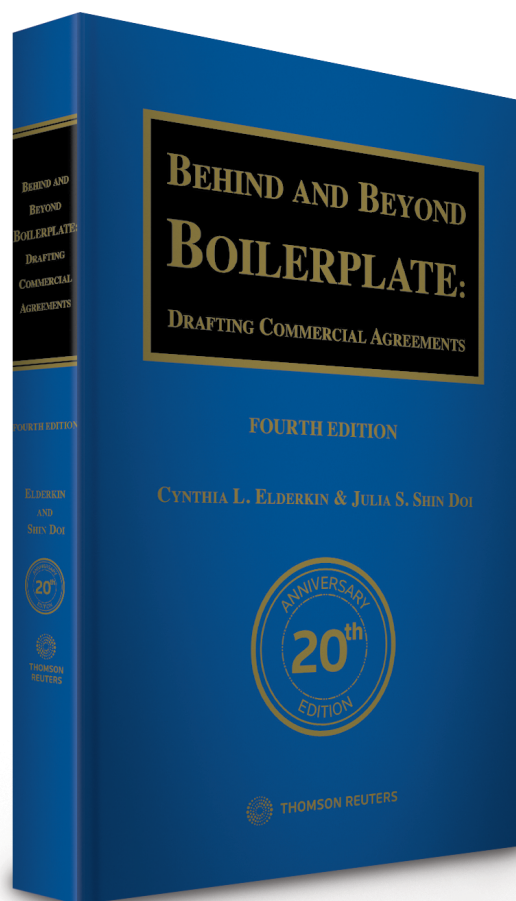


# Law Book News

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# Civil Practice and Procedure

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James J. Carthy W.A. Derry Millar, B.A., LL.B., and  
Jeff G. Cowan, B.A., LL.B., Dip.L., LL.M.

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  - *Courts of Justice Act*
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  - *Judicial Review Procedure Act*
  - *Statutory Powers Procedure Act*
  - *Evidence Act*
  - *Limitations Act, 2002*
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- Small Claims Court Rules – with case annotations
- Paper supplements are issued as required to subscription customers including legislative changes, Notices to the Profession, and Practice Directions

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- Procedural Guide – outlines major step in actions, applications, judicial reviews, motions, and appeals
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- *Limitations Act* Questionnaire – determines whether proceedings in respect of a claim would be met with defence under the Act
- Frequently called numbers – lists important and frequently used contact information

### 2. Forms and Table of Cases Volume – Print

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- *Statutory Powers Procedure Act*
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- Easily searchable Word fillable forms

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### New in this edition

#### Legislative Amendments

Legislation current to Ontario Gazette Vol. 151:13 (March 31, 2018).

- Amendments to the Rules of Civil Procedure include:
  - O. Reg. 203/17
  - O. Reg. 584/17
- Amendments to the Family Law Rules include:
  - O. Reg. 226/17
- Amendments to the Small Claims Court Rules include:
  - O. Reg. 202/17
- Amendments to the *Courts of Justice Act* include:
  - 2017, c. 14, Sched. 4, s. 10
  - 2017, c. 20, Sched. 2, ss. 3-6, Sched. 11, s. 7
  - 2017, c. 24, s. 75
  - 2017, c. 34, Sched. 46, s. 10

#### Amendments to Practice Directions

New and Updated Practice Directions for the Ontario Superior Court of Justice were added:

- Practice Advisory Concerning Long Motions in the City of Welland - Effective April 3, 2018
- Practice Advisory Concerning Civil Long Motions in the Toronto Region - Effective April 3, 2018

#### Commentary

- Extensive synopses of all rules and recent amendments
- Overview of recent developments that discusses all of the new amendments to the rules, related legislation, and Practice Directions

Over 300 new case annotations have been added to this edition, including:

- *Douez v. Facebook, Inc.* (2017 S.C.C.) (*Courts of Justice Act*, s. 106)
- *Google Inc. v. Equustek Solutions Inc.* (2017 S.C.C.) (*Courts of Justice Act*, s. 101; Rules of Civil Procedure, r. 17.03)
- *Canada (Procureur général) c. Thouin* (2017 S.C.C.) (Rules of Civil Procedure, r. 31.10)
- *Québec (Directeur des poursuites criminelles et pénales) c. Jodoin* (2017 S.C.C.) (Rules of Civil Procedure, r. 57.07)
- *Steven Nowack v. 2363523 Ontario Inc.* (2017 S.C.C.) (Rules of Civil Procedure, r. 60.11)
- *Delta Air Lines Inc. v. Lukács* (2018 S.C.C.) (*Statutory Powers Procedure Act*, ss. 5, 17)
- *Wellman v. TELUS Communications Company* (2017 Ont. C.A.) (*Courts of Justice Act*, s. 106)
- *Airia Brands Inc. v. Air Canada* (2017 Ont. C.A.) (*Class proceedings Act*, s.5)
- *Presidential MSH Corp. v. Marr, Foster & Co. LLP* (2017 Ont. C.A.) (*Limitations Act, 2002*, ss. 2,5)
- *Trillium Motor World Ltd. v. Cassels Brock & Blackwell LLP* (2017 Ont. C.A.) (Rules of Civil Procedure, r.15.05)
- *Butera v. Chown, Cairns LLP* (2017 Ont. C.A.) (Rules of Civil Procedure, r.20.04)
- *Bruff-Murphy v. Gunawardena* (2017 Ont. C.A.) (Rules of Civil Procedure, r.53.03)
- *Stokker v. Storoschuk* (2018 Ont. C.A.) (Rules of Civil Procedure, r.48.11)
- *Yaguaje v. Chevron Corporation* (2017 Ont. C.A.) (Rules of Civil Procedure, r.61.06)

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- 11-206 – National Policy – *Process for Cease to be a Reporting Issuer Applications*
- 13-315 (Revised) – CSA Staff Notice – *Securities Regulatory Authority Closed Dates 2018*
- 21-101 CP – Companion Policy – *Marketplace Operation*
- 31-103 Multilateral Instrument – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- 33-109 – National Instrument – *Registration Information*
- 41-101 – National Instrument – *General Prospectus Requirements*
- 44-101 – National Instrument – *Short Form Prospectus Distributions*
- 44-102 – National Instrument – *Shelf Distributions*
- 45-102 – National Instrument – *Resale of Securities*
- 45-106 – National Instrument – *Offering Memorandum for Non-Qualifying Issuers*
- 45-517 – ASC Rule – *Prospectus Exemption for Start-Up Businesses*
- 51-102 – National Instrument – *Continuous Disclosure Obligations*
- 71-801 – ASC Rule – *Implementing the Multijurisdictional Disclosure System under NI 71-101*
- 81-102 – National Instrument – *Investment Funds*
- 81-106 – National Instrument – *Investment Fund Continuous Disclosure*
- 96-501 – ASC Blanket Order – *Re Relief from certain derivatives reporting requirements*
- TSX Venture Exchange Corporate Finance Manual

## New in this edition

- 15-601 – ASC Policy – *Credit for Exemplary Cooperation in Enforcement Matters*
- 21-230 – CSA Staff Notice – *Update: National Instrument 21-101 Marketplace Operation and Related Companion Policy Dealing with Government Debt Transparency*
- 21-321 – CSA Staff Notice – *Markets in Financial Instruments Directive (MiFID II) – Share Trading Obligation and its*

## Application to Canadian Securities

- 21-322 – CSA Staff Notice – *Applicability of Regulation to the Operation of MTFs or OTFs in Canada*
- 23-319 – Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice – *Internalization in the Canadian Market*
- 23-320 – CSA Staff Notice – *Consideration of the Markets in Financial Instruments Directive (MiFID II) Unbundling Requirements on the Regulatory Requirements in Canada*
- 23-321 – CSA Staff Notice – *Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019*
- 23-322 – CSA Staff Notice – *Trading Fee Rebate Pilot Study*
- 31-351 – Joint CSA Staff Notice, IIROC Notice 17-0229, MFDA Bulletin #0736-M – *Complying with requirements regarding the Ombudsman for Banking Services and Investments*
- 31-352 – CSA Staff Notice – *Monthly Suppression of Terrorism and Canadian Sanctions Reporting Obligations*
- 31-701 – ASC Notice – *Account Opening Assistance*
- 33-321 – CSA Staff Notice – *Cyber Security and Social Media*
- 45-519 – ASC Blanket Order – *Re Prospectus Exemptions for Resale Outside of Canada*
- 45-703 – ASC Notice – *Report on the use of the Family, Friends and Business Associates Prospectus Exemption*
- 51-352 – CSA Staff Notice – *Issuers with U.S. Marijuana-Related Activities*
- 51-353 – CSA Staff Notice – *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*
- 51-354 – CSA Staff Notice – *Report on Climate change-related Disclosure Project*
- 52-329 – CSA Staff Notice – *Distribution Disclosures and Non-GAAP Financial Measures in the Real Estate Industry*
- 58-309 – CSA Multilateral Staff Notice – *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices*
- 96-302 – Multilateral CSA Staff Notice – *Variation, Amendment, or Revocation and Replacement of Blanket Order Relief from Certain Derivatives Data Reporting Requirements under Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting*

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Update of all case law affecting boilerplate clauses referenced in the third edition including commentary on recent Supreme Court of Canada decisions that impact contract interpretation and boilerplate:

- *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32: scope of appellate intervention in commercial arbitration is narrow: deferential standard of review – reasonableness – “almost always” applies to arbitration awards.
- *Douez v. Facebook*, 2017 SCC 33: two-step approach in determining to enforcement of a forum selection clause.
- *Soboczynski v. Beauchamp*, 2015 ONCA 282, leave to appeal refused 2015 SCC: entire agreement clauses apply to anything said and done up to the moment of signing the written contract, operating retrospectively rather than prospectively – unless the entire agreement clause expressly provides otherwise.

- *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53: approach to contract interpretation ought to be practical.
- *Bhasin v. Hrynew*, 2014 SCC 71: duty of honest performance requires the parties to be honest with each other in relation to the performance of their contractual obligations.
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- National Instrument 21-101 - *Marketplace Operation*
- National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- National Instrument 33-109 - *Registration Information*
- National Instrument 41-101 - *General*

*Prospectus Requirements*

- National Instrument 44-101 - *Short Form Prospectus Distributions*
- National Instrument 44-102 - *Shelf Distributions*
- National Instrument 45-102 - *Resale of Securities*
- National Instrument 45-106 - *Prospectus Exemptions*
- National Instrument 51-102 - *Continuous Disclosure Obligations*
- CSA Consultation Paper 52-404 - *Approach to Director and Audit Committee Member Independence*
- BC Instrument 72-503 - *Distribution of Securities outside British Columbia*
- National Instrument 81-102 - *Investment Funds*
- National Instrument 81-106 - *Investment Fund Continuous Disclosure*
- BC Instrument 96-501 - *Exemption from certain derivatives reporting requirements in Multilateral Instrument 96-101 - Trade Repositories and Derivatives Data Reporting [BCI]*

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**New in this edition**

- Updated Table of Concordance of business corporations acts
- Amended *Business Corporations Act*, R.S.O. 1990, c. B.16 and regulations
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1990, c. B.17 and regulations

- Amended *Business Regulation Reform Act*, 1994, S.O. 1994, c. 32
- Amended *Corporations Act*, R.S.O. 1990, c. C.38 and regulations, and updated forms
- Amended *Corporations Information Act*, R.S.O. 1990, c. C.39
- Amended *Extra-Provincial Corporations Act*, R.S.O. 1990, c. E.27
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- National Instrument 11-102 — *Passport System*
- National Instrument 11-206 — *Process For Cease To Be A Reporting Issuer Applications*
- National Instrument 11-207 — *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*
- 11-739 — *Policy Reformulation Table of Concordance and List of New Instruments*
- National Instrument 13-101 — *System for Electronic Document Analysis and Retrieval (SEDAR)*
- CSA Staff Notice 13-315 (Revised) — *Securities Regulatory Authority Closed Dates 2018*
- National Instrument 21-101 — *Marketplace Operation*
- Multilateral Instrument 31-103 — *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- National Instrument 33-109 — *Registration Information*
- National Instrument 41-101 — *General Prospectus Requirements*
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- National Instrument 45-106 — *Offering Memorandum for Non-Qualifying Issuers*
- National Instrument 51-102 — *Continuous Disclosure Obligations*
- OSC Staff Notice 51-711 — *(Revised) Refilings and Corrections of Errors*
- CSA Staff Notice 52-311 — *Regarding the Required Forms of Certificates under MI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*
- National Instrument 81-102 — *Investment Funds*
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- CSA Staff Notice 11-332 — *Cyber Security*
- CSA Staff Notice 11-337 — *Notice of Local Amendments and Changes in Alberta, Manitoba and New Brunswick*
- OSC Policy 15-601 — *Whistleblower Program*
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- CSA Staff Notice 21-322 — *Applicability of Regulation to the Operation of MTFs or OTFs in Canada*
- OSC Staff Notice 21-710 — *TSX Insider Trading Report*
- OSC Staff Notice 21-711 — *Multilateral Trading Facilities - Exemption from Requirement to be Recognized as an Exchange*
- OSC Staff Notice 21-712 — *Review of Market Quality Impact of Alpha Exchange Order Processing Delay*
- Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 23-319 — *Internalization in the Canadian Market*
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### Legislative updates:

- *Provincial Offences Act* has been amended by the *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017* and by the *Stronger, Fairer Ontario Act (Budget Measures) 2017* (Bill 177)
- Red Light Camera System Evidence, O. Reg. 277/99 amended by O. Reg. 373/17

### Case law updates:

- *York (Regional Municipality) v. Tomovski*, 2018 ONCA 57 – Provincial court appeal judge held that a shorter presumptive delay ceiling applied for Part I POA proceedings. The proposed appeal by the Municipality sought an advisory opinion of the Court of Appeal that was detached from the underlying facts.
- *R. v. Boukaras*, 2017 ONCJ 608 – The justice of the peace committed reversible legal error in dismissing the charge because the officer had no independent recollection of the events that brought the defendant to court.
- *R. v. Balanzin*, 2017 ONCJ 88 – The court is entitled to ask focused questions of either party to obtain the benefit of their submissions on particular issues.
- *Oshawa (City) v. 536813 Ontario Ltd.*, 2017 ONCJ 83 – The trial justice erred by ordering costs in the amount of \$111,000.00 against the prosecution. The evidentiary record did not support a finding that the conduct of the prosecutors constituted “a marked and unacceptable departure from the reasonable standards expected of the prosecution.”
- *R. v. Madussi*, 2016 ONCJ 309 – The court must ensure that the defendant understands the consequences of the “amendment up” of the amount of the applicable fine and is given a reasonable opportunity to make submissions as to why the amendment should not be granted. Fairness dictated that the unrepresented defendant be given a fair opportunity to respond to the request for enhanced penalty.

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### New in this edition

#### Legislative updates:

- Application of Provincial Laws Regulations amended by SOR/2017-136 and SOR/2017-284
- Contraventions Regulations amended by SOR/2017-251 and SOR/2018-19

#### Case law updates:

- *Bessette v. British Columbia (Attorney General)*, 2018 BCCA 59 – Applicant's request to hold trial on charge of driving while prohibited in French was dismissed. A stay of the provincial court trial proceedings was granted pending the application for leave to appeal to the Supreme Court of Canada.
- *R. v. Boukaras*, 2017 ONCJ 608 – The justice of the peace committed reversible legal error in dismissing the charge because the officer had no independent recollection of the events that brought the defendant to court.
- *Oshawa (City) v. 536813 Ontario Ltd.*, 2017 ONCJ 83 – the trial justice erred by ordering costs in the amount of \$111,000.00 against the prosecution. The evidentiary record did not support a finding that the conduct of the prosecutors constituted “a marked and unacceptable departure from the reasonable standards expected of the prosecution.”
- *R. v. Balanzin*, 2017 ONCJ 88 – The court

is entitled to ask focused questions of either party to obtain the benefit of their submissions on particular issues.

- *Cape Breton (Regional Municipality) v. Morrison*, 2017 NSSC 347 – Whether it was the defence at trial who raised the issue of identity or whether the issue was raised by the court, does not change or alter the Adjudicator's role, which was to base his decision on the evidence before him. Regardless of whether the defence raised the issue, the Crown's burden remained the same, that is, to prove the essential elements of the offence.

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## Annual Review of Criminal Law 2017

**Steve Coughlan, Michelle S. Lawrence, and Robert J. Currie**

The authors, who have written extensively on criminal law, procedure, and sentencing draw upon their varied experience to chronicle and analyze the most significant case law and statutory developments in 2017, detailing how they impact the practice of criminal law in Canada. With the new edition of **Annual Review of Criminal Law**, it will be like having your own expert consultants to decipher the plethora of statutory and case law.

### New in this edition

#### Case law:

- *R. v. Antic* (2017), 37 C.R. (7th) 237, 347 C.C.C. (3d) 231 (S.C.C.), pushing for a less restrictive approach to bail
- *R. v. Oland* (2017), 36 C.R. (7th) 1, 347 C.C.C. (3d) 257 (S.C.C.), dealing with bail pending appeal
- *R. v. Marakah*, 2017 SCC 59, finding that a privacy interest remains in text messages even after they are sent
- *R. v. Jones*, 2017 SCC 60, concluding that obtaining past text messages does not require a Part VI authorization
- *R. v. Cody*, 2017 SCC 31, reaffirming the *Jordan* approach to trial within a reasonable time
- *Quebec (Directeur des poursuites criminelles et pénales) c. Jodoin*, considering when costs can be awarded against counsel personally
- *R. v. Grant* (2016), 342 C.C.C. (3d) 514 (Ont. C.A.), concluding that potential jurors can be ordered excluded even when using the rotating triers method

- *R. v. Barton* (2017), 38 C.R. (7th) 316 (Alta. C.A.), talking about the need to update jury instructions in sexual assault cases
- *R. v. Nyznik, R. v. Tariq*, high-profile trial decisions in sexual assault cases
- *R. v. Barton*, the Alberta Court of Appeal's blockbuster decision on jury instructions in sexual assault cases
- *R. v. M.N.*, ONCA, new decisions on computer-related offences, including accessing and possessing child pornography
- *R. v. Hirsch*, uttering threats via Facebook
- *R. v. Seipp*, BC Court of Appeal considers the offence of failing to remain at the scene of an accident
- *R. v. Saikaley*, Ontario Court of Appeal considers the offence of receiving money at a criminal interest rate
- *R. v. SDL*, new decisions on electronic evidence, including authentication of e-documents (*R. v. Hirsch*) and admissibility of evidence by video link
- *R. v. Abbey, R. v. Shafiq, R. v. Hahemzali, R. v. McGown*, new senior appellate cases on admissibility of fresh evidence on appeal
- *R. v. Barton, R. v. LS*, senior appellate consideration of s. 276 applications in sexual assault cases
- *R. v. Bradshaw*, SCC considers the role of corroborating evidence in the principled exception to hearsay

#### Plus:

- New appellate consideration of the 2013 self-defence provisions
- First instance of previously obscure offences of polygamy and transporting a child across the border for a sexual purpose
- New rulings on the constitutionality of mandatory minimum sentences for drug, firearms, and sex offences
- Manitoba Court of Appeal considers whether the defence of duress is available for murder

#### Other topics discussed are:

- New protocols issues by the Supreme Court of Canada for joint submissions on sentence

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#### New in this edition

This 2018 edition has been updated to reflect all the legislative developments since the last edition and incorporates all significant developments in the case law, including:

- *Cyr-Langlois v. R.* (Q.C. C.A.) – evidence adduced by the accused to the effect that he was not under observation for a minimum of 20 minutes preceding the administration of a breathalyzer test was sufficient to deny the prosecution the benefit of the presumptions set out at s. 258(1)(c) of the *Criminal Code*.
- *R. v. MacInnis* (Alta. P.C.) – s. 9 of the *Charter* was breached where the officer directed accused to exit vehicle and go with officer for screening device test where no necessity was shown why test could not be done at accused's vehicle.
- *R. v. Nguyen* (Ont. C.J.) – charges dismissed after detailed review of precedents where police processed accused without benefit of interpreter notwithstanding obvious language issue.
- *R. v. Lachapelle* (Ont. S.C.J.) – there is no onus on an accused in cases of actual care and control to disprove the element of risk.

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#### New in this edition

##### Legislation update:

The *Stronger, Fairer Ontario Act (Budget Measures) 2017* (Bill 177) was given Royal Assent on 14 December 2017. This legislation, S.O. 2017, c.34, contains Schedule 35, which makes numerous substantive changes to the *Provincial Offences Act*. One of the changes is an amendment to the definition of "prosecutor" in s.1(1), which includes persons acting on behalf of a municipality under a transfer agreement.

##### Case law updates:

*York (Regional Municipality) v. Tomovski*, 2018 ONCA 57 [(In Chambers)] – Leave to appeal was refused where the "decision" of the provincial court appeal judge was that the stay of proceedings should be set aside because there was no breach of s.11(b) of the *Charter of Rights*. The Municipality's proposed appeal sought an advisory opinion of the Court of Appeal that was detached from the underlying facts.

*R. v. Cvokic*, 2017 ONCJ 517 – As per s.21(1) of the *Provincial Offences Act*, the exception to obtain the Attorney General's consent to prosecute is triggered when the Part I or II certificates have been filed. In the defendant's case, the Part I certificate was not filed so there was no required Attorney General consent. In the result, the defendant's Part III charge was valid.

*R. v. Boukaras*, 2017 ONCJ 608 – The justice of the peace committed reversible legal error in dismissing the charge because the officer had no independent recollection of the events that brought the defendant to court. The officer's notes were properly admitted into evidence as record of his past recollection of the incident that brought the defendant to court.

*Oshawa (City) v. 536813 Ontario Ltd.*, 2017 ONCJ 836 – The trial Justice erred in ordering costs against the "Prosecution", the "City of Oshawa" and the "Prosecutor, the City of Oshawa"

because the evidentiary record did not support a finding that the conduct of the prosecutors constituted “a marked and unacceptable departure from the reasonable standards expected of the prosecution” or that the prosecution was directed by the municipality for self-interest and financial gain.

*Ontario (Ministry of Labour) v. Belle-Pak Packaging Inc.*, 2017 ONCJ 811 – With s.11(b) of the *Charter* applying to both regulatory and *Criminal Code* offences, the net delay in the instant case was just under 26 months, which was well over the 18-month ceiling for provincial courts that applies to provincial offences court proceedings. The delay resulted from the Crown’s inaccurate assessment of time required for the case denying the defendant of the constitutional right to have a trial in a timely fashion.

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#### New in this edition

Principles and updates to sections emanating from several SCC rulings including *Antic*, *Alex*, *Anthony-Cook*, *St-Cloud*, *Hernandez*, *A.(J.)*, *George*, *Clarke*, *Bradshaw*, *Spencer*, *Marakah*, *Lacasse*

#### Updated areas:

- Bail, including cases on the ladder principle, the tertiary ground, and bail review
- Impaired driving, including cases on certificates and the presumption of identity
- Offences, including cases on sexual assault and failure to provide necessities of life
- Defences, including self-defence and mistake of age
- Evidence, including testimony and silence of an accused, credibility, child witnesses, hearsay, and voluntariness
- *Charter*, including section 8 (such as reasonable expectation of privacy, wiretaps, and implied invitation to knock), section 10(a), section 11(b)
- Sentencing, including parity, joint submissions, “sprees”, aggravating and mitigating factors, child pornography, domestic violence, and robbery

#### New areas:

- Statutory interpretation
- Continuing offences
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#### New in this edition

- *R. v. Cody*, 2017 SCC 31 and *R. v. Papatotiriou-Lanteigne*, 2017 ONSC 6251 – Before permitting an application to proceed, a trial judge should consider whether it has a reasonable prospect of success. This assessment may require defence counsel to summarize the evidence it anticipates eliciting and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily. An applicant who cannot meet the reasonable prospect threshold is not entitled to call viva voce evidence or cross-examine affiants.
- *R. v. Sciascia*, 2017 SCC 57 – A joint trial for provincial and summary conviction criminal charges is “permissible and desirable” when the charges share “a sufficient factual nexus and it is in the interest of justice to try them together”.
- *R. v. Short*, 2018 ONCA 1 – In denying an application for removal of counsel of record, the trial judge erred in focusing on the content of the legal assistant’s affidavit regarding the non-payment of fees. The trial judge should have focused on the more expansive representations of counsel on the record regarding his ethical concerns and the full breakdown of the solicitor client relationship that went beyond mere non-payment of fees.
- *Brown v. Canada (Public Safety)*, 2018



ONCA 14 – Habeas corpus applications should not be joined with applications for *Charter* damages. Habeas corpus is intended to be an expeditious process for resolving the issue of the lawfulness of the deprivation of a person's liberty. The remedy is aimed at determining whether the detention is currently unlawful, not when that unlawfulness arose. The remedy is not and should not become, a potentially complex and protracted process in which entitlement to s. 24(1) damages is determined.

- *R. v. Mossaddad*, 2017 ONSC 5520 – The defence receives disclosure subject to an implied undertaking that the disclosure will not be used for any purpose other than making full answer and defence.
- Practice direction – Effective May 1, 2017, the Court of Appeal for Ontario has adopted Guidelines for Teleconference and Videoconference Appearances in the Court of Appeal for Ontario.

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Amendments made to the *Highway Traffic Act* by:

- *Safer School Zones Act*, 2017, S.O. 2017, c. 9
- *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act*, 2017, S.O. 2017, c. 26, Sched. 1, s. 31, Sched. 4
- *Stronger, Fairer Ontario Act (Budget Measures)*, 2017, S.O. 2017, c. 34, Sched. 19, s. 22, Sched. 35, s. 27
- *Safer Ontario Act*, 2018, S.O. 2018, c. 3, Sched. 5, s. 26

#### Regulations under the *Highway Traffic Act*:

- Pre-empting Traffic Control Signal Devices, O. Reg. 34/06 – As amended by O. Reg. 216/17
- Standards to Determine Allowable Gross Vehicle Weight for Bridges, O. Reg. 103/97 – As amended by O. Reg. 183/17
- Red Light Camera System Evidence, O. Reg. 277/99 – As amended by O. Reg.

373/17

- Operation of Off-Road Vehicles on Highways, O. Reg. 316/03 – As amended by O. Reg. 478/17
- Drivers' Licences, O. Reg. 340/94 – As amended by O. Regs. 168/17; 338/17; 476/17
- Display Screens and Hand-Held Devices, O. Reg. 366/09 – As amended by O. Reg. 475/17
- School Bus Offence – Service of Offence Notice on Vehicle Owner, O. Reg. 468/05 – As amended by O. Reg. 217/17
- Licences for Driving Instructors and Driving Schools, O. Reg. 473/07 – As amended by O. Reg. 339/17
- Community Safety Zones, O. Reg. 510/99 – As amended by O. Reg. 429/17
- Critical Defects of Commercial Motor Vehicles, O. Reg. 512/97 – As amended by O. Regs. 372/17; 573/17
- Equipment, R.R.O. 1990, Reg. 587 – As amended by O. Reg. 374/17; 376/17
- General, R.R.O. 1990, Reg. 596 – As amended by O. Reg. 375/17
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- Speed Limits, R.R.O. 1990, Reg. 619 – As amended by O. Regs. 184/17; 222/17; 273/17; 275/17; 278/17; 279/17; 382/17; 393/17; 418/17; 439/17 and 486/17
- High Occupancy Vehicle Lanes, O. Reg. 620/05 – As amended by O. Reg. 463/17
- Stopping of Vehicles on Parts of the King's Highway, R.R.O. 1990, Reg. 622 – As amended by O. Regs. 392/17; 16/18
- Stop Signs at Intersections, R.R.O. 1990, Reg. 623 – As amended by O. Reg. 276/17
- Stop Signs in Territory Without Municipal Organization, R.R.O. 1990, Reg. 624 – As amended by O. Reg. 277/17
- Use of Controlled Access Highways by Pedestrians, R.R.O. 1990, Reg. 627 – As amended by O. Regs. 185/17 and 480/17
- Vehicle Permits, R.R.O. 1990, Reg. 628 – As amended by O. Regs. 162/17 and 590/17
- Vehicle Weights and Dimensions, O. Reg.

413/05 – As amended by O. Reg. 368/17

- Vehicles on Controlled-Access Highways, R.R.O. 1990, Reg. 630 – As amended by O. Regs. 186/17 and 481/17

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#### New in this edition

New content in this edition includes:

- A new chapter on human trafficking

Updates throughout the publication to reflect jurisprudential developments includes:

- New Supreme Court of Canada and provincial appellate level authorities clarifying the scope of consent, vitiation of consent including due to fraud (non-disclosure of HIV status) or bodily harm or incapacity, and the requisite elements to the mistaken belief in age defence
- Recent provincial appellate level authorities regarding the application and scope of s. 276 of *Criminal Code*, including additional and recent examples of admissible and inadmissible evidence
- Decisions regarding the importance of avoiding the stereotypes and myths in assessing of evidence during sexual assault trials

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New in this edition

### Supreme Court of Canada Cases

- *R. v. Durham Regional Crime Stoppers Inc.* (SCC) – Informer privilege does not apply where it would compromise the very objective of furthering the interests of justice and the maintenance of public order that justify its existence. The privilege does not exist where a person has contacted Crime Stoppers with the intention of furthering criminal activity or interfering with the administration of justice.
- *R. v. Paterson* (SCC) – The confessions rule does not apply to statements tendered in the context of a *Charter* voir dire.
- *R. v. Alex* (SCC) – S. 258 (1) (g) creates a statutory exception to the hearsay rule, which permits a certificate of analysis setting out the results of D's breath test to be filed as proof of the truth of its contents without the need for *viva voce* evidence.
- *R. v. Bradshaw* (SCC) – Procedural reliability can be based on safeguards in place at the time the statement was taken and on safeguards imposed at trial. Some form of cross-examination of the declarant is usually required. Jury warnings about the dangers of hearsay evidence or unsavoury witnesses do not establish procedural reliability.

### Court of Appeal Cases

- *R. v. Abbey* (ONCA) – Expert opinion evidence is admissible when it meets the threshold requirements of admissibility and the trial judge, as gatekeeper, decides that the benefits of admitting the evidence

outweigh its potential risks.

- *R. v. Barton* (ABCA) – After-the-fact conduct, such as destruction or concealing of evidence, erasing a link to the scene, and concoction and fabrication of lies may support an inference that D knew that he had committed a culpable act. The evidence is also relevant to D's credibility as a witness at trial.
- *R. v. Douglas* (MBCA) – Where a warrant authorizes search for and seizure of "legal correspondence," which is presumptively privileged, the proper remedy on warrant review is: i. to excise the term "legal correspondence" from the warrant; ii. to place the affected documents under seal; and iii. to require the applicant to identify the documents over which privilege is claimed so that the reviewing judge can determine which documents attract privilege.
- *R. v. Laing* (NSCA) – Prior consistent statements introduced as narrative cannot be used to corroborate the in-court testimony of their maker.
- *R. v. Bahamonde* (BCCA) – When a witness uses two similar terms to describe the same physical attribute (the whites of the eyes), a judge may use a dictionary to determine the meaning of the terms used without offending the prohibition against independent research.
- *R. v. Dunford* (SKCA) – Police have no obligation to respond to a detainee's misunderstanding of his rights, or how to implement them, if that misunderstanding is not communicated to the police, or if there are no other signs of lack of comprehension.
- *R. c. Turbide* (QCCA) – Once D, who is not charged with an offence listed in s. 278.2(1), has in his or her possession a document with respect to which V has a reasonable expectation of privacy, a judge cannot order that the document be returned. Further, D may cross-examine V on the contents of the document, provided the purpose of the cross-examination is legitimate.
- *R. v. H. (R.A.)* (PECA) – A court may determine that a video statement made months or even years after an alleged offence was made "within a reasonable time after the alleged offence" by considering whether there is a satisfactory explanation for the delay of the and the impact of the delay on the child's ability to accurately recall the events.

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- *Succession Law Reform Act*, R.S.O. 1990, c. S.26
- *Charities Accounting Act*, R.S.O. 1990, c. C.10
- *Children's Law Reform Act*, R.S.O. 1990, c. C.12
- *Family Law Act*, R.S.O. 1990, c. F.3
- *Health Care Consent Act*, 1996, S.O. 1996, c. 2, Sched. A
- *Insurance Act*, R.S.O. 1990, c. I.8
- *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B
- *Pension Benefits Act*, R.S.O. 1990, c. P.8
- *Perpetuities Act*, R.S.O. 1990, c. P.9
- *Public Guardian and Trustee Act*, R.S.O. 1990, c. P.51
- *Substitute Decisions Act*, 1992, S.O. 1992, c. 30
- *Trillium Gift of Life Network Act*, R.S.O. 1990, c. H.20
- *Vital Statistics Act*, R.S.O. 1990, c. V.4
- O. Reg. 368 – Election of Surviving Spouse – made under the *Family Law Act*
- O. Reg. 741 – General – made under the *Mental Health Act*

- O. Reg. 194 – Rules of Civil Procedure – made under the *Courts of Justice Act*

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- Ont. Reg. 965 – Hospital Management
- Ontario Consent and Capacity Board Policy Guideline No. 2
- *Health Care Consent Act Form C – Application to the Board to Appoint a Representative under Subsection 33(2), 51(2) or 66(2) of the Health Care Consent Act*
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**New in this edition**

The 2019 edition has been updated to include revisions regarding relevant provincial statutes and federal laws, including:

- A discussion of the proposals to amend the federal tax laws respecting the “tax on split income,” which impacts payments made from private corporations
- Updates to the sections on tax benefits available to persons with a disability or those persons providing care to family members, including the Canada Caregiver Credit, the Home Accessibility Tax Credit, and Family Caregiver Benefits
- More detail on various concepts and case studies, particularly when transferring large sums of money to children through a gift, a loan, or use of a trust
- Updated references for the provincial disability-related programs, including the revised asset limits in Ontario

“Van Cauwenberghe’s 20+ years of experience as a tax and estate lawyer come across clearly in this book, but what really makes this title stand apart from other financial/wealth planning books is how the author presents the information. She truly keeps the reader in mind, and that makes this book a must-have in one’s financial/wealth planning library.”

*From the book review of by Wealth Planning Strategies for Canadians 2018 by Helen Mok, Calgary Librarian, Parlee McLaws,*

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- *Protection against Family Violence Act* and Regulation
- *Marriage Act*
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- *Adult Interdependent Relationships Act* and Regulation
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- *Public Sector Pension Plans Act* and Regulations
- *Extra-Provincial Enforcement of Custody Orders Act*
- *Interjurisdictional Support Orders Act* and Regulation
- *International Child Abduction Act*
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- Alberta Divorce Rules (from the Alberta Rules of Court)
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- *Vital Statistics Act*

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- **Federal Child Support Guidelines, SOR/97-175:** This edition includes updates to the Federal Child Support Guidelines. The updated Federal Child Support Tables came into effect in November 2017.
- ***Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12:*** Amended by R.S.A 2017, c. 22, s. 10.
- **Child Support Recalculation Program Regulation, Alta. Reg. 287/2009:** Amended by Alta. Reg. 111/2017.

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#### New in this edition

- *Child, Youth and Family Services Act, 2017* (Bill 89, 2016) [came into force on April 30, 2018]. The new legislation brings on significant changes to child protection laws and to terminology.
- New Regulations accompanying the *Child, Youth and Family Services Act, 2017*.

- Changes to the Family Law Rules – new and amended rules pertaining to applications, motions and service of documents including:
  - Electronic Filing, New Rule – R. 1.1(1) allows permission to file and issue documents electronically. Includes an application for divorce R. 36(6.1).
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Ib S. Petersen

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- Under the *Employment Standards Act*, Reservists' Leave Regulation, B.C. Reg. 254/2016
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- *Employment Standards Act*, R.S.B.C. 1996, c. 113
- Under the *Employment Standards Act*, Employment Standards Regulation, B.C. Reg. 396/95
- Labour Relations Code, R.S.B.C. 1996, c. 244
- Under the *Pension Benefits Standards Act*, Pension Benefits Standards Regulation, B.C. Reg. 71/2015
- Under the *Public Sector Employers Act*, Health Care Employers Regulation, B.C. Reg. 427/94
- Under the *Public Sector Employers Act*, Social Services Employers Regulation, B.C. Reg. 84/2003
- *Public Service Labour Relations Act*, R.S.B.C. 1996, c. 388
- *Workers Compensation Act*, R.S.B.C. 1996, c. 492
- Under the *Workers Compensation Act*, Firefighters' Occupational Disease Regulation, B.C. Reg. 125/2009
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- Le projet de loi 150, *Loi concernant principalement la mise en œuvre de certaines dispositions des discours sur le budget du 17 mars 2016 et du 28 mars 2017*, présenté le 31 octobre 2017
- Le projet de loi 146 (L.Q. 2017, chapitre 29), *Loi donnant suite principalement à des mesures fiscales annoncées à l'occasion du discours sur le budget du 28 mars 2017*, sanctionné le 7 décembre 2017
- Le décret 1182-2017 publié dans la *Gazette officielle du Québec* du 20 décembre 2017 (G.O.Q. 2, vol. 149, no. 51, p.5742 à 5257)

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Ce supplément a été mis à jour afin d'inclure les changements législatifs apportés à la *Loi sur les impôts* du Québec, au Règlement sur les impôts ainsi qu'aux lois connexes entre le 27 mars 2018 et le 15 mai 2018:

- **Projet de loi 175**, *Loi modifiant la Loi sur les impôts, la Loi sur la taxe de vente du Québec et d'autres dispositions législatives*, présenté le 9 mai 2018.

La présente édition inclut également les commentaires approfondis de Marc Lesage sur les articles les plus consultés de la *Loi sur les impôts* du Québec.

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*All updates have been fully integrated into the book and expertly annotated by David Sherman.*

**New in this edition**

- Proposed Bill C-74 (the 2018 first Budget bill)
- Proposed Draft Legislation – February 27, 2018 (Budget 2018)
- Proposed Draft Legislation – November 10, 2017, Legislative and Regulatory Proposals Relating to the Taxation of Cannabis
- Bill C-63 (enacted), the *Budget Implementation Act, 2017*, No. 2
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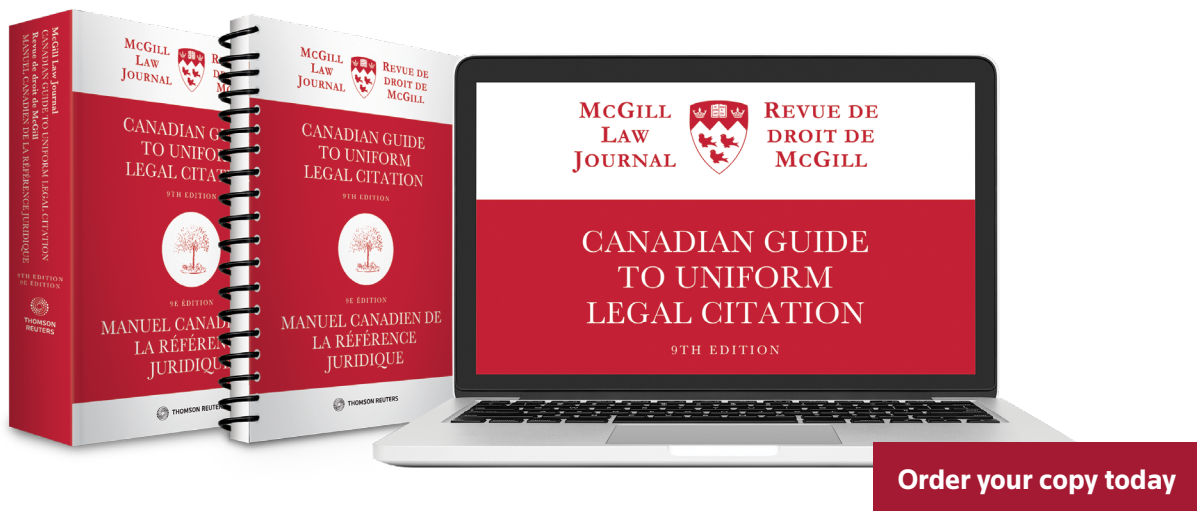
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