

5th November, 2020

Mr. Justice Seamus Woulfe
The Supreme Court
Four Courts
Dublin 7

Dear Mr. Justice Woulfe

As you know, on the 29th of September, 2020, I received a report from Ms Justice Denham of her review in relation to your attendance at a function on the 19th of August, 2020. The review was based on your account and on materials submitted by you. The review concluded that you had exercised insufficient vigilance to ensure that you acted at all times with propriety and the appearance of propriety in relation to your attendance at the event and that public controversy had been damaging to the Supreme Court. The review recommended that the matter be addressed by informal resolution by me. The Supreme Court has indicated its acceptance of the conclusions of the review.

As you know, I had arranged to meet with you on the 5th of October. However, that meeting was ultimately postponed until the 5th November. The purpose of the meeting was to enable me to set out my position on the resolution of this matter. This letter is to confirm my position. I have already set out my view as to the scope of the issues which require to be resolved.

Public health regulations in force on the 19th August 2020 made it an offence to organise an indoor social event where the numbers attending exceeded 50 persons (other than in a private dwelling). It was not an offence to attend such an event and accordingly there is no question of you having breached the criminal law.

However, a judge should not attend any event which is organised in breach of the law or where there may be a reasonable public perception that this is so. To do so brings the law into disrepute and is therefore a serious breach of judicial ethics. Whether or not the organisation of this particular event involved a breach of the regulations, its legality depended on an argument as to the arrangements within the hotel. Assuming it to have been lawful, it did not comply with the objective of the regulations, which was to prevent large numbers of people from mingling together at social events. It is inappropriate for a judge to attend such an event. To do so adds to a public health hazard and to a perception that legal technicalities outweigh public health.

The event did not comply with the guidelines announced by the Government on the 18th August, which were intended to reduce the numbers permitted at an indoor social event to six persons. Such guidelines, when announced, do not have the immediate force of law. However, they must be seen as reflecting the urgent advice of public health experts in the context of a highly contagious disease. Judges should exercise a reasonable level

of vigilance to ensure that they comply with such guidelines unless they have strong justification for doing otherwise. This is in the interests of public health and the maintenance of the social solidarity necessary to contain the spread of disease, during a time when a great many people are suffering personal hardship because of the necessary restrictions imposed on their lives.

A failure by a judge to observe these principles can lead to serious damage to public trust in, and respect for, the judiciary. That has occurred in this case, at a time when trust and confidence in the institutions of the State, and social solidarity more generally, is particularly important.

I am required, therefore, to reprimand you in respect of your conduct.

As you know, I have no powers, under the Constitution or any relevant legislation, to impose any formal sanction on a member of the judiciary. In respect of your attendance at the event in Clifden, I must inform you, however, that you will not be listed to sit as a judge until February 2021 and I strongly suggest in those circumstances that you should make arrangements to either waive or repay your salary for this period (for example by utilising s.483 of the Taxes Consolidation Act, 1997). In that context you repeated the offer made in correspondence to donate a month's salary to charity and offered to make a further apology. I do not consider that course of action sufficient. It had been my intention that this period would run between October and December but, given that our meeting was delayed by a month, I have put the end date also back by a similar period.

If I were dealing with the specific matters which Ms. Justice Denham was asked to review this would, with the possible exception of inviting you to make a further public apology, have been the steps which I would have taken.

However, it is also necessary for me to deal with the situation as it now is. The manner in which you have met this problem has, in my view, added very substantially to the damage caused to the Court, the judiciary generally and thus to the administration of justice. In that context I would remind you of a telephone conversation on the evening of August 21st in which I informed you of my considerable concern that damage was being caused to the judiciary and that the public view was being formed by reasonable people and not by a media frenzy. The concentration on narrow and technical issues rather than recognising the serious public concern and the consequent damage to the Court has only added to the seriousness of the situation.

Unfortunately, further serious issues now arise out of both aspects of the transcripts of your interview with Ms. Justice Denham and elements of the correspondence between us since the delivery of her report.

That account appeared to show that you did not appreciate the genuine public concern about the event and your attendance at it, but rather continued to put the controversy down to a media frenzy. Indeed, your statement that you did not understand what you were apologising for at the time when you issued your limited apology would now significantly devalue any further apology. There would be legitimate public scepticism about the genuineness of any such apology.

Separately, you commented adversely on the government's management of the public health crisis and made remarks critical of the Taoiseach and many other office holders which, as a result of both their tone and content, created further genuine controversy. It is a longstanding and important aspect of the reciprocal respect due by the institutions of the State to each other that judges do not engage in or give rise to matters of controversy most particularly involving the other branches.

So far as your colleagues are concerned you implied that some may have prejudged you. This was compounded by your characterisation in correspondence of your meeting with three colleagues on October 2nd which suggested inappropriate behaviour on their part. Having raised that matter with you in correspondence you replied on October 12th without withdrawing any implication of improper conduct.

You have stated that you have ignored most of the media coverage of the report and the transcripts. I should say that the reasonable response of a great number of people to the transcripts has, in my judgment, caused even greater damage to the judiciary than did your attendance at the Clifden event.

It is my view, and the unanimous view of all of the members of the Court (including the ex-officio members), that the cumulative effect of all of these matters has been to cause a very significant and irreparable damage both to the Court and to the relationship within the Court which is essential to the proper functioning of a collegiate court.

It is not part of my role to ask, let alone tell, you to resign. Resignation is and can only be for the judge him or herself. Regrettably, however, I believe that I should make clear my personal opinion that, to avoid continuing serious damage to the judiciary, you should resign. I asked you to reflect on this. You have indicated that you do not intend to resign.

Yours sincerely

Frank Clarke
Chief Justice