

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY,

19TH JULY 2004 AT 11.00 A.M.:

CHAIRMAN: Good morning, Mr. O'Neill, Mr. Walsh.

MR. O'NEILL: Good morning, Mr. Chairman.

MR. WALSH: Good morning, Chairman.

CHAIRMAN: Mr. O'Neill, do you want to start the proceedings?

MR. O'NEILL: Very good, Mr. Chairman, it's opportune to consider this application for costs, that is the application of Mr. Burke, for his legal costs in the context of Mr. Burke's involvement in the setting up of this Tribunal in 1997.

The background to the establishment of the Tribunal is set out in detail in chapter 1 of the Second Interim Report. In brief summary the facts are these: From 1995 onwards, James Gogarty made allegations that Mr. Burke had received a substantial payment of monies in 1989, from Mr. Gogarty's former employers, JMSE and from Michael Bailey of Bovale Developments, in order to ensure that approximately 700 acres of land in north County Dublin received rezoning or planning permission. These allegations came into the public domain in 1996 through the print media. But it was not until July of 1997, that Mr. Burke was named as the politician involved.

In August 1997, Mr. Ray Burke issued a public statement that he had been a target of a vicious campaign of rumour and innuendo during the previous two years. He acknowledged that he had received a political donation of 30,000 pounds in 1989 from Mr. Gogarty who said that JMSE wished to make the make to

11:10:44 1 him, but he rejected Mr. Gogarty's allegations of wrongdoing on his part and
2 maintained that he was the victim of a campaign of calumny and abuse.

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4 In his statement, Mr. Burke indicated that any further publications of this
11:10:58 5 material would result in him taking all necessary steps to vindicate his good
6 name and reputation.

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8 In September 1997, Mr. Burke took the opportunity of making a detailed
9 statement in the Dail and thereafter subjected himself to questions from
11:11:14 10 members. On the day after his statement, an opposition motion to have the
11 Moriarty Tribunal investigate the circumstances of the payment to determine
12 whether or not it merited a public inquiry was rejected by 76 votes to 69.

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14 On the 25th of September 1997, the full text of a letter of the 8th of June
11:11:37 15 1989 from Mr. Bailey to Mr. Gogarty seeking a 50 percent interest in the Murphy
16 lands in return for procuring planning permission and by-law approval for the
17 development of these lands was published in Magill magazine. On the 1st of
18 October 1997, on Taoiseach announced that the government had decided that a new
19 Tribunal would be set up to investigate all matters relating to the parcels of
11:12:04 20 land referred to in Mr. Bailey's letter and any related matters.

21
22 On the 7th of October 1987, the resignation of Mr. Burke as Minister for
23 Foreign Affairs and as a Deputy was announced in the house, prior to the motion
24 proposing the setting up of this Tribunal. In moving the motion, the Minister
11:12:24 25 for the Environment, Mr. Noel Dempsey, expressed his regret that Mr. Burke felt
26 it necessary to resign his position. He described the media coverage of the
27 issue to that date as, "This corrosive cruelty dressed up as principled
28 investigation" and he went on to say that the Tribunal should be the instrument
29 to conduct the investigation and to that in the process, it will protect the
11:12:49 30 integrity of those who serve our democratic institutions.

11:12:54 1
2 In the course of proposing the motion, the minister stated that it was time
3 that we forced people who corrode public confidence, to put their evidence on
4 the table and support the accusations they make. He said, it was time that we
11:13:09 5 cut away the undergrowth of rumour and nudge nudgery and rebuild public
6 confidence in the institutions where trust is essential.
7
8 The minister stated that, "the Tribunal will be a historic and pivotal
9 procedure if it can remove the lingering doubts about the planning process. If
11:13:29 10 doing so means that somebody stands fully accused and is proven to have taken a
11 bribe, distorted the integrity of the system, or been involved in other illegal
12 activities, that would be welcomed by the government and acted upon
13 immediately. We are all entitled to that. There is no one in this house who
14 has not felt the referred contempt resulting from perceived failures of
11:13:57 15 individuals. It is simply not fair on those of us, whether public
16 representatives or public officials trying to do a difficult job, if we find
17 that job complicated by malicious unjustified rumours.
18
19 We must ensure that when councillors take decisions, they do so for the common
11:14:12 20 good and the good of their constituency, not because they personally stand to
21 gain financially. It is because of that imperative, that the terms of
22 reference will enable the Tribunal to deal with all of the issues emerging from
23 the planning history of the lands referred to in the Bailey letter. The
24 government strongly believes that this flexibility in addition to capacity
11:14:35 25 vested in the Tribunal to deal with any acts, which in its opinion are corrupt,
26 is vital if the Tribunal is to isolate wrongdoers, if any exist, make specific
27 and actionable what has been vague and without consequence, and restore vital
28 trust in the systems established to serve citizens".
29
11:14:56 30 In closing the debate on the motion, the minister noted that from the

11:15:00 1 contributions which had been made, no one disagreed that there was a need for
2 judicial investigation to get to the bottom of the allegations, rumours and
3 innuendos, which have upset the planning system and have scant regard for the
4 good name and reputation of those who serve on public authorities, whether as
11:15:20 5 elected members or officers.

6
7 He said that if people are guilty of impropriety, he hoped that this would be
8 established and they would have to face the consequences of that their actions.

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11:15:31 10 If on the other hand people who had been fingered are innocent, it is even more
11 important that their good name be restored, that they are vindicated and that
12 the allegations and innuendos are refuted.

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14 The motion was duly passed and this Tribunal was appointed by the Minister for
11:15:50 15 the Environment on the 4th November 1997. Although the original Terms of
16 Reference of the Tribunal did not mention Mr. Burke by name, it is clear that
17 his role in the envisaged inquiry into the north Dublin lands would be central.

18
19 In the course of the Tribunal's preliminary investigations, further information
11:16:10 20 came to light which necessitated the amendment of the existing Terms of
21 Reference so as to broaden the inquiry beyond the investigations into the north
22 Dublin lands. As a result of the amended Terms of Reference, this Tribunal was
23 specifically obliged to enquire into whether any substantial payments were made
24 to Mr. Burke during the course of his 24 years in public life, which may in the
11:16:36 25 opinion of the Tribunal amount to corruption or which were made in
26 circumstances giving rise to a reasonable inference that the motive in paying
27 such money was improperly connected with any public office or position held by
28 him.

29
11:16:49 30 The Terms of Reference also require the Tribunal to establish whether Mr. Burke

11:16:56 1 did any act, or made any decision whilst holding such public office or position
2 which was intended to confer any benefit on any person.

3
4 The amended terms of reference became operable on the 15th July 1998 and from
11:17:14 5 that date, Mr. Burke was central to the Tribunal's inquiry. The preliminary
6 investigative work of the Tribunal resulted in decisions being taken to go to
7 public hearing on a number of separate issues in which Mr. Burke's actions were
8 scrutinized. These matters were reported upon in the Second and Interim Report
9 as the Brennan and McGowan module, the Century Module and the Gogarty Module.

11:17:40 10
11 Mr. Burke's application for costs, relates to his legal representation in
12 dealing with these matters. The public hearings conducted into these issues
13 lasted 313 days and involved 170 witnesses.

14
11:17:54 15 The only relationship between these modules is the central role played by
16 Mr. Burke in the events the subject matter of investigation in each module.

17
18 Consequently, Mr. Burke's evidence was crucial in each of the public inquiries
19 into these events.

11:18:12 20
21 Mr. Burke's application for costs today falls to be considered under the
22 provisions of section 6.1 of the Tribunals of Inquiry (Evidence) (Amendment) Act
23 1979 as amended. The principles upon which such application for costs should
24 be considered, has been the subject of your ruling of the 30th of June 2004.

11:18:34 25
26 The Tribunal is a fact finding exercise, its capacity to carry out its
27 functions is largely dependant upon the cooperation of the parties appearing
28 before it. It is evidence that failure to tell the truth to the Tribunal
29 amounts to non-cooperation and can amount to an obstruction of the Tribunal.

11:18:54 30

11:18:54 1 The importance of cooperation with the Tribunal was recognised in the Terms of
2 Reference, where the attention of the Tribunal was specifically drawn to the
3 desire of the House, that all costs incurred by reason of the failure of
4 individuals to cooperate fully and expeditiously with the inquiry, should so
11:19:13 5 far as is consistent with the interests of justice, be borne by those
6 individuals.

7
8 This present application is the application of Mr. Burke to the Tribunal for
9 payment by the Minister for Finance of his own costs.

11:19:27 10
11 It is not an application by others to have Mr. Burke pay their costs or the
12 costs of the Tribunal. In dealing with the present application, it is provided
13 by law, that you shall have regard for the Second Interim Report of the
14 Tribunal. The substantive findings made in relation to Mr. Burke's
11:19:46 15 participation in the events, the subject matter of the public inquiries
16 reported upon in the Second Interim Report, are that the circumstances in which
17 Mr. Burke acquired his former residence, Briar Gate, in 1974, amounted to the
18 conferring upon him of a substantial benefit and the motive of those providing
19 such benefit was an improper motive connected with Mr. Burke's position as an
11:20:12 20 elected representative of Dublin County Council.

21
22 Mr. Tom Brennan through Kalabracki Limited made a corrupt payment of 50,000
23 pounds to an account maintained by Mr. Burke, at AIB Bank (Isle of Man) Limited
24 on the 21st September 1982. A lodgment of 35,000 pounds on the 19th of April
11:20:35 25 1984 to the account of Mr. Burke held in the name of Caviar Limited at Hill
26 Samuel Bank, Jersey was a further payment made by Mr. Tom Brennan and his
27 associates and was a corrupt payment.

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29 The payment of 60,000 pounds to Mr. Burke's account in the name of Caviar
11:20:54 30 Limited on the 21st of November 1984 by Canio Limited was a further corrupt

11:21:02 1 payment to Mr. Burke. The payment of 15,000 pounds to the account in the name
2 of Caviar Limited on the 19th April 1985, was a further corrupt payment made by
3 Canio Limited to Mr. Burke.
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11:21:15 5 The payment of 35,000 pounds in cash made by Mr. Oliver Barry to Mr. Burke on
6 the 26th of May 1989 was a corrupt payment.
7

8 Mr. Burke issued a directive pursuant to Section 16 of the Radio and Television
9 Act 1988, to serve the private interests of the promoters of Century Radio and
11:21:36 10 did not act in the public interest in doing so. Mr. Burke's decisions in
11 relation to the proposed capping of RTE's advertising income, the diversion of
12 licence fee income from RTE to Century Radio and the possible reorganisation of
13 2FM, were all motivated by a desire on Mr. Burke's part to benefit those who
14 had paid him the 35,000 pounds in cash.

11:22:01 15
16 Mr. Burke received a corrupt payment of not less than 30,000 pounds from Joseph
17 Murphy junior on behalf of JMSE in June 1989, and at the same time received a
18 similar package from Mr. Michael Bailey, the contents of which are unknown.
19

11:22:22 20 The findings in the Second Interim Report of the Tribunal, represent a
21 rejection of the evidence of Mr. Burke as to how and why he was paid money by
22 the Murphy interests in 1989. It represents a rejection of his evidence as to
23 how he came to acquire his former home, Briargate, from Oak Park Developments
24 Limited, and a rejection of his evidence as to why he was paid substantial sums
11:22:47 25 of money through his Isle of Man and Jersey bank accounts.
26

27 It represents a rejection of his evidence as to why he fixed the level of
28 transmission charges to be paid by Century Radio, and of the circumstances in
29 which he came to be paid 35,000 pounds in cash by Mr. Oliver Barry in 1989.

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11:23:07 1 It involves a rejection of his evidence in relation to the introduction of
2 legislation to curb RTE's advertising revenue and to divert licence fee income
3 from RTE.
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11:23:20 5 Not only was Mr. Burke's evidence on these issues rejected as untruthful, but
6 the Tribunal went on to find that Mr. Burke had colluded with others to give
7 false evidence to the Tribunal in relation to the payments to his Isle of Man
8 and Jersey accounts.
9

11:23:39 10 The Second Interim Report concludes, that the consequences of Mr. Burke's
11 failure to give truthful evidence were that the Tribunal was obstructed and
12 hindered in its investigation and in its capacity to report upon the issues
13 raised in the matters under investigation, by reason of Mr. Burke's failure to
14 give truthful evidence. The specific failures on the part of Mr. Burke to
11:24:05 15 cooperate with the Tribunal are detailed in chapter 17 of the Second Interim
16 Report at paragraphs 17.05, A to G, in relation to the Brennan and McGowan
17 module, in paragraph 17.10 A to C in relation to the Century Radio module, and
18 in paragraphs 17.14, A to D in relation to the Gogarty Module.
19

11:24:29 20 It is not possible to identify what costs would have been incurred by Mr. Burke
21 had he complied with his obligations by giving a full and truthful response to
22 the inquiries made of him by the Tribunal. What is clear, however, is that the
23 actual legal costs, now claimed by Mr. Burke were incurred in perpetrating the
24 false account of events which he had given to Dail Eireann and in giving a
11:24:58 25 false account to the payments and benefits received by him both offshore and in
26 this jurisdiction. It is in respect of these costs that he now claims that he
27 is entitled in equity to have an order for costs made in his favour against the
28 Minister for Finance.
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CHAIRMAN: Thank you. Now, Mr. Walsh?

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MR. WALSH: Good morning, Mr. Chairman. Thank you for affording me this opportunity on behalf of the current applicant to make this application for costs and thank you also for your ruling earlier on, on the principles to be applied and we'd like to formally apologise for not being present here before you when you delivered the ruling but we are here now.

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11:25:37 10

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I'd just like to reiterate that we are going to rely on our earlier written submissions, I think we made two formal written submissions and there were two or three letters which we are relying on and we are also going to rely on the oral submissions we made last month and this is subject to the previous caveats which we mentioned at the outset on the occasion in June, last month.

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11:26:07 15

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Now, Mr. O'Neill has mentioned some matters which I wasn't on notice that he was going to mention but I'll proceed nonetheless. He did by way of background, say that the Tribunal was obliged to investigate Mr. Burke and in fact it was obliged to investigate his entire public life from 1967 until 1997, a span of 30 years.

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11:26:30 20

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He was central to the inquiry in the beginning when it was known as the Gogarty Module and he became the central figure thereafter when the Terms of Reference were amended and extended and the entire focus of the inquiry culminating in the Second Interim Report, was the applicant and his presence at the Tribunal both personally and with representation for several years, was necessary.

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11:26:47 25

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He wasn't a peripheral character, he was the main focus and this inquiry was set up by a Dail resolution, there was a political decision to set up the Tribunal. These investigations could have been carried out by the Dail or

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11:27:13 1 their Senate, by their subcommittees as they have done in the past and
2 hopefully in the future. They could have been carried out by the Gardai and/or
3 the DPP, or the Attorney General and in fact previous investigations in some of
4 these matters had been carried out by the Gardai and the DPP and the Attorney
11:27:29 5 General many years ago. After Mr. Gogarty's allegations came to light, the
6 Gardai also carried out some investigations and apparently immunity from
7 prosecution was granted to Mr. Gogarty, but no further matters were taken by
8 the DPP.

11:27:43 10 And what we would say is that it was never anticipated that the inquiry into
11 the applicant's public life would take five years to complete. The costs of
12 representation for a private citizen before such inquiry is impossible to bear
13 and we say his legal team could not have expected to be representing the
14 applicant for, what now turns out to be seven years. He resigned as you recall
11:28:08 15 from Mr. O'Neill's brief outline as minister once the matter came before the
16 Dail and he made his public statement.

17
18 Now, once we are in the reality of the situation, which is the Tribunal is set
19 up, Mr. Burke instructed us and at all times in fact cooperated with the
11:28:24 20 Tribunal is what we say. He regarded the Tribunal as an independent entity and
21 he respected the decisions taken by the Tribunal and its legal team as to what
22 lines of inquiry they would make, how they would make them, when they would
23 make them, how long they would take.

11:28:42 25 We know and we respect the judgment of the Tribunal when it determined the
26 nature, the extent, the length, the duration of the inquiries and of the public
27 hearings, and as to how they would conduct the public hearings, what witnesses
28 they would produce, in what order and what documents they would produce.

11:28:58 30 And the applicant and his lawyers were obliged to and they did cooperate with

11:29:04 1 the Tribunal in its endeavours. And, I mean if we just take, for example, the
2 Gogarty Module, I mean, suggestions were made that that could have been speeded
3 up by looking at the letter and the letter talked about that was the subject
4 matter of the lands in north Dublin. It identified specific lands and those
11:29:22 5 lands could have been investigated at the very outset as to ownership and
6 planning history, and then it would have been realised that there was no truth
7 in any of the rumours that were propagated by Mr. Gogarty at the time because
8 it was found subsequently after Mr. Gogarty gave evidence, when the planning
9 history and ownership history was gone into, that most of the land remained
11:29:47 10 agricultural for many years and it was only late in the day, in the Fianna Fail
11 or the Fine Gael rainbow coalition that there was some change in the land for
12 development purposes due to a tax initiative that came in, and there was one
13 other small parcel of land that had its planning status change add and that was
14 a give a dressing room facility for a local boys football team.

11:30:11 15
16 That was the evidence so the matters set out in the Gogarty Module at the time
17 were, could have been dealt with in a speedier way, on one view but we are not
18 criticising the Tribunal, Chairman, they are independent, it was their job to
19 do it anyway they saw fit and we respect that decision and we abided by that
11:30:33 20 decision. But because it took a certain length of time, we have to be involved
21 in it, we say that we are entitled to our costs on that module.

22
23 Now, before the Terms of Reference were amended, it's not referred to anywhere
24 in the report of the Tribunal, but it's clear from the transcripts of evidence
11:30:49 25 and from the documentation in private sessions with the Tribunal, that in fact
26 the payments that Mr. Burke received were disclosed by him to the Tribunal
27 before the Terms of Reference were amended. And he gave details of those
28 payments, of the various bank accounts in Ireland and abroad and the names on
29 the bank accounts and the identities of the donors.

11:31:13 30

11:31:13 1 So, in fact, it wasn't that they weren't discovered by the Tribunal, they were
2 discovered by the Tribunal, they were voluntarily furnished to the Tribunal by
3 Mr. Burke.
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11:31:22 5 Now, we say that to keep up with the Tribunal, and to be able to assist the
6 Tribunal as lawyers, we studied the voluminous amount of documentation and we
7 had to take instructions on the documentation from our client, and the Tribunal
8 had been in being for some time before we came on board, so we had some catch up
9 to do. And then with the judicial appointment, there was another appointment
11:31:53 10 and some more fast reading of documentation of transcripts that had, of
11 hearings that had taken place in public and of source documentation had to take
12 place as well, so that the applicant had considerable expense in the
13 circumstances which aren't of his making.
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11:32:14 15 Now, we say and Mr. Burke, we submit on behalf of Mr. Burke that as his
16 lawyers, we assisted the Tribunal during the public hearings with vital
17 information, facts, page references, suggestions and evidentiary concessions.
18 Now, we kept up with the necessary information and from time to time, we were
19 able to assist with cross referencing and producing documents or giving
11:32:40 20 explanations, just on a professional and courteous way with the lawyers for the
21 Tribunal. And on the evidentiary side, my Lord, we did not take any obscure
22 pedantic approach to it and we indicated at tall stages that all documents
23 could be deemed to be admitted in evidence without formal proof. There wasn't
24 a need to go through of the proof of documents in a chronological order with
11:33:10 25 the author of the document being here, with the original of the document and
26 with the original being compared with the typed copy and so on. We conceded
27 that there was no need to go through those legal formalities.
28

29 And as is evident from a cursory examination of the transcript of the hearings,
11:33:32 30 you will see that as lawyers for the applicant, we were very timely in our

11:33:38 1 approach and we didn't delay the Tribunal or the witnesses of the Tribunal. We
2 cross-examined, when we cross-examined in a very timely and courteous manner
3 and did not delay the workings of the Tribunal in any way.
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11:33:57 5 Sir, the Tribunal had to be run and was staffed by lawyers and by many lawyers
6 and many para-legal workers. They have all been paid on an ongoing basis.
7 Some of the other parties before the Tribunal in the various modules were in a
8 position to meet their legal and Tribunal costs and expenses on an ongoing
9 basis and some may even have been promised their cost. We don't know. The
11:34:24 10 applicant wasn't in a position to finance all the expenses, he could only make
11 a modest contribution towards them.
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13 Now, we say that the award of costs in this instance can not be result driven
14 and that I know the report is there and I know there are political pressure and
11:34:45 15 there's media pressure and there will be media pressure and comment no matter
16 what decision you make.
17

18 But, the decision has to be fair. And the Minister for Justice recently when
19 commenting on the question of costs for Tribunals in reference to the
11:35:03 20 participation of witnesses and parties before the Morris Tribunal, he indicated
21 that the intention of the Act as amended in 2004, was that the parties and
22 witnesses who cooperated with the Tribunal would be awarded their costs and
23 expenses at the end of the Tribunal and that the reason for the statutory
24 structure, which delayed the award of costs and the consideration of
11:35:25 25 applications for costs until the very end of the Tribunal when the report was
26 made was to act as a stick or a carrot for the Tribunal, so that it could hold
27 it over the parties or witnesses in order to encourage their cooperation, that
28 was the one weapon so to speak, that the Tribunal would have.
29

11:35:44 30 And we say that you have to consider the reality of the situation here where

11:35:50 1 other parties and witnesses have been or will be awarded their costs. And we
2 say in those circumstances, when you compare the fact that the Tribunal are
3 getting their costs, other parties are going to get their costs, that not to
4 award costs to this applicant in the circumstances would amount to an unfair
11:36:13 5 invidious discrimination, and would offend against the principle of
6 proportionality and would breach Mr. Burke's legal rights. And we say, in all
7 these circumstances, it would be equitable to grant the applicant an order for
8 costs because over the seven years of his involvement with the Tribunal, there
9 was never, ever, an intimation given to the applicant or his lawyers that costs
11:36:37 10 would not be paid and this encouraged Mr. Burke and his lawyers to continue in
11 their work with the Tribunal over the period of seven years.

12
13 Now, we say that, just referring briefly to your ruling, Mr. Chairman, that the
14 statutory provisions are as set out in your ruling and the relevant one is
11:36:59 15 Section 6 of the 1979 Act, as amended by section 2 of the 2004 Act. And I just
16 quote very briefly from the expert of that, which is at paragraph 4 of your
17 ruling, Mr. Chairman, where you cite a Section 6.1, sorry, at page 3 of your
18 ruling, where you cite the amended section. And there's just a couple of lines
19 I'd like to read:

11:37:32 20
21 "Where a Tribunal or, if the Tribunal consists of more than one member, the
22 Chairperson of the Tribunal is of opinion that having regard to the findings of
23 the Tribunal and all other relevant matters -- and then in brackets it goes on
24 to say -- including the terms of the resolution, the failing to cooperate
11:37:51 25 provide assistance, knowingly giving false or misleading information and so
26 on -- then it goes on to say -- there are sufficient reasons rendering it
27 equitable to do so, the Tribunal may deal with costs."

28
29 Now, there's just two matters I want to draw to your attention there. We say
11:38:07 30 that it's clear there that there are two basic categories of circumstances to

11:38:14 1 be considered. Firstly, the first category is the findings of the Tribunal,
2 because it says the Tribunal is of the opinion that having regard to the
3 findings of the Tribunal, so that's the first category. Then the second
4 category is all other relevant matters. And then in brackets in the section it
11:38:31 5 goes on to outline what some of those relevant matters are and one of the
6 relevant matters there is, that's mentioned is failing to cooperate. And so we
7 say that because there are two separate sections or two separate categories in
8 that section, that if there's a failing to cooperate mentioned in the report of
9 the Tribunal as there is here, that the failing to cooperate in the second
11:39:00 10 category under all other relevant matters, is a different failing to cooperate
11 which has to be considered by the Tribunal.

12 And so we see that you have to look at the conduct of the applicant and his
13 lawyers in the practical day to day running of the Tribunal to determine
14 whether or not there was a failure to cooperate, or whether or not he in fact
11:39:22 15 cooperated.

16
17 And now, as we outlined in our previous submissions we say that statutes
18 relating to costs are penal statutes and they have to be strictly construed or
19 interpreted and this, we say, must mean they are interpreted for the benefit of
11:39:40 20 the applicant and that he must get to use a sporting parlance, every hop of the
21 hop of the ball, when it comes to the question of costs. And in terms of the
22 findings of the Tribunal, we have already mentioned that for various reasons,
23 we asked you to ignore the findings, you said you can't, that as a matter of
24 statute, you have a discretion to consider them and you must consider them so
11:40:06 25 we say of course you are entitled to consider them. But ultimately, in order
26 to act in a constitutional manner and to give effect to the principle of
27 proportionality, you shouldn't attach as much weight to them as Mr. O'Neill
28 might say you should.

11:40:23 30 The reason we say that is that the findings as we have said before are flawed,

11:40:30 1 inaccurate and not sustainable at law, they are the subject matter of various
2 proceedings. And we go on to say just because there's a judgment or a finding
3 in the report which says we are not telling the truth or in fact we have told
4 lies, that's not the same as not cooperating. We say it's different.

11:40:54 5
6 Now, the, Mr. Chairman, you very helpfully set out at page 6 of your judgment,
7 or ruling on the principles at the bottom of that page where you said "in
8 circumstances where for example a party has cooperated fully with the Tribunal
9 by providing truthful information to the Tribunal, and is subsequently reported
10 upon by the Tribunal as having been corrupt, such a finding will not of itself
11 prevent such a person from recovering their costs, whether in whole or in part,
12 if I believe in all the circumstances it is equitable on order for costs should
13 be made."

14 And we say in the circumstances of this case, that that is an appropriate
11:41:35 15 principle to apply and that the benefit of it should go to the applicant,
16 because he voluntarily disclosed the monies that he had, the location of the
17 monies, furnished the ledger to the Tribunal which set out dates and
18 information and where the money went to and where it ended up and furnished
19 permission and consents to go and contact all the various banks and other
20 financial institutions to verify this information.

21
22 And, as we have also stated before, he consented to solicitors in Ireland and
23 abroad giving documents to the Tribunal and/or giving evidence before the
24 Tribunal and as you know, Mr. Chairman, there are issues of client/solicitor
11:42:26 25 privilege and confidentiality and without any delay, Mr. Burke waived all these
26 matters, so that all necessary information could be before the Tribunal for
27 analysis and debate.

28
29 At page 7 of your ruling, Mr. Chairman, you set it out the other relevant
11:42:49 30 matters, and listed the factors that you would consider and I just briefly run

11:42:56 1 through the factors that you have set out in paragraph 7, and say this current
2 applicant comes within those factors.

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4 And the first factor you indicated was the extent to which the applicant was
11:43:13 5 responsible for incurring costs and we say that the applicant did didn't not
6 engage in any activity that was outside the requirements of the Tribunal. All
7 the costs he has incurred were incurred in fully complying with the Tribunal
8 and its orders, by attending at the Tribunal, corresponding with the Tribunal,
9 causing searches to be made in banks and building societies to ensure that the
11:43:37 10 Tribunal was given correct information at the earliest time, given the time
11 span of the inquiries, it wasn't an easy task for either the Tribunal or
12 Mr. Burke to go back 30 years to get the necessary records, sometimes even 10
13 years was difficult to get records from the bank and on a number of occasions,
14 as you will see from the report and/or the transcripts, banks were denying any
11:43:59 15 knowledge of Mr. Burke and then eventually it came to light that they knew of
16 him and that he did have an account.

17
18 So, Mr. Burke was involved in a lot of work in trying to sort these matters
19 out. And as the subject matter of the Terms of Reference, he had no
11:44:16 20 alternative to participating in the Tribunal and any costs incurred were not
21 activated by him. And we say that it's highly unlikely that the Tribunal would
22 have proceeded to investigate his affairs and to conduct public hearings
23 without granting legal representation given that he was such a central figure
24 and that if he was such a central figure and was granted legal representation
11:44:40 25 and such representation was necessary to ensure the efficient and timely and
26 successful performance of the Tribunal has to be paid for.

27
28 Once he became the central core figure of the inquiry by name in the amended
29 Terms of Reference, it was effectively an inquiry into him. This had the
11:45:01 30 effect of significantly altering the Terms of Reference from the original one

11:45:06 1 which was a general inquiry into planning corruption, in which he was a witness
2 because of the letter and he was then a witness and required to give evidence
3 and then ultimately, under the amended Terms of Reference, it became an inquiry
4 sole into him personally and divided into a number of modules as was adverted
11:45:28 5 to by Mr. O'Neill.

6
7 We say that his participation in the Tribunal was essential to its remit and
8 the full participation of his legal team was absolutely necessary. In these
9 circumstances, otherwise the Tribunal couldn't have operated.

11:45:47 10
11 Now, another factor you have mentioned Mr. Chairman is the extent to which the
12 conduct of the applicant was responsible for costs being incurred by the
13 Tribunal. And we say that, we do not believe that he was in any way
14 responsible for costs being incurred by virtue of the amended Terms of
11:46:06 15 Reference, the Tribunal had to investigate all matters to do with the applicant
16 over a period of 30 years of public life. And these costs had to be incurred
17 regardless once the Terms of Reference were amended.

18
19 The applicant endeavoured to assist the Tribunal by voluntarily giving the
11:46:24 20 consents, making the disclosures with the financial institutions, procuring his
21 wife to furnish the necessary consents and disclosures, and corresponding on
22 behalf of Mr. Burke and Mrs. Burke with the Tribunal and with the banks and
23 others. So we endeavoured to speed up the inquiries of the Tribunal and to
24 verify that the information we had given was correct.

11:46:49 25
26 But, we say also on an overview, the costs incurred by the Tribunal were
27 considerably reduced by the timely and active cooperation of the applicant, who
28 when asked attended a private meeting, gave oral evidence, instructed paid
29 contribution towards solicitors and counsel and costings and accountants fees,
11:47:12 30 wrote to financial institutions worldwide, dealt promptly with all

11:47:15 1 correspondence both to and from the Tribunal and independently searched through
2 Allied Irish Banks and banks of Ireland, who gave misleading information and
3 only through the applicant's ongoing effort was the information brought home to
4 the Tribunal ultimately.

11:47:28 5
6 So in those circumstances, we say the level of total cooperation by the
7 applicant is obvious and apparent from any reading of the documentation.
8

9 Now, another factor, Mr. Chairman, is the nature and extent of any
11:47:46 10 non-cooperation or failing to assist the Tribunal by the applicant. And we say
11 that during the five years that the Tribunal was actively investigating the
12 applicant, either at public hearing or in correspondence, he was never accused
13 of non-cooperation. There was never any hint by the Tribunal legal team of
14 non-cooperation by Mr. Burke or his legal team. On the contrary, we say the
11:48:15 15 applicant made statements to the Tribunal, attended interviews and gave
16 evidence, complied with discovery orders, made disclosure, furnished over 100
17 authorities to the Tribunal and helped explain documentation from time to time.
18

19 We say therefore, by giving such fulsome cooperation in effect the applicant
11:48:33 20 made a legal firm available at his own expense to the Tribunal. The Tribunal
21 would have been put to considerable expense if the applicant did not seek legal
22 representation or try to represent himself. The applicant never at any time
23 contested any order of the Tribunal, never at any time went to court, never at
24 any time took issue with any of the orders but by more or less return post,
11:48:58 25 signed the authorities, when requested by the Tribunal and returned them to the
26 Tribunal to enable the Tribunal conduct its investigations.
27

28 It was not the applicant who prevented the information from the banks reaching
29 the Tribunal, it was the banks who were saying that particular accounts did not
11:49:17 30 exist both verbally and they also said it in writing and also said it by

11:49:23 1 witnesses, sometimes witnesses from abroad giving evidence in the witness-box.
2 The existence of these accounts were being denied by the banks.
3
4 The other factor to be considered, is the consequences which flowed from the
11:49:42 5 non-cooperation or failure to assist on the part of the applicant and we say
6 that this isn't of direct relevance to the applicant because he wasn't involved
7 in any non-cooperation or failure to assist with the Tribunal. By the
8 non-cooperation, I have mentioned above and I have mentioned in previous
9 submissions, he assisted the Tribunal and the Tribunal functioned much more
11:50:07 10 efficiently than if the applicant, who was the main focus of the Tribunal early
11 on, had been dilatory or had been slow in dealing with the Tribunal or had
12 refused to deal with the Tribunal.
13
14 Now, I know you have experience and will be able in a better position than I am
11:50:23 15 to compare and contrast the applicant's behaviour and approach to dealing with
16 the Tribunal to the behaviour and approach of other and various witnesses in
17 this module and in other modules to the Tribunal. So you will see that he is a
18 person who cooperated.
19
11:50:39 20 Another factor you have mentioned, Mr. Chairman, was the conduct of the
21 applicant before the Tribunal and we say from the matters I have outlined
22 already, that he conducted himself well and professionally and courteously with
23 the Tribunal in an effort to speed up the investigations of Tribunal and to
24 enable the Tribunal carry out its statutory functions. And from the inception
11:51:08 25 of the Tribunal, he conducted himself in an exemplary manner and was
26 complemented by Mr. Justice Flood at one stage, as being a competent witness.
27 He studied the papers and the documents extensively to bring him up to date on
28 events that happened 20 years ago. For example, in the Century Radio Module,
29 which involved technical and voluminous correspondence and reading the, the
11:51:33 30 applicant was able to demonstrate a clear grasp of the issues and to show that

11:51:37 1 he spent many hours in research, all of which speeded up the business of the
2 Tribunal because he was able to then properly instruct his legal team on the
3 matters set out in the documentation, and so we were then able to cooperate
4 with the Tribunal in the running of the module before the public hearing of the
11:51:59 5 Tribunal.

6
7 And then again, I would reiterate that the applicant never threatened to go to
8 the High Court and never in fact went to the High Court. At any stage, no
9 matter how he felt. He attended all the hearings punctually and without
11:52:18 10 question when requested. He spent some of his own money on two different legal
11 teams. On the applicant's instructions, his legal team had voluminous
12 correspondence with the Tribunal, all of which was dealt with expeditiously.
13 He gave hundreds of authorities to the Tribunals for the financial
14 institutions. He made discovery. He procured documents for discovery and he
11:52:45 15 attended over many hundreds of meetings with his solicitors and counsel.

16 Additionally, he kept up to date with the oral hearings of the Tribunal by
17 directly paying for transcripts of the evidence out of his own pocket. He had
18 to pay for secure transportation of the documents to and from the Tribunal and
19 additionally, he, I would like to reiterate again, that he agreed to all the
11:53:12 20 banks in Ireland and abroad to all the solicitors and other, in Ireland and
21 abroad and to all the financial institutions, in Ireland and abroad, giving
22 whatever information they had to the Tribunal and so we say that that bears the
23 hallmarks of a person who conducted himself well before the Tribunal.

24
11:53:31 25 Another factor you have mentioned is that you would have to regard to whether
26 he knowingly made false allegations of wrongdoing on the part of others. And
27 that factor wouldn't be relevant here at all, it's inapplicable because he
28 never made false allegations of wrongdoing on the part of others. He was
29 professional attentive and restrained in all his dealings with the Tribunal and
11:53:59 30 we would submit conducted himself in a respectful and competent manner in

11:54:05 1 dealing with the Tribunal in both direct in the witness-box and through
2 correspondence.
3
4 Now, another factor you mentioned, Mr. Chairman, was you would have regard to
11:54:18 5 the reasons, if ascertained why persons either failed to assist or did not
6 cooperate with the Tribunal or knowingly provided false information to the
7 Tribunal.
8 Now, we submit this is inapplicable, the applicant says that he did not fail to
9 assist or cooperate with the Tribunal and that he did not knowingly provide
11:54:39 10 false information to the Tribunal. In contrast to that, he says that he bent
11 over backwards to help the Tribunal with its work and it's his guiding
12 principle at all times and that which he devoted his life to since the setting
13 up of the Tribunal, was to ensure that he cooperated efficiently and worked
14 with the Tribunal to speed up its determinations.
11:55:06 15
16 And another factor you mentioned, my Lord, is that you would have regard to the
17 person circumstances of the applicant, including his financial status, and
18 financial liabilities arising from participation in the Tribunal. And as you
19 know from the documentation and the report, the applicant has suffered
11:55:23 20 financially and in terms of personal reputation and status because it ended his
21 ministerial career and it ended his political career, and any chance of
22 employment, he resigned as Minister for Foreign Affairs and also as a Teachta
23 Dail in order to devote himself full-time to the work of the Tribunal. So this
24 is how he has suffered personally and financially. He also endured seven years
11:55:50 25 of stress, public humiliation, a loss of standing in the community, and again,
26 this stems by and large from the ongoing publicity and participation in the
27 Tribunal.
28
29 He has incurred a substantial outstanding bill of costs for his legal team and
11:56:07 30 accountants. He cannot afford to discharge these legal and accountancy fees

11:56:12 1 arising from the participation in the Tribunal. In his submissions, the
2 Minister for Finance conceded that costs and expenses incurred, including the
3 legal and other costs associated with discovery and the procurement of
4 documents should be allowed. We agree with that principle insofar as it goes
11:56:30 5 but we say it should go further. We say that it would be an invidious
6 discrimination in all the circumstances not to allow the applicant his full
7 legal cost and expenses and to limit it only to costs of complying with
8 discovery from the legal perspective and the accountancy prospective.
9
11:56:50 10 We say the circumstances which make it necessary for all these costs to be paid
11 are that he was a central figure through the Tribunal, in reality ab initio and
12 certainly since the terms of reference were amended. The other circumstances
13 he to be considered is the nature extent and length and duration of the
14 Tribunal over which he had no control. It was a matter that was left entirely
11:57:16 15 to the independence of the Tribunal. And they determine these matters. In
16 fact, on an ongoing basis he cooperated with the Tribunal. He was a central
17 figure, he disclosed information concerning his monies, his evidence as
18 conceded by Mr. O'Neill, was crucial to the Tribunal and his participation in
19 the Tribunal was crucial. He had legal representation before the Tribunal from
11:57:48 20 the very start and his resources are not such that would enable him to
21 discharge the fees that have been incurred. The bills that have been incurred
22 by him as a result of the Tribunal, particularly as regards the duration of the
23 Tribunal, as it has affected him because had has up until recently, affected
24 him because he has been a central figure to it. Now he is not before the
11:58:18 25 Tribunal at the moment.
26
27 Now, another factor we say you have to consider the effect of the Tribunal on
28 his present financial status and on his future financial status and effectively
29 he is a pensioner. Now, you also have consider the work that was done by him
11:58:39 30 in preparing for the Tribunal and the witnesses that would give evidence and

11:58:43 1 the documentation that was associated with the Tribunal and again, I don't want
2 to repeat it but he did attend many consultations and was working in the
3 background giving instructions to solicitors and counsel on an ongoing basis.
4

11:59:00 5 We say there should be no discrimination between the legal costs associated
6 with running the Tribunal and the legal and other costs relating to the
7 administration associated with the Tribunal, which the minister seems to
8 confine us to, which is discovery and procurement of documents. Both are
9 intricately and intimately involved and we say there should be no
11:59:27 10 discrimination at all between legal and accountancy expenses. If they want to
11 give accountancy costs and expenses, why can't they give legal costs and
12 expenses.
13

14 You also have to compare and contrast the situation of the applicant with the
11:59:44 15 situation of other people before the Tribunal. The Tribunal and some of the
16 other witnesses and parties were fully resourced on an ongoing basis. The
17 applicant's legal team facilitated the Tribunal in expediting the investigation
18 to the extent that this would not have been possible without legal
19 representation. The legal team participated in good faith, that their fees in
12:00:04 20 acting for a former minister, who could not afford to pay the legal fees would
21 be discharged by the State in due course, at the end of the Tribunal once the
22 report had issued.
23

24 This wasn't a private matter that the applicant had to consult his lawyers in
12:00:19 25 or engage his lawyers in. It was a public matter. It was a very live public
26 issue and the investigation was commissioned by the Dail and the government.
27 They established the Tribunal and to investigate one of their own members in
28 relation to the allegations. They amended the Terms of Reference to include
29 him by name and we say in all these circumstances the onus must fall on the
12:00:43 30 State to pay for his legal representation, especially considering his financial

12:00:48 1 status arising from the inquiries' findings in the second report.

2

3 And also as a result of the investigations arising from these findings, the

4 amount can't settled recent CAB demand for some 600,000 euro and also faces

12:01:09 5 sentencing in relation to two charges before the Dublin Circuit Criminal Court.

6

7 Further, there could be financial penalties by way of fines on those charges.

8 Also, at this time, he is living on a public service pension and he has no

9 other properties or investments. He has no income other than his pension and

12:01:37 10 any funds that he had, have been used to pay for a contribution towards his

11 ongoing legal and accountancy bills.

12

13 Now, another factor you mentioned, Mr. Chairman, was that you would consider

14 the consequences of any order refusing costs in whole or in part. We say that

12:01:56 15 in an order is refused in whole or in part, the applicant will be unable to

16 meet his liabilities which are undertaken on the basis of his understanding

17 that his legal fees would be paid for by the Tribunal. There's no possibility

18 of his ever being able to meet the legal fees incurred in the representation

19 before the Tribunal. There was never the slightest suggestion from the

12:02:21 20 Chairman in the various modules that there was any lack of cooperation and on

21 the contrary, when Mr. Burke instructed his legal team that it was unnecessary

22 to be there on all days when matters not directly relevant to him were being

23 discussed, the Tribunal wrote, noting the absence of the legal team and

24 requesting us to return.

12:02:43 25

26 The applicant responded indicating that his wish was not to increase the burden

27 on the taxpayer, but confirming that he was monitoring the situation and his

28 lawyers were monitoring the situation through the transcripts. And again, at

29 that stage there was no suggestion of any lack of cooperation from the

12:03:01 30 Tribunal. And so we say that Mr. Burke behaved in a responsible manner in that

12:03:08 1 regard.

2

3 We say that if he is not awarded his costs, he will be discriminate against.

4 It would amount to a crippling financial burden and a penalty on him and we say

12:03:20 5 this was not the intention of the Dail at the time it set up the Tribunal. The

6 intention of the Dail was that the Tribunal investigate matters and report. It

7 would be unfair if he was being penalised in this way. It does not appear to

8 be the intention of the Act in our submission, it doesn't appear to be the

9 reading of the Act that the Minister for Justice is mentioned in relation to

12:03:45 10 the Morris Tribunal and we say that it must be unfair and unconstitutional when

11 other parties or witnesses and the Tribunal's own lawyers are being paid and/or

12 alternatively will get or will be awarded costs, or else are large public

13 bodies or private corporations who can afford their own costs.

14

12:04:09 15 Now, we say that in terms of the nature and extent of the costs, that it's also

16 fair to grant us, and equitable to grant us costs because the legal

17 representation employed was at all times of a minimum nature. The applicant

18 was granted legal representation with with expectation, and he had the

19 expectation that his costs would be paid but he didn't go overboard in

12:04:40 20 employing counsel and solicitors. He did his best to minimise the costs

21 incurred by instructing his legal team not to attend the Tribunal when purely

22 internal business arrangements, for example when the Brennan and McGowan module

23 was being discussed.

24

12:04:58 25 He was a central witness in the early part of the module and of the Tribunal

26 and by the nature of his instructions, to his legal team, it made the Tribunal

27 much more efficient and he helped to achieve its goals in a timely and

28 efficient manner by, for example not unnecessarily delaying the Tribunal with

29 pedantic legal or evidential points or with long lasting and needless

12:05:32 30 cross-examination of witnesses. Again a cursory glance at the transcripts

12:05:33 1 showed that all cross-examination was a very short duration.
2
3 In good faith, the applicant will submit that he paid some fees on account of
4 his own monies or then monies, on the understanding that his costs would be
12:05:46 5 paid at the end of the day because he cooperated and that's what he always set
6 out to do. And as an illustration of that, he was never in all of the seven
7 years, told or warned that his costs might not be paid. And he was never told
8 or warned that he was failing to cooperate or in a phrase often used by the
9 former Chairman, Mr. Justice Flood, he was never told to consider his position
10 or to stand down overnight or anything like that.
11
12 And we say that it's equitable to grant Mr. Burke his costs because by its
13 conduct, the Tribunal allowed Mr. Burke to believe that his costs would be paid
14 by granting him the legal representation and by never conveying to him any
12:06:25 15 warnings that his costs would not be paid. And we say that it is equitable to
16 grant him his costs, because to refuse his costs would be unfair, unjust and
17 would be lacking impartiality. The Tribunal should deal fairly and equally
18 with all the witnesses. The Tribunal did not accept some of the evidence given
19 by Mr. Burke but as against that, his level of cooperation was even greater
12:06:51 20 than that from some who will apparently definitely get their costs.
21
22 Given his level of cooperation and assistance, we say that to deal fairly and
23 equally with the applicant, his costs have to be paid. The applicant himself
24 dealt fairly and equitably and timely with the Tribunal by being a responsible
12:07:15 25 witness who has incurred costs in giving full cooperation to the Tribunal and
26 due consideration should be given by the Tribunal to what is fair unbiased and
27 impartial in relation to his application for costs.
28
29 And again, a refusal of cost to the applicant it would be a major penalty on
12:07:36 30 him, it would financially break him and it would mean that he would have no

12:07:41 1 legal representation for any future work of the Tribunal, and in effect it
2 would inflict a punishment of him which would be an unfair penalty and we say
3 it is not within the remit of the Tribunal or its Terms of Reference to impose
4 a punishment and a refusal to grant him costs would be outside the Tribunal's
12:07:58 5 remit.

6
7 We note, Mr. Chairman, that you said that as well as considering the findings
8 of the previous Chairman in the report, you would consider a review of the
9 transcripts and the correspondence where relevant, and we say that even a
12:08:14 10 cursory glance at that will show that the applicant was a meticulous, diligent
11 and attentive witness who attended and cooperated with the Tribunal to the best
12 of his ability.

13 The applicant played a substantial role in the Gogarty module, the Century
14 Radio Module and the Brennan and McGowan module by being available to the
12:08:35 15 Tribunal as a witness, by researching his topics of inquiry, by engaging the
16 solicitor and counsel. By attending to the correspondence, all of which was
17 responded to promptly and he gave evidence in the 1999, 2000 year and 2001 year
18 and we fully accept that the question of costs is a matter to be at your
19 discretion, Mr. Chairman, but again, we reiterate that the non-awarding of
12:09:05 20 costs would be a penalty and that's a factor that you have to consider, when
21 weighing up the considerations to be given to various factors. One of the
22 factors that you are entitled to consider is the findings of the report, but we
23 would say that you cannot give undue weight to those findings given that they
24 are not accepted by this applicant and by others and given that there are legal
12:09:31 25 proceedings concerning them from various parties.

26
27 And finally, we would point out that the applicant is an individual, he is not
28 a corporation with unlimited funds. In his attempt to cooperate with the
29 Tribunal, his own personal funding has been used. He never had enlarged assets
12:09:59 30 as some other individuals or corporation entities had before the Tribunal and

12:10:04 1 that in all those circumstances, the refusal of costs would place an unfair
2 penalty and burden on the applicant.

3
4 And I have nothing further to add, thank you, Mr. Chairman.

12:10:17 5
6 CHAIRMAN: Thank you, Mr. Walsh.

7
8 MR. O'NEILL: There are just one or two matters I'd like to raise which
9 are factual corrections, which I think should be noted at this point.

12:10:27 10
11 In the course of his address to you, sir, Mr. Walsh made reference to the fact
12 that Mr. James Gogarty had an indemnity against prosecution in respect of his
13 evidence. I want to make it clear that Mr. Gogarty neither sought, nor was
14 ever granted an immunity against prosecution. That he was at all times a
12:10:47 15 witness who was subject to prosecution by the DPP in the event that there was
16 evidence which indicated that he was a person who had committed a criminal
17 wrong and was subject to criminal law.

18
19 The second issue is that Mr. Walsh, in the course of his address to you,
12:11:06 20 indicated that had the Tribunal gone about its inquiry in a certain way, that
21 is by examining in detail the land ownership structures and the planning
22 history of the lands, that it would have and I quote Mr. Walsh on this point
23
24 "It would have been realised that there was no truth in any of the rumours that
12:11:23 25 were propagated by Mr. Gogarty at the time because it was found subsequently
26 after he gave evidence when the planning history and ownership was gone into
27 that most of the land remained in agricultural use for many years."

28
29 Now, I'd say in relation to that that the findings of the second interim report
12:11:42 30 were clear, Mr. Gogarty's evidence was accepted that at the time of the payment

12:11:50 1 of the monies to Mr. Burke, it was indicated that these monies were paid to him
2 as a bribe so that Mr. Burke would use his influence to affect the rezoning and
3 planning history of the Murphy lands so I think it is factually incorrect to
4 make the statement that Mr. Walsh did on that point.

12:12:10 5
6 Equally, I'm concerned somewhat on the submissions that are made on the basis
7 that Mr. Burke at all times assisted and cooperated with the Tribunal. That
8 runs entirely in the teeth of the findings of the second interim report. I
9 accept that Mr. Walsh can, of course, make a case that in the respects that
12:12:28 10 were not reported upon in the report, his client assisted or cooperated with
11 the Tribunal; obviously any provision of documentation can, viewed in
12 isolation, be deemed to be of assistance but it is incorrect to state that in
13 relation to the payments that were made to Mr. Burke that he assisted and
14 cooperated with the Tribunal. The Tribunal as of this date is left in the
12:12:53 15 position that no explanation, sorry, no credible explanation, has been given to
16 Tribunal by Mr. Burke for the reasons he received substantial financial
17 benefits and payments between 1974 and 1984. His evidence that these payments
18 to which he admitted were, in fact, political contributions was established as
19 being untruthful by the Tribunal and therefore for Mr. Walsh to advance to you
12:13:26 20 that you should view the matter in the light of cooperation in relation to the
21 payments and the offshore bank accounts is factually incorrect.

22
23 For the record, it should be pointed out that the Isle of Man account which
24 Mr. Burke operated was not disclosed to the Tribunal until it appeared in
12:13:46 25 correspondence from his solicitors on the 28th of June 2000, months after he
26 had disclosed the Jersey account, which was incapable of being concealed
27 because of the references to it in discovered documentation.

28
29 Equally, I think it is correct and is necessary to point out that Mr. Burke
12:14:09 30 retracted the evidence which he had given initially in the witness-box by

12:14:13 1 writing to your predecessor, Judge Flood, to give a wholly and separate and
2 different account of the circumstances upon which he had already given
3 evidence.
4

12:14:28 5 Now, in some way it might be suggested or is suggested which Mr. Walsh that the
6 fact that Mr. Burke was not openly criticised in the course of the Tribunal,
7 and particularly referred to the obligations which he had to cooperate with the
8 Tribunal, should in some way be accepted as a fact that the Tribunal was not
9 critical of his approach and I think you will see that it is quite clear from
12:14:57 10 the evidence that was given that Mr. Burke was under no illusions but that the
11 accounts which he was giving were totally and diametrically opposed. The
12 Tribunal learned of the fact that these were not political payments, not
13 through any acknowledgment by Mr. Burke that that was the case, but rather
14 because the Tribunal established through Bedell and Cristan, the firm of
12:15:26 15 solicitors in Jersey, that the monies which were supposedly political donations
16 according to the donors, Messrs. Brennan and McGowan, and the recipient,
17 Mr. Burke, in fact came from the proceeds of sale of land in County Dublin
18 through a company called Canio.
19

12:15:44 20 Even to this date, and as is reported in the report, no explanation has been
21 given by the directors of Canio, Messrs. Brennan and McGowan, or by Mr. Burke
22 to explain why these monies were paid so that the Tribunal has conducted an
23 inquiry for years which has established forensically the fact of payments, the
24 manner in which these payments were made but has been unable to determine the
12:16:11 25 reasons why these payments were made specifically in relation to Irish land
26 transactions.
27

28 The only other matter then that I would raise, it's suggested by Mr. Walsh in
29 the course of his submission that the Tribunal requested the legal team of
12:16:29 30 Mr. Burke to return upon their not attending. That isn't factually correct.

12:16:38 1 The Tribunal did write to them to indicate that evidence which was relevant to
2 their client's position was being heard and putting them on notice that
3 findings might be made in due course against their client but it was not with a
4 view to requesting their attendance. It is, of course, appropriate that
12:16:55 5 parties should only attend at public hearings of the Tribunal where there are
6 issues which affect them and with which they intend to take issue at some point
7 in time. Thank you, sir.

8
9 CHAIRMAN: Do you wish to, on behalf of the state, do you wish to say
12:17:12 10 anything?

11
12 MR. COONIHAN: Chairman, no, I'm just holding a watching brief on behalf of the
13 Minister for Finance.

14
12:17:19 15 CHAIRMAN: Thank you.

16
17 MR. WALSH: Thank you very much, Mr. Chairman.

18
19 CHAIRMAN: Hopefully I will be in a position to give a decision in September
12:17:27 20 and your solicitors will be notified in advance of whatever date.

21
22 MR. WALSH: Thank you, sir.

23
24 CHAIRMAN: All right. Thank you very much.

12:17:37 25
26 MR. O'NEILL: The Tribunal then, sir, will sit on Wednesday morning at 10.30.

27
28 CHAIRMAN: Wednesday morning to resume the current module.

29
12:18:18 30 **THE TRIBUNAL THEN ADJOURNED UNTIL WEDNESDAY,**

12:18:26 1 **21ST JULY 2004, AT 10.30 A.M.:**

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