

BASIC LEGAL RESEARCH: HOW TO GATHER RAW RESEARCH MATERIAL

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In my opinion there are three steps required to prepare a legal research memorandum in response to a problem posed. First, you must gather raw research material, which will usually be comprised of case-law, statutes, regulations and rules, excerpts from texts and legal literature. Second, you must analyze these raw materials in order to ascertain the general principles of law governing your research problem. Third, you must apply these general principles of law to the facts at hand in order to come up with a conclusion.

In this article I will outline my admittedly subjective view of a basic research approach that you can take in order to gather raw research materials. I will also discuss the basic legal research tools which I feel are essential in order to gather raw research in a thorough manner and frequently comment on ways to access these tools efficiently. Reference will also be made to some supplemental research tools which can be accessed when you are really hunting for materials that bear on your research problem.

A caveat, however: these materials are always changing and care must be taken to ensure that you are dealing with the most current method of use.

1. Gain an Overview of the Problem

Whether you are researching an issue that has been given to you by the assigning lawyer or defining the issues in the course of your research, it is essential that you gain a general overview of the problem. This will prevent you from starting out your research with tunnel vision and allow you to understand better the research course that you must chart.

An excellent place to start is with the general texts addressing the subject area. Most often there will be several texts written by different authors available for your review, and it is usually to your advantage to take a look at them all. This is because each author will likely have a different view of the general area of law (although the differences may be subtle), and thus you will gain a spectrum of views. In reading the texts, however, be careful to assess which authors are setting out “black letter law” and which are merely advocating for what they would like the law to be.

Another tip for those using an in-house library – watch out for outdated texts. For budgetary reasons many librarians fail to purchase the most recent edition of a major text and you can find yourself working with outdated material. A simple way to find out whether there is a more recent text is to telephone the main library in your area and ask the reference librarian. (Usually the major law libraries in an area are located in a court-house or law school.)

In trying to gain an overview of the problem, another source that many faithfully use is the *Canadian Encyclopedic Digest*, 3rd ed. The C.E.D. titles offer a very general statement of the legal principles governing a subject area and also refer to case-law which supports these principles. If you know absolutely nothing about an area of law, the C.E.D. can be an excellent source to give you a broad overview.[†] I find the use of this research tool to be sometimes limited, however, for several reasons. It is my understanding that the titles of the C.E.D. are generally authored by different individuals, and, thus, the quality of the titles differ. I also frequently find that the statement of principles set out is so general that I have already derived these principles from a reading of the texts. Another difficulty with the use of the C.E.D. is that, even though it makes reference to certain cases to support the legal principles stated, this reference is by no means comprehensive and can not always be relied upon to set out the root and leading cases.

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† It also offers a quick way to find out the statutes governing an area of law. The C.E.D. is also useful in that it frequently provides cross-references to the Canadian Abridgment (2nd).

There are two versions of the C.E.D. that are published, the Western and the Ontario version. The major libraries usually have both versions and, if you are really hunting for case-law, it is not a bad idea to take a look at them both as case-law referred to in one version may be supplemented by the other.

Halsbury's Law of England, 4th ed., on the other hand, offers a far more comprehensive statement of the legal principles within a certain subject area. Care must be taken, of course, to ensure that the English and Canadian case-law do not diverge in the subject area that you are researching so as to render the English principles useless. However, as Canadian law has, in many respects, been derived from English law and as it, in many areas, continues to track English law, Halsbury can be an excellent source. Halsbury also usually offers a fairly detailed reference to the relevant case-law supporting the legal principles stated and usually cites the root and leading cases. Indeed Halsbury is such an esteemed research tool that it is considered fair ball to quote from it in a legal research memorandum.

2. See if Anyone Else Has Addressed the Problem

It is usually quite productive to search the various sources available in order to find out if anyone else has addressed the problem. If they have, this can usually provide you with a good starting point for your research. The basic sources which provide this information are the legal periodical indices. The leading Canadian legal periodical indices are the *Index to Canadian Legal Periodical Literature* and the *Canadian Legal Literature* volume of the *Canadian Abridgement* set. It is important that you search through both of these periodical index systems as, although they overlap to some extent, they are significantly different and it is worth your while to canvas both.

I am a great fan of the *Current Law Index*, a legal periodical index system that, because of its expense, is usually not found in a law firm or legal department library and must be accessed at the major libraries. Although the *Current Law Index* is an American

publication, it includes references to Canadian articles as well as those of other Commonwealth countries including Australia and New Zealand. (I am usually delighted to find Australian material as Australian courts are frequently on the cutting edge of the law.) If it is very important that I am completely thorough in my research or if I am striking out in hunting for materials pertaining to my research problem, I can frequently find something in the *Current Law Index*.

I am also a great fan of the *American Law Report* series that is available in the major libraries. This series is somewhat different from legal periodical literature, as it is usually thought of, as the A.L.R. series generally provides articles which merely review the leading American law in an area, without further analysis or critique. If you are striking out in your research, however, and find that you must fall back on American authorities, this series can usually give you access to the leading American authorities within a subject area.

Another source to search for a list of relevant legal periodical literature is the beginning of some C.E.D. titles. Not infrequently a C.E.D. title will commence with a list of the periodical literature relevant to the subject area.

You should also check to see if there is a research guide prepared by the legal education division of your Law Society or others. These guides set out an index of articles that have been prepared for their continuing education programs and can be very helpful.

The QUICKLAW (“QL”) computerized research system also has an interesting database. By accessing QL database ICLL you can search by key word through its indexation of texts and periodical literature. However, this data base is by no means complete and a manual search of the legal periodical literature is still a good idea.

Another place to search is your own firm or legal department “Memorandum Bank” or “Opinion Bank”. Many firms and legal departments have invested considerable

resources in establishing a comprehensive bank of their own internal documents, which usually consist of research memoranda and opinion letters and perhaps factums, written arguments and unpublished articles. Usually these databanks can be searched by key word and you may be lucky enough to find a previous memorandum or opinion letter that discusses the law pertaining to your research problem. Care must always be taken in using these documents, however, as the law may have changed since the time the document was prepared or the author of the document might have been quite incorrect in his or her statement of the law. For these reasons, these internal documents should be viewed as merely a starting point in research. The statements of legal principle contained in these documents must be independently assessed and the documents should be “noted-up” in order to obtain the most current law available.

3. Gather the Case-Law Relevant to the Issues

One of the goals of a research lawyer is to be completely thorough, and thus reliable, in his or her research. It is thus very important to gather all of the case-law that is relevant to the issue or issues that you are researching, as well as the relevant statutory and other authorities.

In my opinion the *Canadian Abridgement*, 2nd ed. set is the “bible” when it comes to gathering relevant case-law, and it is imperative that the research lawyer become proficient in its use. The *Canadian Abridgement* system is comprised of a basic set of volumes broken down into titles on an alphabetical basis. In addition to these basic volumes which set out the case-law, there are six “noter-upper” series of volumes (called “permanent supplements”), as well as binders called “Case Law Digests”, broken down into chronological time periods, and “paper parts”, also called “Case Law Digests”, which set out the most recent case-law.

Most of the original volumes of the *Canadian Abridgement* set have been replaced by revised volumes, which are indicated as such by an “R” placed next to their volume number on the spine. Thus, for example, vol. R14D is the revised volume

dealing with the titles Estates and Estoppel, whereas vol. 31 is an original volume dealing with the titles Nuisance and Personal Property.

It is important to know whether you are dealing with a revised volume or an original volume when “noting-up”. If you are dealing with an original volume, you will have to check through all of the six permanent supplement volumes, as well as the binders and paper parts, in order to gather all of the relevant case-law. On the other hand, if you are dealing with a revised volume, you only have to search through those noter-upper series of volumes that are issued after the date of the revision, as well as the binder and paper parts.

For a thorough case-law search, the *Canadian Abridgement* should be searched by two methods, by subject area and by key case(s). A search of the *Canadian Abridgement* by subject area is an excellent way to start your hunt for relevant case authorities. In searching by subject area, your goal is to find all of the subject areas set out within the main title that are relevant to your research problem, and then to review all of the cases within these numerically designated subject areas. The next step is to “note-up” the subject areas through the subsequent noter-upper volumes, including the binders and the paper parts, in order to capture all of the cases that are relevant to your problem.

By way of illustration, let us attempt to use the *Canadian Abridgement* to research all cases dealing with “fundamental breach”. You would obviously start your search by looking under the title “Contracts”, and locating where fundamental breach was dealt with in the “Tables of Classifications”. A review of the “Table of Classifications” reveals that cases dealing with fundamental breach are set out under the sub-heading with the numerical designation of X6.b. You will therefore want to review all of the cases included within this X6.b designation in order to see whether there are any cases that might be helpful to your research problem.

After you have reviewed the cases pertaining to fundamental breach within the basic volume (which we have noted is a revised volume), you must “note-up”. An

effective way to do this is to note the numerical designation given to the subject area you are researching; in this case X6.b. You then start with the first relevant “noter-upper” volumes, which in this case are the binders, as the revised R7B volume pertaining to contracts was published in 1991. You need only track the numerical designation given to your subject area through the binders and the paper parts to see if there is further case-law pertaining to fundamental breach which might have some bearing on your research problem. You will thus look up the title “Contracts” and the numerical designation X6.b in each of the relevant binder and paper parts to see if there is further case-law relevant to your problem.

If you were dealing with one of the original volumes of the *Canadian Abridgement* you would also note the numerical designation given to your subject area in the Table of Classification pertaining to the title you are interested in. You would then have to note-up by searching each of the subsequent six permanent supplement volumes for the specific numerical designation under your relevant title. You would then track this title and numerical designation through the binders and paper parts.

When you are nearing the end of your hunt for relevant case-law, you will conclude that there are certain cases which are key to your research problem. It is now time to “mop up” your use of the *Canadian Abridgement* system. Your goal will be to find out where each case is located in the *Canadian Abridgement* system and then search for other relevant case-law within that numerically designated subject area or areas.

In order to search the *Canadian Abridgement* by key case, you must first search the “Consolidated Table of Cases” binders to find where your case is located in the *Canadian Abridgement* system. Not infrequently, your key case will be digested in several places within the *Canadian Abridgement*; each of these places should be searched. The Consolidated Table of Cases binders are broken down into white pages and yellow pages – the yellow pages set out the more recent case entries. Be sure to check both. Then take a look at each place where your case is listed in the *Canadian Abridgement* system and “read around” the case by looking at all of the other cases under

the numerically designated subject area(s). In this way you may find other cases that are relevant to your research problem. By “mopping up” in this fashion, you can ensure that you have looked at each numerically designated subject area within the *Canadian Abridgement* system that could be relevant, and have thus been thorough.

Much of the *Canadian Abridgement* system material has recently been computerized, and you can now access these materials through the “Canadian Law On-Line” computerized data base. I am very leery of only using computerized access to the *Canadian Abridgement*, however. As you access the system by the use of key words, you cannot be sure that you have captured all of the relevant cases as perhaps they could only have been accessed through the use of other key words. The Canadian Law On-Line system can be very helpful, however, when you are searching for cases which have similar facts to the factual basis of your research problem; (you will be looking for these cases on the basis that like cases suggest a like result).

After you have finished looking for relevant case-law in the *Canadian Abridgement* system, it is important to then take a look at the *Canadian Weekly Law Sheets* to see if there is even more up-to-date case authority. Each publication of the *Canadian Weekly Law Sheet* shows the date of its issue. You should take a look at each law sheet published after the date of the last paper part of the *Canadian Abridgement* system. Thus, if the last paper part of the *Canadian Abridgement* covered the case-law up to the end of November, 1992, you would commence looking at *Canadian Weekly Law Sheets* dated from December 1, 1992, up to and including the most current publication.

There are other digest sheets that might be helpful to review when you are on a real hunt for cases. The All Canada Weekly Summaries set out case summaries of civil matters. In Alberta the Alberta Weekly Law Digest is available. In Ontario the Butterworths Ontario Digest is issued on a quarterly basis.

There are many other research tools, in addition to the basic *Canadian Abridgement* system, that you will want to access in your search for relevant case-law. A good starting place is to search to see whether there was a CCH looseleaf service bearing on your research problem. These CCH services are most helpful in that they set out the basic legal principles in a subject area and frequently make reference to the root and other leading cases as well as the governing statutory authority.

Another good place to look for case-law bearing on your research problem is the subject indices of a topical report series. These topical reports usually have a series of “cumulative” or “consolidated” indices which cover certain periods of time and/or certain volumes of the series. If you were researching for cases pertaining to fundamental breach, for example, you might be interested in looking at the cumulative and/or consolidated indices to the Business Law Reports. A look at the Table of Contents of the Business Law Reports Consolidated Index for vols. 32-50, for example, indicates that it has a general subject index (in this case referred to as a “Cumulative Index”), as well as “Cases Considered”, “Statutes Considered”, “Rules Considered”, “Regulations Considered”, “Words and Phrases Considered”, “Annotations and Articles Subject Index” and “Annotations and Articles Author Index”. There are equivalent offerings in most of the topical reports indices, and thus, as one can see, a wealth of information is available.

The subject indices of the regional reports can also be helpful. Say, for example, your research was going to be used by the assigning lawyer as a basis upon which to draft a factum to be heard by the Alberta Court of Appeal. The assigning lawyer would thus be very interested in locating all relevant cases bearing on the issue which were previously decided by the Alberta Court of Appeal as they would be of considerable persuasive authority. In order to find such cases, you might check through all of the subject indices of the Western Weekly Reports, as well as the Alberta Reports and Alberta Law Reports. Again, as you review the “Consolidated Index” of the Western Weekly Reports for volumes dated 1989 to 1991, for example, you will note that a wealth of material is made available. The table of contents indicates that not only does the

consolidated index have an extensive subject index (in this case referred to as a “Digest of Cases”), but it also includes material under “Cases Considered”, “Statutes Considered”, “Rules Considered”, “Regulations Considered”, “Authorities Considered” and “Words and Phrases Considered”.

If you are really on a hunt you might want to take a look at the subject indices of the national reports and, in particular, the Dominion Law Reports. The National Reports also offer a subject index (in this case referred to as a “topical index”), and can lead you to Supreme Court of Canada decisions as well as those of the federal courts. If you were searching exclusively for Supreme Court of Canada decisions, you would, of course, search the Supreme Court Reports.

The QL System is also an effective way to locate case-law bearing on your research problem. As the QL System is generally searched by using key words, however, there is a certain “hit or miss” aspect to it, depending on which key words you use. For this reason, I generally use the QL System as a back-up to my manual review of the basic research tools. I generally do not consider my research complete, however, until I have searched for cases on at least the databases pertaining to my home court. (I search my home court databases to find unreported cases.) I will also usually search other databases as well. If the file can afford it, and if my manual research has turned out to be not that productive, I may conduct a search on all of the major databases of the QL system in the hope of turning up relevant cases. If I am conducting such a search, I usually start out with a search on the broad DRS database, and then subsequently narrow my search by flipping to the narrower databases of NRS and WWR. I usually also run a search on the CJ global database. It is also helpful to review all of the specialized databases available from QL to see if you can further refine your computer search. For example, if you were searching a tax question, you would want to search the specific tax databases of the QL system such as DTC.

At one time the courts were reticent to receive unreported decisions on the basis that, as they were not readily accessible to all, they should not be made reference to. In

this day of fully computerized research services, however, this practice seems to have gone by the wayside. It is now very easy to access unreported decisions by searching on the various provincial databases, such as AJ, ACL and ALTD for Alberta. There are other ways of unearthing unreported decisions, however, In Alberta one can make reference to the Alberta Weekly Law Digest as well as the Alberta Decisions binders (although they are by no means a full record of the unreported decisions). In certain cases, for example, when one is researching the potential quantum of damages in a personal injury case, you might want to head off to the court-house library and browse through the court-house files of unreported decisions.

Very frequently research of English and Commonwealth decisions will be very important to your research product. This could be because your Canadian authority is derived from English jurisprudence and has continued to evolve in tandem with it, for example. You may also want to take a look to see if there is anything in the English or Commonwealth jurisprudence that can guide you if you are striking out in finding Canadian cases.

The Digest (formerly called the *English and Empire Digest*) is a little-used but very valuable research tool and is the fundamental source to search for English cases. It is very much like the *Canadian Abridgement* system in that it has basic volumes broken down alphabetically into subject areas and companion “noter-upper” volumes. *The Digest* also has re-issue volumes. It can be similarly searched by subject area by locating numerical designations within the subject areas you are researching, and then noting-up these numerical designations through the noting-up volumes. *The Digest* also digests cases of the Commonwealth, and not infrequently one will find a Canadian case made reference to in *The Digest* that was not referenced in the *Canadian Abridgement* system. Another advantage of *The Digest* is that it frequently notes how a case has been judicially considered.

Another place to look for English jurisprudence is in the subject indices to the All England Law Report series. The subject indices are contained in two volumes that have

been recently up-dated to 1989, and there is a companion paper part for further updating. (In the All England Law Report series the notations of cases and statutes judicially considered are located within a separate “Tables” volume.) The Law Report series also has subject indices contained within several volumes which are broken down chronologically, and is also updated by paper parts.

Computer research is also quite important when hunting for English jurisprudence. The *Lexis* database allows one to search by key words in order to access English and Commonwealth cases and seems to be quite a meaty database. The database is very expensive, however (approximately \$300 per hour), and unless you are a complete computerphile *Lexis* should be accessed by asking your librarian or research lawyer to conduct the search for you. In situations where you must conduct a very thorough search for relevant case-law, however, accessing the *Lexis* database can be of significant importance.

4. “Note-Up” Your Cases to Ensure They Remain Good Authority, to “Weigh” Your Cases and to Capture All Relevant Cases

New publications in the *Canadian Abridgement* system have made it relatively easy to note up a Canadian case, or indeed, an English case that is frequently referred to in Canadian jurisprudence. The *Canadian Abridgement* has consolidated all of its former “noting up” volumes into just a few Canadian Case Citations volumes. The basic volumes now span the time period from 1867 to 1990 and are broken down into several volumes alphabetically. These basic volumes will be presumably updated on a yearly basis and, currently, there are 1991 and 1992 updating volumes available as well as paper parts spanning much of the 1992 and 1993 years.

It is a simple matter to look up alphabetically the case you are noting up within the Canadian Case Citations volumes and take note of the cases which have subsequently judicially considered it. Frequently one must be creative in assessing where the case can be found within the alphabetical volumes of the Canadian Case Citations, however, as its

volumes not infrequently change the method of citing a case. It is important for example, to check to see if the order of the citation of the case has been reversed. For example, the root “abuse of power” case of *Roncarelli v. Duplessis* is primarily listed under *Roncarelli v. Duplessis*; it is also listed under *Duplessis v. Roncarelli*, however. (This reversal of the order of the names occurs because the case name changes as the matter goes on appeal). Your search for cases judicially considering *Roncarelli v. Duplessis* will not be complete unless you search under both listings.

It is also important in your legal research memorandum to give certain “weighting” to cases. Thus, you should identify your case as being a root case, a leading case, one case in a chain of authority, a one-time wonder etc. This can only be discovered by noting-up your case to see how it has been judicially considered, and then carefully reading these subsequent cases.

In listing the cases that judicially consider the case you are noting-up, the *Canadian Abridgement* may make the following notations:

- (1) f, for followed;
- (2) a, for applied;
- (3) c, for considered;
- (4) d, for distinguished, and
- (5) n, for not followed.

Although it is a good idea to look at all of the cases which have judicially considered your case, (if for no other reason than to find a case with similar facts), there are occasions when time is pressing and this cannot be done. If this is the case, I suggest that it is still necessary to take a look at all of those cases with the denotation of f or a, in order to find your “good news cases”, and all of those cases denoted as d or n, in order to find your “bad news cases”.

When you are noting up your case, as you reach the more current volumes, it is not uncommon for the *Canadian Abridgement* citations volumes merely to make reference to a case without a notation of where it has been reported. It is still necessary to take a look at these unreported cases. The unreported cases can usually be tracked down by initially scanning the relevant *Canadian Abridgement* Consolidated Table of Cases binders. If consulting the Consolidated Table of Cases does not help you, the unreported case can usually be found by accessing the QL system. In most cases the *Canadian Abridgement* citations volume will indicate the date of the judgment and the court that issued it. It is then usually a simple matter to access the major database pertaining to that court (for example, in the case of Alberta, the AJ database), and give the command of @ 2 key case name(s) in order to find the text of the unreported decision.

The Canadian Law On-Line system purports to incorporate the “noting-up” features of the *Canadian Abridgement* system. Perhaps because it is a new database, however, I have found that the computer system will frequently generate few or no cases which have judicially considered the case that I am researching, when I know from my manual search of the Canadian Case Citations volumes that it has been judicially considered on a number of occasions. It is therefore still my practice to note-up cases manually in the *Canadian Abridgement* system.

As previously discussed, the topical reports and the regional reports almost always contain a “Cases Judicially Considered” section in the cumulative and/or consolidated indices. If you are really hunting for a case, reference to these indices can be most helpful. Frequently these indices set out cases that cannot be obtained from the Canadian Case Citations volumes.

If it is important that your research be completely thorough, (for example, when a trial lawyer will be making an argument based on the memorandum to the court), it is a good idea to access the “noting-up” feature of the QL system. The global database of CJ is particularly useful for this purpose, and the command of @ 5, 7 key case name(s) can

be run for a general search for cases considering your case. I would caution, however, that this is not a particularly good idea when you know that the case has been judicially considered many times. The case of *Roncarelli v. Duplessis*, for example, would generate a plethora of cases in a global search and would be quite expensive. If your case is not one of the leading cases in Canadian jurisprudence, however, a QL back-up search can be very fruitful.

If your research turns up an English case which is important, there are methods to search for Canadian cases that have applied this English case. The All England Reporter series issues a “Canadian Supplement” which can lead you to these Canadian authorities. You should also try to note-up this case in the *Canadian Abridgement* system and perhaps on QL.

If your research turns up relevant English cases it is also important to note them up in English or Commonwealth jurisprudence. The basic noting-up system is the Law Report index system, which is broken down into chronological periods dating back to 1951. The Law Reports series sets out all of the citations (that is, to statutes and rules as well as cases), within a volume tied to one chronological period. This system is updated with the issue of paper parts.

Another important updating tool for English cases is the All England Law Report Tables. The basic “Tables” volume covers the period 1936 to 1989 and is also updated by paper parts. The Current Law Case citatory volumes can also be made reference to, but these volumes are used less frequently as many firm libraries do not contain the full set. *The Digest* will also frequently set out the subsequent judicial consideration of a case.

It is necessary to consult both the Law Report index system and the All England Law Report Tables volumes in order to adequately note up your English cases. This is easy to forget, as in most libraries the Law Report indices are placed at the end of the extensive Law Report volumes, and the All England Law Report Tables are placed at the

end of the All England Law Report volumes. This usually means that there is quite a distance separating these two updating series and one must keep in mind that they both must be consulted.

If the English case that you will be relying on in your research memorandum is important to your research, it is almost mandatory that you also access the *Lexis* computerized research system. In conducting research with respect to English jurisprudence over the last several years I have noticed that the *Lexis* system will generate far more cases that judicially consider your case than the manual Law Report indices and All England Law Report Tables. One of the reasons why this is so is because the *Lexis* system picks up many of the unreported decisions that judicially consider a case, including those of Scotland and Ireland. Many of the cases of these lower courts can be conveniently ignored, as they are of little precedential value. You may want to take a look at these cases, however, as they may have facts similar to your own and thus, on the basis of the maxim that “like cases are decided alike”, they may be of value to you. A *Lexis* search is almost always worthwhile, however, because it will also bring up cases of significant courts such as the English Court of Appeal or House of Lords that are reported, but are not reflected in the Law Report indices or All England Law Report Tables, or perhaps cases that are unreported, but of a court with significant precedential value, for example, those of an Australian court.

Again it must be stated that the *Lexis* computerized research system is quite expensive and you are best advised to ask your librarian or research lawyer to conduct the search for you. It is a good idea to sit in when the *Lexis* search is being conducted, however, as you can indicate which cases you want printed and which cases you will ignore.

5. When Your Research Involves a Statute

When your research involves a statute or statutes it is important to initially locate the relevant statute(s) and then “note-up” to make sure you have the most current

authority. Statutes are generally set out in alphabetical order within certain “Revised Statutes” sets, and thus a good starting place is to assess where a statute relevant to your problem would fall within this alphabetical categorization. Such an alphabetical designation may not be obvious, however. If this is the case, it is a good idea to browse through the “Table of Public Statutes” of the most recent volume of the annual statutes issued for the relevant province, or federally. In Alberta, for example, the most recent annual Statutes of Alberta volume issued is the 1991 volume, and it contains a “Table of Public Statutes” arranged in alphabetical order at the back of the volume. A review of these “pink pages” will frequently trigger a deduction of which statute or statutes are applicable. Some Revised Statutes sets also offer comprehensive indices which can be consulted.

If browsing the “Table of Public Statutes” or referring to a comprehensive index fails, there is an alternate method of finding out which statute(s) could have a bearing on your research problem. The QL system has databases pertaining to each province’s statutes, as well as the federal statutes, and these databases can be searched by key word. Thus, you can command the QL system to search for key words within a particular statute database and then review the statutes that pop up for relevance to your research problem. The C.E.D. is also a good source to consult.

After you have located the relevant statute(s) bearing on your research problem, it is important that you note them up. In those jurisdictions which have a looseleaf system of Revised Statutes, which provides for frequent up-dating, you can usually be confident that you are looking at the most recent version of a statute. If you are going to be relying on a statute in your legal research memorandum, however, it is important that you note this statute up in order to ensure that the revised edition is in fact correct.

Noting-up a statute can be very easy if there is a statute “Citator” published for the jurisdiction that you are researching. Such citators are available for the federal statutes and several provincial statutes. These citators can usually be relied upon to bring your statute up to date.

The traditional method of noting-up a statute is to refer to the “Table of Public Statutes” set out in the last annual volume of the statutes published for the province you are researching, or federally. You then refer to the most recent “Cumulative Table” issued for that part of the provincial or federal *Gazette* that is relevant to statutes, and look at the more recent issues of the relevant part of the *Gazette* to check for statutory amendments published after the cumulative table.

There is an alternative method of noting-up a statute that can be used as a back-up to the traditional method. You similarly begin by consulting the “Table of Public Statutes” of the last annual volume of the relevant statute(s) that you are researching. Following this, you then consult, in the case of provincial statutes, the most recent edition of the *Provincial Legislative Record* and flip to the section pertaining to the statutes of the province that you are researching. This record will outline the status of bills that were placed before the provincial legislature and, if you see that a bill has passed three readings and received Royal assent, you need only then check for the effective date of enactment of the new Act to see when it came into force. This is also set out in the *Provincial Legislative Record*. While checking the *Provincial Legislative Record* or other similar commercial service for bills which have achieved the status of Acts come into force, you should also check for other bills that may pertain to your statute that have not as yet been enacted. This will tip you off as to future legislative activity proposed.

When noting up a federal statute, you follow the same general procedure but refer to the *Canadian Legislative Index* or similar commercial service to see if bills have received the stature of enacted Acts amending the statute(s) relevant to your research problem.

If you find a statute or statutes relevant to your research problem, it is a good idea to see how these statute(s) have been judicially considered in order to find further case law that has a bearing on your problem. The easiest way to gather this information is to consult a statute citator, if one is available. In Alberta, for example, there are two statute

citators: *Statutes of Alberta Judicially Considered* and the *Alberta Decisions Citator*. Keep in mind that there are often specialized statute citators pertaining to a subject area, for example, the *Canadian Charter of Rights and Freedoms, Annotated* and the *Annotated Insurance Act*.

Be cautious in your use of statute citators, however, for they rarely offer a complete listing of the cases that judicially consider a particular statute. In order to achieve a measure of thoroughness, it is necessary to consult the *Statutes Judicially Considered* volumes of the *Canadian Abridgement* system. These volumes are segregated into volumes dealing with U.K. and federal statutes and volumes dealing with provincial and territory statutes. In accessing these *Statutes Judicially Considered* volumes of the *Canadian Abridgement*, you should consult the basic volume relative to your research problem, and then note-up through the companion updating volumes.

If you are really hunting for cases which have considered your statute, it can be helpful to refer to the cumulative indices of the topical, regional and national reports. In Alberta, for example, both the *Alberta Law Reports* and the *Western Weekly Reports* have “Statutes Considered” sections in their cumulative indices. A search of the “Statutes Considered” section of the *Insurance Law Reports consolidated indices*, if researching an insurance problem, or a search of the *Family Law Reports “Statutes Considered”* section, if researching a family law matter, also illustrate how useful a search of the cumulative indices can be.

Another way to search for cases which have judicially considered your statute in question is to consult the *Canadian Encyclopedic Digest Key*.

The QL system also offers a method of searching statutes, and certain sections within statutes, for cases which have judicially considered them, but it does not work as well as some of the other QL functions. I find that when I try to search a section or sections of a statute for cases which judicially consider it, the computer will frequently pick up page numbers or other irrelevant numbers for the sections that have been set out.

For this reason, I find that QL is a much better system to look for relevant cases than to conduct a search to see if a statute(s) has been judicially considered.

There will be times when you will be interested in researching the legislative intent behind the enactment of a certain statute or statutory provision. If this is the case, one of the first things to do is to find out which documents are available in the parliamentary or legislative libraries with respect to the statute when it was in the bill stage. For example, a bill will almost always have a compendium, which briefly outlines the purpose of each provision of the bill, filed with it. You should also ask the parliamentary or legislative library reference personnel whether the bill was referred to a committee (either standing or select) and, if so, whether the committee produced any reports. (Not infrequently, a committee will produce both an interim and a final report). If public hearings were held, you will also likely be interested in reviewing some of the exhibits filed with the committee, for example, a brief prepared by the Canadian Bar Association. Sometimes the proceedings of a committee are transcribed in “instant Hansards”, and these can be useful to review.

Another search that you can conduct is to check what was said about the bill when it was introduced into parliament or a legislature at its first reading. You can check this out by referring to the indices of the relevant *Hansard*, which will refer you back to the appropriate places in the main *Hansard* volumes.

You may also be interested in whether the bill was amended at the committee stage of the proceedings (which frequently occurs). If it was amended, you will be interested in taking a look at the bill as it appeared at its first and second readings, and then how it appeared when it was referred back to parliament or the legislature for its third reading following a committee review. It is also usually helpful to take a look at the “instant Hansards” of the committee proceedings to review the committee’s deliberations with respect to the proposed amendments. If you are reviewing a bill that has been amended at the committee stage, you should probably also check the *Hansard* index to see what was said at the third reading of the bill.

6. When Your Research Involves Regulations

The regulations of most, if not all, provinces and the federal regulations are bound in yearly volumes of the relevant parts of the respective *Gazettes* (unless the regulation has been exempt from publication). A regulation is, therefore, denoted by reference to its yearly volume; Reg. 101/87, for example, would be found in the 1987 volume of the relevant bound part of the *Alberta Gazette*, at No. 101. Searching for the regulations which are promulgated under the statute(s) relevant to your research problem is a relatively simple matter. A “Cumulative Index” (or, federally, the *Consolidated Index of Statutory Instruments*), is issued on a periodic basis which details which regulations are promulgated under the statutes according to the alphabetical order in which the statutes are set out. It is then a simple matter to make reference to the yearly volumes and numbers of the regulations detailed in order to review all of the regulations that are relevant to your statute.

The “Cumulative Index”, although current, will not encompass regulations which have been promulgated subsequent to the date of issue of the cumulative index. It is therefore necessary to consult the more recent publications of the relevant Part of the Gazette to see if even more current regulations have promulgated.

In some jurisdictions the regulations have been gathered in a looseleaf binder system which is frequently updated. It is generally not safe to rely on these binder systems to reflect accurately all of the regulations promulgated under a statute, however, and it is prudent always to note-up a regulation.

In order to see if a regulation has been judicially considered, several of the topical and regional reports which contain this information should be consulted. Carswell’s Practice Cases, for example, contains a section setting out the judicial consideration of certain regulations, as does the Western Weekly Law Reports. Another source to consult is the Canadian Encyclopedic Digest Key.

7. When Your Research Involves the Rules of Court

A lawyer practicing within a firm with a significant litigation department will frequently find him or herself researching to determine the judicial consideration of a rule of court. In some jurisdictions this is made relatively easy by the publication of a volume annotating the Rules of Court. In Alberta, for example, the *Alberta Rules of Court* are annotated in the comprehensive *Civil Procedure Guide* authored by Stevenson and Cote. Such annotated volumes should obviously be your first source to consult. Judicial consideration of rules of court are also frequently set out in the citators relevant to a particular province. The topical and regional cumulative indices also frequently set out consideration of rules of court.

If the rule you are considering has been derived from the rules of England, reference to the annotated English, “*White Books*”, (that is, the *English Supreme Court Practice* volumes), is usually quite fruitful. If you are considering an Ontario rule or a rule that is analogous to the Ontario rules, a review of the annotated Ontario volumes of *Holmsted and Watson* and the earlier *Holmsted and Gale* can be very productive. In the West one can also make reference to *Powers Western Practice Digest*.

8. When Your Research Involves a Judicial Interpretation of Words and Phrases

A good place to start when researching the judicial interpretation of words and phrases is with the basic dictionaries in your library, for example, the *Shorter Oxford Dictionary* and *Websters New World Dictionary*. Another obvious source is to consult the specialized legal dictionaries such as *Black’s Law Dictionary* or the *Dictionary of Canadian Law*.

There are several specialized “Words and Phrases” sets that should also be consulted, including *Words and Phrases Legally Defined*, edited by Saunders, and the

words and phrases sets edited by Strouds and Sanagan. *The Canadian Abridgement* also contains basic volumes dealing with the judicial interpretation of words and phrases, with companion updating volumes. It is important to consult all of these various words and phrases sets as they are all quite different and a review of each is necessary in order to ensure that you have captured all of the relevant cases.

You can also consult the topical and regional reports to see if they contain a section with respect to the judicial interpretation of words and phrases. Again, Carswell's Practice Cases is a good source for this purpose.

If you totally strike out using the above-described words and phrases sets, it is usually worth the trip to the court-house or law school library in order to review the extensive American words and phrases volumes that are available.

The QL system is also quite helpful in accessing cases which judicially interpret words and phrases. An effective way to access the system is to command a search of the key word(s) within a certain numerical designation of defin! Interpret! means meaning.

9. Conclusion

One interesting thing about legal research is that there are so many ways to go about it. The basic research tools, however, should always be consulted, in a thorough manner, when gathering your raw research material. How far one wants to go in consulting the additional research tools available really depends on your time or billing constraints and how thorough your research must of necessity be. Happy Hunting!