

PRACTICAL STRATEGIES FOR LEGAL RESEARCH

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INTRODUCTION

- Who am I and why should you listen to me?
- This presentation will provide you with a roadmap for legal research problems, from identifying issues to effectively communicating results.

THE BASICS

- Generally speaking, effective legal research requires you to answer three basic questions:
 1. What is the problem?
 2. Where can I find the answer?
 3. What is the answer?

THE BASICS

- I advocate a research strategy that uses both paper and online sources, but does not rely exclusively on either.
- This will allow you to take the benefit of both resources while avoiding unnecessary risks or limitations.

THE PROBLEM

- Identifying the problem may depend on how the research project has been assigned:
 - The assigning lawyer identifies a narrow legal issue without giving you the facts;
 - The assigning lawyer summarizes the facts and identifies the issues; or
 - The assigning lawyer gives you the file materials and asks you to identify the relevant facts and issues.

THE PROBLEM

- If you are asked to identify the legal issues on your own, consider these strategies:
 - Law school course subjects;
 - Causes of action, defences or relief sought;
 - Brainstorm or word associate based on relevant facts; and
 - Use indexes from secondary materials like the CED or textbooks.

THE PROBLEM

- Regardless of the nature of the assignment, in order to provide an effective product, you must understand what you have been asked to do.
- If you are given written instructions, congratulations! If not, listen carefully and take notes.
- Don't be afraid to ask questions. If you are intimidated, ask another student or an associate.

THE PROBLEM

- Address practical considerations, like time lines and cost limitations, at the outset.
- Keep notes of issues that occur to you while you are in the midst of your research.
- If you find that you need clarification along the way, ask for it.
- Don't be afraid to be creative, but make sure you talk to the assigning lawyer.

FINDING THE ANSWER

- The key to legal research is not knowing the law, it's knowing where to find the law.
- Use practical and consistent research strategies. Consider using checklists to ensure you are being thorough.
- Start with general legal principles then move to progressively more specific sources.

STARTING POINTS

- Start with the basics.
- You have to understand the area of law you are researching in order to be effective.

STARTING POINTS

- Use textbooks and other secondary sources like the CED and the Canadian Abridgement to give you a basic understanding of general legal principles.
- These sources can also direct you to other sources.
- Don't ignore the footnotes: they contain valuable citations for articles and cases that may be relevant.

STARTING POINTS

- Consider whether your problem has a statutory element.
- If so, note up the legislation in question to find applicable case law.
- If you're not sure, don't be afraid to browse the list of statutes.
- Watch for changes to legislative language and numbering.

STARTING POINTS

- Where your problem involves issues of interpretation, check dictionaries and words and phrases resources.
- Recent articles can also provide general principles, case comments and alternative methods of analysis. Keep in mind that the views of the author may not reflect the current state of the law.

STARTING POINTS

- Check the CD Rom or online resources available at your firms and libraries.
- Check LESA, CBA and other seminar materials, which are often prepared by leading practitioners.

NEXT STEPS

- Once you have a basic understanding of the problem, move to the case law.
- If you have gleaned leading cases from the secondary sources, read them carefully. Pay particular attention to factual or legislative similarities or differences.
- Watch out for cases that contain multiple judgments, as it can be difficult to determine the majority position on various issues. A chart can be helpful (seriously!).

NEXT STEPS

- Where possible, focus on law from the applicable jurisdiction, particularly where your issue involves a matter of procedure or is tied to statute.
- Keep in mind that case law from certain jurisdictions carries more weight than case law from others.
- Note up, note up, note up!

NEXT STEPS

- If there are no obvious leading cases, formulate a search strategy.
- Use key words and resource lists from textbooks and other secondary sources, such as the Canadian Abridgement and CED keys.
- Browse the indexes in topical case reporters.

NEXT STEPS

- **Conduct online searches, keeping in mind the limitations of the databases you are using.**
- **Think about your search terms ahead of time, using the key words you have come across in other sources.**
- **Use general searches and digest databases to narrow your focus, then move to more specific searches.**

NEXT STEPS

- Be aware of the different fee schedules in place for online resources.
- Review digests or headnotes online to avoid unnecessary printing charges.
- Use the most cost effective ways of printing cases.

ANALYSIS

- Legal research does not end with finding the law.
- Apply the law to the facts underlying the problem you have been given. If you haven't been given the facts, ask for them or note that in your memo.
- Don't be afraid to reach a conclusion, but be sure to back it up.

ANALYSIS

- **Make sure your analysis flows logically from start to finish:**
 - What are the elements of each issue or cause of action?
 - What legal principles apply to each?
 - How do the facts relate to each issue and the legal principles?
 - Example: interlocutory injunctions.

ANALYSIS

- Think about what will be useful to the lawyer reviewing your work, the client and the judge (if applicable):
 - Why are the cases you are citing important?
 - What are the similarities and differences between the cases and your facts?
 - Are you applying existing legal principles or extending the law to apply to your circumstances?

ANALYSIS

- Do not ignore case law that is unfavourable to your position.
- Regardless of any ethical obligations that may apply, from a practical perspective, both your case and your reputation are best served if you can address and distinguish unfavourable law.

THE FINISHED PRODUCT

- Provide your answer in a comprehensible and useable format:
 - Introduction (what the memo is about);
 - Brief Conclusion (if the memo is more than a few pages);
 - Facts;
 - Issues;
 - Analysis (with subheadings for each issue);
 - Conclusion and Recommendations;
 - Sources Consulted.

THE FINISHED PRODUCT

- This format forces you to follow a logical progression.
- It can also be used as an outline, which will help you organize your thoughts and approach.

THE FINISHED PRODUCT

- Use your subheadings effectively. For example, I would organize the analysis section of a memo on interlocutory injunctions as follows:
 - What is the test for an interlocutory injunction?
 - Is there a strong *prima facie* case or serious question to be tried?
 - Can we establish irreparable harm?
 - What is the balance of convenience?
 - Do we need an undertaking?

THE FINISHED PRODUCT

- Give yourself time to edit your work. If you read it again in a day or two, you will be better able to identify areas that need work.
- Avoid overly long quotations by paraphrasing instead. Many readers simply skip over large sections of quoted text.

THE FINISHED PRODUCT

- Always consider the end use of your research project.
- If you are drafting an opinion letter that will go to a client, ensure that it is suited to that purpose.

THE FINISHED PRODUCT

- Most clients want a practical and expert application of the law to their particular circumstances.
- They do not want pages of esoteric discussion on the evolution of the Rule of Law in Canada.

THE FINISHED PRODUCT

- On the other hand, if you are drafting a comprehensive research memo for another lawyer, you can (and likely should) provide detailed analysis.
- Research memos should contain more pure law, including specific legal sources and full citations for secondary sources and cases.
- Lawyers will cut and paste your work into opinion letters or briefs, so if possible create a product that can be used in this way.

PRACTICAL TIPS AND TRICKS

- Use the resources that are available to you.
- Librarians are invaluable sources of information and will always know more than you do about legal research.
- Don't reinvent the wheel: check firm memo banks and databases to determine if anyone else has examined the same issue, which may give you an effective starting point.

PRACTICAL TIPS AND TRICKS

- When you are preparing an opinion or a memo for another lawyer, ask his or her assistant for a precedent so you can use an appropriate format.
- Consider including a short conclusion at the beginning of long opinions or research memos so that the answer is readily accessible.

PRACTICAL TIPS AND TRICKS

- Use proper citations.
- The neutral citation, if available, and a parallel reported citation and/or a reliable electronic citation, are acceptable by the Courts.
 - Queen's Bench Notice to Profession - Citation of Authorities dated Tuesday, November 12, 2013
 - Use pinpoint references for quotes, preferably to paragraph numbers.

PRACTICAL TIPS AND TRICKS

- Anticipate that you will be interrupted in the midst of a research problem.
- Prepare case summaries as you go, by dictation or on paper or sticky notes that you can attach to the cases.

PRACTICAL TIPS AND TRICKS

- **Keep records of the sources you have consulted. If you're using looseleaf editions, note the date of the most recent update. This will allow you to readily note up your research at a later date.**
- **Keep track of your online searches as you conduct them in order to prevent duplication.**

PRACTICAL TIPS AND TRICKS

- **Keep your research material together, including your notes and any cases you've reviewed. Keep it with the file!**
- **Create and maintain a personal precedent system, whether electronic or in paper.**
- **Keep a folder of commonly cited cases.**

RESOURCES

- Alberta Courts Website: albertacourts.ab.ca
- Research texts:
 - N McCormack et al, *The Practical Guide to Canadian Legal Research*, 4th ed (Toronto: Carswell, 2015)
 - DT MacEllven, *Legal Research Handbook*, 6th ed (Markham, Ont: LexisNexis, 2013)
 - PW Whitehead & A Matthewman, *Legal Writing and Research Manual*, 7th ed (Markham, Ont: LexisNexis, 2012)