

DEFAMATION BILL

EXPLANATORY NOTE

THIS Bill amends the law relating to defamation and certain other related actions.

The Bill is based in large part on the recommendations contained in the Report of the Committee on Defamation (1977). That Committee was set up in 1975, with terms of reference requiring it to study and make recommendations on the law of defamation.

The principal recommendations of the Committee on Defamation that are adopted in the Bill are as follows:

- (a) The defence of justification should be renamed “truth”, and amended to enable the defendant to succeed with that defence if he or she can show that the words complained of are either true or substantially true.

Clause 8 renames the defence of justification the defence of truth. It also provides that the defence will succeed if—

(i) The defendant proves that the facts contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or

(ii) 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.

- (b) The defence of fair comment should be renamed, and the common law concept of “malice” (which defeats a defence of fair comment) replaced with a statutory provision requiring a defendant relying on the defence to prove that the opinion expressed was his or her genuine opinion, or, where the defendant was not the author, the genuine opinion of the author. The requirement that comment should be well-founded where there is an imputation of corrupt or dishonourable motives should be abolished.

Clause 9 provides that the defence of fair comment is to be known as the defence of “honest opinion” (rather than simply “comment” as the Committee recommended). It also provides that a defence of honest opinion shall fail unless,—

(i) In the case of a defendant who is the author of the matter containing the opinion, the defendant proves that the opinion expressed was the defendant's genuine opinion:

(ii) In the case of a defendant who is not the author of the matter containing the opinion, the defendant proves that the defendant believed that the opinion was the genuine opinion of the author.

It is further provided that a defence of honest opinion shall not fail because the defendant was motivated by malice, and that 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 honest opinion having regard to—

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

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

Clause 9 (5) provides that the requirements for the establishment of a defence of honest comment in proceedings for defamation are the same whether or not the matter on which the proceedings are based attributes a dishonourable, corrupt, or base motive to the plaintiff.

- (c) The list of reports in the First Schedule to the Defamation Act 1954 (being reports that are protected by the defence of qualified privilege) should be revised and updated, and the common law concept of "malice", which defeats a defence of qualified privilege, should be replaced by a statutory provision to the effect that the defence fails where it is shown that the defendant was actuated by ill will, or otherwise took improper advantage of the occasion of publication.

Clause 11 and the *First Schedule* to the Bill set out a revised and updated list of the situations where the defence of qualified privilege applies. The list of reports in the *First Schedule* has also been simplified in certain cases.

Clause 12 provides that a defence of qualified privilege is not to fail because the defendant was actuated by malice, but shall fail if the plaintiff proves that, in publishing the matter that is the subject of the proceedings, the defendant was motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

- (d) A bookseller should be able to successfully plead the common law defence of innocent dissemination if he or she can show—

(i) That he or she did not know that the book or paper contained the defamatory material; and

(ii) That he or she did not know that the book or paper was of a character likely to contain defamatory material; and

(iii) That his or her lack of knowledge was not due to any negligence on his or her part.

The defence of innocent dissemination should also be extended to printers.

Clause 14 implements these recommendations.

- (e) The provisions of sections 9 and 10 of the Defamation Act 1954, which impose restrictions on the commencement of proceedings in respect of the publication of the same or substantially the same defamatory

matter in different newspapers, should be extended to include news agencies, radio and television broadcasting stations, and cinemas.

Clauses 35 and 36 implement this recommendation.

- (f) Punitive damages should only be awarded in cases where the defendant has acted in flagrant and contumelious disregard of the plaintiff's rights.

Clause 20 gives effect to this recommendation.

- (g) It should be enacted that an action for a declaration alone can be brought in defamation proceedings.

Clause 17 gives effect to this recommendation.

- (h) The occasions on which a statement may be made in open Court should be set out in statutory form.

Clause 25 gives effect to this recommendation.

- (i) Where a verdict is set aside on the ground that the damages are excessive or too small, the Court should have a discretion to substitute its own award where both parties give their consent.

Clause 24 gives effect to this recommendation.

- (j) To deal with the problem of "gagging writs", where proceedings for defamation are brought against a news media defendant, the plaintiff should be prevented from specifying the amount of damages claimed. It should also be enacted that the issue of a "gagging writ" (i.e., where there is no intention to see the proceedings through) shall be deemed to be a vexatious proceeding.

Clauses 33 and 34 give effect to these recommendations.

- (k) The limitation period for defamation actions should be reduced from 6 years to 2 years, but with a power in the Court to permit an action to be brought at any time within 6 years after the accrual of the cause of action on the grounds of mistake or other reasonable cause.

Clause 46 amends the Limitation Act 1950 accordingly.

- (l) It should be enacted that, unless the Court orders otherwise, a defendant shall be entitled to have defamation proceedings against him or her dismissed for want of prosecution when the proceedings have not been set down for trial and no step has been taken in the proceedings by either party for 1 year.

Clause 39 gives effect to this recommendation.

- (m) The provisions relating to criminal libel and slander in Part IX of the Crimes Act 1961 and sections 15 and 16 of the Defamation Act 1954 should be repealed, and the offence of criminal libel completely abolished.

Clause 47 (2) and the *Third Schedule* give effect to these recommendations.

The Bill also contains several provisions that were not the subject of a recommendation by the Committee on Defamation. These are as follows:

- (a) Provision for a plaintiff in proceedings for defamation to seek an order requiring the defendant to publish a correction of the matter that is the subject of the proceedings. This power is contained in *clause 19*.
- (b) A list of the matters that a Court, in assessing damages in proceedings for defamation, should take into account in mitigation of damages. This matter is dealt with in *clause 21*.
- (c) Provision for a Judge to call a conference of the parties to proceedings for defamation in order to ensure that the proceedings are dealt with expeditiously. *Clause 26* makes such provision.

The Bill does not implement the recommendation of the Committee on Defamation that a new defence of qualified privilege for the news media should be enacted. (See Chapter 10 of the Committee's Report.)

Clause by Clause Analysis

The following is a clause by clause analysis of the Bill.

Clause 1 relates to the Short Title and commencement of the Bill. The Bill is to come into force on *1 March 1989*.

Clause 2 defines certain terms used in the Bill.

Clause 3 is an application provision. It provides that the Bill binds the Crown, and that the Bill is to apply to proceedings commenced after the Bill comes into force, whenever the cause of action arose, but is not to apply to proceedings commenced before the Bill comes into force.

PART I

CAUSES OF ACTION

Clause 4 provides that in proceedings for defamation, it is not necessary to allege or prove special damage (i.e., material loss). It re-enacts section 4 (1) of the Defamation Act 1954.

Clause 5 provides that 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 damage to the plaintiff. It re-enacts section 5 (1) of the Defamation Act 1954.

Clause 6 provides that proceedings for defamation brought by a body corporate shall fail unless the body corporate alleges and proves that the publication of the words that are the subject of the proceedings has caused, or is likely to cause, pecuniary loss to that body corporate. As recommended by the Committee on Defamation, the provision purports to state the existing common law rule in relation to defamation proceedings by bodies corporate, in order to remove any doubt in the matter. (See Chapter 17 of the Committee's Report.)

Clause 7 provides that there is a single right of action in respect of the publication of defamatory matter, irrespective of the number of imputations the matter contains. It implements the recommendation of the Committee on Defamation that the right to 2 separate awards of damages where both a natural and ordinary meaning and a legal innuendo have been successfully pleaded should be abolished. (See paras 83 and 84 of the Committee's Report and para. 91 of the Australian Law Reform Commission Report No. 11 "Unfair Publication: Defamation and privacy".)

PART II

DEFENCES

Clause 8 implements certain of the recommendations of the Committee on Defamation in relation to the defence of justification (i.e., where the defendant alleges that the matter was true).

Subclause (1) re-names the defence of justification the defence of "truth".

Subclause (2) provides that 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. The provision is necessary for the establishment of the defence provided by *subclause (3) (b)*.

Subclause (3) (a) provides that in proceedings for defamation, a defence of truth shall succeed if the defendant proves that the facts contained in the matter that is the subject of the proceedings were true, or not materially different from the truth.

This means that a defendant has a good defence if he or she establishes the “substance” or “sting” of the matter alleged to be defamatory. It is not necessary for the defendant to prove that the matter is literally true. (See paras 112 to 115 of the Committee’s Report.)

Subclause (3) (b) provides that in proceedings for defamation based on all or any of the words in a publication, a defence of truth shall succeed if the defendant proves that the publication, taken as a whole, was in substance true, or was in substance not materially different from the truth. The provision is intended to overcome unfairness to a defendant where a plaintiff selects from a number of statements in a publication only those which the plaintiff knows the defendant cannot justify, and ignores others that are true. Under the existing law, the defendant cannot prove the truth of the statements not sued on in order to show that the plaintiff’s reputation was not materially injured by the statements that are untrue. (See paras 108 to 111 of the Committee’s Report.)

Clause 9 implements certain of the recommendations of the Committee on Defamation in relation to the defence of fair comment.

Subclause (1) re-names the defence of fair comment the defence of “honest opinion”. (The Committee recommended that it be re-named “comment”.)

Subclauses (2) and (3) abolish the common law concept of “malice” (i.e., where a publisher, in making a comment, was dishonest or reckless or actuated by spite, ill will, or any other indirect or improper motive), which defeats a defence of fair comment, and replace it with a simpler, statutory statement of the concept. Where proceedings for defamation are brought in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion shall fail unless,—

- (a) In the case of a defendant who is the author of the matter containing the opinion, the defendant proves that the opinion expressed was the defendant’s genuine opinion:
- (b) In the case of a defendant who is not the author of the matter containing the opinion, the defendant proves that the defendant believed that the opinion was the genuine opinion of the author.

It should be noted that burden of proving that the opinion expressed was honestly held rests on the defendant, whereas under existing law a plaintiff must establish the existence of malice. (See paras 148 to 155 of the Committee’s Report.)

Subclause (4) re-enacts section 8 of the Defamation Act 1954, but widens its scope. At present, that provision enables a defence of fair comment to succeed even if the defendant cannot prove the truth of every fact stated in the matter containing the opinion, as long as the opinion is fair comment having regard to the facts that are proved to be true. However, the facts proved must be contained in the part of the publication complained of. Where the plaintiff has complained of only part of a longer publication, the defendant cannot rely on facts contained in the remainder of the publication. *Subclause (4)* allows the defendant to support his or her opinion by relying on—

- (a) Any facts that are alleged or referred to in the publication containing the matter that is the subject of the proceedings and that are proved to be true, or not materially different from the truth; and
- (b) Any other facts that were generally known at the time of the publication and that are proved to be true.

(See paras 143 to 147 of the Committee’s Report.)

Subclause (5) provides that the requirements for the establishment of a defence of honest comment in proceedings for defamation are the same whether or not the matter on which the proceedings are based attributes a dishonourable,

corrupt, or base motive to the plaintiff. Under existing law, there is conflicting authority whether there is a requirement that comment that attributes such motives must be not only honest but well-founded. *Subclause (5)* makes it clear that there is no such requirement. (See paras 156 to 160 of the Committee's Report.)

Clause 10 lists a number of circumstances where the publication of matter is protected by absolute privilege (i.e., no proceedings will lie even if the matter is published with knowledge that it is untrue, or with malicious intent). The list is as follows:

- (a) Proceedings in the House of Representatives (as such proceedings are defined in *clause 2*);
- (b) Any live broadcast, by radio or television, of proceedings in the House of Representatives;
- (c) Anything said, written, or done in any proceedings before—
 - (i) A tribunal or authority that is established by or pursuant to any enactment and that has power to compel the attendance of witnesses; or
 - (ii) A tribunal or authority that has a duty to act judicially,—
 - by a member of the tribunal or authority, or by a party, representative, or witness;
- (d) A communication between any person and a barrister or a solicitor for the purpose of enabling that person to seek or obtain legal advice.

The inclusion of the matters listed in paragraphs (a), (b), and (c) above follows the recommendations of the Committee on Defamation. (See paras 166 to 193 of the Committee's Report.)

Subclause (5) makes it clear that the list is not exhaustive.

Clause 11 lists certain matters that are protected by qualified privilege (i.e., a person may not be sued in defamation for publishing the matter unless he or she took improper advantage of the occasion to publish defamatory material). The list is as follows:

- (a) Any delayed broadcast, by radio or television, of proceedings in the House of Representatives;
- (b) A fair and accurate report of proceedings in the House of Representatives;
- (c) The publication, by or under the authority of the House of Representatives, of any extract from or summary of any report, paper, votes, or proceedings;
- (d) The publication, in any proceedings before a tribunal or authority established by or pursuant to any enactment (other than proceedings to which *clause 10 (3)* applies), of any matter by a member of the tribunal or authority, or by a party, representative, or witness in those proceedings;
- (e) 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,—
 - (i) In the case of proceedings before the High Court, a praecipe has been filed in those proceedings;
 - (ii) In the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings;
- (f) 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;

- (g) The publication of a fair and accurate translation of words from one language to another:
- (h) The publication of a report or other matter specified in *Part I* of the *First Schedule*, if it is a matter of public interest at the time that it is published.

The list follows the recommendations of the Committee on Defamation at paras 194 to 227 and 344 to 348 of its Report. The opportunity has also been taken to simplify the application of several of the clauses of *Part I* of the *First Schedule*.

Subclause (4) makes it clear that the list is not exhaustive.

Clause 12 relates to matters that will rebut a defence of qualified privilege.

Subclauses (1) and (2) implement the recommendation of the Committee on Defamation that the common law concept of “malice”, which defeats a defence of qualified privilege, should be abolished, and replaced with a statutory provision (see paras 195 to 201 of the Committee’s Report). Thus *subclause (1)* provides that 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 motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

Subclause (3) re-enacts section 17 (2) of the Defamation Act 1954, and provides that a defence of qualified privilege in respect of any publication to which *Part I* of the *First Schedule* applies shall fail if the defendant has failed to comply with the plaintiff’s request to publish a reasonable letter or statement by way of explanation or contradiction.

Clause 13 provides that where the defence of honest opinion or of qualified privilege is relied upon by a defendant, the defence is not defeated by the existence of improper motives on the part of any other person who was jointly responsible with the defendant for the publication complained of. (See paras 280 to 294 of the Report of the Committee on Defamation.)

Clause 14 enacts in statutory form the common law defence of innocent dissemination, and extends it to cover printers. (See paras 322 to 337 of the Report of the Committee on Defamation.) The clause provides that in 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 (as defined in *clause 2*) 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.

Clause 15 provides that 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.

Clause 16 relates to the determination of the reasonableness or unreasonableness of a letter or statement by way of explanation or contradiction under *clause 12 (3) (a)*, or a retraction or statement of explanation or rebuttal under *clause 18*. (See paras 264 to 266 of the Report of the Committee on Defamation.)

Subclause (1) provides that it is evidence of the reasonableness of any such statement, letter, or retraction 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.

Subclause (2) provides that 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 so determined.

Subclause (3) provides that any issue as to the content or presentation of any such statement, letter, or retraction may, on the application of any person, be determined, in chambers, by a Judge.

PART III

REMEDIES

Clause 17 provides that in proceedings for defamation, the plaintiff may seek a declaration that the defendant is liable to the plaintiff in defamation. It further provides that if, in such proceedings, the plaintiff seeks only a declaration and costs, and the Court makes the declaration sought, the plaintiff shall be awarded solicitor and client costs against the defendant, unless the Court orders otherwise. (See paras 401 to 405 of the Report of the Committee on Defamation.)

Clause 18 makes provision for the publication of a retraction or reply (a statement of explanation or rebuttal) where a person claims to have been defamed by any matter published in a news medium. Where, in response to a request to do so, the publisher agrees to publish such a retraction or reply, the publisher must also offer to pay to the person who made the request,—

- (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 plaintiff in connection with the publication of the retraction or reply; and
- (c) All other expenses reasonably incurred by the plaintiff in connection with the publication complained of; and
- (d) Compensation for any pecuniary loss suffered by the plaintiff as a direct result of the publication complained of.

Clause 19 makes provision for a plaintiff in proceedings for defamation to seek an order requiring the defendant to publish a correction of the matter that is the subject of the proceedings. Where the plaintiff seeks only a correction order and costs, and the Court makes such an order, the plaintiff is to be awarded solicitor and client costs against the defendant, unless the Court orders otherwise. (See paras 258 to 259 of the Australian Law Reform Commission Report No. 11 “Unfair Publication: Defamation and privacy”.)

Clause 20 relates to the awarding of punitive damages in proceedings for defamation. It gives effect, in part, to the recommendations of the Committee on Defamation on this matter (see paras 387 to 391 of the Committee’s Report). The clause provides that punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

It does not implement the Committee’s recommendation that where proceedings for defamation are tried before a Judge and jury, the Judge should determine whether the plaintiff is entitled to recover punitive damages, and assess the amount of those damages.

Clause 21 sets out certain matters that are to be taken into account in mitigation of damages in proceedings for defamation. The matters listed are as follows:

- (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 reply 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 order for correction, or 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 action was brought and the decision of the Court in the proceedings, being delay for which the plaintiff was responsible.

Clause 22 provides that in 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.

Under existing law, the defendant may mitigate damages by giving evidence that proves that the plaintiff has a bad general reputation. However, the defendant cannot give evidence of specific facts and circumstances to show the disposition of the defendant. The Committee on Defamation thought that this rule was too restrictive, and recommended its abolition (see paras 393 to 395 of the Committee's Report). *Clause 22* gives effect to that recommendation. It should be noted that the evidence of misconduct that is admissible under this clause is limited to that aspect of the plaintiff's reputation with which the defamation is concerned.

Clause 23 re-enacts section 13 of the Defamation Act 1954, and provides that in 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.

Clause 24 provides that where a verdict in proceedings for defamation is set aside by the Court by which the proceedings were 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 parties, substitute its own award of damages, and the award so substituted is final.

Under existing law, the Court cannot substitute its own award where it considers that the damages awarded are excessive or inadequate. The Committee on Defamation recommended that the Court have such a power if the parties consent. (See paras 470 to 472 of the Committee's Report.) *Clause 24* gives effect to that recommendation.

Clause 25 gives effect to the recommendations of the Committee on Defamation in relation to the making of statements in open Court. (See paras 406 to 410 of the Committee's Report.)

Subclause (1) specifies that such a statement may be made 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.

Subclauses (2) and (3) provide that where proceedings for defamation are settled, a Judge in chambers may settle any disagreement between the parties over whether a statement in open Court should be made or the terms of any such statement.

PART IV PROCEDURE

Clause 26 makes provision for a Judge to call a conference of the parties to proceedings for defamation, and give certain directions in relation to the proceedings, for the purpose of ensuring the just, expeditious, and economical disposal of the proceedings. The provision is based on section 10 of the Judicature Amendment Act 1972 (as substituted by section 14 of the Judicature Amendment Act 1977).

Clause 27 provides that where 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.

The clause gives effect to the recommendations of the Committee on Defamation at paras 85 to 87 of its Report.

Clause 28 requires the plaintiff in proceedings for defamation to give particulars specifying, in relation to the matter that is the subject of the proceedings,—

- (a) Every statement that the plaintiff alleges to be defamatory and untrue:
- (b) Where the plaintiff alleges that the matter is defamatory in its natural and ordinary meaning, every meaning that the plaintiff alleges the matter bears, unless that meaning is evident from the matter itself:
- (c) Where the plaintiff alleges that the matter was used in a defamatory sense other than its natural and ordinary meaning, the persons or class of persons to whom the defamatory meaning is alleged to be known, and the other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

The clause gives effect to the recommendations of the Committee on Defamation at paras 88 to 98 of its Report.

Clause 29 provides that where, in proceedings for defamation, 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 must 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.

The provision is in the same terms as rule 189 of the High Court Rules. (See paras 161 to 164 of the Report of the Committee on Defamation.)

Clause 30 provides that where a plaintiff in proceedings for defamation intends to challenge a defendant's reliance on the defence of honest opinion by alleging that the opinion was not genuinely held, the plaintiff must give notice to the defendant with particulars of any facts and circumstances that the plaintiff relies on in support of the allegation. (See para. 155 of the Report of the Committee on Defamation.)

Clause 31 requires a defendant in proceedings for defamation who intends to rely on a defence of truth and on a defence of honest opinion to plead each of those defences separately. (See para. 164 of the Report of the Committee on Defamation.)

Clause 32 provides that where, in proceedings for defamation, 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 proceeding relates (which evidence is made admissible by *clause 22*), the defendant shall include in the defendant's statement of defence a statement that the defendant intends to adduce that evidence. (See para. 394 of the Report of the Committee on Defamation.)

Clauses 33 and 34 implement the recommendations of the Committee on Defamation in relation to the problem of "gagging writs" (i.e., a defamation writ that claims high damages but is only intended to stifle the publication of further matter on the subject). (See paras 412 to 426 of the Committee's Report.)

Clause 33: Subclause (1) provides that in 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.

Subclause (2) provides that where, in proceedings for defamation,—

(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 defendant's solicitor and client costs.

Clause 34 provides that the commencement of proceedings to recover damages for defamation is deemed to be a vexatious proceeding if, when those proceedings are commenced, the plaintiff has no intention of proceeding to trial.

The effect of this provision is that a barrister or solicitor who commences such proceedings will be liable to disciplinary action under the Law Practitioners Act 1982.

Clause 35 re-enacts section 9 of the Defamation Act 1954, and incorporates the amendments recommended by the Committee on Defamation (see paras 315 to 320 of the Committee's Report). The clause provides that where proceedings for defamation have been commenced by any person in respect of the publication of any matter in any newspaper, or by a radio or television station, or by any film in a cinema open to the public, no other proceedings for defamation may be commenced by that person in respect of any other publication (in any of those media), 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.

Clause 36 re-enacts section 10 of the Defamation Act 1954, which requires a plaintiff who commences 2 or more proceedings for defamation in respect of the publication of the same or substantially the same matter to give notice of those proceedings to every defendant in each of the proceedings.

Clause 37 re-enacts section 11 of the Defamation Act 1954, which makes provision for the consolidation of 2 or more proceedings for defamation, slander of title, slander of goods, and other malicious falsehoods commenced by the same person in respect of the publication of the same or substantially the same matter.

Clause 38 provides that 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 granted on an application of which notice has been given to the defendant, 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. (See para. 320 of the Report of the Committee on Defamation.)

Clause 39 makes provision for a defendant to apply for the striking out of proceedings for defamation for want of prosecution where no date has been fixed for the trial of the proceedings and no other step has been taken in the proceedings for 1 year. Where the proceedings are struck out, 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. (See paras 477 to 480 of the Report of the Committee on Defamation.)

Clause 40 re-enacts section 18 of the Defamation Act 1954, which provides for a Court to stay any proceedings for defamation that are commenced in respect of the publication, by order or under the authority of the House of Representatives, of a report, paper, votes, or proceeding.

Clause 41 re-enacts section 19 of the Defamation Act 1954, which provides for a Court to stay any proceedings for defamation that are commenced in respect of the publication of a copy of a report, paper, votes, or proceeding that is published by order or under the authority of the House of Representatives.

Clause 42 re-enacts section 21 of the Defamation Act 1954, which relates to proof of the publisher or printer of any book or other printed matter that is the subject of proceedings for defamation.

Clause 43 re-enacts section 22 of the Defamation Act 1954, which provides that the jury may give a general verdict in favour of the defendant in proceedings for defamation, even though it has been proved that the defendant has published matter that in the opinion of the Judge is defamatory.

PART V
MISCELLANEOUS PROVISIONS

Clause 44 re-enacts section 14 of the Defamation Act 1954, which provides that an agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter is not unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that there is a good defence to any proceedings brought upon it.

Clause 45 imposes restrictions on appeals against correction orders made under *clause 19*. It is based on recommendations contained in the Australian Law Reform Commission Report No. 11 "Unfair Publication: Defamation and privacy". (See para. 292 of that report.)

Subclause (1) provides that no appeal lies against a correction order except—

- (a) On the ground that the order was made as a result of an error of law; or
- (b) As part of an appeal against the whole or any part of any final order made in the proceedings in which the order was made (other than any proceedings in which the plaintiff seeks only a correction order and costs).

Subclause (2) provides that where an appeal is lodged against a correction order, or against the whole or any part of any final order made in any proceedings in which a correction order was made, the correction order shall remain in force pending the appeal, unless the Court in which the appeal is lodged orders otherwise.

Clause 46 amends the Limitation Act 1950. The amendment reduces the limitation period for defamation actions from 6 years to 2 years, but with a power in the Court to permit an action to be brought at any time within 6 years after the accrual of the cause of action on the grounds of mistake or other reasonable cause. This amendment was recommended by the Committee on Defamation at paras 473 to 475 of its Report.

Clause 47 and the *Second and Third Schedules* effect consequential repeals and amendments. Among the enactments repealed are the provisions relating to criminal libel and slander in Part IX of the Crimes Act 1961 and sections 15 and 16 of the Defamation Act 1954. Section 128 of the Electoral Act 1956, which makes it an offence to publish, at the time of a parliamentary election, defamatory matter about a candidate, and section 55 of the Local Elections and Polls Act 1976, which creates an identical offence in relation to local body elections, are also repealed. These repeals were recommended by the Committee on Defamation at paras 443 to 456 of its Report.

DEFAMATION

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A BILL INTITULED

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

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

1. Short Title and commencement—(1) This Act may be 5
cited as the Defamation Act 1988.

(2) This Act shall come into force on the 1st day of March 1989.

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

“Broadcasting station” means a broadcasting station 10
operated by the Broadcasting Corporation of New Zealand under the Broadcasting Act 1976, or a private broadcasting station operated pursuant to a warrant or authorisation for the time being in force under that Act: 15

“Defamation” includes libel and slander:

“Distributor” includes—

(a) A bookseller; and

(b) A librarian:

“House of Representatives” includes— 20

(a) A committee or subcommittee of the House of Representatives:

(b) A committee, subcommittee, or other group or body of members of Parliament, or of members of Parliament and any officer or officers of the House of 25 Representatives, where that committee, subcommittee, group, or body is appointed pursuant to the authority of the House of Representatives for the purpose of carrying out a function of the House of Representatives or of representing the House of 30 Representatives:

“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 35 Court, a Judge of that Court:

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

“Newspaper” means a paper— 40

(a) Containing public news or observations on public news; or

(b) Consisting wholly or mainly of advertisements—

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

5

“Proceedings in the House of Representatives” includes—

(a) Anything said, written, or done, in the House of Representatives, by—

10

(i) A member of Parliament or an officer of the House of Representatives; or

(ii) Any person required or authorised to attend before the House of Representatives—

for the purpose of the business being transacted or about to be transacted:

15

(b) Anything said, written, or done between—

(i) Members of Parliament; or

(ii) A member of Parliament and an officer of the House of Representatives; or

20

(iii) A member of Parliament and a Minister of the Crown—

for the purpose of enabling a member of Parliament or an officer of the House of Representatives to carry out his or her functions, if the thing said, written, or done is no more than is necessary to enable that member or officer to carry out his or her functions:

25

“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—

30

(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.

35

(2) The provisions of **Part II** 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. 5

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. 10

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

6. Proceedings for defamation 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— 15

(a) Has caused pecuniary loss; or

(b) Is likely to cause pecuniary loss— 20
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. 25

PART II

DEFENCES

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. 30

(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— 35

(a) The defendant proves that the facts 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

9. Honest opinion—(1) 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.

(2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion shall fail unless,—

(a) In the case of a defendant who is the author of the matter containing the opinion, the defendant proves that the opinion expressed was the defendant's genuine opinion:

(b) In the case of a defendant who is not the author of the matter containing the opinion, the defendant proves that the defendant believed that the opinion was the genuine opinion of the author.

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

(4) 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 honest 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.

(5) 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.

Cf. 1954, No. 46, s. 8

10. Absolute privilege—(1) Proceedings in the House of Representatives are protected by absolute privilege.

(2) Any live broadcast, by any broadcasting station, of proceedings in the House of Representatives is protected by absolute privilege. 5

(3) 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 10

(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.

(4) A communication between any person and a barrister or a solicitor for the purpose of enabling that person to seek or obtain legal advice is protected by absolute privilege. 15

(5) Nothing in this section limits any other rule of law that relates to absolute privilege.

11. Qualified privilege—(1) Subject to **subsection (2)** of this section, the following matters are protected by qualified privilege: 20

(a) Any delayed broadcast, by any broadcasting station, of proceedings in the House of Representatives:

(b) A fair and accurate report of proceedings in the House of Representatives: 25

(c) The publication, by or under the authority of the House of Representatives, of any extract from or summary of any report, paper, votes, or proceedings:

(d) 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 10 (3)** 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: 30 35

(e) 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,—

(i) In the case of proceedings before the High Court, a praecipe has been filed in those proceedings: 40

(ii) In the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings:

- (f) 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:
- 5 (g) The publication of a fair and accurate translation of words from one language to another:
- (h) Subject to **subsection (3)** of this section and to **section 12 (3)** of this Act, the publication of a report or other matter
- 10 specified in **Part I** of the **First Schedule** to this Act.
- (2) Nothing in **subsection (1)** of this section protects the publication of a report or other matter the publication of which 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 other
- 15 matter arose.
- (3) Nothing in **subsection (1) (h)** of this section protects the publication of a report or other matter specified in **Part I** of the **First Schedule** to this Act unless it is a matter of public interest at the time that it is published.
- 20 (4) Nothing in this section limits any other rule of law relating to qualified privilege.

Cf. 1954, No. 46, ss. 17, 20; 1974, No. 82, s. 2

- 12. Rebuttal of qualified privilege**—(1) In any
- 25 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 motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.
- 30 (2) Subject to **subsection (1)** of this section, a defence of qualified privilege shall not fail because the defendant was motivated by malice.
- (3) In any proceedings for defamation in respect of the publication in any newspaper, or as part of a programme or
- 35 service provided by a broadcasting station, of a report or other matter specified in **Part I** of the **First Schedule** to this Act, a defence of qualified privilege under **section 11 (1) (h)** of this Act shall fail if the plaintiff alleges and proves—
- 40 (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)

13. 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 honest opinion. 5

(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. 10 15

(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. 20

14. 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— 25

- (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 30
- (c) That that person's lack of knowledge was not due to any negligence on that person's part.

15. 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. 35

16. 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 40

section 12 (3) (a) of this Act, or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 18 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 12 (3) (a) of this Act, or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 18 of this Act, may, on the application of any person, be determined, in chambers, by a Judge.

PART III

REMEDIES

17. 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.

18. 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,—

- (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 plaintiff in connection with the publication of the retraction or reply; and 5
 - (c) All other expenses reasonably incurred by the plaintiff in connection with the publication complained of; and
 - (d) Compensation for any pecuniary loss suffered by the plaintiff as a direct result of the publication complained of. 10
- (3) In this section, “reply” means a statement of explanation or rebuttal, or of both explanation and rebuttal.

19. Correction orders—(1) In any proceedings for defamation, the plaintiff may seek an order requiring the defendant to publish or cause to be published a correction of 15 the matter that is the subject of the proceedings, and the Court may make such an order.

(2) A Court shall not make an order under **subsection (1)** of this section if it is proved that the matter in respect of which the proceedings are brought was, in substance, true or not 20 materially different from the truth.

(3) Where a Court makes an order, under **subsection (1)** of this section, for the publication of a correction, it may give directions as to—

- (a) The content of the correction: 25
- (b) The time, form, extent, and manner of publication of the correction.

(4) In exercising its powers under **subsection (3)** of this section,—

- (a) The Court may direct that a correction shall set out any 30 finding of fact made in relation to the matter that is the subject of the proceedings, but shall not direct the defendant, in publishing the correction, to indicate that the defendant adopts or accepts that finding:

- (b) The Court shall have regard— 35

- (i) 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

- (ii) In the case of matter published in a periodical, 40 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.

5 (5) Any correction published pursuant to an order made under subsection (1) of this section may be accompanied by a statement that the correction is published pursuant to such an order.

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

(a) The plaintiff seeks only an order under subsection (1) of this section and costs; and

10 (b) The Court makes such an order,—
the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the Court orders otherwise.

20. Punitive damages—In any proceedings for defamation, 15 punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

21. Matters to be taken into account in mitigation of damages—In assessing damages in any proceedings for 20 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 (whether or not in pursuance of any order of any Court), the 25 nature, extent, form, manner, and time of that publication:

(b) In respect of the publication, by the defendant, of any reply to the matter that is the subject of the proceedings, the nature, extent, form, manner, and 30 time of that publication:

(c) The terms of any order for correction, or of any injunction or declaration, that the Court proposes to make or grant:

35 (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

22. Misconduct of plaintiff in mitigation of damages— 40 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.

23. Other evidence in mitigation of damages—In any proceedings for defamation, the defendant may prove, in mitigation of damages, that the plaintiff— 5

- (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 10 same as the matter that is the subject of the proceedings.

Cf. 1954, No. 46, s. 13

24. 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 15 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. 20

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

25. Statements in open Court—(1) In any proceedings for defamation, a statement may be made by a party in open 25 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 30 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 35 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 40 agreed not to make such a statement.

(2) Where—

- (a) Any proceedings for defamation are settled; 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,—
- 5 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,—
- 10 (a) Determine the terms of the statement; or
 - (b) Direct that no statement be made.

PART IV

PROCEDURE

- 26. Powers of Judge to call conference and give**
- 15 **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
- 20 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
 - 25 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, exercise the powers conferred on a Court by **section 19** of this Act:
 - (c) Require any party to make admissions in respect of questions of fact; and if that party refuses to make an
 - 30 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:
 - 35 (e) Fix the time within which any statement of defence shall be filed or any other step in the proceedings
 - 40

(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. 5

27. 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 10

(b) The ruling of the Judge on that issue— shall be made or given in the absence of the jury.

28. 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. 15

(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. 20

(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— 25

(a) The persons or class of persons to whom the defamatory meaning is alleged to be known; and 30

(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. 1948/197, r. 81A; S.R. 1963/64, r. 5

29. 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— 35 40

(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

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30. Particulars of defence of honest opinion—(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,—

10

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

15

(ii) Where the opinion is that of a person other than the defendant, that the defendant did not believe that the opinion was the genuine opinion of that person,—
 the plaintiff shall serve on the defendant, within 5 working days after the defendant's statement of defence is served on the plaintiff, a notice to that effect.

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(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.

25

31. 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.

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32. 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.

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33. 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

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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.

34. 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.

35. 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 broadcasting station; 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

5 **36. 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
10 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 37** of this Act.

(2) Where the plaintiff fails to give the notice required by **subsection (1)** of this section to any defendant, that defendant
15 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 35** of this Act.

Cf. 1954, No. 46, s. 10

20 **37. 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
25 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
30 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.

35 (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 the District Court, the
40 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: 5
- (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: 10
- (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. 15

Cf. 1954, No. 46, s. 11

20

38. 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. 25

(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. 30

(3) In this section “Court” means the Court in which it is sought to commence or continue the proceedings for defamation. 35

39. 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— 40

(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.

5

(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
10 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
15 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.

**40. Stay of proceedings where publication made by
order of House of Representatives—**(1) Where any
20 proceedings are commenced against any person in respect of
the publication, by that person or that person's employee, by
order or under the authority of the House of Representatives,
of a report, paper, votes, or proceeding, that person may,
25 subject to **subsections (2) and (3)** of this section, produce to the
Court a certificate signed by the Speaker of the House of
Representatives stating that the report, paper, votes, or
proceeding, as the case may be, in respect of which the
proceedings are commenced, were published, by that person or
30 that person's employee, by order or under the authority of the
House of Representatives.

(2) No certificate may be produced to any Court under
subsection (1) of this section unless the person seeking to produce
it has given to the plaintiff in the proceedings, or to the
35 plaintiff's solicitor, at least 24 hours' notice of that person's
intention to do so.

(3) Every certificate produced under **subsection (1)** of this
section shall be accompanied by an affidavit verifying the
certificate.

40 (4) Where a certificate is produced to any Court in
accordance with **subsections (1) to (3)** of this section, the Court
shall immediately stay the proceedings, and the proceedings

shall be deemed to be finally determined by virtue of this section.

Cf. 1954, No. 46, s. 18

41. Stay of proceedings in respect of copy of parliamentary report—(1) Where any proceedings are 5 commenced in respect of the publication of a copy of a report, paper, votes, or proceeding (being a report, paper, votes, or proceeding to which **section 40** of this Act applies), the defendant in those proceedings may, at any stage of the proceedings, produce to the Court the report, paper, votes, or proceeding, 10 and the copy, together with an affidavit verifying the report, paper, votes, or proceeding, and the correctness of the copy.

(2) Where, in any proceedings, the defendant produces the documents required by **subsection (1)** of this section, the Court shall immediately stay the proceedings, and the proceedings 15 shall be deemed to be finally determined by virtue of this section.

Cf. 1954, No. 46, s. 19

42. Evidence as to publisher or printer—Where, in any proceedings for defamation in respect of the publication of any 20 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 25 contrary is proved.

Cf. 1954, No. 46, s. 21

43. 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 30 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 35 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 40 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 moving in arrest of 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

- 10 **44. Agreements for indemnity**—An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter is not unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that
- 15 there is a good defence to any proceedings brought upon it.

Cf. 1954, No. 46, s. 14

45. Appeals against correction orders—

- (1) Notwithstanding anything in any other enactment, no appeal shall lie against any order made under **section 19** of this
- 20 Act (in this section referred to as a correction order) except—

- (a) On the ground that the correction order was made as a result of an error of law; or
- (b) As part of an appeal against the whole or any part of any final order made in the proceedings in which the
- 25 correction order was made (other than any proceedings in which the plaintiff seeks only a correction order and costs).

- (2) Where an appeal is lodged against a correction order, or against the whole or any part of any final order made in any
- 30 proceedings in which a correction order was made, the correction order shall remain in force pending the appeal, unless the Court in which the appeal is lodged orders otherwise.

- 46. Amendment to Limitation Act 1950**—The Limitation Act 1950 is hereby amended by inserting in section 4, after
- 35 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
- 40 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.” 5

47. Repeals and consequential amendments—(1) The enactments specified in the **Second** Schedule to this Act are hereby amended in the manner indicated in that Schedule. 10

(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. 15

(4) Rule 81A of the District Courts Rules 1948 (S.R. 1981/259) is hereby revoked.

(5) Rule 5 of the District Courts Rules 1948, Amendment No. 5 (S.R. 1963/64) is hereby consequentially revoked.

SCHEDULES

Section 11 (1) (h)

FIRST SCHEDULE

STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

Statements Privileged

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

(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 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

FIRST SCHEDULE—*continued*STATEMENTS HAVING QUALIFIED PRIVILEGE—*continued*

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.

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 11 (1) (h)** 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, where the application has been filed after 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 any member or officer of the authority.

FIRST SCHEDULE—*continued*

STATEMENTS HAVING QUALIFIED PRIVILEGE—*continued*

PART II

Interpretation

16. 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 47 (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 the First Schedule to the Defamation Act 1988 , 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	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 the First Schedule to the Defamation Act 1988 , 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.”

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

Enactment	Amendment
1976, No. 19—The Wanganui Computer Centre Act 1976	<p>By repealing section 18B (as inserted by section 6 of the Wanganui Computer Centre Amendment Act 1980), and substituting the following section:</p> <p>“18B. Qualified privilege—For the purposes of clause 3 of the First Schedule to the Defamation Act 1988, 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.”</p>
1976, No. 132—The Broadcasting Act 1976 (R.S. Vol. 13, p. 1)	<p>By omitting from section 67A (4) (as inserted by section 9 of the Broadcasting Amendment Act 1982) the words “clause 8 of Part II of the First Schedule to the Defamation Act 1954”, and substituting the words “clause 13 of the First Schedule to the Defamation Act 1988”.</p> <p>By repealing section 67B (2) (as so inserted), and substituting the following subsection:</p> <p>“(2) Every notice published under subsection (1) of this section shall be deemed for the purposes of section 11 (1) (f) of the Defamation Act 1988 to be a fair and accurate report of the proceedings of a Court in New Zealand.”</p> <p>By omitting from section 95x (4) (as inserted by section 11 of the Broadcasting Amendment Act 1982) the words “clause 8 of Part II of the First Schedule to the Defamation Act 1954”, and substituting the words “clause 13 of the First Schedule to the Defamation Act 1988”.</p>
1977, No. 49—The Human Rights Commission Act 1977 (R.S. Vol. 18, p. 227)	<p>By repealing so much of the Schedule as relates to the Defamation Act 1954.</p> <p>By repealing section 76 (3), and substituting the following subsection:</p> <p>“(3) For the purposes of clause 3 of the First Schedule to the Defamation Act 1988, 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.”</p>

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

Enactment	Amendment
1978, No. 103—The Securities Act 1978 (R.S. Vol. 15, p. 533)	By repealing section 28 (7) (as substituted by section 10 of the Securities Amendment Act 1982), and substituting the following subsection: “(7) For the purposes of clause 3 of the First Schedule to the Defamation Act 1988 , 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.”
1986, No. 5—The Commerce Act 1986	By repealing section 106 (10), and substituting the following subsection: “(10) For the purposes of clause 3 of the First Schedule to the Defamation Act 1988 , 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.”
1987, No. 174—The Local Government Official Information and Meetings Act 1987	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 motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication”. 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 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 the First Schedule to the Defamation Act 1988 ”.
1988, No. 111—The Coroners Act 1988	By omitting from section 29 (3) the expression “ Defamation Act 1954 ”, and substituting the expression “ Defamation Act 1988 ”.

Section 47 (2)**THIRD SCHEDULE****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. 19, p. 159.)
1958, No. 63—The Defamation Amendment Act 1958. (R.S. Vol. 2, p. 321.)
1961, No. 43—The Crimes Act 1961: Part IX 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. 13, p. 293.)
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. 19, p. 321.)