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UNIFORM LAW CONFERENCE OF CANADA

DEFAMATION IN THE INTERNET AGE WORKING GROUP – POLICY REPORT

Presented by the Working Group

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Defamation – Policy Report
Presented by the Working Group

a. Working Group membership and meeting report

(i) The Working Group consists of:

Miina Balasubramaniam, MAG Ontario
Dan Burnett, lawyer at Owen Bird
Christina Croteau, Legal project and Research Coordinator, ULCC
John Gregory, MAG Ontario (retired)
Scott Harwardt, Consumer Services Alberta
James Marton, MAG Ontario
Roger McConchie, lawyer with McConchie Law
Brian Macleod Rogers, lawyer
Nancy Rubin, lawyer at Stewart McKelvey, Halifax
Nicolas Vermeys, professor at the Université de Montréal
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 Project Emerged

[1] 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.

[2] 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.

[3] 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).

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

[5] 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 four times as of April 2025.

[6] 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.

[7] The Working Group chose to proceed by alternating between simpler issues – low hanging fruit such as abandoning the distinction between libel and slander, and more complex issues such as an appropriate notice regime. This would allow us to make early progress while not leaving all difficult issues to the end, where we might run into intractable problems.

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

[8] 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 Saskatchewan Law Reform Commission's 2024 report.[3]

[9] 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 is no longer thought to be an appropriate approach. For example, both the Law Reform Commission of Saskatchewan and the LCO have since recommended that a notice regime apply equally to all publishers.

[10] The LCO report is an invaluable resource that the Working Group is building on, rather than starting from scratch. Its focus, however, was not on unifying provincial laws. We are mindful of the goal of uniformity and of wanting to create a model law that provinces are willing and able to adopt in the relatively short term.

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

[11] The Saskatchewan Law Reform Commission report is also helpful to the Working Group. To date, the Working Group's recommendations largely align with those in the Saskatchewan report (e.g. on abolishing the distinction between libel and slander), though the Working Group is still in the early stages of its work.

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

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

[13] 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.

[14] Much of the Canadian law of defamation is ancient. It evolved in an era long before the internet and its search engines changed the way defamatory words are communicated and accessed.

[15] 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 search engines; and whether special rules for newspapers and broadcasters (e.g. special notice provisions) continue to be justifiable.

[16] While there is significant overlap between the laws of Canada's common law jurisdictions, there is enough variability to make libel tourism a 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.

[4] UK House of Lords and House of Commons, *Joint Committee on the Draft Defamation Bill*, Draft Defamation Bill Session 2010-12 (2011); 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*.

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

[17] 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 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.

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

[18] 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

[19] 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.

[20] 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.

[21] 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.

[22] 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

[23] No consultations were undertaken.

e. Issue identification and analysis

1. Abolish the distinction between libel and slander

[24] The distinction between libel and slander is an ancient one grounded in the persistence – and potential greater harm – of written communications relative to oral ones. In those jurisdictions that maintain the distinction, there are special rules where slander (transitory communication) is at issue, rather than libel (communication in more permanent form). In particular, libel is actionable *per se* whereas slander requires proof of actual pecuniary loss unless the communication falls within a special category that is actionable *per se*, such as alleging the unchastity of a woman or that the plaintiff has a "loathsome" disease.[5]

[25] There are two policy issues here: whether libel and slander should be treated differently and, if not, what the default should be in terms of whether injury is presumed.

[26] Several provinces have abolished the distinction between libel and slander, but British Columbia, Saskatchewan, and Ontario maintain it. Quebec never had such a distinction.

[27] Those provinces that have abolished the distinction have tended to do so in the manner set out in the 1994 *Uniform Defamation Act,* which defines defamation as "libel or slander" and in s. 2(2) presumes damage where defamation is proven.

[28] According to the Commentary, the new definition of "defamation" and the presumption of damages were together intended to abolish the distinction between libel and slander.[6] The presumption does this by implicitly eliminating the need to prove special damage in slander cases, since if damage is presumed for all defamation, there is no need to prove special damage in slander cases.

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[5] See e.g. *Wilson v Switlo,* [2011] BCSC 1287 at para 506, aff'd 2013 BCCA 471.

[6] The Commentary to the Uniform Law Conference of Canada, Uniform Defamation Act (1994) states: "Substantively, unification of the traditional torts of libel and slander into the single tort of defamation is achieved by this section, which is carried over from UDA, 1962. At common law, most species of slander were actionable only if 'special damages' could be proved. Libel, on the other hand, was actionable without proof of actual damage in all cases. This section makes all defamations actionable without proof of damage."

[29] The UK retains the distinction while Australian states abolished it explicitly, as follows:

> **7 Distinction between slander and libel abolished**
> (1) The distinction at general law between slander and libel is abolished.
> (2) Accordingly, the publication of defamatory matter of any kind is actionable without proof of special damage.[7]

There is little support in the literature for maintaining the distinction between libel and slander. The LCO Report recommends abolishing it, calling it "anachronistic".[8] An Alberta court said the distinction no longer served any useful purpose.[9]

2. Adding a Serious Harm Element

[30] Once liability is established, the common law of defamation (libel) presumes injury. That injury leads to a presumption of greater than nominal damages.[10] Since the elements of defamation are simply to communicate about the plaintiff in a way that would make an ordinary person think less of them, trivial libels can result in liability and significant damages. They can waste courts' time and create SLAPP and access to justice issues, since it takes very little to ground a technically meritorious defamation claim. This has led jurisdictions to consider – and some to adopt – a harm threshold, effectively eliminating the presumption of harm.

[31] England first adopted a "serious harm" element in its *Defamation Act, 2013*[11] and most Australian states have subsequently done the same, given the recommendation of the Council of Attorneys General.[12] The case law and commentary, particularly for England where there has been more than ten years' experience with serious harm, is largely positive.[13]

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[7] E.g. *Defamation Act 2005* No 77 (New South Wales), s 7.
[8] Law Commission of Ontario, Defamation Law in the Internet Age: Final Report (Toronto: March 2020) at 20.
[9] *Brule v Chmilar,* [2000] AJ No 39 at para 59, 256 AR 168 (Alta QB).
[10] *Walker et al v CFTO Ltd. et al*, [1987] OJ No 236 at para 22, 59 OR (2d) 104, 37 DLR (4th) 224, citing *Carter-Ruck on Libel and Slander; Barrick Gold Corp v Lopehandia*, [2004] OJ No 2329 at para 49, 71 OR (3d) 416, 239 DLR (4th).
[11] *Defamation Act 2013*, 2013 c. 26 (England and Wales) at s. 1.
[12] Council of Attorneys General, *Model Defamation Amendment Provisions 2020* (Consultation Draft) (Australia) at 25-29. For states' legislation, see e.g. *Defamation Act 2005* No 77 (New South Wales), s. 10A.
[13] See e.g. Stephen Bogle and Bobby Lindsay, *Serious harm: Six lessons since* Lachaux (2024) Journal of Media Law 16:2.

3. Notice

[32] Most Canadian jurisdictions require plaintiffs to provide notice, specifying the matter complained of, if the words at issue were published in a newspaper or broadcast.

[33] The goals of notice are the pursuit of truth, by giving an opportunity for publishers to issue corrections, and access to justice, by promoting early dispute resolution and avoidance of the court process.[14] These goals are relevant to publishers of journalism, who are motivated by professional standards to want to correct or retract where appropriate. However, they are by no means unique to journalism.

[34] A failure to give notice can have different consequences. First, notice can function as a kind of shorter limitation period. For example, in Ontario notice must be given within six weeks of discoverability, or else a claim may be struck.[15] This can be harsh on plaintiffs who are unaware of the special notice rules for defamation. The other jurisdictions with this form of "limitations notice" set the period at three months.[16]

[35] Second, giving notice can trigger a cooling off period before an action can be commenced – typically a few weeks – so the parties can try to correct the record and resolve the matter without litigation.[17] We refer to this as "delay notice".

[36] Most Canadian jurisdictions have one or both types of notice, though British Columbia effectively does not require notice at all.[18]

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[14] Law Commission of Ontario, *Defamation Law in the Internet Age: Final Report* (2020) at 37; Law Reform Commission of Saskatchewan, *Final Report on The Libel and Slander Act* (2024), 2024 CanLIIDocs 2137 at 40; UK House of Lords and House of Commons, *Joint Committee on the Draft Defamation Bill*, Draft Defamation Bill Session 2010-12 (2011) at 47.

[15] *Libel and Slander Act*, RSO 1990, c L.12, s 5(1), *Watson v. Southam Inc*., 2000 CanLII 5758 (ON CA) at para 50.

[16] Alberta, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon all also have this form of notice. See *Defamation Act*, RSA 200, c D-7, s 13(1); *The Defamation Act*, CCSM c D20, s 14(1); *Defamation Act*, RSNS 1989, c 122, 18(1); *Defamation Act*, RSPEI 1988, c D-5, 14(1); *Defamation Act*, RSNL 1990, c D-3, 16(1); *Defamation Act*, RSY 2002, c 52 14(1); *Defamation Act*, RSNWT 1988, c D-1, s 15(1) (15(1); *Defamation Act*, RSNWT (Nu) 1988, c D-1, s 15(1).

[17] All but British Columbia and Ontario have this form of notice, often only to broadcasters and journalists. Periods range from three days in Quebec to 14 days and vary depending on whether the publisher is a newspaper or broadcaster. See e.g. *Press Act*, CQLR, c.P-19, s.3

[18] BC has a one-day delay notice requirement for libels in a newspaper or broadcast. *Libel and Slander Act*, RSBC 1996, c 263, s. 5.

f. Options for consideration

(i) Policy options for the Civil Section to consider

[37] At this early stage of the working group's work, we make three policy recommendations: 1. to abolish the distinction between libel and slander; 2. to add a serious harm requirement; and 3. to create a new uniform notice regime.

1. Abolish the distinction between libel and slander

[38] The Working Group recommends that a new Draft Uniform Act abolish the distinction between libel and slander.

[39] While the 1990 Ontario MAG Advisory Panel report notes the benefit of a separate law of slander to limit liability and damages for trivial slanders,[19] this can be accomplished in other ways, such as through a serious harm element, which the Working Group recommends adopting, as discussed below. The distinction requires litigation over whether online content is libel or slander or whether a slanderous publication falls within the categories that do not require proof of special damages. The categories themselves, which as noted above include alleging having a communicable disease and alleging unchastity of a woman, are problematic.

[40] The Working Group then considered how best to eliminate the distinction, specifically which default rule to apply: proof of damage or actionable *per se*.

[41] Canadian legislation that has abolished the distinction between libel and slander and the ULCC's 1994 *Uniform Defamation Act* take the approach of not requiring special damage for defamation.

[42] However, given the Working Group's recommendation on a serious harm element discussed below, it agreed that the Australian approach makes more sense. This is a matter of substance and not just of drafting. The approach in the 1994 *Uniform Defamation Act* presumes harm from any form of defamation. This does not set the appropriate default, in our view. Presuming injury from any libel allows trivial claims to proceed and generate potentially significant damages, given the common law approach to greater than nominal damages on proof of liability.

[43] We therefore recommend the Australian approach, which abolishes the distinction between libel and slander without presuming injury. It says instead that special damage need not be proven. This allows the possibility of requiring serious harm, for example, which we recommend below. The *Uniform Defamation Act* (1994)

[19] Ministry of the Attorney-General Advisory Committee, Report on the Law of Defamation (November 1990).

approach, which presumes injury from the publication of a libel, is hard to reconcile with the need to prove serious harm. By simply not requiring proof of pecuniary damage, the Australian approach is consistent with requiring proof of serious harm to reputation, even if that harm does not result in pecuniary damage.

Recommendation: the distinction between libel and slander should be abolished. This should be done in a manner that does not presume damage to reputation from the mere publication of defamatory words.
For example:

> **Distinction between slander and libel abolished**
> (1) The distinction at general law between slander and libel is abolished.
> (2) Accordingly, the publication of defamatory matter of any kind is actionable without proof of special damage.

2. Adding a Serious Harm Element

[44] The Working Group recommends that the ULCC Draft Uniform Act include a serious harm element along the lines of that in England, where the *Defamation Act 2013* states: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."[20]

[45] Though the Working Group considers anti-SLAPP law to be outside its mandate, we discussed the possibility that – at least in those provinces that have it – anti-SLAPP law makes the serious harm requirement unnecessary. We rejected that conclusion for several reasons, including the fact that a minority of provinces has anti-SLAPP laws, and the Ontario and BC anti-SLAPP law only applies to public interest speech. We also note that England and Australia, despite requiring serious harm, are considering adding anti-SLAPP legislation, suggesting that neither alone is a complete solution to the issue of trivial or abusive claims.

[46] The Working Group considered the wisdom of including examples or other guidance in the legislation as to what counts as serious harm. The English courts have developed a sensible jurisprudence around what serious harm means. The Working Group recommends leaving interpretation of "serious harm" to the courts, who in turn should look to the English and Australian jurisprudence. We agree with Australia's Council of Attorneys General who stated that legislative guidance on serious harm:

> … is unlikely to provide additional certainty regarding whether the threshold of serious harm would be met, and may add complexity and artificiality to the assessment of serious harm by the courts. The factors outlined above would

[20] *Defamation Act 2013*, 2013 c. 26 (England and Wales) at s. 1.

inevitably be considered by the court. The serious harm threshold contained in s 1 of the Defamation Act 2013 (UK) does not contain factorial guidance.[21]

That said, the eventual Draft Uniform Act should likely contain commentary discussing this intent and perhaps providing examples.

[47] The Working Group will return to the issue of serious harm because there are some minor issues still to be resolved. First, we note that Ontario allows defamation actions in small claims court. We recognize that a serious harm threshold might affect the ability to bring small claims defamation actions in Ontario, since actions for damages under the $35,000 Small Claims Court limit may involve allegations of harm that may not satisfy a serious harm requirement.

[48] The Working Group will also consider whether there should be special rules for corporations when it comes to serious harm. England and the Australian states that have enacted a serious harm element require corporations to prove "serious financial loss" in order to establish serious harm and therefore liability.[22] The Working Group has not yet addressed the controversial issue of special defamation rules for corporations. If the Working Group ultimately recommends requiring corporations to prove serious financial loss, the recommendation above regarding abolishing the distinction between libel and slander would have to be amended to clarify that corporations *do* have to prove special damages.

Recommendation: the Draft Uniform Act should abolish the presumption of damage and include a serious harm element in line with that in England and Australia, e.g. "a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the plaintiff".

3. Notice

[49] Several issues arise regarding notice, including:

a) whether notice should be required at all;
b) if so, to whom;
c) what is the consequences of a failure to give notice.
d) what period of notice;
e) how should notice be given; and
f) what is the proper content of the notice.

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[21] Council of Attorneys General, *Model Defamation Amendment Provisions 2020* (Consultation Draft) (Australia) at 29.
[22] *Defamation Act 2013*, 2013 c. 26 (England and Wales) at s. 1(2).

a) Whether notice should be required

[50] On whether to give notice, the Working Group recommends the Draft Uniform Act contain notice requirements. While the ULCC's *Uniform Defamation Act* (1994) omits any notice requirement, and England and Wales do not require notice, both the LCO and Saskatchewan law reform reports recommend (delay) notice.[23] Australia's *Model Defamation Provisions* require an offer to make amends occur within 28 days of notice.[24]

[51] While British Columbia does not presently require notice, in practice, throughout Canada, notice is almost always given. And Working Group members agreed that notice serves important functions and needn't be unduly burdensome. It therefore recommends both delay notice and limitations notice. That is, there should be a notice period during which an action may not be commenced and there should be a period after discoverability within which notice must be given.

b) Notice to Whom

[52] The Working Group agreed that notice periods should no longer apply only to defamation in a newspaper or broadcast, as is presently the case in most Canadian jurisdictions. Quebec requires it for defamation in "newspapers" alone.[25]

[53] The emphasis on media defendants once made sense, because journalists published to the world at large, were more likely to be responsive to requests for correction and were often able to make corrections. However, the reference to newspapers and broadcasters seems outdated, given broad dissemination of online publications by non-media publishers, including social media platforms. Yet defining the proper range of journalistic publishers is difficult. There is little support in the literature or among Working Group members for retaining notice rules for broadcasters and newspapers alone, or to otherwise define a set of journalism publishers to whom a notice period would apply.

[54] Other law reform bodies have rejected a journalism-only approach to notice.[26]

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[23] Law Commission of Ontario, *Defamation Law in the Internet Age: Final Report* (2020) at 37-44; Law Reform Commission of Saskatchewan, *Final Report on The Libel and Slander Act* (2024) at 40-44.
[24] Council of Attorneys General, *Model Defamation Amendment Provisions 2020* (Consultation Draft) (Australia), Part 3.
[25] Under the *Press Act*, CQLR c P-19, a newspaper refers to any "newspaper or periodical writing the publication whereof for sale or distribution free of charge is made at successive and determined periods, appearing on a fixed day or by irregular issues, but more than once a month and whose object is to give news, opinions, comments or advertisements." In *Guimont* v. *Bussières*, 2019 QCCA 280, the court concludes that this does not include online publications.
[26] Law Commission of Ontario, *Defamation Law in the Internet Age: Final Report* (2020) at 37; Reform Commission of Saskatchewan, *Final Report on The Libel and Slander Act* (2024) at 32.

[55] The Working Group therefore recommended that the notice provisions apply in respect of all defendants and media of communication.

c) Consequences of failing to give notice

[56] The Working Group agreed that barring a claim for failure to provide timely notice is unduly harsh. This was also the conclusion of the LCO and the Law Reform Commission of Saskatchewan.[27] The Working Group therefore recommends that a failure to give notice within the notice period should go to the court's discretion in assessing damages and costs. That is, if it seems that the extent of injury was increased because of a failure to give timely notice, damages or costs could be reduced.

[57] Similarly, if a plaintiff brings an action before the expiry of the (delay) notice period, that action would not be struck for that reason. Rather, a court would determine whether the failure to give notice resulted in prejudice that should be reflected in a damages or costs award. However, the Working Group recognized that there may be circumstances in which it doesn't make sense to delay bringing the action, even for a few weeks. Where that is the case, delay notice would not function to prevent the plaintiff from proceeding immediately nor, presumably, would it lead to an adverse costs or damages award.

[58] The Working Group recognizes that this approach means that while notice is in principle required, in practice, whether and when to give it would become questions of litigation strategy. Our view was that given the range of possible circumstances, this best achieves the goals of notice without creating undesirable consequences.

d) What should the period of notice be

[59] The Working Group recommends a provision in the Draft Uniform Act to the effect that a defamation action may not be commenced until 28 days after notice is provided. This is the period recommended in the Australian *Model Defamation Provisions* and by the LCO. While it is longer than existing Canadian notice periods, this makes sense since the recommendation is to give notice to all defendants, not just media defendants. This may mean it takes longer to engage in negotiations with the defendant, who may need to retain counsel.

[60] The Working Group also recommends that notice must be provided within three months of discoverability. This is the most common period in existing provincial legislation. It is a reasonable amount of time to be able to decide whether to bring

[27] Law Commission of Ontario, *Defamation Law in the Internet Age: Final Report* (2020) at 43. This is implicit in the Law Reform Commission of Saskatchewan, *Final Report on The Libel and Slander Act* (2024) recommendation at 44.

an action and if notice requirements are not onerous, it should not be difficult to provide the notice in time. Further, the fact that a failure to comply goes to damages and costs limits the consequences for those who were unaware of their notice obligations.

e) How Notice should be given

[61] There should be flexibility in how notice is to be provided. Many Canadian jurisdictions require that notice be given in the same manner as a statement of claim. However, since the proposed new notice requirement would apply to everyone, and not just media defendants, the Working Group considers it too onerous to provide notice in the same manner as a statement of claim. Some defendants may be anonymous, or it may be unduly expensive or onerous to give notice in the same manner as service of a statement of claim.

[62] Existing statutory language on communicating with parties provides useful guidance. For example, s. 31 of the Quebec *Act to establish a legal framework for information technology*, CQLR c C-1.1 and s. 133 of the *Quebec Code of Civil Procedure* may be informative. The latter states:

> **133.** Notification by a technological means is made by sending the document to the address provided by the addressee for the receipt of the document, or to the address that is publicly known as the address where the addressee receives documents, provided the address is active at the time of sending.

However, notification by a technological means to a party not represented by a lawyer or a notary is permitted only with the party's consent or if ordered by the court.

[63] Since requiring the defendant's consent may not be appropriate, the Australian Model Defamation Provisions are another potential model. They provide:

> 44. (1) For the purposes of this Act, a notice or other document may be given to a person (or a notice or other document may be served on a person)—
>
> (a) in the case of a natural person—
>
> (i) by delivering it to the person personally, or
>
> (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) by sending it by facsimile transmission to the facsimile number of the person, or

(iv) by sending it by email, messaging or other electronic communication to an electronic address or location indicated by the person for giving documents to, or serving documents on, the person,[...]

Since the purposes of notice include facilitating dialogue and avoiding litigation, where people are avoiding receiving notice, these goals will be difficult to achieve regardless of notice. And since the consequences of failing to provide notice relate to damages and costs, there is less risk of serious prejudice to defendants who should have received notice but for some reason did not – for example because an email was not received.

[64] The Working Group considered whether to require internet service providers (ISPs) to pass along notice to their subscribers, as the LCO report recommends. The LCO's recommendation was based on the premise that intermediaries might otherwise be liable as publishers and passing on notice would immunize them from such liability. The Working Group rejected requiring intermediaries to pass notice on to their subscribers because, under our recommended approach, a failure to give notice goes to damages and costs, so there is less need to engage ISPs in the process. Doing so may also have constitutional and privacy implications that needn't be raised in the notice context.

f) The Content of the notice

[65] The Working Group recommends recourse to existing notice regimes for the content of the notice. For example, the Nova Scotia legislation refers to "notice in writing of [the plaintiff's] intention to bring action, specifying the defamatory matter complained of."[28] Most other provinces include identical or similar provisions.[29]

[66] The Working Group wishes to revisit the issue of the form of notice, since clarity on this point is important. For example, overly broad notice may lead to uncertainty about what is on the record, and therefore not subject to settlement negotiation privilege.

Recommendation: the Draft Uniform Act should include a provision requiring notice to be provided within three months of discoverability, and stating that an action may not be commenced within 28 days from when notice is given. This notice should apply to

[28] *Defamation Act*, RSNS 1989, c 122, s 18.
[29] See e.g. *The Defamation Act*, CCSM c D20, s. 14(1); *Defamation Act*, RSA 2000, c D-7, s. 13(1).

all types of publications and defendants. A failure to give notice should go to a judge's discretion to order damages and costs. The manner of giving notice should be flexible (not "in the manner of service") in light of its purpose. The content of notice should reflect what is presently required in those provinces that require notice.

f(ii) Deviations from any previous direction of the Civil Section

[67] 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.

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

[68] The Working Group recommends that the model act abolish the distinction between libel and slander, include a serious harm element and create a new notice regime, where notice must be provided within three months of discoverability and an action may not be commenced until 28 days after notice has been provided.

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

[69] None.

g. Next steps

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

[70] The Working Group will continue its work, looking to issues such as the meaning of publication, the single publication rule, and special rules for corporate plaintiffs.

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

[71] At this stage it is hard to say whether our next report will be a subsequent policy report or a final report. The Working Group is making good progress and could finalize its recommendations by this time next year. On the other hand, the Working Group has not agreed on a complete list of issues it is considering. As a result, we do not know how long it will take to complete our work. If the next report is a

subsequent policy report, we expect it will reflect most of what our final report contains.

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 2026 annual meeting.