

Researching Secondary Sources of Law

7

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LEARNING OUTCOMES

By the end of this chapter, you should be able to:

- Understand the relationship between primary and secondary sources of law.
- Choose the appropriate print or online secondary source to locate and interpret primary law.
- Structure a search of secondary sources to locate primary law using a fact and issue analysis.
- Select appropriate research tools to note up or judicially consider primary law.

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I. Relationship Between Primary and Secondary Source Law

As described in previous chapters, primary law includes legislation and judicial decisions. In a public international context, primary law also includes treaties and conventions.

By default, legal information that is not primary law is secondary source law. One aspect of legal research competence is proficiency in the use of secondary sources of law to improve both the efficiency and comprehensiveness of primary law research. Secondary resources also provide important critical analyses of law and policy that are not found in primary materials.

While practising lawyers explore the legal issues presented when a client seeks legal advice, law students explore legal issues presented as legal hypotheticals. In both situations, the law that must be researched may not be immediately evident. The authors of secondary sources will have done much of the preliminary work for the researcher by analyzing the legal concepts, discovering nuances in the law, and identifying the relevant primary law.

There are two main categories of secondary sources: those that are used to locate primary law and those that interpret its meaning or application. Some sources perform one function exclusively; others overlap.

To establish competence, a lawyer must be able to:

- use print and online sources as well as other technological tools that are appropriate to the research task, both general sources and those tailored to specific practice areas;
- comparatively assess the strengths and limitations of sources, both commercially published sources and those in the public domain; and
- choose the source that best fits each step of the legal research process, considering both cost and time efficiencies.

II. Relationship Between Online and Print Materials

Students today will be familiar with the wide variety of tools that are available for finding information online. However, when working with legal materials, it is important to understand that many legal information tools that are available online are still organized to reflect the way the publication was historically organized in the print format. Publishers have not entirely abandoned traditional means of organizing information.

Furthermore, many important online legal databases require users to pay substantial subscription fees. For sole practitioners and members of the public who do not have access to subscription services, print resources that are housed in a library may still be important as their only economical source of commentary about the law.

Finally, online databases can provide an infinite amount of legal information to explore. In contrast, text products, such as a periodicals index, have a definite starting point and ending point. When working with print, the researcher has a better sense of when the research has been completed.

To address these points, this chapter discusses key secondary sources by first outlining steps for using the print product and then outlining the steps for using the online product.

III. Generating a Topic Search Using Secondary Sources: Start with Facts, Issues, and Keywords

Consider the following situation.

TASK 7.1

Research Hypothetical Problem

Conrad Cash ("Cash"), 64 years old, was the sole owner of a lucrative business, Cash Computer Co, located in Blissville, Ontario. When Cash died on 1 May 2022, his net worth exceeded \$100 million. In 2017, Cash revised his will. Beneficiaries of the estate included: Penny, spouse, age 58, \$60 million; Farthing, daughter, age 32, \$30 million; and the Blissville District School Board, remainder, to upgrade its computer technology systems and programs.

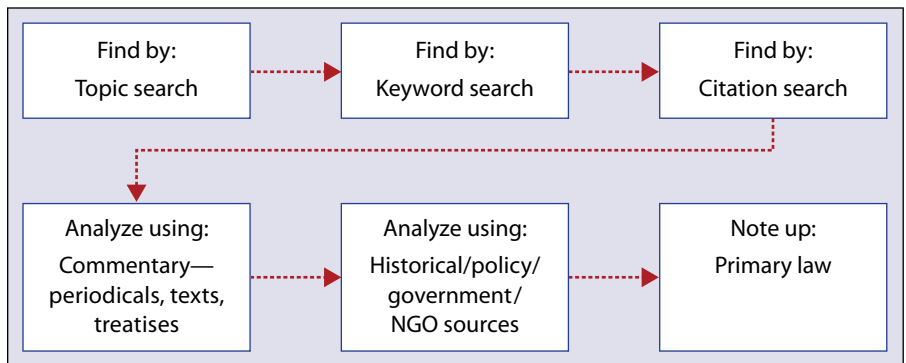
In 2021, Conrad and Penny Cash divorced after a bitter, year-long dispute. Later that year, Cash married the couple's dog walker, Yuro, 26. Unhappy with the remarriage, Farthing became estranged from her father.

In January 2022, Cash suffered a head injury in a motor vehicle accident. After his release from hospital in February 2022, Yuro told Farthing that she could not visit her father until he recovered. Farthing had no further contact with her father prior to his death in May.

Last month, Farthing learned that her father had altered his will, leaving \$80 million to Yuro and the remainder to the Blissville Kennel Club. Farthing suspects that Yuro may have coerced or otherwise unduly influenced her father to change his will. She has sought legal advice to determine whether she can challenge the will's validity.

This hypothetical exemplifies the type of issue typically encountered by law students, articling students, or lawyers in practice, any of whom may be unfamiliar with the area of practice governing the client's concern. Because the governing primary law is not evident at this point, the researcher who is new to this area of law can use secondary sources first to gain an understanding of the principles of law at issue, analyze the applicable law, and identify the relevant primary law. The whole process—finding, analyzing, and noting up (determining the case history¹ and the subsequent judicial treatment of a case)—is illustrated in Figure 7.1.

FIGURE 7.1 Secondary Source Options



Before selecting secondary sources to locate primary law, undertake a fact and issue analysis (as described in Chapter 2):

1. Sort and organize the facts under relevant headings.
2. Generate a legal keyword search list.
3. Frame the issue, incorporating one or more legal and fact words.
4. Use legal keywords to define the topic; choose one or more secondary sources to locate the controlling law.

¹ See Chapter 6, Sections IV.C and IV.D for an introduction to noting up case law.

TASK 7.2

Fact, Issue, and Keyword Summary

Who Are the Key Parties or Others with Information?

- Conrad Cash, creator of the will.
- Farthing, daughter, beneficiary under the first will (client).
- Yuro, spouse, beneficiary under the second will.
- Blissville Kennel Club, beneficiary under the second will.
- Penny, former spouse, beneficiary under the first will.
- Blissville District School Board, beneficiary under the first will.

What Happened?

- Cash altered his will, disentitling former beneficiaries.
- Cash did not inform his daughter about the change to his will following the accident.

Where and When?

- Blissville, Ontario.
- 2017: previous will created.
- 2021: divorce from Penny; marriage to Yuro.
- 2022: MVA/head injury—January; death—May.

How? Why?

- Circumstances concerning the creation of the second will—unknown.
- Date of second will—unknown.
- Reasons for the creation of the second will—unknown.

Additional Unknown/Assumed?

- Additional beneficiaries? Prior wills? Drafter of wills? Existence of relevant legislation, case law?

Legal Keywords

- will, beneficiary, validity, undue influence.

Issue

Is Cash's second will valid?

NB: As research progresses, additional legal keywords, issues, and other facts requiring scrutiny may become apparent. Revise the summary as required.

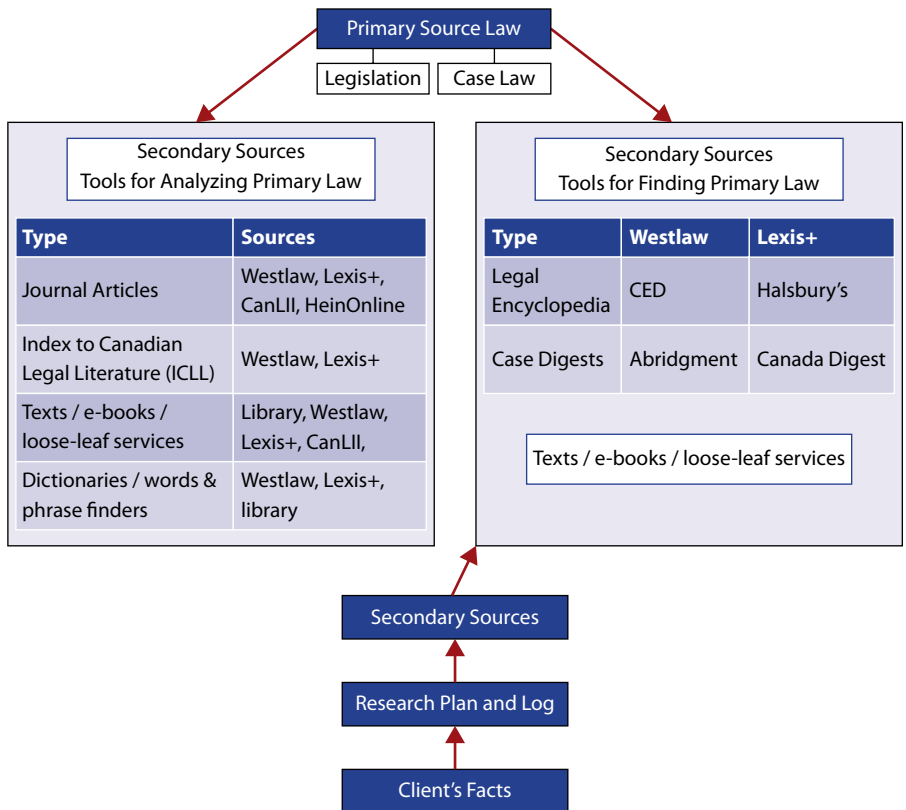
Since research tasks vary, no specific recommended research protocol can be applied uniformly to all research problems. Instead, you must consider what is already known and what remains to be discovered, then decide which sources are most likely to provide relevant information. At this point, create a research plan; as the plan is executed, log information for further review and analysis. (See Chapter 9 to learn how to develop a research plan and log results.)

Figure 7.2 illustrates one approach to researching the fact hypothetical described in Task 7.1, using selected secondary sources to find and analyze primary law.

Although many secondary sources exist, if little is known about the issue and the governing primary law, consider a topic search using a legal encyclopedia.

In addition, take advantage of research learning opportunities provided through your law school, including sessions offered by librarians and legal publishers.

FIGURE 7.2 Mind Map: Using Secondary Sources to Locate and Analyze Primary Law



IV. Locating Case Law by Topic: Print and Online

A. Legal Encyclopedias

1. *Canadian Encyclopedic Digest*

Available both in print and online, the *Canadian Encyclopedic Digest*² (CED), now in its fourth edition, is a comprehensive research tool useful for gaining a general understanding of the legal topic being researched. It references primary law (key cases and legislation) and may identify additional secondary sources that analyze primary law.

The CED organizes information by legal topic or title. Published in a multi-volume loose-leaf format, the CED (Western) emphasizes a Western Canadian perspective, while the CED (Ontario) provides an Ontario focus. However, legal discussion is not restricted to these two regions, because both editions provide summaries of federal and provincial law from across all Canadian jurisdictions.

To search a topic in the CED:

1. Use the library catalogue to locate the CED. Locate the legal topic using either the general Index or the Research Guide and Key, found in separate volumes (print). Alternatively, on Westlaw, choose “Canadian Encyclopedic Digest,” then choose the area of law.
2. Locate the legal topic organized under one or more specific topic titles found in the legal topic volumes (print and online).
3. Narrow the search to specific subtopics as required.

Both the Index and the Research Guide and Key explain how to access information contained in the main volumes. When little is known about a subject, use the Index. By using legal keywords, you can locate the relevant volumes and titles. The topics are cross-referenced to additional related topics, which increases the comprehensiveness of the search. The Research Guide and Key is helpful when you know more about the topic than just keywords because it lists the titles along with pinpoint references to statutes, regulations, and rules referenced in the CED.

2 4th ed (Toronto: Carswell, 2010) (loose-leaf) and online: <<https://www.westlawcanada.com>> [perma.cc/RL4D-Z8Z7] (subscription required). Details and currency of specific titles within this set can be found at Thomson Reuters, “The Canadian Encyclopedic Digest” (last accessed 2 June 2022), online: <<https://store.thomsonreuters.ca/en-ca/product-resources/legal-research/canadian-encyclopedic-digest>> [perma.cc/UC3Z-FSWQ]. The publisher provides e-learning tutorials for its products; see <<https://store1.thomsonreuters.ca/learning/westlawcanada>> [perma.cc/8C26-D6H9].

Once you identify the relevant title using the Index, locate that title in the main volumes and search the title content. Each title divides the general topic into subtopics identified by numbered paragraphs (§§). A brief commentary supports the subtopics, accompanied by citation references to primary law. Supplements, placed at the beginning of each title with the same numbered paragraph system, update the law.

Titles are arranged by:

- title tab;
- a grey-bordered supplement that updates the title content (if available);
- white pages (table of classification or contents);
- tables of cases, statutes, and rules and regulations (optional);
- paragraphs; and
- an index to the title topic.

The paragraphs within the title are organized into parts and then subdivided into numbered sections. Each part contains descriptions of different legal issues. Each section may then be further subdivided with additional information concerning cases and statutes. A “pending legislation” heading at the beginning of the update supplement reminds the researcher to check for amendments to legislation.

One must understand how to use both the print and online versions of the CED because one or the other version may not always be accessible. However, once you have established proficiency in both online and print-based research methods, you may choose the preferred version to locate primary law.

Using the hypothetical described in Task 7.1, consider the following steps, which illustrate the process of using the CED to find primary law.

TASK 7.3

Using the CED to Find Primary Law: Print

- Select the CED (Ontario) because the facts indicate that Ontario is the relevant jurisdiction.
- Select the Index volume and find the tabbed List of Titles. Record the Wills volume and title numbers (volume 53, title 161).
- Find “wills” in the Index. Examine the headings and record relevant subheadings. Note the subheading titled “Undue Influence.” Other subheadings of interest might include “Requirements for a Valid Will” and “Suspicious Circumstances.” Record both the descriptive phrase and

(Continued on the next page.)

corresponding paragraph reference (§) because CED topics are organized by volume, title, and paragraph number, not page number. Record all potentially relevant subtopics. Later, refine the search and exclude irrelevant subtopics.

- Knowing the currency of the material selected is critical. Record the currency date located at the bottom of the page.
- Locate volume 53 and select title 161. Locate the table of contents. Select relevant topic headings and record any information provided.
- Subtopics related to the conditions under which a will can be created or revoked may also be of interest; they can be examined as the research continues. Examine cross-references to locate potential research leads.
- Note that “Undue Influence” appears at §33. Note the various subheadings under this subtopic. Investigate such phrases as “general,” “presumptions,” or “suspicious circumstances.” The numbers following these phrases identify the numbered paragraphs that reference this subtopic.
- Find §33 in the contents. Notice the brief description “Undue Influence,” followed by citation references and brief summaries of leading cases or references to legislation. Record the currency date for this title.
- Use the citation(s) referenced to locate the identified judicial decisions and legislation. Review them to discern the underlying statutory scheme and the associated legal principles that apply to a claim of undue influence when a will’s validity is being assessed.
- Examine the supplement that updates the law, if available (grey-bordered pages). It provides recent additions to legislation and case law. Note the supplement’s currency date. Examine the supplement and locate the target paragraph (§33) reviewed earlier; record and review the updated information.
- Using the CED, you have now located references to relevant primary law, which you can review to gain an understanding of how undue influence may affect a will’s validity.

TASK 7.4

Using the CED to Find Primary Law: Online

Sign on to the Westlaw website. The default tab is “All Content.” Under “Commentary,” select “Canadian Encyclopedic Digest.” Choose “Wills” from the list of available topics. (Although you can search the CED by keyword using the templates, this approach may be less efficient at this point in the research unless you know enough about the topic to narrow the search sufficiently.)

TASK 7.5

CED Online: Subtopic Search

Use the alphabetical list to locate the “Wills” topic. Browse the “Wills” topic by broad subheading. For example, the topic “Knowledge and Approval,” which appears under “Requirements for a Valid Will,” contains the subtopic “Undue Influence.”

Record the currency date. Note that the classification code IV.B is the same in both the print and online versions of the CED.

(Continued on the next page.)

Review the commentary associated with the subtopic chosen. There are extensive footnotes associated with this commentary. Many of the footnotes link to the full text of the case or statute.

For those cases not included in the CED online, locate the case elsewhere online or in print using its citation reference.

No additional updating is required when using the online version, unlike the print version. Also, while the Ontario and Western print versions are published in separate sets, they are integrated in one platform online.

2. *Halsbury's Laws of Canada*

*Halsbury's Laws of Canada*³ (HLC) is a multi-volume encyclopedic-style reference like the CED in national scope and purpose. It organizes legal concepts by topic and subtopic and is available in print and online.

HLC provides summary statements of the law supported by primary law references to judicial decisions and legislation, cross-referenced to related law. Each topic provides a table of contents, index, table of cases, and table of statutes. Topic titles are published in hardcover. HLC does not use a loose-leaf format; rather, annual cumulative supplements update the law.

To search an HLC topic:

1. Locate the legal topic using the Guide and Consolidated Index (print version only).
2. Locate the legal topic in the main topic volumes; narrow the search to specific subtopics as required (print and online).
3. Update using the Cumulative Supplement if available (print version only).⁴

As with the CED, you must understand how to use both the print and online versions of HLC because one or the other version may not always be accessible. However, assuming that neither availability nor cost is a factor, once you have established proficiency in both online and print-based research methods, choose the preferred version to locate primary law.

3 (Toronto: LexisNexis Canada, 2006), print (supplemented publication) and online: <<https://plus.lexis.com>> [perma.cc/N954-3TXY] (subscription required).

4 HLC is continuously updating and reissuing volumes, incorporating information previously published in the Cumulative Supplement in the main topic volumes.

TASK 7.6**Using HLC to Locate Primary Law: Print**

- Select the most recent softcover Guide and Consolidated Index of HLC. Using previously identified legal keywords, locate the Wills topic (HWE). Record relevant subtopic references (e.g., undue influence and suspicious circumstances), HWE-189–190, HWE-25, HWE-184.
- Locate the Halsbury’s Wills and Estates (HWE) volume and examine its organization. Find the Table of Cases and the Table of Statutes near the beginning of the volume. These tables identify the case law and legislation referenced in the volume. Locate and record the currency date found immediately before the Table of Cases.
- Either the Table of Contents or the Index can be used to locate relevant information. Turn to the volume Index and using the keyword “wills” note the cross-reference to “undue influence.” Record and locate relevant paragraphs—HWE at paragraphs 189–190.
- HLC and the CED use a similar paragraph referencing system. Turn to the relevant paragraphs. The organization of information is like that in the CED. Brief commentary, either of a general nature or specific to a province or territory, is followed by citation references to relevant case law and legislation.
- If a cumulative supplement is available, locate the currency date and note additional relevant information under the Wills and Estates topic.

TASK 7.7**Using HLC to Link to Primary Law: Online**

- Sign into the Lexis+ website. Just below the search box, under “Explore Content—Content Type—Popular Sources,” choose “Halsbury’s Laws of Canada.”

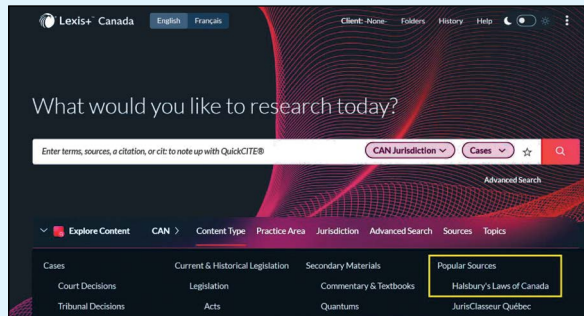


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- From the alphabetical list of topics, choose “Halsbury’s Laws of Canada—Wills and Estates (2020 Reissue) (Hull).”
- The Table of Contents for this section is provided. Selecting a “+” symbol to the left of each listing will show its contents. Select the + next to Wills. Note that there is a subheading, “Contesting a Will.” Select the + next to it to view its contents.

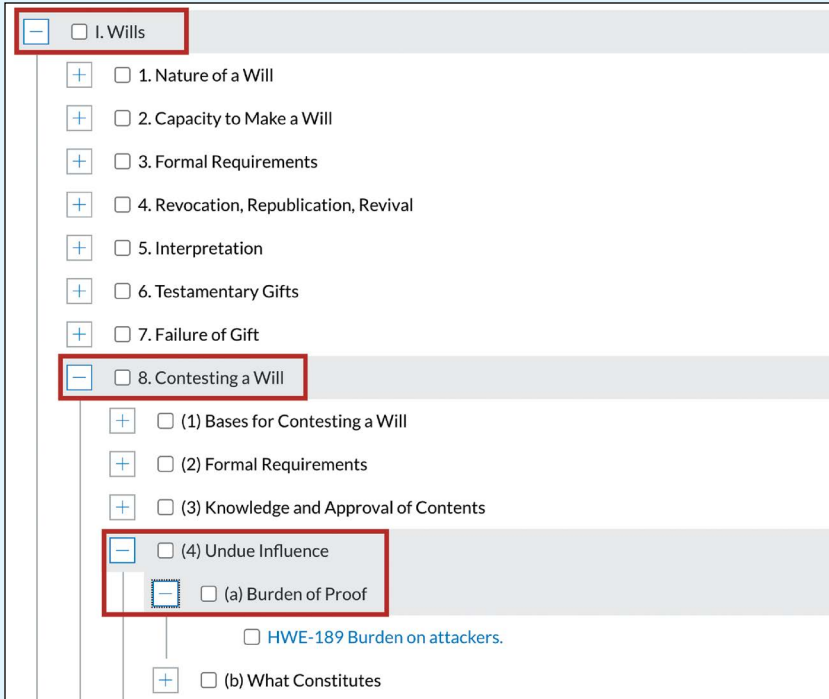


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- Select the subheading “(a) Burden of Proof.” The full text of the document is provided.
- Note that each section of an encyclopedia entry contains an alphanumeric code that corresponds to the print version, and that code is used for citation purposes. The content of this encyclopedia entry is provided here. Be sure to view the footnotes as they provide citations and links to the cases and statutes from which this entry is derived. The footnotes to an encyclopedia entry are the starting point for continued research into the primary source materials.

B. The Canadian Abridgment

*The Canadian Abridgment*⁵ (Abridgment) is a robust multi-function research resource available both in print and online. It includes search features to locate primary law by:

- topic/case digest,
- case name/citation/judicial consideration,
- legislation name/citation/legislative consideration, and
- legal keyword.

Furthermore, the Abridgment includes research tools to aid with primary law analysis, such as a periodical index of legal commentary as well as specific case and legislative comments. It also includes a primary law noteup feature to determine the historical judicial treatment of both cases and legislation. The publisher of the Abridgment has compiled a concise reference tool, available in print and online, that summarizes its key features and provides guidelines for its use.⁶

Competent researchers must understand how to use both the print and online versions of the Abridgment because one or the other version may not always be accessible.

1. Finding Case Law by Topic Digest: Print

A successful topic search will reveal digests that lead to relevant judicial decisions. Digests are brief summaries that explain the court's decision of the legal issues. After reviewing the digests, organize the results of your research and select those decisions likely to be most relevant for further study.

A topic search to locate case digests requires the sequential review of:

- Key and Research Guide (“Guide”) and/or the General Index (“Index”),
- main volumes containing case digests, and
- annual and monthly case digest update supplements/Canadian Current Law.

5 3rd ed (Toronto: Thomson Carswell), print (supplemental publication) and online: <<https://www.westlawcanada.com>> [perma.cc/K6GK-URPZ]. Users of the Abridgment can find out proposed developments to the Abridgment along with research tips at <<https://store.thomsonreuters.ca/en-ca/product-resources/the-canadian-abridgment>> [perma.cc/4AVA-5S69].

6 Carswell, *A Short Guide to the Canadian Abridgment in Print and on WestlawNext Canada* (Toronto: Carswell, 2014), online (pdf): <<https://westlawcanada.com/DynamicData/AttachedDocs/LawSource/CanadianAbridgmentShortGuide.pdf>> [perma.cc/JG3L-DK35] [*Short Guide*].

TASK 7.8**Using Case Law Digests to Locate Judicial Decisions: Print**

- You can use either the General Index or the Key and Research Guide to locate relevant case digests; however, the search method used for each differs.
- Begin with the Guide and Index. In the Guide, turn to the tab marked Key and find the “Subject Titles Table.” If, as in this case, the keyword selected does not lead to the correct subject title (Wills), use the Index. Note that “will” is cross-referenced to the phrase “Estates & Trusts.” Another strategy is to look for the word “wills” in the General Index, which is organized alphabetically.
- In the General Index volume, locate “Wills.” Scan the subtopics; under the “Undue Influence” subtopic, record the reference to “Estates Issues, see Estates.” Under “Estates,” note the subheadings of “Will Challenges” and “Undue Influence.”
- Although using the General Index is efficient, you might find the Research Guide more effective because you are less likely to overlook relevant information.
- In the Research Guide, locate the “Estates and Trusts” title in the Contents Key. Note that you must examine volumes 32 through 35 to completely review this topic. Locate the subtopic “Undue Influence.” Record the alphanumeric classification number. This number is an essential finding tool to locate relevant digests. Based on the facts, classification number I.7.b.iii.B may be of particular interest because this topic concerns undue influence by a family member. Record all the noteworthy classification numbers before beginning the case digest search. Note that many topics, including those under number I.7, are in volume 33.
- Before finding the relevant digests, review the Case Law Update volume, which will likely be shelved adjacent to the General Index and Guide. Use this search tool once you have identified the relevant classification numbers. In the Update volume under “Estates,” look for classification number I.7.b.iii.B. Record any information you find, which can be used to locate digests in the supplements to the main volume.
- The digests are in the main volumes. Select the relevant hardcover volume (EST 33) and the softcover blue supplement to volume 33. Find the case digests that correspond to classification number I.7.b.iii.B, first in the hardcover volume and then in the supplement. Note and record the currency date on the cover of each volume.
- Review the relevant digests concerning “Estates—Undue Influence” by looking at the Index volume or by scanning the volume to locate the relevant classification code.

- Note that the digests provide more detailed information about each case than do the CED and HLC. By scanning each digest, you can identify judicial decisions that warrant further examination. For example, by examining the citation reference, you can locate cases decided by a court of appeal and the Supreme Court of Canada. Depending on the cases you find, you might choose to examine cases decided by a court in the same jurisdiction, or you might select cases from various jurisdictions with similar facts.
- To update beyond the date covered by the supplement, locate the relevant softcover monthly supplements titled *Canadian Current Law—Case Digests*. You can examine each monthly supplement using both the same “Estates” topic and the same classification number (I.7.b.iii.B).
- However, you can shorten the search of the monthly supplements by recalling whether any relevant references were found in the *Case Law Update* and using that information to focus the search on the relevant monthly supplements.
- Given the numerous steps required in the case digest search, record or log the steps as you complete them. This ensures efficiency and comprehensiveness if your work is interrupted prior to completion.

2. Finding Case Law by Topic Digest: Online

TASK 7.9

Using the Abridgment to Link to Judicial Decisions: Online

- Sign on to the Westlaw website. The default tab is “All Content.” Under “Forms, Precedents and Finding Tools,” choose “Canadian Abridgment Digests.” Scan the list of titles and open “Estates and Trusts.”
- The classification number (I.7.b.iii.B) is the same whether searching for digests in print or online.
- Open the “+” icon next to “7. Will Challenges,” then “b. Undue Influence,” then “iii. Source of Influence.” Click on the link for “B. Family Member.” Review the references found and link to the selected sources to review the primary law.
- Since judicial decisions are frequently added to online databases, no additional steps are needed to update the law. However, be sure to always note the currency date of the research when using either the online or print version of the Abridgment or any other research tool.
- An additional benefit of online Abridgment searches is that there are direct links to primary law. A further benefit is a cross-referencing feature that connects the CED and the Abridgment when conducting a search using either product.

C. Canada Digest: Online

Lexis+ *Canada Digest* (CD) service is comparable to the online version of the Abridgment. Unlike the Abridgment, however, there is no companion print service. The collection is extensive, with material dating from the 1800s. It includes federal and provincial judicial decisions, as well as decisions from some administrative boards and tribunals.

The CD uses a similar classification system to the Abridgment and can be browsed in a similar manner.

TASK 7.10

Using the Canada Digest to Locate Judicial Decisions: Online

- From the Lexis+ home page, choose “Browse” at the top of the page.
- Under “Explore Content,” choose the “Sources” tab, then “Search Sources.” Enter “wills” and select “Canada Wills, Estates & Trusts Law Digest” from the list of recommended sources.

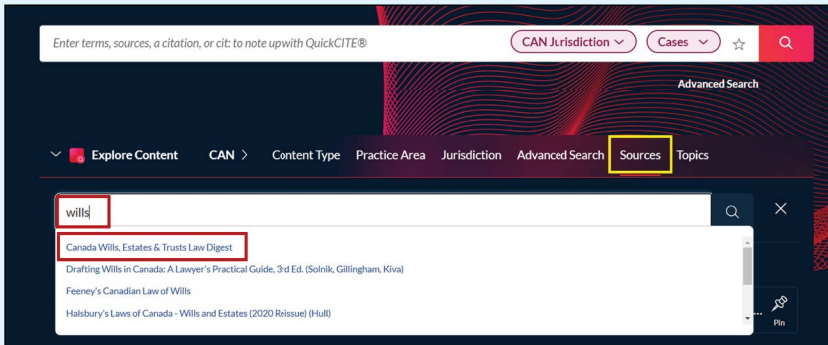


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- Select the link to view this source. A table of contents is provided. Select the arrow next to a heading to view the associated subheadings. Under the main Wills listing, select the + next to “Preparation and execution,” then “Undue influence, fraud and mistake,” then “Undue influence.”

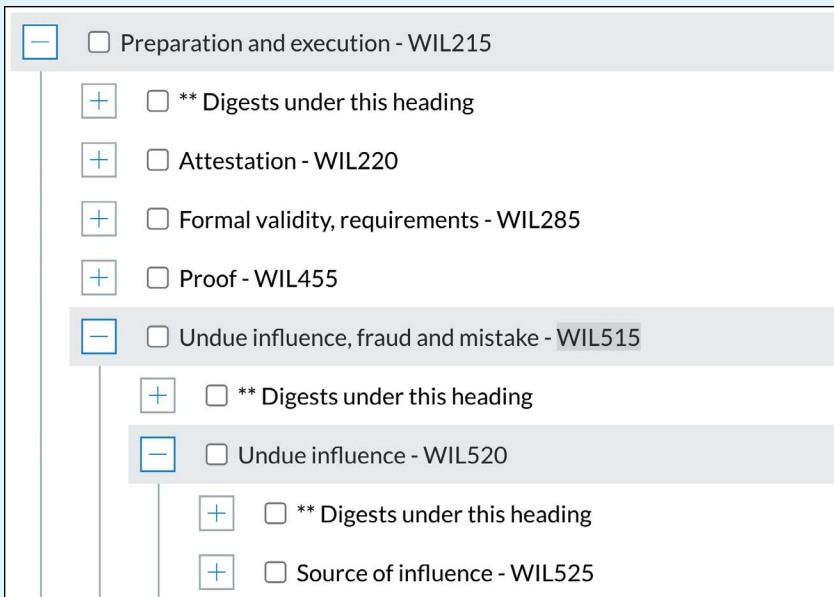


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- Review the content to locate digests of relevant cases. Link to the full text of the case on Lexis+ for further review. Record the classification number, WIL520, for your records.

D. Comparative Advantages of Online and Print Topic Research

- It may be advisable for the novice researcher to start with a print text search because print indexes can be scanned more quickly than online indexes. However, online searching allows in-text word and phrase finding, while print searching requires a lengthier review of indexes. Once you have established proficiency, you may prefer online searching for its convenience.
- Online searching frequently provides direct links to primary law. This saves the step of identifying primary law in another source.

- The online versions of the CED, HLC, and the Abridgment are updated more frequently than the print versions and do not require the researcher to scan supplements to update.
- Although law students are provided with free passwords to commercial online services while at school, they lose this benefit once they are in practice. The research cost must therefore be passed on to the client or subsumed by the lawyer. The cost of commercial online secondary sources may restrict its use once the lawyer enters practice, making the print version the only format available. Some university law libraries continue to maintain these products in print format.

FIGURE 7.3 Topic Search: Comparison of Print and Online Options

	CED and Halsbury’s		Abridgment— Case Digests		Canada Digest
	Print	Online	Print	Online	Online
Cost	Free (library)	Subscription	Free (library)	Subscription	Subscription
Updating	Update using supplements	Updated	Update using supplements	Updated	Updated
Search Method	Browse	Browse/ keyword search	Browse	Browse/ keyword search	Browse/ keyword search
Information	Topic overview Source citations	Same as print, links to sources	Case digests	Case digests, links to cases	Case digests, links to cases

V. Locating Primary Law by Name or Legal Citation

Understanding how to locate primary law using official sources is an essential competency. (Follow the steps described in Chapters 4 and 5 to find official sources of legislation; follow the steps described in Chapter 6 to find judicial decisions.) However, you can use secondary sources to locate primary law if you know even part of the case or statute name.

TASK 7.11**Structuring a Search Using Primary Law Keywords or Citations**

Returning to the issue of the validity of Conrad Cash's will, assume that you have not yet conducted a topic search. Instead, you have been requested to research the following:

- Find *Vout*, a judicial decision about a will's validity. The jurisdiction, court level, and name of the other party are unknown. Note up *Vout*, determining both its history and its judicial treatment.
- Locate Ontario legislation about succession, which includes information about wills.

Because research costs are usually a factor, consider lower-cost options before those that require a paid subscription.

A. CanLII: Online

CanLII⁷ began in 2000 under the auspices of the Federation of Law Societies of Canada and provides free access to domestic primary law as well as links to foreign jurisdictions. In February of 2017, CanLII released a growing collection of commentary as well. This collection includes books, articles, reports, journals, newsletters, and conference proceedings.

This resource is a sound option if a general keyword rather than a topic search is required. However, the prudent researcher should continue to undertake searches of commercial providers of legal information, particularly when searching for historical judicial decisions and secondary source commentary.

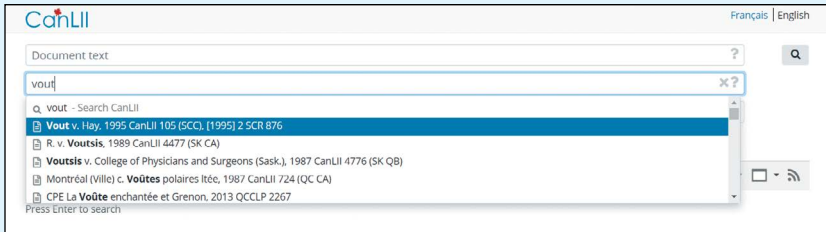
TASK 7.12**CanLII: Locating Judicial Decisions by Keyword Search**

On the CanLII home page, enter "Vout" into the "Case name, document title, file number, author or citation" search field. (Note that the search is case-insensitive.) Search. All legal databases provide a list of suggested results in a drop-down menu as you type. For best results, choose the decision from the appropriate level of court to view it. Review the original citation reference that was located

(Continued on the next page.)

⁷ CanLII, "Canadian Legal Information Institute" (last visited 8 September 2023), online: <<https://www.canlii.org/en>> [perma.cc/62Z7-VVQ5].

using the encyclopedia or digesting service to ensure that you are reviewing the correct case.



TASK 7.13

CanLII: Locating Legislation by Keyword Search

- From the CanLII home page, go to “Ontario” to narrow the search by jurisdiction. Under the heading “Legislation,” choose “Consolidated Statutes.” In the “filter” box, enter the keyword “succession.” Search. Choose *Succession Law Reform Act*.
- CanLII provides added value through links to cases that have judicially considered the statute. Judicial treatment of primary law is an essential aspect of legal research that will be discussed later in this chapter.

B. The Canadian Abridgment: Consolidated Table of Cases—Print

The Canadian Abridgment: Consolidated Table of Cases provides citation information for every level of court. However, as with any print service that frequently adds new information, updating is required. There may be as many as four different multi-set series of volumes to review to complete a table of cases search, including:

- a set of 33 hardcover volumes;
- a set of 33 softcover supplements, which post-date the hardcover volumes; and
- a softcover monthly, *Canadian Current Law* (the table of cases can be found at the beginning of each paper monthly; it is necessary to examine only the monthly digests that postdate the quarterly supplements).

Whether or not the case can be found in the main volume, continue to update until the present date by first checking the annual supplements, then the quarterly

supplements, and then the monthly supplements. This additional step ensures that you do not overlook a subsequent court proceeding.⁸

It is possible that two different cases may have the same style of cause, so use additional information to narrow the search, such as the year of the decision or jurisdiction (where the case arose and was heard).

TASK 7.14

Canadian Abridgment: Consolidated Table of Cases—Locating Judicial Decisions in Print

- Locate the *Consolidated Table of Cases* to find *Vout*. Information in the volumes is alphabetized. If the date of decision is unknown, select the main volume and search under the case name. Only one case lists *Vout* as a party.
- Essential information provided by the citation includes the date the case was reported (1995), the jurisdiction, and the court level (Supreme Court of Canada). Locate the case using the citation information.
- Since the citation indicates that the case was decided by the Supreme Court, further review of the supplements is unlikely to provide additional information, but you should make a habit of checking the supplements to ensure that no additional information can be found. For the *Vout* decision, a further review of annual, quarterly, and monthly supplements yields no new information.
- Note the series of numbers and letters in bold. These can be used to locate the digest that presents a summary of the case.
- A case may contain judicial consideration of multiple legal issues. Note that a separate digest is created for each legal issue discussed within the same case, so the case may be digested under more than one legal topic. Therefore, there may be multiple digests, with different alphanumeric reference codes for each, as explained in Task 7.8.

C. Westlaw and Lexis+: Keyword Searching Online

When searching a topic, a general keyword search is not recommended because too many hits are provided, many of which will be irrelevant. However, when the keywords can be narrowed sufficiently, a keyword search for primary law can be undertaken using both Westlaw and Lexis+.

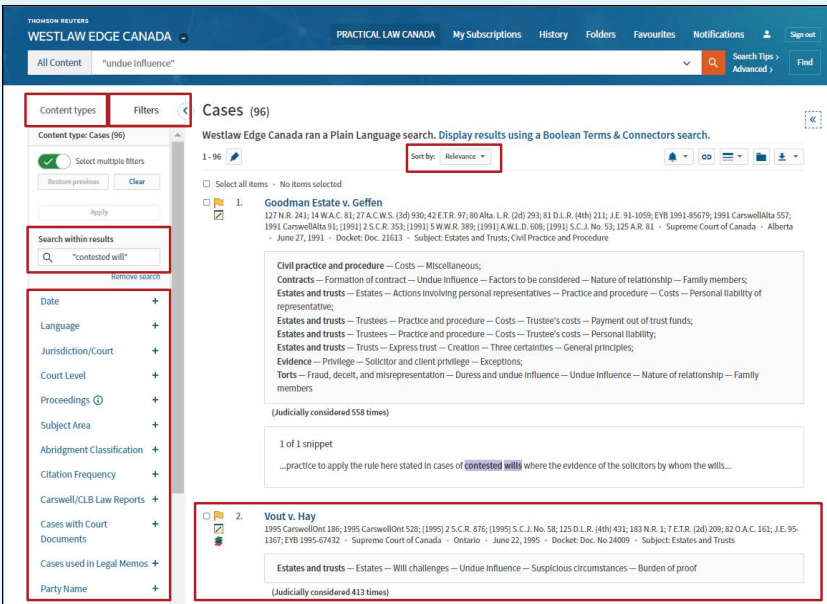
⁸ For additional information regarding the sequence of volumes to consult, review the *Short Guide*, *supra* note 6.

On both the Westlaw and Lexis+ home pages, use the search box to search by case or legislation name, by words or phrases, or by legal commentary keyword found in law reports. Both sites offer a wide variety of filters that allow you to narrow your search results.

TASK 7.15

Westlaw: Locating Judicial Decisions Using a Keyword Search—Online

- A general search using the keyword phrase “undue influence” generates thousands of documents.
- From the left menu, under “Content Types” select “Cases.” From the top, choose “Filters” to narrow the search.
- In the “Search within results” field, enter “contested will.” Choose “Apply” to initiate the search. The search finds dozens of cases, including *Vout*. Take note of the various filters available on the left menu to further narrow results. The “Sort by” drop-down menu at the top of the page can be used to reorganize the results display.



VI. Noting Up Primary Law: Judicial Decisions—Print and Online

The previous discussion focused on using secondary sources of law to find primary law. However, before relying on a case as part of the analysis of a legal issue, the lawyer must first determine whether the case is authoritative, sometimes referred to as “good law.” For example, a case decided in 1984 may be the leading case on a specific issue, having been referred to as authority by subsequent judges considering the same issue; on the other hand, it may have been overturned or further interpreted by a higher court and will therefore no longer be authoritative.

Moreover, although the case may not have been appealed and thus have no subsequent history, the legal issue may have been considered in one or more later cases. Decisions made by judges about the precedential value of a case can add or detract from the case’s authority and weight. For example, judges may either endorse the reasoning of a prior case as a correct interpretation of the law or decide that a different interpretation should be adopted. Furthermore, the case may be distinguished by a subsequent court as not applying closely enough to the underlying facts of the case. Therefore, noting up is an essential component of competent legal research.

This information can be found using both print and online sources.

A. The Canadian Abridgment: Canadian Case Citations—Print

The Abridgment provides both the case history and judicial treatment of decided case law. As with the Consolidated Table of Cases series, a search involves examining both hardcover texts and softcover supplements to ensure that the case is noted up to the most current date available.⁹ The discussion that follows illustrates the noting-up process using the wills hypothetical and the *Vout* case.

⁹ *Ibid.*

TASK 7.16**Noting Up Judicial Decisions Using The Canadian Abridgment:
Canadian Case Citations—Print**

- Locate *The Canadian Abridgment: Canadian Case Citations* hardcover volumes. Cases are arranged in alphabetical order within the volume set. Locate the case name. Record the volume's currency date.
- Update to the softcover supplements—annual, quarterly, and monthly, if available. Record the currency dates to ensure that no gap in time occurs. The case citation information provides the necessary information to locate the case in print or online.
- Examine the information listed after the case, where available. The references identify other cases that have judicially considered the case at each court level. The adjacent symbols indicate the judicial treatment given to the case. A symbol legend is provided at the bottom of each page for reference.
- To appreciate the importance of noting up and the value of this research tool, it is necessary to locate, brief, and analyze the target case.

Vout v Hay: Case Brief

An 81-year-old man who was murdered left a major portion of his estate to a friend. Surviving family members challenged the will's validity. The trial judge admitted the will to probate because there was insufficient proof that the testator lacked mental capacity to create the will. The Court of Appeal set aside the decision and ordered a new trial on the grounds that the trial judge failed to properly consider the issue of suspicious circumstances.

The Supreme Court of Canada determined that suspicious circumstances may be raised by: (1) circumstances surrounding the preparation of the will; (2) circumstances tending to call into question the capacity of the testator; or (3) circumstances tending to show that the free will of the testator was overborne by acts of coercion or fraud.

In this case, the Supreme Court restored the decision at trial and held that the trial judge did not make any error of law or any palpable or overriding error with respect to facts.

...

- By using *Canadian Case Citations*, the researcher can discover the case history of *Vout* and locate cases that considered the legal test applied by the Supreme Court in *Vout* when considering the issue of suspicious circumstances in the creation of a will.

B. Noting Up Cases: Westlaw, Lexis+, and CanLII—Online

Online noting-up functions are provided by these products. Because these services are updated frequently, there are no supplements to consult, and direct links to cases ensure more efficient searching. The additional cost of using commercial services must be considered when deciding which service to use.

TASK 7.17

Westlaw: Noting Up Cases Using KeyCite Canada

Westlaw's noting-up feature is called KeyCite Canada. Figure 7.4 explains Westlaw's noting-up symbols. The case history and judicial treatment are provided. Once you have located the case you wish to note up, use the tabs at the top of the page to navigate to related content.

The screenshot shows the Westlaw Edge Canada interface for the case *Vout v. Hay*. The top navigation bar includes 'WESTLAW EDGE CANADA', 'PRACTICAL LAW CANADA', 'My Subscriptions', 'History', 'Folders', 'Favourites', 'Notifications', and 'Sign out'. The search bar contains 'undue influence'. The case details show '1995 CarswellOnt 186 - Supreme Court of Canada - Ontario - June 22, 1995 (Approx. 18 pages)'. The 'History (4)' tab is selected, showing a list of four decisions:

1. *Vout v. Hay*, 1990 CarswellOnt 1838, Ont. Gen. Div., Nov. 13, 1990 (Judicially considered 2 times). Reversed by.....
2. *Vout v. Hay*, 1993 CarswellOnt 1599, Ont. C.A., Dec. 22, 1993. Leave to appeal allowed by.....
3. *Vout v. Hay*, 1994 CarswellOnt 5826, S.C.C., June 02, 1994. AND Reversed by.....
4. *Vout v. Hay*, 1995 CarswellOnt 186, S.C.C., June 22, 1995 (Judicially considered 413 times).

On the right, a graphical representation of the case history is shown, with boxes for each decision level (A, B, C) and arrows indicating the flow of the case. Annotations include 'Allowing leave to appeal' and 'reversing'.

From the "History" tab under "Direct History" is a list of the decisions that were rendered at each level of court for this case. On the right, a graphical representation of the case is provided. Select the "Citing References" tab to see a list of the decisions that have since considered this case. Use the filters provided to navigate the content.

While commercial sources of information, such as Westlaw and Lexis+, and free sources of information, such as CanLII, provide helpful information to understand the disposition of the case at each level of court (i.e., the case history), you should consult the case itself to ensure the accuracy of this information. Sometimes, as in

cases decided by the Supreme Court, the case history will be summarized in a paragraph prior to the reasons given by the court for its decision. Other courts hearing appeals may embed this information within the judicial reasoning itself.

Also note that both Westlaw and Lexis+ provide lists of secondary sources that have cited a particular case using their respective noting-up functions. On Westlaw, when viewing a case, choose the “Citing References—Secondary Sources” tab at the top of the page. On Lexis+, when viewing a case, choose “Commentary Referring to this Case” from the “About this document” box at the top right of the page. Secondary sources such as journal articles can provide critical analysis of cases, and thus can be used to help interpret the law.

TASK 7.18

Lexis+: Noting Up Cases

Once a case has been opened on Lexis+, choose “Citing Cases” from the “Info” tab at the top right of the page.

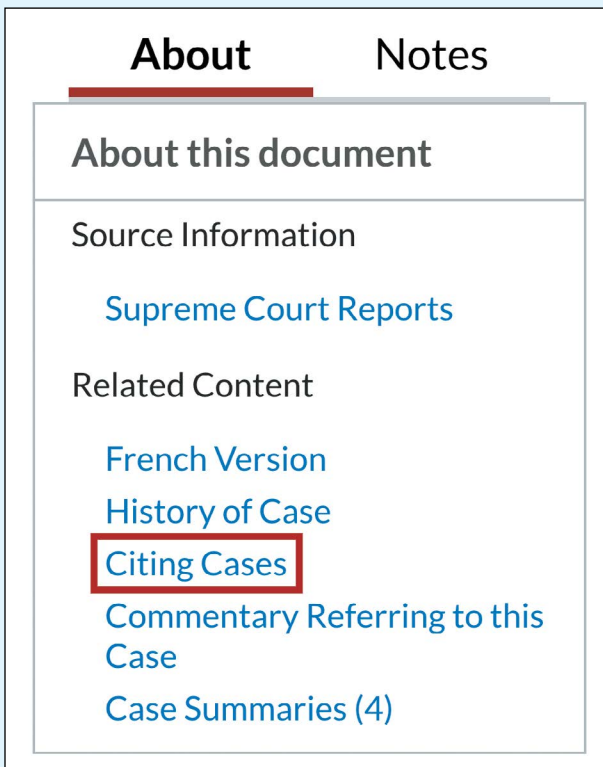


Image sourced from Lexis+™ Canada with permission. Copyright 2023 LexisNexis. All rights reserved.

A list of the cases that have cited this decision is provided. A visual representation, which allows you to filter the citing cases by jurisdiction, year, level of court, and treatment, is also provided just below the “History of Case” listing. Use the “Search Within Citing Cases” box to narrow results. Cases listed here may also be sorted using the “Sort by” drop-down menu just above the list of cases.

The screenshot displays the Lexis+TM Canada interface for the case *Vout v. Hay*. The main section is titled "Citing Cases" and features a grid showing the number of citing cases categorized by jurisdiction and treatment. The grid is organized as follows:

Treatment	ALCA	ABQB	ABQJ	ABSP/ST	BCCA	BCSC	CAFC	Cham/Re/Br/NL	MECA	MBQB	MDQB	MB	NECA	NB/PE/CT	NEBQ	NEBTD/Pr/MI	NLCA	NLSC/DP	NL/ST/DT	NL/ST/DO	NECA	
Negative				1		1																
Cautionary																						
Positive	3		11	4	3	8			1		3	1	2				2	1			1	3
Neutral	5	2	46	4	14	92	3	1	3	2	14			3	1			1	2	6	2	

Below the grid, there is a "Search Within Citing Cases" box with the placeholder text "Enter search terms". To the right, a "Cases (483)" section shows a list of cases, with the first entry being *Glann v. Glannopoulos* [2023] O.J. No. 4207 *Locus Para* 24, 2023 ONSC 5412. A "Sort by" dropdown menu is set to "Date (newest first)".

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TASK 7.19





CanLII: Finding Judicial Treatment

CanLII’s noting-up feature can be accessed at the beginning of each case. Choose the “Treatment” tab to see a list of decisions that have considered the case. Click “Search for all Citing Documents” to obtain full functionality and options.

(Continued on the next page.)

FIGURE 7.4 Comparison of Lexis+ and Noting-Up Symbols

Westlaw	Meaning	QuickCITE	Meaning
 Red flag	The case may not be good law, indicating that the decision has been reversed, or has not been followed within the same jurisdiction or by the Supreme Court of Canada.	 Negative treatment	The case has negative history (judicial review allowed, reconsideration allowed, reversed, quashed, or varied by a higher court) or negative treatments (not followed or questioned by a subsequent court).
 Yellow flag	The decision has some negative history or treatment but has not been reversed or overruled. A yellow flag is also displayed if a treatment has been recently added and has not yet been editorially analyzed.	 Cautionary treatment	The case has been distinguished by a subsequent court.

Westlaw	Meaning	QuickCITE	Meaning
H Blue H	The decision has some direct history, but it is not known to be negative history.	 Positive treatment	The case has positive history (affirmed, judicial review denied, or leave to appeal refused by a higher court) or positive treatments (followed or followed in a minority opinion of a subsequent court).
C Green C	The decision has no direct history, but there are treating cases or other citing references to the decision.	 Neutral history or treatment	The case has neutral treatments (mentioned, explained, cited, or cited in a dissenting opinion) or the case has history (abandoned, abated, leave to appeal granted, reconsideration denied, related proceeding, same case, or supplementary reasons by a subsequent court), but the citing court does not comment on the case. This symbol is also attached to cases that have been added to Lexis+ within the past 3 business days but have not yet been assigned a QuickCITE treatment.
		 Case Citation information	The case has no known history or treatments.
		 Legislation citation information	A legislation citator record is available.

* Descriptions of these noting-up symbols were taken from the help screens for Westlaw at <https://www.westlawcanada.com> and Lexis+ at <https://www.lexis.com>.

VII. Noting Up Primary Law: Legislation—Print and Online

Locating judicial decisions that consider legislation is an essential research skill that can aid with statutory interpretation.

A researcher may also be required to find cases that have judicially considered all versions of the legislation, even when the legislation has been subsequently repealed or amended.

These types of research tasks, which focus on discrete aspects of legislation, can be completed both in print and online, using both commercially available research products and those that are of no cost to the user.

A. The Canadian Abridgment: Canadian Statute Citations—Print

The Canadian Abridgment: Canadian Statute Citations is a comprehensive tool for locating cases that have judicially considered statutes, regulations, and rules.

TASK 7.20

Canadian Abridgment: Noting Up Legislation Using Canadian Statute Citations—Print

Locate the *Succession Law Reform Act*, RSO 1990, c S.26. Previous searches have indicated that this statute is relevant to the creation and interpretation of wills.

- Identify the title of the legislation (statute or regulation) to be examined for its judicial treatment. Determine the relevant sections to be considered. Examine its citation and determine the jurisdiction—federal or provincial.
- Locate *The Canadian Abridgment: Canadian Statute Citations*. Information is organized by jurisdiction. Judicial consideration of statutes is organized separately from regulations. Legislation within each jurisdiction is organized alphabetically.
- The system used is like other Abridgment products, with searches including hardcover volumes, updating to softcover supplements. If searching for legislation that has been in existence for some time, such as a revised statute, begin the search in the hardcover volume. Locate the statute by name and citation and find the specific sections to be considered.
- Previous versions of statutes, if any, are provided, facilitating searches of the judicial treatment of earlier versions of the statute.

- The judicial consideration of the statute is considered section by section, including sections that have been subsequently amended. Record the case citation information that has judicially considered the identified statute section(s).
- Note the currency date of the volume. Update with the annual and quarterly supplements. Record the case names found. Locate the case names using the accompanying citation information.
- The adjacent symbols indicate the judicial treatment of the legislation. A symbol legend is provided at the bottom of each page for reference and is also reproduced in the *Short Guide*.
- If the statute being searched is more recent, it may be possible to begin the search with the supplement. Rely on the date of the citation to determine the period to begin the search.
- To note up regulations and rules, locate the relevant volumes and structure the search in a similar way.

B. Statute Citators: Print

The *Canada Statute Citator*, as well as the *Ontario Statute Citator* and the *British Columbia Statute Citator*,¹⁰ reference important judicial decisions concerning current versions of legislation.

TASK 7.21

Canada Statute Citator and Ontario Statute Citator

- Locate the *Canada Statute Citator*. Federal statutes are organized alphabetically in a series of loose-leaf volumes.
- The short title, all amendments, and coming-into-force dates since the last statute revision (1985) are provided. Record the currency date found at the bottom of each page. In addition, judicial decisions of note, with a brief explanation of relevance, are provided.
- Update the main entry by using the Weekly Bulletin Service (green pages) at the beginning of volume 1 of the Citator. Examine the green pages to determine whether there are bills in progress or consequential amendments.

(Continued on the next page.)

10 *Canada Statute Citator* (Aurora, Ont: Canada Law Book, 2009) (loose-leaf); *Ontario Statute Citator*, RSO 1990 ed (Aurora, Ont: Canada Law Book, 2009) (loose-leaf); *British Columbia Statute Citator*, RSBC 1996 ed (Aurora, Ont: Canada Law Book, 2009) (loose-leaf). The citators consider legislation since the last revision for each jurisdiction.

- Although this service provides a summary of important aspects of a statute, it is not intended to be a comprehensive research tool. Thus, it does not include information about legislation prior to the last revision.
- The *Ontario Statute Citator* is available for Ontario research (1990 and on). It is organized in a similar manner to that of the *Canada Statute Citator* (with updates to pink, not green, pages).

C. Legislation: Westlaw, Lexis+, and CanLII—Noting Up Online

Online noting-up functions are provided by Westlaw, Lexis+, and CanLII.

TASK 7.22

Noting Up Legislation: Westlaw and Lexis+—Online

- To note up legislation using Westlaw, locate the section of the act or regulation in question. Choose the “Citing References” tab at the top of the document to view a list of cases that have cited the section. Use the filters on the left menu to narrow the list of cases by jurisdiction, date of decision, level of court, or keyword. Many other filters are also available.
- To note up legislation using Lexis+, locate the section of the act or regulation in question. In the “About this document” box to the right of the document, choose “Citing Cases.” Use the filters graph to narrow the list of cases by jurisdiction, date of decision, level of court, treatment level, or keyword.

VIII. Using Secondary Sources to Locate Unreported Judicial Decisions

Unreported decisions are those not published in a reporter series. However, many unreported decisions can be located using commercial online services such as Lexis+ or Westlaw. Depending on the research problem, locating unreported decisions may be necessary—for example, if you can find no reported decisions on point or if you are completing a scholarly research paper and are required to investigate all available case law about a topic.

Summaries of older, unreported civil cases from across Canada can be found in *All-Canada Weekly Summaries* (ACWS).¹¹ Cases are organized by subject.

¹¹ *All-Canada Weekly Summaries*, Third Series (Toronto: Canada Law Book, 2015).

Summaries of criminal judgments from across Canada are digested in the *Weekly Criminal Bulletin* (WCB).¹² Print versions are available in most law libraries.

NB: When providing a case citation, do not cite to either the ACWS or the WCB, because these sources do not provide full texts of the decisions.

IX. Legal Commentary, Periodicals, Treatises, and Texts

To this point, the secondary sources discussed have been those that are used to find primary law. However, secondary sources are useful for analyzing both judicial decisions and legislation when:

- completing assigned course work in an academic setting;
- working as a research assistant for a professor engaged in legal scholarship; or
- working as a summer or articling student in a law office, or later, in practice, researching a specific topic about an area of law with which the researcher may not be familiar or up to date.

Treatises, texts, articles, case comments, and annotated legislation, written by experts in their fields, provide analysis of the legal principles and identify the relevant case law and legislation. Other sources, such as legal dictionaries and word and phrase finders, provide descriptions and definitions of words and phrases that have specific legal meanings. In addition, the use of historical documents can provide the background to the development and interpretation of the law while documents that assess current policy initiatives or position papers can help to interpret the law. Many secondary sources provide citation references to legislation and case law. In legal practice, forms, precedent documents, and checklists, in addition to other practice aids, are also helpful.

A. Finding Commentary: Print

- Legal keywords can be used to find secondary sources as well as primary sources of law. Organize keywords, either alphabetically or in an order that will generate the greatest number of relevant articles. Maintain a consistent search pattern and record the results.
- Use periodical indexes to locate secondary sources. Periodical indexes contain citations, which enable you to locate articles, case and legislative

¹² Edward L Greenspan, ed, *Weekly Criminal Bulletin* (Toronto: Canada Law Book, 2015).

comments, monographs, and book reviews. They differ only in the scope or jurisdiction of the journals indexed.

- Law journal articles have traditionally been published by law schools and other organizations in journal format. Many law libraries provide access to historical law journals in print. Finding a law journal article requires a citation that includes the name of the author, the name of the article, the journal title, and year of publication.
- Most print indexes include a subject index (the largest index), an author index, a table of cases (with citation references), and a table of statutes.
- The search topic will dictate the starting place. If the topic is current, you may choose to start with the most recent paper part and work backward in time. If the topic has historical significance, begin at the time the topic was current and work forward in time.

Comprehensive print periodical indexes include:

- *The Canadian Abridgment: Index to Canadian Legal Literature* (ICLL)—indexes Canadian periodicals (Toronto: Carswell, 2014)
- *Current Law Index*—indexes international periodicals, including some Canadian sources (Los Altos, Cal: Information Access Corporation, 1980) (supplemental publication)

TASK 7.23

Locating Commentary, Case, and Legislative Comments: Using the Canadian Abridgment—ICLL: Print

- Returning to the problem of the validity of Conrad Cash's will, select the search terms used for the primary law search, including "wills" and "undue influence." Because this topic concerns a testator who died in Ontario, begin the search with Canadian sources.
- Locate the ICLL. The ICLL includes a set of hardcover volumes and one softcover annual supplement. The set includes subject indexes, author indexes, tables of cases and statutes, and book reviews.
- Determine whether to undertake a search by subject, author, or case or statute name. For this problem, conduct a search by topic/subject. The information is organized alphabetically by subject matter within each volume. Select the hardcover volume(s) containing information about undue influence and wills. Update with the annual supplement.

- Review the sources found and use the citation references to locate relevant material. Interlibrary loans can be arranged if required.
- If you are unsure of the full title of the journal to be searched, the periodical index lists the full name of the periodical linked to its acronym. The *Canadian Guide to Uniform Legal Citation*¹³ provides a similar table in Appendix D.

Case and legislative comments provide analyses of cases or statutes. To find a case comment, determine the name of the case and its decision date.

- Select the relevant volume and examine the alphabetized list of cases to determine whether a case comment exists. Update with the annual supplement.
- Case comments identify the court level in the case citation provided immediately after the case name. A case comment that referenced the Court of Appeal would discuss that Court's decision; a case comment that referenced the Supreme Court would discuss that Court's decision.
- The process for finding case comments and legislative comments is similar. Use the same books and the same processes used to find a case comment.
- To locate legislative comments, select the relevant volume and turn to the Table of Statutes. Federal legislation is organized alphabetically using the name of the statute. Provincial legislation is organized alphabetically by province. Non-Canadian legislation may also be the subject of legislative comment and is organized by country, followed by the title of the relevant legislation.

B. Finding Commentary: Online

Many online sources now provide online access to law journals. Westlaw and Lexis+ provide access to relatively recent law journal content. They both provide extensive databases of commentary on Canadian law, as well as on law from other countries. Sources found in online indexes will link to the full text of the article if available. HeinOnline is the only online source that currently provides comprehensive historical law journal content for Canada and the United States. HeinOnline scans the print version of journal articles and thus provides page numbers for legal citation purposes. CanLII has also recently begun collecting commentary and articles.

13 10th ed (Toronto: Thomson Reuters, 2023) [McGill Guide].

TASK 7.24

Using Lexis+ to Find Journal Articles and Case Commentary: Online

Use the word “wills” and “undue influence” as target search terms.

- On Lexis+, enter the search terms in the main search field.
- From the results list page, select “Secondary Materials” from the box on the left.
- It is also possible to narrow the search to specific types of commentary, including legal encyclopedias, commentary, and textbooks, by selecting the appropriate choice under “Content Type” on the left menu.

TASK 7.25

Using Westlaw to Find Journal Articles and Case Commentary: Online

- From the Westlaw home page, under the “All Content” tab, under “Commentary,” choose “Articles and Newsletters.” A list of available Canadian law journals and newsletters is provided. Enter keywords in the search box at the top of the page to search within these sources. Westlaw also provides e-book content to subscribers.

TASK 7.26

Using HeinOnline to Find Journal Articles

Many libraries subscribe to HeinOnline, which is a valuable resource for historical documents. HeinOnline’s Law Journal Library, available in most large law libraries, provides full-text access to scanned content of law journals from Canada and the United States, with limited coverage of other jurisdictions. HeinOnline is the only online database that provides page numbers for law journals. Content is organized in alphabetical order by journal name for easy browsing; alternatively, the “Search” tab at the top left of the page provides a variety of searching options.

Use the “Advanced Search” for sophisticated search options. Filtering by country or topic is another useful feature of the interface. Additionally, consider navigating by “Pathfinder Subject” to find relevant articles.

TASK 7.27**Using CanLII to Find Commentary**

CanLII is quickly building its collections of e-books, articles, and journals.

C. Using Legal Dictionaries and Words and Phrases Judicially Considered

At times, researchers may be required to search by a legally defined term or phrase rather than by case or statute name or by legal topic. For example, a topic search for the law that considers *parens patriae* jurisdiction would not yield results. In addition, a keyword search in an online database would find many sources that used the term but not necessarily a targeted list of the authoritative sources that provide a precise definition.

Legal dictionaries (and other legal reference texts) are a valuable source of information for this type of search because they contain defined legal concepts and maxims. For example:

- *Black's Law Dictionary*¹⁴ contains definitions from both English and American primary law.
- Canadian legal dictionaries are available both in print (e.g., *The Dictionary of Canadian Law*¹⁵) and online (e.g., Canadian Legal Dictionary¹⁶).
- *Words & Phrases Judicially Defined in Canadian Courts and Tribunals*¹⁷ is another volume in the *Canadian Abridgment* system. The hardcover series provides alphabetized legal words and phrases. The word or phrase is linked to relevant primary law source(s) explaining its meaning. Updates are provided in softcover supplemental volumes.

14 Bryan A Garner, *Black's Law Dictionary*, 11th ed (Eagan, Minn: Thomson Reuters, 2019). Available in print in most law libraries and online via Westlaw.

15 Nancy McCormack, *The Dictionary of Canadian Law*, 5th ed (Toronto: Carswell, 2020).

16 Irwin Law, "Canadian Online Legal Dictionary" (last visited 8 September 2023), online: <<https://irwinlaw.com/cold>> [perma.cc/N94P-QXKJ].

17 Rae Blackburn & Cheryl Finch, eds, *Words & Phrases Judicially Defined in Canadian Courts and Tribunals* (Scarborough, Ont: Carswell, 1993).

- *Words and Phrases Legally Defined*¹⁸ contains information from other jurisdictions as well as Canada.
- *Canadian Legal Words and Phrases* is available on Lexis+ and provides direct links to cases.

D. Online Research

Online research is continuously evolving. Content producers include law professors, lawyers, judges, government agencies, and law students contributing reports, law journal articles, books, and blog posts. Historically, content was distributed primarily by the government, academic law journals, and commercial publishers, who continue to transition content from print formats to digital formats.

The digital environment has provided endless opportunities and challenges. One challenge that remains problematic is determining how to refer users to online content in citations. Two approaches have evolved to help address this challenge.

First, digital object identifiers (DOI)¹⁹ are being employed by many commercial academic journal platforms. In the past, journal citations provided the volume, issue number, year, and start page for individual journal articles. However, with the proliferation of online journals, these citation elements may no longer exist or have relevance. Accordingly, this standardized, unique identifier is now being applied to each article by some journal platforms. Law journal platforms have not begun to adopt this standard, but the trend may evolve for legal content in the future. The 10th edition of the McGill Guide, at pages E-14–15, is encouraging adoption of this standard.

Second, archived, or permanent, URLs are also being encouraged by the 10th edition of the McGill Guide at page E-14. As a result of platform and server migrations and upgrades, URLs referred to in books, journal articles, and court decisions can frequently become “broken links.” The purpose of a citation in legal work is to ensure that users can permanently locate resources that were referred to; accordingly, broken URLs are unacceptable in legal citation. To remedy this widespread problem, the Harvard Law School Library created Perma.cc. This site allows authors and organizations to permanently save website content and to provide durable URLs in citations. The McGill Guide recommends including both the original URL and a permanent/archived URL in any citation that includes reference to a website. We employ dozens of examples of Perma.cc archived URLs in our own citations throughout this book.

18 David Hay, ed, *Words and Phrases Legally Defined*, 5th ed (London, UK: LexisNexis UK, 2018).

19 For full details, visit International DOI Foundation, “The Digital Object Identifier System” (last visited 8 September 2023), online: <<https://www.doi.org>> [perma.cc/Y5ZC-X5BT].

In addition, at the top of any article accessed through HeinOnline’s Law Journal Library, users will see a link icon that provides a permanent link to the article as well.

Below are some additional online sources that are useful for law-related research. Become familiar with the sites listed below. Add to the list as you identify additional sources.

- Library and Archives Canada at <<http://www.collectionscanada.gc.ca/index-e.html>> is a rich source of historical information.
- Government agencies provide many of their policy documents online.
- Informit AGIS Plus Text and Gale Cengage Learning LegalTrac are two additional sources of law journal articles. Check with your law library to determine whether you have access to these websites.
- ProQuest Social Science Journals and Scholars Portal are two helpful resources for finding academic articles from various disciplines. These subscription-based resources can be particularly useful when researching public policy. Check with your law library to determine whether you have access.
- ProQuest Canadian Newsstand is another subscription-based resource that can be used to locate news articles from various newspapers. The databases are continuously updated to add both recent and historical articles.

Before researching online, pay particular attention to the source of the information to determine the information’s validity and reliability. Be prepared to verify the validity and reliability of any secondary source used.

E. Practice Tools

Practising lawyers often refer to several additional tools to assist with drafting and preparation for litigation. A summary of such tools is provided below:

- Forms and Precedents—Editable templates, sample court forms, pleadings and agreements, and sample provisions are helpful information sources often used in practice context. Checklists and tables are also helpful. Such materials can be found in many places, including:
 - as an appendix to a text or loose-leaf service (print or online);
 - Westlaw sources such as “Practical Law,” “O’Brien’s Encyclopedia of Forms,” “Solicitor’s Core,” “Litigator,” and “Pleadings, Motions and Facta/Briefs”;

- Lexis+ sources such as “Practical Guidance,” “Pleadings, Motions and Facta,” or “Drafting Materials (Precedents)”;
- entire texts that may be devoted to providing sample forms and precedents.
- Quantums—Both Lexis+ and Westlaw provide access to quantum services. These services are organized into a few key topics and use detailed filters to locate case law that will assist with quantifying monetary awards.
- Legislative Concordances—Some texts and loose-leaf services, in addition to Westlaw, provide legislative concordances. These tables are designed to help users quickly ascertain legislative provisions across all Canadian jurisdictions for similar statutory rubrics such as insurance or corporate laws.
- Continuing legal education materials—Practising lawyers are required by their governing bodies to perpetually upgrade their knowledge. Continuing legal education seminars are offered to lawyers as learning opportunities. Some libraries have indexed and made available the readings associated with these courses. Such information is useful for providing current information about practice-related topics, as well as forms, sample language, and checklists. For example, Access CLE²⁰ provides a free online library of past educational opportunities offered by the Law Society of Ontario.

F. Researching Primary Case Law and Secondary Source Law

You may find it helpful to create a comprehensive personalized resource for research planning, such as the one shown in Figure 7.5. This table can be modified to include call numbers to print sources and URLs to websites of frequently used sources.

20 Law Society of Ontario, “Access CLE: LSO CPD Articles” (last accessed 21 March 2023), online: <<http://lx07.lsuc.on.ca/R?RN=3985707>> [perma.cc/K52R-ZHFA].

FIGURE 7.5 Sample Comprehensive Personalized Resource for Research Planning

Publication—Encyclopedia	Call Number	Online (if applicable)
CED—Index		Westlaw
CED—Research Guide		
Halsbury’s Laws of Canada		Lexis+
Other		
Publication—Finding Sources and Analyzing	Call Number	Online (if applicable)
Canadian Abridgment—Key and Research Guide		
Canadian Abridgment—Index		
Abridgment—Canadian Current Law—Case Digests		Westlaw
Abridgment—Consolidated Table of Cases		
Abridgment—Canadian Case Citations		
Canadian Abridgment—Index to Canadian Legal Literature		Westlaw
Current Law Index		
Treatises and monographs		Westlaw Edge Canada Lexis+
Annotated legislation		
Other		
Publication—Words and Phrases Defined	Call Number	Online (if applicable)
Canadian Abridgment—Words & Phrases Judicially Defined in Canadian Courts and Tribunals		Westlaw
Canadian Legal Words and Phrases		Lexis+

