Conclusions and Recommendations

That access to law-related information should be a fundamental right is not too controversial an argument. The devil, they say, is in the details, and how such a right can be effectively realized by all citizens. In Canada, new technologies such as the Internet show great promise in improving access to law-related information. However, the complexities of the Canadian legal system create challenges for the average person to find, understand and apply the relevant laws governing a particular problem they might have. While these complexities existed when print law-related publications dominated the market – and continue to exist in an online environment – technology can play a role in reducing the informational distance by bringing information to the desktop in easier to use forms instead of it being relatively hidden in a what is most often a distant law library that may not be easily accessible. As such, the Internet holds the possibility to bypass the idea of a "gatekeeper" – like the doorkeeper in Kafka's novel mentioned in the Introduction to this thesis – by providing multiple, low cost channels for citizens to access law-related information online.

Because the market for commercial law-related publications in Canada is relatively small, most publications are aimed at lawyers who are less price-sensitive than the average person and who can better handle the technical language of most law-related materials. In addition, with the trend towards a "digital drift" – the idea that valued-added material is increasingly being published through subscription databases such as Quicklaw or Westlaw*e*CARSWELL – non-lawyers will increasingly rely on publicly available online databases, such as government and court websites to access law-related

information. However, Crown copyright and the retention by the Canadian government over the royal prerogative to control the ownership and printing of legislation and case law can act as a retardant by making it more expensive for private publishers to license this information for publication in their value-added publications. As has also been seen, governments in Canada have traditionally been slower than the private sector to make law-related information available, and legislation and case law published by the government online in Canada tends to be only current information (with little or no historical information being available).

The private sector has always played an important role in the dissemination of law-related information in Canada. With the trend towards publishers making their value-added information available online through a paid subscription – which has the advantage to lawyers of making the information current and easily accessible – there is a risk of a "have" and "have not" market for value-added legal information. Realistically, only lawyers will have ready access to much of this value-added information since the costs of accessing that information can be passed on to their clients. The average citizen, therefore, risks becoming part of the "have not" part of the market. In addition to protecting their information by licensing and password control, publishers are also a major force at encouraging governments to extend copyright protections that further a potential digital divide for the average consumer.

Thirty years ago, Professor Friedland concluded in *Access to the Law* that the average people or their non-lawyer intermediaries had trouble accessing the law and understanding the law in areas touching upon basic legal rights, such as the right of a

tenant to have the landlord repair a leaky roof. In what was then exclusively a print-based medium, the complexity of the legal system and the confusing way in which law-related information was published greatly contributed to this difficulty in accessing information. One of Friedland's solutions to improve access – a multi-volume encyclopedia of law for each province aimed at the "consumer level" – has not been realized, likely due in part to the costs and work required for such an undertaking. However, the reality is that the publication of law-related information is not necessarily only in the hands of a single party – just the government, for example. The major stakeholders – including the government, private publishers, lawyers, universities, and other public interest groups – can all play significant roles at improving access to law-related information. With the use of modern technology, including the Internet, improving access to law-related information can occur that much more easily.

In the spirit of promoting reform in these areas, set out below is a list of ten recommendations for ways in which access to law-related information can be improved.

<u>Recommendation #1</u>: Governments need to establish clearer information policies

> *[I]nformation policy should commit to and encourage a diversity of sources and channels for government information. This policy is best implemented by a legal framework that grants anyone a right of access to basic government information and also gives everyone a privilege to disseminate that information in other forms.*[1]

The federal and provincial governments need to establish and articulate clearer information policies regarding all government information but particularly information

[1] Perritt and Lhulier, *supra*, Chapter 1, note 69 at 901.

that is law-related. In addition, the federal government should carry through on its commitment to implementing broadband Internet access for all Canadians to help reduce the digital divide and improve access to the Internet. The government should also act on the recommendations of the Access to Information Review Task Force,[2] many of which impact law-related information, including the following recommendations:

- that the federal *Access to Information Act* be amended to set out better criteria to determine what federal institutions should be covered by the Act (Recommendation 2-1);

- that the Act apply to the House of Commons, the Senate and the Library of Parliament (subject to Parliamentary privilege and other limited exceptions) and that a mechanism be developed, such as a panel of experienced parliamentarians, to rule on claims of privilege (Recommendation 2-5);

- that the Act not apply to courts and related institutions but that they adopt alternate and comprehensive disclosure regimes to ensure as much transparency as possible with respect to their administration (2-8);

- that guidelines be issued on how to apply discretionary exemptions by:

    - exercising discretion as far as possible to facilitate and promote the disclosure of information;

    - weighing carefully the public interest in disclosure against the interest in withholding information, including consideration of any probable harm from disclosure, and the fact that information generally becomes less sensitive over time; and

    - having good, cogent reasons for withholding information when claiming a discretionary exemption (Recommendation 4-1);

- that government institutions more systematically identify information that is of interest to the public and develop the means to disseminate it proactively. These means should include regular publication, and the use of Web sites, or special arrangements or partnerships with the private sector, where appropriate (Recommendation 8-3);

- that, where there is an identified need or interest, and where the information is not sensitive, government institutions make as much information as possible available to the public either in hard copy or electronically (Recommendation 8-4);

[2] Discussed *supra*, section 5.3.

- that,
    - a co-ordinated government-wide strategy be developed to address the crisis in information management;
    - a short-term plan be developed to deal with the most immediately critical needs and a longer-term plan to build ability and structure for the future; and
    - this strategy provide for partnerships among the agencies with primary responsibility for information management (Treasury Board Secretariat, the National Archives and the National Library) and other government institutions (Recommendation 9-1);
- that,
    - the Statement of Principles of the Public Service of Canada refer to the responsibilities of public servants as stewards of government information and as providers of access to that information; and
    - training modules for public servants, including orientation sessions for new employees and courses for managers, stress the linkages between access to information and core public service values (Recommendation 11-1);
- that the training of public servants emphasize that they are stewards of government information on behalf of Canadians; that the provision of information is an integral part of their job; and that the records they create in the course of their work are records of the Government of Canada, and for the most part can be made public (Recommendation 11-6); and,
- that, in conjunction with its response to our recommendations, the government launch a broad campaign in the public service to enhance awareness of access to information, appreciation of its principles and pride in providing information to Canadians (Recommendation 11-6).

As part of its information policy, the federal and provincial governments should also abolish Crown copyright and abandon any claim to a royal prerogative since, has been argued, the "commitment to a strong public access philosophy for primary legal materials is at odds with the continued existence in Canada of Crown copyright."[3] As

[3] Scassa, *supra*, Chapter 5, note 22 at 321.

seen in Chapter 4, a number of commentators have called into question the continuation of Crown copyright and even the government's own Access to Information Review Task Force has hinted at the inevitability that such an outdated doctrine can no longer have a positive role to play in the Internet age when it states that "[i]n the future, the needs of our 'information smart' society will increasingly pressure government to put as much information as possible in the public domain, through a variety of channels."[4] Even the "for profit" legal publishers in Canada have advocated for government law-related information to be in the public domain:

> The Committee of Major Law Publishers strongly endorses "public domain" for primary legal materials, for the following reasons:
>
> - Judgments, statutes and regulations are not "owned" by anyone. They are the law.
> - Copyright in these works implies a possibility or intent to restrict access or use, which is inconsistent with the purpose for creating them.
> - The public is entitled to access to the law and, in fact, is obligated to know the law.
> - Claims to Crown copyright in judicial decisions constitute potential interference with independence of the judiciary. If anyone has copyright, it is the judges themselves, not the government.
> - Seeking cost recovery for primary legal materials is illogical. The public has already "paid" for judicial decisions, statutes and regulations through taxpayers' support for the courts, parliament and the government bureaucracy which produces them. The public should not have to pay twice.
> - The existing system of disseminating primary legal materials directly and through private sector law publishers, on a competitive basis, is working well. Law publishers provide "value-added" services to their customers with efficiency, accuracy and cost effectiveness.[5]

[4] Government of Canada, Access to Information Review Task Force, *Access to Information: Making it Work for Canadians* (Ottawa: Government of Canada, 2002) at 133.
[5] Atkey, *supra*, Chapter 4, note 124 at 193.

Jacques Fremont argues that the growth in the volume of primary legal material (what he calls normative information) creates a constitutional duty on the state to disseminate the information as broadly as possible and that a claim to Crown copyright over this information is inconsistent with this duty:

> . . . [A]ll normative information must be known, must circulate and be full disseminated. In a period where the normative growth of the State seems to follow an exponential curve, it becomes, if not squarely unconstitutional, at the very least democratically unfair to submit citizens to an increased duty to keep informed about their duties, without correlatively imposing on the State a duty to disseminate efficiently and at a minimal cost its normative information. In this context, any restriction to the free circulation of State information invoking Crown copyright appears to violate the spirit, if not the letter, of the rule of law.[6]

The Australian Copyright Law Review Committee has recently recommended that "copyright in certain materials produced by government should be abolished where there is a strong public interest in their wide dissemination."[7] In this category, the Committee had included primary legal materials. In doing so, they did not find convincing the traditional argument that copyright is needed to provide incentives to authors since the government, in their role as the promulgator of primary legal materials, does not need the incentives to do so provided by copyright law:

> The Committee considers that the main reasons traditionally claimed for copyright ownership, that is, providing an incentive for creators and safeguarding the integrity of material, are not persuasive in relation to primary legal materials. Judgments, legislation and similar materials will be produced regardless of financial incentives, and the Committee believes they should be available as widely as possible and at minimal or no cost.[8]

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[6] Jacques Fremont, "Normative State Information, Democracy and Crown Copyright" (1996) I.P.J. 19 at 31, cited by Scassa *supra*, Chapter 5, note 22 at 323.
[7] Copyright Law Review Committee (Australia), *Crown Copyright* ¶ 9.27 (April 2005). Available online: <*http://www.ag.gov.au/agd/www/Clrhome.nsf*>.
[8] *Ibid*., ¶ 9.28.

Nor was the committee too concerned about the argument that the government needs to retain copyright or a prerogative right in order to ensure accuracy in its law-related materials:

> The Committee also considers that the argument that copyright ensures the integrity of material is over-stated in relation to primary legal materials. There is no incentive for legal publishers to misrepresent legislation or judgments when publishing them, as their reputations for accuracy and due care are crucial. Nor does the Committee consider it likely that there would be any increased tendency to plagiarise or misrepresent judgments if copyright were removed, as was suggested during the inquiry. The Committee notes the comment that 'It is ... clear that in those countries that do not restrict the copyright of primary legal materials, a majority worldwide; there is no glut of bogus legislation.'[9]

In addition, the Committee took into account the likelihood of putting government law-related information into the public domain would provide better incentives for private publishers to publish value-added material:

> The Committee does not consider that there will be significant impact on the market for 'value-added' products if copyright is removed; indeed, it has been suggested that the removal of restrictions on reproduction is more likely to stimulate the production of value-added resources.[10]

The Committee was also concerned that the retention of Crown copyright and Crown prerogative could give rise to censorship by the government:

> In addition, the Committee is concerned about the capacity for copyright to be used as a tool of censorship, as Sir Laurence Street warned. It is desirable that governments should not be able to withdraw their consent to publish legal materials, an option which is always available if copyright subsists.[11]

In making these recommendations, the Committee also noted the trend in other countries for this sort of law-related information to be made freely available:

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[9] *Ibid*., ¶ 9.31.
[10] *Ibid*.
[11] *Ibid*., ¶ 9.30.

> There is a worldwide trend to make such material freely available, as evidenced by the growth of international websites which provide free access. Many countries, such as the federal government of the USA and civil law countries such as France, Germany, the Netherlands, Sweden, Finland and Spain, do not recognise copyright in legislation or judgments. Moreover, there is no obligation at international law to protect such materials, and the Committee notes that the European Commission is encouraging member States to make such material freely available . . . .[12]

In addition to recommending the abolition of Crown copyright and Crown prerogative in legislative and judicial materials, the Committee extended its recommendations to other government-produced materials that should be made freely available, including:

- bills, statutes, regulations, ordinances, by-laws and proclamations, and explanatory memoranda or explanatory statements relating to those materials;
- judgments, orders and awards of any court or tribunal;
- official records of parliamentary debates and reports of parliament, including reports of parliamentary committees;
- reports of commissions of inquiry, including royal commissions and ministerial and statutory inquiries; and
- other categories of material prescribed by regulation.[13]

The Committee also recommended in its Recommendation #5 that the governments of the Commonwealth, States and Territories be under a statutory duty to disseminate legislation and judgments.

For all of these reasons, the Canadian governments should follow the path taken by Australia and other countries and abolish Crown copyright and the Crown prerogative over the control of printing of the categories of law-related information produced by the government described above. In addition, the government should accept a statutory duty

[12] *Ibid*., ¶ 9.29.
[13] *Ibid*., ¶ 9.32.

to disseminate legislation and court judgments. Regarding the ownership of model form codes that are authored with the assistance of model code organizations, the preferred view would be for these codes to be in the public domain, consistent with the holding in *Veeck* with the incentives for private bodies to continue drafting such codes being clearer standards for their industries and the opportunity for them to publish copyrightable value-added commentary on the codes.

Recommendation #2: We need to reduce the complexity of the legal system

As was noted in Chapter 2, the Canadian legal system is quite complex, for a variety of historical and cultural reasons. This complexity has arisen over a long period of time and to a certain extent is a systemic that is not really the fault of any single government, organization or profession. Because of this, the complexity in the Canadian legal system will not disappear overnight. There are, however, a number of steps that can be taken to reduce the complexity or minimize its impact. In particular, governments should use plainer English in statutes and regulations, organize legislation topically instead of alphabetically, and provide explanatory memorandum with statutes, consistent with the recommendation made in the Friedland study. Governments can also do a better job with publishing guides and commentary and should annotate their legislation with commentary to better explain when sections are repealed or ruled unconstitutional by the courts. With topical organization, governments could also easily provide better “see” references to related legislation and also to legislation from the federal or (applicable) provincial legislation.

In addition to simplifying the language used in legislation and the way in which legislation is published, federal and provincial governments need to increase legal aid funding and public legal education. The Canadian Bar Association has launched a test case in June 2005 against the federal and B.C. provincial governments arguing for a constitutional right to civil legal aid.[14] The lawsuit was brought "out of a sense of profound frustration with cuts to legal aid that have resulted in a vacuum in access to justice for the poor . . . ."[15] As already mentioned, Friedland's study called for increased public legal education opportunities, but, as with legal aid, lack of funding has negatively impacted public legal education. For example, in 1996, the Ontario Conservative government of the time – in a cost-cutting move – cut funding for the Ontario Law Reform Commission, even though the Commission had an operating budget of less than $700,000, bringing to an end 32 years of work of law reform in the province.[16]

Likewise, at the federal level, the Law Reform Commission of Canada was shut down in 1992 to be replaced in 1996 with the Law Commission of Canada (with a much reduced budget).[17] In addition, the Canadian Law Information Council (CLIC), which existed from 1973 to 1992, had as one of its goal the promotion of access to legal information. Its funding, which was largely provided by federal and provincial governments, was significantly cut by the federal government in 1992.[18] CLIC's

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[14] Canadian Bar Association, News Release: "CBA Launches Test Case to Challenge Constitutional Right to Civil Legal Aid" (20 June 2005). Available online: <*http://www.cba.org/CBA/News/2005_Releases/2005-06-20_legalaid.aspx*>.
[15] *Ibid*.
[16] Paula Kulig, "Tory Creation of the 1960s a Victim of Tory Cutbacks in the 1990s: Ont. Law Reform Commission Wrapping up Work" *Lawyers' Weekly* (19 July 1996).
[17] Cristin Schmitz, "Membership of New LRC Council will include Non-lawyers: Feds' Bill Proposes Leaner Law Reform Commission" *Lawyers' Weekly* (20 October 1995).
[18] Cristin Schmitz, "Feds' Budget Cuts Leave Legal Programs Dead and Injured" *Lawyers' Weekly* (20 March 1992).

expenditures in 1991 were $1.9 million and it had a staff of 22 persons. Some of its major contributions included studies and reports in the area of indexing of statutes, computer-assisted legal research, plain language in the law, law library resources and common law in French. As Professor Campbell has noted, the Canadian Legal Information Council played an important role in improving the quality and accessibility of legal information across Canada, currently no national body "ready and able to pick up this mandate."[19]

As such, although the Law Commission of Canada or even the Uniform Law Conference of Canada, carry on important work, their mandates are not necessarily focusing on access to the law. One possibility – in conjunction with Recommendation #5 below – would be for the Canadian Legal Information Institute (CanLII) to be funded to take on access to law-related information projects that were under the previous mandate of CLIC.

Recommendation #3: Governments need to publish archival legislation online

As discussed in Chapter 2, a problem with Canadian legislation online is that the online version is generally on the most recent or current version, with there being little or no historical legislation being available online. Although this can meet the need of most researchers, having historical legislation online would remove the geographical barrier that many researchers have in not necessarily having easy access to a large academic law library that would carry historical versions of Canadian legislation in print. As such, the federal and provincial governments should digitize archives of *all* historical legislation along the lines of the digitization project undertaken in Alberta. In addition to digitizing

[19] Neil Campbell, *supra*, Chapter 3, note 54 at 14.

statutes and regulations, governments should also digitize bills, Hansard transcripts and all law reform commission reports produced by that government. The costs of digitization are decreasing to the point of it being inexpensive compared to the benefit of providing universal access and allowing law libraries to rationalize their collections.

Recommendation #4: Governments need to make their online legislation official

As discussed in Chapter 2, online legislation in Canada is generally considered "unofficial," thereby forcing litigants to using print versions, which may not be as easily accessible and which may not be consolidated and up-to-date, requiring an awkward amount of photocopying. Given the role and use of the Internet in today's society, not having legislation online being official seems unnecessarily backwards:

> Until governments are willing to provide authoritative electronic versions of legislation and regulations, and until courts are willing to do likewise with decisions, and until there is a means to provide historical material online, no free, publicly accessible online site is likely to be able to come close to replicating a library as a point of access for legal materials. This is unfortunate as, unlike law libraries, internet connections are becoming widely available and have the potential to be a very far-reaching tool for public access to legal information.[20]

The traditional rationale of governments for not making their online legislation the "official" version is usually concern over inaccuracies or forgeries. However, given the ability to secure the servers on which the legislation would be provided online, and given that the government is the drafter, owner and publisher of the information, this rationale is not very convincing. Steps should be taken, therefore, for Canadian government to make their online versions of legislation presumptively official for all purposes.

[20] Scassa, *supra*, Chapter 5, note 22 at 313.

<u>Recommendation #5</u>: CanLII should be more broadly funded by taxpayers

Although it is reasonable to assume that CanLII may enjoy its relative independence from the government, funding is always an issue for CanLII. The Federation of Law Societies of Canada currently provides funding for CanLII through mandatory deductions from the annual membership fees from members of law societies across the country.[21] However, it is reasonable to assume that lawyers are not the only users of CanLII (and that many lawyers in fact will instead use the commercial online services which have more extensive materials, where they are able to better absorb the costs of the commercial services or pass those costs onto their clients). As such, funding for CanLII should be broader and a cost absorbed by the general public (including lawyers) since it is the general public who will benefit from access to the material on CanLII:

> If non-commercial Web sites are for use by the general public, is this the best way to meet their needs for legal information? Primary legal resources, in their raw form, often are challenging for legally trained researchers to use. In the United States, legal research tools created specifically for lay persons and self-represented litigants are available. Perhaps public funds should be used to develop truly useful resources for the general public, while efforts to find ways of providing public access to the vast and reliable collections which the publishers have built are increased.[22]

With broader (and more funding), CanLII could also move to include more historical/ archival legislation and case law. The central "clearinghouse" aspect of CanLII – the fact that it has a search engine to globally search both federal and all provincial jurisdictions – is a feature that no single government itself could easily or justifiably undertake (given

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[21] See "Canadian Legal Information Institute, About CanLII." Available online: <*http://www.canlii.org/about-apropos_en.html*>.

[22] Ruth Rintoul, with contributions from Rosalie Fox, "Case law in Canada" (2003) 28 Can. L. Libraries 166 at 170.

constitutional limitations). As has been seen, publication of law-related information is often a combination of private and public sector initiatives. By providing broader funding to an organization such as CanLII, governments could go a long way to meeting their duty to disseminate primary legal materials through such partnerships, something envisioned by the government's own Access to Information Review Task Force:

> Partnering with the private sector allows government-held information to be made more widely available to Canadians than would otherwise be the case. We believe that this approach should not be used to replace publication by a government institution where there is a need to inform the general public; however, it may be highly appropriate for those categories of government information for which there is a limited, but identifiable, market (e.g. scientific and technical research papers). The government role in these partnerships should be to ensure that the information is sufficiently widely available to interested Canadians and that issues such as pricing, accessible format and official languages are addressed.[23]

<u>Recommendation #6</u>: The SCC should publish a complete archive of the Supreme Court Reports Online (1867 to current)

The Supreme Court of Canada should digitize all of their decisions back to 1867 and make them full-text searchable and browsable for free on their website (or through CanLII). The cost and effort of doing so is not that great and the benefit of having the decisions of the Court online would benefit not only to litigants but also historians and other researchers.

[23] *Supra*, Chapter 5, note 68 at 135.

Recommendation #7: Provincial Courts of Appeal should publish a complete archive of their decisions online

Likewise, given the precedential value of decisions of the provincial Courts of Appeal, all provincial Courts of Appeal should digitize *all* of their decisions and make them full-text searchable and browsable for free on their websites (or through CanLII). In addition, on the topic of provincial Courts, the Courts of Ontario and Québec should immediately mandate the use of neutral citations by their judges for their decisions since these two jurisdictions are the only remaining provinces to not use neutral citation, despite their agreement in principle to do so.

Recommendation #8: Appoint a National Law Librarian

As mentioned in Recommendation #1 above, the Access to Information Review Task Force has recommended "a co-ordinated government-wide strategy be developed to address the crisis in information management" including "partnerships among the agencies with primary responsibility for information management" such as the National Library and other government institutions. Along these lines, the government should appoint a National Law Librarian at the National Library of Canada consistent with the call by the Canadian Association of Law Libraries in their Resolution 2000/3:

> WHEREAS the National Library of Canada is charged with the mandate to collect and preserve the social, literary, economic, historical and legal publications related to or published in Canada; and
>
> WHEREAS the National Library of Canada is the institution best positioned to facilitate co-operation and collaboration among Canadian law libraries and law library organizations, and with national bibliographic institutions of other nations; and

> WHEREAS CALL/ACBD is the Canadian professional association most aware of and knowledgeable about the preservation and access issues related to the publication of legal materials in digital form; and
>
> WHEREAS the globalization of legal information in digital form is a reality that is not yet fully accepted by Canadian institutions in terms of national information policy;
>
> BE IT RESOLVED that CALL/ACBD recommend to the National Librarian, Heritage Canada and to Parliament, the establishment of the position of National Law Librarian with the appropriate authority and resources to work at the national level, and in cooperation with groups and organizations to:
>
> - develop a national legal information policy, especially with regard to access to and preservation of digital legal resources of Canadian origin;
> - develop a legal information preservation strategy which is independent of short-term, volunteer initiatives but which may support a distributed undertaking if this appears cost-effective and reliable;
> - advise the National Librarian and other working groups on those issues directly related to the unique nature of legal information resources;
> - create and facilitate collaborative ventures with national law libraries[24]

A National Law Librarian could be given a mandate to improve access to law-related information in Canada and could be a key person to work with both various sectors within the government and private industry to see this mandate realized.

<u>Recommendation #9</u>: Take a balanced approach to copyright amendments

The Canadian government is currently in the process of copyright reform, in part to bring the *Copyright Act* into the age of the Internet and to comply with international intellectual property treaty obligations. However, within these reforms, the government has a fair amount of flexibility to protect the public interest and users' rights if it chose to do so. As has been pointed out, however, the public interest in copyright reform often lacks a

[24] Canadian Association of Law Libraries, Resolution 2000/3 (31 May 2000, Charlottetown Conference). Available online: <*http://www.callacbd.ca/resolutions/resolution_2000_03e.html*>.

visible presence in copyright reform, unlike the interests of the large publishers, who have a strong lobbying force in Ottawa.[25] As such, the Canadian government should move slowly on technological protection measures to ensure that legitimate use of digital material is not impaired.

<u>Recommendation #10</u>: Expand the role of Canadian law libraries

> *The law library, and the books in the law library, are central symbols of the law's concern with information during the past 500 years. The new media represent the equivalent of an earthquake hitting the library, not because the electronic library may replace the physical library but because the role of the library, whether it is electronic or print, is shifting as information becomes accessible from new sources. This, of course, affects not only the law library and legal professionals, but citizens whose distance from the law is shifting as well.*[26]

As discussed in Chapter 6, Friedland's proposal for a national and multiple provincial law-related encyclopedias aimed at non-lawyers is not very realistic. The costs and time to prepare them would be extensive; and if Carswell is having difficulty in updating its commercial *Canadian Encyclopedic Digest*, it seems naïve to think that a non-profit venture would be able to keep such publications up-to-date with the constant revisions that occur with new legislation and new cases being introduced every day.

Given these realities, the final recommendation would be for law schools and law libraries to take a more prominent role in making law-related information more available to all persons, including non-lawyers. Although most law school and law libraries have as their primary objective the need to serve their own faculty and students, an essential mission of most Canadian law schools is – or should be – to instill in their students a

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[25] See Michael Geist, "Canadian Copyright Reform Must Focus on Policy and Process" *The Hill Times* (13 June 2005).
[26] Katsh, *supra*, Introduction, note 8 at 56.

sense of service to the public. The Pro Bono Students Canada program is one recent example of this sort of activity. Most Canadian law librarians, moreover, by the very nature of their calling, usually feel a desire to make information as broadly available as possible. In addition, improving access to law-related information is not necessarily inconsistent with the need for law schools and law libraries to also serve the interests of their faculty and students. Law librarians have a "built-in" incentive to participate in print and online publications that seek to improve access to law-related information through their need to achieve tenure-status through such criteria as "academic achievement and activities and professional achievement and activities."[27] It would also be possible for law libraries to call upon some of their students to volunteer for this sort of work.

Law libraries across Canada are already making huge strides in improving access to law-related information in Canada. At the University of Montreal, for example, the LexUM website[28] gathers together a number of experts to provide free access to law-related materials. The Bora Laskin Law Library at the University of Toronto has also published a number of guides to improve access to the law, including "Finding Legal Help in Ontario"[29] and the "Landlord and Tenant Resources (Ontario),"[30] to name two examples.

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[27] University of Toronto, *Manual of Staff Policies: Academic/Librarians (Code Number: 1.01.01)* ¶ 30. Available online: <*http://www.utoronto.ca/hrhome/acman.pdf*>.
[28] University of Montreal Law Faculty Public Law Research Center, "LexUM Home Page." Available online: <*http://www.lexum.umontreal.ca*>.
[29] Bora Laskin Law Library, "Finding Legal Help in Ontario." Available online: <*http://www.law-lib.utoronto.ca/Resguide/finding.htm*>.
[30] Bora Laskin Law Library, "Landlord and Tenant Resources (Ontario)." Available online: <*http://www.law-lib.utoronto.ca/comminfo/landlordtenant.htm*>.

Academic and courthouse law librarians (and librarians at private law firms), through the Canadian Association of Law Libraries, would be able to coordinate both federal and provincial online guides that could go a long way towards realizing the recommendation in the Friedland study of a law-related encyclopedia for non-lawyers but at a much more realistic and sustainable level. These online guides would be free, could be written in plain English, and could explain where print resources could be found in each province. For example, the law libraries across the country could agree on the most needed guides on matters falling under federal jurisdiction and then divide up the task of preparing and updating the guides. Topics under federal jurisdiction of likely interest to most citizens would include guides on the topics of divorce, income tax, criminal law, youth criminal justice, the *Charter*, immigration law, intellectual property law, privacy law and administrative law. It would be easier to cooperate on the authorship of online guides for these topics, with each academic law library in Canada agreeing to publish and update guides on one or two of these topics. These guides, on topics under federal jurisdiction, could then be shared and adapted, as needed, for each province with "local" information added, depending on the resources available within a particular province.

Guides on law-related topics that fall within provincial jurisdiction could also be created without too much difficulty. And even though the laws vary from province to province, the "templates" for the guides could be shared, and in some cases, the guides would not be that different from province to province. Topics for the provincial guides that would likely be the most needed would include landlord/tenant, family law, mechanics' liens, going to court, real estate (and buying and selling a home), traffic court, education law, administrative law, starting your own business, employment law, labour

law, insurance law, municipal bylaws, occupational health and safety, privacy law, workers' compensation, and wills and estates.

These online guides could be hosted on a single server; alternatively, if the guides produced by each law school law library were kept on their individual servers, links could be provided to each guide, regardless of its location. These guides could also be coordinated with legal aid clinics and other public interest groups, including those offered by law societies and law student legal clinics.

By dividing up the labour among the Canadian law school law libraries, the effort to keep the guides up-to-date would not be overly onerous. In addition, these guides would not necessarily be seen as a threat to the commercial law-related print and online publishers since their products would continue to service a slightly different market (and would have more extensive copyrighted sources, such as newspaper and journal databases), although many lawyers might find the free online guides to be useful.

It is hoped that if the foregoing ten recommendations were implemented, many of which take advantage of Internet technology, that access to law-related information in Canada in the digital age would be improved.