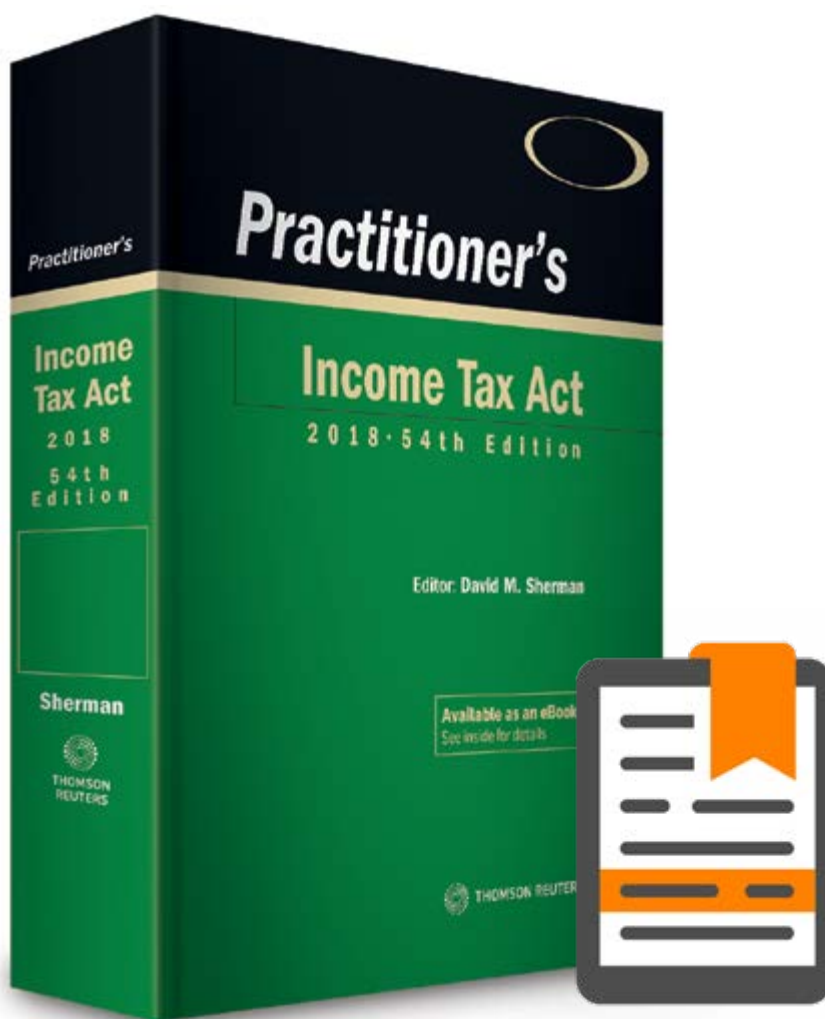


Law Book News

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Civil Practice

New Edition

Annual Review of Civil Litigation 2018

The Honourable Mr. Justice Todd L. Archibald

Regularly cited by appellate courts across Canada, including the Supreme Court of Canada, the **Annual Review of Civil Litigation** has been providing leading-edge coverage of the issues that matter to you. Each article in the 2018 edition is designed to help you understand how new developments in Canadian law will affect your practice. Topics were carefully chosen and written by authors from across Canada. The **Annual Review of Civil Litigation 2018** has a truly national flavour, relevant and appealing to litigators in every province and territory.

New in this edition

Over the years, the **Annual Review of Civil Litigation** has been increasing the number of articles and the number of topics covered each year. This new edition contains 21 new articles on current issues in civil litigation.

- *Looking into an Advocacy Mirror: The Parallels Between Tribunals and Courts The Art and Science of Persuasion Chapter VIII* – Justice Todd Archibald and Brett Hughes
- *Judicial Notice and the Internet* Stephen G.A. Pitel and Liam Ledgerwood
- *Common Ground? The Doctrine of Common Interest Privilege in Canada* – Michael A. Marion and Laura M. Poppel
- *Going for Broke: The Application of Duty of Care Principles in the Problem Gambling Context* – Shoshana Bentley-Jacobs and Ian McKellar
- *The Class Action Quicksand (at Least in Quebec): Awarding of Punitive Damages in the Context of Class Actions – A Comparative Study* – Anne Merminod
- *Sentinels of the Hryniak Shift: Four Years On* – David Alderson
- *Investor-State Dispute Settlement: What Canadian Practitioners Need to Know* – Brenna Evans, Najia Mahmud, and Robert Ginsburg
- *Leave it to Them: Applications for Leave to Appeal to Provincial Appellate Courts* – Veronica L. Jackson and Sointula Kirkpatrick
- *Civil Litigation and Contaminated Lands: Legal Insights and Evidentiary Issues Affecting Damage Awards* – Rebecca Hall-McGuire and Tom Robertson
- *The Loss of Chance Doctrine in Canadian Law* – Brendan Brammall and Stuart Svonkin

- *Garnishment under Federal Taxation Legislation: The Requirement to Pay* – Laura J. Wanamaker
- *Fire on Ice: Why the State of Tortious Liability in Hockey Is Antiquated and How It Ought To Be* – Nicole Corriero and Jordan Kirlik
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- *(Re)confirmation of a Fundamental Right: Four Supreme Court of Canada Solicitor-Client Privilege Decisions in 2016* – Malinda Yuen, Elise Calvert, and Sharilyn C. Nagina
- *Social Host Liability* – Cynthia Verconich
- *Developments in the Law of Limitations: Discoverability, Appropriate Means and Limitation Periods* – Katherine DiTomaso
- *Dissecting Judicial Discretion* – Ben Hanuka
- *POGG & Medicare: Time to Fully Inhabit the Federal Health Power* – Lori Stoltz
- *Developments in the Duty to Defend Intentional and Criminal Acts Post-Scalera: The Case for a Limited Exception to the Rule Against Extrinsic Evidence* – Aaron Gubeli

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New in this edition

This edition is current to B.C. Reg. 87/2018 (April 24, 2018).

All amendments to the rules, including amendments to the *Supreme Court Civil Rules* up to and including B.C. Reg. 162/2016, amendments to the *Supreme Court Family Rules* up to and including B.C. Reg. 4/2016, and amendments to the *Court of Appeal Rules* up to and including B.C. Reg. 6/2016.

All amendments to legislation, including amendments to the *Evidence Act*, R.S.B.C. 1996, c. 124 (as amended by S.B.C. 2017, c. 15, s. 17); the *Interpretation Act*, R.S.B.C. 1996, c. 238 (as amended by S.B.C. 2017, c.10, s. 60 (Sched. 1, item 5), s. 61 (Sched. 2, item 6)); and the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (as amended by S.B.C. c. 16).

Annotations reflecting all recent developments. Cases added to the annotations include:

- **Rule 1-2** *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, 2017 CarswellBC 3010 (C.A.)
- **Rule 3-8** *Bassi v. Bassi*, 2013 BCSC 284, 2013 CarswellBC 466 (S.C.); varied 2013 BCCA 422, 2013 CarswellBC 296 (C.A.)
- **Rule 7-1(6)** *Iser (Committee of) v. Canada (Attorney-General)*, 2016 BCSC 985, 2016 CarswellBC 1481(SC); affd 2017 BCCA 393, 2017 CarswellBC 3213
- **Rule 8-4(1)** *Kriegman v. Dill*, 2018 BCCA 86, 2018 CarswellBC 539 (C.A.)
- **Rule 9-5(1)(a)** *EY Holdings Ltd. v. Great Pacific Mortgage & Investments Ltd.*, 2017 BCCA 405, 2017 CarswellBC 3236 (C.A.)
- **Rule 11-2** *Isbister v. Delong*, 2017 BCCA 340, 2017 CarswellBC 273 (C.A.)
- **Rule 12-6(3)(b)** *Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney-General)*, 2016 BCSC 1391, 2016 CarswellBC 2082 (S.C.); affd 2017 BCCA 324, 2017 CarswellBC 2497 (C.A.)
- **Rule 14-1(10)** *Zhang v. Cute-Go Novelty Inc.*, 2016 BCSC 638, 2016 CarswellBC 949 (SC); affd 2016 BCCA 451, 2016 CarswellBC 3195 (C.A.)
- **Rule 16-1 Commentary** *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P.*, 2017 BCCA 247, 2017 CarswellBC 1717 (C.A.)
- **Rule 19-3** *Kriegman v. Dill*, 2018 BCCA 86, 2018 CarswellBC 539 (CA)
- **Rule 22-1(7)(d)** *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P.*, 2017 BCCA 247, 2017 CarswellBC 1717 (C.A.)

All Practice Directions and Administrative Notices that have been issued or updated since the last edition include: the addition of AN-15 Administrative Notice Emergency After-Hours Applications in Vancouver Civil and Family; updates to the Model Receivership Order; updates to the Policy on Use of Electronic Devices in Courtrooms; the update of Consent Orders (Civil Practice Directive); and the update of Publication Bans and Sealing Orders.

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The author has reviewed and added commentary based on new cases and appeals cases throughout the book. In particular, there are many case and commentary updates to chapters 2 (Operation of the Rule), 5 (Case Management), 6 (Partial Summary Judgment), 7 (Suitable Proceedings), 8 (Acceptable Evidence), and 16 (Family Law Rule 16).

Recent cases:

- *Turtle Creek Landscape Inc. v. Summit Auto Brokers Inc.* (2018), 290 A.C.W.S. (3d) 516 (Ontario Court of Appeal)
- *Singh v. Concept Plastics Limited*, 2016 ONCA 815 at paras. 22-25, reversing 2015 ONSC 6598 and 2015 ONSC 6599
- *Butera v. Chown, Cairns LLP*, 2017 ONCA 783
- *Trez Capital Limited Partnership v. Bernstein* 2018 CarswellOnt 1642 (C.A.)
- *A.C. Concrete Forming Ltd. v. JAC Concrete Structures and Drain Inc.* (2018), 291 A.C.W.S. (3d) 499 (Ontario Court of Appeal)
- *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438
- *Manulife Bank of Canada v. Holden-Khan* (2018), 291 A.C.W.S. (3d) 291 (Ontario Court of Appeal)
- *Union Building Corporation of Canada v. Markham Woodmills Development Inc.*, 2018 ONCA 401
- *1521141 Ontario Limited v. Upper Oakville Shopping Centre Limited*, 2018 ONSC 2808
- *Ronald Breen Consulting v. CNR*, 2018 ONSC 1778
- *Pinder v. Farmers' Mutual Insurance Company (Lindsay)*, 2018 ONSC 2910
- *Veres v. Veres*, 2018 ONSC 3497
- *Minniti v. Canadian Tire Bank*, 2018 ONSC 2128
- *Rockhill Construction Ltd. v. Ottens*, 2018 ONSC 2814
- *Gem in Niagara Homes Inc. v. Dewling et al*, 2018 ONSC 3500

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The *Crown Liability Act* has been fully updated, and important new case law has been added under the appropriate sections.

Topics from new Supreme Court of Canada cases discussed in this edition include the following:

Crown fiduciary duties towards disadvantaged groups

particularly in relation to the Crown's responsibility to Aboriginal people and their interests and entitlement to land.

- *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261
- *Manitoba Métis Federation v. Canada*, 2013 CarswellMan 61, 2013 SCC 14 [2013]

Crown liability governed by the law of the jurisdiction wrongful acts were committed

- *Hinse v. Canada*, 2015 SCC 35

Tort of nuisance

- *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13

Damages for breach of Charter rights

- *Ernst v. Alberta Energy Regulator*, 2017 SCC 1

Punitive damages

- *Hinse v. Canada*, 2015 SCC 35

Limitations on liability – indirect liability

- *Hinse v. Canada*, 2015 SCC 35

Immunity for government policy decisions

- *Hinse v. Canada*, 2015 SCC 35

Crown immunity from rules of civil procedure in cases where the Crown is not a party

- *Canada v. Thouin*, 2017 SCC 46

Limitation periods

- *Manitoba Métis Federation Inc. v. Canada*, 2013 SCC 14
- *Wewaykum Indian Band v. Canada*, [2002] 4 S.C.R. 24
- *Canada v. Lameman*, 2008 SCC 14
- *Canada v. Thouin*, 2017 SCC 46

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Several pieces of legislation have been added, including:

- *Canada Border Services Agency Act*, S.C. 2005, c. 38
- *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.)
- *Excise Act, 2001*, S.C. 2002, c. 22. (selected sections)
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17
- *Tax Court of Canada Rules of Procedure Respecting the Customs Act (Informal Procedure)*, Can. Reg. 2004-99
- Bill C-21, *An Act to amend the Customs Act*, as passed by the House of Commons June 20, 2018

Also updated in the 2019 edition:

- *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.)
- *Customs Tariff*, S.C. 1997, c. 36
- *Excise Tax Act*, R.S.C. 1985, c. E-15
- *Export and Import of Rough Diamonds Act*, S.C. 2002, c. 25
- *Export and Import Permits Act*, R.S.C. 1985, c. E-19
- *Importation of Intoxicating Liquors Act*, R.S.C. 1985, c. I-3
- *Special Import Measures Act*, R.S.C. 1985, c. S-15
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New in this edition

This edition features amendments made by S.C. 2018, c. 8 (a.k.a. Bill C-25, 2016), called the *Act to amend the Canada Business Corporations Act*, the *Canada Cooperatives Act*, the *Canada Not-for-profit Corporations Act*, and the *Competition Act*, which received Royal Assent May 1, 2018.

The following statutes have been updated in this edition:

- *Canada Business Corporations Act*, R.S.C. 1985, c. C-44
- *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23
- *Business Corporations Act*, R.S.O. 1990, c. B.16
- *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3
- *Business Names Act*, R.S.O. 1990, c. B.17
- *Business Regulation Reform Act*, 1994, S.O. 1994, c. 32
- *Corporations Act*, R.S.O. 1990, c. C.38, Part III and related sections
- *Corporations Information Act*, R.S.O. 1990, c. C.39
- *Extra-Provincial Corporations Act*, R.S.O. 1990, c. E.27
- *Limited Partnerships Act*, R.S.O. 1990, c. L.16

The following regulations have been updated in this edition:

- *Business Corporations Act*, R.R.O. 1990, Reg. 62, General
- *Limited Partnerships Act*, R.R.O. 1990, Reg. 713, General

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Contributing Editor: Andre Popadyne

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- Procedures Regulation (made under the *Provincial Offences Act*)
- *Body Armour Control Act*
- *Consumer Protection Act* (formerly, the *Fair Trading Act*)
- *Gaming and Liquor Act* and regulations
- *Interpretation Act*
- *Justice of the Peace Act* and regulations
- Patient Advocate Regulation (made under the *Mental Health Act*)
- *Missing Persons Act*
- *Protection against Family Violence Act*
- Protection of Persons in Care Regulations
- *Protection of Children Abusing Drugs Act*
- *Public Interest Disclosure (Whistleblower Protection) Act* and regulations
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- Le *Règlement sur les concentrations de drogues dans le sang*, DORS/2018-148
- Le *Règlement sur l'exécution policière de la Loi sur le cannabis*, DORS/2018-151
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Marc Lesage, LL.B. LL.M. Fiscalité

Que ce soit pour confirmer une règle de droit, clarifier une question ou alimenter un dossier litigieux, cet ouvrage pratique et efficace vous offre l'information essentielle et à jour concernant la *Loi sur les impôts* du Québec et ses lois connexes. Maintenant publiée deux fois par année, **La Loi du Praticien – Loi sur les impôts du Québec** vous fournit encore plus rapidement les dernières modifications dans votre domaine de pratique. Et grâce à son index consolidé détaillé, vous trouverez rapidement l'information désirée parmi la volumineuse documentation offerte.

Cette 25^e édition a été mise à jour afin d'inclure tous les changements législatifs apportés à la *Loi sur les impôts* du Québec, entre le 15 juin 2018 et le 15 août 2018 :

- **projet de loi 150**, *Loi visant l'amélioration des performances de la Société de l'assurance automobile du Québec, favorisant un meilleur encadrement de l'économie numérique en matière de commerce électronique, de transport rémunéré de personnes et d'hébergement touristique et modifiant diverses dispositions législatives*, sanctionné en tant que L.Q., 2018, c. 18 le 12 juin 2018.
- **Bulletin d'information 2018-4**, *Assouplissement des critères d'admissibilité au supplément pour enfant handicapé nécessitant des soins exceptionnels*, le 20 juin 2018.
- **Bulletin d'information 2018-6**, *Harmonisation à certaines mesures fiscales fédérales et modifications de diverses mesures à caractère fiscal*, le 10 juillet 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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- *Ontario New Home Warranties Plan Act* and regulation
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Audrey Loeb, LSM, B.A., LL.B., LL.M.

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Jurisdiction: Canada (Ontario)

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Legal Research & Writing

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Legislating Statutory Interpretation: Perspectives from the Common Law World

Micah Rankin, Lorne Neudorf, and Christopher Hunt

This is a collection of essays focusing on the relationship between interpretation acts and statutory interpretation. The activity of interpreting statutes is often thought to be quintessentially judicial and is largely governed by common law rules and principles of statutory interpretation. However, in every province in Canada (and in many other jurisdictions), parliaments and legislatures have enacted statutes that purport to dictate to courts how they should interpret legislation. For instance, section 8 of the British Columbia *Interpretation Act* states that "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

What is the significance of these attempts by legislatures to direct courts to adopt a particular interpretive method, and one that is, moreover, essentially teleological in its orientation? From the standpoint of legal and constitutional theory, this incursion by parliament into this sacrosanct realm of the judiciary seems deeply problematic. Yet the truth of the matter is that courts have largely ignored these interpretation acts and applied a common-law interpretive methodology. With the help of leading legal scholars drawn from all over the Commonwealth, this text explores the relationship between courts and legislatures in establishing methodologies for statutory interpretation. Is this relationship constitutionally permissible? And if so, is it desirable? This collection of essays will explore these questions.

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