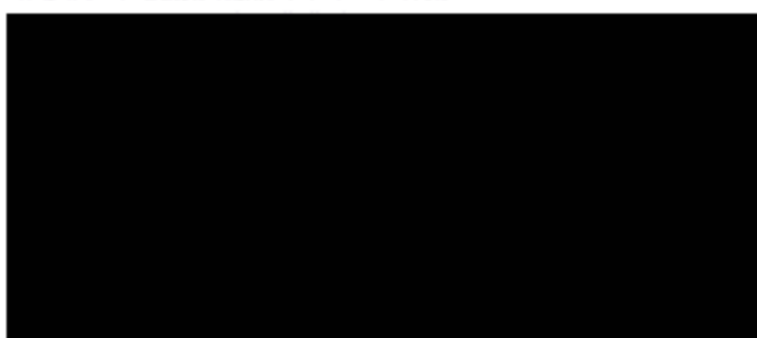


DENIS O'BRIEN

Private & Confidential

Mr. Vincent Browne



21 June 2012

Dear Vincent,

You and I have known each other for many years and while we may not always have seen eye to eye on every issue I have always respected you as a journalist and an independent thinker. You have criticised me on many occasions, in the context of the Moriarty Tribunal and otherwise, but I have always respected your right to freely express your views and opinions. However, your commentary about me over the past few months, particularly in the context of my media interests, marks a new departure and you have left me no alternative but to write to you setting out my side of the story.

While you may well have concerns about my ownership of elements of the media in Ireland I do not see how that gives you carte blanche to simply cast balance and factual accuracy aside.

On Wednesday, 13 June, 2012 the Irish Times published an article by you entitled "*Plans to censure Wallace are brazenly hypocritical*". While purporting to deal with the conduct of the members of Dáil Eireann in respect of their use of the censure mechanism the article instead became an all out attack on me. The piece was strewn with factual inaccuracies, it was based on a fundamentally false premise and it amounted to an unfair attack on my good name and reputation.

You state that, "*O'Brien sold Esat Digifone to British Telecom in 2000 for €2.92 billion (IR£2.3 billion)*". This is not true. In 2000 British Telecom acquired Esat Telecom Group plc. which included Esat Telecom's fixed line, internet and mobile phone interests. Esat Digifone was the owner of the mobile phone licence and Esat Telecom held a 50% shareholding in it. The acquisition by BT was approved by the board of Esat Telecom, it was not a personal whim of mine. I was a minority shareholder in the company and I benefitted from the sale of my Esat Telecom shares in the same manner as all the other shareholders.

You are also guilty of perpetuating the lazy myth that the mobile phone licence that was acquired by Esat Digifone for £15million was inherently worth £2.3 billion and all that was

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required to realise this fortune was the opportunity for a quick sale. Nothing could be further from the truth. The true value of the mobile phone licence was only realised as a result of the investment of in excess of one billion euro in risk capital and the hard work and honest endeavour of hundreds of Esat employees. Esat Digifone brought a much needed end to a state owned monopoly Telecom Eireann/Eircell and became the most successful ever second entrant to a European mobile phone market.

You then go on to state that I “*personally made €367 million (IR£289 million) from the sale*”. This is simply not true. I invested significant personal resources over many years into the development of the Esat Telecom and Esat Digifone businesses. While the value of the shares I sold amounted to approximately IR£289 million this was not a net figure that I ‘made’.

The article further states that “*O’Brien then [after the sale] removed his domicile to Portugal in order to avoid paying the capital gains tax bill of €70 million*”. Again, this is not true. I had moved to Portugal some time before the sale of Esat Telecom to British Telecom and did so for perfectly valid and legitimate personal and business reasons. Once again you are guilty of perpetuating the lazy version of history.

Why have you never asked me to comment on any of these points? You never have. Instead you have accepted inaccuracies which have been peddled by others as fact and decided to run with them. As an experienced and respected journalist you would be the last person to accept such standards from a young journalist.

In referring to the findings of the Moriarty Tribunal you say that the Tribunal found that “*...O’Brien had contributed €71,298 to Fine Gael during the period from March 1995 to June 1996, during which time the deliberations on the award of the second mobile licence were under way...*”. The vast majority of donations to which you refer were not made by me at all but were contributed by corporate entities in which I had some involvement. To equate this to being personal donations from me is yet another example of you playing fast and loose with the facts.

More fundamentally however, your attempts to equate the present situation in which Mr. Wallace finds himself with the Moriarty Tribunal report is fundamentally misconceived and grossly unfair. You claim to rely on the findings of the Moriarty Tribunal to state that Michael Lowry received, “*€1,173,396.00 in cash and other benefits from Denis O’Brien between July 1996 and December 1999*”.

In the first instance, you are well aware of my views on the Moriarty Tribunal and its findings. I have always believed the Tribunal to be fundamentally flawed for the simple reason that not one witness who gave evidence before the Tribunal stated that Michael Lowry interfered with the licence process. That list of witnesses included seventeen senior and respected civil servants from the inter-departmental project team that ran the licence competition, five Government ministers, two senior officials from the Office of the Attorney General, a Senior Counsel to the State and one senior official from the Competition Directorate of the European Commission. This is to say nothing of the respected international telecoms expert, Professor Michael Andersen, whose evidence the Tribunal conveniently chose to rubbish. I am enclosing not only the Statement of Professor Andersen but also the transcripts from his 8 days of evidence to the Tribunal. I believe you will find this illuminating.

I do not know how you have come up with the figure of “€1,173,396.00 in cash and other benefits” but on your TV3 show of 14 June you also stated that the findings of the Moriarty Tribunal “essentially were that [Michael Lowry] for a millions euros (sic) from Denis O’Brien...”. You appear to be aggregating various findings made by the Tribunal in Volume I of its Report. You are a trained lawyer and you have said that you have read the Report so you must know how utterly tenuous the Tribunal’s findings are in this regard. I am alleged to have paid Michael Lowry £147,000.00 as part of a transaction in which, if followed to its logical conclusion, he did not benefit by one penny but I apparently got a free house from the late David Austin! This is to say nothing of the absolutely ludicrous concept of loan support or the other UK property transactions that the Tribunal investigated. I can tell you now that I did not make any payments to Michael Lowry. If you chose to believe otherwise that is your prerogative but in reporting the Tribunal findings you are obliged to do so accurately and with some balance. To be honest, I am astonished that you omitted any reference to the fact that I have rejected the Tribunal’s findings and that I have two challenges awaiting hearing in the Supreme Court in relation to the Tribunal’s decision to retain Michael McDowell to examine Professor Michael Andersen and the Tribunal’s controversial decision to curtail the nature, extent and duration of Professor Andersen’s evidence. I think it is also very interesting to note that you have made no reference to the fact that the Tribunal admitted that it had made significant errors and further that it had abandoned the theory that the team of senior civil servants in charge of the mobile phone licence competition were “*in thrall to the Minister*”. Surely this was worthy of some comment if you were writing a truly objective piece. Of course I accept that there is an old saying about poor quality journalism – why let truth get in the way of a good story – in this case the really dubious decision of comparing and linking me to Mr. Wallace.

In the second instance, it would appear that Mr. Wallace has, as your article states, “*made a false VAT declaration and that is a criminal offence*” (emphasis added). This is a very different proposition to the findings of a Tribunal. You will be well aware, more so than many, of comments made by Justice Hardiman in the recent Supreme Court decision *Murphy & Ors v. Mr. Justice Flood & Ors* [2010] IESC 21:-

“In the words of Costello J., or in the words of the judicial authorities cited with approval by him, the Tribunal of Inquiry is “not imposing any liabilities or affecting any rights” (at p.557); its conclusions have merely the status of opinion and “this opinion is devoid of legal consequences” (at p.557), its findings are “sterile of legal effect” (562 and its purpose is “merely” to inquire and report (at p.562). A Tribunal of Inquiry is “a simple fact-finding-operation” according to Finlay C.J. (at p.588). The Tribunal has no power to inflict a penalty and its determinations cannot “form any basis for the punishment by any other authority of that person” at p.588. Its function is to “make a finding of fact, in effect, in vacuo, and to report it to the Legislature.” (at p.590)”.

It is well established by case law both in the High Court and the Supreme Court that Tribunals are not infallible and indeed that they have been guilty of serious errors in the past, both evidential and procedural. As stated by the Supreme Court, Tribunal findings represent no more than opinions and have no place in a court of law having been arrived at without proper regard to the normal rules of evidence and standards of proof applicable in a court of law. Your attempt to equate such findings of opinion to Mr. Wallace’s admitted criminal offence is simply not sustainable and represents a gross distortion of two very different sets of facts.

You have used the Tribunal findings repeatedly in recent months, in your Irish Times column and on your TV3 show, to question my probity as a business man with media interests. How on earth do you think it either appropriate or justified that I should have my constitutional rights interfered with on the basis of one man's opinion? An opinion that comes in the form of a report that is legally sterile and yet you want there to be legal consequences from it – you want that report to be used as a means of interfering with my business, my livelihood. Where is the justice in that?

It is not my fault that politicians decided to use Tribunals as political footballs for the last 14 years. If there was something real and meaningful amiss it should have been referred to the authorities who do have legal powers and effect. When the Moriarty Report was published I welcomed the decision of An Taoiseach to refer it to the DPP and the various other bodies. I have never had any doubt that that when the contents of that report are reviewed and considered in accordance with the proper rules of law and standards of evidence and when that process has run its full course I will be fully vindicated.

I firmly believe that, in time, people in Ireland will come to understand that we really let ourselves down in allowing these Tribunals to act as they did; to sully reputations and to trample all over the constitutional protections and civil rights supposedly afforded to Irish citizens. Our Tribunals of Inquiry were our own version of the Salem Witch Hunts or the 1950's McCarthy Senate Subcommittee hearings. These Tribunals had no regard for proper procedure, rules of evidence or even for fundamental principles of fairness of procedure and natural justice. You yourself have commented on these manifest failings in the past in light of recent decisions rendered by the Supreme Court relating to Tribunals of inquiry. I can assure you the final chapter on the Moriarty Tribunal remains unwritten.

Vincent, there is a consistent trait through your recent commentary and that is your willingness to massage the detail to fit the story you are trying to tell. I think I, no more nor less than anybody else you see fit to comment on, not only deserve but am entitled to more than that. I was very interested to hear your comments on your TV3 show recently when you said to Constantin Gurdgiev:

“The facts that journalists think are important are determined by what their views are and the presentation of those facts is determined by their viewpoint and inevitably those facts require analysis.”

You are as entitled to your viewpoint the very same as the next person but I am asking you to apply a more rigorous analysis of the facts when you are offering that viewpoint. Your wide ranging and highly personalized attacks on me of late, particularly the Irish Times article, are grossly offensive to me and my family. It has left me in no doubt as to your general disdain for me. I am bewildered by this attitude on your part; particularly considering the fact that I have always afforded you, personally and professionally, a high degree of respect and dignity. Clearly however, you feel that I am undeserving of any reciprocation.

I am putting you on good notice that if you continue to libel me in your TV programme or your Irish Times column I will be left with no other avenue but to sue you personally.

For the record, I am extremely proud of my contribution (past and on-going) to Ireland and to the Irish business and economy. Regardless of the Moriarty Tribunal's flawed findings I

remain undeterred in my desire to continue to contribute in a meaningful way to Irish business at this most critical time in our country's history. In terms of ethics and public standards, my conscience is perfectly clear. I have always conducted my affairs to the highest ethical standards and I will continue to do so.

Your concerns about the media ownership issue are clearly deeply held, and as a gesture of good faith on my part, I am more than willing to meet you some time to discuss these matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Denis O'Brien". The signature is fluid and cursive, with a large, sweeping initial "D" that loops back to the left.

Denis O'Brien

9 July 2012

Dear Denis,

I drafted my earlier reply to your letter of 21 June last while away in France and without access to a printer to enable me review properly what I had written. Now that I have returned home and have had a chance to review the letter, I have redrafted it and herewith the revised edition.

First, I want to thank you for your kind remarks about me and also I want to acknowledge the good relations we have had over the years. You write that I have disdain for you - this is not so. I like you personally and admire the success you have enjoyed from the exercise of your exceptional talents. I also acknowledge your consideration for me personally and, particularly, the encouragement and then the opportunity you gave me to become involved in broadcasting.

There is a section of your letter however, which I find disconcerting and which colours my estimation of the other points you make. It concerns the contention that you moved to Portugal some time before the sale of Esat Telecom to British Telecom, the inference, in the context, being that you did not move to Portugal to avoid the payment of capital gains tax on the profits you made personally from the sale of Esat.

You may recall a discussion in your office some years ago when I went to see you on another matter, during which discussion you opened a file on articles I had written over the previous few years concerning you. In that discussion the issue of you avoiding capital gains tax arose and, instead of claiming there was no connection with your move to Portugal with the avoidance of capital gains, you said that you did not want to pay capital gains tax because you believed the government would misuse the proceeds. We discussed then the amount of capital gains tax you avoided paying and you did not then demur from my estimation of £50 million.

My Irish Times column of 13 June was primarily a criticism of the government parties in the context of a proposed motion of censure on Mick Wallace. I recalled the censure motion on Michael Lowry, following the publication of the Moriarty Tribunal report in March 2011, where the Dáil unanimously (with the exception of Michael Lowry himself) voted censure on him based on a report no TD had read. I went on to note, as I had done in previous columns, that neither the Taoiseach nor any member of the government had criticised you for your defamation of the judiciary and had not stated whether they accepted the findings of the Tribunal. Furthermore, while censuring Michael Lowry for an act involving you, instead of censuring you, they feted you.

I believe that was a valid criticism and nothing you have said disturbs that belief.

I accept your clarification of the company nexus involved in the sale to British Telecom but, I believe, nothing substantial turns on that point.

I accept your point regarding payments to Fine Gael.

I accept you have always rejected the findings of the Tribunal but I do not believe reference to that was relevant to the article I was writing about what I regarded as the hypocrisy of the government parties.

Regarding the amount of money or benefit transferred to Michael Lowry, I do not believe I significantly misrepresented the findings of the Tribunal.

You appear to be suggesting that I drew an equivalence between what appears to be straightforward tax fraud on the part of Mick Wallace and your position. I think this is contrived and, incidentally, entirely untrue.

You are correct in believing I think you should not be permitted to control INM. My reasons for holding this belief are as follows:

- (i) I believe INM has too large a media presence in Ireland to be controlled by any one person and I stated this repeatedly when Tony O'Reilly controlled INM.
- (ii) This is even a more acute factor in your instance because of your considerable radio holdings.
- (iii) I believe that nobody who has significant corporate interests outside the media should be in control of a significant portion of the media for the usual accountability that the media supposedly exerts on corporate power is thereby blunted.
- (iv) The publication of exchanges between one of your representatives on the board of INM and the then CEO of INM, amounting to a direct attempt to interfere with editorial independence, on its own, in my opinion, makes you an unsuitable person to control INM (I am referring here to the correspondence concerning Sam Smyth).
- (v) I believe that there are special concerns concerning your control of INM because of the findings of the Tribunal – yes, such findings have no legal significance, but that does not mean they do not have very political and media significance. Until such time as you are in a position to convincingly refute the findings, then it is reasonable that the media weights the findings in its coverage of you and reasonable for me to believe that it is not in the public interest that you control such a major sector of the media in Ireland – but even if this were not a factor, I would still be opposed to you taking control of INM for the reasons stated above.
- (vi) There is a further factor arising from the Moriarty Tribunal findings: it is incumbent on the media to hold you accountable for what the Tribunal has established concerning you – essentially and by inference a very serious charge - and your control of a large sector of the media obstructs that accountability.

I have been critical of Tribunals, notably of the Planning Tribunal, because of its abuse of proper procedure, as found in a number of cases decided by the Supreme Court. But I do not accept your contention they had no regard for proper procedure. It certainly seems the Moriarty Tribunal wobbled on the issue of the culpability of civil servants in the award of the mobile phone license but that does not, in my opinion, contaminate its overall findings or specifically its findings regarding you.

I just cannot accept that the various money trails it established in relation to payments to Michael Lowry are *all* mistaken but maybe you can disabuse me of that impression.

I am certainly willing to meet you to discuss this again. I would prefer to meet you in a public house, hotel, or restaurant or café, rather than in your office.

Aside from that, I want to offer you the opportunity of a one hour interview on TV3 (actually 48 minutes) where you can put your case fully in relation to the relevant issues arising from the report and arising from your role in INM – the only stipulations I offer are that nobody is defamed and that you do not seek to talk down the clock to avoid answering crucial questions. I assume from the tone of some of your letter you would accept that I would endeavour to act fairly. I have discussed this offer with Andrew Hanlon, Director of News and Current Affairs at

TV3, whom you know, and he concurs with this offer

I am also willing to devote one of my columns in The Irish Times to your response to what I have written. I have not discussed this with the editor of the Irish Times, Kevin O'Sullivan, but I do not think there would be a difficulty with this. In future when dealing with these matters, I will refer specifically to the findings of the Tribunal.

Independently of these initiatives, I intend rehearsing the findings of the Moriarty tribunal again both on the TV programme and in columns I do for The Irish Times and The Sunday Business Post. Because of the voluminous nature of the report, very few people have read it and are therefore unaware of its detail. It think it is incumbent of us journalists to assist in the full public appreciation of what the report contains. I will put questions to you in relation to these initiatives, to ensure your side of the story is told but, where relevant, I will make clear my own judgement on where the balance of truth lies. I assume you will be disappointed to be informed of that but what the report revealed was, in my opinion, of enormous note and I believe it is incumbent of us in the media to communicate that to the public.

I note the third last paragraph where you threaten to sue me personally, which I regard as an attempt to stop me from making any critical comments of you henceforth arising from the Moriarty Tribunal report. In other words you will use your very considerably wealth to stifle criticism of you on the part of a journalist whom, you know, has not the means to match your financial firepower and could not possibly afford the half a million plus costs there would be involved in a libel trial. This I regard as an abuse of the wealth and the attendant power you have acquired and I will do what I can to resist that.

I do not enjoy being in conflict with you but I have found throughout my journalistic career that often friendships are compromised when friends assume powerful positions.

I look forward to hearing from you and to meeting you again.

Yours,

Vincent Browne

Private & Confidential

Mr. Vincent Browne

[REDACTED]

20th July 2012

Dear Vincent,

Thank you for your email dated 3 July and further email dated 8 July attaching an amended version of your letter to me.

While I have been abroad for some time I have considered your letter in full.

Firstly let me say that your version of our conversation at a meeting in my office differs disturbingly from my recollection of that meeting.

On the matter of media ownership, I do of course accept that you are making points of principle regarding cross ownership between radio and newspapers and between business and media. Perhaps you might like to consider that since media finds it increasingly difficult to make a profit, it requires owners who can make money elsewhere to effectively subsidise important journalistic activities. Once they do so at an appropriate distance from editorial matters there shouldn't be a problem.

I want you to know that I am very aware of my responsibility to encourage diversity of content within the media entities that I am involved and expect and hope that the journalists in those entities have the personal integrity to publish fair, accurate and diverse work. As you frequently observe, journalists are often guilty of following an establishment agenda, but also they do not take the time to research the facts of the story in a sufficient way. You also alluded in a recent article to the manner in which those with historical interests in Irish media sought to influence editorial content to suit their own ends. I am keenly aware of the influence that has been brought to bear in certain elements of the Irish media having borne the brunt of agenda setting over the past ten years. That experience has reinforced my understanding of the responsibility that rests with media owners not to interfere with editorial content.

As for Tribunals, all I can say is that nearly all the witnesses (apart from those one or two with an agenda), from myself to the civil servants involved in the licence process and the Tribunal's final witness Professor Michael Andersen find themselves in agreement with Mr. Justice Adrian Hardiman's views of the tribunal process. I suppose I am a bit surprised and disappointed that you appear to be running with the herd on the Moriarty Tribunal. Tribunals are a crude and terrible form of justice.

After Tuesday's Supreme Court judgement it is now up to the failed bidders for the mobile phone license to put up or shut up. Ultimately the High Court will decide whether anything was untoward with the license. This is the best kind of justice one could ask for.

I note from your revised reply that you intend to revisit the Tribunal findings in both your television programme and newspaper columns. Of course, that is your prerogative. I will repeat it again, I did not make any payment to Michael Lowry. Despite your stated acceptance of the Tribunal's findings about me I trust that in '*making clear your own judgment on where the balance of truth lies*' you will carefully review all of the evidence given by the civil servants and others including lawyers in and for the Attorney General's office in relation to the conduct of the licence process. All of the transcripts are freely available on the Tribunal's own website. I think it is also important to remind you that my challenge to the Tribunal's decision to limit the nature, extent and duration of Professor Michael Andersen's evidence awaits hearing in the Supreme Court.

I also think it fair to draw your attention to the fact that none of the Tribunal's findings have been or can be proven as matters of fact. They are the opinion of one man. If you intend to simply rehash the actual Tribunal report then I would remind you again of Justice Hardiman's views on tribunals:

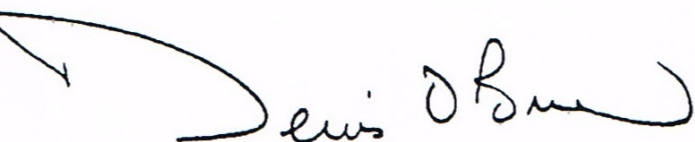
"This [the Mahon] Tribunal manifests two features of a tribunal of inquiry which are, in my opinion, fraught with great risks for justice. The first is that the investigative function – that carried out by the gardaí in relation to criminal matters – and the adjudicative function, or the function of making findings – that carried out by the Courts in criminal matters – are, in the case of a tribunal, conferred on a single body or even a single person."

The Moriarty Tribunal equally manifested this distortion of the separation of powers over a period of 15 years and goes a long way to explaining why so many findings flew in the face of all of the evidence heard. If you take the time to read all of the evidence given as well as the final Report then I believe your view on things may change or at least you might be more inclined to give me the benefit of any doubt.

Regarding your offer of the opportunity of a one hour interview on TV3, I don't believe a TV appearance by me is the best platform for me to get my point across. I therefore must decline your kind offer.

I wish you continued success with your writing and broadcasting.

Yours sincerely,

A handwritten signature in black ink that reads "Denis O'Brien". The signature is written in a cursive, flowing style with a large initial "D" and "O".

DENIS O'BRIEN