



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

Defamation Law and the Internet: Where Do We Go From Here?

**Donald Lamont Learning Centre
Law Society of Ontario
130 Queen Street West
Toronto, ON Canada**

May 3, 2018

Conference Co-Chairs/Partners

The Law Commission of Ontario
Professor Jamie Cameron, Osgoode Hall Law School
Professor Hilary Young, UNB Law School

Rapporteur

Professor Daithi MacSithigh, Queen's University Belfast

This conference qualifies for 5 Substantive CPD hours

Participate in person in Toronto, or remotely through our webcast.

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This conference is supported by the Social Science and Humanities Research Council of Canada

Conference Program

8:30 – 9:00 AM

Coffee and Continental Breakfast

9:00 – 9:15 AM

Welcome and Introduction

- Nye Thomas, Executive Director, Law Commission of Ontario

9:15 – 10:30 AM

Panel 1

Rethinking Defamation Law: The Setting for Reform

The starting point in any discussion of reform is consideration of defamation law's core conceptual and doctrinal assumptions and an assessment of current defamation law, with emphasis on how well has it adapted to change, including and especially technological change. Some issues are: how well does defamation law align with current conceptions of tort liability and liability for reputational damage/harm? What are its conceptual and doctrinal shortfalls? What is technology's place in any re-examination of defamation law? How has internet technology challenged and/or undermined defamation law's core assumptions?

Moderator:

- Julia Lefebvre, Practitioner, Bersenas Jacobsen Chouest Thomson Blackburn LLP

Panelists:

- Jamie Cameron, Professor, Osgoode Hall Law School, York University
- Brian MacLeod Rogers, Barrister, Toronto; Adjunct Professor, Ryerson University School of Journalism
- Andrew Scott, Associate Professor in Law, London School of Economics

10:30 – 11:00 AM

MORNING BREAK

11:00 – 12:15 PM

Panel 2

The Harms and Values Underlying Defamation Law in the Internet Age

A discussion of reform must be set within a framework of defamation law's values and objectives. The panel will consider: reputational harm – how it is defined and understood in its nature and severity, both conventionally and more particularly in internet and online settings; reputation and privacy – whether and to what extent these values can or should be fused or remain distinctive; and expressive and media freedom – whether and to what extent values should be re-balanced, either because of the rise of online defamation or enactment of the *Charter of Rights and Freedoms*, or both.

Moderator:

- Peter A. Downard, Partner, Fasken Martineau DuMoulin LLP

Panelists:

- Jane Bailey, Professor, University of Ottawa, Faculty of Law, Common Law Section
- Andrew Kenyon, Professor of Law and Director of the Centre of Media and Communications Law, University of Melbourne Law School
- Randall Stephenson, Ph.D. and author (*A Crisis of Accountability: Public Libel Law and the Checking Function*, forthcoming summer 2018)

12:15 – 12:35 PM**LUNCH BREAK****12:35 – 1:20 PM****Front Line Issues**

Jurisdiction and anonymity are two of the most difficult problems in online defamation litigation; the decision whether and when to “unpublish” posted material raises important policy questions. The luncheon panelists will briefly offer a point of view and then engage in discussion on these issues with conference participants.

Moderator:

- Madam Justice Wendy Matheson, Superior Court of Justice of Ontario

Panelists:

- Jurisdiction: Paul Schabas, Blakes LLP
- Anonymity: Maanit Zemel, Zemel van Kampen LLP
- Unpublishing: Kathy English, *The Toronto Star*

1:20 – 1:30 PM**SHORT BREAK****1:30 – 2:45 PM****Panel 3****Responsibility for Defamation and the Problem of Intermediaries**

Responsibility for defamatory content has traditionally rested on the concept of a publisher, the publication rule, and the doctrine of innocent dissemination. Though a controversial issue over time, the internet has dramatically shifted the landscape, raising difficult questions about whether, in what circumstances, and under what theory of responsibility different forms of internet intermediaries can or should be held liable for their role in disseminating or maintaining defamatory content online.

Moderator:

- Professor Giuseppina D’Agostino, Osgoode Hall Law School, York University

Panelists:

- Bram Abramson, Mozilla Foundation, Open Web Fellow
- Christina Angelopoulos, University Lecturer, University of Cambridge, Faculty of Law
- Hilary Young, Associate Professor, University of New Brunswick, Faculty of Law

2:45 – 3:00 PM**AFTERNOON BREAK****3:00 – 4:15 PM****Panel 4****Resolving Online Defamation in the Internet Age**

The pervasiveness of online defamation, in combination with the interest in access to justice, calls for re-consideration of traditional, court-based remedies for defamation. Alternative solutions, such as online dispute resolution, can promote access to justice for those harmed by defamatory material, but must do so within a framework of principles that is attentive to process values and is mindful of the risks of over-regulation

Moderator:

- Professor Trevor Farrow, Osgoode Hall Law School, York University

Panelists:

- Emily Laidlaw, Associate Professor, University of Calgary, Faculty of Law
- Ethan Katsh, Director, National Center for Technology and Dispute Resolution; Professor Emeritus of Legal Studies, University of Massachusetts (Amherst)
- Darin Thompson, Legal Counsel, Ministry of Justice, British Columbia; Adjunct Professor, Osgoode Hall Law School and University of Victoria

4:15 – 5:00 PM**Conference Round-Up & Conclusion**

- Daithi MacSithigh, Conference Rapporteur