



LEGAL RESEARCH—2004

PURPOSES AND PRINCIPLES OF LEGAL RESEARCH

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I. The Importance of Legal Research

Two things that have long puzzled me are the seeming lack of understanding as to the role of legal research (and those who do that work) and the reluctance of clients to pay for legal research (and concomitant willingness of lawyers to write it down or even write it off). Surely every lawyer has some recall of his or her studentship and early practice, and even of recent forays to the library. No doubt also every lawyer would acknowledge that it is impossible to know more than a small fraction of the law, even in a narrow field of practice. One must also acknowledge that, more often than not, legal research is at the heart of every matter on the lawyer's desk.

Questions of law requiring legal research arise in every aspect of the practice of law, from aboriginal law to wills and estates; in solicitors' practice and in litigation practice; and at every level of tribunal from the Supreme Court of Canada to the Small Claims Court to private arbitrations and mediations.

Without wanting to appear self-aggrandizing (either individually or on behalf of the class of research lawyers in which I claim membership), I suggest that legal research should be considered the backbone of the practice of law and the most valued billable activity of a lawyer (including student). The simple truth is that research as to the law (legal research) is the defining characteristic of a lawyer—it is what separates and defines the profession of law from all others, and it is integral to every aspect of the practice of law.

In the books on trial practice, there are all manner of comments to the effect that cases are won or lost because of effective examination of witnesses at trial or clever questioning at examination for discovery or by careful review of the documents. Similarly, success for solicitors' practice comes from drafting documents (contract, wills) that withstand scrutiny and challenge, and performing tasks in a way that achieves the desired goals. But, I suggest, all of those tasks are made meaningful and useful only when performed in light of the applicable law. That is to say, it is knowledge of the law that tells us what facts are relevant, what admissions should be sought or avoided, what objections should be raised at trial in order to preserve success on appeal, what contractual clauses will be necessary and effective to achieve the client's goals, what wording should be used in a will to achieve the testator's intentions,

1 Thanks to Linda Morrison and Lisa Peters, who read a draft of this paper; Ms. Peters made many useful editorial comments. Responsibility for content and form rests with me.

what procedural steps must be taken, and how they should be performed, and so forth. And that knowledge of the law is obtained by legal research.

A great deal of legal research is done by students or junior lawyers and as such it may not be seen as being of high importance. That is a grave error. There may be many practical reasons why legal research is delegated by senior lawyers to more junior lawyers, but surely it is not based on any lack of importance to the task. In *Osborne v. Hammerly*, 2002 BCSC 1650, Registrar Saintry said at para. 42:

It was wise for the solicitor to have much of the work performed by more junior counsel, rather than [senior counsel] whose hourly rate is considerably higher than [junior counsel's]. That being said, however, in my opinion, there might have been some economies of scale realized had more senior counsel undertaken some of the work, even at a higher hourly rate, particularly research on some of the law which, while based on a complicated set of facts, is not tremendously contentious (e.g., the law related to the contempt).

It is trite to say that the law of contract, law of tort (negligence) and the rules of professional responsibility require a lawyer to have sufficient knowledge of the law and skill in research. As a single example only, I refer to *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147 (S.C.C.) at 208, where Le Dain J. said:

The requirement of professional competence that was particularly involved in this case was reasonable knowledge of the applicable or relevant law. A solicitor is not required to know all the law applicable to the performance of a particular legal service, in the sense that he must carry it around with him as part of his 'working knowledge,' without the need of further research, but he must have a sufficient knowledge of the fundamental issues or principles of law applicable to the particular work he has undertaken to enable him to perceive the need to ascertain the law on relevant points. The duty in respect of knowledge is stated in 7 *Am Jur* 2d, Attorneys at Law [para.] 200, in a passage that was quoted by Jones J.A. in the Appeal Division, as follows: 'An attorney is expected to possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and to discover those additional rules or law which, although not commonly known, may readily be found by standard research techniques.'

This was quoted with approval by Gibbs J. (as he then was) in *World Wide Treasure Adventures Inc. v. Trivia Games Inc.* (1987), 16 B.C.L.R. (2d) 135 (S.C.). That case involved an application for an interlocutory injunction. The application materials, in Gibbs J.'s view, were seriously deficient. He wrote (bear in mind this is a 1987 judgment) at 141-42:

In my opinion the conduct of the plaintiff's solicitors in this case fell far short of the reasonable care, skill and knowledge which the plaintiff was entitled to expect. The *Amer. Cyanamid* principles ought by now to be part of the working knowledge of a competent counsel in this jurisdiction. If they are not, then any counsel contemplating an injunction application ought to be able to perceive the need to research the law before preparing the material to be filed. It may be that the *Aetna Fin.* case is not well known, however, a moderate amount of research would quickly have brought it to light, and that research should have been undertaken as part of the preparation for a bid for what are known to competent counsel to be extraordinary remedies not lightly granted by the court. It is for these reasons, and in accordance with the principles I have read from the *Rafuse* case that I conclude that the plaintiff's solicitors were negligent in the performance of their duty to him.

In my view, lawyers (especially those bound for a court appearance) ought to do the research that is capable of earning an accolade for its utility – not that one would do so merely for such recognition. But certainly, one would hope to avoid any chastisement such as these:

I regret to say that counsel provided little assistance in terms of the law with respect to the definition of fences. The authorities provided by counsel were directed

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towards the so-called application to modify the Building Scheme, an application which I have concluded does not properly lie before this court. Apart from a reference to *Black's Law Dictionary* provided by defence counsel any references to authorities come from my own research. [*Rideout v. Fliss*, [1998] B.C.J. No. 714 (QL) (S.C.) at para. 28]

Unfortunately, at appeal no authority was submitted to me by counsel for proposition that such a statement is admissible. My inclination at the close of the argument was to dismiss the appeal. I adjourned the appeal to be on the safe side and to do some research. I have found authority on point which was not hard to find. I expect in cases where we are dealing with appeals which involve people's rights that counsel will be a bit more diligent in seeking out this kind of authority. This appeal was set down several months ago, the appellant retained counsel to advance his position in law, not on facts and when a point such as this is raised our adversary system only functions properly if the authorities are canvassed and argued by both sides as to their application. I regret that was not done in this case and I hope in the future I will not be in a position to having to find the authorities to support an appellant's position. [*R. v. Milne*, [1981] B.C.J. No. 1080 (QL) (Co.Ct.) at para. 6]

I have not fixed damages. This is because the defendant flung at my head near the conclusion of his [sic - his] argument, as relevant to damages, a reference to s. 248(2) of the *Insurance Act* and a statement that \$3,350 had been paid to the plaintiff without any proper explanation as to why the \$3,350 was paid or what it purported to cover, and without any attempt at analysis of s. 248(2) or any reference to other applicable provisions of the statute, such as s. 235A and the second schedule to the Act. He gave me in fact, no real argument, and plaintiff's counsel, confronted with little, added little to it. There is too strong a tendency, in these piping times, for lawyers to do this sort of thing, to make a bare reference to a statute or to a document, unaccompanied by any exposition or reasoning and thereafter to expect the judge to do the necessary research. I want from counsel detailed written arguments. [*Lovelace v. Fossum*, [1971] B.C.J. No. 234 (QL) (S.C.) at para. 1 per Wilson C.J.S.C.]

In *Copeland v. Smith*, [2000] 1 All E.R. 457 (C.A.) at 462-63, Brooke L.J. said:

... it is quite essential for advocates who hold themselves out as competent to practise in a particular field to bring and keep themselves up to date with recent authority in their field. By 'recent authority' I am not necessarily referring to authority which is only to be found in specialist reports, but authority which has been reported in the general law reports. If a solicitors' firm or barristers' chambers only take one set of the general reports, for instance the Weekly Law Reports as opposed to the All England Law Reports, or the All England Law Reports as opposed to the Weekly Law Reports, they should at any rate have systems in place which enable them to keep themselves up to date with cases which have been considered worthy of reporting in the other series. If this is not done, judges may be getting the answer wrong through the default of the advocates appearing before them.

The English system of justice has always been dependent on the quality of the assistance that advocates give to the bench. This is one of the reasons why, in contrast to systems of justice in other countries, English judges are almost invariably in a position to give judgment at the end of a straightforward hearing without having to do their own research and without the state having to incur the cost of legal assistance for judges because they cannot rely on the advocates to show them the law they need to apply.

I sincerely hope that under the new Civil Procedure Rules regime no judge will have the experience that Judge Kenny had on 31 March 1999 just before the new regime started, when he raised a question as to whether there was any judicial authority on the point he had to decide and received no assistance from those who were appearing before him who were concerned with the issue, even though there had been recent

Court of Appeal authority directly in point. *Henderson v. Temple Pier Co. Ltd.* had been reported in the All England Law Reports series in July 1998 and in the Weekly Law Reports series in October 1998. It is, of course, the duty of an advocate under the English system of justice to draw that judge's attention to authorities which are in point, even if they are adverse to that advocate's case.

In short, legal research serves an important purpose in the practice of law.

I doubt that many lawyers as routinely and willingly write down fees spent for conducting examinations for discovery or for revising draft contracts, as is done for fees related to legal research. Perhaps this is due to poor billing practices by those who do the research and record the time. This is a topic discussed by Marko Vesely. Perhaps there is a perception that research involves too much wheel-spinning or too little use of institutional learning. If so, maybe knowledge management tools may help us recover our fees as well as enhance our work. This is discussed by Jennifer Spencer, Birgitta von Krosigk, and Carol Anne Finch-Noyes.

II. What is Legal Research

Very often the work of legal research is narrowly viewed as simply sitting in the library finding books and turning their pages or sitting in front of the computer screen typing out commands and scrolling down the screen. But that is only part of the job. The job actually begins at an earlier conceptual stage, with knowledge of what resources exist and what information they contain. This moves into a knowledge of how to use the resources and how to find things that might be obscurely referenced. Often, legal research requires the researcher to re-state, re-imagine, or simply realize the true issue, since clients and even instructing lawyers don't always frame the issue correctly. Then we come to the finding of raw materials by turning pages and scrolling screens. After that, there is the analysis of those raw materials, the analysis of the case at hand, and the analysis of the raw legal materials to the case at hand. And then it becomes critical to take that thinking and put it into a useable form either by oral or written report to the assigning lawyer or client. Finally, that "work product" must be in the proper form, be it legal memorandum, opinion letter, factum or something else.

So research is not a simple task nor is it a single task. It is a multi-faceted task requiring several skills and abilities and a wide range of knowledge. At minimum, good legal research involves:

- (1) Familiarity with the area in issue (e.g., criminal law, insurance law, defamation law, etc.).
- (2) Ability to analyze the facts so as to separate the relevant from the irrelevant.
- (3) Ability to find additional law that is applicable to the issue.
- (4) Ability to analyze the applicable law, including ability to synthesize and draw parallels between different areas of the law.
- (5) Ability to provide conclusions, practical results, and assist in strategy.
- (6) Ability to express the results and conclusions in an appropriate manner (in writing or orally, by memo or opinion letter or factum).
- (7) Knowledge of the research tools available and the use of those tools.
- (8) Ability to determine the appropriate scope of research: enactments, cases, texts; B.C. law only; Canadian law only; or something else? Do you need a long historical and academic approach, or a single case to support a proposition? Very often it will be necessary to have a research plan and strategy. But not every assignment will require the "full treatment" nor even will a "strategy" always be necessary. This aspect of the practice of legal research requires further and better treatment and is the subject of Do-Ellen Hansen's paper.

Often an assignment is straightforward and “standard” legal research is all that is required. Other times, a real creativity and willingness to take risks is needed. The ability to discern whether the assignment is the former or the latter is part of legal research. If the latter, then one needs a breadth and depth of knowledge and an ability to write (or speak) convincingly and coherently. A novel or unusual argument needs to be clearly expressed if it is to have much hope of success.

Sometimes a project will be “quick and dirty,” requiring only the quotation of an enactment or a passage from a judgment (notorious or obscure). Other times, the project will be “no stone unturned.” This is sometimes dictated by time, purpose, or resources available (client willingness to pay), but the researcher can play a role in making that determination. I doubt that anyone in the profession would be much impressed by a “no stone unturned” memo on the standard of appellate review concerning findings of fact.

A moment ago I referred to “standard” legal research. That is no pejorative nor does it necessarily signify that the work is easy. Often, even for typical work, that is not so. Statutory research is one example. It is a potentially difficult and time-consuming task to obtain the relevant enactment. Remember that, although the question is being asked today, the relevant event probably took place in the past and so the enactment in force then is applicable. If someone wants to know the proper process of amending a company’s articles on April 17, 1986, there is no point in quoting the *Business Corporations Act*, S.B.C. 2002, even though that is the enactment in force today and is, therefore, the “current” law. Nor is one safe in looking merely at the volume of R.S.B.C. 1979 (bound or loose-leaf), for reasons that should be apparent. Good statutory research requires a careful attention to detail and a forensic ability, coupled with a strong knowledge of the research tools available and their method of use. Teresa Gleave’s paper is a useful resource to anyone doing this kind of work.

Even when one has the right enactment, it may be no simple task to properly interpret it. A good researcher may draw on resources from dictionary to Hansard, statutes *in pari materia*, or similar statutes from foreign jurisdictions. The job might be aided by tracing the legislative history of the statute, referring to Law Reform Commission Reports, even appealing to common sense. The legal researcher must be alive to these options and to call on them appropriately. This sort of work is discussed in the paper by Lisa Peters.

Cases pose much the same sort of puzzle to the researcher. Do you have the leading case? Do you have a case sufficiently like the case at bar? Are the cases in your argument still good law? Are the cases you rely on likely to remain good law? As an example of the sort of thing that can arise, consider the well-known change in law by the House of Lords regarding the duty of care in negligence. The House of Lords took a position in *Anns* in 1978, but resiled from that position in the *Murphy* decision in 1990. A good legal researcher in 1991 would have sounded a warning bell as to whether *Anns* and the Canadian cases that followed or adopted it would remain good law here in Canada or whether Canadian law would follow suit with the *Murphy* decision. Case law research is more fully discussed by Paul Dawson in his paper.

All of the foregoing goes to the researcher’s task of finding and gathering the raw research material.² I hasten to add that this is only the start of legal research. I think of the work as being much like the process of making jewellery; a process that runs from prospecting, through mining, smelting, refining, and finally to craftsmanship.

2 See Barbara E. Cotton, “Basic Legal Research: How to Gather Law Research Material” (1993), 15 Adv. Q. 332.

III. The Tools of Legal Research

The tools of the trade of legal research are changing. From the time of Henry II to about 1975, the tools were print materials: textbooks, reporters, and statute volumes, along with finding tools like Canadian Abridgment, Canadian Encyclopedic Digest, Halsbury's, the English and Empire Digest, and so forth. Now we have online commercial databases (Quicklaw, Lexis, eCarswell), free websites (the various superior courts, the Department of Justice, the B.C. Legislature, Canlii, Austlii), CD-ROMs, not to mention a growing number of print publications such as annotated statutes and lengthy texts on specific issues. Many print publications are available online in various ways. A good legal researcher will know the tools, know what they contain, know how to use them, and know when to use them. To take a single example, in my view, the index volumes of report series such as B.C.L.R., W.W.R., C.C.L.I., and C.C.L.T., are much-overlooked as a research tool. One could spend a half day usefully learning what is in those index volumes and how to use them. Another useful learning exercise is simply to look at the books on the library shelf to see what books exist on various topics from various time periods from various jurisdictions. There are books on limitations, *res judicata*, product liability, pure economic loss, etc., that provide a wealth of specific learning in supplement to the general texts on the major areas of law such as contract, tort, insurance, and so forth. The formats of the books too are useful to know—general texts, monographs, and annotated statutes offer different options for the researcher. The Courthouse Library is the paradigm of a law library, and Linda Morrison can shed more light on this topic.

Too often, those conducting legal research turn straight to the computer and thus get immersed (even drowned) in the particulars, when it would be better to read a book to determine the contours of the generalities. It is often a mistake to race to the computer and search. For example, suppose you have been asked to look into the law on setting aside a default judgment. Someone who goes straight to the computer and does a search in the nature of “setting aside default judgment” will almost certainly be overwhelmed with the cases that are returned from that search result. Even if one did wade through the stack of cases, it would be to little or no avail. By contrast, 15 minutes with something like McLachlin & Taylor or the White Book would yield the truly important law and principles and would even likely find you some supporting cases that would be useful to your particular file. At this point, if needed, a computer search might perhaps be of some additional benefit. There is a plethora of other topics where a similar warning note could well be sounded, for example: interlocutory injunctions, adding defendants after expiry of a limitation period, extension of time to file a notice of appeal, dismissal for want of prosecution.

Computer-based research, in my view, is unbeatable for finding something specific, but it cannot give the legal researcher the overview and the general understanding of an issue that comes from reading a few pages of a text book or an article. For that matter, I find that it is often possible to learn a lot about an area of law just from looking at the table of contents to the relevant texts or the relevant volume of the Canadian Abridgment. It is often quicker and more effective to use these tools than the computer (be it CD-ROM or online service). Not that I denigrate computer-based research, for indeed, without those tools, some kinds of research would be impossible or prohibitive. For example, I was once asked to determine how many *Wills Variation Act* trials a particular judge had heard. That kind of project would be virtually impossible by use simply of the book resources. But a fairly simple computer database search provided at least some sort of answer. On another occasion, I was asked to find a case and all the lawyer could remember of it was that it contained an unusual word (gate-keeper) and the approximate timeframe. Without a computer search, I doubt that I ever could have found that case. As it was, I found it in a matter of minutes.

Computer-based research tends to favour “current” information, as is particularly obvious when it comes to the statutory resources available. Currency is all well and good, but, as I have stated above, very often it is something in the past that we are interested in. Computer-based research is thus something of a boon but it also contains pitfalls for the unwary or the uninitiated. No doubt these and other issues concerning computer based research will be discussed by the panel.

One research “tool” that is often overlooked, both in availability and credit, is other people. A good number of questions can be answered by asking another lawyer, or secretary, or registry staff, etc.

A further warning note I would like to sound is that no tool has it all. Even for something as comparatively simple as noting-up a case, I consider it crucial to use the complementary resources available (e.g., on-line case citator features and the Canadian Abridgment cases judicially considered).³

In the end, good legal research involves knowing what the research tools are and how to use them appropriately. This is as true in the legal research context as it is in other contexts. A hammer is a wonderful tool, but not much good for cutting bread or whisking eggs. Even a modern high-tech tool is not necessarily the best tool for the job, nor even better than its low-tech counterpart. A microwave oven is often not as good as a traditional fire, as anyone who has enjoyed a barbequed hamburger will attest.

IV. Who are Legal Researchers?

Research lawyers are a comparatively rare breed in the profession and we vary considerably in our roles and functions. Some write only memos, some write only factums; some appear in court from time and time, some never appear; some play a role in in-house professional development at their firm, some play no such role; some specialize in a practice area, some are generalists. The results are no doubt idiosyncratic to the lawyer and firm, and their interests and needs. But a couple of general observations might safely be made.

Research lawyers draw on an array of qualities and skills, including: resourcefulness, reliability, creativity, and co-operation.⁴ Speed-reading, and both elephantine and photographic memory, are nice features too. In my own practice, I am called on to do a diverse range of tasks, requiring me to be sleuth, archaeologist, curator, back-room strategist, intellectual agitator (sometimes trouble-maker), sounding-board, and match-maker.⁵

Research is not done for his own sake, but as part of a package. Research lawyers, as a result, do not operate in a vacuum, but are usually adjunct to the lawyer with conduct of the matter. That lawyer is, in all likelihood, more aware of the facts of the case and the overall strategy in play, and well-versed in the law of his or her area of practice. Yet that lawyer has engaged the service of a research lawyer. I think that this is not just a function of the need to delegate tasks in order to relieve a busy practitioner. I think it is because the researcher brings a fresh perspective and new ideas, and provides an opportunity to import concepts from one area to another.

V. Features of Good and Bad Legal Research

There are a number of features that one will find in good legal research work and there are a number of failings that one will find in poor legal research work. Without attempting to be exhaustive, I suggest the following two lists.

3 See Mark Gannage, “Noting-Up Cases” (1999), 21 Adv. Q. 489 at 490.

4 See Mark Gannage, “The Roles of Research Lawyers in Private Practice in Canada” (2001), 24 Adv. Q. 202, at 204.

5 See *ibid.*, at 206.

A. Standards of Quality

- (1) Be accurate. By “accurate” I mean that propositions be correctly stated, that cases be reliably digested, and that principles be candidly stated (warts and all). Accuracy also requires that the researcher cite the correct law (statute, case) with proper noting-up as to amendments, repeals, appeals, or overruling, as applicable. Accuracy and reliability go hand in hand. Consider also that your reputation, and that of those of your colleagues who rely on your work is at stake.
- (2) Be complete and comprehensive. Completeness and comprehensiveness require the researcher to consider all the possibilities. For example, having found the right statute, you now need to see if it has been considered in the cases. If it hasn’t been considered by a B.C. court, maybe another jurisdiction has a similar statute that has been judicially considered. Maybe the issue hasn’t arisen in the last decade—perhaps one needs to go further back. Maybe the issue isn’t just one of tort, but can also be framed (and thus researched) in contract. Resourcefulness is a virtue in this regard. Maybe you can’t find this topic in the C.E.D.—try Halsbury. Maybe the issue hasn’t arisen in motor vehicle law—try maritime law. Maybe the D.L.R. doesn’t report the case—try a topical reporter. A good researcher knows some back-roads and by-ways not readily accessible to other lawyers.
- (3) Be thoughtful. Most practitioners are hard-pressed with the demands of practice: client calls, meetings, running the business. Researchers can be less stressed in this regard, meaning that valuable “thinking time” is available. Give your harried colleague the benefit of that. Distinguish away the hurtful case; re-cast the issue to better express the true dispute; set out some helpful avenues of factual inquiry; suggest some potential questions for use at trial or discovery. Many times you will find that the true question is not exactly as posed to you originally. Occasionally, you will see novel approach—suggest it (with appropriate disclaimers).
- (4) Be precise. Precision is the counter-weight to completeness and comprehensiveness. Get to the point. Use only the cases that most closely bear on the issue. Don’t cite 10 cases for a single proposition where 1 will do. Don’t refer to extraneous secondary materials. The balance between precision and comprehensiveness is one that comes with experience and concomitant increase in your knowledge of law and judgment in matters of practice.
- (5) Be responsive. You have been asked a question—respond to it, clearly. Perhaps your answer has to be couched with qualifications. Perhaps the answer depends on facts that have yet to be determined. In the end, to the extent possible, a good researcher will answer the question. A memo that only digests and quotes from cases is not (usually) a final product. Such an approach is acceptable for journal articles and texts, but not for memos, opinions, and factums.
- (6) Be readable. (Of course, if you are providing your opinion orally, comments here must be modified *mutatis mutandis*.) A stock phrase in university is that a lecture is a method of transferring material from the notes of the lecturer to the notes of the student without passing through the minds of either. Good legal research work product should not be guilty of a similar failing. Say what you need to say and no more. Be organized. Use headings. Don’t quote long passages, and explain the relevance of passages you do quote. Set out the connections, highlight the points of distinction. Remember that your memo will be read by a lawyer in hurry with a heavy workload. That lawyer needs to distil it for the lay person (the client) and be ready to face challenges to your analysis from opposing counsel or the court. If clarity in expression is evidence of clarity in comprehension, then what impression does unclear expression convey?

B. Typical Failings

- (1) Too general. A memo that merely recites *Donoghue v. Stevenson*, *Hedley Byrne*, and *Anns*, is unlikely to be of much interest to most lawyers. Lawyers seeking research will know this sort of law and expect the researcher to go beyond those cases. Too often though, the junior or inexperienced researcher provides this sort of memorandum. The only real cure for this failing

is experience, which will bring with it an awareness of what is trite law and what is not. The researcher must help find the law that most directly answers the question. I often think of research as a form of hunting, and sometimes my quarry is not merely a tiger, but a left-handed, blue-eyed albino tiger.

- (2) Too vague. At the end of the project the researcher should be able to express an opinion. The researcher has read the law, much of which perhaps is not even in the memo. Nonetheless, awareness of that unexpressed law can assist the researcher in providing an analysis and providing a conclusion. It must also be remembered that research is not done for its own sake, but rather it is done in order to solve a problem. A critical part of the research task is to come to a conclusion. The researcher's conclusion may differ from that of the assigning lawyer, or the client, or the court, but that is a reality of the practice of law, and does not detract from the fact that the researcher's conclusion may assist those other players in coming to their conclusion.⁶ This is not to require the researcher to state that something is black when it is a shade a grey, but simply to state clearly that it is indeed a shade of grey and to describe that shade as accurately as possible.
- (3) Lacking context. This is particularly true where the person doing the research has jumped to the computer and sought a bunch of cases. A memo that merely provides dozens of case briefs is almost always guilty of this failing. Most legal writing benefits from a paragraph or two from the leading text and a statement of the essence of the leading cases. This sort of failing is noticeable when a memo provides many specific case briefs, but fails to cite or even mention the leading cases. A memo on interlocutory injunctions that omits mention of *R.J.R. MacDonald*, or on setting aside a default judgment that omits *Miracle Feeds*, will not be well-received, no matter how many other cases are referred to. As a side point, I will confess that I become instantly suspicious if I see citations only to on-line versions (QL or eCarswell) rather than to print reports like S.C.R. or B.C.L.R.
- (4) No analysis. A collection of case briefs and quotations is not legal research nor a legal memo, but merely a first draft. Those materials must be considered, analyzed, and related to the issue at hand.
- (5) Too academic. It may come as a surprise to some students during their articling year to find that the legal writing projects assigned by lawyers on behalf of clients have a practical purpose. The memorandum does not exist in order to be a treatise on the law nor is it a showcase for the researcher's erudition or brilliance. The memorandum should focus on the case at hand and the law that specifically applies to the question being raised. Except in unusual cases, no one wants you to trace the *Limitation Act* from its original enactment in 1623 or discuss the proposals of the Law Reform Commission that resulted in the 1975 version of the *Limitation Act*.
- (6) Too much quotation. This, I suspect, is a failure engendered by the computer and the ease with which one can cut and paste from screen to screen. It is all too easy to cut and paste from the electronic version of the case to your memorandum. Selecting and copying text is not analysis nor is it legal writing. It is, of course, a step in the drafting process but it is only a step and an initial step at that. A great deal of analysis, editing, thinking, and refining are still necessary if the researcher is to overcome this failing.

6 See Barbara Cotton, "Advanced Legal Research and Writing: How to Build a Cadillac" (1991-92), 13 Adv. Q. 232, at 241-42.

VI. Conclusion

Although legal research is not a particularly visible activity in the practice of law, it is indispensable. One way or another, it forms the foundation for all legal work. Legal research serves many purposes and is governed by a number of basic principles. Keep those purposes and principles in mind as you do your legal research.