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LAW OF DEFAMATION Erika Chamberlain Release No. 2024-5, November 2024
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This service is a comprehensive, authoritative and extremely discerning text that addresses significant new developments in this complex area of legal practice. This landmark text offers an authoritative and comprehensive treatment of defamation law in Canada and elsewhere. The service includes topics such as: available defences, remedies, Charter implications, injurious falsehood and malicious prosecution.

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Highlights:

In *Google LLC v. Defteros*, [2022] HCA 27, Australia’s High Court considered the innocent dissemination defence, overturning the Court of Appeal’s finding of publication and holding that merely listing defamatory search engine results as hyperlinks, absent any other feature or endorsement, does not give rise to intermediary liability. In the majority’s view, the hyperlinks simply refer to content and on their own do not constitute publication for purposes of a platform’s liability. It accordingly deemed Google a “mere facilitator” without “shared intent to publish” the defamatory content. The Court cited the Supreme Court of Canada’s decision in *Crookes v. Wikimedia Foundation Inc.* (per Abella J.), concluding that ‘hyperlinks are in fact references’ and, therefore, are too remote to constitute publications by themselves. The majority did nuance its finding, observing that a platform may, in other circumstances, be found liable if there is ‘something more’ beyond hyperlink listing.

In *Herman v. Zajdel*, 2023 QCCS 5251 (C.S. Que.), the Plaintiff Herman, who resides in the United States (in the State of New York) met the Defendant Ms. Zajdel at a supper club during a brief trip to Montreal in April of 2015. The Plaintiff is claiming \$ 2,650,000 in damages for an alleged “systemic and unrelenting campaign” to destroy his reputation following the Defendant’s multiple public accusations of a gang rape, published on social media, vlogs and a self-published book sold on Amazon. In addition to vlogging, the Defendant also published an article on Media Post entitled “What goes on inside the minds of Wall Street serial rapists” featuring pictures Herman, his wife and two children, among a multitude of other similar content. The Court found “clear and objective evidence” *Maygar Jeti ZRT v. Hungary*, Application No. 11257/16 (European Ct. Human Rights, December 4, 2018) at para. 9. that the two had consensual intimate relations on the evening in question and no one else was present. This finding was corroborated by a police investigation and medical examinations and detailed in an incident report. Having concluded that the defendant was purposely and maliciously endeavouring to destroy the plaintiff’s reputation and awarded \$200 000 in damages, an amount considered especially significant in defamation cases.