

Legal Research Methods for the English-Speaking Caribbean

Legal Research Methods for the English-Speaking Caribbean

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Foreword

Legal Research Methods for the English-Speaking Caribbean by Yasmin Morais and Yemisi Dina delivers on the promise of its title with efficiency and precision. Not only is this publication a valuable guide to Caribbean sources of law, but it also offers stimulating insight into legal processes prevailing in the region. It is thus a welcome addition to Caribbean legal scholarship and literature.

The countries that constitute the English-speaking Caribbean stretch geographically from Jamaica and Belize to the north and west, respectively, to Barbados in the east, and Trinidad and Tobago and Guyana in the south. These countries, together with the Bahamas in the northeast, number approximately twenty independent states and dependent territories. As a general matter, they share a common history of British colonialism, important cultural connections, and interrelated educational systems. Significantly, too, they also share Westminster-style constitutional arrangements and historical reliance on the English common law.

The shared roots of anglophone Caribbean countries in British cultural and constitutional traditions provide a valid starting point for legal research in the region. The researcher seeking Caribbean responses to legal questions is entitled to assume that different states and territories adopt similar approaches to various issues. But, to

be sure, similarity does not necessarily imply sameness. In some instances, the approach to an issue in one territory may depart in either subtle or substantial ways from the approach taken in another. In analyzing legal questions across the Caribbean, therefore, caution is required: the risk of treating the Caribbean in monolithic terms should be avoided. One noteworthy feature of Morais and Dina's compendium is its sensitivity to the different solutions that may emerge from individual territories, with the work presenting clear and concise directions on how such solutions may be found amidst the mass of sources available across the region.

Another positive feature of Morais and Dina's work concerns its appreciation of the evolution of Caribbean law. This is reflected both in the book's treatment of legal history and of current legal questions. As to history, the researcher will find, for example, thoughtful direction on the structure and foundations of the West Indian Federation, a legislative scheme that, though lasting for only four years, has arguably left an enduring mark on aspects of Caribbean regionalism. As to current legal issues, the book provides a strong opening into matters of interest across the Caribbean. Again, by way of example, Morais and Dina offer both regional and local perspectives. At the regional level, references to the Caribbean Court of Justice are appropriately in place, but mindful of the local situation in some countries, the book also provides useful links to the Judicial Committee of the Privy Council.

In its various chapters, the book demonstrates careful attention to the sources of domestic law. Accordingly, there are chapters on national constitutions, legislation, local government arrangements, legislative history, case law, and court structures. There is, in addition, valuable direction on Caribbean treaty law and practice, including means of exploring the *travaux préparatoires* concerning some treaties as well as Community Decisions within the CARICOM, the Caribbean Community. The book commences with an informative review of legal research methods and includes in its closing sections up-to-date guidance about access to libraries with legal material in the region.

Legal Research Methods provides access to many resources that have not always been easy to find. In the recent past—prior to the dawn of the internet and commercial search engines—research into Caribbean legal issues was at best time consuming, with the researcher often having to transcend national boundaries to find primary and secondary material. So, for example, finding subsidiary legislation for various territories was challenging if pursued from a base in one's local library. And for researchers outside the region, save perhaps those from metropolitan centers, much of the Caribbean material was quite inaccessible. Some researchers would probably garner access through much-appreciated interlibrary loan facilities, but in the main they had to overcome major obstacles in the quest for authoritative sources. Today, however, much of this has changed, owing to phenomenal developments in information technology, which now allow many documentary sources to be found with relative ease. In this regard, the work of communities of librarians, from the Caribbean and beyond, deserves special mention and appreciation. Advances in information technology have created a whole new world for the legal scholar, a new world that has been undeniably reinforced for the Caribbean by Morais and Dina, among other librarians.

But while we celebrate enhanced access, a note of reservation is also in order. First, some sources of information may remain largely out of reach even in the present dispensation. This may be especially the case with respect to official local government sources in some jurisdictions. Second, with respect to many books and journal articles on the Caribbean, private researchers often face subscription fees that effectively limit access to material. And third, even where access to sources is available, the researcher may also need to seek out background information not readily available online or in texts. Researchers pursuing questions on case law matters, for example, will need to appreciate relationships among different courts as well as other constitutional issues that may be

at play. On this last point, Morais and Dina are especially helpful, carefully explaining hierarchical issues pertaining to the courts.

Legal Research Methods for the English-Speaking Caribbean is an excellent compendium that will strengthen research efforts on Caribbean issues for years to come. Yasmin Morais and Yemisi Dina are to be congratulated for this publication: academics, business persons, government officials, students, and policy makers should derive great value from the painstaking research undertaken by the authors.

Stephen Vasciannie

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Acknowledgments

I want to thank Dr. Stephen Vasciannie, professor of international law, Norman Manley Law School, University of the West Indies, Mona, and former ambassador of Jamaica to the United States for writing the foreword. Special thanks also to Yemisi Dina for saying yes to the idea of this book and for her ongoing interest in promoting Caribbean legal research. She has been an amazing coauthor, and her contribution is invaluable. I am also grateful to Mr. Paul Cooper, former partner at Livingston, Alexander & Levy in Kingston, Jamaica, for my start in the legal field and for igniting my interest in law. Finally, thanks to my daughters, Mariel and Mikayla, for their support and constant encouragement. (YM)

My sincere appreciation goes to Yasmin Morais who invited me to coauthor this book. It has been a unique experience because of the opportunity to partner with her remotely.

I would like to thank all those researchers who continue to ask questions about the Caribbean region, which has motivated the need for this work.

I am grateful to my husband and my three children for putting up with my schedule while working on the book. (YD)

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She is an active member of the American Association of Law Libraries, Chair African Interest Group of the Foreign, Comparative and International Law Special Interest Group, Caribbean Association of Law Libraries, British and Irish Association of Law Libraries, and the Canadian Association of Law Libraries where she is currently serving on the executive board as president. In October 2022, Yemisi was named as one of Canada's Most Powerful Women: Top 100 Awards in the professional category by the Women's Executive Network (<https://wxnetwork.com/page/2022Top100AwardWinners>) recognizing her contribution to law librarianship.

Introduction

There have been significant developments in legal jurisprudence in the English-speaking Caribbean. In addition, physical legal structures, such as courts, regional organizations focused on the law, and law schools, have increased. While there are more opportunities for Caribbean students to pursue a legal career, there is, however, a dearth in publications on legal research methods. Between 1979 and 1989, Velma Newton, one of the most prolific Caribbean legal writers, published several books on Caribbean legal systems, legal literature, and research practices, and a bibliography of primary and secondary sources. Her publications, and those of others, have enhanced the available resources on Caribbean law. However, apart from a few research guides on Caribbean law and the Caribbean Court of Justice prepared by several law librarians, there is currently no comprehensive monograph available on legal research methods for the English-speaking Caribbean region. A book on researching the laws of the English-speaking Caribbean is therefore long overdue. While there are recent contributions to Caribbean jurisprudence and other specialized areas of law, there is a gap in authoritative resources that facilitate legal research.

There is a real need for publications of this nature, especially considering the evolving nature of Caribbean law, ongoing legal reform, and emerging legal issues that impact the Caribbean—for example the legalization of marijuana, the growing popularity and use of cryptocurrency, space tourism, and the threat of climate change. As a region, the Caribbean attracts significant foreign direct investment and, compared to its size, is a major player in regional and international organizations. The Caribbean Court of Justice, the court of last resort for many of the territories, is already more than ten years old, and its decisions are influencing Caribbean legal thought, with the waning of reliance on the Judicial Committee of the Privy Council in England.

Caribbean economies are also rapidly diversifying and becoming less dependent on tourism as the major economic engine. An increasing number of its citizens are taking advantage of technology and other online platforms such as YouTube, PayPal, and Airbnb to become entrepreneurs. This often requires researching and navigating areas of law such as contracts, copyright, entertainment, and banking, as well as emerging laws related to medical marijuana.

In the education sector, the Caribbean now boasts several institutions for the study of law: University of the West Indies (campuses in Cave Hill, Barbados, and Mona, Jamaica); University of Technology, Jamaica; University of Guyana; Truman Bodden Law School (in collaboration with the University of Liverpool) in the Cayman Islands; the Eugene Dupuch Law School in the Bahamas; and the newest, the University of the Commonwealth Caribbean, which collaborates with the University of London's International Program. Chapter 1 provides an overview of the development of Caribbean legal education and an assessment of the current status of available programs to students.

This has had a favorable impact on the training of future lawyers, especially in relation to specializations such as sports, entertainment law, and legal drafting, which are relevant to Carib-

bean economies. Increasing collaboration between Caribbean law schools and law schools in other regions is also a positive development. The proliferation of Caribbean primary and secondary legal materials and the changing legal landscape require a current and comprehensive resource on finding and analyzing Caribbean law.

This book aims to provide a thorough coverage of how to research the laws of the English-speaking Caribbean. The focus goes beyond the Caribbean as we have decided to include some content about foreign, comparative, and international law, and researching the laws of international organizations. We believe this approach will help Caribbean law students have a mastery of legal research beyond the region. A significant portion of the work will discuss the research process and creating research strategies. Legislative history, municipal laws, and researching regional organizations and treaties will all be examined. The work builds extensively on previous Caribbean research guides created by the authors, and is an important resource for law students, law faculty, court staff, foreign direct investors, and persons interested in foreign and comparative law research.

The jurisdictions of the English-speaking Caribbean will be the main focus of this work. These include, in alphabetical order, Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands. Chapter 1 describes the unique geography and history of these countries and territories, their current political status, and how this impacts their governance and laws. Other chapters focus on foreign, comparative, and international law, the treaty-making process, and emerging legal topics. The authors acknowledge that websites often change, and the links provided at the time of publication were checked and are working.

References

- Antoine, Rose-Marie Belle. *Commonwealth Caribbean Law and Legal Systems*. New York: Routledge-Cavendish, 2015.
- Newton, Velma. *Commonwealth Caribbean Legal Literature: A Bibliography of All Primary Sources to Date and Secondary Sources for 1971–85*. Cave Hill: Faculty of Law, University of the West Indies, 1987.
- Newton, Velma. *Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions*. Cave Hill: Faculty of Law, University of the West Indies, 1989.
- Newton, Velma. *Information Needs and Research Practices of the Commonwealth Caribbean Legal Profession: Report of a Survey Conducted in Six Territories*. Cave Hill: Faculty of Law, University of the West Indies, 1981.
- Newton, Velma. *Legal Literature and Conditions Affecting Legal Publishing in the Commonwealth Caribbean: A Bibliography*. Cave Hill: Faculty of Law, University of the West Indies, 1979.
- Patchett, Keith, and Jenkins, Valerie. *A Bibliographical Guide to Law in the Commonwealth Caribbean*. Mona: Institute of Social and Economic Research, University of the West Indies, 1973.
- Theodore, Michael. *Law: The Air We Breathe: A Look at Law and the Legal System in the Commonwealth Caribbean*. San Juan: Caribbean Legal Publications Ltd., 1994.

