THE HIGH COURT

[2018 No. 8260 P.]

BETWEEN

NOIRÍN O'SULLIVAN

APPLICANT

AND

IRISH EXAMINER LIMITED

RESPONDENT

JUDGMENT of Ms. Justice Pilkington delivered on the 7th day of November, 2018.

1. On 19th September 2018 the applicant issued a Notice of Motion seeking an Order permitting her to issue defamation proceedings outside of the statutory time limit of one year, pursuant to section 11(2)(c) of the Statute of Limitations Act, 1957, as amended by the Defamation Act, 2009 ('the application').

2. The intended defamation proceedings concern the publication of articles by the respondent in the Irish Examiner on 4th October, 2016. The publication comprises a prominent front page article under the byline of Michael Clifford, an editorial, and an article analysing the front page story; all within the same edition of the newspaper.

3. The Irish Examiner's front page article on 4th October 2016 was headed "Senior Gardaí 'tried to destroy' source" and stated, in the opening paragraph, that two senior gardaí had made statements under whistle-blower legislation alleging that senior garda management conducted a major campaign to "destroy" a whistle-blower within the force.

4. At the time the applicant was Commissioner of An Garda Síochána, her appointment having been made permanent in November 2014 until her resignation from that position on 10th September 2017.

5. The applicant is not named within the publication of 4 October 2016. The next day she was referred to by name in connection with it in an RTÉ broadcast and in Dáil Eireann. Thereafter the matters set out within the publication and the naming of the applicant in connection with it were widely reported throughout the media.

6. On or about 7th October 2016 the then Minister for Justice announced that Mr Justice Iarfhlaith O'Neill would conduct an inquiry into protected disclosures referenced within the publication and in his report of 7th December 2016 recommended the establishment of a Commission of Inquiry. That commission of inquiry became the Disclosures Tribunal and it was set up on 17th February 2017 pursuant to the Tribunals of Inquiry (Evidence) Act 1921 (Appointment of Tribunal) Instrument 2017. The opening statement by Mr Justice Charleton was delivered on 27th February 2017 and its hearings concluded on 2nd July 2018.

7. Within the intended defamation proceedings, the applicant seeks damages including aggravated and/or exemplary damages for defamation, a correction order pursuant to s. 30 of the Defamation Act 2009, together with the standard pleas of further and other reliefs, in respect of the publication of 4 October 2016 ("the intended proceedings").

8. The necessity for the application arises pursuant to the amendments to the Statute of Limitations pursuant to the terms of the Defamation Act 2009.

The Legislation

9. Section 38 of the Defamation Act 2009 provides:

"Limitation of actions.

38.— (1) Section 11 of the Act of 1957 is amended—

(a) in subsection (2), by the substitution of the following paragraph for paragraph (c):

"(c) A defamation action within the meaning of the Defamation Act 2009 shall not be brought after the expiration of—

(i) one year, or

(ii) such longer period as the court may direct not exceeding 2 years,

from the date on which the cause of action accrued.",

and

(b) the insertion of the following subsections:

"(3A) The court shall not give a direction under subsection (2)(c)(ii) (inserted by section 38(1)(a) of the Defamation Act 2009) unless it is satisfied that—

(a) the interests of justice require the giving of the direction,

(b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given,

and the court shall, in deciding whether to give such a direction, have regard to the reason for the failure to bring

the action within the period specified in subparagraph (i) of the said subsection (2)(c) and the extent to which any evidence relevant to the matter is by virtue of the delay no longer capable of being adduced.

(3B) For the purposes of bringing a defamation action within the meaning of the Defamation Act 2009, the date of accrual of the cause of action shall be the date upon which the defamatory statement is first published and, where the statement is published through the medium of the internet, the date on which it is first capable of being viewed or listened to through that medium.".

(2) Section 49 of the Act of 1957 is amended by the substitution of the following subsection for subsection (3):

"(3) In the case of defamation actions within the meaning of the Defamation Act 2009, subsection (1) of this section shall have effect as if for the words 'six years' there were substituted the words 'one year or such longer period as the court may direct not exceeding two years'".

10. Pursuant to the legislation cited above the intended proceedings were required to be issued (a) within one year which did not occur or (b) such longer period as the court may direct not exceeding two years.

11. The legislation is also clear as to the matters that must be considered in dealing with any application for an extension of time, not exceeding two years, in such circumstances. In considering these matters on the facts of this case two factors must be noted (a) the first is that no argument is advanced that there is any evidence relevant to the matter which is no longer capable of being adduced by virtue of the delay and (b) the second is that it is clear that the applicant became aware of the publication the subject matter of the intended proceedings at or immediately after its date of publication.

12. In summary therefore the statutory requirements make it clear that a court cannot give a direction to disapply the one-year statutory limitation period unless it is satisfied of two matters:

(a) that the interest of justice requires the giving of the direction; and

(b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given.

Thereafter in deciding whether to give a direction the court should have regard to two matters (only one is appropriate in this instance) namely the reason for the failure to bring the action within the one-year period.

13. The applicant has sworn three affidavits in support of her application. Her reason for not issuing within the one-year statutory time limit can be summarised as follows: -

(a) That the period from the publication of the article on 4th October, 2016, to the conclusion of the public hearings of the Disclosure Tribunal was a period of intense strain for the applicant and her family.

(b) That, whilst in office (as Garda Commissioner), in dealing with the fallout of the controversy and since the applicant left her position in September 2017, she describes herself as being "consumed" with the Disclosures Tribunal which she states was a constant presence and strain for her family and herself.

(c) At the conclusion of the public hearings the applicant believed she could then draw a line under that aspect of the controversy and only thereafter seek to deal with the intended defamation proceedings against the respondent.

(d) The applicant accepts that she could have issued the intended proceedings before now and that she did not have to wait until the conclusion of the Disclosures Tribunal but asserts that she was simply not in a position to do so until the present application.

(e) The applicant also makes reference to the fact that she would have preferred to have awaited the report of the Disclosures Tribunal but to do so would ensure that she could not bring this application within the two year statutory time limit. This application was heard before the court on 3rd October, 2018 prior to any report of the Disclosures Tribunal. The applicant does not explain her preference to make the application and issue the intended proceedings following the report of the Disclosures Tribunal as opposed to its conclusion

14. The applicant does not set out the precise date when she initially took legal advice upon the publication the subject matter of the intended proceedings but in her second affidavit sworn on 1 October 2018, in response to that sworn by Mr Houston for the respondent on 19 September 2018, she states that she did not do so "until the Disclosures Tribunal was ending in June 2018". In doing so, the applicant further confirms that she understood that the intended action would require this application and anticipated (correctly) that it would be strongly contested. She then took further time after June 2018 to consider her position further and discuss matters with her family. Thereafter, she took additional legal advice on the proposed intended proceedings and this application in August 2018 and, thereafter, instructed her solicitor to proceed with this application.

15. The first intimation the respondent had that the applicant was seeking to issue defamation proceedings was her solicitor's letter to the respondent's solicitor dated 10th September, 2018 followed by the service of the papers grounding the application on 19 September 2018.

16. As set out above s. 38 of the Defamation Act, 2009, specifically requires the court to have regard, *inter alia,* to the "reason for the failure to bring the action within the period specified".

17. Peart J. in *Taheny v. Honeyman & ors* (unrept, H Ct, 6th February, 2014), which was in turn endorsed by Ní Raifeartaigh J. in *Rooney v Shell E & P Ireland Limited* [2017] IEHC 63 considered and confirmed that it is the plaintiff who bears the onus of proof in persuading a Court to disapply the one year statutory time limit. He stated in respect of the explanation advanced for the delay by the Plaintiff in those proceedings;

"That onus is discharged in my view firstly by providing an explanation which excuses the delay so that the court could be satisfied that the interests of justice are best served by allowing the case to proceed, and by satisfying the Court additionally that the prejudice which the plaintiff will suffer by being refused a direction outweighs the prejudice which the

> defendants will suffer if the direction is granted. It is insufficient in my view that there is a reason simpliciter for the delay. The court must consider the quality and justifying nature of the reason or reasons put forward, and also weigh the respective prejudices. These requirements are evident from the words used in s. 11, subs. 3A of the Act of 1957."

Ní Raifeartaigh J. commented upon the passage above in the following terms:

> "I agree with the view that the court should conduct a qualitative assessment of the reason offered for the delay, and that the mere proffering of a reason is not necessarily sufficient in and of itself."

I agree with that approach.

18. In this application the explanation for the delay furnished by the applicant is a discrete, personal one. There is a suggestion, and no more than that, that the applicant would have considered her position more difficult had she issued defamation proceedings in her personal capacity whilst Commissioner of An Garda Síochána. The issue therefore is whether an explanation, clear in its terms and personal to the applicant in her consideration of her position is, in and of itself, sufficient to satisfy a qualitative assessment as to the appropriateness of the reason advanced for the delay.

19. The respondent in opposing any disapplication of the statutory time limit points to one specific aspect of this application as it relates to the Disclosures Tribunal itself; specifically that the articles published by the Cork Examiner on 4th October 2016 were the subject of examination and cross examination of the applicant and Mr Michael Clifford of the Cork Examiner respectively.

20. On day 85 of the Disclosures Tribunal (5th June, 2018) Mr Michael Clifford was cross examined by Senior Counsel instructed on behalf of an Garda Síochána, including the applicant and former Commissioner Callinan with regard to the matters set out within the publication in the Cork Examiner of 4th October 2016.

21. On day 82 of the Disclosures Tribunal (30th May, 2018) the applicant was examined by Senior Counsel instructed on behalf of an Garda Síochána, including the applicant and former Commissioner Callinan on the same publication where she was asked questions as to the matters raised within it, together with the public statement she had subsequently issued after its publication.

22. Arising from these matters, the respondent contends that the applicant, as a central figure in matters before the Disclosures Tribunal was, in considering all of the matters she was required to deal with and in instructing counsel, acutely conscious of the publication and the issues that it raised. Many were central to the issues before the tribunal and accordingly the applicant could have directed her mind to what steps, if any, she might take in respect of the publication. Whilst not represented in her personal capacity before that Tribunal, one assumes she would have been in a position to seek legal advice in her personal capacity should she have required it.

23. The applicant is clear; she did not do so as she did not consider she was able to do so at that time in light of all other matters with which she had to contend.

24. In that sense the facts of this case are significantly different from the other Irish cases which have considered this issue. On the facts of this case there can be no credible suggestion that the applicant was caught out by the delay and in my view any arguments surrounding the short statutory one year limitation period for issuing defamation proceedings did not affect this applicant. By this I mean that at no point does she assert she was unaware of the limitation period but rather that factors outside of the intended proceedings and this application weighed more heavily upon her.

25. I now turn to the specific criteria set out within the Defamation Act 2009.

(a) Whether the interest of justice require the giving of the direction to disapply the one-year limitation period

The applicant contends that the factors to be considered under this heading are as follows: -

> (a) In the absence of the clarification sought by the applicant, not to grant the direction would leave the publication in the public domain in perpetuity without any clarification.
>
> (b) There is no freedom of the press consideration, nor is it in the interests of justice to preserve or protect a defamatory article.
>
> (c) That the balance sought to be achieved, between the issues regarding freedom of the press on the one hand and the constitutional right to a good name on the other, is not in any way upset by an extension of time to two years. To do otherwise, may cause an injustice caused by the statutory imposition of an extremely short time limit.
>
> (d) The Act implicitly recognises that a time limit of two years does not undermine the freedom of the press but a shorter period may undermine a person's constitutional right for a good name.
>
> (e) That there was no specific prejudice or inability contended for by the defendant in defending the claim (as advanced by the applicant).
>
> (f) The interests of justice require the direction to allow the applicant vindicate her reputation and the damage done to her.

26. The respondent contends that the interests of justice lie in not directing the extension for the following reasons: -

> (a) the respondent has a good defence to the intended proceedings;
>
> (b) the respondent does not seek to assert justification to any of the meanings pleaded by the applicant;
>
> (c) the articles are clearly published in the public interest;
>
> (d) if the application is refused, the applicant nonetheless has the opportunity for full public vindication within the report to be issued by the Disclosure's Tribunal which would constitute vindication in a public forum; and

(e) the intended proceedings will, in essence, revolve around nuanced debates of meanings as to whether the applicant was actually identified within the articles complained of and also whether they were, in turn, published in the public interest.

(b) Balancing of Prejudice

27. The applicant contends that the prejudice that the applicant will suffer should the application be refused, far outweighs any general prejudice in defending the proceedings that has been identified by the respondent. The applicant also takes issue with any suggestion of the relevance to this application of the applicant being vindicated by any report of the Disclosure's Tribunal.

28. The respondent argues for the balancing of prejudice in the following terms:-

(a) that to grant the extension would severely interfere with the respondent's right to freedom of expression;

(b) that the prejudice to the applicant will be minimal in circumstances where the intended action is not about the truth or otherwise of the allegations contained within the protected disclosures about which the applicant fundamentally complains;

(c) the applicant did not seek to complain about the articles at the time despite being in a position to do so (which is admitted); and

(d) if the applicant loses her entitlement to issue the intended proceedings then the respondent has a *prima facie* reasonable and full defence on meanings, as the applicant was not named as a person against whom the allegations were made and which allegations were published in the public interest.

29. Whilst the submissions advanced as to the criteria to be adopted by the court are considered separately above (the interests of justice and the balance of prejudice) both the written and oral submissions contained a significant degree of overlap in the arguments advanced in respect of each criteria.

30. The application was heard before the court on 3rd October, 2018. At the time, the Disclosure's Tribunal had not reported. However, in my view, regardless of the outcome of any report of the Disclosure's Tribunal as it impacts upon this applicant, I accept that she is fully entitled to seek to institute such defamation or other proceedings as she may be advised. Possible vindication of her good name by the Disclosures Tribunal as is contended for by the respondent does not, in my view, preclude the applicant from seeking to issue the intended proceedings.

31. Both within its submissions and oral argument before the court, the respondent sets out in some detail the nature of what it asserts as its full defence to the applicant's claim. Based upon the claim advanced in this case I do not consider it necessary to examine this point in detail. Suffice it to say that the respondent has a good arguable defence to the intended proceedings.

32. So how are the two criteria which must be satisfied prior to any disapplication by the court of the one year limitation period to be considered and applied to the facts of this case?

33. Eady J. in the case of *Zinda v. Ark Academies (Schools)* [2011] EWHC 3394 (QB) in assessing the similar legislation enacted in England and Wales stated as follows:-

"It is for the applicant to make out a case for the court to exercise its jurisdiction under s.32A, since Parliament decided in the Defamation Act 1996 that the limitation period for defamation claims should be reduced to twelve months … There must, therefore, be some solid reason for overriding that legislative policy."

The court then went on to consider the factors to which the court might have regard as to whether it would be equitable to extend the period and then stated as follows:-

"The court is required to determine whether it would be 'equitable' to extend the period. The court must have regard to all the circumstances of the case and, in particular, the following factors:

(a) the length of, and the reasons for, the delay on the part of the claimant;

(b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the Claimant until after the end of the period mentioned in section 4A of the 1980 Act (i.e. twelve months)

(i) the date on which any such facts did become known to him or her, and

(ii) the extent to which he or she acted promptly and reasonably once it was known whether or not the facts in question might be capable of giving rise to an action; and

(c) the extent to which, having regard to the delay, relevant evidence is likely
(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.

Those provisions were considered by the Court of Appeal in *Steedman v. British Broadcasting Corporation* [2002] EMLR 318 and, more recently, revisited in *Brady v. Norman* [2011] EMLR 16. It was recognised that disapplying the limitation period would always prejudice a defendant, since he would lose his limitation defence: see e.g. *Thompson v. Brown* [1981] 1 WLR 744, per Lord Diplock. Likewise, refusing to disapply the limitation period would always prejudice a claimant, because he would continue to be met with a complete statutory defence regardless of the merits. The balance between those two prejudices would vary according to the facts of the particular case.

Particular considerations come into play in defamation proceedings. It is necessary to take account particularly of Parliament's intention that a claimant should assert and pursue his perceived need for vindication speedily. As was pointed

> out by Tugendhat J. in *Lonzim Plc v. Sprague* [2009] EWHC 2838 (QB), one needs always to remember that the mere fact of being sued for defamation can itself be a serious interference with freedom of expression. That is plainly a factor to take into account when addressing where the balance of prejudice may lie in any given case."

34. In relation to actions for defamation, the Supreme Court has pointed to the requirement that defamation proceedings be dealt with speedily. In the Supreme Court decision of *Ewins v. Independent Newspapers (Ireland) Limited & Purcell* [2003] 1 I.R. 583, Keane C.J. put the matter as follows:-

> "A plaintiff in defamation proceedings, as opposed to many other forms of proceedings, is under a particular onus to institute his proceedings instantly and without delay and, of course, not simply because he will be otherwise met with the response that it cannot have been of such significance to his reputation if he delayed so long to bring the proceedings but also in his own interests in order, at once, to restore the damage that he sees to have been done to his reputation by the offending publication."

35. Macken J. in the case of *Desmond v. MGN Limited* [2009] 1 I.R. 737, put the position as follows:-

> "It is, moreover, axiomatic that in the case of a claim to vindicate the reputation of a person, the rule is that proceedings such as those for defamation must be progressed with extra diligence. That may mean, in a particular case, moving proceedings with even more speed than is required under the Rules of the Superior Courts 1986. "

36. In considering these judgments, I accept and agree with the comments of Barrett J. in *Watson v. Campos & Ors* [2016] IEHC 18, at paragraph 13(i) when he points out that the notion of delay as considered by the Supreme Court in the cases cited above, being a six year limitation period is, of course, in part now obviated by the insertion into the Statute of Limitations of a one year limitation period.

37. This case is unusual in that within the one year statutory limitation period, no action was taken, as a conscious decision by the applicant, in contrast to the case law within this jurisdiction which considers the criteria in which the court may disapply the statutory time limit. In all some initial step, approach or positive action had been advanced by a prospective plaintiff to defamation proceedings within that one year period. The applicant is clear in her assertion that, for the reasons advanced by her and set out above, no step whatsoever was taken by her within the one year period. There is no suggestion that she was unaware of the time limit but rather did not consider herself in a position to deal with it from the date of publication until the conclusion of the Disclosures Tribunal.

38. In considering the criteria for the extension of the one-year statutory time limit to the outer limit of two years in the judgment, Peart J. in *Taheny* having found that the plaintiff was time barred, went on to consider even if the plaintiff were not time barred would he in any event have satisfied the court in relation to his reasons for delaying the commencement of his proceedings beyond the one-year period.

39. After discussing and setting out the onus of providing an explanation that excuses the delay and the requirement that the court must thereafter assess that explanation Peart J. then went on to say:

> "In my view, no good reason has been demonstrated by the plaintiff for the delay in the commencement of these proceedings. His ignorance of the law as to the time limit does not of itself excuse him. The fact that he may have been reliant on legal advice in relation to such a matter is no excuse. Furthermore, there is no explanation given for any difficulty which he had in seeking advice from another firm of solicitors …"

40. The court continued:

> "If a person wishes to bring proceedings to address a perceived wrong, he is entitled to do so within the time limits provided by law. In most cases those limits are generous. In the case of defamation, the Oireachtas has considered that a period of one year should be allowed from the date on which the plaintiff first becomes aware of the statement complained of, unless the plaintiff can justify a delay beyond that one year, but under no circumstances can the proceedings be permitted beyond two years. These limits are less generous than for many other types of action, but nevertheless provide plenty of time for the taking of any legal advice the plaintiff wishes, and for such proceedings to be commenced".

In my view this quotation mirrors the reasoning of Eady J in the *Zinda* case cited and quoted above.

41. In the case of *Watson v. Campos and MGN Limited trading as Irish Sunday Mirror* [2016] IEHC 18 the court considered the application to disapply the statutory time limit against the background of a publication on 16th February, 2014, a solicitor's letter complaining of an alleged defamation on the 8th July, 2014 with a summons pleading defamation only issuing on the 18th June, 2015. In considering the balance of prejudice arising in circumstances where the court found that the reasons for the delay put forward was in fact amounted to it being "completely unexplained" Barrett J. stated as follows:

> "This is not a case, for example, where Ms Watson was prevented by want of legal advice from bringing her proceedings in a timely manner. Nor, for example, has she suffered from a bout of serious ill-health, or some other such factor that prevented her from learning of the alleged defamation and/or bringing her action in a timely manner. Though it is not stated in the statute, the court considers that it is these types of factor – incidents where delay is either blameless or where delay ought because of some mitigating reason to be excused – that would justify the issuance of a direction under s.11(2)(c)(ii) of the Act of 1957. No such factor or incident presents here."

42. In assessing the interest of justice criteria Barrett J. stated as follows:

> "the Act (a reference to the defamation Act, 2009) recognises that the liberty of our nation is inextricably linked to the freedom of speech, that individuals must enjoy the right to vindicate their good name when the press gets it wrong, but that journalists and editors must not in the process be condemned to a Janus-like existence in which they must ever look backwards, while seeking to move forwards. It sets a one-year limitation period as standard. It implicitly acknowledges the challenges that such a short limitation period may sometimes present by allowing the court to direct an extension of that period up to two years when circumstances so require. But there is nothing in the facts of this case which would require such an extension. Ms Watson dallied in the commencement of her proceedings. No good reason has been offered as to why she did so. The interests of justice in her case, and the wider public interest in a responsible but free press, do

not justify the exceptional extension of the standard one-year limitation period in her defamation proceedings to some longer timeframe. The court must therefore decline her application for the direction sought."

43. In the case of *Rooney v. Shell E&P Ireland Limited* [2017] IEHC 63 the court determining that the matter was rather finally balanced concluded as follows:

> "I am of the view that the Court's discretion should be exercised so as to refuse the plaintiff's application. His failure to satisfactorily explain the delays in issuing and serving proceedings, together with the availability of an alternative remedy against his former solicitor, if what he says is true about their error as to the time limit, are important factors in my view. I do not think that the interests of justice require that the Court exercise its discretion in favour of the plaintiff. Nor do I consider that the prejudice to the plaintiff in being prevented from bringing these proceedings would significantly outweigh the prejudice to the defendant in losing its statute of limitations defence."

44. The applicant's counsel contended that, even if the court were to find that the reason for the delay is inexcusable, it could nevertheless hold for the applicant upon the two statutory criteria, namely (a) the interests of justice and (b) the balance of prejudice. In my view, the reasons advanced by the applicant on the facts of this case are integral to and directly impact upon an assessment as to whether a direction should be given in all the circumstances. The reasons for the delay and the court's consideration of the validity or otherwise of those reasons is inextricably bound up with any decision it must then make as to where the interests of justice and the balance of prejudice lie. In none of the cases opened to the court was there a finding by a court of inexcusable delay but nevertheless a determination that the interest of justice and the balancing of the respective prejudices could nevertheless result in a direction to disapply the one-year statutory time limit

45. That the applicant was not in a position to (a) take advice and (b) contemplate the application and the intended proceedings until the two-year time limit had almost expired clearly suggests that the timing was inextricably linked to the Disclosures Tribunal. However as the applicant contends her entitlement to issue defamation proceedings must be considered as separate and distinct from any potential finding in her favour by the Disclosures Tribunal (and I agree) then equally her desire to institute defamation proceedings against the respondent must also be considered as a separate and distinct matter.

46. On the facts of this case the applicant took no steps within the one year statutory time limit. There is no suggestion she was unaware of it or not in a position to obtain legal advice on foot of it. Rather there is her clear assertion that, against the background which had been set out within this judgment and in the unique set of circumstances facing the applicant at that time, she simply did not believe herself to be in a position to consider the matter from the date of publication until the conclusion of the Disclosures Tribunal.

47. In assessing the statutory criteria, it is always a difficult balance between the consititutional entitlements of this applicant who seeks vindication of her good name against the entitlements of the respondent newspaper to freedom of speech.

In *Irish Times Limited & Ors v. Ireland & Ors* [1998] 1 I.R. the Supreme Court (Barrington J) considered the constitutional right to freedom of speech as follows;

> "The right to freedom of expression is one of the personal rights of the citizen which the State is bound to defend and vindicate, as far as practicable, in accordance with the provisions of Article 40.3 of the Constitution. It is of course surrounded by many reservations and safeguards. But it is a positive right which the State is pledged to defend and the function of the court is to preserve the balance between the guarantee and the reservations in such a way as to give to the right guaranteed life and reality"

The Court continued;

> "A constitutional right which protected the right to comment on the news but not the right to report it would appear to me a nonsense. It therefore appears to me that the right of the citizen "to express freely their convictions and opinions" guaranteed by Article 40 of the Constitution is a right to communciate facs and well as a right to comment on them"

48. t is clear and the case law confirms that the Oireachtas has sought to balance these consititutional imperatives by imposing a one year statutory time limit in respect of which an action in defamation might be brought, with the specified criteria which must then be applied in any application for a one year extension of that time limit. In this regard I endorse the comments of Peart J. in Taheny quoted above.

49. The respondent was first notified of an intention to institute defamation proceedings on 10th September, 2016. As set out above this applicant does not advance any argument that she was unaware of the statutory time limit, was not able to have access to legal advice should she wish to do so. It is also noteworthy that this was not a discreet matter that the applicant might consider in due course. The subject matter of a publication of 4th October, 2016 was one of the matters this applicant was required to deal with throughout the period from the publication of that article to the issuing of the intended proceedings.

50. In my view the reasons advanced by the applicant, sincerely and generally held I have no doubt, are in my view insufficient to disapply that one-year statutory time limit. Regard must be had to the time limit laid down by statute; this applicant could have instituted proceedings within that statutory time limit. That she did not do so has consequences for her in now seeking to issue the intended proceedings. To make a decision not to deal with matters within a time limit imposed by statute is in my view an insufficient reason to now grant an extension of it.

51. In my view the interest of justice require that no direction be given to disapply the one year statutory time limit and I am also satisfied that the prejudice to the plaintiff in being prevented from bringing those proceedings does not significantly outweigh the prejudice to the defendant in losing its statute of limitation defence. Accordingly, I refuse the reliefs sought.