

1           THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 25TH FEBRUARY,  
2           1999 AT 10:00AM:

3  
4           CHAIRMAN: Good morning, everyone.

5  
6           Arising out of the events of yesterday, I wish to say the  
7           following:

8  
9           **Background.**

10          This Tribunal is presently hearing evidence in public from  
11          Mr. James Gogarty, a person specifically named in the terms  
12          of reference of this Tribunal.

13  
14          Mr. Gogarty has, in the course of giving evidence to the  
15          Tribunal, made various statements that materially affect  
16          the interests of Joseph Murphy Structural Engineers Limited  
17          and its related companies and persons (whom I shall refer  
18          to collectively as JMSE).

19  
20          At an early stage of this Tribunal JMSE sought, and were  
21          granted, an order for limited representation before the  
22          Tribunal in relation to their interests.

23  
24          JMSE and related companies and persons or properly  
25          interested persons to be represented before the Tribunal in  
26          relation to the evidence being presently adduced by  
27          Mr. James Gogarty.

28  
29          The Tribunal has been, and continues to be, conscious of  
30          its duty to ensure fair procedures in respect for the  
31          constitutional rights of JMSE in common with all other  
32          interested persons before the Tribunal.

1 .  
2 This does not mean that the Tribunal is required to take  
3 the "side" of any person in these proceedings. In fact,  
4 having regard to the inquisitorial nature of a tribunal,  
5 there are no "sides" to an inquiry. The sole function of a  
6 tribunal is simply to inquire into existence, or otherwise,  
7 of the facts relevant to its terms of reference and where  
8 appropriate to make any recommendations thereon. The only  
9 facts upon which a tribunal is entitled to rely are those  
10 which are established in evidence at a public sitting.

11 .  
12 **The Facts**

13 In the course of yesterday's hearing before the Tribunal, I  
14 rose following an exchange with Mr. Garrett Cooney, Senior  
15 Counsel, so as to afford him the opportunity to apologise  
16 to the Tribunal.

17 .  
18 At the relevant time Mr. Cooney was cross-examining  
19 Mr. Gogarty on the content of a document described as a  
20 draft affidavit or draft statement. It transpired that  
21 this document was prepared by Mr. Gogarty's then  
22 solicitors, Messrs. Donnelly Neary Donnelly in August,  
23 1997. The document was not signed by Mr. Gogarty and he  
24 has stated in evidence that he never swore or signed it.  
25 Mr. Cooney wished to put to the witness an extract from  
26 this document apparently to illustrate an apparent  
27 inconsistency between this document and the affidavit sworn  
28 by the witness on 12th October, 1998.

29 .  
30 I made a ruling that this document should be put by  
31 Mr. Cooney to the witness in its correct context.  
32 Counsel for Mr. Gogarty having stated that it was quite

1 clearly a draft not signed by the witness.

2 .  
3 Mr. Cooney maintained his entitlement to put the document  
4 to the witness on the basis, and I quote, "... this  
5 affidavit is in the first person singular, this document is  
6 in the first person singular, it's 'I', he refers to 'I'."  
7 Mr. Cooney went on to state, and I quote: "... somebody  
8 may have actually typed it out for him, but it's plainly in  
9 his words , plainly in his words."

10 .  
11 Following upon an intervention by counsel for the Tribunal  
12 to clarify that the document was not a draft affidavit but  
13 rather a draft of a statement, Mr. Cooney accused counsel  
14 to the Tribunal of attempting to sabotage that part of his  
15 cross-examination. I ruled that no person was seeking to  
16 sabotage the cross-examination by Mr. Cooney. In reply  
17 Mr. Cooney stated, "It seems likely, Mr. Chairman."

18 .  
19 The Tribunal then invited Mr. Cooney to put to the witness  
20 the document concerned in its proper context. In reply  
21 Mr. Cooney stated: "Please, Mr. Chairman, Mr. Gallagher  
22 interrupts me, Mr. Callanan interrupts me." The Tribunal  
23 again invited Mr. Cooney to put the document concerned to  
24 the witness in the proper context. Mr. Cooney then, in  
25 strident tones, addressed the Tribunal as follows:

26 .  
27 "Mr. Chairman, what is going on here? Are you going to  
28 give us a chance to defend ourselves in this Tribunal?"

29 .  
30 The clear inference from these remarks is that the Tribunal  
31 itself had wrongfully sought to interfere with the  
32 constitutionally protected right of JMSE to defend their

1 interest before the Tribunal. This is not the case.

2 .  
3 The Tribunal stated to Mr. Cooney that the content and  
4 manner of his remark to the Tribunal were both insulting  
5 and insolent. In response, Mr. Cooney stated: "It's well  
6 justified, Mr. Chairman by the...." Mr. Cooney did not  
7 complete his remark as the Tribunal forthwith adjourned so  
8 as to allow time to Mr. Cooney to apologise.

9 .  
10 These are the material facts in relation to the request  
11 made by the Tribunal to Mr. Cooney for an apology for his  
12 remarks concerning this Tribunal.

#### 13 . 14 **Consequences**

15 The remarks made by Mr. Cooney in their effect constitute a  
16 serious and direct challenge to the integrity of this  
17 Tribunal and, in consequence, if left unchallenged, may  
18 hinder the proper functioning and effectiveness of the  
19 Tribunal.

20 .  
21 A tribunal is not a court of law. This does not mean,  
22 however, that there is not a requirement for decorum and an  
23 appropriate respect for the procedures applicable in the  
24 Tribunal.

25 .  
26 It is a regrettable fact that in advance of these remarks,  
27 Mr. Cooney yet again saw fit to announce to the Tribunal an  
28 intention to apply to the High Court to judicially review  
29 this Tribunal. The Tribunal has already publicly indicated  
30 that in terrorum threats of High Court intervention would  
31 not be allowed to impede its work.

32 .