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**CANADIAN DEFAMATION LAW  
AND PRACTICE**

**Pepper, Morritt, Stephenson & Ross**

**Release No. 11, December 2018**

This book is designed to provide an overview of the Canadian law of defamation and a practice guide for lawyers advising on defamation issues or engaged in prosecuting or defending defamation actions. It will also assist in-house counsel in recognizing areas of concern and help editors and others involved in the communications, advertising and media fields avoid publishing defamatory material. It is an extremely practical guide to the area providing an overview of the law, practice tips and precedents. Topics covered include: the plaintiff and defendant, defences, remedies, defamation and the internet, defamation and the Charter, and more.

**What's New in This Update:**

This release provides valuable updates to the Introduction, Chapter 1 (The Plaintiff), Chapter 2 (The Defendant), Chapter 4 (Defences), Chapter 5 (Remedies), Chapter 6 (Litigating a Defamation Action),

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Chapter 10 (The Internet), Chapter 11 (Quebec) and Chapter 12 (Defamation Law and the Charter).

### Highlights:

- **Defences — What is “Fair Comment”?** — A fair comment defence was affirmed in *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2017 BCCA 431 at paras. 59-74 following a good review of the requirements for the defence to be established. Citing the decision of the Supreme Court in *WIC*, the Court of Appeal noted that fair comment can include statements that are “deduction, inference, conclusion, criticism, judgment, remark or observation, which is generally incapable of proof, provided there is a factual foundation underlying the comments”. The Ontario Court of Appeal similarly held a fair comment defence to apply in *Walsh Energy Inc. v. Better Business Bureau of Ottawa-Hull Incorporated*, 2018 ONCA 383 (Ont. C.A.) at paras. 21-32, noting that, while the D-rating assigned by the defendant based on one unanswered complaint seemed harsh, provided it was based on facts and could be an honestly held opinion, it was protected whether harsh or unreasonable.

- **Remedies — Damages** — In *Kazakoff v. Taft*, 2018 BCCA 241, the British Columbia Court of Appeal noted that the Supreme Court of Canada had directed in *De Montigny c. Brossard (Succession)*, 2010 SCC 51 with respect to the assessment of damages for intangible harm such as loss of reputation, that:

Because of the essential factual assessment required by the task, an appellate court must take a highly deferential approach to varying the quantum of compensatory damages awarded by the trial judge. The “palpable and overriding error” standard applies to findings and inferences of fact concerning the assessment of such damages.

The British Columbia Court of Appeal stated the proper approach to reviewing a defamation damages award to be that the it received deference and “will not be disturbed unless it was based on a mistaken or wrong principle of law, or the award is so inordinately high or low that it is a wholly erroneous estimate of the damage”. The Court of Appeal then went on to find the award of damages to be inordinately high — general damages were reduced from \$50,000 to \$25,000 and aggravated damages reduced from \$25,000 to \$10,000.

- **The Internet — The World Wide Web and the Issue of Jurisdiction** — The global reach of the Internet creates challenges for defining the jurisdictional scope of the Canadian courts. The varying views as to how these challenges should be resolved is vividly illustrated in the decision of the Supreme Court of Canada in *Haaretz.com v. Goldhar*,

2018 SCC 28 where the majority, made up of six judges supporting the appeal being allowed, wrote four separate decisions. This is reviewed in more detail below following a discussion of cases which preceded it.