



**UNIFORM LAW CONFERENCE OF CANADA
CIVIL SECTION**

DEFAMATION LAW IN THE INTERNET AGE – POLICY REPORT #2

**PRESENTED BY
THE WORKING GROUP**

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Defamation Law in the Internet Age – Policy Report # 2

Presented by the Working Group

a. Working Group membership and meeting report

(i) The Working Group consists of:

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Hilary Young, Working Group chair, Professor, University of New Brunswick

David Rolph, professor University of Sydney (Australia), also advises on certain issues but is not a regular member of the Working Group.

b. Background

(i) Overview of How the Project Emerged

At the 2020 meeting of the Uniform Law Conference of Canada (ULCC), the Civil Section confirmed the recommendation of the Advisory Committee on Program Development and Management that work commence on the topic of online defamation.

The Law Commission of Ontario (LCO) had recently released its comprehensive report on the topic.¹ The LCO was willing to share its work with the ULCC in the hope of moving toward a draft act.

The ULCC also has a *Uniform Defamation Act* (1994),² which predates widespread use of the internet. Since then, many issues of defamation law reform have evolved such that the *Uniform Defamation Act* (1994) both fails to address some important issues and resolves others in a way that is no longer appropriate, in our view.

¹ Law Commission of Ontario, [Defamation Law in the Internet Age: Final Report](#) (Toronto: March 2020).

² Uniform Law Conference of Canada, [Uniform Defamation Act \(1994\)](#).

The 2021 Online Defamation Progress Report sets out this background and raises questions about the scope of a ULCC defamation project.

In the fall of 2024, a new Working Group was formed, led by Hilary Young of the University of New Brunswick's Faculty of Law. It first met in November 2024 and has met eleven times as of April 2026.

At the first meeting, the Working Group addressed issues of scope by identifying a wide range of topics that may be worth considering. There was no desire to limit the scope to online defamation. It seems unwise in principle to create technology-specific laws, and in practice, it is hard to disentangle issues of online defamation from those of offline defamation. The Working Group is addressing defamation law reform more broadly.

(ii) Past work by the ULCC and Law Reform Agencies on the Subject

Many law reform bodies have considered defamation law reform. Most relevant to the present project are the ULCC's *Uniform Defamation Act* (1994), the LCO's report, mentioned above, and the Law Reform Commission of Saskatchewan's 2024 report.³

The communications landscape has changed significantly since the ULCC's *Uniform Defamation Act* (1994). For example, that Act contains definitions of "broadcasting" and "newspaper", for the purposes of notice requirements, a reportage defence, etc. This approach may no longer be appropriate. For example, both the Law Reform Commission of Saskatchewan and the LCO have since recommended that a notice regime apply equally to all publishers.

The LCO report is an invaluable resource that the Working Group is building on. Its focus, however, was not on unifying provincial laws. We are mindful of the goal of uniformity and of wanting to create a draft uniform law that provinces are willing and able to adopt in the relatively short term.

The Law Reform Commission of Saskatchewan's report is also helpful to the Working Group.

Finally, the Working Group is considering foreign law reform efforts, including those of England, Scotland, Ireland, and Australia.⁴

³ Law Reform Commission of Saskatchewan, [Final Report on The Libel and Slander Act \(2024\)](#), 2024 CanLIIDocs 2137.

⁴ UK House of Lords and House of Commons, [Joint Committee on the Draft Defamation Bill](#), Draft Defamation Bill Session 2010-12 (2011); [Defamation Act 2013](#) (England & Wales), 2013 c 26; Bremner, Abigail, ["Defamation and Malicious Publication \(Scotland\) Bill: consideration prior to Stage 3"](#) (Scottish Parliament Information Centre, 23 February 2021); [Defamation and Malicious Publication Act 2021 \(Scotland\)](#), asp 10; Scott, Andrew, ["Reform of Defamation Law in Northern Ireland: Recommendations to the Department of](#)

(iii) Overview of current law (common and civil) and the legal gaps that the project aims to resolve

The primary aim of defamation law is to protect reputation while not unduly infringing on freedom of expression. In Canada, defamation is largely a common law tort, but legislation exists in all common law jurisdictions to fill gaps or override common law.

Much of the Canadian law of defamation is ancient. It evolved in an era long before the internet, social media and AI changed the way defamatory words are communicated and accessed.

This project aims to consider all aspects of the common law (as opposed to civil law) of defamation law that might benefit from reform, but focuses on practical changes that can readily be made and do not create undue uncertainty. These include: whether the distinction between libel and slander continues to serve any useful purpose; whether the multiple publication rule is problematic in an era when accessing content is facilitated through new technologies; the definition of publication and the liability of internet intermediaries; whether special rules for newspapers and broadcasters (e.g. special notice provisions) continue to be justifiable; and whether existing choice of law, jurisdiction and remedies rules should be modified.

While there is significant overlap between the laws of Canada's common law jurisdictions, there is enough variability to make libel tourism a potential problem. For example, if a plaintiff misses a short notice period in Ontario and has their claim dismissed, they may bring the same claim in Alberta if the alleged defamatory words were also accessed there. Since 2015, when Ontario introduced an anti-SLAPP regime (with British Columbia following suit in 2019), the potential for libel tourism between Canadian jurisdictions is greater.

(iv) Past resolutions of the civil section in relation to the project

At the 2021 annual meeting, following a [progress report on the Online Defamation Project](#) presented by Peter Lown, K.C., Chair of the Advisory Committee on Project Development and Management, the following was resolved: That the report of the Chair of the Advisory

[Finance](#)" (Belfast: Department of Finance, June 2016); [Defamation Act \(Northern Ireland\) 2022](#), c.30; Council of Attorneys General, [Model Defamation Amendment Provisions 2020](#) (Consultation Draft) (Australia); Government of Ireland, Department of Justice, [Report of the Review of the Defamation Act 2009](#); [Defamation \(Amendment\) Act 2026 \(Ireland\)](#); Australian Competition & Consumer Commission, "[Digital platforms inquiry: Final report](#)" (Canberra: Commonwealth of Australia, June 2019); Australasian Parliamentary Counsel's Committee, "[Model Defamation Amendment \(Digital Intermediaries\) Provisions 2023: Explanatory Note](#)" (29 September 2023).

Committee on Program Development and Management be accepted; That the Working Group conduct its work in accordance with the general direction stated in the report; and That the Working Group report back to the Conference at the 2022 meeting. There were no progress reports presented in 2022 through 2024, and no resolutions for those years.

Following presentation of the Working Group's first annual report in 2025, the Civil Section resolved as follows:

RESOLVED: THAT the Progress Report of the Defamation in the Internet Age be accepted; THAT, in accordance with the directions from the ULCC, the Working Group continue its work, including identifying possible solutions to address the issues raised in the report; and THAT the working group present a policy report to the ULCC at its 2026 annual meeting.

(v) Overview of the project's impact on the economy, government and specific populations

The impacts of likely proposed reforms would be on access to justice and on the balance between protecting reputation and freedom of expression. There is no significant anticipated effect on the economy or government. Specific populations affected may include civil society groups and media organizations, but the primary benefits should accrue to the public at large.

c. Application

(i) This project is addressed primarily at common law jurisdictions, though in arriving at recommendations, the Working Group is considering civil law approaches. Some of our recommendations may also be of interest in Quebec.

Quebec's civil law of defamation differs significantly from the laws of the common law provinces. It is a form of general civil liability without many of common law defamation's unique pleadings rules, elements or defences. One difference is that truth is not necessarily a defence to defamation in Quebec whereas it is always a defence in common law provinces. Another is that damages tend to be significantly lower.

Given this, the civil law is informing the Working Group's approach to a Uniform Act, but it is not expected that a new Uniform Act would significantly influence the civil law.

(ii) A Quebec-specific project is not anticipated. The problems the Working Group seeks to address are problems primarily with common law jurisdictions' approach to defamation law.

d. Consultations

(i) No consultations were undertaken.

e. Issue identification and analysis

(i) Detailed analysis of the issues sought to be addressed by the project

We do not include the issues or recommendations set out in last year's report, which were to abolish the distinction between libel and slander; add a serious harm element; and include a new notice regime. The issues addressed this year are:

- 1. Whether to adopt a single publication rule;**
- 2. whether to change the fair comment defence (eliminating the “objective honest belief” element; renaming the defence “comment”; consumer protection laws akin to a narrow fair comment defence; having to prove the truth of every underlying fact to prove a factual foundation);**
- 3. whether to clarify that justification does not require that every fact be proved true;**
- 4. whether to modify the definition of publication;**
- 5. whether to adopt special rules for corporations;**
- 6. whether to recommend a defence for peer-reviewed academic publications; and**
- 7. whether to include a provision clarifying that a claim does not fail on serious harm simply because damages sought fall within the small claims court threshold.**

1. Whether to Adopt a Single Publication Rule

At common law, every time a communication is received, there is a new publication. This is the multiple publication rule. For example, every time someone reads the words of a website, a new publication occurs. The rule has consequences for limitations periods and allows multiple actions to be brought in relation to one document. It originates with *Duke of Brunswick v Harmer*, (1849) 14 QB 185, in which a German Duke had an employee go to the British Museum to find a 17-year-old newspaper, which the Duke believed defamed him. The court found that the employee reading it constituted a new publication, such that the six-year limitation period was no defence.

Despite criticism ever since the *Harmer* case, a multiple publication rule is consistent with the traditional understanding of publication which requires both transmitting and receiving a communication. Only with receipt is publication complete. Multiple publication remains the common law rule.

Since the advent of the internet, the multiple publication rule has seemed particularly problematic, since it could mean virtually no limitations periods in relation to online content, and a multiplicity of actions.

All Canadian jurisdictions retain the multiple publication rule. Although several courts have questioned its wisdom, they have ultimately held that reform is for the legislatures. The closest the courts have come to a single publication rule is in *John v Ballingall*, where the Court of Appeal for Ontario held that defamatory material remaining accessible on the internet does not constitute a new republication on each day it is accessible.⁵

The US states have adopted a single publication rule, as have the United Kingdom and Australia. The rules vary somewhat, but under a single publication rule, a single cause of action for defamation would exist in relation to a publication and all republications by the same publisher, unless the republication was materially different. This starts the limitations clock running when words are first published and prevents a multiplicity of actions in relation to the same communication.

Various law reform bodies, including the Law Commission of Ontario, and the Law Reform Commission of Saskatchewan, have recommended adopting a statutory single publication rule. Saskatchewan included a single publication rule in its recent Bill.⁶

If a single publication rule is desired, an important issue is when a communication counts as a separate and new publication. The US, Australia, Saskatchewan and UK's single publication rules refer to "a materially different" publication, that would reset a limitations period or allow a new action to be brought. What is materially different is determined with regard to the prominence of the statement, the extent of publication, and anything else that's relevant.

For example, if a media article is available online but only through an online search, but then that article is brought to prominence on the media organization's website, that is likely a materially different publication.

Another issue relates to whether single publication is only a limitations issue or also precludes a multiplicity of actions. For example, Ireland's *Defamation Act 2009* states that there is only one cause of action in respect of a multiple publication, though additional defamation actions may be brought with leave of the court where the court considers it to be in the interests of justice.⁷

England and Wales' *Defamation Act 2013* includes a single publication rule as follows:

⁵ *John v Ballingall*, 2017 ONCA 579 at para 35.

⁶ [Saskatchewan Bill 31](#), s. 7.

⁷ *Defamation Act 2009*, Act No 31 of 2009, s [11](#).

8. Single publication rule

(1) This section applies if a person—

- (a) publishes a statement to the public (“the first publication”), and
- (b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same.

(2) In subsection (1) “publication to the public” includes publication to a section of the public.

(3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.

(4) This section does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.

(5) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the matters to which the court may have regard include (amongst other matters)—

- (a) the level of prominence that a statement is given;
- (b) the extent of the subsequent publication.

(6) Where this section applies—

- (a) it does not affect the court's discretion under section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation etc), and
- (b) the reference in subsection (1)(a) of that section to the operation of section 4A of that Act is a reference to the operation of section 4A together with this section.

Along similar lines, see section 7 of the Saskatchewan Bill.⁸

2. Whether to change the Fair Comment Defence

a) Whether to eliminate the “objective honest belief” element of fair comment

Fair comment is an important defence that protects opinions and comment (including factual inferences) on matters of public interest if they are made without malice. In common law Canada, its elements are:

⁸ [Saskatchewan Bill 31](#), s. 7.

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognisable as comment;
- (d) the comment must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?
- (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was [subjectively] actuated by express malice.⁹

However, these elements are complex, often misunderstood, and have begun to diverge significantly between different common law countries. For example, England requires a defendant to personally hold the views expressed, in order to benefit from the defence (now called “opinion” in that jurisdiction), while the Supreme Court of Canada rejected that approach in 2008 in *Simpson v WIC Radio*.¹⁰

One issue relates to the “objective honest belief” element of fair comment. It requires that the comment be one that *any person* could hold given the stated facts, “‘however prejudiced he may be, however exaggerated or obstinate his views’ ... Dickson J. also agreed with the comment in an earlier case that the operative concept was ‘honest’ rather than “‘fair’ lest some suggestion of reasonableness ... should be read in”.”¹¹

This test is often misapplied and adds nothing, for the reasons stated by LeBel J. in *WIC Radio*. Essentially, anything satisfies this test so long as there is some nexus between the stated or known facts and the comment expressed. A factual foundation, however, is a separate element. What’s more, an opinion or comment that no one could hold given the relevant facts is simply not defamatory as it does not have a tendency to affect the plaintiff’s reputation.¹²

The Working Group discussed whether to recommend eliminating the element. It doesn’t cause significant problems, but there is some harm in retaining it. It is redundant with the “based on fact” element, causing confusion; it adds complexity; and it reinforces the idea that you can defame without causing harm to reputation. An example of problematic application is found in *Soliman v Bordman*, where the fair comment defence was rejected in

⁹ *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para 28.

¹⁰ *WIC Radio Ltd. v. Simpson*, 2008 SCC 40.

¹¹ *Ibid* at para 40.

¹² *Ibid*, per LeBel J., concurring, at paras 81-99, esp. 93, 97.

part because no “fair” person could come to the same conclusion as the defendant did.¹³ Perell J. required that the comment be “objectively fair”,¹⁴ which is not the test and sets too high a threshold for defending comment, for the reasons set out in *WIC Radio*.

b) Renaming Fair Comment

The “fair” in “fair comment” is misleading; courts have said for decades that comment needn’t be fair to be protected by the defence, as that would provide far too little protection for important speech.¹⁵ Yet as noted above, it is often misapplied, as in *Soliman v Bordman*, where the defence was rejected in part because no “fair” person could come to the same conclusion as the defendant did.¹⁶

Because of this, England changed the name of its defence.¹⁷

A reason against the change, however, is that the defence is well-established as “fair comment”. Further, a change would be symbolic rather than substantive.

The Working Group discussed the difference between comment and opinion (England now refers to “honest opinion”. Comment is broader than opinion, in that it includes factual inferences from underlying facts). It also considered whether comment must be subjectively believed by the defendant for the defence to apply, as is now the case in England but not in Canada.

c) Consumer protection laws

The Working Group considered the relevance to fair comment of consumer protection laws that provide a defence regarding good-faith product or service reviews.¹⁸ Alberta’s states:

Publication of review

183.1(1) A business shall not include in a consumer transaction a provision that prohibits a consumer from publishing a review of the business or transaction.

¹³ *Soliman v Bordman*, 2021 ONSC 7023 at e.g. para 181 where, in *obiter*, Perell J implies that comment must be objectively fair.

¹⁴ *Ibid.*: “the fair comment defence would fail because [Mr Bordman’s] comments or opinions were not objectively fair because no person could honestly express them based on the proved facts.”

¹⁵ *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para 40.

¹⁶ *Soliman v Bordman*, 2021 ONSC 7023 at e.g. para 181 where, in *obiter*, Perell J implies that comment must be objectively fair.

¹⁷ England’s *Defamation Act 2013*, s.3 replaces fair comment with a statutory defence of “honest opinion”.

¹⁸ Alberta’s *Consumer Protection Act*, s.183.1(1); New Brunswick’s *Consumer Protection Act*, (not yet in force), s. 344.

(2) No action lies against a person for compensation, damages or any other remedy for loss or damage resulting from the publication of a negative review or other communication by the person in respect of the conduct of a supplier or any other person to whom this Act applies, unless the review or communication is malicious, vexatious or harassing or otherwise made in bad faith.

These provisions effectively create a broader fair comment defence for such reviews, in that the plaintiff need not show that the review is on a matter of public interest, nor that it is based in fact.

d) Fair comment doesn't fail only because the truth of every fact on which the comment is based is not proven

At common law it used to be the case that the fair comment defence failed unless every fact on which the comment was based was proved true. This evolved so that the defence could succeed so long as there was a substantial basis in true fact for the comment. However, Ontario and Nova Scotia's defamation legislation,¹⁹ and The *Uniform Defamation Act, 1994*, codify this change, in order to prevent a strict and overly technical interpretation of the defence of fair comment. The approach differs between the NS and Ontario legislation, on the one hand, and the *Uniform Defamation Act, 1994*.²⁰

The LCO recommended a provision equivalent to s. 23 of the Ontario *Libel and Slander Act*.²¹ The Law Reform Commission of Saskatchewan did not make recommendations regarding the defence of fair comment in its 2024 report,²² and the defence was not addressed as part of Saskatchewan's recent [Bill 31, The Defamation Act](#).

The issues are a) whether to recommend a provision that a fair comment defence doesn't fail only because the truth of every fact on which the comment is based is not proven; and b) if so, what language should be used or avoided?

¹⁹ The language in these statutes derives from England's Defamation Act of 1952 and states:

In an action for [defamation/libel or slander] words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. (Ontario *Libel and Slander Act*, s. 23; Nova Scotia *Defamation Act*, s. 10).

²⁰ The latter states:

15 (5) In an action for defamation with respect to a matter including or consisting of an expression of opinion, a defence of fair comment is not defeated by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by the defendant as a foundation for the opinion, if the assertions that are proved to be true are relevant and afford a foundation for the opinion.

²¹ [LCO, Defamation Law in the Internet Age: Final Report, 2020](#) at 31.

²² [LRCS, Final Report on The Libel and Slander Act, March 2024](#).

3. Whether to clarify that justification does not require that every fact be proved true

The Working Group considered whether uniform defamation legislation should include a statutory modification to the common law defence of justification modelled on s. 14 of the *ULCC Uniform Defamation Act, 1994* and s. 22 of the *Ontario Libel and Slander Act*.²³

Justification is a defence of truth. Words are justified where their sting is “substantially” true.²⁴

The *Uniform Defamation Act, 1994* provides for the following statutory modification:

14. Where an action for defamation is brought with respect to the whole or any part of alleged defamatory matter
 - (a) the defendant may allege and prove the truth of any part of that matter; and
 - (b) the defence of justification is held to be established if the alleged defamation, taken as a whole, does not materially injure the plaintiff's reputation having regard to any part that is proved to be true.

Pursuant to this provision, the truth of *part* of a broader defamatory allegation could serve as a defence to the entire publication if, having regard to the part which is true, the broader publication does not harm the plaintiff's reputation.

The stated intention of the provision is to allow for courts to consider the context of the defamatory statement when applying the defence of justification.

The ULCC's draft provision for the defence of justification has not been widely implemented. Only two provinces, Ontario and Nova Scotia, modify the common law defence of justification in their respective defamation statutes. In both, the statutory modification is substantially identical, specifying that the defence of justification will not fail only because not every charge in the publication can be proved true, provided that the remaining words that are not proved to be true do not materially injure the plaintiff's reputation.

That said, the common law in the other provinces seems to have evolved in a way that reflects the statutory provisions in Ontario and Nova Scotia. For example, courts in British Columbia have not required every fact to be proven for the defence of justification to be successful where the unproven statements “carried no defamatory sting”.²⁵

²³ 22. In an action for libel or slander for words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1990, c. L.12, s. 22.

²⁴ [Grant v. Torstar Corp., 2009 SCC 61 at para. 33.](#)

²⁵ See e.g. [Zhao v. Corus Entertainment Inc., 2020 BCSC 1533](#) at para. 108.

The LCO recommended that the existing statutory modification in s. 22 should be preserved. As with fair comment, the Law Reform Commission of Saskatchewan did not make recommendations regarding the defence of justification in its 2024 report²⁶ and the defence was not addressed as part of Bill 31, *The Defamation Act*, which had not yet passed at the time this report was finalized.

4. Whether to narrow the definition of publication

One element of defamation is that the relevant words must be published to a third party. Publication means that the defendant must have conveyed, in a comprehensible form, the content complained of to someone who then understood it.²⁷ Conveying defamatory content is necessary to the tort because the plaintiff's reputation is not at risk unless words are understood by third parties.²⁸

Publication has traditionally been defined broadly. It means something like “bringing to someone’s attention” or making available. In addition to content creators who convey, “liability extends to any person who participated in, secured, or authorised the publication”,²⁹ (subject to defences). It follows that repeating defamatory content amounts to publishing it.³⁰ There is no requirement that the defendant be aware of the words they are conveying.

Therefore, a wide range of acts and omissions has been held to constitute publication, including behaviour many would think unobjectionable, like selling a newspaper containing a libel or perhaps failing to remove online content alleged to be defamatory. “[A] very wide

²⁶ [LRCS, Final Report on The Libel and Slander Act, March 2024](#).

²⁷ The defendant must have, “by any act, conveyed defamatory meaning to a single third party who has received it” *Crookes v Newton*, [2011] 3 SCR 269, 2011 SCC 47, 16, citing *McNichol v Grandy*, 1931 CanLII 99 (SCC), [1931] SCR 696, 699. “Harm to reputation is done when a defamatory publication is comprehended by the reader, the listener, or the observer. Until then, no harm is done by it. This being so it would be wrong to treat publication as if it were a unilateral act on the part of the publisher alone. It is not. It is a bilateral act – in which 117 the publisher makes it available and a third party has it available for his or her comprehension” *Gutnick v Dow Jones*, [2002] HCA 56 (Australia), 26. See also Patrick Milmo et al, eds, *Gatley on Libel and Slander*, 11th ed (London, UK: Thomson Reuters, 2008), 6.1-187-88.

²⁸ Patrick Milmo et al, eds, *Gatley on Libel and Slander*, 11th ed (London, UK: Thomson Reuters, 2008), 6.1-188

²⁹ Patrick Milmo et al, eds, *Gatley on Libel and Slander*, 11th ed (London, UK: Thomson Reuters, 2008), 199. For the relationship between the meaning of publication and accessory liability in defamation, see Joachim Dietrich, “Clarifying the Meaning of ‘Publication’ of Defamatory Matter in the Age of the Internet” (2013) 18 *Media and Arts Law Review*, 88.

³⁰ Patrick Milmo et al, eds, *Gatley on Libel and Slander*, 11th ed (London, UK: Thomson Reuters, 2008), 414-415.

class of persons may be caught as publishers, including quite peripheral, seemingly innocent players.”³¹

In the internet era, considerable academic and judicial ink has been spilled on when intermediaries, such as search engine providers and social media companies, are “publishers” of third-party content. Not only is the common law unclear, but it includes complicated doctrines such as “innocent dissemination” and “publication by omission” that are not well-suited to 21st century communications. Innocent dissemination applies only to secondary publishers, namely those who are not primary publishers (those who “have or can readily acquire full knowledge of the publication’s content before its release and are able to control and, if necessary, prevent dissemination of such content”).³² Second, the defendant must have no knowledge of the specific words or be reckless as to knowledge.

Publication by omission relates to failing to remove defamatory content, placed by a third party, from a space that the defendant controls (though whether control alone suffices is unclear).

Internet intermediaries could be said to be secondary publishers or publishers by omission of third-party content, depending on their role.

These concepts have been applied in cases such as *Niemela v Malamas*, the Supreme Court of British Columbia addressed whether Google is a publisher of its search engine results, which are automatically generated based on third party content.³³ The court said they did not – at least until notice. (See the discussion of the relevant issues at para 79-108.) The High Court of Australia ruled in *Fairfax v Voller* that media companies were “publishers” of third party comments on their Facebook pages.³⁴ The case law remains conflicted and unclear.

Many jurisdictions, scholars, and law reform bodies have studied the publication problem and have come to different solutions, including leaving it entirely to the common law (Law Reform Commission of Saskatchewan), treating only “primary” publishers as publishers (England, Scotland), and leaving the definition of publication to the common law but creating specific defences for intermediaries (Australia).

5. Whether to adopt special rules for corporations

³¹ Joachim Dietrich, “Clarifying the Meaning of ‘Publication’ of Defamatory Matter in the Age of the Internet” (2013) 18 Media and Arts Law Review, 92.

³² *Oriental Press v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366 [Hong Kong] at para 57.

³³ *Niemela v. Malamas*, 2015 BCSC 1024.

³⁴ *Fairfax Media v Voller*, [2021] HCA 27.

The common law of defamation treats non-human and human plaintiffs virtually the same.³⁵ That has changed in Australia, which denies corporations with 10 or more employees the right to sue in defamation.³⁶ England has also modified the law applicable to corporations, but only insofar as English law now include a serious harm element and defines serious harm to a for profit corporation as “harm that has caused or is likely to cause the corporation serious financial loss.”³⁷

There have been calls in Canada to restrict the availability of defamation to corporations, primarily because the nature of their reputations is so profoundly different than those of human beings.³⁸ Corporations should arguably have to prove injury and falsehood through an injurious falsehood action. However, such calls have gained little traction. The LCO proposed maintaining the status quo, because it was concerned about the need to protect small business, and it was unconvinced that a rational distinction could be draw between small and large businesses.³⁹ The Law Reform Commission of Saskatchewan agreed, though based perhaps more on a lack of consensus and the belief that anti-SLAPP laws would serve a similar purpose.

With respect to serious harm, the Working Group considered whether to recommend adoption of a provision that serious harm to corporations means serious financial loss, as in England and Australia.

6. Whether to recommend a defence for peer-reviewed academic publications

³⁵ One exception relates to the availability of aggravated damages: since corporations cannot suffer the aggravation of an egregious libel, they cannot receive aggravated damages.

³⁶ Per the *Defamation Act 2005* (WA):

9 (1) A corporation has no cause of action for defamation in relation to the publication of defamatory matter about the corporation unless it was an excluded corporation at the time of publication. (2) A corporation is an excluded corporation if— (a) the objects for which it is formed do not include obtaining financial gain for its members or corporators, or (b) it employs fewer than 10 persons and is not related to another corporation, and the corporation is not a public body. (6) In this section— corporation includes any body corporate or corporation constituted by or under a law of any country (including by exercise of a prerogative right), whether or not a public body; public body means a local government or other governmental or public authority constituted by or under a law of any country..

See also *Defamation Act 2005* (NSW), s 9; *Defamation Act 2005* (Qld), s 9; *Defamation Act 2005* (SA), s 9; *Defamation Act 2005* (Tas) s 9; *Defamation Act 2005* (Vic), s 9

³⁷ *Defamation Act 2013* (England), s.1.

³⁸ See e.g. Hilary Young, (2013) “[Rethinking Canadian Defamation Law as Applied to Corporate Plaintiffs](#)”, UBC LawRev 46.

³⁹ [LCO Report](#) at 66-68.

England provides a specific defence for academic publications in its *Defamation Act 2013*.⁴⁰ Australian states do too.⁴¹ The new Saskatchewan Defamation bill includes such a defence.⁴²

⁴⁰ Peer-reviewed statement in scientific or academic journal etc

(1) The publication of a statement in a scientific or academic journal (whether published in electronic form or otherwise) is privileged if the following conditions are met.

(2) The first condition is that the statement relates to a scientific or academic matter.

(3) The second condition is that before the statement was published in the journal an independent review of the statement's scientific or academic merit was carried out by—

(a) the editor of the journal, and

(b) one or more persons with expertise in the scientific or academic matter concerned.

(4) Where the publication of a statement in a scientific or academic journal is privileged by virtue of subsection (1), the publication in the same journal of any assessment of the statement's scientific or academic merit is also privileged if—

(a) the assessment was written by one or more of the persons who carried out the independent review of the statement; and

(b) the assessment was written in the course of that review.

(5) Where the publication of a statement or assessment is privileged by virtue of this section, the publication of a fair and accurate copy of, extract from or summary of the statement or assessment is also privileged.

(6) A publication is not privileged by virtue of this section if it is shown to be made with malice.

(7) Nothing in this section is to be construed—

(a) as protecting the publication of matter the publication of which is prohibited by law;

(b) as limiting any privilege subsisting apart from this section.

(8) The reference in subsection (3)(a) to “the editor of the journal” is to be read, in the case of a journal with more than one editor, as a reference to the editor or editors who were responsible for deciding to publish the statement concerned.

⁴¹ See [Law Reform Commission of Saskatchewan Report](#) at 53.

⁴² Sask [Bill 31](#):

Peer reviewed material

14(1) The publication of words in a scientific or academic journal is privileged if the following conditions are met:

(a) the words relate to a scientific or academic matter;

(b) before the words were published in the journal, an independent review of the words' scientific or academic merit was carried out by:

(i) the editor of the journal or, in the case of a journal with more than 1 editor, the editor or editors who were responsible for deciding to publish the words; and

(ii) one or more persons with expertise in the scientific or academic matter concerned.

(2) If the publication of words in a scientific or academic journal is privileged by virtue of subsection (1), the publication in the same journal of any assessment of the words' scientific or academic merit is also privileged if:

(a) the assessment was written by 1 or more of the persons who carried out the independent review of the words; and

(b) the assessment was written in the course of that review.

The English and Saskatchewan versions include a privileging provision not only for the peer-reviewed publication but for fair and accurate reports of such publications. There are other differences between the defences.

The English defence is extremely narrow, such that it has not been cited in any reported decisions as of the time Gatley's 13th edition was published. It is too narrow to have protected Simon Singh's publication about the chiropractic profession⁴³ or to have avoided other litigation that inspired the English defence.

Note that neither England nor Saskatchewan has anti-SLAPP laws like those in Ontario, BC and Manitoba.

The Working Group considered whether such a defence is desirable in Canada or whether, for example, the responsible communication defence and anti-SLAPP laws are sufficient.

7. Whether to include a provision clarifying that a claim does not fail on serious harm simply because damages sought fall within the small claims court threshold

The Working Group considered the possibility that if a serious harm element were adopted, this might affect the availability of small claims defamation actions, which are possible in Ontario. However, there is no inherent conflict between seeking damages of \$50,000 or less (the maximum in Ontario small claims court) and proving serious harm. Damages are largely non-pecuniary in defamation and are therefore somewhat symbolic. Further, they are based on many factors, some of which are not related to the extent of reputational harm.⁴⁴

f. Options for consideration

(i) Policy options for the Civil Section to consider

The Working Group makes six recommendations to be reflected in the Draft Uniform Act:

1. Replace the multiple publication rule with a single publication rule;

(3) If a publication is privileged by virtue of this section, the publication of a fair and accurate copy of, extract from or summary of the words or assessment is also privileged.

(4) A publication is not privileged by virtue of this section if it is shown to be made with malice.

(5) Nothing in this section is to be construed as: (a) protecting the publication of words the publication of which is prohibited by law; or (b) limiting any privilege existing apart from this section.

⁴³ Controversy over the Simon Singh case was one reason why England adopted the defence. See [British Chiropractic Association v Singh](#), [2009] EWHC 1101 (QB)

⁴⁴ *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at para 182.

2. Regarding fair comment,
 - a. eliminate the “objective honest belief” element;
 - b. rename the defence “comment”;
 - c. bring consumer protection law re: online reviews to the provinces’ attention;
 - d. clarify that fair comment does not require every supporting fact to be proved true;
3. Clarify that a justification defence does not require every supporting fact be proved true;
4. Do not change the rules for corporations except insofar as “serious harm” to corporations means serious financial loss;
5. Do not include a specific defence for peer-reviewed academic publications; and
6. Include a provision clarifying that a claim does not fail on serious harm simply because damages sought fall within the small claims court threshold.

We make no recommendation at this time regarding the element of publication, but because the Working group spent a great deal of time on it this year, we’ve include an update on our tentative thinking on the issue.

1. Replace the multiple publication rule with a single publication rule

The Working Group recommends that a new Draft Uniform Defamation Act include a single publication rule that would replace the common law multiple publication rule. This rule should apply not only to limitation periods but also to prevent a multiplicity of actions. There was consensus that the model Act should use wording similar or identical to that in England’s *Defamation Act, 2013*, and the language in Saskatchewan’s Defamation Bill, with regard to “materially different” publications. Ireland’s law may also be instructive regarding avoiding a multiplicity of actions within the limitations period.

There is little if any support for retaining the multiple publication rule in common law, secondary sources or law reform reports. There is a sense, however, that this is a change for legislatures rather than courts. What counts as a materially different publication will create uncertainty at the boundaries, but using the same or similar language as in England’s law would allow Canadian jurisdictions to benefit to a greater extent from the English and Australian case law on the meaning of “materially different” as it develops. This is consistent with the approach in the Saskatchewan Defamation Bill.

The Working Group debated trying to provide more guidance regarding the meaning of “materially different”. However, the variety of ways in which words can be published (different technologies, different audiences...) made it difficult to do more than provide some examples – which the explanatory notes to the English Act already do. Further, determining whether a publication is “materially different” than another is a fact-specific interpretive task which judges are well-suited to perform.

We note that the reference in section 8(3) of England’s *Defamation Act 2013* to the limitations period running as of the date of first publication is not appropriate in Canada given that our limitations periods start running upon discoverability. A new ULCC Draft Uniform Defamation Act could indicate that the limitations period starts running upon discoverability of the first publication. However, it may be preferable to address this in limitations legislation, as it is in some Australian jurisdictions,⁴⁵ rather than in a Draft Uniform Defamation Act.

Commentary to the Draft Act could also refer to the Explanatory Notes to the English Act, which help in interpreting what constitutes a materially different publication.

Recommendation: The common law multiple publication rule should be replaced by a statutory single publication rule that takes a form similar to that in England’s *Defamation Act 2013*.

2. Fair Comment

a) Eliminate the “objective honest belief” element

The Working Group recommends eliminating the “objective honest belief” element of fair comment. As noted above, it adds nothing, increases complexity, and reinforces the (false) idea that one can defame without the potential to cause reputational harm. It is not possible to fail to satisfy the element if there is some factual nexus between the facts and the impugned words, which is the focus of the “based on fact” element. And if the opinion is *not* one that someone could hold on the proven facts, it is not possible for it to be defamatory, as no one would believe it, to the plaintiff’s detriment.

The solution is straightforward (removing that element) and doesn’t create a risk of uncertainty or confusion. Instead, it removes a redundancy.

This conclusion is the same as that of the LCO on this issue. The Law Reform Commission of Saskatchewan did not address any changes to fair comment.

Recommendation: Eliminate the “objective honest belief” element of the fair comment defence.

b) Rename the fair comment defence “comment”

⁴⁵ See e.g. [s. 14C of the New South Wales Limitation Act 1969](#).

While opinions were not strong on this issue, the consensus was to recommend renaming the defence “comment”, so as better to reflect the nature of the defence and avoid the implication that comment must be objectively fair to be protected. We noted above how the defence is sometimes misunderstood to require that comment be fair in the sense of objectively reasonable.

“Opinion” – the new name of the defence in England – was rejected as a name because the defence protects speech that goes beyond opinion and includes factual inferences.

Recommendation: Rename the “fair comment” defence “comment”.

c) Bring consumer protection laws to the provinces’ attention

The Working Group recommends no provision in the Draft Uniform Defamation Act that would provide a defence for consumer product and service reviews or prohibit including contractual clauses that disallow negative reviews. It was thought that this was better addressed by consumer protection legislation, as in Alberta and New Brunswick.

However, the Working Group wanted to bring these consumer protection laws to the provinces’ attention should they wish to adopt similar provisions.

There is therefore no recommendation associated with this issue.

d) Clarify that fair comment does not require every supporting fact to be proved true

Statutory clarification was not seen as an urgent issue, since the common law has largely moved away from its earlier strict approach, whereby a failure to prove the truth of every supporting fact relied on would defeat a fair comment defence. Nevertheless, the Working Group recommends including a provision to the effect that every supporting fact needn’t be proven true to make out fair comment.

There is some benefit and little downside to such a clarification, which already exists in Ontario and Nova Scotia. The benefit is to forestall the argument in those jurisdictions which don’t have a statutory provision that this reflects a deliberate decision to retain the strict approach.

As to the language to recommend, while we are aware that drafting is not the Working Group’s responsibility, we considered the different existing approaches. Ontario and Nova Scotia have virtually identical statutory language, stating that the defence “shall not fail”

only because the truth of every allegation is not proved, where the comment is nevertheless “fair” given the facts that *are* proven true.

The *Uniform Defamation Act, 1994* uses different wording, stating the defence “is not defeated” only because every “relevant assertion” is not proven true, where the assertions “proved to be true are relevant and afford a foundation for the opinion.”

The Working Group agreed that there are advantages of using the Ontario and Nova Scotia language, since it is familiar to the bar in those provinces and has been tested. Nevertheless, the language should be altered to reflect the Working Group’s recommendation to rename the fair comment defence “comment” (if that recommendation is approved), and to ensure there is no suggestion that comment must actually be “fair”. Finally, the Ontario/NS provisions refer to proving facts “alleged or referred to in the words complained of”. This ignores the possibility of facts being notorious, rather than stated, and of facts being privileged. This should ultimately be reflected in the draft language too.

Recommendation: The Draft Uniform Act should include a provision to the effect that a defence of comment shall not fail by reason only that the truth of every fact alleged to provide a foundation for the comment is not proved, if the a foundation is provided by such of the underlying facts alleged, referred to or notorious, as are proved or privileged.

The Working Group considered other issues around fair comment, such as whether the definition of “comment” needed clarifying, but made no recommendations for change to fair comment other than those set out above.

3. Clarify that a justification defence does not require every supporting fact to be proved true;

The issue is similar to that regarding fair comment above. The Working Group considered: a) whether to recommend a provision in the Draft Uniform Act that the defence of justification will not fail only because not every charge in the publication can be proved true, provided that the remaining words that are not proved to be true do not materially injure the plaintiff’s reputation; and b) if so, what language should be used or avoided?

As with fair comment above, inclusion of such a clarifying provision in the Draft Act was not seen as essential, since the common law has largely moved away from its earlier strict approach to the issue. Nevertheless, the Working Group recommended including a provision since there was some benefit and little downside to doing so. The benefit is that it forestalls the potential argument in jurisdictions that don’t have the provision that this reflects a deliberate decision to retain the strict approach.

As to the language to recommend, different bodies have taken different approaches to phrasing the rule. Ontario and Nova Scotia, which have virtually identical statutory language, state:

In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

The *Uniform Defamation Act, 1994*, s. 14, in contrast, states:

14. Where an action for defamation is brought with respect to the whole or any part of alleged defamatory matter
(a) the defendant may allege and prove the truth of any part of that matter; and
(b) the defence of justification is held to be established if the alleged defamation, taken as a whole, does not materially injure the plaintiff's reputation having regard to any part that is proved to be true.

Differences include reference to “distinct charges” versus “parts” of a defamatory matter, such that the ON/NS law seems to relate to separate imputations, while the ULCC text may relate more to facts helping to prove a single imputation and the overall meaning it conveys. Another difference relates to whether the rule is phrased positively or negatively: the defence not failing versus being established. Both texts reference “materially” injuring reputation.

Discussion included whether the language should be framed affirmatively (e.g. the defence is established) or negatively (e.g. the defence shall not fail). On the one hand, an affirmative framing is arguably clearer and allows for less “wobble room”. On the other, the negative language is the one already established in law in two jurisdictions, and since we’re not codifying all defences, there may be less need to state what *does* constitute a defence.

Given these concerns, and assuming the serious harm element is adopted, wording could look something like:

In an action for defamation, a defence of justification shall not fail by reason only that the truth of every fact is not proved if the imputations not proved to be true do not seriously harm the plaintiff's reputation.

This is based on the ON/NS language except that: a) it removes the reference to two or more distinct charges, which seems confusing and unnecessary; b) replaces “charge” with “fact”; c) deletes “having regard to the truth of the remaining charges”, which seems unnecessary; and eliminates the reference to “materially injuring” reputation, since that is neither the existing nor proposed threshold for liability in defamation.

This is not meant to pre-empt the drafter’s work; rather, the Working Group wanted to consider the substantive differences between the existing provisions. We also noted the desire for symmetry between the provision regarding fair comment and that regarding justification.

Recommendation: The Draft Uniform Act should include a provision to the effect that the justification defence shall not fail by reason only that the truth of every fact is not proved, if the imputations not proved to be true are do not seriously harm the plaintiff’s reputation.

4. Do not change the rules for corporations except insofar as “serious harm” to corporations means serious financial loss;

While the Working Group was sympathetic to the idea that the nature of corporate reputation is fundamentally different than that of humans, perhaps justifying a different approach, there were ultimately no recommendations to alter the law regarding corporations along the lines of Australia’s approach, where larger corporations cannot sue in defamation. Australia’s distinction between small and large corporations is arbitrary, nor is it clear why the rule should only apply to for-profit corporations and not partnerships, for example.

We do recommend that “serious harm” to for-profit corporations means “serious financial loss”. This is understood flexibly (no minimum dollar value, number of lost clients etc) and reflects the law on serious harm in England and Australia.

Recommendation: A new serious harm element should specify that serious harm to for-profit corporations means serious financial loss.

5. Do not include a specific defence for peer-reviewed academic publications.

The Working Group was of the view that there is no need for a defence specific to peer-reviewed academic publications. While academic publishers are often threatened with libel actions, the defence of responsible communication, other defences, and anti-SLAPP law are sufficient to protect them. The Working Group was further convinced by the fact that the defence is effectively not used in England, despite its having existed for 13 years.

Recommendation: The Draft Uniform Act should not include a specific defence for peer-reviewed academic publications.

6. Include a provision clarifying that a claim does not fail on serious harm simply because damages sought fall within the small claims court threshold

Last year the Working Group recommended adding a serious harm element. It might be argued that serious harm is inconsistent with a small claims court defamation action, such actions being possible in Ontario and perhaps PEI, but not in other provinces. The issue doesn't arise in England or in most Australian states, which have a serious harm element, because defamation actions are excluded from the jurisdiction of small claims courts.

The Working Group recommends including statutory language to the effect that a claim does not fail on serious harm simply because the damages claimed are within the jurisdiction of a small claims court. This should be self-evident, especially as the small claims limit in Ontario is now \$50,000 and since the defamation damages assessment is based on several factors other than the extent of reputational injury. However, out of an abundance of caution, we recommend that this be explicit.

Recommendation: The Draft Uniform Act should include a provision clarifying that a claim does not fail on serious harm simply because the damages claimed are within the range available in small claims court.

Tentative: Narrow the definition of publication

The Working Group has spent several meetings on the issue of publication, which we consider the most difficult one of this project. We are not prepared to make a final recommendation on publication at this time, but wanted to update the ULCC on our thinking to date.

We are likely to recommend a new statutory definition of publication, replacing the common law definition. While the wording will be left to drafters, a publisher is an author, editor or (commercial) publisher, as defined in England's *Defamation Act 1996* or, better still, the *Defamation and Malicious Publication (Scotland) Act 2021*, s. 3:

3 Restriction on proceedings against secondary publishers

(1) Except as may be provided for under section 4, a right to bring defamation proceedings in respect of a defamatory statement does not accrue against a person unless the person is—

(a) the author, editor or publisher of the statement, or

(b) both—

- (i) an employee or agent of such a person, and
- (ii) responsible for the statement's content or the decision to publish it.

(2) In this section, subject to subsections (3) to (5)—

“author” means the person from whom the statement originated, but does not include a person who did not intend the statement to be published,

“editor” means a person with editorial or equivalent responsibility for the content of the statement or the decision to publish it,

“publisher” means a commercial publisher (that is to say, a person whose business is issuing material to the public or to a section of the public) who issues material containing the statement in the course of that business.

(3) Where a statement is in electronic form, a person is not to be considered the editor of the statement or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it, if—

(a) the person's involvement with the statement is only—

- (i) publishing the same statement or providing a means to access the statement (for example a hyperlink) in a manner which does not alter the statement, or
- (ii) marking the person's interest in, approval of or disapproval of the statement in a manner which does not alter the statement (typically by means of a symbol), and

(b) that involvement does not materially increase the harm caused by the publication of the statement.

(4) A person is not to be considered the author, editor or publisher of a statement or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it, if the person's involvement with the statement is only—

- (a) printing, producing, distributing or selling printed material containing the statement,
- (b) processing, making copies of, distributing, exhibiting or selling a film or sound recording (as defined in Part 1 of the Copyright, Designs and Patents Act 1988) containing the statement,
- (c) processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded,

...

The effect of this would be to limit publication to more core participants in conveying information, particularly those with knowledge of, and control over, communicating specific words.

A number of issues remain, however. First, this definition of publisher should not necessarily be exhaustive. We have yet to resolve the issue of when those who are not authors, editors or commercial publishers (that is, those who may now be considered secondary publishers and publishers by omission) should be treated as publishers. For example, what responsibility in defamation, if any, should a social media platform have for third-party content on its platform? This internet intermediary issue is difficult. However, the Working Group tentatively agreed that for such publishers, knowledge and control would be necessary but not sufficient for liability. Thus, for example, a secondary publisher, such as an intermediary, should not be treated as a publisher – either at all or at least until they receive notice, though this creates a problematic incentive for intermediaries to remove posts based solely on a complaint.

We are unlikely to recommend the Australian approach (specific defences for internet intermediaries) because we do not consider the problem with secondary publishers to be unique to the internet context. For example, a library should not be considered a publisher of material it lends, regardless of its knowledge and control (e.g. where a librarian recommends a book), but it would not benefit from internet intermediary-specific defences.

We are also unlikely to recommend adopting the English approach to secondary publishers, whereby a secondary publisher's liability turns on whether there is a primary publisher available to be sued, as that seems fundamentally unprincipled.⁴⁶

Recommendation: None at this stage.
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f(ii) Deviations from any previous direction of the Civil Section

As noted above, the Working Group's recommendations are different than what is set out in the *Uniform Defamation Act* (1994), largely because of the change in the media and communications landscape.

The Working Group also wishes to respond to questions raised at last year's meeting and to note a change in our thinking since last year's report was submitted.

a) Serious harm guidance

In last year's report, the Working Group recommended the adoption of a serious harm threshold. Our recommendation, consistent with the approach in England and Australia, was not to define serious harm statutorily, but rather to leave this to the common law. England, in particular, has a significant body of case law on the meaning of serious harm. At last year's meeting, someone expressed concern about a lack of statutory guidance as to the meaning of serious harm.

⁴⁶ See England and Wales' *Defamation Act 2013*, s. 10.

The Working Group reconsidered the issue but ultimately remained of the view that the risks of trying to define serious harm in a statute outweigh the benefits of clarity. England and Australia both considered including a statutory definition and rejected the idea as likely inappropriately constraining the relevant factors. The Working Group thought that if it did try to create a statutory definition, the result would be complex and would perhaps inadvertently exclude important forms of serious harm. Further, our courts frequently refer to English case law and would be likely to do so regarding the meaning of serious harm.

b) Notice issues

At last year's meeting, the Working Group was asked about its recommended notice provision and, in particular, its recommendation that a plaintiff not be allowed to commence an action until 28 days had elapsed following the provision of notice to the defendant.

While discussing the ULCC's question, the Working Group decided that we wanted to further consider the issue of notice. This may happen before the 2026 meeting and, if so, the Working Group Chair will update delegates on any changes to our original recommendations, as well as including them in our 2027 report.

(iii) The Working Group's recommended option for each policy issue identified

To summarize the recommendations from Section f(i), the Working Group makes the following policy recommendations:

- 1. Replace the multiple publication rule with a single publication rule;**
- 2. Regarding fair comment,**
 - a. eliminate the "objective honest belief" element;**
 - b. rename the defence "comment";**
 - c. bring consumer protection law re: online reviews to the provinces' attention;**
 - d. clarify that fair comment does not require every supporting fact to be proved true;**
- 3. Clarify that a justification defence does not require every supporting fact be proved true;**
- 4. Do not change the rules for corporations except insofar as "serious harm" to corporations means serious financial loss; and**
- 5. Do not include a specific defence for peer-reviewed academic publications; and**
- 6. Include a provision clarifying that a claim does not fail on serious harm simply because damages sought fall within the small claims court threshold.**

Tentatively, the Working Group is likely to recommend narrowing the definition of publication in next year's policy report.

(iv) Note any minority views expressed within the Working Group

None.

g. Next steps

(i) Anticipated work to be undertaken by the Working Group ahead of the next ULCC annual meeting

The Working Group will revisit the notice issue before the next meeting and may also address one or more of the issues we have so far identified as still needing discussion. These are: finalizing the approach to publication; considering changes to pleadings rules (e.g. *Uniform Defamation Act* (1994) ss 4-6; any statutory presumptions regarding jury trials; any specific jurisdiction rules for defamation (to avoid libel tourism); privileging provisions; and any remedial issues, such as the effect of apologies and retractions and the availability of takedown orders.

This sounds like a long list but for some we will quickly recommend against statutory changes and for some others the solutions may be straightforward. The Working Group has already at least partially addressed the most complex and contentious issues of publication and notice.

(ii) Type of report that the Working Group anticipates presenting to the next ULCC annual meeting.

Next year's report will be a policy report.

h. Draft Resolution

THAT the Report of the Defamation Working Group be accepted;

THAT, in accordance with the directions from the ULCC, the Working Group continue its work, including identifying possible solutions to address the issues raised in the report; and

THAT the Working Group present a policy report to the ULCC at its 2027 annual meeting.