LEGAL RESEARCH BOOTCAMP

Conducting Basic Canadian Legal Research
Wednesday, June 5, 1:00-2:30pm

Hannah Steeves
Sir James Dunn Law Library
Introduction

Welcome and Introduction! (5 min.)
Step 1: Secondary Sources (20 min.)
Step 2: Legislation (20 min.)
Step 3: Case Law (20 min.)
Wrap-up and Questions (20 min.)
Step 1: Secondary Literature (1)

What is Secondary Legal Literature?

- Primary Literature includes legislation and cases.
- Secondary Literature describes, explains, and comments on primary literature.
- Dictionaries, Encyclopedias, Texts, Articles.

Why begin with Secondary Literature?

- Law has a structured language.
- Explains concepts, terms, and ideas.
- Identifies key legislation and cases.

*Injurious Falsehood = A lie that hurt me*

*Successive Tortfeasors = More than one wrongdoer*

*Misfeasance of Public Office = Abuse of Power*
Step 1: Secondary Literature (2)

Dictionaries (Definitions)

• Online:
  - Canadian Online Legal Dictionary
  - Duhaime’s Legal Dictionary

• Print:

Encyclopedias (Concepts)

• Online:
  - Halsbury’s Laws of Canada, LexisAdvance, Subscription Only
  - Canadian Encyclopedic Digest, Westlawnext Canada, Subscription Only

• Print:
  - Halsbury’s Laws of Canada, Law Primary Sources Collection, Aisle 35
  - Canadian Encyclopedic Digest, Law Primary Sources Collection, Aisle 35
II.3

See Canadian Abridgment: TOR.XXII Torts — Miscellaneous; TOR.XIV.2.b.iv Torts — Malicious prosecution and false imprisonment — Establishing elements — Malice — Motive imputing malice

§23 Motive is distinct from intention. Intention refers to the defendant’s desire to bring about certain consequences; motive is the underlying reason for the conduct.¹ Except in cases of malicious prosecution, injurious falsehood, abuse of process, maintenance, abuse of public office and conspiracy, the motive for a tortious act is irrelevant. An act that is legal in itself is not made illegal because the motive of the individual committing the act is bad, that is, done with the intent to injure or to effect some ulterior purpose.

§24 If conduct is tortious, a good motive will not excuse the defendant. If conduct is lawful apart from the motive, a bad motive will not make the defendant liable.² Where the defendant’s conduct is tortious, liability can be imposed, even where the plaintiff actually benefits from the defendant’s actions³ or where the defendant merely intends to play a practical joke.⁴

§25 A bad intent may render illegal an act done in combination with others which would have been legal if committed by one person only.⁵ A bad or wrongful motive will defeat the defence of privilege in an action for defamation.⁶

Footnotes


Step 1: Secondary Literature (3)

Texts (General Explanation)
- Essentials of Canadian Law (Irwin Law)
- Novanet Catalogue - Reserve Collection

Articles (Detailed Commentary)
- Index to Canadian Legal Literature (Print)
- Scott’s Index to Canadian Legal Periodical Literature (Free Online)
- Index to Legal Periodicals (Dal Online)
- HeinOnline (Dal Online)

What is the difference between Defamation and Libel?
Where can I read more about this topic?
Can comments on social media be libel?
Step 2: Primary Literature – Legislation (1)

Definitions:
- **Bill**: A proposed law.
- **Statute**: A written law approved by legislatures, parliaments or houses of assembly.
- **Amendment**: A statute that amends or changes another statute.
- **Revision**: A statute officially reissued with all amendments incorporated into the text.
- **Regulation**: A subordinate law supporting and enabled by a statute issued by a government minister.
Step 2: Primary Literature – Legislation (2)

Federal Bill (Bill C-1 or Bill S-201)

- Bill 1st Reading
- 2nd Reading
- 3rd Reading
- Committee
- Senate 1st Reading
- 2nd Reading
- 3rd Reading
- Committee
- GG
- RA
Step 2: Primary Literature – Legislation (3)

Why would I research a Bill’s history?
• To understand the purpose and development of a law.

What documents make up a Bill’s history?
• Original and revised versions, debates, reports, evidence, etc.

Where do I find a Bill’s history?
• Law Library, Primary Sources Collection: Bills, Gazettes, Journals.
• Federal: LegisInfo (Online Free)
• Provincial bills can be found online through the provincial legislature websites (see Legislation LibGuide)

What is the purpose of Bill C-2, Canada-Colombia Free Trade Agreement Implementation Act, 3rd Sess, 40th Parl, 2010?
Did Amnesty International present evidence to the Commons Committee?
What is the status of Bill C-2?
Step 2: Primary Literature – Legislation (4)

Where do I find Federal Statutes?

- Justice Laws:
  - Annual Statutes
  - Consolidated Acts
  - Regulations
  - Table of Public Statutes
- CanLII:
  - http://www.canlii.org
  - Consolidated Acts
  - Regulations
  - Point-in-Time Acts
  - Judicially Considered
Step 2: Primary Literature – Legislation (6)

Where do I find Provincial Statutes and Regulations online?

- Legislation Subject Guide
- Nova Scotia
  - CanLII – Nova Scotia Statutes and Regulations
  - NS Department of Justice – Regulations [http://www.novascotia.ca/just/regulations/consregs.htm](http://www.novascotia.ca/just/regulations/consregs.htm)

Step 3: Primary Literature – Cases (1)

Explains and applies the law to real world contexts.
• Precedent - *Stare Decisis* = “let decisions stand” or “to stand by that which is decided”
• Legislation Interpreted

Decision of a Judge
• Not the transcript of the trial
• Not every case is reported

Classification of a Case
• Where: Jurisdiction
• Who: Court or Tribunal
• When: Date

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New Brunswick (Human Rights Commission) Appellant

v.

Potash Corporation of Saskatchewan Inc. Respondent

and


INDEXED AS: NEW BRUNSWICK (HUMAN RIGHTS COMMISSION) v. POTASH CORPORATION OF SASKATCHEWAN INC.

Neutral citation: 2008 SCC 45.

File No.: 31652.


Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Abella, Charron and Rothstein JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR NEW BRUNSWICK

Human rights — Discriminatory practices — Discrimination on basis of age — Mandatory retirement

Pension plans — Employer filing complaint alleging age discrimination after being asked to retire at age 65 pursuant to mandatory retirement policy contained in pension plan — Provincial human rights legislation expressly declaring that age discrimination provisions are not applicable (if employer's decision to terminate employment is made pursuant to "bona fide pension plan") — Criteria required to show that pension plan is "bona fide pension plan" — *Human Rights Code, R.S.N.B. 1973, c. H-11, s. 3(6)*.

Pensions — Pension plans — *Bona fide pension plan* — Criteria required to show that pension plan is "bona fide pension plan" — *Human Rights Code, R.S.N.B. 1973, c. H-11, s. 3(6)*.

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New Brunswick (Commission des droits de la personne) Appelante

v.

Potash Corporation of Saskatchewan Inc. Intimée

et


RÉPERTORIÉ : NOUVEAU-BRUNSWICK (COMMISISON DES DROITS DE LA PERSONNE) c. POTASH CORPORATION OF SASKATCHEWAN INC.

Référence no: 2008 SCC 45.

N° du greffier: 31652.


Présents : La juge en chef McLachlin et les juges Binnie, LeBel, Deschamps, Abella, Charron et Rothstein.

EN APPEL DE LA COUR D'APPEL DU NOUVEAU-BRUNSWICK

Droits de la personne — Mesures discriminatoires — Discrimination fondée sur l'âge — Régime obligatoire — Régimes de pension — Plans de discrimination fondée sur l'âge présentée par un employeur après sa mise à la retraite à l'âge de 65 ans conformément à la règle permanente d'un régime de pension — Les provinciaux sur les droits de la personne précisent expressément que ces dispositions interdisent la discrimination fondée sur l'âge ne s'appliquent pas lorsque la décision de mettre un employé à la retraite est prise conformément à un régime de pension effectif — Crêtres auxquels un régime de pension doit satisfaire pour constituer un « régime de pension effectif » — Code des droits de la personne, L.R.N.B. 1973, ch. H-11, art. 3(6).
Step 3: Primary Literature – Cases (2)

What is included in case law research?

Locating Cases
• By Topic: “Workplace Privacy”
• By Citation: “Smith v Jones, [2004] 2 SCR 99.”

Locating Case Histories
• Has my case been appealed to a higher court?
• Did my case have prior history?

Locating Subsequent Treatment – “Noting Up”
• Have the courts considered this case in other cases?
• Was the court’s treatment positive, negative, or neutral?
Step 3: Primary Literature – Cases (3)

Where do I find relevant cases?

• Subscription Online Sources
  • Nexis Uni
  • Criminal Source
  • Labour Source

• Free Online Sources
  • CanLII
  • Court Websites e.g. Supreme Court of Canada [http://scc-csc.lexum.com/](http://scc-csc.lexum.com/)

Most recent case from the Supreme Court on “right to trial”


Wrap Up

What is “fair dealing” in Copyright Law?

- Duhaime’s Dictionary: “A limited exception to the exclusivity of intellectual property allowing fair critique or private study use of the protected material, and with appropriate acknowledgement.”

- Canadian Encyclopedic Digest: Copyright, XIV — Lawful Use of Copyright Works, 2 — Fair Dealing
  - § 274 Fair dealing for the purpose of research or private study does not infringe copyright.

- JusticeLaws: Copyright Act, RSC 1985, c C-42, s 29.
- LegisInfo: Copyright Modernization Act, SC 2012, c 20, s 21.

Questions & Comments

Questions on content covered?

What did I not cover?

Do you have specific legal research questions?

Further questions throughout the summer?

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