



PUBLIC PETITION NO.

PE01525

Name of petitioner

catherine fraser

Petition title

Access to justice

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to change the law to provide that legal aid is available to defend actions of defamation and challenge judgements in defamation cases.

Action taken to resolve issues of concern before submitting the petition

I have contacted everyone I am aware of who I thought may be of help including: Citizens Advice Bureau, Danny Alexander MP, Mary Scanlon MSP, Margaret Nielson Sheriff, Sheriff Principal at Inverness Sheriff Court, Various solicitors, Human Rights, Law Society, SLCC, Lord Gill, Kenny Macaskill Justice Secretary, Scottish Government, Legal Assistance Office, Legal Aid Board, Andrew Alexander Head of Access to Justice, Police and Procurator Fiscal. I believe I have exhausted all avenues and the only option left is to challenge the current law with a view to change.

I initially contacted the above regarding my own specific case and the overwhelming response I received was to seek legal advice. On informing them that I could not do this as I had no funding, I was referred and re-referred time and time again to the Legal Assistance Office who informed me each time that I would not be eligible for legal aid as it was a defamation case. Over the years the issue which had started out as a personal one, escalated into a more general issue as it became apparent by the responses I received when asking questions about how others managed to access justice specifically regarding defamation cases. The overwhelming response was that unless a person could pay for legal advice and representation they would have to accept injustice as this is the reality of how the justice system currently operates.

Petition background information

Under the current law defamation cases are excluded from obtaining legal aid other than in very exceptional circumstances. I am proposing that legal aid should be available to all people who do not have the financial means of challenging a court decision. I agree that it should continue to be means tested regarding financial status, but the nature of the case must never be a barrier in accessing justice. This is a form of discrimination. All cases go through the same justice system and therefore should have equal rights regarding right of appeal. Human error does occur within the justice

system, including defamation cases. All cases must be seen to be fair and just in the way individuals taken through the court system are treated. As the law stands at present, specifically re defamation, there is a two tier system ie; access to justice for the wealthy, while less affluent people are left with no means of challenging injustice. Consequently the general public have no faith or confidence in the very system put in place to protect the innocent and ensure justice for all. Having had personal experience of this, I urge the Scottish Government to take the necessary steps to change the law to allow every individual the basic right of defending the truth.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/accesstojusticeforall>

Related information for petition

The criteria for legal aid for defamation cases, however, are very stringent. They can be summarised as follows:

Probable cause: an applicant must demonstrate a plausible basis for defending proceedings.

Reasonableness: whether it is reasonable given individual circumstances for public funds to be made available.

Financial Eligibility: the usual financial eligibility tests apply.

Direction Criteria (see link below): (i) of wider public interest; (ii) effective representation is not possible without public funding; and (iii) cross border disputes.

The direct link to the Scottish Legal Aid Board's guidance on defamation applications is:

<http://www.slab.org.uk/handbooks/Civil%20handbook/wwhelp/wwhimpl/js/html/wwhelp.htm#href=Part%20IV%20LA/IV%20%20merits.html#9001036>

The direct link to the Scottish Government's Direction, "Civil Legal Aid for Defamation or Verbal Injury Proceedings (Scotland) Direction 2010", is:
<http://www.scotland.gov.uk/Resource/Doc/254431/0106203.pdf>.

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

0

Closing date for collecting signatures online

30 / 05 / 2014

Comments to stimulate online discussion

Definition of justice: the principle of fairness that like cases should be treated alike.

The justice system should value justice for all citizens of this country, regardless whether they come from the poorest background or from the wealthiest in society.

We have a two tier system of justice in this country.

One injustice, regardless of its nature is totally unacceptable.