

# APPENDIX K

## PRE-ACTION PROTOCOL FOR DEFAMATION ACTIONS

### 1. APPLICATION

- 1.1. This Protocol applies to all defamation (including libel and slander) actions.
- 1.2. Parties are expected to comply with the framework prescribed in this Protocol before commencing proceedings in the State Courts.
  - 1.2.1. Notwithstanding this, parties may adapt the forms where necessary to suit the facts of their case.
  - 1.2.2. This Protocol is in addition to any negotiations that parties may be conducting privately or on a “without prejudice” basis.
- 1.3. In following this Protocol, the parties should act reasonably to keep costs proportionate to the nature and gravity of the case and the stage the complaint has reached.

### 2. OBJECTIVES

- 2.1. This Protocol aims to:
  - 2.1.1. improve pre-action communication between parties by establishing a timetable for the exchange of information and documents;
  - 2.1.2. encourage constructive negotiations in order to improve the chances of a pre-action settlement; and
  - 2.1.3. set standards for the content of pre-action correspondence between parties which will in turn lead to clear pleadings and streamlined issues if proceedings are commenced.

### 3. LETTER OF CLAIM

- 3.1. Before commencing proceedings, the claimant must send a letter of claim to the potential defendant. The letter of claim must be prepared in accordance with **FORM 1** in this Protocol.

- 3.2. The letter of claim should be marked “Private and Confidential. To be opened by addressee only” and it should not be marked “without prejudice”. It must include the following information:
- 3.2.1. the name of the claimant;
  - 3.2.2. sufficient details to identify the publication or broadcast which contained the words complained of;
  - 3.2.3. the person(s) to whom the words complained of were published, broadcasted or spoken;
  - 3.2.4. the exact words complained of and the date of publication or broadcast (if known), and where possible, a copy, screenshot or transcript of the words complained of should be enclosed;
  - 3.2.5. if the words complained of are not in the English language, a translation of the words in the English language<sup>1</sup>;
  - 3.2.6. sufficient details of the factual inaccuracies or unsupportable comments within the words complained of to enable the potential defendant to appreciate why the words are inaccurate or unsupportable;
  - 3.2.7. where relevant, any fact and matter which makes the claimant identifiable from the words complained of;
  - 3.2.8. where relevant, details of any special fact relevant to the interpretation of the words complained of and the meanings which the claimant attributes to the words complained of;
  - 3.2.9. where relevant, any particular damage caused by the words complained of;
  - 3.2.10. the nature of the remedies sought by the claimant, for which purpose —
    - (a) if the claimant is seeking monetary damages, he should indicate the quantum sought and as far as possible, refer to relevant case precedents and/or other authorities; and
    - (b) if the claimant is seeking a retraction, clarification, apology and/or undertaking, he should enclose a draft for the potential defendant’s execution (a sample can be found at **FORM 2** in this Protocol);

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<sup>1</sup> Please refer to Order 92, Rule 1 of the Rules of Court (Cap. 322 R 5).

- 3.2.11. the timeframe given for the potential defendant to respond. Save in cases where there is exceptional urgency, the potential defendant should be given at least 14 days to respond. If a shorter timeframe is imposed, the claimant should explain the reasons for the urgency; and
  - 3.2.12. a statement by the claimant as to which of the alternative dispute resolution (“ADR”) options set out at paragraph 6 of this Protocol he proposes to use for the resolution of the dispute for the potential defendant to consider.
- 3.3. The letter of claim must be sent to the potential defendant by way of certificate of posting, registered post or any other mode which provides the claimant with a written acknowledgement of posting / delivery.
  - 3.4. Nothing in this Protocol should be construed to operate as a stay of the time limited for the doing of any act as prescribed by the Limitation Act (Cap. 163). If, by reason of complying with any part of this Protocol, a claim may be time-barred under any provision of the Limitation Act, the claimant may commence proceedings without complying with this Protocol, or so much of this Protocol that he is unable to comply with by reason of the impending operation of an applicable limitation period.

#### **4. RESPONSE TO LETTER OF CLAIM**

- 4.1. The potential defendant must provide a response to the claimant within 14 days of the receipt of the letter of claim (or such shorter time limit as specified in the letter of claim). The response must be in accordance with **FORM 3** in this Protocol.
- 4.2. If the potential defendant is unable to respond substantively within 14 days (or such shorter time limit as specified), he must acknowledge receipt within the said 14 days (or shorter time limit) and inform the claimant of the length of time required to respond substantively to the claim. A sample acknowledgement can be found at **FORM 4** in this Protocol.
- 4.3. The substantive response must contain the following information:
  - 4.3.1. whether, and to what extent, the claimant’s claim is accepted, whether more information is required or whether the claim is rejected;
  - 4.3.2. if the claim is accepted in whole or in part, which remedies the potential defendant is willing to offer (for which purpose if the potential defendant is willing to offer monetary payment, he should specify the quantum and as far as possible, refer to relevant case precedents and/or other authorities);

- 4.3.3. if more information is required, precisely what information is needed in order to enable the claim to be dealt with and why;
  - 4.3.4. if the claim is rejected, an explanation of the reasons why it is rejected, including a sufficient indication of any fact on which the potential defendant is likely to rely in support of any substantive defence;
  - 4.3.5. where relevant, the meanings which the potential defendant attributes to the words complained of;
  - 4.3.6. whether the potential defendant agrees to any of the ADR options proposed by the claimant, and if not, which of the ADR options set out at paragraph 6 of this Protocol he wishes to propose for the resolution of the dispute; and
  - 4.3.7. whether the potential defendant intends to make a counterclaim, and if so, the information at paragraphs 3.2.1 to 3.2.12.
- 4.4. The acknowledgement of receipt or response must be sent by way of certificate of posting, registered post or any other mode which provides the potential defendant with a written acknowledgement of posting / delivery.
- 4.5. If no response is received by the claimant within the timeframe set out in the letter of claim, the claimant is entitled to commence proceedings without further compliance with this Protocol.

## **5. COUNTERCLAIM**

- 5.1. If the potential defendant intends to make a counterclaim for defamation and states so in his response, the claimant should provide a response to any such counterclaim within the equivalent period allowed to the potential defendant to respond to the letter of claim.

## **6. ALTERNATIVE DISPUTE RESOLUTION (“ADR”) OPTIONS**

- 6.1. The State Courts regards ADR as crucial in the efficient and cost-effective resolution of disputes. The following are some ADR options which parties should consider prior to commencing an action:
- 6.1.1. mediation at the Singapore Mediation Centre;
  - 6.1.2. mediation at the Singapore International Mediation Centre; and
  - 6.1.3. mediation under the Law Society Mediation Scheme.

- 6.2. The above list is non-exhaustive and parties are free to consider and propose other ADR mechanisms to resolve the dispute.
- 6.3. If the claimant and the potential defendant are able to agree on a mode of ADR, the claimant should submit the relevant request for ADR (depending on chosen mode of ADR) within 14 days of the parties' agreement to initiate the ADR process.
- 6.4. No party can be compelled to enter into any form of ADR.

## **7. PRE-ACTION PROTOCOL CHECKLIST**

- 7.1. Where the claimant decides to commence litigation, he must file, together with the statement of claim, a duly completed Pre-Action Protocol Checklist (**FORM 5** in this Protocol).

## **8. SANCTIONS FOR NON-COMPLIANCE**

- 8.1. The State Courts will have regard to the compliance with this Protocol or lack thereof in exercising its discretion and powers in relation to costs orders.
- 8.2. Where there are good reasons for non-compliance, the court will not impose sanctions against the party in default.

**FORM 1:**

**LETTER OF CLAIM**

PRIVATE AND CONFIDENTIAL  
TO BE OPENED BY ADDRESSEE ONLY

To: [Potential defendant]  
[Address]

**SECTION 1 - INTRODUCTION**

State that you are / your client is claiming against the potential defendant in connection with *[insert nature of publication or broadcast. For example, a letter / an article / a book / an online post]* which was *[published / said]* on *[date]*.

**SECTION 2 – DETAILS OF PARTIES AND WORDS COMPLAINED OF**

- (a) State your / your client's full name and address.
- (b) Identify the publication or occasion where the words complained of were made. Include the date and location of the publication or occasion.
- (c) Identify the person(s) to whom the words complained of were published, broadcasted or spoken.
- (d) Set out the exact words complained of as a quotation.
- (e) Where applicable, set out a translation of the words in the English language.
- (f) Include a copy of the publication, a screenshot, or a copy of the transcript of the words complained of.
- (g) Set out details of any fact and matter which makes you / your client identifiable from the words complained of.

**SECTION 3 – MEANING OF WORDS COMPLAINED OF AND HOW THEY ARE DEFAMATORY**

- (a) Set out the natural and ordinary meaning of the words complained of.

- (b) Where applicable, set out the innuendo meaning<sup>2</sup> of the words complained of and the facts that give rise to the innuendo meaning which are known to the person(s) to whom the words complained of were made.
- (c) Provide an explanation as to why the words complained of are inaccurate or unsupportable.

#### **SECTION 4 – DAMAGE CAUSED AND REMEDIES SOUGHT**

- (a) Set out the damage caused to you / your client by the words complained of.
- (b) Set out the nature of the remedies you / your client seek(s).
- (c) Where applicable, specify the quantum of monetary damages that you / your client seek(s) and as far as possible, refer to relevant case precedents and/or other authorities.
- (d) Where applicable, enclose a draft retraction, clarification, apology and/or undertaking (see Form 2 in this Protocol).

#### **SECTION 5 – ADR OPTIONS AND CONCLUSION**

State your / your client's preferred mode of ADR:

- mediation at the Singapore Mediation Centre
- mediation at the Singapore International Mediation Centre
- mediation under the Law Society Mediation Scheme
- others: (Please specify)

If you do not / your client does not wish to propose or engage in ADR, please state the reasons.

Request a response to this letter of claim within 14 days of the potential defendant's receipt of this letter. State that the timelines and details set out in the Pre-Action Protocol for Defamation Actions apply.

State that if you do not / your client does not receive an acknowledgement or response from the potential defendant within 14 days, you / your client will be entitled to commence Court proceedings against the potential defendant without further compliance with the said Protocol.

Yours faithfully

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<sup>2</sup> In their innuendo meaning, *ie*, in some other meaning (apart from the natural and ordinary meaning) which, although not defamatory from the viewpoint of the ordinary reasonable person, is nonetheless defamatory from the viewpoint of person(s) with knowledge of the special meaning of the offending words or the relevant extrinsic facts.

[Signed off by claimant / claimant's solicitors]

Enclosures.

**FORM 2:**

**SAMPLE APOLOGY AND UNDERTAKING**

To: [Claimant]

Dear Sir

On [date], I published a [letter / article / online post] **OR** I said words to the effect of [*set out the substance of the words complained of*].

I would like to retract what I [*published / said*] and withdraw all imputations upon you.

I acknowledge that there was no basis for what I [*published / said*] and I apologise to you for having [*published / said*] them.

In consideration of you not commencing legal proceedings against me for the abovementioned publication / words complained of:

- (a) I extend the above apology to you;
- (b) I undertake not to repeat those words or words to that effect in the future;
- (c) [If applicable] I will pay to you the sum of \_\_\_\_\_ as monetary damages by [date]; and
- (d) (Any other remedy sought by the claimant or offered by the potential defendant).

Yours faithfully

[Signed off by potential defendant]

## FORM 3:

### RESPONSE TO LETTER OF CLAIM

To: [Claimant / claimant's solicitors]  
[Address]

#### SECTION 1 - INTRODUCTION

State that you / your client acknowledge(s) receipt of the letter of claim dated [date] and its enclosures on [date of receipt].

#### SECTION 2 – RESPONSE TO THE LETTER OF CLAIM

- (a) State whether, and to what, extent the claim is accepted, whether more information is required or whether the claim is rejected.
- (b) If the claim is fully accepted, state that you / your client accept(s) the claim and the remedies which you are / your client is willing to offer (for example, retraction, clarification, apology, undertaking, offer of amends<sup>3</sup> and/or monetary payment (in which case, specify the quantum and as far as possible, refer to relevant case precedents and/or other authorities)).
- (c) If the claim is partially accepted:
  - (i) state the areas of the claim which you / your client accept(s);
  - (ii) state the areas of the claim which you / your client dispute(s) and why;
  - (iii) state the remedies which you are / your client is willing to offer, if any (for example, retraction, clarification, apology, undertaking, offer of amends and/or monetary payment (in which case, specify the quantum and as far as possible, refer to relevant case precedents and/or other authorities)).
- (d) If more information in relation to the claim is required, specify the additional information required and why;
- (e) If the claim is rejected:
  - (i) state that you / your client reject(s) the claim;
  - (ii) where applicable, state that you / your client disagree(s) with the claimant's interpretation of the words complained of and identify the meanings which you / your client attribute(s) to those words;
  - (iii) where applicable, indicate which substantive defence you / your client wish(es) to rely on and the relevant facts in support of that defence (for example, the defences of justification, absolute / qualified privilege or fair comment).

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<sup>3</sup> Please refer to section 7 of the Defamation Act (Cap. 75).

- (f) If there is a counterclaim for defamation, provide the information set out at Form 1 in this Protocol.

### **SECTION 3 – ADR OPTIONS AND CONCLUSION**

State whether you are / your client is agreeable to any of the ADR options proposed by the claimant in the letter of claim. If you are not / your client is not agreeable to the proposed ADR option(s), counter-propose your / your client's preferred ADR option(s) as a form of dispute resolution.

If you do not / your client does not wish to engage in ADR, please state the reasons.

Yours faithfully

[Signed off by potential defendant / potential defendant's solicitors]

**FORM 4:**

**SAMPLE ACKNOWLEDGEMENT OF RECEIPT**

To: [Claimant / claimant's solicitors]  
[Address]

Dear Sir

I acknowledge receipt of your letter dated [date] in connection with [*insert publication or broadcast containing words complained of*].

I am not in a position to fully respond to your allegations within the time limit that you have set.

Please accept this letter as formal notification that I shall respond in full by [date].

Please defer any proposed action until receipt of my letter on [date].

Yours faithfully

[Signed off by potential defendant / potential defendant's solicitors]

**FORM 5:**

**PRE-ACTION PROTOCOL CHECKLIST  
TO BE FILED WITH STATEMENT OF CLAIM**

1. Has the defendant acknowledged receipt of the claimant's letter of claim?

Ans: Yes / No

2. Have attempts been made to settle the matter?

Ans: Yes / No

If no, please give reasons.

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3. Have the parties considered alternative remedies under the Protection from Harassment Act (Cap. 256A)?

Ans: Yes / No

If no, please give reasons.

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4. Are any of the claims made by the claimant admitted by the defendant?

Ans: Yes / No

5. Has the defendant indicated that he has a counterclaim for defamation?

Ans: Yes / No

6. Is that counterclaim or any part thereof admitted by the claimant?

Ans: Yes / No / Not applicable

7. The following documents / information have been exchanged between the claimant and defendant:

*[Claimant to set out list of documents/information]*

**I confirm that I have complied with the Pre-Action Protocol for Defamation Actions.**

[Signed off by claimant]

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*[This section is to be completed by the claimant's solicitors]*

I have provided my client(s) with an estimate of the costs to be incurred if the matter proceeds to trial.

[Signed off by claimant's solicitors]