



Scottish Law Commission

promoting law reform

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Report on Defamation

Today the Scottish Law Commission publishes its Report recommending reform of defamation law in Scotland. The Report includes draft legislation designed to modernise the law for the age of the internet and social media. The draft Bill is the most substantial proposed reform of defamation law in Scottish legal history.

The Report is the culmination of the Commission's three years of intensive study of the subject and reflects extensive public consultation. The recommendations are based on close engagement with stakeholders: members of the public, media organisations, authors, publishers, campaign groups and the legal profession.

The Report recommends that some old legal rules around defamation should be swept away; for example, it recommends that it should no longer be possible to sue where a defamatory statement is made only to the person who is the subject of it and no-one else – in that case there cannot realistically be any damage to reputation.

The Report also proposes that where a statement has not caused serious harm to reputation there should be no right to sue. This is to prevent defamation actions being used as a weapon by the rich and powerful to try to silence unwelcome criticism.

The Report recommends that Scots law should explicitly recognise a defence of publication on a matter of public interest. This is important for investigative journalism.

Under the present law a person can allow three years to go by before suing for defamation. The Report concludes this is too long. Where there has been genuine damage to reputation this should become clear quickly. So the Report recommends that the three year time limit should be reduced to one year. This would be in line with best international practice.

The Report proposes that there should be a new 'single publication' rule; this means that the time limit for bringing a claim will not start afresh each time the same statement is downloaded by a new search on the internet.

Lord Pentland, Chairman of the Scottish Law Commission and the Commissioner with lead responsibility for this project, said:

“Defamation law potentially affects everyone and getting it right is crucial for the type of society we want to live in. With the phenomenal growth in use of the internet and social media it is possible for everyone to communicate far more easily and more widely than was the case in the past. But faster and easier ways of communicating have thrown up new challenges for the law. The absence of editorial controls can sometimes allow reputations to be unfairly tarnished in the eyes of a mass audience.

Our modern law of defamation, therefore, has to strike the right balance between two values that sometimes pull in different directions - the principles of freedom of expression and protection of reputation. Both are fundamental human rights and are of vital importance in a modern democracy. The law of defamation has a central part to play in safeguarding both these rights. It is important that fearless journalism can thrive so that the rich and powerful are held to account; at the same time the law must allow those whose reputations are unfairly tarnished to restore their reputations swiftly and at reasonable cost, if necessary through the courts.”

The Report makes 49 recommendations in total and contains a draft Bill which would put into effect those recommendations. An outline of the draft Bill provisions is contained in the Appendix to this news release.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline Drummond, David Johnston QC, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Graham McGlashan, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gsi.gov.uk).

3. The Report will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 14 December.

APPENDIX

The draft Bill attached to the Report contains a range of proposals to modernise the law of defamation in Scotland. In particular:

- the Bill provides that for a defamatory statement to be actionable it must have been published to someone other than the subject of the statement;
- it provides that in order to be actionable the publication of the statement must have caused (or be likely to cause) serious harm to the reputation of the claimant;
- it provides that in the case of a non-natural person trading for profit serious harm means serious financial loss;
- the Bill places certain key principles of defamation law on a statutory footing for the first time, including the *Derbyshire* principle that defamation actions cannot competently be brought by public authorities;
- it seeks to prevent defamation actions being brought against “secondary publishers” i.e. people other than authors, editors or publishers of material containing a defamatory statement;
- it restates in modern terms the main defences available in defamation actions, replacing common law equivalents; these include the defences of truth and honest opinion;
- it introduces a statutory defence of publication on a matter of public interest;
- it establishes a jurisdictional threshold for the bringing of defamation proceedings in courts in Scotland - a case will only be heard here if Scotland is clearly the most appropriate place for hearing it;
- it removes the presumption that proceedings are to be tried by jury;
- it provides for the abolition of common law verbal injury in so far as it relates to injury to feelings, as well as creating statutory equivalents of verbal injury affecting business interests;
- it strengthens the powers of the courts in granting remedies in defamation actions; in particular, the courts will be able to order the taking down of defamatory material from websites;
- it makes provision to reduce the limitation period within which defamation actions can be brought from three years to one;
- it introduces a ‘single publication rule’ to avoid the time limit being artificially extended by stale publication of the same material;
- it provides for the repeal and re-enactment of key sets of provisions of relevance to defamation proceedings, namely those relating to absolute and qualified privilege and those relating to offers to make amends.