

Publisher's Note

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Brown

Brown on Defamation

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 17 (Bringing an Action) and Chapter 19 (Pleadings).

Highlights:

Bringing an Action — Actions Designed to Discourage Public Participation — Canada — Ontario Protection of Public Participation Act — In 2015, Ontario enacted the Protection of Public Participation Act, an anti-SLAPP provision, which became Section 137.1 of the Courts of Justice Act. Its aim was “to preserve the right of citizens to express themselves freely on issues of public interest and importance without being under the threat or spectre of court proceedings.” The provision achieves this purpose “by first, distinguishing between claims that arise from and expression that relates to a matter of public interest and other claims, and second, by providing for the early and inexpensive dismissal of claims based on expressions relating to matters of

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public interest, either because those claims lack sufficient merit to proceed, or because the public interest is, on balance, not served by allowing the action to proceed to an adjudication on the full merits.” This section of the Courts of Justice Act has now received a comprehensive and meticulously crafted examination by the Ontario Court of Appeal. The court acknowledges the constitutionally protected right of freedom of expression and the importance to the maintenance in a vibrant democracy of the “free and open expression of divergent, competing, and strong viewpoints on matters of public interest”. “Freedom of expression is a constitutionally protected right in Canada. The free and open expression of divergent, competing, and strong viewpoints on matters of public interest is essential to personal liberty, self-fulfillment, the search for the truth, and the maintenance of a vibrant democracy.” *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685.

Pleadings — Generally — In pleadings the material facts pleaded with precision. “[P]leadings play a critical role in defamation cases. Material facts must be pleaded with precision as they give the opposing parties fair notice of the case they have to meet and frame the issues for trial. [citation omitted] If the plaintiff does not properly plead a claim or part of a claim against a defendant the court cannot decide it, even if a party has presented evidence that relates to it and made arguments about it.” Per Iyer J. in *Northwest Organics, Ltd. Partnership v. Roest*, 2018 BCSC 866, at para. 124. Quoted in *Level One Construction Ltd. v. Burnham*, 2018 BCSC 1354.

Pleadings — Amendments of Pleadings — Amendments are generally favoured by the courts; there is strong policy supporting them and there is a liberal disposition permitting amendments. The overarching purpose is to facilitate the just resolution of the dispute quickly, inexpensively and efficiently. “The power of the Court to grant or refuse leave to amend under...the Rules must be exercised in the way that best promotes the Court’s overarching purpose to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible. [citations omitted] The Court’s power to grant leave to amend is broad and has the remedial objective of ensuring that any defect in the pleadings is cured and that the real questions in the controversy are properly agitated. [citations omitted] The object of the Court is not to punish parties for mistakes made in the course of their case, but to correct errors with the result that a decision can be made on the real matters in controversy. [citations omitted] Leave to amend should be granted unless the proposed amendment is futile, such that the issue sought to be raised by the amendment has no reasonable prospects of success, or would be liable to be struck out as not raising a reasonable cause of action, or where the amendment would cause substantial prejudice or injustice to the opposing party in a way that cannot be compensated by the award of costs.” Per Wigney J. in *Rush v. Nationwide News Pty Ltd (No. 2)*, [2018] FCA 550.