

ADVICE TO YOUNG LAWYERS: HOW TO FIND THE KILLER CASE

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I remember from my days as a young lawyer that much time is spent in legal research, toiling in the library for the senior partners. Of course today much of the toiling is done over a computer.

One of the crucial research skills that a young lawyer must learn is the ability to find the “killer case” – the case that solves the legal riddle, or is directly on point, and in your favour - and, in fact, there is a degree of fun and satisfaction in doing so.

I was invited by a managing partner of a Calgary law firm to address their students and young associates on how to go about finding the “killer case”, and these were my remarks.

1. Get Clear Instructions

It is imperative that you start off with a clear understanding of the facts and a clear understanding of what the assigning lawyer is looking for.

If the assigning lawyer simply calls you into his or her office to give verbal instructions, take notes, and ask for clarification. What is the question that the assigning lawyer wants answered?

Most research assignments will turn on their facts - “the law is the law is the law”. Do you need to see any background documents in order to clarify your instructions, such as a notice of motion and supporting or responding affidavits? Do you need to review the pleadings?

¹ With thanks to Allison Palmer of Bottom Line Research for her review of this article and helpful comments.

Even if the research instructions come to you by way of an instructing memorandum or email, make sure you have the facts and question asked pinned down.

Also key is to ask the assigning lawyer what the “research budget” is - how many hours do they anticipate you spending on this task? Do they want a quick answer and a few highlighted cases or do they want a thoughtful, detailed analysis in a research memorandum?

What is the deadline within which the assignment must be completed? Can you meet this deadline? (For it is far better to decline the assignment at the outset than to miss an agreed upon deadline).

2. Get a Broad Overview

One of the difficulties young lawyers get into from my observation is that once they have their research assignment they immediately start researching in the on-line databases on the computer.

It is important to get a broad overview of the problem before you commence computer research, however, and I therefore recommend that you roll up your sleeves and get into a library as a beginning point.

I like to start out by pulling out relevant texts, and I always pull out more than one, if available, as all of the authors have different viewpoints.

Another way to gain a broad overview is to browse through the Canadian Encyclopedic Digest, Halsbury’s, or perhaps a CCH volume that may be available. If a Rule of Court is involved then Stevenson & Cote and Fradsham’s texts are invaluable. (Be careful with the CED and other sources, however, as they may not flag the important cases as reference points, and you must assume that you will have to do this work on your own.)

After I have done this general browsing, I run an article search in Quicklaw, WestlaweCarswell, and sometimes Lexis. Frequently you will find an article right on point, or closely analogous to the problem at hand. The authors of the articles usually flag the leading cases and are generally more reliable in this regard than the CED, for example.

3. Start Chasing up Cases

Now that I have a clear understanding of the facts and the issues, and a broad overview of the problem, I start to “chase up the cases”. This is when I get on the computer.

Frequently I will have found cases referenced in the course of my broad overview, and start to note-up these cases and see where these follow up cases take me. At this time I also run my keyword searches, and see what comes up on the computerized databases. When you note-up a case on WestlaweCarswell secondary materials are also flagged, and I usually take the time to go through these articles, CED entries etc. as well.

In my “chase up the cases” endeavour, I am looking for two things -

1. the seminal, leading, and recent Alberta cases; and
2. the “good news cases” and the “bad news cases”.

With respect to point one, you will want to find cases of binding or highly compelling authority. You therefore are searching for any Supreme Court of Canada cases on point, and cases from the Alberta Court of Appeal or Court of Queen’s Bench of Alberta. In the absence of these cases, you will want to look for appellate authority from the other courts. If these do not come up, then you should look for authority in broader based jurisdictions, such as English House of Lords or English Court of Appeal cases, or perhaps, if you are really hunting, cases from the Australian courts. When all else fails I turn to American law.

You will also want to find your “good news cases” - cases that are closely analogous to your facts at hand and support your position. This is because of the principle that similar facts should lead to a similar result. You will also want to flag your “bad news cases” - cases that go against you, and that you will have to try to distinguish in your research memorandum, when you write it up.

It is when you are methodically chasing up cases in this fashion that you will usually have your Eureka! moment - the moment you find your killer case.

4. Expand the Hunt in Difficult Situations

There are occasions when your “killer case” does not come up by conducting the above steps and then you must conduct a broader hunt. The next step that I take is to manually browse through the topical reports in the area (as I have already conducted computer research in the topical databases) For example, for personal injury law, I browse the Canadian Cases on the Law of Torts and the Motor Vehicle Reports. If I find a merely helpful case, and not my killer case, I then “chase it up” as described above, and see if I can find my killer case in the chase up.

In my manual browsing I may also turn to the regional reports, such as the Digests and Indexes of the Alberta Reports and the Alberta Law Reports, (I have already searched in the Alberta databases on the computer), and see if there is anything helpful there, and chase it up.

When I am really on a hunt, and cannot find anything helpful, I sit down with the Canadian Abridgement, and budget several hours to go slowly through it looking for that killer case. You would be amazed what you can find when you take some time with the Canadian Abridgement. Of course, when I find a helpful case in the Canadian Abridgement, I then note it up on the computer, and chase up the resultant cases in the fashion discussed above.

If I have struck out on all of these approaches, I then, as a next-to-last resort, manually browse through The Digest, the English equivalent of our Canadian Abridgement, (I have already run searches on the Commonwealth database in Lexis). The Digest also references Commonwealth cases and if you spend some time with it you can often find a killer case buried in the minutia of these volumes, or perhaps a helpful case that you can note-up.

And just to flag for you, the “Words & Phrases” volumes are often helpful when you are on a hunt for a killer case - both the very helpful Canadian volumes published along with the Canadian Abridgement, now on-line on WestlaweCarswell, and also the extensive American Words & Phrases volumes.

When all else fails I turn to American law. This I research on the computer, and I use the Lexis system. Although American cases are not of precedential value, they can often be arguably persuasive, although great care must be taken to ensure that their result does not turn on the wording of a specific American statute.

5. Keep a Meticulous Research Trail

It is extremely important that you keep a research trail as you go along in your research. This is important for two reasons: (1) you may need to prove that you met the standard of care of a competent research lawyer for up to ten years into the future, and thus will have to be able to recreate the research methodology that you used; and (2) as a young lawyer you will frequently be interrupted in your research and called away to other tasks – it will therefore be important to look at your research trail to refresh your memory as to what you have already done before you were interrupted.

I personally keep a research trail by simply walking around the library etc. with a sticky note pad and writing down what I have done, including details of the specific subsections etc. that I have looked at in the Canadian Abridgement, the exact texts that I have looked

at etc. At the end of the day, when I am finished my research, I then simply staple these sticky notes down onto pieces of paper and staple them together. I also print off the summaries of my search terms keyed in on the databases when I am finished my research session and keep these in my file as part of my research trail. I am also very careful to keep all records of note-ups of cases as part of my research trail.

Eureka!

It is very satisfying when you have that Eureka! moment when you find your killer case-it is like finding a prize at the end of a maze.

Please feel free to email or telephone me to discuss your research process, as I am always happy to help. You can reach me at barbc@bottomlineresearch.ca or at 403-240-3142.