

JUDGEMENT ON APPLICATION FOR REPRESENTATION

On the 15th July, last I sat in order to deliver an interpretation of the Terms of Reference setting up this Tribunal of Inquiry, to explain certain procedures which the Tribunal proposes to adopt and to take applications for representation in respect of interested parties. Having on that day heard the applications for representation, I am now delivering a decision in relation thereto. I propose to take these applications in the order in which they were made.

1. Mr. Michael Coen, Barrister at Law, instructed by Thomas Loomes, Solicitor applied on behalf of seven named individuals. They are John Casey, Thomas Collins, Timothy Collins, David Power, Bernard Power, John McCann and Michael McCann. In relation generally to applications for representation, I will refer to the arguments presented, both openly and in public and in letters received from the Solicitors acting on behalf of particular clients. In a letter dated 27th June, 2002, Mr. Loomes, Solicitor, explained that the particular Term of Reference in respect of which his clients had an interest in the work of the Tribunal was Paragraph (i). He further argued that it was necessary for them to be represented "to examine and to cross-examine all witnesses and documents" pertaining to this matter. In argument, Mr. Michael Coen, indicated that the arguments for seeking representation were that the seven named individuals had been subject to an invalid arrest and detention, thereby impinging upon their good name, arising from the events of Burnfoot, County Donegal on the 23rd May, 1998. He indicated that proceedings had been instituted in respect of this matter. I am persuaded that joint representation in respect of the seven individuals through the same solicitor and counsel should be granted. My reasons are that the good name of these persons, which is a right protected under the Constitution, could predictably come under attack by reason of the discovery of a firearm at a place where all of them were sharing an encampment. The mere arrest and detention of a person, or indeed the search of a person's premises, does not necessarily imply an attack upon the good name of such an individual. In this instance, however, I am persuaded that the good name of these several individuals may loom large in the proceedings of the Tribunal and that representation in respect of the limited portion of the Tribunal's work dealing with Paragraph (i) in the Terms of Reference should be granted to them.

2. Three letters have been received in respect of a group of persons, all of whom are represented by Binchys, Solicitors. They are, in respect of a letter dated the 27th June, 2002, Michael Peoples and Charlotte Peoples; in respect of a letter dated the 8th July, 2002, Katriona Brolly, Sean Crossan, Anne Crossan, Alfie Gallagher, Anne Gallagher, James Gallagher, Paul Quinn, Mark Quinn, Donna Quinn, Anna Quinn and Edel Quinn; finally, by letter dated the 10th July, 2002 representation was sought in relation to Sally Bradley. At the hearing of this matter, Mr. Alan Toal, Barrister at Law presented further oral arguments in relation to the necessity for representation in respect of the foregoing. As there are separate reasons in relation to each, I feel I need to refer to each Applicant in turn. As regards Michael Peoples and Charlotte Peoples they are the subjects of Paragraph (a) of the Terms of Reference. Mere mention in a Term of Reference, should not, in my view, automatically guarantee a right to representation. However, in this instance, it may be that the nature of the allegations made by the Peoples in that regard, could be the subject of an attack as to their conduct and character. In addition, Michael Peoples was arrested on the 4th December, 1996 and on the 6th May, 1999. This latter event is referable to Paragraph (d) of the Terms of Reference. In consequence, certain allegations are, I understand, made by him in relation to his detention in custody. The manner in which these allegations are disposed of, upon hearing evidence, may have favourable or unfavourable implications in relation to his good name. He is therefore entitled to representation. Michael Peoples is therefore entitled to limited representation in relation to Paragraph (a), (b) and (d) of the Terms of Reference. Mrs. Charlotte Peoples is entitled to limited representation in respect of Paragraph (a). Such representation to be the same solicitor and counsel in respect of any other persons hereunder granted representation in respect of the letters aforesaid referred too.

Katriona Brolly was arrested on the 4th December, 1996 and has certain complaints to make. The resolution of these allegations may have an impact in relation to her good name. In consequence, she is entitled to representation in respect of Paragraph (b).

Sean Crossan and Anne Crossan are married to each other. Sean Crossan was arrested on the 11th December, 1996. He has allegations to make in respect of his detention. The resolution of these allegations may impact on his good name. He is therefore entitled to representation under Paragraph (b). I do not believe his wife Anne Crossan has any role in the inquiry, other than as a witness. Her attendance in that respect would be most welcome as would be any further statement that she wishes to make in relation to this matter. In the event that the allegation contained in their letter of intermittent harassment by certain Gardai is borne out in evidence and in the event that the disposal of same may impact upon their good name, further application for representation may be made on their behalf in relation to Term of Reference (c).

I now come to deal with Alfie Gallagher, Anne Gallagher and James Gallagher. As Mr. Toal explained, the joint home and farm of these applicants was searched in respect of explosives. I believe that it is unlikely, having read the relevant papers, that any allegation would be maintained before the Tribunal in relation to the character of these applicants. Insofar as it can be seen from the papers before the Tribunal, the applicants are held in the highest regard, both in their local community and by members of An Garda Síochána. In their letter, however, they address a statement made in Dáil Éireann by the then Minister for Justice. In it, he says that their complaints should be addressed by this Tribunal of Inquiry and the relevant Paragraph of the Terms of Reference would appear to be (e). I therefore propose to grant them representation limited to Paragraph (e).

I now go on to deal with Paul Quinn. Mr. Toal indicated that he was suffering from an illness. He alleged that on a particular occasion, an allegation was made against him of holding a particularly dangerous drug illegally in his possession. This allegation was made by a party who may be central to certain other questions, which the Tribunal has to consider. There is therefore an impact in relation to the good name of Mr. Quinn because that allegation may well be maintained. For that limited purpose, therefore, representation will be granted to Mr. Quinn in respect of Paragraph (c).

Application was also made on behalf of Mark Quinn and Donna Quinn. These applicants are married to each other. From the papers in the possession of the Tribunal, I understand that the role allegedly played by Mark Quinn in this matter, could be put on the basis that the alleged presence by Mark McConnell in his public house at 08:30 a.m. on the 14th October, 1996 is in some way suspicious. It may be that this allegation will be maintained. In addition, Mark Quinn was arrested and has certain allegations to make in relation to the manner in which he was treated while in custody. His good name therefore comes into question and he is entitled to representation in respect of Paragraph (b) and (c) of the Terms of Reference. In relation to Mrs. Donna Quinn, these considerations do not arise. The Tribunal would, however, be grateful to receive from her a comprehensive statement detailing any facts, which she wishes to bring to the attention of the Tribunal.

Mrs. Anna Quinn is the mother of Mark Quinn. Again, similar considerations arise here. The Tribunal would be grateful to receive a statement from her bringing to the attention of the Tribunal any facts, which she feels are important to the Tribunal's work. She is not, like her daughter, however, entitled to representation.

I now turn to Edel Quinn. Edel Quinn is a sister of Roisin McConnell. She was arrested on the 4th December, 1996 as being an accessory after the fact to the murder of the late Richie Barron. She alleges that the manner of her treatment while in Garda custody was abusive. The resolution of these questions may involve an impact upon her character and in consequence she is entitled to representation in respect of Paragraph (b) of the Terms of Reference. It could conceivably be the case, as well, that the arrest might be argued to be part of the harassment referred to in Paragraph (c) and, insofar as that allegation might be maintained, Edel Quinn is entitled to representation in that regard.

Finally, under the group of persons referred to in this paragraph, Sally Bradley has sought representation. I understand her to have been, at the relevant time, the proprietress of a public house called "Charlie Brown's" at Quigley's Point in County Donegal. Whereas she may have information to offer to the Tribunal, I do not believe that her character or conduct comes any way into consideration. The Tribunal would be grateful to receive from her a statement bringing to the attention of the Tribunal any facts which she considers are important as being relevant to its Terms of Reference.

In summary, therefore, representation is granted as aforesaid on the basis that the same Solicitor and Counsel would be used.

3. By letter dated the 28th June, 2002 an application was received from Gallagher Shatter & Co., Solicitors in respect of Karen McGlinchey and Adrienne McGlinchey. The application for representation by Karen McGlinchey has not been proceeded with. Mr. Paul Murray, Barrister at Law on behalf of Adrienne McGlinchey indicated that as it was being alleged that Adrienne McGlinchey was an informant, that what was said about her would impact not only on her good name but on her health. It seems to the Tribunal that Adrienne McGlinchey may well be a person whose character and conduct could be called into question in relation to Paragraph (e) of the Terms of Reference and she is therefore granted the right to representation accordingly.

4. By letter dated the 2nd July, 2002, an application for representation was received from the Garda Síochána Complaints Board. The reason for seeking representation were further elucidated in submissions by Mr. David Barnville, Barrister at Law. In essence, since the Tribunal is required by

virtue of Paragraph (j) to closely scrutinise the work and effectiveness of the Garda Síochána Complaints Board, it is fair that they should be granted the right to representation. Such a representation will be limited to that paragraph.

5. By letter dated the 5th July, 2002, an application was received from Mr. Daniel J. Callanan, Solicitor on behalf of Joseph Doherty and Mr. & Mrs. James Smith. In essence, an allegation is made of Garda impropriety in respect of certain allegations made by members of An Garda Síochána against them. Having examined these allegations, it seems to the Tribunal that they are not within the Terms of Reference. It would be of the greatest assistance, however, if these parties were to make available to the Tribunal a comprehensive statement setting out whatever facts they see are relevant to the Terms of Reference of the Tribunal.

6. The next two applications are similar. By letter dated the 5th July, 2002, O'Mara Geraghty, Solicitors on behalf of Mr. Brendan Howlin, T.D., applied for representation limited to Paragraph (h) of the Terms of Reference. Mr. Richard Humphreys, appearing on behalf of Mr. Howlin, indicated that "there is a potential for comment on the appropriateness of passing on the information, so to that extent there is potential for prejudice in relation to Deputy Howlin". It seems to me that this is a compelling argument for granting representation in respect of Paragraph (h). In addition, he has indicated that in previous Tribunals that where a member of Dáil Éireann is mentioned within the Terms of Reference, representation would automatically be granted. I am not persuaded by this particular argument. However, Deputy Howlin is entitled to be represented in respect of Paragraph (h).

7. A similar argument, adopting the argument made on behalf of Mr. Howlin, was made by Mr. Niall Mooney, Barrister at Law on behalf of Mr. James Higgins. Mr. Higgins is the former Fine Gael T.D. and front bench Spokesman on matters related to justice. Mr. Mooney said "I would say that any finding that you, Mr. Chairman, may make in respect of Paragraph (h) of your Terms of Reference, could seriously affect Mr. Higgins in his good name and reputation ...". This again, seems to be a compelling reason for granting limited representation in respect of Paragraph (h) to Mr. Higgins.

8. On the 8th July, 2002, an application for representation was made by Messrs. Dermot G. McDermott & Co., Solicitors on behalf of Bernard Conlon. This application, however, was not moved before me. An application may be made at a later date, if Mr. Conlon regards this as being appropriate.

9. By letter dated 8th July, 2002, an application was received from McCartan & Hogan Solicitors on behalf of William G. Flynn, Eileen Flynn, Patrick Flynn and Jacqueline Flynn. All of these persons were described by Mr. Hugh Hartnett, Senior Counsel, appearing on their behalf, as "Investigators". The papers before the Tribunal indicate that the appearance of a private firm of investigators into the ongoing Garda enquiries may lead to questions which the Tribunal may need to address. Mr. Hartnett also referred to a letter allegedly circulated to the Garda Force in Donegal which he says has the effect of an attempt to discredit his client. It may well be that the character and conduct of the private investigators apparently engaged on behalf of the McBrearty family, is germane to Paragraph (b) and (c) of the Terms of Reference. Representation on the basis of the same solicitor and counsel should therefore be available to these applicants.

10. By letter dated the 8th July, 2002, the Chief State Solicitor sought representation on behalf of the Minister for Justice, Equality and Law Reform and the Department of Justice, Equality and Law Reform. Mr. Paul O'Higgins, Senior Counsel indicated that because of the wide ranging responsibility of the Minister under the various pieces of legislation governing the conduct of the Gardai, that it is appropriate that the Minister should be represented. In addition, he stated that this representation might not be exercised in respect of operational elements. Mr. O'Higgins stated that representation was being sought:

"...having regard to the Minister's overall responsibility for the operation of the Police Service of the State under the Ministers and Secretaries Act, 1924 which includes responsibility for legislation governing policing generally and addressing complaints against An Garda Síochána as well as being accountable to the Houses of the Oireachtas for issues relating to policing and also in relation to the specific other responsibilities vested with the Minister pursuant to the Garda Síochána Acts, 1923 - 1989 and the Minister's other responsibilities in that area ...[this representation] may not be exercised in respect of many of the matters which concern operational issues, but, in my respectful submission, in particular having regard to your comments, Chairman, in relation to the investigation into the checks and balances of the system of criminal investigation and any recommendations which might stem from them, in my respectful submission all of the matters at supra-operational level concern matters of clear interest and concern to the Minister and in respect of which the Minister should be entitled to be represented".

In their letter, a helpful notice of application was included which contained the following grounds on which representation will be sought. The specific responsibilities vested in the Minister pursuant to the Garda Síochána Acts 1923 - 1989 and certain other responsibilities which may be relevant to the definite matters set out in the Instrument establishing the Tribunal. The concern and anxiety of the Minister and the Department to ensure the effectiveness of the Tribunal, and to be in a position to meet any responsibilities arising from the Tribunal.

It seems to me that the foregoing are sufficient arguments whereby I am able to grant general representation to the Minister.

11. By letter dated the 8th July, 2002, the Chief State Solicitor, acting on behalf of the Commissioner of An Garda Síochána, sought representation. The grounds for seeking such representation were enunciated by Mr. Eamon Leahy, S.C.. The purpose for which representation is being sought is less than clear. If the Garda Commissioner were to seek to represent members of An Garda Síochána in respect of whom a question might arise as to their conduct or character, there would be no question as to the granting of representation. It would be granted. However, the application was not made on that basis but on the basis of the overall responsibility of the Commissioner. I feel that the Commissioner should be allowed to renew his application after the opening statement of Counsel for the Tribunal in the autumn. He will then be in a position to indicate whether he wishes to represent certain individual members. The questions which might arise in relation to these members will, at least in part, be elucidated in the opening statement of Counsel for the Tribunal. Mr. Leahy also advanced arguments in relation to the important policy role and in relation to the ultimate responsibility of the Commissioner. These arguments constitute a basis upon which representation may be granted, at the moment, in respect of those limited purposes having regard to the work of the Tribunal.

12. By letter dated 8th July, 2002 from David Walley & Co., Solicitors representation was sought in respect of Hugh Diver, Bernadette Diver, Barney Shovlin and Geraldine Shovlin. The reasons for seeking representation were elucidated by Mr. Martin Giblin, Senior Counsel. Mr. Hugh Diver and Mr. Barney Shovlin were arrested following the apparent arson attack on a telecommunications mast at Ardara, County Donegal in October/November, 1996. Mr. Giblin has indicated that they will be seeking to allege in evidence that they were ill-treated while in custody. The application, as the Tribunal understands it from the papers before it, was in respect of Hugh Diver and Barney Shovlin. Certain other members of the family have, regrettably, died since that time. Mr. Giblin indicated in explicit terms that the act of arson on the mast may have been a device created for the purpose of the arrest of his clients. The resolution of the issues of ill-treatment and the deliberate creating of a false basis of reasonable suspicion for arrest may be a matter which impacts upon the good name of Mr. Diver and Mr. Shovlin. I would therefore grant them limited representation in relation to Paragraph (g). I cannot see any basis for the representation of Bernadette Diver and Geraldine Shovlin. A comprehensive statement from them bringing to the attention of the Tribunal any facts which they feel are important to its work would be most welcome from them.

13. By letter dated the 8th July, 2002 an application for representation was made by David Walley & Co., Solicitors on behalf of what might be termed the extended McBrearty family. Forty-three persons in all are named. They are Frank McBrearty, Snr., Rosalind McBrearty, Maria McBrearty, Edward McBrearty, John E. McBrearty, Brid McConnell, Frank McBrearty Jnr., Patricia McBrearty, Frankie McBrearty (minor), Chantal McBrearty, Andrew McBrearty, Mark McConnell, Roisin McConnell, Dean McConnell, Noel McConnell, Hannah McConnell, Michael McConnell, Eamonn McConnell, Francis McConnell, Hugo McBrearty, Richard McBrearty, Seamus McBrearty, Edward McBrearty, Hughie McBrearty, Kevin McBrearty, Joseph McBrearty, Michael McBrearty, Edward McBrearty, Michael McBrearty, Kay Breslin, Christine Griffin, Joanne O'Donnell, Cathy McBrearty, Mary McBrearty, Joanne McBrearty, Frances McBrearty, John Mitchell, Liam O'Donnell, Michael McGahern, Willie Logan, Marty McCallion, Paddy Lynch and Jackie Gallagher. Mr. Martin Giblin, appearing on behalf of the extended McBrearty family, indicated that there were three main reasons why representation was sought. Firstly, he indicated that members of the family, and their employees, had been arrested and questioned. He indicated that Frank McBrearty, Snr. was the subject of an allegation that he was instrumental in the bribing of a potential witness against him. Secondly, he indicated that all the members of the extended McBrearty family will be alleging a campaign to issue documents and otherwise to orchestrate a campaign blaming the McBrearty family, and their agents, the private investigators the Flynn family, in respect of activities which might broadly be described as "a cover up". A letter was opened indicating that the Garda force was told that members of the family ought to be observed and information collated for intelligence purposes. This letter indicates that such matters should be reported to the then Chief Superintendent responsible for that area of Donegal. A question of slogans in Raphoe against the McBreartys was also mentioned. Thirdly, Mr. Giblin indicated that the employees of the McBrearty family would be alleging that they were all subject to unwelcome attention by members of An Garda Síochána and brought before the Courts on criminal charges, presumably in circumstances where this was unjustifiable. These are all reasons why representation on the basis of

the same solicitor and counsel should be granted to the extended McBrearty family in respect of Paragraphs (a), (b), (c), (d), (f), (h) and (j).

Certain other submissions were advanced to the Tribunal by Mr. Giblin which I feel I should deal with at the end of this document.

14. By letter dated the 8th July, 2002, Kathryn Ward, Solicitor applied for representation on behalf of Mr. Frank Shortt. As explained by Mr. Brian O'Moore, Senior Counsel, before me, Mr. Shortt awaits a judgement in what might colloquially be termed a "miscarriage of justice" application in a case called *The People (D.P.P.) - v - Shortt* before the Court of Criminal Appeal. At the moment, he has no application. Mr. O'Moore however supported certain applications made by Mr. Giblin to which I shall shortly refer.

15. By letter dated the 8th July, 2002, Messrs. Kevin P. Kilrane, Solicitors applied for representation on behalf Superintendent Lennon. Mr. Jack Fitzgerald, Senior Counsel made a short supporting application referring to the numbered paragraphs in that letter, which helpfully set out the matters in respect of which the character and conduct of Superintendent Lennon might be called into question. It seems that on the basis of this well-focused letter, that general representation ought to be granted.

16. By letter dated 11th July, 2002 and 12th July, 2002, Messrs. Hughes, Murphy, Walsh & Co. Solicitors, applied for representation on behalf of two named members of An Garda Siochana. In Court, Mr. Thomas Murphy, Solicitor reserved that application but indicated in a most helpful way to the Tribunal that he has authority to accept the service of any documents which the Tribunal might wish to serve on, or exchange with his clients. The Tribunal is grateful for this intervention. We understand it may be the case that following the opening statement that this application will be renewed.

17. By letter dated the 11th July, 2002 Messrs. Hughes, Murphy, Walsh & Co., Solicitors also applied for general representation on behalf of the Garda Representative Association. Mr. John Rogers, Senior Counsel gave further reasons while in Court. While no named members of the Garda Representative Association are identified as being the client of this firm of solicitors, it seems accepted on behalf of their legal representatives that certain members of An Garda Siochana will have their character and conduct called into question. Following the opening statement, therefore, representation on behalf of certain named individuals may then be sought. That application would then be most helpful to the Tribunal. In the meantime, the application of the Garda Representative Association is helpful because they have indicated that they may be a point of contact for the Tribunal. In addition, the Garda Representative Association may wish to make submissions on policy issues towards the end of the Tribunal's work. We therefore look forward to further submissions on their behalf.

18. By letter dated 12th July, 2002, Mr. Sean Costello Solicitor wrote on behalf of the Association of Garda Sergeants and Inspectors seeking representation. Mr. Michael Cush, Senior Counsel made submissions in this behalf. Three arguments were advanced. Firstly, Mr. Cush said it was difficult for the Commissioner to represent all the members of An Garda Siochana. As to who will in fact represent the members of An Garda Siochana is a matter yet to be fully elucidated. Secondly, Mr. Cush indicated helpfully that the A.G.S.I. could be a link to individual members of that Association and thirdly, that he wished to make final submissions in relation to procedure. These submissions are helpful. The Tribunal will look forward to being able to communicate with individual members of the A.G.S.I. through Mr. Costello, Solicitor. The Tribunal will look forward to an application towards the end of the Tribunal's work to make submissions as to policy matters. Following the opening statement, it would be helpful if an application on behalf of named individuals might then be made. I should say that two firms of Solicitors have written in this regard. Apart from Mr. Sean Costello, Solicitor, a letter was also received from Smith, O'Brien, Hegarty, Solicitors. The Tribunal will welcome submissions at the appropriate time in relation to the manner in which this representation might be effected.

In addition to the foregoing, a number of personal applications were received:

19. Mr. Jim Gallagher indicated that he had complaints to make in respect of his business in Dungloe, County Donegal during the years 1996 - 1998. He alleged a commonality of personnel between members of An Garda Siochana investigating certain events there and Gardai apparently involved in the investigation of the matters which are called into question by the Terms of Reference. He in particular mentioned the question of the arson attack of the mast in Ardara, which is Paragraph (g) of the Terms of Reference. The Tribunal looks forward to receiving a full statement, bringing to the attention of the Tribunal any facts which Mr. Gallagher feels may be of assistance to the Tribunal's work. The Tribunal is grateful for his attendance.

20. By letter dated 3rd July, 2002, Mr. Daniel Devine indicated that he wished to attend before the Tribunal and seek representation. Mr. Devine is the proprietor of a business in Dunfaugheney, County Donegal. He indicated that he had a difficulty in obtaining representation. He complains of harassment and bullying by certain members of An Garda Síochána. He said in submissions before the Tribunal that there were great similarities with what he referred to as "the McBrearty case" by reason again of common personnel. The Tribunal is grateful for the attendance of Mr. Daniel Devine and looks forward to receiving a comprehensive statement from him in relation to any facts which he feels should be brought to the attention of the Tribunal, which he thinks might assist the Tribunal in its work.

21. By letter dated 4th July, 2002, notice was given that Mr. John Bovaird, and by letter of the same date, Mr. Danny Doherty, proposed to attend. Mr. Doherty appeared and spoke on behalf of himself and Mr. Bovaird. He indicated that there was again a commonality of personnel between problems from the Gardai which he said he was having and individuals involved in matters in respect of which the Tribunal must enquire. He felt that the Garda Síochána Complaints Board should be looked into from his point of view. In respect of Mr. Bovaird and Mr. Doherty, the Tribunal looks forward to receiving a comprehensive statement from them, bringing to the attention of the Tribunal any facts which they feel might be of assistance for the Tribunal to consider. The Tribunal is grateful for the attendance of Mr. Doherty.

22. Mr. Thomas Glavey in a letter dated 4th July, 2002 wrote indicating that he wished to attend and to seek representation. In submissions before the Tribunal, Mr. Glavey indicated that he was from Dunmore, County Galway and the difficulties that he said he was experiencing might operate as arguments for extending the Terms of Reference of the Tribunal to the Garda force outside the Donegal Division. He said that the Gardai see themselves as protecting the State and not the people and that this was contrary to the history and traditions of the Irish people. The Tribunal looks forward to receiving a comprehensive statement from Mr. Glavey bringing to the Tribunal's attention any facts which he considers might be of assistance to the Tribunal's work.

23. Mr. Thomas Coffey indicated by letter dated 8th July, 2002 that he was seeking representation. From 1996 - 1999, Mr. Coffey explained in submissions to the Tribunal, he was employed by the Flynn family as an investigator and worked on behalf of the McBreartys in the context of the investigation into the death of Mr. Barron and the events consequent on same. Mr. Coffey made arguments similar to those advanced by Mr. Giblin and Mr. O'Moore. From the materials available to the Tribunal at this juncture, it seems that the conduct and character of Mr. Coffey may well be called into question. In the same way that the Flynn family have been granted the right to representation, that right ought to be extended to Mr. Coffey.

Certain persons did not appear, having written to the Tribunal. The Tribunal would wish to emphasise that it is anxious to receive written and comprehensive statements bringing to the attention of the Tribunal any facts which members of the public may feel could be of assistance to the work of the Tribunal, as delimited by its Terms of Reference. The Tribunal is open to the receipt of such communications by letter or fax at any time.

24. Mr. Alan Toal, barrister at law, also argued that facts touching upon the death of Councillor Fullerton may be relevant to the Terms of Reference. The Tribunal will receive any further documents in that regard which the parties wish to send in. We will consider them.

I now go back to consider submissions made by Mr. Giblin, Senior Counsel, Mr. O'Moore, Senior Counsel and by Mr. Coffey in person. It is contended that the Terms of Reference which delimit the work of the Tribunal are too narrow. The argument is made that the role of the State should be investigated and the hope was expressed that the Minister for Justice, Equality and Law Reform would support an application to extend the Terms of Reference. This argument has already been advanced to Dáil Éireann. The Tribunal does not have its mind closed to this argument. It could not possibly at this stage adjudicate on such an application, because no material has been advanced as to why an extension of the Terms of Reference should be sought. The Tribunal is mindful of the fact that Section 1(a) of the Tribunal of Inquiry (Evidence) Act, 1921 as inserted by Section 1 of the Tribunal of Inquiry (Amendment) Act, 1998 and as amended by Section 1 of the Tribunal of Inquiry (Amendment No. 2) Act, 1998 provides as to its material part:

1) An Instrument to which this section applies (whether made before or after the passing of the Tribunals of Inquiry (Evidence) (Amendment)(No. 2) 1998 shall be amended pursuant to a Resolution of both Houses of the Oireachtas, by a Minister of the Government, where

(a) the Tribunal has consented to the proposed amendment, following consultation between the Tribunal and the Attorney General on behalf of the Minister, or

(b) the Tribunal has requested the amendment and is satisfied that such amendment would not prejudice the legal rights of any person who has co-operated with, or provided information to the Tribunal under its Terms of Reference.

2) Without prejudice to the generality of sub-section (1), the Tribunal shall not consent to or request an amendment to an Instrument to which this section applies where it is satisfied that such amendment would prejudice the legal rights of any person who has co-operated with or provided information to the Tribunal under its Terms of Reference.

3) Where an Instrument to which this section applies is so amended, this Act shall apply.

The question of extending the Terms of Reference of the Tribunal to cover Mr. Shortt was specifically debated in Dáil Éireann, inter alia on the 28th March, 2002. Whether the matter was debated in Dáil Éireann or not, however, the Tribunal remains mindful of its own responsibility. If arguments or submissions are made, particularly those grounded upon evidence the Tribunal will then consider its attitude bearing in mind its responsibility under the relevant Acts.

The question of costs has also been raised. Some sittings of the Tribunal will take place in Donegal. This will no doubt minimise costs to certain local people. As indicated in the Opening Statement explaining the Terms of Reference, this might particularly apply where there are many witnesses, for example, from Raphoe and Letterkenny, whose needs might constitute, in themselves, an argument for the Tribunal sitting locally. Certain other considerations related to the technology which must be at the disposal of the Tribunal and the necessity to safeguard documents will require the Tribunal to sit in Dublin. As the Tribunal's work progresses, this matter will be decided. The Tribunal urges the parties, the press, and the public generally, to utilise the Tribunals web-site at www.morristribunal.ie in respect of ongoing information. The Tribunal fully intends to make use of all modern methods of communication and of analysing information.

The Tribunal considers that it does have the power to offer viaticum to witnesses for the purpose of attendance. The Tribunal will itself calculate the cost of travelling, overnight stay with bed & breakfast and two substantial meals and, on that basis, offer viaticum to witnesses who are required to travel from Donegal to Dublin. The Tribunal will do this of its own motion.

As regards the wider issue of costs, counsel addressing this issue are agreed that I cannot, pending the determination of the Tribunal, make any Order in respect of costs. Relevant case law in that regard has been set out in the document, which I opened last Monday, 15th July, 2002. In addition to these reasons, however, there is another relevant provision of the Acts. Section 6(1) of the Tribunal of Inquiry (Evidence) Act, 1921, as inserted by Section 6 of the Tribunal of Inquiry (Evidence)(Amendment) Act, 1979 and amended by Section 3 of the Tribunal of Inquiry (Evidence)(Amendment) Act, 1997 provides that where a Tribunal, or, if the Tribunal consists of more than one member, the Chairperson of the Tribunal, is of the opinion that, having regard to the findings of the Tribunal and all other relevant matters (including the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal, or failing to co-operate with or providing assistance to, or knowingly giving false and misleading information to the Tribunal) there are sufficient reasons rendering it equitable to do so, the Tribunal or the Chairperson, as the case may be, may either of the Tribunal's or the Chairperson's own motion, as the case may be, or on an application by any person appearing before the Tribunal, order that the whole or part of the costs:

a) of any person appearing before the Tribunal by Counsel or Solicitor, as taxed by a Taxing Master of the High Court, shall be paid to the person by any other person named in the Order,

b) incurred by the Tribunal, as taxed as aforesaid, shall be paid to the Minister for Finance by any other person named in the Order.

It is impossible for the Tribunal to have regard to the criteria set out in the aforesaid Act without first hearing the evidence and hearing submissions from various parties, both as to the facts and as to costs. Under the terms of the legislation governing the Tribunal, this task is not possible until the close of the Tribunal's business.

Mr. Justice Frederick Morris.
Chairman.

Date: 22/July/2002