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Moving Towards Neutral Citations For Case Law

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Introduction

The aim of this article is to alert legal practitioners on recent developments in case citations to accommodate unpublished and electronically generated judgments emanating from the courts. It traces briefly the developments in several countries in evolving vendor and media neutral citations

Definition of Citation

What are case law citations? 'Case law citations' are simply unique identifiers which are applied to cases to enable researchers using a law library to easily locate cases, and they also form the means of referring to such cases in court. *Osborn's Concise Legal Dictionary* defines citation as "The quotation of decided cases in legal argument as authorities." According to *AALL Citation Formats Committee [89 L. LIBR. J. 7 (1997)]* "Citations enable lawmakers to legitimize their actions by linking their rulings to established legal authority."

Development of Conventional Citation

In the early days court decisions were transcribed, edited and published by individuals from outside the courts. In these early reports elements of case citations included the year of reporting and/or volume number, the abbreviation of the individual's name and the page number as follows:

Nouaille v Flight 7 Beav 486 - Beavan's Rolls Court Reports reported by Beavan
Armooteah Pillay v Fatimah (1888) 4 Ky 416 - case heard in the Supreme Court of the Straits Settlements reported by Norton

Kyshe. Citations that carried the reporters' names were termed "nominate reports"

All the English nominate reports by various individuals were later published by commercial publishers in the English Reports (ER), Revised Reports (RR) and the All England Law Reports (Reprint, 1558-1935) (All ER).

Official and Commercial Law Reports

In 1865 members of the legal profession in the United Kingdom established the Incorporated Council of Law Reporting (ICLR) with the object of

"preparation and publication, in a convenient form, at a moderate price, and under gratuitous professional control, of [The Law] Reports of Judicial Decisions of the Superior and Appellate Courts in England"

(*Memorandum and Articles of Association, 1870*)

In the following Practice Direction, Law Reports published by ICLR are accepted as authorized reports:

Practice Direction (Judgments: Form Citation) (Supreme Court) [2001] 1 WLR 194

"Citation of judgments in court"

3.1 For avoidance of doubt, it should be emphasised that both the High Court and the Court of Appeal require that where a case has been reported in the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales it must be cited from that source. Other series may only be used when a case is not reported in the Law Reports." Lord Woolf CJ

In Australia each State started its own official law reporting council, for example, The Council of Law Reporting for New South Wales.

The increasing number of judgments being handed down and delay in publication of the authorised reports eventually led to the emergence of commercial publishers such as Butterworths LexisNexis, Westlaw, Law Book Company, Sweet & Maxwell etc. In Malaysia we saw the emergence of Malayan Law Journal 1932-, Malayan Current Law Journal 1981- 1982 (digest of cases) 1983- (full judgments) and the All Malaysia Report 1992-. In the commercial reports the elements of citation are the same as the nominate reports except that the abbreviation of the individual's name is replaced by the abbreviation of the publisher's name or law report's name.

Bank Bumiputra (M) Bhd v SAL Enterprise [2006] 2 MLJ 233

Aon Trust Corp Ltd v KPMG (a firm) and others [2006] 1 All ER 238

Traditionally citations only come into being once the case is published and remain the copyright of the publisher. Unreported cases did not have any form of citation for reference. With the onslaught of information technology and the introduction of CD-ROMs, online databases and the Internet there has been a tremendous increase in electronic legal records. Judgments are published on the web within twenty-four to forty-eight hours of being handed down. Vendor

based citations of printed formats were found unsuitable because of the use of pagination and volumes, differing alternative citations for the same case and delay from the time of handing down of the judgment to the time of publishing. A court designated citation which was medium neutral and vendor neutral was felt to be the answer.

Development of Neutral Citation

A. United States of America

In 1994 the American Association of Law Librarians (AALL) formed a Task Force on Citation Formats and passed a resolution calling for "a system of citation that permits reference to legal or law-related information in any medium, print or electronic, without requiring reference to proprietary products of any particular publisher..." The State Bar of Wisconsin recommended similarly for the State. Following on this the American Bar Association made its recommendations which were incorporated with AALL recommendations to form a universal citation.

B. Canada

In Canada in 1994 the Canadian Judicial Council sought to adopt a standard for electronic documents. In 1997 the Canadian Association of Law Libraries and Legal Research Network held a summit of specialists and publishers to work towards neutral citations for Canada. In 1999 the Canadian Citation Committee made up of various specialists in legal information established the basis of a neutral citation standard.

C. Australia

In 1996 Australian Legal Information Institute in its paper presented at the conference of the Australian Institute of Judicial Administration in Wellington outlined the need for vendor free and medium free court designated citations in Australia. The High Court of Australia was

the first court to implement a form of neutral citation in 1999.

D. United Kingdom

In the United Kingdom a *Court of Appeal Practice Note* was issued on 11 January 2001 reported in [2001] 1 All ER 193 where Lord Woolf directed that

"With Effect from 11 January 2001 a form of neutral citation will be introduced in both divisions of the Court of Appeal and in the Administrative Court. A unique number will be given by the official shorthand writers to each approved judgment issued by the courts..."

The Neutral citation will be the official number attributed to the judgment by the court... Once the judgment is reported, the neutral citation will appear in front of the familiar citation from the law report series."

On 14 January 2002 in a *Supreme Court Practice Direction* reported in [2002] 1 All ER 351, Lord Woolf directed that "With effect from January 14 2002 the practice of neutral citation is being extended to all judgments given by the judges in the High Court in London."

E. Singapore

In Singapore *Practice Direction No.6 of 2002* initiated the introduction of neutral citations.

"Citation of Written Judgments

To bring our system of citation of written judgments in line with increasingly accepted international practice, and render such citation more amenable to electronic resources, the honourable The Chief Justice has directed that our courts adopt the system of neutral citation of written judgments with effect from 2 January 2003."

In the Appendix to this Practice Direction neutral citation is explained

"(1) The neutral citation system

- (a) A neutral citation is a court-approved system of citation which is independent of the series of law reports or other publications, and unique to each written judgment.
- (b) Each written judgment from a particular level of court is assigned a sequential number, starting from 1 at the beginning of each calendar year.

(2) Specific paragraph citations

- (a) Counsel will be required to make specific citations by referring to the paragraph number of the judgment, and not to the page number of the judgment or report."

The year 2003 also saw the setting up of a Council of Law Reporting in Singapore when the Singapore Academy of Law took over from LexisNexis and started publishing the Singapore Law Reports in cooperation with CCH Asia Pte Limited.

Use of Neutral Citations on the Internet Judgments handed down by the courts have been published complete with neutral citations on the Internet by Australia, Britain and Ireland, Canada, Hong Kong, New Zealand, Pacific Islands and Southern Africa etc. through their respective legal information institutes and are freely available.

- Australasian Legal Information Institute (AustLII) www.austlii.edu.au/
- British and Irish Legal Information Institute (BAILII) www.bailii.org/
- Canadian Legal Information Institute (CanLII) www.canlii.org/
- Hong Kong Legal Information Institute (HKLII) www.hklii.org/
- New Zealand Legal Information

Institute (NZLII) www.nzlii.org/

Legal Information Institute (Cornell) (LII (Cornell)) www.law.cornell.edu/

Pacific Islands Legal Information Institute (PacLII) www.pacii.org/

Southern Africa (SAFLII) www.saflii.org/

WorldLII provides a single search facility for databases located on the following Legal Information Institutes: AustLII; BAILII; CanLII; HKLII; LII (Cornell); and PacLII. WorldLII also includes its own databases not found on other Legal Information Institutes (LIIs).

Elements of Neutral Citation

What then are the elements of vendor neutral and media neutral citation? Basically the elements are – the parties to the case, year of the decision, abbreviation of the jurisdiction/geographical indicator, abbreviation of the court, the sequential number of the decision within the calendar year. Judgments include paragraphs which can be used as pinpoint citations instead of pages.

AWG Group Ltd v Morrison [2006] 1 All ER 967 at 969 -- traditional
[2006] EWCA Civ 6 at 18 -- neutral

In the traditional citation [2006] is the year of publication, 1 is the volume number, All ER is the abbreviation of the name of the report, 967 is the page, 969 is the page pinpoint citation

In the neutral citation [2006] is the year the decision was handed down, EW stands for the jurisdiction (England and Wales), CA stands for the court (Court of Appeal), Civ for Civil Division, 6 is the 6th judgment for 2006 and 18 is the paragraph pinpoint for the citation. Pinpoint citations are only used when a solicitor needs to bring the court's attention to a specific paragraph/page in a case cited.

Mewett v Commonwealth of Australia (2003) 200 ALR 679 -- traditional
[2003] FCA 808 -- neutral

In the case of Australia, as can be seen in the citation above, the court designator precedes the jurisdiction/geographical indicator but this is not always the case. FCA stands for Federal Court of Australia. Please see the Appendix at the end of the article for an almost comprehensive list of neutral citations in various jurisdictions compiled from the Internet.

Advantages of Providing Neutral Citations

Neutral citations provide consistent unique identifiers/designators which facilitate identification and location of judgments for reference for unreported and electronic format judgments. These citations are not the copyright of vendors and can be freely used by anyone. The advantage of neutral citations is being able to refer to a greater number and very current decisions from the Internet which is not limited by volumes and pages as compared to the printed format. Paragraphs are used to serve as pinpoint citations which are more specific than pages.

"There are now significantly more judges, more cases and more databases than there were even two decades ago.... Large numbers of decisions, good and bad, reserved and unreserved, can be accessed. Lawyers frequently feel that they have an obligation to search this material. Anything which supports their clients' case must be drawn to the attention of the court."
Michaels v Taylor Woodrow [2000] EWHC Ch 178; [2000] 4 All ER 645

However judgments published free on the Internet with neutral citations are without catchwords or head notes. The neutral citation allocated by the court at the time of delivering the judgment is always

retained even after the judgment is published, as parallel or alternative citation, which will be useful in hyper linking. Neutral citations always appear on the first page of each reported case as seen in the samples below. I have inserted the *commercial citations at the bottom for comparison and reference.

UCO Bank
v
Golden Shore Transportation Pte Ltd

[2005] SGCA 42

Court of Appeal - Civil Appeal No 8 of 2005
Chao Hick Tin JA and Judith Prakash J
27 July, 14 September 2005

***[2006] 1 SLR 1**

DAVIS
v
STENA LINE LIMITED

[2005] EWHC 420 (QB)

Before Mr Justice FORBES

***[2005] 2 Lloyds' Rep 13**

Gosai
v
General Medical Council

[2003] UKPC 31

Privy Council
Lord Hoffmann, Lord Walker of Gestingthorpe and
Sir Philip Otton
10 April 2003

***[2003] 75 BMLR 52**

PURVIS..... APPELLANT,
APPLICANT,

AND

STATE OF NEW SOUTH WALES
(DEPARTMENT OF EDUCATION AND
TRAINING AND ANOTHER....RESPONDENTS
RESPONDENTS,

[2003] HCA 63

ON APPEAL FROM THE FEDERAL COURT OF
AUSTRALIA

***[2003] 217 CLR 92**

