



Mr Seán Ó Fearghaíl,

Ceann Comhairle.

**Re: Parliamentary Questions for written answer on 24 November, 2020:
Application under Dáil Standing Order No. 54
(‘Adequacy of replies to Parliamentary Questions and topical issues’)**

04 December, 2020

Dear Ceann Comhairle,

I refer to your letter of 3 December, 2020 in the above matter.

I regret this issue has arisen particularly as I gave a full account of all matters relating to the filling of the Supreme Court vacancy during Statements and Answers on Judicial Appointments in the Dáil on 26 November last and at the Justice Committee. I am conscious of Deputy Kelly’s interest in this matter, and he can be assured that it was certainly not my intention to fall short of the provisions in Standing Order No.54.

It may help if I were to explain that in replying to Deputy Kelly’s Questions on 24 November, and mindful of my responsibility as Minister for Justice, I was conscious of the possibility then that a number of members were considering putting forward a motion of impeachment. In all this, I am mindful too on my obligation to uphold the independence and integrity of the Judiciary, and not to do or say anything which could undermine the courts, or any sitting judge, or indeed undermine the separation of powers, or cause a sitting judge who had applied for a vacancy to be identified.

As you know, this is against a background where appointments to the Judiciary 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 to advise the President on judicial appointments lies with the Government alone. It is my duty therefore to have regard to the Constitution and the law in making such appointments.

At all times too, I must be fair to those persons who have put themselves forward for appointment.

My answers were therefore framed in that context, and I regret to say that I do not agree with your conclusion in that regard. However, to be helpful to the Deputy, the position will be clearer as I respond in turn to each of Questions set out in your Table:

PQ No. 76

I have provided as much information on this matter as I can while protecting the identities of the serving judges who apply for judicial appointment. While no statutory provisions govern the process, expressions of interests received over a number of years are retained on file for any current or future vacancy, which are put forward in confidence. It has never been the practice, to my knowledge, to release such information, or any information that might identify such judges. However, it is on the Dáil record, following my statement on 26 November, that expressions of interest from serving judges received from 2017 to June 2020 were actively considered as part of the process for filling this post.

PQ No. 728

I can confirm that a draft Memorandum for Government was submitted by officials to my Office on 6 July, 2020. This is the precise date. The submission included details of the recommendation that had been made by Judicial Appointments Advisory Board; expressions of interest from serving members of the judiciary; and all other judges eligible for the position. I was made aware of the JAAB letter at the same time as I was informed, upon my appointment, that there was a vacancy to be filled in the Supreme Court



PQ No. 729

As outlined in the reply to Deputy Kelly, I spoke with the Taoiseach, the Tánaiste, Minister Ryan and the Attorney General between 11 and 14 July in line with the Cabinet Handbook. I then brought a Memorandum to Cabinet for the Government's consideration on 15 July. The Memorandum considered by Government was submitted on 15 July, 2020 to the Department of the Taoiseach for inclusion on the Cabinet agenda.

PQ NO. 730, 731, 732

I have given a full account of all matters related to the filling of the Supreme Court vacancy during the Statements and Questions and Answers on Judicial Appointments held in the Dáil on 26 November last. During the debate, I informed the House, that in line with the Cabinet handbook, between 11 and 14 July I informed the Taoiseach, the Tánaiste, the Minister for Transport, Deputy Eamon Ryan, and the Attorney General of my intention to propose Séamus Woulfe SC for the position, following which I brought a memorandum for the consideration of the Government on 15 July, recommending a name to Cabinet for appointment by the President. At this remove, I cannot pinpoint the precise date between 11 and 14 July on which the various conversations took place, and as such I am providing a date range in order to be helpful to the Deputy.

PQ No. 733

I did not speak with any other Minister prior to 15 July of my intention to appoint the person concerned.



PQ No. 734

As outlined in my reply to Deputy Kelly, it has been the practice to maintain a vacancy in the Supreme Court due to the reduction achieved in waiting times in that court in recent years. However, this arrangement is kept under review.

To reiterate, it is the factual position in this particular case that the Chief Justice wrote to my predecessor on 4 February 2020 requesting that the Supreme Court vacancy arising from the retirement of Ms Justice Mary Finlay Geoghegan in June 2019 be filled. He cited emerging pressures including the establishment of the Cervical Check Tribunal.

The then Minister wrote to the Judicial Appointments Advisory Board (JAAB) on 17 February 2020.

The then Minister also responded separately to the Chief Justice stating that this request of the JAAB did not pre-suppose the filling of the post; it was to facilitate the procedure should a decision be taken to make an appointment at whatever point in the future that vacancy might be progressed. Indeed, the only judicial nomination made during the period of Government formation was to the post of President of the High Court, as this senior position has broader statutory functions.

By letter dated 11 March, 2020, the JAAB advised that they had met on 9 March and decided to recommend one candidate, Mr Séamus Woulfe, SC, whom it considered suitable for appointment to the Supreme Court.

Following my appointment at the end of June, I was informed by my officials of the vacancy to be filled on the Supreme Court and that the Chief Justice had written to my predecessor. A draft Memorandum was submitted to my Office on 6 July, 2020. In line with the Cabinet Handbook, between 11 and 14 July I spoke with the Taoiseach, the Tánaiste, Minister Ryan and the Attorney General, following which I brought a Memorandum for the Government's consideration on 15 July, 2020.



PQ No. 745

The position is as outlined in the reply regarding my speaking with the Taoiseach, the Tánaiste, Minister Ryan and the Attorney General between 11 and 14 July, again in line with the Cabinet Handbook and following which I brought a Memorandum for the consideration of Government on 15 July, 2020.

I trust this helps explains matters. As I said in my statement to the Dáil on 26 November, the Government has acted appropriately at all times through the current process. I have made every effort to answer such questions on the process, and will continue to do so in my oral parliamentary question session next week, which I had hoped to be scheduled for an earlier date.

However, as a Government, we have never believed that the judicial appointments process currently in place is as good as it should be. That is why we built into our Programme for Government that we would bring forward new legislation to reform the process very quickly, and it is my intention to do so as quickly as possible and to provide leadership in this regard. I expect the support of colleagues across the floor in putting this new legislation and new process in place shortly.

Yours sincerely,

Helen McEntee T.D.
Minister for Justice