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Law for Everyone for the Librarian

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The problem raised by this subject is one of access to the law.¹ Encapsulated in my title, *Law for Everyone For the Librarian*, are three components: the law; the reader with a problem; and you, the librarian. The issue is essentially how to bring the three together, and in my judgment the librarian is the critical link.

The equipment you need I have divided into four elements, which I will pose to you as questions: What are the resources? Where are they? How do you get at them? and How can you use them to the reader's benefit?

I. What are the Resources?

The resources available are, of course, the law. Here I want to speak to you about different sources of law, as they are what you and the readers want to gain access to. You must distinguish first between primary and secondary legal sources. Primary sources are the principles and the rules of law itself, while secondary sources are commentary on the law.

In our system of law,² that is to say what is generally called the Common Law, the primary sources are of two kinds: legislation and caselaw. A piece of legislation is a statute, is an act of Parliament or of the Legislature: they are all the same terms and are used quite interchangeably. Now an act of the Legislature either makes the law or tells you who makes it. Some statutes do one or the other and some do both. When they tell you who may make the law, they are usually referred to as 'enabling statutes'. The laws subsequently made under this kind of enabling authority, for instance by the Governor-in-Council, are called regulations, alias subordinate or delegated legislation. These are also equally interchangeable terms. Let me also impress on you that regulations constitute by far the greatest volume of legislation today. Although our Legislatures are

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These remarks were first presented as an address in the School of Library Science of Dalhousie University.

1. For a comprehensive study of the subject in Canada, see Friedland, Jewett & Jewett, *Access To The Law* (Toronto: Carswell, 1974).

2. Outside of Quebec, where the civil law system prevails.

active, our governments are more so, and it is by means of regulation-making that the provincial or federal government of the day is empowered to function and to act.

There is also one specific kind of delegated legislation that is distinguished by a separate name because it is the product and the means of action of our third level of government, the municipalities. Those statutes that establish our municipalities, like the Halifax City Charter, also empower and enable them to pass subordinate legislation. What they pass are specially known as by-laws or ordinances. So you see, under the heading of legislation there are acts or statutes which tell you directly what you may or may not do, regulations made by the government under the power of an enabling act, and bylaws established by the municipal council by reason of the authority found in its own constituent act.

The other kind of primary source is caselaw, alias decisions of the courts. They are quite different in style from legislation, which is explicit in its statement of the rules of law. Caselaw is anything but explicit. It must be sought in the reports of cases already decided. A case report is essentially a record of the judgment, that is of the judge's reasons for deciding as he did. The law itself is his reason for judgment, or, as lawyers tend to say, his holding in the case. Unfortunately, the holding does not stand out as the rule does in a piece of legislation. In caselaw you have to find the rule of law in the case for yourself. It is done by a process of analysis and interpretation of the judgment in the light, and let me emphasize this, in the light of other relevant cases. It is always a difficult problem and an uncertain process. It's something at which lawyers spend much time in gaining expertise, and a good deal more time in practising.

Fortunately for you librarians there are two circumstances to ease your task. The first is that all you are really looking for is a leading case. There are thousands of cases which are essentially repetitive, that is they apply the same principle of law to differing sets of circumstances. What you want is the leading case in your field of legal enquiry, which is the one whose judgment best sets out the current principle of law with clarity and certainty. Secondly, secondary sources of law will usually serve your purposes well enough. These are the commentaries on the law written by supposedly learned authors who have spent the necessary long hours toiling in the Law Reports and have then described the state of the caselaw for you.

You should also note two further points about primary legal resources. The first concerns the relationship between legislation and caselaw. Do not imagine they are isolated islands of law. Legislation is our primary source of law because Parliament or the Legislature is constitutionally supreme. Thus where there is a statute it overrides any pre-existing but conflicting caselaw. From this viewpoint, caselaw merely fills the gaps between statutes. But legislation, like caselaw, is applied by the courts, so consequently many cases are in fact interpretations of statutes in practice. Hence, although legislation speaks with primary authority, it's the courts that have the last word.

The second point concerns the relation between different cases. Law follows a system of precedent. This system has two aspects. Both depend upon a hierarchy of courts, of which you must be aware. First, the latin legal phrase "*stare decisis*" embodies the idea that like cases should be decided alike and hence, that an instant court should follow the precedent set by a previous one. Secondly, the system of precedents is also a method of determining amongst different cases which one shall take precedence over another. Naturally, the basic rule is the decision of a higher court takes precedence over one of a lower court. That is why you need to know the hierarchy of courts.

Since the system of courts is a provincial affair, you will not be surprised to learn that the names and organisation of the courts varies from province to province. However, every province's hierarchy can be depicted as a pyramid made up by decreasing numbers of ever superior courts. In the merest outline, then, there are many inferior courts, variously named Family Courts, Provincial or Magistrates Courts for criminal cases, and County or District Courts for civil suits. Next are fewer Provincial Supreme Court, Trial Divisions, i.e. superior courts of first instance, then comes the Provincial Appeal Court, and finally at the apex is the Supreme Court of Canada. There is some difference in the hierarchy of appeals for civil and criminal courts, though some courts appear in both hierarchies because they hear both kinds of cases. The important point to note with regard to the hierarchy of courts is the position occupied by the Supreme Court of Canada. As the final court of appeal from every province it acts as a unifying point in caselaw. It is our highest judicial authority. So in your research of caselaw what you librarians ideally hope to find is a leading

decision on your reader's problem from the Supreme Court of Canada.

That is the extent of primary sources. Let me turn to the secondary sources of law. These are also of two kinds, which I think of in terms of reference works and research tools. I have already hinted at the first in referring to commentaries on the law. Reference works are the texts or treatises on law. Some are reference works for lawyers, and others are textbooks for law students, but there is also a great mass of published materials, from pamphlets of a few pages to tomes of a thousand or more, that are either written for laymen or at any rate are readable by them. This is the bulk of the kind of legal collections you are likely to meet in public or school libraries. I can't begin to list their variety because law obviously covers the whole of human life. But I can make a couple of recommendations. I think the best single volume encyclopaedia of law for Canadians is *You And The Law* by Readers' Digest; with a caveat, it's beginning to age (it was published in 1976), and there's a limitation, it does not contain any references. It provides a good outline of the law in most areas, but unfortunately it does not tell you where to go any further. The best, and indeed a very good, bibliography of law for everyone is by Gail Dykstra, *A Bibliography of Canadian Legal Materials*, published by Butterworths.

The other kind of secondary sources are what I call research tools. They are the books which will help you to find the primary sources, that is the law itself. They include legal encyclopaedias, digests of cases, statute and case citators, and the like, all of which I shall speak about more when I reach my third question. In a sense they are more important to you as librarians than are the legal commentaries or the reference works because they are the means which give you access to the law.

II. *Where are the Resources? — Legal Information Retrieval and Referral*

The law as I have described it to you is a literary resource. It is usually to be found in statute books and case reports shelved in the library. So far as a reader's problem is access to the law itself, a librarian's task, it seems to me, is information retrieval within the library. That procedure I propose to discuss further under question three. Here I wish to add that you may be lucky and have within your library other kinds of legal resources, such as audio-visual materials. These

can be very useful if the patron is someone like a schoolteacher or a group leader who wants to discuss a certain topic with a class or club. Again I can't list what these resources might be, but I can recommend a bibliography to you. The best A/V catalogue is by San San Sy, *Audio Visual Resources: Law and Law-Related*. It is published out of Edmonton by the Legal Resource Centre, Faculty of Extension, University of Alberta.

If you are trying as a librarian to build up your library's legal collection, you will certainly get help from the experience of Gail Dykstra, the same person who compiled the Canadian bibliography that I have already mentioned. She has written two articles, one called "Legal Materials and Non-Law Libraries" which is published in the *Ontario Library Review* for 1975, vol. 59, at page 226, and the other is entitled "Sources of Canadian Legal Materials" which is to be found in *Emergency Librarian* for the year 1977, vol. iv, no. 3, page 8. In addition, if you are trying to keep up to date with available published material suitable for everyone, you'll be well served by the Canadian Law Information Council or CLIC's *Legal Materials Letter*. Write to Suite 2010, Tower 'B', Cluster V, 112 Kent Street, Ottawa. There are 11 issues per year and each is an exceedingly comprehensive newsletter. The April 1980 number has a current list of all sources of information on law for everyone.

But the reader's request may not be limited to information. He or she may need more than knowledge of the law; he may require help in protecting some right or practical advice in solving some personal problem. These needs you are unlikely to be able to provide from within the library. Yet it seems to me the librarian can still assist; indeed it is your obligation to provide a legal referral service, as distinct from the common information retrieval service. Frankly, in order to provide a referral service you simply have to know your own community, and that, so far as I can see, can be done in only one way. You have to make a survey of the community organisations and other supportive law related associations in your area. Moreover, and this is probably the harder part, you must keep your survey up to date.

I suspect that you will have to prepare such a survey for your own library, or for yourself, from scratch since it will contain very local information that is continually and rapidly changing, but here are some bibliographical starters. There's a journal known as the *Canadian Community Law Journal*, published by the Faculty of Law

of the University of Windsor, which comes out once a year. Half of it is given over to a Directory of Legal Services by Province. The other half of the journal is also useful to you but for informational purposes. It contains reflective articles on all aspects of the law for everyone. Secondly, CLIC has published a *Canadian Directory of Public Legal Information*. It's in 12 volumes — one for each province plus one national and one index. It was prepared by law students working locally for the Department of Justice over two summer vacations. It attempts to fulfil the same purpose as the law journal, namely to provide a directory of legal referral services and legal education programmes.

If your inquiry particularly concerns public legal education, then what you need is the directory by Luba Lisun, *People And The Law* which comes out of Edmonton from the Legal Resource Centre, Faculty of Extension, University of Alberta. In Ontario, which is the most populous province and consequently offers the greatest range of resources, you can receive a great deal of help from the group known as CLEO (Community Legal Education Ontario) which is located at Suite 310, 111 Queen St. East, Toronto, and from the Community Law Programme of the Faculty of Law, University of Windsor.

III. *How to Find the Resources? — Legal Research*

Here I shall travel quite lightly, since the only way to get to grips with the individual research tools is to see them in front of you and to try and work with them. But I can give you an overview of the legal method in researching a reader's problem. Readers are likely to present two sorts of problems. One type is very general: basically it asks "where can I find information on . . .?" Consumer protection might be a typical example. The other kind of question is quite specific: in so many words it amounts to "what are my rights against the seller of this defective washing machine?" This question sounds like a request for advice as well as information.

The process of research is the same for all varieties of enquiries, but you have to go further into detail over the more specific ones. Now I cannot emphasize too much that your first task is to obtain as much information about the reader's problem as possible. Far too many reference replies fail because the information the readers volunteer is insufficient, or represents only part of their circumstances. So you really have to question them further if you

are going to be of much help.

The hard mental part comes next for it involves making two intellectual leaps yourself. First you must convert the facts the reader supplies you into appropriate legal issues. Then, armed with the legal issues, you have to dive into the right field of legal literature. Your task is hard because there is so little help available in doing either of these two functions. Unfortunately, there is no legal encyclopaedia for laymen. The best substitute is Readers' Digest *You and The Law* that I have already mentioned, but it has no references. It may help you, therefore, to identify the legal issues in your reader's problem, but it will not direct you to any further legal sources. If this book is no use even to sort out what area of the law affects your reader, then there's nothing to be done but to guess at the subject area, start pulling basic commentaries off the shelf, and hunt through tables of contents and indices in textbooks. It takes time and not a little imagination. It's the process that lawyers have to employ also, though they have the good fortune of some legal training.

When you have an idea of the legal issues and the area of the law that concern you, then you have to put the research tools to work. Here I want to emphasize two fundamental concepts that must always direct your search all the time. The first is legal jurisdiction, the second is law reform.

Jurisdiction is a technical idea that mixes locale and authority. The application of law is limited by both. It usually has no force or effect beyond the borders of the province or the country where it is made, nor even within that geographic area if it is made without proper authority. I am sure you fully understand that there is a distinction between provincial and federal authorities in this country of Canada. It is a result, legally speaking, of separate legal systems or jurisdictions in each province, which maintain their own particular courts, and their own individual legislatures and governments. A similar though separate system applies at the federal level to Canada as a whole. Thus the Legislature of a province cannot pass acts on subjects not granted to it by authority of the British North America Act. Any attempts to do so are not effective law. In addition, courts cannot apply legislation or caselaw beyond their provincial boundaries, except, of course, the Supreme Court of Canada, which has a unifying power across the country as a whole. So your research must be directed to the jurisdiction

affecting your reader. You must always bear it in mind when looking for the law.

The second concept to keep in mind throughout your research is law reform. Law changes over time. Since the law doesn't stand still, nor can you; so your research must always seek to update the law to its latest condition. For instance, you may find a statute or cases which seem to be very relevant but if the Legislature passed an act last week which says something different, then all you have found is irrelevant. It is no longer law. The latest version of the rule is what alone matters.

The progress of legal research is from the most general to the most specific. You will proceed from a broad topical area to a precise rule of law. Of the legal research tools available, in a law library at any rate, the most general is the *Canadian Encyclopaedic Digest* (C.E.D.) Unfortunately the new and greatly improved third edition is only roughly half complete, but it will still yield some starting references, either to statutes or to leading cases, and it will certainly give you a better idea of the key words to hunt under in other indices.

After that the research process requires a frontal attack on the statutes or the caselaw. It doesn't much matter which to approach first. If you have found out from C.E.D. that there does not appear to be any relevant statute, then you might as well start with the cases. Otherwise, since acts are the principal source of law, you should start with them.

You will probably think there is a policy in legal literature to hide the law because I now have to tell you that unfortunately in attacking statutes there is usually no index. However, at the back of the last annual volume of statutes of each jurisdiction is a table of public acts, and the titles to these acts are generally descriptive. So you can go to that set affecting your jurisdiction and try out the key words you have picked up to see if you can find a relevant act. Then of course you turn it up and you read it, which may be a daunting task in itself. If you are lucky in finding an act, then remember to update it. You must check whether it's been amended or partially repealed. That information will usually be noted for you in the same table of public acts. You should also cross-check to see whether any courts have already interpreted your act by looking in a volume known as a statute citator. It is a tool for annotating those statutes that have been applied by courts.

If you are unlucky, and do not find any statutes relevant to your

topic, your efforts may reflect one of two conclusions. There may indeed be no legislation about your reader's problem, or you may have overlooked it. The relevant sections of law may have been stuck in some act of which you did not think. That's always a risk. Well then, you must press on to the caselaw, for you may find in the reports citations to related statutes. They may cross-reference you indirectly and so set you on your task the right way around eventually.

For an attack upon caselaw, you will be much better supplied. There is a series of volumes known as the *Canadian Abridgement* which does have an index and many subsidiary aids besides. An abridgement is essentially a set of abbreviated case reports. There are long lists by subject matter of headnotes or summaries of the kind that appear at the beginning of every case report. If you apply your key words so as to lead you to the right volume, you can then read pages of these headnotes to locate what you are looking for, namely a leading authority resolving an analogous set of factual circumstances to those concerning you.

This particular tool has its own updating tables to inform you of the subsequent fate of your leading case. If it was appealed, it is important to know how it was disposed of. If it was not affirmed, but was reversed or altered by a higher court, then the law affecting your reader's problem is likewise changed. The updating tables will also indicate whether and how your case has been regarded by other, later courts. Perhaps it will have been referred to or applied, both of which would strengthen its impact, or maybe it will have been overruled by a higher court in the hierarchy, which would then destroy its authority. This service, when separately published, is called a case citator because it cross-references by citation the histories of related cases.

Finally, to make sure that you are completely up-to-date, that you have taken into account changes in the law at any time, you can refer to *Canadian Current Law*, which is a series of slim monthly paperbacks. They cover the latest developments in all areas of the law, in all aspects of law. In addition, in some subject areas, such as family law, there are loose-leaf services that provide current information on relevant primary sources nation wide. This then is the merest outline of the method of legal research. For limited but quite sufficient detail you might refer to either of two good research manuals especially written for everyone. One by Paul Murphy is entitled *Canadian Legal Research Guide* and is published by the

Community Law Programme, Faculty of Law, University of Windsor. The other, written by the Legal Services Society of British Columbia, is called *A Popular Guide to Legal Research* and is obtainable at 200-744 West Hastings Street, Vancouver, B.C. The research process is practically the same in every province; there is no jurisdictional limit on these books as there is on the law they may help you to discover!

IV. *How to Use the Resources? — Legal Information and Legal Advice*³

Sometime every librarian will have to face the reader who in one way or another asks: “what shall I do?” or “what does the law mean?” The implicit and critical question for you, as librarians without legal training, is how you should answer that kind of question on the law? Its thrust is a request for legal advice: how can you satisfy it? The first point to realize is that no one has a monopoly on legal information. Librarians certainly don’t, nor do lawyers either. So don’t be afraid; go ahead and answer the question asked but take care the way you do so.

Secondly, the risk is not great that you will open yourself to a lawsuit by either the reader or by the Bar Society if you answer such a question. It is true that practising law, which includes the giving of legal advice for a fee, is reserved to lawyers. But your opinion is not for a fee, — worse luck perhaps. Also, the law imposes responsibility on everybody in society not to make negligent misstatements. But this is a technical phrase in law: it is not nearly so broad in application as it might seem. As a librarian you might be liable to a reader who receives the misinformation in a situation that is analogous to advice for a fee or where you show you have legal research skills not merely to refer him to the requisite law but also to interpret it and apply it to his situation so he relies on it to his detriment. I say “might be liable” because I do not know of any cases in Canada in which a librarian has been sued by a patron. That may indicate the degree of risk you face. Moreover, not every inaccuracy leaves you open to court action by a reader. Liability may be imposed only where the misinformation is supplied as a result of unreasonably careless conduct as a librarian. No one can be

3. G. Dykstra, “How and Why: Legal Information Referrals,” and T. Heitz, “Legal Information vs. Legal Advice,” in (1977), 4 *Emergency Librarian*, no. 3 at pp. 14 and 20 respectively.

called upon to be wholly accurate all the time. You may expect to be measured by current standards of good library practice in your profession. In any case, there is no need to expose yourself to any risk of litigation at all if, in the course of assistance, you simply make the reader aware that you are not qualified to give legal advice and that the help you may provide should be treated accordingly.

Having said this much by way of reassurance, common sense should lead you to realize that there is a limit of assistance to readers beyond which you cannot usefully go. If you have already discovered all the relevant information available in your library and you are still asked "what should I do now?" or "what does all this mean?", then I think it is high time that you did refer the reader beyond the library to some legal advice service, or even to a lawyer if he has a specific personal problem. But don't just push the patron out the door. Your obligation, though certainly not to choose a particular lawyer for him, is to match your referral service to his kind of needs.

As I have already indicated, in the context of legal research, one of the greatest pitfalls is the failure of readers to volunteer all the facts relevant to their enquiry. Hence I cannot emphasize too much that the greatest cause of misleading statements by librarians in their replies is the lack or omission of information supplied by the readers in the first place. So make sure you question a reader fully and carefully about his problem on all occasions.

After that you ought to be able to match up a patron's needs to your referral service from the survey that you will have on file in the library. If the need is for the advice of a lawyer, you should not choose one for the patron but nor should you simply point to the lists of practitioners in the telephone company's yellow pages. Direct him to the local Bar Society's referral service or the nearest Legal Aid Office, whichever is the more appropriate. At a minimum you ought to be able to provide these aspects of assistance: the correct name, address, directions and opening hours of a relevant agency; whether it will provide help over the telephone; in what languages it operates; whether there is a charge for its services; and if it will accept clients who walk in for assistance without an appointment.

The librarian must know these details as a matter of course and, in addition, must employ them to the effective benefit of the patron. I don't think it adequate simply to send off a patron with directions in his pocket. If possible, you should contact the agency and let it know that a client is coming, or arrange an appointment, and

provide the patron with the name of a member of the agency for whom he can inquire. As a final word, for your benefit, ask the patron to check back with you about the treatment he received from the agency. Then you will be able to keep your referral survey up to date and you will avoid some of the risk of passing on bad information.