

Ignorance of the Law is No Excuse: A Law Student's Perspective on Developing Legal Information Literacy

By Pamela Pengelley (nee Seguin)

Like many eager, wide-eyed students before me, I entered law school with the misguided notion that the purpose of a law degree was to learn 'The Law'. Now, looking back with the hindsight sharpened by a \$40 000 (plus interest) education, I have come to realize the grave extent of this fallacy. I was not ultimately meant to learn the damages rule in *Hadley v. Baxendale*, nor wonder at how poor Mrs. Donahue's "neighborhood" became so populous by her unfortunate ingesting of a rancid snail. The Law, I have discovered, is a changing creature. It is dynamic. It develops, often in unexpected ways. And by the time of my graduation, it has become a different beast altogether from when I began.

The true goal of a legal education is to learn how to learn the law. Yet surprisingly, this remains a largely unstated notion throughout law school. Our reading materials are comprised of casebooks: pre-packaged judgments, usually rendered down to the 'important bits'. We are spoon-fed facts and ratios with a dose of public policy on the side. This method may serve to facilitate teaching, but it ignores the reality: students will in the very near future be required to go out into practice to compile and assimilate this information on their own. Should this not be the primary focus of our legal education? How is it that students can complete two and a half years of a law degree before ever being required to search for a judgment?

It seems obvious to remark that this issue is compounded by the emergence of electronic-based resources, including online journals and databases. Not only do these systems provide an alternative to traditional paper-based media, they are now becoming the dominant information resource.¹ There has also been a shift towards the "paperless office" as I discovered during my articling interviews - the firm at which I will soon be articling now maintains computerized records of correspondence and submits all court documentation via compact disk. More and more articling postings list computer literacy as a requirement of potential candidates. Consequently, it is vital in today's information society that law students are equipped with a range of suitably transferable skills to order to fully utilize these resources. Yet it seems to me that these considerations are largely secondary in Canadian law school curricula.

Just Where Do These Skills Come From?

British psychologist Liz McDowell has examined lecturers' perspectives on the role of electronic information resources in universities. It was a notable finding of her study that lecturers expected students to develop the necessary skills to utilize electronic research databases. Yet they did not feel the need for radical change to their teaching and learning practices; they relied on academic librarians to impart these skills.² They felt this was justified on the grounds that, as one law professor stated, students had limited time available, had difficulty working independently, and would perhaps "get more confused and...just throw a lot of stuff in".³ However, in a complementary study examining student expectations, students indicated that they expect help and support in using electronic resources to come from lecturers themselves and not from other members of the university such as librarians.⁴

This dilemma is mirrored in law school curricula - where does the responsibility for teaching legal research fall? There are a number of methods that have been adopted in law schools to

impart these skills to students. These include the laissez-faire approach, legal research courses, and the support of law librarians.

The “Laissez-Faire” Approach

Most law schools assign a ‘mandatory substantive writing requirement’ to upper-year students in an effort to develop research and writing skills. I do not believe that this method is effective, owing to one universal truth: students will follow the ‘path of least resistance’ when conducting legal research. From this simple heuristic, it is possible to predict with striking accuracy how students will conduct their legal research and a number of generalizations can be deduced.

1. Students will prefer online sources to print. It seems that 99% of students have a laptop (and the rest have sent theirs to the repair shop). Nearly all students can access the web from the comfort of their own homes and it is far easier to conduct a search of online sources than scour the stacks for a periodical that may or may not be on the shelves.⁵ Even if a student is in the library using a computer and an article is not available in full-text online, but hardcopy is available in the library proper, students will discount the article unless the substance appears to be so on-point that the effort to locate it will make life easier in the long run.⁶

2. Students will stick with what they know. At some point in their first year, law students are advised that they should obtain a Quicklaw, Lexis, or Westlaw password. Of those of us who believe it is imperative to do so, the majority will sign up for whichever service happens to have a sign-up table in the foyer that day, and leave it at that. If we do enlist for more than one database, we will restrict our usage to the database that is perceived to be the most ‘user-friendly’ (in other words, the one with the simplest log-on feature). Once we have selected a database, we will forget about the others (in fact, some of us simply assume that Quicklaw is the high-speed version of Westlaw). Furthermore, we will not experiment with all the fancy features - rather, we will conduct our searches clumsily and without much forethought, notwithstanding the possibility that there is a more effective and thorough method of finding what we are searching for. That is, until one day, entirely by accident, we click on the wrong button and discover... “Hey, how ‘bout that! Search by Keyword!”

3. We will rarely go beyond searching online legal databases. We students have heard rumors that it costs money to use these programs, but none of us really believe it. We remain blissfully unaware of such costs during our educational experience. We will never bother looking for alternative indexes, free or otherwise. The only exception to this rule occurs when we misplace our password and would prefer not to go through the hassle of reinstating our account. It is then easier to (for the first time) browse the law library Web site to determine if there is a quick and simple alternative to this dilemma. The result is predictable. Almost every law library Web site will have a “Research” link, leading to “Electronic Journals”, with a “Search by Subject” heading. Students will invariably assume that a search of, say, “Intellectual Property Journals” will generate a comprehensive list of all articles on topic, without realizing they have restricted their search to a narrow selection of specialized journals. The result is that left to their own devices, most students will develop restrictive, inadequate, and often quite misleading methods of conducting legal research.

Legal Research Courses

Most law schools offer introductory research sessions to first-year students. I suspect the expectation is that by offering these courses at an early stage in a law student’s education,

students will then be able to apply these skills in subsequent years without the necessity for later research instruction.

There is a serious problem with this approach that I believe is often overlooked. This is, quite simply, that first-year students “just don’t get it”, and they have no opportunity to apply these skills in any meaningful way. During their first year, law students are focused on grasping basic substantive law concepts; they do not have incentive to learn and integrate complex researching skills that do not have immediate application. Educational researchers emphasize that students must have a strong grounding in subject matter before information retrieval skills can be developed and retained.⁷ Yet it is not until their second-year that students have sufficient proficiency in law to develop legal research skills.

The preferable approach in my opinion is to provide these courses in upper-year curricula in conjunction with substantive writing projects. Although many law schools do offer “Advanced Legal Research” courses, they are elective and students often regard them as directed specifically towards those interested in academia or judicial clerkships. The attitude of many is “if it were so important, it would be mandatory.” As a result, many law students will graduate without even knowing of the “Canadian Encyclopedic Digest” or “Canadian Abridgement”, yet these are fundamentals of basic research. As Justice Ferguson scathingly noted in a judgment where lawyers for both parties had failed to do adequate research for the case: “In my view, it is not acceptable for any counsel or articling student to come to court intending to argue a contentious point of law without first researching the point at least to the extent of looking up the issue in basic reference books...If the lack of preparation and research in this case were unique or unusual I would let it pass, however, unfortunately it is not. In my experience this lack of preparation and research is commonplace.”⁸

It is the professional duty of a solicitor to conduct reasonably complete research on points of law, and yet it is not mandatory for law students to be educated in how to go about this process. Indeed, it is usually not until after graduation that the attention of students is called to the practical importance of these skills. Torts, contracts, and civil procedure are required courses. Should not legal research be also?

Law Librarians

I believe that law librarians are a highly important, but under-utilized resource. The reality is that most students would not know a law librarian if one knocked them over the head with the Income Tax Act. Many students have no idea that law librarians usually have a law degree or specialized expertise in legal research. Beyond asking where to find the answers to Sunday’s crossword, or query why the *McGill Law Journal* is not shelved under “QUE”, students do not resort to law librarians, notwithstanding that they are a valuable source of instruction and information. Even students who do understand this will often make the erroneous assumption that anyone putting law books on a shelf is thus a law librarian replete with associated credentials.

It is often incorrectly assumed that students will know that reference librarians are there to assist them with research questions. It would be helpful if libraries were to communicate law librarians’ qualifications to students and make it clear that they are on hand to help students with their research. This could perhaps be accomplished through a general email to the student body a few weeks into a semester or even through postings indicating as much in the library (although as a general rule, I find that signs are usually overlooked). It should be made clear just who is a

“law librarian□- that it is not necessarily the person at the checkout desk. Finally, a friendly face and an open door policy are always appreciated - for example, friends of mine at Queens University have spoken quite enthusiastically about their reference librarian who is known by all for her helpfulness, and seems to be on a first name basis with the entire student body.

The General Importance of the Law Library

Given that most students can do the majority of their legal research on-line from the comfort of their own homes, why do students even bother using a law library? I would like to emphasize that a law library is important to students, and it is used by almost all of us, at all times throughout the year, often for significant durations. In my opinion, the value to students of the law library has nothing to do with the size of the collection or the number of books on the shelves. We really do not give a hoot that our library happens to be the only one in the Commonwealth to carry the 1986 volumes of the *Burkina Faso Law Reports* (if there even is such a thing). That a law library is a housing facility for resources is secondary to students; its true worth is as a comfortable place to work and study.

An interesting study by Lemuel Watson has examined students’ perceptions of how the library influences their educational outcomes. Importantly, students report that because they see the library as a place to study, they believe that they receive higher gains in study skills, self-confidence in finding information, and quality of class work.⁹ For this reason, I think most students will agree that flexible food and drink policies, comfortable seating, and adequate lighting are the most important aspects of the law library. Plants are a nice touch. Students will continue to use law libraries as long as they continue to be friendly, comfortable places to work.

Conclusion

The philosopher Jeremy Bentham once cynically observed, “lawyers are the only persons in whom ignorance of the law is not punished□. His acerbic wit holds a grain of truth. Given the vast quantity of laws that exist in our complex society, the only a way lawyer is to determine which law applies to a particular set of circumstances is to have a well-developed understanding of proper research methodology. Yet many law students will complete their legal education without adequate exposure to this process.

Students require legal research instruction. Left to their own devices, they often develop poor and misleading methods of searching for information. However it is not until the upper-years that students have the necessary legal foundation to learn and retain adequate researching skills. As a result, law librarians have an important role in advising and instructing students through this process, but many students do not recognize that law librarians are a useful resource.

The law library itself is important to law students, and has value as a place to work and study. Exposure to the law library may have a positive impact on a student’s quality of work and self-confidence in finding legal resources. Furthermore, students who are encouraged to use the law library will have exposure to important resources including law librarians.

It has been said that lawyers do not necessarily know the law better than other people; rather they only know where to find it.¹⁰ A lawyer who does not know how to perform legal research is lacking a defining characteristic of the profession. More importantly, they run the real risk of violating professional standards of conduct. Law school should emphasize the importance of these skills, yet many students will remain ignorant of sound research methods. Perhaps we

should consider rephrasing a common adage to characterize this concern: Ignorance of how to find the law is no excuse.

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1 See for example, Nicholas Pengelley, "We know what we are: Another year in the digital millennium" (2004) 29 *Canadian Law Library Review* 79.

2 Liz McDowell, "Electronic information resources in undergraduate education: an exploratory study of opportunities for student learning and independence" (2002) 33 *British Journal of Educational Technology* 255 at 260.

3 *Ibid.* at 259.

4 L. Murray, T. Hourigan, C. Jeanneau, & D. Chappell, "Netskills and the current state of beliefs and practices in student learning: an assessment and recommendations" (2005) 36 *British Journal of Educational Technology* 425.

5 However, note that the opposite must be true with regards to course material. Students prefer books to computer-based course material because books are more portable and easier to use whereas online information must either be printed out or continuously re-accessed online. For more on this, see J. Noyes & K. Garland, "Students' attitudes towards books and computers" (2004) 21 *Computers in Human Behavior* 233.

6 This is rarely, if ever, the case.

7 See, for example, G. J. Leckie, "Desperately seeking citations: uncovering faculty assumptions about the undergraduate research process" (1996) 22 *Journal of Academic Librarianship* 201, and J. MacDonald, N. Heap & R. Mason, "'Have I learnt it?': Evaluating skills for resource based study using electronic resources" (2001) 32 *British Journal of Educational Technology* 419.

8 *Gibb v. Jiwan*, [1996] O.J. No. 1370, at para. 34 (QL).

9 L. Watson, "How do students' perceptions of their library usage influence their educational outcomes?" (2001) 35 *College Student Journal* 366. Other notable results were as follows:

i) Students who feel comfortable with the library agree more than those who do not that the library helps them with their academic work;

ii) If students dread using the library for schoolwork, that feeling has a negative effect on academic outcomes;

iii) Students feel strongly that the library is a place to use technology, in the form of copiers and computers for information retrieval;

iv) While students feel that the library is a place to use technology, they do not necessarily correlate this function with academic success or failure;

v) Students perceive the library as a place to study, and in this capacity they correlate the library with their academic success.

10 King George III (according to tradition).