

NewsBrands Ireland
**Opening Statement to the Oireachtas Joint Committee on Tourism, Culture, Arts, Sport
and Media**

***‘Non-court based conflict resolution mechanisms for the handling of media related
complaints’.***

Litigation

Litigation is expensive, slow and its outcome uncertain. This is especially so in defamation cases. The involvement of juries in High Court actions lengthens considerably both the trial itself and the time taken for it to come on for hearing. Civil jury decisions are erratic and lack transparency. This leads to greatly increased legal costs.

On average it takes three to four years for a defamation case to reach trial. Many take longer. Such delays do not do justice to plaintiffs, who, if defamed, should be entitled to have access to the courts and to have their good name vindicated as quickly as possible. Neither can it be said to do justice to defendants, as delays and the threat of sizeable damages and legal costs, exert a chilling effect on the right to free speech.

General Scheme of the Defamation (Amendment) Bill

The General Scheme of the Defamation (Amendment) Bill goes some way towards ameliorating these problems. It places an obligation on solicitors to advise clients of alternatives to litigation, namely the roles of the Press Council/Press Ombudsman and of the BAI, as well as the advantages of mediation.

Non-court based conflict resolution mechanisms

NewsBrands Ireland is a founding member of the Office of Press Ombudsman and Press Council of Ireland. The benefits of taking a complaint to the Press Ombudsman are many. It promises to be “fast, free and fair”. Complaints can cover all alleged breaches of the Code of Practice of the Press Council, ranging from accuracy to privacy and to issues that do not allow for a legal remedy such as fairness and grief.

Mediation is confidential and without prejudice. The parties are the decision makers, control the process and can walk away from the mediation if they wish. The privacy of the process is particularly attractive in defamation cases. Anything said or seen within the process that would normally be part of disclosure will remain confidential even if litigation is commenced or proceeds further.

Despite all their advantages, these conflict resolution mechanisms will not, in the absence of further changes to the General Scheme, have the impact hoped for.

Serious Harm Test

In particular, a serious harm test, similar to that introduced in the U.K., must be brought into force here.

The General Scheme proposes a serious harm test in cases involving bodies corporate, public authorities and retailers. It is a mystery, however, why it is not being introduced in all defamation cases.

The Irish media faces, on an almost daily basis, unwarranted and exaggerated claims for defamation. The costs of defending these cases are significant and these costs are often unrecoverable even where the defence succeeds.

A serious harm test for all defamation proceedings would alleviate the costs of such unwarranted claims and the risks to Ireland associated with SLAPPs (Strategic Lawsuits Against Public Participation) and 'libel tourism'.

For all the advantages of non-court based solutions, lawyers and their clients can be slow to look beyond litigation and a potential financial windfall. They may need not just the carrot of alternative dispute resolution methods but the stick of the risk of failure to meet a serious harm test.

In the absence of a serious harm test, very wealthy claimants, including those with little or no connection to this country, will have little deterrent to stop them going to law. The 'nuisance' claimant will have little incentive to seek alternative redress. If such a test is introduced, meritorious claimants will still have open to them non-court based mechanisms and well as the right to go to full trial.

NewsBrands would, therefore, urge the Joint Committee to support the introduction of a serious harm test in all defamation cases.

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