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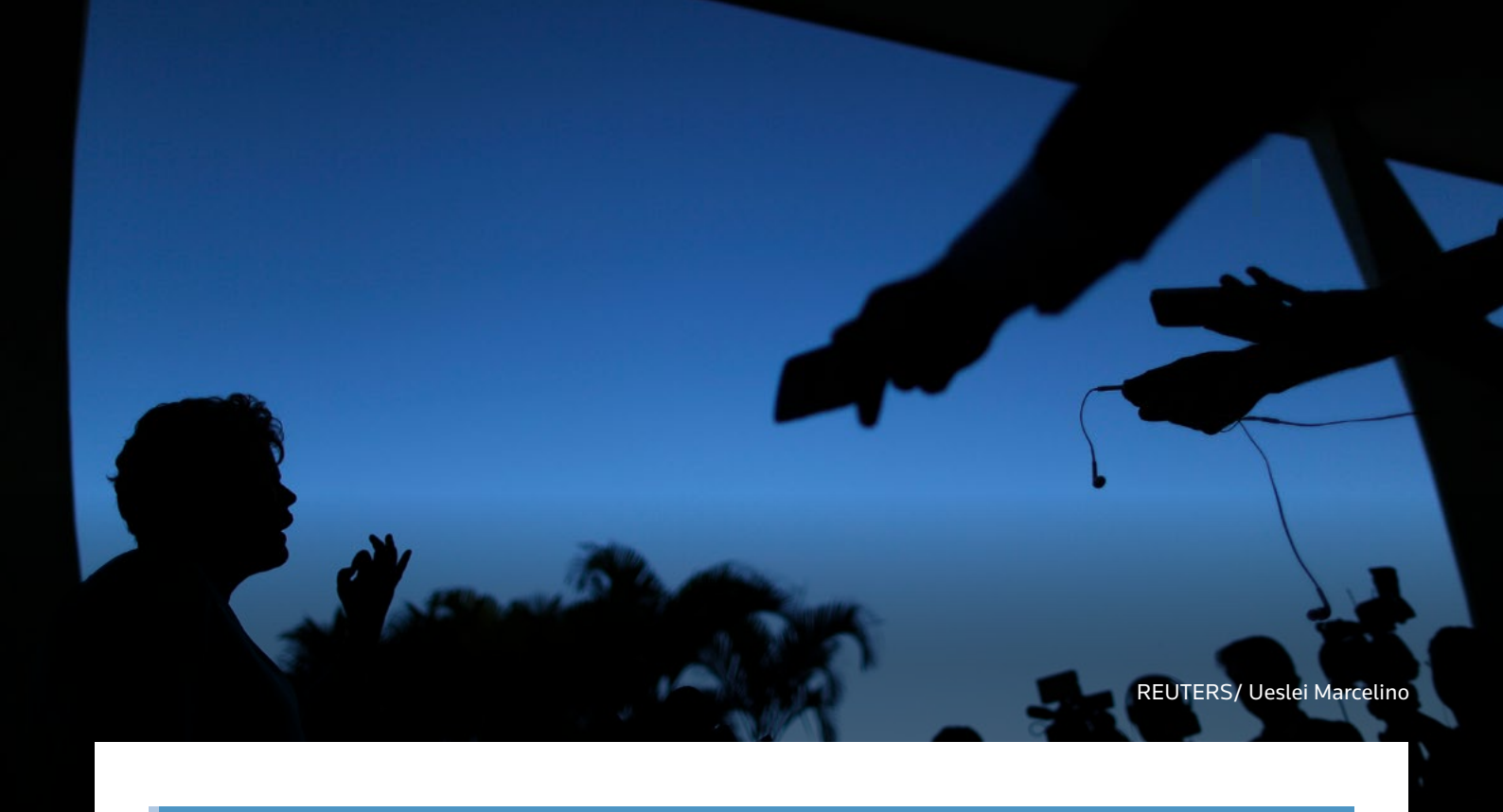
# UNDERSTANDING DEFAMATION LAWS IN ZAMBIA

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## INTRODUCTION

When applied legitimately, defamation laws are intended to protect individuals and businesses against false statements that are harmful to their reputation. Yet both civil and criminal defamation laws have the potential to be misused to prevent open public debate.

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in Zambia. This awareness will empower journalists to understand their legal rights and obligations and continue to report on issues of vital public interest. The Guide covers the scope of defamation law, the criminal and civil process of cases in courts, the defences against defamation, sanctions against defamation, and practical steps to mitigate defamation liability.



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## 1. SCOPE OF DEFAMATION

- ***What is defamation?***

Defamation is broadly defined as a false statement that tarnishes, harms or damages a person's reputation. Defamation falls under [tort law](#) and includes both libel (written statements) and slander (oral or spoken statements). The law on defamation is found primarily in the [Defamation Act](#) which applies specifically to civil defamation, and [the Penal Code](#) which applies specifically to criminal defamation.

A publication may be made in print or online and on social media, and includes words, paintings, effigies, and videos.

- ***What is criminal defamation?***

Criminal defamation is the publication of a statement (by print, writing, painting, or effigy, but does not include only gestures, spoken words or other sounds) that is likely to harm the reputation of any person by exposing them to hatred, contempt or ridicule, or likely to damage any person in their profession or trade by injury to their reputation. Criminal defamation is punishable by a fine or imprisonment or both.

- ***What is civil defamation?***

Civil defamation includes libel and slander. Libel is the publication of a statement in a permanent form (such as writing, picture, radio or television broadcasting) which is false and may injure a person's reputation in business, employment or office. Slander is a defamatory statement that is conveyed by spoken words (i.e., in a non-permanent form). The most common sanction for civil defamation is damages.

- ***What constitutes criminal and civil defamation?***

There are two key distinctions between a criminal and civil defamation case:

- a. the identity of the party bringing the claim; and
- b. the standard of proof required to prove the claim.

In civil proceedings, the individual or entity who/which alleges that they were defamed will bring the claim which must be proven on a balance of probabilities. In the case of a criminal defamation, the National Prosecution Authority institutes the case, and it must prove the elements of criminal defamation beyond reasonable doubt. This means that there is a higher evidence threshold in criminal defamation as opposed to civil defamation.

- ***When can I be sued for civil defamation?***

You may be sued for civil defamation by any person or an entity (through their representatives such as company directors) who believe their reputation has been damaged by your alleged defamatory statement. However, for the person suing you to successfully establish a claim against you for civil defamation, they need to prove the following elements:

- a. that you published or made a false statement orally;**
- b. that the statement refers to or identifies the person defamed; and**
- c. that the false statement harms the person's character, business, occupation or employment.**

If the court finds that the statement complained of was defamatory, you will be found liable, unless you can defend the claim. Defences to defamation are highlighted at pages 9 and 10.

- ***When can I be charged/prosecuted for criminal defamation?***

You may be charged/prosecuted under the Penal Code for criminal defamation if you publish a false statement about another person with the intention of harming their reputation, profession or trade. Publishing is defined as communicating the statement to at least one other person (section 193 (1) of the Penal Code). You may also be charged with criminal defamation against dead persons.

However, for you to be successfully prosecuted, the prosecutor must prove:

- a. the false statement was published in a permanent form such as through print, videos or effigies; and**
- b. you had the intention of tarnishing the person's reputation, profession or trade.**

- **What are the possible consequences for being convicted/found liable for defamation?**

### Criminal defamation

An imprisonment term of up to two years or a fine, or both.

### Civil defamation

- Damages:** If the defamatory statement has already been published and someone/an entity is successful in proving a defamation claim against a journalist, they are entitled to compensatory damages for the harm to their reputation and dignity. Damages are calculated on a case-by-case basis. The Zambian courts will consider factors such as the extent of the damage caused to the claimant's reputation and/or business.
- Interim injunction:** in the context of defamation, an interim injunction is a court order restraining an individual or a media outlet from publishing or broadcasting alleged defamatory material. Courts have the discretion to grant interim injunctions in defamation cases. This means that magistrates and judges may issue interim injunctions based on their own evaluation of the issues and guided by the law. Interim injunctions are issued where monetary compensation would offer an inadequate remedy to an injured party. Interim injunctions in defamation cases are granted before the trial of the case and should only be exercised in the clearest of the cases - they should not be granted when the defendant intends to rely on (and has reasonable evidence to support) defences such as justification, fair comment, or qualified privilege (see [Transparency International Zambia \("TIZ"\) v Chanda Chimba III and Zambia National Broadcasting Corporation 2010/HP/1176](#) at page 5). In the above case, the court restrained ZNBC and Chanda Chimba III from further publishing or broadcasting a documentary which was allegedly defamatory to TIZ.
- Retraction and/or apology:** Under the Defamation Act, an apology, whether given after a complaint or at the earliest opportunity after a defamation suit, mitigates damages granted by a court (section 12). A person suing for defamation may ask the court to order a retraction or apology.

## CASE EXAMPLES

### **Criminal defamation**

#### **Chellah Tukuta case (2021)**

A criminal defamation charge was brought against a Lusaka-based photographer and social media personality, Cornelius Mulenga, known as Chellah Tukuta. The allegations were that Mulenga, in a Facebook live video, accused Dora Siliya, the then Chief Government Spokesperson and Minister of Information and Broadcasting, of being immoral and of facilitating the prostitution of young girls for high-profile people. The court found Mulenga guilty and sentenced him to two years' imprisonment with hard labour for defaming Siliya. The magistrate went on to describe Mulenga's utterances against Siliya as reckless and required a harsh punishment to deter would-be offenders who abuse social media to disparage other people.

## **Civil defamation**

### **[Transparency International Zambia \(“TIZ”\) v Chanda Chimba III and Zambia National Broadcasting Corporation 2010/HP/1176](#)**

In this case, Chanda Chimba III produced a documentary styled as “Stand Up for Zambia” which was broadcast by ZNBC. The documentary contained allegedly defamatory words and images referring to TIZ’s President and its Executive Director.

TIZ applied for an interim injunction against Chanda Chimba III and ZNBC contending that the words and images used were circulated to disparage TIZ, and to cause injury to TIZ’s reputation. Chanda Chimba III and ZNBC pleaded the defence of justification and fair comment on a matter of public interest. Chanda Chimba III and ZNBC also contended that ZNBC, being a public broadcaster, had a duty to inform the public and the right to free speech.

The High Court granted TIZ an interim injunction restraining the Chanda Chimba III and ZNBC from further publishing, or broadcasting words, or images, defamatory of the claimant. The interim injunction was granted on the basis that the comments made by Chanda Chimba III and ZNBC had no factual basis and could therefore not be said to be justified or fair comment.

### **[Bevin Ndovi v Post Newspapers Limited Times and Printpak Zambia Limited \(SCZ 8 OF 2011\)](#)**

This case was an appeal filed by Bevin Ndovi in the Supreme Court against the Post Newspapers and Printpak Zambia after the High Court dismissed his claim for damages for defamation. Bevin accused the two of damaging his reputation for publishing that he was involved in clandestine meetings with Hon. Sokontwe, the then Member of Parliament for Chembe constituency.

Hon Sokontwe had responded by denying the allegations of having clandestine meetings and had shared his response to Post Newspapers and Times Printpak Zambia for publishing. The Post Newspaper published Hon. Sokontwe’s response as “.... Sokontwe is alleged to have been having clandestine meetings with .....Bevin Ndovi.” Printpak Zambia published Hon. Sokontwe’s response under the headline “Charges Baseless” and stated “Mr. Sokontwe was alleged to have between January, and August 2004, attended clandestine meetings especially on April 15, 2003, in Kabulonga with .... Mr. B. Ndovi”.

Upholding the decision of the High Court, the Supreme Court held that the Post Newspaper and Printpak Zambia engaged in balanced reporting as they reported both accounts: the allegations and the response to the allegations. The Supreme Court found that the respondents had a duty to disclose all the information to the general public on matters of public interest, confirming the defence of fair comment to the defamation claims.

### **[Muvi TV Limited v Charity Katanga \(Appeal 77 of 2018\) \[2019\] ZMCA](#)**

This case was brought to the High Court by Charity Katanga, who was a senior police officer at the time of the action. She argued that Muvi TV Limited aired on its prime-time news a report with the caption “Katanga involved in a punch up with subordinate Assistant Superintendent Lukonde”. The High Court found in favour of Katanga and awarded her ZMW 20,000 (approximately USD 1,124) as damages for defamation. On appeal, the Court of Appeal confirmed that Katanga was defamed and clarified that one can prove libel without proof that its publication caused harm to the person. Since libel is actionable without proving specific harm, damage is presumed. The Court of Appeal further stated that an adequate apology, even if it is offered late, has the effect of reducing the severity of the case and the damages awarded by the court.

## 2. PROCEDURE FOR LAUNCHING CRIMINAL CASES

- ***Who can complain to law enforcement about defamation?***

Any person who has a reasonable and probable cause to believe that they have been defamed may complain to a law enforcement officer. A person may make a complaint to the Magistrate of the Subordinate Courts in Zambia (the Subordinate Court(s)) or report the matter to a police officer. The magistrate or the police will prepare a charge sheet and the matter will be referred to the National Prosecution Authority (NPA) who will open a docket (a file containing information about a criminal case including statements and evidence gathered) and determine whether or not the case has merit for a trial. If the NPA determines that the case has merit, the case will be assigned to a prosecutor and a court date will be set.

- ***Who decides whether to prosecute a journalist for defamation? And how do they decide on whether they can charge a journalist?***

The Director of Public Prosecutions (the "DPP") decides whether or not to institute and undertake all criminal proceedings in Zambia. The DPP is the head of the National Prosecution Authority (the "NPA") and can delegate the powers of prosecution to the NPA.

The decision on whether or not to charge a journalist with defamation lies with the DPP.

- ***What should I do if I am arrested and/or charged with defamation?***

If arrested and charged with defamation, you have the following rights:

- a. the right to be informed, in a language that you understand and in detail, of the nature of the offence(s) brought against you;
- b. the right to remain silent if questioned. Anything you say may be used against you in a court of law;
- c. the right to seek legal representation before you are questioned by the police. The lawyer is permitted to be present during your questioning;
- d. the right to be given adequate time to prepare your defence; and
- e. the right to a fair hearing within a reasonable time by an independent and impartial court.

A journalist or their legal representative may also request for police bond pending commencement of the matter before the Subordinate Court of Zambia. A police bond is money that an accused person pays at a police station to be released pending appearance in court. The money is forfeited if the accused person fails to appear in court on the date required. Where police bond is not granted, the Subordinate Court may grant bail.



REUTERS/ Alex Gallardo

### 3. PROCEDURE FOR LAUNCHING CIVIL DEFAMATION CASES

- ***How does an aggrieved party sue a journalist/media outlet for defamation?***

Defamation cases are filed in the Subordinate Court or High Court of Zambia depending on the value of the claim.

Court	Damages claimed (in Zambian Kwacha)
Subordinate Court	Below 100,000 (approximately USD 5,620)
High Court	Above 100,000 (approximately USD 5,620)

- ***What should I do if I am served with a defamation suit or I am charged with defamation?***

If you are served with a defamation suit, it is important to seek legal representation and advice on the next steps. After that, you may be advised to pursue the case as a defendant (where the claimant's case is weak) or to settle out of court (where the claimant has a strong likelihood of succeeding). You may also offer to withdraw the article(s) and offer a public apology. An adequate apology, even if it is offered late, has the effect of reducing the seriousness of the defamation case and therefore, the severity of damages. If the defamation suit cannot be settled outside court, the steps a journalist needs to take will depend on whether the charge of defamation is civil or criminal. The next steps for each are outlined below:

### Civil defamation

- a. the defendant will be served with a court summons, statement of claim, list of documents and witness statement by the claimant, laying out the claimant's case against the journalist;
- b. the journalist will have fourteen (14) days to respond by sending the court and serving on the claimant (providing the claimant) a written defence, list of documents and list of witnesses;
- c. the parties will then be issued an order for direction by the judge assigned to the case. The order will outline the pre-trial steps that the parties need to undertake (e.g., preparing the documents);
- d. a trial date will be set, and both parties will be required to attend the trial and offer evidence and interrogate witnesses (parties may be represented by the appointed lawyers or self-represent during trial);
- e. upon conclusion of the trial, the parties will be required to make submissions in court. The submissions summarise the case presented before court and the legal arguments raised (the parties may self-represent or rely on the lawyers appointed); and
- f. the judge will have 180 days within which to issue a judgment. The judge may award damages and costs of litigation to the winning party. The losing party may be required to meet the costs of the case.

### Criminal defamation

- a. the person who brought the charge against the journalist (the "complainant") will either commence the defamation suit by reporting the matter to the police or by raising a complaint with a magistrate of the Subordinate Court;
- b. the magistrate or the police will prepare a charge sheet and the matter will be referred to the National Prosecution Authority (NPA) who will open a docket and determine whether or not the case has merit for a trial;
- c. if the NPA determines that the case has merit, the case will be assigned to a prosecutor and a court date will be set;
- d. the journalist facing the charge (the "accused") will be required to enter their plea before a magistrate;
- e. if the accused pleads guilty, a statement of facts (of the events leading up to the charge and plea) will be prepared, which the accused will be required to accept (if the facts are accurate). After that, the magistrate will give judgment and sentence the accused in accordance with the law;
- f. if the accused pleads not guilty, the case will proceed to trial;
- g. at trial, the prosecution will start with presenting its case. After that, the magistrate will determine whether or not the accused has a case to answer. If the accused is found with no case to answer, the accused will be released;
- h. if the accused is found with a case to answer, they will present their defence after which the parties may be required by the magistrate to give final written submissions to the court; and
- i. the magistrate will render judgment (and sentencing, if found guilty).





## 4. DEFENCES TO DEFAMATION

- ***How can I defend myself if I am charged with criminal defamation? What are the available defences and in what instances do I raise them?***

The defences for criminal defamation established in the Penal Code (sections 194-196) include:

### **Truth and public benefit**

If the matter is true and it was for the public benefit that it be published.

### **Absolute privilege**

It does not matter whether the matter is true or false, or indeed whether the matter was published in good faith for this defence to be applicable.

It includes:

- a fair report of anything said, done or published in the Cabinet or the parliament;
- matters published by the President, Cabinet, the National Assembly or a fair report of anything said or done in Cabinet or the National Assembly;
- matters published by a person subject to military or naval discipline where it relates to their conduct in such capacity;
- matters in the course of judicial proceedings if published by someone taking part in them. For example, a judge, magistrate, commissioner, counsel, witness, assessor or any party to the proceedings; and
- where the person publishing the matter is legally bound to publish it.

## Qualified privilege

There is a requirement that the matter was published in good faith. It includes a fair report of anything said, done or shown in court proceedings, where the reporting is not prohibited by the court.

- ***How can I defend myself against a civil defamation case? What are the available defences and in what instances can I raise them?***

The defences for civil defamation under the Defamation Act (section 6- 11) and common law (law that is based on court decisions from previous cases) include:

### Justification

The statements made are true in substance and fact.

### Fair comment

The statement was an honest opinion with no malice or intent to defame.

### Absolute privilege

The statement was a fair and accurate report of court proceedings which were publicly heard, and the statement was published during or shortly after the proceedings.

### Qualified privilege

The publication is privileged on condition that it is made in good faith/without malice. It includes a fair and accurate report of public proceedings of the parliament, public body, International Court of Justice or international organisation, among others. Such a publication will not be privileged if it is made with malice.

### Innocent or unintentional defamation

This defence applies where the defamatory content was published innocently, and the publisher makes amends. If the aggrieved/offended party accepts the amends, the libel suit should not be filed, and if already in progress, it will not continue. If the offer of amends is rejected by the claimant and the suit proceeds, the defendant can rely on innocent or unintentional defamation as a defence and will need to prove that they published the content innocently in respect of the claimant. They will also need to prove that they made an offer of amends soon after they were made aware of the defamatory article and that the offer has not been withdrawn. The offer of amends may include an apology, correction or notifying the persons who the copies of the defamatory article had been distributed to of the defamatory nature of the content. If a journalist wishes to rely on this defence, an offer of amends must be made and should be accompanied by an affidavit (a sworn written statement which is witnessed by lawyers) and the facts supporting the position that the content was published innocently in relation to the aggrieved/offended party. The affidavit can be the only evidence of the defence of innocent or unintentional defamation.

- **What options do I have if I am found guilty? Can I appeal?**

If found guilty, the court will pass a judgment which will impose penalties on you or require you to serve a period of imprisonment. However, you can apply to stop the penalty or imprisonment pending appeal to the High Court (if the matter was before the Subordinate Court).

If still dissatisfied with the outcome of the case in the High Court, a further appeal can be made to the Court of Appeal of Zambia and finally to the Supreme Court of Zambia, the final appellate Court.

## 5. PRACTICAL STEPS TO MITIGATE DEFAMATION LIABILITY

### DEFAMATION LIABILITY IN THEIR WORK

In general, journalists in Zambia should be guided by the [Standard Operating Procedures for Broadcasting in Zambia](#), which are the ethical guidelines for radio and television stations in Zambia developed by the [Independent Broadcasting Authority](#) (IBA).

#### **Summary**

It is worth remembering that truth is a complete defence to a defamation action. There may be other limitations on publishing information, but to the extent that the information is and can be proved to be true, a defamation action will not be successful. A good rule of thumb is to only report what you are confident you can prove.

A rigorous focus on fair and accurate reporting at each stage and verifying the truth of the matters reported will put you in the best possible position if faced with legal threats or claims. The suggestions below are intended to help you to think about practical means of achieving this. There are also other defences to a defamation claim which may be available to you depending on the jurisdiction, some of which are mentioned below.

#### **Newsgathering**

- Gather information early - as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution – if you rely solely on information from a confidential source in respect of certain allegations or statements in your reporting, be aware proving the truth may be more difficult.

- Non-disclosure agreements are permissible and effective to protect journalists from disclosing their source. If you do not conclude such an agreement – expressly or impliedly – you are not contractually (although you may be ethically) obligated to protect sources and maintain confidentiality.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to use audio or visual recording, always pause to consider whether you can record without permission, or whether permission is required. When in doubt, ask for consent.
- Keep a good record of your notes, meetings, etc.
- Research carefully. Verify sources and double-check your facts to ensure accuracy. Generally, you may only adopt communications from authorities and recognized agencies without further verification where you clearly attribute the source of the information.

### ***Drafting and vetting the article***

- Familiarise yourself with defamation law in the countries where you're working (see above). Be aware there may be more restrictive laws in some countries – for example in some countries it is easier for a company to bring a defamation challenge than others.
- Familiarise yourself and comply with your news organisation's ethics guidelines and policies.
- Use credible sources to verify the accuracy of any potentially defamatory statements.
- Ask yourself whether there are any statements directed to identifiable individual(s) or companies that could be reputationally damaging. Confirm accuracy, and if doubt remains, weigh the benefits of keeping the statement in versus taking it out.
- Make your reliance on trustworthy and non-confidential sources transparent (for example, by hyperlinking to or otherwise disclosing the relevant reports or public records).
- A cornerstone of responsible journalism is seeking comment from the subject(s) of the reporting you intend to publish, in particular where you intend to make allegations about them or their conduct – you should clearly put the substance of allegations to the subject, in advance and invite their response.
- Ensure, especially where you are engaging in investigative reporting, the subjects of your reporting have sufficient time to respond and have enough information to respond adequately. You should not show them a draft of your intended reporting, but you should be prepared to share the substance of the intended publication.
- Reflect the comment /response in the article (you may use your editorial discretion in doing so). Even noting "no comment" or source "did not respond to requests for information" will go a long way in showcasing the steps the journalist took to report factual information.
- Be precise with your language and the meaning you intend to convey. Avoid any ambiguity, over-exaggerations or speculations. To the extent that you've made any assumptions, disclose them clearly as such.
- Always reproduce quotations correctly and attribute them clearly.

- Consider exculpatory circumstances and avoid one-sided reporting. Reporting should be balanced and not create a distorted picture of reality.
- Do not spread mere rumours, whether about public or private matters. Report only when a minimum body of evidence is available and say what you don't know, where applicable.
- Consider how litigious and risky the subjects of your reporting are, and plan accordingly. If it is someone with a history of litigious activity toward the press, engage your news organisation's legal/compliance team early.
- Consider whether you are making an assertion of fact or a potentially protected opinion. There must be sufficient evidence for a statement of fact. If there is any uncertainty or doubt, consider formulating it as an expression of opinion (based on true facts) or presenting it as an assumption.
- Beware of republication liability. If you take information from another medium for your reporting, you assume responsibility for its content. Always research yourself.
- Consider whether any available defences to defamation – for example truth, public interest reporting, qualified or absolute privilege, fair and accurate reports of certain proceedings – apply.
- There are several defences to a defamation action other than truth/justification, some of which may be particularly applicable to journalists – for example in some countries there is defence for reporting in the public interest. There may also be defences available where an article expresses an opinion and are written in the public interest. However, these defences are not fool proof and will usually involve satisfying a number of requirements. If you intend to rely on a defence, consult your legal team or research precedent to ensure that the defence is likely to be available.

### ***After publication***

- Stay informed of any developments in the subject matter that might change, call into question, or shed new light on the published information. Originally permissible reporting may generally be kept in the online archive. You typically have no active duty to investigate or update the reporting. Only if an affected party raises a qualified complaint about the reporting, you may be required to add supplementary information or take reasonable precautions to prevent the reports from being found in search engines in name-related search queries ("right to be forgotten").
- Consider whether to keep your notes and relevant communications and, if so, for how long – knowing the limitation period for defamation claims in the relevant jurisdiction may assist.
- Be willing to correct or retract your mistakes and issue an apology to the extent necessary for the justification/truth defence. You may be required to correct factual allegations that have subsequently proven to be incorrect and have a lasting effect on the personal rights of the person concerned. This is usually done via a supplement/correction in the next issue or on the website.

*Please note that journalists must also remain cognisant of emerging trends in other areas of the law that place their wellbeing at risk, or which could create legal risk – such as applicable privacy laws.*



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