WEBINAR
TAKING YOUR RESEARCH SKILLS TO THE NEXT LEVEL

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1. Introduction

Finding current applicable law usually requires in-depth research and securing the best research results is dependent on understanding key steps to effective research.

The goal is always to achieve better, faster and cheaper search results.

Lawyers have a duty to the Court and their client to know the applicable law

Lawyers are expected to know the law when they come to Court. In presenting an argument, a lawyer is expected to have researched the law and not simply be depending on others’ statements, whether in textbooks or of researchers.\(^1\)

There have been numerous texts written on how to do legal research. This webinar won’t be able to provide you with in depth coverage, but we can offer you a brief practical guide to effective research, based on our day to day experience as legal researchers.

The three main legal publishers for New Zealand provide webinar and other forms of training on how to use their particular products. While we will cover online searching, we don’t want to duplicate what the publishers already offer, instead our focus is on providing an agnostic overview of research techniques and a more generic view on how to approach legal research.

Legal research can be seen as a three stage process:

– identifying and analysing a problem;
– identifying appropriate information to solve the problem;
– presenting the results of the analysis and research in an appropriate and effective manner.\(^2\)

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2. Framing Your Research - asking the right questions

Start framing your research with the classic *who, what, when, where, why* and *how* questions.

Your checklist

- **Who?**
  
  Who are you doing the research for?
  
  - the “who” will influence your search focus, how you report your findings, level of resources selected and time spent
  
  - parties – are there third parties, other entities such as trusts and companies you need to consider?

- **What?**

  What is your research topic?

  This key question encapsulates identifying and analysing a legal problem which will often involve more than one legal issue.

  *What information is required?*

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3 Widely known from Rudyard Kipling’s “six honest serving men” poem in “The Elephant’s Child” *Just So Stories.*
Successful research depends on having a clear understanding of what information is needed.

However legal questions are often complex and communicating or understanding exactly what information is required, is not always straightforward.

For example:
- sometimes what information is required doesn’t become clear until initial research has been carried out.
- sometimes a lawyer requesting research may not have formulated their question sufficiently before making their request.
- clear communication between a requester and researcher is essential.\(^4\)

Is your question focussed or unfocussed?

In-depth research usually starts with an unfocussed question or questions which require time, expertise and analysis to become focussed questions.

Identify and analyse the following components, as you work through the research process:
- material facts
- area of law
- legal issues
- legal principles
- relevant legislation/rules

What sort of information is required?

What end result is needed?
- commentary only
- legislation only
  - current or “point in time”
  - equivalent legislation in another jurisdiction
  - legislative history materials
- judgments
  - leading cases, similar facts cases, guideline/tariff judgments, reported only
- forms and precedents
- all relevant information on your issue.

\(^4\) If requesting research to be done by another lawyer, law clerk or researcher, tell them if you have already carried out some research. You may not want them to spend time searching WestlawNZ or LexisNexis if you have covered that particular resource. It is also helpful to say if you expect there will be a lot of information or not much to be found.
Structure of legal information

Often it is best to begin by consulting *secondary sources*:

**Primary materials:**
- Primary legislation (Statutes)
- Secondary legislation (Legislative Instruments, tertiary legislation)
- Case law

**Secondary materials:**
- Commentary
- Texts – (hard copy and online)
- Seminar papers
- Journal articles
- Legal encyclopaedia
- Bills, Parliamentary debates, other extrinsic materials
- Forms & precedents
- Words & phrases – definitions

**Case law**
- Which level of court?
  - Supreme Court and Court of Appeal only, High Court and above
  - Law reports – do you need “court ready” copies?

**When?**

Time is probably your most significant factor.

How efficiently you use the time available, will determine the effectiveness of your research:
- Assess how much time you have available
- As you draft your plan, think about how much time your research is likely to take
  - In-depth research always takes longer than you expect!
- What is the time-span of the information required - current, point in time, historical, un-amended and so on.

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5 Most databases focus on High Court and above.
• **Where?**
  - jurisdictions
    - New Zealand only, NZ plus Australia, England, Canada, USA, etc.
  - where will you find the applicable law?
    - law reports, Court rules, legislation…
  - where to search – relevant information tools and resources
    - start with the Library’s “Databases” page
  - where are your research tools available?

• **Why?**
  
  What is the purpose of your research?
  - ensure you have sufficient context and relevant background information to understand the question correctly
    - context will help avoid wasting time by going down the wrong path
  - if you are researching for another lawyer – always check back for clarification if search results start to look as though you may need to refocus your question
    - send interim results and confirm what else is needed.

• **How?**

  How to get there - your research plan

  You will have already begun to:
  - formulate your research questions;
  - identify your research tools
  - worked through your checklist so far, for *who, what, when, where, why*

  The importance of framing – structuring your research plan

  **Why a research plan is important**

  Your plan facilitates a methodical approach to your research and records your ‘work in progress’.

  **Update your plan at each step of the way!**

  Creating and updating your plan allows you to:
  - focus and refine your research questions;
  - avoid duplicate or inefficient database searching;
  - track what remains to be searched – especially when your search is interrupted

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– prioritise if you are running out of time
– record your key search results – selected cases, commentary, legislative references etc.
– create a draft research report/memorandum/opinion as you go.

Implementing your research plan

Your plan can be just jotted down if the research is simple, however most research results should be saved electronically and updated, as you are working.

Suggestion – work from a saved folder where you can save results such as judgments or commentary in one place along with your plan document, or work via an email to yourself, adding key documents as attachments. If you are working in one of our research libraries you can work on your own laptop via the Library Wifi network, or if you are working from a branch kiosk, download to a USB stick.

– make sure to clearly name your files with citation and source references.
– annotate your plan as you go!

Research is not a linear process

Research doesn’t run in a straight line – it usually requires drilling down or “mining” different sources:
– generally – start wide and narrow down
– trace back – as you refine your search, you may need to revisit previous sources
– review your results regularly – follow the leading threads
– if you are lucky, you will find a “vein of cases” on your issue
– footnotes are as important as the main text – and where you are likely to find gold!

7 If you are working in one of our research libraries you can work on your own laptop via the Library Wifi network, or if you are working from a branch kiosk, download to a USB stick.
3. **Search Strategy**

Note down:
- your area/s of law
- *words and concepts* for use as search terms
- relevant texts
  - is it available as an “online text”? 
- relevant tools
- databases to search
  - work from our NZ Law Society Library “Databases” webpage
  - online collection organised by *Subject, Jurisdiction* and *A-Z by title*
  - *A-Z list* has over 380 titles with publisher noted
  - “free legal resources” page with links to selected free resources.
- where are your selected resources available? In house? Law Society Library? University?

**Traps on the way**

**Currency** - is your information good law?

*Commentary*
- when searching commentary (texts or online) always check for currency
- some publishers are slow to update their commentary with new legislation

*Case law*

Once you have found a relevant case, use a number of different databases to search for *cases citing* your case
- is there a “vein of cases” for your issue?
- always note citation details for your case
  - if searching a case law index note the Medium Neutral Citation (MNC) and any parallel citations
- how authoritative is your case?
  - has it been reported?
  - has it gone on appeal?
  - how has your case been treated? – applied, distinguished, disapproved, overruled etc.

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8 Due to publishers’ licensing restrictions, subscription database content can ONLY be accessed on site in the Library.

9 Linked from “Databases” page side bar.
**Search a case citator**
- *CaseCite* on WestlawNZ
- *CaseBase* on LexisNexis
- *LawCite* on AustLII
- *Linxplus* or *Briefcase* – to check whether reported or appealed.

**Dealing with roadblocks**

What if you can’t find anything on point?
- did you ‘start wide and narrow down’ by searching a legal encyclopaedia or commentary first?
- are your search terms too specific?
- are your search terms different to the terms used in current legislation/commentary?
- have you only searched online databases?
  - check the Library catalogue!
- check *Words and Phrases dictionaries* for leading cases, then do a ‘cases cited’ search to update
- would a legislative history help?
- have you been searching the wrong area of law – and/or legal concept?
- try browsing – using a database tree level list of headings (expand/contract)\(^1\)
- have you searched the relevant law report database for your area of law - *Procedure Cases, Administrative Law Reports, New Zealand Law Reports*?
- could your answer be found in settled law where the authorities pre-date most legal databases?
- is it likely you are dealing with a novel issue?

**Dealing with interruptions**
- work via saved folder or *email to self* - save often
- systematically update your research plan!

**When you get something odd what do you do?**
- consult – talk with a colleague, your supervising lawyer, or your law librarian

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\(^{10}\) Usually located on the left hand side pane.
Tips
– to search overseas jurisdictions – start with an encyclopaedia, ie *Halsbury’s Laws of Australia, Canada, England*
– make sure you note the exact title/citation – bibliographic details!
– when looking for a specific judgment, use a citation field – enter the exact “Medium Neutral Citation” (MNC) or reported citation for the case, for example:
  – a citation is a judgment’s ‘unique identifier’
– when searching via a case name field - it’s safer to enter party names using “AND” rather than the usual “v”
  – *kraal* AND *earthquake commission*
– search fields are not case sensitive – so no need to type in upper case (but if you do it won’t matter)
– there is no ‘silver bullet’ for legal research
– when doing wider research – it’s good if you find something on point early on, but don’t stop there ¹¹
– don’t rely on one source – cross check with at least one other title
  – for example if doing a sentencing search cover:
    *Adams - Sentencing, Hall’s Sentencing, Sentencing Tracker* (Westlaw NZ) and *Linxplus*
– think about whether you are likely to incur any costs (photocopying, document delivery, interloan) – do you need to arrange a budget?

¹¹ See: “Traps on the way” above.
4. Online Searching

*Precision v Google*

There is a vast difference between a “precision” search and a “google” search.

Databases offer both *search* and *browse* search functions – in this webinar our main focus is on the “search” function.

Your search string needs to be carefully constructed to achieve the best possible results.

You will often need to use “proximity” searching combined with the other techniques outlined below, to find relevant hits in your database search.

*Before you start typing in your search terms* – make sure you know the “default search” for the publisher’s product you are about to use. Ask how will the search engine interpret my search? Does the database default to a phrase, AND or OR search?

Note: *LexisNexis* defaults to a “phrase” search, while *WestlawNZ* defaults to OR between each word.

What content are you searching?

Is it a full text database, an index or citator?

Are you searching across commentary, a database of headnotes or full text of judgments?

You will need to adjust your search query to reflect the structure of the database.

**How to construct your search**

You will need to use at least some of the following techniques to construct a legal database search.

The following operators can be combined to add power and flexibility to your search within the limitations of the particular search software.

**Search operators - terms & connectors**

Except for the AND, OR, NOT connectors, each publisher uses slightly different symbols for search operators:
Connectors - also called Boolean connectors or Boolean logic

**AND** restricts or narrows the search. Each word in the search must be present in the results.

**OR** expands the search. Either word must be present in the search to be retrieved.

**NOT** excludes a word from the search.
These basic connectors are standard across different database products and determine the relationships between terms entered into a search form:

**AND**  tenant and duty (both words must appear in a record)

**OR**  tenant or lessee (one or the other of the two words must appear in a record)

**NOT**  tenant not lessee (excludes records containing the word tenant which also contain the word lessee).

Take care using the NOT operator as you can easily exclude results you didn’t intend to.

**Synonyms**

Try not to enter search terms which are too specific as they are less likely to be present in the database and you may miss relevant hits.

Use generic terms as much as possible – grandparent instead of grandmother; vehicle instead of car; aviation or aircraft instead of drone and so on.

If you are not sure, try using alternative terms joined with the OR operator:

– grandmother OR grandparent; vessel OR boat OR yacht

Remember different terminology will often apply for overseas jurisdictions:

**Nesting or Bracketing**

Brackets can be used to group pairs of words, when using more than two connectors, for example: tenant and duty or lessee – this may be interpreted in different ways by the database

– (tenant and duty) or lessee – either, both tenant and duty must be included in the record retrieved, or else just lessee

– tenant and (duty or lessee) – tenant and either duty or lessee must be in the record retrieved

**Truncation**

Truncation widens or expands your search by finding word variations of the stem or root word, so for example:

– tenant! finds tenant, tenant’s, tenanted, tenanting, tenants

– transport* finds transport, transportation, transporting

– tax! finds tax, taxes, taxation, taxpayer

– child* finds child, child’s, children, childhood

Truncation symbols vary by database – common symbols include: *, !, ?, or #.
Phrase searching

Enter quote marks around a phrase to search for an exact phrase “eggshell skull” or “duty of care” searches for this exact phrase.

Use of quote marks is important if your phrase includes an “operator” word such as “AND” because database search engine will usually interpret the word “and” as a connector, for example, enter:
– “young persons and their families act” in quotation marks when searching on this Act.

Phrase searching creates a very narrow (literal) search, so it needs to be used with care.

Unless you are sure you require the exact phrase entered, it will be better to use a “proximity” operator.

Proximity searching

Using a proximity operator searches for words within a certain proximity to each other, and can be ordered or unordered.

A proximity operator is very powerful when searching a full text database - in fact it’s essential for precise full text searching.

*Ordered proximity* searches for the words in the order entered in the search box, within the number of words specified.

For example proceeding! w/3 time searches for “proceeding!” within three words of “time” in that order.

*Unordered proximity* searches for the words in any order, within the number of words specified.\(^\text{12}\)

Check the particular publisher’s *terms & connectors* or *search operators* information to see which symbols apply (see also Fig 11.6 above).

Examine your search results carefully to see if your search needs to be ‘edited’ or ‘refined’. When you use a ‘refine’ search option, you are searching within your current search results.

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\(^{12}\) Note that some databases search software comes with proximity search words preset for certain numbers of words. These words are often adj or adjacent, with and near. Databases such as LexisNexis and Westlaw allow you to specify words within the same sentence or paragraph.
Advanced search options

Most databases offer an advanced search template. An advanced search will always give more precise searching than a basic search. It allows you to do all the various types of searches mentioned above that the software allows. You can also restrict your search to just one segment or part of a record. This can be very powerful and flexible when combined with other general or specific field searches.

– for example: you could search for all judgments from the High Court Dunedin in 1996 decided by Justice Young, containing the word damages.

Faceted searching

Faceted searching refers to the option of narrowing down your search result set, by selecting options (usually on the left of the screen) which allow you to limit by higher level categories such as jurisdiction, level of court or subject for example. After you have selected a relevant category, your results are a subset of the original results narrowed down by the selected category, so for example: just Supreme Court, or New South Wales, or Conveyancing, or just the New
Zealand Law Reports. This is a useful way to quickly refine search results and see what you get. You can usually return to your original results and try narrowing with a different facet option.

Browsing is similar in that you drill down in headings listed on a left hand side bar. But with browsing you can only use the tree of information that has been set up by the publisher. Usually accessed by expand and contracting (using + or – ) within the tree. For journals and law reports this will be by year, volume and issue. For commentary it is effectively the table of contents in more detail.

Classification/Subject headings

Natural language or “controlled vocabulary” – also called taxonomy or a subject tree

Using a subject heading or a classification search option will allow you to use the publisher’s sets and sub-sets of hierarchically arranged subjects or legal concepts. The publishers use metadata tagging behind the scenes which offers powerful ‘added value’ to database searching. “Controlled vocabulary” is a pre-determined list of subject or classification terms, and all the legal database content will have been ‘tagged’ as belonging to a particular term or classification. So once you know the correct terms to use for your subject area, you can then accurately target the information you are looking for. WestlawNZ even offers you choices of terms to select from. The more refined you can make the classification, the more precise your results will be.

Most legal databases will have some form of thesaurus operating.

Display of results

Order

– search results arranged by last in first out, first in first out, by origin or source, alphabetically by some part of the record (title, author, journal name)

– hierarchy – by court (Supreme Court/Privy Council, Court of Appeal, High Court, District Court),

Relevance ranked

– weighted/relevance ranked by hits

– this is done by the number of times the word(s)/term(s) searched for, appears in each record

– does the database give you an option to change the order?

Traps of online searching

– plurals – is this automatic or do you need to truncate, or use the OR operator

– publishers have different search operators

– you need to know the “default search” of the publisher’s platform before you can enter an effective search query
– search history – are your “previous searches” saved and can you re-run/edit your previous search?

– could the next person using the same computer also see your previous searches? If so, close the browser session when you are finished working

– Westlaw NZ links commentary with sections of an Act – most of the time, but not always – for example: Child Law, Land Law and Misuse of Drugs

– finding cases on a section of an Act – the technique for doing this search is different on each database platform – check the database “help” pages, or ask a librarian!
5. Reviewing and Finalising your Research - are you there?

Have you found the current applicable law for your issues?
- when to stop?
  - are the same results showing up in your search in different sources – this usually indicates it’s time to stop.
  - consult your checklist – have you missed a vital step?
- have you reviewed your research plan against your results?
  - is the material you selected along the way, still relevant now you are at the end of research?
- do you need to update any of your information?

Facts
- Person
- Place
- Action
- Object

Legal
- Cause of action
- Defence
- Relief/remedy sought

Search Strategy
- Keywords
- Terms/terminology/terms of art
- Context
- Broader
- Narrower
- Alternatives & related words
- Synonyms & antonyms
- Subject headings
- Index terms
- Statutes & Regulations (Legislative Instruments)

Answer
- No
  - Back to search strategy
    - Lateral thinking
    - Similar solutions
    - Broader search
    - Other jurisdictions
    - Search non-legal sources
    - Colleagues & experts
- Yes
  - Check results
  - Update results
  - Go home/back to work!

Tools
- Encyclopaedias
- Digests
- Texts & looseleafs
- Citators
- Dictionaries, indexes &c
- Other tool & databases
– have you done a “cases cited” search on your key cases? – this is an essential step for ensuring you have the current authority and you don’t miss other cases on point!

– do you need court-ready copies of cases?

– have you noted full bibliographic details (title, author, page numbers, edition) for commentary

– have you noted case details and citations?

– have you missed any relevant sources – hard copy books, journal articles, online sources?

– check the Library “databases page” subject list of databases

**Always ask yourself - do I need to search the Library catalogue to check hard copy resources**
6. Another Option

Your library

NZ Law Society Library - legal research services

Working from information provided by the lawyer, Library researchers identify and search relevant information resources to select the appropriate content to provide to the lawyer.

When we undertake research on behalf of the lawyer our role is as an intermediary between the lawyer and the sources of law.

We assist with the middle stage of a three stage research process, mentioned at the beginning of our webinar:

– identifying and analysing a problem;
– identifying appropriate information to solve the problem;
– presenting the results of the analysis and research in an appropriate and effective manner. 13

Our research is delivered with a brief summary of our search strategy and results, accompanied by the relevant primary and secondary materials, usually comprised of some of the following:

– case summaries, with selected judgments in full
– legislation and/or legislative materials
– commentary (extracts from online databases, texts, articles, seminars, Law Commission reports etc.)
– Forms and Precedents
– definitions from Words & Phrases dictionaries

More in-depth research will provide material from selected common law jurisdictions.

Your law librarian - your research mentor