



ANALYSIS

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1993, No. 5

An Act to amend the law relating to libel and slander and other malicious falsehoods

(22 October 1993)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Defamation Act 1993.
2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Broadcasting station" means a radio service or television service which is licensed under the Broadcasting Act 1989;

"Court" means the High Court of the Cook Islands;

"Criminal proceeding" means a proceeding for criminal libel or criminal slander under Part IX of the Crimes Act 1969;

"Newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements which is printed for sale and is published, in the Cook Islands or elsewhere periodically at intervals not exceeding 3 months;

References to words shall be construed as including references to pictures, visual images, gestures, and other methods including electronic methods of signifying meaning.

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

3. Application of Act - (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.

4. Libel and slander actionable without proof of special damage - In an action for defamation (whether libel or slander), it shall not be necessary to allege or prove special damage.

5. Slander of title, etc. - In an action for slander of title, slander of goods, or other malicious falsehood, it shall not be necessary to allege or prove special damage if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff.

6. Unintentional defamation - (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case -

(a) if the offer is accepted by the party aggrieved and is duly performed, no action for defamation shall be commenced or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(b) if the offer is not accepted by the party aggrieved, then except as otherwise provided by this section, it shall be a defence in any action by him for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) Paragraph (b) of subsection (1) shall not apply in relation to the publication by any person of any words of which he is not the author unless he proves -

(a) that the author did not intend to write or publish them of and concerning the party aggrieved, and did not know of circumstances by virtue of which they might be understood to refer to him; or

- (b) that the words were not defamatory on the face of them, and the author did not know of circumstances by virtue of which they might be understood to be defamatory of the party aggrieved, -

and that in either case the author exercised all reasonable care in relation to the matter.

(3) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(4) An offer of amends under this section shall be understood to mean an offer -

- (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;
- (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(5) Where an offer of amends under this section is accepted by the party aggrieved -

- (a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the Court, whose decision thereon shall be final;
- (b) the power of the Court to make orders as to costs in any action by the party aggrieved against the person making the offer in respect of the publication in question, or in any proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer, to the party aggrieved, of costs on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question, -

and, if no such action or proceedings as aforesaid are taken, the Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in any such action or proceedings.

(6) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say -

- (a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
- (b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person, -

and in either case the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of the publisher who was concerned with the contents of the publication.

7. Justification - In an action for defamation in respect of words containing 2 or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved, if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

8. Fair comment - In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

9. Actions in respect of publication in different newspapers of same defamatory matter - (1) When an action has been commenced by any person in respect of the publication of defamatory matter in a newspaper, no other action shall thereafter be commenced by the same person in respect of the publication at any time before the commencement of the first-mentioned action of the same or substantially the same defamatory matter in any other newspaper, unless that other action is commenced on or within 30 days after the date of the commencement of the first-mentioned action.

(2) When any action is commenced in breach of the provisions of this section, it shall not be necessary for the defendant to plead this matter by way of defence, but the same may be given in evidence as defence on the trial of the action.

(3) In determining for the purposes of this section the date of the publication of defamatory matter in the newspaper, the defamatory matter shall be deemed to have been published on the date of issue of that newspaper, and at no subsequent time.

10. Plaintiff to give notice of such actions to each defendant - (1) When 2 or more actions have been commenced by the same person in respect of the publication of the same or substantially the same defamatory matter in different newspapers, the plaintiff shall as soon as practicable give to the defendant in each of the actions such notice of the existence of the other actions as is reasonably sufficient to enable each defendant to make application for the consolidation of the actions under the provisions of section 11.

(2) If the plaintiff makes default in giving notice as set out in subsection (1) to any defendant, that defendant may apply to the Court to dismiss or stay the action, and the Court may, if in its discretion it thinks fit to do so, dismiss or stay the action accordingly.

11. Consolidation of actions on application of defendants - The Court, upon the application of the defendants in 2 or more actions brought in that Court by one and the same person in respect of the publication of the same or substantially the same defamatory matter, may make an order for the consolidation of those actions so that they shall be tried together; and after any such order has been made, and before the trial of the actions, the defendant in any other action brought in respect of the same or substantially the same defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by that defendant and the defendants in the actions already consolidated.

(2) In an action consolidated under the provisions of this section the Judge shall assess the whole amount of the damages (if any) in one sum, but a separate decision shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and if a decision is given against the defendants in more than one of the actions so consolidated, the Judge shall proceed to apportion the amount of damages so found between and against those defendants; and the Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he deems just for the apportionment of those costs between and against those defendants.

(3) Every action consolidated under the provisions of this section shall be heard at such time and place as a Judge of the High Court may order.

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

12. Public apology in mitigation of damages - In an action for defamation the defendant may prove in mitigation of damages that he made or offered a public apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was a reasonable opportunity of making or offering such an apology, as soon afterwards as he had a reasonable opportunity of doing so.

13. Other evidence in mitigation of damages - In an action for defamation the defendant may prove in mitigation of damages that the plaintiff has already recovered damages, or has brought an action for damages, or has received or agreed to receive compensation, in respect of any other publication by the same or any other person of the same or substantially the same defamatory matter.

14. Agreements for indemnity - An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be 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 action brought upon it.

15. Qualified privilege for certain reports - (1) Subject to the provisions of this section, the publication of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged in any civil or criminal proceeding unless the publication is proved to be made with malice.

(2) In an action for defamation in respect of the publication in a newspaper, or as part of any programme or service provided by means of a broadcasting station, of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the manner in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication -

(a) of any report or other matter the publication of which is prohibited by law;

(b) of any such report or other matter as is mentioned in Part II of the Schedule to this Act, unless it is of public concern and the publication of it is for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting immediately before the commencement of this Act.

16. Stay of proceedings for publication of reports, etc., by order of Parliament -

(1) Any person who is a defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication of any report, paper, votes, or proceedings by that person, or by his servant, by or under the authority of Parliament may bring before the Court in which the proceeding is so commenced or prosecuted (first giving 24 hours notice of his intention to do so to the plaintiff or prosecutor in the proceeding or to his solicitor) a certificate under the hand of the Speaker of Parliament stating that the report, paper, votes, or proceedings, as the case may be, in respect of which the proceeding is commenced or prosecuted were published by that person, or by his servant, by order or under the authority of Parliament.

(2) Every such certificate shall be accompanied by an affidavit verifying the certificate.

(3) The Court shall thereupon immediately stay the proceeding and the proceeding shall be deemed to be finally determined by virtue of this section.

17. Stay of proceedings in respect of copy of Parliamentary report, etc. - Where any civil or criminal proceeding is commenced or prosecuted in respect of the publication of any copy of any such report, paper, votes, or proceedings as are referred to in section 16 of this Act, any defendant may, at any stage of the proceeding, lay before the Court the report, paper votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy, and thereupon the Court shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

18. Publication of extract from Parliamentary report, etc., in good faith and without malice - In any civil or criminal proceeding commenced or prosecuted in respect of the publication of any extract from or abstract of any such report, paper, votes or proceedings as are referred to in section 16 of this Act, the defendant may give in evidence the report, paper, votes, or proceedings, and show that the extract or abstract was published in good faith and without malice; and if that is the opinion of the Judge a verdict of not guilty shall be entered for the defendant.

19. Evidence as to publisher or printer - Upon the trial of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter in any book or printed document, or in any number or part of a newspaper or other periodical, any printed statement contained in the book, document, number, or part that the same is published or printed by the defendant shall, in the absence of proof to the contrary, be evidence of the truth of that statement.

20. Court may give a general verdict in civil or criminal cases - Upon the trial of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter, the Judge may give a general verdict for or against the defendant upon the whole matter put in issue, and shall not be required to give a verdict against any defendant merely on proof of the matter alleged to be defamatory and on proof of the sense ascribed to it in the statement of claim or summons:
Provided that nothing in this section shall be construed to prevent a Judge from finding a special verdict in his discretion, as in other cases.

21. Repeals - (1) The Libel Act 1792, of the Parliament of Great Britain, shall at the commencement of this Act, have no effect in the Cook Islands.

(2) Subject to section 3, the Defamation Act 1954 of the Parliament of New Zealand shall have no effect in the Cook Islands.

This Act is administered by the Justice Department

SCHEDULE**STATEMENTS HAVING QUALIFIED PRIVILEGE****PART I****Statements Privileged Without Explanation or Contradiction**

1. A fair and accurate report of the proceedings of Parliament or of any Committee thereof.
2. A fair and accurate report of the proceedings of any Court of justice in the Cook Islands whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

PART II**Statements Privileged Subject, in the Case of a Newspaper or a Broadcasting Station, to Explanation or Contradiction**

3. A fair and accurate report of the proceedings of the legislature of any territory outside the Cook Islands or of any Committee of any such legislature.
4. A fair and accurate report of the proceedings of any Court of justice outside the Cook Islands whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.
5. A fair and accurate report of the proceedings in any inquiry held under the authority of the Government or Parliament of any territory outside the Cook Islands, or a true copy of or a fair and accurate extract from or abstract of any official report made by the person by whom the inquiry was held.
6. A fair and accurate report of the proceedings of any international organisation of which the Cook Islands or any other territory within the Commonwealth, or the Government of the Cook Islands or any such territory, is a member, or of any international conference to which the Government of the Cook Islands or any other territory within the Commonwealth sends a representative.
7. A fair and accurate copy of or extract from any register kept in pursuance of any Act which is open to inspection by the public, or of any other document which is required by the law of the Cook Islands to be open to inspection by the public.
8. A notice or advertisement published by or on the authority of any Court of justice, whether within the Cook Islands or elsewhere, or any Judge or Officer of such a Court.

9. A fair and accurate report of the proceedings at any meeting or sitting in any part of the Cook Islands of -
- (a) any local authority or committee of a local authority or local authorities;
 - (b) any person or body appointed or constituted by or under, and exercising functions under any Act (not being a Court of justice or a person holding an inquiry to which clause 5 of this Schedule relates), -
- not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.
10. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any 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 interest in any art, science, religion, or learning, -
- being an inquiry relating to a person who is a member of or is subject by virtue of any contract to the control of the association.
11. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of promoting and safeguarding the standards of the news media of the Cook Islands.
12. A fair and accurate report of the proceedings at any public meeting held in the Cook Islands, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.
13. A fair and accurate report of the proceedings at a general meeting of any company or association constituted or registered by or under any Act or of any other incorporated company or association operating in the Cook Islands (other than a private company within the meaning of the Companies Act 1970-71), not being a meeting admission to which is denied to representatives of newspapers and other members of the public.
14. A copy or fair and accurate report or summary of any statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or officer thereof, or any local authority or any member or officer thereof.

PART III

Interpretation

15. In this Schedule, unless the context otherwise requires, -
- "Court of justice" includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;
 - "Government", in relation to any territory outside the Cook Islands which is subject to a central and a local Government, means either of those Governments;
 - "Legislature", in relation to any territory outside the Cook Islands which is subject to a central and a local legislature, means either of those legislatures;
 - "Local authority" means an Island Council established under the Outer Islands Local Government Act 1987; the Palmerston Island Council established under the Palmerston Island Local Government Act 1993; The Rarotonga Island Council and any District Council established under the Rarotonga Local Government Act 1988; and any other authority having similar functions and powers, established under any other Act.