



## How-To Guide: How to Find Statutes Judicially Considered

This How-To Guide outlines how to find statutes judicially considered using electronic sources.

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### Overview

Judicial consideration of a statute can provide a point of access into case law by giving the names of cases that have dealt with a particular statute. These cases can be crucial to the interpretation of the statutes that deal with the problem that you are trying to solve.

For the most thorough search, you will want to consult both Westlaw Canada and LexisNexis Quicklaw. Each source uses slightly different terminology for identifying the depth of treatment of the statute in the case cited. Cases may analyze and interpret the statute; may mention the statute but not analyze it; may note that a proceeding was undertaken pursuant to a section of the statute; or may note that the statute in whole or part was declared unconstitutional.

### Historical Versions

If you need to carry your research process back into earlier versions of a statute, you should be aware that the section number may not be the same from revision to revision. The end of each section of a statute in the current revision usually cites the immediate predecessor of the section. Use this cite to search for the section that you want to judicially consider in the earlier version.

It is important to note that historical references at the end of the sections are not always complete, particularly where the earlier version of a section formed part of an act of a different title.

### Sources Used to Judicially Consider Statutes

#### Method A: KeyCite (Westlaw Canada)

In Westlaw Canada legislation may be judicially considered either by citation or by name/title. For reported cases, coverage is stated to be comprehensive since 1977 and selective prior to 1977. For unreported cases, coverage is stated to be comprehensive since 1986.







- **KeyCiting a statute by citation:**

- In the **Find/KeyCite a Document** section of the LawSource home page, select the **KeyCite** button.
- Enter the complete citation in the **Any document by citation** box, e.g.,
  - R.S.O. 1990, c.O.18, s.29.
- The citation box is not case, punctuation or space sensitive.
- From the **Result List** on the left, select **Citing References**.
- The resulting hit list may be further limited by clicking on the **Limit Key Cite Display** button on the bottom of the page and choosing **Jurisdiction**, **Date** and/or **Document Type**.
- After choosing the options that you wish to use, click on the **Apply** button.

- **KeyCiting a statute by name or title of the act:**

- In the **Find/KeyCite a Document** section of the LawSource home page, select the **KeyCite** button.
- Enter the short title of the act or part of the title in the **Legislation** box.
- Enter a section number if desired and choose the appropriate jurisdiction.
- Depending on the database coverage, several versions of the section of the statute may be listed on the Results Page. Click on the blue number to the left of the cite to choose the version of the statute that you want to consider.

- **Notes:**

- General consideration of the whole section is listed before the consideration of sub-sections of the act.
- Cases cited are grouped by type of treatment:
  - **Considered** means that the section has been analyzed or interpreted,
  - **Referred to** means that the section has been mentioned by the court, but not commented upon,
  - **Pursuant to** means that a proceeding was undertaken pursuant to the section,
  - **Unconstitutional** means that the section has been found to be unconstitutional or invalid in whole or in part.
- The individual cases, which cite the sections of the act, may also display treatment symbols placed to the left of the style of cause. The symbols used are as follows:
  -  A red flag warns that the case may have been reversed or has not been followed within the same jurisdiction or by the Supreme Court,
  -  A yellow flag points to some negative history or treatment but has not been reversed or overruled. The yellow flag also is displayed if a treatment has been recently added and has not yet been editorially analyzed,
  -  A blue  indicates some direct history but the history is known to be not negative,
  -  A green  indicates that the case has no direct history but there are treating cases or other citing references to the decision.
- If the substance of the section has been in force for many years, older versions of the act may be used to find early cases on point, but remember that the section number may change from revision to revision.

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## Method B: QuickCITE Statute Citator (LexisNexis Quicklaw)

QuickCITE covers legislation judicially considered from 1992 to date (from 2005 for Quebec). If you require cases dated before 1992 or before 2005 for Quebec, use the Boolean method described in the next section.

- **To search using QuickCITE:**

- Select the **Search** tab.
- Select the **Legislation** tab.
- Select **QuickCITE Statute Citator**.
- Enter either the short title in the **Legislation title** box or the citation in the **Citation** box.
- Use the **Legislation Section/Article** box to enter the section number.
- Use the drop-down **Jurisdiction** box to limit by jurisdiction, if required.
- Click **Search**.

- **Notes:**

- To find cases on a subsection, do not enter the subsection number. Enter the main section number and use **Pinpoint** to narrow to the subsection.
- Cases cited in the Results List can be sorted by different options including type of treatment:
  - **Unconstitutional** means that the statute section was determined by the court to be unconstitutional,
  - **Constitutionally Discussed** means the constitutionality of the cited statute section was discussed but no final determination was made on the issue of constitutionality by the court,
  - **Pursuant to** means that the action or proceeding was brought pursuant to the cited section,
  - **Considered** indicates that the cited section was analyzed or interpreted by the court,
  - **Referred to** means that the cited statute section was referred to by the court with no further discussion,
  - **Cited** means that the statute section has been cited and may contain a stronger judicial treatment.
- The individual cases, which cite the sections of the act, may also display treatment symbols in the **Signal** column. The icons used are as follows:
  -  The blue citator information icon is used where the case has no known history or treatments,
  -  The green positive treatment icon is used where the case has positive history or positive treatments,
  -  The yellow cautionary treatment icon is used where the case has been distinguished by a subsequent court,
  -  The red negative treatment icon is used where the case has negative history or negative treatments,
  -  The purple neutral treatment icon/history treatment icon is used where the case has neutral treatments or the case has history but the citing court does not comment on the case.

## Method C: Boolean Searching (LexisNexis Quicklaw)

### Boolean searching:

- Click on **Search**.
- Select the **Court Cases** tab. For national coverage, the default is set at **All Canadian Court Cases**. For provincial coverage, use the **Jurisdiction** box to select a province or territory.
- To consider a section number and all subsections, in the **Enter search terms** box, enter: the short title without quotation marks; space; proximity connector; space; section number in quotation marks, e.g.:
  - Ontario Heritage Act /20 "29"
- To note up a single subsection, e.g., only s.29(2):
  - Ontario Heritage Act /20 "29(2)".
- **Notes:**
  - Use a proximity connector of at least 20 to retrieve any cases containing the title of the act within 20 words of the section number. This will allow you to retrieve a wider number of hits. However you may also have to sort through a larger number of hits that are not relevant.
  - Pay close attention to the statute citation in the body of the case. Make sure that the version of the statute cited is the one that you want to consider. The section number that you are considering may change from one statute revision to another.
  - Some cites are embedded in the decision and do not give the year of the statute cited.
  - If you wish to narrow your results, you may use the **&** connector and add a keyword to the search, e.g., for the subsections of section 34 of the *Ontario Heritage Act* that deal with demolition, use the following:
    - Ontario Heritage Act /20 "34" & demolition.

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