

The Digital Research Utopia



Melanie Hodges Neufeld , BA (Hon), LLB, LLM

Director of Legal Resources

Ken Fox, BAsC, MLIS

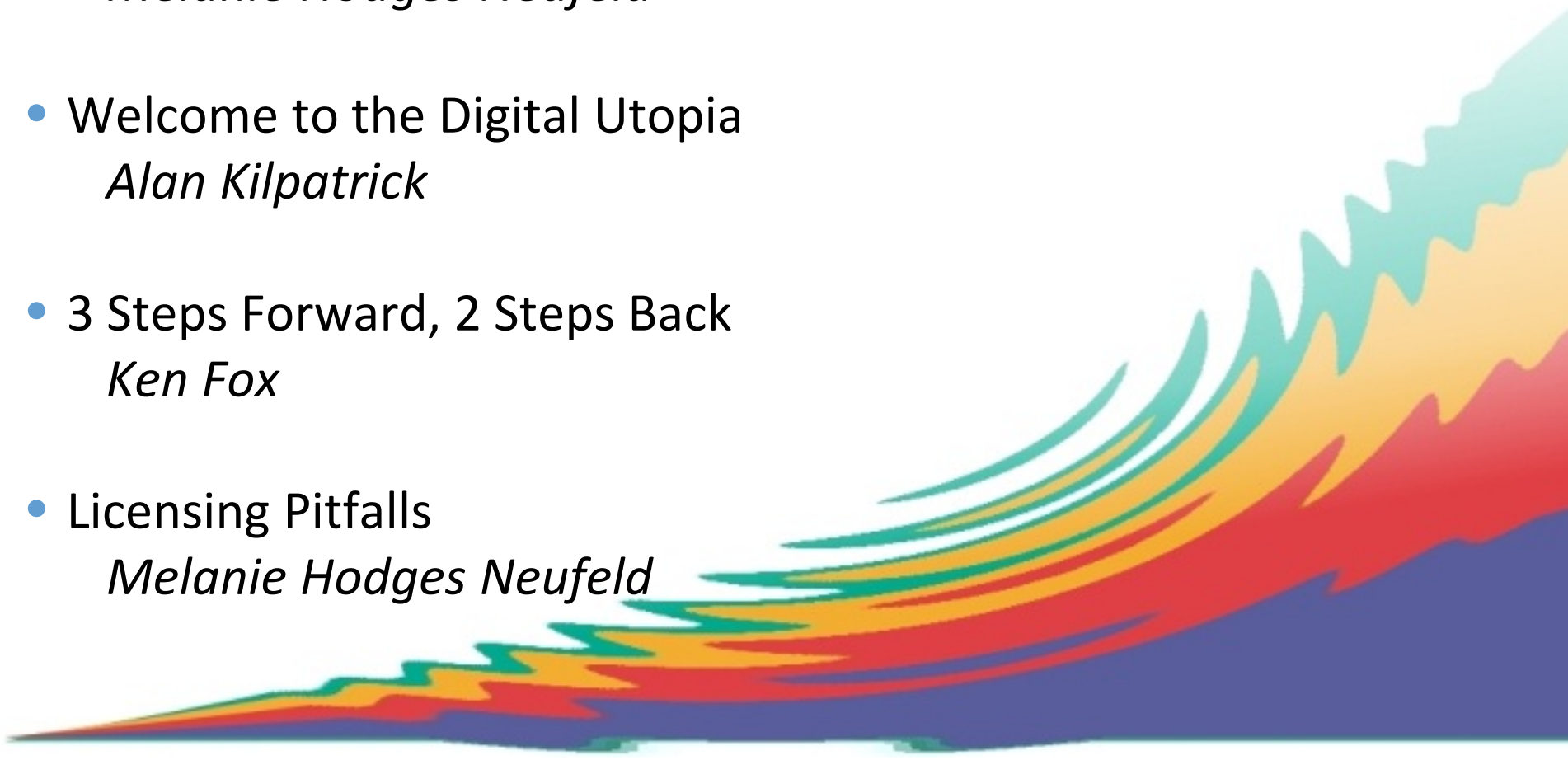
Reference Librarian

Alan Kilpatrick, BA, MLIS

Reference Librarian

Overview

- Introduction: An Evolution
Melanie Hodges Neufeld
- Welcome to the Digital Utopia
Alan Kilpatrick
- 3 Steps Forward, 2 Steps Back
Ken Fox
- Licensing Pitfalls
Melanie Hodges Neufeld





**Law Society
of Saskatchewan
Library**

An Evolution....

2015 Library Statistics

Members Section

63,651



visits from 1,481 individuals

22%
increase
from
2014

Blog

414 posts
55,269 views

2015

Legal Sourcery's
first full calendar year

81.5%
of active LSS
members
accessed
materials and
services from the
Members Section
in 2015

49,338 visits from 627 individuals

Website

2014
969,896
visits

2015
980,953
visits

Reference Inquiries

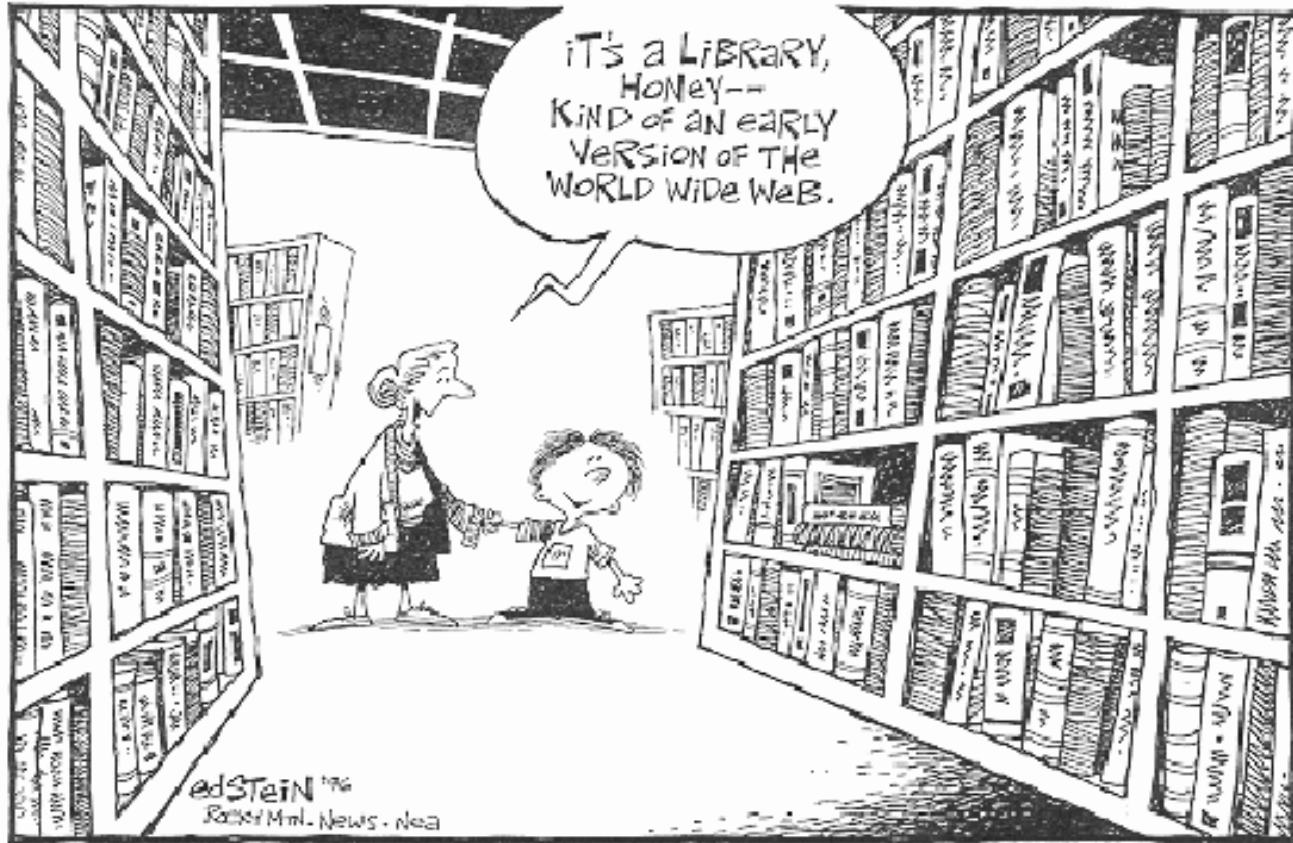
	2014	2015	increase over 2014
public	71	153	54%
rural member	145	181	20%
urban member	323	546	41%
other	94	164	43%
Total =	633	1,044	

The reference staff track the number of users we assist and we note that inquiries increased in 2015 by approximately 40% over 2014. In total, the library received 1,044 by phone, email or in person in 2015.

Resource Shift



Future of Libraries: A Service, Not a Space



We have an image problem





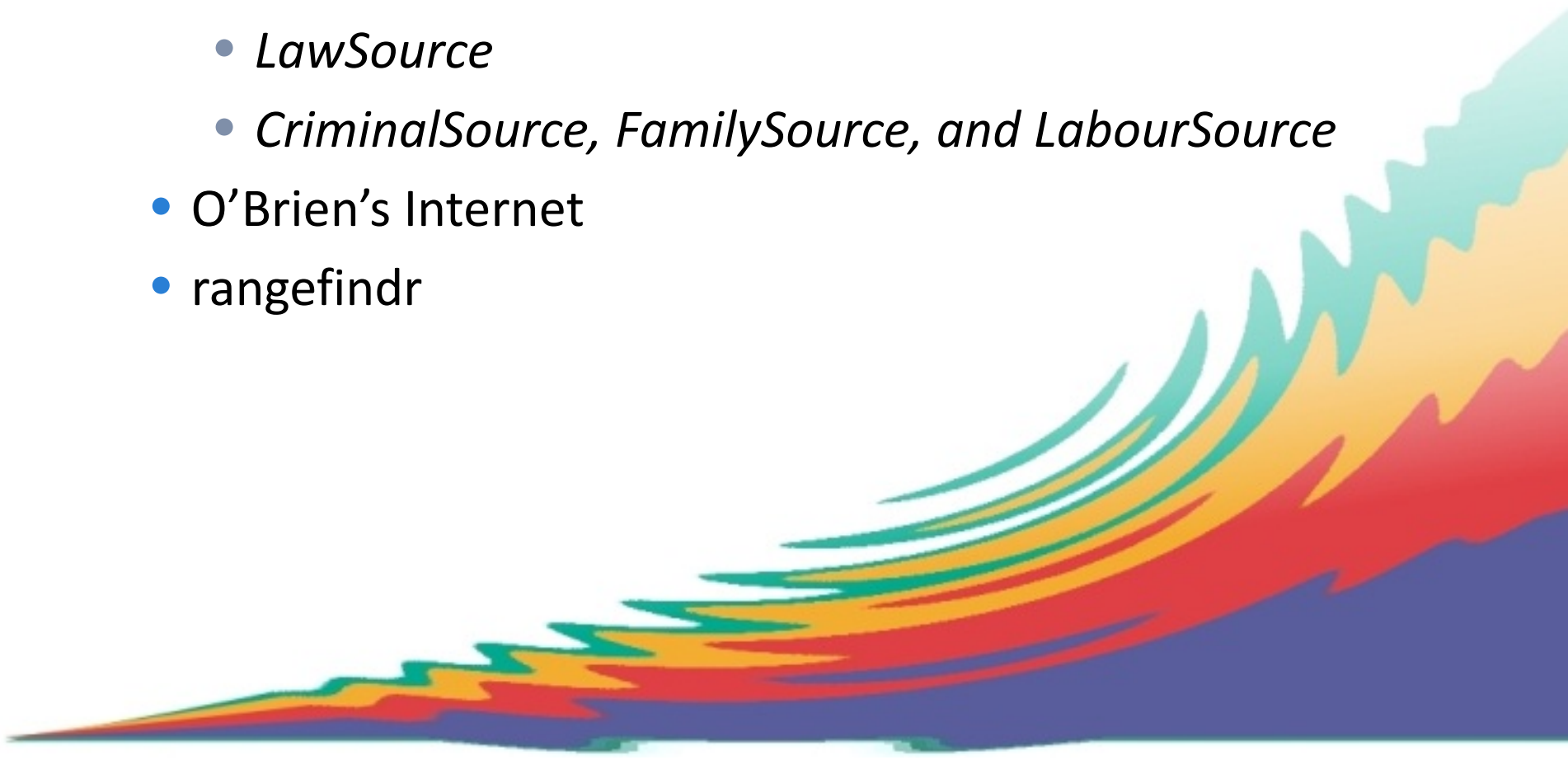
“The purpose of the work on making the future is not to decide what should be done tomorrow, but what should be done today to have a tomorrow.”





Digital Subscriptions

- Subscriptions
 - WestlawNext Canada
 - *LawSource*
 - *CriminalSource, FamilySource, and LabourSource*
 - O'Brien's Internet
 - rangefindr



Ebooks

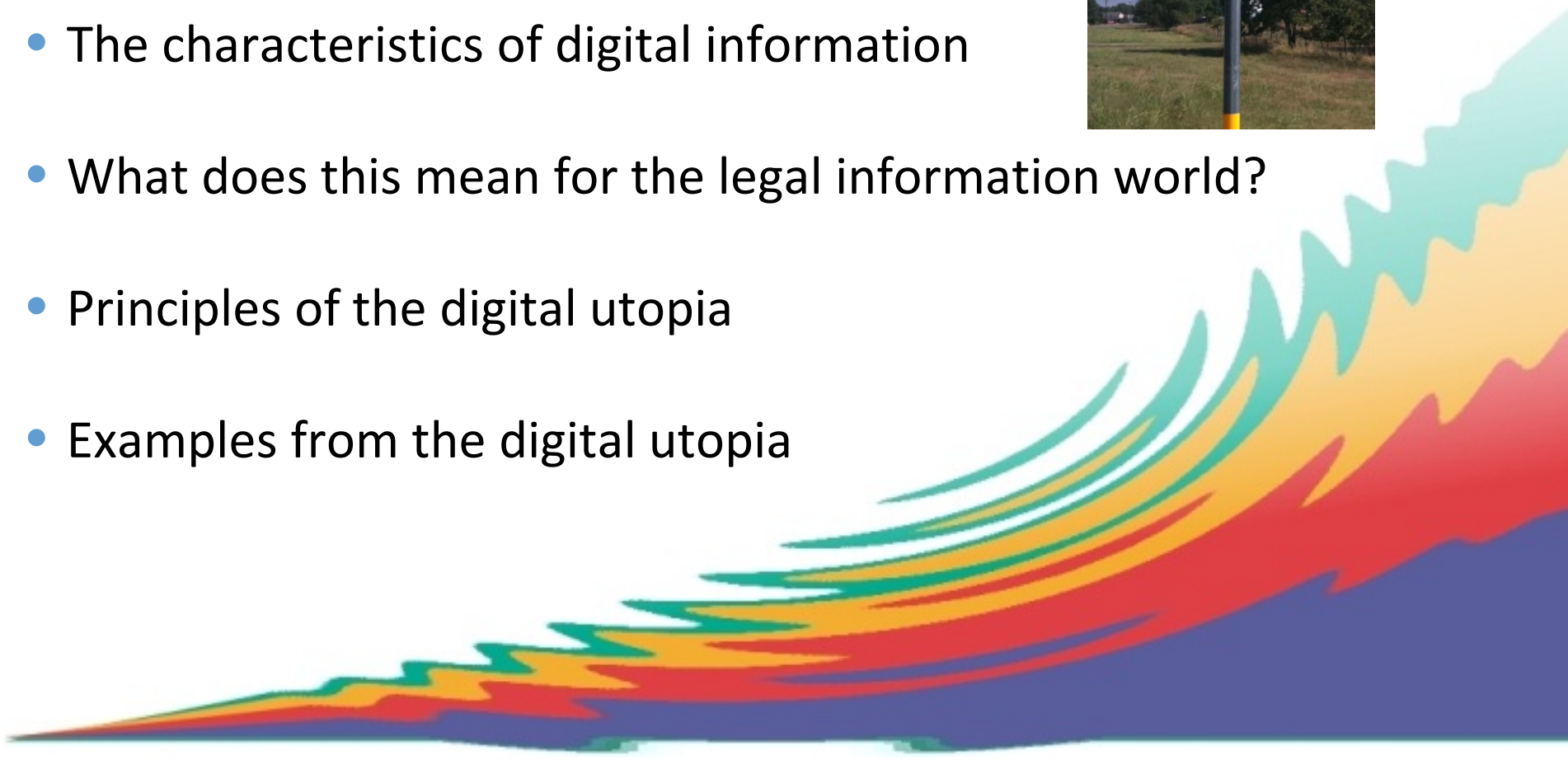
- Emond Publications
 - More than 50 titles available in the Working With the Law series and Casebook Collection.
- Irwin Law e-Library
 - More than 100 online textbooks, including the entire Essentials of Canadian Law series.

Online Journals

- ***HeinOnline***
 - Full text of over 700 legal periodicals from the United States, Canada and the Commonwealth.
 - Includes provincial statutes, English Reports, and all US Supreme Court decisions.
- ***Lawyers Weekly***
 - Published 48 times a year, Lawyers Weekly provides lawyers with information essential to maintaining and building a successful practice in today's competitive business environment.
- ***Saskatchewan Law Review***
 - Complete issues in full text from 2013. Prior issues available on HeinOnline.

Welcome to the Digital Utopia

- What is the digital utopia?
- The characteristics of digital information
- What does this mean for the legal information world?
- Principles of the digital utopia
- Examples from the digital utopia



Welcome to the Digital Utopia



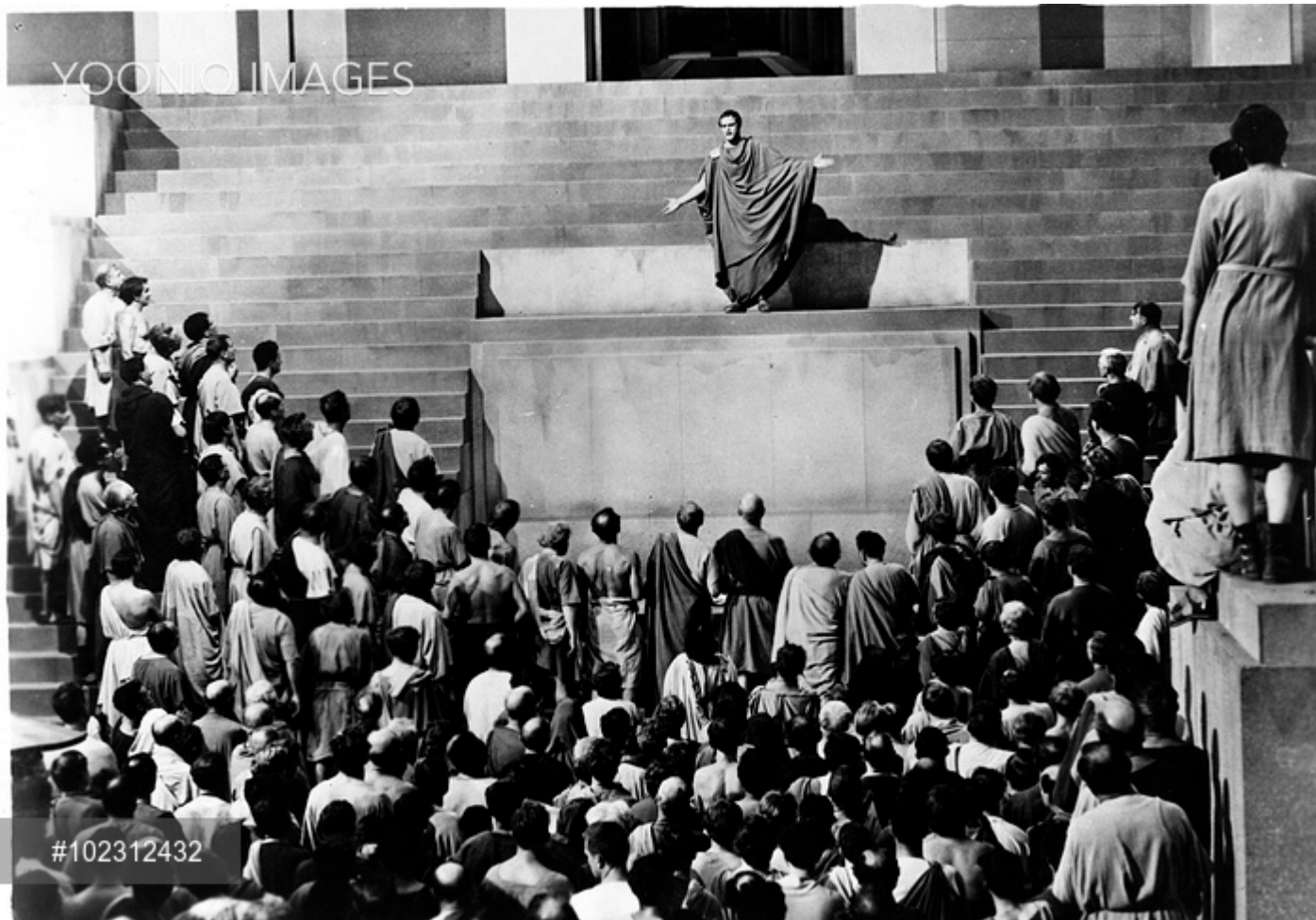
Characteristics of Digital Information

“Electronic information flows as easily as water.”

- 
- Downloadable
 - Uploadable
 - Copying
 - Pasting
 - Editing
 - Altering
 - Reformatting
 - Resizing
 - Reshaping
 - Current
 - Accessible
 - Searchable
 - Sharable
 - Storable
 - Transportable
 - Reproducible
 - Rewriteable
 - Printable
 - Transmittable
 - Wide range

What does this mean for legal information?





Principles of the Digital Utopia

Principles of the Digital Utopia

1. Case law and legislation are available digitally
2. Digital books have a significant impact on print books
3. Public access to the internet is better
4. The Members' Section is a key to the digital utopia



Principles of the Digital Utopia

Public access to the law has never been better

Alberta:

[Centre for Public
Legal Education
Alberta \(CPLEA\)](#)

New Brunswick:

[Public Legal
Education and
Information
Service \(PLEISNB\)](#)

**Prince Edward
Island:**

[Community Legal
Information
Association of
PEI \(CLIAPEI\)](#)

**British
Columbia:**

[People's Law
School](#)

Newfoundland:

[Public Legal
Information
Association of NL
\(PLIAN\)](#)

Quebec:

[Éducaloi](#)

Manitoba:

[Community Legal
Education
Association of
MB](#)

Nova Scotia:

[Legal
Information
Society of NS
\(LISNS\)](#)

Saskatchewan:

[Public Legal
Education
Association of
Saskatchewan
\(PLEA\)](#)

Ontario:

[Community Legal
Education
Ontario \(CLEO\)](#)

Principles of the Digital Utopia

1. Case law and legislation are accessed digitally
2. Digital books have a wider reach than print books
3. Public access to the law has never been better
4. The Members' Section is your gateway to the digital utopia

A decorative graphic consisting of several overlapping, wavy, horizontal bands of color in shades of blue, green, yellow, orange, and red, creating a rainbow-like effect that curves upwards from the bottom left towards the right.

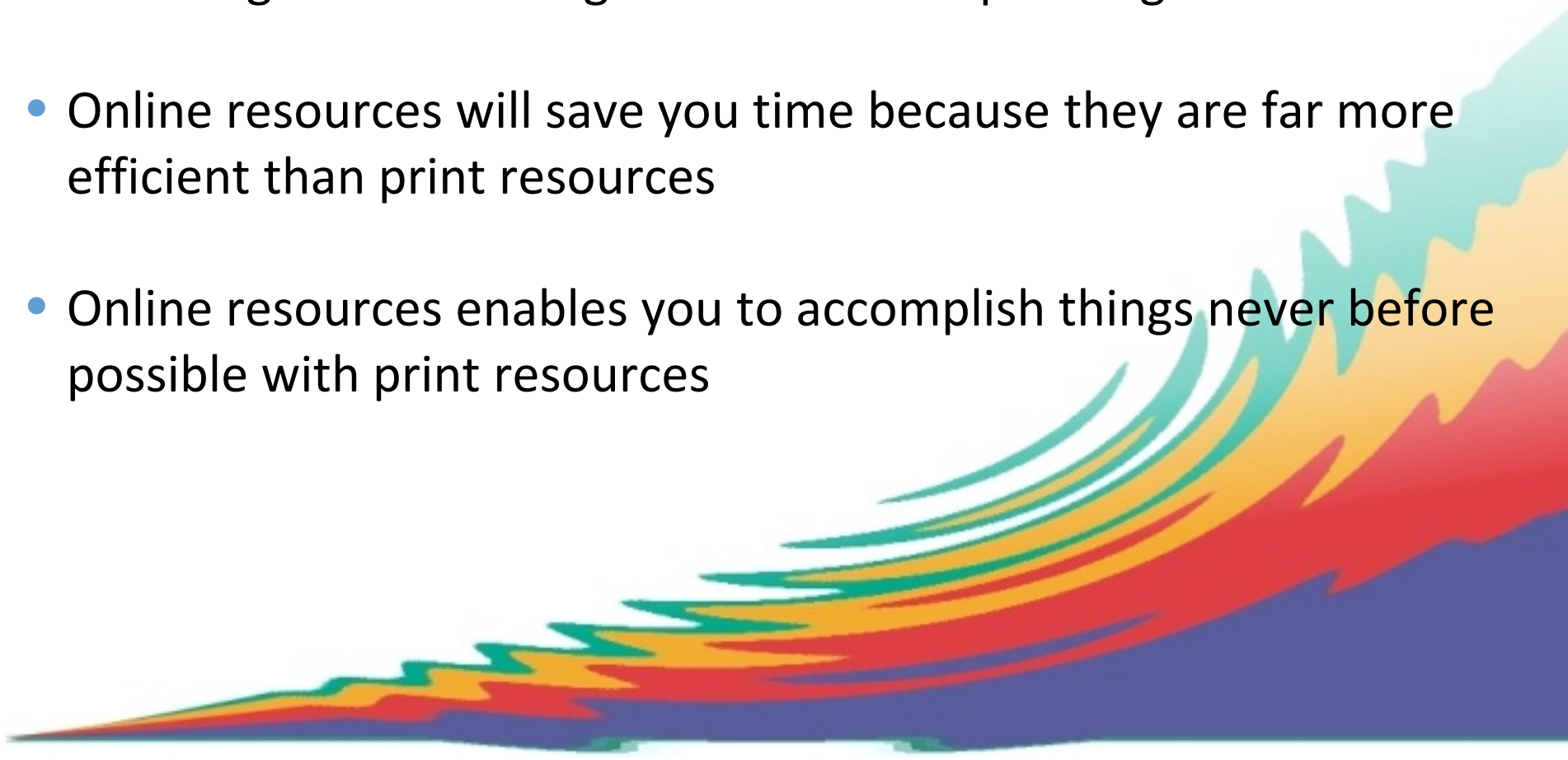
Adapted from Courthouse Libraries BC

Principles of the Digital Utopia



Examples from the Digital Utopia

- Let's look at some examples that demonstrate the amazing advantages of online legal research over print legal research
- Online resources will save you time because they are far more efficient than print resources
- Online resources enables you to accomplish things never before possible with print resources



Examples from the Digital Utopia

- Searching for a case of unknown name:
 - I am trying to locate a Queen's Bench judgment by Justice Gerein, made somewhere in the last few years on arbitrary detention
 - Unfortunately, I cannot seem to recall the name of the decision



PORTS
LAW REPORTS
CHANCERY
DIVISION
1909
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1911
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1914

LAW REPORTS
CHANCERY
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1922

Search

"arbitrary detention" gerein



?

Case name, legislation title, citation or docket

?

Noteup: cited case names, legislation titles, citations or dockets

?



Browse

[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

2016-03-14 [Overzealous Denial of Claim Results in Large Punitive Damage A...: Arsenovski v. Bodin, 2016 BCSC 359 \(CanLII\)](#)

2016-03-14 [More cases reaching judgment during notice period: Drysdale v Panasonic Canada Inc., 2015 ONSC 6878 \(CanLII\)](#)

2016-03-14 [OCA: coverage not forfeited by technical non-compliance: Dams v. TD Home and Auto Insurance Company, 2016 ONCA 4 \(CanLII\)](#)

2016-03-14 [OCA decision highlights the 'nuts and bolts' of jury selection: R. v. Nouredine, 2015 ONCA 770 \(CanLII\)](#)

Other resources

[Commentary](#)

[Other Countries](#)

News

2016-03-02  [What's Hot on CanLII](#) 

2016-02-17 [We've Hit Post Number 40,000 on CanLII Connects!](#)

2016-02-17  [What's Hot on CanLII](#) 

"arbitrary detention" AND gerein

Case name, legislation title, citation or docket

Notes: cited case names legislation title citations or dockets

All Cases (77) Cases (77) Legislation (0) Commentary (0)

All jurisdictions ▾ All courts and tribunals ▾ Any date ▾ By Relevance ▾

☐ Canada (Federal) ☒ All courts and tribunals ☒ Any decision date 28
☐ British Columbia All courts Last week 0
☐ Alberta Appeal courts Last three months 0
☒ Saskatchewan All tribunals Last year 2
☐ Manitoba Labour Last three years 5
☐ Ontario Privacy Last ten years 15
☐ Quebec Human rights
☐ New Brunswick Discipline Decision date is YYYY MM DD OK
☐ Nova Scotia Securities
☐ Prince Edward Island Decision date between 2011 01 01 2013 12 31 OK
☐ Newfoundland and Labrador
☐ Yukon
☐ Northwest Territories
☐ Nunavut

Saskatchewan

Court	Count
Court of Appeal for Saskatchewan	8
Court of Queen's Bench for Saskatchewan	28
Provincial Court of Saskatchewan	36
Appeal Tribunal under the Medical Profession Act	0
Automobile Injury Appeal Commission	0

BETA LEXBOX

Save this query

Set up alert feed

Email this query

Run a saved query

Browse Lexbox

3. [R v Poletz](#), 2012 SKQB 148 (CanLII) — 2012-04-11

Court of Queen's Bench for Saskatchewan — Saskatchewan

arbitrary detention — stay of proceedings — breaches — breath samples — evidence

[...] I am of the view that a stay of proceedings will not only redress a past wrong, being the **arbitrary detention** of Mr. Poletz, but will also serve to prevent [...] In particular is the case of *R. v. Salisbury*, 2011 SKQB 153 (CanLII), 372 Sask.R. 242, a decision of **Gerein J.**, where an accused was detained for over nine [...] Both the trial judge and the summary conviction appeal court judge expressed the view that, if they were in error in failing to find a case for **arbitrary detention**, this [...]

cited by 5 documents [CanLII Connects](#)

"arbitrary detention" AND gerein x ?

Case name, legislation title, citation or docket ?

Noteup: cited case names, legislation titles, citations or dockets ?



All CanLII (72)

Cases (5)

Legislation (0)

Commentary (0)

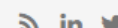
Saskatchewan ▾

SKQB ▾

2011-01-01 to 2013-12-31 ▾

Clear filters

By Relevance ▾



1. [R v Poletz](#), 2012 SKQB 148 (CanLII) — 2012-04-11

Court of Queen's Bench for Saskatchewan — Saskatchewan

arbitrary detention — stay of proceedings — breaches — breath samples — evidence

[...] I am of the view that a stay of proceedings will not only redress a past wrong, being the **arbitrary detention** of Mr. Poletz, but will also serve to prevent [...] In particular is the case of R. v. Salisbury, 2011 SKQB 153 (CanLII), 372 Sask.R. 242, a decision of **Gerein J.**, where an accused was detained for over nine [...] Both the trial judge and the summary conviction appeal court judge expressed the view that, if they were in error in failing to find a case for **arbitrary detention**, this [...]

cited by [5 documents](#) [CanLII Connects](#)

2. [R v Zacharias](#), 2012 SKQB 491 (CanLII) — 2012-11-23

Court of Queen's Bench for Saskatchewan — Saskatchewan

systemic — arbitrary detention — police — overholding — capriciousness

[...] x) As stated by **Gerein J.** at paras. 9 to 12 of his reasons in R. v. Salisbury, a series of decisions where the provincial court held that **arbitrary detention** [...] The trial judge had the benefit of both the decision of **Gerein J.** and the Court of Appeal in Salisbury when she made her decision in this case. [...] was entitled to make, do these conclusions justify as a matter of law her finding an **arbitrary detention** that constituted a breach under the Canadian Charter of Rights and Freedoms? [...]

cited by [3 documents](#) [CanLII Connects](#)

3. [R. v. Salisbury](#), 2011 SKQB 153 (CanLII) — 2011-04-21

Court of Queen's Bench for Saskatchewan — Saskatchewan

stay of proceedings — breach — detention — remedy — operate a motor vehicle

[...] [10] All of the cited cases were instances of **arbitrary detention** which resulted in judicial stays. [...] Both the trial judge and the summary conviction appeal court judge expressed the view that, if they were in error in failing to find a case for **arbitrary detention**, this [...] [18] We do not intend to deal with the third issue relating to the allegation of **arbitrary detention**. [...] W. F. **Gerein** [...]

cited by [25 documents](#) [CanLII Connects](#)



Save this query

Set up alert feed

Email this query

Run a saved query ▾

Browse Lexbox ▾

Examples from the Digital Utopia

- Noting up case law:
 - I would like to note up *R v Lewko*, 2002 SKCA 121 on WestlawNext
 - In particular, I would like to identify all appeal level decisions that have cited *R v Lewko*

Examples from the Digital Utopia



R. v. Lewis

- ③ R. v. Pertab, 2004 Carswell-Ont 5292, 27 C.R. (6th) 126 (Ont. S.C.J.)
- ③ R. v. Turner (1995), 164 N.B.R. (2d) 241, 421 A.P.R. 241 (N.B. Q.B.)
- ③ R. v. Naglik (1991), 3 O.R. (3d) 385, 46 O.A.C. 81 (Ont. C.A.)
- ③ R. v. Atikian (1990), 57 C.C.C. (3d) 293, 1990 CarswellOnt 733 (Ont. H.C.)
- ③ R. v. Church of Scientology of Toronto (1987), 18 O.A.C. 321, 30 C.R.R. 238 (Ont. C.A.)
- ③ R. v. Degg (1981), 58 C.C.C. (2d) 387, 1981 CarswellOnt 1245 (Ont. Prov. Ct.)
- ③ Taha, Re (1976), 28 R.F.L. 352, 1976 CarswellOnt 202 (Ont. Prov. Ct.)

R. v. Lewis
(April 4, 1903)
(1903), 2 O.W.R. 290, 1903 CarswellOnt 215 (Ont. Div. Ct.)

R. v. Lewis
(May 1, 1891)
(1891), 11 C.C.C. 158n (N.S. C.A.)

R. v. Lewis
(1881), 8 P.R. 497
affirmed / confirmé (June 24, 1881) (1881), 32 U.C.C.P. 104, 1881 CarswellOnt 164 (U.C. C.P.)

Cases citing U.C. C.P.
③ R. v. Coleman (1881), 46 U.C.Q.B. 175, 1881 Carswell-Ont 206 (Ont. Q.B.)

R. v. Lewis
(1844), 13 L.J.M.C. 46

Cases citing 1st level
③ Peropolkin v. British Columbia (Superintendent of Child Welfare) (1957), 26 C.R. 97, 21 W.W.R. 625 (B.C. C.A.)

R. v. Lewis
(1844), 174 E.R. 874

Cases citing 1st level
③ R. v. Jobidon (1991), 7 C.R. (4th) 233, 128 N.R. 321 (S.C.C.)

R. v. Lewisham London Borough Council
(1987), [1988] 1 All E.R. 938 (Eng. Q.B.)

Cases citing Eng. Q.B.
③ Canadian Daily Newspaper Assn. v. Canada Post Corp., [1995] 3 F.C. 131, 98 F.T.R. 214 (Fed. T.D.)
③ Shell Canada Products Ltd. v. Vancouver (City), [1994] 3 W.W.R. 609, 20 M.P.L.R. (2d) 1 (S.C.C.)
③ Shell Canada Products Ltd. v. Vancouver (City) (1990), 49

M.P.L.R. 185, 46 B.C.L.R. (2d) 346 (B.C. S.C.)

R. v. Lewisham Union
[1897] 1 Q.B. 498 (Eng. Q.B.)

Cases citing Eng. Q.B.

- ③ National Indian Brotherhood v. Juneau (No. 1), [1971] F.C. 66, 1971 CarswellNat 219 (Fed. T.D.)
- ③ R. v. United Grain Growers Ltd. (1977), 3 Alta. L.R. (2d) 387, 6 A.R. 328 (Alta. T.D.)
- ③ Hughes v. Henderson (1963), 46 W.W.R. 202, 42 D.L.R. (2d) 743 (Man. Q.B.)
- ③ Ontario (Board of Health) v. Toronto (City) (1920), 46 O.L.R. 587 at 592, 51 D.L.R. 444 (Ont. C.A.)

R.; Lewisporte Holdings Ltd. v. see Lewisporte Holdings Ltd. v. R.
R.; Lewitzky v. see Lewitzky v. R.

R. v. Lewko
(December 21, 2001), Doc. Saskatchewan Q.B.C.A. 18/01, 21/01 2001 SKQB 580, 2001 Carswell-Sask 796, 214 Sask. R. 274, [2002] 5 W.W.R. 163 (Sask. Q.B.)
reversed / infirmé (October 31, 2002), Doc. 421, 2002 SKCA 121, 169 C.C.C. (3d) 359, 2002 CarswellSask 665, 227 Sask. R. 77, 287 W.A.C. 77, [2003] 2 W.W.R. 197, [2002] S.J. No. 622, 31 M.V.R. (4th) 1, 7 C.R. (6th) 71 (Sask. C.A.)

Cases citing Sask. C.A.

- ③ R. v. Cody, 2005 SKQB 467, 2005 CarswellSask 732 (Sask. Q.B.)
- ③ R. v. Nelson, 2005 ABPC 232, 2005 CarswellAlta 1221 (Alta. Prov. Ct.)
- ③ R. v. Brown, 2004 Carswell-Ont 4468, 13 M.V.R. (5th) 216 (Ont. S.C.J.)
- ③ R. v. Nash, 2004 CarswellOnt 4572, [2004] O.J. No. 4522 (Ont. S.C.J.)
- ③ R. v. Wasyluk, 2004 SKPC 45, 2004 CarswellSask 157 (Sask. Prov. Ct.)
- ③ R. v. Horton, 2003 SKQB 510, 2003 CarswellSask 825 (Sask. Q.B.)
- ③ R. v. Rose, 2003 CarswellNfld 212, 43 M.V.R. (4th) 35 (N.L. Prov. Ct.)
- ③ R. v. Choudhry, 2005 ABQB 973, 2005 CarswellAlta 1934 (Alta. Q.B.)
- ③ R. v. D. (H.), 2005 SKPC 91, 2005 CarswellSask 709 (Sask. Prov. Ct.)
- ③ R. v. Dolphin, 2004 MBQB 252, 2004 CarswellMan 495 (Man. Q.B.)

[1867-Dec. 2006]

- ③ R. v. Nash, 2004 ONCJ 57, 2004 CarswellOnt 2093 (Ont. C.J.)
- ③ R. v. Piotrovich, 2004 SKPC 58, 2004 CarswellSask 293 (Sask. Prov. Ct.)
- ③ R. v. Davidson, 2003 SKPC 101, 2003 CarswellSask 449 (Sask. Prov. Ct.)
- ③ R. v. Sheehan, 2003 CarswellNfld 50, 35 M.V.R. (4th) 61 (N.L. Prov. Ct.)

R. v. Lewko
(January 5, 2001), Doc. T-2287-99 2001 CarswellNat 10, 2001 CarswellNat 3238 (Fed. T.D.)

R. v. Lexier
(March 27, 1933)
[1933] 1 W.W.R. 588, 59 C.C.C. 343, 1933 CarswellMan 26, 41 Man. R. 78 (Man. C.A.)

R. v. Ley
(October 13, 1994), Doc. Edmonton 408-71-840-P10101 1994 CarswellAlta 1020, [1994] A.J. No. 756 (Alta. Q.B.)

R. v. Ley
(September 3, 1912)
(1912), 2 W.W.R. 849, 20 C.C.C. 170, 1912 CarswellAlta 252, 7 D.L.R. 764 (Alta. S.C.)

Cases citing Alta. S.C.

- ③ Fitzsimonds v. Royal Insurance Co. of Canada (1984), 7 D.L.R. (4th) 406, 51 A.R. 368 (Alta. C.A.)

R. v. Leydier
(1981), 14 Man. R. (2d) 249, 1981 CarswellMan 313 (Man. Co. Ct.)

R. v. Leys
(June 20, 1910)
(1910), 16 O.W.R. 544, 17 C.C.C. 198, 1910 CarswellOnt 289, 1 O.W.N. 958 (Ont. C.A.)

Cases citing Ont. C.A.

- ③ Balliram, Re, 2004 Carswell-Ont 7353 (Ont. Review Bd.)

R. v. Leyte
(September 17, 2004), Doc. 2004 05T 0907 2004 NLSCD 177, 711 A.P.R. 158, 2004 CarswellNfld 282, 240 Nfld. & P.E.I.R. 158, 7 M.V.R. (5th) 67 (N.L. T.D.)

R. v. Leyte
(April 8, 2004), Doc. 0699A-00528 2004 CarswellNfld 430 (N.L. Prov. Ct.)

R. v. Leyte
(June 5, 1996), Doc. AR 95-30-0273 (1996), 110 Man. R. (2d) 235, 1996 CarswellMan 290, 118 W.A.C. 235, [1996] M.J. No. 298 (Man. C.A.)

Cases citing Man. C.A.



R. v. Lewko

2002 SKCA 121, 2002 CarswellSask 665, 2002 Saskatchewan Court of Appeal, Saskatchewan, October 31, 2002 (Approx. 18 pages)

Document

History (2)

Citing References (221)

Legal Memos (0)

Court Docs (0)

Experts (0)

Powered by KeyCite Canada

Citing References (221)

Legal M

Original

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Most Recent

272894 | (Que.

Cases and Decisions (203)

Secondary Sources (18)

nated)

c. Ratté | 2016 QCCM 218, 2016 CarswellQue 10943, EYB 2016-

2002 SKCA 121

Saskatchewan Court of Appeal

R. v. Lewko

2002 CarswellSask 665, 2002 SKCA 121, [2002] S.J. No. 622, [2003] 2 W.W.R. 197, 169 C.C.C. (3d) 359, 227 Sask. R. 77, 287 W.A.C. 77, 31 M.V.R. (4th) 1, 55 W.C.B. (2d) 547, 7 C.R. (6th) 71

Her Majesty the Queen (Appellant) and Glen Lyn Lewko (Respondent)

Bayda C.J.S., Lane, Jackson J.J.A.

Heard: September 3, 2002

Judgment: October 31, 2002

Docket: 421

Proceedings: reversing in part (2001), 214 Sask. R. 274, [2002] 5 W.W.R. 163 (Sask. Q.B.)

Counsel: *W. Dean Sinclair*, for Crown

Nicholas J. Stooshinoff, for Respondent

Subject: Criminal

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Annotation

Table of Authorities

APPEAL by Crown from judgment reported at 2001 SKQB 580, 2001 CarswellSask 796, 214 Sask. R. 274, [2002] 5 W.W.R. 163 (Sask. Q.B.), allowing appeal from conviction on charge of failure to provide, without reasonable excuse, breath sample for roadside test.



R. v. Lewko

2002 SKCA 121, 2002 CarswellSask 665 | Saskatchewan Court of Appeal | Saskatchewan | October 31, 2002 (Approx. 18 pages)

Document

History (2)

Citing References (221)

Legal Memos (0)

Court Docs (0)

Experts (0)

Powered by KeyCite Canada

KeyCite Canada Citing References (203) 1-50

Sort By: Treatment Type

No items selected

VIEW

Cases and Decisions

203

Secondary Sources

18

All Results

221

NARROW

Select Multiple Filters

Search within results

Date

All

Depth Of Treatment

☐ 12
☐ 39
☐ 152

Jurisdiction

☐ Alberta 39
☐ British Columbia 5
☐ Manitoba 6
☐ New Brunswick 5
☐ Newfoundland and Labrador 6
☒ Nova Scotia 5
☐ Ontario 34
☐ Quebec 48
☐ Saskatchewan 55

Court Level

☐ All Courts of Appeal
☐ All Other Courts 200

Treatment Type

☐ Recently added (treatment not yet

2

	Treatment	Title	Date	Type	Depth
<input type="checkbox"/>	Recently added (treatment not yet designated)	1. R. c. Ratté 2016 QCCM 218 (C.M. Que.)	Oct. 13, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Recently added (treatment not yet designated)	2. R. c. Grainger 2016 QCCS 1668 (C.S. Que.) (Judicially considered 1 time)	Apr. 11, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	3. Saskatchewan (Attorney General) v. An 2016 SKQB 378 (Sask. Q.B.)	Nov. 21, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	4. R. c. Ben Sassi 2016 NBPC 5 (N.B. Prov. Ct.)	Sep. 06, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	5. R. v. Stewart 2016 SKPC 72 (Sask. Prov.)	June 17, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	6. R. v. Bonang 2016 NSPC 73 (N.S. Prov. Ct.)	May 11, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	7. R. v. Gillis 2016 SKPC 1 (Sask. Prov.)	Feb. 05, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	8. R. v. Camalalingham 2016 ONSC 499 (Ont. S.C.J.)	Jan. 25, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	9. R. v. Warha 2016 ONSC 93 (Ont. S.C.J.)	Jan. 06, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	10. R. v. Keller 2016 SKQB 2 (Sask. Q.B.)	Jan. 04, 2016	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	11. R. v. Poisson 2015 SKPC 180 (Sask. Prov.)	Dec. 22, 2015	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	12. R. v. Adams 2015 ONCJ 696 (Ont. C.J.)	Dec. 07, 2015	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
<input type="checkbox"/>	Followed in	13. R. v. Sibanda 2015 ABPC 238 (Alta. Prov. Ct.)	Nov. 26, 2015	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>
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<input type="checkbox"/>	Followed in	15. R. v. Young 2015 SKPC 127 (Sask. Prov.)	Aug. 25, 2015	Cases and Decisions	<div><div></div><div></div><div></div><div></div><div></div></div>



R. v. Lewko

2002 SKCA 121, 2002 CarswellSask 665 | Saskatchewan Court of Appeal | Saskatchewan | October 31, 2002 (Approx. 18 pages)

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Treatment	Title	
Considered in	1. R. v. Moise 2016 SKCA 133 (Sask. C.A.) (Judicially considered 1 time)	
Considered in	2. R. v. Goleski 2014 BCCA 80 (B.C. C.A.) (Judicially considered 30 times)	
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- Finding similar case law with the Abridgement:
 - *R v Lewko*, 2002 SKCA 121 is a leading case dealing with the refusal to comply with roadside screening demand
 - I would like to locate additional case law dealing with this same legal topic

Examples from the Digital Utopia



R. v. Lewis

[2014]

- ⑥ R. v. MacKenzie (1991), 64 C.C.C. (3d) 336, 103 N.S.R. (2d) 91 (N.S. C.A.)
- ⑥ R. v. Bayard (1988), 29 B.C.L.R. (2d) 366, 1988 CarswellBC 302 (B.C. C.A.)

R. v. Lewis
(March 23, 1972)
(1972), 6 C.C.C. (2d) 516, 1972 CarswellOnt 1051 (Ont. C.A.)

- Cases citing Ont. C.A.**
- ⑥ R. v. Duda, 2007 ABPC 215, 2007 CarswellAlta 1046 (Alta. Prov. Ct.)
 - ⑥ R. v. Jahns (1986), 70 A.R. 247, 1986 CarswellAlta 538 (Alta. C.A.)
 - ⑥ R. c. De Vincentis (1982), 5 C.C.C. (3d) 562, 1982 CarswellQue 343 (C.A. Que.)
 - ⑥ R. c. Boileau (1979), 1 M.V.R. 168, 50 C.C.C. (2d) 189 (C.S. Que.)

R. v. Lewis
(December 23, 1968)
(1968), 67 W.W.R. 243, [1969] 3 C.C.C. 235, 1968 CarswellBC 216 (B.C. S.C.)

- Cases citing B.C. S.C.**
- ⑥ R. v. Fast, 2009 BCSC 1671, 2009 CarswellBC 3286 (B.C. S.C.)
 - ⑥ R. v. Hettrick (1988), [1989] N.W.T.R. 42, 1988 CarswellNWT 37 (N.W.T. S.C.)
 - ⑥ Ontario (Attorney General) v. C.E.C. Edwards Construction (1987), 60 O.R. (2d) 618, 23 C.P.C. (2d) 61 (Ont. H.C.)
 - ⑥ Barbieri v. Gargano, [1986] O.L.R.B. Rep. 329, 1986 CarswellOnt 1272 (Ont. L.R.B.)

R. v. Lewis
(October 27, 1949)
(1949), 9 C.R. 36, 97 C.C.C. 268, 1949 CarswellQue 17 (Que. K.B.)

- Cases citing Que. K.B.**
- ⑥ R. c. Corbeil (1991), 5 C.R. (4th) 62, 40 Q.A.C. 283 (C.S.C.)

R. v. Lewis
(September 24, 1941)
[1941] 3 W.W.R. 575, 57 B.C.R. 83, 77 C.C.C. 95, 1941 CarswellBC 66, [1941] 4 D.L.R. 640 (B.C. C.A.)

- Cases citing B.C. C.A.**
- ⑥ R. v. Poole, 2014 BCSC 102, 2014 CarswellBC 162 (B.C. S.C.)
 - ⑥ R. v. Chu, 2013 SKQB 362, 2013 CarswellSask 710 (Sask. Q.B.)
 - ⑥ Petrelli v. Lindell Beach Holiday Resort

- BCCA 367, 2011 CarswellBC 2331 (B.C. C.A.)
- ⑥ R. v. Evaglok, 2010 NWTCA 12, 2010 CarswellNWT 94 (N.W.T. C.A.)
- ⑥ R. v. Korevaar, 2009 CarswellOnt 5053 (Ont. C.J.)
- ⑥ R. v. Tkachuk, 2009 BCSC 834, 2009 CarswellBC 1642 (B.C. S.C.)
- ⑥ R. v. West, 2009 BCSC 1164, 2009 CarswellBC 2311 (B.C. S.C.)
- ⑥ R. v. Tysowski, 2008 SKCA 88, 2008 CarswellSask 430 (Sask. C.A.)
- ⑥ R. v. Sinclair, 2007 ABPC 353, 2007 CarswellAlta 1831 (Alta. Prov. Ct.)

R. v. Lewis
(April 10, 1929)
(1929), 52 C.C.C. 43, 1929 CarswellNS 56 (N.S. C.A.)

R. v. Lewis
(June 29, 1903)
(1903), 6 O.L.R. 132, 7 C.C.C. 261, 1903 CarswellOnt 825, [1903] O.J. No. 123 (Ont. C.A.)

- Cases citing Ont. C.A.**
- ⑥ R. v. Jonah, 2007 NBPC 14, 2007 CarswellNB 216 (N.B. Prov. Ct.)
 - ⑥ R. v. Letourneau, 2007 CarswellOnt 114, [2007] O.J. No. 96 (Ont. S.C.J.)
 - ⑥ R. v. Naglik (1993), 23 C.R. (4th) 335, 157 N.R. 161 (S.C.C.)

R. v. Lewis
(April 4, 1903)
(1903), 2 O.W.R. 290, 1903 CarswellOnt 215 (Ont. Div. Ct.)

R. v. Lewisham London Borough Council
(1987), [1988] 1 All E.R. 938 (Eng. Q.B.)

- Cases citing Eng. Q.B.**
- ⑥ Shell Canada Products Ltd. v. Vancouver (City) (1991), 6 M.P.L.R. (2d) 109, 57 B.C.L.R. (2d) 345 (B.C. C.A.)

R. v. Lewisham Union
[1897] 1 Q.B. 498 (Eng. Q.B.)

- Cases citing Eng. Q.B.**
- ⑥ Ward v. Canada (Attorney General), 1997 CarswellNfld 78, 153 Nfld. & P.E.I.R. 135 (Nfld. T.D.)
 - ⑥ McCaig v. Elgin (County) (1987), 24 O.A.C. 317, 1987 CarswellOnt 810 (Ont. Div. Ct.)

R.; Lewisporte Holdings Ltd. v. R.; Lewko v., see Lewko v. R.

- R. v. Lewko**
(June 4, 2007)
2007 SKPC 40, 2007 Carswell-Sask 268, 295 Sask. R. 193 (Sask. Prov. Ct.)
- R. v. Lewko**
(December 21, 2001), Doc. Saskatchewan Q.B.C.A. 18/01, 21/01 2001 SKQB 580, 2001 Carswell-Sask 796, 214 Sask. R. 274, [2002] 5 W.W.R. 163 (Sask. Q.B. reversed in part / infirmé en partie (October 31, 2002), Doc. 421, 2002 SKCA 121, 169 C.C.C. (3d) 359, 2002 CarswellSask 665, 227 Sask. R. 77, 287 W.A.C. 77, [2003] 2 W.W.R. 197, [2002] S.J. No. 622, 31 M.V.R. (4th) 1, 7 C.R. (6th) 71 (Sask. C.A.)

Cases citing Sask. C.A.

- ⑥ R. v. Ding, 2014 ONCJ 24, 2014 CarswellOnt 844 (Ont. C.J.)

- ⑥ R. v. Dube, 2014 ABPC 64, 2014 CarswellAlta 427 (Alta. Prov. Ct.)
- ⑥ R. v. Ghessessow, 2014 ABQJ 133, 2014 CarswellAlta 413 (Alta. Q.B.)

- ⑥ R. v. Spracklin, 2014 ABQB 88, 2014 CarswellAlta 258 (Alta. Q.B.)
- ⑥ Yi v. British Columbia (Superintendent of Motor Vehicles), 2014 BCSC 304, 2014 CarswellBC 489 (B.C. S.C.)
- ⑥ R. v. Chamryk, 2013 SKPC 60, 2013 CarswellSask 206 (Sask. Prov. Ct.)
- ⑥ R. v. Duchek, 2013 SKPC 84, 2013 CarswellSask 370 (Sask. Prov. Ct.)

- ⑥ R. v. Frantz, 2013 ABPC 212, 2013 CarswellAlta 1440 (Alta. Prov. Ct.)
- ⑥ R. v. Furlotte, 2013 BCSC 2281, 2013 CarswellBC 3777 (B.C. S.C.)

- ⑥ R. v. Lemay, 2013 ABPC 14, 2013 CarswellAlta 1047 (Alta. Prov. Ct.)

- ⑥ R. v. Washington, 2013 CarswellOnt 12485, 2013 ONCJ 497 (Ont. C.J.)
- ⑥ R. v. Chihuahua, 2012 CarswellNfld 268, [2012] N.J. No. 273 (N.L. Prov. Ct.)

- ⑥ R. v. Giroux, 2012 SKPC 163, 2012 CarswellSask 699 (Sask. Prov. Ct.)
- ⑥ R. v. Rahn, 2012 NBQB 202, 2012 CarswellNB 409 (N.B. Q.B.)

- ⑥ R. v. Blackett, 2011 NBPC 35, 2011 CarswellNB 687 (N.B. Prov. Ct.)



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Most Recent Recently added (treatment not yet designated): [R. c. Ratté](#) | 2016 QCCM 218, 2016 CarswellQue 10943, EYB 2016-272894 | (Que. Mun. Ct., Oct 13, 2016)

2002 SKCA 121
Saskatchewan Court of Appeal

R. v. Lewko

2002 CarswellSask 665, 2002 SKCA 121, [2002] S.J. No. 622, [2003] 2 W.W.R. 197, 169 C.C.C. (3d) 359, 227 Sask. R. 77, 287 W.A.C. 77, 31 M.V.R. (4th) 1, 55 W.C.B. (2d) 547, 7 C.R. (6th) 71

Her Majesty the Queen (Appellant) and Glen Lyn Lewko (Respondent)

Bayda C.J.S., Lane, Jackson J.J.A.

Heard: September 3, 2002
Judgment: October 31, 2002
Docket: 421

Proceedings: reversing in part (2001), [214 Sask. R. 274](#), [2002] 5 W.W.R. 163 (Sask. Q.B.)

Counsel: *W. Dean Sinclair*, for Crown
Nicholas J. Stooshinoff, for Respondent

Subject: Criminal

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 - [VI.74.f](#) Proof of impairment
 - [VI.74.f.iv](#) Miscellaneous

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-- CRM.VI.126.a Elements (413)

-- CRM.VI.126.a.i Demand by peace officer (96)

1. [R. v. Bath](#)

Ontario Court of Justice | Ontario | 2016 CarswellOnt 18207; 2016 ONCJ 659; 133 W.C.B. (2d) 511

Police officer named C drove to parking lot in response to call about possible impaired driver — Caller reported that intoxicated woman got into vehicle and caller also provided vehicle's licence plate — When C arrived he saw woman getting into passenger side and he saw that she was fairly intoxicated — Woman got out of car and she was arrested for not obeying police instructions — Accused sat in driver's seat, which was fully reclined and he was undressed — Engine of vehicle was turned off but accessories such as radio were turned on — C smelled alcohol on accused's breath and he made approved screening device ("ASD") demand — C did not have ASD with him and parties had to wait for one to arrive — Accused was given eight opportunities to provide sample but they were all unsuccessful — Accused was charged with refusing to provide sample for ASD — Accused convicted — C was honest witness and his evidence was true — Accused's evidence was not believed and it did not give rise to reasonable doubt — Time period that elapsed from time from when C formed reasonable suspicion and made ASD demand to time that ASD arrived was 11 minutes — Demand was valid for it was made forthwith and C was prepared to take sample forthwith — Crown proved beyond reasonable doubt that accused intentionally refused to provide suitable ASD sample — Crown also proved that ASD was in proper working order.

R. v. Bath (2016), 2016 CarswellOnt 18207, 2016 ONCJ 659, J.M. Copeland J. (Ont. C.J.) [Ontario]

2. [R. v. Keedi](#)

Ontario Superior Court of Justice | Ontario | 2016 CarswellOnt 14591; 2016 ONSC 5926; [2016] O.J. No. 4864; 133 W.C.B. (2d) 317

Accused was convicted of refusing to comply with demand to provide breath sample for analysis by approved screening device — Police were dispatched on impaired driver call to restaurant at approximately 5:00 am and found accused in restaurant with female friend, having driven there from nearby fast food restaurant where he had been involved in argument of some sort with staff — When approached in restaurant by arresting officer, backed up by two other officers, accused engaged in aggressive verbal exchange with them and at one point demanded to be handcuffed before stepping outside of restaurant — Arresting officer attempted to persuade accused to provide breath sample and ultimately read accused formal demand, while accused was in back seat of police car, but accused continued to refuse to provide breath sample and was charged — At trial accused argued that police had no lawful basis to ask him to provide breath sample and that he was never asked to do so, at least in way that he could understand — Accused appealed his conviction — Appeal dismissed — Trial judge made adverse findings about accused's credibility which appeared to be demonstrably justified by evidentiary record — Accused said that he only came to understand what had been asked of him when he telephoned police some hours after incident to discuss situation — However, this was not borne out by accused's own trial evidence — Trial judge's conclusion that demand to provide breath sample had been made was unassailable and admitted in accused's own evidence — If breath demand failed to register with accused, it was because accused was refusing to listen.

R. v. Keedi (2016), [2016] O.J. No. 4864, 2016 CarswellOnt 14591, 2016 ONSC 5926, C.T. Hackland J. (Ont. S.C.J.) [Ontario]

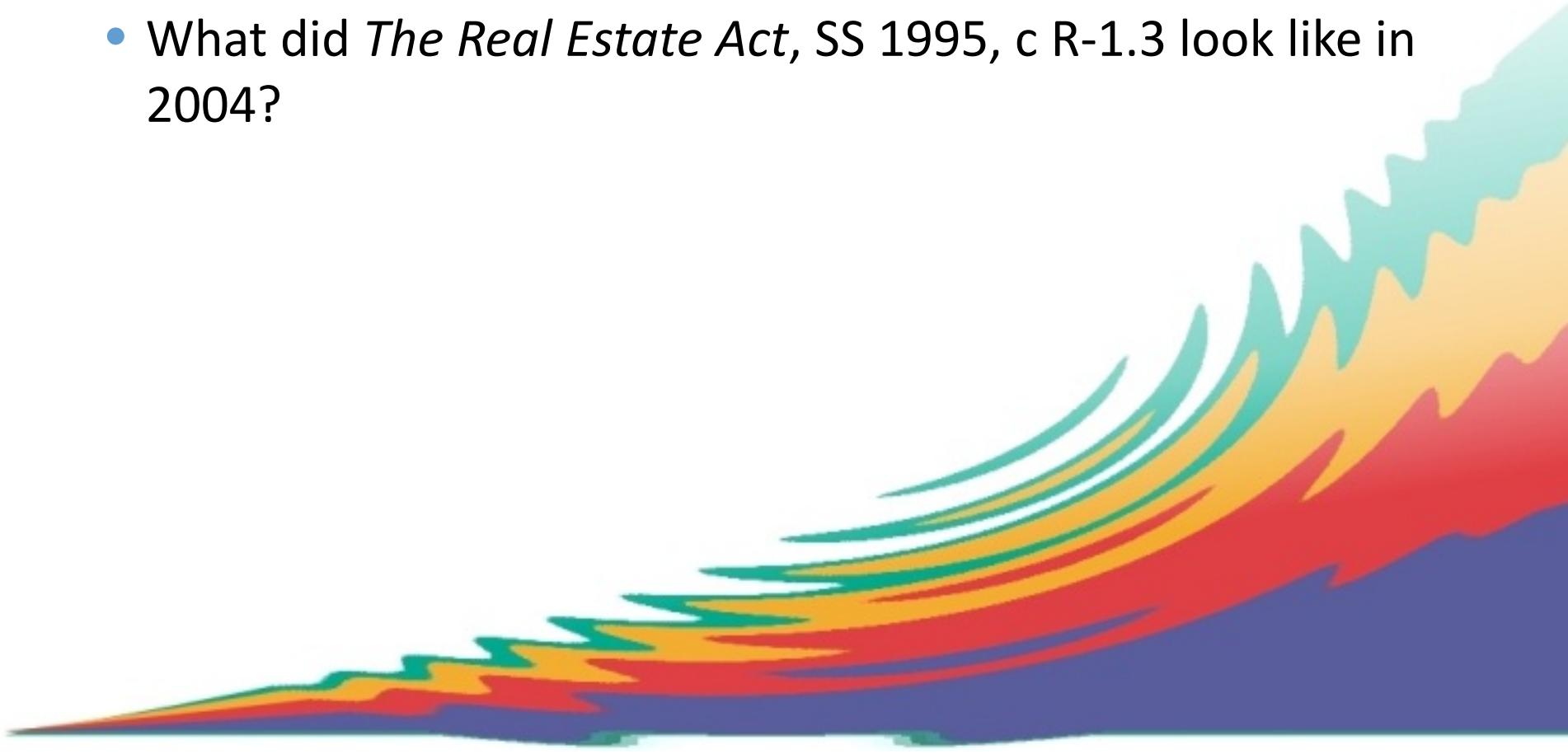
3. [R. v. Stewart](#)

Saskatchewan Provincial Court | Saskatchewan | 2016 CarswellSask 432; 2016 SKPC 72; [2016] S.J. No. 369; 132 W.C.B. (2d) 18

Police officer followed vehicle driven by accused after it spun its tires and was speeding — Officer radioed in plates and nothing unusual came back but officer decided to check on operator's licence and sobriety and stopped vehicle — Accused provided documentation and he told officer he had not been drinking — Officer noted that accused avoided eye contact with him but he could smell alcohol on accused's breath and his eyes were glassy — Officer read roadside demand to accused four times but he claimed that he could not understand demand and he would not provide sample — Accused was not given last chance opportunity to comply and he was also not given time to think things over — Accused was then arrested and he again claimed that he did not understand — Accused was charged with refusing to comply with demand for breath sample on approved screening device — Accused acquitted — Court was not satisfied beyond reasonable doubt that accused intentionally refused to provide sample.

Examples from the Digital Utopia

- Researching historical legislation:
 - What did *The Real Estate Act*, SS 1995, c R-1.3 look like in 2004?



Examples from the Digital Utopia



Real Estate Act, SS 1995, c R-1.3


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This statute replaces SS 1986-87-88, c R-2.1.**

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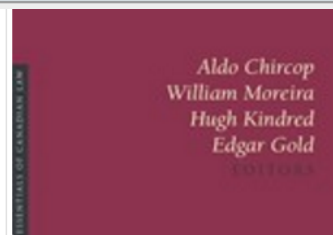
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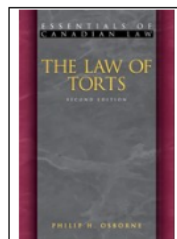


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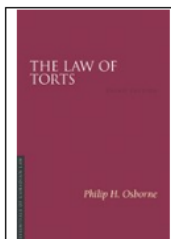
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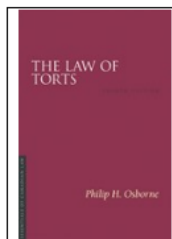
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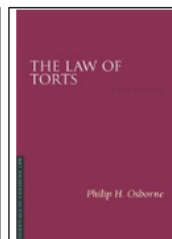
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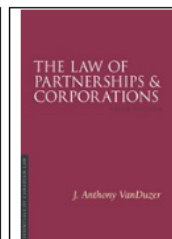
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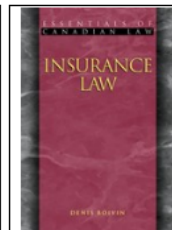
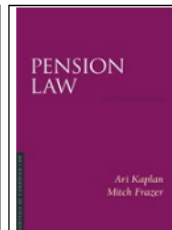
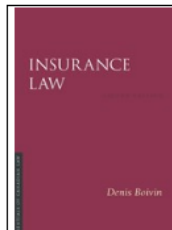
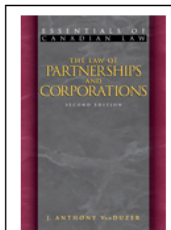
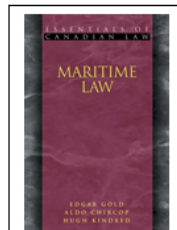
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F The Duty of Care 69

Negligence: Basic Principles 69

cause other asbestos-related illnesses.¹⁰⁴ In *Yearworth v. North Bristol NHS Trust*,¹⁰⁵ the plaintiffs required chemotherapy which threatened their fertility. Before the treatment, they chose to freeze samples of their semen at the defendant hospital. When the semen was destroyed by the negligence of the defendant, the plaintiffs were robbed of their chance for future fatherhood. The Court of Appeal held that the loss of semen was "damage" sufficient to support a negligence action. It was, however, in its opinion, a type of property loss rather than personal injury.¹⁰⁶

There has been considerable debate about whether other categories of damage should be recoverable in negligence. There is a good deal of caselaw, for example, defining the scope of recovery for psychiatric damage and economic losses. But this debate has not taken place under the rubric of damage. It has taken place in a discussion of one or other of the control devices: *duty of care* and *remoteness of damage*. The element of *damage* has therefore been largely marginalized from any policy debate about the scope of negligence liability.

E. THE DUTY OF CARE

The establishment of a duty of care is an essential element of liability in negligence. It is a question of law which requires the judge to determine if the defendant is under a legal obligation to exercise reasonable care in favour of the plaintiff. This has proved to be a difficult and contentious task and in the course of the last hundred years a variety of approaches have been utilized.

Prior to the decision in *Donoghue v. Stevenson*,¹⁰⁷ courts approached this task by examining the particular relationship between the defendant and the plaintiff in the light of prior authority and the surrounding circumstances, and by declaring whether or not a duty of care was owed by the defendant. This incremental process of examination and classification provided guidance in respect of those relationships that

104 The Scottish Parliament subsequently departed from *Rothwell*. It enacted the *Damages (Asbestos-related Conditions) Scotland Act 2009* allowing liability for plural plaques.

105 [2009] 2 All E.R. 986 (C.A.) (*Yearworth*).

106 *Yearworth* has been followed in Canada. Human tissue, once removed from the body, has been characterized as personal property. See *Lavi v. University of British Columbia*, 2015 BCCA 2 (frozen sperm) and *C.C. v. A.W.*, 2005 ABQB 290 (frozen embryo).

107 *McKerr (or Donoghue) v. Stevenson*, [1932] A.C. 562 (H.L.) (*Donoghue*).



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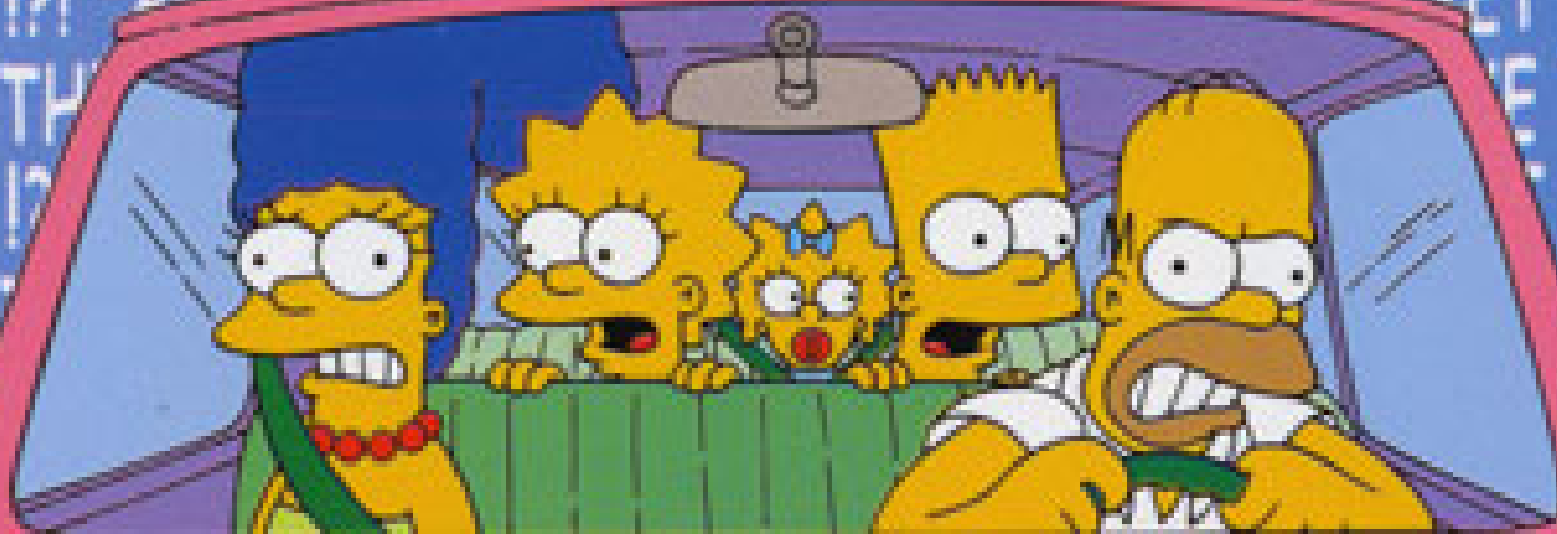
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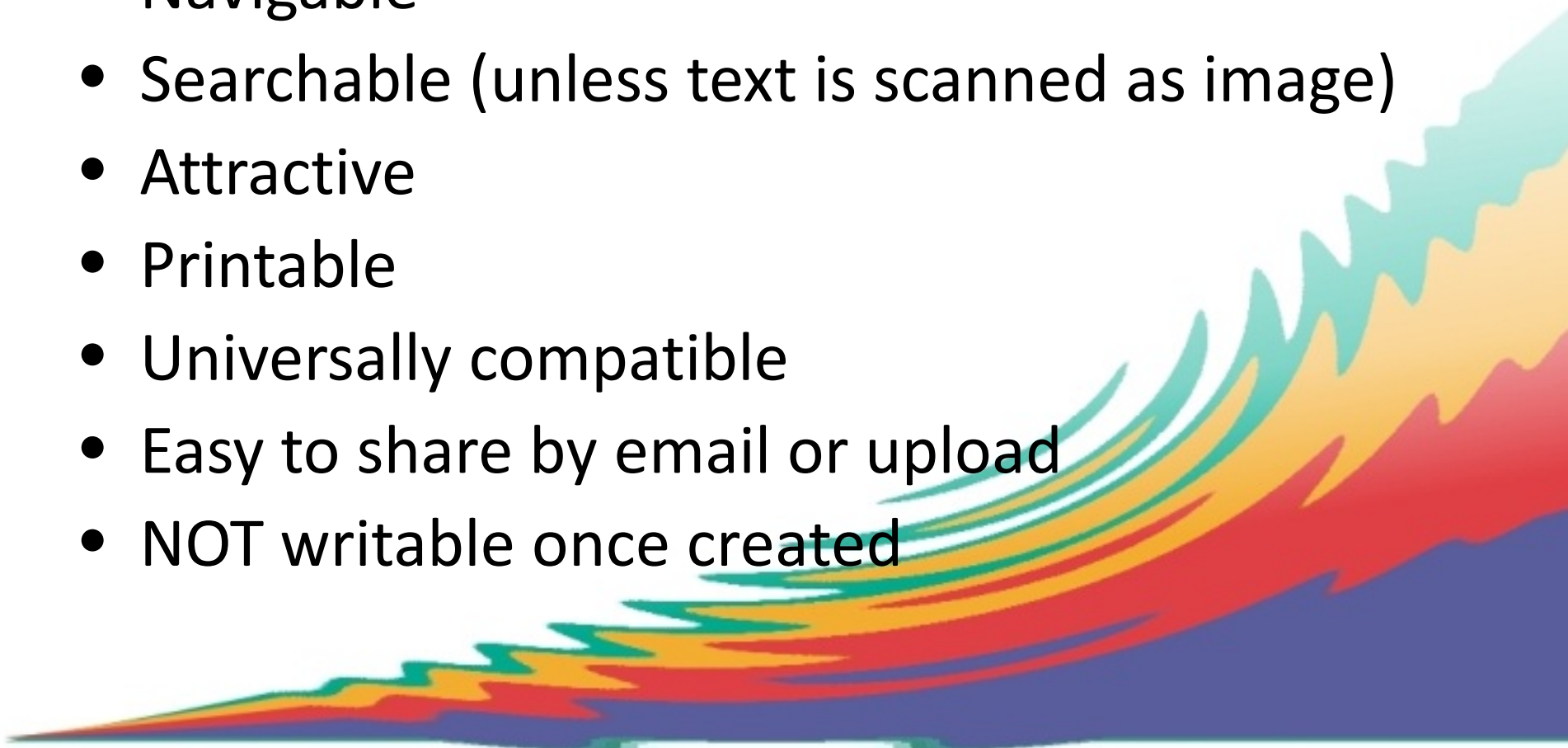
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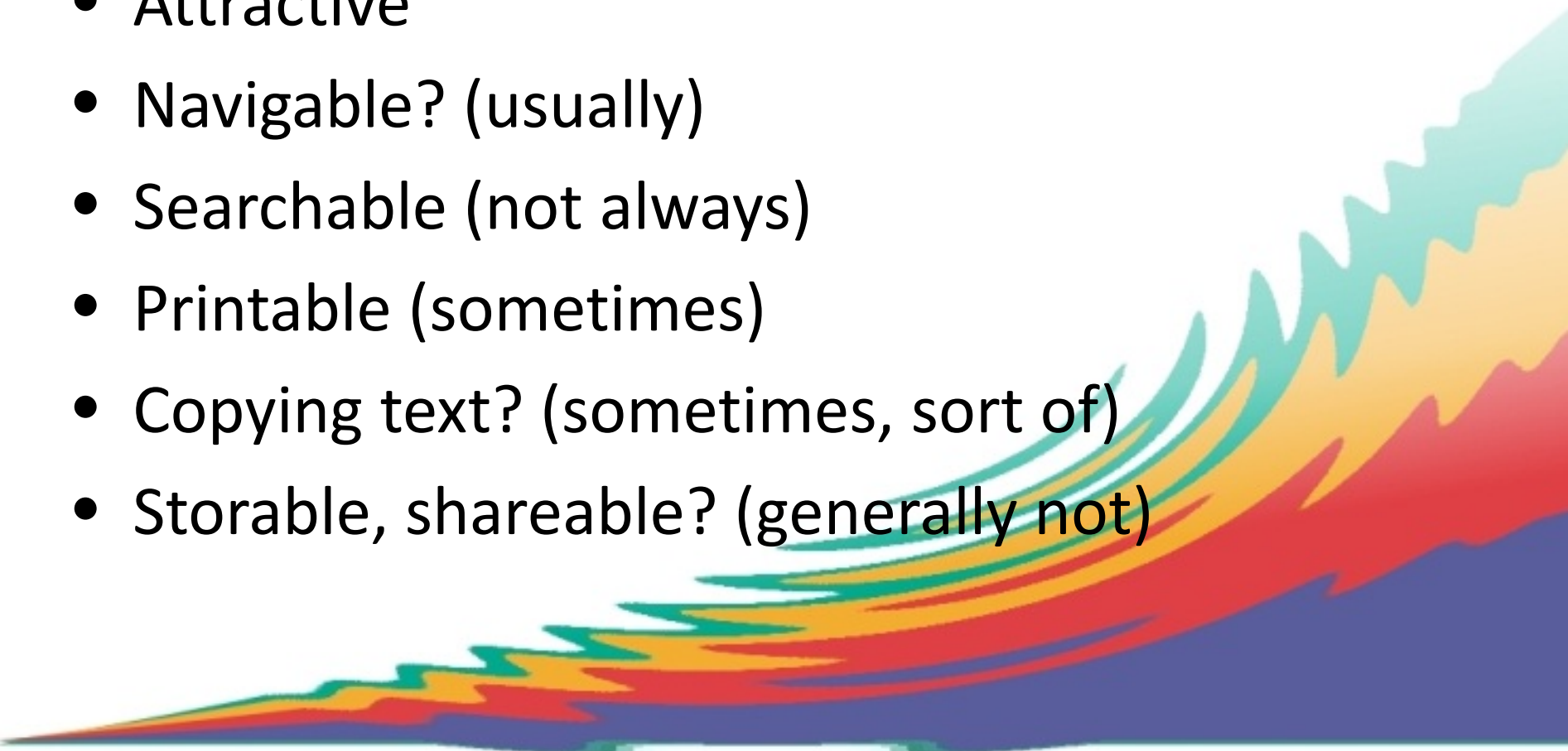
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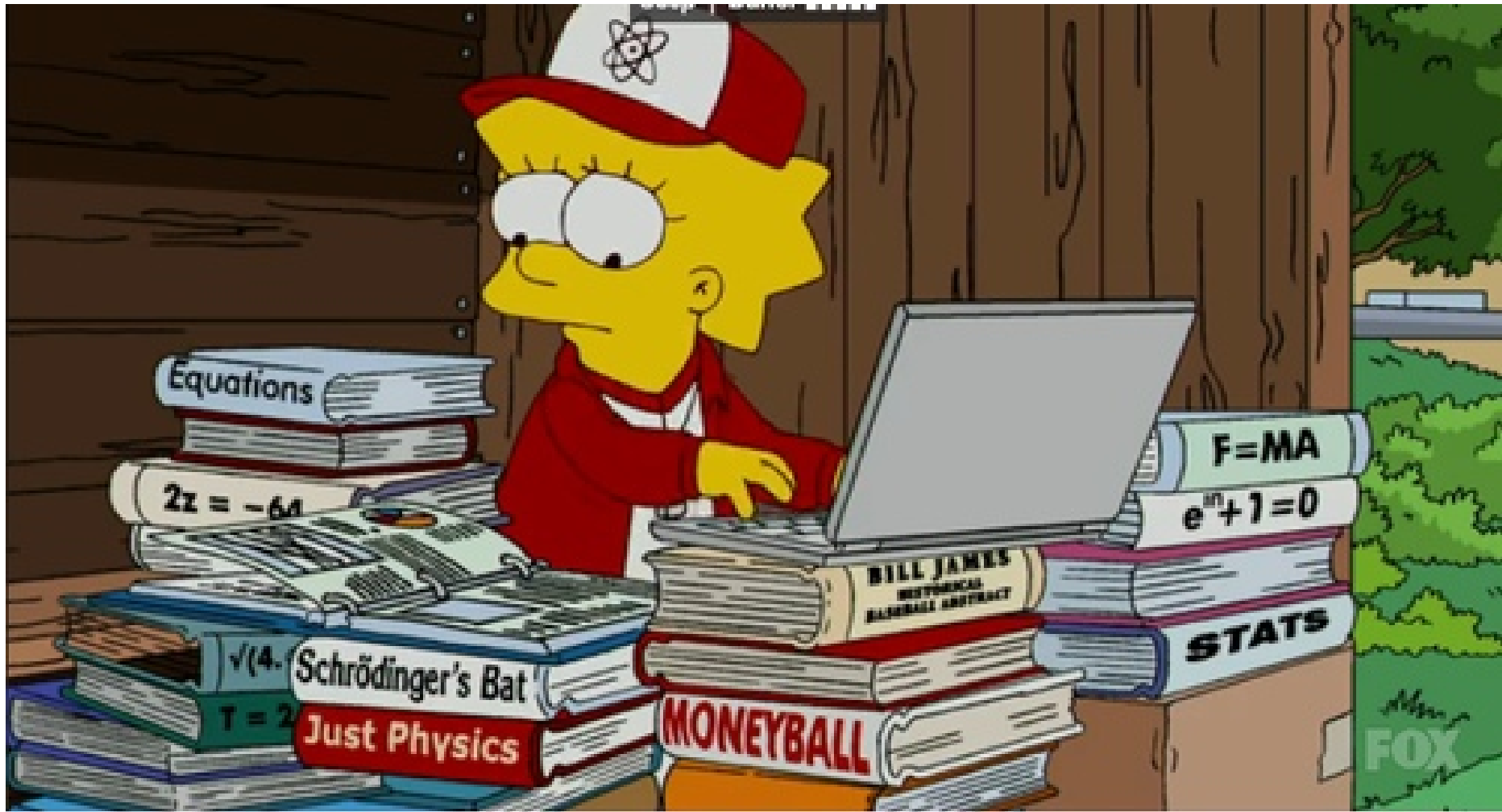
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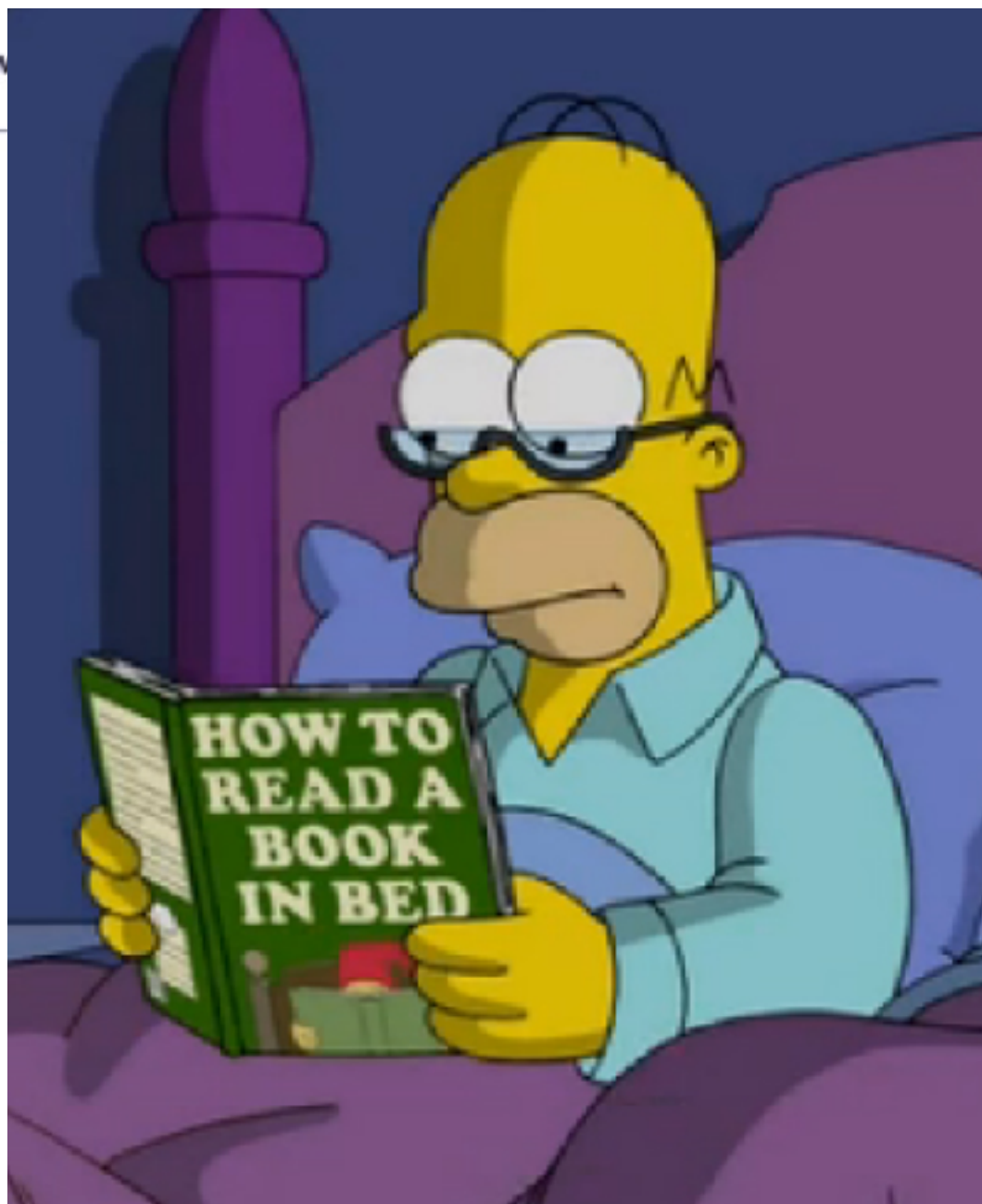
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Fact Situation: The Sad Tale of Abigail Boar

Introduction

It is now time to introduce you to the unfortunate Abigail Boar, who set out to buy a sports car and ended up with serious injuries resulting from the apparent negligence of others involved in what lawyers usually refer to as a "slip and fall case." We will follow Abigail's case from the time Abigail consults a lawyer, through the various pretrial stages, to trial in the Ontario Superior Court.¹ As we proceed, we will discuss the steps that are taken, including the preparation of many of the documents that are required in a civil action. The facts set out here present a broad outline of what occurred. As we proceed we will add more detail where it is required.

Facts

Abigail Boar is a 28-year-old securities analyst employed by Megadoon Investments Ltd. She is earning more money than she ever thought she would and decides the time has come to do some conspicuous consuming, so she buys her first car. After talking to friends, she decides that the right kind of car for her is a two-seater sports coupe. On September 14, year 0, she decides to go after dinner to look at the hot new line of sports coupes manufactured by the Skunk Motorcar Company Ltd., which are being sold at Rattle Motors Ltd. After work, she stops at Barbeerian's, a trendy bar frequented by financial types, where she has a quick dinner and two glasses of wine. She then walks over to Rattle Motors Ltd. at 1240 Bay Street, Toronto.

At about 6 p.m., Fred Flogem, a salesperson employed by Rattle Motors Ltd., notices that there is some oil on the floor next to the Super Coupe model. He peers underneath the car and discovers oil leaking from underneath the engine. Because this is hardly good advertising for a new car, Fred does not want to draw customers' attention to the problem by cleaning up the mess immediately. Instead, he shuts off two of the four spotlights that illuminate the Super Coupe, hoping that no one looking at the car will notice the mess on the floor. Fred intends to clean up the mess when there are no customers in the showroom, or when the showroom closes for the day.



Introduction

This chapter presents the “big picture” of how a civil proceeding unfolds. The balance of the book fills in the details. In order to help you see both the big picture and later the details, we start by setting out a fact situation involving Abigail Boar and her various difficulties. Using Abigail’s story, we demonstrate how a civil case progresses from the initial stage of hiring a lawyer to the final stage of appealing a trial judgment.

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Third-Party Claims: Rule 29

Introduction

One or more of the defendants to the main action may take the position that the plaintiff has not named all persons who are liable for his or her injuries. For instance, assume that unbeknownst to Abigail Bow, the car on display in the showroom had a manufacturer's defect in the oil pan that caused it to leak onto Rattle Motors Ltd.'s showroom floor. In its own investigation into Abigail's fall, Rattle Motors Ltd. discovers this defect and believes that Skunk Motorcar Company Ltd. is responsible for Abigail's injuries. But Abigail has not sued the car manufacturer. The Rules provide a procedure for Rattle Motors Ltd. to bring Skunk Motorcar Company Ltd. into the action. This is called a **third-party claim**, and it may be commenced by a defendant against any person who is not a **party** to the main action but who:

- is or may be liable to the defendant for all or part of the plaintiff's **claim**,
- is or may be liable to the defendant for an independent **claim** for damages or other relief arising out of the same transaction or occurrence or series of transactions or occurrences involved in the main action, or
- should be bound by the determination of an issue arising between the plaintiff and the defendant (Rule 29.01).

Pleadings on a Third-Party Claim

A **third-party claim** is a new **claim** made against a person who is not a **party** to the main action. It is unlike a **counterclaim** and a **crossclaim** because these proceedings involve someone who is already a **party** to the existing proceeding. For instance, in a **counterclaim**, the defendant must make a **claim** against the plaintiff. A **crossclaim** involves defendants who are already parties by virtue of the fact that they are being sued by the same plaintiff or plaintiffs. There are therefore two sets of pleadings in a **third-party** proceeding: the pleadings in the main action and the pleadings in the **third-party** proceeding.

The pleadings in the main action are the regular pleadings: the **statement of claim**, the **statement of defence**, and the **reply**. The second set of pleadings between the defendant who is making the **claim** against the **third party** and the **third party** consists of:

- the **third-party claim** (Form 29A), delivered by the defendant asserting the **claim** and resembling a **statement of claim** in its form and content;
- the **third-party defence** (Form 29B), delivered by the **third party** to raise a defence to the **claim** being brought against him or her; and
- the **reply to the third-party defence** (Form 29C), delivered by the defendant asserting the **third-party claim**.

The Third-Party Claim

Because a **third-party claim** brings someone new into the proceeding and asserts a new **claim**, it is an originating process. It must be issued by the court within 10 days after the defendant delivers a **statement of defence** or anytime before the **defendant** is noted in default (Rule 29.02(1)). However, if the plaintiff replies to the **statement of defence** in the main action, the **third-party claim** may be issued within 10 days of the plaintiff's delivering his or her reply (Rule 29.02(1.1)).

There are exceptions to these time limits for commencing a **third-party claim**. A **claim** may be issued at any time if the plaintiff consents or if the court grants leave, and the court will grant leave unless the plaintiff will suffer prejudice (Rule 29.02(1.2)).

Like other originating processes, the **third-party claim** must be served on the **third party** personally or by an alternative to personal service under Rule 16.03. At the same time, the **third party** must also be served with all the pleadings previously delivered in the main action, any **counterclaim**, any **crossclaim**, and any other **third-party claim**. Service of the documents must take place within 30 days after the **third-party claim** is issued (Rule 29.03(2)).

The **third-party claim** must also be served on every other **party** to the main action within 30 days after it has been issued, but it need not be served personally on these parties (Rule 29.03(3)). Figure 12.5 at the end of the chapter sets out a **third-party claim**.

Third-Party Defence

The **third-party defence** must be delivered within 20, 40, or 60 days, depending on where the **third-party claim** is served (Rule 29.03).

Once the **third party** has delivered a **third-party defence**, there are several consequences that affect the **third party**:

- The **third party** must be served with any subsequent pleadings filed by any **party** to the main action.
- The plaintiff cannot obtain a consent judgment or note the defendant in default without notice to the **third party**.
- The **third party** has a right of discovery against any defendant to a **crossclaim** brought by the defendant who asserted the **third-party claim** (Rule 29.06).

Where a **third party** is noted in default for failing to file a **third-party defence**, judgment may be obtained against the **third party** only at trial of the main action or on a motion to a judge. The registrar cannot issue a default judgment against a **third party**. Figure 12.6 at the end of the chapter sets out a **third-party defence**.

Reply to Third-Party Defence

The defendant who commenced the **third-party** proceeding has a right to reply to a **third-party defence** within 10 days after being served with the defence.

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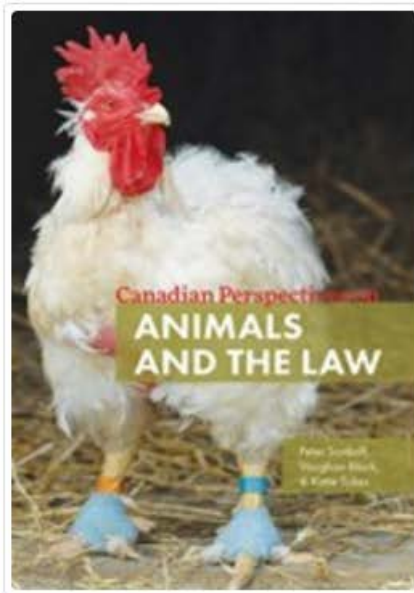
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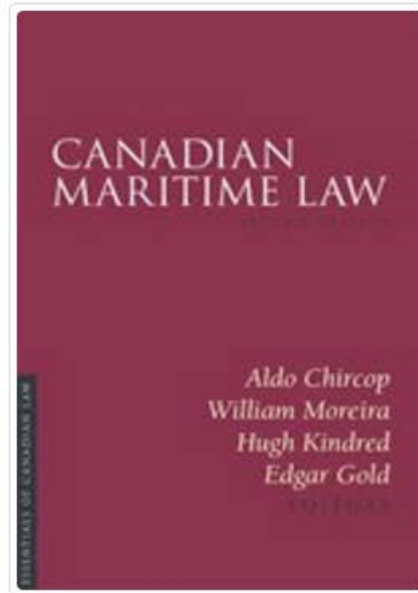
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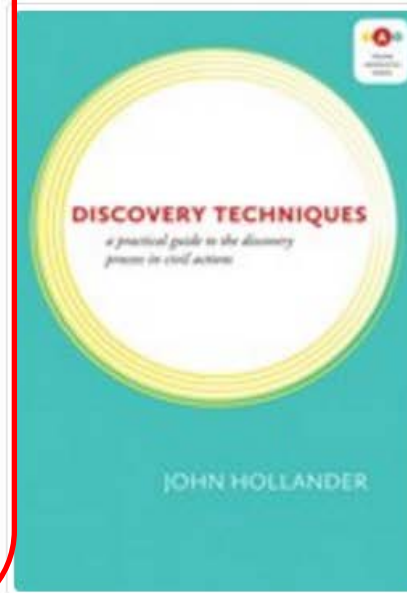
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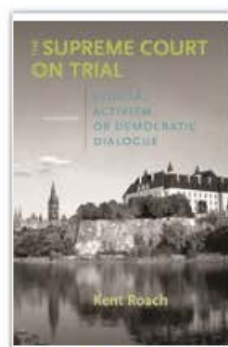
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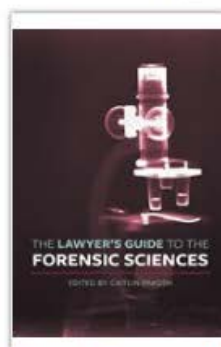
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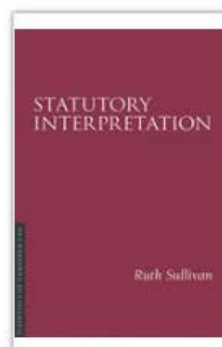
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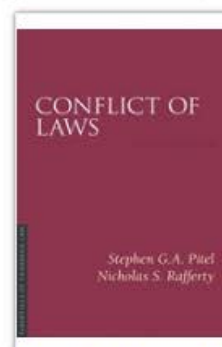
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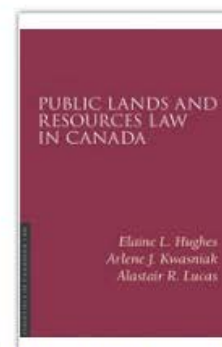
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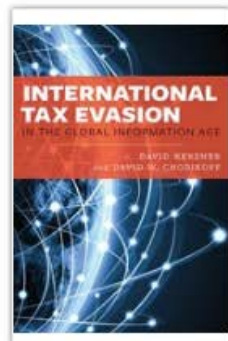
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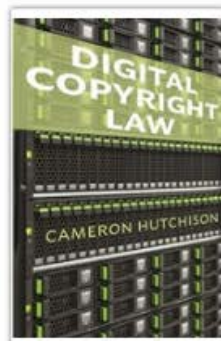
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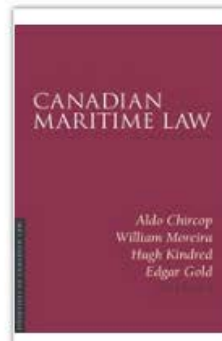
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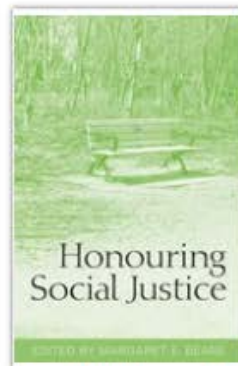
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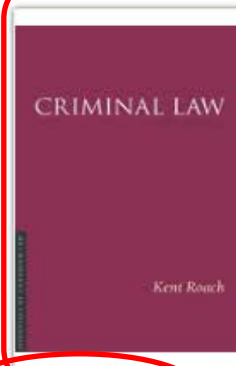
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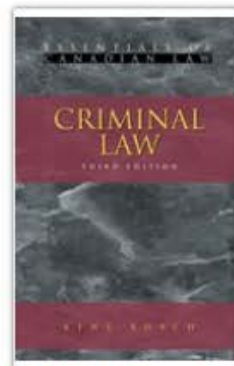
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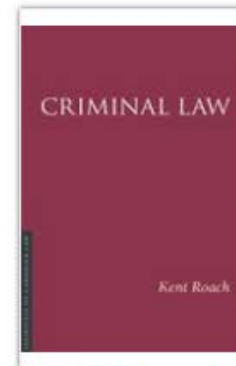
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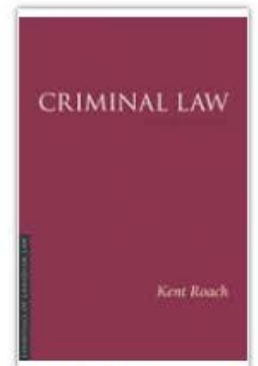
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HAZY FUTURE: THE IMPACT OF FEDERAL AND STATE LEGAL DISSONANCE ON MARIJUANA BUSINESSES

Rosalie Winn*

INTRODUCTION

Under the Controlled Substances Act of 1970 ("CSA"),¹ it is a federal crime to possess, cultivate, or distribute marijuana. Historically, states largely mirrored the CSA's criminal treatment of marijuana, with state laws making the possession, growth, and distribution of marijuana a state crime.² However, starting in 1996, many states began legalizing or decriminalizing the use of marijuana for medical purposes under state law.³ In November 2012, voters in Colorado and Washington legalized the possession of marijuana for recreational purposes, citing marijuana enforcement costs and added tax revenue as rationales for the new policies.⁴ Colorado and Washington have since developed regulatory frameworks for the production and sale of recreational marijuana. Most recently, ballot initiatives legalizing marijuana passed in Oregon, Alaska, and the District of Columbia.⁵

While state laws regulating marijuana have changed dramatically in the past few decades, change to the federal law through either legislation or executive action has been slow.⁶ Instead, the Department of Justice ("DOJ") under President

While marijuana has been listed as a Schedule I Controlled Substance since the passage of the CSA,¹⁴ the Attorney General has the authority under the CSA to “transfer between . . . schedules” or “remove any drug . . . from the schedules” after a formal rulemaking and a scientific and medical evaluation and recommendation from the Secretary of Health and Human Services.¹⁵ Despite this authority, the Drug Enforcement Administration (“DEA”), the responsible agency within the Justice Department, has consistently refused to consider moving marijuana to a different schedule or delisting marijuana from the CSA.¹⁶

Because marijuana is a controlled substance, banks and other financial institutions working with marijuana producers or suppliers may be charged as co-

8. See *Gonzales v. Raich*, 545 U.S. 1, 15 (2005).

9. Controlled Substances Act, 21 U.S.C. §§ 801–904 (2015).

10. *Gonzales*, 545 U.S. 1.

11. 21 U.S.C. § 841(a)(1).














12. *Id.* § 811(c).

13. *Id.* § 812(b)(1). Characterization of marijuana as having no medical benefit has been scientifically criticized. See Igor Grant et al., *Medical Marijuana: Clearing Away the Smoke*, 6 OPEN NEUROLOGY J. 18, 24 (2012), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3358713/pdf/TONEUJ-6-18.pdf> (describing clinical trials indicating that marijuana can have medical benefits, particularly with regards to management of pain).

14. 21 U.S.C. § 812.

15. *Id.* §§ 811(a)–(b).

16. See *Ams. for Safe Access v. DEA*, 706 F.3d 438, 451 (D.C. Cir. 2013) (denying petition for review of DEA’s classification of marijuana as a Schedule I drug), *cert denied*, 134 S. Ct. 267 (2013).

Page 1 	ScholarCheck 
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Dodd v. United States Case - 2005	
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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2004

GONZALES, ATTORNEY GENERAL, ET AL. v. RAICH

ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

THE NINTH CIRCUIT

No. 03-1454. Argued November 29, 2004—Decided June 6, 2005

California's Compassionate Use Act authorizes limited marijuana use for medicinal purposes. Respondents Raich and Monson are California residents who both use doctor-recommended marijuana for serious medical conditions. After federal Drug Enforcement Administration agents seized and destroyed all six of Monson's cannabis plants, respondents brought this action seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act (CSA) to the extent it prevents them from possessing, obtaining, or manufac-

MEDICAL SUPERVISION.

While marijuana has been listed as a Schedule I Controlled Substance since the passage of the CSA,¹⁴ the Attorney General has the authority under the CSA to “transfer between . . . schedules” or “remove any drug . . . from the schedules” after a formal rulemaking and a scientific and medical evaluation and recommendation from the Secretary of Health and Human Services.¹⁵ Despite this authority, the Drug Enforcement Administration (“DEA”), the responsible agency within the Justice Department, has consistently refused to consider moving marijuana to a different schedule or delisting marijuana from the CSA.¹⁶

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12. *Id.* § 811(c).

13. *Id.* § 812(b)(1). Characterization of marijuana as having no medical benefit has been scientifically criticized. See Igor Grant et al., *Medical Marijuana: Clearing Away the Smoke*, 6 OPEN NEUROLOGY J. 18, 24 (2012), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3358713/pdf/TONEUJ-6-18.pdf> (describing clinical trials indicating that marijuana can have medical benefits, particularly with regards to management of pain).

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the Tenth Amendment therefore would likely prevent the federal government from requiring state legislatures to enact specific marijuana laws, or from mandating the use of state or local police forces to enforce the CSA.⁴⁷

While the federal government is prevented by the Tenth Amendment from forcing a state to act, the federal government may stop a state from acting if there is a conflict between federal and state law.⁴⁸ Preemption of state law by federal law is rooted in the Supremacy Clause, which makes the Constitution and the laws of the United States the “supreme Law of the Land,”⁴⁹ although there is a presumption

39. See generally GARVEY, *supra* note 2 (discussing enforcement difficulties created for the federal government by the “principles of federalism”).

40. *Id.* at 2–4.

41. *New York v. United States*, 505 U.S. 144, 161 (1992) (quoting *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 288 (1981)) (holding that provision in Low-Level Radioactive Waste Policy Amendments Act requiring state to take title and assume liability for nuclear waste if state failed to comply with the Act was excessively coercive).

42. U.S. CONST. art. VI, cl. 2.

43. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

44. *New York*, 505 U.S. at 157. Article I enumerates areas in which Congress has authority to legislate, including the powers to tax, borrow money, and regulate commerce, and grants Congress the implied authority to make all laws necessary for executing the enumerated powers. U.S. CONST. art. I § 8.

45. See *id.* at 166 (“The allocation of power contained in the Commerce Clause, for example, authorized Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments’ regulation of interstate commerce.”).

46. See *Printz v. United States*, 521 U.S. 898, 904–18 (1997) (describing a historical record of federalism to support the conclusion that state law enforcement officials cannot be directed to administer federal programs).

47. Cf. *id.* at 943 (“The Federal Government may not compel the States to enact or administer a federal regulatory program.” (quoting *New York*, 505 U.S. at 188)).

48. See GARVEY, *supra* note 2, at 7.

49. U.S. CONST. art. VI, cl. 2.





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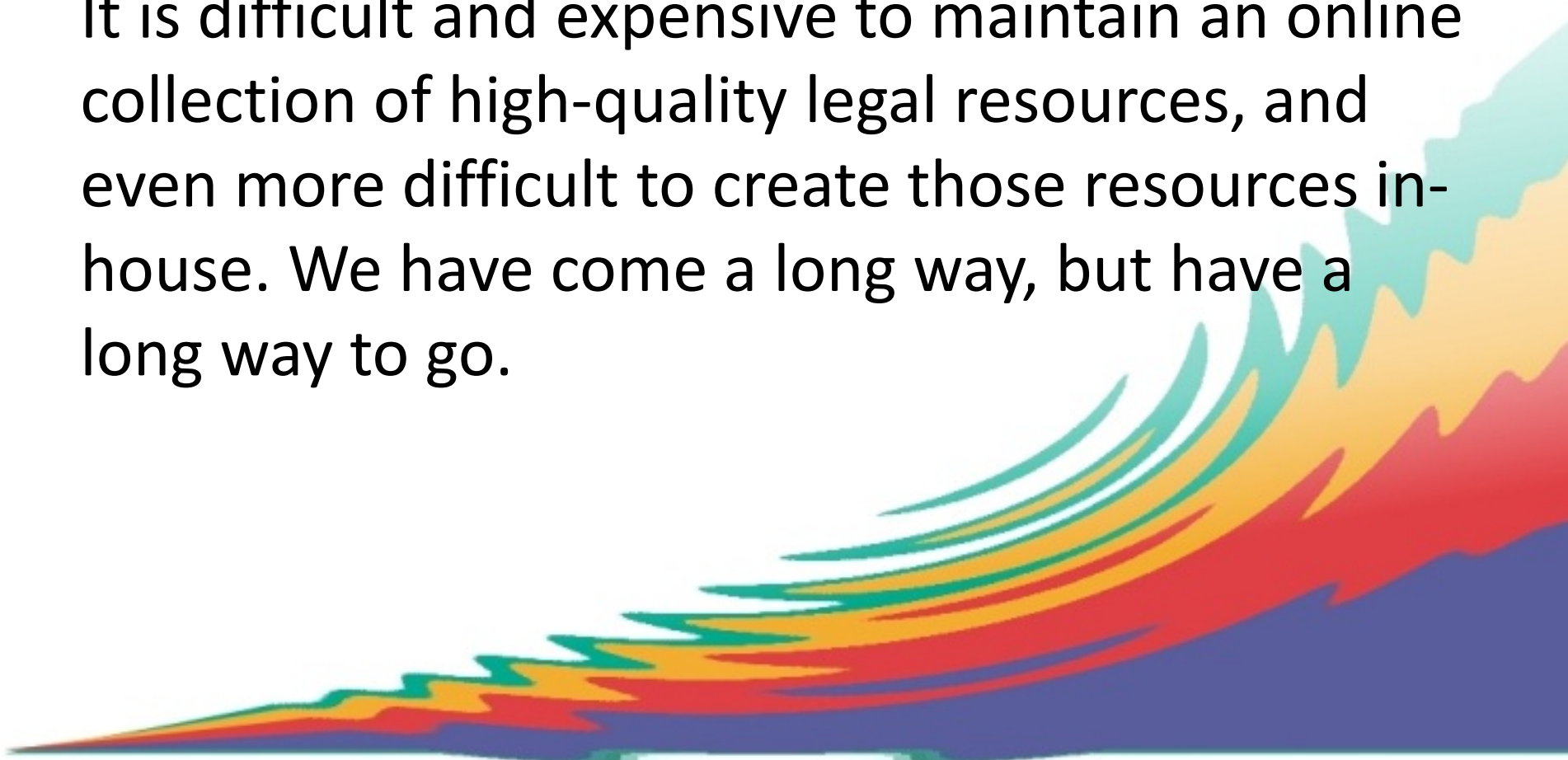
-But-- But-- But--
-Make him stop!

Digital myth:
It's all online



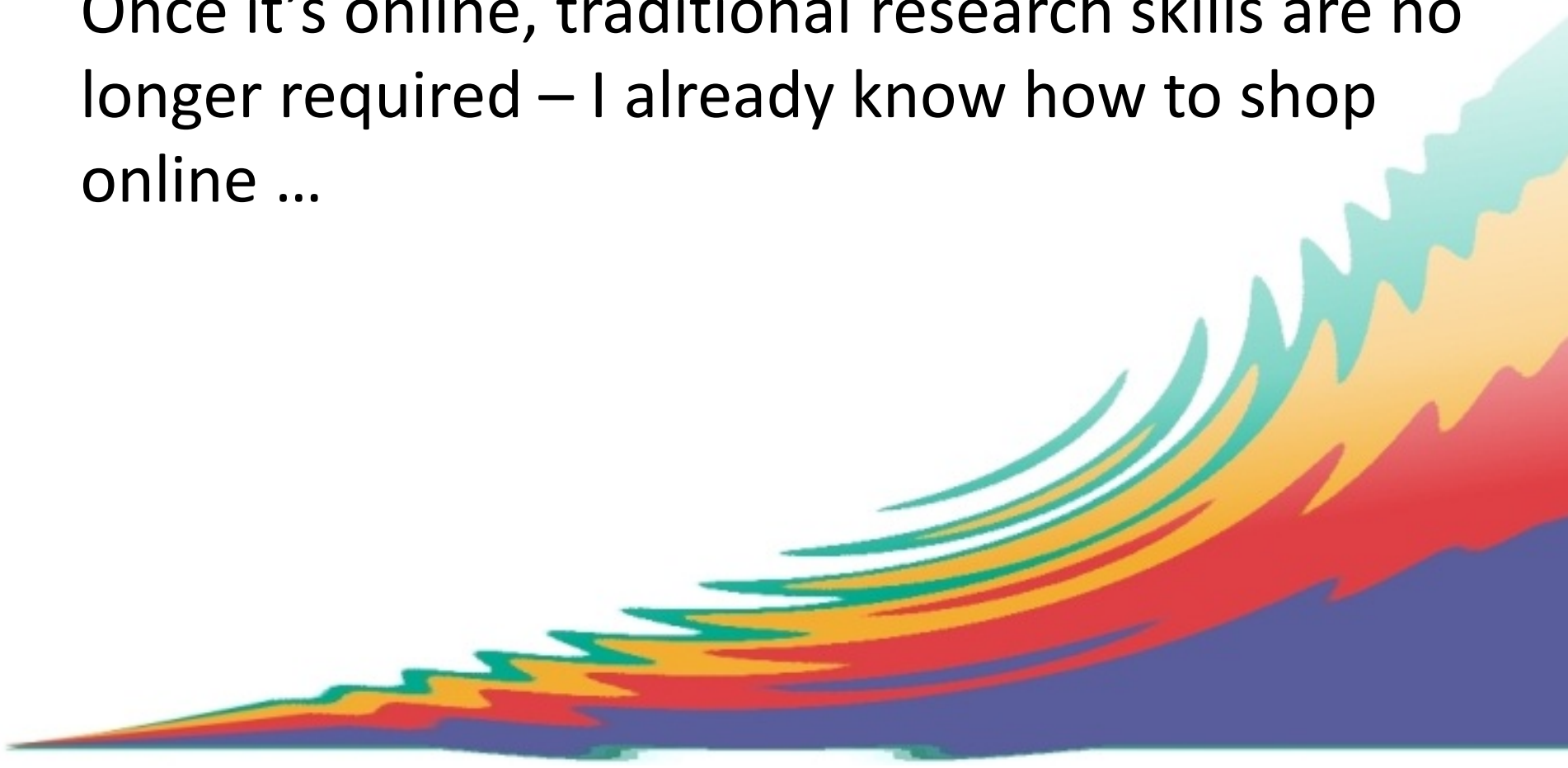
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It is difficult and expensive to maintain an online collection of high-quality legal resources, and even more difficult to create those resources in-house. We have come a long way, but have a long way to go.



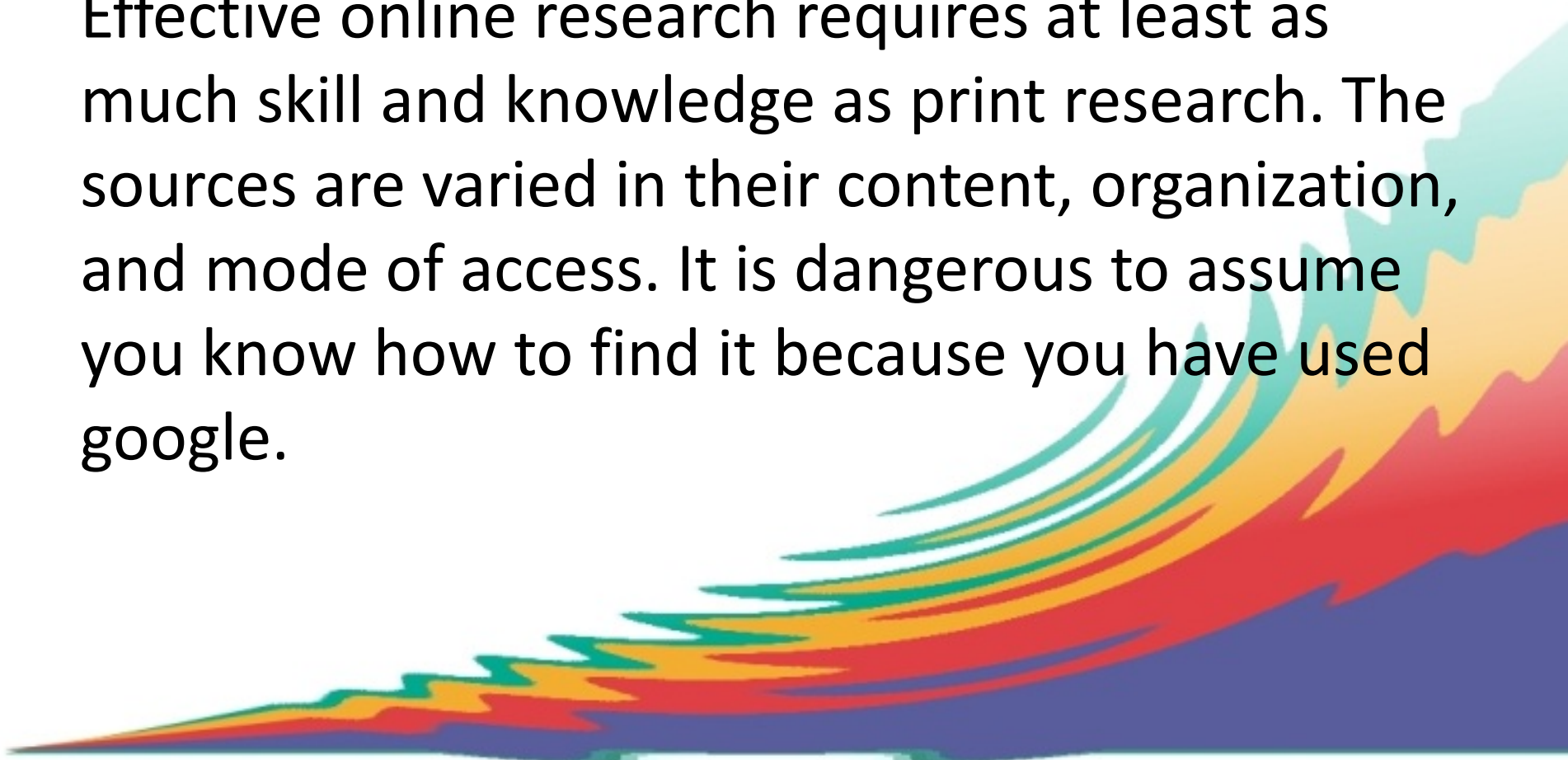
Digital myth:

Once it's online, traditional research skills are no longer required – I already know how to shop online ...



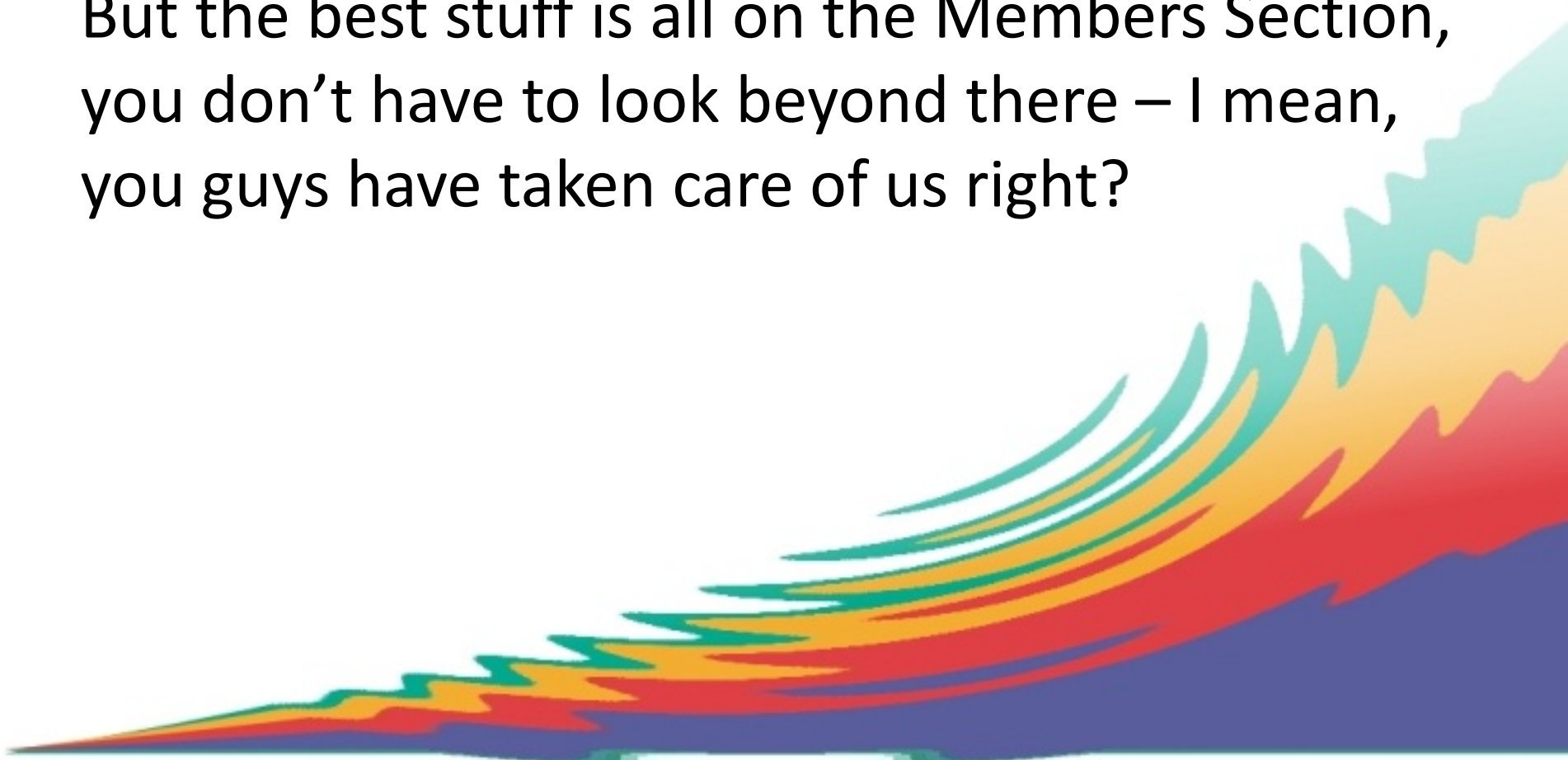
Digital reality:

Effective online research requires at least as much skill and knowledge as print research. The sources are varied in their content, organization, and mode of access. It is dangerous to assume you know how to find it because you have used google.



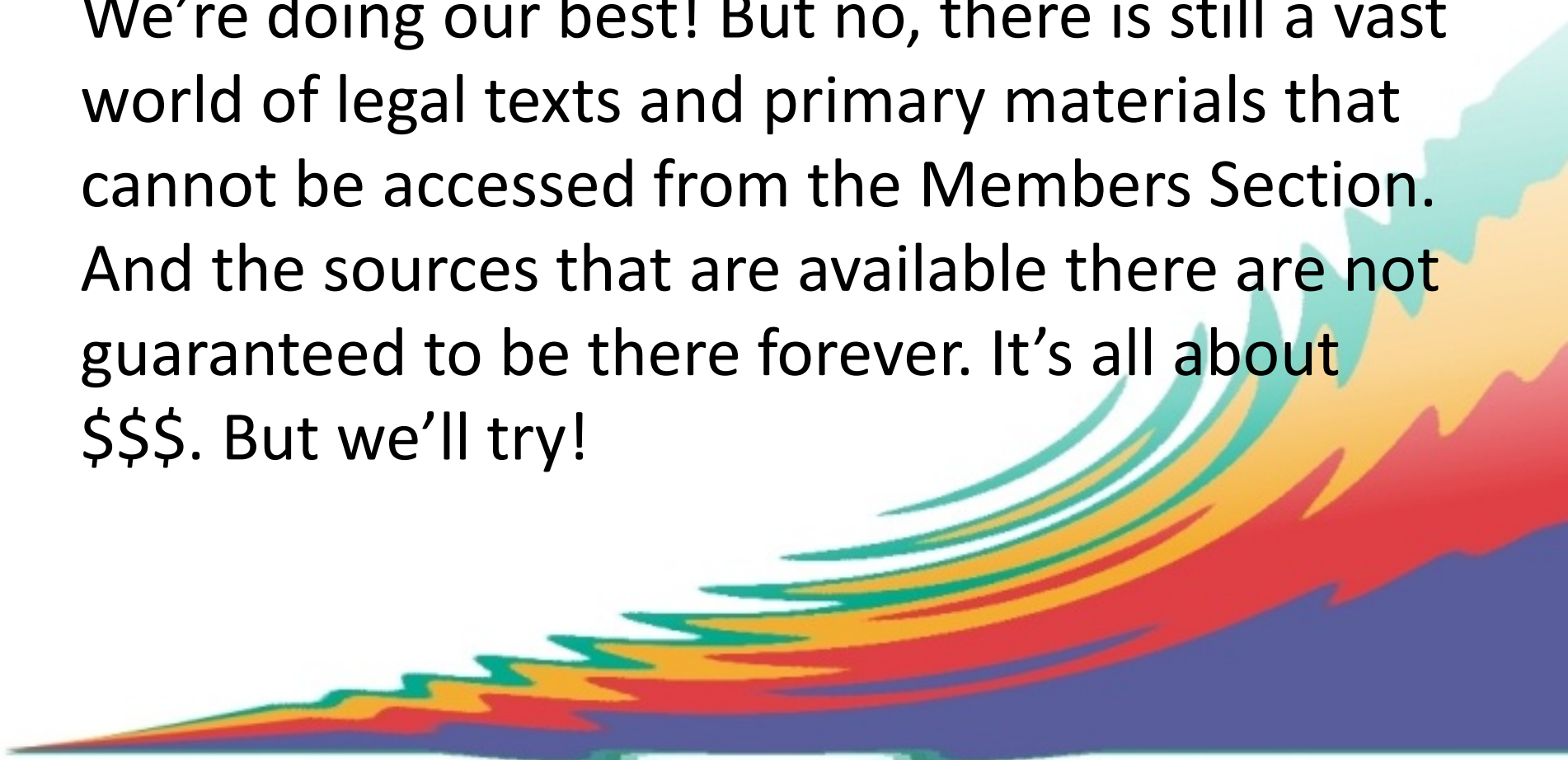
Digital myth:

But the best stuff is all on the Members Section,
you don't have to look beyond there – I mean,
you guys have taken care of us right?



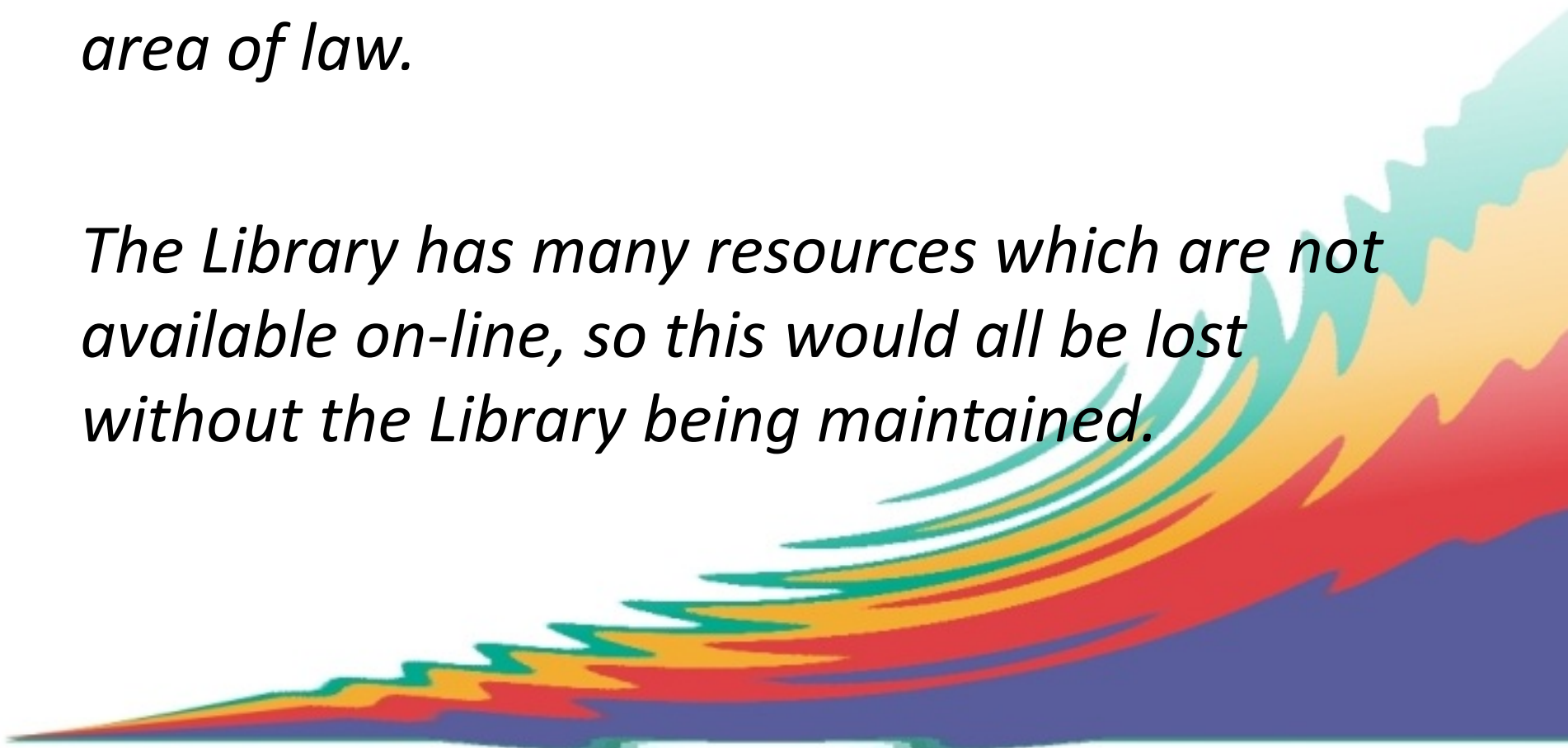
Digital Reality:

We're doing our best! But no, there is still a vast world of legal texts and primary materials that cannot be accessed from the Members Section. And the sources that are available there are not guaranteed to be there forever. It's all about \$\$\$\$. But we'll try!

A decorative graphic consisting of multiple overlapping, wavy, curved bands of color. The colors include shades of blue, green, yellow, orange, red, and purple, creating a vibrant, rainbow-like effect that flows from the bottom left towards the top right of the slide.

It is important the Library continues to maintain physical copies of textbooks, as these are still the best resource when learning about a particular area of law.


The Library has many resources which are not available on-line, so this would all be lost without the Library being maintained.

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Role of Staff



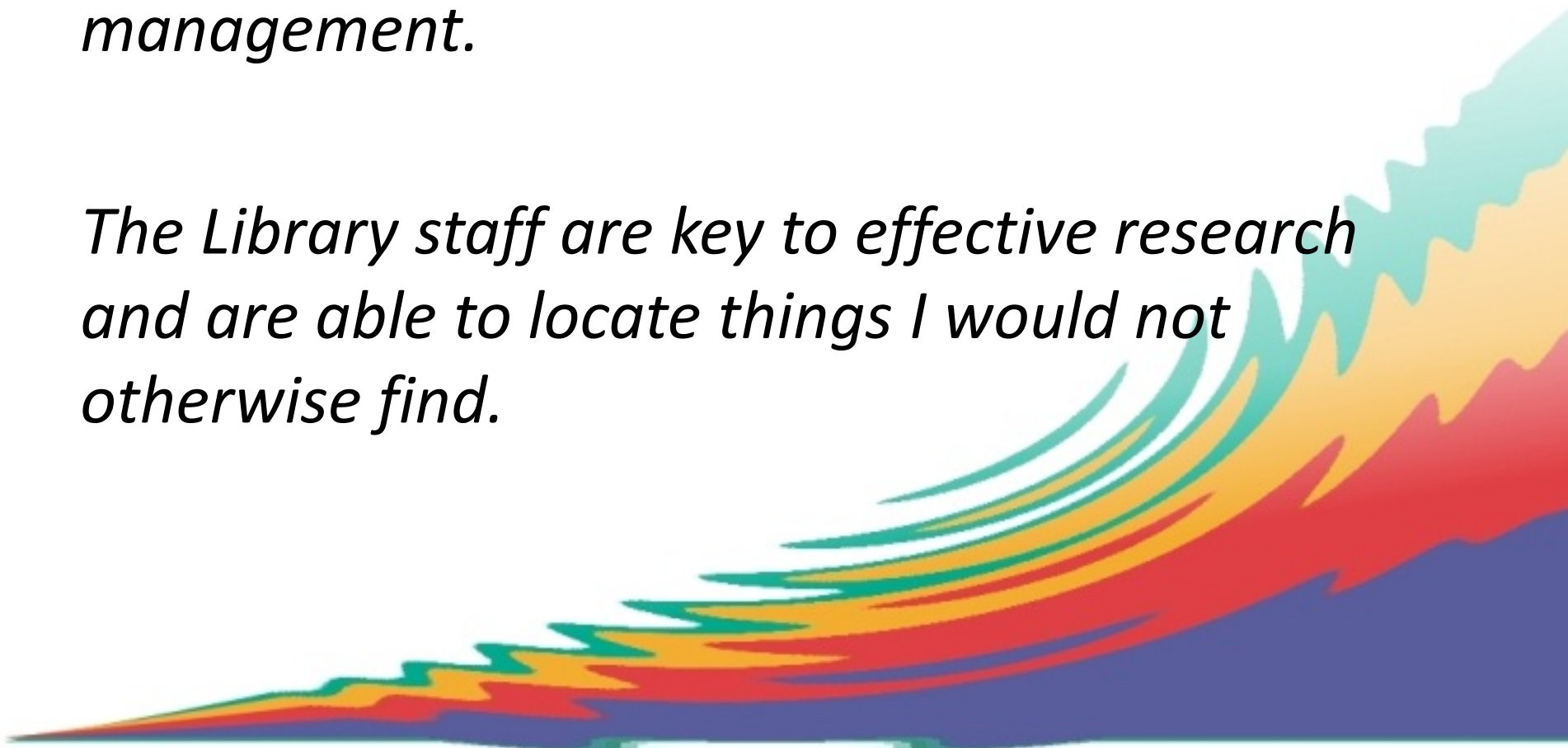
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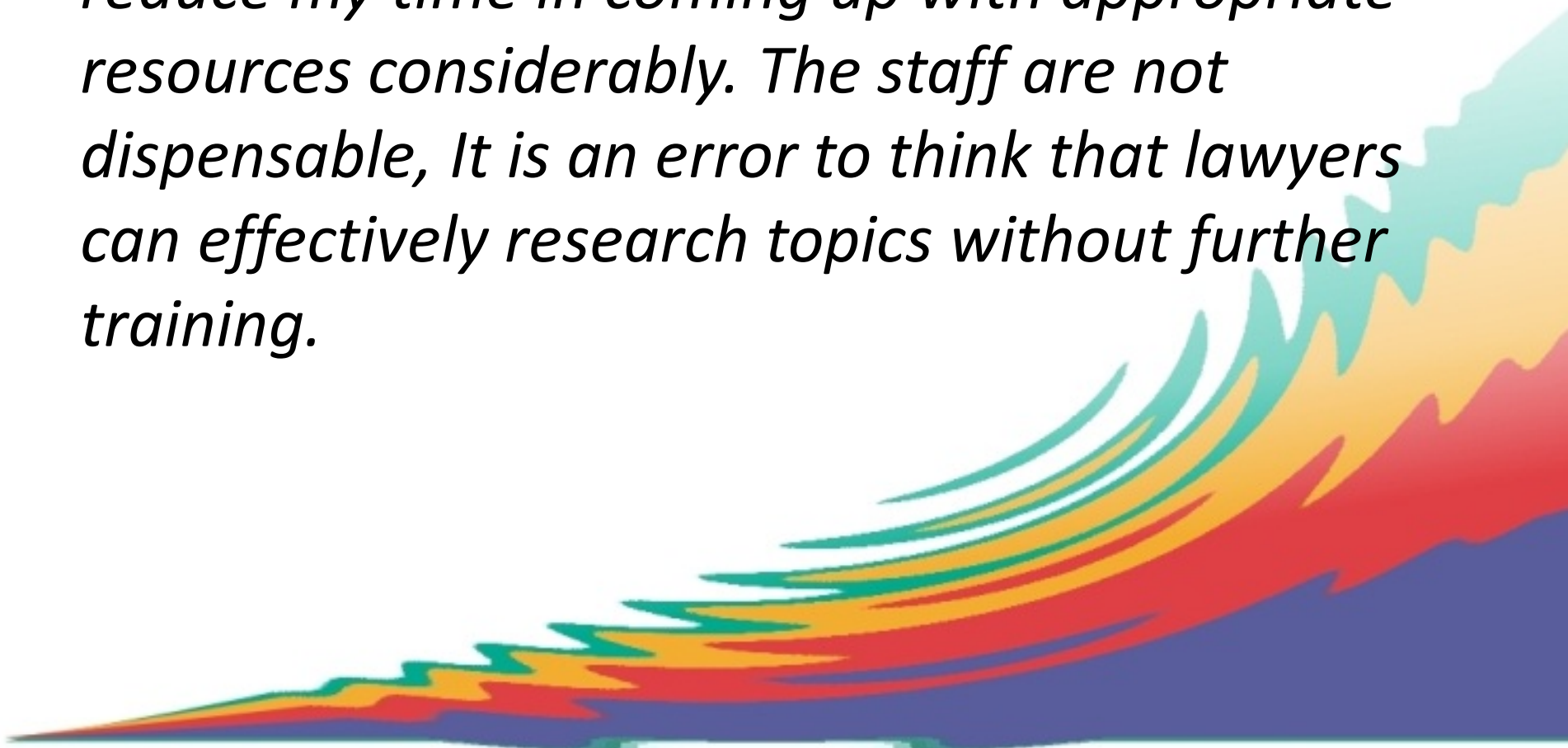
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Law Society Library staff make it easier to find resources and they are experts at information management.

The Library staff are key to effective research and are able to locate things I would not otherwise find.

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The Library staff are knowledgeable and can reduce my time in coming up with appropriate resources considerably. The staff are not dispensable, It is an error to think that lawyers can effectively research topics without further training.

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Questions?

- Phone: 306-569-8020 (Regina) 306-933-5141 (Saskatoon)
- Email: reference@lawsociety.sk.ca
- In person: Regina Library 2425 Victoria Ave Saskatoon Library 520 Spadina Cres E

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