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### REMEDIES IN TORT

Klar

Release No. 6, June 2022

#### Publisher's Special Release Note 2021

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This five-volume national work provides thorough coverage of the law relating to recovery in tort actions in Canada. The first three volumes focus on specific torts while the fourth volume covers substantive and procedural issues common to all tort litigation. The first volume also includes the Master Table of Contents. The final volume includes a Table of Cases, and a comprehensive index.

This release features updates to the following legal memos: What constitutes a “publication” of a defamatory statement, particularly respecting modern modes of communication, such as the internet?; How do courts approach the issue of standard of care in cases involving rural and recreational properties?; and In what circumstances have the courts imposed a standard of care approximating absolute liability in the case of products liability? It also contains valuable updates to the Defamation Quantum Table.

#### **Release Highlights**

- **Defamation Quantum Tables — Internet (Excluding E-mail):** Defendant was dentist with long history of disputes with dental regulatory body and college over advertising guidelines imposed on dentists—Plaintiff served as chair of advertising committee responsible for drafting guidelines designed to ensure compliance with College’s Code of Ethics—Plaintiff successfully sued defendant for defamatory statements made by defendant when defendant criticized people who prepared advertising guidelines, including plaintiff, and when defendant alleged that plaintiff engaged in inappropriate sexual touching—Defendant made disparaging remarks about plaintiff by name, on website, in newsletter, and in e-book—Defendant appealed on several grounds including that trial judge’s award of damages was too high because she failed to consider relevant factors—Appeal dismissed—Trial judge correctly set out law on assessing general damages—She was not obliged to repeat many facts she had found and considered in assessing damages, but highlighted that anything leading to tarnishing of professional reputation could be disastrous—She explicitly listed factors to be considered, including conduct of plaintiff, his position and standing, nature of libel, mode and extent of publication, absence or refusal of retraction or apology, and whole conduct of defendant from time when libel was published down to very moment of their verdict—After considering factors, trial judge explained why nominal damages were not appropriate—Her assessment was not unreasonable and entitled to deference; Award—Damage to Reputation—General/non-pecuniary damages: \$50,000: *Huff v. Zuk*, 2021 CarswellAlta 356, Alberta Court of Appeal
- **Defamation Quantum Tables — Public Statement(s):** Defendant became dissatisfied with extent of financial information provided with respect to investment opportunity he entered into with plaintiff—There was also dispute over marketing fee charged to defendant, which was subsequently refunded to him—One day at lunch defendant told two of plaintiff’s business acquaintances that plaintiff stole from him and was

thief—Acquaintances continued to do business with plaintiff, and plaintiff admitted he suffered no actual loss—Plaintiff brought action for defamation, and civil jury awarded general damages in amount of \$500,000—Defendant appealed, contending that quantum of damages was unreasonable—Plaintiff cross-appealed jury’s failure to award punitive damages—Appeal allowed; cross-appeal dismissed—Award of \$50,000 for general and aggravated damages was at upper end of reasonable range in present circumstances, and it was appropriate to replace jury’s award with award of \$50,000 for general and aggravated damages—Regarding cross-appeal, fact that defamatory statement was made intentionally is not, by itself, sufficient to attract punitive damages—It was not persuasive that defendant’s conduct in present circumstances was so malicious, oppressive and high-handed, or so egregious or truly outrageous, so as to warrant punitive damages—Compensatory award of \$50,000 for general and aggravated damages was adequate to achieve objectives of retribution, deterrence and condemnation in circumstances of this case; Award—General/aggravated damages: \$50,000: *Chartier v. Bibeau*, 2022 CarswellMan 5, Manitoba Court of Appeal

## **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

