



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Defamation Act 2013: Mr Mike Nesbitt MLA

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that, within the statement, there was an indication of the basis for the opinion; and that an honest person could have held that opinion on the basis of any existing facts or privileged statements. Ninety per cent were in favour of that and 3% against. Question 4 was on a new defence of responsible publication on a matter of public interest, with 97% in favour and 1% against.

Question 5 was about the operators of websites and trying to separate out whether the operator should be responsible or whether the person who authored the post should take responsibility. Ninety per cent were in favour of the proposal and 5% against.

Question 6 was on peer-reviewed statements, which you discussed earlier. There was a very high response rate approving this new defence, with 99% in favour.

Question 7 was on a single publication rule to prevent someone from suing and suing again: 87% were in favour and 4% against, with quite a high proportion who did not know.

**Mr Weir:** Could I interrupt? Just for clarity, how would the single publication proposal work? What is the intention?

**Mr Nesbitt:** If you discovered that a statement had been published, and you sue, that is fine. If somebody else retweeted it and it appeared somewhere else and it is the same thing, you would have probably a 12-month limitation on your ability to sue.

**Mr Weir:** If somebody said something libellous in a newspaper, online or wherever, and you successfully sued, would there then be any restriction if someone simply repeated the libel 12 months down the line? Would you have no right to sue under those circumstances?

**Mr Nesbitt:** It is about circumstances where you find it after 12 months and it is in one paper and another and another. It is simply to stop someone repeatedly suing over the same issue.

**Mr Weir:** Let us say that an august publication such as the 'Belfast Telegraph' published something that was libellous, would there be anything to stop them, if the case were found against them, to repeat that 12 months down the line?

**Mr Nesbitt:** The legislation that I envisage would allow you to sue again. The defamation is made and, as is the way with social media, it goes out like a ripple. You have only the one opportunity on that. You do not sue on every ripple. However, if somebody comes back and makes it as a fresh allegation, you can go again.

**Mr Weir:** OK.

**Mr Nesbitt:** There would need to be a legislative restriction.

Question 8 related to libel tourism. A judge might say, "This comment is defamatory but it was viewed only 1,000 times online within Northern Ireland but 100,000 times in New York State. Therefore, you must take your case and sue in New York State".

Question 9 relates to trial by jury. This is where the response was least favourable. The question was:

*"Do you agree that defamation cases should be tried without a jury unless a court orders otherwise?"*

That figure was down to 77% in favour. That may reflect that we have particular views in this jurisdiction on non-jury trials, going back historically.

Question 10 was something of a catch-all: do you think we could do better or is the current set of laws as good as it gets? One per cent thought that the laws were as good as they could be.

My intention was to move on from that public consultation to a round of consultations with, as it were, super-consultees — the chief stakeholders — but, as we know, the Minister has asked the Northern Ireland Law Commission to take a view. I spoke with them twice and we reached a mutual understanding that they were going to do the same thing. There was no point in duplication, so I

agreed at the end of the first meeting that I would return with these results. They are now in possession of the results of my public consultation, and I am standing back to allow them to go into the next round of consultation. As I say, there is no point in duplicating the two things. My one concern is the timeline. After my first meeting with them, I left with the impression that it might be done before the summer recess. After my second meeting, I fear it might be the summer recess next year. That is not a criticism of the Law Commission. It will do the work thoroughly. It has issues, not least in resourcing and getting the right personnel on board, and it had not when I spoke to it a couple of weeks ago. It will do it thoroughly and properly, and I do not, in any way, offer any criticism of the commission. However, I am concerned that it is being kicked down the road, politically. You can look at the Minister's intervention benignly or you can take the less benign view that it knocks it back.

**The Chairperson:** Are you considering whether to go ahead with your legislation?

**Mr Nesbitt:** It is my understanding that I would not get the support of the Bill Office while the Law Commission is undertaking work on behalf of the Minister, who clearly could be considering legislation in the area, depending on the outcome.

**The Chairperson:** Is there a view on what is a reasonable period of time for that process?

**Mr Nesbitt:** I would respectfully ask that you might enquire, as a Committee, about the likely timelines for the Law Commission to publish its conclusions.

**The Chairperson:** That sounds reasonable.

**Mr McCallister:** I just want to comment on that last point. I think that you should get support from the Bill Office because the Minister has not stated whether he will or will not do anything. In fact, the latest and most definitive position on where the Department stands is that it did not accept the legislation when it was offered through a legislative consent motion. My understanding of Bills is that, if something else was in progress, you would not get support. I hope that you pursue that with the Bill Office to see whether support is coming.

I want to go back to the discussion that you had with Peter about when someone could sue several times. Would that provision ban someone if they took a claim against somebody and the courts refused it? Could they then try their luck with a different claim or against someone else, and just go again? Is that where your 12-month rule would kick in?

**Mr Nesbitt:** One of the issues, John, is that, if 12 months have passed and you have not sued, the question is this: what serious harm could possibly have been caused to you, given that it has been out there for so long and you have either been unaware of it or been aware of it and not bothered to take action? That suggests that it has not caused you any serious harm.

**Mr Weir:** I am still trying to get my head around some of that side of it. I will not rehearse it from the beginning. In the consultation, you got 209 responses by way of the online test and a couple of dozen others. Were those accompanying emails?

**Mr Nesbitt:** They were sent separately to a separate email address that I set up.

**Mr Weir:** Do you have any data on how many of the 209 came from individuals or from organisations?

**Mr Nesbitt:** No. In the same way as you book a hotel and hold a public meeting, you cannot really verify who has come and that they are who they say they are.

**Mr Weir:** I appreciate that. Do you have any postal addresses for people or is it just email addresses?

**Mr Nesbitt:** It is an online survey. You do not register; you just fill it in.

**Mr Weir:** I will give an example from my area that was contentious in a different way. The local paper held an online survey to get people's views on what should happen to the seafront in Bangor. I might be slightly misquoting the figures because I cannot remember them exactly, but it ended up with, if you took it at face value, maybe 12,000 responses in favour and 12,000 against. Clearly, not that many people had responded, but some people were very driven by the issue and had made multiple

responses and sent multiple emails. I am sure that this is not the case but what is to say that this was not three people in a room who feel really passionately about the issue? It is easy enough for someone to set up 20 or 100 different email addresses if they desire. What is to say that this is 209 people as opposed to —

**Mr Nesbitt:** One person, 209 times? I suppose it is possible. It is what it is, and it would not, to my mind, be the definitive justification for bringing the Bill forward.

**Mr Weir:** You made a statement on this — to be fair, it might not have been you; it might have been the way it was picked up by the papers — that 99% of the public back you on this. Of the 209 responses, we do not know the breakdown as to how many came from Northern Ireland or how many were from outside. There are people who feel very passionately about particular issues. On almost any issue, there will be people who feel very passionately, even over whether this is 209 or whether it is, for the sake of argument, 100 people making multiple responses.

**Mr Nesbitt:** That is a reasonable point, but it is a broad point about how we consult with the public. I would never argue that this should be the defining document that would bring forward reform of the libel laws. I think that there should be a round of consultations with the likes of the judiciary, the Law Society and the Bar: they are the key stakeholders.

**Mr Weir:** I detect from what you have said that you are either reconsidering or possibly backing off the aspect of a jury trial. Could you clarify that?

*(The Deputy Chairperson [Mr D Bradley] in the Chair)*

**Mr Nesbitt:** I have taken the view from the beginning that what I would like to see is reform of the libel laws but that we need to try to be flexible about how we accomplish that and keep an open mind about what is right for Northern Ireland. From the start, the idea of denying people or in any way restricting jury trials was going to be an issue. To the extent that this is robust evidence, you can see the drop from the high-90s to below 80% in favour.

**Mr Weir:** It would be a fair comment to say that you are, naturally, very supportive of all the elements of your Bill, but you are in listening mode as well. Is that the one aspect that you are most open-minded about?

**Mr Nesbitt:** Within the 10 elements, absolutely, because it is a matter of striking the right balance between doing something efficiently, effectively and quickly; and doing it really well and thoroughly. Logic would suggest that there would be times when you would want a jury trial and other times when it might be reasonable to say that something just needs to be done and actioned quickly by a judge.

**Mr Weir:** Finally, mention was made with the other Mike a few minutes ago about an issue that does not go to definition but is quite often seen as the elephant in the room as regards libel, namely the barriers to people taking action on the basis of cost. I wonder whether you have any thoughts on incorporation of that issue. I appreciate that the general argument is made that clarifying and simplifying things would have some impact, but, from a practical point of view, it still leaves someone who wants to take a libel action, if it is someone who is not very well-off, taking a tremendous gamble with very large amounts of money. That creates a level of chill factor for that person. Do you have any thoughts on how you specifically deal with the issue of the barriers on the basis of cost and whether that is something that could be incorporated into legislation?

**Mr Nesbitt:** Something that I looked at but would not claim to have the expertise in how you actually make happen is the type of no-win, no-fee arrangement that exists in England for certain aspects of the law. I listened very intently to your exchange with Mike Gilson on that, and I certainly would support anything that you were suggesting that could remove that chill factor and make access to this particular type of law open to all.

**Mr Weir:** I think that it is reasonable to check with the Law Commission what its timescales are, but it might well be the case that, if legislation is brought forward on that side of things, something could be incorporated within that.

**Mr Nesbitt:** As a matter of principle, that would be very welcome.

**The Deputy Chairperson:** Thanks very much, Mike. No doubt you will be back before the Committee in the future.

**Mr Nesbitt:** I hope so. Thank you very much.