

SEANAD ÉIREANN

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Dé Máirt, 4 Nollaig 2007.
Tuesday, 4 December 2007.
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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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Paidir.
Prayer.
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Business of Seanad.

An Cathaoirleach: I have received notice from Senator Brian Ó Domhnaill that he proposes to raise the following matter on the Adjournment:

The need for the Minister for Justice, Equality and Law Reform to appoint a second permanent District Court judge and the allocation of a second permanent judge in County Donegal in order to reduce the large back log in the Circuit and District Courts services.

I have also received notice from Senator Jerry Buttimer of the following matter:

The need for the Minister for Transport to make a statement on the alleviation of Cork Airport's debt and on the creation of an independent——

Senator Jerry Buttimer: Hear, hear.

Senator Dan Boyle: Is the Senator “hear hearing” himself? I apologise, a Chathaoirligh.

Senator Ivor Callely: It would be different if it were Dublin.

An Cathaoirleach:——autonomous Cork Airport board.

I have also received notice Senator Cecilia Keaveney:

The need for the Minister for Health and Children to clarify why, in the era of huge emphasis on the access to the state of the art cancer services that only 10% of the 50 places negotiated by the Irish Government for Donegal patients to use the new facility in Belfast have been taken up and to make a statement on the matter.

I regard the matters raised as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion re the Asset Recovery Offices, referral to committee; and No. 2, the Defamation Bill 2006. It is proposed to take No. 1 without debate at the conclusion of the Order of Business. At the conclusion of No.1 it is proposed to take tributes from party leaders and constituency colleagues on the death of a former Member of this House, the late Seán Keegan, to conclude by 4 p.m. No. 2 will be taken at the conclusion of the tributes and will adjourn not later than 6.30 if not previously concluded.

Senator Frances Fitzgerald: Will the nursing home Bill come before the House before Christmas? There are many concerns on both sides of the House about the cutbacks in home care packages, and about moving ahead without proper debate on the issue of more subsidisation of nursing homes when home care packages and home help are not available to enable the elderly to remain at home. The community care services have been cut back quite severely in the past few months. We are concerned about rushing through this legislation without adequate time for discussion of the wide range of issues connected with it.

Will the Leader speak to the Minister for Defence about the Defence Forces contribution to the mission in Chad? The day after our debate on this issue last week there was a change in plan because our EU colleagues were not able to supply helicopters and other supports necessary for the mission. Was the Minister not aware of this when he addressed the Seanad during the debate on Thursday? If not, why not? If he was aware of this when he addressed the House he did the debate a disservice. I am concerned about this because the change in the decision was announced only hours after the debate in this House. If we are to have meaningful debates we must have current information on the decision making process. The Minister mentioned there was a possibility the mission might not proceed but the announcement in this regard was made only a few hours later and I feel he did a disservice to the House in not providing us with the latest information he and the Department of Foreign Affairs probably had.

Senator Fidelma Healy Eames: Hear, hear.

Senator Frances Fitzgerald: The Leader might wish to clarify whether the Taoiseach will make a statement on the Mahon tribunal, given members of his parliamentary party are calling for such a statement to address the inconsistencies that are being exposed, almost on a daily basis.

Senator Joe O'Toole: I wish to bring to the attention of the House a well-produced document on social and economic indicators from the

[Senator Joe O'Toole.]

Oireachtas Library and Research Service. This is the kind of document that would cost a lot of money in the private sector. It is superb and the people who prepared it should understand we appreciate it is an outstanding piece of work. I bring it to the attention of the House because it is valuable in itself but also because it was produced by members of the public service.

I am rarely stuck for words in this House but Senator Jim Walsh, on the Government benches, last week demonised public servants, including teachers, nurses, gardaí, civil servants and a range of others, with disparaging comments. It struck me as incredible that a Member of this House could speak of modernisation and progression while representing a party that has, for 30 years, refused to allow this House modernise and change to meet the will of the people. The Senator made comments on prison officers but, while we might have personal opinions of them, there was outrage some years ago when a Minister for the public service suggested politicians should check in every morning. He was blown out of the water because we would not do such a thing. The same goes for matters relating to information technology, IT, and modernisation; every primary school and every office of the public service uses IT. Should we keep it a secret that 50% of Members of the Oireachtas cannot send and receive e-mails? People in this House who make comments such as those made by Senator Walsh last week should check they are not throwing stones inside a glasshouse. I would be happy to have a debate on this. Senator Walsh can bring a supporting Minister with him and I will stand toe to toe with both. For every problem they find in the public service I will find one in this House and I guarantee I will be the last man standing.

Senator Paul Coghlan: That is fighting talk.

Senator Alex White: I support Senator Fitzgerald's call for an adequate debate in this House on the nursing homes Bill when it is introduced. There have been reports in recent days on this matter and I ask the Leader to confirm whether it is intended to publish this Bill on Thursday this week or whether the matter has been clarified in the past few hours. It would be a matter of concern if such an important piece of legislation was rushed through the Houses of the Oireachtas, to use the phrase mentioned in newspapers in recent days. For the first time in the history of social provision in Ireland, it is proposed a levy be applied to the estates of deceased persons. I am not aware of any provision or precedent in any area of health care, in Ireland or elsewhere, that allows levies to be applied to a person's estate after he or she has died. This is to be imposed on people with illnesses associated with old age, such as dementia, but not on other ill people. I hope it is not proposed that we levy the estates of people who suffer other illnesses

during their lives. This major piece of legislation represents a huge change and deserves a full debate in the House.

Senator Fidelma Healy Eames: Hear, hear.

Senator Alex White: When I refer to sufficient time I do not mean sufficient time only on the floor of the House. I mean sufficient time after the Bill's publication to allow people study it and prepare their views in order that it can be amended in this House over separate Stages. It would be unconscionable for the Government to seek to push legislation such as this through all Stages. If the legislation is not ready by January, it has been made clear that its provisions can be made to apply retrospectively if and when it is introduced. Will the Leader confirm whether it is intended to publish the Bill this week and when it is intended to debate it in this House?

Senator Ivor Callely: I am prompted to respond to the two previous speakers on the nursing home issue. I have stated publicly in the past in regard to the HSE that the jury is out and that I hope the verdict will be delivered shortly. The previous situation in regard to nursing homes was that 14 health boards were applying 14 different sets of regulations. This meant that some elderly people had to dispose of their homes and utilise all their funds to avail of nursing home care while others were not obliged to do so. At least the proposed legislation has some element of fairness. I wholeheartedly support the calls for a debate, but we must ensure we have the facts about the proposal.

Senator Alex White: We must also ensure there is enough time to discuss it.

Senator Ivor Callely: Yes, there must be adequate time to discuss it. The anomalies in the current system are unfair.

There are constant calls for space to be provided for quality bus corridors to encourage people to use buses. Much of our road space has been given to bus transport. However, for the first time, Operation Freeflow has been put in place without the provision of bus park and ride facilities. The equation does not tot up. Will the Leader ascertain whether there are plans to provide bus park and ride facilities and, if so, when they will be provided?

I propose to circulate copies of a motion on Zimbabwe and I ask the Clerk to take a copy. I propose that this motion be passed without debate and tabled for discussion at a later stage. I understand democratic parliaments throughout the world, including the Dáil, are tabling a similar motion today. My motion simply calls for the dire economic and humanitarian situation in Zimbabwe—

An Cathaoirleach: There is a procedure in regard to motions. I ask Senator Callely to forward it to the Clerk to be included on the Order Paper and circulated to Members tomorrow. The Senator should speak to the Leader.

Senator Ivor Callely: I have sufficient copies of the motion and I ask that they be forwarded to the Clerk and to each political grouping. I propose that the motion be approved without debate and that a debate take place whenever it can be accommodated.

An Cathaoirleach: The Senator should submit the motion to the office and it will be circulated to Members tonight.

Senator Ivor Callely: Thank you.

Senator Paul Bradford: I support the comments made by Senator Fitzgerald and other colleagues on the nursing home support scheme Bill. I look forward to it coming before the House. It is important that sufficient time is afforded to allow us reflect fully upon it. It is also important that we consider the second part of the equation in regard to care of the elderly. We should not get carried away with the concept that the development of some type of super nursing home system throughout the State will be enough to deal with the situation facing thousands of elderly people. We must put community care and the ability to allow people remain in their own homes and communities at the core of any policy in regard to the elderly.

Senator Paul Coghlan: Hear, hear.

Senator Paul Bradford: We hope tomorrow's budget will include improvements in such provisions as the carer's allowance, home help service and community care packages. These must be our prime concern in terms of care of the elderly.

Senator Ivor Callely: Hear, hear.

Senator Paul Bradford: The statistics clearly show that the majority of elderly people wish to remain in their homes with their families and among their communities. We must respond to that. I look forward to the debate on the nursing home support scheme Bill and the implementation of an adequate nursing home system. However, we should not get carried away with the notion that one size fits all and that a nursing home solution should be the extent of our aspirations for the elderly. They deserve far better than that and their welfare should be one of our primary concerns in 2008.

Senators: Hear, hear.

Senator Terry Leyden: I seek guidance from the Cathaoirleach in regard to a request that I

convey our appreciation, admiration and support for our colleague, Senator Harris, on his wonderful and sterling support for the Taoiseach on the "News at One" yesterday. It was a marvellous and magnificent——

Senator Jerry Buttimer: Santa Claus is coming to town up there.

An Cathaoirleach: We will not debate what happened on radio yesterday or any other day.

Senator Terry Leyden: Will we not?

An Cathaoirleach: If the Senator so wishes, he should make a point on the Order of Business to the Leader.

Senator Terry Leyden: I will frame it in the following manner.

An Cathaoirleach: It must be relevant to the Order of Business.

Senator Terry Leyden: It is relevant to this House.

An Cathaoirleach: We are on the Order of Business.

Senator Jerry Buttimer: There is no love for his support.

Senator Terry Leyden: Will the Leader make time available to discuss the intrusion of the media, especially the British *Daily Mail* and *Mail on Sunday*?

Senator Paudie Coffey: He took on Eoghan.

Senator Terry Leyden: There has been a scurrilous attack on the Taoiseach of this country and the Tánaiste in recent weeks.

Senator Jerry Buttimer: The Greens are very quiet today.

Senator Terry Leyden: We will wait until the Mahon tribunal reports on John Bruton's evidence as well.

Senator David Norris: Hear, hear.

Senator Terry Leyden: It is a good honourable man——

Senator Jerry Buttimer: Shame on the Senator for starting this.

An Cathaoirleach: We have a Bill before the House today dealing with defamation. All the relevant points can be raised in that debate.

Senator Terry Leyden: I accept that.

An Cathaoirleach: The Senator has made his point.

Senator Terry Leyden: I admire Senator Harris and his sterling attack on the *Daily Mail* yesterday.

Senator Jerry Buttimer: Would the Senator vote for him?

Senator Joe O'Toole: The votes may be transferable next time.

An Cathaoirleach: The Senator has made his point very well and should leave it at that.

Senator Michael McCarthy: The Minister for the Environment, Heritage and Local Government, Deputy John Gormley, is travelling to Bali to negotiate the successor to the Kyoto Protocol, so I will raise the issue of climate change. This is very important and not just to Ireland. Sometimes we lose sight of the fact we are an island nation and climate change will affect us in different ways.

My party has called for an integrated approach across Departments on the issue and we have asked that a national forum on climate change be established. I wish the Minister well on his endeavour in Bali but I would appreciate it if we would discuss climate change in this House when he is finished there.

I record my appreciation to the Marine Institute and Met Éireann for their very accurate predictions last week of the 14 m waves which hit the south and west coast.

Senator Joe O'Toole: Hear, hear. It was a public service well done.

Senator Michael McCarthy: Absolutely. It was a splendid example of public service. It is tragic for the Kennedy family to have lost a father and son at Inver after they were rescued in a very high-risk operation. It was a tragic conclusion and our sympathies should go to the family and the community. Our sympathy should also go out to those linked to the two non-nationals, also fishermen, who lost their lives in Galway during the week.

Senator Cecilia Keaveney: Following on from Senator McCarthy's comments, I add my sympathies to those close to the people whose lives have been lost to the sea. Many of the families in Greencastle have come to realise how difficult it can be when this happens, whether fishermen are subsequently found or not. Senator O'Donovan last week requested a discussion on safety at sea and support for the emergency services called out on such occasions.

I ask the Leader to convey my congratulations to the Minister for Education and Science on the new OECD study, which ranks Irish students as among the most environmentally aware. It indi-

cated that Irish 15 year old students were among the top performers when it came to literacy and were significantly above the average in science. They were in line with the average in OECD mathematics. More than 4,500 Irish 15 year olds took part in the study.

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator Cecilia Keaveney: I have asked that the Leader might convey congratulations to the Minister for those significant results.

Senator Joe O'Toole: We might also congratulate the teachers.

Senator Cecilia Keaveney: There should be no doubt about that. I am a former teacher. We should clearly also congratulate the students, who are at the core of the issue.

Senator Joe O'Toole: The Minister might be left until last.

Senator Cecilia Keaveney: We must continue to encourage such results. I draw the attention of the Leader to a recent report published in today's papers. It tracks those who leave school early with the aim of ensuring their potential is maximised should they wish to return to education at a later date. Many supports are in place but the tracking element is very important.

Senator Eugene Regan: The Defamation Bill is on the Order Paper, having been reintroduced on Committee Stage. I understand the Leader previously indicated it would be introduced on Second Stage given that 35 of the 60 Senators are new to the House. It is regrettable it is being introduced on Committee Stage but perhaps the Leader might comment on it.

The Leader has indicated the Taoiseach will come to the House in December, during which visit I would like him to address a number of issues. One is the date for the referendum on the EU reform treaty and whether it is proposed to hold the referendum on children's rights on the same date. The second issue is the loss of competitiveness in the economy in the light of the annual report of the National Competitiveness Council last week. Third, in the interest of confidence in the office of the Taoiseach, he should make a full and frank explanation of the €300,000 lodged to his personal accounts in 1994 and 1995 in the light of the sworn evidence and documentary proof which flatly contradicts his story as told to RTE and the Dáil last year.

An issue was raised about publications in the media this week. Later we will discuss the Defamation Bill, which contains a provision on fair and reasonable publication on a matter of public importance. I express the view—

An Cathaoirleach: When we come to the debate on the Bill later, each section can be discussed.

Senator Eugene Regan: I just make the point that publications on the Mahon tribunal in the media are fair and reasonable publications on a matter of public importance. I ask the Leader to address the questions I have raised.

Senator David Norris: I am very pleased to follow Senator Regan because in recent weeks I have repeatedly raised the issue of introducing the Defamation Bill on Committee Stage rather than on Second Stage. Nearly two thirds of the House have not had the opportunity to speak on it, which is an outrage and an abrogation of democracy. The Leader knows this because he said in the House that to introduce it on Second Stage would be the sensible thing to do. Who leaned on him? There is a mad rush to get this Bill through, which is obscene. I would like the Leader to clarify a point. The notice circulated to all of us states that Committee and Remaining Stages of the Bill are to be taken tomorrow. That smells of a guillotine to me. I hope it is wrong.

I will be opposing the Order of Business on this matter and will be calling a vote because it is disgraceful. It is neutering the Senate and removing its power. I believe a deal was done between the Taoiseach and the O'Reilly empire in order to get elected at the last general election, which is why they all uncharacteristically swung in behind him. This would be exactly the same as the deals concluded between Mr. Blair and Mr. Murdoch, and President Bush and Mr. Murdoch. That kind of thing really stinks. With regard to that Bill, there is no independence. I do not believe the Bill has the support of people on the Government side and they are quite right, which is why I believe it was a private deal. I saw, as I am sure others also did, the Minister for Foreign Affairs on "Questions and Answers" last night. Although he was talking about another matter, he said that of course there must be independent regulation of medical interests, legal interests and the media. If one of the most senior Cabinet figures feels that, why do we not get it? We do not have it. Regulation is not independent but paid for by the newspaper industry.

I support Senator Callely in his motion on Zimbabwe. We would send out a message if we followed the example of the British Prime Minister, Gordon Brown, and boycotted the Lisbon meeting. In addition to this motion, which is valued, we should boycott the Lisbon meeting and send that message.

I hope we will have an opportunity to discuss the effervescence of golf clubs all over this unfortunate little island and the fact that Clontarf Golf Club proposes to dispose of its interest for a huge amount of money — €100,000 for each member — and of course they nearly all voted for it. That

is public land on lease to the golf club. It is a hell of a cheek to sell public land for private gain and I salute the Lord Mayor of Dublin, Councillor Paddy Bourke, for standing up against it. I do not know to which party he belongs and I do not care. I am informed that he is from the Labour Party and I thought that might have been the case, from the enthusiastic welcome given to him by my good friend, Senator Alex White. That man has a good public conscience. Green areas should not be sold off for intensive housing in the centre of the city because there are few left.

Senator Maurice Cummins: The late Mr. Justice Dermot Kinlen produced some excellent reports on the prisons and the prison service. His final report should have been published by now. His previous reports were the subject of excellent debates in this House. I ask the Leader to inquire from the Department of Justice, Equality and Law Reform when the report will be published so that the House can debate it. Almost €40 million has been expended on Thornton Hall and not a brick has been laid yet, to the best of my knowledge, while in the meantime our prisons continue to deteriorate.

I support Senator Fitzgerald and other speakers regarding the nursing homes Bill. This Bill has not been published. I express the wish that it should not be rushed through the Oireachtas when it is published, whether that is before or after Christmas. This subject must be debated.

The HSE has informed nursing homes that some of the provisions of this Bill will be applied from 1 January 2008 and this is completely out of order. I ask for an urgent debate on the Bill and that sufficient time is allowed to discuss its provisions.

Senator Brian Ó Domhnaill: I wish to raise two issues. I have raised the issue of the 2012 London Olympic Games on a number of occasions, in particular with reference to the opportunities which these games will provide to Ireland. I refer to the siting of training camps and facilities in this country as London is only about 30 minutes flying time from Ireland. I ask that the Minister for Arts, Sport and Tourism be invited to the House to discuss this matter and to provide Senators with an update on the work of the committee of the Irish Sports Council and its recommendations to the Department in terms of how Ireland could capitalise on this event.

I refer to an issue raised by Senator Leyden, namely, the attacks on the Taoiseach. This is an issue which Senator Regan raises every day he speaks in the House. It seems that Fine Gael has lost confidence in the Mahon tribunal.

An Cathaoirleach: This is not relevant to the Order of Business.

Senator Brian Ó Domhnaill: That party signed up to the establishment of the Mahon tribunal.

[Senator Brian Ó Domhnaill.]

The Taoiseach has given 18 hours of evidence to the tribunal. He has told his story and we should not be——

Senator Jerry Buttimer: Which one was that? The Taoiseach writes the book of the tribunal.

An Cathaoirleach: Senator Ó Domhnaill has made his point. We are not discussing the tribunal.

Senator Brian Ó Domhnaill: Those of us on this side of the House are trying to deal with the day to day issues that affect the Irish people and I ask the Opposition to do the same.

An Cathaoirleach: The Senator has made his point.

Senator Jerry Buttimer: They are getting scared over there.

An Cathaoirleach: I have no intention of allowing a debate on the tribunals to take place. They have enough eminent and well-paid people to produce a proper report at the end.

Senator David Norris: There are a lot of eminent and well-paid people giving evidence to the tribunal.

Senator Terry Leyden: Including the ambassador to the United States of America.

An Cathaoirleach: Please allow Senator Healy Eames without interruption.

Senator Fidelma Healy Eames: I wish to express my deep concern at the rumour circulating currently in Galway that Abbott is talking to its workers. There seems to be a strong chance that 500 jobs in Galway may be lost. Abbott is a significant employer in the manufacture of medical devices. The Galway plant makes stents and Abbott employs 3,000 nationally. There could be serious implications for Galway. My point is——

An Cathaoirleach: The Senator should table something for the Adjournment and I will gladly accept it.

Senator Fidelma Healy Eames: ——that once again, this exposes the myth that Fianna Fáil has managed the economy well.

My main reason for speaking today is not unrelated to my previous point. I ask that the Minister for Education and Science should come before the House to discuss the results of the programme for international student assessment, PISA, to which a previous Government Senator referred today. I heard some of the reports this morning and it is being circulated that 15 year olds in Ireland are doing much better than is the case. The facts are that Ireland is doing very well on

reading, just reasonably in science and only just about average in mathematics. Ireland came fifth in reading, which is very good and is to be welcomed. However, this does not mean all our problems in respect of literacy have ended.

An Cathaoirleach: The Senator seeks a debate on education.

Senator Fidelma Healy Eames: I wish to finish this point. As a nation, we are entirely exposed in the area of maths and science. Because Ireland is peripheral and has a small population, Members on all sides of the House agree that we must build a knowledge society and a knowledge economy.

Senator Cecilia Keaveney: Ireland's performance was above average in science.

Senator Fidelma Healy Eames: This nation needs a strong pool of mathematicians and researchers, as well as people to create the required high-end jobs to be able to survive and compete.

An Cathaoirleach: The Senator seeks a debate on education.

Senator Fidelma Healy Eames: I would welcome such a debate because —— this is the crunch —— our higher performing students are performing poorly. We do not have enough higher performing students in the higher band at levels five and six in mathematics in particular.

An Cathaoirleach: The point is not relevant to the Order of Business. The Senator has made a very good point.

Senator Fidelma Healy Eames: I thank the Cathaoirleach.

An Cathaoirleach: It is up to the Leader to reply.

Senator Fidelma Healy Eames: I wish to finish this point. Given that these are the students who are receiving grinds in private schools——

Senator Cecilia Keaveney: Members should acknowledge the success outlined in that report.

Senator Fidelma Healy Eames: ——to gain places in college, this is a highly worrying sign for our education system.

An Cathaoirleach: The Senator has called for a serious debate on education.

Senator Fidelma Healy Eames: I thank the Cathaoirleach for his patience.

Senator Cecilia Keaveney: That is when there is success.

Senator Terry Leyden: Senator Healy Eames should hold her fire.

An Cathaoirleach: Senator O'Donovan, on the Order of Business.

Senator Denis O'Donovan: I wish to raise two issues. First, I ask the Leader, before it is too late, to have a debate on the issue of the Cork-Swansea ferry. Perhaps the relevant Minister should be asked to come to the House to ascertain whether the situation in which we find ourselves can be retrieved. This matter is of the utmost importance to the area that I represent.

Senator Jerry Buttimer: Hear, hear.

Senator Denis O'Donovan: Second, I wish to consider an issue of constitutional importance regarding tribunals. While I will not go into specifics, some years ago the Houses of the Oireachtas set up a particular tribunal to inquire into certain allegations. Having regard to the separation of powers and the functions of the Dáil and Seanad, it is important that Members should find out where they stand in respect of an ongoing inquiry, perhaps through the Committee on Procedure and Privileges. I raise this issue as a former member of the Abbeylara inquiry, which cost the State a lot of money and fell on the grounds that Opposition members of that committee decided to project that particular tribunal of inquiry through the media.

Members must be extremely careful in this regard because there is due process. Members must respect tribunals that have been set up by the Oireachtas in order that an independent inquiry would take place. If there is to be an ongoing drip-drip of requests in this House about what was said on this day or the other, my point is the tribunal should be allowed to complete its work. Thereafter, if there are findings that are adverse to some Member of these Houses, of whatever calibre, a week's inquiry or whatever should be held. It is not appropriate that the epitaph of the present Taoiseach should be written in this House on a weekly ongoing basis like a soap opera.

Senator Fidelma Healy Eames: It is a soap opera.

Senators: Hear, hear.

Senator Rónán Mullen: I will second Senator Norris's amendment to the Order of Business because like him, I agree that we should be discussing the Defamation Bill on Second Stage and not on Committee Stage. I greatly regret, despite all the lip service that is paid to the quality of the debate in the Seanad Chamber, that in many ways, Members are being frustrated from considering issues in the way they might.

It is worth noting, as I have just noted to Senator Quinn, that 35 of the Members of this

House are new, of whom 25 are complete first-timers. I would have thought that on an important issue such as the role of the media in our society and the precise balance to be struck between the individual right to a good name and the media's right to self-expression or to express its views, that Members should have a thorough debate. That would involve discussing this Bill on Second Stage.

I wish to mention briefly the proposed debate on the European Union reform treaty. I hope we will have a debate on this matter soon. I note there was much concern in the media some weeks back that all manner of interesting flora and fauna from Europe such as Jean-Marie Le Pen would visit this country to oppose the treaty.

It seems plenty of people are lining up in the propaganda war to pre-empt the discussion we need to have. I refer to the European Commissioner, Charlie McCreevy, who said the other day Ireland would be the laughing stock of Europe if its citizens rejected next year's European Union treaty. Without prejudice to my views on the treaty, which I have not yet expressed in this House—

Senator Alex White: Go on; tell us.

Senator Rónán Mullen: —I do not call the Commissioner a moron but the argument is certainly moronic. To suggest to people that they will be the laughing stock of Europe if they reject the treaty is no substitute for good argument.

Rather than hearing from dignitary after dignitary such as Commissioner McCreevy and the Dutch Minister for European Affairs, Frans Timmermans, who was in town to tell us it would be a setback for Europe, which is a nice example of passive-aggressive language, would it not be preferable, instead of having the big guns rolling in to prepare us gradually to say a big unthinking "Yes", that we would have a debate and let all sides of the argument be heard? Let us hear something we never hear, like what would happen if we said "No". What exactly would happen in terms of the economy?

An Cathaoirleach: We can discuss that during the debate.

Senator Rónán Mullen: How would our other European partners react?

An Cathaoirleach: If the Leader agrees—

Senator Rónán Mullen: Let us hear the advantages for saying "Yes" as well. Please can we have an end to this and can the debate start here in the Seanad, the place with the reputation for stimulating debate?

An Cathaoirleach: That is not relevant to the Order of Business.

Senator Rónán Mullen: Please can we have an end to anti-intellectual argument——

An Cathaoirleach: Come on. Hold it now.

Senator Rónán Mullen: ——such as that we will be the laughing stock of Europe if we do not vote “Yes” or “No” or whatever it is. I am sorry for going on, a Chathaoirligh. I appreciate your indulgence.

An Cathaoirleach: It was my understanding that Senator Norris is opposed to the Order of Business but I was not aware that he had moved an amendment to it.

Senator Rónán Mullen: I am opposing it.

Senator John Hanafin: I call on the Leader to provide time at the earliest opportunity to discuss the excellent news that Ireland is among the top seven for gross national product in the OECD report. This highlights the excellent way the economy has been managed. We are anticipating growth of more than 3% in the economy at a time when most other economies in Europe are anticipating significantly less. It is a tribute that almost annually *The Economist* chooses Ireland as the best place in the world to live out of approximately 160 countries. That publication has 2 million readers weekly. It would be an opportunity for us to say “Well done” to those who are the architects. I refer to the Taoiseach who was Minister for Finance for so long and who has been Taoiseach during the time of prosperity we now enjoy.

Senator Jerry Buttimer: I welcome the publication today of the report by National Suicide Research Foundation Ireland. I accept we had a debate on mental health in recent weeks but I urge the Leader to arrange to have another debate on this issue. People are under pressure coming up to Christmas and the report has many interesting findings. I commend all concerned with the report.

As Senator Frances Fitzgerald stated, it is important that we have a debate on elderly people and community care packages for them. I join Senator O'Donovan in calling for the Minister to come to the House to debate the issue of the Cork-Swansea ferry. It is intolerable that Cork, the gateway to Munster, would not have a maritime link to its neighbours in Wales or England. I urge that the Leader would invite the Minister to the House. Go raibh maith agat.

Senator Eoghan Harris: I will obey the Cathaoirleach's injunction and not make a speech about the Mahon tribunal. However, the Cathaoirleach should be consistent in regard to procedures. In every single session, Senator Regan, in pursuit of a bubble reputation, has brought the Mahon tribunal into this forum. Every time anyone replies to him the Cathaoir-

leach says, quite rightly, that we should not be debating the Mahon tribunal. We cannot have it both ways. The Cathaoirleach should either stop him at the beginning or allow us to reply to him because in common justice it is not correct that the Mahon tribunal can be kept away from the daily discourse of this nation for the simple reason that there is no such thing as the Mahon tribunal. There is the Mahon media tribunal or the “Daily Mahon”.

Senator Jerry Buttimer: Senator Harris did a good job himself in the *Sunday Independent*.

Senator Eoghan Harris: It is a drip-feed from the Mahon tribunal, which does not sit in some isolated place. It is drip-fed to the newspapers every day. It is a composite thing, a symbiosis of media and tribunals. It is like a marriage between the Spanish Inquisition and the *News of the World*. It is the “Daily Mahon”. We are either going to discuss it in the Chamber or not. Senator Regan has been abusing the privilege of this House for some time.

Senator Jerry Buttimer: The Senator should withdraw that remark, a Chathaoirligh. That is a very unfair comment.

An Cathaoirleach: Whenever a Member has raised the issue of the Mahon tribunal, I have intervened and ask him or her not to. As I have said on a number of occasions, there are eminent and well-paid people in the tribunal who will produce a report and we can discuss it when that happens.

I hope I am being fair to every Member; I have no wish to be unfair. I have given a little latitude to Members on all sides of the House, which perhaps I should not have done. It could be to my cost for doing so. I could be strict with everyone as soon as they step slightly over the line but I do not wish to do that. If Members would observe the rules of the House on the Order of Business, everything would work out for us. I can tighten the rope on Members but I ask them to observe the rules. As has been pointed out by a number of people, the House will have plenty of time to discuss the tribunals when the reports are produced.

Senator Frances Fitzgerald: On a point of order, what Senator Eoghan Harris has called an abuse by my colleague, Senator Eugene Regan, is considered a public service by many people. There is a difference of opinion on that, among the public as well as in this House.

Senator Jerry Buttimer: The Senator should withdraw the remark.

Senator David Norris: A Chathaoirligh, could you elaborate on the pay of the learned judges? You have mentioned on several occasions their eminence and the fact they are well paid. I would

be interested to hear the reason for that. Perhaps you would expand on your interest in their remuneration.

An Cathaoirleach: I will not elaborate. I am only referring to what I read in the newspapers which indicated that they were not working for nothing. I call Senator Coghlan.

Senator Jerry Buttimer: On a point of order, could Senator Harris withdraw his unfair remark? What he said was unparliamentary. Will the Cathaoirleach ask him to withdraw his remark?

An Cathaoirleach: No. I call Senator Coghlan.

Senator Maurice Cummins: A Chathaoirleach, has a Member of the House abused the privilege of this House?

An Cathaoirleach: As far as I am concerned, no.

Senator Maurice Cummins: That allegation has been made.

An Cathaoirleach: I will rule if somebody does. It can be the opinion of a Member that I did not rule correctly, but I rule as I think fair and appropriate. I now call Senator Coghlan.

Senator Paul Coghlan: I will not abuse the privilege of the House, a Chathaoirleach—

Senator David Norris: Go on.

Senator Paul Coghlan:—nor will I impugn your integrity. However, I share the concerns of Senators Frances Fitzgerald, Alex White, Paul Bradford and others who referred to the proposed nursing homes Bill. That Bill will deserve a most comprehensive debate and should not be rushed prior to Christmas. The last such Bill was struck down by the courts because of the illegal charges imposed on older people. The rights of older citizens who are medical card holders were thoroughly vindicated. Is the Minister proposing to row back on that judgment and, as has been suggested in the media today, introduce the measure under the cover of the blaze of budget details which presumably will be in the media on Thursday? Will the Leader respond to this? The Bill is a serious matter and will require detailed consideration by everyone. I hope it is not the intention of the Government to publish it on Thursday and rush it through both Houses of the Oireachtas prior to Christmas.

Senator Feargal Quinn: For the 15 years I have been a Member of the House there has always been a Member from Northern Ireland or the Six Counties. There are now a number of Members from the north of Ireland but none from the Six Counties. We should have a debate on Northern Ireland. Such debates were held regularly in the

past. Some wonderful things are taking place in Northern Ireland.

Senator Cecilia Keaveney: Hear, hear.

Senator Feargal Quinn: One of them involves the Lisanelly Barracks in Omagh, where Sinn Féin and the DUP have got together to convince the authorities that the site should be used as a joint facility for six schools from different sides of the divide. Just last week Senator George Mitchell joined the First Minister and Deputy First Minister in a cancer research effort that is taking place. Yesterday, in Wall Street, Mr. Martin McGuinness and Rev. Ian Paisley told corporate America that Northern Ireland is open for business. This is great news. However, there is a sense that in this part of the country we are not giving our full support. Some time ago I went to buy a wedding present with someone from Limerick, in the south of Ireland. I suggested buying some linen, but the other person refused, suggesting that we buy “something of our own”. Clearly, the further one goes from the Border, the less people regard the North as part of Ireland. We now have an opportunity to recognise that we are a united Ireland and that we are moving closer and closer to unity. We should have a debate in the House to say that we support the people of Northern Ireland in all their efforts and to celebrate the wonderful achievements taking place there. Let us ensure that we have a well constructed debate on this issue.

Senator Maria Corrigan: Well said.

Senator Donie Cassidy: The up-to-date position on the health (long term residential care scheme) Bill 2007, known as the nursing home Bill, is that it will not be published this week as stated by some Members. However, it is hoped that the Bill may be published as soon as possible following Government approval. For the benefit of those Members who were not in the House in former times, when I was Leader of the House from 1997 to 2002, no Bill was guillotined or rushed through the House. On one occasion I remember Senator Norris addressing the House at 4.45 a.m., and some Senators were pleading with me to call time. As long as I am Leader of the House in this session—

Senator Paul Coghlan: That is not true.

Senator Donie Cassidy: Members of the Opposition will wish to be prepared, and not just for talking on the Order of Business. There will be no guillotine on this Bill.

Senator David Norris: This is a guillotine. Introducing it on Committee Stage is effectively a guillotine.

Senator Donie Cassidy: I am talking about the nursing home Bill.

Senator David Norris: All right, but the Leader said there was to be no guillotine and he would not stand over a guillotine, yet he is doing that today.

An Cathaoirleach: The House agreed—

Senator Donie Cassidy: There is no guillotine on any legislation that will come before the House.

Senator David Norris: This is a guillotine. There is one this afternoon.

Senator Donie Cassidy: If we have to sit on Mondays or Fridays, I will call sittings on those days.

Senator David Norris: Great.

Senator Donie Cassidy: However, I will also be here to observe those who are in attendance.

Senator David Norris: The Leader will see me at 4.45 a.m. if he likes.

Senator Donie Cassidy: The Senator cannot say one thing today and then not be present when the legislation comes before the House.

Senator David Norris: Name and shame.

Senator Donie Cassidy: Care for the elderly is a priority for Members on all sides of the House in these times of plenty. Ministers on the Government side have been exemplary in this regard over the past ten years, as can be seen when one compares what was done in the previous ten or 20 years for our senior citizens. There is nothing good enough for those who have made a contribution to our country and put us in the privileged position we are in today. As far as I am concerned, that is a commitment. I will consider the strong views put forward by concerned Senators on all sides of the House and I will keep in touch with the leaders of the groups to ensure that we allow as much time as is required by Members for this important but urgent Bill.

Senators Fitzgerald, Alex White, Callely, Bradford, Cummins and Coghlan all expressed strong views on various matters. I will not delay the House except to say that I will be in touch with the relevant Departments and come back to the Senators about these matters. Senator Callely made some observations about Operation Free-flow and bus corridors. I will make contact with the Garda Commissioner this afternoon about this issue and I will contact the Senator's office this evening. The motion drafted by Senator Callely, as the Cathaoirleach pointed out, can be put on the Order Paper for tomorrow morning with the permission of the Cathaoirleach and the Clerk of the Seanad. Senator Leyden expressed his congratulations to Senator Harris on his stance on RTE yesterday about the various inac-

curacies we all know have appeared in some of the Sunday dispatches and newspapers. The person in the House with the most experience of the legal profession is Senator O'Donovan, who excellently chaired the All-Party Committee on the Constitution when he was a Dáil Deputy. I would listen to the words of wisdom that he has given to the House from both a parliamentary and a legal point of view. He and the Cathaoirleach are correct to call for one or two days of debate on all of the evidence before the tribunals, if such is necessary, before expressing opinions on the evidence of the Taoiseach and former taoisigh. All fair-minded people must say that, until all of the facts can be considered, we should not allow ourselves to be carried down that path, particularly new Members.

Senator Terry Leyden: Be patient.

Senator Donie Cassidy: They may not have the experience of most of us, but they are passionate in their contributions. While I respect that, we must await the findings of the tribunal established by both Houses. I look forward to such.

Senator McCarthy spoke about climate change and wished the Minister for the Environment, Heritage and Local Government well in Bali. I will pass on the Senator's congratulations. His proposed national forum on climate change is worthy of debate.

We should offer our congratulations to Met Éireann, which warned those of us on the west coast of last weekend's inclement weather. We want to send our condolences on the unfortunate and untimely deaths of the four fishermen. I want to also send the House's condolences on the deaths of the mother and daughter killed in Saturday morning's horrific crash. They had close family ties to my family.

Senator Keaveney offered her congratulations to the Minister for Education and Science on the OECD report, particularly in respect of the school leavers element. Senator Healy Eames called for a debate on BIPA.

Senator Fidelma Healy Eames: PISA.

Senator Donie Cassidy: I have no difficulty with setting aside time for such a debate.

Senators Regan, Norris, O'Donovan and Harris expressed their opinions on the Defamation Bill. Committee Stage will be taken in the House today and from 11.30 a.m. until one hour before the budget tomorrow. If time is required to continue Committee Stage, I have no difficulty with setting aside as many days as Senators wish for their discussions with the Minister. I will put the Seanad on notice that, if required, we will sit on Friday.

Senators: Hear, hear.

Senator Donie Cassidy: I will deal with the Senators' opinions in the various forums they requested.

Senators Mullen and, in particular, Norris expressed their opinions on Clontarf Golf Club. The latter congratulated the chairman of Dublin City Council, Councillor Paddy Bourke, on behalf of Dublin's citizens. The details given by the chairman on radio this morning put everything in context.

Senator Alex White: He is the lord mayor.

Senator Donie Cassidy: My apologies. He acts on behalf of the citizens of the city of Dublin and I want to note Senator Norris's opinions.

As requested by Senator Cummins, I will inquire as to when the Prison Service report will be published.

Senator Ó Domhnaill asked that the Minister for Arts, Sport and Tourism attend the House regarding the proposals for the 2012 Olympic Games. It is a worthwhile request because Ireland can benefit greatly from the games, particularly in light of our tourism facilities, such as hotels, swimming pools and infrastructural investment. I have no difficulty with setting aside time for that debate.

Senator O'Donovan called for a debate on the Cork-Swansea ferry service. As he comes from south-west Cork's coastal area, I will accede to his request.

Regarding the OECD report, Senator Hanafin congratulated the Taoiseach and the Government on Ireland's position among the top ten countries in terms of GDP and on the work done to make

Ireland the number one destination in terms of quality of life. He recommended that people should choose Ireland as a destination.

Senator Buttimer called for a debate on mental health, for which I can have time set aside. I congratulate him on his recent book launch in Cork, which I believe was successful.

Senator Quinn called for a debate on Northern Ireland. The House always has a debate on Northern Ireland at least once a year and it would be timely to have one soon. Those of us who were in Oxford last week and are members of the British-Irish Interparliamentary Body will know the importance of how we have progressed and come to where we are today over the past number of years. I am also a member of the Joint Committee on the Implementation of the Good Friday Agreement. I assure Senator Quinn that anything that needs to be done and addressed will be.

The Minister for Foreign Affairs, Deputy Dermot Ahern, has agreed to come to the House to a debate on foreign affairs matters. I made a request this morning to see if the Taoiseach's diary has time for him to address the House. If it does not, such a debate can be taken in the new year.

I share Senator Quinn's sentiments on how we both in the North and South can purchase each other's products to assist each other. I understand this has been done in the construction industry over the past seven years. It is an example to many other jurisdictions which had major difficulties with their past histories.

Question put: "That the Order of Business be agreed to."

The Seanad divided. Tá, 29; Níl, 15.

Tá

Boyle, Dan.
Brady, Martin.
Callanan, Peter.
Callely, Ivor.
Cannon, Ciaran.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Harris, Eoghan.

Keaveney, Cecilia.
Kett, Tony.
Leyden, Terry.
McDonald, Lisa.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
Wilson, Diarmuid.

Níl

Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Fitzgerald, Frances.
Healy Eames, Fidelma.

McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Toole, Joe.
Quinn, Feargal.
Regan, Eugene.
White, Alex.

Tellers: Tá, Senators Déirdre de Búrca and Diarmuid Wilson; Níl, Senators Rónán Mullen and David Norris.

Senator Joe O'Toole: On a point of order, the screen shows 30 voting "Tá".

An Cathaoirleach: One Senator voted in the wrong seat. Members should ensure they sit in their designated seats to avoid problems.

Question declared carried.

Order of Business agreed to.

Asset Recovery Offices: Motion.

Senator Donie Cassidy: I move:

That the proposal that Seanad Éireann approves the exercise by the State of the option or discretion provided by Article 1.11 of the Treaty of Amsterdam to take part in the adoption of the following proposed measure:

a proposal for a Council Decision concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime,

a copy of which proposed measure was laid before Seanad Éireann on 20th September, 2007, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights in accordance with paragraph (1) (Seanad) of the Orders of Reference of that Committee, which, not later than 19th December, 2007, shall send a message to the Seanad in the manner prescribed in Standing Order 72, and Standing Order 74(2) shall accordingly apply."

Question put and agreed to.

Death of Former Member: Expressions of Sympathy.

Senator Donie Cassidy: I acknowledge some very senior people from the Mullingar rotary club and its president, Councillor Robert Troy, who have visited the House today to be present for the tributes that are about to be paid. I welcome them to the House.

I wish to convey my sincere condolences, and those of my Fianna Fáil colleagues, to Seán Keegan's wife, Mary, and his children, Maria, Nan, Nuala, Tom and Gearóid on the sad loss of a very fine man. He was a loyal and loving husband, a dedicated father and a loyal servant of the people of County Westmeath.

Seán was truly committed to the people of Longford-Westmeath and worked tirelessly on their behalf in the county council, Seanad Éireann and Dáil Éireann. He was a committed republican and a politician who took great pride in representing the people of County Westmeath. As many of his friends in both Houses will know, Seán came from a patriotic family with a strong background in public service. His father was active in the War of Independence and Seán developed a strong association with many of the

founding Fathers of the Fianna Fáil party. He was a true supporter of core values and was steadfast in his belief of what they stood for.

Seán Keegan was first elected to Westmeath County Council in 1955, when Éamon de Valera was leader of Fianna Fáil, and was the youngest council member elected. He entered Dáil Éireann in 1977 but by that time was considered an established Member of Leinster House. Seán was first elected to Seanad Éireann in a 1970 by-election and was re-elected to the Seanad in 1973. In the general election of 1977 he received such overwhelming support from the people of Longford-Westmeath that his surplus allowed Albert Reynolds be elected to Dáil Éireann for the first time.

Seán served with great distinction on many committees and in many areas of the county. He was a member of the vocational education committee, VEC, in County Westmeath, the Westmeath Agricultural Committee, the Midland Health Board and Westmeath Health Board during the 1950s, 1960s and early 1970s. Seán was a member of the Council of Europe, Mullingar Chamber of Commerce and many clubs in Kilbeggan, Castletown Geoghegan, Ballinagore, Horseleap, Dysart and all the surrounding areas where he served with great pride for many years. He was also president of Fianna Fáil's Westmeath Comhairle Dáil Ceantar.

I remember Seán as a dependable courteous person who was a gentleman to those he worked with and those he met on life's highways and byways. I went door to door with him often and attended many cumann meetings in parishes and at crossroads throughout the county for many years. He was committed to the framework of the cumann and believed if it was not served and the parishes looked after the organisation would disappear. He was a keen contributor at the council and at parliamentary party meetings, particularly on issues relating to rural Ireland and his beloved midlands.

Throughout his time in Leinster House Seán was a dedicated, hard-working Member and viewed it as an honour to represent the people of his constituency. He worked diligently to improve the quality of life of all those in his community, especially the less well-off. To sum up this tribute in a sentence, Seán Keegan was champion of the underprivileged. He stayed up day and night working as hard as possible to help those most in need. I know this through witnessing his work at first hand on dozens of occasions.

Seán will be sadly missed by his wife, Mary, his five children and his extended family and friends. We, on this side of the House, will remember him as a loyal and faithful friend who served in both Houses of the Oireachtas, at local government level and worked tirelessly on behalf of his constituents. The people of Longford-Westmeath have lost a loyal and true friend. Go ndéanfaidh Dia trócaire ar a anam dílis.

Senator Frances Fitzgerald: It is an honour to rise today, on behalf of the Fine Gael group in the Seanad, to pay tribute to a former Member of the Oireachtas, Deputy and Senator, Seán Keegan and extend sympathy to his wife, family, friends and Fianna Fáil colleagues.

Seán Keegan showed a deep and unwavering commitment to public service as a member of a local authority and as a Member of Dáil Éireann and Seanad Éireann. While his time as a Member of the Oireachtas ended before mine began, he served from 1955 to 1982 and this is a long period of public service. I have heard many stories about his courtesy, kind ways and the helping hand and advice he always offered to new parliamentarians. I wish to extend my deepest sympathy to his wife, Mary, his family, former colleagues and the Fianna Fáil Party on the loss of a stalwart son. Ar dheis Dé go raibh a anam.

Senator Joe O'Toole: Ní raibh aon aithne agam ar Seán Keegan, cé gur bhuaile mé leis uair nó dhó. However, on behalf of the Independent benches I wish to be associated with the words said by the Leader in a fine tribute.

We on the Independent benches always seek to put on the record that we recognise and appreciate the diligent public service of people like the former Senator, Seán Keegan, as this is what keeps democracy going. He served time at county council level, in the Seanad and Dáil and people like him grease the wheels of democracy. I also wish to be associated with the condolences offered to his wife, Mary, and family as it is clear that a person with Seán Keegan's level of commitment and involvement must have received great support and tolerance from them.

I note with interest the Leader's comments on Seán Keegan's commitment to the public service because I said some angry words on the Order of Business this morning relating to attitudes to the public service. Mr. Keegan was represented in terms of education, on the VEC, on agricultural committees, and on the health boards. No more could be asked of a public representative in terms of participation in national politics than to commit to these three huge areas. We might disagree on how we approach these areas but his commitment was hugely important.

We wish to be associated with these expressions of sympathy and sympathise with the Fianna Fáil Party, which has lost a loyal supporter. Ar dheis Dé go raibh sé.

4 o'clock Aithnímid an obair a dhein sé agus é sa Teach seo, sa Dáil agus sa chomhairle contae. B'fhéidir go mbeidh seans agam amach anseo níos mó a léamh ar an mhéid a dhein sé, but in the meantime we offer our condolences and wish to be associated with the other expressions of sympathy that have been offered.

Senator Alex White: On behalf of the Labour Party I wish to be associated with the expressions of sympathy directed towards the family of Seán

Keegan and the Fianna Fáil Party. I did not know Mr. Keegan personally but my colleague, Deputy Willie Penrose, knew him well as a man of considerable integrity with a strong agricultural background and an ear for all of his constituents. He was widely experienced and had a broad set of political skills relating to the area he represented.

On behalf of the Labour Party, I wish to extend sympathy to the family of Seán Keegan on its sad loss.

Senator Dan Boyle: I wish to join the expressions of sympathy on the death of the former Member, Seán Keegan. Similar to other Members, his involvement in public life well preceded mine and it also preceded the foundation of my party. Politics in this country continues to evolve thanks to the contributions of people like Mr. Keegan. The eloquence with which the Leader opened these expressions of sympathy was matched by the sincerity of one who knows the value and worth of the contribution made by the person to whom tribute is given. On behalf of my party, I express sympathy to the friends and family of Mr. Keegan.

Senator Fiona O'Malley: I wish to be associated with the tributes paid to former Senator, Deputy and Councillor Seán Keegan. I convey my condolences to his family. The presence in the Gallery of so many colleagues, friends and associates from his community is a tribute to his commitment to public life. As Senator O'Toole observed, this commitment encompassed not only the political sphere but also his great community involvement, particularly with the GAA. We all have our own political preferences but Mr. Keegan's commitment to the Fianna Fáil organisation is worthy of commendation. He was clearly a man of great talent to be so well appreciated within his community not only in respect of his political life but also for his contribution to agricultural, educational and health issues. His was a life dedicated to public service.

Unfortunately, I did not know Mr. Keegan, but it is important to recognise the contribution of former Members. We hope that we will continue in the spirit of the contribution made by Mr. Keegan to public life.

Senator Camillus Glynn: Ba mhaith liom comhbhrón a dhéanamh le bean agus clann Seán Mac Aogáin, a fuair bás le déanaí. Bhí aithne agam ar Sheán le fada agus ba fear macánta, dílis agus díograsach é.

I knew Seán Keegan for many years. When I first became a member of Westmeath County Council in 1979, Seán was the leader of the Fianna Fáil group. My knowledge of Seán predated 1979 in that my first vote in a general election was cast for him. I was always struck by his commitment to the public he served. He was a champion of the underprivileged. Nobody could ever claim to have had no response to a tele-

[Senator Camillus Glynn.]

phone call or visit to him. Seán Keegan was the consummate contributor to public life and he was absolutely at his best in serving those who needed his service.

He had a strong commitment to the agricultural sector and he never lost an opportunity to articulate the needs and woes of those involved. He was a trenchant debater in Westmeath County Council. When he was fighting an issue, the engineer, manager or official who said “No” to Seán Keegan would have to have his or her facts and figures right. It was my experience that Seán nearly always won the day. I also had the great privilege of serving with him on the county committee on agriculture, where he excelled. As a member of the Midland Health Board for many years, Seán served through difficult times. He was also a member of the farm advisory sub-committee. The Cathaoirleach served with him at that time and I am sure he too was astounded by the depth of Seán’s knowledge of this sector.

Seán was motivated by the highest principles that should obtain in public life. When he was elected to the Dáil in 1977, it was not a question of him measuring up to the job but of whether the job would measure up to his standards. He gave everything he had to public life. He was a Member of this House for some seven years. When he lost his Dáil seat in the election of November 1982, he did so by only a handful of votes. Being the man he was, he did not stand back from the party but instead continued to contribute.

One of his great strengths was his organisational ability. There was no cumann in Westmeath, no matter how small, that was not organised on at least an annual basis when Seán Keegan was a Deputy. He engendered a spirit of great pride in being involved in a political party but he also had great respect for those of other political persuasions. The late, great Gerry L’Estrange, Joe Sheridan and many others served in the Oireachtas and the county council with Seán. They would bat each other across the floor but were the best of friends outside it. Their activities and the words uttered within the Chamber were always in the best interests of the people they served.

I could speak at great length about Seán Keegan’s attributes. Suffice to say, I was privileged to know him and to have served with him. I convey my sincerest sympathy to his wife, Mary, and children, Maria, Nan, Nuala, Tom and Gearóid, and his extended family. Ar dheis Dé go raibh a anam.

Senator Nicky McFadden: I speak on behalf of the Fine Gael Party in Longford-Westmeath and on behalf of my family. My father knew Seán Keegan well. I extend my condolences and sincere sympathy to his wife, Mary, and children, Gearóid, Tom, Nan, Maria and Nuala. Sadly, I did not know Seán, but I understand he always

put the people of Westmeath firmly ahead of party politics. He was concerned always with what was best for Westmeath and was never afraid to express his views, either in the county council, Seanad or Dáil. I have been told by the many people in Westmeath who speak so highly of him that he was always rigid in his defence of the core values of honesty and decency.

I wish his wife, Mary, well. I extend my condolences to my colleagues in Fianna Fáil on the sad loss of the late, great Seán Keegan. I join the Leader in welcoming the visitors from Westmeath, especially my former colleague, Councillor Robert Troy. I am pleased to see him here.

Senator John Ellis: Like my colleagues, I express sympathy with the family of the late Seán Keegan. I had the pleasure of serving with him in the Oireachtas from 1977 to 1982. He was a true and perfect gentleman. I also had the privilege of sharing an office with him for a short period. I learned from him that one must do what one is asked by one’s constituents or else face their wrath. I wish to be associated with the sentiments of sympathy to his wife and family. I extend to them our deepest sympathy on his sad passing. I also take this opportunity to wish Mrs. Keegan a speedy recovery from illness.

Senator Geraldine Feeney: I did not know the former Deputy, Senator and Councillor Seán Keegan, but as a Tullamore woman, I live only seven miles from Kilbeggan. There were no boundaries as far as Seán Keegan was concerned and he was well known in Tullamore and throughout Offaly. I wish to be associated with the sympathy expressed on his passing. I first learned of his illness when I canvassed Tom Cowley in Kilbeggan during the summer. He died shortly after that. I know Gearóid well because he is working in Tullamore. Like Senator Ellis, I wish Mr. Keegan’s wife, Mary, a speedy recovery.

An Cathaoirleach: I would like to be associated with the tributes to the late Seán Keegan, who was a member of this House from 1970 to 1977. Seán served the people of Westmeath at local and national level and made a major contribution to political life as a member of the Midland Health Board, councillor, Senator and Deputy. I knew Seán best as a member of the Midland Health Board, where he was a loyal colleague. He was on the farm advisory committee of the board, with responsibility for two large farms in Mullingar and Portlaoise. He ensured both were profit-making enterprises at a time when profits were very important to the finances of the board and for some of the patients in the care of the board’s institutions.

He will be sadly missed by all his colleagues in the Oireachtas and especially by the people of Westmeath whom he represented so loyally for so many years. Seán was also a lifelong member of the Pioneer Total Abstinence Association.

I extend my sincere sympathy to his wife, Mary, sons, Tom and Gearóid, daughters, Maria, Nan and Nuala, as well as to his extended family on their sad loss.

Members rose.

Defamation Bill 2006: Committee Stage.

SECTION 1.

Question proposed: "That section 1 stand part of the Bill."

An Leas-Chathaoirleach: I welcome the Minister for Justice, Equality and Law Reform to the House.

Senator David Norris: I disagree vehemently with the disgraceful way in which this Bill is being rushed and I would like an explanation from the Minister why it is being reintroduced on Committee Stage rather than Second Stage. Thirty-five out of 60 Members in this House have had no opportunity to speak on it, including some very eminent legal people such as Senator Regan, a senior counsel. They have been deprived of the opportunity to have a proper say on the second half of the Bill.

Matters have moved on since the previous debate, which may have served as a warning to the press. However, the press has gone on to commit worse actions in the interval between this Bill failing to complete Committee Stage on the previous occasion and it being introduced again. I am astonished at the alacrity with which the Government has rammed the Bill through in an undemocratic manner, which is effectively a guillotine on the operation of the House and an insult to Seanad Éireann. I have no doubt about that.

I believe a deal was done between the Taoiseach, Deputy Bertie Ahern, and the O'Reilly newspaper empire. This was made perfectly clear when Independent News & Media newspapers changed their tack in the same way *The Sun* newspaper did when it got Mr. Blair into power in England. Rupert Murdoch did a deal with Mr. Blair in that case.

I do not agree with the Bill being introduced on this Stage and I do not agree with section 1. I take it that section is the Short Title and commencement. Before we speak of the commencement of the Bill, may I ask when we will have the commencement of the debate? I will have certain matters to raise with regard to some other early sections.

Will the Minister explain why this Bill, in defiance of any sense of democracy, is being introduced on Committee Stage rather than Second Stage? Does he agree that doing this deprives more than half the Members of this House of an opportunity to speak on this important Bill?

What is the fate of the Privacy Bill? We were always told it was supposed to be the partner of

this legislation. The Minister's predecessor, Mr. Michael McDowell, instituted a group under Brian Murray, SC.

An Leas-Chathaoirleach: That is not relevant to this Bill.

Senator David Norris: It published a report which urged the creation of a new tort of privacy.

Minister for Justice, Equality and Law Reform (Deputy Brian Lenihan): The section before the House deals with the citation and commencement of the Bill when enacted. In reply to the more general point, it is a matter for Seanad Éireann to regulate its procedures. The Government made a decision that the Bill should be restored to the Order Paper on the commencement of Committee Stage.

As Senator Norris is well aware, Seanad Éireann is a body with a continuous existence under the Constitution. It has approved this Bill on Second Stage and has considered quite a few of its sections, having almost completed Committee Stage. I recommended to my colleagues in Government that it would be appropriate to reintroduce the Bill on Committee Stage and the Government made that decision. I am anxious to hear the views of Senators on the detail of the legislation. I am open to any reasonable points made on that detail.

With regard to the principle of the legislation, the Long Title refers to it as: "An Act to revise in part the Law of Defamation; to repeal the Defamation Act 1961; and to provide for matters connected therewith." Nobody could object to the stated aim of this Bill to reform the defamation legislation. Many reports over many years have documented the difficulties faced by the litigant brave enough to take a claim in court proceedings under our current arrangement. Any arrangement which improves the position for the person whose good name is infringed is to be welcomed. A balance must be struck in this area between the legitimate and constitutionally guaranteed right to freedom of expression and the right of a citizen to his or her good name, which also enjoys constitutional protection.

The Bill is simply to revise the law of defamation and we are beginning with the first section. I am quite open to amendments, hearing Senators' comments and taking them into account when we come back on Report Stage. There is no intention of jackbooting this legislation through, so to speak, and I am quite amenable to hearing what Senators wish to say on it.

The suggestion that this is some implied contract in a complicated arrangement between the Taoiseach and a newspaper group is utterly without foundation. The provisions of this Bill have been dealt with, discussed and elaborated upon in reports over many years. Far from initiating this legislation, I am trying to close this chapter in the history of Irish legal reform.

Senator Ivor Callely: I thank the Minister, my good friend and colleague, Deputy Brian Lenihan, for his explanation, which I support. I can understand equally the position of Senator Norris regarding the new Seanad and its Members. In light of the Minister's comments, we should move forward in that spirit.

The law on defamation exists to protect a person's right to their reputation against a false allegation. Society must balance the right to a reputation and the right to freedom of expression. In this jurisdiction the balance is weighted in favour of protection of reputation. The Defamation Act 1961, which we are replacing, was in effect confiding the common law which existed until then. While it has been debated on many occasions, as the Minister, Deputy Brian Lenihan, mentioned, this is the first time in a long time a Minister has tackled this much talked about issue. There unfortunately may be somewhat of a hiccup in the way in which it is before the Seanad on Committee Stage today. However, in light of what has been said, I hope you, a Leas-Chathaoirleach, will give Members freedom to discuss the issue under section 1.

The libel laws are particularly close to the hearts of journalists as nearly every journalist, in particular Paul Reynolds and John Waters, can testify. Political figures have not been so successful regarding defamation. There is one obvious exception, which was the case of Proinsias De Rossa MEP who pursued his constitutional right for unlimited damages and the jury decided in his favour. He was awarded what might have been deemed to be a relatively large award of £300,000 by the jury at the time. Few would begrudge him that award given that any political figure might have had to go to court, as I am sure most people in this House have probably been libelled at some time — some more than others. On one or two occasions I had a choice to make and decided not to go down the libel route. However, others have and have not been successful other than the one I mentioned.

My concern is not with any particular case or the one involving the MEP, but with what was addressed in the Supreme Court appeal of the De Rossa case, which, I understand, has now been addressed in section 29. I am inclined to support it. I ask the Minister to give more clarity to the section when he reaches it. Ms Justice Denham, in the course of her minority decision in that case, made the following observation——

An Leas-Chathaoirleach: We are on section 1 now.

Senator Ivor Callely: I understand we are allowed some liberty in light of what the Minister has said.

An Leas-Chathaoirleach: We are on section 1.

Senator Ivor Callely: I am dealing with that. In general I favour giving guidelines to a jury on the level of damages. Information does not fetter discretion. If this is perceived as a more active approach by the judge, it is in the interest of justice. While the Legislature could legislate, in the absence of more guidelines, it would help juries and the administration of justice. Guidelines would assist in achieving consistent and comparable decisions, which would enhance public confidence in the administration of justice. There is a benefit to the administration of justice in such an approach while maintaining the paramount position of the jury in determining the damages. Specific information would aid decision-making and the maintaining of an appropriate relationship with the award of damages in other areas. Such information as is deemed appropriate could be given more specific guidelines. Ms Justice Denham suggested that information of previous awards in libel cases made or affirmed by the Supreme Court should be given to the jury. She also suggested that the jury should be able to compare the value of what courts usually award——

Senator Alex White: On a point of order, I understand the Senator wants to make his contribution on this matter. However, the Bill is set out in a systematic way. While I am not criticising the Senator, I ask the Chair whether we will be permitted to address such issues as we wish at any point in the debate or whether we will be asked or required to wait until that section. If Senator Callely is to be afforded that indulgence I will seek it also.

An Leas-Chathaoirleach: We are dealing with section 1.

Senator David Norris: We should be on Second Stage.

Senator Alex White: It is one or the other.

Senator Ivor Callely: I understand it was sought that we should have some liberty in the discussion of the Bill.

An Leas-Chathaoirleach: We cannot have a Second Stage speech on the matter. We are on section 1.

Senator Ivor Callely: I am making a point under section 1.

Senator Alex White: It is not on section 1, but section 29.

Senator Ivor Callely: The Minister indicated he would accommodate some flexibility.

Senator Eugene Regan: It has been decided that this Bill is re-entered on Committee Stage and not on Second Stage. Senator Callely is argu-

ing on the basis of Second Stage. That is a bone of contention on this side of the House. He cannot deny it, vote against it and then try to abuse the privilege of the House.

An Leas-Chathaoirleach: I remind Senator Callely that we are on section 1.

Senator Ivor Callely: Juries should be able to compare the value of what courts usually award to people.

Senator Alex White: I am sorry to rise again——

An Leas-Chathaoirleach: Senator Callely, that is not relevant to section 1. Section 1 deals with the Title.

Senator Jim Walsh: I have listened to the points of order raised. Section 1 clearly states, “This Act shall come into operation...” I humbly put it to you, a Leas-Chathaoirligh, that anything anybody raises with regard to the Bill under section 1 is valid because it relates to the Act coming into operation. What Senator Callely is talking about is precisely what is in the Act and matters pertaining to the Act, and is valid under this section.

An Leas-Chathaoirleach: The Chair’s reading of it is not——

Senator Jim Walsh: The first few words of section 1(2) are clear in stating, “This Act shall come into operation...”

An Leas-Chathaoirleach: Section 1 deals with the Title.

Senator Jim Walsh: The substance of section 1 deals with the Act. While I know there is a timing issue, it deals with the Act and therefore what Senator Callely is saying is correct.

Senator David Norris: The Senator’s own Members are acting as if we were on Second Stage.

Senator Maurice Cummins: Let us have Second Stage.

Senator David Norris: Let us have Second Stage. Let us have a vote.

An Leas-Chathaoirleach: I call Senator Callely on section 1.

Senator Ivor Callely: I thank Senator Walsh for his helpful intervention.

Senator Alex White: What Senator Walsh said is wrong.

Senator Ivor Callely: As Ms Justice Denham said, I believe the jury should be able to compare

the value of what courts usually award to people in personal injury actions as compensation in a notional remedy in both incidences. The lame do not walk after an award of compensation and the defamed do not cease to have been defamed after an award of damages.

An Leas-Chathaoirleach: I remind the Senator that a section of the Act deals specifically with that point and I ask him to address it at that stage.

Senator Ivor Callely: I can deal with it at that stage if the Leas-Chathaoirleach so wishes.

An Leas-Chathaoirleach: Yes.

Senator Ivor Callely: However, it is equally covered here. While I will not read what section 1 states, it gives the standard provision as Senator Walsh said. May I continue a Leas-Chathaoirligh?

An Leas-Chathaoirleach: On section 1, Senator.

Senator Ivor Callely: Am I right in reading that section 1 deals with the Act?

An Leas-Chathaoirleach: It does not deal with the Act.

Senator Jim Walsh: It does.

An Leas-Chathaoirleach: It deals with the Title of the Act and the commencement.

Senator Eugene Regan: On a point of order, as the Leas-Chathaoirleach has made a ruling, the Senator should respect that ruling. It is the prerogative of the Leas-Chathaoirleach to make that ruling. It is not the Act at large regardless of the previous interpretation put on it. It is the ruling of the Leas-Chathaoirleach that determines the matter. As he has ruled on it, the Senator should respect the Chair.

Senator Jim Walsh: I hope Senator Regan will always do that——

Senator Eugene Regan: I do indeed.

Senator Jim Walsh: ——on the Order of Business when Opposition Senators flout the rules very conveniently.

An Leas-Chathaoirleach: I call Senator Callely on section 1.

Senator Ivor Callely: I am not too sure if I am being defamed myself, a Leas-Chathaoirligh, because you do not know what I am about to say. I understand that section 1 deals with the commencement of the operation of the Act and I am dealing with issues regarding the operation of the Act.

An Leas-Chathaoirleach: The Chair has given the Senator some latitude up to now, but——

Senator Maurice Cummins: On a point of order, as happened on the Order of Business, an allegation has been made that a Member of the House has been flouting the rules of the House. On the Order of Business, the Cathaoirleach judged that the Member had not flouted the rules of the House.

Senator Jim Walsh: He has.

Senator Maurice Cummins: I want that retracted at this stage. This is a recurring theme at this stage. The Cathaoirleach ruled on this matter on the Order of Business and it should be withdrawn again for ruling.

Senator Jim Walsh: I wish to reconfirm what I said. It is flouted with impunity on the Order of Business every morning and this is wrong. I concur with what Senator Harris said.

Senator Maurice Cummins: The Cathaoirleach ruled on the matter on the Order of Business.

An Leas-Chathaoirleach: The Cathaoirleach is the sole judge of order within the House and his ruling is not permitted to be challenged.

I call Senator Cally on section 1.

Senator Ivor Cally: Am I permitted to deal with aspects of the commencement of the Defamation Bill as an Act and the provisions and purposes contained in the Act?

An Leas-Chathaoirleach: If it is relevant to section 1 of the Bill.

Senator Ivor Cally: I am about to conclude my contribution as there is not much left of what I want to say. As I was saying before I was interrupted, an order of damages is an artificial form by which a court gives a remedy to an injured person. Juries no longer decide on the value of compensation in personal injuries actions. In the event of a person——

Senator Alex White: A Leas-Chathaoirligh, if the ruling is to mean anything——

An Leas-Chathaoirleach: Senator Cally, that is not relevant to this section.

Senator Ivor Cally: I will raise it when I come to the relevant section. I ask the Leas-Chathaoirleach to let me know when we come to the relevant section.

Senator David Norris: Is it possible to put a motion before the House that Second Stage be taken now?

An Leas-Chathaoirleach: I have called Senator Regan.

Senator Ivor Cally: I ask the Leas-Chathaoirleach when that part arises.

An Leas-Chathaoirleach: We will be dealing with it section by section.

Senator David Norris: It is clear that this side of the House wants a Second Stage debate but the Government has deprived us of the opportunity.

An Leas-Chathaoirleach: I call Senator Regan on section 1.

Senator David Norris: The rules are being flouted. They may not have been flouted by Senator Regan but they are being flouted all over the place by Fianna Fáil.

An Leas-Chathaoirleach: I call Senator Regan without interruption, please.

Senator Eugene Regan: On section 1, apropos of the question raised by Senator Norris, I read the record of the House on Committee Stage of the Bill in the last Seanad. It was a comprehensive debate and points of agreement were reached on a number of the sections. The return to the Bill on Committee Stage is an issue, as also is the issue of using and benefiting from that debate in order to revise the Bill and to return to this House with a new Bill which has taken account of the very useful, detailed and meaningful discussion which took place in the last Seanad. By returning with the same Bill and going over the same ground——

An Leas-Chathaoirleach: Senator Regan, the House has decided to begin with Committee Stage and we are discussing section 1 of the Bill. I have no control over this as the House has decided.

Senator Eugene Regan: I am sure the Minister has a good reason but this is a new Seanad and a new Bill would have been in order. The Minister might wish to comment. I fully understand the objectives of this Bill——

An Leas-Chathaoirleach: The House has already agreed to the restoration of this Bill to the Order Paper.

Senator Eugene Regan: I understand. Those are my commencing remarks on section 1.

Senator David Norris: I wish to respond to some points made by the Minister. He stated that the Seanad was continuous under the Constitution and this is quite true but it is not continuous in terms of its membership. I wish that was

the case. Why did I fight the last election if it is so continuous?

Deputy Brian Lenihan: Dublin University has been fairly continuous to the Senator.

Senator David Norris: If it is continuous why are there more people on the Government side who want to have a Second Stage debate? I reiterate what Senator Regan said. Has the Minister read the Seanad debate in full? There were various points at which his predecessor, the then Minister, Mr. McDowell, indicated that he intended to make changes or was thinking of making changes but none of those have been made. It is extraordinary that this Bill has not apparently been affected by the debate that took place in the House previously.

An Leas-Chathaoirleach: That is not relevant to section 1.

Senator David Norris: It is as relevant as anything that was said over there.

An Leas-Chathaoirleach: That may well be but we are dealing with section 1.

Senator David Norris: On that point, it is clear there is disagreement on this side of the House; it is also clear that there are Ministers who disagree with a great deal in the Bill and would have welcomed it being reintroduced on Second Stage. I believe the Minister knows this. Many of his colleagues do not want the Bill in this form but it is being rammed through. I have asked the question why and I have suggested a reason but the Minister has dismissed it.

Deputy Brian Lenihan: It is not for me to talk to Senators about their own procedures but they are trying to have it both ways in their more recent comments on this Bill.

Senator Alex White: The Senators on the Government side.

Deputy Brian Lenihan: No, I mean the Senators opposite.

The Seanad has voted to restore the Bill which the Seanad voted for on Second Stage and not a different Bill prepared by the Minister.

Senator David Norris: The Leader of the House said it would be the reasonable and sensible thing to introduce it on Second Stage; either that or he is talking nonsense. It was *force majeure*.

An Leas-Chathaoirleach: The Minister without interruption, please.

Deputy Brian Lenihan: If a new Bill was required then this would be a new Bill. However, this Bill was approved by this House on Second

Stage. I appreciate the point made by Senators Regan and Norris that this is a Bill which may require amendment. It would have been open to the Government to have commenced the discussion on this Bill at section 20 but we did not do so; we have returned to the beginning of the Bill. Therefore, anyone who has any difficulty with the 43 different points of defamation law set out in this Bill has an opportunity to discuss the merits and demerits of each of those 43 points in the course of this debate. Neither I nor the Government opted for having the Committee Stage discussion foreclosed for that reason. The Bill before the House now of necessity must be substantially unamended to enable me hear the views of Senators. I will reflect on what is said and at that stage consider whether amendments can be brought forward on Report Stage. This is the reason the Bill is in this form and the reason we begin the procedure at this point.

Senator Joe O'Toole: Much as I admire the Minister and defer to his greater level of knowledge on the Constitution and matters parliamentary, I have to gently correct him on a number of issues. Despite the fact that Senator Norris agreed with him that the Seanad is continuous, this is an incorrect belief.

Senator David Norris: I did not agree with him.

Senator Joe O'Toole: I beg the Senator's pardon.

The Seanad is not continuous; it may be continual, which I doubt, but it certainly is not continuous. This is the reason we describe it as the "new" Seanad and the reason each new Seanad is given a new number.

Senator David Norris: It is the reason we have to be elected.

Senator Joe O'Toole: This Seanad is a new body. The House agreed for the Bill to be reinstated, as the Minister said, but in practical terms there are 35 Members who have never seen this Bill before. I supported the Bill and voted for it in the last Seanad and I still support it even though I will support many of Senator Norris's amendments because they will improve it.

The Minister has an extraordinary way of communicating but he is incorrect when he says the Government could have reintroduced the Bill on section 40. The rules of the House are very clear and we can defer to the Cathaoirleach for a ruling if necessary. I know the rules of the House because I have been a Senator for 20 years and as this is a "new" Seanad, the Bill would have to be reintroduced at the beginning of Committee Stage. This was not a case of a choice being made by the Minister and beginning with discussion on section 1 should not be presented as a sort of gift from Government. The rules of the House state it must begin on section 1.

Deputy Brian Lenihan: We were given the option.

Senator Joe O'Toole: I ask for a certain amount of leeway. Members should be permitted to make points. It is a parliamentary convention rather than a rule that Members table amendments on Committee Stage which reflect and follow on from the points made on Second Stage. In this case, 35 out of 60 Members do not have this opportunity. It would be a gentle and open decision to allow a wider debate.

Senator David Norris: I wish to raise a point of order. I ask for a ruling from the Chair as to whether Senator O'Toole is correct in this as the Minister is on the record of the House as having said that he was offered the option. If this is not the case, who offered him the option?

An Leas-Chathaoirleach: I refer Senators to Standing Order 132. Senator O'Toole is correct.

Senator David Norris: Will the Minister inform the House who gave him the option? He said he had an option.

An Leas-Chathaoirleach: That is not an issue. I call Senator Alex White.

Senator Alex White: The concern expressed by some Members for those of us who are new Members of the House is touching and much appreciated. However, I assure my colleagues that we are well able to look after ourselves and to take——

Senator David Norris: Is the Senator now speaking for them all? His concern for his 34 colleagues is equally touching.

An Leas-Chathaoirleach: Senator Alex White, please.

Senator Alex White: ——a view on what is being proposed. I agree fully with Senator Norris's earlier proposal that this Bill should have reverted to Second Stage and I voted to that effect on the Order of Business. It is a pity the Government did not take that approach. Instead, there is what one could describe as a Fianna Fáil solution to a Fianna Fáil problem, whereby although one does not allow for a Second Stage debate, one conducts such a debate anyway. I object to this. Members are still debating section 1, which pertains to the Short Title and commencement, and it is now 4.40 p.m.

Question put and agreed to.

SECTION 2.

Question proposed: "That section 2 stand part of the Bill."

Senator Eugene Regan: Why is defamation not defined in section 2 under the list of definitions? It merely states that it shall be construed. Normally, such a definitions section would state that the words to be defined have a particular meaning. In this case, the section simply states, "construed accordingly".

Senator David Norris: I raised this matter during the previous discussion of the Bill and it has not been addressed. However, Members now have a distinguished legal authority pointing out this.

Deputy Brian Lenihan: The new tort of defamation is defined in section 5 of the Bill. It states:

The tort of libel and tort of slander . . . shall cease to be so described, and . . . shall, instead, be collectively described, and are referred to in this Act, as the "tort of defamation".

When one is transiting from a particular cause of action to another, it is desirable that it be done in clear language in a clear section and not referred to in an interpretation section of an Act and nor should it find its foundation in the interpretation section of an Act. Hence the definition section simply states that defamation "shall be construed in accordance with *section 5(2)*" because this new tort is created by section 5(2).

Senator David Norris: May I be of some assistance to the Minister? Had he read a little further, he would have come to section 2, in which there is a definition of the tort of defamation.

Senator Alex White: Members are debating section 2.

Senator David Norris: My point, which I also made on the previous occasion, is that it should have been included in the list of definitions.

Question put and agreed to.

SECTION 3.

Question proposed: "That section 3 stand part of the Bill."

Senator David Norris: I have a question on this section. I understand the principle that retrospective legislation is highly regrettable and vitiates many of the best principles of the law. While I may return to this issue later, I have been made aware of a case in which highly serious, unpleasant and completely inaccurate statements were made about a deceased person to the great regret of his family. Completely incorrect and gross accusations of sexual behaviour were published on the front pages of newspapers and the family had no redress because the man was dead. Moreover, attempts were made to invade the funeral. This was a really shocking business and the family has asked me to raise this matter

although they do not wish their grief to be exacerbated by mention of the family name.

When the family wrote to the press ombudsman, they were informed that they were caught in a gap and that he would not be able to do much about it. This is extraordinary. While I do not seek retrospective legislation in terms of rewriting section 3, at some stage during the Bill's passage, I ask the Minister to address this principle and this case in particular. I can make available its details to him directly and I believe he will be highly shocked when he reads what was printed, completely wrongly, about this unfortunate man who was murdered, to the great distress of his family.

The cause of death was reported wrongly. It was alleged that it was a sex game, in which he was involved and that he was trussed up like a pig. However, it was no such thing. He was killed by a single stab wound to the carotid artery and his teenage nephews and nieces are highly upset and traumatised. They have been asking their parents what was going on as they knew their uncle as an extremely gentle, decent and good man. Although this man became the victim of a brutal murder, the newspapers had a perfect right to splash all these lies about him all over the place, to the distress of his family. Obviously, retrospective legislation is not a good principle. However, I wonder whether these people will have an opportunity to receive some degree of redress and of real retraction of this material.

Senator Denis O'Donovan: I agree that legislation should not be retrospective. Does the Minister believe there are instances in which it would be appropriate? I refer in particular to a recent High Court challenge on a case regarding the drink driving laws, which created havoc in district courts throughout the country. Certain aspects of a recent criminal justice Act regarding the term of suspension off the road came under the spotlight. Thankfully the High Court clarified that the legislation, despite the uncertainty of the language used, should not be retrospective and should not impose on or change directions made by a district court prior to its enactment.

Senator Eugene Regan: The Minister should explain what he envisages as the scope of section 3(2), which provides for an element of retrospection in this Bill. It states that, "A provision of this Act shall not affect the operation of the general law in relation to defamation, in force immediately before its commencement, except to the extent that that provision provides otherwise". What is the scope of this provision and how does the Minister view it? There is a general rule against retrospective legislation.

Senator Maurice Cummins: Were retrospection to be introduced, I would have serious concerns. The Minister should comment on this matter. A colleague, who is a former public representative,

has been seriously defamed in recent months. I hope no retrospection will apply from the commencement of the Act, which would have been whenever Members dealt with it on Second Stage. This series of retrospection must be clarified by the Minister because were it to be introduced, it would be a serious matter.

Senator Jim Walsh: Senator Cummins makes a most interesting point with regard to retrospection and the fact that this Bill might apply to a former colleague who was seriously defamed. However, this raises the question as to the reason the Bill was supported by Fine Gael on the last occasion.

Senator Maurice Cummins: I wish to respond on a point of order. I spoke on the Bill and supported it, as did my party, in principle. Fine Gael has no objection to supporting it in principle. However, we have other comments to make. We did not offer *carte blanche* to any Minister to proceed with a Bill as he sees fit. Fine Gael Members will oppose sections with which they do not agree. While we agreed in principle with the Bill on Second Stage, this will not prevent us from making valid points on Committee or Report Stages.

Senator Joe O'Toole: The Minister should note that an important issue arises in this regard, which reverberates with the issue of provisional licences. While I had intended to raise this matter in the debate on section 1, all Bills that contain a variety of commencement dates should include a covering statement, namely, provided that the Act will be commenced fully by a particular date. An issue comes into operation in this regard regularly. I noted in legislation in the past year the commencement dates of certain sections were not in chronological order. They were not in the order in which the Act was intended to operate. For example, the Minister could commence section 9 officially, even though it would have no effect until sections 5 and 6 were put into operation. This type of situation occurred recently with the Education for Persons with Special Educational Needs Act, and I have seen it affect other legislation as well. We spent years discussing the Local Government Act 2003, yet large sections of it have not yet been implemented. No reason for this has been given. No cost or other difficulty is involved but somebody in the Department does not like it and it is not done.

It would be helpful to address this matter. Many of the issues raised could be dealt with if we knew the Bill, when passed, would be fully commenced by a particular date. Is the Minister prepared to accept an amendment to section 1 on Report Stage stating the Act would be fully commenced by a given date?

Senator Jim Walsh: Senator Cummins may have misunderstood the point I was trying to make. His opinion is that if the Act were retro-

[Senator Jim Walsh.]

spective there would be implications in the case he has in mind for the person trying to rectify the defamation made and trying to re-establish their good name. If a similar situation were to arise when the Act was fully implemented, people would face the same problem. It is essential, therefore, we ensure the ordinary individual who is without great financial resources is in a position to establish his or her good name. That is an essential element of this exercise.

Deputy Brian Lenihan: With the leave of the Leas-Chathaoirleach, I will return to section 1 with Senator O'Toole who asked a question about the commencement of the legislation. I appreciate we have moved on two sections but I am delighted to deal with the issue. This Bill could be enacted without a commencement provision. It could enter into force seven days after the signature of the President. I am open to an amendment deleting the commencement section, although with measures of law such as this which affect civil rights and liabilities in a reforming and changing way, it is generally desirable for the Minister to fix the first day of a certain month as the date upon which the measure will commence, if only for the sake of the legal profession which must have recourse to the dates to find out when legislation comes into operation. There is no intention to delay the enactment of the legislation.

While I agree with Senator O'Toole in the context of this Bill, having been the Minister charged with the implementation of the Education (Welfare) Act in the previous Administration, I would have reservations about that approach and whether it is necessarily a good idea always to have a cut-off point for the commencement of legislation. We can have that debate on another occasion. Suffice it to say that on this Bill that is my attitude to commencement.

On the point of substance raised by Senators about the retrospective nature of the provisions of the Bill, it is quite clear that what section 3 means is that the Act only applies to a cause of action which accrues after it comes into operation. It also proposes that the Act shall not affect the operation of the general law in force immediately before the commencement of the Act. Senator Regan inquired whether the form of words used went beyond that in some sense. I am advised it does not. It is the Parliamentary Counsel's rather complicated way of saying this new cause of action reflected in this legislation does not affect the operation of the general law in force immediately before the commencement of the Act.

The crucial provision in section 3 is the reference to "accruing". The accrual of this cause of action takes place on the publication of the material. It is publication which sets the timeline going in the tort of libel and slander at present and in the tort of defamation after the enactment

of this legislation. If the libel or slander is written or uttered before the commencement date of this legislation, it is governed by the general law in force up to the commencement of the legislation. If the defamation is published after the commencement of the legislation, then it will be governed by what we may enact here.

Senator Joe O'Toole: I appreciate very much the response the Minister gave on the timelines. I would be much reassured to have a "not later than" date or a commencement date introduced on Report Stage. I have a very good reason for doing this. On two occasions in the past year I have come across legislation where a Minister exercised a power under a subsection but where there was a qualification to that subsection in the following subsection which formed part of the same section. The qualification referred to other legislation. When I checked, the section in the other legislation had never been commenced. I accept I am being very theoretical but what was contemplated by the Houses in the passing of the first section in effect was never discharged.

I asked for a commencement date for the Education (Welfare) Act, to which the Minister referred. I also asked for a commencement date from the Minister on the Education Act, which I received. This made life very easy. An example of current legislation which makes life very difficult because there is no commencement date is the Education for Persons with Special Educational Needs where, for instance, a section has been commenced which sets up an appeals committee to something which cannot happen until a previous section is commenced. That is cynicism personified. That is the kind of stuff that bothers me. Is the Minister prepared to insert a commencement date? I do not care when it is as long as there is a commencement date or a "not later than" date.

Senator Eugene Regan: Do we need the penultimate phrase, "except to the extent that that provision provides otherwise" in section 3(2)? Where are we providing for retrospective legislation? Do we really need that last clause?

Deputy Brian Lenihan: I am happy to go back to the Parliamentary Counsel and have him examine the issue raised by Senator Regan. The matter will be examined but it has been included out of an abundance of caution.

On Senator O'Toole's point, I would favour having a fixed date for the commencement of the Act and inserting that date in the legislation. The best solution is that one would fix a definite date upon which the Bill would commence. It is not a good idea to leave it to the presidential signature because it might be an arbitrary date. The first date of a month could be fixed as a commencement date. As this is a Seanad Bill, I will be in a better position to determine that when the Bill is at a later Stage.

Senator Joe O'Toole: I appreciate that.

Question put and agreed to.

Section 4 agreed to.

SECTION 5.

Senator Alex White: I move amendment No. 1:

In page 7, subsection (4)(b), line 24, after "person" to insert the following:

"or the publication to the second-mentioned person was in the course of the performance of duties of a secretarial nature by the second-mentioned person (being a person whose relationship if any to the first-mentioned person is primarily based on contract) and there were no reasonable grounds to believe that the first-mentioned person would suffer any significant injury by reason only of such publication".

In the interests of brevity, I indicate formally that it is not my intention to pursue amendments Nos. 1 and 2.

Amendment, by leave, withdrawn.

Section 5 agreed to.

Section 6 agreed to.

SECTION 7.

Question proposed: "That section 7 stand part of the Bill."

Senator Jim Walsh: The aim of the Bill, as the Minister rightly put it at the outset, is to strike a balance between freedom of expression and the constitutional right of persons to their good name. Section 7 provides for an affidavit. It is mandatory for a plaintiff to swear an affidavit verifying the assertions and allegations made. Section 7(9) states it is open to the defendant to cross-examine the plaintiff on the statement and any matters sworn in the affidavit. Perhaps we are being overly prescriptive. When I raised this matter previously, reference was made to the Law Reform Commission putting the onus of proof unreservedly on the plaintiff. There may be a reason for that, such as persons fraudulently making a claim against newspapers. I wonder, however, if the inclusion of this provision goes too far in the other direction. The onus should be on members of the media, if they are publishing statements which are derogatory and possibly defamatory, to establish that they are dealing with facts. It is imperative that we do not dilute that requirement. I am aware that the learned lawyers present would, in cases before the courts, avoid going on a fishing expedition. However, this provision leaves it open to a defendant, who might well be on shaky ground with what they published, to use the affidavit to try and pick holes and perhaps find other avenues to pursue.

Take the example of somebody who has been defamed specifically on an issue. The person takes the matter to court and it is found that the statement made was untrue. Let us say the person had committed an offence or even a crime in his or her teenage years. This can be introduced into the case and, as a consequence, it can be found that the person did not have a great reputation to defend in the first place. I believe there is an element of unfairness in that. I would prefer a situation where the defendant must deal specifically with the allegation and not be able to open it up to become an investigation of the individual and his or her life story, to see if there are skeletons in the cupboard to help support and underpin the case. That is unjust. It is not permitted in a criminal case; in fact, there are strong rules that prohibit a person's previous record being introduced in a case or being brought before a jury. The case must be dealt with specifically on the nature of the offence involved.

We should not create a different set of circumstances in this legislation. It is manifestly unfair. The section should be re-examined from that point of view, despite what the Law Reform Commission said.

Senator Eugene Regan: Affidavits are normally sworn for the purposes of the case in question. Will the Minister clarify how the affidavits which are sworn in an action could be viewed by the authorities, and an offence could be prosecuted? I support the principle of affidavits. However, section 7(13) states, "This section does not apply to an application for a declaratory order." If we are to be consistent, I am not sure there is a justification for the exclusion of the declaratory order remedy. Perhaps the Minister will comment on it.

Senator Ivor Callely: I support Senator Jim Walsh and I will not repeat what has been said. What is the specific timeframe referred to?

Senator David Norris: Senator Walsh seemed to suggest that there was no reason to introduce a past record into the question of defamation. However, defamation deals principally with the loss of a reputation or injury to it, so it appears to be perfectly reasonable if a person could be deemed to have no reputation. If a person has engaged in criminal activity and has no reputation to injure, it is difficult to assess considerable damages for that person. It is perfectly logical that if somebody has no reputation, one cannot damage it.

Senator Jim Walsh: I can offer an example, although I do not know whether it is a good or bad one. Let us say a person is defamed in the media as a rapist when he is in his thirties or forties. It transpires that the allegation is incorrect and without foundation. However, during cross

[Senator Jim Walsh.]

examination — this is what concerns me — it emerges that when he was 17 he had sex with his girlfriend who was 16 years of age. That is statutory rape under the law. I do not believe it would be justifiable that it could be used as a defence by the defendant against the plaintiff. It would be wrong. There is also the example of a person who is accused of fraud or larceny and it transpires that as a teenager he or she stole something small and was brought to court for it. These issues can arise.

A Bill is before the Lower House at present which provides for expunging certain criminal offences from one's record after a certain period of time. It would be wrong if such history is used to buttress a false, defamatory statement made in the media. That is my point. This legislation is about balance. We are talking about cases that will involve very unequal parties with, generally, huge international multimedia conglomerates on one side and, on the other, an individual with limited resources. We must err on the side of the individual with limited resources.

Senator Denis O'Donovan: I am reminded of some old maxims by the comments of Senator Walsh and others, the first being, "He who comes into equity must come with clean hands." I wonder where reputation starts if one is taking a case on one's reputation and stating that one is a person of high integrity and honesty. Second, in the context of one's reputation and history, the following is an old saying in the west Cork mountains about dogs killing sheep, "Give a dog a bad name and hang him." Does that arise in the debate?

Senator Alex White: With respect, it does not arise in the debate on this section. The Minister can clarify the issue in due course. The issue raised by Senator Walsh may be legitimate in terms of his concerns about cross examination, although I share the view of Senator Norris on that aspect, but I wonder whether it arises under this section. The section deals with verifying affidavits, which are quite confined. We are familiar with them in personal injuries actions. The plaintiff is simply required to swear an affidavit stating that everything in the pleadings is the truth. The reason the person can be cross examined flows from that because an affidavit is evidence. Such people are cross examined on the veracity of what they said in their main pleadings, which are the main documents in the action. A verifying affidavit does no more than simply state that what has been put forward is truthful.

Senator David Norris: Senator White is correct. I am not sure that the points made by Senator Walsh are germane. I disagree with him. I will address the point of principle that was made and with which his distinguished colleague, Senator O'Donovan, agreed, that is, the issue of giving a

dog a bad name and so forth. The example given by Senator Walsh was interesting, but unfortunate from his point of view. Where a 17 year old youth had sexual relations with a 16 year old and was convicted of statutory rape, he is a rapist under the law. It may be wrong and we might believe it should not have happened — I believe we have tinkered with the law somewhat — but if he was convicted of statutory rape, he is a rapist and the newspaper has a right to call him a rapist. In that case we should examine the law on statutory rape because the problem arises in that primary legislation. It would be a very different matter if a man was convicted of riding a bicycle without a light, and the *Daily Mail* called him a rapist and justified it on the basis that he rode his bicycle without a light. That is a good example. If a man is convicted of statutory rape, then he is a rapist, and if we do not like that we should change the law in that regard.

Senator Jim Walsh: I wish to clarify one point.

An Leas-Chathaoirleach: Senator Walsh has spoken twice already.

Senator Joe O'Toole: I fully support this section as it is useful and necessary. In my experience as vice-chairperson of a body much beloved of lawyers, the Personal Injuries Assessment Board, I have come across legislation in which it is a breach of law to exaggerate a claim. I notice that the phrase used by the Minister here is "false or misleading". I would like to hear his view on whether the word "exaggerate" or "exaggerated" could be added to this. That goes to the core of the matter. A statement can be grossly exaggerated. There was a time when we would have been slow to use that word as there was a chance it might not have been sufficiently precise in its interpretation, but now that the word has been used in legislation on personal injuries, there is a strong case for inserting it. It keeps manners on everyone. What we are dealing with is scale.

I agree with the point made by Senator Norris in response to Senator Walsh, but Senator Walsh's point could have been made in a different way. There are minor items which might be unnecessary, but if something is irrelevant a good judge will point that out. The question of reputation is important and there is no gainsaying the point made by Senator Norris. If the primary legislation is wrong that is another matter.

I also support the point made by Senator Regan. I do not understand the need for subsection (13) which states: "This section does not apply to an application for a declaratory order." This jumps off the page. Why does it not apply to an application for a declaratory order? If somebody gives information that is false or misleading, in that case it is equally unacceptable. I do not see any reason this should be specifically excluded, unless I am missing some point of relevance. The Minister is indicating that I am.

Senator Jim Walsh: On a point of clarification, while I said the analogy was not a particularly good one, the point I was trying to make was that I had no difficulty with someone being accused, for example, of being a rapist if he or she committed the offence. However, I am trying to distinguish between this and a situation in which, for example, a man who has previously been convicted of rape is, with no foundation, accused by the newspapers of rape 15 years later when there is a string of rapes in a town. I am concerned that if the person in question took the newspapers to court, even if he were not involved in the latest incidents in any shape or form, he would be defenceless owing to the previous conviction and could not prosecute his case properly. As Senator O'Toole pointed out, however, perhaps a good judge would deal with this sympathetically.

Deputy Brian Lenihan: In considering section 7, we must take account of the inner nature of the defamation action. Historically, the pleading stated that the defendant did falsely and maliciously say of and concerning the plaintiff matters which lowered the plaintiff in the eyes of upstanding members of the community. There was never an onus on the plaintiff to prove that the matters were false and untrue. The onus in this type of tort is on the defendant to establish the truth of the statement. There is, if you like, a presumption of falsity.

The media organisations which have lobbied for change in this area have opposed this presumption of falsity, saying that it puts an unfair burden on them that is not cast on any other defendant in our law of civil liability. In fact, as several Senators have pointed out, owing to the strength of the media organisations compared with the individual plaintiff seeking to vindicate his or her reputation, the Government decided to retain the presumption of falsity as a core element of our defamation code.

The one difficulty is that it is then open to a plaintiff simply to file a pleading, which is an unsworn document. I apologise to the House for entering into the technicalities of legal practice, but it is important in the consideration of this issue.

Senator David Norris: It is very helpful.

Deputy Brian Lenihan: A pleading, in law, is an assertion of fact which is not sworn to or verified on oath, so it is not evidence. It is simply a description of the framework within which a plaintiff wishes to present a case or a defendant wishes to present a defence. Historically, in the law of defamation, pleadings were exchanged between the parties, a notice of trial was served and a hearing took place. It is open under our current law, therefore, for a plaintiff to base a defamation action on something he or she knows to be untrue but cannot be demonstrated by the defendant to be untrue.

The Government took the view, with which I agree having inherited this measure, that the presumption of falsity is an important safeguard for the plaintiff in libel proceedings. That said, we investigated whether there was some system we could introduce that would ensure at least that truth is at a premium in these actions. The recommendation we came up with was that an affidavit should be sworn by the plaintiff verifying any assertions or allegations of fact in the pleading. A similar obligation is cast on the defendant with regard to any assertions of fact in his or her pleading. There is, therefore, no question of putting the plaintiff in a different position from the defendant.

The question of exaggeration was raised by Senator O'Toole. The issue of exaggeration arises in the context of the PIAB as the exaggeration of injuries in the context of a claim for damages was a major problem. In the type of action with which we are dealing here, however, the danger is not exaggeration but downright lies on either side. To guard against that, therefore, both sides are required to swear an affidavit verifying the matters set out in their pleadings.

The point raised by Senator Walsh about the extent of the matters covered by sworn affidavit, on which Senator Alex White corrected him, is a good one. It is confined to the pleadings. The plaintiff swearing the verifying affidavit is asserting, therefore, that his or her case is true, not that other collateral matters that may rise evidentially in the course of the libel hearing are true or false. He or she merely verifies that the case being put down on paper — the instructions given to solicitors that have been transmitted by counsel into a legal formula outlining the scope of the claim — is true as a matter of sworn evidence.

Senator Regan raised the issue of sanction for an untrue statement. The sanction is a prosecution for perjury, although this is not very common. The greater danger with this provision is that there will be extensive cross-examination of parties, both plaintiffs and defendants, on the basis that they have sworn to their assertions. There will be theatricals, therefore, especially in jury trials, involving the fact that the assertion has been sworn to. This is an action, however, in which truth should be at a premium. The reason we legislate for defamation and the reason we have damages and a battery of remedies available to plaintiffs is to ensure truth is at a premium. It is a reasonable legislative provision that the parties should swear to what they believe to be the case.

Senator O'Toole raised the question of declaratory orders. A declaratory order comes into operation after the lodgment of pleadings. If we examine section 26(5), we will see that a person who claims to be the subject of a statement he or she alleges to be defamatory can apply to the High Court for an order that the statement is false and defamatory of him or her. As I understand the position, this constitutes an existing libel action with a sworn affidavit. There is no

[Deputy Brian Lenihan.]

need, therefore, to impose an additional obligation in the context of section 7. It should be noted that an application under subsection (5) “shall be brought by motion on notice to the respondent grounded on affidavit.” The application is grounded on a sworn document when the plaintiff opts to pursue the declaratory route. Section 7, which does not apply to the declaratory order, clarifies the law where one can arise.

Senator Joe O’Toole: I thank the Minister for his clarification, which I accept because it makes logical sense.

Section 7(7) states: “A person guilty of an offence under this section shall be liable...”. As the affidavit would be lodged as part of the evidence, why is the offence not perjury? Is this a new offence or is it different to perjury? I have no objection to the intention of section 7, but is this a new offence and is it necessary?

Deputy Brian Lenihan: I thank Senator O’Toole for his intervention because in my earlier reply I assumed the standard sanction applied to the affidavit, namely, that it was perjury. I will have the subsection examined to determine whether it can be deleted because it is as well for prosecuting authorities considering matters such as these to consider all perjury prosecutions under one rubric instead of having a separate section.

Senator Eugene Regan: Now that any action will include verifying affidavits by all parties, will the losing party be guilty of an offence under this section, attracting the penalty—

Deputy Brian Lenihan: Not at all. There is a great deal of difference between losing an action and committing perjury. The manner in which a court draws inferences from facts and resolves conflicts of fact does not necessarily involve the inference that one of the witnesses lied. A witness can be under a mistaken apprehension of the facts.

Question put and agreed to.

SECTION 8.

Question proposed: “That section 8 stand part of the Bill.”

Senator Ivor Callely: Why does section 8 begin with the words, “A person has one cause”? There may be multiple causes in the statement.

Deputy Brian Lenihan: As I understand the position on section 8, the person has one cause of action only in respect of the publication of a defamatory statement concerning the person even if more than one defamatory imputation in respect of that person is borne by the statement. This does not deal with the question of multiple

publication. It deals with the issue of multiple meaning or imputation in one publication.

For example, if someone is described as a thieving murderer, the person could theoretically sue claiming the statement meant that he or she was a thief and, on another day, sue claiming the statement meant that he or she had murdered someone. That situation is not allowed under this section. One must sue in a single action on the basis of being accused of being a thief and a murderer.

Senator Alex White: If one does not like either.

Deputy Brian Lenihan: It does not deal with the question of multiple publication. Each publication constitutes a separate cause of action, which is well established law and is being addressed in a different section of this legislation. Not alone does the person who wrote the article commit the tort of publishing a libel under current law, but also the newspaper, for example, that printed the article and the newsagent who sold the newspaper. This section does not address that issue, but the issue of the number of meanings that can be read into a single defamatory statement. The plaintiff is obliged under this section to plead all of those meanings in one action. He or she cannot take a separate action in respect of separate meanings that can be read into one article.

Senator Ivor Callely: I thank the Minister for his response but people may be caught. Regarding the multiple publication issue, section 8 states: “A person has one cause of action only in respect of a multiple publication.” I am somewhat confused. Perhaps the Minister or his officials will clarify this matter by way of a letter. I do not need clarity now.

Question put and agreed to.

SECTION 9.

Amendment No. 2 not moved.

Question proposed: “That section 9 stand part of the Bill.”

Senator David Norris: I welcome this section because it seems to be travelling in the direction of a class action, which has been forbidden by Irish law until now. It is a good provision because a class of persons can be defamed.

According to the information I have been given, the provisions for the press council, while following the standard practice of referring to attacks on persons due to their sex, race, nationality, religion and so on, omit the Traveller community. I wish such was not the case. While it is only marginally relevant at this point in the Bill, I want to signal the Minister regarding the matter.

Were someone to write that I am a well known Sodomite, Sodomites cause disease and I am a

well known spreader of disease, I would be covered by this provision, but I presume a gay person or a Traveller would not have a right of action if one attacks gay people or Travellers in general. Will the Minister clarify this matter? Must the attack be specific and name the individual? How will it operate? A sweeping, general statement of a highly dangerous and inflammatory nature might be addressed by the incitement to hatred legislation. I presume there must be a specific identification.

Senator Joe O'Toole: On a related issue, the section does not allow for a class action according to my reading. Much that I wish there was an opportunity to take a class action, there would appear to be a requirement for a substantial burden of proof. For example, were Senator Walsh to make a sweeping, populist condemnation of the decent public servants around the country and I to take it personally——

Senator Jim Walsh: I thought the Senator did.

Senator Joe O'Toole: ——I would need to prove that his statement referred to me in particular.

I want an answer to my next question more than that one. Could a person take a case on behalf of a group of lawyers, teachers or the Traveller community in the sense that a statement affecting all Travellers, for example, also affected the person? If the statement impugned the reputation of the group to which I belong, it would impugn me. What burden of proof is required? The section concludes with the words, “the statement could reasonably be understood to refer, in particular, to the member concerned.”

Senator David Norris: Exactly.

Senator Joe O'Toole: The term “in particular” dilutes my preferred intention. A significant protection for groups within society, such as those referred to by Senator Norris, could be built into the Bill. Would it be possible for someone to take a class action on behalf of gay people or another group?

Senator David Norris: Hear, hear.

Senator Joe O'Toole: In the event of someone being successful in putting forward a claim of defamation under section 9 — the defamatory statement would have had the effect of impugning a class of persons and damaging that class's reputation — would every member of the class be covered and able to state a case or would each case be separate?

I have asked a series of questions on the matter of class actions. Is it possible to state a case on behalf of a class of persons? For instance, would I be able to state a claim on behalf of a class of persons and give myself and how I have been impugned as examples?

Deputy Brian Lenihan: I am not sure the section has as wide a scope as suggested by Senator O'Toole. I do not believe it deals with the issue of class action. From what I understand from the report of the Law Reform Commission, the issue raised in this section is an attempt to put clothes on the definition on how one has proof of reference to a particular plaintiff, an issue arising in many libel actions.

For example, if a defamatory statement was made claiming a Member of the Seanad, who was a former staff member of Trinity College, Dublin, was seen in a corrupt transaction with a builder, clearly there is proof of reference to Senator Norris. I accept it may also include Senator Bacik but I am still becoming familiar with the new Members. That is the issue the section addresses. It is not addressing the more general question raised by Senator O'Toole. Our courts, and those in England, have been somewhat reluctant about this, while it has been resorted to more extensively in the United States of America.

Senator Ivor Callely: Was the balance in the 1961 Act more towards reputation than freedom of expression? Have we shifted the goalposts in this Bill in recognising the importance of the free press first and then for action to be taken later? Rather than addressing this specific section, is the whole Bill changing the emphasis in the 1961 Act?

Deputy Brian Lenihan: That will be addressed in subsequent sections. The legislation attempts to recalibrate the balance to ensure the press and other media organisations, as defendants, will have to create a culture where apology and admission of wrongdoing becomes more common than it is at present.

Question put and agreed to.

SECTION 10.

Question proposed: “That section 10 stand part of the Bill.”

Senator Eugene Regan: The section defines “multiple publication”, as “publication by a person of the same defamatory statement to two or more persons ... whether contemporaneously or not.” If a defamatory statement is made in, say, the *Irish Independent* which is then made ten times in the *Sunday Independent*, will that constitute a multiple publication? Is the definition precise enough?

Senator David Norris: Will the Minister consider using terminology such as “two or more occasions”, particularly in the same media outlet. I have personal experience of this.

I have consistently complained about the appalling way in which drinks licences are handed out willy-nilly and in most extraordinary circumstances all over this town. I said this on television,

[Senator David Norris.]

not once but twice. When the Minister speaks about exaggeration, I can assure him the letter I received from a well-known firm of solicitors was the most extraordinary piece of exaggerated nonsense I ever came across in my life. In exacerbation with every huckster's shop in Dublin's north inner city been licensed to sell as much as gin, beer and wine as it feels like, I asked what kind of idiots are handing out the licences. It turned out there is only one person, who took it very personally. I could not possibly have meant him; otherwise I would scarcely have used the plural.

I received a letter stating I had accused this eminent judge of being a well-known imbecile, idiot or person of low or restricted intelligence. The whole matter was blown out of proportion. My comments were not directed at the person. The humiliating and embarrassing aspect of this for me was that I was not aware of this person's existence. The insult was worse but the libel did not exist, in my opinion.

I must also add that judges are allowed to libel with impunity.

Deputy Brian Lenihan: So are we.

Senator David Norris: Yes, but it is much more serious when one is handing down a judgment. We need to examine clipping the wings of the Judiciary when taking legal action. I am not talking specifically about my case. It is very difficult for the ordinary members of the public to sustain themselves against a libel action taken by a judge, a member of a close-knit fraternity.

I repeated my concerns on drinks licences in the same week on the same television station. RTE cravenly gave in and the learned judge, very happily, took the station twice for considerable sums. I warned RTE to tie his hands because I saw this coming down the line, but foolishly it did not.

For that reason, we should examine a process where we constrain the idea of multiple publication. If the same thing is said on two separate occasions in the same outlet, it is not appropriate, just or fair for somebody who has made large sums of money from the first statement to take another whack and get another bite of the cherry. The reputation, if damaged, was damaged once.

Senator Ivor Callely: Regarding the one cause of action, which I raised on section 8, this section allows for a court to grant leave for a person to bring more than one case. Does an individual have to go through the same procedure again when bringing a second case?

If I might, because I have another meeting to attend at 5.30 p.m. in which I have a motion—

Senator David Norris: Who is the Senator going to get into remission?

Senator Ivor Callely: I unfortunately have to attend the other meeting.

Senator David Norris: We could take a sos.

Senator Ivor Callely: I note in a further section—

Senator Alex White: On a point of order, I too have a meeting to attend at 5.30 p.m. and another at 6.30 p.m. but I am waiting to deal with the sections in which I am interested. Every Member should have to do the same or else we change the system.

Acting Chairman (Senator Cecilia Keaveney): It is not in order to discuss other sections.

Senator Jim Walsh: I am not clear whether the point raised by Senator Norris is covered by this section, particularly on the point of “contemporaneously or not”.

Senator David Norris: I think it is.

Senator Jim Walsh: I do not believe it should be covered. Senator Norris's experience has influenced his thinking on this. However, I have a strong reservation about it. Let us take the example of a newspaper running the same defamatory statement for several weeks which is put on notice by the individual concerned that the statement is untrue. There is an inherent injustice in confining the individual concerned to taking an action on the one statement. I would like to see the definition elaborated. I look forward to hearing what the Minister says about the issue of confinement to the one publication.

Deputy Brian Lenihan: The multiple publication in the definition in section 10(3) means a publication by a person of the same defamatory statement to two or more persons whether contemporaneously or not. It is the contemporaneity of the publication which is an issue in the subsection. In the circumstances Senator Walsh outlined of a newspaper or other media organisation running the same story day after day, each publication would be separate, with a fresh cause of action.

Senator Norris, however, asked whether the section implements its intent. I have some reservations about the expression “multiple publication” because in the textbooks, multiple publication traditionally referred to the phenomenon of having a separate cause of action in respect of each publication, although section 10(3) attempts to clarify the matter. I am open to revisiting the wording, especially in the context of the word “occasion” which Senator Norris used and might help to clarify the intent.

Senator David Norris: The interventions of Senator Walsh and the Minister have been useful. We should contemplate also, however, the

situation in which the newspaper or media company was served notice that the statement was inaccurate, damaging, misleading and libellous. If a newspaper campaigning against someone publishes a libellous remark, is put on notice but repeats the remark, there should be a second cause of action and even aggravated damages.

I would have been very happy to defend that case but RTE was not. My remarks were perfectly justified and were not attributable to a specific person. I also said that years ago I had been in court and seen the licences being rubber-stamped. I would put my hand on the Bible and say I was there. I can give a contemporaneous account of that incident.

Emphases vary according to different types of media. There is a difference, for example, between the instant nature of a live television broadcast and a prepared article that may be part of a policy. We all have known cases of newspapers hunting people down, and some groups are especially bad. If a person who makes a defamatory statement in a newspaper is served notice that the statement is incorrect but persists maliciously in repeating it, that is cause for aggravated damages. Conversely, however, there should be a different emphasis where there are multiple publications without this notice in live broadcasts. A person should get one bite of the cherry.

Senator Eugene Regan: I welcome the Minister's statement that he will reconsider this definition. His statement that separate publications give rise to different causes of action does not emerge from this section.

Deputy Brian Lenihan: That is the point I wanted to make. This can relate to only one distinct item. In Senator Norris's example of a newspaper organisation that wages a campaign against an individual, which is so common in public life and in some areas of private life too, each publication on separate days is a fresh and separate cause of action. I am open to considering whether this can be taken into account in respect of damages when we discuss them later in the Bill.

This issue is different, however, because it concerns publication to a multiple audience. The best example might arise in the broadcast media. RTE might make a documentary on the activities of a businessman which is defamatory about the person's business practices and that person might launch promptly a defamation action and, more surprisingly, bring it promptly to hearing and obtain damages. This should occur under this new legislation and we must legislate for what we envisage. If the person calls various persons with whom he did business to show how the defamatory statement impacted on him and obtains an award of damages but the same programme is re-broadcast 18 months later on the basis of a privately made video, is that a fresh publication for libel purposes? Can the person sue a second time

on the same libel because a fresh set of merchants have emerged who distrust him as a businessman as a result of seeing the programme and are unaware that he had already taken a libel action in respect of it? That is the mischief the section tries to address. I agree with Senators Regan and Norris that we must consider the wording more carefully to confine it precisely to those circumstances.

Senator Eugene Regan: Is there a mischief there? As the Minister describes it, if a defamatory programme is re-broadcast, that seems to be a separate cause of action. Is the section needed at all because it seems there is a mischief worthy of protection in those terms?

Deputy Brian Lenihan: If it were the same newspaper article it would not be a separate publication. The Senator is right and I must correct myself. That is why I used the example of a video recording because if the same recording were used on two occasions I am not sure it would be a separate publication on re-broadcast. If, however, a newspaper article were to be picked up 18 months after publication by another reader who took an unfavourable view and proceedings had already taken place, this section would appear to bar a fresh set of proceedings on it. I accept the section lacks a degree of clarity and I would like to see it made clearer.

Senator David Norris: I am not convinced that people should harvest damages in this absurd way. If a case is closed in respect of one organ of publication which may assume the matter has ended, it would not be fair that someone should be able to accuse it of doing the same again the minute the matter is closed. People should not make a profession out of libel. I am all on the side of the small person but there should not be harvesting of damages if there is not a malign intent.

I do not always believe that one is not aware of it after the libel action and someone rings up out of the blue and says that two and a half years ago on Tuesday, 14 November so-and-so said something on television. It is pure hogwash from people who are in it to milk the system. On this occasion I am inclined to be against the plaintiff.

Senator Rónán Mullen: I wish to add my voice to those of the Minister and my colleagues because this requires clarification. The distinction requiring to be made concerns the situation in which several people hear or read defamatory comments, which is the basis of most defamation cases, and appears to be what the phrase "multiple publication" seeks to convey. There is also, however, a legitimate concern about whether the re-broadcast of a television programme or the publication of another edition of a newspaper with the same article reprinted at another time are separate acts of defamation which should give

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rise to separate causes of action or at the very least to the award of aggravated damages.

Senator David Norris: I think the question of intent ought to be written into the legislation. Aggravated damages should apply if something is done as part of a campaign but if something is innocently re-broadcast or re-published, damages should be limited in the absence of a complaint from a member of the public. One should not be able to go on endlessly receiving the same amount of money in those circumstances if there is no malicious intent and the second publication took place in the absence of a complaint. A certain level of innocent re-publication can exist in the absence of the knowledge that matter was deemed defamatory.

Senator O'Toole referred to exaggeration of injuries and the Personal Injuries Assessment Board suggesting people try to milk the system. I do not believe people should harvest damages in this manner.

Deputy Brian Lenihan: Many of the questions on damages will be discussed when we reach the section that covers that matter. Regarding this section, I will discuss with the Parliamentary Counsel whether a more exact definition can be given to address this issue. I accept that broadcasting involves a separate publication every time an item is broadcast but, in respect of one publication to an audience, the fact that a subsequent person publishing can lead to a fresh cause of action must be excluded.

Question put and agreed to.

SECTION 11.

Question proposed: "That section 11 stand part the Bill."

Senator David Norris: I oppose this section because it is nonsense. It states:

The provisions of this Act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under this Act in respect of a statement concerning it that it claims is defamatory whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement.

Businesses are corporate bodies and the difference between a corporate body and a natural body is that a natural body has feelings.

Senator Rónán Mullen: Some natural bodies do not have feelings.

Senator David Norris: Are we really suggesting that Renault or Rolls Royce have feelings and should be entitled to compensation? I could understand, perhaps, if a financial loss was

incurred and I gave a series of examples on the previous occasion. The former Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, stated:

I am grateful to Senator Norris for coming to the aid of the section. I am beginning, however, to experience a slight sinking feeling about it.

Senator Rónán Mullen: I think the sinking feeling referred to something else of which he was having a premonition.

Senator David Norris: It did not. On that occasion the Minister suggested a situation wherein one might make a negative comment about a company only for its profits to rise.

In the financial world a company's reputation can be assessed in financial terms and it is extraordinary that in several sections this Bill we are weakening the defences of ordinary people, the "natural person" that was referred to in the Bill. This section will enable corporations to take actions. I cannot see the logic of this and, a fine lawyer though he is, Mr. McDowell did not ultimately seem to see it either. Perhaps some additional reasons have arisen in the meantime and the Minister can produce them for us but I cannot see them.

The language of this section is also absurd, for example, the words, "apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under this Act". Are we talking about a body corporate experiencing hurt feelings?

Senator Eugene Regan: If this section is to be included a definition of defamation with regard to a corporate body would have to be included as it has been with regard to the natural person. This matter of defamation of a corporate body must be considered but the clause "whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement" is certainly over the top.

How does one define the defamation of a corporate body? The fact that directors of a small corporate body may be identified with it can affect them, but we must be clear on how this provision would operate.

Senator Lisa McDonald: Some definitions are required in this section. For example, as Senator Regan said, a definition of defamation is needed, but also the term "body corporate" is not defined in the Bill. One would wonder where organisations such as the GAA and Irish Farmers Association, IFA, would stand in this regard. Some jurisdictions allow class actions beyond bodies corporate.

Obviously, companies do not have feelings but the people working in them do and the reputation of companies, particularly small businesses, can

be damaged by false statements. We need to know where we stand in terms of a definition of “body corporate”. Does it go beyond a typical company to include associations and so on?

Senator Joe O’Toole: I register disagreement with my distinguished and much esteemed colleague, Senator Norris, and with the two speakers subsequent to him on this matter. I could give countless examples of why this section is necessary.

I mentioned the Personal Injuries Assessment Board earlier and about a year ago I read in the *Irish Independent* three pages of inaccuracies relating to its board of directors, of which I am one, which I raised in this House. The inaccuracies hurt many people, though more so those working for the board than its directors. All sorts of allegations were made and I would have welcomed it had the writer been asked to swear the accuracy of the report’s contents because they could have been disproved.

I could give examples all day in this regard relating to other bodies corporate. When I was president of the Irish Congress of Trade Unions, ICTU, and chair of its executive council I read in the newspaper of people in whose dismissal I was alleged to have colluded. I felt my reputation was damaged by this and it happens regularly that people feel anything can be said about a group of people. I could give ten more examples and I wish I had my day in court to argue about this issue and force these individuals to give their points of view. This legislation would be greatly weakened if this section were not included because instead of pointing at a person, people can point at a body corporate and get away with murder.

I agree with Senator Norris’s point on financial loss but this is a case of reputational loss where no financial compensation is required. In the situations I mentioned all I would have sought was a correction of the inaccuracies.

An article by Gene Kerrigan on the entire back page of the *Sunday Independent* was a diatribe suggesting I was involved in the sacking of the general secretary of a well-known union because of a disagreement I had with him. There was not a scintilla of truth in the article but the ICTU, of which I was president, was supposed to have done this.

Things like this happen and this section is about setting the record straight and having corrections made because damage can be done to the reputation of a body corporate. I watched a television programme last night on something that happened in west Cork 30 years ago and I was part of the making of the programme. Last night’s programme was very fair but 30 years ago I felt the body corporate involved, the Irish National Teachers Organisation, INTO, of which I was then an executive member, was badly treated in the media. At the time I wanted to take action.

6 o’clock

I have lived all my life with people hiding behind the fact that one can say anything about a body corporate. Bodies corporate have no defence and are not able to state a case and, therefore, I welcome this section of the Bill, unless I have missed something about it. I feel it is a hugely important section because public participation and involvement in life are suffering. Increasingly, people will not become involved in voluntary bodies and other organisations because of the possibility of reputational damage. I agree with the points made by Senator Norris but I contend they are parallel to the argument I put forward. This section does not detract from the remainder of the Bill. Rather, it offers the possibility of the articulation of a hurt or sense of offence as experienced regularly by persons who are members of corporate bodies.

I could pick up a newspaper every week and point to an article rubbishing some particular group. For example, I do not hold any brief for the FAI but if I were a member of that organisation’s executive council, I would be greatly offended by some of the articles that have been written. I am a member of the national management committee of the GAA. I assure Members that I have regularly wished to have a go at those who have made negative comments about our role in agreeing a deal with the Gaelic Players Association, despite our having worked to the best of our ability for two years to get it right. As far as I am aware, all the organisations to which I referred are bodies corporate and, as such, have a legal personality and are registered and so on. Section 11 is helpful in this context.

Senator Rónán Mullen: I never cease to be impressed by the quality of Senator O’Toole’s CV. It is fine, however, for Independent Senators to disagree with each other from time to time. On this occasion, I disagree with both my highly esteemed colleagues. I am sure that does not surprise them.

Deputy Brian Lenihan: Senator Mullen is taking the third way.

Senator Rónán Mullen: I am strongly convinced of the importance of this section. I suggest to Senator Norris and others that it is not simply a question of feelings nor is it merely a matter of reputational damage, as my colleague, Senator O’Toole, described it. Incorporated bodies have been protected in our laws for a long time. The notion of the veil of incorporation in company law exists for a reason — to allow people to do business. It recognises that business is important for society by giving employment to people and so on.

I am reminded of the words of Thomas More in “A Man for All Seasons” in which he says he would give the Devil himself the benefit of the law. We must put aside our feelings about ruthless fast food companies and so on. I will use the

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example of a fictional company called HyperMax. If it were claimed that all the beef produced by this company was contaminated with BSE, the ensuing damage would consist not only of the hurt or reputational damage suffered by individual employees but also the commercial damage the organisation would suffer. Such acts of defamation should be actionable *per se*. Otherwise, it would be difficult to prove that a decline in sales, for instance, was due to the intemperate comments in a newspaper of a set of mad activists. This is why it is appropriate that this protection should be in place, not only for natural persons but also for bodies corporate. I strongly support section 11.

Senator David Norris: I am grateful to Senator Mullen because he has solidified my opposition to section 11. I recall the case of a middle aged couple in the United States who made statements about McDonald's. That company harassed them through the courts to such an extent that although they felt justified in their claims — and, in my view, every word they said was true——

Senator Rónán Mullen: If it was true, it cannot have been defamatory.

Senator David Norris: ——McDonald's was able to use its financial strength against these people and they eventually ran out of money and were absolutely banjaxed. I sympathise with Senator O'Toole but I understood the issues he raised are covered under section 9 which deals with the defaming of a class of persons.

Senator Joe O'Toole: No.

Senator David Norris: I would have thought so but I am not sure. Perhaps the Minister will clarify this.

I wish to defend my right to say in public that I would not, even under the most severe physical pain, read any publication of Mr. Rupert Murdoch. I nearly said "the late Rupert Murdoch", but that was wish fulfilment.

Senator Rónán Mullen: He is undead.

Senator David Norris: I have often said that *The Sun* is a tawdry publication with which I would not wipe my backside.

Senator Rónán Mullen: I thought the sun shone from there.

Senator David Norris: I see no reason I should not be allowed to say that. I should be able to make such comments with impunity. I stress the imbalance between huge corporations, such as McDonalds, and the ordinary person. These entities can often exhaust the financial resources of the individual who is thus deprived of justice. I maintain my objection to this section.

Senator Jim Walsh: I support fully section 11. The debate is interesting. Senator McDonald raised the issue of the definition of bodies corporate. It is an issue that should be examined because she referred to organisations that may require protection. I agree with Senator Regan that much of the business activity in this State involves small companies, the directors and owners of which are well known locally. Any aspersions or defamatory statements in regard to the body corporate reflect also on them.

A growing cause for concern in our global economy is industrial espionage. It is not beyond the bounds of possibility that there may be some domestic activity in this area. We do not want to leave open a situation where one corporate body can pay, with impunity, a reporter to do a scurrilous job on a competitor. The section refers to the likelihood of incurring financial losses, and we must be mindful that significant losses can be involved. We must afford the same protection to bodies corporate as is provided to individuals. As Senator Mullen said, it is not a matter of feelings. If a press reporter or feature writer decides to write an article of that nature, the facts should be correct. If they are not, he or she must bear the consequences.

Senator Eugene Regan: The connection Senator Norris has made with sections 9 and 10 is correct. Perhaps section 9 should be revisited in this context. Senator O'Toole observed that he believed himself to be personally identified in criticism of the corporate body of which he was a director. This falls under section 9 rather than section 10. Senator Norris's concern that there is potential for an abuse under section 11 is justified.

There is also the issue of freedom of expression. I am not clear as to the precise legal status of the Health Service Executive but I assume it is defined as a body corporate. As such, anyone who criticises that organisation might be subject to action on the grounds of defamation. I am not sure what is the overriding justification for this provision. Will the Minister outline whether he attaches great importance to it?

Deputy Brian Lenihan: The point of departure in this debate was struck by Senator Norris when he said that companies do not have feelings. However, they do have personalities.

Senator David Norris: That is a fiction of Madison Avenue.

Deputy Brian Lenihan: Some Senators seem to be under a misapprehension about the defamation law in that it somehow serves to protect our feelings. It is true that the law of delict in continental countries protects the feelings of the hurt individual in the context of the publication of statements. There is a famous story about a professor in civil law in a continental university

who screamed and roared at one of his students and claimed subsequently that this behaviour would not be actionable in a common law country. The student in question replied: "True, it would be mere vulgar abuse." The point is our law of defamation does not protect people in respect of their hurt feelings, much as the prospective plaintiff may think that to be the function of a libel action. The purpose of our law is to protect the reputation of persons.

A number of interesting points have been made on the section. There is the extent to which a corporate body, as distinct from a natural person, is entitled to have its reputation protected. Senator O'Toole instanced an example of an organisation of which he was a part, which I take was the INTO. He suggested a statement was published which was defamatory of him, meaning it was defamatory of him as a person. It was not defamatory of the organisation.

Senator Joe O'Toole: No, it was defamatory of the organisation.

Deputy Brian Lenihan: It would have been along the lines of, for example, a statement that the INTO at its head office systematically defrauds teachers in deducting subscriptions in union dues. That clearly would be a serious defamation of the INTO as an organisation. The question arises whether a corporate body, of itself, can take an action for that. I presume damages then accrue to the profit and loss account in the case of a private company or to the general fund in the case of a trade union.

That is the question arising for decision on this section. There is no precise decision in point in this jurisdiction, and the section was included in the Bill to clarify the law. The issue has arisen for decision in our immediate neighbouring jurisdiction where the highest court has ruled that a trading company can sue for libel and claim damages without the need to prove actual financial loss as the result of the libel.

I accept that if an artificial person can sue for libel, it is difficult to insist that financial loss should have to be proven. The plaintiff does not have to do that in a libel action. It was recognised in English law that a damaging libel could have severe implications for a company and it may lower its standing in the eyes of the public or even its staff. People may be less ready to deal with it or less willing or proud to work for it. These are the difficulties arising from not recognising this.

Difficulties would be placed on businesses if they had to prove a specific loss, not least because specific losses arising from defamatory statements can be difficult to quantify, as demonstrated in previous cases of this nature. We must decide the issue of whether a body corporate of itself has a reputation, which I believe it does.

The more technical issue was raised by Senators McDonald and Walsh, which was how to define bodies corporate. It is a wide definition

in the legislation. I reassure Senators that three of the greatest institutions in Irish life, Fianna Fáil, the Gaelic Athletic Association and the Catholic Church—

Senator David Norris: One cannot defame Fianna Fáil as it has no reputation.

Deputy Brian Lenihan: None of these is a body corporate.

Senator Rónán Mullen: One can say anything about all of them.

Deputy Brian Lenihan: That was precisely my point before Senator Norris engaged in mere vulgar abuse. If we are going to recognise bodies corporate, we would cover the entire span of incorporated entities under the companies legislation. That includes commercial and some, but not all, charitable bodies. It also includes older bodies established under Latin letters patent, such as the University of Dublin and other such places.

I do not have a very strong view on that but there is a point of view that can be expressed on either side. One danger I see in this is if the protection is not provided against the abuse of power by media organisations, articles can be worded in such a way as to defame companies rather than individuals. On the other side there is a danger identified by Senator Norris that very wealthy companies can use this as a method for chilling comment about themselves.

I am not disposed to delete the section as there is an issue to be addressed.

Senator David Norris: Will the Minister look at the wording?

Deputy Brian Lenihan: I will reflect on it before Report Stage.

Question put and agreed to.

SECTION 12.

Question proposed: "That section 12 stand part of the Bill."

Senator Jim Walsh: This deals with Supreme Court hearings of appeal arising from a jury award, which can vary. It is a significant change from the current situation. The matter may be relevant because of certain headline awards given by juries in cases in recent years.

Where the Supreme Court would hear an appeal and damages in the High Court could be varied, would it have to have regard to section 29 which details the issues the High Court must have regard to when assessing damages? That would be important. The decision of a jury can be considered in the High Court anyway but I have some sympathy with those who argue that a jury hearing the case and granting awards could be set aside by the Supreme Court. Do we need to add

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to section 29 if the Supreme Court becomes the adjudicating body on the level of damages?

I subscribe to Senator Norris's comments regarding people looking for money and taking cases for that purpose. On the other hand, it can be said equally that the awarding of damages is a deterrent and a policing of standards within the newspaper industry. I would be concerned about anything which could undermine or dilute that as it could have a similar effect in diluting standards within the media.

Senator David Norris: I agree in large measure with Senator Walsh. We discussed this on the previous occasion. One would accept that the Supreme Court comprises highly intelligent and wonderful people, except when I took a case there some years ago. Those people are unlikely to make bad decisions. With regard to democratic principle, one should be loath to second-guess a jury, especially if it decides, on appeal from a lower court, to triple damages. That would suggest the ordinary people are outraged and that is what they want. They are entitled to their pound of flesh. We should be very careful before we circumscribe this.

I am inclined to agree with Senator Walsh that it is right for us to draw attention to the fact that the Supreme Court usually deals only with matters of law. It does not review any new evidence and it deals in very technical matters. If we keep the section, it might be no harm to include a reference that the Supreme Court shall have regard to the evidence given at the earlier trial. This would be relevant especially when there is a series of cases before it.

I am sure the Minister remembers a certain case, to which I am sure Senator Walsh is referring, in which a newspaper appealed the first decision and got rightly whacked the second time, so to speak.

Senator Jim Walsh: That is right.

Senator David Norris: That suggests two separate juries considered the matter and indicated they were not taking such action from the newspaper, which they were perfectly entitled to do. It goes against the strain of democracy to second-guess not one jury but two.

Senator Alex White: Perhaps the Minister would clarify the section, as it seems the most important word is "may" in the phrase "the Supreme Court may, in addition to any other order that it deems appropriate". It is already a long-standing element of our law that the Supreme Court can make a finding or conclude that damages awarded in the High Court are excessive. Cases go back to the High Court for that reason.

This appears simply to introduce an important additional provision allowing the Supreme Court

to substitute itself in the award for damages in the circumstances of the case instead of sending the matter back to the High Court. That would appear to be the net difference introduced by the section. We all are familiar with cases where the Supreme Court has indicated damages to be excessive and sent them back to the High Court.

On the issue whether it is appropriate, Senator Walsh raised an interesting question in respect of section 29 and whether the Supreme Court would be required to have regard to all the matters to which the High Court was required to have regard. As people are aware, the matter is not opened again in the Supreme Court in terms of evidence and that could not be so. It would seem appropriate that the Supreme Court would have regard to the issues before it on appeal. It would not be appropriate, however, for evidence to be reintroduced and that would not happen in the Supreme Court. As matters stand, if I am right in my interpretation of section 12, it simply obviates the necessity to send every case back to the High Court, empanel new juries, etc. to allow the Supreme Court in the circumstances to substitute its own award, which I remind Senator Norris could be higher, although it could be lower too. If I am right in my interpretation of the section, it is appropriate.

Senator Eugene Regan: This is an important provision designed to provide for finality to litigation in that remitting it back to the High Court for further determination is a very costly process. On balance the provision is probably well based. The main finding in the lower court is one of defamation and regarding the inferences drawn in the High Court, the Supreme Court could draw different inferences from the determination of the facts. On balance this is a worthy provision.

Senator Rónán Mullen: On a sheet of paper distributed in the House, certain sections have been very helpfully grouped together for our consideration. I see that section 12 is linked with section 31. I wonder if it should not in fact—

Deputy Brian Lenihan: They are amendments and not sections.

Senator Rónán Mullen: I apologise. I was going to say that section 29 is very much connected with section 12. In considering the issue of the Supreme Court having the power to adjust the award of damages, what consideration has been given to the question of whether it should be a jury that awards damages at the level of the High Court, as is provided for in section 29? If one considers the analogy with the criminal law, the jury is the trier of fact and the judge is the trier of law. In criminal law cases the jury does not decide the sentence. I am sure we would agree unanimously that it would not be desirable for it to do so. Why do we not give consideration to the question whether the judges would be the best people to

decide the amount of compensation to be awarded, the fact of defamation having been established to the satisfaction of the jury? Has the Minister given the matter any consideration? I reserve the right to table an amendment on Report Stage on the matter.

Deputy Brian Lenihan: We can return to the function of the jury when we come to discuss that section of the Bill. In a High Court action the plaintiff always has the option to serve a notice of trial for judge alone or a notice of trial with judge and jury. The Senator's proposal would deprive the plaintiff of a right existing in Irish law if we abolished the plaintiff the right to have recourse to a jury in a case of this type. At present a plaintiff in an action of this type has the right to insist that his or her reputation, or its reputation if we accept bodies corporate, can be judged by his or her fellow Irishmen and women in a jury. The Supreme Court has often adverted to the fact that in its view the jury is the correct constitutional tribunal to determine the reputation of a person in the community.

Following from that the Supreme Court has always taken the view that the jury's verdict has a unique character in libel actions. It is very difficult if not almost impossible to appeal a jury verdict of no libel. For the same reason, the Supreme Court has been reluctant to interfere with awards of juries in libel actions. While there is no statutory regulation or exception to it, under the Constitution the Supreme Court has jurisdiction to deal with all appeals from the High Court. Historically the Supreme Court has had an attitude that it is reluctant to interfere with the size of a jury award in these matters. However, there has been a well-advertised case in our courts, the particular facts of which I do not wish to mention, in which the Supreme Court ruled that the sum of damages was excessive and ordered a retrial in the High Court. The plaintiff won a sum in excess of the original court award. Where that happens there must be some reality in the position.

We must at least draw the attention of the Supreme Court to its power to substitute a verdict. If there is an outer limit on what the Supreme Court considers reasonable in an award of damages, the court should be in the position to award that. Defamation proceedings are lengthy, costly and dangerous for plaintiffs as well as for defendants. It is desirable in the interests of the State that the Supreme Court as the ultimate court of resort can have the power to substitute its own verdict as to damages at a certain stage in the proceedings and bring finality to matters. It is the court of ultimate resort in this jurisdiction.

Senator Norris was concerned that someone might have appealed to the High Court. A case that is heard in the High Court with a jury is a case of original jurisdiction. The only other tribunal before which a plaintiff can sue is the Circuit Court where the judge sits without a jury in such cases. An appeal of a decision of the Circuit

Court would be by way of rehearing by judge alone in the High Court. The only circumstance of having a jury in such cases is in the High Court and the only appeal there is to the Supreme Court, which is the ultimate court of resort. If it believes that there is an outer limit beyond which an award has gone, then surely the Supreme Court should be free to award that outer limit and bring an end to the litigation rather than subjecting the parties to the expense of another High Court action. That is the purpose of this section.

Having said all that, I would like to revisit one matter in the section. As Senators are aware, lodgements are often made in defamation actions. One of the purposes of the Bill is to make it easier to make a lodgement. Were a plaintiff, for example, to defeat the lodgement in a High Court action but not defeat the lodgement in the substituted verdict of the Supreme Court, I believe there would be an injustice to the plaintiff in that circumstance. If the plaintiff had been lucky enough to beat the lodgement in the High Court, even though the Supreme Court took the view that he was outside his outer limit, that should not make the lodgement effective against that plaintiff. I want to revisit that issue in the context of this section.

Senator Jim Walsh: I very much welcome the final comments of the Minister. I hope when we come to it we will find a way to address it. In all this we need to have a level playing pitch. This matter has arisen because of the case involving Mr. Denis O'Brien, where the Supreme Court referred the matter back to the High Court and there was an increased award of damages the second time around. Everybody felt the damages were very high. In recent days the newspapers referred to Mr. O'Brien's involvement in a €200 million deal. While I would not argue this case normally as these people are well able to look after themselves, for a person operating at that level, the financial implications are very high if his reputation is tarnished as a consequence of published articles.

Regarding what Senator Alex White said, while I am aware the Supreme Court does not take any new evidence, it would be very important that all the evidence presented in the High Court should be considered and taken on board.

My main point to the Minister is as follows. I have serious concerns about the matter and I am glad that he is to revisit it. As I interpret this provision a scenario could arise that an individual could go to the High Court, be found by the jury to have been seriously defamed and be awarded, for example, €100,000. Subsequent to the case in the High Court, the defendant might decide to appeal only the extent of the awarding of damages, which would be his or her right. The Supreme Court might decide the award should not be €100,000 but might agree the person was defamed and might award damages of €80,000. As I understand it, the costs would follow the

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decision. The defendant having been successful in the overall case and successful in his or her application to the Supreme Court in having the damages reduced, the award of costs would go against the plaintiff and perhaps put him or her at a financial loss, even though he was awarded €80,000. This is manifestly unfair, if my reading is correct.

I fully subscribe to the sentiments expressed by the Minister with regard to the lodgement and those same sentiments must be applied because this should not be allowed happen. I know this would be at variance with what normally happens when appealing a case to the Supreme Court but it shows the complexity of what is being undertaken in this Bill and how a defamed person could be disadvantaged by a technicality in the case where a jury makes an award which is reduced marginally on appeal to the Supreme Court. As a consequence, the defamed person is out of pocket in an attempt to protect his or her reputation and this is wrong.

Progress reported; Committee to sit again.

Adjournment Matters.

State Airports.

An Cathaoirleach: As the Senator who is first on the list is not present, we will proceed with the next matter. I welcome the Minister of State to the House.

Senator Jerry Buttimer: I, too, welcome the Minister of State, Deputy John McGuinness, to the House and congratulate him on his appointment.

The issue of Cork Airport is important and needs to be resolved. In simple terms, a promise that Cork Airport would be debt free was made by the former Minister for Transport, Deputy Brennan. It was agreed that the board of Cork Airport Authority would be a separate autonomous board. Neither of these has happened.

I question how long more Cork can put up with this. Will a third Minister for Transport refuse to deal with the issue? His predecessors have not answered the question and I hope the Minister of State and the Minister will not fail to deliver on the promise.

Cork Airport has a new terminal building but there is still the outstanding question of when the Government will honour its commitment to the people of Cork and to the Cork Airport Authority to provide a debt-free Cork Airport. Why has it taken so long to grant independent status to Cork Airport? What is the Government doing to create a truly independent airport authority in Cork? It is nonsense to ask the board of the airport to draw up and present a business plan when the board is in limbo regarding the cost and the

size of the debt. Cork Airport needs to be debt free and separate from Dublin Airport Authority. Under no circumstances should Cork be lumbered with a debt as this was never meant to be the case under the terms of the break-up of Aer Rianta.

The distribution of the assets of Aer Rianta, such as the duty-free shops, the Great Southern Hotels group and the share in Birmingham Airport, has freed up considerable resources which could be put towards the elimination of Cork's debt. I will not retell the history of the issue other than to say a decision is required. This lies in the hands of the Government and it is time for delivery.

A political promise was made by the then Minister in both Houses of the Oireachtas. Cork Airport should not have to pay debts and the people of Cork city and county should not have to face the consequences of an airport being levelled with a debt. There is frustration in Cork as it has been three years since this debt was accrued. I ask the Minister of State that a decision be made on the Cork Airport debt and the separation of Cork Airport Authority from the Dublin Airport Authority.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy John McGuinness): I thank both the Cathaoirleach and Senator Buttimer for their welcome and their kind remarks.

The State Airports Act 2004, provides the framework for the establishment of Shannon and Cork as independent airports. As part of the airport restructuring process, the boards of Cork and Shannon airports are required to prepare business plans for eventual separation. As they are inter-linked, the production of the three airport business plans will have to be co-ordinated by the Dublin Airport Authority to ensure overall coherence before they are submitted to the Ministers for Transport and Finance for their approval under the Act.

In their examination of the plans, both Ministers will have to be satisfied that the airports have the capacity to operate on a sound commercial basis before giving final approval to the business plans. The Minister for Transport understands the Dublin Airport Authority has been advised by consultants on an appropriate financing proposal that would facilitate the statutory objective of the separation of Cork Airport from the DAA in a timely manner consistent with the requirements of the State Airports Act 2004 and the Companies Acts.

The Minister is aware that the outcome of this analysis was that Cork Airport could sustain a certain level of debt while remaining a very viable enterprise. He understands the board of the Cork Airport Authority also engaged consultants to examine further the issue of the Cork debt. It is clear the debt issue is crucial to the business planning process and there will have to be agreement

on this point between the Cork Airport Authority and the Dublin Airport Authority before the Cork business plan can be completed and submitted to both Ministers.

The Government's position is that the funding of the new terminal and other works at Cork Airport will have to take account not only of what is commercially and financially feasible for Cork Airport but also what is commercially and financially feasible for Dublin Airport Authority. If the Cork Airport Authority is to achieve autonomy in the foreseeable future, it will have to accept responsibility for a reasonable portion of the outstanding debt, in return for the substantial assets to be transferred to it on separation.

The co-ordination role of the DAA will be central to the conclusion of the business planning processes for both Shannon and Cork. Accordingly, the Minister has encouraged the Cork Airport Authority to engage with the DAA on its business plan and in particular on the issue of the debt to pave the way for eventual autonomy for Cork Airport. I understand a draft of the Cork Airport business plan was submitted to the DAA in recent days.

The Minister looks forward to a pragmatic and constructive engagement by all concerned. Subject to satisfactory progress being made on the plans, the Minister awaits the DAA's overall considered views on airport separation to enable the plans to be examined by the Minister and the Minister for Finance. Only then will the Minister be in a position to consider the timing for the restructuring of the three State airports.

An Cathaoirleach: I will allow a brief supplementary question.

Senator Jerry Buttimer: I thank the Minister of State for his reply. Can it be assumed the original commitment made by the then Minister, Deputy Brennan, is worthless and there has been a rowing back on the promise that Cork Airport would be debt free?

Deputy John McGuinness: The Senator can take it that it is work in progress and plans are awaited. That process must be completed before either of the two Ministers will make a statement on that matter.

Senator Jerry Buttimer: Will Cork Airport be debt free?

Deputy John McGuinness: That is a matter for consideration once the business plan and everything else is considered. As I outlined in my reply, a process exists and we must wait for that process to be completed.

Judicial Appointments.

Senator Brian Ó Domhnaill: I thank the Cathaoirleach for the opportunity to raise this matter. I refer to the need for the Minister for

Justice, Equality and Law Reform to appoint a second permanent District Court judge and the allocation of a second permanent judge to County Donegal to reduce the existing waiting times and backlog in the northern Circuit and District Court services.

The Donegal Bar Association has consistently raised this issue for many years and in recent months in particular. The president of the association has outlined clearly the existence of a large backlog in the Circuit Court and District Court services in County Donegal. Both the president and the Donegal Bar Association have called clearly for the additional resources that are required to deal with the backlog.

A recent meeting held in Letterkenny courthouse in November was attended by all the principal users of the court. The meeting was attended by the county registrar, the District Court clerks of Letterkenny and Donegal town, as well as other court users.

According to information I have received from the Donegal Bar Association, the situation has not improved during 2007. It is clear to the association that its proposal of a second permanent District Court judge and the allocation of a second permanent judge to the northern circuit would go a long way towards addressing the present backlog. In its view, visiting judges for special sittings cannot deal adequately with cases that last more than one day. For example, I refer to cases involving family law, child care or land disputes, all of which constitute highly sensitive legal situations. It is important they would be dealt with in a prompt and timely manner.

In 2007, the scheduled sittings provided for a total of 63 days in the Donegal district. I understand from information given to me by the Donegal Bar Association that the allocation for 2008 has been reduced to 56 days.

I call for the early implementation of the recommendations to appoint a second District Court judge, as well as the allocation of a second permanent judge in County Donegal. This would relieve greatly the current stress that is on the system, would facilitate those families waiting for their sensitive cases to be heard and would reduce the backlog.

On the last day on which he presided in Letterkenny District Court, John O'Donnell, who was a District Court judge in Donegal, made one recommendation. Having noted that the Donegal District Court was much too large for a single judge to preside over, he called for the Courts Service to carry out an immediate audit of the existing services in County Donegal. As a worst case scenario, if the judges cannot be put in place immediately, I call on the Minister to carry out such an audit. The intervention of the Minister is required to provide those citizens of County Donegal who bring forward cases with the facility to have them heard in a prompt and timely manner.

Deputy John McGuinness: On behalf of the Minister for Justice, Equality and Law Reform, I thank Senator Ó Domhnaill for raising this issue. The Minister assures the Senator and the House that he appreciates the importance of adequately resourcing the courts system in County Donegal and elsewhere. The question of additional judicial resources in the northern circuit or in the Donegal district is, however, a matter for consideration by the presidents of the Circuit Court and District Court, respectively. The Minister will be guided by the presidents of the courts as to the need for additional permanently assigned judges.

The presidents of both the District Court and the Circuit Court have at their disposal unassigned judges who can be used to assist the permanently assigned judges where pressure of work demands. As the Senator will be aware, 14 additional judges were appointed within recent months. Of these, five were appointed to the Circuit Court while six were appointed to the District Court. These additional judicial resources will have a significant and positive impact on court delays in County Donegal and elsewhere.

In the Circuit Court, other than in Dublin and Cork, one judge is assigned permanently to each circuit. The northern circuit covers the counties of Cavan, Monaghan, Leitrim and Donegal. If additional sittings are required in any of these locations, the relevant county registrar contacts the President of the Circuit Court who has responsibility for assignment of judges. The president has given priority in the current year to clearing backlogs in criminal work in circuits throughout the country. Criminal work must be prioritised as defendants, especially those who are in custody, may be found not guilty. In particular, efforts have been made to clear outstanding long trials, which cannot be accommodated in the normal court lists. In the current term, an additional ten weeks of sittings have been allocated by the President of the Circuit Court to the northern circuit. County Donegal was given six additional weeks, while Carrick-on-Shannon and Monaghan each have had two additional weeks of sittings.

In the District Court, many additional court sittings have been organised by the President of the District Court and waiting times have been substantially reduced. Last year, the President of the District Court made arrangements for 112 additional sittings in Donegal, which greatly reduced the backlog that then existed. The situation in Donegal, as in all circuits and districts, is kept under constant review and the presidents of the relevant courts allocate additional resources as necessary.

The Minister has been informed that waiting times in Donegal District Court are generally less than six months for cases other than family law cases. As regards the latter, delays are approximately six months. As the Senator will appreciate, individual cases sometimes will have longer waiting periods for reasons not within the control

of the Courts Service, such as adjournment applications from parties to the case.

Hospital Services.

Senator Cecilia Keaveney: I thank the Cathaoirleach for accepting this matter for debate and I thank the Minister of State, Deputy John McGuinness, for being in the House to respond. I am highly concerned about a recent report that indicated that only six patients with cancer have availed of the 50 places that were sought and obtained by the Irish Government in the state-of-the-art facility in Belfast.

The Minister of State is aware of the perception of isolation in County Donegal in respect of its geographical location, which is far from both Dublin and Galway. This is highly relevant to the issue of health. While the Minister of State is more involved with the issue of jobs, such perceptions are relevant to both subjects. The Government has moved to relieve this geographical isolation in a number of ways. For example, at general practitioner level there has been the advent of pilot projects that cross the Border. As for cancer care, while I wish to see the roll-out of BreastCheck, I have suggested previously that consideration should be given to a linkage with the existing service in Derry as an interim measure. However, I recognise the support that is being given to allow women who are worried to attend clinics in Belfast for mammograms and I trust the roll-out of BreastCheck in County Donegal will come quickly.

I recognise the Government's support of the surgery in Letterkenny and congratulate the team there. The permanent appointment of a surgeon for Letterkenny who is linked to the Galway facility is an important move to provide a critical patient mass that will increase survival rates for patients. All Members know that a critical mass and such multidisciplinary teams are the best way to ensure the sharpest knives and keenest eyes.

The next piece of the jigsaw is radiation oncology. While I am aware of the ongoing important talks on having a satellite service in the north west, interim support was given in the form of the link to Belfast. This leads me to the key question. Given the journey time and distance to Dublin and Galway — the latter is 20 miles further from my home than is Dublin — and given the effort made to break down many borders and the consequent political success of equal access for 50 patients, why, more than a year later, can one not discern the patient gain from this closer and equally professional location?

Is there a problem in Belfast? Are patients not getting access or priority in comparison with patients from the Six Counties? Should this be the case, it raises fundamental questions on the ability to work on an equal footing in respect of the satellite unit for the north west. The answers need to be clear at this point. This does not fit

with what I have been told to date by officials of the Department of Health and Children or by the Minister, Deputy Harney, where the emphasis has been on partnership and equality of treatment for those places that have been acquired. Since I raised this issue last week in County Donegal, a number of people have asked me the reason those with bowel cancer are being told they are not entitled to go to Belfast. Such people are very anxious that I should get answers this evening regarding the lack of take-up of the 50 places.

Last year, the question posed by local media was what would happen were more than 50 patients to present themselves. The answer I received was that since this is a pilot project, if more places were needed, more places would be negotiated. What has gone wrong? Will the Minister of State undertake to draw the attention of the Minister for Health and Children, Deputy Mary Harney, to the need to ensure the 50 places will remain open to patients and will not be withdrawn owing to the lack of uptake to date? Is the reason for the lack of take-up clinical, medical, psychological or due to a lack of patients being informed? The Minister of State should enable me to ascertain the reason.

The opinion of the daughter of one patient is that patients in Letterkenny General Hospital are not being actively encouraged to go to Belfast. She believes that during consultation about radiotherapy treatment with a consultant from Dublin, the option of Belfast was mooted but skipped over. Patients are expected to make a spur-of-the-moment decision and are not given the benefit of time to consider the advantages and disadvantages of travelling to Dublin or Belfast for their treatment. It is assumed automatically also that if a patient chooses Belfast, he or she must have friends or relatives there. The same is true when a patient opts to travel to Dublin. However, none of this criticism detracts from the care given. Should patients choose Belfast, they are duly referred to a consultant there.

This person did not think patients had enough information before going for their radiotherapy consultation to make them aware they had a choice and that accommodation in and transport to Belfast were provided as well as for Dublin. The mother of this person recently finished her radiotherapy treatment in Belfast and my information is based on her experience and that of others whom she met. She considered the radiotherapy unit and the accommodation facilities in the Glenview building at Belfast City Hospital to be excellent, as was the support network. In addition, as the facilities are much closer to home, this cut down on travelling times. She understands the facilities in Dublin are excellent too, but the journey time is longer. That is the reaction of the daughter of one patient who was through the system.

There is a great deal of talk of a 32-county Ireland and there is a concern about isolation in

the north west. This is a solution to some of the difficulties presented. I hope the Minister of State, Deputy McGuinness, has answers from the Minister for Health and Children why this option has not been taken up and whether it is intended that cancer patients of all types would gain from the facility should they wish to use it. From what I have heard, I do not believe there are only six patients who want to go to Belfast. Go raibh maith agat.

Deputy John McGuinness: I omitted to mention to Senator Ó Domhnaill that I appreciate his comments and suggestions and that I will bring them to the attention of the Minister.

I thank Senator Keaveney for raising this matter on the Adjournment. The Government decided in July 2005 to improve geographic access for patients in the north west to radiation oncology services. It was decided to facilitate access to Belfast City Hospital and to progress consideration of a joint venture for the provision of oncology services in the medium term to patients in the north west from a satellite centre in the north west linked to Belfast City Hospital.

Cancer patients in the north west requiring radiation oncology treatment are referred to either St. Luke's Hospital, Dublin or University College Hospital, Galway. As the House is aware, a service level agreement is also in place for the referral of radiation oncology patients from Donegal to Belfast City Hospital.

The Health Service Executive has informed the Department of Health and Children that a mid-term review of this arrangement was held in September. At that point, 12 patients had used the service. This represents 24% of the initial estimate of patient demand. The HSE expects that uptake will continue to increase, but the figure of 50 was an initial upper estimate of demand and not a target, as this facility is offered for the benefit of those patients whose circumstances would be suited by the shorter journey to Belfast and the possibility of mid-week or daily return home. However, this is only one factor in a patient's decision and may not be the most important one for each individual.

The actual uptake for Belfast is a matter of individual patient choice following advice from a consultant. It was never expected that the majority of Donegal radiotherapy patients would choose to go to Belfast rather than Dublin given family and social connections, transport links, and the fact their initial consultation is with a consultant from St. Luke's Hospital. The HSE has advised that this service effectively commenced in March 2007. Patients are seen by the visiting consultant radiation oncologist in Letterkenny General Hospital who is attached to St Luke's Hospital, Dublin, and those whom he considers would benefit from radiotherapy are offered the choice of having their treatment in Dublin or Belfast.

[Deputy John McGuinness.]

The HSE has informed the Department also that transport arrangements have been put in place to facilitate patients who wish to go to Belfast. Patients who go to Belfast report satisfaction with their experience. The initial phase of this agreement comes to an end on 31 December, following which a comprehensive review of the service is to be carried out.

This agreement reflects the significant commitment by Government to developing North-South co-operation in health. The Minister for Health and Children, Deputy Harney, met Minister Michael McGimpsey of the Department of Health, Social Services and Public Safety in Northern Ireland on 28 November last. The potential for further cross-Border co-operation and collaboration on cancer care and, specifically, provision of a satellite centre for radiation oncology in the north west linked to Belfast City Hospital was discussed in the context of a joint North-South feasibility study on the potential for future co-operation.

The Government is committed to making the full range of cancer services available and accessible to cancer patients throughout Ireland, including Donegal. There is considerable political, departmental and service commitment to delivering on this agreement with Belfast City Hospital. It is important this initiative succeeds as it will support further co-operation in health care, including cancer care.

Senator Cecilia Keaveney: I thank the Minister of State for his response. There is no doubt people want this service to work. Perhaps he would ask the departmental officials to respond to the specific questions I asked. I refer in particular to whether the radiation oncology service is specific to breast and prostate cancer or whether it includes bowel cancer. This is an issue for a small number of patients who have been in touch with me. If it is an option for them, they are more than willing to go to Belfast.

The Seanad adjourned at 6.55 p.m. until 10.30 a.m. on Wednesday, 5 December 2007.