AN CHÚIRT UACHTARACH
THE SUPREME COURT

Record No: S:AP:IE:2021:000056

[2022] IESC 13

MacMenamin J.
Dunne J.
Baker J.
Woulfe J.
Hogan J.

BETWEEN/

PÁDRAIG HIGGINS

APPELLANT

and

THE IRISH AVIATION AUTHORITY

RESPONDENT

JUDGMENT of Ms. Justice Elizabeth Dunne delivered on the 7th day of March 2022

1. I have read the judgment of Mr. Justice MacMenamin in relation to this matter, and I agree with his comprehensive judgment in this case.

2. I have also read the judgment of Mr. Justice Hogan in relation to this case, and I feel it is appropriate to make some observations in relation to that judgment particularly in relation to jury verdicts in respect of an award of damages.

3. In the course of his judgment, Hogan J., at para. 9, observed that "*It is true that up to now perhaps the accepted wisdom was that appellate courts should be slow to interfere with jury awards of damages in defamation cases*". In that context, he referred to a number of statements of this Court in support of that contention, including a reference to *Barrett v. Independent Newspapers Ltd.* [1986] I.R. 13, at 19; *de Rossa v. Independent Newspapers Plc.* [1999] 4 I.R. 432, at 463; and a decision of the majority of this court, in the case of *Leech v. Independent Newspapers* [2014] IESC 79, [2015] 2 I.R. 214, where I stated, at page 265:

> *"Thus it is clear that while the assessment by a jury of damages for defamation is not sacrosanct, it does carry considerable weight such that appellate courts have been slow to interfere with the assessments by a jury and an appellate court should only set aside such an award if the appellate court is satisfied that the award is so disproportionate to the injury suffered and wrong done that no reasonable jury would have made the award in all the circumstances of the case."*

4. That observation followed from a detailed consideration of the judgments of this Court in the earlier cases of *Barrett* and *de Rossa*, referred to previously. I concluded a discussion of the law in relation to the scrutiny of jury awards in defamation actions by saying, at page 267, as follows:

> *"As is clear from the authorities referred to above, the position in Irish law is that an appellate court will be slow to interfere with the verdict of a jury on the*

assessment of damages but nevertheless awards by juries are subject to scrutiny and if an award is so disproportionate in the circumstances of the case, having regard to the respective rights of freedom of expression on the one hand and on the other hand the requirement under the Constitution to protect the good name of every citizen, that no reasonable jury would have made such an award, then the award will be set aside on appeal."

5. Hogan J., at para. 10 of his judgment therein, has expressed the view that the law, as set out in those judgments, has moved on from that traditional common law position. In so concluding, he referred in particular to the provisions of s.13 of the 2009 Act, which provides:

> *"13.— (1) Upon the hearing of an appeal from a decision of the High Court in a defamation action, the Supreme Court may, in addition to any other order that it deems appropriate to make, substitute for any amount of damages awarded to the plaintiff by the High Court such amount as it considers appropriate."*

Hogan J. also referred to s.13(2), which expressly provides that, in s.13 the word "decision" includes a judgment entered pursuant to the verdict of a jury. Hogan J. also considered the provisions of s.96 of the Courts of Justice Act, 1924, according to which it was provided that the Supreme Court might "*in lieu of ordering a new trial, set aside the verdict, findings, and judgment appealed against and enter such judgment as the court considers proper*."

6. He expressed the view that the words "*as the court considers proper*", as used in that section, had the effect in cases involving a verdict by a jury in defamation cases sufficient to "*disturb a tradition of a long standing regarding the special sanctity*" which has attached

to such verdicts. He also had regard to the decision of this Court in *Holohan v. Donohue* [1986] I.R. 45, a case involving a jury trial in a personal injury action, a case decided before jury trials were abolished in such cases.

7. It seems to me that in considering this issue as a whole it would also be useful to look at the decision in the case of *McDonagh v. Sunday Newspapers Ltd.* [2018] 2 I.R. 79, in the course of which a number of judgments were delivered. Denham C.J., in the course of her judgment, referred to the decisions in the case of *Barrett v. Independent Newspapers; de Rossa v. Independent Newspapers;* and *Leech v. Independent Newspapers,* as to the approach to be taken in considering whether or not to interfere with a verdict of a jury. O'Donnell J. (as he then was), at page 108 of his judgment, also considered the circumstances in which a jury verdict could be set aside, and he observed as follows, at page 107:

> *"Indeed, it would be inconsistent with the high value ascribed to the decision of a jury in defamation matters and to the collective intelligence it embodies if appellate courts were willing to set aside jury verdicts and direct retrials on speculations such as this. It would be quite different if the jury had written an answer "no" to question two but then proceeded to award damages. That would be self-contradictory and create genuine ambiguity as a result of which the verdict cannot stand. Here however, I think it is quite clear that the jury did not consider that s. 22 afforded the defendant a defence in this appeal, something which was entirely logical in the circumstances. The sting of this libel had always been the dramatic contention that the plaintiff in this case was not just a drug dealer, but a "new drug king" and a "top drug dealer". It would be hardly surprising if a jury considered*

that to make such an allegation in the most prominent possible way in a large circulation newspaper was of a different order to asserting that someone had evaded tax. I appreciate the argument that there is a possible inconsistency between the decision of the court on this matter that the jury behaved rationally and reasonably in this regard and the conclusion that the damages award was excessive which necessitated a finding that on damages it had come to a conclusion outside the range that any reasonable jury could award. But that possible inconsistency is more rhetorical than real. Courts regularly overturn awards of damages by judges and juries without considering that the decision on liability is necessarily undermined. No one suggests that even if the plaintiff had been of unblemished character, that the award here was appropriate. Accordingly, there is in my view no necessary linkage between the issue in respect of Question 2 and the award of €900,000 damages. Accordingly, I would reverse the finding of the Court of Appeal on this issue."

8. Having made those general observations in relation to the role of an appellate court in respect of the assessment of damages in a jury trial for defamation, O'Donnell J. went on to pose the question:

"Is the award of €900,000 excessive? If so, should this court substitute its own figure or must it remit the matter to the High Court for a new trial which, as a matter of practicality and possibly logic, could necessitate a full rehearing not just on the damages issue, but on the issues of liability?"

9. The argument was made by the defendant, in that case, that once the court had concluded that the award was excessive it had to remit the matter for a further trial, even if such further trial was limited to the assessment of damages. At para. 101, he noted as follows:

> *"The fact that the defendant argues for a remittal for a further jury trial, and against this court substituting its own award, deserves comment. For very many years now, media defendants, both individual and collective, have complained that the Supreme Court and appellate courts generally have directed retrials in cases rather than substitute their own award. The provisions of s. 13 of the Defamation Act 2009 ("the 2009 Act"), it was conceded, were introduced in response to these complaints. That section expressly permits the appellate court to substitute its own award in circumstances where it concludes that the award of damages by the jury was excessive. The commencement of these proceedings pre-dated that provision but again, as acknowledged in argument, and indeed as set out in Holohan v. Donohoe [1986] I.R. 45, the better view is that the court has always had jurisdiction and the reason that the jurisdiction was rarely exercised was because of prudential rather than jurisdictional limits."*

10. He continued, at para. 103, on page 111, as follows:

> *"This argument is of course devoid of principle. The only appeals brought by defendants to an appellate court are from awards which it is contended are not only too high, but so high that no reasonable jury could have awarded them. If awards are appealed by successful plaintiffs, it is on the corresponding argument that they were too low. Thus, in every case in which the court is invited to exercise the powers under s. 13 of the 2009 Act or the jurisdiction identified in Holohan v. Donohoe*

[1986] I.R. 45, the same theoretical framing risk arises. If correct, the appellate court should never exercise a power to substitute its own award. But the risk of framing is something with which lawyers, not just judges, are familiar since it is a feature of almost every negotiation and there are countervailing influences. Counsel seemed to suggest however, that it was only a real concern where the awards were very high. However, this is not persuasive. If indeed the award is so high and so out of kilter that it satisfied the test that it is so unreasonable that no reasonable jury could have made it, it is hard to see why it should be feared that the court which had made that determination would nevertheless allow itself to be subliminally influenced by that award, and would not be astute to avoid any such influence. In any event, the court has a jurisdiction and cannot avoid exercising it if it is required in a case.

It seems therefore that the defendant's opposition to the court substituting its award in this case is based less on principle and reason, and more on a pragmatic assessment of the defendant's chances under each route. If the finding of liability is upheld (as has been in this case), then the assessment of damages must take account of and be faithful to that finding. If, however, there is a retrial, and in particular a retrial at which all issues are open, then there is a risk which neither party can exclude, that the plaintiff may not succeed, or if he succeeds he will not receive large damages. On this calculation it might be thought to be likely, although that can never be known with accuracy, that the outcome of a retrial would be better for the defendant than a substitute award which accepted the finding on liability. The fact that the plaintiff asks the court to determine the matter and substitute its

own award reflects perhaps a similar assessment of the likely range of potential outcomes, as well no doubt as a concern that the imbalance in resources may mean that the plaintiff may find it more difficult than the defendant to face into a second trial and what would be a fourth court hearing. The defendant may therefore calculate that even if the finding on liability on this case was in the permissible range of findings open to a jury, it nevertheless represents something of an outlier and might not be replicated before another jury. That may or may not be correct, and may be a pragmatic reason for the defendant taking the position it is, but I fail to see why it could be a reason for this court to accede to the course the defendant suggests."

11. Having referred to a passage from the judgment of *Barrett*, as to whether or not a jury verdict was sacrosanct, O'Donnell J. went on to observe:

"This vivid phrase gives a strong sense of the height of the bar but was not, I think, intended to suggest that the award of damages by a jury in a defamation case had some mystical quality putting it beyond review. Rather, I consider that however described, the appellate reluctance to review a jury award and substitute its own award is based on pragmatic and persuasive considerations rooted in the decision made in this and other jurisdictions to have the questions of meaning, defamation, and assessment of damages determined by a representative and randomly selected sample of the population, under the guidance of an experienced judge."

12. He concluded on this issue, at para. 110, at page 115, by saying:

"If this was a case in which the appeal was being heard very shortly after a trial, then the difficulties with the substitution of an award might indeed lead me to take the course of directing a retrial. However, I cannot ignore the amount of time that has elapsed in this case, and I have come to the conclusion that the prospect of a re-trial in this case, with the possibility of further appeals, is a less satisfactory and less just solution, than for this court to proceed and to seek to determine this litigation once and for all by substituting its own award for the award of the jury which has been set aside. The administration of justice contemplates a decision at trial level and if necessary review at appellate level. I do not see that the prospect of further trial hearings and possible appeals is a fair, better, or more just outcome than if this court assesses damages now."

13. In the course of a judgment I delivered in that case, I made some observations on in support of the approach of O'Donnell J., and as to whether or not there should be a remittal of the trial to the High Court for a further assessment of damages, or whether the matter should be dealt with by way of the substitution by this Court of the appropriate sum for damages in place of that awarded by the jury verdict. At para. 229, on page 166, I commented as follows:

"An individual who seeks to vindicate their good name by bringing an action for damages for defamation has two options. The first of these is to bring proceedings in the Circuit Court claiming damages for defamation. The Circuit Court hearing will involve a hearing by a judge sitting alone and the damages available in the Circuit Court are less than those available to a plaintiff seeking damages in the High Court. The Circuit Court is a suitable venue for dealing with action in

defamation where the defamation in issue is not so serious as to result in an award of damages in excess of the Circuit Court jurisdiction. In cases where the defamation is more serious, the appropriate venue is the High Court. The courts established in this State in the earliest days of Saorstát Éireann provided the right to trial by jury (see s. 94 of the Courts of Justice Act 1924). That provision applied to the right to a jury in civil cases in the High Court and the Circuit Court alike. Civil juries were abolished for Circuit Court actions by s. 6 of the Courts Act 1971. Subsequently, s. 1 of the Courts Act 1988 provided for the abolition of juries in the majority of actions in the High Court. However, the Oireachtas expressly retained trial by jury for a limited number of proceedings including defamation actions. Thus the Oireachtas recognised the importance of the role of a jury in the task of vindicating a citizen's right to their good name. An important part of the task for the jury is the assessment of the damages due to an individual by reason of the injury caused to their reputation. Given the standard text book definition of defamation is that the words complained of tend to "lower the plaintiff in the estimation of right thinking members of society generally" (see Gatley on Libel and Slander (10th ed., Sweet & Maxwell, 2004) at para. 1.5, page 8), it is appropriate that the Oireachtas has retained the use of a jury of right-thinking members of society for the purpose of assessing the damages due to a plaintiff in defamation proceedings. Thus, at a philosophical level, one can well understand the desirability of a person whose reputation has been damaged by a defamatory statement turning to a jury of their peers, representing as they do the values and norms of the society in which they live, to measure the damages to which that

plaintiff may be entitled. For that reason, it seems to me that it will only be in exceptional cases that an appellate court will attempt to undertake the difficult task of assessing damages in a defamation action such as this.

...

231. While there is no doubt as to the jurisdiction of this court to substitute its own award for that of a jury, it seems to me that in assessing damages in a defamation action, a jury is generally best placed to assess damages. Damage to reputation, as I have already explained, is best assessed from the point of view of the community and a jury is quintessentially in the best position to perform that task. Nevertheless, there are cases where that may not be the appropriate course to take and I now wish to consider whether this is one of those cases."

14. For the reasons explained further in the course of that judgment, I expressed the view that the *McDonagh* case was one such case. Principally, at issue was the considerable lapse of time between the defamation which was published in 1999, the hearing before the judge and jury in the High Court, the appeal before the Court of Appeal in October, 2015, and the further appeal before the Supreme Court. Inevitably, there would be further delay had the matter been remitted to the High Court for the assessment of damages. In the circumstances, I was of the view that, given the lapse of time that had occurred, it would not be in the interest of either of the parties to remit the assessment of damages to the High Court, given the expenses and delay that would follow from that. There were other considerations taken into account also.

15. I think it can be seen from the above that the general approach of an appellate court will be to remit the matter for further trial, but there may be circumstances which make that

inappropriate, of which delay is an obvious reason for not remitting a matter to the High Court for a further trial before a judge and jury. As observed in that case, (page 168):

> *"For all these reasons and having regard to the costs that would be necessarily incurred in a further re-trial of the issue of damages, it seems to me that this is one of those rare cases in which it would be appropriate for this court to assess damages rather than remit the matter to the High Court. This case is the exception rather than the rule to the general proposition that if the jury verdict is set aside as being disproportionately high, the matter should be remitted to the High Court for a fresh trial before a judge and jury. In this case, however, it is undoubtedly in the interests of justice for the parties at this stage to bring an end to this lengthy litigation."*

16. I appreciate the careful consideration given by Hogan J. to the introduction of s.13 of the Act of 2009, and his observation at para. 17:

> "*This Court has often acknowledged the principle that there is a presumption that all the words of a statute bear a meaning. Thus, for example, in Cork County Council v. Whillock [1993] 1 I.R. 231, O'Flaherty J said, (at 237) that "A construction which would leave without effect any part of the language of the statute will normally be rejected". Egan J likewise endorsed the same principles, stating (at 241) that there was abundant authority "for the presumption that words are not to be used in a statute without a meaning and are not tautologist or superfluous" so that "effect must be given, if possible, to all the words used for the legislature must be deemed not to waste its words nor say anything in vain.*"

17. He went on to observe, at para. 18:

> *"If this is true regarding particular statutory words, it would seem to be true a fortiori regarding an entirely new section. One might therefore ask: What was the statutory objective of s.13(1) of the 2009 Act? If the Oireachtas was content with the existing law there would, of course, have been no need to address this issue, not least given the continued existence of s.96 of the 1924 Act. The fact, however, that it took the trouble to address this issue via. s.13(1) of the 2009 Act is, to my mind, strongly suggestive of a desire to effect legislative change. For all of these reasons, therefore, I cannot interpret s.13(1) of the 2009 Act as anything other than a direction by the Oireachtas that the pre-existing judicial practice of deference to jury awards in defamation cases should be changed."*

18. Whilst I have no difficulty with the underlying presumption relied on by Hogan J. in those paragraphs, I do have some difficulty in accepting the proposition that the introduction of s.13(1) of the 2009 Act was intended as a direction that the pre-existing judicial practice of deference to jury awards in defamation cases should be changed. As O'Donnell J. observed in the passages referred to previously in this judgment, s.13 was introduced as a response to complaints as to the general practice of the Supreme Court, and appellate courts, to direct retrials rather than substituting their own award. This was notwithstanding the view that the Court had that jurisdiction. Indeed, it might be said that the gravamen of the complaint was that appellate courts were perhaps over-cautious in tending to direct retrials rather than substituting an award of damages.

19. It seems to me that in enacting s.13 the Oireachtas intended, in part, to confirm the fact that the appellate courts had such jurisdiction, notwithstanding the fact that such jurisdiction

was rarely exercised. There was to some extent a degree of doubt in regard to that. As the authors point out in Cox & McCullough on Defamation Law & Practice (1st Edition, Clarus Press), at para. 14-272:

> *"Section 13 of the Defamation Act 2009 further provides that, on an appeal, the Supreme Court may, in addition to any other order that it deems appropriate to make, substitute for any amount of damages awarded to the plaintiff by the High Court such amount as it considers appropriate. This is probably not new. The Supreme Court affirmed in Holohan v. Donohue that where it is of the opinion that the jury's award of damages is unreasonable, it can substitute its own figure without ordering a retrial. This, however, was not a defamation action, and the Supreme Court has always been reluctant to exercise this right in defamation actions. Even in Holohan, it was made clear that if the respondent expressed a strong desire to have a new trial, the appellant would have to advance "very compelling and strong reasons" as to why the court should not do that. Furthermore, if the transcript of the trial did not contain "a sufficiently clear and concrete set of facts" that would allow the Supreme Court to assess damages, it should order a retrial. The latter of these factors, in particular, is likely to remain an important feature in informing the decision of the Supreme Court as to whether to substitute its own award for that of the jury in any future case."*

20. It may also be worth referring briefly to the comment made by McMahon & Binchy in the Law of Torts (4th Edition, Bloomsbury) at para. 34.362 made the following observation:

> *"It appears that, in some proceedings prior to the Act, the Supreme Court had requested of the parties whether, in the event that it found the jury award excessive,*

they would agree to the substitution of the amount the Supreme Court considered appropriate rather than remitting the case to a jury for a new trial. No such consent was forthcoming from defendants."

21. The learned authors continued, at para. 34.363, as follows:

"Under s 13, the Supreme Court, if it chooses to exercise its new jurisdiction, may substitute a figure either higher or lower than that awarded by the jury. Whilst the Act as a whole is somewhat laconic on key principles, it seems clear enough that the effect of s 13 will not be to encourage the Supreme Court to depart from its well-established policy of overturning jury awards only where they are clearly disproportionate and instead substitute an amount it considers appropriate in cases where the award is not obviously disproportionate."

22. Without revisiting the issue as to whether or not there was jurisdiction by virtue of s.96 of the Courts of Justice Act, 1924, to substitute an award of damages rather than remitting the matter, (and I think the authorities previously referred to make it clear that this jurisdiction did exist), the observations of McMahon & Binchy clearly indicate a reluctance to substitute the appellate court's view on damages, as opposed to remitting the matter for further trial. However, as pointed out by Cox & McCullough, in the passage referred to above, there may be difficulty in some cases in substituting an award of damages precisely because, as it has been put, if the transcript of the hearing before the High Court does not contain "*a sufficiently clear and concrete set of facts*", there would appear to be no option but to order a retrial. That said, it appears to me that the academic commentary referred to above does appear to suggest that there was some doubt or misgiving as to the extent of the jurisdiction of the Supreme Court, or an appellate court, to substitute a figure for

damages, as opposed to sending a matter back for retrial. To that extent, it seems to me, that the purpose of s.13 of the 2009 Act was to put this matter beyond doubt. It is important, however, to note that the language of s.13 is to give the Court a discretion as to whether or not to do so. In other words, it is important to bear in mind it gives the Court a discretion to substitute a figure for the amount of damages awarded to the plaintiff.

23. While I do not disagree with the observations of Hogan J. at para. 17 of his judgment, to the effect of the interpretation of the words of a statute, I find it difficult to accept his conclusion in para. 18, to the effect that he cannot interpret s.13(1) of the 2009 Act "*as anything other than a direction by the Oireachtas that the pre-existing judicial practice of deference to jury awards in defamation cases should be changed*." It seems to me that the legislature was clarifying the jurisdiction of an appellate court to substitute a figure for the award of damages in cases where it was satisfied that the award by the jury was one that should be set aside. However, there is nothing in the Act of 2009 which constrains the appellate court, or in any way changes the underlying principles applicable to an appellate court when considering whether or not to find that a verdict of a jury in relation to damages is excessive. By way of an aside, it might also be observed that the reluctance to interfere with a finding by a trial judge as to damages is not confined to the area of defamation alone. In this context, it is interesting to refer to a passage from McMahon & Binchy, at para. 44.118 to 119. There the authors noted:

> *"In more recent years the appellate courts have been far more inclined to substitute their own assessment of the damages for that of the trial judge and thereby save the parties the expense, inconvenience and the delay of a retrial. They cannot take what has by now become "the normal course", however, where the assessment of*

damages by the trial judge has been attended by a lack of clarity that renders it impossible for them to stand over the actual reasons given by the trial judge for assessing the damages as he or she did.

A graphic recent example of the Supreme Court substituting its own award for that of a High Court judge is Kearney v. McQuillan. The plaintiff, when aged 18 in 1969, had been subjected to an unnecessary and completely unjustified symphysiotomy procedure after giving birth to her first child by caesarean section. This resulted in serious medical, physical and psychological problems for her, extending over decades. Ryan J awarded her general damages of €450,000. The Supreme Court reduced this to €325,000. MacMenamin J, while acknowledging the devastating effects of the procedure on the plaintiff, noted that there had been "issues" as to the true extent of the very serious psychological symptoms and consequences and as to when they affected the plaintiff. He did not think that the High Court judgment had sufficiently weighed the mitigating factors on the damages issue."

24. Thus, as can be seen, the reluctance to interfere with an award of damages has permeated not just the award of damages in defamation actions, but also the award of damages in personal injury actions. Key to the appropriate approach I think will be, whether or not it is possible for the appellate court to substitute a decision having regard to the facts and circumstances of the case. If there is a lack of clarity in that regard, then obviously the correct approach would be to remit the matter to the High Court for a retrial. Nevertheless, insofar as there may be deference, it is not just deference to a jury's award, but also to an award of damages in the first instance by the person, or in the case of a jury, by the jury

who has heard and seen the witnesses giving evidence and is aware of all the facts and circumstances of the case. To that extent, I find myself unable to agree with the proposition that s.13(1) of the 2009 Act means that judicial deference to jury awards in defamation cases is being changed or has been changed by s.13(1) of the 2009 Act.

25. I am reinforced in this view by one other matter. It seems to me that it is important to reflect on the fact that defamation actions involve two conflicting constitutional values. First, there is the important value of freedom of expression, which is a core value of any democracy. Secondly, there is the constitutional recognition given to the importance of an individual's good name, and the importance of providing the means to vindicate an individual's good name where that may be necessary. In this context, it is I think significant when one considers the changes in relation to the right to a trial by jury on the civil side that have taken place over the years. The Courts Act, 1971 removed juries from civil trials in the Circuit Court, and when jury trials were abolished for most civil actions in the High Court in 1988, it seems to me to be of significance that the civil jury was retained for the hearing of defamation actions. Thus, it seems to me that the Oireachtas recognised the importance of juries in this area. In this context, I repeat what I said in *Leech* as set out above.

26. Thus, it seems to me, that the Oireachtas has, by its retention of juries in defamation proceedings, emphasised the importance of the role of a jury in cases such as this, and for that reason it would be, in my view, wrong to view the provisions of s.13 as having the effect of changing the appellate court's "deference" to jury awards in defamation actions. It seems to me that the purpose of enacting s.13 was to make it crystal clear that the appellate court can substitute its award of damages for that provided by the jury. Whether that will be done in any given case will depend on the facts and circumstances of the case.

If it is open to the appellate court to do so, it may do so if that is the appropriate course to take. That will depend on a number of factors. In a number of cases it has been pointed out that substituting the award may be the better course, having regard to issues such as the administration of justice, the delay involved in a retrial, the costs involved in a retrial, and the difficulty for the parties in having to go through a retrial. These are all legitimate considerations. In defamation proceedings a verdict of a jury awarding a sum of money by way of damages is a powerful statement of vindication of the individual's reputation. It is not necessary to repeat here the circumstances in which this Court, or an appellate court, generally will set aside a jury award. However, it is important to bear in mind that the appellate court may substitute its own award, if that is appropriate. There is no reason why that cannot be done, and it will be done if the circumstances so require. The appellate court has done so in the past, and will continue to do so. This is a case in which it is appropriate to substitute an award for the reasons explained by MacMenamin J. in his judgment. Nevertheless, I think it should be clear that jury verdicts are still entitled to a degree of deference, but, if it is shown that they have fallen into error, then, clearly, the error has to be corrected. Whether that results in a retrial or a substitution of an award by the appellate court will depend on the circumstances of the case. In this case, it is appropriate to substitute our own award, having regard to the facts and circumstances of the case. For that reason, I am satisfied that the appropriate sum for damages is that set out in the judgment of MacMenamin J.