**Adams’ High Court victory shows urgent need for defamation reform**

**One of the factors that makes Irish law so appealing to foreign plaintiffs is the weakness of the public interest defence**

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On Tuesday, April 29, in the Four Courts, a jury was sworn in to hear Gerry Adams’ defamation case against the BBC. The following day, the Dáil considered the report stage of the Defamation Bill. Both of these developments originated in late 2016.

On September 20 of that year, BBC Northern Ireland’s investigative documentary series *Spotlight* broadcast an episode called *Spy in the IRA* which alleged that Gerry Adams had sanctioned the killing of Denis Donaldson, who had been an MI5 and PSNI informer in the IRA. In November, then-Tánaiste Frances Fitzgerald announced a long-awaited review of the Defamation Act 2009.

Now, as key chapters in both of these stories are being written, the Adams case demonstrates that the government must re-think its defamation reform proposals in at least three key respects. The first relates to the fact that Adams took the case in Dublin, rather than in Belfast, where the programme was primarily broadcast. The second relates to the failure of the BBC’s public interest defence. The third relates to the role of the jury.

On foot of the review announced in 2016, the Department of Justice published a report in 2022 and a draft Bill in in 2023. One of the key recommendations in the report addressed the risk of libel tourism, by which plaintiffs with little connection to Ireland commence defamation claims here, because Irish law is more favourable to them than the law in their home jurisdictions. The report recommended that the court should not have jurisdiction in such cases, unless it is satisfied that Ireland is clearly the most appropriate place for the action to be brought.

There are povisions to this effect in the UK. A similar section was included in the 2023 draft Bill. But it disappeared, without explanation, when the current Bill was published last year. Adams taking his case in Dublin rather than Belfast demonstrates exactly why the libel tourism provisions should be reintroduced into the Defamation Bill when the government brings amendments to the next stage.

One of the factors that makes Irish law so appealing to foreign plaintiffs is the weakness of the public interest defence in section 26 of the 2009 Act. It is ambiguous and cumbersome to the point of unworkability, and it has never been successfully relied upon.

In the aftermath of the Adams case, the BBC commented that if their case could not be won under existing Irish defamation law, it is hard to see how anyone’s could. On the other hand, the version of the defence available in the UK, including Norther Ireland, is much crisper, more straightforward, and considerably more robust. Indeed, expert evidence in the Adams trial suggested that the BBC would have been able to rely on this defence if the case had been taken in the North. And it has been successfully relied upon in many defamation trials in England.

Again, one of the key recommendations in the 2022 report was to adopt the UK approach; and a section to this effect was included in the 2023 draft Bill. However, it, too, disappeared, again without explanation, when the current Bill was published.

The Adams case demonstrates exactly why the UK-style public interest defence should be reintroduced into the Bill. The announcement that Jim O’Callaghan, the justice minister, intends to bring forward an amendment to provide for a clearer and simpler defence of fair and reasonable publication in the public interest is therefore very welcome indeed.

One of the most controversial aspects of current Bill is the abolition of juries in High Court defamation cases. Mr Justice Alexander Owens remarked that the Adams case would be one of the last such jury trials.

This abolition is driven by the fear that damages awarded by juries in defamation cases are too high. Indeed, there have been some eye-watering jury awards, including an award of €1.872 million in June 2007, and one of €10 million in November 2010. The former was reduced by the Supreme Court, albeit only to €1.25m, and the European Court of Human Rights later held that even the reduced award was still disproportionately high. Following that decision, the latter award was reduced by the Court of Appeal to €250,000. These cases predated the 2009 Act, which now permits the parties, and requires the judge, to address the jury on the issue of damages. Moreover, in 2022, the Supreme Court subsequently identified four bands of defamation damages.

Counsel for Adams argued that he should receive €200,000 to reflect the seriousness of the BBC’s allegations. The BBC’s lawyers argued that Adams should receive no damages at all, as he had no reputation to protect. The judge charged the jury on the basis of that Supreme Court case. The jury split the difference between the amounts sought by the parties, and awarded Adams €100,000.

This shows that the reforms introduced in the 2009 Act, reinforced by the Supreme Court in 2022, seem to be heading in the right direction. A well-charged jury awarded relatively modest damages. Of course, one swallow does not a summer make. And we can never know exactly why the jury decided as it did.

However, it does suggest that the risks of juries awarding disproportionately high damages in defamation cases are being successfully addressed, and that the outright abolition of juries may be an unnecessary step. Instead, the government should provide a presumption against juries, unless the court in its discretion directs that the case should be tried with a jury, thereby retaining them in appropriate cases.

This is the position in the UK, including the North. There, in a recent case between singer Van Morrison and health minister Robin Swann, the Court of Appeal ordered that the case should be heard with a jury. The case subsequently settled; but it shows that, in the North, while most defamation cases will not be tried before a jury, in appropriate cases they may be. This is as it should be. And the government should amend the current bill accordingly.

More chapters in these stories are likely to be written. The BBC will probably appeal. And the Defamation Bill will continue its unhurried passage through the Oireachtas. As it does so, the government should learn the lessons of the current chapter of the Adams case, and amend the bill to prevent libel tourism, strengthen the public interest defence, and retain the possibility of juries in appropriate cases.

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