Noting up a section of the Criminal Code in CriminalSource

About this guide

This guide shows you how to search in CriminalSource for Supreme Court of Canada decisions which have cited a specific section of the Criminal Code. You can use the same technique to note up other criminal statutes as well.

Why do you need to note up legislation?

The law does not stand still. Every year, new laws are passed – and existing laws amended – by the federal Parliament and provincial legislatures. Every day, judges interpret the appropriate application of the legislation in court cases. Judges write up their decisions, and these written judgments are called cases. To find out how a specific piece of legislation has been treated by the courts, you will need to locate important cases which have interpreted or applied that statute (or more likely, a specific section of a statute). This process is called ‘noting up’ the legislation.

The CriminalSource database is an excellent tool for noting up any Canadian criminal statutes, including the Criminal Code. Like CanLII, it lets you find cases (judges’ decisions) which have cited a specific section of a statute. CriminalSource also indicates HOW each citing case treated the section of the statute. For example, whether the judge(s) in a specific case found a section of the statute to be unconstitutional.

Find the section of the statute in CriminalSource

- Go to the CriminalSource database and login if you are off-campus
  ○ <http://cufts2.lib.sfu.ca/CRDB4/BSKC/resource/14163>
- Click on the first link which says “View a Section of Criminal Legislation along with relevant annotations & histories”
- You will then see a screen which asks which criminal statute you want to note up (use the drop-down menu if you want to change this from the default Criminal Code)
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- You can then enter the section number that you want to note up
  - Only type the number (e.g. 462.37); don’t include the word ‘section’, or ‘sec’ or ‘s’ before the number
  - Search for the section number only; don’t include subsections or clauses, e.g. 462.37, but not 462.37(1)(b). You will be able to limit your search results to a specific subsection/clause in a later step.

CriminalSource will display links to that specific section of the statute, in French and English. Click on the English link.

Find cases which have cited this section of the statute

- You will then see a page with the text of that section of the act, with tabs at the top of the screen. Click on Citing References
CriminalSource tracks “Cases and Decisions” and “Secondary Sources” (such as journal articles) which have cited specific sections of statutes. We are interested in how judges in courts have interpreted and applied this section of the Criminal Code, so we will view the Cases and Decisions.

Limit to Supreme Court of Canada cases which have cited this section of the statute

If you want to choose more than one of these limits at a time, click on Select Multiple Filters.

There are 670 cases which have cited section 462.37 of the Criminal Code. On the left-hand side of the screen, you have several options to narrow your search results:

- **Subsection or clause**: this is where you can choose a specific sub-section, if you wish
- **Jurisdiction**: choose a province, or the Supreme Court of Canada
- **Court level**: can limit to appeal courts only
- **Treatment type**: indicates how the section was treated by court, e.g. was it found to be unconstitutional?
- **Citation frequency**: shows how often other cases have cited the case which considered this section. Important cases are heavily cited.
Sort citing cases by type of treatment of statute section

- The following screenshot shows 3 cases which have cited section 462.37 of the *Criminal Code*.

- Citing cases will be listed in the order of the statute subsection that they cite; see that the “Sort by” dropdown menu above says “Legislation Subsection or Clause”). In this instance, they are all citing the same section (based on our filter selection in the previous step).

- If you have a long list of results, you can change this sort order, and list the cases by the type of treatment instead. This will help you to identify cases which might be most useful to look at first. For example, did any of the cases find this section to be unconstitutional? To do this, click on the “Sort by” dropdown box and select **Treatment Type**.

- Here is a breakdown of the treatment types:

<table>
<thead>
<tr>
<th>Treatment Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unconstitutional</td>
<td>Section of statute was found by the court considering it to be unconstitutional or invalid, in whole or in part</td>
</tr>
<tr>
<td>Pursuant to</td>
<td>A proceeding was undertaken pursuant to a section of statute</td>
</tr>
<tr>
<td>Considered</td>
<td>Section of statute was analyzed or interpreted in the decision</td>
</tr>
<tr>
<td>Referred to</td>
<td>Section of statute was mentioned by the court in the decision, but not commented upon</td>
</tr>
</tbody>
</table>