

# **CML 1101 : Principles of Legal Research Fall 2009**

## **Canadian jurisprudence and the *Canadian Abridgment***

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**Bibliothèque uOttawa Library**

# Outline

- What is jurisprudence?
- How do we find cases?
- Introduction to the *Canadian Abridgment*



# Jurisprudence

- Definition: the body of case law on a topic
- Judicial decisions are always *documented* but not necessarily *published*
  - **Reported** = published in a case law reporter
  - **Unreported** = will not appear in a printed format in a reporter



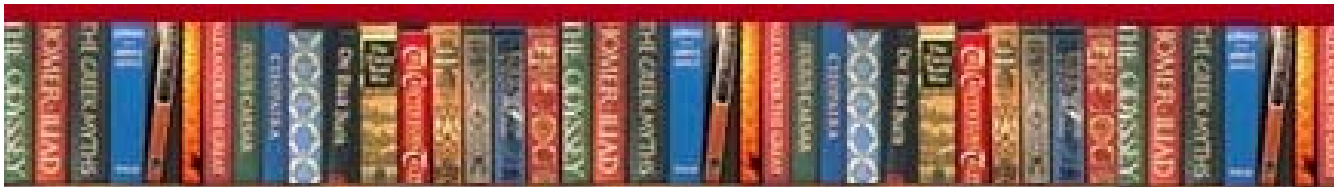
# Unreported decisions

- Often available in online legal research services like LexisNexis/Quicklaw and Westlaw Canada
- Otherwise, can sometimes be obtained directly from the specific court



# Case law reporters

- A publication of full-text decisions of judges
- Often, additional editorial information will be added, such as:
  - a summary of the principal points of law raised in the decision; and
  - a summary of the legislation, jurisprudence and secondary sources cited in the decision.



# How are cases selected for publication?

- Criteria can vary from publisher to publisher
- E.g. the *Ontario Reports* cases are selected based on whether the case:
  - Makes new law by dealing with a novel situation or by extending the application of existing principles
  - Includes a modern judicial restatement of established principles
  - Clarifies conflicting decisions of lower courts, etc.



# Two main types of law reporter

## 1) General law reports:

- Decisions from a specific court (*Supreme Court Reports*)
- Several courts w/in a specific jurisdiction (*Ontario Reports*)
- Several courts w/in several jurisdictions (*Dominion Law Reports*)

## 2) Specialized law reports

- Include decisions discussing *specific* subjects of law independent of court or jurisdiction (*Canadian Cases in Environmental Law, Family Law Reports, Canadian Criminal Cases, etc.*)

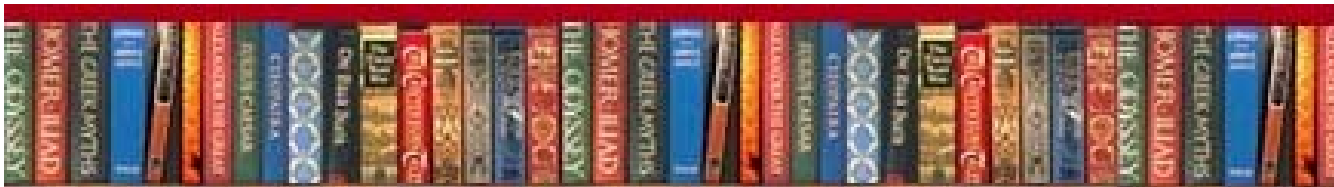


# *Criminal Code*, s. 365. Every one who fraudulently ...

- (a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration,
- (b) undertakes, for a consideration, to tell fortunes, or
- (c) pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found



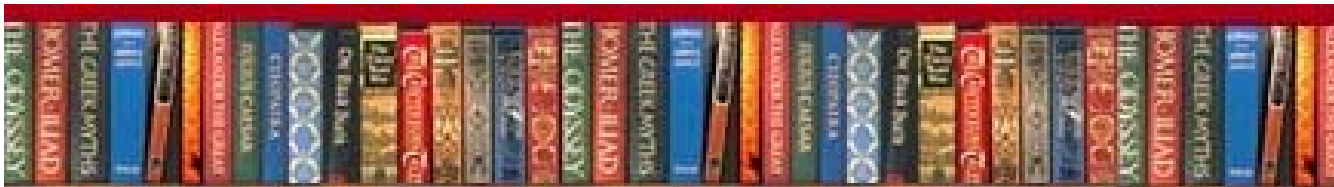
is guilty of an offence punishable on summary conviction.





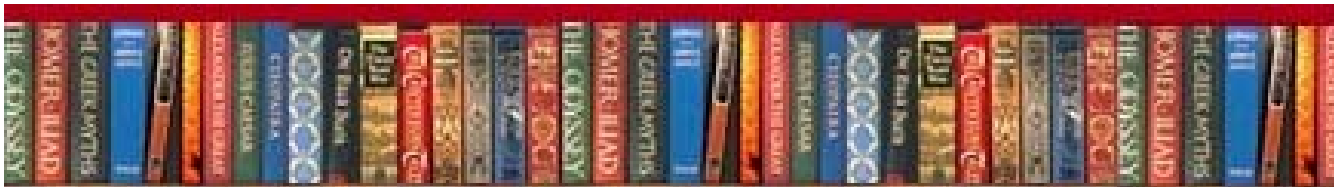
# How do I find case law on the subject?

- Consult secondary sources first
  - Textbook on the subject (e.g., *Criminal Law* by Kent Roach)
  - Legal encyclopedia (e.g., *Canadian Encyclopedic Digest* under the title « Criminal Law »)
  - Annotated code (e.g., *Martin's Annual Criminal Code*, s. 365)
- Read summaries or **digests** of cases (e.g., *All Canada Weekly Summaries*, summaries in the *Lawyers' Weekly*)
- Use the *Canadian Abridgment* or other research tools that list cases by style of cause or subject



# Example of an annotated code

- *Martin's Annual Criminal Code* (FTX RESV/ [KE 8804.5 .M3](#))
  - *R. v. Dazenbrook* (1975), 23 C.C.C. (2d) 252 (Ont. Prov. Ct.).
    - The mere telling of a fortune is not *per se* illegal, as the Court must also prove an intent to defraud.



# Example of a case digest

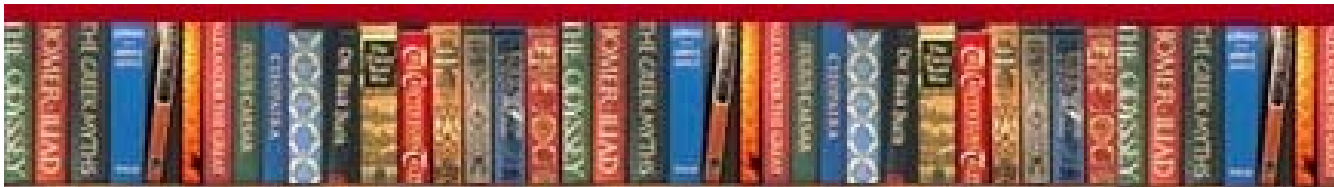
- Read the digest or summary of the case, then note the citation to the full text

**9930.**

(X.19.b)

Offences against person and reputation - Abortion - Charging offence - Distinct offences created by section - Conviction for offence not charged - Criminal Code, R.S.C. 1927, c. 36, s. 303. Under s. 303, there are at least three distinct offences of attempting to procure a miscarriage. Accused was charged with unlawfully using an instrument with intent to procure a miscarriage. The trial Judge instructed the jury that there was no evidence of using an instrument, but nevertheless left them generally to find that accused had used other means with intent to procure a miscarriage, and the jury convicted. Held, the conviction must be quashed. The jury had not returned a verdict upon the charge as laid, and there must be a new trial.

R. v. Dale (1939), 54 B.C.R. 134, [1940] 1 W.W.R. 375, 72 C.C.C. 181, [1939] 3 D.L.R. 603 (C.A.).



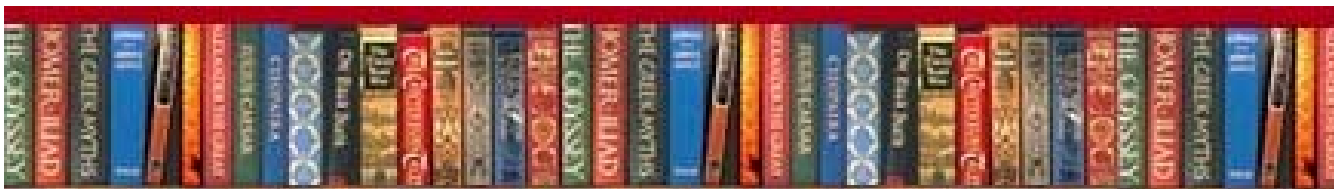
# Case law indexes provide many ways to find cases:

1. Search using the names of the parties or the style of cause.
2. Search by subject.
3. Search by legislation cited.
4. Search by case law cited.
5. Search by judicial definitions of a word or a phrase.



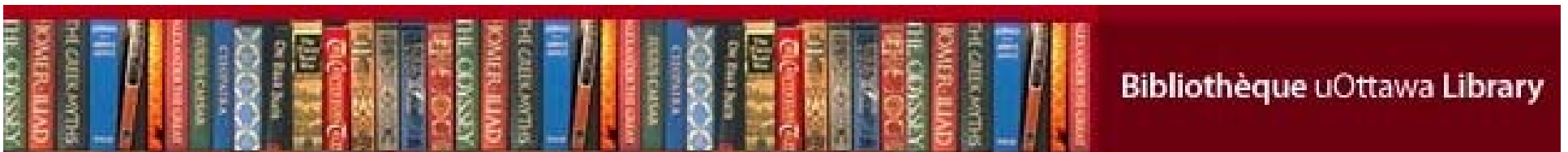
# What about Google<sup>™</sup>?

- Good for finding well-known or oft-cited cases, but not much else
- Keyword search for caselaw via Google will retrieve too many documents, and often irrelevant ones or ones with little authority
- Better to try a legal database:
  - Canadian Legal Information Institute ([canlii.org](http://canlii.org))
  - [other Legal Information Institutes](#)
  - an online database such as Quicklaw or Westlaw Canada, or another relevant database for your jurisdiction/area of research



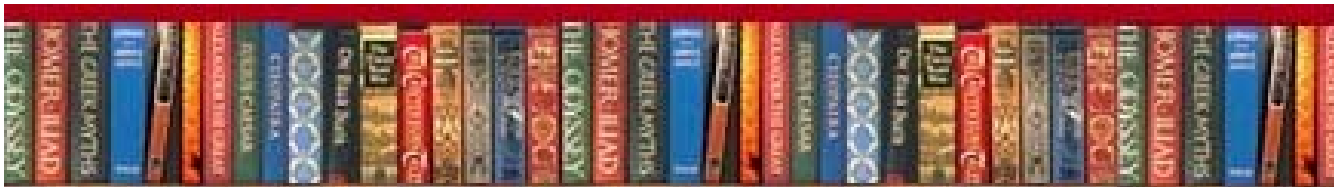
# I have a reference to a case. Now what?

- Many indexes to case law do not include the full text of the case itself, but simply a reference to the case
- So you must learn how to read these citations



# Reading a case citation

- *R. v. Dazenbrook* (1975), 23 C.C.C. (2d) 252 (Ont. Prov. Ct.).
  - style of cause
  - year of decision
  - volume
  - reporter abbreviation
  - series
  - first page of decision
  - level of court and jurisdiction



# Deciphering legal abbreviations

- What gets abbreviated?
  - Names of courts and tribunals, periodicals, yearbooks, case law reporters, etc.
- Where to find abbreviations:
  - *Canadian Guide to Uniform Legal Citation* (the “*McGill Guide*”) includes appendices with common abbreviations
  - Legal abbreviation dictionaries (e.g., *Bieber’s* – REF/[KF 246 .B53 2001](#))
  - Online:
    - Brian Dickson Law Library [in-house binder](#) with list of all law reporters and statutes held at the Law Library
    - [Cardiff Index to Legal Abbreviations](#)
    - [List of legal abbreviations](#) prepared by Université de Montréal
      - Comprehensive, including Quicklaw abbreviations, but ignore call numbers indicated on the list
      - Also only available in French





# The structure of a judicial decision

- **Style of cause :**

- the names of the parties – *e.g., R. v. Sparrow*

- **Preliminary information :**

- the names of the court and of the judge or judges that were present at the hearing, the date or dates of the hearing, the date the decision was rendered, etc.

- **Keywords or Catch-phrases :**

- Key words and phrases, usually written in italics and separated by dashes, that describe the subject and basic principles of law, as well as the basic facts of the case



# The structure of a judicial decision

- **Headnote :**

- a summary of the facts, principles of law, and reasons of the judge – written by the editors of the law reporter, not by the judge, so never cite these directly!

- **Authorities cited :**

- list of cases, laws and regulations, and secondary sources referred to by the judge (or judges), and upon which the decision, to some degree, is based

- **History :**

- Includes any previous history of the case: previous appeals, judge's decision at first instance, etc.

- **Opinion(s) :**

- the actual written or oral reasons of the judge(s)



# The *Canadian Abridgment*

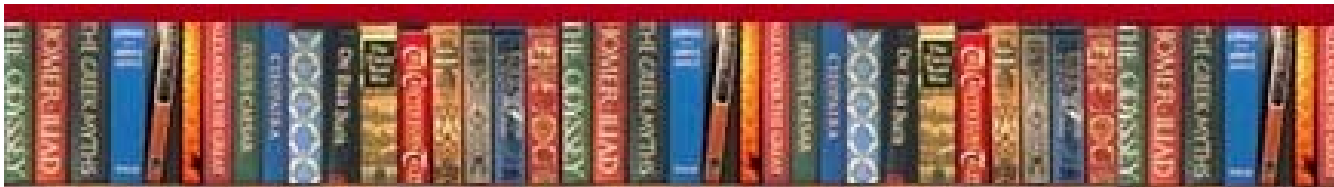
- Published by [Thomson Carswell](#), the *Canadian Abridgment* is a comprehensive multi-volume **research tool for Canadian law**
- Includes all reported decisions, as well as some unreported ones
- N.B.: does not include decisions on Quebec civil law!



# What can I find by using the Abridgment?

## 1. Case digests

- To find case law by **legal issue**
  - You will use these volumes the most
  - For example, if you are looking for a case on Torts, you find the volumes with that subject title, then look through the Table of Classification to find the specific area of torts in which you are interested

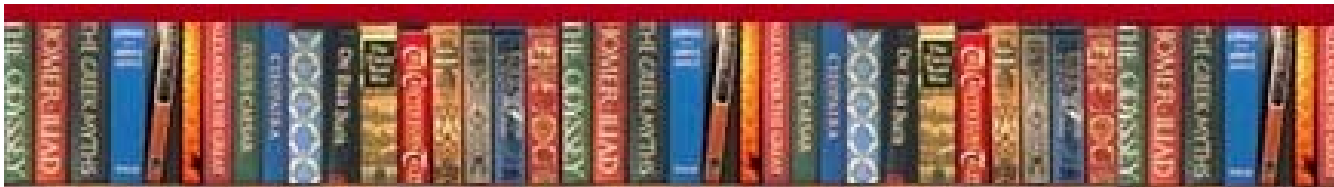


# Example of Classification

## Torts

- XX. Trespass
  - 2. Trespass to land
    - C. Particular situations of trespass
      - » i. Landlord and tenant

**Volume 115  
(3<sup>rd</sup> edition)**



# What can I find by using the Abridgment? (cont.)

## 2. *Consolidated Table of Cases*

- Comprehensive listing of all the cases indexed in the *Canadian Abridgment*, organized alphabetically by case name
- Usually lists a brief history of the case, all parallel references, and where you can find the case in the main Case Digests

## 3. *Canadian Case Citations*

- Provides detailed history of each case, including the results of any appeals, and also the **judicial treatment** of a case
  - Judicial treatment = whether any subsequent cases have cited a case or not



# What can I find by using the Abridgment? (cont.)

## 4. *Canadian Statute Citations*

- Provides references to cases that have judicially considered specific statutes, including some foreign statutes and even international treaties

## 5. *Words and Phrases Judicially Defined in Canadian Courts and Tribunals*

- Judicial definitions of various words and phrases
- Each entry includes an excerpt from the decision which considered the word or phrase, and gives you the reference to the full-text



# What can I find by using the Abridgment? (cont.)

## *6. Canadian Current Law, Case Law Digests*

- Summaries of case law published monthly to keep you up-to-date (ask at Reserve for these)

## *7. Index to Canadian Legal Literature*

- Index of all legal articles and books written in Canada
- Can be searched by subject, by case name, by name of legislation, or by author

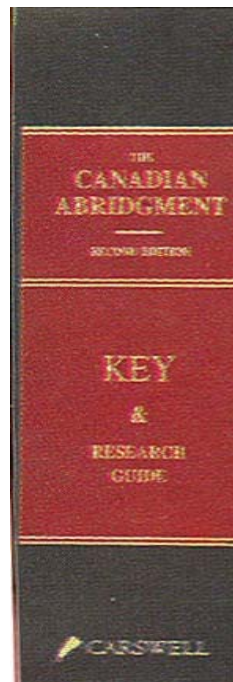




# To find your legal issue in the Digests

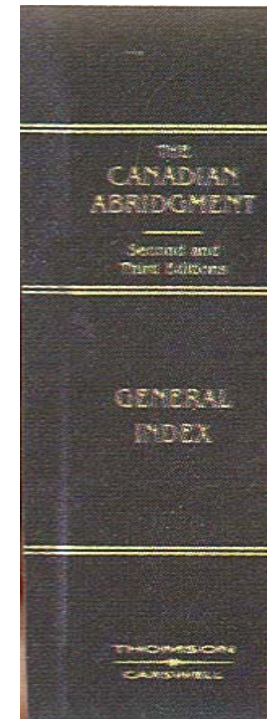
- The **Key & Research Guide** is the Abridgment's Table of Contents

- shows full table of contents for each title in the main work.
- use it when your title covers many different volumes (ex.: Criminal Law which spans 15+ volumes)



- The **General Index** lists the key legal concepts arising out of the digests

- organized alphabetically by **keyword**, with citations to the corresponding key numbers in the main work.
- use it when you don't see the subject title you want...



# Example in the General Index

**Certified cheque** – *see Cheques, accepted or certified cheques* → **cross-reference**

**Certiorari** → **main topic**

● *in civil matters* → **sub-topic**

●● *discretion of court to refuse* → **further divisions of sub-topics**

●●● *availability of other remedy*

**ADM 1.3470-3501** → **locator code in main work**



**“key number”**



# **REVIEW** : Finding case law by case name

## **1. Consolidated Table of Cases -**

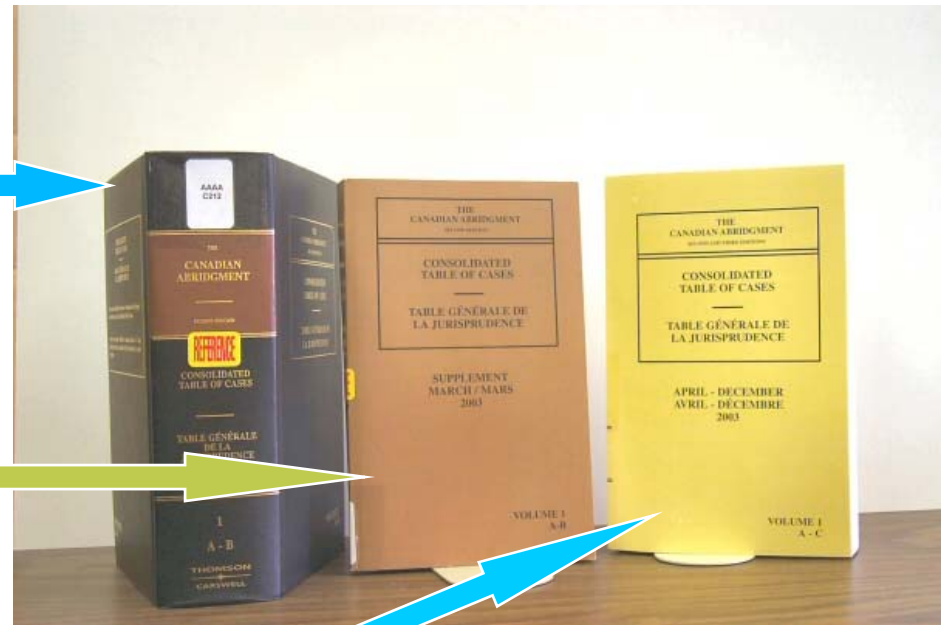
- main volumes

## **2. Consolidated Table of Cases –**

- supplement volumes

## **3. Canadian Current Law: Case digests**

- monthly issues



# REVIEW: Finding case law by legal issue or topic

## ■ Canadian Abridgment Case Digests

1. Main Case Digest volumes
2. Case Digest supplement volumes
3. Canadian Current Law: Case Digests monthly issues (see #3 on previous page)



# Summary

- Cases – reported or unreported
- General & specialized reporters
- The *Canadian Abridgment*
  - a comprehensive research tool for finding Canadian jurisprudence
  - complicated, but necessary to learn!

