard was not started until 1970. Until then, BC had only the Journals of the House, the official record of what motions were debated and passed. See Chapter 4: Documents for more information on Hansard.

Finding Cases

Many band offices or other Indigenous organizations follow legal developments carefully and often have copies of recent decisions on hand. Court registries can also provide you with copies of cases decided in their courthouse. Court registries are listed in the blue pages of telephone books. There may be a small fee to look at the decision, plus a charge for photocopies.

Online legal resources, which allow for keyword searches by subject or by case name, are an excellent means of finding cases. Recent judgments from the federal and provincial courts are available on the Internet. Some specific sites to look for are:

- Courts of British Columbia. This database contains the full-text decisions of the BC Court of Appeal and the Supreme Court (as of January 1996), and the Provincial Court. You can search for decisions by a content query. If you prefer to gain access to cases through an index arranged by date or topic you can visit the sites of the Court of Appeal and the Supreme Court: <http://www.courts.gov.bc.ca>.
- Supreme Court of Canada. This site has information on decisions, reports and bulletins of the Supreme Court of Canada from 1985 to the present: <http://www.scc-csc.gc.ca>.
- *The Canadian Native Law Cases*, at the Native Law Centre, University of Saskatchewan. The Internet version of this resource provides access to all reported Canadian Native Law Cases as well as those that went to the Privy Council on appeal from Canada between 1763-1978. The print version of the *Canadian Native Law Cases* is available from the Native Law Centre. The website is: <http://library.usask.ca/native/cnlch.html>.

Examples of how to cite cases

*R.*¹ v.² *Nikal*,³ [1996]⁴ 3 CNLR 178⁵ (S.C.C.).⁶

- 1 R. or “Regina” refers to the Crown
- 2 v. means versus
- 3 Nikal is the last name of the person charged
- 4 1996 indicates the year the decision was issued by the court
- 5 It is located in the Canadian Native Law Reporter at page 178
- 6 It is a Supreme Court of Canada decision

*Guerin*¹ v.² *The Queen*,³ [1984]⁴ 3 2 S.C.R.⁵ 335.⁶

- 1 Guerin is the name of the chief representing the Musqueam First Nation
- 2 v. means versus
- 3 The Queen refers to the Crown
- 4 1984 is the year the decision was issued by the court
- 5 S.C.R. refers to where the decision was published (the Supreme Court Reports)
- 6 The decision begins at page 335

Resources

Imai, Shin and K. Logan and G. Stein. 1993. *Aboriginal Law Handbook*. Scarborough: Carswell.

McGill Law Journal. 2002. *Canadian Guide to Uniform Legal Citation*. 5th ed. Scarborough: Carswell.

Sandy, Nancy. 1988. *The Indian Act and What it Means*. Vancouver: Union of BC Indian Chiefs.

Woodward, Jack. 1989. *Native Law*. Scarborough: Carswell. [Updated regularly].

Websites

Bill Henderson’s “Aboriginal Law and Legislation online” website
<http://www.bloorstreet.com/300block/ablawleg.htm>

Continuing Legal Education Society of BC
<http://www.cle.bc.ca/cle>

Click on “Practice Points” and then “Aboriginal Practice Points.”