CHAPTER 18

Some developments in Australia and the United Kingdom

Uniform Defamation Law in Australia

LEGISLATION RELATING to defamation in Australia is the responsibility of the states. But there have been attempts in recent years to implement uniform legislation throughout the country. It is understood that Senator Evans, the Attorney-General in the new Australian government, has made a recent announcement indicating that good progress is being made among the states in agreeing to this new legislation.[1] Further developments will be awaited with interest.

It would appear that in Australia, the draft model Uniform Defamation Bill has not yet been released to the public. The Report of the Australian Law Reform Commission entitled *Unfair Publication : Defamation and Privacy* contains, in Appendix C, a draft model Unfair Publication Bill. The proposed model uniform Bill for defamation in Australia, it is understood, is based on the draft appended to the above report, though it has significant differences in form.[2]

At present, the states in Australia have their own laws on the subject. Thus, in New South Wales, the relevant law is the Defamation Act, 1974. In Western Australia, there is no Defamation Act and the relevant statutory provisions codifying the common law are contained in the Newspaper Libel and Registration Act, 1884 and amendments of 1888 and 1957, the Parliamentary Privileges Act, 1891, the Parliamentary Papers Act, 1891, the Slander of Women Act, 1900 and the Criminal Code, 1913 and amendments.

It would be proper to await concrete legislative action to be taken in Australia.

Developments in the United Kingdom

Certain statutory reforms affecting the law of torts in the sphere of defamation were achieved in the United Kingdom by the Defamation Act, 1952. Thereafter, there was the report of the Committee on Defamation, forwarded

1. Letter No. 122/14 dated 11th August, 1983 from the First Secretary (Information), Australian High Commission to P.M. Bakshi.
2. Letter dated 30th August, 1983 addressed to P.M. Bakshi by R.M. Armstrong, Secretary to the Standing Committee of Attorneys-General, Parliamentary Counsel's Chambers, 221 Queen Street, Melbourne, VIC. 3000.

in 1975.[3] The report has not yet been implemented, but its important recommendations may be summarised as under :

(a) Defamation should be defined, by statute, as under :

> Defamation shall consist of the publication to a third party of matter which in all the circumstances would be likely to affect a person adversely in the estimation of reasonable people generally.

(b) The distinction between libel and slander should cease to be a part of the English law.

(c) Where a civil action for defamation is concluded, it should no longer be permissible for the plaintiff, to bring or continue other proceedings (for defamation) for the same or any other publication of the same matter.

(d) No change is to be made in the special defence of "innocent dissemination" as available to the distributors of defamatory matter, so as to give greater protection to distributors.

(e) Punitive damages for defamation should be abolished (a few other points concerning damages were also made).

(f) Where there is defamation of a deceased person, the relatives of the deceased person should be allowed to sue for a declaration and injunction within five years of the death.

(g) The criminal law of libel should continue.

(h) A proceeding for defamation should be tried ordinarily by a judge; the jury should be permissible only in exceptional cases.

(i) Legal aid should be available in actions for defamation.

The recommendations of the Committee on Defamation were noted by the Royal Commission on the Press in Britain, known as the McGregor Commission.[4] The Royal Commission did not consider it proper to make any recommendations of its own on the subject, except in regard to two matters (to be mentioned presently). The Royal Commission noted that the inquiry by the earlier committee on defamation, as well as by the earlier committees on privacy, contempt of court and official secrecy, had been exhaustive. Moreover, the Royal Commission did not consider itself well equipped to conduct an inquiry of its own. However, on certain matters, the Royal Commission did express its views. So far as as concerns the law of defamation, it made the following recommendations of importance :

(a) In regard to the defence of innocent dissemination as available to the distributors of defamatory matter, it recommended that distributors of books or

3. Faulks Committee, *Report on the Law of Defamation* (March, 1975).
4. *Report of the Royal Commission on the Press* Cmd. 6810, pp. 191-193, paras 19.35 to 19.36 (July 1977).

papers should not be liable for defamation, even if they knew that the book or paper was of a character likely to contain a libel, provided—

(i) they did not know that the book or paper contained a libel, and

(ii) such want of knowledge was not due to any negligence on their part.

The recommendation for expansion of the scope of innocent dissemination is in substantial agreement with the view taken by Lord Denning in a case decided in 1977 by the Court of Appeal.[5]

(b) The Royal Commission further recommended that all prosecutions for criminal libel should be conducted by the Director of Public Prosecutions, and private prosecutions for libel should no longer be permitted.

5. *Goldsmith* v. *Sperrings Ltd.*, (1977) 1 W.L.R. 478. (C.A.).