

## **CHAPTER 199**

### **DEFAMATION**

1996-20

This Act came into operation on 15th August, 1997 by Proclamation (S.I. 1997 No. 82).

#### **Amended by:**

This Act has not been amended

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

1997



## **CHAPTER 199**

### **DEFAMATION**

1996-20

#### *Arrangement of Sections*

1. Short title
2. Interpretation
3. Action for defamation
4. Separate causes of action
5. Action for malicious falsehood and other actions
6. Defence of triviality
7. Defence of truth
8. Defence of comment
9. Reports of proceedings in court
10. Proceedings in Parliament
11. Qualified privilege
12. Defeat of defence of qualified privilege
13. Particulars of malice

**14. Translations****RESPONSIBILITY FOR PUBLICATION****15. Responsibility for publication****OFFER OF AMENDS****16. Offer of amends****17. Effect of accepting offer of amends****18. Effect of not accepting offer of amends****19. Multiple publication****20. Innocent dissemination by printer****21. Protection for book publisher and author****22. Actions by corporations and other bodies****23. Assessment of damages****24. Mitigation of damages****25. Effect of death on actions****26. Defamation of the dead****27. Award of damages****28. Waiver of right to damages****29. Limitation of actions**

- 30. Striking out and dismissal of actions
- 31. Consolidation of actions
- 32. Agreements for indemnity
- 33. Limitation of privilege at elections
- 34. Criminal libel
- 35. Saving
- 36. Trial by jury
- 37. Proceedings affected and saving
- 38. Rules of court

#### SCHEDULE

#### *SPECIAL CATEGORIES OF REPORTS AND STATEMENTS HAVING QUALIFIED PRIVILEGE*



**BARBADOS**

## DEFAMATION

1996-20

*An Act to revise the law relating to defamation, malicious falsehood and criminal libel and to provide for related matters.*

[Commencement: 15th August, 1997]

**Short title**

1. This Act may be cited as the *Defamation Act*.

**Interpretation**

2. For the purposes of this Act

“broadcasting” means broadcasting by means of wireless telegraphy from any broadcasting station within Barbados licensed under the *Telecommunications Act*, Cap. 282A and providing services for general reception and includes transmission by telegraphy or by means of a loudspeaking or amplifier system;

“broadcast programme” means a programme broadcast as aforesaid and includes all matter broadcast;

“court” means the High Court;

“existing” means existing immediately before the commencement of this Act;

“matter” means

- (i) words;
- (ii) images or sound or a combination of both generated, transmitted or accessed by any means whereby infrastructures for providing information are internationally linked whether or not through the use of computer or telephony;

“newspaper” means any paper containing public news or observations therein or consisting wholly or mainly of advertisements, which is printed for sale and is published in Barbados at intervals of not more than 21 days;

“publication” means publication by the defendant or his servant or agent in any manner and whether or not in permanent form; and “published” shall be construed accordingly;

“report” includes summary;

“words” includes pictures, tapes and other records, visual images, gestures and other methods of signifying meaning.

### **Action for defamation**

3.(1) From the commencement of this Act it shall no longer be competent for a plaintiff to bring an action for libel or an action for slander and the action brought shall be for defamation.

(2) An action shall arise where a person publishes any matter by means of the whole or any part of which, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise.

(3) Subject to sections 22(1) and 25(3), in an action for defamation it shall not be necessary for the plaintiff to prove special damage.

**Separate causes of action**

4. A claim in defamation based on a single publication and relying both on the natural and ordinary meaning of words and on a legal innuendo shall constitute separate causes of action.

**Action for malicious falsehood and other actions**

5. In an action for malicious falsehood, slander of title or slander of goods, it shall not be necessary to allege or prove special damage if the publication of the matter in respect of which the action is brought is likely to cause pecuniary damage to the plaintiff.

**Defence of triviality**

6. It is a defence in an action for defamation that the circumstances of the publication of the matter complained of were such that the person defamed was not likely to suffer harm to his reputation.

**Defence of truth**

7.(1) The defence in relation to an action for libel or slander known before the commencement of this Act as the defence of justification shall, in relation to any action for defamation brought after the commencement of this Act, be known as the defence of truth.

(2) Where an action for defamation has been brought in respect of the whole or any part of matter published, the defendant may allege and prove the truth of any of the charges contained in such matter and the defence of truth shall be held to be established if such matter, taken as a whole, does not materially injure the plaintiff's reputation having regard to any such charges which are proved to be true in whole or in part.

**Defence of comment**

**8.(1)** The defence in relation to an action for libel or slander known before the commencement of this Act as the defence of fair comment on a matter of public interest shall, in relation to an action for defamation brought after the commencement of this Act, be known as the defence of comment on a matter of public interest (in this Act referred to as the “defence of comment”).

(2) In an action for defamation in respect of words including or consisting of expression of opinion, a defence of comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation therefor.

(3) The defence of comment in an action for defamation shall not be limited or otherwise affected by the fact that dishonourable or corrupt motives have been attributed to the plaintiff.

(4) Nothing in this section shall affect the liability of the defendant in an action for defamation for the acts of his servant or agent.

**Reports of proceedings in court**

**9.(1)** For the avoidance of doubt, the publication of a fair, accurate and contemporaneous report in any newspaper or broadcast programme of any proceedings in public before a court (including a court established by a disciplinary law and a tribunal or inquiry recognised by law and exercising judicial functions) shall be protected by absolute privilege.

(2) For the purposes of this section and paragraph 4 of Part I of the *First Schedule*

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means

- (a) a naval, military or air force;
- (b) a police force;
- (c) a prison service; or
- (d) a fire service.

### **Proceedings in Parliament**

- 10.(1)** Proceedings in Parliament shall be protected by absolute privilege.
- (2) Where proceedings in Parliament are being broadcast by television or sound broadcasting
- (a) where the broadcast is live, the transmission of the words spoken by any member of either House, and the transmission of the pictures by television shall be protected by absolute privilege;
  - (b) where the broadcast is not live, the transmission shall be protected by qualified privilege.
- (3) Reports commissioned by either House shall be protected by qualified privilege.
- (4) The publication of a fair and accurate report of proceedings in Parliament shall be protected by qualified privilege.
- (5) In any civil or criminal proceedings in respect of the publication of any extract from or abstract of any report, paper, votes or proceedings published by order or by the authority of either House, it shall be lawful to give in evidence such report, paper, votes or proceedings, and such publication shall be protected by qualified privilege.
- (6) For the purposes of the defence of absolute privilege in an action or prosecution for defamation, “proceedings in Parliament” include
- (a) all things said, done or written by a member or officer or by any person ordered or authorised to attend before either House, in or in the

presence of such House and in the course of a sitting of such House and for the purpose of the business being or about to be transacted, whenever such sitting may be held and whether or not it be held in the presence of strangers to such House; and

- (b) all things said, done or written between members or between members and officers of either House or between members and Ministers for the purpose of enabling any member or any such officer to carry out his functions as such, provided that publication thereof be no wider than is reasonably necessary for that purpose.

(7) For the purposes of subsection (6)

“member” means a member of either House;

“officer of either House” means a person, not being a member, whose duties require him from time to time to participate in proceedings in Parliament and who is a member of a class of persons from time to time designated by the President or the Speaker for the purposes of this section;

“House” includes any committee, sub-committee or other group or body of members or members and officers of either House appointed by or with the authority of such House for the purpose of carrying out any of the functions of or of representing such House.

### **Qualified privilege**

**11.(1)** Subject to this section, the publication of any report or matter referred to in the *First Schedule* shall be protected by qualified privilege.

(2) In an action for defamation in respect of the publication of any report or matter referred to in Part II of the *First Schedule*, the provisions of this section shall not be a defence if it is proved that the defendant

- (a) has been requested by the plaintiff to publish at the defendant’s expense and in such manner as is adequate or reasonable in the circumstances a reasonable letter or statement by way of explanation or contradiction; and

- 
- (b) has refused or neglected to do so or has done so in a manner not adequate or not reasonable in the circumstances.
- (3) Nothing in this section shall be construed as protecting the publication of
- (a) any matter the publication of which is prohibited by law;
  - (b) any matter which is not of public concern and the publication of which is not for the public benefit; or
  - (c) any blasphemous or obscene matter.

#### **Defeat of defence of qualified privilege**

**12.** The defence of qualified privilege shall be defeated if the plaintiff proves that the defendant in making the publication complained of was actuated by malice.

#### **Particulars of malice**

**13.** Where the defendant alleges comment or qualified privilege and the plaintiff intends to allege that the defendant was actuated by malice the plaintiff must serve a reply giving particulars from which malice is to be inferred.

#### **Translations**

**14.** Publication by any person of a translation by him, whether oral or written, shall be protected by qualified privilege provided that the words complained of have been translated in accordance with the sense and substance of the original.

## RESPONSIBILITY FOR PUBLICATION

**Responsibility for publication**

**15.(1)** In proceedings for defamation a defendant who is not primarily responsible for the publication of the statement complained of shall not be held liable to any plaintiff defamed thereby for publishing that statement unless

- (i) he knew or had reason to believe that the statement was defamatory of that person; and
- (ii) he had no reasonable grounds for believing that the statement could be justified or was otherwise excusable.

(2) The burden of proof shall be upon the plaintiff to prove that such a defendant knew or had reason to believe that the statement was defamatory of him and upon the defendant to prove that he had reasonable grounds for believing that the statement could be justified or otherwise excused.

(3) For the purposes of this section the persons primarily responsible for the publication of a defamatory statement are the author, the editor and the publisher.

For this purpose

“author” does not include a person who does not intend that his statement be published;

“editor” means any person having editorial or equivalent responsibility for the content of the statement or the decision to publish it; and

“publisher” means any person whose business is issuing material to the public, or a section of the public, and who publishes the statement in the course of that business.

(4) Employees or agents of a person primarily responsible for the publication of a defamatory statement are themselves primarily responsible if or to the extent

that they are in fact responsible for the content of the statement or the decision to publish it, but not otherwise.

(5) The following shall not be regarded for the purposes of this section as primarily responsible for the publication of a defamatory statement

- (a) in the case of a defamatory statement contained in printed material, a person involved only in printing, producing, distributing or selling that in which the statement is contained;
- (b) in the case of a defamatory statement contained in audio-visual work or recording, a person involved only in processing, making copies of, distributing, exhibiting or selling that in which the statement is contained;
- (c) in the case of a defamatory statement published by electronic means, a person involved only
  - (i) in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or
  - (ii) in operating any equipment by means of which the statement is retrieved, copied or distributed;
- (d) the broadcaster of an unrecorded defamatory statement made by a person for whose acts the broadcaster is not responsible;
- (e) the operator of a communications system by means of which a defamatory statement is transmitted, or made available, by a person for whose acts the operator is not responsible;
- (f) such other person as satisfies the court that he is not the author of the publication and that his involvement in the publication extends only to conversion of material into a readable form, or the transmission or reproduction of that material.

(6) In determining for the purposes of subsection (1) whether a person had reason to suspect that his acts involved or contributed to the publication of a statement defamatory of the plaintiff, regard shall be had to

- (a) whether the nature or circumstances of the publication, or the previous conduct or character of those primarily responsible, were such as to give cause for suspicion that his acts might involve or contribute to the publication of a defamatory statement; and
- (b) such other matters as the court considers necessary.

(7) In this section

“audio-visual work and recording” have the same meaning as in section 2 of the *Copyright Act*, Cap. 300;

“statement” includes pictures, visual images, gestures and other methods of signifying meaning.

(8) The provisions of this section do not affect any cause of action arising before this section comes into force.

#### OFFER OF AMENDS

##### **Offer of amends**

**16.(1)** A person who has published a statement alleged to be defamatory of another may, if he claims that he did not do so intentionally, make an offer of amends under this section.

For this purpose it shall be presumed until the contrary is shown that a person publishing a statement defamatory of another did so unintentionally.

(2) A person shall be regarded for the purposes of this section as publishing a defamatory statement intentionally if he knew that the statement

- (a) referred to the party aggrieved or was likely to be understood as referring to him; and
- (b) was both false and defamatory of that party,

or if he was reckless as to those matters.

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

- (a) to publish or join in the publication of a suitable correction of the statement complained of and a sufficient apology to the party aggrieved;
- (b) where copies of the statement 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 statement is alleged to be defamatory of the party aggrieved; and
- (c) to pay compensation to the party aggrieved.

(4) An offer of amends under this section

- (a) must be expressed to be an offer of amends under this section;
- (b) must be in writing; and
- (c) must be accompanied by an affidavit setting out
  - (i) particulars of the facts on which the publisher relies to show that his publication of the matter in question is innocent in relation to the offeree, and
  - (ii) particulars of any correction or apology made or steps taken before the date of the offer, upon which the publisher relies for the purposes of subsection (3).

(5) The affidavit referred to in subsection (4) must be made

- (a) by the publisher;
- (b) where the publisher is a corporation aggregate, by an officer of the corporation having knowledge of the facts; or

- (c) where, upon facts appearing in the affidavit, it is impracticable to comply with paragraph (a) or (b), by a person authorised by the publisher and having knowledge of the facts.
- (6) An offer of amends under this section may not be made by a person after serving a defence in proceedings for defamation brought against him by the party aggrieved in respect of the publication in question.
- (7) An offer of amends under this section may be withdrawn at any time before it is accepted, and a renewal of an offer which has been withdrawn shall be treated as a new offer.

### **Effect of accepting offer of amends**

- 17.(1) If an offer of amends duly made under section 16 is accepted by the party aggrieved, no proceedings for defamation in respect of the publication concerned may be brought or continued by him against the person making the offer, but he is entitled to enforce the offer of amends as follows.
- (2) Any question as to what is to be done in fulfillment of the offer, including the amount of compensation to be paid, shall in default of agreement between the parties be referred to and determined by the judge, whose decision shall be final.
- (3) The amount to be paid by way of compensation shall be determined on the same principles as damages for defamation, due allowance being made for the correction and apology made and any other steps taken in fulfillment of the offer.
- (4) The party aggrieved may apply to a judge
- (a) for an order that the other party comply with the terms of the offer, as agreed or determined by the judge, with respect to the correction and apology and any other steps to be taken in fulfillment of the offer; and
  - (b) for judgment for the amount of the compensation agreed or determined by the judge to be payable.

(5) The power of the judge to make orders as to costs in defamation proceedings by the party aggrieved against the person making the offer, or in proceedings under this section, includes power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and of any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question.

(6) If no such proceedings are taken, the judge may, on application by the party aggrieved, make any such order for the payment of such costs and expenses as could be made in such proceedings.

(7) The acceptance of an offer of amends made by one person does not affect any cause of action of the party aggrieved against any other person in respect of the same publication.

#### **Effect of not accepting offer of amends**

**18.(1)** If an offer of amends is duly made under section 16 and is not accepted by the party aggrieved, the fact that the offer has been made is a defence to any proceedings for defamation in respect of the publication in question brought or continued by that party against the person making the offer.

(2) Notwithstanding subsection (1) a defendant in proceedings for defamation is not bound to rely on an offer of amends that he has made by way of defence.

(3) A defendant in proceedings for defamation may rely in mitigation of damages on an offer of amends not relied on, or not successfully relied on as a defence.

#### **Multiple publication**

**19.** Where an action for defamation in respect of matter published has been concluded (whether by way of judgment, decree, final order at a trial, settlement, discontinuance or abandonment), the plaintiff shall not be allowed to take or continue any further proceedings against the defendant in that action in respect of the said matter unless he has obtained leave of the court and has served notice on the defendant.

**Innocent dissemination by printer**

**20.** Where an action for defamation has been brought against a printer in respect of charges contained in matter published, it shall be a defence for him to prove that

- (a) he did not know the matter contained the said charges;
- (b) he did not know that the matter was of a character likely to contain charges of a defamatory nature; and
- (c) his want of knowledge was not due to any negligence on his part.

**Protection for book publisher and author**

**21.(1)** Where, in an action for defamation in respect of matter published in a book, the plaintiff has expressly or by implication requested the defendant to withhold, withdraw or correct the book, he shall not recover additional damages on the ground that the defendant has continued to publish or failed to correct the book unless he has given the defendant an undertaking that, in the event of the action failing or being struck out or dismissed, he will compensate the defendant for any loss sustained by the defendant as a result of complying with the request.

(2) In order to enforce such an undertaking referred to in this section, the defendant shall bring separate proceedings.

**Actions by corporations and other bodies**

**22.(1)** An action for defamation brought by any of the bodies referred to in subsection (2) shall fail unless that body alleges and proves

- (a) special damage; or
- (b) that the matter published was likely to cause it pecuniary damage.

(2) The bodies referred to in subsection (1) are

- (a) a trading corporation;

- (b) a non-trading corporation;
- (c) a statutory board; and
- (d) an unincorporated body.

### **Assessment of damages**

**23.** Damages recoverable in actions for defamation shall be by way of compensation and may include exemplary damages where the court considers that such an award is appropriate in the circumstances.

### **Mitigation of damages**

**24.** In an action for defamation, the defendant in mitigation of damages may give

- (a) any general or particular evidence which at the date of the hearing of the action has relevance to the charges contained in the matter published;
- (b) evidence that the plaintiff has
  - (i) recovered damages, or brought an action for damages, for libel or slander or defamation in respect of the publication of charges in respect of which the first mentioned action is brought, or
  - (ii) received or agreed to receive compensation in respect of any such publication.

### **Effect of death on actions**

**25.(1)** A cause of action in respect of defamation shall survive against the estate of the defendant in the action or the person who, if he had survived, would have been the defendant in the action.

(2) Where the plaintiff in an action for defamation dies prior to judgment, his personal representative shall be entitled to continue on the action and recover such damages as would have been recovered by the plaintiff.

(3) A cause of action in respect of defamation shall survive in favour of the personal representative of a person who has died without bringing an action for defamation, but the personal representative shall, in an action for defamation brought by him be entitled to commence and continue proceedings to the extent only of obtaining a declaration or an injunction or both as the circumstances may require, and compensation for actual or likely pecuniary damage suffered by the deceased or his estate as a result of the defamation.

### **Defamation of the dead**

**26.(1)** Where in relation to a person who has died, a person publishes matter, the publication of which would, if the deceased had not been dead, have constituted defamation, any of the surviving relatives of the deceased shall, within a period of 3 years beginning with the date of death of the deceased be entitled to bring proceedings against the publisher for

- (a) a declaration that the said matter published was untrue;
- (b) an injunction against the defendant;
- (c) such an award of costs, if any, as the court thinks fit,

but not for damages.

(2) The relatives of the deceased referred to in this section are

- (a) the spouse;
- (b) parents;
- (c) brothers and sisters.

(3) If more than one of the relatives referred to in subsection (2) bring proceedings as aforesaid, the proceedings shall be consolidated unless the court shall otherwise order.

(4) Where proceedings brought under this section have been carried through to judgment, no further proceedings may, without leave of the court, be brought or continued under this section in respect of the said matter published.

- (5) For the purposes of subsection (2), reference to a “spouse” includes
- (a) a single woman or widow who was living with a single man, as his wife for a period of not less than 5 years immediately preceding the date of his death;
  - (b) a single man or widower who was living with a single woman as her husband for a period of not less than 5 years immediately preceding the date of her death.
- (6) Notwithstanding subsection (5) only one such common law relationship shall be considered for the purposes of this section.
- (7) For the purposes of subsection (5), references to a single woman or a single man include references to a woman or man who is divorced.

#### **Award of damages**

- 27.(1)** Where an action for defamation is tried by a judge and jury it shall be competent for the judge to instruct the jury that an award of damages may be substantial, moderate, nominal or contemptuous.
- (2) In directing the jury as to the quantum of damages which may be awarded, the judge may direct the jury that they may have regard to the quantum of damages awarded in personal injury cases.
- (3) It shall be the duty of the jury to assess the damages in accordance with the instructions given pursuant to subsection (2).
- (4) Without prejudice to any other powers vested in it, the Court of Appeal may, on appeal against an award of damages under subsection (1) increase or reduce such award or substitute its own award of damages.

#### **Waiver of right to damages**

- 28.(1)** Notwithstanding the provisions of this Act and subject to this section, in an action for defamation the plaintiff may waive his right to damages.

(2) In an action under this section, the court may make an order for advertisement of its decision at the defendant's expense, in a daily newspaper or such other periodical or in such manner as it determines.

### **Limitation of actions**

**29.(1)** Subject to this section no action for defamation shall be brought unless it is commenced before the expiration of 3 years from the date when the right of action accrued.

(2) Where on the date when any right of action accrued, the person to whom it accrued was under legal disability because he was a minor or suffering from a mental disorder and was not in the custody of a parent, the action for defamation may be brought at any time before the expiration of 3 years from the date when the person ceased to be under disability, notwithstanding that the period of limitation under subsection (1) has expired.

(3) For the purposes of subsection (2)

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or disability of mind;

“parent” includes a step-parent and a grandparent.

(4) Where it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which

- (a) the operation of subsection (1) or (2) prejudices the plaintiff or any person whom he represents; and
- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

- 
- (5) In acting under subsection (4) the court shall have regard to all the circumstances of the case and in particular to
- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
  - (b) in a case where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the expiration of the period mentioned in subsection (1) the date on which any such facts did become known to him;
  - (c) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff is or is likely to be less cogent than if the action had been brought within the period mentioned in subsection (1);
  - (d) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
  - (e) the duration of any disability of the plaintiff arising after the date of accrual of the cause of action;
  - (f) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the facts in question might be capable at that time of giving rise to an action for libel or slander or, as the case may be, an action for slander of title, slander of goods or other malicious falsehood;
  - (g) the steps, if any, taken by the plaintiff to obtain legal advice and the nature of any such advice he may have received.
- (6) Nothing in this section affects any cause or right of action which accrued before the commencement of this Act.

**Striking out and dismissal of actions**

**30.** Where an action for defamation has been struck out or dismissed, no further writ in respect of the same cause of action shall be issued without leave of the court.

**Consolidation of actions**

**31.(1)** Where actions for defamation have been consolidated under Order 34 of the *Rules of the Supreme Court, 1982*, the jury or where there is no jury, the judge shall assess in one sum the total amount of damages to be awarded to the plaintiff in the consolidated actions and apportion the said sum between and against the defendants in the said actions.

(2) Where an award is made to the plaintiff of the costs of such consolidated actions, the judge shall thereupon make such order as is considered just for apportionment of such costs between and against the defendants.

(3) The provisions of this section shall apply *mutatis mutandis* to actions for malicious falsehood, slander of title and slander of goods.

(4) Nothing in this section shall affect the liability of joint tortfeasors *inter se* or to the plaintiff.

---

[1982/51]

**Agreements for indemnity**

**32.** An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be unlawful but such an agreement shall be unenforceable if at the time of publication that person knew that the matter was defamatory and did not reasonably believe that there was a good defence to any action brought in respect of it.

**Limitation of privilege at elections**

**33.** A defamatory statement published by or on behalf of a candidate in any election to Parliament shall not be deemed to be published on a privileged occasion on the grounds that it is material to a question in issue in the election.

**Criminal libel**

**34.(1)** Liability for criminal libel shall extend to charges contained in matter published

- (a) by means of broadcasting; or
- (b) in permanent form.

(2) The defence of comment and the defence of privilege (whether absolute or qualified) shall extend to a prosecution for criminal libel as they respectively extend to an action for defamation.

(3) A court of summary jurisdiction shall, with the consent of the defendant, have power to hear and determine a prosecution for criminal libel and shall have power to impose on conviction a fine not exceeding \$2 000 or imprisonment for a term not exceeding 12 months or both.

(4) No prosecution for criminal libel shall, without the consent of the Director of Public Prosecutions being first obtained, be brought in respect of any matter appearing in a newspaper or periodical publication against any proprietor, publisher, editor or other person responsible for the publication of such newspaper or periodical publication or against any person who (whether or not employed by such proprietor) is paid to contribute matter to such newspaper or periodical publication; nor shall any prosecution for criminal libel be brought without such order in respect of any matter broadcast against the broadcasting authority concerned or against any person who (whether or not employed by such authority) is paid to present or contribute such matter.

(5) Any application for an order to which subsection (4) refers shall be made after notice to the person accused who shall have an opportunity of being heard against such application.

(6) The fact that an action for defamation has been brought or concluded against any person shall not be a bar to a prosecution of that person for criminal libel.

### **Saving**

**35.** Subject to this Act, any enactment or rule of law or practice which immediately before the 15th August, 1997 applied to actions for libel or slander shall, in relation to actions for defamation brought after the 15th August, 1997 apply as varied, modified or otherwise affected by this Act.

### **Trial by jury**

**36.** Nothing in this Act affects the right of the parties to a defamation action to trial by jury under section 44 of the *Juries Act*, Cap. 115B.

### **Proceedings affected and saving**

**37.** This Act applies for the purposes of any proceedings begun after the 15th August, 1997 no matter when the cause of action arose, but does not affect any proceedings begun before the 15th August, 1997.

### **Rules of court**

**38.** The *Rules Committee of the Supreme Court* may make rules for the purpose of giving effect to the provisions of this Act.

---

**SCHEDULE***(Section 11)****SPECIAL CATEGORIES OF REPORTS AND STATEMENTS HAVING  
QUALIFIED PRIVILEGE*****PART I****REPORTS AND STATEMENTS PRIVILEGED WITHOUT EXPLANATION  
OR CONTRADICTION**

- 1.** A fair and accurate report of any proceedings in public of the legislature of any Commonwealth Country.
- 2.(1)** A fair and accurate report of any proceedings in public of an international organisation of which Barbados or the Government of Barbados is a member or of any international conference to which that Government sends a representative.  
**(2)** A fair and accurate report of the proceedings of any international organisation or agency carrying out the functions under the United Nations Organisation.
- 3.** A fair and accurate report of any proceedings in public of
  - (a)** the International Court of Justice or any other judicial or arbitral tribunal deciding matters in dispute between states;
  - (b)** such other international body as the Minister responsible for Legal Affairs may by order declare.
- 4.** A fair and accurate report of any proceedings in public before
  - (a)** a court (including a court established under any disciplinary law and a tribunal or enquiry recognised by law and exercising judicial functions)

in Barbados when such report is not protected by absolute privilege under section 9;

- (b) a court including a court established under any disciplinary law in any Member State of the Caribbean Community or Commonwealth Country.

**5.** A fair and accurate report of any proceedings in public by the government or legislature of any Member State of the Caribbean Community or Commonwealth Country.

**6.** A fair and accurate copy or extract from any register kept in pursuance of any enactment which is open to inspection by the public or of any other document which is required by law to be open to inspection by the public.

**7.** A fair and accurate report of

- (a) any report commissioned by either House;
- (b) any publication issued by or under the authority of
- (i) the Conference of Heads of Government;
  - (ii) the Government or legislature of any Member State of the Caribbean Community or of any Commonwealth Country.

**8.** A notice or advertisement published by or on the authority of any court in Barbados or any judge or officer of such court.

**9.** A notice or advertisement published in Barbados by or on the authority of any duly constituted court of competent jurisdiction in any Member State of the Caribbean Community or Commonwealth Country (other than Barbados) or any foreign State recognised by the Government of Barbados.

**10.** A letter or statement by way of explanation or contradiction published in compliance with section 11(2).

---

PART II  
REPORTS AND STATEMENTS PRIVILEGED SUBJECT TO  
EXPLANATION OR CONTRADICTION

- 11.** A fair and accurate report of the findings or decisions of any of the following associations of any committee or governing body thereof
- (a) an association formed in Barbados for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association or the actions or conduct of any persons subject to such control or adjudication;
  - (b) an association formed in Barbados for the purpose of promoting or safeguarding the interest of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession or the actions or conduct of those persons;
  - (c) an association formed in Barbados for promoting or safeguarding the interest of any game, sport or pastime, to the playing or exercise of which members of the public are invited or admitted and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;
  - (d) an association formed in Barbados for the purpose of providing a charitable object or other objects beneficial to the community and empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the association or the action or conduct of any persons subject to such control or adjudication.
- 12.(1)** A fair and accurate report of the proceedings at any public meeting held in Barbados, that is to say a meeting *bona fide* and lawfully held for a lawful

purpose and for the furtherance of discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

(2) A fair and accurate report of any press conference held in Barbados convened to inform the press or other media of a matter of public concern.

(3) A fair and accurate report of any such public meeting or press conference may include a fair and accurate report of any document circulated at the public meeting or press conference to the persons lawfully admitted thereto.

**13.** A fair and accurate report of the proceedings at any meeting or sitting in Barbados of

(a) any commission, tribunal, committee or person appointed for the purposes of an inquiry under any enactment, by the Governor-General or a Minister;

(b) any other tribunal, board, committee, or body constituted by or under and exercising functions under any enactment,

not being a meeting or sitting admission to which is denied to representatives of publishers of newspapers or broadcast programmes and to other members of the public.

**14.(1)** A fair and accurate report of the proceedings at a general meeting of a corporation or association constituted, registered or certified by or under any enactment or incorporated by Royal Charter not being a private company.

(2) A fair and accurate report of any report or other document circulated to stockholders, shareholders or members by or with the authority of the board of any corporation or association constituted, registered or certified as aforesaid, not being a private company.

(3) A fair and accurate report of any document relating to the appointment, resignation, retirement or dismissal of directors circulated to stockholders, shareholders or members of any corporation or associations constituted, registered or certified aforesaid, not being a private company.

(4) A fair and accurate report of any document circulated by the auditors to stockholders, shareholders or members of any corporation or association constituted, registered or certified aforesaid, not being a private company.

**15.** A fair and accurate report of any adjudication, official report, statement or notice issued by the Barbados Press Association or such other body as the Minister responsible for Legal Affairs may by order declare.

**16.** Any information made available officially from court documents in criminal cases.

**17.** A fair and accurate report of any official notice or other matter (including photographs, sketches or other pictorial representations) issued for the information of the public by or on behalf of any ministry or department of government.

**18.(1)** A fair and accurate report of any proceedings, in public before a foreign court duly constituted by the *de facto* or effective government of the State in which such court exercises jurisdiction, such State not being a Member State of the Caribbean Community.

(2) A fair and accurate report of any proceedings in public of the legislature of a foreign State which is not a Member State of the Caribbean Community.

(3) A fair and accurate report of any publication issued by or under the authority of the government or legislature of any foreign State which is not a Member State of the Caribbean Community.

**19.** Publication in a technical or scientific journal of an article of a technical or scientific nature shall be protected by qualified privilege.

**20.** For the purposes of this Schedule

“Caribbean Community” means the Caribbean Community established by the *Treaty of Chaguaramas*;

“legislature” means in relation to any country or State which is subject to a central and a local legislature, either of those legislatures;

“private company” shall be construed in accordance with the *Companies Act*, Cap. 308.