

Chapter 293.
Defamation Act 1962.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 293.

Defamation Act 1962.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Defamation Act 1962,

Being an Act to consolidate the law of defamation.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**court**” includes any court or person acting judicially in, or for purposes of or connected with, Papua New Guinea;

“**defamatory matter**” means the matter of an imputation referred to in Section 2;

“**periodical**” includes a newspaper, review, magazine or other writing published periodically.

PART II. – DEFINITIONS AND GENERAL.

2. DEFINITION OF DEFAMATORY MATTER.

(1) An imputation concerning a person, or a member of his family, whether living or dead, by which—

- (a) the reputation of that person is likely to be injured; or
- (b) he is likely to be injured in his profession or trade; or
- (c) other persons are likely to be induced to shun, avoid, ridicule or despise him,

is a defamatory imputation.

(2) An imputation may be expressed directly or by insinuation or irony.

(3) The question, whether any matter is or is not defamatory or is or is not capable of bearing a defamatory meaning, is a question of law.

3. DEFINITION OF DEFAMATION.

A person who—

- (a) by spoken words or audible sounds; or
- (b) by words intended to be read by sight or touch; or
- (c) by signs, signals, gestures or visible representations,

publishes a defamatory imputation concerning a person defames that person within the meaning of this Act.

4. PUBLICATION.

For the purposes of this Act, publication is—

- (a) in the case of spoken words or audible sounds, the speaking of those words or making of those sounds in the presence and hearing of a person other than the person defamed; and
- (b) in the case of signs, signals or gestures, the making of those signs, signals or gestures so as to be seen or felt by, or otherwise come to the knowledge of, a person other than the person defamed; and
- (c) in the case of other defamatory matter—
 - (i) exhibiting it in public; or
 - (ii) causing it to be read or seen; or
 - (iii) showing or delivering it; or
 - (iv) causing it to be shown or delivered,

with a view to its being read or seen by a person other than the person defamed.

5. PUBLICATION OF DEFAMATORY MATTER PRIMA FACIE UNLAWFUL.

It is unlawful to publish defamatory matter unless the publication is protected, justified or excused by law.

6. ABSOLUTE PROTECTION OF PETITION TO PARLIAMENT.

A person who presents a petition to the Parliament does not incur liability for defamation by the publication to the Parliament of defamatory matter contained in the petition.

7. ABSOLUTE PROTECTION OF OFFICIAL REPORTS, ETC.

A person does not incur liability for defamation by publishing defamatory matter—

- (a) in the course of a proceeding held before or under the authority of a court; or
- (b) in the course of an inquiry made under a law or the authority of the Head of State, acting on advice, or the Parliament; or
- (c) in an official report made by him of the result of an inquiry under Paragraph (b) where he is the person appointed to hold the inquiry.

8. PROTECTION: REPORTS OF MATTERS OF PUBLIC INTEREST.

(1) In this section, “**public meeting**” means a meeting lawfully held for a lawful purpose, and for—

- (a) the furtherance or discussion in good faith of a matter of public concern; or
- (b) the advocacy of the candidature of a person for a public office,

whether admission to the meeting is open or restricted.

(2) For the purposes of this Act, it is lawful to publish in good faith for the information of the public—

- (a) a fair report of the proceedings of the Parliament or of a Committee of the Parliament; or
- (b) a copy of, or an extract from or abstract of, a paper published by order of or under the authority of the Parliament; or
- (c) a fair report of the public proceedings of a court, whether the proceedings are preliminary, interlocutory or final, or of the result of any such proceedings, unless—
 - (i) in the case of proceedings that are not final—the publication has been prohibited by the court; or

- (ii) in any case—the matter published is blasphemous or obscene, or publication is prohibited by law; or
- (d) a fair report of the proceedings of an inquiry held under a law, or by or under the authority of the Head of State, acting on advice, or an extract from or abstract of any such proceedings, or a copy of, or an extract from or abstract of, an official report made by the person by whom the inquiry was held; or
- (e) at the request of—
 - (i) a Department of the Public Service; or
 - (ii) a prescribed instrumentality of the Government; or
 - (iii) a commissioned officer of the Police Force,
 - a notice or report issued by the Department, instrumentality or officer for the information of the public;
 - or
- (f) a fair report of the proceedings of a local authority, board or body of trustees or other persons, duly constituted under a law, or by or under the authority of the Head of State, acting on advice, for the discharge of public functions, so far as the matter published relates to matters of public concern; or
- (g) a fair report of the proceedings of a public meeting, so far as the matter published relates to matters of public concern.

(3) For the purposes of this Act, a publication is made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the publication of news.

(4) In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith for the purposes of this Act if the proprietor, publisher or editor has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish it.

9. PROTECTION: FAIR COMMENT.

- (1) For the purposes of this Act, it is lawful to publish a fair comment—
 - (a) respecting any of the matters with respect to which the publication of a fair report in good faith for the information of the public is declared to be lawful by Section 8; or
 - (b) respecting—
 - (i) the public conduct of a person who takes part in public affairs; or

- (ii) the character of any such person, so far as his character appears in that conduct; or
- (c) respecting—
 - (i) the conduct of a public officer or public servant in the discharge of his public functions; or
 - (ii) the character of any such person, so far as his character appears in that conduct; or
- (d) respecting—
 - (i) the merits of a case, civil or criminal, that has been decided by a court; or
 - (ii) the conduct of a person as a Judge, magistrate, party, witness, lawyer or officer of the court, in any such case; or
 - (iii) the character of any such person, so far as his character appears in that conduct; or
- (e) respecting—
 - (i) a published book or other literary production; or
 - (ii) the character of the author, so far as his character appears by the book or production; or
- (f) respecting—
 - (i) a composition or work of art or performance publicly exhibited; or
 - (ii) the character of the author or a performer or exhibitor, so far as his character appears from the matter exhibited; or
- (g) respecting—
 - (i) any public entertainment or sports; or
 - (ii) the character of a person conducting or taking part in any public entertainment or sports, so far as his character appears from the matter or the manner of conducting the entertainment or sports; or
- (h) respecting a communication made to the public.

(2) Whether a comment is or is not fair within the meaning of this Act is a question of fact.

(3) If a comment is not fair, and is defamatory, the publication of it is unlawful.

10. PROTECTION: TRUTH.

For the purposes of this Act, it is lawful to publish defamatory matter if it is true, and if it is for the public benefit that the publication complained of should be made.

11. QUALIFIED PROTECTION: EXCUSE.

(1) For the purposes of this Act, it is a lawful excuse for the publication of defamatory matter if the publication is made in good faith—

- (a) by a person having lawful authority over another in the course of a censure passed by him on the conduct of the other person in matters to which the lawful authority relates; or
- (b) for the purpose of seeking remedy or redress for some private or public wrong or grievance from a person who has, or whom the person making the publication believes on reasonable grounds to have, authority over the person defamed with respect to the subject-matter of the wrong or grievance; or
- (c) for the protection of the interests of the person making the publication or of some other person, or for the public good; or
- (d) in answer to an inquiry made of the person making the publication relating to a subject as to which the person by whom or on whose behalf the inquiry is made has, or is believed on reasonable grounds by the person making the publication to have, an interest in knowing the truth; or
- (e) for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has, or is believed on reasonable grounds by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances; or
- (f) on the invitation or challenge, express or implied, of the person defamed; or
- (g) in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person; or
- (h) in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit, and if, so far as the defamatory matter consists of comment, the comment is fair.

(2) For the purposes of this section, a publication is made in good faith if—

- (a) the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter; and
- (b) if the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion; and
- (c) if the person by whom it is made—
 - (i) is not actuated by ill-will to the person defamed, or by any other improper motive; and

- (ii) does not believe the defamatory matter to be untrue.

12. GOOD FAITH.

Where a question arises as to whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made in circumstances that would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith is on the party alleging the absence.

13. RELEVANCY AND PUBLIC BENEFIT QUESTIONS OF FACT.

For the purposes of this Act, whether—

- (a) defamatory matter is or is not relevant to any other matter; and
(b) the public discussion of a subject is or is not for the public benefit,

are questions of fact.

14. DEFENCE IN CASE OF DEFAMATION BY WORDS, ETC.

In any case other than that of words intended to be read, it is a defence to an action or prosecution for publishing defamatory matter to prove that the publication was made on an occasion when, and in circumstances in which, the person defamed was not likely to be injured by the publication.

15. PROTECTION OF INNOCENT SELLERS OF PERIODICALS.

A person is not responsible for defamation merely by reason of selling a number or part of a periodical containing defamatory matter, unless he knows that—

- (a) the number or part contains the defamatory matter; or
(b) defamatory matter is habitually or frequently contained in the periodical.

16. PROTECTION OF INNOCENT SELLERS OF BOOKS.

A person is not responsible for defamation merely by reason of selling a book, pamphlet, print or other thing not forming part of a periodical, although it contains defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained in the book, pamphlet, print or other thing, as the case may be.

17. PROTECTION OF EMPLOYERS.

An employer is not responsible for defamation merely by reason of the sale by his servant of a book, pamphlet, print or other thing, whether or not forming part of a periodical, containing defamatory matter, unless it is proved that he authorized the sale, knowing that the book, pamphlet, print or other thing contained the defamatory

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matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently contained in the periodical.

PART III. – CRIMINAL LIABILITY.

18. UNLAWFUL PUBLICATION OF DEFAMATORY MATTER.

(1) A person who unlawfully publishes defamatory matter concerning another is guilty of an offence.

Penalty: Subject to Subsection (2), a fine not exceeding K600.00 or imprisonment for a term not exceeding 12 months, or both.

(2) Where an offender against Subsection (1) knows the defamatory matter to be false, he is liable to a fine not exceeding K1,000.00 or imprisonment for a term not exceeding two years, or both.

19. DEFAMATION OF MEMBERS OF PARLIAMENT BY STRANGERS.

A person, not being a member of the Parliament, who unlawfully publishes false or scandalous defamatory matter touching the conduct of a member or members of the Parliament as such is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding two years, or both.

20. PUBLISHING, ETC., SO AS TO EXTORT MONEY.

A person who publishes, or directly or indirectly threatens to publish, or directly or indirectly offers to prevent the publication of, defamatory matter concerning another, with intent—

- (a) to extort property from that other person or any other person; or
- (b) to induce a person to give or confer or procure, or to attempt to procure, to, upon or for a person any property or benefit of any kind,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three years.

21. LIABILITY OF PROPRIETOR, PUBLISHER AND EDITOR OF PERIODICAL.

(1) Where a proprietor, publisher or editor of a periodical is charged with the unlawful publication in the periodical of defamatory matter, it is a defence to prove that the matter complained of was inserted in the periodical without his knowledge and without negligence on his part.

(2) General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert in the periodical what in his discretion he considers fit, is not negligence within the meaning of this section, unless it is proved that the proprietor, publisher or editor, when giving the general authority, meant that it should extend to and authorize the unlawful publication of defamatory matter, or continued the general authority

knowing that it had been exercised by unlawfully publishing defamatory matter in a number or part of the periodical.

22. CERTAIN PROSECUTIONS TO BE BY SANCTION OF JUDGE, ETC.

A criminal prosecution shall not be commenced otherwise than in the National Court against the proprietor, publisher or editor of, or a person responsible for the publication of, a periodical, for the unlawful publication of defamatory matter contained in the periodical, without the order of the National Court or a Judge, made after notice to the person accused, and after he has had an opportunity of being heard in opposition to the application for the order.

23. SUMMARY JURISDICTION.

Where, on the hearing before a court other than the National Court of a charge of the unlawful publication of defamatory matter, the court is of opinion that a case has been made out against the accused person but that the case is of a trivial nature, the court may ask him whether he desires to be tried on indictment or consents to the charge being dealt with summarily, and, if the accused person consents to the charge being dealt with summarily, he may be summarily convicted before the court, and is liable to a penalty of a fine not exceeding K100.00.

PART IV. – CIVIL LIABILITY.

24. DEFAMATION ACTIONABLE.

The unlawful publication of defamatory matter is an actionable wrong.

25. OFFER OF APOLOGY.

In an action for defamation the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for the defamation before the commencement of the action or, if the action was commenced before there was an opportunity of making or offering the apology, as soon as he had an opportunity to do so.

26. MONEY TO BE PAID TO COURT WHERE ABSENCE OF MALICE PLEADED.

(1) In an action for the publication of defamatory matter in a periodical, the defendant may plead–

- (a) that the matter was published without ill-will to the person defamed or other improper motive and without gross negligence; and
- (b) that before the commencement of the action or at the earliest opportunity he–
 - (i) inserted in the periodical a full apology for the defamation; or
 - (ii) offered to publish the apology in a periodical selected by the plaintiff where the periodical in which the defamatory matter appeared was ordinarily published at intervals exceeding one week.

(2) On pleading the defence under Subsection (1), the defendant shall pay into court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, and the payment into court has the same effect in all respects as in other cases of payment into court.

27. CONSOLIDATION OF ACTIONS.

(1) On an application by or on behalf of two or more defendants in actions brought before a court in respect of the publication of the same or substantially the same defamatory matter brought by the same person, the court may make an order for the consolidation of the actions so that they are tried together.

(2) After an order under Subsection (1) has been made and before the trial of the actions, the defendant in any new action instituted in respect of the publication of the same or substantially the same defamatory matter is also entitled to be joined in a common action on a joint application being made by the new defendant and the defendants in the actions already consolidated.

28. DAMAGES IN CONSOLIDATED ACTIONS.

(1) In an action consolidated under Section 27, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) If a verdict is given against the defendant or defendants in more than one of the actions consolidated under Section 27, the court shall apportion the amount of damages between and against those defendants.

(3) If it awards the plaintiff the costs of the action, the court shall make such order as it considers just for the apportionment of the costs between and against the defendants against whom the verdict was given.

29. EVIDENCE IN MITIGATION OF DAMAGES.

At the trial of an action for the publication of defamatory matter in a periodical, the defendant may give evidence, in mitigation of damages, that the plaintiff has—

- (a) recovered or brought actions for damages; or
- (b) received or agreed to receive compensation,

in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

30. IMPRINT *PRIMA FACIE* EVIDENCE OF PUBLICATION.

On the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical, the production of the book, or of a number or part of the periodical, containing a printed statement that it is printed or published by or for the defendant, is *prima facie* evidence of the publication of the book or of the number or part of the periodical, as the case may be, by the defendant.

31. STAYING PROCEEDINGS IN CERTAIN CASES.

(1) In an action commenced or prosecuted in respect of the publication of a paper published by the defendant or by his servant by order or under the authority of the Parliament, the defendant, on giving 24 hours' notice to the plaintiff of his intention to do so, may bring before the court in which the proceeding is pending or before a Judge—

- (a) a certificate under the hand of the Clerk of the Parliament stating that the paper was published by the defendant or by his servant by order or under the authority of the Parliament; and
- (b) an affidavit verifying the certificate,

and the court or Judge shall immediately stay the action, and may order the plaintiff to pay to the defendant his costs.

(2) In an action referred to in Subsection (1), the defendant may, at any stage of the proceedings, lay before the court or a Judge an original of the paper with an affidavit verifying it, and the court or Judge may stay the action, and may order the plaintiff to pay to the defendant his costs.

32. LEVY OF DAMAGES, ETC., BY PLAINTIFF OBTAINING JUDGEMENT.

(1) Subject to this section, in an action where a person is convicted of publishing defamatory matter by means of printing, the plaintiff in whose favour judgement is given may levy, under his writ of execution, the damages, penalty and costs out of—

- (a) any property of the defendant in the same manner as in ordinary civil actions; and
- (b) the whole of the types, presses or printing materials in which any person who by himself or his servants or agents had any beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, no matter to whom the types, presses or printing materials belong at the time of the levy.

(2) The plaintiff is required under his writ of execution to levy the damages, penalty and costs out of the property of the defendant in the first instance.

(3) Where the property of the defendant is found insufficient to satisfy the damages, penalty and costs, the plaintiff in the next instance shall levy the remainder of the damages, penalty and costs out of the whole of the types, presses or printing materials in which the defendant had a beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, no matter to whom the types, presses or printing materials belong at the time of the levy.

(4) Where, after the levy specified in Subsection (3), the judgement is not fully satisfied, the plaintiff, in the final instance, shall levy the remainder of the damages, penalty and costs out of the whole of the types, presses or printing materials in which a person who by himself or his servants or agents printed the defamatory matter had a beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, no matter to whom the types, presses or printing materials may belong at the time of the levy.

33. “SLANDER OF TITLE”.

This Part does not relate to the actionable wrong commonly called “slander of title”.

PART V. – MISCELLANEOUS.

34. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG