
DEFAMATION BILL 2006

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

1. The purpose of the Bill is to 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.

PART 1 – Preliminary and General

Short title and Commencement

2. *Section 1* is a standard provision and proposes that the Act shall come into operation on such day or days as the Minister may appoint by order.

Definitions

3. *Section 2* is a standard provision defining certain terms used in the Bill.

Saver

4. *Section 3* provides that the Act should only apply to a cause of action which accrues after it comes into operation. It also proposes that the Act shall not affect the operation of the general law in force immediately before the commencement of the Act.

Repeal

5. *Section 4* is self-explanatory.

PART 2 – Causes of Action

Defamation

6. *Section 5* collectively describes the tort of libel and the tort of slander as the tort of defamation and defines the essential ingredients of defamation. It also provides that the tort of defamation is actionable without proof of special damage.

Amendment of certain enactments

7. *Section 6* is self-explanatory.

Verifying affidavit

8. *Section 7* provides a mechanism whereby both the plaintiff and defendant are obliged to verify the particulars of any pleading containing assertions, allegations of fact or further information within a specific timeframe, which may be extended at the discretion of the court. The contents of the verifying affidavit could also form the subject matter for cross-examination of both plaintiff and defendant to which they must make themselves available at the time of the trial. This section also provides for an offence if a person makes a statement in an affidavit that is false or misleading in any material respect or that he or she knows to be false or misleading.

Imputation

9. *Section 8* abolishes the existing rule of law under which each innuendo in a statement gives rise to a separate and distinct cause of action

Defamation of class of persons

10. *Section 9* which seeks to clarify the existing law, provides that a member of a class of persons shall have a cause of action if by reason of the number of persons who are members of that class or by virtue of the circumstances in which the statement is published the statement could reasonably be understood to refer to the member concerned.

Multiple publication

11. *Section 10* provides for a general rule that only one cause of action will lie in respect of a multiple publication (as defined). It further provides that a court may allow a person to bring more than one defamation action in respect of multiple publication.

Defamation of a body corporate

12. *Section 11* provides that a body corporate may bring a defamation action whether or not it has incurred or is likely to incur financial loss as a result of the publication of the alleged defamatory statement.

Appeals in defamation actions

13. *Section 12* is self-explanatory.

Meaning

14. Section 13 provides for a preliminary application to the court as to whether or not the matters complained of in defamation proceedings are reasonably capable of carrying the imputation pleaded by the plaintiff and, if so, whether that imputation is reasonably capable of bearing a defamatory meaning.

PART 3 – Defences

Truth

15. Section 14 restates the existing law relating to the defence of justification which is now renamed the defence of truth.

Absolute Privilege

16. Section 15 specifies a number of occasions where absolute privilege arises and is, for the most part, declaratory of the common law position in relation to these matters.

Qualified privilege

17. Section 16 provides a statutory basis for the defence of qualified privilege.

Loss of defence of qualified privilege

18. Section 17 deals with the circumstances in which a defendant loses the defence of qualified privilege and related matters.

Honest opinion

19. Section 18 provides for a defence of honest opinion which is intended to replace the defence now known as fair comment.

Distinguishing between allegations of fact and opinion

20. Section 19 sets out the criteria to be considered by a court when distinguishing between facts and opinion contained in a statement in defamation proceedings.

Offer to make amends

21. *Section 20* provides for a person who has published an allegedly defamatory statement to make an offer of amends. The offer shall not be made after a defence in the defamation action has been lodged. This section updates the existing defence of unintentional defamation which is at present provided for in section 21 of the Defamation Act, 1961.

Effect of offer to make amends

22. *Section 21* provides for the effect of acceptance or rejection of an offer of amends. update the existing defence of unintentional defamation which is at present provided for in section 21 of the Defamation Act, 1961.

Apology

23. *Section 22* provides that an offer of apology by a defendant to a plaintiff is not to be construed as an admission of liability.

Consent to publish

24. *Section 23* puts the common law defence of consent onto a statutory footing.

Fair and reasonable publication on a matter of public importance

25. *Section 24* introduces a new defamation defence into Irish law - the defence of fair and reasonable publication on a matter of public importance. It is essentially designed to facilitate public discussion where there is both a benefit and an interest in such discussion taking place. The defence is subject to the criterion of fairness and reasonableness and a range of matters - which are non-exhaustive - are specified which a court shall take into account in determining whether or not the publication of a statement is fair and reasonable in the circumstances. The defence is forfeited where the defendant believed the statement to be untrue, was actuated by bad faith, made out of spite or ill-will or other improper motive or that the statement bore no relation to the purpose of the defence and the manner and extent of the publication exceeded what was reasonably sufficient in all the circumstances.

Innocent publication

26. *Section 25* develops, in a more comprehensive way, the existing common law defence of innocent publication which has traditionally been available to distributors.

PART 4 - Remedies

Declaratory order

27. *Section 26* provides a new remedy for defamation to be known as a declaratory order. It is intended to provide an expeditious avenue of redress where damages are not being sought.

Lodgement in Court

28. *Section 27* brings defamation proceedings into line with other actions for damages by allowing the defendant to lodge in court with the defence a sum of money in satisfaction of the plaintiff's claim. This lodgement may be made without admission of liability. *Subsection (3)* is intended to facilitate a plaintiff who may wish to ensure that some measure of public recognition attaches to the fact that the defendant was willing to settle the case before the trial of the action was concluded.

Correction Order

29. *Section 28* provides that where there is a finding that the statement in respect of which the action was taken was defamatory and the defendant has no defence to the action, the court may on the application of the plaintiff make an order directing the defendant to publish a correction of the defamatory statement. This correction order is a new remedy.

Damages

30. *Section 29* provides that parties in a defamation action may make submissions to the court in relation to damages. Where an action is brought in the High Court, the judge shall give directions to the jury in the matter of damages. *Subsection (4)* sets out a number of factors to which regard shall be had in making an award of general damages. The defendant may give certain evidence concerning the plaintiff for the purpose of mitigating damages.

Aggravated and punitive damages

31. *Section 30* broadly restates the current law by which the court has to award aggravated and punitive damages.

Dismissal for want of prosecution

32. *Section 31* provides that defamation proceedings in which no proceeding has been taken by the plaintiff for one year from the date they were commenced may be dismissed on application to the court by the defendant.

Order prohibiting the publication of a defamatory statement

33. *Section 32* sets out the grounds on which a court may grant or refuse an order prohibiting the publication or further publication of defamatory matter.

Summary disposal of action

34. *Section 33* provides a mechanism whereby defamation proceedings may be disposed of in a summary fashion, on the application of the plaintiff, where the court is satisfied that the statement was defamatory and the defendant has no defence that is reasonably likely to succeed. The Court may also dismiss the action, upon the application of the defendant, where it is satisfied that the statement in respect of which the action was brought is not reasonably capable of being found to have a defamatory meaning.

PART 5 – Criminal Liability

Abolition of certain common law offences

35. *Section 34* is self-explanatory.

Publication of gravely harmful statements

36. *Section 35* creates a new offence of publication of gravely harmful statements. This applies where a person publishes a false statement causing grave injury to the reputation of the person and intended to cause that grave injury.

Seizure of copies of false statements

37. *Section 36* provides that where a person is convicted of an offence under *Section 35*, a member of an Garda Síochána may, on foot of a warrant issued by the court, enter and search a premises and seize copies of the statement in accordance with the terms of the warrant.

PART 6 – Miscellaneous

Limitation of defamation actions

38. *Section 37* provides that a one year limitation period shall apply in respect of defamation proceedings and related matters. Provision is also made in *subsection (1)* for the court to extend the period to 2 years in exceptional cases. Clarification is also provided as to when the cause of action accrues in respect of the matters which are dealt with in this section.

Survival of cause of action on death

39. *Section 38* provides that a cause of action in defamation should survive the death of the person in respect of whom the defamatory statement was made. It also provides that a cause of action in defamation should survive the death of defamer.

Agreements for indemnity

40. *Section 39* is effectively a restatement of section 25 of the Defamation Act, 1961.

Jurisdiction of Courts

41. *Section 40* provides that, notwithstanding current jurisdiction limits, all defamation cases where the amount of the claim does not exceed €50,000 may be taken in the Circuit Court.

Malicious falsehood

42. *Section 41* is intended as a replacement for section 20 of the Defamation Act 1961. The provision clarifies both the basis of the tort and the circumstances where special damage is, or is not, required to be shown.

Evidence of acquittal or conviction

43. *Section 42* is evidential in nature and amends and clarifies the existing law relating to the admissibility of evidence of acquittals and convictions in defamation proceedings.

Press Council

44. *Section 43* provides that the Minister shall, on application to him, and having satisfied himself that the applicant materially complies with the minimum requirements prescribed in *Schedule 2*, make an order recognising the applicant as the Press Council. There can only be one such Press Council granted recognition at a time. This section also provides for the amendment or revocation of an order of recognition granted to the Press Council, should the Minister form the opinion that the Press Council no longer adheres to the minimum requirements prescribed in *Schedule 2*. The Press Council must be afforded the opportunity to address the matters of concern prior to the moving of any order. A draft of an order under *Section 43* must be approved by both Houses of the Oireachtas before the order is made by the Minister.

Schedule 1 – Statements having qualified privilege

Schedule 1 provides for statements having qualified privilege. Part 1 provides for statements privileged without explanation or contradiction. These include determinations or statements by the Press Council or Ombudsman. Part 2 provides for statements privileged subject to explanation or contradiction.

Schedule 2 – Minimum requirements in relation to Press Council

Schedule 2 provides for minimum requirements required of a body seeking recognition as the Press Council.

Financial Implications

45. There are no discernable financial implications for the Exchequer.

Department of Justice, Equality and Law Reform
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