

# **Report**

**Susan Denham, S.C.  
Chief Justice of Ireland 2011 to 2017**

## **Introduction**

The Chief Justice, the Hon Mr. Justice Frank Clarke, hereinafter referred to as “the Chief Justice”, wrote to Susan Denham, SC, Chief Justice of Ireland 2011 to 2017, hereinafter referred to as “the Reviewer”, on the 25<sup>th</sup> August, 2020 formally requesting her, on behalf of the Supreme Court, to consider certain questions arising out of the attendance of the Hon Mr. Justice Seamus Woulfe, hereinafter referred to as “Mr. Justice Woulfe”, at an event in the west of Ireland on the 19<sup>th</sup> August, 2020 and to report conclusions and recommendations to the Chief Justice.

The Reviewer was asked to consider whether Mr. Justice Woulfe should have accepted the invitation to dinner. In addition, whether he should, in all the circumstances, have left the hotel in the light of the situation prevailing. Furthermore, whether Mr. Justice Woulfe should have attended the golf event without attending the dinner. In the context of these questions, the Reviewer was asked also to consider whether there are any relevant codes of practice or guidelines and to make any recommendations in that regard which is considered appropriate.

## **Nature of Review**

This report is based on a review of documentation provided to the Reviewer. This included a statement of Mr. Justice Woulfe dated 4<sup>th</sup> September, 2020, a statement of Paul Coghlan dated 2<sup>nd</sup> September, 2020, a statement of Lorraine Higgins dated 3<sup>rd</sup> September, 2020, a report of Rowan Engineering Consultants Limited dated 4<sup>th</sup> September, 2020 and a Book of Images prepared by Rowan Engineering Consultants Limited.

At the request of the Reviewer a meeting was held on Tuesday 8<sup>th</sup> September, 2020, in the boardroom at Green Street Courthouse, with Mr. Justice Woulfe and his legal adviser Michael Collins, SC. Assisting the Reviewer was Shane Murphy, SC, legal adviser to the Report, and Patrick Conboy, BL, who carried out valuable research to assist the Reviewer.

At the meeting the Reviewer was presented with three further files of documents. These were a collection of legislation and guidelines, and two booklets containing relevant publications on the issue of Judicial Conduct.

At the meeting the Reviewer posed questions to Mr. Justice Woulfe and listened to his detailed responses. Legal submissions were made on behalf of Mr. Justice Woulfe by his legal adviser.

The Reviewer reviewed further written submissions presented on behalf of Mr. Justice Woulfe, dated the 15<sup>th</sup> September, 2020, relating to applicable Statutory Instruments and Regulations, which have been considered carefully.

A copy of the draft report was sent to Mr. Justice Woulfe on the 22<sup>nd</sup> September, 2020. At the request of Mr. Justice Woulfe a further meeting was held on the 25<sup>th</sup> September, 2020, in the Boardroom at Green Street Courthouse with Mr. Justice Woulfe and his legal adviser. Shane Murphy, SC, legal adviser to the report was also present. Counsel on behalf of Mr. Justice Woulfe made submissions, and presented a further booklet to the Reviewer. The above documents, and the meetings on the 8<sup>th</sup> September and on the 25<sup>th</sup> September, 2020, together with the personal experience of the Reviewer, are the foundations of the report.

### **Appendices**

To assist the Reviewer Mr. Justice Woulfe and his legal advisers provided an Engineer's Report, by Rowan, to be found in Appendix A; a Book of Images, by Rowan, to be found in Appendix B; and Guidelines for re-opening Hotels and Guesthouses, to be found in Appendix C. Also attached to this review is a transcript of the meeting held in the Boardroom in Green Street Courthouse, Dublin 7, on Tuesday 8<sup>th</sup> September, 2020, in Appendix D. A copy of the statement of Mr. Justice Woulfe of the 4<sup>th</sup> September, 2020, is in Appendix E. A transcript of the meeting held in the Boardroom in Green Street Courthouse on Friday 25<sup>th</sup> September, 2020 is to be found in Appendix F. A booklet given to the Reviewer at the meeting on the 25<sup>th</sup> September, 2020 is in Appendix G.

This review does not in any way constitute an adjudication or purported finding of any facts in relation to the events referred to herein. Moreover, insofar as this review contains any opinion or advice, this is provided to the Chief Justice as an expression of the Reviewer's opinion for the benefit of the Supreme Court.

Accordingly, for the avoidance of any doubt, the Reviewer is expressing an opinion. This is a non-statutory review and is not a fact finding exercise. It is a review exercising fair procedures appropriate to such a review, in accordance with law.

### **Structure of Review**

The Reviewer approaches the questions raised by the Chief Justice in chronological order, thus the questions are sequenced as follow:

1. Should Mr. Justice Woulfe have attended the golf event without attending the dinner?
2. Should Mr. Justice Woulfe have accepted the invitation to dinner?
3. Should Mr. Justice Woulfe, in all the circumstances, have left the hotel in light of the situation prevailing?
4. In the context of these questions the Reviewer is asked to consider whether there are any relevant codes of practice or guidelines and to make any recommendations in that regard considered appropriate.

### **Mr. Justice Woulfe**

Mr. Justice Woulfe was called to the Bar of Ireland in 1987 and he took silk in March, 2005. He was a practising barrister in areas of commercial and public law. He was appointed as Attorney General on the 14<sup>th</sup> June, 2017 at the formation of the 31<sup>st</sup> Government of Ireland. In this office his work centred on advising the Government, departments of government, and consequently having constant contact with politicians. *Inter alia* his office advised on legislation restricting activity during the COVID-19 pandemic.

Mr. Justice Woulfe concluded his position as Attorney General on the last Saturday in June, 2020. He returned to practice at the Bar. However, earlier, after the general election in 2020, he had applied to the Judicial Appointments Advisory Board, not knowing whether he was going back to the Bar or staying on as Attorney General. He told then Taoiseach Leo Varadkar, TD that he would be putting in an application to the Judicial Appointments Advisory Board but that it did not mean he was not happy to stay on as Attorney General, and that his preference was to stay on as Attorney General and to help the new Government.

In July, 2020 he was nominated by the Government to fill a vacancy in the Supreme Court which arose following the retirement of the Hon Mrs. Justice Mary Finlay Geoghegan. An Taoiseach Micheal Martin, TD stated that his appointment was recommended by the Judicial Appointments Advisory Board. On Thursday 23<sup>rd</sup> July, 2020 he was appointed an Ordinary Judge of the Supreme Court by President Higgins at Áras an Uachtaráin. On Friday 24<sup>th</sup> July, 2020 Mr. Justice Woulfe made his declaration as required by the Constitution in the Supreme Court before the Chief Justice.

Mr. Justice Woulfe has not yet sat on the bench as a judge of the Supreme Court. Nor has he taken part in any applications for leave determinations by the Court.

### **Mr. Justice Woulfe's Statement**

Mr. Justice Woulfe had provided the Reviewer with a written statement. This was used by the Reviewer as a basis upon which to pose questions to Mr. Justice Woulfe at the meeting in the Boardroom in Green Street Courthouse on the 8<sup>th</sup> September, 2020. A copy of his statement is to be found in Appendix E.

### **Background re Invitation to Oireachtas Golf Society Event**

Mr. Justice Woulfe described the background to the invitation to the Oireachtas Golf Society event in 2020. During his term of office as Attorney General he was invited as a guest to some of the Oireachtas Golf Society outings by former Leas Cathaoirleach Paul Coghlan. He had met the former Leas Cathaoirleach previously when Mr. Justice Woulfe was still practising as a barrister and was with the Bar Council in a delegation to Leinster House to inform politicians about the Legal Service Regulation Bill. Then, when he was Attorney General, Mr. Justice Woulfe met the former Leas Cathaoirleach again. Mr. Justice Woulfe was invited first to the Oireachtas Golf Society in 2018 by telephone call from the former Leas Cathaoirleach, with whom he had become personally friendly. On that occasion he was unable to attend.

The second time he was invited to an event by the Oireachtas Golf Society was to an outing at Powerscourt Golf Club in August 2019. The invitation was made informally by the Leas Cathaoirleach. Former Senator Lorraine O'Higgins would have mentioned it to him also. Among the participants who attended also and whom he met were a serving judge and a retired judge. His experience of golf society outings in general is that sometimes participants eat with their own playing parties when they arrive at the clubhouse after their round of golf, and sometimes participants eat as a group after all the golf has been completed. He pointed out that eating as a group is not always popular with all participants as it can mean a lot of hanging around in the clubhouse for those who played in earlier timeslots.

At the golf outing in Powerscourt in 2019 Mr. Justice Woulfe became aware of some of the organising committee of the Oireachtas Golf Society. His view was that the dominant force was the President of the Society, former leader of the Seanad, Donie Cassidy. Other organisers of the society appeared to him to include Deputy Noel Grealish, and the Captain of the Guard John Flaherty. Mr. Justice Woulfe explained that the Captain of the Guard is the second in command of the Leinster House complex and organisation. He was also of the impression that Senator Coghlan was involved in the organising committee, but that, at the last moment, he had been unable to attend the Powerscourt outing. Mr. Justice Woulfe had a sense that it was a well organised event, with a very friendly social atmosphere. He met a number of people, mainly retired politicians. He also met former Taoiseach Enda Kenny, who was still a TD at that time. Mr. Justice Woulfe got the

impression that the Oireachtas Golf Society was an organisation to promote convivial relations between former politicians and their friends and families. He considered that it was a social and recreational society.

During the speeches at the August 2019 dinner it was mentioned that the following year would be the 50<sup>th</sup> anniversary of the Oireachtas Golf Society and that the summer outing would be a two-day event at Ballyconneely Golf Club to celebrate the anniversary. It was suggested to Mr. Justice Woulfe (who was then Attorney General) that he might like to attend the 50<sup>th</sup> anniversary event in 2020. Mr. Justice Woulfe resolved to keep it in mind, if invited, and depending on family holiday arrangements in August 2020.

### **Invitation**

At some time while he was still Attorney General Mr. Justice Woulfe received an informal verbal invitation, from Senator Paul Coghlan, to the August, 2020 golf outing in Ballyconneely. He next discussed the event with Deputy Noel Grealish in May or June, 2020, when he met the Deputy while walking around the lawn at Leinster House. During the pandemic he had the habit of bringing his lunch into the office, and then going for a walk afterwards, either in Merrion Square or around Leinster House lawns. One day he casually met Deputy Grealish, who was a supporter of the Oireachtas Golf Society, and Deputy Grealish raised the August event with the then Attorney General. Mr. Justice Woulfe recalled that Deputy Grealish confirmed that as the matter stood the event was still scheduled to go ahead notwithstanding the COVID-19 pandemic as sporting activities such as golf had recommenced. Mr. Justice Woulfe stated that he did not think anybody at that stage was thinking about dinner or eating in groups or eating in fours or any such arrangements.

### **Appointed Judge of the Supreme Court**

Mr. Justice Woulfe was appointed a judge of the Supreme Court on the 23<sup>rd</sup> July, 2020, and the following day made and subscribed the declaration required of him by the Constitution.

He played in the Bar Golf Society outing in Baltray, Co. Louth, on Saturday 25<sup>th</sup> July, 2020, with a large group of barristers and judges. This was the first golf society outing that he had played in since the easing of the COVID-19 pandemic restrictions, and on that occasion they ate in groups of four as they came in off the golf course. They did not eat together later as a bigger group.

Mr. Justice Woulfe said that he had played in two earlier Bar golf events over the years, even though he had been a member since 1992. He played once in the early years, in the Bar Golf Society Christmas event, and he played last year as Attorney General.

Mr. Justice Woulfe stated that after his appointment as a judge of the Supreme Court he was not familiar with internal judicial protocols. He had received briefing materials from the Courts Service, but these concerned logistical issues, such as car parking and office space.

Mr. Justice Woulfe, after discussing the matter with his wife, decided that the safest thing to do was to raise the issue of the Oireachtas Golf Society event with the Chief Justice. On Wednesday 29<sup>th</sup> July, 2020 Mr. Justice Woulfe was crossing the yard at the Four Courts and met the Chief Justice. Mr. Justice Woulfe called out to the Chief Justice, saying that because he was new he just wanted to check something with him. He said that he had been invited to the Oireachtas Golf Society outing. Mr. Justice Woulfe emphasised that it was a non-political event. Mr. Justice Woulfe recollects the Chief Justice said something like "I don't see any problem with that". Mr. Justice Woulfe pointed out to the Reviewer, in fairness to the Chief Justice, that he did not raise the issue as to whether there would be a dinner or not.

At no time did Mr. Justice Woulfe receive a formal written invitation to the Oireachtas Golf Society outing, which he understands may have had a reference to a dinner. He never had sight of such an invitation. He was not aware whether there would be a formal group dinner, or whether participants would dine separately in the clubhouse with their playing partners directly after their round of golf. So he could not have raised the issue of the dinner with the Chief Justice at that time because he, Mr. Justice Woulfe, did not know of the arrangements.

He had one or two conversations with Paul Coghlan, and got the exact dates for the event. He stated that nobody mentioned the dinner one way or another in any of the conversations.

### **Tuesday 18<sup>th</sup> August, 2020**

On Tuesday 18<sup>th</sup> August, 2020 Mr. Justice Woulfe was with his family on holidays in Donegal. He left at around midday and arrived at the Station House Hotel in Clifden at approximately 6.00pm. He arrived in Clifden tired after his drive from Donegal. He was in contact with Paul Coghlan, who invited him to dinner in another hotel in Clifden.

Mr. Justice Woulfe was not aware of any public pronouncement, that night, by the Government, of new rules in relation to public dining. He was on holidays and had switched off from news coverage.

**Wednesday 19<sup>th</sup> August, 2020**

On Wednesday 19<sup>th</sup> August, 2020 Mr. Justice Woulfe had breakfast on his own. He was not closely involved in the event and did not know many people playing in it. He learned that his tee-time was 1.20pm, and he arranged to meet one of his fourball for a cup of tea at the golf club in Ballyconneely beforehand. He left the hotel around midday. At that stage he was not aware of arrangements, if any, for eating after the game of golf.

On arrival at the clubhouse in Ballyconneely he went upstairs to the bar, where he expected to register. At the registration desk he met Donie Cassidy and Deputy Noel Grealish. Paul Coghlan was also in the vicinity of the registration desk. Mr. Justice Woulfe was asked for and paid a fee for the outing, and he was told that the fee included dinner. He was given a docket or voucher for dinner and was told that the dinner would be in the Station House Hotel, Clifden at 9.00pm. This was when Mr. Justice Woulfe first became aware of the proposed dinner.

Mr. Justice Woulfe did not consider phoning the Chief Justice, or any other member of the Court, to seek guidance in relation to the dinner. Mr. Justice Woulfe conveyed that his assumption was that the Chief Justice would have known that there was some kind of social element to the golf. He considered that there was no need to go checking the details with him. He believed that there was nothing inherently dangerous about the fact that there was going to be a dinner. He stated that gatherings of 50 people were allowed under the regulations. These were the regulations in which he had been involved in the Attorney General's office.

Mr. Justice Woulfe stated that when he contacted the Chief Justice in July about the event it was not about a COVID-19 issue, but rather his concern had been about a judge going to such an event, that it could be considered as a separation of powers issue. So when he heard about the dinner he was not concerned on a separation of powers issue.

He said he was aware of the Regulations which were in force on the 19<sup>th</sup> August, 2020. Gatherings of 50 people were allowed under those Regulations. He would have been aware in a very general hazy way that there were detailed guidelines and rules about all that but that the whole point was to reopen the country. He stated that that had changed, unfortunately. This was almost on the cusp of that change, but the Government policy had been for people to go and support hotels and events. The hotels could have 50 people at an event.

Thus, when the dinner was mentioned Mr. Justice Woulfe was cautious. It was to be a group dinner in a hotel as opposed to golfers eating in the clubhouse when they came in off the golf course. He asked Paul Coghlan, who was his host, and he thought part of the organising committee, about the dinner being a group dinner that night. Mr. Justice Woulfe stated that Paul Coghlan assured him strongly that Donie Cassidy and the

organising committee had consulted extensively with the authorities and had ensured that everything would be in compliance with the rules and the public health guidelines. Mr. Justice Woulfe considered that the individuals involved in running the Oireachtas Golf Society were people of great experience and highly regarded. He knew Donie Cassidy was a very successful businessman in the hotel and hospitality sector. He stated that what was conveyed to him by Paul Coghlan was consistent with the general desire at the time for hotels and restaurants to open and carry on business to the greatest extent possible, while complying with all relevant regulations and guidelines.

In light of all this Mr. Justice Woulfe considered that he had no reason to doubt that everything about the dinner had in fact been arranged to be in compliance with the public health guidelines. It was mentioned at that time that the dinner had been moved from the golf clubhouse to the hotel in order to ensure compliance with the public health guidelines. This further reassured Mr. Justice Woulfe that the organisers were taking all necessary steps to ensure that the event complied with the regulations and public health guidelines. He received express assurance that the event would be compliant.

At 1.20pm Mr. Justice Woulfe commenced his round of golf with three other members of his fourball, being former Senator Lorraine Higgins, former TD Gerry Reynolds and a gentleman named Tony Walsh whom he had not met beforehand. Owing to weather conditions they came in after the ninth hole. They had lunch in the clubhouse, and arranged to meet for a drink in the Station House Hotel before the dinner.

### **The Dinner**

On the evening of Wednesday 19<sup>th</sup> August, 2020 Mr. Justice Woulfe went downstairs in the hotel at around 8.15pm. He met one of his playing partners for a drink. After some time, they were called into dinner. He had no sense of a large group assembling either in the bar or in the lobby area. There seemed to be a relatively small number of people around. There were many people staying in the hotel other than the Golf Society members and friends.

Mr. Justice Woulfe said that there had been discussions with some people who were not going to the dinner, for family reasons. Mr. Justice Woulfe got no sense of people not going to the dinner because of a concern as to compliance with the COVID-19 regulations.

Paul Coghlan came into the bar and asked them to go into the dining room. When leaving the bar with former Senator Lorraine Higgins and the Moroccan ambassador Mr. Justice Woulfe was chatting, he was brought into the Omeys Suite by Paul Coghlan.

The Reviewer raised with Mr. Justice Woulfe the issue of a table plan referred to by Rowan at para. 3.2 of his report. It was and is useful to see the Book of Images provided by the Engineers Rowan. Mr. Justice Woulfe was brought from the Library Bar to the Omeys Suite

– see Image 4. There was a table in the access hallway leading to the Omey Suite – see Images 6, 8 and 9. He was queried as to whether he saw a framed table plan positioned on the table. Mr. Justice Woulfe said that he did not notice a table in the hall, which was a public area, nor did he notice whether there was or was not a table plan on that table. He never saw a table plan and knew nothing of a table plan. He was told that he was at table 5. As he stood at table 5, a lady arrived who was the Lady Captain of the local golf club. He talked to her for a short while, and when they sat down she was on his left and on his right was former Senator Lorraine Higgins and the Moroccan Ambassador. Mr. Justice Woulfe did not speak to the Lady Captain much after the early part of the dinner, as she knew the people on her left, Mr. and Mrs. John Sweeney. He spoke with former Senator Lorraine Higgins and the Moroccan Ambassador who were on his right.

The room Mr. Justice Woulfe had been brought to for the dinner appeared to him not to be a big room. It is helpful to look at images in the Book of Images. Image 10 is the entrance to the Omey Suite. Initially Mr. Justice Woulfe recollected that there six or eight tables, but he stated that there were in fact six tables. It is helpful to look at Appendix A – Floor Layout Plans – in the Engineer’s Report. There it is clearly set out that in the Omey Suite there were six tables. Mr. Justice Woulfe stated that he was not on his guard when in the Omey Suite, he did not count the number of people in the room, but he understands now that there were 45 people in the room, which he considered was consistent with his memory of the room. The rest of the people arrived at his table, making a total of eight people, including two married couples.

The plan of the tables is set out in Appendix A of the Engineer’s Report. It shows six tables in the Omey Suite. There was a row of three tables and behind them a further row of three tables, with table 5 in the middle. The row of tables with table 5 were not in an exact line. Table 5 was slightly forward of table four and six on either side. There was a partition wall behind the row of tables numbered four, five and six. Mr. Justice Woulfe had his back to the partition wall – see Image 14 in the Book of Images. Before and during the dinner the partition wall remained closed. There was a gap at the end of the retractable wall for hotel staff to go to and from the kitchen – see Image 28. Mr. Justice Woulfe stated that he did not know that there was a second function room behind the partition wall.

Mr. Justice Woulfe stated that during the dinner he was not aware of, and had no reason to believe that, the event consisted of any diners other than those he could see in his dining room. He said he was not conscious of another room of diners in the hotel or any other room connected to the Oireachtas Golf Society. All of the people whom he associated with the Oireachtas Golf Society event appeared to him to be in the same room with him. He could not hear any noise coming from any adjoining room. Nor was he conscious of any adjoining room. He was sitting facing the front of the room where the top table was and from where the speeches were made – see Image 15 in the Book of Images.

Throughout the dinner Mr. Justice Woulfe stated that he had no reason to believe that the Oireachtas Golf Society dinner was anything different, or larger, than what was occurring in the room in which he was dining. He indicated that at no time was he aware that there was a second group of diners from the Oireachtas Golf Society in an adjoining room behind a wall behind him.

At the end of the dinner there were speeches and a prize giving. During the prize giving at least one person, who was called on to receive a prize, approached the front of the room in the Omey Suite from Mr. Justice Woulfe's left. Mr. Justice Woulfe stated that this did not give him any cause for concern. After the event, and during the process of this review, Mr. Justice Woulfe acknowledged that this person may have been dining in a second room, behind the retractable partition wall. It appears that late in the evening a gap was opened by the hotel staff in the retractable wall behind Mr. Justice Woulfe, slightly behind his left shoulder – see Image 30 in the Book of Images. Mr. Justice Woulfe stated that he did not know a gap had been opened, at the end of the dinner for the speeches and prize giving. He did notice Gerry Brady going up for a prize, from his left. But he indicated to the Reviewer that he never noticed the open section in the partition wall.

### **Any Concerns?**

- (a) In the course of the meeting on the 8<sup>th</sup> September, 2020, Mr. Justice Woulfe was asked if he had had any concerns about attending the dinner at the time when he had just learned of the dinner. He was asked also if he had considered asking the Chief Justice, or any member of the Supreme Court, for advice after he was informed, after 1.00pm, that a dinner was to be held that evening in the Station House Hotel in Clifden.

Mr. Justice Woulfe stated that, having obtained reassurances at the Ballyconneely Clubhouse, from people whom he considered to have extensive knowledge and experience in the hotel business of the arrangements and the COVID-19 Rules, when he queried the event, that he need not have any concerns regarding the COVID-19 Regulations and the dinner.

On being questioned whether he had considered phoning the Chief Justice, or any other member of the Supreme Court, to seek guidance in relation to the dinner, Mr. Justice Woulfe stated that that would have been ridiculous. He had assumed that the Chief Justice knew or would have known that there would have been some kind of social element to the golf. He stated that while the Chief Justice would not have known precisely the details, because he (Mr. Justice Woulfe) did not know them then himself, but that there was no need to go checking the details with him. Mr. Justice Woulfe, and his legal adviser, explained that when he contacted the Chief Justice his concern was about judges going to an Oireachtas event, what was

referred to as a separation of powers issue; it was explained the COVID-19 issue did not come into it.

- (b) On being queried as to his entering the dining room, Mr. Justice Woulfe stated that when he went into the dining room it appeared to him that there were approximately 45 people in the room, and, he stated, that it seemed to him to be within the Regulations. He said that this, the dining room, did not raise any issues of concern with him.
- (c) On being questioned about the partition wall behind him, Mr. Justice Woulfe stated that he did not see the panel in the partition wall behind him being opened late in the evening when the prize giving was taking place. Thus, he said that he could not have, and did not have, any concern at this juncture, as he did not see the gap being opened or remaining open.

On each of these three occasions, and generally, Mr. Justice Woulfe said that he had considered the situation from the point of view of the COVID-19 Regulations and was satisfied on that issue.

### **Later that Evening**

Mr. Justice Woulfe stated that immediately after the speeches and prize giving had finished he left the dining room went into the hotel lobby/reception area. He had two after-dinner drinks in the hotel bar area, and then left and went upstairs to bed.

The next morning, Thursday 20<sup>th</sup> August, 2020, he had breakfast alone, checked out of the hotel, and drove back to Donegal.

### **Apology**

Mr. Justice Woulfe stated that on Thursday morning, 20<sup>th</sup> August, 2020, he was absolutely dumbfounded to hear that Minister Calleary had resigned on account of attending the dinner. Mr. Justice Woulfe stated that he had not been aware of any breaches of the Regulations or Guidelines at that stage. He stated that he had racked his brain to see if there was something he had missed and stated that it had seemed to him that the media were pressing that there was a new Government rule on the 19<sup>th</sup> August and that the number had gone from 50 to 6 persons (at a gathering). He stated that he was astonished, amazed, but he stated that if he had had time to think clearly he would have known that that could not have happened so swiftly. He stated that his understanding now (8<sup>th</sup> September, 2020) was that there had been wholesale confusion in the public's understanding of the Regulations which applied on the 19<sup>th</sup> August, 2020.

It appeared there had been a Government announcement on Tuesday 18<sup>th</sup> August, when the public heard of the proposed new restrictive rules, including a rule about six persons, but Mr. Justice Woulfe stated that he knew that there had to be a process to bring in a Statutory Instrument, to bring about a legal change that there should only be six persons at an event instead of 50. He stated that he knew that such a change could not happen automatically. Mr. Justice Woulfe stated that he could not recollect any breach of the rules. However, he decided to make an apology for any unintentional breach of any guidelines on his part.

Mr. Justice Woulfe's statement on Friday 21<sup>st</sup> August, 2020, was as follows:

"I confirm that I attended one day of the Oireachtas Golf Society outing in Ballyconneely on Wednesday 19<sup>th</sup> August, as an invited guest. I was not aware in advance that there was going to be an organised dinner as part of the event.

On learning of the proposed dinner during the course of that day, my understanding was that the organisers and the hotel had satisfied themselves that they would be operating within Government public health guidelines."

"I attended based on that understanding, that it would be within the guidelines, but do apologise for any unintentional breach of any of the new guidelines on my part.

I would never disregard governmental or health authorities' advice regarding public health, and have been at pains to follow rules and guidelines since their introduction in March. That I ended up in a situation where breaches may have occurred, is of great regret to me, and for which I am sorry. I unreservedly apologise. "

Mr. Justice Woulfe stressed to this Reviewer, at the meeting in the Boardroom in Green Street Courthouse, that if he had been unintentionally in breach of the law or the applicable guidelines he apologised unreservedly, but he had been of the belief that there had been no breach of which he was aware. The apology reflects the fact that much of the media criticism related to the allegation of a breach of "new" guidelines.

### **Guidelines for re-opening Hotels and Guesthouses June 2020**

A document entitled "Guidelines for re-opening Hotels and Guesthouses June 2020" was brought before the Reviewer on 8<sup>th</sup> September, 2020. It is described as a "living document" which means that as Government Restrictions and Public Health Guidelines develop the document will change. The Guidelines are endorsed by the Government of Ireland, Fáilte Ireland, the Irish Hotels Federation and Coronavirus COVID-19 Public Health Advice. The Hotel Federation had advised its members that new Government

Guidelines needed to be implemented once Fáilte Ireland issued up to date guidance. The up to date guidance was not issued until some days after the 19<sup>th</sup> August, 2020.

The document, relevant to the 18<sup>th</sup> August, 2020, was opened. Guideline 18 was referred to *inter alia*. Guideline 18 is entitled “Meetings and Events”. Under a heading “Physical Distancing Protocol” it is stated:

“There is a limit on the number of people gathering in a venue at one time in line with NPHEHET guidance on indoor gatherings. The limit includes workers. Multiple gatherings are allowed in venue facilities provided they are in separate defined spaces and there are systems to prevent intermingling in common spaces (e.g. entrances, exits and toilet facilities)”. See Appendix C.

### **Engineer’s Report**

An engineer’s report was submitted to this review on behalf of Mr. Justice Woulfe. An inspection of the Station House Hotel in Clifden was carried out by the engineer on the 29<sup>th</sup> August, 2020. The report of the engineer included a Book of Images and a floor layout plan which were the subject of questions raised by the Reviewer at the meeting on the 8<sup>th</sup> September. In his report the engineer described the hotel as a 78-bedroom hotel with bars, restaurants, function rooms, a theatre and a spa and leisure centre. The engineer understood that the hotel has two function rooms, the Omev Suite and the Kylemore Suite, which are adjoining and divided by a full floor to ceiling height retractable wall, and that the Oireachtas Golf Society dinner was split between the two suites. The engineer understood that there were 45 people, including Mr. Justice Woulfe, seated in the Omev Suite, and there were 36 people seated in the Kylemore Suite. There was a service route through an opening in one end of the retractable wall which was used to serve dinner in the Omev Suite on the night in question.

The engineer was instructed that the dinner was followed by speeches and a prize giving; that a mobile audio speaker system had been installed in the Kylemore Suite for guests to hear the speeches, and to facilitate the adjustment of volume of the speaker a section of the retractable wall was opened at the time of the speeches and prize giving, which resulted in a narrow opening in the wall between the suites at that stage. The engineer’s report concluded:

“While the applicable statutory instrument (SI 234/2020) stipulated that the maximum number of persons attending a gathering should not exceed 50 persons, guidelines issued on behalf of the Government, Fáilte Ireland and the Irish Hotels Federation expressly permitted multiple such gatherings in separately defined spaces. I am satisfied that at the time of the event the layout of the Omev Suite and the Kylemore Suite, which were separate defined spaces, and the arrangements in

place in the hotel conformed substantially to the requirements of s.18 of the guidance relating to “Multiple Gatherings”.

**Memorandum regarding applicable Statutory Instruments and Regulations introduced under s. 31A of the Health Act, 1947, as inserted by s. 10 of the Health (Preservation and Protection and other emergency measures in the Public Interest) Act, 2020.**

The Reviewer received also a written submission from counsel on behalf of Mr. Justice Woulfe. It was stated that the purpose of the memorandum was to set out the chronology of the legislative provisions and statutory instruments which gave effect to the government’s efforts to contain COVID-19 through the placing of limitations on the holding of events.

The analysis in the submissions identified the following points. Firstly, that each of the regulations listed (i.e. Regulation 5 of S.I. 121/2020, Regulation 6 of S.I. 206/2020, Regulation 5 of S.I. 234/2020) are penal provisions for the purpose of s.31A of the Health Act, 1947 under s.31A(6)(a) and 31A(12), of the 1947 Act, an offence carries a class C fine (i.e. €2,500) and/or a term of imprisonment of six months.

Secondly, it was noted that, whereas between the 8<sup>th</sup> April, 2020 and the 8<sup>th</sup> June, 2020, it was prohibited to organise or participate in a relevant event (under Regulation 5(1) of S.I. 121/2020), from the 8<sup>th</sup> June onwards it was only an offence to organise or cause to be organised an event which did not comply with the Regulations in force. Thus on the 19<sup>th</sup> August it was submitted, it was not an offence to participate in a non-compliant event.

Thirdly, it was submitted that, whereas the golf dinner in Clifden took place on the 19<sup>th</sup> August, 2020, (i.e. after the Government had announced a maximum of six persons at dinner and/or that no formal events were to take place in bars and restaurants), no statutory instrument had been enacted or commenced to put the Government announcement into legal effect.

It was submitted that, in accordance with the Regulations in effect on the 19<sup>th</sup> August, 2020, that any one gathering of people in a room was limited to 50 people, but that the hotel was entitled to have a number of such gatherings, provided they were in separately defined spaces. In relation to the event in issue counsel also submitted that the two gatherings (in the Omey Suite and in the Kylemore Suite) were in two separate rooms, each with their own entrance and exit.

Further, it was submitted on behalf of Mr. Justice Woulfe, that whether the removal of the panel in the retractable wall at the end of the evening, for the speeches and prize giving,

was a breach of the guidelines, was not entirely clear, but that the evidence of Mr. Justice Woulfe was that he was not aware of the removal of the panel.

The Reviewer has considered carefully the documents in this review, while the Government announced new measures on the 18<sup>th</sup> August, 2020, no new Guidelines making the new measures operational were adopted by the Government/Bord Fáilte/Irish Hotels Federation until the 24<sup>th</sup> August, 2020, and the Statutory Instrument relating to the new rules was not yet in force.

Thus on the 19<sup>th</sup> August, 2020 the hotel and dinner organisers believed that the rule remained that 50 people could attend an event. In this case Mr. Justice Woulfe was in a room with less than 50 people.

The Reviewer considers that on a review of the submissions presented by or on behalf of Mr. Justice Woulfe, and the Reviewer's assessment of the relevant guidelines and statutory instruments, the law as presented by and on behalf of Mr. Justice Woulfe, it was not unreasonable for him to consider that the dinner was COVID-19 compliant.

### **Declaration**

Mr. Justice Woulfe had made his declaration before the Chief Justice on Friday 24<sup>th</sup> July, 2020. This is a solemn declaration in which he stated:

“In the presence of Almighty God I, Seamus Woulfe, do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Ordinary Judge of the Supreme Court without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.”

Following his appointment, he received briefing materials from the Courts Service which covered logistical issues.

He was given no documents relating to judicial conduct and ethics by the Supreme Court, or by the Association of Judges of Ireland, or anyone. He stated that he had never read any publication on a judicial code of conduct or judicial ethics. Nor was he informed of any introductory programme for new judges. However, he did realise, in a broad sense, that there were restrictions on judges. That was the reason why he had requested the view of the Chief Justice as to his attending the Oireachtas Golf Society event.

### **Judicial Codes of Practice and Judicial Guidelines**

At this time there are no formal codes of judicial practice or ethical guidelines in Ireland. In accordance with the Judicial Council Act, 2019, and subsequent to the appointment of the lay members as specified in the said 2019 Act, the Conduct Committee of the Judicial Council was formally established and held its first meeting promptly in July, 2020. The Secretariat was asked to assemble a range of materials concerning judicial and other codes of conduct to enable the committee to progress its task of formulating its own views. A further meeting has been scheduled for September.

As a consequence of the excessive delay in establishing a Judicial Council in Ireland, and thus a Judicial Conduct Committee, there is now a wealth of relevant comparative examples for the Irish Judicial Conduct Committee.

One of the early and significant publications on Judicial Ethics was published in 1988, it is entitled "Judicial Ethics in Australia", and is by the Hon. Mr. Justice Thomas. In his introduction he wrote:

"This is merely the opening of a subject that needs much more work. The judges should do that work with community benefit in mind".

He referred to the monastic tradition, by quoting an exchange in the Queensland Parliament in 1921:

"The Hon. A.J. Thynne: a judge when appointed has to make a great change in his life. He has to be continually on his guard socially or otherwise with people who are likely to be litigants before him. A judge has almost to become an isolated person socially and publicly and live quite a different life from the one that he had been living before he became a judge". (p.33)

He referred, on the other hand, to an alternative approach and states:-

"No-one would argue with Professor Robert McKay that 'a judge is likely to be a better dispenser of justice if he is aware of the currents and passions of the time, the developments of technology, and the sweep of events'". (p.34)

Judge Thomas's book is an excellent starting point from which to consider the issue of Judicial Ethics.

Another foundation document is the Bangalore Principles of Judicial Conduct 2002. In the preamble it is stated:

"THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles

presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.”

Now that a Judicial Council has been established in Ireland, and a Judicial Conduct Committee commenced its work in July, 2020, standards for ethical conduct of judges may be drawn. The Bangalore Principles provide an excellent foundation upon which to commence drafting guidelines for the Irish judiciary.

The European Network of Councils for the Judiciary, ENCJ, has many relevant publications. Ireland was a founder member of this important judicial network. The report of the Working Group on Judicial Ethics 2009-2010 is a relevant document which would be of assistance. These ethical principles were written in accordance with the decision taken by the ENCJ's General Assembly which took place in Brussels in June, 2007, the result of two year's work.

In the London Declaration the ENCJ declared that the affirmation of shared principles and values on a European level strengthens mutual understanding, and thus mutual confidence, between judges in the European judicial area. The ENCJ approved the report entitled “Judicial Ethics – Principles, Values and Qualities” as guidelines for the conduct of European judges. There are other helpful projects and reports of the ENCJ.

### **Canada**

The Canadian Judicial Council has done a considerable amount of relevant work in this area. The Canadian Judicial Council published “Commentaries on Judicial Conduct” in 1991, and in 1998 published “Ethical Principles”. These documents have been used in the training of judges on appointment and as part of discussions throughout judicial careers. A revision is taking place at the moment, and a revised document is being circulated for discussion. On previous occasions judges from Canada have attended conferences in Ireland and have discussed such issues here. At one conference a presentation was made by a judge from the Ontario Judicial Council, which was of great interest and was considered to be relevant to any future Irish Judicial Conduct Committee.

### **New South Wales**

Contact has also taken place over the years with the Judicial Commission of New South Wales. Personnel from the Commission, judges, including former Chief Justice Sir Anthony Mason, and administrative staff, including the Chief Executive Mr. Ernest Schmatt, have given addresses and advices at judicial conferences in Ireland on the establishment and running of a Judicial Council. Their Sentencing Committee, which has the purpose of assisting courts to achieve consistency in imposing sentences, may be of assistance to the proposed Sentencing Guidelines and Information Committee to be established in Ireland under the Judicial Council Act, 2019.

### **Scotland**

The Irish judiciary has benefited greatly over the years from educational seminars run by the Judicial Studies Committee in Scotland, which is now called the Judicial Institute for Scotland. Introductory written materials on judicial matters are provided for newly appointed judges. There is an introductory programme, which is regarded as essential, so that the new appointee can adjust to a new judicial role, which is so different from their role as a practitioner. A mentor is also nominated for a newly appointed judge as a first point of contact.

In a Statement of Principles of Judicial Ethics for the Scottish judiciary, which was revised in December, 2016, the Lord President stated in the foreword:

“The statement gives guidance in the light of which judges will make their own decisions. It does not provide an answer to every ethical question with which a judge may be confronted, nor does it prescribe a code of conduct.”

The Lord President expressed the hope that it would inform the public of the principles by which judicial office holders are guided in their professional and private lives. Thus the benefit of a statement of ethical principles is not only for the judiciary but also for the public.

Both the educational programmes and documents of the Judicial Institute for Scotland are very helpful and relevant.

### **Northern Ireland**

In Northern Ireland a Statement of Ethics for the Judiciary in Northern Ireland was issued from the Lord Chief Justice’s office in February, 2007 and has since been revised in April, 2010 and August, 2011. This document refers to internationally recognised documents

on judicial ethics and sets out a statement which would also be of assistance to the Irish Judicial Conduct Committee.

### **United Kingdom**

Earlier this year a Guide to Judicial Conduct was published in London. It is an updated document on the issue of judicial conduct. It considers that there are three principles guiding judicial conduct; judicial independence, impartiality and integrity. After analysing these three principles it proceeds to give helpful guidance on specific issues.

### **Codes of Judicial Conduct and Ethics Worldwide**

While there are now many other codes of judicial conduct and ethical guidelines, for example in Australia, Canada, the USA and Europe, they tend to reflect the principles set out in the above documents.

In general, a judge should refrain from conduct that in the mind of a reasonably fair-minded and informed person could give rise to the appearance that he is engaged in conduct likely to bring the judiciary into disrepute. This principle is addressed in the Guide to Judicial Conduct (3<sup>rd</sup> Ed.) published Australasia Institute of Judicial Administration, where it is stated at para. 6.11:-

“Judges should themselves assess whether the community may regard a judge’s participation in certain activities as inappropriate. In cases of doubt, it is better to air on the side of caution, and judges generally will be anxious and careful to guard their own reputation.”

### **Pandemic**

The fact that Ireland was experiencing a pandemic at the time of the dinner on the 19<sup>th</sup> August, 2020 is part of the context requiring consideration. Consideration was required of the COVID-19 Regulations, the separation of powers issue, and whether it was appropriate for a judge of the Supreme Court to attend the dinner. Life for everyone in the State has been affected by the pandemic and over 1,800 people have lost their lives. It has brought sorrow to many people because, in accordance with the Government’s Regulations and Guidelines, they have been unable to visit relations in care homes, parents and grandparents who were cocooning, or to visit relations and friends in hospital. There have been no large family christenings or weddings or funerals. Occasions, which in normal times would give rise to celebrations have not occurred. The commencement of the relaxing of the rules relating to events in the summer of 2020 was

marked by a proliferation of Government guidelines and advices provided to hotels and guesthouses.

The media reports that “80” people or “over 80” people had attended a convivial event, a golf dinner in a hotel, came as a shock to many who had suffered and were still saddened, by the pandemic. It generated intense public controversy in mainstream media and on social media. Mr. Justice Woulfe described it as a “maelstrom” which had exploded around all of those who had attended the dinner.

### **Judges**

A judge has a special status in our society. As said by Sir Anthony Mason, former Chief Justice of New South Wales in the Independence of the Bench, the Independence of the Bar and the Bar’s Role in the Judicial System (1993):-

“Judicial independence is a privilege of, and a protection for, the people”

Judicial independence is a core principle in our democratic state, it is a principle for the benefit of the people, it underlines the Rule of Law. Thus, it is necessary, that judges take care not to do anything which undermines the institutional or individual judicial independence, or anything that might undermine the appearance of such independence.

In considering critical moments relevant to the event in issue, as when Mr. Justice Woulfe was first told of the dinner in Ballyconneely Clubhouse, or when he entered the dining room in Clifden Station House Hotel, the evidence before the Reviewer indicates that Mr. Justice Woulfe approached the matter from the COVID-19 Regulations point of view. At Ballyconneely Clubhouse he stated that he was satisfied that the dinner was being organised in accordance with COVID-19 Regulations, at the dinner he was aware that there were approximately 45 in the dining room, and thus that it was less than 50 persons provided for in the Regulations. He stated that he had not known of the gap in the partition wall being moved behind him, when the speeches were being made. The evidence indicated that he was analysing the event from the point of view of the COVID-19 Regulations.

Mr. Justice Woulfe was a newly appointed judge of the Supreme Court. It appears to the Reviewer that his vigilance was not yet fully honed into the Judicial sphere. He had not yet had the benefit of an introductory programme, or read any comparative judicial guidelines or codes of conduct of other jurisdictions. A member of the judiciary has to be vigilant both in court and in activities outside the court. This vigilance is necessary to avoid impropriety and to avoid the perception of impropriety in all activities.

### **The Media and Resignations**

In the aftermath of the dinner there was a considerable volume of media coverage of the dinner. Dara Calleary, TD apologised for being at the dinner, and resigned, as Minister for Agriculture. Senator Jerry Buttimer apologised and resigned as Leas Cathaoirleach of the Seanad. The party whip was removed from three Fine Gael Senators. Former T.D. and Senator Donie Cassidy resigned from his position as Vice-President of Fianna Fail.

Counsel on behalf of Mr. Justice Woulfe submitted that much of the criticisms and public reaction was sparked by the notion that 80 people were in a room having dinner together which, if it were true, that would have been a breach of the guidelines.

### **Vigilance**

From the time when Mr. Justice Woulfe first learned about the dinner he queried with the organisers whether it was in compliance with the COVID-19 Regulations. That was his mindset. From the information provided by and on behalf of Mr. Justice Woulfe, in the opinion of the Reviewer it was, and is, not unreasonable that he was satisfied that the event was COVID-19 compliant on the night of the dinner.

However, there is another prism, in this Reviewer's opinion, through which Mr. Justice Woulfe should have considered the invitation to the dinner. It was submitted on his behalf that "the separation of powers" issue was met when the Chief Justice said that he saw no problem in him attending the Oireachtas Golf Society event. However, at that time Mr. Justice Woulfe did not know that there was to be a dinner, and so that issue was not discussed with the Chief Justice. It was submitted that once there was "no problem" going to the golf game that meant that there was no problem in going to the dinner, that there could be no "separation of powers" issue. It was also submitted that the Chief Justice would have known that there would be "eating after the event".

From the information provided to this Reviewer by and on behalf of Mr. Justice Woulfe the fact that the society is called "the Oireachtas Golf Society" does not give rise to a separation of powers issue as, in fact, it is not connected to the Oireachtas, other than it being essentially a society mostly for retired members of the Oireachtas, their families and friends, for social and recreational purposes. While some current politicians seem to attend occasionally they, it appears, were in the minority. Thus, the Reviewer is satisfied that there was no breach of the separation of powers issue by Mr. Justice Woulfe attending the event.

However, attendance at the dinner does raise another issue. Judicial independence is at the core of our democratic society. It exists for the protection of parties who go to court to obtain an independent judge to determine issues in accordance with the Rule of Law. The concept of judicial independence extends further than the separation of powers. The

six Bangalore principles address the issues in general, and the fourth principle in particular is relevant:

“(4) Propriety, and the appearance of propriety, are essential to the performance of all the activities of a judge.”

A judge has to take care that his or her conduct, on or off the Bench, does not undermine the independence of the judiciary, either by an inappropriate action or by the appearance of an inappropriate action.

There are no Ethical Guidelines or Judicial Codes of Conduct in Ireland yet. However, it has always been recognised that a judge is expected, both on and off the Bench, to adhere to a high standard of conduct, consistent with his or her status as a judge in an independent judiciary. This standard includes propriety and the appearance of propriety.

A useful example may be found in the Ethical Principles for Judges of the Canadian Judicial Council at 2.5 which states:-

“Given the independence accorded to judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily on public confidence. Lapses and questionable conduct by judges tend to erode that confidence.”

In the Australian Institute of Judicial Administration Incorporated’s Guide to Judicial Conduct, in referring to social and recreational activities at 6.10 it is stated:-

“Judges should themselves assess whether the community may regard judges’ participation in certain activities as inappropriate. In cases of doubt, it is better to err on the side of caution, and judges generally will be anxious and careful to guard their own reputation.”

A judge has a duty to protect the independence of the individual judge, and to protect the institution of the judiciary. Also, on a collegiate bench, he/she has a duty to that collegiate court. He/she is part of a group, thus if he/she acts with impropriety or even with an appearance of impropriety to a reasonable observer, it reflects upon the whole Bench.

The issue of whether Mr. Justice Woulfe should have attended the dinner required specific consideration.

Mr. Justice Woulfe got caught up in a media controversy over the dinner in Clifden. He was reported negatively in the media, and this reflected negatively on the Supreme Court, which is a collegiate court.

The Rule of Law is dependent on an independent Judiciary. Thus, judicial independence should be considered very seriously. Independence should be from the Executive and the

Legislature. Independence is a heavy mantle for a judge to carry. It is required to be worn on and off the Bench, in public life and in private life.

It is important that judges retain the respect of the People. Thus, a judge should not take part in any conduct that is inappropriate, but also should not take part in an activity which may appear to be inappropriate to a reasonable and informed observer.

Judicial ethics apply not only to a judge's work on the Bench, but also in his or her private life. In addressing the issue of the private life of a judge there are those who take or have taken a very strict approach. Thus, Slessor L.J. stated:

“When I became a judge, naturally I resigned from all political and semi political associations, and even in church matters I felt it not right to take part in any work of markedly polemical nature, so that my retirement from the world really took place in 1929. After that date my only public contacts or utterances were in court.”

Such a strict approach is not often taken today.

The Bangalore Principles of Judicial Conduct address the issue of propriety in Value 4. It states:

“Propriety, and the appearance of propriety, are essential to the performance of all the activities of a judge.”

In 4.2 it is provided:

“As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge should conduct himself or herself in a way that is consistent with the dignity of the judicial office.”

A judge needs to be vigilant so that he or she acts with propriety, and the appearance of propriety.

In this case Mr. Justice Woulfe considered carefully the dinner invitation, and the dinner, from the aspect of the COVID-19 Regulations. In the Reviewer's opinion he did not consider the situation from the aspect of propriety and appearance of propriety, from the aspect of a Judge of the Supreme Court. He appears to have relied upon his original conversation with the Chief Justice – but neither he nor the Chief Justice knew of the dinner at that time. While he stated that the Chief Justice would have known there would be some “eating” at the golf game, it was not a topic discussed with the Chief Justice.

In the opinion of the Reviewer there is a great difference between four people sitting down together after a game of golf to have a bite to eat, and a larger formal celebratory dinner in a hotel, with speeches and a prize giving, during a pandemic.

When Mr. Justice Woulfe heard of the dinner he made careful inquiries and sought reassurances from the organisers as to the dinner being in compliance with the COVID-19 Regulations. It is clear from Mr. Justice Woulfe's evidence that he made no inquiries and sought no advice or reassurances from the Chief Justice, or any member of the Supreme Court, or anyone, as to whether attendance at a celebratory dinner, in a hotel, during a pandemic, was appropriate for a member of the Supreme Court. In fact, Mr. Justice Woulfe told the Reviewer that it would have been "ridiculous" to do so. (See transcript 8.9.20 p. 71, lines 15 and 16). The Reviewer disagrees with that view.

The Reviewer is of the opinion, that the advisability of the attendance by a member of the Supreme Court at a celebratory dinner, in a hotel in a public place, at a time of pandemic, required to be considered independently of compliance with the issue of COVID-19 Regulations. In the opinion of the Reviewer this was not done by Mr. Justice Woulfe. The Reviewer is of the opinion that Mr. Justice Woulfe did not consider the dinner invitation from the point of view of his new status as a judge of the Supreme Court and in this regard Mr. Justice Woulfe was not sufficiently vigilant.

### **Burden of Proof**

At the meeting on the 8<sup>th</sup> September, 2020 and again at the meeting of the 25<sup>th</sup> September, 2020, counsel for Mr. Justice Woulfe submitted that the report, albeit an opinion, expresses an opinion that there was misconduct by Mr. Justice Woulfe. Counsel submitted that the relevant burden of proof was that of beyond reasonable doubt.

If this was a Tribunal of Inquiry the Reviewer would have to apply the test of the balance of probabilities, which is what is applied here. The Reviewer is mindful of *Lawlor v. Planning Tribunal* [2010] I.R. 170, and the determination that the findings made must clearly be proportionate to the evidence available, that any findings should in principle be grounded on cogent evidence.

The Reviewer affirms that this report is an expression of an opinion, it is not an adjudication on fact. In the circumstances, insofar as any burden of proof is relevant, the Reviewer considers the burden to be the civil burden, that is on the balance of probabilities, subject to the cogent evidence requirement stated in *Lawlor v. Planning Tribunal*.

In this review the Reviewer is of the opinion that there is cogent evidence that Mr. Justice Woulfe did not consider whether it was appropriate for a member of the Supreme Court to attend the dinner, he did not consider the propriety of such attendance, or the appearance of any impropriety.

At the meeting on the 8<sup>th</sup> September, 2020, having heard from Mr. Justice Woulfe that he first learnt of the dinner when he registered at the Ballyconneely Clubhouse, the Reviewer asked him;

**Mrs. Justice Denham:** “Did you consider phoning the Chief, or any other member of the Court to seek guidance in relation to the dinner?”

**Mr. Justice Woulfe:** “Ah, no. I think that would have been ridiculous, with respect, Judge, I really do. You know, I don’t think an adult person on holidays in that kind of sense would go bothering the Chief Justice at that stage. Particularly there was nothing to spark off bother in my mind that there was any question going back to him.” (Transcript 8.9.20 p. 7, from line 20)

Having, *inter alia*, pointed to the reassurances he, Mr. Justice Woulfe, had received from experienced people in the hotel trade, and the Government policy and the economic imperative of hotels getting business, the Reviewer asked Mr. Justice Woulfe what the position was for a judge.

**Mrs. Justice Denham:** “And what about as a judge? (Transcript 8.9.20 p.108, line 28 etc)

**Mr. Justice Woulfe:** “Same as a judge. In this sense you’re an ordinary citizen going to a social and recreational event”

**Mrs. Justice Denham:** “Well are you an ordinary citizen? ... ”

**Mr. Justice Woulfe:** “Because of the nature of the event I think you are.”

Later the Reviewer asked Mr. Justice Woulfe;

**Mrs. Justice Denham:** “Do you accept that your presence at the dinner may have created a public controversy which could have adversely affected the Supreme Court?” (Transcript 8.9.20 – p.129, line 26)

**Mr. Justice Woulfe:** “Ok that’s a difficult question. In one sense I suppose that is so, that for the media to also have the chance to bring down a judge as an extra fuel to the fire and it did add to the controversy that I was there. ...”

**Mrs. Justice Denham:** “I think so, do you accept the context and the context is the pandemic, where we have six months of not going to christenings, not holding weddings, not being able to go to your family’s funerals”. (Transcript 8.9.20 – p.131, line 2)

**Mr. Justice Woulfe:** “Of course.”

**Mrs. Justice Denham:** “And pent up tension in the country?”

**Mr. Justice Woulfe:** “Of course. This was a very unfortunate set of circumstances and unfortunate timing. And for those people to be presented by the media with what appeared to be a flagrant breach of the Regulations and the Guidelines was like letting off a bomb.”

In all the circumstances the Reviewer is of the opinion that there was cogent evidence that, apart from considering whether the dinner was in compliance with the covid-19 Regulations and Guidelines and the separation of powers issue, Mr. Justice Woulfe did not seek advice on or consider whether it was appropriate for a member of the Supreme Court to attend the dinner.

### **Conclusions**

The Reviewer was requested to undertake the task of making this report in the absence of a complaints procedure in Ireland. While the Judicial Council Act, 2019 has partly come into force, the Conduct Committee of the Judicial Council was formally established only in July, 2020, and is currently engaged in preliminary preparatory work.

Thus the Reviewer assumes that this report is in place of any potential action before the Judicial Conduct Committee. Consequently, the Reviewer considers that it would not be fair, or in accordance with due process, for any further action to be taken against Mr. Justice Woulfe in relation to the events in issue in this report.

The Reviewer is of the opinion that there was no breach of law committed by Mr. Justice Woulfe. The reasons for this conclusion are set out above, in the analysis of the COVID-19 Regulations.

The Reviewer is of the opinion that Mr. Justice Woulfe placed reliance bona fide on the assurances of the organisers of the dinner that the COVID-19 Regulations were complied with, and further there was evidence before the Reviewer of reliance by the Station House Hotel on the Guidelines for re-opening Hotels and Guesthouses June 2020 being guidelines endorsed by the Government of Ireland, Fáilte Ireland and the Irish Hotels Federation, which applied on the 19<sup>th</sup> August, 2020.

The Reviewer is of the opinion that Mr. Justice Woulfe’s attendance at the dinner did not breach the principle of the separation of powers.

However, the Reviewer is of the opinion that Mr. Justice Woulfe failed to consider in advance of his attending the dinner whether his attendance, as a Supreme Court Judge, at a celebratory dinner in a hotel, in a public place, in the middle of a pandemic, might be an

impropriety, or might create the appearance of an impropriety, to reasonable members of the Public.

In the opinion of the Reviewer, judicial vigilance, to avoid actions which might give rise to a risk of controversy which could impact on the Supreme Court, is an important matter. In the opinion of the Reviewer, from that perspective, it would have been better if Mr. Justice Woulfe had not attended the dinner.

The opinion of the Reviewer was sought on three questions. They are considered in chronological order, being:

**A. Should Mr. Justice Woulfe have attended the golf event without attending the dinner?**

Yes.

The issue of a member of the Supreme Court attending the golf event was addressed in the conversation between Mr. Justice Woulfe and the Chief Justice. At that time Mr. Justice Woulfe did not know that there was a dinner being arranged in a hotel, and consequently neither did the Chief Justice. The issue of a dinner was not addressed at that time by either Mr. Justice Woulfe or the Chief Justice. If Mr. Justice Woulfe had attended the golf event without attending the dinner no issue could have arisen as to his presence.

The matter of the dinner arises in the next question.

**B. Should Mr. Justice Woulfe have accepted the invitation to dinner?**

No.

The reasons are set out in detail in the above report. Mr. Justice Woulfe had sought and obtained assurances from the organisers of the dinner (whom he knew to have experience in the organising of events in hotels). In the opinion of the Reviewer it was reasonable for Mr. Justice Woulfe to rely on those assurances, and his own observations at the hotel, on the issue of compliance with the COVID-19 Regulations.

However, as set out in detail in the above report, the Reviewer is of the opinion that Mr. Justice Woulfe did not consider separately the propriety, or if there would be an appearance of impropriety, for a judge of the Supreme Court to attend a celebratory dinner in a public place while there is a pandemic in the State. He should have considered whether the community may regard the judge's participation as an impropriety.

**C. Whether Mr. Justice Woulfe, in all the circumstances, should have left the hotel in the light of the situation prevailing?**

This question does not arise for consideration as a consequence of the answer to B above.

However, in spite of the views set out above, in the opinion of the Reviewer, there are a number of significant mitigating factors.

- (a) Mr. Justice Woulfe did not break any law, or knowingly breach any guidelines on the 19<sup>th</sup> August, 2020.
- (b) The failure of Mr. Justice Woulfe to reflect upon whether his attendance as a Judge of the Supreme Court might cause controversy, and bring the Supreme Court into disrepute, should be seen in the light of the following:-
  - (i) He was a newly appointed judge;
  - (ii) He had not yet sat on the Bench as a member of the Supreme Court;
  - (iii) He had not had the benefit of any introductory programme as a judge;
  - (iv) There were no Judicial Guidelines or Judicial Code of Conduct that could have assisted him to deal with the situation.

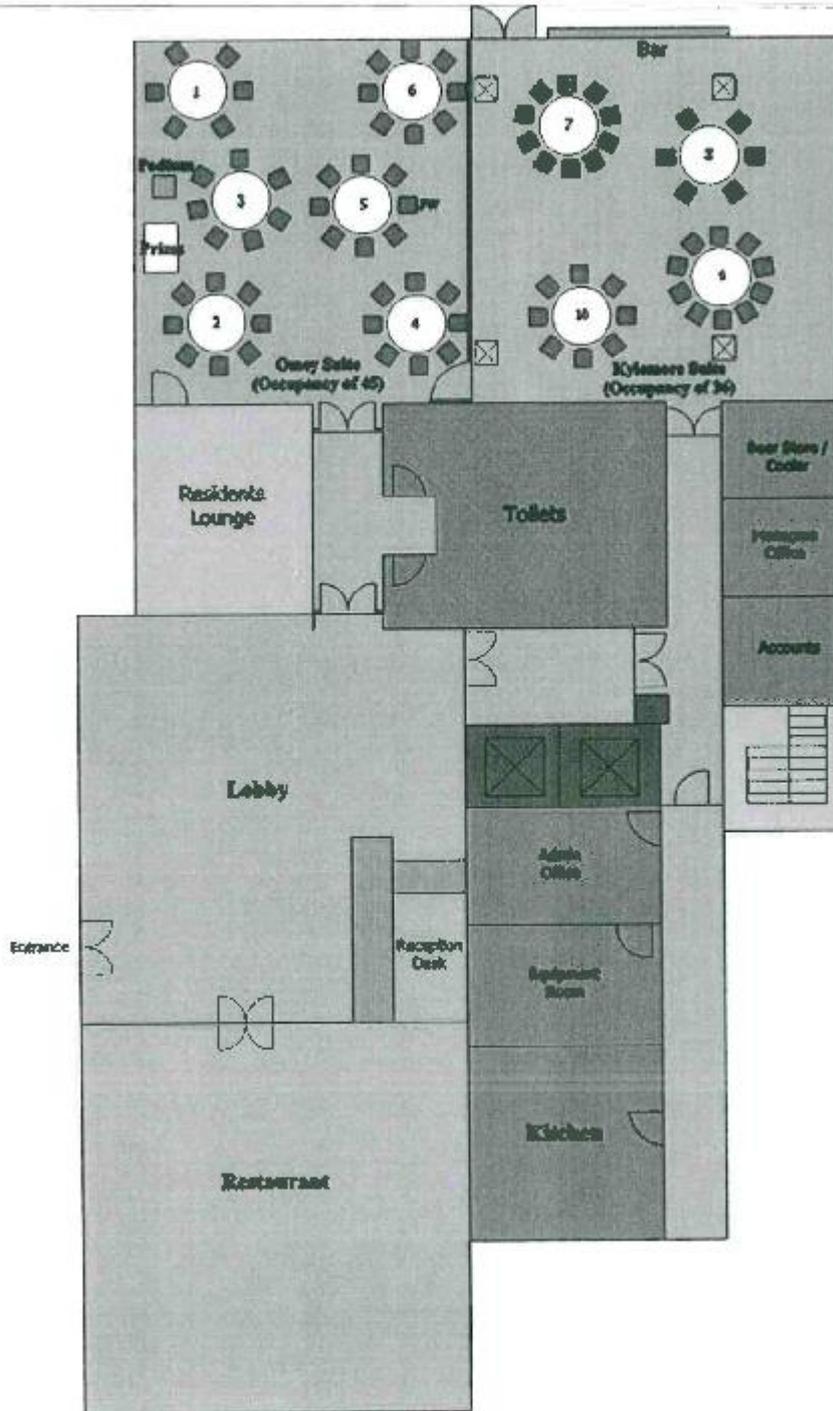
The Reviewer recommends that a Code of Judicial Conduct and Judicial Ethical Guidelines should be introduced as a matter of urgency. It is the opinion of the Reviewer if there had been an introductory programme for newly appointed judges and if Judicial Guidelines had existed at the time, i.e. 19<sup>th</sup> August, 2020, as they do in most jurisdictions, they would have greatly assisted Mr. Justice Woulfe and it is highly unlikely that this situation would have occurred.

In the Reviewer's opinion, based on the evidence and submissions she has received, she is of the view that Mr. Justice Woulfe did nothing involving impropriety such as would justify calls for his resignation from office. Such a step would be unjust and disproportionate.

In light of the mitigation referred to above, the Reviewer is of the opinion that it would be open to the Chief Justice to deal with this matter by way of informal resolution.

**Susan Denham, SC**  
**Chief Justice of Ireland 2011-2017**  
**29<sup>th</sup> September, 2020**

Appendix A – Floor Layout Plans



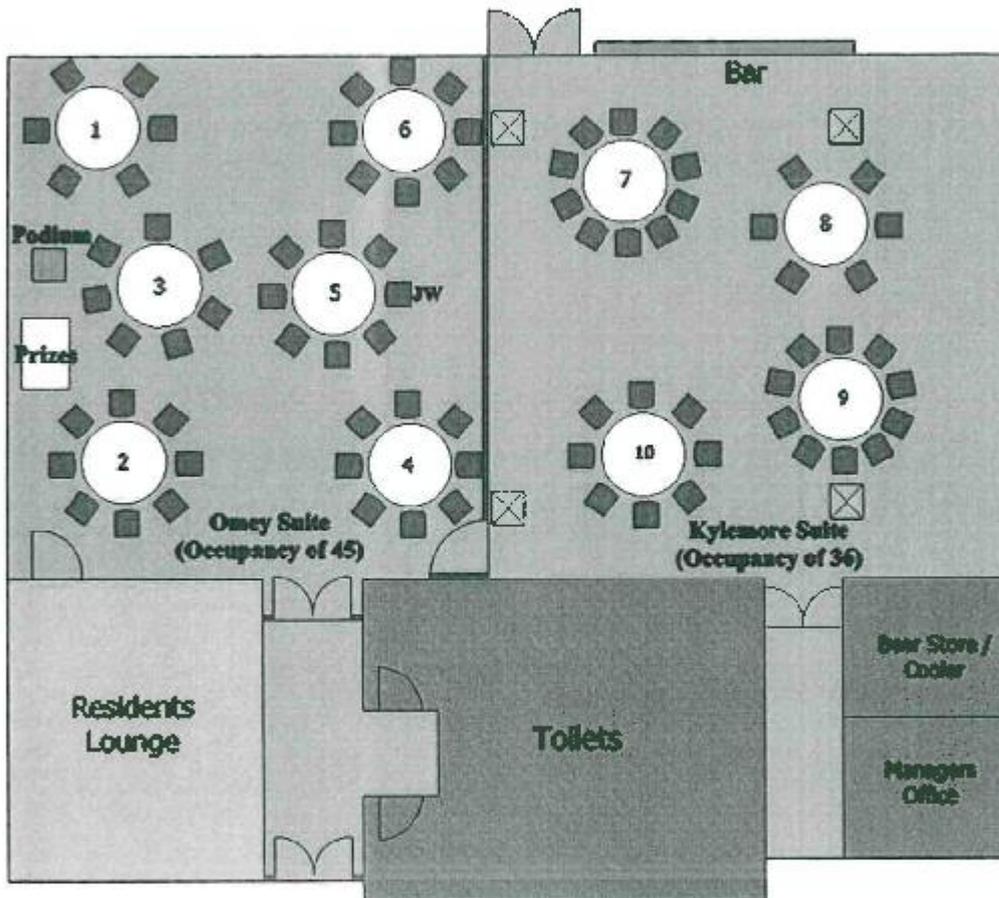




Image 3: View left on entering showing the seating in the lobby area



Image 4: View of access to the Library bar, Omey Suite, and Kylemore Suite

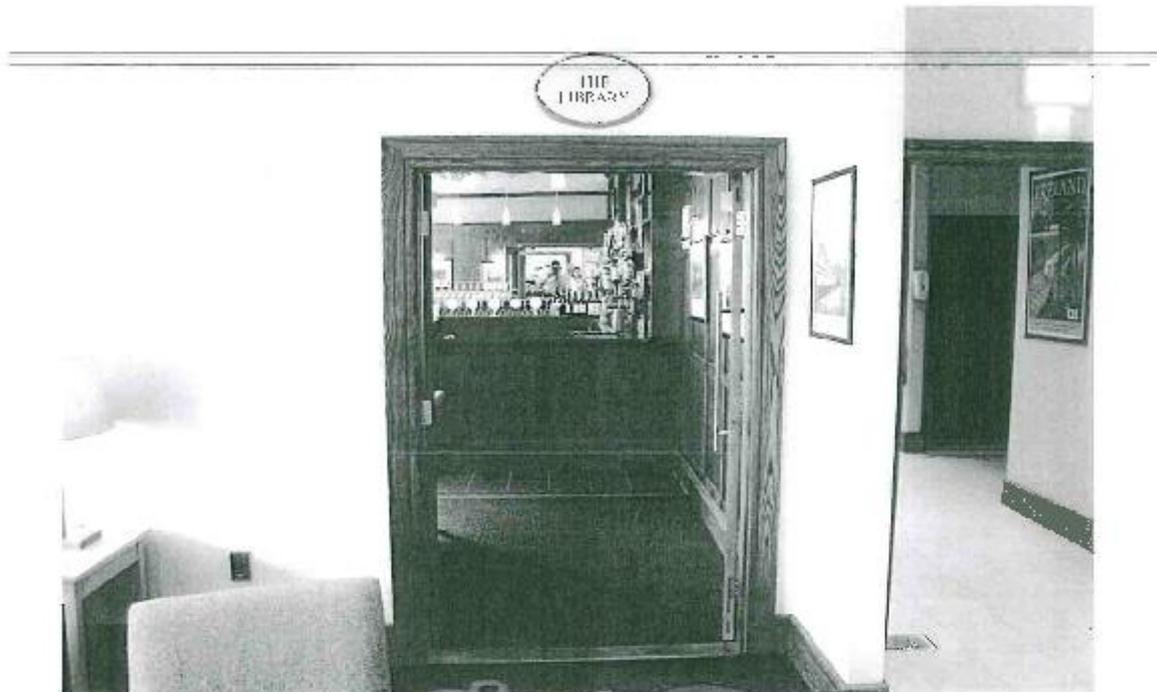


Image 5: Entrance to The Library bar

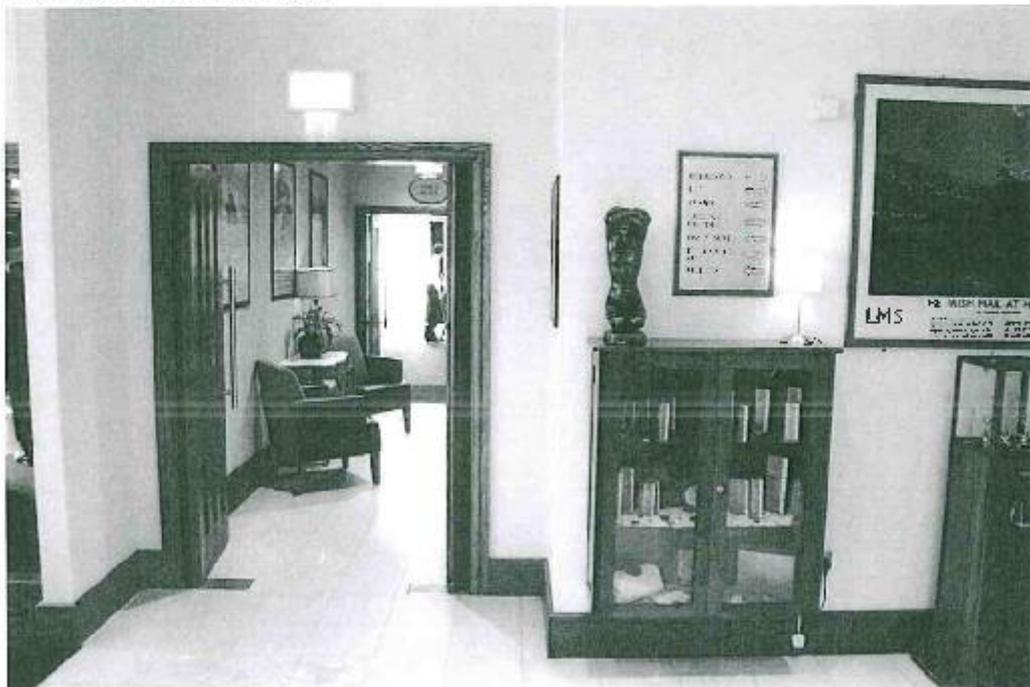


Image 6: Access hallway leading to the Onye Salto

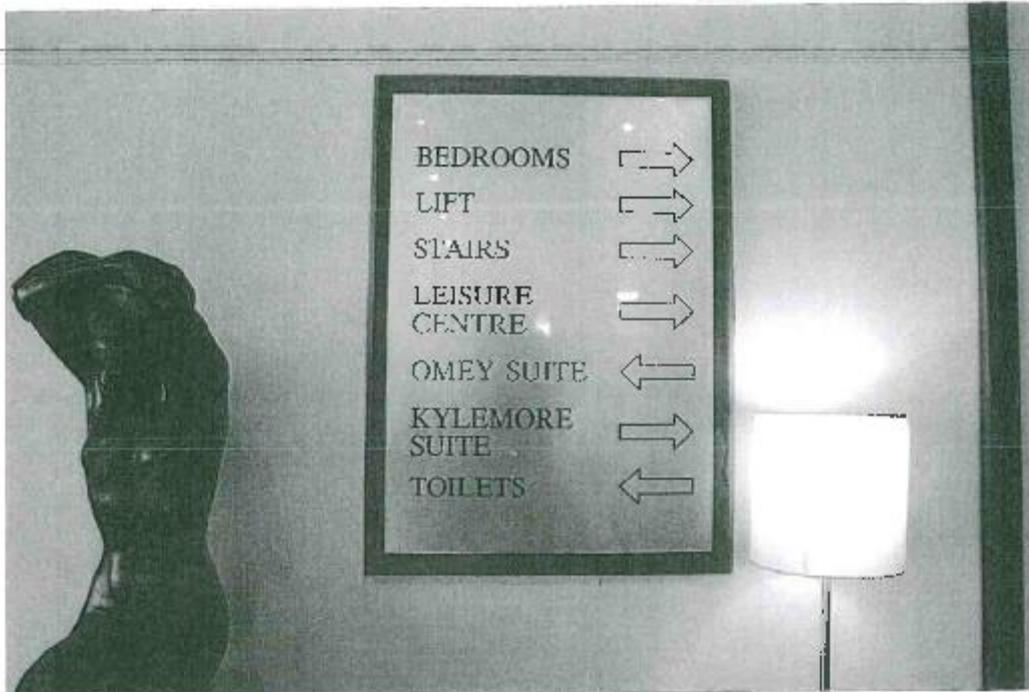


Image 7: Signage with directions to Omev and Kylemore Suites

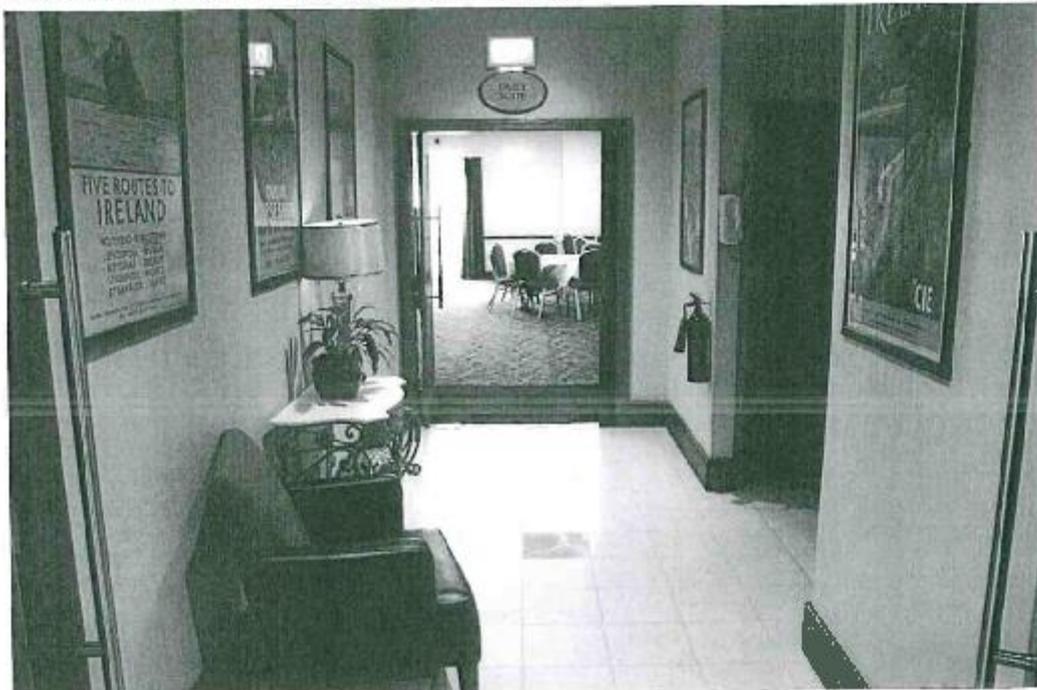


Image 8: Access hallway to Omev Suite straight ahead



Image 5: Table in the hallway which contained the table plan



Image 10: Entrance to the Omey Suite



Image 13: View from the speaker's podium showing Table Nos. 3, 5, 4 & 2 (Clockwise)



Image 14: View showing Table Nos. 2, 3, 6 & 5 (Clockwise)





Image 28: View of service route through to the Omeo Suite



Image 29: View from Kylemore Suite with retractable wall moved to provide a central opening



Image 30: View from Ormeau Suite showing the arrangement post-dinner