Vol. 188
No. 1

Tuesday,
11 December 2007

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 11 *December* 2007.

SEANAD ÉIREANN

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

TUAIRISC OIFIGIÚIL
OFFICIAL REPORT

IMLEABHAR 188 VOLUME 188

Dé Máirt, 11 *Nollaig* 2007.
Tuesday, 11 *December* 2007.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.
Prayer.

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 Community, Rural and Gaeltacht Affairs to allocate funding to the Inishboffin (Dhun na nGall) pier refurbishment project and the Tory Island sea wall project.

I have also received notice from Senator Cecilia Keaveney of the following matter:

> The need for the Minister for Finance to clarify the status of the acquisition of a site in Inishowen for a national car testing centre as was recommended in the mid-term review but which seems to have stalled mid-process.

I have also received notice from Senator Nicky McFadden of the following matter:

> The need for the Minister for Transport to ensure Killucan railway station be re-opened and park and ride facilities be made available to the commuters on the Sligo-Dublin line.

I regard the matter raised by Senator O Domhnaill as suitable for discussion on the Adjournment and it will be taken at the conclusion of business. I regret I have had to rule out of order the matter raised by Senator Keaveney as the Minister has no official responsibly in the matter. It is a matter for the Road Safety Authority. I also regret I have had to rule out of order the matter raised by Senator McFadden as the Minister has no official responsibility in the matter. It is a matter for Iarnród Éireann.

Before I call on the Leader, I would like to welcome to the distinguished members' gallery former Members of this House, namely, Mary Henry, Michael Brennan, Liam Fitzgerald, Kathleen O'Meara, Sheila Terry, Tom Fitzgerald and Brian Mullooly, who is a former Cathaoirleach. I wish them a happy Christmas and a prosperous new year.

Order of Business.

Senator Donie Cassidy: Cathaoirleach, I would like to be associated with your kind expressions of welcome to the magnificent seven here today, who served our country with great distinction. Senator Tom Fitzgerald was Government Whip in this House when I was Leader.

The Order of Business is No. 9, motion re Regional Fisheries Boards (Postponement of Elections) Order 2007; No. 10, motion re Fisheries (Miscellaneous Commercial Licences)

[Senator Donie Cassidy.]

(Alteration of Duties) Order 2007, back from committee, to be taken without debate at the conclusion of the Order of Business; No. 1, Defamation Bill 2007, Committee Stage, to resume at the conclusion of Nos. 9 and 10 and to adjourn not later than 6 p.m., if not previously concluded.

Senator Maurice Cummins: I join with others in welcoming former colleagues to the House. Last night's "Prime Time Investigates" programme highlighted the amount of drug use and its availability throughout the country. The dangers to people's health were highlighted. The violence on the streets was frightening and this part of Celtic tiger Ireland is not something to be proud of. It presents many challenges for the Government and for society. Those taking cocaine for so-called recreational purposes must get the message that they are involved in a very dangerous and criminal activity. It is killing people and lining the pockets of dangerous criminals. If they know that a party is going on where drugs are freely available, citizens have an obligation and a responsibility to report it to the Garda. They cannot turn a blind eye and leave it somebody else.

The Garda Síochána and customs officials must be given the necessary resources to tackle this problem. There is just one scanning machine to cover all of our ports, which is unacceptable in this day and age. We on this side of the House are willing to support any legislative proposal by the Government that may assist, but greater urgency is required to tackle this problem which is ravaging the country. I call on the Minister to outline to this House his proposals to tackle this problem.

Last week a report on emergency services for the homeless disclosed that many of the hostels that house homeless people leave much to be desired and do not comply with fire safety regulations. It also stated that a significant proportion of residents have mobility problems and poor physical health and that standards set out in the fire regulations for hostels need to be addressed. Governments and societies are judged on how they treat the weakest. We have some way to go before proper accommodation, assessment and appropriate support is provided for our homeless. I ask that a debate on this issue be taken as a matter of urgency in the near future.

Senator David Norris: This lunch time the report on rendition by the Irish Human Rights Commission was published. Some of us heard on the radio news the comments of a senior person there which make it clear that the country has not met its human rights obligations. More importantly, that person made detailed reference to exchanges between the Department of Foreign Affairs and the IHRC in which it was clear that the Government and its agents were attempting to lean on the IHRC and interfere in a way that transgresses the boundary of separation that should exist between an independent human rights commission and the Government. This is a serious matter. The Seanad is aware of this kind of thing as the commission we were on the way to establishing was dismantled because the Government was afraid of what might emerge. I ask for a full debate on this important issue next week.

The IHRC has called for an effective inspection regime for the aeroplanes at Shannon, advance information on the nature of the flight and details of personnel held on board well in advance of any aircraft landing. I quote IHRC commissioner Ms Suzanne Egan:

> In the context of three pan-European investigations into the issue of extraordinary rendition flights through the territory of European states the IHRC has conducted a comprehensive review and concludes that in its approach to extraordinary rendition the Irish State is not fully complying with its human rights obligations. The State's reliance on diplomatic assurance is not enough to satisfy these obligations.

Many in this House have been saying this and have given clear evidence collected by ordinary citizens such as Mr. Tim Hourigan at Shannon Airport detailing the flight pattern of these aeroplanes. Without question Ireland has been involved in rendition. We must open up about it and take this report on board in the light of a number of reports from Europe. The European Parliament report in February 2007 included a resolution deploring Ireland's involvement. The Marty report by the Parliamentary Assembly of the Council of Europe said simple assurances from heads of state have no legal force. I call for a detailed, open and honest debate on this, which was stifled by the previous Government.

I agree with Senator Cummins about last night's horrifying "Prime Time Investigates" programme. This situation can be approached only on a global basis. I also agree with him on the homeless. The Seanad should examine the report issued by the Simon Community today, which indicated that 55 homeless people who had contact with their agency died on the streets in 2006. Their average age was 42 years. This is a reproach to us.

Can the Leader confirm today's reports that an officer of the immigration services charged with examining people as to their categorisation as asylum seekers, refugees or otherwise was the subject of an action in the courts on the grounds that he had never allowed a case? The individual who took this case won it and the judge decreed that this man's case should be transferred to another examiner. If this is true, will the Leader communicate urgently with the Minister for Justice, Equality and Law Reform to the effect that if that man is unfit on those grounds to try that case, he is unfit to try any case, and should be dismissed at once?

Senator Dominic Hannigan: I second the call by Senator Norris for a debate on rendition. It is important that we have such a debate next week, if possible.

I also want to raise the issue of the impact of lifestyles on health, and ask for a debate on this matter. The release of more studies yesterday by the Department of Education and Science make for depressing reading. Once again, they refer to the lack of indoor spaces in schools for physical education. The lack of indoor facilities means many children and their teachers have to cancel physical education exercises because they are at the mercy of the weather. It is the Minister for Education, Deputy Mary Hanafin, who should determine the physical education curriculum, not Jack Frost. It is no wonder there is a growing level of obesity in our society when schools lack the basic facilities to allow physical education to take place. If we are serious about encouraging exercise, we need to start early.

Yesterday, a report by Ipsos Mori on the participation of elderly people in active life suggested that three out of five of them have sedentary lifestyles. Only one in five takes a sufficient level of exercise to maintain and improve his or her health. Last night the Irish Association for Emergency Medicine stated that one of the biggest problems facing accident and emergency departments is the persistent and excessive level of overcrowding. Is it any wonder the accident and emergency departments are so overcrowded when, as a nation, we fail to promote and encourage exercise in the community?

We need to start by encouraging exercise in our community. It is not just about providing more hospital beds and getting more doctors, we can reduce the level of such overcrowding by encouraging exercise. I ask the Leader to arrange a debate on preventative measures to ensure we see lower levels of heart disease through encouraging participation in sport and investment in school buildings to allow children to exercise indoors during physical education periods.

Senator Denis O'Donovan: Last week I called for a debate on the question of the Cork-Swansea ferry. As I am not sure whether it is too late for such a debate, I ask the Leader to urgently intervene with the Minister in question since I understand a boat has been identified and there is a window of opportunity. We missed the boat, so to speak. The situation has cost the west Cork and Kerry economy upwards of €70 million this year. A boat has been identified and an entrepreneur, who had hoped to raise additional funding through American sources, regrettably had his application declined because of financial uncertainty with the banks there. It will not be good enough if the Cork-Swansea ferry is not in place for the communities I serve in that region of both Cork and Kerry. Apparently boats such as the one that has been identified, are very scarce. Only certain types of boat are capable of this ten or 12-hour journey, and can double both as a passenger ferry and a freight or car ferry. The matter is extremely urgent, and perhaps the Leader could make contact with the Minister today. I am disappointed, given my own channels of investigation, about what can be done at this stage, and time is running out.

I want to add my voice and support to the matter raised by the Leader of the Opposition, Senator Maurice Cummins, on the issue of drugs. The matter of the closure of coastguard stations at Cahirciveen and Malin Head was raised last week. A substantial portion of drugs comes ashore off the south-west coast. The busiest shipping lanes off Europe pass close to Fastnet Rock, Mizen Head and the south-west coast. This year, to the good fortune of the Customs and Excise Service and the Garda Síochána, the largest haul of cocaine ever found off Ireland or the UK came ashore by accident.

Cocaine is a serious issue. Rather than close the coastguard stations, a strategy of extra surveillance along the coastline should be put in place and spearheaded by the Garda Síochána, the Customs and Excise Service and all those concerned. For the one success we had this year I imagine four such consignments were landed. It is not conducive to the health of people in general and society's attitude needs to change. If the recent deaths and tragedies have a silver lining it is that people might realise that society accepts that cocaine is the in-drug and this attitude will change.

Senator Eugene Regan: I wish to speak on the cocaine epidemic and the tragic events of the past week. An issue is raised of human rights and the political philosophy on which we operate. This goes back to John Stuart Mill's principle of individual liberty and that we restrict the individual only to the extent it is necessary in the common interest.

We know a link exists between individual usage of cocaine and crime, the destruction of lives, violence and gangland crime. We also know we can do only so much to restrict the supply side through the best efforts of the Garda Síochána and co-operation at European and international level. If we do not examine the demand side we fail to tackle this problem. I call for a debate on the specific matter of the demand side. It must be done by a combination of persuasion, penalty and fines.

The Leader of Fine Gael, Deputy Enda Kenny, proposed voluntary random drugs testing in schools, to which the Taoiseach responded positively. However, a case can be made for mandatory random drugs testing in places of employment, universities and public institutions. This could start with the Oireachtas. This is a serious subject and it would be an extremely serious measure. However, if we are serious about tackling the usage of drugs and the downstream effects of this usage, it is a mechanism that could be considered. Already, we have random testing

[Senator Eugene Regan.]

of drivers for alcohol. It is in the common interest.

Senator Larry Butler: I rise to extend my sincere sympathies to the families who have lost their sons and daughters to drugs during the past week. I thank people on the other side of the House for their support. We have a duty and a job to do together in this House and the way to do it is unanimously. We must think outside the box in terms of how we will reduce the supply of cocaine. I agree with the Leader of the Opposition that one x-ray machine at one of our main ports is not enough. We are playing while dealing with professionals. If we do not approach in a professional manner what is done by the Garda Síochána and other organisations available to the State we will not be successful in the fight against drugs.

The "Prime Time Investigates" programme on RTE last night was an example of excellent, methodological reporting. It is appropriate that Senators should comment when the public broadcaster does a good job. The programme makers left nothing to chance and showed how the lives of young people and their families have been taken over and destroyed by drugs. It is frightening to have had such large loss of life in such a short time, with two young men in Mullingar still on life support machines. The House has a responsibility to the wider community to consider introducing roadside drug testing, which is in place in Spain.

An Cathaoirleach: The Senator may raise these matters if the Leader arranges a debate on the issue.

Senator Larry Butler: The "Prime Time Investigates" programme indicated that people from all walks of life are using cocaine. Train drivers, airline pilots and bus drivers may be using it. Occupational groups which have a responsibility to members of the public should be subjected to drug testing. A bus driver is responsible for 50 or more people.

An Cathaoirleach: The Senator has made his points well. I hope the Leader will be in a position to facilitate his call for a debate.

Senator Larry Butler: Security is very important in the context of drugs. We should use satellites and other technologies to reduce the volume of drugs entering the country.

Senator Ivana Bacik: I support the calls made by Senators Norris and Hannigan for a debate on extraordinary rendition. The report of the Irish Human Rights Commission makes serious claims which should be debated in the House as a matter of urgency. It is important we ensure Ireland does not breach human rights obligations in this regard.

In response to the calls for a debate on the drugs issue, while all Senators are deeply sympathetic to the families of the young people who have died, calls for mandatory drug testing in all sorts of fora, including schools, universities, hospitals and even the Oireachtas, cannot be taken seriously because they would be much too great an encroachment on the civil liberties of us all.

Senator David Norris: Hear, hear.

Senator Eugene Regan: We are in a very serious situation.

Senator Mary M. White: It has to be done.

Senator Ivana Bacik: A strong case can be made for roadside drug testing as we already have roadside alcohol testing. The knee-jerk hysteria we hear whenever the issue of drugs is discussed is not the way to tackle the problem or help the real victims.

Senator Mary M. White: It is not knee-jerk hysteria.

Senator Larry Butler: Senator Bacik is soft on drugs.

Senator David Norris: Senator Butler is an old poseur. He should withdraw that remark.

An Cathaoirleach: Allow the Senator to continue without interruption, please.

Senator Ivana Bacik: Accusing people of being soft on drugs is typical of the kind of hysteria that accompanies this debate and does not help anybody, especially the real victims such as the unfortunate couriers and others shown on the streets in the "Prime Time Investigates" programme last night.

Senator Mary M. White: A serious and speedy response is needed.

Senator Ivana Bacik: Our concerns should be with the real victims. The Simon Community has produced a report showing that many people are homeless on the streets as a result of drink, drugs and psychiatric problems. Homelessness is linked to the issue of prison. If the House debates homelessness, and I called for such a debate last week, it should also debate prison policy because many of those who leave prison re-offend and return to prison in a terrible cycle because no provision is made to shelter or accommodate them. The Simon Community report makes chilling reading for us all.

Senator Eoghan Harris: I join the call to have a debate on drugs with the Minister whom I commend on the calmness and lack of hysteria with which he has approached the tragic deaths of a number of young people. Discussion of this issue

can easily turn hysterical and there is a danger of knee-jerk reactions. I choose my words deliberately and may not be popular on this side of the House for doing so. Ten years ago I would have believed everything that was said on this side but I have done a great deal of work on the drugs issue and given it considerable thought.

Senator Jerry Buttimer: Was that before the general election?

Senator Eoghan Harris: I have done so for the past ten years.

The taking of drugs like the taking of alcohol or any other substance is fundamentally a matter of individual choice. If people want to kill themselves, then the same numbers of people who kill themselves with alcohol will kill themselves with cocaine. What is causing the disruption, agony and the horror of society is the fact that drugs are illegal and the criminal classes have attached themselves to the body of society.

3 o'clock

Senator David Norris: Hear, hear.

Senator Eoghan Harris: No one is being shot in the back of the head because of addiction to alcohol. The drugs war against drugs has lasted the best part of a century in America. At the end of it, the addiction problem and the criminal problem is great. If we are to have a debate it should be open and free, with thinking the matter through to the bitter end.

I honestly confess that much of the stuff about cocaine and drugs was a mystery to me and still is. I pay tribute to the "Prime Time Investigates" programme last night. We have often said hard things about RTE in respect of the recent ridiculous carry on following Ms Justine Delaney-Wilson's book. The truth is, most RTE programmes are of the standard of Ms Keelin Shanley's brilliant "Prime Time Investigates" programme last night. The factual area of RTE, which has come in for criticism, has been responsible for brilliant programmes on Liam Clancy, mental health, Coolacrease, Frank Aiken and the "Hidden History Series". When the joint committee on communications meets I hope it will balance on the scale all the good work RTE does against the odd error it makes. On the scale on balance RTE comes out well ahead on factual and investigative programmes.

There are two problems in relation to drugs that we might flag for this debate. The first is the problem of adults taking drugs which raises the questions raised by my Senator Regan. He began with a statement on human liberty, the supply and demand side. We have to deal with the right of adults to decide what to do with their lives. Second, is the need to protect young people from drugs, the way we protect them from alcohol, smoking and so on. Let us face the fact that none of the young people was watching "Prime Time Investigates" last night.

Senator Jerry Buttimer: That is right.

Senator Eoghan Harris: I talked to the Minister of State before coming into the Chamber and told him how right he was to go to Bebo and Facebook and the areas where young people are engaging with young people. Young people think they are immortal, whether living in South Hill or taking drugs as teenagers. They do not think they are going to die. If one is to engage with them one cannot wag fingers at them from the adult world, one has to use their language and their way of thinking. Part of their way of thinking is to engage with them at the sensory level.

Senator Michael McCarthy: Speech.

Senator Eoghan Harris: If they are getting satisfaction from PlayStation it is not beyond the wit of man to devise programmes that will meet the needs of young people in that sensory area. If we are to have a debate let us think the unthinkable in this debate. Let us think about whether the question of the criminalisation of drugs must be seriously addressed as part of the debate on drugs.

Senator David Norris: Hear, hear.

Senator Jerry Buttimer: I join with my colleague, Senator O'Donovan, in asking the Leader to press the Minister to come into the House for a debate on the Cork-Swansea ferry. It is critical to regional development in the southern region and particularly in the Cork-Kerry tourism area.

I join with Senator Cummins in raising the issue of drugs and, in particular, "Prime Time Investigates" last. Like Senator Harris, I congratulate RTE on its approach to the problem. The programme last night would have been lost to the generation to which it is most applicable. I appeal to RTE to put the video of the programme on uTube where it can be accessed by thousands of young people.

Taking on board the views of Senator Bacik, I call for a debate on the whole issue of sentencing as regards drug use, including those who deal in and sell drugs. The Judiciary has a critical role in stopping this problem. Unlike Senator Butler I do not think those who deal in drugs are professionals, they are low life and we should not call them professionals.

I call for a debate on the whole issue of the housing strategy and homelessness in the context of the St. Vincent de Paul report today which has highlighted the death of 55 people. It behoves all of us today to take cognisance of the fact that there are families suffering as a consequence of choices made by individuals. This is about fellow human beings and I hope we can have a constructive debate. We had the Minister here a couple of weeks ago and he is a decent person. The national drugs strategy needs to be reviewed urgently and I ask the Leader to arrange for that debate in the context of the drugs strategy.

Senator Labhrás Ó Murchú: I join Senator Harris in complimenting RTE not just on last night's programme but on being a quality station generally. It has done excellent work and it is not long since it screened an exposé on alcohol abuse, which is linked with the abuse of drugs. What we saw last night may have come as a surprise to some but in the main we are aware this is taking place.

An ordered society always requires constraints on individual rights. We can sometimes park our car in one position, for example, whereas at other times we cannot. We must watch the speed at which we drive and we are told how many drinks we can have before we drive a car. If individual rights were being debated, it would not be unusual to decide it is, at the end of the day, a matter of the lesser evil and the greater good.

I am in favour of zero tolerance with regard to drugs given what I see happening at the other end of the scale. Old people are being terrorised as a result of drug abuse. I have no doubt much of the criminality in this country is as a result of addiction to drugs and the money required to feed that addiction. I have no doubt we will all find ourselves virtual prisoners in our own society and community if we do not take a stand. We will come to a point where we will not be able to redirect society to ensure the quality of life for the people.

No message should go out from this House that we are in any way soft on drugs. We should push for zero tolerance because the ordinary citizen deserves this from us.

Senator Mary M. White: Hear, hear.

Senator Alan Kelly: For a number of reasons, I call for a debate on the future of the technology sector. The House will discuss later today broadband and small and medium enterprises, but the future of our economy in many areas is based primarily on the future of technology and this issue is not being taken seriously enough.

While I have many concerns, most of which I will not refer to here, a specific concern is the role of Enterprise Ireland, the reports of which, while often worthy, leave gaping holes. I am also concerned by reports that the so-called Silicon Paddies who have gone to Silicon Valley seeking investment in their enterprises have stated this week they received no worthwhile help from Enterprise Ireland and asked for it to desist from helping them. This is a serious concern. I ask the Leader to discover why these people felt they did not need the help of Enterprise Ireland. SMEs in Ireland are discovering they cannot get investment and cannot access tax breaks. An opportunity was missed in the budget in this regard.

The people have the education and skills to put them at a level whereby they can bring forward technology and technology companies but, unfortunately, we do not have second generation networks for broadband or the required investment. That is the concern.

An Cathaoirleach: That is a matter for the debate. The Senator has made his point.

Senator Alan Kelly: I thank the Cathaoirleach. On another issue, today was a day of great concern to me because, unfortunately, I had to deal with a person I will call the Chemical Ali representative of the Health Service Executive in terms of press relations. As some Members may be aware, I visited Nenagh hospital last week with Labour Party colleagues and press photographers when we were denied access to a CT scanner that has been lying idle for eight months.

An Cathaoirleach: The House can do nothing about the management of the HSE at local level. The Senator has made his request to the Leader. If the Leader can do something by way of a request to the HSE——

Senator Alan Kelly: With all due respect, I have only spoken for two minutes in comparison with other Senators who have spoken.

An Cathaoirleach: I have been very fair to the Senator on a number of occasions.

Senator Alan Kelly: I will wrap up. From the point of view of the HSE there seems to be some form of new agenda when it comes to dealing with public representatives and the press. Inaccurate comments were made about me, so I went directly to the person concerned to seek redress but I was told I had gone through the wrong channel. How long will it take me to get around to the correct channel and contact the right person? I went to the right person in the first instance. The HSE should stop dealing with people in this manner and treat them in a dignified way.

Senator Brian Ó Domhnaill: I wish to raise two issues. The first concerns the undocumented Irish to which I have referred on a number of occasions in this House. We are now approaching Christmas, the season of goodwill, when families want to be together, yet between 40,000 and 50,000 Irish individuals in the United States of America — the so called undocumented — will not be able to return home to their families for the holidays. I am seeking an update from the Minister for Foreign Affairs to determine the current stage of the debate.

Second, I support all that has been said about drugs. Like everyone else in the House, I watched "Prime Time Investigates" last night. It was a harrowing replay of what occurs daily on the streets of Ireland. Drug pushers are exposing young people to real risks. Even in a rural county such as Donegal, drug pushers are actively engaged in selling illicit drugs to young people. This situation must be challenged and I support what all Senators have said in this regard. We must strongly support the Minister of State, Deputy Pat Carey, who is doing his utmost to deal with the issue. I also support Garda Commissioner

Murphy, who today called for communities to name the people who are destroying lives, young and old. People should make any information they have known to the Garda Síochána so that the miserable actions of drug dealers can be targeted and stopped. We should have a debate on drugs in society. I agree with Senator Harris's point about the adult population, minors under 18 and the pushers who are targeting them.

An Cathaoirleach: We can discuss all that in the debate.

Senator Brian Ó Domhnaill: I ask the Leader for such a debate as quickly as possible.

Senator Dominic Hannigan: We had one three weeks ago.

Senator Mary M. White: We do not need a debate, we need action.

Senator Nicky McFadden: I acknowledge your consideration of my Adjournment matter, a Chathaoirligh, and accept your decision. However, I am increasingly concerned as to who is responsible for transport, which was the subject of my Adjournment matter. Who is responsible for health?

An Cathaoirleach: I will not allow a discussion on a ruling of the Chair.

Senator Nicky McFadden: That is all right.

An Cathaoirleach: That matter was ruled upon and if I could have allowed it, I would have done so.

Senator Nicky McFadden: The Minister for Transport should attend the House for a debate on the reopening of Killucan railway station with a park and ride facility, as well as the Mullingar-Athlone rail link, which is a pressing matter. I have raised the latter issue before now.

Senator Maria Corrigan: I support the calls by other Senators for a debate on drugs. Such a debate should seek the integration of the alcohol and drug strategies. It is no longer acceptable or appropriate to view alcohol abuse and drug or substance abuse as two separate issues. In reality, alcohol is most frequently the gateway to drug abuse. If we are concerned about early intervention through an effective drugs strategy, there must be a seamless integration of the alcohol strategy within it. I refer to the right of individuals to choose to take drugs. That issue must be viewed in the context of the implications of the actions on others of people taking drugs.

Three issues need to be considered. The first is that the taking of drugs fuels criminal activity as a result of which innocent people are being injured with increasing frequency and, in some cases, killed. The second is that there is a real chance that the taking of drugs will impact detrimentally on a person's motor and visual skills and on the integration of both. That has implications for anyone for whom such a person taking drugs has responsibility.

The final issue is that there is an area with which we are not familiar, namely, the implications for people taking drugs in later life. We now have the research to back up the fact there is a direct link between the onset of mental health difficulties and mental illness as a result of taking drugs. We must ask in that context how we can afford individuals the absolute right to take drugs.

Senator Michael McCarthy: I join other speakers in calling for a debate on drugs. I congratulate the "Prime Time Investigates" programme makers and RTE on last night's forceful investigative programme and look forward to tonight's follow-up programme.

I refer to the policing of our shoreline and waters. The Sea-Fisheries Protection Authority received €14 million in the budget to persecute fishermen around the coastline. We depend on the goodwill of fishermen to police our waters by bringing to the attention of the authorities any finds they make, of which there are many. We need to bear in mind that a co-ordinated and integrated approach is required not only among political parties, as I said last week. Political parties came together to fight subversives in the 1980s and the same type of political approach is now required. We need an integrated approach and to bear in mind that fishermen, in effect, police our waters.

I welcome the Minister for the Environment, Heritage and Local Government's green budget last week. It is a good move and is indicative of the Green Party's involvement in Government. I look forward to it being rolled out. I refer to low emission cars. Will the Government lead by example in respect of the ministerial fleet? Has any Volvo or Mercedes-Benz been replaced by a Toyota Prius or a car with low emissions? The Government must lead by example. I understand the Minister of State, Deputy Trevor Sargent, is using a Toyota Prius, an initiative taken by Niall Ó Brolcháin when he was mayor of Galway. I would like such an initiative to be taken in respect of the entire ministerial fleet. If we expect the ordinary citizen to drive low emission cars, the Government must lead by example.

Senator Paul Coghlan: I join Senator Cummins and others in calling for a debate on drugs. As was said, we have often been critical of RTE but it did a super job in last night's programme bringing to our attention, in a forceful way, the shocking availability of drugs in our country. Traces of cocaine were found in 92% of places surveyed. Sadly, it is being made available too freely not only in clubs but in colleges. The late night, needless violence on streets in particular locations has also been referred to. There is an issue of edu-

[Senator Paul Coghlan.]

cation and I hope the Minister of State is doing his best in that regard.

As Senator Cummins said, we are quite prepared to back the Government in making available the maximum resources needed to deal with this problem. Perhaps more effective deployment is needed. We know where drugs are being, or are likely to be, made available. Perhaps that is something the Minister of State will examine in conjunction with the Garda so there is a more focused approach. We must resist and fight against the acceptability of this damn drug — cocaine.

Senator Donie Cassidy: Twenty-one Senators raised the issue of the "Prime Time Investigates" programme. I also compliment RTE on the professionalism it displayed last night in bringing the scourge of cocaine abuse to the attention of the nation. We all await with bated breath the second part of the programme tonight. As a national broadcaster, RTE must be commended. It was said that we are often dissatisfied, to say the least, with certain programmes but this was one of the best programmes I have seen on RTE this year.

Many good points have been made on the Order of Business. Next week is legislation week in the House. I am prepared, however, to——

Senator David Norris: One week a term; that is great.

Senator Donie Cassidy: I am prepared to forgo Private Members' business on behalf of the Government side to give Senators as much time as possible to make their contributions on this issue, starting at 5 p.m. next Wednesday. I will discuss with the Leaders after the Order of Business on Thursday morning how to prepare and make proposals to address the concerns of the House in respect of that matter.

We had a debate three weeks ago with the Minister of State at the Department of Community, Rural and Gaeltacht Affairs, Deputy Pat Carey. He is a very young, enthusiastic and energetic Minister and long before he or I entered this House, I knew of his great work with young people. As some older Senators probably will be aware, I have been a Member for quite a long time. They would respect the wide knowledge, experience and expertise of the Minister of State.

Senator Mary M. White: Hear, hear.

Senator Donie Cassidy: Everyone, not just those in the political system but the entire country, must come on side in respect of this challenge. Many good proposals have been made. The Garda Commissioner said today that he needs the total co-operation of everyone in the State. Thank God for closed circuit television systems and for private enterprise which is making CCTV systems available to gardaí to assist them in their efforts in this respect.

Fear left the law in respect of alcohol but is now coming back with random breath testing. Fear must enter the law in respect of drugs. The views of a professional such as Senator Corrigan who has considerable experience in a certain area of expertise, which she relayed to the House today, must be taken on board.

I appeal to those who were eminent legal people before they became Members of this House and those were directly involved in the health services to convene this week in a sub-committee of all parties in the House. I will ask Senator O'Donovan, the former Chairman of the Oireachtas Joint Committee on the Constitution and a man of great expertise and immense experience, to chair that sub-committee this week to see how best we can serve the House next week in respect of the Government allocating Private Members' business to have a meaningful debate. Such a debate would help us to see how we can progress and assist the Department, Minister, Government and the people in the challenge that lies ahead in respect of the horrific experiences everyone on this island has had, especially the poor unfortunate families of those who have died so young and so tragically over recent days and weeks.

Many of these things were not planned. Accidents are never planned but just happen. Unfortunately, these things have happened and we must come together as a community to deal with them. If there is one thing for which the people can be acknowledged, it is their spirit and willingness to rally to the cause whenever they are called upon to do so. I call on the people to come together and eliminate the scourge of the drug abuser and drug pusher from society.

I live in a small village called Castlepollard of which I am very proud because I was born and reared there. Last weekend, there were 11 break-ins in two nights in our community. A group of old people were watched going to Mass on Saturday night. Three individuals with a particular accent came to our village, broke into their houses and stole their duvets, all the various candlesticks and everything that could be stolen and put into car boots. They then had the audacity to break into the priest's house. Mass was supposed to finish at 8 p.m. but it finished at 7.55 p.m. and luckily Fr. Moore was in the house when they arrived. This took place for money to pay for drugs.

The case of the housewife struck me last night. She had to pay a drug taker money every week or he would beat her up. This is outrageous, citizens are becoming prisoners in their homes. As legislators, we have responsibility for this. The talking has been done and it is time for us to get together, under Senator O'Donovan, in the sub-committee which will be convened by tomorrow morning. We will be able to report progress and confirm when the meeting is taking place.

Senators Norris, Hannigan, Bacik and others expressed views regarding the human rights report and extraordinary rendition. We have

much legislation in the House next week. I have given Government time to the drugs debate. I have no problem having a debate on this at the earliest possible time.

Senator Hannigan called for a debate on lifestyle and health of senior citizens, school goers and all sections of our community. It is a worthwhile suggestion. Walking is the easiest and cheapest form of exercise. Without trivialising the issue, the Labour Party asked one question at the last general election, asking people if they were happy.

Senator Dominic Hannigan: We asked other questions as well.

Senator Donie Cassidy: The people gave their response last May. They were happy.

Senator Jerry Buttimer: They are not happy this week.

Senator Donie Cassidy: Walking is the cheapest and the best form of exercise. He should ready his colleagues in the Labour Party to go walking again.

Senator Dominic Hannigan: We are ready anytime the Leader is.

Senator Donie Cassidy: Members on this side of the House have proved they are champions at walking. I am not trivialising the matter, it is a worthwhile subject of debate.

Senators O'Donovan and Buttimer highlighted the serious challenge to the Cork-Swansea ferry. After the Order of Business I will see what I can do by contacting the Minister's office to assist this serious situation. Senator Kelly called for a debate on technology and particularly on the role of Enterprise Ireland. We will debate broadband in the House, and enterprise with the Minister of State at the Department of Enterprise, Trade and Employment, Deputy McGuinness, attending. As Chairman of the previous Joint Committee on Enterprise and Small Business I found Enterprise Ireland to be an excellent State agency. It is a credit to the country. We are fortunate to have Mr. Frank Ryan as chief executive. There is no better person for the job. I was in the Silicon Valley in the USA and the Silicon Valley in Bangalore, India. In each case Enterprise Ireland is *in situ*, working day in, day out. If the Senator has experience of Enterprise Ireland not playing a part I would like to take it up with the chief executive because it is not our experience of the agency.

Regarding Senator Kelly's query, public representatives of the people have a direct communication line with the HSE. If a new procedure is emerging we, as Oireachtas Members, want to know about it. In fairness to the HSE in the midland region we have a direct line with the executive in the area and can communicate on a daily basis with senior people regarding urgent matters. If the Senator wants me to take this up with the chief executive or the Minister I will do so.

Senator Ó Domhnaill referred to the undocumented Irish in the United States. The Taoiseach has been honoured as one of the few in the western world to address a joint sitting of the Houses of Parliament in the UK and the US Congress, comprising the House of Representatives and the Senate in a joint sitting. I hope to have the honour of representing this House when the Taoiseach delivers his address.

Senators: Hear, hear.

Senator Donie Cassidy: It will be an historic occasion and it is incredible our Taoiseach is acknowledged and recognised outside the country.

Senator Jerry Buttimer: He is following in the footsteps of previous Fine Gael Taoisigh.

Senator Donie Cassidy: Some within the country may not acknowledge what he has done but we must give credit where it is due. The Taoiseach gave a commitment at the weekend to continue to treat the question of the undocumented Irish as a top priority. He will deal with the matter during his address to the joint sitting of the United States Congress.

Senator McFadden requested a debate on transport, especially in the context of the reopening of Killucan railway station and the position on the Athlone-Mullingar railway line. I have no difficulty in arranging for the Minister for Transport, Deputy Dempsey, who is responsible for representing north Westmeath since its inclusion in the constituency of Meath West, to come to the House following the Christmas recess to debate the matter.

Senator McCarthy called on members of the Government to lead by example by using low-emission or green cars as their preferred means of travel. I will pass on his views in respect of the matter.

Order of Business agreed to.

Fisheries Orders: Motions.

Senator Donie Cassidy: I move:

That Seanad Éireann approves the following order in draft:

Regional Fisheries Boards (Postponement of Elections) Order 2007,

copies of which were laid before Seanad Éireann on 8 November 2007.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann approves the following order in draft:

[Senator Donie Cassidy.]

Fisheries (Miscellaneous Commercial Licences) (Alteration of Duties) Order 2007,

copies of which were laid before Seanad Éireann on 8 November 2007.

Question put and agreed to.

Defamation Bill: Committee Stage (Resumed).

SECTION 23.

Question proposed: "That section 23 stand part of the Bill."

An Leas-Chathaoirleach: I welcome the Minister for Justice, Equality and Law Reform to the House. The debate is resumed on section 23. Is the section agreed?

Senator David Norris: I have a difficulty with it but I am prepared to wait until we reach the next section to discuss it.

Senator Eugene Regan: Is it clear from this section that the onus is on the defendant to prove that the plaintiff consented to the statement?

Senator Jim Walsh: On the issue of consent, it generally arises by way of a telephone call to the person concerned.

Senator David Norris: Yes.

Senator Jim Walsh: If a person consents to a publication, he or she may not be fully aware of its full content. I have concerns that a person might indicate he or she is happy with a statement, but without knowing the detail of the full article, it is impossible for a person to give such consent. I do not know the case law on this issue but consent in this regard is not good enough. Such consents are generally sought at the last minute by reporters trying to cover themselves by making a telephone call to the person concerned and if he or she is not fully *au fait* with the total content of the article, it could create an injustice if such defence of consent were accepted by the court.

Senator David Norris: Senator Walsh's point has brought something to mind. I consider I was seriously libelled by one of the gutter newspapers some time ago and on that occasion I did not take the matter to court. I was telephoned around midnight and I got out bed to answer the telephone, the person read over what he or she proposed to publish and wanted a comment from me. That person was just covering himself or herself. That is precisely the kind of matter about which Senator Walsh spoke. Newspapers may in a sneaky way try to get one offside.

I imagine the Minister will say newspaper reporters must prove what they write. I wonder what is that proof. Does the provision mean proof in writing or can the record of a telephone call made late at night to a person be held to be convincing proof or would the person need to have a contemporaneous note or a recording of the conversation? The section does not seem to indicate that? If a person gives consent in writing in advance, he or she has very considerably weakened his or her case for taking an action for libel to the point of extinction. I have concerns about precisely the matter that Senator Walsh raised.

Senator Eugene Regan: The issue is that the defence of consent would apply only where the plaintiff is apprised of the full extent of the statement which is to be made and which then is the subject of the action. In circumstances where one is doorstepped and asked to accept or reject a cryptic statement that is put forward, the true situation is not covered. Therefore, some elaboration is needed on the consent required to enable this to be a valid defence.

Minister for Justice, Equality and Law Reform (Deputy Brian Lenihan): If Senator Regan wishes to table an amendment, I will it consider it sympathetically. This is a new provision and was not included in the 1961 Act. Therefore, Senators are entitled to question its meaning, as they are to question the meaning of anything that is put before them. However, specifically, they should raise any concerns they have about this section. I will examine the issue the Senator raised.

On the drafting of the section, as it stands, I advise Deputy Walsh that a consent clearly must be an informed consent. A consent is not simply a casual conversation with a garrulous newspaper man or woman at a late hour of night; it must be an informed consent. The expression "consent" in the section clearly is the consent of the plaintiff and, therefore, must be a consent to the publication of the statement in respect of which the action was brought. In other words, if a person said, "you can say of me that I am the keeper of a house of ill repute in this city" and consented to having said that, but did not own a house of ill repute, under this section he would not have an action for it. There have been cases where persons have uttered utter falsehoods and untruths to reporters for the purpose of generating libel actions. The consent must be freely and spontaneously given.

In relation to the onus of proof, an issue raised by Senators Norris and Walsh, the words "it shall be a defence" mean that the onus rests clearly on the defendant to make out the defence.

Senator David Norris: I wish to ask the Minister a question on what he has said. I have never heard it said that people have sought out newspapers and told reporters lies. Are there any proven instances of this? It would be fascinating if there were, and perhaps it is possible there have been such instances.

Returning to the matter of telephone calls by reporters, there is also a question of headlines carried by newspapers and information having

been twisted. I have to use Senator Walsh in the hypothetical case I will cite, but I do not mean to sully his reputation. I believe he has a wife. I am not so provided and, therefore, I cannot put this hypothetical question in regard to myself. If a newspaper reporter telephoned Senator Walsh and asked him, "Did you beat your wife last night?" and he rightly said "No" and the newspaper then carried the headline "Walsh says he did not beat his wife", the implication would be that nobody would believe him because they would know perfectly well that he beat the daylights out of his wife. That is type of circumstance I mean and perhaps such communication is a kind of consent. I am interested to know if there are cases of scams where people have lied to reporters to damage their reputation and have taken action on foot of that. I have never heard of it, but it might well be a lucrative additional source of income for Members of the House.

An Leas-Chathaoirleach: Senator Walsh is anxious to answer that question.

Senator Jim Walsh: No, I cannot think of the right answer to that question, one that would not get me into more trouble.

On the question of consent — I am sure the Minister would be able to advise me on this — there is reference in a later section of the Bill to the interaction between the reporter and the person who is defamed. Rather than inserting a defence of consent, I wonder if that later section deals sufficiently with this issue. I note the Minister said the consent would be an informed consent. That is not stated in this section but perhaps it is inherent from other laws.

Deputy Brian Lenihan: In what section is this?

Senator Jim Walsh: I cannot say off the top of my head, but there are sections dealing with interaction that takes place. For example, section 24(3) deals with the issue, as do other areas. I wonder whether it is necessary to include it. A kind of confusion can arise. It would not be uncommon if somebody was contacted off guard by a reporter who knew what he was doing and told the reporter he could publish whatever he liked. It might just be a throwaway remark and the person might not be fully *au fait* with the issue, but it could provide cover in a subsequent defamation case. Perhaps the Minister's point about informed consent is right and the courts would very strictly interpret that consent could only be given where the person had time to peruse fully the article and to respond to it in a measured way. However, I wonder whether it is necessary at all in the Bill.

Deputy Brian Lenihan: It has always been part of the common law. All we are seeking is a codification of that, which is an expression of what is the current law in statutory form. I cannot see that it prejudices the parties to a legal action.

Senator David Norris: Can the Minister give any examples of people telling lies?

Deputy Brian Lenihan: I could give many examples of persons who tell lies.

Senator David Norris: I will be more specific under cross-examination and ask whether the Minister can give any examples of people telling lies to newspapers with the intention of making profit from libel actions. He said he could do so.

Deputy Brian Lenihan: Not this afternoon. I will return to the subject on Report Stage if the Senator wishes to table an amendment.

Senator David Norris: I would be very interested in hearing some of these examples, if the Minister can dig them out. I do not mean to be awkward, but I challenged his predecessor on the basis that I have yet to come across a convincing case where the libel laws frightened off a proper investigative journalist from an investigation. I asked him on a number of occasions, but he said he could not find such a case, having previously said such cases existed. It is just a little piece of forensic cross-examination.

Deputy Brian Lenihan: Legal professional privilege prevents me from comprehensively answering the Senator's question.

Senator David Norris: My compliments on an elegant wriggle.

Senator Eugene Regan: To deal with Senator Norris' case and the situation that may arise, perhaps another defence should be built in here for the publisher. We have a whole list of defences, but we may need another defence. I will be putting down amendments on Report Stage for this and other sections of the Bill. We are agreeing to these sections on the basis that further amendments will be submitted on Report Stage.

Question put and agreed to.

SECTION 24

An Leas-Chathaoirleach: Amendments Nos. 16 to 19, inclusive, are related and may be discussed together by agreement.

Senator Eugene Regan: I move amendment No. 16:

In page 18, lines 26 to 36, to delete subsection (1) and substitute the following:

"24.—(1) Subject to *subsection (4)*, it shall be a defence (to be known, and in this section referred to, as "the defence of fair and reasonable publication") to a defamation action for the defendant to prove that the statement in respect of which the action was brought was published in good faith and in all the circum-

[Senator Eugene Regan.]

stances of the case, it was fair and reasonable to publish the statement.".

I think it is agreed that instead of a subject of public importance, the section should be amended to refer to a subject of public interest. I am not committed to the exact wording proposed in the amendment and I am prepared to withdraw it. However, I think that this section creates a defence which has very serious implications. It is based on jurisprudence established in the United Kingdom that has not yet been adopted in this jurisdiction, although there are intimations that it has been so adopted at the level of the High Court, following the Reynolds judgment. However, this is the subject of a Supreme Court appeal. In a sense, we are codifying jurisprudence which is not yet settled in this jurisdiction. That has far-reaching consequences because it sets up a defence which effectively means that a publisher can print an untruth and defame somebody, yet still establish a defence.

There is other jurisprudence in the US which states that there is no constitutional value in a false statement of fact. It affects confidence in politics and it also infringes the right to privacy and the constitutional right to one's good name. This section is very important and I question the extent to which we codify a defence which is not settled in the jurisprudence of this jurisdiction.

Senator David Norris: I agree with Senator Regan. I am astonished that a Fianna Fáil Minister would introduce this kind of thing in the light of the case mentioned by the Senator. This is the celebrated Reynolds case, which followed some American precedents that have been extremely damaging. Look at the state of play in America, especially for politicians and negative advertising. People can tell any quantity of lies with apparently complete impunity about opponents in a political race. People who are highly decorated war heroes can be described by little lice as cowards. People who never got their backsides off the seat in front of the television and who never fired so much as a pop gun in their lives, can still tell these lies. That is where all this thing started.

In my opinion, Mr. Reynolds was very badly treated by the British courts and I would be horrified that the same kind of practice could be pursued here. Senator Regan also made another point that I had intended to make. Under the Constitution, the State guarantees very strongly not only to protect but actively to vindicate the good name of its citizens. Yet this Bill states that someone can print something that is untrue, as long as it is done in good faith. That is not good enough and that is why my amendment is more limited than that of Senator Regan. My amendment just deletes the expression "in good faith". I do not believe in it and I think it is wrong. Why should people be allowed to print lies? What does good faith mean? Is there a definition of good faith? Does it mean that the publisher had the day off because of a hangover, so he did not look over the article in question? Does it mean that he was too stupid to realise that the thing was defamatory? Why should the stupidity or unprofessional behaviour of an editor be allowed to protect him or her against an action by a citizen?

4 o'clock

I am astonished at this. A very distinguished former Taoiseach and leader of the Minister's party was very badly treated under similar ideology in the British courts, yet here we are happily introducing it into our own legislation. No thank you.

Senator Jim Walsh: I said this on the previous occasion we debated this issue, when the Minister's predecessor took the debate, and I did not get far. This is a significant shift in our defamation laws. I agree with Senator Norris. The good faith criteria are weak. There is an amendment to remove section 24(1)(*a*), "in good faith", and even paragraph (*b*), "in the course of, or for the purposes of, the discussion of a subject of public importance, the discussion of which was for the public benefit", may not be strong enough. It is a shift towards freedom of expression, which we must make, but it could undermine all the other balancing measures we are trying to include for the person who is defamed, the plaintiff. This is significant.

If we continue with this we should have at least a paragraph (*c*) stating that strenuous efforts must be made by the reporter or publication concerned and obliging them to check or ascertain that what they are publishing is true and factual. That is not in place. I am concerned by the absence of this strong criterion, which should underpin all publications of statements that may impact on people's good names. If stories are not true they should not be published. This significantly dilutes that principle.

Deputy Brian Lenihan: Before I deal with the detail of the amendments I will say a few general words on this section. Section 24 puts on a statutory footing the new defamation defence of fair and reasonable publication on a matter of public interest. It extends the occasion of qualified privilege to the world at large. Defamations can occur on occasions of absolute or qualified privilege without malice. Formerly the phrase "public importance" was used and there is no issue on the fact that "public interest" is now proposed because it is a more precise concept. Senators are familiar with the genesis of this new defence. As Senator Norris said, it was first set out by the United Kingdom court of appeal in 2001 in the case of Reynolds *v.* Times Newspapers Limited, which developed this new defence.

Senator David Norris: It also came out of the United States case of Sullivan *v.* The New York Times Company.

Deputy Brian Lenihan: Sullivan *v.* The New York Times Company originated this doctrine in the 1950s. The High Court decision in July 2003 by Mr. Justice Ó Caoimh in the case of Hunter and Callaghan *v.* Duckworth and Company Limited and Blom-Cooper adopted the reasoning of the Reynolds case and introduced the concept into Irish jurisprudence. In September 2006 the United Kingdom court of appeal refined and clarified this defence in the case of Jameel and others *v.* Wall Street Journal Europe. In his consideration of the case of Leech *v.* Independent Newspapers (Ireland) Limited of June this year, Mr. Justice Charlton was of the opinion that a fair and reasonable defence existed for the Irish media and he drew heavily on the Jameel judgement. While Senator Regan said the matter has not been resolved by the court of ultimate resort in this country, the judicial precedents are not encouraging. The new defence provided for in section 24 codifies in statute the existing judicial position following the decisions of the Irish High Court to apply the reasoning of the United Kingdom authorities.

I agree philosophically with Senators Norris and Regan on this. Many commentators argue that the issue in defamation should be truth or falsehood. Absolute and qualified privilege trench on it, but to extend an occasion of privilege for media interest to include the whole world is a far-reaching step and I share the Senators' reservations. I would be interested to see whether Senator Regan can bring his party, including Members of the Dáil, along on this and whether there might be all-party agreement which would put us all in a stronger position. As Minister for Justice, Equality and Law Reform I am in a difficult position. Were I not to legislate for this area I would leave the matter to the courts, where the signals are not encouraging. Our only option therefore is to legislate for it but to restrict it in every way possible. The reference to compliance with the standards of the Press Council of Ireland has been inserted to make the defence difficult to make out. That is the only way forward.

As a person interested in legal matters I never agreed with the Sullivan judgment and the fact that our courts are introducing it is disappointing to me. As legislators we have a duty to stop them. In this legislation we purport to codify all the defences. If we do not address this issue, we leave it out and say it does not exist. I appreciate Senator Regan's comment that we should leave this matter to the courts, but the signs are that if we do so they will develop this defence at their own pace and on their own terms. When the courts raise an issue, we as legislators have a duty to respond to it in our way. My instinct on this defence is to circumscribe it as much as possible. Our views on this may be misrepresented in public comment and I want to be clear why I am concerned about it. Truth should be at a premium in defamation matters and our laws should not encourage the publication of falsehoods.

Senator Eugene Regan: I appreciate the Minister's outline of the case law. Mr. Justice Ó Caoimh's statement was *obiter dictum* to the case and cannot be relied on except in the broadest sense. The matter will be a subject of a Supreme Court ruling soon and that is why I say the law has not been settled. We must be conscious we are adopting legislation that might have constitutional impediment in light of the constitutional requirement that the good name of an individual be protected and vindicated. I am concerned that we do not overstep the mark in this legislation and we have an obligation on that.

Senator David Norris: The Minister has been open, honest and interesting. I applaud the fact that he shared his views on this difficulty with the House. I am pleased he thinks the judges' following the Sullivan case was the start of the rot, followed by the infamous Reynolds case in Britain, which no Irish person could relish. The Minister indicated that the Judiciary is following such precedents in other jurisdictions, as it is entitled to do, in the absence of any prescription from the Houses of the Oireachtas, which we are doing. The Minister has suggested an elegant and sophisticated approach in which we appear to do what the newspapers want but tie it around with so much red tape that they will find it difficult to enter this defence. We must legislate for this area but I would like us to do so that we can close it down. As the Minister said, truth is at a premium. If we allow newspapers to tell lies, they will be happy so to do and it will be damaging, especially with the impact of the British tabloids in this country. The judges will not follow these precedents if we legislate effectively and tie their hands. The judges only interpret the law, we originate it and it is up to us to do our best.

Further down the section is this business which I believe is lamentable. The Minister spoke about broadening out the concept of public benefit, etc., to cover the entire population and so on. However, in section 24(2) it is narrowed down again in a manner that raises questions. Subsection (2)(*a*)states:

> For the purposes of this section, the court shall, in determining whether it was fair and reasonable to publish the statement concerned, take into account such matters as the court considers relevant including any or all of the following:
>
> (*a*) the extent to which the statement concerned refers to the performance by the person of his or her public functions.

In other words, one can tell lies about people in public life and this can be construed as something of a mitigating factor. I do not see the logic of that, although perhaps, in one sense there is. On the Order of Business today, for example, there was an interesting series of exchanges about drugs and whether the approach should be to hammer down as hard as possible the American

[Senator David Norris.]

style war on drugs or to liberalise them by going towards decriminalisation and so forth. I can see a case, for example, if a Minister was taking a hard line on drugs and was then discovered every Saturday, in the potting shed, smoking joints and taking cocaine. At that point, fair enough, the Minister should be made responsible to public opinion. However, as regards this bald statement, "the extent to which the statement concerned refers to the performance by the person of his or her public functions", what has that got to do with the price of eggs? Why should that be allowed to dilute the necessary and primary element of truth? I cannot follow that.

I would inform the Minister that this is possibly unconstitutional. When the Constitution talks about vindicating a person's good name, it is very strong in this regard. It is one of the great things in Éamon de Valera's Constitution.

Senator Jim Walsh: One of the many great things.

Senator David Norris: It allowed me to decriminalise homosexuality. I thank Mr. de Valera, and I do not imagine he expected that.

Deputy Brian Lenihan: There are lurking problems still, in Article 41.

Senator David Norris: I am just making the point, and, regrettably I have to leave the House for a while, although not before I hear the Minister's reply. I believe we are creating two classes of person here. The Constitution does not say the good name of an ordinary citizen may not be dragged in the mud but if he or she is stupid enough to get elected to the Dáil or Seanad, or even a county council, then one may say whatever one likes about him or her. I do not believe that is right and I shall take a good deal of convincing.

Senator Jim Walsh: I welcome the Minister's comments as regards the premium on the truth, and it should be the criterion by which all sections of the Bill are measured.

Senator David Norris: Hear, hear.

Senator Jim Walsh: To follow through on the point I made earlier about the statement being true, I wonder whether we are proceeding with that. I heard what the Minister had to say on the advisability of it because of the codification. If section 24(1)(*a*) was to read, "[I]n good faith, following implementation of best practice in establishing the truth of the public statement, and...", then the term "In good faith" is qualified by compliance with best practice in the media and the newspaper business about establishing the truth. My understanding of the way the media operates is that if something is controversial or defamatory of somebody, it should not be published without corroborating evidence from other sources. At least that could put some degree of qualification on the term "In good faith". I am not sure whether it is perfect qualification, but it would certainly be an improvement on what is there. I share the concerns of other Senators that a lazy reporter could, in fact, just publish without establishing how factual or otherwise a statement was. The rest of the section contains some qualifications but this insertion, stating what is meant by fair and reasonable publication, ensures a definition that is as good and tight as it can be.

Deputy Brian Lenihan: On the specific point raised by Senator Walsh, my advice is that good faith encompasses all the factors subsequently referred to which includes, in the case of a statement published in a periodical, the extent to which the publisher adhered to the code of standards of the Press Council or to standards equivalent to those specified, and abided by decisions of the Press Ombudsman and determinations of the Press Council. However, I am prepared to look at the points Senator Walsh has raised to see whether it can be strengthened.

Amendment, by leave, withdrawn.

Government Amendment No. 17:

In page 18, subsection (1), line 27, to delete "as "the defence" and substitute "as the "defence".

Amendment agreed to.

Senator David Norris: I move amendment No. 18:

In page 18, subsection (1), line 31, to delete paragraph (*a*).

I am precluded from calling a vote because I have another appointment. Perhaps we can return to battle, however, on Report Stage.

Amendment, by leave, withdrawn.

Government Amendment No. 19:

In page 18, subsection (1)(*b*). line 33, to delete "public importance" and substitute "public interest".

Amendment agreed to.

An Leas-Chathaoirleach: Amendment No. 20 is in the name of Senator Norris. Amendment No. 21 is related, therefore, amendments Nos. 20 and 21 may be discussed together by agreement. Agreed.

Senator David Norris: I move amendment No. 20:

In page 19, subsection (2)(*f*)(i), lines 9 and 10, to delete all words from and including "or"

in line 9 down to and including "standards" in line 10.

Can the Leas-Chathaoirleach give me the opportunity to find the relevant part of the Bill because I was just leaving the House.

Deputy Brian Lenihan: Does the Senator want me to deal with it?

Senator David Norris: I shall be obliged because unfortunately I have to leave now. That leaves me with the opportunity to re-submit. I shall read the Minister's reply with great interest, and I apologise for having to leave now.

Deputy Brian Lenihan: Senator Norris's amendment on this section is not as fundamental as his previous one and might not require a vote. However, the point being raised is whether the membership of the Press Council can be made compulsory. In providing for the circumstance in which a matter of public interest can be a fair and reasonable publication, the section goes on to state, at subsection (2)(*f*):

> in the case of a statement published in a periodical, the extent to which the publisher of the periodical—
>
> (i) adhered to the code of standards of the Press Council or to standards equivalent to those specified in that code of standards, and
>
> (ii) abided by decisions of the Press Ombudsman and determinations of the Press Council.

If I interpret Senator Norris correctly, he is trying to delete all the words that are equivalent. In other words one must either adhere to the code of standards of the Press Council or else one may not avail of this defence at all. That is something I will look at.

Section 24 makes specific reference to the Press Council, and that is to be welcomed. We cannot force periodicals to take up their entitlement to be members of the Press Council and therefore in a sense we are making it mandatory. However, this is a civil matter and it will be possible to look at Senator Norris's amendment. I will consider it for Report Stage.

Senator David Norris: I am very grateful. The Minister, in fact, has articulated exactly what was in my mind, and I am grateful for that.

Deputy Brian Lenihan: That is a unique gift.

Senator David Norris: However, he looks rather shocked at the prospect of entering my consciousness like that. I thank him for his undertaking to look at this amendment and I shall re-submit it on Report Stage.

Amendment, by leave, withdrawn.

Government Amendment No. 21:

> In page 19, subsection (2)(*f*), to delete lines 11 and 12 and substitute the following:
>
> "(ii) abided by determinations of the Press Ombudsman and determinations of the Press Council;".

Amendment agreed to.

Amendment No. 22 not moved.

An Leas-Chathaoirleach: Amendments Nos. 23 to 26, inclusive, will be discussed together rather than being discussed with Amendment No. 22, which has been withdrawn.

Senator Jim Walsh: I move amendment No. 23:

> In page 19, subsection (2)(*g*), lines 15 and 16, to delete "a reasonable attempt was" and substitute "reasonable attempts were".

This is important as it is the judicial interpretation of whether the defence of fair and reasonable publication is accepted by the courts and compliance with the subsections of section 24(2) is germane. Section 24(2)(*g*) states:

> . . . the extent to which the plaintiff's version of events was represented in the publication concerned and, if not so represented, the extent to which a reasonable attempt was made by the publisher to obtain and publish a response from that person.

Leaving a voicemail message for a person after an article is written and an hour prior to publication stating that one has been told something about that person, that an article has been written and is about to go to press and for the person to please telephone back if he or she has a comment to make should not satisfy the situation. Given access to mobile telephones, landlines, e-mail and various communication modes which now exist, it is not unreasonable for "reasonable attempt" to be in the plural. Therefore, if one claims the defence of fair and reasonable publication one must show one made not only one attempt but a number of attempts. I propose changing it to the plural in order that it would read, "to which reasonable attempts were made".

While it is probably inherent that these attempts are made prior to publication, paragraph (*g*) does not state this. Amendment No. 24 would include the words "in advance" and I considered suggesting the phrase "a reasonable time in advance". If one is defamed in an article on which a reporter has worked for weeks, one should have an opportunity to consider for some time what has been stated before one responds. One should not be expected to respond on the hoof and not doing so should not give the green light to the publisher of the offending article to avail of this defence. If this section is passed in

[Senator Jim Walsh.]

its present format it will represent an extremely significant modification of our libel laws.

Senator Dominic Hannigan: Amendment No. 25 is similar to that of Senator Walsh, and either would be acceptable. The basis is to ensure it is done in advance. The Labour Party would be happy to support Senator Walsh's amendment.

The purpose of amendment No. 26 is to make clear that a brief response by the plaintiff at the end of the article is not sufficient. It should be a detailed response and this opportunity should be given to the plaintiff.

Senator Eugene Regan: If this section is maintained, I agree with the amendments tabled by Senators Walsh and Hannigan. They are reasonable amendments to the text.

Senator Ivor Callely: I support Senator Walsh because his amendment is worthy of favourable consideration.

With regard to sections 24 and 25, particularly in light of recent media coverage, it is my view that whether one is a catwalk model or politician, any citizen of the Republic——

An Leas-Chathaoirleach: I will allow Senator Callely to speak on the section after we have dealt with the amendments.

Senator Ivor Callely: I wish to speak on the amendment. I support the amendment but I want clarification from the Minister as to what is deemed to be the private life of the individual and deemed to be of importance to the interest of the public and legitimately published. This is a major issue and it would be great to have clear guidelines in this regard. We have all witnessed the intrusion of the private lives of individuals which some members of the media state is of interest to the public.

Deputy Brian Lenihan: I understand what Senators seek to do, although they have not passed the parliamentary draftsman yet. I notice Senator Regan proposed to delete the section which should not have happened. It is important to have paragraph (*g*) in the section because it is a protection. The paragraph states:

> . . . the extent to which the plaintiff's version of events was represented in the publication concerned and, if not so represented, the extent to which a reasonable attempt was made by the publisher to obtain and publish a response from that person.

The purpose of this paragraph is to put a limitation on what is a fair publication defence. I understand Senators wish to strengthen this. However, with regard to amendment No. 23, Parliamentary Counsel states the term "reasonable attempt" may be interpreted in the plural as well as in the singular. Therefore, it is not required to state "attempt or attempts" because "attempt" encompasses "attempts" in current legislative practice.

Amendments Nos. 24 and 25 would preserve paragraph (*g*) but seek to alter its meaning by providing that the plaintiff's version of events must be obtained in advance. I have a sympathy for and understanding of the thinking behind this proposed amendment. However, it is extremely prescriptive. Valid reasons can exist for not being able to obtain the plaintiff's version in advance of publication. One must leave to the courts the determination of what is reasonable. By inserting the word "reasonable" one gives control to the courts over the operation and conduct of the defendant.

In amendment No. 26, the Labour Party proposes that the nature and extent of the representation of the plaintiff's views compared with the suspicion, allegation or fact concerned presented by the defendant be taken into account. I am prepared to consider this prior to Report Stage. It appears to strengthen the subsection in terms of imposing an obligation on a journalist. It has a concrete meaning and I will examine this.

Senator Jim Walsh: I thank the Minister for his reply. I understand the parliamentary draftsman stated the singular may be interpreted as the plural. Let us remove the concept of "may" and make this mandatory by including the plural. This is a significant shift in favour of freedom of expression and against the plaintiff in the case. In the circumstances, it would be fair and reasonable for the publisher to make a number of attempts to ascertain the opinion of the person who may be defamed. While the parliamentary draftsman may be correct in this regard, why is it necessary to allow for discretion in this instance? Why not make the provision stronger? I do not wish to be pedantic but this is an important issue. I ask the Minister to consider it positively before Report Stage.

The motivating factor behind amendment No. 23 is not so much to require a publication to obtain in advance the views of a person who may be defamed and reflect these in a statement but to require that a publisher make reasonable attempts in advance to obtain and publish a response from the person, perhaps even in a timely fashion. We want to prevent the media from engaging in token gestures to satisfy the letter but not the spirit of the law by attempting to contact individuals at the last minute. In these circumstances, they have the excuse of being unable to contact the individual at a given time.

If we choose to shift the onus on the defendant in a defamation action from being required to show a statement was true to being required to show it was made in "good faith" as part of a "discussion of a subject of public importance", we must, as a corollary, strengthen the interest of the plaintiff to ensure he or she is not placed in an

impossible position in attempting to have his or her good name vindicated in court.

In light of advances in communications and the length of time some articles are in gestation prior to publication, it is not unreasonable to expect that early attempts would be made to obtain a statement, correction or opinion from the person about whom the article has been written, if he or she wishes to provide such information.

Senator Ivor Callely: I support Senator Walsh's amendment. While I appreciate the Minister's point with regard to parliamentary draftsmen and his undertaking to report to the House again on Report Stage, I am inclined to support the view that the House should be more prescriptive in this regard and should not leave a decision on the matter to the interpretation of a court. I emphasise my earlier point on the provision allowing for a defence of "fair and reasonable publication" on a matter of public importance or that a statement has been essentially designed to facilitate public discussion. Where do we draw the line? What is the difference between an issue of "public importance" and what the media may decide is of interest to the public?

Members of the House or, given the day that is in it, catwalk models and their spouses, children and other family members are entitled to a private life. In certain cases in the past, they have not been afforded this entitlement. While we can support the defence that a statement has been published to further discussion of a matter of public importance, we should have a clear understanding of what is a private issue for an individual and his or her family. In this regard, I highlight the practice of publishing stories or photographs of individuals or their families. In the case of a public representative, his or her family members or spouse are not subjects of public importance and their private lives should remain private.

It is very difficult to adjudicate on whether "a reasonable attempt was made by the publisher to obtain and publish a response" from a plaintiff. If a media organisation communicated to a person by sending 101 e-mails which were not received, would this be deemed "a reasonable attempt" to obtain a response? Perhaps the person's system received the e-mails or he or she received a document by fax or letter. In such cases, will it be left to the court to adjudicate on what is reasonable? Senator Walsh is correct to argue that we should be more prescriptive in this regard. At minimum, the section should include a definition of what is deemed to be reasonable.

Senator Dominic Hannigan: I thank the Minister for his comments on amendment No. 26. I concur with Senator Walsh's views on amendment No. 25. Given the modern forms of communication available, the legislation should require that a reasonable attempt be made to obtain and publish a response "in advance" of publication. Many publications do not go to press daily and hold stories for days or weeks. It is not too much to ask that they seek to obtain in advance a comment from the person about whom an article is written. I support the amendment.

Deputy Brian Lenihan: Senator Callely referred to private lives, an issue which will arise on many sections of the Bill. In the context of this section, however, it is proposed in the Government amendment to delete the reference to "public importance" and insert the words "public interest". This is a much stronger phrase because it clearly implies that there is a distinct private sphere which is not of public interest. As the Senator indicated, the words "public importance" can connote anything in relation to the conduct of a public figure.

On the substance of what Senator Walsh was seeking and the question regarding the reasonable number of attempts made to obtain a response from an individual, I am prepared to examine whether this issue can be addressed by way of a separate subsection. This is the only way in drafting terms that the issue could be addressed because the section, as it stands, does not include a reference to the plural. If one were to stipulate the number of attempts which were made, it would elevate it into a separate requirement.

Senator Jim Walsh: Will the words "in advance" be inserted?

Deputy Brian Lenihan: By definition, the attempt must be made in advance. Obviously, the criterion of reasonableness will govern how far in advance the attempts were made. I see some merit in examining whether we can include the plural in this context but it would have to be by way of separate expression.

Senator Ivor Callely: I welcome the Minister's comments and understand his point of view. I look forward to the proposals he will make on Report Stage. We should not lose sight of what Senator Hannigan said. In fairness to the Irish media, the majority of outlets are not bad. On occasions, however, members of the media have stories building up for weeks and choose to contact the public figure concerned at short notice to inform him or her that the publication in question is running with the story. We should consider the issue in the context of the interval between the commencement of the story and the point at which the public figure was given an opportunity to respond. The Minister finds himself between a rock and a hard place in terms of what would be deemed to be reasonable in this context. We should not leave this matter to the court to determine. If information has been gathered over weeks and months, the word "reasonable" requires that the person who is likely to be defamed in the article should be given a similar

[Senator Ivor Callely.]

or appropriate period to respond adequately to the material. I accept what the Minister has said and ask him to come back on Report Stage with a comprehensive response.

Amendment, by leave, withdrawn.

Amendments Nos. 24 to 26, inclusive, not moved.

Senator Jim Walsh: I move amendment No. 27:

> In page 19, subsection (3)(*b*), lines 25 to 30, to delete all words from and including "if," in line 25 down to and including "published" in line 30.

This is an amendment about which I feel strongly. I suggest section 24(3)(*b*) should read, "entitle the court to draw an inference" and that the following be deleted, "if, in the particular circumstances of the case, the court considers that the plaintiff was reasonable in withholding any response or in believing that a denial or refutation by the plaintiff of a defamatory statement would itself be unfairly used or published". I am not satisfied with that qualification. The plaintiff should have an absolute right to withhold comment if somebody comes to him and there should be no imputation, good, bad or indifferent, from that. We go part of the way but then say "shall not ... entitle the court to draw an inference". A judge may decide that is giving judicial discretion.

We are dealing with very powerful influences within the media. Public opinion is shaped to a large extent by what people hear and read in the media. There is no doubt that judges are also influenced. There are comments sometimes from judges about reports of court cases. There is a real concern about the influences that can be brought to bear on judges or others in cases where a great deal of money is at stake.

To qualify the absolute right in this instance is wrong. To come back to the fundamental principle, one can go to court and remain silent. There is no obligation on one to comment. While the recent criminal justice legislation may have allowed some inference to be drawn from that in certain offences, there should be no inference in this instance. There should not be an onus on an individual, if somebody contacts him, to make any comment. The onus should remain on the press, the reporter or the publication to establish that what they are publishing is factual and the truth. I feel strongly that by including the additional wording of paragraph (*b*) we are going yards offside in respect of the balance we should maintain between freedom of expression and the right of an individual to his or her good name and in respect of the mechanism we have for protecting that for them.

Senator Eugene Regan: I agree with Senator Walsh. The paragraph as written provides that failure to respond in the circumstances outlined in the paragraph shall not entitle the court to draw an inference. This means that if the person in respect of whom the article is being written does not respond, an inference can be drawn. The point that has been made is correct.

The general situation is that anyone who has time to think about a question that is posed will be able to give a more complete and appropriate response, but in many cases we are talking about situations where people are door-stepped or caught on the hop and given a cryptic account of what is suggested will be in an article. There is a general belief by many that they cannot win by responding, that in some way their response will feed the story and feed a distortion of a publication. There is merit in what Senator Walsh said that the situation where an inference can be drawn should not be particularised and instead it should be that there is no entitlement to draw an inference *simpliciter*.

Deputy Brian Lenihan: The purpose of this subsection is to make it clear that the failure or refusal of a plaintiff to respond to attempts by or on behalf of the defendant to elicit the plaintiff's version of events shall not imply consent to the publication or entitle the court to draw an inference. That is the fundamental purpose of this subsection and I have no difficulty with that. In fact, the additional words were introduced for the purpose of trying to strengthen the hand of a plaintiff in this situation by making it clear that the simple publication of a denial would not be sufficient cover for a publisher in those circumstances. I agree the language is somewhat tortuous and complicated and I am quite happy to table an amendment on Report Stage to delete the formula altogether. If Senators have other ideas on the subject they may table amendments on it if they can see some way of capturing that idea in the subsection.

Senator Eugene Regan: In fairness to the Minister, if after the word "if" it read "including, in the particular circumstances", perhaps it would capture the objection that has been raised.

Deputy Brian Lenihan: Perhaps the Senator would table an amendment to that effect.

Senator Eugene Regan: I will do so on Report Stage.

Senator Jim Walsh: I am strongly of the view that the wording should be deleted. I fully support the fact that the court should not be able to draw any inference. Once one goes beyond that, one is asking the court to ask if the plaintiff was reasonable in withholding a response — very subjective — or whether the plaintiff felt that the denial or refutation would in itself lead to an inference being drawn. There does not have to be any reason. Why give reasons? If a person gives

specific reasons, it opens up other avenues whereby the court could say he or she should have given a comment because of certain specific circumstances. If the wording in the subsection is deleted, it is clear the court can take no inference from the fact that a person does not make a comment. That is crystal clear and in my opinion that is the way it should be. I agree with the Minister and welcome that he will table an amendment on Report Stage.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Maurice Cummins): Amendments Nos. 28 and 29 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Eugene Regan: I move amendment No. 28:

In page 19, subsection (4)(*b*), line 36, to delete "out of spite, ill will or".

I wonder if the language there is as intended — "bad faith or out of spite, ill will or other improper motive"? I am not familiar with the use of "out of spite" being used in legislation of this nature but I will not necessarily press the matter. I want to comment generally on the section.

Senator Dominic Hannigan: Amendment No. 29 is in line with previous amendments to strengthen the case to allow for the defendant to put in place a response in a timely manner.

Deputy Brian Lenihan: On Senator Hannigan's amendment, in a sense it might have been grouped with the earlier amendments because I have agreed to revisit the issue whether there should be a number of attempts to obtain a response. On Senator Regan's point, the wording "out of spite, ill will" is not surplus as it makes the defence stricter and for those reasons I would retain it.

Senator Joe O'Toole: That statement has troubled me very much. There is almost a "prove your innocence" aspect to it. It does not seem to fit with the general approach in legislation that a person would have to prove he or she did not act out of spite, for whatever reason. The first part of the subsection refers to reasonableness but how does one prove one did not act out of spite? How can one quantify the burden of proof in such a situation?

Senator Jim Walsh: We are now dealing not just with domestic publications but international publications with Irish editions, which come in the main from England. If one picks up any newspaper, one would find statements that would fit the bill in regard to subsection (4)(*b*).

Deputy Brian Lenihan: This is a matter of defence not of claim. I expressed my view earlier that I must view this defence with some suspicion given it is a judicial innovation, and I am anxious to have it restricted and limited as much as is practicable. Truth should be at a premium in defamation proceedings. This creates an occasion of qualified privilege where matters of public interest are concerned. It is important that this privilege is not abused and that the position is that if there is malice or, in the words of Senator Regan, spite or ill will displayed on the face of the article, that can be taken into account in denying a defendant the opportunity to avail of the defence.

Senator Joe O'Toole: While I do not wish to be awkward, I do not understand the point. I am trying to visualise a relevant situation. There is an important point with regard to the claim of reasonableness, which I thoroughly support. I believe it is a major move forward and I support what we are trying to achieve in subsection (4). However, I cannot understand how the "defence of fair and reasonable publication shall fail unless ... the defendant proves that ... he or she did not act in bad faith or out of spite". Can anyone explain how a person would do that? How does one prove one did not act out of spite, beyond saying it? A person would have already proved, under the previous subsection, that he or she believed the statement to be true, fair and reasonable. If somebody goes to the trouble of trying to prove that point, an additional burden seems to be added in order that, in addition, the person would also have to prove he or she did not act out of spite.

The two parts are contradictory. If one part proves it is fair and reasonable, this I can accept, but to have to prove at the same time that one did not act out of spite seems contradictory. Is it possible to prove one's actions were fair and reasonable but that one was also acting out of spite? This is not even a belt and braces approach. It is a case of belt and throw away the braces, and hold one's trousers up with one's hands.

Senator Ivor Callely: In a similar vein, a matter can be presented by way of fact and can therefore be deemed to be fair and reasonable. However, while subsection (4)(*d*) refers to the "extent of publication", I am not sure this covers the manner in which a publication is presented, which is also an issue that causes difficulties and complications.

The manner in which an article is presented can give a reflection that would, particularly when it is thrown into the public arena, create a new discussion on the issue. Whereas the publisher may state that what has been published is fact, and is fair and reasonable, the manner in which it is presented would not reflect what is stated in this section.

Deputy Brian Lenihan: In reply to Senator O'Toole, the crucial point is that we are allowing

[Deputy Brian Lenihan.]

a defence even though there is an untruth. Senator O'Toole is impressed that we have introduced concepts of fairness and reasonableness. They are being allowed to qualify an individual's reputation and to permit the publication of untruth. It is important that strict qualifications be placed on this facility.

Senator Eugene Regan: I agree with the Minister that there is no contradiction in this regard. The defence should fail if there is malice, which is not unusual. The criteria by which "reasonable publication" is determined are set out in section 2. It is a different assessment to judge bad faith, improper motive, spite or malice in general. There is not the contradiction to which Senator O'Toole referred.

Senator Joe O'Toole: I accept the point.

Amendment, by leave, withdrawn.

Amendment No. 29 not moved.

Section 24, as amended, agreed to.

Section 25 agreed to.

SECTION 26.

Amendment No. 30 not moved.

Government amendment No. 31:

In page 21, subsection (2)(*b*), line 5, to delete "make" and substitute "make and publish".

Amendment agreed to.

Senator Dominic Hannigan: I move amendment No. 32:

In page 21, subsection (6), line 19, to delete "applicant" and substitute "plaintiff".

The amendment seeks to ensure consistency of language throughout the document.

Deputy Brian Lenihan: The reason the terms "applicant" and "respondent" are used in section 26 is that the proceedings in question fall short of an action for defamation in respect of which damages may be awarded. Under section 26(8), no order in regard to damages shall be made when an application for a declaratory order is made. Accordingly, the decision was made that the appropriate titles of the parties are "applicant" and "respondent" rather than "plaintiff" and "defendant". I understand this mirrors the practice in the courts. In other words, when a person is applying for an order rather than seeking damages, he or she is known as an applicant and, consequentially, the defendant is known as a respondent.

Senator Dominic Hannigan: I will withdraw the amendment and consider the Minister's response.

Amendment, by leave, withdrawn.

Section 26, as amended, agreed to.

SECTION 27.

Senator Jim Walsh: I move amendment No. 33:

In page 21, subsection (4), line 41, to delete "not".

I had much debate in this regard with the former Minister, Mr. Michael McDowell. I felt it was one of the most un-republican aspects of legislation I had seen introduced in the House, and I still take equally strong exception to it.

This section deals with the lodgement of money in settlement of an action. My understanding is that it is customary in civil cases that where compensation is in order, the defendant can agree to pay a sum and can lodge it in court. It is then open to the plaintiff whether it is accepted. In general, this is reasonable in cases where monetary compensation is the primary purpose of the case being pursued. Obviously, if the defendant decides not to accept the lodgement, the lodgement is not disclosed to the court, and the court functions without the knowledge of the sum of the offer from the defendant. However, if the subsequent outcome of the case is less than the lodgement initially offered, the plaintiff is caught with the costs of the case. That is my understanding of the matter, and the eminent legal persons present in the House may correct me if required.

This section concerns a case for defamation. I put it to the Minister that while not exclusively, most plaintiffs' primary purpose in such cases is to re-establish their reputations, which have been seriously eroded through libel or defamation in some media organ. Therefore the primary purpose in taking such a case is to obtain an apology and a correction. To some extent in the public mind the attending damages vindicate the individual's right and the seriousness of the defamation they suffered.

5 o'clock

In this section, however, we are saying that if a lodgment of money is made, the defendant shall not be required to admit liability. Section 27(4) states: "The defendant shall not be required to admit liability in an action for damages for defamation when making a payment to which this section applies." In other words, they do not have to offer an apology, but do offer an amount of money. The premier motivation of the individual who has been defamed is to re-establish their good name and reputation through the pursuit of such a case, and subsequently the court may vindicate their position by ruling that they were defamed and that the media concerned must publish a retraction and an apology. For some reason, however, they may get a financial award which is less than the lodgement. As I read this section,

they could be caught for costs totalling hundreds of thousands of euro for having pursued the case and therefore would be at a huge financial loss, while having won the case on the fundamental issue. That is totally unfair and works against the plaintiff in such situations.

In general, there will be a significant divergence between the resources available to the defendant and those available to the plaintiff. As a consequence, this section will make it difficult for a defendant to continue prosecuting a case where they obtain an award which — whether they accept it or not — will often be determined by their legal advice. We are placing the plaintiff in an invidious position. It takes nothing away from the defendant to give an apology as well as providing money. The question is, however, why would they make a compensatory award if in fact the defendant's case was unlikely to lead to the plaintiff winning it? I strongly urge that the word "not" should be deleted and therefore if a lodgment is to be made it must be accompanied by an agreement to publish an apology and a correction. In that case there is no admission of liability because if the case is pursued the matter is not known to the court, as I understand it. That is what I am seeking. We debated this matter in the House before and at that time neither the Minister nor anybody else said my interpretation was incorrect in any way.

Deputy Brian Lenihan: This amendment would undermine the whole purpose of the legislation. At present, the law on lodgements is clear. In every other class of action in civil proceedings it is open to a defendant to lodge a sum of money in satisfaction of the plaintiff's claim. It is open to a plaintiff to accept, or not accept, that in satisfaction of their claim. If a plaintiff does not accept a lodgement the plaintiff puts himself or herself at risk when the final hearing of the action takes place. This is because if the plaintiff fails, as the expression goes, to beat the lodgement, the plaintiff can be penalised in costs.

We have always had a procedure by way of lodgement in our legal system. The procedure encourages the settlement of legal actions. In the course of the debate on Committee Stage, I have already mentioned that the lodgement procedure encourages the speedy resolution of disputes. The whole thinking behind this legislation is that apologies should not be reckoned as admissions of liability so that we have more apologies, and that the defendants in these proceedings should be put in the same position as any other defendant, and allowed to lodge a sum of money so that the plaintiff can seriously consider his or her options before embarking on the hazard of a court proceeding.

It must be remembered that many of those who have suffered most in defamation proceedings in recent years have been plaintiffs who established a violation of their reputation but failed to beat lodgements. In justice to the defendants in such cases, whether they are newspapers or anyone else, I do not see why they should be put in a different position in civil litigation than any other person. Every other defendant in a civil litigation is entitled to make a lodgement. Senator Walsh is right in saying that many defendants are powerful organisations but we have always afforded them the facility of saying to a plaintiff, "This is my view about the colour of your money. If you think you are worth more than that, get on with it. If you don't, take it". It is not an unreasonable attitude for the State to take concerning the use of the courts system. In this section we are ensuring that the defendants in these actions are put in the same position as anyone else. Therefore, I cannot accept the amendment, which would entirely undermine the purpose of this legislation.

However, the Senator has made one point on which I may be able to provide him with a crumb of comfort on Report Stage. Section 27(3) states:

> Where a payment to which this section applies is made, the plaintiff in the action concerned may accept the payment—
>
> (*a*) in accordance with the rule referred to in *subsection (2)*, or
>
> (*b*) inform the court in which the action was brought, on notice to the defendant, of his or her acceptance of the payment in full settlement of the action.

In other words, the section envisages that where a lodgement is accepted a plaintiff will have the right to inform the court that the lodgement has been accepted. Senator Walsh may argue that is not an apology but it must be remembered that in our current legal system when the court awards damages at the end of a defamation action there is no apology either. The defendant is not required to apologise even in a High Court action where the jury brings in a verdict and awards a plaintiff €500,000 for the wrong done to that person's reputation. It is the case at present that there is still no requirement on that defendant to give an apology. The award speaks for itself. I would maintain that the acceptance of a lodgement speaks for itself as well. The fact that the newspaper had to pay up shows in effect that there was an argument about the item concerned.

I am prepared, however, on Report Stage to examine the issue of whether, in the context of the court being informed of the acceptance of the lodgement, the court may direct the publication of the fact of acceptance in a place of prominence in the offending broadcast or article. That is as far as I can go on that matter.

Senator Jim Walsh: I am not happy with that.

Senator Joe O'Toole: The Senator should put it to a vote.

Senator Jim Walsh: I might do that. I have listened carefully to what the Minister said. I note his first comment was that it would undermine the legislation, although I fail to see how it would

[Senator Jim Walsh.]

do so. It is not the same as other civil cases. If I break my leg, for example, and take a case to court, I am seeking financial compensation. The court will not put my leg in plaster and fix it up for me; I must do that separately. I am seeking compensation for loss, so a monetary lodgement fully caters for my court claim. However, if I am seriously defamed in an article it could be far more important to clear my name by way of an apology. The inclusion of this section, as drafted, undermines the spirit of much of what we are trying to do in this legislation. We are trying to get claimants to deal reasonably with the issue and accept that the pursuit of monetary compensation is not the primary purpose of pursuing such cases. We are allowing for the newspaper industry to apologise earlier and to do such things.

As was rightly said, if a lodgement is made, it puts the plaintiff in a precarious position financially and legally and also in an invidious position if he or she lacks considerable financial resources. His or her primary motive could be the re-establishment of his or her good name. It might not be satisfactory for him or her to get €100,000 to put in his or her bank account, even if it is a very generous lodgement, if the whole town or county from which he or she comes does not see the record corrected.

I note what was said about judges but should we legislate on the basis that in order for the defendant to get fair play, it is absolutely at the discretion of the Judiciary? I do not believe that should be the case. Our legislation should ensure that the person who is offended can pursue his or her case and will be treated fairly. We should not encourage a defendant to make a lodgment in court unless he or she believes the article was wrong, untrue and defamed an individual. In such a scenario, it is not unreasonable to expect that he or she would be prepared to make an apology along with a lodgement. The apology should be read out in court and published. I cannot see the logic in taking this route. I appreciate the Minister said he would look at it between now and Report Stage.

The declaratory order is an entirely different matter. The plaintiff can go to the court in advance for the declaratory order with no compensation. I am not in favour of huge amounts of compensation. When we come to deal with the press council, I will argue that it should be independent and in a position to make awards up to a certain level.

The Personal Injuries Assessment Board model is a good one, which could be used in this instance. It would avoid the court route where costs are exorbitant. Until we reform costs in our court system, we should try to find alternative mechanisms to do this, as in the case of the Personal Injuries Assessment Board. It is unsatisfactory that an individual, who is defamed, would go to court and come away with a lodgement but with no apology. If he or she does not have the resources to pursue the case, he or she is forced into a situation where he or she must accept the lodgement, even though a smaller amount in damages and a correction in the newspaper might have been his or her primary objective.

Senator Ivor Callely: I listened with interest to the Minister and I appreciate the need for a lodgement in order to have a speedy settlement. I presume our intention is to improve the legislation. If a person has been defamed and he or she accepts the lodgement, what is to stop him or her being defamed again on the basis that he or she accepted the lodgement but no apology or correction was made? While the person was awarded an amount of money, it does not clear up the situation in terms of whether he or she was defamed. One could argue that point. The media, whether print or otherwise, could continue to use the original line.

Why is section 27(4) included? If the lodgement route is being taken to ensure speedy settlement, I presume it is being done on the basis of the relevant professionals speaking either inside or outside the court and on agreements being reached in regard to the lodgement. There must be a wink or a nod. Perhaps I am wrong but there must be some discussions. If there are discussions, perhaps there could be agreement in regard to an apology or otherwise. That is the reason I ask about the need for section 27(4), if there is an agreement on the lodgement.

Senator Joe O'Toole: I support the Minister on this issue and will try to defend him against his party colleagues. Senator Jim Walsh referred to the Personal Injuries Assessment Board legislation. The Cathaoirleach will recall we faced a similar situation when that legislation was brought before the House by the then Minister, Deputy Mary Harney, because he was the Government Whip. The problems were on the Government side.

Senator Jim Walsh is arguing against himself. This is precisely the model in the Personal Injuries Board legislation. The big debate which took place on the Government side at that time was whether an award could be made without an admission of liability. We debated that extensively and we tried to explain that there was no problem and that one would simply pay the money for the damages and that would be the end of the matter. The question of accepting liability, or in this case acceptance of liability leading to an apology, does not arise. It is precisely as the Minister said. In the case of this legislation, it is damage to reputation or otherwise while under the Personal Injuries Assessment Board legislation, it is damage to a limb or whatever.

At that time it was very difficult to get the agreement of the House on that point and to get it to understand that a defendant — in that case, an insurance company — having assessed a case would pay a certain amount of money without accepting liability or without any reference to liability. A long debate took place on that issue.

This is exactly what is involved here. People will pay the money in all circumstances without accepting liability. There is at least one substantial legal precedent to prove that point.

Senator Callely made an important point. If another publication publishes a statement knowing money has been paid on account of it being published, it is more money into the hand of the person who was defamed. It would be very foolish for another publication to take that course of action, so I do not believe that would arise.

The reality is that the money can be paid without an admission of liability. That is the outcome if, as the Minister said, a person takes the decision to look for more money. In terms of the operation of the Judiciary, we cannot ask for more. I fully support this section.

Senator Eugene Regan: The parallel with personal injury actions is not quite correct. The reality is that in personal injury actions, one tries to determine liability for the purpose of securing compensation. In the case of defamation, although there is a general view that an individual who pursues an action in defamation seeks money, the apology and admission that an individual has been defamed is also important. The lodgement can distort the position and lead to a situation where one is, in a sense, done out of the opportunity to secure a determination as to the defamation by virtue of the costs, risks, etc., in pursuing the action. There is a risk that the lodgement system could distort the process. I appreciate that the Law Reform Commission and, to a certain extent, the courts have criticised the fact that there is no provision for a lodgement without an admission of liability. There is a risk in this provision, however, and I reserve my position in terms of tabling an amendment on Report Stage.

Senator Jim Walsh: I take the point made by Senator O'Toole in respect of the Personal Injuries Assessment Board. I did not mean to go down that cul-de-sac because I think the analogy with the Personal Injuries Assessment Board is, as Senator Regan said——

Senator Joe O'Toole: It is only marginal.

Senator Jim Walsh: It is marginal. The point I was trying to make was that——

Senator Joe O'Toole: It is before the court.

Senator Jim Walsh: I would say to the Minister, as I would have said to the previous Minister in the previous debate, that if the Press Council were independent and in a position to give awards of up to €50,000 or €100,000 — one can choose any amount, much like the Personal Injuries Assessment Board — there would be an alternative whereby a plaintiff could pursue a route that was not costly, satisfied him and cleared his name. If I were defamed and were offered a lodgement of €50,000, I would much rather get €20,000 or €10,000 and an apology. Many people are in that position. This section puts people in the position of being in a lottery. Do they pursue the case and seek what they came for, namely, an apology and a correction, or must they accept money, which was a very secondary consideration in taking the case? We are forcing them into a position. The declaratory order is a different issue.

In respect of section 27(4), my colleague, Senator Callely, made an interesting point. Why is it there? It states that the defendant shall not be required to admit liability. There is no need for the subsection. We would only need it if we were saying the defendant would be required to admit liability. I do not have an argument with a situation whereby the lodgement is made with a commitment to publish an apology on page four of the newspaper or other publication. The judge is not privy to the contents of the apology but it is part of settling the case. By putting it as it is in the Bill, where one does not get the apology, we are ensuring the genuine person who did not take the action for money and who wants to get a correction is forced to continue his or her case at huge risk to him or herself. If the apology were part of the lodgement, the matter probably could be settled more reasonably from a financial perspective.

Senator Denis O'Donovan: One could argue that in any instance, be it personal injuries or defamation of character, a lodgement denotes an admission of liability and is in some way an apology. I have some support for Senator Walsh's argument.

Defamation is a tort and an unusual hybrid creation from a legal perspective. For the first time in our legal or political lifetime, we have a chance to deal with this issue which has not been dealt with since the early 1960s. I see some merit in the case of a lodgement of coming clean and apologising where there is blatant and obvious defamation under the new law, such as where a section of the media, such as a radio station or RTE, in unquestionable terms takes somebody's character without proper assertions. An example would be the case I mentioned last week — I will not dwell on it — which involved Liam Lawlor, God be good to him, which everyone accepts was blatantly wrong. In those circumstances and in most cases where a person's character is taken, be it the ordinary man in the street or, as in the case of Liam Lawlor, a lady from Ukraine who was an interpreter and whose character was severely and unfairly defamed, in the case of a lodgement why not come clean and say "Sorry"?

This is possibly a teaser for the Minister. A personal injuries case is slightly different. A bone is broken or damage is done and compensation is awarded. Under the Constitution, our good name and character is something we hold very dear. We often walk a tightrope in public life because people say that because we are in public life and politics, we are fair game. Would it not be possible to frame this section in such a way that

[Senator Denis O'Donovan.]

where a lodgement is made, the defendant admits that the real foundation is that the person's good name has been taken and apologises for doing so? One is talking by and large about the print media and radio or television stations. Perhaps I am misreading it but I cannot see why this cannot be done.

We are offering some sort of opt-out clause or diminution, not necessarily of responsibility but certainly of damages, if we allow a newspaper to admit within 48 hours that it was wrong and to print a fine front-page apology on equal terms with the article that defamed the plaintiff, thereby resulting in most instances in the plaintiff receiving a very small figure in compensation. That is an opt-out clause for the defendant.

We accept that these defendants in most cases have large sums of money behind them. They have the best legal teams. I will not name names but some of the huge media conglomerates around the world have the best counsel on standby. The best legal teams are available and are probably on retainer. The unfortunate person who has been defamed may have not such facilities.

Given that it is such an unusual tort and that this Bill is the first opportunity to address this, I would find it difficult to accept that in all instances, with or without money and regardless of the seriousness, when a person's good name or that of a company or a body politic such as the Seanad or the Dáil, which can be seriously damaged, is taken, when it comes to an apology and financial compensation, the defendant can offer €50,000 but does not have to apologise. Perhaps the learned Minister can enlighten me and I am sure he will. I am not here purely to support Senator Walsh. If a vote is called, obviously I must refrain. I would still like a sincere explanation.

Deputy Brian Lenihan: I thank Senator O'Donovan for his encouraging concluding remarks. I am not a learned Minister but listening to Senators this evening reminded me of the learned phase of my existence when one met a client who told one that they were only here as a matter of principle to which one replied: "How much are your principles worth?" That is at the heart of this section.

Those who are concerned about their principles will now for the first time have section 26. A declaratory order is available, to which no lodgement can be made, seeking the vindication of one's reputation and establishing as a matter of law on a matter of fact that defamation took place and requiring a correction. While section 26 was being debated I should have mentioned that I plan to revisit the section on Report Stage to ensure that where the court makes a declaration and directs an apology, the apology can be required to be in a place of equal prominence with the original statement.

Regarding section 27, the principles are being substantiated in the form of a claim for a cash award. It is entirely reasonable for legislators to provide for the same lodgement procedure that applies in any civil litigation. Senators Regan and O'Donovan pointed out that a defamation action is not the same as a personal injuries action but there is commonality between them. Both are claims for compensation for damages. The element we are addressing can be isolated because the legislation specifically provides for a declaratory order on reputation. At the conclusion of a libel action one cannot require an apology to be made by a newspaper. Much of Senator Walsh's observations on this matter can be reduced to the proposition that either we should not have lodgements in libel actions because it is entirely wrong, or we should be able to require apologies. When the matter goes to damages, the fact that damages were awarded illustrates the nature of the wrongdoing. In civil litigation a settlement is always made without concession of liability.

Regarding Section 27, I can meet Senator Walsh's argument in the sense that I am considering providing that the court can have the fact of the apology publicised in the defendant newspaper or broadcasting organisation in a place of equal prominence with the original statement. The readership or viewership can witness the fact that the defendant was forced to pay that sum of money and there was something unsound in what was said. That is as far as it can be put. If one were to follow the path suggested by Senator Walsh, who suggests there could be some form of sealed apology, it would only lead to further litigation. The purpose of the lodgement is to stop litigation, not prolong it.

Senator Jim Walsh: I welcome the Minister's last comments on Section 26, which we skipped but which is worthy of comment. I welcome the fact that the Minister is considering amendments in order that the apology is as prominent as the original statement.

Regarding section 27, many people who take cases for defamation and win damages subsequently donate the damages to charity. It is a reasonably common occurrence.

Deputy Brian Lenihan: It is far from universal.

Senator Jim Walsh: Not long ago, a case was taken in Ireland and I listened to a radio broadcast concerning it. The editor made a significant financial settlement but did so without an apology. He was at pains to point out that he did so because of the financial bill of legal costs that would have arisen and the fact that the plaintiff may not have been in a position to pay the costs of the case if it were lost. In a genuine situation, it would be grossly unfair to put the plaintiff in such a position. If only people of significant wealth, such as Denis O'Brien, Michael O'Leary and J.P. McManus, can vindicate their names, we

have not done a good day's work. It must be also open to others.

I ask the Minister to examine this section and to consider whether section 27(4) is needed. The Minister referred to the judge making an order for the publication of an apology. Perhaps the section should include a broad hint that would encourage the Judiciary, while leaving some judicial discretion, to do so unless there is a valid reason not to do so. Let us not consider those cases that do not have foundation. Many people who take this route have genuine cause of complaint because of defamation. It is important that an apology can be granted because this is why the cases are initiated even though, as the Minister states, principle has a price. The declaratory order is an avenue that did not exist previously and mitigates this but balance is needed.

If a person seeks a declaratory order it is not a deterrent to the press. The costs are much lower because it is much quicker but that may not ensure implementation, particularly because we have no independent press council, an organ created by the media. In any case it does not have the force of law to implement standards. The deterrent to defamation comes from the potential risks the media take with the cost of court cases rather than the award. The costs are generally multiples of the award and are the real deterrent. Where we dilute that we must be mindful of the consequences for media standards.

Amendment, by leave, withdrawn.

Section 27 agreed to.

SECTION 28.

An Cathaoirleach: Amendments Nos. 34 to 36, inclusive, are related and will be discussed together.

Government amendment No. 34:

In page 22, subsection (2), line 6, to delete "specify".

Deputy Brian Lenihan: These amendments relate to the correction order in section 28. They seek to offer some flexibility in regard to the timing of the publication of a correction order, where such an order has been made by the court following a successful application by the plaintiff. Amendments Nos. 35 and 36 are related and allow a court to specify the time and date on which a correction order must be published or a period not later than which the order must be published. Amendment No. 34 is a consequential technical drafting amendment.

Regarding section 28, I intend to revisit the question of whether the court can be empowered to ensure the correction is in a position of equal prominence.

Senator Eugene Regan: The correction seems to apply only to declaratory orders. The section refers to where the defendant has no defence to the action, the same wording used in the declaratory order. That is the intention. The prominence of the correction, to which the Minister referred, is appropriate.

Is the High Court the only court with the jurisdiction to issue a correction order or would this extend to the Circuit Court?

Deputy Brian Lenihan: The section we are discussing relates not to the declaratory order but to the correction order, when one seeks an apology in the course of a substantive defamation action. That is why there is no reference to a declaratory order at that stage. In other words, it is a standalone provision governing the correction that takes place in a substantive defamation action where there is also a claim for damages.

With regard to the jurisdiction of the courts, I take it that it will have to apply to both the Circuit Court and the High Court. If there is any defect in that regard, I will revisit the matter on Report Stage.

Amendment agreed to.

Government amendment No. 35:

In page 22, subsection (2), lines 7 and 8, to delete paragraph (a) and substitute the following:

"(*a*) specify—

(i) the date and time upon which, or

(ii) the period not later than the expiration of which, the correction order shall be published, and".

Amendment agreed to.

Government amendment No. 36:

In page 22, subsection (2)(b), line 9, to delete "the form" and substitute "specify the form".

Amendment agreed to.

Section 28, as amended, agreed to.

SECTION 29.

Senator Dominic Hannigan: I move amendment No. 37:

In page 22, subsection (2), line 27, to delete "shall give directions" and substitute "may advise".

Deputy Brian Lenihan: Section 29 updates the existing provisions, contained in the 1961 Act, in respect of the award of damages. The parties in a defamation action may now make submissions to the courts regarding damages and various matters are set out in that regard. Section 29(2) is a critical element of the Bill, which requires that where a defamation action is brought in the High Court,

[Deputy Brian Lenihan.]

the judge shall give directions to the jury in the matter of damages. The jury then must make its own decision.

Section 29(2) is an essential part of the Bill and I do not understand why the amendment proposes that the provision it contains should be weakened. The approach taken in the subsection is very much in line with the recommendations of the Law Reform Commission and the legal advisory group. Senator Norris, who originally tabled the amendment, is seeking to substitute the term "may advise" for that of "shall give directions". However, it is always the function of a trial judge to give directions to a jury. That is how lawyers formulate the matter. I take it Senator Norris is concerned that we are weakening the function of juries in respect of this matter. However, I do not believe that the formula used does so.

Senator Dominic Hannigan: I will withdraw the amendment on the understanding that Senator Norris may wish to resubmit it at a later Stage.

Amendment, by leave, withdrawn.

Senator Jim Walsh: I move amendment No. 38:

In page 23, subsection (4), lines 21 and 22, to insert the following:

"(*l*) the extent to which it was fair and reasonable to publish the statement having regard to matters specified in *section 24 subsection (2)*.".

I am trying to recall what prompted me to table this amendment. Section 24(2) refers to what constitutes fair and reasonable publication and lists matters the courts should take into account in this regard. I may have tabled this amendment in respect of the wrong section. However, I am concerned that where appeals are made to the Supreme Court, the latter should take account of the list of matters contained in section 24(2) in making its assessment. Perhaps the Minister's reply will indicate whether I have tabled the amendment in respect of the wrong section.

Deputy Brian Lenihan: My answer suggests that there is not an inner logic to where the amendment has been tabled. Perhaps the Senator might revisit the matter on Report Stage.

Amendment, by leave, withdrawn.

Senator Dominic Hannigan: I move amendment No. 39:

In page 23, between lines 21 and 22, to insert the following subsection:

"(5) In the case of a successful defamation action, the Editor and Proprietor of the newspaper which published the defamatory statement shall be liable for damages.

Deputy Brian Lenihan: Senator Norris, who tabled the amendment, is seeking to ensure that in the case of a successful defamation action, the editor and proprietor of the newspaper which published the defamatory statement shall be liable for damages. Although he is not present, I can almost hear him pronounce the words "editor" and "proprietor". This matter is already provided for in existing law. Each defamation action must be taken on its own merits and the liability lies where it falls. It is a case for the plaintiff and his or her advisers to name the appropriate defendants. However, in the case of a defamation action against a newspaper, it is highly likely that the named defendants at the commencement of the action will be the journalist, the editor and the publisher. The latter can, of course, vary, depending on the circumstances involved.

Senator Dominic Hannigan: I will withdraw the amendment but Senator Norris may wish to resubmit it for Report Stage.

Amendment, by leave, withdrawn.

Senator Dominic Hannigan: I move amendment No. 40:

In page 23, subsection (6)(*a*), line 29, before "give" to insert "with the leave of the court,".

We are concerned that a time limit or some form of constraint is not included in this section. In such circumstances, people will be able to trawl through information relating to the reputations of particular individuals. For example, there is nothing to stop a person being cross-examined in respect of a once-off crime committed 15 or years previously. We ask that the phrase "with the leave of the court" be included in order that a reasonable balance might be struck.

Deputy Brian Lenihan: The courts have a discretion in this matter. I take it Senator Hannigan is concerned that by not stating expressly in the subsection that this is the case, in some way the tendering of evidence such as that to which he refers will be made quite habitual in actions of this nature. I am willing to examine the amendment and return to the matter on Report Stage.

Senator Dominic Hannigan: We are of the view that the words contained in the amendment would allow a reasonable balance to be struck. I appreciate the Minister's commitment to consider the matter and return to it on Report Stage.

Deputy Brian Lenihan: I do intend to look at it because when one includes the phrase "with the leave of the court" in legislation, one immediately sends a signal to the courts that they must be careful not to admit prejudicial evidence in a particular context. It might be useful to send such a signal in the context to which we are referring.

Amendment, by leave, withdrawn.

Senator Dominic Hannigan: I move amendment No. 41:

In page 23, between lines 38 and 39, to insert the following subsection:

"(7) In a defamation action the Press Council may make a recommendation regarding the reasonable parameters of damages and limitation thereto to be awarded in any case where the newspaper apologises in advance of the hearing. The court must take such a recommendation into consideration in assessing damages.".

Deputy Brian Lenihan: Senator Walsh may intervene in respect of this amendment, which proposes that the press council may make a recommendation regarding the reasonable parameters of damages to be awarded in any case where the newspaper involved apologises in advance of the hearing. It also states, "The court must take such a recommendation into consideration in assessing damages." I am opposed to that because the courts, not the press council, should have the final say in respect of the damages people should obtain. I do not agree that the press council should be able to advise the courts or that its advice should be taken into account by the courts in assessing damages for infringement of a person's reputation.

Senator Jim Walsh: It is a pity Senator Norris is not present. I take the Minister's point that particular bodies should not be in a position to advise the courts. The latter should be independent in the assessment of damages, etc. I would favour a situation where a person could make a complaint to the press council and if he or she was prepared to allow it to deal with the matter up to a particular point — for example, where it might award up to €50,000 in damages — he or she would then sign a waiver indicating that he or she would not subsequently take the matter to court. We should create a system whereby a person would be in a position to circumvent the need to go to court in order to vindicate his or her good name. In that context and acting as somewhat of a halfway house, the press council could solve the issues.

We are trying to encourage people to take routes other than those that involve the necessity to pursue costly court cases. In addition, I am also concerned that much of the time of the courts is being taken up in dealing with issues that might be resolved directly by the parties. I presume people will first approach the newspaper or media organisation they believe to have defamed their good name in order to seek an apology. If the latter is not forthcoming, they will then go to the press council. If we could allow for some determination at that level, even small amounts of compensation, we would save court time and perhaps facilitate the thrust of what we are trying to achieve here. I see some merit in it. The PIAB is not a good analogy to use, as previous speakers have said, but it is the closest to an independent press council. The PIAB was set up for specific reasons. The press council needs to be independent. We could not allow a body established by and paid for by the press to make such determinations.

Senator Denis O'Donovan: I take a slightly different view from my colleague in that I regard the press council or press ombudsman as having the role of monitoring the conduct, code of ethics and standards of the media. When we talk of giving powers to the press council, I envisage its role as one of admonishing a certain newspaper, radio station or television channel, pointing out it has sinned and crossed the boundary of fairness and propriety and that it should apologise. However, suggesting that it should recommend a monetary settlement would be totally *ultra vires* of the council. When the Oireachtas tried to impose mandatory sentences for drug-related offences under the Criminal Justice Bill, sections of it were more observed by the Oireachtas ignoring that suggestion. That might be the wrong analogy to use in this regard. If the press council were given extra power to recommend monetary settlements of, say, €50,000 or €100,000, it would create mayhem. Not alone would it give rise to an unintended interference with the Legislature and the process of proceedings, it would also set a dangerous precedent. I regard the role of the press council or press ombudsman as being one of cracking the whip where somebody steps out of line and prodding him or her into settling the case or printing an apology. I see nothing wrong with that, but to give that body or individual statutory powers to award damages, whether involving small or large amounts, would be wrong. In that regard, we must be extremely careful. The Minister's response to Senator Norris's amendment was fair, reasonable and one with which I concur.

Senator Eugene Regan: I concur with Senator O'Donovan's statement. Guidelines are set out in the legislation and it would usurp the function of the courts to include any such provision. It would be inappropriate.

Senator Dominic Hannigan: We will withdraw the amendment and may retable it at a later Stage.

Amendment, by leave, withdrawn.

Section 29 agreed to.

Sections 30 and 31 agreed to.

Amendment No. 42 not moved.

Section 32 agreed to.

Sections 33 and 34 agreed to.

SECTION 35.

Senator Dominic Hannigan: I move amendment No. 43:

In page 25, subsection (1), line 24, after "knowingly" to insert "or recklessly".

Deputy Brian Lenihan: May I speak to the section first as it might assist consideration of the amendment?

An Cathaoirleach: Is that agreed? Agreed.

Deputy Brian Lenihan: The amendment is to a section I am considering deleting. That is the reason I was anxious to spare Senator Hannigan some time. Section 35 deals with an arcane branch of our law. Part 5 deals with criminal liability. If I may, I will revert to section 34, which is linked to section 35. Section 34 purports to abolish the common law offences of criminal libel, seditious libel and obscene libel and section 35 proposes to establish an entirely new section dealing with the publication of gravely harmful statements. All of these matters in sections 34 and 35 are criminal and not civil matters. Article 40° of the Constitution provides that the publication of blasphemous, seditious or obscene material is in itself an offence. As legislators, we must have regard to that in whatever proposals we draw up in these areas.

I am not satisfied with the current arrangement in sections 34 and 35. Following discussions with the Attorney General, I am reviewing the provisions of sections 34 to 36, inclusive, to ensure that whatever legislation we bring in respects the existing constitutional provisions and goes no further than them.

Senator Dominic Hannigan: In light of the Minister's statement, we will withdraw the amendment and await sight of his revisions.

Amendment, by leave, withdrawn.

Section 35 agreed to.

Sections 36 and 37 agreed to.

SECTION 38.

Question proposed: "That section 38 stand part of the Bill."

Senator Jim Walsh: I wish to refer to a point raised by my colleague, Senator O'Donovan. I do not wish to labour it now as I might deal with it on Report Stage. The Minister may be relying on the effectiveness of the press council to meet the issue, not of the survival of cause of action on death, but of defamation of a deceased person and that there would be respect for the dead, which is a very important part of our ethos. I do not want to delay the debate by initiating a debate on this issue. This is important, however, and this is the only section on which I thought it appropriate to refer to it. Senator O'Donovan has strongly expressed his views on this issue. Perhaps I might defer dealing with it until Report Stage.

Deputy Brian Lenihan: I would like to reply to the point as it is a serious one. Section 38 provides for current law, that libel defamation is one of those causes of action that ceases upon death and that one's reputation, as a matter of legal action ability, does not survive one's death. There are good reasons of policy for this. The tort is necessarily personal and intimate in character and the principal witness is not available to prosecute the claim in a defamation action.

Concern was expressed at an earlier stage in Committee about incidents that have taken place in this context and clearly it is a concern I share. I made that clear in Committee. I have said to the press council that the first matter to which I want it to attend is put in place a proper code of practice to bring an end to this. I made it clear to the council that if it did not address it, I would deal with it as a first priority in the Privacy Bill because first and foremost the wrong being done is the wrong to the privacy of those who mourn the person whose reputation is traduced in this manner.

One of the difficulties of dealing with this subject in the province of defamation law, as distinct from the province of privacy, is that once one starts to legislate in this area in defamation law, one inhibits the writing of obituaries. I am sure that no one in this House would want to inhibit the writing of well-researched obituaries, which necessarily have to contain some candid, if carefully worded, comment about a deceased person. I do not want to inhibit that but I welcome that Senator Walsh raised this point. I do not agree with all the points he raised but I agree with this one. It is not an issue that will go away. I made it clear in Committee that if this issue is not satisfactorily addressed we will have legislate in this area within the lifetime of this Government and not in the decades to come.

Senator Ivor Callely: I welcome the Minister's comments and look forward, with interest, to the progress he makes on this matter.

Question put and agreed to.

Sections 39 to 42, inclusive, agreed to.

Progress reported; Committee to sit again.

Business of Seanad.

Senator Donie Cassidy: I wish to make a proposal to the House to change the Order of Business. I move that we extend whatever time is necessary to conclude the Committee Stage of this Bill.

Question put and agreed to.

Defamation Bill: Committee Stage (Resumed).

SECTION 43

Senator Jim Walsh: I move amendment No. 44:

In page 30, between lines 4 and 5, to insert the following subsections:

"(2) Any such order made under this section shall be for a period not to exceed five years.

(3) After the expiry period for each order the Minister shall conduct a review which will be laid before the Houses of the Oireachtas, together with a copy of any new or renewal order.".

This section deals with the press council. The press council has been set up independently of the Houses of the Oireachtas, and it appears the legislation retrospectively will rubber-stamp it. I feel that is inappropriate. That is not an issue for the Minister because it happened during the lifetime of the last Government. However, I do not think that is the way we should establish something as important as a press council. An attempt has been made to make it look like it is independent, but it cannot be so, given the structure that has been put in place to establish it. That is regrettable. When the Bill is eventually finalised in the Houses of the Oireachtas, I encourage the Minister to advertise for bodies and personnel to make an application for recognition as the press council. A proper evaluation of those bodies should take place before the press council is put *in situ*.

As I read section 43, there is no time limit for the press council. Once it is put in place, it could continue *ad infinitum*. I do not think that is the most appropriate mechanism for us to establish a new press council. I was going to suggest that it should not be for a period longer than three years, but my amendment is for a period not to exceed five years. There should be a review and it will be particularly important at the early stages to monitor its effectiveness, impartiality and impact on the issue of defamation, as well as whether apologies are compliant with recommendations and the like. My amendment calls for this review at the end of the period of five years or less, and it should be laid before the Houses of the Oireachtas, together with a copy of any new or renewal order.

The press has a very powerful influence and if we do not have something like this in law, it would be much easier to take the option of not carrying out the review and having an argument with the body that represents itself as the press council. If the normal procedures applied and there was an independent process of assessing what would be defined as the press council, there would be periodic reviews, as happens in all Government regulations to set up bodies. I hope this amendment will be an improvement to the section.

Senator Ivor Callely: I am inclined to disagree with Senator Walsh on this aspect, but we might get clarification from the Minister on the progress in setting up the structures within the press council. The press has called for defamation reform over many years and we have got there now. I would welcome the establishment of the council. We are in a quandary when it comes to its independence, but the whole area of self-regulation is under threat in many walks of life and it will be interesting to see the manner in which the press council has been structured. For those of us who have dealt with the press, we must accept that there are some very good guys out there. Hopefully, the council will prove its own independence by its actions, and this is where I differ from my colleague to some extent.

Senator Denis O'Donovan: The press council is in a test mode at this stage. There has been a debate for the past 30 to 40 years about freedom of speech and all the trappings that go with that, as well as the natural curtailment to ensure that people are not defamed and that freedom of speech is not abused. I accept that the press council must act independently of this House, but the spotlight will be on this council for the next two or three years. If cases such as the Lawlor one or that of the tragic situation of a family in Carlow or Kilkenny arise, then we will have to revisit the entire issue. If it is not seen to be working, the obligation is on the Oireachtas to ensure it does.

Having said all of that, I have absolute confidence in the press Ombudsman and that a press council will be effective, fair and transparent. If that occurs, we will have no fears. After a fair trial period of two to three years, if the council is not being seen to be effective as a restriction on the abuse of the rights of freedom of speech, then we will have to revisit the matter. Hopefully, my reservations will be seen as being unnecessary.

Senator Eugene Regan: We must have the courage of our convictions. If we are to establish a press council, we must provide for it to act independently. There is a provision in section 43(5) which states:

If the Minister is of the opinion that a body for the time being standing recognised by order under this section no longer complies with the provisions of Schedule 2, he or she may revoke that order.

I would have thought this provision is adequate to address the concerns of Senator Walsh. I do not believe the amendment is appropriate.

Deputy Brian Lenihan: There are issues of law and issues of policy here. On the narrow issue of law, as Senator Regan points out, I have the power to revoke the recognition of the press council as it is written into the Bill. That can be exercisable at any time. If the council does not comply with the minimum standards prescribed

[Deputy Brian Lenihan.]

for it under this Bill, I can revoke it. That is clear and it strikes the balance correctly. If I go down Senator Walsh's route of announcing a legal review, I fear I will put myself in a position where the council is no longer independent in the performance of its functions and I will have to engage in a comprehensive audit of it in a designated period as a matter of law. The period referred to in Senator Walsh's amendment is five years. I would prefer to take the approach, as I have outlined during this debate, of leaving the Privacy Bill on the Order Paper of this House, reviewing developments and giving the Press Council, as a matter of practical policy, an opportunity to flourish and address the issues Senators have raised in this debate.

I want to refer again to the behaviour of the media on people's deaths. The use of the libel law will not address all the issues involved because there are profound issues of taste as well as truth and falsehood, for example, the photographs taken of people in mourning. The Press Council must address these issues as well as other matters mentioned in this debate.

Senator Jim Walsh: I take Senator Regan's point, which the Minister mentioned, that the power to revoke the order exists. If that is the conventional view on this, that is fair enough. However, should a future Minister have the courage to revoke the order he will no doubt be excoriated in the press for doing so, given that the Press Council is the product of the media. That is why a statutory review term would take it out of that area. I take the Minister's point that one could be seen to be interfering.

What about a review of the Press Council? We may all form different opinions based on one or two cases but there should be a system of evaluating how it is progressing so that it could be debated. If we give legislative force to a body that has been established, it is right that it be accountable. Perhaps it will be accountable to some of our joint Oireachtas committees, I do not know. I would hate to think we are setting loose a body established outside the Houses and giving it statutory recognition which it will continue to enjoy. I will not say it will enjoy it with impunity because that section on revoking it puts a break on it.

I would welcome the introduction of the Privacy Bill, which was initially envisaged as part of this process. People have an entitlement which is not recognised or respected by many in the media. As Senator Callely said, there are many fine people in the profession but many are driven by sales and circulation, and that reduces standards.

Amendment, by leave, withdrawn.

Section 43 agreed to.

SCHEDULE 1.

Government amendment No. 45:

In page 31, paragraph 5, line 1, to delete "under the Constitution" and substitute " by law in the State".

Amendment agreed to.

Schedule 1, as amended, agreed to.

SCHEDULE 2.

Senator Dominic Hannigan: On behalf of Senator Norris I move amendment No. 46:

In page 33, paragraph 4, line 8, to delete "shall" and substitute "may".

Deputy Brian Lenihan: Section 2 sets out the minimum requirements on the Press Council. Adherence to these requirements is a vital element in the future recognition of an independent Press Council and the list of requirements is self-explanatory. Section 4 of Schedule 2 provides that the owner of any periodical in circulation in the State shall be entitled to be a member of the Press Council. The provision does not force an owner of a periodical to be a member and he or she may choose for whatever reason not to be. I see no purpose in the amendment.

Amendment, by leave, withdrawn.

Amendment No. 47 not moved.

Schedule 2 agreed to.

Title agreed to.

Bill reported with amendments.

Acting Chairman: When is it proposed to take Report Stage?

Senator Denis O'Donovan: Next week.

Acting Chairman: When is it proposed to sit again?

Senator Denis O'Donovan: At 10.30 a.m. tomorrow.

Adjournment Matter.

Harbours and Piers.

Senator Brian Ó Domhnaill: Cuirim fáilte roimh an Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta anseo tráthnóna. Bhí sé anseo cúpla seachtain ó shin fosta agus tá lúcháir orm go bhfuil sé anseo arís tráthnóna.

Ba mhaith liom ceist a chur ar an Aire maidir le dhá thogra i nDún na nGall. Is é an chéad togra

cé oileán Inis Bó Finne. Tá géargá ann an cé a fhorbairt. Tá an cé atá ann faoi láthair ag titim as a chéile. Níl sé úsáideach do na hiascairí atá ag iascaireacht amach as an oileán, nó na báid farantóireachta atá áúsáid chun daoine a thabhairt ón mór-thír go dtí an oileán. Tá sé tábhachtach do phobal an oileáin agus cúrsaí turasóireachta ann go ndéanfaí forbairt ar an gcé. Tuigim go bhfuil plé leanúnach ar siúl idir an Roinn agus an gcomhairle contae maidir leis an gcé agus go bhfuil luacháil de €481,000 curtha ar an obair atá i gceist a dhéanamh. Bhí comhairleoirí ceaptha ag an gcomhairle contae chun an réamh-obair a dhéanamh. Tar éis tuaraisc na gcomhairleoirí, cuireadh an jab ar e-tender. Tháinig an luacháil de €481,000 ar ais agus roghnaíodh conraitheoir. Bhí an conraitheoir sásta fanacht leis an bpraghas sin go dtí deireadh na bliana seo. Tuigim ó na cainteanna atá ar siúl idir an Roinn agus an chomhairle contae go bhfuil 25% den airgead le teacht ón chomhairle contae, agus 75% den airgead le teacht ón Roinn. Tá €125,000 ceadaithe ag an gcomhairle contae don togra seo. Molaim gur chóir don Roinn cuid den airgead a cheadú anois, cé go bhfuil sé beagnach ro-dhéanach aon obair a dhéanamh idir seo agus deireadh na bliana. Tá súil agam go mbeimid in ann dea-scéal a fháil ón Aire go luath chun tús a chur leis an obair tábhachtach seo.

Ba mhaith liom labhairt mar gheall ar an dara togra — balla cosanta ar Oileán Thoraí. De thairbhe an teagmháil idir an Roinn agus an gcomhairle contae, tá iarratas úr á ullmhú ag an gcomhairle contae, ag cuir san áireamh an obair atá de dhíth ar an mballa atá ann faoi láthair — é a shíneadh agus a thógáil níos airde. Sílim go bhfuil luacháil €65,000 ar an mballa atá ann a chosaint, €115,000 ar an mballa a shíneadh agus €140,000 ar an mballa a ardú agus a dhéanamh níos láidre. Tá súil agam go mbeidh sé ar chumas an Aire machnamh a dhéanamh ar an iarratas atáá ullmhú faoi láthair ag an gcomhairle contae agus an plé leanúnach idir an Roinn agus an gcomhairle contae, agus ansin cinneadh a dhéanamh dul ar aghaidh leis an dtogra úd. Tuigim go dtiocfaidh 50% den maoiniú ón gcomhairle contae agus 50% ón Roinn. Tá chomhmhaoiniú de €50,000 ceadaithe ag Comhairle Contae Dhún na nGall faoi láthair ach tá an gcomhairle ag fanacht le airgead ón Roinn. Tuigim go raibh briseadhsíos cumarsáide idir feidhmeannaigh na gcomhairle contae agus feidhmeannaigh na Roinne ó thaobh an iarratais seo de. Tugadh le fios dúinn mar ionadaithe poiblí go raibh an iarratas déanta chuig an Roinn, ach sílim anois nach sin an chás. Tar éis dom soiléiriú a fháil, tá a fhois agam anois go bhfuil iarratas úr le déanamh agus go bhfuil séá ullmhú ag feidhmeannaigh na comhairle contae. Gheobhaidh cigire na Roinne an iarratas úr chomh luath agus is féidir. Tá súil agam go mbeidh an Aire in ann an airgead tábhachtach sin a chur ar fáil dúinn.

Minister for Community, Rural and Gaeltacht Affairs (Deputy Éamon Ó Cuív): Ba mhaith liom leithscéal a ghabháil faoi mo dheireanaí. Cheap mé go raibh an díospóireacht seo le tosnú ag a seacht a chlog. Cé gur chuir an Seanadóir an cheist síos i mBéarla, tuigim go mb'fhearr leis, mar ball den Údaráis**,** freagra a fháil uaim i nGaeilge. Mar sin, tabharfaidh mé an fhreagra i nGaeilge. Tá sé mar nós agam go hiondúil ceisteanna a cuirtear síos i mBéarla a fhreagairt i mBéarla agus ceisteanna a cuirtear i nGaeilge a fhreagairt i nGaeilge. Déanfaidh mé eisceacht sa gcás seo mar tá mé cinnte go mb'fhearr leis an Seanadóir go bhfreagróidh mé i nGaeilge é.

Ba mhaith liom a shoiléiriú go bhfuil níos mó ná €6 milliún infheistithe ag rannóg na n-oileán mo Roinne sna hoileáin i dTír Chonail ó 2002. Baineann ionann agus 68%, no €4.2 milliún, de seo le oibrithe capitil, agus is bun-struchtúir é sin. Mar shampla, tá obair áirithe déanta ar cé Machaire Rabhartaigh agus ar Céibh Reannaigh ar Árainn Mhór. Roimhe sin, rinneamar obair ar ché an Leadhb Gharbh. Baineann an chuid eile den obair le rochtain agus bóithre, oibrithe beaga mara, caomhnú an chósta, athnuachan baile agus obair comhshaoil. Baineann cuid eile den chiste leis na báid farantóireachta atá ag freastal ar na hoileáin.

Ar ndóigh, tá seirbhísí i bhfad níos fearr ag dul go Oileán Thoraí agus Árainn Mhór ná mar a bhí roimhe seo. Tá seirbhísí héileacaptar ar fáil ar Oileán Thoraí freisin. Is fiú a luadh go dtarraingíonn na hoileáin an t-uafás airgid eile ó mo Roinn faoi scéimeanna ar nós CLÁR, na scéimeanna Gaeltachta, deontas tithíochta, Leader agus an local development and social inclusion programme. Mar sin, tá cuid mhaith airgid infheistithe ag mo Roinn go díreach sna hoileáin. Tá airgead á chuir isteach ag Údarás na Gaeltachta agus Comhairle Contae Dhún na nGall freisin.

Tá an chaoi ina roghnaítear na tograí atá le déanamh bunaithe ar an méid airgid atá ar fáil ag an Roinn. Tá i bhfad níos mó airgead ná riamh ar fáil ag an Roinn. Tugtar tosaíocht de réir na bun-chritéir, mar shampla an phráinn a bhaineann le oibreacha, cé mhéid duine atá ina cónaí ar an oileán, luach airgid, an fiontar — na rudaí ar fad a bhaineann le cinneadh a dhéanamh mar Aire. Ar ndóigh, ní féidir liom níos mó tograí a cheadú ná mar atá de mhaoiniú agam — caithfimid é sin a coinneáil le n-intinn. Tá go leor tograí móra idir láimhe againn i láthair na huaire.

Maidir le cé Inis Bó Finne, fuair mé iarratas i mí Lúnasa na bliana seo ag iarraidh 75% den airgead atá á teastáil le feabhas a chuir ar an gcé. Tá an t-iarratas á scrúdú i láthair na huaire i gcomhthéacs an méid airgid atá ar fáil ag an Roinn agus na tosaíochtaí a luaigh mé. Ar ndóigh, déanfar an chás a mheas sa gcomhthéacs sin.

Maidir le Oileán Thoraí, ba mhaith liom a shoiléiriú go gcaitheadh €931,987 chun cosaint na tithe agus an cloigtheach, atá mar séadchomhartha náisiunta ón 6ú aois, a chosaint ó creimeadh cósta. Bhí sé sin tábhachtach. Ar ndóigh, bhí infheistíocht áitiúil i gceist freisin ón gcomhairle contae. Idir 2001 and 2003, caitheadh os cionn €1 milliún chun creimeadh cósta ar Oileán Thoraí a

[Deputy Éamon Ó Cuív.]

stopadh. I 2005, cheadaigh an Roinn deontas eile de €32,500 chun an obair sin a chríochnú. Tuigtear dom go bhfuil dhá chéim eile den obair seo — sineadh 30 m leis an mballa atá ann i láthair na huaire agus an balla a ardú chun tonnta a chuir siar ar ais isteach sa bhfarraige, seachas go mbriseadh siad ar thalamh tirim. Pléadh é seo ag cruinnithe idir oifigigh na Roinne agus Comhairle Contae Dhún na nGall i 2007.

Tá polasaí láidir agam maidir le hoibreacha den shórt seo. Faighim go leor iarratais gach bliain, ó pobail ar na hoileáin agus ar an mórthír, le haghaidh airgead chun creimeadh cósta a sheachaint. Tá sé mar pholasaí ag an Roinn gan airgead creimeadh cósta a cheadú sa gcás nach bhfuil tithe, bóithre nó saoráidí poiblí do chosaint. Ní tugaimid airgead creimeadh cósta muna bhfuil ach talamh feirme, mar shampla, le chosaint. Má ndéanfaimid a leithéid, ní bheadh deireadh go deo leis an méid airgead a d'fhéadfaimid a chaitheamh.

Mar a dúirt mé mar fhreagra ar cheist parlaiminte ar 24 Deireadh Fomhair seo caite, ní raibh an obair seo clúdaithe, nó san áireamh, sa liosta a thug Chomhairle Contae Dhún na nGall ar aghaidh le haghaidh na mionoibrithe i mbliana, ar na cúiseanna atá díreach mínithe agam. Bhí plé idir oifigigh na Roinne agus an gcomhairle chontae le gairid. Tuigtear dom go bhfaigheadh phríomh-iarratas ón gcomhairle ar 26 Samhain 2007 ag lorg €100,000 chun an balla farraige a ardú os comhair na tithe agus balla speisialta a thógadh chun na tonnta a shroanadh thar n-ais sa bhfharraige. Tá an iarratas seo á scrúdú sa Roinn i láthair na huaire.

Tá súil agam go dtugann an méid atá ráite agam inniu lánléargas don Seanadóir agus don Teach faoin infheistíocht fhiúntach agus leanúnach atá ar bun ag an Stát i bhforbairt na n-oileán, ní amháin i gcás na hoileáin amach ó chósta Dhún na nGall ach ar bhonn náisiúnta.

The Seanad adjourned at 6.30 p.m. until 10.30 a.m. on Wednesday, 12 December 2007.