

Forms and Precedents

Catherine Cotter
Reference/Instruction Librarian, UNB Law Library

Why is it important to know about forms and precedents?

When you article, you will be doing the grunt work for your principals, including drafting agreements, court documents, and more. By using forms and precedents, you save time in drafting these documents, and you learn how to use the information provided by your client in an effective manner.

Some forms are legislated and have to be used in certain circumstances, for example, court forms. You need to learn how to find and use these forms; if you don't, you could jeopardize your client's case.

Where can you find forms and precedents?

This is an important question – if you don't know where to find forms and precedents, you will not be able to represent your clients effectively. Please note that the below is not an exhaustive list; there are many resources available on forms and precedents. Those resources listed below are just some of the more popular examples of resources.

1) Print Products

- a. *O'Brien's Encyclopedia of Forms*, UNB Law Library Call No.: KF 170.O27 1987 (Reference). *O'Brien's* provides commonly-used agreements, clauses, letters, memorandums, and more. It also provides Ontario court forms (the Law Library does not receive the Ontario court forms). *O'Brien's* is available in print and electronically (not all firms subscribe to it electronically). Note: The electronic version may not have the entire *O'Brien's* content; be aware of this when using it.
- b. *Canadian Forms and Precedents*. UNB Law Library Call Nos.: KF 886 .C36; KF 886 .C362; KF 886 .C364; and KF 886 .C369 (Reference). This is a popular resource and may be in your law firm's library or in the local courthouse library. It includes forms and precedents in many areas of law. These are also available on CD Rom – if your firm gets these, have them loaded onto your computer or make sure you know where they are located on your firm's open directory. Some parts of *Canadian Forms and Precedents* are available in Quicklaw LexisNexis.
- c. *Williston and Rolls Court Forms*. UNB Law Library Call No.: KF 8836. W5 1986 (Reference). *Williston and Rolls* is a popular reference for court forms (they are based on Ontario court forms). Your law firm library or courthouse library may have this resource in stock. *Williston and Rolls* is available in Quicklaw LexisNexis.

- d. CLEs and Conference Material. Canadian Law societies and Bar Associations provide continuing legal education for lawyers and students. Take advantage of these – often the documentation for a CLE or conference presentation will include a precedent, which can be very helpful because not every resource includes every type of agreement; for example, O'Brien's does not include a law firm LLP agreement precedent.

Please note that most CLE and conference materials are not available electronically. You will have to conduct a search in a library catalogue and on the respective Law Society or conference website in order to find these materials. Quicklaw LexisNexis has one source for Canadian CLE and conference materials: Canadian Law Symposia Index. You can find this by clicking on the Source Directory tab and then searching for Canadian Law Symposia Index by using the Find a Source option located on the right side of the screen.

One popular CLE resources is the *Law Society of Upper Canada: Annotated Document Series*. If you are going to article in Ontario, this resource may be available in your law firm's library or in the local courthouse library. It includes annotated forms and precedents and drafting tips. When searching for this in a catalogue, search for Law Society of Upper Canada as an author and search for annotated as a keyword.

- e. Monographs. Numerous monographs include sample forms and precedents; for example, *Ontario Civil Practice 2007* by Garry D. Watson, Q.C., and Michael McGowan, UNB Law Library Call No.: KF 8840 .ZB3 O57 2007 (Reference). Make sure you look at a textbook or monograph in your particular topic area to see if it has any precedents.
- f. Law Society of Upper Canada: Annotated Document Series. May be available in your law firm's library or in the local courthouse library. It includes annotated forms and precedents and drafting tips.

2) Electronic products

- a. New Brunswick Court Forms. These are available on the Attorney General Website: http://www2.gnb.ca/content/gnb/en/departments/attorney_general/acts_regulations/content/rules_of_court.html (in case the link changes, keep in mind that you will have to find the Rules of Court first, then the Forms of Court).
- b. Other Jurisdictions Online. Most jurisdictions in Canada have their court forms online. For example, you can find Nova Scotia court forms on their Courts website (<http://www.courts.ns.ca/index.htm>). In Ontario, all court forms must now be available online at <http://www.ontariocourtforms.on.ca>. The Supreme Court of Canada (<http://www.scc-csc.gc.ca/ar-lr/for/2011/doc-eng.asp>) - note that a Word version of the forms are available) and the Federal Court of Canada (

nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Forms) both have their forms available online.

- c. O'Brien's Encyclopedia of Forms. Some firms will have access to this product electronically. To access it from our website, go to www.law.unb.ca/library, click on e-Resources >> Research Tools and Reference Materials >> O'Brien's. We do not purchase the full content, so in a firm you may have access to more forms. Note: The electronic version may not have the entire O'Brien's print content, so be aware of this when using it.
- d. Quicklaw LexisNexis. Quicklaw LexisNexis has a Forms and Precedents tab for customers who purchase this resource. If you have access to this at your firm, you will notice a tab for Forms – click here and you are brought to the search screen for forms and precedents. You also have the option to browse the forms and precedents (the browse link is on the left-hand side of the page). You can also access them through the Source Directory (Source Directory >> Forms and Precedents) and the Practice Areas tab. There are currently 20 different forms and precedents sources you can search – many of them are from the *Canadian Forms and Precedents* resource mentioned above. The court forms that Quicklaw has will be listed here as well, but they only have court forms for a few jurisdictions.
- e. Westlaw Canada. In Westlaw Canada, there is no one source to find all forms and precedents; you will have to look under each Source tab to find it. For example, in the InsolvencySource tab, there is a link to *Houlden and Morawetz Bankruptcy and Insolvency Precedents* (left hand side of page). But in the FamilySource tab, you have to look under each commentary title to see if there are forms and precedents. If your firm has purchased the Litigator component (we do not get this with our academic subscription), you will have a more localized place to find these materials. If your firm does not have Litigator, the best way to find court forms may be to click on the Legislation link on the left-hand side of the page on the LawSource screen; then choose your jurisdiction; click on the link for Rules; then click on the Rules of Court for that jurisdiction, and a link for Forms should appear. For example:

LawSource > Legislation > New Brunswick > Rules > Several of the options will have forms; for example, Probate Rules and Rules of Court of New Brunswick.

To find precedents, you will need to look in each Source product to see if precedents are listed separately (as in InsolvencySource); if they aren't, you will need to look within each individual commentary product to see if a precedent is included. You can do this by either searching or browsing. For example:

FamilySource > Commentary > Stark & Maclise, Domestic Contracts > Open a Chapter > Choose from precedents presented.

3) Other resources

March 11, 2013

- a. Firm's precedents. Most law firms will have a database of precedents. When you start articling at your firm, make sure you know where the precedents database is located and that you have access to it.
- b. Bar Ad Materials. In your Bar Ad materials, you will likely receive sample forms and precedents. Keep these close at hand.

Remember the following:

- 1) Make sure you know how to use your firm's library – know what materials they have, how it is organized, and where the forms and precedents resources are located, in print and electronically.
- 2) Not all firms have libraries, and even if your firm does have one, it will not have every forms and precedents resource. Make sure you get to know your courthouse library and academic law library. Know how to use their catalogue so you can find the resources you need.
- 3) Use examples from law school. If your professor gave out examples, you may as well use them.
- 4) The resource you use may not have every form or precedent you need, so make sure you check more than one resource. When it comes to court forms, you will want to check with the Rules of that particular jurisdiction to ensure you are accessing all the necessary forms.
- 5) Remember that not all forms are connected with Rules but with other legislation. Some legislation have forms listed that must be used in certain actions. For example, under the regulations of the *Condominium Act, 1998*, S.O. 1998, c. 19, there are several different forms that must be used depending on the actions being taken.
- 6) When you begin articling, have your assistant start a precedents binder and electronic file. As you continue with your practice, insert agreements, letters, and other such precedents into the binder and save them electronically. This way, you will have all your precedents at your fingertips when you need them.