



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

Meeting of Senior Officials of Commonwealth Law Ministries, London, October 2007

Professor Graham Greenleaf, Professor Andrew Mowbray and Mr Philip Chung,
Co-Directors, AustLII and CommonLII*

Contents

Objectives and background	2
Support and involvement.....	2
Content now included.....	3
Types of databases	3
Extent of coverage.....	3
Demonstration searches.....	4
Comparative law searches across all countries	4
Searching only one country – ‘one stop shopping’ research	4
Future development of CommonLII	5
After two years	5
Funding needed for continuing development	6
How can Commonwealth countries assist CommonLII’s development?.....	6
References	6

* The authors are Graham Greenleaf <graham@austrlii.edu.au> Professor of Law, University of New South Wales (UNSW); Andrew Mowbray <Andrew@austrlii.edu.au> Professor of Law, University of Technology, Sydney (UTS); and Philip Chung <philip@austrlii.edu.au> Executive Director of AustLII and Lecturer in Law, UTS; Thanks to Kieran Hackshall at AustLII for development of many of the databases; Research on the copyright issues related to commons in legal information was assisted by Abi Paramaguru, Research Assistant to the Australian Research Council Linkage Project ‘Unlocking IP’.

Objectives and background

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. 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.

Support and involvement

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 and common law countries. At present these are (in alphabetical order) AustLII (covering Australia), BAILII (covering Great Britain and Ireland), CanLII (covering Canada), CyLaw (covering Cyprus), HKLII (covering Hong Kong), NZLII (New Zealand) PacLII (covering 20 Pacific Island countries and territories including Papua New Guinea), SAFLII (covering 16 countries in Southern and Eastern Africa) and ZamLII (covering Zambia). These LIIs from Commonwealth countries are a major part of the global Free Access to Law Movement, whose ideals are set out in the Montreal Declaration on Free Access to Law (2002).

The CommonLII web portal is developed and maintained by the Australasian Legal Information Institute (AustLII). Databases from the 16 Commonwealth countries where there is no separate local LII 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, by Australian Chief Justice The Hon. Murray Gleeson. Initial financial support for development of CommonLII in 2004-06 came from the Australian Research Council’s research infrastructure fund, and the Australian Attorney-General’s Department.

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 and the Commonwealth Legal Education Association (CLEA) (see 'Commonwealth Supporting Institutions' on the 'Stakeholders' page on CommonLII).

Content now included

CommonLII makes jointly searchable 558 databases, 75 of which (from 16 countries) are located on CommonLII itself, and the rest on other national or regional LIIs. 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 Google search engine for law from that country.

Types of databases

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

- The Constitutions of most countries, .
- Legislation from nearly 40 countries, with comprehensive sets consolidated to include amendments from some jurisdictions (eg Singapore, Canada, Australia, the United Kingdom, and Sri Lanka). The inclusion of consolidated UK legislation on BAILII in the last year has been a major step forward. Consolidated New Zealand legislation from NZLII will be included during the next year.
- Court decisions from almost all countries, usually including the decisions of the highest courts of those countries. Their comprehensiveness varies a great deal.
- Law reform reports from twenty law reform bodies in 10 countries.
- About sixty law journals, mostly from Australia and New Zealand, but with an increasing number from Commonwealth institutions, Pacific Island countries, and the UK. We expect that the LexUM team in Canada will soon make many Canadian law journals part of the Free Access to Law Movement.
- Treaties from a few countries, including the very extensive Australian Treaties Library, and additional treaties from Singapore and from Pacific Island 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 four broad categories:

- The minimum coverage is that we only include the Constitution(s) from the 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 some countries we republish some databases which are already published on free access official websites from that country, first usually converted into a consistent format for the purposes of our search engine. The copyright laws of many 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 they are often 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.
- The best scenario is where the Courts or Justice agencies of a country actively provide their decisions, legislation or law reform reports to a legal information institute. This reduces the resources needed by the LII, improves consistency, and helps keep the information up-to-date. All of the 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 wherever it is possible to do so.

Demonstration searches

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

Comparative law searches across all countries

Let’s start with a comparative law search across all 558 databases on CommonLII. Let us take as a research task the question of which Commonwealth countries have implemented laws on money laundering.

We start with a simple search on CommonLII’s front page for the phrase “money laundering”. The first page of the more than 1800 results, ranked by relevance, demonstrates that there is considerable legislation across the Commonwealth on this topic. It includes legislation from Australia, Belize, Samoa, Cook Islands, Solomon Islands, Malta, Tonga, 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 149 databases in 21 countries.

If we sort the results **By Date** we find quite a few recent cases dealing with this issue. The most recent is an Australian case from early this month dealing with sentencing for money laundering, the second is the transcript of proceedings just heard by Australia’s High Court. Later appear two cases from March 2007 from South Africa’s Constitutional Court. The 2006 results include cases from the Supreme Court of India, the courts of Mauritius, and the Court of Appeal of Malaysia, as well as law reform reports, law journal articles and treaties.

We believe there is no other research facility in existence 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. These searches 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

Next we see the ways in which you can search for law from only one country. For a good demonstration we will use a country whose database are located on CommonLII (rather than

another LII), and which has a substantial amount of content, such as India, Singapore or Sri Lanka. First, we go to the country's page in the list of 53 Commonwealth countries.

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

For any of these countries, the default search over Databases will give hundreds of results. We can also sort the results By Date to find the most recent results, or By Database to see which databases the results came from..

In addition, we can see 3 other ways in which CommonLII assists in finding materials on law from this one country, found anywhere on the Internet.

- (i) First, we can go to the **Catalog** of the country's law websites (at the bottom of the country's page), and we find a category for 'Alternative Dispute Resolution' which provides links to other useful sites.
- (ii) Second, we can use our previous search terms to do a '**Websearch**' of many of these sites listed in the Catalog. Individual pages from many of the sites we just saw are then found.
- (iii) Third, we can use the '**Law on Google**' option to send the same search to its search engine. CommonLII converts the search into the proper search language for Google, and limits the results to legal materials concerning ADR in the country concerned.

This demonstrates 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. There is much more that could be demonstrated, but this is all that time allows.

Future development of CommonLII

CommonLII has made considerable progress since it was launched only two years ago.

After two years ...

Thirty seven Commonwealth countries now have their databases kept up-to-date by their own national or regional free access legal information institutes. Only 16 countries have databases being maintained by AustLII on the CommonLII portal itself. The Free Access to Law Movement has therefore had its greatest success in the countries of the Commonwealth, particularly in the two outstanding legal portals of the whole developing world, PacLII and SAFLII.

Most of the 16 countries for which there are not yet national or regional legal information institutes come from two regions of the Commonwealth: from South Asia, and from the Caribbean. Once separate national or regional LIIs emerge to maintain the databases from those countries, 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.

Funding needed for continuing development

Even in relation to 16 countries, the development and maintenance of databases on CommonLII requires considerable input from technical and management personnel, equivalent to between one and two full-time staff. At present, the only funding that is available for the ongoing development of CommonLII is a grant of A\$25,000 from the Australian Attorney-General's Department for 2007-08, and a contribution of A\$5,000 from the Commonwealth Legal Education Association (CLEA), for whom CommonLII is hosting law journals and other resources. The 'seed' funding from the Australian Research Council is no longer available. As a result it is now difficult for AustLII to maintain many of these CommonLII databases.

Now that the efforts of the last two years have successfully built not only the fundamentals of CommonLII, but something considerably beyond a prototype, it is necessary for us to look more widely for funding assistance. Assistance will be sought from the institutions of the Commonwealth such as the Secretariat, and from development organisations such as the Asian Development Bank and World Bank. Funding is needed to enable us to maintain and update those CommonLII databases from 16 countries that are not maintained by another LII, to assist the development in South Asia and in the Caribbean of new local legal information institutes, and to develop new services made possible by the aggregation of legal data from across the whole Commonwealth.

How can Commonwealth countries assist CommonLII's development?

Law Ministries in Commonwealth countries can assist the development of CommonLII by being willing to support such applications for funding. Otherwise, what CommonLII most needs is the efficient provision of case law, legislation, and other legal data from Commonwealth countries, so that the creation of databases on CommonLII or on other LIIs can be automated. To further the 2005 Ghana resolution of the Commonwealth Law Ministers, AustLII would like to invite the Legal Officers of Commonwealth countries to contact us to discuss how legal materials from their country can be most efficiently made available to CommonLII or to the appropriate local LII. With your assistance CommonLII can progress toward becoming a comprehensive source for the whole of the common law world.

References

'Commonwealth Supporting Institutions' page - on the CommonLII Stakeholders page
<<http://www.commonlii.org/commonlii/sponsors/>>

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/>>