Reading and Understanding Case Reports: A Guide for Self-Represented Litigants

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Before You Get Started

The goal of *Reading and Understanding Case Reports* is to equip self-represented litigants (SRLs) with the necessary understanding to read a reported court decision – a "case report" – when conducting legal research and preparing to present their own case to a court. We shall use the term "case report" throughout, but you may also see a court decision referred to as a "judicial opinion" or a "judicial decision", since when you are reading a case report, you are reading a judge's ruling on a legal dispute.

This Primer is divided into two parts, and includes two appendices**.**

> **Part I** explains the structure of a case report. This will teach you what you should look for when reading a case in order to assess its relevance to your own matter.
>
> **Part II** offers guidance on understanding what you read in a case report, the most important sections, and the relevance of the different parts of a case report.
>
> **Appendix A** provides you with a Glossary of important terms that will be useful when you are reading a case, and preparing materials for presenting your matter. When you see a term in **bold red,** you can find an explanation of that term in the Glossary.
>
> **Appendix B** provides you with a list of some of the court abbreviations that you may come across while reading case reports.

Online legal services such as CanLII publish case reports from all over Canada and are an excellent resource for preparing to present your own arguments. Using Can Lll, you can research and read previous case reports on cases similar to your own, and in the same jurisdiction. Some **legal databases** are only available to lawyers and law students, and at a fee, but Can Lll is free and publicly available.

Can Lll can be challenging to use, because to do so effectively you need to understand which cases are most relevant and important to you. In order to make the best use of *Reading and Understanding Case Reports*, we recommend

that you use it in combination with NSRLP's CanLII Primer (also available in French). Both are free online NSRLP Primers written specifically for SRLs.

In order to conduct your own legal research using case reports, you need to be able to do two things:

1. Identify which earlier court decisions (found via CanLII or other legal databases) will carry the *greatest weight* in relation to your own legal matter. This means understanding the system of **precedent** and the structure of the courts, both of which are explained in the Can LII Primer. This knowledge will enable you to narrow down which case reports may be useful to you in your own case preparation. We recommend that you review this framework before getting started with your legal research[1]. We also recommend that you read Cindy Freitag's blog, "Caselaw Research is Like Cheesecake."

2. Analyze and understand *an individual case report*. This includes understanding how a case report is structured, what to look for when reading a case in order to determine its usefulness, and which parts are the most important and relevant to your own matter.

The Can Lll Primer focuses on the first of these tasks – how to *find* cases that may be helpful to your matter. This Primer will help you accomplish the second – how to *read, understand and then evaluate* those cases.

We have written this Primer because reading and analyzing case reports is very challenging and our goal is to help you to overcome obstacles. Try not to get discouraged if the case report you are reading seems unclear or confusing. Some judicial writing is vague and ambiguous. Some of the "elements" described in Part I might not be present in the case report, or they may be organized in a different sequence. Sometimes important facts will be omitted, making the reasoning hard to follow. The more case reports you look at, the easier it will become to navigate and analyze what you are reading. You will begin to recognize the basic structure and become familiar with the terms and language used. This means that you are on your way to identifying the best cases to use as part of your own arguments to the court.

[1] Pages 11-13 in both the English and French versions of the CanLII Primer.

Part I: Navigating a Case Report

1. What is a case report?

When a legal dispute is filed in a court, the judges in that court will make a decision (sometimes a series of determinations and decisions) about that dispute. Many of these decisions are published as case reports.

A case report is the written decision of a judge that explains his or her reasoning for resolving a dispute in a particular way. It discusses the relevant legal principles that will generally apply in similar situations. This is why reading earlier case reports can be useful to you as you prepare to present your own argument to the court.

2. Do all case reports describe a trial?

No. Often the "parties" (as the sides in a legal case are called) will negotiate and settle their dispute before a full trial. But, in the meantime, there may be case reports on preliminary matters, such as what evidence can be brought forward in the case, what parties are involved, or in which court it should be heard.

This means that some case reports you will see will not provide a final decision on the merits of that case, but instead are interim decisions dealing with procedural issues. In other words, they are a **procedural ruling**, not a final **decision on the merits of the case ("trial")**. They may provide important background information, but they are not going to help you argue the legal merits of your own case. For that, you will need to find the full trial decision (described below at (3)).

Don't fixate on a particular word that is unfamiliar or hard to understand – instead work on understanding the overall context and then return to that word when you have finished reading the case report.

These procedural hearings that take place before a trial are called "motions". A **motion** is a written request that a **party** can submit to the court asking the court to make a certain decision. Common examples include a request to change a child support order, a request for an order on costs, a request for an adjournment (to resume trial at a later date), a request for documents from the other side, a request to add or remove a party to the lawsuit, or even a request to strike out the other side's case ("**summary judgment**"; see NSRLP's

Research Report on summary judgments). These motions can be brought at any point before the case is settled or goes to a full trial.

A case report may describe a **procedural ruling** or a final **decision on the merits of the case**. The history of any motions may also show up in the case report of a trial.

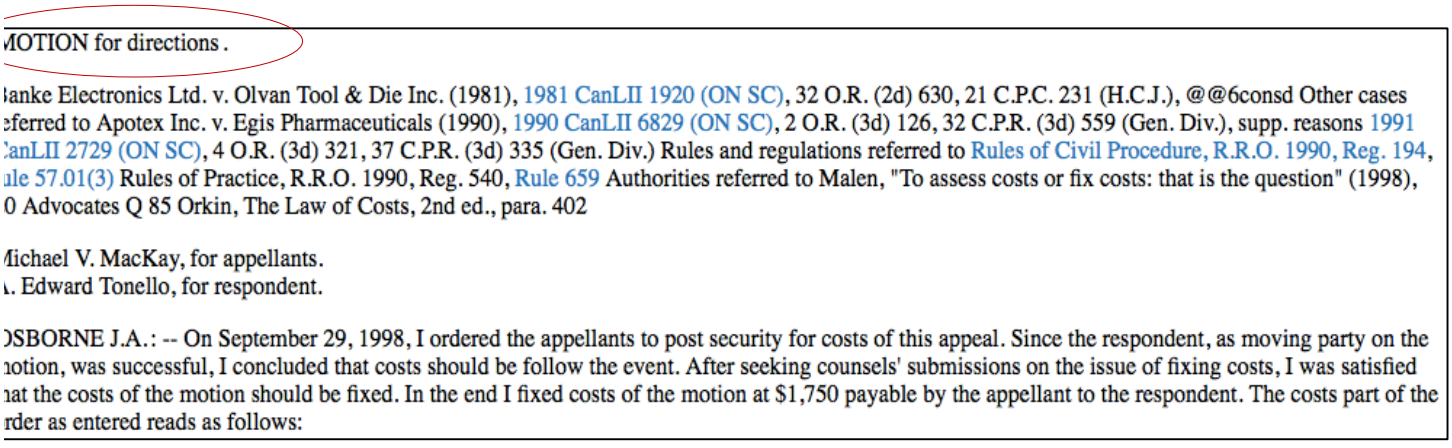
3. How do you know which case reports are trial decisions?

Generally, your research is going to focus on case reports of trial decisions which support your argument, not procedural rulings. A trial decision is the court's "final" word on resolving a legal dispute on its merits (unless it is appealed; see (4. f.) below). Unlike **procedural rulings**, which are limited to the single issue requested in the motion, trial decisions offer explanations of law and legal principles, and suggest how a court would decide a similar legal matter.

You will generally be able to spot a procedural ruling by references in the beginning of the report that might say "MOTION", etc. Below are some examples.

In Figure 1 below, the screenshot shows the beginning of a case report in CanLII. You can see that the very first heading states that this will be a motion for directions, which means that a party filed a request for the court's further directions following the court's order.

Figure 1: *Motions example 1*



MOTION for directions.

anke Electronics Ltd. v. Olvan Tool & Die Inc. (1981), 1981 CanLII 1920 (ON SC), 32 O.R. (2d) 630, 21 C.P.C. 231 (H.C.J.), @@6consd Other cases eferred to Apotex Inc. v. Egis Pharmaceuticals (1990), 1990 CanLII 6829 (ON SC), 2 O.R. (3d) 126, 32 C.P.R. (3d) 559 (Gen. Div.), supp. reasons 1991 anLII 2729 (ON SC), 4 O.R. (3d) 321, 37 C.P.R. (3d) 335 (Gen. Div.) Rules and regulations referred to Rules of Civil Procedure, R.R.O. 1990, Reg. 194, ule 57.01(3) Rules of Practice, R.R.O. 1990, Reg. 540, Rule 659 Authorities referred to Malen, "To assess costs or fix costs: that is the question" (1998), 0 Advocates Q 85 Orkin, The Law of Costs, 2nd ed., para. 402

Michael V. MacKay, for appellants.
. Edward Tonello, for respondent.

OSBORNE J.A.: -- On September 29, 1998, I ordered the appellants to post security for costs of this appeal. Since the respondent, as moving party on the notion, was successful, I concluded that costs should be follow the event. After seeking counsels' submissions on the issue of fixing costs, I was satisfied nat the costs of the motion should be fixed. In the end I fixed costs of the motion at $1,750 payable by the appellant to the respondent. The costs part of the rder as entered reads as follows:

The same case report states that the only issue before the judge "at this time" will be to give further directions on security for costs, and to explain the effect of that order. This type of language is an additional clue that this is a procedural ruling rather than a decision following a full trial:

Figure 2: Motions example 2

The only issue before me at this at this time is what is the effect of the language of my endorsement and the order entered further to it in respect of the timing of the payment of the costs fixed at $1,750. The appellant takes the position that the order contains no adverb such as "forthwith" that would determine when the $1,750 fixed costs are to be paid. The appellant relies upon Cory J.'s judgment in Banke Electronics Ltd. v. Olvan Tool & Die Inc. (1981), 1981 CanLII 1920 (ON SC), 32 O.R. (2d) 630, 21 C.P.C. 231 (H.C.J.) in support of the submission that absent language such as "costs payable forthwith", the costs of an interlocutory motion should be payable at the conclusion of the litigation between the parties after the costs of the proceeding are assessed. The respondent contends that fixed costs should be payable forthwith unless the contrary is indicated.

In Figure 2 above, you can see that this is a procedural report rather than a trial decision because of the reference to "motion" and the nature of that motion ("a motion for **summary judgment** requesting the dismissal of this **action**").

Figure 3 shows a response to one party bringing a motion requesting a **summary judgment**, which is a request asking the court to rule that the other party has no merit to their case. The language of this paragraph helps you to further identify that this is a procedural ruling because it says specifically that this decision will "*not address the information in relation to the specific allegations of discrimination"* and that those allegations *"will be addressed in the final decision".*

Figure 3: *Motions example 3*

Mr. Justice J.S. Fregeau

Reasons On Motions

Nature of the Motions

[1] The Defendants, Denise Bilsland ("**Bilsland**") and Patrick Lake ("**Lake**") brought a motion for summary judgement in April 2011 requesting the dismissal of this action against them on the basis that there is no genuine issue requiring a trial with respect to the claims made by the Plaintiff against them.

[2] Shortly prior to the hearing of the motion for summary judgement, the Plaintiff brought a motion seeking leave to amend the Statement of Claim pursuant to Rule 26 of the *Rules of Civil Procedure* to assert various allegations of breach of duty against Bilsland and Lake. The motions were heard together.

[3] This Interim Decision is in response to the applicant's Form 10 Request for an Order during Proceedings ("RFOP"), submitted to the Tribunal on March 18, 2015. While the RFOP covered a great deal of additional information about the substance of the Application and the allegation of discrimination, this Interim Decision responds to the applicant's request for a summary judgement or partial summary judgement and does not address the information relating to the specific allegations of discrimination submitted by both parties. Those matters will be addressed, as appropriate and necessary, in the final decision after the hearing has concluded.

Compare Figure 4 below with the examples of procedural rulings in Figures 1-3, above. Figure 4 is a case report following a trial. Unlike a procedural ruling on one component of a case in response to a **motion,** a case report that is a trial decision addresses the entire lawsuit, including the facts and arguments made.

Figure 4 is an example of a trial decision. This particular case report is the decision of a court of **appeal**; this case was initially heard by a lower court, and the "losing" party requested the outcome be reviewed by a higher court. (**appeals** are discussed in greater detail below under **Procedural History** (4. f.).

Figure 4: A trial decision

On appeal from the order of the Divisional Court (Justice Elizabeth M. Stewart), dated June 16, 2016, with reasons reported at 2016 ONSC 3331 (CanLII), affirming the order of Deputy Judge Michael Bay of the Small Claims Court, dated January 9, 2015.

Brown J.A.:

I. OVERVIEW

[1] The appellant, Alexandra Moore, sued her former employer, the respondent Apollo Health & Beauty Care ("Apollo"), in Small Claims Court for constructive dismissal and other employment-related damages. Ms. Moore has represented herself throughout the matter. At trial, she advanced two claims.

[2] First, Ms. Moore alleged Apollo had fundamentally changed the terms of her employment, thereby constructively dismissing her. The trial judge found in Ms. Moore's favour, holding Apollo had constructively dismissed her. However, the trial judge concluded Apollo provided Ms. Moore with appropriate termination notice calculated in accordance with the terms of the employment contract.

[3] Second, Ms. Moore alleged Apollo had failed to pay her amounts for hours she had worked, for two statutory holidays, and for six sick days. The trial judge did not award any amount for these claims on the basis Ms. Moore had abandoned them during her trial evidence.

[4] Ms. Moore appealed to the Divisional Court, requesting that court overturn the trial judge's ruling she had abandoned portions of her claim and his finding on "wrongful termination." A single judge of the Divisional Court dismissed her appeal. Ms. Moore then sought and obtained leave to appeal to this court.

4. What information can you expect to find in a case report?

Usually, case reports follow a typical structure. This section aims to help you identify the various parts of the case report and to understand their significance.

a. The caption

The **caption** is the title or name of the case – for example, *Moore v. Apollo Health & Beauty Care* (captions are usually italicized when writing a **legal brief**). It consists of the names of the people or organizations involved in the dispute, who are referred to as the parties or the litigants. As seen in Figure 5, Ms. Moore (the **plaintiff**) is suing Apollo Health & Beauty Care (her former employer, the **defendant**)

Figure 5: Two-party civil case caption

Caption

Moore vs Apollo Health & Beauty Care

Parties/Litigants

Here is how this case caption looks in CanLII:

Sometimes there are more than two parties to the dispute. When you see "*et al.*", a Latin abbreviation for "and other", after the name of one of the parties in the caption, it means that additional persons or organizations are parties to the dispute.

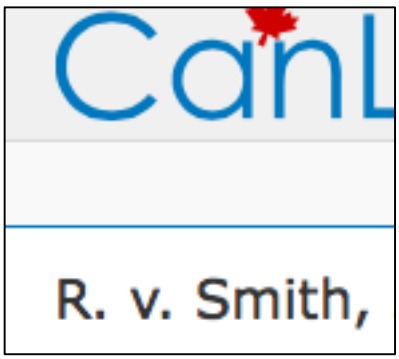
In the next example (Figure 6 below) from CanLll, a party named Al-Mandlawi is suing a party named Gara and other parties, who are indicated by the use of *et al.* in the caption.

Figure 6: Multi-party civil case caption

It is important to note that the caption will appear differently in criminal cases. When a person is charged with a criminal offence, cases are almost always brought by the State, not by private parties. The government becomes a party to the case, and is the first party in the caption. Canadian criminal cases identify the government as the party that is bringing a lawsuit using the Latin words "Rex" or "Regina" ("king" or "queen", currently "Regina"). In the caption, Regina is abbreviated to just one letter – "R".

So the case caption *R. v. Smith* (as seen in Figure 7) means that the government is bringing the case (a prosecution) against Mr. Smith (the accused).

Figure 7: Criminal case caption

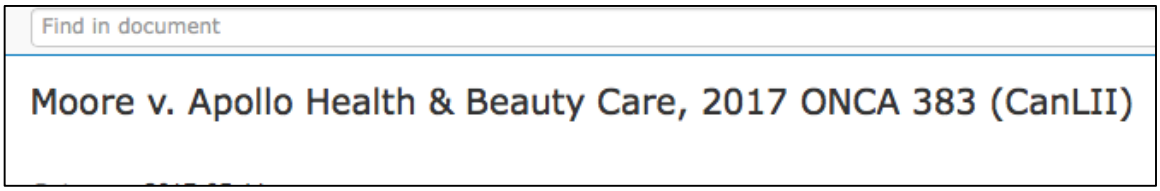


b. The case citation

Usually, the case **citation** will follow directly underneath the caption, or to the right of it. As you can see in Figure 8, the caption of the case is followed by some letters and numbers which tell you:

- the year of the decision
- the name of the court in which the case was decided
- the "reporter" in which you will also find the case report. The "reporter" is a collection of case reports for that court and that year. This usually includes the volume number (there are often multiple volumes for any given year). In many cases, the "reporter" will be Can Lll.

Figure 8: Case citation



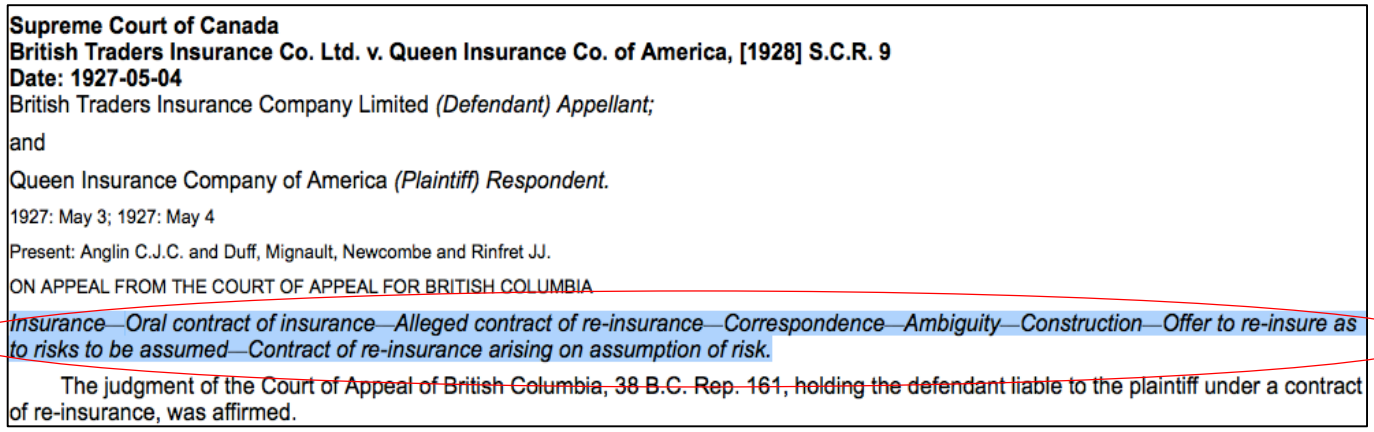
In the case of *Moore v. Apollo Health & Beauty Care*, the case citation includes the names of the parties, followed by 2017 (the year that the case was decided), and then "ONCA" (an acronym for the Ontario Court of Appeal). Different courts across the provinces and territories of Canada are referred to by various acronyms – for a list of some of the most common, please refer to Appendix B. The number "383" is the page number where the decision can be found in the reporter, which here is CanLII.

c. The headnote

Many case reports also include a **headnote**, typically located under the citation and before the main body of the case report. A headnote is usually a brief summary of a legal principle or rule discussed in the case report, and a brief summary of the legal issue that the judgment underneath will focus on. A headnote can also include information on legislation or other case reports that are relevant to this case, and whether this case is on appeal.

For research purposes, the headnote can be a useful quick summary, but please keep in mind that *the headnote is not a direct quote from the case report itself and is not written by the judge*. Don't quote it when presenting your own case.

Figure 9: The headnote



Supreme Court of Canada
British Traders Insurance Co. Ltd. v. Queen Insurance Co. of America, [1928] S.C.R. 9
Date: 1927-05-04
British Traders Insurance Company Limited *(Defendant) Appellant;*

and

Queen Insurance Company of America *(Plaintiff) Respondent.*

1927: May 3; 1927: May 4

Present: Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Insurance—Oral contract of insurance—Alleged contract of re-insurance—Correspondence—Ambiguity—Construction—Offer to re-insure as to risks to be assumed—Contract of re-insurance arising on assumption of risk.

The judgment of the Court of Appeal of British Columbia, 38 B.C. Rep. 161, holding the defendant liable to the plaintiff under a contract of re-insurance, was affirmed.

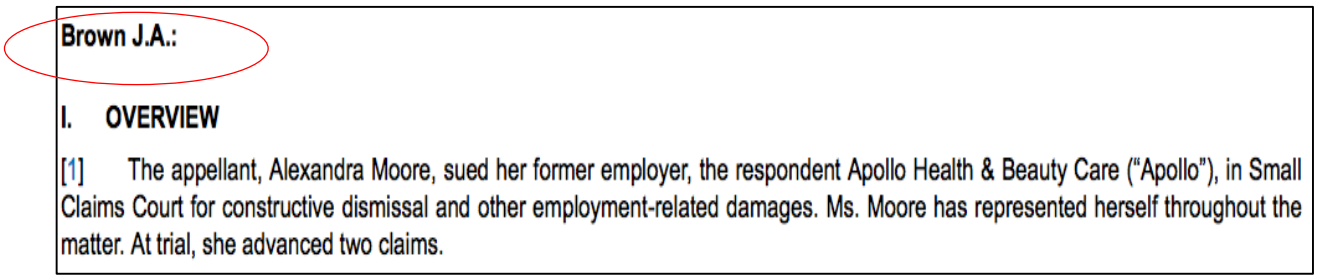
The headnote in Figure 9 tells you that this case report focuses on an oral insurance contract and briefly states the main legal principles involved. As in the above example, the headnote is sometimes italicized.

The headnote is a useful place to begin, but if you spot an issue there that relates to your case, you should read the whole case report, if possible, in order to understand how the court applied the law in this earlier case.

d. The authoring judge

Under the citation, you will also find the name of the judge who wrote the opinion. Most often, it will be a last name followed by the letter "J" which stands for Judge or Justice.

Figure 10: Authoring judge



Brown J.A.:

I. OVERVIEW

[1] The appellant, Alexandra Moore, sued her former employer, the respondent Apollo Health & Beauty Care ("Apollo"), in Small Claims Court for constructive dismissal and other employment-related damages. Ms. Moore has represented herself throughout the matter. At trial, she advanced two claims.

In *Moore v. Apollo* (see Figure 10 above), the decision was written by Brown, J. A. or Justice Brown, an Appeal Court judge. If he were a judge of the trial court, he would be described simply as "Brown J." or Justice Brown. In some case reports you may also see the abbreviation of "C.J." which stands for Chief Justice. Note that some opinions are authored by multiple judges.

e. The facts of the case

You are now at the main body of the case report. This part typically consists of the facts of the case, answering the question "what happened?" in the dispute now before the court.

You have to keep in mind that not all the facts of a given case are necessarily described in the "facts" section: as a judge authors an opinion, he or she describes the most important facts as he or she understands them, and those considered to be most relevant to the decision that follows.

Don't get bogged down in the details of a case – you are looking for differences and/or similarities to your own case.

Often, the beginning of the "Facts" section is clearly identified by a heading, as seen in Figure 11.

Figure 11: The facts

II. FACTS

The appellant's employment

[6] Apollo hired Ms. Moore, an engineer, in November 2012 as a line technician. The company presented her with an employment contract. One term of the contract stated that in the event Apollo terminated her employment, Ms. Moore would "be entitled to receive only such notice of termination, termination pay, benefit continuation and/or severance pay, if any, as are required by the [*Employment Standards Act, 2000*, S.O. 2000, c. 41] in the circumstances of the termination." The company advised Ms. Moore she was free to seek independent legal advice before signing the contract. She signed the contract without doing so.

[7] Apollo also provided Ms. Moore with an employee handbook, which stated employees were entitled to paid half-hour lunch breaks, double-time for Sunday work, and six paid sick days a year.

Because the system of precedent requires that courts in the same jurisdiction follow earlier decisions, you will be looking at the facts to see how closely you can relate your own matter to this one (see also Part II(b) below).

f. Procedural history and appeals

Trial decisions often include a **procedural history**. Whereas the facts of a case (above) describe the events that occurred *before* the dispute entered the court system, the procedural history describes what happened in the case *after* it was filed in court. The procedural history of a case may include any motions that have been brought (see the discussion of motions above), earlier preliminary **hearings** such as case management conferences or settlement conferences, and in the case of an appeal, the earlier, lower court trial decision that is now being reviewed.

A case may be appealed when one of the parties files a request to a higher court to review the outcome of that case. When a case is appealed, it is reviewed by a higher court, which can overrule and replace the previous decision, or agree with that decision and thus confirm it.

The **procedural history** of a case will tell you whether the case report you are reading has since been overruled on appeal by a higher court. This is important because you want to establish that this case is still "good law" – meaning, it has not been overruled and replaced.

Let's return to the case of *Moore v. Apollo,* and the case report of the trial decision in the Ontario Court of Appeal. The procedural history is (typically) given at the beginning of the case report. Here it is described under the heading "Overview", as seen in Figure 12. The procedural history tells us that this case began in the Small Claims Court, where Ms. Moore, a self-represented litigant, sued her former employer, Apollo Health & Beauty Care. She lost, and is now appealing to the Ontario Court of Appeal.

Figure 12: Procedural history

I. OVERVIEW

[1] The appellant, Alexandra Moore, sued her former employer, the respondent Apollo Health & Beauty Care ("Apollo"), in Small Claims Court for constructive dismissal and other employment-related damages. Ms. Moore has represented herself throughout the matter. At trial, she advanced two claims.

The trial

[12] A few weeks after her employment with Apollo had ended, Ms. Moore brought an action in the Small Claims Court against the company and some of its employees. Before trial, she withdrew her claim against the employees. As mentioned, her claim against Apollo contained two main components: (i) damages for constructive dismissal, using eight weeks as the appropriate period of notice; and (ii) damages for unpaid wages, two statutory holidays, and six unpaid sick days (hereafter collectively the "Unpaid Wages").

[13] Ms. Moore represented herself at trial. She testified. Apollo called one former employee to testify. The trial judge reserved.

Paragraphs 12 and 13 describe the earlier Small Claims Court trial.

It is important to check whether the case report you are reading is the "final word" or "good law" on the case, or whether it has since been appealed to a higher court and perhaps changed. Part II returns to this topic and gives you some tips on how to check that the case report you are relying on in your own argument is still "good law".

Make sure that the decision you are reading is the final word in that case – that it has not been overruled and replaced later by a higher court's decision.

g. References to other cases

A case report will often include (sometimes in the procedural history) a reference to *earlier decisions* that the court considers relevant to their judgment. Sometimes the court will "**cite to**" such decisions with approval – and sometimes they will "**distinguish**" them. This means that the court discusses an earlier case but decides that it is not relevant here. It may be useful for you to read the cases "**cited to**" with approval, but less useful to read those that are "**distinguished**".

The subsequent procedural history of a case can also tell you when and how this decision has been referred to ("**cited by**") by *later cases*. This will give you an idea of how widely applied and known the case is, and is useful for "tracking" how the case has been subsequently interpreted by other courts. You can get this information in CanLll by clicking on the "**cited by**" link on the main page of your case report. This process is explained in the CanLII Primer, on pages 20–21 (both English and French versions).

h. Legal principles and other authoritative sources

You are finally reaching the point in the case report where the legal principles behind the decision are discussed!

Typically, you will first see a discussion of the *general* legal principles relevant to the facts of the case. Next, the case will discuss how these legal principles may be directly applied to the facts of the case you are reading. It is the application of these relevant laws to the facts of the case that will determine and explain the case outcome.

The legal principles that are relevant to the case may come from several different sources. A judge may use principles that are written in **legislation** or **statutes** – laws passed by the Canadian Parliament. A judge may also discuss legal principles and rules that come from **common law**. Usually, the term common law refers to the body of previous case reports, also known as **precedents**, that are relevant to this case[2]. Finally, an argument may draw on another "authoritative" source; for example, a statement of principles from a professional organization, or from the published writing of a respected jurist.

Sometimes the case report will include a lengthy discussion of how a particular legal principle is central to the judge's reasoning. Let's return to the case of *Moore v. Apollo* for an example.

Under the heading "Misapprehension of the evidence" (Figure 13, below), the case report addresses one of the issues raised on appeal by Ms. Moore. This was that the judge at her (Small Claims Court) trial "misapprehended" (failed to consider) her evidence. In Paragraph 37 (circled), the judge sets out the relevant law. In the next paragraph (Para 38), he discusses how this legal principle is relevant here, applying the law to Ms. Moore's case.

[2] For a review of precedent in common law, see the NSRLP CanLII Primer at page 11, 1.2 "System of Precedent"

Figure 13: Legal principles

Misapprehension of the evidence

[37] A misapprehension of the evidence may refer to a failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to evidence: *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514 (C.A.), at p. 538.

[38] In the present case, the trial judge mistook the substance of Ms. Moore's evidence. When, in answer to his question, Ms. Moore testified that she was not expecting compensation for the unpaid breaks, but just referring to the issue as "one of the reasons why I left," the trial judge mistakenly concluded Ms. Moore was not pursuing her claim for Unpaid Wages. It was not reasonable for the trial judge to reach that conclusion, without further inquiry, in light of: (i) Ms. Moore's itemization of those items in her Claim, together with a calculation of the compensation sought; (ii) her placing the Apollo timecards into evidence; and (iii) her testimony about the specific days for which she sought compensation.

You can also see that in Paragraph 37 the judge "**cites to**" to the case of *R v. Morrissey,* an earlier case that discusses the general legal principles governing the misapprehension of evidence.

Another heading in the case report reads "Ascertaining whether a self-represented person has abandoned part of her claim" (Figure 14). This provides an excellent example of reference to an "authoritative source" that is neither caselaw nor statute.

Figure 14: An authoritative source

Ascertaining whether a self-represented person has abandoned part of her claim

[41] The new reality of civil litigation in public courts is the significant number of parties who are not represented by a lawyer, but present their own cases. Presiding over a trial where a party is not represented by a lawyer poses distinct challenges for a trial judge, and also brings with it distinct responsibilities.

[42] Both the challenges and responsibilities are succinctly described in the *Statement of Principles on Self-represented Litigants and Accused Persons* (the "*Statement*") issued by the Canadian Judicial Council in September 2006. The Supreme Court of Canada endorsed the *Statement* in *Pintea v. Johns*, 2017 SCC 23 (CanLII).

The principles the judge refers to here are not found in court decisions. They are the *Statement of Principles of Self-represented Litigants and Accused Persons* written by the Canadian Judicial Council. The judge explains that this *Statement*

has been approved by the Supreme Court in the case of *Pintea v. Johns*[3] in 2017 (another example of "**citing to**").

After setting out the relevant law and other authoritative sources (and **legislation**, if applicable), most judges go on to further explain and justify their reasoning. Sometimes judges will emphasize the importance of public policy – that is, making sure the outcome of this case is consistent with established public policy principles (for example, not upholding an "unconscionable" or "immoral" contract). Similarly, the judge's reasoning may refer to principles of procedural fairness and justice that are seen as foundational to the legal system (for example the principle of "open court").

In Part II we shall explain how you can encapsulate the judge's reasoning as the "**ratio decidendi**" or the "gem" at the heart of the case.

i. The outcome

At the end of the judge's opinion, you will see a "**holding**" or **disposition**, which sets out what action the court orders in this case.

If the case is being heard by an Appeal Court, and more than one judge is sitting, the judgment you read in a case report is the decision of all or the majority of the judges hearing the case (but it is written by just one of them, the "authoring judge").

Sometimes judges who agree with the majority will issue a separate, additional (usually short) decision stating that they *"**concur**"* but emphasizing a particular point or line of reasoning that differs slightly from the majority decision. If a judge writes a **concurring** decision, they have still reached the same result as the rest of the court, but did so by using a different legal principle or for a different reason.

When one or more judges have a different opinion than the majority and have reached a different result, they provide a "**dissent**". A **dissenting opinion** not only identifies a different legal principle, but also argues that the result (the majority decision) should have been different.

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[3] *Pintea v. Johns*, 2017 SCC 23 (CanLII)

Also, in a case report of an appeal decision, you will see the following language that tells you what the (new) outcome is:

- ➢ The Appeal Court may ***affirm*** the decision that was made earlier by the lower court. If a decision is affirmed it means that the court finds no error in the decision of a lower court, and agrees with it, coming to the same result.
- ➢ The Appeal Court may ***reverse*** the lower court's decision. This means that the decision of a lower court is overturned.
- ➢ Occasionally, the court may ***remand*** a lower court's decision, which means that the case will be sent back to that lower court to be heard again.

Part II: Using a Case Report to Make Your Own Case

Not every case report you read will help you to make your own argument.

Once you are familiar with what information is available in a case report, you are ready to start evaluating which cases will help you to make a persuasive argument to the court.

Don't get overwhelmed by reading too many cases. Don't go down every rabbit hole. You don't have to have every possible precedent – your goal is to find two or three (or even just one) really clear, strong precedents for your own argument.

a. Understanding precedent

The first thing you need to do is review how the system of precedent works in Canadian law. This is a commonsense system, with the decisions of higher courts always "trumping" (if they come to a different decision, overruling) those of lower courts.

There is also value in finding a case in the same jurisdiction (province, court) as the one you are applying to. The system of precedent we refer to throughout this Primer is reviewed by the English and French CanLII Primers and you should look at these documents if you need a "refresher".

b. Checking that a case is "good law"

If you have found a case in your jurisdiction which you think is similar to your own and will support your argument, you next want to be sure that the case report you are reading is still "good law" and has not been appealed and overruled (see above Part I(f)). If this case was appealed and the original decision overruled (reviewed and changed), it will *not* help your own argument.

Here are some tips for checking whether a case is "good law" in CanLll:

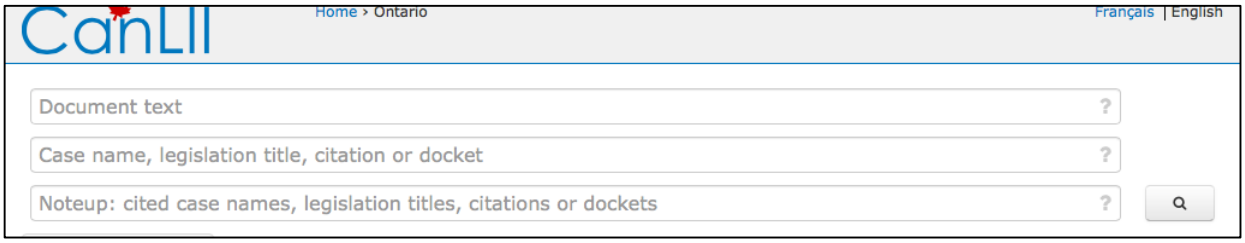
(a) Decisions of the Supreme Court of Canada are always the final word on a case – this is the highest court of the country. If the case report you are reading is from the Supreme Court of Canada, rest assured that it is the final word.

(b) If the case you are reading is a decision of a provincial Court of Appeal (an appeal court that reviews the original decision by a lower provincial court, for example: the Ontario Court of Appeal in the example above at Figure 12), *unless* there is a further appeal to the Supreme Court of Canada, what you have is the final outcome of that case. Since January 2006, CanLll links all decisions issued by Courts of Appeal to the appealed lower court decision. As the higher court, the Court of Appeal decision is "good law", whether or not the appeal judges agreed with the lower court's decision.

(c) If you are still unsure, one way to find out whether there were any further appeals in the case report you are reading is to run a search in CanLll using the name of the case (its **caption**, explained above in Part I, section 4. a.). Let's work through an example using the case of *Moore v. Apollo*.

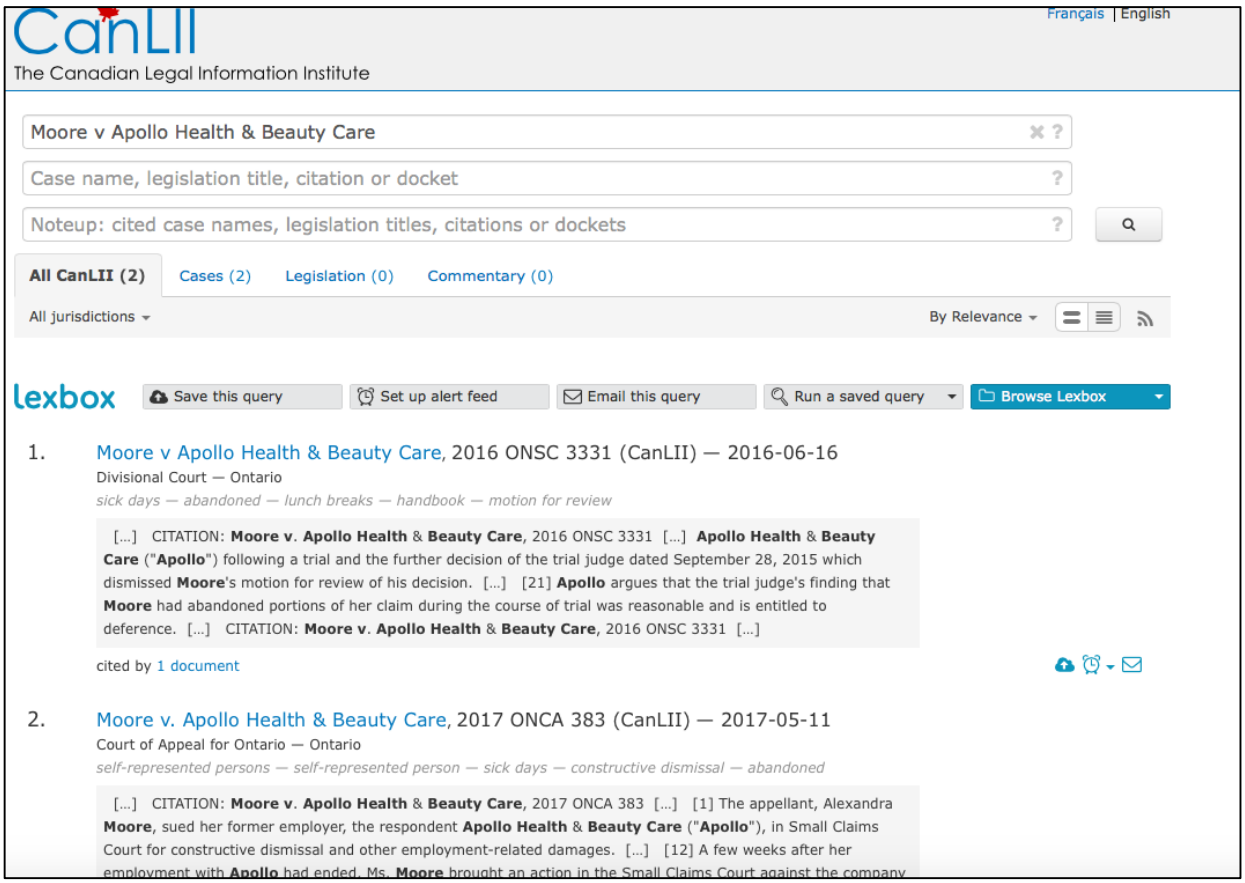
Step 1: Cut and paste the caption into the main CanLll search page. To return to the main search page, click on the large "CanLII" symbol in the top left corner. Figure 15 illustrates what you will see.

Figure 15: Main CanLll search page



Step Two: You can now paste the caption into one of three places. The "Document text" or "Case name, legislation title, citation or docket" fields allow for a broader search (you can learn more about the specifics of the search of each field by clicking the question marks on the far right). The lower field ("Noteup") is designed for a limited, more specific search. Putting the caption for *Moore v Apollo* in "Document text" takes us to the following result (Figure 16):

Figure 16: Is this case report the final word, or has it been appealed?



Step Three: Interpreting your results. You can see from the search results in Figure 16 that the 2016 case report of *Moore v Apollo* is not the final word – in 2017 there was an appeal to the Ontario Court of Appeal (ONCA). You can now click on the second result and read the final appeal and holding of *Moore v. Apollo*.

c. Understanding the facts

If you wish to use a case report to support your own argument to the court, you must be able to show that it is factually similar. Make note of the factors that shape the case report and the dispute it is describing (see above, Part I section 4. e.). Can you address any factual differences that might prevent these two situations from being resolved in the same way?

Alternatively, you may read a case report that reaches a different outcome to the one you want to argue for in your own case – and although the facts look similar, you think there are some important differences. In this case, you can use this case report to show how your own case is factually different and therefore should be decided differently – in other words, you would like to **distinguish** this case in your own argument. If this is your goal, make note of the factors that set the two cases apart.

d. Understanding the arguments made by each party

Try to locate the arguments made by each party in the case report. If you understand the claims made by each side, it will be easier to understand the case outcome. Moreover, as you read through the case report you will see how the court reacted to each argument. This allows you to see where the parties succeeded, and where their claims were rejected.

It can be helpful to make brief notes on each party's claim and argument. What is the outcome they are asking for? What arguments do they use? (And perhaps, what other cases do they refer to?) What does the court say about it? Why does the court grant them the outcome they asked for, or refuse it? What cases does the court **cite to** with approval in reaching its decision?

Understanding the argument made by a party in a similar-fact case who takes a position *different* to your own is very important. This will allow you to better anticipate the questions that the court might ask you in order to justify your own argument.

e. Finding the gem of the case (*ratio decidendi*)

Part I explained how the case report will describe the outcome of the case, and the resulting actions of the court. Now you need to go a step further in analyzing that outcome.

As you read through the judge's reasoning, you will eventually reach the most important element of every case report – the ***ratio decidendi*** or ***ratio*** for short. This Latin phrase means "the reason for the decision". The *ratio* – or the rule of the case – explains and justifies the court's solution to the legal issue at hand.

If you are reading an appeal court judgment, you want to look for the ratio in the majority decision. It will not be found in a **concurring decision**, although this analysis is considered "persuasive" in future cases. And it will not be found in any "**dissent**" (see above Part I section 4. i.). A dissent is sometimes described as "strong" where it points out a serious flaw in the reasoning of the majority decision. However, a dissent is not a decision that you can rely on to make your own argument – remember that the majority disagreed with this position. At best, you can use it to raise some doubts and new ideas.

Your ultimate goal is to find the gem of the case – ***ratio decidendi***, the final word of the court in that case and the main outcome of the decision.

The ***ratio decidendi*** is the "gem" that you are searching for in your analysis. The ***ratio*** is crucial for future interpretation of similar legal issues. Anything that the judge says to justify the decision, and any case or statute or other authoritative source that is relied on in that reasoning, forms part of the *ratio*.

The ***ratio*** is your most important "take-away". Not only does it describe the court's resolved outcome to the dispute at hand, but it also represents the legal principle(s) in this case. And because of the principle of precedent, the *ratio* is binding on lower courts considering similar fact cases – perhaps including yours.

Not everything in the decision (or majority decision) is the **ratio**, and you need to distill what is essential to the reasoning. Let's look at this example from the case of Ms. Moore (Figure 17).

Figure 17: Ratio decidendi

[47] However, the trial judge did not make sufficient inquiries before concluding Ms. Moore had abandoned her claim for Unpaid Wages. Where the evidence of a self-represented party raises a question in the trial judge's mind about the specific relief the party is seeking, a trial judge must make the appropriate inquiries of the party to clarify the matter. Those inquiries must be made in a clear, unambiguous, and comprehensive way so that several results occur: (i) the trial judge is left in no doubt about the party's position; (ii) the self-represented person clearly understands the legal implications of the critical choice she faces about whether to pursue or abandon a claim; and (iii) the self-represented person clearly understands from the trial judge which of her claims he will adjudicate.

Here, the judge no longer discusses legal principles in the abstract. He has already referred to the authorities (above, Figures 13 & 14) that he believes apply to this case and has applied them to the facts here. Now he states a legal principle which will become a part of the ***ratio***. It can be summarized as follows:

> **"Judges must make specific inquiries when there is a question raised about evidence of the self-represented litigant."**

This ***ratio*** not only states a legal principle, but gives practical instructions on how to ensure that it is followed in future cases.

Finding the **ratio** is the single most challenging, and the most important, part of reading and analyzing a case. If you can do this effectively, you will be able to use the cases that you have identified as relevant to your own case in a powerful way.

This is not easy – it takes lawyers years of practice and is an acquired skill. These tips may help:

- The ***ratio*** is often preceded by words like "we find that…" "our ruling is that…" etc.

- The ***ratio*** is central to the judge's reasoning on who is going to win – so when you start to get a sense of whose side the judge is going to take, you are in *ratio* territory![4]
- The ***ratio*** is not just an abstract description of the law, but a pragmatic application to the facts of this case.
- The ***ratio*** may be stated broadly (which will help you make it "fit" your own case) or it may be very narrow and fact-specific. If it is stated narrowly, be careful about "stretching" it to your own case unless the facts are very similar.

Remember: this is an art not a science. There is no definitive ***ratio*** for each case – lawyers argue over this endlessly – just use your best guess about what is at the core of the decision. You will get better at this the more case reports you read.

f. What is the importance of the *obiter dictum* comments in a case report?

While the ***ratio*** is the most important part of the case report, you will also want to note the court's comments that, while not part of the solution to the legal issue at hand, are offered as observations by the judge. These statements are called ***obiter dictum*** (singular) or ***dicta*** (plural), a Latin expression that means "things said by the way".

Comments made ***obiter dictum*** are not as important or as useful to you as the *ratio*, which is the ultimate legal principle. Nonetheless, ***obiter*** comments can be important. Although it will not form part of the precedent (this is limited to the ***ratio***), ***obiter dicta*** can be "persuasive" – meaning that they may influence, although not determine, future decisions. Sometimes new cases will incorporate earlier *obiter* comments into a new decision or ***ratio***. ***Obiter dicta*** from a Supreme Court of Canada decision are especially influential in lower courts.

[4] Described as the "aha" moment by Survive Law, July 18th 2017

g. How do you know what is part of the *ratio* and what is *obiter dictum*?

This is a tough call. Generally, ***obiter dicta*** are comments offered by a judge which are not directly needed to solve the legal dispute.

These comments sometimes take the form of a hypothetical example, using different facts from the case at hand, in order to illustrate a principle of law. Here is an example from a very old and well-known case, *Carlill v. Carbolic Smoke Ball Company*[5]:

"If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal? Why, of course not!"

The facts of the case of *Carlill v. Carbolic Smoke Ball Company* did not involve any lost dogs, but the judge's hypothetical example is an illustration of the contractual principle that is later set out in the ***ratio*** of the case. This example, however, is ***obiter.***

Obiter comments may also refer to or set the context for the decision. For example, in the case of *Moore v. Apollo*, the judge is asked to rule on whether in this case Ms. Moore was given sufficient judicial assistance (he said no). He was not asked to make any determination about the increased number of self-represented litigants in the courts; nevertheless, he chose to highlight this as "the new reality" Para 41, see Figure 18 below). These comments, since they are not directly related to the outcome in this case, are ***obiter:***

Figure 18: Obiter dictum

Ascertaining whether a self-represented person has abandoned part of her claim

[41] The new reality of civil litigation in public courts is the significant number of parties who are not represented by a lawyer, but present their own cases. Presiding over a trial where a party is not represented by a lawyer poses distinct challenges for a trial judge, and also brings with it distinct responsibilities.

[5] *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 QB 256

It is possible to imagine quoting the phrase “new reality” in an argument in another case about judicial assistance for SRLs – not as a legally binding principle like a ***ratio***, but as important context.

Appendix A
Glossary of Terms

Accused: a person who is charged with a crime.

Action: a civil lawsuit.

Act: a statute (or a law) passed by legislature.

Affirm: an Appeal Court may affirm a decision made earlier by If a decision is affirmed it means that the court finds no error in the decision of a lower court, and agrees with it, coming to the same result.

Appeal: when a party asks a higher court to review the decision of a lower court.

Appellant: a person who is appealing a decision of a court by asking for review by a higher court.

Appellate court: a court that hears appeals of case decisions from lower courts.

Caption: the title or name of a case report.

Citation: the part of a case report that usually follows the caption or is directly underneath the caption; the citation states the name of the court where the case was decided, the "reporter" (collection of case reports) where the text will be found, the reporter's volume number, and the year the case was decided.

Cites to: when a court "cites to" it mentions or refers to an earlier decision.

Cited by: when and how often this particular case has been referred to ("cited by") by other cases.

Common Law: a generic term for the justice system which operates in countries such as Canada, the United Kingdom, and the United States, whereby law is created via previous judicial decisions (precedent).

Counsel: another term for lawyer or legal representative.

Concurring decision: an opinion written by a judge (or judges) that agrees with the majority decision but describes a different reason (or additional reason or legal principle) for reaching the same outcome.

Damages: the remedy, usually monetary compensation, awarded to the winning party in a lawsuit.

Decision on merits: the final decision in a lawsuit, based on weighing the evidence and the arguments.

Defendant: a party against whom a civil lawsuit is brought, or a person who is charged with a criminal offence.

Disposition: outcome of the case.

Dissenting opinion: a decision written by a judge (or judges) that disagrees with the majority decision in the outcome. The dissent is not the final outcome or the rule of a case.

Distinguish: where the court discusses an earlier case but decides that it is not relevant to the current case

Hearing: any proceeding before a court.

Headnote: a part of a case report, typically located under the citation and before the main body of the case report. A headnote is usually a brief summary of a legal principle or rule discussed in the case report. The headnote is not a part of the case judgment and is not written by the authoring judge.

Holding: the decision reached by the court.

Legal brief: a legal document written by one party and submitted to court that contains this party's argument.

Legal databases: collections of case reports that are usually accessed online

Legislation: a law or a body of law that is created ("passed") by the legislature.

Legislature: the governmental body that has the authority to make laws.

Motion: a request to a court filed by one party asking for a procedural decision that will affect the progress of the case.

Obiter dictum (plural **Obiter Dicta**) a "passing remark", commentary made by a judge in a decision which is not part of the legal reasoning ("ratio") and which is not binding on future decision-makers.

Plaintiff: a person who brings a lawsuit or action.

Party: one of the participants or sides in a lawsuit.

Petition: a written application from a party to a court asking for "relief". "Relief" may be an order for compensation, variation of an existing order, a divorce, or other request.

Precedent: one case – sometimes a group of cases - that establish a pattern that is binding and which must be followed by lower courts (or the same court) in that jurisdiction unless "distinguished" on the facts.

Procedural history: information on how the case has progressed since it began (includes lower court decisions, motions hearings).

Procedural ruling: a court order regarding a specific request made by one of the parties to a lawsuit about a procedural matter such as adding or removing a party to the lawsuit, a request for documents or other information from the other side, or a request for summary judgment.

Prosecution: a criminal trial in which a charge is brought by the State against an accused

Ratio decidendi: the part of the case report that is is crucial for future interpretation of similar legal issues. Anything that the judge says to justify the decision, and any case or statute or other authoritative source that is relied on in that reasoning, forms part of the *ratio*.

Reverse: an Appeal Court may reverse the lower court's decision. This means that the decision of a lower court is overturned.

Remand: occasionally, an Appeal Court may remand a lower court's decision, which means that the case will be sent back to a lower court to be heard again.

Respondent: a party against whom a petition is filed. For example, the other spouse when one spouse files for divorce, or the other party when one side (the "appellant") files an appeal.

Statute: a law passed by the legislature.

Summary judgment: a request to the court by motion to dismiss the case of the other party without a full trial.

Trial court also sometimes referred to as the "original court" in a procedural history, the trial court is where the case was first presented.

Appendix B
Canadian Court Abbreviations

Alberta Court of Appeal:	ABCA
Alberta Court of Queen's Bench:	ABQB
British Columbia Court of Appeal:	BCCA
British Columbia Supreme Court:	BCSC
Manitoba Court of Appeal:	MBCA
Manitoba Court of Queen's Bench:	MBQB
New Brunswick Court of Queen's Bench:	NBQB
New Brunswick Court of Appeal:	NBCA
Newfoundland and Labrador Court of Appeal:	NLCA
Newfoundland and Labrador Supreme Court: (Trial Division)	NLTD(G)
Nova Scotia Court of Appeal:	NSCA
Nova Scotia Supreme Court:	NSSC
Nunavut Court of Appeal:	NUCA
Nunavut Court of Justice:	NUCJ
Ontario Court of Appeal:	ONCA
Ontario Superior Court of Justice:	ONSC
Ontario Court of Justice:	ONCJ
Prince Edward Island Court of Appeal:	PECA
Prince Edward Island Supreme Court:	PEI
Cour Supérieure du Québec:	QCCS
Cour du Québec:	QCCQ
Saskatchewan Court of Queen's Bench:	SKCA
Saskatchewan Superior Court:	SKSC

Yukon Territory Court of Appeal:	YTCA
Yukon Territory Supreme Court:	YTSC
Northwest Territories Court of Appeal:	NWTCA
Northwest Territories Supreme Court:	NWTSC
Supreme Court of Canada:	SCC