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# THE INFORMATION LITERATE LEGAL RESEARCHER\*

By Kim Nayyer\*\*

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## Sommaire

Cet article résume les composantes fondamentales de la maîtrise de l'information du point de vue de la bibliothéconomie et les applique aux habiletés requises dans la recherche et l'analyse d'un problème juridique. L'auteure affirme, basée sur sa propre expérience, que plusieurs étudiants ou chercheurs moins expérimentés travaillant dans les firmes d'avocats n'appliquent pas les composantes de la maîtrise de l'information à leur travail de recherche juridique, soit parce qu'ils ne maîtrisent pas bien ces habiletés ou parce qu'ils trouvent cela trop difficile ou pas pratique pour les appliquer de façon efficace dans leur travail quotidien. Cet article identifie les problèmes soulevés par le manque de maîtrise de l'information et propose de nouvelles pistes pour solutionner ce problème.

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Information literacy is a well-established principle in library and information studies. Ensuring that their target population - users of their libraries and information centres - is information literate is a key goal of librarians and information specialists. The concept requires that library users know (or know how to determine) the questions they need to ask, how to find (or seek assistance in finding) the information they need in order to answer their questions, and - crucially - how to critically (and perhaps skeptically) examine and understand that information.

This goal applies equally to the specific context of legal analysis and legal research. Within this context there are narrower settings, such as legal research performed in law schools and the courts. This article addresses the application of information literacy principles to the specific setting of the law firm. Those of us who earn our livelihood by conducting or teaching others how to conduct legal research are aware that this task is not simply an exercise in going online and entering some keywords in the hope of locating the silver bullet case. Effective legal research requires the researcher to be information literate, which itself requires legal analysis. In turn, legal analysis is an application of the information literacy elements noted above: knowing (or finding out) what the relevant legal issues are, understanding or determining how to find the information (that is, cases and legislation) that will help resolve the issues, and the ability to critically analyze what is discovered. Again, this last point is crucial. This function is at

the heart of the lawyer's or student's responsibility.

What is the purpose of this exposition of the application of library principles to legal research in practice (or study)? My point is that the way many current legal researchers and students carry out this work is not centred in information literacy. Their work does not incorporate or display the basic elements of information literacy. It is the goal of many students and less-practiced researchers to find that silver bullet case, and to find it in as few steps as possible. And an unfortunate consequence - or, perhaps, cause - of this is an over-reliance on full-text online searching as a first step in research. This fault applies whether the full-text searching is in an electronic commercial legal database or in an internal knowledge management system.

I suggest that effective information literacy in the context of legal research and, therefore, proper analysis of a legal problem, requires a road map of some sort. No research issue can be resolved if it is not first properly understood. The starting point in the road map often exists in the form of traditional legal finding tools that help the researcher to determine the appropriate context for the research - that is, to help the researcher more precisely identify the issues being addressed. In my experience with students and junior lawyers, I have observed that the finding tools are familiar but are often overlooked in an impulse to get online for some quick full-text searching in what often turns out to be an unnecessarily large haystack.

Those in private practice know well that there are several reasons for this type of research. Quite often there are heavy demands on the time of students and junior lawyers, so the urge to take shortcuts is understandable. A desire to keep commercial database costs down or reluctance by the assigning lawyer to dedicate fees to research can pressure researchers to minimize time spent online. The unfortunate result is often that the researcher does not always read the cases beyond the headnotes or the immediate context of the search terms. Time constraints and working with case law first also may mean that the researcher does not read the precedents cited within the cases that have been found. The significance of this last problem cannot be underestimated. When this happens, the researcher really cannot properly understand the context or basis of the legal analysis in the cases they have found. All of this defeats information literacy.

Legal encyclopedias (such as the *Canadian Encyclopedic*

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*Digest*, which is one of the first resources all students learn to use), and topically arranged digest collections (including the *Canadian Abridgment*, but also the often overlooked topical case reporter digests) are the most basic finding tools. Tables of contents, back-of-book indexes, and tables of cases or statutes in these tools and in textbooks are all effective access points for locating information within them. Some organizations also have internal knowledge management systems with controlled vocabularies, taxonomies, or indexing schemes; these also satisfy the function of helping the researcher to organize his or her thoughts and analysis. More experienced lawyers and researchers may use less traditional finding tools: the person's experience itself, review of favourite secondary sources such as a particular textbook in the general area of law covering the issue or topical case reporters and their digests, previous research and analysis in the area in the researcher's own files or in an internal database of the organization, or discussions with colleagues.

Following the maps that these tools lay out, students and young lawyers can ensure, first, that they have identified the issues correctly, second, that they have considered any additional relevant issues, and third, that they have read and

understood the legal context of the issues. Context allows the researcher to critically evaluate the cases to which their research leads. On the other hand, full-text online searching, either on its own or as the starting point, may lead the researcher to something that looks like the right answer when, in reality, it is the answer to the wrong question.

Most of us have seen these errors happen all too frequently in student research, even from those who have great facility with online research. Once in a while this lack of information literacy is evident in de-contextualized research that forms the basis of faulty analysis, which, in turn, leads to unimpressive case law decided in reliance on inappropriate case law cited to the court. And the existence of such unfortunate cases on the books (or in the databases) makes future legal research and analysis even more difficult. By identifying and filling the gaps in the information literacy of students and junior lawyers and encouraging them to follow appropriate road maps in conducting their research and analysis, information professionals and experienced researchers can assist in addressing these problems and improving the quality of the research and its outcomes.

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