

The Basics of Legal Research



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Learning Outcomes

After reading this chapter, you will understand:

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

Introduction

In this chapter, we take a look at the fundamentals of legal research. Research is something that legal professionals are constantly doing, whether it's strictly "legal" research—that is, finding out the law from statutes, regulations, bylaws, and cases—or various other kinds of research, such as finding out the correct legal name of a corporation, what county a town is located in, or whether there is a security lien on a chattel or a construction lien on real property.

The ability to find things out—in other words, to research—is therefore an essential skill for a legal professional.

We live in an information age: we are surrounded by information—online, on television and radio, and in print. The information needed by a legal professional is available *somewhere*, but you have to know where and how to find it and be able to understand, evaluate, and apply it.

The Purpose and Basic Steps of Legal Research

All research, legal or otherwise, has the same purpose—to gather information that you don't yet know or to confirm the accuracy of information you already have. All research, legal or otherwise, involves the same standard steps, whether you are using print sources or online sources. These steps are as follows:

- identify the issue to be researched in order to solve a specific problem;
- identify and use the right research tools to guide you to information about that issue;
- find the sources to which the research tools point you;
- understand those sources; and
- apply the information you have found to answering a question or solving a problem.

In legal research, the information you don't have and are seeking is the law. For this reason, the research steps are a bit more specialized. You must

- identify a *legal issue* after hearing the story of a *client's* problem;
- familiarize yourself with, find, and work with specialized *legal research tools and sources*; and
- apply the *law* you find so that you can solve the *client's* problem.

A legal professional will engage in legal research to learn about the law, so that he or she can take action or advise a client how to proceed in a given situation. For example, consider the following situations, each involving a different area of law:

- A commercial lawyer researches case law to advise a client whether a contract she entered into is valid and whether the other party can be forced to perform his obligations under the contract.

- A family lawyer researches statute law to advise a client whether the foreign divorce he got is valid and whether he can marry again without committing bigamy.
- A tax lawyer researches statute law and regulations to find out whether a client's business expense is deductible for tax purposes.
- A paralegal or lawyer researches case law clarifying the rules of court concerning substituted service to prepare to appear on a motion.
- A paralegal researches statute law to advise a landlord client whether she has grounds to evict her residential tenant.

Categories of Law

No legal professional knows all the law all the time. But legal professionals have to know *enough* law to fit a client's problem into the proper category of law; they need to know where to begin to look for answers. To navigate your way through the vast amount of legal information available, you need to have some understanding of the categories of law.

The three broadest categories of law are substantive law, procedural law, and the law of evidence (see Figure 1.1). **Substantive law** defines legal rights and obligations. Legal rights may be enforced by way of legal proceedings, and substantive law also sets out defences to such proceedings. **Procedural law** sets out the process that a party must follow to enforce his or her rights in a court proceeding or to defend a proceeding. The **law of evidence** sets out the manner in which facts are introduced and proved in a trial or a proceeding.

Substantive law may be further divided into public law and private law. **Public law** governs the relationship between legal persons (individuals, partnerships, and corporations) and the state (federal, provincial, or municipal government), and it includes such areas as

- constitutional law,
- criminal law,
- tax law,
- immigration and refugee law,
- environmental law,
- child welfare, and
- municipal law.

Private law governs the relationship between legal persons and includes such areas as

- contracts,
- family law,
- property law,
- real estate,
- torts,
- wills and estates, and
- commercial law.

substantive law

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

procedural law

sets out the process that a party must follow to enforce his/her/its rights in a court proceeding or to defend a proceeding

law of evidence

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

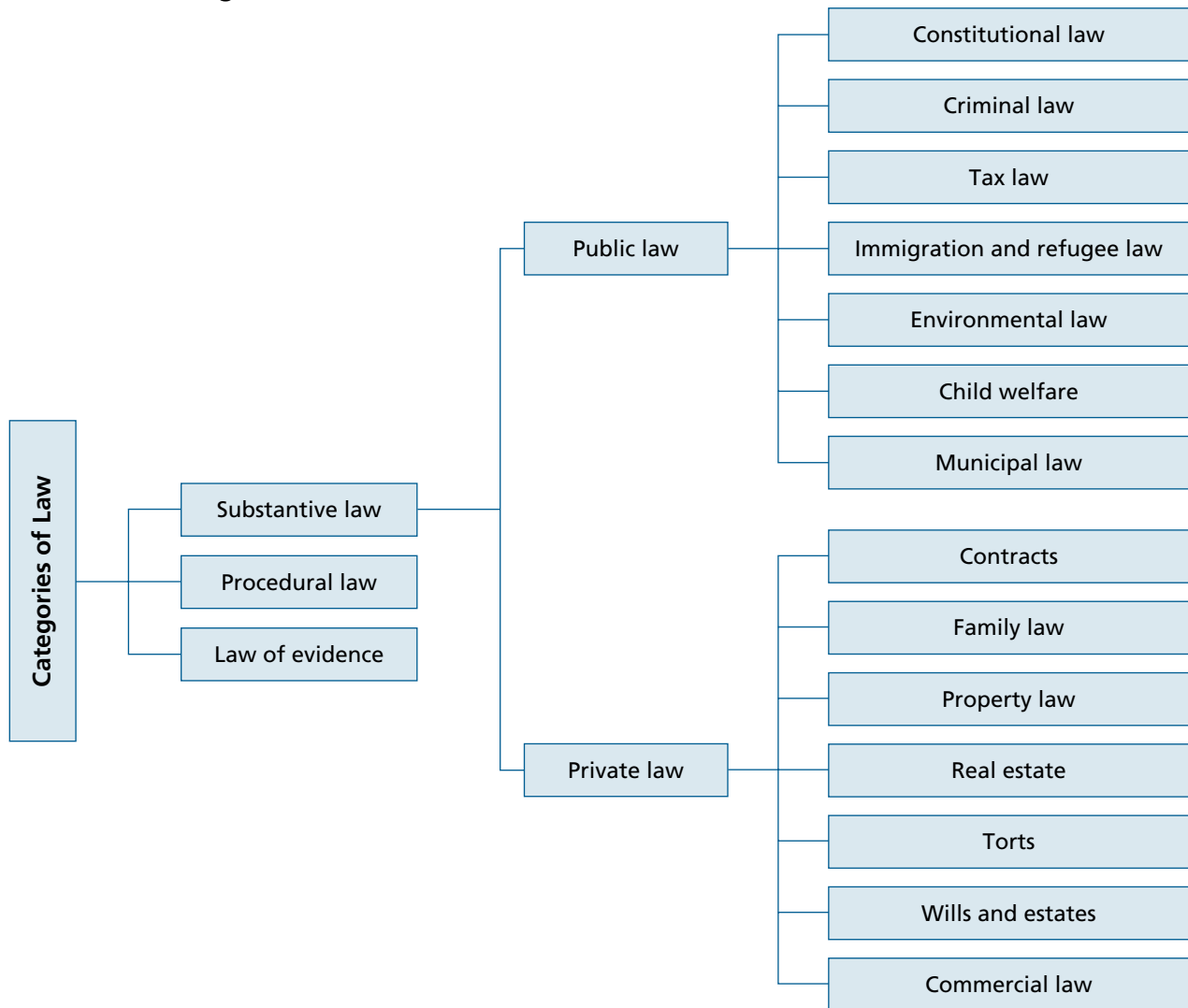
public law

governs the relationship between legal persons (individuals, partnerships, and corporations) and the state (federal, provincial, or municipal government) and includes such areas of law as municipal law, immigration and refugee law, environmental law, constitutional law, criminal law, tax law, and child welfare

private law

governs the relationship between legal persons and includes such areas as contracts, family law, property law, real estate, torts, wills and estates, and commercial law

FIGURE 1.1 Categories of Law



Sources of Law

Substantive, procedural, and evidentiary Canadian law are made up of a combination of

- statutes passed by either the federal Parliament or the provincial legislatures (the Canadian Constitution defines whether it is a federal or a provincial government that has the power to make laws in a particular area);
- regulations made either by the federal government or by a provincial government, pursuant to their respective statutes;
- bylaws made by a municipality pursuant to powers granted to it under the provincial *Municipal Act, 2001*, SO 2001, c 25; and
- decisions made by judges and adjudicators in court and tribunal proceedings (case law).

Primary Versus Secondary Sources

In legal research, we make a distinction between primary sources and secondary sources. **Primary sources** are the actual statutes, regulations, bylaws, and case decisions that create the law. **Secondary sources** are sources that summarize, discuss, explain, and/or help you find primary sources. They include

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

When you perform legal research, you cannot rely on secondary sources alone. Secondary sources are the finding tools that help you gain an understanding of the law and direct you to the primary sources that actually create the law. You must then examine the primary sources to which you have been referred.

Print Sources Versus Online Sources

Most primary and many secondary legal sources are available in both print and online formats. Statutes and regulations are bound into book format, and cases are collected in report series. When it comes to secondary sources, most legal texts are available only in book format, and many journal articles are published only in print. However, legal encyclopedias, case digests, and indexes to statutes are found in both print and online versions. Online versions of statutes, regulations, bylaws, and cases are available on free websites and through subscription services such as Lexis Advance Quicklaw and WestlawNext Canada. Many of these online sources combine the finding features of a secondary source with direct access to the primary sources themselves.

While the current trend is to perform legal research using online sources alone, there are still some advantages to using print sources. First, it is much easier to browse through print sources and see how your research topic fits within the general area of law you are researching. Online sources, by comparison, will show you only what you ask to see. Second, online sources—in particular, the sources that provide statutes, regulations, and bylaws—do not extend very far into the past and therefore may not be able to show you the law that governed when the legal problem arose. If you want to see a version from before 2000, you may need to use print sources.

What It Takes to Be a Good Legal Researcher

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

- Your final information must come from the most reliable sources—that is, primary sources.

primary sources

the statutes, regulations, bylaws, and case decisions that create the law

secondary sources

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

- You must find *all* the relevant statutes, regulations, bylaws, and case decisions, and then make sure that the statutes, regulations, or bylaws have not been amended or repealed and that the cases have not been overturned on appeal or by statute or regulation.
- You must understand the information you have found and summarize or copy it correctly.

KEY TERMS

law of evidence, 5
primary sources, 7
private law, 5

procedural law, 5
public law, 5
secondary sources, 7

substantive law, 5

EXERCISE

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

Read the fact situation below and answer the questions that follow. Please feel free to use your creativity and powers of deduction! You are not being asked to consider questions of substantive law or procedure.

Fact Situation

Angelina Jolly was visiting Niagara Falls, Ontario. While she was driving near the falls, her car was struck by a car driven by Jennifer Annistone. Brad Pitts, a driver in another car, witnessed the incident; he gave his name and telephone number to Angelina before Angelina was taken by air ambulance to Toronto Slicendice Hospital. While Angelina was recuperating at the hospital, a nurse entered her room in the middle of the night and stole an extremely valuable ring.

After her release from the hospital, Angelina retained your law firm to bring two separate actions: one against Jennifer Annistone, for damages for her injuries and the cost of replacing her car; and one against the Slicendice Hospital for the theft of her ring.

There are some preliminary matters for your firm to consider. Read the questions below and suggest how you would go about finding the information required.

1. What is the monetary jurisdiction of the Ontario Superior Court of Justice? Of the Ontario Small Claims Court?
2. What is the filing fee for a claim in the Ontario Superior Court of Justice? In the Ontario Small Claims Court?
3. How can you find the location and telephone number of the Superior Court or Small Claims Court office where your firm will file the statement of claim?
4. You need to contact the witness, Brad Pitts. Unfortunately, Angelina lost his telephone number, but remembers that he lives in Los Angeles, California. How can you find Brad's telephone number?
5. Angelina is claiming that she suffered neurological injuries in the accident. If the action goes to trial, your firm will need an expert witness in the field of neurology to testify about the effects of Angelina's injuries on her ability to work. Where can you find an up-to-date list of all neurologists registered in your province?
6. Angelina has an insurance certificate valuing the stolen ring at US\$23,950. In order to determine whether a legal action should be brought in Small Claims Court or Superior Court, you need to know the Canadian dollar equivalent of the US dollar amount at today's exchange rate. Where can you find this information?
7. Legal research brings to light the somewhat similar Ontario case of *Holmes v Kidman*, and your firm would like to obtain the advice of the lawyer who was named in *Holmes* as counsel for the plaintiff. How can you find the lawyer's address and/or telephone number?
8. A court summons will have to be served personally on Angelina's hospital roommate, who was in the next bed when the nurse made off with Angelina's ring. Angelina happens to know the roommate's home telephone number, but not her street address. It doesn't seem like a good idea to alert the roommate to the summons by calling her. How can you use the roommate's telephone number to find out her address?
9. Your firm is a busy one and has matters besides Angelina's to deal with. Turning to your brimming inbox, you discover you have to send a package to the Banff Springs Hotel in Banff, Alberta, but the courier service won't accept the package without a postal code, even though you have provided the rest of the address. How can you find the postal code without telephoning the hotel?
10. In another unrelated matter, you need to write to a member of Parliament on behalf of a client. How can you find out the name and address of your client's federal MP, the member for the Don Valley North riding in Toronto?

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