

Legal Research Online

LEGAL RESEARCH ONLINE

Information Seeking in the Digital Environment

CHRISTA BRACCI AND ERICA FRIESEN



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ABOUT THIS BOOK

A word to instructors

This open educational resource (OER) textbook was created to support teaching and learning legal research in an online environment. The project was funded by a grant from Queen's University Library, designed to support the creation or adaptation of a primary educational resource for a course of study at Queen's University.



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How It Started

The process of legal research, and the way that process is taught, have changed substantially over the past twenty years. The title of this book explicitly positions legal research as an online activity, but this has not always been the case. For many teachers and practitioners, information seeking was learned and performed using print volumes, sometimes many at a time, spread out on law library workroom tables. Although this approach is no longer the norm, the influence of print culture persists: it is evident in the information seeking habits of many who are the practice supervisors of today's students and early associates, as well as in some of the more subtle aspects of information seeking in an online environment. Nevertheless, legal research can now be accomplished almost entirely using online access points — even if those access points lead to print resources.

As information seeking diverges from the print environment, legal research instruction is also evolving to specifically address information seeking in an online environment. In particular, students of legal research must learn strategies for managing concerns endemic to the online environment: a huge volume of available legal and relevant non-legal information; the ever-expanding number of access points for that information; and the regular appearance of new technologies designed to assist in the information seeking process. Subscription service training, as delivered by our product representatives at the start of every school year, is still necessary — but is no longer sufficient.

Further, we have seen in our classrooms that students are not only struggling to keep up with the range of online access points and basic techniques for online research; they also have little to no basis for critically assessing resources that do not emanate from traditional publishing houses. Even with traditional sources, in the ambient noise produced by the volume of available information and the ease of access to that information online, students seem to have lost sight of some of the more fundamental aspects of good legal research, such

as using multiple techniques to access and filter information; matching the type of resource to the nature of the legal problem; locating and retrieving information while keeping costs low; assessing whether a resource is authoritative, and being able to say why or why not. In other words, on top of the standard legal research curriculum, students also need to build information literacy skills to help them navigate legal information seeking in the online environment.

How It's Going

Initially, the shift from print to online culture in legal research unfolded slowly, over a period of decades. But the COVID-19 pandemic, together with recent technological advances, has been like rocket fuel for that shift. During the pandemic, many university libraries shut down. Teaching and information seeking moved almost entirely online. Instructors and university administrators struggled with the administrative challenges generated by the shift, but all parties, including law students, law librarians and lawyers, developed new strategies for communication, instruction, and research. In the midst of this, we also saw a broad take-up of newer technologies — like Zoom — which became standard operational modalities almost overnight. Many law-school based legal research courses moved (almost) seamlessly online, and instructors took the opportunity to innovate and explore how their teaching practice might focus on the utility and limitations of online access points, tools, and techniques.

The shift is ongoing — and its repercussions will be felt for years. For example, when library physical spaces closed during the pandemic, many students developed — or entrenched — a blind spot for resources not available in digital or eBook format. Clearly this is not optimal for comprehensive research, but it is a reality that instructors must now address. Further, there is greater urgency for students as well as practitioners to successfully integrate technological advances into their practice skill set.¹ Particularly for law students, some rational strategy must be taught for managing these demands.

As a first step, it seemed to us as authors that there was a need for a text that explicitly acknowledged these trends in legal information seeking, one that would meet learners where they are: online. As we approached the challenge to create such a text, we decided that isolating the information seeking process² from the larger legal problem solving paradigm would allow us to foreground concepts in legal information literacy and critical

1. Dyanne O'Leary implies that this is the “second wave” of the overall shift, the first being “from paper to online [and] from manual to machine” and the second being the struggle to deal with the impact of the tech that we now encounter in the online environment, such as AI. See Dyanne O'Leary, *Legal Innovation & Technology: A practical skills guide for the modern lawyer* 2023 (St. Paul, Minnesota, West Academic Publishing) at 88.

2. See generally Carol Collier Kuhlthau, *Seeking Meaning: A Process Approach to Library and Information Services*, 2nd ed (Westport, Conn: Libraries Unlimited, 2004). In the context of legal research, information seeking can be viewed as an element embedded in the iterative loop located in the early stages of the larger legal reasoning and problem-solving process. This is consistent with the idea that information seeking itself, in the early stages, is an iterative process.

assessment of legal information. To this end, we have adopted the phrase “information seeking” — as distinct from information analysis and synthesis — to describe and identify this element of legal problem solving. Even though this is only part of the legal problem solving process, there is plenty to talk about here. Further to the discussion above, another of the repercussions we’ve noted is that when given a choice, students restrict their information seeking almost exclusively to online access points. Yet, students almost universally report an experience of becoming overwhelmed early in the research process by too much information. The fear of “going down rabbit holes” with no particular purpose in mind causes anxiety. And when that anxiety manifests, it robs students of the time and focus needed for the critical assessment, synthesis, and analysis of legal information that is essential to effective legal problem solving.

What Now? (Who this book is for)

Thus, we set out to design a text that would fill the gap in our instructional toolkit. We aimed to address the contemporary concerns in teaching and learning legal information seeking that stem from an online process. Our approach was guided by best practices in legal research pedagogy, which has advanced considerably in the last 20–30 years, as seen through the lens of current technology. The result, we hope, is a text that is compatible with best practices in legal research pedagogy — active-learning and collaborative-learning “flipped” classrooms that embrace the process-approach to teaching legal research and support authentic, problem-based, “messy” learning — but which moves information seeking along the timeline into the online environment and addresses the issues found there.

Wherever possible, we have attempted to avoid reproducing foundational information such as the structure of the court system, the jurisdictional divisions of power, and the legislative process. This information already exists in many fine instructional texts on which we rely in our own classrooms. Instead we chose to focus more directly on those aspects of research that are directly impacted by the online environment. In that sense, this text is not a standalone volume, and should be read together with other more foundational material.

In the same vein, we see this text as an accompaniment to a well-structured legal research classroom experience. Having read the description of basic tools and techniques for online legal research, students should then be prepared to attend a class where they are asked to apply those tools and techniques within the context of problem-based online information seeking.

Finally, we know that the online legal research landscape changes rapidly and without warning. Printed texts on online legal research, which are tied to a traditional publication cycle, can fall out of date within mere weeks or months of publication. For example, screenshots of research services — so carefully chosen, placed, and captioned — are often quickly invalidated by the launch of a new user interface for that service. Our approach to avoid this issue is two-fold. First, we expect that the OER format (open educational resource, or free access textbook) for this text will allow more regular and responsive updating. But further, we have also simply chosen to avoid the use of service screenshots in this text wherever possible. To fill this gap, we invite users to consider

the Queen's Law Library *Legal Research Manual*, which is openly available, regularly updated, and provides a more step-by-step description of some of the techniques and tools described here.

Substantively, this text addresses both traditional and non-traditional sources of legal information. We augment this discussion with what we believe is essential contextual understanding in the areas of database and information literacy, including responsibilities around technological competence, basic artificial intelligence (AI) literacy, and ethical considerations in online information seeking. Although the utility of such a text would largely be confined to the academic environment, we believe this book may have a slightly broader application.

First, this book may be useful for those who learned legal research when it was taught primarily from and within the print environment. So much has changed since computer-assisted legal research became the norm. For those whose understanding of legal research tools and techniques precedes that paradigm shift, this text may provide something of an introduction to the contemporary online research environment.

Of course, this book is also meant to be useful for instructors of legal research, whether librarians, practitioners, or both. Legal educators have witnessed the slow shift from print to online but have had little comprehensive support in terms of teaching materials. This text seeks to fill some of that gap by presenting in a single text the concepts and related learning outcomes that are the foundation for credible competence in online legal research. Our hope is that by choosing an OER format, we create a space for this conversation to expand to our colleagues across other institutions. We look forward to hearing about what you do with the text based on its availability through a Creative Commons license.

Finally, and perhaps most importantly, we wrote this text with our students in mind. As legal educators, our primary goal is to teach students to successfully manage the huge volume of legal information currently available to them online, and to prepare them to become savvy consumers of legal information, and capable creators of innovative legal solutions for their clients.

PART I: STEPPING OFF INTO ONLINE INFORMATION SEEKING

CHAPTER 1: INFORMATION LITERACY IN THE ONLINE ENVIRONMENT

Learning Outcomes

- Identify information literacy as an essential skillset for efficient and effective legal research.
- Use specialized vocabulary to describe information-seeking behaviours.
- Identify a range of online search techniques beyond keyword searching.
- Critically assess databases based on their attributes, content, and organization, to determine utility for research.

1.1 Introduction: What is information literacy in legal research?

In this chapter, we introduce **information literacy** as a core competency for legal practitioners. We discuss aspects of the online research environment that can significantly impact efficiency for an information seeker. These include an understanding of the availability of information online, the distinction between legal research services and databases, fundamental search techniques, and the use of AI in legal-**information seeking**.

Legal practice has traditionally been anchored in a wide range of predictable **source** types and formats. But as the legal information environment has shifted from print to online, the volume of available information, much of which is potentially relevant, has become increasingly unwieldy. Reliable **resource** types have expanded. **Access points** for resources have been relocated. We could once find legal information in known, predictable formats, published on a timeline controlled by the realities of print publishing. Now we find relevant resources sprinkled throughout open online sources, including websites, public databases, blogs, social media, and in AI-generated content. And paradoxically, much of this online legal information ecosystem is still defined by, and at times constrained by, traditional formats and source types. Savvy legal researchers must therefore be conversant in both paradigms. They must be able to recognize the old formats and access points

— and the advantages and limitations associated with them — but also successfully navigate the range of information available online, and all the muddy in between that comes with it.

It is a tricky place to stand, as a legal professional. The key to keeping your balance is information literacy, which we present here as a key competency in legal-information seeking.

To understand information literacy, it's helpful to start by exploring the nature of information seeking itself. **Information seeking** can be defined as any activity or behaviour of an individual with the goal of locating or identifying information. However, this is a barebones definition for a complex human behaviour with rich social, psychological, and affective underpinnings. Scholars in library and information science embrace a broader definition for this term, acknowledging how the context of human experience informs the actual process of “search”:

Information seeking is a term that describes a collection of fundamental human processes that enable survival and growth. Some elements of information seeking are involuntary and continuous elements of consciousness, but most studies of information seeking focus on conscious processes that tend to be grouped under the name ‘search’. In the 20th century, industrialization led to an informed society, which in turn has made searching for information one of the basic skills of 21st century modernity. Information work is seldom solitary, and most information is selectively shared at different stages of the information life cycle. Not only do people collaborate to create or analyze information, but they often collaborate on the seeking processes.¹

We concur that the process of seeking information in the 21st century is intricate and multifaceted. In this text, we acknowledge the intricate nature of human behaviour within this context, even as we use the simple term “information seeking” to refer to it.

The foundational skillset that facilitates effective information seeking is information literacy: “the set of integrated abilities encompassing the reflective discovery of information, the understanding of how information is produced and valued, and the use of information in creating new knowledge and participating ethically in communities of learning.”² Information literacy places at the heart of any information-seeking task the individual's ability to successfully find, assess, use, and apply information, regardless of format, access point, or paradigm. It is about where, how, when, and why to find information, rather than how to use a specific **database**, **search engine**, or research tool. Information literacy promotes search agility in a way that empowers an information seeker in the online environment. It also more easily facilitates the transition to new information-seeking technologies and paradigms, such as those currently being ushered into the world under the umbrella of AI.

1. Gary Marchionini, “Foreword” in Chirag Shah, *Collaborative Information Seeking: The Art and Science of Making the Whole Greater than the Sum of All* (Berlin: Springer Berlin Heidelberg, 2012) at vii.

2. Association of College & Research Libraries, *Framework for Information Literacy for Higher Education* (American Library Association, 2016), online: <<https://www.ala.org/acrl/standards/ilframework>>.

In the narrow context of legal research, information literacy is well-defined by the American Association of Law Libraries' (AALL) *Principles and Standards for Legal Research Competencies*.³ AALL states that an “information-literate legal researcher” demonstrates the following five competencies:

- Possesses foundational knowledge of the legal system and legal information sources.
- Uses effective and efficient research strategies.
- Critically evaluates information.
- Applies information effectively to resolve a specific issue or need.
- Understands the ethical and legal issues surrounding information.

These are the principles that will guide your learning in this text. You may notice that these competencies are clearly paradigm-agnostic; in other words, they do not reference the print environment or the online environment but instead constitute an overarching skillset that becomes relevant at the nexus between the researcher and the ever-evolving information ecosystem. In other words, this skillset will grow with you as a researcher and is not dependent on any particular search environment. It is as important when you use an AI-driven legal research tool as it is when you pull a book from a shelf.

Moreover, information literacy touches on more than just your ability to find information. Under the third competency point above, it also plays a crucial role in the stages preceding and subsequent to information seeking. Critical evaluation includes having the necessary understanding of the legal system to determine the type of information required as well as how and where it can be accessed. Similarly, once the information is obtained, it must be evaluated based on its inherent characteristics and its suitability for use in client-centered problem solving. These themes will reoccur in the chapters that delve into specific legal resources, both **primary** and **secondary**, including **traditional** and **non-traditional secondary sources**, case law, and legislation. Both the final two competencies above will be engaged as we discuss broader topics such as confidentiality and privacy, AI and legal research, and critical legal research.

We believe that in the modern legal research context, and particularly in the online legal research environment, these competencies are essential. Information seeking has often been viewed as a “preliminary” activity — one that is inherently less valuable than the construction of an argument or other knowledge creation.⁴ We believe that effective legal research in the current information ecosystem can only be taught if we focus in depth on the information-seeking behaviour and mindset that precedes synthesis and analysis. Our goal in this text is to prepare researchers to engage critically with resources, and the processes by which they were obtained, prior to relying on them for problem solving.

3. American Association of Law Libraries, *Principles and Standards for Legal Research Competency* (American Association of Law Libraries, 2020), online <<https://www.aallnet.org/wp-content/uploads/2020/04/AALL2020-PrinciplesStandardsLegalResearchCompetencyFull.pdf>>.

4. CC Kuhlthau & SL Tama, “Information Search Process of Lawyers: a call for ‘Just for Me’ Information Services” (2001) 57:1 J Documentation 25 at 26.

Information literacy may, for you, be a new way of looking at the online information landscape. It may be uncomfortable, including as it does a whole new set of vocabulary used to describe source types, research techniques, and search strategies. In the following sections, we provide a brief overview of some of the most essential elements of information literacy. These concepts, taken together, will equip you with a powerful set of skills for effective and efficient online information seeking.

1.1.1 Glossary of Research Terms

A skilled researcher employs a variety of tools, techniques, and access points in creating strategies for information seeking online. To communicate effectively about these strategies, you will need a specific vocabulary to facilitate clear and accurate descriptions and explanations of your research process to others. It will also assist you in tracking and documenting your research process for yourself.

We've created a glossary at the end of this book with definitions of specialized terms. These terms are set in boldface throughout this text; if you are using this book online, you can simply hover over the term to view its definition. The glossary is not exhaustive and new words may be added over time. We encourage you to review the glossary before you continue reading this section.

1.2 The Availability of Information Online

Given the prevalence and availability of online information in general, many legal researchers assume that everything they need for effective research and analysis can be accessed online, and that they will easily be able to identify where they can access this information by using a Google search. These are common assumptions but are they not accurate.

As the process of legal research moves online, it is easy to forget about non-digital formats that continue to exist but are not perfectly captured or replicated in the online environment. Many legal texts and treatises are still *only* published in print format.⁵ Furthermore, even when publishers make these texts available on a paywall-protected digital platform like Lexis or Westlaw Edge, they may not be discoverable through common online search techniques like googling.

1.2.1 Semi-visible Online: Print and paywalled resources

Many resources that are not freely available online still tend to have an online *presence* of some sort. Consider the following example: Waddams' *Law of Contracts*, a leading legal text now in its 8th edition, is published

5. For example, the authors conducted an analysis of the LexisNexis Canada online bookstore in March 2023. Out of 1,148 available titles, only 52 were classified as available in ebook format (including 38 that were available as PDFs).

in print and through Carswell's ebook platform ProView. ProView is accessible by subscription only, which means that a paywall prevents anyone who does not pay for the book (either as an individual or through a library, firm, or other organization) from accessing it. This means that a search engine like Google cannot **index** the **full text** of this book, so you cannot access it from a Google search.

The resource, however, may still be visible in the online environment. Information exists *about* this text online, even if we cannot read the full 700 pages without pulling the physical book off a library shelf or subscribing to the ebook platform. In other words, even when a book is available only in print or by subscription online, we can still use **metadata** in the online environment to identify that a resource exists and to evaluate its potential utility for research. That metadata includes useful information like a resource's title, description, or table of contents. But identifying a resource like Waddams' *Law of Contracts* in the online environment can be challenging because our default search strategy — keyword searches in a search engine — is often too granular to capture higher-level information. For example, a keyword search for "*force majeure*" in an online search engine or library **catalogue** will display many results, but it won't retrieve Waddams' *Law of Contracts*, since the full text of the book is not searchable online. It is available online (e.g. via ProView and a library catalogue) but it is not easily and broadly *searchable* online; it is a *semi-visible* resource in the online environment.

While semi-visible resources are most often **traditional secondary sources**, the online availability of **primary sources** of law also has its limitations. Although the majority of reported Canadian court decisions with written reasons can now be accessed online, the availability of **unreported decisions**, oral judgments, and court filings varies significantly. As with secondary sources, a researcher may need to use the online environment to determine the existence of a resource before requesting the document from the court. Similar variability exists in the online availability of historical legislative materials, which differ greatly between jurisdictions.

It is important to appreciate that a particular source may be exactly what you need, even if its **full text** is not available online. Later in this text, we'll discuss specific resource types and which strategies are most useful for locating them. The more you practice locating different types of sources, the easier it will become to build effective information-seeking strategies in the online environment.

1.2.2 The Prevalence and Use of Google

For many, Google⁶ is a go-to starting point for any research question or information need. There's good reason for this. The search algorithms are reliably good at surfacing relevant online content based on **natural**

6. To use your preferred search engine most effectively, consider finding and reading the search documentation for that engine. For example, for Google, see: "Google Search Essentials" (last visited 12 June 2023), online: <developers.google.com/search/docs/essentials>. While Google, Alphabet Inc's proprietary search engine, is the most widely used, this tip also applies to other search engines such as Bing, Yahoo!, DuckDuckGo, etc.

language queries, which means you don't have to put as much effort into devising search terms as you would in a more traditional database. Googling is also often an effective way to quickly locate government information, including current, consolidated statutes that are published online.

We are especially tempted to rely on Google or other search engines for legal research because we think of it as free.⁷ While there are no **disbursement** or **overhead** costs tied to hitting the search button, you should still beware of the time cost (which may be **billable time**). This can quickly accrue when you are following tangents and sifting through a large volume of Google results, looking for authoritative and relevant resources. Consider the following caveats to maximize effective and efficient use of Google as a first-line search in your research process.

First, Google does not search everything that is available online. Google only **indexes** information found on publicly available webpages (i.e. it records the content or information about the content). But this method of indexing information privileges certain types of resources over others. A Google search is more likely to retrieve blog posts, news articles, informational websites, and open- or community-generated content (think of Wikipedia) than it is to retrieve authoritative treatises like the Waddams text used in the previous example.

There are some extremely important resources, both in print and online, that are not accessible to Google's crawlers, like the databases and tools in Westlaw or Lexis' legal research **services**. As a result, these will be invisible to the Google searcher. If you limit your search to Google, you will miss entire categories of sources — especially legal secondary sources like textbooks, treatises, looseleafs, and encyclopedias. The full text of these resources are not typically accessible to Google, even if they exist online in a digital format. Other resource types, such as scholarly articles, may be indexed by Google but are similarly inaccessible because the publisher has placed a paywall on the content. Even publicly accessible, online Canadian case law can be difficult to search on Google, since CanLII does not allow most of its case law databases to be indexed by search engines.⁸

Second, Google returns results based on popular — not legal — criteria. If you're evaluating sources as a legal researcher, you will likely do so with certain key legal principles in mind such as *stare decisis* and jurisdictional considerations. Google has not been programmed specifically to meet professional parameters such as these. Yes, Google can deduce some information about its user and tailor search results accordingly (like using your device location as a factor). But often results are ranked based on other factors like how many times a keyword appears in a webpage or how often a website is accessed. This can lead to many irrelevant results in a Google search on a legal topic — for instance, results prioritizing American blogs and websites. These are

7. The saying "If you aren't paying for the product, you are the product" is a pithy truism sometimes attributed to entrepreneur and Netscape co-founder Marc Andreessen and popularized in the 2020 Netflix documentary, *The Social Dilemma*. Google and other online functions earn their billions by attracting and disseminating paid advertising to users based on their recorded search histories.

8. "In order to minimize the negative impact of such transparency on the privacy of those involved in cases leading to judicial decisions, CanLII does not permit its case law collections to be indexed by external search engines." CanLII, "Privacy Policy" (last visited 22 June 2023), s 19, online: <www.canlii.org/en/info/privacy.html>.

common search hits and do not always explicitly state the jurisdiction of information; you may need to spend some time investigating a suggested website to determine its relevance.

Third, Google does not care if an author is an “expert”. One challenge with **secondary sources** in the online legal research environment is the illusion of authority. Search engines like Google may not have access to the full text of many traditional secondary source types, and will often instead point researchers towards less authoritative source types such as blogs. When these appear in your search results, you may assume they have a weight or influence that they don’t actually have. Further, since Google is a major access point for attracting web traffic, companies will often use strategies like repeating keywords to increase web traffic to their website by boosting the site’s ranking in a results list. Factors like whether the author has a degree in the field, has practiced or published in the area of law, or has other relevant expertise in the subject matter, are not considered by the Google algorithm when returning or ranking results. A careful review of an author’s expertise, and the accuracy of the content, is therefore essential in order for a user to determine whether a search result can be relied upon as a source in legal research.

So when should we use Google as legal researchers? Despite these caveats, Google remains a key tool when embarking upon a legal research task. It is a useful entry point if you have been tasked with researching an issue and have no clue where to start looking. For example, if you’ve been asked to research a *shotgun clause*, but don’t know the type of document in which such a clause would be found, Google may at least point you in the right direction. Similarly, in the beginning stages of research, you will also be jotting down keywords, synonyms, variations of a phrase, and related concepts. A Google search can often help you quickly identify at least some relevant keywords, so that you have a head start in tracking down relevant materials in more fruitful access points like your law library, a legal database, or the major legal services.

Google is also useful if you are looking for a specific source that you *know* is available online. If you’re seeking the current version of a statute and you know the official consolidated act is on the Justice Laws website, you can navigate there much faster using a Google search. But be warned: you still need some important context to conduct this type of information retrieval with Google. Names of annual statutes (**source law**) and **consolidated statutes** (current law) may be virtually indistinguishable, so you must have enough knowledge to determine if you are looking at the right version of the statute on Justice Laws once Google has brought you there. For novice researchers, it may be easier to start on the Justice Laws homepage and click into the correct database than to use Google as a short cut.

Lastly, Google is especially useful for researching emerging areas of the law where little primary law exists and where more traditional secondary sources have not yet been published. See Chapter 5 for more information about the types of resources returned in a web search that can be useful here.

1.3 Essential Background for Using Legal Databases and Services

As we’ve already described, Google and other **search engines** do not interact well with legal databases — even

those publicly available on CanLII. Knowing the basic fact that legal databases exist outside of Google is the first step in locating legal information effectively. But what exactly is a legal database?

1.3.1 What is the Difference Between a Database and a Service?

First, it is important to understand the difference between a database and a service (see Figure 1). In this text, we use the term *database* to refer to a digitized collection of individual resources — often documents, but sometimes other types of records as well — that have been standardized⁹ to allow for search and retrieval. Consider CanLII’s list of Primary Law Databases: note how this list is presented as individual databases from each court or tribunal with notes that cover when each database was last updated and the number of documents in each.

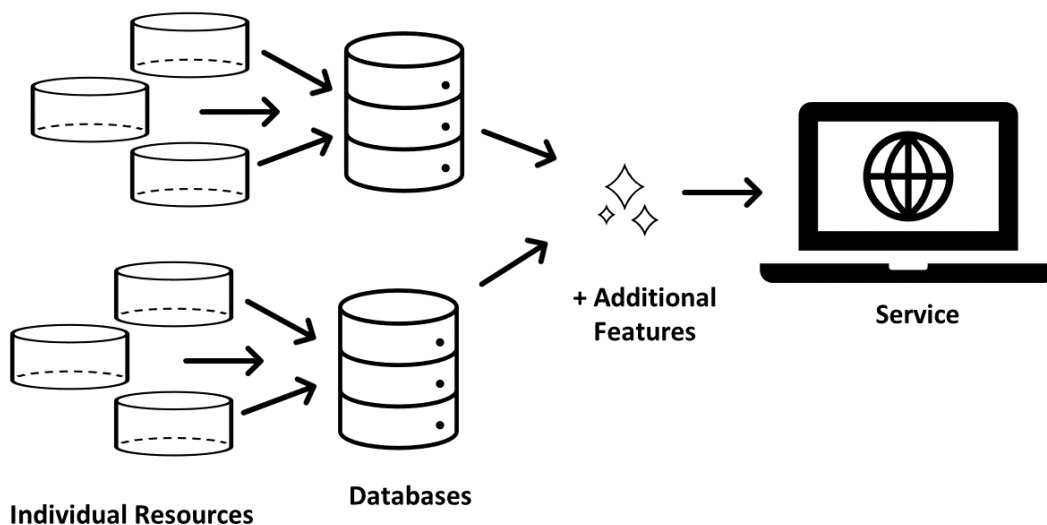


Figure 1: The relationship between databases and services.

A legal research service, on the other hand, is a *collection* of research tools and databases available from a single access point. A service provides a wide range of information and may also offer additional value-added elements (like annotations or **classification** schemes), as well as useful tools or integrated functionality to facilitate searching. CanLII, for example, is a service because it provides multiple databases (e.g. case law, legislation, secondary sources), all searchable from one access point (canlii.org), and with additional features such as a citator tool and subject classifications. CanLII is a free service; Lexis and Westlaw are both

9. Standardization here refers to the fact that every record in the database has the same fields — simply, boxes into which relevant information can be stored and then displayed in response to a search. For example, in a full-text case law database, every record has a field for style of cause. This field can be searched by a user to discover various cases based on words contained in the style of cause.

subscription-based commercial services. CanLII, Westlaw, and Lexis are the three major Canadian legal research services, though there are emerging commercial competitors.¹⁰

When it comes to searching, each service allows you to search across its *entire* collection of databases (from the Google-type search bar on its homepage) as well as to drill down into a specific database (e.g. Supreme Court of Canada decisions) or a subset of databases (e.g. all Canadian case law). Your experience with Google may lead you to use the broadest approach, but this is usually an inefficient way to conduct legal research. A service can contain millions of records, and weeding through a results list with thousands of items can be confusing. This is especially true if those results include disparate types of resources, such as sections of legislation, pleadings, forms, and legal memoranda, as well as cases and secondary sources.

The alternate approaches are a form of pre-search filtering and is generally more efficient. It not only makes your search results less overwhelming, but will also increase your options for manipulating the individual resources to display in ways that meet your research needs. This is because a service standardizes specific types of resources to allow you to better search them; for instance, searching case law by subject classification. These more tailored options will only appear from within the specialized databases themselves, rather than from the service's general search. Look for either an “advanced search” option or a filter on your search results page. We will discuss specific strategies for retrieving types of resources in each relevant chapter in parts II and III of this text.

1.3.2 Questions to Ask about a Database

Once you've identified a potentially relevant database in a service, you'll need to understand certain characteristics of the database before you can use it effectively. Consider the following five key questions which are expanded from Ken Fox's *Slaw* series on this topic:¹¹

- **What constitutes a record in the database?** A database is a collection of records — individual documents that you can search across. To answer this question, think about what sorts of items will come up in your results list. For example, if you are looking for case law, is your search going to retrieve **full-text** versions of a case? Or are your results case summaries? Or are they **case digests**? You need to understand *what* you're searching across to effectively use the database.
- **What is the database's scope of coverage?** Every database has some type of limitation on the information it contains. Most databases will include a sidebar or pop up box called a *scope note* where

10. For example, vLex has grown in popularity in recent years and is now available to many lawyers through their local courthouse library. Other jurisdictions have a more competitive landscape for legal services. For example, Google Scholar could be considered an American legal research service since it provides access to multiple case law databases for both federal and state courts.

11. Ken Fox, “4 Questions to Ask About Any Database (Part 1)” *Slaw* (15 December 2016), online: <tips.slaw.ca/2016/research/4-questions-to-ask-about-any-database-part-1>.

this information is found (look for “information” icons, often indicated by the letter “i”). Scope may be defined using a number of dimensions including chronology, geography or substance. Is it a topic- or discipline-specific database? Does it deal with information from a single jurisdiction or geographical region? What is the date of the oldest information in the database (how far back in time does it cover)? How recently has information been updated or new documents added?

- **What is its search syntax?** Most databases allow you to perform a keyword search using either **natural language** or **Boolean search** (discussed later in this chapter). However, not every database uses the same set of Boolean connectors or interprets natural language in the same way. Symbols may differ: a wildcard symbol may be an exclamation point in one database and an asterisk in another. Connectors like a typed space may be interpreted quite differently by the search engine: an *AND* in one case and an *OR* in another. The system may automatically search plurals and word variations, or you may have to specify which variations you want to capture in your search. To ensure that your search will yield the results you expect, be sure you are using the correct Boolean connectors for that database. To find a list of relevant Boolean connectors, navigate to the search help or advanced search information page for the database.
- **How are my results ordered or presented?** Often a database will default to showing a results list ordered by “relevance”. However, this is often a difficult metric to understand, since we seldom know how the search algorithm for that database makes decisions about what constitutes relevance. In other words, the database doesn’t usually give you much information as to how it determines which results are more relevant than others. In some cases, it may be useful to view results ordered by most relevant to least relevant, but in others it may be more useful to see results ordered in other ways such as newest or oldest first (chronological or reverse chronological) or alphabetically. Some services are also starting to present database results in more creative ways than a list, such as the visual “Search Tree” on Lexis . Explore the database you are using to see if it permits you to change how the results list is ordered.
- **What is the database algorithm’s bias or “point of view”?** As you’ll see later in this chapter, most search technologies in use today rely on algorithms that obscure how and why certain results are selected or promoted in your results list. You as a user are not able to see the basis on which the algorithm makes decisions about what to return in your results list. As Susan Nevelow Mart puts it, the algorithm has a point of view.¹² As a piece of search technology built by a specific group of people working within a particular corporate culture, any algorithm has **biases** and assumptions built right into it, which can differ dramatically from one database to the next. While you may not be able to find clear answers about an algorithm’s behaviour, you can get a better idea of how it operates by running your search in a similar database and comparing the results.

12. Susan Nevelow Mart, “Every algorithm has a POV” (2017) 22:1 AALL Spectrum 40.

You are much more likely to use a database effectively and efficiently if you spend at least some time trying to find the answers to the above questions.

Every Algorithm has a POV

In 2017, Susan Nevelow Mart conducted a fascinating study by recreating the same searches in 6 case law databases and comparing the top 10 results. Results showed that approximately 40% of the top 10 cases were unique to a database — in other words, they were not in the top 10 results for any other database in the study. Mart concluded that “every algorithm is very different, and every database has its own point of view [...] researchers cannot rely on the black box of the algorithm and be satisfied with their initial results”.¹³

1.4 Fundamental Search Techniques

Search **techniques** are behaviours that a legal researcher uses when seeking information. Of all the possible online search techniques, keyword searching — either with **Boolean** connectors or **natural language** searching — is likely the most familiar. However, there is a range of techniques beyond keyword searching that you should be familiar with. You will become a more effective and efficient researcher if you expand your repertoire of search techniques and learn to deploy them flexibly in your research.

Not every technique can be used in every database, but the techniques described below are standard across the major legal research services (CanLII, Westlaw, and Lexis), with differences noted where applicable. Each is referred to by a name that you can use when discussing research with others or when recording your own search process.

1.4.1 Keyword Searching: Boolean and Natural Language

Keyword searching is familiar and intuitive. The advent of computer-assisted legal research brought this technique to the forefront of most researchers’ minds and search repertoire. It is the most common approach to searching in an online environment, so much so that it may be your default setting for research. But the process of generating and extracting keywords, and then using them for resource searches, should be approached mindfully and with some caution (for more information on the process of generating keywords,

13. *Ibid* at 44.

see Chapter 2). There are two main types of keyword searching, but let's first look at how keyword searching evolved, how it works, and consider some possible pitfalls. There are some important caveats to keep in mind, most of which stem from what is happening when you retrieve information based on keywords.

Keyword searching, as we now know it, has not always been possible or easy. In a print environment, researchers “keyword searched” by using their eyes and brains to spot words that they deemed important in tables of contents and indexes of print volumes. Information systems advanced rapidly however throughout the 1970s and 80s until the point in the early 1990s when workable search engine algorithms met digitized data and the web. At this point, web-based interfaces were very new and the algorithms not yet particularly sophisticated. Even a search of offline materials — for example, digitized content provided to users on a subscription basis in the form of a standalone CD-ROM — could present challenges based on the organization of data on the disc. As these issues were resolved, however, it became easier and easier to access an enormous volume of information using fairly simple search techniques: navigate to an **access point**, type some words into a search box, hit return, and wait for your results. And therein lies the basic challenge associated with modern keyword searching: easy access to huge volumes of information.

When you conduct a keyword search, you are asking the database's search algorithm to take the terms in your search and look for matches between your keywords and the text of each record in the database, within the parameters defined by any Boolean connectors you use.¹⁴ This type of search will retrieve every record in which your keywords appear, whether or not any given record is conceptually related to your keywords. In other words, the algorithm is looking for mere matches between your search terms and the words found in the database. Such a search may generate a huge volume of results, many of which may be “false positives” — records where your search terms do exist, but which have nothing to do with the topic of your search. Similarly, if you haven't used the right word to capture the concept or topic, your search may miss important results — after all, the algorithm is simply looking for a word match, not a concept match.

The use of Boolean connectors in a keyword search can improve search results, but many users lack confidence in their ability to correctly use Boolean connectors. As a result, for many, keyword searching is an inefficient approach to research — especially if your firm is billing each search you conduct in a legal research service — unless you know how to leverage the search functionality of the database to your advantage. To do so, you need to understand that there are two major types of searches available within a given database: natural language and Boolean (or “terms and connectors”) searches.

Natural language search refers to search technology where a user enters just that: language as they would naturally speak or write. We tend to assume that every search bar we see in a database or service is able to parse this type of search, since it has become the industry standard with Google and other online search engines. While the legal research services have been improving their natural language capabilities, it is much more

14. Although some algorithms are now sophisticated enough to imagine synonyms and suggest “relevant” content without prompting from a user, the main algorithmic approach used in the three Canadian legal research services is to use the search terms provided.

difficult to retrieve legal information via this method. It often exacerbates the above-mentioned problems by either retrieving a huge volume of results or missing important results, or both.

Boolean connectors can make your search more efficient by allowing you to direct the search engine to treat your search terms in a certain way. Boolean connectors are symbols or words such as AND (&), OR, and NOT, which specify the relation between keywords that you want to see appear in a result (e.g. drunk AND driving). A well-structured Boolean search — one that contains appropriate keywords, synonyms, and connectors — can be very effective. In the ideal case, it returns a manageable population of results which are uniformly relevant to the legal issue in question. However, the success of such a search is directly dependent on your knowledge of the Boolean connectors that function in the database you are searching, as well as on your ability to generate relevant keywords and synonyms. Not all databases or services use the same **search syntax**. The Boolean connectors trigger certain operations that differ across databases. If your keyword or Boolean technique is still developing, there can be distinct disadvantages: a huge volume of results, missed results, or false positives.

To complicate matters further, you may not be able to easily predict, as a user, which type of search is the default setting for the search box in which you are about to type. Not all legal research services default to the same type of search in the search box. Pay particular attention to which types of searches are supported, and how or where to switch between natural language and Boolean search as needed. For instance, Westlaw automatically runs a plain language search *even if* you use certain Boolean operators such as AND, OR, and “” (phrase). To deliberately run a Boolean search, you must force it to interpret these as operators.¹⁵ CanLII, on the other hand, will interpret your query as a Boolean search no matter what, because every query is processed according to CanLII’s Boolean syntax. These distinctions highlight the need for you to always investigate the search documentation provided by a service before conducting a search. In Westlaw, this information is available by opening the “Search Tips” pop up from the homepage. On Lexis, go through the search documentation in the “Help” section.¹⁶ On CanLII, this information is on the “Search” page.¹⁷

Often, the best approach is to combine keyword searching with another technique, like **subject-based searching** (find a generally relevant topic and then do a keyword search within the contents of that subset) or filtering (perform your keyword search then apply filters to narrow your results). This combined approach will help you narrow the focus of your search so that you do not retrieve an overwhelming number of results.

1.4.2 Browsing

Browsing is a way of briefly examining a service or database for information that aligns with your research

15. This currently is possible by clicking on “Display results using a Boolean Terms & Connectors search”. Look for clues like this to determine if a database has switched the type of search you thought you were running.

16. E.g. LexisNexis, “Search Types”, online: <help.lexisnexis.com/Flare/lexispluscanada/CA/en_CA/Content/reference/searchtypes_ref.htm>.

17. CanLII, “Search”, online: <canlii.org/en/info/search.html>.

topic. To use this technique, you must first have done some thinking about your topic, to generate keywords and synonyms that accurately describe the area(s) of law and the legal issues relevant to your client's problem. You must also have an access point at which information about the resource's contents is presented in an organized hierarchical fashion — in other words, a table of contents or an index that can be scanned for keywords, phrases, and concepts. Browsing can be used with print books or ebooks (which have both a table of contents and an index) as well as with other databases that offer some form of table of contents or index, like online **legal encyclopedias** and **case digest** databases. In this sense, browsing is closely related to subject-based searching (see below).

Browsing can also be thought of more broadly when used in tandem with early-stage exploration. For example, Lexis and Westlaw provide additional access points for browsing by grouping resources under a specific subject matter (called “Legal Topics” in Westlaw and “Practice Area” in Lexis). These provide a browsable collection of resources that include both primary law databases and secondary sources. Users can browse these results to get a sense of the scope of available material, mine the results for more keywords, and access particular sources to learn more about the area of law they are researching.

1.4.3 Filtering

Filtering is another technique usually used in tandem with keyword searching or browsing, although it can be used with results lists of all kinds in all three services. It is an effective way to reduce the overall number of search results retrieved to a more manageable population. You can use this technique with any other, so long as you have a results list to work with and a set of criteria that you can impose on those results.

Filters can be used either before (using an advanced search function) or after your search is conducted. When used prior to a search, filtering limits the number of records over which your search is run. Only records that meet the filter criteria — level of court, jurisdiction, date range, resource type — are searched, and results are drawn from that population. However, there may be a distinct disadvantage to this approach, in that you may end up narrowing the results of your search too soon and miss something. Consider adding and removing filters flexibly and strategically as you search.

When these criteria are offered as limiters that you can apply after your search is conducted, to only look at certain subsets of your results — say for example, after you do a broad keyword search — they are sometimes called “facets”. These options usually appear on the left side or across the top of your results page, depending on the service you are searching.

You can filter in all three services. You can even pre-filter on Google, using the advanced search function.

1.4.4 Subject-based Searching

Subject-based searching is a powerful search technique but is only available in a limited number of databases.

Subject-based searching allows you to see and choose from a list of topical categories, and then browse or search within that category, where all information contained there is about that topic.

In order to classify information according to topic, two things are required: first, an established taxonomical framework for classifying information; and second, some means by which to impose or assign classification on content within the database, whether that is achieved by human database classifiers or by AI. This classification of information by legal subject matter is a key feature of databases that allow subject-based searching. The set of agreed-upon terms that comprise the **taxonomy** of topical classifications is called a controlled vocabulary. A controlled vocabulary is a special tool, in that the words chosen are used to represent concepts, not just specific words. For example, the concept of drunk driving can be expressed using several different phrases and terms. But with a controlled vocabulary, the classifiers establish one term or phrase to represent the concept (like “drunk driving”). Every record conceptually related to the idea of drunk driving will be labelled the same way, regardless of the words used to denote the concept.

When you search on this basis, you can find records in the database that are conceptually related to the term used to describe the concept, even if the exact term is not used in that record. Each record in the database is categorized in accordance with one or more terms drawn from the controlled vocabulary. Terms at the topmost level identify the broadest level of classification. At the lower levels, classification terms may be quite granular. But all the information in the database is given a place in the hierarchy of topics.

Here is an example of subject classification drawn from the Canadian Abridgment Case Digest database. This is a classification in the top-level area of contract law. As you can see, as you descend the hierarchy of terms in the controlled vocabulary, the terms become more and more specific:

```

Contracts
  -Formation of contract
    —Duress
      —Psychological duress
  
```

At various levels in the classification scheme, you can access resources (in this case, case digests) that have been assigned to that classification in the database.

This classification system creates both advantages and challenges. If you can identify a top-level classification and subheadings related to your topic, you can find all the information contained in that database, on that topic, in one step. This is true regardless of the specific words that might be used in each record to refer to the concept that is of interest to you. On the other hand, you may not always know what the relevant top-level term is for your topic. For example, if the database classifies all information about drunk driving under

a subject heading called “Operation of vehicles while intoxicated”, this may not be obvious to you. Other disadvantages include the fact that subject-based searching is less surgical. If you are looking for information on a very specific concept, that concept may not have a topical category all to itself. Lastly, terms in the taxonomy can take time to catch up to emerging areas of law or may misrepresent areas of law due to the perpetuation of historically dominant perspectives.

1.4.5 Chaining, or Cited Reference Searching

Chaining or **cited reference searching** is a highly intuitive technique. It can be used wherever you are beginning your search process with at least one useful resource in hand. To be useful, your resource must *cite* other resources, and be able to *be cited by* other resources.

Consider, for example, a journal article; a common “good source”. Journal articles do indeed cite other sources and can themselves be cited by other sources. Imagine you have chosen an article because it is highly relevant to your research. As the author was writing, she cited other, earlier works by other authors. We assume she cited these because they were relevant to her topic. These are the cited references, and they will typically appear in footnotes or endnotes to the article, as well as in a bibliography or table of authorities.

Once the article was published, it in turn could be cited by other authors. Again, we assume that other authors would choose to cite this article because it was topically relevant to their work. These are the citing references. They can be a bit harder to find. One approach is to view your original “good source” on a service like Google Scholar or the Dimensions app, where it is possible to see all other sources that cite your one good source. The assumption here is that if you begin with a source that is highly relevant to your topic, you will find other similarly relevant resources within the population of cited references, and within the population of citing references. In other words, you parlay your one good resource into many by using the web of citations and references.

Some databases and services provide hyperlinks that redirect or cross-link related information between tools and/or databases. This feature can expedite the process of chaining and is possible in Lexis, Westlaw, and CanLII. For example, in the Canadian Encyclopedic Digest, the text of an article includes hyperlinks to the database record for the corresponding full-text primary sources of law (cases and legislation) discussed in that article. In a full-text view of a case, cases cited by the court in its decision are hyperlinked and you can navigate to the cited cases by just clicking on them — you don’t have to do another search. Be alert for hyperlinked or cross-linked information, as it is an opportunity to expedite your research.

1.4.6 Monitoring

Monitoring is something of a hybrid between a technique and an information-seeking strategy. It is an active choice to follow and incorporate certain types of legal information into your research workflow. In this sense, it is an essential means of achieving current awareness: the state of having up-to-date knowledge on a

legal topic. Current awareness is a difficult concept, as it is sometimes confused with simply searching **non-traditional secondary sources** like newspapers or web-based newsletters. Without monitoring, however, a one-time search of non-traditional secondary sources provides merely an illusion of current awareness. It is the difference between simply stumbling upon some information as a result of a search, versus actively controlling an information stream to bring certain types of information from certain resources directly to you on a periodic basis.

For example, blogs may be considered current awareness tools but only insofar as you have actively incorporated new entries into your workflow via monitoring. Consider a blog post from 2012: there is nothing current about this information resource, and viewing this old post in your web search results will not contribute to your state of current awareness. Just because something is online does not mean it is current. Indeed, as the internet matures, it will continue to host a higher and higher proportion of outdated information. But by actively subscribing to receive updates from that blog — in other words, by monitoring that blog — you create an automated information stream that allows you to keep abreast of any new developments.

Monitoring is not just for non-traditional secondary sources in a certain practice area. It can involve tracking a specific case or statute, as well. If you’ve identified an important case, you can monitor the case to know if it is cited or appealed. If you’ve identified a key statutory provision, you can monitor it for amendments or coming into force. Your individual current awareness needs will of course vary throughout your career, depending on your role and professional environment. The key here is to integrate monitoring into your day-to-day information-seeking behaviour by leveraging tools that enable you to track case law, legislation, and/or secondary sources. As a general rule, look for “subscribe” or “alert” options on a website, within a database, or on a search results page. We identify some specific monitoring tools, broken down by resource type, throughout the remainder of this text.

1.5 Artificial Intelligence in Legal Research

AI is all around us as online legal researchers. AI is a key component of Google, but it is also embedded in the major legal research services in ways that are not always obvious to the user. For example, Westlaw and Lexis integrate AI into their **natural language** search technology, but also into standalone products that are more heavily advertised as AI-driven, such as Westlaw’s KeyCite Overruling Risk and Lexis’ Brief Analysis tool. Both companies have announced plans to integrate **generative AI** — the type of technology that includes ChatGPT

— into their platforms in their next iterations.¹⁸ In the early 2020s, even CanLII started integrating AI by using it to automatically generate subject classifications for case law.

AI may seem at odds with more traditional **research strategies**, but any researcher’s interactions with an AI-driven tool should be treated in much the same way as those with a more traditional database. The information literacy principles we use to interact with case law or journal article databases are, in essence, the same ones we require to effectively interrogate the information that an AI tool is trained on, interacts with, and delivers to the user.

AI will surely continue to permeate the legal research landscape in new and imaginative ways in the coming years. As these technologies become increasingly intertwined with legal research tasks and tools, a basic understanding of what AI is and how it works is necessary so that the savvy legal researcher can leverage it effectively alongside more traditional legal research tools.

1.5.1 Introduction to Artificial Intelligence

The label **artificial intelligence** is given to a range of technologies that allow machines to simulate human cognitive abilities or perform tasks typically associated with intelligence. Currently, AI-driven tools do not have the capacity for actual “intelligence”; instead, they rely on a machine’s ability to identify, replicate, and predict patterns based on enormous datasets, and in response to specific targeted tasks. Thus, modern AI is most useful when applied to a specific, discrete legal task or problem. In fact, the most sophisticated examples of AI in the legal industry today are tools that use a “human in the loop” approach. That is, they do not rely solely on the machine’s ability to teach itself a task based on a dataset; they also rely heavily on human involvement and feedback to refine the AI tool’s outputs more adequately to human standards. ChatGPT is an example of this strategy: the chatbot was trained on web-scraped text, but was further refined based on human feedback, especially regarding more sensitive aspects of text generation like the avoidance of offensive or harmful text.¹⁹ Tailored legal research tools often rely on the human in the loop even more extensively. For instance, AI tools that generate research memos may be partnered with human researchers who review and supplement those memos before they are sent to a customer.

In the legal research context, the movement to AI often means that the intellectual work of the researcher is instead conducted by the machine. For example, traditional Boolean search allows a user to be very precise

18. See Bob Ambrogi, “LexisNexis Enters the Generative AI Fray with Limited Release of New Lexis+ AI, Using GPT and other LLMs” (4 May 2023), online: <www.lawnext.com/2023/05/lexisnexis-enters-the-generative-ai-fray-with-limited-release-of-new-lexis-ai-using-gpt-and-other-llms.html>; Bob Ambrogi, “Thomson Reuters Previews Its Plans for Generative AI, Announces Integration with Microsoft 365 Copilot” (23 May 2023), online: <www.lawnext.com/2023/05/thomson-reuters-previews-its-plans-for-generative-ai-announces-integration-with-microsoft-365-copilot.html>.

19. Long Ouyang et al, “Training language models to follow instructions with human feedback” (delivered at the 36th Conference on Neural Information Processing Systems, 2022), online: <proceedings.neurips.cc/paper_files/paper/2022/file/b1efde53be364a73914f58805a001731-Paper-Conference.pdf>.

about what terms are retrieved in a search and their relationship to other terms; the researcher must engage in considerable intellectual work to predict how these terms may appear in their results. In contrast, an AI-driven natural language search engine removes that level of control from the user and instead relies on the machine to interpret the meaning of a researcher's query and return the most relevant results. Much of the cognitive work here has been shifted onto the machine and the individuals who have developed it. Because these technologies are usually proprietary, the researcher may not have much information at all about how the machine is interpreting a query or why it is returning certain results.

This shift has important consequences for lawyers who still, ultimately, shoulder the responsibility for using these tools appropriately in the practice of law. It is important to understand our natural tendency to trust the results of an AI-generated tool because of **automation bias**: the human tendency to favour decisions made by automated systems instead of making the effort to verify or seek out information themselves.²⁰ One good analogy for the use of AI in legal practice is the relationship between a junior and senior lawyer. Even though the junior associate may be doing the bulk of the work, the senior lawyer is still responsible for supervising and directing the junior, ascertaining the validity of legal conclusions, and delivering legal advice to the client. The same is true with an AI system — just because you are using a machine does not mean you can avoid responsibility for the accuracy of the legal information you provide to your client.

1.5.2 How is AI used in Canadian Legal Research Tools?

As with most new technologies, AI tools in legal research are being developed and deployed more broadly and quickly in the U.S. Since there is such an enormous amount of publicity surrounding these advances, it can be difficult to cut through the hype and headlines to get a realistic idea of what is available to a Canadian legal practitioner.

The following are some major categories of AI-driven legal research tools available in Canada as of 2024.

1. New search technologies: While prior systems required strictly controlled search syntax, new search engines in both Westlaw and Lexis allow for and encourage **natural language** searching across their many databases. Other tools like Lexis Brief Analysis and vLex's "legal research assistant", Vincent, allow you to upload your own document for analysis. The system will then recommend additional case law that you may have missed in that document. These two examples represent fundamental departures from how case law has been searched in the past.

2. Improved citators: Online **citators** have long existed in Westlaw, Lexis and CanLII and all three permit a "manual" analysis of stream of precedent. AI-driven citators move legal citation analysis a step further, by promising to automatically detect when a case has been *implicitly* overruled by another case (instead of just

20. Linda Skitka, Kathleen Mosier & Mark Burdick, "Does automation bias decision-making?" (1999) 51 Intl J Human-Computer Studies 991.

explicitly). In Canada, Westlaw Edge currently provides access to Westlaw’s improved AI-powered citator, KeyCite Overruling Risk.

3. Legal “answer” tools: AI-driven systems that aim to pull “answers” to legal questions from existing materials like cases or legislation. For example, Lexis Answers matches natural language queries from the main search bar to “answers” drawn from case law.

4. Subject classification systems: Subject classification used to be a specialized task that could only be accomplished by humans and was therefore only available via large publishing services like Westlaw and Lexis. Recently, however, CanLII has experimented with adding AI-generated subject classifications to case law documents, which allows the user to filter by subject.²¹

5. Analytic and prediction tools: These tools leverage AI to predict the outcome of a scenario by analysing previous cases with similar factors. Prediction tools usually focus on very specific legal issues, such as worker classification, constructive dismissal, and reasonable length of notice. For example, Blue J Legal is one company using AI to predict outcomes in the areas of tax and employment law. MyOpenCourt is an open access suite of Canadian predictive tools. Other predictive tools focus instead on analysing your likelihood of success in front of a certain judge or court, such as Lexis’ Context.

6. Generative AI: Tools that create entirely new content such as text, images, video, or other media (text generation is typically the focus in the legal industry). Some companies, like Alexsei, use a combination of AI and humans to generate a legal research memo. Other generative AI tools are chatbots that will generate text based on prompts from a user. The most famous example of generative AI is, of course, ChatGPT, which took the world by storm in 2022, and then quickly made one lawyer infamous for his faulty reliance on the tool in court.²² Generative AI chatbots in the Canadian space include Jurisage’s “chat with a case” tool and Codify’s “talk to legislation” tool. This technological space is moving quickly, and Lexis and Westlaw generative AI integrations are imminent.

While this is certainly not a comprehensive list, these general categories are useful aids in helping a novice legal researcher identify when and where AI is being used throughout the products that are currently available in the Canadian market.

1.5.3 The Three Layers of an AI-driven System

A detailed technical understanding of how AI works is unnecessary for most legal researchers. But to approach an AI-driven tool from an information literacy standpoint — and thereby understand its utility for a research

21. Pierre-Paul Lemyre, “Lexum’s Approach to Automatic Classification of Case Law: From Statistics to Machine Learning” (8 April 2022), online: <lexum.com/en/blog/lexums-approach-to-automatic-classification-of-case-law-from-statistics-to-machine-learning/>.

22. Sara Merken, “New York lawyers sanctioned for using fake ChatGPT cases in legal brief”, *Reuters* (26 June 2023), online: <reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>.

task — it is helpful to understand the three main components of any AI system. These can very broadly be described as **input**, **analysis**, and **output** (see Figure 2).

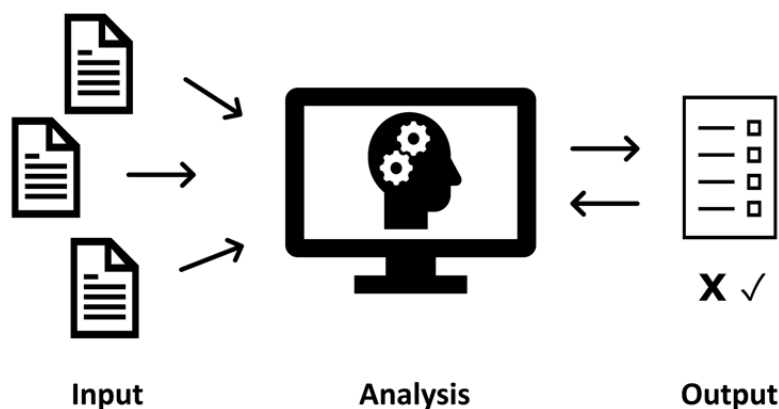


Figure 2: Three layers of an AI-driven system.

The input layer refers to the dataset (the information) that the system runs on for the purposes of task completion. AI relies heavily on pattern detection, which means that it uses rules and patterns in existing data to predict the correct or desired result. Thus, the quality and quantity of the underlying dataset has an enormous impact on the quality of the AI tool’s output. A tool trained on a general-purpose dataset will be much less useful to a legal researcher than one that is trained on legal data. A tool that is trained on only Canadian case law will look very different from one that is trained on American case law. A tool that is trained on 10,000 cases will look very different from a tool trained on only 10.

In the second layer, the analysis layer, the machine interprets its input in light of the task set by the user. The machine’s analysis can be influenced by direct programming — for instance, programming the machine to give more weight to appellate court decisions versus trial court decisions, or programming a generative AI tool to avoid offensive words. However, the analysis may also be influenced in ways not obvious or understandable to the user, since these systems often detect patterns that are not discernable to humans. This opacity, the “black box” of AI, can make it challenging for users to understand how and why a tool is providing certain results, and even more challenging to identify its shortcomings.

The third layer is the output layer, which refers to the results generated by the tool in response to a task. The form of this output can be different depending on the purpose of the tool. It could be a list of documents that the AI has determined match your query, or an AI-generated legal memo, a predicted outcome for your client, or any number of other outputs. At this layer, many AI-driven systems incorporate some amount of “training”, through which humans interact with the tool and provide assessment of the quality of output, which is in turn incorporated into how the tool conducts analysis in the future. Training often happens both in the development stage (i.e. conducted by the tool’s developers) and also after a product is rolled out to users.

For example, researchers using a tool may be asked to mark when results are useful, or data may be collected on how they interact with the output to determine its relevance and feed back into the analysis layer.

This feedback loop is one of the important characteristics of many AI systems. The machine “learns” and improves; this ability is partly why we attribute human-like qualities of intelligence to these systems.

1.5.4 Strengths and Limitations of AI in Legal Research

It can be difficult for novice researchers to accurately assess the utility of AI-driven tools for typical research tasks. As with any emerging technology, the limitations of these tools can be massive, underacknowledged, and often obscured by hype. The volume of commentary in this regard, as well as the marketing materials disseminated by the services as they roll out new AI-driven tools embedded as features in academic subscriptions makes it even harder to discern the real strengths and limitations of such tools. The complexity is increased by the fact that AI is an incredibly wide-ranging area of technological development. A general-purpose system (like ChatGPT) may not necessarily have the same relevance to a specific discipline like law as it does for general use. Once you are able to cut through this noise, however, there are very specific strengths and limitations to these types of tools in the context of Canadian legal industry research.

AI is most effective when applied to specific legal problems that have a clear structure and definitive right or wrong answers. It is also well-suited to tasks that focus on identifying existing patterns in datasets, such as predicting judicial outcomes based on how courts have ruled in the past.²³ Nevertheless, there are a number of areas that are core to legal service provisions that are not well-suited to AI-powered assistance. Harry Surden provides a useful list of adjectives for understanding which areas of law are *not* easily automated: “areas that are conceptual, abstract, value-laden, open-ended, policy- or judgment-oriented; require common sense or intuition; involve persuasion or arbitrary conversation; or involve engagement with the meaning of real-world humanistic concepts, such as societal norms, social constructs, or social institutions”.²⁴ In other words, AI systems are good at following existing rules and patterns, but are less adept at presenting novel, creative, or innovative approaches to law and legal problem solving. They are unable to grasp nuance or demonstrate some of the soft skills associated with high-quality client service, such as compassion or empathy.

In addition to being ill-suited for certain types of questions, many AI systems run the risk of perpetuating **bias** in many forms. These tools are strongest at detecting existing patterns in datasets, which means they can very easily project prejudices that exist in a dataset into the present. Consider the infamous example of risk assessment software COMPAS, which predicted greater recidivism for Black defendants than White

23. For example, predictive tools often focus on a very specific legal question where the courts have determined a fairly set number of factors to consider, such as: is an individual considered to be an employee or contractor under employment law?

24. Harry Surden, “Artificial Intelligence and Law: An Overview” (2018) 35:4 Ga St UL Rev 1305.

defendants.²⁵ These biases can be introduced unintentionally: even if race is ostensibly excluded as a criterion for consideration, there may be proxies for this factor in the dataset (e.g. socioeconomic status or postal code) that the AI system detects and factors into its determination. This lack of transparency into an AI tool's decision-making process is often referred to as the program's "black box", which can make it challenging for a researcher to identify and mitigate bias effectively when using these tools.²⁶ A savvy legal researcher will use the information at their disposal to assess the risk of bias in a given tool and its implications for their research question.

Traditionally, legal research has been a time consuming and labour-intensive process. When applied to the right legal problem — such as the need to review large quantities of data, or spot patterns and how those patterns have been interpreted²⁷ — AI can be an efficient assistant, because a machine can conduct this type of work much faster than a human. This can help eliminate or reduce some of the more mundane aspects of legal research, and, consequently, bring great potential for cost effectiveness if you are billing a client for time spent conducting legal research.

1.5.5 Conducting Legal Research Using AI

The current state of AI is a dangerous one for the legal industry. Practitioners must be extremely careful to only leverage AI systems that add value to their work, rather than those that invent or muddle legal research, or are otherwise disadvantageous to traditional legal research methods. In extreme cases, a lack of awareness on the part of the researcher can lead to drastic consequences — like the New York lawyer who used ChatGPT to write a court filing in 2023, only to be sanctioned for his failure to realize that the chatbot cited fake cases.²⁸ Blind reliance on AI can be a career-ending move.

Instead, a savvy legal researcher needs to consider the utility of any AI system on an individual basis. That means working closely in or with a tool to identify its strengths and weaknesses before relying on it to conduct or supplement legal research tasks. Information is crucial: learn everything you can about the system and its layers by reading all possible documentation and by experimenting with the limits of the tool.

First, ask the most basic question: What is the purpose of this AI system? A general-purpose tool — not designed for law specifically — is far less likely to have relevance or utility for legal research. The main purpose

25. Julia Angwin et al, "Machine Bias", *ProPublica* (23 May 2016), online: <propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

26. See e.g. Kim P Nayyer, Marcelo Rodriguez & Sarah A Sutherland, "Artificial Intelligence & Implicit Bias: With Great Power Comes Great Responsibility" (2020) *AALL Spectrum* (May/June 2020) 14.

27. For example, a plausible suggested use for AI is for the purpose of identifying the most common or prevalent interpretation of contractual phrases; see David A Hoffman & Yonathan A Arbel, "Generative interpretation" *NYUL Rev* [forthcoming in 2024], online: <papers.ssrn.com/abstract=4526219>.

28. *Mata v Avianca, Inc*, 2023 WL 4114965 (SD NY). The court found that the lawyers involved acted with bad faith by not reading the cases that were cited in their affidavit and then later swearing to the truth of its contents. A penalty of \$5,000 was ordered.

of ChatGPT is to replicate human language patterns; it is not designed to provide factual information. In contrast, a tool trained specifically for the legal industry is far more likely (though not guaranteed!) to meet basic criteria required by lawyers, such as generating accurate case citations.

Next, consider the system's strengths and limitations as they relate to the three layers of an AI-driven tool. How do we begin to assess an AI-driven research tool, if so much is hidden or obscured? Understanding all three layers really comes down to a question of information and information literacy: What are the strengths and limitations of the information that is being used as the input for the tool? How is the machine analysing that information, and how much control do you as the researcher have to modify that approach? What gaps or issues are present in the output, and what do they tell you about how this tool operates? Information literacy is at the heart of all these questions. Developing your information literacy skills will not only give you the advantage on assessing traditional legal research tools and databases but will also help you interact with these new legal research tools in useful and meaningful ways.

The following questions provide a starting point for thinking about each of these layers.

Input Layer:

- What dataset underlies this tool?
- What is the breadth of the dataset? (e.g. jurisdiction, types of resources)
- How current is the data?
- What types of human bias exist in the dataset? (e.g. inaccuracies, omissions, systemic bias)
- How could these types of bias manifest in the output?

Analysis Layer:

- What factors are being considered?
- What kind of bias could exist in the algorithm(s)?
- How transparent is the system?
- Does the tool tell or show you how the input is analysed?
- Do you have the ability to control how the input is analysed?

Output Layer:

- How does the algorithm receive feedback on the relevance of the output?
- Does the user have the ability to help “train” the tool?
- What kind of bias could have been introduced by humans involved in “training” the model?
- What kind of bias is reflected in the output?
- What is missing from your results?

Once you have collected as much information as possible, you will be in a place where you can consider how this tool will fit into your research process for this task. Will it help or hinder your legal research process? What are its limitations and how will you overcome them through additional research strategies or using other research tools? How will you conduct a quality check on the information that this system retrieves to ensure that you are presenting accurate research findings?

The answer to whether or not to use an AI system will likely not be clear, and may differ depending on the legal research task you are trying to accomplish. The most important outcome of this process is for you to use a new tool responsibly, effectively, and within its limitations so that you can feel confident in whatever research product you create.

CHAPTER 2: SUPPORTING THE LEGAL RESEARCH PROCESS ONLINE

Learning Outcomes

- Explain how the use of a research checklist improves online research effectiveness.
- Use enhanced methods for extracting keywords from various resources.
- Use click-path notation to record and describe the information-seeking process.
- Know when you can/should stop researching.

2.1 Introduction: Why does online legal research need frameworks and checklists?

An early edition of the classic text by Christina Kunz, et al called *The Process of Legal Research* stated that good research — both as a product and a process — is characterized by the following attributes:

- It is *correct*, that is, it accurately describes and applies the law that governs your client's situation, and which applies as of the time of that situation.
- It is *credible*, that is, it features authority that carries weight because of its nature and quality.
- It is *comprehensive*, that is, it addresses the various issues raised by the client's situation and incorporates an appropriate range of pertinent resources and authorities; it avoids missing an important case or other authority.
- It is *cost effective* (as well as *time effective*), that is, the results justify both the cost of your time (i.e. your billable hourly rate) and any subscription costs that may be charged back to the client, in light of the client's circumstances and available research options.¹

1. Christina Kunz et al, *The Process of Legal Research* (New York: Aspen Publishers, 2004) at 6.

This is as true in the online environment as it was when the approach to legal research was print based. But to achieve this standard of quality, online research must also be systematic and organized. While researchers must contend new formats and source types — such as **non-traditional secondary source** types — the building blocks of good legal research remain the same. For example, legal research will almost always be more efficient if **secondary sources** are consulted before **primary sources**. In the contemporary online environment, where the volume of information may threaten to derail an orderly research process, it is more necessary than ever that information seekers use tools and frameworks to help anchor that process.

Tools such as research checklists for guiding and recording your search process, and frameworks to prompt you and support your thinking on aspects of the process, foster a focused and organized approach to information seeking in the online environment. They also promote patience and thoroughness, boosting your efficiency by helping you resist the urge to follow every tangent or hyperlink, or rush into information seeking before you have fully understood the problem and devised an appropriate strategy for finding relevant information.

In this chapter, we look at some of those tools in the context of online legal research and explain how they can help you achieve both a process and product that conforms to the above “four Cs” of good legal research.

2.2 The Wren Matrix: Foundational knowledge for information seeking

In 1988, Christopher G. Wren and Jill Robinson Wren proposed what was then a novel approach to teaching and learning legal research.² Historically, most law school legal research courses focused on describing, often in great detail, the broad range of library resources and law books used in research. The Wrens argued in favour of replacing this bibliographic, “bibliocentric” approach with one that instead highlighted the relationship between lawmaking structures and the resources they create and presented the process of legal research as intentional and systematic, “explaining to [learners] *when* [and why] to use which type of law book and then *how* to use it.”³ They noted that primary sources in particular — legislation and case law — have inherent characteristics that are the result of how these sources are created. This in turn affects how they are published, indexed, stored and accessed. The Wrens believed these characteristics should be made clear so that learners might see these sources as part of a system, rather than as just sequentially accessed texts. As the Wrens noted, “the structure of legal research will make sense to you when you understand the relationship between the sources of law (courts, legislatures and administrative agencies) and the books in which you will find the law

2. Two key publications offer a detailed explanation of their approach: a student textbook, Christopher G Wren & Jill Robinson Wren, *The Legal Research Manual* (Wisconsin: Legal Education Publishing, 1986) [Wren, *Manual*]; and a journal article, “The Teaching of Legal Research” (1988) 80:1 Law Libr J 7 [Wren, “Teaching”].

3. Wren, *Manual*, *supra* note 2 at vi.

they create... In our view, it makes no sense to know what a law book looks like if you don't know when and how to use it.”⁴

The Wrens' “process-oriented approach” allowed students to come to terms with the structures and processes of lawmaking; prepared them to manage the broad variety of published sources of legal information; and laid the groundwork for learning effective **techniques** for locating and retrieving this information. These skills are as essential in an online environment — and maybe more so — as in a print environment. They can help researchers be more effective in the face of the current volume and variety of online publication formats, databases, search interfaces, and **access points** for searching and retrieving primary sources of law. It makes sense for a researcher to understand how and why primary law is funnelled towards those online access points.

Another American scholar of legal research pedagogy, Professor Paul Callister, took the Wren's proposal and expressed it as a series of guiding questions relevant to primary sources of law:⁵

- What is the lawmaking structure or institution of origin?
- What precursor documents are required or generated during the lawmaking process?
- Where and how is the law published or made known?
- After publication, where is the law **indexed**?
- What online access points, **databases**, or repositories exist for searching and retrieving the law?
- What specific tools or techniques are optimal?

These questions can help learners focus on the characteristics of legal information in an online environment and adjust information-seeking and problem-solving strategies accordingly. You will see these questions referenced repeatedly in this text. We believe these questions are central to a sound understanding of how primary law is captured and organized in the online environment.

2.3 Using Legal Research Checklists in Online Research

Legal research checklists help you create a plan and track your progress when researching. They come in many forms.⁶ They may vary in the amount of detail provided or the number or names of steps contemplated.

4. *Ibid* at v-vii.

5. These questions are the authors' textual representation of two tables: one proposed by the Wrens (see Wren, “Teaching”, *supra* note 2 at 35, “Matrix A”), and the other created by Callister based on the Wrens' work. See Paul D Callister, *Field Guide to Legal Research* (St Paul: West Academic Press, 2019) at 75, Table 4-2.

6. Some legal research experts use the word *plan* instead of *checklist*, but the idea is generally the same: a framework to keep you on track, accessing resources in a logical order and ensuring that you don't forget to consult a particular type of resource. See, e.g. Arlene Blatt & JoAnn Kurtz, *Legal Research: Step by Step*, 5th ed (Toronto: Emond, 2020) at 92; Maureen Fitzgerald & Susan Barker, *Legal Problem Solving: Reasoning, Research & Writing*, 8th ed (Toronto: LexisNexis, 2019) at 46; Moira McCarney et al, *The Comprehensive Guide to Legal Research, Writing & Analysis*, 3rd ed (Toronto: Emond, 2019) at 9.5; and Shelley Kierstead et al, *The Law Workbook: Developing Skills for Legal Research and Writing*, 2nd ed

Some checklists encompass the entire process of legal research and analysis. Others zero in on steps involved in accessing core legal information — secondary and primary sources. They also vary in appearance and format. But no matter the version, a checklist is a tool that encourages a systematic, structured, and thorough approach to information seeking.

A framework is particularly important when researching online. It is common for researchers to go no further than the first page of search results before getting drawn into a tangent or taking a detour. We are easily distracted by interesting-looking hyperlinks which take us further afield until we have lost sight of our original research purpose. Before you know it, you’ve spent an hour online and you are no further along in seeking information for your task. Indeed, many students note that this particular concern — the likelihood that they may find themselves “going down a rabbit hole” during the online research process — drives their lack of confidence in their own research skill set.

A checklist is an antidote to that fear. It keeps your online information-seeking sessions anchored in your goal and helps you document your progress through any research task. This is particularly true of those versions that allow you to create a record of your work. By tracking each step in your process (for example, by using **click path notation**), you can stay efficient even if you are interrupted, need to revisit the task at a later date, or if another researcher must step in and pick up where you left off. In this sense, the use of a checklist not only keeps you on task, it also saves duplication of time, effort, and cost.

Approach research checklists with flexibility and a mindset open to adaptation. Keep in mind that in any checklist, not all suggested steps may be relevant to your specific research problem. You may want to customize your checklist for a particular task or to highlight the importance of certain online access points or resources. Similarly, although checklists are presented as a linear sequence of steps, research is an iterative process. You will benefit greatly if you cycle through certain steps — especially in the earlier stages of the research process, where you are working to articulate legal issues, gain a basic understanding of the relevant law, and identify relevant keywords. You will almost certainly repeat and refine your searches based on new findings and a growing understanding of the legal issue, and may even revise your research plan entirely. Nevertheless, any checklist you find, if used mindfully, is likely to prompt more structured information seeking compared to conducting research without one.

(Toronto: Emond, 2011) at 134. We use the version developed by Nancy McCormack, John Papadopoulos & Catherine Cotter in *The Practical Guide to Canadian Legal Research*, 4th ed (Toronto: Thomson Reuters, 2015) (available from the Westlaw homepage via the “Research and Writing Tools” content category). It is customizable for different practice areas and suitable for use with click-path notation. Free online options include the “Research Checklist” in Melanie Bueckert et al, *The Canadian Legal Research and Writing Guide* (CanLII, 2018), s 2.9, online: <canlii.org/en/commentary/doc/2018CanLIIDocs161>, and the checklist available in Queen’s University Library, *Legal Research Manual* (last modified 13 November 2023), online: <guides.library.queensu.ca/legal-research-manual/steps-legal-research>.

2.4 Extracting Keywords

If you look at any of the research checklists mentioned above, you'll notice that “keywords” are mentioned as important in the early stages of the legal research process. What is the purpose of keywords? In the context of online legal research, many will say that we extract keywords so that we can build **Boolean** or **natural language** searches.⁷ But keywords serve other functions in the process of legal research, and extracting keywords can be an important part of conceptualizing your research topic and getting started on analysing your client's legal issue. The act of keyword generation supports certain research techniques beyond keyword searching, including browsing (used with print and digital indexes, tables of contents) and **subject-based searching** (used with certain kinds of databases, indexes, and library catalogues). The process of extracting keywords also provides conceptual focus: it contributes to how you characterize and categorize the area(s) of law relevant to your client's problem, a necessary aspect of issue identification in legal analysis.

There are many sources of keywords in the average research task. You can extract keywords from the client's fact scenario, a client interview, and the lawyer who assigns you the research task.⁸ You can also extract keywords from documents in a client file, secondary sources, primary sources such as leading cases or governing legislation, preliminary web searches, or current awareness resources. No matter how you get them, however, and even if keyword searching will not be your primary search technique, extracting keywords is an effective way of conceptualizing and characterizing your problem in the early stages of research. It is a way of contextualizing and understanding your research problem before you start to seek a solution.

2.4.1 A Framework for Extracting Keywords

Early-stage researchers sometimes struggle to brainstorm a rich population of keywords. One way to ease this process is to appreciate that keywords exist in several hierarchical “levels” or categories — ones that roughly track the way legal information is classified and stored in online databases. Different keywords, from different “levels” can be applied together or separately depending on the type of records that you are searching, since some databases are more effectively searched using certain types of keywords than others. For example, recall the database question, “what constitutes a record?” If you are searching across a full-text case law database, it will be effective to use more granular and specific keywords than if you are searching across a case digest database.

Since keywords differ in specificity and granularity, it is helpful to use a framework for extracting keywords that acknowledges this. One such framework focuses on three levels of keywords: primary, secondary and

7. For information about some concerns associated with keyword searching, see Fundamental Search Techniques.

8. An assigning lawyer is an especially rich source since lawyers often use specialized language or terms of art that are highly relevant but unfamiliar to an early-stage practitioner.

tertiary (abbreviated as 1y, 2y and 3y). This hierarchical framework identifies three categories of keywords, ranging from the very broad to the specific. Using this hierarchy to guide you in identifying and selecting keywords not only ensures a comprehensive approach to generating search terms, but also anchors your search terms in the scheme used by major legal research databases for organizing and indexing digitized information.

Primary keywords indicate major legal topics. You can think of these as being on the same level with words that describe typical law courses: contracts, immigration, torts, patents, criminal, labour, corporate, etc. These words describe in the broadest possible way the area(s) of law engaged by your research problem. When you generate a primary level keyword, you are classifying your research problem as belonging under one of those major topical areas. Sometimes, legal problems exist at the intersection of major topical categories, so you may have more than one primary level keyword associated with your problem. In other cases, specific legal concepts or issues within these large major topical areas may themselves be so legally significant — for example, negligence within the larger topic of tort law — that they also may be considered primary keywords. These are words that constitute the topmost level of the legal taxonomy and so are also used at the top level of the organization hierarchy: subject titles, top-level digest classifications and sometimes library subject headings.

Secondary keywords are legal concepts within the larger area of law described by the primary keyword. They nest conceptually within the category identified by the primary keyword. For example, under the primary word *contracts*, a secondary word might be *breach* (of contract) or *consideration*. Secondary keywords play a role in articulating the legal issues that your client faces, and so, generating accurate secondary keywords can be a tremendous boost to efficient searching.

Finally, **tertiary keywords** represent specific facts or situational elements associated with your problem. The acronym TAPP assists with generating tertiary keywords.⁹ TAPP stands for:

- T — Thing or object involved in the dispute
- A — Act or activity that led to the dispute
- P — Person or class of persons involved in the dispute
- P — Place where the event occurred that led to the dispute (which could mean jurisdiction, but which also might mean hockey rink or dark alley)

Be cautious when generating tertiary keywords, however. The TAPP acronym may keep you closely tethered to a fact scenario, which may in turn restrict the population of words you generate. Remember as well that synonyms are particularly important, not just for searching but also for conceptualizing your client's legal issue. Certain key terms may be closely associated with a particular legal perspective on an issue. A balanced range of terms used to define the same issue, and to search for relevant resources, will return a more balanced range of

9. See Wren, *Manual*, *supra* note 2 at 32.

results. Plan to spend some time generating synonyms for the search terms you have identified at the tertiary level.

2.5 Click-path Notation

Click-path notation goes hand in hand with a legal research checklist as a method of making your research more structured and systematic. It refers to a shorthand approach used to describe and record your online searches in detail. It is a way of tracking, either for yourself or for someone else, the actual series of steps or “clicks” you executed while searching for legal information online. In this sense, it is similar to the “bread crumb trail” you sometimes see at the top of a web page, but also includes reference to search techniques you used, like browsing, filtering, or using a Boolean connector, as well as reference to your search terms and connectors themselves.

The use of click-path notation is an effective means of ensuring you have an accurate record of your searches in a centralized location that is not limited to your search history in a particular legal research **service**.¹⁰ As with a research checklist, the click path is especially important in an online environment where it is possible to run search after search, often with the use of keywords, without being aware of how your search strategy or search terms are evolving with each subsequent search. The risk of wasting time and money is compounded if you have to leave off and return to your research task at a later point in time. In this situation, you may find yourself replicating your original searches without realizing it, including those that produced no useful results.

It doesn’t take much time to record a click path. Ideally, you would use click-path notation to record searches either on a legal research checklist under the relevant subheading (case law, legislation, secondary source types, etc.) or on a page appended to your checklist, which you regularly update. And, if you record your click path accurately, there is no need to record your results list. Anyone who replicates your click path — including you — will be able to generate the same results, capturing any records that were added to the database after your original search.

There is no standardized approach to recording a search using a click path. Since the point is to record or communicate your research process accurately for future reference, you should try to be consistent in what you record and how you represent the elements of your online search. Here are some essential elements that you should be sure to track for every search:

- The date of the search.
- The access point (the webpage or service where you started, include a URL if it is not obvious).

10. The ability to store your search history in a service like Westlaw and Lexis is, of course, still useful. However, there may be limits to the number of searches you can store (e.g. all searches may be erased after a specific time period). Further, clicking on the search in your history may trigger charges, depending on the service. As well, not all access points or databases have functionality that allows you to track your search history.

- Any sub-databases or tools used.
- Any specific search techniques used.
- Search terms (keywords), and Boolean connectors if used.

Here’s an example of a method for representing the elements of a search in click-path notation. This click path describes a case law search using Westlaw as the original access point. In this search, the researcher is looking for Supreme Court of Canada decisions within a certain date range involving spousal sponsorship for family class immigration where the genuineness of the marriage is an issue:

12 November 2022: WLNext > Cases and Decisions DB > SCC & Privy Council SubDB > [keyword+Boolean:] spous! /3 sponsor! AND genuin! > [filter:] date = after 2010

This click path represents each essential element described above. The process of the search — each “click” that takes the researcher to a new or updated webpage — is represented by a right-pointing angle bracket (>). Search techniques are recorded in square brackets with the particulars of the technique following, such as *keyword* + *Boolean* searching with the search string used, or filtering with a note as to the parameters applied to narrow the results list. If this search were recorded as a narrative instead of using a click path, it might look like this:

“On November 12, 2022, I searched using the Canadian subscription service WestlawNext. I navigated to the database for Cases and Decisions. From there, I chose the Supreme Court of Canada sub-database. In this sub-database, I performed a keyword search with Boolean connectors for cases in which the words *spouse* or *spousal* appear within three words of terms such as *sponsor* or *sponsorship* or *sponsored* and in which the record also contains a term starting with *genuin*, such as *genuine* or *genuineness*. From those results, I then reduced my population of results by filtering only for decisions rendered after 2010.”

A few things to note:

- Recording the date of the search helps you assess how old the results are. If a number of months have passed since you performed the original search, you might choose to rerun this search, delimiting results by date, to see if any new cases have been added to the database since the time of your last search.
- Specify the service you are using. In many cases, the three services will yield different results for the same search. If you are starting a search from a non-service access point — a library catalogue, for example, or a law firm’s website — identify the site by name and include the URL if it is not otherwise obvious.
- You can choose any abbreviations you wish — just be consistent. Here, the abbreviations “DB” and “SubDB” were used for *database* and *sub-database* respectively.
- Provide an accurate and replicable description of the search string, including both keywords and

connectors. Recall that “search syntax” — the choice of connectors/symbols and the order in which they must be placed — is not universal; each service has its own. If this were a Lexis or CanLII search, the Boolean connectors might be different, even if the search was for the same information.

You won’t always use a subscription service as your access point, of course. Here’s an example of a click path for another search using Google as the access point:

12 November 2022: Google> “legal liability for livestock injury” > no relevant results for phrase in quotes.

In this case, the click path records the starting point — Google’s search engine — and it’s clear that the search was a brief natural language search with a phrase in quotes, which Google parses as a request for an exact result (even Google has a search syntax). The fact that this search returned no relevant results is also recorded, since this is useful information. The researcher now has a record of trying this phrase, with no luck, and can move on to try something else.

2.6 How do I know when I'm done researching?

There are some important milestones in the search process that every researcher can use to ensure they know when to stop searching. These are tried and true maxims, as relevant in the world of online information as they are in the print world. They are derived from the very structure of the Canadian legal system and the “rigid hierarchy that exists at the heart of the common law system”¹¹ — one which transcends the nature of the research environment. Keep these milestones in mind to keep your searches focused and avoid wasting time looking in out-of-the-way online places that have little to no value in the overall process of good legal research.

- First, use a legal research checklist. In an online environment, the use of a checklist will help you to stay on track and recognize when you have already covered certain ground.
- Use secondary sources of all types (with appropriate critical assessment) to orient yourself to the law and to give you leads on relevant primary sources.
- Use authoritative traditional secondary sources such as treatises and texts of acknowledged experts and high-quality journal articles. It does not matter the format — print, looseleaf or online; it is the nature of

11. McCormack, *supra* note 6 at 14.

the source here that is relevant.

- Be sure you understand the hierarchy of primary sources relevant to your research topic:
 - Look for legislation before you look for case law. If there is a statute that governs, the rest of your searches will be related to what you have found in the legislation.
 - Then look for case law from within your jurisdiction, either decisions that interpret and apply the relevant legislation or decisions based on common law principles. Choose cases that are binding and authoritative in your jurisdiction: Decisions of the Supreme Court of Canada; decisions of a Court of Appeal or a lower court in your jurisdiction; or decisions of the relevant tribunal or board.
 - Then look for case law that may be persuasive: decisions of Courts of Appeal outside your jurisdiction or decisions of lower courts and relevant tribunals outside your jurisdiction.
 - Use the foreign law of a closely similar foreign jurisdiction (U.S., U.K.) where on-topic jurisprudence or scholarly commentary exists.

If you follow this progression, moving through each element, then you will have covered all possibly relevant resources in the most efficient order possible. Further, once you have moved all the way from the first element to the last, that is your stopping point. At each step, if you have found relevant primary sources, then you must also note up what you have found before proceeding to the next element.

All of these, with the exception of foreign law resources, are discussed in greater depth in the coming chapters.

CHAPTER 3: ONLINE LEGAL RESEARCH AND PROFESSIONAL RESPONSIBILITY

Learning Outcomes

- Describe the range of ethical and professional responsibility concerns associated with online information seeking.
- Identify the extended elements of “competency” in legal research, including cost efficiency and fluency with emerging technologies.
- Describe potential issues associated with protection of client information and online research.

3.1 Introduction to Professional Responsibility and Online Information Seeking

Lawyers handle large amounts of sensitive client information, and the obligation to preserve client confidentiality and privacy extends to the work a lawyer does online. However, ethical and responsible practice requires more than just attention to client privacy issues. The types of incidents that could be considered departures from ethical norms are increasing due to the emergence of new technologies and increased reliance on existing technologies. Lawyers using the online environment for information seeking and information management will engage with issues around ensuring data privacy and security, intellectual property rights, transparency, and cost effectiveness, as well as attribution of sources and integrity in practice before the courts and in relation to other lawyers. Additionally, lawyers will need to critically evaluate the quality, reliability and “fitness for purpose” of emerging technologies, remain vigilant about algorithm **biases**, and acknowledge that computer-assisted legal research tools may import inherent biases into information seeking that impact advice to clients.

Some of this is already regulated by provincial law societies, while other aspects are left to the diligence of the lawyer. But it may not yet be possible to articulate a comprehensive approach to managing tech in practice. This is a dynamic area of concern, with new issues and situations emerging almost daily. As new

technologies become available, whether for information seeking, analysis or file management, practitioners will need to reassess the boundaries of ethical behaviour. Ideally, these boundaries will be based on the acknowledged persistent values fundamental to the legal profession: honesty, integrity, and competence in all its manifestations.

In this chapter, we briefly outline four elements of professional responsibility relevant to online information seeking: defining the scope of research “competence” in the context of modern practice; technological competence in the context of emerging technologies; the cost of computer-assisted legal research; and “Big Data’s” interest in client information.

3.1.1 The Law Society of Ontario and Research Competence

Although the Law Society of Ontario’s *Rules of Professional Conduct*¹ do not apply to law students, they nevertheless set the standard by which your research skills will be measured in practice. Rule 3.1-1 defines a competent lawyer as one who (among other things) “implement[s] as each matter requires, the chosen course of action through the application of appropriate skills, including... (i) legal research.”² Rule 3.1-2 states that “A lawyer shall perform any legal services undertaken on a client’s behalf to the standard of a competent lawyer.”

This seems quite straightforward, but Rule 3.1 is accompanied by extensive commentary designed to help lawyers parse the definition of competence in various situations. Competence is, in fact, contextual and must be assessed in relation to a variety of factors.

The Commentary accompanying Rule 3.1-2 is salient to both computer-assisted legal research in particular and to technological competence in general:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer’s duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer’s practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In

1. Law Society of Ontario, *Rules of Professional Conduct*, online: <<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/complete-rules-of-professional-conduct>>.

2. Research competence — locating authorities relevant to the determination of your client’s issue and then analyzing and applying those authorities to your client’s facts — also implies legal citation competence. Citation instruction is beyond the scope of this text, but students are encouraged to see this as an ethical obligation and work toward mastery of the citation format used by their institution. This should include a grounding in the policy underpinnings of legal citation: attribution and acknowledgement of work that is not your own when you use it in your own product, and the facilitation of access so that readers can read and assess the source cited for themselves. Particularly in the case of attribution, it is easy for errors of omission to be made. Students must aim to develop an impeccable citation technique as an element of professional responsibility.

determining whether technology is reasonably available, consideration should be given to factors including:

- (a) The lawyer's or law firm's practice areas;
- (b) The geographic locations of the lawyer's or firm's practice; and
- (c) The requirements of clients.

The commentary highlights three ethical obligations for online researchers.

First, the rule requires that lawyers' (and by extension law students') understanding of relevant technology be sufficiently developed to allow them to critically assess its utility — that is, the associated benefits and risks — in each context.³ In the context of online information seeking, tech competence comprises a broad understanding of algorithms' impact on research results and the trade-off between efficient online legal research and cost of legal research services, an ability to critically assess the utility of online **resources** and even to judge the appropriate use of technology in each research task.

Second, Commentary 4B says lawyers may assess their own “required level of technical competence” with reference to the lawyer's particular area of practice. Although this suggests that that an understanding of technology may not be necessary in all practice contexts, this may no longer be the case. There will be fewer and fewer practitioners who can avoid the professional obligation described in Commentary 4A on the basis that they do not rely on technology in their practice. In fact, in contemporary practice, no matter the area of expertise, it is highly unlikely that a lawyer can research a client's problem from start to finish using only print resources in a cost- and time-effective way. In other words, legal research technology — the online **services** and **databases** in which legal information is published, **indexed**, and stored, and through which it is accessed — are now essential to every lawyer's practice.

Finally, the commentary suggests that the strict requirement for tech competence can be tempered in cases where the relevant technology is not “readily available”. The implication here is that if the technology is neither common nor widely adopted, then a lawyer may be held to a less rigorous standard of competence. While it may once have been the case that computers and the internet were not part of every lawyer's practice, those days are all but gone. Legal research technology — essentially nothing more than a computer with internet access — is so integral to the contemporary practice of law that there is virtually no excuse for saying legal research technology is not “reasonably available”. And more and more frequently, this metric will be applied to emerging technologies as well.

A lawyer ignores these obligations at their own professional risk. When assessing a lawyer's tech competency in the context of legal research, the courts have shown themselves ready and willing to enforce a standard. Historically, such cases usually involved simple research capability⁴ and emanated from a period when many

3. For a proposed framework for assessing benefits and risks of technology in legal practice, see Iantha Haight, “A Rubric for Analyzing Legal Technology Using Benefit/Risk Pairs” (29 June 2023) [unpublished, forthcoming in U St Thomas LJ], online: <ssrn.com/abstract=4495752>.

4. There are a handful of well-known cases in this regard, where courts have dressed-down counsel for their failure to discharge their duty of research competence. These include *Gibb v Jiwan*, (1996) 62 ACWS (3d) 607, 1996 CarswellOnt 1222 (ONCJ (GD)); *Lougheed Enterprises Ltd v*

legal researchers still relied on print resources. However, given the ease of online access to legal information, there is now no reason for a lawyer to come to court (or to a transaction or an important client meeting) without having performed competent online legal research in support of their client's position. More recent cases on tech competence and ethical legal research have tended to arise in the context of taxation for costs, where law firms must justify their billings to clients including billings for computer-assisted legal research (see below). We predict this will evolve yet again with the emergence of new technologies such as generative AI large language models (LLMs) and their adoption and integration in legal practice tools.⁵

3.2 Technological Competence and Emerging Research Technologies

Technological competence is a serious obligation. Notwithstanding the proliferation and widespread availability of emerging technologies, our tendency to be curious about and experiment with them does not equate to competence. The launch of an AI tool is often surrounded by hype, which can easily lead to misinformation about its actual utility and risks and can mislead users into thinking such tools are simple to integrate into practice tasks. For a good example, we once again turn to the advent of LLMs.

LLMs such as ChatGPT can be a tempting shortcut for those unaware of the contours of these tools — with disastrous results. In 2023, New York lawyer Steven Schwartz became the poster child for lack of technological competence using ChatGPT, after submitting a court filing that cited fake cases generated by the AI system. Schwartz testified that it never occurred to him that ChatGPT could fabricate cases because he mistakenly thought the tool functioned as a **search engine**.⁶ In this case, while the mere use of ChatGPT was probably not an action worthy of discipline, the lawyer's lack of competence in critically assessing the result most definitely was. Schwartz's blind trust in the tool caused him to forego crucial steps in information seeking and legal analysis, such as verifying — and *reading* — the cases that he was relying on in a written submission.

We will surely see more cases regarding the use of AI and professional competence in the coming years — and we will likely see other revolutionary technologies that will have an impact on practice. With generative AI, as with any emerging technology, as it becomes embedded in the major legal research services, it will be crucial to maintain an understanding of these tools' capabilities and to understand how to use them with competence. One good analogy is to think of using AI in legal practice as akin to supervising an articling

Armbruster, (1992) 10 BCAC 226, 63 BCLR (2d) 316 (BCCA); and *Central & Eastern Trust Co v Rafuse*, [1986] 2 SCR 147, 31 DLR (4th) 481 (SCC).

5. Amy Salyzyn, "AI and Legal Ethics 2.0: Continuing the Conversation in a Post-ChatGPT World", *Slaw* (28 September 2023), online: <slaw.ca/2023/09/28/ai-and-legal-ethics-2-0-continuing-the-conversation-in-a-post-chatgpt-world/>.

6. Josh Russell, "Lawyer who cited bogus legal opinions from ChatGPT pleads AI ignorance", *Courthouse News Service* (8 June 2023), online: <courthousenews.com/lawyer-who-cited-bogus-legal-opinions-from-chatgpt-pleads-ai-ignorance/>.

student. A supervising lawyer is responsible for the actions of the student acting under their direction.⁷ In the same way, you hold responsibility for ensuring that the work you generate or supplement with an AI tool is accurate.

3.3 The Cost of Online Legal Research: Overhead or disbursement? And why does it matter?

Does a lawyer have an obligation to minimize the cost-to-client of competent legal research? Should law firms be able to charge clients for computer-assisted research as a line-item **disbursement**, separate from that of overall legal advice? To answer these questions, it helps to understand the ways in which a law firm — or any business for that matter — can characterize legal research costs.

In the early days of computer-assisted legal research, firms had the option to subscribe to the commercial legal research services (Westlaw or Lexis) on a pay-as-you-go basis. The firm was charged based on its use of the service and would, in turn, pass that cost along to the client as part of the work on that client's file. However, this is no longer the most prevalent model for commercial service subscriptions. At present, a firm typically subscribes on a flat-fee basis, which is calculated on factors such as the number of users in the firm, the premium features included in the subscription, and usage rates in prior years. The subscription cost paid by the firm is stable, no matter how much or how little research is done on behalf of any client file. In other words, a commercial service subscription is a known annual cost to the firm. In this situation, a law firm could characterize its Westlaw or Lexis subscription cost in one of two ways: as a disbursement or as **overhead**.

A disbursement is an expense incurred and paid by a law firm on behalf of a specific client, for a specific good or service, the benefit of which accrues to that client. When a firm bills research as a disbursement, the client is charged for specific research costs commensurate with the amount and types of research done on their file. This approach is known as a “chargeback” to the client (or sometimes “transactional costs”). To facilitate this, the subscription services provide tables of suggested chargeback amounts. Firms can track transactional costs on a per-file basis by using a feature in each commercial service that allows a researcher to enter a file number at the beginning of each search session. Searches and document access is then tracked based on that file number and billed to the client accordingly.

In the alternative, firms may characterize their subscription costs as overhead. Overhead is the aggregate of essential ongoing operational expenses for any business, including salaries, rent, utilities or office supplies. Overhead costs are not related to any specific client's file but rather to the operation of the firm as a whole. They are recouped in the hourly fees or fees for service that the firm charges to a client for a lawyer or law student's time.

Traditionally, costs associated with legal research were charged as disbursements. This approach was

7. *Rules of Professional Conduct*, *supra* note 1, Rule 6.2-2, Commentary [1].

facilitated by both the suggested transactional or chargeback amounts and the per-client usage tracking feature. But this approach has the potential to result in a windfall for the firm, especially in a case where a subscription represents a stable cost within a billing or fiscal period, but many clients are getting charged for research. The defensibility of such an approach is being challenged. Cases have arisen in which this approach has been impugned both by clients — for the large monetary amounts firms chargeback to a client for research on their file — and by courts themselves.⁸ Judges have begun to recognize the ethical disconnect between a firm’s flat-fee subscription cost (which tends to look like overhead) and a chargeback approach to invoicing (which tends to look like a disbursement). While the issue is not settled, there does seem to be a trend towards the “research costs as overhead” approach. Nevertheless, students should be alive to the question of how research costs are presented to clients and ensure that their information-seeking practice is as cost effective as possible, as a matter of professional ethics as well as research competence.

3.4 Client Information and “Big Data” Data Collection

The online legal research environment presents a host of questions regarding unintentional or inadvertent disclosure of client information in the context of third-party data collection. The collection of large amounts of data in a commercial context, often without direct consent of users, is sometimes termed Big Data, which can be defined as “a combination of structured, semi-structured and unstructured data collected by organizations that can be mined for information and used in machine learning projects, predictive modeling and other advanced analytics applications.”⁹ There is a clearly commercial benefit to the data collector, as the information collected can be used in ways that improve and target products to users based on subtle user preferences. This, in turn, makes further purchases, and thus profitability, more likely. Data collectors may also sell user information to third parties, allowing more detailed tracking of user preferences in cognate markets for the purposes of creating highly targeted marketing, and again, thereby improving profitability.

The risk of data collection via legal research technologies is not directly addressed in the LSO Rules of Professional Conduct or in the Federation of Law Societies of Canada Model Code of Professional Conduct.¹⁰ However, we can infer lawyers’ ethical duties around the intersection of confidentiality and Big Data from the Rule 3 Commentary [4A] when read together with section 5.7 of the LSO’s Technology Practice Management

8. See *Fairchild v Vancouver Coastal Health Authority*, 2011 BCSC 616 at para 77; *Drummond v The Cadillac Fairview Corp Ltd*, 2018 ONSC 5350 at para 10; *Matthews v Lawrence*, 2022 ABQB 288 at para 19; Laura Olsen, “Inside Track: Still Charging Clients for Legal Research? You Might Want to Rethink That” (15 Oct 2014), online: <wisbar.org/newspublications/insidettrack/pages/article.aspx?volume=6&articleid=23620>; Ted Tjaden, *Legal Research and Writing*, 4th ed (2016, Toronto: Irwin Law) at 12 et seq.

9. Bridget Botelho & Stephen J Bigelow, “Definition: Big Data” (January 2022), online: <techtargert.com/searchdatamanagement/definition/big-data>.

10. Federation of Law Societies of Canada, *Model Code of Professional Conduct* (October 2022), online: <flsc.ca/what-we-do/model-code-of-professional-conduct>.

Guideline.¹¹ Commentary [4A] states that a lawyer’s competence includes an “understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities”, including a duty to “protect confidential information” as set out in section 3.3 of the FSLC Model Code. The Technology Practice Management Guideline expands this, noting that a lawyer should “take appropriate measures to secure confidential information when using cloud-based services”.¹² To the extent that the legal research services are a type of cloud-based service, it is incumbent on researchers to understand what information an online legal research tool is collecting when you are engaging with it. This is especially important if the tool requires you to input facts about your client or otherwise might collect data that is your professional obligation to protect. This is ever more frequently a concern with legal research tools that invite you to search by uploading documents as opposed to you entering a query via keywords and connectors. It’s one thing to know that your search terms are being tracked by a service; it’s another to know that a research memo you uploaded could be collected and stored as “data” associated with your account.

For example, consider a newer type of legal research tool called a “brief analysis” tool. These tools closely inspect a document that you upload, and then recommend citations and resources based on that original document. In using such a tool, you might be tempted to upload a communication to or from a client, a document from a client’s file, or a pleading in a case that is still before the courts. But what is the system doing with that document once you have uploaded it? Does the data in that document become part of the system database for that service? Is the document indexed or otherwise saved or made available for the system to access in future? Lexis’ Brief Analysis tool is one example of a legal research tool that allows you to upload your own document. Interestingly, their privacy policy does not address this security concern specifically, but their data security statement (available within the tool itself as viewed on Lexis+) states that “the full text from the user’s document is not stored beyond the current session”.¹³ If you can’t find information that alleviates your concerns about how a tool uses your data, you may need to reconsider its necessity or utility as part of your research process. At the very least you should carefully redact personal or identifying information — names, places and dates — before you upload.

Both Westlaw and Lexis collect personal information — provided by you when you register for the service — such as your contact details, job title, and educational background. They also collect information about how you interact with their product. Lexis’ privacy policy states that they collect data regarding “the features you used, the settings you selected, your URL click stream data, including date and time stamp and referring and exit pages, search terms you used, and pages you visited or searched for on the Service”.¹⁴ Westlaw

11. Law Society of Ontario, “Technology Practice Management Guideline”, online: <lso.ca/lawyers/practice-supports-and-resources/practice-management-guidelines/technology>.

12. *Ibid* at s 5.7.

13. Lexis+ Canada, “Brief Analysis” (last visited 12 June 2023), online: <plus.lexis.com/BriefAnalysis>.

14. LexisNexis, “LexisNexis Privacy Policy” (20 December 2022), s 2.4, online: <lexisnexis.com/global/privacy/en/privacy-policy-ca.page>.

Interestingly, Lexis characterizes this as “usage” data in its policy text, but it is in fact more than that.

collects “personal information in content and communications uploaded, sent, shared, or inputted through our Services” as well as “usage, search, and browsing history, user journey history (including clicks, navigation, user actions, interactions, and session replays), usage and diagnostics analytics and metrics”.¹⁵ In other words, you should assume that everything you do in the subscription service platforms is tracked, collected, and associated with you as a user. If you think about a firm that bills legal research costs from within the services, you know this already. In many legal workplaces, the services pass along this usage information to the law firm for purposes such as generating chargeback fees for clients to pay for the use of these expensive services.

You should also consider the scope of personal information collected by a service, and the sources it is collected from. Westlaw’s policy, for example, shows that they collect information not only from your direct interaction with the service but also from third parties (e.g. advertisers or data brokers), your organization, governmental agencies, and publicly available sources of information, all of which is kept in their system and associated with you as a user. Lexis provides a similar list, including marketing partners, social networks, and publicly available sources. This means that you may not have a clear picture of how your data — or your client’s data — is being assembled behind the scenes. The concerns here are further compounded by the fact that you may not know who the services are sharing information with,¹⁶ and where that information may be stored.¹⁷

These models of data collection, retention, and sharing may have different levels of ramifications for a practicing lawyer. At the more benign end of the spectrum, you may receive targeted advertising from third parties that a company has sold your personal data to. On the more extreme side of the spectrum, however, some researchers have pointed to more troubling data sharing practices which actively endanger client interests.¹⁸

It is worth comparing these policies with CanLII’s privacy policy, which states that the service “collects and stores only that personal information necessary... to fulfil its mandate” but does store information including IP addresses, pages visited, duration of visit, and queries made on CanLII’s search engine in order to improve its

15. Thomson Reuters, “Thomson Reuters Privacy Statement” (1 January 2023), online: Thomson Reuters <thomsonreuters.com/en/privacy-statement.html>.

16. Lexis states that they share personal information with their affiliates (any of a massive group of companies associated with LexisNexis or RELX) as well as their “service providers, suppliers, agents and representatives”. Westlaw states that they will also share personal information with your organization, business affiliates, third parties who market their products/services, governmental agencies, and law enforcement agencies.

17. According to Westlaw, “your personal information may be transferred outside of your home country” including to the United States. Lexis lists several examples of countries where information may be stored, including Australia, China, India, the United Kingdom, and the United States. Data storage in other jurisdictions raises concerns about government surveillance due to differing laws about what the government can and cannot access.

18. For example, see Sarah Lamdan, “When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing” (2019) 43:2 NYU Rev L & Soc Change 255. Sarah Lamdan is a well-respected librarian and data surveillance researcher. See also Sarah Lamdan, *Data Cartels: The Companies That Control and Monopolize Our Information* (New York: Stanford University Press, 2022). This book outlines links between both Lexis and Thomson Reuters acting as data brokers to agencies and organizations including U.S. Immigration and Customs Enforcement (ICE), as well as for tenant screening software companies and predictive policing.

services.¹⁹ CanLII also states that the site “does not disclose users’ personal information to third parties except as required or permitted by law”, and provides the example of sharing information with their partner Lexum, “who assist CanLII in operating and hosting the website and fulfilling its mandate”.²⁰

To mitigate concerns around Big Data, lawyers should exercise good online hygiene. Provide only the required elements of information, and nothing more, when activating an account. Strip out or anonymize personal or identifying information from any documents before uploading them to a service for search purposes. Ensure that searches conducted in more traditional ways (e.g. keywords and **Boolean** connectors) do not contain personal identification of you or a client that could be used to infer a litigation strategy or client issue. Ensure that in-firm client data is properly encrypted and kept behind firewalls. Finally, don’t assume that every legal research service, product, or tool behaves the same way. Researching privacy policies or engaging in conversations with privacy experts at your workplace is an important aspect of professional responsibility.

19. See CanLII, “Privacy Policy” (last modified 11 November 2023), ss 1, 6, online: <canlii.org/en/info/privacy.html>.

20. *Ibid.*, s 8.

PART II: LOCATING COMMENTARY ONLINE

CHAPTER 4: TRADITIONAL SECONDARY SOURCES

Learning Outcomes

- Distinguish between traditional and non-traditional secondary sources and their utility.
- Identify common types of traditional secondary sources.
- Use advanced search techniques to identify, locate and retrieve traditional secondary sources.
- Critically evaluate traditional secondary sources based on characteristics such as authoritativeness, bias, currency, and credibility.

4.1 Introduction to Traditional Secondary Sources

All **secondary sources** fulfill two functions: they explain and orient you to the law and they point you to relevant **primary sources** — cases and legislation. But given the huge volume of legal commentary available online, some way of distinguishing among the various types and quality of **resources** becomes useful. One way to do this is to see secondary sources as falling into two main categories: traditional and non-traditional.

Traditional secondary sources are resources published in formats that have persisted since the early days of print commentary and pre-date the information landscape brought about by the internet. These formats are long-established in the field of law and legal information and include books, journal articles, treatises, case comments, etc. They undergo an extended period of pre-publication vetting, and the publication timeline is long. They are also often ill-adapted to the online environment; the original print format is simply digitized, as opposed to born-digital resources that have been optimized for online search strategies.

In contrast, **non-traditional secondary sources**, are published in a less formal, more flexible way, using formats that are easily generated and easily accessible online. They come in a variety of text and audio formats: legal newsletters, podcasts, blogs, law firm websites, as well as non-legal sources like general news outlets

(whether mainstream media or not). They also include social media platforms, which have a now well-established value to both scholars and practitioners. They may undergo no vetting at all — the information is direct-to-user from author. They are intuitive and easy to locate in the online environment because they are born-digital formats whose success has depended on ease of access through online search. But they also have significant drawbacks related to accuracy, reliability, and quality that will be discussed in more detail in Chapter 5.

Since traditional secondary sources existed as resource types well before the internet, their migration to the online world has been shaped by the parameters of their original print format. This means that traditional secondary sources are often not optimized for online searching; they are frequently the type of semi-visible resource that is not **indexed** by Google (see Chapter 1). Consider a textbook that is only available in print or online behind a paywall: a resource like this will not be fully searchable from Google. Because they take effort to unearth online, a common mistake by novice researchers is to completely overlook these traditional secondary sources. But they have several distinct advantages over non-traditional secondary sources and should never be overlooked during the research process.

One key advantage is that they involve an extended pre-publication vetting process, involving both editors and publishers, which includes oversight of both the format and content of the resource. In other words, decisions about form and content are not left fully in the author's hands, and the author's work is checked for quality and accuracy, among other things. As a result of this pre-publication process, traditional secondary sources, like books and journal articles, take time to move from author's draft to publication — sometimes weeks, but more often months or even years.

Another advantage is that traditional secondary sources can be considered authoritative. For example, a well-respected treatise like Hogg's *Constitutional Law of Canada* can be cited by the Canadian courts thousands of times. Traditional secondary sources also tend to provide more in-depth information than non-traditional sources like blogs and websites, which usually cover a very specific or niche topic.

Of course, there are also disadvantages to traditional secondary sources. One of these is currency; the price we pay for a more rigorous quality control process tends to translate to a greater delay between when information is written and when it is published. A traditional secondary source can therefore be expected to lag behind the current state of the law. This can be easy to forget when we view online sources because we tend to assume that online text is easily updated. But the e-versions of traditional secondary sources go through the same extensive publishing process as the print versions. Thus, when relying on one, you must always look for the currency date of the source and then take the additional step of checking if the law has changed since that date. This also means that, to varying degrees, traditional secondary sources may also lag in addressing recent or emerging areas of the law.

As mentioned, the main challenge in locating traditional secondary sources is that many of them are *not* easily accessible via a Google search. Instead, they are hidden behind publishers' paywalls, physically present on a library shelf, or retrievable via a subscription **database**. Traditional secondary sources are often tied to a specific legal publisher who controls how and when researchers can gain access to and search the product.

In recent years, some have been made available openly online; for example, a decent number of legal journals are now available on CanLII, such as the Canadian law school reviews. But major publishers like Lexis and Carswell have little incentive to make their publications available online for free. This means that exploring **access points** beyond Google is crucial for locating these sources. Using a library catalogue, searching a specific **service** or database, or using a **periodical** index are all ways to search secondary sources effectively, given these limitations. We will discuss access points and search strategies below in relation to specific types of secondary sources, but some more general information is also useful when considering traditional secondary sources.

If you are trying to track down a *known* source (most likely from a citation), then you need to focus on identifying where you can access the publication itself. For example, a Google search for a book title or journal article is unlikely to retrieve the **full text** of the source unless it is an open access resource (e.g. available on CanLII). If you do manage to find the source, it may be behind a paywall. At this point, you should determine if you have access to that book or journal by searching your library's **catalogue** or checking the subscription journal databases available on Westlaw, Lexis, or other legal research platforms.

If you are instead trying to identify secondary sources on a particular *topic*, then you will want to focus on where online you are able to search or browse across multiple publications simultaneously. A library catalogue can be useful in these instances, especially if secondary sources are assigned subject **classifications** that you can leverage to locate resources on a given topic. Westlaw and Lexis also both have browsable collections of traditional secondary sources organized by legal topic.

4.1.1 Types of Traditional Secondary Sources

Why do we need to understand the different types of secondary sources? Since Google is not a good tool for locating these types of sources, you'll need a certain level of awareness about what type of sources you are looking for in order to accurately and efficiently track them down. For example, you may conduct a search in a service or library catalogue and then be faced with an array of filters that allow you to specify which type of source you wish to view. This is why following a legal research checklist is a good idea when facing any legal research task; a checklist will help you remember the various possible source formats so that you do not omit any of the major access points from your **research strategy**.

The following sections describe several general types of traditional secondary sources: **legal encyclopedias**, books and looseleaves, and periodicals. For each, we will discuss the particular features of the type, strengths and limitations in the online environment, and how to locate and search each type of source.

4.2 Legal Encyclopedias

If you need a very general overview of a subject in Canadian law, a legal encyclopedia is a great starting point. Legal encyclopedia entries provide a succinct description of the state of the law. Footnotes refer the reader to

the applicable legislation and case law, which makes a legal encyclopedia a very efficient way to identify the primary sources in a given area of law.

In Canada, there are two legal encyclopedias: the *Canadian Encyclopedic Digest (CED)* and *Halsbury's Laws of Canada*. These encyclopedias are available online on Westlaw and Lexis, respectively. While similar in function, the two are not identical in content; you may find it helpful to consult both for some research questions.

4.2.1 Strengths and Limitations of Legal Encyclopedias

The main strength of legal encyclopedias is that they are some of the quickest and most efficient tools for gaining a basic understanding of the law in a given area and locating primary sources. They are particularly useful as a way of identifying *leading* case law on a topic. That is, they will not list every single case that has dealt with a particular legal topic or issue, but are an efficient way to identify the cases that have decided the relevant points of law (instead of diving straight into a case law search). Legal encyclopedias may also include additional content such as a table of cases, table of statutes, and glossary of terms defined in the applicable legislation.

A legal encyclopedia is not a replacement for reading the legislation and case law you intend to cite. Indeed, you would not typically cite an encyclopedia entry at all in your writing, because you should be citing the primary sources instead. Another limitation is that it may not include relevant entries for new and emerging areas of the law, since encyclopedias follow a more established format based on a topical classification system that takes time to adapt for newer information needs.

Currency is both a strength and limitation of a legal encyclopedia. While both *Halsbury's* and the *CED* online are regularly updated, some subject titles are updated more frequently than others, so it is important not to assume that the currency date will be the same across all subject titles. Historically, these were published as new (or “reissued”) print volumes every few years, with supplements published regularly in between to provide updates on the law. You may see this language replicated in the online environment, which is intended to demonstrate that the original volume has been supplemented in the intervening years or months. Therefore, even if a volume is labelled as “2021 reissue”, its currency date may be much more recent. Look for currency information in each individual encyclopedia entry (i.e. the level at which you are reading actual text) by finding a date identified as “currency”, “updates”, “source information”, or similar.

4.2.2 Locating Encyclopedias and Encyclopedia Entries

Online encyclopedias provide several advantages over their print counterparts, including having multiple access points. The simplest way to access an online legal encyclopedia is by navigating to the full set of online subject titles from the homepage of Westlaw (for the *CED*) or Lexis (for *Halsbury's*).

Because they are fully searchable online, you may be tempted to jump straight to a full-text search of

the entire encyclopedia. This can be a useful method of locating relevant entries, especially if you are not sure which area of law your topic falls under. But don't forget that you can also search within individual subject titles (e.g. if you already know the area of law you are working in) or browse the table of contents to identify relevant entries. **Browsing** is also a useful way to become familiar with the topical classification of an encyclopedia, which will make using the resource easier and more efficient for you in the future.

When searching across an encyclopedia online, keep in mind that the text of an entry is very focused and will not provide exhaustive details. This means that you should take care to identify synonyms and related concepts (see Chapter 2), and, as always, pay attention to the **search syntax** options in the service you are searching.

Another advantage of the online format is that both Lexis and Westlaw have integrated the encyclopedias throughout their platforms, making it easier to identify this content at any stage in your research. For example, when noting up a case on either platform, you will see an option to view secondary sources/commentary that references the case you are looking at, which includes encyclopedia entries. Keep an eye out for these kinds of cross-references throughout the two platforms which make it easy to consult the relevant encyclopedia entry no matter where you start your research.

The *Canadian Encyclopedic Digest* (on Westlaw) and *Halsbury's Laws of Canada* (on Lexis)

The *CED* focuses on providing an overview of the law. It is organized under broad headings, called subject titles. Subject titles may be a single area of law (e.g. copyright) or a particularly large sub-issue within a larger area of law (like negligence in relation to torts, and divorce in relation to family law). Subject titles are further broken down into subheadings, allowing you to research broad or specific points of law. Titles are also marked according to their jurisdictional perspective, either broadly (e.g. fires — western) or specifically (e.g. labour law — Manitoba). These considerations are especially important to keep in mind when searching across the entire set of subject titles. If you limit your search to the broader, more top-level subject titles, you may not realize that there is a more specific title, with a specific jurisdictional perspective, on your specific legal topic. Conversely, if you search too broadly, you risk consulting a title that is too broad or for the wrong jurisdiction.

In comparison with *Halsbury's*, the *CED* approaches topics in less depth and with little commentary. The online *CED* also no longer provides some of the additional content that was typical in a print encyclopedia such as tables of case law and legislation. It has other advantages, however, such as superior integration with Westlaw's case law databases; each entry links to a corresponding "Legal Topic" classification that brings up case law and other source types on the same topic.

Halsbury's Laws of Canada is an online encyclopedia that hews more closely to the original print format of the source. For instance, each title has a table of cases, table of legislation, a short bibliography, and a glossary of terms. Each title also includes an index which you can use as an alternative to conducting a keyword search across the entire encyclopedia. Locate a term or concept within the index to find a detailed list of all encyclopedia entries within that subject title that discuss that term.

Like the *CED*, the topical classification of *Halsbury's* can be unintuitive and comes from the print environment. For example, commercial law is broken down into seven titles, each focused on a more specific topic such as consumer protection. Unlike the *CED*, however, titles are not separated based on jurisdiction. In fact, one strength of *Halsbury's* lies in its scope of coverage, which is national compared to the *CED's* focus on limited regional perspectives. *Halsbury's* often cites to the equivalent section(s) of legislation for each province and territory. It generally provides more commentary on a topic than the *CED*, which can make the text more readable compared to the comparatively brief statements provided by the *CED*.

4.3 Books and Looseleaf Services

4.3.1 Types of Books and the Hierarchy of Authoritativeness

A well-referenced book or looseleaf serves as an excellent starting point for a legal research task. They provide more detail than an encyclopedia and provide context and legal analysis from which you can move on to researching periodical articles, cases, and statutes.

There are three distinct types of books to consider when conducting legal research:

Legal treatises provide an in-depth and comprehensive examination and scholarly analysis of a particular area of the law. They may be considered authoritative and can be cited in the courts, depending on the nature of the treatise, including its authorship and reputation.

Textbooks and introductory texts are more generally targeted towards students and others who are new to an area of law, although the line between textbook and treatise may not always be obvious. They are considered less authoritative and are not usually cited in the courts, but serve as a helpful and more easily comprehensible introduction to an area of law. They may be signaled as introductory texts with their title, such as the use of “Introduction to...” in *Introduction to Contracts*, or similar.

Casebooks are a type of teaching textbook used in law schools, comprised mainly of case law excerpts. They have little use for a legal researcher other than as a finding tool or reminder of the leading case law on a given topic. If you want to rely on a case that you found in a casebook, don't forget to locate and read the actual case

instead of relying on the excerpts. It would be unusual to cite a casebook in a piece of legal writing, as they are not considered authoritative.

Note that these resource types can be published in book (one bound volume) or looseleaf format. The distinction is described below, and is important when conducting research online, even though it can be difficult to know which type you are looking at in the online environment.

4.3.2 What is a looseleaf service?

To keep information up to date, some publishers issue legal texts in looseleaf format. In print, this looks like large binders filled with sheets of paper, which allows pages with out-of-date information to be manually replaced by newer pages at set intervals (often multiple times per year). Many looseleafs are now available online (e.g. via Westlaw or Lexis), though libraries often opt for print subscriptions because looseleafs are extremely expensive.

Online, it can be difficult to know at a glance if you are looking at an ebook or an looseleaf; they both just look like some version of an online text. But it is important to at least have a basic idea of which type of resource you are looking at. Why? Looseleafs should have a more recent currency date than most books, which are often a year or more behind the current state of the law. Always look for source and currency information to confirm when a resource was last updated.

Looseleafs also are generally longer than books — often running to thousands of pages spread out between multiple binders — which means that they can provide more in-depth treatment on topics that require more space. For instance, looseleafs are often a good source of commentary on specific statutory provisions, because they may include section-by-section analysis of a particular statute (see Annotated Statutes). They may also include other practitioner-specific resources, such as a collection of forms and precedents used in that area of law.

4.3.3 Strengths and Limitations of Books and Looseleafs

Books and looseleafs are an essential step in the legal research process that novice researchers are often tempted to overlook because of how unintuitive and difficult it is to access them online.

A major strength is that some books — i.e. some treatises — are considered authoritative and persuasive in court. This means that a researcher who overlooks the major treatises will open themselves up to potential blind spots in that area of law. Books and looseleafs of all types are useful because they provide more context, explanation, and analysis of an area of law, to varying degrees of specificity. You can often learn a substantial amount about your broader topic if you start with an introductory text and progress to a treatise.

That being said, books and looseleafs do not provide a comprehensive list of case law in a given area. Since space is limited, footnotes are carefully curated to provide leading and otherwise noteworthy case law.

Some ebooks and looseleafs are set up to overcome this limitation by providing links to relevant case law classification systems, such as the Canadian Abridgement Digest on Westlaw (see Case Digests).

As with many traditional secondary sources, books are of more limited use when researching emerging areas of the law, because compiling a new edition is a time consuming process that often takes a year or more. Looseleafs are more up to date than books, but even these publications are rooted in historical legal subjects and may be slow to incorporate emerging topics and areas of legal practice and research. If your topic is more specific, you may have more luck in searching for relevant articles in legal periodicals instead of books.

4.3.4 Locating Books and Looseleafs

As we've already discussed, books and looseleafs are one of the more difficult formats to locate through online search strategies like googling because the full text of these resources is not usually indexed by internet **search engines**. Instead, think of locating books and looseleafs as generally a two-step process:

- Identify the title of a relevant book or looseleaf.
- Retrieve the text so you can read it.

The first step will become quicker as you become more familiar with a field of law. There are usually only so many treatises on a given subject, and you will become familiar with them once you start researching in that area. Checking those sources will become second nature. At that point, you'll research additional titles as needed.

But how do you identify titles as a novice researcher? There are many tools available to you. Many law libraries, including law school libraries, the Great Library (at the Law Society of Ontario), and even firm libraries, provide topic-specific curated lists of books and looseleafs that are available from that library. These are often called “research guides” or “library guides” and include resources listed by subject categories and sub-categories within those specific topics. Even if you are looking at a guide from another institution that you do not have access to, these resource lists can be a helpful way to identify books and looseleafs that exist on a topic.

Searching a library catalogue is another useful way to determine what texts exist on a topic. Most library catalogues will have at least some form of subject classification system. These subject headings may be assigned by humans, by computers, or by a combination of the two, so be aware that they may be inconsistently applied throughout the catalogue, especially if the library has a large volume of holdings. Nevertheless, subject classifications are often one of the most effective ways to search for books and looseleafs, especially when used in combination with broader search options. Most library advanced search forms will allow you to specify whether you want to search the subject, title, author, description, or “any field” (or similar) for specific keywords. Consider what broader keywords could appear in a subject heading and combine these with additional “any field” keyword searches if you need to capture a more specific aspect of a legal topic.

A sample search:

Subject contains: employment

Any field contains: "wrongful dismissal"

If you searched only for resources categorized under the subject “employment”, you would have had a huge number of hits in any law library catalogue. But if you specify that you want the subject to be “wrongful dismissal”, you would only retrieve texts where the main subject has been classified using that phrase. This combination allows you to identify additional resources that are classified under the broader “employment” subject, but which contain “wrongful dismissal” somewhere else in the record (e.g. in the description or in the table of contents). Once you have identified a resource in this manner, the library catalogue will tell you if it is accessible through an online database or as a physical copy.

Google is another method of identifying relevant books and looseleaves. But like a library catalogue, it generally does not allow you to search the full text of these resources and should be handled similarly to a subject search. In addition to keeping your search broad, you will also need to specify that you are looking for a *book*, or else your results are likely to be more non-traditional secondary source formats like blogs and law firm newsletters. Try variations of a Google search like the following:

employment law book Canada "wrongful dismissal"

We have specified that we are looking for Canadian sources; otherwise some results are likely to be from another jurisdiction. Searching Google can be a useful method of tracking down a book on a particular topic because you are likely to retrieve publisher information about books, which may be more detailed than the information available in a library catalogue. However, once you’ve identified a relevant book, you’ll still need to check your library catalogue to see where and how you can access the full text.

Lastly, the *Canadian Index to Legal Literature* is a finding tool that indexes many books and looseleaves. Use of indexes will be described in more detail in the next section on Locating Periodicals.

4.4 Legal Periodicals

4.4.1 What are legal periodicals?

A *periodical* is any serial publication that includes shorter works written by more than one contributor and that is published at regular intervals (periodically; usually more than once per year). This means that a wide range of publication types are captured in this category, including law journals and law reviews, magazines, and association newsletters.

Historically, periodicals were published one issue at a time, with multiple issues falling within an assigned volume number. The volume–issue enumeration system is still used by most journals in the online environment, even though publishing practices are more varied, given the flexibility of digital publishing platforms.¹ This numbering is also still used in legal citation; it is therefore important to be able to locate the volume and issue numbers in order to either cite an article yourself or to track down an article from a citation.

4.4.2 Types of Periodical Literature

Legal periodicals are varied in nature and do not always fall into neat categories. In general, there are two types of legal periodicals. First, there are general periodicals that publish on topics across the entire breadth of the law, such as most law reviews (academic journals associated with a law school, like the *Queen's Law Journal*). Second, there are topical periodicals that publish in a specific subject area (e.g. *Canadian Journal of Human Rights*). This distinction exists throughout the different periodical formats described below.

Law journal and **law review articles** are a rich source of scholarly writing. Specialized topics that are too narrow for publication as monographs can be published in law journals. Although some are published commercially, many emanate from law schools and include articles on a broad range of subjects. Quality control measures for these periodicals tend to be more stringent compared to other periodical types, and can include steps such as peer review, editing, and proofreading. They are often footnoted and can be extremely valuable when trying to identify other relevant sources in the area you are researching.

Case comments are often published in periodicals (including in law journals), and provide commentary on a particular court decision. These resources are useful if you are starting your research from a particular case, because they will provide you with context, analysis, and commentary on the consequences of the decision. They will often be linked directly to the court decision itself through a legal research service's note up feature, though this is not a comprehensive way to locate them (see Locating Periodicals for another method).

Legal-magazine articles tend to be less scholarly and more practitioner-focused in nature. Some of these periodicals are written by legal practitioners, while others are staffed by journalists who may or may not

1. For example, some journals publish articles from an issue throughout a given year, instead of publishing all articles from the issue at the same time.

have legal expertise. Articles tend to be briefer, less formal, and include fewer references. They often provide commentary on recent developments in the law such as a court decision that has been handed down or proposed legislative changes.

Legal newsletters are generated by professional associations or other legal organizations. They often focus on a specific area of law and the majority of articles are written by practitioners and experts in that field. Since professional organizations are often in a state of flux and run by professionals who volunteer their time, newsletters may not have a longstanding historical publication run and may only be available for certain years.

In addition to the titles issued by commercial publishers, a lot of useful literature is published by professional associations. The Canadian Bar Association and the Law Society of Ontario, for example, regularly publish seminar papers. Government publications, such as those from law reform commissions, justice departments and government inquiries, are also good sources for discussion of legal topics, including proposed changes to the law.

4.4.3 Strengths and Limitations of Periodical Literature

Due to the shorter publication cycle, legal periodicals tend to contain more current information than treatises and other monographs. But this is again a spectrum that depends on the type of periodical, with law reviews and legal journals on the longer side and legal magazines and newsletters on the shorter side.

An article in a periodical will also tend to have a more specific focus than a treatise or monograph; they are most useful when researching specific aspects of a broader legal subject or emerging legal developments, or when looking for critical analysis of the law.

Periodicals also fall on a wide spectrum of formality and rigor, depending on the publication type. Since this category is so wide-ranging, it is important to note that the utility and authority assigned to periodical literature will vary depending on factors such as the publication and author. Make sure that you critically note up the source to determine how useful it is for your research.

4.4.4 Locating Periodicals

Many periodicals can be found online, including a growing number of journals that are provided via open access (i.e. freely available to the public). However, some commercial journals continue to be sold only in print or have prohibitively expensive online subscriptions. Older articles sometimes have not been digitized and may also only be found in the physical journal volumes held by a library. This hodgepodge system makes journal literature somewhat challenging to search and retrieve.

Depending on their size and resources, a law library catalogue may not have very granular information about periodicals that they have access to. For example, a journal may only be listed under the publication title (e.g. the *Supreme Court Law Review*) instead of it being possible to search full text or even individual article titles

within that journal. You may be able to find some full-text articles through a library catalogue, or you might have to check multiple full-text databases, since no one database includes all legal periodicals.

One key for overcoming these hurdles is a specialized tool called a **journal index** or periodical index. These indexes include **metadata** for (and sometimes the full text of) various types of legal literature including journal articles, books, conference proceedings, collections of essays, and book reviews. Indexes usually provide the titles, names of authors, and citations for these materials. The advantage of indexes is their comprehensiveness; they will point not only to materials they have within their databases but also to material they do not have. This means that once you have located titles of relevant articles, you may still have to retrieve the actual article by locating the journal in your library or in an online legal research platform like Lexis or Westlaw.

If you are trying to do a comprehensive literature search, you should not rely on just one index or discovery tool. There are many that exist, but each have different coverage, strengths, and weaknesses. For Canadian legal literature, the main index available is called the *Index to Canadian Legal Literature (ICLL)*, which is available via both Westlaw and Lexis. The Canadian scope of this index is very useful for Canadian legal researchers, since international indexes often include only the more prominent Canadian periodicals. However, the *ICLL* includes minimal information about each indexed resource: title, author, date, citation, and one or more subject classifications. This means that a researcher searching the index should think very carefully about what keywords are likely to show up as a subject heading classification for their research topic, or else risk excluding the vast majority of resources. Often the most useful way of searching an index like the *ICLL* is to take the time to first identify relevant subject headings — for instance, the *ICLL* provides a Table of Subject Headings.

Beyond the *ICLL*, Lexis has a Canadian index called the *Canadian Law Symposia Index*, which includes papers presented at legal seminars and continuing legal education conferences. Legal indexes that are international in scope include the *Index to Legal Periodicals and Books*, *Index to Foreign Legal Periodicals*, and *LegalTrac*. Indexes in other fields may be worth seeking out for inter- or cross-disciplinary research.

Another strategy is to conduct a keyword search in one or more full-text databases. This strategy provides the benefit of allowing you to search the entire text of the article, which means you can conduct much more detailed, complex searches. But it is more limited because no one database will contain all relevant periodicals. If you have access to a library catalogue that includes full-text articles — as many academic libraries do — you should use that as your starting point, because this will search multiple full-text databases at once. It is crucial to note, however, that Lexis and Westlaw do not integrate their periodical databases with academic library catalogues. To overcome this limitation, try searching a full-text periodical database in a legal research platform, such as the “Articles and Newsletters” database on Westlaw, the “Law Reviews & Journals” database on Lexis, or the “Journals” or “Newsletters” databases on CanLII. Before you start searching, check the title list for the selected database to determine which periodicals you are actually searching. HeinOnline is another common legal research platform for periodical searching, due to their vast, full-text holdings in their international “Law Journal Library” database.

Lastly, let’s not forget Google as a search tool, including its sibling search tool, Google Scholar. Both are most useful in locating open access periodical literature, such as articles available on CanLII, university

repositories, or SSRN (a platform where researchers publish pre-print versions of their work). However, Google can also be useful as a tool for *identifying* relevant articles that you can then track down through a library, because of the superiority of its search technology in surfacing relevant content. Just bear in mind its limitations — especially the fact that it won't include periodicals available in Westlaw and Lexis. An article may show up as behind a paywall, when in reality you have access to it through other means.

As you can see, *search* is the most-used strategy for locating online periodical literature. But note the varied degrees of search described here, because the nature of your search will change depending on which tools you are using. Search more openly and with less precision using Google, but know that you will need to be more specific about aspects of your research, like jurisdiction. Search with high precision and using very intentional categories of keywords when searching a full-text database, because otherwise the number of results may be overwhelming. Lastly, search with higher-level keywords based on subject heading classifications when using a periodical index, because the records in this database contain only limited bibliographic information, rather than the full text of articles.

4.5 Critically Assessing Traditional Secondary Sources

Because traditional secondary sources are subject to a pre-publication vetting process, they have already undergone some scrutiny by the time they reach the hands of the researcher. However, there are two main dimensions for critical assessment that remain important: currency and jurisdiction.

As noted above, traditional secondary sources are published on a fairly long timeline. This is not only true for the first edition of a resource, but also for subsequent editions. Thus, for some formats, like books, it may take time for updates to be published in subsequent editions of the resource. This means that some information may be outdated by the time you access the source. Try to assess the basis upon which any statement of law or reference to law is made. If a case is mentioned, note it up. If legislation is referenced, consider whether it has been amended since the time the resource was published. If factual information is provided, see if you can confirm that those facts still hold.

Ensure that the jurisdiction of the source — including both that of the author and the publisher — aligns with the jurisdiction of the law you are researching. It is not uncommon in a library search, for example, to bring up a number of on-topic results that look promising, only to find that they were written in another jurisdiction, pursuant to that other jurisdiction's law.

Finally, look carefully for **bias**. Consider the author of your source. Even if the source is considered authoritative, and the author a known expert, you may still find their point of view is prioritized or privileged in the text of the resource. Seek to gain a balanced perspective on the topic, perhaps by actively searching for resources that consider your issue from a different angle. Your choice of keywords when searching will have a big impact here. Be sure to identify synonyms that tend to be used on one side of an issue or the other to describe the same idea (for example, *solitary confinement* for *administrative segregation*; or *illegal alien* for *undocumented migrant*).

4.6 Maintaining Current Awareness: Monitoring traditional secondary sources

Maintaining **current awareness** of the law in general is often easiest to accomplish by tracking and reading new secondary sources in a given area. However, the lengthy publication process associated with traditional formats gives them limited utility as tools for maintaining current awareness in comparison with non-traditional formats. A new decision handed down by the Supreme Court will likely take months — if not years — to appear in a leading text. So while reading the latest edition of a leading text in your practice area is certainly a useful activity, it's not really providing you, as a researcher, with much by way of current awareness. Traditional secondary sources are therefore a limited means of staying up to date with primary law.

That said, periodical literature like law journals are one traditional format where active monitoring can be an effective way for practitioners to gain current awareness. If there is a particular journal that is relevant to your practice area, you should investigate your options for receiving an alert when new articles or issues are published.² Some journals allow you to do this directly from their website, or will even automatically email you when a new issue is published (if you are a subscriber). For others, you may need to find a service or database that indexes that journal and then look for an alert option within the service.³

To monitor a subject area or topic more broadly, you can set up an alert in a journal index. Generally, you will first run a search in the index on a given keyword or subject and then look for an option to set up an alert from your search results page. Some commonly available indexes that allow you to set up alerts include the *ICLL*, *LegalTrac*, and HeinOnline's *Current Index to Legal Periodicals*.

2. In the print world, monitoring is easily accomplished because a journal or newsletter subscription would physically come across your desk issue by issue. In the online world, you must more deliberately find a way to monitor the publication of new issues.

3. For example, Westlaw, Lexis, and HeinOnline all allow you to set up an alert for new articles in a specific journal.

CHAPTER 5: NON-TRADITIONAL SECONDARY SOURCES

Learning Outcomes

- Identify common types of non-traditional secondary sources.
- Use advanced search techniques to identify, locate and retrieve non-traditional secondary sources.
- Critically evaluate secondary sources based on characteristics such as authoritativeness, bias, currency, and credibility.

5.1 Introduction to Non-traditional Secondary Sources

One key feature of **non-traditional secondary sources** is that there is usually little to no pre-publication editing or vetting. Thus, the publication timeline for a non-traditional source is much shorter, making these sources agile and responsive to developments in the law such as a ground-breaking court decision. This permits authors to offer commentary quickly on important legal developments — sometimes on the very day they occur. A traditional source that provides commentary on the same case is unlikely to be published until perhaps weeks or even months after the case is decided. However, since non-traditional secondary sources are almost entirely **disintermediated** — lacking the strict editorial oversight that is the hallmark of **traditional sources** — the quality, reliability and accuracy of non-traditional sources is an issue. They may also be considered less authoritative than traditional secondary sources. As a researcher, it is essential that you assess their credibility and accuracy carefully.

Non-traditional secondary sources are published in an ever-expanding variety of formats and are usually located and accessed using a web browser. Most share similarities in terms of strengths, like timeliness and flexibility/agility in responding to developments in the law, and weaknesses, such as a huge variation in quality depending on the **source**. Later on in this chapter, we'll talk about critically assessing non-traditional secondary sources, which will ensure that you are considering limitations when using one of these (or other) types of resources in your legal research.

5.2 Blogs

A blog is a free online resource that publishes shortform entries on a specific subject and with some degree of regularity. Blogs are often associated with an organization or run by a small group of individuals who share a common interest, often with the goal of establishing expertise in a field, selling a product or service, and/or raising awareness on a particular topic.

Blogs are often an early source of information on a breaking news topic, falling behind only social media and mainstream news sources in the timeline of how quickly information emerges online. They are also relatively easy to locate because Google **indexes** them very effectively and many organizations use search engine optimization (SEO) strategies to raise their blog's profile (and ranking) in your results list.

But blogs also share many of the familiar weaknesses of non-traditional secondary sources. Even legal blogs may have few to no quality control measures involved in the publication process (including fact checking and basic editing). Authorship can also be challenging to determine; some blogs may not even have individual authors associated with particular posts, instead posting under an organizational author. This can make it extremely difficult to determine the reliability and expertise underlying the information and makes the critical assessment of a blog an extremely important part of the process.

There are many Canadian legal blogs. *Lawblogs* is one available resource to help you identify relevant blogs in your subject area via their open directory of Canadian law blogs. An accompanying tool is Slaw's custom Google search engine, which allows you to search across all the law blogs in its directory simultaneously.

5.3 Law Firm Updates and Newsletters

Law firms will often publish information online in areas that they specialize in, as a way of establishing expertise in that area of law, gaining a reputation, and attracting potential clients. These types of resources have various names, including "client updates", "insights", or "newsletters" and may appear in email blasts, a blog, or even print. They are often framed as providing current information about emerging developments in the law, such as summaries and analyses of recent decisions handed down by the courts or legislative amendments that are undergoing consideration or coming into force. The listed author(s) are usually practitioners in the area of law that is the focus of the article.

These updates share some of the strengths of a blog (currency and findability), but their status is also bolstered because of their affiliation with a law firm with an accompanying greater expectation of accuracy and credibility. Of course, as with blogs, this can vary significantly between firms and authors. Don't forget that any firm can start an online newsletter, and that one of the goals of the medium is to sell their services (which represents a bias) — to prove their ongoing value to existing clients, to recruit new ones, and to more generally establish expertise in the field.

There are a handful of specialized tools for locating information published online specifically by Canadian law firms:

Fee Fie Foe Firm Canada is a search engine that has been customized to *only* search Canadian law firm websites. It is also available for other select jurisdictions.

Lexology and Mondaq are two international syndication services that aggregate law firm content by topic or region. Sign up for a free account to search or **browse** content by subject or jurisdiction. Note that in-site searching on Mondaq is clunky, so this content is best searched via a Google site search using the form *site:www.mondaq.com/canada* followed by keywords to retrieve Canadian articles (see General tips).

5.4 Podcasts

A podcast is an audio program that is released in episodic format and can be downloaded or streamed online. Legal podcasts are sometimes published by an organization (e.g. a bar association, law firm, or law school) but can also be published by an individual. All of the above caveats about non-traditional secondary sources apply here: use caution, investigate the source, and critically assess before moving forward with a podcast as a source.

Locating podcasts on law topics can be a challenge. *Lawblogs* offers a list of Canadian law Podcasts & Vlogs, but note when searching that podcasts vary greatly in terms of what information accompanies each released episode. You'll have to identify first which podcasts to focus on and then either use that podcast's website to browse or search, or run a Google *site:* search to see if your keywords appear in any of the episode titles or descriptions (see General tips).

5.5 Social Media

Social networking platforms like X (formerly Twitter), Facebook, LinkedIn, Instagram, and TikTok are used by legal professionals for many purposes, including to spread information about developing events or to promote expertise on a given topic. Social media is also very useful as a source of information about personal opinions or breaking news such as parliamentary activity, press conferences, or announcements.

As a source for legal commentary, social media has some limited uses. While it is unlikely that you would cite a social media post in most formal legal writing, social media platforms are important hubs for professional and other communities that may be relevant to your research. Finding those communities and identifying the experts within them can be a useful strategy to pair with more traditional **information-seeking** strategies. For instance, experts who are active on social media may hyperlink to other secondary sources that they have created, such as blog posts, articles, or even books.

Consider also the utility of a crowdsourced **taxonomy**: the hashtag. Hashtags are a modern type of subject **classification** that can be used to immediately identify individuals or organizations who are posting on and responding to a given topic. They may also be used to identify information emanating from or of interest to a particular subset of users (e.g. *#medtwitter* for doctors, *#sciencetwitter* for scientists). Since these subject classifications are user-generated, they often reflect more current language and topics than a more traditional

taxonomy that is controlled by a publisher. But it can also be tricky to guess the wording of a hashtag without first being exposed to or involved in the group that is using it. It's often better to chain your research by starting with a known account (individual or organizational) then following associated hashtags, follows, and followers to identify additional accounts. Always be wary of how easy it is for someone to fake credibility on social media. Critical assessment is a crucial step!

Strategies for researching on social media can differ widely between platforms. Many social media sites are indexed to some degree by Google, which means that you can leverage the search engine as a starting point. But there are often limitations to this indexing. Private pages will not show up in a Google search, for example, and video content may be difficult to surface since you are often relying on the user's application of hashtags.

5.6 AI-generated Sources

A newer frontier is the emerging technology that allows **artificial intelligence** to generate text or “answers” to a legal question. Consider ChatGPT, the generative pretrained transformer (GPT) technology created by OpenAI, which has been lauded as a massive breakthrough for its ability to provide human-like responses to questions. AI-generated sources are also gradually emerging in our most-used legal research **services**, Westlaw and Lexis. Though more of these tools exist only in the American versions of these platforms, a handful of **generative AI** chatbots have popped up in the Canadian space including Jurisage's “chat with a case” tool and Codify's “talk to legislation” tool. This technological space is moving quickly, and Lexis and Westlaw generative AI integrations are imminent in Canada.

Do AI-generated texts truly count as “secondary sources”? While they verge on the edge of this category, for now the technology does not seem to meet the two main requirements of secondary sources, which provide commentary on the law and point the reader towards relevant **primary sources**. Since AI generates information based on patterns in a dataset, it is difficult to consider AI-generated text on the law to be much in the way “commentary”, even if AI ever perfects the ability to explain existing law (and we're not there yet). Tools like Lexis Answers may be better at providing the second function of pointing the reader towards primary sources, since the main use of the tool is to extract “answers” from case law and other sources. But this type of technology places more of the analytical burden on the user compared to a traditional secondary source. The researcher must determine the relative authority of the excerpts themselves; Lexis makes no promises with regards to the thoroughness of the tool or its ability to surface leading case law. Even worse, more mainstream AI systems (like the GPT technology behind ChatGPT) are notoriously unreliable for source identification and will make up citations to articles, case law, and other sources.

In general, currency in AI-generated secondary sources can be challenging to judge. Remember that an AI-driven system generates text (or other outputs) based on an underlying dataset (like a database of cases or web-scraped data). So the currency of that output (in this case the generated text) depends on the currency of that underlying dataset. In some cases, that may be identical to the currency information for the **database** in which

you find the tool, especially if it is embedded in a service like Westlaw or Lexis. But in other cases the output may be outdated by days, months, or even years (as with ChatGPT).

Certainly, these AI tools are not yet at the stage where a researcher would want to rely on them as standalone sources.¹ GPT technology can provide a fun starting point for research by allowing the researcher to probe a topic in a conversational setting, but any facts, analysis, or sources discovered via this technology should be carefully verified. Tools like Lexis Answers may be another venue for discovering case law but should not be assumed to provide a comprehensive list of case law and should be supplemented with additional research.

These are only two examples of AI-generated sources. Since it is certain that new tools will continue to emerge, remember the overarching principles discussed in Chapter 1 when leveraging any type of AI-driven secondary source in your research.

5.7 General Tips for Locating Non-traditional Secondary Sources

Non-traditional secondary sources can be both incredible easy and incredibly difficult to find online. This is because of the limitations of online search engines described in Chapter 1. Google can easily retrieve *a* source on a given topic, but it can be surprisingly difficult to add criteria to a search such as *author must be a lawyer*. This is why the specialized search tools noted above for different types of sources are key finding tools.

More generally, there are ways to force a search engine to return more relevant results. Since every search engine is different (and information about how it retrieves results is usually proprietary and not public), the search results that float to the top of your results list can appear haphazard. And almost any search can return thousands of results. Without a clear **search strategy**, simply googling for legal information can be time consuming and distracting, since it may not yield reliable and current information.

Every search engine is different, but we'll use Google as an example since it is the most used. Google has a lesser-known Advanced Search form that allows you to be more precise in your criteria. If you're retrieving irrelevant results through Google, consider which connectors available on that form will allow you to be more precise. For example, consider using quotation marks to specify a phrase ("*wrongful dismissal*") and prevent Google from retrieving all instances of *wrongful* and of *dismissal*; or consider using the minus sign to exclude a term from your results (e.g. *automatism -intoxication*). These simple adjustments can save time and improve your efficiency.

One of the most useful — and consistent — options is the *site:* operator, which you can also use from the main Google search bar. *Site:* allows you to specify the website (e.g. *site:queensu.ca*) or domain (e.g. *site:.ca* for Canadian websites or *site:.edu* for U.S. post-secondary institutions) in combination with other keywords. Your results list will then include only webpages from that site/domain that include your keywords. Use this after

1. *Mata v Avianca, Inc*, 2023 WL 4114965 (sanction).

you’ve identified a website that looks potentially useful — perhaps a legal blog that is run by an expert in the field, or a podcast that deals primarily with the area of law you are researching. Then use the first part of the URL (the site or domain indicator portion) in your search along with the keywords you are looking for. For example, if you were looking for commentary on bill C-11 from Michael Geist’s well-known copyright blog, you could search:

site:michaelgeist.ca “bill c-11”

Site is a particularly useful feature for locating non-traditional secondary sources when you’ve already done the leg work of identifying experts who publish in non-traditional formats online. You can also use this strategy for social media sites (*site:BlueSky.com “bill c-11”*), especially if their internal site search does not allow for particularly sophisticated searching.

Another key issue with locating non-traditional secondary sources is *link rot*, which refers to the tendency for links to break over time due to changes in website URLs or the removal of content. Link rot is a major problem for information-seeking strategies that depend on following references in other sources. For instance, if you are reading an article from a law journal that cites a blog, the link provided in the citation may no longer lead to that article. In these cases, you may still be able to retrieve an archived or cached version of a webpage. For example, you can use the Google prefix *cache:* in front of the URL to retrieve a snapshot of the page when Google last crawled it. You can also use the Wayback Machine internet archive to enter the URL and retrieve an archived version of the website. Lastly, if the webpage has been cited in a more scholarly format (such as a law review), the editors of that publication may have archived the source using a tool called Perma.cc. If you can track down a citation that includes a Perma.cc link, you may be able to read the source. Unfortunately, though, not all pages are archived using any of these methods, and it is very possible that the page may have disappeared completely from the internet.

5.8 Critically Assessing Non-traditional Secondary Sources

The ease with which non-traditional secondary sources can be retrieved online means you probably won’t have any trouble finding at least something that is relevant to your research task. However, while quantity may not be an issue, the question of quality always is. Once you’ve identified a non-traditional secondary source, you need to critically assess it before you rely on it in your research and analysis. You may have an initial impression of a source based on a quick glance, but even those that appear professional may not be appropriate for use in your research. Further investigation is almost always necessary.

This crucial investigative step is often called *source evaluation* or *critical assessment*. We can liken it to the noting-up process we use to ensure that the primary sources of law we seek to rely on — cases and legislation — are still “good law”. Looking critically at a source is a skill that takes practice. It is also a skill that requires you to be somewhat flexible — the way you evaluate a source may be slightly different depending on the nature of your research question and the nature of the source itself.

With traditional secondary sources, especially those that have a long and complex vetting process prior to publication, there is good reason to believe that the source contains reliable and accurate information. Non-traditional secondary sources, however, require systematic critical assessment before you can comfortably rely on them in your analysis. This is because, compared to more traditional formats like books, there are usually fewer quality controls involved in making information available online. As a result, online sources can easily contain incorrect, **biased**, outdated, or misleading information. They come to you directly from the author with no editorial “middleman” involved; in other words, they are almost entirely **disintermediated**.

Critical assessment might also be warranted if the source you are using is a non-legal source. It’s common for legal researchers to draw on information from other disciplines (for example, social science journal articles). While such sources tend to be vetted, they may be authored by people with little to no legal training and created using methodological frameworks quite different from the legal reasoning framework you’re familiar with. As a result, they might require careful critical assessment, especially in relation to any empirical conclusions reached, prior to use in a legal context.

Regardless of whether you are using traditional or non-traditional secondary sources, some degree of critical assessment of the source and its authorship is a research best practice. In critically assessing secondary sources, we consider a range of dimensions similar to those considered for primary sources. Ultimately, our goal is to determine whether we can rely on the source — whether it is authoritative on the topic of interest to us. The following criteria — the elements that construct authority, the issue of bias, and the currency of the source — should be used when evaluating a source in legal research.

5.8.1 Authority

In a common law jurisdiction, both case law and legislation constitute “the law” and so are inherently authoritative within the limits of jurisdiction, and subject to the results of the noting-up process described above. Secondary sources, by contrast, have no force and effect as law, and they don’t “give” the law. Thus, they are not inherently authoritative.² Rather, the authority of secondary sources, whether traditional or non-

2. Legal authority — a source of information used in support of a legal argument or position — is traditionally divided into primary authority and secondary authority, as in the division of legal research sources into primary sources and secondary sources. Primary authority consists of “the law” in a given jurisdiction: cases and legislation that are valid and not overturned. Secondary authority consists of commentary on the law. Authority may be further characterized as “binding” or “persuasive”. Relevant primary authority from within the jurisdiction of the issue being argued is

traditional, is derived from characteristics of authorship, accuracy, audience and purpose, and jurisdiction. The following questions can be used to assess these characteristics:

Authorship

- What are the author's credentials? Is the author recognized as an expert in this area of law?
- Is the author affiliated with an institution or organization that is known for special expertise in this area of law?
- Has the author published elsewhere on this topic?

Accuracy

- Is the source vetted for accuracy prior to publication, as in a peer-reviewed journal article?
- Are citations provided in support of factual assertions, commentary, or other content? Are case law and legislation referenced? Is information verifiable?
- Is there any form of intervening editorial process (intermediation) between the author and the consumer of the information that will help to ensure accuracy?
- Is the source one which is updated regularly with regard to developments in the law?

Audience and Purpose

- Is the source intended for an audience with legal expertise? Or is it intended for a lay audience?
- Is the purpose to describe the law (like a treatise)? to evolve the law (like a scholarly journal article)? to educate the public (like legal clinic pamphlets)? to advocate a position (like a blog piece or a newspaper editorial)? to inform clients (a law firm web site or newsletter)? To comment on the law as it is made (like social media commentary)?
- Is it simply speculative, or an opinion piece?

Jurisdiction

- Does the jurisdiction of the publication, or the law discussed, align with the jurisdiction of the problem you are researching?
- Are there separate volumes or parts of commentary for different jurisdictions (as is the case for a **legal encyclopedia**)?

binding (or sometimes “mandatory”). Extra-jurisdictional primary authority is said to be persuasive. Secondary authority is always persuasive, never binding, and may be more or less persuasive depending on the characteristics identified and discussed in this section.

Credibility/Subsequent Treatment

- To what extent has the source been cited with approval by the courts, in legislative debates, or by other scholars or commentators?

5.8.2 Bias

To assess **bias**, ask whether the author or source is known to favour one perspective on a given legal issue, or if they have a clear “agenda” or goal. A clear bias expressed by an author, or inherent in the source’s affiliation or practice area, does not automatically mean a source must be discarded. It does, however, require that you account for this in assessing the utility of the resource. For example, if you are reading a blog post about a recent labour law decision, consider to what extent the author’s perspective is influenced by her firm’s representation of management-side clients and integrate this into your assessment of the source for your own analysis.

Also consider your own bias on a legal issue. You may find resources that express your own or your client’s position perfectly. You must, however, remain objective and systematic in your research. You will still need to critically assess the source, and moreover, you should determine whether there are counterarguments or alternative positions expressed in other sources. In this way, you’ll ensure that your legal analysis is thorough and well-founded.

5.8.3 Currency

Check whether you have the most recent edition of the source, or whether some aspects of the commentary might be out of date. In some cases, it is simply a matter of looking at the date of the blog post or newsletter. Some sources are updated regularly. For example, you can tell how recently the article you’ve been looking at in the *CED* has been updated by the currency information at the top of the screen. Similarly, a looseleaf volume, like an annotated act, will indicate how recently update pages have been published.

You might also ask how permanent or persistent the source is. For example, if it is a website, does it have a **persistent URL**? If it’s a publication like a journal or **periodical**, does it have a long history of uninterrupted publication?

5.9 Maintaining Current Awareness: Monitoring non-traditional secondary sources

Non-traditional secondary sources are well-suited to monitoring because they are usually born-digital formats. But beware — resources like blogs and socials can contain outdated information just as easily as a journal article or book. You’ll need to actively monitor those resources in order to maintain a state of **current awareness**.

In most cases, you will monitor non-traditional sources by subscribing to or otherwise setting up alerts directly from that source's website, social media page, or other online **access point**. These access points are differentiated by source type but are generally familiar to us as internet users — subscribing to a podcast through an app, to a blog through an email newsletter, to a social media account through a “follow”, and so on. The basic workflow is to first identify a useful source and then actively subscribe to its updates through whatever means are possible and work well for your needs.

One monitoring strategy worth mentioning is law firm updates. There are several websites that aggregate law firm updates from across the internet (e.g. Mondaq and Lexology). This is often a more useful monitoring **technique** than subscribing to every individual law firm's bulletin, unless there is one particular law firm that consistently posts content relevant to your practice area.

Lastly, ensure that you leverage any non-traditional sources that are available to you through the legal research services. Depending on the service and your subscription, you may have access to various newsletters, blog posts (e.g. via CanLII Connects), and legal magazines or news sources (e.g. on Westlaw and Lexis). Use the browsing technique to explore what current awareness options your subscriptions provide access to and, where possible, set up alerts within the service for relevant publications or subject searches.

PART III: LOCATING PRIMARY SOURCES OF LAW ONLINE

CHAPTER 6: RESEARCHING CANADIAN LEGISLATION ONLINE

Learning Outcomes

- Describe how Canadian legislation is enacted, published, indexed, stored, and accessed.
- Identify basic legislative research tasks.
- Identify specialized tools, techniques and access points and strategies for researching legislation.
- Identify the importance of noting up legislation and describe the steps of the process.

6.1 Introduction to Online Canadian Legislative Research

Legislation is an umbrella term that includes both statutes and regulations.¹ Both species of legislation are important in legal problem solving. In addition to legislation as enacted, your research may also require you to consider legislation that is still in progress towards enactment — bills. This chapter will deal with three aspects of legislative research online: the distinctions between statutes, regulations, and bills, and why you might search these; the process for researching all three of these **resources**; and the most effective online tools and **techniques** for doing so.

As suggested by the Wren matrix, an understanding of the legislative process is essential to effective legislative research. There are many excellent texts, government documents, and online resources that explain the legislative process clearly and in detail, including:

- The Queen’s University Law Library’s *Legal Research Manual*
- Federal: Audrey O’Brien and Marc Bosc’s *House of Commons Procedure and Practice*, 3rd ed (2017)
- Provincial: the relevant provincial legislative assembly website (e.g. the Legislative Assembly of Ontario)

1. The word “legislation” may also be used to refer to municipal enactments, such as bylaws or ordinances.

In this chapter, we focus on the way that lawmaking structures and practices of publication and **consolidation** impact your work as an online researcher.

Legislative research may often happen as an afterthought; case law research can seem to take up more attention. But if there is legislation that governs your client's issue, it may provide all the information you need in terms of what the law permits or requires in certain circumstances. As a result, legislation should typically be explored before you look in earnest for relevant case law. Case law can be useful in interpreting legislation, especially if the legislation is complex or vague, or for discovering how the courts have applied legislation in various circumstances. But at the first instance, you must identify and retrieve any legislation governing your issue.

The most common legislative research tasks are:

- Determine whether there is legislation (an act or regulation) that governs your legal issue (or identify a bill that *will* govern your issue or amend a relevant act).
- Locate or retrieve the official current consolidated version of an act or regulation.
- Note up a provision in an act or regulation.

Perhaps the main takeaway implied in each of the above tasks is legislation is indeed a moving target. Changes may stem from the legislative process, but also from ongoing interpretation by the courts. Thus, you cannot rely on legislation to always look the same as when you first retrieve it, because it is always susceptible to amendment or repeal by future legislation, and subject to interpretation by the courts. This is what makes noting up legislation — and enhancing its currency date — an essential research task that supports the other major legislative research tasks.

6.2 Understanding Lawmaking Structures and Processes

In Canadian legislative research, it is important to note a few essential technical or procedural details. The following section highlights how online legislative research is impacted by the process of statute-lawmaking, using the framework provided by the Wren matrix.²

6.2.1 Lawmaking Structures and Precursor Documents

While the process of lawmaking hasn't changed much over time, both the provincial and federal governments now have a significant online presence when it comes to legislative materials. Their websites are the outlets for the lawmaking structures at each level of government. The advent of governments' online presence has made it

2. Christopher G Wren & Jill Robinson Wren, *The Legal Research Manual* (Wisconsin: Legal Education Publishing, 1986).

easier for researchers to access official **sources** of law. This is especially true for newer and emerging legislation, but the scope of the **databases** contained on the government websites also allows researchers to cast back in time on government databases for almost two decades.³

In Ontario, e-Laws is the repository for official provincial legislation. The corresponding site at the federal level is Justice Laws. These sites provide access to both **consolidated law** (i.e. law that incorporates amendments) and **source law** (i.e. law as it appeared when first enacted). These websites also provide access to regulations, point-in-time versions, and historical information about legislative provisions. Where once such information was only available by reference to numerous print volumes of legislative tables, it is now integrated into the user interface. This allows researchers to note the history and development of legislative provisions — from the time they are tabled as **bills** up to the most recent consolidated version — right on the face of the online text.

Both levels of government also maintain websites devoted to **indexing** and organizing the precursor documents for legislation: **bills**. Bills are legislation that is proposed but still moving through the legislative process. They also provide important ancillary information generated by the legislative process: Hansard (debates), committee reports, white papers, regulatory assessment impact statements — all of which contribute to our understanding of the purpose and intended effect of the law and the intent of the legislature. In Ontario, information about bills is found on the website of the Ontario Legislative Assembly; federally, the website is LEGISinfo.

In some respect, we can also think of source law as a precursor document, especially for legislation that is substantive and that will be the subject of many amendments over its lifetime. Having access to the act as it appeared when first enacted provides an important touchstone for some more sophisticated research tasks.

6.2.2 Publication, Coming into Force, and Consolidation

Even though an act may have received royal assent, signaling its transformation from bill to statute, it may not necessarily be in force. In order to have effect as law, the act as a whole or its provisions separately must come into force. You should note, however, that acts are published online once they receive royal assent whether or not they have come into force. Thus, researchers must pay careful attention to this additional detail as the act of publishing is not a clue as to whether the act or provision governing your client's issue is in force and effect.

The concluding section of a statute normally deals with its coming into force — often in what is called a commencement provision. Certain sections may be brought into force in different ways and at different times, by a combination of the following methods:

3. Legislation enacted before this time can also be accessed online, through different access points such as HeinOnline, the Internet Archive, or the Osgoode Digital Commons.

- as soon as it receives royal assent;
- on a date specified in the act, either prospective or retrospective; or
- on a date to be named by proclamation (e.g. by the Governor in Council for federal legislation or by the Lieutenant Governor for Ontario legislation).

Regulations do not receive royal assent, so the date of registration or filing is often key to coming into force.

If the act is silent as to the method by which it comes into force, there is provincial and federal legislation⁴ that directs that the statute comes into force on the day it receives royal assent. There are also legislative provisions that stipulate what happens if an act is never declared in force. For example, under the federal *Statutes Repeal Act*,⁵ acts that have not been declared in force within 10 years of receiving royal assent are automatically repealed unless either House of Parliament adopts a resolution that prevents the repeal.

After acts are enacted and regulations are filed, neither of these sources is static. At any time, a new bill may be introduced that will, when it is itself enacted, add, change, or repeal sections of your target act. An amending act might amend just your target act, or it could start out as an omnibus bill that, once enacted, will amend many acts at the same time. Similarly, regulations may also be changed by amending regulations. The action of incorporating amendments into an existing act or regulation is called *consolidation* (also referred to as revision).

Perhaps the point of greatest divergence between past and present as legislation has come online is in publication. Print volumes of legislation, and the print publishing culture associated with legislation, persist. But consolidation — the essential task of keeping legislation current — is now accomplished exclusively in the online environment. Historically, this was a manual process requiring the periodic publication of a new set of print volumes (federally, the *Revised Statutes of Canada (RSC)*; provincially, the *Revised Statutes of Ontario (RSO)*). These volumes were published infrequently — once every 10 to 15 years or so — and so accessing the most current version of the law required some effort. But in the online environment, consolidation happens on a near real-time basis.

That said, because online documents are easily updated, you might assume that consolidated legislation on a government's website *always* reflects the current law, including amending legislation with all its complex coming into force possibilities. But this process, while much quicker online, is not instantaneous. It can take some time for those changes to be edited in. Thus, the “currency date” displayed for statutes and regulations on Justice Laws may be somewhat stale dated, sometimes even up to a few weeks in the past. This can mean that any amending acts enacted and in force in weeks since the last currency date, and any amendments made to your target section, will not yet appear in the act's online text even though they carry the full force of the law.

This is an even greater concern if you are accessing legislation in one of the **services**, as opposed to the government website. The legal research service providers can update their copies of legislation only after the

4. *Interpretation Act*, RSC 1985, c I-21, s 5(2); *Legislation Act*, 2006, SO 2006, c 21, Sched F, s 8(1).

5. SC 2008, c 20, s 2-3.

government has incorporated any changes into the consolidated legislation on the government website. By the time you retrieve a copy of legislation that is stored on Westlaw, Lexis, or CanLII you are looking at a version that is several steps down the currency chain (in addition to not being the official version). To address this, see Noting up Legislation.

6.2.3 Indexing and Storage of Legislation

Turning to the task of determining whether your legal issue has governing legislation, you should note that legislation is not stored in the same way in common-law Canada as in some other jurisdictions. That is, the government does not organize or provide access to legislation by topic.⁶ And, as you know, the way information is stored and organized impacts your approach to **information seeking**. In this case, **subject-based searching** becomes more difficult, although perhaps not impossible, depending on the service or access point you use. For example, the subscription services sometimes collect and store legislation links with topic-based materials. However, in general you will need to use a different technique to identify whether there is legislation governing your topic.

Your best first step is to use a reliable **secondary source**. You will see reference to relevant legislation in **encyclopedia** entries, in treatises (in a table of legislation), and in journal articles, as well as in **non-traditional secondary sources** online. Be sure to **triangulate** what you see and be prepared to synthesize from multiple sources in order to outline the complete regulatory scheme for a particular topic. Pay attention to the jurisdiction implicated in any commentary you find to ensure that the legislation you retrieve is relevant to the jurisdiction in which your issue has arisen.

Another key aspect of online legislative storage is that even consolidated legislation is tied to a citation system grounded in historical publication practices. As a result, an act's source law and its related consolidated version may share the same citation. For instance, the *Immigration and Refugee Protection Act*, SC 2001, c 27 (known as *IRPA*) could refer to *either* the **annual statute** (source law) or the **consolidated statute** (as amended to reflect changes since it was originally enacted in 2001). This is important to understand in an age of Google searching because an online **search engine** may surface one or the other version of the legislation depending on how you search. It is up to you to understand what you are looking at once you have landed on the official government website, or you risk relying on outdated law.

Keep in mind too that the year shown as part of an act's citation has no bearing on the currency of the version you are looking at. Acts enacted after the last print consolidation will keep their citation to the annual volume in which they first appeared. For example, the *IRPA* has been updated many times since 2001, but the consolidated statute's citation still is "SC 2001" because it is tied to the print publication of the source law.

6. In civil law jurisdictions, laws are codified — i.e. systematically compiled into one collection according to subject matter — which allows a subject-based approach to research.

6.3 Specialized Tools, Techniques, and Access Points for Legislative Research

Once you have confirmed that there is legislation governing your issue, and have identified that legislation, you will then need to retrieve it and understand how it has been applied or interpreted vis-à-vis your client's issue. There are specialized legislative research tools available for this purpose. Not all are available online – and in many cases, they are not easily stumbled upon online – but most can at least be identified using online resources. Here is a general overview of these resources and their features.

6.3.1 Legislative Databases

Of all the tools for online legislative research, government legislative databases are the best first access point in many cases. However, it is sometimes difficult to persuade researchers that this is the case. Westlaw, Lexis, and CanLII are frequently the default access point for any search in the law school context. But the free government legislative access points, such as e-Laws, or Justice Laws, should in fact be your first option, especially when you are retrieving legislation that you already know is relevant for your client's purpose (this is as opposed to trying to identify whether relevant legislation exists. For that task, authoritative secondary sources such as treatises or encyclopedias are far more effective). Government sites offer the official version of legislation, the most up-to-date version (which is important, since legislation is a “moving target” as a result of amendment and consolidation), and they offer it to you free of charge.

That said, government databases tend to have less-than-stellar search functionality. The subscription services do offer more robust search interface, but what you retrieve is not the official version and it may also not be the most current version. CanLII might seem an attractive middle ground — a free online access point for legislation, with some slightly better search functionality — but it is still unofficial and there is still no organization of legislation by legal topic.

As with any database, it is important to keep the database questions from Chapter 1 in mind. In the case of legislative databases, the most important question is likely to be the scope of the database, since both the subscription services and the government databases have definite limits on the date range of legislation they index and store. For legislation that is outside these limits, there are online workarounds. For example, HeinOnline⁷ maintains copies of statutes and regulations — both federal and provincial, annual and revised — going much farther back than the government or subscription databases. A similar collection for Ontario statutes with slightly less scope is available at the Osgoode Digital Commons.

7. A commonly available research platform. For example, many academic law libraries subscribe to HeinOnline and Ontario lawyers have access through the Law Society of Ontario.

6.3.2 Annotated Statutes

An annotated statute includes the **full text** of one or more statutes, in addition to commentary, history, and references to judicial consideration of the statute. This value-added content is provided in what is called an annotation. Case law that has commented on or interpreted the act is provided on a section-by-section basis. However, an annotation will only cite select case law, so it is not a suitable substitute for noting up an act with a citator tool.

Is an annotated statute a **primary** or **secondary source**? To the extent that an annotated statute provides commentary and points to relevant case law, it is perhaps better to think of it as a secondary source. It has few of the hallmarks of legislation itself. For example, an annotated version of an act is *not* an official version. Further, since annotations take time and editorial involvement to publish, the text of the statute itself may lag behind the official statute in incorporating amendments.

Annotated statutes are usually published in either book or looseleaf format. In the online environment, this means that they are only semi-visible because the full text is either hidden behind a paywall or only available in print. Annotated statutes can also be difficult to identify through an online search, because the title of the publication may not clearly identify itself as such a resource. Some titles will be obvious (e.g. *The 2023 Annotated Family Law Act*), but others may not even include the word *annotated* in the title (e.g. *Ontario Family Law Practice* includes an annotated *Family Law Act*). Some strategies you can use to identify them include:

- Use Google to identify the title of an annotated statute publication, then search your library **catalogue** or the online services for that title.
- Consult topic-specific resources listed under that area of law in Westlaw or Lexis.
- Check a list of subject resources compiled by a law library (sometimes called “LibGuides”, “Subject Guides”, or “Research Guides”).

6.3.3 Legislative Concordances

Some legal research requires you to compare substantively similar legislative provisions across jurisdictions (horizontal comparison), or a single provision across time within one jurisdiction (vertical comparison). Legislative concordances are designed for this purpose. For example, a concordance may help you find Alberta’s equivalent legislative provision to a section of Ontario’s *Personal Property Security Act*; or identify that section as it existed in the preceding statute.

As with annotated acts, concordances can be tricky to locate online, because they are often published as part of a larger publication. Check whether your law library maintains a list or other finding aids to help you locate concordances in their collection. If your law library does not have a list (or if you need to get your hands on one outside of your local collection), consult the Queen’s Law Library’s Legislative Concordances guide, a

unique resource that provides a list of concordances organized by topic. This list will help you figure out what book, looseleaf, or other access point to use. Westlaw also provides a handful of concordances linked from their homepage.

Once you've identified a title that contains a concordance, locate that resource via your library catalogue or check Westlaw or Lexis to see if an online version is available.

6.3.4 Law Reform Commission Reports

Law reform commissions are independent bodies that provide authoritative advice to the government on modernizing and improving the law. In addition to detailed recommendations, commission reports can offer a useful and authoritative summary of the law on a specific topic. The Uniform Law Conference of Canada addresses the harmonization of both provincial and federal law from a bijural and bilingual perspective.

The Law Commission of Ontario is the current iteration of the reform body in Ontario, established in 2007. Reports from its historical counterpart (shut down in 1996) are available via the Osgoode Digital Commons' Ontario Law Reform Commission archive.

6.3.5 Model Acts and Codes

Model acts and codes are a proposed model version of a statute — a normative statement of the law as legal experts think it should be, not necessarily as it is. They are of no force and effect unless they are enacted, which they sometimes are. Some model acts and codes are available in the reports of the law reform commissions discussed above. You can also identify and locate model acts and codes by searching library catalogues and conducting Google searches. See model codes at the National Research Council Model Codes Page, and model acts at the Uniform Law Conference of Canada.

6.4 Researching Statutes Online

The following section describes some basic techniques for navigating the major online legislative databases. Information regarding the scope of the databases discussed is current as of the date of the publication of this text.

Retrieving statutes online is usually simple once you have identified the legislation relevant to your legal problem. There are specialized **access points** for doing this. While you may be tempted to retrieve legislation via a Google search, keep in mind that you must take the time to review and critically assess your Google results to ensure that your result will lead you to the most current, consolidated, and official version of legislation. In this sense, accessing legislation from official sources may save you time.

The following sections provide a brief overview of considerations in retrieving statutes from the federal and Ontario government websites, as well as from CanLII, Lexis, and Westlaw.

6.4.1 Federal (Justice Laws)

Justice Laws includes source law, consolidated law, and regulations. As of the date of publication of this text, coverage extends back to 2001 for annual statutes (source law); 2003 for point-in-time versions of statutes (i.e. the consolidated version as it looked as of 2003); and 2006 for point-in-time versions of regulations. All consolidated acts and regulations on Justice Laws are official.⁸ The website is updated about every two weeks.

The simplest way to locate legislation on Justice Laws is to **browse** to the relevant legislative database: “Consolidated Acts” for consolidated statutes or “Annual Statutes” for statutes published as source law. Consolidated statutes can also be pulled by title via the main search bar on the homepage.

Note the currency date, which indicates the date to which point Justice Laws has incorporated amendments into the face of an act. This appears on the Justice Laws homepage but will also display at the top of each consolidated statute.

6.4.2 Ontario (e-Laws)

E-Laws provides official⁹ copies of Ontario legislation dating back to January 1, 2000. This includes source law, consolidated law, and regulations.

E-Laws is also most easily navigated via browsing. Select either “Consolidated law” or “Source law” depending on the type of statute you are interested in. Then, use the alphabetical list to locate your act.

Look for the e-Laws currency date, which will be linked from the top of any consolidated statute.

6.4.3 CanLII, Westlaw and Lexis

As noted above, the three legal research services can also be used for statute retrieval, with the caveat that they are not official copies of legislation and lag behind updates posted to the government websites.

CanLII provides both consolidated and annual statutes for all Canadian jurisdictions, but dates of coverage vary by jurisdiction.¹⁰ Federal consolidated statutes have continuous coverage from 2003, and annual statutes from 2001; Ontario consolidated statutes from 2004 and annual statutes from 2001.

Lexis provides consolidated statutes going back to 1988 federally and 1990 for Ontario, as well as a few jurisdictions’ annual statutes (including federal and Ontario going back to 1995 and 1996, respectively). In contrast, Westlaw does not contain any annual statute databases, only consolidated statutes.

In all three services, the simplest way to retrieve a statute — with the highest degree of caution as to retrieving the correct document — is to browse to the relevant legislation database and locate the statute on

8. *Legislation Revision and Consolidation Act*, RSC 1985, c S-20, s 31.

9. See O Reg 413/08.

10. For a complete coverage list, see “Legislation databases”, online: <canlii.org/en/databases.html>.

the alphabetical list. Another option is to enter the short title of your target act into a service's search bar. But beware — you are not trying to conduct a full search across the entire platform for the title of an act, which will result in an unmanageable number of documents (including references in case law, secondary sources, etc.). Start typing the title and, instead of hitting the search button, click on the act from the drop-down menu once the service accurately identifies the statute that you are looking for.

6.5 Researching Regulations Online

The research tasks associated with statutes also apply to regulations. However, regulations are retrieved online using slightly different techniques.

Regulations are also known as delegated or “subordinate” legislation (a broad term given to rules, regulations, orders, bylaws, or proclamations made by an authority under the terms of an act of parliament or of a provincial legislature). Regulations do not exist in a vacuum. They are always made pursuant to an existing act, referred to as the enabling statute. Where enabling statutes deal more with general matters or policy principles for the legislative subject matter concerned, regulations provide highly specific details to how those general matters or policy objectives are to be achieved through the ministry responsible for enforcing the act in question. In the online legal research environment, this relationship is straightforward as regulations are co-located with their enabling statute. This means that the act's landing page on e-Laws or Justice Laws will contain a list of the regulations associated with it.

Regulations have the force of law, and like the acts under which they are promulgated, are issued and changed on a regular basis. These rapid changes can make regulations a challenge to work with because updating becomes such an important component of the research process. It is essential to be as current as possible to avoid missing any important information (see Noting Up Regulations). Like statutes, regulations can have complex coming into force details. They may come into force on the date they were registered/filed¹¹ or they may come into force retroactively or on a date in the future.

Although regulations do not endure the same sort of parliamentary process to be officially brought into existence, they follow a similar publication process and many of the technical details for understanding statutes remain relevant here. For instance, the distinction between **source law** and **consolidated law** is still important, being the difference between a regulation as it was initially filed and a regulation that has been updated to reflect amendments introduced since its initial filing.

The sections that follow provide a brief overview of how to retrieve regulations via the federal and Ontario government websites, as well as CanLII, Lexis, and Westlaw.

11. Regulations do not receive royal assent, so the date of registration is often key to coming into force.

6.5.1 Federal (Justice Laws) and Ontario (e-Laws)

Justice Laws and e-Laws both provide regulations alongside their **enabling statute**, which means that your first step is navigating to your target act. In e-Laws, this looks like a tab at the top of an act called “Regulations under this Act”.

In Justice Laws, this looks like a list of “Regulations made under this Act”, at the bottom of the act’s table of contents page.

6.5.2 CanLII, Lexis, and Westlaw

The three services handle regulations slightly differently.

On CanLII, retrieval is similar to e-Laws, with regulations accessible via a “Regulations” tab on the act’s page. Conversely, Lexis and Westlaw both require you to specify that you are looking for regulations *before* you navigate to the enabling act. Once you have selected the relevant regulations database, only then can you select the enabling act from an alphabetical list, which will pull up the corresponding list of regulations for that act.

As with statutes, you can also retrieve a specific regulation by typing the title or citation into the main search bar of Westlaw, Lexis, or CanLII.

6.6 Researching Bills Online

A bill does not have the full force of the law until it receives royal assent and comes into force. However, a legal researcher must be aware of bills because they have the potential to change your client’s rights and obligations at any time. Here is one common scenario where you would need to research a bill: you learn that a bill has been introduced that will affect a major act in your practice area. As such, you will need to determine where it is in the legislative process and how the amendments will affect your client.

There are two main types of bills: public and private. In general, a public bill is concerned with matters of public policy or amends a public act, while a private bill relates to matters of a particular interest to a person or an organization. Bills introduced by a cabinet member in the House of Commons are government public bills. They reflect government public policy, and passage of these bills has government priority. Private members’ public bills, by contrast, are introduced by individual members of the legislature and rarely get beyond first reading because they do not reflect government policy and are therefore not a priority. It is useful to know this distinction so that you can identify the likelihood of an amending bill becoming law — especially if it substantially amends your target act.

To efficiently retrieve bills online, you need a key piece of information: the bill number. Federally, bills are identified with a letter (according to which chamber introduced it, C for House of Commons or S for Senate) and an ordinal number indicating its place in the sequence of bills introduced during that legislative session. Bill numbering restarts at “1” in every parliamentary session, so there may be several bills indexed on

the government website with the same bill number. To effectively search bills online, you must therefore have additional information, such as the name of the member introducing the bill, the date it was introduced (so as to identify the correct session of parliament), and some basic information about the subject matter. These various datapoints can often be drawn from non-traditional secondary sources like newspaper articles or media broadcasts.

Once a bill receives royal assent, it is assigned a new chapter number. This can make it somewhat complicated to figure out the corresponding bill number of your target statute. If you are unsure of the bill number/title that corresponds with your target act, you will have to check information that is published in the relevant Canada or Ontario Gazette.¹² These publications provide the statute number alongside the bill number once a bill has received royal assent.

Once you have enough identifying information, researching the status and text of bills online using government resources is straightforward as long as you learn basic navigation of these sites. The following sections provide a brief description of this process for federal and Ontario bills.

6.6.1 Federal (LEGISinfo)

The full text of federal bills going back to 1994 are accessible through the Parliament of Canada's LEGISinfo. Click on "Bills" to view by default all bills in the current session, their status, and all corresponding documents from their movement through the legislative process.

The "Bills" page provides a variety of filters that allow you to view a different parliamentary session, date range, bills with a specific status (e.g. received royal assent), and other factors. Once you've clicked into the text of a bill, you'll be able to view different versions (first reading, third reading, and royal assent versions).

6.6.2 Ontario (Legislative Assembly)

The Legislative Assembly of Ontario's Bills website includes bills going back to 1995. To retrieve a bill, navigate to the relevant legislative session and then locate the bill by number or title on the following list.

Ontario bills are published at first reading, after amendment by committee, and upon royal assent. Each bill will also include information about its status and corresponding documentation including debates.

6.7 Noting Up Legislation with Enhanced Currency

After enactment, acts are not static — they are subject to ongoing change. At any time, a new bill may be introduced that will, when it is itself enacted, add, change, or repeal sections of your target act. An amending

12. Federally, these appear in the Canada Gazette: Part III; in Ontario the publication is the Ontario Gazette.

act might amend just your target act, or it could start out as an omnibus bill that, once enacted, will amend many acts at the same time. This means that you cannot rely on what an act looks like at one point in time, because it is always susceptible to amendment or repeal by future acts. In other words, legislation is a moving target. This is what makes noting up legislation — and enhancing your currency date — an essential research skill.

Once an amending act is passed and comes into force, any changes to your target act are incorporated through the process known as consolidation (also referred to as revision). Since changes must be edited into the text of an act, there may be a delay between when changes are enacted and come into force, and when they appear in the official online version of the act. Consider the “currency date” displayed for statutes and regulations on Justice Laws. If the currency date listed for your target act is two weeks ago, that means any amending acts enacted and in force in the last two weeks (and any amendments made to your target section) will not yet appear in the act’s online text.

In addition to changes that stem from the legislative process, acts are also subject to ongoing interpretation by the courts. New decisions are handed down by the courts on a continuing basis; new or revised legislative interpretations can emerge at any time. Case law and legislation are intertwined. When a judge interprets a statute, that interpretation may become binding pursuant to the doctrine of *stare decisis*. Therefore, it is not sufficient to look only at the text of a statute. You must also investigate how courts have dealt with that piece of legislation. This process is often referred to as “noting up a statute” or looking for “statutes judicially considered”.

Because legislation is always subject to change, you need to complete a note up whenever you are referencing or relying on an act. Noting up is the way that you ensure you can rely on the version of the statute you are looking at, so that your advice to your client is accurate and reliable.

Noting up legislation online has two parts:

- Currency: Do I have the most up-to-date version of the law? Is it in force?
- Judicial Consideration: How have the courts dealt with our target legislation? How has it been interpreted or applied? Have the courts commented on its constitutionality?

The following sections review each of these parts in more detail.

6.7.1 Noting Up Legislation Part 1: Currency

In the first part of a note up, you ensure that your target act or provision is in force and that you are looking at the most current version. This process can be done most easily and accurately using the government websites for the relevant jurisdiction.

To find an act’s currency date, navigate to the current consolidated version of the act on the official

government website. The posted currency date is found at the top of the page for the current version of the act or regulation and will give you the exact date of the last consolidation.

Typically, the currency date will be a few days to a few weeks in the past — but a bill that amends your act could receive royal assent and come into force at any time. Therefore, even a week's gap between the posted currency date and the date of your research could pose a risk that your target act or provision has been amended, but the changes are not yet visible on the act as you see it. As a result, you may need to enhance your currency date. This is especially true if you know from **current awareness** resources that there are amendments pending for the act you are interested in.

To enhance your currency date, check that no amending provisions have been enacted and come into force during this gap. To do this, you need to explore the bills that have received royal assent during the time span between the posted currency date and the date of your research, by searching the website of the legislature in that jurisdiction.

This process will be slightly different depending on the jurisdiction of your research. Some government websites (like LEGISinfo) will allow you to search across all bills in the current session for mentions of your target acts. Others (like the Bills section of the Legislative Assembly of Ontario's website) require that you manually check bills that have received royal assent since your currency date.

Once you've identified a bill, look for the name of your target act and read the text carefully to determine the amendment's relevance to your research question. If it is relevant, check for coming into force information for the bill to determine whether or not the provision is currently in force.

If you follow these steps, you'll have a good idea of whether any recent amendments have affected your target act, and you'll know if any of those amendments affected the specific section you're interested in.

6.7.2 Noting Up Legislation Part 2: Judicial treatment

In the second part, look for cases that have dealt with your target act or provision to understand how courts have interpreted or applied the statute, how they have defined certain terms, and whether they have commented on the constitutionality of a provision.

The relevant research tool for this process is a **citator**, which gives you a list of cases that have cited the section of the act that you are interested in. Note that since courts tend to deal with legislation one or two sections at a time in their analysis, it is much more efficient to look up the judicial treatment for single provision of an act rather than looking at treatment of the act as a whole.

This process can easily be accomplished online. Each of the three major services has a citator tool. Simply navigate to your target act and section, and then click on the link that allows you to access the citator tool. This usually appears as either a tab at the top of the document or, on CanLII, a bubble beside each section of legislation. Note that CanLII also has a dedicated search box on the landing page for noting up.

It is important to understand that no single citator is comprehensive, since no two legal databases contain the same judicial decisions. There may be substantial overlap in these sources, but each will include unique

cases as well. It is a best practice to cross-check and compare note up results using whichever citator tools you have access to.

When you are viewing a legislative provision on Westlaw, you can also look at its “Judicial Consideration”. This feature — unique among the services — points you more specifically towards cases that interpret the section (instead of just referring to it in passing) and is meant to surface cases that are more valuable for statutory research. However, the scope of the tool is limited and, for now at least, does not include much historical coverage of cases, so do not ignore the standard citator tool available on Westlaw.

For some legislative provisions, there may be an overwhelming number of decisions citing your target provision. How might you know which ones are most important?

Narrow down your target to a single legislative provision if possible; seek judicial treatment only for that provision and aim to retrieve cases that discuss it, rather than the entire act in general.

Use filtering on all three services to refine your results lists by level of court/date and pay particular attention to higher-level court decisions.

Sort your results lists depending on what you think may be more relevant for your research problem — either higher levels of court or more recent decisions.

Sort your results list by treatment indicator where possible. In particular, be watchful for treatment that indicates your provision has been struck down or declared unconstitutional.

One note of caution on treatment indicators: you’ll notice that Lexis and Westlaw provide some type of indication as to the nature of the relationship between a citing case and the target legislative provision. For instance, Lexis notes when a case has provided “cautionary”, “positive”, or “neutral” treatment, including a note of “constitutionality discussed”. While these indicators can be helpful ways of narrowing your citator list, research has shown that the citator tools — and the legal editors or **AI** tools that populate them — are not always accurate in assigning these designations.¹³ They should not be relied upon without reading the case fully in order to more accurately assess the relationship between the case and the legislative provision.

6.7.3 Noting Up Regulations

For regulations, whether provincial or federal, the steps are roughly the same. Because regulations change so often, you should update your regulations to be as current as possible. To check for any regulations that have amended your target regulation since the currency date, you can check the Gazette online, either provincially or federally. Look for Gazette issues published between the last currency date shown on the government website and the date you are researching. Federal regulations are published in the Canada Gazette, Part II, while Ontario regulations appear in the weekly Ontario Gazette.

13. Paul Hellyer, “Evaluating Shepard’s, KeyCite, and BCite for Case Validation Accuracy” (2018) 110:4 Law Libr J 449.

The second part of the note up (judicial treatment) is identical to the process outlined above for statutes, and can be done using Westlaw, Lexis, or CanLII.

6.8 Maintaining Current Awareness: Monitoring legislation

Monitoring legislation is essential to remain apprised of key developments in an area of law. By doing so, you ensure that you maintain **current awareness** and have advance notice of upcoming changes that may affect your clients.

Monitoring legislation may be as simple as leveraging non-traditional secondary sources. One effective strategy is to regularly review or subscribe to various freely available news outlets including mainstream media (newspaper, television, radio) outlets. These are great resources for notice of upcoming legislative changes (bills that are in progress) or acts recently enacted (those that have received royal assent), though mainstream news will often only report on major or significant legislative changes. For a more specialized view, law firm websites and newsletters are more useful for their more targeted legal perspective on new legislation or amendments. Current awareness for these non-traditional secondary sources is discussed in Chapter 5.

For more detailed monitoring, there are several legislative tracking services that will allow you to track amending bills as they progress through the stages of the legislative process to become law. The federal legislature's website (LEGISinfo) allows you to set up an **RSS feed**¹⁴ to alert you whenever new bills are introduced that affect your target act. Simply look for an RSS option when you have conducted a search on their website. However, many jurisdictions in Canada, like Ontario, do not provide a direct alert option online. For these jurisdictions, there are a handful of (paid) subscription tools, including Canadian Legislative Pulse (a Lexis product) and Codify. In the absence of a subscription to these tools, you may have to rely on monitoring the non-traditional secondary sources listed above.

Lastly, you can set up **citator** alerts to track the judicial consideration of a target act — either a specific section, or sometimes (depending on the tool) the entire act. Find this alert option from within the note up section of an act on CanLII, Westlaw, or Lexis.

14. For more information on how to set up an RSS feed to your email, see Microsoft, "What are RSS feeds?" (last visited 12 June 2023), online: <support.microsoft.com/en-us/office/what-are-rss-feeds-e8aaebc3-a0a7-40cd-9e10-88f9c1e74b97>. This page includes instructions for adding an RSS email alert feed to your Outlook account. Note that if you are not using Outlook, you may need an RSS reader installed on your computer or device, such as the RSS Feed Reader for Chrome (online: <chrome.google.com/webstore/detail/rss-feed-reader/pnjaodmkngahhkoijehjehlcdlnohgmp?hl=en>).

CHAPTER 7: RESEARCHING CANADIAN CASE LAW ONLINE

Learning Outcomes

- Describe how Canadian case law is generated, published, indexed, stored and accessed.
- Identify specialized tools, techniques and strategies for locating and retrieving relevant Canadian case law online.
- Identify the importance of noting up case law and describe the online steps of the process.
- Critically evaluate online tools for case law research.

7.1 Introduction to Online Canadian Case Law Research

In a common law jurisdiction like Canada, the law on a given subject is found not only in statutes and regulations but also in the judicial decisions of courts and administrative tribunals. These decisions are referred to collectively as “case law”. As a **primary source** of law, case law will usually have some role to play in your problem-solving strategy, even when your topic is heavily regulated and the governing legislation is clear. Finding cases that are useful for your analysis, however — that is, cases that are authoritative and on point — can be challenging and occasionally more time consuming than locating relevant statutory provisions. This is especially true in the online environment where there is an extremely large volume of case law available.

In a print research environment, there was at least one significant “assist” to be had in researching case law: case law reporters. Case law reporters are an intermediated **source**: the editorial team of the reporter chooses cases selectively from those decided since the time of the last issue. Only certain cases are selected for publication, based on the significance of the decision: an emerging trend in the law, novel subject matter, or an unresolved point of law. Cases not chosen for inclusion in the print reporter — referred to as “unreported” or “unpublished” — could still be accessed by request from the respective court, but unpublished cases were not considered as significant as those that were published in reporters. Thus, using a reporter and its **index** forced

an initial restriction of the number of cases to only the most significant and ostensibly authoritative cases on the topic.¹

The online environment has challenged the prominence of case law reporters in the legal research process. Reporters continue to operate and select cases for publication, with many now publishing online rather than in print. But courts also publish decisions on their own websites, and the legal research **services** index and ingest case law with little to no selection process. Most decided cases will make it into a **database** in at least one service, regardless of their publication status, significance or subject matter. Thus the range of cases conveniently available to the researcher is now much broader.

As noted, however, the volume of results returned by such searches can be very large indeed. To manage this expansive set of options, effective researchers use a variety of online search tools and **techniques**. Efficient case law research begins not only with an understanding of how case law is generated, indexed, stored, and retrieved, but also with an awareness of the key tools for case law research — what they’re called, where you find them, and how they work. Finally, self-awareness and situational awareness will help the researcher choose the approach — both tool and technique — that is most likely to result in a list of cases that is manageable in size and consistently relevant to the issue at hand.

7.1.1 Understanding Lawmaking Structures and Processes

As with legislation, your ability to master techniques for effective online case law research is enhanced if you understand the structure and process of the courts as lawmaking institutions and how this primary source is generated, published, indexed, stored, and accessed online. In this section, we review these aspects of Canadian case law using the Wren matrix questions introduced in Chapter 1. Note that when we refer here to court decisions, we are also referring to decisions of tribunals and other decision-making bodies that render their decisions in textual format and which are indexed online in a way that allows a user to search and retrieve those decisions.

1. Although the volume of available cases may seem like a research boon, researchers should use unpublished decisions with some caution. In some jurisdictions, unpublished decisions are considered “non-precedential” — see Sarah E Ricks, “Law Schools Should Teach Non-Precedential Federal Appellate Opinions” (2023) 30:1 Perspectives: Teaching Leg Research & Writing 4. Even if there is no such rule in your jurisdiction, citing only unreported cases in an argument may have a significant impact on whether your argument is persuasive. While it is comforting that your searches turned up many apparently relevant decisions, if none of those have been reported, you may need to reassess whether they constitute an adequate basis for your argument. McCormack notes “...unreported cases are valid legal authority and can be as useful as reported cases” (Nancy McCormack, John Papadopoulos & Catherine Cotter, *The Practical Guide to Canadian Legal Research*, 4th ed (Toronto: Carswell, 2015) at 160, fn 11). However, researchers should “be aware that courts generally view an unpublished decision as not adding to the common law but rather as applying settled law to unremarkable facts in a routine way...[a] long list of [unreported] similar cases with the outcome you want for your client is less useful than one binding or persuasive case” (Margaret McCallum, Deborah Schmedemann & Christina Kunz, *Synthesis: Legal Reading, Reasoning, and Writing in Canada*, 4th ed (Toronto, Ontario: LexisNexis) at 40).

7.1.2 Lawmaking Structures and Precursor Documents

The Canadian court system has evolved over time: courts have split based on function, or they amalgamate or shift in subject matter responsibility. Court names also change from time to time, not only as a result of change in the ruling sovereign (e.g. King's Bench instead of Queen's Bench) but also as a result of the changes suggested above. For instance, the Exchequer Court of Canada was succeeded in 1971 by the Federal Court of Canada, which in turn was split into the Federal Court and Federal Court of Appeal in 2003. As a researcher, you may need to retrieve decisions from a decision-making body which no longer exists or whose name has changed since the time the decision was rendered. This can pose issues if you use keywords instead of filters as a way of searching online for decisions from a particular decision-maker. There are many useful **resources** that can help you understand the current structure of the court system which in turn can help you filter your results effectively.²

Precursor documents to court decisions include pleadings, facts, and other court documents. In the Canadian context, these have not shifted as seamlessly to the online environment as court decisions have. Some services — Westlaw and Lexis — provide access to a limited number of court documents, which are usually linked from the **full text** view of a decision. But due to the massive number of documents produced by the courts, the services are usually selective in which courts or practice areas are prioritized for these databases. Access to these resources also comes at a steep cost in a subscription service. Unlike the United States, Canada does not currently have a centralized, public system for accessing court documents online. However, it is possible to request such documents directly from the court, as court filings and exhibits are a matter of public record in most cases.

Also relevant as precursor documents are cases that were relied on as precedent to your target decision. These can be identified using the table of cases found at the top of the decision (sometimes also called a table of authorities, or simply “cases cited”). These lists are often added by legal editors, rather than by the courts themselves, so if you are accessing a court decision online directly from the court's website, you may not find a consolidated list of cases cited at the top of the decision. This is one good reason to access a case from one of the services, which will not only provide such a list but also link the case names to the full text of those decisions (assuming they are contained within that service's database).

2. See, e.g. “The judicial structure” (last modified 1 September 2021), online: <justice.gc.ca/eng/csj-sjc/just/07.html> or “Appendix 1 — the Canadian Court System” in Nancy McCormack, John Papadopoulos & Catherine Cotter, *The Practical Guide to Canadian Legal Research*, 4th ed (Toronto: Carswell, 2015) at 17. In addition, a useful “Canadian Court System” chart of past and present court names is available from the Westlaw homepage under “Research and Writing Tools.”

7.1.3 Publication and Indexing of Decisions: The shift from print to online

As noted above, there has been a substantial shift in the way that case law is published. Whereas traditionally, court decisions were published in print, today most courts have an online presence where they provide access to decisions.

Some courts adapted early on to the online environment, appreciating the fact that a website provided a convenient and reliable platform on which to publish decisions, whether or not those decisions would also be indexed and made accessible elsewhere. However, court websites tend not to have robust search interfaces. As such, they can be a fine **access point** if you merely wanted to retrieve a case that you already know about, but are less helpful if you need to locate cases on a particular legal issue. Court websites often do not add anything to the decision as rendered, such as a summary of the decision, a list of keywords, or a separate list of cases cited. These value-added features are one of the major benefits of locating a decision on one of the services instead.

However, it is important to note a significant limitation: You might conclude that in the online environment, every decision of any value is available on all three services. This is not so. Although the services are less selective than case law reporters, sometimes a case will simply not be picked up and indexed on one of the services but is available on another. This is not simply an issue of algorithm selection or point of view, as demonstrated in the Nevelow Mart study.³ Rather, it has more to do with the case simply not being ingested into a particular database. To avoid missing an important case, there are several things you can do: remain flexible in your search strategy by using a variety of techniques; consider building in time for a search on a second service; and ensure that you are cultivating **current awareness** in your area of law by setting up appropriate alerts both for secondary and primary sources.

7.2 Key Tools for Case Law Research

Three tools form the backbone of any solid case law **research strategy**: a **case digest** database, a case **citator** and a **full-text** case law database. This is as true in the online environment as it was in the print environment: all three existed in print and are as essential to legal research as they ever were. However, the ease of use online, including how quickly the tools can be accessed, how quickly you can navigate from one to the others, and what information is readily available both in text and in graphic form, is substantially greater than in print. Online, these tools are integrated seamlessly into the full-text case view on all three services and, as a result, can be deployed quickly and flexibly in your search strategy. Below, we describe each and offer some observations about access points and utility in combination with certain online search techniques.

While these three tools are customized for case law research, one of the most effective case law research tools

3. Susan Nevelow Mart, “Every algorithm has a POV” (2017) 22:1 AALL Spectrum 40.

you have is in fact a secondary source. Assuming your source is authoritative, a good secondary source that mentions a leading case on your issue is a significant time saver. In identifying and referencing that case, the author of that source has done the leg work for you. If the author is known as someone experienced in that area of law, you can rely on their expertise and move your research forward.

7.2.1 Case Digest Databases

A **case digest** is not a summary of a whole case, but rather a short summary of a single decided issue in a case. Since some cases decide several or even many legal issues, one decided case may give rise to more than one digest. Digests are not as detailed as a full headnote case summary, which you can find at the top of many full-text case views online. But they provide a basis for classifying cases based on the legal issues they address, which can make it easier to find cases on point.⁴

A case digest database, as the name suggests, is a database that contains only case digests, which are classified and organized by legal topic. Two of the three services — Westlaw and Lexis — have digest databases. Westlaw's digest database is called the Canadian Abridgment Digests, and Lexis' is called the Canada Digest. Westlaw's coverage goes back farther (cases reported since 1803), but only Lexis covers Quebec civil law cases. CanLII does not, as of yet, have a case digest database.

In a digest database, areas of law are set out hierarchically. The topmost level uses a broad description of an area of law — for example, contracts or environmental law. Lower-level subtopics and sub-subtopics break the broad body of law into more specific doctrines, concepts, and legal issues within that top-level area. Individual digests are classified or assigned to these more detailed levels. Indeed, digest **classification** systems are extremely detailed at the lower levels, which are built on distinct legal issues that arise in a general body of law. All digests related to a single legal issue are assigned to the same classification based on their conceptual “fit” to that classification. Thus, all digests in one classification are conceptually related to each other, whether or not they share any keywords.

There are several aspects of digest databases that warrant mention before we get into how to effectively search them later in this chapter. First, the digest classification systems are not consistent between Westlaw and Lexis. By scanning the table of contents of each digest database you'll notice that the legal topics or areas of law that form the topmost level of the classification system do not align. In some cases, a classification for an area of law exists in one service, but not in the other. Even if a top-level classification exists in both database and is described using the same or very similar words, there may still be substantial divergence in classification labels in the lower-level classifications, or the information may be organized along different conceptual lines.

Second, between Westlaw and Lexis, the very same case may have a different number of digests associated

4. Digests are usually written by legal editors, although AI tools may eventually do some of this work. In either case, errors and omissions can occur. So it is not wise to rely only on a digest for an understanding of a decided issue. Digests may not capture the nuance of the court's reasoning, and may, even if rarely, miss essential facts or points of law. In other words, there is no substitute for reading a case yourself.

with it and the editors responsible for assigning decided issues to digest classifications may not agree on how the same issue might be classified. This will affect the group of other digests that this case is collected with. Lexis will not include a digest for a given case/issue at all unless it considers that case to be a “leading case”.

Finally, as with secondary sources like the *CED* that also use a classification system, you may find that a digest database doesn’t do a very good job of capturing emerging areas of law. Digest databases are built on a set of assumptions about the scope of the law — a particular view of what the law is. Therefore, the classification system and **controlled vocabulary** that provides their organizational structure restricts the way that cases and decided issues can be characterized. In this way, not only are digest classification systems slow to acknowledge emerging areas of law, they may also not even “see” some legal topics and thus entrench the “dominant” view of the issues that the law concerns itself with.⁵

7.2.2 Citators

A case **citator** is a slightly different tool. When you use a citator, you are researching from a position where you already have a case that you consider relevant for your research purposes — your “target case”. A citator is the primary tool used in noting up case law. Its utility is derived at least in part from the doctrine of *stare decisis*: when a common law court decides a case, it will look to prior decided cases, or precedent, as authorities that inform its reasoning. The court will usually refer to or “cite” these cases in its decision. Subsequent cases — “citing cases” — may choose to adhere to the reasoning in your target case, perhaps because it is binding or perhaps simply because it is cogent. Or they may choose instead to distinguish the reasoning in your target case from the citing case.

A citator can help you assess the strength of your target case by identifying cases that have cited it and relied on its reasoning, and the depth of that reliance.⁶ The tool can also help you find more cases decided on the same legal issue. The presumption here is that subsequent courts will cite your target case if that court is deciding the same legal issue as that presented in your target case. For a discussion of this particular function, see the One Good Case strategy.

In an online environment, the citator tools are constantly updated with new cases. This means you are likely to have a more complete list of citing cases and resources than if you used the print equivalent. All three services have citator tools. On Westlaw the citator is called KeyCite; on Lexis, it is called QuickCITE; and on CanLII, it is accessed through the “Note up/Discussion” field on the landing page.

Does it matter which one you use? In other words, are the three citators consistent as to the citing cases they reveal based on your target case? This is an important question in online case law research. As each service contains a slightly different body of case law, so too are their respective citators slightly different in coverage.

5. Richard Delgado & Jean Stefancic, “Why Do We Tell the Same Stories: Law Reform, Critical Librarianship, and the Triple Helix Dilemma” (1989) 42:1 *Stan L Rev* 207.

6. See below for a discussion of treatment indicators under Noting Up.

If a case does not exist in Lexis' case law databases, it will not then be picked up by Lexis' citator QuickCITE. We will discuss this issue in more depth when we come to Noting Up Case Law: Considerations for noting up online.

7.2.3 Full-text Case Law Databases

A full-text case law database is probably the most familiar type of online case law research tool. It is designed to allow you to search and retrieve the full text of any decision indexed in that database.

Full-text databases have existed since the courts first began to create their own websites and publish their decisions online. All three services contain dozens of full-text case law databases, indexing thousands of decisions over a long period of time alongside important value-added features, such as explanatory or summary headnotes, relevant keywords, and cross-links to other research tools and related secondary sources. Researchers can retrieve known cases by searching by citation or style of cause and can find unknown cases on a particular topic using keyword searching in combination with filtering. Records retrieved from full-text databases allow a researcher to read a case in its entirety.

Many early-stage researchers consistently default to a keyword search technique — whether using **natural language** or **Boolean search** — over a full-text case law database as their first approach in research. In the online environment, the ease of beginning your search in this manner is tempting, since it can make you feel as if you are advancing quickly through your searches. However, there are significant pitfalls here.

Online keyword searching can be hazardous if you haven't committed sufficient time to generating a robust population of keywords and synonyms,⁷ or if your Boolean technique is still developing. An ill-formed keyword search can return hundreds of irrelevant results while at the same time missing cases that are key to your research issue. This is true even if the algorithm's sense of what is "relevant" is reliable and appropriate filters are applied. To make matters worse, keyword searching attracts a very high chargeback or transactional fee in the subscription services. To avoid wasting time reviewing a mountain of potentially irrelevant cases, we recommend that researchers take a judicious pause before beginning online case law research with a keyword search over a full-text database. Consider the points in the discussion regarding "Designing your case law research strategy".

That said, there are, in fact, a limited number of situations in which a keyword search with Boolean connectors in a full-text case law database could be a good first approach in research. These include situations where you have an extremely unique fact scenario and are looking for cases with similar facts; where your topic is emerging and may not yet be discussed in **traditional secondary sources**; or where you are looking for a very recently decided case. However, in these scenarios you must still be sure you are using the right **search**

7. This can be a particular problem if you are unfamiliar with the area of law to begin with and have not taken the time to explore (via authoritative secondary sources) the terms used by experienced practitioners and scholars to refer to the body of legal issues known within that area of law.

syntax, using appropriate keywords and synonyms, and making good use of filters to ensure your search is as efficient as possible.

7.2.4 Secondary Sources: The forgotten case law research tool

Secondary sources are a key tool in legal research. In case law research, they can shift you from a situation where you have no leads on a relevant case for your topic area, to a situation in which you have at least one good case which you can then parlay into more good cases using the technique set out below and the tools discussed above.

The usual secondary sources are in play here: treatises, journal articles, and especially **legal encyclopedias**, since they often include hyperlinks to relevant cases discussed in the articles. For emerging areas of law, or topics that are un- or underdeveloped, you may need to consult **non-traditional secondary sources** (with appropriate critical assessment). People are also a particularly effective secondary source for case law research, since most experienced practitioners will have at least three or four key cases at the tip of their tongue that they can share with you. Starting your research with a good secondary source can make a huge difference in giving you a useful starting point and early advantage in the otherwise unwieldy online world of case law research.

7.3 Designing Your Case Law Research Strategy: The circumstantial dyad and the One Good Case technique

An online case law research strategy is designed to negate the temptations associated with the online environment and to mitigate their impact on your research progress. Your goal in designing a strategy is to minimize expense of time and money (both your own **billable time** as well as any chargebacks to the client) and maximize efficiency and effectiveness: a modest number of results returned with a high percentage of relevant results. The time you spend designing such a strategy can save you much more time in the long run. It will help you remain focused in your searches and avoid retrieving too many results, too many irrelevant results, or tumbling down a rabbit hole and losing sight of your goal.

To build a good online case law research strategy, consider the contextual factors surrounding your research process. These may include cost and time limits imposed on your research, technical concerns such as the four database questions (Is it correct, credible, comprehensive, and cost effective?) and questions dealing with your own level of development as a researcher. Am I confident searching using techniques more sophisticated than just a natural language search? Do I understand how the key tools for case law research — the case digest database, the full-text case law database and the citator tool — work together? Do I have a firm grasp of the set of Boolean connectors for this service and how they are deployed? Do I have a sense of which filters (court, jurisdiction, date range, etc.) are most appropriate for this problem?

In designing your online case law research strategy, think of the process as beginning in one of two ways

(a circumstantial dyad): You will either start your research from a position where you have no leads and no cases at all, or you will have at least one case that is relevant to your topic and you want to see more. Your starting position guides you in choosing the right tools and techniques for your research. Before you begin your research, assess whether you have any leads whatsoever — a mention of a leading case in a textbook or treatise, a case mentioned in your coursework, something a colleague said, a case you read about in the newspaper or in a legal blog — or whether you are truly starting from nothing. Then, choose your approach to research accordingly.

7.3.1 The First Circumstance: You are starting with no leads

If you are starting with no leads, there are at least two effective alternatives to keyword searching in a full-text database: a search in a relevant secondary source or a **subject-based search** in a digest database. Once you have used one of these techniques to identify a relevant case, you can then shift to the other side of the circumstantial dyad and employ the One Good Case technique.

7.3.1.1 Secondary Sources

Reliable and authoritative secondary sources on your topic will point you to relevant primary sources, like case law, without you having to do any further searches. In this case, you are leveraging the “point to” function of secondary sources. This is both time- and cost-efficient; if the source author is an acknowledged expert, you can rely on that expertise rather than spending time searching for that first case yourself.

The kind of secondary source you use — either traditional or non-traditional — will depend upon the nature of the legal issue you are researching. Secondary sources can include people in your practice area; traditional types such as legal encyclopedias, treatises, and journal articles; or, if your problem is novel or involves intersecting areas of law, non-traditional sources like legal blogs, podcasts, newsletters, newspapers, firm websites, or your own firm’s knowledge management database. See Chapter 4 and Chapter 5 for more information on locating secondary sources.

7.3.1.2 Subject-based Searching in a Digest Database

Concurrently with the use of secondary sources, and assuming your topic is not entirely novel, you should try to identify your topic in a case digest database. This is an iterative approach — your searches in one can be informed by your results in the other — that is both efficient and convenient in an online research context. When you identify a case that looks promising, then pull that case up in full-text view and read the entire decision.

To search a digest database effectively, recall that they are organized by topic in order to permit subject-based searching. Cases decided on the same legal issue are stored together in the database under a single classification. To find a relevant classification — and thus find a group of cases all on your topic of interest — **browse** the

table of contents in a case digest database and zero in on a topical classification or sub-classification of interest. You can then skim the digests of those cases to look for a decision that might be relevant for your analysis. Stay mentally flexible if you use this technique. You may not be able to predict what words the database classifiers have used to describe your target legal issue. This means that synonyms and alternate ways of describing the issue are important to keep in mind as you browse.

For greater precision, or if browsing doesn't reveal a relevant classification, you can also do a keyword search within your initial results to further refine the list of case digests returned. There may in fact be digests related to your topic, but they may be contained in a classification that isn't obvious or intuitive. First, try to narrow down to a single classification in which you will run your keyword search. You can, however, search over the entirety of the database if you sense that the top-level classification is part of your problem in not retrieving any results.

A few notes on keywords here: Be careful and selective when choosing your keywords for searching a digest database. Consider what constitutes a record in a digest database: the digest is a short summary of a single decided issue in the case. In other words, any keyword search you perform will not be performed over the full text of a case. If you couldn't find a particular top-level area of law when browsing, you may have to dig deeper into your keyword population to find unique terms that will return results. The word you use to describe the legal issue may not be the word the legal editor chose, so synonyms and Boolean connectors may be essential. Try choosing slightly broader keywords to begin — perhaps only primary and secondary keywords — and then move on to terms associated with specific facts of your client's issue. Keep in mind, too, the other limitations of case digest classification systems — including the fact that they do not represent well those topical areas that are emerging or underdeveloped — as described above. To use this technique effectively in the case of an emerging area of law, you may need to search more than one digest classification or think creatively about how your topic could be described.

7.3.1.3 Intelligent Keyword Searching

Ironically, the *last* strategy a researcher should use when starting with no leads is often their default approach: keyword searching over a full-text database. In rare situations, it can be a rational first choice: if you have an unusual fact pattern for example, or very distinct and unique keywords that are almost sure to be used in any discourse regarding the legal issue involved. However, in the absence of these factors, keyword searching can be fraught. Eventually you will become more expert in all aspects of **information seeking**, and so may find that your ability to retrieve relevant results from keyword searches vastly improves over time. In the meantime, however, try using one of the approaches described above, prior to relying on the keyword search.

But even where you have exhausted options for subject-based searching at the first instance, there is one other subject-based tool you have at your disposal when resorting to keyword searches: subject filters. Like digest classifications, a subject filter allows you to select a topic or sub-topic of case law. However, they allow you to do so while in the midst of your keyword search. The filter is applied in-process, across the full text of your results in a case law database, instead of just at the beginning of a search such as in a digest database. All the

services have some degree of subject filtering as an option. In Westlaw, you can filter by (high-level) subject area *or* (more granular) abridgment classification (that is, the subject classification assigned to the full text of the case, rather than searching the digest database itself). In Lexis, there is a legal topics filter with multiple degrees of sub-level. Even CanLII has a basic subject filter option, though it is generated by **artificial intelligence** and can only identify a high-level category associated with each case. Look for a subject filter option when viewing your results list to leverage this functionality.

7.3.2 The Second Circumstance: You have a good lead

In the second situation, you have a lead on a good case — one that is authoritative and on point in terms of the legal issue decided. Perhaps you learned about it in a course, and you recall that it is the leading case on a particular legal issue. Or perhaps it was mentioned by a colleague or your principal lawyer, or you recall reading about it in a secondary source. No matter how you became aware of it, you can use this good case as a basis for retrieving additional similar cases, that is, cases decided on the same legal issue.

The One Good Case method for case law research will help you do this. It has two approaches, each of which is named for the case law research tool it relies on: the digest approach or the citator approach. As with most aspects of case law research, the One Good Case method can be used with print resources. However, the interconnectedness of the three main case law research tools — the digest database, citator, and full-text case law databases — means that you can move effortlessly between these tools with greater speed and efficiency online.

Many researchers think it is important to use a recent case as their One Good Case. This is not true. Some of the most significant leading cases were decided years or even decades ago. This can be true in any area of law for any issue. Before you discard a case as being “too old” to be your One Good Case, think carefully. If it is mentioned as a leading case, the passage of time won’t change that unless the case has been overturned on appeal or superseded by the reasoning in a newer case. Either a solid note up or a secondary source are likely to reveal that to you.

The quality of your results when using the One Good Case method will depend greatly on the quality and relevance of the case you begin with. Thus, it makes sense to spend some time at the front end of this process, trying to locate the best, most relevant, most authoritative case possible, before proceeding with one (or both) of the approaches described below.

7.3.2.1 The Digest Approach

The digest approach takes advantage of a digest database’s classification system. Recall that CanLII does not yet have a digest database, so this approach won’t work for you on that service. If you find the digest classification for the relevant issues decided in your One Good Case, then you will find more cases decided on the same issue, as they will be digested in the same classification.

Begin from the full-text view of your One Good Case in either Lexis or Westlaw and find your case's digest classifications. In both services, these classifications will be linked directly to the digest database for that classification. On Westlaw, a case's Canadian Abridgment classifications can currently be found both as links on the case view page or at the top of the full-text case view. In Lexis, look for the link to "case summaries" beside the text of the case. Note that in Lexis, this technique works best if the case you are starting with is considered a leading case in your topic area. This is because Lexis only creates digests and assigns them to classifications for those cases it deems to be significant or "leading" in the topic area.

7.3.2.2 The Citator Approach

In case law research, the citator approach is nothing more than the use of citing references or **chaining** in the context of case law. You use the citator tool to identify cases that have cited your One Good Case. You are looking for cases that have followed or substantively discussed your One Good Case. Note that such cases are easier to find if you are using a citator that offers well-developed treatment indicators. These additional citing cases are useful to you based on the assumption that at least some of those cases deal with the same legal issue as your One Good Case.

It is worth noting that you can use this approach in both "directions". Not only can you look at the cases citing your One Good Case — by using the citator — but you can also consider cases cited *by* your One Good Case. The assumption is the same: cases cited by your One Good Case may be useful to you since the court in your One Good Case cited them in its decision — and thus they are likely to have been decided on the same or similar legal issues. To find these cases, look near the top of your One Good Case for a list of "cases cited" or "table of authorities" where the legal editors or the court will list the cases relied on in that decision.

This technique may lead you to a leading case in your area of law, or even to a more authoritative case than your One Good Case. In any event, if you identify another good case based on this technique, you should still scan the full text of your One Good Case to see how that additional case is treated in the body of your target case decision.

7.4 Noting Up Case Law

7.4.1 Why note up case law?

Noting up (sometimes referred to as "updating") is a mandatory step in legal research, but it is not a technique for finding case law; rather, it is a way of validating what you have already found. In an online environment, noting up is easily accomplished and yields results that are often updated in near real time. In a common-law jurisdiction like Canada, noting up considers two factors that could impact the validity and therefore the utility of a case you would like to rely on for problem solving. These two steps are always necessary for a note up, and both steps use the citator tool. The two steps remain the same whether done in print or online.

The first step of the note up involves verifying the complete *history* of the case. Lower court or tribunal decisions are susceptible to being overturned or reversed on appeal to higher-level courts. Researchers must determine whether this is true of their target case so as to confirm that the legal principles articulated in the target case are still “good law” and have not been overruled by a higher court.

In the second step of a note up, researchers consider the *subsequent judicial treatment* of their target case. The goal is to determine how widely and in what way the reasoning in their target case has been considered — and followed — by other courts. Although the legal doctrine of *stare decisis* governs the development of the common law, courts will nevertheless sometimes attempt to avoid the reasoning in a prior decision that would otherwise be binding on that court.

Provided that your target case has been indexed in one of the three services, noting up online is convenient, easy, and can be done on all three services using the citator tools. All three have also integrated value-added features into the citator tools to offer researchers additional information on the history and subsequent judicial treatment of their target case. This is not to say, however, that your note up results from one service to the next will always be the same. This is discussed in greater detail below, where you’ll find a description and brief discussion of each step, together with some comments about how the process is impacted by the online environment.

7.4.2 Noting Up Step 1: Case history

The history of your target case or decision may be complex. Sometimes, you need to consider more than merely “was my case appealed?” when viewing this history. For example, if your target case is an appeal from a lower court, was it subsequently appealed to a higher court? Was the lower court’s decision affirmed? reversed? varied? If the decision is from the Supreme Court of Canada, what were the outcomes in the lower court decisions? Is there a dissenting opinion? Have there been other Supreme Court decisions on the same topic? (Recall that the SCC is not bound by its own prior decisions.) This information is easily accessible using any of the three citator tools.

For this step, begin by accessing the full text of your target case and look for “History”. All three citator tools can provide you with this information, though some offer more information or more intuitive information than others. Westlaw’s KeyCite, for example, offers a graphical representation of a case’s history that visually represents the interrelated nature of the individual decisions. Lexis’ QuickCITE offers no graphical representation, but does include signals (“Affirmed”, “Reversing”, etc.) to indicate the nature of the relationship. CanLII’s citator is the most barebones of the three, providing only a case list with the citation, date, and court level, which means that you must do the manual work of checking whether the higher court has reversed or varied your target case.

When you consider a case’s history, it’s important not to confuse or conflate the case’s history with its recency. No matter how old a case is, if it has not been overturned on appeal, then it may be good law — and in fact, an older case may persist as a leading case for certain legal principles for decades or longer. This

doesn't mean that the law has not developed since the leading case was decided, and you may need to trace the development of a legal principle using citing references over time. But do not discard a case merely because it is not a recent decision. If it has not been overturned on appeal, you may still consider it, but should pay close attention to its judicial treatment (below).

7.4.3 Noting Up Step 2: Judicial Consideration

In the second step of a note up, you investigate the subsequent judicial treatment of your target case. In other words, you are asking: How have other courts treated your target decision? Have those courts followed the reasoning in your target case? distinguished it? merely considered it? or even not followed it? Each service will provide you with a list of cases that will answer these questions.

The principle of *stare decisis* is important here. In a common law jurisdiction, cases decided on the same law and based on similar facts should have similar outcomes. However, courts may not entirely agree with the legal reasoning found in an earlier case on point. A decision not to follow or to distinguish the earlier case is traditionally justified by the assertion that facts of the two cases are different enough to require a different application of the law.

Searching for cases that have cited your target case will yield references to similar cases as well as to cases that provide some understanding of how the law relevant in your target case is developing. You may even find that the argument you proposed to make based on the reasoning in your target case has been weakened by recent jurisprudence in which your target case is not relied upon in the reasoning. The citators will characterize the subsequent judicial treatment of your target case using “treatment indicators,” which are supposed to provide a concise alert as to the quality or depth of treatment received by your target case. Treatment indicators help you understand the strength of your target case as a precedent, whether subsequent courts have uniformly accepted or rejected the reasoning in your target case, or whether there was mixed treatment.

Treatment indicators vary from service to service, not only in terms of the word used by that service to identify a form of treatment but also in the symbols or icons that represent those words. Treatment indicators include words such as applied, approved, considered, mentioned, disapproved, discussed, distinguished, explained, followed, referred to, not followed, or overruled. A single case may receive different treatment indicators depending on the service and the citator — in other words, there is sometimes little similarity in the way the services characterize the subsequent judicial treatment of a case (see below). While treatment indicators are a useful guide, there is no substitute for reading the case yourself to fully understand the manner and extent to which a case was considered in a subsequent decision.

7.4.4 Considerations for Noting Up Online

Can an accurate note up be accomplished using only one citator tool on one service? As far as case history is concerned, the answer is yes. However, regarding subsequent judicial treatment, there can be substantial

variation between services both in the citing cases identified, as well as in the nature and accuracy of the treatment indicators. Legal editors will make different choices on both dimensions. Some citators will designate a case as “citing” your target case, even if it makes only the merest passing mention of your target case in its analysis. Similarly, one service may decide that the citing case only “mentions” the target case while in another you may see that it has been labelled as “following” your target case.

There are two antidotes to this concern. First, get in the habit of reading the citing cases for yourself. Assess for yourself how accurately the treatment indicator describes the real relationship between the citing case and your target case. If you are finding too many citing cases in your note up to do this easily, try applying some filters first — citing cases only from certain levels of court, certain jurisdictions, or from within a specific time range. Second, try noting up your case in another service. You may not always have access to both subscription services. But you will always have access to CanLII, for free. It may be worth taking a minute or two to crosscheck your subscription citator results with what is found on CanLII. The discrepancies may be revealing and prompt you to do some further searches to refine your conclusions about the strength of your target case.

The volume of cases available online may make some note up records for citing cases seem overwhelming. One strength of using these tools online is that you can easily manipulate a massive list of citing cases according to various factors (court, jurisdiction, year, treatment) or even conduct more sophisticated keyword searches across the body of citing cases. Westlaw and CanLII even allow you to filter your list of citing cases by subject: in Westlaw, by using the Abridgement classification filter and in CanLII, by using their high-level subject filter. By leveraging these types of integrated features across a service, you can make the high volume of available information more manageable.

7.5 Maintaining Current Awareness: Monitoring case law

Staying up to date with case law can be achieved by a variety of methods, but your approach will depend on your goal: Do you need to monitor a specific case? decisions involving a specific area of law? or any decision that includes a particular keyword or phrase? In fact, you may find that it’s most effective to use a combination of these options.

The **current awareness** tools listed under “secondary sources” can also be useful for keeping up to date with case law developments in a specific area of law. Often the easiest way to stay up to date is to leverage the work already being done by an expert in the field. Finding a prominent lawyer, law firm, or other expert who will digest this material for you can be a very efficient way to maintain current awareness. Some resources are designed to keep practitioners up to date on a specific area of case law. These vary significantly by practice area. For example, LexisNexis NetLetters are a group of resources available in Lexis, which provide weekly summaries of case law by practice area. The Lexis digests also allow you to set up alerts classification or sub-classification, so that you receive the latest digests as they are added to the database.

If you are trying to monitor a much more specific subset of case law, all three legal research services allow you to set up an alert from the results page of a case law search. Simply select the database that reflects your

jurisdiction of interest, enter your search, and look for an alert button. This will allow you to receive emails when new cases meet your search criteria.

Lastly, the citators on Lexis, Westlaw, and CanLII all allow you to set up an alert when new cases are added to the note up record for a specific case. This is a useful way of monitoring a specific case, its progression through the court system, and its ongoing treatment. Set up an alert by first navigating to the citator view in a case and then looking for a bell or other “alert” icon.

GLOSSARY

Access point

The online point from which you begin research in an online environment, usually a specific URL. Access points include, but are not limited to, a service, a webpage, a standalone database, or a search engine.

Artificial intelligence

Name given to a range of technologies that allow machines to simulate human cognitive abilities or perform tasks typically associated with intelligence.

Automation bias

The human tendency to favour decisions made by automated systems instead of making the effort to verify or seek out information themselves.

Bias

A weighted position in favour of or against a perspective, idea, or issue, or a particular and persistent perspective on an idea or issue.

Bill

Draft legislation that is proposed but still moving through the legislative process.

Billable time

Time spent working on a specific file, for which a legal professional bills the client based on their hourly rate or a flat rate (sometimes referred to as "fee for service"). The time you spend searching for legal information, whether or not your searches have been fruitful, is usually calculated as part of your billable time.

Boolean search

A type of search using keywords in combination with **search syntax** like AND, OR, and NOT, which dictate the relationship one keyword must have to another for the computer to determine relevant results.

This type of search contrasts with “natural language search”, where the user enters their query using language as they would naturally speak or write.

Browsing

A search technique used with a resource or database that has a table of contents or index, whereby the researcher skims either of those parts, in a focused way, looking for information that is conceptually relevant to their research topic or issue.

Case digest

A short summary of one single decided issue in a case. Since some cases decide several legal issues, one case may give rise to more than one digest.

Catalogue

An inventory of books, articles, and other resources in a specific library’s collection, which a user can then search across online.

Chaining

Using one relevant resource to locate more by following the chain of citation — reading sources that both *cite* and are *cited by* your target resource. Also called *cited reference searching*.

Citator

A tool that shows where your target resource has been cited. When you use a citator, you are trying to find cases or secondary sources that have cited a target case or legislative provision. Citators will also indicate the quality of that citation — whether your target case or provision was cited and relied on, for example, or treated negatively.

Classification

A means of categorizing information by topic. Classification systems are hierarchical, moving from most general at the top to most specific at the bottom. For a given topic there can be any number of subtopics, sub-subtopics, etc. Each classification is given a code of descriptive phrases and/or letters and numbers that allows you to refer directly to that topic. Various classification systems are deployed throughout legal resource types including legal encyclopedias, digest databases, journal indexes, and law library catalogues. Different resources may use different classification systems. There is no one system used by all resource types. A classification system can also be called a **taxonomy**.

Click-path notation

A method of recording a search so that you or another researcher can recreate the series of steps or “clicks” you performed at a later date. A click path should identify essential search elements such as: the date of your search, the access point from which you began, any sub-databases or tools that you then navigated to, and any specific search techniques like filtering or keywords with **Boolean** connectors.

Consolidated law

Legislation that has been updated to incorporate amendments into its text (*cf* **source law**). The process of incorporating these amendments is referred to as *consolidation*.

Controlled vocabulary

An established list of terms that are assigned as subject headings to a resource, document, or other item in a database based on its content, subject matter, or other distinguishing features. Using a set list allows all resources under a particular subject to be viewable together, even when they each individually use different words, synonyms, or related concepts to describe that subject. (*cf* **taxonomy**)

Current awareness

The state of having up-to-date knowledge on a topic. A legal researcher should maintain current awareness by actively monitoring new developments in the law through a wide range of tools, depending on the type of resource a researcher is hoping to track (e.g. case law, legislation, or secondary sources).

Database

A searchable collection of information stored electronically and organized in such a way that information can be searched on various dimensions. Westlaw, Lexis, and CanLII each contain dozens of legal information databases.

Disbursement

An expense incurred and paid on behalf of a client for a specific good or service, the benefit of which accrues to that client. (*cf* **overhead**)

Disintermediation

In economic terms, the disruption of the commercial supply chain whereby the “middleman” is eliminated, resulting in a direct-to-consumer pathway for goods and services. In legal research, the recent phenomenon whereby large amounts of information are available direct-to-researcher, without any

intermediation (guidance in locating or interpreting that information, or editorial vetting of the resource), as might be provided by a legal information expert (law librarian) or an editorial team including peer reviewers.

Enabling statute

The act under which a regulation is made. The enabling statute delegates the authority for the creation of regulations.

Full text

The entirety of a resource, such as the whole article, book, or case. This is in contrast with databases that contain only summaries (like a case digest database), bibliographic information, or metadata about a resource.

Generative AI

Artificial intelligence that creates new content such as text, images, video, or other media. Often used synonymously with the type of large language model (LLM) chatbots made famous by ChatGPT.

Index

As a noun, a list that records words, concepts, and/or phrases as they appear in a resource, or that summarizes the features or content of a resource, to facilitate a user's ability to locate information. E.g. the index found at the back of a book or a **journal index**.

As a verb, the act of organizing and storing words, concepts, or phrases in an index. E.g. a search engine indexes words on webpages; a journal index indexes the bibliographic information that identifies journal articles.

The past participle, *indexed*, indicates the state of being included in an index. Understanding where certain types of resources — like legislation or case law — are indexed online impacts the choices you make for researching those resources.

Information literacy

The set of abilities a legal researcher must develop, including the ability to successfully find, assess, use, and apply information regardless of format, access point, or paradigm. Information literacy addresses the characteristics of information itself — its source, its precursor documents, how it is accessed and indexed — and focuses on where, how, when, and why to find that information, rather than how to use a specific database, search engine, or research tool.

Information seeking

Any behaviour or activity the goal of which is to locate or obtain information. In legal research, it is distinct from the acts of information synthesis and analysis. All three elements taken together — information seeking, synthesis and analysis — are the essential building blocks of legal-problem solving.

Journal index

A finding tool that allows users to identify and/or retrieve journal articles based on **metadata** such as title, subject, or author whether the full text is in the database or not. Also called a *periodical index* when the scope encompasses other types of periodicals.

Legal encyclopedia

A specialized type of authoritative traditional **secondary source**. Legal encyclopedias provide short summaries of the law with citations to the applicable legislation and leading case law.

Metadata

Information *about* a resource such as the author, abstract, headnote, title, table of contents, subject classification, or description of a resource, but no actual text of the resource itself.

Natural language

A type of search where a user enters language in the search field as they would naturally speak or write. This is in contrast to **Boolean search**, where a user must follow a specific syntax that the computer is programmed to interpret in a certain way.

Non-traditional secondary sources

A category of **secondary sources** that are published in a less formal, more flexible way, using formats that are easily generated and easily accessible online. For example, legal newsletters, blogs, social media, and podcasts.

Overhead

Ongoing operational expenses that are not directly tied to specific client file, but which are instead essential for the general operation of the firm, like salaries, rent, or office supplies. (contrast with **disbursement**)

Periodical

Any serial publication that includes shorter works written by more than one contributor and that is published at regular intervals (usually more than once per year). Law journals and law reviews, magazines, and association newsletters are all examples of periodicals.

Persistent URL

A link that is designed not to break or degrade over time. URLs are often susceptible to “link rot”, which means that a URL stops pointing to the correct file or webpage. A persistent URL or a permanent URL overcomes this issue and doesn’t break when the content in question is moved to a different website or the web URL of the original information changes.

Primary sources

Primary sources of law include legislation (such as statutes and regulations) and the decisions handed down by courts and administrative tribunals. Primary sources establish and carry the full weight of the law, and as such are the sources you will rely upon in most legal writing.

Research strategy

The combination of tools and techniques which together form a systematic approach for locating and retrieving legal information for problem solving.

Resource

In the context of legal research, something that has value or utility for fulfilling your information-seeking need, such as a case, statute, ebook, journal article, blog entry, newspaper article, etc.

RSS feed

An automated syndication technology that delivers updated online content such as a webpage, blog, podcast, or news source to an RSS reader app or to your email inbox (depending on your email client).

Search engine

A software application powered by an algorithm, which enables users to search across large repositories of information. A search engine selects and returns results based not only on the search terms entered by the user, but also based on other selection criteria built into the algorithm, which are usually not known to the user.

The term is sometimes confused with a *web browser*, which enables access to online content including

search engines (a browser is also a software application, but is stored locally on a user's computer). For example, Alphabet Inc.'s proprietary browser product is called Chrome; its search engine is called Google.

Search syntax

The type of symbols that are used as **Boolean** operators to connect terms in a search, as well as the order in which they must be placed to retrieve the desired relation between keywords. Syntax differs from service to service or database to database, so a researcher should look up the syntax before searching.

Secondary sources

Sources that provide commentary on the law such as treatises, encyclopedias, and articles. They have two basic functions: they explain the law and point the reader towards the relevant **primary sources** of law. They should always be consulted at the beginning of the research process.

Service

A service is a collection of research tools and databases available from a single access point. In legal research, a service provides a wide range of information and may also offer additional value-added elements (like annotations, classification schemes, or commentary), as well as useful tools or integrated functionality to facilitate searching. CanLII is a free service. Lexis and Westlaw are commercial services, which means that an organization or individual must purchase access to them.

Source

Legal information of a particular type, presented in a specific format, identifiable by a citation. Also used to differentiate between categories of sources that share similar features, as in **primary sources** and **secondary sources**.

Source law

Law as it appeared when first enacted. (*cf* **consolidated law**)

Subject-based searching

A powerful search technique available in a limited number of databases. Databases organized by subject or topic collect all information relevant to a single topic under a classification. Researchers can see a list of topical classifications, navigate to those most relevant to their research issue, and then browse or search within that classification.

Taxonomy

The particular framework of terms (a **controlled vocabulary**) used in a **service** to classify information according to topic; a key feature of databases that allows subject-based searching.

Technique

Any observable information-seeking strategy. Techniques can be used alone or in combination and are tailored for the specific information-seeking goals of the researcher.

Traditional secondary sources

Secondary source formats that pre-date the online information environment. These formats have long been established in the field of law and legal information and include books, journal articles, treatises, and case comments. (*cf* **non-traditional secondary sources** and **primary sources**)

Triangulate

The process of validating information in search results by comparing multiple sources, looking for credible commonality. Supported by the technique of “lateral reading”, that is, reading across online sources “to assess and corroborate information before determining the credibility of any single source.” (Obar, 2021)

Unreported decisions

Traditionally, cases not editorially chosen for inclusion in a print case law reporter, which meant that they would be unpublished and could only be accessed by request from the court. These decisions were considered less important than those that were published in a reporter. Today, many unreported cases are nevertheless made available online via the research services, so the term is sometimes used to refer to decisions that are difficult to locate, or unwritten decisions (e.g. oral reasons).

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TABLE OF FIGURES

Figure 1: The relationship between databases and services.

Figure 2: Three layers of an AI-driven system.