

# Defamation and Media

Lenczner Slaght has decades of litigation experience in defamation and related media matters. We regularly act as litigation or advisory counsel in libel issues arising across all print, broadcast and digital media channels. We have represented both plaintiffs and defendants through libel trials and appeals.

We don't just practice libel law: we shape it. Our lawyers have argued some of the leading defamation law cases before the Supreme Court of Canada.

We also know that clients often don't want protracted litigation; sometimes what's most important is a quick and practical solution. Our expert practitioners are adept at moving proactively to obtain apologies and retractions following inappropriate assertions in the media. We also work regularly with the courts and Internet service providers to have damaging material removed from the web on an urgent basis. In the course of helping our clients, Lenczner Slaght lawyers have made important contributions to the development of Canadian libel law in the digital age.

## RECOGNITION

- ▶ Best Lawyers in Canada (2023)  
 Toronto "Lawyer of the Year" in Administrative & Public Law  
 Toronto "Lawyer of the Year" in Defamation and Media Law
- ▶ Best Lawyers in Canada (2022-2024)  
 Corporate & Commercial Litigation, Defamation & Media Law
- ▶ Best Lawyers in Canada (2020-2024)  
 Corporate & Commercial Litigation, Defamation & Media Law, Healthcare Law, Medical Negligence
- ▶ Best Lawyers in Canada (2013-2024)  
 Administrative & Public Law, Class Action Litigation, Corporate & Commercial Litigation, Defamation & Media, Health Care Law, Legal Malpractice Law
- ▶ Best Lawyers in Canada (2017-2024)  
 Administrative & Public Law, Alternative Dispute Resolution, Appellate Practice, Corporate & Commercial Litigation, Defamation & Media, Intellectual Property, International Arbitration
- ▶ Canadian Legal Lexpert® Directory (2012-2024)  
 Litigation - Corporate Commercial, Litigation - Defamation & Media, Litigation - Regulatory & Public Law, Professional Liability, Litigation - Public Law (2023)
- ▶ Canadian Legal Lexpert® Directory (2014-2024)  
 Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Defamation & Media, Litigation - Intellectual Property, Litigation - Regulatory & Public Law, Professional Liability, Litigation - Public Law (2023)

- **Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (2013-2018)**  
Corporate Commercial Litigation, Defamation & Media Litigation
- **Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (2014-2017)**  
Commercial Arbitration, Corporate Commercial Litigation, Defamation & Media Litigation
- **Lexpert® Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (2014)**  
International Commercial Arbitration, Corporate Commercial, Defamation & Media

## SELECT CASES

- **Xavier Tu v Ireland Byrne et al** – Counsel for the Defendants in a defamation action.
- **Moazzani v Ebrahimi** – Successful counsel to a defendant/moving party in a motion to strike a statement of claim, which sought \$2,000,000 in damages for defamation. Despite being an opposed motion in-writing, the Superior Court of Justice granted the motion and awarded costs.
- **Fiera Private Debt Inc et al v Private Debt Partners et al** – Counsel to the defendants (plaintiffs by counterclaim) in an action alleging conspiracy and breach of fiduciary duties by former employees of a company. The counterclaim alleges that the plaintiffs have engaged in constructive dismissal and promulgated defamatory comments.
- **Paul J. Murphy v Guyana Goldfields Inc** – Counsel to the former Chief Financial Officer of the corporate defendant in a case alleging the breach of an employment contract and seeking damages for libel.
- **Rutman v Rabinowitz** – Counsel to the respondent on an appeal in a seminal internet defamation case. The Court of Appeal for Ontario clarified the law of concerted action liability and upheld a very large damages awards for what it characterized as a prolonged, persistent and vicious internet campaign.
- **Google Inc v Equustek Solutions Inc** – Counsel to Google in an appeal to the Supreme Court of Canada from decisions of the Supreme Court of British Columbia and British Columbia Court of Appeal in a novel case regarding the limits to be placed on injunctions granted against non-parties.
- **Subway Franchise Systems of Canada Inc v Canadian Broadcasting Corporation** – Counsel to Subway in a \$210 million defamation action against the CBC and Trent University relating to a Marketplace episode.
- **Crookes v Newton** – Counsel to an intervener in an appeal to the Supreme Court of Canada regarding the novel question of whether an internet hyperlink to a defamatory statement constitutes republication of the defamation.
- **Éditions Écosociété Inc v Banro Corp** – Counsel to the appellant in the Supreme Court of Canada in an interjurisdictional defamation matter. The Court's decision in this case is one of its leading precedents in the application of public law to defamation.
- **The Catalyst Capital Group Inc v Veritas Investment Research Corporation** – Counsel to an equity research firm in an action arising from alleged defamatory statements in investment research reports.
- **Goldhar v Ha'aretz** – Counsel to the plaintiff in a defamation action involving the online publication of an article by an Israeli newspaper. Successful in responding to a motion and an appeal to stay the action

due to lack of jurisdiction.

- **Borden Ladner Gervais v Barlow** – Counsel to the plaintiff in a defamation matter, including obtaining injunctions on the basis of internet defamation and trademark infringement.
- **Elfarnawani v International Olympic Committee** – Counsel to the IOC in an action brought in Ontario by the plaintiff arising out of the IOC's decision to declare the plaintiff persona-non grata in the Olympic movement. Successful motion to stay the action on jurisdictional grounds.
- **Canadian National Railway Company v Google Inc** – Counsel to CN Railway in a successful proceeding for an order removing a defamatory blog.
- **Michael L Goguen v Amber Laurel Baptiste** – Counsel to the plaintiff commencing an action to enforce a foreign judgement and obtaining a Mareva injunction in support of the action, ensuring that the defendants do not sell or dissipate any of their assets in Canada.

### SELECT PUBLICATIONS AND PRESENTATIONS

- **Dominion Voting Systems: Explaining the Defamation Suits Against Fox News & Trump's Allies** – David Salter authored the Lexpert article *Dominion Voting Systems: Explaining the Defamation Suits Against Fox News & Trump's Allies*. This article breaks down the U.S. defamation cases pushing back against claims of a stolen election.
- **Anti-SLAPP: Where We Are At and Where We Are Headed** – Brendan Morrison presented at the Defamation Law 2019: Current Issues + Emerging Trends Conference on the panel "Anti-SLAPP: Where We Are At and Where We Are Headed". The panel examined key lessons from the Court of Appeal on interpreting and applying anti-SLAPP legislation and other practical considerations and strategies for anti-SLAPP motions.
- **Keeping Up with the Times: How to Survive and Thrive in the Age of Digital Litigation** – William C. McDowell was a faculty member at the 2018 Ontario Bar Association's Institute. With his depth of expertise and experience in Defamation & Media Law, he discussed "The Impact of Social Media on the Development of the Law".
- **John Furlong, Laura Robinson and Qualified Privilege** – William McDowell participated in a podcast entitled "John Furlong's Privilege", along with Jesse Brown of Canadaland, regarding John Furlong, Laura Robinson and qualified privilege. The session was held October 5th, 2015.
- **Debate on Cameras in the Courts: Time for a Change?** – Will McDowell presented on Cameras and New Media in the Courtroom at the 2012 Fall Convention hosted by The Advocates' Society.
- **Defamation in Social Media and Employment** – Matthew Sammon presented at the 2012 HRPALaw Conference.
- **Defamation in Social Media and Employment** – Matthew Sammon presented his paper *Defamation in Social Media and Employment* at the 2012 HRPALaw Conference.
- **What's New and Exciting in the World of Defamation Law** – William C. McDowell served as a panelist at the 2012 OBA Conference "What's New and Exciting in the World of Defamation Law".

- **U.S. Libel Tourism Law Silences Foreign Courts** – William C. McDowell's article *U.S. Libel Tourism Law Silences Foreign Courts* appeared in the March 27, 2009 issue of *The Lawyers Weekly*.

## BLOG POSTS

- **Bars or Bytes? Exploring the Implications of a Track that Drake Might (or Might Not) Have Created** – Did Drake respond to an alleged feud with fellow artists, including Kendrick Lamar and Rick Ross? As reported by the LA Times, a track titled 'Push Ups (Drop and Give Me 50)' appeared online recently, taking aim at Lamar and several of his recent musical collaborators. However, this track remained unclaimed on any of Drake's official platforms, causing some to question whether this track was fan-generated using artificial intelligence. This cynicism may be justified: Drake is reportedly no stranger to having to denounce fan-generated songs, and Lamar's rumoured response was actually the work of artificial intelligence and another rapper.
- **When Must an Anti-SLAPP Motion Be Heard?** – Ontario's Anti-SLAPP legislation (ss 137.1 to 137.5 of the *Courts of Justice Act*) provides a judicial screening device. It is designed to swiftly eliminate claims that unduly limit freedom of expression on matters of public interest. Since coming into force, courts have considered, at length, the substantive issues. To date, little guidance has been provided on the procedural issues.
- **Breach of privacy or plain old defamation? Ontario Court recognizes "false light" privacy tort** – In the late 2019 decision in *V.M.Y. v S.H.G.*, Justice Kristjanson of the Ontario Superior Court of Justice for the first time recognized the tort of "publicity placing a person in a false light" in Canadian law. But do we need yet another invasion of privacy tort?
- **Vice Media pleads in vain for press freedom, facing order to produce messages with ISIS combatant** – The Ontario Court of Appeal recently heard and resolved a conflict between two competing components of a free and democratic society. As the Court put it, the dispute involved a conflict between a free and vigorous press, on the one hand, and the protection of society from serious criminal activity on the other.
- **Can you defame someone just by hitting "reply" to an email?** – Pierre Lebel didn't like that Miranda Dyck was following his daughter on Twitter. Mr. Lebel sent an email to Andre Picotte (and several others). Mr. Lebel asked Mr. Picotte to email Ms. Dyck asking that she un-follow Mr. Lebel's daughter.
- **Appeal dismissed in contract dispute over Canadian film rights** – In *PDM Entertainment Inc. v. Three Pines Creations Inc and Louise Penny*, the Ontario Court of Appeal had to decide who was entitled to produce the next television adaptation of the fictional Chief Inspector Gramache.
- **Striking a Jury Notice: When Is It Appropriate to "Wait and See"?** – In *Chandra v. CBC*, 2015 ONSC 2980, Justice Graeme Mew rejected the CBC's argument that the jury notice should be struck because the issues and the expert evidence were too complex for the six randomly-drawn members of the public. However, the Court held that it might revisit that ruling as the trial progressed – the "wait and see" approach.

The plaintiff Dr. Chandra is a world-renowned professor and researcher in the field of nutrition and immunology. He sued the CBC for defamation following its broadcast of a documentary that claimed he fabricated his research results and committed academic fraud. The CBC pleaded

defences of truth, fair comment and responsible communication on a matter of public interest.

Before settling with the Plaintiff, the CBC's co-defendants had served a jury notice in the action. The CBC brought a motion to strike that notice.

The CBC argued that a jury was ill-suited to the task of choosing between competing experts whose evidence would be highly complex and technical. According to the CBC, the case would turn on Dr. Chandra's scientific integrity, and the trier of fact would need to have an in-depth understanding of his work and its place in his field. At least six experts would be testifying over the course of a nine-week trial.

Dr. Chandra painted a very different picture of the trial. He argued that the central issue in the case was whether or not he had fabricated research results and misappropriated money. The jury would not be called upon to decide whether the studies reached sound conclusions, but merely whether Dr. Chandra actually carried out the research at all — a task well within the jury's traditional bailiwick.

Justice Mew noted the parties' divergent predictions on how the trial would unravel. The court held that it was unable to determine which version of events would ultimately prove correct, and accordingly dismissed the motion to strike the jury notice. Relying on the Supreme Court's decision in *King v. Colonial Homes Ltd.*, [1956] S.C.R. 528, Justice Mew held that the right to a trial by jury was a substantive right "of which a party ought not to be deprived except for cogent reasons."

The court held that the issue could be revisited during the trial "if the combined effect of the legal issues and the factual issues as they emerge at trial so warrants." (para. 50) In other words, "wait and see".

However, as some courts have recognized, the "wait and see" approach is often inappropriate. In *Cowles v. Balac* (2006), 83 OR (3d) 660 (C.A.), the majority of the Court of Appeal affirmed the trial judge's decision to strike a jury notice at the outset of trial on the basis of scientific complexity. Justice Borins, in dissent, would have preferred that the trial judge take a "wait and see" approach.

The "wait and see" approach will often be a less efficient process. Among other things, it means that the jurors may spend weeks hearing evidence, only to be sent home by the judge without deciding the case.

It also forces a party who wishes to strike a jury notice to make some difficult tactical decisions. The more complex and technical the expert evidence a party leads, the more likely they are to succeed in striking the jury notice during trial. However, if the motion fails, the party may be stuck with having adduced evidence that the jury may have difficulty comprehending.

\*Research contributed by Anne-Marie Zapf-Belanger, 2015 summer student

- **Defamation battle from the fringes of the Web ends in split decision** – The political blogosphere is rude, aggressive and insulting, but the ruling in *Baglow v. Smith* (2015 ONSC 1175) suggests that it is nonetheless a tough forum in which to make out a case of defamation.
- **Towards a More Workable Approach: Proportionality and Internet Defamation** – As the internet continues to develop into the primary forum for expression in our society, defamation actions increasingly involve comments made online.
- **Liability may lurk in the vitriol of reader comments** – Score one for science, zero for journalistic integrity and a point for an interesting advance in the law of defamation.

- **No absolute privilege for city councillors' speech** – In its recent decision in *Gutowski v. Clayton*, 2014 ONCA 921, the Ontario Court of Appeal provided helpful advice to two sets of professionals: municipal councillors and lawyers. First, the Court confirmed for municipal councillors that they do not enjoy absolute privilege for defamatory statements they make during municipal council meetings. Second, the Court signalled to litigators that a Rule 21 motion is not the "appropriate vehicle" through which to attempt to develop an area of law that is not fully settled.
- **Speak No Evil: Defamation and Unlawful Interference with Economic Relations** – The tort of unlawful interference with economic relations is surprisingly slippery, especially when pleaded alongside defamation.

## SELECT NEWS ARTICLES

- **Toronto Star Article** – William C. McDowell and Derek Knoke were mentioned in a Toronto Star article, which looks into a defamation lawsuit concerning a dance group and their former leader and employer.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **Ontario couple 'bullied' by window company over bad reviews awarded \$166,000** – Lawrence E. Thacker and Derek Knoke were interviewed by CTV News following the decision in *Canadian Thermo Windows v Seangio* in favour of our clients.
- **Defending Democracy: The Status of "false News" in Canada** – David Salter spoke to Julius Melnitzer about the status of "fake news" and defamation law in the U.S. and Canada for a LegalWriter.net article.
- **Narcissism of Small Differences: A Defamation-law Lesson From Trump's 2020 Election Fraud Claims** – The Law Times interviewed David Salter on the high-profile defamation lawsuits underway in the U.S., in which two election-technology companies are suing figures associated with former president Donald Trump's post-election voter fraud claims. In this article, David highlights the differences between Canadian and American defamation law.
- **The 2021 Lexpert Directory Recognizes 30 Lenczner Slaght Lawyers** – An increasing number of our expert litigators are recognized by their peers as the foremost practitioners in their fields.
- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Lexpert Highlights Lenczner Slaght's Professional Excellence** – Lenczner Slaght's litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** – In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.
- **Lenczner Slaght Litigators Ranked in Best Lawyers in Canada** – Canada's leading litigation firm is proud to announce that 25 of the firm's 58 lawyers have been recognized in the *Best Lawyers in Canada 2019* publication across multiple categories.

- **OCA upholds \$700,000 award in internet defamation case** – Matthew Sammon is quoted in the Law Times article that discusses the recent Ontario Court of Appeal decision in *Rutman v Rabinowitz* that upheld \$700,000 in damages for what was characterized as a prolonged, persistent and vicious internet campaign. Matt represented the successful Plaintiff on the appeal and at trial.
- **Court of Appeal for Ontario Releases Key Decision on Internet Defamation** – On January 31, 2018, the Court of Appeal for Ontario released a decision upholding very large damages awards for what it characterized as a prolonged, persistent and vicious internet campaign.
- **Lenczner Slaght Ranked Among the Best** – Almost half of the leading litigation firm's lawyers are recognized in the *Best Lawyers in Canada*.
- **Supreme Court hears arguments in case pitting Google against B.C. firm** – William C. McDowell was quoted in the Globe and Mail article *Supreme Court hears arguments in case pitting Google against B.C. firm* on December 6, 2016.
- **Peers Recognize Lenczner Slaght's Expertise in Cross-border Litigation** – Fifteen Lenczner Slaght lawyers have been ranked in the Lexpert 2016 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada
- **Libel Crosses Borders: Court rules Israeli paper can be sued in Ontario** – William C. McDowell is quoted in the Lexpert article *Libel Crosses Borders: Court rules Israeli paper can be sued in Ontario* on September 21, 2016.
- **Lenczner Slaght Lawyers Ranked Best** – Nearly half of the firm's lawyers recognized among Canada's foremost practitioners
- **Lenczner Slaght Leads in Cross-Border Litigation** – Recognition of Lenczner Slaght lawyers as Canada's Leading Cross-Border Litigators Endures
- **Lenczner Slaght Lawyers Repeatedly Ranked Among the Best** – Half of the firm's lawyers are ranked as leading practitioners and three named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **The failed Caribbean casino deal** – William McDowell was quoted on behalf of Mr. Michael DeGroote in the Globe and Mail and the National Post on January 23, 2015 regarding the bitter dispute over a US\$112-million investment in Caribbean casinos which placed one of Canada's wealthiest businessmen, at the centre of bizarre accusations of Mafia exploitation, death threats and fraud.
- **A Leader in Cross-Border Litigation** – 14 Lenczner Slaght litigators ranked in Lexpert 2014 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada.
- **Lenczner Slaght Welcomes Four New Associates** – Canada's leading litigation practice grows to 53 lawyers.
- **23 Lenczner Slaght Lawyers Ranked Among the Best** – Nearly half of the firm's 49 lawyers are ranked as leading practitioners and two named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **Criminal decisions on privacy rights could affect civil cases** – Monique Jilesen was quoted in the August 4, 2014 issue of Law Times on privacy interests of Internet subscribers.

- **Lenczner Slaght Increases Rankings in 2014 Lexpert Directory –** Canada's leading litigation practice continues to add new names to the list.
- **Lenczner Slaght in Top Tier and 11 Lawyers Ranked as Stars –** Canada's leading litigation practice also wins two national impact cases.
- **Lenczner Slaght Lawyers Win Top Peer Ratings –** Recognized by Canadian Legal Lexpert Directory as leading practitioners.