LEGAL RESEARCH

Skills and Techniques for Researching Law

Generic research skills used in any discipline may be sufficient to begin an initial legal analysis and investigate legal processes and procedures at the start of a case. Another person may have started legal action, and their documents may provide some research and analysis that can be built on. For example, an individual can access an online legal dictionary to look up the legal references and words they have used. He or she can study legal procedures by downloading the rules of court from a court’s website. As a legal matter progresses, however, it becomes important to be able to do more complex research to improve the strength of a claim and to raise doubts about that of the other side. Arguments based on law require competent legal research to be credible in the eyes of a judge or tribunal.

The goal of legal research is to find laws or precedents that support your arguments and undermine those of the other side. This is a search for authorities (precedents and other authoritative statements of law) that may be presented to a decision-maker to support a legal argument. When a judge asks, “what is the authority for that statement?” the results of prior legal research help to provide a credible and persuasive response. The legal system is capable of change, but it is much easier to convince a judge to follow existing legal
authorities than to break with long-standing interpretations of the law and established precedents. In exceptional cases it may be possible to find a section of the Constitution, or a decision of the highest court in the jurisdiction that can be presented to a judge as a binding authority that makes any counterargument virtually impossible. Such a case would likely be settled without the necessity of a trial (if the facts were not in doubt) once both sides of the dispute became aware of such authority. Many legal matters, however, are not so cut-and-dried, and research is usually necessary to find helpful authorities that may come from all levels of the legal hierarchy, including local legislation and decisions from lower courts.

Before the existence of the Internet, legal research was conducted in law libraries found in courthouses, law schools, and private legal firms. Law librarians over many hundreds of years adopted unique conventions for cataloguing and displaying legal materials that law students learned about as part of their training in conducting research. The distinctive organization of law libraries to some extent physically mirrored the structures and hierarchies of law itself. Legislation and legal decisions were contained in books shelved chronologically and located in separate sections, each dedicated to a single legal jurisdiction; textbooks, reference works, and journal articles were housed in their own areas—this structured arrangement of materials helped to focus legal research, making it more efficient and effective. The print era of legal research, however, is now largely over and huge quantities of legal materials are now available in digital format, often free of charge on the web. This has had the effect of opening up more avenues of legal research, but it has also magnified the problem of identifying which legal authorities will be accepted and used by a decision-maker in a particular case.

This chapter examines the purposes of legal research, the tools and techniques that are available to do it, and some obstacles that get in the way of doing it well. Today, finding legal materials is much easier than when it was necessary to visit a law library, but evaluating the results of online searches—determining the value of what you find as legal authority—is a new challenge for researchers whether legal professionals or not.
Types of Legal Research

Individuals may research the law and legal system for a variety of reasons in addition to making or responding to a legal claim. The field defines different approaches to legal research according to the perspective and corresponding objective of the researcher. An internal perspective regarding legal research accepts the existing framework of the law, the legal system, its processes and procedures, and seeks the results of research for the purpose of practical use. Lawyers typically have an internal perspective when they do legal research for their clients. An external perspective does not accept the inevitability of existing law and legal systems, and seeks legal knowledge for the purpose of advancing a critique of them. Academics, such as law professors and scholars of legal studies, often adopt an external perspective when they do research for the purpose of law reform. From an internal perspective, the purpose of doing legal research is to obtain a desired result using legal processes. From an external perspective, the purpose of research is to understand the relations between law and society, and generate ideas about how law might better serve it.

Research done by lawyers from an internal perspective is called doctrinal legal research. Its purpose is to discover the doctrines (legal principles and rules) that can be used to persuade a judge to decide in a client’s favour. Legal academics also do this type of research to contribute to the better understanding of existing law, and sometimes with a view to developing it in new directions. Because doctrinal research is primarily concerned with analyzing legal texts (legislation and case reports) it is sometimes described as the study of black-letter law (law as written rules).

The results of doctrinal legal research appear in the written submissions (written arguments, called briefs in the United States) that lawyers present to judges. When done by legal scholars, doctrinal research appears in periodicals called law journals (or law reviews). Another type of research done from an internal perspective is theoretical inquiry about the nature and status of law, called jurisprudence (or legal philosophy). Note that the word jurisprudence is sometimes also used in a different way when talking about the law. In this alternative meaning, it is used to describe the legal principles and interpretations established in precedent cases. This other meaning of jurisprudence is used to contrast that part of the law with legislation.
Legal research from an external perspective may be done with the addition of concepts and research methods from other scholarly disciplines, and therefore has a variety of names. Some areas of research and study are sociology of law, economics and law, law and psychology, socio-legal research (also known as law in context and law and society), law reform and legal studies research. The results of these types of research sometimes appear in law journals, but more often in interdisciplinary publications and the scholarly journals of fields such as sociology and psychology. Law reform research often results in a discussion paper or report that is published by the reform agency for consideration by lawmakers who may wish to change or amend the law.

A study of legal research has classified all of the many types on a grid. One axis of description extends from doctrinal at one end to interdisciplinary at the other. The other axis features pure research (seeking knowledge for its own sake) and applied research (gaining knowledge for practical use) at its poles. In Australia, legal research has been described in broad terms:

Legal research today may be thought to be considerably broader than the tripartite classification [doctrinal, reform-oriented and theoretical], as it embraces empirical research (resonating with the social sciences), historical research (resonating with the humanities), comparative research (permeating all categories), research into the institutions and processes of the law, and interdisciplinary research (especially, though by no means exclusively, research into law and society).

Terry Hutchinson suggests that today’s lawyers need more than the bibliographic skills (skills in finding written information) which are most often used in doctrinal legal research. In Hutchinson’s view, the qualitative and quantitative research methods common in other disciplines should also be part of a lawyer’s skill set. The field of legal studies already embraces such interdisciplinary methods in the study of law.

This book reflects both an internal and an external perspective on the law. From the internal perspective, it presents information useful for working within the legal system to achieve goals. Thus, in this chapter, I go on to describe traditional methods of doctrinal legal research used by the legal profession, many of which can also be used effectively by non-lawyers. The concluding section of the chapter, like similar sections throughout this book, presents critical ideas
based on research and study that has been done primarily from an external perspective on the legal system.

**LAW LIBRARIES**

Some readers may be tempted to skip this section because they never expect to enter a law library. That would be a mistake for at least three good reasons:

1. becoming familiar with the organization and arrangement of law libraries yields insight into the structure of law, which contributes to more effective legal planning and research whether done in print or online;
2. some valuable legal materials are not easily accessible online, but can be found on the shelves of law libraries;
3. many law libraries have websites that include useful guides to finding online legal materials.

Publicly accessible law libraries are found in three locations: university law schools, courthouses, and legislatures (or associated government buildings). Most general public libraries have only small collections of legal materials. Law libraries are organized differently from other libraries. The items on the shelves are not arranged either by using Dewey Decimal call numbers (numbers 340 to 349.9) or by Library of Congress alphabetical classification (class K). Instead, law libraries organize their collections according to the source of law found in different types of publication. In common law systems there are two principal sources of law: statutes (legislation), and reports of judicial decisions (precedents). Statutes are always published separately from case reports, and therefore these two types of materials are shelved in different locations in law libraries.

There is slightly different terminology used to refer to the decisions of judges depending upon the jurisdiction. In Canada and the United Kingdom, such decisions are usually called *judgments* (note the spelling). In the United States they are called *opinions*. These contain judges’ justifications for their decisions, explaining how they followed (and sometimes interpreted) the law and decided the facts. The formal document that records the result of the decision (which party is to be paid, for instance) is often called an *order* of the court,
although sometimes it is called a *formal judgment*. When a judge writes a judgment or opinion, it may be published in print or online as a case report found in a series of volumes known as a *reporter, or report series*.

Law libraries have a section devoted entirely to statutes, within which the materials will be organized by territorial jurisdiction. Therefore, in a Canadian law library you will find a section containing all federal legislation and there will be sections for each of the provinces and territories, perhaps in alphabetical order. The statutes of each jurisdiction will be shelved in date order, according to when they were passed by the legislators, going back in time to the founding of the country, or even further to the colonial period. At some points on these many shelves containing legislation are volumes labelled *revised statutes*. These are periodic collections of all the statutes in a jurisdiction that have not been *repealed* (declared to be no longer law), with all *amendments* (changes or additions) made since the legislation was first passed incorporated into the text. *Consolidated statutes* are much the same thing, but are produced for individual statutes more often than revisions of all legislation. The most recent legislation to have been passed may be in unbound printed form (*loose parts*) and will be published in an annual volume at a later date. The *Queen’s Printer* (official government publisher) for British Columbia provides a useful online glossary of terms used in connection with legislation.4

Case reports are also found together in a separate section in a law library. They are usually organized by geographical jurisdiction, and may be further subdivided (into national and provincial jurisdictions, for instance). Some series of case reports are dedicated to specific subject matter jurisdictions such as tax, criminal law, and family law. The volumes of reports within a jurisdiction are shelved by date according to when the decisions were made and published, and may be subdivided into series (volumes consecutively numbered covering a certain span of years). An example of this is the *Dominion Law Reports* containing decisions from across Canada. As of 2009, these reports were in their fourth series of volumes that began in 1984. Before that, date volumes belonged to the third series of these reports.

Another important section of a law library is the collection of law journals (reviews) containing scholarly articles, usually arranged alphabetically by journal title and shelved by publication date. Law libraries also have a separate section for *legal treatises* (scholarly texts, or monographs) dealing with specific legal subjects (like criminal law, or wills and estates). These volumes may be
shelved according to the Dewey Decimal or Library of Congress scheme. In common law systems, judges may occasionally refer to these scholarly publications for guidance in deciding cases, and therefore they represent another potential source of law when accepted by courts as being correct.

Law libraries will also have a reference section containing publications such as law dictionaries, legal encyclopedias, and legal digests (brief summaries of cases indexed according to the legal issues discussed in the decisions). Legal reference works may also be found online, but usually only through publishers’ websites that are restricted to subscribed customers. To make use of these valuable legal research tools, you may therefore have to visit a law library.

Many law libraries have embraced the open access principle, and have made valuable research materials available on or through their websites. Here is a list of some Canadian courthouse (or Law Society) library websites providing valuable public access to legal research materials online and some research guidance:

- Alberta: www.lawlibrary.ab.ca/
- British Columbia: www.courthouselibrary.ca/
- Manitoba: www.lawsociety.mb.ca/manitoba-law-libraries/
- New Brunswick: www.nblawlib-bib.ca/
- Newfoundland & Labrador: www.lslibrary.ca/
- Nova Scotia: http://nsbs.org/library_services
- Ontario: www.lsuc.on.ca/greatlibrary.aspx
- Prince Edward Island: www.lspei.pe.ca/law_library.php
- Saskatchewan: www.lawsociety.sk.ca/newlook/Library/library.htm
- Nunavut: www.nucj.ca/library/library.htm

**LEGAL CITATION**

The term *legal citation*, like many words in law, has several related but distinct meanings depending on the context in which they are used. One of the primary meanings of the verb *to cite* is to refer to and possibly quote from something; this is similar to the meaning intended when someone *cites a case* as a precedent. In law this is called *citing from authority*—referring to, and perhaps quoting
from, a case or a statute that is an authoritative statement of the law. Therefore, in this setting legal citation means the process of using precedent (or legislation) to support an argument. In the same context, we find the term *citator* referring to a publication containing an index of cases or statutes. A *case citator* contains cross references of decisions that have been cited in subsequent cases either as precedents or in other ways. Such an index is one way of finding out if a judgment has been appealed or if it has been considered by judges in other jurisdictions. The index in a *statute citator* allows you to trace the history of legislation (amendments and repeals), and to find reported cases that consider and interpret particular statutes.

A related meaning of the term legal citation is the way in which cases or statutes are referenced when they are cited. In this context, a *system of legal citation* is an approved or preferred style of referencing, like those used in other disciplines. Thus, if a judge asked “What is the citation for that case?” he or she wants the reference data in the accepted legal format (the *case citation*). Sometimes *cite* is used as a noun in place of the full word citation in that context (“here’s the cite for the case you asked for”).

Finally, it should be noted that there is yet another legal use of the term *citation* based on an alternative meaning of the verb “to cite,” which is “to summon.” Thus, if you are *cited for contempt* it means you are being summoned to appear before a judge to explain your actions. Such an order is contained in a document known as a *contempt citation*.

Systems of accepted legal citation vary by jurisdiction. In Canada, one of the most commonly accepted is that used by the *McGill Law Journal* when publishing articles. In the United States it is the *Bluebook* system promoted by Harvard Law School that is most widely accepted. A unique feature of most systems of legal citation is that they usually begin with a year or volume number, rather than the name of the publication. This reflects the legal system’s concern for the currency of legal sources—the most recent case (or the appeal decision in a case), and the current version of legislation containing all amendments are usually the best authorities.

In the past, most case reports were provided by private publishers, such as the *Dominion Law Reports* in Canada issued by the Carswell Company, or the *National Reporters* issued by West Publishing Company in the United States. Therefore, access to those volumes was necessary in order to cite a case and provide its citation in court. This necessity supported a strong commercial
demand for these publications, and these created successful private monopolies based on access to sources of law. As part of the movement for open access to law, it was recommended that courts provide neutral citations for their judgments. A neutral citation is not tied to the page numbers in a privately published case report series, and therefore allows cases to be cited without requiring access to commercial publications. Neutral citations typically consist of the year the decision was made, the name of the court issuing it, and a consecutive number assigned by the court to the decision. To assist with citing specific parts of judgments, many courts have also adopted the practice of numbering the paragraphs in their decisions. This allows lawyers to give an exact citation for a quotation from a judgment that is not tied to page numbers in a printed volume. Of course, it is necessary to first read the case to be cited, and courts have assisted with the publication of judgments in addition to their citation.

Let’s examine the legal citation of a case in detail, taking as an example an important case in Canadian copyright law we will examine later in this chapter. As with all referencing systems, the primary purpose of legal citation is to allow the source of a document to be located and the original examined if so desired. How does legal citation do this?

Here is the neutral citation for the case:

CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13

This citation tells us that the case was decided in 2004, but it is not immediately obvious by which court. Legal citations usually use abbreviations for the names of courts and publications. You might guess that “SCC” stands for Supreme Court of Canada (and you would be right), but you can check using an index of legal abbreviations. The citation also informs us that the decision was the thirteenth issued by the court in that year, but does not help us to locate it. Later in this chapter, I will provide guidance on locating legal materials for reading.

Here is a parallel citation (citation containing two or more references) for the same case. A parallel citation includes information about alternative sources in which the case report may be found.

This citation includes the further information that a report of the case may be found in a volume containing cases decided in 2004 in a publication abbreviated as “S.C.R.” Looking up that abbreviation, we find that it stands for *Supreme Court Reports*, the official printed versions of decisions of the Supreme Court of Canada. The “1” indicates that there were several volumes of cases from 2004, and we must look in the first of them. The page number is at the end. This citation allows us to locate and read the case report if we can find a library with this publication on its shelves. We would look for volumes labelled *Supreme Court Reports*, go to those for the year 2004, choose the first volume of that year, and find page 339.

Here is a further parallel citation providing even more publications in which one can find this important case:


Finally, here is a citation for the same case in a format that is used in a particular commercial legal database (LawSource):

2004 CarswellNat 446

This is a citation in a private format adopted by Westlaw Canada, allowing a report of the case to be retrieved through the LawSource online commercial database. Such a citation would not be acceptable in court.

Statutes and regulations (subsidiary laws made under authority of a statute) are also cited according to an accepted system of citation. Here is an example for a law we will discuss later in the chapter:


Using an abbreviation index, we can discover that the citation refers to a statutory instrument (S.I.—a document having the force of law, but not contained
in a statute or regulation) made in 1997 and published in the *Canadian Gazette* (C.Gaz., a government publication), part II, at page 444. These abbreviations are explained in a glossary of legislative terms provided online by the Canadian Government.5

Here is a citation for a federal statute:

*Copyright Act, R.S.C. 1985, c. C-42*

In most jurisdictions, governments have retained responsibility for publishing legislation and have not put it in the hands of private firms. For Commonwealth countries, the official government publisher is usually known as the *Queen's Printer*. Accordingly, citations to statutes assume that the official version as published by the government is being cited. Recently, the Canadian government and others, have made the online versions of legislation official. This means that the version found on the Internet is considered to be the authoritative statement of the law, instead of that found in print.

Using abbreviation indexes, we can discover that the *Copyright Act* referred to above is found in the Revised Statutes of Canada (R.S.C.), revised as of 1985, at the chapter (c.) labelled C-42 (the 42nd statute under “C” in alphabetical order). The use of the term “chapter” indicates that all the legislation in a particular jurisdiction is considered to form one large figurative "book" (the *statute book*) and that separate *Acts* (pieces of legislation) on different topics are the individual chapters of it.

Here is an example of citation of a Canadian provincial statute:

*Queen's Printer Act, R.S.A. 2000, c. Q-2*

This citation follows the same format as the federal *Copyright Act*. This provincial legislation may be found in the volumes of the *Revised Statutes of Alberta* (R.S.A.) as of the year 2000 at chapter Q-2. However, not all legislation is contained in revised statutes. Here is an example of a citation of legislation that is not:

*Civil Marriage Act, S.C. 2005, c. 33*
The Civil Marriage Act may be found in a collection of the Statutes of Canada (S.C.) passed by Parliament in 2005; it was the thirty-third piece of legislation enacted that year. This act will eventually be incorporated in future set of revised statutes, and will be given a new chapter number when that is done.

LEGAL RESEARCH STRATEGY

There is no single best way of doing legal research. Research experts have emphasized that it should be approached as a strategy, and cannot be conducted by simply following a checklist or standard format every time.

As I already mentioned, doctrinal legal research has traditionally meant a search for an authority that can support arguments in a case. In common law legal systems, this means textual authority found in legislation or case precedents (and sometimes treatises). Computerized and online searches give people the ability to look for texts that mention the same legal issues or describe a factual situation similar to their case. The goal is to find the section of a statute or decision of a judge that supports the argument they wish to make. Word-matching, however, is not a sound strategy for good legal research. It often results in a mass of disorganized material, and the problem of not being able “to see the forest for the trees” or mistaking the value of what is found. Non-lawyers are particularly disadvantaged by such excess information because they have no internalized conceptual map of the law and its processes to guide them in evaluating search results.

What alternative strategies are there for legal research? Again, experts have pointed to the need for the researcher to first assemble a context within which to evaluate the legal sources they find. The goal is to create a mental map of the wider “neighbourhood” of law in question before becoming lost in the twists and turns of particular cases, rules, or principles that are discovered through intensive research. Another way of putting it is to consider generalities first before proceeding with a detailed analysis of particulars. Such a strategy helps the researcher avoid two serious errors: citing a decision in a case that was appealed, resulting in the decision being reversed and making it worthless as precedent; citing a statute that was amended or repealed, thus negating its value as legislation to be followed.

Here are some important criteria for evaluating and selecting primary legal materials (legislation or reported cases) as authorities to support a legal argument.
Assuming that the individual has found a case with similar facts to the one being argued, the criteria for evaluating it as a persuasive case authority are: the case should be from a court in the jurisdiction of the dispute; the higher the level of the court in that jurisdiction, the better; the more recent the case, the better; the more times the case has been cited with approval in other cases, the better; the case must not have been successfully appealed and the decision reversed.

For legislation (including statutes, regulations, rules, and bylaws) important criteria for evaluation are: the legislation must be from the jurisdiction of the dispute and be in force; if there is a choice, statutes are better than regulations, rules, or bylaws; regulations, rules, or bylaws must not be contrary to the statute; a constitution is the highest authority and everything else must be constitutional (that is, not contradict the constitution); the legislation must not have been repealed or amended.

It is sometimes necessary or desirable, however, to research the state of the law as it existed in the past, even though it is no longer in effect. This may be done as part of historical or law reform research, or because a statute was changed after the events in question in a particular dispute. The legal principle that law should normally not have retroactive effect means that past events are governed by the law in force at that time, not the law as it stands today if it has since changed. Therefore, research must reveal the state of the law at some earlier date. Some online legislative databases now offer point in time searching to facilitate such historical research.

Important legal concepts and ideas will be mentioned in several statutes, many cases, treatises, and scholarly articles. The strategic goal of contextual legal research is to sample all of those sources without going too deeply into them at first. Comparing the treatment of a legal concept, rule, or principle across multiple legal materials helps to bring out the conceptual structure of the law in the area. Once the researcher grasps that overall structure, it will then be useful and informative to look closely at individual cases or the details of legislation.

A legal research strategy in a particular situation will be guided by the information available to begin with. This may be the name of a case, the section number of an act, regulation, or bylaw, or words describing a legal problem or public issue. I have provided below some strategies appropriate to each of those starting points.

First, how can a researcher progress from reading a particular case to understanding the wider legal context in which the decision was rendered? The text
of a case itself often provides an introduction to the context surrounding it. Here are some excerpts from the report of the CCH case cited above as an example:


**Cases Cited**


**Statutes and Regulations Cited**

*Copyright Act*, R.S.C. 1985, c. C-42, ss. 2 “computer program” [am. c. 10 (4th Supp.), s. 1(3)], “dramatic work” [am. 1993, c. 44, s. 53(2)], “every original literary, dramatic, musical and artistic work” [*idem*], “library, archive or museum” [ad. 1997, c. 24, s. 1(5)] . . .

**Authors Cited**


The catchwords (or keywords) appearing at the beginning of a case report can be used as signposts—relevant legal terms to use when continuing to research in encyclopedias, treatises, and journal articles, thus building up a picture of
the law in the area. The cases cited can lead to other decisions that may mention more key terms, and the statutes cited establish the legislative context.

As a strategy for reading cases, the first step should be to look at more descriptive materials about the relevant area of law, such as legal encyclopedias, to help establish the legal framework for the decision, and only when that has been done should the judgment be read closely. It is easy to get lost reading the details of a decision without first understanding the wider legal context in which it exists. References in the case report to scholarly articles or treatises ("authors cited") lead to explanations and discussions of the legal concepts and principles involved in the case. It is also necessary early on to find out if the decision to be read has been appealed or considered (commented on) in subsequent cases. Since the CCH judgment is from the Supreme Court of Canada, no further appeal is possible, but it may have been discussed in other, later decisions that can also provide insight. A case citator is the place to look for that information.

If the starting point of legal research is a section of legislation, then its context can be discovered using a statute citator or digest. A lawyer in the Canadian Department of Justice has created one such research tool online for the Charter of Rights and Freedoms. It is a citator and digest for decisions in which the Charter has been applied or considered. Here is an excerpt from the entry for Section 2(a) of the Charter that discusses the fundamental freedoms of conscience and religion:

To state that any legislation which has an effect on religion, no matter how minimal, violates the religious guarantee “would radically restrict the operating latitude of the legislature” (Braunfeld v. Brown, 366 U.S. 599). It is arguable that under our Constitution this kind of concern should be dealt with under s.1, but as Wilson, J. stated in Operation Dismantle, “the rights under the Charter not being absolute, their content or scope must be discerned quite apart from any limitation sought to be imposed upon them by the government under s.1.” Not every effect of legislation on religious beliefs or practices is offensive to the constitutional guarantee. Section 2(a) does not require the legislature to refrain from imposing any burdens on the practice of religion. Legislative or administrative action whose effect on religion is trivial or insubstantial is not a breach of freedom of religion. This conclusion necessarily follows from the adoption of an effects-based approach to the Charter: Jones v. R., 1986 CanLII 32 (S.C.C.), [1986] 2 S.C.R. 284.6
This digest entry provides legal commentary and references to other cases, both Canadian and American.

Finally, if legal research begins with only a few words that appear to have legal significance, then encyclopedias, treatises, and journal articles will help to form the context. The table of contents from a legal encyclopedia is one place to look for the words of interest, and there are collections of materials arranged by legal subject matter online. Today, legal commentary also can be found online via the blogs (or “blawgs”) of lawyers, law teachers, and other legal experts. These may provide valuable discussion that helps to increase understanding of the concepts and issues in a particular area of law. An index of law blogs can be found at the Canadian Law Blogs List.7

Having gained a better understanding of the concepts, terminology, and principles of an area of law involved in a legal matter, a researcher can then return to the starting point and read all of the legal materials that he or she has collected carefully in detail. I present some ideas on how to get the most out of reading legal materials in the next chapter on legal interpretation.

LEGAL RESEARCH ONLINE

There are now many freely available online collections of legal materials. These are mainly restricted to case reports and legislation, since individual authors often claim copyright in their commentary and analysis of the law, and will not usually allow it to be accessed without charge. Non-profit bodies, universities, and governments (through Queen’s Printers and other departments) are the primary providers of freely accessible online legal materials. In Canada, CanLII, the largest open legal database, is provided by the Federation of Law Societies of Canada and produced by LexUM based at the University of Montréal. The advanced search function on CanLII allows an individual to retrieve as narrow or wide a selection of legal materials as desired.

Here are some of the other valuable functions available on CanLII with examples of the results that can be obtained using the Copyright Act and the 2004 CCH Canadian Ltd. v. Law Society of Upper Canada case as the starting point:

• Point-in-time source of legislation (historical search). For example, a search using CanLII for the Copyright Act will also provide links to older, superseded versions of the act; in this instance, a version that was in force between April and December 2005.
Copyright Act, RSC 1985, c C-42

• Citator for legislation (called noteup in CanLII). For example, a search using CanLII for other cases that have considered the Copyright Act. These cases are searchable by jurisdiction, venue (court or tribunal in which they were heard), and date.

   Superior Court – Quebec
   oeuvre — auteur — brevet — titulaire — pomme

   Federal Court of Canada — Canada (Federal)
   application — seq — copyright infringement — proceedings — violation

[...]

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• Case citator. For example, a search using CanLII for other cases that have considered the CCH case.

   Court of Appeal — Quebec
   auteur — originalité — œuvre — photographé — norme

   Court of Appeal — Quebec
   intérêts — idée — talent — œuvre — auteur

Of course, online legal resources must still be evaluated for their reputability, currency, and accuracy according to the criteria discussed above.

CRITICAL PERSPECTIVE ON LEGAL RESEARCH

It has never been easy to find the law or discover how it works, even for lawyers. Critics have pointed to several reasons for this: the volume of legal materials that keeps growing, control of sources by governments, and control of distribution of materials by publishers.

The law in common law systems has been under development for hundreds of years, beginning in England and now throughout the Commonwealth and the United States. During this time, an enormous amount of written material has accumulated. In many university law school libraries you can find hundreds of thousands of items, and the Law Library of the United States Library of Congress has millions.

A large proportion of legal materials are case reports—the reasons given by judges when deciding individual lawsuits. In early times, only a few of these decisions were recorded and published—this is known as a selective publishing policy, and results in a collection of leading cases referred to frequently for guidance. In the United States, however, beginning in the nineteenth century one law publisher, West Publishing, decided to publish all decisions of appeal courts. This is known as a comprehensive publishing policy. Critics have noted
that it results in a mass of cases, most of which are routine and unhelpful to the
development of the law. Today, courts find it easy to provide digital versions of
judges’ decisions and court records online; this amounts to a de facto compre-
hensive publishing policy. Digitalization of the law has resulted in even more
legal materials becoming available, adding to the problem of finding relevant
legal information in the mass of online materials.

Another criticism of the field of legal publishing argues that there is actually
too little in the way of legal materials publicly available because of government
control over sources of legal information. This control is supported by the prin-
ciple of Crown copyright, according to which all materials produced by officials
(including judges) belongs to the government, which can therefore prevent or
regulate its copying and distribution. The position in the United States is dif-
ferent. There the principle of the public domain has been adopted, according
to which the public must be given access to all government documents (with
some exceptions, such as materials related to national security).

Critics of Crown copyright point out that it is inconsistent with the prin-
ciple that everyone is presumed to know the law, which cannot operate fairly
if the law is not published; that it frustrates democratic scrutiny of law and
public participation in law-making; and that legal materials have already been
paid for by the public through taxes that pay judges’ and officials’ salaries.

Governments have recently responded to these criticisms and relaxed con-
trol over government documents, particularly legislation and court decisions.
One example is the order issued by the federal government in Canada:

Reproduction of Federal Law Order

Whereas it is of fundamental importance to a democratic society that its law be widely known and that its citizens have
unimpeded access to that law;

And whereas the Government of Canada wishes to facilitate access to its law by licensing the reproduction of federal law
without charge or permission;

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, the
Minister of Industry, the Minister of Public Works and Government Services, the Minister of Justice and the Treasury Board, hereby makes the annexed Reproduction of Federal Law Order.

Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.

S.I./97-5, C.Gaz. 1997. II. 444 (Registration January 8, 1997)

Other governments in Canada, such as the provinces of Ontario and Alberta, have followed suit.

The movement for open access is another response to the problem of restrictions on the distribution of legal materials. Legal academics have been leaders in advocating for and providing open public access to law. The Legal Information Institute at Cornell Law School was one of the first to utilize the Internet for this purpose, followed by the Australasian Legal Information Institute (AustLII), the Canadian Legal Information Institute (CanLII), and others around the world. WorldLII is a federation of such organizations, and has adopted a declaration of open access principles that states,

Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;

Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;

Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.11
A further criticism of the traditional approach to disseminating legal materials is that it should not be under the control of private publishers. In the past, courts often entered into exclusive licensing agreements (permission to reproduce copyright materials) with publishers to produce volumes of case reports for sale. The West Publishing Company in the United States gained a virtual monopoly on publishing these essential legal reference works for a century, and similar situations occurred in other countries. Private publishers naturally block the use of their legal publications by those who have not paid for them to protect their commercial interests.

As part of its commercial strategy, West Publishing sought to prevent other publishers from using the page numbers West assigned in their volumes of case reports. Page number references are needed when quoting from the decisions of judges used as precedents, and any publication that lacks them is not suitable for use in court. In the case *Matthew Bender & Co. v. West Publishing Co.*, American courts decided that West could not claim copyright in page numbers.\(^\text{12}\) This decision allowed other publishers to produce effective competing products.

In the Canadian case *CCH Canadian Ltd. v. Law Society of Upper Canada*\(^\text{13}\) mentioned above, a publisher tried to prevent the Law Society in Ontario from photocopying CCH publications held in in their library to provide copies to lawyers doing legal research. The Canadian courts also decided against the publisher. These cases show that relying on private publishers to provide access to legal materials may not be in the best interests of the legal system and the public. Laws governing the use and distribution of legal materials thus have an important bearing on access to justice. Accordingly, the barriers to legal research is a topic in itself which may be critically investigated by legal studies researchers.

**CHAPTER REVIEW**

After reading this chapter you should be able to:

- explain the concepts of crown copyright and open access
- describe the different types of legal research
• explain the concepts of legal authority and precedent
• describe the elements of a system of legal citation
• list the principal research tools for finding legislation and court decisions
• find legislation, court decisions and other materials relating to a legal issue