

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

BROWN ON DEFAMATION

Raymond E. Brown

Release No. 2022-2, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 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 October 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.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

This service is a comprehensive, authoritative and extremely discerning text that addresses significant new developments in this complex area of legal practice. This landmark text offers an authoritative and comprehensive treatment of defamation law in Canada and elsewhere. The service includes topics such as: available defences, remedies, Charter implications, injurious falsehood and malicious prosecution.

This release provides valuable updates to the case law and commentary in chapter 12 – Absolute Privilege – Executive, Parliamentary and Judicial and chapter 13 – Qualified Privilege.

Highlights:

Absolute Privilege—Executive, Parliamentary and Judicial – Absolute Privilege-Judicial Proceedings – Statement of the Privilege; Basis for the Privilege – Statement of the Privilege – Judicial proceedings are among the settings in which an absolute privilege is recognized. In *Landry’s, Inc. v. Animal Legal Defense Fund*, Blacklock J. provided a summary of the character of the judicial proceeding privilege and the difference between that of an attorney’s privilege: “The judicial-proceedings privilege is straightforward: ‘Communications in the due course of a judicial proceeding will not serve as the basis of a civil action for libel or slander, regardless of the negligence or malice with which they are made.’ [citation omitted] The ‘due course of a judicial proceeding’ may include communications ‘in serious contemplation of such a proceeding.’ [citation omitted] Although commonly applied in defamation cases, the privilege prohibits ‘any tort litigation based on the content of the communication’ at issue. [citation omitted] The judicial-proceeding privilege is an absolute privilege that covers ‘any statement made by the judge, jurors, counsel, parties or witnesses, and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits and any of the pleadings or other papers in the case.’ [citation omitted] The privilege facilitates the proper administration of justice by promoting ‘full and free disclosure or information. . .by participants in judicial proceedings.’ [citations omitted] Although the judicial-proceedings privilege traditionally applies to ‘statements made in open court, pre-trial hearings, depositions, affidavits and any of the pleadings or other papers in the case,’ [citation omitted] it can also include statements made ‘preliminary to a proposed judicial proceeding.’ [citation omitted]. . . The privilege can also extend to the right of parties and counsel ‘to communicate with [a quasi-judicial body] touching the matters under [its] consideration, just as such persons would have the right to communicate with a court.’ ” *Landry’s, Inc. v. Animal Legal Defense Fund*, 631 S.W.3d 40 at 46-47 (Tex. 2021).

Absolute Privilege—Executive, Parliamentary and Judicial – Absolute Privilege-Judicial Proceedings – Matters to Which Privilege Attaches - Information Given to Investigative Bodies – Communications to bodies which exercise only investigative, as distinct from adjudicative, functions traditionally have been protected by a qualified and not absolute privilege, even if the communications are only a step removed from the initiation of legal proceedings. where a person files a complaint with a quasi-judicial tribunal and the tribunal as a matter of course undertakes an investigation as part of its

PUBLISHER'S NOTE

procedure to determine whether a proceeding should go forward, the discussions which take place and the information received during this investigation should be treated as part of the quasi-judicial proceeding and protected by an absolute privilege even if the complaint is thereafter dismissed. In *Penney v. L.B.*, the court held that statements made to the RCMP during the course of an investigation in preparation for a prosecution was protected by an absolute privilege. In this regard, McGrath J. said that “it is relevant whether the statements were made for the purpose of collecting evidence for a proceeding that was contemplated at the time. Even taking a narrow view of the scope of witness immunity, the authorities indicate that if a statement is made in the course of an ongoing investigation of a possible crime, with a view to a possible prosecution, witness immunity applies.” *Penney v. L.B.*, 2021 NLSC 82 at para. 100.

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
- As with the print product, the front matter is in a different order than previously displayed
- 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