

# Broadcast

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## Broadcasters should trust the clout of common law

NI's libel stance shouldn't have prevented Sky from screening exposé, argues Sarah Webb



**N**obody quite knows why the Northern Ireland finance minister took the unilateral decision to halt the extension of libel reform to Northern Ireland in May 2012. There has been speculation that it was because the nation's politicians prefer more "claimant-friendly" libel laws than England, Scotland and Wales.

But the decision is having an unexpected impact on broadcasters and the media. The matter is now subject to a Northern Ireland Law Commission review, which will consider whether to introduce the 2013 Defamation Act.

This week, Sky Atlantic shelved plans to broadcast HBO's Church of Scientology exposé *Going Clear*, because it cannot restrict its broadcast in Northern Ireland.

What is surprising is that broadcasters consider there is a significant difference between the law under the Defamation Act 2013 and the previous common law provisions.

The differences that would affect a programme such as this are the defence of "honest opinion", which widens the previous "fair comment", and the defence of "publication of a matter of public interest".

The broadcaster can defend a defamation charge if it can show that the statement complained of was all or partly a matter of public

interest. This defence replaces the old common-law Reynolds defence of "qualified privilege".

While the statutory defences always aimed to provide broader protection, it is perhaps surprising that a broadcaster believes the new protection is so much greater.

One case – *Flood vs Times Newspapers Ltd* – illustrates this. The Supreme Court held that the Reynolds privilege protects the publication of defamatory matters where (1) it is in the public interest that the information should be published and (2) the publisher has acted responsibly in publishing it.

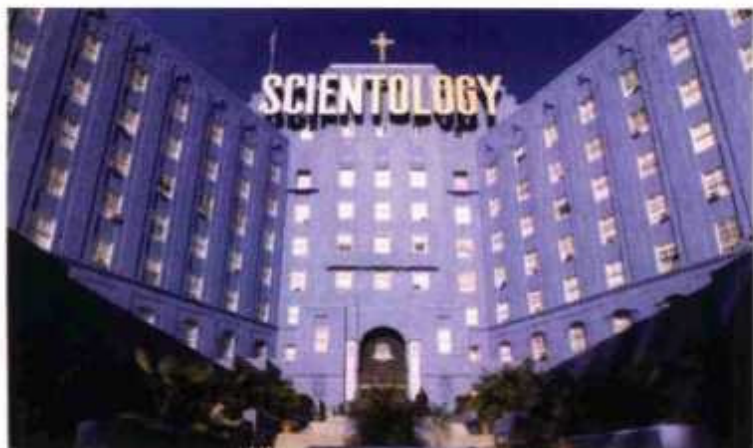
The 2013 Act takes away the requirement for "responsible journalism" but the test for reasonable belief appears to stand. The *Flood vs Times* case recognised that: "It will not be, or is unlikely to be, in the

public interest to publish material which has not been the subject of responsible journalistic enquiry..."

So whether the difference between NI's common law and the 2013 Defamation Act is enough to stop the broadcaster showing a programme is open to question.

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**'It is surprising that a broadcaster believes statutory defence offers greater protection'**



Going Clear: Sky Atlantic has shelved plans to screen Scientology exposé