

**BEYOND CASE REPORTERS: USING NEWSPAPERS TO
SUPPLEMENT THE LEGAL-HISTORICAL RECORD
(A CASE STUDY OF BLASPHEMOUS LIBEL)**

*Jeremy Patrick**

INTRODUCTION

For decades, students in American and Canadian law schools were taught a particularly narrow vision of what constituted legal research.¹ To the students, who eventually became lawyers, scholars, and judges, legal research meant consulting cases and statutes contained in print volumes. Some particularly ambitious researchers went further afield to look at law review articles and treatises, sources which themselves often constituted nothing more than extensive doctrinal analyses of the same cases and statutes. As Robert Berring notes, “Legal researchers learned that certain sets of books were authoritative and reliable. If used correctly, such sources provided ‘the’ information.”²

Although finding applicable case law is still the primary focus of legal research education,³ the realm of potentially relevant *cognitive authority*⁴ has broadened significantly:⁵ unpublished opinions,⁶

* Ph.D. Candidate, Osgoode Hall Law School, York University. The author welcomes feedback at jhaeman@hotmail.com.

1. See Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 CALIF. L. REV. 1673, 1681 (2000).

2. *Id.* at 1676–77.

3. See William R. Mills, *The Shape of the Universe: The Impact of Unpublished Opinions on the Process of Legal Research*, 46 N.Y.L. SCH. L. REV. 429, 429 (2003).

4. Berring, *supra* note 1, at 1676 (defining *cognitive authority* as “the act by which one confers trust upon a source”).

5. See *id.* at 1675 (“Legal information is in the midst of great change, a change not just in formats, but in the authority structure of the materials that legal workers use.”).

6. See Mills, *supra* note 3, at 430; Roderick Munday, *Law Reports, Transcripts, and the Fabric of the Criminal Law – A Speculation*, 68 J. CRIM. L. 227, 229 (2004); Lee Faircloth Peoples, *Controlling the Common Law: A Comparative Analysis of No-Citation Rules and Publication Practices in England and the United States*, 17 IND. INT’L & COMP. L. REV. 307, 321 (2007).

foreign jurisprudence,⁷ legislative history,⁸ and even blogs⁹ and Wikipedia.¹⁰ The Internet has made it far easier for lawyers to find material that once required visiting and sorting through historical archives—a daunting process for researchers who simply were not trained for the task.¹¹ Although this flood of information can seem overwhelming,¹² it also offers a valuable opportunity to expand our awareness of how legal concepts work in practice. With apologies for a tired metaphor, cases selected for inclusion in traditional reporters are just the thinnest tip of the iceberg of legal materials available.¹³ Legal research beyond case law is of obvious value to historians who seek to understand “the political, social, and economic impact of people and events on legal history[.]”¹⁴ but it also offers opportunities for judges and lawmakers to better gauge the real impact of the policies they promote.¹⁵

Newspapers are an excellent supplement to the narrow range of legal materials found in case reporters.¹⁶ They offer several advantages over traditional legal research: (1) details about the specific

7. See, e.g., Traci Donovan, *Foreign Jurisprudence – To Cite or Not to Cite: Is That the Question or Is It Much Ado About Nothing?*, 35 CAP. U. L. REV. 761, 762 (2007).

8. See, e.g., David S. Law & David Zaring, *Law Versus Ideology: The Supreme Court and the Use of Legislative History*, 51 WM. & MARY L. REV. 1653 (2010).

9. See, e.g., Brian A. Craddock, Comment, 2009: A Blog Odyssey: Exploring How the Legal Community is Using Blogs and How Blogs are Changing the Legal Community, 60 MERCER L. REV. 1353 (2009).

10. See Lee F. Peoples, *The Citation of Wikipedia in Judicial Opinions*, 12 YALE J.L. & TECH. 1 (2009).

11. See, e.g., Jenni Parrish, *A Guide to American Legal History Methodology with an Example of Research in Progress*, 86 LAW LIBR. J. 105, 107 (1994) (“[T]he first time a lawyer or law student ventures into an archival facility, he or she is typically quite distressed at the paucity of available indexing, relative to the indexing typical of legal publications.”).

12. See, e.g., Berring, *supra* note 1, at 1677 (“Old tools are slipping from their pedestals while new ones are fighting for attention. Where once there was a settled landscape, there is now a battlefield.”).

13. See, e.g., Shirley A. Louder, *Case Law Reporting in Canada* 36–49 (Canadian Law Info. Council, Occasional Paper No. 4, 1982) (showing how the selection of cases for printed reporters is very much an idiosyncratic and contingent process). Munday also uses the iceberg metaphor in this context. See Munday, *supra* note 6, at 243.

14. Parrish, *supra* note 11, at 106; see also William W. Fischer III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 STAN. L. REV. 1065, 1068–69 (1997) (discussing contextualism).

15. Cf. Fischer, *supra* note 14, at 1096 (discussing legal history as a means to better evaluate current policies).

16. See generally Kim Stevenson, *Unearthing the Realities of Rape: Utilising Victorian Newspaper Reportage to Fill In the Contextual Gaps*, 28 LIVERPOOL L. REV. 405, 406 (2007) (advocating the usage of newspaper for historico-legal purposes).

parties and events involved in a legal dispute that, for one reason or another, were not included by the judge writing a particular opinion;¹⁷ (2) information about the social context in which the case took place, including the moral presuppositions held by the actors involved (victim, accuser, judge, jurors, and more);¹⁸ and (3) descriptions of cases never recorded in traditional reporters, allowing the researcher to better gauge the real prevalence of certain types of disputes, while also gaining insight into legal decision-making that diverged from mainstream legal doctrine.¹⁹ Writing in the context of inquiry into the history of the criminal law, Kim Stevenson summarizes the point nicely:

Even where the official record of a crime is located, it often fails to provide the necessary contextual insights into the underlying stereotypical codes, prevailing moral perceptions and prejudices that implicitly influenced judges and jurors in their courtroom decisions. The extent to which social and moral factors were and are taken into account when determining guilt or innocence, and how that might affect the application of doctrinal legal rules and principles, cannot be fully uncovered or evaluated using singular preferred traditional sources such as the law reports and critique of judicial opinions.²⁰

However, digging into newspaper archives can be a difficult and time-consuming task, one that may involve the expense of travel and the tedium of flipping through bound volumes or scrolling through seemingly endless reels of microfilm in the hopes of stumbling upon something relevant. The increasing availability of full-text newspaper archives on the Internet makes the process less burdensome, but the search and index features of such archives vary widely and are in their infancy compared to online case- and statute-

17. See, e.g., Jeremy Patrick, *Canadian Blasphemy Law in Context: Press, Legislative, and Public Reactions*, 16 ANN. SURV. INT'L & COMP. L. 129 (2010) (using historical newspaper and archival research to draw fuller picture of parties and events involved in 1927 blasphemy case).

18. See Stevenson, *supra* note 16, at 423 ("Newspaper reports are essential and irreplaceable sources for providing detail about the prevailing rationales and reasoning adopted by magistrates, and by juries and/or judges in coming to their decisions.").

19. See *id.* at 415 ("Reading of newspaper reports can reveal a quite different picture about the actual incidence of crime compared to that which the official crime statistics might suggest."); see also *infra* Part II.C (comparing the number of Canadian blasphemy prosecutions found via traditional research versus newspaper research).

20. Stevenson, *supra* note 16, at 405-06.

finding tools. Finally, the results of newspaper research will have little if any precedential value in traditional legal argument, are difficult to cite and share, and may be of varying reliability.

Because of these issues, it is important to demonstrate the value of using newspapers in legal research, rather than merely asserting it. This Article is an experiment to test this general thesis. It proceeds by way of a case study that compares the number of times a particular legal concept appears in case reporters compared to newspaper articles during the twentieth century, along with a detailed discussion of what, if anything, the newspaper research adds to the legal doctrine expressed in the cases. The particular topic chosen for this case study is blasphemy as a crime under Canadian law—a rarely researched subject that has the potential to add to our knowledge of how law and religion interacted in Canadian history. Part I expands on the history and limitations of case reporters and discusses the role that newspapers might play in supplementing legal research. Part II explains the methodology and results of the case study into unpublished blasphemy cases, and this Article ends by offering a few concluding remarks.

I. THE LIMITATIONS OF CASE LAW REPORTERS

If case reporters were perfect, there would be no need to look beyond them in order to find the state of the law. However, an overview of reporting in Canada, the United States, and England demonstrates that, historically, reporting is neither comprehensive in coverage nor uniform in selection criteria.²¹ Reporting practices vary widely across jurisdictions and subject matters, and many, if not most, reporters rely on editorial selection to determine which cases will be included and become “the cornerstone tools of legal information.”²² Editors will choose only a small percentage of the entire uni-

21. See Louder, *supra* note 13, at 36–49 (discussing Canadian practices); *id.* at 50–71 (discussing state-by-state analysis of U.S. practices); Peoples, *supra* note 6, at 307–08 (discussing English and American practices).

22. Berring, *supra* note 1, at 1676; see Louder, *supra* note 13, at 4 (“The normal course followed in full-text reporting series is to report a selection of the cases and this selection is carried out by the editor or editorial board for the reporter.”); Munday, *supra* note 6, at 229 (“The law reporter’s function in winnowing the durable decisions of clear legal import from those that are merely evanescent or iterative is of course already well established.”); Peoples, *supra* note 6, at 308 (“American federal appellate courts are free to issue unpublished opinions and to decide their precedential value . . .”).

verse of cases for inclusion,²³ leaving the remainder to fall into the *shadowland* of unreported decisions.²⁴ The availability and authority of unreported decisions is a controversial topic, especially in the United States, where it has been the subject of over one hundred law review articles.²⁵ The nature and history of that debate is beyond the scope of this Article, but a brief foray into reporting practices will help demonstrate the need to supplement published cases with outside research.²⁶

In Canada, for example, law reporting began in the early 1800s.²⁷ Provincial law societies were the predominant supporters, publishers, and editors of early law reports,²⁸ and “in this way controlled to some extent which cases would be available for citation to the courts.”²⁹ The rise of commercial law-report publishers sometimes changed who selected cases, but selection occurred all the same.³⁰ However, the existence of multiple commercial reporters covering the same province or subject matter led to a paradoxical problem:

23. See, e.g., Mills, *supra* note 3, at 432 (stating that in the United States, “nearly 80% of federal circuit court cases are now decided without a published opinion”); Catherine P. Best, Everything Old is New Again: The Proliferation of Case Law and Whether There is a Remedy 7 (Oct. 17, 2007) (unpublished paper), http://legalresearch.org/docs/Proliferation_paper.pdf (noting that only 350 of approximately 5000 decisions are published in England each year between the Law Reports and Weekly Law Reports).

24. Berring, *supra* note 1, at 1692.

25. See Peoples, *supra* note 6, at 332 (stating that a website devoted to the controversy over citation of unreported cases in the United States had compiled 102 law review articles on the subject).

26. This Article uses the terms *unreported* and *unpublished* interchangeably to refer to cases that have not been the subject of full-text publication, but it should be noted that some scholars have offered definitions to differentiate the terms. See, e.g., Louder, *supra* note 13, at 4 (“[A]n unreported decision is one which does not appear in a full-text reporting series . . . but which may have appeared in a digest or a summary series. An unpublished decision is one which has not appeared in any series.”); Peoples, *supra* note 6, at 310 (applying the term *unreported* to English cases and *unpublished* to American cases, but noting that in each circumstance such cases might actually appear in an electronic database or print appendix).

27. See BORA LASKIN, *THE BRITISH TRADITION IN CANADIAN LAW* 69 (1969); Vivienne K. Denton, *Canadian Law Publishers: A Look at the Development of the Legal Publishing Industry in Canada*, in *LAW REPORTING AND LEGAL PUBLISHING IN CANADA: A HISTORY* 16, 16 (Martha L. Foote ed., 1997).

28. See Denton, *supra* note 27, at 17.

29. Best, *supra* note 23, at 18; see also Anne Matthewman, *Volumes of History - The Legal Profession and the Development of Law Reporting in Ontario*, 21 *CAN. L. LIBR.* 7, 7 (1996) (“Throughout the 173 years of case reporting in Ontario, one factor remains constant and paramount. The legal profession has always been closely involved in the publication of law reports. Most importantly, the Law Society of Upper Canada has controlled, in varying degrees, the writing and publication of reports.”).

30. See Best, *supra* note 23, at 18.

over-reporting of some cases through repetition in numerous reporters,³¹ and under-reporting of other cases deemed, for one reason or another, not worth the effort to report.³² In other words, consumers thirsty for case reports faced both a trickle and a flood, which created numerous complaints about the way the system operated. As this history evolved, the same issues and concerns seemed to arise again and again—namely, “too many reports, problems in getting unreported decisions, delay in publishing, too much expense, ill-defined breadth of coverage, inconsistent quality, and so on.”³³

The adoption of Westlaw and other electronic case research services by practicing lawyers has altered the nature of the law-reporting problem, but has not solved it.³⁴ The traditional distinction between reported and unreported cases has blurred, since each is available in the same electronic databases and can be found using the same research tools.³⁵ The new problems of case law research are “the current explosion of legal information, [in which] lawyers are required to wade through vast amounts of mostly inconsequential decisions in order to ensure they have considered all potentially relevant authorities,”³⁶ while simultaneously attempting to determine what percentage of cases are not available through the services and whether those cases are *worth* (in terms of time, expense, or duty to one’s client) trying to discover through other means.³⁷ Simi-

31. See, e.g., Denton, *supra* note 27, at 38 (“One of the perennial complaints of the bar has been the duplication of law reports, creating expense for the practitioner who wants to build a complete library. . . . In 1996[,] the Ontario practitioner had a potential of 31 commercially published series reporting Ontario cases.”).

32. See Louder, *supra* note 13, at 90 (“Until comparatively recently . . . [f]ewer series of case law reporters were available and their contents were highly selective. Complaints about unreported cases were frequent and justified.”).

33. Matthewman, *supra* note 29, at 80.

34. See Best, *supra* note 23, at 25 (noting the “information explosion” which can only partially be dealt with through electronic search tools).

35. See Munday, *supra* note 6, at 229 (There is “virtually universal accessibility of judgments today, regardless of whether or not they happen to have caught a reporter’s eye”); Peoples, *supra* note 6, at 321 (“The availability of unpublished opinions has improved so much that the term ‘unpublished’ is only accurate as a term of art, and not as a description of physical location.”).

36. Best, *supra* note 23, at 3.

37. See, e.g., Mills, *supra* note 3, at 445 (discussing the United States federal courts and noting that “while it is quite true that researchers now have access to many thousands of unpublished opinions through LEXIS and Westlaw, this should not obscure the fact that many thousands of other such opinions *can not* be found on either of these services. The ratio that can be found versus those that can not be found is unknown, and is in any case a moving target.”);

lar problems with finding and relying on unpublished cases exist in England and the United States³⁸ and are probably the inevitable consequence of the common-law system of jurisprudence.³⁹

Out of the vast range of materials produced in the entire course of the thousands upon thousands of instances of litigation the legal system produced before the current action, only the formal written opinion (published or sometimes unpublished) is of notable significance for the everyday common-law lawyer. Only the judicial opinion—the final distillation of the often complex proceedings that came before it—offers the binding, or at least persuasive, authority the common-law lawyer needs to win future cases.⁴⁰ However, for the historian or policy maker, collecting formal opinions is often inadequate for answering larger questions: How often does this crime or type of lawsuit occur? Apart from what they said, why did the judges really decide the way they did? What pertinent facts, if any, did the judge leave out of the opinion? Raw statistics may help answer the first question, whether in the form of court administration records, arrest reports, victim surveys, or some other method.⁴¹ The court record for a particular case may help to answer the second and third questions as witness affidavits, pleadings, and documentary exhibits offer a fuller picture of what prompted the litigation in the

see also Best, *supra* note 23, at 24 (noting that the “historical depth” of Canadian electronic reporting services “is not great”).

38. See generally Mills, *supra* note 3 (discussing issues related to unpublished decisions in the U.S. federal appellate courts); Munday, *supra* note 6 (posing the question of whether the explosion in the amount of previously unavailable judicial decisions in electronic form will lead to, or require, the reconfiguring of presumably settled doctrines in the common law of England); Peoples, *supra* note 6 (providing a comparative analysis of no-citation rules and publication practices in England and the United States).

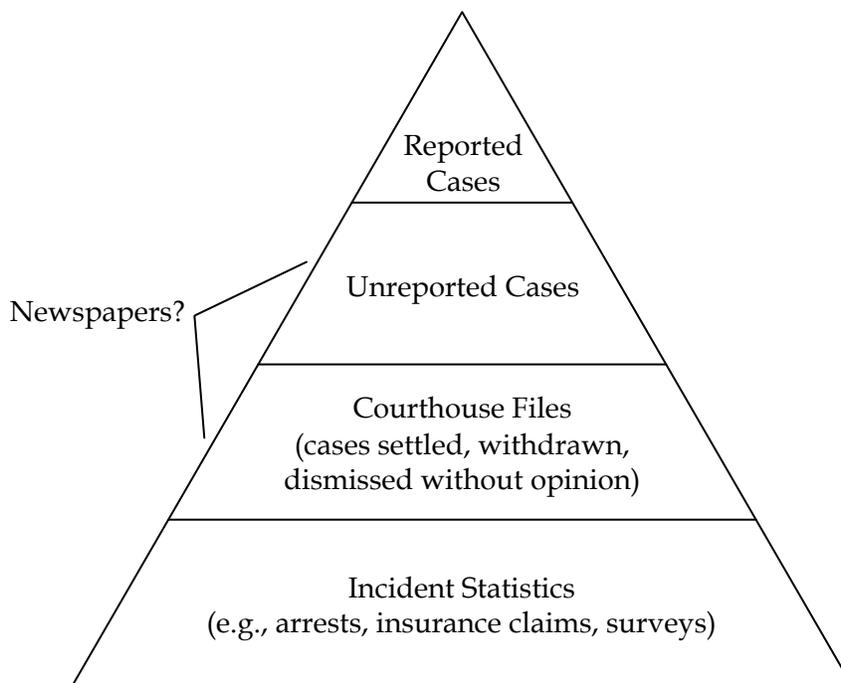
39. See Munday, *supra* note 6, at 227 (“[O]ne could legitimately claim that anxiety over the available quantity of reported (and, to a degree, unreported) caselaw has been in some sort a constant of the common lawyer’s predicament.”). In a common-law system of dispute resolution where every decision potentially holds either binding or persuasive precedential value, the pool of information available to legal researchers inevitably grows every year. With only a small percentage of those decisions selected and indexed in case reporters, the natural result is that those decisions not selected are more difficult to find.

40. See, e.g., Mills, *supra* note 3, at 429 (“The appellate judicial opinion sits at the very heart of our legal system. Lawyers use these opinions as building blocks for their legal arguments. Legal theorists parse and analyze them. Judges apply them in cases through the doctrine of *stare decisis*. Precedents established in appellate judicial opinions are thought to promote the stability, certainty, and predictability of law.”).

41. See, e.g., *Sourcebook of Criminal Justice Statistics*, BUREAU OF JUSTICE STATISTICS, <http://www.albany.edu/sourcebook/> (last visited Apr. 16, 2011).

first place.⁴² Placing these types of materials—and there are many others—in a chart may help to demonstrate how case reporters constitute just a small fraction of the tools available to legal researchers (see Figure 1).

FIGURE 1: TYPES OF CASE INFORMATION



Where do newspaper accounts of arrests, lawsuits, and trials fit into this picture? The answer is difficult to determine and likely varies by the nature of the legal concept at issue. For instance, newspapers are in the business of publishing stories their readers will find interesting, meaning that the more sensational cases—such as those involving political corruption, police brutality, murder, plagiarism, and sexual abuse—will receive more attention than those cases viewed as mundane—such as those involving contract, tax, or bank-

42. See generally Debra L. Theedy, *Legal Archaeology: Excavating Cases, Reconstructing Context*, 80 TUL. L. REV. 1197 (2006) (defining *legal archaeology* as the use of case studies in historical legal research, and providing a framework for categorizing and evaluating such works).

ruptcy law (unless, of course, a high-profile figure is involved).⁴³ Newspaper accounts certainly offer less quantitative and scientific information for the researcher than incident statistics, but may, depending on the legal category involved, provide a fuller picture of how certain legal concepts work in practice. Part II examines one such instance.

II. A CASE STUDY IN BLASPHEMOUS LIBEL

This Part is an experiment to determine what, if anything, archival newspaper research can add to the process of legal research. Canada's prohibition on blasphemous libel has been chosen as a case study, with the purpose of determining the difference in the quantity of cases found through case law reporters as compared to the number of cases found through additional newspaper research. A companion article to this one examines what newspapers can add to the historical understanding of known blasphemy cases,⁴⁴ and therefore, this case study focuses on the discovery of previously *unknown* cases.⁴⁵ However, the purpose of the case study is to do more than keep a tally – it also aspires to test whether newspaper research deepens our understanding of blasphemy jurisprudence in terms of its doctrine and focus.

A. Background: Canada's Blasphemy Law

When Canada enacted its first Criminal Code in 1892, it provided for the punishment of blasphemers.⁴⁶ The law remains on the books even today, little changed since its earliest form.⁴⁷ In its current incarnation, the law provides:

43. See Steven M. Chermak, *Body Count News: How Crime is Presented in the News Media*, 11 JUST. Q. 561, 580 (1994) ("Because news space is limited, the media emphasize extreme, dramatic cases."); James Garofalo, *Crime and the Mass Media: A Selective Review of Research*, 18 J. RES. CRIME & DELINQ. 319, 323 (1981) ("Without exception, violent individual crimes – particularly murders – are represented disproportionately in news media presentations about crime.").

44. See *supra* text accompanying note 17.

45. A separate article examines provincial archives for additional blasphemy cases. See Jeremy Patrick, *Blasphemy in Pre-Criminal Code Canada: Two Sketches*, 22 ST. THOMAS L. REV. 341 (2010).

46. Criminal Code, S.C. 1892, c. 29, § 170 (Can.).

47. The law presently sets a maximum of two years of imprisonment, an increase from the one-year maximum originally provided. Compare Criminal Code, R.S.C. 1985, c. C-46, § 296 (Can.), with Criminal Code, S.C. 1892, c. 29, § 170 (Can.).

(1) Every one who publishes a blasphemous libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) It is a question of fact whether or not any matter that is published is a blasphemous libel.

(3) No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion on a religious subject.⁴⁸

A thorough survey of case reporters from 1892 to the present reveals only four prosecutions in Quebec and one prosecution in Ontario for breaching this provision.⁴⁹ All but one of those cases took place during the 1920s and 1930s, with the most recent case occurring in 1936. I have previously summarized what these five cases tell us about the history of blasphemy law in Canada elsewhere:

Despite the strident denunciations of the defendants' conduct and the lectures on the evils of blasphemy made by judges in all four of the cases resulting in convictions, the sentences handed down were light compared to the maximum [F]our out of the five prosecutions took place in Quebec and at least three of those primarily involved direct criticism of the Catholic Church.

. . . [T]he case law clearly deviates from the English rule that only the brand of Christianity embraced by the Church of England is protected. . . . There is some support . . . [for the notion] that blasphemous libel requires that the publication tend to breach the peace, but . . . four cases do not use the phrase or make such a finding There appears to be a split in the case law as to whether blasphemous libel is a strict liability offence or instead whether a jury must find that the defendant intended to blaspheme[.]⁵⁰

48. Criminal Code, R.S.C. 1985, c. C-46, § 296 (Can.).

49. See *R. v. Rahard* (1935), [1936] 3 D.L.R. 230 (Can. Que. Ct. Sess.); *R. v. St.-Martin*, [1933] 40 R.J. 411 (Can. Que. Ct. sess.); *R. v. Kinler*, [1925] 63 C.S. 483 (Can. Que.); *R. v. Pelletier*, [1901] 6 R.L. (n.s.) 116 (Can. Que.); E.J. Murphy, "Blasphemy," Annotation, (1926) 48 C.C.C. 1, 2 (discussing *R. v. Sterry*, an unreported decision).

50. Jeremy Patrick, *Not Dead, Just Sleeping: Canada's Prohibition on Blasphemous Libel as a Case Study in Obsolete Legislation*, 41 U.B.C. L. REV. 193, 229-30 (2008).

B. Methodology

Three newspapers were consulted for this case study, each available in a full-text electronic database: the *Toronto Star*,⁵¹ *The Globe and Mail*,⁵² and the short-lived Quebec newspaper, *The Axe*.⁵³ *The Toronto Star* and *The Globe and Mail* were chosen for their national coverage and historical depth, while *The Axe* was chosen on the hypothesis that a Quebec-focused newspaper might turn up more blasphemy cases, since four out of the five reported cases occurred in that province.⁵⁴ The two national newspapers are keyword searchable, and this author examined every instance of the word “blasphemy” or “blasphemous” for the years 1898–1945 for the *Toronto Star* and 1882–2003 for *The Globe and Mail*.⁵⁵ The periods covered thus extend even before a statutory prohibition on blasphemy was included in the 1892 Criminal Code and well after the Golden Age for blasphemy prosecutions in the 1920s and 1930s. *The Axe*, a weekly English-language Montreal newspaper that only existed between 1922 and 1924, was not keyword searchable and therefore the author manually examined each page of each issue for relevant headlines.

C. Analysis

Using newspapers as a supplement to traditional legal research yielded several new insights about the history of Canadian blasphemy law. First, in terms of quantity, twenty-one new prosecutions for blasphemy were discovered, a significant increase over the five revealed through case reporters.⁵⁶ Second, some of these prosecutions appear to have been resolved summarily in Police Court as provincial offenses akin to minor offenses like traffic infractions. Thus, blasphemy was punishable without formal charges under the

51. See *Pages of the Past*, TORONTO STAR, <http://pagesofthepast.ca> (last visited Apr. 16, 2011).

52. See *Canada's Heritage from 1844 – The Globe and Mail*, PROQUEST, http://www.proquest.com/en-US/catalogs/databases/detail/canada_heritage.shtml (last visited Apr. 16, 2011).

53. See *Collections*, BIBLIOTHÈQUE ET ARCHIVES NATIONALES QUÉBEC, <http://collections.banq.qc.ca/ark:/52327/1827637/> (last visited Apr. 16, 2011). Unfortunately, the search failed to return any prosecutions for blasphemy.

54. See *supra* notes 49–50 and accompanying text.

55. The date range chosen was intended to provide extra coverage of the period when most reported blasphemy cases occurred (the 1920s and 1930s), while also providing an opportunity to catch any unreported cases that fell outside of this period of heavy activity.

56. Each of the prosecutions is discussed and cited in the relevant subparts below.

relevant Criminal Code provision.⁵⁷ Third, at least one court attempted to resolve an unresolved conflict in the case law: whether blasphemous libel, as defined by the Criminal Code, included oral blasphemy.⁵⁸ Fourth, new prosecutions of members of a minority religious group, the Jehovah's Witnesses, were discovered.⁵⁹ Fifth, some of the prosecutions reveal the extension of blasphemous libel to theatrical productions – plays and cinema.⁶⁰ Finally, although case reporters give the date of the last blasphemy prosecution as 1936, the newspapers reveal the suppression of blasphemous material as late as 1979.⁶¹ The amount of information provided by the newspapers on each of these prosecutions varied: as little as a single line in some instances, to several long articles in others. For analysis, the twenty-one new prosecutions have been grouped into the following categories: (1) blasphemy as profanity; (2) Jehovah's Witnesses; (3) theatrical productions; and (4) miscellaneous.

1. *Blasphemy as profanity*

Nine of the twenty-one prosecutions appear to have treated blasphemy as akin to profanity, and most of these took place in the context of motorists swearing at other drivers or at police officers during a traffic stop. The cases include

- Michael Millen, a man “arrested . . . for using blasphemous language on King . . . [S]treet” in 1886.⁶² Millen's arrest actually predates the Criminal Code and may have been based on the common law or a provincial statute.

57. See *infra* Part II.C.1. In Canada, responsibility for criminal law is constitutionally allocated to the federal government and serious crimes are prohibited by the federal Criminal Code. Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.), reprinted in R.S.C. 1985, app. II, no. 5, § 91(27) (Can.). Provinces, however, retain jurisdiction over minor regulatory offenses involving highway safety, municipal bylaws, etc. See generally *id.* § 92.

58. See *infra* note 126 and accompanying text. Similar to the traditional distinction in the law of defamation between libel (written) and slander (spoken), the common law historically differentiated between blasphemous libel (which was written) and blasphemy (which was spoken). Strictly speaking, the Criminal Code only addresses the issue of blasphemous libel, but it was, and still remains, unclear in the case law whether this choice of terminology in the statute was meant to exclude verbal blasphemy from the reach of the law. See Criminal Code, R.S.C. 1985, c. C-46, § 296(1) (Can.).

59. See *infra* Part II.C.2.

60. See *infra* Part II.C.3.

61. See *id.*

62. *Local Briefs*, GLOBE (Toronto), Aug. 7, 1886, at 16.

- John Morrison, a man who faced the choice of either paying \$10 or spending ten days in jail “for . . . being blasphemous on Weston [R]oad within the hearing of a police constable.”⁶³
- Frank Veale, a motorist who was accused of using blasphemous language during a traffic stop.⁶⁴ After the arresting officer testified against Veale, Veale “declared that the constable was a liar.”⁶⁵ The officer was unwilling to actually repeat the blasphemous language in court but was allowed by the judge to write it down.⁶⁶ After Veale’s remarks about the constable, the Magistrate “upbraided . . . [him] for failing to appreciate that the policeman’s lot is not a happy one and fined . . . [him \$2] and costs.”⁶⁷
- Charles Copeland, a truck driver who was stopped for failing “to paint the name of the owner of the truck he was driving on both sides.”⁶⁸ Copeland responded to the traffic stop with “indelicate words” and gave “a dusty answer” to one of the officer’s questions, earning himself a \$10 dollar fine.⁶⁹
- Antonio Travellin, a man who received a \$10 fine for using blasphemous language while also “being drunk in a public place.”⁷⁰
- Ernest Losee, who pleaded not guilty to “using insulting and blasphemous language over the telephone.”⁷¹ The court discharged him “on [the] condition he . . . [did] not trouble his woman accuser in [the] future.”⁷²
- W.S. Smale, an irate driver who admitted swearing at a highway flagman near a construction zone, but denied

63. *Men’s Police Court*, TORONTO DAILY STAR, Oct. 23, 1926, at 13.

64. *Calls Constable a Liar*, TORONTO DAILY STAR, Dec. 3, 1930, at 5.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Shocked an Officer with His Language*, TORONTO DAILY STAR, July 19, 1932, at 18.

69. *Id.*

70. *Bicycles are Stolen Culprits Not Traced*, TORONTO DAILY STAR, July 26, 1932, at 16.

71. *Men’s Police Court*, TORONTO DAILY STAR, Jan. 11, 1935, at 3.

72. *Id.*

“using blasphemous language” when doing so.⁷³ Nevertheless, the court fined him \$10 and costs.⁷⁴

- An unidentified man who was either too stubborn or poor to pay a \$25 fine for calling a fellow motorist “a blasphemous name” after a traffic accident and who instead served twenty days in jail.⁷⁵
- D.E. Greenberg, a man who was fined \$10 after a traffic stop for “using blasphemous language.”⁷⁶ Greenberg claimed he only remarked to the officer, “Gosh, can’t I say anything[?]”⁷⁷

The fines in these cases ranged from a low of \$2 in a 1930 case to as high as \$25 in a 1939 case, with \$10 being the most common amount.⁷⁸ The distinction in punishment for blasphemy viewed as a minor infraction akin to profanity (as compared to blasphemy viewed as a serious attack on organized religion) is demonstrated by the penalties meted out in the cases chosen for inclusion in case reporters: three \$100 fines and one sixty-day jail term.⁷⁹ Thus, depending on context and usage, blasphemous language could be punished by as little as a small fine to as much as actual imprisonment.

2. *The Jehovah’s Witnesses and blasphemy*

Jehovah’s Witnesses have often been at the center of controversies that led to the development of civil liberties in the United States and Canada.⁸⁰ The Witnesses fervently believe that Jesus Christ’s return to earth is imminent and that only a small fragment of humanity will be saved.⁸¹ This belief is the foundation of the Witnesses’ well-

73. *Brantford Motorist Fined for Swearing*, TORONTO DAILY STAR, June 11, 1938, at 6.

74. *Id.*

75. *Wouldn’t Pay \$25 so Serves 20 Days*, TORONTO DAILY STAR, Aug. 26, 1939, at 6.

76. *“Blasphemous” Words Costs Motorist \$10*, TORONTO DAILY STAR, Dec. 13, 1939, at 10.

77. *Id.*

78. *See supra* notes 62–77.

79. *See Patrick, supra* note 50, at 229.

80. A number of works have detailed the social and legal tribulations Jehovah’s Witnesses faced in Canada in the twentieth century. *See, e.g.*, WILLIAM KAPLAN, *STATE AND SALVATION: THE JEHOVAH’S WITNESSES AND THEIR FIGHT FOR CIVIL RIGHTS* (1989); M. JAMES PENTON, *JEHOVAH’S WITNESSES IN CANADA: CHAMPIONS OF FREEDOM OF SPEECH AND WORSHIP* (1976); SHAWN FRANCIS PETERS, *JUDGING JEHOVAH’S WITNESSES: RELIGIOUS PERSECUTION AND THE DAWN OF THE RIGHTS REVOLUTION* (2000).

81. *See KAPLAN, supra* note 80, at 4 (“[God’s] law requires them to spread the word of Jehovah, to make God’s word known, before the end comes. The imminence of the end makes

known habit of proselytizing door-to-door, although in past decades, the Witnesses have also tried other means, such as radio broadcasts⁸² and portable phonographs played on the sidewalk.⁸³

This zeal for proselytizing – along with the harsh criticisms levied at other religions⁸⁴ – brought the Witnesses into frequent clashes with the authorities.⁸⁵ In Canada during the 1920s and 1930s, municipal and provincial governments tried a wide variety of means to suppress the Witnesses, including charging them with “seditious conspiracy, violating the Lord’s Day Act, disturbing the peace, and peddling without a licence.”⁸⁶ The Witnesses were not hesitant to defend their rights in the courts, as noted by Allen Rostron:

An examination of the history, beliefs, and practices of the Jehovah’s Witnesses suggests that the legal activity was important to them on several levels. Litigation, obviously, was a means to remove legal obstacles to the Witnesses’ exercise of their religion. However, the legal struggles served even more fundamental needs of the Witnesses, setting them apart from others, indulging their need for opposition and adversity, and reassuring them that they were indeed a special people to God.⁸⁷

the Witness message all the more urgent. As many people as possible must be shown the truth before the world, as we know it, is destroyed.”).

82. *See id.* at 8 (discussing censorship of Witnesses’ radio broadcasts).

83. *See id.* at 9 (“By 1935, 35,000 of these contraptions had been distributed to individual Jehovah’s Witnesses throughout Canada and the United States If the message could not be beamed through the airwaves . . . it would be brought directly to the front door.”); PENTON, *supra* note 80, at 119 (“While this phonograph preaching was particularly resented by many, for a time it proved to be an effective means of proselytizing.”).

84. *See* PENTON, *supra* note 80, at 87 (“The most condemnatory Scriptural terminology was used over and over again against the churches. The clergy were called ‘scribes,’ ‘pharisees,’ ‘hypocrites,’ ‘serpents,’ ‘offspring of vipers,’ and ‘whitewashed sepulchres,’ and the churches were described as ‘harlot-like organizations which committed whoredoms with the kings of the earth.’”).

85. *See* KAPLAN, *supra* note 80, at 5 (“It was not Jehovah’s Witnesses’ persistence in getting their message across that led to their problems with the law. It was their message itself that caused trouble. The Jehovah’s Witnesses are an intolerant group, believing that theirs is the only truth. . . . Their intolerance for all other religions is expressed in bitter attacks on other faiths, in particular on Roman Catholicism.”).

86. *See* PENTON, *supra* note 80, at 90, 114–15. After the advent of World War II, the federal government passed an order-in-council banning the Jehovah’s Witnesses entirely. *See* KAPLAN, *supra* note 80, at xi.

87. Allen Rostron, *Demythologizing the Legal History of the Jehovah’s Witnesses and the First Amendment*, 22 QUINNIPIAC L. REV. 493, 498 (2004) (reviewing SHAWN FRANCIS PETERS, *JUDG-*

Blasphemous libel was another option for police and prosecutors hoping to make charges stick against the Witnesses. Although the reported opinion in a 1925 case, *R. v. Kinler*, never mentioned the religion by name, it dealt with two Witnesses facing charges of blasphemous libel.⁸⁸ In a doctrinal holding eventually repudiated,⁸⁹ the two were acquitted when the presiding magistrate interpreted the Criminal Code's blasphemous libel provision to apply only to direct attacks on God and not on clergy or religious institutions.⁹⁰ This was the last reported case to involve Jehovah's Witnesses on trial for blasphemy.

Contemporary newspaper accounts, however, show that the Witnesses continued to face charges of blasphemous libel until at least the end of the 1930s, with separate prosecutions in 1932, 1937, 1938, and 1939. The first of these cases involved the arrest of six Witnesses for blasphemous libel after they disseminated pamphlets containing statements like "the clergy [is in] an impious alliance with [the] political and industrial powers that be."⁹¹ The presiding magistrate followed the line of reasoning in *Kinler* and held that, although the Witnesses' publications "might give an unusual interpretation of the Scriptures, . . . he found nothing that might be described as a blasphemy against the Deity" and therefore acquitted them.⁹²

In a subsequent case, this one taking place in Ontario, it was the Witness' accuser who ended up in trouble. A Witness named John McDonald played a gramophone record in Italian for a couple, and the record allegedly "denounced organized religion."⁹³ A nearby priest heard the alleged blasphemous record, entered the couple's home, and broke McDonald's records.⁹⁴ The priest, Reverend McCann, swore out a complaint for blasphemous libel against McDonald, to which McDonald countered with a charge of "mali-

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88. 63 C.S. at 483.

89. See Patrick, *supra* note 50, at 221-23 (analyzing *Kinler*); see also KAPLAN, *supra* note 80, at 10 (mentioning *Kinler*); PENTON, *supra* note 80, at 92 (referring to *Kinler*).

90. *Kinler*, 63 C.S. at 486.

91. *Court Dismisses Charge of "Blasphemous Libel,"* GLOBE (Toronto), May 24, 1932, at 18.

92. *Id.* The quotation may be a reporter's paraphrase of the magistrate's actual words.

93. *Priest Admits Guilt, Pays \$3,* GLOBE & MAIL (Toronto), Nov. 27, 1937, at 2.

94. See *Bible Unit Charged in Blasphemy Case,* TORONTO DAILY STAR, Nov. 4, 1937, at 2. This article gives the spelling as "MacDonald" instead of "McDonald" and the initials "H.W." for the first name, instead of "John."

cious damage to property” against McCann.⁹⁵ A grand jury dismissed the blasphemous libel charge against McDonald, but McCann pled guilty and paid a \$3 fine for breaking the records.⁹⁶

In 1938, two Witnesses were held on \$300 bail after being arrested in Rouyn, Quebec, with pamphlets and phonograph records⁹⁷ that “claim[ed] to ‘expose’ the Roman Catholic and Protestant Churches.”⁹⁸ Although the two were committed to trial,⁹⁹ the papers did not report whether they were convicted. At this point, the Jehovah’s Witnesses’ legal arm, The Watchtower Bible and Tract Society, decided to be more aggressive in fighting blasphemy charges in largely Catholic French Quebec by hiring a lawyer named R.L. Calder and arranging, when possible, for cases to be heard by English-speaking Protestant judges.¹⁰⁰

When two Witnesses were brought to trial near Sherbrooke, Quebec, for blasphemy, Calder represented them and argued in court that that the provincial police were “exercising ‘religious censorship . . .’” and that police arrested the men without any complaints from the public.¹⁰¹ Calder went on to note that the Witnesses believed “in the fundamentals of Christianity” and that although he was “irritated at much” that they wrote, no man should be able “to prevent these men from expressing their outlook on any subject, especially religion, provided they do not attempt to attack the very basis of Christianity.”¹⁰² In response, the Crown Prosecutor condemned the Witnesses’ writing as “gross[ly] irreveren[t] toward established religious institutions” and offered as an example a passage taken from Witness literature that read “the practice of religion has proved beyond all doubt that it is a racket of the very worst kind.”¹⁰³

The trial judge instructed the jury that “any man was at liberty to criticize another man’s religion. . . . [But] it was possible to abuse that privilege to a point where irreverence might arise[, and] it was

95. See *Priest Pays \$3 Fine Broke Bible Records*, TORONTO DAILY STAR, Nov. 26, 1937, at 1.

96. See *id.*

97. See *Remanded on Charge of Blasphemy*, GLOBE & MAIL (Toronto), July 11, 1938, at 13.

98. *Jehovah’s Witnesses Face Charges at Rouyn*, GLOBE & MAIL (Toronto), Aug. 3, 1938, at 12.

99. *Blasphemy Case to Trial*, TORONTO DAILY STAR, Aug. 16, 1938, at 1.

100. See PENTON, *supra* note 80, at 123.

101. *Religious Censorship Laid to Quebec Police*, GLOBE & MAIL (Toronto), Feb. 11, 1939, at 3; see *Jury Selected to Try Witnesses of Jehovah*, GLOBE & MAIL (Toronto), Feb. 9, 1939, at 7.

102. *Religious Censorship Laid to Quebec Police*, *supra* note 101.

103. *Id.*

up to the jurors to decide whether the literature which [the Witnesses] distributed was blasphemous or merely excessively critical."¹⁰⁴ The jury decided that the impugned writing fell into the latter category and acquitted the defendants.¹⁰⁵

Just a year later, after the outbreak of World War II, a federal order completely banned the Witnesses as a potentially subversive organization.¹⁰⁶ The newspapers surveyed for this study report no further invocations of the blasphemy law, but the cases discussed above make it clear that the Witnesses continued to face prosecution under the blasphemy laws for over a decade longer than could be gleaned from the reported cases—until the late 1930s, in fact. The Witnesses, however, were largely, perhaps even uniformly, successful in using the legal system to protect themselves against these charges. The failure of law enforcement to win convictions points to the vigor and skill that the Witnesses deployed in defending themselves and may be an important clue as to why blasphemy charges were rarely pressed after this time period.

3. *Blasphemy and the stage*

The five blasphemy cases recorded in case reporters all involved written materials: pamphlets, posters, and small-run newspapers.¹⁰⁷ Doctrinally, this leaves open the question of whether the Criminal Code's blasphemous libel provision includes oral, as well as written, blasphemy.¹⁰⁸ However, research using newspaper archives demonstrates that, in practice, the law could be applied to non-written categories of expression, including theatrical performances and (with unclear results) the cinema.

A dramatic example of this took place in Montreal in April of 1938. During a crowded performance of a play called *The Deluge*, eighteen members of the Quebec Provincial Police "secreted themselves among the audience" and "let the play run on into the second act" before "swarm[ing] out of the pit and on to the stage[.] . . .

104. *Id.* This is a newspaper paraphrase of the actual jury instruction. See also, PENTON, *supra* note 80, at 123 (quoting the trial judge as instructing: "These people believe these statements to be true; they have faith in these teachings, hence they have a right to promulgate them, and even if it does hurt some of us, that does not constitute blasphemy.").

105. *Religious Censorship Laid to Quebec Police*, *supra* note 101.

106. See KAPLAN, *supra* note 80, at xi.

107. See *supra* text accompanying note 49.

108. See Patrick, *supra* note 50, at 194 n.5.

seiz[ing] the prompter's copy of the French script[,] and hustl[ing] the performers out of the hall [and] into waiting police vans."¹⁰⁹ In all, twenty-one performers were arrested on charges of "oral blasphemy," while the play's author was additionally charged with a count of "written blasphemy."¹¹⁰

During pre-trial hearings, the prosecutor labeled the play "a crude farce"¹¹¹ and produced an expert witness from the University of Montreal to testify about the play's blasphemous qualities: "It is a parody on Biblical passages, notably the passage relative to the deluge. The style is ribald and obscene, mingling the most holy and most sacred things with the most filthy and disgusting."¹¹² This was enough to satisfy the judge, who bound the defendants over for trial¹¹³ and set bail for the play's author at \$950.¹¹⁴ Later that year, the play's author and seven performers pled guilty just moments into their trial.¹¹⁵ Unfortunately, as best could be determined, the newspapers did not report the sentences imposed on the defendants. Although no evidence is available on point, a reasonable inference is that authorities in the province were successful in halting performances of *The Deluge* for some time.

Forty years later, the newspapers reported another attempt to suppress a play: Denise Boucher's *Les fées ont soif* (*The Fairies are Thirsty*).¹¹⁶ A coalition of religious groups brought a private suit against Boucher, alleging that the play was blasphemous and personally defamed them. This time around, the effort was less successful; although sales of the play's script were banned under a

109. *21 Actors Arrested on Morality Charge*, TORONTO DAILY STAR, Apr. 25, 1938, at 1.

110. *Actors Deny Blasphemy*, GLOBE & MAIL (Toronto), Apr. 26, 1938, at 14; see *Quebec Police Jail Complete Cast of Play*, GLOBE & MAIL (Toronto), Apr. 25, 1938, at 3.

111. See *Actors Deny Blasphemy*, supra note 110 (this statement may be a paraphrase of the prosecutor's actual words).

112. *Playwright is Remanded: Blasphemous Libel Charge Follows Raid by Police of Montreal*, GLOBE & MAIL (Toronto), May 4, 1938, at 9.

113. *Play Cast To Be Tried at Assizes*, GLOBE & MAIL (Toronto), May 18, 1938.

114. See *Actors Deny Blasphemy*, supra note 110.

115. "Blasphemous Libel" Admitted by Actors, TORONTO DAILY STAR, Nov. 29, 1938 (reporting that the Crown withdrew charges against the other performers).

116. See *Author "Mad as Hell" Over Ban*, GLOBE & MAIL (Toronto), Dec. 7, 1978, at 12. The unreported opinions of the Quebec Superior Court and Court of Appeal are easily accessible in this instance. See *Jeunes Canadiens pour une Civilisation Chrétienne c. Fondation du Théâtre du Nouveau-Monde*, 1979 CarswellQue 662 (Can. Que. S.C.), *aff'd*, 1979 CarswellQue 325 (C.A.); see also Maria-Suzette Fernandes-Dias, *Les Fees Ont Soif: Feminist, Iconoclastic or Blasphemous?*, ANU E-PRESS, http://epress.anu.edu.au/nts02/mobile_devices/ch06.html (last visited Apr. 16, 2011).

temporary injunction,¹¹⁷ no performances were cancelled, and the injunction was lifted soon after.¹¹⁸

A year later, in 1979, an Anglican clergyman started a private prosecution for blasphemous libel against a movie theatre that had shown Monty Python's *Life of Brian*.¹¹⁹ The president of the theatre chain cancelled one showing of the movie but then regained his courage (or consulted with his attorneys) and allowed all future showings to proceed normally.¹²⁰ Because a private prosecution required the consent of the province's Attorney General, the case could not continue unless the government supported it—and in this instance, consent was not forthcoming, and the case was dropped.¹²¹

As far as could be determined, this failed attempt to suppress *Life of Brian* was the last time Canada's prohibition on blasphemous libel was invoked in the courtroom. Just two years later, the *Charter of Rights and Freedoms* would come into effect and cast doubt on the constitutionality of the statute.¹²² However, this particular chapter in Canada's history of prohibiting blasphemy—including attacks on *The Deluge*, *Les fées ont soif*, and *Life of Brian*—shows that the law could be envisioned to apply to far more than just written materials.

4. Miscellaneous

Not every case fits into a neat category. Newspaper research reveals several prosecutions for blasphemous libel that demonstrate the law's scope beyond that presented in case reporters:

- In 1904, the publisher of a monthly Montreal newspaper was charged with blasphemous libel for implying that a fire in a Roman Catholic church was arson "because the host was burned."¹²³

117. See Author "Mad as Hell" Over Ban, *supra* note 116 (noting that the decision granting the temporary injunction "cited an article of the Criminal Code dealing with blasphem[y]").

118. See *Les Fees Injunction Denied on Appeal*, GLOBE & MAIL (Toronto), Nov. 20, 1979, at 15; *Court Won't Review Les Fees Decision*, GLOBE & MAIL (Toronto), Feb. 8, 1980, at 15 (noting that the Supreme Court of Canada refused to hear an appeal from the religious groups).

119. See *Monty Python Film to Be Shown Tonight*, GLOBE & MAIL (Toronto), Nov. 12, 1979, at 22. *Life of Brian* "presents a satirical account of the persecution of Christ." See *id.*

120. See *id.*

121. See *Charge Stayed Against Theatre for Showing Film*, GLOBE & MAIL (Toronto), May 21, 1980, at 8.

122. See Patrick, *supra* note 50, at 238–42.

123. *Epidemic of Libel Suits: Five Against Le Journal – La Lanterne's Case*, GLOBE (Toronto), Mar. 26, 1904, at 23.

- In 1919, a private prosecution for blasphemy failed when the presiding magistrate determined that he did not have jurisdiction over the case because the incident took place on an Aboriginal reserve.¹²⁴
- In 1921, a Toronto bookseller was charged with blasphemous libel for advertising the works of freethinker Robert Ingersoll in his store window.¹²⁵
- In 1929, a man told a crowded restaurant that “there was no God, [t]he church is a menace, and everyone [should] become a Bolshevik and get work.” However, the defense counsel successfully argued that only written blasphemy was prohibited, and that oral statements were not covered.¹²⁶ The magistrate dismissed the charge, but instructed the prosecutor to see if any city by-laws had been violated.¹²⁷
- A Montreal labor leader was charged with blasphemous libel after making “attacks on the popes of the Roman Catholic church.”¹²⁸ The defendant, a “French-Canadian radical leader,” pled not guilty and was committed to trial.¹²⁹

Standing alone, these incidents may be nothing more than historical curiosities. However, as part of a sustained study of the use of blasphemy law in Canadian history, they demonstrate the diverse circumstances in which prosecutions could occur: everything from advertisements for freethinker books to Communist criticism of religion to attacks on the Pope constituted blasphemy as far as law enforcement was concerned.

124. *Can't Try Indians*, GLOBE (Toronto), Nov. 13, 1919, at 11.

125. *Charge Blasphemy Against Bookseller: Police Allege He Displayed Objectionable Advertising Card in Windows*, GLOBE (Toronto), Nov. 1, 1921, at 9. The arresting officer, Inspector McKinney, who was a member of the Morality Department, had no issue with Ingersoll's work—only the advertisement was problematic. *Id.* McKinney was the same officer responsible for the highly publicized arrest and trial of Ernest Sterry. See Patrick, *supra* note 17, at 139, 141–42 (discussing the Sterry case at length, including McKinney's role).

126. *Blasphemous Libel Charge Withdrawn: Alleged Utterances Against God Are Not Unlawful Unless Written, Court Rules*, TORONTO DAILY STAR, May 14, 1929, at 3.

127. *Restaurant Orator Is Freed by Court: Steve Bozchin Discharged on Blasphemous Libel Count*, GLOBE (Toronto), May 15, 1929, at 26.

128. *Send Libel Charge to Superior Court*, TORONTO DAILY STAR, Feb. 3, 1934, at 33.

129. *Pilon is Committed on Blasphemy Count*, TORONTO DAILY STAR, Feb. 8, 1934, at 42.

CONCLUSION

Newspaper archives proved a valuable supplement to traditional case reporter research in the case study of blasphemy performed for this Article. Not only did the newspapers reveal the existence of almost four times the number of prosecutions as previously known, but they provided valuable insight into how blasphemy charges were (1) levied against Jehovah's Witnesses; (2) used by police officers to punish the equivalent of profanity during traffic stops; and (3) in at least one instance, successful in suppressing the performance of an irreligious play. Along with the additional commentary they provide on the cases already known, newspaper articles provided a much fuller picture of how blasphemy laws were used in practice.

A single case study of an obscure criminal offense, of course, is not by itself sufficient proof that newspaper research will always reward the time and effort involved. Blasphemy is a rare crime with few, if any, analogues elsewhere in the criminal justice system. Research into other crimes discussed in newspapers can be much more difficult because "[r]eferences to legal provisions can be . . . ambiguous, requiring judgments to be made about the specific offence committed and statutory provision breached."¹³⁰ Crimes that have both an *everyday* and a legal definition, such as assault, could easily overwhelm researchers without careful limitations on the time period or geographical area studied. Additionally, this author's experience is that the keyword search function of PDF-based newspaper databases lacks the precision of traditional case databases, returning many false positives and an unknown number of false negatives. Finally, newspaper reports offer only a limited snapshot into a prosecution or lawsuit, and they usually lack the detailed explication of facts and doctrine that are the hallmarks of good judicial opinions.¹³¹

The results of this case study, and those of another author who examined press reports of rape in Victorian England,¹³² point to the potential for newspapers to supplement and complicate historical research into legal topics. The judicial opinions chosen by editors for inclusion in case reporters are a valuable, but insufficient, tool for understanding what the law means for those who experience it firsthand.

130. Stevenson, *supra* note 16, at 413.

131. See Garofalo, *supra* note 43, at 325 ("[C]rime stories in newspapers consist primarily of brief accounts of discrete events, with few details and little background material.").

132. See *id.* at 321.