Foreword by the Minister for Justice

I am delighted to be publishing the comprehensive Report of the Review of the Defamation Act 2009, along with this summary report.

This represents the culmination of very extensive work undertaken by my Department, which has included a public consultation process and a ‘Critical Perspectives’ symposium, which brought together media, academics, the legal profession, social media companies, NGOs and relevant state bodies.

The right to freedom of expression co-exists with the right to reputation and to private and family life in our Constitution. Our defamation law must therefore strike the right balance in protecting these fundamental Constitutional protections, while taking into account the vital role played in our democracy by a free and independent press, and of other civil society actors, in providing information and debate on matters of public interest.

In the recommendations put forward in this Review, I believe we have struck the right balance.

I want to thank everyone who has engaged with my Department during the Review process. Your contributions have helped to shape this important Report and ensured that the review has been carried out in a meaningful and inclusive way.

I look forward to taking forward the outcomes of the Review to deliver our Programme for Government commitment to ‘review and reform defamation laws to ensure a balanced approach to the right to freedom of expression, the right to protection of good name and reputation, and the right of access to justice’.

The intention now is to move forward with the preparation of a General Scheme of a Defamation (Amendment) Bill. I look forward to further engagement with stakeholders as part of the legislative process.

Helen McEntee TD
Minister for Justice
1. Introduction

The Report of the Review of the Defamation Act 2009, was brought to Cabinet by the Minister for Justice, Helen McEntee, TD, and the Government agreed to publish the Review and to develop a general scheme of a new Defamation Bill on foot of the review.

This Summary Report aims to provide an overview of the comprehensive Review Report, which is available on the Department of Justice website and its key recommendations for reform of Irish defamation law.

What is defamation?

A defamatory statement is one that ‘tends to injure a person’s reputation in the eyes of reasonable members of society’.

However, a statement that is true or substantially true is not defamatory.

To take a defamation case, a person must prove that the statement they are complaining of was published (to one or more people), that it concerned him or her, and that it carried a defamatory meaning.

A company can sue (and be sued) for defamation in the same way as an individual.
Constitutional and other personal protections

The Irish Constitution provides for a number of personal rights that offer protection against defamation or against a complaint of having made a defamatory statement. These include: 

- The right to freedom of expression (Article 40.6.1(i));
- The right to protection of good name and reputation (Article 40.3.2); and
- The right of access to the courts (under Article 40.3).

Similarly, the European Convention on Human Rights protects the right to freedom of expression in a democratic society (Article 10) and the right to reputation and to private and family life (Article 8).

What is the current Irish law on defamation?

In Ireland, the current law on defamation is the Defamation Act 2009. Our defamation law seeks to protect a person’s right to their good name and reputation against unfair attack, while also protecting the right to freedom of expression, taking account of the vital role in our democracy played by a free and independent press, and other civil society actors, in providing information and debate on matters of public interest.

Irish defamation law presumes that the defamatory statement complained of is false unless proven otherwise. This is called the presumption of falsity.

The law provides for 9 defences and privileges against a legal action for defamation:

1. Truth – a statement cannot be defamatory if it is true or substantially true.

2. Absolute privilege – for situations where the right to know as a matter of public policy, outweighs the right to good name – for example a statement made by a TD or a Senator in the Houses of the Oireachtas, or by a judge when performing their judicial duties.

3. Qualified privilege – for situations where the person has a duty or interest in communicating with another person or persons who also have a duty or interest in receiving the information – for example, where a journalist publishes a fair and accurate report of court proceedings or a court decision. However, any malicious intent will remove this privilege.

4. Honest opinion – if the statement was an opinion that was honestly held.

5. Fair and reasonable publication on a matter of public interest – that the statement was made in good faith on a public interest matter and for the benefit of the public, and was published in a fair and reasonable way.

6. Offer to make amends – where the person who published the defamatory statement offers to publish a correction and apology, and agrees to make an (agreed or assessed) payment to the injured person.

7. Apology – if the maker of a defamatory statement publishes an apology with equal prominence, or offers to do so, it counts towards mitigation of any damages.

8. Consent – if it is proven that the person consented to the publication of the statement.

9. Innocent publication – where a defamatory statement is further published by another publisher who is not the original author or publisher, who took reasonable care regarding their publication and had no reason to believe it would be defamatory.
Are the Courts the only way to resolve a complaint?

No. There are other avenues available for redress and mediation that don't involve the Courts or starting legal proceedings.

Press Council and Press Ombudsman

The Press Council of Ireland (including the Press Ombudsman) was established in 2008 by the press industry as an independent body to provide a complaints handling process that enables members of the public to seek redress if something is published in an Irish newspaper, magazine or online news publication which breaches the Code of Practice of the Press Council of Ireland. The Press Council was given statutory recognition in 2010.

The Code of Practice sets out 11 principles which members are required to adhere to including: ethical standards; rules and standards intended to ensure the accuracy of reporting where a person's reputation is likely to be affected; rules and standards intended to ensure that intimidation and harassment of persons does not occur; and rules and standards intended to ensure that the privacy, integrity and dignity of the person is respected.

The Press Council can receive, hear and determine complaints concerning the conduct of its members. All complaints must, in the first instance, be referred to the editor of the relevant publication. Complaints which cannot be resolved in this way are dealt with by the Office of the Press Ombudsman by conciliation or mediation. Where a complaint cannot be resolved by either of those means, the Press Ombudsman will issue a decision which can require the taking of a series of remedial actions, including the publication of the decision of the Ombudsman; the publication of the correction of inaccurate facts or information relating to the complainant; the publication of a retraction in respect of the material complained of; and any other such action as the Ombudsman deems appropriate. Decisions of the Press Ombudsman can be appealed to the Press Council.

The Office of the Press Ombudsman receives an average of 350 complaints per year.

Broadcasting Authority of Ireland

The Broadcasting Authority of Ireland (BAI) has developed a statutory Right of Reply Scheme, which applies to all broadcasters regulated in the State, and provides for the correction of incorrect facts or information which have impugned a person’s reputation. This is separate from the BAI’s complaints process.

The aim is to provide free and speedy redress without the need for legal proceedings. Such a reply generally takes the form of a scripted statement of correction, drafted by the broadcaster and approved by the requester.

A decision to refuse to grant a right of reply can be appealed to the Compliance Committee of the BAI. If a broadcaster fails to comply with the appeal decision of the Committee, the BAI can apply to the High Court for an appropriate order to ensure compliance. The High Court can rule that the broadcaster must comply with the decision, vary the decision or refuse the BAI’s application.
2. The Review Process

The Defamation Act 2009, contains a legal requirement to review the Act.

The Programme for Government commits to ‘review and reform defamation laws to ensure a balanced approach to the right to freedom of expression, the right to protection of good name and reputation, and the right of access to justice’.

This commitment is also confirmed in the Department of Justice Statement of Strategy 2021-2023 and the Justice Plan 2021.

Recommendations regarding the reform of Irish defamation law made in the Review of the 2009 Act, will allow for the preparation of a General Scheme of a Defamation (Amendment) Bill in 2022.

Objectives of the Review:
The Review had 5 main objectives:

1. To review the operation in practice of the changes made by the 2009 Act;

2. To review recent reforms of defamation law in other relevant jurisdictions;

3. To examine whether Irish defamation law, and in particular the Defamation Act 2009, remains appropriate and effective for securing its objectives: including in the light of any relevant developments since 2009;

4. To explore and weigh the arguments (and evidence) for and against any proposed changes in Irish defamation law intended to better respond to its objectives; and

5. To publish the outcomes of the review, with recommendations on appropriate follow-up measures.
How has the Review been carried out?

The main elements in the work of the Review have been:

- A public consultation, with submissions received from a wide range of stakeholders;
- A symposium on the key themes arising from the submissions;
- An examination of the relevant caselaw and intervening judgments of the European Court of Human Rights (ECHR) and the Irish superior courts;
- A comparative review of defamation laws in other relevant common law jurisdictions;
- An analysis of relevant EU law; and
- By monitoring a number of parallel reform initiatives in Ireland that are relevant to reforming Irish defamation law.

Legal cases

Since the Defamation Act 2009 was enacted, there have been a number of notable legal cases regarding defamation, which the Review has taken into account. Three very important judgments are as follows:

- The judgment of the Supreme Court in Leech v Independent Newspapers (2014) - an award of €1.8 million in damages, made under the Defamation Act 1961 by the High Court jury, was (at that time) the highest made by an Irish court in a defamation case. It was later reduced on appeal to the Supreme Court to €1.25 million;
- The judgment of the European Court of Human Rights in Independent Newspapers v Ireland (2017) – which held that the procedural safeguards provided under the Defamation Act 1961 were inadequate to protect against disproportionately or unpredictably large awards of damages - which were, in principle, capable of having a chilling effect on media freedom, contrary to Article 10 of the ECHR - as the Supreme Court judgment on appeal in Leech had not sufficiently explained the basis for its revised award of €1.25m.; and
- The judgments of the Supreme Court in McDonagh v Sunday Newspapers Ltd. (2017) – which emphasised the need for Irish courts to ensure proportionality and transparency in defamation awards (In this case the High Court jury had awarded the plaintiff damages of €900,000, after the newspaper described him as a drug dealer and loan shark. The case was settled just before the Supreme Court gave its judgments on the appeal, but the majority of the Court indicated that they would have considered an award of around or below €75,000 as proportionate).

Significant reductions to previous High Court jury awards have also been made by the Court of Appeal in more recent years – Kinsella v Kenmare Resources (2019) – damages of €10 million reduced on appeal to €250,000; and Higgins v Irish Aviation Authority (2020) – damages of €387,000, reduced on appeal to €76,500.

Specific challenges raised by online defamation

The period since the enactment of the Defamation Act 2009, has also seen the rapid development of online and digital communications. Statements and comments can be circulated worldwide rapidly through these mediums and are often made anonymously. Determining liability and establishing jurisdiction in online defamation is also more complex. This poses significant additional challenges for defamation law that may require the development of new and specific legal mechanisms.
Lawyers and courts across different jurisdictions have developed ad hoc remedies suited to the online defamation context. The best known are the:

- ‘Norwich Pharmacal’ order – requiring an internet service provider to identify an anonymous poster where so required by a court; and
- ‘Take-down’ order – a court injunction directing an internet service provider to remove a post held to be defamatory.

Arguably such remedies should be expressly provided for by way of legislation.

One recent development is the European Commission’s proposal for a new Digital Services Act, published in December 2020. This proposal states that it aims to rebalance and better protect the fundamental rights of users, and includes new procedures aimed at ensuring faster takedown of unlawful material.

Reforms to defamation law in other countries

The Review also examined a range of recent reviews and reforms to defamation law in other common law countries, in particular England and Wales; Northern Ireland; Ontario, Canada; Australia; and Scotland. This includes:

- Changes made to defamation law in England and Wales, by the Defamation Act 2013;
- The Report on Defamation Law in Northern Ireland, Recommendations to the Department of Finance, published in 2016;
- The Australian Model Defamation Provisions, updated on 27 July 2020; and
- The Defamation and Malicious Publications (Scotland) Act 2021.

The Review did not examine US defamation law in any great detail. This is because the US Constitution gives very strong protection to freedom of expression, but without the same balanced rights to protection of individual privacy, reputation and good name, as we have in Ireland.
Other important reform initiatives

The review also takes account of several other important reform processes which may have relevance to aspects of Irish defamation law.

Review of the Administration of Civil Justice

The Working Group on the Review of the Administration of Civil Justice, chaired by the former President of the High Court, Mr Justice Peter Kelly, presented its Report (‘the Kelly Report’) to the Minister for Justice in October 2020.

The Report puts forward a comprehensive range of recommendations aimed at reforming the administration of civil justice in Ireland, including in areas like case management, litigation costs, procedural reform and discovery, all of which are relevant to defamation proceedings.

Online Safety and Media Regulation Bill

In January 2022, the Government published the Online Safety and Media Regulation Bill. It proposes to reform the regulatory structures for online media, including replacing the Broadcasting Authority of Ireland with a new Media Commission and Online Safety Commissioner (while retaining the ‘Right of Reply’ scheme).
Harmful Communications and Hate Crime

Following a comprehensive public consultation last year, the General Scheme of the Criminal Justice (Hate Crime) Bill 2021, was published by the Minister for Justice in April. The Bill will create new, aggravated forms of certain existing criminal offences, where those offences are motivated by prejudice against a protected characteristic. The list of protected characteristics under the new Bill have been updated from the 1989 Prohibition of Incitement to Hatred Act to add gender, including gender expression or identity, and disability, and to ensure Traveller ethnicity is recognised in the main definitions in the new law, on the same basis as other ethnicities. The full list of protected characteristics under the Bill are:

- Race;
- Colour;
- Nationality;
- Religion;
- Ethnic or national origin;
- Sexual orientation;
- Gender; and Disability.

There will also be new offences of incitement to hatred, which are clearer and simpler than those in the 1989 Prohibition of Incitement to Hatred Act. These offences cover inciting hatred against a person or persons because they are associated with a protected characteristic, and also disseminating or distributing material inciting hatred. This legislation will be proportionate, specific and clear.

Personal Injuries and Cost of Insurance

In December 2020, the Government published the Action Plan for Insurance Reform, which reflects the commitments made in the Programme for Government, the relevant Government Departments and agencies/bodies, and the associated timeframes for delivery of the commitments. A Cabinet Committee Sub-Group on Insurance Reform was established to develop and oversee the implementation of the Action Plan.

Across a number of different Government Departments and statutory and public bodies, work is ongoing on insurance costs and the reform of personal injuries litigation.

This includes the Cost of Insurance Working Group, established in 2016; the Report of the Law Reform Commission on Capping Damages in Personal Injuries Litigation (September 2020); the enactment of the Judicial Council Act 2019, with its provisions for establishment of a Personal Injuries Guidelines Committee; and the adoption by the Judicial Council, on 6 March 2021, of the Personal Injuries Guidelines. The Personal Injuries Guidelines came into operation on 24 April 2021, to replace the Book of Quantum in personal injuries cases. They seek to promote a better understanding of the principles governing the assessment and award of damages for personal injuries, with a view to achieving greater consistency in awards.

Review of Civil Legal Aid Scheme

The Justice Plan 2021, contains a commitment to commence a review of the Civil Legal Aid Scheme. The Department of Justice is currently in the process of scoping the review, which is expected to commence in early 2022.
3. Public Consultation

Public Consultation

The Department of Justice is committed to the principles of consultation and ensuring that everyone has an opportunity to have their say on matters affecting them in an open and transparent manner.

A public consultation on the Review of the Defamation Act 2009, was launched on 1 November 2016, and continued into early 2017.

A total of 41 written submissions were received from a wide variety of stakeholders including:

- National and local print media;
- RTE;
- Irish SME Association (ISME);
- Irish Council for Civil Liberties (ICCL);
- Free Legal Aid Centres (FLAC);
- National Union of Journalists (NUJ);
- Specialised journalists and broadcasters;
- Bar Council;
- Law Society;
- Legal firms and individual lawyers;
- Academics;
- The Press Council and the current and previous Press Ombudsmen; and
- Social media platforms (including Facebook, Twitter, Google and Yahoo!).

The Department analysed the submissions received, which helped to identify the key themes for the Review (see Section 4 for more detail).
Symposium

In November 2019, the then Minister for Justice and Equality hosted a ‘Critical Perspectives’ symposium, at the Royal Irish Academy, on the key themes identified for reform of Ireland’s defamation laws. The symposium, which was moderated by the RTE Legal Affairs Correspondent, brought together media, academics, the legal profession, social media companies, NGOs and relevant state bodies. Papers from the following three leading experts in defamation law were discussed at the symposium:

- **Dr Andrew Scott** of the London School of Economics;
- **Professor Neville Cox** of Trinity College Dublin; and
- **Professor Tarlach McGonagle** of the Universities of Leiden and Amsterdam.

Their papers cover reforms to defamation law from the Irish and international common law perspectives and the European Convention on Human Rights. The symposium also featured two discussion panel sessions for key stakeholders.
4. Views and proposals raised during consultation

In addition to a number of proposals on the current defences and privileges under the 2009 Act, the following range of views and proposals was raised by various stakeholders during the course of the public consultation and the symposium:

- Some stakeholders considered that Irish law affords too much weight to the protection of reputation, at the expense of freedom of expression;
- Others noted that the right to a good name is one of the personal rights expressly protected by the Constitution, and questioned whether some of the changes proposed in other submissions would be compatible with this, or with the constitutional right of access to the Courts;
- Many stakeholders argued that defamation awards are too high and are disproportionate to those awarded in other jurisdictions, though later submissions received acknowledged that headline awards were being substantially reduced on appeal, following the McDonagh judgment;
- Stakeholders generally argued that the use of juries leads to excessive awards, increased costs and delays in hearings – jury decisions were also seen to lack transparency, as juries cannot give or discuss the reasons for their decisions; They recommended that all defamation cases be decided by a judge or if juries were to be retained, that they should be limited to deciding whether a statement was defamatory, with the judge deciding the level of any damages;
- Some submissions argued that defamation cases can be taken too easily: proposals included removing the presumption of falsity, so that a person claiming defamation would first have to prove that the statement is untrue, and specific measures to deter vexatious claims; some stakeholders proposed limiting the capacity of a company, or of a public body, to take proceedings for defamation;
- Submissions proposed a range of changes to different defences, mainly to simplify or clarify when they will apply;
Many submissions proposed that where the publisher of a defamatory statement makes an offer of amends, any remaining disagreement about the appropriate level of compensation to be paid must be decided by a judge, not by a jury;

Stakeholders proposed changes intended to reduce court delays, including more case management by judges and providing that a judge can dismiss a claim which is not progressed within 2 years;

A few submissions proposed amending the Civil Legal Aid Act, to remove the exclusion of defamation from the list of cases which may be eligible for legal aid;

Some submissions suggested that Ireland might be at risk of ‘defamation tourism’ and proposed a new test that the court must be satisfied that Ireland is clearly the most appropriate place for the defamation case to be brought;

Many submissions supported encouraging more use of mediation and other alternative dispute resolution mechanisms; and

Media stakeholders, particularly the print media, were concerned that high and unpredictable awards, combined with high legal costs, in defamation cases exercise a real ‘chilling effect’ on public interest reporting and investigative journalism, and could threaten the economic viability of some national newspapers.

There were opposing views from the submissions received on whether or not sanctions for digital and online defamation should be strengthened.

Some of the submissions also called for the introduction of a ‘serious harm’ test, similar to the one introduced in England and Wales in 2013. This would require a person to prove that the statement complained of has caused, or is likely to cause, serious harm to their reputation, before a defamation case could go forward to hearing.

Following the Department's analysis of the submissions received, key themes for the Review were identified and the Review thereafter focused particularly on how Irish defamation law could best be reformed to:

- Avoid the risk of disproportionate and unpredictable awards and high legal costs exercising a ‘chilling effect’ on freedom of expression, and particularly, on investigative journalism or public debate on issues of public interest;
- Ensure effective and proportionate protection against unfair damage to a person’s good name;
- Develop the use of alternative dispute resolution processes and solutions, and avoid defamation as a ‘rich man’s law’; and
- Tackle effectively the new and specific problems raised by online defamation.
5. Recommendations of the Review

Following the Department’s completion of the Review of the Defamation Act 2009, these recommendations are made across 6 key themes to update Irish defamation law:

1. Juries and Damages

I. Abolish the use of juries in High Court defamation cases and provide that all defamation cases will be heard by a judge alone, sitting without a jury. The judge will decide the nature and level of redress, including the amount of any damages, as well as whether defamation has occurred;

II. Clarify (following the Supreme Court judgement in Higgins v Irish Aviation Authority) that where a defendant makes an offer of amends, the damages to be fixed by the court, in default of agreement between the parties, will be fixed by a judge sitting alone, not by a jury;

III. Allow a defendant to make a lodgement in court, by way of reasonable compensation offer, where it has made an offer of amends but the parties cannot agree on the level of damages – in order to facilitate early settlement of proceedings;
2. Taking defamation proceedings and court procedures

While it is not recommended to introduce a general requirement for a ‘serious harm’ test; the Review concluded that this should be considered in the first two instances below:

I. Consider introducing a ‘serious harm’ test for certain ‘transient’ defamation claims (claims regarding a statement made in non-permanent form, in the course of providing or refusing retail services) to prevent frivolous or vexatious actions;

II. Provide (as in other common law jurisdictions) that a body corporate may not sue for defamation of its reputation unless it first shows that the statement has caused or is likely to cause serious harm: in the case of a body that trades for profit, this means serious financial loss, consider whether smaller entities such as SMEs should be exempted from this requirement;

III. Consider whether to provide (as in England, Wales and Scotland) that a public body is not entitled to sue for defamation of its own reputation (such a change would not prevent it from suing on behalf of its employees or officers, if they are defamed arising from their work);
IV. To reduce delays and address the proliferation of stale claims, provide an express power for the court to dismiss a defamation claim that is not progressed by the plaintiff within 2 years of issue, unless special circumstances justify the plaintiff’s delay;

V. Recommend removal of the blanket exclusion of defamation claims from eligibility for civil legal aid, under the Civil Legal Aid Act. This issue, together with the relative priority to be afforded to defamation cases, should be considered within the forthcoming overall review of civil legal aid;

VI. Encourage proactive judicial case management of defamation claims, in line with the Kelly Report, in order to reduce delays and costs;

VII. To address the perceived risk of international forum-shopping or ‘defamation tourism’ into Ireland: require the court to be satisfied that Ireland is ‘clearly the most appropriate place’ for action to be brought (as in cases in England and Wales), in cases not falling under the rules of the Brussels I Recast Regulation or of the e-Commerce Directive;

VIII. Introduce a new ‘anti-SLAPP’ mechanism, to allow a person to apply to court for summary dismissal of defamation proceedings brought against them that they believe is a SLAPP (Strategic Lawsuit Against Public Participation – a groundless or exaggerated lawsuit typically issued by powerful companies or individuals, against weaker parties who have engaged in criticism or debate that is uncomfortable to the litigant, on an issue of public interest. The purpose of a SLAPP lawsuit is typically to censor, silence and intimidate the person, by burdening them with the costs of legal defence until they abandon their criticism or opposition).
Simplify and clarify the defence of ‘fair and reasonable comment in the public interest’, on the lines applied in UK jurisdictions and in Canada, to provide a defence where a statement is on a matter of public interest, the publisher reasonably believed that its publication was in the public interest and the defendant acted responsibly in the circumstances regarding trying to verify the accuracy of the statement;

Amend the defence of innocent publication, as recommended by the Report of the Legal Advisory Group and proposed by NUJ, to exempt a broadcaster from liability for a statement made by a contributor during a live broadcast, provided that it has taken reasonable precautions prior to the broadcast and exercises reasonable care during the broadcast;

Amend the defence of ‘honest opinion’ to remove the condition that the person who published the opinion must prove that they ‘believed in the truth of’ that opinion. The opinion will still have to be ‘honestly held’.
4. Promoting Alternative Dispute Resolution (ADR)

I. Provide a statutory obligation for parties to a defamation dispute to consider mediation (as under the Online Safety and Media Regulation Bill 2022);

II. Require solicitors representing clients in defamation cases to advise their clients, before issuing proceedings, of the availability of mediation under the Mediation Act 2017, the redress and mediation options provided by the Press Council and Press Ombudsman, and the right of reply scheme provided by the Broadcasting Authority of Ireland;

III. Clarify that online publications by members of the Press Council, and online-only news sites who apply for membership of the Press Council, are included within its remit; consider also opening membership to online publications by broadcasters (which, unlike broadcasts, are not covered by the Broadcasting Act);

IV. Include participation by a party in alternative dispute resolution processes among the factors to be considered by a judge in assessing the redress to be awarded in defamation proceedings.
5. Special measures for digital or online defamation

I. Provide for a statutory Notice of Complaint process, on the lines envisaged by the e-Commerce Directive, recommended by the Law Commission of Ontario, and provided by the Australia Model Defamation Law – to make it easier, quicker and cheaper to notify an online publisher (including intermediary platforms) of defamatory content and request its takedown, or request identification of the poster; and define a timeframe for the required ‘expeditious’ removal of defamatory content, to provide clarity and support early and quick resolution of disputes;

II. Provide that the defence of innocent publication applies to operators of websites in relation to user-generated comment, (as in UK jurisdictions, Australia and Ontario), subject to the obligation to take down content expeditiously and/or identify the poster, if notified of defamatory content;

III. Provide a statutory power to grant a Norwich Pharmacal order (directing an intermediary services provider to disclose the identity of an anonymous poster of defamatory material). This will make it easier and quicker to obtain an identification order, by providing that such orders can be granted by the Circuit Court (along the lines recommended by the Law Reform Commission in 2016) – rather than only by the High Court, as at present.
6. Special measures for both online and non-online defamation

I. Following recent court judgments, revise sections 28, 30, 33 and 34 of the Defamation Act 2009 to clarify the tests that must be satisfied for the court to make an order (including an interlocutory order) prohibiting further publication (a ‘take-down’ order), an order declaring that statement is defamatory, a correction order, or an order for summary relief;

II. Review the statutory requirement at section 33 of the Defamation Act for the plaintiff, having proved that the statement is defamatory, to also establish that the defendant has no defence likely to succeed, before the court can grant an interlocutory take-down order;

III. Amend section 30 of the Act (‘Correction order’) to provide that unless the plaintiff requests otherwise, the correction of a defamatory statement is to be published with equal prominence to the defamatory statement.
6. Next Steps

The full Review Report will be the subject of detailed consideration by Minister McEntee and her Department with the Attorney General and his Office. Some constitutional and legal issues arising from the Report will require their input.

Minister McEntee intends to prepare in 2022 a General Scheme of a Bill to amend defamation law.
Appendices

Submissions made during the public consultation
