

10:37:30

1

**THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,**

2

**21ST JULY, 2005, AT 11:00 A.M.:**

3

4

CHAIRMAN: Good morning.

11:00:43

5

6

None of the parties listed in today's list were granted representation by

7

the Tribunal. All but two were nevertheless represented by solicitors in

8

their dealings with the Tribunal. All of the parties have been

9

circulated with the detailed written submissions made on behalf of the

11:01:03

10

Minister for Finance and would be aware that the Minister has submitted

11

that a party who was not granted representation by the Tribunal is not

12

entitled to an award of costs under current legislation.

13

14

All of today's applications are for awards of costs in respect of costs

11:01:21

15

incurred in relation to work associated with the matters reported on in

16

the Second and Third Interim Reports of the Tribunal.

17

18

I am satisfied that all of today's application have fully cooperated with

19

the Tribunal in its work.

11:01:33

20

21

When each party is called, they may, if they wish, make oral submissions.

22

All written and oral submissions, including those made on behalf of the

23

Minister for Finance, will be considered prior to any Ruling being made.

24

11:01:48

25

It is my current intention Rule on today's applications before the end of

26

this month. And I would ask parties when they make their applications to

27

identify themselves for the record.

28

29

Mr. Kavanagh will call out the parties.

11:02:02

30

11:02:02 1 REGISTRAR: For mention. Donnagh O'Donoghue.  
2  
3 MR. LAYNG: I appear on behalf of the Applicant, Chairman.  
4  
11:02:11 5 CHAIRMAN: All right. Do you wish to make your application?  
6  
7 MR. LAYNG: Chairman, we have filed a written submission which we  
8 mentioned to you last week. And that was filed, I understand, before 11  
9 a.m. on Monday morning of this week. It's an eight page submission. I  
11:02:26 10 would propose to waive reading the submission into the record if that's  
11 acceptable.  
12  
13 CHAIRMAN: That's very acceptable.  
14  
11:02:33 15 MR. LAYNG: Thank you very much, Chairman.  
16  
17 REGISTRAR: Bernard Cooke.  
18  
19 MR. DEVITT: Chairperson, Noel Devitt, instructed by Douglas & Barrett.  
11:02:43 20  
21 My application, Chairperson, isn't that Mr. Cooke be awarded his full  
22 legal costs.  
23  
24 Now, I have noted what you have said in relation to legal representation.  
11:02:53 25 As I understand it, an application to be represented was made by counsel  
26 on behalf of Mr. Cooke. I don't have the date. My solicitor appears to  
27 be en route but it would have been made sometime prior to the 16th of May,  
28 '03. I think that application was made to your predecessor.  
29  
11:03:15 30 I have also noted your comments in relation to adverse findings. And in

11:03:20 1 relation to the conduct of witnesses. And quite clearly, therefore, Mr.  
2 Cooke fits into that category of people who co-operated fully and  
3 expeditiously and weren't involved in any way in disrupting the Tribunal  
4 or involving it in any way that it would have incurred costs that it  
11:03:40 5 otherwise wouldn't have incurred.

6  
7 Mr. Cooke was requested to appear before the Tribunal. The chairperson  
8 would be aware in what context Mr. Cooke was contacted. And there is no  
9 need for me to rehearse that.

11:03:57 10  
11 He appeared in public session as a witness and he gave his testimony.  
12 And the chairperson has indicated that no adverse findings, either of  
13 factor of conduct, are contained in either the Second or Third Interim  
14 Reports in as much as it's relevant, in relation to Mr. Cooke's evidence  
11:04:19 15 and in relation to his conduct.

16  
17 In those circumstances, Chairperson, I say that Mr. Cooke should be  
18 entitled to the costs of his representation.

19  
11:04:31 20 Now, that's my brief application. However, if you wish to me to elaborate  
21 or if you have any further questions for me I will try to assist you in as  
22 much as I can.

23  
24 CHAIRMAN: Well, you say the information that I have is that no grant of  
11:04:48 25 representation was made in respect of your client. You think it was --

26  
27 MR. DEVITT: Well I know an application was made to your predecessor  
28 because I made that application myself, as I have indicated to you, I  
29 don't have the exact date which that application was made. But that date  
11:05:05 30 could be furnished to the Tribunal.

11:05:07 1  
2 CHAIRMAN: All right. Well are you -- are you saying that a grant was  
3 in fact?  
4

11:05:12 5 MR. DEVITT: Well no. I'm saying that your predecessor took the position  
6 that is indicated, that without fettering his discretion there would be a  
7 general rule that parties who got represented would have the costs of that  
8 legal representation met by the Tribunal.  
9

11:05:35 10 CHAIRMAN: But are you saying that a grant of representation was made by  
11 Judge Flood in your client's favour?  
12

13 MR. DEVITT: No, I'm not. I'm saying that an application for  
14 representation was made and it was met by your predecessor with the  
11:05:47 15 comments, as are outlined, that he couldn't say yea or nay.  
16

17 CHAIRMAN: All right well we can check the transcript anyway in relation  
18 and that hopefully will clarify the position.  
19

11:06:00 20 MR. DEVITT: Very good. Thanks Chairperson.  
21

22 CHAIRMAN: Thank you very much.  
23

24 REGISTRAR: Sean Connolly.

11:06:06 25  
26 CHAIRMAN: Second calling.  
27

28 REGISTRAR: Tom Moore.  
29

11:06:09 30 MR. KEANE: May it please you, Chairman. I appear on behalf of

11:06:13 1 Mr. Moore. Good morning.

2

3 We filed our submission on his behalf on the 8th of July. I trust that  
4 it is with you, as it has been with the Tribunal.

11:06:23 5

6 Just very much in brief, Chairman. Just to state that Mr. Moore is and  
7 was at the time a chartered accountant of many years standing in Dublin.  
8 And he was requested in May and June 2000 to assist the Tribunal team.

9 And he did so very willingly. And the history of his connection and

11:06:45 10 perhaps the reason as to why he was approached was that Mr. Stafford, one  
11 of the promoters of Century Communications, had been a personal client of  
12 his for many years. So that was the historical background. And

13 although Mr. Moore was never properly within the category of parties who  
14 would be granted representation because of his professional position as a

11:07:07 15 chartered accountant and having regard to his long-standing reputation in  
16 Dublin, he felt it incumbent on himself to retain solicitors and counsel  
17 and did so shortly after, I think it was his initial meeting with

18 Mr. Hanratty when the nature of what was sought was requested from him.

19

11:07:26 20 That's the general background. In addition to certain accounting  
21 information and reconciliation of the capital account with regard to  
22 contributions made by the promoters of Century Communications Limited,

23 Mr. Moore also gave evidence here at this Tribunal in late October of

24 2000. And accordingly, Chairman, we are submitting that he is entitled

11:07:56 25 to the whole of his costs as that phrase is used in Section 3 (1) of the  
26 1997 Act. And we would also submit to you, Chairman, that he appears  
27 certainly to be within the category of persons contemplated by Mr. Justice  
28 Flood in his opening statement dated 14 January, 1998.

29

11:08:19 30 Accordingly, Mr. Moore is seeking to recover the whole of his costs.

11:08:24 1 Which is basically broken down as between his legal costs and also certain  
2 time that he spent assisting the Tribunal on a financial basis in that  
3 reconciliation, as mentioned to you.

11:08:37 5 The other point that we would like to bring before you today, Chairman, is  
6 that as a result of the evidence and assistance given to him, it enabled  
7 the Tribunal to come to a certain view as regards to the knowledge of the  
8 particular payment made to Mr. Ray Burke. And in particular, with regard  
9 to the knowledge of the promoters of Century in the timing of the payment  
11:09:04 10 and their knowledge of it and it subsequently transpired that your  
11 colleague found that the knowledge had been prior to the making of the  
12 payment.

13  
14 Finally, Chairman. In addition to those costs, there are certain  
11:09:20 15 personal costs incurred by Mr. Moore, which I think just leaving aside his  
16 professional qualification, would just emphasise a certain financial  
17 detriment he bore as a citizen of this country insofar as he was obliged  
18 to seek personal assistance of a financial nature to discharge the legal  
19 cost of his solicitors who declined to wait until these applications.

11:09:49 20 And for that reason he had to take out a personal loan from Bank of  
21 Ireland in excess of 24,000 Euros.

22  
23 He did so because he was facing Circuit Court proceedings. And in order  
24 to discharge his obligations he borrowed that amount. And the net effect  
11:10:04 25 of that is that as submitted in detail, there is a substantial interest  
26 payment already borne by him in respect of that loan which still remains  
27 undischarged. The total interest bill is in excess of 7,300 Euros in  
28 addition to the initial loan.

11:10:24 30 So, therefore, Chairman, Mr. Moore, on our behalf, he comes before you as

11:10:29 1 an Applicant seeking his costs today both as a chartered accountant who  
2 gave substantial assistance to the Tribunal of a professional nature and  
3 also having regard to his detriment, he seeks the recovery of the actual  
4 personal costs to him of literally coming and helping out the Tribunal,  
11:10:49 5 which of course he was more than happy to do.  
6  
7 Thank you very much, Chairman.  
8  
9 CHAIRMAN: Thank you very much.  
11:10:54 10  
11 REGISTRAR: Arthur Cox/Eugene Fanning.  
12  
13 CHAIRMAN: Second calling.  
14  
11:11:02 15 REGISTRAR: Campbell O'Connor Stockbrokers.  
16  
17 MR. O'CONNOR: Our application has already been sent to you.  
18  
19 CHAIRMAN: All right.  
11:11:11 20  
21 MR. O'CONNOR: It's in relation to 32 searches that you asked us to do on  
22 people, whether they were clients of ours and if so to give their records.  
23 And this necessitated going back numbers of years and going back on to the  
24 old files in the basement because the old files had to be looked up,  
11:11:35 25 checked by partners, new modern staff wouldn't be able to do that.  
26 They'd all be working on computers only.  
27  
28 It necessitated a lot of time, a lot of work. Obtaining all of this  
29 information and sending it to the Tribunal.  
11:11:53 30

11:11:53 1 CHAIRMAN: All right. Can you give me your name, please.  
2  
3 MR. O'CONNOR: Brian O'Connor.  
4  
11:12:02 5 CHAIRMAN: All right. Thank you, Mr. O'Connor.  
6  
7 MR. O'CONNOR: Thank you.  
8  
9 REGISTRAR: Donnelly Neary Donnelly.  
11:12:10 10  
11 MR. CALLANAN: I appear on behalf of Mr. Michael Smith and Colm  
12 McIochaigh, by whom Donnelly Neary Donnelly were retained.  
13  
14 And Donnelly Neary Donnelly have already by letter of the 16th January,  
11:12:28 15 2003, responded to the letter of the Tribunal of the 13th of December,  
16 2002, in relation to the issue of costs. And that response has been  
17 amplified and certain submissions have been made by a further letter which  
18 I regret to say is likely to have only reached the Tribunal by e-mail for  
19 the attention of Mr. Donal King virtually at the moment that you sat,  
11:12:51 20 Mr. Chairman. And that really covers the essential ground of the  
21 application on behalf of Mr. Smith and Mr. McIochaig.  
22  
23 Very briefly. Their situation is exceptional in relation to their role  
24 in relation to the inception of the Tribunal culminating in the placing of  
11:13:17 25 the advertisement almost ten years ago on the 3rd of July of 1995.  
26 That led to the establishment of the Tribunal and is reflected in the  
27 Terms of Reference in the reference to the statement, the personal  
28 statement of the then Minister for Foreign Affairs and Donnelly Neary  
29 Donnelly are indeed expressly referred to in the original Terms of  
11:13:44 30 Reference at B (3) and that's reflected also in the order of discovery

11:13:51 1 made by the then Sole Member on the 9th of February, 1998. Mr. Smith and  
2 Mr. McIochaig didn't pursue the original application for limited  
3 representation before the Tribunal as they had been named in a Sunday  
4 Times article. And in the circumstances didn't proceed with the  
11:14:12 5 application. I think that appears from the decision of the Sole Member  
6 of the 2nd of February, 1998. Certain legal submissions had been made in  
7 response to the submissions of the Minister in the letter that ought to  
8 have been received as the Tribunal sat.  
9  
11:14:32 10 The costs incurred fall into four discrete categories which are set forth  
11 in the letter of this morning. And obviously, different considerations  
12 apply in relation to each of those categories, which I don't think I need  
13 to rehearse.  
14  
11:14:46 15 After their initial involvement Messrs. Donnelly Neary Donnelly on behalf  
16 of Mr. Smith and Mr. McIochaig retained in the nature of a watching brief.  
17 Thereafter Mr. Smith and Mr. McIochaig had an obvious public and personal  
18 concern and interest in the proceedings of the Tribunal in relation to the  
19 Gogarty Module, not least by reason of the sustained attack on the  
11:15:12 20 credibility and motivation of Mr. Gogarty by some of the parties adversely  
21 effected by his evidence. Which, of course, extended to the  
22 circumstances in which Mr. Gogarty had come forward in the first place.  
23  
24 And in those -- in the unusual peculiar circumstances, peculiar to  
11:15:32 25 Mr. Smith and Mr. McIochaig, in my respectful submission, it is  
26 appropriate that the legal costs incurred by them ought to be met.  
27  
28 May it please you.  
29  
11:15:44 30 CHAIRMAN: Thank you.

11:15:46 1  
2 REGISTRAR: Martin E Marren & Co. Solicitors.  
3  
4 MR. MARREN: Chairman, Paul Marren. I make an application on behalf of the  
11:15:55 5 firm of the assistance given to the Tribunal by myself and Enda Marren in  
6 or about 2000, 2001.  
7  
8 We did not seek legal representation when we were initially approached for  
9 assistance. Part of the reason for that was simply that we had  
11:16:14 10 anticipated that our -- that the costs of our providing that assistance  
11 would in fact be dealt with.  
12  
13 Quite extensive requests were made of our firm at the time. Not only in  
14 terms of discovery but also in terms of information requested at extensive  
11:16:32 15 meetings that were held with Counsel for the Tribunal. And also in the  
16 preparation of statements and subsequently in the attendance at the  
17 Tribunal to give evidence.  
18  
19 At all times it was certainly the expectation on our part that based on  
11:16:49 20 our co-operation that the professional time that was involved would indeed  
21 be met as part of the costs of the Tribunal.  
22  
23 There was a certain level of immediacy in relation to the information that  
24 was requested which required immediate attention to the detriment of other  
11:17:07 25 professional work which had been undertaken in our firm on behalf of other  
26 clients.  
27  
28 I think the submission made by the Minister grounded on his interpretation  
29 of Section 6, I think is incorrect insofar as that he seems to preclude  
11:17:29 30 the Tribunal from incurring costs in relation to its primary objective,

11:17:34 1 which is the Terms of Reference of the Tribunal. If costs were not to be  
2 awarded to people who give assistance, I think it would prejudice the  
3 workings of the Tribunal to a substantial extent. Certainly the -- if it  
4 was known at the outset that the Minister would be objecting to the issue  
11:18:02 5 of costs, we would have gone to the trouble of taking on legal  
6 representation ourselves and save ourselves the professional time that was  
7 required in order to comply with the requests of the Tribunal.

8  
9 I think in the circumstances, whilst we have written to the Tribunal in  
11:18:19 10 relation to the level of costs, which indeed I believe I regard as being  
11 modest. I think it is a reasonable request that they be met. And  
12 certainly it is one that at all times would have been expected to have  
13 been met.

14  
11:18:34 15 In the circumstances, I would like to adopt submissions that have been  
16 made for other witnesses in similar situations and make -- or seek our  
17 costs in relation to the matter.

18  
19 Thank you.

11:18:46 20  
21 CHAIRMAN: Thank you.

22  
23 REGISTRAR: Denis McArdle.

24  
11:18:50 25 MR. McMAHON: Chairperson, my name is Paddy McMahon.

26  
27 And we appeared on behalf of the late Denis McArdle, solicitor, when he  
28 was asked to make certain submissions and prepare documentation for the  
29 Tribunal in connection with a client that he had formally acted for.

11:19:09 30

11:19:09 1 And it is very clear to us and it was to him, at the time, that he acted  
2 totally with co-operation towards the Tribunal. And in a very, very  
3 professional manner. Indeed, as someone who knew him as a solicitor for  
4 many years, I can assure you, Sir, that he always was an impeccable  
11:19:28 5 person.  
6  
7 Now, unfortunately, at the time in a he was asked to comply with the order  
8 of the Tribunal he was also nursing his wife who subsequently died soon  
9 after that. And to make matters worse, during that period he himself got  
11:19:42 10 cancer. And in fact, I had to interview him at one stage in the hospice  
11 and in St. Vincents Hospital.  
12  
13 But I have to say that the Tribunal at all times was quite sensitive at  
14 the time. But there was quite an amount of work done. And our counsel  
11:20:02 15 in the case at the time was Mr. Patrick MacEntee, still is Patrick  
16 MacEntee SC. He unfortunately hasn't been available this morning. He  
17 has told me John Gallagher SC, who at the time was counsel to the  
18 Tribunal, informed him that our costs would be paid.  
19  
11:20:20 20 And the other point that I have to make to you, is that when he died, when  
21 Mr. McArdle die in the 1999 Maire Ann Howard on behalf of your predecessor  
22 very graciously wrote us a letter which I have and maybe it would be  
23 easier to hand it in to you in case it's not on file.  
24  
11:20:39 25 "Very brief, what it says is that I write to you belatedly to express on  
26 behalf of Mr. Justice Flood and the Tribunal team, our sadness at the  
27 demise of Mr. McArdle. During what was undoubtedly a very difficult time  
28 for him, Mr. McArdle graciously gave his time and effort to assist the  
29 Tribunal. He will be remembered with appreciation".  
11:21:01 30

11:21:01 1 And I would hope that an appreciation would be made of the effort. And I  
2 think it would be very unfair if his estate in, a situation like this,  
3 whereas a professional he was asked to act would be requested to make any  
4 payment.

11:21:23 5  
6 And in that respect I have sent you, Sir, on the 6th of July a letter  
7 setting out this and I respectfully ask you to grant the costs to  
8 Mr. McArdle's estate.

11:21:25 10 CHAIRMAN: Thank you.

11  
12 REGISTRAR: Denis O'Brien.

13  
14 MR. REYNOLDS: May it please you, Tom Reynolds of William Fry solicitors  
11:21:33 15 and I appear on behalf of Mr. O'Brien.

16  
17 I have provided a short written submission to the Tribunal. I don't  
18 intend unnecessarily reiterating the points made in that submission.

19  
11:21:43 20 I have noted the Tribunal's comments in respect of Mr. O'Brien's fullest  
21 co-operation with this Tribunal. Those comments are appreciated.

22  
23 In respect of the Minister's submissions in relation to what constitutes  
24 an appearance and the jurisdiction of this Tribunal to award cost. I  
11:21:58 25 would respectfully adopt the reasoning put forward in submission made by  
26 Mr. Nesbitt and Mr. Gardiner to the Tribunal on Monday last on behalf of  
27 their respectful clients.

28  
29 In my respectful submission the principal to be applied can be stated as  
11:22:09 30 follows. Any party who cooperates fully with the Tribunal of Inquiry as

11:22:13 1 did Mr. O'Brien, and who has necessarily incurred reasonable costs in so  
2 doing, is entitled to be reimbursed for those costs. On that basis I'm  
3 applying for Mr. O'Brien's costs and would ask the Tribunal to exercise  
4 its proper jurisdiction and discretion in discharging such costs.

11:22:34 5 Thank you Chairman.

6

7

CHAIRMAN: Thank you.

8

9

REGISTRAR: Vincent and Beatty Solicitors.

11:22:37 10

11

MR. BEATTY: Frank Beatty, attended by Mr. Neil Campbell of Vincent and  
12 Beatty solicitors.

13

14

The first thing, if I could. Just to clarify on behalf of my clients is

11:22:49 15

that in fact Vincent and Beatty were at all times representing the Sisters  
16 of the Sacred Heart Nuns.

17

18

And I make this because it would appear from the record that in fact the  
19 application is being made on behalf of Vincent and Beatty solicitors when

11:23:07 20

in fact the application or the orders that were sought whilst against --

21

sorry not against but whilst it sought or requested Vincent Beatty to make  
22 discovery. It was at all times on behalf of the Sacred Nuns.

23

24

And I can tell you, Sir, that contact was made by the Tribunal in this

11:23:30 25

respect on the 2nd of May. And specifically made reference when it wrote

26

to Vincent and Beatty solicitors that their client was the Sisters of the

27

Sacred Heart Nuns and correspondence ensued thereafter on that basis.

28

29

An affidavit of discovery -- an order was made on the 10th of May as

11:23:53 30

against Vincent and Beatty solicitors. And an affidavit of discovery was

11:23:57 1 sworn by Vincent and Beatty solicitors on the 24th of May, 2001. But  
2 then a further affidavit was sworn by the Sisters of the Sacred Heart on  
3 the 7th of September 2001. And meetings occurred between the Sisters of  
4 the Sacred Heart Nuns and the Tribunal where Vincent and Beatty attended  
11:24:22 5 the nuns.

6  
7 So whilst it would appear that Mr. Walter Beatty gave evidence. He did  
8 so because it was his best recollection and he was the best evidence to  
9 give. But it was always on behalf of the Sisters of the Sacred Heart and  
11:24:38 10 also on behalf of Vincent and Beatty, who then came into the picture.

11  
12 I should simply clarify that obviously we're not looking for two sets of  
13 costs. But it started that Vincent and Beatty were representing the nuns  
14 and then it went on that Mr. Walter Beatty gave evidence.

11:24:56 15  
16 And I mention that simply to clarify the record. But I also mention it  
17 because it is clear that this application comes within category 2 and 3  
18 of -- as identified by you, Sir, at day 594 page 27 of the transcript.

19  
11:25:19 20 Where you state that "the second category is a category of parties who  
21 were not granted representation either because they applied and were  
22 refused by the Tribunal or I think the majority would fall into this  
23 subcategory; those who never felt it necessary to seek representation in  
24 the first place but who then proceeded and went on to use the services of  
11:25:39 25 either a practising solicitor or an in-house solicitor".

26  
27 And I say that's what happened in relation to the nuns. And then category  
28 3, as you identified, Sir, was that there was a third category. "Those  
29 individuals or companies who provided valuable assistance to the Tribunal  
11:25:59 30 had been requested to do so but did not use its solicitor".

11:26:02

1

2

Now, I say insofar as Mr. Walter Beatty gave the evidence he did he used the firm of Vincent and Beatty solicitors. But in so far as Vincent and Beatty are seen to be the people who provided the information or then

3

4

11:26:21

5

documentation, then I say that they fall within that third category.

6

7

And if I could open page 4 of the transcript at day 598, Sir. You

8

specifically identified the issue at that time. In fact, you did it

9

earlier than that. You did it at page 32 of the transcript of 594. Day

11:26:38

10

594. And if I could just go into the identification by you, Sir, in

11

relation to the particular issue that is now being argued between the

12

applicants, all of the applicants, I would say, and the State.

13

14

If I could just go through at page 32 of the transcript of 594. You

11:27:01

15

specifically state -- I just want to make sure that I -- I don't seem to

16

be able to find it now. But certainly if I could open page 4 on day 598.

17

Where you identified and I don't think this changes at all from your

18

earlier identification. It states "the issue relates to the correct

19

interpretation of Section 6 of the 1979 Act and specifically the "term"

11:28:06

20

appearing before the Tribunal by solicitor or counsel".

21

22

"And whether that means a physical appearance or a granted representation

23

or a formal grant of representation or whether merely using a solicitor

24

without a grant of representation and with the consent of the Tribunal,

11:28:21

25

whether that constitutes an appearance". And that was asked or that was

26

raised before Mr. Collins on behalf of the State. And Mr. Collins

27

addressed you. And in response to that I would simply, by general

28

response, say the following in response to Mr. Collins' submissions and

29

indeed the State's submissions.

11:28:43

30

11:28:43 1 Firstly, I would state that I would reiterate, Sir, your observations.  
2 Which are that the parties co-operated and they played a significant role  
3 and that it was necessary for the working of the Tribunal.  
4

11:28:56 5 In addition to that, I would adopt for the purpose of my application, the  
6 submissions of Mr. Owens, senior counsel, on behalf of Bank of Ireland on  
7 day 595, Mr. Finlay senior counsel on behalf of Stephen Miley on day 598,  
8 Mr. O'Callaghan's submission on behalf of the National Irish Bank and  
9 National Irish Investment Bank Limited on day 598, Mr. Nesbitt's  
11:29:21 10 submissions on behalf of AIB and Mr. Gardiner's submissions on behalf of  
11 EBS on that day.  
12

13 In addition to that, I would raise Mr. Collins' submission to you, Sir,  
14 wherein he stated that Section 6 constitutes what he referred to as an  
11:29:49 15 exhaustive statement of the powers of the Tribunal in respect of the  
16 costs. And I say that that submission by Mr. Collins is ironic. And I  
17 say it's ironic because he then proceeds at page 3 of the transcript in  
18 594 at page 3.  
19

11:30:30 20 He states that "Section 6 of the 1979 Act as amended is an exhaustive  
21 statement of the powers of the Tribunal in respect of costs". That's his  
22 submission to you. And then he proceeds having stated that that is the  
23 exhaustive, and presumably he is doing that because the State are  
24 concerned that the application doesn't come in within Section 4 of the  
11:30:54 25 1970 Act. But having submitted to you, Sir, that it is an exhaustive  
26 list he then goes on to say that "it should be read in light of Section 2  
27 (B) of the 1921 Act".  
28

29 Now, I say that the State can't have it both ways. They can't say that  
11:31:13 30 it is an exhaustive provision in relation to costs. And that the

11:31:18 1 applicants aren't entitled to rely on Section 4. But then the State are  
2 entitled to refer to Section 2 (B) of the 1921 Act in reading and  
3 understanding and defining Section 6 and the rights thereunder.  
4

11:31:39 5 And I say that Section 6 has nothing to do with Section 2 (B). Section 6  
6 is very clear in its terms. And in that respect, I adopt the submissions  
7 of Mr. Nesbitt and Mr. Paul Gardiner. On day 594 Mr. Collins opened an  
8 authority to you, Sir. And that authority was the authority of K  
9 Security Limited. And he specifically submitted a passage from that and  
10 I will read out that passage, just for the purpose of clarification.

11:32:18 11 It's a passage of Mr. Justice Gannon "the fact that a Tribunal to which  
12 the Act may be implied is empowered by the Act to authorise interested  
13 parties to be represented before it. There is no basis for implying that  
14 the Act confers authority on a Tribunal to award the costs of such  
15 representation to those parties at the expense of or as a charge upon the  
16 public funds. Those are entrusted by the Constitution to the care of the  
17 Government subjected to strict control and supervision of the legislator  
18 upon whose resolutions in both Houses of the Oireachtas the Constitution  
19 and the authority of this Tribunal are founded. The very nature of the  
11:33:02 20 functions of that legislature in relation to the control and disposition  
21 of public funds is such that any statutory authority for payment out of or  
22 a charge upon public funds must be clearly expressed and cannot be a  
23 matter merely of implication as it contended on behalf of the second named  
24 plaintiff".

11:33:22 25  
26 Now, ironically I would adopt that passage. And I would do so is on the  
27 following basis. I say that that passage, and that quote, should can  
28 read in light of the fact that the 1979 Act and the provisions thereof  
29 were introduced after that. And Section 6 is very, very clear in its  
11:33:49 30 terms. And I don't think I need to open to you, Sir. It has been

11:33:53 1 opened by a number of the applicants. And not only is it very clear in  
2 its terms but also it clearly does not restrict the powers of the  
3 Tribunal.

11:34:09 4  
5 So I say that the authority which Mr. Collins opened to you, Sir, should  
6 be read in light of the fact that if it was to be remedied it was going to  
7 be remedied by the 1979 Act and it wasn't. It clearly was not.

8  
9 Mr. Collins then continues that to say that the argument that was advanced  
11:34:40 10 to you, Sir, that a negative finding in relation to these applications  
11 would restrict the workings of the Tribunal. And he then submits that  
12 that is not enough to grant the Tribunal the power. But I say that the  
13 Tribunal has been granted the power by Section 6. And that Section 6 is  
14 very clear in its terms.

11:35:04 15  
16 And I would also say it's very clear that Section 6 was introduced in  
17 light of the authority that was opened up to you and was also introduced  
18 in order to make the Tribunal efficient. And it would be wholly  
19 inequitable and contrary to Section 6 for the Minister to now be entitled  
11:35:32 20 to come before the Tribunal having taken advantage of that in that the  
21 Tribunal has worked and has worked well to now say well, in fact there's  
22 some restriction on costs when it simply does not exist.

23  
24 And whilst I said that I wouldn't open Section 6 to the Tribunal. I say  
11:35:55 25 that it is very clear by the wording that that Tribunal is entitled in  
26 awarding costs to take all relevant matters. And I would emphasise that.  
27 It specifically states "all relevant matters into account". It  
28 specifically refers and provides for the Tribunal to be entitled to take  
29 the equity of the situation into consideration.

11:36:23 30

11:36:23 1 Now, if I say that if Mr. Collins' submissions were to be accepted, that  
2 those provisions would be rendered redundant. And more specifically,  
3 Section 6 states that the Tribunal has the power to award costs to any  
4 person. And it specifically states any person. It doesn't restrict it.  
11:36:49 5 It states any person.  
6  
7 And I say that this should -- the wording should be considered in light of  
8 Mr. Collins' submissions at day 594 on page 10 when he states: "It is to  
9 confer on the Tribunal a power which the Oireachtas has clearly determine  
11:37:25 10 it had ought not to have".  
11  
12 Now, that simply can't be the case. If the Oireachtas had made that  
13 provision it would have stated it. It has not stated it. Whilst there  
14 might be some confusion and I say there's not. Whilst there might be  
11:37:40 15 some confusion. For Mr. Collins to come to the Tribunal and say it would  
16 confer on the Tribunal a power which the Oireachtas did not give it is  
17 simply not the case. If the Oireachtas didn't intend to give it  
18 especially in the light of the authority introduced by Mr. Collins it  
19 simply would have deprived it of that. It would have prevented it from  
11:38:03 20 doing that. And I say that that submission by Mr. Collins goes too far.  
21  
22 So in considering the issue raised by you, Sir, which I opened up at page  
23 4 of 598, which is the term "appearing before the Tribunal by solicitor or  
24 counsel" and the meaning of that. Before I make submissions in relation  
11:38:44 25 to what I say should be the proper definition of the word "appearing". I  
26 would refer you to page 32 of the transcript on day 594. Where you  
27 specifically asked, and this is the part which I was trying to find  
28 earlier on. You specifically asked, Mr. Collins "I think you agree  
29 ultimately it depends on what construction is to be placed on the words"  
11:39:22 30 appearing before the Tribunal "and then you go into the High Court

11:39:26 1 appearance. And Mr. Collins doesn't in fact answer the question. But  
2 he goes on to say "well, circumstances I think in a common sense reading  
3 of the ordinary language there with respect I don't see that writing a  
4 letter from an office in Fitzwilliam Square or wherever the office of  
11:39:40 5 these parties may have been can be said to amount to appearing before the  
6 Tribunal in the sense of which this term is used" and then, Sir, you take  
7 him up on the fact that it wasn't simply a letter. And he addresses  
8 that.

11:39:55 10 And that brings us to what is meant by "appearing". And I won't take  
11 much longer, Sir. But if I could hand up the Oxford English definition  
12 of "appearing". And I can hand up the Tribunal team and indeed yourself,  
13 Sir. And I have printed this. This is the most up-to-date version of  
14 the Oxford definition and it goes into a number of definitions, some of  
11:40:40 15 which are angelic like and spiritual in nature and I won't rely on those.

16 But it goes on to say in relation to an appearance "to present oneself  
17 formally before an authority or tribunal, to put in an appearance, hence  
18 to present oneself as legal representative of another to act as counsel."  
19 And I say that I come within that definition and that I clearly come  
11:41:07 20 within it.

21  
22 And I say that all of the applicants come within it. Because it's  
23 specifically stating to present oneself formally before an authority or  
24 tribunal. And then to put in an appearance. And then if one is a legal  
11:41:26 25 representative it goes on to say if you are a legal representative to act  
26 as counsel to present oneself to act as legal representative.

27  
28 But it is clear that all of the parties, and specifically my clients were  
29 formally before the authority or Tribunal. I say that that has to be the  
11:41:42 30 case. And I say that that is especially the case in circumstances where

11:41:47 1 there is no procedure for the entry of an appearance. So it would be a  
2 wholly different beast if I was to come in and I was to say to you, Sir,  
3 well I realise that there is a procedure for the entry of an appearance.  
4 And that, therefore, the definition of appearance must come within that.  
11:42:06 5 But there is no such procedure here. And I say that in those  
6 circumstances, all as I must do, is formally be before the authority.  
7 And I say that if I am drafting affidavits and swearing affidavits and if  
8 I am giving evidence, which was done in this case by my client, then I  
9 must formally be before an authority.  
11:42:27 10  
11 And it goes on then to give other definitions, which I say I come under if  
12 that definition was not to be adopted but I say that that is the most  
13 appropriate.  
14  
11:42:37 15 And then if I could, I believe I have handed up if one was to take the  
16 strict legal interpretation of an appearance. I would refer you to the  
17 7th edition of Black's Legal Dictionary. I believe, Sir you have been  
18 handed up a copy of that. At page 94 of that text it states an  
19 appearance is a procedure. Again, I repeat my words that there is such  
11:43:03 20 procedure in this instance. "A coming into court as party or interested  
21 person" interested person "or as lawyer on behalf of a party or interested  
22 person". I say that my clients must clearly come under that. It then  
23 goes on to give a definition. And I would rely on the second part of  
24 that definition which is on page 95. And it starts with the paragraph  
11:43:29 25 "the term appearance. The term "appearance" is used -- sorry. The term  
26 appearance is used particularly to signify or designate the overt act by  
27 which one against whom a suit is being commenced submits himself to the  
28 court's jurisdiction although in a broader sense embraces the act of  
29 either plaintiff or defendant into coming into court. An appearance may  
11:43:54 30 be expressly made by formal written or oral declaration on record entry or

11:44:00 1 it may be implied from some act done with the intention of appearing and  
2 submitting to the court's jurisdiction".  
3  
4 Now, clearly I can't pretend to come into it in that I am not a party to  
11:44:11 5 it and I never claimed I was. But I would say that that aspect of the  
6 definition clearly refers to a court procedure and a litigation procedure.  
7 I say that that doesn't apply here. That aspect of the definition  
8 doesn't apply here. And what I'm relying on here in relation to this  
9 definition an appearance can be "implied" from some act done with the  
11:44:37 10 intention of appearing and submitting to the court's jurisdiction. I  
11 would say that that is clearly being done. It is clear from the  
12 submissions made to you, Sir, by a number of the parties and indeed from  
13 the provisions of the 1979 Act that parties get into trouble if they don't  
14 submit to your jurisdiction.

11:45:01 15  
16 And I say, therefore, they do submit to your jurisdiction. And by  
17 implication that can result in an appearance.  
18

11:45:19 19 So in conclusion. I say that it is clear that everybody has relied on  
20 the workings of this Tribunal on the basis that the costs of those  
21 contributing and those who became interested by orders being made against  
22 them, and that people -- everybody has relied on , that including the  
23 State. And I say that, and I don't want to make a political speech but I  
24 say it's not appropriate to take advantage of the fact that the political  
11:45:49 25 agenda has changed slightly and it has gone from one of fact-finding to  
26 one of cost analysis. And I say that it's not right now, the parties  
27 having come in and giving the evidence and the State having relied on  
28 that, to now come in and submit that in fact the whole programme is  
29 completely different than that which was initially envisaged.

11:46:13 30

11:46:13 1 My clients appeared by counsel. And they attended meetings. Mr. Walter  
2 Beatty gave evidence. And he was attended by Vincent and Beatty  
3 solicitors at all times through correspondence. The issues were very  
4 complicated and they dated back a significant amount of time. Vincent  
11:46:40 5 and Beatty themselves clearly could not give the evidence without the  
6 consent of the nuns and it clearly related to documentation that was  
7 otherwise privileged. Counsel were engaged. Orders of discovery were  
8 made. And the nuns are clearly a religious order and should not be  
9 burdened now with the cost of those.

11:47:03 10  
11 And I say that the costs should, therefore, be met.  
12  
13 Thank you, Chairman.  
14

11:47:08 15 CHAIRMAN: Thank you.  
16  
17 REGISTRAR: TV 3 and others.  
18

19 MS. KILROY: Thank you, Chairman, Helen Kilroy of McCann Fitzgerald  
11:47:17 20 solicitors.  
21  
22 I'm applying for costs on behalf of my client which they incurred in  
23 cooperating with the Tribunal.  
24

11:47:22 25 As the Tribunal is aware, my clients dealt with inquiries, provided  
26 documents and attended private interviews. Rather than making a long  
27 submission. I would just like to adopt previous submissions made by Mr.  
28 Owens on 12 July and the submissions I made that day on behalf of my  
29 client about the equity of making an award to a party, such as TV 3, which  
11:47:47 30 was not going to be the subject of any adverse finding but co-operated

11:47:49 1 fully. And also the submissions of Mr. Finlay and Mr. O'Callaghan on 15  
2 July and Mr. Gardiner and Mr. Nesbitt on 18 July in particular what the  
3 phrase "appearing before the Tribunal" means in Section 6  
4

11:48:04 5 Thank you Chairman.  
6

7 CHAIRMAN: Thank you.  
8

9 REGISTRAR: Brian Phelan.  
10

11:48:10 11 CHAIRMAN: Second calling.  
12

13 REGISTRAR: Money Markets International Stockbrokers Limited in  
14 Liquidation.

11:48:17 15

16 MR. O'CALLAGHAN: My name is Jim O'Callaghan. I appear on behalf of  
17 Mr. Tom Kavanagh liquidator of Money Markets International Stockbrokers.  
18 I am instructed by Eugene F Collins. Mr. Robin McDonnell.  
19

11:48:28 20 Mr. Chairman, for the purpose of speeding up my application, we have  
21 prepared a short written submission that I understand has been handed in  
22 to the Tribunal. So I don't propose to reiterate what's in that.  
23

24 If I could just make a number of very brief points. Firstly, my client  
11:48:43 25 complied with 49 requests that the Tribunal issued in respect of 30  
26 individuals. Those requests were sent by the Tribunal to my client  
27 between December 1999 and April 2003. And he complied with those. And  
28 I say that the production of those documents or of swearing affidavits was  
29 a necessary part of the work that this Tribunal did. In response to the  
11:49:06 30 submissions made for the Minister for Finance I would like to make three

11:49:11 1 points briefly and they are all within the written submissions.  
2  
3 Firstly, I don't agree with the interpretation put on Section 6 (1) of the  
4 1979 Act by the Minister for Finance. I say his representation doesn't  
11:49:22 5 recognise that a crucial part of any Tribunal's work, particularly this  
6 Tribunal's work, is work that is done in private.  
7  
8 Secondly, I say on foot of the statement made by the former Chairman of  
9 this Tribunal on 4th of February 1998 that my client was entitled to  
11:49:36 10 believe that it had a legitimate expectation that its costs for  
11 co-operation would be paid. Just as a corollary of that. If the  
12 Minister was aware of that statement. If he had a problem with it he  
13 could come in back in 1988 or 1999 and appraised the parties who were  
14 cooperating with the Tribunal that they wouldn't be getting their costs  
11:49:58 15 because of this point he is making in respect of Section 6 (1).  
16  
17 Finally, if I could just refer to the justice of the situation and in  
18 particular highlight the decision of Justice Geoghegan in the Haughey  
19 Moriarty decision where at the end of the quotation that I have on page 7  
11:50:11 20 of the submissions he stated that "there is a guarantee that justice will  
21 be done in relation to costs at the end of the Tribunal".  
22  
23 And I say in respect of my client Mr. Kavanagh, he was a liquidator who  
24 went into a company. He had to find these records himself in order to  
11:50:27 25 assist the Tribunal. If his costs aren't met it will necessarily mean  
26 that the other creditors of this company will be in a worse off position.  
27  
28 And on those grounds I respectfully and formally ask for my legal costs  
29 and also for the administrative costs incurred by Mr. Kavanagh in  
11:50:45 30 complying with the requests.

11:50:46 1  
2 Thank you very much.  
3  
4 REGISTRAR: Second calling S there any appearance by or on behalf of Sean  
11:50:52 5 Connolly? Arthur Cox, Eugene Fanning? Brian Phelan?  
6  
7 CHAIRMAN: All right. Thank you very much.  
8  
9 CHAIRMAN: Now.  
11:54:57 10  
11 REGISTRAR: Brian Phelan.  
12  
13 MR. PHELAN: Yes. I am not familiar with the procedure. Sorry.  
14  
11:55:02 15 CHAIRMAN: You are making an application for costs.  
16  
17 MR. PHELAN: Yes. It's in relation to the time incurred in dealing with  
18 correspondence  
19  
11:55:13 20 CHAIRMAN: All right.  
21  
22 MR. PHELAN: Arising from the Tribunal of Inquiry payments to  
23 Messrs. Charles Haughey and Michael Lowry.  
24  
11:55:21 25 CHAIRMAN: All right. And I think have you written to the Tribunal, you  
26 have?  
27  
28 MR. PHELAN: We've had significant contact Tribunal with them.  
29  
11:55:27 30 CHAIRMAN: All right. That's fine. I mean, I have the details. I

11:55:32 1 have sufficient details.  
2  
3 You are only required to make your application.  
4

11:55:36 5 MR. PHELAN: Okay.  
6  
7 CHAIRMAN: And there will be a Ruling in relation to your application and  
8 others possibly at the end of next week.  
9

11:55:43 10 MR. PHELAN: Fine. Do I formally have to advise on what the time and  
11 costs were?  
12

13 CHAIRMAN: No. At this stage the only requirement is that you formally  
14 apply for your costs.

11:55:58 15  
16 MR. PHELAN: Okay.  
17

18 CHAIRMAN: It will be a matter, if there's an award of costs given, then  
19 it's a matter for the taxing master of the High Court, which will be  
20 another day's work.  
21

11:56:15 22 MR. PHELAN: Thank you very much.  
23  
24 CHAIRMAN: All right.

11:56:15 25  
26 **THE TRIBUNAL THEN ADJOURNED.**  
27  
28  
29  
30