

**TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING
MATTERS AND PAYMENTS**

Appointed by Instrument of the Minister for the Environment and Local
Government dated the 4th day of November 1997 and as amended by
Instrument dated the 15th day of July 1998-12-18

OPENING STATEMENT

OF

**THE SOLE MEMBER
JUSTICE FEARGUS M. FLOOD**

Tuesday 12th January 1999

Introduction

The purpose of today's public sitting is to hear, at the earliest appropriate opportunity, the evidence of Mr. James Gogarty, a person named by the Oireachtas in the terms of reference of this inquiry, and also any related evidence.

The Tribunal has decided, in view of Mr. Gogarty's age, his general condition of health, and the importance of ensuring that his evidence is available to the Tribunal, that the Tribunal should sit in public and hear his evidence at an early stage of the proceedings of this Tribunal.

This course is neither unprecedented nor unusual. Courts and Tribunals frequently make arrangements to take the evidence of particular witnesses at a time, or at a place, out of the usual sequence or place, in which that evidence would normally be heard. This is but a particular example of the established practice of hearing evidence *de bene esse*.

The Tribunal has decided that the evidence of Mr. James Gogarty should, in the public interest, be heard at this time. Mr. Gogarty has appeared in answer to the witness summons served on him by the Tribunal and I intend to hear his evidence directly.

Tribunal of Inquiry

These proceedings, established under the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998, are an inquiry by this Tribunal into definite matters of urgent public importance identified by the Oireachtas in its terms of reference. These proceedings are also inquisitorial in nature.

The central purpose of this Tribunal is to seek to establish facts and to make appropriate recommendations in relation to those facts.

There is no person on trial in this inquiry. There is no prosecution and no defence. It is important to note that Section 5 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 provides that any statement or admission made by a person before a tribunal of inquiry is, generally, not admissible against them in any criminal proceedings.

Similarly, these proceedings are not an adversarial civil trial concerned with attributing civil liability as between a plaintiff and a defendant.

Equally, there is no jury, criminal, civil or otherwise, in this Tribunal. The Oireachtas has decided that this Tribunal should comprise a sole member, a judge of the High Court, to hear evidence, find facts and make recommendations.

Less there should be any doubt it should be clearly understood that this Tribunal is the sole authority in relation to what evidence is heard by the Tribunal and as to the weight, if any, to be attributed to any evidence so heard.

The Tribunal does not intend to be limited in its inquiry by an inflexible adherence to the traditional adversarial rules of evidence. In the course of this inquiry it may be necessary (on occasion) for the Tribunal to relax the rules of evidence in regard to some particular witness or an aspect of their evidence. The Supreme Court has anticipated and approved of this approach in its decision in *Goodman International & Another v. Mr. Justice Hamilton & Another* reported at (1992) 2 I.R. 542.

In relation to this aspect of evidence, which may be heard by the Tribunal, Lord Diplock in the decision of *R. v. Deputy Industrial Injuries Commissioner, ex parte Moore* reported at (1965) 1 All E.R. 81 helpfully states at page 94 of that report:

“The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue.”

This does not mean, and should not be taken to mean, that in the words of Mr. Justice Henchy in *Kiely v. Minister for Social Welfare (No.2)* (1977) I.R. 276 at page 281 the Tribunal can “... *act in such a way as to imperil a fair hearing or a fair result.*”

The correct approach to this matter can be found in the decision of Mr. Justice Hamilton, when as sole member of the *Tribunal of Inquiry into the Beef Processing Industry* (Pn. 1007), he indicated that that tribunal having “... *sifted through rumour and hearsay...*” relied “... *only on evidence, properly admitted, for its findings.*” (See: page 9, paragraph (34) of the Report). This approach was specifically approved by the Supreme Court in the *Goodman International* case already referred to.

This Tribunal, at all times, must respect the constitutional rights of all persons whose interests may be affected by the course of this inquiry. Those constitutional rights include the right to fair procedures and the right to constitutional justice as interpreted by the Supreme Court in a series of recent decisions, including *Haughey & Others v. Mr. Justice Moriarty & Others* and *Bailey & Others v. Mr. Justice Flood & Another* both delivered on the 28th July, 1998 and *Redmond v. Mr. Justice Flood* delivered on the 6th January, 1999.

Witnesses

The decision as to what witnesses will be called to give evidence before the Tribunal, and the order in which those witnesses are to be called is a matter within the sole discretion of the Tribunal.

The Tribunal has requested witnesses to provide statements of their intended evidence in advance of any hearing so that the Tribunal is aware of the nature of any evidence sought to be adduced and to ensure that notice of that evidence is given to interested parties.

The Tribunal will, where appropriate, issue and serve a summons under the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998 on persons to ensure their attendance before the Tribunal.

Procedure

Counsel for the Tribunal will in the first instance question any person giving evidence before the Tribunal. At that stage only those persons who can satisfy the Tribunal that they have a legitimate interest in the evidence of that witness will be permitted to ask questions of that witness. The order of questioning a witness by any interested parties will be decided solely by the Tribunal.

The legal representative appearing on behalf of a witness may question his client at the conclusion of the opening questioning by Counsel for the Tribunal, or he or she may defer their questioning until all other interested persons have concluded their questioning of that witness. Finally, Counsel for the Tribunal will be permitted to conclude any questioning of that witness.

If any interested person wishes to have the evidence of a particular witness adduced before the Tribunal they should first provide the solicitor to the Tribunal with a written statement of that person's intended evidence together with any relevant submissions. If the Tribunal decides to call that person in evidence the Tribunal will issue and serve a summons on that person, notify interested persons of that persons intended evidence, and call that witness in evidence in the same manner as all other witnesses.

Conduct

The Tribunal is required to devise and regulate its own procedures. In that regard it should be clearly understood that it is an unalterable minimum standard in this Tribunal that all witnesses, whatever the nature of their evidence, are to be treated with courtesy and respect.

The Tribunal will not tolerate any attempt at bullying, intimidation, or rudeness to any witness or person attending at, or giving evidence before, the Tribunal. In particular the tone and language of any questioning of a

witness, or any submissions made to the Tribunal, must reflect the courtesy and respect properly due to a tribunal established by the Oireachtas.

In addition, it should be clearly understood that when the Tribunal has decided any particular question, or matter of procedure, that decision is, in the ordinary course, final. The Tribunal will not permit serial submissions from any legal representative in an effort to revisit a decided question or matter.

Applications to the High Court

This Tribunal, in common with other tribunals, has received almost weekly threats from various persons that the Tribunal will be enjoined by them in the High Court. Where appropriate, the Tribunal welcomes the supervisory jurisdiction of the High Court. At the same time the Tribunal does not intend to desist from its work in the face of these threats.

In the event that some interested person announces to the Tribunal their intention to apply to the High Court for relief the Tribunal will continue with its inquiry work unless it is considered by the Tribunal not appropriate to do so, or the High Court makes an order enjoining the Tribunal.

Unauthorised disclosures of information

The Tribunal remains concerned at the apparently systematic pattern of unauthorised disclosures in the media of documentation and information confidential to the Tribunal. The Tribunal has been carrying out its own inquiries into this matter, and has made a detailed criminal complaint to An Garda Siochana in relation to this matter.

An Garda Siochana has informed the Tribunal that a criminal investigation under the supervision of two-experienced Garda superintendent's is presently being carried out on foot of this complaint. The Tribunal is satisfied that this criminal investigation has been afforded an appropriate level of priority and resources having regard to the importance of the matters being investigated.

Mr. James Gogarty

The Tribunal now intends to proceed to hear the evidence of Mr. James Gogarty. It should be clearly understood by all persons attending at this Tribunal that Mr. Gogarty is a person of mature years. The Tribunal has already decided that it is in the public interest that his evidence be heard. While in no way expressing a view on any evidence that this witness may give I require that this witness be treated with the dignity and respect that will be afforded to all witnesses who give evidence before this Tribunal.

I will deal with any submissions in relation to the admissibility of this witness's oral evidence as it arises in the course of his giving evidence.

It may be necessary from time to time to take short breaks in this witness's evidence and these breaks will be indicated at the appropriate time.

Mr. Kavanagh please have the witness take an oath or affirm as may be appropriate.

12th January 1999