

What price the truth? A jury decides

A NEWSPAPER asserting its human rights is, well, news. Independent News and Media is bringing a case to the European Court of Human Rights. The company wants the court to examine Ireland's libel laws, following an award of €1.9m (later reduced to €1.25m) to Monica Leech, a PR consultant, in 2009.

When I read the item, I felt a queer blast from the past. I covered that trial. It centred around a claim that the *Evening Herald* had printed material and pictures which falsely suggested Ms Leech had had an affair with Martin Cullen, a former cabinet minister.

The jury found the material had meant there was an affair, which was false. There is no doubt that, given the jury's decision, a wrong was perpetrated on Ms Leech and she deserved compensation. The level of the award, however, was staggering.

Put it into context. The average award at the redress board for former residents of state institutions was €60,000. Those people had their childhoods swiped away, their psyches damaged, and, tragically for many, their lives ruined before they even reached adulthood.

Ms Leech was also done a wrong. She had come to public prominence in 2004, when it was revealed that she had received contracts worth €300,000 from Cullen's department. She had been a political supporter of Cullen's in their hometown of Waterford. An inquiry conducted by a former chairman of the Revenue Commissioners found there was nothing wrong with Cullen's department employing her, but it also found it difficult to determine the extent of the work she did for the money. Wherever the blame may lie for that, it wasn't with her.

It was in the fall-out from that story that the false allegations surfaced, for which the jury found she was wronged to the tune of €1.9m. Her counsel characterised the false allegation as casting her as a "slut, harlot, tart, floozy".

He said the interpretation of the material cast her as "a liar, a cheat, cheating on her husband, cheating on her children, a tramp and a slut". Presumably, that representation had a major effect on the jury, although the characterisations might well belong in the century that preceded the last one.

After the case, Ms Leech went on the radio and outlined what had befallen her as a result of the false allegations. "I have been assaulted in restaurants," she told 4FM. "I've had my car vandalised. I've had stones thrown at me from moving cars. I have received horrible letters."

Not even bankers have been subjected to the kind of treatment meted out to Ms Leech over the false allegations, but that's the way it goes. There is no question but Ms Leech was entitled to compensation, but proportionality is another matter.

That's just one of a number of problems with the libel laws in this country. What care you about the libel laws?



Monica Leech was wrongly accused of having an affair with a former minister, Martin Cullen, and was awarded €1.9m, later reduced to €1.25m.

Well, if you give a fig about corruption, abuses in public life, scrutinising decisions and criminality, you should do.

In January of last year, referring to the controversy over RTE paying out compensation to individuals who said they had been libelled by Panti Bliss on the Brendan O'Connor TV show, Pat Rabbitte issued a statement saying it would be "a matter of serious concern if recourse to our defamation laws was to have a chilling effect on public debate". The phrase "chilling effect on public debate" is constantly and correctly used in reference to libel laws in this country.

RTE was heavily criticised for paying out without testing the alleged libel. In that instance, yet anybody with any knowledge of the libel laws endorsed the decision. Defending a case in front of a jury that awards millions for damages unseen makes no sense.

And the damage perpetrated is unseen. In this country, somebody who believes their reputation has been injured does not have to produce evidence of the damage. It is akin to a plaintiff wearing a large wig and appearing before a judge, alleging that he has lost his left arm, but not being required to produce the stump. Many successful plaintiffs in libel actions prospered in their careers in between the libel and the trial, and yet claimed that their reputations had suffered greatly. In light of the size of some of the awards that have been made in recent decades, is it any wonder that media outlets shy away

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from putting their trust in juries. Then, there are the costs. When an outlet successfully defends an action, it may have to fork out for its own legal fees, even when the judge awards costs. Most plaintiffs simply wouldn't have the money to pay the enormous costs involved. So, for a media outlet, it's a lose-lose, taking a financial hit even when it is completely in the right. Is this the case in any other area of law?

Down the years, there was much huff-

ing and puffing about reforming the law on libel, which ultimately led to a new law in 2009. In reality, the changes have been minimal, and much the same problems pertain.

For the centres of power, it's a win-win. The libel laws have had a "chilling effect" on public debate. Increasingly, lawyers employed by media outlets to protect against libel are acting as censors. Traditionally, lawyers employed by media outlets attempted to avoid editors to include as much material as possible on the right side of the libel laws.

Now, if there is even the smallest chance that somebody can make even a prima facie case for taking an action, then the media's lawyer blocks that material on the basis that it will inevitably cost money, and possibly, in light of the structure of the laws, huge amounts. This is not a criticism of the media lawyers. They are acting in their client's best interests.

However, it changes the dynamic of the

media's function to act as a watchdog for society. The issue is not one of ensuring that what you are publishing is fair and accurate, but ensuring that there is no possibility that that law can be used as a weapon to strike back against the media.

What's the problem if you're 100% sure of your facts? In the first instance, it's not possible to always be 100% sure, and in that grey area lie many of the stories which unearth wrongdoing and corruption. For instance, a number of the cases highlighted by RTE's *Prime Time* programme in relation to health scandals might never have seen the light of day if done by one of the less-resourced media outlets.

Equally, even when a case is successfully defended, the plaintiff is unlikely to have resources to pay the media outlet's legal fees. (Plaintiff's own counsel in libel actions generally operate on a no-fail, no-fee basis). Now, it would seem that one media outlet — INM — is going to Europe

to see if some remedy can be found that might bring laws in this country into line with others, particularly the neighbouring jurisdiction, which has reformed its laws in recent years. Developments will be interesting to observe.



MICHAEL CLIFFORD

The endless reign of his Endaness is upon us

Behold, the endless reign of his Endaness is upon us. Like the Big Korean Kim dynasty, it seems the little people do not have much of a say or Mr Kenny (or should that be Mr Kimmy?) already believes in the Big Korean Kim dynasty.

So, let's explore the similarities between the two regimes.

Kim Jong-il: In 1978 ordered the kidnapping of South Korean film director Shin Sang-ok, and his actress wife, Choi Eun-hee, in a bid to build up North Korea's film industry. They made seven films before escaping to Japan in 1986.

Enda Kimmy: In 2009 lured George Lee from RTE in an attempt to build-up his party's economics and industrial image. Lee grew increasingly unhappy under the autocratic rule of Kimmy and defected back to the State broadcaster in 2010.

Kim Jong-il: Composed six operas in two years.

Enda Kimmy: Admits he cries every time he sees *Riviera*.

Kim Jong-il: On his first ever touch of a golf club when he opened North Korea's only golf course in 1994, Kim shot a 39 under par round that included 11 holes in one. Delighted at his achievements he immediately announced his retirement from the sport.

Enda Kimmy: Does not like to talk about golf much, as it brings up all those unfortunate questions about all the controversy surrounding the raising outings with developers that make them look no better than Fianna Fáil and their infamously grubby tent at the Galway races. No holes in ones recorded, but plenty of holes in Fine Gael's claims of a whiter than white image, and lots of references to stroke politics.

Kim Jong-il: Reported to be able to talk to dolphins.

Enda Kimmy: In January 2013 the *Irish Examiner* reported that Enda Kimmy tried to talk to turkeys on a visit to Tayto Park, telling them: "Christmas is Over! It's OK — you're safe now!"

Kim Jong-il: In a bid to try and



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Our glorious Taoiseach believes this nation's little people would be happy for him to remain at the helm well into the 2020s, with his 'regime' following a path similar to that of the Kim dynasty in North Korea

make the unsellable sound better than was Kim ordered donkey meat be described as "Heavenly Cow".

Enda Kimmy: Responding to the unsellable sound better than it was Kimmy described Irish Water as a "major achievement" which would change Ireland for the better.

Kim Jong-il: Ripped off the American hamburger, called it "double bread with meat" and told the North Koreans it was his own invention.

Enda Kimmy: Ripped off the Fianna Fáil blueprint for getting out of the economic crisis (which, after all, Fianna Fáil were responsible for), called it his "five point plan" and told the Irish people it was his own invention.



Kim Jong-Un. In 2012, in an effort to boost patriotic morale, he announced that archaeologists had finally discovered the remains of a unicorn.

deaths of some 70 senior officials he suspected of plotting against him. The most prominent of these was his uncle Jang Song Thaek who was officially denounced as "despicable human scum who was worse than a dog and attempted to overthrow the state by all sorts of intrigues and despicable methods with a wild ambition to grab the supreme power". Reports of his punishment vary from being executed by anti-aircraft gun so no trace of him would be left, to being eaten alive by 120 dogs specially starved for five days.

Enda Kimmy: Responding to Richard Bruton's 2010 heave against him, Enda Kimmy said he was "disappointed" by his colleague's actions, and punished Little Richard by demoting him to the cabinet role of minister for enterprise and jobs.

Kim Jong-Un: Wants to turn North Korea "into a country of mushrooms", as well as "letting the strong wind of fish farming blow" and making "the wives of officers become dependable assistants to their husbands".

Enda Kimmy: One of the few Western world politicians continuing to call a group of women "housewives". But, like the answer to whether or not he fired ex-guards commissioner Martin Cullinan, Kimmy's mushroom and wind views remain a mystery.

Kim Jong-Un: In a bid to boost patriotic morale and thus the regime's flagging popularity, in 2012 announced that archaeologists had finally discovered the remains of a unicorn. Nothing has been heard of this amazing feat since.

Enda Kimmy: In a bid to boost patriotic morale and thus the regime's flagging popularity, in 2012 it was announced Mr Kimmy had finally discovered the basis of a bank guarantee retro-debt deal with the EU which would deliver "seismic" results. Nothing heard on this amazing feat since then.

Kim Jong-Un: Wants to turn back time by creating his own time zone 30 minutes behind Japan to remind people the former dominant political power is responsible for all the country's ills.

Enda Kimmy: Wants to turn time back to the bank guarantee and troika bailout periods by creating the Oireachtas probe into the financial crash to remind people the former dominant political power, Fianna Fáil, is responsible for all the country's ills.

Kim Jong-Un: Constantly tours tractor factories and fish farms where he is met with a rapturous response as people spontaneously tell him how wonderful he is and how brilliant his policies are in the full glare of the media's gaze. Many suspect the scenes to be faked.

Enda Kimmy: Constantly tours tractor factories and work places, but, curiously, it's when he is alone, and away from media glare, that he is met with a rapturous response as people spontaneously tell him how wonderful he is and how brilliant his policies are — endorsements he later uses in speeches to the Dáil when the unsolicited remarks of ordinary citizens just so happen to re-enforce whatever point he is making, from the brilliance of Irish Water to the effectiveness of his homelessness strategy. Many suspect the scenes to be faked.

Kim Jong-il: is still officially known as the "eternal" leader of North Korea. Eternal Enda — has quite the ring to it, doesn't it, Mr Kimmy?

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