

## **Traditional and Non-Traditional Gathering Paths**

### **The Research Process: A Reminder of the Basics**

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Prepared By:

**Shaunna Mireau**

**Field LLP**

**Edmonton, Alberta**

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There is a pretty solid consensus among the people who write about legal research that there is a predictable path to the best results. Whether you practice the FILAC approach<sup>1</sup>, follow the steps outlined by MacEllven<sup>2</sup>, use the tools outlined by Tjaden<sup>3</sup>, or espouse the traditions outlined by your research teacher in law school, applying a principled, standard approach to the legal research process will net you the best results.

For an easy reference to a best practice approach to basic legal research, look to <http://legalresearch.org/essential.html>. Catherine Best shares the Research Essentials path on her site Best Guide to Canadian Legal Research. This method starts with planning and organization. Before you start gathering or analyzing material to apply to a research question, you need to have a solid understanding of what you are looking for as well as some ideas about where you will find the answer.

### **First**

Do not attempt to know everything about all areas of law.

Information overload is a reality that we all must continue to cope with. Given the volume of information on the planet and the rate at which it grows, I doubt there is a way for any human being to claim complete expertise in any thing.

Since gaining personal expertise can only be limited, as Google Scholar suggests, stand on the backs of giants. Consult what librarians call secondary sources.

Secondary sources are materials like textbooks, journal articles and other sources of commentary on a legal topic. These sources should provide a broad brush overview of an area of law, describe any terms of art used in that area, and link to leading cases in the footnote references that most of these sources provide. Legal encyclopedias like *Halsbury's Laws of Canada* or the *Canadian Encyclopedic Digest* will share statements of law with citations that support them. These tools will provide a quick start for any legal research project. In the best cases, they will also reference legislation that applies to a point or area of law.

### **Next**

Take what you find and gather the circle of relevant material that flows from it.

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<sup>1</sup> The FILAC Approach is discussed in Maureen Fitzgerald, Legal Problem Solving: Reasoning, Research and Writing, 4th ed. (LexisNexis, 2007).

<sup>2</sup> Douglass T. MacEllven et al, Legal Research Handbook, 5th ed. (LexisNexis Butterworths, 2003)

<sup>3</sup> Ted Tjaden, Legal Research and Writing, 3<sup>rd</sup> ed. (Irwin Law, 2010) and its companion website <http://www.legalresearchandwriting.ca>

## **1. Legislation**

Find the statutes referenced in the secondary sources. Read them, with particular attention to in force dates and regulatory material that flows from them. Gather decisions and other material (i.e. policy statements, news releases, bulletins by government agencies and stakeholders) that relates to the legislation.

Apply (or distinguish) the legislation to your facts.

## **2. Decisions**

Judicial decisions referenced in secondary source footnotes are usually the key cases on a particular point of law. Sometimes they are unique exceptions. Note these decisions up by using a citation service to find judicial history, other cases that consider them, or additional commentary sources that refer to them. From this circle of resources, identify the patterns that reflect the most likely solution to a legal problem.

Apply (or distinguish) the decisions to your facts.

## **3. Identify Gaps**

Gaps can appear if you are only using one set of criteria to answer your research problem. Once you have the initial collection of materials, you will need to review, restate your strategy, and refine your searching. Revisit secondary sources for additional keywords.

Finding tools like words and phrases indexes, case digests, and indexes to law reports should be assessed to ensure that all gaps are closed.

Consider whether your question warrants searching law of other jurisdictions.

## **4. Keep It Current**

Law changes. Make sure that legislation and case law that you apply to your question has not been changed or modified by more recent legislation or decisions that are binding or strongly persuasive.

## **Stop**

Knowing when to stop researching is an important aspect of legal research. You know when to stop when you keep finding the same result and nothing new or relevant appears. Catherine Best addresses knowing when to stop as well as what to do if you find nothing in her Research Essentials site at <http://legalresearch.org/docs/process12.html>