Legal Information Management, 12 (2012), pp. 165–172

doi:10.1017/S1472669612000424

Free Access to Law in Canada[1]

Abstract: Today, the level of access to legal information in Canada equals or surpasses that of any country. Not only do several commercial publishers compete to sell their publications but, in recent years, legislatures, many courts and tribunals have built significant repositories on the web. However, the most spectacular advance has come through the creation of CanLII. In this paper, the Daniel Poulin looks at why and how the Free Access to Law (FAL) approach came about in Canada. He sketches the principles supporting free access, but he tries also to make the business case for establishing it.
Keywords: open access; free access to law; CanLII; Canada

1. INITIAL DEVELOPMENT OF FREE ACCESS TO LAW IN CANADA

Daniel Poulin

In Canada, as in many other countries, free access to law started in a university; however what distinguishes the development of FAL in Canada is that at some point legal professions got involved, and this ultimately led to the creation of CanLII. The origin and beginnings of CanLII are worth knowing, to see how legal professionals were brought to work with academics to meet their own information needs and how, ultimately, that cooperation made law more accessible for everybody.

The framework used to structure this short essay follows the FAL sustainability model proposed by Mokanov *et al.*[2] Succinctly, for FAL to succeed and be sustainable there must be a need for it and that need must be correctly understood. Then, the means to meet the need must exist or be developed. Third, the FAL initiative must provide an adequate response to the need. Finally, sustainability is achieved when users see the benefits and reinvest in FAL. In the following paragraphs, this structure will be used to trace the progress of FAL in Canada.

1.1 The Need

In the nineties, access to legal information was expensive in Canada.[3] Worse, costs were growing. A study estimated that costs rose 23 percent between 1995 and 1998 in Ontario.[4] This was a source of considerable concern for Canadian law societies. Worry was further aggravated because around the same time the legal publishing industry was becoming more concentrated in Canada.[5] What is more, law society librarians and principals were realizing that while subscribing to law reports series used to expand their library holdings over time, the situation was quite different with new digital media and electronic database systems. In the new digital world, a subscription means nothing more than the right to access an information service for a limited period of time. Once a subscription expires, nothing remains.

Frequently, the growing costs were related to use of databases comprised of documents that had been prepared by governments using taxpayers' money. Most people understand that doctrine must be paid for. In fact, for treatises and monographs, one can hope that the money paid for a copy of a work will get back to the author and consequently encourage the production of other useful books.[6] This logic simply does not apply when the content of a book or database is official legal information coming out of state institutions. In such cases, it cannot be argued that the profits accruing from publishing, even if shared with the government, will lead to better or more comprehensive laws or improved justice.

Furthermore, throughout the nineties, new information technologies were slowly revolutionizing the business of law. Micro-computers were invading law firms and starting to appear on clerks' and judges' desks. In the second half of the nineties a large majority of judgments were born digital and, with the arrival of the new millennium, all were. The effects of this evolution on legal publishers' work were significant. In the era of dictation machines and typewriters, publishers had to collect printed judgments, court by court, if not judge by judge, and then entirely retype them to produce the computer files required for their databases or law reports. With the advent of microcomputers and the internet, decisions began coming in by email and a very substantial amount of tedious operations disappeared.

The development of the internet meant that the cost of distributing digital products was falling as well. Where they had in the past to rent bandwidth on private communication networks, the internet and the web were providing new, much cheaper, public infrastructure to distribute legal information.[7] Every major element of the web, namely, the public network (the internet), the convenient distribution format (the HTML coding language) and the web browser were solving publishers' problems.

In that context, there was a need to set up something new, for it was perceived by many that the high cost of commercial database systems could more accurately be explained by weak competition in a market protected by high entry costs. This is when the internet came in and its use by the academic world changed a lot of things.

1.2 The Capacity to Publish at Low Cost

A mix of idealism and enthusiasm motivated those who started publishing law on the internet in the nineties. The ideal of making the law more accessible was driving many academics towards using emerging technologies in a way that could contribute to making the world better and fairer. Besides, there was enthusiasm. An information revolution was underway and some researchers could not help themselves; they wanted a part of it. Moreover, in faculties of law, academics stuck with 70s-like commercial database systems were quite aware of the potential of the nascent web. Soon, many started to look at what they could do with internet technologies in their own field.

In 1992, Bruce and Martin started publishing U.S. Supreme Court judgments at Cornell University. LexUM followed suit with Supreme Court decisions in 1993, and AustLII came in a couple of years later, in 1995, but with a much more ambitious plan: to publish all current law in Australia. These innovative ventures did not go unnoticed. In the U.S., the creation of the Cornell's Legal Information Institute inspired a brief but genuine stampede towards publishing in law schools.[8] Thus, in Canada, FAL started in August 1993 at the University of Montreal's Centre de Recherche en Droit Public, with publication of the Supreme Court of Canada's judgments.[9] Indeed, like other teams abroad, LexUM had brought together the talent required to initiate a publishing operation. The capacity was starting to develop, but what was still missing was broad access to source material; decisions and legislative texts.

The availability of Supreme Court judgments for free did not suffice to change the way legal information was accessed in Canada. To go further, more legal institutions had to accept to make their information available for free on the internet. Those wanting to develop FAL had to campaign and win the support of these institutions. Since the institutions were the sources, some arrangements needed be made to ensure all documents were collected to present law faithfully and comprehensively. In the nineties, courts were making their judgments available to publishers according to mostly informal arrangements. Occasionally, these arrangements were an exchange of services of sort. A court might make sure that the publisher got everything – all judgments rendered – and be happy to receive free access to the publisher's database products. Everybody won. Yet, when FAL became possible, the perception of enjoying a mutually advantageous collaboration with commercial publishers constituted an obstacle in some quarters. Some felt ill at ease with letting someone publish judgments for free since such an activity could be detrimental to the viability of publishers so precious for the resources they could provide.

The decision taken in 1993 by leadership at the Supreme Court of Canada to make the Court's judgments accessible to LexUM brought change into that world. In doing so, the Court was following its well-established policy to provide its decisions to all those who wanted to publish them. Still, the Court's leadership knew that the free access that LexUM was about to initiate would be disruptive. FAL immediately began in Canada, and the Supreme Court's positive response to FAL contributed to establishing a model that would eventually be followed by all other courts in Canada.[10]

With regard to legislation, the initial difficulties were even more acute. It must be mentioned that in many Canadian jurisdictions, Queen's printers have a mandate to recover as much as possible of their operating costs by the sales of the various books, brochures and CDs used to publish legislation. When the internet came on the scene, many of these official publishers were taken aback: it was now possible to make legislation accessible for free. Great! But what about the money they used to collect from sales? Overall, government reactions were mixed. Some governments jumped on the new FAL opportunity; others tried to limit free access to protect whatever business their Queen's printer had developed in the past.

A decisive change in government attitudes toward FAL came with the *Reproduction of Federal Law Order* published by the Government of Canada at the end of 1996. The very short order states that:

> Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.[11]

That order was following a small-scale but relentless campaign to obtain permission to publish federal legislation. Many public servants and government lawyers besides LexUM shared the view that the internet was offering an exceptional opportunity to make law more accessible. Other factors may have also played a role in

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press

the ministerial decision. The government and the Minister of Justice at the time were both eager to promote all things Canadian on the internet. Since our fine southern neighbors were embracing the internet as a way to publish their laws, there was a risk that all the 'law' accessible on the network would be that of the United States. This cultural sovereignty motive certainly played a role in the publication of the *Reproduction of Federal Law Order*.

From that point on, the free access strategy could develop, and it did. In 1999, on the eve of CanLII's creation, LexUM was publishing more than ten legal web sites, and most of the provinces and territories were publishing the current version of their consolidated statutes for free.[12] The situation was more embryonic on the case law side. Only a dozen courts out of 40 were publishing their decisions for free. In most of the provinces and territories there was no free access to court decisions at all. At the time, there were as many systems as there were sites, and search engines – when present – were not consistent.[13] At that point, despite their shortcomings, namely, the shallowness of their databases and their lack of consistency, FAL websites were generally deemed trustworthy. The large majority, if not all of the sites, were under the responsibility either of a government department or of LexUM and were professionally maintained. Since they were free to use and rather reliable, these resources were appreciated and their use was growing. Globally, the sites managed by LexUM were already registering over 15,000 visits a day in 1999.[14]

Despite all the efforts, FAL was not a source of law sufficiently well organized to serve legal professionals on a day-to-day basis. In other terms, there was enough FAL to see the value of the approach, but not enough to actually rely on it for professional use. Something had to happen, one way or the other. Government-managed websites could certainly be maintained forever, but the other free-access-to-law resources, such as those run by LexUM, were at a crossroads. They had to grow and be supported or, if not simply disappear, remain marginal.

1.3 The Creation of CanLII

Other events were unfolding which played a role for the future of FAL. In 1993, the main Canadian legal publishers decided to band together and commence an action against the Law Society of Upper Canada, alleging that, by offering copying services to their members from their law libraries, it was infringing their copyrights. That legal action was to go all the way up to the Supreme Court of Canada, which closed the case in 2004 when it decided against the publishers. However, all throughout the nineties, the publishers' legal actions nourished the worries of law societies and shone crude light on their dependency on legal publishers. Many benchers started to think that something had to be done with regard to legal information.

In 1999, the Federation of Law Societies of Canada (FLSC), an umbrella organization of all law societies in the country, decided to form a committee to study the feasibility of establishing a Canadian virtual law library. The committee set to work on a report where the issues and choices confronting the law societies would be identified and recommendations set out.[15] The report presented a vision that, first, the future Canadian virtual law library (or CanLII as it was starting to be called) was to be freely accessible. Second, CanLII was to serve not only the legal profession but also the general public. Consequently and third, access to the site was not to be password-controlled but instead remain as simple as possible to use, and therefore less complex and costly to operate. Fourth, the new site was to devote itself to publishing primary legal material, legislation and case law. It was suggested that the FLSC's stake in CanLII should be entrusted to a distinct not-for-profit society. The practical strategic question of going it alone or with LexUM was left open. Finally a funding model was proposed. It was rather simple; all law society members were to contribute a yearly amount. This sound funding model was to be of paramount importance for ensuring a stable financial basis and to permit CanLII to reach the level of quality required for professional use.

The committee's report was discussed and its conclusions were adopted by law society representatives at the August 2000 annual FLSC meeting. A pilot project in partnership with LexUM was launched in the following days. The pilot project site was to evolve into what is CanLII today. Five months later, a first contract was established between FLSC and LexUM. That contract was to remain the basis for the parties' uninterrupted collaboration for the next ten years.

1.4 Subsequent Reinvestments

The sustainability model for FAL suggests that the users' choice to reinvest in a free-access-to-law project is both testimony to its usefulness and a prerequisite for its continuation. In the first years of a FAL project, such reinvestment requires user confidence in the future because the practical value of the nascent legal information database is still limited. In its first years, CanLII could count on only few dozen databases and their historical coverage was shallow. Nevertheless, stakeholders took notice of CanLII's progress. With CanLII, all the legal content accessible for free could now be found on a single consistent site and the scope of the databases was growing. A virtuous circle then began: law societies kept investing in CanLII and CanLII grew better.

A survey conducted in February 2008 and completed by over 2,000 lawyers revealed that CanLII was the electronic resource they used most frequently. It was used once a week or more by 39% of the respondents. A large number of respondents, 43%, said that they could accomplish more than half their legal research with CanLII.[16] Lawyers are starting to reap the rewards of their

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press

long-term commitment. According to the same survey, 71% of lawyers said that CanLII allowed them to reduce their legal information costs and almost one half (43%) estimated that CanLII had significant impact on reducing their costs. CanLII's usage has since continued to grow and CanLII is now solidly established.

Today, CanLII's databases contain one million judgments and hundreds of thousands of legislative texts. Overall, more than 165 case law databases are maintained; of which 40 cover courts and the rest administrative tribunals. Generally, databases for courts of appeal provide all published judgments for the last 20 years, and those for superior courts for the last 10 to 20 years. The historical scope of databases for other courts and tribunals varies. Decisions received are published twice a day; between 2,000 and 3,000 are published weekly.

The CanLII website offers advanced search mechanisms. Reflex, a citator – a tool for exploiting references between documents – was added in 2005. By 2009, all legislation was being republished in a point-in-time manner. This means that the legislation on CanLII can now be searched with date criteria. Some databases of legislation go back to 2003. Legislative databases are updated on a weekly basis. Of course, the web site is bilingual.

Recently, a long-term agreement has been established between the Federation of Law Societies of Canada and LexUM to ensure the future of the CanLII website. The roles and the relationship have been revisited for the first time since CanLII's inception. Under the new agreement, LexUM, which is now a private company,[17] will provide website maintenance and operation services to the not-for-profit society, the Canadian Legal Information Institute.[18] This new commitment could certainly be interpreted as reinvestment by a community well served by FAL. This examination of the practical success of FAL in Canada leads us to consider the principles and the benefits accruing from the model.

2. THE UNDERLYING PRINCIPLES OF THE FREE ACCESS TO LAW APPROACH

Many kinds of motivation could lead to adoption of a FAL strategy. As has already been alluded to, some really convincing reasons relate to the economic value of establishing a more efficient legal environment. These will be reviewed more systematically in a later section. Let us turn our attention first to the principles and ideals that have motivated many free-access-to-law projects.

2.1 Promoting Justice

One of the first motivations for implementing a FAL program is to promote and improve access to justice. As stated in the Montreal Declaration on Free Access to Law: "Maximizing access to this information promotes justice and the rule of law".[19] FAL promoters believe that making legal information more accessible contributes to making justice more accessible.

Intuitively, we cannot assert our rights if we are not informed about them. Knowledge about our rights is the first step towards winning respect for them. This also seems to be the conclusion of the UNDP's Commission on Legal Empowerment of the Poor, which states in its report that "Empowering the poor through improved dissemination of legal information and formation of peer groups (self-help) are first-step strategies towards justice".[20]

In this regard, a FAL initiative directly serves citizens, the subjects of law, because it makes it possible for them to learn about the law and use that knowledge to better defend their interests. However, FAL also serves promotion of justice and access to justice in a second way; accessibility of legal information can empower not-for-profit organizations fighting for justice. Consequently, these organizations can inform people and help them fight for their rights. Thirdly and finally, FAL serves access to justice by ensuring better availability of legal information for lawyers. Competent lawyers are pivotal to good operation of the justice system. Lawyers who have easier access to information can provide better advice, and their cost savings can trickle down to clients.

2.2 Supporting the Rule of Law and Democracy

FAL contributes to the rule of law in many ways. Four primary benefits come to mind: the possibility of knowing the applicable legislation, the State's compliance with its laws, creation of conditions necessary for a legal system that is equal and fair, and improved functioning of democratic institutions.

Ignorance of the law excuses no one; therefore citizens have the right to know the laws governing their conduct and the State has a corollary obligation to disseminate legal knowledge using all reasonable means. To achieve minimal access, commercial publishing alone is insufficient. Although commercial publishing can serve the needs of legal professionals, such services only indirectly benefit the general public. Very few 'ordinary persons' will ever subscribe to such services. New forms of dissemination, such as internet distribution and FAL, however, have made it possible to reach large segments of the population.

According to the rule of law, the State itself must abide by its laws and actively subject itself to principles of legality. Enacted legislation should conform to higher standards, in particular, the national constitution. Open access to legal texts gives leverage to those questioning the actions of the State or defending their rights against the State.

Free public access to law also contributes to equality before the law. It ensures that everyone has the means to gain knowledge of the law, which in turn makes legal systems fairer. In some environments where legislation is

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press

difficult to access and where case law is even harder to find, discrepancies between the resources available to parties are exacerbated. As a result, a citizen with little means who is subject to legal proceedings might not be able to make appropriate legal arguments relevant to the case, even with the aid of a lawyer. A wealthier party, however, might have access to better information sources, whether such sources are commercial or personal. Obviously, such situations undermine the ideal of equality.

Since the rule of law is one of the principal characteristics of democratic societies, it comes as no surprise that democracy greatly benefits from better access to legal documents. When FAL is in place, statutes, the main end results of the democratic process, become accessible. Consequently, citizens can learn about and understand laws adopted by their representatives, thereby gaining a better appreciation of the final results of legislative work. Moreover, this knowledge can contribute to increasing the political involvement of citizens, since better informed citizens can participate more actively in democratic life.

2.3 Strengthening Judicial Systems

Openness and transparency form the essential elements of proper functioning of the judicial system. For Bentham, "publicity is the very soul of justice":

> In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only with publicity in place, can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.[21]

The possibility for citizens to know who judged what case, what facts were taken into consideration, and what conclusion was reached obliges all participants to ensure not only that justice has been applied, but also that its application has taken place in an obvious and convincing manner. Transparency favors impartiality. In turn, impartiality contributes to gaining litigants' confidence in their judicial institutions.

Alongside issues of transparency, open access to case law contributes to the efficacy of the justice system. The possibility of knowing how similar cases have been resolved can open the way for litigants to seek a compromise more actively, whereas uncertainty associated with poor access tends to increase litigation. It is therefore possible to assert that legal insecurity resulting from lack of case law accessibility leads to needless court actions. Such uncertainty also increases the difficulty of rendering judgments in a timely manner, since judges themselves may find it difficult to locate relevant case law that could assist in their decision-making process. Similarly, without access to case law, a lawyer must prepare without the benefit of prior work done by other judges and lawyers. Consequently, legal research and analysis must constantly be started anew.

Improved dissemination of law can increase efficiency, reduce costs and expand access to law, while also enriching the quality of justice. This leads us to the economic arguments for FAL, in other words to how FAL constitutes a sound business proposition.

3. THE BUSINESS CASE FOR THE FREE ACCESS TO LAW APPROACH

It would not be exact to say that while academics embraced FAL to pursue their ideals, lawyers adopted it to serve their needs. Things are never that clear: academics have careers to lead and lawyers can be as strongly committed to society as any professor. Actually, in Canada, law society representatives' own values led them to commit to varying degrees to achieving free access to law. However, the purpose of this section is to show that a business case for FAL can be made without taking into account the numerous social and non-economic benefits. In a nutshell, for legal professionals, developing free access to law constitutes a good investment.

3.1 Securing Access to Legal Information

In Canada, commercial legal publishers used to control circulation of legal information. Two or three of them, depending on the specific market, used to share the privilege of being the sources of case law. Generally, these publishers added value in the form of keywords, abstracts and the like, but some did not add much. Yet, whatever the additions, they were all charging substantial subscription prices for their electronic products. From the users' point of view, it was not easy to judge the value added by the publishers, for they were the only show in town. For the law societies, the future of legal information appeared bleak because the legal community did not possess any means to prevent further monopolization or any other adverse evolution in the legal information market.

Ten years later, the benefits of having invested in CanLII are obvious. For a cost equivalent to that of executing a couple of searches in a commercial database, a lawyer pays his or her share of publishing all the new judgments rendered in Canada (plus all the legislation). Once published, these judgments are free to search, free to download and they could be free forever.

This security, namely, the fact that today in Canada a huge and growing part of the relevant case law is publicly accessible and that the legal profession is collectively in a position to keep this free access going is of paramount importance for the legal community. It means that lawyers will not be prisoners of a future monopoly. It empowers the main group of users of legal information.

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Enjoying secure access to tools essential to the exercise of the profession is the first major business reason for a law society to create a free-access-to-law service.

3.2 Improving the Ecology of Legal Information

With regard to access to primary material, FAL is also the best way to end private appropriation of a public good. Selling primary material constitutes an important element of many publishers' business even though the state is the source of it. Primary material includes the documents conveying the primary sources of law in legislation and case law. In many countries, the private market is the only practical way to obtain a copy of a judgment or even of a legislative act. Because of the absolute necessity of such material for lawyers, when such a regime is in place, there is no obvious limit on the market price of these information products.

FAL implementations have demonstrated that another environment is possible. In it, documents produced by the state are available for free, from government outlets or from institutes operating a FAL service. This does not prevent commerce, it only adds to the ecology of sources for legal documents. Anyone can still operate a commercial publishing activity offering better service to lawyers; its success will depend on the market. If users feel that the added value is worth paying for, they will buy it. If the commercial publishers do not add value, or enough value given the price, users will just keep using the free-access-to-law service.

Therefore, establishing such an environment, a richer one, where competition thrives and publishers are encouraged to develop better products at better prices is a second compelling business reason to establish a free-access-to-law regime.

3.3 Serving the Competency of Legal Professionals

For Canadian law societies, working towards establishing CanLII was strongly related to their efforts to ensure the competency of their members. In the words of the president of CanLII: "Enabling lawyers to practice competently and have access to the knowledge that will enhance their competence is our goal".[22] In general terms, law societies serve the public interest by promoting a high standard of legal services. In that perspective, ensuring lawyers' access to the material required for practicing law is paramount. In an ideal world, money would not be an object and all lawyers would be able to use commercial databases for free. In reality, everything costs something. The FAL approach is probably the most effective way to give access to an essential ingredient for competent practice of law.

3.4 Providing Access when there is no Viable Market

In some contexts, the market is not affluent enough to sustain commercial publishing. It could be that practice in a certain field of law is not very lucrative. Fields like youth justice, social law and other areas of law where the parties are generally not well-off come to mind. It has been observed that legal literature and legal information systems are much less developed in such fields of practice. For these areas of law, the FAL approach can produce resources that could not accrue from the commercial approach because FAL favours very lean operations while commercial publishers target high end products. Since FAL operators can publish judgments and statutes at very low cost, they can publish the law regardless of the means of the clients in the area of practice.[23]

A similar situation occurs in developing countries. In some countries there is simply no viable market for legal information, period. In some places, bar associations include no more than a couple of hundred lawyers. Such a small market discourages even the most intrepid commercial publishers. The ways and means of commercial legal publishing simply cannot survive, let alone prosper, in such surroundings. The FAL approach might not thrive, but because of its inherent thriftiness, it can at least survive in such difficult terrain. In countries where salaries are low, free access to law can be implemented for very little money.

So, the last economic benefit is also the solution to a very thorny problem: how to set up minimal legal information resources in less fortunate contexts. This is a major advantage of FAL.

4. CONCLUSION

In Canada, free access to law has been achieved through a long, sustainable collaboration between law societies and a university laboratory, LexUM. Both parties have worked together mainly because of shared objectives, but also for their own reasons. The heterogeneous nature of that venture, which has created challenges at times, has ended up proving to be an unforeseen source of strength and resilience. CanLII has progressed through the efforts made by all stakeholders to bridge differences in points of view.

More than ten years since it began, CanLII is no shining concept cooked up in a laboratory, but an achievement in the real world. All the way along, both law societies and LexUM have had to concentrate on what is useful, what is required to both make the law accessible to all and provide tools to improve lawyers' competency. For these reasons, the end result is probably more focused and useful in the practical sense that it would have been otherwise.

A significant part of this paper dealt with the motivation and rationale for establishing free access. There are indeed many good reasons to reengineer traditional

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press

circulation of legal information. All the same, be it fueled by ideals or by simple business sense, revolutionizing the circulation of official legal information to make it accessible free of charge will at the same time serve both principles and interests.

Footnotes

[1] This contribution to *Legal Information Management* is based on an unpublished paper prepared for a communication to the *Law via the Internet International Conference* held at the University of Hong Kong, 8–10 June 2011.

[2] I. Mokanov, I. Moncion and D. Poulin, "A sustainability model for Free Access to Law," Research Paper, Chaire en information juridique, University of Montreal, May 2011.

[3] In 1993, when LexUM started publishing recent Supreme Court of Canada decisions for free, the cost of obtaining the same documents from a commercial online database could easily surpass $100. The cost of using those commercial systems was then around $300 per hour, modems were slow and SCC decisions were long.

[4] Professional Development and Competence Committee (1998). First Report of the Working Group on Long-Term Delivery of County and District Library Services. *Library Services, Law Society of Upper Canada*. See paragraph 310.

[5] While it began in the nineties, the concentration of this industry is still continuing. In 1987, the Thompson Company (Westlaw) bought Carswell, which bought les Éditions Yvon Blais Inc. in 1996. Quicklaw was acquired in 2002 by LexisNexis, which had acquired Butterworth a few years before. LexisNexis itself became part of Reed Elsevier in 1994. Lastly, in July 2010, Canada Law Book, one of the two last national companies in the sector was bought by Westlaw Canada. The document *A Legal Publishers List: Corporate Affiliations of Legal Publishers, 2nd Ed.* prepared by the American Association of Law Libraries convincingly illustrates the high level of concentration of the industry in the United States, Canada and also worldwide. Source: http://www.aallnet.org/committee/criv/resources/tools/list/ (accessed on 19 July 2010).

[6] Law journals constitute an exception among doctrinal productions. Most of the costs involved in writing their content and running them are already assumed by public money.

[7] Before the internet, legal publishers had to rent a X.25 data packet service to link all the cities where they wanted to offer local access. In each locale, the publisher had also to pay for the digital switch, modems and telephone lines. A modem and a phone line were required for each concurrent subscriber that a publisher wanted to accommodate. Information format and encoding were not easy either; publishers were stuck with various proprietary encodings. Finally, the software for users was usually an unfriendly terminal emulator or, as time went by, peculiar client software that publishers has to develop, distribute and maintain.

[8] For some time, legal information web sites were mushrooming on U.S. campuses. In 1997, according to the *Internet Legal Resources Guide* which is still accessible through the *Internet Archives Wayback Machine*, the decisions of the U.S. Federal Circuit courts were to be found at the websites of the following university law schools: Emory, Georgetown, Pace, Villanova and Washington. As of today, in 2010, only the Villanova Law School continues some archiving but nothing more. Source: http://replay.web.archive.org/19970713000017/www.ilrg.com/caselaw/ (accessed on 1 Aug 2012).

[9] The CanLII web site went online only seven years later, in August 2000, with the legal documents accumulated by Lexum. However, from that point on, the scale of free publishing was to change. CanLII's arrival was the second and biggest turning point in the Canadian legal publishing industry.

[10] It took ten years to obtain permission to publish all other courts' decisions. The problem of access to case law was different in Quebec for, in the mid-seventies, the Quebec's government established a crown corporation, the *Société québécoise d'information juridique* (SOQUIJ) to gather, process and publish the province's case law. For years, SOQUIJ enjoyed a *de facto* monopoly. It was only in 2001, following a Quebec Court of Appeal decision, that SOQUIJ started to make the decisions available to other publishers (*Wilson & Lafleur inc.* v. *Société québécoise d'information juridique*, 2000 CanLII 8006 (QC CA)). Today, all decisions from all courts and tribunals are collected by SOQUIJ and also made available at cost to all publishers.

[11] *Reproduction of Federal Law Order* (SI/97-5), Source: http://laws.justice.gc.ca/eng/SI-97-5/ (visited on July 26, 2010). It must be noted that this order applies only to law from federal sources. It does not apply to the legislation and case law of provinces and territories.

[12] Only Saskatchewan, Newfoundland and Labrador were missing.

[13] Poulin, Daniel, Bertrand Salvas and Frédéric Pelletier. (2000) La diffusion du droit canadien sur Internet. *Revue du Notariat* 102, 189 54

[14] In 1999, LexUM was publishing Supreme Court of Canada decisions and those of three of Quebec's courts. It was also operating the Department of Justice of Canada's federal statutes and regulations website, as well as the Tax Court of Canada and Federal Courts Reports websites.

[15] Daniel Poulin and Janine Miller authored the committee report. Poulin, Daniel and Janine Miller. (2000) CANLII Road Map. *Virtual Law Library Committee Report, Federation of Law Societies of Canada*, 34 p.

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press

[16] Mokanov, Ivan (2008). 2008 survey: CanLII is the most frequently used electronic legal resource in Canada. *CanLII's blog, 2 September 2008*. Source: http://www.canlii.org/en/blog/index.php?/archives/22-2008-survey-CanLII-is-the-most-frequently-used-electronic-legal-resource-in-Canada.html.

[17] Lexum, the former University of Montreal laboratory, is now a private company specializing in legal informatics. Lexum provides the expertise, software and infrastructure required for the CanLII website. Lexum operates and maintains the CanLII website under contract for CanLII.

[18] The Canadian Legal Information Institute (CanLII) is a not-for-profit organization established by and belonging to the Federation of Law Societies of Canada. CanLII is governed by an independent board and it owns the CanLII website. CanLII has one employee, a president, who operates under a very broad mandate. The president liaises with all stakeholders, negotiates with the legal institutions and manages the relationship with Lexum.

[19] The Montreal Declaration on Free Access to Law was adopted when the legal information institutes of the world met in Montreal in 2002. The Declaration aimed at setting out a clear statement of their goals of promotion of free access to law initiatives. The Declaration was amended in subsequent meetings of the legal information institutes. Source: www.canii.org.online/mtldeclmtl-axion.html (accessed on 1 Aug 2012).

[20] Commission on Legal Empowerment of the Poor and United Nations Development Programme (2008). Making the Law Work for Everyone, Volume I, *UNDP*, p. 64.

[21] Attorney General of Nova Scotia *v.* MacIntyre *[1982] 1 S.C.R. 175, 1982 CanLII 14 (S.C.C.), p. 183,* quoting from Bentham.

[22] Canadian Legal Information Institute (2007). Annual Report.

[23] Publishing case law in many fields of social law is a much more demanding task than publishing cases in commercial law for instance. This may be another cause of the traditional paucity of legal documentation for these fields. Furthermore, when minors are involved in most cases it is simply impossible to publish the judgments as they are received; such judgments must be redacted to protect the identity of the child, and publishing them becomes rather labour intensive.

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Biography

Daniel Poulin is professor at the Faculty of Law of the University of Montreal. He currently holds the Legal Information Research Chair at the Faculty of Law. Daniel Poulin has been director of the LexUM lab at the University of Montreal from 1997 to 2010 at which time the lab became a private corporation. He is also one of the main authors of CanLII, having been its research director from 2000 to 2010. Daniel Poulin is now President of LexUM Inc.

https://doi.org/10.1017/S1472669612000424 Published online by Cambridge University Press