

Opening Statement

16th December 1998

Good morning Ladies and Gentlemen.

On the 10th December I wrote to the Editors of 8 Newspapers expressing my concern following upon the continuing publication in the print media of confidential material provided to the Tribunal and circularised by the Tribunal on a strictly confidential basis. I sought an undertaking from each of the Editors, to whom I had written, that any confidential material which had been provided to the Tribunal or which had been circularised in confidence by the Tribunal would not be published in the future.

In view of the responses to my request, I decided to hold a public sitting of the Tribunal to allow for submissions to be

made to me on the issue as to whether or not I should make an Order restraining such unauthorised publication. My reason for seeking the undertaking in the first instance was, as stated, my concern that such publications could interfere with the workings of the Tribunal.

As I stated in my letter, this Tribunal has received a volume of complaint from parties whose rights are claimed to have been infringed by such unauthorised publications. I have been informed by persons who are potential witnesses to the matters under investigation that their ability to participate fully in the work of the Tribunal is hampered by their belief that any information provided by them to the Tribunal will be published in the media. Other parties have indicated their ability to participate in the Inquiry is limited by fears that their confidentiality would be breached if they were to co-operate as fully as required by the Tribunal. The Tribunal has spent a considerable

amount of time and effort in endeavouring to deal with these concerns.

This situation cannot be allowed to continue. It was my hope that the Editors of the Newspapers in question would accede to my request and thereby deny those persons intent on disrupting the activities of the Tribunal the opportunity of doing so.

Unfortunately, this hope has not been realised and it now falls on me to decide whether or not I should make an Order restraining such further publication.

In relation to the past unauthorised publications, the matter is currently under Garda investigation following complaints made by me to the Garda authorities.

My concern at this time is to prevent similar acts in the future. I do so not to interfere with the legitimate press

coverage of the matters in issue. Any Orders, which I may make, would not interfere in any way with the legitimate reporting of the facts or issues involved nor would it interfere with the right of the press to comment on the workings of the Tribunal.

The nature of the Tribunal is such that its investigative work must be carried out in private.

The Supreme Court in the recent decision of Haughey and Others v Moriarty and Others delivered the 28th day of July 1998 expressly stated that if the investigations of the Tribunal were to be held in public it would be a breach of fair procedures because many of the matters investigated may prove to have no substance and the investigation thereof in public would unjustifiably encroach on the constitutional rights of the person or persons affected thereby.

In the conduct of this Inquiry I am obliged to conduct the affairs of the Tribunal in accordance with constitutional justice and the rights of all parties concerned. The Tribunal has been scrupulous in maintaining the confidence of the information provided to it to date. The circulation of any material to others has been solely on the basis that they had a legal entitlement to receive that information. All parties to whom information was circulated were informed that the material was being provided to them on a strictly confidential basis. The subsequent publication of this material in the newspaper constitutes a serious breach of the terms upon which this information was provided. In the circumstances, I can see no justification for [further] publication of such material in the media.

I can assure the public that all relevant matters stemming from these investigations will be heard in the proper forum, namely, in the public sittings of this Tribunal.

I am mindful of the important role played by a free press in any democracy and adopt the concise statement of Sir John Donaldson, Master of the Roles, in *Francombe v Mirror Group Newspapers Limited* 1984 2 England Reports where he said *"The media, to use a term which comprises not only the newspapers but also television and radio are an essential foundation of any democracy. In exposing crime, anti-social behaviour and hypocrisy and in campaigning for reform and propagating the views of minorities, they perform an invaluable function. However, they are particularly vulnerable to the error of confusing the public interest with their own interest. Usually these interests march hand in hand but not always. In the instant case pending a trial it is impossible to see what public interest would be served by publishing the contents of the tapes which would not equally be served by giving them to the police or the Jockey Club. Any wider publication could only serve the interest of the Daily Mirror."*

As is apparent from that case, the newspapers sought to publish in advance of an Inquiry, material which had come into its possession improperly and sought to justify its intended publication on the basis of public interest.

I will give careful consideration to the submissions which will be made to me by the legal representatives of those present before reaching any final decision on the issue.

I shall now hear applications for representation.