Introduction to Legal Research

Legal Research and Writing Program
September 14, 2020
John Bolan & Alexia Loumankis
Library Orientation:
Spaces
Services
Resources
People
Visit the Library

• Hours of Operation
  • Mon-Thurs: 9-9, Fri: 9-5, Sat: 10-6, Sun: 12-4

• Study Rooms
  • Main floor: 2 students/room, Upstairs: 4 students/room

• Information Commons = Computers

• Information Desk (Circulation, IT)

• Reference Desk is virtual: law.ref@utoronto.ca

• Website: library.law.utoronto.ca
IT Services

- Located at Information Desk
- Staffed Monday – Friday during Library’s opening hours
- Assist with
  - Wireless printing
  - Connecting to U of T’s wireless network
  - Library’s scanner/photocopier/printer
  - Information Commons computers
- Contact: helpdesk.law@utoronto.ca
Physical Collection

• Law Stacks only accessible through curb-side pick-up and Hathi Trust
  • Look up book in Library Catalogue and click on Get Help
  • If available in Hathi Trust, you can read it online
  • If not, you can order the book using your library barcode
  • Email will be sent as to when you can pick-up books at the Circulation Desk
  • You can order books from other U of T Libraries in same fashion and pick them up at Robarts Library

• Short-term loan books are not accessible
  • Many are online through catalogue or on lists on our website
  • For those that are not online, we will endeavor to scan portions for you adhering to copyright laws
Online Collection

• Bookmark our Website: library.law.utoronto.ca
• Access to online books, journals, databases, legislation, etc.
• Vast majority of our other online resources are available from anywhere off-campus using your UTORid
• A small number require a special password or can only be accessed from campus; instructions are included on our website
• We also have digitized exams going back to 2011
Library News

September 2020 Update

On September 8, 2020, the Bora Laskin Law Library will reopen only to the Faculty of Law's students, staff, and faculty. [Fall 2020 Library hours](#)

The U of T community outside of the Faculty of Law may borrow our books through the [Robarts Library Curbside Pickup Service](#).

Read more about our [COVID and Fall 2020 Access policies and updates](#).

And follow us on [Instagram](#) and [Twitter](#)!

The Bora Laskin Library, University of Toronto
## Research Guides

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**Authoritative and recent books by topic; very useful for first year courses**
Core Texts

**Constitutional Law of Canada**, by Peter W. Hogg
Call Number: KE4219.H62 2007 Course Reserves v. 1-2 [looseleaf]
Also available on **online** to the U of T community

**Constitutional law** by Patrick J. Monahan, Byron Shaw, Padraic Ryan
Call Number: KE4219.M66 2017 Course Reserves
Also available on **online** to the U of T community

**Oxford handbook of the Canadian Constitution** by Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers
Call Number: KE4219.O94 2017 Course Reserve
Also available on **online** to the U of T community

**The law of the Canadian Constitution** by Guy Régimbald, Dwight Newman
Call Number: KE4219.R446 2017 Course Reserve

**The Charter of Rights and Freedoms** by Hon. Robert J. Sharpe & Kent Roach
Call Number: KE4381.5 S54 2017 Course Reserves
Also available on **online** to the U of T community
Lexis Advance Quicklaw & WestlawNext Canada

- These databases include vast amounts of case law, legislation, secondary materials (incl. books and law journals), and additional research tools like indexes, forms, etc.
- All students have their own accounts/passwords to these services
- Free while you are in law school; expensive in practice
- Take advantage of free access to become experts in their use
- You will develop a preference, but try to use them both as your future place of employment may have a subscription to only one of these tools
- Not part of a library catalogue search or a Google search; you have to search them separately
### Primary Sources
- **Cases and Decisions**
- **Securities Regulatory Materials and Bulletins**

### Commentary
- **Canadian Encyclopedic Digest**
- **Articles and Newsletters**
- **Causes of Action, Defences and Remedies**

### Court Documents
- **Pleadings, Motions and Facts/Briefs**
- **Insolvency Court Filings**

### Finding Tools (not in federated search)
- **Browse Legal Topics**
- **Canadian Abridgment Digests**
- **Legislative Concordances**
- **Legislative Watch**

### My Subscriptions
- CriminalSource
- EmploymentSource
- Environmental Offences
- Sentencing
- Quantum Service
- Estates & TrustsSource
- Family Source
- InsolvencySource
- IPSource
- LabourSource
- LawSource
- Litigator
- SecuritiesSource
- Solicitor's Core (ON)

### Browse Legal Topics

**Alexia's Research (0)**

**Favourites**

**Custom Pages**

View all Custom Pages

### Product Information
WLNC & LAQ Training Webinars

WestlawNext Canada
• Friday Oct 2\textsuperscript{nd}, 12:45-1:45 pm
• Friday Oct 16\textsuperscript{th}, 12:45-1:45 pm

Lexis Advance Quicklaw
• Thursday Oct 1\textsuperscript{st}, 12:45-1:45 pm
• Thursday Oct 8\textsuperscript{th}, 12:45-1:45 pm

• Details on how to attend will be sent to you shortly
Legal Citation

• At U of T Faculty of Law we follow the Canadian Guide to Uniform Legal Citation, aka the McGill Guide
• The final word is up to your course instructor
• You will cover citation more thoroughly in LRW
People

Feel free at any time to make an appointment with a librarian for research assistance

john.bolan@utoronto.ca
sooin.kim@utoronto.ca
alexia.loumankis@utoronto.ca
law.ref@utoronto.ca
People

sufei.xu@utoronto.ca (Inter-Library Loans)
anna.szot.sacawa@utoronto.ca (Library Account/Circulation Matters)
Don’t fret! We are here to help you!

Get in touch any time.

Keep calm and study on.
Agenda

- Why legal research matters
- Basic legal research concepts and process
- Publishing/Reporting of court judgments
- Anatomy of an online judgment
- Citation primer
Why is research so important?

- Fundamental to the practice and the study of law.

In legal practice:
- litigation
- other areas?
  - yes!
  - Legal opinions, memoranda in every area of law
  - Business/client research

All legal advice is premised on expertise in some area of the law, and that expertise is acquired through....... some sort of research
Research: a mainstay of legal practice

- In the early years of your career you are often evaluated on the quality of your writing and research.

- Later on in your career you will be evaluating research done by others, and of course you will be maintaining current awareness of the legal situation throughout your career.

- Bottom line: Throughout your careers you will be connected in a variety of ways to legal research. It’s a conduit for the knowledge that will undergird your professional practice.
Academic Success

Throughout law school you will be writing substantial papers that require effective research

– You can miss the target on some analytical aspects of an issue and still provide at least a decent answer by compensating in other areas

– But failing to include key cases or statutes is another matter - hard to come back from that mistake [true in practice as well as school].
Some Research Concepts

- **Secondary Sources**
  - Sources which explain or describe the law.
    - Books
    - Journal articles
    - Encyclopaedias
    - Other forms of academic commentary

- **Primary Sources**
  - These are the law itself:
    - Constitution
    - Legislation
    - Cases
there is a lot of information present that you usually don’t find in your casebooks and coursepacks.

Let’s break down a case as it appears in the online databases, because
HOW CASES ARE PUBLISHED

- Case Reporters History

- Present day
  - Right now, some case reporters are still printed – these are also available online
  - As well, there are a lot of cases that available purely online

Canlii/Bailii, WL, QL, Justis (UK)
  - Even cases that are only available online still need to be cited, and still have database identifiers/citations
    - Eg 2001 CarswellBC 2502
Cooper v. Hobart

Mary Francis Cooper, Appellant v. Robert J. Hobart and Her Majesty the Queen in right of the Province of British Columbia, Respondents and The Attorney General of Canada, the Attorney General for Ontario, the Attorney General for New Brunswick, Her Majesty the Queen in right of Alberta, the Minister of Justice and the Attorney General for Alberta, the British Columbia Securities Commission, the Ontario Securities Commission, and the Alberta Securities Commission, Interveners

Heard: June 20, 2001
Judgment: November 16, 2001
Docket: 27880
Docket: 27880


Counsel: David P. Church, Andrew J. Pearson, Ian G. Schildt, for Appellant
D. Clifton Browse, Karen Horsman, Keith L. Johnston, for Respondents
Donald J. Rennie, for Intervener, Attorney General of Canada
Sara Blake, for Intervener, Attorney General for Ontario

Written submissions only by Cedric L. Haines, Q.C., for Intervener, Attorney General for New Brunswick
Tim Hurbut, for Interveners, Her Majesty the Queen in right of Alberta, Minister of Justice, and Attorney General for Alberta
James A. Sosa Angus, Lorne Herlin, for Intervener, British Columbia Securities Commission
Neil Finkelstein, Johanna M. Superina, for Interveners, Ontario Securities Commission and Alberta Securities Commission

Subject: Torts; Civil Practice and Procedure; Public

Related Abridgment Classifications

Civil practice and procedure
V Class and representative proceedings
V.1 Representative or class proceedings not under class proceedings legislation
V.1.a Requirements
V.1.a.vii Miscellaneous

Civil practice and procedure
V Class and representative proceedings
V.2 Representative or class proceedings under class proceedings legislation
V.2.b Certification
V.2.b.i Plaintiff's class proceeding
A registered mortgage broker acted as broker for large syndicated loans. The broker arranged for investors to pool their funds for the purpose of making those loans. It was alleged that the funds provided by investors were used by the broker for unauthorized purposes. The broker was investigated by the registrar of mortgage brokers and the broker’s licence was suspended. Soon afterward the broker went out of business. Money was outstanding to the investors, and the amount that they would likely realize from the security taken from the loans was such that there would be a shortfall of millions of dollars.

The plaintiff, one of over 3,000 investors who had advanced money to the broker, brought an action against the registrar. The statement of claim alleged that the registrar breached the duty of care that he allegedly owed to the plaintiff and other investors. The plaintiff alleged that the registrar was liable in negligence for failing to oversee the conduct of the broker, which had been licensed by the registrar. The plaintiff asserted that the registrar failed to suspend the broker’s licence until more than a year after the registrar was aware of serious violations of the Mortgage Brokers Act, and failed to notify the investors that the broker was under investigation. The plaintiff applied to have the action certified as a class proceeding.

The trial judge concluded that the registrar would have reasonably contemplated that carelessness on his part was likely to cause damage to the plaintiff, a person dealing with a mortgage broker. The trial judge held that therefore there was a prima facie duty of care, and that there were no considerations negating or limiting that duty of care. The trial judge held that the pleadings disclosed a cause of action. The action was certified as a class proceeding. The registrar and the Crown appealed. The Court of Appeal held that even though the registrar might reasonably have foreseen that losses to investors would result if the registrar was careless in carrying out his duties under the Act, there was not a sufficiently close relationship between the parties. Therefore, a prima facie duty of care was not established. The appeal was allowed. The plaintiff appealed.

**Held:** The appeal was dismissed.

The first branch of the applicable test required an answer to the question of whether the circumstances of the case disclosed reasonable and foreseeable harm, and proximity sufficient to establish a prima facie duty of care. The case did not fall within and was not analogous to a category of cases in which a duty of care had previously been recognized. Nor was this a situation in which a new duty of care should be recognized. In this case, the factors giving rise to proximity, if they existed, had to arise from the statute under which the registrar was appointed. The Mortgage Brokers Act does not impose a duty of care on the registrar to investors with mortgage brokers regulated by the Act. The registrar’s duty is rather to the public as a whole. A duty to individual investors would potentially conflict with the registrar’s overarching duty to the public. A review of the relevant powers and duties of the registrar under...
Anatomy of A Case Report

Headnote

- The headnote is created by the editorial team to summarize the facts and holding
- Headnotes
  - should never be quoted or cited as they are not part of the judgment
  - Lack sufficient detail to allow you to fully engage with the reasoning in the judgment:
  - BOTTOM LINE: you need to read the actual case
## Table of Authorities

**Cases considered by Major J.:**


The judgment of the court was delivered by The Chief Justice, McLachlin C.J.C. and Major J.: 

1. The present appeal revisits the Anns test (from Anns v. Merton London Borough Council (1977), 1978 A.C. 728 (U.K. H.L.) ) and, in particular, highlights and hones the role of policy concerns in determining the scope of liability for negligence. The appellant is an investor who alleges that the Registrar of Mortgage Brokers, a statutory regulator, is liable in negligence for failing to oversee the conduct of an investment company which the Registrar licensed. The question is whether the Registrar owes a private law duty of care to members of the investing public giving rise to liability in negligence for economic losses that the investors sustained. Such a duty of care is as yet unrecognized by Canadian courts. For the reasons that follow, we find that this is not a proper case in which to recognize a new duty of care. In the course of these reasons, we attempt to clarify the distinctive policy considerations which impact each stage of the Anns analysis. 

1. Facts 

2. Eron Mortgage Corporation ("Eron") was registered as a mortgage broker under the Mortgage Brokers Act, R.S.B.C. 1996, c. 313 ("the Act"), from early 1993 until 1997. On October 3, 1997, the respondent, Robert J. Hobart, in his capacity as the Registrar under the Act ("the Registrar"), suspended Eron's mortgage broker's licence and issued a freeze order in respect of its assets. 

3. Eron acted as a mortgage broker for large syndicated loans. It arranged for numerous lenders (or investors) to pool their funds for the purpose of making a single loan to a borrower which was typically a developer of commercial real estate. The syndicated loans were made in the name of Eron or one of its related companies, which held the security in trust for the investors. 

4. It is alleged that the funds provided by the investors were used by Eron for several unauthorized purposes, such as funding interest payments on other non-performing mortgages and paying for personal items for the benefit of the principals of Eron. It is currently estimated that $222 million is outstanding to the investors on these loans. Investors will likely realize only $40 million from the security
Concurring & Dissenting judgments

- Concurring judgments (judges agree with the decision but for a different reason)
- Dissenting judgements (judges disagree with a decision or part of a decision and explain why)
- With some rare exceptions, both of these will come after the judgment of the court in the written judgment
Recap: Anatomy of a Case

- **Anatomy of a case Report**
  - Case information (contents will depend on the publisher) but this section will likely contain the following information
    - Style of Cause
    - Citations
    - Court
    - Judges
    - Counsel
  - **Headnote**
    - The headnote is created by the editorial team and summarizes the case and highlights all the key points of law considered in the case.
    - Headnotes should never be quoted or cited as they are not part of the judgment
  - **Authorities**
    - List of Cases, Legislation and Secondary Sources cited and considered. This is still not part of the judgment
  - **Judgment of the court**
    - The judgment is the law – the beginning of the judgement is indicated by the judges name
    - Concurring and dissenting judgments, with some exceptions, follow the judgment of the court.
Noting up

- Refers to the process of finding cases that have considered other cases or legislation
  - Essential part of legal research. Necessary to determine the precedential value of a case, and obtain courts’ interpretations of legislation
  - When analyzing what the law is for an issue, you will almost never confine your analysis to a single case – you will typically need to find the leading cases, and then more recent cases that have applied or adapted them to form your opinion. And that’s what noting up helps you do.

You will cover this in LRW
When to cite

- For articles and journals you cite for the regular reasons: to acknowledge the source of your quotation, insight, information, whether you are quoting it directly or not.

- Any time you mention a case or a law.
2 forms of case citation in Canada

Neutral citation

- *Cooper v Hobart*, 2001 SCC 79.

Non Neutral citation

Citing Legislation

- **Access to Information Act, RSC 1985, c A-1.**
  - RSC 1985, c A-1 = Revised Statutes of Canada 1985 chapter A-1

- **Alternative Fuels Act, SC 1995, c 20.**
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* Content under Finding Tools and some Forms and Precedents are not included in federated search.
E - 1 General Rules

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- E - 1.3 Footnotes: Rules
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- E - 1.5 Pinpoints
- E - 1.6 Online Resources
- E - 1.7 Citing Sources that Quote or Reprint the Original Source
- E - 1.8 General Rules for Quotations
- E - 1.9 Writing in a Foreign Language
Remote students!

- We are available to help you with all questions, big or small.
- Whether it’s citation, research strategy or problems finding a case or article, please ask us
- We can meet virtually via Microsoft Teams, Zoom as well as by email & phone. Please reach out to us with any questions you have.