

Publisher's Note

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Previous release was 2019-2

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Klar

Remedies in Tort

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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 final volume includes a Master Table of Contents, Table of Cases, a Table of Statutes, and a comprehensive index.

This release features updates to case law and commentary in Chapters 9 (Injurious Falsehood), 10 (Intentional Infliction of Nervous Shock), 11 (Interference in Domestic Relations), 14 (Maintenance and Champerty, and 15 (Malicious Prosecution).

Release Highlights

- **Chapter 14 – Maintenance and Champerty – Elements of Cause of Action:** Representative plaintiffs, acting on behalf of thousands of absent party plaintiffs, seeking indemnity for any costs liability in proposed products liability class action; representative plaintiffs and their lawyers entering into third party funding agreement whereby funder paying up to 50% of lawyers' docketed time plus budgeted disbursements and any orders for costs and security for costs; lawyers' and funder's fees potentially 30% to 38% of litigation proceeds; funder entitled to terminate agreement for breach of terms or if case could be lost; third party funding necessary to provide plaintiffs access to justice but funder given rights under agreement usually restricted to lawyer client relationship; agreement approved on

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terms; representative plaintiffs' appeal dismissed; funder's fees, like contingent legal fees, subject to court review; judge properly exercising discretion to pre-approve recovery of only 10% of fees and have court determine fairness and reasonableness of additional compensation once outcome of case known; funder's ability to terminate agreement made subject to court approval, thereby protecting funder from excessive risk and administration of justice from champertous fear of officious intermeddling; *Houle v. St. Jude Medical Inc.*, 2018 CarswellOnt 17713, 2018 ONSC 6352 (Div. Ct.), affirming 2017 CarswellOnt 13215, 2017 ONSC 5129, 9 C.P.C. (8th) 321 (S.C.J.), appeal quashed 2018 CarswellOnt 1035, 2018 ONCA 88, 420 D.L.R. (4th) 444, 16 C.P.C. (8th) 281 (C.A.).

- **Chapter 15 – Malicious Prosecution – Elements of Cause of Action – Malice:** Canada Revenue Agency investigator deciding from start that plaintiffs guilty of tax evasion and rejecting their explanations for significantly increased business income; investigator suppressing exculpatory evidence, creating inculpatory evidence, filing misleading report for prosecutors, and swearing Information knowing of evidentiary shortcomings; investigator acting deliberately to abuse his office and for improper purpose; malice vicariously established against CRA; evidence of culture within CRA supporting finding of investigator malice; *ad hoc* prosecutor's failure to properly exercise prosecutorial discretion, or to act properly through negligence or failure to understand issues, not of itself amounting to malice: *Samaroo v. Canada Revenue Agency*, 2018 CarswellBC 473, 2018 BCSC 324, [2018] 6 W.W.R. 106, 8 B.C.L.R. (6th) 121 (S.C.).