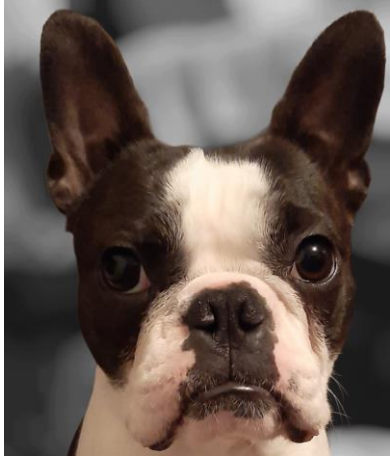# Legal Research in an Academic Setting

Best Practices for Teaching Success

James Bachmann

Matthew Renaud

Introduction

James Bachmann is a librarian at the University of British Columbia Law Library

James.Bachmann@ubc.ca

Matthew Renaud is a librarian at the University of Manitoba's E.K. Williams Law Library

Matthew.Renaud@umanitoba.ca

Today's Objectives

- Highlight **practices** used in the successful delivery of **legal research instruction** (in an academic setting)*

- Foster **discussion** amongst instructional librarians concerning the delivery of **legal research instruction** (what works, and what doesn't work)

*Based on the speakers' experiences delivering legal research instruction via both online and in-person methods

What the Heck is ALR?

- The ALR course is designed to give law students an opportunity to **perfect their legal research skills** prior to entering professional practice

- The course generally covers the **fundamentals of legal research** (reading legislation, finding case law, interpreting foreign and international law, etc.)

What the Heck is ALR? (cont.)

- ALR generally builds upon the **research and writing skills** that students acquire in their first and second years of law school (ALR is considered an upper years course)

- Students are assigned a variety of **"professional-level"** research assignments, such as **Memos**, **Factums** and **Case Briefs** that mimic the work they will be undertaking in professional practice

Best Practices

For Success in Teaching Advanced Legal Research

Best Practices

1. Emphasizing Traditional and Non-Traditional Research Methods
2. Emphasizing the Pitfalls of Technology
3. Teaching Transferable Critical Thinking Skills
4. Choosing the Right Assignments

Practice #1:
Emphasizing Traditional and Non-Traditional Research Methods

Findings:

- Use of both **traditional** and **non-traditional** research methodology works best in the classroom

- Best to **start** research instruction with a) **traditional methods** and then move on to b) **non-traditional methods**

Traditional Research Methods

- Early emphasis on core **Secondary Sources***

       Books

       Journal Articles

       Legal Encyclopedias

*Sources that **explain/analyze/summarize** the law (usually from an academic perspective)

Findings (Traditional Research):

- Secondary Sources provide **the fastest way** for students to develop an "**A+ Understanding**" of the legal issue/topic/problem

- Excellent **starting point** for most research projects (will **alleviate uncertainty** and boost researcher **confidence/productivity**)

Findings (Traditional Research):

- Although important, **Primary Source research** should be taught only after Secondary Sources have been **emphasized and perfected** (aka beaten over their heads)

- **Case Law** and **Legislation** should be taught independently of each other, over a period of four weeks

Findings (Traditional Research):

- Important to mention to students that many areas of the law are **grounded in legislation**, not case law (thus reiterating the importance of quality legislative research)

Non-Traditional Research Methods

- Move on to **non-traditional research methods** only after traditional research methods have been emphasized

- The use of **non-traditional research methods** will enhance the legal research skills of your students ("icing on the cake")

Non-Traditional Research Methods

- Boolean Boolean Boolean!

- Advanced Search Functionality (ex: the Headnote Search)

- Legislative Comparison tool (CanLII)

Practice #2:
Emphasizing the Pitfalls of Technology

The Pitfalls of Technology

- Teach students not just how to use technology, but to be aware of its pitfalls (and how to mitigate them).

Do the "Same" Thing More Than Once

Because there's a good chance you'll get different results

For example:

- Do the same search in more than one database
  - Don't rely on a single database
- Do the "same" search in the same database more than once
  - E.g., advanced search vs. natural language search
  - E.g., search and then filter vs. filter and then search
  - E.g., narrow results using filters vs. narrow results by adding search terms

Don't Rely on a Single Database

Example:

Do a phrase search for fair dealing in Westlaw, Lexis, and CanLII and narrow your results to Canadian cases. Compare the first five results in each database. How many of these cases are the same across all three databases?

Don't Rely on a Single Database (cont.)

Example:

Do a phrase search for fair dealing in Westlaw, Lexis, and CanLII and narrow your results to Canadian cases. Compare the first five results in each database. How many of these cases are the same across all three databases?

Answer: almost none

Don't Rely on a Single Database (cont.)

Example:

Search Westlaw, Lexis, and CanLII for the term marijuana. Narrow your search results to the British Columbia Human Rights Tribunal. How many results are there in each of these databases?

Don't Rely on a Single Database (cont.)

Example:

Search Westlaw, Lexis, and CanLII for the term marijuana. Narrow your search results to the British Columbia Human Rights Tribunal. How many results are there in each of these databases?

Answer:

CanLII – 128

Lexis – 126

Westlaw – 82

Do the "Same" Search in the Same Database More Than Once

Example:

How many bankruptcy court cases in the eastern district of North Carolina involved both a mortgage and jewelry according to Westlaw? How about according to Lexis?

Do the "Same" Search in the Same Database More Than Once

Lexis:

Search:	Number of results:
mortgage AND jewelry	7
"mortgage" AND "jewelry"	5

Do the "Same" Search in the Same Database More Than Once

Westlaw:

	Advanced search	Natural language search
Search, then filter	4	3
Filter, then search	2	879

Do the "Same" Search in the Same Database More Than Once

Example:

You are working on a research project and your supervisor has asked you to compile a list of cases decided by Lynn Smith of the BC Supreme Court that involve duress. Search both Westlaw and Lexis for duress and then filter your results by judge. How do your results compare?

Answer:

Westlaw – 3 results, including *Carter v Canada*, 2012 BCSC 886

Lexis – 5 results, NOT including *Carter v Canada*, 2012 BCSC 886

Do the "Same" Search in the Same Database More Than Once

Example:

Search Lexis for the case *Carter v Canada*, 2012 BCSC 886. Click on the link to open up the case. Who does Lexis list as the judge in this case?

Answer:

Lynn Smith

Also Note Up More Than Once!

Example:

Hagerman v Niagara Falls (City), [1980] 114 DLR (3d) 184, 5 ACWS (2d) 139

Westlaw

CanLII

Lexis

Noting Up: Watch Out for the "Same" Results!

Example:

Thomas v Roman Catholic Archbishop of Vancouver, 2016 BCSC 1466

CanLII doesn't indicate any negative treatment

Westlaw and Lexis both indicate cautionary treatment

      - but…

Noting Up: Watch Out for the "Same" Results!

E.g., *Swiston v British Columbia (Transportation Investment Corp.)*, 2018 BCSC 640

- Westlaw says followed

- Lexis says distinguished

Skepticism re Reliability of Technology

These were just some of many examples

Students no longer see technology as reliable

A quick look at brief analysis tools furthers this view of technology

Reliability of More Advanced Technology

E.g., AI such as ChatGPT

Discussion of how such technology is built on already problematic foundations, and then adds more problems on top of these

- These more advanced technologies are taking unreliable and biased inputs, adding more unreliability and bias, and then giving us "answers"

Discussion of Ethics is Part of Teaching Legal Research

Research doesn't happen in a vacuum and there are ethical implications of choices made

- E.g., obligations to clients, to the law/legal system, to justice

Practice #3:
Teaching Transferable Critical Thinking Skills

Teach Transferable Critical Thinking Skills

Teaching legal research isn't just an opportunity to teach practical skills, it's an opportunity teach transferable critical thinking skills that allow students to become both better researchers and better overall lawyers.

What is Critical Thinking?

There are numerous definitions

- See, e.g., the seventeen different definitions in Robert H. Ennis, "Definition: A Three-Dimensional Analysis with Bearing on Key Concepts"
  - in Bondy, P. and L. Benacquista (eds.), *Argumentation, Objectivity, and Bias: Proceedings of the 11th International Conference of the Ontario Society for the Study of Argumentation (OSSA), 18-21 May 2016*, Windsor, ON: OSSA, 1-19 at 8-9.

One of the simpler definitions is from Ennis:

- "'Critical thinking is reasonable reflective thinking that is focused on deciding what to believe or do.'" (Ennis, above, at 8)

Thinking Critically About Finding Sources

Encourage

- Reflective research practices

- Awareness of benefits and limitations of different research tools/databases

- Noting lack of reliability of "basic" technology and adjusting research strategies accordingly

- Assessing reliability and ethical use of more advanced technologies (e.g., ChatGPT)

Thinking Critically About The Sources

Examples:

• Bias in secondary sources

• Understanding statistics, visual representation of data

• Understanding scientific studies

Thinking Critically About The Research Topic

Examples:

- What issues are raised? What areas of law (both obvious and less obvious) are implicated?

- Thinking about (both obvious and less obvious) search terms
  - Statsky's cartwheel

- Updating search terminology and direction(s) upon learning more
  - I.e., research as an iterative process

Thinking Critically Beyond The Research Topic

Students tend to think too narrowly about their research topic

Need to encourage

- Thinking analogically

- "Big picture" thinking

Similarly to, e.g., failing to think about alternative search terms, failing to think analogically and about the bigger picture means failing to conduct relevant and sufficient research

Thinking Critically: Set the Tone From the Start

Start the course with critical thinking

- Critical thinking (rather than practical skills) as the foundation of research
  - Sets expectations for the course
  - Sets expectations for being a competent researcher

Keep this tone throughout the course

- Emphasize critical thinking skills throughout all components of the course
  - Through exercises and class discussion
  - Never "here's how to use this tool"; always "we're going to use and critically assess this tool"

Teach Transferable Critical Thinking Skills

Goal is to equip students with critical thinking skills that they can use in novel situations

- E.g., when encountering new research tools, new research topics, new disciplines

Practice #4:
Choosing the Right Assignments

What are the "Right" Assignments

- As mentioned, students in ALR are assigned a variety of **"professional-level"** assignments including:

    - **Memos**
    - **Factums**
    - **Case Briefs**

What are the "Right" Assignments

- These are assigned for **two specific reasons:**

    1. To **reinforce and emphasize** the importance of the research methods being taught in class

    2. To provide students with a **challenge that is similar** to what they will experience in professional practice

The Legal Memo

- Of those assignments, the legal memo stands out as an effective assignment for a variety of reasons:

The Legal Memo

- Students are required to assess a fact situation

- Determine the relevant legal issue(s)

- Research legislation, case law and secondary sources

- Practice sound legal writing

Measuring Outcomes

- A final exam can be used effectively for assessing how well a student has performed, but…

- these can be difficult to construct and provide students with little opportunity to conduct legal research in a "real-world" setting

Measuring Outcomes

- Oral evaluations can also be used, as these provide clear evidence to a student's knowledge of the material covered in the course

- Like final exams, oral evaluations can be difficult to construct and grade

Measuring Outcomes

- **Student evaluation** stands as the most **challenging** aspect of teaching Advanced Legal Research

(Unfortunately, there is no "perfect" way to evaluate students with this kind of course)

In Conclusion

Conclusion

- Teaching ALR is a challenging but rewarding experience for law librarians

- Law librarians bring a wealth of experience and an awareness of the research needs of students and new lawyers

Questions?

Thank You!

James.Bachmann@ubc.ca

Matthew.Renaud@umanitoba.ca