

Although I live in England I have been following the reform of defamation law in the UK with interest.

Broadly I am very pleased about the reforms proposed for Scotland in the published draft at https://www.scotlawcom.gov.uk/files/5715/0123/0435/Defamation_and_Malicious_Publications_Scotland_Bill_-_consultation_draft_-_Bill.pdf but there is one aspect which alarms me and that is the fact that for-profit organisations can be considered a 'person'. This is mentioned in Part 1, 1(3) where it says "(3)

For the purposes of subsection (2)(b), where B is a non-natural person whose primary purpose is to trade for profit, harm to B's reputation is not "serious harm" unless it has caused (or is likely to cause) B serious financial loss."

My interest in the whole issue of libel reform came about because a charlatan, for-profit, organisation sued a journalist because he published an article which quite rightly criticised that organisation for promoting 'quack' cures which could cause serious harm to children. (I refer to the Simon Singh case.)

The organization in question had a web site which stated that various child-hood illnesses could be 'cured' through chiropractic neck manipulations; something which is dangerous in adults and even more so in children with weaker necker bones/muscles. Simon Singh was sued and dragged through the courts to defend his article.

Although the draft bill contains defences for truth, public interest and honest opinion (which I welcome) the fact that the bill allows for-profit organization to sue will still result in a 'chilling' effect on individuals who might seek to criticise those organizations. A for-profit organization has much greater resources to pursue legal action than an individual and if those organizations have the right to sue individuals under defamation law, any person thinking of publishing critical content about those organizations is going to think twice, even if they are true and in the public interest.

Please think again about treating for-profit organizations as 'persons' under this law.

Corporations can defend themselves under other laws. In the balance between the rights of organizations and the individual, I believe the law should try harder to protect the individual from being dragged through the courts and forced to defend themselves. If a person criticises a corporation, that corporation can defend themselves by publishing their side of the story and the public can judge which side has the best arguments.

If for-profit organizations should remain treated as persons for the purposes of this law, there should be one or more additional deterrents to inhibit organizations from 'bullying' individuals into silence. Automatic legal aid for defendants might be one option. Another measure might be to demand a 'deposit' from for-profit organizations which is returned only if they win the case. This money could be used to help fund the legal aid for defendants.

I appreciate defence 5(2) very much because I remember the 'McLibel' case where McDonalds won the case despite the fact that many of the assertions of the defendants were shown to be true. This seems to strike the right balance.

In section 25 'Damages for anxiety and distress' I suggest that it should only be possible for an individual person to claim damages, not a for-profit organization. A for-profit organization cannot suffer anxiety and distress.

Thank you for the work so far on this bill.

Kevin Senior