

PART I

Introduction to Legal Research

Chapter 1 The Basics of Legal Research

The Basics of Legal Research

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Learning Outcomes

After reading this chapter, you will understand:

- The purpose and the basic steps of legal research
- The categories of law
- The sources of law
- The difference between primary sources of law and secondary sources
- The differences between print sources of law and online sources
- What it takes to be a good legal researcher

Introduction

Every legal professional will be called on from time to time to perform legal research. Lawyers and paralegals are also required to be competent at legal research in order to fulfill their competency duties to their clients under their professional rules of conduct and under the law. Law clerks and legal administrative assistants will often receive instructions from their supervising lawyers asking them to provide preliminary research. And if, after reading this book, you decide you love doing legal research, you can make a career out of providing competent legal research to law firms on a freelance basis.

Yes, you can actually love legal research. If you enjoy solving problems and looking deeply into legal issues, legal research can be fun. A good legal researcher is always going to be in demand, despite advances in artificial intelligence.

In this chapter, we will look at the fundamentals of research in legal practice.

The Purpose and Basic Steps of Legal Research



See Emond's tips for navigating your textbook on LAW+.

All research, legal or otherwise, has the same purpose: to gather information. If you are in an unfamiliar city and you want to find the nearest Tim Hortons, you will likely ask your phone to "find the nearest Tim Hortons." That is research. Similarly, if you are drafting a document that must be filed in a courthouse other than the one that you deal with most often, you will search for the address of that courthouse online. That, too, is research. The Tim Hortons search obviously doesn't require you to have any special legal knowledge, but the courthouse search will require you to understand how the legal system is organized by geographical location and court authority—both of which we refer to, somewhat confusingly, as "jurisdiction."

**BOX
1.1**

AN EXAMPLE OF LEGAL RESEARCH

If you would like to garnish the wages of a debtor who works in Comox, British Columbia (BC), you will have to know where to file the garnishing order. There is no courthouse in Comox, so you need to understand that Comox is in the regional district of Courtenay, and the Courtenay regional district courthouse is located at 420 Cumberland Road, Rm 100, Courtenay, BC V9N 2C4. If you don't understand that BC is organized into judicial districts and you file the garnishing order in the wrong courthouse, the creditor won't be able to collect their debt through garnishment.

Consider a situation where you must file an order for spousal support. You must understand which court has jurisdiction over enforcement of spousal support orders if you are going to file the order in the correct courthouse. Without some basic legal knowledge, you will not understand what is being asked of you.

BOX
1.2**ANOTHER EXAMPLE OF LEGAL RESEARCH**

Your client comes in and tells you that they are unsatisfied with the work that the construction firm “Bob the Builder” performed on their house, and they would like to know if they have any recourse. You may be asked to conduct a search to find out the correct legal name of Bob the Builder. Is it a corporation or a sole proprietorship? If it is a corporation, is it federally incorporated or provincially incorporated? Is it a numbered company?

We tend to think of legal research as a more formal process of finding legislation, cases, or explanations that answer legal questions—we refer to these as “legal issues.” This type of legal research will be the focus of much of the rest of this book.

All research, legal or otherwise, involves the same standard steps:

- identify an *issue* after hearing a client’s story,
- identify the *research tools* that will help you to find answers for the client,
- read and understand *the sources* you find,
- apply *the law* you find so that you can solve the client’s problem, and
- put your answers in *writing*.

A legal professional will conduct legal research to learn about the law, so that they can advise the client. For example, consider the following situations, each involving a different area of law:

- A commercial lawyer researches legislation to advise a client whether they can cancel a gym membership that they signed up for on January 2 in order to fulfill their New Year’s resolution.
- A family lawyer researches legislation and case law to advise a client whether the foreign divorce they got is valid and whether they can marry again in Canada without committing bigamy.
- A tax lawyer researches legislation to find out whether a client’s business expense is deductible for tax purposes.
- A paralegal or lawyer researches case law and court rules to determine how documents are to be served when bringing a motion or application.
- A paralegal researches legislation and case law to advise a landlord client about whether they have grounds to evict their residential tenant.

Good legal research requires you to be thorough. If you were to miss or overlook case law, statutes, or rules, and incorrect or even bad advice was provided to a client, opposing counsel, or used in court, it would compromise your client’s position. This could lead to a complaint or, if serious enough, an insurance claim being made to your lawyer’s insurance fund.

Categories of Law

It may surprise you to learn that no legal professional knows all the law all the time. But all competent legal professionals have to know *enough* law to understand where to start looking for answers. If a client comes to the lawyer asking whether they have any recourse against their home builder because their basement floods every time it rains, the lawyer must know enough to realize that the client won't be helped by research into landlord and tenant law or nuisance law (even though a flooded basement is definitely a nuisance). The lawyer should really know that this client's story deals with the sale of land and, in particular, with the obligations of a builder toward the purchaser of a new home.

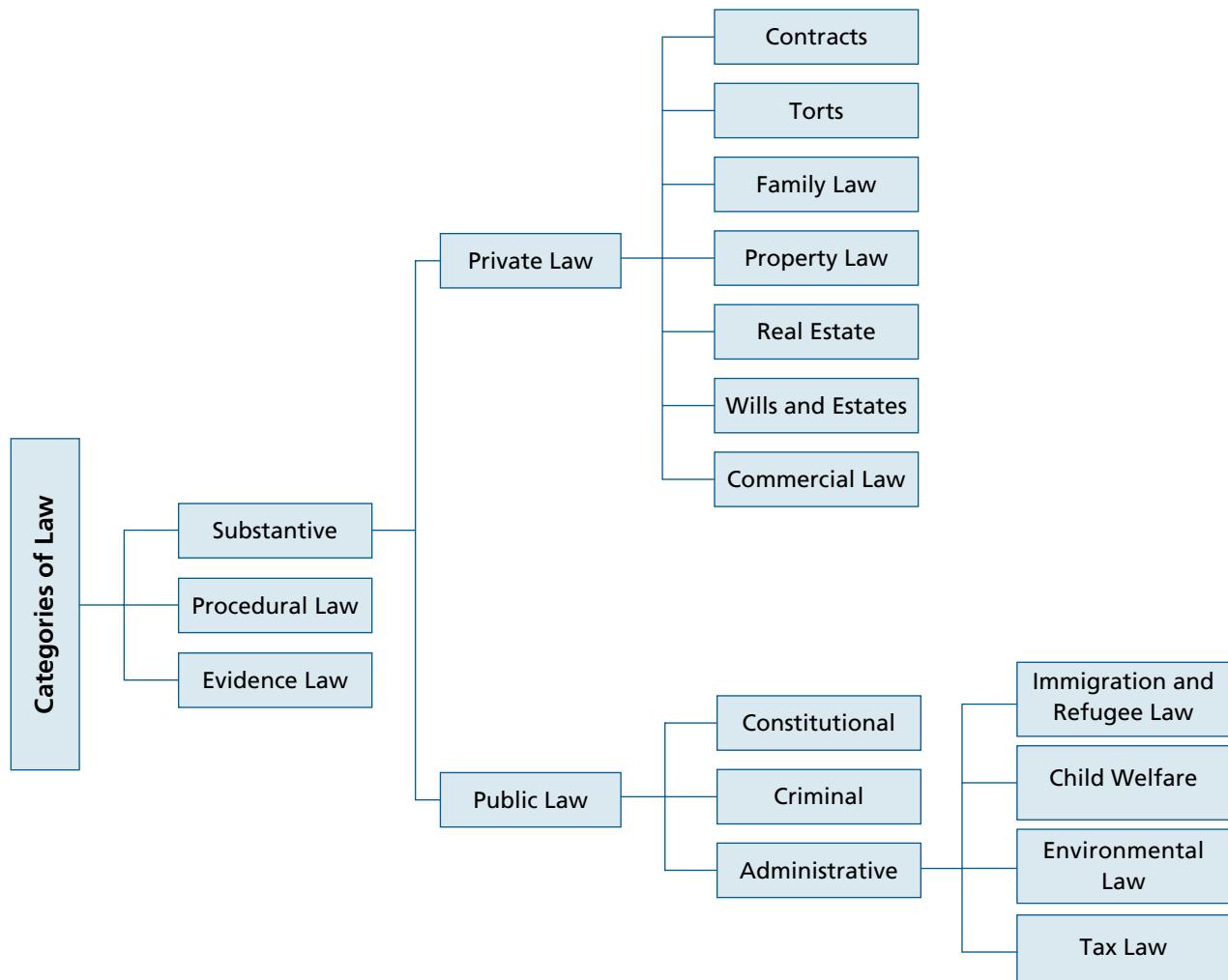
substantive law

defines legal rights and obligations; legal rights may be enforced by way of legal proceedings, so substantive law also includes defences to legal proceedings

That level of understanding comes with experience in a given area of law. Beginning legal researchers should start by understanding the three broadest categories of law:

- **Substantive law** defines legal rights and obligations. Legal rights may be asserted by way of legal proceedings, and substantive law also sets out defences to such proceedings.

FIGURE 1.1 Categories of Law



- **Procedural law** sets out the process that a party, court, tribunal, or administrative tribunal must follow.
- **Evidence law** governs how facts are proven and whether evidence is admissible in court.

Substantive law may be further divided into public law and private law. **Public law** governs the relationship between legal persons (individuals, partnerships, and corporations) and the state (federal, provincial, or municipal government), while **private law** governs the relationship between legal persons. The different categories of private law and public law are shown in Figure 1.1.

procedural law

sets out the process that a party must follow to enforce their rights in a court proceeding or to defend a proceeding

evidence law

sets out the manner in which facts are introduced and proved in a trial or a proceeding

public law

governs the relationship between legal persons (individuals, partnerships, and corporations) and the state (federal, provincial, or municipal government)

private law

governs the relationship between legal persons

Sources of Law

When we refer to “sources of law,” we are asking “where does the law come from?” Or, put another way, “how do we know what the law is?” Without knowing anything about the law, we might think that every law is written down in a “book of laws,” and we just have to look for it. In Canada, this is partially true. Many of our laws are written down. We call these written laws “legislation,” or more specifically, statutes, regulations, and rules.

Legislation consists of statutes, regulations, and rules that are created by a government. In Canada, we have a federal government responsible for laws that apply across the entire country, and we have provincial or territorial governments that make laws that apply only within their province or territory. In some cases, a city or municipality has the power to create laws that will apply within their boundaries. We will discuss this further in Chapter 2.

Laws in Canada (with the exception of Quebec) also come from “cases,” which are decisions made by judges in previous cases. This body of law is referred to as case law or the common law. We will discuss case law in greater detail in Chapter 4.

Primary Versus Secondary Sources

In legal research, we distinguish between primary sources and secondary sources.

Primary sources are the law itself, so legislation and case law are referred to as “primary sources.” **Secondary sources** tell us *about* the law. They may help us to find primary sources, or they may discuss how the primary sources fit together or how they contradict each other. Secondary sources can also provide us with summaries, explanations, or even charts describing trends in the law. Some of the more common secondary sources include:

- legal encyclopedias,
- digests of cases,
- indexes to statutes,
- textbooks,
- articles,
- legal commentary, and
- legal blogs.

primary sources

the statutes, regulations, by-laws, and case decisions that create the law

secondary sources

sources that summarize, discuss, or explain primary sources and include legal encyclopedias, digests of cases, indexes to statutes, textbooks, and articles

Although secondary sources are often considered a good place to start your research of a legal topic, when you perform legal research, you cannot rely on

secondary sources alone. Secondary sources are the tools that help you gain an understanding of the law and direct you to the primary sources that actually create the law. Secondary sources can provide valuable interpretations and summaries of the larger body of primary sources, but you must ultimately consult the primary source for a statement of The Law.

Print Sources Versus Online Sources

Until recently (meaning within the last 30 years or so), legal sources were available exclusively in print. Now, most legal researchers rely almost exclusively on online sources. Most current legal sources are most easily accessed online, even though print versions exist. Online versions of legislation can be accessed through government websites or specialized legal research platforms (see Chapter 8). Case law may be made available by some courts (e.g., the Supreme Court of Canada); some law society websites, such as the Law Society of Ontario; or through legal publishers. Case law is also accessible through online legal research platforms, which (sometimes for a fee) combine the finding features of a secondary source with direct access to the primary sources themselves. CanLII is one such platform, which we will discuss in detail in Chapter 8.

While legal research is now performed predominately using online sources, there are still some advantages to using print sources. First, it can be easier to browse through print sources to see how your research topic fits within the general area of law you are researching. Online sources, by comparison, will show you only what you ask to see in your search parameters. Second, online sources—in particular, the sources that provide statutes, regulations, and by-laws—extend only so far into the past and therefore may not be able to show you the law that governed when your client's legal problem arose. If you want to see a version from before 1990, you may need to use print sources.

What It Takes to Be a Good Legal Researcher

You will rely on the legal research you perform to give legal advice to a client or to initiate legal action. Your legal research must therefore be accurate. This means the following:

- Your final information must come from the most reliable sources—that is, primary sources.
- You must find *all* the relevant statutes, regulations, by-laws, and case law decisions, and then make sure that the statutes, regulations, or by-laws have not been amended (changed) or repealed (deleted), and that the cases still represent the most current version of the law.
- Finally, you must understand the information you have found so that you can communicate your research results accurately.

KEY TERMS

evidence law, 7
primary sources, 7
private law, 7

procedural law, 7
public law, 7
secondary sources, 7

substantive law, 6

EXERCISES

These exercises will introduce you to the basic steps of research and allow you to develop some standard research skills.

You will note that each of the situations presented below takes place in a different province. There are some preliminary matters for your firm to consider. Read each of the situations and then read the questions below each situation.

Suggest how you would go about finding the information required. Please feel free to use your creativity and powers of deduction! You are not being asked to consider questions of substantive law or procedure.

1. Blair Lovely was visiting Vancouver, BC. She was there to see Taylor Swifties at a concert at The Stadium in downtown Vancouver. While she was making her way down the concourse and to the suite at The Stadium, she slipped and fell on what appeared to be a spilled drink on the floor. Tyler Casey, a new friend of Blair's, witnessed the incident; he gave his telephone number to Blair before Blair was taken by ambulance to Vancouver Hospital. While Blair was recuperating at the hospital, a nurse entered her room in the middle of the night and stole an extremely valuable ring.

After her release from the hospital, Blair retained your law firm to bring two separate actions: one against The Stadium for damages for her injuries, and one against the Vancouver Hospital for the theft of her ring.

- a. What is the monetary jurisdiction of the British Columbia Supreme Court? Of the Provincial Court of British Columbia?
- b. What is the filing fee for a claim in the British Columbia Supreme Court? In the Small Claims Court BC?
- c. How can you find the location and telephone number of the Superior Court or the Small Claims Court location where your firm will file the initiating court documents?
- d. You need to contact the witness, Tyler Casey. Unfortunately, Blair lost his telephone number, but remembers that he lives in Kansas City, Ohio. How can you find Tyler's telephone number?
- e. Blair has an insurance certificate valuing the stolen ring at US\$23,950. In order to determine whether a legal action should be brought in the

Small Claims Court or the Supreme Court, you need to know the Canadian dollar equivalent of the US dollar amount at today's exchange rate. Where can you find this information?

- f. Legal research brings to light the somewhat similar BC case of *Holmes v Kidman*, and your firm would like to obtain the advice of the lawyer who was named in *Holmes* as counsel for the plaintiff. How can you find the lawyer's address and/or telephone number?
2. You work for a law firm in Red Deer, Alberta. A client of your firm signed her son up for dance lessons at a new dance studio, Sarah's Fly by Night School of Dance, that recently opened in her neighbourhood. To celebrate their grand opening, the studio had held an open house and offered a 50 percent discount to any families who registered and paid for a full year of dance lessons within the first week of opening. The owner of the studio, Sarah Plunket, even offered a money-back guarantee to any families who weren't completely satisfied after their first lesson.

Your client's son attended his first ballet class and absolutely loved it. He couldn't wait to go back the next week. But when your client got to the studio with her son all decked out in his new dance gear, she found the doors to the studio locked. The studio never reopened and Sarah Plunket was never heard from again. Your client wants to know if there is any way she can recover the \$2,000 she paid for the year of ballet lessons.

- a. Sarah's Fly by Night School of Dance had opened in a strip mall in your client's neighbourhood. You think maybe the owner of the strip mall might have some contact information

- for Sarah. How might you go about finding the owner of the strip mall?
- b. The lease for the dance studio was signed by Rhonda Randy. How might you go about finding this person?
 - c. You are pretty sure this wasn't Sarah's/Rhonda's first scam. Where might you look to see whether they have tried this before?
 - d. You determine that Sarah Plunket and Rhonda Randy are aliases used by a well-known fraudster, Marieva Magnipova. Her last known address is in Lethbridge, Alberta. Your client wishes to proceed with a claim against Marieva in the Small Claims Court. You need to file a statement of claim in the Lethbridge Small Claims Court. How would you find out the address for the courthouse?
 - e. You need to have the statement of claim served on Marieva. How would you find a process server?
3. You are working at a law firm in Ottawa, Ontario. Your client lives in Ottawa, but has a vacation property in Gananoque, Ontario. They hired a contractor to replace the old rotting wooden deck on the cottage with a completely new wraparound deck made of high-end composite decking material. Your client paid the first installment of the construction price, \$30,000. The contractor showed up at the cottage on the day that work was to begin, demolished the existing deck, and never showed up again. Your client has been unable to reach the contractor and had to hire another contractor to rebuild the deck. They had to pay 50 percent more to have the deck completed in time for the summer rental season because the cottage had already been rented for the entire months of July and August. The client wants to recover any damages they are entitled to from the contractor.
- a. You are asked to find any information you can about the contractor, Musa Afzal. How might you begin your search?
 - b. You find out that the contractor, Musa Afzal, has operated his business under several different names: Musa's Wrecking Crew, We-Wreck, and Musa's Renovations. You want to find out whether any of these businesses are registered corporations. How would you start your search?
 - c. The contract that your client signed with Musa Afzal lists a nine-digit Ontario corporation number. How can you verify if that number is correct?
 - d. You find on a few of your social media searches that Musa Afzal, AKA Moses Afzal, AKA Musa Ahmed has gained a dubious reputation for similar behaviour in the past. Several posters in the Gananoque, Thousand Islands, and the Brockville area have hired him to complete home improvement projects only to have him demolish the job site and leave with the deposit. How might you find out whether the police have opened an investigation into your client's contractor?