

James and Margaret Watson

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Email

Dear Rt Honourable Lord Pentland,

We would like to take this opportunity to thank the Scottish Law Commission for granting us permission to submit this late response. Due the time factor involved we have concentrated on Chapter 12 Defamation of the deceased Questions. We can only trust this will be acceptable.

We have attached a Letter for Lord McCluskey, Lord Hunt's proposed amendment to the UK 2012 Defamation Bill, EU Victims Support response to European Commission for Democracy Through Law consultation paper, page 5 media and an email from Sir Alan Moses of Ipso [*Remainder of sentence deleted as confidential*].

With our sincere gratitude for permitting this late submission  
James and Margaret Watson.

The Scottish Law Commission - Discussion Paper on Defamation.

Question 47. Should consideration be given to the possibility of statutory provision to allow an action for defamation to be brought on behalf of someone who has died, in respect of statements made after their death?

Answer. Yes. There is ample scope for the introduction of defamation of the deceased legislation under Section 2 of Article 10 of the Convention of Human Right - Freedom of Expression, which is a qualified right, not an absolute right. Section 2 of Article 10 of the Convention of Human Rights imposed the following clearly defined restrictions - "In the interest of public safety". It cannot be in the public interest to disseminate egregious or grossly misleading information about events leading up to a murder. "Protecting the health and Morals". It is imperative that the added mental anguish and torment endured by families of murdered victims is given due prominence when considering if there is a need for defamation of the deceased legislation. "Protection of reputation and rights of others". Given that families of the deceased are denied any legal standing under the current Scottish Defamation Legislation and excluded from the Independent Press Standards Organisation, Arbitration Service, as only complainants who have the option of taking civil defamation action have access to Ipso Arbitration Service. it is misleading to suggest that remedy to defamation of the deceased can be addressed under Ipso rules or Editors Code. Ipso have acknowledged that a substantial number of publishers throughout the UK have not joined their organisation [*Remainder of sentence deleted as confidential*]. We have attached a copy of Ipso rules to be taken into consideration by the Scottish Law Commission: "Maintaining the Authority and Impartiality of the Judiciary". [*Remainder of paragraph deleted as confidential*].

Article 8 of the Convention of Human Rights - Right to Private and Family Life. Article 8 of the Convention was acknowledged by the EU Court in the 2013 Judgement Putitstin V Ukraine as a mechanism whereby families of murdered victims can challenge unfounded attacks on the good name and character of murdered victim. It would be travesty of justice if the full implications of the EU Court Judgement in the 2013 Putitstin V Ukraine case is not recognised and endorsed in Scotland.

Article 10 and 8 of the Convention of Human Rights Directives has been fully ratified by the UK and Scottish Governments therefore the Scottish government has a duty to fully implement Article 10 and 8 of the Convention of human rights.

Question 48. Do you agree there should be a restriction on the parties who may competently bring an action on behalf of someone who has died?

Answer. Yes.

Question 49. If so, should the restriction on the parties be to people falling into the category of "relative" for the purpose of section 14 of the Damages (Scotland) Act 2011?

Answer. We are of the view that it should be direct family members as suggested in section 14 of the Damages (Scotland) Act 2011.

Question 50. Do you consider that there should be a limit as to how long after the death of a person an action for defamation on their behalf may be competently be brought? If so do have any suggestions as to approximately what that time limit should be?

Answer. No. To have a time limit imposed would inflict undue pressure on families who lost a much loved member of their immediate family to murder. Serious consideration must be given for physical and psychological wellbeing of immediate family members of the deceased murdered victim when considering imposing any time limit. The EU Court of Human Rights made no reference to imposing a time limit in the Putitstin V Ukraine case.

Question 51. Do you agree that any provision to bring an action for defamation on behalf of a person who has died should not be restricted according to:

(a) According to the circumstances in which the death occurred or;

(b) Whether the alleged defamer was the perpetrator of the death?

Answer. Both (a) and (b) must be taken into consideration. There is well documented evidence that both the perpetrator (criminal memoirs) and journalist who campaign on behalf of convicted murderers have taken advantage of the lack of legal redress available to families of murdered victims under the current Scottish Defamation Legislation.

James and Margaret Watson.