

Legal Research in Law Firms

Terry C. M. Hutchinson

Lecturer-in-Law, Queensland University of Technology



"We know very little about how attorneys actually do research - what steps they follow, what shortcuts they take, how they decide to stop the research. The available evidence is that most of us perform research at less than minimally acceptable standards and that research is often cumbersome, difficult, time-consuming, and uneconomic."¹

1. Introduction

In 1992/93, a study was undertaken to gauge the importance of legal research skills to the practising solicitor and articled clerks in Brisbane firms. The underlying purpose was to make the legal research courses being taught in the Faculty of Law at Queensland University of Technology as relevant as possible to the students' future work. Apart from the recent Law Foundation investigation², the majority of the studies regarding skills have emanated from the United States and the United Kingdom. Little evidence of the state of legal research and the relevance of research to practising solicitors is available in the Australian context. As part of the project, five hypotheses were tested. These were:

- that practising solicitors and articled clerks routinely spend a proportion of time involved in research activity;
- that articled clerks and recently admitted solicitors do most of the research in the firms;
- that the research that is accomplished in the firms is to a large extent operational in nature;
- that the research training that has generally been made available to the solicitors working in Brisbane is sufficient for their needs; and
- that solicitors and articled clerks in Brisbane firms are relying on collections of legal materials that are unstaffed and inadequate for their research.

Many law librarians would find the answer to these questions self-evident. However, the study did reveal some interesting facts regarding the operation of firm collections - from the users', rather than the law librarians' view

- 1 R. Chester, 'Achieving Quality Research and Writing' In R. Greene (ed), *The Quality Pursuit: Assuring Standards in the Practice of Law*, Chicago: ABA, 1989, p 31
- 2 *Legal Research and Information Needs of Legal Practitioners: Discussion Paper* Prepared by M.S.J. Keys Young. Sydney: Law Foundation of New South Wales, 1992

2. *Definitions of Legal Research*

The categories of legal research adopted for the survey, while being informed by previous definitions of legal research³, target the basic conceptual research levels. The categories have been tailored to reflect the legal research activity within a busy office setting. Briefly, they included three categories of legal research:

- updating research, being research that you would undertake to keep yourself up-to-date;
- operational research, being research that you would undertake on problems and legal issues arising in the course of working on a file; and
- original research, being research that you would undertake to explore a new area of law.

3. *Methodology*

A total of 2280 mail questionnaires were sent to articled clerks and solicitors throughout Brisbane whose addresses were taken from the Queensland Law Society mailing lists for 1992. After one follow-up, a response rate of 37.5% (n=857) was achieved. The respondents seemed generally representative of the overall population of practitioners in Brisbane.

4. *Conclusions*

The study's principal conclusions were that:

- most of the respondents routinely achieve 1-2 hours billable and 1-2 hours non-billable research each week;
- the combined billable and non-billable research time constitutes over 5% of the respondents' total billable time each week;
- all respondents generally do the same amount of research each week whatever their position in the firm, the size of the firm, the firm location, respondents' sex, years in practice, or predominant practice area;
- the more senior principal/partner group displays slightly different research patterns in that they report greater research activity;

3 *Law and Learning. Report to the Social Sciences and the Humanities Research Council of Canada by the Consultative Group on Research and Education in Law* Ottawa: Information Division of the Social Sciences and Humanities Research Council of Canada, 1983; *Legal Research Profile*. Brisbane: QUT Faculty of Law, 1992; D Pearce, E Campbell and D Harding, *Australian Law Schools. a discipline assessment for the Commonwealth Tertiary Education Commission* Canberra: AGPS, 1987.

- the major category of research in which the respondents are involved is operational research being research undertaken on problems and legal issues arising in the course of working on a client's file;
- approximately a quarter of the respondents have not had formal research training;
- 70% of the respondents state that they require more research training;
- most of the need for training occurs in very basic research areas such as the updating of legislation and location of case-law from Queensland and other Australian jurisdictions;
- research training later in the law degree and at the vocational and professional stages is regarded as more useful;
- research assistance is available in the firms and many respondents take advantage of this assistance;
- libraries with a staff member assigned specially to look after the collection are available to the majority of respondents in the firms;
- respondents display a willingness to use other libraries in the vicinity when necessary;
- computer research is available but not widely used; and
- respondents are of the opinion that legal research skills are either very or fairly important to practice

5. *Issues for Law Librarians*

The study was of special interest to law librarians in several respects. In the first place, it highlighted the need for increased research training for practitioners. Secondly, it provided information on the nature and extent of legal materials available in the firms. It identified alternative research sources being used by practitioners. The situation in regard to staffing of collections was also touched on. Most importantly, the study revealed that the new research technology was not being used to a great extent.

5.1 TRAINING NEEDS

Information was sought from the respondents on the types of training they had received, the perceived usefulness of such training, and any need for further training. Seven options were provided and the respondents were asked to indicate which of these training courses they had received. The results are set out in Table 1.

TABLE 1
 LEGAL RESEARCH TRAINING RECEIVED BY RESPONDENTS

Law School - first year compulsory subject	41.4%
CLE - inhouse in firm	36.3%
CLE - Law Society	32.0%
No Formal Training	25.4%
Law School - final year compulsory	12.3%
Law School - voluntary subject	11.2%
Other	8.9%

As can be seen from the Table, less than half of the respondents had received legal research training in the first year of their law degree. This is the usual stage for such training within a law degree.⁴ Approximately a third had benefited from CLE training which usually occurs at the vocational or professional stage of their education. A smaller proportion had the benefit of research training later in the law degree. Of the several respondents who made comments in the 'Other' category, at least 25 put 'experience' or 'on the job training' as their main research training. However, it would seem that a quarter of all respondents in the sample had not received any formal training in legal research at all.

When asked to rate the usefulness of the various types of legal research training they have received, most respondents rated the training they have received as 'Fairly Useful'. For each method of training the responses in the Very or Fairly Useful categories constitute a majority. Table 2 shows the combined responses in the 'Very Useful' and 'Fairly Useful' categories for each type of training.

TABLE 2
 COMBINATION OF RATINGS OF TRAINING IN 'VERY USEFUL' AND 'FAIRLY USEFUL' CATEGORIES

Law Firm - inhouse	88.4%
On the job training	84.9%
Law Society - CLE	83.9%
Law School - final year	71.6%
Law School - 1st year	68.4%
Law School - voluntary	59.5%

4 I. Hutchinson, 'Legal Research and Writing in University Law Schools: The Survey' (1992) 110 *ALLG Newsletter* 87

The responses for research training later in the degree and at the vocational stage, were more favourable than those for training in the first year of the degree. The responses also underline the value of experience or on-the-job training, possibly because a skill is sometimes easier to learn when motivation is high. This supports the Zemans and Rosenblum study which found experience to be the most important contributor to the development of knowledge and skills important to the practice of law, including legal research.⁵ The relevance of experience is also shown in Smillie's data.⁶ The New South Wales Law Foundation study, while very supportive of the research training given in law schools, did relate positive comments from practitioners in regard to refresher courses for experienced practitioners.⁷ However, most studies also indicate that prospective employees expect that legal research skills will have been taught at the academic stage.⁸

The point that needs to be recognised here is that legal research skills teaching can be compared to the layers of an onion. Basic material has to be covered very early in a lawyer's career and reinforced later in the degree. However, there is ample scope for further layers of knowledge to be added at the vocational and professional stages. It also suggests the value of a practical case study teaching style at whatever stage.

The questionnaire also sought to identify any perceived need for further research training. An overwhelming 71.1% (n=576) of the 810 who answered this question indicated they would like more training. A list of 10 areas for further training were suggested with the opportunity for respondents to nominate another topic not listed. Between 30% and 50% of the respondents indicated that they wanted more training in very basic research areas, as is demonstrated in Table 3.

TABLE 3
AREAS FOR FURTHER TRAINING

Training Areas	Response
Using Technology in Research	45.6%
Locating Case-law	40.0%
Locating and Updating Legislation	36.4%
Locating Journal Articles	35.7%
Research Methodology	30.9%

5 F Zemans and V Rosenblum, 'Preparation for the Practice of Law' (1980) 1 *American Bar Foundation Research Journal* 1

6 J. Smillie, 'Results of a Survey of Otago Law Graduates 1971-1981' (1983) 5 (3) *Otago Law Review* 442. Smillie found that 65% of Otago graduates favoured legal research training in law school, 8% favoured training in university together with vacation work, and 12% favoured training during the first two years of practice.

7 *Legal Research and Information Needs of Legal Practitioners Discussion Paper, op cit*, 7

8 D Benthall-Nietzel, 'An Empirical Investigation of the Relationship between Lawyering Skills and Legal Education' (1975) 63 *Kentucky Law Journal* 373

Only 1%-5% wanted training in the more advanced areas of Treaty Research and Researching Foreign Law. However, Locating Case-law and Using Technology in Research gained a high response with 40% and 45.6% respectively. The need for training in modern computer-assisted research is understandable, as this is an area that has expanded greatly in the last 10 years, and is due for further change with the introduction of the new Queensland legal information retrieval system (Legal Retriever) in Queensland. The gap in knowledge with regard to locating case-law through manual sources such as digests and updating services like *Australian Current Law* and *Australian Legal Monthly Digest* is of more concern, as is the indication that further training is required in regard to locating and updating local legislation. Of course, there have been major changes in the publication formats of Queensland legislation in the last few years that might explain this uncertainty.

In all, the responses in this section of the study suggest that the research training that has generally been available to the solicitors and articled clerks working in Brisbane has not completely satisfied their current needs. Many respondents have received no training or minimal research training. A large percentage are indicating a need for further training in very basic research techniques. This information should prove invaluable in formulating training packages of most use to the profession.

5.2 THE LAW COLLECTIONS

As might be expected, most respondents had access to a law collection inside the firm, with only 8.1% indicating that there is little in the way of legal materials inside the firm. The nature and extent of the firm's legal materials reported by the respondents are set out in Table 4.

TABLE 4
 LEGAL MATERIALS AVAILABLE IN FIRM COLLECTIONS (n = 857)

Major texts/looseleaf services/journals	92.5%
Queensland reports and legislation	81.7%
Organised precedent collections	73.5%
Commonwealth reports and legislation	64.8%
Organised opinion collections	42.0%
Interstate reports and legislation	39.1%
Other	10.5%
Little in the way of legal materials	8.1%

The comments in relation to these responses were very extensive. Several mention that office collections contain overseas reports, particularly the English series, and reference books such as *The Digest* and *Halsbury's Laws of England* additional to the materials listed on the survey questionnaire. Videos, audio-tapes and continuing legal education papers are also listed as additional material. These results mirror the in-house resources identified in the New South Wales Law Foundation study:

IN-HOUSE RESOURCES:

- Library: Looseleaf services
- Statutes and law reports
- Other printed sources - bound textbooks, precedents, previous opinions, etc
- Electronic information sources - eg., INFO-ONE, data on CD-ROM
- Consultation with colleagues
- Video- and audio-tapes
- In-house Continuing Legal Education (CLE), seminars etc⁹

Thus, the collections generally include relevant looseleaves, but nearly 20% do not have the Queensland Reports and legislation, and a larger percentage, approximately 35%, do not have Commonwealth materials. Therefore, this would suggest that in that 20%-35% not having full sets of legislation and law reports, the looseleaves are being relied upon for access to pertinent legislation and reports although some recourse to other libraries is also reported.

5.3 USE OF OTHER COLLECTIONS

Over half, 54.1% (n=455) of the respondents, indicate that they have recourse to legal materials outside their firm. The respondents were asked to indicate which of a group of libraries they used. This question was phrased in such a manner that it limited the external sources to law libraries. The New South Wales Law Foundation study took a broader view and included not only libraries,¹⁰ but also advice from counsel, consultation with colleagues outside the firm, and CLE courses and materials.

In the present study, the local collections were ranked as to use. This is set out in Table 5.

9 *Legal Research and Information Needs of Legal Practitioners Discussion Paper, op cit* 9

10 *Id* 18-21

TABLE 5
USE OF LAW COLLECTIONS OUTSIDE THE FIRM

Supreme Court Library	53.4%
The Law Library of another Firm	13.5%
QUT Law Library	10.2%
University of Queensland Law Library	8.3%
Other	3.2%
Queensland Law Society Library	1.2%

The collections grouped in the 'Other' category include the Administrative Appeals Tribunal Library, Bond University Law Library and the State Library of Queensland

The Supreme Court Library would appear to be the most used of the collections outside the firm. However, a surprising number of the respondents appear to be sharing library collections. This could be merely a matter of geographic proximity and convenience, but it certainly makes excellent economic sense

5.4 STAFFING OF COLLECTIONS AND RESEARCH ASSISTANCE

Respondents were also asked whether there was a staff member assigned specially to look after the collection of materials. Of those answering this question, 66.2% (n=839) replies were in the affirmative. The New South Wales Law Foundation study seems not to have covered this aspect in any depth. It would seem appropriate that even if the collection consisted mainly of the major looseleaf services, there would need to be a person assigned to regularly do the filing and basic upkeep. A cross-tabulation of responses according to firm location and firms with staff specially looking after the library appears in Table 6

TABLE 6
A CROSS-TABULATION SHOWING THE LOCATION OF FIRMS WITH A 'LIBRARIAN' (n = 824)

	Yes	No
Brisbane City	512	159
Southern Suburbs	17	62
Northern Suburbs	5	40
Western Suburbs	9	20
Total	543	281

This shows that those respondents working in Brisbane city were more likely to be working in firms where there was a staff member specially assigned to look after the collection. This person need not necessarily have been a qualified librarian.

Sixty percent of the respondents (n=506) indicate that there is research assistance available to them in their firm. The categories of assistance available include law librarians, articled clerks, and other employed solicitors. Of those who receive assistance, the majority, 79.5% (n=415), receive up to 2 hours' research assistance each week. A cross-tabulation of sources of research assistance available to respondents broken down by job type shows that:

- the articled clerks principally gain assistance from law librarians;
- employed solicitors use librarians by preference followed by articled clerks;
- associates use articled clerks and then librarians; and
- partner/principals use articled clerks, solicitors and then librarians

Overall, the law librarians are being called upon most, with articled clerks and then employed solicitors also being involved in that order.

5.5 COMPUTER ASSISTED LEGAL RESEARCH

Only 30.1% (n=841) of respondents indicated that they used computers in their research. While not providing any hard data, the New South Wales report seems to reinforce this qualified response to computers:

"The attitudes to computerised legal information which were encountered among practitioners tended to be broadly positive if sometimes cautious"¹¹

"... this study did not generally suggest that conservatism or resistance from the profession was a major barrier to the wider use of computerised services"¹²

The fact that Queensland material is not presently available on the main Australian system, INFO-ONE, together with the costs and skill needed to use this particular service, may have explained the low use in Brisbane offices. Possibly the advent of the new Legal Retriever system and the changes to INFO-ONE will make a significant difference in this respect. In addition, CITEC, with its access to the Titles Office records did not register great popularity whereas in New South Wales the comment is made that:

¹¹ *Id.* 14

¹² *Id.* 15.

“On-line access has had most impact to date in the area of Land Titles and Corporations searches rather than in legal research as such”¹³

The main computer services were therefore listed and respondents were requested to indicate the ones used. The responses are set out in Table 7

TABLE 7
COMPUTERISED INFORMATION SOURCES USED BY RESPONDENTS

Firm's In-house Database	20.8%
INFO-ONE	14.8%
LEXIS	11.3%
CD-ROM: Austrom including AGIS	5.4%
CD-ROM: Diskrom	4.1%
CD-ROM: Index to Legal Periodicals	3.0%
LINK	3.0%
Other	2.7%
CD-ROM: LAWPAC	2.3%
ABN	1.6%
QL	1.2%
KIWINET	1.2%

The firm's in-house database is ranked first in regard to use by 10.3% of respondents, INFO-ONE is ranked second and LEXIS is ranked third. The low responses on the CD-ROM systems might be caused by the fact that they have not infiltrated the market sufficiently. In New South Wales the comment is made that:

“Few practitioners were as yet familiar with the CD-ROM system, and it appeared that few firms had internal CD-ROM access”¹⁴

Apart from the CITEC system, AUSINET and QNIS were additional systems listed by a small number of respondents

6. *The Importance Factor*

The study had as its primary objective the investigation of the importance of legal research skills to solicitors and articulated clerks. This is demonstrated specifically in the data collected on research activity, however the importance

¹³ *Ibid*

¹⁴ *Ibid*

of the skills was also canvassed by requesting the opinions of the respondents. Respondents were asked to give an indication of how important they considered good legal research skills were to a practising solicitor.

The respondents gave positive support to research skills as being 'Fairly' or 'Very' Important to practice. Of 852 respondents for this question, 97.9% regard good legal research skills for a practising solicitor as either very important or fairly important. However, many of the comments accompanying these responses display a little more ambivalence. They range from the very positive:

"Essential, without them one is a mere mechanic, but the vehicles change, and you could lose your ability to service them".

"... if you can't research what are you doing being a lawyer!"

"Law schools need to emphasize legal research far more than they do".

to the very negative:

"The days of taking time out in a small solicitor's practice for research are gone. Competitive costing precludes such 'niceties'".

"If the topic is operational, then brief to counsel".

Others are more equivocal:

"Clients should not be charged for MOST research by junior solicitors. It should be categorised as professional development".

"... depends on the nature of the solicitor's work".

"The important factor is being able to understand and apply legal materials. The location of those materials is not a legal skill - it's an expert skill belonging to a research assistant / librarian - greater specialisation is required".

Thus, the study provided a cameo of the research activity and concerns of a representative number of Brisbane solicitors and articled clerks. It also provides valuable information for law librarians to the extent that the experience in one capital city can be applied to other centres.