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# Case Law Research

June 23, 2023

Slides: <https://tinyurl.com/bdhc7nsh>



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# Agenda

- Locating Case Law
  - Relevant Case Law
  - Noting Up Case Law
  - Knowing When to Stop
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# Legal Research & Writing Guide

## The Canadian Legal Research and Writing Guide

Formerly the Best Guide to Canadian Legal Research

[2018 CanLII Docs 161](#)

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

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The Canadian Legal Research and Writing Guide

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# Locating Case Law

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# What is Case Law

A decision on a specific case, as written by a judge(s) at the end of a trial.

A decision will highlight the details of the case and the arguments presented on both sides, including discussion of cases and legislation considered in making a decision, and will present the judges final decision.

What it is not/does not include:

- Details of a trial (transcripts, witnesses, etc.)
  - Jury decisions
  - Court cases decided by mediation, settlement, etc.
  - Decisions on small matters where the judge only verbally presents his decision
  - And much more....
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# Locating Case Law: where cases are published

- Decisions of courts and administrative bodies are collected and published by commercial and non-profit publishers as well as government bodies
  - Decisions are organized and published in a number of ways:
    - Traditionally, in case reporters, with a hierarchy of reporters
    - Currently, more commonly published by courts with a neutral citation and found on the courts websites or a database like CanLII, Westlaw or Quicklaw.
  - Case Reporters are a set of books containing decided cases
    - Can also be called, case reports, law reports or case reporting series
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# Finding Case Law with citations

## [Cardiff Index to Legal Abbreviations](#)

Ex: *Colven Distributors Ltd. v. Allstate Insurance Co.* (1992), 10 C.C.L.I. (2d) 157

EXPLORE CARDIFF UNIVERSITY HOME ABOUT STUDY RESEARCH NEWS EVENTS

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**Cardiff Index to Legal Abbreviations**

[Home](#) [About](#)

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### Cardiff Index to Legal Abbreviations

This database allows you to search for the meaning of abbreviations for English language legal publications, from the British Isles, the Commonwealth and the United States, including those covering international and comparative law.

A wide selection of major foreign language law publications is also included. Publications from over 295 jurisdictions are featured in the Index.

The database mainly covers law reports and law periodicals but some other legal publications are also included. The Index is under continuous development with new abbreviations and titles being added on a regular basis.



#### Search by Abbreviation

Enter an abbreviation to find matching Law publication titles

**Search Options:**

☒ Exact

☐ Close

#### Search by Title

Enter the title of a Law publication to find the abbreviation

**Search Options:**

☒ Exact Words (ALL words, any order)

☐ Phrase (ALL words in order)

☐ Keyword (ANY words, any order)

# Locating Case Law: Open Sources

## CanLII



Search all databases

### Primary law

Canada (Federal)

British Columbia

Alberta

Saskatchewan

Manitoba

Ontario

Quebec

New Brunswick

Nova Scotia

Prince Edward Island

### Commentary

Books, articles, reports and more...

CanLII Connects

## WorldLII



WorldLII

World Legal Information Institute

Free, independent and non-profit access to worldwide law

[\[Advanced Search\]](#) [\[LawCite\]](#) [\[Help\]](#)

Search

1834 databases from 123 jurisdictions via 14 Legal Information Institutes

#### Global

- [All Countries](#)
- [All Databases](#)
- [All Regions](#)
- [Other Groupings](#)

#### Libraries & Projects

- [Final Appeal Courts](#)
- [International Decisions](#)
- [Law Journals](#)
- [Law Reform](#)
- [Treaties](#)

- [International Law](#)
- [Privacy Law](#)

#### Catalog

- [All Categories](#)
- [Subjects](#)

#### News & Database Additions

Last updated 16 June 2023

- [Philippines National Privacy Commission - Advisory Opinion](#)
- [Philippines National Privacy Commission - Commission-Issue](#)
- [Global Tables and Maps of Data Privacy Laws 2011:](#)
- [International Privacy and Data Protection Law Monographs 16](#)
- [United Nations Special Rapporteur on the Right to Privacy: Pu](#)
- [International Law Monographs 1689-1950 \(WorldLII\)](#)
- [Goettingen Journal of International Law 2009: \(WorldLII\)](#)
- [United Nations Committee Against Torture - Concluding Obse](#)
- [International Labour Organization Administrative Tribunal 12:](#)
- [United Nations Committee on the Elimination of Discriminati](#)
- [United Nations Committee on the Elimination of Discriminati](#)
- [United Nations Committee on the Elimination of Discriminati](#)
- [United Nations Committee on the Elimination of Racial Discrimi](#)
- [United Nations Committee on the Elimination of Racial Discrimi](#)
- [United Nations Committee on the Elimination of Racial Discrimi](#)
- [United Nations Committee on Economic, Social and Cultural\]](#)
- [United Nations Committee on Economic, Social and Cultural\]](#)
- [United Nations Committee on Migrant Workers - Concluding:](#)

• [Past additions...](#)

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# Locating Relevant Case Law

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# Locating Relevant Case Law

- **Secondary Sources:** Identify and comment on cases
  - **Legal databases:** Find cases – entire decision, search by keyword, jurisdiction, parties etc.
  - **Case Digests:** Arranged by topic provide summaries of important cases, with citations to full-text case reports
  - **Legislation:** Find related cases based on a piece of legislation
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# Review & Assess Case Law

For leading, relevant cases, assess the following:

- Case History
  - Case Consideration
  - Binding or Persuasive?
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# Review & Assess Case Law

"Noting up" means verifying whether a particular case is still relevant and that it has not been reversed on appeal, or has been criticized or overruled by subsequent cases.

- **Case history**, involves finding out if the decision has been appealed to a higher court; and if it has, did the higher court change the decision of the lower court in any way?
  - **Case consideration**, involves finding out if the decision has been cited by later cases; if it has, how did the later cases view, or treat, the earlier decision? Understanding how to find the history and consideration of a case decision is essential in determining if the case will be useful to you.
  - **Binding or Persuasive**, what jurisdiction and level of court is the case from? What is its precedential value to your case or situation?
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# Researching Case Law

1. Locate relevant cases
  2. See if relevant cases have been appealed (history of a case)
  3. Locate later cases that have considered those cases (noting up)
  4. Determine whether a case is binding or persuasive
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# Lets work through and example together!

Try answering the following question using secondary sources  
on CanLII

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## Sample Question

An individual has been terminated without cause from their employment, without notice or severance. They were employed for 10 years and want to file a claim against their previous employer.

- You want to find what notice requirements exist.
  - You have investigated applicable legislation, and want to see what the case law says about this issue.
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# Define Legal Issues

## Answer: eText on Wrongful Dismissal and Employment Law, 2012 CanLIIDocs 1

CanLII

[Home](#) › [Commentary](#) › [Books](#) › [Lancaster House](#) › 2012 CanLIIDocs 1

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› PART I. THE EMPLOYMENT RELATIONSHIP

✓ PART II. TERMINATION OF EMPLOYMENT

✓ Chapter 6. Dismissal Without Cause

✓ **6.1 Notice Requirements**

› 6.1.1 Common Law Notice Requirements

› 6.1.2 Statutory Notice Requirements

› 6.2 What is Reasonable Notice?

› Chapter 7. Dismissal for Cause

› Chapter 8. Constructive Dismissal, Resignation and Repudia...

✓ Chapter 9. Other Terminations of Employment

9.1 Termination of Fixed Term Employment

9.2 Termination of Probationary Employment




9.3 Mandatory Retirement



9.4 Termination of Seasonal Employment

› 9.5 Termination due to Frustration

### Chapter 6. Dismissal Without Cause

#### › 6.1 Notice Requirements

Under common law principles applicable to contracts of employment it is well established that employers have an implied contractual obligation to give indefinite-term employees notice of termination of the employment relationship unless there is “just cause” for immediate dismissal. If the employer and employee have previously agreed on the length of notice to be given—for example, if there is a written employment agreement with express notice terms—those terms will generally govern provided they comply with statutory minimum notice requirements (see Sections 6.1.1 and 6.1.2). If no such agreement exists, the courts will imply a term of “reasonable notice”: *Carter v. Bell & Sons (Canada) Ltd.*, [1936 CanLII 75](#)  (ON CA), [1936] O.R. 290 (C.A.); *Machtinger v. Hoj Industries Ltd.*, [1992 CanLII 102](#)  (SCC), [1992] 1 S.C.R. 986, at para. [19](#) . Where there is no cause for immediate dismissal, or the notice provided is less than agreed upon or reasonable, the dismissal is said to be “wrongful.”

In order to be effective in law, notice of termination must be specific, unequivocal and clearly communicated to the employee, a question of fact to be determined on an objective basis considering the circumstances of each case: *Allen v. Ainsworth Lumber Company Ltd.*, [2013 BCCA 271 \(CanLII\)](#) , affirming, [2011 BCSC 1707 \(CanLII\)](#) . See discussion in Section 6.1.2.

# Case Law: Locating Decisions

CanLII

Français | English

"Wrongful dismissal" AND "notice" and "Remedy"

x?

?

Case name, document title, file number, author or citation

?

Noteup/Discussion: cited case names, legislation titles, citations or dockets

?

All CanLII (522)

Cases (521)

Legislation (1)

Commentary (0)

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All courts and tribunals ▾

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Your results contain Supreme Court of Canada decisions. [Remove them.](#)

1.

Fayant v. Campbell's Maple Village Ltd., 1993 CanLII 7216 (AB QB)

Court of Queen's Bench — Alberta

1993-11-17 | 7 pages | cited by 7 documents

wrongful dismissal — doctrine of issue estoppel — employee — ab initio utilizes — enforceability

[...] The employees commenced a civil action alleging **wrongful dismissal**. The issue was whether a dismissed employee with an employment contract stipulating a period of **notice** less than that required under the legislation is entitled to reasonable **notice** of termination or whether he is restricted to the

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# Locating Decisions in Westlaw

## [Westlaw Canada](#)

- Canadian Encyclopedic Digest
  - Words & Phrases
  - Keyword Search
  - Canadian Abridgement Digest
-

# Case Law: Locating Decisions

Source: Canadian Abridgement Digests

THOMSON REUTERS  
WESTLAW CANADA

All Content LAB Labour and employment law

Q - Search LAB Labour and employment law Find Search

III Employment standards legislation

- 1 Constitutional issues
- 2 Object of legislation
- + 3 Definitions
- + 4 Applicability of legislation
- + 5 Wages
- 6 Hours of work
- 7 Eating periods
- + 8 Overtime pay
- + 9 Public holidays
- + 10 Vacations
- 11 Benefits
- + 12 Leaves of absence
- 13 Termination of employment
  - a Termination of employment by employer
    - + i What constituting dismissal
    - ii Quit vs. fired
    - iii Constructive dismissal
    - iv Statutory notice requirements
  - + b Termination pay
  - c Severance pay
    - i Entitlement
    - ii Calculation
  - + d Exemptions to entitlement to statutory termination or severance pay

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# Noting Up Case Law

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# Noting Up

"Noting up" means verifying whether a particular case is still relevant and that it has not been reversed on appeal, or has been criticized or overruled by subsequent cases. There are two parts to noting up a decision:

- **Case history**, involves finding out if the decision has been appealed to a higher court; and if it has, did the higher court change the decision of the lower court in any way?
  - **Case consideration**, involves finding out if the decision has been cited by later cases; if it has, how did the later cases view, or treat, the earlier decision? Understanding how to find the history and consideration of a case decision is essential in determining if the case will be useful to you.
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## Noting Up - Case History

- **Affirmed** - Appeal dismissed, whether or not decision of lower court is expressly affirmed.
  - **Reversed** - Appeal allowed, whether or not higher court sends matter back for further adjudication.
  - **Supp. Reasons** - The citing decision arises from issues raised in the initial decision, such as costs, sentencing, damages or further liability.
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# Noting Up - Judicial Consideration

- **Distinguished** - cited case held to be inapplicable because of difference in fact or law
  - **Explained** - citing case (decision which is considered primary case) adds to, expands upon, or interprets the cited case.
  - **Followed** - citing case applies a principle of law from the cited case. The judge expressly relies on the cited case as a precedent on which to base a decision.
  - **Mentioned** - case is cited with no explicit treatment and with no more information than what was available in the case itself.
  - **Not followed** - citing case overruled or refuses to apply the cited case for some reason other than it was distinguishable
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# “Binding” or “Persuasive” Case Law?

A case is binding when:

- It's from the Supreme Court of Canada or the Court of Appeal in your jurisdiction.
- You are bound to follow the precedent unless it is distinguishable (usually based on the facts).

Otherwise, a case is simply persuasive.

Ultimately, it is the judge(s) who determine whether a precedent is binding or persuasive.

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## Noting Up Case Law in CanLII

You have found *Boutcher v. Clearwater Seafoods Limited Partnership*, 2010 NSCA 12 to be applicable to this situation, and you want to investigate it further to see if it is still applicable and how it can be applied in this circumstance.

To do this, you will look at:

- Case History
  - Case Consideration
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# Case Law: Case History



[Home](#) › [Nova Scotia](#) › [Nova Scotia Court of Appeal](#) › 2010 NSCA 12 (CanLII)

## Boutcher v. Clearwater Seafoods Limited Partnership, 2010 NSCA 12 (CanLII)

[Document](#)

**History (2)**

[Cited documents \(21\)](#)

[Treatment 🖱️ \(13\)](#)

[CanLII Connects \(4\)](#)

### Supreme Court of Canada

2010-08-12

[\(Application for Leave\) Clearwater Seafoods Limited Partnership, a Nova Scotia Limited Partnership v. Cecil Boutcher et al., 2010 CanLII 46501 \(SCC\)](#)

### Supreme Court of Nova Scotia

2009-04-03

[Boutcher v. Clearwater Seafoods Limited Partnership, 2009 NSSC 107 \(CanLII\)](#)

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# Case Law: Case Consideration

CanLII

Home › Nova Scotia › Nova Scotia Court of Appeal › 2010 NSCA 12 (CanLII)

## Boutcher v. Clearwater Seafoods Limited Partnership, 2010 NSCA 12 (CanLII)

Document

History (2)

Cited documents (21)

Treatment 🏹 (13)

CanLII Connects (4)

Citations 🏹 (13)

Discussions 🗨️ (1)

Unfavourable mentions 🏹 (1)



🔍 Search for all citing documents

- [Oostlander v Cervus Equipment Corporation](#), 2022 ABQB 200 (CanLII)  
Court of Queen's Bench — Alberta  
2022-03-09 | 13 pages | cited by [2 documents](#)  
*termination — notice — employment — vacation pay — commute*  
[...] [Boutcher v Clearwater Seafoods Ltd. Partnership](#), **2010 NSCA 12** at para.31 [...]
- [Ogilvie v. Windsor Elms Village for Continuing Care Society](#), 2021 NSSC 25 (CanLII)  
Supreme Court of Nova Scotia — Nova Scotia  
2021-01-26 | 45 pages  
*notice — auditor — employment — contract — accounting*  
[...] See also [Boutcher v Clearwater Seafoods Limited Partnership](#), **2010 NSCA 12**, [Aasgaard v. Harlequin Enterprises Ltd.](#), [1993] O.J. No. 1484 (Ont. Ct. J. (Gen. Div.)) at paras 15 – 17; [aff'd](#) [1997] O.J. No. 1112 (Ont. C.A.); and the decision of [Karakatsanis, J.](#) (as she then was) in [Kontopidis v. Coventry Lane Automobiles Ltd.](#), [...]
- [Crook v Duxbury](#), 2020 SKCA 43 (CanLII)  
Court of Appeal for Saskatchewan — Saskatchewan  
2020-04-16 | 28 pages | cited by [2 documents](#)  
*fixed-term employment contract — mitigation — damages — duty to mitigate — termination*  
[Appeal](#) [Contracts](#) [Damages](#) [Labour and employment](#)

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# More than just case law

- Legal research isn't just about legislation and decisions
  - Look for Policies and Services
    - Government websites (Ministerial Orders)
    - Service organization websites
    - Resources aligned with the courts
    - Public Health Orders
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# How to know when to stop?

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# How to know when to stop?

- You have checked legislation, case law and at least one encyclopedia and/or one text
  - You keep coming across the same information
  - Nothing is new
  - You have answered your question
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# Things to remember

- Always clarify expectations and deliverables before beginning research
  - Secondary Sources - Start with those you have free access to. Verify with paid, foundational sources when/if needed
  - Case Law - 2000s onwards, CanLII is comparable to paid services for cases included
    - Paid services add value through headnotes and treatment, but you still need to rely on your own judgement
  - Know the subscription rules for paid databases
    - Some charge per search, others if you open results
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# Thank you!

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