

Thoughts and Questions on Law Reform in an Electronic Age

Background Material and References

Research

1. PREVALENCE OF ELECTRONIC RESEARCH

- a. New associates at law firms spend 71% of their work week online
- b. 31% of their work week is spent doing legal research
 - i. Figure jumps to 35% for first or second year associates
- c. Legal research mostly done using online, paid resources (first) and online, free resources (second)
 - i. Less than 2 hours per week were spent consulting print resources
 - ii. 10% of those surveyed do not use print resources at all
- d. Would the above statistics re: percentage of work week spent online be even higher for those engaged in law reform work?
 - i. Law reformers spend most of their time conducting legal research and, unlike firm associates, do not have as many competing demands on their time (i.e., client meetings)
- e. Another emerging trend is the increasing use of mobile devices which, in turn, signals increasing access to mobile apps
 - i. American Bar Association 2014 Tech Survey = 91% of respondents use a smartphone:
 1. 69% use iPhone
 2. 25% use Android
 3. 7% use Blackberry (down 41% from 2011)

- f. **Source:** Steven A. Lastres, Insights Paper, “Rebooting Legal Research in a Digital Age” (6 July 2013), online:
www.lexisnexis.com/infopro/literature-reference/white-papers/b/whitepaper/archive/2013/07/15/insights-paper-rebooting-legal-research-in-a-digital-age.aspx.

2. HOW HAS LEGAL RESEARCH CHANGED IN THE ELECTRONIC WORLD?

- a. In the days before electronic research, if a lawyer was researching an unfamiliar area, the first resource they would consult would be a leading text book or another secondary source located by searching at their local law library
- i. Now, the first step for young associates researching in an unfamiliar area is to conduct a plain language Google search
- b. Prior to the electronic days, lawyers would have to consult abridgement digests, case citators or some other legal classification system in order for to conduct case law research
- i. Now, researchers almost never use a case digest
 - ii. If they do, it is done as a later step in the research process, and it is accessed by following the digest link on the online case’s headnote
 1. It is used as a tool to find additional cases
- c. Even online research is changing
- i. Electronic case law databases used to employ Boolean searches
 - ii. Now, many databases are following Google’s lead and utilizing Natural Language searches
 1. i.e., WestlawNext
- d. Easy access to online resources has led to an almost exclusive reliance on electronic research

- i. Little to no library usage
 - ii. Little to no understanding of search logic
- e. An exclusive reliance on electronic resources has led to a decreased need to access information technology experts (i.e., law librarians)
 - i. Double-edged sword – while electronic research is usually quicker, it leads to higher expectations
 - 1. For example, there is a tendency to assume that researchers should be able to find a particular resource and they should be able to do so themselves
- f. **Source:** Steven A. Lastres, Insights Paper, “Rebooting Legal Research in a Digital Age” (6 July 2013), online:
www.lexisnexis.com/infopro/literature-reference/white-papers/b/whitepaper/archive/2013/07/15/insights-paper-rebooting-legal-research-in-a-digital-age.aspx.

3. WHAT RESOURCES ARE AVAILABLE ONLINE?

- a. Electronic research databases (i.e., Westlaw, Quicklaw) – can be used to access the following:
 - i. Statutes and regulations
 - 1. Some are not even published in print anymore – i.e., Canada Gazette and Government of Canada documents
 - ii. Case law
 - iii. Legal literature (i.e., scholarly articles, case comments etc)
 - iv. Rules of Court
 - v. Canadian Encyclopedic Digest, Halsbury’s etc
 - vi. Canadian Abridgement Digest (Westlaw)
 - vii. Canadian Abridgement E-Digest
 - 1. A weekly current awareness service available through WestlawNext Canada that is designed to help lawyers and

legal researchers keep abreast of the latest developments in case law for a particular topic

b. Websites:

i. Law reform websites – used to access Reports, Consultation Documents etc

1. ALRI no longer publishes hard copy reports
2. ALRI website (provides links to other law reform agencies):
<http://www.alri.ualberta.ca/>
3. ALRC website: <http://www.alrc.gov.au/>
4. Database that allows you to search all Australasian and European law reform agencies:
<http://www.worldlii.org/int/special/lawreform/>

ii. Court websites – Rules of Court, practice directions etc

iii. Informational websites

c. Leading text books or other secondary sources available in eBook or other online formats

d. Legal blogs (sign up with an RSS feed for regular updates)

e. Legal research apps

i. LexisAdvance – offers features similar to the Lexis desktop version for searching cases, statutes, secondary resources etc

1. App is free, but must have a LexisNexis subscription

ii. WestlawNext – offers access to cases, statutes, secondary materials, and more, plus most of the features available in the desktop version

1. Must have a Westlaw subscription

iii. WiseLii – search and view Canadian statutes, regulations and case law

- iv. Irwin Law iPad app – provides access to eBooks published by Irwin Law
- v. Canadian Law app – provides offline access to over 700 Federal statutes
 - 1. Includes the full English text of all statutes (but not the regulations)

- f. Legal practice apps
 - i. iTableAmount – quickly calculates the “Table Amount” child support parents should pay or receive under the Canadian Child Support Guidelines
 - 1. Provides iCloud support so calculations can be stored
 - ii. Canadian Mortgage by Bendigi Tech Inc. – allows you to calculate total monthly home costs, your mortgage payment, payment frequencies, insurance premium estimation etc
 - 1. Tested and verified against available Canadian mortgage calculators from all major banks in Canada
 - 2. Allows you to share your calculations via email
 - iii. TurboScan – turns your phone into a multi-page scanner for documents, receipts, notes, whiteboards and other text
 - 1. Allows you to store or email scanned documents as multi-page PDF or JPEG files
 - 2. Auto-detects document edges, straightens documents and eliminates shadows

- g. **Sources:** Shaunna Mireau, “Review of Irwin Law iPad App” (13 December 2011), *Slaw*, online: www.slaw.ca/2011/12/13/review-of-irwin-law-ipad-app.
- h. Cheryl Niemeier, “Part 1 – Legal Research in Your Pocket: Fee-based Services” (7 November 2014), *Bose Law and Technology Blog* (blog),

online: <http://lawandtechnologyblog.boselaw.com/2014/11/07/part-1-legal-research-in-your-pocket-fee-based-services/>.

- i. Melissa Preston, "Making Use of Smartphone Apps in Your Family Law Practice" (Presentation delivered at the Alberta Law Conference, Edmonton, 29-30 January, 2015).

4. ADVANTAGES OF ELECTRONIC RESEARCH

- a. Quick
- b. Easy
- c. Accessible
 - i. Especially convenient for traditionally hard to find resources
- d. Able to consult a variety of different resources
- e. Many ways to search for and access information
- f. Online catalogues and bibliographic searching capabilities
- g. Can view court decisions very soon after they have been released
- h. Instantaneous online research assistance:
 - i. Online chats with law librarians
 1. Georgetown Law Library:
www.law.georgetown.edu/library/about/services-policies/live-help.cfm
 - ii. Email questions to law librarians
 1. The "Ask a Law Librarian" function on the Alberta Law Libraries website: www.lawlibrary.ab.ca/ask-a-lawlibrarian.html

- iii. Online video tutorials on various legal research topics
 - 1. BC Courthouse Library video tutorials:
www.courthouselibrary.ca/training/videos.aspx
- iv. Quicklaw Tips Wiki page (allows anyone who has some great information about using new Quiklaw to share their expertise with the world)
 - 1. Allows collaboration and input from multiple researchers around the world
 - 2. Monitoring the wiki page alerts you to helpful research tips you did not know you needed
- i. **Sources:** Kayleen Wardell, “From caveman to casebase: the evolution of legal research through the technological age” (Paper delivered at the Australian Law Librarians’ Association Evolution Conference, Darwin, 2-4 September 2009), online:
http://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1014&context=lib_pubs;
- j. Morris L. Cohen, “Researching Legal History in the Digital Age” (2007) 99 Law Libr J 377 at 378.
- k. Shaunna Mireau, “QL Tips Wiki” (12 September 2007), *Shaunna Mireau on Canadian Legal Research* (blog), online:
<http://mireau.blogspot.ca/2007/09/ql-tips-wiki.html>.

5. CHALLENGES FOR ELECTRONIC RESEARCH

- a. Abundance of data
 - i. Large but disorganized volume of material
 - ii. Potential to “...accumulate unnecessary amounts of disorganized and unreliable material that has to be checked and rechecked.”
[Hanft at 80]
- b. Accessibility of data

- i. “We no longer need merely cases and statutes, but regulations, ordinances, factual information, statistics, public records, international documents, and news. Paradoxically, as these materials become more accessible, our need for them grows. What might have been beneath our notice five years ago (because it was too hard to find) may be required today to avoid malpractice.” [Hanft at 78]

- c. Validity of data
 - i. “Once a document is digitized and uploaded to the web, the ‘assurance of quality provided by the publishers’ editorial control” is not guaranteed. The document is also more vulnerable to alteration, thereby making the task of authentication more difficult. Therefore, as the world of legal information becomes more digitized, it is critical that legal researchers in the 21st century have acquired the skills to not only effectively search for relevant legal information, but to also evaluate both the content and sources of information available.” [Wardell at 5]

- d. Permanence of data
 - i. How does one ensure the long-term, physical survival of data when print copies are digitized, or never existed in the first place [Cohen at 390]
 - ii. “With electronic data constantly changing, will we have to create our own electronic archive of every research session in order to preserve our results?” [Hanft at 79]

- e. Gaps in database information
 - i. Example from Slaw Tips Blog: author was attempting to note up a section of a particular statute. She searched Westlaw, Quicklaw and CanLii. Some results were found on one database that were

not found on the others, meaning that if only one database had been used, information would have been missed.

1. One of the databases had also experienced a technical glitch, and a number of years' worth of results were missing entirely
2. <http://tips.slaw.ca/2013/research/search-multiple-sources/>

- f. Scope of database (implications for historical and point-in-time research)
 - i. WestlawNext contains unreported cases from 1986 onwards, reported decisions from 1977 onwards, and some key decisions pre-dating 1977
 1. Also contains decisions published in Carswell reporters since their inception (i.e., Canadian Tax Cases from 1917 onwards)
 - ii. Our Future Our Past: The Alberta Heritage Digitization Project contains Statutes, Legislative Assembly Bills, Debates and Journals, the Alberta Gazette and the Ordinances of the Northwest Territories (up to 1990)
 1. <http://www.ourfutureourpast.ca/law/>
 - iii. QP Source Professional provides searchable point-in-time legislation back to January 1, 2002
 - iv. CanLii provides Alberta Court of Appeal cases back to 1970 and Queen's Bench cases back to 1971
- g. High cost of databases may be limiting for some scholars and institutions
 - i. ALRI does not have to pay out of pocket for a database subscription
 1. We accesses Westlaw and Quicklaw through the University of Alberta's library website
 - ii. What about agencies who are independent?

- h. **Sources:** John K. Hanft, “A Model for Legal Research in the Electronic Age” (1999) 17:3 Leg Ref Serv Q 77 at 77-80.
- i. Richard A. Danner, “Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available” (2003) 31:2 Intl J Leg Info 179 at 192.
- j. Kayleen Wardell, “From caveman to casebase: the evolution of legal research through the technological age” (Paper delivered at the Australian Law Librarians’ Association Evolution Conference, Darwin, 2-4 September 2009), online:
http://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1014&context=lib_pubs.
- k. Morris L. Cohen, “Researching Legal History in the Digital Age” (2007) 99 Law Libr J 377 at 378-390.

6. FULL-TEXT SEARCHING

- a. Advantage: full-text searching in electronic databases make it easier to search for cases with analogous facts
- b. Disadvantage: full-text searching can produce an abundance of results, unreliable results, and can sidetrack the researcher
 - i. “...the power of full-text searching is illusory...as an exclusive or predominant research tool, it can be a colossal waste of time and can produce unreliable results. We easily get lost or sidetracked. We lose sight of the conceptual overview of the subject. We accumulate unnecessary amounts of disorganized and unreliable material that has to be checked and rechecked. We overlook important areas we should have included in our research.” [Hanft at 80]

- c. **Source:** John K. Hanft, “A Model for Legal Research in the Electronic Age” (1999) 17:3 Leg Ref Serv Q 77 at 77-80.

7. DOES PRINT RESEARCH REMAIN VALUABLE?

- a. Example from Slaw Tips Blog: <http://tips.slaw.ca/2015/research/print-legislation-remains-valuable/>
 - i. During a dinner table discussion of paper-less practices recently, a friend praised the value of print legislation. He practices tax litigation, and I was questioning him about the various eBook versions of available in that area. He reminded me that the speed of cross referencing several sections is enhanced with the finger in book method as opposed to the click and return, especially when you have multiple sections referring to one another.
 - ii. When I think about using legislation to answer a legal research question and the pattern that I used most frequently, I have to agree.
 - iii. For the answer to a legislation question print often wins the day. Finding the first thread may be faster with a word search, and for sharing, electronic is clearly out front. In the race for meaning though, print is still frequently first over the finish line.
- b. May be a generational issue – older practitioners may be more inclined to use print resources, while younger practitioners may be most comfortable using electronic formats?
 - i. Generational preference is an issue in law reform, especially when the decision is being made regarding consultation design and format (discussed further below)

8. ELECTRONIC LEGAL RESEARCH AND THE IMPLICATIONS FOR LAW REFORMERS

- a. What types of electronic databases are available to law reform agencies?

- i. Resources – can law reform agencies afford to have more than one paid subscription?
 - 1. If not, what free resources are available to ensure that law reformers do not suffer from gaps in the database’s information or scope
- b. Scope of database may be especially important for law reform agencies
 - i. Engage in historical or point-in-time research more often than practitioners
- c. How important is case law research to law reformers?
 - i. If we are recommending changes to the law, is it really necessary to read every existing case on that particular topic?
 - ii. If we do read all existing case law, why? What is the benefit of it?
 - 1. To tout the comprehensiveness of our report?
 - 2. What value does it have in policy making?

Consultation

9. THE ONLINE PRESENCE OF LAW REFORM AGENCIES

- a. Most law reform agencies publish their Reports electronically
- b. Law reform agencies have a presence on Twitter
 - i. ALRC - @AusLawReform
 - ii. ALRI - @Ablawreform
- c. Online consultation formats
 - i. Bang the Table (NZLRC)
 - ii. Fluid Surveys (ALRI)
- d. How do we apply our online presence to consultation?

10. ELECTRONIC COMMUNICATION

- a. Attributes of modern, electronic communication
 - i. Instant
 - ii. Short and staccato phrasing, with potentially unlimited length
 - iii. Direct
 - iv. Own vocabulary and shorthand form

- b. In the law reform context, we have increased our methods of contact (i.e., email us, tweet us, phone us)
 - i. What do we do with responses that are short? Negative?
 - 1. For example, during a recent consultation, ALRI received a voicemail from an individual indicating that he had seen an overview of our consultation document on an external website and did not agree with our recommendations. The individual admitted that he had not reviewed our document or recommendations.
 - 2. What value does this communication have and how should it be recorded?
 - ii. If we are encouraging this type of communication, what do we do with the responses we receive?
 - 1. Do we log the responses?
 - 2. What weight do they carry?
 - 3. Is the content of the communication important, or are we simply interested in the trends it is demonstrating?
 - a. i.e., support or no support for a particular position

11. SOCIAL MEDIA

- a. Electronic communication is the heart of social media and social communication
 - i. How can we use it to our advantage?

- ii. Can we use social media for consultation and still get meaningful analysis/response?
 - iii. Do we have to structure our questions so that they are easy to respond to?
- b. Key features of social media:
 - i. Mobile and internet-based
 - ii. Interactive platform
 - iii. User-generated content
 - iv. Ability to share/modify
- c. Types of social media:
 - i. Facebook
 - ii. Twitter
 - iii. Linked In
 - iv. Blogs
 - v. Wiki sites
 - vi. Podcasts
- d. Generally, Canadian law reform agencies make only limited use of social media – certainly in comparison to the agencies in New Zealand and Australia. Why is that?
 - i. More confidence in the traditional communication and consultation models?
 - ii. Perception that the use of social media tools is not professional, or not well suited to our projects?
 - iii. Lack of familiarity or resources?
 - iv. Pejorative reaction to social media in general?
- e. A number of law reform agencies have Twitter accounts
 - i. ALRI has 221 Twitter followers as of 16 March 2015

- f. Ways to use Twitter in the law reform environment:
 - i. Communicate release of reports
 - ii. Communicate consultation events and deadlines
 - iii. Communicate recommendations
 - iv. Communicate links to related news
 - v. Link back to agency's website

- g. Benefits of Twitter:
 - i. Immediate
 - ii. Low maintenance
 - iii. Low risk
 - iv. Informal
 - v. Greater transparency and relevance
 - vi. Ability to reach a larger number of stakeholders
 - vii. However, cannot expect meaningful input in 140 characters or less!

- h. How popular are law reform agency's Twitter accounts and Facebook accounts?
 - i. How often do agencies tweet/post? Is it worth it?
 - 1. ALRC Twitter account
 - a. Trends on Twitter the same day it releases Copyright Issues Paper (20 August 2012)
 - b. August and September 2012 = Twitter becomes top referrer of traffic to ALRC website
 - c. Visitors from Twitter tend to spend more time on the ALRC website than visitors from other referrers (i.e., Google)
 - 2. Engagement vs. capturing audience and directing to other channels

- i. What types of consultation are best suited for social media?
 - i. Factors to consider:
 - 1. Type of audience
 - 2. Complexity of the subject matter
 - 3. Length of the questions
 - ii. For example, an agency may have cause to ask the following series of questions:
 - 1. Have you experienced this particular problem?
 - 2. Were you able to resolve the problem?
 - 3. If so, how were you able to resolve the problem?
 - iii. Given that the first two questions require a general yes or no answer, it may be beneficial and it may generate more responses to send them out via Twitter or other social media platform
 - 1. However, the third question requires a qualitative response. It is not the type of question that you would tweet and ask participants to respond to in 140 characters or less

- j. **Source:** Maria Lavalley's 2012 FOLRAC presentation on The Use of Social Media in Legal Research and Consultation

12. FORMAT OF CONSULTATION

- a. Traditional model of consultation = send out hard copies of consultation document to relevant stakeholders and wait passively for qualitative feedback
 - i. Who are you trying to reach?
 - 1. Older participants may be more comfortable with the traditional model, while younger users may prefer electronic options
 - ii. If modern, electronic communication is instantaneous, does that mean consultations should be conducted differently?
 - 1. Mobile-friendly?

- b. Mode of consultation will dictate the nature of the consultation question and/or how the questions are framed
 - i. In traditional consultations where qualitative responses are sought, open-ended questions may be used
 - ii. If a modern consultation method is selected (i.e., online survey), the questions will have to be framed to accommodate the pre-selected survey responses, such as in a check-box format
 - iii. What we want to know should drive the question – are we used to this approach? What information are we looking for?
 1. For example, ALRI recently commenced a consultation on not-for-profit corporations. We want to know how important particular documents are and how much attention is paid to them.
 - a. To solicit this information, we asked the following question: “Who will create and file the documents?”
 - b. Our Sector Advisory Committee indicated that the answers we would get to this particular question would not give us the information we are seeking – the answer from the not-for-profits would be “it will get done”
 - c. To discover how much attention is paid to these documents, we should be asking if there is someone who normally attends to the documents and, if so, who is it?
- c. Mode of consultation may also dictate the type of response
 - i. You will likely get a very different answer from a “from-scratch” qualitative assessment as opposed to a survey where the participant has been asked to check boxes, with the option to provide additional comments

- ii. For example, ALRI recently completed a consultation on whether to change the valuation date under our matrimonial property legislation. We released a survey with “yes” or no” check boxes, as well as the option to provide additional comments. We also accepted written submissions from those who chose not to complete the survey.
 - 1. The optional, additional comments tended to be shorter and more general
 - a. Not all survey respondents provided additional comments. For example, there were 79 respondents on the first survey question, and only 22 provided additional comments
 - 2. The written submissions tended to be longer, more detailed and included information that was not directly asked by the survey questions
- d. Must be careful that the mode of consultation does not self-select the audience
 - i. For example, if you were conducting a consultation on elder financial abuse, would you do it exclusively online?
 - 1. It is likely that the generation you are trying to reach does not have universal online access
 - a. Would you also need to provide a different method of response? For example, make hard copies of the survey available at seniors’ residences?
- e. Agencies must be alive to privacy concerns
 - i. Hide email addresses on a survey mailing list
 - ii. ALRI specifically chose to utilize Fluid Surveys – rather than Survey Monkey – as our survey software because of privacy concerns

1. If you use Survey Monkey, you become subject to the United States' *Patriot Act*
 - a. If your data, for some reason, became a matter of American national security, you would not be able to keep it confidential and you would have to disclose it to the United States government

13. GATHERING RESULTS

- a. Should feedback be analyzed differently, depending on the mode of consultation used?
 - i. Are 100 "check-box" responses preferable to 5 qualitative assessments? In other words, does quantity trump quality?
- b. Resources
 - i. Consider the size of the agency and the ability to process results
 1. Big agency vs small agency = own communications staff vs more limited resources
 - ii. Does the size of the agency inform the type or format of the consultation?
 1. Bang the Table
- c. Delegation – law reform agencies are skilled in analyzing legal issues, but are they the most knowledgeable in facilitating consultations and gathering feedback?
 - i. ALRI recently released a consultation document regarding Not-for Profit Corporations.
 - ii. The consultation is targeted at a wide range of audiences with differing levels of knowledge and sophistication.
 - iii. In this particular situation, one consultation document was not appropriate
 1. Focus groups

2. Webinars
3. Results gathered by regional centers

Report

14. ENGAGEMENT

- a. How important is the Executive Summary?
- b. Do we need hooks to attract attention to the Report
 - i. E-newsletters
 - ii. Public discussion boards
 - iii. Etc
- c. Should there be online advertising of publications?
 - i. Short pieces to appear in blogs, current issues summaries etc
 - ii. Facebook, Twitter
- d. Mailing lists
 - i. How can law reform agencies expand the reach of their mailing lists?

15. LENGTH

- a. We have recognized that modern communication is electronic and instant, yet our Reports still tend to be long and detailed.
 - i. Can we demand hours of our stakeholders' time in order for them to read and digest the Report?
 - ii. Will they be more inclined to read the full Report if the engagement tools, discussed above, contain an exciting hook?
- b. Does the trend towards instant communication also mean that our Reports have to be shorter and more focused?

- i. Are they less cogent if all the background research is not summarized or referenced?
- ii. Do chapters have to be self-contained so that the Report can be digested in pieces?

16. PUBLICATION

- a. Advantages of digital publication:
 - i. Disseminated more quickly – no publication or distribution delays
 - ii. Minimal fees
 - iii. Usability – i.e., ability to “Ctrl + Find” a specific issue

- b. Problems with digital publication:
 - i. Potentially less visible – only exists on your screen
 - ii. Problems with how to control advance copies

- c. Different ways to publish – i.e., eBooks, podcasts
 - i. Potential to reach different audiences
 - 1. Those with literacy issues etc
 - ii. Should always take care to provide users with the format that will be most useful to them

- d. Version control
 - i. PDF format is stable
 - ii. Google Docs allows you to track who has made what changes to a document

17. POST-REPORT

- a. If there is no “original”, how does one issue corrections, addendums, updates etc