

THE TRIBUNAL RESUMED AS FOLLOWS ON

THURSDAY 9TH DECEMBER 2004 AT 2 PM:

13:10:34 1
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4 CHAIRMAN: Morning Mr. Gallagher. In relation to the ruling on Mr -- in
14:06:04 5 relation to Mr. O'Kelly. This is the ruling of the Tribunal.

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7 In the course of giving evidence to this Tribunal on Wednesday the first of
8 December, 2004, Mr. Barry O'Kelly, declined to identify the source or sources
9 of information and documentation provided to him and which formed the basis of
10 articles written by him and published in -- I'm going to ask Judge Faherty to
11 read it. I might cough the whole way through it.

12
13 JUDGE FAHERTY: Very well I will start again then.

14
15 This is the ruling of the Tribunal in the course of the giving evidence to this
16 Tribunal on Wednesday 1st December 2004, Mr. Barry O'Kelly declined to identify
17 the source or sources of information and documentation provided to him and
18 which formed the basis of articles written by him and published in the editions
19 of Sunday Business Post newspaper on the 17th of October 2004, on 24th October
14:07:02 20 2004.

21
22 The Sunday Business Post, on 17th October 2004 referred to the content of
23 documentation relating to the Coolamber Inquiry which commenced it's public
24 hearing on Tuesday of this week. The documentation in question was
14:07:41 25 confidential to the Tribunal and had been circulated in advance of the public
26 hearings to a limited number of parties or their solicitors, early in October
27 2004.

28
29 These parties and their solicitors were directed by the Tribunal to treat the
14:07:55 30 information and documentation furnished to them as strictly confidential, which

14:07:59 1 was not to be disclosed to any third party.

2

3 In an article in the Sunday Business Post on the 24th October 2004, Mr. O'Kelly
4 specifically referred to the contents of a confidential statement of Mr. Jude

14:08:13 5 Campion, a witness in the Carrickmines module and reproduced the upper portion
6 of that statement. The statement of Mr. Campion, together with other relevant
7 information and documentation had been earlier circulated by the Tribunal to a
8 limited number of parties or their solicitors with the direction that it's
9 content remained confidential until opened in evidence in the course of public
10 hearings.

11

12 While much of the said statement of Mr. Campion was subsequently referred to in
13 evidence in the public hearings of the Tribunal, the Tribunal directed that
14 there should be no public disclosure of the names of certain individuals at
15 that time.

14:08:49

16

17 Nevertheless, and in spite of this direction which as it is clear from the
18 article was known to Mr. O'Kelly, the article proceeded to identify the
19 individuals in question.

14:08:58

20 In correspondence with Mr. O'Kelly and the Sunday Business Post, the Tribunal
21 requested Mr. O'Kelly to return the copy of Mr. Campion's statement, which he
22 clearly had in his possession and which had been reproduced in part in his
23 article on the 24th October 2004. He did not do so.

14:09:17

24 In the course of his evidence to the Tribunal on the first of December 2004,
25 Mr. O'Kelly admitted that had he destroyed the Campion statement document and
26 all the documentation relating to the two articles and that such destruction
27 had taken place after he became aware of a direction of the Tribunal not to
28 destroy any of the documents.
29
30

14:09:34

14:09:35 1
2 Mr. O'Kelly stated that he took this action for the purposes of protecting his
3 source or sources and that he felt he was entitled to proceed in this way
4 because of journalist privilege.

14:09:48 5
6 Mr. O'Kelly also stated in his evidence that while did he not wish to be
7 disrespectful of, or uncooperative with the Tribunal, he deemed it appropriate
8 to refuse to reveal the source or sources of the information and documentation
9 in question on the basis that as a journalist such source or sources were
10 sacrosanct and that he felt he was entitled to rely on journalist privilege in
11 refusing to divulge this information.

12
13 Since it's establishment the Tribunal has encountered significant problems with
14 leaks to the media of confidential information and documentation. In an effort
14:10:06 15 to curtail such leaks it is has questioned journalists, written to newspapers
16 and referred to a number of specific leaks to the Gardai for investigation.
17 But with no success in either revealing the source or in stopping the practice
18 of publishing information which is confidential to the Tribunal.
19

14:10:40 20 Indeed it should be pointed out that the Sunday Business Post and an associated
21 newspaper have on previous occasions published such leaked information.
22

23 The effect of the leaking of confidential information and documentation and the
24 publication of this material by newspapers is extremely serious. It involves a
14:11:03 25 blatant defiance of directions of the Tribunal as to confidentiality of
26 information and documentation by in the first instance, the individual or
27 individuals who leak the material, and secondly, the newspapers and journalists
28 who do, knowing of the confidential nature of the material and in most cases
29 the fact that the Tribunal has decreed that it is to remain confidential,
14:11:26 30 proceed nevertheless to publish such information.

14:11:28 1
2 Indeed on the 24th October 2004, the Sunday Business Post actually reproduced a
3 copy of a portion of a confidential statement which was clearly worded
4 confidential.

14:11:38 5
6 Such publication is not isolated or rare. It has become a fairly regular
7 feature in some newspapers and is a matter of immense concern to the Tribunal
8 and to parties who furnish information and documents to the Tribunal.

14:11:52 10
11 The Tribunal is satisfied that as a matter of probability the effect of the
12 publication of such information is to undermine, obstruct and hinder it's work.
13 Such publication almost certainly acts to dissuade potential witnesses from
14 coming forward, from making statements and providing documentation to the
15 Tribunal or otherwise cooperating with the Tribunal.

14:12:13 16
17 On many occasions parties affected by the publication of confidential
18 information and documentation or their solicitors, have bitterly complained to
19 the Tribunal about the leaking of such information and have pleaded with the
20 Tribunal to take steps to prevent it recurring.

14:12:31 21
22 Mr. McCullagh, senior counsel acting on behalf of Mr. O'Kelly and the newspaper
23 has made detailed submissions to the Tribunal in support of the contention that
24 in the circumstances relating to the publication of these articles, Mr. O'Kelly
25 is entitled to claim journalist privilege and is entitled to refuse to disclose
26 his source or sources and that he should not therefore be ordered to do so.

14:12:52 27
28 It is Mr. McCullagh's submissions, can be summarised as follows:

29 1. The law on the issue of journalistic privilege must now be considered in
14:13:07 30 the light of European Convention of Human Rights Act 2003, which came into

14:13:11 1 effect in this country in January 2004.

2

3 2. The issue of journalist privilege must now be decided in accordance with

4 the principles enunciated in this legislation.

14:13:22 5

6 3. The Tribunal must take into account any judgement of the European Court of

7 Human Rights that is relevant to the issue.

8

9 4. The Tribunal having considered the decision in the case of Goodwin versus

14:13:32 10 the UK should adopt a similar approach and acknowledge that Mr. O'Kelly should

11 not be obliged to reveal his source or sources in relation to the October

12 articles.

13

14 Mr. McCullagh also referred to number of English decisions which indicate

14:13:47 15 positions generally similar to views expressed in Goodwin case.

16

17 5. For a number of reasons Mr. O'Kelly should not be obliged to reveal his

18 source or sources including, that because disclosure of documents has occurred

19 there is no longer any confidential information to be protected. That there is

14:14:04 20 nothing to be gained by protecting the content of these documents or the

21 information contained therein.

22

23 That the Tribunal's only remaining legitimate interest in pursuing the matter

24 currently being considered is to identify the source or sources in question.

14:14:20 25 That the information disclosed in the documents is not a hundred per cent

26 confidential, as the documents have already been circulated to a limited number

27 of parties by the Tribunal and have been or will in the future be opened in the

28 course of public hearings.

29

14:14:34 30 That adequate alternative steps have been taken -- that inadequate alternative

14:14:41 1 steps have been taken by the Tribunal to identify the source or sources of the
2 leaks. That an order directing Mr. O'Kelly to disclose the information sought
3 by the Tribunal is futile, as it is his intention to refuse to reveal this
4 information in any event irrespective of any decision of this Tribunal or the
14:14:57 5 courts.

6
7 Because the Tribunal is not a court of law, it has a limited role in the manner
8 in which it is free to interpret the law on any subject. Clearly a Tribunal
9 must from time to time interpret the law and consider decisions of the courts
14:15:19 10 in order to assist itself to understand and ascertain the laws applicable in
11 any given situation. Furthermore, and more importantly, it must have regard to
12 the relevant statutory provisions relating to any particular issue and the
13 relevant decisions of the courts.

14
14:15:28 15 The Tribunal is satisfied that it has the power to summons Mr. O'Kelly, and
16 other individuals summonsed pursuant to the provision it's the Tribunal of
17 Inquiry Acts 1921 to 2004, for those reasons stated in the summons and it is
18 also satisfied that where an order of the Tribunal is disobeyed it may refer
19 the matter to the High Court.

14:15:49 20
21 The power of the High Court to impose sanctions or penalties for failure to
22 obey an order of the Tribunal is clearly provided for in the relevant
23 legislation.

24
14:15:59 25 In the case of Kybert and others versus Hamilton 1992 Irish Reports at page
26 257, the power of the chairperson of what was known as the Beef Tribunal, to
27 direct Mr. Kybert, a journalist and editor of the Sunday Business Post, to
28 appear before the Tribunal and divulge his source of information published in
29 the Sunday Business Post was upheld by the High Court. Mr. Justice Blaney said
14:16:24 30 in the course of his judgement at page 266:

14:16:29 1
2 "It is perfectly understandable that some people be would be reluctant to make
3 material available to the Tribunal, if they thought there was a risk it could
4 appear in the public press before being put in evidence at a hearing of the
14:16:42 5 Tribunal. And if witnesses were dissuaded from coming forward with material
6 relevant to the inquiry, then clearly the Tribunal would be hampered in
7 carrying out it's functions, in that it would be deprived the opportunity of
8 hearing witnesses and considering material which might be of assistance to it.
9
14:16:59 10 Apart from this, it seems to me that the Tribunal has to take steps to ensure
11 that no further articles would be published, based on material submitted in
12 confidence to the Tribunal. If it did nothing about the articles which had
13 appeared in the Sunday Business Post there would be a risk of recurrence and
14 the step which he took by making the relevant order was for these reasons
14:17:21 15 necessary in the circumstances."
16
17 In the course of his judgement in the case of in re Kevin O'Kelly 1974 Irish
18 Law Times Reports at page 97, Mr. Justice Walsh stated:
19
14:17:35 20 "Journalists or reporters are not any more constitutionally or legally immune
21 from other citizens from disclosing information received in confidence. The
22 fact that a communication was made under terms of expressed confidence or
23 implied confidence does not create a privilege against disclosure, so far as
24 the administration of justice is concerned the public has a right to every
14:18:03 25 man's evidence, except for those persons protected by constitutional or other
26 established and recognised privilege".
27
28 In effect, the views expressed in re Kevin O'Kelly case were adopted and
29 approved in the course of the judgement of Mr. Justice Geoghegan in the Court
14:18:20 30 of Criminal Appeal hearing of the Catherine Nevin murder case appeal 2003 Irish

14:18:27 1 Reports. The decisions of the Superior Courts referred to all predate the
2 enactment of the European Convention on Human Rights Act 2003. It is clear
3 that the provisions of the 2003 Act contemplate circumstances where in the
4 interests of protecting free speech, a journalist may not be legally obliged to
14:18:48 5 reveal his sources, the act of 2003 clearly stipulates that organs of the State
6 and which include Tribunals, must perform their functions in a manner
7 compatible with the State's obligation under the convention provisions, subject
8 to any other relevant statutory provision or rule of law.
9

14:19:08 10 The judgement in the European Court of Human Rights case of Goodwin versus the
11 UK, 1996 European Court of Human Rights Reports, provides a very useful insight
12 into how that court viewed the application of the European Convention on Human
13 Rights. To the question of a journalist's privilege, in the context of the
14 provisions of the UK Contempt of Court Act 1981, there is no similar
14:19:34 15 legislation in this jurisdiction.
16

17 The European Court considered a number of issues and tests which it believed
18 should be applied in determining whether or not journalistic privilege should
19 be respected or denied. It is clear that the approach of the court is
14:19:51 20 different to the approach adopted by the Superior Courts in this country
21 predating the enactment of the 2003 Act. It is clear from the decision of the
22 Court of Human Rights that the law should and does recognise journalistic
23 privilege in certain circumstances, and that such privilege should and will be
24 respected in many instances.

14:20:13 25
26 This Tribunal has been established by the Oireachtas pursuant to specific
27 legislative provisions to carry out a public inquiry into matters of obvious
28 public importance. Because of the nature of it's inquiries, the necessity to
29 conduct a detailed preliminary investigation in private, and to consider a vast
14:20:33 30 amount of information and documentation in confidence is vital to it's very

14:20:38 1 existence. If this was not the position, or was impossible, the Tribunal
2 simply could not function as intended. Coupled with this is the need to ensure
3 that parties supplying information and documentation to the Tribunal are
4 themselves satisfied that assurances and guarantees of confidentiality are
14:20:58 5 respected and upheld.

6
7 Instances where confidentiality is compromised or breached for any reason serve
8 to act as a disincentive to members of the public in coming forward to assist
9 the Tribunal and providing it with information and documentation. That the
14:21:15 10 Tribunal should be in a position to create the necessary trust and confidence
11 in it's procedures in order to persuade persons to come forward with
12 information is clearly and undoubtedly in the public interest.

13
14 Where a constitutionally established Tribunal proceeds to impose full or
14:21:32 15 partial conditions of confidentiality in relation to specific information or
16 documentation, it does so in order to enable it to conduct it's inquiries in a
17 proper manner and to ensure that such information or documentation is not
18 unnecessarily or prematurely disclosed in the public arena.

19
14:21:50 20 To enable a Tribunal to perform it's very important function it must of
21 necessity, be in a position to ensure that the necessary steps are taken to
22 prevent the leaking of confidential material and where ever possible, to ensure
23 that the leaking of such material is not repeated.

24
14:22:10 25 In most cases where information is leaked through the media, there are a number
26 of parties to the leaking. There is the party who provides the information or
27 documentation to the reporter, and there is the newspaper which proceeds to
28 publish it. In the instant case there is no doubt but that the person or
29 persons who furnished to Mr. O'Kelly and his newspaper the information and
14:22:31 30 documentation in question had received this information and documentation on

14:22:37 1 terms of strict confidence from the Tribunal.

2

3 It is undoubtedly the case that the person or persons was/were not entitled to
4 divulge the information to any party, with the exception of their legal

14:22:49 5 advisers, and certainly not to any newspaper.

6

7 Equally, it is clear that Mr. O'Kelly and his newspaper, at the time they
8 received the information and the documentation and at the time they actually
9 published same, were fully aware as to the confidential nature of the

14:23:06 10 information and documentation and the fact that the Tribunal had directed that
11 it ought not to be divulged, other than to a small number of individuals who
12 were entitled to receive the information and documentation as part of the
13 circulation of information and documentation in advance of or during the public
14 hearings of the Tribunal.

14:23:26 15
16 Furthermore, it is clear that Mr. O'Kelly was aware that specific information
17 relating to the identities of certain individuals and which he proceeded to
18 identify in the Sunday Business Post of the 24th October 2004, was itself the
19 subject of a direction by the Tribunal at public hearings that such identities
14:23:47 20 would not be, were not to be revealed.

21

22 In effect, Mr. O'Kelly received information and documentation which he knew to
23 be confidential to the Tribunal, and proceeded to reveal same in his newspaper
24 articles.

14:24:00 25

26 Applying the approach and logic of the European Convention on Human Rights, the
27 European Court of Human Rights in the Goodwin case, the Tribunal believes the
28 position to be as follows:

29

14:24:12 30 1. Insofar as the exercise of the right of freedom of expression may be

14:24:18 1 interfered with by a requirement to Mr. O'Kelly to identify his sources, such
2 requirement is clearly prescribed by the domestic law of this country.

3
4 The decisions in the superior courts to which reference has been made, clearly
14:24:34 5 indicate that there is no such thing as sacrosanct journalistic privilege and a
6 refusal to reveal a source of information by a journalist is a matter of the
7 utmost seriousness and a matter which may result in significant sanction
8 including imprisonment.

9
14:24:52 10 The judgement of Mr. Justice Blaney in the case of Kybert and another versus
11 Hamilton is of particular relevance as it was decided on facts which are
12 broadly similar to the facts in the instant case.

13
14 2. The likely effect of the enactment of the Act of 2003, subsequent to the
14:25:09 15 relevant decisions of the superior courts, is that the circumstances in which a
16 journalist may be entitled to refuse to disclose the identity of the source
17 have been significantly widened, but falls very much short of establishing
18 anything close to absolute journalistic privilege.

19
14:25:28 20 3. Did the interference pursue a legitimate aim? The Tribunal is satisfied
21 that the requirement to reveal Mr. O'Kelly's sources is a reasonable measure
22 designed not only to identify the particular source, but also to ensure to a
23 very great extent that there would be no recurrence of improper disclosures
24 of confidential information and documentation.

14:25:51 25
26 In the course of the private and public inquiries being undertaken by the
27 Tribunal and having regard to the sensitive nature of much of the information
28 and documentation accumulated by the tribunal in the course of its work, the
29 aim of taking steps to ensure that such information or documentation is not to
14:26:09 30 be broadcast publicly in breach of confidentiality imposed by the Tribunal, is

14:26:14 1 a legitimate aim and an aim very much in the public interest.
2
3 4. On the question of whether the requirement to Mr. O'Kelly to reveal his
4 source or sources amounts to interference "Necessary in a democratic society"
14:26:35 5 it is again clear that the circumstances prevailing in the instant case are
6 indeed exceptional in that there are both vital public and individual interests
7 at stake. The public interest relates to the work and mandate of the Tribunal
8 and the individual interests are the interests of the individuals whose
9 identities have been properly and clearly ordered not to be divulged or in
14:26:58 10 circumstances where individuals are identified long before they have an
11 opportunity to respond to statements relating to them, or where such
12 individuals may never have an opportunity to publicly respond to such
13 statements.
14
14:27:12 15 5. The European Court of Human Rights in the course of it's judgement in the
16 Goodwin case referred to a submission at paragraph 38 that:
17 "Although there is a general public interest in the free flow of information to
18 journalists, both sources and journalists must recognise that a journalist's
19 expressed promise of confidentiality or his implicit undertaking of
14:27:37 20 non-attribuality may have to yield to greater public interest".
21
22 The court held at paragraph 39 that, and I quote:
23 "Having regard to the importance of the protection journalistic sources for
24 press freedom in a democratic society, and the potentially chilling effect of
14:27:56 25 an order of source disclosure has on the exercise of that freedom, such a
26 measure cannot be compatible with article 10 of the convention, unless it is
27 justified by an overriding requirement in the public interest".
28
29 It is also interesting to note that in the Goodwin case the journalist
14:28:20 30 acknowledged that he had no special privilege by virtue of his profession and

14:28:23 1 that journalists are not above the law. He himself recognised and accepted
2 that there were circumstances where the law, legitimately would require a
3 journalist to reveal his sources.
4

14:28:34 5 In the case of John and others, the Express Newspapers and others 2000, at page
6 1931, it was held that before a journalist should be required to break what was
7 described as a most important professional obligation to protect a source, a
8 minimum requirement was that other means of identifying the source should first
9 be explored. The Tribunal is satisfied that all reasonable steps have been
10 taken by the Tribunal in the instant case to identify the likely source of the
11 information and documentation that was used by Mr. O'Kelly in the two articles
12 but without success.
13

14 The Tribunal is also mindful of the fact that inquiries conducted by the
14:29:17 15 Tribunal and a Garda inquiry in previous instances of leaks to the media failed
16 to produce absolute proof of the identities of the sources in question.
17

18 The Tribunal is satisfied that it acted correctly and legitimately in directing
19 Mr. O'Kelly to reveal the source or sources of the confidential information and
14:29:34 20 documentation which were the subject of his articles in the Sunday Business
21 Post editions of the 17th and 24th October 2004, and that for the purposes of
22 it's functions it is necessary and appropriate that he do so in order to assist
23 the Tribunal in ensuring the leaking of such information and documentation in
24 the future does not recur and in order for it to be placed in a position where
14:29:58 25 it can consider the credibility and motivation of the individual or individuals
26 responsible for the leaking of information and documentation.
27

28 That's the ruling.
29

14:30:09 30 CHAIRMAN: Thank you. Mr. Lucey, do you wish -- we'll rise for a few minutes

14:30:14 1 if you want to have a look. I can give you a copy of the ruling if you want to
2 discuss it with your client.

3
4 Mr. Lucey: Yes if you don't mind for a few moments Chairman, thank you.

14:30:33 5
6 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**
7 **AND RESUMED AGAIN AS FOLLOWS:**

8
9 CHAIRMAN: All right?

14:46:46 10
11 MR. LUCEY: Yes thank you, Chairman. Mr. O'Kelly understands the ruling of the
12 Tribunal.

13
14 CHAIRMAN: All right, Mr. Gallagher?

14:46:52 15
16 MR. GALLAGHER: In the circumstances, Sir that's -- do you wish to have --

17
18 CHAIRMAN: I think Mr. O'Kelly should come back to the witness box and be
19 formally asked, so that we have the --

14:47:04 20
21 MR. GALLAGHER: I see. Mr. O'Kelly please.

22
23 CHAIRMAN: The record properly --

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14:47:10 1 **MR. O'KELLY RETURNS TO THE WITNESS BOX, HAVING BEEN PREVIOUSLY**
2 **SWORN, AND IS QUESTIONED AS FOLLOWS BY MR. GALLAGHER:**
3
4 Q. 1 Mr. O'Kelly you are sworn as a witness, you were sworn on the last day on which
14:47:32 5 you gave evidence. You have heard the ruling of the Tribunal on the matter. I
6 again ask you on behalf of the Tribunal whether you are willing to disclose to
7 the Tribunal the source or sources of the information and the documentation
8 which you caused, wrote, in an article -- in the articles in the Sunday Tribune
9 on the 17th and 24th of October last?
14:47:59 10 A. Business Post.
11 Q. 2 I beg your pardon. Sunday Business Post my apologies. On the 17th and 24th
12 October last. Are you willing to disclose to the Tribunal the source or
13 sources of the information and documentation?
14 A. I don't want to sound patronising but with the greatest respect I am not,
14:48:23 15 unfortunately.
16
17 CHAIRMAN: All right, Mr. Kelly. You are aware that the Tribunal is in effect
18 ordering you to disclose the sources? And you have decided not to obey that
19 order.
14:48:35 20 A. I am fully aware of that yes.
21
22 CHAIRMAN: And you have been advised as to what the possible consequences
23 might be?
24 A. I am fully aware of the consequence.
14:48:43 25
26 CHAIRMAN: Thanks fine. Thank you very much.
27
28 MR. GALLAGHER: Thank you.
29
14:48:46 30 **THE WITNESS THEN WITHDREW.**

14:48:48 1
2 MR. GALLAGHER: Sir, there has been some correspondence with the solicitors for
3 Mr. O'Kelly and the Sunday Business Post since the matter was last before the
4 Tribunal and I don't know whether you wish to have that documentation opened
14:49:05 5 for the record?

6
7 CHAIRMAN: No, no. Well no I don't think it's necessary. It was in effect --

8
9 MR. GALLAGHER: Yes, well I think --

14:49:13 10
11 CHAIRMAN: I think Mr. Dinan was here.

12
13 MR. GALLAGHER: All right. Mr. Dinan please.
14 I can tell the Tribunal that the solicitors for Post Publications Limited,
14:49:28 15 trading as the Sunday Business Post have indicated that their client would not
16 give an undertaking as sought by the Tribunal in the course of correspondence,
17 and the Tribunal again wrote to the solicitors in question today, indicating
18 that they would be asking Mr. Dinan on behalf of the Sunday Business Post to
19 give an undertaking in the following terms to the Tribunal:

14:49:57 20
21 An undertaking that the Sunday Business Post will not publish information or
22 reproduce documentation in relation to which it is aware that the Tribunal has
23 directed that such information or documentation should remain confidential
24 until disclosed at public hearing or as otherwise directed".

14:50:16 25
26 You are aware of that correspondence Mr. Dinan, I take it?

27 A. Yes, I am.

28 Q. 3 And you have read the letter in question?

29 A. Yes I have.

14:50:24 30

14:50:24 1 CHAIRMAN: Well perhaps, I know that letter was just sent out this morning is
2 Mr. Martin and Mr. Lucey, are you aware of the content of the letter that went
3 out this morning?
4

14:50:33 5 MR. LUCEY: Yes. We have received that letter Mr. Chairman.
6

7 CHAIRMAN: And Mr. Dinan, I presume is aware of the content of that letter?
8

9 MR. LUCEY: Yes, he has seen it.
10

14:50:43 10

11 **MR. DINAN, HAVING BEEN PREVIOUSLY SWORN, RETURNS TO THE WITNESS**

12 **BOX AND IS QUESTIONED BY MR. GALLAGHER AS FOLLOWS:**
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14 MR. GALLAGHER: Mr. Dinan are you prepared to give an undertaking in the terms
15 set out in that letter?
14:50:49 15

16 A. No, I am not.
17

18 CHAIRMAN: Can we take it then Mr. Dinan, that the position of the Sunday
19 Business Post is that where in circumstances where the Tribunal has given a
20 direction that particular information or documentation is to remain
21 confidential, that the Sunday Business Post will not abide by that direction?
14:50:59 20

22 A. That's correct, Chairman.
23

24 CHAIRMAN: All right thank you.
25

14:51:13 25

26 MR. GALLAGHER: Thank you Mr. Dinan.
27

28 **THE WITNESS THEN WITHDREW.**
29

14:51:17 30 CHAIRMAN: All right that concludes the matter. The Tribunal will consider

14:51:26 1 the position and we'll be in contact with Mr. Martin in the -- we'll be in
2 touch with Mr. Martin in due course. All right?

3

4 MR. GALLAGHER: Thank you.

14:51:37 5

6 **THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,**

7 **FRIDAY 10TH DECEMBER 2004 AT 10.30 AM.**

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