



The Hon. Mr Justice Frank Clarke
CHIEF JUSTICE

9th November 2020

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

By email only

Dear Mr. Justice Woulfe

Your letter of this morning refers. I do not consider that anything useful can be served by further detailed correspondence. As you are aware I indicated to you, at our meeting on Thursday of last week, that I intended sending you a letter setting out my views. I did say that I would consider any comments or observations which you might have to make before finalising the letter. I conveyed the substance of my views to you at the meeting. At the close of the meeting you requested a copy of the working draft which, with some minor amendments, I sent to you immediately after the meeting. Your letter of this morning is a response to the substance of what was said by me at Thursday's meeting and as confirmed in that draft letter. On that basis I think it appropriate to consider the draft letter as sent to you as forming part of the record of our exchanges.

I intend shortly to publish the draft letter, your response and this letter. I consider this course of action necessary in the public interest. I will consider any suggestions which you may make as to the publication of other parts of our correspondence for completeness.

However, there are a number of points referred to in your letter of this morning on which I would like to briefly comment.

- It is neither feasible nor realistic to attempt to separate each individual issue and argue whether it in itself would justify resignation. It is the cumulative effect of this serious controversy that I have had to consider. That cannot be fairly characterised as a "shift of the goal posts".

- Ms Justice Denham heard your account. She made it clear that she was making no finding of fact and was coming to no conclusion as to law. It is at a minimum debatable whether it could be argued, as you do, that the event complied with regulations. What is unarguable, is that the event gave the impression of being designed to circumvent such regulations and to ignore the public health advice underpinning those regulations and the new guidelines since it was a single gathering of persons who were likely to mingle with each other before, after and at the event. My concern was with the legitimate public concern with your attendance at the event and your subsequent explanation gave rise to.
- I understand that you say that Ms Justice Denham informed you that the meeting would be in private. The meeting was for the purposes of permitting you to give her your account for the purposes of her report, which in due course would be furnished to the Court. The report itself included extracts from the transcript and attached them and other documents as appendices which meant that they would be published with the report. Nevertheless, you were asked in advance of publication, and expressly and specifically agreed to the publication of the report and the appendices. I cannot accept, therefore, that it was the publication by the Judicial Council of the report and appendices which caused any public controversy. Furthermore, the transcript recorded your views, even if you thought they were being expressed in private, and it is not possible to treat them as not having been expressed.
- The meeting with your colleagues on the 2nd October was arranged so that you would hear the views of the court, because of a concern that you did not appreciate the seriousness of the matter. The colleagues who attended were authorised to speak on behalf of the Court. That meeting was arranged in the Four Courts as part of the process. You refer to that meeting in your email of the 4th October. I invited you in my letter of 5th October to confirm you were not suggesting any inappropriate conduct. In your letter of the 12th October, you addressed both the meeting and my letter, and did not do so. Although this matter was specifically addressed once again at our meeting on Thursday and in the draft letter furnished to you, you have not addressed it in your otherwise lengthy letter.
- I note that you are now willing to agree on a somewhat qualified basis (since you say in each case that you will agree “if it would ensure resolution”) to some of what was suggested to you in broad outline. I remain of the view that a waiver of salary is a more appropriate course of action than a donation to a charity of your choice.
- I do not want to debate with you matters already set out at great length, save to say that I believe that I have made clear what I consider to be the scope of the informal resolution process as early as the 1st October, which you did not then dispute. It is clear that Ms Justice Denham was not conducting an inquiry under or by reference to the Judicial Council Act and the resolution process she suggested was that which had always existed, and under which it was for me to consider the appropriate steps to take in the light of her report.

- I do not agree that expressing my opinion can properly be characterised as “judges pressurising another judge to resign”, and/or somehow inconsistent with the principle of judicial independence. The principle of judicial independence is to guarantee the independence of judges in carrying out their functions in deciding cases. Questions sometimes arise, however, about the conduct of judges and the question may arise whether a judge should consider resigning because of the damage being done to the Judiciary generally, and the administration of justice. It is an unrealistic view of the principle of judicial independence to contend that the President of the relevant court is not entitled to have an opinion on the matter, and may not express it to the individual judge. It is important to emphasise that your colleagues at your meeting of October 2nd neither suggested that you should resign nor indicated that judges would be unwilling to sit with you.
- I note that it appears that you implicitly criticise both the meeting between you and your colleagues on the 2nd October and our more recent meeting on grounds that you consider that you did not have an opportunity to express your views. I have to suggest to you that your accounts and arguments and contentions have all been ventilated at very great length both in the account you gave to Judge Denham and in our subsequent extensive correspondence. At both meetings you expressed your views and they were heard. The fact is that, until those meetings, you had not heard your colleagues’ views of the matter. The real burden of your complaint appears to be that your colleagues have been unwilling to share the benign view you take of all the matters involved here. I do recognise that the events which have occurred, and the protracted process, are a source of damage to the to the Judiciary and the Supreme Court in particular, but I have to say that I think it would be more damaging to the Court if I were to either simply accept your view, or perhaps worse, be seen as willing to permit the false impression to be given that I did so.
- Finally, I do acknowledge that, in a number of points in your most recent letter, you express regret and offer an apology and that you have now come to the point of accepting the burden of what I had suggested was appropriate to deal with the matters in Ms Justice Denham’s report. These in themselves are welcome developments, although I regret to say, somewhat undermined by your apparent insistence that nothing you have done merits reprimand, criticism or apology and indeed your continuing desire to place responsibility elsewhere.

I very much regret that we have arrived as this situation. However, I feel that I have no alternative to expressing my opinion in circumstances where, while suggesting that you will apologise and make amends, you maintain that you did little wrong. I do not think that sufficient to restore public confidence. While I accept that some of the media commentary was hurtful, that commentary reflected a lack of insight and understanding on your part of the public reaction. These are matters which affect public trust.

Finally, I should say that, regrettably, I remain of the view, expressed at our meeting and in the draft letter, that you should resign. Part of my role, as Chief Justice, is to do what I can to maintain public confidence in the Supreme Court, the judiciary generally and the

administration of justice. It is in that context that I have expressed my view as to the course of action that will do the most to achieve those ends. I note that you have reaffirmed the view expressed at our meeting to the effect that you will not resign. I do appreciate that this has been a most stressful time and am glad that you recognise that the views which I have come to are not borne out of ill will but rather my genuine assessment of the situation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'F. Clarke', written in a cursive style.

Frank Clarke
Chief Justice