

A Guide to Media Law in Zimbabwe

by Geoff Feltoe

Preface

This is a revised and updated version of the *A Guide to Press Law in Zimbabwe* published by the Legal Resources Foundation of Zimbabwe. As this guide covers the law relating to both print and electronic media this new edition has been entitled *A Guide to Media Law in Zimbabwe*.

This booklet is intended to assist journalists to understand the various aspects of the laws in Zimbabwe that have a bearing on their professional work. Media practitioners in both the print and electronic media can use it as a reference work. It will be of use to reporters, editors, sub-editors, publishers and managers of media enterprises. It will also be of use to legal practitioners who give legal advice to media practitioners.

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Access to information by media

There is no specific constitutional guarantee of access to information held by government departments. However in terms of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] the media has a right to obtain access to various types of information held by public bodies. Only a journalist who is accredited has the right to seek access to information held by public bodies. [s 78]. A request for access to a record in the custody or control of a public body must be made in writing to the public body concerned. The request must provide adequate and precise details to enable the public body to locate the record. [s 6]. The applicant must pay the prescribed fee. [s 7].

Where an applicant is granted access to a record or part of a record, the head of a public body must give him or her the opportunity to examine such record or a part of it or where the applicant has requested a copy of a record or part of a record, provide him with such copy if it can be reproduced, and where it cannot be reproduced, give the applicant an opportunity to take notes from such record or part thereof. [s 10].

The public body from whom the record has been requested must normally respond within a maximum of 30 days to the request but there is provision for this period to be extended in certain circumstances. [ss 8 and 11].

There are, however, various types of information that either must not be disclosed or in respect of which the head of the public body has a discretion whether or not to disclose. These include:

- deliberations of Cabinet and local government bodies [s 14]
- advice relating to policy [s 15]
- information subject to client-attorney privilege [s 16]
- information whose disclosure will be harmful to law enforcement process and national security [s 17]
- information relating to inter-governmental relations or negotiations [s 18]
- information relating to the financial or economic interests of public body or the State [s 19]
- research information (s 20)
- information relating to personal safety [s 22]
- information relating to business interests of a third party [s 24]
- information relating to personal privacy [s 28].

Section 28 deals with information that must be disclosed in the public interest. This provides that the head of a public body must disclose to an applicant or members of public affected, whether or not they have requested the information, information concerning: “

- the risk of significant harm to the health or safety of members of the public;
- the risk of significant harm to the environment;
- any matter that threatens national security; any matter that is in the interest of public security or public order, including any threat to public security or public order, but this must only be disclosed to the relevant law enforcement authorities;
- any matter that assists in the prevention, detection or suppression of crime.

If the head of the public body refuses access to the requested record the journalist has a right to request the Media Commission to review that decision [s 53]

Accreditation and discipline of journalists

These matters are dealt with in the Access to Information and Protection of Privacy Act [*Chapter 10:27*].

No person is allowed to practice as a journalist or be employed as a journalist unless the Media Commission accredits him or her as a journalist. [s 83(1)] The penalty for practising as a journalist without accreditation is a fine not exceeding \$80 000 or imprisonment for up to two years or both. (s 80(d)). No journalist has the rights of journalists set out in s 78 unless he or she is accredited. [s 79(1)]. The accreditation is granted for one year and may be renewed. [s 84]

Only a Zimbabwean citizen or a permanent resident can be accredited [s 79(2)] A person who is not a citizen or permanent resident can only be accredited for a period not exceeding 30 days. [s 79(4)].

The journalist must make the application for accreditation or the mass media service for which he or she works may apply for accreditation on his or her behalf. [s 79(3)].

The Commission may accredit a journalist if it is satisfied that the applicant:

- has complied with the prescribed formalities; and
- possesses the prescribed qualifications; and
- is not disqualified because he or she is not a citizen or permanent resident or, not being a citizen or permanent resident has applied for accreditation for up to 30 days.

[s 79(5)].

The Minister responsible for information and publicity has the power to pass regulations providing for the qualifications that a person must possess for accreditation as a journalist. [s 91(2)(p)].

The Act tasks the Commission with the development of a code of conduct containing the rules of conduct that must be observed by all journalists. The Commission must develop this code “in consultation with such organisations it considers to be representative of journalists. [s 85(1)].

The Commission enforces this code. If a journalist breaches the code it can impose the following penalties on the offending journalist:

- deleting the journalist's name from the roll of journalists; or
- suspension for a specified period; or
- imposing conditions subject to which the journalist will be allowed to practice; or
- a penalty not exceeding fifty thousand dollars; or
- a caution; or
- referring the matter for prosecution.

[s 85(2)]

Before imposing these penalties the Commission must notify the journalist in writing of its proposed action and the reasons for it, and call upon him or her to show cause, within such reasonable period as will be specified in the notice, why the proposed action should not be taken. After considering any representations made by the journalist and affording him or her a fair hearing, the Commission may then take whatever action as it considers appropriate. [s 85(3) and (4)] The journalist has a right of appeal against the decision made or action taken to the Administrative Court. [s 85(6)].

Advertising

In terms of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] the owner of an advertising agency will be obliged to seek registration in terms of s 66 of the Act if the agency operates a mass media service as defined in s 2 of the Act. The relevant portions of the definitions in s 2 (as they will read if the proposed amendments contained in a Bill seeking to amend the Act (H.B. 9 of 2002) are these

“mass medium” includes any medium consisting in the transmission, circulation or distribution of voice, visual, data or textual messages to an unlimited number of persons, **and includes an advertising agency . . . ;**

“mass media products” means **an advertisement . . . ,**

“mass media service” means any service that produces mass media products, whether or not it also disseminates them.

The only other legislation specifically relating to advertising is the Advertising Regulation Act [*Chapter 14:01*] that simply regulates the posting of advertisements on roads, railways and in public places. There is also a little known provision, namely s 3(2)(q) of the Miscellaneous Offences Act [*Chapter 9:15*] which makes it an offence to place any placard or other document, writing or painting on, or otherwise deface any house, building, wall, fence, lamp post, gate or elevator without the consent of the owner or occupier thereof, or, subject to the provisions of any other enactment, to place any handbill, leaflet or other similar document on or in any motor vehicle without the consent of the owner or person in charge of such vehicle.

If, however, an advertisement contains indecent or obscene material there could be a prosecution under s 3(2)(p) of the Miscellaneous Offences Act [*Chapter 9:15*] or s 13(1)(a) read with 13(2)(a) of the Censorship and Entertainments Control Act [*Chapter 10:04*], or, if it contains the sort of material that would constitute any of the offences in terms of the Public Order and Security Act [*Chapter 11:17*] or in terms of s 80 of the Access to Information and Protection of Privacy Act [*Chapter 10:27*].

The advertising companies themselves have an internal mechanism for disciplining members of the advertising community who overstep the mark by engaging in unduly shocking or sexually explicit advertising. The Advertising Media Association will investigate any complains it receives from the public about particular advertisements. The Code of Standards of this Association contains this statement of general principle:

“All advertising accepted for publication, transmission or broadcast will be governed by the general principle that it will be legal, decent, honest and truthful “

(Copies of this Code of Conduct are available from the Advertising Media Association.)

The media must be on their guard against defamatory comments contained in advertisements to be published in the media. In *Zimbabwe Banking Corp Ltd v Mashamhanda* 1995 (2) ZLR 96 (H) a bank employee sued a bank for an advertisement it inserted in a newspaper stating that an ex-employee had been dismissed for incompetence and insubordination whereas he had been dismissed for insubordination. He sued the bank for damages for defamation and was awarded

damages. In a case where a highly defamatory remark is contained in an advertisement carried by a newspaper, the newspaper is also exposed to an action for damages for defamation against it for publishing the defamatory material.

Constitutional provisions guaranteeing press freedom

There is no specific guarantee of freedom of the press in the Zimbabwean Constitution. By contrast, Article 21(1)(a) of Namibia's Constitution which guarantees freedom of speech and expression, makes explicit reference to the freedom of the press and other media. Similarly the freedom of the press and other media is expressly guaranteed in Article 16 of the South African Constitution.

In the Zimbabwean Constitution s 20 lays down that everyone has the right to enjoy freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference. There is no explicit provision on freedom of the press. However, the general provision on freedom of expression encompasses freedom of expression by the press.

The Zimbabwe Supreme Court has repeatedly emphasis the importance of freedom of expression. In various judgments it has said the following things:

Freedom of expression is one of the most precious of all the freedoms and is a vitally important right that is an indispensable condition for a free and democratic society. Without the freedom to express, interchange and communicate new ideas and advance critical opinions about public affairs or the functioning of public institutions, a democracy cannot survive. Freedom of expression is universally recognised as a core value of society. One of the functions of freedom of expression is to protect the free flow of information and ideas in a society. This is essential to the proper functioning of a democratic system. In the political sphere, political parties competing for power are entitled to communicate freely with the electorate in order to try to persuade the electorate to support them and vote for them. Only by the spread of information, opinions and arguments, can voters make a responsible choice in determining whether they should support a particular candidate at an election or the party that person represents.

See *In re Munumheso & Ors* 1994 (1) ZLR 49 (S); 1995 (1) SA 551 (ZS); *Retrofit (Pvt) Ltd v PTC Anor* 1995 (2) ZLR 422 (S) 211A-H; *Retrofit (Pvt) Ltd v PTC & Anor* 1995 (2) ZLR 199 (S); *United*

Parties v Minister of Justice, Legal and Parliamentary Affairs & Ors 1997 (2) ZLR 254 (S) 269 (S);
In re: Chinamasa 2000 (2) ZLR 322 (S).

As in other countries, the right to freedom of expression in Zimbabwe is not an absolute and unlimited right. It is subject to a series of limitations. For example, restrictions can be imposed in the interests of the protection of defence, public safety, public order, the economic interests of the State, public morality or public health. There are also restrictions aimed at protecting the reputations and private lives of persons.

Any restrictions imposed, however, must not be more than are reasonably justifiable in a democratic society [s 20(4)] of the Zimbabwean Constitution. [Section 20 of the Constitution is reproduced verbatim at the end of this booklet.]

There are a number of legislative restrictions on the freedom of the press in current Zimbabwean law that are not to be reasonably justifiable in a democratic society. The current law of defamation seems also to be unduly restrictive of freedom of the press. It is arguable that our present law of defamation in the press imposes onerous constraints on the right of the press to inform the public, which are arguably in violation of the Constitution in that they go further than is justifiable in a democratic society.

In the case of *Chavunduka & Anor v Minister of Home Affairs & Anor* Supreme Court case 36 of 2000 the Supreme Court ruled that a provision in the Law and Order (Maintenance) Act [*Chapter* 11:07] was unconstitutional as it violated the freedom of expression guarantee in the Constitution. An editor and senior reporter of a weekly newspaper published an article about an attempted *coup d'état* said to have taken place. They were arrested on charges of contravening s 50(2)(a) of the Law and Order (Maintenance) Act, which makes it an offence to publish a false statement likely to cause fear, alarm and despondency among the public. They applied for an order declaring the section to be unconstitutional, as breaching the rights of freedom of expression and to a fair trial. The Supreme Court found that this provision far too wide and vague to allow people to regulate their conduct so as to avoid contravening the law. It curtailed freedom of expression to an extent that was not reasonably justifiable in a democratic society. It criminalized not only lies but also inaccurate statements and the anticipated danger that it sought to prevent was remote and conjectural.

See also under “Freedom of Speech and Media Freedom.”

Contempt of court

Criticism of the processes of justice

This crime is defined as “any unlawful and intentional act or omission that is calculated to impair the dignity, repute or authority or to interfere in the administration of justice in a matter pending before”.

The particular form of contempt of court that the media are most likely to run into trouble over is the form referred to as “scandalising the court”. In the case of *In re: Chinamasa* 2000 (2) ZLR 322 (S) the Supreme Court stated that this form of contempt is committed “by the publication, either verbally or in writing, of words calculated to bring a court, a judge of a court, or the administration of justice through the courts generally, into contempt.” The Supreme Court pointed out that this offence is seldom prosecuted.

The media, like ordinary citizens, have a right to engage in fair and temperate criticism of the processes of the administration of justice. The right of criticism is, however, confined within the limits required for the proper administration of justice. In the English case of *Ambard v AG for Trinidad and Tobago* [1936] AC 322 at 335 it was said that: “justice is not a cloistered virtue she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.” In the South African case of *In re Phelan* (1877) Kotze 5 at 9 it was stated:

“Although no scandalous or improper reflection on the administration of justice can be allowed, everyone is undoubtedly at liberty to criticise the conduct of judges on the bench in a fair and legitimate manner. It is only when the bounds of moderation and of fair and legitimate criticism have been exceeded, that the court has power to interfere. I do not in the slightest degree desire to fetter free and open discussion in the public prints of the proceedings of this Court. The liberty of the press is a great privilege, and a great safeguard to the public; but the administration of justice is, in like manner, a matter of public importance. Consequently the law – the very protector of the liberty of the press – will not, on the grounds

of public policy, allow that liberty – its own creature – to be abused and employed as an instrument to bring the administration of justice into contempt.”

Thus it is vital that public confidence in the courts and the fairness of the administration of justice should not be undermined, and thus there are limits to the right of criticism.

Some examples may be given of where fair and legitimate criticism will not constitute contempt. The press may, for instance, criticise a criminal sentence imposed on the basis that it was far too lenient or it may criticise the reasoning process of a judgment (provided that an appeal is not pending). Even fair and temperately expressed criticism of the competence of a judicial officer or of judicial impartiality will not amount to contempt of court. If a judge engages in behaviour which makes him unsuitable to hold the position of judge, again this may be reported.

Constitutional challenges have been brought to the species of contempt of court known as scandalising the court on the basis that it violates the right to freedom of expression.

In the case of *In re: Chinamasa* 2000 (2) ZLR 322 (S) the Zimbabwe Supreme Court decided the crime of contempt of court in the form of scandalising the court is not unconstitutional. Although the courts play a key democratic role in a democratic society and are bound to be criticised, and the courts are strong enough to withstand criticism, criticism imputing improper or corrupt motives or conduct does create a real or substantial risk of impairing public confidence in the administration of justice and some limitation on the right of free speech in relation to the courts is justifiable. Although this offence restricts freedom of expression, the limitation imposed upon this right is reasonably justifiable in a democratic society. It does not excessively limit the right of free speech as the offence is narrowly defined. The Supreme Court did, however, acknowledge that it is not always easy to draw the line between impermissibly scandalising the court and engaging in what is fair and legitimate criticism of the courts.

In the South African case of *S v Mamabolo* 2001 (3) SA 409 (CC) the Constitutional Court held that although crime of scandalising the court did limit freedom of expression, provided the crime was appropriately narrowly defined, the limitation was reasonable and justifiable in an open and democratic society in order to preserve confidence in the administration of justice. The court noted that in many such societies have this power for this purpose. It held that freedom of expression must be weighed against public confidence in the courts.

Comment upon case before the court or pending case

Another area where the media may get into trouble with the law of contempt is where it comments upon a case that is already underway or is about to go to court. The press has the right to report in a fair and balanced way all court cases which are not held *in camera*. For example, it may not publish the names of juveniles who are tried for criminal offences – s 195 of the Criminal Procedure and Evidence Act [Chapter 9:07] and may not publish the name of rape victims – s 196 of the Criminal Procedure and Evidence Act [Chapter 9:07]. But when cases are already being tried or are about to be tried, the press is not permitted to comment on the case and suggest that the case should be decided in a particular way. The court dealing with the case has to decide the case based entirely on the evidence which is put before it and it is therefore improper for the press to seek to influence the outcome of a pending case or a case which is being tried. In Zimbabwe it was established in the case of *S v Hartmann & Anor* 1983 (2) ZLR 186 (S) that any comment on a matter which is *sub judice* will constitute contempt of court if that comment created a real risk of prejudicing the outcome of the case.

Journalists called to testify in court

The journalist may also encounter difficulties with the law of contempt in situations where a reporter or editor has been subpoenaed to give evidence in a court case and has been ordered by the court to disclose the sources of his information for a particular story. The journalist does not have any privilege which enables him at law to refuse to disclose his source. Yet journalists will often only be able to extract information if their informants are given a categorical assurance that the source of the information will not be revealed. The journalist will obviously be placed in a predicament if the court orders him to disclose the source of information gleaned confidentially. However, the law is quite clear that if he refuses to answer such a question in court he commits the crime of contempt and may be incarcerated. See *R v Parker* 1966 RLR 15 (A).

Contempt of Parliament

There are a variety of offences that can be committed by journalists and the media under the Privileges, Immunities and Powers of Parliament Act [Chapter 2:08].

In terms of s 21 anyone who commits an act specified in the Schedule to this Act commits an offence and can be fined up to \$4000 or imprisoned for up to two years or can be both fined and imprisoned up to these levels.

The Schedule sets out a number of acts which will constitute illegal contempts and which can attract the penalties set out in s 21. The most important of these as far as the media are concerned are the following:

- wilfully failing or refusing to obey an order of Parliament;
- refusing to be examined before or to answer any lawful and relevant question put by Parliament or a committee of Parliament;
- publishing the proceedings of a committee of Parliament or evidence given before such a committee before the proceedings of the committee have been reported to Parliament;
- wilfully publishing a false or perverted report of any debate or proceedings of Parliament or wilfully misrepresenting any speech made by a member;
- publishing a defamatory statement reflecting on the proceedings or character of Parliament or committee of Parliament;
- publishing a defamatory statement concerning a member in respect of his conduct in Parliament or in a committee of Parliament.

If there has been a leak of information from a Parliamentary committee to the press, Parliament or a committee of Parliament can order the journalist who wrote the story to reveal his source of information for this leaked information. Or, if a Parliamentary committee is investigating a particular matter and the press has published a story on this matter, the newspaper can be ordered to reveal any further information it has on this matter and to identify the source from which this information was gleaned. If the journalist or newspaper refused to comply with this order, then the journalist or newspaper would be committing an offence under the Privileges, Immunities and Powers of Parliament Act. The law does not recognise any journalistic privilege in this situation. It is no defence for the journalist or newspaper owner or editor to refuse to answer the question put because to answer it would be a breach of journalistic ethics.

Under s 16 of the Act, Parliament itself has the power to impose and execute any punishment which can be imposed under this Act for an offence. In order to do this Parliament can sit as a court and, when doing so, it has the same rights and privileges that a court of law would have to inquire into and to punish the alleged offence.

Under s 22, however, instead of dealing with the alleged offence itself, Parliament may request the Attorney-General to take steps to bring the matter before an ordinary court of law.

For a critical discussion of these provisions see “Contempt of Parliament” 1993 Vol 5 No 1 *Legal Forum* 26.

Copyright

The essence of copyright is the right to prevent copying of original works.

Copyright means the sole right to produce or reproduce any original literary, dramatic, musical or artistic work. Copyright is protected by law by the Copyright Act [*Chapter 26:01*].

Copyright generally belongs to the author of the work, but it may be sold or donated by him. The law states that no person may reproduce any original work or any substantial part of it, without the consent of the owner of the copyright. The press may have to pay a fee in order to be able to reproduce materials, such as articles or cartoons, which are copyrighted.

If the press reproduces without the permission of the owner of the copyright the work or a substantial portion of it, it will be infringing copyright and the owner of the copyright is entitled to damages for any loss that he suffers. The owner is also entitled to the possession of all the infringing work and payment of all moneys that the infringer received for the copies that he has sold. The owner can also claim a court order known as an interdict to stop any future reproduction of his or her work.

Criminal Defamation

In Zimbabwe we still have a criminal offence known as criminal defamation. This is a common law crime. Prosecutions for this crime are relatively rare.

Criminal defamation consists of the unlawful and intentional publication of matter that injures another person’s reputation. The defamation must be of a serious nature before this crime is committed. To decide whether the defamation is serious the courts consider factors such as the extravagance of the allegation, the extent of the publication and whether the words are likely to have results that may detrimentally affect the interests of the state or community.

Relevant Zimbabwean cases on criminal defamation are *S v Marangarire* 1977 RLR 73 (GD) and *S v Modus Publications (Pvt)* 1996 (2) ZLR 553 (S)

The leading writers on South African Criminal Law (Burchell and Milton *Principles of Criminal Law* p 450) say that the use of a criminal sanction in respect of what is ordinarily only a delict seems to rest upon a concern to protect government from scurrilous attacks which might stir up public opinion and insurrection as well as concern to maintain decency in public discourse and prevent disturbances of the public peace. They go on to observe that “the crime possesses unattractively wide scope for the oppression of opponents of government, not to mention freedom of expression and the press. Its role in the prevention of disturbances of the public peace, in modern society is minimal.” They say that there is therefore a strong case for decriminalisation of this crime.

This offence may be open to constitutional challenge on the basis that it is so nebulous and ill-defined that it is incapable of fair application. It could be argued that the criteria laid down in the cases are so vague as to be incapable of sensible and consistent application. The scope of this offence as currently constituted goes further than can be accepted in a democratic society unless perhaps it is confined to deliberate character assassination of a very serious nature, that is where the accused knowing full well that the information he is publishing is false maliciously publishes that information with the intention of causing serious harm to the complainant.

Criminal offences in the Access to Information and Protection of Privacy Act and the Public Order and Security Act

Journalists need to be aware of a number of criminal offences contained in these two Acts. The publication of certain types of information lead to charges being brought for committing these offences. The important sections of these two Acts have been reproduced verbatim at the end of this guide. What follows is a short summary of these provisions.

The Access to Information and Protection of Privacy Act [Chapter 10:27]

Section 80 makes it a criminal offence for a journalist to -

- intentionally or recklessly falsify information;
- maliciously or fraudulently fabricate information;

- publish a statement knowing it to be false or without having reasonable grounds for believing it to be true and recklessly, or with malicious or fraudulent intent, representing it to be true;
- committing or facilitating the commission of a criminal offence.

(These definitions are the ones that will apply if the Access to Information and Protection of Privacy Amendment Bill, 2002 (H.B. 9 of 2002) is passed.)

The maximum penalty for these offences is a fine not exceeding \$ 80 000 or imprisonment for up to two years or both.

The Public Order and Security Act [*Chapter 11:17*]

Section 5 makes it a criminal offence to urge the setting up of an organisation

- to overthrow or attempt to overthrow the government by unconstitutional means;
- to take over or attempt to take over government by unconstitutional means;
- to usurp the functions of government;
- to coerce or attempt to coerce the government (coerce means using physical force or measures such as boycotts and civil disobedience if these are accompanied by physical force).

The media or a journalist could commit this offence by publication of an article urging the taking of these steps.

The maximum penalty for this offence is imprisonment for up to 20 years without the option of a fine.

Section 15 creates two offences involving the publication of certain types of false statements that are prejudicial to the State. Both these offences consist of publishing inside or outside Zimbabwe a statement which is wholly or materially false. The first offence entails the publication of a false statement intending it to cause or realising that it might cause the following types of harm:

- inciting or promoting public disorder or public violence or endangering public safety; or
- adversely affecting the defence or economic interests of Zimbabwe; or

- undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- interfering with, disrupting or interrupting any essential service.

Even if these forms of harm *do not actually occur* the publisher is still guilty of this offence and is liable to a fine not exceeding one hundred thousand dollars or to imprisonment for up to 5 years or to both.

The second offence is only committed if the following types of adverse effects are actually caused by the publication of the statement:

- it promotes or incites public disorder or public violence or endangers public safety;
- it adversely affects the defence or economic interests of Zimbabwe; or
- it undermines public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- it interferes with, disrupts or interrupts any essential service.

This offence is only committed if the person knows the statement that he or she is publishing is false or does not have reasonable grounds for believing that it is true. The State, however, does not have to prove that the publisher intended the specified adverse effects.

The penalty for this second offence is a fine not exceeding \$1000 or to imprisonment for a period not exceeding 5 years or to both.

Section 16 creates the offence of undermining the authority of or insulting the President. This offence is committed by any person who publicly and intentionally

- makes a false statement about or concerning the President or an acting President knowing or realising that there is a risk or possibility of engendering feelings of hostility towards or causing hatred, contempt or ridicule of the President or an acting President, whether in person or in respect of his office; or
- makes any abusive, indecent, obscene or false statement about or concerning the President or an acting President, whether in respect of his person or his office.

The penalty for this offence is a fine not exceeding \$20 000 or imprisonment for up to 1 year or both.

Defamation (see also criminal defamation)

Legal terminology

Damages

An amount of money which D has to pay to P to compensate for injury which D has caused to P.

Defame

To write or say something about P or to compile some illustration about P which harms P's reputation when others hear or read the words or see the illustration.

Defendant (D)

The person against whom a legal action is brought.

Innuendo

A statement which is not defamatory at face value, but has a hidden meaning and is defamatory when certain facts become known.

Interdict

A court order to prevent a person from going ahead and doing something which will cause injury to another.

Justification for statement

D will be justified in publishing a defamatory statement where the statement is true and publishing it is in the public interest.

Malice

Where D's actions are not motivated by a desire to assert a right but by spite, ill will or a grudge towards P. The presence of malice will defeat the defences of fair comment and privilege.

Plaintiff (P)

The person bringing a legal action against the defendant.

Privilege to publish defamatory statement

D will have a privilege to publish a defamatory statement when D is fulfilling some legal, social or moral duty in transmitting that statement.

Publish a statement

To pass on a statement about P to at least one other person than P or D's spouse. A statement can be passed on by speaking to others or by passing on to others a written statement or illustrations. A person can "publish" a statement written by another by passing on that written statement to more people.

Reputation

The estimation in which a person is held in the community; the standing of the person in the eyes of others.

Purpose of defamation law

The law on defamation sets out when a person has been defamed by another and what remedies the defamed person has. The usual remedy for defamation is to claim an amount of money by way of damages for the harm which has been caused to reputation. Sometimes an attempt will be made to prevent the publication of a defamatory statement by obtaining a court order known as an interdict. If the interdict is granted the person intending to publish a defamatory statement will be prohibited from doing so.

The law of defamation seeks to balance two competing interests, namely the protection of reputation and the right to disseminate information. On the one hand, the law recognises the right of the individual to be adequately protected against reputational harm. Most individuals in society want other people to think well of them. Thus when people's reputations are harmed this often causes them great distress, affecting as it does their social relationships. Also, once reputation is damaged it is extremely difficult to repair that damage. The press can reach large numbers of people and can thus do great harm if it publishes defamatory material.

On the other hand, the law also recognises that the rights of freedom of speech and freedom to transmit information are vitally important ingredients of a democratic society. Unless the public has access to information, they are not in a position to influence the course of events by exercise of their democratic rights. The law recognises that the press plays a pivotal role in the dissemination of information to the public and therefore that it should not be stifled by highly restrictive defamation laws.

Responsibilities of media

The media, especially mass circulation newspapers and national radio and television broadcast media, reaches substantial numbers of persons. Because of this, a great responsibility rests with the press to report in a professional and responsible fashion. This means that it has a duty to check facts carefully and to try to ensure that stories are not published which will unjustifiably harm the reputations of persons.

What is defamation?

Defamation causes harm to reputation. A person's reputation is not their own self-esteem; it is the estimation in which a person is held by others. A defamatory statement is a statement which lowers the esteem in which P is held by ordinary people generally; it harms his good name and standing in the community. It may cause P to be shunned or avoided or may expose him to hatred, ridicule or contempt or it may cast aspersions on his character or integrity or his trade, business, profession or office. Some examples of defamatory statements will help to make this clearer. I would be defaming P if I said that:

- P is a rapist or a murderer;
- P is a prostitute;
- P, who is a leading politician, is using his political office to engage in corruption;
- P, who is a businessman, is engaging in illegal foreign exchange transactions;
- P, who is a newspaper editor, is deliberately distorting certain facts in order to create a false picture about a particular event.

Is it defamation to repeat a statement made by another?

Yes. It is no defence that someone else made the statement or that the statement has already been published in, say, another newspaper. Anyone who further disseminates a defamatory statement is also guilty of defamation because the action of spreading the story around causes more harm to P's reputation.

As reputation is the estimation in which r is held by others, it follows that his reputation can only be harmed if the defamatory statement is published or communicated to at least one member of the public other than P himself. (The also law says that the publication must be to someone other than the D's spouse because it is felt that the intimate relationship between spouses is such that defamation is not committed by communications between them.)

What is the test to decide what is defamatory?

The test used is whether the publication of the statement would have lowered P in the estimation of ordinary, average Zimbabweans generally. The test for defamation is discussed in many of the decided court cases. These include *Chinamasa v Jongwe Printing & Publishing (Pvt) Ltd & Anor* 1994 (1) ZLR 133 (H) and *Madhimba v Zimbabwe Newspapers (1980) Ltd* 1995 (1) ZLR 391 (H)

The test is not how highly virtuous persons who think completely rationally and fairly and who are devoid of all prejudices would respond to the statement. This is important when it comes to defamatory statements such as that r has been charged with a crime or that P has been raped or that P has become insane. The virtuous rationalist would not think less of P because of any of these statements. He would reason that the fact that a person has been charged with a crime does not necessarily mean that he is guilty, since in our law a person is presumed innocent until his guilt has been proven. He would thus suspend judgment about the case until Ps guilt has been proven. He would feel sympathy for the rape victim and for the person who has become insane because it was not the fault of the persons concerned that these things have happened. This is not how ordinary average Zimbabweans generally would respond. Ordinary persons have ordinary prejudices and preconceptions. Each of the statements above would lower P's reputation in their eyes. Ordinary people would reason that a prosecution for a crime would never have been initiated unless the police had convincing evidence that P had committed that crime. They would think less of a rape victim because she has been tarnished by the rape. The fact that a person has become insane would lower that person in their estimation.

In respect of written materials the test is how ordinary, average readers of normal understanding and average intelligence would construe the item. It is not how a reader with a morbidly suspicious mind or how an abnormally sensitive or highly critical reader would respond to the contents. With regard to articles contained in newspapers, the law takes into account the reality that people reading newspapers do not usually carefully study each article. Because of the mass of information contained in newspapers and the limited time which most ordinary readers have for reading ordinary readers tend to read articles quickly in order to gain an overall impression about their contents. The test used takes into account this reality. The courts have laid down that ordinary readers of newspapers are not supercritical readers who study every item with meticulous care. Because of the mass of information contained in a newspaper, the ordinary reader does not engage in a process of intellectual analysis in respect of each item; he or she only forms an overall impression of the various items. Because the law adopts this approach, Stuart, in his book *The Newspaperman's Guide to the Law*, advises sub-editors to read from the perspective of ordinary, somewhat superficial readers. They should read the various reports and then put them aside and consider what overall impression they would create in the minds of ordinary readers who might not read all items in the paper right through. If a particular item could create an adverse impression in the minds of somewhat cursory readers, the item should be referred to the paper's lawyers for legal advice.

What of specialist journals or papers, such as scientific, technical or economic publications? As these publications are read and can only be properly understood by persons with specialist knowledge in the field concerned, the law takes this into account and uses the test of whether readers with specialist knowledge would construe the article in question in a defamatory sense. In the case of *Auridiam Zimbabwe (Pvt) Ltd v Modus Publications (Pvt) Ltd* 1993 (2) ZLR 359 (H) the court observed that it would probably be fair to impute to the reader of the *Financial Gazette* a somewhat higher standard of education and intelligence and a greater interest in and understanding of political, financial and business matters than newspaper readers in general have, but one should not impute to him the training or habits of mind of a lawyer.

The test for defamation also has to pay heed to contemporary social and political values. If, over time, these values undergo change, what is considered to be defamatory may alter as well.

A statement may be defamatory either in the primary sense or because it has a secondary meaning. The latter is referred to as *innuendo*. If I say of P that he is totally immoral and corrupt, that is defamatory in the primary sense in that ordinary persons hearing my remarks would think less of P. If, on the other hand, I say of P that he has 8 children, that does not bear any primary defamatory meaning. If, however, P is a Catholic priest who has thus sworn a vow of chastity, P's reputation will be harmed in the eyes of those who know he is a Catholic priest and must therefore have broken his vows. The statement assumes a defamatory meaning in the secondary sense.

Who can be defamed?

The following can be defamed:

- A person (but a dead person cannot be defamed and the relatives cannot sue in respect of defamatory statements affecting the reputation of the dead person);
- A trading corporation;
- A non-trading corporation, but probably only if the statement concerns the way in which it runs its affairs and is calculated to cause it financial prejudice.

A statutory corporation, however, may not sue for defamation if it is part of the governance of the country. The main policy reasons for this are these. State bodies should be open to public criticism and the public should have the right freely to criticise the activities of these bodies. Secondly, that State should not stifle or silence criticism by mounting defamation actions against its critics using State funds, derived from its subjects, to finance such actions. The State's normal remedy in such

cases is a political one and not by way of litigation. See *PTC v Modus Publications (Pvt) Ltd* 1997 (1) ZLR 492 (S).

A statutory corporation can only sue for damages if it has a sufficient degree of independence from the State. *ZESA v Modus Publications (Pvt) Ltd* 1996 (2) ZLR 256 (H)

Who can be held liable for defamation?

Both persons and corporations can be sued for defamation. All those who are involved in the making and dissemination of the defamatory statement can be sued for damages. Thus with a defamatory article in a newspaper or a magazine all the following can be held liable:

- the journalist who wrote the story;
- the editor who allowed the story to be published;
- the owner of the newspaper or magazine (which is usually a corporation);
- the publisher;
- the distribution agency for the newspaper or magazine.

What defences can be raised to actions for defamation?

It is necessary first to stress what defences are not available in Zimbabwean law. As the present law imposes strict liability, it is no defence that the publisher of a defamatory statement had no intention to defame; it is no defence that the publisher genuinely believed the statement to be true and that it was in the public interest to publish that information if the statement was in fact false and defamatory; it is even no defence that the publisher took all reasonable steps to check the accuracy of the story before going ahead and publishing it; it has not been accepted by the Zimbabwean courts that absence of negligence will act as a defence.

The way in which the current law operates leaves the press very vulnerable to defamation actions in a number of areas. It is strongly arguable that the present law weights the balance too far in favour of protection of reputation and is too restrictive upon the press when reporting in the public interest. However, until the law is changed the press has to try to operate as well as possible within its restrictive framework.

Another point needs to be noted before dealing with the defences that are available to the press. Journalists sometimes hold the erroneous view that provided they have confronted P with a

defamatory allegation against him, they are then entitled to go ahead and publish that allegation and they will have protection against being sued for defamation even if the story turns out to be without foundation. This is entirely wrong. The purpose of confronting P with the allegation is to try to check the story. If, when confronted, P admits the allegation, the press can then go ahead safely and publish the story. But if P completely denies the allegation or refuses to comment on it and the press still publishes it, P will be able to sue for defamation if the defamatory allegation is without substance.

The main defences currently available are justification, fair comment and qualified privilege.

The defences that can be raised are summarised below:

- ***Justification***

For this defence to succeed D must prove that:

- the statement was true in all its essential details (minor factual inaccuracies will not negate this defence;) and
- it was in the public interest or for public benefit to publish it (as it would be, for example, where a public official has accepted bribes or a judge has committed an indecent assault upon a young female). The public interest is not served by raking up long forgotten facts about P which have no bearing on P's present activities e.g. the fact that a person who is not a public figure was convicted twenty years ago of a petty theft when no suggestion is being made that he is presently behaving in a criminal fashion.

In the case of *Bushu & Anor v Nare* 1995 (2) ZLR 38 (H) a member of an association had made various allegations of mismanagement in the affairs of the association. The court held that although the member had proved that many of the allegations were substantially true and were published in the public interest, he had not established that some of the allegations were true and the defence of justification did not cover these allegations.

In the case of *Levy v Modus Publications (Pvt) Ltd* 1998 (1) ZLR 229 (S). a newspaper had published an article in which it had criticised the business conduct of a well-known businessman. The majority of the Supreme Court found that the defence of justification had not been established as the newspaper had failed to prove that it was justified in implying that the businessman was a crook. However, one of the judges was of the opinion that the newspaper was not liable for defamation. This judge said that the businessman was a public figure and in an open democratic society the public should guard against the tendency of prominent, wealthy and well connected

people in society to get away with breaking and bending the law and rules and trampling on the rights of other citizens. The statements about the businessman were generally true and the comments based on them were fair.

b) Fair comment

In the interests of free speech, the law allows people to express genuine opinions about facts of a public nature. If D's comments are not a genuine expression of his or her opinion, but instead are motivated by malice towards P and D has simply set out to harm P's reputation, this defence will not succeed.

The main requirements for this defence are set out below:

- This defence only applies if D made a comment or expressed an opinion; it does not apply if D made a statement of fact.
- The facts in relation to which the comment is being made must first be stated unless they are notorious. (It is always advisable for newspapers and the other media to set out clearly the facts upon which the comment is being made.)
- The facts commented on must be true facts and the facts must relate to matters of public interest. The comments must not be dishonest and have nothing to do with facts.
- D must be expressing his or her genuine opinion about the facts; this defence will not apply if D is not expressing a genuine opinion but instead simply wants to harm P because, for instance, D has some grudge against P. Provided the comments are a genuine expression of D's opinion, this defence will apply even if the opinion is expressed in strong and somewhat intemperate language, and even if the opinion is one-sided and not well-balanced.

In the case of *Moyse & Ors v Mujuru* 1998 (2) ZLR 353 (S) a magazine had published an article in which reference was made to the "goings on" of a prominent politician in a particular area. This was a reference to the business activities of this person which he admitted were in violation of the leadership code of his political party, the code prohibiting such business activities. The court held that this article was covered by the defence of fair comment.

In the case of *Madhimba v Zimbabwe Newspapers (1980) Ltd* 1995 (1) ZLR 391 (H) held that to say of a news reader that he is too grim and serious and should smile more often is well within the bounds of the criticism and fair comment to be expected by a person in his position. Public performers may be freely criticised and such criticism is not actionable as long as it is the honest expression of the critic's real views.

See also *Tekere v Zimbabwe Newspapers (1980) Ltd & Anor* 1986 (1) ZLR 275 (H) and *Zvobgo v Kingstons Ltd* 1986 (2) ZLR 310 (H)

c) Privilege

The law recognises that in certain circumstances a person has a moral, social or legal right or duty to transmit information to another, and that other person has a right to receive this information, even though the information may be of a defamatory character. In such circumstances, the law provides protection against actions for defamation under the defence of privilege. The defence of privilege can operate even if the information covered by the privilege turns out to be untrue.

For the defence of privilege to apply, the bounds of the privilege must not be exceeded. Thus only information that falls within the privilege must be communicated and the information must only be communicated to those who have a right or duty to receive such information. In the case of *Bushu & Anor v Nare* 1995 (2) ZLR 38 (H) the court held that the defence of privilege did not apply because two of the three persons to whom the information was transmitted did not have a legitimate interest in receiving the information.

The defence also does not apply if D in transmitting the information was motivated by malice rather than because he felt duty bound to supply the information. Thus if he deliberately supplies false information about P because he or she wishes to do harm to P, D will be liable for defamation. Once the person being sued has established that the statement was made on a privileged occasion, the onus is on the person suing to prove that the statement was motivated by malice.

The easiest example of where privilege operates is where D, an ex-employer of P, is asked by a potential employer of P to provide a reference about P's suitability for employment. If D defames P in the reference by stating his genuine opinion that P was untrustworthy, incompetent and indolent, the defence of privilege will protect him. If on the other hand D knows that P was industrious, highly competent and very trustworthy whilst in his employment and he tells the potential employer that he was untrustworthy, incompetent and indolent because he is actuated by spite towards P, P will be able to sue him for damages and the defence of privilege will not apply.

The operation of the defence of privilege is illustrated by the case of *Musakwa v Ruzario* 1997 (2) ZLR 533 (H). Ruzario had sent an affidavit to the Secretary of Justice and the Commissioner of Police alleging that a magistrate who was presiding over the criminal trial of Ruzario's younger brother had solicited a bribe from him. The court found that Ruzario was not liable for defamation.

The statement had been published on a privileged occasion and the magistrate had failed to establish that Ruzario had acted out of malice.

A newspaper is not covered where it reports the defamatory remarks of one politician about another politician. Thus in the case of *Zvobgo v Modus Publications (Pvt) Ltd* 1995 (2) ZLR 96 (H) a newspaper was made to pay damages where it carried a story in which an opposition politician who had been shot and seriously injured portrayed the Minister as being heartless. The court ruled that it was no defence that the newspaper was merely quoting the remarks of one politician about another.

In the case of *Thomas v Murimba* 2001 (1) ZLR 209 (H) the court said that in respect of the defence of qualified privilege, the range of duties or rights to communicate defamatory matter is wide and must be widened even further for the greater good of social transparency. The range spans legal, moral and social duties or rights and interests. The law must develop and the list cannot be fixed but will inevitably be widened. In the social setting in Zimbabwe, with its history of racial discrimination and continuing racist tendencies, it is even more imperative to widen the scope of qualified privilege. In this case a security guard who was secretary of the workers committee had written letters to the managing director of a security company alleging racism and unprofessional conduct on the part of the general manager. The guard also referred in similar terms to the general manager when he appeared on a television programme.

d) Consent

It is a defence to establish that P gave his consent to the publication of the defamatory statement.

e) Compensatio

It may be a good defence to show that D had replied in equal measure to a defamatory statement made by P. Where P newspaper makes serious defamatory allegations against D newspaper, D newspaper can obviously defend itself by refuting the allegations; if it also makes defamatory comments about P newspaper which are proportionate to the extent of defamation committed by P newspaper, it will be entitled to raise the defence of *compensatio* if P newspaper seeks to sue for damages.

f) Anger or rixa

This is a very limited defence and has little application to the press. Basically this defence may apply where D makes a defamatory statement in sudden anger in response to serious provocation from P. D must not persist in the defamation subsequently.

g) Jest

The fact that D made the statement in jest and did not intend the statement to be taken as being literally true is not in itself a defence in Zimbabwean law. The fact that the statement is made in jest will only be a defence if objectively, given the character of the statement and the circumstances in which it was made, it could not reasonably have been understood in a defamatory sense. Thus if the statement was made in jest but ordinary people would have taken it to be seriously intended, the author of the statement will be held liable for defamation. The cartoonist in a newspaper or magazine thus has to be careful when poking fun at people, especially those who are prominent in society. If his cartoon reasonably bears a defamatory meaning, then the person targeted may sue the newspaper or magazine.

In the case of *Makova v Modus Publications (Pvt) Ltd* 1996 (2) ZLR 326 (H) the facts were as follows. An army officer was employed as the head of the army's public relations section. A newspaper published a satirical article about the officer in which it made fun of the fact that he was overweight. The officer lost his claim for damages, the court finding that the defence of jest applied as ordinary readers would have understood the article in a jocular vein and would not have regarded it as defamatory.

Investigative reporting

The function of newspapers and periodical magazines is to inform the public. Access to information is of pivotal importance to the proper working of a participatory democracy.

Investigative reporting can be a very hazardous business under the present Zimbabwean law. The press in Zimbabwe is not protected by a qualified privilege if it publishes reports which seek to expose corruption or other forms of misconduct on the part of persons such as high ranking Government officials or prominent businessmen. If the story turns out to be without substance the person defamed can sue for damages. The fact that the press organ that published the statement believed that the statement was true and that it was in the public interest to publish the story, will not provide any defence to the action for defamation. It is therefore incumbent on the press to make sure that such a story does have substance before it goes ahead and publishes it. If it is sued for

damages, it must be able to establish in court that the defence of justification applies, because not only was it in the public interest to publish the story, but the details of the story were substantially correct. That this was the legal position was made clear in the case of *Levy v Modus Publications (Pvt) Ltd* 1998 (1) ZLR 229 (S). The facts in this case were that a newspaper had published an article in which it had criticised the business conduct of a well-known businessman. The majority of the Supreme Court found that this article implied that the businessman was a crook and that he had acted corruptly. They found that the defence of justification had not been established as the newspaper had failed to prove that it was justified in implying that the businessman was a crook. However, one of the judges was of the opinion that the newspaper was not liable for defamation. This judge said that the businessman was a public figure and in an open democratic society the public should guard against the tendency of prominent, wealthy and well connected people in society to get away with breaking and bending the law and rules and trampling on the rights of other citizens. The statements about the businessman were generally true and the comments based on them were fair. In the case of *Mujuru v Moyse & Ors* 1996 (2) ZLR 642 (H) the judge was of the opinion that even though public figures are obliged to submit themselves to public scrutiny and accept a certain amount of criticism without resorting to actions for defamation, this does not mean that they are not entitled to any protection of their reputations when they are maligned. Like anyone else, they were entitled to sue for defamation when they are maligned. Finally in the case of *Madhimba v Zimbabwe Newspapers (1980) Ltd* 1995 (1) ZLR 391 (H) the court observed that criticism is the lifeblood of the nation and those who choose to appear in the public eye – be they politicians, sports personalities or news readers – should have the strength of character to disregard and forget that which is ill-informed and biased, and to accept and learn from that which is fair and correct. To say of a news reader that he is too grim and serious and should smile more often is well within the bounds of the criticism and fair comment to be expected by a person in his position.

By seeking to expose dishonesty, corruption and nepotism the press is seeking to root out these evil practices and to promote integrity in public administration and honesty and compliance with the laws protecting the economy in the field of private business. To allow it to fulfil this role effectively, it is arguable that the law of defamation should be changed so as to give the press limited protection against defamation along the lines outlined below. It has been suggested that it should be a defence in Zimbabwe for the press to establish that before it published a story in the public interest, it took all reasonable steps to check the accuracy of the facts. If it took such steps, it would be immune from liability for defamation damages. However, if subsequently it was shown that the story was incorrect, it would have a duty to retract the story and apologise. If it failed to do this, it would again become liable for damages. It would also be under the duty to publish a reasonable statement in contradiction or rebuttal from the person at whom the story was aimed.

It has been argued that this approach would draw a better balance between the right to information and the protection of reputation. The paper would be obliged to take proper steps to check its stories and thus reputations would not be left exposed to reckless or careless reporting. But the paper would also not be left exposed to large-scale damages claims if it behaved in a responsible and professional way in checking its facts. For further discussion on this issue see “The press and the law of defamation: producing a better balance” 1993 Vol 5 No 2 *Legal Forum* 43

Letters to the Editor

There is often a misunderstanding as to the law on defamation in this regard. To publish a defamatory statement made by another still amounts to defamation. Even the fact that the story has already been published in another newspaper is no defence. Letters to the Editor often contain factual allegations of a defamatory nature. People who write such letters often wish to criticise in a scathing fashion or to condemn in vitriolic terms or to make highly defamatory allegations which are not supported by concrete facts. The press must be very careful with such letters. Defamatory letters should only be published if the facts have been checked for accuracy.

A case that illustrates that a newspaper can be held liable for defamatory remarks contained in a letter to the editor is *Zimbabwe Newspapers (1980) Ltd & Anor v Bloch* 1997 (1) ZLR 473 (S). In that case a newspaper had published a letter alleging that an economist was trying to stir up tribal conflict. The newspaper was held liable for defamation.

Stopping the media from publishing a defamatory story

The courts are reluctant to issue an order to prevent the media from publishing a story on the basis that the story is allegedly defamatory. This reluctance is illustrated in the case of *Universal Merchant Bank Zimbabwe Ltd v The Zimbabwe Independent & Anor* 2000 (1) ZLR 234 (H). In the early hours of the morning on which a weekly newspaper was to be published, the applicant bank sought an interim interdict preventing the publication of the paper. The paper contained an article which the bank said would be damaging to it because it suggested that the bank was in serious financial trouble. There had been an article in the previous edition of the paper in which it was said that the bank was in trouble. The court refused to grant an interdict to stop the circulation of the paper. It held that the bank had produced no proof that the article was false and that the article would harm it, particularly as there had been a previous article that gave an equally bleak picture of the bank’s situation. The court also held that there were a number of alternate remedies available to the bank, including suing the paper for defamation. The court did, however, point out that a

newspaper has a duty to act responsibly and to take reasonably adequate steps to satisfy itself of the veracity of the reports it publishes. This is particularly so when a report alleges that a bank is in serious financial difficulties because of the reaction such report can generate from the bank's customers.

In *Schweppes (Central Africa) Ltd v Zimbabwe Newspapers (1980) Ltd* 1987 (1) ZLR 114 (H) the court decided that before an interdict may be granted restraining the publication of matter alleged (or admitted) to be defamatory, the court must be satisfied not only that the matter is defamatory but also that there is no defence (such as that the statement is true and for the public benefit) and that nothing has occurred to deprive the plaintiff of his remedy (such as consent to publication). Where a newspaper received an anonymous letter concerning the petitioner, which letter was grossly defamatory and potentially harmful to the petitioner, the court refused an application for a perpetual interdict. The letter had not been published and would not be published until or unless the truth or otherwise of the allegations in it was established; and the final article, if published, might not be defamatory of the petitioner. It could only be determined at the publication of the contemplated article, if it could be determined at all, what the truth was.

In *Moyo v Muleya & Ors* HH-64-2001 a Cabinet minister, sought an interdict against the respondents after they published an article which referred to legal proceedings being brought against him in Kenya. The applicant had already instituted proceedings against the respondents in respect of the article already published; the respondents had raised the defences of qualified privilege and justification. The court held that the competing interests of the right to personal dignity and integrity and the right of freedom of speech had to be balanced. In doing so, the court should interfere as little as possible with freedom of speech. Before granting a final interdict, the applicant had to establish a clear right. He could not do so when the existence of the right had yet to be determined in the other case pending. The fact that the applicant was a politician was important in assessing the respondents' defences. Generally speaking, politicians are open to greater scrutiny than ordinary persons. This meant that the defences being raised had a reasonable prospect of success.

Stopping Parliament from debating a defamatory report

In the case of *Econet Wireless Holdings Ltd & Ors v Minister of Finance & Ors* 2000 (2) ZLR 131 (H) the facts were that the Minister had appointed a committee to inquire into the affairs of an insurance company. The committee's draft report was defamatory of the applicants, in that alleged

fraudulent conduct on their part. The applicants feared that the report would be tabled and debated in Parliament and sought an order restraining its publication.

The court held that assuming that all the requirements for the grant of a final interdict were met, it would only be in an extreme case that the court could prevent matter from being raised and debated in Parliament. The privilege extending to Parliament is a matter of policy. The court should be very slow to do anything which might prevent debate in Parliament of matters of concern. If the deliberations relating to the report are thought to be flawed, criticisms, and any response to the allegations, can be made in the House or in committee. There is no basis whatever for supposing that the elected representatives of the people will behave perversely.

Reporting Parliamentary proceedings

Why is press reporting of parliamentary proceedings important?

Parliament is the major democratic institution. In Parliament, the elected representatives of the people debate government policies and decide whether legislation proposed by the executive should be passed. An official report of the Parliamentary proceedings is produced. This is called *Hansard*. *Hansard* reproduces verbatim all the proceedings at the public sessions of Parliament.

The public has a right to be informed about the debates of its elected representatives in Parliament. Members of the public are entitled to attend sessions of Parliament in order to observe the proceedings. They can also find out what has gone on in Parliament by reading *Hansard*. However, few members of the public attend Parliamentary sessions and relatively few people read *Hansard*. Most people acquire information about what has happened in Parliament by reading, hearing or seeing press coverage of this.

How much coverage will the press give to Parliamentary proceedings?

The press does not, of course, report everything that happens in Parliament. It covers only those aspects of Parliamentary proceedings that are considered to be of public interest. It will not cover Parliamentary debates on more mundane or routine matters. Specialist magazines such as farming magazines will report in more detail Parliamentary matters of concern to the readers of that magazine.

When the press does carry reports about Parliamentary proceedings, it usually summarises rather than give a verbatim account of the proceedings, unless the debate is of such great importance that it is considered to be appropriate to reproduce the entire debate. In summaries, some verbatim quotes of what was said will usually be included.

What is the likelihood of defamatory statements being made by Parliamentarians ?

Parliamentarians have an absolute privilege in respect of all their utterances made during Parliamentary debates. They cannot be sued for any defamatory statements which they make during Parliamentary debates. This applies even if it can be proved that the Parliamentarian in question deliberately made a statement about another which he knew to be false and made it with the sole and malicious motive of harming that person. The reason why the Parliamentarians are given such absolute protection against legal actions for defamation is so that they can engage in free and vigorous debate without the constraints which would apply if they could face law suits for defamation arising out of what they have said in Parliament. However, there is also the danger that this absolute protection might lead Parliamentarians to say things without checking their facts, or even to say things which they know to be false, knowing that they are immune from legal action. In other words, the immunity can lead to irresponsible or abusive utterances.

Thus, from time to time Parliamentarians make statements that are defamatory of others; they may be defamatory of fellow Members, or they may be defamatory of persons outside Parliament. The Parliamentarians cannot be sued for defamatory statements made in Parliament. The question is whether the press is given any protection against actions for defamation if it reproduces such statements as part of reports on Parliamentary proceedings.

What protection does the law of defamation give to the press when it reports Parliamentary proceedings?

It is obviously in the public interest that Parliamentary proceedings be as fully reported as possible so that the public can keep abreast of what their elected representatives are saying and what decisions are being made by Parliament. For the press to perform the important task of disseminating information about Parliamentary proceedings, it needs to be offered some protection against being sued for defamation. The law does afford it protection in this regard. In reporting Parliamentary proceedings the press does not have absolute immunity from the law of defamation; it does, however, have what is known as qualified privilege. What this means is that the press will not be held liable for defamation if it gives a fair, accurate and balanced account of Parliamentary

proceedings, even if the account includes details of a defamatory statement made by one of the Parliamentarians during these proceedings. The press can publish the statement, attributing it to the Parliamentarian. It does not have first to check the accuracy of the statement. If the law obliged the press to check the accuracy of all utterances made by Parliamentarians before publishing, very few details of Parliamentary proceedings would ever be published.

The motivation of the press must, however, be to inform the public. If the motivation is purely one of malice, the qualified privilege will fall away. If the press knows that the defamatory comments of the Parliamentarians are completely misdirected and are without substance, and it goes ahead and publishes them because it has a grudge against the person targeted and wishes to harm his reputation, the press will no longer have the protection of the defence of qualified privilege. On the other hand, if before publishing the story the press becomes aware of the fact that the allegation made by the Parliamentarian is fallacious, it may still wish to publish the statement with a comment that the allegation is without substance in order to show that the Parliamentarian has behaved in an irresponsible fashion. Here the name of the person defamed should normally be omitted.

Thus if a newspaper report states that during the proceedings a named Parliamentarian made a statement and it then accurately reproduces what he or she said, the newspaper will not be held liable to pay damages to the person who was defamed by the Parliamentarian, provided that overall the account of the Parliamentary proceedings is fair, accurate and balanced. If one Parliamentarian utters defamatory remarks about a fellow Member, but the other replies and establishes that the accusations are totally without foundation, the press must report not only the defamatory remarks but also the reply. If it has not published the reply, its account is not fair and balanced.

If one Parliamentarian makes highly defamatory allegations about someone outside Parliament such as a private businessman but a fellow Parliamentarian asserts that the allegations are without foundation, a fair and balanced account will report both the allegations and the contradiction of these by the second speaker. The best course to follow in respect of serious, defamatory allegations made by Parliamentarians about private citizens is obviously for the press independently to investigate the allegations and to seek comment from the persons concerned about the allegations.

If the press inaccurately reports a Parliamentary statement in such a way that a non-defamatory utterance becomes defamatory of P, P can sue the press for damages, as no qualified privilege attaches to an inaccurate report.

Reporting what one politician says about another outside Parliament

A newspaper is not covered where it reports the defamatory remarks of one politician about another politician. Thus in the case of *Zvobgo v Modus Publications (Pvt) Ltd* 1995 (2) ZLR 96 (H) a newspaper was made to pay damages where it carried a story in which a leading opposition politician who had been shot and seriously injured portrayed the Minister as being heartless. The court ruled that it was no defence that the newspaper was merely quoting the remarks of one politician about another.

Reporting statements made at public meetings

Not only are members of the public interested in what is said in Parliament, they are interested in what politicians, especially Government Ministers, say at public meetings and rallies which are held around the country. They are also interested in what has been said at other public gatherings, such as meetings addressed by leading business people and industrialists, or meetings of experts discussing important topical issues such as the spread of AIDS. Relatively few members of the public attend such meetings and it falls to the press to keep people informed about important things which are said at such meetings.

The problem for the press is that it is not clear in current Zimbabwean law whether the press has a qualified privilege which affords it protection when it fairly and accurately reports statements made by politicians and other public figures at public meetings, if such statement turn out to be inaccurate as well as being defamatory. This uncertainty creates problems for the press, especially when it is reporting on what has been said at political rallies and meetings where, not infrequently, defamatory comments may be made about political opponents and others.

Clearly the press should be afforded protection in this regard. The public has a right to know what is said at important meetings. If the press is not given a qualified privilege, it will be almost impossible for it to report properly because it will continually be having to check the accuracy of any statements of a defamatory nature before going ahead and publishing the stories.

In England, there is legislative protection for reporting of statements made at public meetings. There is a need for similar legislation in Zimbabwe. In terms of such legislation, protection should be afforded in respect of fair, balanced and accurate reporting of such meetings.

However, persons affected by such reporting should have the right to have the paper publish a reasonable statement in contradiction or rebuttal. The paper should also be under an obligation to publish the correct facts if it turns out subsequently that the utterances at the meeting were false.

In the absence of Legislation in Zimbabwe, if the press was to be sued arising out of a report of a public meeting, it would have to argue that the common law relating to qualified privilege should be taken to extend to fair, accurate and balanced reporting of matters of public interest arising at public meetings.

Reporting proceedings of other public bodies

The public have a right to be informed about the public proceedings of other public bodies, such as elected local government bodies, and the press has a qualified privilege when it reports these proceedings. In order for the qualified privilege to attach, the account of the proceedings must be fair, accurate and balanced.

Reporting court cases

The public have a right to know what is happening in the courts and the press has a qualified privilege in reporting court cases. In order for the qualified privilege to attach, the reports of the proceedings must be fair, accurate and balanced. The qualified privilege attaches to the reporting of both civil and criminal cases. It also extends to the reporting of the public proceedings of other courts and tribunals such as the Administrative Court and the Rent Tribunal or the Liquor Licencing Board. It will also extend to the reporting of other public inquiries, such as Commissions of Inquiry set up by Government to conduct public inquiries into particular matters.

The press is entitled in the public interest to report all the court proceedings themselves, that is, any evidence which has been led in open court. In civil cases that have not yet come to court, the press must not publish papers relating to the case before those papers have been produced in court during the case. In criminal cases it may also report preliminary proceedings such as arrests on charges, remands and applications for bail. Once someone has been arrested on a charge, the press is entitled to report the name of the person arrested and the charge for which he has been arrested. It may also report the name of a person who has been brought to court for remand and the charge in respect of which he is being remanded. It may report that a named individual was granted or refused bail and it may report his bail conditions if he was released on bail. However, if a person has not been arrested and charged but is merely being questioned by the police his name must not be disclosed.

The press must never report any court proceedings which were held *in camera*, that is, proceedings from which the press have been excluded by the court.

The report of any court case must be reasonably contemporaneous with the proceedings and should not be long after the trial. The public have an interest in receiving information about cases as they take place, but the press is not usually permitted to rake up court cases that took place years ago, particularly if they were of a petty nature. Where, however, after conviction, evidence is led in court of a person's previous convictions, the press may report this evidence. It should be carefully noted that the press must in no circumstances publish details of the previous convictions of a person who has been charged with a criminal offence but who has not yet been convicted of the offence charged. The rule is that the judicial officer dealing with the case must not be told about the accused person's criminal convictions until that person has been convicted, otherwise he might be prejudiced against the accused in deciding his guilt.

Court reporting is a difficult operation and is fraught with dangers. The press must devise ways of trying to ensure that all court reporting is accurate and is fair and balanced.

Accurate court reporting

The court reporter must exercise meticulous care in gathering and checking his information. He must ensure that no vital facts are left out and that he has not distorted the facts or, even worse, invented facts. Wherever possible, reporters should be in court to report what transpires. They should be cautious about relying upon what they have been told has happened or will happen in the courtroom by prosecution or defence counsel or other court officials. The court reporter must be particularly on his guard to avoid bad errors such as wrongly reporting the name of the person charged with or convicted of a crime, because if another person has the same name as the name which was wrongly used, that person may well seek to sue for damages on the basis that his reputation has been adversely affected. Reporters must also be careful to avoid errors such as reporting that a person has been charged with a far more serious offence than the crime in fact charged against him or that he was convicted of a far worse crime than the one he was in fact convicted of. If the reporter misreports these facts, there is a risk that the person concerned would sue for damages on the basis that the press has made him out to be a far worse criminal than he was.

The press must not report that a person was charged with murder when in fact he was only charged with the far less serious charge of culpable homicide. They must not erroneously state that he was

convicted of attempted murder when he was convicted only of common assault. It must not report that he was convicted of twenty counts of fraud involving huge sums of money, when he was only convicted of one count involving a small amount. In the case of *Aitken v Zimbabwe Newspapers (1980) Ltd* 1997 (1) ZLR 383 (H) a newspaper had erroneously published an article stating that the lawyer had been charged with stealing money from his clients' trust fund whereas in fact the lawyer had been charged with money laundering and illegal dealing in foreign currency. The paper had to pay damages to the lawyer.

The court reporter must obviously never make the assumption that the accused person was convicted of the very charged simply because, for instance, the prosecutor told him that the case would be an open and shut case.

The press will not usually report the entire court proceedings, except perhaps where the case is particularly sensational or significant. Most reports will be condensed or summarised versions of what has happened in the courts. In the process of summarising the case there is a pronounced danger that the report will become distorted, garbled, inaccurate or misleading. This again must be guarded against.

A particular point to note is that where a witness has given evidence through an interpreter, the reporter must report only the official interpreter's translation, as this is what will be in the official court record. He must not make his own translation of the testimony where he thinks, for instance, that the court interpreter's translation is not accurate, and then include his own interpretation in his report of the proceedings.

Fair and balanced court reporting

Both sides of the case must be reported impartially. This does not require that equal detail and prominence be devoted to the case put forward on each side, but there must not be undue emphasis upon the one side or omission of important facts highly favourable to one of the sides. If evidence on the one side is reported, there should be coverage of the evidence in rebuttal on the other side. The report of a criminal case would not be fair and balanced if the press has concentrated exclusively on the prosecution case and has totally ignored the defence case. So too if the press has reported the original criminal charge brought in court against P and that charge is later withdrawn or P is acquitted or he is found guilty only of some lesser charge, the subsequent developments should also be reported.

There are logistical difficulties in keeping track of various cases as they proceed. But if the press has started to report a case, it must try to ensure that it also reports later developments in that case, and court reporters must design efficient systems to monitor cases. A particular problem arises with lengthy trials where there may be variable or diminishing public interest in the case as it proceeds. Nonetheless the press must seek to report the case in a balanced fashion.

There are various restrictions placed upon the media on reporting divorce cases and cases involving rape and indecent assaults certain matters related to court proceedings. For details of these restrictions see under “Restrictions on reporting of certain types of court cases”.

Factors affecting amount of damages

The main factors taken into account by the courts in deciding levels of damages to be awarded are:

- What sort of reputation did the person have before he was defamed? The person with a spotless reputation would attract more damages than the person who previously had a very poor reputation. Was he or she prominent and in public life or not?
- How serious was the defamatory statement and how badly did it affect the person’s reputation? The level of damages will be greater for a serious and highly damaging defamation than for a minor defamation causing little reputational harm.
- How extensively was the defamation disseminated? A particular defamatory comment if published in a daily national newspaper or the national radio would reach large numbers of persons and cause widespread harm to reputation whereas if the same defamatory statement was published in a small, local newspaper it would reach far fewer people and do less harm.
- Did the publisher of the defamatory statement act maliciously? The damages will be greater if for instance the publisher, acting out of a grudge, set out deliberately to damage someone’s reputation by publishing a story about that person which he knew or suspected to be false.

Apologies and retractions

A prompt and unqualified retraction and apology is the best response to any defamatory story which, after publication, is found to be without substance. The apology will not act as a defence in any action for damages but it will serve to reduce the amount of damages which the publisher will be made to pay. In order to reduce the damages, however, the apology must be:

- full, unconditional and unreserved withdrawal of all imputations, together with an expression of regret; and
- made as soon as reasonably possible after the original publication; and
- must be given the same or greater prominence than the original defamatory statement.

Out of court settlement and payment into court

Where it is clear that the action for damages will be indefensible in court or there is strong chance that the person suing will succeed in his action, the sensible thing to do is to try to negotiate an out of court settlement so that the defamer can avoid having to pay the considerable additional legal costs which will arise if the case goes to court. The earlier the settlement is negotiated the better, in order to reduce legal costs. However, if the person defamed is claiming an exorbitant amount of damages, and will not accept a reasonable amount in settlement, the defamer can make use of the device of paying into court the amount which it is estimated that the defamed person will be likely to be awarded by the court. If the defamed person persists in taking the matter to court after this payment has been paid, and the court awards him no more than the amount which has been paid into court, the court will order the defamed person to bear his own legal costs which he has incurred from the time that the payment into court was made and the defamer will therefore not be made to pay these costs. The payment into court is thus a way of reducing the amount of legal costs that the defamer will be made to pay.

Dignity

The law not only protects against harm to a person's reputation; it also affords protection harm to dignity. Thus a person can sue for damages if a newspaper article or photograph subjects that person to indignity or humiliation. In the case of *Zimbabwe Newspapers (1980) Ltd v Zimunya* 1995 (1) ZLR 364 (S) the newspaper published a photograph of a person that created the false impression that he was urinating in public. This had been humiliating and embarrassing to the person. The newspaper was liable to pay damages. The fact that the newspaper had published this photograph without realising the impression it created and had not intention to humiliate the claimant did not constitute a defence. On the other hand, in the case of *Madhimba v Zimbabwe*

Newspapers (1980) Ltd 1995 (1) ZLR 391 (H) a television newsreader did not succeed in his action for damages arising out of the publication of a letter to the editor in which the writer alleged that he lacked skill in his news reading, that his comportment was disgraceful and foolish and that he was gloomy and looked like death. The court held that the comments could not be regarded as insulting or injurious.

Electronic broadcasting

Section 27 of the Broadcasting Act [*Chapter 12:01*] provided that only the Zimbabwe Broadcasting Corporation was entitled to carry on a broadcasting service in Zimbabwe. Capital Radio brought a case in the Supreme Court to challenge on constitutional grounds this monopoly. In a decision handed down on 22 September the Supreme Court held that section 27 was invalid because it violated the freedom of expression and freedom to impart information guarantee in the Constitution, namely s 20. The court ruled that Capital Radio was lawfully entitled to operate and provide a broadcast service in Zimbabwe and to import radio equipment for this purpose. (*Capital Radio (Pvt) Ltd v Minister of Information* (1) 2000 (2) ZLR 243 (S))

Following the Capital Radio case the government quickly passed legislation to regulate electronic broadcasting. This legislation was the Broadcasting Services Act [*Chapter 2:06*] In terms of s 6 the Minister of State for Information and Publicity in the President's Office is the licensing authority in respect of licensing a person to provided broadcasting services. The Minister decide upon which licences to grant based upon recommendations from a Broadcasting Authority, the members of which are all appointed by the Minister in consultation with the President. The applicant who is refused a licence by the Minister can appeal to the Administrative Court. (The appeal must be made within 28 days of being notified of the decision. [s 43])

A broadcasting licence may only be issued to individuals who are Zimbabwean citizens and ordinarily resident in Zimbabwe or to a corporate body in which the controlling interest is held by Zimbabweans ordinary resident in Zimbabwe. [s 8]. Only a corporate body may hold a community broadcasting service licence. [s 8(3)].

The Act also provides that:

- only one licence to provide a national radio broadcasting and one licence to provide a national television broadcasting service can be issued in addition to the national broadcasting service provided by ZBC [s 9(1)];
- except for ZBC a person with a broadcasting licence is not permitted to hold also a signal carrier licence [s 9(3)];
- no political party may own or control any broadcasting licence [s 20];
- a community broadcasting licence is valid for one year and is not renewable and a community broadcaster may not broadcast any political matter but it must allow the Government one hour a week to explain its policies to the nation. Other licences are valid for a period of two years. [s 12(2) and (3)].

Section 3(3) read with the Sixth Schedule imposes onerous requirements pertaining to the minimum amount of Zimbabwean content that must be broadcast by licencees.

The Broadcasting Authority must, in consultation with broadcasting licencees, develop codes of conduct to regulate broadcasting services. [s 24]. On the advice of the Authority the Minister must prescribe a schedule of monetary and other penalties to be imposed by the Authority for breaches of the code.

Foreign journalists and representative office of foreign mass media service

Foreign journalists must be accredited in terms of s 79(4) of the Access to Information and Protection of Privacy Act [*Chapter 10:27*]. The maximum period for which the Media Commission may accredit a foreign journalist is 30 days. [s 79(4) as it will read if the proposed amendments contained in the Amendment Bill (H.B. 9 of 2002) come into operation.]

In terms of s 90 of the Act (as it will read if the proposed amendments contained in the Amendment Bill (H.B. 9 of 2002) come into operation a representative office of a foreign mass media service may only operate in Zimbabwe if it has obtained permission from the Media Commission. Such permission is valid for 12 months but it can be renewed on the same terms and conditions that applied to it previously. The only journalists that could be employed in this representative office are journalists who are Zimbabwean citizens or who are permanently resident in Zimbabwe or are foreign journalists with accreditation (but foreign journalists can only be accredited for a maximum of 30 days.)

Freedom of speech and media freedom

The rights of freedom of speech and media freedom are not absolute and unqualified rights. The print and electronic media are powerful agencies that have the capacity to disseminate information on a widespread basis. In exercising this freedom the media must behave responsibly and must not abuse its freedom to inform the public. They must take all reasonable steps to try to avoid publishing false information especially where the false information will cause harm to legitimate state information such as defence and public safety or where the information will cause serious harm to the reputation to others.

In South Africa a court has articulated the importance of freedom of the press in these terms:

The role of the press is in the front line of the battle to maintain democracy. It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal- and inept administration. It must also contribute to the exchange of ideas already alluded to. It must advance communication between the governed and those who govern. The press must act as the watchdog of the governed.

Government of the Republic of South Africa v. the Sunday Times [1995] 1 LRC 168 at 175-6 (Transvaal Provincial Division)

For further discussion on freedom of expression see – “Just how precious is freedom of expression?” 1996 Vol 8 No 3 *Legal Forum* 23. For an examination of the difference between

criticism and subversion see “Freedom of Speech: When Does Criticism of Government Become Subversion? See 1990 Vol 2 No 3 *Legal Forum* 28.

Media Commission

In terms of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] the body responsible for registering and de-registering media services, accrediting journalists and disciplining journalists is the Media Commission. The Media Commission is controlled and managed by a Board consisting of not less than 5 and not more than 7 members appointed by the Minister, after consultation with the President. [s 40]. The Minister also appoints both the chair and the vice-chair of the Board. (The provision that at least three of the members must be nominated by an association of journalists and an association of media houses will be deleted if the proposed amendments to the Act contained in the Amendment Bill H.B.9 of 2002 are passed.)

The Fourth and Fifth Schedules of the Act give the Minister broad powers over members, including the power to set the terms of office, as well as other terms and conditions, including allowances, and to remove a member on a number of grounds, some of which are highly subjective.

Pornographic and obscene materials

Section 47(1)(b) of the Customs and Excise Act [*Chapter 23:02*] prohibits the importation and entry into the country of publications or goods which are indecent, obscene or objectionable.

In terms of s 13 of the Censorship and Entertainments Control Act [*Chapter 10:04*] it is an offence to print, publish, produce, distribute or sell an undesirable publication. A publication is deemed to be undesirable if it is indecent or obscene or is offensive or harmful to public morals.

The Censorship and Entertainments Control Act also places restrictions on the reporting certain matters in judicial proceedings. Section 13(2)(c) lays down that a publication is deemed to be undesirable if it discloses, with reference to any judicial proceedings

- any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details the disclosure of which is likely to be offensive or harmful to public morals; or
- for the dissolution or a declaration of nullity of a marriage or for judicial separation or for the restitution of conjugal rights, any particulars other than
 - the names and occupation of the parties and witnesses;
 - a concise statement of the allegations, defences and counter allegations in support of which evidence has been given;
 - submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;
 - the judgment and the verdict of the court and any observations made by the judge in giving judgment.

Prisons and Prison Conditions

There are a series of restrictions on reporting on prisons and conditions in prisons in Zimbabwe. These restrictions are to be found in the Prisons Act [*Chapter 7:11*] and regulations made under this Act.

In terms of s 84(3) of the Act it is an offence to publish a letter written in prison and smuggled out of the prison without the letter going through the authorized prison clearance procedures laid down for mail.

In terms of s 188 of the Prison Regulations (1956) it is an offence for a prison officer or person authorized to visit a prison, to divulge, without the authority of the Director and otherwise than in the course of his duties, any information concerning the administration of prisons and the conditions and treatment and affairs of prisoners. It is also an offence for a person to take a camera into any prison or to take photographs in any prison without the authority of the Director.

Privacy

In Zimbabwe, the right to privacy is protected under the *actio injuriarum*. If a person's privacy is disturbed or invaded by the press then that person can sue for damages.

However, the right is not absolute. For instance if a person commits a crime and is prosecuted for this crime then the press can report upon the criminal case. Also, public figures such as politicians and film stars, by thrusting themselves into the limelight, cannot expect the same degree of protection of privacy as ordinary citizens. The private behaviour of public figures such as political leaders has a bearing on their overall reliability and integrity and thus to some extent they must expect the media to scrutinise this and to report thereon when there has been misbehaviour e.g. a politician who is having an adulterous relationship or who is very promiscuous and is engaging in sexual harassment of his female staff.

Protection of Sources

In a country like Zimbabwe where there is presently no legislation requiring government departments to supply information on request media practitioners often face great difficulties in obtaining information about what is going on in these departments. They may also face problems in obtaining information about the activities of private business corporations. In order to obtain information on these matters media practitioners may need to rely on confidential sources. Such sources may be prepared to supply information of wrongdoing in the public interest but they will make it clear that they do not wish their identities revealed and that they will be unprepared to testify in court because they believe that they will be penalised for disclosing the information. Unless such sources are assured that their identities will be kept secret, they will not supply the information and such sources of information will dry up. In order for the media to perform effectively, especially in the area of acting as a watchdog against corruption and other forms of wrongdoing in the public and private sectors, it is necessary that wherever possible they protect their confidential sources.

The law however cannot and does not take the approach that it will never order journalists to disclose their sources. There may be situations where the general public interest in the disclosure of the sources is overriding and outweighs the detrimental effect on the effective functioning of the

press if such disclosure is ordered. In criminal cases the court may thus order a journalist to disclose his or her source where there are compelling reasons. For instance it may be imperative that the information be disclosed in order to allow the police access to information that may lead to the apprehension of a serial killer or a dangerous gang of criminals. Sometimes the disclosure of the information may be necessary in the interests of national security or the prevention of serious disorder. In the case of *R v Parker* 1965 RLR 355 (A) the court upheld an order committing a journalist to prison for refusal to divulge the source of information when ordered to do so in connection with a criminal case. The court ordered the disclosure of the information as its disclosure was likely to provide material evidence in respect of an alleged contravention of the Official Secrets Act. The court said that any pledge of secrecy given by a journalist must be subject to the qualification that a journalist will divulge the source if ordered to do so by a court of law. However, an appeal against a second committal for refusal to disclose his source succeeded, the appeal court having concluded that considerations of privacy and confidence relied upon by the journalist outweighed the interests of justice which could be achieved by compelling him to speak.

In civil cases there are now provisions in the Civil Evidence Act [*Chapter 8:01*] which allow the court hearing a case in which disclosure of a source is sought to weigh various factors against one another in order to decide whether, on balance, it should order disclosure of the source or it should decline to do so. The relevant provisions are sections 9 and 10. In essence the court may order disclosure where the evidence is material and it is in the interests of justice or the public interest requires its disclosure. On the other hand, it may decide not to order disclosure if the interests of justice or the public interest do not so require. In the important case of *Shamuyarira v Zimbabwe Newspapers (Pvt) Ltd* 1994 (1) ZLR 445 (H) the court decided that on balancing the competing interests disclosure of the confidential sources of information implicating a Government Minister in a corruption scandal should not be ordered. The Minister was suing a newspaper for defamation for naming him as one of the persons involved in this corruption. The newspaper was raising the defence of justification to the action for defamation and the onus was on the newspaper to prove that the story was correct and that the Minister was indeed involved in the corruption. The Minister sought an order ordering the editor who had obtained the information from confidential sources to disclose his sources. The court weighed the competing considerations at stake in this case. It pointed to the importance of the watchdog role of the press in rooting out corruption in high places and recognised that reliance upon confidential sources very much assisted the press in performing this role. In the present case the non-disclosure of the sources would not prejudice the Minister in his litigation. Rather it would make it more difficult for the newspaper to prove that its story was true. On balance, therefore, it was not necessary to order disclosure. Clearly in this case if the

disclosure of the sources to the claimant had been material and essential in order to do justice to the claimant, the court may well have reached a different conclusion.

Registration and de-registration of mass media services and news agencies

In terms of the Access to Information and Protection of Privacy Act a mass media owner must register before it carries out mass media service activities. [s 66] The registration is for a period of two years and the registration may be renewed. [s 66(5)]

It is a criminal offence to operate without being registered the maximum penalty for which is a fine not exceeding \$300 000 or two years imprisonment or both. [s 72 (2)] Mass media services are very broadly defined. The relevant definitions taken from s 2 of the Act (as they will read if the amendments contained in the Amendment Bill (H.B. 9 of 2002) are passed) are these:

“mass medium” or “mass media” includes any medium or media consisting in the transmission, circulation or distribution of voice, visual, data or textual messages to an unlimited number of persons, and includes an advertising agency, publisher, production house or, except as otherwise excluded or specially provided for in this Act, a news agency or broadcasting service as defined in the Broadcasting Services Act [*Chapter 12:06*];

“mass media products” means an advertisement, the total print or part of the total print of a separate issue of a periodically printed publication, a separate issue of a teletext programme, the total data or part of the data of any electronically transmitted material, or audio or video recorded programme;

“mass media service” means any service that produces mass media products, whether or not it also disseminates them.

The only grounds upon which the Commission may refuse to register a mass media service are that the mass media service:

- fails to comply with the provisions of this Act ; or

- gives false or misleading information in its application or the application contains a misrepresentation; or
- seeks to be registered in the name of an existing registered mass media service.

[s 69]

On its own initiative or after investigating a complaint made by an interested party, the Media Commission can suspend or cancel the registration certificate of a mass media service if it has reasonable grounds for believing that—

- the registration certificate was issued in error or through fraud or there has been a misrepresentation or non-disclosure of a material fact by the mass media owner concerned; or
- a mass media service concerned does not publish or go on air within twelve months from the date of registration; or
- the mass media service concerned has contravened the following sections of the Act –
 - the section barring ownership of media services by non-Zimbabweans, by banned organisations and by insolvent person [s 65];
 - the section requiring publications to bear the publisher’s imprint [s 75];
 - the section requiring a mass media service to deposit free copies of its periodical with the Commission and the National Archives [s 76];
 - the section requiring a mass media service to publish when required to do so by the Commission court decisions and Commission decisions pertaining to that mass media service [s 77];
 - the section requiring a mass media service to publish a reply from the person affected by an untruthful story or a story that impinges on that person’s rights or lawful interests [s 89]

Any person operating a news agency must be registered by the Media Commission. The penalty for operating a news agency without being registered is a fine up to \$300 000 or imprisonment for up to 2 years or both. [s 74]

News agencies that operate in Zimbabwe – whether they are domiciled within or outside the country – are prohibited from employing non-licensed journalists. [s 79(6)]

Section 90 of the Act provides that a representative office of a foreign mass media service may only operate in Zimbabwe if it has obtained permission from the Media Commission. Such permission is valid for 12 months but it can be renewed on the same terms and conditions that applied to it previously.

There is a right of appeal to the Administrative Court against a refusal by the Media Commission to register a mass media service. (This will become s 69 (2) if the Access to Information and Protection of Privacy Amendment Bill, 2002 (H.B. 9 of 2002 comes into operation.) In terms of s 90A of the Amendment Bill (H.B. 9 of 2002) if an applicant is refused registration and he or she succeeds in his or her appeal to the Administrative Court against this decision, the applicant is not then entitled to be registered but instead his or her application for registration will be remitted to the Media Commission for re-determination.

Restrictions on reporting certain types of court cases

Divorce, annulment of marriage and judicial separation proceedings

In terms of s 13(2)(c) of the Censorship and Entertainments Control Act [*Chapter 10:04*] the only particulars which may be published about such proceedings are the names and occupations of the parties and the witnesses, a concise statement of the allegations, defences and counter allegations where evidence has been given to support these, and the judgment and verdict of the court.

Cases involving juveniles

There are various restrictions upon the reporting of cases involving juveniles. These apply in respect of juveniles who are accused of criminal conduct, juveniles involved in proceedings before the juvenile court, and juveniles who are giving evidence in court. There is a general provision in s 3 of the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*] which empowers the courts and other administrative bodies to order that certain information relating to court proceedings or the proceedings before the administrative body must not be published. One of the grounds on which it may make this order is in the interests of the welfare of persons under the age of eighteen.

Juveniles being prosecuted

In terms of s 195 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] the media are not allowed to publish the names, addresses or any other information likely to reveal the identity of any person under the age of 18 who is being or has been tried in any court for a criminal offence. It is a criminal offence to disobey this prohibition. The only time that it is lawful for the press to publish these details is if the Minister of Justice, Legal and Parliamentary Affairs or the presiding magistrate or judge has authorised such publication in the public interest or in the interests of any particular person.

Juveniles concerned in juvenile court proceedings

In terms of s 5(5) of the Children's Protection and Adoption Act [*Chapter 5:06*] it is an offence to publish the name, address or school of a juvenile concerned in the proceedings in a juvenile court or any other information which could reveal the identity of such a juvenile. The presiding officer may, however, give written authority for such information to be published where he considers that it would be just and equitable and in the public interest to do so.

In terms of s 5(6) representatives of the press are not permitted to be present during the proceedings of a juvenile court. Only certain specified people are allowed to attend such proceedings such as the parents, lawyers and witnesses.

Juveniles giving evidence

In terms of s 197 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], it is an offence for the media to publish the name, address, school or place of occupation of any person under the age of 18 who is giving or will give evidence at any trial, or to publish any other information which could reveal the identity of such a witness. The presiding judge or magistrate may, however, give written authority for publication of such information after consulting with the guardian of the juvenile.

Cases of rape and other sexual offences

As a matter of proper Journalistic ethics, the identities of victims of sexual offences such as rape and indecent assault must never be published by the press. If such information were to be disclosed by the press, the victim would be able to sue for invasion of privacy under the *actio injuriarum*.

Under the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:06*], in order to protect the private lives of persons concerned in the proceedings, the courts have the power to order that information must not be published.

Restrictions imposed by the courts

Under the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:06*], the courts and the Minister of Justice, Legal and Parliamentary Affairs may impose restrictions on the reporting of court cases on certain grounds. For example a court can order that the name of a witness must not be published where this is necessary to protect a witness who maybe subject to reprisals if his identity is publicly revealed. The press must be careful to find out when any such restrictions have been imposed and ensure that it does not publish information which it is not allowed to publish. It is a criminal offence to publish information which the court or the Minister has ordered must not be disclosed. The relevant portions of the provisions of this Act are published in full at the end of this booklet.

State secrets

The press is obviously subject to a range of restrictions which are there to prevent military secrets from falling into the hands of enemies of the State. There are also a variety of provisions aimed at preventing access to and disclosure of other State information which Government legitimately requires to keep secret. For example, where delicate diplomatic negotiations are underway between Zimbabwe and another country, the Government will clearly require that the details of the negotiations are not to be disclosed. The main Act dealing with this area is the Official Secrets Act [*Chapter 11:09*]. The main purposes of this legislation is “to prohibit the disclosure for any purpose prejudicial to the safety or interests of Zimbabwe of information which might be useful to an enemy; to make provision for the purpose of preventing persons from obtaining or disclosing official secrets in Zimbabwe [and] to prevent persons from making sketches, plans or models of and to prevent trespass upon defence works, fortifications, military reserves and other prohibited places.”

Government undoubtedly has the right to safeguard high-level State secrets. The problem with official secrets legislation, however, is that it has a tendency to be used not only to protect

information which legitimately needs to be protected, but also to cover up blunders and corrupt practices of Government officials. The Official Secrets Act was first passed in 1970 by the Smith regime. It is cast in very wide and vague terms and creates a whole series of extremely serious offences for passing on or receiving official information without authorisation. These offences are committed even where the information concerned is of a trivial nature.

However, the suppressive effect of the Official Secrets Act on accessing official information has been substantially ameliorated by the amendment to s 4(1) of the Official Secrets Act brought about by s 92 of the Access to Information Act [*Chapter 10:27*]. Section 4(1) penalises the passing on or obtaining of various types of official information. The amendment inserts a new section (1a) after 4(1) the effect of which is to make it clear that the offences under 4(1) do not apply when a head of a public body who has lawful access to a document or information discloses the document or information in accordance with the Access to Information and Protection of Privacy Act.

There are various other pieces of legislation where under restrictions can be imposed on journalists in the interests of such things as public security. See for instance the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:06*].

Bibliography

For further discussion on the media laws of Zimbabwe see Feltoe “Institutionalising and Human Rights and the Role of a Free Press in the Promotion of Human Rights” in *The Institutionalisation of Human Rights in Southern Africa* (Ed P Nherere and M D’Engelbronner-Kolff 1993 Nordic Human Rights Publications); Biti and Feltoe *Law and Media Practice in Southern Africa: Zimbabwe* (Feb 1997 Article 19); *Zimbabwe: Media Monopoly and Popular Protest* (Article 19 May 1998).

Appendix – Legislative provisions

Constitution of Zimbabwe

Provisions relating to freedom of expression

20. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision ù

- (a) in the interests of defence, public safety, public order, the economic interests of the State, public morality or public health;
 - (b) for the purpose of :
 - (i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
 - (ii) preventing the disclosure of information received in confidence;
 - (iii) maintaining the authority and independence of the courts or tribunals or Parliament;
 - (iv) regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields;
 - (v) in the case of correspondence, preventing the: unlawful dispatch therewith of other matter; or
 - (c) that imposes restrictions upon public officers;
- except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) ...

(5) ...

(6) ...

(These last three subsections are not relevant to freedom of expression by the press.)

The Access to Information and Protection of Privacy Act **[Chapter 10:27]**

80 Abuse of journalistic privilege

A journalist who abuses his journalistic privilege by—

- (a) intentionally or recklessly falsifying information; or
- (b) maliciously or fraudulently fabricating information; or
- (c) publishing any statement—
 - (i) knowing it to be false or without having reasonable grounds for believing it to be true; and
 - (ii) recklessly, or with malicious or fraudulent intent, representing it as a true statement;
- or
- (d) committing or facilitating the commission of a criminal offence;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

The Public Order and Security Act [Chapter 11:17]

5 Subverting constitutional government

(1) In this section—

“coercing” means constraining, compelling or restraining by—

- (a) physical force or violence or, if accompanied by physical force or violence or the threat thereof, boycott, civil disobedience or resistance to any law, whether such resistance is active or passive; or
- (b) threats to apply or employ any of the means described in paragraph (a);

“unconstitutional means” means any process which is not a process provided for in the Constitution and the law.

(2) Any person who, whether inside or outside Zimbabwe—

- (a) organises or sets up or advocates, urges or suggests the organisation or setting up of, any group or body with a view to that group or body—

- (i) overthrowing or attempting to overthrow the Government by unconstitutional means; or
- (ii) taking over or attempting to take over Government by unconstitutional means or usurping the functions of the Government; or
- (iii) coercing or attempting to coerce the Government;

or

- (b) supports or assists any group or body in doing or attempting to do any of the things described in subparagraphs (i), (ii) or (iii) of paragraph (a);

shall be guilty of an offence and liable to imprisonment for a period not exceeding twenty years without the option of a fine.

15 Publishing or communicating false statements prejudicial to the State

(1) Any person who, whether inside or outside Zimbabwe, publishes or communicates to any other person a statement which is wholly or materially false with the intention or realising that there is a risk or possibility of—

- (a) inciting or promoting public disorder or public violence or endangering public safety; or
- (b) adversely affecting the defence or economic interests of Zimbabwe; or
- (c) undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- (d) interfering with, disrupting or interrupting any essential service;

shall, whether or not the publication or communication results in a consequence referred to in paragraph (a), (b), (c) or (d), be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who, whether inside or outside Zimbabwe and whether with or without the intention or realisation referred to in subsection (1), publishes or communicates to any other person a statement which is wholly or materially false and which—

- (a) he knows to be false; or
- (b) he does not have reasonable grounds for believing to be true;

shall, if the publication or communication of the statement—

- (i) promotes or incites public disorder or public violence or endangers public safety; or

- (ii) adversely affects the defence or economic interests of Zimbabwe; or
- (iii) undermines public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- (iv) interferes with, disrupts or interrupts any essential service;

be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

16 Undermining authority of or insulting President

(1) In this section—

“publicly”, in relation to making a statement, means—

- (a) making the statement in a public place or any place to which the public or any section of the public have access;
- (b) publishing it in any printed or electronic medium for reception by the public;

“statement” includes any act or gesture.

(2) Any person who publicly and intentionally—

- (a) makes any false statement about or concerning the President or an acting President knowing or realising that there is a risk or possibility of—
 - (i) engendering feelings of hostility towards; or
 - (ii) causing hatred, contempt or ridicule of;
 the President or an acting President, whether in person or in respect of his office; or
- (b) makes any abusive, indecent, obscene or false statement about or concerning the President or an acting President, whether in respect of his person or his office; or

shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

The Courts and Adjudicating Authorities (Publicity Restrictions) Act [*Chapter 7:04*]

In terms of s 3 a court or a tribunal, board, commission, authority or person exercising quasi-judicial or administrative functions has the power to impose restrictions on what information may be revealed about the proceedings if it considers it necessary or expedient to do so -

- (i) where publicity would prejudice the interests of justice, particularly where it is satisfied that a witness or his family members will suffer harm if his identity is revealed; or
- (ii) in interlocutory proceedings; or
- (iii) in the interests of public morality; or
- (iv) in the interests of the welfare of persons under 18; or
- (v) to protect the private lives of persons concerned in the proceedings; or
- (vi) to protect the safety or private lives of persons related to or connected with any person concerned in the proceedings.

The court, tribunal or other administrative authority must impose suitable restrictions whenever it is satisfied that it is necessary or expedient to do so in the interests of defence, public safety, public order or the economic interests of the State.

The court, tribunal or other administrative authority may order:

- (a) that all persons or such class of persons as is specified will be excluded from the proceedings;
- (b) that the name, address or other information likely to reveal the identity of any person concerned or mentioned in the proceedings must not be publicly disclosed;
- (c) that information revealing or likely to reveal any place or locality concerned or mentioned in the proceedings must not be disclosed;
- (d) that the whole or any specified part of the proceedings must not be publicly disclosed.

The Minister of Justice, Legal and Parliamentary Affairs may issue a certificate preventing the disclosure of any matter in court proceedings. He also has the power under s 4 to issue a certificate prohibiting the disclosure on the grounds of public interest of any matter before a court, tribunal or other administrative authority or even prohibiting disclosure of the fact that any proceedings may or will be instituted. He may prohibit the making of copies of any document related to the proceedings or require the return of such a document.

Cases on damages for defamation

Main factors taken into account when assessing damages

In assessing damages for defamation the main factors which will be taken into account are:

- the character and status of the plaintiff (a person with a good character and reputation will obviously attract greater damages than a person with poor character; a person who is prominent and well known to the public will suffer greater harm to reputation than a person who is not a public figure);
- the nature of the words used and the intended effect thereof (the publication of a statement gravely maligning the plaintiff's character will attract greater damages than an accusation of minor wrongdoing on the part of the plaintiff);
- the extent of the publication (publication to a large number of people through a newspaper will cause greater harm than publication verbally to one other person);
- whether the statement was maliciously made;
- whether the defamatory statement was persisted in up to and during the trial of the action;
- whether the defendant has subsequently made attempts to rectify the harm done by way of a retraction or apology.

Zimbabwean cases

Newspaper cases

Rhodesian Printing and Publishing Co Ltd & Ors v Howman 1967 RLR 318 (GD) £300 awarded to 2nd and 3rd plaintiffs and £150 to 1st plaintiff in respect of an attack on a newspaper by Ministry of Information accusing it of deliberately presenting incorrect, unbalanced and biased picture of national events.

Tekere v Zimbabwe Newspapers (1980) Ltd & Anor 1986 (1) ZLR 275 (H)

A total of \$20 000 was awarded to the plaintiff in respect of two articles published in a newspaper. These articles suggested that the plaintiff, who was a prominent politician, was lazy, inefficient and irresponsible and did not attend properly to his political duties but instead engaged in drinking and womanising.

Zvobgo v Kingstons Ltd 1986 (2) ZLR 310 (H)

\$14 000 awarded to a Minister in the Government. A defamatory article about the plaintiff had been included in a magazine distributed in Zimbabwe by the defendant company. The article suggested that the behaviour of the plaintiff had not always been suitable for a leader and that he had thus fallen below the standards expected by the Prime Minister. The article created the impression that the plaintiff had been guilty of some form of dishonourable or disgraceful conduct. He was also defamed by being called a “regionalist” thereby connoting that, contrary to national policy, he sought to favour one tribal group over another.

Zvobgo v Modus Publications (Pvt) Ltd 1995 (2) ZLR 96 (H)

\$20 000 awarded to a Government Minister. The newspaper had carried a story in which an opposition politician who had been shot and seriously injured portrayed the Minister as being heartless and had tried to stop a charitable institution from assisting the injured politician.

Chinamasa v Jongwe Printing and Publishing co (Ltd) 1994 (1) ZLR 133 (H)

\$30 000 awarded to Attorney-General for an article alleging that the serving Attorney-General had been the subject of a criminal investigation involving fraud committed on a client when he was previously practicing as a private. Whilst the story was basically true, the newspaper had then gone on to make various further insupportable assertions. It conveyed the impression that the evidence against him was strong and that he would be likely to be convicted. It implied that the allegation had been suppressed and it had only resurfaced after the representations had been made to high officials. It also implied that he was unfit to be the Attorney-General because of this allegation.

Zimbabwe Newspapers (1980) Ltd & Anor v Bloch 1997 (1) ZLR 473 (S)

The *Sunday Mail* and the *Herald* published a defamatory article about a prominent economist. Zimpapers was made to pay \$45 000 in damages and the editor of the *Sunday Mail* was made to pay \$40 000. The articles accused the economist of racism, hypocrisy, insanity and of fuelling tribal conflict. This defamation was held to be serious as the articles were published in the newspapers with the largest circulation in Zimbabwe and were published in pursuit of some vendetta. Also the language used was in the highest degree offensive, insulting and abusive. The editor has shown himself to be a political creature prepared to make wild allegations without any basis in fact and without any real attempt to substantiate his allegations. The allegation of racism was particularly harmful.

Aitken v Zimbabwe Newspapers (1980) Ltd 1997 (1) ZLR 383 (H)

\$14 000 awarded to legal practitioner. The newspaper had erroneously published an article stating that the lawyer had been charged with stealing money from his clients' trust fund whereas in fact the lawyer had been charged with money laundering and illegal dealing in foreign currency.

Other cases

Haas v Greaterrnan Stores (Rhodesia) Ltd & Anor 1966 RLR 313 (GD)

£500 awarded for verbal insinuation that had committed shoplifting in front of bystanders.

Parsons v Cooney 1970 (2) RLR 75 (A)

\$100 awarded arising out of a letter sent to potential employer of plaintiff indicating that plaintiff was unsuitable for appointment to the post.

Khan v Khan 1971 (1) RLR (A)

\$150 awarded to a woman who was called a prostitute.

Association of Rhodesian Industries & Ors v Brookes & Anor 1972 (2) RLR 1

£700 awarded to 1st plaintiffs and \$900 to 2nd and 3rd plaintiffs arising out of a newspaper report accusing the plaintiffs of corruption in the allocation of foreign exchange.

Mavromatis v Douglas 1971 (1) RLR 119 (GD)

\$450 awarded to a person accused of criminal conduct within the hearing of one other person.

Mahomed v Kassim 1972 (2) RLR 517 (GD)

Nominal damages of \$1 awarded to plaintiff arising out of report that plaintiff had dishonourably failed to repay a loan. The audience were already aware of the allegation.

Arnold v Majome HH-431-86

\$3 500 awarded to a person, who was chairman of a co-operative society, about whom it had been stated that he had been suspended by the Registrar because funds donated to the society could not be accounted for.

Nyamwanza v Kambadza & Ors HH-104-87

\$5 000 awarded to a school headmaster falsely accused of inefficiency, sexual impropriety and dereliction of duty.

Mupita v Bayayi HB-31-89

\$750 awarded to a woman wrongly accused at her workplace of theft within the hearing of her subordinates and some customers.

Darangwa v Bushu HB 68-89

\$5 000 awarded to a factory manager falsely accused of unjustly demoting a worker because the latter had stated publicly that the manager had gone fishing with his girlfriend during working hours.

Tabanie v Chimanzi HB-75-90

\$5 000 awarded to a constable in Zimbabwe Republic Police for being falsely accused by a member of CIO of providing assistance to two armed bandits and sharing in the spoils of the robbery and attempted murder committed by them.

Marongwe & Anor v Tsvaringe HH-5-91

\$750 each awarded to two persons ridiculed in front of subordinates by calling them mad and also making other insulting remarks about them.

Madaka v McLean HB-86-91

\$7 000 awarded to the plaintiff in these circumstances: Defendant took default judgment against a farmer after he had paid in full and caused publication of the judgment in *Dun's Gazette*, causing the AFC to threaten foreclosure. He refused to apologise or to apply to rescind the judgment and publish the rescission in *Dun's Gazette* and to the AFC, and unsuccessfully opposed plaintiff's application for rescission.

Although the court agreed with the submission that \$10 000 damages would have been appropriate on the facts, it awarded only \$7 000 because the plaintiff had been in breach of contract and had owed a large sum of money when summons was issued against him and because the refusal by the defendant to apologise was partly due to poor legal advice given to him.

Robertson v Erickson 1993 (2) ZLR 415 (H)

\$5 000 to doctor against a person who had written to the Registrar of the Health Professions Council complaining that the doctor was rude, incompetent, activated by mercenary motives, overcharged his patients, had assaulted the person complaining, had made false accusations against the person complaining and had generally acted in an unprofessional and unethical manner.

Bikwa v Ndlovu HB-18-92

\$5 500 awarded to a Community Court Presiding Officer where defendant had published to plaintiff's superiors and others a number of false allegations of an immoral relationship between the plaintiff and the defendant's wife and of abusing his office to set up this immoral liaison.

Robertson v Ericksen 1993 (2) ZLR 415 (H)

\$5000 awarded to medical doctor. A patient had defamed the doctor by writing to the Health Professions Council complaining that the doctor was rude, incompetent, activated by mercenary motives, overcharged, assaulted the patient, made false accusations against her and had generally acted unprofessionally and unethically.

Zimbabwe Banking Corp Ltd v Mashamhanda 1995 (2) ZLR 96 (H)

\$45 000 to a bank employee against his former employer. The employee had been dismissed for insubordination but the bank had published in a newspaper an advertisement in which it stated that the employee had been dismissed for incompetence and insubordination.

Bushu & Anor v Nare 1995 (2) ZLR 38 (H)

\$1 000 awarded to first claimant and \$400 awarded to the second in respect of allegations that they had been guilty of mismanagement of the affairs of an association.

Levy v Modus Publications (Pvt) Ltd 2000 (1) ZLR 68 (H)

\$20 000 awarded to businessman in respect of two newspaper articles dealing with the construction of a shopping complex. The articles pointed out that the construction had commenced before building permits had been obtained and they implied that the businessman was a crook who had used his wealth and political connections to subvert Ministers and officials.

Nyatanga v Zimbabwe Newspapers Ltd HH-13-2001

Allegations which impugn the integrity of a person holding the post of Master of Sheriff of the High Court are defamatory in the highest degree and call for punitive damages. They are much more serious than allegations defaming a politician or businessman. To attack falsely the honesty and integrity of a person holding high office in the judicial system undermines the confidence that the public should have in the judicial system of the country.

Zimbabwe Newspapers (1980) Ltd & Anor v Bloch 1997 (1) ZLR 473 (S)

Two newspapers of the defendant published articles accusing of well-known economist of racism, hypocrisy, insanity and fuelling tribal conflicts. The economist was awarded amounts of \$45 000 and \$40 000.