

The Canadian Legal Research and Writing Guide

Formerly the Best Guide to Canadian Legal Research

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Edited by Melanie Bueckert, André Clair, Maryvon Côté, Yasmin Khan, and Mandy Ostick, based on work by Catherine Best, 2018

*The Canadian Legal Research and Writing Guide is based on *The Best Guide to Canadian Legal Research*, An online legal research guide written and published by Catherine Best, which she started in 1998. The site grew out of Catherine's experience teaching legal research and writing, and her conviction that a process-based analytical approach was needed. She was also motivated to help researchers learn to effectively use electronic research tools.*

Catherine Best retired In 2015, and she generously donated the site to CanLII to use as our legal research site going forward. As Best explained:

The world of legal research is dramatically different than it was in 1998. However, the site's emphasis on research process and effective electronic research continues to fill a need. It will be fascinating to see what changes the next 15 years will bring.

The text has been updated and expanded for this publication by a national editorial board of legal researchers:

Melanie Bueckert legal research counsel with the Manitoba Court of Appeal in Winnipeg. She is the co-founder of the Manitoba Bar Association's Legal Research Section, has written several legal textbooks, and is also a contributor to [Slaw.ca](http://slaw.ca).

André Clair was a legal research officer with the Court of Appeal of Newfoundland and Labrador between 2010 and 2013. He is now head of the Legal Services Division of the Supreme Court of Newfoundland and Labrador.

Maryvon Côté is an associate librarian at the Nahum Gelber Law Library at McGill University in Montreal. He is active on the Canadian Association of Law Libraries executive and writes on legal research topics.

Yasmin Khan is the Manager, Legal Information Services at the Ministry of Attorney General Law Library. She has previous legal research and government law library experience at the City of Toronto and Department of Justice Canada. In addition to her Masters of Information Studies at University of Toronto, she also completed a Masters of Science, information and Knowledge Strategy from Columbia University.

Mandy Ostick is a law librarian and information professional with legal research experience in law firm, university library, and courthouse environments. She has had previous positions as library services manager for Norton Rose Fulbright in Vancouver, law librarian at Thompson Rivers University, and director, digital library at Courthouse Libraries BC. Currently she is librarian at Harris & Company in Vancouver.

About Catherine Best

Catherine Best worked as a research lawyer for almost 30 years. In that role, she researched complex legal issues, prepared opinions for clients, and developed submissions for court and other types of proceedings. Catherine retired from the practice of law in September 2015.

Catherine served for eight years on the Board of Directors of the [Canadian Legal Information Institute](#) (CanLII), and was the first full-time director of legal research and writing at the UBC Faculty of Law. She is one of eight legal researchers featured in the book *Law of the Super Searchers: The Online Secrets of Top Legal Researchers*.

About “*Stare Decisis* and Techniques of Legal Reasoning and Legal Argument” by Hon. Justice Paul M. Perell

[Chapter 9](#) of the *Guide* is “*Stare Decisis* and Techniques of Legal Reasoning and Legal Argument” an article by Hon. Justice Paul M. Perell of the Ontario Superior Court of Justice. It was originally published in (1987) 2:2,3 Legal Research Update 11. Justice Perell has kindly given permission for it to be republished here, continuing its inclusion in the *Best Guide to Canadian Legal Research*.

Additional thanks

Thanks goes to Rachelle Bastarache who worked on this guide as a summer student working at CanLII and to Jennifer Taylor who is a former member of the Editorial Board.

1 The Importance of Legal Research

1.1 Legal research is an essential lawyering skill

The ability to conduct legal research is essential for lawyers, regardless of area or type of practice. The most basic step in legal research is to find the leading case governing the issues in question. As most researchers know, this is far more difficult than it sounds. This is the case for several reasons:

- Often the issues are not correctly identified or some issues are missed altogether: issue identification is crucial for effective research.
- The law is constantly changing: recent decisions of the Supreme Court of Canada clearly show the fluidity of legal doctrine. Even where there is a recent decision of the Supreme Court of Canada, split decisions of the court make it difficult to determine how the next case will be decided.
- In many areas there are conflicting decisions or no binding authority: you must then research the law of other jurisdictions and apply creative analysis to the existing case law or create an argument based on first principles.

Finding the law is an important part of legal research, but the ability to analyze what you have found and reach a conclusion or formulate an argument based on it is just as essential. Christina Kunz and Deborah Schmedemann expressed this view as follows:

As a beginning researcher, one of the bigger mistakes you can make is to envision legal research as a bibliographic checklist of sources to consult. Clearly you need to be familiar with the various sources and their location in the library, but that's not all. You also need to formulate research strategies that tell which source, of several sources, you should consult. And your strategy should incorporate flexibility. Successful researchers continually re-evaluate their research methodology and consider alternative research approaches as they find that various sources or research approaches are helpful or fruitless. Even more important, you also need to learn how to advance your analysis of a law-related problem by means of your research. Even the most diligent researcher, armed with the latest technology, will not arrive at a successful result if he or she approaches legal research as a

*mechanical process devoid of analysis. Thus, legal research is really just a portion of legal problem-solving.*¹

1.2 Standard of legal research required

Our courts have set the standard for legal research they expect of counsel appearing before them. In [Lougheed Enterprises Ltd v Armbruster](#)², the British Columbia Court of Appeal held that counsel has a duty to be aware of all cases on point decided within the judicial hierarchy of British Columbia and to refer the court to any authorities that might turn the case. The court noted that “on point” does not mean cases that resemble the case at bar in the facts. It means cases that decide the same point of law. You may think you can justify not referring to a binding decision because it is distinguishable on its facts, but that determination is for the court to make—not counsel.

The court in *Lougheed v Armbruster* held that:

- Counsel cannot discharge their duty by not bothering to determine whether there is a relevant authority. Ignorance is no excuse.
- The duty to the court does not go as far as the duty to their clients to be persuasive, which often requires counsel to produce authorities outside the hierarchy of British Columbia.
- Counsel are not expected to find and consult unreported cases, though if counsel know of an unreported case on point, they must bring it to the court’s attention.

This ruling on unreported cases is in the context of counsel’s duty to the court. The duty to one’s client to be persuasive arguably goes beyond this and requires counsel to include these cases within his or her research. Given the ready availability of recent unreported cases on both commercial and free websites, counsel has an obligation to his or her client to review this body of law. Even if you are not familiar with the most recent unreported cases, the judge or counsel on the other side probably will be.

¹ Christina L. Kunz et al, *The Process of Legal Research: Successful Strategies* (Boston: Little, Brown, 1989) at pages 6-7.

² [1992] 2 WWR 657, 63 BCLR (2d) 316, 1992 CanLII 1742 (BCCA).

Failure to have conducted proper research can have devastating consequences.

In [*World Wide Treasure Adventures Inc. v Trivia Games Inc.*](#)³ counsel applied for an injunction without first understanding or researching the applicable law. Gibbs J. ruled that counsel had been negligent in the performance of his duty and awarded significant solicitor-client costs against counsel personally.

Perhaps the strongest criticism of counsel's failure to conduct research was levelled in *Gibb v Jiwan*⁴ by Ferguson J. The case involved a dispute over priority to claims against land registered under the Ontario *Land Titles Act*. After deciding the point of law, Mr. Justice Ferguson commented extensively on the failure of counsel to conduct adequate research, noting the professional obligation of counsel:

- to be competent
- to keep abreast of developments in their own area of practice
- to give their clients advice based on an adequate consideration of the applicable law
- to inform the court of relevant material authorities regardless of whether they support or contradict the position counsel is advocating

He ordered both counsel to deliver a copy of his reasons to their clients.

In [*Central & Eastern Trust Co. v Rafuse*](#) the Supreme Court of Canada ruled that:

A solicitor is not required to know all the law applicable to the performance of a particular legal service in the sense that he must carry it around with him as part of his "working knowledge", without the need of further research, but he must have a sufficient knowledge of the fundamental issues or principles of law applicable to the particular work he has undertaken to enable him to perceive the need to ascertain the law on relevant points ... "and to discover

³ (1987) 16 BCLR (2d) 135, 1987 CanLII 2629 (BCSC).

⁴ [1996] OJ No 1370 (QL), 62 ACWS (3d) 607 (Gen Div).

*those additional rules of law which, although not commonly known, may readily be found by standard research techniques”.*⁵

A litigator who has not conducted sufficient research thus faces the possibility of being sued by his client, and also of censure by the court through an award of costs. For a solicitor, failure to understand the law or conduct the research necessary to gain an understanding of it may result in personal liability to the client.

1.3 Complexity of modern legal research

Though we have more tools for conducting legal research than our predecessors, the research task has become harder rather than easier. There are more bases to cover:

- Computer research has introduced the need to be completely current and to develop new skill sets.
- There has been a dramatic increase in the volume of case law and statutory material.
- [Secondary sources](#) have grown exponentially.
- The law of other jurisdictions must often be researched.

The days when counsel could be reasonably sure they knew the law without having to look it up has long passed.

In order to cover this large volume of material, you need to conduct efficient and effective legal research. The key to this is developing a research strategy and following good research methodology. The more familiar you are with the resources available, the faster you can develop your strategy and the more effective it will be.

There are several guides available (including this one) to assist lawyers in finding the appropriate resources for conducting their research. If you are looking for detailed bibliographic information on research sources, these resources can help you. The

⁵ [1986] 2 SCR 147, 31 DLR (4th) 481, 1986 CanLII 29 (SCC), at 524.

emphasis in *The Canadian Research and Writing Guide* is on research strategy and methodology.

1.4 References

Fischer, Judith. "Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers" (1997) 31 Suffolk UL Rev 1. Online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347591>.

Valentine, Sarah. "Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools" (2010) 39 U Balt L Rev 175. Online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537871>.

2 Step-By-Step Legal Research Process

2.1 Plan and organize your research

It is recommended that legal researchers develop their research plans based on the type of legal research they need to conduct. A legal research plan depends on the following factors:

- the purpose and nature of the research project
- the type of information required (case law, commentary, legislation, or a combination of two or more types)
- the researcher's prior knowledge of the area of law, subject matter, and the amount of information the researcher has been given about the legal issue
- the researcher's level of legal training or background (i.e. lawyer, law student, summer or articling student, paralegal, librarian, member of the public, etc.)
- the amount of time and money devoted to the project
- how thorough or exhaustive the legal research needs to be
- whether the researcher is interpreting the legal research or consulting resources on someone else's behalf

Legal researchers must be familiar with the content, coverage, strengths, weaknesses, and appropriate use of the sources they consult. Researchers cannot simply rely on Google or other large search engines, as the majority of Canadian legal research material is not available on the open web. With the technology available at our fingertips, we must go further and go online by consulting free resources, including CanLII, government websites, court websites, and others. However, this should be balanced with use of specialized digital and print resources available on paid subscriptions and from law libraries.

As time goes on, more textbooks are being published on these platforms as well as being available in print. Print texts are generally available for purchase or through law libraries.

There is overlap between the content available from legal publishers and free resources. What legal researchers consult may depend on how user-friendly the print and online resources are and how quickly things are needed. Evaluating content for accuracy and reliability is very important, as is updating them to make sure they are current. To develop effective research strategies, researchers must spend time thinking about these factors before embarking on their research and periodically revisit and revise their research plans in response to feedback from research results.

The steps set out in this chapter will not be appropriate for every research problem. However, they will give you some guidance on how to approach your research when confronted with the multiplicity of resources available to you. These steps are not completely linear. You may need to repeat certain steps or approach some sources again from a different perspective as your understanding of a legal issue grows.

You will not need to complete all the steps in this guide for each issue you research.

2.2 Parameters

You must take the following parameters into account when developing your research strategy:

- the deadline for completion
- restrictions on the amount of time and disbursements

You should also consider the following:

- More detailed and exhaustive research may be required when preparing for trial argument as opposed to when drafting pleadings.
- The focus of your research will be different if you are preparing an opinion letter or legal memorandum rather than an argument for court.
- The scope of your research will be different depending on the level of court or tribunal before which you are appearing.

In law school many of these parameters are irrelevant, as law students can determine how much time to spend completing research. Universities provide campus-wide access to a variety of online search tools that legal organizations and law firms must pay to use. At law schools, students are free to step outside the bounds of *stare decisis* and take a critical look at the law. They may also conduct broader legal research in other legal jurisdictions and consult more secondary literature (doctrine in Quebec civil law), including journals, law reviews, legal treatises, and textbooks. This means they can conduct more extensive research in academic settings, whereas the focus may be narrower in practice.

2.3 Initial analysis

If your research problem is based on a fact pattern, consider the facts that have been given to you and start to characterize those facts within a legal framework. There are several ways to structure your initial analysis. Maureen Fitzgerald recommends the following structure:

- Parties
 - who are the people involved in the problem?
 - what are the parties' roles or occupations?
 - what are the relationships between the parties?
 - what are the parties' special characteristics?
- Events
 - what occurred?
 - when did it occur?
 - where did it occur?
 - what is the nature of the location where it occurred?
 - how did it occur?
- Claims
 - what are the parties complaining of?
 - what are the parties claiming?
 - what are the injuries or harm?
 - what will the defence to the claim likely be?⁶

This initial thinking is crucial to your research. If you do not consider the problem in this open-ended way at the beginning, you may miss important issues. During this process, note whether some facts or legal issues may be determinative. For example, a defendant with limited financial means or the expiration of a limitation period may make the rest of your research academic.

Determinative issues should be given priority when you start your research. As you carry out this analysis, make a list of keywords and subject headings to use during your research. Include important factual terms as well as legal concepts in your list of keywords. Though [free text searching](#) is more prevalent when finding quick information such as case name, legislation title, or citations, effective use of carefully selected keywords helps find relevant content.

⁶ *Legal Problem Solving* (Toronto: LexisNexis Canada, 2016) at 11.

Proper identification of the issues and of keywords and subject headings at this stage will expedite your research and permit a more accurate and thorough analysis of the law. Regularly refer back to your initial characterisation of the issues as you proceed through the steps identified below. It is common for researchers to change their definition of the issues as they progress with a research project.

If your research is for a seminar paper, you will need to develop a thesis. Rather than just regurgitating information about a topic, you must identify what you want to say about it. The first step is to acquaint yourself with secondary and primary sources. Then, you must spend time thinking about your research data in a variety of creative ways to develop your legal argument. Some techniques for doing this are discussed below.

2.4 Organisation of research material

It is common to be working on several projects at once or to come back to your work after a period of time. One way to improve your efficiency while working this was it to use annotations. Instead of re-reading the whole case to remember why it seemed important, you can quickly refer to a few highlighted passages and your notes regarding the issues to which the case relates to your research. In a simple, single issue research project, printouts are useful for tracking your legal research. For a more complex research assignment keep separate sub-folders for each issue of law, or use some kind of coding for each issue of law. Put copies of relevant sources in the appropriate folder, together with notes indicating whether these sources have been updated.

Since a great deal of your legal research will be conducted online, organizing your research can be stored on virtual folders with highlighting and annotations (at the document level) on Lexis Advance Quicklaw, Westlaw, and CanLII. [Lexbox](#) and [Zotero](#) are examples of free online tools that can help you organize your research.

More information can be stored on folders on your computer. When working with electronic copies, use the highlighting and annotation features of a word processor or electronic reader to capture this information. Printouts and photocopies may still need to be stored in physical folders. Highlighters and sticky notes are useful for annotating

research documents in print format. Researchers can also set up email alerts or [RSS feeds](#) on Lexis Advance Quicklaw, CanLII, or WestlawNext Canada to keep up with current developments in topics of interest.

In addition to these relevant sources, keep general research notes, including the problem assigned, your research strategy, the issues and sub-issues identified, your notes on which sources have been reviewed or rejected, and which sources must still be checked.

2.5 Research bibliography

In order to conduct your research in an orderly fashion, it is necessary to keep a list of the sources you have reviewed. A complete research bibliography will contain the following information:

- title, author, and year (or most current release date) for texts, citation for periodical articles, page or paragraph references for helpful or damaging passages
- headings and classification numbers used in searching digest and encyclopaedia services, and the currency date for the topics searched
- databases searched, date of search, and search string used
- headings used for searching indices, and date of index
- case citations for cases reviewed, references to paragraph or page numbers for helpful or damaging passages, and a record of where and when you noted up the case
- list of statutory provisions reviewed, together with the date you checked for amendments, and a record of where you checked for judicial consideration of the statute

This information will keep you from repeating the same steps, and to quickly prepare a bibliography. It will permit the person supervising your research to ascertain whether you have covered the proper sources and help you or someone else to quickly update your research at a later date.

The research record kept by some electronic research tools provides a useful summary of some of your research steps. For example, the research history on WestlawNext Canada keeps track of the search queries and documents viewed for a full year, allows the user to search within the documents viewed during that year, and to filter them by client ID and other categories. You can also set the preferences in WestlawNext Canada to email you a copy of your research history for each search session, so that it can be kept in the client file as a record of your research. There is a search history function in Lexis Advance Quicklaw, but it contains less information and is available for a shorter period. However, there is a visual research map that researchers can download to record what and where they have searched within Lexis Advance Quicklaw. In Recherche Juridique from SOQUIJ, the search history is accessible for 30 days but you can select searches to be saved indefinitely.

2.6 Using a research checklist

Though a checklist does not permit a detailed record, it will help you keep track of your research and remind you of sources to consult. This site includes a [sample checklist](#). All sources listed on the checklist do not have to be checked for every research project. Conversely, the checklist is not exhaustive. Additional sources should be consulted depending on the nature of your project.

2.7 Preliminary strategy

The easiest way to map out your initial strategy is to review a legal research checklist and mark the sources you intend to consult. If your research problem involves more than one legal issue, use a different copy of the checklist for each issue. Your strategy will vary depending on your general familiarity with the subject, and the nature of your research project.

It will be difficult to map out a detailed research strategy until after you have reviewed some secondary sources dealing with your issues.

Though these readings set out a general methodology for research, your strategy must always be adapted to your situation and focused on the appropriate resources in your subject area taking into account the parameters listed above.

For a common law issue, you will usually start by reviewing one or more secondary sources. However, your circumstances may dictate a different approach. If you are already familiar with the general area of law and know a leading case, you can start your research by reviewing that case and noting it up.

For a Quebec civil law issue, the process is similar to a common law issue as it is important to review the secondary sources (doctrine) written by legal experts (jurists). However, a different approach can also be used especially if there is ground breaking decisions from the Court of Appeal or the Supreme Court.

Statutory research is rather different from researching the common law. It requires that you start with consideration of the statute itself and then look for judicial consideration of and commentary on the statute. Your first step will probably be to find and review an annotated version of the statute.

Some research problems may require you to go beyond traditional legal sources and include research from other disciplines.

2.8 References

Fitzgerald, Maureen. *Legal Problem Solving: Reasoning, Research and Writing*, 7th ed (Toronto: LexisNexis Canada, 2016).

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Companion website: www.legalresearchandwriting.ca.

_____, "Strategic Thinking in Legal Research" (20 July 2011). *Slaw: Canada's Online Legal Magazine*, online: <http://www.slaw.ca/2011/07/20/strategic-thinking-in-legal-research/>.

Iosipescu *et al.* *Legal Writing and Research Manual*, 7th ed (Toronto: LexisNexis Butterworths, 2012).

2.9 Research Checklist

(Free sources are linked below. Access pay walled services through subscription or library websites.)

2.9.1 Texts & looseleaf services

Access through catalogues in

[] firm library

[] courthouse library

[] law school library

2.9.2 Encyclopedias

- Canadian Encyclopedic Digest* (in print or on Westlaw's LawSource)
- Halsbury's Laws of Canada* (in print or on Lexis Advance Quicklaw)
- Halsbury's Law of England*
- other _____

2.9.3 Online research

- [CanLII](#)
- Lexis Advance Quicklaw
- WestlawNext Canada
- [Centre d'accès à l'information juridique](#) (CAIJ)
- Recherche Juridique (SOQUIJ)
- La Référence (Yvon Blais)
- Inforoute Notariale (Chambre des notaires du Québec)
- other available databases

2.9.4 Digests

- Abridgment Canadian Case Digests (in print or on Westlaw Canada)
- The Canada Digest (Lexis Advance Quicklaw)
- [CanLII Connects](#) (CanLII)
- Bulletin En bref (La Référence Yvon Blais)

- Express and Express Travail (SOQUIJ)
- WestKey Numbers and General Digest (US)
- topic specific digest services
- other _____

2.9.5 Periodicals & CLE materials

- full text periodicals databases in Lexis Advance Quicklaw, Westlaw, WestlawNext Canada, or CanLII
- Index to Index to Canadian Legal Literature (WestlawNext Canada, QL, print)
- HeinOnline (online)
- [AccessCLE](#) (Law Society of Ontario, starting 2004)
- CLE Online (CLE Society of BC, starting 2001)
- [Jurisbistro eDoctrine](#) (CAIJ)
- [Index Scott](#) (CAIJ)
- Inforoute Notariale (Chambre des notaires du Québec)
- [SSRN](#) (Social Science Research Network, free crowdsourced research publications)
- LegalTrac (US, Commonwealth)
- other _____

2.9.6 Cases judicially considered

- [Reflex on CanLII](#)

QuickCITE on Lexis Advance Quicklaw

KeyCite on WestlawNext Canada

full text searches on Lexis Advance Quicklaw, LawSource, and [CanLII](#)

citator via Recherche Juridique (SOQUIJ)

2.9.7 Statutes judicially considered

[Reflex on CanLII](#)

KeyCite on WestlawNext Canada

QuickCITE on Lexis Advance Quicklaw

[Jurisbistro UNIK](#) (CAIJ)

Recherche Juridique (SOQUIJ)

La Référence (Yvon Blais)

annotated statutes

full text searches

2.9.8 Words & phrases

Words & Phrases (print or WestlawNext Canada)

Canadian Legal Words and Phrases (Lexis Advance Quicklaw)

Dictionnaire de droit québécois et canadien ([CAIJ Jurisbistro eDictionnaire](#))

Dictionnaire de droit privé ([free online](#) or LaRéférence)

Sanagan's Encyclopedia of Words and Phrases, Legal Maxims (print)

[] Canadian Law Dictionary (print)

[] *Dictionary of Canadian Law* (print)

[] other dictionaries

3 Use Commentary to Define and Understand the Issues

3.1 Reviewing commentary in texts

As a general rule, it is best to start your research with commentary, such as a text or legal encyclopedia. This will provide an overview of the topic, help to define the issues, refer to journal articles or primary sources, and suggest keywords to use when searching indices or online. In addition to setting out general legal principles, commentary can also provide useful analysis in areas where the law is complex or unclear.

Review texts critically, with the recognition that coverage, accuracy, currency, and orientation vary considerably from one text to another.

3.1.1 Find leading texts

As you gain experience, you will become familiar with the leading texts in various areas. If you do not know of a good text on the subject you are researching, the traditional approach is to conduct a keyword search in the library catalogue. However, there are many approaches to take.

Lists of Canadian legal texts are available that can help you locate leading publications:

- [here is a list of suggested textbooks in this guide](#)
- [LegalTree](#) (see [resources by subject area](#))
- topical bibliographies in books on legal research
- research guides from law libraries

- online topical research products contain leading treatises in the subject area, though only the publisher's own products will usually be included
- check with a law librarian for recommendations of leading treatises

3.1.2 Use keywords

Generate a list of keywords while conducting your research, and consider the following:

- Never look up an issue using only one term.
- Be as [creative](#) and [flexible](#) as you can in generating your list of keywords.
- Revise your keyword list as you use each source and learn more about your topic.
- Use the keywords to create online research queries.

3.1.3 Use indices, tables of contents, and tables of cases

Use your keywords to search through the indices in texts and other secondary sources. Look at the table of contents of the texts you are reviewing. Sometimes the index is unhelpful and the table of contents will make it easier to locate relevant passages. Also, the table of contents will give you a better sense of the emphasis and orientation of the text. Other ways to locate relevant passages are tables of cases and tables of statutes included in the text. If you have a citation for a relevant primary source, look it up in these tables and go directly to that section of the text.

3.1.4 Check online resources if available

Many texts are not available electronically. However, a growing number of texts are published in that format. This will expand the resources available to you, particularly if you do not have ready access to a physical library. Full text research in the texts can be a valuable way to locate relevant commentary.

Options for researching legal texts online include the following:

- CanLII's [commentary](#) database

- CAIJ [JurisBistro eDOCTRINE](#) for Quebec civil law published by the Barreau du Québec, law firms, some Québec university publications as well as legal treatises and commentaries by Wilson & Lafleur
- [Google Books](#)—though you may not be able to view the entire book, this service can help you locate relevant books and passages in books
- texts published as part of a topical service, such as EmploymentSource or Lexis Advance Quicklaw_Employment Essentials
- texts included in commentary add-on to a subscription service, such as Lexis Advance Quicklaw EmploymentPractice
- texts made available to subscribers in electronic form, such as practice manuals published by the CLE Society of BC, and texts available through Thomson Reuters ProView
- Quebec doctrine and annotated laws available via Recherche Juridique (SOQUIJ)
- legal publishers such as Yvon Blais offer access to its secondary sources via LaRéférence
- publications from La Chambre des notaires du Québec is available via Inforoute Notariale

There are several topical products on the WestlawNext Canada platform that contain leading secondary sources pertinent to particular areas of law. These publications are all searched as part of the federated search. Entries in the results list that are outside of subscription can be viewed on a pay-per-view basis. The use of federated searching on LawSource will bring this commentary to the researcher's attention at an early stage of the research process.

Many more texts may be available through library access, whether online or in print. Check any libraries you have access to for information on what they have.

Though these digital resources may seem plentiful, remember that they represent only a small fraction of the commentary available in

print. Do not restrict your research to digital resources.

3.1.5 References

Bora Laskin Law Library. “Bora Laskin Law Library Guide to Finding Law Journals and Journal Articles”. *Research Guides*. Online:

<<http://guides.library.utoronto.ca/c.php?g=250953>>.

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Iosipescu *et al.* *Legal Writing and Research Manual*, 7th ed (Toronto: LexisNexis Butterworths, 2012).

3.2 Using legal encyclopedias

3.2.1 When and how to use a legal encyclopedia

Legal encyclopedias contain a narrative summary of the law, supported by references to primary sources. A legal encyclopedia may be the fastest way for you to get a reasonably current summary of the law on a certain topic and to obtain references to relevant primary sources.

There are comprehensive legal encyclopedias that purport to cover all legal topics. *Canadian Encyclopedic Digest (CED)* and *Halsbury's Laws of Canada* are examples of comprehensive legal encyclopedias. There are also topical encyclopedias, which purport to cover the law in a particular subject area. *Couch on Insurance* is an example of a topical encyclopedia covering American insurance law.

Unlike texts and periodicals, legal encyclopedias do not provide legal analysis or policy discussion. They seek only to summarize the law. Usually different titles are written by different authors, meaning that the quality of one title may vary considerably from the quality of another. Also, the currency of different titles may vary greatly. Always check to see who has written the title and how current it is.

Before relying on a statement in a legal encyclopedia, review the primary sources cited to ensure the statement is supported by the sources. Sometimes a bold statement of law in an encyclopedia or text is not fully supported by the authorities cited.

If there are other secondary sources covering your topic which are current, accurate, and comprehensive, you may not need to use a legal encyclopedia. However, a legal encyclopedia can be particularly helpful in the following circumstances:

- It can give you a quick overview of your subject—a legal encyclopedia is particularly useful as a starting point when you are researching the law of another jurisdiction.

- Even if you find texts dealing with your subject, the cases and statutes cited may not be from your jurisdiction. An encyclopedia may help by providing references to primary sources from your jurisdiction.
- The encyclopedia may be more current than relevant texts.
- The encyclopedia will include titles on narrow topics for which there is no text.

3.2.2 *Canadian Encyclopedic Digest*

The *Canadian Encyclopedic Digest*, or CED, is a comprehensive Canadian legal encyclopedia. It is published in a Western edition and an Ontario edition. The Western edition covers the law of the four Western provinces. Though these two editions exist, the contents of many titles are exactly the same in both editions. The currency and quality of the content varies considerably from one title to the next.

Both the Western and Ontario editions are available electronically through LawSource on WestlawNext Canada. The default federated search on LawSource includes the *CED*. Browsing and drilling down by table of contents is also available. *CED* references are also included in KeyCite results.

3.2.3 *Halsbury's Laws of Canada*

Halsbury's Laws of Canada covers all Canadian jurisdictions. It is published in print, and it is available electronically to some Lexis Advance Quicklaw subscribers. Selected titles are also available in Lexis Advance Quicklaw topical products. References to *Halsbury's Laws of Canada* are included in QuickCITE results.

This publication contains clearly written statements of Canadian legal principle based on case law and legislation and indicates where the law differs among jurisdictions. It is useful as a starting point or where a brief refresher on a particular area of law is required.

3.2.4 *JurisClasseur Québec*

JurisClasseur Québec (JCQ) is a legal encyclopedia covering Quebec and Canadian law in French. It is the equivalent of the *Halsbury's Laws of Canada*. JCQ is published in

print as a looseleaf, and it is also available electronically to some Lexis Advance Quicklaw subscribers. This publication covers topics such as Quebec civil law, labour law, commercial law, penal law, and public law.

3.2.5 *Halsbury's Laws of England*

Halsbury's Laws of England is regarded as authoritative. It is a useful starting point for English and Welsh law, and for finding authorities that support general propositions.

There are several access points:

- the consolidated index
- the consolidated table of cases
- the consolidated table of statutes
- The hardcover main volumes are updated by the Cumulative Supplement, and by the looseleaf Current Service

3.3 Journals and seminar papers

3.3.1 When to use journal articles

If the texts and encyclopedia entries you find are too general or outdated, or if they do not deal specifically with your jurisdiction, concentrate on finding journal articles or continuing legal education seminar papers. If you are writing an academic paper, research in law reviews or journals is essential. Journals should also be reviewed if there has been new legislation or an interesting case that might be the subject of a case comment.

Journal articles are particularly useful for developing policy arguments and for close analysis of difficult cases. A narrow issue covered in a passing footnote in a text may be the subject of several pages of discussion in a journal article. Articles are usually well-footnoted, with references to primary sources or other secondary sources.

3.3.2 Finding the article once you have a citation

Older periodical articles will be available either in print or through HeinOnline. If you have trouble locating a periodical at your library, check [WorldCat](#) for other libraries which subscribe to the periodical. Canadian periodicals abbreviations are listed in the [ICLL Periodicals List](#).

More recent articles are likely to be available electronically. An alphabetical list of periodicals available in electronic form is maintained by the [Bora Laskin Law Library](#). This list includes periodicals available from multiple sources and specifies where they are available. Another listing is maintained by the Supreme Court of Canada Library on its [Journal Titles A-Z](#) page; this listing includes details of HeinOnline coverage.

The [WashLaw WEB law journal resource page](#) also maintains an extensive listing of law journals with links to the ones that are available online.

3.3.3 Searching journals and seminar papers in full text

Many journals are now available in full text electronic form. This permits you to search directly using the words in the articles themselves to find relevant articles. The leading journal collections available in full text are as follows:

CanLII	CanLII has a growing collection of journals in its commentary section
Canadian Bar Review	Full text of this publication can be accessed at cba.org
WestlawNext Canada LawSource	Canadian journals and case comments from topical reporters
Lexis Advance Quicklaw core subscription	Canadian journals and the Lexis international journals collection

HeinOnline

Full text law journals in PDF format; the most recent issues are sometimes not included

The Law Society of Upper Canada publishes its seminar papers on [AccessCLE](#). Papers published during the previous 18 months are available to view, but not print or download. Papers prior to that date are available for printing or downloading without charge.

The Continuing Legal Education Society of British Columbia has made its seminar papers since 2001 available online in full text through [CLE Online](#). This is a paid subscription service, but some papers have been selected for free publication and are available under the heading [Practice Points](#).

The internet is a growing source for full text periodical searches. One popular source is [Google Scholar](#), which indexes legal journals. A click takes you to a list of documents citing an article or case, and you can then search within those documents. You can also set up alerts to notify you of new articles in Google Scholar. You can read more about Google Scholar's functionality on their [help pages](#).

Various courthouse and law society libraries have purchased licences from HeinOnline that enable registered members to access HeinOnline through their websites. The HeinOnline collection is also available to students and faculty at most law schools.

3.3.4 Legal periodical indices

References in cases or texts may lead you to relevant journal articles. Full text databases of journal articles provide the easiest way to search for journals published electronically. However, some journals are not published electronically. Another common way to find journal articles is to look in a periodicals index.

The leading Canadian index is the *Index to Canadian Legal Literature* (ICLL), which is available on Lexis Advance Quicklaw, WestlawNext Canada, and in print. Another

leading Canadian index is the freely available [Scott Index to Canadian Legal Periodical Literature](#) (via CAIJ).

Here are some things to consider when using article indices:

- Searching periodicals indices in print and electronically requires creativity and persistence in generating search terms.
- Some indices rely primarily on the title of the article as an access point for researchers—given the strange titles often used for academic articles, this is not a reliable way to locate relevant articles.
- All periodicals indices have a subject classification scheme, but the depth and consistency of the classification scheme varies considerably from one index to another.
- Very few indices have searchable abstracts.

Try your search in a variety of indices. You may find it helpful to acquaint yourself with the subject classification scheme for the index by looking at the print version before you carry out your electronic search. When offered keyword searching, as well as a more structured classification scheme, try both methods.

3.3.5 Using RSS feeds and automated clipping services

WestlawNext Canada and Lexis Advance Quicklaw have an automated alert service that permit you to conduct periodic searches of particular databases and have the results delivered to you by e-mail. This is useful for conducting regular searches of periodicals indices and full text periodicals on topics you are following.

RSS feeds and alerts on specific titles or databases can also help you keep current with the most recent articles.

The [Bora Laskin Law Library Reference Services Blog](#) publishes a monthly list of recent contents for Canadian law journals. Subscribe by RSS feed to be notified about new

journal articles each month. The Law Society of Saskatchewan Library offers a [similar service](#).

Google Scholar does not have RSS alerts. However, you can subscribe to receive an email alert for new papers that meet your search criteria.

3.4 Memorandums and factums

3.4.1 Legal memorandums

A legal memorandum on the issue you are researching can be a very useful resource, though you must evaluate it as you would any other research source. It is best to use it as a starting point rather than regarding it as the answer. When using a memorandum or factum consider the following:

- How current is the research?
- Do you have confidence in the authors' research and analysis?
- Does the memorandum cover the law of your jurisdiction?
- How similar are the facts of your situation to the facts on which the analysis is based?
- Was the memorandum prepared quickly or is it a thorough review of the law on the point? —Given the cost of legal services, sometimes a researcher is asked to conduct research within a very limited timeframe.

Many law firms keep collections of legal research, to avoid repeatedly researching the same issues. If such a collection is available to you, look there for relevant documents early in your research process.

WestlawNext Canada publishes a growing collection of Canadian legal memorandums. This collection is searched in the WestlawNext Canada federated search, and the memorandums identified as most relevant will appear in your search results. In addition, the memorandums are referenced in KeyCite results. This can be a useful starting point for your research, or it may help you to confirm that your research is on the right track.

3.4.2 Factums and pleadings

Litigation documents filed in court proceedings can be an extremely useful research source.

A factum may contain detailed submissions on the point of law you are researching, and a pleading in a case involving similar issues, particularly in an emerging area of law, can greatly assist you.

When using litigation documents it is important to keep in mind that these are advocacy documents and only tell one side of the story. It is a good idea to review both appellants' and respondents' factums to get a fuller picture. Interveners' factums are also an excellent research resource, but again they are written from a particular perspective.

These types of documents can be obtained from various sources:

- The Supreme Court of Canada has published appellants' and respondents' factums since 2009, and in April 2013 the court began to publish interveners' factums. To find them locate a case in the [SCC Case Information](#) database, and use the "Factums" link to obtain factums filed with the court in that case.
- Some courts provide online access to documents filed with the court: in British Columbia, [Court Services Online](#) provides access to court filings, including pleadings and written submissions. Payment is either pay-per-view or by subscription. This service is considerably less expensive than commercial products.
- In Québec, access to court filings is available online through subscription to [SOQUIJ Plumitif](#).
- Litigator, published as part of WestlawNext Canada, provides access to court filings including pleadings, briefs, and factums, for select cases. Full access to Litigator requires a separate subscription, but individual court filings are also available to WestlawNext Canada subscribers on a pay-per-view basis.

- In other jurisdictions, precedents may be accessed by attending local courthouses and speaking with registry staff. Photocopying charges will likely apply.

3.5 Blogs and newsletters

3.5.1 Blogs

Blogs are websites containing a series of postings. Blogs focusing on a legal subject area are useful for keeping current on specialized topics. You can subscribe to an [RSS feed](#) or via e-mail so that you will be notified of new postings.

[CanLII Connects](#) is a collaborative site with links to and from cases on CanLII, which allows members of the legal community to write about Canadian case law. Contributors must be registered with and their identities verified by CanLII before they are approved.

Here are some additional tools to help you find Canadian legal blog content:

- Canadian legal blogs are listed on the [Canadian Law Blogs List](#).
- Ted Tjaden maintains a [custom Google search](#) limited to Canadian law firms, blogs, and journal websites.
- [BlawgSearch](#) will search just legal blogs. In addition to being searchable, BlawgSearch has a directory with categories. Several [Canadian legal blogs](#) are listed under the category for Canada.

3.5.2 Law firm newsletters

Newsletters published by law firms can provide useful commentary on recent cases. However, these articles are usually written for lay readers, so they do not provide a sophisticated review of the subject.

Here are some tools you can use to access law firm newsletters:

- [Canadian Law Firm Websites, Blogs & Journals](#) to search within the websites of several leading Canadian law firms.

- [Fee Fie Foe Firm Canada](#) searches a broader range of firms, linking to similar services for law firms from other jurisdictions.
- [CAIJ JurisBistro eDoctrine website](#) includes publications from various Québec law firms organized according to various legal topic.
- [Lexology](#) and [Mondaq](#) aggregate commentary in various practice areas.

4 Guidelines for Online Research

4.1 Use with other tools

Commercial databases and free internet sites provide access to a vast amount of case law, which has led to a tendency to go straight to keyword searches to find relevant cases. However, it is recommended that you consult a textbook first. If one does not exist, consult a journal article or seminar material to familiarize yourself with your topic. You can get a feel for the major topics covered by browsing textbooks' tables of contents and indices, and it may lead you to useful keywords. More importantly, authors may have already summarized a legal issue and cited leading cases, which can be an effective starting point instead of conducting numerous keyword searches online. With online versions of textbooks, researchers can conduct keyword searches within specific textbooks, copy paragraphs from textbooks, and cite references.

Using secondary resources first allows researchers to place the problem within a conceptual framework, provides analysis of the legal point, and may direct the researcher to related topics or issues that should be considered.

It is important to leverage both primary and secondary resources. Researchers should embrace both the narrow approach enabled by keyword research in primary sources and the broader conceptual approach enabled by secondary sources.

Even if you start with keyword searches in the case law, be sure to review relevant secondary sources to gain additional context and understanding of the law.

Even a very good search query may not retrieve all relevant cases. Lawyers conducting electronic research retrieve far less of the relevant case law than they think, which is another reason you should incorporate secondary sources or commentary in conducting legal research. Researchers should consult the following:

- textbooks (books and loose-leafs)
- legal treatises
- journals and law reviews
- seminar material such as continuing legal education (CLE) papers
- legal encyclopaedias
- finding tools (citators, digests, etc.)

For a more detailed list, consult the [Research Checklist](#).

4.2 Know your product

Here are some of the basic features of a research tool that a user should understand:

- what information is included, including coverage for case law, commentary, and legislation
- how to leverage broad searches and then narrow results with [Boolean](#) searches and filtering of results (i.e. date, jurisdiction, etc.)
- how relevance ranking affects what researchers see within search results
- how is use being billed? (i.e. free, flat fee, pay-as-you-go etc.)

4.3 Search syntax tips

4.3.1 Natural or plain language searching

The newer generation of search tools is designed to provide a search experience similar to Google—just type a string of words without worrying about connectors or word variations.

This type of searching can be used, with some caveats, in the leading Canadian search tools, all of which have sophisticated algorithms that determine relevance ranking of search results.

4.3.1.1 *CanLII*

CanLII uses **AND** as the default connector. It also incorporates automatic phrase recognition and searches for word variants. You can simply type a string of words into the CanLII search box instead of crafting a Boolean query. Where you may encounter difficulty is if you want to incorporate synonyms as alternate terms, which cannot be done without using parentheses and Boolean commands.

4.3.1.2 *WestlawNext Canada*

WestlawNext Canada uses an excellent plain language search engine as the default search method. Because it uses a “best match” approach, you can include synonyms in your query without any search commands. The “best match” approach can sometimes lead to unexpected results, as your search results may contain documents that do not include a search term that you consider mandatory. You can override this by placing **+** (plus sign) directly before any mandatory terms. When your search results are shown, you have the opportunity to narrow the results—at which point you must use Boolean syntax.

4.3.1.3 *Lexis Advance Quicklaw*

Lexis Advance Quicklaw has a natural language search engine, which is available from the start page. It is similar to WestlawNext Canada.

4.3.1.4 *SOQUIJ Recherche Jurisique*

SOQUIJ Recherche Jurisique uses **ET** (equivalent of the **AND**) as the default operator between terms. Other Boolean operators can also be used. Synonyms and proximity operators are understood and the search engine adds the parentheses for you. The research pane can help start or narrow your research easily by a simple click and without typing words, it always provides automatic searches for variant words.

4.3.2 Boolean searching

There are variations in search syntax between products. However, the following techniques will improve your [Boolean](#) queries and can help overcome the variations in Boolean searching between CanLII, WestlawNext Canada, Lexis Advance Quicklaw, and Recherche Juridique:

- Use proximity connectors that will find your terms within the same paragraph, sentence, or specified number of words.
- If the terms will appear as a phrase, search for them in quotation marks.
- The default search functions in WestlawNext Canada and Lexis Advance Quicklaw are [natural language](#) algorithms that prioritize the **OR** connector. You can switch to Boolean searching within each database easily or use the advanced search templates on each platform if you cannot remember Boolean search syntax.
- Write out **AND** and **OR** rather than assuming that a space between two words will be treated as one or the other when using Boolean searches.
- Use parentheses to force the order in which your terms will be evaluated, if you want specific search terms to appear first within search results. This works in the same way as order of operations in math.
- Included in Boolean searching is the ability to conduct proximity searches. For example, the query **duty /5 (consult OR accommodate)** will work in any of WestlawNext Canada, Lexis Advance Quicklaw, or CanLII. It will look for duty within 5 words of either consult or accommodate.

4.4 Proximity connectors

Full text cases are long documents. Using **AND** as a connector means the words could appear anywhere in the document. Your relevancy when conducting Boolean searches will be greatly improved by looking for terms within a sentence, paragraph, or certain number of words of each other. This is referred to as a proximity connector. Here are some common examples:

- **duty /p consult** looks for terms in the same paragraph
- **duty /s consult** looks for terms in the same sentence
- **duty /5 consult** looks for terms within 5 words of each other

Novice researchers often search for words as a phrase without considering whether the terms always appear as a phrase. Consider whether a short proximity connector, such as one word within five of the other, would be better. All the proximity connectors in the examples above will look for the terms in either order.

4.5 Refine and modify

Rather than using a complex narrow query, start with a broader, natural language query, and then narrow it. After a broad search, researchers can employ a variety of filtering options (such as date, jurisdiction, primary or secondary resources on each electronic platform, as noted previously). In addition, researchers can then employ Boolean and proximity searches to narrow results. This step by step method may be easier for novice searchers, so they can refine their original searches.

Review the first few documents on the search results page and use the feedback from your search results to incorporate other terms and improve your query.

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5 Researching Canadian Federal and Provincial Legislation

It is important to look at the legislation for the jurisdiction you are considering. There are two kinds of legislation:

- statutes, the acts passed by the Parliament of Canada and the provincial and territorial legislatures
- regulations, passed by bodies that are empowered to do so by statute, such as government departments

Legislation is considered and applied by the courts, so changes in legislation may change the applicability of court cases, and court cases help to define how legislation is applied in practice.

Legislative research should go beyond reading specific sections and instead consider a legislative provision in the context of the act as a whole. This process is applicable when reading both statutes and regulations.

Effective legal research often requires researchers to consult the most current version of a statute. Having an understanding of the timeline of specific provisions may be

useful depending on the nature of the judicial research. Depending on the timeline, former versions of a piece of legislation that is currently in force may be useful to understanding specific decisions or commentary.

5.1 Researching Canadian Federal legislation

5.1.1 The origin of new legislation

There are three different ways new legislation may be introduced:

- Government bills are sponsored by the party in power and that originate in ministries or departments.
- Private members' bills are sponsored by any member of the legislature.
- Private bills are initiatives of private parties.

This section provides an introduction and broad overview of Federal government bills.

There are several reasons the government might want to draft new legislation. It might be part of their political program, an electoral promise, the result of a white paper, pressure from lobbyists, recommendations from a parliamentary inquiry or ad hoc committee, a recurrent issue that needs to be addressed, or some required correction.

Before introducing a bill to Parliament, the Cabinet minister sponsoring a bill usually consults with interested parties, studies policy issues, and considers the economic and social impact of the proposed legislation. Discussion papers prepared by the particular department are occasionally released to stimulate public consultation. The documents prepared during this initial stage can be important in determining the policy behind any legislation that will be introduced to Parliament.

Following study and consultation, a legislative proposal goes through the following steps before it is presented in Parliament:

The Cabinet minister presents a legislative proposal to Cabinet.



If Cabinet approves the proposal, legislative counsel prepare a bill.



Once the minister and legislative counsel are satisfied with the bill, it is submitted to Cabinet.



If approved by Cabinet, the bill is printed and proceeds to the first reading in Parliament.

5.1.2 Readings in Parliament

Federal legislation must pass three readings in both the House of Commons and the Senate before it is passed into law. Federal legislation is usually introduced first in the House of Commons, but it can also originate in the Senate. It is usually private bills that originate in the Senate.

Typically a government bill follows the following process:

First Reading in the House of Commons



Second Reading in the House of Commons



Commons Committee



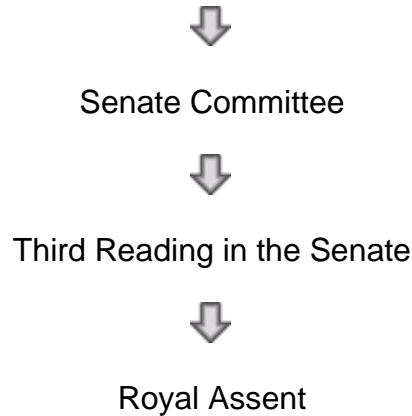
Third Reading in the House of Commons



First Reading in the Senate



Second Reading in the Senate



5.1.2.1 First reading

The first reading occurs on the day the legislation is introduced. The sponsoring cabinet minister will briefly introduce the bill in the legislature. At this stage, there is no debate among members of Parliament. Sometimes the bill is sent to a committee for study at this stage. The first reading version of the bill may contain explanatory notes.

Some law libraries still receive first reading bills in print form, but most rely on the electronic version posted on the Parliamentary webpage. [LEGISinfo](#) is an excellent website for obtaining copies of Federal bills, tracking their progress, and obtaining important information about them.

5.1.2.2 Second reading

During second reading, the sponsoring cabinet minister explains the purpose of the bill, and the members debate the main principles of the bill. Speeches in the legislature by the minister sponsoring the legislation can be important in determining the intention behind the legislation. These can be found in the transcripts of the proceedings of the debates in the House of Commons and the Senate, which are usually called [Hansard](#). Hansard is available on the [Parliament website](#) since 1994 for the House of Commons and since 1996 for the Senate. For older sessions of Parliament, Hansard is available from "[Historical Debates of the Parliament of Canada](#)".

5.1.2.3 Committee

After the bill has passed second reading, it is sent to a parliamentary committee for detailed consideration on a clause-by-clause basis. This can be a legislative committee, a standing committee, or a committee of the whole house. The committee can receive briefs or hear witnesses. Amendments to the bill can be proposed at this stage. The [Parliament website](#) provides detailed information about parliamentary committees. Links to committee reports and proceedings are included in the [LEGISinfo](#) profile for a bill.

The committee reports on the bill to the legislative body in which the bill originated. The legislative body votes on any amendments made to the bill. If the bill has been amended, it is reprinted prior to third reading. You may want to review a transcript or report of the committee's proceedings to understand the amendments. In addition to being available through LEGISinfo, proceedings and reports of parliamentary committees are also available in print in law libraries.

5.1.2.4 Third reading

The final version of the bill is circulated for third reading. There is often no debate at this stage. Third reading versions of bills are available through [LEGISinfo](#).

5.1.2.5 Passage by the other House

Both the House of Commons and the Senate must pass Federal bills. Thus, the three readings described above must be repeated for the second legislative body. If the second legislative body amends the bill, it cannot become law without the originating body agreeing to the amendments. If the originating body will not agree, representatives of both Houses will try to reach a compromise. If no compromise can be reached, the legislation cannot become law.

5.1.3 Royal assent and coming into force

After the bill passes third reading in both houses, it receives royal assent from the Queen's representative, the Governor General. At that time, it is assigned a chapter number.

As soon as practicable after the bill has received royal assent, it is published in the [Canada Gazette, Part III](#). The online version of the *Canada Gazette* has had [official status](#) equivalent to that of the print version since April 1, 2003. Eventually, the government publishes hard cover volumes containing all statutes passed in a particular year. This is comprised of all the third reading bills. These volumes are referred to as sessional volumes.

If the bill is silent on how and when it comes into force, then it comes into force immediately on receiving royal assent. If the bill indicates that it is to come into force in some other way, then it does not come into force on royal assent. See section 5 of the *Interpretation Act*, R.S.C. 1985, c. I-21 for additional information.

A common way for a bill to come into force is by regulation. This means that the bill does not come into force until the Governor in Council, in other words Cabinet, issues an order in council proclaiming the legislation into force.

To find more information on whether a statute is in force, consult the following:

- [LEGISinfo](#) contains in force information for Federal bills
- See “[Coming into Force of Federal Legislation](#)” on the Library of Parliament site

Other print sources of proclamation information are the *Canada Statute Citator* (Carswell) and the [Table of Public Statutes and Responsible Ministers](#).

Once you have found a reference to an order in council, you may want to find a copy of the order itself. To do this, you must go to the [Canada Gazette, Part II](#). This can be accessed [online](#). Current print issues are in pamphlet format. Older issues are usually bound by year and contain an index. Go to the volume for the year of the regulation, and look it up by number. Historical orders-in-council for the period of 1867 to 1924 are available via the [Library and Archives Canada website](#).

5.1.4 Ascertaining the status of a bill

There are various ways to ascertain the status of a bill and to obtain references to the documents arising out of the legislative process.

Electronic sources for obtaining this type of information include the following:

- [LEGISinfo](#) (free), covers 1994 to the present
- Canadian Legislative Pulse (subscription), is a service that tracks the status of Federal and provincial bills and regulations published by LexisNexis

5.1.5 Citing a bill

The proper format for citing a Federal bill includes the bill number, the name of the bill, the legislative session, and the year, as is shown below:

Bill C-2, *An Act to amend the Income Tax Act*, 1st Session, 42nd Parliament, 2016.

5.2 Federal statutes

5.2.1 Finding statutory provisions

There are various online sources to locate current versions as well as amendments regarding statutes and regulations of Federal legislation:

- [Justice Laws Website](#) is updated monthly and is an [official version](#) (free)
- [CanLII](#) is updated from the Justice Laws Website (free)
- Lexis Advance Quicklaw (subscription)
- LawSource includes statutes and selected regulations through WestlawNext Canada (subscription)
- the “[Table of Public Statutes and Responsible Ministers](#)” contains a list of legislative amendments since the previous revision. Check the currency date for the table to determine the extent to which you need to update the information in the table

The following tools can provide useful information regarding the relevant statutory provisions:

- look for secondary sources on your topic, including textbooks, encyclopedias, and periodical articles, are a good starting point for locating relevant statutory provisions, due to the difficulty of identifying keywords to search statutes
- review commercially published consolidated statutes on your topic, which may have detailed indices. Try searching a law library catalogue to locate published annotated statutes or statute consolidations on your topic
- look for references to statutory provisions within relevant cases
- conduct keyword searches of statutes available online
- check the [“Table of Private Acts”](#)

5.2.2 Statute revisions

Prior to the publication of Federal statutes online, legislation revision and consolidation took place every 15 to 30 years. The last Federal revision occurred in 1985. The purpose of a revision is to consolidate all amendments to the statutes since the last revision, and to improve the statutes by making non-substantive changes in wording, style, and organization. The mandate of the revision committee, and the effect of the revision, is set out in the *Legislation Revision and Consolidation Act*, [R.S.C. 1985, c. S-20](#).

There have been revisions of the Federal statutes in 1886, 1906, 1927, 1952, 1970, and 1985.

It can be complicated to verify in force dates close to the revision date. If you are having problems with this, it is recommended to verify with a law librarian or research lawyer.

5.2.3 Finding legislative history

To conduct effective research, and particularly to look for judicial consideration of statutory provisions, you need to know its prior year, chapter, and section numbers. You

can obtain this information (back to the prior revision) from historical notes at the end of the annual volumes or at the end of each section of the revised statutes. The “[Table of Public Statutes and Responsible Ministers](#)” is a useful resource for checking legislative history.

A sample reference to the predecessor provision to section 123 of the *Bills of Exchange Act*, R.S.C. 1985, c. B-4, appearing immediately below that section, is R.S., c. B-5, s. 124. This means that in the 1970 revision of the Federal statutes, this section was cited as Chapter B-5, section 124.

If you then want to trace the references to a statutory provision back to the 1952 revision, look in the 1985 notes to find the 1970 section number, and in the 1970 notes to find the 1952 section number. If there are references to amendments between revisions, you can find the text of the amendments by looking in the sessional volume for the year of the amendment in print. For example, a reference to S.C. 1997, c. 13, s. 2 refers you to section 2 of Chapter 13 in the sessional volume for 1997.

You can access early Canadian legislation in the following places:

- [Internet Archive](#) provides free access to historical legislation, including some revised statutes, sessional papers, and statutory orders.
- [Early Canadiana Online \(ECO\)](#) provides free access to historical bills in their subscription service and some other materials.
- LLMC Digital (subscription) provides access to some historical legislative materials through their site.
- HeinOnline (subscription) includes PDF versions of the Revised Statutes of Canada (1886, 1906, 1927, 1952, 1970, 1985 revisions) as well as the sessional volumes of Federal statutes (from 1792).

5.2.4 Reading and citing a statute

Reading or citing a statute citation varies depending on whether it is a revision, or a sessional volume. If you are citing to section 6 of chapter S-20 of the 1985 revision, the citation is:

Statute Revision Act, RSC 1985, c S-20, s 6.

If you are citing to an Act that was passed after the 1985 revision, the citation is:

Proceeds of Crime Act, SC 1991, c 26.

When you are citing a sessional volume, then instead of RSC (for Revised Statutes of Canada) you must use SC (for Statutes of Canada).

There is often confusion about whether you need to cite all amendments when you cite a statutory provision. Section 40(2) of the *Interpretation Act*, RSC 1985, c I-21, provides that any citation to an enactment in legislation is deemed to include all amendments to that enactment. The *Canadian Guide to Uniform Legal Citation (McGill Guide)*⁷ provides that citations are presumed to be to the statute as amended. It is therefore not necessary to include amendment information in court submissions. However, if the amendment is relevant to a point being discussed, it should be cited. Different rules apply to statute citations in contracts, as the court looks to the parties' intention at the time the contract was made.

5.3 Federal regulations

5.3.1 The nature of regulations

Subordinate legislation includes regulations, orders, directives, tariffs, bylaws, and proclamations.

⁷ Editors of the *McGill Law Journal*, 8th ed. (Toronto, ON: Carswell, 2014) [McGill Guide].

The *Statutory Instruments Act*⁸ governs Federal regulations, and section 2 distinguishes between regulations and other types of statutory instruments. The act defines regulations as a statutory instrument “made in the exercise of a legislative power conferred by or under an Act of Parliament”, or a statutory instrument “for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament”.

The governing statute sets out the scope of the regulatory power. The governing statute also sets out who has the authority to make the regulation or order.

Regulations are cited using **SOR** and other types of statutory instruments are cited using **SI**.

5.3.2 How regulations are made

A regulation is made in the following way:

The ministry responsible for the governing statute produces a draft regulation.



The draft regulation is reviewed by the Clerk of the Privy Council in consultation with the Deputy Minister of Justice.



Proposed regulations are published in the Canada Gazette Part I, together with a regulatory impact analysis statement. This provides an opportunity for public comment on the proposed regulation.



If necessary the regulation is revised by the ministry and returned to

⁸ RSC 1985, c S-22.

the Clerk of the Privy Council for review.



Once the regulation is in final form, the Governor General prepares a draft order in council for signature.

Before the regulation can come into force, it must be registered by the clerk of the Privy Council. The regulation is then published in Part II of the [Canada Gazette](#), as required by the *Statutory Instruments Act*⁹. It is also included in the Gazette's [Consolidated Index](#).

When reviewing an act, note whether it contains a section authorizing the Governor in Council or another entity to make regulations. If so, you should check whether any regulations have been passed.

5.3.3 Reading or citing a regulation

A regulation is cited by year and number, e.g.:

Regulation of the Court of Québec, SI/2015-114.

“SOR” stands for Statutory Orders and Regulations. “2015” signifies the year 2015, and 114 is the number assigned to the regulation. Inclusion of the title of the regulation is optional. If the statutory instrument is not a regulation, it is cited as **SI/92-133**.

Regulations published in the 1978 consolidation are cited to that consolidation. The citation includes the title of the regulation, e.g.:

Air Cushion Vehicle Regulations, CRC, c 4.

“CRC” stands for Consolidated Regulations of Canada. “c 4” stands for chapter 4.

⁹ RSC 1985, c S-22.

5.3.4 Finding regulations

Use a consolidated version of the regulations to locate the regulations enacted under a statute. Current consolidated versions of the Federal regulations are available electronically through the following services:

- [Justice Laws Website](#)
- [CanLII](#)
- Lexis Advance Quicklaw (subscription)

Proposed regulations are published in the [Canada Gazette, Part I. Official](#) regulations are published in final form in the [Canada Gazette, Part II](#). The internet version of Parts I, II and III of the *Canada Gazette* has had official status since April 1, 2003. Each print issue has an index listing regulations by number and name. A cumulative index is produced at the end of each calendar year, and the issues for the year are bound with the index.

The last time the Federal regulations were consolidated in print format was in 1978 in the publication entitled *Consolidated Regulations of Canada*. Though some regulations published in that consolidation are still in effect, most of them have been amended, and there are many new regulations not included in the consolidation. Rather than starting with the 1978 consolidation, you should start your research with a current consolidation of the regulations available online via the Canadian [Justice Laws Website](#) or [CanLII](#).

If you need to research the historical evolution of Canadian regulations, there are two consolidated indices to the Federal regulations.

The Federal government publishes the [Consolidated Index of Statutory Instruments](#) online and in print.

Carswell publishes a commercial consolidated index to the Federal regulations, the 3 volume loose-leaf *Canada Regulations Index*, which is available in some law libraries.

- The coloured pages filed at the front of each volume update the white pages. The coloured pages list regulations passed since the period covered by the white pages, but do not provide detailed information about those regulations.
- The white pages contain a detailed index to all regulations passed since the 1978 consolidation, including the table of contents for each regulation.

If you are researching an act with several regulations, this publication may help you to quickly narrow your research to the most relevant regulations. Depending on the timing of new releases, it may be more current than the *Consolidated Index* published by the government.

5.4 Judicial consideration regarding Federal statutory provisions

5.4.1 Best practices

Finding judicial consideration involves looking for decisions that have considered a particular statutory provision. References are located by using the citation to the legislation. If there is not much judicial consideration of the current version of the legislation, then you must trace the legislative history of the section and find references to the provision in earlier revisions of the legislation.

5.4.2 Annotated legislation

Check whether an annotated version of your statute exists: if there is an annotated version of your statute available, this is a good place to start.

The annotation will contain references to judicial consideration of each statutory provision, and it may also cover the legislative history of each provision. Sometimes the annotation will contain additional information on the section, including the policy behind it and an analysis of cases considering it.

5.4.3 CanLII

Federal legislation on [CanLII](#) is published with a note-up feature that links to cases considering the legislation. When viewing legislation, click on the hyperlink on the section or subsection number. These links are restricted to cases within CanLII's scope

of coverage and are dependent on a properly formed citation appearing in the case. Other sources should be consulted to complete your research regarding judicial consideration of the legislation.

CanLII also offers point-in-time access to Federal legislation and regulations from 2003 to the present. This feature provides a comparison table that highlights the amendments from one version to the other.

5.4.4 KeyCite Canada

KeyCite Canada available via WestlawNext Canada is an online tool for finding judicial consideration of Canadian statutes, regulations, and rules of court. It is based on the *Canadian Case Citations*, *Canadian Statute Citations*, *Regulations Judicially Considered*, and *Rules Judicially Considered*, which are all part of the *Canadian Abridgment*.

5.4.5 QuickCITE Legislation Citator

QuickCITE Legislation Citator available via Lexis Advance Quicklaw includes Canadian cases from 1992 (except coverage for Quebec, which begins in 2006) which judicially consider the most recent revision of each jurisdiction's legislation.

5.5 Researching provincial and territorial statutes

5.5.1 The origin of new legislation

Much like Federal statutes, new legislation sponsored by the provincial and territorial governments are known as government bills, and they originate in government ministries. New legislation can also originate from bills sponsored by any member of the legislature, which are known as private members bills, or from initiatives by private parties, known as private bills. The following discussion relates to government bills.

There are several reasons the government might want to draft new legislation: it might be part of their political program, an electoral promise, a white paper, pressure from lobbyists, recommendations from a parliamentary inquiry or ad hoc committee, a

recurrent issue that needs to be addressed or some urgent correction to the current legislation that is required based on a previous version of the law.

Before introducing the bill to the provincial or territorial legislative assembly, the minister sponsoring a bill might consult interested parties, study policy issues, and consider the economic and social impact of the proposed legislation. Discussion papers prepared by the ministry are occasionally released to stimulate public discussion. The documents prepared during this initial stage can be important in determining the policy and the legislative intent of a piece of legislation that will be introduced to the provincial or territorial legislative assembly.

Following study and consultation, a legislative proposal goes through the following steps before it is presented in the legislative assembly:

The ministry presents the proposal to the Cabinet Legislation Committee.



This committee considers the proposal and makes a recommendation to Cabinet.



If Cabinet approves the proposal, legislative counsel prepare a bill.



Once the ministry is satisfied with the bill, it is submitted to the Cabinet Legislation Committee.



This Committee considers the bill and makes a recommendation to Cabinet.



If approved by Cabinet, the bill is printed and proceeds to first reading in the Legislative Assembly.

5.5.2 Readings in the legislature

Legislation is introduced in the legislative assembly as a bill. Each bill must pass three readings in the legislative assembly and receive royal assent before it is passed into law.



First reading

The first reading occurs on the day the piece of legislation is introduced. The minister of the sponsoring ministry will briefly introduce the bill in the legislature. There is no debate at this stage. Sometimes the bill is sent to committee for study.

The first reading version of the bill contains explanatory notes about each section of the legislation. These notes do not appear in later versions of the legislation. The first reading version of the bills are usually available on a province or territory's legislative assembly website. Some jurisdictions have first reading bills dating back to the 1990s.

Second reading

During second reading, the sponsoring minister explains the purpose of the bill and debate takes place on the main principles of the bill. Speeches in the legislature by the minister responsible for the legislation can be important in determining the intention behind the legislation. The proceedings of the legislature and of legislative committees are recorded in [Hansard](#) transcripts.

After the bill has passed second reading, it is sent to committee for detailed consideration on a clause by clause basis. This can be a standing legislative committee, or a committee of the whole house. Amendments to the bill can be proposed at this stage. If the bill is amended, it is reprinted prior to the third reading. If you are looking for an indication of legislative intent, you may want to review a transcript or report of the committee's proceedings to find out why the bill was amended.

Third reading

The final version of the bill is circulated for third reading. There is usually no debate at this stage. The third reading version of the bill is available on the legislative assembly website. This version of the bill may also be available in print format at your local law library.

5.5.3 Royal assent and coming into force

After the bill passes third reading, it receives royal assent from the lieutenant governor, the Queen's representative at the provincial level. It is assigned a chapter number at that time.

If the bill is silent on how and when it comes into force, then it comes into force immediately on receiving royal assent. If the bill indicates that it is to come into force in some other way, then it does not immediately come into force on royal assent. See the [Interpretation Act](#) for the appropriate provincial or territorial jurisdiction for more information.

The most common way for a bill to come into force is by order in council. This means that the bill does not come into force until the Lieutenant Governor in Council (in other

words, Cabinet) issues an order proclaiming the legislation into force. There are several ways to locate proclamation information for a bill or a particular section of a bill.

“Tables of Legislative Changes” for particular acts indicate whether amendments have been proclaimed into force. The tables are published with statutes published on the provincial and territorial legislature websites.

5.5.4 Finding a bill

The first and third reading versions of bills are available from most of the provincial and territorial legislative assembly websites, as are the [Hansard](#) transcripts. Go to the legislative session in which the bill was enacted, and look for it by bill number or by title.

5.5.5 Ascertaining the status of a bill

There are various ways to ascertain the status of a bill and to obtain references to the documents arising out of the legislative process.

Legislative assembly websites provide information regarding the progress of the bills in tables which contains status information as well as links to Hansard and committee debate.

5.5.6 Reading and citing a bill

The proper format for citing a bill includes the bill number, the name of the bill, the legislative session, the jurisdiction, and the year.

Bill 16, Police Amendment Act, 1997, 2nd Session, 36th Parliament, British Columbia, 1997.

5.6 Provincial and territorial statutes

5.6.1 Finding statutory provisions

There are many online sources to locate relevant statutory provisions and amendments regarding provincial statutes and regulations including:

- secondary sources, such as textbooks, encyclopedias, and periodical articles are a good starting point for locating relevant statutory provisions, due to the difficulty of using keywords to search statutes
- commercially published consolidated statutes may have detailed indices, try searching a law library catalogue to locate published annotated statutes or statute consolidations on your topic
- look for references to statutory provisions within relevant cases
- conduct keyword searches of statutes available online

There are several online versions of provincial and territorial statutes, which can be used for full text searches of the statutes and regulations:

5.6.1.1 *CanLII*

[CanLII](#) provides users access to statutes and regulations with some provinces starting as of 2003. Please note that the coverage varies among jurisdictions. Statutes are updated frequently from the provincial and territorial legislature websites. Earlier versions of statutes and regulations can be compared side-by-side with later versions to identify changes made during amendments. Users can also subscribe to RSS feeds to be notified about legislative changes.

5.6.1.2 *Lexis Advance Quicklaw*

Lexis Advance Quicklaw publishes the current statutes for all Canadian provinces and territories. In addition, Lexis Advance Quicklaw provides access to historical and repealed statutes for Alberta, British Columbia, and Ontario. Lexis Advance Quicklaw includes some point in time coverage back to 2000 and detailed legislative history information. QuickCITE includes judicial consideration of legislation back to 1992.

5.6.1.3 WestlawNext Canada

LawSource on WestlawNext Canada provides access to current and revised consolidation of provincial statutes and selected regulations. WestlawNext Canada also provides access to legislative concordances in tables for provincial and territorial legislation on topics such as family law, personal property security acts, and securities acts. KeyCite Canada includes judicial consideration of legislation with extensive historical coverage.

5.6.1.4 HeinOnline

HeinOnline includes a *Provincial Statutes of Canada* database, which provides access to current and historical statutes and revisions.

5.6.1.5 LLMC Digital

LLMC Digital Law Library publishes selected historical provincial statutes and proclamations.

5.6.1.6 [“A Primer to Legislative Research across the Provinces and Territories”](#)

This primer published in the *VALL Review* (Spring 2017, Volume 29, No 2) provides access to provincial online resources (except Quebec), which was collaboratively developed by law librarians from Canada’s provinces and territories.

5.6.2 Statute revisions

Traditionally, a [general revision](#) of the provincial statutes was carried out every 15 to 20 years. The purpose of a general revision is to consolidate all amendments to the statutes since the last revision and to improve the statutes by making non-substantive changes in wording, style, and organization. Now that consolidated statutes are made available on an ongoing basis and are accessible online ([see section 5.9 for list for each province and territory](#)), general revisions are occurring less often.

5.6.3 Citing a statute

Citing a statute citation varies depending on whether it is from a revision or a sessional volume. For example, if you are citing section 5 of chapter 484 of the 1996 of the *Revised Statutes of British Columbia*, the citation is:

Water Protection Act, RSBC 1996, c 484, s 5.

If you are citing to the version of that Act that was passed in 1995, prior to the 1996 revision, the citation is:

Water Protection Act, SBC 1995, c 34, s 5.

There are several differences. Instead of RSBC (for Revised Statutes of British Columbia) use SBC (for Statutes of British Columbia). The year and chapter number are both different. In this case the section number is the same, but often the section numbering will change in a revision.

The move to continuous electronic consolidation of statutory changes is starting to affect citation rules. For example, [s 43](#) of the *Interpretation Act*, RSBC 1996, c 238, has been amended to permit an act that is a [limited revision](#) to be cited either to its chapter number in the sessional volume for the year when it was enacted, or as a revised statute for that year. See the legislative assembly of your provincial or territorial legislature website for a list of revisions pursuant to the relevant statute revision act.

There is often confusion about whether all amendments need to be cited when citing a statutory provision. According to the *Canadian Guide to Uniform Legal Citation (McGill Guide)*, citations are presumed to be to the statute as amended. It is therefore not necessary to include amendment information in court submissions. However, it should be cited if the amendment is relevant to a point being discussed. Different rules apply to statute citations in contracts, as the court looks to the parties' intention at the time the contract was made.

5.7 Provincial and territorial regulations

5.7.1 The nature of regulations

Regulations, orders, directives, bylaws, and proclamations are all subordinate legislation. Statutes use terms like "regulation" or "prescribe" to confer the power to make regulations.

A regulation is more than merely administrative. It affects the public, rather than an individual or small group.

Regulations contain such details as how much per kilogram cherry pickers are entitled to be paid under employment standards legislation, or limits on effluent discharge under pollution control legislation. By contrast, orders are used for day-to-day administrative matters such as permits and appointments.

The governing statute sets out the scope of the regulatory power. The [Interpretation Act](#) of each province and territory elaborates further on the scope of that power, by providing what is implied within the power. The governing statute also sets out who has the authority to make the regulation or order.

5.7.2 How regulations are made

The ministry presents the proposal to the cabinet legislation committee.



The draft regulation is inspected by legislative counsel, and then returned to the originating ministry for enactment.



If the regulation is to be made by the Lieutenant Governor in Council, the minister brings it before Cabinet for approval.



It is then signed by the minister, the presiding member of the Executive Council, and the Lieutenant Governor.

Before the regulation can come into force, it must be deposited with the registrar of regulations. The regulation is then published in Part II of the provincial *Gazette*, as required by the *Regulations Act* in each jurisdiction.

When reviewing an act, note whether it contains a section authorizing the Lieutenant Governor in Council or another entity to make regulations, or whether it refers to certain things as prescribed. If so, you should check to find out whether any regulations have been passed.

5.7.3 Citing a regulation

A regulation is cited by year and number:

BC Reg 181/74.

“BC Reg” stands for British Columbia Regulations, 181 is the number assigned to the regulation and “74” stands for the year 1974. Similar citations are available for all the other provinces and territories.

5.7.4 Finding regulations

Use a consolidated version of the regulations to locate the regulations enacted under a statute:

- consolidated versions of the provincial regulations are available electronically through provincial justice website (see [section 5.9](#) for complete list), [CanLII](#), Lexis Advance Quicklaw, and WestlawNext Canada
- for older regulations, check for consolidated regulations for your province published by the government printer, often known as the Queen’s Printer in

Canada, at your law library. The regulations are organized by statute, rather than by the names of the regulations

Regulations are published in Part II of the provincial or territorial *Gazette*. A new issue of the *Gazette* comes out every two weeks. Each issue has an index listing regulations by name and by statute. A cumulative index is produced at the end of each calendar year, and then the issues for the year are bound with the index.

5.8 Judicial consideration regarding provincial statutory provisions

5.8.1 Best practices

Finding judicial consideration of a statutory provision, or noting up, involves looking for decisions that have considered that particular statutory provision. References are located by using the citation to the legislation. If there is not much judicial consideration of the current version of the legislation, you can trace the legislative history of the section and find references to the provision in earlier revisions of the legislation. Not only does noting up give insight into how legislation has been interpreted, it is also a way to update your statute and determine if there are any changes to its validity for a specific legal argument. Noting up can show whether the precedential value of a statutory provision has changed.

While there can be considerable overlap in the cases you discover different tools for noting up, there are also differences. If you need to be comprehensive, note up the statutory provision using as many statute citation tools as possible.

5.8.2 Annotated legislation

Check whether an annotated version of your statute exists. You can try searching your law library catalogue for the title of your statute to locate publications, which include an annotated version of your statute.

If there is an annotated version of your statute available, this is a good place to start.

The annotation will contain references to judicial consideration of each statutory provision, and it may cover legislative history of each provision. Sometimes the annotation will contain additional commentary on the section, including the policy behind it and an analysis of cases considering it.

CanLII

Legislation on [CanLII](#) is published with a note-up feature that links to cases considering the legislation. When viewing legislation, click on the hyperlink on the section or subsection number. These links are restricted to cases within CanLII's scope of coverage and are dependent on a properly formed citation appearing in the case. Other sources should be consulted to complete your research regarding judicial consideration of the legislation.

KeyCite Canada

KeyCite Canada on WestlawNext Canada is an online tool for finding judicial consideration of Canadian statutes, regulations, and rules of court. It is possible to KeyCite both current and historical statutes. KeyCite Canada for Statutes includes judicial treatment of Canadian and foreign statutes referenced in Canadian decisions. KeyCite Canada offers information on treatment and status flags regarding history and citing references that may impact the validity of your legislative provision. KeyCite also offers several ways to filter and sort your results.

QuickCITE Legislation Citator

QuickCITE Legislation Citator is available via LexisNexis and includes Canadian cases going back to 1992 (except in Quebec, where coverage began in 2006). QuickCITE identifies different types of treatment in a note up (unconstitutional, pursuant to, referred to, etc.) to provide additional insight into legislative interpretation and offers several ways to filter and sort your results.

KeyCite and QuickCITE both offer valuable information, but researchers should bear in mind that treatment symbols and flags may not necessarily apply to their specific issue.

5.9 Statutory research sources

5.9.1 All Canadian jurisdictions

- [CanLII](#) (Federal and provincial statutes and regulations for all jurisdictions)
- [current Canadian legislation](#), Bora Laskin Law Library
- [older Canadian legislation](#), Bora Laskin Law Library
- LexisNexis, Canadian Legislative Pulse (online by subscription)

5.9.2 Federal

- [statutes and regulations](#) (official)
- [Parliament](#)
- [bills](#) (how passed, finding, status, citing)
- [statutes](#) (finding, citing, updating, history)
- [regulations](#) (making, finding, citing, updating, history)
- [judicial consideration](#) (sources)
- [statutory research texts](#) (interpretation principles)

5.9.3 British Columbia

- [statutes and regulations](#)
- [Legislative Assembly](#)
- [Quickscribe Online](#) (subscription)

5.9.4 Alberta

- [statutes and regulations](#)
- [Legislative Assembly](#)

5.9.5 Saskatchewan

- [statutes and regulations](#)
- [Legislative Assembly](#)

5.9.6 Manitoba

- [statutes and regulations](#)
- [Legislative Assembly](#)
- [legislative reporting in early Manitoba Newspapers \(1873-1884\)](#)
- [orders in council](#)

5.9.7 Ontario

- [statutes and regulations](#) (official)
- [Legislative Assembly](#)
- [Queen's University Faculty of Law, Legal Research Materials](#)
- [Historical legislation: Internet Archive](#)

5.9.8 Quebec

- [laws](#) (official)
- [regulations](#)
- [Civil Code](#) (English and French versions)
- [National Assembly](#)

5.9.9 New Brunswick

- [statutes and regulations](#)
- [Legislative Assembly](#)

5.9.10 Nova Scotia

- [statutes and regulations](#)
- [Legislature](#)

5.9.11 Prince Edward Island

- [statutes](#)
- [regulations](#)
- [Legislative Assembly](#)

5.9.12 Newfoundland and Labrador

- [statutes and regulations](#)
- [House of Assembly](#)

5.9.13 Yukon

- [statutes](#)
- [regulations](#)
- [Legislative Assembly](#)

5.9.14 Northwest Territories

- [statutes and regulations](#)
- [Legislative Assembly](#)

5.9.15 Nunavut

- [statutes and regulations](#)
- [Legislative Assembly](#)

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6 Searching Canadian Case Law

Researchers have several options for finding Canadian case law. The three most comprehensive and current sources of Canadian case law online are CanLII, WestlawNext Canada, and Lexis Advance Quicklaw. Additionally, researchers use current awareness resources like legal newsletters and digests to stay up to date with significant new cases identified by legal editors in their area of interest. Researchers can also use CanLII, Westlaw, or Lexis Advance Quicklaw to set up customized alerts to monitor for new cases of interest.

Many courts publish their decisions online. While court websites lack the advanced functionality of CanLII, Westlaw, or Lexis Advance Quicklaw, they are often the best option for finding very recently released decisions.

Other specialist online resources which provide access to Canadian case law include SOQUIJ Recherche Juridique, La Référence (Yvon Blais) and [CAIJ](#) (free) for Québec, *CHRR Online (Canadian Human Rights Reporter)*, *First Resort*, Wolters Kluwer online products, and [vLex Canada](#) (formerly Maritime Law Book).

Additionally, print case law reporters are sometimes available at law libraries.

6.1 Starting with the right source: evaluation

Criteria for selecting an appropriate online research tool are similar to those for evaluating print sources, plus some additional criteria to consider:

- either comprehensiveness or fit for task: which resource is likely to include content that addresses your research question
- currency
- quality of content
- ease of use
- accessibility: ease of access for you and people using your research
- quality of help resources
- acceptance by the court, if relevant to your research—confirm formatting of cases is in accord with court requirements
- citations used: cases with neutral citations can be found in all three resources, as can citations from the major Canadian case law reporters, but locating cases when you have only a Lexis Advance Quicklaw citation is challenging in Westlaw, and vice versa
- cost

CanLII, Westlaw, and Lexis Advance Quicklaw all offer current case law; sophisticated search interfaces in English or French; secondary sources which can be searched concurrently with case law and legislation; and many options for reviewing, saving, and sharing results. CanLII is the most accessible of the three tools, as it offers free online access. WestlawNext Canada and Lexis Advance Quicklaw offer additional advantages including case classification schemes and other case finding tools, and more historical cases than CanLII, but WestlawNext Canada and Lexis Advance Quicklaw are expensive tools that are available to subscribers only.

WestlawNext Canada and Lexis Advance Quicklaw also offer tools for administrators such as usage reports, which are helpful in evaluating the products' value to an organisation. Some law libraries offer access to WestlawNext Canada and Lexis Advance Quicklaw, but access is often limited to members, or students and faculty.

While CanLII, Westlaw, and Lexis Advance Quicklaw all offer comprehensive access to Canadian case law, there are enough differences between the products that truly comprehensive case law research may require use of two or even all three of these

resources. CanLII, WestlawNext Canada, and Lexis Advance Quicklaw are complicated tools that require user expertise to successfully conduct complex searches that produce good, relevant case law. Similar searches in these three products can produce surprisingly different relevancy-ranked results.

In addition to differences in content being searched, factors that determine relevancy ranking of results in these three products are a complex mix of the searcher's choice of search strategies, the products' search algorithms, and each product's reliance or lack of it on traditional legal classification schemes and secondary sources to determine relevancy of search results. These value-added features, found in products like Westlaw and Lexis Advance Quicklaw, can help draw a researcher's attention to well-known cases, but might obscure other cases that a researcher would consider relevant but do not appear as highly in relevancy-ranked results lists as cases which have been incorporated into an online legal research product's classification schemes, digests, and secondary sources.

6.2 Canadian case law collections

6.2.1 CanLII

CanLII.org is a free online service funded by the Canadian legal profession. The Supreme Court of Canada collection is comprehensive from 1876 and includes PDF versions from the *Supreme Court Reports*. The collection also includes decisions of many administrative tribunals. Coverage dates vary from court to court and jurisdiction to jurisdiction. To confirm the coverage dates of your jurisdiction of interest, check the [Scope of Databases page](#).

CanLII includes a note up tool called Reflex, so users can determine a decision's history and whether it has been appealed or judicially reviewed. CanLII's note ups are generated using a different method from WestlawNext Canada's and Lexis Advance Quicklaw's approaches. Information found via case citators in WestlawNext Canada and Lexis Advance Quicklaw is selected by legal editors, and note up information in CanLII is created programmatically. Also, CanLII note ups lack the treatment codes assigned by legal editors in WestlawNext Canada and Lexis Advance Quicklaw.

[CanLII Connects](#) offers case digests and other legal commentary on cases, written by lawyers, scholars, and others in the legal community.

CanLII makes a detailed [help page](#) available. Training on CanLII is sometimes available from law libraries.

6.2.2 WestlawNext Canada

WestlawNext Canada has an extensive collection of Canadian cases with excellent historical depth except for Québec civil law. It includes comprehensive coverage of case law from 1986, all reported cases from 1977, and all tribunal decisions from selected reporters since 1997, all cases in reporters published by Carswell, and all cases that were reported in the *Dominion Law Reports* and *Canadian Criminal Cases* ([see Westlaw online materials for more detail on coverage](#)). This collection is integrated with other content, such as KeyCite (for noting up), the *Canadian Abridgment* digests, and subject classification scheme, *Words & Phrases*, and the *Canadian Encyclopedic Digest*.

WestlawNext Canada also has additional subscription collections which include secondary sources that support specific practice areas.

WestlawNext Canada provides [video tutorials and user guides](#) and offers training for subscribers.

6.2.3 Lexis Advance Quicklaw

Lexis Advance Quicklaw has an extensive collection of Canadian cases and tribunal decisions. It includes all reported court decisions and labour arbitrators reported in print since 1970, and all cases that have been cited by the courts since 1970—see online help materials for more details. This collection is integrated with other content, such as QuickCITE (for noting up), *Canada Digests*, [quantum databases](#), and *Halsbury's Laws of Canada*.

Lexis Advance Quicklaw also provides access to additional collections by subscription, including content formerly available via CCH Online.

Lexis Advance Quicklaw makes [training modules and user guides](#) available and offers training for subscribers.

6.3 Searching CanLII, WestlawNext Canada, and Lexis Advance Quicklaw

CanLII, WestlawNext Canada, and Lexis Advance Quicklaw all offer many methods for users to find cases by name, citation, or full text keyword searches.

The default for all three tools is to search the entire collection. However, users can select specific areas to search, or make use of filters to refine the search results by jurisdiction, court, date, citation frequency, and various other filters. WestlawNext Canada and Lexis Advance Quicklaw also offer tools for finding cases using subject classification schemes.

All three resources also track search histories, offer multiple ways to save and share cases, and offer alerts services that researchers can set up to stay up to date with case law on topics of interest.

6.3.1 CanLII

Searching

CanLII offers three search fields for full text keyword searches, case or legislative names or citations, and note ups. The CanLII search engine incorporates query syntax features such as word stemming and phrase recognition. If connectors are used, the search engine will recognize them. See the [CanLII Search Operators: Summary Table](#) for more detail.

CanLII search includes an auto-complete feature that is triggered when you start typing the name or citation of a case or piece of legislation.

Users can filter search results by relevance, date, citation frequency, or court level. It is also possible to limit searches to a selected jurisdiction, or browse a list of cases by court and year.

Search history

Users can view their recent CanLII search history using [LexBox](#), which is incorporated into CanLII.

Annotating, saving, and sharing documents

CanLII offers access to PDF versions of cases, as well as HTML versions with permanent links. Searches and cases can be emailed from CanLII using LexBox.

Users can set up folders to save results from CanLII using LexBox. The folders are exportable, but you cannot share access to your LexBox folders with other people. You can also add notes to saved items that you email to others.

Alerts

Users can use alerts to stay up to date on cases that fit your search criteria by using CanLII's RSS feeds for searches in an RSS feed reader, or by saving searches and setting up email alerts for new content matching search strings using [LexBox](#).

6.3.2 WestlawNext Canada

Searching

The default WestlawNext Canada search is a plain language search of case law and other document collections. You can type in a question or a string of words without connectors. Users can start with a broad search, then use filters to narrow down search results by primary sources, jurisdiction/court, court level, Abridgment classification, citation frequency, and other options.

WestlawNext Canada search results can be sorted by relevance, date, citation frequency, or court level. Because the plain language search uses a “best match”

system, it can retrieve hundreds of documents and many of them will not contain all of your search terms. As a result, relevance can drop off quickly. This causes problems when you re-sort your results, for example by date: the most recent documents may not be very relevant. It makes sense to use filters to restrict your results before sorting. You can also search within your search results.

You can choose to search specific resources in WestlawNext Canada by selecting the collection first from the home page and then running a search. Searchers can choose a specific field and enter a case name and jurisdiction to find a case, note it up, or find a case by citation. If you select a particular collection first, such as “Cases and Decisions”, you can use a search template with fields customized for that collection.

Researchers who are not having success with the default plain language search approach, or who want to control the cases that appear in search results more precisely, can use Boolean searching on the advanced search template. If you switch to Boolean, remember that some of the advantages of natural language searching will be lost, such as augmented relevancy ranking.

As plain language and terms and connectors searches produce different cases as the most highly relevant in your search results, it can be helpful to try both approaches. If you switch back and forth between plain language and Boolean searching in WestlawNext Canada, notice that “advanced:” will appear in the search box in front of any query that is run as a Boolean search. This is a useful reminder of which search method is processing your current query.

WestlawNext Canada [Boolean Searching - Terms and Connectors Search](#) operators table.

Search history

The WestlawNext Canada platform saves your search history for up to one year. This is useful for keeping track of queries and documents reviewed and can be filed with your research notes.

Annotating, saving and sharing documents

- When viewing a document, users can annotate it by adding a note and by highlighting passages. The document must be saved in a WestlawNext Canada folder or downloaded with the annotation to keep the annotation.
- Users can create folders on WestlawNext Canada and save viewed documents, including any annotations, within those folders. The contents of a folder can be downloaded by the user at any time.
- A folder can be shared by the user with other WestlawNext Canada password-holders in the same organization. Cases can be emailed directly to other people as well as printed or downloaded.

Keep privacy and confidentiality concerns in mind when saving annotations in the online folders of commercial products, for WestlawNext Canada and for other online tools. For further information, see this blog post by Michel-Adrien Sheppard: "[WestlawNext User Annotations Being Stored on US Servers](#)".¹⁰

Alerts

WestlawNext Canada subscribers can set up email alerts to stay up to date with new cases that match search criteria.

6.3.3 Lexis Advance Quicklaw

Searching

Lexis Advance Quicklaw offers a comprehensive search box plus options for Boolean (terms and connectors) searching, field searching, and filtering results. It automatically determines which type of search to run, based on the search terms you enter. You can start a search as a natural language search then convert it to a terms and connectors search by selecting "Actions"—run as terms and connectors. Here is the list of [Lexis Advance Quicklaw terms and connectors](#).

¹⁰ *Library Boy* (blog), online: <<http://micheladrien.blogspot.ca/2014/07/westlawnext-user-annotations-stored-on.html>>.

You can limit your search by jurisdiction, content type, or legal topic. You can also use filtering tools to narrow your search results after you search, and run a search within your search results. When searching for cases, you can filter by court or jurisdiction, content type (cases, case summaries, or tribunal decisions), specify a date range, legal topics, judge or legal counsel, and other options.

Lexis Advance Quicklaw's search box includes an auto-complete feature for name or citation searches. You can choose to limit your case law research to specified legal topics in a legal topic hierarchy, or choose specific resources by title to search.

Lexis Advance Quicklaw supports field searching. Choose "Advanced" search, then select "Cases" as a content type. This gives you access to a search form with document segments/fields that support case law research.

Search history

You can view your search history for the past ninety days in the form of a list or a research map. Search history can be sorted by date, client number, type, or search title. You can filter your search history to display by date or date range, client, or task type.

Annotating, saving and sharing documents

You can save selected documents and text, search results lists, searches, and other Lexis Advance Quicklaw content to online folders. Organizations that subscribe to Lexis Advance Quicklaw can opt to share folders and manage access across all password-holders.

Alerts

You can set up email alerts to stay up to date with new cases that match your search criteria by running a search and using the bell icon to set up an alert.

6.4 Case reporters and indices

6.4.1 Reporter indices

Some researchers find reporter indices a useful research tool, though they have been largely supplanted by online resources. Current print case law reporters are becoming increasingly difficult to find, as many law libraries no longer subscribe to these publications, given library users' general preference for online case law resources which provide access to the same material. Print case law reporters are still a useful option for historical research, for filling in gaps in content available online, and for verifying the accuracy of online case law.

Some law libraries retain cancelled print case law reporters to support historical research, but justifying the use of shelf space required for housing print case law reporters can be a challenge for law libraries, given competing priorities for space.

6.4.2 General reporters

The [Supreme Court Reports](#) is the [official reporter](#) for the Supreme Court of Canada, and the [Federal Court Reports](#) is the [official reporter](#) for the Federal Court of Canada. The *Dominion Law Reports* is the leading reporter series for national coverage of Canadian case law. WestlawNext Canada includes a complete collection of the cases that were selected for publication in the *Dominion Law Reports*.

- CanLII has comprehensive case law coverage for most courts from 2000 and earlier than that for many others. There is a detailed list of what's available [here](#).
- WestlawNext Canada includes reported cases from 1977 and all cases reported in Carswell case reporters since their inception.
- Lexis Advance Quicklaw includes reported court decisions from 1970.
- Maritime Law Book published cases from all Canadian jurisdictions until 2016, using a detailed “point of law” classification scheme. The Maritime Law Book classification scheme can be used to find cases dealing with a particular legal issue. Maritime Law Book cases are available on the [vLex Canada](#) platform, with a subscription required to access the classification.

6.4.3 Topical reporters

Topical reporters contain editorially selected cases in a topical area, such as employment law or family law. They often include a case comment or annotation for significant cases. In addition, topical reporters include research aids such as subject tables and words and phrases tables.

6.5 References

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7 Restate the Issues and Refine Your Strategy

7.1 Restate the issues

Often you will need to restate the issues using the applicable keywords, phrases, and concepts you have identified through your initial review of cases and secondary sources. Knowing how your issues have previously been framed and divided may assist you in identifying relevant sub-issues. It should also help you determine which of your issues and sub-issues are straightforward and which are problematic.

Initially your statement of an issue may be as broad as “negligence” or “breach of contract”. Refine it as you go to determine the relevant sub-issues such as elements of

the cause of action, applicable remedies, defences available, onus of proof, policy considerations, limitations periods, evidentiary issues, or interpretation issues.

You may also find that your problem can be approached under various legal subject areas or causes of action. Depending on how you characterize the problem, there may be advantages or disadvantages in terms of what must be proved, the remedies available, and the limitation period imposed. Knowing these may help identify your main argument and those that you wish to make in the alternative.

7.2 Refine your strategy

The next step is to refine your research strategy for the various issues you have identified. You may find that some issues may be dealt with quickly using leading authorities and trite law; some will require careful analysis of conflicting case law; and others may not have been judicially considered, requiring a creative approach based on analogous legal doctrines and first principles.

At this point, you may wish to refine the research strategy you developed in [Chapter 2](#).

This may involve reviewing any research checklist you have developed to determine if there are additional sources you should consult in dealing with the issues.

8 Review and Assess the Case Law

8.1 Weigh the cases

At this stage, follow up on the case references you have gleaned from your review of secondary sources.

Read the cases and assess the weight a court would give a case based on the following:

- whether the case is binding or persuasive

- the level and jurisdiction of the court
- the closeness of the facts to your case
- the closeness of the legal issues to your case
- the soundness of the reasoning in the case
- whether the court considered pertinent case law in reaching its decision
- the age of the case

Note up any case that seems important following this analysis, and reassess the case in light of how it has been interpreted in subsequent decisions. Start with the case you think a court would give the most weight to, and work your way down. You may find what you need before you reach the end of your list.

8.2 Analyse the cases

It is unusual for a legal rule to be stated consistently throughout a line of cases. You may find that a chart or table comparing the factors and reasoning in each relevant case will help you evaluate the cases you have found and synthesize the reasoning and rules in them. This type of approach, though time-consuming, will help you tremendously in analyzing the cases.

There are several organizational ways to think about the cases:

- the role each case has played in the historical development of the legal rule
- the factual situation in each case
- separate aspects of the legal rule that arise in each case
- the precedential value of each case

8.3 Read the cases critically

It is important to read the cases critically and closely. Some techniques for doing this include:

- “noticing what the court *said* about the rule”
- “noticing how the court *applied* the rule”

- “noticing how the court did *not* apply the rule”
- “noticing the *facts* the court emphasized”
- “reading what leading commentators have said about the case”
- “noticing the *policy* considerations the court described”¹¹

Consider whether the reasoning employed in the case is:

- **Rule-based:** the court reached an answer by establishing and applying a rule of law
- **Analogical:** a case with similar facts should govern
- **Policy-based:** the court reached the answer on the basis that this result will be best for society at large
- **Narrative:** the case tells a story that calls forth this result
- **A combination** of these forms of legal reasoning¹²

These techniques will help you gain a deeper understanding of individual cases, and help you to formulate a rule based on conflicting and inconsistent cases. These techniques will also help you find ways to attack unfavourable cases.

8.4 Close reading techniques

If you are developing a thesis topic and need to read the cases more deeply, the following close reading techniques will help you:

- keep a reading journal, in which you record your subjective reactions, associations, evaluations, interpretations, and questions regarding the cases you read
- apply a different perspective to the issues in the case, such as the perspectives of critical legal studies, feminist jurisprudence, law and economics, or law and literature

¹¹ Linda Edwards, *Legal Writing: Process, Analysis and Organization* (Boston: Little, Brown, 1996) at 41.

¹² *Ibid* at 5-6.

- read for “jurisprudential and interpretive posture”: how did the court itself read the law?
- take two different judgments on the same issue and compare the reasoning
- read for context:
 - look to the context within the case itself, such as lower court decisions, and arguments of counsel
 - look to the context outside the case, obtained from news sources, social sciences literature, government documents, and other information sources
- read the judgment as a rhetorical document seeking to persuade the reader: challenge the “belief that the language of judicial opinions is a neutral medium for the expression of disembodied reason”:
 - study word choice
 - study use of precedent
 - analyse larger rhetorical design
- read for omission:
 - look for what is left out, disregarded, or considered unimportant,
 - consider whether the gaps can be filled in without altering the conclusion¹³

The role of narrative is becoming more important in analyzing judicial decisions. Linda Edwards suggests that case analysis should include consideration of what is the story being told—the prototypical narrative underlying the text:

- consider if there are competing cultural narratives
- compare conflicting decisions on a similar point of law and identify the stories being told
- consider the tension between narrative reasoning and rule-based reasoning: did the judge decide the case based on the story or outcome that most appealed to the judge, without regard for the governing rule of law, or did the judge use

¹³ Elizabeth Fajans and Mary R. Falk, “Against the Tyranny of Paraphrase: Talking Back to Texts” (1993) 78 Cornell L. Rev 163 at 190-201, online <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi>>.

narrative reasoning (sometimes in the form of analogical reasoning) to further shape the rule of law?¹⁴

These techniques will help you develop your own perspective on the cases, rather than simply paraphrasing them.

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¹⁴ Linda Edwards, “Convergence of Analogical and Dialectic Imagination” (1996) 20 *Legal Stud F* 7, online <<https://www.lwionline.org/sites/default/files/2016-08/EdwardsTheConvergence.pdf>>.

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Companion website: <www.legalresearchandwriting.ca>.

9 ***Stare Decisis* and Techniques of Legal Reasoning and Legal Argument**

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9.1 Introduction

It gives away no secret to observe that lawyers have their own unique discipline and approach to the resolution of legal problems. Not surprisingly, there are laws about determining the law. One of the most important of these laws is the law of precedent or *stare decisis*. That doctrine and its significance in practical terms are the subject matters of this paper. This paper is also about how a lawyer in everyday practice answers a legal question and how that lawyer evaluates and formulates legal arguments. The paper is only to a very limited extent concerned about the practical problems of how to find or look up the law; rather, the concern is how a lawyer should deal with the authorities that he or she finds. Because different legal systems have different approaches to the proper way of deciding a legal point, the perspective will be Canadian and primarily that of Ontario.

9.2 The doctrine of *stare decisis*

What is the doctrine of precedent or of *stare decisis*? Professor Gall described it in the following terms:

The operation of the doctrine of stare decisis is best explained by reference to the English translation of the Latin phrase. “Stare decisis” literally translates as “to stand by decided matters”. The phrase “stare decisis” is

itself an abbreviation of the Latin phrase “stare decisis et non quieta movere” which translates as “to stand by decisions and not to disturb settled matters”.

Basically, under the doctrine of stare decisis, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within that same jurisdiction. The decision of a court of another jurisdiction only acts as persuasive authority. The degree of persuasiveness is dependent upon various factors, including, first, the nature of the other jurisdiction. Second, the degree of persuasiveness is dependent upon the level of court, which decided the precedent case in the other jurisdiction. Other factors include the date of the precedent case, on the assumption that the more recent the case, the more reliable it will be as authority for a given proposition, although this is not necessarily so. And on some occasions, the judge’s reputation may affect the degree of persuasiveness of the authority.¹⁵

In *Learning the Law* (9th ed 1973), Glanville Williams describes the doctrine in practical terms:

What the doctrine of precedent declares is that cases must be decided the same way when their material facts are the same. Obviously it does not require that all the facts should be the same. We know that in the flux of life all the facts of a case will never recur, but the legally material facts may recur and it is with these that the doctrine is concerned.

The ratio decidendi [reason of deciding] of a case can be defined as the material facts of the case plus the decision thereon. The same learned author¹⁶ who advanced this definition went on to suggest a helpful formula. Suppose that in a certain case facts A, B and C exist, and suppose that the court finds that facts B and C are material and fact A immaterial, and then reaches conclusion X (e.g. judgment for the plaintiff, or judgment for the defendant). Then the doctrine of precedent enables us to say that in any future case in which facts B and C exist, or in which facts A and B and C exist the conclusion must be X. If in a future case A, B, C, and D exist, and the fact D is held to be material, the first case will not be a direct authority, though it may be of value as an analogy.¹⁷

It follows from William’s analysis that the addition of fact D to a future case means that conclusion X may or may not follow. In other words, the presence of a new fact D may

¹⁵ Gerald L. Gall, *The Canadian Legal System*, 2d ed (Toronto: Carswell Legal Publications, 1983) at 220. This text includes an excellent bibliography on this subject including a lengthy list of cases and articles.

¹⁶ The reference is to Goodhart, “Determining the *Ratio Decidendi* of a Case”, *Essays in Jurisprudence and the Common Law* (1931) 1.

¹⁷ Glanville Williams, *Learning the Law*, 9th ed (1973) at 67-68. See also S M Waddams, *Introduction to the Study of Law*, 2d ed (Toronto: Carswell, 1983) at 102-118.

have the effect of distinguishing the future case from the precedent or conversely the precedent may be extended to apply to the future case.

There is considerable literature about whether the doctrine of *stare decisis* is a good or bad one¹⁸ but, the doctrine is usually justified by arguments which focus on the desirability of stability and certainty in the law and also by notions of justice and fairness. Benjamin Cardozo in his treatise, *The Nature of the Judicial Process* stated:

It will not do to decide the same question one way between one set of litigants and the opposite way between another. "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights."¹⁹ Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.²⁰

In *Sweney v The Department of Highways*,²¹ Middleton J.A. for the Ontario Court of Appeal stated:

But, in my view, liberty to decide each case as you think right, without regard to principles laid down in previous similar cases, would only result in a completely uncertain law in which no citizen would know his rights or liabilities until he knew before what Judge his case would come and could guess what view that Judge would take on a consideration of the matter, without any regard to previous decisions.²²

That the doctrine of *stare decisis* is related to justice and fairness may be appreciated by considering the observation of American philosopher William K. Frankena as to what constitutes injustice:

¹⁸ For example, The Rt. Hon. Lord Denning, *The Discipline of the Law* (London: Butterworths, 1979) at 285-314; Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven and London: Yale University Press, 1921) at 9-50; Friedman, "Stare Decisis at Common Law and under the Civil Code" (1953) 31 Can Bar Rev 722; MacGuigan, "Precedent and Policy in the Supreme Court of Canada" (1967) 45 Can Bar Rev 627; Weiler, "Legal Values and Judicial Decision Making" (1970) 48 Can Bar Rev 1 and Bale, "Casting Off the Mooring Ropes of Binding Precedent" (1980) 58 Can Bar Rev 255.

¹⁹ The quote is from W.G. Miller, *The Data of Jurisprudence*, at 335.

²⁰ See Cardozo, *supra*, note 4 at 33-34.

²¹ [1933] OWN 783 (CA).

²² *Ibid.* at 783-4.

*The paradigm case of injustice is that in which there are two similar individuals in similar circumstances and one of them is treated better or worse than the other. In this case, the cry of injustice rightly goes up against the responsible agent or group; and unless that agent or group can establish that there is some relevant dissimilarity after all between the individuals concerned and their circumstances, he or they will be guilty as charged.*²³

The critics of the doctrine accept it as the general rule but chafe under it when the staleness of old law leads to unfairness and injustice. For example, Lord Denning, the former Master of the Rolls has argued:

*If lawyers hold to their precedents too closely, forgetful of the fundamental principles of truth and justice which they should serve, they may find the whole edifice comes tumbling down about them. Just as the scientist seeks for truth, so the lawyer should seek for justice. Just as the scientist takes his instances and from them builds up his general propositions, so the lawyer should take his precedents and from them build up his general principles. Just as the propositions of the scientist fail to be modified when shown not to fit all instances, or even discarded when shown in error, so the principles of the lawyer should be modified when found to be unsuited to the times or discarded when found to work injustice.*²⁴

9.3 **Stare decisis and the hierarchy of the courts**

Keeping with the practical approach of this paper, we will now leave aside this debate and consider the practical problems of dealing with the doctrine as it exists for the practising lawyer. Let us then consider the example of a lawyer preparing legal argument for court.

The lawyer will be appearing before a particular court and the first thing that the lawyer must do is to note the rank of that court in the hierarchy of courts. This is necessary for two reasons: first, because a higher ranking court is not bound to follow the decision of a lower court and second, because some courts do not apply the rule of *stare decisis* with respect to their own prior decisions.

While it might be thought that it would not be difficult to decide this question of ranking, there are in fact some problems because the hierarchy and the attitude of various courts

²³ William K. Frankena, *Ethics*, 2d ed (Englewood Cliffs, N.J.: Prentice-Hall Inc., 1973) at 49.

²⁴ See Denning, *supra*, note 4 at 292.

have changed from time to time. For example, for Canada, appeals to the Privy Council in criminal matters were abolished in 1933²⁵ and it was only in 1949 that all Canadian appeals to the Privy Council were abolished.²⁶ In Ontario, from 1895 to 1931 but not afterwards, there was a section of the *Judicature Act* which obliged a Judge of the High Court not “to disregard or depart from a prior known decision of any other judge of co-ordinate authority on any question of law or practice without his concurrence.”²⁷ Further, perhaps by reason of the abolition of appeals to the Privy Council or perhaps because of the example of the House of Lords which in 1966 announced that it would reverse itself in proper cases²⁸ or perhaps because of the maturing of Canadian jurisprudence, the Supreme Court of Canada has relatively recently reassessed its own position on the effect of its own prior decisions. In light of these changes, the current position for Ontario jurisprudence appears to be as follows:

- The Supreme Court of Canada is not bound to follow its own prior decisions or the decisions of the Privy Council.²⁹ As Professor Gordon Bale has noted:

*The Supreme Court can no longer be content to say that the case is governed by an earlier decision either of its own or of the Privy Council unless the decision provides the proper reconciliation of the competing interests which are involved.*³⁰

- All Canadian courts are bound to follow a precedent of the Supreme Court of Canada³¹ and any pre-1949 decision of the Privy Council which has not been overruled by the Supreme Court of Canada. A minority opinion of the Supreme Court of Canada is, however, not binding.³²

²⁵ 23 & 24 Geo V, c 53, s 17.

²⁶ 13 Geo VI, c 37.

²⁷ See for example, RSO 1927, c 88, s 31(2).

²⁸ Practice Statement (Judicial Precedent), [1966] 1 WLR 1234 (HL).

²⁹ Reference re Agricultural Products Marketing Act, [1978] 2 SCR 1198; AVG Management Science Ltd v Barwell Developments Ltd, [1979] 2 SCR 43; Min of Indian Affairs & Northern Dev v Ranville (1982), 141 DLR (3d) 577 (SCC), rev'g (1980), 115 DLR (3d) 512 (Ont CA) which aff'd (1980), 107 DLR (3d) 632 (Ont SC).

³⁰ See Bale, *supra*, note 4 at 260.

³¹ Wolf v The Queen (1974), 47 DLR (3d) 741 (SCC).

³² Re Ward (1975), 5 OR (2d) 35 (Div Ct).

- The Ontario Court of Appeal is not bound to follow a decision of the appellate court of another province.³³
- The Ontario Court of Appeal will generally be bound by its own prior decisions unless the liberty of the subject is involved or unless the prior decision was given *per incuriam*, that is, inadvertently without consideration of an applicable authority or statutory provision.³⁴ It should be noted by comparison that appellate courts in certain other provinces have allowed themselves greater freedom in overruling their own prior decisions.³⁵
- All Ontario provincial courts lower than the Court of Appeal are bound to follow a decision of the Ontario Court of Appeal.³⁶ A Divisional Court decision as a decision of an intermediate court of appeal would bind lower courts. (It should be noted that the Divisional Court also sits as a court of first instance.)
- All Ontario provincial courts are not bound by the decisions of the appellate courts of other provinces or by decisions of the Federal Court of Appeal.³⁷
- A decision of a court of co-ordinate jurisdiction is not binding³⁸ though where there is conflict it may be appropriate to refer the case to the Court of Appeal.³⁹ It should be noted that in certain circumstances, the District Court may have co-ordinate jurisdiction with the High Court and not be obliged to follow the decision of the otherwise higher court.⁴⁰ Similarly, it seems that with respect to procedural matters, the Master's Office and the District Court may be considered to be co-ordinate courts.

³³ *Wolf v The Queen*, supra, footnote 9.

³⁴ *R v Eakins*, [1943] OR 199 (CA); *R v McInnis* (1973), 1 OR (2d) 1 (CA); *Re Hardy Trust*, [1955] 5 DLR 10 (Ont CA); *R v Godarov* (1974), 3 OR (2d) 23 (CA); *Ex parte Pickett* (1976), 12 OR (2d) 195 (CA).

³⁵ See *Gall*, supra, note 1 at 226, and authorities there cited.

³⁶ *Re Canada Temperance Act: Re Consolidated Rule of Practice*, [1939] OR 570, aff'd (sub nom *AG Ont v Can. Temperance Federation*) [1946] AC 193 (PC); *R v Morris*, [1942] OWRN 447.

³⁷ *Bedard v Isaac*, [1972] 2 OR 391. Rev'd on other grounds (sub.nom. *Issac v Bedard*) 38 DLR (3d) 481; *Re Commonwealth of Virginia and Cohen (No. 2)* (1973), 1 OR (2d) 262; *R v Guertin*, [1971] 2 OR 505 (Co Ct); *R v Beaney*, [1969] 2 OR 71 (Co Ct); *Norris v Hamilton*, [1943] OWRN 566; *Xerox Can Inc v Neary* (1984), 43 CPC 274 (Ont Prov Ct).

³⁸ *R v Nor Elec Co*, [1955] OR 431; *R v Groves* (1977), 17 OR (2d) 65.

³⁹ See *R v Nor Elec Co*, supra, note 25 and Rule 22, Ontario Rules of Civil Procedure and formerly s. 34, Judicature Act, RSO 1980, c 223.

⁴⁰ *Masse v Dietrich*, [1971] 3 OR 359.

- While decisions of co-ordinate courts are not binding, these decisions are highly persuasive. This is because of the concept of judicial comity, which is the respect one court holds for the decisions of another. As a concept it is closely related to *stare decisis*. In the case of *R v Nor Elec Co*,⁴¹ McRuer C.J.H.C. stated:

I think Hogg J. stated the right common law principle to be applied in his judgment in Rex ex rel McWilliam v Morris, [1942] OWN 447 at 448-9, where he said: "The doctrine of stare decisis is one long recognized as a principle of our law. Sir Frederick Pollock, in his First Book of Jurisprudence, 6th ed, p. 321: "The decisions of an ordinary superior court are binding on all courts of inferior rank within the same jurisdiction, and though not absolutely binding on courts of co-ordinate authority nor on the court itself, will be followed in the absence of strong reason to the contrary..."

I think that "strong reason to the contrary" does not mean a strong argumentative reason appealing to the particular judge, but something that may indicate that the prior decision was given without consideration of a statute or some authority that ought to have been followed. I do not think "strong reason to the contrary" is to be construed according to the flexibility of the mind of the particular judge.

9.4 Legal argument when there is a precedent

Thus noting the court ranking of the judge before whom the lawyer will be appearing and guided by the doctrine of *stare decisis*, the lawyer will then prepare his or her argument. Usually, the best position for the lawyer occurs when there is a precedent case supporting his or her client's case. The lawyer will then argue that the court is either bound, or that the court, if not actually bound, ought to be persuaded by the precedent case to find in the client's favour. In his or her research, the lawyer will therefore look for cases with results which support the client's position and the lawyer will prepare to argue that the *ratio decidendi* of those precedent cases covers the facts of the case at bar. However, just locating and evaluating the prospects of precedent cases is not easy since it is often difficult to determine and articulate the authority of a case. Moreover, skill is necessary to analyze and organize the material facts of both the precedent case and the case at bar. That said, more difficult problems of legal reasoning and legal argument occur when the lawyer is unable to find a close case or

⁴¹ [1955] OR 431.

any case at all or, worse yet, when a case presents itself, which appears to be unfavourable. How does the lawyer deal with these problems?

To get around an apparently unfavourable case, there are a number of tools and techniques available to the lawyer. The lawyer may not simply ignore the unfavourable case and hope that the other side does not discover the authority. This is unethical⁴² and with respect it may be submitted that it is also unethical and intellectually dishonest for a judge in deciding a case to simply ignore a precedent case, which stands in the way of the decision that the judge wants to make. This is not to say that lawyers and judges must deal with every case that remotely touches on a subject but only that there should be an honest effort to play by the rules.

The techniques that are available follow as a consequence of accepting and then manipulating the doctrine of *stare decisis*. The techniques structure and direct the lawyer's legal reasoning and argument. The following are generally recognized:

- The lawyer can argue that the precedent case does not stand for the legal proposition for which it has been cited. In other words, the lawyer articulates the *ratio decidendi* of the case differently. An example of this may be found in the treatment of the case of *Rivtow Marine Ltd v Washington Iron Works*.⁴³ In *The Attorney General for the Province of Ontario v Fatehi*,⁴⁴ Estey J. without resolving the difficulties associated with this case observed:

*Nonetheless it must be acknowledged that Rivtow has been variously applied or rejected by the courts of this country, some of whom find in the majority judgment recognition of economic loss and some of whom have found the opposite.*⁴⁵

- The lawyer can argue that while the precedent case does articulate the legal proposition for which it has been cited, nevertheless the proposition was *obiter dicta* (things said by the way). Subject to an exception for considered

⁴² Law Society of Upper Canada, Professional Conduct Handbook, Rule 8, Commentary 1(h) and authorities there cited.

⁴³ [1974] SCR 1189.

⁴⁴ (1985), 15 DLR (4th) 132 (SCC).

⁴⁵ *Ibid.* at 139.

pronouncements of the law by appellate courts, comments by the judge, which are not part of the *ratio decidendi*, are *obiter dicta* and are theoretically not binding in a subsequent case.⁴⁶ The exception is that where an appellate court expresses a considered opinion on a point of law then such ruling is binding on the lower courts notwithstanding that it was not absolutely necessary to rule on the point in order to dispose of the appeal.⁴⁷ It should be noted that if a judge rests his decision on two different grounds neither can be characterized as *obiter dictum*.⁴⁸

- The lawyer can argue that while the precedent case does stand for the legal proposition for which it has been cited, the case has been effectively overruled by a decision of a high court or by the introduction of a new statute. Examples of this kind of legal argument will obviously occur after significant decisions of the Supreme Court of Canada. For instance that Court's decision in *Kamloops v Nielsen*⁴⁹ did away with the distinction between non-feasance and misfeasance in negligence actions against municipalities and many old cases which turned on that distinction can no longer be relied upon.
- The lawyer can argue that while the precedent case does stand for the legal proposition for which it has been cited, the case at bar is different; that is, the cases are factually distinguishable. Glanville Williams suggests that there are two kinds of "distinguishing": restrictive and non-restrictive and states:

Non-restrictive distinguishing occurs where a court accepts the expressed ratio decidendi of the earlier case, and does not seek to curtail it, but finds that the case before it does not fall within this ratio decidendi because of some material difference of fact. Restrictive distinguishing cuts down the expressed ratio decidendi of the earlier case by treating as material to the earlier decision some fact, present in the earlier case, which the earlier court regarded as immaterial.

⁴⁶ Landreville v Gouin (1884), 6 OR 455.

⁴⁷ R v Sellars, [1980] 1 SCR 527; Ottawa v Nepean, [1943] 3 DLR 802 (Ont CA); Re McKibbin and R (1981), 34 OR (2d) 185, aff'd 35 OR (2d) 124 aff'd on other grounds (sub nom. R v McKibbin, [1984] 1 SCR 133; Woloszczuk v Onyszczyk (1976), 1 CPC 129 (Ont).

⁴⁸ Stuart v Bank of Montreal (1909), 41 SCR 516, rev'g 17 OLR 436, aff'd [1911] AC 120 (PC); 6 CED (Ont 3rd) Courts, para 389.

⁴⁹ [1984] 5 WWR 1 (SCC).

An example of restrictive distinguishing may be noted in the House of Lords decision in *Peabody Fund v Sir Lindsay Parkinson Ltd*,⁵⁰ where the Court restricted the application of *Anns v Merton London Borough*.⁵¹ The *Anns* case is cited as authority for the proposition that a municipality may be liable in negligence where it fails to properly inspect building plans. In the *Peabody Fund* case, by defining the duty of the municipality as being owed to owners and occupiers threatened with the possibility of injury to safety or health, the House of Lords specified and made less general, the scope of the municipality's responsibility as it had been defined in the *Anns* case. In the result, the Court did not allow a claim by the developer of a housing project who suffered damages when the municipality's drainage inspector failed to point out that the drainage system was not being installed in accordance with the approved design.⁵² Thus, in *Peabody Fund* the element of restrictive distinguishing is the introduction of the requirement of the possibility of injury to safety or health.

An example of non-restrictive distinguishing may be noted in the Supreme Court of Canada decision in *Town of the Pas v Porky Packers Ltd*.⁵³ In this case, the Court noted that the authority of *Hedley Byrne Co Ltd v Heller*⁵⁴ required the plaintiff in a negligent misrepresentation claim to show that he relied on the skill and judgment of the party from whom he had received incorrect information. In the *Porky Packers* case the plaintiff had received incorrect zoning advice from municipal officials but the plaintiff's representative was a former municipal council member who had more expertise in planning matters than the officials. In these circumstances, there could be no reliance and the doctrine or authority of *Hedley Byrne* by its own criteria was not available. The plaintiff's claim was dismissed. The material fact of the plaintiff's lack of reliance provided the element for non-restrictive distinguishing of *Hedley Byrne*.

⁵⁰ [1984] 2 WLR 953 (HL).

⁵¹ [1978] AC 728 (HL).

⁵² The law in Canada may be different. See an article by the writer published in the *Advocates' Quarterly*: "Common Law Negligence and the Liability of Governments and Public Authorities".

⁵³ (1976), 65 DLR 1 (SCC).

⁵⁴ [1963] 2 All ER 575.

- Where the case being relied upon has a built in public policy factor, the lawyer who wishes to distinguish the case may argue that public policy has changed and while the legal principle of the precedent case is still good law, it is distinguishable because of the change of circumstances. The possibility of this type of argument was noted in the case of *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co*,⁵⁵ an important case with respect to the principle that contracts in restraint of trade may be voidable on grounds of public policy. In his judgment in this case, Lord Watson noted:

*A series of decisions based upon grounds of public policy, however eminent the judges by whom they were delivered, cannot possess the same binding authority as decisions, which deal with and formulate principles which are purely legal.*⁵⁶

- The lawyer can argue that while the precedent case does stand for the legal proposition for which it has been cited, there is another precedent of equal weight, which stands for the opposite proposition. The lawyer then goes on to argue that it is that other case which the court should follow. This type of argument is related to but in the end result different from the “*per incuriam* argument” because it does not necessarily challenge either decision as having been given *per incuriam*. The rule is rather that the court may decide which one of the conflicting decisions to follow. Interestingly and as will be seen in a somewhat ironical way, the availability of this rule in Ontario is itself an example of the rule. The legal argument follows. The 1876 Ontario appellate decision of *Fisken et al v Meehan*⁵⁷ is authority for the proposition that where there are conflicting decisions of equal weight the court should follow the more recent decision. Lower courts followed the *Fisken et al v Meehan* rule in *Bank of Montreal v Bailey and Bailey*,⁵⁸ and in *Chiwniak v Chiwniak*,⁵⁹ though in *Chiwniak Wilson J.* described the duty imposed by the rule to be presumptuous.⁶⁰

⁵⁵ [1894] AC 535, and see the discussion in Friedman, supra, note 4 at 736-737.

⁵⁶ [1894] AC 535 at 553.

⁵⁷ (1876), 40 UCQB 146.

⁵⁸ [1943] OR 406.

⁵⁹ [1972] 2 OR 64.

⁶⁰ Ibid at 69.

However, in *Hamilton v Hamilton*⁶¹ Middleton J., sitting as a lower court judge, said that where there are conflicting decisions, the lower court judge may follow the decision which commends itself most to him. Unfortunately, Middleton J. does not cite the *Fisken* case and the *Hamilton v Hamilton* decision may thus be said to have been given *per incuriam*. But, in 1958 the Court of Appeal decided *Woolfrey v Piche*.⁶² In that case, LeBel J.A. stated:

...but I am now faced with two conflicting decisions in this Court on the same point, and in that unfortunate state of things I apprehend that I must choose between them as I have done. That is what was done in Young v Bristol Aeroplane Co., [1944] 1 K.B. 718, where three exceptions to the application of the rule in Velazquez [the stare decisis rule] were stated. One of these (the first incidentally) is that "the court is entitled and bound to decide which of two conflicting decisions of its own it will follow". [p. 729] There is authority also for the proposition that where two cases cannot be reconciled, the more recent and the more consistent with general principles ought to prevail. See Campbell v Campbell (1880), 5 App. Cas. 787 at p. 798.⁶³ [emphasis added]

The *Fisken* decision is again not cited but its principle that the later of two conflicting cases should be followed is acknowledged but qualified by the requirement that the later case be more consistent with general principles. Thus, to the extent that there is any inconsistency between *Fisken v Meehen* with *Woolfrey v Piche*, the *Fisken* case directs that *Woolfrey* be followed. If the *Woolfrey* rule is used to resolve any conflict in authority between the cases, it must come down on its own side or it would not be an authority. If there is no inconsistency between the cases because of the qualification or explanation noted by LeBel J.A. then again the *Woolfrey* rule will be followed.

9.5 Legal argument when there is no binding precedent

The above seven types of legal argument are the principle techniques used to get around an apparently binding precedent and we can turn next to the problem of not being able to find a precedent case. Because there is considerable room for imagination and creativity in responding to this problem, it is more difficult to identify the main

⁶¹ (1920), 47 OLR 359.

⁶² (1958), 13 DLR (2d) 605.

⁶³ *Ibid.* at 608.

techniques. Nevertheless, some typical responses may be identified. Below we will consider three classical types of legal reasoning used in these circumstances. Again the doctrine of *stare decisis*, this time in spirit, may be noted.

- Where a lawyer cannot find a binding precedent, he or she may rely on a non-binding precedent from another jurisdiction. While not obliged to do so, the court may be impressed with or be persuaded by the reasoning and be prepared to adopt the rule established by the foreign case. However, care must be taken in employing this technique because it often necessitates reviewing the foreign law to determine whether there may be underlying differences in principles which qualify or which may diminish the persuasiveness of the foreign case. For example, decisions on the *American Bill of Rights* will obviously be important and helpful in interpreting our own *Charter of Rights and Freedoms*. However, it must not be lost sight of that there is no provision in the *American Constitution* comparable to the provision in our *Charter* that the rights set out “are guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.⁶⁴
- Where a lawyer cannot find a binding precedent, he or she may form a legal argument from first principles. This approach identifies legal principles from decided cases and argues that while the factual circumstances of the cases may appear different, analytically they are the same. This kind of legal argument is often used with respect to determining the measure of damages. For example, without any reference to its particular facts, *Wertheim v Chicoutimi Pulp Co*⁶⁵ is often cited as authority for the legal principle that where there is a breach of contract then as far as money can do so, the injured party is to be placed in as good a position as if the contract had been performed. The general principle is then applied to the particular facts of the immediate case. This type of approach may be noted also with respect to the issue of liability; for example, *Hedley Byrne & Co Ltd v Heller, supra*, has frequently been cited as applying to fact situations

⁶⁴ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (UK), 1982, c 11, s 1.

⁶⁵ [1911] AC 301 (PC).

which do not remotely resemble the facts of that case. This kind of argument does not purport to extend or develop the law; rather, the sense of it is just the opposite. The underlying premise is that the judge will be applying and will not be departing from decided law. The spirit of *stare decisis* may be noted here.

- Where a lawyer cannot find a precedent he or she can go beyond first principles and instead develop an argument that the decided cases have evolved to a general principle which covers the immediate case. This is a very sophisticated and creative type of argument. It is the kind of argument in which common law lawyers and judges take particular pride. It is this type of argument that can be identified in the majority judgment of Lord Atkin in *McAlister (or Donoghue) v Stevenson*.⁶⁶ In that case, there were two strong dissenting judgments of Lord Buckmaster and Lord Tomlin and their legal argument was that the plaintiff's claim did not come within the reach of the established authorities but represented a new type of claim. Lord Atkin's response was that while the decided cases might each examine particular types of liability, there must be a common rationale. His Lordship stated:

*At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances.*⁶⁷

His Lordship then went on to complete his famous speech, which is the foundation of the modern law of negligence. In his approach, we can again note the spirit of *stare decisis*. Lord Atkin did not ignore the precedents. Instead he found within them an underlying principle which he then applied. In a sense, Lord Atkin looked backward before he moved the law forward. Further, his argument was not based on any assertion that the principle he was articulating was the next logical step in the law. Indeed, an appeal to pure logic is difficult because

⁶⁶ [1932] AC 562 (HL).

⁶⁷ *Ibid.* at 580.

established precedents may prevent the law from developing as a matter of logical progression. Lord Halsbury in *Quinn v Leathen*⁶⁸ stated:

*A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to logically follow from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.*⁶⁹

Thus, *McAlister (or Donoghue) v Stevenson* does not offend the letter or spirit of the doctrine of *stare decisis* and provides a classic example of legal reasoning and legal argument in circumstances where there was no near precedent for the case.

9.6 Conclusion

This paper has focused on one aspect of legal reasoning and argument, that of the use of precedent. However, it must be conceded that *stare decisis* is only a part of this topic. There is much more. There are substantive rules for the interpretation of statutes and there are special rules and considerations when the statute is a tax act or a criminal code or a constitutional document. There are special and often difficult rules for the interpretation of contracts and testamentary instruments. There are unique considerations when principles of the law of equity are involved and problems caused by the evidentiary rules of onus of proof or of rebuttable and irrebuttable presumptions. Yet, while the multitude of these rules provides the lawyer with a large variety of other tools and techniques for legal reasoning and legal argument, it also has to be conceded that *stare decisis* continues to play the pivotal role.

10 If You Get Stuck

You do not have to follow every research step in this guide for every issue. For some issues, you will discover the leading cases early on, and the bulk of your time will be spent analyzing those cases. Other times, following the steps set out in the previous

⁶⁸ [1901] AC 495 (HL).

⁶⁹ *Ibid.* at 506.

chapters might not uncover anything relevant. This chapter sets out some additional research methods to help you get “un-stuck”.

The chapter begins by discussing the use of pure finding tools which may be used to uncover relevant case law. It then discusses how to research the law of other jurisdictions when you cannot find any helpful Canadian law. It then closes with some further suggestions for what to do if you are still stuck.

10.1 Finding tools

Most of the secondary sources described in [Chapter 4](#) are narrative sources, which perform the dual function of providing summaries and analysis of the law and helping you to find other relevant primary and secondary sources. They are valuable as finding tools, but they are often neither comprehensive nor current.

[Reporter indices](#), [digest services](#), and [words and phrases sources](#) are additional tools for finding relevant cases. After reviewing commentary and conducting full text research in the case law, you may need to continue your research using some of these finding tools. These tools contain no commentary on or analysis of the law: they simply help you locate relevant case law.

10.2 Reporter indices

Reporter indices can be a useful research tool, though they have been largely supplanted by full text electronic databases, but please keep the following in mind:

- You may want to review the subject index for a case reporter series when your electronic research has not yielded satisfactory results, or if you do not have electronic access to the cases covered by the reporter series.
- The standardized index terms can sometimes lead you to cases that are missed in a keyword search. They tend to be broader, and they may take you to cases dealing with the same point of law but in a different factual context.
- The indices also have useful value-added features such as words and phrases references; the subject indices for topical reporters are particularly useful.

10.2.1 General reporters

- The *Supreme Court Reports* is the [official reporter](#) for the Supreme Court of Canada.
- The *Federal Court Reports* is the [official reporter](#) for the Federal Court of Canada.
- The *Dominion Law Reports* is the leading reporter series for national coverage of Canadian case law.

The BestCase Library is the only electronic service to publish the *Dominion Law Reports* with PDF versions containing the DLR headnotes. However, WestlawNext Canada includes a complete collection of the cases that were selected for publication in the *Dominion Law Reports*. CanLII includes all the cases published in the *Dominion Law Reports* that have been cited by any documents in the CanLII document collections.

WestlawNext Canada states that it includes all reported cases from 1977, and all cases from 1986, as well as a collection of pre-1977 decisions from key courts and law report series. Lexis Advance Quicklaw states that it includes all reported court decisions from 1970 and all pre-1970 decisions cited by cases decided from 1970, as well as all cases from 1986. CanLII's coverage changes regularly as new things are added. [Here's the current list of what's there.](#)

There are general reporters from different provinces, as well. For example, *Alberta Reports*, *British Columbia Law Reports*, *Newfoundland and Prince Edward Island Reports*, *Recueils de jurisprudence du Québec*, and *Ontario Reports*, are general reporters.

10.2.2 Topical reporters

Topical reporters contain editorially selected cases in a topical area, such as employment law or family law. They often include case comments or annotations for significant cases. In addition to this, topical reporters include research aids such as subject tables and words and phrases tables.

10.3 Case digests

Digests are best used after consulting commentary and performing some full text searches of the case law. They are particularly useful in the following circumstances:

- to find cases with similar facts or dealing with a similar issue
- where the topical sources for the subject area are poor
- to look for cases outside of the date range of the other resources reviewed
- to “cover all the bases”

10.3.1 CanLII Connects

[CanLII Connects](#) is a free crowd sourced site for commentary on case law where members of the legal community can sign up as members to write about cases and comment on others’ work. It often has content on new cases before the commercial services, but as it depends on contributors’ desire to write about particular cases it may not have content on everything you are looking for.

Contributors’ professional identities are confirmed before they are approved to post on CanLII Connects to ensure they are qualified to provide the content, but there is no editorial function on the site, so the quality of content can be variable.

10.3.2 *Canadian Abridgment Digests*

10.3.2.1 *Searching the Abridgment Digests electronically*

Cases published on the WestlawNext Canada platform include links to the *Abridgment* classification in the headnote. Clicking on the link will retrieve a list of all the digests under that classification. This is a good way to find similar cases. Once the list of digests is retrieved, you can refine the list using keywords and other filters.

Links to related Abridgment classifications are also included in *Canadian Encyclopedic Digest* (CED) entries and provide another way to leverage the digests as a finding tool.

The Abridgment digests can also be researched by browsing and drilling down in the Canadian Abridgment Digests table of contents, accessed from the bottom of the WestlawNext Canada home page. Once you get to a relevant classification, you can link to digests under that classification. If you have trouble finding relevant classifications, try using the search box at the right to search in the headings and subheadings.

The Abridgment digests are not included in federated searches. They are also not easily searched in the WestlawNext Canada platform, largely because there are too few of them to work well with a plain language search. Another problem is that the Abridgment search results are displayed in classification order, rather than by reverse chronological order. It is not possible to sort the results by relevancy. This makes searching within the collection unwieldy and difficult.

Searching in the Abridgment digests will be more manageable if you do the following:

- select certain classifications within which to search, using the “Specify content to search” button at the top right
- filter search results by classification after running a search
- either force the search to be run as a Boolean search or run a plain language search and narrow the results with the “Search within results” filter and other filters

10.3.2.2 Finding relevant Abridgment classifications using the print version

There are a series of steps to be followed if you want to use the print version of the Abridgment effectively:

- The first step is to identify the general subject areas in which your topic may be covered.
- The best tool for finding applicable subject headings and classifications is the Key section of the [Key and Research Guide](#). Look up your topic in this guide. If the term you look up is not used as a subject heading, the cross-references will usually direct you to the appropriate subject heading. The *Key and Research*

Guide also contains an “Abridgment Overview” section, which indicates where subject headings fall within broad legal categories. This can be helpful if you have no idea where to start.

- Once you have identified the appropriate subject headings, review the table of contents for those subject headings in the *Key and Research Guide*. Note the most relevant classifications, using the subject heading and classification numbers and letters, and using the words comprising the sub-headings. *The Key and Research Guide* will inform you of the steps you need to follow to make your research under a particular subject heading complete.
- If you already know a relevant case, there is a very fast way to locate the classification scheme. Look up the case in the “[Consolidated Table of Cases](#)”, and note the digest reference for the case. Go to the digest and determine the classification assigned to it. This method is quick, but it does not replace a thorough review of the *Key and Research Guide*. Cases on the same legal issue often appear in more than one classification. Rather than relying on this method alone, use it to augment your search through the *Key and Research Guide* for relevant classifications.

After locating the relevant classifications, the next step is to follow the classification scheme through from the hardcover “Main Case Digest Volume”, to the softcover “Case Digest Supplement”, to the monthly softcover issues of *Canadian Current Law*. To do this use the main subject heading and the numbers and letters comprising the classification scheme.

main case digest volume



Case Digest Supplement



Canadian Current Law

Canadian Current Law contains a quarterly cumulative index that uses the words comprising the classification rather than the number and letter code. This index can save you considerable time, so it is worth writing down these terms when you start your research in the Abridgment.

10.3.3 Lexis Advance Quicklaw's *Canada Digest*

The *Canada Digest* service on Lexis Advance Quicklaw has a hierarchical classification scheme. It can be browsed or searched from the Lexis Advance Quicklaw start page, or a link in the "Court Cases" search template.

Unlike the *Abridgment Digests*, there is no simple way to link from a Lexis Advance Quicklaw case directly into the relevant level of the *Canada Digest* classification scheme. The "Find case digests" link in the "Related Content" box at the top right of the case display takes you to a digest of the case you are already viewing. This is of limited use.

One approach is to search the full digest collection, using the "Search" link on the start page. However, if you want to filter your search using the classification scheme, you will need to ascertain what the classification numbers are for the relevant legal issues. A different approach is to start by browsing the *Canada Digest*, locate the relevant classification codes, and then conduct your search. Yet another approach is to browse the *Canada Digest* to find the classifications of interest, select them by clicking in the box, and then run a search of that content by typing keywords into the "Quick Search" box. The simplest approach may be to use the topical classification scheme (which is similar but not identical to the digest classification scheme) for searching or viewing full text case results. Your search can be narrowed by topic in the "Court Cases" template. Alternatively, your search results can be filtered using the topical classifications.

10.3.4 Are the *Abridgment Digests* and the *Canada Digest* comparable?

The search results obtained from the *Canada Digest* and the *Canadian Abridgment Digests* can be very different. See Louis Mirando’s column “Law Reports, Digests and Public Access to Legal Information”⁷⁰ for more information.

Given the frailties of the indexing process, it is unwise to rely too much on these classifications when conducting your research. Think of them as another finding tool: the classification will not contain an exhaustive collection of cases on a particular legal concept.

10.3.5 Other case digests

In addition to the Abridgment Case Digests and the Canada Digest, there are several other important digests of case law. Many are published electronically. Digest services are often used as a current awareness tool, but can also be used to augment your full text research.

Here are some additional digest services to consider:

Digest Name	Source
Canadian Case Summaries	Lexis Advance Quicklaw
Canadian Labour Arbitration Summaries	LabourSource – WestlawNext Canada
Lawyer’s Daily Digests	Lexis Advance Quicklaw
Supreme Court of Canada Reports Service	Print, LexisNexis
Weekly Criminal Bulletin	CriminalSource – WestlawNext

⁷⁰ Louis Mirando, “Law Reports, Digests and Public Access to Legal Information” (19 July 2013) Slaw.ca (blog), online: <<http://www.slaw.ca/2013/07/19/law-reports-digests-and-public-access-to-legal-information/>>.

There are also many provincial sources of digests, such as The Law Society of Saskatchewan Libraries' [Case Digests](#) (free) and the Continuing Legal Education Society of BC's Digest service (by subscription).

Consult a law library catalogue or speak to a librarian to get more information on what's available in your province or territory.

10.4 Words and phrases research

Your research may turn on the meaning of a particular word or phrase in a statute or contract, and there is a specialised body of research tools designed to assist with finding the meaning of words and phrases. The first tools to check are those covering judicial interpretation of words and phrases. If you do not find what you need there, consult legal dictionaries and general English dictionaries. Words and phrases publications are also helpful as a starting point when your research involves unfamiliar terms or terms are too narrow to be indexed in other sources.

The following sources can be consulted for words and phrases research:

- *Words & Phrases* from Carswell is the most comprehensive collection of Canadian words and phrases, available online as part of WestlawNext Canada. This research tool provides an excerpt from the cited case. The print version is updated using soft bound supplemental volumes and is included in *Canadian Current Law*.
- *Sanagan's Encyclopedia of Words and Phrases, Legal Maxims*⁷¹ contains good coverage of Canadian case law and provides the excerpt from the cited case.

⁷¹ John D. Gardner and Karen M. Gardner, *Sanagan's Encyclopedia of Words and Phrases, Legal Maxims, Canada*, 5th ed. (Toronto: Thomson Carswell, 2005).

- Lexis Advance Quicklaw offers a resource called *Canadian Legal Words & Phrases* in its commentary collection. Users can search edited listings of judicially considered words and phrases and view an excerpt from the cited case.
- Full text keyword searches can be done in electronic databases of case law. However, this method is only helpful if the terms are distinctive.
- Indices to case reporters will usually include a table of words and phrases judicially considered.
- Legal encyclopedias such as *Halsbury's Laws of England* and the *Canadian Abridgment* contain words and phrases listings.

If you are working in a specialised area of law, there may be a words and phrases publication unique to that topic. For example, Jolin's *Canada Tax Words, Phrases and Rules*⁷² deals exclusively with words and phrases relevant to taxation. Indices for topical reporters usually include a table of words and phrases judicially considered.

The leading English publication is the multi-volume *Words & Phrases Legally Defined*⁷³. It is updated by paper supplements. A second multi-volume English publication that is a good source of Commonwealth cases is *Stroud's Judicial Dictionary of Words and Phrases*⁷⁴. The indices to the *All England Reports* and to the *Law Reports* also contain words and phrases listings.

The leading American publication is the multi-volume *West's Words & Phrases*⁷⁵, also available on Westlaw. If using the print version, be sure to consult the pocket supplement at the back of each volume.

Legal dictionaries, such as the *Canadian Legal Dictionary*, *Black's Law Dictionary*⁷⁶, and *Jowitt's Dictionary of English Law*⁷⁷, may prove helpful if the usual words and phrases

⁷² Marc Jolin, *Canada Tax Words, Phrases and Rules/Dictionnaire fiscal canadien* (Toronto, ON: Carswell, 1990) (loose-leaf).

⁷³ David Hay, *Words and Phrases Legally Defined* (London: Wildy, 2016).

⁷⁴ Daniel Greenberg, *Stroud's Judicial Dictionary of Words and Phrases*, 8th Ed, (London: Sweet & Maxwell, 2012).

⁷⁵ *Words and Phrases* (Eagan, MN: Thomson West, 2012).

⁷⁶ Brian A. Garner, *Black's Law Dictionary*, 10th Ed. (Eagan, MN: West Group, 2014).

⁷⁷ Daniel Greenberg, *Jowitt's Dictionary of English Law*, 4th ed. (London: Sweet & Maxwell, 2015).

sources do not have what you are looking for. Some legal dictionaries, such as the [Irwin Law Canadian Online Legal Dictionary](#), and the [Legal Dictionary on Findlaw](#), are now freely available online.

Some subject classifications in the *Canadian Abridgment Case Digests*, such as “Contracts – Interpretation, Statutes – Interpretation”, provide access to cases interpreting particular terms.

Statutory interpretation texts and contracts texts often contain a section on interpretation, or the index will direct you to a discussion of the interpretation of a particular term.

The Federal [Interpretation Act](#)⁷⁸ and the provincial interpretation acts contain extensive definitions that may apply in a given situation.

The definition sections of relevant statutes and regulations should be reviewed. Some electronic research templates allow you to carry out a field search that will narrow your search to the definition sections of legislation.

The courts will often look to the ordinary meaning of a word to assist with its interpretation. If the word is not a legal term of art, check its meaning in a few good dictionaries. The *Oxford English Dictionary* may be available through a library you have access to. Though dictionaries are the last item in this list, they are regularly relied on by the courts and should be included in your words and phrases research.

10.5 Consider the law of other jurisdictions

If you have not found what you need after conducting a thorough review of Canadian law, you may have to turn to the law of other jurisdictions.

Though the research resources will be different in those jurisdictions, the basic research methodology will be similar to the methodology you have already employed in your Canadian research.

⁷⁸ RSC 1985, c I-21.

Here are some guides on researching the laws of the following countries:

- [United Kingdom](#)
- [Australia](#)
- [New Zealand](#)
- [United States of America](#)
- [European Union](#)
- [International Law](#)

You may also want to look for a [Free Access to the Law Movement](#) member in the country you want to research.

10.6 References

Fox, Rosalie. “Using Citation Analysis to determine the use of information sources from the European Union by Judges of the Supreme Court of Canada” (11 December 2008) *Journées Européennes d’Informatique Juridique*.

McCormick, Peter. “American Citations and the McLachlin Court: An Empirical Study” (2009) 47 Osgoode Hall LJ 83. Online:

<<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1163&context=ohlj>>.

10.7 Still stuck?

What if you have still not found anything relevant?

Before you decide that you have exhausted all avenues, consider whether there are other ways of thinking about your issue:

- discuss the problem with someone (a different view may lead you to another approach)
- consider whether you have characterized the issues properly

- consider whether the keywords you used in indices and online searches were the right ones
- consider whether the approach you have taken is too narrow
- look for cases dealing with broad general principles and formulate an argument from them
- think of analogous situations that might apply
- look for novel approaches by studying treatises, and periodical literature

11 When to Stop

It is important to know when to stop your research. Generally, you have reached the end when you keep coming across the same material and nothing both new and relevant is turning up. Recall that, if you have not found any relevant cases, you may consider the recommendations in [Chapter 10: If you get stuck](#).

At the point where you have determined it is appropriate to stop your research you will (hopefully) have identified legislation or jurisprudence you believe may be relevant and applicable to your case.

As a final step, it is crucial that you ensure that these sources are still valid for your purposes. This involves both noting them up and ensuring their continued currency.

11.1 The importance of noting up legislation and case law

“Noting up” legislation involves examining how it has been interpreted in the case law and determining whether it is still valid. The importance of this was acutely illustrated in 2016 when a man was convicted of murder pursuant to s. 230 of the *Criminal Code*—a section that had been declared unconstitutional by the Supreme Court of Canada in 1990 (see *R. v Vader*, 2016 ABQB 625).

“Noting up” a case involves searching for its history (the particular case’s appellate treatment, if any) and subsequent treatment in other unrelated cases. The perfect case is far from perfect if the argument you are advancing it for was subsequently rejected on appeal. And why rely on a decision from another jurisdiction’s court of appeal, if the Supreme Court of Canada subsequently adopted that court’s reasoning in another case?

As you can see, noting up a case may bolster or weaken your argument.

11.2 Noting up legislation

There are a number of sources which can assist you in noting up legislation. The most commonly used are WestlawNext Canada’s “KeyCite”, Lexis Advance Quicklaw’s “QuickCITE”, and CanLII’s “Noteup” feature. Other online or print-based resources may also be used. These are discussed in more detail below.

11.2.1 WestlawNext Canada’s KeyCite

KeyCite on WestlawNext Canada is an electronic tool for finding judicial consideration of Canadian statutes, regulations, and rules of court. It is based on the *Canadian Statute Citations* (discussed below) and has the same historical depth and treatment codes.

The simplest way to access KeyCite is by clicking on the KeyCite link when you are viewing the legislation you want to note up. However, this is not possible when the legislative provision that you want to KeyCite is older, and the full text is not on WestlawNext Canada. In that circumstance, run a KeyCite search in the global search box, using the citation for the legislation.

For example, “**kc: rsc 1970 c c-32 s 16**” would retrieve a KeyCite result for the Canada Corporations Act, R.S.C. 1970, c. C-32, s. 16.

This method can be used for retrieving a KeyCite result for any statutory provision, without having to locate the legislation first.

For more information on using KeyCite, there is a user guide available [here](#).

11.2.2 Lexis Advance Quicklaw’s QuickCITE

Lexis Advance Quicklaw’s QuickCITE is another electronic tool for finding case citations of statutes. It includes all English jurisdiction Canadian cases from 1992-present and all Quebec cases from 2006-present (with selected cases from before that period) that judicially consider the most recent revision of each jurisdiction’s legislation. When viewing the legislative provision, look for a link to QuickCITE on the upper left. Alternatively, use the “Note up with QuickCITE” feature from the home page to enter a citation for the legislation and go directly to QuickCITE.

For more information on using QuickCITE, there is a user guide [here](#).

11.2.3 CanLII’s Reflex

Legislation on CanLII is published with a note-up feature that links to cases considering the legislation. When viewing legislation, click on the hyperlink on the section or subsection number where available or use the “Noteup” tab at the top of the legislation page. These links are restricted to cases within CanLII’s scope of coverage. There is more information about Reflex [here](#).

11.2.4 Annotated legislation

If there is an annotated version of your statute available, this may be a useful resource. The annotation will contain references to judicial consideration of each statutory provision and may also cover the legislative history of each provision. Sometimes the annotation will contain additional information on the section, including the policy behind it and an analysis of cases considering it.

11.2.5 *Canadian Statute Citations*

Canadian Statute Citations is a print publication and is part of the *Canadian Abridgment*. It covers judicial consideration of statutes from all Canadian jurisdictions. It includes

judicial consideration of legislation through successive revisions, enabling researchers to check for judicial consideration of earlier versions of the legislation.

11.2.6 Canada Statute Service

Canada Law Book, Thompson Reuters, publishes the *Canada Statute Service* online. It includes a full text consolidation of the Federal statutes and regulations (excluding the *Income Tax Act*). It is linked with the *Canada Statute Citator*, so that users can view statutory amendments and citing cases. It also includes a complete amendment history for each statute, including amendments not yet in force.

11.2.7 LégisQuébec

[LégisQuébec](#) is the [official](#) source of Québec legislation and regulations published by Publications Québec. This database is available free online and provides point-in-time laws as well as PDF of annual statutes and regulations since 1996.

11.2.8 Indices to case reporters

Indices to case reporters usually contain a table for statutes judicially considered. For example, *Canadian Cases on the Law of Torts* is published with cumulative indices containing a table for both statutes and regulations judicially considered.

11.3 Noting up cases

11.3.1 Electronic case citators

There are two comprehensive electronic citators for Canadian case law: QuickCITE on Lexis Advance Quicklaw, and KeyCiteCanada on WestlawNext Canada. CanLII's Noteup feature is not as comprehensive and does not assign treatment codes. However, it is a good starting point, and it is free to use.

While using WestlawNext Canada, KeyCite results are accessed from tabs above the case being viewed. KeyCite can also be accessed using the "Find by Name" feature, or by conducting a citation search in which the case citation is preceded by the command "kc:".

KeyCite results can be sorted and refined in various ways, including:

- sorted by treatment type, date, court level, citation frequency, and depth of treatment
- filtered by date, depth of treatment, jurisdiction, court level, treatment type, citation frequency
- refined by keyword search

The KeyCite user guide is available [here](#).

QuickCITE results are accessed using the “Noteup with QuickCITE” link at the top left of the screen, or by clicking on a status icon in a results list. You can also access QuickCITE from the Lexis Advance Quicklaw start page, using the “Note up with QuickCITE” feature.

QuickCITE results can be sorted and refined in various ways, including:

- sorted by date, court name, court level or to show negative treatment first
- filtered by positive or negative treatment, or by jurisdiction, court or court level
- refined by keyword search

There is a QuickCITE user guide available [here](#).

CanLII’s Noteup feature permits you to search for documents which cite a particular case. In addition to this, when viewing a search list or the full text of a case in CanLII, you can click on the “Cited by [#] documents” link, which will provide you with a list of CanLII documents which have cited the case in question.

You can search within the list of citing cases using the search box at the top of the list. The list of citing cases can also be refined by jurisdiction, and sorted by relevance, date, citation frequency, and court level. When viewing a citing case, the highlight tool locates to references to the cited case.

11.3.1.1 Comparison of online citators’ coverage and features

You should be familiar with the scope of coverage of any service you use for noting up cases and be aware of the different features offered by each citator. QuickCITE, KeyCite, and CanLII have different coverages and, therefore, may produce different result lists. The scope of coverage of each service may change over time.

It is advisable that you consult each service's respective webpages to confirm its coverage.

The features of each service differ as well. It is recommended that you check the documentation of each service to see what functionality each offers.

11.3.1.2 Comparison of KeyCite and QuickCITE treatment codes

The treatment codes assigned in various citators can be quite different for the same case, so it is not always wise to rely on the treatment code in determining whether you should review the citing case.

The status flags and signals used in KeyCite and QuickCITE indicate whether a case is still good law should not be blindly relied on without reviewing the citator results in more detail.

The KeyCite status flags indicate that:

- red flag: the case has been reversed or not followed within the same jurisdiction
- yellow flag: the case has some negative history or treatment
- green H: the case has direct history
- green C: the case has been the subject of some consideration

The QuickCITE signals indicate that:

- red hexagon: the case has negative information
- yellow triangle: caution should be used
- green diamond: the case has some positive treatment

- purple circle: the case has some neutral treatment
- blue hexagon with C: the case has citation information

11.3.2 Noting up cases in print

The primary Canadian print tool for noting up cases is the *Canadian Case Citations* portion of the Canadian Abridgment. To use this tool, look up the case in the following *Canadian Case Citations* volumes:

- main volume
- annual supplement
- quarterly cumulative supplement
- monthly issues of *Canadian Case Citations*

11.4 Keep your research current

11.4.1 Alerts, automated searches, and RSS Feeds

The easiest way to stay current is to have relevant cases pushed to you through alert services or [RSS feeds](#).

On CanLII you can subscribe to an RSS feed for individual courts, which will send notifications of all the decisions released by that court as they are added to CanLII. You can also subscribe to an RSS feed for any query run on CanLII, which will alert you each time a document is added to CanLII which meets their search criteria. For example, you can track any cases added to CanLII that cite a particular case, or cases that deal with a particular issue such as waiver of tort.

The commercial publishers also allow you to set up alerts that re-run a search at intervals chosen by you and email the new results. The benefit of these is that they are customized to respond to a particular research query.

The following table summarizes the currency and alert features available through Lexis Advance Quicklaw, WestlawNext Canada, and CanLII:

	CanLII	Lexis Advance Quicklaw	LawSource
Case law	RSS feeds for new cases that respond to saved search query, or for all cases from selected courts	Saved searches will periodically run search to check for new cases, based on parameters set by users	WestClip will periodically run search to check for new cases, based on parameters set by users
Judicial consideration	RSS feeds can alert the user to new judicial consideration of cases or legislation, based on users' parameters	QuickCITE Alert can be programmed to periodically check for new judicial consideration of cases or legislation, based on users' parameters	KeyCite Alert can be programmed to periodically check for new judicial consideration of cases or legislation, based on users' parameters

Another way to ensure your case law research is current is to run a search in the full text case collections of CanLII, LawSource, or Lexis Advance Quicklaw. Be sure to rank your documents by date to ensure that the most recent ones appear first.

- The default ranking method on CanLII is relevance, and it can easily be changed in your results list to rank by date or citation frequency.
- The default ranking method on Lexis Advance Quicklaw is relevancy ranking, and it can easily be changed in your results list to rank by date, court, or jurisdiction.
- The default ranking method on WestlawNext Canada is relevancy ranking. Results can be re-sorted by chronological order. Because of the “best match” method used by the WestlawNext Canada search engine, the cases that appear

at the top when using sort methods other than relevancy may be highly irrelevant. To avoid this, conduct a Boolean search within your results using the “Search with results” filter. This will narrow the results before you re-sort. That way you get the benefit of the plain language search for the relevancy sort and can get better results from the other sort methods

11.4.2 Legislative change

For a more detailed consideration of currency in legislative research, see [Chapter 5: “Researching Canadian Federal and Provincial Legislation”](#).

11.4.3 Commentary

For commentary on the most recent case law, check [Canadian Law Firm Websites, Blogs & Journals](#), or [Fee Fie Foe Firm Canada](#), where you can search within the websites of leading Canadian law firms. Law firm newsletters often publish very timely commentary on notable recent cases.

Alternatively, many firms and legal bloggers write about recent cases on [CanLII Connects](#).

The [Bora Laskin Law Library Weblog](#) publishes a monthly list of new Canadian legal periodicals with links to their tables of contents.

11.4.4 Other current awareness services

There are several Canadian publications and news sources to help keep your legal knowledge current.

- Supreme Advocacy LLP publishes the [SupremeAdvocacyLetter](#), providing email summaries of recent decisions of the SCC.
- WestlawNext Canada provides to its subscribers recent case summaries from the *Abridgment Case Digests* in several subject areas.

- Lexis Advance Quicklaw publishes NetLetters in several subject areas. “LawNet” on Lexis Advance Quicklaw contains recent significant cases, available through RSS feeds.
- The Canadian Bar Association publishes [PracticeLink](#), available through RSS feed.
- There are several [Canadian legal blogs](#) to which you can subscribe by RSS feed.
- News feeds from [Federal Government departments](#) are available by RSS feed.
- Most Canadian legal publishers have an RSS feed listing their new publications, see [LegalPubs.ca](#) for an aggregation of those feeds.

12 Preparing a Legal Memorandum

A legal memorandum presents research and analysis, and applies the research and analysis to particular facts. A legal memorandum follows a general structure and follows certain conventions. The structure and conventions are discussed below, and a [sample memorandum](#) is included below.

Because each legal problem is distinct, no two memoranda will be organised in precisely the same way. Do not slavishly follow the sample memorandum and feel free to incorporate your own style where appropriate. The goal of this guide is to help you learn about the general structure and components of this form of writing, and apply them to your research assignment in the most effective way for your particular problem.

A legal memorandum is comprised of certain standard elements:

- heading
- succinct identification of the legal issue(s)
- short summary of your conclusion
- review of relevant facts
- discussion of the law relevant to the legal issues, and application of that law to the facts
- ultimate conclusion that is responsive to the legal issues

Each of these elements is discussed in greater detail below.

12.1 The heading

The heading should identify the author and recipient of the memorandum, and include the date, client identification, and subject matter. See the [Sample Memorandum](#) for an example of a typical **Heading**.

12.2 Issues

The issues portion of the memorandum is crucial. You must succinctly identify the pertinent legal issues within the context of the facts of your case. Include legal elements that are essential to resolution of the issues.

The more narrow and descriptive your issue statement is, the more effective it will be. Compare these three issue statements, derived from the [sample memorandum](#) research problem:

- #1 Is the security enforceable?
- #2 Will security documents signed and registered using the debtor's common law name be enforceable against the debtor and the debtor's creditors if the debtor later changes to using his legal name?
- #3 Will personal property security documents granted in favour of the Bank, signed and registered in British Columbia using the Debtor's common law name David Black, be enforceable against the Debtor and the Debtor's creditors now that the Debtor has changed to using his legal name David Brown?

#1 asks the basic question that needs to be answered. However, when compared to #2 and #3, it is clearly inadequate. It provides no context for anyone who is not immediately familiar with the case, and does not add value to the memorandum as a precedent for future cases.

#2 is a good issue statement. It provides a concise summary of the legal issue and includes the essential elements. It is less wordy than #3, making it easier to read and

understand. However, it is less complete than #3, because it does not incorporate the specific facts of the case.

#3 is an excellent issue statement. It sets out the precise legal issue to be resolved. Just as each legal case is decided within the confines of the facts of that case, a legal memorandum is intended to address the narrow legal issue raised by a particular problem.

If there is more than one issue to be addressed, list the issues in the order in which you will be discussing them in the memorandum.

See the [Sample Memorandum](#) for an example of the **Issues** portion of a legal memorandum.

12.3 Short conclusion

Here, you can provide a brief, up-front statement of your conclusion(s).

Remember that your reader does not want to be kept in suspense. To paraphrase [Justice Laskin](#): do not write your memorandum like a mystery novel in which the conclusion is revealed only in the final paragraph, if at all. A crisp, clear, responsive answer must be provided as near the beginning of your memorandum as possible. See the [Sample Memorandum](#) for an example of the **Short Conclusion** portion of a legal memorandum.

12.4 Facts

The facts portion should list the relevant facts on which you have relied in researching and preparing the memorandum. If you have made assumptions, indicate this. If you have relied on any documentation (e.g. from the client), indicate that too.

State the facts objectively and clearly. Usually this will be in chronological order. Use definitions to standardize terminology for persons and things that will be referred to

frequently in the memorandum. This prevents clutter and inconsistent references to the same thing.

If your matter relates to litigation, make sure to review the key parts of the procedural history, and note the current stage of proceedings.

The facts portion can either precede or follow the issues section of the memorandum. Various formats are listed below. If the issues will not make sense without reference to the facts, then put the facts first. Alternatively, if the facts portion of the memorandum is quite lengthy, your reader may want to see the issues first. (You may have cited some facts already, in your **Short Conclusion** section.)

See the [Sample Memorandum](#) for an example of the **Facts** portion of a legal memorandum.

12.5 Which format?

There are various ways of dealing with conclusions in a legal memorandum:

Format 1	Format 2	Format 3	Format 4
Facts	Issues	Facts	Issues
Issues	Conclusions	Issues	Brief answer
Conclusions	Facts	Brief answer	Facts
Discussion	Discussion	Discussion	Discussion
		Conclusion	Conclusion

If you follow the model of including your Short Conclusion early in the memorandum, keep that section extremely brief, three to four sentences, maximum. You can then

provide a more detailed conclusion at the end. If your short conclusion and your conclusion sections are likely to be identical, use Format 1.

12.6 Equivocation / opinion

One of the hardest parts of writing a legal memorandum is to reach a defensible conclusion when the law is uncertain generally, or as it applies to your facts. Since the purpose of the memorandum is to answer the legal question posed, you cannot simply say that the law is unclear and leave it at that. You have to trust that your research and analytical skills enable you to provide a reasonable answer.

In some circumstances there may be a practical solution that enables you to avoid confronting the uncertainty in the law. The [sample memorandum](#) provides an example of this. However, usually you have to make a decision about what a court or other decision-maker would likely do if faced with your fact situation.

Do not hesitate to offer your own opinions, as long as they are well-grounded in the law and facts.

Try to avoid using equivocal language in your memorandum where possible. This is particularly important in the conclusion section. Sentences that begin with the phrase “It would appear that” or “It seems that” should alert you to equivocation.

By all means indicate where the law is unclear and state the risks of the client’s position, but also state what you think is the better view or probable outcome, and if applicable the client’s chances of success.

12.7 Analysis and discussion

The discussion section is the heart of the memorandum. It provides the venue for explaining and analysing the law, and applying it to your facts. Let the word “synthesis” guide your approach to this section.

The discussion section should be broken down into a separate part for each discrete legal issue covered in the memorandum—subheadings are helpful here. The discussion of each issue should include an introduction, an explanation of the applicable legal rule, an application of the rule to the legal problem, and a conclusion in respect of that issue.

The classic formulation for this is known as **IRAC**:

- I The first step is to state the legal **issue**. This can be done in a couple of ways. You can summarize the issue in the form of a topic sentence or question. The most effective style is to use a thesis sentence or paragraph that not only indicates what the issue is, but tells the reader briefly what your conclusion is on the issue. The issue can also be referred to in the heading for this part of the discussion section.
- R The second step is to determine the applicable legal **rule**. This involves a review and analysis of the relevant cases, statutes, and secondary sources. It is sometimes referred to as rule explanation. Depending on the nature of the legal rule, you may need to review the history of the rule and consider the policy rationale for the rule. You may find there are different lines of cases, each resulting in a different formulation of the rule. Try to approach this section using rules synthesized from the cases, rather than simply listing a series of individual cases. Avoid lengthy quotations from cases. This section includes analysis of the rule, but does not include application of the rule to your facts.
- A The third step is to **apply** the legal rule to your facts. This involves further analysis and weighing of individual cases, distinguishing cases, making counter-arguments, and considering policy issues. Do not be so concerned about advancing a particular position that you forget to consider and weigh the other side(s) of the argument.
- C The last step is to state your **conclusion** on the legal issue being discussed. Though you will include overall conclusions elsewhere in your memorandum, it is also important to reach a conclusion on each legal issue as it is dealt with in turn.

IRAC need not be applied rigidly as long as all the elements are covered. Your decision about how to divide up the legal issues will influence the way that you apply IRAC.

For example, if you are dealing with cases from a number of different jurisdictions you can structure your discussion separately for each jurisdiction, or cover all jurisdictions when you deal with a particular issue.

You may want to discuss each sub-issue separately. However, if that would result in repetitive discussion of the same cases in different sections of the memo, it might be better to combine your discussion of some of the sub-issues.

See the [Sample Memorandum](#) for an example of the **Discussion** portion of a legal memorandum.

12.8 A note on citations

Your memorandum may be used to draft a letter to the client or a brief for the court, so it is extremely important to cite all your sources and pinpoint to paragraph or page numbers as much as possible. It is better to err on the side of providing too many citations than not providing enough. Remember that the ultimate goal of legal citations is to ensure your reader can easily find any of the material you reference.

The [Sample Memorandum](#) uses in-text citations. You may choose (or be asked) to use footnotes instead. Unless you are specifically asked to do so, do not use endnotes, as it is annoying to have to constantly flip to the end of the memorandum to follow references. It is important to adopt a consistent style throughout your memorandum, rather than switching between in-text citations and footnotes. You may also wish to include hyperlinks in your citations, where appropriate.

Please see also the part dedicated to [legal citation](#).

12.9 A note on bibliographies

If your memorandum is especially long or complex, you may wish to provide a bibliography at the end, listing all of the authorities you have cited. This bibliography can be divided into sub-sections for legislation; jurisprudence; and secondary materials, like

textbooks and journal articles. The items in each section should be listed in alphabetical order.

In situations where you have been unable to locate any relevant resources on your topic, it is helpful to include a list of all the resources you consulted or to append your research log, so the recipient of your memorandum can review your research process and satisfy themselves regarding the thoroughness of your research.

13 Legal Citation

General rules about citing Canadian cases and secondary sources are set out below. The citation examples are based on the 8th edition of the *Canadian Guide to Uniform Legal Citation* (the *McGill Guide*)⁷⁹, which was published in 2014. It is important to note that not all courts will prefer to have citations in the form of the 8th edition. Most courts have their own preferences for citations, so it would be wise to check before submitting your factum.

It is also important to note that this section does not cover legal citation in detail. A number of references are listed below that provide extensive information about citation. Citation of Canadian legislation is also covered within the chapter on [Statutory Research](#).

13.1 McGill Guide

The 8th edition of the *Canadian Guide to Uniform Legal Citation*, or the *McGill Guide* as it is commonly called, recommended some changes to accepted citation practice and expanded on current best practices. One welcomed expansion pertains to digital sources.

Those unsure about whether to adopt the changes recommended in the 8th edition should review the list in the *McGill Guide* of law reviews and courts that have adopted the current edition. Another suggestion is to review the practice directions and recent

⁷⁹ Editors of the *McGill Law Journal*, (Toronto, ON: Carswell, 2014).

decisions from the courts in your jurisdiction to see whether these changes have been adopted.

Students may find [Zotero](#) or [Mendeley](#) useful tools for preparing citations that comply with the *McGill Guide*. Your school's law library may also have a paid subscription to EndNote or RefWorks, making them free for students to download.

13.2 General principles

Citation rules will be easier to understand and remember if you keep the following principles in mind:

- A citation should enable you to find the document easily
- A case citation should indicate not only the name of the decision and where it can be found, but also its year, the jurisdiction, and the court. This provides important information for assessing the relevance and weight of a case.
- A citation should not contain more information than is necessary. For example, since a neutral citation already indicates the jurisdiction and court, it is not necessary to add this information again at the end of the citation. Similarly, since the *Supreme Court Reports* only publishes decisions of the Supreme Court of Canada, it is not necessary to add (SCC) at the end of the citation.

For more detail on citation please see the *McGill Guide*, or one of the many fine online guides that university libraries have compiled, such as [this one](#) from Sir James Dunn Law Library at Dalhousie University.

13.3 Neutral citation

Neutral citation has been adopted by all Canadian superior courts, and by several Canadian tribunals. This means that the citation and the paragraph numbering are assigned by the court rather than by a private publisher. It is therefore consistent across all published versions of the decision. A neutral citation can be used to “find by citation” in electronic services such as CanLII, WestlawNext Canada, and Lexis Advance Quicklaw.

Canadian cases should be cited to their neutral citation first.

Examples of neutral citations are as follows:

Style of cause	Year	Court	Number	Pinpoint
<i>R. v. Fearon,</i>	2014	SCC	77	at para 83.
<i>Meads v. Meads,</i>	2012	ABQB	571	at para 203.
<i>R v Sharpe,</i>	2001	SCC	2	at para 12.

Other than the comma separating the style of cause from the citation, there is no punctuation in a neutral citation.

If there is no neutral citation for the decision, then the McGill Guide permits either a print reporter citation or citation to an electronic source. The following examples, in the order listed, are from CanLII, Lexis Advance Quicklaw, and WestlawNext Canada. Note that each citation indicates the year, jurisdiction and court.

You can read more about neutral citation in [this document](#) by the Canadian Citation Committee.

13.4 Parallel citations

Here are three different citations for the same case:

Lougheed Enterprises Ltd v Armbruster, 1992 CanLII 1742 (BCCA).

Lougheed Enterprises Ltd v Armbruster, (1992) BCJ No. 712 (CA).

Lougheed Enterprises Ltd v Armbruster, 1992 CarswellBC 20 (CA).

A parallel citation lists another source, either print or electronic, where the case has been published. Here is an example of a neutral citation with a parallel citation to a reporter series:

Sharab Developments Ltd v Zellers Inc, 1999 BCCA 39, 65 BCLR (3d) 67.

It varies by court whether parallel citations are necessary for Canadian cases. However, the 8th edition of the *McGill Guide* strongly suggests, but does not require, a parallel citation in addition to the neutral citation if the case has been reported.⁸⁰ Many courts follow a similar rule, or require parallel citations be included.

13.5 Electronic source information

If you are using a parallel citation that comes from an electronic version of a judgment, the 8th edition of the *McGill Guide* requires a citation to an electronic version of a judgment to include a reference to the electronic database from which the judgment was obtained.⁸¹ For example, if the judgment referred to above was reproduced from CanLII, the citation would be as follows:

Sharab Developments Ltd v Zellers Inc, 1999 BCCA 39, 65 BCLR (3d) 67 (CanLII).

This additional electronic source information is no longer required by the British Columbia courts. The Alberta practice is that despite differences between paragraph numbering in the electronic source and in the print reporter, the electronic source can be used. However, if the electronic source is not obvious from the citation then the source should be identified by adding “QL”, “WL” or “CanLII” at the end of the citation.

The most common electronic sources, with abbreviations, are as follows:

⁸⁰ *Ibid* at E-49.

⁸¹ *Ibid* at E-64.

CanLII	Canadian Legal Information Institute
WLNC	WestlawNext Canada
Lexis	LexisNexis
QL	Quicklaw (Lexis Advance Quicklaw)
AustLII	Australian Legal Information Institute
BAILII	British and Irish Legal Information Institute

13.6 Pinpoint references

A pinpoint reference refers to a paragraph number or page number. Since paragraph numbers are more precise, you should cite to them wherever possible.

Citation problems can arise where a publisher has assigned paragraph numbering and a pinpoint reference is made to that paragraph numbering, but a different version of the case is cited or reproduced. Make sure that any pinpoint references you make are consistent with the electronic or print version of the case that you are citing to and providing to the court. Using the neutral citations eliminates this problem, as the paragraph numbering will have been assigned by the court and should be consistent in all versions of the case. The date on which a court started to assign its own paragraph numbers varies depending on the court.

13.7 Print reporter citations

This Canadian case is used as an example: *R v Jordan*, [2016] 1 SCR 631, 2016 SCC 27:

style of cause	year	volume	reporter	series	page	court
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<i>R. v. Jordan,</i>	[2016]	1	SCR		631	
	[2016]	398	DLR	(4th)	381	(SCC)
	[2016]	335	CCC	(3d)	403	(SCC)

This table shows the case with citations to two different reporters, broken down into the various elements that comprise a traditional legal citation. Some of these elements are reviewed in more detail below:

style of cause	Italicised or underlined.
year	Round brackets are used if the reporter series is not organised by year. Square brackets are used if the reporter series is organised by year, such as the <i>Supreme Court Reports</i> and the <i>Western Weekly Reports</i> . A comma follows round brackets and precedes square brackets.
reporter	Use the abbreviation for the reporter.
series	Include the series number for reporters published in series, such as the <i>British Columbia Law Reports</i> and the <i>Dominion Law Reports</i> .
page	The page number may be followed by a pinpoint reference to a particular page in the decision. For example, a pinpoint reference to page 320 in the BCLR citation above would be (1992), 63 BCLR (2d) 316 at 320 (CA).
court	If the jurisdiction or court level are apparent from the name of the reporter, you do not need a full reference to the court.

Different courts may have their own citation rules, this information will be available on their websites.

13.8 Unreported decisions

Sometimes you must cite to a case that has no neutral citation, is not reported in print, and is not available electronically. Using the McGill Guide,⁸² the correct citation would be:

Lougheed Enterprises Ltd v Armbruster (31 January 1992),
Vancouver CA012380 (BCCA).

Where “CA012380” is the docket number.

If a decision has been assigned a neutral citation, cite the case using the neutral citation instead of using the unreported citation format.

13.9 Treatises and loose-leaves

The standard format for treatises is:

Author, Title (Place of publication: Publisher, Year).

The year is the date shown on the copyright page.

This must be modified for loose-leaf publications to show the date of the most recent release in the publication that was consulted. An example is:

SM Waddams, *The Law of Damages* (Toronto: Thomson Reuters,
2011) (loose-leaf updated 2011, release 20).

⁸² *Ibid* at E-71.

The 7th edition of the *Canadian Guide to Uniform Legal Citation* required that the citation to refer to the date when the loose-leaf was consulted. This has been changed in the 8th edition, which requires the citation to include the “update release” information, as in the example above.⁸³ The Supreme Court of Canada has also adopted the citation style shown in the example above.

This style is preferable because many loose-leaf publications are not consistently updated, making the date the book was consulted an unreliable indicator of its contents.

13.10 Journals and seminars

The standard format for journal articles is as follows:

Author, “Title of article” (Year) Volume: Issue abbreviated Journal Title First Page (Database Service, if applicable).

Here is an example:

Natasha Affolder, “Why study large projects: environmental regulation’s neglected frontier” (2011) 44 UBC L Rev 521.

Different information needs to be included for seminar papers:

Fisher, “Forest & Range Agreements and the Provincial Crown’s Duty to Accommodate”, Aboriginal Law Conference 2004 (Vancouver: Continuing Legal Education Society of BC, June 2004).

⁸³ *Ibid* at E-129.

13.11 Blogs and tweets

The standard format for citing a blog entry is as follows:

Author, “title” (date), online: name of website <URL of website>.

Here is an example:

Bill Braithwaite, “Regulators consider policy that would allow poison pills to remain unchallenged” (5 December 2011), online: Canadian Securities Law <<http://www.canadiansecuritieslaw.com>>.

The standard format for citing a tweet is as follows:

Name, “full content of tweet” (date and time), online: Twitter <twitter.com/full_path>.

Here is an example:

Martin Felsky, “Someone just asked a Relativity forum how to post 91,000 search terms. I always thought 200 were too many #ediscovery” (5 February 2017), online: Twitter <<https://twitter.com/mfelsky/status/828332894980546560>>.

13.12 Citation linking software

Some legal publishers have developed citation linking software that enable you to insert links to electronic versions of cases cited in your documents.

13.12.1 CanLII

The [CanLII hyperlinking tool](#) automatically creates links between citations in a submitted user HTML document and the cited cases and legislation on CanLII. It is accessed from the [Tools](#) link at the bottom of any page on CanLII.org.

The document is uploaded to a Lexum server, and a copy of the document is sent back to the user with the links inserted. The uploaded document is destroyed within 24 hours according to the Lexum privacy policy.

The links are built to CanLII's freely available cases and legislation, rather than to proprietary versions on a commercial service.

13.12.2 Lexis Advance Quicklaw and Westlaw Canada

Lexis Advance Quicklaw's Auto Link and WestlawNext Canada's CiteLinkCanada are commercial services for this. The advantages of these services are the broad scope of case law included and the fact that they are add-ins for Microsoft Word. However, each time you link to a document you will incur a "notional charge" for viewing the case, if your contract is configured that way.

Lexis Advance Quicklaw for Microsoft Office (QLMO) can automatically link citations in your Word documents to authorities on QL, and update the citator treatment codes.

13.12.3 SOQUIJ

SOQUIJ has also developed a [citation tool as a plugin of MS Word](#) which covers references according to the 8th edition of the *Canadian Guide to Uniform Legal Citation (McGill Guide)* and the 9th edition of the *Guide des références pour la rédaction juridique (Guide Lluelles)*⁸⁴. This tool enables lawyers and jurists to automatically switch references within Word according to the two prominent citation guides used in Québec.

⁸⁴ Josée Didier Lluelles, *Guide des références pour la rédaction juridique*, 9th ed. (Montreal, QC: Les Éditions Thémis, 2014).

13.12.4 Other programs

Other useful citation-based programs include:

- [LawCite](#): a free citator for Commonwealth jurisprudence (primarily English and Australian) that locates cases and their judicial consideration
- [Jureeka](#): a Firefox extension that converts legal citations that it recognizes into hyperlinks to a web page for the cited source (note: primarily for US citations but also recognizes Federal citations from Canada)
- [CiteGenie](#): a Firefox extension that creates Bluebook formatted pinpoint citations from Westlaw and Lexis
- [LII Citation Finder](#): a program under development by the Legal Information Institute that will scan a highlighted section of a web page looking for a US citations and deliver you to the cited legal resource

13.13 References

Court of Queen’s Bench of Alberta. “Notice to the Profession: Citation of Authorities”. (12 November 2013). *Alberta Courts* (webpage). Online: <https://albertacourts.ca/docs/default-source/Court-of-Queen's-Bench/notice-to-profession---citation-of-authorities.pdf>.

British Columbia Court of Appeal. “Civil & Criminal Practice Directive (Civil and Criminal): Citation of Authorities”. (30 May 2013). *British Columbia Court of Appeal* (webpage). Online: [http://www.courts.gov.bc.ca/Court_of_Appeal/practice_and_procedure/civil_and_criminal_practice_directives/PDF/\(CandC\)Citation_of_Authorities.pdf](http://www.courts.gov.bc.ca/Court_of_Appeal/practice_and_procedure/civil_and_criminal_practice_directives/PDF/(CandC)Citation_of_Authorities.pdf).

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McGill Law Journal. *Canadian Guide to Uniform Legal Citation*, 8th ed (Toronto: Carswell, 2014).

Cardiff University. *Cardiff Index to Legal Abbreviations*. Online: [<http://www.legalabbrevs.cardiff.ac.uk/>](http://www.legalabbrevs.cardiff.ac.uk/).

Colledge, Joanne & Léa Lapointe, “How does a ‘uniform’ citation guide fail to be uniform? A review of the Canadian Guide to Uniform Legal Citation” (2011) 74 Sask L Rev 275.

Duhaime.org. “Duhaime’s Legal Citations & Abbreviations”. Online: [<http://citations.duhaime.org/>](http://citations.duhaime.org/).

Martin, Peter. “Introduction to Basic Legal Citation” [US]. (Ithaca, NY: Legal Information Institute, 2016). Online: [<https://www.law.cornell.edu/citation/>](https://www.law.cornell.edu/citation/).

New York University School of Law. “Guide to Foreign and International Legal Citations”. 2006 J International L & Politics. Online: http://www.law.nyu.edu/sites/default/files/upload_documents/Final_GFILC_pdf.pdf>.

Mokanov, Ivan. “Environmentally-friendly Citations” (1 March 2010) *VoxPopuLII* (blog) online: [<https://blog.law.cornell.edu/voxpath/2010/03/01/environmentally-friendly-citations/>](https://blog.law.cornell.edu/voxpath/2010/03/01/environmentally-friendly-citations/).

Ontario Superior Court of Justice. “Filing of Judicial Decisions from Electronic Databases and Citation of all Judicial Decisions”. (14 July 2014, updated 1 January 2017). *Consolidated Provincial Practice Direction*. Online: http://www.ontariocourts.ca/scj/practice/practice-directions/provincial/#E_Filing_of_Judicial_Decisions_from_Electronic_Databases_and_Citation_of_all_Judicial_Decisions>.

Prince, Mary. *Prince's dictionary of legal citations*, 9th ed (Getzville, NY: Hein, 2017).

Queen's University Library. "Legal Citation" (3 October 2016). Online:

<<http://guides.library.queensu.ca/legal-citation>>.

SOQUIJ, " Aide à la citation : un outil expressément conçu pour les juristes du Québec " (13 December 2017) online : <<http://soquij.qc.ca/fr/a-signaler/nouveautes-azimut/aide-a-la-citation-un-outil-expressément-conçu-pour-les-juristes-du-quebec>>.

Appendix 1: Sample Memorandum of Law

This memorandum is provided for instructional purposes. It is not to be relied on as legal advice.

TO: Lawyer
FROM: Law Student
DATE: December 13, 1995
FILE NO: 20056-3
RE: Security documents executed and registered using debtor's common law name

Facts

An individual (the "Debtor") executed security documents on his own behalf using a name which was not his legal name. He signed using the name David Black, which he was using generally as his name at the time he executed the documents. However, his legal name is David Brown, and he has more recently begun using that name instead of David Black.

Our client (the "Bank") is the security holder. The security documents were registered against the Debtor's personal property in British Columbia in favour of the Bank, with the registration listing the Debtor as David Black.

The Bank is now concerned about whether its security is enforceable.

Issue

Will personal property security documents granted in favour of the Bank, signed and registered in British Columbia using the Debtor's common law name David Black, be enforceable against the Debtor and the Debtor's creditors now that the Debtor has changed to using his legal name David Brown?

Short conclusion

The law is clear that the security documents will be enforceable by the Bank as against the Debtor. However, there is a significant risk that the security documents, which have been registered under the name David Black in public registries, will not be enforceable against other creditors of the Debtor. If the Debtor had continued to consistently use David Black as his common law name, the registration would protect the Bank's security. The switch from Black to Brown brings the protection afforded by registration into question.

The Bank should take the following steps to protect its security. The entire transaction does not need to be re-executed, because the contracts signed by the Debtor are valid as against the Debtor. However, the security registration should be updated by a new filing reflecting the different name. One way would be to file notice of a change of name. Given the uncertainty as to when the Debtor goes by Black, and when he goes by Brown, the better route is to file under both names.

Discussion

General principles concerning names

At common law, a person could adopt any name in the community, provided that this was not done with any intention to defraud others. A person's legal name was the name the person was known by, determined merely as a question of common usage within the community. Though occasionally private acts were used to formally establish changes of name, the most common pattern was for the name change to be effected by

adoption, use and recognition in the community. *CED (West. 3rd)*, Vol. 34, “Vital Statistics”, at para. 47.

Legislation now governs legal name changes. However, the courts have held that the use of a name different from one’s legal name is still not illegal, so long as there is no intention to defraud or mislead. *CED (West. 3rd)*, Vol. 34, “Vital Statistics”, at para. 50.

The Privy Council considered the effect of signing a deed using a name different from one’s legal name in *Fung Ping Shan v Tong Shun*, [1918] A.C. 403 (P.C., on appeal from the Supreme Court of Hong Kong). At page 407 their Lordships stated:

A person who signs, seals, and delivers a deed of covenant cannot avoid liability under the deed by signing a name which he represents as, but which is not in fact, his own, nor can he saddle such liability on the person whose name he uses, unless he is the duly constituted attorney of such person.

Their Lordships held that though the defendant had signed his uncle’s name to the conveyance document when he had no authority to do so, the vendor thought it was dealing with the defendant rather than his uncle, and the defendant was therefore liable under the deed of conveyance. This case is cited as authority in both *Halsbury’s Laws of England* (4th ed.), Vol. 12, “Deeds and other Instruments”, at para. 1365, note 1, and *CED (West. 3rd)*, Vol. 11A, “Deeds and Documents”, at para. 25.

In summary, at common law one was entitled to use a name by which one was commonly known in the community. If one used a different name to sign a legal document, one would still be bound under that document.

Applying this rule to our facts, the Debtor is bound to the Bank under the security documents, even though he did not sign them using his legal name.

Registration regimes

Difficulties with the common law rule have arisen in modern times because of registration regimes that are name-dependent. There are several recent cases debating this issue in the context of PPSA registrations. Most of these cases deal with minor

differences between the legal name and the registered name, such as an incorrect or missing middle initial, or a misspelled first name. I have not dealt with these cases. A small body of cases discusses the problems that arise with a significantly different given name. An even smaller body of cases deals with differences in surnames.

The tendency in the more recent cases has been to afford a generous interpretation of the word “name” in the registration requirements, where the legislation does not specify that the name used in the documentation must be the individual’s legal name. However, this is balanced against the problems caused to third parties trying to search the registry under the legal name and finding no security documentation registered under that name.

British Columbia

The leading British Columbia case is *Re Lazarchuk* (1994), 7 P.P.S.A.C. (2d) 155 (B.C.S.C.), per Master Powers. The debtor had granted a chattel mortgage on a motor vehicle to the bank in the name of “Lazarchuk”. The debtor subsequently filed an assignment into bankruptcy under the name of “Lazarchuk”. The debtor’s birth certificate read “Lazarczuk” and as a result the assignment was changed to read “Lazarczuk”. However, all other identification of the debtor, including his driver’s licence and vehicle ownership, contained the spelling “Lazarchuk”. The debtor also stated in an affidavit that he always knew himself to be “Lazarchuk” and held himself to be such to the public. He was not aware that his birth certificate contained a different spelling of his surname.

The bank had registered its security interest under the name of “Lazarchuk” and under the correct serial number of the vehicle. The trustee in bankruptcy disallowed the bank’s claim as a secured creditor on the grounds that a name search would not reveal the bank’s interest and hence the error was seriously misleading. The trustee argued that section 9(1) of the *Personal Property Security Act*, S.B.C. 1989, c. 36 (“PPSA”) required that the debtor’s legal, true or right name, as indicated on some official document, should be recorded on the financing statement, and that strict compliance is necessary to preserve the integrity of the registration system under the Act. Hence, the trustee

argued that the bank's security interest was unperfected at the time of bankruptcy and was invalid as against the trustee.

The bank argued that additions should not be read into the PPSA and its regulations. Furthermore, the bank argued that name changes can occur without registration under the *Name Act* and under common law, and there is nothing to invalidate these changes. The bank therefore argued that its registration and security interest should be valid as against the trustee.

Master Powers noted that this was a case of first impression in British Columbia. He made the following general comments about name changes at pages 162 and 163:

A person may have more than one name, or may be known by more than one name, or may change their name without going through a formal process which results in a record of that change. The person's birth certificate may contain the name under which their birth was registered, or be issued in a different name if that change has been officially recorded with Vital Statistics. A person may use a surname of their spouse, the name they obtained by adoption, or at birth or their surname immediately before marriage, if they are a married person. The Name Act, s 2.1, does not appear to place any restriction on when a person begins using a particular surname or any restriction that prevents them from using one particular surname and then another and reverting to the original or, in fact, to what may be a third surname. The Name Act does not appear to require any formal registration of such an election or use.

In addition, there does not appear to be anything which invalidates a change of name by common-law even though that change might be an offence under the Name Act.

Master Powers then reviewed the PPSA and its regulations, and concluded that the references to "name" in that legislation were not restricted to the "legal name" of the debtor:

I conclude that the regulations should not be interpreted to deprive the bank of its security in a case of this nature. The regulations do not say which name the security must be registered in and I would also find from the evidence that the bankrupt's name is Lazarchuk, not Lazarczuk as shown on his birth certificate. The name Lazarchuk is the name which he has acquired at common-law. I am not making any determination as to whether or not his

name may not also be Lazarczuk as registered by his birth. This may simply be a case where he had, in fact, two names and the regulations of the PPSA do not specify which name is to be used. Therefore, I conclude the bank has properly registered its security as required by the PPSA and that its security is valid as against the trustee.

This case comes out strongly in favour of the bank and therefore supports the position our client wants to take with respect to the Brown financing. However, there are several problems with relying on this case. It was decided only at the level of a Master. It is the only British Columbia case on this issue. The two surnames in our case are completely different, rather than having a slightly different spelling. Furthermore, the Debtor has now started using Brown, his legal name, as his surname. This confuses the issue and would enable a court to distinguish our case from that of Mr. Lazarchuk.

Alberta

The Alberta Court of Appeal took a similar approach in *Miller, McClelland Ltd. v Barrhead Savings & Credit Union Ltd.*, [1995] 5 W.W.R. 170 (Alta. C.A.). The bankrupt in that case had three given names, but was commonly known and referred to by only the second of the names. His driver's licence, income tax returns, personal resume and professional certificates, presented when he applied for a loan with the credit union, all identified him by the second name. The credit union registered financing statements under the PPSA (Alta) showing only the second given name. Bankruptcy proceedings were later commenced using the bankrupt's first given name, under which no PPSA registrations were shown. The registrar in bankruptcy disallowed the credit union's claim, and the disallowance was upheld by the bankruptcy judge. These rulings were overturned on appeal.

The Alberta Court of Appeal held that neither the *Personal Property Security Act*, S.A. 1988, c. P-4.05 nor the regulations under it prescribed unequivocal identification criteria. They merely provide that the debtor is to be identified by his or her last name, followed by his or her first name and middle name, if any. The term "first name" is not defined in the Alberta PPSA or regulations and should not be presumed to refer to a precise term such as "given name". The Alberta Court of Appeal held that even though registry

guidelines published by the Attorney General directed that the birth certificate name be used in registering securities, those guidelines did not have binding legal effect. Accordingly, the registration using only the second given name and the surname was held to be in compliance with PPSA requirements.

The key in both the Alberta and British Columbia cases is that the name used by the debtor on the security documents was the debtor's common law name, in the sense that the debtor consistently used that name and was known by that name in the community. A different result may arise where the debtor does not consistently use the same name, as in our case.

Ontario

In *Re Grisenthwaite* (1987), 43 R.P.R. 304 (Ont. Sup. Ct.) the borrower used different last names. Her maiden name was J.C. Smith. She adopted her first husband's name, Gullins, on marriage. After his death and her remarriage to W. Grisenthwaite, she used various last names, including "Gullins", "Gullins Grisenthwaite", and "Grisenthwaite". A security document and financing statement in favour of the chattel mortgagee with respect to a motor home described the debtor as "J.C. Gullins". The trustee in bankruptcy of the debtor sought directions as to whether this security was valid.

Master Browne noted that the Ontario legislation did not define what is the proper surname for use in a PPSA financing statement. He noted that the *Change of Name Act*, R.S.O. 1980, c. 62 placed some restrictions on common-law rights with respect to name changes, but did not necessarily change those rights. In particular, he held that at common law the debtor was entitled to use the various names she was using. However, he held that her true name and surname for purposes of compliance with the regulations under the *Personal Property Security Act*, R.S.O. 1980, c. 375 was "Grisenthwaite", as she had adopted by usage her new husband's name. That adoption had the effect of an election. Such an adoption was acknowledged to cause a change of name under the *Change of Name Act*.

This case implies that the only name that is valid for PPSA registration is the name that is the legal name under the *Change of Name Act*. In this respect, it is narrower than the later case law summarized above. However, this case was decided several years prior to those cases. The recent Alberta and British Columbia case law takes a more liberal approach.

Summary

When considered together and analyzed, the combined effect of this case law appears to be as follows. Where the debtor uses more than one name, then the name to be used for PPSA registration must be the debtor's legal name. On the other hand, if the debtor consistently uses the same name and has therefore adopted it at common law, registration in that name will be valid for PPSA purposes. Thus, in this case, if David Black was continuing to use that name, even though his birth certificate name is David Brown, then registration under David Black should be valid because it would be his common law name. However, if he is using both names, or has abandoned Black in favour of Brown, then the documentation should be registered in his legal name.

Recommendation

As a result of this analysis, the Bank should take the following steps to protect its security. The entire transaction does not need to be re-executed, because the contracts signed by the Debtor will be valid as against him. However, the security registration should be updated by a new filing reflecting the different name. One way would be to file notice of a change of name. Given the uncertainty as to when the Debtor goes by Black, and when he goes by Brown, the better route is to file under both names.

Appendix 2: Suggested Textbooks

This selective list of primarily Canadian legal texts is a quick starting point for secondary source research. It is not comprehensive, and does not cover specialised areas of practice such as securities and tax.

Aboriginal Law

Borrows, John. *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016).

Borrows, John & Leonard Rottman. *Aboriginal Legal Issues: Cases, Materials and Commentary*, 4th ed (Markham, On: LexisNexis Canada, 2015).

Hoehn, Felix. *Reconciling Sovereignties: Aboriginal Nations and Canada* (Saskatoon: Native Law Centre, University of Saskatchewan, 2012).

Imai, Shin. *Annotated Aboriginal Law: The Constitution, Legislation and Treaties 2017* (Toronto: Carswell, 2016).

Issac, Thomas. *Aboriginal Law: Commentary and Analysis*, 5th ed (Toronto: Thomson Reuters, 2016).

———. *Aboriginal Law: Supreme Court of Canada Decisions* (Toronto: Carswell, 2016).

Macaulay, Mary Locke. *Aboriginal and Treaty Rights Practice* (Toronto: Carswell, 2000).

Olthuis, John *et al.* *Aboriginal Law Handbook*, 4th ed (Toronto: Carswell, 2012).

Woodward, John, *Native Law* (Toronto: Carswell, 1989).

Administrative law

Blake, Sarah. *Administrative Law in Canada*, 5th ed (Markham, On: LexisNexis Butterworths, 2011).

Brown, Donald JM & John M Evans. *Judicial Review of Administrative Action in Canada*, 2nd ed (Toronto: Carswell, 2009).

Flood, Colleen & Lorne Sossin. *Administrative Law in Context*, 2nd ed (Toronto: Emond Montgomery Publications, 2013).

Jones, David P & Anne S de Villars. *Principles of Administrative Law*, 6th ed (Toronto: Thomson Carswell, 2014).

Keyes, John Mark. *Executive Legislation* (Markham, On: LexisNexis Canada, 2010).

Régimbald, Guy. *Canadian Administrative Law*, 2nd ed (Markham, On: LexisNexis Canada, 2015).

Van Harten, Gus; Gerald Heckman & David J Mullan. *Administrative Law: Cases, Text, and Materials*, 7th ed (Toronto: Emond Montgomery, 2015).

Woolf, Lord Justice & Jeffrey Jowell. *de Smith's Judicial Review of Administrative Action*, 7th ed (London, UK: Sweet & Maxwell, 2013).

Arbitration

Blackaby, Nigel *et al.* *Redfern and Hunter on International Commercial Arbitration*, 6th ed (Oxford: Oxford University Press, 2015).

Born, Gary. *International Arbitration: Law and Practice*, 2nd ed (Den Haag: Kluwer Law International, 2016)

Casey, J Brian. *Arbitration Law of Canada: Practice and Procedure*, 2nd ed (Huntington, NY: Juris, 2015).

McEwen, J Kenneth & Ludmila B. Herbst. *Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations* (Aurora, On: Canada Law Book, 2013).

Sutton, David S; Judith Gill & Matthew Gearing. *Russell on Arbitration*, 24th ed (London: Sweet & Maxwell, 2015).

Schwartz, Eric A & Yves Derains. *Guide to the ICC Rules of Arbitration*, 2nd ed (Den Haag: Kluwer Law International, 2005).

Banking

Baxter, Ian EF. *Law of Banking*, 4th ed (Scarborough, On: Carswell, 1992).

Crawford, Bradley. *The Law of Banking and Payment in Canada* (Aurora, On: Canada Law Book, 2008).

Crawford, Bradley & John Delatare Falconbridge. *Banking and Bills of Exchange: A Treatise on the Law of Banks, Banking, Bills of Exchange and the Payment System in Canada*, 8th ed (Toronto: Canada Law Book, 1990).

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Appendix 3: Glossary

A

All Canada Weekly Summaries

Canadian case digests available on the WestlawNext Canada platform and by subscription to the BestCase Library.

American Digest System

Case digests for American law, comprised of three different series: the Centennial Digest (cases up to 1896); the Decennial Digest (a number of sets covering either 10 or 5 years of cases, commencing in 1896); and the General Digest (volumes covering the period since the most recent Decennial Digest). The case digests are classified using the [West Key number system](#). This publication is the US equivalent to the [Canadian Abridgment Case Digests](#).

American Law Reports

Important American cases are published, with an accompanying annotation summarising other cases dealing with the same point of law. Subsequent cases on the point of law are included in updates to the annotation. Usually referred to as ALR annotations. Available on databases in [Lexis](#) and [Westlaw](#).

AmJur 2d

A legal encyclopedia covering American law, published by Lawyers' Cooperative.

Annotated statutes

An annotated statute is published with section by section commentary. The commentary usually contains the legislative history of the section, or references to cases considering the section, or both.

B

BCLaws

A government website at BCLaws.ca that publishes a current consolidation of British Columbia statutes and regulations.

BestCase Library

An online legal research collection published on the WestlawNext Canada platform through a separate subscription. The BestCase Library provides access to a comprehensive collection of unreported decisions from 1977 to present, and also includes cases reported in reporters previously published by Canada Law Book, such as the *Dominion Law Reports*, *Canadian Criminal Cases*, *Labour Arbitration Cases*, *Canadian Labour Arbitration Summaries*, and *BC Labour Relations Board Decisions*. The cases from these reporters are published in PDF and include the same headnotes and editorial enhancements from the print reporters.

Black's Law Dictionary

An American legal dictionary. Available in print, on a mobile app, and on WestlawNext Canada in database DI.

Boolean

A system of search notation that allows controlled searching of content. Most systems that support Boolean logic support similar functionality, including “AND”, “OR”, “NOT”, and proximity operators. Check the help pages of the services you are using to see what commands to use as they differ between systems.

C

Canada Digest

The Canada Digest contains summaries of Canadian cases organized under the LexisNexis Classification System, added to Lexis Advance Quicklaw by topic. All titles of the Canada Digest are included in full service subscriptions. Subscribers to practice pages have access to Canada Digest titles relevant to the practice area.

Canada Law Book

Canada Law Book was a publisher that published case reporter series (including the *Dominion Law Report* series), annotated legislation, and Canadian treatises. It was purchased by Thomson Carswell who maintained the imprint name.

Canadian Abridgment

A comprehensive Canadian research tool published by Carswell and comprised of the *Key and Research Guide*, *General Index*, *Consolidated Table of Cases*, *Canadian Abridgment Case Digests*, *Canadian Current Law*, *Canadian Case Citations*, *Canadian Statute Citations*, *Annual Legislation*, and the *Index to Canadian Legal Literature*. The *Abridgment* also includes *Words and Phrases Judicially Defined in Canadian Courts and Tribunals*.

Canadian Abridgment Case Digests

Digests of Canadian cases from 1803 to present published in the Canadian Abridgment. Available electronically as the Canadian Abridgment Digests on [WestlawNext Canada](#).

Canadian Case Citations

The case citator portion of the [Canadian Abridgment](#). Published in print format as part of the Abridgment. Available electronically through KeyCite on [WestlawNext Canada](#).

Canadian Case Summaries

Canadian and UK case digest service available on [Lexis Advance Quicklaw](#) in the CCS database, with Canadian digests from 1968 and some UK digests from as early as 1573. Includes the [Dominion Report Service](#) case summaries.

Canadian Converter

Companion volumes to the third edition of [Halsbury's Laws of England](#), using the same subject headings and paragraph numbering as the third edition. For each subject title, Canadian cases and statutes are listed that relate to the point of law covered in the third edition of *Halsbury's*.

Canadian Current Law

A monthly update service for the [Abridgment](#), updating [Canadian Case Digests](#), Words and Phrases, and the [Consolidated Table of Cases](#).

Canadian Encyclopedic Digest

The *Canadian Encyclopedic Digest* (CED) is a legal encyclopedia, rather than a collection of case digests. A legal topic is summarised, with footnote references to relevant cases and statutes. The CED is published in a Western edition and an Ontario edition, though some titles are the same for both editions. Both versions of the CED are available on [WestlawNext Canada](#).

CanCite

A case citator service covering Canadian cases decided since 1940. It ceased print publication in 1994, but has been continued online by Lexis Advance Quicklaw under the name QuickCITE.

CanLII

[CanLII](#) provides free access to Canadian judgments, administrative decisions and statutory material. The [scope of coverage](#) varies by jurisdiction. The site is funded by the Federation of Law Societies of Canada. You can read more about it on their [about page](#).

Case digests

Case digests are brief summaries of case law that identify the primary area of law and outline the fact pattern. They can be useful when researching case law, because they can help identify important cases more efficiently than keyword searching.

Consolidated statute

A consolidated statute is one in which amendments to the statute since the last [revision](#) have been incorporated.

Consolidated Table of Cases

This publication lists all cases digested in the [Abridgment](#). It provides parallel citations, and includes lower court decisions and appellate decisions in the same entry. As a result, this publication provides a quick way to determine whether a case you are researching was overturned or upheld on appeal. Lastly, every case entry also indicates the digest references for the case. If you know of a relevant case, going directly to the digest entry for that case is a fast way into the classification scheme, and it will take you to digests of other cases on the same point of law.

Corpus Juris Secundum

A legal encyclopedia covering American law, published by West.

D

Dominion Law Reports

A case reporter published since 1912, covering important legal decisions from across Canada. Available electronically by subscription to the [BestCase Library](#).

The Digest

A case digest service covering English and Commonwealth law.

E

F

Free text searching

Free text searching allows researchers to enter search terms without commands. It is usually run against the full text of the documents being searched by default.

G

H

Halsbury's Laws of Canada

A legal encyclopedia covering Canadian law. Available in print and electronically through Lexis Advance Quicklaw.

Halsbury's Laws of England

An authoritative legal encyclopedia covering English law. Currently in its 5th edition, with cumulative supplements and updates. The 3rd edition includes the [Canadian Converter](#).

Hansard

Hansard is the published transcripts from parliamentary proceedings. It is published in bound volumes and online. It is accessible via keyword searching and through the index. It is named for Thomas Curson Hansard, the first official printer to the parliament at Westminster.

HeinOnline

[HeinOnline](#) is an electronic subscription service containing an extensive collection of full text law journals in PDF. It also contains historical Canadian legislation, Supreme Court of Canada decisions, and the *English Reports*.

I

Index to Canadian Legal Literature

An index covering Canadian legal books and periodicals. It is available in print form as part of the [Canadian Abridgment](#), electronically on [WestlawNext Canada](#), and under Legal Indices & Tables on [Lexis Advance Quicklaw](#).

J

K

Key and Research Guide

A black looseleaf binder that contains a list of subject titles for the [Canadian Abridgment Case Digests](#), and a key to the full classification scheme for the digests.

KeyCite

The citator used in WestlawNext Canada products for ascertaining the history of a case and whether a case or statute has been judicially considered or commented

on in legal commentary. KeyCite*Canada* on LawSource includes judicial consideration and secondary source commentary on Canadian cases, judicial consideration of Canadian legislation, and judicial consideration by Canadian courts of cases from other jurisdictions.

L

LawSource

An electronic research tool for Canadian case law which is part of [WestlawNext Canada](#). Contains the *Abridgment Case Digests*, the *Canadian Encyclopedic Digest*, Canadian case law, KeyCite for Canadian cases and statutes, *Words & Phrases*, statutes and selected regulations, rules of court for Canadian jurisdictions, the *Index to Canadian Legal Literature*, and the ability to link to documents in other WestlawNext Canada products.

Lawyer's Daily

A Canadian legal website published by LexisNexis Canada and available on [Lexis Advance Quicklaw](#). Excerpts are available on the [Lawyer's Daily web page](#). Contains articles and case digests. Formerly *The Lawyer's Weekly*.

LegalTrac

An index to over 850 legal periodicals from US and Commonwealth jurisdictions. Available electronically as Current Law Index and Legal Resources Index, and in print as the Current Law Index.

Legislation

Legislation is law that has been passed or authorized by a parliamentary body such as the Parliament of Canada or provincial and territorial legislatures. Legislation includes [statutes](#) and [regulations](#). Statutes are enacted by the

parliamentary bodies, and parliamentary bodies authorize the creation of regulations by bodies such as government departments.

LLMC

[LLMC](#) is a non-profit cooperative of libraries with a growing collection of digital legal materials consisting of international historical documents. Includes a growing collection of Canadian materials. See what is included [here](#).

Looseleaf

Looseleafs are books published in a format that includes regular updating of their contents. They include binder(s) for the pages, and loose pages. They are periodically updated, with “releases” being mailed to customers. There have been issues with the cost of looseleafs and their maintenance. Many looseleaf titles are not available electronically as ebooks.

M

Maritime Law Book

See [VLex Canada](#).

N

Natural language searching

Natural language searching allows researchers to enter search terms without commands using language in format people use to communicate. It can be useful, especially on systems with good algorithms. Results may not include all search terms included in the search, and result sets can be very large.

O

Official version

Some legal publications, such as the *Supreme Court Reports* and print volumes of statutes, are published by courts or government printers, and are considered “official versions” of the law. Other versions, such as *Ontario Reports*, are semi-official and have similar levels of authority. Publishers produce other unofficial versions. It is preferable to use official versions when they are available.

Ontario Reports

A case reporter published since 1882 covering Ontario decisions. Between 1901 and 1931, the reporter was called the *Ontario Law Reports*.

P

Primary sources

[Statutes](#), [regulations](#), by-laws, case law, and administrative rulings are primary sources of law. Though [secondary sources](#) may rationalize and explain the law more clearly than the primary sources, the primary sources establish the law. Therefore, in legal memoranda, opinion letters, legal argument, and facta, you must cite primary sources to support your conclusions and arguments.

Q

Quantum services

Quantum services are databases that provide numerical information about court judgements. These are most common in areas of practice that involve ranges of numerical values, such as sentencing and personal injury damages.

QuickCITE

A case citation service for Canadian cases and legislation on [Lexis Advance Quicklaw](#).

Quicklaw

Now called Lexis Advance Quicklaw. A Canadian collection of computer research databases, containing statutes, comprehensive coverage of full text Canadian cases since 1986 (with stronger historical coverage for some jurisdictions and case reporters), a case citator, and a variety of case digests and [topical databases](#). Full information is available at [LexisNexis.ca](#).

R

Regulations

Regulations are subordinate legislation, passed by the provincial or Federal Cabinet pursuant to delegated powers in Acts of the legislature or parliament.

RSS

RSS stands for Really Simple Syndication. RSS feeds can be used to send you new case law and legislation, news articles, government information, and blog entries. You receive information feeds from various internet sources so that you do not have to visit individual sites to obtain the information. To use RSS, you have to set up an RSS reader. Free web-based options for this include [Feedly](#), [The Old Reader](#), and the [Digg Reader](#). Another option is to use your desktop email program or web browser to receive and organize feeds. Once you have determined the set-up for your RSS reader, and found information of interest to you, check for RSS subscription information and set up the subscription. An easy first step is to subscribe to a CanLII RSS feed for cases and legislation for your jurisdiction, or for updates on your CanLII searches.

S

Secondary sources

Secondary sources in traditional legal research are either commentary on the [primary sources](#) of law, or finding tools used to locate the primary sources of

law. Texts, periodical articles, and encyclopedias are examples of commentary. Digests, citators and indices are examples of finding tools.

Sessional volumes

Each legislative session, new legislation is passed. This legislation is eventually published in a sessional volume. If you are conducting legislative research and need to find an act, you usually look it up either in the sessional volume for the year in which it was passed, or in the [consolidated](#) revised statutes. The sessional volumes contain the [official version](#) of the statutes. However, they are cumbersome to use because amendments are not consolidated in the sessional volumes.

Slaw.ca

A co-operative blog about Canadian legal research and related technology at [slaw.ca](#).

Statutes

Statutes are the laws that are passed by parliamentary bodies. Along with [regulations](#), statutes are [legislation](#).

Statute citator

This term can refer to two different types of publications. A statute citator's primary function is to keep track of legislative amendments. Some statute citators purport to also cover judicial consideration of statutes, but usually do not achieve or strive for comprehensive coverage in this respect.

Statute revision

Canadian statutes are periodically revised to incorporate and consolidate amendments to the statutes. This is traditionally done every 15 to 20 years. The

Federal statutes were last revised in 1985. Now that legislation is consolidated on an ongoing basis, there is less need for general revisions. However, limited revisions often occur, where a particular statute is completely replaced by a new Act.

T

Topical reporters

Some case law reporters contain cases on a specific area of law, such as the *Canadian Cases on the Law of Torts*, or the *Canadian Insurance Law Reporter*. In addition to reporting cases, these publications often contain annotations commenting on particular cases. The cumulative indices for topical reporters can be a useful finding tool.

U

V

VLex Canada

VLex Canada was formerly Maritime Law Book, which published Canadian case reporters, all using a sophisticated topic number classification system. Case reporters published by Maritime Law Book include *British Columbia Appeal Cases*, *Alberta Reports*, *Saskatchewan Reports*, *Manitoba Reports*, *National Reporter*, *Federal Trial Reports*, *Atlantic Provinces Reports*, *Western Appeal Cases*, *Ontario Appeal Cases*, *Yukon Reports*, *New Brunswick Reports*, *Nova Scotia Reports*, and *Newfoundland and Prince Edward Island Reports*. Electronic research in this family of reporters is enhanced if you search on the topic name and number for your legal issue. VLex Canada makes some content available for free after registration for an account, they also have paid subscriptions. The case coverage on VLex is not comprehensive, especially for cases later than 2016.

W

Weekly Criminal Bulletin

Digests of Canadian criminal cases. Available on the WestlawNext Canada platform as part of CriminalSource, or by separate subscription.

West Key number system

A subject classification system used in West case reporters, case digests, and citators to facilitate legal research.

Western Weekly Reports

A case reporter published since 1911 containing decisions of the Western provinces and the Supreme Court of Canada. Available on [WestlawNext Canada](#).

WestlawNext Canada

[WestlawNext Canada](#) is an internet-based platform for Canadian legal research. Modules available on this platform include LawSource, InsolvencySource, FamilySource, CriminalSource, EmploymentSource, LabourSource, SecuritiesSource, and the BestCase Library. LawSource contains the *Abridgment Digests*, the *Canadian Encyclopedic Digest*, Canadian case law, KeyCite for Canadian cases and statutes, statutes and selected regulations, rules of court for Canadian jurisdictions, the *Index to Canadian Legal Literature*, and the ability to link to documents in other Westlaw products.

X

Y

Z
