

News

Awards

- **Mark Persaud** was given an honorary doctor of laws degree by the Law Society of Upper Canada at its Call to the Bar ceremony in London, Ont. Persaud has devoted his career to public service. He regularly volunteers for community based organizations assisting refugees, the homeless and youth at risk and is also a strong voice for groups committed to addressing issues of equity and discrimination.
- The Law Foundation of Ontario has awarded Community Leadership in Justice Fellowships to **Nikki Gersh bain**, **Sarah Pole** and **Brenda Young**. The fellowships will help the recipients to better understand and improve access to justice for families, racialized and marginalized youth and indigenous peoples.

Moves

- **Jean-François Vadeboncoeur** has joined *Gowling WLG* as a partner in the firm's Montreal office and member of its corporate commercial group. With expertise in banking, real estate and corporate law, as well as traditional, subordinate and venture capital financing, Vadeboncoeur has 15 years of experience practising in banking and financial services.
- **Samia Hussein** has joined *Sherrard Kuzz* as an associate assisting employers in matters of employment and labour law.
- **Colin Campbell** is a new associate with *Goldman Sloan Nash & Haber LLP*. Campbell will focus on construction law, representing builders, developers and subcontractors throughout Ontario.
- *Lerners* has hired **Jacqueline Woodward** as an associate in its London, Ont., office. Woodward will work with the insurance defence and health law groups.

Ontario defamation overhaul studied

KIM ARNOTT

Hundreds of years of common law history plus legislation dating from the 19th century are the cornerstones on which defamation law in Ontario is built today.

But over the last 35 years, the adoption of the *Canadian Charter of Rights and Freedoms* and the invention of the Internet have eroded those foundations, leading many to believe it's time for a modern reconsideration of the legal protection of people's reputations.

"The Internet has changed our society and the *Charter* has changed our society to the extent that really we have to look at defamation law in response to both of these things," says Sue Gratton, a research lawyer heading a defamation law project by the Law Commission of Ontario (LCO).

After undertaking preliminary research last year, the LCO has now established an expert advisory panel and published the intended scope of its project on its website.

The intent, says Gratton, is to develop broad recommendations to replace Ontario's *Libel and Slander Act* with forward-looking legislation, rather than simply looking for tweaks to update the existing law.

"We're looking at this project as the opportunity to reassess the balance between the underlying values of defamation law — the protection of reputation...and on the other hand and in tension to that, our *Charter* right to freedom of expression," said Gratton. "That balance really needs a re-evaluation in the modern context."

While courts have introduced incremental change to defamation law through the years, she says very limited legislative reform has left the province's law outdated.

Within the context of current technology and *Charter* rights, the



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Sue Gratton
Law Commission of Ontario

LCO project has identified a list of 15 possible issues it may explore.

Those include considering whether long-standing legal presumptions, such as the presumption of falsity (plaintiff is not required to prove defamatory statement is false) and the presumption of fault (tort is strict liability with no need for proof of malice), remain appropriate.

The project also proposes con-



Burnett

sideration of questions of anonymity, jurisdiction and damages that have arisen as the Internet has developed. Gratton says the project is also looking at defamation law within the broader context of the legal regulation of Internet content.

Vancouver media law expert Daniel Burnett, a member of the project's advisory panel, says the project is needed and overdue.

One of the main issues he hopes to see addressed is the question of liability for intermediaries on the Internet.

The extent to which forum operators, website hosts and even Facebook page owners have liability for content that someone else posts remain unclear. And while judicial decisions have started to address the question in incremental ways, Burnett says that's too slow a way to develop law in an area where people urgently need answers.

"You need to know if you're responsible to pre-moderate everybody else's comments that might be on your website; whether you're going to be held liable; whether if somebody notifies you and demands something be taken down, that changes your status; those kinds of important questions."

Burnett is also looking for the project to address the issue of harm in the context of defamation

complaints. A 2013 reform to the United Kingdom's *Defamation Act* includes the requirement for a complainant to demonstrate "substantial harm," which Burnett says allows the courts to get rid of cases where the burden of litigation outweighs the potential outcome.

While the U.K. reform will be among the international policy developments the project studies, Gratton says the ultimate aim is to develop made-in-Ontario recommendations founded on the conceptual principles of what defamation law is meant to accomplish.

And while the Internet may have made publication a global affair, "the goal of defamation law is protection of reputation and reputation itself is grounded in particular communities," she says.

"We're looking at balancing the protection of reputation and freedom of expression for our time and our place," she said.

But Burnett hopes those made-in-Ontario recommendations may eventually lead to a uniform law initiative to address some of the inconsistencies that exist across different provinces.

For example, while Ontario requires complainants to give notice of perceived libel within six weeks of publication, British Columbia requires no libel notice at all.

"With nearly everyone's publication these days also a web publication, they are almost always published in not just multiple provinces, but also worldwide," says Burnett. "So all of a sudden the world becomes a very small place, and the territorial nature of law becomes out of step with the global, borderless nature of the Internet."

The LCO intends to release a consultation paper on the topic by early 2017, then undertake a broad consultation process.

Gratton says she hopes to reach out to young people directly to engage them and other affected stakeholders in discussions.

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