

# APPENDIXES

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## APPENDIX A

# Sample Problem

### I. Description

The fact pattern that follows is based on a case file that was presented to one of the authors<sup>1</sup> Law I Legal Research and Writing classes. The fact hypothetical in the original problem formed the basis of several research, writing, and advocacy assignments that students completed during the first year of law school, which culminated at Moot Court. Within this framework, the issue of polygamy was examined in various contexts including family law, marriage, divorce, child welfare, and best interests. In addition, as described in the following problem, the issue of polygamy was examined in both the criminal and constitutional law contexts.

The information in this appendix was prepared by two law students<sup>2</sup> who were in that original Law I class. They later revisited the topic and described the research processes they undertook, providing accompanying narrative for the decisions they made about their research. The description that follows illustrates an approach to take when researching a topic of this nature; it is explanatory and not definitive. As it was completed when the students were learning how to research and were unfamiliar with the law they were researching, it includes descriptions of the various approaches that they took to ensure that they were undertaking comprehensive research. At the end of the appendix, one former student who is now a more senior lawyer reflects on the research and how similar research may be approached in his current role.

**NB:** Each legal problem and research problem creates different challenges. Therefore, the approach that follows provides an example of a research process, but it is not a template. In most cases, using online sources is preferred. However, occasionally, when completing historical research and resources are not available

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1 Moira McCarney. The discussion in this appendix reflects a summary of the state of the law as of 2018. Updating both primary and secondary law to the present date would require several additional steps, which are summarized later in this appendix. All the processes required to undertake these research steps are explained in the research chapters of the book, while the methods to analyze and communicate research results are described in the legal analysis and legal writing chapters.

2 The work of Chuck Andary and Andrew McLean provided the foundation for the first edition of this appendix. Chuck Andary has continued to update and revise the material in the second, third, and fourth editions of this appendix. His work is very much appreciated.

online, print resources may be required, and so research processes using both methods are described.

## II. Facts

Corfield, in the province of XXX, is home to the largest Canadian contingent of Idealights—that is, members of the faith organization Ideal Life Path (“ILP”). Idealights adhere to two related but distinct sets of principles of faith and values, referred to, collectively, as “Life Guides” and “Ways of Life.”

Life Guide principles are subordinate to Way of Life principles. Both are recommendations about how to live in accordance with the ILP faith. One of their Life Guide beliefs requires Idealights to grow their own food. Another requires them to observe a strict 9:00 p.m. curfew. Breaches of these Life Guide precepts can result in fines, as well as in temporary suspensions from membership in ILP. The money collected from the fines is directed to an ILP fund dedicated to causes that support their beliefs. Breaching Way of Life principles is a more serious matter; it can result in stronger sanctions, including permanent banishment from the ILP community.

Garnett Kane (“Mr. Kane”) has been the leader of the ILP community for the last seven years. During his tenure, one of the Way of Life principles—the one requiring Idealights to dedicate their lives to increasing the membership of their community—has been the subject of differing interpretations that have resulted in an escalating community conflict.

Two factions have emerged, each with opposing viewpoints. One group, the traditionalists, has interpreted the community-growth principle as making polygamy mandatory for all Idealights. The other group, the progressives, has interpreted polygamy as a Life Guide principle that would not result in permanent banishment for those who do not adopt the practice.

Mr. Kane knows that anyone practising polygamy in Canada faces prosecution under the *Criminal Code*. Currently, he admits to being married to three women, all of whom reside in separate residences. As a traditionalist member of the Idealight community, he has sought legal advice to determine whether the criminal sanction prohibiting polygamy could be successfully challenged as an unjustifiable infringement of his fundamental freedom of conscience and religion under the *Canadian Charter of Rights and Freedoms (Charter)*.

## III. Research Plan and Log

We started out by identifying legal concept keywords and fact keywords and then formulated the issue as described in Chapter 2—for example, *Criminal Code*,

polygamy, religion, faith, *Charter*, Ideal Life Path, and Garnett Kane. In our research, sometimes we used online sources and sometimes we used print. We will describe what we found.

Although there are many ways to start legal research (e.g., consulting a legal encyclopedia or searching for a secondary source on the topic of polygamy, both of which are explained in Chapter 7), we decided to look at the legislation first.

General Area/Topic of Law: Constitutional Law

Common Law?  Civil Law?  Public?  Private?

Jurisdiction: Federal?  Provincial/Territorial?  Municipal?

International/Foreign?

Legislation?  Judicial Decisions?  Unknown?

**Issue 1: Does the prohibition against polygamy in section 293 of the *Criminal Code* unjustifiably violate Mr. Kane's fundamental freedom of conscience and religion under section 2(a) of the *Canadian Charter of Rights and Freedoms*?**

Plan		Log	
Legal Information Required	Online and Print Sources to Check	Checked (Date)	Findings (Append Results to Document)*
A. Essential elements of the crime of polygamy	<i>Criminal Code</i>		Section 293 of the <i>Criminal Code</i>
B. Judicial interpretation of polygamy provisions	Case law— <i>Canadian Statute Citations</i> , <i>Canadian Abridgment</i> , CanLII, Quicklaw, Westlaw, CED, <i>Halsbury's</i>		Five cases consider the polygamy provisions
C. Standing under the <i>Charter</i>	Case law		Three-part test to determine standing
D. Relevant <i>Charter</i> section	<i>Constitution Act, 1982</i>		Section 2(a) of the <i>Charter</i>
E. Purpose of polygamy provision	Backdate statute, consult <i>Hansard</i>		Provision originally enacted in 1890

(Continued on the next page.)

Plan		Log	
F. Case law on section 2(a) of <i>Charter</i>	<i>Canadian Abridgment, Canadian Statute Citations, CanLII, Quicklaw, Westlaw, CED, Halsbury's Laws of Canada</i>		A number of cases considering section 2(a) of the <i>Charter</i> ; one case deals with polygamy violating section 2(a)
G. Secondary sources on polygamy and freedom of religion	ICLL, CLI		Several print and online articles to consider
H. Limitations on section 2(a) rights	<i>Constitution Act, 1982</i>		Section 1 of the <i>Charter</i>
I. Reasonable limits	Case law		Several cases interpret section 1 of the <i>Charter</i>

\* If additional questions are raised in the course of research, add them to column 1.

## A. Essential Elements of the Offence of Polygamy

Recall from Chapters 4A and 4B that federal legislation can be found on the Department of Justice website. A search of “polygamy” identifies the *Criminal Code* as relevant legislation.

Although this section of the *Criminal Code* was amended in 2019, the essential elements of the offence remain the same as they were when we first undertook our research.

Section 293(1)(a) of the *Criminal Code* makes it a crime to consent to “practise or enter into any form of polygamy or any kind of conjugal union with more than one person at the same time” regardless of whether the union is recognized as a binding form of marriage. There is also a disjunctive rule under section 293(1)(b) that makes it a crime to do any activity that “celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction” any form of polygamous relationship.

Polygamy is an indictable offence with a maximum penalty of five years imprisonment. Section 293(2) states that no proof of the method by which the

alleged relationship was entered into is required for the purposes of the indictment or trial. Nor is it necessary to show that those charged had or intended to have sexual intercourse. The guilty act is to engage in a polygamous relationship.

## **B. Judicial Interpretation of Polygamy Provisions**

Several sources can be consulted to locate case law. To ensure that all relevant considerations are brought to light, the following resources can be used:

- *The Canadian Abridgment* case digests,
- CanLII,
- Lexis+,
- Westlaw Edge,
- *Canadian Encyclopedic Digest* (CED), and
- *Halsbury's Laws of Canada*.

Recall that these sources are discussed in Chapter 7. The information they provide will overlap to some extent, and some sources may not provide any relevant information. But the competent researcher will exhaust all possible resources in an effort to become familiar with the issues. Only new information from each resource needs to be included; where resources overlap, the superfluous information can be omitted. Record the citation information for all cases so that they can be located at a later date. Below, we describe what we found when we used these different research tools. We did not begin to evaluate what we found until we had finished our research.

### **1. Canadian Abridgment Digest Search**

1. Using the *Canadian Abridgment's* Key and Research Guide, available online and in print, locate polygamy under the section on criminal law. Note the classification code: XIII.36.b.
2. Locate the *Canadian Abridgment* volume on criminal law that contains XIII.36.b.
3. Locate XIII.36.b. This section highlights several cases dealing with polygamy. Read the case summaries to find relevant cases.

Four convictions in Canada are relevant to this problem:

- *R v Blackmore*, 2017 BCSC 1288—Accused convicted. At the time of writing, this was the most recent criminal case to consider the polygamy provisions. Despite not being an appellate level decision, this case should serve as the primary guidance in this matter. See also *R v Blackmore*, 2018 BCSC 1383 (sentencing).
- *R v Bear's Shin Bone* (1899), 4 Terr LR 173, 3 CCC 329 (NWTSC)—Earliest reported case of polygamy. The Court found the accused guilty of polygamy for taking two wives in accordance with Indigenous marriage customs.
- *R v Tolhurst*, [1937] OR 570, 68 CCC 319 (CA)—Accused convicted. Notable that conjugal union means more than adultery; it means forming a union under the guise of marriage.
- *R v Harris* (1906), 11 CCC 254 (QCCQ)—Accused convicted. Marriage certificate sufficient proof of first marriage; provision applies because accused is living with another woman in open continuous adultery.

Note the three *Reference* cases that appear. Upon review, the three are related; two deal with pre-trial matters in a constitutional challenge to the polygamy provisions. The most recent *Reference* citation is a decision on the constitutional questions surrounding polygamy.

- *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588—The polygamy provisions were upheld by the British Columbia Supreme Court; while inconsistent with section 2(a) of the *Charter*, the provisions are saved by section 1 of the *Charter* as, *inter alia*, the provisions are minimally impairing on section 2(a) when considering the harms that Parliament was attempting to address. The case points to numerous sources that will assist in your research. Note, however, that this is a trial level decision.

Update the law, using the *Abridgment* digests. If using the print version, consult the latest volume.

When we completed our research using the *Canadian Abridgment* online, we found the same cases both in print and online except for the *Blackmore* decision (which shows you how important it is to check all sources when updating the law).

## **2. CED: Overview**

Locate the CED volume on criminal law. Find polygamy under “Marriage Related Offences.” The entry on polygamy gives a brief overview of the elements to the crime and provides case citations. We had found all of these cases already in the *Abridgment*. The online CED matches the print version.



### 3. *Halsbury's Laws of Canada: Overview*

Using the *Halsbury's Companion Guide and Consolidated Index*, we found the reference for polygamy (HCF-165, HCR-335). The title index indicates that HCF refers to the *Conflict of Laws* volume of *Halsbury's*, while HCR refers to the *Criminal Law* volume. *Halsbury's Laws of Canada* is available in print and online.

Locate each volume and find each reference. The HCF reference discusses void marriages and is not relevant for the purposes of this problem. The HCR reference provides a brief overview of polygamy as it is dealt with in the *Criminal Code*. Both sections remained unchanged in *Halsbury's Cumulative Supplement* (print).

### 4. *CanLII: Online Search*

A keyword search of “polygamy” identified some of the cases that we had already found. We found no additional relevant cases.

### 5. *Lexis+ and Westlaw Edge: Online Search*

A search for case law under “Legislation”/“Statutes and Regulations” and section 293 of the *Criminal Code* locates only a few relevant cases, all of which we had already found using other sources. Noting up can be done online.

### 6. *Case Analysis*

At this stage, we summarized the relevant cases, preparing to incorporate the relevant law into the memorandum. For some cases, a statement of the *ratio decidendi* is all that will be required. For others, particularly those that outline a test to apply, a more detailed outline is required. (For a sample case brief, see Chapter 10.)

#### ***Criminal Code—section 293***

**Case Name and Citation:** *R v Bear's Shin Bone* (1899), 4 Terr LR 173, 3 CCC 329 (NWTSC)

**Procedural History:** Northwest Territories Supreme Court

**Facts:** Mr. Bone married two women, in keeping with the Blood tribe's marriage customs.

**Issue:** Did Mr. Bone violate the polygamy provision of the *Criminal Code*?

**Decision:** The Court found Mr. Bone guilty of practising polygamy.

**Reasoning:** Regardless of how the marriages were performed (here, through an Indigenous ceremony), the accused entered into a polygamous union. Because this case was decided in the 19th century, its applicability is limited. The court of

the day did not consider the customs and historical narrative underlying the Indigenous practice of polygamy. Recall that Chapter 10 discussed critical perspectives on case law and legislation, including First Nations jurisprudence. This may provide an additional approach when researching this topic.

*R v Tolhurst*, [1937] OR 570, 68 CCC 319 (CA)

“Conjugal union” means something more than adultery—it means forming a union under the guise of marriage.

*R v Harris* (1906), 11 CCC 254 (QCCQ)

Conviction entered; living with another woman in open, continuous adultery (guise of marriage).

**Case Name and Citation:** *R v Blackmore*, 2017 BCSC 1288; see also 2018 BCSC 367 (wherein the applicants sought a stay of proceedings based on the defence of officially induced error; however, the application was denied).

**Procedural History:** British Columbia Supreme Court

**Facts:** The accused were charged with practising polygamy contrary to section 293(1)(a) of the *Criminal Code*. The two accused were alleged to have been practising polygamy or some form of conjugal union with 24 and 5 persons, respectively.

**Issues:** Did the accused violate section 293(1)(a) of the *Criminal Code*?

**Decision:** Both accused were convicted. The decision largely followed the guidance in the *Reference* case discussed below.

**Reasoning:** The Court found that the *Reference* case should be followed and that the Crown need not prove harm, compulsion, or lack of consent as essential elements of the offence. There was an abundance of evidence in this case that the accused were practising polygamy. The elements of the offence of polygamy include: (1) an identified person, who (2) with the intent to do so, (3) practises, enters into, or in any manner agrees to practise or enter into (4) a marriage, whether or not it is by law recognized as a binding form of marriage, with more than one person at the same time. This will be a fact-based inquiry, which makes your interview with Mr. Kane important when determining the relevant facts. Of note, while a written decision was not available at the time of publication, one of the accused was sentenced to six months’ house arrest while the other was sentenced to three months’ house arrest. Both were also sentenced to 12 months’ probation and community service.

**Case Name and Citation:** *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588

**Procedural History:** British Columbia Superior Court

**Facts:** Against the backdrop of ongoing criminal proceedings, the Lieutenant Governor in Council referred the issue to the British Columbia Supreme Court pursuant to the *Constitutional Question Act*, RSBC 1996, c 68, s 1.

**Issues:** Does the polygamy provision violate freedom of religion and, if so, is it saved under section 1 of the *Charter*?

**Decision:** While the provision violates section 2(a) of the *Charter*, it is saved by section 1.

**Reasoning:** Public policy weighed heavily on the decision, with the prevention of harm to vulnerable groups (women and children) being the dominant deciding factor. This case is directly on point, but it comes from a trial level court in British Columbia and was not appealed; thus, although highly persuasive, it is not binding in any jurisdiction.

## C. Standing Under the Charter

To find case law that judicially considers various sections of the *Charter*, we used both print and online annotated *Charter* resources—for example, CanLII Charter Digest. To challenge a law and bring an issue before the court, the applicant must have standing. In criminal cases, being charged automatically confers standing. Someone who has not been charged would have to seek public-interest standing to bring the issue before the court.

The leading case with respect to public-interest standing is *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*. It summarizes the law from a trilogy of standing cases.

**Case Name and Citation:** *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236, 1992 CanLII 116

**Procedural History:** Supreme Court of Canada case, an appeal from the Federal Court of Appeal

**Facts:** Canadian Council of Churches is an interest group representing several churches. It sought standing to challenge portions of the *Immigration Act, 1976*.

**Issues:** Does the Council qualify for public-interest standing?

**Decision:** The Council failed the third part of the test and standing was denied.

**Ratio:** The test for public-interest standing is as follows:

1. Is there a serious issue raised as to the invalidity of the legislation in question?

2. Has it been established that the plaintiff is directly affected by the legislation, or, if not, does the plaintiff have a genuine interest in its validity?
3. Is there another reasonable and effective way to bring the issue before the court?

## **D. Relevant Charter Section**

Since an individual's religious freedom is at issue, the Canadian *Charter* becomes relevant.

Section 2(a) of the *Charter* states that “[e]veryone has the following fundamental freedoms: (a) freedom of conscience and religion.”

Section 52(1) states that “[t]he Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”

## **E. Purpose of Polygamy Provision**

At this point in our research, we recognized that backdating the polygamy provision was necessary in order to discover the legislative intent behind the creation of this section of the *Criminal Code*. While the *Reference* case provides a detailed analysis of the purpose of the polygamy provision, the case is not binding. Therefore, before we undertook any more case law research on the *Charter*, we backdated as described below.

1. Locate the *Criminal Code* in the 1985 RSC and find section 293. Note that the wording of the section is identical to the current wording. Record the citation that follows the section: RS, c C-34, s 257.
2. Locate the *Criminal Code* in the 1970 RSC using the citation from the 1985 RSC. Note that the wording is identical to the current wording. Record the citation that follows the section: 1953-54, c 51, s 243 (this is *not* an RSC citation).
3. Locate the *Criminal Code* in the 1953-54 SC using the citation information from the 1970 RSC. Note that the wording of this section is identical to the current wording. While no citation information follows the section, backdating must continue. The *Criminal Code* was repealed and reintroduced with several amendments in 1953-54.
4. The *Criminal Code* does not appear in the 1952 RSC. Recall from Chapter 4B the second backdating method, which uses the Table of Public Statutes. Occasionally, the method used here, while more efficient,

does not provide all the information needed for backdating. Using the Table of Public Statutes in the 1952 SC, note the citation information for the *Criminal Code* in the 1927 RSC.

5. Locate the *Criminal Code* in the 1927 RSC, using the citation information from the 1952 SC. Section 310 deals with polygamy. Note that the wording is different from that in the current version. Note the citation information following the section: RS, c 146, s 310.
6. Locate the *Criminal Code* in the 1906 RSC, using the citation information from the 1927 RSC. Note that the wording of the section is identical to the wording in the 1927 RSC. Note the citation information following the section: 63-64 V, c 46, s 3. When doing historical research, citation information often lists the regnal year of the monarch rather than a specific SC year (63-64 V is the 1900 SC).
7. Locate *An Act to Further Amend the Criminal Code, 1892* in the 1900 SC using the citation information from the 1906 RSC. The section amends the *existing* polygamy provision. Note the wording of the polygamy amendment, which matches the wording in the 1906 RSC. Note the citation information in section 3 of the Act: 1892, c 29.
8. Locate the *Criminal Code* in the 1892 SC using the citation information from the 1900 SC. Note that there were only minor wording changes between the 1892 SC and the 1906 RSC. Note the citation information following the section: 53 V, c 37, s 11.
9. Locate *An Act to Further Amend the Criminal Law* in the 1890 SC using the citation information from the 1892 SC. Section 11 adds the polygamy provision to the *Criminal Code*. This is the original provision.

## 1. *Hansard*

The next step is to establish legislative intent by consulting *Hansard* from 1890. Use the *Hansard* index to find *An Act to further amend the Criminal Law*. The Minister of Justice of the time, Sir John Thompson, introduced the criminalization of polygamy. The resulting debate provides insight into why the provision against polygamy was enacted. The ban on polygamous relationships is purposely worded so that it does not only refer to marriage.

There was concern among some House members that Mormons immigrating to Canada from Utah would begin to engage in polygamous relationships. This wording was a response to Mr. Edward Blake's contention that the Mormons would sometimes not seek marriage certificates. It is arguable that the initial goal of the legislators was to prevent further Mormon immigration to Canada, and they considered a law against polygamy as the best way to achieve this goal. Of

course, there were House Members who disagreed with this goal but still agreed that polygamy was a social evil. As debate went on, supporters of the law softened their tone where immigration was concerned and joined the more moderate House members in arguing that the government was targeting polygamy, not the immigration of Mormons.

Consulting two annotated *Criminal Codes* yielded no information beyond what we had already ascertained from the wording of the legislation and from *Hansard*.

## **F. Case Law on Section 2(a) of the Charter**

Applying the methods described previously for case law selection, we located several cases in addition to the *Reference* case relating to section 2(a) of the *Charter* that were relevant to our case:

**Case Name and Citation:** *Syndicat Northcrest v Amselem*, 2004 SCC 47

**Procedural History:** SCC case, on appeal from the Court of Appeal for Quebec

**Facts:** Tenants of a residential building placed *sukkahs* on their balconies, violating the building's bylaws against structures being built on balconies.

**Issues:** Does the bylaw violate the tenants' freedom of religion (this case deals with the Quebec *Charter of Human Rights and Freedoms*, but the *ratio* applies to the *Canadian Charter of Rights and Freedoms*).

**Decision:** Appeal allowed; erection of *sukkahs* is connected to the tenants' religious beliefs.

**Ratio:** From this case, there emerges a basic principle, as well as a test for determining the scope of freedom of religion in individual cases. The Court ruled that, in order for a claimant to establish that their religious freedom has been infringed, they must demonstrate that (1) they sincerely believe in a practice or belief that has a nexus with religion and (2) that the impugned conduct of a third party (or, as in this polygamy case, an impugned provision) interferes, in a manner that is non-trivial or not insubstantial, with the claimant's ability to act in accordance with that practice or belief. To qualify for this protection, a person must demonstrate that they sincerely believe in a practice or belief that has a nexus with religion.

The first step, therefore, in showing that a person's religious freedom has been infringed is to show that "he or she sincerely believes in a practice or belief that has a nexus with religion." This can be done in several ways—for example, by showing a consistency between the person's practice and their belief and

by establishing the claimant’s credibility. Second, the claimant must show that the impugned provision (in this case, the law against polygamy) interferes, in a manner that is more than trivial or insubstantial, with the claimant’s right to practice their religious beliefs. In this case, the court will impose limits on the practice if it infringes on the rights of others.

*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, 18 DLR (4th) 321

This Supreme Court of Canada case will be used for its discussion of legislative intent and shifting purposes. What a court must look at is the initial purpose for which legislation—in this case, the *Lord’s Day Act*—was enacted. In *R v Big M Drug Mart Ltd*, the Court found that the legislation’s purpose was to create a day of observance on the Sabbath for religious reasons. This made the legislation inconsistent with section 2(a) of the *Charter*. Even showing that the current effect of the law is secular in nature—in this case, a general day of rest—does not override the fact that there was an unconstitutional purpose behind the law. There can be no shifting purposes for legislation; the original intent is what will be scrutinized. This case also speaks to the scope of section 2(a) and demonstrates that, while it is not absolute, freedom of religion should be given a “generous” reading—thus giving it a broad scope.

*R v S (M)* (1996), 111 CCC (3d) 467, 84 BCAC 104

This is a case where the accused was charged with incest. He alleged that the ban on incest is in violation of section 2(a) of the *Charter* because it is rooted in a Judeo-Christian principle that he does not accept. Here, the Court ruled that the fact that the law is “rooted in a moral principle [that] developed within a religious tradition” doesn’t interfere with a freedom to believe or not to believe under the *Charter*. This law protects others and is thus not within the scope of section 2(a).

## **G. Secondary Sources on Polygamy and Freedom of Religion**

Secondary research is an important way of gaining an understanding of a law’s effect on society. It is particularly important in *Charter* cases, where the purpose and effect of the law will be under scrutiny. Fortunately, the *Reference* case pointed us to numerous scholarly articles. Additionally, there are several resources for finding treatises, scholarly articles, government documents, international treaties, and other sources of legal interpretation. The charts in this section reflect the research undertaken in the third edition.

**1. Print Sources**

We used legal periodical indexes to find scholarly articles. The following chart outlines two widely used print periodical indexes:

Index	Currency	Availability	Usage
<i>Canadian Abridgment—Index to Canadian Legal Literature (ICLL)</i>	Cumulative volume supplement, monthly digest	Also available online via Quicklaw and Westlaw	Organized by topic and author, used for Canadian articles
Current Law Index (CLI)	Cumulative volume, yearly supplement, monthly digests	Also available online via LegalTrac	Organized by topic and author, used for finding articles from Canada, US, Australia, UK, New Zealand, and Ireland; the most comprehensive of the print sources

1. We used the keyword “polygamy” to search through these resources, starting with the cumulative volume, then updating through the supplements.
2. We recorded the titles of the articles found. Before choosing the articles to read, we reviewed and shortened the list. For example, in the latest ICLL, there is an article from 2014 entitled “Of Crime and Religion: Polygamy in Canadian Law,” by Marie-Pierre Robert et al, and in the ICLL 2001-2011 supplement, an article from January 2010 entitled “Polygamy, Freedom of Religion, and Equality: What Happens When Rights Collide?” by Linda McKay-Panos and Brian Seaman. These seemed relevant to the issues.
3. We recorded the citation information for every potentially relevant article. Once the information was recorded, we looked for the articles either in print or online. Print articles obtained from the library are free, but the library may not have the journal you need. Finding articles online is much quicker, and they usually provide an abstract.
4. We read the remaining articles and noted relevant information that could be incorporated into the research memo.



## 2. Online Sources

Online sources are widely available and easily searchable; it is much more efficient to make use of them if possible. Searches usually produce an abstract, which makes the research process more efficient. The table below outlines four of the major searchable databases.

Source	Availability	Content
Scholar's Portal	Subscription; free for most Canadian university students	Searches over 7,300 academic journals and resources from libraries across Canada that can be provided via interlibrary loan
Quicklaw	Subscription; free for Canadian law students	Searches for case commentary and journal articles with a focus on legal journals. Also includes Words & Phrases search
Westlaw	Subscription; free for Canadian law students	Searches for case commentary and legal journal articles through LawSource databases; also includes Words & Phrases search
HeinOnline	Subscription; free for most Canadian university students	International database search; emphasis on historical content

Searching print and online sources for articles on polygamy will generate many articles. For this reason, articles chosen for use in the memorandum will vary from person to person. A typical list might look like the following:

- Al-Krenawi, A & JR Graham, "A Comparison of Family Functioning, Life and Marital Satisfaction, and Mental Health of Women in Polygamous and Monogamous Marriages" (2006) 52:1 Int J Soc Psychiatry 5.
- Bailey, Martha et al, *Expanding Recognition of Foreign Polygamous Marriages: Policy Implications for Canada*, Queen's Faculty of Law Legal Studies Research Paper Series, No 07-12 (Kingston, ON: Queen's University, 2006).
- Bala, Nicholas, "Why Canada's Prohibition of Polygamy Is Constitutionally Valid and Sound Social Policy" (2010) 25:2 Can J Fam L 165.
- Drummond, Susan, "Polygamy's Inscrutable Mischief" (2009) 47:2 Osgoode Hall LJ 317.

Jütting, Johannes & Christian Morrisson, *Changing Social Institutions to Improve the Status of Women in Developing Countries*, OECD Development Centre: Policy Brief No 27 (Paris: OECD, 2005).

## H. Limitations on Section 2(a) Rights

Section 1 of the *Canadian Charter of Rights and Freedoms* “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

## I. Reasonable Limits

Using the same methods we had used previously led us to several relevant cases related to section 1 of the *Charter*:

**Case Name and Citation:** *R v Oakes*, [1986] 1 SCR 103, 26 DLR (4th) 200

**Procedural History:** SCC case, on appeal from Ontario Court of Appeal

**Facts:** Challenge to a law (the *Narcotic Control Act*) created a reverse onus whereby possession of an illegal narcotic created a rebuttable presumption that there was intent to traffic. The issue was whether this presumption violates section 11(d) of the *Charter*.

**Issues:** Is a reverse onus a reasonable limit prescribed by law as defined by section 1 of the *Charter*?

**Decision:** No rational connection between possession and presumption of trafficking.

**Ratio:** This is the leading case regarding the application of section 1 of the *Charter*. *Oakes* outlines the test that should be used when determining whether an infringement on a right or freedom can be justified under section 1. An infringement must meet two criteria, with the burden of proof resting on the government:

1. The objective that the law seeks to achieve must be of pressing and substantial concern in a free and democratic society.
2. The means chosen must be reasonable and demonstrably justified.
  - a. The measures must be rationally connected to the objective.
  - b. The means chosen should impair as little as possible the right or freedom.
  - c. There must be proportionality between the effects of the measures and the objective.

*RJR-MacDonald Inc v Canada (AG)*, [1995] 3 SCR 199, 127 DLR (4th) 1

Decided after *Oakes*, this Supreme Court of Canada case imposes a stricter burden on the government to *demonstrate* why the right or freedom must be limited. The government cannot rely on abstract arguments; actual evidence must be presented to justify the limitation of the right or freedom in question. The court takes a contextual approach with regard to the amount of deference that should be given to Parliament. The standard of proof required in a section 1 analysis is not a stringent one; it is similar to the standard of proof required in a civil case, where the court will weigh the evidence on a balance of probabilities.

The rational connection test does not require scientific evidence of a relationship between the objective and the measures used to achieve that objective; rather, a causal link must be shown on the basis of reason or logic. In *RJR-MacDonald*, it was reasonable to draw a link between cigarette advertising and smoking.

*RJR-MacDonald* elaborates on the minimal-impairment criterion set out in the section 1 analysis. In *RJR-MacDonald*, the government had to show that the infringement impaired the right in question—the right to freedom of expression—as little as reasonably possible. In this instance, the Court recommended giving some leeway to the legislature; Justice McLachlin wrote, at paragraph 160, that “if the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement.”

*Harper v Canada (AG)*, [2004] 1 SCR 827, 239 DLR (4th) 193

This Supreme Court of Canada case can be used to further explain the first stage of the section 1 analysis. The Court suggested that, in characterizing the objective, the government should be as specific as possible. Definitive social science evidence is not needed to show harm.

*Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835, 120 DLR (4th) 12

This Supreme Court of Canada case is the authority for the final stage of the section 1 analysis. This part of the test is meant to determine whether the benefits of the limitation are proportional to the deleterious effects of limiting the *Charter* right. This part of the test is more effects focused than the other parts of the section 1 analysis.

## J. Summary

The results of the research that we obtained from following the processes described in this appendix were summarized and became the basis for a memorandum of law concerning Mr. Kane’s legal issue. The *Blackmore* and *Reference* decisions factored strongly in our opinion, though these decisions are not binding. Below is an example of how we would structure a memorandum of law based on the information that we found through our research processes.

## IV. Structure of a Memorandum of Law

To: Supervising Lawyer  
From: Law Student  
Date: Today's Date  
Re: Garnett Kane:  
Criminal Law – Constitutional Law – *Criminal Code* – *Canadian Charter of Rights and Freedoms* – Polygamy – Conjugal Union – Freedom of Religion

### Facts

In this section, restate the relevant facts as you understand them. This will provide a basis for future work on the file. Remember to include:

- Names
- Places
- Dates
- Procedural history
- Surrounding circumstances
- Any other relevant information

### Issues

Here you will outline the issues that the memorandum will address. In this case, they can be stated as:

1. Will Mr. Kane be convicted of polygamy pursuant to section 293 of the *Criminal Code*?
2. Does the prohibition of polygamy under section 293 of the *Criminal Code* violate Mr. Kane's section 2(a) freedom of religion under the *Canadian Charter of Rights and Freedoms*?
3. If Mr. Kane establishes a section 2(a) *Canadian Charter of Rights and Freedoms* infringement, is that infringement justified under section 1 of the *Charter*?

### Brief Answer

Complete this section as a final step. This will be a brief summary of key facts and law that answer the questions posed in the Issues section of the memorandum.

### Discussion

Will Mr. Kane be convicted of polygamy pursuant to section 293 of the *Criminal Code*?

Restate each issue before providing the analysis. In this section, provide a brief answer to the issue outlined above, for example:

**"Mr. Kane will likely be convicted of polygamy because he admits to the essential elements of this crime."**

## **Analysis and Synthesis of the Law**

### **Legislation**

In this section, restate the *Criminal Code* provision. Where relevant, outline the amendments that you have discovered through the backdating process and the reasons for those amendments, to the extent that this information is relevant and available.

### **Jurisprudence**

In this section, provide a summary of the relevant case law that you found in your research. Provide a summary of the purpose of the polygamy provision and the elements of the offence.

### **Application of the Law to the Facts of this Case**

To the extent that they are available, outline the facts as they apply to the elements of the offence. This section may change over time if more facts are discovered.

Carry out the same exercise for each of the remaining issues using your research. The subheadings in your memorandum may look like this:

## **Does the prohibition of polygamy under section 293 of the *Criminal Code* violate Mr. Kane's section 2(a) freedom of religion under the *Canadian Charter of Rights and Freedoms*?**

### **Analysis and Synthesis of the Law**

#### **Legislation**

In this section, restate the *Charter* provision as well as the remedies for a breach of that provision.

#### **Jurisprudence**

In this section, provide an overview of the relevant jurisprudence that you found in your research for section 2 of the *Charter* as well as the appropriate test to determine whether there is an infringement.

#### **Application of the Law to the Facts of this Case**

Our research indicates that the appropriate section 2 test is found in *Amselem*. The following subheadings will apply the facts to that test.

##### **Purpose of the Prohibition of Polygamy**

##### **The Sincerity of Mr. Kane's Beliefs**

##### **The Intrusion of Section 293 on Mr. Kane's Beliefs**

#### **Conclusion**

If Mr. Kane establishes a section 2(a) *Canadian Charter of Rights and Freedoms* infringement, is that infringement justified under section 1 of the *Charter*?

(Continued on the next page.)

## **Analysis and Synthesis of the Law**

### **Legislation**

In this section, restate the relevant *Charter* provision.

### **Jurisprudence**

In this section, provide an overview of the relevant jurisprudence that you found in your research in relation to section 1 of the *Charter*, as well as the appropriate test to determine whether the infringement is justified.

### **Application of the Law to the Facts of this Case**

Our research indicates that the appropriate section 1 test is found in *Oakes*. The following subheadings will apply the facts to that test.

### **Pressing and Substantial Objective**

### **Rational Connection**

### **Minimal Impairment**

### **Deleterious and Salutary Effects**

### **Conclusion**

## **Conclusions and Recommendations**

In this section, compile all of the information from your memorandum and provide a conclusion as well as recommendations on how to proceed.

## **Table of Authorities**

## V. Structure of a Factum

Assume that Garnett Kane was charged and found guilty of practising polygamy contrary to section 293 of the *Criminal Code*. The trial judge found that all of the elements of the offence were proven beyond a reasonable doubt. The trial judge found that polygamy was not an essential requirement of the Ideal Life Path faith (citing the inconsistent beliefs among followers), and it was not a religious tenet for followers, thus section 2 was not infringed. The judge did not undertake a section 1 analysis.

After consulting with your client, your instructions are to appeal the judge's findings on the *Charter* issues only. You review the appellate court rules and find that a factum is required.

Below is a sample of the structure of a factum that might be created for this case.

**NB:** You'll notice that a well-researched and well-drafted memorandum will lead to a more efficient factum drafting process. When completing a factum,

jurisdictional rules apply. Please consult your appellate court rules to ensure that specific formatting conventions are followed. As a guide, use precedents from major cases which are available in court files and online.

	<p><b>[APPEAL COURT]</b>  <b>ON APPEAL FROM</b>  <b>[TRIAL COURT]</b></p>	
BETWEEN:	GARNETT KANE	<b>Appellant</b>
	-AND-	
	HIS MAJESTY THE KING	<b>Respondent</b>
<b>APPELLANT'S FACTUM</b>		
NAME		
Counsel for the Appellant		
ADDRESS		
<b>Part I</b>		
<b><u>FACTS</u></b>		
<p><i>In this section, outline the facts, procedural history, issues, and remedy sought. Use subheadings to organize each section of the factum to help the reader navigate the document more easily. While a factum should be a persuasive document, the Facts section contains facts and not argument. Include the facts that support your client's argument, as well as those facts that must be explained, even if those facts are not necessarily helpful to your argument. If your client is the appellant as in this case, you must provide a compelling legal basis for an appeal court to overturn the trial decision. If your client is the respondent, you must provide a similar argument that supports the decision reached at trial.</i></p>		
Overview		
<p>1. Section 2(a) of the <i>Canadian Charter of Rights and Freedoms</i>, which protects an individual's freedom to religious beliefs and practice, will be invoked when state legislation impermissibly infringes on the individual's freedom to practise their religion. Garnett Kane ("Mr. Kane") argues that the operation of section 293(1)(a)(i) of the <i>Criminal Code</i> unjustifiably infringes on his section 2(a) <i>Charter</i> freedom to practise his religion.</p> <p style="padding-left: 40px;">RSC 1985, c C-46 [Code]</p> <p style="padding-left: 40px;"><i>Canadian Charter of Rights and Freedoms</i>, Part I of the <i>Constitution Act, 1982</i>, being Schedule B to the <i>Canada Act 1982 (UK), 1982</i>, c 11</p>		

(Continued on the next page.)

2. Mr. Kane is a member of a religious organization, the Ideal Life Path (“ILP”). He is a high-ranking spiritual leader within the ILP organization. Currently, and according to his faith, he has entered into marriages with three women.
3. He was charged on [DATE] under section 293(1)(a)(i) of the *Criminal Code*, which prohibits the practice of polygamy. Mr. Kane was convicted on [DATE] in the [TRIAL COURT] of one count of polygamy pursuant to the *Code*.

*The remainder of the subheadings in the Facts section might include:*

***Trial judgment***

*Summarize the decision at trial.*

***Ideal Life Path history***

*Provide a description of ILP.*

*Polygamy beliefs within ILP.*

*Provide a description of the polygamy beliefs within ILP.*

***Mr. Kane’s personal belief***

*Provide a description Mr. Kane’s beliefs in relation to polygamy.*

***Legislation***

*Restate the relevant legislative provisions of the Criminal Code and the Charter.*

**Part II**

QUESTIONS IN ISSUE

*In this section, provide the issues that the court must consider. For the Appellant, identify the error(s) of law that you will argue were made by the trial judge.*

*For example:*

1. The practice of polygamy by Mr. Kane is a religious tenet that is protected by section 2(a) of the *Charter*.
  - a) *The Supreme Court of Canada test for section 2(a) was misapplied.*
  - b) *The validity of religious beliefs is not dependant on the beliefs of the religious community.*
  - c) *Polygamy is a Way of Life Principle, which obligates members of the ILP to its practice.*
2. The section 2(a) *Charter* infringement is not justified under section 1 of the *Charter*.
  - a) *The purpose of the prohibition of polygamy is not pressing and substantial.*
  - b) *Criminalization of polygamy is not rationally connected to the objective of preventing harm.*



- c) *The objective of the legislation can be achieved in a manner that does not infringe on freedom of religion.*
- d) *The deleterious effects of this infringement are not proportional to the salutary effects.*

### **Part III**

#### STATEMENT OF ARGUMENT

*Restate each issue and provide argument concerning the error of law committed by the court below and outlining your submission as to the correct analysis. (Include a statement on the standard of review, in which you identify the degree of deference that the court should grant to the trial judge.)*

*For example:*

#### **A. POLYGAMY IS A RELIGIOUS TENET THAT IS PROTECTED BY SECTION 2(A) OF THE CHARTER.**

##### ***Standard of Review***

1. The principles of correctness and reasonableness necessitate that the *Amselem* test be applied in the proper manner (*Dunsmuir*). As discussed below, the learned justice incorrectly considered irrelevant facts when determining the religious status of polygamy. Further, the justice incorrectly applied a value judgment when determining Mr. Kane's sincerity of belief.

*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 34 [*Dunsmuir*].

*Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 55, Iacobucci J [*Amselem*].

##### ***The Supreme Court of Canada test for section 2(a) was misapplied***

2. At its core, the decision of the learned justice in dismissing Mr. Kane's sincerity of belief in his faith is founded in a misapplication of the test set out by the Supreme Court of Canada in *Amselem*. Specifically, *Amselem* states that the test for freedom of religion in section 2(a) of the *Charter* consists of a two-step test that must determine whether:
  - a) the impugned legislation infringes a specific religious aspect, and
  - b) the interference is substantial/non-trivial.

This test determines the validity of the religious belief and its worthiness to be protected under the *Charter*. The test will be applied when determining a section 2(a) violation.

*Amselem*, *ibid* at paras 56–57.

(Continued on the next page.)

3. The learned justice erred by considering the inconsistent practice of polygamy within ILP as a basis for dismissing an infringement of Mr. Kane's religious beliefs. The first part of the *Amselem* test requires that a law infringes on a specific religious aspect. A religious belief is found to exist (and be worthy of protection) when an individual's belief or practice has a nexus with a religious aspect of their faith, irrespective of the wider belief or practice. Further, the belief must be sincere and be subject to a non-trivial level of interference.

*Amselem*, *ibid* at para 5.

*Next, present the facts that establish the sincerity of Mr. Kane's belief.*

***The validity of religious beliefs is not dependent on the beliefs of the religious community***

*Make additional argument in this section that explains facts and law that should be applied.*

***Polygamy is a Way of Life Principle, which obligates members of the ILP to its practice***

*Make additional argument of the section that explains how the facts and law should be applied.*

**B. THE SECTION 2(A) CHARTER INFRINGEMENT IS NOT JUSTIFIED UNDER SECTION 1 OF THE CHARTER.**

*In this section, you will review the test outlined in Oakes to argue that the infringement of section 2 of the Charter is not justified under section 1 of the Charter. Each prong of the Oakes test should be discussed separately. For example:*

***The purpose of the prohibition of polygamy is not pressing and substantial***

4. The first step in determining whether a *Charter* infringement is justified under section 1 is to determine whether the objective of the legislation is "pressing and substantial in a free and democratic society" (*Oakes*). The court will examine the impugned legislation's original purpose; the purpose cannot shift over time (*Big M Drug Mart*). The government cannot create a new purpose for the law simply based on the "current utility of the impugned provisions" (*Zundel*). Furthermore, the government must be precise in stating an objective in order to allow the court to evaluate its importance and the means that are used to achieve it (*Harper*).

*R v Oakes*, [1986] 1 SCR 103 at para 69, 26 DLR (4th) 200, Dickson CJ [*Oakes*].

*Big M Drug Mart*, *supra* para x at para 91.

*R v Zundel*, [1992] 2 SCR 731 at para 45, 95 DLR (4th) 202, McLachlin J [Zundel].

*Harper v Canada (AG)*, 2004 SCC 33 at para 92, Bastarache J [Harper].

*Given the Reference case with respect to the purpose of the law, this will be a difficult argument to make. You might choose to not make an argument for this section, or given the language used in Big M, you may want to discuss the original purpose that you found in your research—to prevent Mormon immigration—as not being pressing and substantial.*

***Criminalization of polygamy is not rationally connected to the objective of preventing harm***

*In this section, you may choose to argue that criminalization of polygamy itself is not the best means for addressing the harms cited by the Crown. In that case, your argument may start like this:*

5. Concerning the potential for harm resulting from polygamy, the Appellant respectfully submits that criminalization is not the best means for preventing such harm. The measures adopted by the government to achieve a particular objective must be rationally connected to that objective; a causal link must be shown.

*Oakes, supra* para x at para 70.

*RJR-MacDonald Inc v Canada (AG)*, [1995] 3 SCR 199 at para 86, 127 DLR (4th) 1, McLachlin J [RJR-MacDonald].

6. The Crown argues that polygamy results in patriarchal, coercive relationships, where women and children are disproportionately affected. The method the government has taken to prevent this harm is criminalization of polygamy.
7. Criminalization forces polygamy to move underground, thereby removing it from the ambit of government regulation. Furthermore, removing a husband and father from his family and incarcerating him increases the harm to the women and children in the family by depriving them of economic support. Regulation, rather than criminalization, would be more rationally connected to harm prevention as the criminalization only serves to add to the potential harm that could be caused.

Susan Drummond, "Polygamy's Inscrutable Mischief" (2009) 47:2 Osgoode Hall Law Journal 362.

(Continued on the next page.)

***There are ways to achieve this objective that do not infringe on freedom of religion***

*Next, you will move on to the minimal impairment stage. Your argument here may start like this:*

8. In the minimal impairment stage of the *Oakes* analysis, the Crown must establish that the law is minimally impairing on the Appellant's freedom of religion and falls within a range of reasonable alternatives to achieve the objective. While the impairment must be minimal, a court will provide some leeway to the legislature when drafting its legislation. Even though a court may find an alternative, this does not immediately render the law overbroad.

*Oakes, supra* para x at para 70.

*RJR-MacDonald, supra* para x at para 160.

9. The impugned legislation prohibits all forms of polygamy. This complete ban on polygamy criminalizes those who engage in consensual relationships, such as Mr. Kane. A less impairing alternative is already in effect; laws aimed at harm prevention, such as the duty to provide the necessities of life exist and could be strengthened and adopted into regulations surrounding polygamous marriages. Prohibiting polygamy does nothing to give additional effect to the prevention of harm and is only a punitive measure that affects everyone in these relationships.

Martha Bailey et al, *Expanding Recognition of Foreign Polygamous Marriages: Policy Implications for Canada*, Queen's Faculty of Law Legal Studies Research Paper Series (2006) Queen's Univ Legal Studies Research Paper No 07-12 at 19.

***The deleterious effects of this infringement are not proportional to the salutary effects***

*Finally, you will argue that the deleterious effects of the provision outweigh the salutary effects. There are a number of arguments that can be made. One such argument may be that the prohibition drives the practice underground, where the perceived harms that may flow from the practice are less likely to be discovered by authorities (similar to the decision in Canada (AG) v Bedford, 2013 SCC 72).*

**Part IV**

**STATEMENT OF THE ORDER SOUGHT**

*In this section you will outline your summary position and the remedy you are requesting. For example:*

1. The Appellant requests that this appeal be allowed, and the decision dated [DATE] be set aside for the following reasons:
  - a) the Appellant's section 2(a) *Charter* freedom was infringed by legislation prohibiting the practice of polygamy,

- b) the section 2(a) infringement is not justified under section 1 of the *Charter*, and further
- c) section 293 of the *Code* be struck down under section 52(1) of the *Constitution Act, 1982*.  
*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 52*.  
*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*.

[DATE]

\_\_\_\_\_  
[Lawyer's Signature]**Part V**TABLE OF AUTHORITIES*Attach a Table of Authorities, listing all the sources used, and a back page.***REFLECTIVE SUMMARY: APPROACHING LEGAL PROBLEMS IN PRACTICE**

The research steps outlined in this Appendix would undoubtedly be required for circumstances similar to the ones presented in Mr. Kane's fact pattern. That is, complex constitutional cases typically require more historical case law research than cases in, for example, the civil sphere. For most students and junior lawyers, however, online research will be sufficient for most legal issues. Primary sources of law are always paramount, but secondary sources—particularly in legal journals and case commentaries published by law firms—can help you narrow down your search and point you to cases that you may not otherwise have found in your search. You may also have access to a wealth of information that is neither online nor in print: your colleagues. Those good habits that you developed in law school, particularly in respect of professionalism and civility, would have enabled you to develop a large network of lawyers that you could learn from. Discussing unique legal questions with your colleagues may assist you in finding the right direction in terms of your research (but remember not to disclose anything confidential or otherwise privileged).

Notwithstanding the foregoing, you may find yourself in a position where consulting print sources is necessary, so knowing how to navigate print case reporters, *Hansard*, and other primary and secondary sources is important to ensure that, when those instances occur, you are not learning how to do this for the first time.

Lawyers are required to provide competent legal representation regardless of the legal issues before them. Lawyers also must consider how to manage their

time to ensure that needless research is not conducted as clients do not expect to pay for an approach that is overly exhaustive (unless you are, for whatever reason, instructed to do this). Knowing where to look from the outset and becoming more efficient in your research will come with time. A task that takes a junior lawyer ten hours may take a senior lawyer two hours simply as a result of a greater familiarity with the legal issues at hand. When reporting to a more senior lawyer, it will be important to demonstrate that you have conducted an appropriately exhaustive search, but do not feel the need to list the results from every resource, particularly if the results were unhelpful. Focus on the most important results from your search—those that are binding, on point factually and legally, and have positive treatment.

Finally, remember that most disputes never make it to the courtroom. The closer you get to formal submissions before a judge, the more exhaustive your research should become (especially as you develop the various directions that witness testimony and cross-examination can take). This is something that a more senior lawyer can guide you through. Up until then, parties to litigation are typically positioning themselves both for litigation and for negotiation. Develop your case and know your strengths and weaknesses with both fact and law, but do not stop developing your case. It could be years before you are in a courtroom litigating and, particularly as new facts emerge, more research will always be needed to build upon the foundation that you laid out in the beginning.<sup>3</sup>

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3 If it were necessary to update the research and citation references to the present date, several additional steps would be undertaken. Legislation would be examined to determine if amendments had altered any aspect of the relevant sections. If amendments were found, the legislative history would be undertaken to determine the reason for the legislative change. Newly decided case law that considered the relevant sections of the *Criminal Code* would be examined. New binding judicial decisions that examined the applicable sections of the *Charter* would be considered. Secondary sources that considered policies foundational to the creation of the legislation would be reviewed. The memorandum of law or factum would be updated to reflect the updated status of the law. Finally, citation references would be updated using the most recent version of the *Canadian Guide to Uniform Legal Citation*, presently in its 10th edition.