

# Legal Research with the Law Society Library

Or: Those Librarians with the Beards Can Help

Ken Fox, Reference Librarian Law Society Library (Saskatoon)

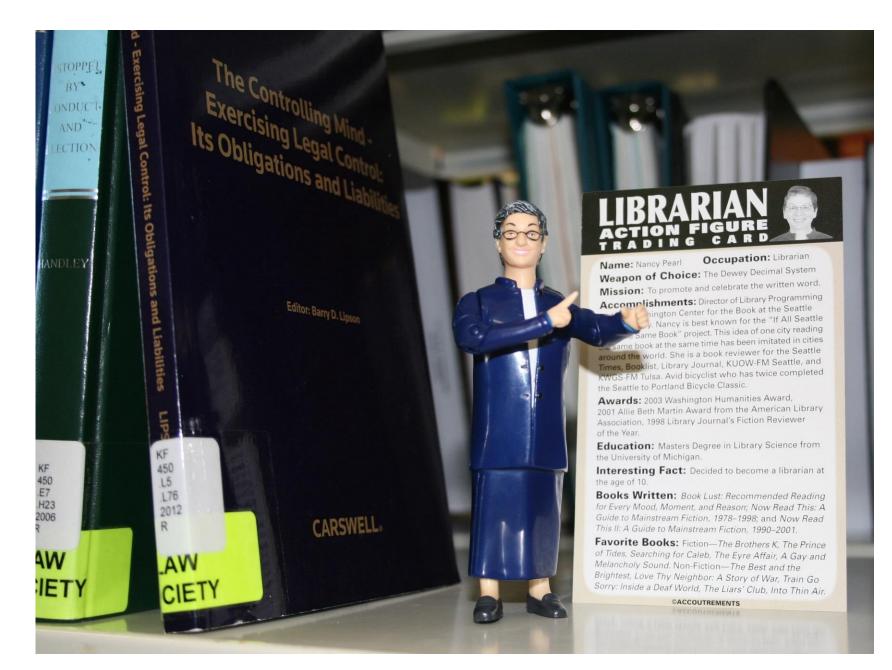
Alan Kilpatrick, Reference Librarian Law Society Library (Regina)

## Today's Overview

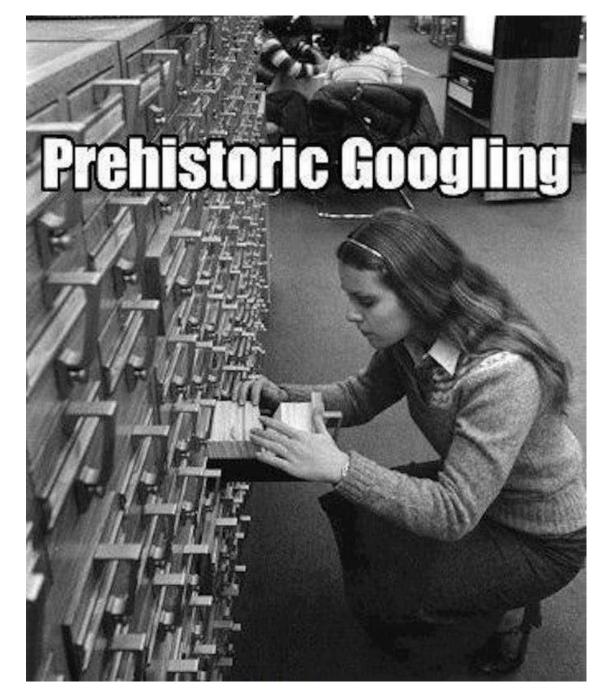
- Starting Your Legal Research
   Alan
- Exploring Secondary Sources

  Alan
- Break (20 minutes)
- Case Law Search Skills Ken











## Did you use a law library during law school?

Go to www.menti.com and use the code 66 93 85



Grab your phone

www.menti.com



Go to www.menti.com





Enter the code 66 93 85 and vote!



## What do you think of when you hear the word library or librarian?

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www.menti.com



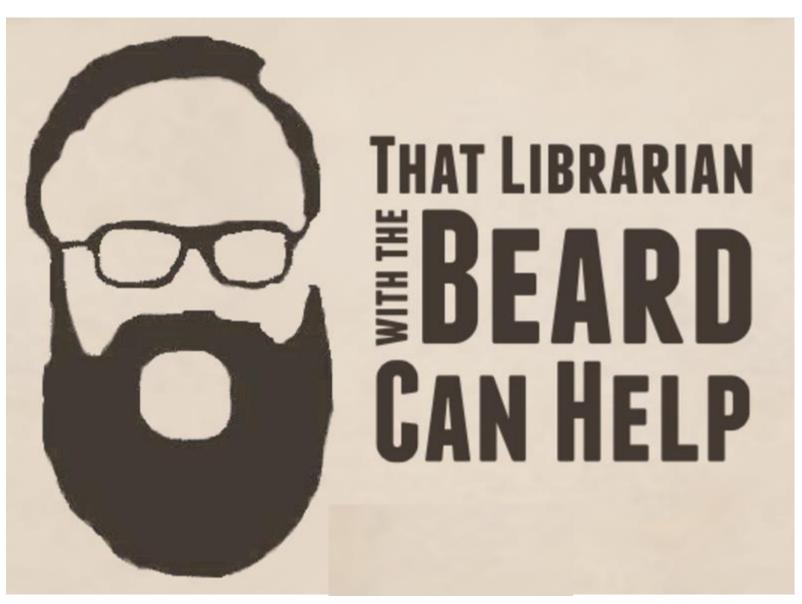
Go to www.menti.com





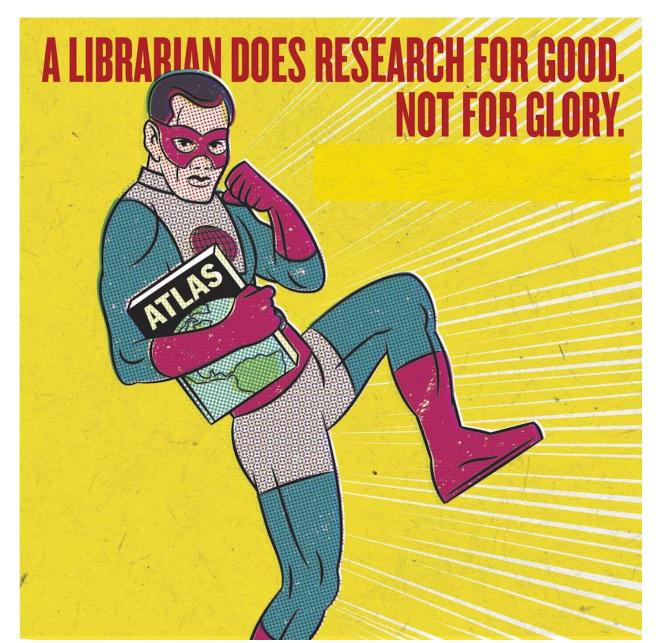
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https://librariandesignshare.org/2015/05/18/that-librarianwith-the-beard/





https://info.askalibrarian.org/2016/09/29/librarian-superhero-images-for-instagram/?doing\_wp\_cron=1553013589.4720880985260009765625

## Who Are We?

- A part of the Law Society's "Legal Resources & Communications" department
- A tool to enhance lawyer competence, which is a part of the mandate of the Law Society
- Our goal is to facilitate access to legal resources, no matter your location



## Library Services

- Members and articling students can access:
  - Print resources
  - Online resources
  - Research Services
  - Saskatchewan-focused legal publications



## **Library Locations**

**Regina** Queen's Bench Court House 2425 Victoria Ave

**Saskatoon** Queen's Bench Court House 520 Spadina Cres E







## Research Assistance

- Ken and I are your legal resource navigators:
  - We can help locate whatever you are looking for
  - Contact us if you need help locating a text, case, statute, or journal article
  - We can research a point of law, trace a statute, or search a database for you
  - Need to brush up on your research skills? Call us!













## Legal Resources

The Law Society is committed to providing you with the legal resources you need in the most convenient formats available. Our highly trained library and information professionals are ready to provide robust and responsive legal information pervices and research assistance.





**CPD Materials** 



eBooks

### Find

## iawsocieτy.sk.ca/legai-resources

#### Cases

- CanLII
- Case Mail
- Saskatchewan Cases
- vLex Canada
- WestlawNext Canada

#### Sentencing Range

- Rangefindr
- Saskatchewan Court of Appeal Sentencing Digests
- Legislation

- пешопше
- ICLL

#### Forms and Precedents

- · O'Brien's Internet
- · Queen's Bench Forms

#### **Ebooks**

- CanLII Commentary
- Emond Ebooks
- Irwin Law Ebooks



#### About Us

Hours and Locations

Library Staff

Related Links

CanLII

Saskatchewan Courts

Publications Saskatchewan

**PLEA** 

Family Law Saskatchewan

Saskatchewan Legal Research Primer

Legal Sourcery

**Tutorials** 



1 FIND A



#### Member Resource Section







Law Society of Saskatchewan / Member Resource Section

#### Databases and Subscriptions

Law Society Databases | Journals | Ebooks | WestlawNext | vLex Canada | O'Brien's | rangefindr

#### Law Society of Saskatchewan

- Library Catalogue
- Saskatchewan Cases
- Saskatchewan Court of Appeal Sentencing Digests
- Saskatchewan Bills
- Saskatchewan Regulations

#### **Journals**

#### **HeinOnline**

Fulltext of over 700 legal periodicals from the U.S., Canada, and the Commonwealth. Includes all U.S, Supreme Court decisions.

Please note: Temporary storage of an article or case on computer prior to printing is permitted. Downloading or printing a complete issue of a journal at one time is a violation of the license agreement.

#### Saskatchewan Law Review

Complete issues in fulltext from 2013

#### **Ebooks**

**Emond Montgomery Publications ebooks** 

## **Announcements**

**Special Notices for Members** 

Fraud Alerts

Notice to Members Re Accepted Methods of Payment for Fees (Oct. 2017)

Canadian Bankers Association has provided updated list of bank officials to contact in the case of delays in the discharge of mortgages (English | French) (April 22, 2019)

#### **Quick Links**

Pre-judgment Interest Rates

Law Office Management

New Solo/Small Firm Start up

**Practice Resources** 

Career Opportunities

Students Seeking Articles

Looking for Look Willo





Law Society D

#### Member Resource Section

FIND A LAWYER

Law Society of Saskatchewan / Member Resource Section







Databases and Subscriptions

Law Soci Generic Username: Libra Sask Sask summerstudents Sask Sask @lawsociety.sk.ca **Journals** HeinO Fu Co Ple **Generic Password:** pri Saska PurpleLemonade Co **Ebooks** Emond

#### **Announcements**

Special Notices for Members

Fraud Alerts

Notice to Members Re Accepted Methods of Payment for Fees (Oct. 2017)

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#### **Quick Links**

Supreme

ading or

Pre-judgment Interest Rates

Law Office Management

New Solo/Small Firm Start up

**Practice Resources** 

**Career Opportunities** 

Students Seeking Articles

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#### Member Resource Section

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## Databases and Subscriptions



#### **Announcements**

Special Notices for Members

Fraud Alerts

Notice to Members Re Accepted Methods of Payment for Fees (Oct. 2017)

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#### **Quick Links**

Supreme

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Pre-judgment Interest Rates

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**Practice Resources** 

Career Opportunities

Students Seeking Articles

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Making the most of

free legal resources

An overview of the

amazing resources

available through the Law Society

Members' Section

Advanced search

strategies

like CanLII

## Lunch & Learn

with the Law Society Library

Do you need legal research training tailored to your firm's specific needs? Want to earn CPD credit while improving your legal research skills?

## The Law Society Library is here to help.

- Law librarians Ken Fox and Alan Kilpatrick offer flexible in-person training sessions customized to your firm's legal research needs.
- and save time and money through efficient legal research.

Lunch & Learn training sessions are \$55.00 per lawyer per hour for 1.0 CPD credit. Book in advance to ensure the librarian's availability.

reference@lawsociety.sk.ca (306) 569-8020

## Possible training session topics:

Develop solid research strategies, identify relevant legal resources,

Book an in-person Lunch & Learn session with a law librarian today:





## Legal Sourcery



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Submissions Guidelines

The Land Contracts (Actions) Act, 2018

POSTED ON AUGUST 27, 2019 UPDATED ON AUGUST 27, 2019

In June 2018 The Land Contracts (Actions) Act, 2018 was passed by the Legislative Assembly of Saskatchewan. On September 1, 2019, The Land Contracts (Actions) Act, 2018 will come into

The new Act will repeal and replace the existing Act and includes provisions that:

- require that a notice form be served or hearing date;
- require that a copy the property be a
- require that updat prior to the heari
- continue to limit a
- state that the Act of default: and

• repeal The Home Owners' Protection Act and The Agreements of Sale Cancellation Act, and include provisions of the latter in the new LCAA.

The Regulations accompanying the Act include prescribed forms.

A copy of the Act as passed can be found here:

http://publications.saskatchewan.ca/#/products/90577

#### Share this:











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This entry was posted in Announcement, Statutes.







## Isslib.wordpress.com



#### Recent Posts

The Land Contracts (Actions) Act, 2018 AUGUST 27, 2019

Monday Links AUGUST 26, 2019

Family Violence Training for Lawyers and Mediators AUGUST 22, 2019

Historical Table of Public Statutes 1909-1978 Now on CanLII AUGUST 21, 2019

Federal Proclamations AUGUST 20, 2019





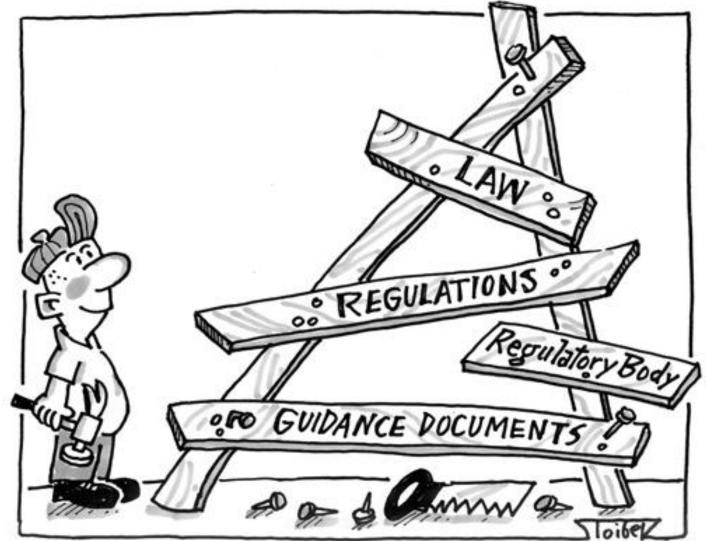
## Starting Your Legal Research

Or: Why Legal Research?

**Ken Fox, Reference Librarian**Law Society Library

(Saskatoon)

Alan Kilpatrick, Reference Librarian Law Society Library (Regina)









### 3.1 COMPETENCE

"Competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

- knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;
- investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;
- (c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:



- (i) legal research;
- (ii) analysis;
- (iii) application of the law to the relevant facts;
- (iv) writing and drafting;
- (v) negotiation;
- (vi) alternative dispute resolution;
- (vii) advocacy; and
- (viii) problem solving;



https://www.lawsociety.sk.ca/media/395080/codeconsolidatemarch2018.pdf

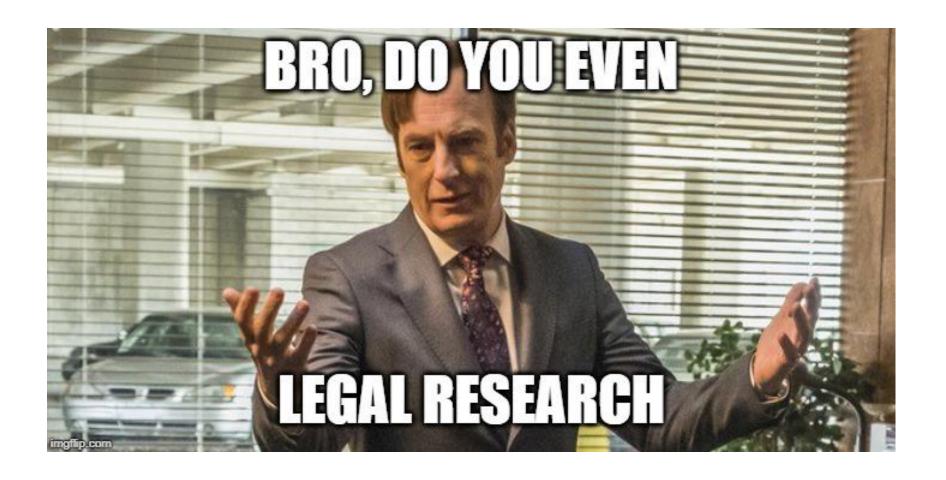
"A litigator who has not conducted sufficient research faces the possibility of being sued by his client, and also censure by the court itself through an award of costs ... Failure to understand the law or conduct the research necessary to gain an understanding of it will result in personal liability to the client."

Catherine Best legalresearch.org/essentials/importance-of-legalresearch



# How do you start legal research?







- Legal research is:
  - Is iterative
  - Is messy
  - Includes mistakes and missteps
  - Has multiple starts and stops
  - Isn't static
  - Rarely complete after the first attempt



### The Canadian Legal Research and vyrtung Guide

The Canadian Legal Research and Writing Guide



Table of Contents

Q Search

More ▼

#### The Canadian Legal Research and Writing Guide

- > 1 The Importance of Legal Research
- > 2 Step-By-Step Legal Research Process
- > 3 Use Commentary to Define and Understand the Issues
- > 4 Guidelines for Online Research
- > 5 Researching Canadian Federal and Provincial Legislation
- > 6 Searching Canadian Case Law
- > 7 Restate the Issues and Refine Your Strategy
- > 8 Review and Assess the Case Law
- > 9 Stare Decisis and Techniques of Legal Reasoning and Lega...
- > 10 If You Get Stuck
- > 11 When to Stop
- > 12 Preparing a Legal Memorandum
- > 13 Legal Citation
- > Appendix 1: Sample Memorandum of Law
- > Appendix 2: Suggested Textbooks
- > Appendix 3: Glossary

**Footnotes** 

## CanLII.org

#### The Canadian Legal Research and Writing Guide, 2018 CanLIIDocs 161

Author(s): Melanie R Bueckert, André Clair, Maryvon Côté, Yasmin Khan and Mandy Ostick

Publisher(s): Canadian Legal Information Institute (www.canlii.org)

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License: This work is licensed under the CanLII user license which includes the right of the User to make copies of the work for legal research

purposes, in the practice of law or in the exercise of their legal rights.

Citation: Melanie R Bueckert et al, The Canadian Legal Research and Writing Guide, Canadian Legal Information Institute, 2018 CanLIIDocs 161,

<a href="http://www.canlii.org/t/2bm3">http://www.canlii.org/t/2bm3</a>, retrieved on 2019-08-27

#### > The Canadian Legal Research and Writing Guide

Formerly the Best Guide to Canadian Legal Research 2018 CanLIIDocs 161

Edited by Melanie Bueckert, André Clair, Maryvon Côté, Yasmin Khan, and Mandy Ostick, based on work by Catherine Best, 2018

The Canadian Legal Research and Writing Guide is based on The Best Guide to Canadian Legal Research, An online legal research guide written and published by Catherine Best, which she started in 1998. The site grew out of Catherine's experience teaching legal research and writing, and her conviction that a process-based analytical approach was needed. She was also motivated to help researchers learn to effectively use electronic research tools.

Catherine Best retired In 2015, and she generously donated the site to CanLII to use as our legal research site going forward. As Best explained:

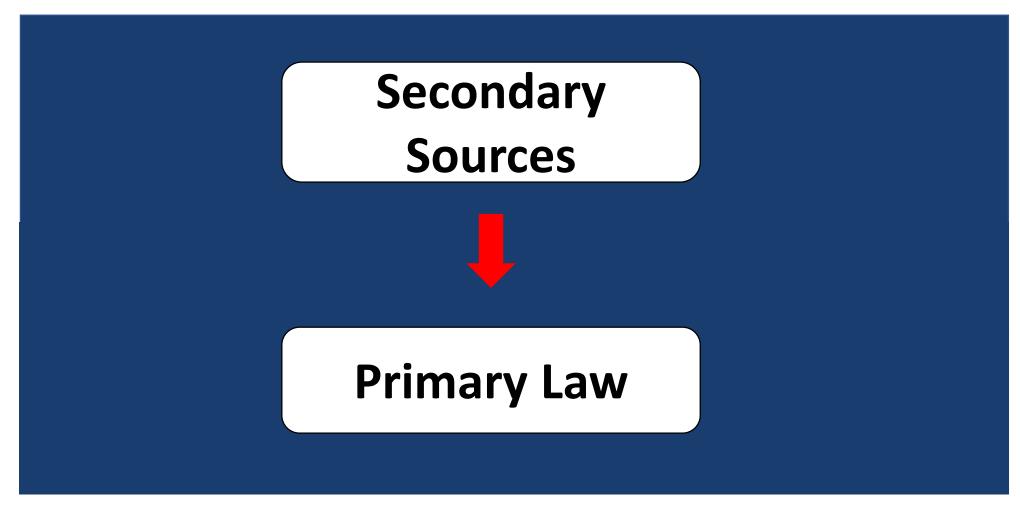
The world of legal research is dramatically different than it was in 1998. However, the site's emphasis on research process and effective electronic research continues to fill a need. It will be fascinating to see what changes the next 15 years will bring.

The text has been updated and expanded for this publication by a national editorial board of legal researchers:

Melanie Bueckert legal research counsel with the Manitoba Court of Appeal in Winnipeg. She is the co-founder of the Manitoba Bar Association's Legal Research Section, has written several legal textbooks, and is also a contributor to Slaw.ca ...

André Clair was a legal research officer with the Court of Appeal of Newfoundland and Labrador between 2010 and 2013. He is now head of the Legal Services Division of the Supreme Court of Newfoundland and Labrador.

Maryvon Côté is an associate librarian at the Nahum Gelber Law Library at McGill University in Montreal. He is active on the Canadian





- Where can you find secondary sources?
  - Law Library Catalogue
  - Irwin Law ebooks (Members' Section)
  - Emond ebooks (Members' Section)
  - CanLII's Commentary
  - Source Products (WestlawNext)
  - Canadian Encyclopedic Digest (WestlawNext)
  - HeinOnline (Members' Section)



- Where can you search for case law?
  - CanLII
  - Quicklaw Advance
  - WestlawNext (Members' Section)
  - vLex Canada (Members' Section)
  - Canadian Abridgment (WestlawNext)

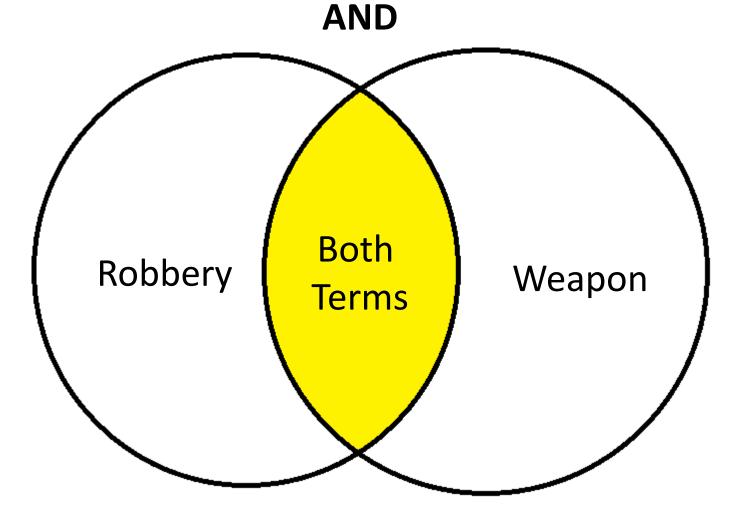


- Your Keyword search strategy:
- Step 1: Brainstorm for keywords
- Step 2: Identify concepts
- Step 3: Create search query
- Step 4: Execute search and analyze results
- Step 5: Reformulate search



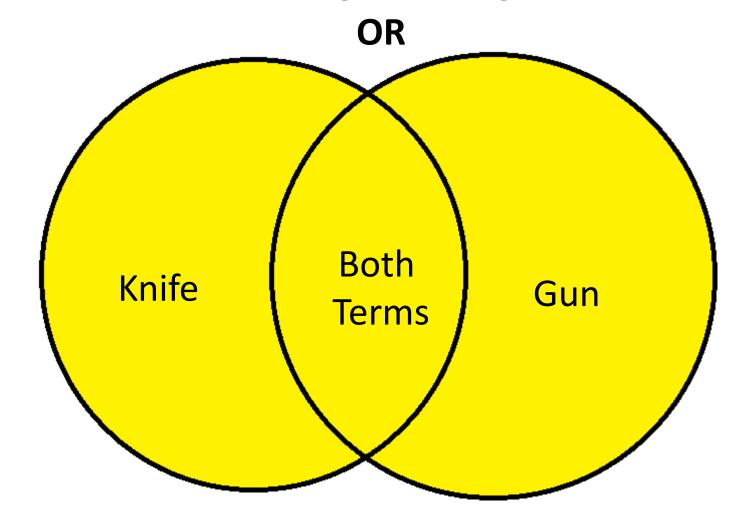
```
AND
        robbery AND weapon
        (weapon OR knife OR gun)
• OR
        "child of marriage"
        (drugs OR "controlled substance")
        create, creation, creating, etc
creat*
        officer /p ask
•/p
• /5
        officer /5 ask
```







Narrows the search & Less results



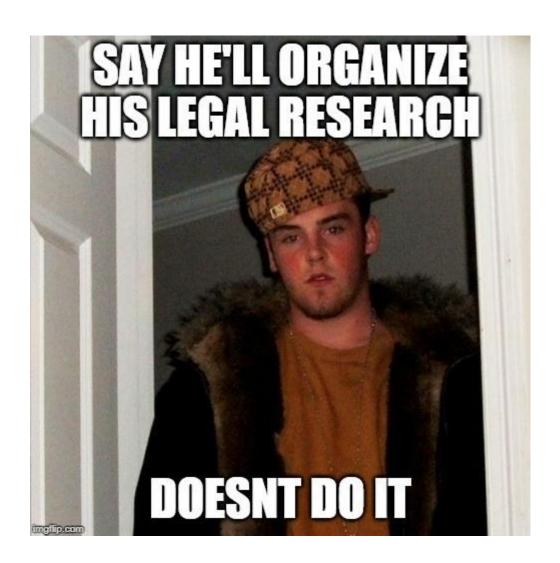


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AND
        robbery AND weapon
        (weapon OR knife OR gun)
• OR
        "child of marriage"
        (drugs OR "controlled substance")
        create, creation, creating, etc
creat*
        officer /p ask
•/p
• /5
        officer /5 ask
```



# Organizing your legal research?







# Organizing Your Legal Research?

- What do you do when you find what you are looking for? Go to LexBox!
- Free workspace to organize your research
- Save cases, legislation, and search queries
- Track when case law or legislation is cited
- Download at mylexbox.com

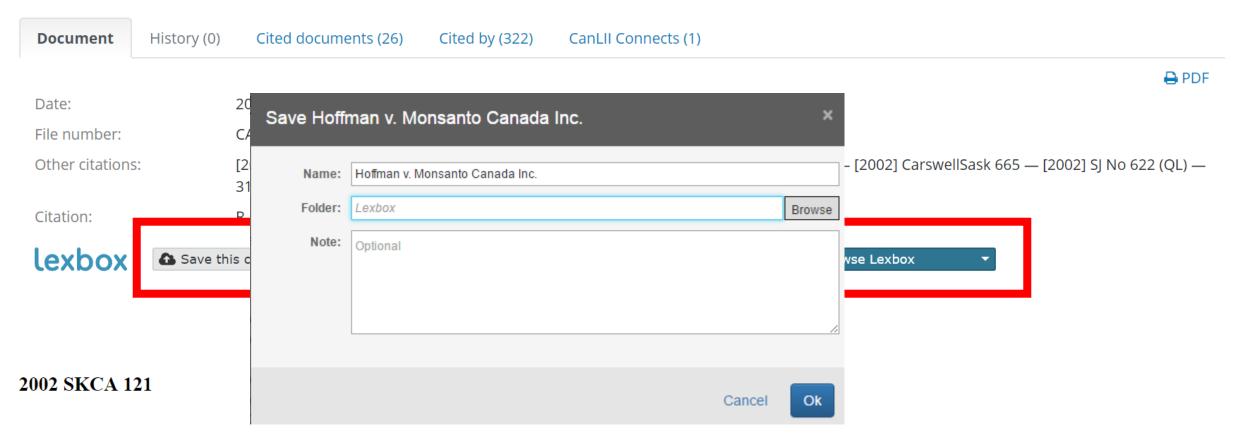




Press F11 to exit full screen



### R. v. Lewko, 2002 SKCA 121 (CanLII)



THE COURT OF APPEAL FOR SASKATCHEWAN



🚨 Alan Kilpatrick 🕶

Q

Page: 1

Find in document

### The Automobile Accident Insurance Act, RSS 1978, c A-35

**Document**Versions (58)Cited by (1,505)Regulations (5)Amendments (37)

₽ PDF TXT

Current version: in force since Jul 1, 2018

Link to the latest version 🖳

http://canlii.ca/t/wvk

Stable link to this version 2:

http://canlii.ca/t/538sq

Citation to this version:

The Automobile Accident Insurance Act, RSS 1978, c A-35, <a href="http://canlii.ca/t/538sg">http://canlii.ca/t/538sg</a> retrieved on 2019-08-27

Currency:

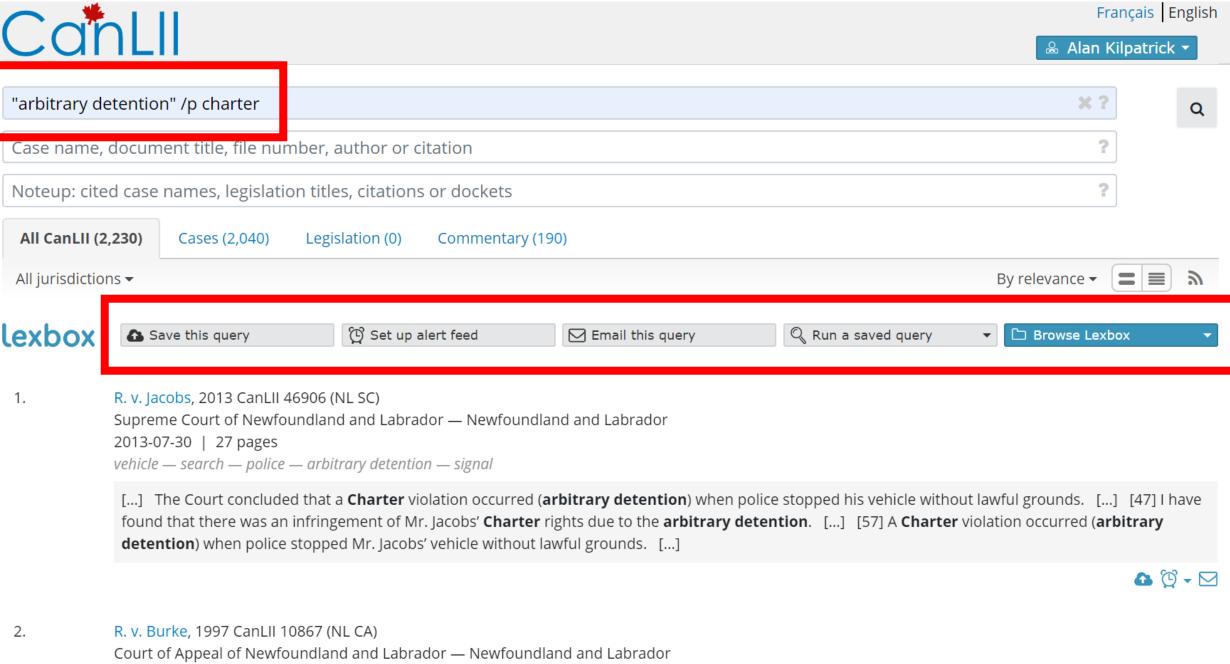
Last undated from the Freelaw site on 2019-08-26



⚠ Save this legislation 🤁 Set up amendment alert







2. R. v. Burke, 1997 CanLII 10867 (NL CA)
Court of Appeal of Newfoundland and Labrador — Newfoundland and Labrador
1997-07-18 | 25 pages | cited by 40 documents
arbitrary detention — articulable cause — stopping — random — pick-up

# Organizing Your Legal Research?

- Monitoring case law developments with LexBox:
- Construct a CanLII search that retrieves the case law you are interested in: "arbitrary detention" /p charter
- 2. Click "Set up alert feed"
- 3. Indicate how you would like to be notified



# Mylexbox.com

## lexbox by lexum

My Lexbox	Lexbox	
Recent history	Type Name ▲	Date
⟨∑⟩ My alerts	Act respecting the acquisition of farm land by non-residents CQLR c A-4.1  CanLII Consolidated Statutes of Quebec – Quebec	Yesterday at 20:59
My profile	Amendment alert for Act respecting the acquisition of farm land by non-residents  CanLII 4 alerts  Tracking: New versions of the Act respecting the acquisition of farm land by non-residents, CQLR c A-4.1 only notify me on MyLexbox.com Expecting less than one alerts per year.	Yesterday at 20:59
	"arbitrary detention" /p charter  CanLII	Yesterday at 20:57
	"arbitrary detention" /p charter  CanLII 10 alerts  Tracking: "arbitrary detention" /p charter only notify me on MyLexbox.com Expecting 12 alerts per month.	Yesterday at 20:58
	Citation alert for R. v. Burke  CanLII 10 alerts  Tracking: All documents; citing R. v. Burke, 1997 CanLII 10867 (NL CA) only notify me on MyLexbox.com Expecting 2 alerts per year.	Yesterday at 20:59
	R. v. Burke 1997 CanLII 10867 (NL CA)  CanLII Court of Appeal of Newfoundland and Labrador – Newfoundland and Labrador 1997-07-18  arbitrary detention — articulable cause — stopping — random — pick-up	Yesterday at 20:58



Ken Fox, Reference Librarian Law Society Library (Saskatoon)

Alan Kilpatrick, Reference Librarian Law Society Library (Regina)

- Helpful secondary sources?
  - Library Catalogue & Subject Resource Lists
  - Canadian Encyclopedic Digest (WestlawNext)
  - Source Products (WestlawNext)
  - CanLII Connects & Commentary





### lawsociety.sk.ca/legal-resources

Quick Find



ADVANCE

#### How does this work?

Primo provides simple, one-stop searching for books, e-books and videos.

Primo also helps you manage your research. Sign-in in order to:

- · Renew books
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- · Export citations to Refworks and Endnote Web
- · View full search results

Supported browsers: The most current version of Internet Explorer, Firefox, Chrome, and Safari.

#### Contact Us

Ask a librarian how to start your search

Law Society of Saskatchewan Library

Other research tools for Law Society Members

### Need help?

For more information on Primo, the new Library catalogue, please watch the following free recorded webinar.

- Subject Resource Lists
  - Provide the titles of key texts, eBooks, CPD materials, journals, legal encyclopedias, and provincial and federal legislation for a particular area of the law.
  - The guides are intended to be used by those starting new legal research projects and to ensure that obvious resources are not missed.













- · Saskatchewan Cases
- vLex Canada
- WestlawNext Canada

### Sentencing

- Rangefindr
- Saskatchewan Court of Appeal Sentencing Digests
- Gladue Rights Research Database

### Legislation

- Publications Saskatchewan
- Saskatchewan Bills
- Saskatchewan Regulations
- Historical Table of Public Statutes 1909-1978
- CanLII

Saskatchewan Law Review

#### Forms and Precedents

- · O'Brien's Internet
- · Queen's Bench Forms
- · Queen's Bench Practice Manual
- Law Society Forms
- Trust Account Forms

#### **Ebooks**

ICLL

- CanLII Commentary
- Emond Ebooks
- Irwin Law Ebooks
- WestlawNext Texts and Annotations

### Research Tools & Resources

Member Resource Section (For Law Society Members Only)

Law Society Databases

Publications

Subject Resource Lists

Legal Research Guides

Family Law Saskatchewan

Saskatchewan Legal Research Primer

**Legal Sourcery** 

**Tutorials** 

#### Popular Resources

Law Society Rules

Law Society Forms

Trust Account Forms

Queen's Bench Rules

Queen's Bench Forms

**Limitations Manual** 

Queen's Bench Practice Manual

**Practice Checklists** 

Essential Legal Research Guide

Historical Table of Public Statutes 1909-1978











#### Member Resource Section (For Law Society Members Only)

#### **Law Society Databases**

#### **Publications**

#### **Subject Resource Lists**

- Aboriginal Law
- Banking Law
- Bankruptcy and Insolvency Law
- Civil Procedure
- Constitutional and Human Rights
- Construction Law
- Contract and Agency Law
- · Corporate and Partnership Law
- Criminal Law
- Family Law
- Insurance Law
- Tax Law
- Tort Law
- Trusts, Wills and Estates Law

#### Legal Research Guides

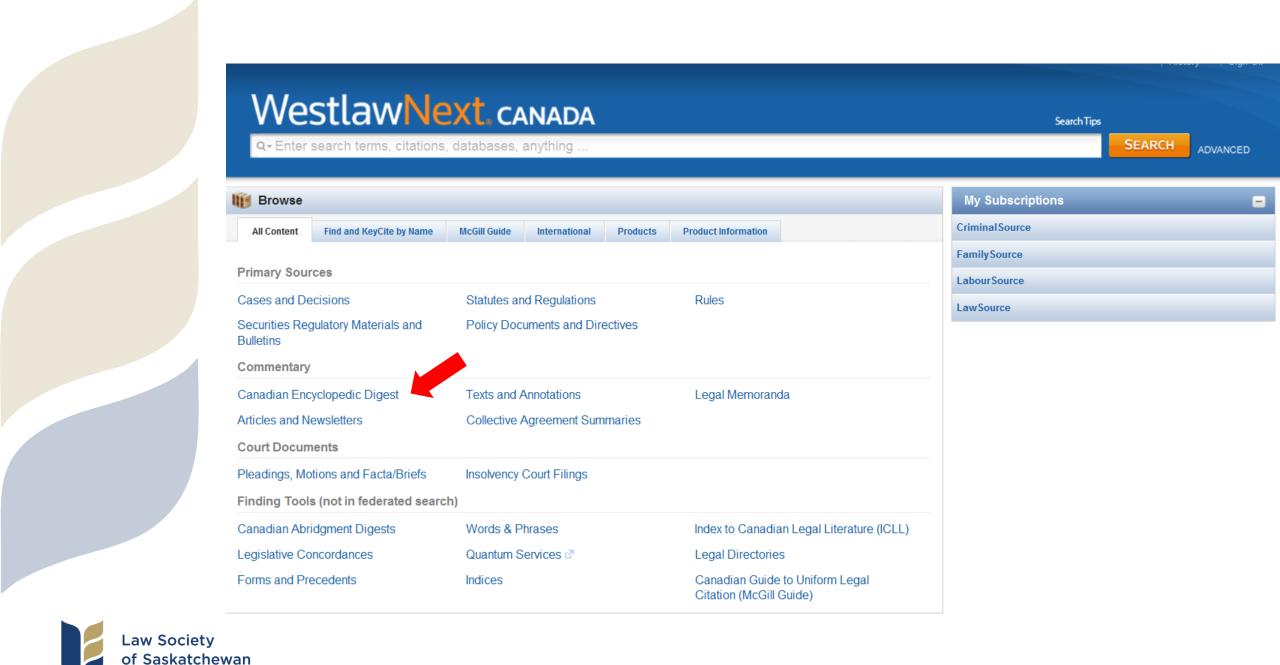
**Practice Checklists** 

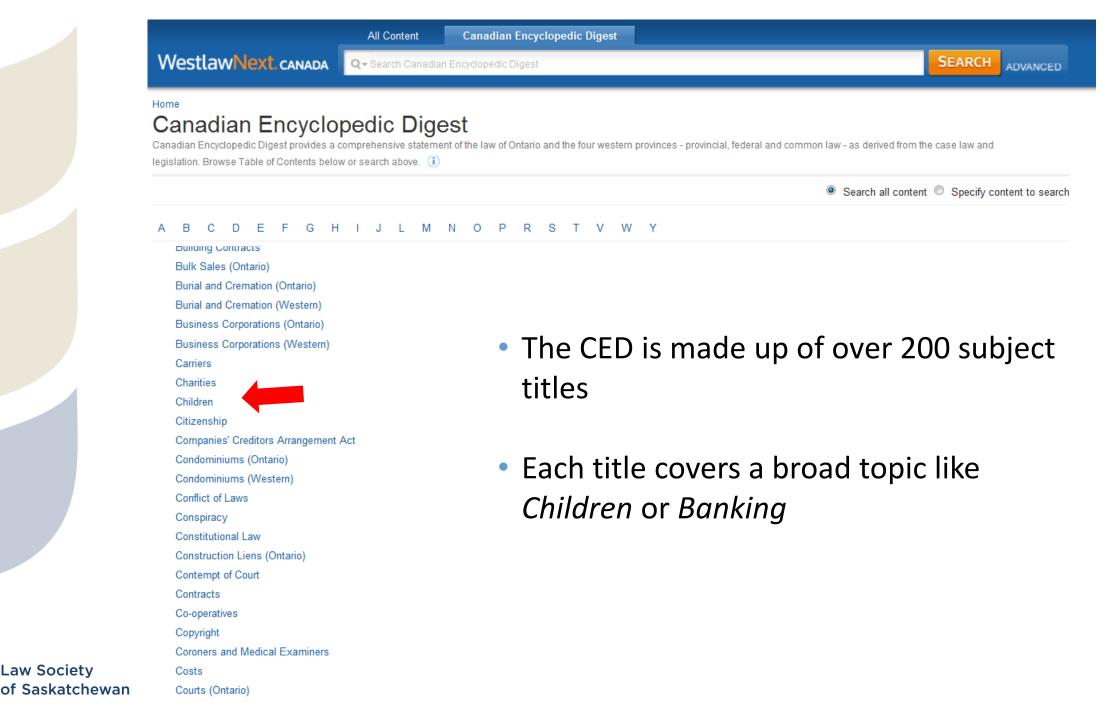
Essential Legal Research Guide

Historical Table of Public Statutes 1909-1978

- Canadian Encyclopedic Digest
  - Comprehensive legal encyclopedia
  - Excellent starting point for legal research
  - Broad overview, leading cases, and current legislation







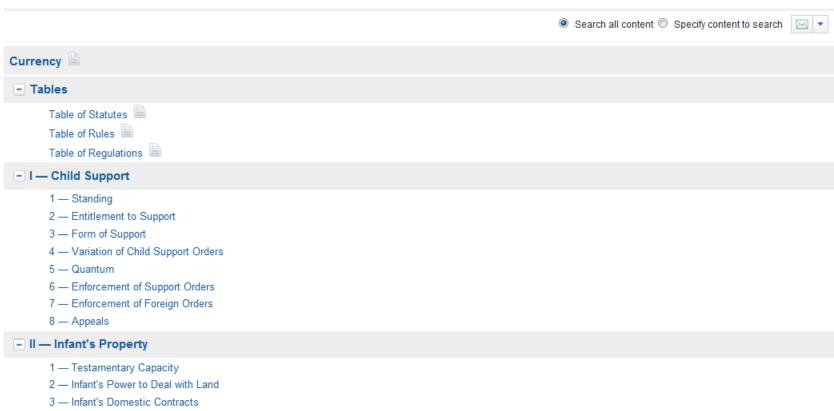


Home > Canadian Encyclopedic Digest

#### Children

Canadian Encyclopedic Digest provides a comprehensive statement of the law of Ontario and the four western provinces – provincial, federal and common law – as derived from the case law and legislation.

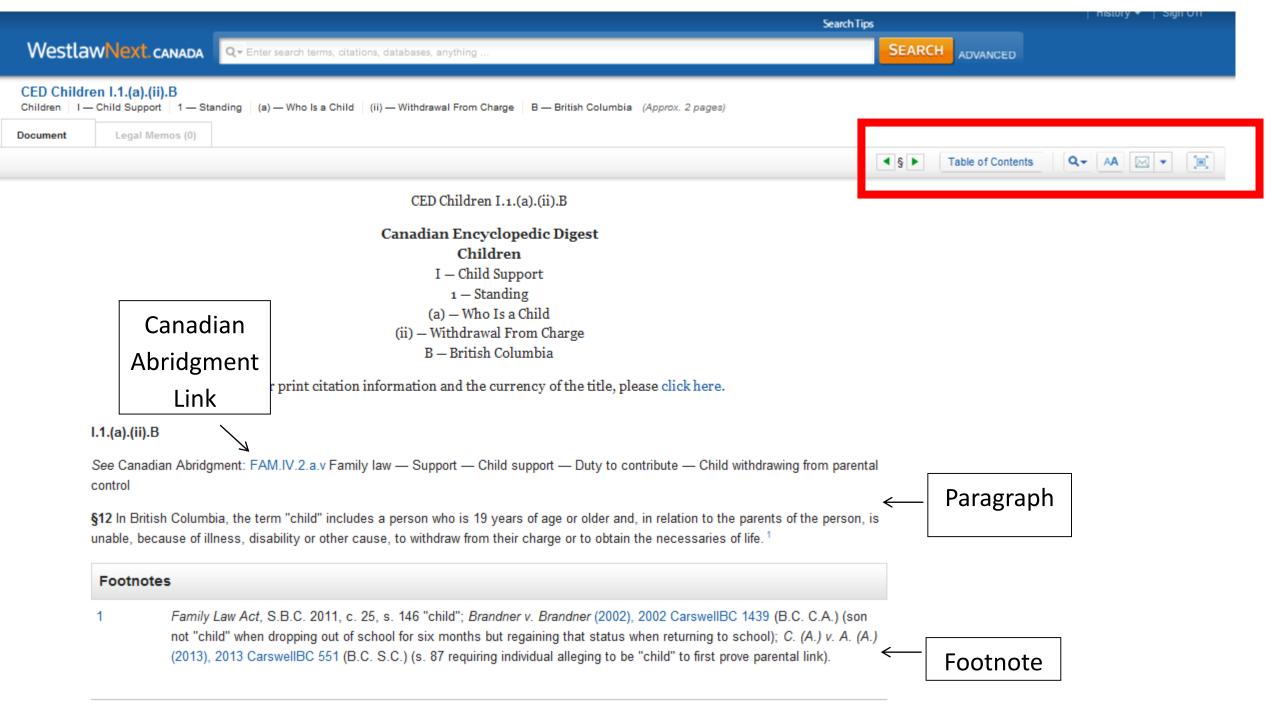
Browse Table of Contents below or search above.



- 4 Infant's Interests under Separation Agreements
- 5 Sale or Lease of Infant's Real Estate
- 6 Deeds and Mortgages
- 7 Gifts by and to Infants

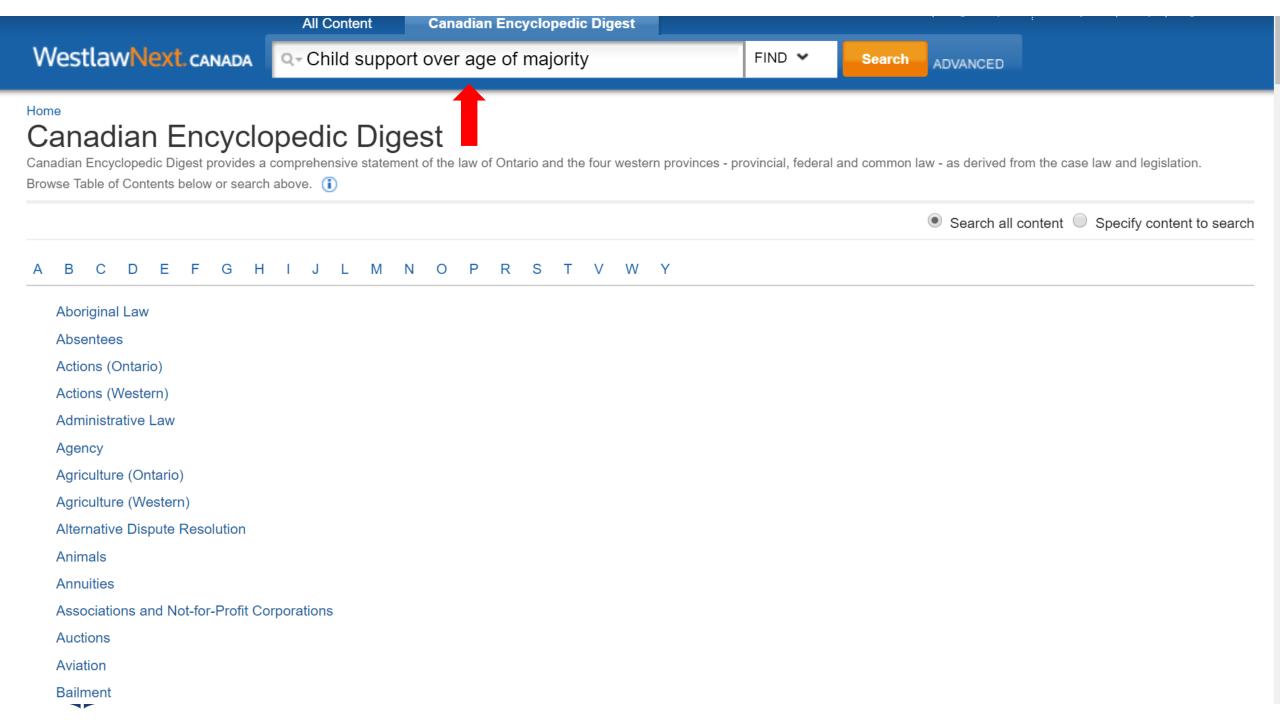
#### - III — Contractual Rights

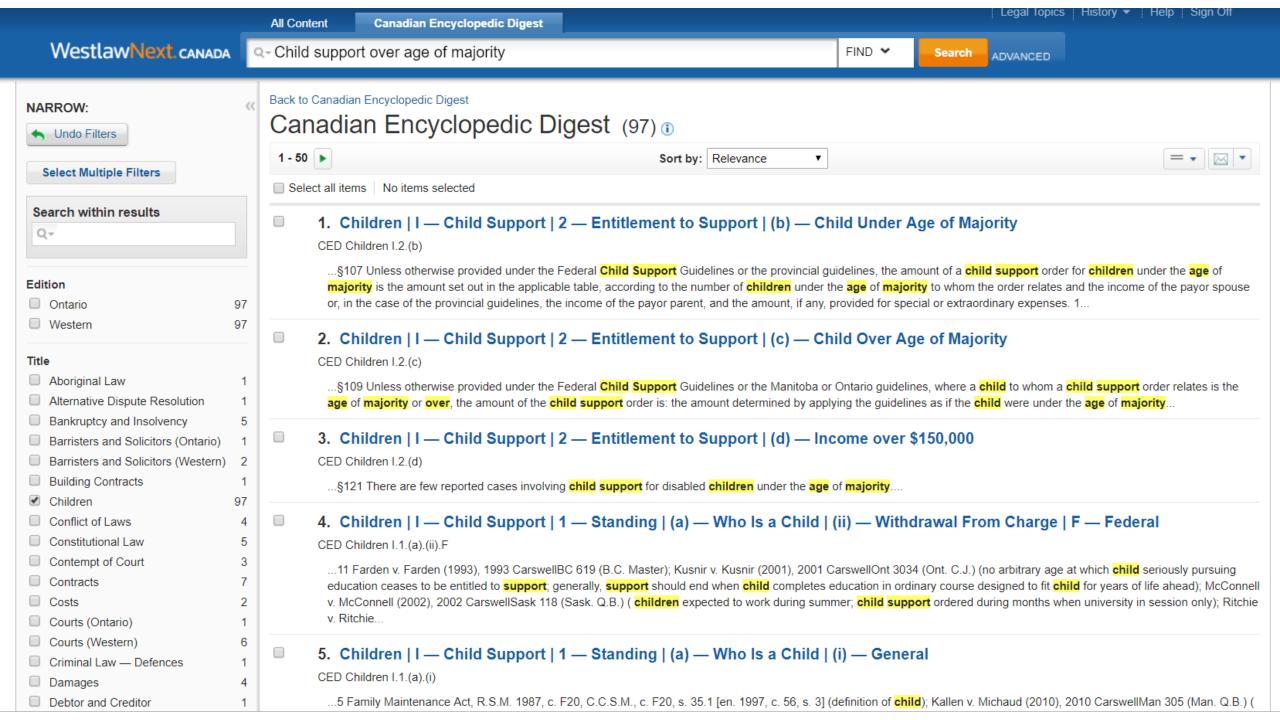
- 1 General
- 2 Parent's Liability for Infant's Debts
- 3 Contracts of Infants Which are Binding



- Canadian Encyclopedic Digest: 3 Strategies
  - Browsing
  - Keyword searching
  - Through case law

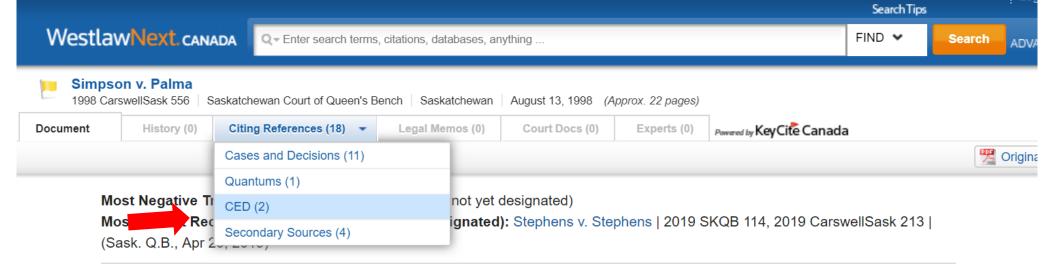






- Canadian Encyclopedic Digest: 3 Strategies
  - Browsing
  - Keyword searching
  - Through case law





1998 CarswellSask 556 Saskatchewan Court of Queen's Bench

#### Simpson v. Palma

1998 CarswellSask 556, [1998] S.J. No. 581, 171 Sask. R. 89, 82 A.C.W.S. (3d) 129

## George Alexander Simpson, Petitioner (Respondent) and Delmira Maria Palma, Respondent (Applicant)

Zarzeczny J.

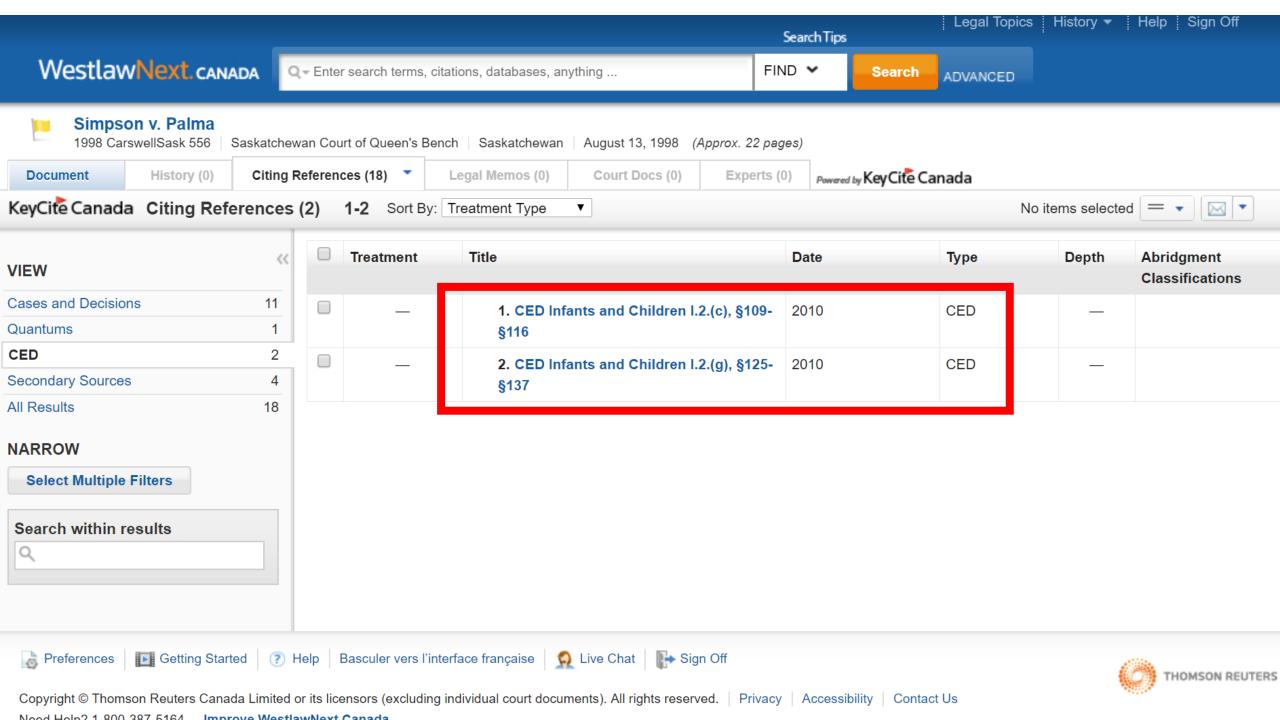
Judgment: August 13, 1998 Docket: Estevan Q.B. 470400951/90

Counsel: K.M. Rondeau, for George Alexander Simpson.

S.J. Orlowski, for Delmira Maria Palma.

Subject: Family

## Related Abridgment Classifications ttps://nextcanada.westlaw.com/RelatedInformation/110b717cd7f5563f0e0440003ba0d6c6d/kcCitingReferences.html?...





#### **Canadian Encyclopedic Digest** Children

I — Child Support

2 — Entitlement to Support

(c) — Child Over Age of Majority

For print citation information and the currency of the title, please click here.

#### I.2.(c)

See Canadian Abridgment: FAM.IV.2.a.iii Family law — Support — Child support — Duty to contribute — Age of child; FAM.IV.2.a.iv Family law — Support — Child support — Duty to contribute — Child at school

§109 Unless otherwise provided under the Federal Child Support Guidelines or the Manitoba or Ontario guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is: the amount determined by applying the guidelines as if the child were under the age of majority; or, if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child. Unless otherwise provided under the Alberta guidelines, the amount of a child support order for a child who is at least 18 years of age but not older than 22 years of age and who is unable to withdraw from his or her parents' charge because he or she is a full-time student, is the amount determined by applying the guidelines as if the child to whom the order relates were under the age of majority or, if the court considers that approach to be inappropriate, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the support of the child.<sup>2</sup>

### TO THESE LEGAL TOPICS

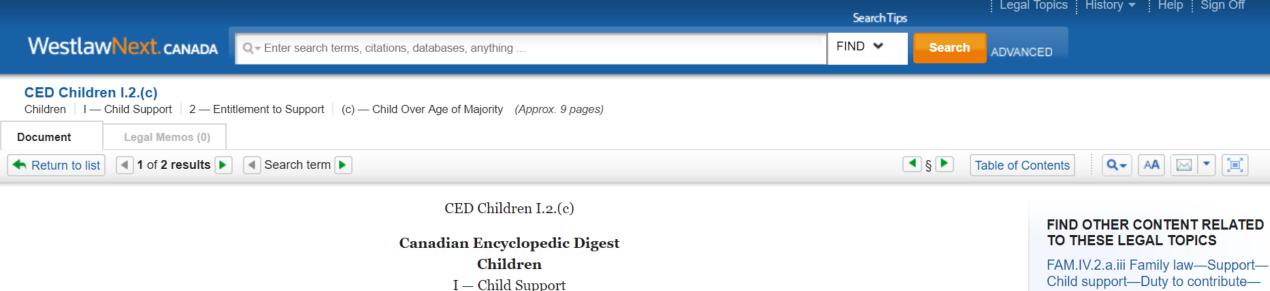
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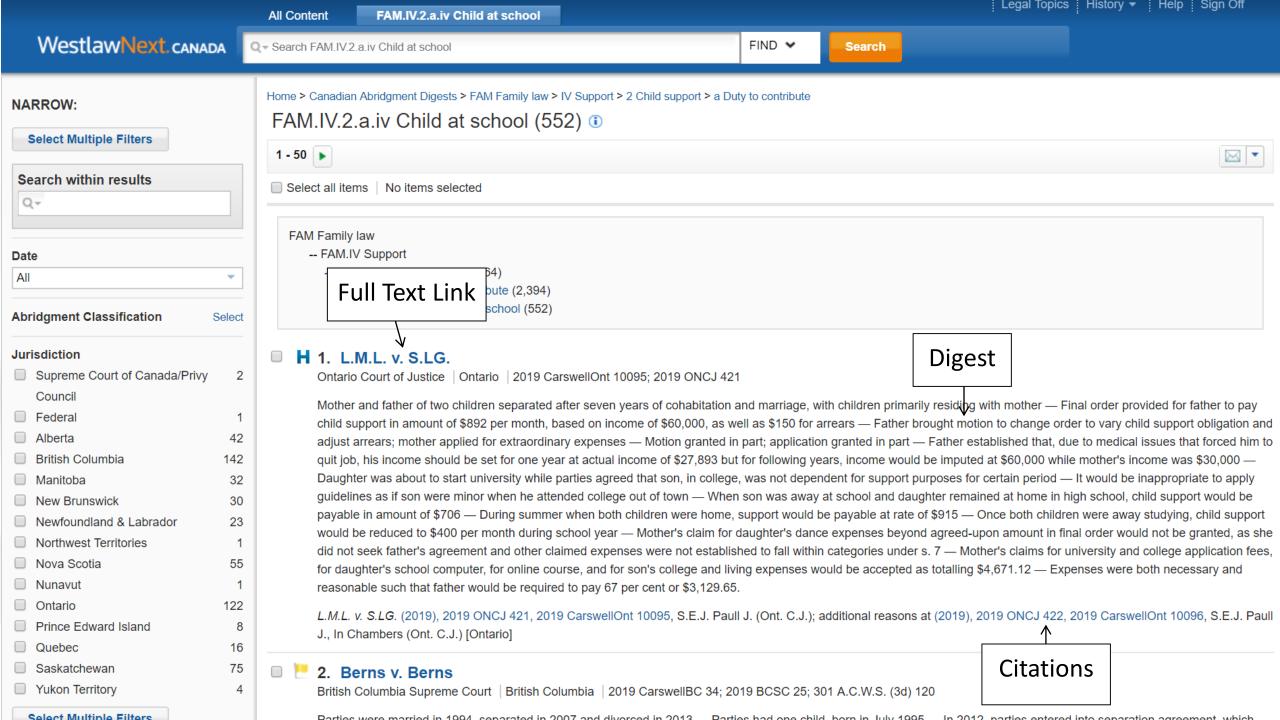
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§109 Unless otherwise provided under the Federal Child Support Guidelines or the Manitoba or Ontario guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is: the amount determined by applying the guidelines as if the child were under the age of majority; or, if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child. Unless otherwise provided under the Alberta guidelines, the amount of a child support order for a child who is at least 18 years of age but not older than 22 years of age and who is unable to withdraw from his or her parents' charge because he or she is a full-time student, is the amount determined by applying the guidelines as if the child to whom the order relates were under the age of majority or, if the court considers that approach to be inappropriate, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the support of the child.<sup>2</sup>

Child support—Duty to contribute— Age of child

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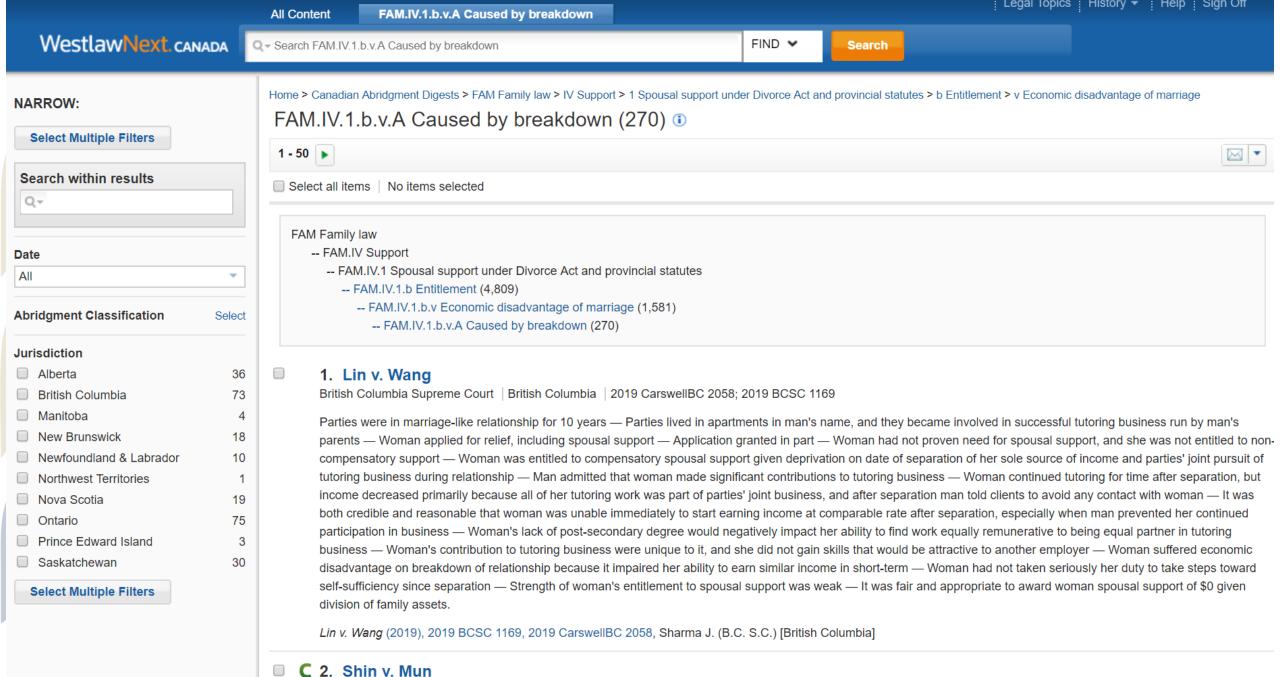
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IV.1.b Entitlement

IV.1.b.v Economic disadvantage of marriage

IV.1.b.v.A Caused by breakdown



British Columbia Supreme Court | British Columbia | 2019 CarswellBC 2022; 2019 BCSC 1124; 307 A.C.W.S. (3d) 540

Both parties were originally from South Korea. Husband immigrated to Canada with his family as teenager, parties met when wife was visiting family in Canada, they started

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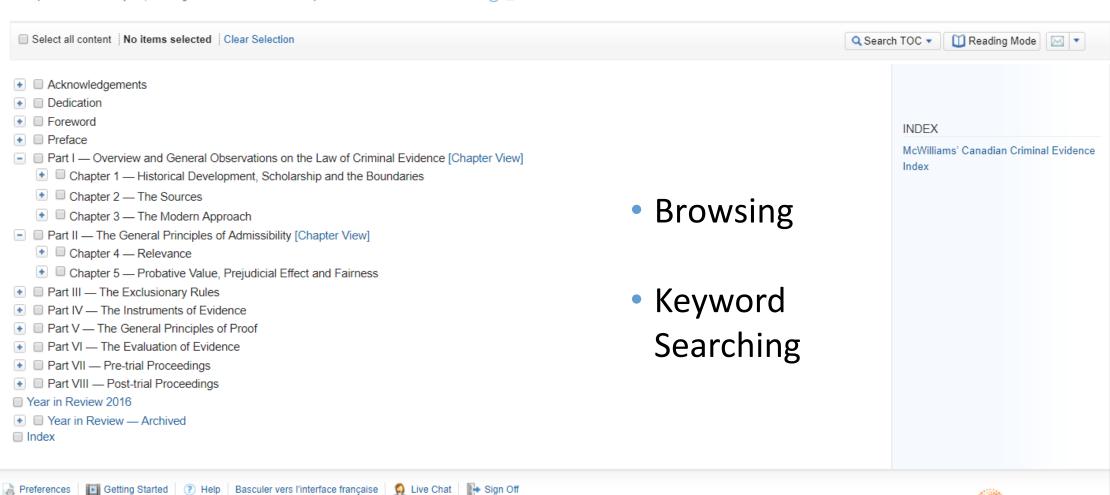
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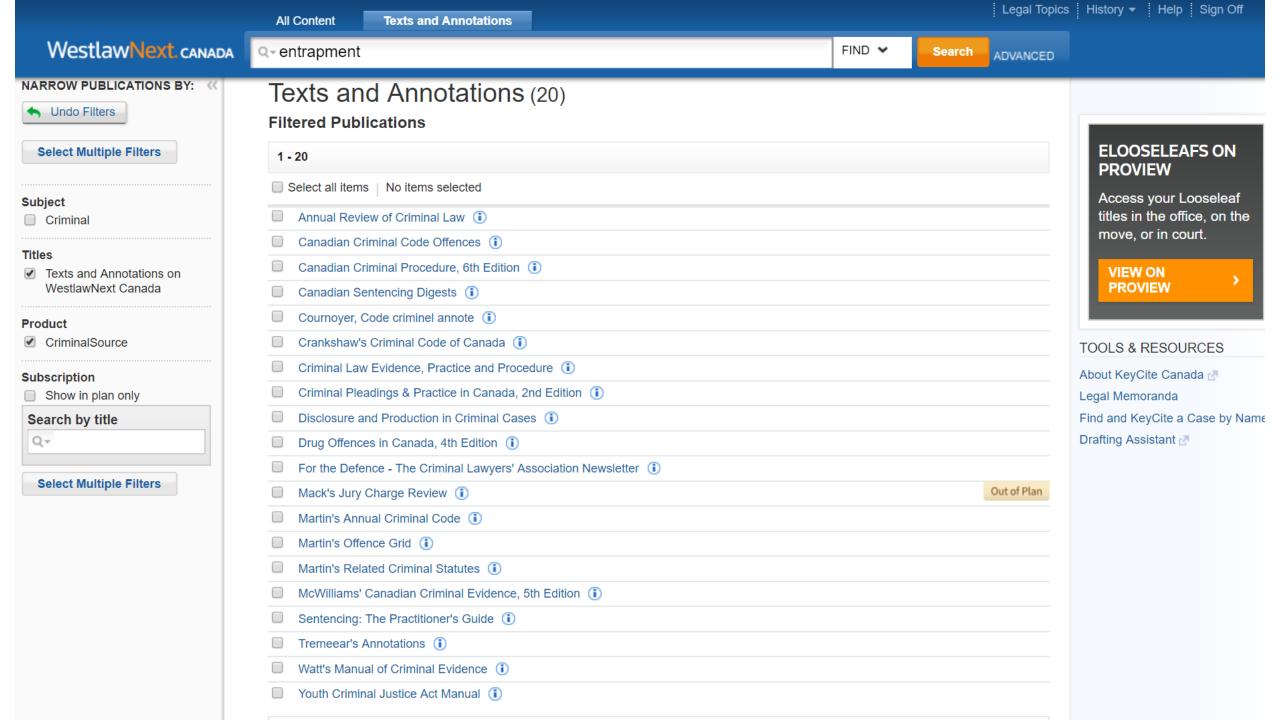
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Alford v. Canada (Attorney General), 2019 ONCA 657 (CanLII)

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by Marie-France Maior Aug 27, 2019



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Durno v. TD Waterhouse Canada Inc., 2019 ONSC 3328 (CanLII)

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Aug 21, 2019



Objections après l'interrogatoire?

Procureure générale du Québec c. Gratton, 2019 QCCQ 4034 (CanLII)

O CONCURS





Jul 6, 2017

# Supreme Court of Canada invalidates the promise doctrine

AstraZeneca Canada Inc. v. Apotex Inc., [2017] 1 SCR 943, 2017 SCC 36 (CanLII)



Drug: esomeprazole

In this decision, the Supreme Court of Canada (SCC) overturned the decision of the Federal Court of Appeal (FCA), and held the patent to be valid and infringed. In so doing, the SCC established a new test for determining utility pursuant to the *Patent Act* and held that the so-called 'Promise Doctrine' is not the correct approach to determine utility. Our summary of the FCA decision can be found here, and the decision is here.

K

Flag as Inappropriate

The SCC held that the utility requirement in s. 2 of the *Patent Act* is a necessary pre-condition to patentability. However, the question was: useful for what? The Federal Courts have answered this question with the Promise Doctrine. However, the SCC held that this doctrine is excessively onerous in two ways: (1) it determines the standard of utility by reference to the promises expressed in the patent; and (2) if there are multiple expressed promises, it requires that all be fulfilled for a patent to be valid.

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by Chantal Saunders, Beverley Moore, Adrian Howard, Jillian Brenner — Borden Ladner Gervais LLP.





The SCC held that the Promise Doctrine conflated s. 2 and s. 27(3) of the

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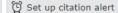
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CITATION: AstraZeneca Canada Inc. v. Apotex Inc., APPEAL HEARD: November 8, 2016 2017 SCC 36, [2017] 1 S.C.R. 943

JUDGMENT RENDERED: June 30, 2017

**DOCKET:** 36654

Between:

AstraZeneca Canada Inc., AstraZeneca Aktiebolag and AstraZeneca UK Limited

Appellants

and

Apotex Inc. and Apotex Pharmachem Inc.

Respondents

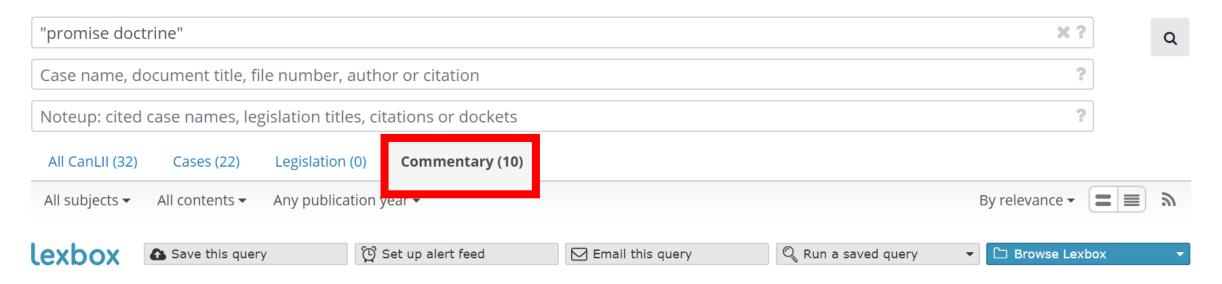
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 James Billingsley – Appeal: Review of Current Law and Law Reform
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[...] Additional provisions in Chapter 17 further support the proposition that the **promise doctrine** is not inconsistent with the chapter. [...] They suggest that the **promise doctrine** is no more inconsistent with Chapter 17 than it is consistent. [...] Nor is it suggested that the **promise doctrine** is necessarily preferable over other interpretations of patent utility. [...]

Supreme Advocacy Newsletter, 2019 29, 2019 CanLIIDocs 1509
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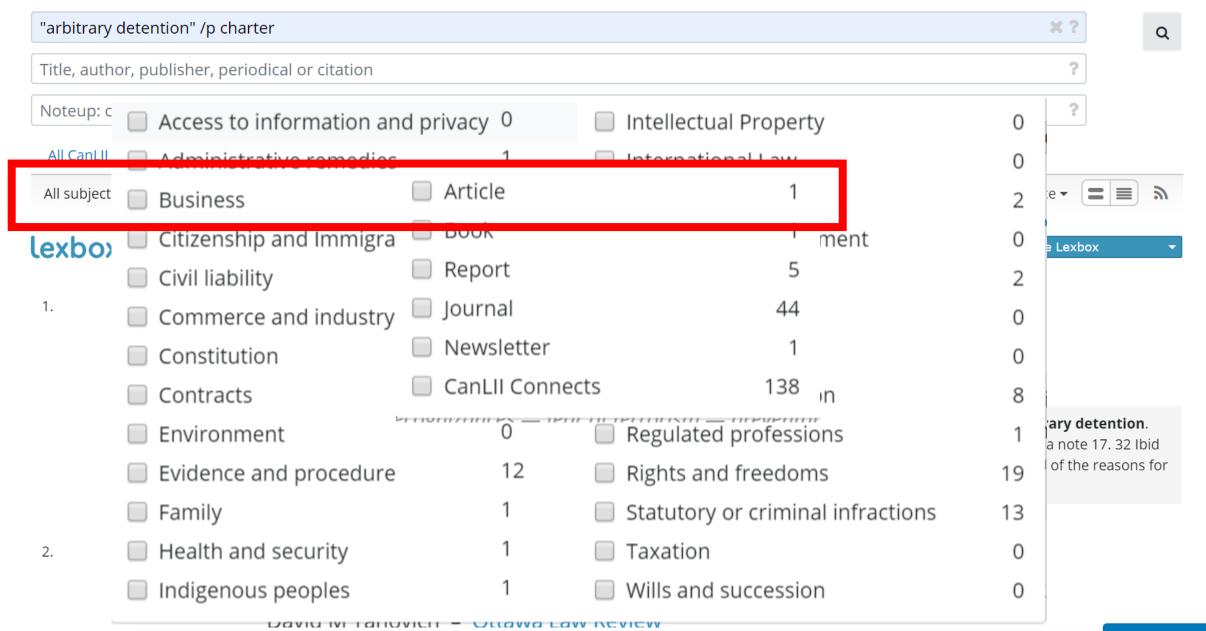
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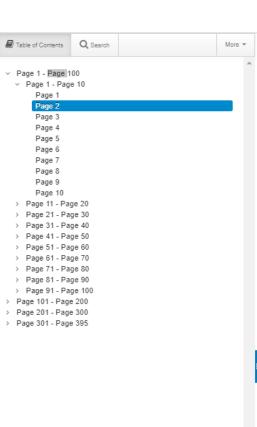
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