

Key Take-aways

Overview

This course provides practicing lawyers with an introductory strategy to performing legal research. By the end of the course you should be able to plan a research strategy and employ specific research skills to tackle a legal question using popular research tools. This course uses video modules to demonstrate how to develop a strategy for legal research, and demonstrate specific skills for using secondary, primary and other sources.

This course is aimed at practicing lawyers, not research specialists. The course is intended to help lawyers improve their skills in conducting general legal research tasks and to adapt their research approach to the unique circumstances of each research question.

The course is not a substitute for exercising professional judgment on how much and what type of research is required for specific situations, although the course prompts participants to evaluate these questions throughout the research task.

For BC lawyers, be aware of section 3 of the Code of Professional Conduct for British Columbia (the BC Code) which sets out the requirement that lawyers have the requisite skill and competence in a subject area when advising clients or giving legal advice. If you are a lawyer from another jurisdiction, be wary of your obligations to exercise professional judgment in performing legal research.



In this course we will research a legal question, following a 6-step process:

- Define the question
- Evaluate your resources
- Use secondary resources
- Use primary resources
- Use other sources
- Evaluate/analyze your work

It is important to consider a few questions before diving into a research question, such as:

1. How familiar are you with the area of law you are researching?
2. What resources do you have on hand?
3. What is the scope of the research question (governed ultimately by the deliverables)?

Consider and review the [Legal Research Flowchart](#) in the materials; which highlights that your approach or methodology taken is determined largely by your experience with the topic.

Module 1 - Introduction

This module outlines the course objectives.

Module 2 - Fact Pattern

This module introduces the story or fact pattern from the client. There are no specific take-aways or lessons from this module.

Module 3 - Define your Task

This module analyzes the fact pattern and defines the task.



First, plan and organize your research. Consider:

- What is due?
- When is it due?
- Are there any time restrictions or external demands?
- What is the purpose/use of the research?
- What are the legal questions or issues?

Think about the keywords the client used, and brainstorm ones that are relevant. You may think of more keywords with the help of other sources. Specifically, ask yourself what are the:

- *Actions*
- *Actors*
- *Places*

Where possible, translate your keywords into legal language by thinking about the problem in terms of the cause of action involved, defenses raised, or the relief sought.

Module 4 - Evaluating Resources & Starting with Secondary Sources

Module 4a – Secondary Sources (Evaluating Your Resources)

This module evaluates which resources would be helpful in our research and considers checklists or other resources to help get started.

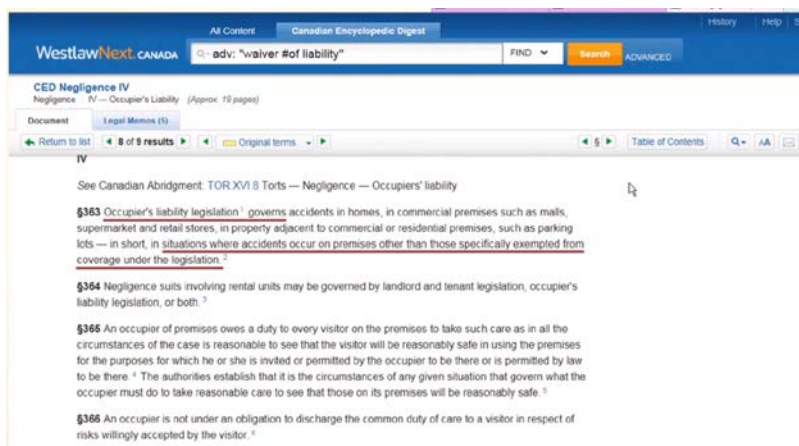
If you are not an expert in the area of law you're researching, it is recommended to start broad. It is recommended to use secondary sources such as the Canadian Encyclopedic Digest (CED), Halsbury's Laws of Canada, or other traditional encyclopedic sources. These summarize both the case law and the statutory law, in addition to providing commentary. If the CED or Halsbury's doesn't have what you need, try textbooks, practice manuals, or journal articles, and review the Research Checklist for other sources to look it —the goal is to find commentary on the law with shortcuts to leading cases and statutes.

Module 4b – Secondary Sources (Encyclopedias and Commentary)

This module discusses use of secondary sources (CED in particular).

When using the CED, it is recommended to scan or browse the index to see topically where your subject might be. This is because the topic may come up in chapters you may not anticipate, or you may not come across the chapters with a text-search.

Nevertheless, searching across the CED is also possible for convenience or simplicity.



The CED is available on computers at Courthouse Libraries BC branches for free. The CED will summarize topics and provide footnotes to allow you to access the primary source or origin of that information.

CED search results are sorted by relevancy by default. Preview language and headings are very helpful for previewing what a specific result covers. Search results can be limited to results that use a Boolean-type search.

WestlawNext Canada's CED also cross-references with the Canadian Abridgement Digest. The Canadian Abridgement Digest is written on an issue-by-issue basis, and a single judgment may have several case digests; one for each legal issue considered in the case. The taxonomy from both the CED and the Canadian Abridgement Digest can be very useful to take note of; these terms may help you with your research by defining the issues in legal terms. The Canadian Abridgement Digest can be also be accessed from WestlawNext Canada's homepage.

Module 5 – Legislation (Primary and Secondary Sources)

Module 5a – Primary Sources (Finding the Act)

This module discusses finding legislation.

When searching for legislation, there are several places to look. All of the following are accessible for free on computers available at Courthouse Libraries BC:

- CanLII
- Quickscribe
- Quicklaw
- WestlawNext Canada
- BC Laws

When searching for legislation, make sure you are searching for the appropriate jurisdiction and that the version you're looking for is the correct version (whether the most current or the date appropriate for your fact pattern or research issue). Also consider if the Act has regulations. Read the legislation in full to make sure you understand how it operates.

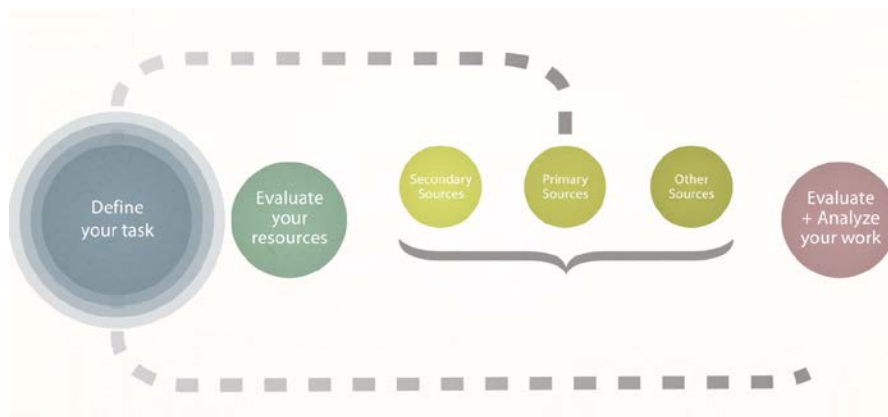
Module 5b – Primary Sources (Does the Act Apply?)

This module considers whether the legislation applies to the fact pattern.

After learning that relevant legislation applies, you may realize that there is a gap in information. In our course it was not clear if the Act applied to the fact pattern. This gap in information might result because you are missing information from your fact pattern, or possibly because of the way you defined the research question. In our course, the lawyer did not think to ask what route or area the client's tour was passing through. However, this is actually an important jurisdictional question and impacts whether the legislation applies or might be exempted for other reasons.

It is important to follow-up on those gaps in the information. If you encounter gaps in your facts, evaluate the information you have in front of you, and if possible:

- ask for clarification from the client, senior counsel or a colleague; or
- consider if you have framed your legal issue appropriately.



A similar situation can arise in virtually all areas of legal research. It is recommended to be mindful of these types of issues and to remember that legal research requires an iterative approach. The legal question(s) you set out to answer at the beginning may change as you continue your research.

Module 5c – Primary Sources (Using the Annotated Act)

This module considers use of commentary for legislation, or annotated statutes.

An annotated statute is published with references to cases considering each section. The text may also contain commentary and the legislative history of the section. Annotated statutes can be very useful when considering how a statute has been judicially considered, summarizing decisions in a concise organized fashion.

The Annotated Occupiers Liability Act textbook we demonstrated in this course also has:

- Well-researched memos on topical areas;
- Words and phrases;
- Incident/issues indices which organize cases set out under the headings; and
- Recommendations for other secondary sources/articles.

Module 6

Module 6a – Primary Sources (Finding Cases on Point)

This module considers finding cases on point and Boolean searching.

Boolean searching is a way of combining search terms to make your searching more precise and efficient. One of the greatest challenges to online searching is too much information. Boolean searching can help avoid information overload.

How do I Boolean search? Basic Boolean searching works with connector terms:

Boolean Connector	What It Means
AND / &	Ensure all results include multiple search terms
OR	Search alternate phrases or spellings
NOT	Exclude words from your search
“...”	Search for a precise phrase
/S /P /N	Search for words - in the same sentence - in the same paragraph - within N words of each other
(...)	Use brackets to prioritize search terms

When running a case law search you can often filter and re-sort results by:

- jurisdiction to province or territory,
- by relevance (however the manner in which cases are sorted by relevance will differ across databases),
- by how frequently a case is cited, and
- by date.

Module 6b – Primary Sources (Noting up Cases)

This module considers noting up judicial decisions.

Noting up decisions to see how they've been judicially considered is important if you wish to rely on a decision for a point of law. It's critical to see whether courts have agreed with that point of law since the decision was issued.

When noting up decisions, you can use various databases.

In CanLII, a decision judicially considered is called a “citing reference”. Some other tips to be aware of when using CanLII:














- You can set up alerts to see if and when the case is cited in the future.
- You can subscribe to RSS feeds in connection with a decision or search results.
- LexBox allows you to save and aggregate some of your research results and access them conveniently the next time you login.

There are several reasons why it is strongly recommended to note up a decision in more than one database.

We demonstrated that the various databases offered different citing references for the same decision (*Karroll*). This is because databases have different coverage of decisions across courts and jurisdictions; not all decisions are available in all databases.

Feb 7, 2018

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Followed in	 10. Accra Wood Products Ltd., Re 2014 BCSC 1259 (B.C. S.C.)	July 09, 2014	Cases and Decisions		BKY.IX.2.c.ii BUS.IV.9.a.v CON.III.4
Followed in	 11. Niedermeyer v. Charlton 2014 BCCA 165 (B.C. C.A.) Judicially considered 12 times	Apr. 30, 2014	Cases and Decisions		CON.VI.3.f INS.XII.10.d TOR.XVI.13.e.iii
Followed in	 12. Ross v. British Columbia Lottery Corp. 2014 BCSC 320 (B.C. S.C.) Judicially considered 3 times	Mar. 05, 2014	Cases and Decisions		PUB.VII.2.e PUB.VII.7 RST.I.2.c TOR.VII.3.e TOR.XVI.2.a TOR.XVI.2.j
Followed in	 13. Niedermeyer v. Charlton 2012 BCSC 1668 (B.C. S.C.)	Nov. 08, 2012	Cases and Decisions		TOR.XVI.13.e.iii
Followed in	14. O'Brien v. TR Westcan Inc. 2012 BCPC 89 (B.C. Prov. Ct.)	Mar. 29, 2012	Cases and Decisions		REM.I.6.c.ii.G TSP.I.3.b.iv
Followed in	 15. Arndt v. Ruskin Slo Pitch Assn. 2011 BCSC 1530 (B.C. S.C.) Judicially considered 7 times	Nov. 10, 2011	Cases and Decisions		CIV.XVIII.1
Followed in	 16. Dawson v. Tolko Industries Ltd. 2010 BCSC 346 (B.C. S.C.) Judicially considered 4 times	Mar. 18, 2010	Cases and Decisions		PEN.I.5.b PEN.I.5.c

Some databases also show indicators that a decision has received “negative” “neutral” or “positive” treatment by a subsequent decision. However, the “flag” or “citation” systems are determined by the publisher/database so you should not rely on these indicators full-stop. It is prudent to read through the citing cases to assess treatment of the point of law you are relying on.

Module 7 – Other Sources and Precedents

This module considers researching other areas of law and the use of precedents and templates. Templates and precedents are powerful tools. Building a precedent library is important for any lawyer: litigator or solicitor.

It is important to use your discretion when considering the use of a template or precedent from an unfamiliar source. If you are considering using a template or precedent, consider:

- Is it the correct jurisdiction?
- Is it the right subject matter?
- Is it current?
- Do I trust the source? Is it credible?

Searching for precedents can differ depending on the area of law and type document. Here are general tips for locating and using precedents:

- Trusted publishers such as CLEBC are excellent sources for precedents.
- Searching legal information websites can be useful, such as the Courthouse Libraries BC website. We came across a webpage pointing us to an excellent textbook with precedent language for drafting waivers (The Law of Releases in Canada by Fred Cass).
- Searching case law for determinative precedent language can be helpful. In the *Karroll* decision, the waiver that was the subject of litigation was included in the decision.
- There are many well-written, researched and credible law firm wikis, blogs and websites for legal information, but they are not all created equal.
- Secondary sources often list other resources that could be useful. Our Annotated Occupiers Liability Act textbook had a wealth of recommended articles and sources.

Other areas of law may not lend themselves to a case law or legislative search as demonstrated in our course. Be ready to adapt your research strategy, including what types of databases or resources are best for the area of law you're researching.

A few examples:

- In the tax law context, Canada Revenue Agency (CRA) often issues interpretation bulletins. These are widely considered by practitioners to be followed and authoritative, although not having the full force of legislation.
- For securities law, securities-related multi-lateral or national instruments issued by relevant provincial securities commissions are critical in considering a corporate finance or securities-related question.
- Finding tribunal decisions or other administrative law decisions can be tricky, because they're not always published and may not be found across all the databases. Quicklaw is an excellent source for Board and Tribunal decisions.

Module 8 - Putting it all together

We utilized a process to visually illustrate the following 6 steps:

- Define the question
- Evaluate your resources
- Use secondary resources
- Use primary resources – reviewing the relevant Act, conducting case law searches, and noting up cases
- Use other sources –using template or precedent documents for drafting, and researching other areas of law not covered by the steps in this course
- Evaluate/analyze your work

When researching a question like our example in the course, it's important to get organized from the beginning and keep track of your search terms and issues. It is recommended to put together an internal memo that is fulsome and detailed with the research completed. If the final deliverable (work product) is client focused however, it will need to be tailored so that it is readable and appropriate for their use.

Glossary of Terms

Boolean searching is a way of combining search terms to make your searching more precise and efficient.

Basic Boolean searching works with connector terms, for example:

Boolean Connector	What It Means
AND / &	Ensure all results include multiple search terms
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"..."	Search for a precise phrase
/S /P /N	Search for words - in the same sentence - in the same paragraph - within N words of each other
(...)	Use brackets to prioritize search terms

The Canadian Encyclopedic Digest (CED) is a comprehensive statement of Ontario and Western law – provincial, federal and common law – as derived from legislation and case law. More than 225 subject titles on every aspect of Canadian law and practice are included.

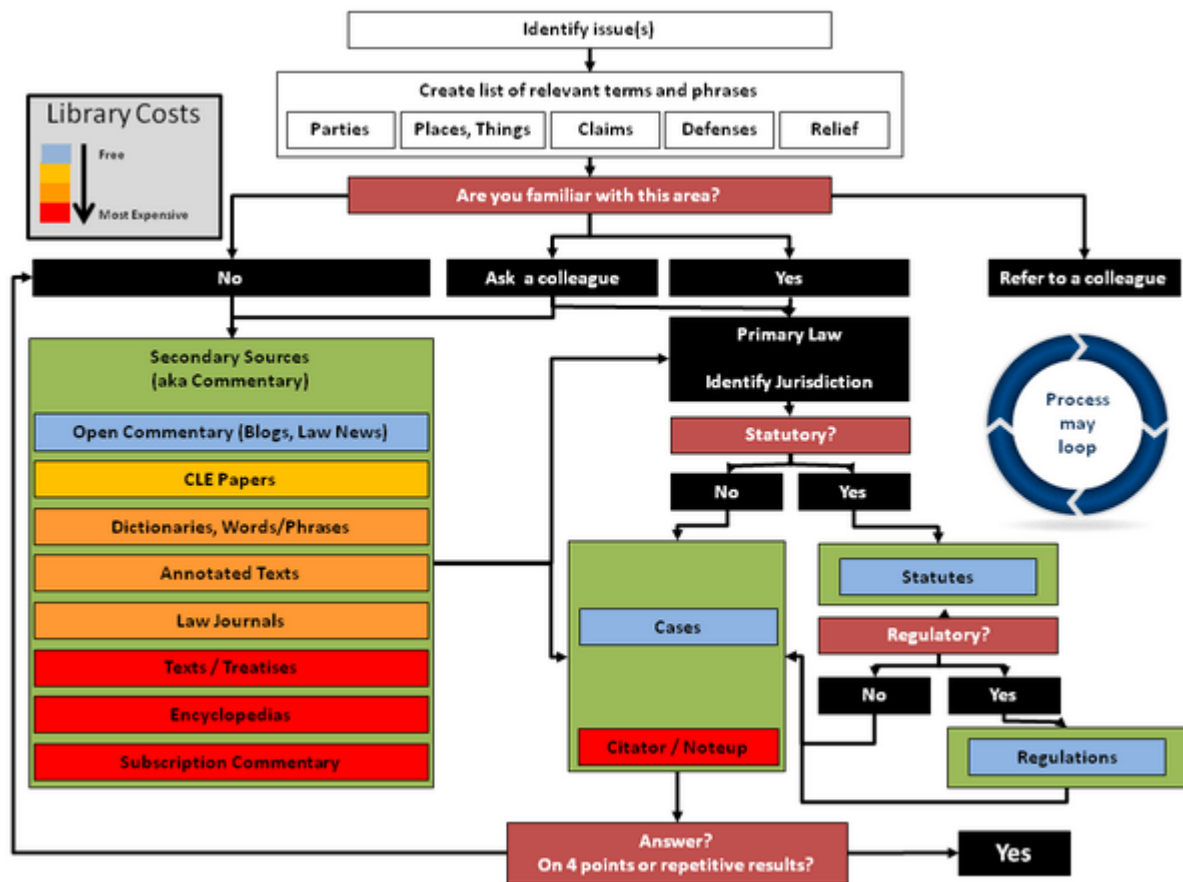
The Canadian Abridgment Digest is a comprehensive collection of over 1,000,000 digests of Canadian case law that is organized by legal issue according to a taxonomy. The digests are written on an issue-by-issue basis, and a single judgment may have several case digests; one for each legal issue considered in the case.

Resources Referenced in Course

Code of Professional Conduct for British Columbia (the BC Code) – annotated. Section 3 covers requirements of lawyers to be competent in the area of law when providing legal services to clients.

See <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/> for more information.

Legal Research Flowchart



Adapted from David Whelan, *Law Libraries and Legal Malpractice*, online: <<https://ofaolain.com/blog/2014/07/04/law-libraries-and-legal-malpractice/>>.

Resources Referenced in Course (continued)

Eric J. Wagner, *Annotated British Columbia Occupiers Liability Act* (Toronto: Thomson Reuters, 1999).

Fred D. Cass, *Law of Releases in Canada*, (Aurora: Canada Law Book, 2006).

Research Checklist (see additional attachment)