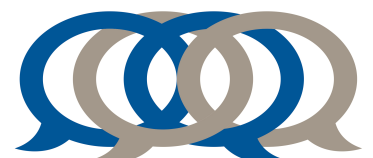


The CanLII Primer

Legal Research Principles and
CanLII Navigation
for Self-Represented
Litigants

The National Self-Represented
Litigants Project



**THE NATIONAL
SELF-REPRESENTED LITIGANTS PROJECT**
Research, Resources, Dialogue & Collaboration



Windsor Law
University of Windsor

TABLE OF CONTENTS

Introduction

What is CanLII?

Part One

The Canadian Legal System

1.1 The Structure of the Canadian Courts, Boards and Tribunals

- 1.1.1 The Canadian Court System
- 1.1.2 Administrative Tribunals

1.2 The System of Precedent

- 1.2.1 What is “Precedent”?
- 1.2.2 What is “Binding” Case Law?
- 1.2.3 What is “Persuasive” Case Law?

1.3 Legislation

Part Two

Legal Research using CanLII

2.1 Getting Started

- 2.1.1 Maneuvering the Search Engine
- 2.1.2 Finding your way Around Case Law Reports in CanLII
 - 2.1.2.1 *The Legal Citation*
 - 2.1.2.2 *The Headnote*
 - 2.1.2.3 *The Decision*
 - 2.1.2.4 *The Presiding Judge*
- 2.1.3 Finding your way Around Legislation in CanLII

2.2 Generating Search Terms in CanLII

- 2.2.1 Using Legal Terms for your Search
- 2.2.2 Using Cases and Legislation to Generate Search Terms

2.3 Searching by Jurisdiction, Case Names, and Legislation

2.3.1 How to Search by Jurisdiction

2.3.2 How to Search by Case Name

2.3.3 How to Search by Legislation

2.4 Do I search Cases First, Legislation First, Relevance First, or Court Level First?

2.4.1 Begin with Legislation

2.4.1 Move on to Cases

2.4.3 Presentation of Case Law Results

In Conclusion

Appendix A: Provincial Court Structures

Appendix B: Federal Court Structure

Glossary of Terms

TABLE OF FIGURES

Figure 1	CanLII Entry Page
Figure 2	CanLII Basic Search Page
Figure 3	Outline of Canada’s Court System
Figure 4	Binding Court Decisions
Figure 5	CanLII Basic Search Page
Figure 6	“Operators” in CanLII
Figure 7	Legal Citation
Figure 8	Expanded Legal Citation
Figure 9	In-Text Citation
Figure 10	The Headnote
Figure 11	Cited Cases (1)
Figure 12	Cited Cases (2)
Figure 13	In-Text Citations and <i>Ratios</i>
Figure 14	Finding the Presiding Judge in a Reported Decision (1)
Figure 15	Finding the Presiding Judge in a Reported Decision (2)
Figure 16	How Legislation is Presented in CanLII
Figure 17	Recent and Past Versions of Legislation
Figure 18	In-Text Citations and Generating Search Terms
Figure 19	Results Screen
Figure 20	How to Search by Jurisdiction
Figure 21	Jurisdiction Search Screen
Figure 22	Searching by Court Level

- Figure 23 Refining Search Results by Jurisdiction (1)
- Figure 24 Refining Search Results by Jurisdiction (2)
- Figure 25 In-Text Citation and *Ratios*
- Figure 26 Finding Legislation using Search Box
- Figure 27 Searching for Legislation using Name of Legislation
- Figure 28 Searching by Jurisdiction in the Basic Search Page
- Figure 29 Finding Legislation by Jurisdiction
- Figure 30 Searching Statutes and Regulations by Jurisdiction
- Figure 31 Recent and Past Versions of Legislation
- Figure 32 Organizing Results by Relevance

Introduction

The goal of this document is to help self-represented litigants (SRLs) navigate CanLII in order to prepare for the presentation of their cases - in court, in chambers, or as part of a negotiation or mediation.

CanLII is an exceptional resource for those without legal counsel, but its usefulness will depend on how well you understand how to navigate and apply its vast resources. This primer offers you some basic navigational tools.

In addition, you will need to understand the basics of how law is created in Canada, as a combination of case law and legislation. While this primer does not provide you with a comprehensive introduction to this complex topic, it offers some fundamental principles to help you get started and hopefully make your use of CanLII more effective.

At the end of this document, you will find a Glossary that defines some of the most commonly used terms and phrases you may come across when conducting legal research. Terms and phrases that have been **bolded or highlighted** throughout this document can also be found in the Glossary.

A few pieces of initial advice on how to use this document and make best use of Can LII:

1. If you are using your research results to make a proposal to the other side for a negotiated agreement, you might want to review the NSRLP resource “Settlement Smarts for SRLs” (<http://representingyourselfcanada.com/settlement-smarts-for-srls/>). If you are using the results of your research for a courtroom presentation, we suggest you also look at the NSRLP resource “Coping with the Courtroom” in order to prepare your presentation (<http://representingyourselfcanada.com/coping-with-the-courtroom/>).
2. Hopefully this primer will assist you in marshaling the resources of **case law** and **legislation** relevant to your case. Inevitably, you will still have less insight than a practising lawyer into how to use these resources most effectively, how particular judges may respond to this material etc. If you are able to afford to pay for a few hours of legal services and can find a lawyer who will review the results of your research on an “unbundled” basis, and give you some tips on how to present your case to the judge, this might be very helpful.
3. Finally - because Can LII is an interactive tool, we recommend that as you work your way through this primer you stop and try out the tools we describe, and perhaps work with some examples of your own. This document has been organized as a reference tool, that is, you will likely return several times over to different sections to refresh your memory about the steps involved as you become gradually more accustomed to navigating Can LII.

What is CanLII?

CanLII is a free legal service that can be accessed by anyone on the Web. It includes reported court decisions (**case law**) and legislation. You can access CanLII by entering www.canlii.org into your browser, at which point you will see the screen below.



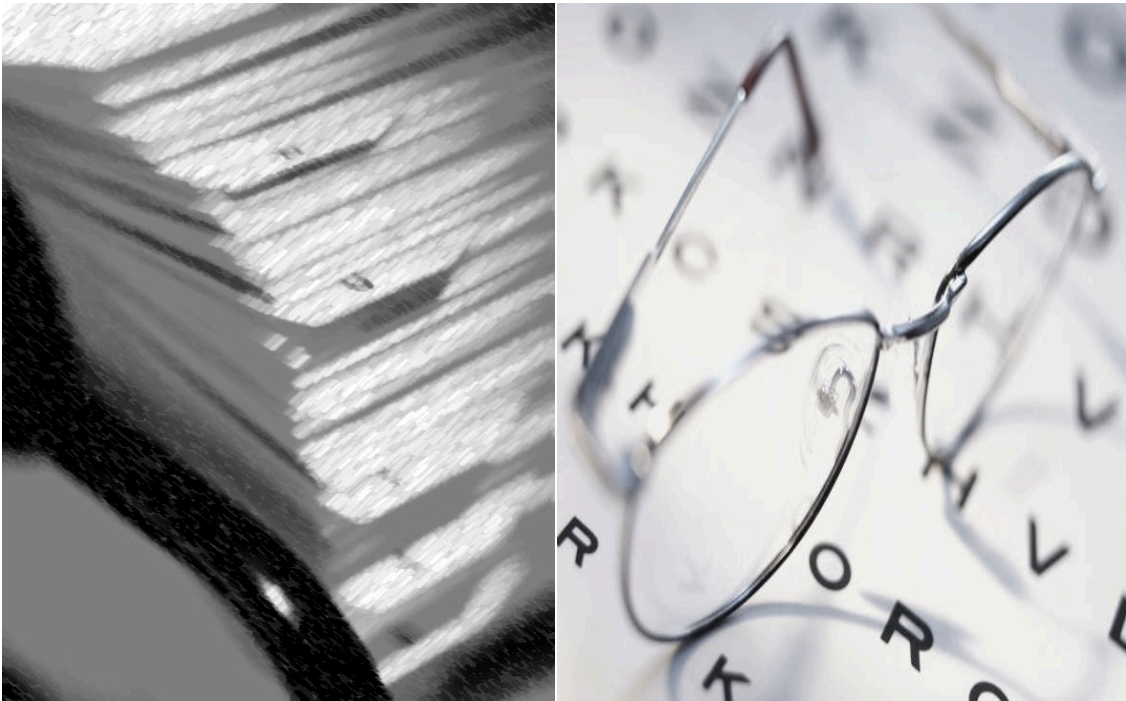
Fig. 1

After choosing your preferred language, you will be directed to the main search page. This will be the starting point for all of your legal searches when using CanLII.



Fig. 2

Part One: The Canadian Legal System



A CanLII search can provide you with an overwhelming number of results. In order to be able to “sift and sort” through these results, many of which may appear at first glance to be relevant to your case, you will need to understand the basic structure of the Canadian courts and tribunal system and the system of **precedent**, as well as the relationship with **legislation**. This determines which cases are going to be most important for you. This section offers you some background on these related topics.

1.1 The Structure of the Canadian Courts, Administrative Boards & Tribunals

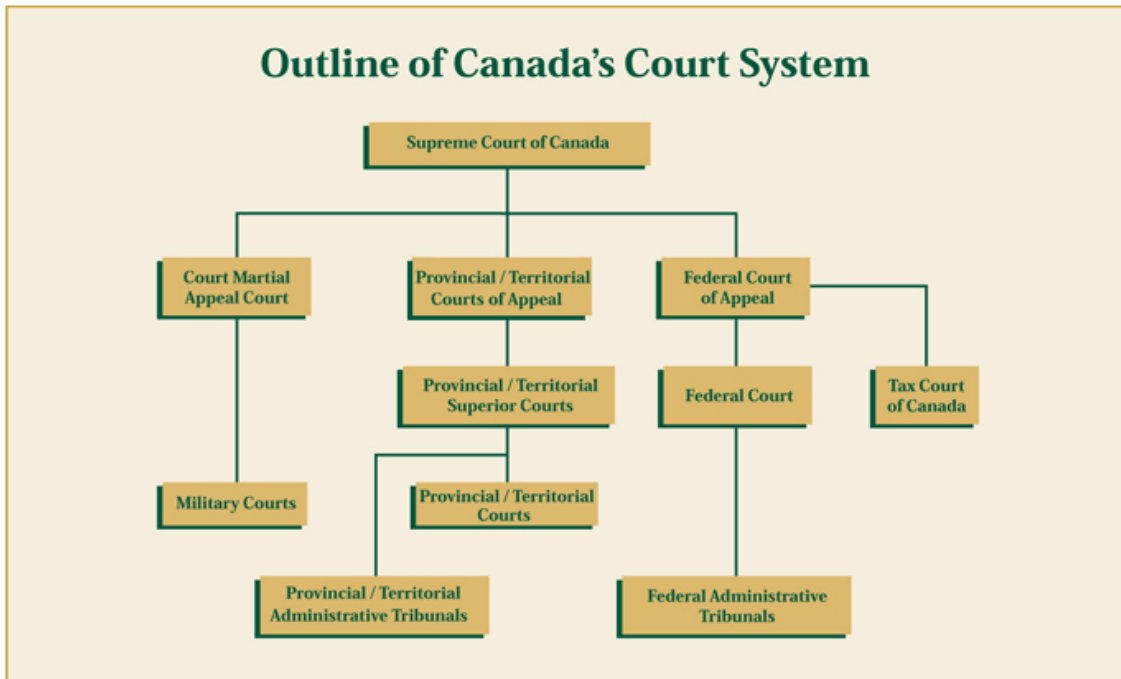


Fig. 3

1.1.1 Canadian Courts

“Court” typically refers to the Provincial/Territorial Courts, the Superior Courts of each province, the provincial Courts of Appeal, the Federal Court and Federal Court of Appeal, and the Supreme Court of Canada.

All these different levels of court deal with different matters and each has a particular place in the hierarchy of courts. *It is important to understand this in order to search for the most important cases.* As section 1.2 explains, the higher the court, the more important the decision will be in influencing the outcome of your own case.

Provincial/Territorial Courts deal with:

- ◆ Most criminal offences;
- ◆ Family law matters (except for divorce);
- ◆ Young offenders (ages 12-17);
- ◆ Traffic violations;
- ◆ Provincial or territorial regulatory offenses (for example, driving without a license);
- ◆ Claims involving money. under a certain amount, this is typically handled by a “Small Claims Court”.

Superior Courts (called “Supreme Court”- not to be confused with the Supreme Court of Canada! - or “Court of Queen’s Bench” in some provinces) can hear cases in any area, unless an area is specifically limited to another level of court.

Superior Courts deal with:

- ◆ Serious criminal cases
- ◆ Cases involving large sums of money
- ◆ Cases that fall within special divisions established by the court (such as the family law division, which deals with divorce and property claims)

An appeal from a decision made by the first level of provincial court (above) must first go to the superior court in that province, as it is the first provincial/territorial court of appeal.

Provincial/Territorial Courts of Appeal hear appeals from the decisions of the superior courts and any further appeals of decisions originally made by the provincial/ territorial courts.

The Federal Court and Federal Court of Appeal deal only with particular legal issues referred to in the legislation that created them. For example, the federal courts will hear disputes over government decisions regarding immigration, privacy, aboriginal rights, public service employment and intellectual property rights. The Federal Court of Appeal hears appeals from decisions of the Federal Court. Federal court decisions are nationally enforceable.

Finally, **the Supreme Court of Canada** is the final court of appeal for all Canadian courts and administrative tribunals. Appeal to the Supreme Court of Canada is by leave only - it is not an automatic right. Decisions made by the Supreme Court of Canada are **binding** on all courts and administrative boards tribunals and can only be **overturned** by subsequent decisions made by the Supreme Court.

The system of precedent and the distinction between “binding” and “persuasive” cases is discussed in more detail in section 1.2 below.

1.1.2 Administrative Tribunals

Depending on the legal issue you have, your case may begin at an administrative tribunal (or board). You will only proceed to court if you appeal the board or tribunal’s decision. While administrative boards and tribunals are not part of the court system, they have important decision-making functions. They tend to be less formal, highly specialized, and the people making decisions are not judges, but rather experienced practitioners in that area of law (“adjudicators”).

Disputes that may go before an administrative tribunal include:

- ◆ Employment insurance disputes
- ◆ Landlord-tenant conflicts
- ◆ Human rights/discrimination issues
- ◆ Disability benefits disputes
- ◆ Refugee claims

Tribunals are created by statute, either provincial or federal legislation. Some administrative tribunals have provincial jurisdiction – for example, the Ontario Landlord and Tenant Board, the British Columbia Human Rights Tribunal, the provincial Labour Relations Boards - and some are national bodies – for example the Public Service Labour Relations Board, the Immigration and Refugee Board.

Appeals from provincial/territorial administrative tribunals may go to the superior court of that province or territory, and appeals from federal administrative tribunals will go to the Federal Court (Fig. 3).

1.2 The System of Precedent

In Canada, as in other countries with a “**common law system**” (the United States, the United Kingdom, Australia and New Zealand among others), the law develops through case law reports using a system called “precedent”. (Note that in Canada, Quebec operates a civil law system that relies more heavily on a codified system of rules and treats precedent as a secondary source).



1.2.1 What is “Precedent”?

Precedent refers to a system in which a court must decide subsequent cases in line with previous cases that deal with the same legal issue that have been decided by courts of the same level, or higher.

In a system of precedent, a court decision operates as authoritative law for all subsequent decisions by this court or courts at a lower level.

Precedent means that the law is developed vertically as cases move through the court system. A higher court can overrule a lower court. So one party to a claim may ask a higher level of court to review the outcome of their case and that higher court will either change, or uphold, the lower court’s decision.

Supreme Court of Canada (SCC) decisions operate as binding precedent for all courts across the country. A SCC decision provides the authoritative rule of law for all future decisions on that point until that rule is overturned, or changed, by a later decision of the SCC.

Decisions by courts are not binding on administrative tribunals, but they are “persuasive” (see “What is “**Persuasive**” Case Law?” below).

This means that when you search for cases on your legal issue in CanLII, those decided at the highest level will be the most important and influential in making your own arguments. In particular, those cases decided at the highest level in your jurisdiction (your province or territory or the Federal Court system) will be the most important (see below).

1.2.2 What is “**Binding**” Case Law?

It is always good practice to start by examining cases within *your own jurisdiction* first.

Once you find a decision that seems to help your own argument, your next question should be how high up in the court hierarchy was the decision made? Previous decisions must be followed - unless there are real differences that allow them to be “**distinguished**” - in all lower courts. These decisions that must be followed are called “**binding**” case law.

Therefore,

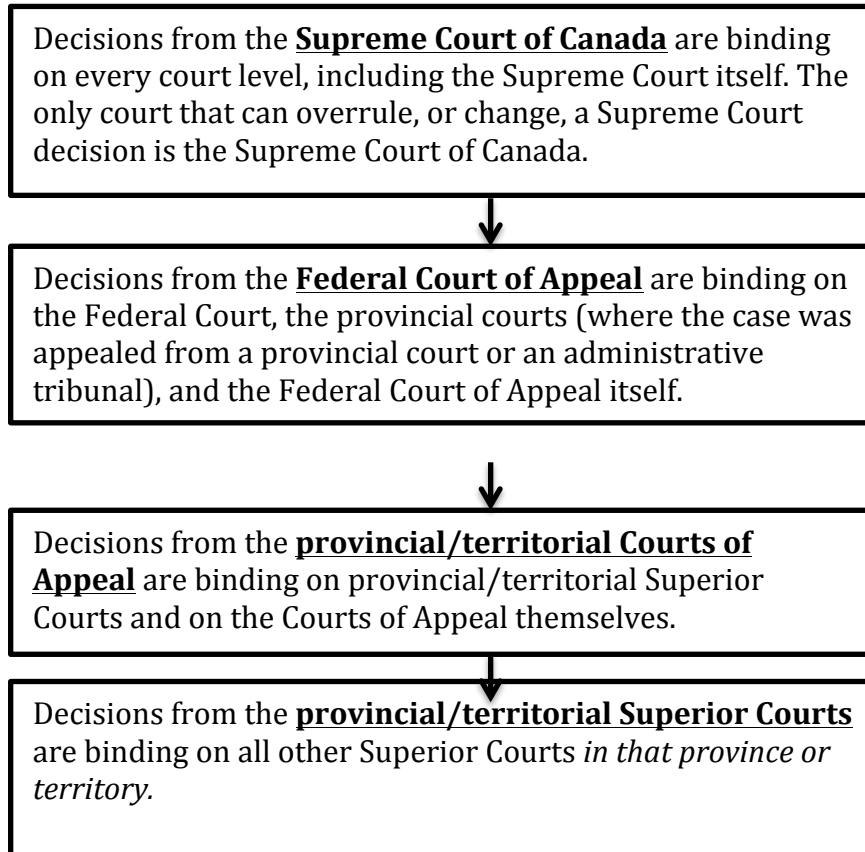


Fig. 4

Case law must also develop and grow to reflect new and/or changing circumstances. Thus, otherwise “binding” decision can be “**distinguished**” (and not automatically applied) if it is demonstrated that the facts of one case are significantly different from the facts of the case being cited as a binding precedent. Obviously there are a multitude of different fact situations, and you may want to argue that the facts of your case are different from the facts of a case that would otherwise be “binding”.

1.2.3 What is “Persuasive” Case Law?

“**Persuasive**” cases are those that a court is not *required* to follow, but may influence the court’s decision. For example, decisions made by provincial/territorial courts in a different provincial/territorial jurisdiction are considered persuasive, and not **binding**.

So for example, a decision made by the British Columbia Court of Appeal may not be binding on the Ontario Superior Court of Justice.

It may still be useful for you to research cases that seem to support your argument that are **persuasive**, but they are not as important as finding cases that are **binding**. Nonetheless, citing a persuasive case may – just as the term suggests – “persuade” (rather than require) the judge to consider this case and perhaps use it in their reasoning regarding your case.

1.3 Legislation

If your case involves the interpretation of a particular piece of legislation – for example, the *Divorce Act* (R.S.C. 1985) or the *Residential Tenancies Act* (2006. S.O. 2006) - you should first determine this is provincial or federal legislation. This will determine in which court system – federal or provincial – you should search for a decision by the highest court¹. In this way the system of precedent will always guide your CanLII searches.

Remember that the courts ultimately decide how legislation will be understood and applied to actual cases, so you need to be familiar with the cases in your province or territory that have addressed any questionable issues of interpretation in relation to this piece of legislation.

If you are not sure whether or not your case is affected by legislation, you can search using appropriate search terms (see 2.2 below), and/or you may check the headnote of the cases that come up in your case law search.

¹ In some provinces a Unified Family Court hears both federal and provincial family matters

Part Two: Legal Research Using CanLII



Now that you have a basic handle on the structure of the Canadian legal system, you can put that knowledge to use by finding case law and legislation in CanLII that supports your case.

2.1 Getting Started



Fig. 5

The legal research you will do with CanLII all starts from the basic “Search” page, pictured above.

2.1.1 Maneuvering the Search Engine

By default, the Can LII search engine processes a space between terms as a logical “AND”. Essentially, spaces left between words will be processed as if you searching for *each* of these words, and not for exact phrase or alternatives. For example, if you type:

Statutory limitation period

The search engine will process that phrase as you looking for as:

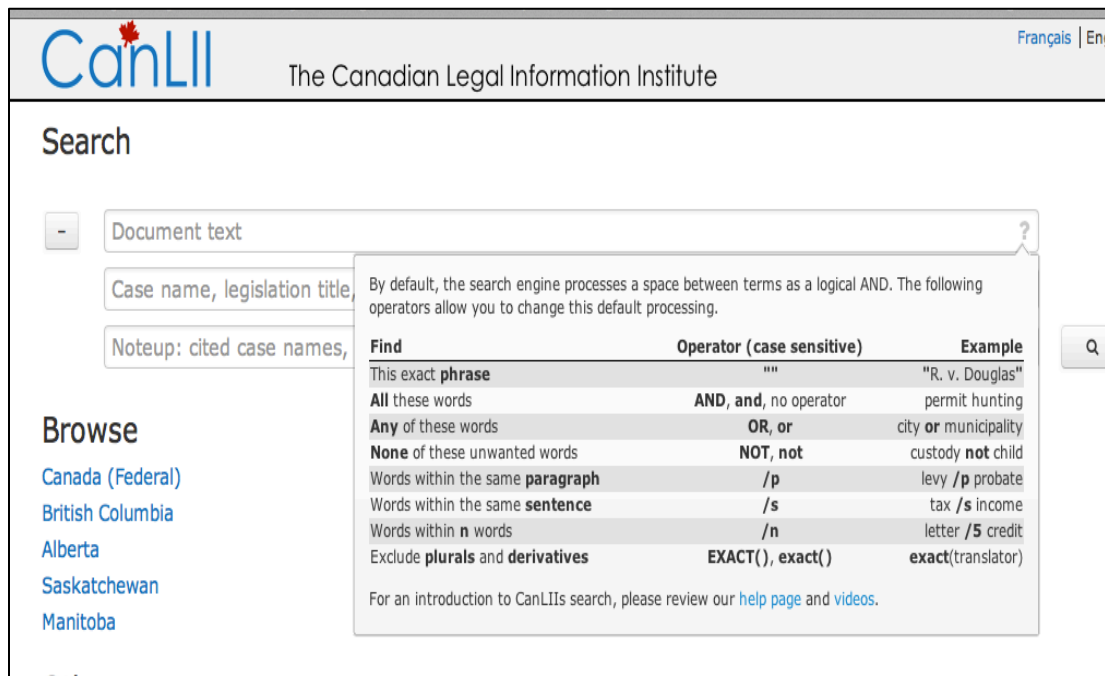
Statutory & limitation & period

The results you will get will be those that have *any* of the words in the phrase “statutory limitation period”, but not necessarily in that particular order. Since the “logical AND” is the default for the search engine, if you do not modify your search terms and phrases, the engine will automatically process your search request in the way explained above.

So how can you modify your search request to get what you want? You need to use “operators”. One “operator” is the use of quotation marks (“”). Putting the words inside quotation marks will ask the search engine to pull up only results that contain *that exact phrase*. For example, by typing:

“Statutory limitation period”

The following operators, pictured below, show you how to change this default processing to refine your search and find exactly what you are looking for.



The screenshot shows the CanLII search page. At the top, the CanLII logo and the text "The Canadian Legal Information Institute" are visible. Below the logo, there are search input fields: "Document text", "Case name, legislation title", and "Noteup: cited case names,". A "Browse" section lists provinces: Canada (Federal), British Columbia, Alberta, Saskatchewan, and Manitoba. A tooltip is open over the search fields, containing a table of search operators and their examples.

Find	Operator (case sensitive)	Example
This exact phrase	""	"R. v. Douglas"
All these words	AND, and , no operator	permit hunting
Any of these words	OR, or	city or municipality
None of these unwanted words	NOT, not	custody not child
Words within the same paragraph	/p	levy /p probate
Words within the same sentence	/s	tax /s income
Words within n words	/n	letter /5 credit
Exclude plurals and derivatives	EXACT(), exact()	exact (translator)

For an introduction to CanLIIs search, please review our [help page](#) and [videos](#).

Fig. 6

The “Help” tool, which can be opened by clicking the “?” icon in the upper right hand corner of the search boxes, will lead you to the information box pictured above. In the left-hand column of the chart, you will find a list of options describing what you may be looking for. The middle column provides you an example of what you would type into the search engine to find what you are asking for (i.e. all of these words or an exact sentence). The right-hand column offers an example of what your search phrase would look like.

MINI-ASSIGNMENT:

The following sections explain how to navigate and find information within case law reports and legislation as these are laid out in Can LII. Before you begin to work your way through these sections, it may be helpful to type some basic search terms into the Can Lii basic search page - at this stage, whatever comes to mind as relevant and using the operators described above. This way you will pull up some cases and legislation that *you can practice finding your way around and become comfortable navigating before refining your search* (below at 2.2).

2.1.2 Finding Your Way Around Case Law Reports in CanLII

2.1.2.1 The Legal Citation

At the top of each law report, there is the “legal citation” for the case, for example,

Stein v. Stein, [2008] 2 SCR 263, 2008 SCC 35

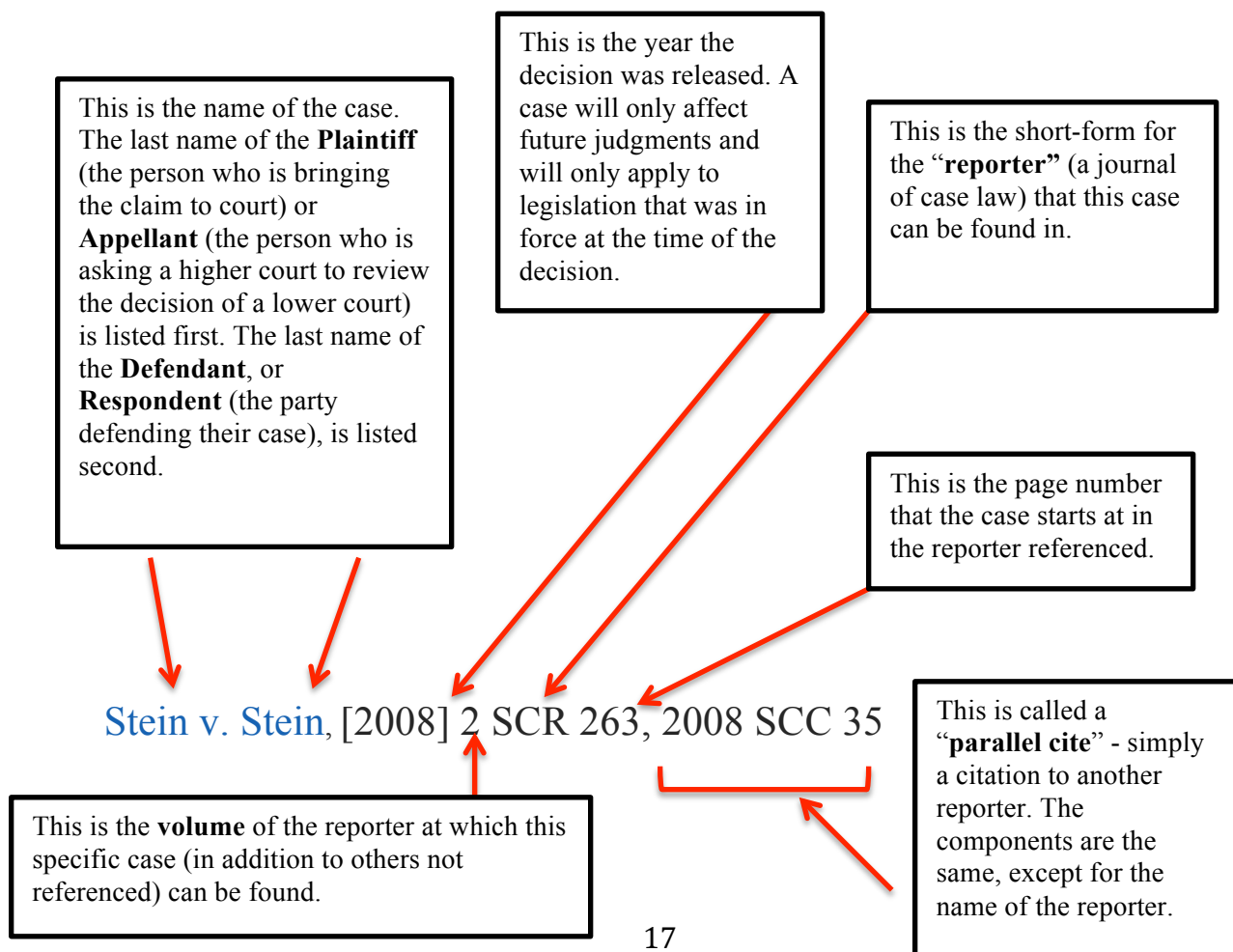
Fig. 7

The **legal citation** is the identifying information by which the case will be known and includes not only the parties names but also the name of the court, the year of the decision, and other information to help locate this case in a particular law report volume. So if you know how to read the citation, you can find the full decision for that case.

The **legal citation** is also how you would refer to a case in a presentation to a court or tribunal. Understanding the information contained in the **legal citation** not only facilitates your ability to search for that case, it also enables you to quickly gather some information about the case before reading it. You may for example decide to search for cases in the same year, or in the same court..

Fig 8

What does a “Legal Citation” Tell You?



If there is an “at” or “at para”, followed by a number, the citation is directing you to the page or paragraph of the case law report where the information or quote cited can be found.

[Stein v. Stein](#), [2008] 2 SCR 263 at 8, 2008 SCC 35

When a court refers to prior cases in their decision (sometimes referred to as “**in-text**” citations), the citation for those cases will typically be embedded in the headnote. It may also appear within the text of the decision in which case it is called an “in-text” citation. An “in-text citation” will often summarize the rule or principle in that case and this will help you in your research.

A “**legal citation**”

[Stein v. Stein](#), [2008] 2 SCR 263, 2008 SCC 35

An “**in-text**” citation

[17] The Supreme Court has dealt with the issue of student loans in the case *Mbaruk v. Mbaruk*, [1997] B.C.J. No. 125. In that case, Madam Justice Levine (as she then was) found that student loans which were used to pay family expenses is a “family debt”.

[18] The Supreme Court of Canada also recognized that fairness requires a consideration of both assets and debts in determining a distribution of family assets under the *FRA* (*Stein v. Stein*, 2008 SCC 35 (CanLII)).

[19] Mr. Holland argues that he was not aware of most of these debts and does not believe that they are family debts in the sense that the monies were not used for a family purpose. Ms. Cleary responds that they had talked at length about the family debt situation and in fact had consulted with debt counsellors. Ms. Cleary’s evidence in her argument is that throughout the marriage Mr. Holland was unable to earn any significant amount of money and did not pay “one-half of the family expenses” as he alleges. Ms. Cleary also says that a portion of the student loans were originally used to purchase an automobile that the family used. The balance was used to meet educational expenses as well as living expenses.

[20] It is impossible for either of the parties to completely reconstruct their financial history over the period of their relationship.

[21] With regard to the charge cards, there are some copies of the charge card monthly statements made available. Some may relate to personal expenses such as hairdressers etc., but a large part of them really appear to be family expenses, restaurant meals, telephone accounts, and drug store charges.

[22] The line of credit is similar in the sense that much of it was used to pay charge card accounts. It would appear that it was simply used as a way to try and reduce the interest rates that the parties had on their various charge cards. Very few payments were actually made on the

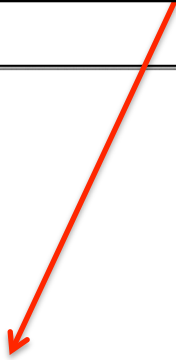
Fig. 9

2.1.2.2 The Headnote

When a case is reported, the judge’s decision and the reasons for that decision are described. The names of parties, the court and the names of the judge or judges are given at the very top. Underneath you will usually find a short summary (the “headnote”) that sets out the basic elements of the decision and references any legislation and other cases that are relevant to the decision.

The headnote also includes information regarding the point of origin of the case, whether it is on appeal, and on what basis the appeal was or was not granted. This information is typically elaborated upon in the first few paragraphs of a decision.

**The “headnote” is found
at the top of the case**



Heffron v. Imperial Parking Co. et al.
(1974), 3 O.R. (2d) 722

ONTARIO
COURT OF APPEAL
EVANS, BROOKE and
ESTEY, J.J.A.
21ST MARCH 1974

Bailment -- Motor vehicles -- Car parked in parking lot -- Keys given to attendant -- Whether bailment or licence.

Contracts -- Exemption clauses -- Fundamental breach -- Contract of bailment of car -- Clauses on ticket and signs excluding liability for loss or theft - Whether clauses effective.

The plaintiff, the owner of a car, parked it in the defendant's parking lot, receiving a numbered ticket and delivering the keys to the attendant. The parking lot closed at midnight and the practice was for the attendant to take the keys of cars still in the lot to a nearby parking garage where there was an attendant on duty until 2 a.m. The plaintiff, on returning to the lot an hour after its closing, discovered that his car was missing. It was later recovered in a damaged state and without certain items of personal property that had been in it. The parking ticket contained the words "we are not responsible for theft or damage of car or contents, however caused". The same words were displayed on signs in the parking lot. On appeal from a judgment holding the defendant liable for the plaintiff's damage, held, the appeal should be dismissed. In the circumstances the defendant was a bailee, not a licensee, in that it took positive custody of the plaintiff's car. The failure to return the car in accordance with the duty of a bailee was a fundamental breach of the contract of bailment, and whether the doctrine of fundamental breach is a matter of construction, or whether it is an independent principle of law, the effect in either case was to render the exemption clause ineffective. The liability of the defendant extended to any personal property of the kind that might reasonably be expected to be found in a car.

APPEAL from a judgment of Shortt, Co.Ct.J., in favour of the plaintiff in an action for damage to a car and for loss of its contents.

[Samuel Smith & Sons Ltd. v. Silverman, 1961 CanLII 164 (ON CA), [1961] O.R. 648, 29 D.L.R. (2d) 98; Ashby v. Tolhurst, [1937] 2 All E.R. 837; Palmer v. Toronto Medical Arts Building Ltd., 1959 CanLII 131 (ON CA), [1960] O.R. 60, 21 D.L.R. (2d) 181; Mitchell v. Silverman, [1952] O.W.N. 130; Bata v. City Parking Canada Ltd. (1973), 1973 CanLII 796 (ON CA), 2 O.R. (2d) 446, 43 D.L.R. (3d) 190, distd; J. Spurling Ltd. v. Bradshaw, [1956] 1 W.L.R. 461; Karsales (Harrow), Ltd. v. Wallis, [1956] 2 All E.R. 866; Suisse Atlantique Societe d'Armenement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale, [1967] 1 A.C. 361; Mendelssohn v. Normand Ltd., [1960] 2 All E.R. 1215; R.G. McLean Ltd. v. Canadian Vickers Ltd. et al., 1970 CanLII 386 (ON CA)]

Fig. 10

CanLII is also able to tell you how many *other* cases have referenced the case that you are looking at.

Click here to find cases that referred to the one you are now looking at.

CanLII Home > Ontario > Court of Appeal for Ontario > 1974 CanLII 801 (ON CA)

Heffron v. Imperial Parking Co. et al., 1974 CanLII 801 (ON CA)

Date: 1974-03-21
Other citations: 3 OR (2d) 722; 46 DLR (3d) 642
Citation: Heffron v. Imperial Parking Co. et al., 1974 CanLII 801 (ON CA), <<http://canlii.ca/t/g1516>> retrieved on 2014-12-07

Cited by 13 documents Show headnotes ▾ PDF Email Tweet in Share

Heffron v. Imperial Parking Co. et al.
(1974), 3 O.R. (2d) 722

**ONTARIO
COURT OF APPEAL
EVANS, BROOKE and
ESTEY, J.J.A.
21ST MARCH 1974**

Fig. 11

When you click on this link, it will bring you to a page like the one below that lists all the cases that have “cited” (referred to) the case you are looking at.

CanLII The Canadian Legal Information Institute Français | English

Document text ?
Case name, legislation title, citation or docket ?
Citing Heffron v. Imperial Parking Co. et al., 1974 CanLII 801 (ON CA) x ?
or Noteup: cited case names, legislation titles, citations or dockets ?

All CanLII (13) Cases (13) Legislation (0) Commentary (0)

All jurisdictions ▾ By Relevance ▾ in

- [Peter Cortesis Jeweller Ltd. v. Purolator Courier Ltd.](#), 1981 CanLII 1882 (ON SC) – 1981-12-22
Superior Court of Justice — Ontario
bill of lading — carrier — pearls — liability — loss
[...] (1974), **1974 CanLII 801 (ON CA)**, 3 O.R. (2d) 722, 46 D.L.R. (3d) 642; J. Spurling, Ltd. v. Bradshaw, [1956] 2 All E.R. 121; Murray v. Sperry Rand Corp. [...] (1974), **1974 CanLII 801 (ON CA)**, 3 O.R. (2d) 722 at 729, 46 D.L.R. (3d) 642, quoting Denning L.J. in J. Spurling, Ltd. v. Bradshaw, [1956] 2 All E.R. 121. [...]
cited by 2 documents
- [Clarke v. Action Driving School Ltd.](#), 1996 CanLII 2649 (BC SC) – 1996-05-01
Supreme Court of British Columbia — British Columbia
waiver — unconscionable — howsoever arising — motorcycle — terms

Fig. 12

The “cited by” link is a helpful tool for you to find other relevant cases and to see how many times those cases have been used to support other decisions. This will ensure that

you do not miss any cases that have subsequently overruled the case you want to rely on (also known as **Noting Up**).

2.1.2.3 *The Decision*

The full text of the decision (usually written by a single judge) follows the headnote. This will give you further information about the reasoning behind this decision. You may want to pay particular attention to any part of the decision where the judge “cites” (or refers to) *another* case that may be useful to your arguments. An “in-text” citation or reference (that is, when the judge refers to this other case in the body of the decision) will often provide you with further information about the principle in that case.

The sentence before the “in-text” citation briefly explains the legal rule (“ratio decidendi”, “ratio”, or proposition of law) that comes from the case that being referred to (here, *Stein v. Stein*).

[17] The Supreme Court has dealt with the issue of student loans in the case *Mbaruk v. Mbaruk*, [1997] B.C.J. No. 125. In that case, Madam Justice Levine (as she then was) found that student loans which were used to pay family expenses is a “family debt”.

[18] The Supreme Court of Canada also recognized that fairness requires a consideration of both assets and debts in determining a distribution of family assets under the *FRA* (*Stein v. Stein*, 2008 SCC 35 (CanLII)).

[19] Mr. Holland argues that he was not aware of most of these debts and does not believe that they are family debts in the sense that the monies were not used for a family purpose. Ms. Cleary responds that they had talked at length about the family debt situation and in fact had consulted with debt counsellors. Ms. Cleary’s evidence in her argument is that throughout the marriage Mr. Holland was unable to earn any significant amount of money and did not pay “one-half of the family expenses” as he alleges. Ms. Cleary also says that a portion of the student loans were originally used to purchase an automobile that the family used. The balance was used to meet educational expenses as well as living expenses.

[20] It is impossible for either of the parties to completely reconstruct their financial history over the period of their relationship.

[21] With regard to the charge cards, there are some copies of the charge card monthly statements made available. Some may relate to personal expenses such as hairdressers etc., but a large part of them really appear to be family expenses, restaurant meals, telephone accounts, and drug store charges.

[22] The line of credit is similar in the sense that much of it was used to pay charge card accounts. It would appear that it was simply used as a way to try and reduce the interest rates that the parties had on their various charge cards. Very few payments were actually made on the

Fig. 13

2.1.2.4 *The Presiding Judge*

You may also want to search for cases that have been decided by specific judges. You will search by judge in the same way that you would search for any other specific term in a document, since here is no specific option to filter cases by judge name.

1. Enter the judge's name in quotation marks (for example, "Justice Browne"), and CanLII will find all cases in which the exact phrase "Justice Browne" has appeared.
2. To further refine the search results, choose the jurisdiction that judge sits in, for example, "Ontario".
3. You can then you can go through the search results to determine which of these cases have been decided by the judge in question.

The Judge's name can be found at the top of the document, either before the name of the parties...

Home > Canada (Federal) > Federal Court of Canada > 2015 FC 244 (CanLII)

Navaratnam v. Canada (Citizenship and Immigration), 2015 FC 244 (CanLII)

Date: 2015-02-25
Docket: IMM-7429-13
Citation: Navaratnam v. Canada (Citizenship and Immigration), 2015 FC 244 (CanLII), <<http://canlii.ca/t/ggp7n>> retrieved on 2015-03-17

Cited by 0 documents [Show headnotes](#) PDF Email Tweet in Share

Date: 20150225
Docket: IMM-7429-13
Citation: 2015 FC 244

Toronto, Ontario, February 25, 2015

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

SIVASHANKAR NAVARATNAM

Applicant

Fig. 14

...or immediately before the text of the decision.

NOTE: The “J” is for “Justice”. The Chief Justice will have the initials “CJ” following their name.

COURT FILE NO.: CR-10-2123 DATE: 20141205

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
HER MAJESTY THE QUEEN)
- and -)
Baldev Singh)
Accused)

Richard L. Pollock, for the Federal Crown
Maurice Mirosolin, for the Defendant

) **HEARD:** January 27, 28, 29, 30, 2014;
) February 10, 11, 12, 13, 14, 18, 19, 20, 21,
) 2014; March 13, 2014; and May 30, 2014

**RULING ON THE CONSTITUTIONAL VALIDITY
OF THE BORDER SEARCH**

POMERANCE J.:

INTRODUCTION

[1] Baldev Singh encountered some very bad luck on March 19, 2009, when he crossed the border into Canada.

[2] He was directed to secondary inspection where his cargo was offloaded. His trailer contained 54 bins of oranges from Westlake, California. Two

Fig. 15

You now know what the basic geography of a reported case looks like in CanLII.

2.1.3 Navigating Legislation in CanLII

The next image illustrates the layout of **legislation** in CanLII. The title of the legislation is provided at the top of the document, and its citation is immediately under the title. This is followed by the text of the legislation itself.

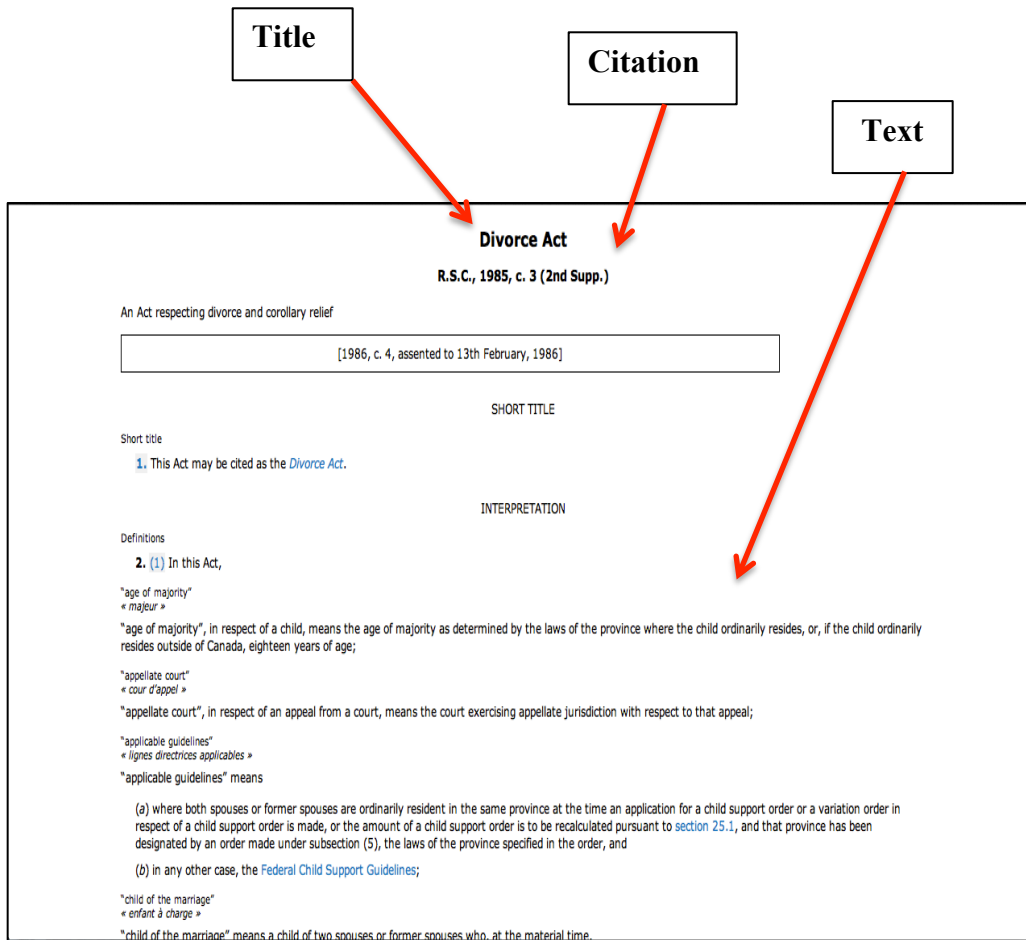


Fig. 16

Legislation in CanLII is offered in a “point-in-time” database format. This means that not only can you access the most up-to-date legislation, but you can also access past versions of the legislation.

Why is this useful? This allows you to identify changes that were made between past and current versions of the same piece of legislation. It is especially important in cases where past changes can help you argue that the legislature intends the particular result that you are arguing for.

If you want to look for an older version of the legislation that was applicable (or “in force”) at an earlier time, you can find quick links and the period that each older version was in force for here.

This shows you the date after which the copy of the current legislation you are looking at became binding

The screenshot shows the CanLII website interface for the 'Access to Information Act, RSC 1985, c A-1'. At the top, there are navigation tabs for 'Versions', 'Noteup', and 'Regulations'. Below this is a 'COMPARE' section with a table titled 'Access version in force'. The table lists five historical versions with their respective effective periods and a '(past)' status. Below the table, a red warning message states: 'This Act was amended by several enactments which came into force retroactively. This may cause some versions to contain changes which did not occur exactly at the dates shown.' Below the warning, it indicates the 'Current version: in force since Nov 1, 2014'. At the bottom, there are links for the latest and stable versions, a citation, currency information, and social media sharing options.

Version	Access version in force
<input type="checkbox"/>	49. between Oct 20, 2010 and Nov 24, 2010 (past)
<input type="checkbox"/>	48. between Aug 18, 2009 and Oct 19, 2010 (past)
<input type="checkbox"/>	47. between Aug 13, 2009 and Aug 17, 2009 (past)
<input type="checkbox"/>	46. between Jul 1, 2009 and Aug 12, 2009 (past)
<input type="checkbox"/>	45. between Apr 3, 2009 and Jun 30, 2009 (past)

This Act was amended by several enactments which came into force retroactively. This may cause some versions to contain changes which did not occur exactly at the dates shown.

Current version: in force since Nov 1, 2014

Link to the latest version: <http://canlii.ca/t/7vck>
Stable link to this version: <http://canlii.ca/t/52c38>
Citation to this version: Access to Information Act, RSC 1985, c A-1, <<http://canlii.ca/t/52c38>> retrieved on 2014-12-13
Currency: Last updated from the Justice Laws Web Site on 2014-12-10
Share: [Tweet](#) [Share](#)

Fig. 17

2.2 Generating Search Terms in CanLII

Now that you have an understanding of how to find your way around both cases and legislation in CanLII, as well as how case law (which often references and weighs in on the meaning of legislation) is developed using the system of precedent, it is time to begin generating some more precise and useful search terms. This is an essential step in making CanLII work for you.

CanLII allows you to enter both simple and complex search terms in order to pull up cases or legislation in different areas. It also allows you to search by jurisdiction – for example, cases and law in specific provinces, on the federal level, in tribunals, and at different levels of court (this may be important because of the doctrine of **precedent**, explained above).

Generating good search terms is critical to the effectiveness of your use of CanLII. The process of generating search terms in CanLII is not really different than generating search terms in a search engine like Google, which you have probably already done many times.

The basic strategy is to begin by using as many different terms as possible that are relevant to your case and your situation, and try to gradually narrow and refine your search.

The additional challenge with generating search terms in Can LII is familiarizing yourself with some of the most important legal terms and expressions that are relevant to your case. These can be part of your search strategy.

2.2.1 Generating Legal Terms for your Search

Certain words and expressions are commonly used in particular legal fields. Reference to these words and expressions is often an essential part of court decisions, and you will see them appear over and over in reported case law.

You may have to do some background reading – perhaps using a legal dictionary or Wikipedia – to discover what the crucial legal terms are in your area of law, and start to familiarize yourself with what they mean. You will gradually pick these up as you begin to read cases and legislation in Can LII. Here are just a few examples:

- ❖ If your case deals with family law, and you are looking at how your possessions and money will be divided after a separation and after a divorce, you may want to use the expression “equalization of assets” and “separation agreement” when you begin to search in Can LII
- ❖ If you are looking at financial provision in the family law setting, you would want to type in “spousal support” and/or “child support”
- ❖ If you are a tenant renting a property and want to determine what your landlord’s obligations are, you can look for the “Landlord Tenant Act”, and depending on your issue may search using terms such as “maintenance”, “reasonable enjoyment”, “notice”, and “abatement”
- ❖ If you have been charged for driving with a suspended license, or without a license, you could search using terms like “motor vehicle”, “license suspension”, “provincial offenses”, “driving without a license”

2.2.2 Using Cases and Legislation to Generate Search Terms

As you read cases, make note of terms that the court seems to be focusing on, repeats, or refers to in quotation marks. Often, these are key search terms that will bring up similar cases.

Note also which sections of what legislation (if any) are referred to in the case decision.

Elgner v. Elgner

105 O.R. (3d) 721
2011 ONCA 483

Court of Appeal for Ontario,
Cronk, Gillese and MacFarland JJ.A.
June 29, 2011

Family law -- Support -- Spousal support -- Appeal -- Leave to appeal required to appeal interim spousal support order made under [Divorce Act](#) -- [Sections 21 of Divorce Act](#) and [19\(1\) of Courts of Justice Act](#) operating harmoniously -- Doctrine of paramourncy not engaged -- [Courts of Justice Act, R.S.O. 1990, c. C.43, s. 19\(1\)](#) -- [Divorce Act, R.S.C. 1985, c. 3 \(2nd Supp.\), s. 21](#).

The appellant moved to file a notice of appeal from an interim award of spousal support under the [Divorce Act](#) and, if leave to appeal was required, sought leave to appeal. A single judge of the Divisional Court dismissed the motion. The appellant moved for a review by a full panel of the Divisional Court of that part of the order dismissing his motion for an order permitting him to file his appeal as of right. The full panel dismissed the motion, holding that leave to appeal the interim order was required. The appellant appealed. He argued that [s. 21\(1\)](#) of the [Divorce Act](#) provides a direct right of appeal of all orders, interim and final, made under the [Divorce Act](#); that [s. 21\(1\)](#) conflicts with [s. 19\(1\)\(b\)](#) of the [Courts of Justice Act](#) (the "CJA"), which stipulates that an appeal from an interlocutory order of a Superior Court judge lies to the Divisional Court only with leave; and that the doctrine of paramourncy applied to render [s. 19\(1\)\(b\)](#) of the [CJA](#) inoperative to the extent of the conflict.

Held, the appeal should be dismissed.

[Section 21\(1\)](#) of the [Divorce Act](#) must be read along with [s. 21\(6\)](#) of the [Divorce Act](#), which provides that, "[e]xcept as otherwise provided by this Act or the rules and regulations, an appeal under this section shall be asserted, heard and decided according to the ordinary procedure governing appeals to the appellate court from the court rendering the judgment or making the order being appealed". In Ontario, the "ordinary procedure" referred to in [s. 21\(6\)](#) is provided by [s. 19\(1\)](#) of the [CJA](#), with its leave requirement. A party may comply with both [s. 21](#) of the [Divorce Act](#) and [s. 19\(1\)](#) of the [CJA](#) by applying for leave to appeal pursuant to [s. 19\(1\)\(b\)](#) of the [CJA](#). [Section 19\(1\)](#) does not frustrate the federal purpose behind [s. 21](#) of the [Divorce Act](#). As the two provisions operate harmoniously, the doctrine of paramourncy is not engaged.

[Sections 21](#) and [25](#) of the [Divorce Act](#)

[34] Each province has enacted procedures for how appeals are ordinarily asserted. In Ontario, [s. 19\(1\)\(b\)](#) of the [CJA](#) stipulates that an appeal lies to the Divisional Court from an interlocutory order of the Superior Court in Ontario "with leave". This was the ordinary procedure for asserting an appeal from an interlocutory order when, in 1985, Parliament enacted [s. 21\(6\)](#) of the [Divorce Act](#).

[35] [Section 21\(1\)](#) of the [Divorce Act](#) does not stand in isolation. It must be read in context. That context includes [s. 21\(6\)](#), which provides that: [page729]

21(6) Except as otherwise provided by this Act or the rules and regulations, an appeal under this section shall be asserted, heard and decided according to the ordinary procedure governing appeals to the appellate court from the court rendering the judgment or making the order being appealed. (Emphasis added)

[36] In my view, on a plain reading of [s. 21\(6\)](#), it stipulates that the appeal right given in [s. 21\(1\)](#) must be asserted in accordance with the ordinary procedure governing appeals in Ontario. That ordinary procedure is provided by [s. 19\(1\)](#) of the [CJA](#), with its leave requirement.

Fig. 18

This legislative language will also give you further possible search terms. For example, in the decision pictured above, you could search the phrase "asserted heard and decided" in conjunction with Sections 21(1) and 21(6) of the *Divorce Act* to see how other courts have interpreted this phrase. Looking at the relevant sections of the legislation may also give you further terms or phrases to include in your search.

2.3 Searching by Jurisdiction, Case Name, and Legislation

Once you have generated some good search terms and typed them into CanLII, you are ready to begin to sort and shift your results. For example, here is part of a screen shot after typing in the search terms "child support", "net income" and "spousal support."



Fig. 19

A search like this will produce a lot of information – maybe too much information to handle. Some of the information you have pulled up using legal search terms may be less useful to you – for example, if it comes from a different province/ territory. So armed with your legal search terms, you now need to narrow your search to find the specific legislation and cases that will be most useful to you in presenting your arguments.

2.3.1 How to Sift & Sort by Jurisdiction

The jurisdiction in which your case is being heard – that is, a particular province or territory such as “Ontario” or “New Brunswick” or “Canada Federal” - is a good place to begin to try to find precedent that will help you in your arguments.

Beginning a search by jurisdiction is relatively straightforward – you simply choose your jurisdiction and continue on from there. Keep in mind, though, that all the results you pull up will be restricted to the jurisdiction you have chosen and you may want to broaden your search at a later stage to include other jurisdictions that may have **persuasive** precedents

Begin by choosing your jurisdiction on the main CanLII page, under the “Browse” heading:

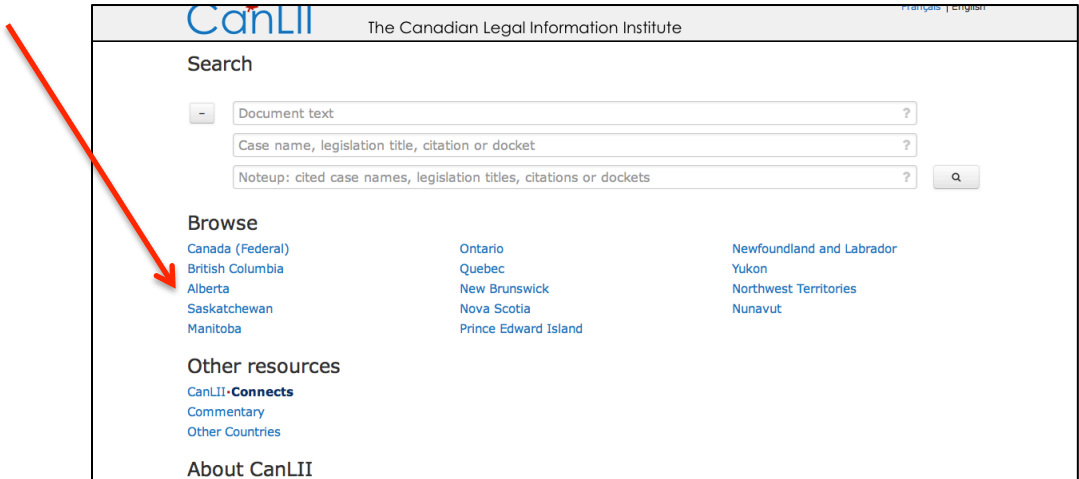


Fig. 20

Once you have chosen the jurisdiction in which you will now focus your search, you will be taken to a further search page with the name of the jurisdiction - for example, “Ontario” - at the top left-hand corner of the page (shown below). Here you may narrow your search to a particular court (or administrative Board/tribunal) in that jurisdiction.

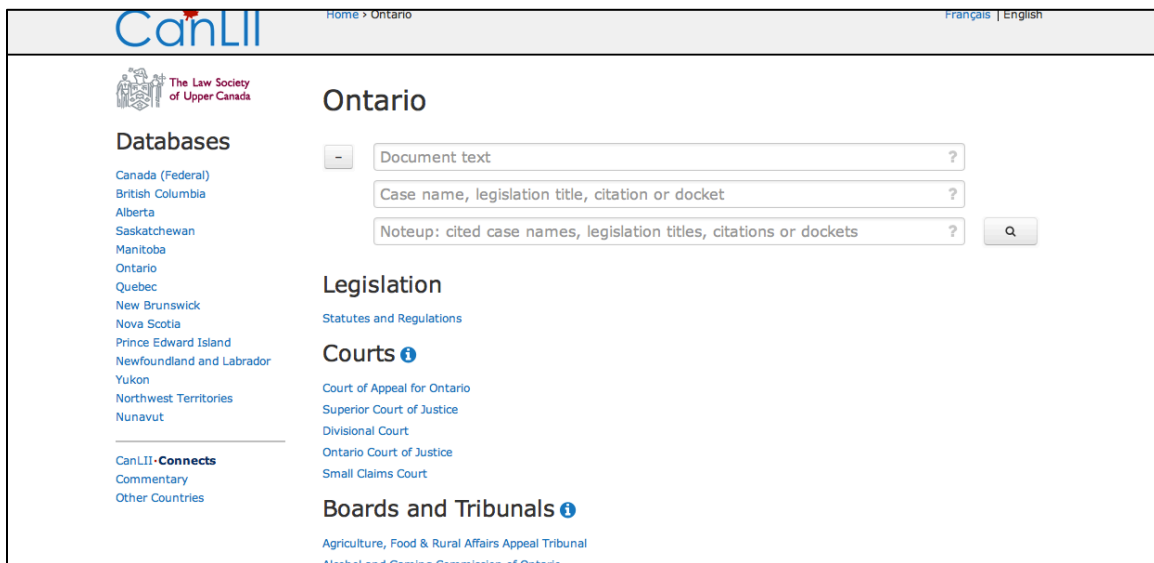


Fig. 21

From here, you can generate and input search terms, as explained earlier in section 2.2. If you want to search different jurisdictions, you will have to return to the main CanLII page (shown below). You can do this at any time by clicking the “CanLII” icon in the top left-hand corner of the screen.

If you choose to search by “Courts” (as illustrated in Fig. 21), you will be brought to a page like the one below (Fig 22), which allows you to filter through cases determined by the court *by year*. This is especially helpful if you want to narrow your search to look for cases decided by a particular court in a particular year, or even a particular case with which you are familiar.

CanLII Home > Ontario > Court of Appeal for Ontario Français | English

The Law Society of Upper Canada

Court of Appeal for Ontario - Ontario

Databases

- Canada (Federal)
- British Columbia
- Alberta
- Saskatchewan
- Manitoba
- Ontario
- Quebec
- New Brunswick
- Nova Scotia
- Prince Edward Island
- Newfoundland and Labrador
- Yukon
- Northwest Territories
- Nunavut

CanLII-Connects
 Commentary
 Other Countries

Document text ?
 Case name, citation or docket ?
 Noteup: cited case names, legislation titles, citations or dockets ?

Access by date ([YYYY] = partial coverage)

					2015	2014	2013	2012	2011
2010	2009	2008	2007	2006	2005	2004	2003	2002	2001
2000	1999	1998	1997	1996	1995	1994	[1993]	[1992]	[1991]
[1990]	[1989]	[1988]	[1987]	[1986]	[1985]	[1984]	[1983]	[1982]	[1981]
[1980]	[1979]	[1978]	[1977]	[1976]	[1975]	[1974]	[1973]	[1972]	[1971]
[1970]	[1969]	[1968]	[1967]	[1966]	[1965]	[1964]	[1963]	[1962]	[1961]
[1960]	[1959]	[1958]	[1957]	[1956]	[1955]	[1954]	[1953]	[1952]	[1951]
[1950]	[1949]	[1948]	[1947]	[1946]	[1945]	[1944]	[1943]	[1942]	[1941]
[1940]	[1939]	[1938]	[1937]	[1936]	[1935]	[1934]	[1933]	[1932]	[1931]
[1930]	[1929]	[1928]	[1927]	[1926]	[1925]	[1924]	[1923]	[1922]	[1921]
[1920]	[1919]	[1918]	[1917]	[1916]	[1915]	[1914]	[1913]	[1912]	[1911]
[1910]	[1909]	[1908]	[1907]	[1906]	[1905]	[1904]	[1903]	[1902]	[1901]
[1900]	[1899]	[1898]	[1897]	[1896]	[1895]	[1894]	[1893]	[1892]	[1891]
[1890]	[1889]	[1888]	[1887]	[1886]	[1885]	[1884]	[1883]	[1882]	[1881]
[1880]	[1879]	[1878]	[1877]	[1876]					

About this database

Continuous coverage 1994-01-01 to present
 Partial coverage 5821 decisions prior to 1994-01-01
 Total number of decisions 22082
 Last update 2015-01-30
[Official website](#)

Recent decisions

- 2015-01-30 Philip Services Corp. v. Deloitte & Touche, 2015 ONCA 60 (CanLII)
- 2015-01-30 R. v. Okash, 2015 ONCA 58 (CanLII)
- 2015-01-29 R. v. A. L., 2015 ONCA 57 (CanLII)
- 2015-01-29 Koohestani v. Mahmood, 2015 ONCA 56 (CanLII)
- 2015-01-29 Moore v. Getahun, 2015 ONCA 55 (CanLII)
- 2015-01-28 First Elgin Mills Developments Inc. v. Romandale Farms Limited, 2015 ONCA 54 (CanLII)
- 2015-01-28 Waldman v. Thomson Reuters Canada Limited, 2015 ONCA 53 (CanLII)
- 2015-01-28 R. v. Mufuta, 2015 ONCA 50 (CanLII)

[more by month...](#)

[more by month...](#)

Practice rules

- Rules of Civil Procedure, R.R.O. 1990, Reg. 194
- Ontario Court of Appeal Criminal Appeal Rules, [S1/93-169]
- Rules of the Court of Appeals under the Provincial Offences Act, O. Reg. 721/94
- Rules of Civil Procedure forms
- Practice Directions and Administrative Advisories

by LEXUM for the Federation of Law Societies of Canada

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Fig. 22

You can also choose to search in multiple jurisdictions, and Can LII can tell you how many cases relevant to your search term(s) are reported in each province/ territory.

This drop down box allows you the check off what jurisdictions to which you want your search restricted.

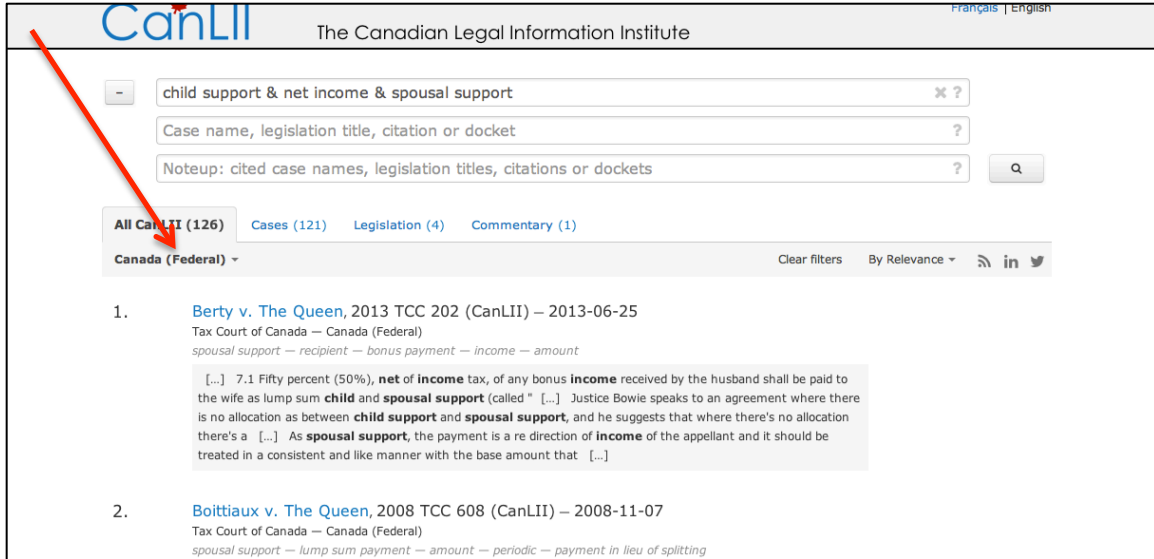


Fig. 23

You can check off just one or multiple jurisdictions; for example, if you want to search both “Federal” and “British Columbia”, or both “Alberta” and “Ontario” for cases and legislation relevant to your search term.

Beside the name of each jurisdiction, you will find a number that represents how many cases come from that specific jurisdiction within the parameters of your search.

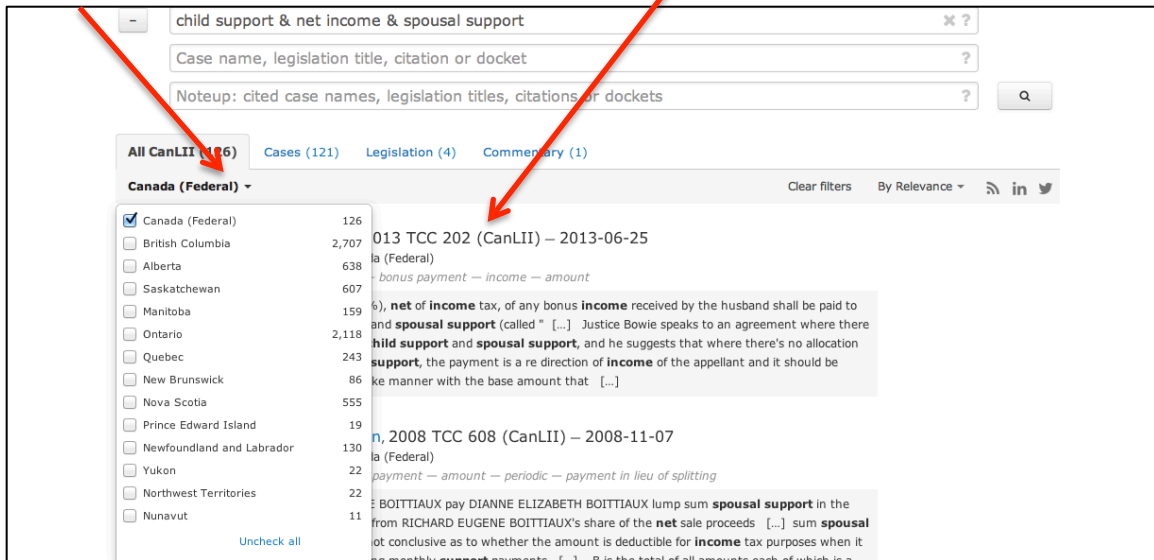


Fig. 24

2.3.2 How to Sift & Sort Cases

First, remember to check that none of the cases that you want to rely on have been overruled or appealed by using the “cited-by” function in Can Lii (also known as **Noting Up**, above at Fig. 12).

When you are reading through the cases that you have found, it might be helpful to divide them into two piles - those decisions that are “**binding**” and those that are “**persuasive**” (see above 1.2.2). You will probably want to begin by using the decisions that would be “binding” on the judge hearing your case - that is, a Supreme Court of Canada decision or a case from the same jurisdiction at either the same or a higher level court as the one you are appearing in.

When you read these binding cases, we suggest that you think about the following questions:

- a. Does this case describe a similar fact situation to your own?
- b. Are there “material” (significant and crucial to the decision) differences that might mean that it can be “distinguished” from your case?
- c. How often does this case get referred to by other cases i.e. how influential does it appear to be?
- d. Does this case offer a definition or clarification of legal terms, phrases or tests that you can use in your own arguments?

A secondary question is how can you use the other (“persuasive”) cases that the court is citing in its decision? Are these useful leads for you, or not really helpful?

- e. Determine (from the headnote) which cases the judge has cited as being relevant to this decision. *How similar to the facts in your case are these cases?*
- f. Look at the cases that the court rejects, and think about whether there might be a similar rejection if you used this case in your argument. *How similar to the facts in your case are these cases?*

Practical Tip

The sentence before or after the “in-text” citation (above 2.1.2.3) briefly explains the legal rule (also referred to as “*ratio decidendi*”, “*ratio*”, or proposition of law) that comes from the case that is being referred to (which in the next image is *Leskun v. Lesku*). You can use the information provided in the “**in-text**” citation to quickly assess how that case may be relevant to yours.

[19] In *Leskun v. Leskun*, [2006] 1 S.C.R. 920, 2006 SCC 25 (CanLII), para. 37, the Supreme Court of Canada stated that subjecting a time-limited order to review can be justified where there is “genuine and material uncertainty at the time of the original trial” on a specific aspect of the original order. This avoids the need for a party to demonstrate a material change in circumstances in order to bring a motion to alter support awards.

[20] Here, the Court of Appeal said the uncertainty was the ability of Ms. Stein to find remunerative employment. The Court felt that this uncertainty would be resolved within the time limitation of the support order and that the issue could be properly decided by application to this Court prior to the expiration of the order in December, 2008. That is what is before me now.

Fig. 25

2.3.3 How to Sift & Sort Legislation

When looking for legislation that applies to your case, there are several ways to search for relevant legislation.

If you have generated some legal search terms - for example, “tenants’ rights” or “child support” or “property division” - you can type these words or phrases into the first box in the search engine to pull up legislation that uses those words and phrases.



Fig. 26

If you know the name of the legislation that applies to your case (for example, *The Residential Tenancies Act*) you can search using this. The second box in the search engine at the top of the page allows you to search CanLII by “Legislation Title”.

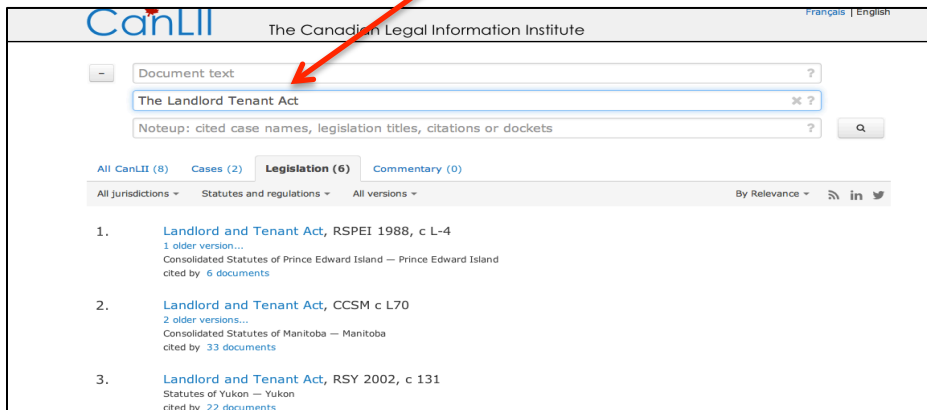


Fig. 27

The third text box (“**Note Up**”) offers you yet more information. This function allows you to cross-reference the applicable legislation with cases in which it has been referenced, with any other legislation that has been discussed in case reports in relation to it, and any new amendments or updates to this legislation.

Another approach to searching by legislation is to search by jurisdiction. From the main CanLII page, shown below, you can choose to search by the jurisdiction in which your case has arisen, for example, British Columbia or Ontario.



Fig. 28

You can also choose to search the “Federal” database. This database is where you would look if your claim falls under an area that is federally regulated, such as criminal law or divorce, for which you would consult the *Criminal Code* or *The Divorce Act*.



Fig. 29

Clicking on any of the jurisdiction options, (Fig. 24) will give you an option to search by “Statutes and Regulations”. This option is under the subheading “Legislation” and above “Courts” as shown in Fig. 26 above.

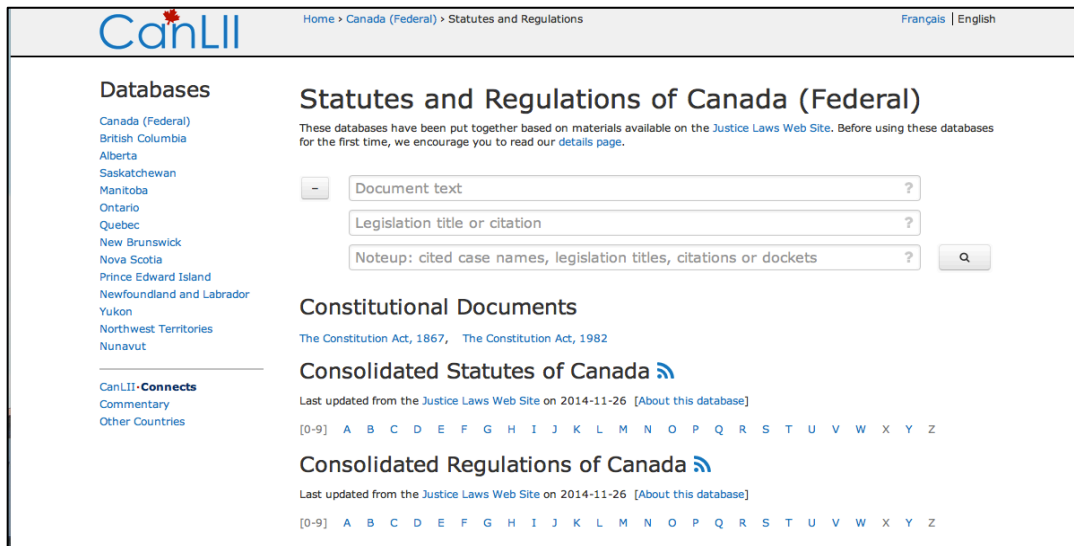


Fig. 30

Clicking on the “Statues and Regulations” option will bring you to a page similar to the one above. There are three search boxes that give you the option to search for terms or phrases, to search by the name of the legislation itself or by citation, or to “Noteup” legislation.

Divorce Act, RSC 1985, c 3 (2nd Supp)

[Versions](#) | [Noteup](#) | [Regulations](#)

COMPARE [Access version in force](#)

<input type="checkbox"/>	6. since Apr 1, 2014 (current)
<input type="checkbox"/>	5. between May 31, 2007 and Mar 31, 2014 (past)
<input type="checkbox"/>	4. between Jul 20, 2005 and May 30, 2007 (past)
<input type="checkbox"/>	3. between Jul 2, 2003 and Jul 19, 2005 (past)
<input type="checkbox"/>	2. between Apr 1, 2003 and Jul 1, 2003 (past)

Current version: in force since Apr 1, 2014

Link to the latest version: <http://canlii.ca/t/7vbw>
 Stable link to this version: <http://canlii.ca/t/527nw>
 Citation to this version: Divorce Act, RSC 1985, c 3 (2nd Supp), <<http://canlii.ca/t/527nw>> retrieved on 2014-11-28
 Currency: Last updated from the [Justice Laws Web Site](#) on 2014-11-26
 Share: [Tweet](#) [Share](#)

SHOW TABLE OF CONTENTS

Divorce Act

Fig. 31

There will be an option to look at older versions of the legislation in the top left hand corner of the page. Immediately above the title of the Act, there is also an option to expand the Table of Contents. Doing so allows you to choose specific sections of the legislation to “jump to”, instead of having to scroll through the entire Act in order to find relevant sections.

MINI-ASSIGNMENT:

Have a go at trying to look up some cases and legislation that are relevant to your case.

1. Generate a list of search terms;
2. Using those search terms, do a search that is restricted to (i) your province or territory and (ii) to the Federal Court System;
3. Using a case you’ve found through steps 1 and 2, try to determine the *ratio* of this case;
4. Using the same case, find the in-text citation for a major decision the court decided upon;
5. Using that in-text citation from step 4, determine what year the decision was made and what court made that decision;
6. Go back to the main CanLII screen. Now, find the case cited in steps 4 and 5 through a search by Court level;
7. Generate some search terms in order to rediscover the case cited in steps 4 and 5 by using the search method set out in step 6.

By now you know should have a good idea of how to navigate the Can LII search engine and how to find cases and legislation. You have looked at how cases and statutes are presented and what further information you can glean from them. You have started to think about generating search terms. The next question for you to tackle is: with all these resources at your disposal, where do you begin your search?

2.4 Do I search Cases First, Legislation First, Relevance First, or Court Level First?

2.4.1 Begin with Legislation

It is usually a good strategy to begin by figuring out what statute, or piece of legislation, covers the issue you are going to be researching, for example:

- If dealing with divorce, look to the *Divorce Act* and the *Family Law Act*;
- If dealing with landlord tenant issues, take a look at the *Landlord Tenant Act*; and
- If dealing with employment issues, check out the *Labour Code* or the *Ontario Human Rights Code*.

It is always a good idea to begin by focusing your search on any relevant legislation. If your case is affected by legislation, this will *lay out the law upon which your claim must be based*.

2.4.2 Move on to Cases

If you have determined that there is (provincial or federal) legislation that applies to your claim, and you have identified the relevant section or sections, you can move on to looking for cases that have dealt with that specific section of legislation. These cases will tell you how courts have treated or interpreted the legislation under which your claim falls. In a **common law system** (which operates in every province *except for Quebec*) case law builds on judicial interpretation of legislation. Case law either clarifies vague or ambiguous legislation, or it may fill in gaps that legislation does not cover. This means that it is vital for you to research how that legislation is interpreted and applied by the courts.

Or, it may be that there is *no legislation applicable to your claim* and instead you will rely on the principles of case law alone – for example if you are seeking compensation for certain harms or a wrongs (a “tort”) or for “**breach of contract**”.

Usually you will find that it is most helpful to search for and familiarize yourself with *both the applicable legislation and case law*. That way, you will have a more complete picture of what a successful claim or defense requires.

2.4.3 Presentation of Case Law Results

The default presentation of case law results in Can Lii is by “relevance” to your search parameters. Alternative approaches to arranging search results include listing them court level, timing (most recent) and most cited (by other cases). You can alter the default as shown below.

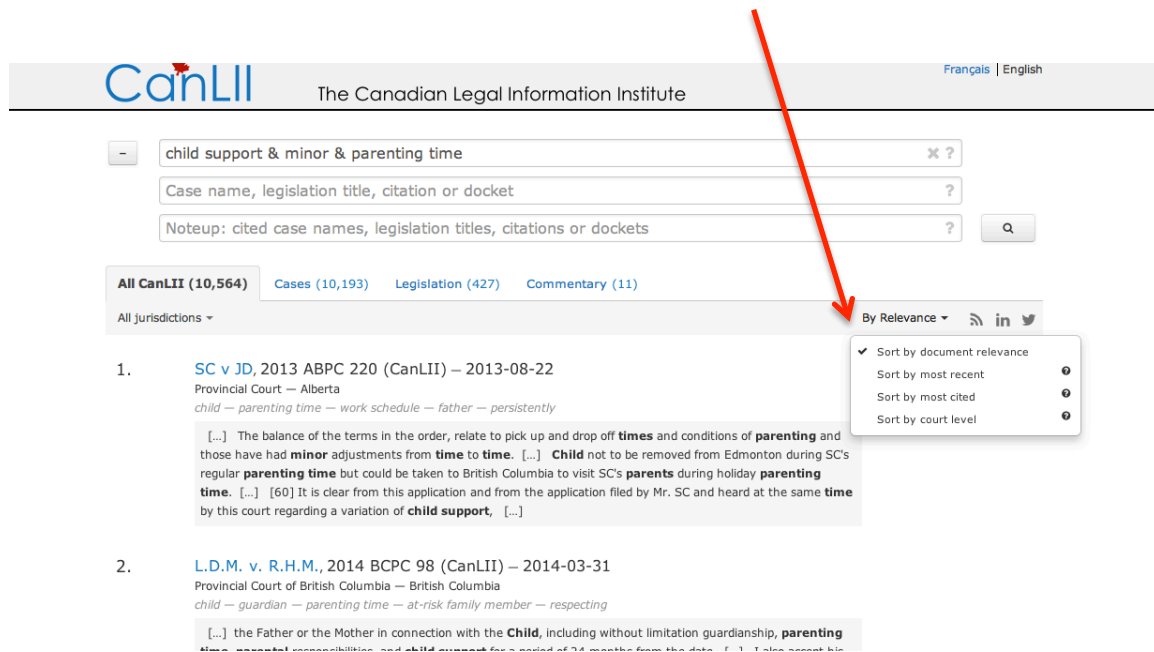


Fig 32

Because of the importance of **precedent**, it may be faster to jump directly to decisions that were handed down by higher courts. If you choose to sort your results by court level, the first decisions that appear on the results page will be from the Supreme Court of Canada – the highest and most authoritative court in Canada. Decisions handed down by the Supreme Court that uphold, overrule, or **distinguish** cases will be binding in your jurisdiction, regardless of where you reside.

The downside to arranging the results by court level is that you may have to sift through a couple of headnotes before you are able to find a case that deals squarely with the issues that you are searching for.

If you choose to list your results by relevancy first, your search results will be presented to you in order of their relevancy to the terms that you typed into the search box. However, when looking through these cases you will need to be mindful of the jurisdiction from which they were released in order to determine whether they are “**binding**” or just “**persuasive**” in relation to your case.

To summarize:

1. Identify any relevant legislation first;
2. If there is no relevant legislation, go to case law;
3. If the relevant legislation uses **terms of art** (like “tort” or “breach”), look to case law to elaborate those terms
4. Always check the jurisdiction to determine the significance of the decision to your own case

In Conclusion

Legal research is complex and takes years of practice to master. However, using Can LII effectively can give you a great start on making your legal arguments.

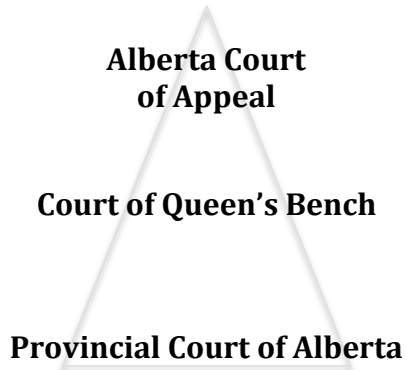
This Can LII primer was created as a navigational tool for those making their way through legal terrain without the assistance of counsel. While it cannot provide a complete and comprehensive overview of the legal system, legal research and the way a common law system operates, it tries to explain and make practical the basic understanding of the system that SRLs need in order to effectively and efficiently conduct legal research.

We wish you the very best in your research endeavours. If you have comments for us on the utility of this primer, or suggestions for ways to improve it, please contact us at representingyourself@gmail.com

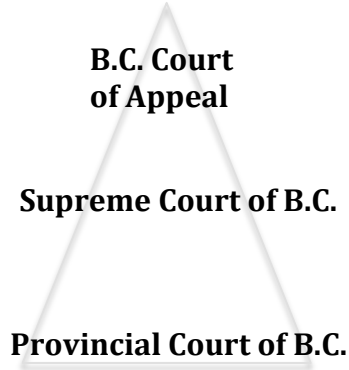
Julie Macfarlane & Tamara Thomas
The National Self-Represented Litigants Project

Appendix A: Provincial Court Structures

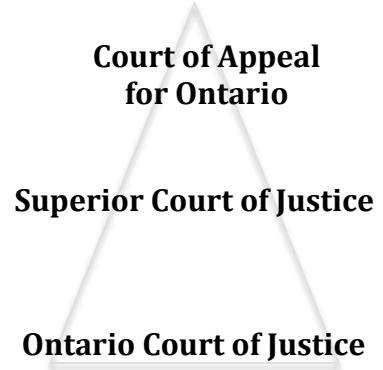
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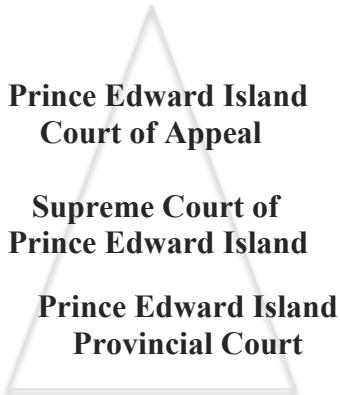
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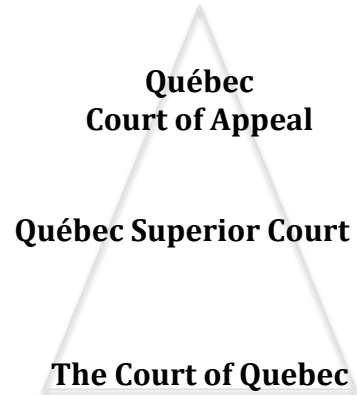
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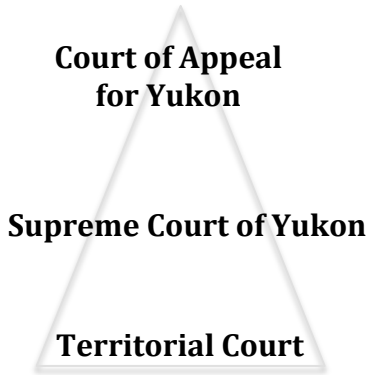
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Quebec



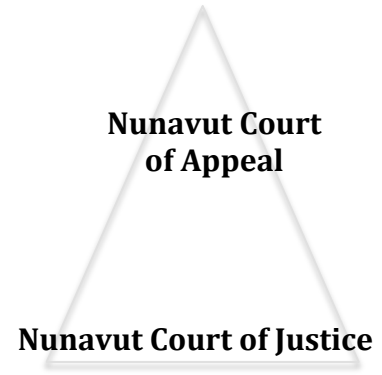
Yukon Territories



Northwest Territories



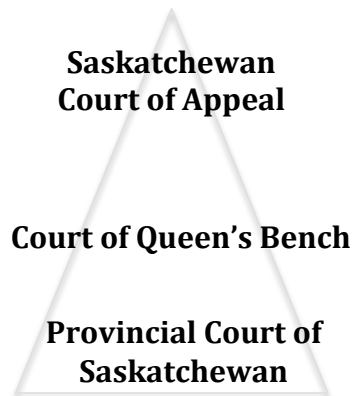
Nunavut



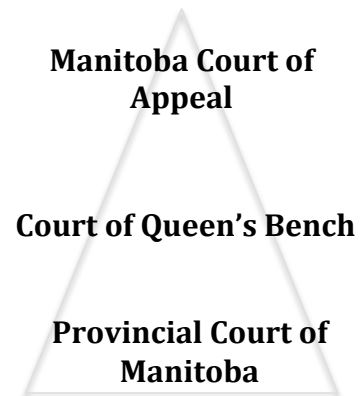
Newfoundland and
Labrador



Saskatchewan



Manitoba

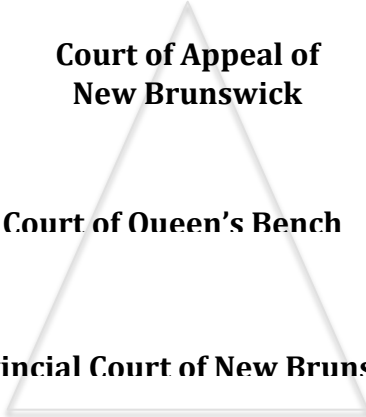


New Brunswick

**Court of Appeal of
New Brunswick**

Court of Queen's Bench

Provincial Court of New Brunswick

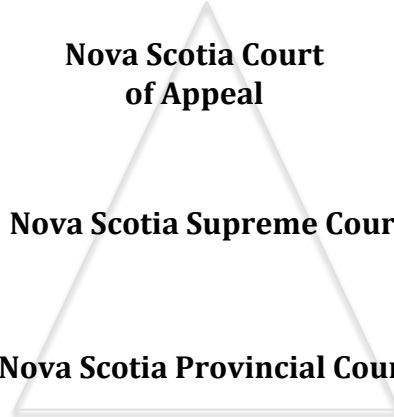


Nova Scotia

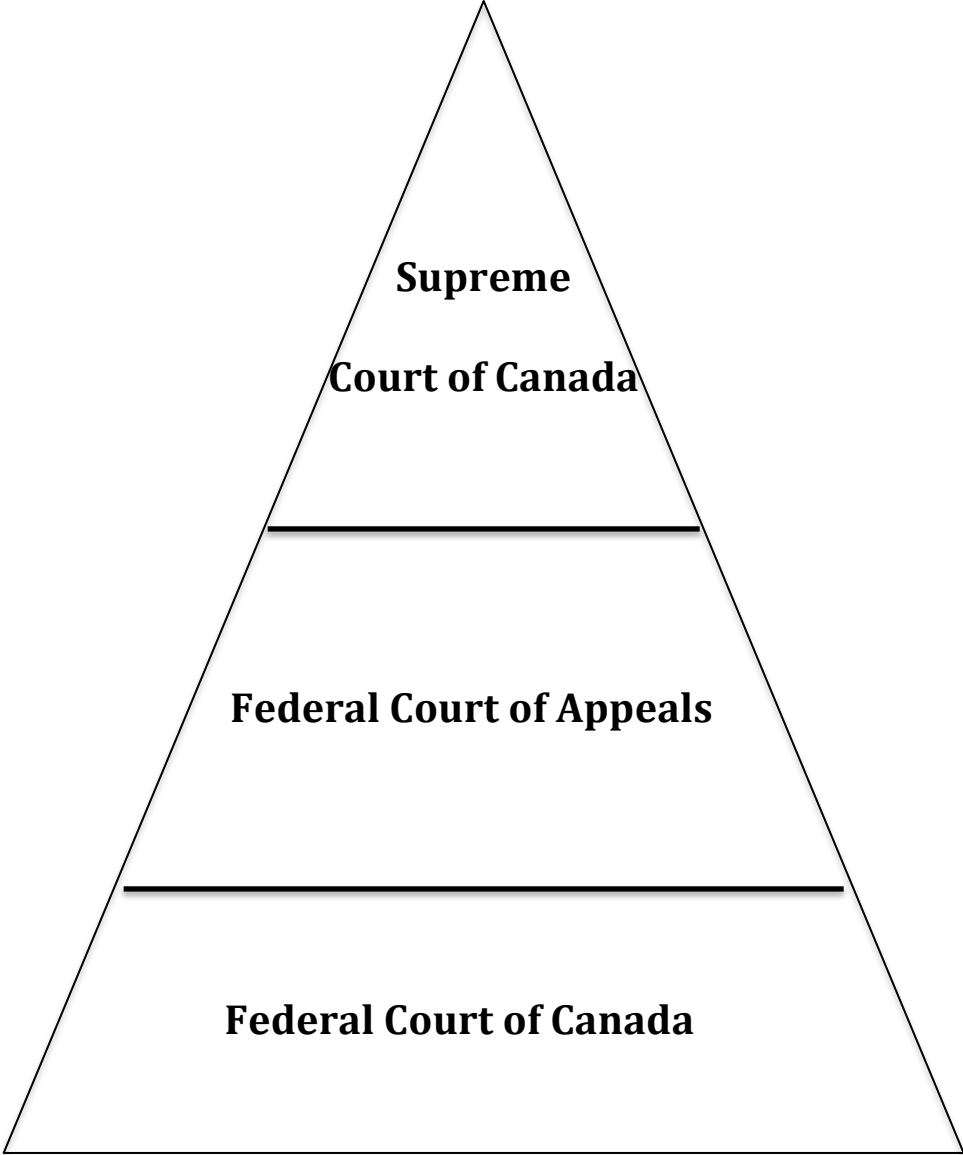
**Nova Scotia Court
of Appeal**

Nova Scotia Supreme Court

Nova Scotia Provincial Court



Appendix B: Federal Court Structure



Glossary of Terms

- Appellant:** The party that seeks to have a court decision on a case to which they were a party revisited by a higher court usually seeking a reversal of that decision².
- Binding:** Decisions or laws that must be followed by the court when it is making decisions on legal questions. These decisions are derived from the previous rulings (i.e. precedents) of other judges in higher courts of that province or territory, as well as the Supreme Court of Canada, on the same issue³.
- Breach of Contract:** Failing to do what you were required to do by a legally binding contract⁴.
- Case Law:** The written decisions of judges from court cases and tribunals, coming from all levels of court in Canada⁵.
- Case Law Report:** The overall presentation of a case in a reporter either online or in print. There are six main parts of a reported case⁶:
1. **The Style of Cause:** (e.g. *Smith v Smith*) the names of the parties to the legal dispute. In civil cases, the claimant is named first. In criminal cases, “R” – which represents the state – is named first.
 2. **The Preliminary Information:** this includes information like the court name, the judge(s) who heard the case, and the date of the decisions’ release.
 3. **Catchlines:** phrases and key words, separated by dashes, that describe the legal issues as well as the facts of the case reported.
 4. **The Headnote:** A summary of the facts, issues and reasons for the decision rendered. This is not part of the proper decision, as it is not written by the court or judge, but rather, is often written by either the editors of the law reporter.

² Black’s Law Dictionary, 8th ed.

³ Bora Laskin Law Library at <http://library.law.utoronto.ca/step-2-primary-sources-law-canadian-case-law-0>

⁴ The law Dictionary at <http://thelawdictionary.org/breach-of-contract/>

⁵ Bora Laskin Law Library at <http://library.law.utoronto.ca/step-2-primary-sources-law-canadian-case-law-0>

⁶ Found on the Queen’s University Library website, at <http://library.queensu.ca/law/lederman/lawreports>

5. **The Authorities:** the cases, statutes and secondary sources consulted or referred to in the decision are listed following the headnote, providing a quick overview of sources that were consulted when writing the judgment.
6. **The History of the Case:** provided whenever it is not a first hearing of the case.
7. **The Decision:** the written reasons of the judge(s) who heard the case.

Cause of Action: A factual situation that entitles a person to bring legal proceedings against another person in order to receive a remedy⁷.

Civil Law: Black letter law, or law that is derived from statutes, codes, regulations, etc. Civil law systems require that judges stick to the laws as they are written, and do not allow for the development of case law, or “judge made law”⁸.

Codify: The process of collecting and arranging the laws of a country or state into a code or system of laws that are then promulgated by legislative authority⁹.

Common Law: The opposite of the civil law system, common law systems allow for judges-made law, which is reflected by the precedents that are established through the decisions of the courts, and is distinct from statute law that is passed by the legislature¹⁰.

Defendant: The party that the claim is being brought against, who is being sued in a civil action or charged with a criminal offence¹¹; the party that is “defending” themselves.

Distinguish: Differentiating cases based on the specific factual scenario of each case. This is often done to provide the court with a reason to treat one case differently than the other¹².

Handed Down: A colloquial term for when final judgments on cases have been made by court judges or by a jury¹³.

⁷ Irwin Law Online Legal Dictionary at https://www.irwinlaw.com/cold/cause_of_action

⁸ Irwin Law Online Legal Dictionary at https://www.irwinlaw.com/cold/civil_law

⁹ The Law Dictionary at <http://thelawdictionary.org/codification/>

¹⁰ Irwin Law Online Legal Dictionary at <https://www.irwinlaw.com/search/node/common%20law>

¹¹ Irwin Law Online Legal Dictionary at <https://www.irwinlaw.com/search/node/Defendant>

¹² The Law Dictionary at <http://thelawdictionary.org/distinguish/>

¹³ The Free Dictionary at <http://idioms.thefreedictionary.com/hand+down>

- Headnote:** A summary of the case, typically provided by the publisher. Generally located at the very top of a decision (or “opinion”), these provide a brief summary of the facts, the ruling by the court, and a summary of the reasons the court provided to support its ruling¹⁴.
- In-Text Citation:** A citation for a case, statute, regulation, etc., that can be found within the text of the judgment.
- Jurisdiction:** Power and/or authority given to a court or judge, by way of the Canadian Constitution, to make decisions of law or to award remedies based in law to parties that come before the court¹⁵.
- Legal Citation:** Governed by numerous technical rules for citing cases, legislation and other law-related materials, the legal citation provides information that can be used to find cases that have been cited or used by courts in their decisions¹⁶.
- (Legal) Claim:** A demand of some matter, as of right, made by one person upon another, to do or to forbear to do some act or thing as a matter of duty¹⁷.
- Legislation:** Laws that have been enacted by a legislature or other governing body; also refers to the process or act of making or enacting laws¹⁸.
- Note Up/ Noting Up:**
- The process of ensuring that the legislation or case you have found is still good law. For legislation, this involves ensuring that the legislation is the most recent version, and checking if and how the statute in question has been interpreted by the courts. For cases, this involves ensuring that the particular case has not been reversed on appeal, has not been criticized by subsequent cases, or overruled by subsequent cases.¹⁹ **NOTE:** CanLII references are limited to those sources that are included in the CanLII database²⁰.
- Parallel Cite:** An alternate citation for a case, which directs the reader to a second location where the case has been published²¹.
- Persuasive:** Sources of law (i.e. related cases, legal encyclopedias, other secondary sources) that the court is able to consult when deciding a case, but which the court is not required to apply when reaching its

¹⁴ Irwin Law Online Legal Dictionary at <https://www.irwinlaw.com/search/node/Headnote>

¹⁵ The Law Dictionary at <http://thelawdictionary.org/jurisdiction/>

¹⁶ Irwin Law Online Legal Dictionary at https://www.irwinlaw.com/cold/legal_citation

¹⁷ The Law Dictionary at <http://thelawdictionary.org/claim/>

¹⁸ The Law Dictionary at <http://thelawdictionary.org/legislation/>

¹⁹ Bora Laskin Law Library at <http://library.law.utoronto.ca/step-3-noting-cases>

²⁰ Bora Laskin Law Library at <http://library.law.utoronto.ca/step-3-noting-legislation>

²¹ Derived from Irwin Law Online Legal Dictionary at https://www.irwinlaw.com/cold/legal_citation

conclusion²².

Plaintiff: The person who brings the action or claim²³.

Precedent: A common law doctrine that requires courts to follow prior decisions in future cases that disclose the same facts. It is similar to (“*Stare Decisis*”) the concept of “binding judicial precedent”. For example, when the facts of Case A are similar to the facts of Case B, the judge in Case B is required to follow the ruling in Case A, but only where the judge in Case A is from a higher court in the same jurisdiction²⁴.

Overtured: To invalidate or reverse a decision by legal means or, in other words, through the decision of a higher court²⁵.

Ratio Decidendi: A Latin phrase meaning “the reason for a decision”²⁶.

Regulations: Rules or directives that are made and maintained by some kind of authority, usually in the form of legislation. While they are not laws per se, they have the same force of law as a result of their statute-granted authority²⁷. Regulations are usually enforced by regulatory agencies forced commonly by a regulatory agency that is formed or mandated to carry out the purpose and provisions of the legislation²⁸.

Reporter: Law reports or reporters are a series of books that contain judicial opinions from a selection of case law decided by courts. They are like journals, but instead of publishing articles of an academic nature, they publish judicial decisions from both courts and tribunals. They can be issued by commercial or public bodies, and many reporters are organized by jurisdiction (i.e. the *Nova Scotia Reports*,). Some journals contain cases dealing with specific subjects (e.g. *Canadian Criminal Cases*). If possible, when citing a case, cite to the official reporter. There are only three official reporters of Canadian case law, the Canada Supreme Court Reports (SCR or RCS), the Federal Court Reports (FCR or CF), or the RC de l’É Exchequer Court (Ex CR)²⁹.

²² The Free Dictionary at <http://legal-dictionary.thefreedictionary.com/Persuasive+Authority>

²³ Irwin Law Online Legal Dictionary at <https://www.irwinlaw.com/cold/plaintiff>

²⁴ Irwin Law Online Legal Dictionary at https://www.irwinlaw.com/cold/stare_decisis

²⁵ The Free Merriam-Webster Dictionary at <http://www.merriam-webster.com/dictionary/overturn>

²⁶ The Free Dictionary at <http://thelawdictionary.org/ratio-decidendi/>

²⁷ Government of New Brunswick Executive Council Office at

http://www2.gnb.ca/content/gnb/en/departments/executive_council/promo/smart_regulations/w_hat_are_regulations.html

²⁸ Government of Canada Privy Council Office, Reports and Publications at <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/part3-eng.htm>

²⁹ Queen’s University Library at <http://library.queensu.ca/law/lederman/lawreports>

Respondent: The party that responds to, or defends against, a legal claim. While this term can apply to the responding party at any level of court, it is most often used to describe the party in appellate matters³⁰.

Statute (or “Act”): Written law passed by a legislative body. Statutes can be amended or appealed, so it is very important to ensure that the statute being consulted is the most up-to-date version³¹.

Statutory Limitation Period:

A timeframe that is set by legislation (which may be referred to as “statute of limitations”) wherein parties must bring a claim or action to court in order to enforce their rights or seek redress³². If parties do not bring their claim within the applicable limitation period laid out in the relevant statute of limitations, then they are barred, or disallowed, from subsequently bringing their claim or action before the court, absent certain statutory exceptions.

Terms of Art: Words or phrases that have specific, precise and specialized meaning within particular fields or professions³³.

Tort: A wrongful act or injury from which a right to an action or claim will arise. This legal wrong is committed against a person or property independent of a contract, and can arise from the direct invasion of an individual’s legal rights, from the violation of a public duty, or the violation of a private obligation³⁴.

³⁰ Irwin Law Online Legal Dictionary at <https://www.irwinlaw.com/cold/respondent>

³¹ Irwin law Online Legal Dictionary at <https://www.irwinlaw.com/cold/act>

³² The Law Dictionary at <http://thelawdictionary.org/statute-of-limitations/>

³³ The Free Dictionary at <http://legal-dictionary.thefreedictionary.com/Term+of+Art>

³⁴ The Law Dictionary at <http://thelawdictionary.org/tort/>