

The Law Society
of British Columbia



Legal Research Essentials Course

Learning Materials

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Please note: Course learning material contents have been updated at various times, as indicated herein.

Table of Contents

COURSE CONTENT..... 3

RELATED RESOURCES..... 5

FULL TEXT TRANSCRIPT FOR ONLINE LEGAL RESEARCH COURSE 6

KEY TAKE-AWAYS 26

GLOSSARY OF TERMS 35

RESOURCES REFERENCED IN COURSE 36

RESEARCH CHECKLIST 39

COURSE CONTENT

The original course is presented in a series of videos covering eight Modules as listed in the Outline of the Course, below. The course also includes quiz questions at the end of each Module grouping, with five quizzes in total. These learning materials are comprised of a transcript of the videos as well as relevant handouts that were included in the course content.

Outline of the Course

1. Introduction to the Online Legal Research Essentials Course
2. Fact Pattern / Story
3. Define your Task
4. Evaluating Resources & Starting with Secondary Sources
 - 4a - Secondary Sources (Evaluating your Resources)
 - 4b - Secondary Sources (Encyclopedias and Commentary)
5. Legislation (Primary and Secondary Sources)
 - 5a - Primary Sources (Finding the Act)
 - 5b - Primary Sources (Does the Act Apply?)
 - 5c - Primary Sources (Using the Annotated Act)
6. Case Law (Primary Sources)
 - 6a - Primary Sources (Finding Cases on Point)
 - 6b - Primary Sources (Noting up Cases)
7. Other Sources and Precedents
8. Putting it all together

Acknowledgements

The course content was created by Katrina Leung with the help of Alex McNeur and Megan Vis-Dunbar (all of Courthouse Libraries BC). The videos were produced by PinPoint Productions.

Contact Us

- If you require assistance with this course, please contact ProfessionalDevelopment@lsbc.org. You are also welcome to send questions, comments or suggestions that you feel would be useful for others.
- For assistance with your research questions, you are welcome to consult the staff at [Courthouse Libraries BC](#).

IMPORTANT

PLEASE NOTE:

While some revisions may have been made more recently, this course was last reviewed *en masse* for update in 2018.

DISCLAIMER:

The information contained in this course, including any references to websites, appendices or links, has been prepared to assist you as you develop or refresh your skills in the various areas of law covered by this course.

Given the changing nature of the law, you should exercise your own skill and professional judgment when using the content.

Always refer to the most current statutes, regulations, practice directions and notes, as well as the most recent case law and any other appropriate sources.

These materials do not provide legal advice and should not be relied on in any way.

RELATED RESOURCES

- Courthouse Libraries BC:
 - [How We Can Help | Courthouse Libraries BC \(courthouselibrary.ca\)](https://www.courthouselibrary.ca/how-we-can-help)
 - [Guides | Courthouse Libraries BC \(courthouselibrary.ca\)](https://www.courthouselibrary.ca/guides)
- [The Canadian Legal Research and Writing Guide | CanLII](https://www.canlii.org/en/canlii/doc/canlii/canlii.html)

Contents

Contents..... 1

Module 1 – Introduction to the Online Legal Research Course..... 2

Module 2 – Fact Pattern/Story 4

Module 3 - Define your problem 6

Module 4 - Evaluating resources and starting with secondary sources 8

 Module 4A – Secondary Sources (Evaluating Your Resources)..... 8

 Module 4B – Secondary Sources (Encyclopedias and Commentary)..... 8

Module 5 – Primary law/Looking at legislation 11

 Module 5a – finding legislation..... 11

 Module 5B – Primary Sources (Does the Act Apply?) 11

 Module 5c – Primary Sources (Using the Annotated Act) 13

Module 6 – Case Law (Primary Sources) 15

 Module 6a – Primary Sources (Finding Cases on Point)..... 15

 Module 6b – Primary Sources (Noting up Cases) 16

Module 7 – Other Sources and Precedents..... 18

 Module 8 - Putting it all together 20

Module 1 – Introduction to the Online Legal Research Course

Narrator

Welcome to the Online Legal Research Course brought to you by Courthouse Libraries BC.

THIS IS A LEGAL RESEARCH COURSE. IT TALKS ABOUT THE RESEARCH PROCESS.

We will not discuss how to write a research memo or draft a waiver of liability.

It is also not a substantive discussion of the law.

Please make sure you've familiarized yourself with the basics of this course.

This course is broken into **8** video modules. A few of the modules will be broken down further into smaller parts.

This **first module** will introduce the process which we will follow to illustrate the strategy and approach to legal research. The steps in the cycle will pulse to indicate where we are in the process.

The **second module** we will introduce a fact pattern or story with legal questions that need answering.

The **third** through **eighth** modules will tackle researching select issues from our example story using select resource types or research strategies.

Note that there are accompanying documents which you should find linked in the intro page to the course. Download these and follow along.

The 1st PDF has a full transcript of course.

The 2nd PDF has a glossary of terms, highlights key take aways from the course, and houses materials that are referenced in this course.

By the end of this course you will be able to plan a research strategy and employ specific research skills to tackle a legal question.

We won't demonstrate every step and be fully exhaustive, but we want to impart you will a strategy that you can adapt for your use. We also will demonstrate enough of the skill so that you can go out and do that exercise on your own.

You should get familiar with: this [6-step] process.

It will guide you through the research process. Each research question is different, so you may need to complete all steps, maybe it's iterative and you repeat steps, maybe you skip some steps. Maybe these steps don't apply to you at all. Many areas of law do not rely on published case decisions/reasons, many operate in tribunal and administrative context or are governed by instruments or bulletins that do not go through a parliamentary process the way many pieces of legislation do.

Always be ready to adapt your research style and approach to suit the *question* and the

area of law.

This process is meant to demonstrate visually the concepts we will cover.

We will refer to the process throughout the video modules. It will be a roadmap in the research quest.

Remember, how you tackle a research question, depends on your experience or familiarity with the subject.

A few questions to ask yourself before tackling a question:

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)?

We welcome you to take a look at the [Research flowchart](#) in your materials. Where the research path chosen is determined largely by your experience with the topic.

Always bear in mind your professional ethics and rules of conduct as required by Law Society of BC.

Module 2 – Fact Pattern/Story

Narrator:

You: a practicing lawyer, have a few years of general civil litigation experience under your belt.

Your old friend Ellis comes in for a meeting with you.

Ellis:

It's so great to see you again. It's been forever. Thanks for meeting me today. I have a plan to start an adventure tourism business. I want to take people out in the backcountry to experience the beauty and awesomeness of the BC wilderness.

I was told if I do this kind of thing I should get a waiver of sorts. Something that will protect me if someone gets injured. I don't wanna get sued you know.

I was reading a few websites that talk about these waivers. I'm not totally sure if they're worth the paper they're written on – do they hold up in court?

Also, if I was to put one together, I've seen websites where I can just download one, I could probably just change the names around and use it, right?

Can you help me with this? I don't know where to start.

Lawyer [Thinking]:

Hmm...sounds like an interesting question. I'm not sure I have enough information to answer the question though.

What is the question even?

I should ask Ellis to take a step back and see if we can flesh out the issues.

Lawyer:

Wow, this is all really great, I think you've done the right thing to come to me. There are a lot of things to consider.

A few more questions for you Ellis.

Firstly, you will be running these tours through a business or company? And you will be charging money for these tours?

Ellis:

Yes, through my business and I will be charging tour fees.

Lawyer:

What kind of activities are you thinking about?

Ellis:

Back-country skiing, back-country wilderness snowshoe walks, that kind of thing

Lawyer:

What about snowmobiling/ATV-ing?

Ellis:

DEFINITELY NOT SNOWMOBILING

Lawyer:

Are you working with tour guides? Are they hired?

Ellis:

Yes but I am not worried about hiring needs and employment stuff.

Lawyer:

Are you taking out children? Or are they mostly adults.

Ellis:

They'd definitely be over 21 (probably older even).

Lawyer:

What time of year or season are you going out on these tours?

Ellis:

Winter mostly. Probably End of Oct – March depending on the year and weather.

Lawyer:

If you can think of all the types of dangers, can you tell me about them?

Ellis:

- Weather
- Wildlife
- Risk of falling off snowshoe/equipment
- Avalanches
- Probably some other stuff I haven't thought of.

Lawyer:

Okay Ellis, thanks for answering those questions. There's a lot for me to digest but I'm so glad you came to see me today.

I think the question you're asking me to look into is whether these waivers hold up in court.

I'm going to put together an email outlining some of the things you should watch out for, and if you'd like some assistance with putting a waiver together, I'll help you out with that.

Narrator:

With the story you've just heard, your deliverables are:

- An email to Ellis about the enforceability of waivers; and
- Consider a precedent for drafting a waiver.

Remember that while your deliverable is a written memo or email to client, this course will only go through the research process necessary for the memo, not writing the memo itself.

Module 3 - Define your problem

Narrator

We are at the first step in the process [Define Your Task].

Let's think back to our fact pattern. And get organized.

First: Plan/organize. Consider:

- What is due?
- When is it due?
- Are there any time restrictions or external demands?
- What is the purpose of the research?
- What will it ultimately be used for?
- What are the legal questions or issues?

Remember what your deliverables are. Why does it matter that we keep the end in mind?

Your deliverables are:

- An email to Ellis about the enforceability of waivers; and
- Consider a precedent for drafting a waiver.

Being efficient is not only good practice but saves you and your client time. And gives you a better chance at staying organized and focused.

Lawyer:

I'm going to start by taking apart the story/fact-pattern.

Action – Ellis wants to do a business that entails dangerous activities or recreation; snowshoe or skiing tours.

Actors – Ellis's company will be taking paid customers on tours. She will charge a fee, and is making a profit for these activities.

On the other end, the customers are all consenting adults (not minors, so there shouldn't be issues of capacity). I wonder how experienced these customers will be with the activities.

Place – Ellis mentioned the wilderness, outdoors, inclement weather

Looking at whether there any other determinative issues...

- Ellis did not specifically mention an immediate due date, or urgency
- Thinking about jurisdiction; the relevant jurisdiction should be BC as we are talking about tours in the BC wilderness, without any other facts to indicate that another jurisdiction is pertinent.

Narrator:

Let's think about the keywords Ellis used in talking about her legal question:

- Adventure tourism
- Waiver
- Liable

And came up with a few of your own:

- Tort
- Negligence
- Recreation
- Wildlife

Let's keep track of these terms so we can use them later in our research.

Module 4 - Evaluating Resources & Starting with Secondary Sources

Module 4a – Secondary Sources (Evaluating Your Resources)

Narrator (ALL):

Recall from Module 3 you looked at relevant Actions, Actors, Places

And considered if there were any determinative issues: Time periods, urgency, and jurisdiction.

You also thought about the keywords Ellis used:

- Adventure tourism
- Waiver
- Liable

And came up with a few of your own:

- Tort
 - Negligence
- Recreation
- Wildlife

Where do you start?

Assuming you're not an expert in this area of law, where could you look if you wanted to get a bigger picture understanding of the issues? Let's start with secondary sources, and start broad. This will give us a more general understanding of the area of law.

If you're not familiar with which sources, try a research checklist like the one in your resources.

Module 4b – Secondary Sources (Encyclopedias and Commentary)

Narrator:

If you're not an expert in the area of law already, one of the recommended places to start is an encyclopedia. Why? Because it covers topics at a high level, referencing more detailed sources when you've drilled down to your area of interest.

Ideally, you should cast your net wide, and then start getting more defined and discrete as you understand more about the topic

We can start with Canadian Encyclopedic Digest and type in the search words. Note that the CED is available on computers available at Courthouse Libraries branches for free.

The Canadian Encyclopedic Digest (C.E.D.) 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.

Ideally, it's recommended to scan/browse the index to see topically where your subject might be. But if that's not something you feel comfortable with, or you don't know which topic heading to start with, you can start with a search across the entire CED. And see where it gets us.

Lawyer:

I'm going to try searching "adventure tourism"

Hmm, looks like the only results are in the "marine liability" context. That's not very helpful.

I'll try a second search in CED with "waiver of liability"

Alright, we have 14 results.

Narrator:

Generally search results are ordered by relevance. Headings and preview language are very helpful to determine which results will be helpful to your research.

Let's show results using only the Boolean search terms and connectors.

Note we will discuss in detail what Boolean searching later in the course. The term is also defined in our glossary.

Let's take a look at our FIRST RESULT VII.5 "Exclusion of Liability"
This seems relevant.

Let's open it up in a new tab as it will make going back to our search results easier.

The first result discusses the operator's use of a waiver of contract to exclude liability. Note that operator has a specific meaning in this context.

Reading through provides a great way to get a general grasp of the concept but more specifically in sporting context.

Lawyer:

This seems like what I'm looking for. I can easily see the source of the information by checking the footnotes. There may be useful resources such as the Law Reform Commission of BC's 1993 report on the topic of recreation and waivers of liability. There's also a lot of case law and other journal articles.

Narrator:

What's great about WL Next Law Source is that it also cross-ref with Canadian Abridgment Case Digests (or CAD for short).

We may also want to save these "keywords" as they could be useful in future searches.

The CAD is a comprehensive collection of over 1,000,000 digests of Canadian case law that is organized by legal issue according to a taxonomy.

Abridgment 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.

The CAD can also be accessed from the Westlaw home page through a hierarchical table of contents

Back to CED search results. It doesn't seem like any result is quite on point, until we get to:

EIGHTH RESULT **IV Occupier's Liability**

The first [363] paragraph references the BC provincial Occupier's liability (RSBC 1996, c 337).

These results all deal with the issue of liability of an occupier where the land is private, or to lands that fall within the definition of the legislation or "premises other than those specifically exempted from coverage under the legislation". Without having the full Act in front of you, it's hard to know whether a particular property is exempted or not.

So far you have learned: there is relevant legislation.

CED also references primary law (statute/case law) and also other memos/articles

Lawyer:

I think the CED has been helpful so far, but if there is relevant legislation, I should probably take a look at the Act in full to better understand how it defines the premises, occupiers and other relevant terms.

Narrator:

Let's move to the next module – primary law/legislation

Remember, legal research is not necessarily linear, but it requires an iterative approach where feedback and reframing the question is just part of the norm. Even more so if it's an area you're not an expert in.

Module 5 – Legislation (Primary and Secondary Sources)

Module 5a – Primary Sources (Finding the Act)

Narrator:

This is where we are in the process:

First, take a look at Occupier’s Liability Act BC in full, and regulations, if there are any.

Where to find legislation:

- CanLII
- Quickscribe
- Quicklaw
- Westlaw
- BClaws

All of which are free and accessible from computers located at BC Courthouse libraries branches.

Lawyer:

I’ll take a look at the Act in CanLII.

I’ll first select the jurisdiction we’re searching in.

Then make sure we’re looking at the current version of the Act.

Sections 3 and 4 leap out... Essentially, it creates a presumption of liability for an occupier, and an occupier is defined in the Act, but it is a party who is responsible for, or in possession of premises (also defined in the Act)

Section 4 deals with contracting out of the occupier’s assumed liability. It seems there are various factors impacting the ability to contract out.

The Act has no corresponding regulations.

I have to remember that the ultimate question I’m answering for Ellis is whether a waiver of liability can hold up in court – or, conversely, whether waivers can be sufficient to protect the occupier from liability or legal responsibility.

Or further, whether waivers can be enforceable. And if they can be enforceable, what is it about waivers that can make them more or less enforceable.

The Act has specific carve outs to the definition of premises.

To think of it, I should make sure that this Act applies to Ellis’ fact pattern and the environment she’s operating in.

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

Narrator:

Looks like you’ve distilled the legal question down to whether waivers can be enforceable.

But you still need to ask yourself about the application of this Act.

The Act applies only to “occupiers” of “premises” as such terms are defined in the Act.

Which are essentially land and property that are not exempted by the legislation, or possibly which may fall under the jurisdiction of another legislation.

Lawyer [Thinking]:

I don't know where Ellis' tour is passing through. Maybe I should ask Ellis about where the tour is going.

Because if I don't, it's not really clear if the route tours are under some kind of exemption that might apply.

Lawyer:

Hey Ellis, you didn't mention where the tour was going to be going through. Can you explain a bit further about the tour routes and the areas you will be accessing during these tours?

Ellis:

My great grandpa passed down 1000 hectares of land in the pristine part of the Cariboo BC forest, we're going through there. It's been well-maintained over the years by my family, so it's in good shape and I check on and maintain the trails every year with the help of some others, soon to be my employees. It's in tip-top shape and gorgeous.

Lawyer:

Wow! You own all of that? That's incredible, I have another question that's really important: are there any highways that the tour might be passing through.

Ellis:

No, nothing like that. There are service roads but we won't be travelling on them.

Narrator:

We don't have time to discuss what we would do in the circumstance where the tour is taking place on provincial/federal park lands, or any other exempted lands, however that should trigger a change in your research.

Now you know there should not be an exemption to the otherwise general application of the Act, there is nothing about the route or path which Ellis is taking her customers on that might restrict the application of the legislation, or immediately signal application of another piece of law or legislation.

This is an example of revising and reviewing all the way through your research. Admittedly, it's not always so easy to pick up the phone, call the client and get clarification on a question, but where you can, it can save you tons of time. If a client cannot be reached, perhaps a colleague or senior counsel might have insight into the fact situation to clarify the research question. This can really shortcut a research question.

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

Lawyer:

I'm glad I spoke with Ellis to clarify the application of the Act.

I'm going to look specifically at how sections 3 and 4 have been interpreted by courts in the context of using waivers.

Narrator:

A good place to start, even for legislation, is yet again secondary sources/commentary.

Commentary for legislation comes in a few forms. Admittedly, you're lucky with this Act, as it's frequently cited and has lots of commentary.

If we run a search for Occupiers Liability Act in the BC Courthouse Libraries' catalogue, we get the Annotated Occupiers Liability Act. It was updated this year (or at least the year this course was made)

CanLII Connects is also another possible electronic source for commentary, however coverage will really depend on how frequently contributors/authors have added to the literature on CanLII Connects.

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. Annotated statutes can be your best friend in finding how a statute has been judicially considered, often summarizing decisions in a concise organized fashion.

Looking at the Annotated Act, what does the index reveal:
We can read the Act in full, annotated at each provision or section.

Many of the sections in the practice guide could also be helpful; again as a survey of the Act and how it works in context.

Lawyer:

I want to focus **on s. 4**: I wonder what the Annotated Act has for us in terms of case law and how waivers have been treated by courts.

This act has been frequently used in litigation so there's no shortage of caselaw.

The cases support the proposition that waivers can be enforceable. These cases in the Annotated Act are really on point as it's in the context of an operator (or business), offering an inherently risky or dangerous activity/sport, and did present a waiver to the plaintiff user. The cases set out that:

1. It is irrelevant if the plaintiff/user did not read the release or waiver before the activity, if the operator took appropriate steps to bring it to the user's attention (*Mayer*).
2. A two-step test established in *Dyck v Manitoba Snowmobile* and later affirmed suggests that the question of enforceability of a waiver is a similar exercise as asking whether a contract can be enforceable (*Knowles*).
3. Whether the user was aware of the effect of their signature (or agreement to the

waiver) is to be decided based on the facts of each case (*Karroll*).

I'm going to keep these decisions as they are helpful for my research, and to see if they are still good law as some are a bit dated – a lot could have happened since these decisions came down. But this looks to be getting exactly to the heart of the issue.

Narrator:

A few more comments about the Annotated Act – and this annotated resource happens to be really excellent. Oftentimes other relevant legislation might be provided, it may offer memos or analyses on areas of law which can be extremely useful for your research, and also recommend other resources or articles for your research. If you're unsure, always check out the table of contents or index to see if other information in the source can be put to use. It can save you a lot of time.

This Annotated Act also has:

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

Module 6 – Case Law (Primary Sources)

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

Narrator:

In this module we will start by finding cases on point and discuss effective search strategies.

You might be doing this either because there were no secondary sources/commentary on your subject matter, or perhaps it has not provided cases on point. You might also want to run a search to ensure you've captured all of the relevant case law.

What is Boolean: And why might we use it rather than plain language searching? Sometimes a well-crafted Boolean search can garner a more precise search. It is an art rather than pure science however and does take practice.

This table shows commonly used operators, and these operators will function the same across databases.

There are more complex operators you can use to refine your search even more. But a note of caution, they might be different across databases, so it's important to check the Help menu of the database you're using.

Let's think about our legal question, we have brainstormed some keywords back in an earlier module. We can also use some of the key terms garnered from reviewing the Canadian Encyclopedic Digest and the Canadian Abridgement Digest in earlier modules. Like:

- Waiver of liability
 - Occupier's Liability Act
- if we wanted to tie the search back to the legislation.

Let's try to run a search in CanLII using the following Boolean search string:
"occupiers liability" AND "waiver of liability"

You should be familiar with the basic, commonly-used operators. Don't worry about memorizing them. You'll always be able to locate operators in the Help menu of the database you're using. CanLII's is found here.

Lawyer:

Great, I get 28 results. This search string searched for and included the terms "occupiers liability" and "waiver of liability".

I'm going to filter and resort results. I can also narrow the jurisdiction to province or territory. I can also sort by relevance.

Narrator:

But note that the manner in which cases are sorted by relevancy will differ across databases.

Lawyer:

I can also sort by how frequently it is cited, or by date. I'm going to sort by "most cited

first” and pick the top two cases to file in my briefcase to note-up for later.

That’s

- *Milina v Bartsch* 1985 CanLII 179; which showed up in our Annotated Occupiers Liability Act textbook; and
- *Loychuk v Cougar* 2012 BCCA 122

Module 6b – Primary Sources (Noting up Cases)

Narrator:

In this module we will demonstrate how to note up decisions to see how they have been judicially considered. This is an important step in the research process to make sure our decisions are still good law. If we are going to rely on a decision for a proposition, we should see if courts have agreed with that point of law since the decision was issued. We learned from our earlier decisions that waivers can be enforceable, but there is a two-step test which has been applied by courts, and often the question can be very much dependent on the facts of a particular case.

Lawyer:

Unpacking my briefcase of saved resources, I have a number of decisions from when I reviewed the Annotated Occupiers Liability Act and looked at how s. 4 was judicially considered.

- *Mayer v Big White Ski Resort Ltd.*
- *Bloomberg v Blackcomb Skiing Enterprises Ltd.*
- *Knowles v Whistler Mountain Ski Corp.*
- *Karroll v Silver Star Mountain Resorts Ltd.*
- *Milina v Bartsch*

I also saved two decisions from the Boolean search performed in CanLII.

I will note up *Karroll v Silver Star Mountain*; a 1988 BCSC decision to see how it’s been considered, as it’s a fairly old decision.

I can note it up in various databases, but I’ll start with CanLII.

Narrator:

You can find *Karroll* in CanLII, let’s click on “cited by ___”; and in this case there are 59 documents.

We won’t be reading the cases that have judicially considered *Karroll*, but this is an important part of the research process to decide if the decision is it still good law, if it is still authoritative for the points of law we are relying on.

Some other tips to be aware of:

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

What if you were to note up the decision in different databases?

- In Westlaw: there are 107 citing references
- In Quicklaw there are 92 citing references

You can see that noting up the decision in different databases gave us different results.

Further, some databases may specify 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 it is prudent to read through the cases to determine if treatment of the point of law is actually consistent with your understanding of that proposition. Don’t just rely on those flag/citing systems.

It’s also important to note that databases will have different coverage of decisions across courts and jurisdictions. Where possible, it’s a good idea to see how a decision was judicially considered across more than one database if the decision is significant to your research.

Lawyer:

I’ll want to note up the seminal cases in CanLII and on other databases where possible. Assuming I don’t get any surprises or judgments being reversed, at least on statement that I’m relying on, I’ll be able to rely on these cases and stop my research here.

Narrator:

You can do a full-text search of your style of cause or citation in the database to be even more thorough as sometimes the links to citing references don’t capture everything.

Assuming you have noted up the decisions and determined they are still good law, you will likely at this point have assembled enough to confidently answer that waivers can be enforceable. Of course, the factual matrix will dictate how and when those waivers are enforceable.

This should give you enough information to answer Ellis’s question and write an email or memo summarizing the relevant points.

Module 7 – Other Sources and Precedents

Narrator:

In this module we will consider the use of template/precedent documents and some general principles to follow when relying on external templates.

We will also briefly discuss some things to watch out for if researching areas of law that do not follow the process or steps we covered in this course.

Lawyer:

Ellis wanted to find out if waivers hold up in court, specific to the circumstances of her business and how she runs her tours.

And she mentioned she had seen some waivers online that she wanted to adapt for her own use.

Once I discuss the enforceability of waivers with her, she will probably ask me to draft one for her situation.

Narrator:

Templates and precedents are powerful tools. They can drastically reduce your workload by providing usable language that can be similar or analogous to the situation you're drafting for. Undoubtedly precedents have their place in your toolkit, and building a precedent library is important for any lawyer: litigator or solicitor.

Whether you would entertain repurposing a template/precedent waiver your client found off a website, or a colleague or fellow lawyer found online, it's up to your professional discretion. Many would highly caution against using template documents from any source you are not familiar with.

Lawyer:

Assuming Ellis wants me to draft a waiver, and I don't have suitable one handy, I should consider when looking at a template I come across:

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

Narrator:

When it comes to searching for precedents, every subject differs, so we can only recommend general tips:

- Common publications such as CLEBC are excellent sources for precedents.
- You can try searching on websites or legal information websites. When we did a search on the BC courthouse library website, we came across an in depth discussion of [the "law of releases"](#) – pre-emptive release/waiver, pointing us also to an excellent textbook with precedent language for drafting waivers.
- Sometimes you can try searching caselaw for determinative precedent language – When we looked at the Karroll decision, there was precedent language of the waiver which was the subject of litigation. Take a look at what it was about that waiver language that made it contentious.

Finally, if you *are* searching online for resources, keep in mind whether the author / source of the information is authoritative.

By now you've come across a variety of secondary sources and should be familiar with the frequently cited authors of the subject area.

There are many well-written, researched and credible law firm wikis, blogs and websites for legal information, but they are not all created equal. Check to see if the author of that website (be it an individual or an organization) has been published, and if they're authoritative in the subject, or cited by others.

Secondary sources often list other resources that could be useful.

For example, take a look back at our Annotated Occupiers Liability Act textbook; there are a wealth of recommended articles and sources for us to refer to.

What about other areas of law? It is important to be able to adapt your research style and approach for the area of law you're tackling.

Perhaps running a search for case law or legislation will not be helpful for finding authoritative information in some areas of practice. For example,

- In the tax law context, Canada Revenue Agency (CRA) often issued interpretation bulletins, these were widely considered by practitioners to be followed and authoritative, although not having the full force of legislation. If you don't search these interpretation bulletins, you could be missing something in a tax law question.
- For securities, securities-related multi-lateral or national instruments issued by relevant provincial securities commissions are critical in considering a corporate finance or securities-related question.
- And 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.

Don't get used to one style of research, be ready to adapt and change your approach and methodology. It's also important to recognize that databases change frequently, and so do their coverage. As you become more familiar with an area of law, your comfort and awareness of research approaches and resources will build. Like anything, research is a skill that takes practice.

Be aware that overly relying on one source only can put you in danger of missing out on important resources.

Module 8 - Putting it all together

Narrator:

This course went through researching a fact pattern asked by a client: whether waivers are enforceable in the context of her business which involves taking paying customers on a fun but possibly dangerous winter backcountry tour.

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

- Define the question
- Evaluate your resources
- Use secondary resources - namely the Annotated Occupiers Liability Act
- Use primary resources – namely reviewing the relevant Act, and conducting case law searches and noting up those cases
- Use other sources –namely how and when to use template or precedent documents for drafting, as well as researching other areas of law not covered by the steps in this course
- Evaluate/analyze your work

Lawyer:

After conducting this research, I feel ready to put together an email and memo to Ellis on the enforceability of waivers. I feel confident in my research and can answer yes, waivers can be enforceable, and further there are specific recommendations I can make to Ellis about what variables (or factual circumstances) will make a waiver more or less likely to be enforceable to protect her from liability if an incident happens with a future customer while out on a tour.

I will also be prepared to draft a waiver if she asks me to.

Ultimately I'll have an internal memo that is fulsome and detailed with the research that I have completed. But my final deliverable being an email to Ellis, it will be tailored so that it is readable and appropriate for her use.

Narrator:

Remember that point about keeping the end in mind? It's important that we not forget the deliverable and what the product will ultimately be used for.

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.

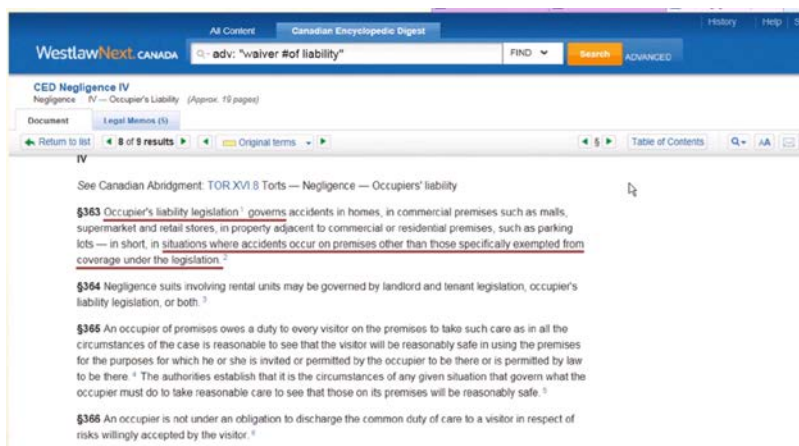
If you are not an expert in the area of law you're researching, it is recommended to start broad. It is recommended to use secondary sources such as the Canadian Encyclopedic Digest (CED), Halsbury's Laws of Canada, or other traditional encyclopedic sources. These summarize both the case law and the 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.

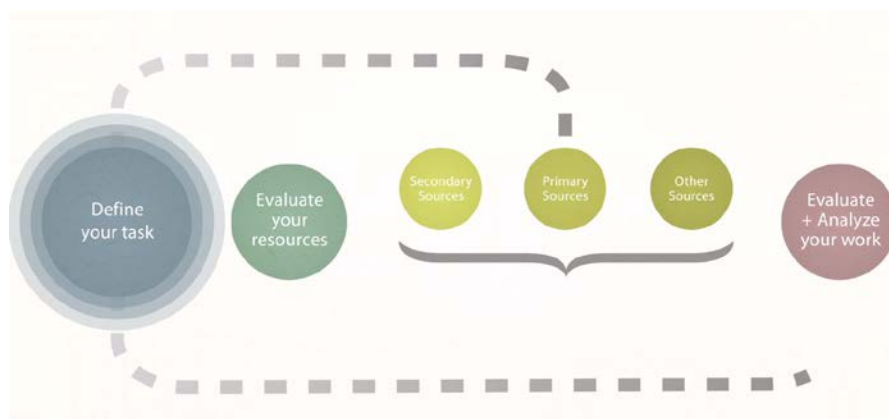
Module 5b – Primary Sources (Does the Act Apply?)

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.

a/

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
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

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.

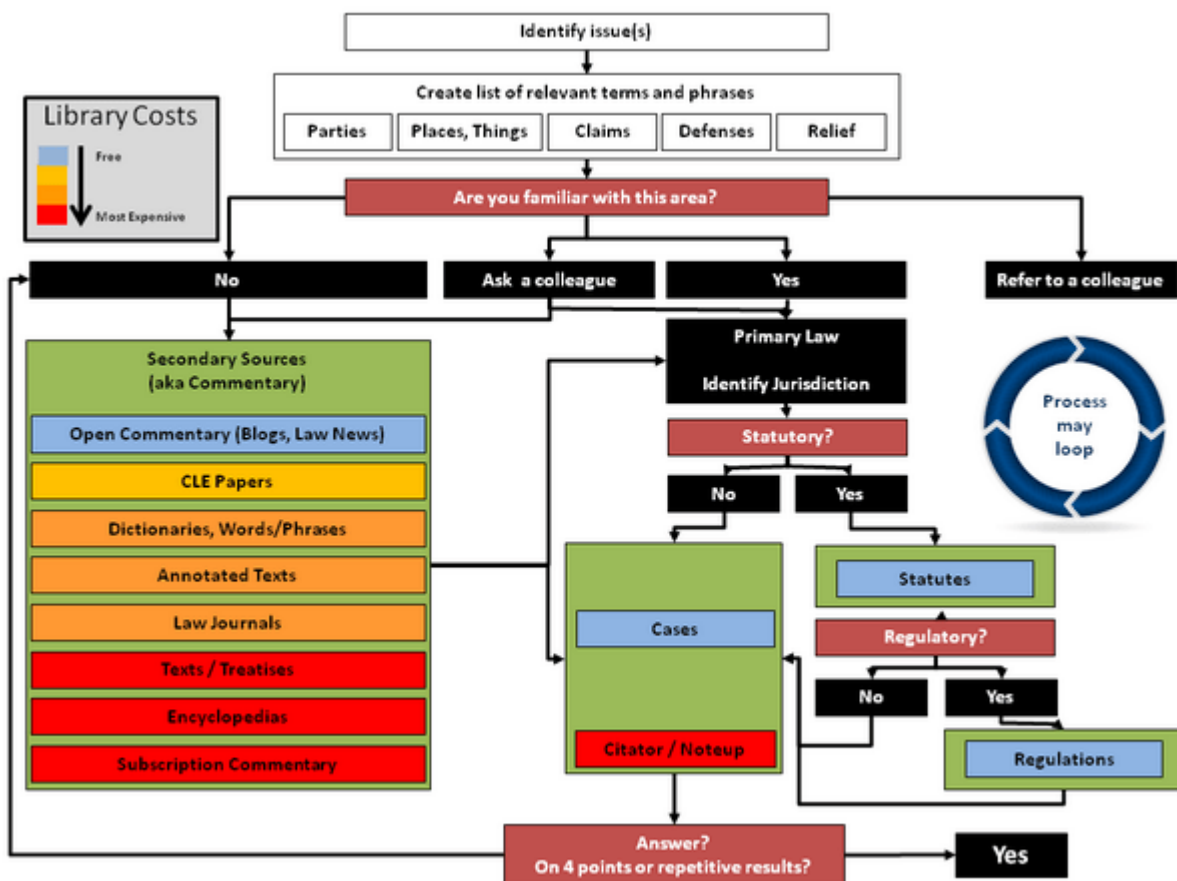
The Canadian Abridgment Digest is a comprehensive collection of over 1,000,000 digests of Canadian case law that is organized by legal issue according to a taxonomy. The digests are written on an issue-by-issue basis, and a single judgment may have several case digests; one for each legal issue considered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

The Canadian Legal Research and Writing Guide

Formerly the Best Guide to Canadian Legal Research BETA

Home / Research Essentials / Step-by-Step Legal Research Process / Plan and organize your research / Research Checklist

Research Checklist

Texts & Looseleaf Services

Access through catalogues in

- Firm library
- Courthouse library
- Law faculty library

- Online texts
- Worldcat.org

Encyclopedias

- CED (in print or on LawSource)
- Halsbury's Laws of Canada
- Halsbury's 4th (UK)
- Halsbury's 3rd (UK) & Converter
- Halsbury's Laws of Australia (Aust)
- AmJur 2d (US)
- Corpus Juris (US)
- Other _____

On-line Research

- CanLII (Cdn)
- Quicklaw (Cdn)
- WestlawNext Canada (Cdn)
- BestCase (Cdn)
- Maritime Law Books (Cdn)
- BAILII (UK)
- AustLII (Aust)
- Lexis (US, UK, Aust, European, International, some NZ & Cdn)
- Westlaw (US, UK, European, International)
- UBC Law Library Electronic Resources
- Courthouse Libraries BC Databases

Digests

- Abridgment Canadian Case Digests (in print or on LawSource)
- The Canada Digest (QL)
- SCC Reports Service
- Criminal Law Digests (CLE Society of BC)
- Civil Law Digests (CLE Society of BC)
- All Canada Weekly Summaries (BestCase)
- Weekly Criminal Bulletin (BestCase)

-] The Digest (UK, Commonwealth, Europe)
-] Australian Digest (Aust)
-] New Zealand Digest (NZ)
-] West's General Digest (US)
-] Other _____

Periodicals & CLE Materials

-] CLE Online (CLE Society of BC, starting 2001)
-] Full text periodicals databases in Lexis, Westlaw, Quicklaw, WestlawNext Canada
-] Canadian Bar Review at cba.org
-] Index to Canadian Legal Literature (in print or online)
-] Hein Online (Courthouse Libraries BC or UBC)
-] Index to Canadian Legal Periodical Literature
-] In Conference (Insight papers on CD ROM)
-] Canadian Law Symposia Index (QL)
-] Index to Legal Periodicals (US, Commonwealth)
-] LegalTrac (US, Commonwealth)
-] Legal Journals Index (UK)
-] Index to Foreign Legal Periodicals (not US or Commonwealth)
-] Index to Periodical Articles related to Law
-] ALR Annotations (US)
-] Other _____

Law Reports – General

-] Dominion Law Reports
-] Western Weekly Reports
-] National Reporter
-] All England Reports (UK)
-] Law Reports (UK)
-] Australian Law Reports (Aust)
-] Commonwealth Law Reports (Aust)
-] New Zealand Law Reports (NZ)
-] West Reporters (US)
-] Other _____

Law Reports – Jurisdictional

-] Supreme Court Reports
-] Federal Court Reports
-] Federal Trial Reports
-] British Columbia Law Reports
-] British Columbia Reports
-] British Columbia Appeal Cases
-] Alberta Reports
-] Alberta Law Reports
-] Saskatchewan Reports
-] Manitoba Reports
-] Western Appeal Cases
-] Ontario Appeal Cases
-] Ontario Reports
-] New Brunswick Reports
-] Nova Scotia Reports
-] Newfoundland & Prince Edward Island Reports
-] Atlantic Provinces Reports

- Yukon Reports
- Other _____

Law Reports – Topical

- See Topical Reporters chart

Cases Judicially Considered

- QuickCite on Quicklaw
- KeyCite on WestlawNext Canada
- Reflex on CanLII
- Canadian Case Citations
- Full text searches on Quicklaw, LawSource or CanLII
- Case reporter indices
- Current Law (UK)
- The Digest (UK)
- Australian Citator (Aust)
- Westlaw: Shepard's, KeyCite (US)
- LawCite (UK/Commonwealth)
- Lexis: Shepard's, AutoCite (US)

Statutes Judicially Considered

- KeyCite on WestlawNext Canada
- Canadian Statute Citations
- QuickCite on Quicklaw
- Statutes of BC Judicially Considered
- Annotated statutes
- CCH looseleaf services

- Full text searches

Words & Phrases

- Carswell's Words & Phrases (in print or in LawSource)
- Quicklaw's Canadian Legal Words and Phrases
- Irwin Law's Canadian Online Legal Dictionary
- Canadian Case Digests (Abridgment Digests in LawSource)
- Contracts – Interpretation
- Statutes – Interpretation
- Time
- Words & Phrases Legal Maxims Canada
- CED
- Statutory Interpretation Texts
- Contracts Texts
- Canadian Legal Dictionary
- Black's Law Dictionary (US)
- West's Words & Phrases (US)
- Words & Phrases Legally Defined (UK)
- Stroud's Judicial Dictionary (UK)
- Jowitt's Dictionary of English Law (UK)
- Halsbury's (in Index under Words & Phrases)
- Case reporter indices
- Dictionaries

