

# INDEX

## A

adventure company, liability of

- all terrain vehicle, 300
- camp, 299
- canoe trip, 297
- horse stables, 301
- zip line, 298

all terrain vehicle, liability of adventure company/camps/privately run facilities, 300

aggravated damages, public torts and, 437

archery range, municipal and provincial liability for, 211

arrest, negligence for, 53

assault

- by student against student, 570
- by teacher against student, 557

assault and battery

- assessing damages, 445
- generally, 441
- case law
  - assault, 444
  - battery, 442
- criminal guilty plea, affect of, 454

## B

baseball

- complex, liability of, 295
- liability towards spectators, 279
- municipal and provincial liability for, 217

basketball, liability of governing bodies, 225

battery and assault

- assessing damages, 445
- generally, 441
- case law

- assault, 444
- battery, 442
- criminal guilty plea, affect of, 454

breach of *Charter*

- by police, 153
  - damages for, 163

breach of fiduciary duty, schools and, 435

bullying

- cyber, school age, 550
- workplace and, 403
  - right to sue, 409

**C**

camp, liability of

- all terrain vehicle, 300
- camp, 299
- canoe trip, 297
- horse stables, 301
- zip line, 298

canoe trip, liability of adventure company/camps/privately run facilities, 297

*Charter*

- breach of
  - by police, 153
    - damages for, 163
- remedies
  - civil law proceedings, 141
  - criminal law proceedings, 142
  - generally, 140

clubs, liability of

- golf, 228
- jockey, 235
- scuba diving, 233
- ski, 225

coaches/instructors

- liability of

- hockey, 236
  - horse riding, 240
  - in-line skating, 241
  - marital arts, 238
  - rock climbing, 239
  - track team, 245
  - vicarious liability of, 179
- colleges, liability in school sports programs, 245
- common negligence, sports and, 175
- complaint
  - of cover-up, by police, 136
  - of misconduct, by police, 115
    - complaint procedure versus statement of claim, 131
- contributory negligence, sports and, 188
- cover-up, by police, 136
- co-workers, sexual relationships and, 403
- customs/immigration officials, use of force by, 29
- Criminal Code remedies, 140
- cyber bullying, school age, 550
- cycling and roads, municipal and provincial liability for, 216

## D

- damages
- for assault and battery, quantification of, 445
  - for breach of *Charter* by police officer, 163
  - for public tort
    - aggravated, 437
    - cost of future care, 437
    - factors considered in quantification, 435
    - general (non-pecuniary) damages, 425
      - assessment of, 436
    - internet defamation
      - aggravated, 490
      - general, 487

- punitive, 491
- lump-sum damages versus structured settlements, 433
- multiple tortious causes, 432
- pecuniary damages
  - causal link and, 426
  - distinction between “loss of earning capacity” and “lost future income”, 429
    - future loss assessment, 436
  - past wage loss, 431
    - assessment of, 436
- punitive damages, 431
  - fixed amount for, 437
- for sexual assault by police officer, 12
- for sexual assault in the workplace
  - civil, 400
  - constructive dismissal, 395
  - wrongful dismissal for internet pornography, 366
  - wrongful dismissal for sexual harassment and non-physical contact, 385
  - wrongful dismissal for sexual harassment and physical conduct, 378

#### defamation

- public torts and
  - case law
    - breach of public office, 506
    - libellous statements
      - about non-professionals, 495
      - about professionals, 497
    - slanderous statements
      - about non-professionals, 500
      - defence of fair comment, 505
  - defences to, 482
  - defined, 478
  - generally, 478
  - intentional infliction of mental suffering and, 494
  - internet, 507
    - applicability to blogs, 509
    - case law

- anonymous defendants, production of identity of, 540
  - corporations, 511
  - non-professional context, 515
  - professional context, 522
  - generally, 507
  - injunctions, 509
  - statutory breach, 510
  - misfeasance in public office and, 495
  - quantifying damages for
    - aggravated, 490
    - general, 487
    - punitive, 491
  - statutory breach and, 494
  - workplace and, 418
- disciplinary proceedings
- of police
    - disclosure of disciplinary record, 102
    - legislation, 92
    - strip searches and, 139
  - schools and, 581
- disciplinary record
- of police, disclosure of, 102
  - automatic, 103
- disclosure
- police
    - personnel file
      - in civil action, 111
      - in criminal proceedings, 104
      - in human rights proceedings, 107
- dogs, police, 28
- domestic violence victim
- police negligence and, 54
- E**
- elementary schools
- liability in school sports programs, 251

emotional distress

- workplace and, 403
- right to sue, 409

employment law, 312

exercise equipment, municipal and provincial liability for, 219

## **F**

false imprisonment

- by police
  - damages for, 73
  - distinguished from malicious prosecution, 63
  - generally, 65
  - limitation defence, 71
  - summary judgment, 72
- public tort, 456

fiduciary duty, schools and, 435

## **G**

general damages

- public torts and, 425
  - assessment of, 436

golf

- club, liability of, 228
- liability
  - of participants towards each other, 274
  - towards spectators, 281

## **H**

harassment

- as public tort, 589
- sexual
  - workplace
    - damages for, 385
    - disciplinary proceedings, 399

- high schools
    - liability in school sports programs, 251
  - hockey
    - liability of coaches/instructors, 236
    - liability of governing bodies, 222
    - liability of participants towards each other, 265
    - liability of sports equipment manufacturer, 288
  - homeowner, liability of, 287
  - horses
    - liability of coaches/instructors, 240
    - stables, liability of adventure company/camps/privately run facilities, 301
  - human rights law
    - workplace and, 310
  - Human Rights Tribunal
    - school based torts and, 589
    - workplace and
      - mental anguish and sexual harassment, 361
      - reprisals by employer, 345
      - text messaging and, 343
- I**
- immigration officer, 29
  - in-line skating, liability of coaches/instructors, 241
  - instructor, vicarious liability of, 179
  - insurance company, duty of in public torts, 476
  - intentional infliction of mental shock, 589
  - intentional infliction of nervous shock, 456
  - internet defamation
    - applicability to blogs, 509
    - case law
      - anonymous defendants, production of identity of, 540
      - corporations, 511
      - non-professional context, 515

- professional context, 522
- generally, 507
- injunctions, 509
- statutory breach, 510

invasion of privacy

- case law, 542
- generally, 541

investigation, negligent, 47

- standard of care owed, 50

investigative detention, negligence for, 53

## J

jockey club, liability of, 235

## L

lacrosse

- liability
  - of governing bodies, 221
  - towards spectators, 282

landowner, liability of

- homeowner, 287
- vacant land, 284

law enforcement official *SEE* “*police*”

legislation

- police disciplinary proceedings, 92
- workplace, 305

liability

- for minors
  - martial arts school, 264
- of adventure company
  - all terrain vehicle, 300
  - camp, 299
  - canoe trip, 297
  - horse stables, 301
  - zip line, 298



- of camp
    - all terrain vehicle, 300
    - camp, 299
    - canoe trip, 297
    - horse stables, 301
    - zip line, 298
  - of coaches/instructors
    - hockey, 236
    - horses, 240
    - in-line skating, 241
    - martial arts, 238
    - rock climbing, 239
    - track team, 245
  - of landowner
    - homeowner, 287
    - vacant land, 284
  - of owner/occupier, 190
  - of Parks Canada, 302
  - of privately run facility
    - all terrain vehicle, 300
    - camp, 299
    - canoe trip, 297
    - horse stables, 301
    - zip line, 298
  - of recreational facility
    - baseball complex, 295
  - of sports equipment manufacturer
    - hockey, 288
    - swing apparatus, 293
  - of sports participants towards each other
    - golf, 274
    - hockey, 265
    - rugby, 277
- libellous statements
- about non-professionals, 495
  - about professionals, 497
- limitation period
- police and negligence, 58

## M

### malicious prosecution

- police and
  - distinguished from false imprisonment, 63
  - generally, 66
  - leading Canadian case, 78
  - limitation defence, 71
  - motion to strike claim
    - where dismissed, 85
    - where granted, 89
  - proof of malice, 68
- public tort, 589

### martial arts

- liability for minors, 264
- liability of coaches/instructors, 238

### mental shock, intentional infliction of, 589

### mental suffering

- workplace and, 403
  - right to sue, 409

### minors

- liability for
  - martial arts school, 264
- torts involving, 592
- waivers/releases in sports and, 186

### misconduct complaint, police, 115

- versus statement of claim, 131

### misfeasance in public office, 61

### municipal liability

- archery ranges, 211
- baseball, 217
- cycling and roads, 216
- exercise equipment, 219
- for sexual abuse in sports, 193
- recreational trails and
  - cross-country skiing, 205

- cycling, 206
- skateboard park, 214
- swimming and
  - open water, 198
  - pool, 201

## N

### negligence

- contributory, 188
- of police officer
  - and domestic violence victim, 54
  - and sexual assault victim – relationship of proximity, 41
  - fatality, 35
  - for arrest and investigative detention, 53
  - generally, 30
  - investigation, 47
    - standard of care, 50, 53
  - limitation period, 58
  - private law duty of care owed to family members, 39
- sports and, 175
- victim of domestic violence and, 54

### negligent investigation, 47

- standard of care owed, 50, 53

### nervous shock, intentional infliction of, 456

### non-pecuniary damages

- public torts and, 425
  - assessment of, 436

## O

### occupier's liability

- public torts and, 471
- sports and, 190

### owner's liability

- sports and, 190

## P

Parks Canada, liability of, 302

pecuniary damages

- public torts and
  - causal link, 426
  - distinction between “loss of earning capacity” and “lost future income”, 429
    - future loss assessment, 436
  - past wage loss, 431
    - assessment of, 436

personnel file

- of police
  - disclosure of in civil action, 111
  - disclosure of in criminal proceedings, 104
  - disclosure of in human rights proceedings, 107

physical assault

- by police officer, 15
  - negligence and, 43

physical harm

- workplace and, 320
  - proper forum, 320
  - rights to sue, 321
  - vicarious liability, 327

police

- *Charter* breach, 153
  - damages for, 163
- cover-up, 136
- disciplinary proceedings
  - for strip searches, 139
  - legislation, 92
- disclosure of disciplinary record, 102
  - automatically disclosed records, 103
- dogs, 28
- false imprisonment, 65
  - damages for, 73
  - distinguished from malicious prosecution, 63
  - limitation defence, 71

- summary judgment, 72
- malicious prosecution, 66
  - distinguished from false imprisonment, 63
  - leading Canadian case, 78
  - limitation defence, 71
  - motion to strike claim
    - where dismissed, 85
    - where granted, 89
  - proof of malice, 68
- misconduct, complaints of, 115
  - versus statement of claim, 131
- misfeasance in public office, 61
- negligence
  - and sexual assault victim – relationship of proximity, 41
  - fatality, 35
  - for arrest and investigative detention, 53
  - generally, 30
  - limitation period, 58
  - negligent investigation, 47
    - standard of care, 50, 53
  - private law duty of care owed to family members, 39
- personnel file
  - disclosure of in civil action, 111
  - disclosure of in criminal proceedings, 104
  - disclosure of in human rights proceedings, 107
- physical assault by
  - complaint procedure, 16
  - generally, 15
  - negligence and, 43
  - tasers, 17
  - use of force, 17
- sexual assault by, 10
  - damages for, 12
  - sentencing of, 13
- strip searches, 1
  - disciplinary proceedings and, 139
  - sentencing of for illegal, 7
  - stays in criminal proceedings and, 145
- tactical team, 26
- use of physical force, 19

- by customs/immigration officers, 29
- *Charter* breach and, 153
- police dogs, 28
- tactical team, 26

privately run facility, liability of

- all terrain vehicle, 300
- camp, 299
- canoe trip, 297
- horse stables, 301
- zip line, 298

provincial liability

- archery ranges, 211
- baseball, 217
- cycling and roads, 216
- exercise equipment, 219
- for sexual abuse in sports, 193
- recreational trails and
  - cross-country skiing, 205
  - cycling, 206
- skateboard park, 214
- swimming and
  - open water, 198
  - pool, 201

provocation, public torts and, 458

public office

- misfeasance in, 61

public torts

- aggravated damages, 437
- assault, 456
- battery and assault
  - criminal guilty plea, affect of, 454
  - generally, 441
  - case law
    - assault, 444
    - battery, 442
  - quantification of damages, 445
- breach of fiduciary duty, 435
- cost of future care, 437

- cyber bullying, school age, 550
- deduction from damage award, 436
- defamation
  - case law
    - breach of public office, 506
    - libellous statements
      - about non-professionals, 495
      - about professionals, 497
    - slanderous statements
      - about non-professionals, 500
      - defence of fair comment, 505
  - defences to, 482
  - defined, 478
  - generally, 478
  - intentional infliction of mental suffering and, 494
  - internet defamation
    - applicability to blogs, 509
    - case law
      - anonymous defendants, production of identity of, 540
      - corporations, 511
      - non-professional context, 515
      - professional context, 522
    - generally, 507
    - injunctions, 509
    - statutory breach, 510
  - misfeasance in public office and, 495
  - quantifying damages for
    - aggravated, 490
    - general, 487
    - punitive, 491
  - statutory breach and, 494
- discoverability principle, 434
- duty of insurance company, 476
- false imprisonment, 456
- general (non-pecuniary) damages, 425
  - assessment of, 436
- harassment, 589
- intentional infliction of mental shock, 589
- intentional infliction of nervous shock, 456

- invasion of privacy
    - case law, 542
    - generally, 541
  - lump-sum damages versus structured settlements, 433
  - malicious prosecution, 589
  - minors and, 592
  - multiple tortious causes, damages and, 432
  - occupier's liability, 471
  - pecuniary damages
    - causal link and, 426
    - distinction between "loss of earning capacity" and "lost future income", 429
      - future loss assessment, 436
    - past wage loss, 431
      - assessment of, 436
  - provocation, 458
  - punitive damages, 431
    - fixed amount for, 437
  - quantification of damages, factors considered in, 435
  - school age cyber bullying, 550
  - school based torts
    - case law
      - assault by student against student, 570
      - assault by teacher against student, 557
      - criminal court proceedings and school violence, 576
      - defamation, breach of contract and mental distress, 579
      - Human Rights Tribunal, 589
      - school disciplinary proceedings, 581
      - school's statutory reporting requirement, 567
      - student suicide, 575
    - generally, 553
  - self-defence, 458
  - stalking
    - case law, 439
    - generally, 438
  - vicarious liability, 433, 471
- punitive damages
- public torts and, 431
    - fixed amount for, 437



**R**

- recreational facility, liability of
  - baseball complex, 295
- recreational trials, municipal and provincial liability for
  - cross-country skiing, 205
  - cycling, 206
- releases, in sports, 179
  - minors and, 186
- remedies
  - *Charter*
    - civil law proceedings, 141
    - criminal law proceedings, 142
    - generally, 140
  - Criminal Code, 140
- rock climbing
  - liability of coaches/instructors, 239
- rugby
  - liability of participants towards each other, 277

**S**

- school age cyber bullying, 550
- school based torts
  - case law
    - assault by student against student, 570
    - assault by teacher against student, 557
    - criminal court proceedings and school violence, 576
    - defamation, breach of contract and mental distress, 579
    - Human Rights Tribunal, 589
    - school disciplinary proceedings, 581
    - school's statutory reporting requirement, 567
    - student suicide, 575
  - generally, 553
- school sports programs, 183
  - liability
    - elementary/high school, 251

- universities/colleges, 245
- school violence, criminal court proceedings and, 576
- scuba diving club, liability of, 233
- searches, strip, 1
- self defence, public torts and, 458
- sentencing, of police officer for sexual assault, 13
- sexual abuse, sports and, 193
- sexual assault
  - by police officer, 10
    - damages, 12
    - reasonable discovery, 11
    - relationship of proximity to victim, 41
    - sentencing for, 13
  - workplace
    - arbitration board: sexual harassment, physical contact, 376
    - damages
      - civil, 400
      - for constructive dismissal, 395
      - for wrongful dismissal for internet pornography, 366
      - for wrongful dismissal for sexual harassment and non-physical contact, 385
      - for wrongful dismissal for sexual harassment and physical conduct, 378
    - generally, 329
    - Human Rights Tribunal
      - mental anguish and sexual harassment, 361
      - reprisals by employer, 345
      - text messaging and, 343
    - rights to sue
      - collective agreement, 333
      - Human Rights Tribunal, 337
      - statutory, 330
- sexual harassment
  - workplace
    - damages for, 385
    - disciplinary proceedings, 399

- sexual relationships
  - between co-workers, 403
- skateboard park, municipal and provincial liability for, 214
- ski club, liability of, 225
- slanderous statements
  - about non-professionals, 500
  - defence of fair comment, 505
- social host liability, 186
- spectators of sports, liability towards
  - baseball, 279
  - golf, 281
  - lacrosse, 282
- sports
  - clubs, liability of
    - golf, 228
    - jockey, 235
    - scuba diving, 233
    - ski, 225
  - coaches/instructors, liability of
    - hockey, 236
    - horse riding, 240
    - in-line skating, 241
    - martial arts, 238
    - rock climbing, 239
    - track team, 245
  - common law negligence and, 175
  - contributory negligence and, 188
  - equipment manufacturer, liability of
    - hockey, 288
    - swing apparatus, 293
  - governing bodies, liability of 221
    - basketball, 225
    - hockey, 222
    - lacrosse, 221
  - landowner, liability of
    - homeowner, 287
    - vacant land, 284

- liability of adventure company/camps/privately run facilities
  - all terrain vehicle, 300
  - camp, 299
  - canoe trip, 297
  - horse stables, 301
  - zip line, 298
- liability of participants towards each other
  - golf, 274
  - hockey, 265
  - rugby, 277
- minors, liability for
  - martial arts school, 264
- municipal liability and
  - archery ranges, 211
  - baseball, 217
  - cycling and roads, 216
  - exercise equipment, 219
  - for sexual abuse in sports, 193
  - recreational trails and
    - cross-country skiing, 205
    - cycling, 206
  - skateboard park, 214
  - swimming and
    - open water, 198
    - pool, 201
- owner/occupier liability and, 190
- Parks Canada, liability of, 302
- provincial liability and
  - archery ranges, 211
  - baseball, 217
  - cycling and roads, 216
  - exercise equipment, 219
  - for sexual abuse in sports, 193
  - recreational trails and
    - cross-country skiing, 205
    - cycling, 206
  - skateboard park, 214
  - swimming and
    - open water, 198

- pool, 201
  - recreational facility and liability
    - baseball complex, 295
  - school programs, 183
    - liability in
      - elementary/high schools, 251
      - universities/colleges, 245
  - sexual abuse in, 193
  - spectators, liability towards
    - baseball, 279
    - golf, 281
    - lacrosse, 282
  - vicarious liability in, 177
    - equipment manufacturer and, 188
    - of coaches/instructors, 179
    - school programs and, 183
  - waivers and releases, 179
    - minors and, 186
- sports equipment manufacturer
- liability of
    - hockey, 288
    - swing apparatus, 293
  - vicarious liability of, 188
- sports governing bodies, liability of, 221
- basketball, 225
  - hockey, 222
  - lacrosse, 221
- stalking
- case law, 439
  - generally, 438
- strip searches
- constitutional validity of, 3
  - damages for, 4
  - definition, 1
  - generally, 1
  - guidelines for, 2
  - improper search, remedy for, 3
  - police, 1
    - disciplinary proceedings and, 139

- sentencing of enforcement officials for conducting illegal, 7
- stays in criminal proceedings and, 145

student suicide, 575

swimming, municipal and provincial liability for

- open water, 198
- swimming pool, 201

swing apparatus, liability of equipment manufacturer, 293

## T

tactical team, 26

tasers, 17

track team

- liability of coaches/instructors, 245

## U

universities

- liabilities in school sports programs, 245

use of force

- by police, 17
  - *Charter* breach and, 153
  - physical, 19

## V

vacant land, liability of landowner, 284

vicarious liability

- public torts and, 433, 471
- sports and, 177
  - equipment manufacturers and, 188
  - of coaches/instructors, 179
  - school sports programs and, 183
- workplace and, 309
  - physical harm, 327

## victim

- domestic violence
  - and negligence by police, 54

**W**

## waivers

- in sports, 179
- minors and, 186

## workplace

- co-workers, sexual relationships between, 403
- defamation, 418
- employment law, 312
- human rights law, 310
- legislation, 305
- mental suffering/emotional distress (bullying)
  - generally, 403
  - right to sue, 409
- physical harm in, 320
  - proper forum, 320
  - rights to sue, 321
  - vicarious liability, 327
- sexual assault
  - arbitration board: sexual harassment, physical contact, 376
  - damages, civil, 400
  - damages for constructive dismissal, 395
  - damages for wrongful dismissal for internet pornography, 366
  - damages for wrongful dismissal for sexual harassment and physical conduct, 378
  - damages for wrongful dismissal for sexual harassment and non-physical contact, 385
  - general, 329
  - Human Rights Tribunal
    - mental anguish and sexual harassment, 361
    - reprisals by employer, 345
    - text messaging and, 343
  - rights to sue
    - collective agreement, 333

- Human Rights Tribunal, 337
- statutory, 330
- sexual harassment
  - damages for, 385
  - disciplinary proceedings, 399
- vicarious liability, 309

**Z**

zip line, liability of adventure company/camps/privately run facilities,  
298