



4 December 2020

Seán Ó Fearghaíl T.D.,  
Ceann Comhairle,  
Dáil Éireann.

Dear Ceann Comhairle,

I refer to your letter to me of 3 December 2020 with regard to the replies to Questions Nos. 146, 147, 150 and 151 of Tuesday 24 November 2020 in respect of which Deputy Alan Kelly has written to you under Standing Order 54.

I note your conclusion that you agree with the Deputy that the reply does not address the information sought in Questions 146 and 151 and, therefore, does not comply with the provisions of the Standing Order in respect of those Questions. I regret to say that I do not share that view.

With regard to Question No. 146, Deputy Kelly misstates in his Question the process of appointment for members of the Judiciary and, as a consequence, he seeks information that cannot be provided. Judicial appointments are made in accordance with Articles 13.9 and 35.1 of the Constitution, by the President acting on the advice of the Government. This is a constitutional function that cannot be transferred or delegated. The constitutional prerogative on advising the President on judicial appointments lies with the Government. It cannot be exercised by a Minister acting alone. The power of appointment lies with the President alone.

It follows that at no point could I, whether as Taoiseach or otherwise, have been informed by the Tánaiste or the Minister for Justice in the manner envisaged by the question that a person would be appointed to the Supreme Court. Such an appointment can only be made by the President. A nomination to the President for such an appointment can only be made by the Government. As you will appreciate, this is not a superficial or specious distinction. It is part and parcel of the constitutionally-mandated arrangements that govern the role of different arms of the State in the process for appointment of members of the judiciary.

In light of your letter, I assume for the purpose of this correspondence that the information sought was when, as Taoiseach, I was informed by the Minister for Justice or the Tánaiste that a person would be *proposed to the Government for nomination for appointment by the President to the Supreme Court*. I do not wish to pre-empt that a Question in those terms would be submitted but, as I am anxious to be of assistance to both you a Cheann Comhairle and to the House, I am happy to state that I was informed by the Minister for Justice of the proposal between 11 and 14 July 2020 in the course of a telephone call.

As I stated in my reply to Deputy Kelly's Questions, the formal means by which I and the other Members of the Government were informed of the proposal by the Minister for Justice was by means of a Memorandum for the Government setting out the proposal which was considered at its meeting on 15 July 2020.

Question No. 151 again misstates the process for judicial appointments and the distinct roles the Constitution provides for the Government and the President, as I have set out above. It follows that at no point, whether prior to or after 15 July 2020, could I have informed other Ministers of an intention of the Government to appoint a person as a Supreme Court judge. Once again, I do not wish to pre-empt that a further Question might be tabled but, as I am anxious to be of assistance to both you and to the House, I am happy to state that I did not inform other Ministers of a proposal to the Government to nominate a person for appointment by the President to the Supreme Court prior to 15 July 2020.

It is required, as you make clear in your letter, that in general terms, in order to elicit information effectively, Questions should be clear and precise in their phrasing. This is, of course, essential where issues of the separation of powers under the Constitution are raised. As a rule, in answering Questions I seek to avoid where it is possible making assumptions or seeking to over-interpret the Questions that are submitted for answer, especially where Questions are unclear in terms of the information that is sought. If you feel it is helpful, I am happy for officials in my Department to liaise with the relevant officials in your Office to ensure that any lack of clarity in Questions or misunderstandings as to responsibilities can be addressed so as to ensure that Members can receive information that they seek.

A Cheann Comhairle, I have emphasised on the floor of the House and elsewhere that my overriding concern with regard to the appointment made to the Supreme Court in July this year has been to ensure that the separation of powers as between the executive, legislative and judicial arms of the State would be respected and protected. I have emphasised also the importance of the independent role of the Judicial Appointments Advisory Board, in accordance with the law, in the process for judicial appointments. I am equally conscious of the duty I have as Taoiseach to account to the Dáil appropriately. I hope, in light of the above, you will agree that I have properly addressed myself to these essential aspects of our democratic framework. I want to assure you that I will continue to adopt this approach in respect of this and all other issues.

Yours sincerely,



Micheál Martin T.D.  
An Taoiseach.