

Legal Research

Legal Research Introduction and Legal Arguments

Last Reviewed: April 2022

Reviewed by: JES



If you are representing yourself in a family law matter, you are going to need to conduct legal research. This can be challenging. You are going to need to identify specific sections of law that apply to your case, as well as list specific past cases that help demonstrate the merits of your case.

NOTE: This Guidebook does not provide legal advice and must not be used as a substitute for the advice that a lawyer may provide. This Guidebook provides general information to help people with matters in the BC Supreme Court.

Legal Arguments

BC Supreme Court processes are very formal. To be successful, you will need to make legal arguments to help the judge make the decision that you want. A legal argument is a specific way to present information in court.

Legal arguments follow this formula: Based on the law, the facts of my case, and the evidence provided, this is the decision I want to court to make (your application). This formula is described below, with an example of a street vendor getting a ticket for selling hot dogs.

Decision = Law + Facts + Evidence			
Application: I am asking the court for this	Law: The law says this	Situation: My situation is this	Proof: Here is proof about my situation and why this law

Example			applies to my case
Application: The children should live with me most of the time	Law: Parenting arrangements should be in the best interests of the child	Situation: I have always been the primary caregiver. The other parent frequently travels for work.	Proof: Testimony about how the children have been cared for and the parties' work situation

Legal research is necessary for you to be able to make legal arguments. You need to understand what laws apply to your case. You need to be able to prove the facts of your case and present evidence to explain why these laws apply to your case.

This Guidebook provides you with key information to help you conduct legal research to build legal arguments that support your application to the court.

Laws and Regulations

There are five broad sources of law and rules that may apply to your case. They are:

- Canadian Constitution
- Legislation – also called Statues or Acts
- Regulations – which provide specific details
- Case law – which interprets legislation and creates a precedent
- Rules of court – which can include practice directives

The Constitution

The Constitution is the supreme law of Canada. All other laws must be consistent with the Constitution. There are two key documents that make up the Constitution:

- The ***Constitution Act, 1867***: This document sets up the Canadian government. It explains the powers of the Courts, the Federal Government, and the Provinces.
- The ***Constitution Act, 1982***: This contains what is perhaps the most famous part of the Constitution, the *Charter of Rights and Freedoms*. It also contains s. 35, which recognizes and guarantees Aboriginal rights, including Treaty rights.

Legislation

Governments create laws and once passed, these become legislation. These laws are often called “Statutes” or “Acts”. For example, the ***BC Family Act*** is provincial legislation in that it only applies to BC cases, and the ***Divorce Act*** is federal legislation and can be applied across Canada.

It is important to understand the law that is relevant to your case. Laws are often complex and in many cases, you will need to understand several different sections of the law. Be sure to review relevant legislation carefully. For separation and divorce, depending on your situation, you may refer to the ***BC Family Act***, the ***Divorce Act***, or both.

Read the Rules



A collection of current British Columbia legislation is available at the ***BC Laws*** website. A collection of current Federal legislation (that is, laws passed by the Canadian government and in force throughout Canada) is available at the ***Justice Laws Website***.

It is important to understand the law that is relevant to your case. Laws are often complex and in many cases, you will need to understand several different sections of the law. Be sure to review relevant legislation carefully. For separation and divorce, depending on your situation, you may refer to the ***BC Family Act*** or the ***Divorce Act***.

Regulations

Regulations look very similar to legislation. Regulations set out details of how legislation works. For example, the ***BC Motor Vehicle Act*** sets out broad requirements for cars in the province. The ***Motor Vehicle Act Regulations*** deal with more specific details, like precise guidance on minimum braking standards.

Case Law

Case law is created when judges interpret legislation in a case, and then this interpretation becomes the standard – sets a precedent – for the meaning of this legislation in other cases.

Canada has a “common law” system, which means that its judges are supposed to “follow” earlier decisions by other judges. This means that when a judge hears your case, they will be interested to know how other BC Supreme Court judges dealt with similar issues. If you can tell the court that another judge dealt with a similar issue and decided the way you say that they should, this will be very helpful.

For example, imagine that there is a law that says no bicycles are allowed on major roadways. A cyclist gets a ticket and then challenges this ticket in court. A judge interprets the law to define major roadways as any road with four or more lanes. The decision about major roadways becomes case law that determines how the bicycle law will be interpreted in other cases.

There are rules as to what cases a judge has to “follow”. Judges of the BC Supreme Court have to follow decisions of the BC Court of Appeal and the Supreme Court of Canada. Judges of the BC Supreme Court are expected to follow other decisions of the BC Supreme Court unless there is very good reason no to.

The BC Supreme Court does not have to follow decisions of courts from other provinces, the BC Provincial Court, nor tribunals like the Civil Resolution Tribunal. However, Supreme Court judges may find these decisions convincing and follow that case law.

One thing that complicates case law is that some court decisions that are no longer followed. This happens when a case is appealed, and the higher court decides that

the decision was a mistake. This is called “overturning” a decision. Once this happens, the BC Supreme Court will no longer follow that decision.

Understanding legislation and case law is challenging. What laws apply to your case and what case are relevant to your case? It’s hard to know. There may be hundreds (or even thousands) of cases that seem similar to yours. You may have trouble knowing which cases you should refer to in court.

Learn More



The National Self Represented Litigant Project has created a resource to help those moving through the court system on their own with legal research. See [**The CanLII Primer: Legal Research Principles and CanLII Navigation for Self-Represented Litigants.**](#)

It is a good idea to consult a lawyer about the law that applies to your case. See the Guidebook called [**“Free and Low-Cost Legal Help to Divorce in BC”**](#) for information getting free and affordable legal advice.

This Guidebook provides information on how to conduct legal research to identify cases that are relevant to your situation.

Rules of Court

Supreme Court Family Rules govern the conduct of family law cases in the BC Supreme Court. They are a road map for steering your case through trial and beyond. The rules are very important because they provide guidelines for each step in the litigation process and also set time limits for when certain steps must be completed. You can find answers to many of your questions about the litigation process by referring to these rules.

Court Forms

Almost everything that happens in court needs to be documented. As a case moves forward, there are a series of **court forms** that need to be completed, signed and submitted to the court. For example, to apply for a divorce, you need to file a Notice of Family Claim in **Form 3**.



Find the Form

Fillable versions of BC Supreme Court Family Forms are available from the **Government of BC website**. If you and your former spouse agree on the terms of your divorce, you can complete the online forms for a **Joint Divorce**.

Court Fees

There are a range of fees that need to be paid in order for your case to move forward. For example, there are filing fees for submitting various court forms. The court rules also set out the fees payable to the Crown (on behalf of the court), to the sheriff, and to witnesses. Fees are contained in **Appendix C of the Supreme Court Family Rules**.



Read the Rules

Supreme Court Family Rules

Starting Legal Research

This Guidebook is only a start to learning about legal research. There are many more resources that will help you on your way. The best way to fast-track your legal research is probably to talk to a law librarian. The guides and tutorials listed below will help you gain expertise on conducting legal research.

- **Courthouse Libraries** are an excellent place to start. They have resources you can access both in person and online, as well as knowledgeable staff to point you in the right direction.
- The **CANLII Primer** is an extremely helpful guide to conducting case law research using CANLII.
- The University of Ottawa has put together a helpful **online tutorial** that teaches some basics about legal research.

- The **Canadian Legal Research and Writing Guide** is helpful and comprehensive.
- This is a free publication available on **CanLII**, prepared by Catherine Best, an experienced legal research lawyer.
- Harvard Law School has also put together an online **legal research training tool**.

Identify the Issues

The first step in legal research is to identify all the questions you need answers to. Almost certainly you will have more than one issue. For example, you may have a procedural question (what Court do I need to file this with?), an evidence question (can I rely on my recording of a conversation with the defendant?), and a substantive question (can I get money if the other side lied to get me to sign a contract?). Before you start your research, try to think of all the issues you are unsure of.

Review Textbooks

You may want to consider starting legal research by referring to the leading textbooks on the area of law you are concerned with. These will have broad overviews of the important concepts. Textbooks are available at the law libraries.

Different textbooks go into different levels of detail. You may want to start with less detailed textbooks that provide more of an overview. The **Irwin Law, Essentials of Canadian Law series** provides useful overviews of many subjects. Many of these books are available at the law libraries.

The Halsbury's Laws of Canada series also provides concise overviews of many legal subjects and is available at the law libraries. However, it is written in a style that can be difficult to read. By starting with the textbooks, you will get direction as to what statutes and case law you should read.



Learn More

Court to **Courthouse Libraries BC** for more information

Researching Case Law

You need to identify past court decisions – case law – that is relevant to your case. The most useful free resource to look up case law is **CanLII**. This is a free database of thousands of court cases in Canada through time. It does not have every decision ever made in Canada, but for most legal research it is a great resource. However, it can be difficult on CanLII to figure out if a case has been “overturned”.

There are also paid databases, such as Quicklaw and Westlaw. These have more cases than CanLII, and can tell you easily whether a decision has been overturned. It is very expensive to get access to these databases on your own. If you go to a law library they have public computers that can access these Canadian court cases databases.

Researching case law is hard and time consuming. However, it is a necessary part of good research. You should have two goals in searching for relevant cases.

- 1. Find the most important, leading cases.** There are certain cases that come up again and again, because they set out the key ideas in an area of law. They are often going to be decisions of the Supreme Court of Canada or the British Columbia Court of Appeal. If you see a case that is mentioned many times when doing your research, reading it carefully to understand why it is important.
- 2. Find cases with facts similar to yours.** Think about what makes your case unique. Then look for cases with a similar situation. Use the keyword search tool to specify an important issue and limit the number of cases you need to review.



Use the **Family Law Research Worksheet** to help organize your work. Consider your case and the legal arguments you need to make. For each of your key issues – like parenting arrangements, support and property division – identify the law that applies, as well as relevant case law and describe why it is relevant.

Legal Research Tips

Conducting legal research is hard and it takes time. The information provided below includes tips to help you move forward and ensure the information you are gathering is relevant and will help you make legal arguments.

Visit a Law Library

There are a number of law libraries throughout the province. These are libraries that specialize in making legal resources available. They have textbooks, books of cases, statutes, and access to helpful online resources.

Many courthouses have law libraries and you can learn more at [**Courthouse Libraries BC**](#). You can also access university law school libraries. There are three main law school libraries in the province: [**UBC Law Library**](#), [**University of Victoria Law Library**](#) and [**Thompson River University Law Library**](#).

All law libraries employ law librarians who are experts at legal research. They are not able to provide legal advice and they will not do your work for you. However, BC law librarians help thousands of self-representing litigants each year and they may be able to save you a lot of time and provide helpful guidance to assist you with your research.

Make Research Notes

Take notes as you go. It is hard to remember all of the important things you come across during the legal research process. Write down the cases, books and resources you have reviewed and include important page numbers.

- Are the leading cases relevant to your case? Why or why not?
- What specific cases are similar to your case? What did the judge decide?
- Are there cases you think your former spouse might reference? Why do you feel they do not apply to your case?

It is important to take good notes because it often takes several months before you case will go to trial. You are going to need your legal research notes as your case moves forward in court.

Consider Hiring a Lawyer

Once you have conducted your legal research, it can be extremely helpful to have your work reviewed by a lawyer. They can provide an expert opinion on laws that apply to your case and relevant case law. If you are organized and have a clear, concise written summary, you may be able to get a lawyer's opinion for free, or for a small fee.



Use the **Family Law Research Worksheet** to organize your information and present information for a lawyer to review.

Create a written summary of the key facts of your divorce. Note the law that you think applies to your situation. List the key cases (case law) that you feel present support for your case. With this information, contact **BC Lawyer Referral Service** or the **BC Directory of Unbundled Family Law Lawyers** to have a lawyer review your legal research.