Opening Statement on Behalf of Mark Harty SC

Mark Harty SC

By way of brief introduction I am a member of the bar since 1996 and a senior counsel since 2012. I have significant experience in media law acting for both Plaintiffs and Defendants both as junior counsel and senior counsel. In 27 years of practice acting both on behalf of media organisations and plaintiffs I have developed a deep appreciation of the seriousness and fairness with which juries undertake their task and the worth attached to their verdicts in the public domain.

Before the Oireachtas considered reform of defamation law preceding the 2009 Act a working group of experts was assembled to review the options. The report which informs the current proposals is not the result of a similar exercise. It relies heavily on the "reforms" in England and Wales from 2013. The report does not contain any analysis of the impact of those reforms. Defamation legal costs in the High Court in England are now many times greater than costs in this jurisdiction. Experts estimate that the costs of a 2 day defamation action in London are now between £1-2 million figures which completely dwarves figures in this jurisdiction. In effect only the very rich can now pursue an action for defamation in England and Wales.

The proposal to abolish juries is made in the report on the basis that the majority of "stakeholders" have sought this change. I would suggest that it is better to say that the majority of stakeholders believe that certain issues regarding jury actions caused significant difficulties and the situation needed to be remedied. Many media organisations would understand that a jury, comprising as it does of their natural market, will be more sympathetic to their journalism than members of the judicial cadre. It should be noted that entirely neutral bodies such as the Press Ombudsman did not consider it appropriate to abolish juries.

The rationale for abolishing the right to a jury trial as set out in the report is in part grounded on incorrect assumptions regarding pre-trial and appellate delays. Similarly criticism of Jury actions regarding costs is not borne out when considering the effect of abolition in the UK.

Where the report is correct however is regarding issue of excessive jury awards. This is unsatisfactory for all parties involved as it gives rise to inevitable appeals.

Almost simultaneously with the publication of the Department's report the Supreme Court delivered its decision in *Higgins v IAA.* That decision is vitally important to this committee's consideration of the issues for two reasons. Firstly because it clearly sets out the importance and value of juries in determining defamation cases and secondly because for the first time ever the supreme court has clearly set out a mechanism by which a jury can be given clear guidance as to the appropriate level of damages in any given case. In other words the decision in *Higgins* corrects the most significant complaint regarding jury acitons..

The value of a jury verdict in their favour is invaluable to both a defendant and a plaintiff. It carries far greater weight in the mind of the public than the decision of a judge alone. The public value the verdict of juries and trust them above all others which is why the constitution protects and the public expects (in the ordinary course) trial by jury in serious criminal matters.. A verdict of a judge could be discounted on the basis of some connection, bias, prejudice or caprice, more often imagined than real, but discounted all the same. These questions do not arise in relation to juries.

The international charity Reporters without Borders has ranked Ireland at the very best in the world for press freedom. In doing so it commends the proposed reforms but notes concerns regarding the removal of the involvement of juries in defamation actions. I would echo those concerns in the interests of both the ordinary citizen and a free press. The impact of the decision in *Higgins v IAA* should first be analysed before any drastic step is taken in this regard.

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