



June 21, 2007

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Decisions & Rulings](#)[Decisions and Rulings](#)[Statements](#)[Search](#)[Downloads Area](#)**In the matter of an application by Denis McCullough
S.C. Counsel on behalf of Mr. Gabriel Grehan****2nd November, 1999**

This is an application by Counsel on behalf of Mr. Grehan to the effect that I should not proceed to hear evidence on the issue which arises from the apparent conflict between Counsel's record of what transpired at a meeting with Mr. Grehan on the 30th of November 1998 on the one hand and, on the other hand, a written outline of evidence provided by Mr. Grehan to The Tribunal on the 11th day of January 1999. On Thursday the 13th May 1999 Mr. Cooney on behalf of the Murphy parties made certain comments regarding the behaviour of two members of the Tribunal's legal team in connection with their dealings with Mr. Grehan. In the light of the submissions of Mr. Cooney and the very serious allegations which he made against those members I decided, in the first instance, to take a very exceptional course to call both Counsel to give evidence and they did so. I then proceeded to hear evidence from Mr. Grehan. Mr. McCullagh has compared this procedure to a "trial within a trial" and he now submits that this "trial within a trial" should not be proceeded with. He bases his application on the submission that a perception of bias is inevitable given the professional relationship between Counsel to the Tribunal and the Sole Member of the Tribunal.

In the course of his submissions Mr. McCullagh identified the essential conflict between the accounts attributed to Mr. Grehan and Mr. Grehan's outline of evidence as being the date when he acquired knowledge of the matters referred to in his outline of evidence.

In my view Mr. McCullagh has correctly identified the fundamental issue as being whether what Mr. Grehan said in the statement of evidence which he submitted to the Tribunal is correct and whether it differs significantly from what he may have said to Mr. O'Neill and Mr. Hanratty and which of those pieces of evidence the Tribunal should accept as being correct and accurate. However it appears to me, as submitted by Counsel to the Tribunal, Mr. Gallagher, that the evidence of Mr. Grehan himself on this point has effectively resolved this issue.

At page 156 of the Transcript of the 20th of May 1999 starting at question 972 Mr. Grehan says the following:-

Q. You accept then, do you, that you discussed with my colleagues this payment. You told them essentially what was contained in that statement, save that you say that you inadvertently or wrongly attributed the source of the information to John Maher, is that right.?

A. Yes

Q. Yes. And you say you never mentioned this as being some months after the transaction ?

A. That's right, yes.

Q. now are you certain of that. ?

Irish Time

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newspaper

Independence

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newspaper

**The Irish
Examiner**

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**Sunday
Business Post**

Dublin base
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Sunday Times

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of U.K. Sunday
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Ireland**

Website for
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the Irish State

A. Not certain of that because I may have got the date wrong, the 1989 dates incorrect.

Q. Do you accept that you did in fact say 1989 ?

A. Yes, and I was inadvertently incorrect in saying that.

Q. So you do accept that you told him on that occasion that your understanding was that some months after the transaction, that some months after June of 1989, your understanding was that £30,000 had left the JMSE account, but that a similar amount had been lodged to the company account shortly afterwards ?

A. Yes, and the 1989 was inadvertently incorrect.

Q. But you did tell them that. ?

A. Yes.

Q. You accept that.

A. Yes, yes."

This was the first time that the Tribunal had been formally told that Mr. Grehan accepted that he did tell Counsel to the Tribunal that this knowledge was acquired in 1989, albeit that his testimony is that he made this statement inadvertently. There was correspondence between Mr. Grehan's Solicitors and the Tribunal after the Tribunal received the outline of Mr. Grehan's evidence but nowhere in that correspondence was it stated that his reference to 1989 was "inadvertently incorrect." Indeed the Tribunal, having circulated Mr. Grehan's outline of evidence, also decided to circulate the draft statement prepared by Counsel to the Tribunal to alert interested parties to the apparent conflict. In any event, in the light of the evidence which Mr. Grehan has now given, it appears to me unnecessary to proceed with the so-called "trial within a trial" because the substance of the matter has been clarified and determined by Mr. Grehan's own evidence.

I would now ask Mr. Grehan to return to the witness box to resume his evidence.

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