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Defamation in Scotland and the Republic of Ireland

Nothing in this paper constitutes legal advice or should be used as a replacement for such

1 Introduction

The Committee for Finance and Personnel commissioned background research into the approaches adopted by the Scottish Parliament and the Oireachtas with respect to defamation law¹. This paper supplements Briefing Paper 90/13 'The Defamation Act 2013'², presented to the Committee for Finance and Personnel on 26 June 2013³.

The paper considers defamation law in Scotland and the Republic of Ireland in the light of legislative change in England and Wales brought about by the Defamation Act 2013.

¹ Meeting of the Committee for Finance and Personnel 3 July 2013:

<http://www.niassembly.gov.uk/Documents/Finance/minutes/20130703.pdf>.

² Research and Information Service Briefing Paper 90/13 *The Defamation Act 2013* 21 June 2013:

http://www.niassembly.gov.uk/Documents/RaISe/Publications/2013/finance_personnel/9013.pdf.

³ Meeting of the Committee for Finance and Personnel 26 June 2013:

<http://www.niassembly.gov.uk/Documents/Finance/minutes/20130626.pdf>.

2 Defamation Law in England and Wales, Scotland, Northern Ireland and the Republic of Ireland

The basis of defamation law in all four jurisdictions is in common law. Legislation has codified certain aspects of defamation in each case, the more recent examples of which are given in the following table.

| <i>Jurisdiction</i> | <i>Legislation</i> |
|----------------------------|--|
| England and Wales | Defamation Act 1952 ⁴ Defamation Act 1996 ⁵ Defamation Act 2013 ⁶ |
| Scotland | Defamation Act 1952 Defamation Act 1996 Sections 6 and 7 only of the Defamation Act 2013 |
| Northern Ireland | Defamation Act (Northern Ireland) 1955 ⁷ Defamation Act 1996 |
| Republic of Ireland | Defamation Act 1961 ⁸ Defamation Act 2009 ⁹ |

In very broad terms, there were general codifications of aspects of UK and Irish defamation law in the 1952-1961 Acts, with further legislation in the UK only in 1996. Defamation legislation was introduced in the Republic of Ireland in 2009 and in England and Wales in 2013 to allow for changes in the nature of publication, but in the UK, there was added concern around 'libel tourism' and the 2013 Act for the most part only extended to England and Wales.

Appendix 1 summarises legislation in Scotland and the Republic of Ireland in comparison with the main provisions of the Defamation Act 2013 in England and Wales.

⁴ Defamation Act 1952: <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/66>.

⁵ Defamation Act 1996: <http://www.legislation.gov.uk/ukpga/1996/31>.

⁶ Defamation Act 2013: <http://www.legislation.gov.uk/ukpga/2013/26/enacted>.

⁷ Defamation Act (Northern Ireland) 1955: <http://www.legislation.gov.uk/apni/1955/11/contents>.

⁸ Defamation Act 1961: <http://www.irishstatutebook.ie/1961/en/act/pub/0040/print.html>.

⁹ Defamation Act 2009: <http://www.irishstatutebook.ie/2009/en/act/pub/0031/print.html#sec26>.

Republic of Ireland

Elements of defamation law were codified in the Defamation Act 1961 in a similar vein to the Defamation Act 1952 in Great Britain and the Defamation Act (Northern Ireland) 1955.

The most recent legislation on defamation has been the culmination of a long development process. In 1989, the Attorney General requested the Law Reform Commission to undertake an examination of the law on defamation and contempt of court. The Commission reported in December 1991 and the recommendations are reproduced at Appendix 2¹⁰.

Draft legislative proposals in 1994 and 1995 were not progressed. The Commission on the Newspaper Industry recommended extensive changes to the law on libel in 1996. These changes were debated in the Seanad in November 1997¹¹, where a motion was agreed to call on the Government to:

indicate the progress, if any, that has been made towards implementing the recommendations of the Commission on the Newspaper Industry and, in particular, the recommendation in Chapter 7 that extensive changes in the law of libel be introduced as a matter of urgency.

A Legal Advisory Group was established in 2002, reporting in March 2003 with a list of recommendations and a draft scheme for a bill¹². The recommendations are reproduced at Appendix 3.

The Minister for Justice and Equality then consulted on the recommendations of the Advisory Group¹³ with a view to introducing a Bill.

The Defamation Bill was introduced in the Seanad on 7 July 2006¹⁴. The purpose of the Bill was to¹⁵:

revise in part the law of defamation and to replace the Defamation Act 1961 with modern updated provisions taking into account the jurisprudence of our courts and the European Court of Human Rights.

The final Act on 23 July 2009 resembled the Bill as introduced in all substantive provisions.

¹⁰ Law Reform Commission (1991), *Report on the Civil Law on Defamation*, Dublin: Law Reform Commission, pp.96-109: <http://www.lawreform.ie/fileupload/Reports/rDefamation.htm>.

¹¹ Seanad Éireann debate Volume 152 5 November 2013: <http://historical-debates.oireachtas.ie/S/0152/S.0152.199711050005.html>.

¹² Legal Advisory Group on Defamation (2003), *Report of the Legal Advisory Group on Defamation*, Dublin: Department of Justice, Equality and Law Reform: <http://www.justice.ie/en/JELR/rptlegaladgpddefamation.pdf/Files/rptlegaladgpddefamation.pdf>.

¹³ Consultation Conference on Defamation, 1 December 2003: http://www.justice.ie/en/JELR/Pages/Consultation_conference_on_defamation.

¹⁴ Defamation Bill 2006 bill page: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2006/4306/document1.htm>.

¹⁵ Explanatory Memorandum, Paragraph 1: <http://www.oireachtas.ie/documents/bills28/bills/2006/4306/b4306s.pdf>.

Defamation laws recently came to media attention after the national broadcaster RTÉ agreed to pay €80,000 to an organisation that claimed for damages after it was accused of being homophobic during a televised broadcast¹⁶. In a debate in the Seanad, Senator Averil Power stated¹⁷:

I ask the Leader to arrange for the Minister for Communications, Energy and Natural Resources to come to the House to discuss the recent revelations that RTÉ has paid financial compensation to individuals associated with the Iona Institute in response to complaints made about Rory O'Neill's interview on the "Saturday Night Show". It is incumbent on the Minister to appear in the House and advise Members of how much was paid to the Iona Institute on foot of the complaint; whether other remedies such as a right to a reply were offered to the organisation and whether these more appropriate remedies were refused by it. Did RTÉ give serious consideration to arguing the defence of honest opinion in any threatened defamation action? I also wish to give the Minister the opportunity to outline to the House whether he believes RTE acted appropriately, given its responsibility as a public service broadcaster, to ensure balanced debate on issues of public importance. RTÉ has a responsibility to ensure all voices are heard, not just those with the deepest pocket. The revelations in the media in recent days about this financial payment set a dangerous precedent ahead of the referendum on marriage equality that has been promised by the Government.

Scotland

Scotland was included in the provisions of the 1952 and 1996 Defamation Acts, in line with the rest of Britain. This legislation sits alongside Scottish common law.

A consultation paper, *Death of a Good Name – Defamation and the Deceased*, was published in 2011, looking specifically at defamation cases in respect of the dead¹⁸. Responses to the consultation were generally divided¹⁹ and there has been no further action on this issue.

In 2012, in respect of the Defamation Bill at Westminster, the Justice Committee of the Scottish Parliament considered a Legislative Consent Motion which proposed that the clauses of the Bill relating to privileging academic and scientific material should be adopted in order to²⁰:

¹⁶ Ronan McGreevy (2014) 'RTÉ payout 'damaging in the extreme' in *The Irish Times* 2 February 2014.

¹⁷ Seanad Éireann debate 30 January 2014 (Vol 229 No 8):

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2014013000001?opendocument>.

¹⁸ Scottish Government (2011), *Death of a Good Name – Defamation and the Deceased: A Consultation Paper*, Edinburgh: Scottish Government: <http://www.scotland.gov.uk/Resource/Doc/337251/0110660.pdf>.

¹⁹ Scottish Government (2011), *Death of a Good Name – Defamation and the Deceased: Summary and Analysis of Responses*, Edinburgh: Scottish Government: <http://www.scotland.gov.uk/Resource/Doc/254430/0121368.pdf>.

²⁰ Scottish Government (2012), *Legislative Consent Memorandum – Defamation Bill*, LCM (S4) 13.1, Edinburgh: Scottish Government: <http://www.scottish.parliament.uk/LegislativeConsentMemoranda/DefamationBill-lcm.pdf>.

ensure parity of protection in relation to peer-reviewed statements in scientific or academic journals etc. and to academic conference reports etc.

The Committee considered evidence from the Government that Scottish law was sufficient and that there had not been the same issues in Scotland that had arisen in England and Wales in relation to defamation. Other evidence maintained that Scots law on defamation was deficient.

The Committee recommended as follows²¹:

The Committee recommends that the Parliament approves the forthcoming legislative consent motion on the UK Defamation Bill to be lodged by the Scottish Government.

The Committee also agreed to draw the Scottish Law Commission's attention to the issues considered in this report and to seek its views on whether it considers that the law of defamation in Scotland requires to be reviewed.

Consequently, Sections 6 and 7 of the Defamation Act 2013 extend to Scotland.

In 2013, a case was brought by an advisor to the Scottish Government in relation to defamation on social media, in what is reported to be the first case of its kind in Scotland²². The adviser was allegedly defamed on Twitter.

²¹ Justice Committee (2012), *Legislative Consent Memorandum on the Defamation Bill*, 10th Report, 4th Session (2012), Edinburgh: Scottish Parliament: http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/juR-12-10w.pdf.

²² 'Scottish teacher wins £40k for defamatory Twitter remarks in historic case', *The Herald* 6 August 2013: <http://www.heraldscotland.com/news/home-news/scottish-teacher-wins-her-defamation-battle.21800603>; 'Man cleared of Twitter abuse charge', *The Herald* 16 November 2013: <http://www.heraldscotland.com/news/home-news/man-cleared-of-twitter-abuse-charge.22708482>.

3 Themes and Issues

This section briefly raises some additional issues connected to defamation that have been considered in Scotland and the Republic of Ireland.

Legislation v Common Law

Introducing legislation in the area of defamation places elements of common law into statute. In the Committee Stage debate on the Irish Defamation Bill, the wisdom of legislating on some aspects of defamation at all was raised by Senator O'Toole²³:

Why do we need to put into legislation something which is already covered either by previous legislation or by the Constitution, not to mention common law?

This raises a wider point that questions whether elements of defamation that have been dealt with adequately in common law require codification at all.

Indeed in Scotland, the Minister Kenny MacAskill felt that Scottish law was adequate and did not require the same legislative change as in the rest of Britain²⁴:

It has not attracted the same criticism as the law south of the border and the Scottish Government has no plans for wholesale reform in this area.

This has been criticised in that Scottish law needs to be modernised and as it stands, is inadequate to cope with current developments in technology²⁵.

Defamation of Deceased Persons

The issue of defamation of deceased persons arose during the Second Stage debate of the Irish Defamation Bill. This issue was also raised in a consultation in Scotland (see Section 2 above), but there has not been further action to date.

During the Second Stage debate on the Irish Defamation Bill²⁶ Senator Walsh stated²⁷:

I have great difficulty with the fact that deceased people cannot be defamed. I note the Minister's comments regarding people who may have been defamed prior to their demise. We have seen such examples and it should be open to the bereaved family to pursue a case. There is another issue concerning the subsequent writing of history, but we should find a middle way. It is neither fair nor reasonable that lies should be

²³ Defamation Bill 2006 Committee Stage, Seanad Éireann 5 December 2007: <http://debates.oireachtas.ie/seanad/2007/12/05/00005.asp>.

²⁴ Scottish Parliament Justice Committee Official Report 18 September 2013: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7520>.

²⁵ For example, Alastair Bonnington (2012), 'SNP's arrogance leaves Scottish libel law stuck in the past' in *The Daily Telegraph* 17 August 2012: <http://www.telegraph.co.uk/news/uknews/scotland/9484055/SNPs-arrogance-leaves-Scottish-libel-law-stuck-in-the-past.html>.

²⁶ Defamation Bill 2006 Second Stage Debate, Seanad Éireann 6 December 2006: <http://debates.oireachtas.ie/seanad/2006/12/06/00006.asp>.

²⁷ A similar point was raised by Senator Coveney in the Dáil – Defamation Bill 2006 Report and Final Stages, Dáil Éireann 8 July 2009: <http://debates.oireachtas.ie/dail/2009/07/08/00010.asp>.

published about somebody simply on the basis that they are dead and, therefore, cannot pursue a case for defamation.

A compromise acceptable to Senator Norris was that defamation cases could be taken up to a year after death:

We should examine the possibility of introducing a limited period under which a dead person can be libelled. Libel is particularly painful for people in the immediate aftermath of death. Why not provide that the right not to be libelled will not be extinguished for a year after death in the interests of the family of the deceased?

Although provision for defamation cases in respect of the dead was included in recommendations of the Law Commission in 1991 (see Appendix 2 Paragraphs 14.44 – 14.47), these proposals have not been taken forward.

Libel Tourism

The Justice Committee of the Scottish Parliament heard from the Minister, Kenny MacAskill,²⁸ that:

The law of defamation in Scotland has been relatively robust. We do not have the same issues as are arising south of the border with libel tourism and an array of other problems.

Libel tourism, therefore, was not considered a problem in that jurisdiction and consequently did not require legislation.

The issue of libel tourism does not seem to have arisen in the debates on the Irish Defamation Bill and was not a subject of either the Law Commission report of 1991 or the Legal Advisory Group report in 2003.

²⁸ Scottish Parliament Justice Committee Official Report 18 September 2013:
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7520>.

Appendix 1: Comparative Table of Sections of the Defamation Act 2013

Note: Inclusion on this Table does not infer legal equivalence

| | 2013 Act | Scotland: 1996 Act; 1952 Act | Republic of Ireland, 2009 Act |
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| Requirement of serious harm | <p>1. (1) <i>A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.</i></p> <p>(2) <i>Harm to the reputation of a body that trades for profit is not “serious harm” unless it has caused or is likely to cause the body serious financial loss.</i></p> | Not in legislation. | <p>12. <i>The provisions of this Act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under this Act in respect of a statement concerning it that it claims is defamatory whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement.</i></p> <p>6(5). <i>The tort of defamation is actionable without proof of special damage.</i></p> |
| Truth | 2. <i>It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement</i> | 5. (1952 Act) <i>In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence</i> | 16. <i>It shall be a defence (to be known and in this Act referred to as the “defence of truth”) to a defamation action</i> |

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| | <p><i>complained of is substantially true.</i></p> | <p><i>of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.</i></p> | <p><i>for the defendant to prove that the statement in respect of which the action was brought is true in all material respects.</i></p> |
| <p>Honest opinion</p> | <p>3. (1) <i>It is a defence to an action for defamation for the defendant to show that the following conditions are met.</i></p> <p>.</p> <p>(2) <i>The first condition is that the statement complained of was a statement of opinion. .</i></p> <p>(3) <i>The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.</i></p> <p>(4) <i>The third condition is that an honest person could have held the opinion.</i></p> | <p>6. (1952 Act) <i>In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.</i></p> | <p>20. <i>It shall be a defence (to be known, and in this section referred to, as the "defence of honest opinion") to a defamation action for the defendant to prove that, in the case of a statement consisting of an opinion, the opinion was honestly held.</i></p> |

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| <p>Publication on a matter of public interest</p> | <p>4. <i>It is a defence to an action for defamation for the defendant to show that— .</i></p> <p><i>(a)the statement complained of was, or formed part of, a statement on a matter of public interest; and .</i></p> <p><i>(b)the defendant reasonably believed that publishing the statement complained of was in the public interest.</i></p> | <p>Not in legislation.</p> | <p>26. <i>It shall be a defence (to be known, and in this section referred to, as the “ defence of fair and reasonable publication ”) to a defamation action for the defendant to prove that—</i></p> <p><i>(a) the statement in respect of which the action was brought was published—</i></p> <p><i>(i) in good faith, and</i></p> <p><i>(ii) in the course of, or for the purpose of, the discussion of a subject of public interest, the discussion of which was for the public benefit.</i></p> |
| <p>Operators of websites</p> | <p>5. (1)<i>This section applies where an action for defamation is brought against the operator of a website in respect of a statement posted on the website.</i></p> <p>(2)<i>It is a defence for the operator to show that it was not the operator who posted the statement on the</i></p> | <p>Not in legislation.</p> | <p>27. (2) <i>A person shall not, for the purposes of this section, be considered to be the author, editor or publisher of a statement if—</i></p> <p><i>... (c) in relation to any electronic medium on which the statement is recorded or stored, he or she was responsible for the processing, copying, distribution</i></p> |

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| | <i>website.</i> | | <i>or selling only of the electronic medium or was responsible for the operation or provision only of any equipment, system or service by means of which the statement would be capable of being retrieved, copied, distributed or made available.</i> |
| Peer-reviewed statement | <p>6. (1)<i>The publication of a statement in a scientific or academic journal (whether published in electronic form or otherwise) is privileged if the following conditions are met. .</i></p> <p>(2)<i>The first condition is that the statement relates to a scientific or academic matter.</i></p> <p>(3)<i>The second condition is that before the statement was published in the journal an independent review of the statement's scientific or academic merit was carried out by— .</i></p> <p>(a) <i>the editor of the</i></p> | Introduced into Scottish law by Legislative Consent Motion. | Not in legislation. |

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| | <p><i>journal, and .</i></p> <p><i>(b)one or more persons with expertise in the scientific or academic matter concerned.</i></p> | | |
| <p>Report protected by privilege</p> | <p>7. Certain publications are added to those in the 1996 Act for absolute privilege (Section 14) and qualified privilege (Section 15).</p> <p>A list of reports subject to qualified privilege is at Schedule 1.</p> | <p>Introduced into Scottish law by Legislative Consent Motion.</p> | <p>17. <i>It shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought would, if it had been made immediately before the commencement of this section, have been considered under the law in force immediately before such commencement as having been made on an occasion of absolute privilege.</i></p> <p>18. <i>It shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought would, if it had been made immediately before the commencement of this section, have been considered under the law (other</i></p> |

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| | | | <p><i>than the Act of 1961) in force immediately before such commencement as having been made on an occasion of qualified privilege.</i></p> <p>A list of reports subject to qualified privilege is at Schedule 1 of the Act.</p> |
| Single publication rule | <p>8. (1) <i>This section applies if a person—</i></p> <p><i>(a) publishes a statement to the public (“the first publication”), and</i></p> <p><i>(b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same. .</i></p> <p><i>(2) In subsection (1) “publication to the public” includes publication to a section of the public. .</i></p> <p><i>(3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any</i></p> | Not in legislation. | <p>11. <i>A person has one cause of action only in respect of a multiple publication.</i></p> |

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| | <p><i>cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.</i></p> | | |
| Jurisdiction | <p>9. (1) <i>This section applies to an action for defamation against a person who is not domiciled—</i></p> <p><i>(a) in the United Kingdom; .</i></p> <p><i>(b) in another Member State; or .</i></p> <p><i>(c) in a state which is for the time being a contracting party to the Lugano Convention²⁹.</i></p> <p>(2) <i>A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales</i></p> | Not in legislation. | <p>41. Amends the Third Schedule of the Courts (Supplemental Provisions) Act 1961³⁰ in respect of jurisdiction for hearing defamation actions:</p> <p><i>At the election of the plaintiff—</i></p> <p><i>(a) the judge of the circuit where the tort is alleged to have been committed, or</i></p> <p><i>(b) the judge of the circuit where the defendant or one of the defendants resides or carries on business.</i></p> |

²⁹ The Lugano Convention 1988 sets out agreements with regard to jurisdiction in civil and commercial matters: <http://curia.europa.eu/common/reldoc/convention/en/c-textes/lug-idx.htm>.

³⁰ Courts (Supplemental Provisions) Act 1961: <http://www.irishstatutebook.ie/1961/en/act/pub/0039/>.

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| | <i>is clearly the most appropriate place in which to bring an action in respect of the statement.</i> | | |
| Action against a person who is not the author | 10. <i>A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.</i> | 1. (1996 Act) <i>In defamation proceedings a person has a defence if he shows that— (a) he was not the author, editor or publisher of the statement complained of.</i> | 27. <i>It shall be a defence (to be known as the “defence of innocent publication”) to a defamation action for the defendant to prove that— (a) he or she was not the author, editor or publisher of the statement to which the action relates.</i> |
| Trial by jury | 11. Amends Section 69 of the Senior Courts Act 1981 ³¹ and Section 66 of the County Courts Act 1984 ³² to remove the presumption in favour of trial by jury. | Section 11 of the Court of Session Act 1988 ³³ : <i>Subject to section 9(b) of this Act, the following actions if remitted to probation shall be tried by jury— (a) an action of damages for personal injuries; . (b) an action for</i> | The presumption in favour of trial by jury can be waived under Rule 7 of Order 36 of the Rules of the Superior Courts ³⁴ . |

³¹ Senior Courts Act 1981: <http://www.legislation.gov.uk/ukpga/1981/54/contents>.

³² County Courts Act 1984: <http://www.legislation.gov.uk/ukpga/1984/28/contents>.

³³ Court of Session Act 1988: <http://www.legislation.gov.uk/ukpga/1988/36/contents>.

³⁴ Rules of the Superior Courts: <http://www.courts.ie/rules.nsf/SuperiorRules?OpenView&Start=30>.

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| | | <p><i>libel or defamation; .</i></p> <p><i>(c) an action founded on delinquency or quasi delinquency, where the conclusion is for damages only and expenses; and .</i></p> <p><i>(d) an action of reduction on the ground of incapacity, essential error, or force and fear; .</i></p> <p><i>and such an action which has been ordered by the Lord Ordinary to be tried by jury is hereafter in this Act referred to as a jury action.</i></p> | |
| <p>Summary of court judgement</p> | <p>12. <i>Where a court gives judgment for the claimant in an action for defamation the court may order the defendant to publish a summary of the judgment.</i></p> | <p>9. (1996 Act) Summary relief may be granted (under Section 8) which may include:</p> <p><i>(a) a declaration that the statement was false and defamatory of the plaintiff; .</i></p> <p><i>(b) an order that the defendant publish or cause to be published a suitable correction and apology;</i></p> <p><i>[...] If they cannot</i></p> | <p>2. Summary relief granted under Section 34 means:</p> <p><i>(a) a correction order, or</i></p> <p><i>(b) an order prohibiting further publication of the statement to which the action relates.</i></p> |

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| | | <i>agree on the content, the court may direct the defendant to publish or cause to be published a summary of the court's judgment agreed by the parties or settled by the court in accordance with rules of court.</i> | |
| Removal of statements | <p>13. <i>Where a court gives judgment for the claimant in an action for defamation the court may order—</i></p> <p><i>(a) the operator of a website on which the defamatory statement is posted to remove the statement, or</i></p> <p><i>(b) any person who was not the author, editor or publisher of the defamatory statement to stop distributing, selling or exhibiting material containing the statement.</i></p> | <p>9. Summary relief may include:</p> <p><i>(d) an order restraining the defendant from publishing or further publishing the matter complained of.</i></p> | <p>2. <i>(a) a correction order, or</i></p> <p><i>(b) an order prohibiting further publication of the statement to which the action relates.</i></p> <p>Section 37 refers to the removal of blasphemous material by the Garda Síochána.</p> |
| Slander of women | <p>14. <i>(1) The Slander of Women Act 1891³⁵ is repealed.</i></p> <p><i>(2) The publication</i></p> | The Slander of Women Act did not extend to Scotland. | Section 16 of the Defamation Act 1961 states: <i>Words spoken and</i> |

³⁵ Slander of Women Act 1891: <http://www.legislation.gov.uk/ukpga/Vict/54-55/51/contents>.

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| | <p><i>of a statement that conveys the imputation that a person has a contagious or infectious disease does not give rise to a cause of action for slander unless the publication causes the person special damage.</i></p> | | <p><i>published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable.</i></p> |
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Appendix 2: Recommendations of the Civil Law Commission 1991

General

14.1

The Defamation Act 1961 should be repealed and new legislation enacted giving effect to the recommendations contained in this Report and the Commission's forthcoming Report on the Crime of Libel.

Distinction between Libel and Slander

14.2

The distinction between libel and slander should be abolished. There should be a new cause of action in defamation in which proof of special damage is not necessary.

Definition of Defamation

14.3

Defamation should be defined for the purposes of the legislation. The definition should take the following form.

- (1) "Defamation" is the publication by any means of defamatory matter concerning the plaintiff.
- (2) "Defamatory matter" defined: defamatory matter is matter which (a) is untrue and (b) tends to injure the plaintiff's reputation.
- (3) "Publication" defined: publication is the intentional or negligent communication of defamatory matter to at least one person other than the plaintiff.
- (4) Standard by which injury is measured: matter shall be considered injurious to the plaintiff's reputation if it injures his reputation in the eyes of reasonable members of the community.
- (5) "Concerning" defined: defamatory matter concerns the plaintiff if it would correctly or reasonably be understood to refer to the plaintiff.
- (6) Burden of Proof: the burden of proof is on the plaintiff to show that there was publication, that the matter contained in the publication was defamatory (which also means that its falsity must be established) and that the defamatory matter concerned the plaintiff.

The Meaning of Words

14.4

The rule of law under which each legal innuendo in a single publication gives rise to a separate and distinct cause of action should be abolished and be replaced by a provision that a claim in defamation based on a single publication shall give rise to a single cause of action.

14.5

The Rules of Court should state that where the plaintiff in a defamation action alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning:

- (1) he must give particulars of the facts and matters on which he relies in support of such a sense and
- (2) he must specify the persons or class of persons to whom these facts and matters are known.

14.6

There should be a rule of court providing that:

- (1) Whenever a plaintiff alleges that words or matters are defamatory in their natural and ordinary meaning:
 - (i) the plaintiff shall succinctly specify the meaning which he alleges the words bear if such meaning is not clearly apparent from the words themselves;
 - (ii) the pleaded meaning may explain but not extend the ordinary or natural meaning of the words;
 - (iii) the plaintiff shall be confined to his pleaded meanings.

Payment into Court

14.7

Order 22 Rule 6 of the Rules of the Superior Courts should be amended so that a defendant in a defamation action may make payment into court without admission of liability.

Apology

14.8

(1) In any defamation action, evidence that the defendant made or offered an apology to the plaintiff should not be construed as an admission of liability and, when the issues of fact are being tried by a jury, they should be directed accordingly.

(2) Subject to (3) below, in any defamation action, it should be lawful for the defendant to give in evidence in mitigation of damage that he made or offered an apology to the plaintiff in respect of the matter complained of, prior to the commencement of the action or as soon afterwards as he had an opportunity of doing so, in case the action should have been commenced before there was an opportunity of making or offering such apology.

(3) The defendant should be required to give notice in writing of his intention to give in evidence the fact of the apology to the plaintiff at the time of filing or delivering the defence in the action. Such notice should not be construed as an admission of liability and, when the issues of fact are being tried by a jury, they should be directed accordingly.

Pleading of Words “Falsely and Maliciously”

14.9

The practice of pleading in the statement of claim that the publication was made “maliciously” should be discontinued and the rules of court should expressly provide that it shall not be necessary.

Privilege

(a) Absolute Privilege

14.10

(1) The present distinction between absolute privilege and qualified privilege should be retained. Absolute privilege should apply to statements in the course of judicial proceedings, as well as to utterances by the President in the performance and exercise of his or her functions and powers and by members of the Oireachtas in either House and official Oireachtas Reports and utterances made in parliamentary committees, all of which are at present afforded absolute privilege under the Constitution.

(2) There should be a statutory provision stating that the members of each House of the Oireachtas should not, in respect of any communication, whether written, oral or otherwise, in either House of the Oireachtas, be amenable to any court or any authority other than the House itself.

(3) There should be a statutory provision that official reports of communications in either House of the Oireachtas whether written, oral or otherwise, should be absolutely privileged and that reports in newspapers and on television or radio of

such communications, whether written, oral or otherwise should enjoy the same privilege as is at present extended to reports of oral statements in either House.

(4) Section 2(2)(c) of the Committees of the Houses of the Oireachtas (Privileges and Procedure) Act 1976 should be amended by the insertion of the words “or witnesses before” after the word “agents”, the replacement of the word “utterances” by the words “statements in any form” and the word “absolutely” before the word “privileged”.

(5) A Judge or other officer performing a judicial function and who is not knowingly acting without jurisdiction or performing a purely ministerial function should be absolutely privileged in relation to any statements made in the performance of that function if the statement has some relation to the matter before him.

(6) Statements made by parties, witnesses, advocates and jurors in any judicial proceedings should be absolutely, privileged provided that the matter bears some relation to the legal proceedings in question.

(7) Statements made before a person or body of persons exercising limited functions and powers of a judicial nature and bearing some relation to the proceedings before such person or body should be absolutely privileged.

(8) Any rule of law whereby communications between members of the executive are absolutely privileged should be abrogated.

(9) Any rule of law whereby communications between solicitor and client or counsel and client are absolutely privileged should be abrogated.

(10) Any rule of law whereby communications between spouses are absolutely privileged should be abrogated.

(b) Qualified Privilege

14.11

There should be a statutory provision clarifying the common law defence of qualified privilege in the following terms:

(1) It shall be a defence to a defamation action that the publication of defamatory matter was made only to a particular person or group of persons and

(a) subject to sub-section (3), the recipient(s) had an interest in receiving, or a duty to receive, information of the kind contained in the matter and

(b) the publisher had an interest in communicating, or a duty to communicate, information of the kind contained in the matter.

(2) In sub-section (1), “duty” includes a legal, social or moral duty and “interest” includes a legal, social or moral interest.

(3) A defence of qualified privilege shall not fail by reason only of the fact that the recipient of the communication had no actual interest or duty to receive information of the type contained in the communication, if a reasonable person would have believed the recipient to have an interest or duty to receive information of the type contained in the communication.

(4) Persons shall not be regarded as constituting a particular group by reason only of the fact that they received particular published matter.

(5) The privilege shall be deemed forfeited and abused in the following circumstances:

(a) if the defendant did not believe the matter to be true;

(b) if the publication by the defendant was actuated by spite, ill-will or any other improper motive;

(c) if the matter bore no relation to the purpose for which the privilege was accorded, or

(d) if the manner and extent of publication exceeded what was reasonably sufficient for the occasion.

(6) Notwithstanding (5)(a) a lack of belief in the truth of the matter will not result in forfeiture of the privilege if the defendant was reasonable in publishing the matter in all the circumstances.

(7) The burden of proof is on the plaintiff to show that the defendant has forfeited the privilege.

(8) Where there is a joint defamation in circumstances giving rise to an occasion of qualified privilege, forfeiture of the privilege by one defendant on any of the grounds set out in sub-section (5) shall result in forfeiture of the privilege by the other defendant only if that other was vicariously liable for the first.

(9) Section 11(4) of the Civil Liability Act 1961 is hereby repealed.

Fair Report and Related Defences

14.12

(a) A general defence of “fair report” should not be introduced.

(b) The defence of privilege provided under s18 of the Defamation Act 1961 to reports of court proceedings should be retained. It should be made clear that it is an absolute privilege. There should no longer be a requirement that the publication be

contemporaneous and the defence should not be confined to media defendants. The defence should also extend to the reporting of a judgment delivered in in camera proceedings where the judgment itself is made public.

(c) Fair and accurate reports of the matters set out in the Second Schedule to the Defamation Act 1961 should continue to be privileged. The existing elements of the defence, i.e. that the publication should have been made without malice and was not prohibited by law and that the subject matter of the report should have been of public interest or for the public benefit, should be retained. The defence should no longer be confined to media defendants. The list of matters in the schedule should also be revised, clarified and expanded as indicated in the body of this Report. The right afforded under the present law to the defamed person to explain or contradict the defamatory report in the case of reports contained in Part 2 of the Second Schedule (as replaced) should be retained.

(d) The Rules of the District Court should be amended by the inclusion of a provision entitling bona fide representatives of the media to obtain from the clerk of the District Court copies of charge sheets in cases other than cases which the media are prohibited from reporting.

Statements of Opinion

14.13

The title of the defence of fair comment should be changed to “comment based on fact”.

14.14

There should be a statutory provision setting out the constituent elements of the defence of comment based on fact in a positive manner.

14.15

Section 23 of the Defamation Act 1961 should be replaced by the following provisions:

(1) In order to avail himself or herself of the defence of comment based on fact the defendant must show:

(a) that the words complained of were comment;

(b) that the comment was supported by facts either

(i) set out in the publication containing the comments, or

(ii) expressly or impliedly referred to in the publication containing the comment provided such facts were known to the persons to whom the publication was made;

(c) the truth of sufficient facts to support the comment.

(2) If the defendant fulfils requirements (1)(a) and (b) above, the defence shall not fail by reason only of the fact that (c) is not established, provided the defendant exercised reasonable care in ascertaining the truth of the facts alleged to support the comment. In such a case, the plaintiff shall not be entitled to general damages, but shall be entitled to special damages, a correction order or a declaratory order.

14.16

There should be a statutory defence based on the rule in *Mangena v Wright* [1909] 2 KB 958. This should allow the defendant to avail of the defence of comment based on fact where the comment was supported by facts published on an occasion of absolute privilege or in circumstances where the publisher would be entitled to rely on a defence of qualified privilege under ss18 and 24 of the Defamation Act 1961 (as replaced) in respect of reports of judicial proceedings and the other matters set out in Part 1 of the Second Schedule.

14.17

(1) The common law rule that “malice” defeats the defence of comment should be retained, but should be confined to cases in which the comment did not represent the genuine opinion of the defendant.

(2) Accordingly, a defence of comment by a defendant who is the author of the matter containing the opinion should fail unless the defendant proves that the opinion expressed was his genuine opinion.

(3) A defence of comment by a defendant who is not the author of the matter containing the opinion should fail unless the defendant proves that he believed that the opinion expressed was the genuine opinion of the author.

(4) Where there is a joint defamation in circumstances normally protected by the defence of comment, the defence of one person should not fail by reason only of the fact that the comment did not represent the genuine opinion of the other, unless that other is vicariously responsible for the first.

14.18

There should be a statutory provision making it clear that it is not a requirement of the defence of comment based on fact that the comment be fair.

14.19

For the purposes of clarification there should be a statutory provision stating that allegations of base, dishonourable or other sordid motives should be treated in the same way as any other defamatory allegation and that such a statement should not be treated conclusively as fact or comment, nor should a more stringent defence apply if it is found to be comment.

14.20

It should continue to be a requirement of the defence of comment that the comment should have been made on a matter of public interest.

14.21

(a) There should be a statutory provision setting out guidelines for the court in distinguishing between fact and comment.

(b) Part (a) of the provision should state that, in determining whether the statements giving rise to the litigation are defamatory statements of fact or statements of opinion, the court should consider

(1) The extent to which the statements are objectively verifiable or provable;

(2) the extent to which the statements were made in a context in which they are likely to be reasonably understood as opinion or rhetorical hyperbole and not as statements of fact;

(3) the language used, including its common meaning, and the extent to which qualifying or cautionary language, or a disclaimer, was implied.

(c) Part (b) of the provision should state that a statement unsupported by any facts set out in the publication or expressly or impliedly referred to in the publication and known to the persons to whom the publication is made should be treated as a statement of fact.

Statements of Fact**14.22**

(1) The defence of justification should be renamed the defence of truth.

(2) There should be a statutory provision stating that, in order to avail himself or herself of the defence of truth in respect of a defamatory imputation, the defendant must show that it was in substance true or in substance was not materially different from the truth.

14.23

In place of s22 of the Defamation Act 1961, there should be a provision that, where an action for defamation has been brought in respect of the whole or any part of the matter published, the defendant may allege and prove the truth of any charges contained in such matter and the defence of truth shall be held to be established if such matter, taken as a whole, does not materially injure the plaintiffs reputation having regard to any such charges which are proved to be true in whole or in part.

14.24

There should be a statutory provision that:

(a) Where in a defamation action the question of whether a person party to the action committed a criminal offence is relevant, proof that he stands convicted of the offence by a court of competent jurisdiction in the State shall be conclusive evidence that he committed the offence;

(b) The conviction of a person not party to the defamation action by a court of competent jurisdiction in the State shall be evidence, but not conclusive evidence, of the facts on which it was based;

(c) The acquittal of a person party to a defamation action shall be evidence, but not conclusive evidence, of the facts on which it was based.

14.25

The rule that aggravated damages may be awarded where there is an unsuccessful defence of justification should be retained.

14.26

(1) It should be a defence to a claim for general damages in respect of a defamatory allegation of fact that the defendant exercised reasonable care prior to publication in attempting to ascertain the truth of the allegation.

(2) It should not be a defence to a claim for damages in respect of financial loss clearly linked with the publication that the defendant exercised reasonable care prior to publication in attempting to ascertain the truth of the allegation.

(3) It should not be a defence to a claim for a correction order and/or declaratory judgment that the defendant exercised reasonable care prior to publication in attempting to ascertain the truth of the allegation.

14.27

In all cases of defamation, the onus of proof should be upon the plaintiff to establish that the words complained of were untrue.

14.28

(1) A claim for a correction order and/or declaratory judgment in a defamation action in respect of a defamatory allegation of fact should not be entertained by the court unless the plaintiff alleges that the plaintiff made a timely and sufficient request for a retraction and the defendant failed to make a timely and conspicuous retraction.

(2) It should not be a defence to a claim for general or special damages in a defamation action in respect of a defamatory allegation of fact that the defendant made a timely and conspicuous retraction of the allegedly defamatory allegation but

the court should be entitled to take the publication of any such retraction into account in assessing the damages to which the plaintiff is entitled.

(3) Definitions: a “retraction” is a statement withdrawing and repudiating the allegedly defamatory allegations. A “conspicuous retraction” in the case of a newspaper, broadcast or periodical publication is a retraction published in substantially the same place and manner as the defamatory statement being retracted. The placement and timing of the retraction must be reasonably calculated to reach the same audience as the prior defamatory statement being retracted. In the case of a book or other publication not of a periodic nature, a “conspicuous retraction” is one published in such a manner and at such a time as to be reasonably calculated to reach the same audience as the prior defamatory statement being retracted.

(4) A “timely request” for retraction is a request made within three months of the publication of the defamatory statement or the date on which the plaintiff first became aware or ought reasonably to have become aware of the publication.

(5) A retraction is “timely” if it is published within thirty days of the original publication or the first request of the plaintiff for retraction.

(6) Where the defendant customarily publishes retractions or corrections or affords opportunities to reply in a designated place, publication of a retraction in that place should be deemed conspicuous if notice of the retraction is published in substantially the same place and manner as the statements to which the retraction is directed.

(7) The publication by the defendant of a timely and conspicuous retraction should not be construed as an admission of liability and where the issues of fact are being tried by a jury they should be directed accordingly.

14.29

In cases involving allegedly defamatory matter contained in a fictional context, the ordinary requirement of identification should be supplemented by a requirement that the matter be reasonably understood as referring to actual qualities or events involving the plaintiff.

Damages

14.30

1. In making an award of general damages, the court should be required to have regard to the following factors:

- (a) The nature and gravity of the defamatory assertion(s);
- (b) The method of publication, including the durable or other nature thereof;
- (c)

- (i) the extent and circulation of the publication, subject to sub-paragraph (ii),
- (ii) In a case involving words innocent on their face which become defamatory by reason of facts known only to some recipients of the publication containing the defamatory matter, the publication of the libel should be deemed proportionate to the number of recipients who have knowledge of these facts;
- (d) The importance to the plaintiff of his reputation in the eyes of particular, or all, recipients of the publication;
- (e) In a case involving the defence of truth where the defendant has proved the truth of some only of the allegations, the whole of the publication and the extent to which the defendant has proved the truth of its contents, irrespective of whether the plaintiff brings an action in respect of the publication in whole or in part;
- (f) The extent to which the publication of the defamatory matter was caused or contributed to by the plaintiff;
- (g) The reputation of the plaintiff at the time of publication;
- (h) The terms of any correction order, declaratory order or injunction that the court has granted or proposes to grant.

2. It should be permissible for the defendant to introduce any matter, general or particular, relevant at the date of trial to that aspect of the plaintiff's reputation with which the defamation is concerned, in order to mitigate damages under (1)(d).

3. The court should be empowered to award damages in respect of financial loss clearly linked with the publication.

14.31

There should be an express statutory provision that exemplary or punitive damages may be awarded in cases of defamation but only where:

- (1) The defendant intended to publish matter to a person other than the plaintiff, knowing that such matter would be understood to refer to the plaintiff and that it would tend to injure the plaintiff's reputation and with knowledge, or with reckless disregard, of its falsity; and
- (2) The conduct of the defendant has been high-handed, insolent or vindictive or has exhibited a disregard for the plaintiff's rights so gross as clearly to warrant punishment over and above that which has been inflicted upon him by an award of compensatory damages.

Remedies other than Damages

14.32

Where, in the course of proceedings for defamation, the plaintiff seeks an interlocutory injunction restraining publication of allegedly defamatory material:

- (1) the court should grant such an injunction only if the matter is clearly defamatory and any defence raised is likely to fail;
- (2) an injunction should not be refused merely because the defendant has stated his intention to plead a defence: the court should examine the defendant's affidavit before assessing what weight (if any) should be given to such an assertion.

14.33

There should be a provision making it clear that, where an injunction is issued to restrain a publication because of its allegedly defamatory nature, the court has no power to prohibit the reporting of the fact of the injunction having been granted.

14.34

Provision should be made for a new form of proceedings for a declaratory judgment which should be in the following terms:

(a) *Cause of action:*

- (1) Any person who is the subject of any allegedly defamatory publication may bring an action for a declaratory judgment that the statement was false and defamatory.
- (2) No damages may be awarded in such an action.

(b) *Burden of proof:*

The burden of proof as to publication and the defamatory nature of the publication and its falsity shall be on the plaintiff in the same manner and to the same extent as in any other action for defamation.

(c) *Defences:*

Privileges existing at common law, by statute and by virtue of the Constitution and the defences of truth and comment based on fact shall apply to the action.

(d) *Bar to certain claims:*

A plaintiff who brings an action for a declaratory judgment shall be barred from asserting any other claim or cause of action arising out of the same publication.

(e) *Limitation of action:*

- (1) The action must be commenced within one year of the date of publication;

(2) The provisions as to the extension or postponement of limitation periods in cases of disability, fraud and mistake contained in the Statute of Limitations 1957 shall apply to the limitation period prescribed in (1).

(f) It shall be a complete defence to an action under this section that the defendant published a timely and conspicuous retraction before the action was commenced in accordance with the terms of the relevant provision (as to timely and conspicuous retractions).

(g) The procedure shall be by way of special summons in the High Court and by way of motion in the Circuit Court, in each case grounded on an affidavit.

14.35

The legislation should provide for new remedies in the form of correction orders and declaratory orders, the principal features of which should be as follows:

(1) The court should have the power to award a declaratory order or a correction order stating the matter to be false and defamatory in any case where the false and defamatory nature of the statement is established.

(2) Where the court makes an order for the correction of matter, the court may specify the contents of the correction and may give directions concerning the time, form, extent and manner of publication of the correction.

(3) Unless the plaintiff otherwise requests, directions given by the court in accordance with (2) above should ensure, as far as is practicable, that the correction will reach the persons who are recipients of the matter to which the correction relates.

(4) In a defamation action arising out of the publication of a comment, the court may make an order for the correction of the defamatory comment and any allegation of fact expressly or impliedly referred to in the published matter as the basis for the comment the truth of which is not established by the defendant or admitted by the plaintiff.

The Role of Juries and the Jurisdiction of the Courts

14.36

In the High Court, the parties to defamation actions should continue to have the right to have the issues of fact other than the assessment of damages determined by a jury.

14.37

The damages in such actions should be assessed by the judge, but the jury should be entitled to include in their verdict a finding that the plaintiff is entitled to nominal damages only.

14.38

The similar right formerly enjoyed by parties in the Circuit Court to have such issues determined by a jury should be restored, subject to the same qualification as to the assessment of damages.

14.39

The appeal from the verdict in a defamation action in the Circuit Court should be by way of motion to the Supreme Court rather than by way of re-hearing in the High Court or by way of motion to the new Court of Civil Appeal in the event of that court being established.

14.40

For the removal of doubt, it should be expressly provided that the Supreme Court may in actions for defamation as in other civil actions assess the damages themselves in the event of an appeal.

Right of Reply**14.41**

It is considered inappropriate to recommend the introduction of a statutory right of reply in this Report.

Identity of Parties**14.42*****Public figure plaintiffs:***

There should be no change in the law based on a distinction between “public” and “private” figures, either in respect of factual or opinion statements.

14.43***Group plaintiffs:***

There should be a provision that:

One who publishes defamatory matter concerning a group or class of persons is subject to liability to an individual member of it, but only if;

(a) The group or class is so small that the matter can reasonably be understood to refer to the member or,

(b) The circumstances of publication reasonably gives rise to the conclusion that there is a particular reference to the member.

Defamation of the Dead

14.44

There should be a new cause of action in respect of defamatory statements made about a person who is dead at the time of publication.

14.45

The right to institute such proceedings should be vested solely in the personal representative of the deceased who should, however, be under a statutory obligation to consult the immediate family of the deceased, i.e. spouse, children, parents, brothers and sisters, before the proceedings are instituted.

14.46

The period of limitation should be three years from the date of death of the allegedly defamed person.

14.47

The only remedy available should be a declaratory order and, where appropriate, an injunction.

Corporate Bodies

14.48

There should be a statutory provision, for the avoidance of doubt, that all corporate bodies have a cause of action in defamation irrespective of whether financial loss is consequent upon the publication or was likely to be consequent upon the publication.

Distributors and Printers

14.49

No action should lie against printers of a defamatory statement, save where they are also the publishers thereof.

14.50

No action should lie against the distributors of a defamatory statement, save where they are the publishers thereof, or

(a) The plaintiff has by notice in writing called upon the distributors to cease distributing the allegedly defamatory material; and

(b) The distributors have, within seven days from the receipt of such a request, failed to comply therewith.

14.51

Where a printer or distributor of a defamatory statement is not the publisher of the statement but refuses on request to disclose to the plaintiff the identity of the publisher, an action should lie against the printer or distributor to the same extent as if he were the publisher.

Miscellaneous Limitation of Actions

14.52

(1) There should be a single limitation period applicable to all forms of defamation which should in general be three years from the date on which the cause of action accrues. In the case of actions in respect of defamation of a deceased person, it should be three years from the date of death. In the case of an action for a declaratory judgment, it should be one year from the date on which the cause of action accrues.

Dismissal for Want of Prosecution

14.53

There should be a provision stating that:

(1) Where no step has been taken in a defamation action by the plaintiff within one year from the issue of the plenary summons, the defendant should be entitled to have the proceedings dismissed for want of prosecution, unless the court orders otherwise and

(2) If such proceedings have been struck out or dismissed, no further proceedings in respect of the same cause of action should be issued without leave of the court.

Survival of Causes of Action

14.54

A cause of action in defamation should survive the death of the defamer after publication. Compensatory damages, special damages, an injunction in costs, but not exemplary damages, should be available as remedies in such a case.

14.55

The cause of action in defamation should survive the death of the alleged victim any time after publication, whether or not proceedings were pending at the time of his death. The personal representative of the deceased should be entitled to obtain an injunction and/or special damages but compensatory damages should not be recoverable.

14.56

Consistently with the foregoing recommendations, we recommend the deletion of the words “or for defamation” in s6 of the Civil Liability Act 1961, which would remove defamation from the list of causes of action which die with the wrongdoer or the victim by virtue of the combined effect of ss6 and 8 of the Act.

Multiple Publications

14.57

As a general rule, a person should have a single cause of action in respect of a multiple publication by the same person. The court, however, in its discretion should be entitled to permit a second action to be brought. Multiple publication should be defined as the publication by a particular person of the same or substantially the same matter in the same or substantially the same form to two or more recipients.

14.58

It should be provided that (a) where proceedings have been commenced against the defendant in respect of defamatory matter, an action may be commenced in relation to the same or substantially the same matter published by another defendant only within thirty days of the first action, (b) where a second action is commenced within thirty days of the first action, the plaintiff must notify all the defendants involved of the existence of each action and (c) the court may in its discretion extend the time limit in (a) to the time of setting down the first action for trial.

Legal Aid

14.59

Civil legal aid should be available to the victims of defamatory statements.

Appendix 3: Recommendations of the Legal Advisory Group on Defamation 2003

I. A defence, to be known as “the defence of reasonable publication” should be provided for which would be available where a defendant could show that the publication in question was made in the course of, or for the purposes of the discussion of some subject of public interest, the public discussion of which was for the public benefit.

II. Juries should continue to have a role in assessing damages in the High Court. However, the parties to the proceedings should be able to make submissions to the court, and address the jury, concerning damages. Furthermore, the judge in such proceedings would be required to give directions to the jury on this point.

III. The jurisdiction of the Circuit Court in defamation cases should be set at €50,000.

IV. There should be a clear statutory statement to the effect that, in a defamation appeal from the High Court, the Supreme Court could substitute its own assessment of damages for that awarded in the lower court.

V. There should be no substantive change in the law concerning the presumption of falsity. However, all plaintiffs in defamation proceedings should, in future, have to file, within a specific period of time, an affidavit which would verify the particulars of their claim. Failure to file such an affidavit could, in certain circumstances, result in the claim being struck out.

VI. A Press Council should be established, on a statutory basis, which would have a number of functions, including the preparation of a Press Code of Conduct and the investigation of complaints in respect of alleged breaches of that Code.

VII. Any proposed legislation should only apply to causes of action which accrue after it comes into operation.

VIII. The changes already proposed which would see defendants in defamation actions being able to make lodgements in court regardless of whether liability is admitted or denied should be accompanied by an additional provision which would permit a plaintiff, should they so wish, to inform the court that they have accepted a lodgement and also to inform the court of the consequences for them of the resolution of the defamation proceedings.

IX. The tort of malicious falsehood should be retained but should be restated in a clearer and more simplified manner.

X. A new fast-track procedure should be introduced so that, in an appropriate case, it would be possible for either of the parties to apply to the court to have a defamation

action disposed of in a summary manner by a judge sitting alone. The remedies encompassed by a procedure of this kind should not include damages.

XI. The circumstances in which aggravated damages may be awarded in defamation proceedings should be clarified.

XII. The defence of fair comment should be re-named the defence of honest opinion and its scope clarified.

XIII. The ability to make an offer of amends in cases of unintentional defamation (now provided for in section 21 of the Defamation Act, 1961) should be retained but in a more modern form.

XIV. A new defence, to be known as “the defence of innocent publication” should be provided for. This would replace the common law defence of innocent dissemination and should not be confined to distributors only but should embrace a broader category of person, for example, printers and broadcasters. Specific provision should be made to deal with internet service providers.

XV. The defence of consent should be put on a statutory footing.

XVI. The implementation in statutory form of a rule whereby, in defamation proceedings, only a single cause of action would lie in respect of a multiple publication, should deal explicitly with publication by electronic means.

XVII. The limitation period in respect of defamation proceedings should be one year. However, the court should have a measure of discretion to disapply this limitation period subject to a general proviso that no defamation proceedings could be brought after the expiry of six years from the date on which the cause of action accrued.

XVIII. A statutory rule should be introduced which would make it clear that a cause of action in defamation accrues from the date on which the matter complained of was first published and, in the case of an electronic publication, from the date on which the matter complained of was first made available - in effect a “single publication” rule should be introduced for defamation proceedings.

XIX. Provision should be made to enable a court to determine, as a preliminary issue, whether or not the allegedly defamatory material is capable of bearing the meaning that is contended for by a plaintiff.

XX. The common law offences of blasphemous libel, obscene libel and seditious libel should be abolished.

XXI. The offence of criminal libel should be abolished and replaced by a narrower offence to be known as the offence of publication of gravely harmful statements.

XXII. Various other recommendations of the Law Reform Commission concerning, for example, the making of an apology and the rationalisation of the defences of absolute and qualified privilege, should be enshrined in legislative form.

XXIII. As a consequence of the above recommendations, the Defamation Act, 1961 should be repealed in its entirety.