SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH (LEASÚ), 2024
DEFAMATION (AMENDMENT) BILL 2024

LEASUITHE TUARASCÁLA
REPORT AMENDMENTS

[No. 67b of 2024] [21 January, 2026]

SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH (LEASÚ), 2024
—AN TUARASCÁIL

DEFAMATION (AMENDMENT) BILL 2024
—REPORT

Leasuithe
Amendments

**Government amendments are denoted by an asterisk*

1. In page 6, between lines 28 and 29, to insert the following:

"(2) A party to a defamation action in the High Court may apply to the President of the High Court for an order permitting the trial of the action with a jury in any or all of the following circumstances:

(a) that by reason of the exceptional nature of the case or the identity of one or more of the parties in the case, it is preferable that it should be tried with a jury, or

(b) that the claim or counterclaim in the proceedings includes other issues triable in the High Court with a jury and that the interests of justice would be served by the trial of the claim in defamation with a jury.

(3) Where a trial with a jury is ordered under *subsection (2)*, the jury shall not decide the amount of any damages to be awarded for defamation but shall be entitled by its verdict to decide whether aggravated or exemplary damages be awarded.

(4) In any case to which *subsection (3)* applies, the trial judge shall determine the amount of any damages, including any aggravated or exemplary damages, to which a party is found to be entitled by the jury.".

—Senators Michael McDowell, Gerard Craughwell.

2. In page 7, between lines 14 and 15, to insert the following:

"(3) The amendments effected by *subsection (1)* shall apply only to trials of defamation claims other than trials with a jury ordered under the provisions of *subsection (2)#* of *section 4*.".

—Senators Michael McDowell, Gerard Craughwell.

[#This is a reference to a subsection proposed to be inserted by amendment No. 1.]

3. In page 7, to delete lines 29 to 32.

—Senators Michael McDowell, Gerard Craughwell.

4. In page 8, line 7, after "court-martial" to insert "or a parole board".

—Senators Michael McDowell, Gerard Craughwell.

5. In page 8, line 26, before "an inquiry" to insert "a statement or".

—Senators Michael McDowell, Gerard Craughwell.

***6.** In page 10, line 4, to delete "**Publication**" and substitute "**Fair publication**".

***7.** In page 10, line 5, after "of" to insert "fair".

***8.** In page 10, line 7, to delete "that, in all the circumstances of the case" and substitute "that the publication was fair in all the circumstances of the case, in that".

9. In page 10, to delete lines 10 to 12 and substitute the following:

"(b) the defendant reasonably believed that publishing the statement was in the public interest,

(c) the statement was published in good faith, and

(d) the publication of the statement was fair having regard to the rights of the plaintiff including the right to his or her good name.".

—Senators Michael McDowell, Gerard Craughwell.

10. In page 10, line 14, to delete "subsection (1)(b)" and substitute "subsection (1)(b)#, (c)## and (d)###".

—Senators Michael McDowell, Gerard Craughwell.

[#This is a reference to a paragraph proposed to be inserted by amendment No. 9.]

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11. In page 10, between lines 16 and 17, to insert the following:

"(3) Failure or refusal by a plaintiff to respond to any attempt by the defendant to elicit a response to a statement proposed to be published by or with the involvement of the defendant shall not—

(a) constitute or imply consent to the publication of the statement, or

(b) entitle a court to draw any inference therefrom adverse to the plaintiff.".

—Senators Michael McDowell, Gerard Craughwell.

12. In page 10, to delete lines 17 to 23.

—Senators Michael McDowell, Gerard Craughwell, Rónán Mullen, Sharon Keogan.

13. In page 10, line 21, after "any" to insert "reasonable".

—Senators Michael McDowell, Gerard Craughwell.

14. In page 10, between lines 23 and 24, to insert the following:

"(4) In deciding whether publication of a statement to the public at large or any section thereof was fair a court may have regard to—

(a) the extent to which the statement concerned refers to the performance by the person of his or her public functions,

(b) the seriousness of any allegations made in the statement,

(c) the context and content (including the language used) of the statement,

(d) the extent to which the statement drew a distinction between suspicions, allegations and facts, and

(e) the extent to which there were particular circumstances justifying the publication of the statement at the time of publication.".

—Senators Michael McDowell, Gerard Craughwell.

15. In page 11, after line 42, to insert the following:

"(f) whether, any statement having been made which a reasonable or prudent person would conclude was capable of being defamatory, the presenter took prompt steps to—

(i) challenge the person making the statement,

(ii) alert viewers or listeners to the problem of possible defamation, the right of the subject of the statement to defend his or her good name and to initiate an action where appropriate against the publisher of defamatory material, and

(iii) where the person the subject of the statement, or his or her representative, was actually present, to give the person or the representative an immediate opportunity to challenge the published statement.".

—Senators Rónán Mullen, Sharon Keogan.

***16.** In page 11, after line 42, to insert the following:

"(3) For the avoidance of doubt, the live broadcast defence shall not fail by reason only of the live programme concerned having been broadcast with a minimal delay.".

***17.** In page 12, to delete line 1 and substitute the following:

"(4) In this section—".

18. In page 21, to delete lines 30 to 32 and substitute the following:

" "45. (1) The Circuit Court and the High Court (in this section referred to as the 'court') shall each have concurrent jurisdiction to hear and determine an application in accordance with this section.".

—Senators Michael McDowell, Gerard Craughwell.

19. In page 22, to delete lines 38 to 42 and substitute the following:

"(5) The provisions of section 169 of the Legal Services Regulation Act 2015, shall apply in relation to the costs of any application for an identification order.".

—Senators Michael McDowell, Gerard Craughwell.

20. In page 22, after line 42, to insert the following:

"(6) Where an identification order has been made under this section, a court may at any time thereafter vary any condition to which the order may have been made in accordance with subsections (4) and (6).".

—Senators Michael McDowell, Gerard Craughwell.

21. In page 22, after line 42, to insert the following:

"(6) Where an identification order has been made in accordance with this section, and where an anonymous publisher has been identified thereunder by an intermediary service provider, the said identification as relevant information shall, subject to the right of any party to contradict or disprove that he or she is or was the anonymous publisher, be admissible in evidence in any defamation proceeding where the court hearing such proceeding so directs.".

—Senators Michael McDowell, Gerard Craughwell.