



ANALYSIS

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1992, No. 105

An Act to amend the law relating to defamation and other malicious falsehoods

[26 November 1992]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Defamation Act 1992.

(2) This Act shall come into force on the 1st day of February 1993.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Broadcaster” has the meaning given to it by section 2 of the Broadcasting Act 1989:

“Defamation” includes libel and slander:

“Distributor” includes—

- (a) A bookseller; and
- (b) A librarian:

“Judge”, in Parts II, III, and IV of this Act, means,—

- (a) In the case of any proceedings before the High Court, a Judge of that Court:
- (b) In the case of any proceedings before a District Court, a Judge of that Court:

“News medium” means a medium for the dissemination, to the public or to a section of the public, of news, or observations on news, or advertisements:

“Newspaper” means a paper—

- (a) Containing news or observations on news; or
- (b) Consisting wholly or mainly of advertisements—

that is published, in New Zealand or elsewhere, periodically at intervals not exceeding 3 months:

“Processor” means a person who prints or reproduces, or plays a role in printing or reproducing, any matter:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

(2) The provisions of Part III of the First Schedule to this Act shall also have effect for the purposes of the interpretation of that Schedule.

3. Application—(1) This Act binds the Crown.

(2) This Act applies to proceedings commenced after this Act comes into force, whenever the cause of action arose.

(3) This Act does not apply to proceedings commenced before this Act comes into force.

Cf. 1954, No. 46, ss. 3, 22A; 1958, No. 63, s. 2

PART I

CAUSES OF ACTION

4. Defamation actionable without proof of special damage—In proceedings for defamation, it is not necessary to allege or prove special damage.

Cf. 1954, No. 46, s. 4 (1)

5. Malicious falsehood actionable without proof of special damage—In proceedings for slander of title, slander of goods, or other malicious falsehood, it is not necessary to allege or prove special damage if the publication of the matter that is the subject of the proceedings is likely to cause pecuniary loss to the plaintiff.

Cf. 1954, No. 46, s. 5 (1)

6. Proceedings for defamation brought by body corporate—Proceedings for defamation brought by a body corporate shall fail unless the body corporate alleges and proves that the publication of the matter that is the subject of the proceedings—

(a) Has caused pecuniary loss; or

(b) Is likely to cause pecuniary loss—
to that body corporate.

7. Single publication to constitute one cause of action—Proceedings for defamation based on a single publication constitute one cause of action, no matter how many imputations the published matter contains.

PART II
DEFENCES

Truth

8. Truth—(1) In proceedings for defamation, the defence known before the commencement of this Act as the defence of justification shall, after the commencement of this Act, be known as the defence of truth.

(2) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.

(3) In proceedings for defamation, a defence of truth shall succeed if—

- (a) The defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or
- (b) Where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

Cf. 1954, No. 46, s. 7

Honest Opinion

9. Honest opinion—In proceedings for defamation, the defence known before the commencement of this Act as the defence of fair comment shall, after the commencement of this Act, be known as the defence of honest opinion.

10. Opinion must be genuine—(1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.

(2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,—

- (a) Where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that—

- (i) The opinion, in its context and in the circumstances of the publication of the matter that is

the subject of the proceedings, did not purport to be the opinion of the defendant; and

(ii) The defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion:

(b) Where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that—

(i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant; and

(ii) The defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

(3) A defence of honest opinion shall not fail because the defendant was motivated by malice.

11. Defendant not required to prove truth of every statement of fact—In proceedings for defamation in respect of matter that consists partly of statements of fact and partly of statements of opinion, a defence of honest opinion shall not fail merely because the defendant does not prove the truth of every statement of fact if the opinion is shown to be genuine opinion having regard to—

(a) Those facts (being facts that are alleged or referred to in the publication containing the matter that is the subject of the proceedings) that are proved to be true, or not materially different from the truth; or

(b) Any other facts that were generally known at the time of the publication and are proved to be true.

Cf. 1954, No. 46, s. 8

12. Honest opinion where corrupt motive attributed to plaintiff—In any proceedings for defamation in which the defendant relies on a defence of honest opinion, the fact that the matter that is the subject of the proceedings attributes a dishonourable, corrupt, or base motive to the plaintiff does not require the defendant to prove anything that the defendant would not be required to prove if the matter did not attribute any such motive.

Absolute Privilege

13. Absolute privilege in relation to Parliamentary proceedings—(1) Proceedings in the House of Representatives are protected by absolute privilege.

(2) Any live broadcast, by any broadcaster, of proceedings in the House of Representatives is protected by absolute privilege.

(3) The following publications are protected by absolute privilege:

- (a) The publication, by or under the authority of the House of Representatives, of any document:
- (b) The publication, to the House of Representatives, of any document, either by presenting the document to, or laying the document before, the House of Representatives:
- (c) The publication, by or under the authority of the House of Representatives, or under the authority of any enactment, of an official or authorised record of the proceedings of the House of Representatives:
- (d) The publication of a correct copy of any document or record to which paragraph (a) or paragraph (c) of this subsection applies.

Cf. 1954, No. 46, ss. 18, 19

14. Absolute privilege in relation to judicial proceedings and other legal matters—(1) Subject to any provision to the contrary in any other enactment, in any proceedings before—

- (a) A tribunal or authority that is established by or pursuant to any enactment and that has power to compel the attendance of witnesses; or
- (b) A tribunal or authority that has a duty to act judicially,— anything said, written, or done in those proceedings by a member of the tribunal or authority, or by a party, representative, or witness, is protected by absolute privilege.

(2) A communication between any person (in this subsection referred to as the client) and a barrister or a solicitor for the purpose of enabling the client to seek or obtain legal advice, and a communication between that solicitor and any barrister for the purpose of enabling legal advice to be provided to the client, are protected by absolute privilege.

15. Other rules of law relating to absolute privilege not affected—Nothing in section 13 or section 14 of this Act limits any other rule of law that relates to absolute privilege.

Qualified Privilege

16. Qualified privilege—(1) Subject to sections 17 and 19 of this Act, the matters specified in Part I of the First Schedule to this Act are protected by qualified privilege.

(2) Subject to sections 17 to 19 of this Act, the publication of a report or other matter specified in Part II of the First Schedule to this Act is protected by qualified privilege.

(3) Nothing in this section limits any other rule of law relating to qualified privilege.

Cf. 1954, No. 46, s. 17 (1); 1974, No. 82, s. 2

17. Qualified privilege not to apply where publication prohibited—Nothing in subsection (1) or subsection (2) of section 16 of this Act protects the publication of any report or other matter where the publication of that report or matter is prohibited by law, or by a lawful order, in New Zealand or in a territory in which the subject-matter of the report or matter arose.

Cf. 1954, No. 46, s. 17 (3) (a)

18. Restrictions on qualified privilege in relation to Part II of First Schedule—(1) Nothing in section 16 (2) of this Act protects the publication of a report or other matter specified in Part II of the First Schedule to this Act unless, at the time of that publication, the report or matter is a matter of public interest in any place in which that publication occurs.

(2) In any proceedings for defamation in respect of the publication in any newspaper, or as part of a programme or service provided by a broadcaster, of a report or other matter specified in Part II of the First Schedule to this Act, a defence of qualified privilege under section 16 (2) of this Act shall fail if the plaintiff alleges and proves—

- (a) That the plaintiff requested the defendant to publish, in the manner in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction; and
- (b) That the defendant has refused or failed to comply with that request, or has complied with that request in a manner that, having regard to all the circumstances, is not adequate or not reasonable.

Cf. 1954, No. 46, s. 17 (2), (3) (b)

19. Rebuttal of qualified privilege—(1) In any proceedings for defamation, a defence of qualified privilege

shall fail if the plaintiff proves that, in publishing the matter that is the subject of the proceedings, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

(2) Subject to subsection (1) of this section, a defence of qualified privilege shall not fail because the defendant was motivated by malice.

Cf. 1954, No. 46, s. 17 (2)

General

20. Joint publishers—(1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion shall not fail merely because the opinion expressed by any person jointly responsible with the defendant for the publication of that matter was not that person's genuine opinion.

(2) In proceedings for defamation, a defence of qualified privilege shall not fail merely because any person jointly responsible with the defendant for the publication of the matter in respect of which the proceedings are brought is proved, in publishing the matter, to have been motivated by ill will towards the plaintiff, or otherwise to have taken improper advantage of the occasion of publication.

(3) Subsections (1) and (2) of this section apply whether or not the person jointly responsible with the defendant for the publication of the matter is a defendant in the proceedings.

(4) Nothing in this section affects the liability of a defendant in any proceedings for defamation for any act of the defendant's employee or agent.

21. Innocent dissemination—In any proceedings for defamation against any person who has published the matter that is the subject of the proceedings solely in the capacity of, or as the employee or agent of, a processor or a distributor, it is a defence if that person alleges and proves—

- (a) That that person did not know that the matter contained the material that is alleged to be defamatory; and
- (b) That that person did not know that the matter was of a character likely to contain material of a defamatory nature; and
- (c) That that person's lack of knowledge was not due to any negligence on that person's part.

22. Consent to publication—It is a defence to proceedings for defamation if the defendant alleges and proves that the plaintiff consented to the publication of the matter that is the subject of the proceedings.

23. Evidence of adequacy of redress—(1) In proceedings for defamation, it is evidence of the reasonableness of a letter or statement by way of explanation or contradiction under section 18 (2) (a) of this Act, or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 25 of this Act, that the party by whom it was proposed has offered to have any issues as to its content or presentation determined, in chambers, by a Judge.

(2) In proceedings for defamation, it is evidence of the unreasonableness of any such statement, letter, or retraction that the party by whom it was proposed has refused an offer by any other party to have any issues as to its content or presentation determined, in chambers, by a Judge.

(3) Any issue as to the content or presentation of a letter or statement by way of explanation or contradiction under section 18 (2) (a) of this Act, or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 25 of this Act, may, on the application of any person, be determined, in chambers, by a Judge.

PART III

REMEDIES

24. Declarations—(1) In any proceedings for defamation, the plaintiff may seek a declaration that the defendant is liable to the plaintiff in defamation.

(2) Where, in any proceedings for defamation,—

(a) The plaintiff seeks only a declaration and costs; and

(b) The Court makes the declaration sought,—

the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the Court orders otherwise.

25. Retraction or reply—(1) Any person who claims to have been defamed by any matter published in a news medium may, not later than 5 working days after that person becomes aware of the publication of that matter in that news medium, request the person who was responsible for the publication of that matter to publish, in the same medium as the publication complained of, with substantially similar prominence, and without undue delay,—

(a) A retraction of the matter in so far as it includes or consists of statements of fact; or

(b) A reasonable reply.

(2) Where, in response to a request made under subsection (1) of this section, a person agrees to publish a retraction or a reply, that person shall also offer to pay to the person who made the request (in this subsection referred to as the requester),—

(a) Where it is agreed to publish a reply, the cost of publishing that reply; and

(b) The solicitor and client costs incurred by the requester in connection with the publication of the retraction or reply; and

(c) All other expenses reasonably incurred by the requester in connection with the publication complained of; and

(d) Compensation for any pecuniary loss suffered by the requester as a direct result of the publication complained of.

(3) In this section, “reply” means a statement of explanation or rebuttal, or of both explanation and rebuttal.

26. Court may recommend correction—(1) In any proceedings for defamation, the plaintiff may seek a recommendation from the Court that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings, and the Court may make such a recommendation.

(2) Where, in any proceedings for defamation,—

(a) The Court recommends that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings; and

(b) The defendant publishes or causes to be published a correction in accordance with the terms of that recommendation,—

then—

(c) The plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the Court orders otherwise; and

(d) The plaintiff shall be entitled to no other relief or remedy against that defendant in those proceedings; and

(e) The proceedings, so far as they relate to that defendant, shall be deemed to be finally determined by virtue of this section.

(3) Where, in any proceedings for defamation,—

- (a) The Court recommends that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings; and
 - (b) The defendant fails to publish or cause to be published a correction in accordance with the terms of that recommendation,—
- then, if the Court gives final judgment in favour of the plaintiff in those proceedings,—
- (c) That failure shall be taken into account in the assessment of any damages awarded against the defendant; and
 - (d) The plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the Court orders otherwise.

27. Court may make recommendations as to content, etc., of correction—(1) In recommending, pursuant to section 26 (1) of this Act, the publication of a correction, a Court may include recommendations relating to—

- (a) The content of the correction;
 - (b) The time of publication of the correction;
 - (c) The prominence to be given to the correction in the particular medium in which it is published.
- (2) In making any recommendation under subsection (1) of this section, the Court shall have regard—
- (a) To the context and circumstances in which the matter that is the subject of the proceedings was published, including the manner and extent of publication; and
 - (b) In the case of matter published in a periodical, or in the course of a regular activity or presentation (including a radio or television programme), to the proper interest of the defendant in maintaining the style and character of the periodical, activity, or presentation.

28. Punitive damages—In any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

29. Matters to be taken into account in mitigation of damages—In assessing damages in any proceedings for defamation, the following matters shall be taken into account in mitigation of damages:

- (a) In respect of the publication of any correction, retraction, or apology published by the defendant, the nature, extent, form, manner, and time of that publication:

- (b) In respect of the publication, by the defendant, of any statement of explanation or rebuttal, or of both explanation and rebuttal, in relation to the matter that is the subject of the proceedings, the nature, extent, form, manner, and time of that publication:
- (c) The terms of any injunction or declaration that the Court proposes to make or grant:
- (d) Any delay between the publication of the matter in respect of which the proceedings are brought and the decision of the Court in those proceedings, being delay for which the plaintiff was responsible.

Cf. 1954, No. 46, s. 12

30. Misconduct of plaintiff in mitigation of damages—

In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

31. Other evidence in mitigation of damages—In any proceedings for defamation, the defendant may prove, in mitigation of damages, that the plaintiff—

- (a) Has already recovered damages; or
 - (b) Has brought proceedings to recover damages; or
 - (c) Has received or agreed to receive compensation—
- in respect of any other publication by the defendant, or by any other person, of matter that is the same or substantially the same as the matter that is the subject of the proceedings.

Cf. 1954, No. 46, s. 13

32. Defendant's right to prove other matters in mitigation of damages not affected—Nothing in section 29 or section 30 or section 31 of this Act limits any other rule of law by virtue of which any matter is required or permitted to be taken into account, in assessing damages in any proceedings for defamation, in mitigation of damages.

33. Review of damages—(1) In any proceedings for defamation, where a verdict is set aside by the Court by which the proceedings are tried, or by any Court on appeal, on the ground that the damages awarded in the proceedings are excessive or are inadequate, the Court by which the verdict is set aside may, with the consent of the plaintiff and of every

defendant against whom the award was made, substitute its own award of damages in the proceedings.

(2) Where a Court substitutes its own award of damages under subsection (1) of this section, the award so substituted shall be final.

34. Statements in open Court—(1) In any proceedings for defamation, a statement may be made by a party in open Court only in one or more of the following circumstances:

(a) At any time before the final disposition of the proceedings, where—

(i) The parties have agreed that such a statement may be made, and have agreed on the terms of the statement; and

(ii) The Judge, in chambers, has granted leave to make the statement:

(b) Where the proceedings have been settled, and the terms of the settlement permit the party to make the statement:

(c) By the plaintiff, where the plaintiff has accepted, in full satisfaction of the plaintiff's claim, money paid into Court by the defendant, unless the plaintiff has agreed not to make such a statement.

(2) Where—

(a) Any proceedings for defamation are settled, or the plaintiff in any proceedings for defamation accepts, in full satisfaction of the plaintiff's claim, money paid into Court by the defendant; and

(b) Any party to the proceedings wishes to make a statement in open Court; but

(c) The parties to the proceedings cannot agree as to—

(i) Whether a statement should be made; or

(ii) The terms of the statement,—

any party may apply to the Judge, in chambers, to determine the question.

(3) On hearing an application under subsection (2) of this section, the Judge may, if he or she thinks fit,—

(a) Determine the terms of the statement; or

(b) Direct that no statement be made.

PART IV

PROCEDURE

35. Powers of Judge to call conference and give directions—(1) For the purpose of ensuring the just, expeditious, and economical disposal of any proceedings for

defamation, a Judge may at any time, either on the application of any party or without such application, and on such terms as the Judge thinks fit, direct the holding of a conference of parties or their counsel, presided over by a Judge.

(2) At any such conference, the Judge presiding may—

- (a) Identify the matters in issue between the parties, and ascertain whether those issues may be resolved, in whole or in part, by means (including the publication of a correction or a voluntary apology) acceptable to the parties, and, if the parties agree, the Judge may make such order as is necessary to give effect to the agreement between the parties:
 - (b) With the consent of the parties, or on the application of the plaintiff, exercise the powers conferred on a Court by sections 26 and 27 of this Act:
 - (c) Require any party to make admissions in respect of questions of fact; and if that party refuses to make an admission in respect of any such question, that party shall be liable to bear the costs of proving that question, unless the Judge before whom the proceedings are tried is satisfied that the party's refusal was reasonable in all the circumstances, and accordingly orders otherwise in respect of those costs:
 - (d) Require any party to make discovery of documents, or permit any party to administer interrogatories:
 - (e) Fix the time within which any statement of defence shall be filed or any other step in the proceedings (including the filing of any document and the giving of any notice) shall or may be taken by any party:
 - (f) Fix a time and place for the trial of the proceedings:
 - (g) Give such consequential directions as may be necessary.
- (3) In this section "party", in relation to any proceedings for defamation, includes any intended party to those proceedings.

36. Functions of Judge and jury in relation to meaning of matter—Where any proceedings for defamation are tried before a Judge and jury,—

- (a) The submissions of the parties on whether the matter that is the subject of the proceedings is capable of a defamatory meaning; and
 - (b) The ruling of the Judge on that issue—
- shall be made or given in the absence of the jury.

37. Particulars of defamatory meaning—(1) In any proceedings for defamation, the plaintiff shall give particulars

specifying every statement that the plaintiff alleges to be defamatory and untrue in the matter that is the subject of the proceedings.

(2) Where the plaintiff alleges that the matter that is the subject of the proceedings is defamatory in its natural and ordinary meaning, the plaintiff shall give particulars of every meaning that the plaintiff alleges the matter bears, unless that meaning is evident from the matter itself.

(3) Where the plaintiff alleges that the matter that is the subject of the proceedings was used in a defamatory sense other than its natural and ordinary meaning, the plaintiff shall give particulars specifying—

- (a) The persons or class of persons to whom the defamatory meaning is alleged to be known; and
- (b) The other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

Cf. 1908, No. 89, Second Schedule, r. 188; 1985, No. 112, s. 10; S.R. 1992/109, r. 211

38. Particulars in defence of truth—In any proceedings for defamation, where the defendant alleges that, in so far as the matter that is the subject of the proceedings consists of statements of fact, it is true in substance and in fact, and, so far as it consists of an expression of opinion, it is honest opinion, the defendant shall give particulars specifying—

- (a) The statements that the defendant alleges are statements of fact; and
- (b) The facts and circumstances on which the defendant relies in support of the allegation that those statements are true.

Cf. 1908, No. 89, Second Schedule, r. 189; 1985, No. 112, s. 10; S.R. 1992/109, r. 212

39. Notice of allegation that opinion not genuinely held—(1) In any proceedings for defamation, where—

- (a) The defendant relies on a defence of honest opinion; and
- (b) The plaintiff intends to allege, in relation to any opinion contained in the matter that is the subject of the proceedings,—

(i) Where the opinion is that of the defendant, that the opinion was not the genuine opinion of the defendant; or

(ii) Where the opinion is that of a person other than the defendant, that the defendant had reasonable

cause to believe that the opinion was not the genuine opinion of that person,—
the plaintiff shall serve on the defendant a notice to that effect.

(2) If the plaintiff intends to rely on any particular facts or circumstances in support of any allegation to which subsection (1) (b) (i) or (ii) of this section applies, the notice required by that subsection shall include particulars specifying those facts and circumstances.

(3) The notice required by subsection (1) of this section shall be served on the defendant within 10 working days after the defendant's statement of defence is served on the plaintiff, or within such further time as the Court may allow on application made to it for that purpose either before or after the expiration of those 10 working days.

40. Truth and honest opinion to be pleaded separately—In any proceedings for defamation, where the defendant intends to rely on a defence of truth and on a defence of honest opinion, the defendant shall plead each of those defences separately.

41. Particulars of ill will—(1) Where, in any proceedings for defamation,—

(a) The defendant relies on a defence of qualified privilege; and

(b) The plaintiff intends to allege that the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication,—

the plaintiff shall serve on the defendant a notice to that effect.

(2) If the plaintiff intends to rely on any particular facts or circumstances in support of that allegation, the notice required by subsection (1) of this section shall include particulars specifying those facts and circumstances.

(3) The notice required by subsection (1) of this section shall be served on the defendant within 10 working days after the defendant's statement of defence is served on the plaintiff, or within such further time as the Court may allow on application made to it for that purpose either before or after the expiration of those 10 working days.

Cf. 1908, No. 89, Second Schedule, r. 190; 1985, No. 112, s. 10; S.R. 1992/109, r. 213

42. Notice of evidence of bad reputation—In any proceedings for defamation, where the defendant intends to

adduce evidence of specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate, the defendant shall include in the defendant's statement of defence a statement that the defendant intends to adduce that evidence.

43. Claims for damages—(1) In any proceedings for defamation in which a news medium is the defendant, the plaintiff shall not specify in the plaintiff's statement of claim the amount of any damages claimed by the plaintiff in the proceedings.

(2) In any proceedings for defamation, where—

(a) Judgment is given in favour of the plaintiff; and

(b) The amount of damages awarded to the plaintiff is less than the amount claimed; and

(c) In the opinion of the Judge, the damages claimed are grossly excessive,—

the Court shall award the defendant by whom the damages are payable the solicitor and client costs of the defendant in the proceedings.

44. Particulars in support of claim for punitive damages—In any proceedings for defamation, where the plaintiff claims punitive damages, the plaintiff shall give particulars specifying the facts or circumstances that the plaintiff alleges would justify an award of punitive damages against the defendant.

45. Proceedings deemed to be vexatious if no intention to proceed to trial—The commencement of proceedings to recover damages for defamation shall be deemed to be a vexatious proceeding if, when those proceedings are commenced, the plaintiff has no intention of proceeding to trial.

46. Proceedings in respect of publication in different media of same matter—(1) In this section "publication" means the publication of any matter—

(a) In any newspaper; or

(b) By a broadcaster; or

(c) By any cinematographic film in any cinema that is open to the public (whether free or on payment of a charge).

(2) Where any proceedings for defamation have been commenced by any person in respect of the publication of any

matter, no other proceedings for defamation may be commenced by that person in respect of any other publication, at any time before the commencement of the first proceedings, of the same or substantially the same matter, unless those other proceedings are commenced—

- (a) Not later than 28 working days after the commencement of the first proceedings; or
- (b) Within such longer period as the Court in which it is sought to commence the later proceedings may allow, being in no case later than the date on which a date is fixed for the trial of the first proceedings.

(3) Where any proceedings are commenced in breach of subsection (2) of this section, a defendant may adduce evidence of that fact by way of defence at the trial of the proceedings, whether or not the defendant has pleaded that fact by way of defence.

(4) For the purposes of this section, matter in a newspaper shall be deemed to have been published on the date of issue of that newspaper, and at no subsequent time.

Cf. 1954, No. 46, s. 9

47. Notice of multiple actions—(1) Where 2 or more proceedings for defamation have been commenced by the same person in respect of the publication of the same or substantially the same matter, the plaintiff shall as soon as practicable give to every defendant in each of the proceedings such notice of the existence of the other proceedings as is reasonably sufficient to enable each defendant to apply for the consolidation of the proceedings under section 48 of this Act.

(2) Where the plaintiff fails to give the notice required by subsection (1) of this section to any defendant, that defendant may apply to the Court to dismiss or stay the proceedings, and the Court may dismiss or stay the proceedings accordingly.

(3) In this section “publication” has the same meaning as in section 46 of this Act.

Cf. 1954, No. 46, s. 10

48. Consolidation of actions on application of defendants—(1) The High Court, on the application of the defendants in any 2 or more proceedings for defamation commenced in that Court or in a District Court by the same person in respect of the publication of the same or substantially the same matter, may make an order for the consolidation of those proceedings so that they may be tried together.

(2) Where any order is made under subsection (1) of this section in respect of any proceedings for defamation, any defendant in any other proceedings for defamation commenced in respect of the same or substantially the same matter shall be entitled, at any time before the trial of the consolidated proceedings, on making a joint application with the defendants in those proceedings, to be joined in common proceedings with those defendants.

(3) Proceedings that are consolidated under this section shall be tried in the High Court, and shall be tried at such time and place as the High Court may order.

(4) Where any of the proceedings that are consolidated under this section have been commenced in a District Court, the order consolidating the proceedings shall be deemed to be also an order for their removal into the High Court.

(5) In any proceedings that have been consolidated under this section, the following provisions shall apply:

- (a) The Judge or jury shall assess in one sum the whole amount of any damages that may be awarded:
- (b) Notwithstanding paragraph (a) of this subsection, a separate verdict shall be given for or against each defendant in the same way as if the proceedings consolidated had been tried separately:
- (c) If a verdict is given against the defendants in more than one of the proceedings consolidated, the Judge or jury shall apportion, between and against those defendants, the amount of damages so awarded:
- (d) If the Judge at the trial awards to the plaintiff the costs of the proceedings, the Judge shall make such order as the Judge deems just for the apportionment of those costs between and against those defendants.

(6) This section applies to proceedings for slander of title, slander of goods, and other malicious falsehoods as it applies to proceedings for defamation; and references in this section to the same or substantially the same matter shall be construed accordingly.

Cf. 1954, No. 46, s. 11

49. Limitation on subsequent actions—(1) Where any proceedings for defamation have been determined by settlement, judgment, final order, or discontinuance, the plaintiff in those proceedings may not, except by the leave of the Court, commence or continue any other proceedings for defamation against any defendant in the first proceedings in relation to the same publication or to any other publication of

the matter in respect of which the first proceedings were commenced.

(2) Notice of an application for leave under subsection (1) of this section to commence or continue any proceedings for defamation shall be given by the applicant to every person against whom the proceedings are to be commenced or continued.

(3) In this section "Court" means the Court in which it is sought to commence or continue the proceedings for defamation.

50. Striking out for want of prosecution—(1) In any proceedings for defamation, unless the Court in its discretion orders otherwise, the Court shall, on the application of the defendant, order the proceedings to be struck out for want of prosecution if—

(a) No date has been fixed for the trial of the proceedings; and

(b) No other step has been taken in the proceedings within the period of 12 months immediately preceding the date of the defendant's application.

(2) Where any proceedings are struck out under subsection (1) of this section, no further proceedings may be commenced by the plaintiff against any defendant in the proceedings in respect of the same or substantially the same cause of action, except by the leave of the Court in which it is sought to commence those proceedings.

(3) Notice of an application for leave under subsection (2) of this section to commence any proceedings for defamation shall be given by the applicant to every person against whom the proceedings are to be commenced.

(4) Nothing in this section limits any other power of a Court to order any proceedings to be struck out for want of prosecution.

51. Evidence as to publisher or printer—Where, in any proceedings for defamation in respect of the publication of any matter in a book or printed document, or in a number or part of a newspaper or other periodical, that book, document, number, or part contains or bears a statement that it is published or printed by the defendant, that statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

Cf. 1954, No. 46, s. 21

52. General verdict by jury—(1) Where any proceedings for defamation are tried before a jury,—

- (a) The jury may give a general verdict for or against a defendant upon the whole matter put in issue; and
 - (b) The jury shall not be required or directed by the Judge to give a verdict against a defendant merely on proof of the publication by that defendant of the matter that is the subject of the proceedings and on proof of the meaning ascribed to it in the statement of claim.
- (2) Nothing in subsection (1) of this section—
- (a) Limits the discretion of the Judge to give the Judge's opinion and directions to the jury on any issue between the parties, in the same manner as in other cases; or
 - (b) Limits the powers of the jury to return a special verdict, as in other cases; or
 - (c) Prevents a defendant in respect of whom a verdict is given from applying to set aside judgment on such grounds and in such manner as if this section had not been enacted.

Cf. 1954, No. 46, s. 22

PART V

MISCELLANEOUS PROVISIONS

53. Agreements to indemnify against liability for defamation—(1) Subject to subsection (2) of this section, an agreement is not unlawful merely because it indemnifies a person against civil liability for defamation in respect of the publication of any matter.

(2) Nothing in subsection (1) of this section applies where, at the time of the publication, the person indemnified—

- (a) Knows that the matter is defamatory; and
- (b) Does not reasonably believe that there is a good defence to any proceedings brought upon that matter.

Cf. 1954, No. 46, s. 14

54. Act not to derogate from Parliamentary privilege, etc.—Nothing in this Act derogates from any of the powers, privileges, and immunities that, immediately before the commencement of this Act, were enjoyed by—

- (a) The House of Representatives;
- (b) Members of Parliament;
- (c) Any committee or subcommittee of the House of Representatives.

55. Amendment to Limitation Act 1950—The Limitation Act 1950 is hereby amended by inserting in section 4, after subsection (6), the following subsections:

“(6A) Subject to subsection (6B) of this section, a defamation action shall not be brought after the expiration of 2 years from the date on which the cause of action accrued.

“(6B) Notwithstanding anything in subsection (6A) of this section, any person may apply to the Court, after notice to the intended defendant, for leave to bring a defamation action at any time within 6 years from the date on which the cause of action accrued; and the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law (other than the provisions of subsection (6A) of this section), or by any other reasonable cause.”

56. Repeals, revocations, and consequential amendments—(1) The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) The enactments specified in the Third Schedule to this Act are hereby repealed.

(3) The High Court Rules set out in the Second Schedule to the Judicature Act 1908 are hereby amended by revoking rules 188 to 190 and the heading after rule 187.

(4) The District Court Rules 1992 (S.R. 1992/109) are hereby amended by revoking rules 211 to 213 and the heading above rule 211.

SCHEDULES

FIRST SCHEDULE

Sections 16, 17, 18, and 19

PUBLICATIONS PROTECTED BY QUALIFIED PRIVILEGE

PART I

Publications Not Subject to Restrictions in Section 18

1. Any delayed broadcast, by any broadcaster, of proceedings in the House of Representatives.
2. The publication of a fair and accurate report of proceedings in the House of Representatives or in any Committee of the House of Representatives.
3. The publication of a fair and accurate extract from, or summary of, any document or record to which section 13 (3) (a) or (c) of this Act applies.
4. Subject to any provision to the contrary in any other enactment, the publication, in any proceedings before a tribunal or authority established by or pursuant to any enactment (other than proceedings to which section 14 (1) of this Act applies), of any matter by a member of the tribunal or authority, or by a party, representative, or witness in those proceedings.
5. The publication of a fair and accurate report of the pleadings of the parties in any proceedings before any Court in New Zealand, at any time after,—
 - (a) In the case of proceedings before the High Court, a praecipe has been filed in those proceedings;
 - (b) In the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings.
6. The publication of a fair and accurate report of the proceedings of any Court in New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not), or of the result of those proceedings.
7. The publication of a fair and accurate translation of words from one language to another, where the publication—
 - (a) Is by the person who made the translation; and
 - (b) Is by that person in his or her capacity as translator of those words.

PART II

Publications Subject to Restrictions in Section 18

1. A fair and accurate report of the proceedings of a legislature of a territory outside New Zealand or of a committee of any such legislature.
2. A fair and accurate report of the proceedings of a Court outside New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not), or of the result of those proceedings.
3. A fair and accurate report of the proceedings in an inquiry held under the authority of—
 - (a) The Government or Parliament of New Zealand; or
 - (b) The Government or legislature of a territory outside New Zealand,—or a true copy of, or a fair and accurate extract from or summary of, any official report made by the person by whom the inquiry was held.
4. A fair and accurate report of the proceedings of—
 - (a) An international organisation of—
 - (i) Countries or representatives of countries; or
 - (ii) Legislatures or representatives of legislatures; or
 - (iii) Governments or representatives of governments; or

FIRST SCHEDULE—*continued*PUBLICATIONS PROTECTED BY QUALIFIED PRIVILEGE—*continued*

- (b) An international conference at which governments of any countries are represented.
5. A fair and accurate report of the proceedings at a meeting or sitting in any part of New Zealand of—
- (a) A local authority or committee of a local authority or local authorities; or
 - (b) A person or body appointed or constituted by or under, and exercising functions under, any Act (not being a Court or a person holding an inquiry to which clause 3 of this Part of this Schedule applies),—

not being proceedings from which the public or members of the news media or both were excluded.

6. A fair and accurate report of the proceedings, or of the result of the proceedings, in an inquiry held in accordance with the rules of an association formed for the purpose of—

- (a) Promoting or safeguarding the interests of any game, sport, or pastime to the playing or exercise of which members of the public are invited or admitted; or
- (b) Promoting or safeguarding the interests of any trade, business, industry, or profession, or of the persons carrying on or engaged in any trade, business, industry, or profession; or
- (c) Promoting or encouraging the exercise of, or an interest in, any art, science, religion, or learning,—

being an inquiry relating to a person who is a member of the association, or is subject by virtue of a contract to the control of the association.

7. A fair and accurate report of the proceedings, or of the result of the proceedings, in an inquiry held in accordance with the rules of any association formed for the purpose of promoting and safeguarding the standards of the New Zealand press.

8. A fair and accurate report of the proceedings at a meeting held in New Zealand that—

- (a) Is bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern; and
- (b) Is open to the public, whether with or without restriction.

9. (1) A fair and accurate report of—

- (a) The proceedings at a general meeting of a body to which this clause applies (not being a meeting from which the public or members of the news media or both were excluded);
- (b) A report or other document circulated to shareholders or members by the board of directors or other governing body of a body to which this clause applies (not being a report or document circulated on a confidential basis);
- (c) A document circulated to shareholders or members by an auditor of a body to which this clause applies (not being a document circulated on a confidential basis).

(2) This clause applies to—

- (a) Any company or association constituted or registered under any Act;
- (b) Any society registered under the Incorporated Societies Act 1908;
- (c) Any other body corporate operating in New Zealand,—

but does not apply to any private company within the meaning of the Companies Act 1955.

FIRST SCHEDULE—*continued*PUBLICATIONS PROTECTED BY QUALIFIED PRIVILEGE—*continued*

10. A fair and accurate report of the proceedings at a press conference given by or on behalf of any body or person (being a body or person in respect of whose proceedings the publication of any fair and accurate report is, by virtue of section 16 (2) of this Act, protected by qualified privilege).

11. A fair and accurate report of a publication issued under the authority of a government or legislature of a foreign state.

12. A fair and accurate copy of or extract from a register that is kept in pursuance of any Act and that is open to inspection by the public, or of any other document that is required by the law of New Zealand to be open to inspection by the public.

13. A notice or advertisement published by or under the authority of a Court, whether within or outside New Zealand, or a Judge or officer of any Court.

14. A notice or advertisement published for the purpose of complying with a New Zealand Act; but not including a notice of an application to a Court or tribunal, or to any other statutory office or statutory body, unless the application has been filed before the publication of the notice.

15. A copy or a fair and accurate report or summary of a statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or departmental officer, or any local authority or officer of the authority.

PART III

Interpretation

In this Schedule, unless the context otherwise requires,—

“Court” includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between states; and also includes a court martial:

“Government”, in relation to a territory outside New Zealand that is subject to a central and a local government, means either of those governments:

“Legislature”, in relation to a territory outside New Zealand that is subject to a central and a local legislature, means either of those legislatures:

“Local authority” means a local body or public body named or specified in the First Schedule or the Second Schedule to the Local Government Official Information and Meetings Act 1987.

Section 56 (1)

SECOND SCHEDULE
ENACTMENTS AMENDED

Enactment	Amendment
1971, No. 150—The Race Relations Act 1971 (R.S. Vol. 14, p. 479)	By repealing section 20 (3), and substituting the following subsection: “(3) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Conciliator or the Deputy Conciliator under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	By repealing section 26 (4) (as substituted by section 5 of the Ombudsmen Amendment Act (No. 2) 1982, and amended by section 57 (1) of the Local Government Official Information and Meetings Act 1987), and substituting the following subsection: “(4) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by an Ombudsman under this Act, or under the Official Information Act 1982, or under the Local Government Official Information and Meetings Act 1987, shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1976, No. 19—The Wanganui Computer Centre Act 1976	By repealing section 18B (as inserted by section 6 of the Wanganui Computer Centre Amendment Act 1980), and substituting the following section: “18B. Qualified privilege —For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made under this Act by the Commissioner or the deputy of the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1977, No. 49—The Human Rights Commission Act 1977 (R.S. Vol. 18, p. 227)	By repealing section 76 (3), and substituting the following subsection: “(3) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Commission under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

SECOND SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1978, No. 103—The Securities Act 1978 (R.S. Vol. 15, p. 533)	<p>By repealing section 28 (7) (as substituted by section 10 of the Securities Amendment Act 1982), and substituting the following subsection:</p> <p>“(7) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report or comment made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”</p>
1985, No. 151—The Law Commission Act 1985	<p>By repealing clause 14 (5) of the First Schedule, and substituting the following subclause:</p> <p>“(5) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”</p>
1986, No. 5—The Commerce Act 1986	<p>By repealing section 106 (10), and substituting the following subsection:</p> <p>“(10) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any statement, document, determination, clearance, authorisation, or decision made by the Commission in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”</p>
1987, No. 174—The Local Government Official Information and Meetings Act 1987	<p>By omitting from section 52 the words “the publication is proved to be made with malice”, and substituting the words “, in any proceedings for defamation in respect of that publication, the plaintiff proves that, in publishing the matter, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication”.</p>

SECOND SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1987, No. 174—The Local Government Official Information and Meetings Act 1987— <i>continued</i>	By omitting from section 53 (1) the words “the statement is proved to be made with malice”, and substituting the words “, in any proceedings for defamation in respect of the statement, the plaintiff proves that, in making the statement, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication”.
1988, No. 2—The Police Complaints Authority Act 1988	By omitting from section 33 (4) the words “clause 5 of the First Schedule to the Defamation Act 1954”, and substituting the words “clause 3 of Part II of the First Schedule to the Defamation Act 1992”.
1988, No. 111—The Coroners Act 1988	By omitting from section 29 (3) the words “or broadcasting station within the meaning of the Defamation Act 1954”, and substituting the words “within the meaning of the Defamation Act 1992, or by means other than by broadcasting within the meaning of the Broadcasting Act 1989”.
1989, No. 24—The Children, Young Persons, and Their Families Act 1989	By repealing section 420 (4), and substituting the following subsection: “(4) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1989, No. 25—The Broadcasting Act 1989	By repealing section 13 (4), and substituting the following subsection: “(4) Every statement published pursuant to an order made under subsection (1) of this section shall be deemed for the purposes of clause 13 of Part II of the First Schedule to the Defamation Act 1992 to be a notice published on the authority of a Court.” By repealing section 15 (3), and substituting the following subsection:

SECOND SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1989, No. 25—The Broadcasting Act 1989— <i>continued</i>	<p>“(3) Every notice published under subsection (1) of this section shall be deemed for the purposes of clause 6 of Part I of the First Schedule to the Defamation Act 1992 to be a fair and accurate report of the proceedings of a Court in New Zealand.”</p> <p>By repealing so much of the Second Schedule as relates to the Defamation Act 1954.</p>
1991, No. 126—The Privacy Commissioner Act 1991	<p>By repealing section 29 (5), and substituting the following subsection:</p> <p>“(5) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”</p>

THIRD SCHEDULE

Section 56 (2)

ENACTMENTS REPEALED

- 1954, No. 46—The Defamation Act 1954. (R.S. Vol. 2, p. 307.)
- 1956, No. 107—The Electoral Act 1956: section 128. (R.S. Vol. 26, p. 173.)
- 1958, No. 63—The Defamation Amendment Act 1958. (R.S. Vol. 2, p. 321.)
- 1961, No. 43—The Crimes Act 1961: Part IX, section 357 (5), and so much of the Third Schedule as relates to the Defamation Act 1954. (R.S. Vol. 1, p. 635.)
- 1974, No. 82—The Defamation Amendment Act 1974. (R.S. Vol. 2, p. 322.)
- 1976, No. 144—The Local Elections and Polls Act 1976: section 55. (R.S. Vol. 28, p. 683.)
- 1980, No. 52—The Wanganui Computer Centre Amendment Act 1980: section 6.
- 1981, No. 120—The Electoral Amendment Act 1981: so much of the Schedule as relates to section 128 of the Electoral Act 1956. (R.S. Vol. 26, p. 346.)

This Act is administered in the Department of Justice.