

The frailties of online legal research: the words “and” and “or”

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I have been a legal research lawyer for almost 30 years.

When I started law school in 1987 the use of laptops to take notes in lectures was completely unknown. Our first year legal research and writing class was based on how to conduct research using books like case reports, The Canadian Abridgment Digests, and the Canadian Encyclopedic Digests (Ontario) and other paper sources. Online research was limited to “Quicklaw”, which was a database of cases that could be searched using Boolean search parameters. These cases were generally considered to be unreported decisions because they had not been published in case reports, such as the Dominion Law Reports or the Ontario Reports.

When I articulated, we did not have a desk top computer and all legal research was done using the physical books that were either in the firm’s small library or at the nearby law school law library.

When I was called to the Ontario Bar in 1992, lawyers were only beginning to get desktop computers installed in their offices. Thus, online commercial legal research sources were still in their infancy as the legal publishers were still developing platforms that could be utilized over the internet and easily accessed from a law office computer.

At the time, the Canadian Abridgment Digests became one of the first product that was made available on a CD-Rom and eventually Carswell was able to develop an online research tool to rival Quicklaw.

The race toward the virtual library had begun.

Today, law students and the legal profession have become dependent on using online tools to conduct legal research. Paper products have disappeared from library bookshelves as lawyers and students access virtual law libraries. However, as I recently discovered, conducting online legal research is not necessarily easy if the point of law being searched is a common word.

The words “and” and “or” are words that have received a lot of judicial consideration. But they are so common that trying to find jurisprudence in which they have been judicially interpreted using online search tools can prove difficult.

For example, there are some tools available online that are specifically created to assist the researcher in understanding how certain words have been judicially considered. For example, the product “Words & Phrases” might be a good place to discover how the words “and” and “or” have been interpreted. However since both “and” and “or” are Boolean search connectors, they are “stop words” when entered electronically in the relevant search fields of this tool. Accordingly, no results can be obtained.

Meanwhile online dictionaries are not necessarily adequate either, as I discovered when searching a dictionary on another online private commercial source even though these two very common words have received much attention.

So in order to track down the relevant law in which the meaning of common words is sought using virtual research tools, a legal researcher must think of other words and search strategies to produce the desired results.

But finding an alternative might still prove to be elusive. For example, a researcher might try to use different natural language searches or different Boolean search strings such as: “contractual /s interpretation /s “and”” or “meaning /s “and” /s “or””. However, these search strings produce unsatisfactory results.

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Thus, a legal researcher might currently still be tempted to hop in a car, while we work from home during the COVID pandemic and potentially in the future, and drive to the office to access a hard copy of a law dictionary to discover the legal meaning of the word “and” and “or”, especially where there is time pressure to find an answer.

But this is an easy way out and is likely to be unavailable in the future as law firms feel the pressure to convert their physical law libraries to virtual law libraries that are accessible to all lawyers and law students from their computers at all times of the day.

Accordingly, in an evolving world where technology is replacing paper, it is incumbent for legal researchers to evolve their methodologies to match the evolution that is taking place in the legal publishing world.

For online research where the only source available might be a case law database because helpful textbooks have not yet been converted to an electronic format or might not be included in a firm’s subscription, the meaning of common words like “and” and “or” requires the researcher to utilize uncommon words. For the words “and” and “or” those uncommon words are “conjunctive”, “conjunctive” and “disjunctive”.

As a matter of contractual or statutory interpretation the words “and” and “or” are sometimes interpreted “conjunctively” or “disjunctively” depending on context. Using these uncommon words in a search string will open the door to retrieving the relevant case law to help answer legal questions involving how a court might interpret these common words in a contract or a statute.

Although it cannot be doubted that more and more legal research will be dependent on the use of online tools, whether through publicly accessible sites like CanLII.org or privately purchased commercial tools like NextCanada or Lexis Advance, hard copy books should not be discounted until such time as these books are converted to an electronic format and made widely available to the legal community in such format. While I am a veteran research lawyer who can easily shift to an online legal research world and discover the keywords necessary to retrieve relevant case law where the interpretation of a common word is at stake, the less experienced legal researcher might struggle.

The take away is that while legal publishers need to rapidly convert paper titles into electronic format, legal researchers must appreciate that there will always remain potential frailties in online legal research and that great care and thought sometimes is required to locate and retrieve the necessary cases on point.

If you require any litigation assistance, our **Dispute Resolution Group** lawyers are available to assist you. Please contact **Stephen Thiele** at 416.865.6651.

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