Fifteen Years of Free Access to Law

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Abstract. Free access to law on the web began with the seminal initiative of two law professors at Cornell University in 1992. Rapidly, others researchers and professors adopted the idea, and created their own legal information institutes. Later, government also joined in by establishing free access for some law. In general terms, the movement to make law accessible for free on the Internet is now fifteen years old.

As the number of stakeholders involved in making the law free and open grows, it is useful to take stock of the progress, try to identify what has been demonstrated by pioneering actions, pinpoint what is still disputed and look at what needs to be done to further extend open and free access.

The LexUM laboratory at the Université de Montréal had been involved in the open access to law initiative since its inception. Drawing on experience gained in Canada and in supporting access to law abroad, we offer our reading of the open and free access to law movement at fifteen.

1 Introduction

A mix of idealism and technology drove those who started publishing the law on the Internet in the 90s. Idealism was frequent at the outset of the Internet and web. Many actors were not working in line with the usual profit-driven dynamic; they were instead developing and employing technology in a way that made sense to them because it was a useful thing to do and could contribute to making the world better and fairer. Besides, an information revolution was underway, and some academics could not help themselves: they wanted a part of it.

It must be remembered that at the time, law publishers were explaining to all who wanted to listen, and to many who did not, that publishing law was so costly that they could not charge less than a couple of hundred dollars an hour for use of their systems. With the advent of microcomputers in courts and the development of the Internet many stakeholders were no longer convinced. The

pioneers were not interested so much in the potential commercial benefits as in serving those needing access and in proving wrong those who claimed that putting decisions online was that costly.

The whole movement was also technology driven. Those who had used arcane technologies, such as legal database systems developed in the 70s and still in their glory in the early 90s, and who were discovering the nascent web could envision what could be achieved with it and a comprehensive public communication network. They knew the tools, they saw what the tools were starting to do for other disciplines, and so they were looking for what they could do in their own field, law. Of course, today, in some circles, technology-driven projects sketched by IT lovers are doomed to be shot down on sight by the sober and wiser boardroom crowd. Luckily, then, and still today, universities provide some safe havens for eccentrics who want to try things because they are "interesting."

In this paper, we propose an assessment of the Free Access to Law (FAL) movement's achievements, formulate questions, and suggest some future steps to be taken to extend the spirit of the pioneer efforts but also to build necessary bridges to other players, who began elsewhere, but have done very well in the field.

2 Findings and Achievements

Overall, the FAL movement has been successful. Modest and not-so-modest initiatives – AustLII having been part of the mix since the beginning – have significantly contributed to establishing a new understanding of what "access to legal information" means. In what follows, we identify some of FAL's results, with an admitted bias in favor of positive achievements. The results presented here may appear as a mix bag, for some outcomes are measurable and some are not, but all together they provide a good overview of what has been achieved.

Furthermore, the goal is not to establish which proportion of the positive developments can be linked directly to the legal information institutes: LII, AustLII, BaiLII, and CanLII and all the

others. This is beside the point; this paper aims at identifying what has been learned and demonstrated by all who have chosen to make the law freely accessible on the Internet.

1.1 PRIMARY LEGAL DOCUMENTS MUST BE IN THE PUBLIC DOMAIN

For centuries, citizens have been presumed to know the law. Such a presumption certainly entails a duty for the state to make the legal rules as accessible as possible. In older times, laws evolved slowly and the body of rules was limited. When a rule has been around since time immemorial, informing people about it is less a problem. Over the last century, the body of legal information has grown tremendously and the pace of its evolution has significantly accelerated, making it unrealistic to presume that one could be aware of all of the huge body of regulations based on what filters through the media alone. Printed legal documents are costly to distribute. Of course, official publications are offered to local libraries at a cheap price, but nevertheless reliable documents used to be difficult to access. For instance, a rapid query of the catalog of the City of Montreal library system using “Lois révisées du Canada” or “Supreme Court of Canada” will not return much and it is one the largest public library systems in the country. However, let’s assume for now that print did not lead to a good distribution system.

The first wave of electronic systems, the commercial legal databases, such as SOQUIJ and Quicklaw in Canada, did not help much in terms of access, at least as far as individual citizens were concerned, for they required pricey subscriptions. Only with the advent of Internet did it become feasible to provide the general public with access to the law.

Today in most economically advanced countries, and for most of the people living in them, it has become possible to know the law, or at least to access the documents containing the law. In other words, in a significant part of the world, the law is now available to be accessed and consulted by the people it was designed to

guide and rule. What the free access to law movement did is prove that this could be done in a very cost-effective manner.

It was not clear at the outset whether a site offering access to legal documents would find an audience outside the legal community. Legislative texts are at best boring, if not so convoluted as to be barely understandable. At first glance, a casual reader might think court decisions are easier to understand; however they are not court dramas or crime novels. The facts can be sketchy and learned judges can drag on for pages, discussing the recent addition of a full stop between two sentences of a statute. So, it was not certain that free access to law initiatives would find an audience beyond the usual crowd of lawyers and law students.

Well, it so happens that the documents have been used and consulted not only by lawyers and journalists but also by a significant segment of citizens trying to figure out how to prevent or get out of trouble. Evidence of such use lies in the nature and the quantity of questions we receive from users. Some try hard to help themselves. This said, figuring out how the law is organized and works and finding a way through the maze of texts, let alone understanding legal language, remain huge obstacles.

Of course, in most cases, when facing serious legal difficulties, people end up consulting a lawyer. However, with the advent of CanLII and the likes they could try to understand their situation and the rules by themselves, just as they look on the web for information about a new drug that they have been prescribed. They are not planning to fly solo or to order medicine from some dubious source on the Internet. They still trust physicians and pharmacists, but a little medical information cannot hurt and they can find it on the Internet. Now they can find legal information as well.

The pioneering efforts have shown that it is not so costly to provide free access to law and that this is within the reach of most states. The LIIs have also revealed that there is interest in legal texts, not only among lawyers, but also among members of the

citizenry itself. To conclude, primary legal material, statutes, regulations and cases must be accessible for free to people.

1.2 THE ROLE OF THE STATE IN ENSURING PUBLIC ACCESS TO LAW

The countries where the first free access to law initiatives appeared enjoy a legal and policy framework globally favorable to the broadest circulation of law. Governments can make the difference.

In Canada, there is still Crown copyright over statutes and judgments. As long as Crown copyright was used to control reproduction of primary legal documents, the development of a free accessible resource was undermined by the required license. Legal information vendors did not suffer much from the policy: they could just set high prices for their products and buy the licenses from the government. FAL's activists did not have that option. When Canada's federal government decided later on to adopt a new policy such that permission was no longer required to reproduce legal documents prepared by the government if the intended use was non-commercial, free access to information started to develop at a fast pace.

A second, and far more fundamental, illustration of the importance of government policies is that only governments can establish some features of the basic framework of a law-governed country. For instance, if legal information is not gathered and preserved, there is no way to publish it, for free or for money. In some countries, gazettes and official reports have not been published for years and court records are not kept. It is obvious that in such situations only the government can establish the foundation for the legal system to operate properly.

Public institutions must collect, organize and preserve the essential texts stating the law of the land. For legislative texts, a public institution must also act as the official publisher. In other words, an authoritative version of legislative acts must be available from the state. This said, in countries subject to extremely difficult

economic conditions, simply collecting and publishing legislation can be a challenge, even though it is the obvious starting point.

Collection of judicial decisions, especially those with precedential value, is also of great importance. Today, collecting the essential components of primary legal information must be done for digital as well as paper versions. Preservation of archival copies of the legal patrimony on both supports is a fundamental responsibility of government. With regard to ensuring access to law, particularly to legislative texts and judgments, which is the central issue here, there are many government obligations.

A common obstacle for those who want to publish law for free comes out of some governments' desire to make money out of legal texts. The thinking goes like this: if publishers are to develop products out of very valuable public assets, it is normal that the government get its fair share of the profits from the sales of those products. Sometimes it is even simpler. In some Canadian jurisdictions, the government imposes financial self-sufficiency objectives on the provincial Queen's printer, which is the office in charge of publishing legislation. This forces it to extract revenues from its control over statutes and gazettes. In such situations, Queen's printers have a very demanding balancing act to perform: they must provide access and also make money.

Other jurisdictions take another route: the Government of Ontario and the Canadian federal government have chosen to offer free access to the best systems of legislative information they can produce – their legislation sites are both remarkable – and to liberally authorize reproduction. They have preferred access over cost recovery. In our view, their approach exemplifies best practices in the matter.

In courts and tribunals, the outlook is simpler. To our knowledge, no Canadian courts or tribunals have ever asked for money for a license to publish their decisions. Legal publishers operating for commercial or for free access purposes can contact any of them to establish channels for providing their publications with raw materials produced by the courts. However, in some Canadian

provinces, and in some countries, a single outlet has been set up to provide access to decisions from all courts and tribunals, and it often follows that cost recovery issues appear. Some jurisdictions have found quite elegant approaches. In Quebec, admittedly after a Court of Appeal ruling that case law must be accessible to publishers, SOQUIJ reluctantly set up a web site on which citizens can find all Quebec decisions for free. Then, as the court asked, SOQUIJ established a channel to give other publishers access to decisions as well. The Quebec government and SOQUIJ even ensure the distribution of anonymized decisions when identity protection is required. Eight years later, SOQUIJ continues to operate the most successful commercial operation in the Quebec's legal information market, yet at the same time it ensures free access and makes accessible all the source material needed by other publishers. In the end, SOQUIJ really won in all respects. This is an impressive and inspiring example.

Elsewhere in Canada, as in many other countries, a large number of courts and tribunals have set up their own web sites to make their decisions available. Some of them are very good resources, but all of them are important. Their relevance, even when, as in Canada, a LII such as CanLII publishes the decisions anyway, comes from the commitment to transparency and access shown by the institutions.

In many European countries, governments have taken into their own hands the burden of providing free access to legal information. Legifrance is a good illustration of this approach to making law accessible. On Legifrance, one can find nearly 2 million documents and 100,000 more are added each year. Since 2002, Legifrance has been making constant progress, and today it serves its mission with the usual French flair. We all know that legal language is not easy to understand, so while publishing the case law and legislation of a country is a very laudable objective, it does not suffice to reach the higher and much more difficult goal of making the law itself accessible. The French government has risen to the challenge by setting up a companion site to Legifrance that may be even more remarkable: Service-Public.fr. Service-Public offers a simplified outlook on procedures, explains

administrative processes, and clarifies the law from the citizen's perspective, starting with ordinary personal problems with landlords, in the workplace, and in dealings with the government. Together, Legifrance and Service-Public provide a good illustration of what can be achieved by a government committed to public access.

To sum up, the role of government is paramount. There are fundamental missions that only the government can carry out; collecting, managing and preserving law are government duties. Official publication of legislation must also be under state control. Thus, proper policy must be chosen to favor other initiatives that complement those of the government. Finally, governments with resources can prepare tools that nobody else can match.

1.3 OPEN ACCESS TO LEGAL INFORMATION SERVES ACCESS TO JUSTICE

In the seventies, in many of our countries and in many forums, public rights advocates, academics, civil servants and politicians met and discussed how to make the justice system more accessible. In Canada, what can be called the access to justice program took four main tacks: (1) attempts to simplify procedure, and establishment of small claims courts; (2) exploration and creation of alternate dispute resolution mechanisms and resources; (3) establishment of a legal aid system, to make sure that less well-off people could have the assistance of a professional lawyer; and (4) efforts to simplify legal language. All these initiatives succeeded at some level, except maybe the last one: at least in Canada, legislation drafters made no breakthroughs.

Pierre-Paul Lemyre, a colleague at LexUM, recently suggested that free access to legal information must now become part of the program to support access to justice and this sounds right. With the means at their disposal, governments that favour access to justice must act today to make sure that the primary sources of law are accessible to their citizens for free on the Internet.

1.4 LEGAL PROFESSIONALS AND LAW SOCIETIES COULD BE CRITICAL ALLIES FOR OPEN ACCESS

Governments have money and responsibilities; lawyers have money too, and they have needs. Canadian law societies invest a significant amount of money in improving the competency of their members by maintaining libraries and preparing various types of training material and publications. This is an important way of protecting the public. In Canada, in the 90s, law societies and lawyers alike were facing huge cost pressures from legal publishers. Legal information costs were spiraling. The worst of it was that the transition from paper to the new digital media was fundamentally changing the deal. Lawyers and libraries, which used to build documentary assets, were becoming licensees having to pay forever to access online databases and even to continue using their CD-ROMs. On top of that, a law society was sued by publishers over sharing its information holdings with its client-lawyers. This was the context when LexUM and the Federation of Law Societies of Canada started to talk about building CanLII.

There was already some legal information accessible for free in Canada. LexUM was involved in many of the projects, but overall the resources were scattered. Some were not even searchable, and the others employed a range of different search tools. Overall, it was, if not useless, certainly not conducive to supporting competent practice of law. In 2000, Canadian lawyers decided that by partnering with those who were already involved in publishing law for free, they could improve the service. The Federation of Law Societies of Canada and LexUM ended up as an odd couple. Some may say that LexUM married up, but we like to think that we have spoilt the spouse. Now Canadian lawyers have a one-stop shop with over 600,000 decisions from all Canadian courts and a hundred tribunals, as well as the legislation from all of Canada's provinces and territories. CanLII, a marriage of convenience, has become a happy union. Recent surveys have shown that CanLII is now the main source of primary legal information for Canadian lawyers. In our view, what CanLII has shown is that free access to law can make business sense.

Something more needs to be said about CanLII: people with professional and business interests can do nice things. When they chose the CanLII approach as the solution to their problems, Canadian lawyers turned their backs on many less innovative, more familiar, business-like, and – let's say it – selfish approaches. They preferred the high road of ensuring free access to law for everybody, laypeople and paying members alike.

Involvement of the legal profession in making the law accessible is not specifically Canadian. The legal profession played an important role in the establishment of BaiLII. Cornell has been receiving contributions from its users for years, and lawyers are significantly present among donors. AustLII recently campaigned to reestablish its funding, and individual lawyers, law firms, law societies have responded to the call and shown huge support for their Australian LII. Even in emerging countries, lawyers get involved. In Burkina Faso, the Ordre des Avocats played a central role in the establishment of Juriburkina. A similar involvement paved the way to the establishment of JuriNiger. Clearly, lawyers are allies, and indeed sometimes the initiators of FAL.

1.5 OPEN ACCESS IS NOT POOR ACCESS

Today, CanLII offers a very sophisticated search environment: comprehensive databases, a powerful search tool, a citator, a point-in-time system for legislation and more. Database comprehensiveness is constantly monitored. Usability is a constant concern for the production team at LexUM. CanLII is not a rustic tool; it is the tool that professionals choose. AustLII is almost as good, and at times may be even better. The LII at Cornell continues to impress owing to its tidiness, and especially because of the care taken to make the law accessible to laypeople: no one tries harder. PacLII, SafLII, BaiLII and all the other members of the LII family are doing quite well too. The quality of government sites varies. There are extremely basic sites, extraordinary ones, and everything in between. Beyond the variety of the systems, what can certainly be concluded here is that some of the

accessible-for-free resources are setting the bar very high, even for their commercial brethren.

1.6 OPEN ACCESS AND COMMERCIAL PUBLISHING CAN COEXIST

Finally it is worth mentioning that free access has not killed commercial legal publishers. (Not yet, mischievous observers would say.)

Our own view is that there is room for both and that in fact both are needed. At least in Canada, commercial entities are doing a superb job publishing law. The business has certainly evolved: the bygone days of selling raw court decisions have passed. However, forward-looking publishers are finding new ways and new places to lead their businesses. They innovate in content packaging and they design products targeted to practice communities: securities, labour, corporate and so on. Beyond that, they still produce and support a lot of secondary sources of law: treaties, commentaries, annotated text and more.

3 Questions and perspectives

The first part of this paper is mostly upbeat; indeed, very significant progress has been made. The outcomes of the issues discussed in the second part are less certain. The stakes relate to sustainability, extension of the free access to law program around the world and proliferation of legal information.

3.1 OPEN ACCESS IS SUSTAINABLE

Cornell's LII went online in 1992; LexUM and AustLII followed suit in 1993 and 1995. In Internet time, that was long ago and they are quite old places. In a less favorable context, PacLII has been leading an ambitious publishing effort in the South Pacific since 1998. Juriburkina has been hanging on since 2004, and SafLII in South Africa is the same age. All these initiatives are of course happening outside governments, and by definition they are the

most vulnerable to sudden lack of funding, but they keep persevering. Government-based free-access-to-law sites have proliferated in recent years. There are now hundreds of them in ministries, agencies, courts, and tribunals across the world. These sites, once started, tend to stay around. So, in one form or another, free access to law is far from a fad of the doc.com times and seems to be here to stay.

Study and analysis of the first 15 years of development of legal information institutes remain to be done. However, some of the ingredients of the successful projects can be identified, and they are probably the same whatever the level of development of the economy: the involvement of the various local stakeholders is certainly the most important factor for success. Generally, however, sustainability factors differ depending on whether we are talking about LIIs and the likes, or government-created FAL sites.

The LII scenario is produced when members of civil society, academia, ONGs or a law society decide to take the initiative to publish the law for free. The depths of the roots in the community are the major factor for success because the deeper they are, the more likely the project will survive to maturity. Establishing a new source of law takes time, especially for those wanting to avoid huge investment. In our experience, the initial phase takes five to six years. This is easy enough to understand, for at first the would-be LII offers only few databases that do not extend very far into the past. It is plainly not sufficient for legal research. That will come, but it will take time. However, this is not to say that LIIs are useless in their first five years. Absolutely not. LexUM started with 300 Supreme Court of Canada's decisions and the service was highly appreciated from its very first months. However, in such conditions and at that tender age, the LII has not yet reach the point where legal research can be conducted, and this entails frailty. Such a LII needs to be nurtured until its usefulness is proven to the community.

The clearest form of local involvement – and a special one – is when a government or government agency decides to take charge of making the law accessible for free. In those cases, often a large

or at least a significant body of law is published at once. Such sites can become reputable and reach a significant level of use rapidly, so generally they will avoid the long starting phase of their LII cousins.

In the long term, sustainability means the same thing everywhere; one has to be able to pay salaries, the rent and the like. In both rich and poor countries, two main sources of funding exist: those who have the mandate to make the law accessible – governments – and those who need the service – lawyers, businesses, law schools, and… governments. In most cases, a LII's capacity to self-finance will depend on the usefulness of its product. This said, everything is easier in a richer society.

Government-funded free-access-to-law sites are certainly less exposed financially. These resources still have to face risks. In less stable countries, a change of government may entail the death of the initiative and loss of the data. In poorer countries, where the state struggles to fulfill many of its basic responsibilities, the support of foreign development agencies could be required for a while. For instance, New Zealand's development agency is supporting free access to law in the South Pacific. In Canada, the IRDC is funding research on FAL and as well as on some experimental sites in Africa. External funding may actually be needed for some time. It is certainly hoped that the LIIs established in emerging countries will end up being financed by local sources, but this can take time, especially since the real usefulness of some sites can take time to develop.

In many emerging countries, international development funding agencies are involved in legal reform, rule of law strengthening, judicial transparency and good governance programs. Unfortunately, issues surrounding accessibility of legal documentation do not always receive the attention they merit. Quite probably, the value of the free access to law approach as one of many practical ways of strengthening rule of law-related institutions has not been sufficiently demonstrated. Besides the fact that the issue is too often neglected, there are also issues around the approaches chosen to make law accessible.

In some cases, outside funds have been mustered for programs designed to reinforce a country's capacity to collect and disseminate its law without sufficiently securing the public nature of the legal information and with no ambition to make the law accessible for free. To some, trading official legal documents appears as a better business than giving them away. Unfortunately accessibility is too often the victim of such commercial schemes. Let's start by noting that in order to create a market for raw official legal documents, one needs first to ensure some scarcity. To do that, digital versions of documents are made difficult to obtain, and licensing schemes is introduced for controlling the reproduction of legal texts. When a market has been sufficiently created businesspeople in or outside government can start doing marvels, selling the law. Anybody could then assess that all this is done without costing anything to the government. However, the truth is that this sort of privatization of official legal information can work somewhat and for some time in a rich country. Most often, it will not work at all, not even for a minute, in an emerging country. For, however scarce access to legal documents is, the buying power is just not there.

The obvious solution – funding permitting – is to adopt a principled approach where official legal documents or primary materials are deemed to be public patrimony. The documents are made freely available and their reproduction is permitted. Then, because commercial activity is good and businesses do many things better than governments, all the rest of the legal information business is left to entrepreneurs wanting to offer value-added legal information products and services. In such a framework, they can enrich state-produced material, which they have perhaps acquired for a license fee, to prepare products users will buy. Furthermore, the creation of various free access to law remains possible, it is up to interested stakeholders to make it a reality.

3.2 STRATEGIES FOR FOREIGN LAW ACCESS

Most of the time, law has a local character. Ordinary citizens and even practicing lawyers rarely engage in full-fledged worldwide research. This said, globalization is constant, and our legal systems undoubtedly influence one another. Higher courts in neighboring countries are cited in our Supreme Court, some fields of law – cyberspace, intellectual property, and privacy law come to mind – are evolving in a global way, and probably more importantly business is now frequently conducted globally. Commercial publishers recognized this fact and started responding to this need years ago. Some actors in the FAL movement are stressing the importance of being able to access foreign law: “Those who value free access to law need to respond to the increasing global nature of legal research” (Greenleaf, 2007).

An empirical way to assess the importance of the global nature of legal research is to look at what the users do. On CanLII, it is possible to see how often a user has chosen to go to other countries’ resources, and how many times someone went to us directly from another country or through a portal as WorldLII or Droit Francophone (DF). Of course, this is not rock-solid knowledge. However, we believe that these observations could give us an idea of how global legal research is today.

Usage statistics show is that the need for foreign law is significant. For instance, CanLII answered close to two millions of queries from users abroad in 2007. However, only a tiny fraction of these users came to us through worldwide portals like Droit Francophone and WorldLII.

The needs to access foreign law are important enough for us to look at solutions. One is the creation of hubs, à la WorldLII, and another is the creation of interoperability standards and protocols paving the way to federating all FAL sites. The latter approach would let any FAL provider to act as a hub. Let’s call these solutions the hub model and the federation model, and look at each one in turn.

In a hub model, the hub promoter/operator creates a catalog, various indices, such as a search index and maybe a citation index, and sets up the service. From that point on, those who want to access foreign law visit the hub and do their research work there. Greenleaf and his colleagues develop such a strategy in detail [Greenleaf 2007] in relation to WorldLII, a hub of the sort they advocate. Anybody who has visited WorldLII can testify that the approach chosen by AustLII has a lot of merit. The system is working, and beyond its utility as a catalog it could be especially useful for those needing to do global comparative studies or global searches. Creating WorldLII was no small undertaking, and maintaining it over the years is also an achievement in itself. WorldLII has been serving free access to law for over seven years.

The hub approach is not without shortcomings, though. Such a centralized resource limits everything to a common denominator, its current implementation asks for too much technological consistency, and in the end it is too centralized.

There is certainly a need to compare law, and this need is probably increasing, but it remains relatively uncommon. Sometimes someone may wonder what is the law regarding protection of the personal data in school records world-wide. Such needs occur, and when they do, WorldLII is now the starting point for finding more specific sources and resources.

What we believe is more frequent is the need to know the law of not just other countries in general, but a very specific one. For instance, a Canadian business person or a company lawyer may need to know specific environmental requirements for mining activities in Tunisia or Cambodia. A student may want to know visa requirements for Australia. An information technology start-up or its lawyer may want to know how intellectual property is protected in Barbados. This understand of the needs in relation with foreign law is supported by CanLII usage statistics. It can be said that the most frequent needs with respect to foreign law are needs with respect to another country domestic law. When you have a project or problem, you want to know the law of the land.

This analysis of foreign law needs lead us to examine what could be the best strategy for meeting them. What advice would we like to give a Swiss lawyer looking for Canadian legal information? Of course, it is to invite him to pay a visit to CanLII. Indeed, despite the quality and the value of the work done in consolidating all the law of the world in global hubs, such resources may be not a substitute for the real thing. Hubs serve global searches especially well, but global search needs are limited. “Local searches” made by foreigners are more frequent. This is the need we wanted to serve.

Greenleaf et al. have described various facets of legal hubs [Greenleaf 2007]. We want to add one more. Some hubs may be characterized as shallow and others as integrated. Using this terminology, traditional search engines would be classified as shallow. The “Droit Francophone hub” (DF), designed to provide a starting point for exploring legal content produced in French and developed for the Organisation internationale de la Francophonie (OIF), would also be qualified as shallow. So, a shallow hub would be one that has no requirement with respect to indexed sites other than to be “browsable” and to let indexing robots pass. Integrated hubs have more requirements, and WorldLII is closer to an integrated one. Actually, an important ingredient of the WorldLII recipe is that most of the sites that are globally searchable on WorldLII share the same search engine, the excellent SINO developed by Mowbray. This is no sin, but it works only as long as other people use SINO. As of today, the real basis for the main WorldLII’s service is the uniformity of technological choices. In all fairness, it must be noted that WorldLII operators are not opposed in principle to other approaches, for instance, for some time WorldLII has been federating CanLII’s search engine’s results with results from other search engines.

Finally, WorldLII offers a centralized model. Everything is done in Sydney. With Droit Francophone (DF), LexUM has also ventured in the field of global portals. However, DF was designed from the start to be operated by a worldwide network of partners. In the end, the planned collaboration never took off and we have ended up doing everything from the central office too. So, in that case

everything is done in Montreal. When the collaborative approach did not work, it taught us something: collaboration and cooperation require incentives and we were not offering enough of these to those we were inviting to work with us.

Again, centralization is not bad in itself. For instance, CanLII is a very centralized model within Canada's borders. AustLII is also a centralized solution for Australia. Where it starts to get more complicated is with centralized solutions for outside jurisdictions. This said, it is probable that to many stakeholders, the centralized approach is the way to go. Their law can be searched and easily located, and it costs nothing. Many users as well find that WorldLII is great: it is a one-stop shop for finding legal information on the web, to do global searches. Others would prefer a less hierarchical, less centralized approach. This leads us to the second model which can be seen as an alternative or complement.

The federation approach can be compared with peer-to-peer networks. According to this approach, LexUM, for example, could develop for CanLII some sort of connectors that are usable by outside programs from other LIIs. Thus, any LII recognized as so by LexUM/CanLII would be able to search CanLII. Much richer connectors could also be designed. For instance, a citation resolver could be offered and a CanLII resource description could be prepared according to a standard and made accessible in the same way. We don't intend to be obscure here. The plan is simple. Participating LIIs would connect by way of standardized APIs, so when a Canadian user using CanLII is interested in South African law, she will find a link to SafLII or will be able to use SafLII's search engine directly from CanLII, and vice-versa.

This sort of approach is more scalable. These days, moving data between LexUM and AustLII is no small feat. With the suggested approach there would be no need to index huge external LIIs or to replicate enormous quantities of data. Such replication can be impossible, many LIIs has a duty to "control" the data entrusted to them. The approach also lends itself to offering complete freedom of choice with regard to technologies. Any site participating in the free access to law program would have only to support the

standard API to join the access exchange. The approach would also be extensible; various levels of service interchange could be developed in the future.

The federation approach is not hub hostile. Actually, if LexUM offers an API to access the CanLII search tool ELIISA, a hub – more specifically WorldLII – will be able to use that API to send CanLII the query, get the results and federate them with other results obtained elsewhere. However, the API will be accessible not only to WorldLII but to other LIIs as well. Reciprocal agreements come to mind. To make sense, the approach requires standardization at the API level so the would-be hub operator does not have to talk to dozens of different programming interfaces. This makes sense though, and even if new in the FAL world, this seems to us the most obvious way to serve our desire to collaborate.

Finally, the federation model is closer to FAL's values. The resulting structure would be flatter. Relationships between free access to law sites could be between equals. In the end, we think that such an approach would even please those who are more attracted to the benefits of a hub approach. For them, this may mean that they would even get access to databases that were closed to them until now because some who provide free access to law may be reluctant to see their entire content copied abroad in order to be searchable on a hub.

Both approaches have advantages, and actually they may well complement each other. On our view, this would be the most promising way to serve the FAL movement.

3.3 ACCESS TO JUSTICE AND THE PROLIFERATION OF LEGAL INFORMATION

When we started publishing law at LexUM, we were eager to publish everything because so little material was accessible back then. We could not find enough of it, and the truth to be said we are still eager to publish more stuff today.

At CanLII, we are now publishing the decisions from all Canadian courts and over 100 administrative tribunals. We are also publishing the legislation from the fourteen Canadian jurisdictions. Overall we are publishing over 150,000 decisions a year not counting legislation. If one considers only Quebec, CanLII is publishing 20 times more decisions than used to be published there only 20 years ago. The publishing volume on CanLII is matched by commercial vendors. Legal information is now abundant, so abundant that some users are starting to feel challenged by the huge volume of information to be sifted and searched.

FAL's goals are to make the law accessible. Could it be that so many legal documents are published today that there could be a threat to access to justice, the end goal of FAL? Could the current proliferation of texts compromise actual access? Catherine Best, a member of the CanLII's board of directors, brought this issue to the attention of the FAL movement at the 8th International "The Law via the Internet" Conference [Best 2007]. Among the ideas expressed by Best is that lawyers can see their research work becoming more complicated if they have to face a tidal wave of published cases. The volume of available material seems to lead lawyers to take support from a larger number of authorities. At the same conference, Canadian judges also expressed concerns with the proliferation of case law. A flood of cited authorities can slow down the work of the judiciary. The FAL movement must meet this challenge, and for LexUM and CanLII, it means enhancing the tools provided to users.

The way this problem was dealt with in the more conventional world of legal publishing was by improving the organization of the data. Published pell-mell, even a thousand documents can be difficult to handle. Conversely, major legal publishers have demonstrated that users can utilize millions of documents when they are well organized. Legal publishers help users coping with large sets of documents by investing in editing to add head-notes with keywords; abstract, conceptual and thematic indexes; authorities cited, and so on. For FAL, the challenge is to provide the required but costly tools in a cheap way. In this respect, LIIs have fared well; however, as their holdings grow, some of them

may want to do even more. Let's look at how FAL site operators have managed to add value in a thrifty way.

Firstly, one must respect the inherent structure of legal information. Cornell's LII site, the very first, offered good information architecture right at the origin of FAL. This inspiring model has generally been followed by other LIIs. Without going into minute detail, legislation is arranged and presented in a hierarchical way and cases are organized and browsed hierarchically and chronologically. The information is organized in directories and presented in pages in its "natural" structure. This way, URLs are meaningful, and navigating the material does not disorient users.

The second major element of the FAL approach is the search tool. It has also been a central part of the FAL offering since the beginning. The search tools are generally good and fast. Speed counts. CanLII's users send feedback to tell us how much they appreciate searching on CanLII: they can launch ten searches on it while they would be able to run just one or two on a commercial site. LexUM has always thought that search speed is paramount, for a fast search tool can compensate for weaknesses by letting users refine their query so efficiently that limitations are forgiven if not forgotten. This said, it is still best to have a search tool that is simple and powerful (and yet lightning fast).

Thirdly, hypertext linking helps users navigate information. In the olden days, checking a citation meant a visit to the library. With hypertext, checking is instantaneous. The massive legal hypertext built by AustLII in the 90s has become a FAL signature. The ingenious approach to building the hypertext systems is described by Mowbray [Mowbray 97]. Let's summarize it in our own words: (1) citation recognition and markup is done around conversion time; (2) the well-designed information architecture makes it easy to set up links; (3) a note-up function makes it possible to find documents citing the current document by searching for the information added to citations at markup time. LexUM's Morissette found an astute supplementary trick by integrating the note-up with the full CanLII search function. The resulting search

tool, entirely built by programmatic techniques, lets users mix concepts – or at least citations to documents strongly associated with concepts – and words in queries. For instance, CanLII's users can note up a Quebec Civil Code section with other search criteria.

LexUM hit a limit with the preceding approach when it was developing CanLII. The problem was that, quite often, cited documents were on CanLII but cited by reference to a printed report. The information needed to attach a citation referencing a reported decision to the very same decision published on CanLII was simply not available. A fourth enrichment strategy, the development of a citator or a database of citation information, was needed, and it has been developed by LexUM under the name of Reflex [Poulin 2005]. Over 200,000 citations were extracted from the leading Canadian reports by students in two consecutive summers. That operation added over 2 M of hypertext links to CanLII. The 36 report series have since been compiled on a monthly basis. Reflex adds chores to the editorial process for CanLII, but we feel that the hypertext linking makes the service much more complete and reliable, and so is worth the trouble.

Judicial history information is the fifth enrichment on CanLII. What is at stake here is to provide reliable information about later judicial treatment of the case at hand. For instance, a lawyer looking at an interesting Ontario Court of Appeal case needs to know whether the rule stated in the case is still good law, whether it has been overturned by the Supreme Court of Canada. Compiling judicial history adds another bit of work to the case law publishing process but can be mostly automated.

Furthermore, if we turn our attention to the future, LexUM is envisioning mobilizing CanLII users in some sort of collaboration scheme. Various collaborative strategies have been discussed and imagined to partner with our users so as to add even more value. At some point, experiments will have to be done. We are considering many avenues at this point; user interactions as they are reflected in the logs can tell us something about what users search for, how, what they look at and so forth. Personalization could also give us information on the content. Letting users create

their “own CanLII” could pave the way to the enrichment we have in mind. Overall, making the most of users’ interactions appears to be the strategy to further enrich CanLII. Hopefully, an efficient strategy will be identified to help us add some sort of classification of CanLII content. If the classification is dependable enough, it could be used to enhance the search tool and bring us closer to solving the difficulties related to proliferation of legal information.

4 Conclusion

In the first part of this paper, a list of findings was presented. We tried to analyze the FAL contribution to the establishment of the public nature of primary legal documents. We have looked at how legal information is now published, who are its users and what we can envision as the role of the state in these matters.

One of the findings that appear especially important is that free access to law is now more frequently provided by government bodies than by legal information institutes. This cannot be surprising to anybody, for most governments have the resources, and access to law is for a large part their responsibility. What follows is that a Free Access to Law movement must define itself as comprising the organizations working to achieve precisely that: free access to law. What started small in a quaint village in upstate New York has now become one of the various missions of a democratic state: providing access to the law for free.

Three issues have merited a longer treatment: the sustainability of FAL initiatives, strategies for providing access to foreign law and pressure on larger LIIs to improve and add value so that their users can exploit their huge holdings.

5 References

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