

Australian Case Citators on CD-ROM: Which one would you choose?

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Case citators serve a number of functions and one's enthusiasm for case citators varies according to how vital these functions are to the individual user. They can be used to verify an incomplete citation or to find alternative citations if the preferred series of law reports is not available. More importantly, they can be used to find out if a case has been judicially considered. They sometimes allow one to find cases which have judicially considered a statute and in which words and phrases have been judicially considered. Finally, they can also be used to identify case notes that have been written about specific cases.

For many years LBC Information Services' *Australian Case Citor* was the only citator. A challenger appeared on the scene in 1987 (in the form of the *Australasian Current Case Annotator*, more recently known as the *Australasian Case Annotator*¹) and this product evolved into *CaseBase*, the best known product of Pink Ribbon Publishing Company. Another product appeared more recently and is known as *Hypercite*, produced by Computer Law Services, and marketed as part of their suite of CD-ROM based legal products. The situation now exists where there are three services distributed on CD-ROM. This article reviews these products. Whilst there have been, and continue to exist, various other non CD-ROM delivery methods those have not been considered here².

It is often the case that selection decisions for CD-ROM databases are made on the basis of ease of use. How user-friendly is the interface? What search options are possible? How much training is involved in becoming a proficient searcher? While these considerations are important when there are a number of different search software 'front ends' to the same database, they may be less important when the underlying databases are different. For example, libraries may select a product despite serious misgivings about the search software because the underlying data is of a high quality.

The Products: A Brief Overview

The *Australian Case Citor* has existed as a multi-volume print work for many years. It provides a list of citations, with the authorised citation for each case listed first. It also includes references to case notes and then provides subsequent judicial consideration of a case. The CD-ROM version presents two tables. A table of case names is linked to entries in a table of history and citations. The CD-

¹ The printed *Australasian Case Annotator* ceased publication in June 1997.

² For example, *CaseBase* is available as an Internet service via *Butterworths Online*.

ROM version uses Folio VIEWS text retrieval software. Source data comes from a large range of law reports and most of the CCH services are covered. The *Australian Case Citator* includes citations from, for example, *Australian Family Law Cases*, *Intellectual Property Reports*, *Australian and New Zealand Insurance Cases* and the various reports covering the superior courts in each state. It does not cover unreported judgments. There are some interesting omissions; as is noted later, the *Equal Opportunity Cases* do not appear to be included in the coverage of the *Australian Case Citator*. Figure 1 gives a sample record from the *Australian Case Citator*.

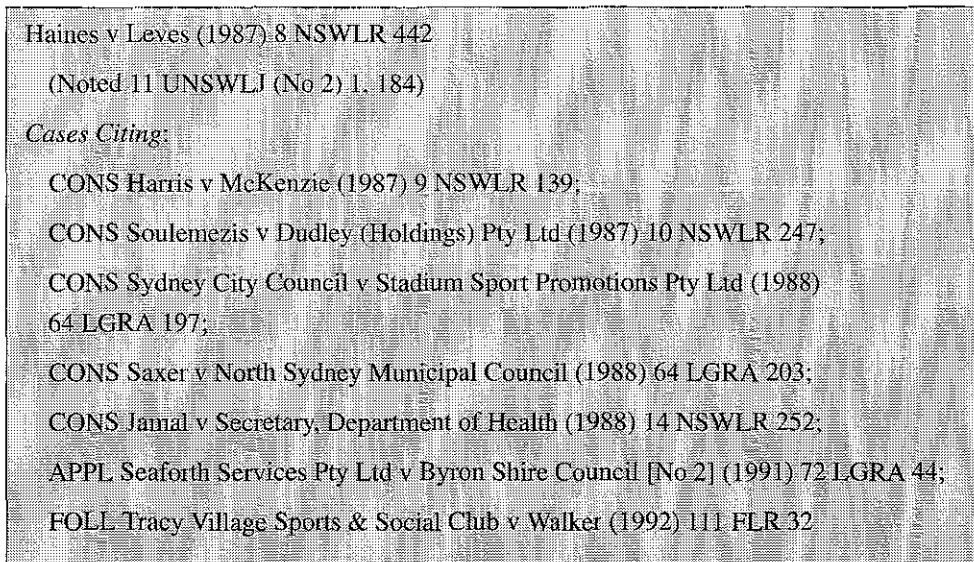


Figure 1: Sample Record from Australian Case Citator

CaseBase clearly aims to be more comprehensive than the *Australian Case Citator*. It covers more law reports (including the CCH services, the *New Zealand Law Reports* and *Lloyd's Law Reports*) and 80 legal journals and it covers unreported judgments from all superior Australian courts.

It provides citations, judges, details of the court and date of judgment, cases judicially considering the case, case notes, and, in some records, words and phrases judicially considered and statutes judicially considered are included. Since 1994 catchwords have been included in the records. The annotations are generally arranged in reverse chronological order, with cases usually followed by case notes or, more specifically, with 'see references' to journal articles. *CaseBase* uses a simple locally developed interface which allows searches of specific fields, a global search and the facility to browse various indexes. The Butterworths and LBC Information Services release of *CaseBase* rely on Folio software. Figure 2 gives a sample record from *CaseBase*.

R v Stephenson
[1976] VR 376
Judge(s)
Young CJ, Nelson and Harris JJ
Court
SCVic, 21/10/1975
Annotations
Cited Hanlon v Brookes (1996) ATPR 41-523
Refd to Alucraft Pty Ltd (in liq) v Grocon Ltd (No1) [1996] 2 VR 377
Cited F A I Traders Insurance Co Ltd v Savoy Plaza Pty Ltd (1993) AustContractR 90-025; (1993)
VConvR 54-466; [1993] 2 VR 343; [1993] ANZConvR 469 [Ext]
Foll R v Gane (1993) 18 MVR 39
Dist Wakeley & Bartling v R (1990) 93 ALR 79; (1990) 64 ALJR 321
See More Things Change the More They Stay the Same? The Evidence Acts 1995 (1995) 18 UNSWLJ 1
Words and Phrases
gross negligence
Statutes
Crimes Act 1958 (Vic), s 318.

Figure 2: Sample Record from CaseBase

Hypercite covers 22 law reports and includes certain unreported cases which have been cited in the reported cases. The layout for each case is clear, with citations followed by date of judgment and court, then judges, then cases judicially considering this case, statutes judicially considered by the listed case and words and phrases judicially considered by the listed case. (See Figure 3). The inclusion of words and phrases judicially considered and statutes judicially considered fields in the records are useful features not found in the *Australian Case Citator*.

<p>SEALE v PERRY [1982] VR 193 11 Sep 1981 VIC SC LUSH J MURPHY J MCGARVIE J</p> <p>Cases judicially considering this case:</p> <p>apld 23-11-95 FED CT 62 FCR 1 HENDERSON & OTHERS v AMADIO PTY LTD & OTHERS (No 1)</p> <p>folld 23-11-95 FED CT 62 FCR 1 HENDERSON & OTHERS v AMADIO PTY LTD & OTHERS (No 1)</p> <p>not folld 18-03-97 HIGH COURT 142 ALR 687 HILL (trading as [RF HILL & ASSOCIATES]) v VAN ERP</p> <p>not folld 21-05-87 TAS SC [1987] Tas R 60 FINLAY v ROWLANDS ANDERSON & HINE</p> <p>refd 29-05-87 QLD SC [1988] 1 QdR 393 HARDWARE SERVICES PTY LTD v PRIMAC ASSOCIATION LTD</p>
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Figure 3: Sample Record from *Hypercite*

There are four indexes. It is possible to browse/search via a case name, citation, statute, or words and phrases. This word wheel feature is a useful approach, if the name of first party is known. There appears to be no attempt to include case notes and *Hypercite* appears to make no attempt to present the authorised report first in the list of entries.

How much do they cost? The *Australian Case Citator* costs \$1,050 for a single user or \$2,100 for a network of 2-5 simultaneous users. This price drops after the first year to \$550 for a single user and \$1,100 for the network. *CaseBase* is priced at \$1,450 for a single user and \$3000 for a network licence. *Hypercite* costs \$495 for a single user and \$750 per annum for a network of up to 5 simultaneous users. *Hypercite* is available at a lower rate if quarterly rather than monthly updates are preferred.

A Methodology for Making Comparisons

For the purposes of comparison, fourteen cases were searched for and downloaded in the June 1997 release of each product. Three details were noted for each case, using the three services. For each case, the number of citations were tallied, the number of subsequent judicial considerations were counted and the number of case notes counted. The Butterworths 'version' of *CaseBase* was used. These results are presented in Table 1, Table 2 and Table 4.

Table 1: Number of Citations

Case	ACC	CaseBase	Hypercite
Donnelly v National Bank WA SC, 19-May-92)	0	1	1
Haines v Leves (1987) 8 NSWLR 442	1	2	1
Harriman v R (1989) 167 CLR 590	4	4	2
Law Society of ACT and Chamberlain, Re (1993) 116 ACIR 1	1	2	1
O'Leary v R (1946) 73 CLR 566	3	3	2
Peacock v R (1911) 13 CLR 619	2	2	1
Perry v R (1982) 150 CLR 580	3	3	3
Pfennig v R (1995) 182 CLR 461	4	5 ¹	4 ²
Plomp v R (1963) 110 CLR 234	5	4	3
R v MacFarlane [1993] 1 QdR 202	1	1	1
R v Stephenson [1976] VR 376	1	1	1
Seale v Perry [1982] VR 193	1	1	1
Sutton v R (1984) 152 CLR 528	4	4	3
Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279	1	3	2

¹ Includes 19 *CrimLJ* 229 which is in fact a case note.

² Includes one citation to Computer Law Service's service [CLS 1995 HC 3]

Discussion

The *Australian Case Citator* uses Folio VIEWS software but the tagging (F6) function is awkwardly implemented. Identifying the fourteen cases and tagging the citations that accompanied these cases for downloading involved a large number of keystrokes. This is because each judicial consideration is a separate record. It is necessary to move the cursor to the record and then press the F6 key. In contrast, a single record in *CaseBase* contains the citation, subsequent judicial consideration, catchwords etc. so a single keystroke tags the entire record. It should be noted that this problem with the *Australian Case Citator* can be circumvented by the use of the mouse to select the required text. However, using this option it is necessary to mark and download records one at a time.

Searching *Hypercite* for the fourteen cases was not without problems. In five cases there were 'problems' associated with the indexing of case names. Whether these are minor or major shortcomings depends on your point of view. In the Peacock v R case the use of the index of case names fails to locate the case. This is because the case appears as Samuel Peacock v R and thus appears in a quite different place in the index. The use of the search expression feature of the software will successfully locate the case. In the case of Harriman v R, Perry v R and Plomp v R there are duplicate records. This lack of authority control seemed

to occur with a frequency that is alarming for a company that claims prominently that it is an ISO9002 quality compliant company. Finally, the Pfennig case was incorrectly cited as Pfenning v R. For those using the index of case names approach this would not be such a problem as the case appears in alphabetical sequence roughly where it should appear; for those using the search expression approach this might be more of a problem.

CaseBase provided catchwords for only three of the fourteen cases. While catchwords are probably a useful selling point, it must be remembered that most of the records in *CaseBase* do not, in reality, contain catchwords.

As Table 1 indicates, the *Australian Case Citator* and *CaseBase* often provide more citations than *Hypercite*. The inclusion of CCH law reports in *CaseBase* generally accounts for the 'extra' cites in *CaseBase*. For example, in the Haines v Leves case, *CaseBase* picked up the EOC citation. The *Australian Case Citator* does not appear to include this series of law reports in its coverage. In the Law Society of the Australian Capital Territory case, *CaseBase* picked up the *ANZConvR* (*Australian and New Zealand Conveyancing Reports*) citation. In *Ziems*, *CaseBase* picked up the *ArgLR* (*Argus Law Reports*) and *ALJR* (*Australian Law Journal Reports*) citations. Why these latter citations might have been missed by the *Australian Case Citator* is not clear as *ALJRs* are usually included in the *Australian Case Citator*. Not surprisingly, the *Australian Case Citator* did not include *Donnelly v National Bank* as it does not claim to include unreported cases.

Table 2: Number of Subsequent Judicial Considerations

Case	ACC	CaseBase	Hypercite
Donnelly v National Bank WA SC, 19-May-92)	0	1	1
Haines v Leves (1987) 8 NSWLR 442	7	21	1
Harriman v R (1989) 167 CLR 590	19	36	17
Law Society of ACT and Chamberlain, Re (1993) 116 ACTR 1	0	0	0
O'Leary v R (1946) 73 CLR 566	15	22	12
Peacock v R (1911) 13 CLR 619	56	43	22
Perry v R (1982) 150 CLR 580	18	28	17 ¹
Pfennig v R (1995) 182 CLR 461	8	16	1
Plomp v R (1963) 110 CLR 234	33	36	17
R v MacFarlane [1993] 1 QdR 202	0	0	0
R v Stephenson [1976] VR 376	3	5	1
Seale v Perry [1982] VR 193	7	16	5 ²
Sutton v R (1984) 152 CLR 528	18	45	21
Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279	28	35	13

¹ Includes two citations to *Thompson v R*, two citations to *Sutton v R* and two citations to *Pfennig v R*.

² Includes two citations to *Henderson & Others v Amadio Pty Ltd & Others* (No 1).

As Table 2 indicates, *CaseBase* provides the highest number of judicial considerations in almost all cases. There are two reasons for this; *CaseBase* includes more reports and covers unreported judgments. In the case of *Pfennig v R*, 10 of the 16 citations were to unreported cases; in the case of *Harriman v R*, six of the 36 citations were to unreported cases

The problems of duplicate records mentioned above with regard to *Hypercite* were also in evidence in this part of the study. For example, of the 17 citations for *Perry v R*, three cases were duplicate citations (the same case was referred to twice). In *Seale v Perry* (reproduced in Figure 3 above) two of the citations are to the same case. The value of listing a case as both applied and explained or both considered and discussed (as separate annotations) seems to be questionable. It was not possible to check all entries for duplicates, so it is possible that the *Hypercite* numbers in Table 2 are generally inflated by duplicates.

Closer examination of the citations for the *Pfennig* case reveal some curious differences between the *Australian Case Citator* and *CaseBase*. Table 3 presents the citations for both databases, excluding the unreported *CaseBase* decisions. As Table 3 indicates, only one citation is common to both services. *CaseBase* provides a citation to a UK case where the Australian case has been referred to

Table 3: *Pfennig v R* Citations

Australian Case Citator	CaseBase
Barker v The Queen (1994) 127 ALR 280; (CONS)	Murphy v Various Respondents (No1) (1997) ASC 56-363 (Cited)
Maxwell v The Queen (1996) 70 ALJR 324; (REFD)	N R M A Finance Ltd v Various Respondents (1997) ASC 56-367 (Cited)
R v Dales (1995) 80 A Crim R 50; (CONS)	R v Tamboureas & Batas (1996) 186 LSJS 286 (Cons)
R v Davidson; Ex p Attorney-General [1996] 2 Qd R 505; (NOI FOLL)	R v H [1995] 2 WLR 737; [1995] 2 AC 596; [1995] 2 AllER 865 (Refd to)
R v O'Neill (1995) 81 A Crim R 458; (DIST)	R v McKnoulty (1995) 80 ACrimR 28 (Appl)
R v Smith (1994) 75 A Crim R 327;(APPL)	Zaknic Pty Ltd v Svelte Corporation Pty Ltd (1995) 61 FCR 171; (1995) 140 ALR 701 (Cons)
R v Smith [No 2] (1995) 64 SASR 1; (CONS)	
Zaknic Pty Ltd v Svelte Corporation Pty Ltd (1995) 61 FCR 171 (57 SASR 507); CONS	

This lack of commonality between the cases referred to by each of the services was even more pronounced in the *Perry v R* example. Of the 63 citations in this example, 36 different cases were referred to. However, only eight cases were common to all services. What does this mean? It can be argued that the services clearly do not duplicate one another. Each service refers to different cases and whilst there is some overlap it is not as great as one might expect (or hope for).

Table 4: Number of Case Notes

Case	ACC	CaseBase
Donnelly v National Bank WA SC, 19-May-92)	0	0
Haines v Leves (1987) 8 NSWLR 442	1	2
Harriman v R (1989) 167 CLR 590	2	12
Law Society of ACT and Chamberlain, Re (1993) 116 ACIR 1	0	0
O'Leary v R (1946) 73 CLR 566	0	1
Peacock v R (1911) 13 CLR 619	0	2
Perry v R (1982) 150 CLR 580	3	10
Pfennig v R (1995) 182 CLR 461	5	8
Plomp v R (1963) 110 CLR 234	1	1
R v MacFarlane [1993] 1 QdR 202	0	0
R v Stephenson [1976] VR 376	0	1
Seale v Perry [1982] VR 193	5	11
Sutton v R (1984) 152 CLR 528	2	10
Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279	0	6

As Table 4 indicates, *CaseBase* provides more links to journal articles. Eleven of the cases contained references to journal articles. In only seven cases did the *Australian Case Citator* include references to case notes. Just how important this function of a case citator is for the user is not clear. It is worth noting that *AGIS* has included references to cases in its indexing since April 1991 and the *Australasian Legal Literature Index (ALLI)* has also made a point of providing access via case names to journal articles.

Conclusions

How does a library decide which product represents the 'best' product? Is it better to have all of them, on the basis that they all do things differently and more is better? Or is it better to make a selection decision, and offer a single product with all training geared to that one product? What if the budget allows us to choose only one?

How are they different? Based on the findings presented above it can be seen that the choice is not an easy one. All of the case citators have strengths and all have attempted to provide extra features to make them more useful. Whether a case citator is the first place to go when you are looking for case notes or words and phrases judicially defined, for example, is a matter of preference. Other services do perform these functions and there is thus a considerable amount of duplication of material.

Using the sample approach outlined here, *CaseBase* appears to provide more of everything. However, the hoped for overlap between services was not clearly evident. If anything, the message to be learned is that we need to proceed cautiously. No one case citator can be relied on to provide the last word and, once again, the art of legal research becomes just that: an art rather than a science! All attempts to sell computer assisted legal research products as complete solutions underestimate the complexities of the research process.

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