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PRESIDENTIAL ELECTION MUSINGS....

DEFAMATION, TRACTION AND LAW

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Traction:

- The ability of wheels to move over a surface without slipping;
- The extent to which an idea, product, etc gains popularity or acceptance

Defamation:

Section 2 of the Defamation Act 2009 - "Defamatory Statement" means a statement that tends to injure a person's reputation in the eyes of reasonable members of society, and "Defamatory" shall be construed accordingly".

I sit in an office overlooking the National Concert Hall which many years ago housed UCD. I was one of its last law students prior to its disembowelling to Belfield. An early memory is attending a tutorial on the coming into force of the 1937 Constitution and the repeal of the Constitution of Saorstát Eireann leading to the replacement of the Office of Governor General by that of Uachtarán na hÉireann. We were told in the lead up to the enacting Referendum in 1936 that Governor General O'Buachalla, an inoffensive man but hard of hearing, was telephoned by deValera (in his capacity as President of the Executive Council) and told he was being abolished and allegedly responded to his lifelong friend "so are you..." If the misheard quote was uttered it was perhaps no more than vulgar abuse. Many of the Presidential candidates in the recent election might have wished that what was said of and about them was no more than vulgar abuse

David Norris referred to the campaign as "a war".

Richard Moore, principal adviser to Sean Gallagher opined dryly that in future elections only a hermit from the Blasket Islands would run as the only dirt that might attach to such a candidate would be bird droppings – a more gullible version of the *traction* constantly referred to during the campaign.

I do not suggest that any of the candidates was defamed but merely ponder to what extent if any were the reputations of any of them, to use an older definition, lowered in the eyes of the public over the long summer and autumn of electioneering. That is the consideration posed in a jury libel action after any number of days hearing. It is a very simple question put to ordinary citizens having heard the evidence, and if the answer is yes they are asked to put a monetary value on the loss, hurt and distress that follows as a consequence.

David Norris, immortalised by Áine Lawlor as not running for the Presidency of Ancient Greece, was so hurt by the publication

of the letters he wrote in support of a former lover jailed for child abuse that he withdrew from the race only to re-enter it later, remembering that at the time he withdrew he had failed to obtain the nomination of four local authorities or 20 Oireachtas colleagues.

Mary Davis's campaign faltered even before it was launched due to the concentration on her membership of over 30 boards, all but 3 of which she served on in a voluntary capacity and without payment. Once crowned the Quango Queen her candidacy was doomed notwithstanding her personal attributes and qualities which did not feature insofar as she got any coverage in the media, which never focused on her aspirations or policies as distinct from her board memberships. Her coverage was derided as *cheap and lazy branding* by her husband.

Vincent Browne in his notorious (is it ever other) questioning of Martin McGuinness called him a liar to his face as did the son of the Garda shot many years ago in Ballinamore during the rescue of Don Tidey. If one is called a liar on live television would one not be inclined to sue?

As an aside it can be taken that any wording or comment the subject of a defamation action is by definition defamatory. The issues fought over at a trial concentrate on whether the words complained of were true or reflect the honest opinion of the author / speaker based on facts that relate to a matter of public interest. In a defamation hearing it is the examination of these defences that is crucial to the success of an action.

The stories surrounding Dana and the reports on family sadness based on allegations of sexual abuse gave rise to the most astounding declaration in a television debate, her assertion direct to camera that unfounded and malicious stories were circulating about her. It was mesmeric television and left the small coterie of Irish libel lawyers charging their mobiles in anticipation of an intriguing call from a possible new client the following morning.

The most that could be said of Michael D. Higgins (recently annointed by Seamus Heaney as president of the republic of conscience, president of the republic of letters and the President of the Republic of Ireland), was that as a member of cabinet almost 20 years ago he voted for a tax amnesty. If that was defamatory of him did he not have 14 colleagues with whom to stand constitutionally united in a class action, based on collective responsibility?

Sean Gallagher, with apologies to the Dragon's Den, came from nowhere (including little or no support from Fianna Fail members

2011 IRISH PRESIDENTIAL BALLOT

Was the person who devised this ballot paper
flirting with defamation law?

Please mark your order of preference in the right hand column

of Louth Council Council), to be a poll leader just five days before (to use that great cliché) the only poll that counts. He lost traction dramatically when cast as a villain in the final election debate when Martin McGuinness typecast him as the ultimate foil in his Greek tragedy. The dramatic unfolding of this Greek drama need not be retold

If however one were to use Sean Gallagher as a possible case study in a defamation symposium the following are questions that might be put to a jury:-

- Is it defamatory to say of a person that he is a member/ former member of Fianna Fáil/Fine Gael/Labour/Sinn Fein/Socialist Party/People before Profit?
- Is it defamatory to say of a person he gave/collected €5,000 for Fianna Fáil/Fine Gael/Labour/Sinn Fein/Socialist Party/People before Profit?
- Is it defamatory to say of a person he gave a substantial amount of money to enter a tent in the West of Ireland /a salubrious Golf Club in the East of Ireland/ to pay for access to a Minister?
- Is it defamatory to say of a person he placed a cheque in an envelope addressed to Fianna Fáil/Fine Gael/Labour/ Sinn Fein/Socialist Party/ People before Profit?

One can but imagine the tension that would arise in a packed courthouse if ever those questions were put to a jury (and if different answers were given depending on the party!).

I am not intentionally leaving Gay Mitchell out of this RTE termed “showbusiness”* campaign, but did the MEP show cause as to why he might be mentioned? If I do him an injustice, apologies.

Focal scoir - was the person who devised the attached ballot paper flirting with defamation law?

*Have RTE / Pat Kenny a take on breathlessly informing viewers of a sensational misleading tweet promising a revealing confirmatory media conference the following day?

The red dress		
The paper envelope		
The leprechaun		
The wet fish		
The balaclava		
The boater hat and matching glasses		
The crucifix		