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Sent: 16 June 2016 14:51
To: SLC info
Subject: Comments relating to the Discussion Paper on Defamation

I have comments relating to two issues in the Discussion Paper on Defamation.

Academic discourse

Question 31 asks, "Given the existing protections of academic and scientific writing and speech, do you think it is necessary to widen the privilege in section 6 of the 2013 Act beyond a peer-reviewed statement in a scientific or academic journal? If so, how?"

The concessions in the 2013 Defamation Act are insufficient to protect academics who make legitimate scientific criticisms of a process. The case of *BCA v Singh* is illustrative.

If the aim is to use peer review as a test of scientific quality, peer review is not restricted to journals. Academic bids for funding are often peer reviewed. 13 of 16 books I have written have been peer reviewed, and two others have been subject to the judgment of editorial boards.

The idea that peer review offers some kind of protection against defamation is in any case questionable. As a peer reviewer I am usually asked to make judgments about the validity and rigour of the submission. I have never been asked to notify the editor whether or not academic comment and criticism might act to the detriment of someone's commercial interests, and would not consider that to be part of a reviewer's role.

It is not clear however why safeguards should only be applicable at the point of formal publication or submission to other bodies. Academic papers commonly go through several stages of development before they appear, which may include consultation with colleagues, reviews of drafts, presentation in seminars, presentation in conferences and submission to peer reviewed journals; then there is likely to be subsequent dissemination through various media, including teaching and public resources, and plans for such dissemination are increasingly required by bodies that fund research. There should be a general exemption for all bona fide academic discourse, the nature of such discourse to be determined case by case rather than to be treated as occurring only in specified locations or outlets.

General comment

Para 3.27 the Discussion Document notes 3.27, that "In Scotland it has been held expressly that a voluntary association which nonetheless has a reputation that is valuable in economic terms has title to bring an action for defamation in appropriate circumstances. ... There seems little reason why wholly not-for-profit organisations should not also be regarded as having a reputation as a form of honour." There are no questions in the document directly relating to these issues. The first part of this - interpreting damage in economic terms - is inadequate to protect the reputation of non-profit organisations, considered in the second part. Clubs, societies, charities and bodies such as mosques and synagogues are no less likely to be concerned about their reputation and good name because of the implications that loss of reputation will have for their social role.

Suggesting that groups are murderous, that they sponsor terrorism or are in the pay of foreign powers has the potential to be very damaging. This does reflect indirectly on questions 4, 6 and 7. It is a matter of concern that the current law relating to defamation seems to privilege economic interests over the issues of honour and reputation that the law is ostensibly meant to defend.

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