

# **TRIBUNAL OF INQUIRY**

## **INTO**

### **COMPLAINTS CONCERNING SOME GARDAÍ IN THE DONEGAL DIVISION**

**Appointed by Instrument made by the  
Minister for Justice, Equality and Law Reform  
on the 24<sup>th</sup> day of April, 2002 entitled  
Tribunals of Inquiry (Evidence) Act, 1921  
(Establishment of Tribunal), 2002**

## **RULING ON APPLICATIONS FOR COSTS**

**Concerning Hearings of the Tribunal in respect of Terms of  
Reference (d), (g), and (i)**

### **Ruling of Mr. Justice Frederick Morris on applications for costs concerning Terms of Reference (d), (g) and (i)**

The Tribunal published the third, fourth and fifth reports of the Tribunal in relation to Terms of Reference (d), (g) and (i) respectively on the 16<sup>th</sup> of August 2006. These concerned:

#### **Third Report – Term of Reference (d)**

Report on the circumstances surrounding the arrest and detention of Mark McConnell on the 1<sup>st</sup> of October 1998 and Michael Peoples on the 6<sup>th</sup> of May 1999.

#### **Fourth Report – Term of Reference (g)**

Report on the Garda investigation of an arson attack on property situated on the site of the telecommunications mast at Ardara, Co. Donegal in October and November of 1996.

#### **Fifth Report – Term of Reference (i)**

Report on the arrest and detention of seven persons at Burnfoot, Co. Donegal on the 23<sup>rd</sup> of May 1998 and the investigation relating to same.

After the publication of these reports, each of the parties to whom representation had been granted, was afforded an opportunity by the Tribunal to seek an order for costs from the Tribunal pursuant to Section 6 (as amended) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2004. A number of parties made written submissions to the Tribunal and oral submissions were also received by the Tribunal on the 29<sup>th</sup> of September 2006. These applications are considered later in this Ruling. It is appropriate that I repeat the legal basis governing the exercise of my discretion as to the awarding of costs pursuant to Section 6 (as amended). In doing so, I am repeating my previous Ruling in this respect made on the awarding of costs following the publication of the second report of the Tribunal. This in turn substantially repeats the principles which I had previously set out in the first Ruling of the Tribunal on the awarding of costs following the publication of the first report of the Tribunal.

Section 6 of the 1979 Act (as amended by the 1997 and 2004 Acts) provides as follows:-

**6(1) Where a Tribunal or, if the Tribunal consists of more than one member, the Chairperson of the Tribunal, is of 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 cooperate with or provide assistance to, or knowingly giving false or 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 on the Tribunal's or the Chairperson's own motion, as the case may be, or on 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 ...**

**6(2) any sum payable pursuant to an Order under this section shall be recoverable as a simple contract debt in any court of competent jurisdiction.**

**6(3) any sum payable by the Minister for Finance pursuant to an order under this section shall be paid out of monies provided by the Oireachtas.**

Section 6 (as amended) gives the Tribunal a wide discretion in respect of the Orders which it can make as to costs. In exercising this discretion, the Tribunal can have regard to a number of matters. The first matter specified by this section is the "findings of the Tribunal". The interpretation of this portion of the section has given rise to some difficulty. In the 1979 Act, Section 6 only provided that the Tribunal could have regard to "the findings of the Tribunal and all other relevant matters". That section was considered by the Supreme Court in *Goodman International v The*

*Honourable Mr. Justice Liam Hamilton, Ireland and the Attorney General* [1992] 2 IR 542. In analysing Section 6, McCarthy J. stated at P.605 of the report:

**Section 6: The liability to pay costs cannot depend upon the findings of the Tribunal as to the subject matter of the inquiry. When the inquiry is in respect of a single disaster, then, ordinarily, any party permitted to be represented at the inquiry should have their costs paid out of public funds. The whole or part of those costs may be disallowed by the Tribunal because of the conduct of or on behalf of that party at, during or in connection with the inquiry. The expression “the findings of the Tribunal” should be read as the findings as to the conduct of the parties at the Tribunal. In all other cases the allowance of costs at public expense lies within the discretion of the Tribunal, or, where appropriate, its Chairman.**

In his judgement Finlay C.J., expressly agreed with the construction placed on Section 6 of the 1979 Act by McCarthy, J. O’Flaherty and Egan JJ, also agreed in general terms with the judgment of McCarthy J.

In the 1997 Act, the Oireachtas inserted into section 6 after the words “and all other relevant matters”, the words “(including the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal or failing to cooperate with or provide assistance to, or knowingly give false or misleading information to, the Tribunal)”. The amended Section 6 has not as yet been the subject of judicial interpretation.

The Law Reform Commission published a consultation paper on Public Inquiries, including Tribunals of Inquiry, in 2003. In that paper it argued that given the additions made to Section 6 in the 1997 Act, the major change thereby effected was to enable the Tribunal when exercising its discretion under Section 6 to have regard to its findings on the substantive issues. The Law Reform Commission stated at page 286 of the consultation paper:

**The major change is directed at the main point under consideration here, namely whether in deciding whether to award costs, a Tribunal may take into account its findings on the substantive issue or whether it is confined to the party’s behaviour before the Tribunal. The following points are relevant. First, the fact that the Tribunal is enjoined to pay regard to the fact that a person has “failed to cooperate with ... or knowingly given false ... information to the Tribunal” is now (in contrast to the original 1979 Act wording) stated explicitly. It is critical that there can, therefore, be no room for the suggestion that the phrase “the findings of the Tribunal” should be taken to mean a finding as to whether a person has failed to cooperate with the Tribunal. Instead this key phrase must bear its natural meaning, that is, the findings of the Tribunal as to the substantive issue. The second point tending in the same direction concerns the phrase “including the terms of the resolution ... relating to the establishment of the Tribunal”. These words, too, make it clear that in awarding costs, the Tribunal must take into account the facts found in relation to the subject matter which it was mandated, by**

**its Terms of Reference to explore. In short, mention of the “Terms of Reference” points the Tribunal in the direction of its findings on the substantive issue, as a relevant factor to be taken into account in deciding on costs. This confirms the first point.**

This interpretation of Section 6 was accepted by His Honour Judge Alan P. Mahon, S.C., Chairman of the Tribunal of Inquiry into Certain Planning Matters and Payments in a Ruling issued by him entitled, ‘Ruling on the Principles to be Applied in Respect of Certain Applications for Costs’, delivered on the 30<sup>th</sup> of June 2004.

The Tribunal is aware that having regard to the Ruling of the Supreme Court in this matter, it can be contended that the interpretation suggested by the Law Reform Commission and adopted by his Honour Judge Mahon in his Ruling is incorrect. This interpretation suggests that, without disturbing the phrase, “the findings of the Tribunal”, the legislature enacted a reforming provision which bore a meaning which was exactly the opposite to that reached by the Supreme Court concerning that phrase: in effect reversing the Supreme Court Ruling. The Law Reform Commission’s view was that the original section required the Tribunal to have regard to (a) the findings of the Tribunal and (b) to all other relevant matters and that the section as amended, does no more than identify some of the other relevant matters. It does not purport in any way to alter or amend the phrase “the findings of the Tribunal” which was the subject of the Supreme Court’s judgement in the Goodman case.

However, it can also be contended that the analysis of the Law Reform Commission concerning the significance of the insertion of “terms of the resolution” into the amended version of Section 6, ignored the fact that the “terms of the resolution” are but one of the other “relevant matters” identified in the amendment and are clearly not an aspect of the amendment intended to have an impact upon the expression “findings of the Tribunal”. The argument runs that it is much more likely that the Oireachtas had in mind the type of “terms of the resolution” (Term of Reference) which commands a Tribunal to complete its business in as economical a manner as possible and requests that costs incurred by reason of the failure of individuals to cooperate fully and expeditiously with the Tribunal, insofar as consistent with the interests of justice, be borne by such an individual. It would have been remarkably easy for the draughtsmen of the legislation to have amended the phrase, “the findings of the Tribunal” to provide that it should be read as including the substantive findings of the Tribunal in relation to the matters into which it is inquiring, if that was what was required. This was exactly what the Supreme Court held the phrase did not mean, and accordingly, it is argued that had the Oireachtas intended to effect an overturning of that decision, it would have been easy to insert the necessary words to make this absolutely clear. This, it is contended, the 1997 Act did not do: the phrase was left undisturbed.

The Law Reform Commission considered how this issue was addressed by the Mahon Tribunal and this Tribunal in Chapter 7 of its reports on Tribunals of Inquiry. The Tribunal notes that in this report the Law Reform Commission concluded that the phrase “findings of the Tribunal” as currently drafted may be “misinterpreted” to mean that the Tribunal in resolving the issue of costs could not or should not have regard to the findings which it has made on the substantive or primary issues which arose out

of its deliberations. It therefore recommended an amendment to Section 6(1) of the Act for the purposes of clarification. As amended the relevant part of the new section would read:

**7.19. The Commission recommends that the first part of Section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 which deals with the awarding of costs be redrafted as follows: “Where a Tribunal ... is of the opinion that having regard to:**

- (i) the findings of the Tribunal in relation to its subject matter as indicated in the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal;**
- (ii) and all other relevant matters (including failing to cooperate with or provide assistance to, or knowingly giving false or misleading information to the Tribunal and the means of a party), there are sufficient reasons ...**

The Tribunal is satisfied that the phrase “the findings of the Tribunal” in Section 6 as amended by the 1997 Act does not mean that the substantive findings of the Tribunal may never be taken into account by a Tribunal in determining an application for costs. For example, if a person were to make an entirely false and unfounded allegation which he knew was false and which by reason of that person’s insistence led to the establishment of a Tribunal of Inquiry and that person was subsequently exposed as untruthful or acknowledged the falsehood of his allegations before the Tribunal, such a person could make an application to the Tribunal for costs. However, if the Tribunal made a finding of fact that the allegations were false and were falsely made which constituted a substantial finding in respect of its Terms of Reference it would be entitled to take that finding of fact into account in determining and refusing such an application. The Tribunal accepts that the Ruling as to costs does not depend exclusively on the substantive finding of the Tribunal in respect of its Terms of Reference but simply acknowledges that in certain cases its findings may properly be regarded as important to such a Ruling.

It must also be understood that under Section 6 of the Act as amended a substantive finding of wrongdoing does not necessarily operate so as to deprive an applicant of the opportunity to have an award of costs made in their favour. In that regard, it is important to consider the extent to which an applicant has cooperated with the Tribunal by furnishing it with relevant documents within his/her knowledge, power or procurement in an understandable and accessible format by way of discovery or disclosure; by furnishing it with all information in his/her knowledge, power or procurement, and by telling the whole truth to the Tribunal’s Investigators and as a witness. When an applicant has fully cooperated in this sense with the Tribunal I am entitled to consider the making of a full order for costs in his/her favour. In such circumstances, an applicant may be granted costs even though he/she has been found to have been involved in wrongdoing in respect of the substantive issues reported upon by the Tribunal. In addition, a party may have partially cooperated or assisted it in respect of some particular issue or issues but not on others. I am satisfied that I am entitled in such circumstances to make an order for costs which takes account of the degree of such non-cooperation or cooperation in the sense indicated, by making a limited or partial order for costs only in favour of such an

applicant. Under the provisions of Section 6 where a person has wholly failed to cooperate with the Tribunal or provide it with assistance or gave it false or misleading information or lied I am also entitled to consider the making of an order for costs against such a person particularly where this caused further work for the Tribunal and prolonged or complicated its investigations or hearings.

A number of applicants have been partially or fully unsuccessful in their applications for costs. It has been submitted on their behalf that solicitors and counsel acting on behalf of unsuccessful applicants would suffer unjust hardship by reason of refusal of costs to their respective clients. A number of lawyers attended the Tribunal acting on behalf of various parties some for short periods and some for extended periods. It is contended that a refusal of costs to their respective clients would result in their not being remunerated for the work done. Of course, refusal of an order for costs to any one of the applicants is not in any way a criticism of the lawyers who represented them. The representation that they afforded their clients was for the most part professional and helpful to the Tribunal's work. The Tribunal wishes to record its appreciation to each of the legal teams who appeared, for the level of assistance and cooperation which they respectively furnished during its hearings. These lawyers in accepting instructions did so on terms that must have been understood by them and their clients as to how and when their services would be remunerated. However, terms upon which lawyers have been retained to appear before the Tribunal are not a matter to be taken into account when considering whether to make an order for costs in favour of an applicant. The Tribunal must make its orders for costs within the discretion set out in Section 6 of the Act as outlined in the preceding pages of this Ruling.

It was previously urged upon the Tribunal that costs should be awarded on a solicitor and client basis, rather than as party and party costs. I note that differing approaches have been taken by previous Tribunals in this regard. The Tribunal of Inquiry into the Whiddy Island disaster, the Tribunal of Inquiry into the Beef Processing Industry and the Tribunal of Inquiry into the Blood Transfusion Service Board, awarded costs on a party and party basis. The Tribunal of Inquiry into the Infection with HIV and Hepatitis C of persons with haemophilia and related matters and the Tribunal of Inquiry (Dunnes payments) awarded costs on a solicitor and client basis.

In my opinion, an award of costs on a solicitor and client basis is appropriate where the costs have been incurred between the solicitor and his or her own client. In such circumstances, the client has knowledge of the amount of work being undertaken by the solicitor on his/her behalf. The client can control the level of service provided by his/her legal advisors. Where an Order for Costs is made by this Tribunal, such Order will be directed to the Minister for Finance who will discharge the ultimate bill from monies made available by the Oireachtas. The Minister for Finance has no control whatsoever over the amount of legal services provided to a party by that party's legal team during the course of the Tribunal. In such circumstances, it seems to me that it is only equitable that costs should be awarded on a party and party basis. This will enable a party in whose favour an Order is made to obtain costs in respect of legal work reasonably undertaken by their legal advisers and at a reasonable rate. Accordingly, the Orders which will issue from the Tribunal will be on a party and party basis.

I now set out the Tribunal's Ruling in respect of each of the applications for costs in respect of Terms of Reference (d), (g) and (i):

**Applications for Costs in Respect of Term of Reference (d) – Third Report**

1. Application on behalf of Ms. Kathleen Keogh

Mrs. Keogh was granted legal representation on the 14<sup>th</sup> of July 2005 in respect of allegations concerning her Late husband's alleged involvement in the procurement of false certificates of earnings in respect of Bernard Conlon by Mr. John Nicholson. This led to a fairly limited involvement on her behalf by Damien Tansey & Associates and counsel instructed on her behalf. Mrs. Keogh and her family cooperated fully with the Tribunal. Her evidence was accepted as was that of her daughter, Ms. Fiona Keogh. The Tribunal is entirely satisfied that it is equitable to grant Mrs. Keogh the costs incurred by her and her family in their preparation for and attendance at the Tribunal.

2. Application on behalf of The Garda Representative Association on its own behalf and on behalf of Mr. John Nicholson, Garda Noel Keavney, Detective Garda Paul Casey and Detective Garda Seamus Kearns

(i) The Garda Representative Association

The Garda Representative Association was granted limited legal representation on behalf of the Association based on a solicitor acting alone without counsel. The object of this was to facilitate the Association in providing assistance to the Tribunal in respect of any cooperation that might be sought by the Tribunal during the course of its hearings, when issues, such as those relating to practice and procedure relevant to the work of its members, and of which it had specialised knowledge, arose and on occasions when specific issues arose in respect of any individual member of the Association. In addition, it was important that the Association be fully informed of all issues arising at the Tribunal in order to assist the Tribunal by making submissions on general issues relating to its members at the conclusion of the Tribunal's hearings on this module. It was anticipated that this might assist the Tribunal in the formulation of its recommendations. The Association through its solicitor provided valuable assistance to the Tribunal during its hearings. It is appropriate and equitable that an order for costs in respect of this limited representation be made in favour of the Association.

(ii) Mr. John Nicholson (Retired Garda)

This applicant was legally represented before the Tribunal following a grant of legal representation in respect of this module. Garda Nicholson was a serving Garda in Sligo Garda Station during the course of the events relating to a District Court prosecution in which Bernard Conlon was involved as chronicled in Chapter 2 of the Report and features to a lesser degree in the events concerning the "Silver

Bullet Threat”, chronicled in Chapter 3 and “The Letter” chronicled in Chapter 4. The important findings in respect of Mr. Nicholson’s evidence speak for themselves. He was found to have lied to the Tribunal in respect of matters as set out in the report. In other matters, he declined to tell the Tribunal the full story and remained evasive, telling the Tribunal only half-truths about important events. This made the work of the Tribunal more difficult and caused it to invest extensive time and energy in trying to get behind his lies and evasions in order to determine the truth. Nevertheless he did give testimony which was accepted that he had delivered a message from Detective Sergeant John White to Bernard Conlon that he was to meet Detective Sergeant White at Raphoe on Saturday night, the 30<sup>th</sup> of August 1997. Such testimony or information of a useful nature that was obtained from Mr. Nicholson was furnished with great reluctance. For the most part, his evidence was tainted by cover-up, evasion, and lies. It would be entirely inequitable to make any award of costs in his favour. His application is refused.

(iii) Application on behalf of Garda Noel Keavney

Garda Keavney gave evidence in relation to the inspection of Frank McBrearty’s nightclub and the identification of Michael Peoples in the District Court in Letterkenny. His evidence was accepted by the Tribunal. The Tribunal held that Garda Keavney was unaware that Bernard Conlon had been planted in Frankie’s nightclub as a person who would be used as a witness. The Tribunal is satisfied that Garda Keavney is entitled to the costs of his legal representation before the Tribunal in respect of Term of Reference (d).

(iv) Application on behalf of Detective Garda Paul Casey

Detective Garda Casey gave evidence in respect of the completion of a certificate of earnings for Mr. Bernard Conlon at the behest of Mr. John Nicholson. It was accepted by the Tribunal that his involvement in this matter was entirely innocent and that he had given truthful evidence to the Tribunal in respect of this issue. The Tribunal is satisfied that Detective Garda Casey is entitled to an order for costs in respect of his legal representation before the Tribunal on this issue in the course of Term of Reference (d).

(v) Application on behalf of Detective Garda Seamus Kearns

Detective Garda Kearns gave evidence to the Tribunal in respect of a conversation that took place whilst Mr. Conlon was being driven to Donegal in the course of which Mr. Conlon suggested that he had received a bullet in the post. The Tribunal found that his evidence was truthful and this incident is set out at paragraphs 3.30 to 3.31 of the report. I am satisfied that Detective Garda Kearns is entitled to an order for costs in respect of his legal representation before the Tribunal on this matter in the course of Term of Reference (d).



3. Application on behalf The Association of Garda Sergeants and Inspectors and Inspector Gerard Connolly, Inspector Bernard Lyden and Sergeant Sarah Hargadon

(i) The Association of Garda Sergeants and Inspectors

The Association was granted representation on the basis that it was appropriate that the Tribunal should be assisted in relation to its conclusions and recommendations insofar as they might affect serving members of An Garda Síochána. Representation was granted on the understanding that submissions in relation to such issues were likely to be taken towards the end of the Tribunal's hearings and did not require a full legal team to be present at all times during the course of the hearings for this purpose. The Tribunal notes that the Association conducted itself on that basis. The Tribunal acknowledges the help and assistance of the Association in this regard. The Association is entitled to its costs on this basis.

The Tribunal notes that the original application for representation was granted to two firms of solicitors namely Smyth O'Brien Hegarty solicitors and Seán Costello & Company solicitors. The fact that there are two firms of solicitors acting on behalf of the Association is a matter entirely for agreement between the Association, its members and the respective solicitors. The fact that there were two firms of solicitors representing the same Association and members thereof cannot affect the overall amount of costs to which the applicants of the Association are entitled at the end of the day.

The Tribunal sets out below the relevant facts or circumstances concerning the other three respective applicants. The applicants and the Association are not entitled to separate orders for costs but to a single order in respect of one single set of costs by reason of their joint representation.

(ii) Inspector Gerard Connolly

The evidence given by Inspector Connolly to the Tribunal was regarded as truthful in respect of the actions which he took arising out of the false allegations made by Bernard Conlon. Inspector Connolly is entitled to the legal costs of his representation before the Tribunal in respect of Term of Reference (d).

(iii) Mr. Bernard Lyden (Retired Inspector)

The Tribunal is not satisfied that Mr. Lyden cooperated fully with the Tribunal or gave a completely full and truthful account of his involvement in matters relating to Bernard Conlon. The Tribunal is not satisfied that it would be equitable to make an order of costs in his favour in respect of his representation before the Tribunal in this matter.

(iv) Sergeant Sarah Hargadon

The Tribunal is satisfied that Sergeant Hargadon cooperated with the Tribunal both in her preparative work and in her evidence which was regarded as truthful. It is equitable that an order for costs should be granted to Sergeant Hargadon in respect of her representation before the Tribunal in respect of Term of Reference (d).

4. Application on behalf of Bernard Conlon

The entire “Silver Bullet” module concerned events in which Mr. Conlon was centrally involved. The three important elements of the testimony furnished by Bernard Conlon concerned his dealings with the then Garda John Nicholson and Detective Sergeant John White in respect of the events of the 30<sup>th</sup>/31<sup>st</sup> August 1997 and an inspection carried out by An Garda Síochána at Frankie’s nightclub on that evening. This is dealt with for the most part in Chapter 2 of the third report. The Tribunal was satisfied that the core story told by Bernard Conlon in relation to his use as a Garda agent in the licensing prosecution was true and that there was a sufficient degree of corroboration of his account to enable the Tribunal to accept his testimony. This was not the case in respect of the two other matters in respect of which he gave testimony namely the “Silver Bullet Threat”, dealt with in Chapter Three, and the issue of “The Letter” dealt with in Chapter Four. In respect of the “Silver Bullet” issue the main accusation made by Bernard Conlon was that he was put up to making an allegation against Mark McConnell and Michael Peoples by Detective Sergeant John White. The Tribunal determined that his testimony in this regard was deeply flawed and that he was shown to be seriously inaccurate and to have lied in the course of his evidence to the Tribunal. There was no satisfactory corroboration of his allegations against Detective Sergeant White. In the course of the hearings, Detective Sergeant White successfully demonstrated the unreliability of much of Mr. Conlon’s testimony to the effect that Detective Sergeant White was involved in creating the “Silver Bullet Threat” allegation and inspiring Mr. Conlon to make this false allegation against the two men.

In relation to “The Letter” Bernard Conlon told a story that a private detective working for the McBrearty family, Mr. William Flynn, called to his house and attempted to bribe him to withdraw the statement which he had made in respect of the District Court prosecution dealt with in Chapter 2 of the report. The Tribunal was satisfied that Mr. Conlon made up this allegation and that there was no evidence to support his further allegation that he had planned to tell this lie as a result of entering into a conspiracy with Detective Sergeant John White. He also alleged that he had received a letter from Mr. Flynn which included a second page. The Tribunal rejected Mr. Conlon’s evidence that he was used as Detective Sergeant White’s corrupt agent in respect of “The Letter”. Mr. Conlon was found to have told multiple lies about the William Flynn letter and attempted to mislead the Tribunal in claiming that the second page to the William Flynn letter was the creation of a member of An Garda Síochána.

Mr. Conlon's testimony, in respect of matters pertaining to the District Court prosecution, was accepted by the Tribunal. That issue constituted a significant aspect of the Tribunal's work in trying to determine what actually happened in relation to the events in which he was involved. In the absence of independent testimony supporting his evidence relating to the events concerning the "Silver Bullet Threat", the Tribunal was not happy to accept his evidence in this regard. In addition, it was demonstrated that he had told a number of lies in respect of that matter. In respect of the third issue concerning "The Letter" his evidence was totally rejected as he was found to have lied to the Tribunal. This issue took up much less time than the other two issues in the course of this module. Undoubtedly, Mr. Conlon was a wrongdoer in these events. He told the truth in respect of some issues and lied in respect of others.

In all the circumstances, I consider that it is equitable to make an award of costs to Bernard Conlon which will be a partial order of 40% of his costs in the light of the findings made in the report concerning his evidence.

5. Application on behalf of William Flynn

Mr. Flynn was granted legal representation in the course of this module during the course of the evidence of Mr. Bernard Conlon and was represented by solicitor and counsel. This representation was granted to Mr. Flynn in respect of the period of time that Mr. Conlon was giving evidence. The main allegation made against Mr. Flynn concerned a letter emanating from Zimmerman & Company International Limited dated the 21<sup>st</sup> of April 1999. In his complaint, he alleged that Mr. Flynn had called to his house a few days before the receipt of this letter by him. He alleged that Mr. Flynn told him that if he cooperated with Mr. Flynn he would make one phone call to Frank McBrearty and that he (Mr. Conlon) would receive £10,000. He alleged that Mr. Flynn wanted him to change the statement he made to the Gardaí about McBrearty's nightclub and to go with him to a solicitor in order to make a statement against Sergeant White and Garda John O'Dowd. He then alleged that he received this letter of the 21<sup>st</sup> of April 1999 which, it was suggested, contained a second page. The second page was represented as being in some way a confirmation that Mr. Flynn was offering money on behalf of Mr. Frank McBrearty, Senior to Mr. Conlon in order to get him to change his statement. Insofar as any allegations were made against Mr. Flynn they were totally false. There was no evidence of any kind of improper conduct by Mr. Flynn in respect of this matter. Mr. Conlon was found to have told multiple lies about the William Flynn letter. The second page to the letter was found to be entirely false and "deceitfully added to the letter by Bernard Conlon". In the circumstances, Mr. Flynn is entitled to a full order for costs in respect of the limited representation granted to him by the Tribunal.

6. Application on behalf of Detective Sergeant John White

Detective Sergeant White was a central figure in each of the three main allegations made by Bernard Conlon in the course of the Tribunal's hearings in respect of Term of Reference (d). As already noted, these were the issues

which arose concerning “The District Court Prosecution” (dealt with for the most part in Chapter 2), “The Silver Bullet Threat” (dealt with for the most part in Chapter 3), and “The Letter” (dealt with for the most part in Chapter 4).

In respect of Bernard Conlon’s attendance at Frankie’s nightclub on the evening of the 30<sup>th</sup> of August 1997, the Tribunal has found that Bernard Conlon was retained as an agent by Detective Sergeant John White through Garda John Nicholson to attend at the nightclub. He was to be “found on” the premises by Gardaí who would inspect the premises after licensing hours. He was directed by Detective Sergeant White to be in possession of as many alcoholic drinks as possible and to cooperate with inspecting Gardaí. It was concluded that this was part of a plan whereby he would ultimately make a statement as to how he purchased and consumed drinks at Frankie’s nightclub after hours which would form the basis of a prosecution against Frank McBrearty Senior, the licensee of the premises, and members of his staff. It was also found that Bernard Conlon was promised that he would be (and was) rewarded financially for doing this. He was paid his expenses and travel allowances to which he was not entitled when attending the District Court. The Tribunal was satisfied that the core story told by Bernard Conlon in relation to his use as a Garda agent in this licensing prosecution was true and that there was a sufficient degree of corroboration of his account to enable the Tribunal to accept his testimony. In addition, the Tribunal was satisfied that Detective Sergeant White told lies in his evidence to the Tribunal in respect of this matter. He, along with Garda Nicholson, was found to have deliberately deceived his Garda colleagues as they tried to deal with these matters. The Tribunal was satisfied that Detective Sergeant White manipulated people and events to his own ends in organising the escapade of the 30<sup>th</sup>/31<sup>st</sup> of August 1997 and in trying to conceal his involvement subsequently.

In respect of the “Silver Bullet Threat” the accusation made by Bernard Conlon that he was put up to making this allegation by Detective Sergeant White was based entirely on his own testimony, which the Tribunal found, in this respect, was deeply flawed. He was shown to be seriously inaccurate and to have lied in the course of his evidence to the Tribunal. He was not a person whose testimony could be relied upon without corroboration in material respects. There was no sufficient independent evidence of Mr. Conlon’s allegations against Detective Sergeant White in respect of this issue, such as to warrant the conclusion that Detective Sergeant White conspired, induced or paid Mr. Conlon to make the “Silver Bullet Threat” allegation against Mr. McConnell and Mr. Peoples. The Tribunal was also satisfied that Detective Sergeant White successfully demonstrated the unreliability of much of the testimony given by Bernard Conlon in respect of his alleged participation in the making of the allegation of the “Silver Bullet Threat”, and in particular the allegation that Detective Sergeant White was involved in creating this “threat” allegation by using Mr. Conlon as a false witness. Detective Sergeant White’s contribution to the work of the Tribunal was important in this regard.

On the other hand, the Tribunal also found that when Detective Sergeant White and Superintendent Lennon became aware of significant information relevant to the “Silver Bullet Threat” investigation they failed to pass it on to

the investigators in Sligo. A number of allegations were also made by Detective Sergeant White against Garda colleagues and the Carty team and in Sligo which the Tribunal determined were false. The hearing of testimony in relation to these allegations lengthened the hearings of the Tribunal.

Insofar as Bernard Conlon made allegations against Detective Sergeant White in respect of "The Letter", there was no evidence to support his allegation that he told lies concerning this letter as a result of entering into conspiracy with Detective Sergeant White, and there was no evidence that Detective Sergeant White used Bernard Conlon as his corrupt agent in this matter. In this respect, Mr. Conlon's allegations and testimony were rejected by the Tribunal. Detective Sergeant White provided evidence to the Tribunal and documentation which supported the proposition that Mr. Conlon's allegations against him concerning "The Letter" were false. It is clear from the report that in some respects Detective Sergeant White lied to the Tribunal. On other matters he did not and successfully defended himself against the lies of Mr. Conlon.

I have considered all of the submissions made on behalf of Detective Sergeant White, written and oral, and I have determined that it is equitable in all the circumstances and in the light of the findings set out in the third report of the Tribunal, that Detective Sergeant White should have an order granting him 50% of the costs of his legal representation in respect of Term of Reference (d).

#### **Applications for Costs in Respect of Term of Reference (g) – Fourth Report**

1. Applications on behalf of The Association of Garda Sergeants and Inspectors, Sergeant Seán McKenna and Sergeant Paul Wallace
  - (i) As already noted the Association was granted representation on the basis that it was appropriate that the Tribunal should be assisted in relation to its conclusions and recommendations insofar as they might affect serving members of An Garda Síochána. Representation in this module was also granted on the understanding that submissions in relation to these issues were likely to be taken towards the end of the Tribunal's hearings and did not require a full legal team to be present at all times during the course of the hearings for that purpose. The Association conducted itself on that basis. The Tribunal acknowledges the help and assistance of the Association in this regard. The Association is entitled to its costs on this basis in respect of its representation concerning Term of Reference (g).

The Tribunal now sets out the relevant facts and circumstances concerning each of the respective applicants in paragraph form. The applicants and the Association are not each entitled to a separate order for costs but to one order embracing all of the applicants. In other words, the applicants and the Association, as they are the subject of joint representation, are entitled to a single order providing for one set of costs.

(ii) Sergeant Seán McKenna

Sergeant Seán McKenna was stationed with Garda Patrick O'Donnell at Ardara Station at the time of the events surrounding the investigation into the planting of the device at the television mast. On a number of issues Sergeant McKenna's evidence was accepted as reliable and he assisted the Tribunal. I am satisfied that he is entitled for an order for costs in respect of his legal representation on this module.

(iii) Sergeant Paul Wallace was originally implicated as the maker of an anonymous telephone call to Mr. Hugh Diver. This proved to be incorrect. No finding of any kind was made against Sergeant Wallace. He is entitled to an order for costs in respect of his limited involvement in this matter.

2. Application on behalf of Mr. Hugh Diver

Mr. Diver was not legally represented before the Tribunal though he was entitled to have such representation. He has submitted a claim which is essentially one for expenses and not for legal costs. Mr. Diver is entitled to recompense for any expenses which he incurred. This matter will be dealt with by Mr. O'Donnell, Registrar to the Tribunal, in the normal way.

3. Application on behalf of Mr. Bernard Shovlin and Mrs. Geraldine Shovlin

Mr. and Mrs. Shovlin were not legally represented before the Tribunal though they were entitled to such representation. They have submitted a claim for expenses in respect of their attendance as witnesses before the Tribunal. They are entitled to be recompensed for any legitimate expenses which have been incurred by them in the course of this attendance. Applications for expenses are normally dealt with by Mr. Brendan O'Donnell, Registrar to the Tribunal, and this application for expenses will be dealt with in the normal way.

4. Application on behalf of Detective Sergeant John White

The Tribunal has considered the submissions made in respect of this application concerning Term of Reference (g) on behalf of Detective Sergeant White. The Tribunal has determined, on the balance of probabilities, that he was not telling the truth as to how he found the object on the mast. The Tribunal was satisfied that he was aware, before anyone had officially discovered it, that the device was there. It was also satisfied that when he went to "find" it, it came as no surprise to him that it was there. It found that he did not act in any way consistent with a Garda making a discovery and that he manipulated the investigation and, in particular, Superintendent Cullinane, who trusted him, in order to ensure that the powers of arrest under Section 30 of the Offences against the State Act, 1939 were used against Mr. Hugh Diver, the Late Mr. Anthony Diver and Mr. Bernard Shovlin. It also concluded that the device was caused to be put on the mast by Detective Sergeant White for the purpose of effecting these arrests in respect of an earlier arson attack and that this was either done by Detective Sergeant White or on his behalf. The

Tribunal was satisfied that all of the arrests for the explosive device were based upon a false premise and founded on the wrongdoing of Detective Sergeant White.

The Tribunal, having regard to the findings made by it, and the fact that it is satisfied that untruths were told to it by Detective Sergeant White in the course of its hearings in respect of Term of Reference (g), is not satisfied that it would be equitable in all the circumstances of the case to make any award of costs in favour of Detective Sergeant White concerning Term of Reference (g). This application is refused.

5. Application on behalf of the Garda Representative Association

The Garda Representative Association was granted limited legal representation on behalf of the Association based on a solicitor acting alone without counsel. The object of this was to facilitate the Association in providing assistance to the Tribunal in respect of any cooperation that might be sought by the Tribunal during the course of its hearings, when issues such as those relating to practice and procedure relevant to the work of its members, and of which it had specialised knowledge, arose and on occasions when specific issues arose in respect of any individual member of the Association. The Association through its solicitor, as in other modules, provided valuable assistance to the Tribunal during its hearings. It is appropriate and equitable that an order for costs in respect of this limited representation be made in favour of the Association concerning Term of Reference (g).

6. Application on behalf of Mr. John Dooley (Retired Detective Garda).

Mr. Dooley gave evidence in relation to matters concerning the investigation of incidents at the Ardara Mast. His evidence was of a limited nature and no criticism was made of him in the Tribunal's report. I am satisfied that it is equitable that an order for costs be made in favour of Mr. Dooley in respect of his legal representation before the Tribunal in respect of Term of Reference (g).

**Applications for Costs in Respect of Term of Reference (i) – Fifth Report**

1. Applications on behalf of Thomas Collins, Timothy Collins, John Casey, John McCann, Michael McCann, Bernard Power and David Power

The Tribunal found that all of the seven applicants arrested at the campsite at Burnfoot were unlawfully deprived of their liberty. These arrests took place directly as a result of the deliberate planting of a dangerous firearm at the encampment on the previous day so that it would be found in a subsequent search, thus justifying the arrest of the heads of households there. The Tribunal has found that Detective Sergeant White was responsible for this. The evidence given by the members of the Travelling Community concerning the reasons that they came to be in North Donegal, their activities during the relevant period the subject of the Tribunal's inquiry, and their non-involvement

in the possession of the firearm found near their camp, was accepted by the Tribunal. The Tribunal was also satisfied that those arrested did all in their power to aid the Gardaí with their enquiries whilst in detention. They told the truth as to their movements and their activities during their journey. They had nothing to do with the death of the Late Mr. Edward FitzMaurice.

The Tribunal had great difficulty prior to its hearings in finding out what specific allegations of maltreatment those arrested wished to make when giving evidence. There was little detail in the documents relating to their civil proceedings which were furnished to the Tribunal. A request for further particulars from the Tribunal to the legal representatives of the arrested men yielded very little extra detail. Extensive interviews by the Tribunal's statutory investigators added some extra particulars. The Tribunal called each of the arrested persons and heard their evidence on oath. Following this, adjournments were granted so that the transcripts of hearings supplying the alleged details of abuse to those Gardaí who were being accused of abuse and assault might be made available and considered by the Gardaí concerned. The manner in which these complaints were presented and formulated made it impossible to clearly identify the Gardaí against whom allegations of abuse and assault were made.

The Tribunal concluded that those arrested were the subject of racist abuse by certain Gardaí whom the Tribunal could not identify by name or rank due to the nature of the testimony given by those arrested.

The Tribunal was satisfied that post-mortem photographs of the Late Mr. Edward FitzMaurice were shown to two and possibly four of the seven arrested at Burnfoot. On the unsatisfactory state of the evidence, it was not possible to ascribe responsibility for this to any individual Gardaí or to say that they were identified by the seven men arrested.

In a number of cases, specific allegations made by those arrested were rejected by the Tribunal. Nevertheless, having regard to the clear wrongs done to the seven arrested men, the fact that a number of their allegations were established in evidence, the fact that they cooperated for the most part with the Tribunal in trying to tease out the facts of what occurred in the course of their detentions, and having regard to the overall findings of the Tribunal in respect of Term of Reference (i), I am satisfied that a full order for costs should be made in favour of the seven arrested men. This order shall comprise of one set of costs which will cover all seven arrested in respect of their representation before the Tribunal.

2. Application on behalf of The Garda Representative Association and on behalf of Garda Michael O'Grady, Garda Vincent Bourke, Garda Michael O'Boyce, Detective Garda Brendan Regan, Detective Garda James Breslin, Detective Garda Stephen Sheerin and Mr. John Clancy (Retired Detective Garda).
  - (i) As in other modules, The Garda Representative Association was granted limited legal representation on behalf of the Association based on a solicitor acting alone without counsel. The object of this was to



facilitate the Association in providing assistance to the Tribunal in respect of any cooperation that might be sought by the Tribunal during the course of its hearings, when issues such as those relating to practice and procedure relevant to the work of its members, and of which it had specialised knowledge, arose and on occasions when specific issues arose in respect of any individual member of the Association. In addition, it was important that the Association be fully informed of all issues arising at the Tribunal in order to assist the Tribunal in the making of submissions on general issues relating to its members at the conclusion of the Tribunal's hearings on this module. It was anticipated that this might assist the Tribunal in the formulation of recommendations. The Association through its solicitor provided valuable assistance to the Tribunal during its hearings and as in other modules it is appropriate and equitable that an order for costs in respect of this limited representation be made in favour of the Association.

(ii) Garda Michael O'Grady and Garda Vincent Bourke

These two Gardaí gave evidence concerning the preservation of the scene of Detective Sergeant White's sheds. The Tribunal was satisfied that the accounts given by the two Gardaí were accurate and honest. Though they had furnished somewhat inaccurate statements in August 2001 concerning these events, the Tribunal accepted that the original version of their statements was due to carelessness and was not part of any deliberate conspiracy to cover up the fact that the search area had been left unprotected for a period on the night of the 20<sup>th</sup> of June 2001. They did not submit corrective statements out of a desire on their part not to stir up trouble for themselves and, to leave well enough alone in view of the fact that they considered their statements not to be significant. The Tribunal was satisfied there was nothing sinister in the events leading up to the abandonment of the search for approximately forty-five minutes on the night of the 20<sup>th</sup> of June 2001. The Tribunal is satisfied that the two Gardaí cooperated with the Tribunal and gave truthful evidence. I am satisfied that they are entitled to an order for costs in respect of their legal representation before the Tribunal.

(iii) Garda Michael O'Boyce

Garda O'Boyce gave evidence to the Tribunal in respect of an encounter said to have occurred at the Orchard Bar, Letterkenny, on the 3<sup>rd</sup> of October 2002. Garda Martin Leonard gave evidence that a conversation had occurred between Garda Leonard and Garda McConigley to the effect that Garda McConigley told him that he had searched the area three minutes before the gun was found and that there was no gun to be found and that he and another colleague had gone round the side of a caravan and laughed at the idea of the finding of a gun. The allegation was made by Garda Leonard that he had a conversation with Garda O'Boyce in which he reported these matters to him and had asked him to note specifically that the conversation had

occurred and its contents. Garda O'Boyce denied this. His evidence was accepted as being truthful. Garda O'Boyce is entitled to the costs of legal representation.

(iv) Detective Garda Brendan Regan

This Garda was involved in the detentions of Bernard Power, Michael McCann and John McCann. He gave evidence to the Tribunal and no specific criticism was made of his conduct. It is equitable in the circumstances, having regard to the findings of the Tribunal, that an order for costs be made in favour of Detective Garda Regan.

(v) Detective Garda James Breslin

This Garda is concerned in relation to the detention of Michael McCann. He was not the subject of any criticism in the report. Having regard to the findings of the Tribunal in respect of the detention of Michael McCann, it is equitable that an order for costs be made in favour of Detective Garda Breslin.

(vi) Detective Garda Stephen Sheerin

Detective Sergeant White alleged that he had a conversation in February 2005 with Detective Garda Sheerin, in which Detective Garda Sheerin is alleged to have said that Detective Garda Whelan had told him that he had been put under pressure to say that the gun, which he had examined in respect of the Burnfoot issue, had been recently fired prior to his examination in May of 1998. The Tribunal was satisfied that no pressure was brought to bear on Detective Garda Whelan to change his opinion. It received evidence from Detective Garda Sheerin in relation to the matter. He did not think that there was pressure on Detective Garda Whelan to write an opinion to order. The issue seemed to be in relation to safety in the firing of the gun using live ammunition. Detective Garda Sheerin cooperated with and gave truthful evidence to the Tribunal and I make an award of costs in respect of his legal representation before the Tribunal.

(vii) Mr. John Clancy (Retired Detective Garda)

Mr. Clancy gave evidence in relation to his involvement in the detention of David Power, Bernard Power and John Casey and of how he was notified to attend at Letterkenny Garda Station. No criticism was made by the Tribunal of Mr. Clancy's involvement in these matters and it is appropriate that I make an order granting him costs of his legal representation in respect of this module.

The order in respect of each of these applicants (ii) to (vii) inclusive extends to one single set of costs in respect of all of the applicants. The applicants are the subject of joint representation and are entitled to a single order providing for one set of costs.

3. Applications on behalf of The Association of Garda Sergeants and Inspectors and Sergeant Niall Coady, Mr. Hugh Smith (Retired Detective Sergeant), Mr. James Leheny (Retired Detective Sergeant), Sergeant Philip Gillespie, Detective Sergeant Thomas Burke, Sergeant Christopher Galligan, Sergeant Martin Conroy, Detective Sergeant John McCormack, Detective Sergeant Pádraic Scanlon, Inspector Martin Byrne, Detective Sergeant John O’Keeffe, Detective Inspector Michael Keane and Sergeant Brendan Roache.

- (i) The Association of Garda Sergeants and Inspectors

The Association was granted representation as in other modules on the basis that it was appropriate that the Tribunal should be assisted in relation to its conclusions and recommendations insofar as they might affect serving members of An Garda Síochána. Representation was granted on the understanding that these submissions were likely to be taken towards the end of the Tribunal’s hearings and did not require a full legal team to be present at all times during the course of the hearings for that purpose. The Tribunal notes the Association conducted itself on that basis and acknowledges the help and assistance of the Association in this regard during the course of the hearings on this module. The Association is entitled to its costs on this basis.

- (ii) Sergeant Niall Coady

Sergeant Coady discovered the gun at the encampment at Burnfoot on the 23<sup>rd</sup> of May 1998. His evidence was accepted by the Tribunal and no criticism was made of Sergeant Coady in the report. I am satisfied that Sergeant Coady is entitled to the costs of his legal representation.

- (iii) Mr. Hugh Smith (Retired Detective Sergeant)

Mr. Smith gave evidence in respect of the condition of the gun which was found by Sergeant Coady. He cooperated with the Tribunal and his evidence was accepted in relation to these matters and in respect of evidence which he gave concerning the search of Detective Sergeant White’s home in 2001. I am satisfied that it is equitable to make an order granting Mr. Smith the costs of his legal representation of this module.

- (iv) Mr. James Leheny (Retired Detective Sergeant)

Mr. Leheny was of assistance to the Tribunal and his evidence was accepted by the Tribunal. I am satisfied that Mr. Leheny is entitled to the costs of his legal representation of this module.

- (v) Sergeant Philip Gillespie

Sergeant Gillespie was involved in the events surrounding the search of the encampment and was also involved in the detention of Michael McCann. Mr. McCann complained of ill treatment during his detention,

which was not accepted by the Tribunal. There was no criticism of Sergeant Gillespie arising out of this evidence. I am satisfied that he is entitled to an order for costs in respect of his legal representation.

(vi) Detective Sergeant Thomas Burke

Similarly, Detective Sergeant Burke was involved in the interrogation of Michael McCann. No criticism was made of him arising out of these allegations. I am satisfied that it is equitable to make an order granting him costs of his legal representation having regard to the findings of the Tribunal in this regard.

(vii) Sergeant Christopher Galligan

Sergeant Galligan gave evidence in respect of the search at Burnfoot and the manner in which certain members of the search party covered the area and the vicinity in which the gun was discovered. His evidence was expressly accepted by the Tribunal on this matter and in respect of his dealings with Detective Sergeant White during the course of the search. I am satisfied that it is equitable to make an order for costs in favour of Sergeant Galligan's legal representation on this module.

(viii) Sergeant Martin Conroy

Sergeant Martin Conroy was the Member in Charge at Letterkenny Garda Station on the night of the 23<sup>rd</sup> and 24<sup>th</sup> of May 1998. He gave evidence in relation to a complaint made to him on behalf of Mr. Timothy Collins. Mr. Kieran Dillon complained to Sergeant Conroy in respect of an allegation made by Timothy Collins that he had been slapped and been put under duress. This was recorded in the custody record and he brought it to the attention of Detective Sergeant Henry. He went with Detective Sergeant Henry to Timothy Collins to ask him if he was ok and if he wanted a doctor. Mr. Collins declined the services of a doctor. Sergeant Conroy agreed that he should have spoken to Timothy Collins with a view to identifying which particular interviewer he wished to complain about. On balance, the Tribunal accepted that Sergeant Conroy acted in a bona fide manner on this occasion. The Tribunal was satisfied that Sergeant Conroy cooperated with it and gave a truthful account of these events. I am satisfied that it is equitable to make an order for costs in favour of Sergeant Conroy.

(ix) Detective Sergeant John McCormack

Detective Sergeant McCormack was involved in the interviewing of Mr. Thomas Collins. An allegation that Detective Sergeant McCormack was concerned in the production of post mortem photographs to Mr. Collins during the course of his detention was rejected by the Tribunal. Detective Sergeant McCormack also admitted to the Tribunal that the notes of his interview with Mr. Collins were incomplete and that he had

not included certain questions concerning the death of the Late Mr. FitzMaurice, which constituted a breach of the judges' rules. The Tribunal is satisfied that Detective Sergeant McCormack assisted the Tribunal in the evidence which he gave and is satisfied that an order for costs in respect of his representation before the Tribunal should be made in his favour.

(x) Detective Sergeant Padraic Scanlon

Detective Sergeant Scanlon interviewed Mr. Thomas Collins during the course of his detention. An allegation that he had shown post mortem photographs of the Late Mr. FitzMaurice to Mr. Collins in the course of interviewing was rejected by the Tribunal. The Tribunal is satisfied that it is equitable to make an order for costs in favour of Detective Sergeant Scanlon in respect of his representation before the Tribunal on this module.

(xi) Inspector Martin Byrne

Inspector Byrne was classified as a "C" witness in respect of the detention element of this module. The Tribunal is satisfied that Inspector Byrne cooperated fully with the Tribunal. Having regard to the fact that allegations made against Inspector Byrne were expressly withdrawn by counsel on behalf of the seven members of the travelling community at the commencement of that aspect of the module and that no criticism was made of him in the report, it is appropriate that Inspector Byrne be granted an order for the costs of his legal representation before the Tribunal.

(xii) Detective Sergeant John O'Keeffe

Detective Sergeant O'Keeffe gave evidence to the Tribunal concerning the search conducted at Burnfoot and also the detention of Mr. John McCann. The Tribunal is satisfied that Detective Sergeant O'Keeffe gave assistance and truthful evidence to the Tribunal and that it is equitable to grant him an order for costs in respect of his representation before the Tribunal.

(xiii) Detective Inspector Michael Keane

Detective Inspector Keane gave evidence to the Tribunal concerning important aspects of the investigation made by An Garda Síochána into Detective Garda Kilcoyne's allegations in respect of the finding of the gun at Burnfoot. His evidence in relation to these matters was accepted by the Tribunal and no criticism was made of Inspector Keane in the Tribunal's report. The Tribunal is satisfied that it is equitable to make an order for costs in favour of Detective Inspector Keane in respect of his legal representation before the Tribunal on this module.

(xiv) Sergeant Brendan Roache

Sergeant Roache gave some limited evidence to the Tribunal in respect of his dealings with Garda Martin Leonard. His evidence was accepted as can be seen at Chapter 4 of the report, paragraphs 4.47 to 4.50. The Tribunal is satisfied to make an order for the costs of his legal representation in respect of his limited involvement in this module.

In respect of Term of Reference (i) the Tribunal notes that separate applications for costs were submitted by Smyth O'Brien Hegarty solicitors in respect of applicants (i) to (xi) (inclusive) and by Seán Costello & Company in respect of Detective John O'Keefe (xii), Detective Inspector Michael Keane (xiii) and Sergeant Brendan Roache (xiv). In this context, the Tribunal notes again that the original application for representation by the Association and any members who might require legal representation was made by these two firms of solicitors. It is repeated, that the fact that there are two firms of solicitors acting on behalf of the Association or its members is a matter entirely for agreement between the Association, its members and the respective solicitors. The fact that there were two firms of solicitors representing the same Association and its members, cannot affect the overall amount of costs to which the applicants who are members of the Association are entitled at the end of the day.

The Tribunal has set out the relevant facts or circumstances concerning those members of the Association represented by the Association's solicitors. It is emphasised that respective applicants and the Association are not each entitled to a separate order for costs but to a single order in respect of one single set of costs by reason of their joint representation. This is in accordance with previous rulings of the Tribunal in respect of costs in favour of the Association and its members.

#### 4. Application on behalf of Detective Sergeant John White

Detective Sergeant White was the principal focus of the allegation made by Detective Garda Tom Kilcoyne of the planting of the gun at the Burnfoot encampment at which members of the Irish Travelling Community resided. Detective Sergeant White's evidence was rejected by the Tribunal in respect of the substantive allegations made against him. Readers are referred to the important findings in Chapter 3 of the report. The acceptance of Detective Garda Kilcoyne's evidence for the reasons set out in the report, and the rejection of Detective Sergeant White's evidence, comprise the substantive reasons for the findings of the Tribunal concerning the allegation that a gun was planted at the encampment. In the light of these findings, the Tribunal is satisfied that there was a substantial failure on the part of Detective Sergeant White to cooperate with and provide assistance to the Tribunal which sought the truth on these matters. False testimony was given by him to the Tribunal on important matters, which was calculated to hinder the Tribunal in obtaining the truth and had the unfortunate consequence of extending its hearings. Detective Sergeant White contends in an extensive submission to the Tribunal that an award of costs should be made in his favour notwithstanding that he has been found guilty of wrongdoing by the Tribunal in relation to the planting

of the gun which precipitated the arrest of members of the Irish Travelling Community. It is correct to state that the Tribunal has the power, notwithstanding a finding of wrongdoing against an individual, to make an order for costs in his/her favour if he/she has cooperated fully with the Tribunal and told the truth. This is manifestly not the case in respect of Detective Sergeant White. It would not be equitable to make a full award of costs in favour of Detective Sergeant White in the face of his persistent false testimony to the Tribunal in relation to the matters under investigation in this module. This is clear from the provisions of Section 6 (as amended) of the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004. The order, which the Tribunal now makes in respect of Detective Sergeant White, is made with full regard to the provisions of that section. It should also be noted that the Tribunal was mindful of the provisions of Section 6 which empowered the Tribunal of its own motion to order that the whole or part of the costs incurred by the Tribunal should be paid to the Minister for Finance by any other person. The section also contemplates that in considering such an order, the Tribunal may have regard to its findings and any failure to cooperate with or provide assistance to the Tribunal or "knowingly giving false or misleading information to the Tribunal." I invited counsel on behalf of Detective Sergeant White to make submissions on this power to the Tribunal but he declined to do so.

The Tribunal is satisfied that it would not be equitable in all the circumstances of the case to make a full award of costs in favour of Mr. White.

Nevertheless, the Tribunal is entitled to consider whether, having regard to any cooperation or assistance given by Mr. White to the Tribunal, a partial order for costs should be made in his favour. The Tribunal is mindful of the cooperation and assistance given by Mr. White in the provision of documents at the preparatory stage of its work and of the assistance given to the Tribunal in respect of the ordering of its business by counsel. In all the circumstances, the Tribunal considers it equitable to make an order in favour of Mr. White granting him 10% of the costs of his legal representation at the Tribunal in respect of Term of Reference (i).

As appears from the above, the Tribunal has decided not to award any part of the costs of the hearings in respect of Term of Reference (i) against Mr. White. It does not consider that this would be equitable in all the circumstances of the case.

5. Application on behalf of Sergeant John Conaty and Mrs. Carmel Conaty

The Tribunal has considered the written and oral submissions made on behalf of Sergeant Conaty and his wife. It is clear that the Tribunal concluded that both were involved in wrongdoing in the aftermath of the events concerning the finding of the gun at Burnfoot and their respective involvements are set out in Chapter 4 of the fifth report. It is clear that Sergeant Conaty was found to have been engaged in wrongdoing with a number of his colleagues and that he involved his wife in these matters. It was incumbent upon them both to give their truthful evidence to the Tribunal which they failed to do. It was submitted to the Tribunal that the principal object of its work was to pursue the

truth. It was further submitted that that objective could only be achieved if parties were free to give their testimony without fear or favour and that in some way that freedom was fettered if the Tribunal adopts the practice of depriving certain parties of the costs of representation on the basis of its findings. It was suggested that such a practice invites parties to tailor their testimony to meet their perception of the Tribunal's expectations. The Tribunal utterly rejects this proposition. Witnesses have appeared unrepresented before the Tribunal and given full and truthful testimony of the events in which they were concerned. Legal advice and lawyers are not the elixir of truth. It emanates from the witnesses' knowledge of events and their honesty, integrity and willingness to tell the truth. The Tribunal is of the view that it would be inequitable, having regard to the provisions of Section 6 of the Act, to make an award of costs in favour of these two applicants. These applications are refused.

6. Application on behalf of "Mr. A"

"Mr. A" gave evidence in private session before the Tribunal in relation to his dealings with Detective Sergeant White. "Mr. A" is said to have contacted Detective Sergeant White and furnished him with information which implicated a number of the members of the Irish Travelling Community, who were subsequently arrested, in the death of the Late Mr. FitzMaurice. This was untrue. The source of the information from "Mr. A" was allegedly "Mr. B". It was important to the Tribunal's work that "Mr. A" attend the Tribunal and give evidence in relation to his contact with Detective Sergeant White. He was reluctant, initially, to do this having regard to issues concerning his anonymity and his personal security in the light of the information which it was said he had supplied to Detective Sergeant White. His testimony was ultimately heard in private by the Tribunal and is dealt with in Chapter 3 of the report. As a witness, he needed reassurance as to the protection of his identity, his security and the manner in which his evidence would be taken and used by the Tribunal. A claim of privilege might successfully have been raised by An Garda Síochána and on his behalf in relation to the testimony sought by the Tribunal. These were all attributes of his status as a witness, which differed from the norm, and it was essential that he be legally advised in relation to these matters, over and above advice which he might require as a witness, in attending the Tribunal. It is clear that the Tribunal regarded the evidence given by "Mr. A" as unsatisfactory and unreliable in significant respects. Nevertheless, the Tribunal regards the status of "Mr. A" as a further relevant matter which ought to be considered in respect of the issue of costs. Mr. Garret Sheehan, solicitor, who agreed to act on his behalf provided enormous assistance to the Tribunal in so doing, and was an essential part of the cooperation and assistance which was ultimately obtained from "Mr. A" in the course of the hearings. The Tribunal is satisfied that it is equitable to make an order for costs in favour of "Mr. A".

7. Application on behalf of "Mr. B"

"Mr. B" was said to have been the source of the information furnished to Detective Sergeant White through "Mr. A". As with "Mr. A", a claim of privilege



could have been raised on behalf of the Garda Síochána and “Mr. B” in relation to the information which was allegedly supplied in regard to his status in the case as an informant. “Mr. B” also had legitimate concerns about his identification as the source of information by the Garda Síochána if the hearings were to be heard in public and his personal security. It was essential that his attendance as a witness be obtained before the Tribunal. He also gave evidence in private session much of which was regarded as unreliable and unsatisfactory. Nevertheless, it was essential that he be advised and reassured in relation to his attendance before the Tribunal in relation to the protection of his anonymity, his security, and the intended use of the testimony which he might give. The Tribunal is very grateful to McCartan & Burke solicitors who undertook to advise and represent “Mr. B” in relation to these matters and without their involvement, it is likely that the Tribunal would not have had the benefit of his evidence. It is, therefore, equitable that an order for costs be made in favour of “Mr. B” in respect of this legal advice and representation for the same reasons as the award was made in favour of “Mr. A”.

**Signed:**

\_\_\_\_\_  
**Mr. Justice Frederick R Morris**  
**Sole Member of the Tribunal**

**Date:**

\_\_\_\_\_