



Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

PART 2

MALICIOUS PUBLICATION

Actionable types of malicious publication

21 Statements causing harm to business interests

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—
 - (i) made a false and malicious statement about B’s business or business activities, and
 - (ii) published the statement to a person other than B, and
 - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of [subsection \(1\)\(a\)\(i\)](#), a statement is malicious only if B shows—
- (a) that the imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
 - (b) both—
 - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
 - (ii) that A’s publication of the statement was motivated by a malicious intention to cause harm to B’s business or business activities.

22 Statements causing doubt as to title to property

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—

Status: This is the original version (as it was originally enacted).

- (i) made a false and malicious statement about B’s title to land or other property, and
 - (ii) published the statement to a person other than B, and
 - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of [subsection \(1\)\(a\)\(i\)](#), a statement is malicious only if B shows—
- (a) that the imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
 - (b) both—
 - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
 - (ii) that A’s publication of the statement was motivated by a malicious intention to delay or jeopardise a transaction involving the land or other property of B.

23 Statements criticising assets

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—
 - (i) made a false and malicious statement criticising or denigrating the quality, condition, use or treatment of assets owned, possessed or controlled by B, and
 - (ii) published the statement to a person other than B, and
 - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of [subsection \(1\)\(a\)\(i\)](#), a statement is malicious only if B shows—
- (a) that the false imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
 - (b) both—
 - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
 - (ii) that A’s publication of the statement was motivated by a malicious intention to cause B financial loss.

General provision

24 Limit on requirement to show financial loss

A pursuer in proceedings under this Part does not need to show financial loss if the statement complained of is more likely than not to cause such loss.

25 Statements conveying two or more meanings

- (1) This section applies where proceedings are brought under this Part in respect of a statement that is capable of conveying two or more distinct meanings.

- (2) It is not necessary for the purposes of deciding whether harm has occurred for the court to determine—
 - (a) which of the meanings is conveyed by the statement in the circumstances, or
 - (b) that one meaning should be preferred to the exclusion of the other or others.
- (3) But nothing in this section prevents the court from excluding or disregarding possible meanings where it considers it appropriate to do so.

26 Damages for anxiety and distress

- (1) In determining the appropriate amount of damages to award in proceedings under this Part, the court may take into account any distress and anxiety caused to the pursuer by the statement complained of.
- (2) This section does not limit any other basis of claim for damages or remedy that may be available to a pursuer in proceedings under this Part.

Abolition of common law verbal injuries

27 Abolition of common law verbal injuries

- (1) Any rules of law providing for a right to bring proceedings for a verbal injury cease to have effect.
- (2) Subsection (1) does not affect any right to bring proceedings for a verbal injury which accrued before the commencement of that subsection.