

Sitting on 8th September 1998 in the Supreme Court
Courtroom.

OPENING STATEMENT
OF MR. JUSTICE FEARGUS FLOOD

The purpose of today's sitting is to entertain any applications for representation before the Tribunal pursuant to Section 2 (b) of the Tribunals of Inquiry (Evidence) Act, 1921.

This Tribunal of Inquiry was established by Instrument of the Minister for the Environment and Local Government on the 4th November, 1997. The original terms of reference of the Tribunal were set out in that document. The same Minister has, by Instrument made on the 15th July, 1998 both amended and very substantially extended the terms of reference of the Tribunal.

I propose, at the outset, to request the Registrar to the Tribunal Mr. Peter Kavanagh to read the text of the amended and extended terms of reference of this tribunal of inquiry for the benefit of those who may not already be familiar with them.

(Read terms of reference)

There are a number of points I wish to make before hearing the applications for representation.

1. The name of the Tribunal has now been amended to the "Tribunal of Inquiry into Certain Planning Matters and Payments".
2. The Offices of the Tribunal have been re-located to the State Apartments, Upper Castle Yard, Dublin Castle, Dublin 2. The telephone no. of the Tribunal is 6339800. The fax no. of the Tribunal is 6339890.
3. The Tribunal has previously, at a public sitting, made Orders granting limited representation to certain Applicants. In the first instance, I do not require those persons to re-apply for the representation that they have been previously granted unless any such person wishes to do so.
4. For the convenience of persons who have not appeared before the Tribunal on any earlier occasion I propose to repeat, in outline, some general aspects of the practice and procedure adopted by this Tribunal.
5. A Tribunal of Inquiry is essentially inquisitorial in nature. This is in contrast to the adversarial character of civil or criminal

cases in Courts of law. Consequently, any evidence heard before a Tribunal at a public sitting will usually be led by Counsel on behalf of the Tribunal.

6. All parties whose interests are likely to be affected will be allowed such representation as is necessary to protect their interests and such parties will be allowed to question relevant witnesses. The Tribunal will entertain any such application either at this public sitting, or at any other appropriate time.
7. All proceedings before the Tribunal will be conducted in such a manner as to ensure proper respect for the legal and constitutional rights of all persons connected with the work of the Inquiry. This includes the confidential preliminary investigative stage of the inquiry work of the Tribunal.
8. The Tribunal has, to date, carried out a considerable amount of investigative work. This work has involved the consideration of a significant volume of documentation and information, and the interviewing of various persons. The Tribunal has made significant progress in relation to the first phase of its inquiry work.

9. The Tribunal is now required under the amended and extended terms of reference to undertake significant additional inquiries that have considerably increased the workload of the Tribunal.
10. The members of the Tribunal legal team will be available to provide assistance to any party seeking to make statements or forward documents to the Tribunal.
11. The Tribunal hopes that all parties who are involved in the work of the inquiry will co-operate promptly and fully in the provision of information and documentation to enable the inquiry to be brought to an expeditious, economical and successful conclusion.
12. I am cognisant of the concerns which persons wishing to assist the Tribunal may have in relation to the issues of personal and commercial confidentiality. In order to protect these concerns I have adopted the following protocol, which has been used by similar inquiries, in regard to confidential documentation:
 - (i) All original documents provided to the Tribunal will be returned to their owners at the conclusion of the work of this inquiry,

- (ii) Any copies of documentation in the possession of the Tribunal that contain confidential information will be destroyed after the conclusion of the inquiry,
- (iii) All documentation in the possession of the Tribunal is stored in a secure location,
- (iv) Any confidential documentation or information not relevant to the inquiry is not disclosed to any outside party. The only persons who have access to such documentation or information are the Sole Member and his advisors,
- (v) Any documentation which contains both confidential information not relevant to the inquiry, and other information, which is relevant, will have the non-relevant information blanked out,
- (vi) For the assistance of persons submitting documentation or information to the Tribunal a confidentiality memorandum is available from the Tribunal office.

13. With regard to the question of public hearings it should be noted that under its terms of reference the Tribunal is obliged in the first instance to carry out such preliminary investigations in private as are necessary to determine whether sufficient evidence exists in relation to any of the terms of reference to warrant proceeding to a full public enquiry. These preliminary investigations are already in hand and I hope to be in a position to make the appropriate determination in early course.
14. Any person who may be in a position to assist this preliminary investigation in private is requested to come forward at the earliest opportunity.
15. It is not possible until the relevant preliminary investigations are completed to make an informed assessment as to when the public hearings, if any, will commence, if I conclude that such hearings are warranted. I can say, however, that I am satisfied that time spent on the private investigative stage can pay considerable dividends in terms of keeping the amount of expensive hearing days to a minimum consistent with the Tribunal fully discharging its terms of reference.

16. On the question of representation it should be noted that any decisions taken as a result of applications made today are not in any sense final. Any party who may not be given representation at this time may renew their application later if it subsequently becomes apparent that such representation is warranted.

17. For the purpose of any particular application for representation today I require any person making such application to provide to the Tribunal submissions in writing as to the basis upon which the application is made. These written submissions, which will be regarded as a support to the oral submissions made today, must be received by the Registrar to the Tribunal not later than 12.00 p.m. on Friday next, the 11th September, 1998. I intend to reserve my decision on any application until the submissions have been considered. I propose to deliver my decisions on representation at 11.00a.m. on Tuesday next, the 15th September, 1998.

18. Parties who are granted representation should note that the granting of representation is not a guarantee that such party will be awarded costs at the conclusion of the inquiry.

19. Without fettering my discretion in any way I would indicate that, in general, where any party, whether represented before the Tribunal or not has realistically and reasonably incurred any legal expense in preparing a prompt statement to assist the Tribunal, I will favourably consider any application providing for indemnity in respect of such expense.

20. I propose now to take any applications for representation in the following order commencing first with counsel, solicitors and then any other persons. I require each applicant to clearly identify themselves, their relevant address, and to specify succinctly the interest in respect of which representation is sought.