
Who owns the law?

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Promulgation of the Law

One often hears that ignorance of the law is no excuse for disobeying it. If citizens are expected to act according to the law, they must be able to know what the law requires. Promulgation refers to the publication and circulation of laws. It would be very unfair for the government to pass laws and to enforce them without people knowing about them.

Since most people in our society are law-abiding, they would be willing to obey the law once they learn of and understand it. In that way, promulgation is not only fair to citizens, but it would likely contribute to greater overall compliance in a society. A law should not be effective and enforced until it is put in writing and available to the public.

Most governments have a formal process of publicizing the law. Legislatures are open to the public as are law libraries in courthouses, universities, and municipalities. One may follow the questions, speeches, and other proceedings of a legislature in the daily written record called Hansard. Progress of legislation and other formal government announcements can be found in written Gazettes published from time to time.

Government departments designated for the purpose dispense official copies of the legislation to the public at a nominal cost. Often legislation can also be purchased at book stores. Perhaps the easiest way today to find and read the law is on the internet, where most of the important legislation and judicial decisions can readily be located and downloaded.

The popular media also publicize the law. Most print and electronic news sources also know about new law when it is developed, whether it be from legislatures or from the courts. In most cases, legislation is subjected to a time-consuming and public process. Journalists follow and often comment on the proposed legislation before it becomes law. They are at the courthouse when a judicial decision is made that they believe has significant interest or implications.

Another issue which relates directly to promulgation is the form and language of the law. It is not feasible to try to educate everyone about the full meaning of every law that might apply to one's life. Publication of the law, however, will be of little use if the average citizen cannot understand any of it and will have to rely entirely upon lawyers. It would be implied that in promulgation, the law would be in a form and language that most people would understand.

Copyright in the Text of the Law

Legislation is drafted by legislative counsel and other lawyers working for the government. Judicial decisions are written by judges. One would expect that these writers of the law would have the copyright in it. More precisely, since they work for the Crown, one might expect the Crown to retain the exclusive right to copy and distribute it.

In the interests of promulgation, of spreading the law as widely as possible throughout the province and country in which it applies, the Crown freely permits us to copy legislation and judicial decisions. The law is in the public domain. That is to say that there can be no copyright infringement or plagiarism of the text of the law itself. Copying and dissemination of the law cases is even encouraged.

The judges at the higher levels of court, from where most precedents flow, are appointed and paid by the federal government. An Order in Council dated January 8, 1997 was enacted to liberalize copying of federal laws and appellate decisions. This can be found in the Canada Gazette - Part II, Volume 131:1 and reads as follows:

"Whereas it is of fundamental importance to a democratic society that its law be widely known and that its citizens have unimpeded access to that law;

And whereas the Government of Canada wishes to facilitate access to its law by licensing the reproduction of federal law without charge or permission;

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, the Minister of Industry, the Minister of Public Works and Government Services, the Minister of Justice and the Treasury Board, hereby makes the annexed Reproduction of Federal Law Order.

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

The law belongs to all of society. It can be copied and quoted freely, in books and magazines, for example. The only two requirements are that one must be careful to copy it accurately, and not suggest that it is "official", which may mislead readers. The Order does not even indicate that the law must be properly cited. Law has its own peculiar language, so the source or context of the law is likely implied by the copy.

In published judicial decisions, the commercial publishers often prepare a summary at the beginning of the case (called a headnote). This headnote is protected by copyright because it is a value-added summary by a private party. It should not be copied without permission. However, the rest of the case or legislation may be copied.
