

Defamation Claims on the rise in Ireland

The Courts Service Annual Report 2017 was published by the Courts Service on 17 July 2018 and shows a significant increase in the number of defamation claims in the Courts.

The number of claims taken in the High Court increased from 133 in 2016 to 152 in 2017, while the number of defamation claims entered in the Circuit Court increased from 73 in 2016 to 135 in 2017.

The more dramatic increase of 85 per cent in the number of defamation claims reported in the Circuit Court may be attributed to two main factors, as noted recently in *The Irish Times*.

The most obvious contributing factor is the increase in the monetary jurisdiction for Circuit Court cases in 2014 from €38,000 to €75,000.

Social media is also likely to be fuelling the rise. This is because people can publish remarks without going through the checks that would be in place in a traditional media organisation, which increases the risk that defamatory material will be published. Experience shows that people often publish material on social media without considering the legal implications of what they are publishing.

The increase in Circuit Court cases may be following a trend seen in the UK, where there was a rise in actions over alleged defamatory comments made on social media. Defamation cases arising from social media make up approximate ten per cent of defamation cases in the UK. However, that trend has reversed in the UK where the number of cases has fallen in the last three years. This decline is likely to be attributable at least in part due to changes to the UK Defamation Act in 2013 that required defamation claimants to prove that a publication has caused or was likely to cause them "serious harm". Such a threshold does not exist in Ireland.

The spike in the number of defamation claims brought in the Circuit Court in particular may have been contributed to by claimants becoming aware that Irish Courts are prepared to award significant damages for defamatory material published on social media.

Recent "social media" defamation Decisions in the Circuit Courts

A number of recent Circuit Court decisions have seen up to €75,000 awarded in damages.

One such case came before Monaghan Circuit Court and involved an allegedly defamatory item on Facebook which suggested that the national director of Ireland's game shooting body had caused the organisation to go "broke".

A Co Monaghan man had posted the item on Facebook on or about 22 December 2015, and has been ordered to pay €75,000 in damages.

In awarding the maximum allowable damages, the Judge commented that his order should teach people posting messages on the social media site to be very careful.

A similar case before Carrick-on-Shannon Circuit Court concerned a publication on a Facebook page by the defendant on August 22, 2016. The message written about the claimant was in relation to money that had gone missing in the 1980s and 90s. In awarding €65,000 damages plus legal costs, the Judge noted that it was a "particularly nasty defamation" of the claimant with very devastating effects for him.

An example of a smaller award was seen in a case involving a couple from Co Donegal who took a defamation action at Letterkenny Circuit Court. The couple were awarded [when] more than €30,000 in damages against a neighbour who had defamed them on Facebook. The claimant's husband was

alleged to have been accused of having an affair with another woman and was also referred to as being overweight.

The Judge described the posts as “scurrilous and reckless.” He further highlighted that the posting of Facebook comments can be a “highly dangerous activity.”

Will the increase in claims be offset by a more measured approach to awards?

Although there has been an increase in the number of claims, as regards proceedings against the traditional media i.e. print, radio, broadcast, the recent Nicky Kehoe case may indicate a move toward more measured awards of damages in comparison to past awards.

Mr Kehoe, Sinn Féin’s political manager in Dublin, claimed he was defamed on the *Saturday with Claire Byrne* show on RTÉ Radio 1 in October 2015. The claim was denied by RTÉ.

On the programme, former Labour TD Joe Costello said a member of the IRA army council controlled Sinn Féin councillors on Dublin City Council. Mr Kehoe was then named by Sinn Fein representative, Eoin O’Broin, who was also participating in the interview. By the end of the interview Mr Costello accepted that Mr Kehoe was a former (and not current) IRA member. Mr Kehoe claimed the interview was defamatory as he was no longer a member of the IRA and was ashamed by his IRA past and had sought to build up his reputation since he left the IRA. Mr Kehoe was awarded damages of €3,500 against RTE. The jury found that the defamation justified damages of €10,000 but that Mr. Costello was 65 per cent liable for what had occurred, albeit he had not been sued so no damages could be awarded against him

Commented [NM1]: This is all consistent with media reports

While the Kehoe case is just one award, and while jury awards remain an unsatisfactory way of determining High Court defamation cases, this decision coupled with last year’s Court of Appeal decision in *Christie v TV3* whereby the Court of Appeal reduced the damages in a defamation claim from €200,000 to €60,000 prior to applying a further discount on account of the use of an “offer of amends” [footnote here to our previous insight], lends some hope to the traditional media that the days of penal defamation awards might be coming to an end.

Conclusion

The suggestion that social media may be giving rise to increased defamation claims in this jurisdiction seems to borne out by the type of enquiries we now regularly receive from corporate clients about publications on social media both from a defamation and IP infringement perspective. Claim of this nature are likely to continue to grow. While significant damages have been awarded in the Circuit Court cases mentioned above that arose from social media publications, as they are some of the first of such awards in this jurisdiction there may be an element of the judiciary “sending the message out” that people cannot publish whatever they want on social media. Defamation awards in this jurisdiction are high compared to other jurisdictions. When the volume of these “social media” claims grows the damages should reduce as the judiciary gets to grips with this area. There are grounds for hope for the traditional media that a downward trend in damages would apply to that area too.