Introduction
Let’s start this checklist by saying – don’t be intimidated by the research process. The steps set out in the checklist reflect the ideal scenario in which you have every resource at your fingertips and a handy librarian to help you out when you are in a jam. But, as we know, life is not always like that. You may not have access to any texts; you may have only been given 15 minutes to find the leading case on a particular topic; or you may just not be able to find a direct answer to your question.

Whatever your situation, you can still make use of this checklist. You may have to skip a step or two depending on the resources at hand but as long as you have been systematic in your research and have made detailed notes on where you looked and what you have found, you will be able to justify your research findings. Keeping detailed notes is particularly important where you have been unable to locate any relevant authorities as these notes will show that you have looked at the available resources and done your research thoroughly as possible in your particular circumstances.

About Pro Bono Students Canada
PBSC is a national pro bono organization with a chapter in every law school in Canada. PBSC provides legal services without charge to organizations and individuals in need from coast to coast. PBSC’s mission is to provide law students with opportunities to develop their legal skills; to have a positive impact on the legal profession through the promotion of a pro bono ethic; and to increase access to justice in Canada. PBSC’s impact on access to justice in Canada is remarkable. Each year, about 1,500 PBSC law student volunteers – fully a quarter of all law students in Canada – provide approximately 120,000 hours of free legal services to between 400-500 public interest and other community organizations, courts and tribunals across the country. For more information, go to www.probonostudents.ca.

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STEP I:

Plan Before You Start

✅ Look at the problem and identify the facts and legal and other issues to be examined.

✅ When beginning your research start with the general and move toward the specific. Locate the broad concepts in texts and other sources of commentary and then move to the specifics when you have a clear understanding of the issues at hand.

✅ Don’t forget, research is an iterative process. You will need to repeat the steps a few times as new information appears in order to ensure your research is complete.

✅ Ask your librarian to assist you in planning your research. A librarian can help you to identify where information might be located and to formulate your search strategy.

Notes: in addition to conducting legal research, your research may involve looking at social science or public policy sources. The courts are increasingly accepting social science evidence as persuasive. This evidence may include “government reports, law reform commission reports, social science studies, or statistics. These … sources can provide insight into the social purposes … context … and institutional framework in which legislation is intended to operate” (McCormack, Papadopoulos and Cotter, p. 205)

One example is the Morgentaler case ([1988] 1 S.C.R. 30) in which the court referred to evidence from Statistics Canada (Basic Facts on Therapeutic Abortions). So keep in mind the need to do research other than legal research when you are looking at public policy issues.
Always Start with Secondary Sources

Secondary sources are not the law; they do not have binding authority in the courts, but they may have persuasive authority.

Secondary sources include:

1) Finding Tools – help to locate the primary sources and commentary
   • Case law digests, citators
   • Journal indexes

2) Commentary – explains and describes the law and points to primary sources.
   • Texts, articles, encyclopedias, legal dictionaries, words and phrases, wikis, blogs and law firm newsletters.

Secondary Sources: Texts, Loose-leaf Services, Law Reform Commission Reports, Continuing Legal Education Materials, Government Reports

• These sources are the best starting point because they are written by experts and provide a broad academic or practical overview of the subject.
• To locate these sources, search your library catalogue or better still refer to published bibliographies which identify the best resources available.

Examples:
- Tjaden, Legal Research and Writing, 3rd edition. 2010. Irwin
  Chapter 8: Legal Research by Topic
- Eaton and Lemay, Essential Sources of Canadian Law. 2009. Irwin

Notes: Once you have read through a couple of texts, you will have an idea of the concepts, keywords and terms that you will need to explore to build on your understanding of the topic. To streamline your research, make note of the terms to be researched as well as the primary sources you might want to look at. One caveat – texts are not always current – to keep your research up to date you must check current sources of information.
Secondary Sources: Blogs, Wikis and Law Firm Newsletters

- Are useful for finding background information on very current issues, cases that are before the courts or issues that are in the news.

- Be aware that these sources may not be authoritative. Always check the authorship to ensure that the information is coming from a reliable source: an academic institution or a law firm for example.

Notes: What about Google or other search engines?

Generally, it is not a good idea to base your research on Google; you will get too many false hits of questionable authority.

There are two instances when you might want to use Google.

1) for preliminary searching (when you know absolutely nothing) – a quick search may provide you with background information or vocabulary
  - or –

2) for very specific searching – when you know exactly what you are looking for, a particular website or document for example.

In the area between these two extremes you will need to be very careful if you are using Google for your research.

(Taken from Fitzgerald and Barker, The Ultimate Guide to Canadian Legal Research, LexisNexis 2010)

Secondary Sources: Legal Encyclopedias

- Build on your knowledge by checking an encyclopedia. Encyclopedia entries are written by subject experts, and provide a brief overview of most of the topics relevant to Canadian Law. Each paragraph describes a particular point of law with very little commentary and provides
references and links to relevant cases and legislation. Encyclopedias have multiple points of access, including indexes, tables of cases and tables of legislation.

Examples:
- *Canadian Encyclopedic Digest* in Westlaw Canada
- *Halsbury’s Laws of Canada* on Quicklaw/LexisNexis

Both are available in print and online and are updated regularly. In the online version the updates are consolidated into the text but in the print version you will have to check the hard copy supplements.

Notes: Don’t take it for granted that this information will be up to date. Always check the currency date to ensure that your information is as up-to-date as possible.

If using a print version of an encyclopedia, take advantage of the indexes and finding tools available. If using an online version, you can do a keyword search (now that you know what terms to look for) or browse the tables of contents to locate the appropriate information.

**Secondary Sources: Legal Dictionaries and Words and Phrases**

- Legal terminology is very specific and so you should not take it for granted that you know the meaning of a term or expression. Further, you will need to know if a term or expression has been defined by the court in a particular way. These resources also point to primary sources of law when appropriate.

Examples:
- *Words and Phrases Judicially defined* (in print or on Westlaw Canada)
- *Canadian Legal Words and Phrases* on Quicklaw/LexisNexis

**Secondary Sources: Journals and Periodicals**

- It is always a good idea to see if there are any journal articles on your topic. These are generally written by legal scholars and usually cover current or developing or controversial issues. They usually provide references to primary and other useful secondary resources and they may have persuasive influence in court.
Secondary Sources: Journals and Periodicals – Finding Tools – Journal Indexes

- Start your research using a journal index.
  - Indexes speed up the research process by providing references to the article’s author, title, and citation as well as to abstracts and subject headings, the latter of which you can use to locate other articles on the same issue.
  - Indexes are more comprehensive than full text databases.

Examples:
- Index to Canadian Legal Literature
- Index to Foreign Legal Periodicals
- Index to Legal Periodicals and Books
- Index to Legal Periodicals Related to Law
- LegalTrac
- Criminal Justice Abstracts
- Hein Online Law Journal Library Search
- Social Science Index
- Social Science Research Network (for very current legal and social science research)

Notes: Researchers are often reluctant to search indexes as they think everything is available in the full text journal databases. But, in reality, they are likely to miss something if they limit their search to these databases only. As an example, the Index to Canadian Legal Literature indexes approximately 200 legal resources, while the Law Reports Articles and Journals database on Westlaw Canada only includes the contexts of approximately 50 law reports and journals and the All Canadian Legal Journals database on Quicklaw/LexisNexis includes only the contents of approximately 30 law journals. Using a journal index, however, might be a two step process as once you have located the index entry you will then need to locate the full text of the article.
STEP 2:

✅ Secondary Sources: Journals and Periodicals – Using Full-Text Journal Databases
- Full Text Databases are convenient when you know what article you are looking for or if you are searching for specific situations rather than broad legal concepts.

Examples:
- Hein Online
- *Law Reports Articles and Journals* on Westlaw Canada
- WORLD-JLR on Westlaw Canada
- *All Canadian Legal Journals* on QuickLaw/LexisNexis

✅ Secondary Sources: Newspapers
- Newspapers are great for factual information and for examining the social and political context of current issues. Your library will subscribe to a number of newspaper databases. Check with your librarian for assistance.

✅ Secondary Resources: Parliamentary Material
- When researching parliamentary material, remember; ask for help, the librarian is your best friend. Parliamentary debates are an excellent source for locating the context or intent behind a particular piece of legislation. Current debates and government committee reports are available from the government websites. You may need to go to the law or government documents library for assistance in locating older material.

✅ Secondary Resources: Finding Tools – Case Law Digests
- Digests are summaries of cases organized by subject. These summaries enable researchers to quickly read about the cases. Each case is also assigned one or more subject headings which allow researchers to locate similar cases very easily.

Examples:
- *The Canadian Abridgment* (in print and on Westlaw Canada)
- *The Canada Digest* on QuickLaw/LexisNexis
STEP 3:

Primary Resources – Case Law and Legislation

✓ Primary sources of law in the common law system are case law and legislation.

✓ If you have done your research properly, at this point you will probably have a list of citations to the primary sources of law that govern the issue that you are researching and you should be able to go directly to those sources.

✓ Primary Resources: Case Law

• Case law consists of the written record of a judge's reasons for judgment. Cases can be reported, i.e. published in a commercially printed reporter or unreported.

• Most recent cases are available electronically and easy to locate if you have the citation or name of the case. For older cases you may need to locate the print reporters which are available in most law libraries.

• Search the full text databases when you are looking to match broad concepts and/or specific fact situations.

Sources for Case Law:
- Westlaw Canada
- Quicklaw/LexisNexis
- CanLII (a free source)

Notes: Cases will have either authoritative or persuasive value depending on the court level and jurisdiction. Cases from the Supreme Court are binding for all jurisdictions in Canada; cases from lower courts are only binding in their originating jurisdiction although they may have persuasive value in other jurisdictions. Older cases that are still good law should be included in your findings.

Most cases are identified by abbreviated citations – to find out what an abbreviation means check out the Cardiff Index to Legal Abbreviations, http://www.legalabbrevs.cardiff.ac.uk/.
Primary Sources – Legislation

- Legislation research is complex. You will need to locate legislation as it was on the date of the matter being researched. Don't forget, you can ask your librarian for help.

- For current matters you will need to locate statutes that are still in force. It is relatively easy to locate current consolidated legislation, and their related regulations, on the various government websites. The Bora Laskin Law Library has compiled links to all these websites on their Internet Sources of Current Canadian Legislation and Parliamentary Material webpage.

Other Sources of Current Consolidated Legislation:
- Westlaw Canada
- Quicklaw/LexisNexis
- CanLII

Notes: Legislation located in commercial databases or on CanLII is not considered to be official and cannot be presented to court. Legislation located from the websites of the various jurisdictions is generally (with the exception of those from the Ontario, Quebec and the Federal Governments) not considered to be official either. So it is likely that you will have to refer to the print versions if going to court.
STEP 4:

Note up Case Law, Statutes and Regulations

✔ Note up Case Law
  • To see if a case has been appealed to a higher court and how it was treated by that court
  • To check how other cases have considered that case. A step which will, in essence, help you locate other cases on the same subject matter
  • To tell if a case is a leading case, look at the court level of the decision and at number of times it has been cited.

Sources for noting up case law:
  - KeyCite Canada on Westlaw Canada
  - QuickCITE Case Citations on Quicklaw/LexisNexis
  - On CanLII – with limited coverage
  - Canadian Case Citations in print

✔ Note up Statutes and Regulations
  • To see how the courts have treated or considered a particular statute or regulation

Sources for noting up legislation:
  - KeyCite Canada on Westlaw Canada
  - QuickCITE Statute Citations on Quicklaw/LexisNexis (does not note up regulations)
  - On CanLII – with limited coverage
  - Canadian Statute Citations in print
  - Canadian Regulations Judicially Considered in print

Selected Bibliography of Canadian Sources on Legal Research and Writing


GLOSSARY OF TERMS

**Appeal:** Resort to a higher court/tribunal to review the decision of a lower court/tribunal

**Canadian Abridgment Digests:** Summaries of cases organized by issue of law

**Canadian Encyclopedic Digest:** Legal encyclopedia with paragraphs explaining different issues of law, footnoted with relevant cases and legislation

**Case:** See Judgment.

**Citation:** Identifier for a case, legislation or article; based on where it has been published, either in print or online. Note that documents can have more than one citation if they have been published in more than one place. These are known as parallel citations.

**Citing References:** Documents (e.g. cases, articles, court documents) referring to the case or legislative section you are looking at and whether they have followed, considered, referred to or distinguished the case or legislative section you are looking at. See Judicial Treatments.

**Decision:** See Judgment.

**Full History:** (Also called case history or direct history.) The path a case has taken through the court system; has it been appealed, affirmed, reversed or had additional reasons given.

**Headnote:** A summary of the key issues and facts in a case which appears at the beginning of a case, written by the publisher.

**Judgment:** (Also called decision or case.) A final determination by the court of a matter brought before it.

**Judicial Treatments:** A list of judgments that cite another case, accompanied by an indication of whether they have followed, considered, referred to or distinguished the case or legislative section you are looking at.

**KeyCite:** Provides you with the Full History and the Citing References for a case. Used for Noting up.

**Legislation:** Includes statutes (laws or acts), regulations (how statutes are to be implemented) and rules (procedural instructions for court proceedings.)

**Noting up:** (Also called Judicial Treatment. See also Full History and Citing References.) Finding any subsequent cases that have referred to the case or legislation in question. Also, for cases, determining the full history of the case.

**Precedent:** A legal case establishing a principle or rule that a court or other judicial body may use when deciding subsequent cases with similar issues or facts.

**Reported Decisions:** Cases that have been selected to be published in a law report series. Unreported cases are decisions that have not been published in a print law report series.

**Secondary Sources:** (Also called Commentary.) Works written by authors (as opposed to cases or legislation.)

**Style of Cause:** The case name for a cause of action or lawsuit; a description of the parties involved.