[IE] New Defamation Law

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The Defamation Bill 2006 (see IRIS 2006-9: 13) was finally passed on 10 July 2009. It will be known as the Defamation Act 2009 and is due to come into effect in October. The Act repeals the 1961 Defamation Act and updates the law in a number of respects. The historically separate torts of libel and slander become a single tort of defamation, which is defined in the Act. The tort of defamation involves the publication "by any means" of a defamatory statement, thus extending to new media. The period of limitation for bringing an action is shortened from six years to one. A new defence of fair and reasonable publication on a matter of public interest, along the lines of the Reynolds defence in the UK, is included and a list of requirements to establish the defence is set out. A court in deciding if the defence is met must take into account such matters as it considers relevant, including any or all of a list of factors set out in section 26(2). New remedies, such as declaratory orders and correction orders, are provided in addition to the primary remedy of damages. The process of awarding damages is also addressed. A new provision enables the judge to give directions to the jury and a list of factors that the court must "have regard to" is set out (section 31). The Supreme Court, which formerly sent cases back for a re-hearing where it found the amount of damages awarded by a lower court excessive, may in future substitute whatever amount it considers appropriate for the amount awarded by the lower court (section 13).

Other changes of interest to the media include an express provision that apologies will not constitute an admission of liability and a simplification of the "offer of amends" mechanism for resolving a defamation action at an early stage (before the delivery of the defence - section 22). The old common law defence of innocent publication is also updated to apply to those who are involved in the process, but who do not have control over content, for example printers, as well as to those involved only in the processing, copying, distribution, exhibition or selling of film or sound recordings and similarly those involved only in the processing, copying, distribution or selling of "any electronic medium" or in the operation or provision of any related equipment, system or service (section 27).

There is also statutory recognition for a Press Ombudsman and Press Council, with details of such matters as its composition, principal objects, procedures and code of standards (section 44 and Schedule 2). The members of the Press Council are to be appointed, not by government, but by an independent panel and are to be

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independent in the performance of their functions. The Council then appoints the Ombudsman. As it happens, an independent Press Council and Ombudsman, which resulted from a print media initiative and which conforms to the requirements of the new Act, has been in operation since January 2008. It will apply for recognition under the Act when the Act comes into operation.

As befits a modern law of defamation and in line with European and international trends, defamation is decriminalised (section 35). However, an exception is made in the case of blasphemous matter. The Minister for Justice argued that this was necessary because of a provision in the Irish Constitution on freedom of expression which states that "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law." (Article 40.6.1i). Accordingly, he introduced a provision that a person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable on conviction to a fine not exceeding EUR 25,000 (section 36). The essence of the offence is that the matter is “grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of adherents of that religion”. The *mens rea* requirement for the offence is intention to cause such outrage. Following intense public debate and considerable pressure to drop the provision altogether, the Minister amended the original wording to exclude from the ambit of “religion” an organisation or cult, the principal object of which is the making of profit or that employs “oppressive psychological manipulation” of its followers or for the purpose of gaining new followers. The section remained contentious and the Bill was only passed by a single vote.

Defamation Act

http://www.oireachtas.ie/ViewDoc.asp?DocId=-1&CatID=87&m=a

Constitution of Ireland (available under “publications archive”)

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