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Building a commons for the common law - The Commonwealth Legal Information Institute (CommonLII) after four years progress

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Graham Greenleaf, Andrew Mowbray, and Philip Chung

Abstract

The Commonwealth Legal Information Institute (CommonLII – www.commonlii.org – pronounced ‘Common-lee’), is a non-profit and free access website for legal information from all countries that are members of the Commonwealth and their territories (more than 60). CommonLII also covers a small number of significant non-Commonwealth countries and territories that have a legal system based on the common law, including the Republic of Ireland and the Hong Kong Special Administrative Region (SAR).

The main purpose of CommonLII is to provide a comparative law facility by which the laws of all common law countries can be searched and compared. In relation to case law, CommonLII assists in making the ideal of an international common law a reality, by providing the case law collection with the broadest geographical scope, and the only free access international citator (LawCite). In relation to legislation, CommonLII makes it easier to compare legislative developments in the same subject-areas across Commonwealth countries, and can therefore assist in the process of law reform, as well as increasing the transparency of each country’s legal system. CommonLII also makes it easier to find commentaries on the law from Commonwealth and common law countries, including law reform reports and some law journals.



Building a commons for the common law - *The Commonwealth Legal Information Institute (CommonLII) after four years progress*

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Partners, scope and supporters

CommonLII is a cooperative development by existing providers of free access to law facilities (usually called ‘legal information institutes’ or ‘LIIs’ for short) in Commonwealth

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and common law countries. At the end of 2009 CommonLII provides a facility to search 795 databases, of which 726 are maintained by 8 other LIIs. These are (in alphabetical order) AustLII (Australia - 375), BAILII (Great Britain and Ireland - 78), CyLaw (Cyprus - 6), HKLII (Hong Kong - 13), NZLII (New Zealand - 35) PacLII (Pacific Island countries and territories including Papua New Guinea - 156), SAFLII (15 countries in Southern and Eastern Africa - 56) and ULII (Uganda – 7). These LIIs from Commonwealth countries are a major part of the global Free Access to Law Movement, whose ideals are set out in the Declaration on Free Access to Law (2002).

The CommonLII web portal is developed and maintained by the Australasian Legal Information Institute (AustLII). Sixty-nine databases from the 25 Commonwealth countries and territories where there is no separate local LII¹ are included on the CommonLII system itself, and maintained by AustLII. The other 37 Commonwealth countries already have their own national or regional LIIs, so their data is included in CommonLII via the networking arrangements between CommonLII and other LIIs.

CommonLII was proposed in 2003 at the Commonwealth Law Conference in Melbourne (Greenleaf, Chung and Mowbray, 2003). In 2005 it was launched at the Commonwealth Law Conference in London, and it was also presented to the Commonwealth Senior Law Officers Meeting in London, 2007.

In October 2005 the Commonwealth Law Ministers, meeting in Ghana, resolved that

“Commonwealth Law Ministers welcomed the development of the Commonwealth Legal Information Institute (CommonLII). The Meeting noted that CommonLII is an Internet research facility providing free access to legal information from all Commonwealth countries. The Meeting encouraged all countries to co-operate in the development of CommonLII by providing, to the extent possible, access to their legal materials, including legislation, case law and law reform reports.”

A number of Commonwealth institutions have also expressed their support for CommonLII, including the Legal & Constitutional Affairs Division, Commonwealth Secretariat, the Commonwealth Lawyers Association, the Commonwealth Magistrates' and Judges' Association, the Institute of Advanced Legal Studies (IALS) and the Commonwealth Legal Education Association (CLEA) (see ‘Commonwealth Supporting Institutions’ on the ‘Stakeholders’ page on CommonLII).

Content from each country

For every country included in CommonLII, there are included on that country’s main page (i) the searchable databases from that country; (ii) an index of law-related websites from that country (and a means of searching them); and (iii) a means of searching the web for law from that country, using the Google search engine.

Types of databases, and their scope

The types of databases of legal content that CommonLII now makes searchable from Commonwealth and common law countries are:

¹ Antigua & Barbuda; The Bahamas; Bangladesh; Barbados; Belize; Brunei; Dominica; The Gambia; Ghana; Grenada; Guyana; India; Jamaica; Malaysia; Maldives; Malta; Nigeria; Sierra Leone; Singapore; Sri Lanka; St Kitts & Nevis; St Lucia; St Vincent & Grenadines; Trinidad & Tobago; and (most recently) Rwanda. Canada has its own LII, but it has decided not to participate in CommonLII.

- Over 700,000 Court decisions from almost all countries, usually including the decisions of the highest courts of those countries. Their comprehensiveness varies a great deal. These include the 125,000 decisions comprising the *English Reports (1220-1873)*, the foundations of the common law in all common law countries. These are CommonLII's 'crown jewels', and not available elsewhere for free access.
- The Constitutions of most countries.
- Legislation from over 40 countries, with comprehensive sets consolidated to include amendments from some jurisdictions (eg Singapore, New Zealand, Australia, the United Kingdom, and Sri Lanka).
- Law reform reports from twenty law reform bodies in 10 countries.
- Over sixty law journals including more than 20,000 articles, mostly from Australia and New Zealand, but with an increasing number from Commonwealth institutions, Pacific Island countries, and the UK.
- Treaties from a few countries, including the comprehensive Australian Treaties Library, and additional treaties from Singapore and from Pacific Island countries.
- Every country has a 'virtual database' which includes content concerning that country drawn from other LIIs and databases, such as treaties or international court decisions to which the country is a party, or journal articles concerning it.
- The LawCite citator <<http://www.commonlii.org/LawCite/>> is the only free access international case citator available on the Internet. It provides citation histories for almost 3 million cases, the majority of which are from common law countries.

In all of these categories, these are the largest searchable collections of these types of legal information searchable across Commonwealth countries or across common law countries.

Extent of coverage

In terms of the comprehensiveness of the databases on CommonLII, countries fall into three broad categories:

- The best scenario is where the Courts or Justice agencies of a country actively provide their decisions, legislation or law reform reports to a local legal information institute like SAFLII, PacLII, BAILII or AustLII. This reduces the resources needed by the LII, improves consistency, and helps keep the information up-to-date. All of the other LIIs whose content is included in CommonLII receive this form of active assistance. As discussed in the conclusion, AustLII would like to develop such data provision arrangements in other Commonwealth countries wherever it is possible to do so.
- The minimum coverage is that we only include the Constitution(s) from the country, plus a virtual database of other LII content relating to that country. This is all that is included at present from Sierra Leone, The Gambia, the Maldives and Guyana, but for all other countries there are somewhat more substantial collections.
- For 25 countries AustLII republishes on CommonLII databases which are already published on free access official websites from that country, usually first converted into a consistent format for the purposes of our search engine. The copyright laws of most Commonwealth countries allow such republication, and in other cases it is

allowed by licences provided on the government website or provided upon request. This approach provides some key databases from almost all Commonwealth countries, but sometimes of limited scope. In some cases, this ‘web republication’ approach results in a large number of databases, or some very large databases, being available because of very active government web publication policies. Examples are Sri Lanka, India and Singapore.

Demonstration searches

We will do a couple of searches to demonstrate the features of CommonLII.

Comparative law searches across all countries

An example of a comparative law search across all 558 databases on CommonLII is to research the question of which Commonwealth countries have implemented laws on money laundering. Starting with a simple search on CommonLII’s front page for the phrase “money laundering” gives nearly 2800 results, ranked by relevance. This demonstrates that there is considerable legislation across the Commonwealth on this topic. The first page of results includes legislation from Australia, Belize, Samoa, Cook Islands, Solomon Islands, Malta, Tonga, and Nigeria, and the UK – and that’s just the first page. We can also use the **By Database** display option and ‘Collapse listing’ to see that the results come from. They come from 201 databases in 22 countries. If we sort the results **By Date** we find many recent cases dealing with this issue.

There is no other research facility on either free access or commercial systems that will let you do this type of comparative research across all or even most common law countries, or to find recent materials so easily. Searches such as this demonstrate a key element of CommonLII’s approach: by allowing one search over all of the available legislation, case law, law journal articles, and other content, we are able to make more sense of each type of content, and to make research more efficient.

Searching only one country – ‘one stop shopping’ research

CommonLII can also be used to search for law from only one country. Choosing India as an example we first go to the India page in the list of 53 Commonwealth countries on CommonLII’s front page. Methods of alternative dispute resolution are important, particular to investors and other foreign parties interested in the laws of a particular country. A search for all forms of alternative dispute resolution would be something like the following (the asterisk * is used to truncate words to their stems):

arbitrat* or mediat* or alternative dispute resolution or ADR

The default search over Databases give 3700 results ranked in likely order of relevance (a 1984 case is highest ranked, followed by two Acts concerning arbitration), which can also be sorted By Date to find the most recent results, or By Database to see which of 24 different Indian databases the results came from.

In addition, there are three other methods shown on the India page (and every other country page) by which CommonLII assists in finding materials on law from this one country, but found anywhere on the Internet (not only in CommonLII’s databases).

- (i) The **Catalog** of the country’s law websites (at the bottom of the country’s page), and is likely to include a category for ‘Alternative Dispute Resolution’ providing links to other useful websites (eg [Indian Council of Arbitration](http://www.icar.org/)).

- (ii) The previous search terms (used to search the databases) can be re-used to do a ‘**Websearch**’ of many of these sites listed in the Catalog relating to India. Individual pages mentioning arbitration etc from many of the sites are then found.
- (iii) Finally, using the ‘**Law on Google**’ option will send the same search terms to Google’s search engine. CommonLII converts the search into the proper search language for Google, and limits the results to legal materials concerning ADR in India.

Searches such as this demonstrate the main aim of the CommonLII country pages: to be, as far as possible, a ‘one stop shop’ for extensive legal research concerning that country, using as many different research techniques as possible. Searching CommonLII’s databases, plus the three additional methods above, will almost always provide useful results.

Future development of CommonLII

After nearly five years of gradual development (including major additions such as the 125,000 cases of the *English Reports* and the LawCite citator), CommonLII is now entering a phase of rapid expansion from 2010.

First and most important is that the other LIIs whose partnerships are the cornerstone of CommonLII are thriving, and providing an ever-increasing number of databases whose content may be searched via CommonLII, and whose cases are citation-tracked by LawCite. In the last two years the number of databases searchable via CommonLII has increased by over 200, with major contributions from SAFLII and PacLII (two outstanding legal portals of the whole developing world), BAILII, and AustLII. Thirty seven Commonwealth countries and territories now have their databases kept up-to-date by their own national or regional free access legal information institutes.

Major new LIIs in Commonwealth countries are now under development. AusAID has provided funding for 2010-11 to AustLII to assist the development of a new Indian LII, in cooperation with four leading Indian law schools, and it is expected that this will be launched in 2010. This project will also expand free access to law in other South Asian Commonwealth countries (Bangladesh, Sri Lanka, Pakistan and the Maldives).

The Commonwealth Secretariat Legal and Constitutional Division (ComSec LCAD) has provided funding to assist free access to law development in the Caribbean, and a Caribbean Law Project on CommonLII <<http://www.commonlii.org/caribbean/>> has been developed to facilitate this, and the gradual development of a Caribbean LII.

The Australian Research Council has also provided major funding of over A\$400,000² for 2010-11 to AustLII for a project entitled ‘Free access legal research infrastructure for the whole of the common law: Completing CommonLII’, which will enable AustLII to build substantial databases for all Commonwealth countries which do not have their own LIIs, and encourage the development of such LIIs.

The Australian Attorney-General’s Department has also continued to provide funding for CommonLII since its inception. Details of all funding for CommonLII are on AustLII’s ‘Funding for International Projects’ page <http://www.austlii.edu.au/cgi-bin/s_juris.cgi?int>.

² including partner University funding from The University of New South Wales, Macquarie University, The Australian National University, The University of Sydney, University of Technology, Sydney, and University of Western Sydney.

Once separate national or regional LIIs emerge to maintain the databases from South Asia and the Caribbean, and a number of West African countries (notably including Nigeria) have their own LIIs or are included in SAFLII, CommonLII will come close to being a self-sustaining system. Its role in assisting the creation of an international common law will then be a permanent reality.

As well as expanding the coverage of CommonLII, AustLII is developing new services based on specific subject areas of law. The first of these, developed with funding assistance from ComSec LCAD, is the Commonwealth Criminal Law Library <<http://www.commonlii.org/crimlaw/>> which brings together criminal law resources from all Commonwealth countries in one convenient searchable location, and updates the service daily from the databases of all LIIs involved in CommonLII.

How can Commonwealth countries assist CommonLII's development?

Now that it has secure funding for its next phase of development, what CommonLII most needs is the efficient provision of case law, legislation, treaties, law journals, law reform reports and other legal data from Commonwealth countries, so that the creation of databases on CommonLII or on other LIIs can be expanded and automated. To further the 2005 Ghana resolution of the Commonwealth Law Ministers, AustLII would like to invite the Law Ministries, Courts, law agencies of Commonwealth countries, and publishers of law journals, to contact AustLII (see addresses in first footnote) to discuss how legal materials from their country can be most efficiently made available to CommonLII or to the appropriate local LII. With this assistance from Commonwealth law agencies, CommonLII can progress toward becoming a comprehensive source for the whole of the common law world.

References

Greenleaf, Chung and Mowbray (2003) - Greenleaf G, Chung P and Mowbray A 'A new home online for Commonwealth law: A proposal for a CommonLII' 2004 (2) *The Journal of Information, Law and Technology* (JILT), available at <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_2/greenleafmowbrayandchung/>

Montreal Declaration (2002) – *Declaration on Free Access to Law*, Montreal, 2002 (as amended), available at <<http://www.worldlii.org/worldlii/declaration/>>