# Case Law Research

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Slides: <a href="https://tinyurl.com/bdhc7nsh">https://tinyurl.com/bdhc7nsh</a>



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# Agenda

- Locating Case Law
- Relevant Case Law
- Noting Up Case Law
- Knowing When to Stop

# Legal Research & Writing Guide

#### The Canadian Legal Research and Writing Guide

Formerly the Best Guide to Canadian Legal Research

#### 2018 CanLIIDocs 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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# **Locating Case Law**

#### 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....

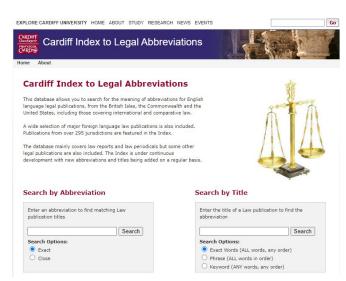
# Locating Case Law: where cases are published

- 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
  - o Can also be called, case reports, law reports or case reporting series

## **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

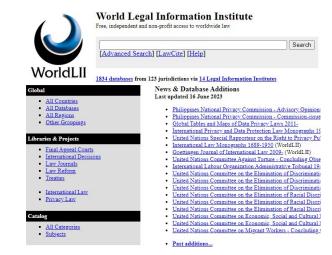


### **Locating Case Law: Open Sources**

#### **CanLII**



#### **WorldLII**



# Locating Relevant Case Law

### **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

#### **Review & Assess Case Law**

For leading, relevant cases, assess the following:

- Case History
- Case Consideration
- Binding or Persuasive?

#### **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 it's precedential value to your case or situation?

# **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

# Lets work through and example together!

Try answering the following question using secondary sources on CanLII

## 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.

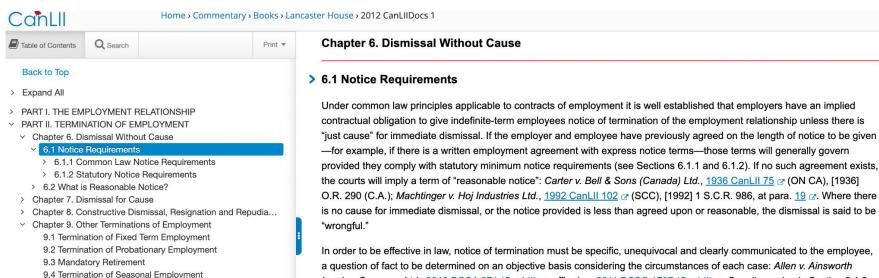
- You want to find what notice requirements exist.
- You have investigated applicable legislation, and want to see what the case law says about this issue.

#### **Define Legal Issues**

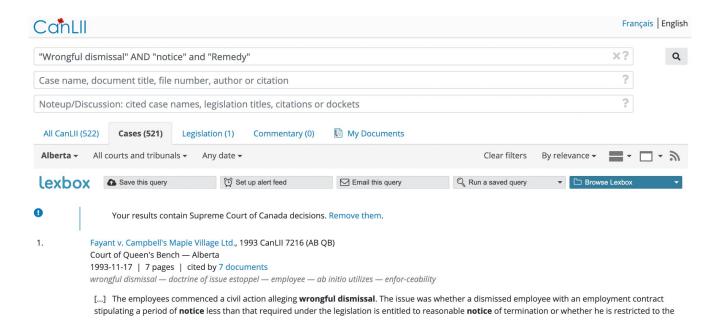
> 9.5 Termination due to Frustration

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

Lumber Company Ltd., 2013 BCCA 271 (CanLII) , affirming, 2011 BCSC 1707 (CanLII) . See discussion in Section 6.1.2.



#### **Case Law: Locating Decisions**



# **Locating Decisions in Westlaw**

#### Westlaw Canada

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

#### **Case Law: Locating Decisions**

Source: Canadian Abridgement Digests



# **Noting Up Case Law**

# **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.

# **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.

### **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

## "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.

# **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

#### **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

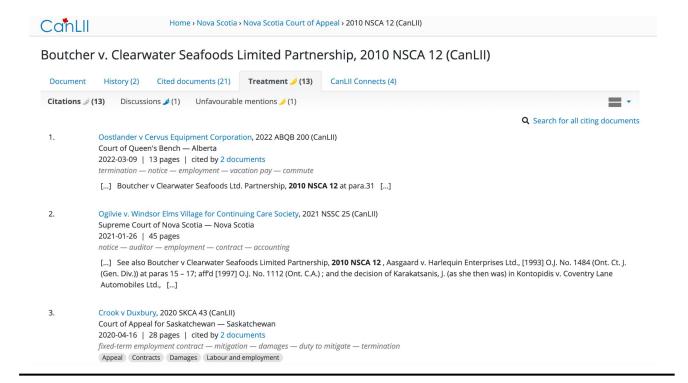
46501 (SCC)

#### Supreme Court of Nova Scotia

2009-04-03

Boutcher v. Clearwater Seafoods Limited Partnership, 2009 NSSC 107 (CanLII)

#### **Case Law: Case Consideration**



#### 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

# How to know when to stop?

## 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

# 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

# Thank you!

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