



**Tribunal of Inquiry  
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment  
and Local Government dated the 4<sup>th</sup> day of November 1997  
as amended by Instrument dated the 15<sup>th</sup> day of July 1998

**RULING re Affidavit of Liam Conroy**

**OF**

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

**Tuesday 27<sup>th</sup> April 1999**

**RULING**  
**re Affidavit of Mr. Liam Conroy**

Counsel on behalf of Joseph Murphy/JMSE seek an order pursuant to Section 2(a) Tribunals of Inquiry (Evidence) Act 1921 to the effect that the Tribunal ought not to allow the public to be present when any witness to the Tribunal gives evidence in relation to the contents of the Affidavit of Mr. Liam Conroy sworn on the 26<sup>th</sup> March 1989, in certain proceedings in the Isle of Man and filed in those proceedings.

This Affidavit has been ruled by the Tribunal to be relevant and admissible in evidence in relation to certain matters under inquiry before the Tribunal. This ruling was made on the 19<sup>th</sup> day of March 1999.

Counsel for the applicant in making this application, specifically emphasised that he was not making an application to restrain evidence referring to the fact of the Affidavit or the fact that it contains serious allegations to be heard otherwise than in public. The application he said was confined to evidence relating to the details of those allegations.

In short, he is seeking a confidential hearing in relation to the said allegations to which he refers.

He admits, that the Tribunal unlike a Court, is not subject to the provisions of Article 34 of the Constitution which provide that justice shall be administered in public save as may be prescribed by law. The reason he says, that this constitutional provision does not apply to the workings of Tribunals is that they do not constitute the administration of justice. In support of that premise he cites the judgement of Mr. Justice Hamilton in the recent Supreme Court decision of *Haughey and Others v Moriarty and Others* (delivered 28<sup>th</sup> July 1998 - unreported). Where the Chief Justice says

*"This court is satisfied that the activities of a Tribunal of Inquiry of this type fulfil none of the fundamental conditions or characteristics of the administration of justice as laid down by Kenny J. in McDonald v Bord na gCon (1965 IR 217) in the passage which was later accepted by the decision of the Supreme Court in the judgement of Walsh J. and set forth in the judgement of Finlay CJ in the Goodman case at page 393. The Tribunal is not conducting a trial and in no*

*sense is adjudication involved: it is merely conducting an inquiry.*

*The nature of the powers conferred on the Tribunal by the relevant sections of the 1921 Act as amended must, however, be construed as subject to the constitutional framework and in particular involving fair procedure" he said.*

Counsel for the applicant says that the position of public hearings by the Tribunal are contained in Section 2 of the 1921 Tribunals of Inquiry (Evidence) Act.

Section 2(a) provides:-

*"A Tribunal to which this is so applied as aforesaid.*

*(a) shall not refuse to allow the public or any portion of the public to be present at any proceedings of the Tribunal unless in the opinion of the Tribunal it is in the public interest expedient so to do for reasons connected with the subject matter of the Inquiry or the nature of the evidence to be given".*

It is to be noted that sub-paragraph (a) of the said section is couched in the negative. It follows that a private session is an exception to the general mode of procedure contemplated for hearings before the Tribunal. It can only be acceded to where, in the opinion of the Tribunal, it is in the public interest expedient to do so for reasons connected with

- (a) the subject matter of the inquiry, or
- (b) the nature of the evidence to be given.

In my view, the governing factor is that the Tribunal is persuaded that it is expedient to do so in the first instance in the public interest. Secondly, the factors which can give rise to that expediency must be either

- (a) *"For reasons connected with the subject matter of the Inquiry, or*
- (b) *The nature of the evidence to be given."*

Counsel for the applicant submits that the evidence which is it is proposed to admit before the Tribunal has peculiar features upon which the applicants are entitled to rely in submitting to the Tribunal that the public interest renders it expedient to hear the evidence otherwise than in public.

In short, the real gravamen of his case relates to the nature of the evidence to be given. In the first instance, he says that the Affidavit was sworn 10 years ago. This submission in my view is essentially a submission as to the probative quality of the evidence. His second submission is that it contains serious allegations against Mr. Murphy Senior which in themselves have nothing whatsoever to do with the Terms of Reference of the Tribunal. It is undoubtedly true that they are not directly referable to the Terms of Reference but there may be circumstances where they could be of probative value and corroborative of other evidence tendered to the Tribunal by Mr. Gogarty.

He further says that Mr. Conroy is dead, the Affidavit was never opened to a Court and that no one has ever had an opportunity to cross-examine Mr. Conroy in relation to these allegations. Those statements are factually correct but they go solely to the probative value to be assigned to the document by the Tribunal.

His next submission is that the only party advocating admission in evidence of the said document is Mr. Gogarty and that Mr. Gogarty has denigrated the credibility of Mr. Conroy. This latter comment again solely relates to the

probative value to be assigned to the document. The Tribunal has already ruled that it is relevant to the matters it is considering.

He goes on to submit that it has been that Mr. Gogarty has expressly disavowed the idea that the evidence ought to be admitted for the purpose of going to the credit of Mr. Murphy Senior.

Finally, he says in effect that it would give Mr. Gogarty an opportunity of further damaging the good name of Mr. Murphy Senior. It appears to me that the degree of damage (if any) to the reputation and good name of Mr. Murphy Senior depends entirely on the probative value assigned to the said document when all the evidence before the Tribunal is being assessed.

I have given careful consideration to the said submissions and they do not seem to me to make out a case that the nature of the evidence to be given renders it expedient in the public interest to hear it otherwise than in public.

In my view, this is a public inquiry into matters of "*urgent public importance*" and as such there must be a major

reason why the public nature of the inquiry should be departed from.

Further, Mr. Justice Hamilton in the decision of the Supreme Court delivered by him on 6<sup>th</sup> January 1999 in Redmond v Flood and Others at page 13 of the text of the judgement says

*"There is no doubt that an inquiry by the Tribunal into allegations made by Mr. Gogarty ... allied with the exceptional quisitorial powers conferred upon such Tribunal under the 1921 Act as amended necessarily exposes the applicant and other citizens of having aspects of their private lives uncovered which would otherwise remain private and to the risk of having baseless allegations made against them. This may cause to stress and injury to their reputations and may interfere with the applicants constitutional right to privacy.*

*The right to privacy, however, is not an absolute right. The exigencies and common good may outweigh the constitutional right to privacy.*



*The exigencies of the common good require that matters considered by both Houses of the Oireachtas to be of urgent public importance be inquired into, particularly when such inquiries are necessary to preserve the purity and integrity of public life...*

*The effect of such resolutions is undoubtedly to encroach upon the fundamental rights of the applicant in the name of the common good but is justified by the exigencies of the common good. Such encroachment must, however, be only for the proper conduct of the Inquiry.*

*The Tribunal is obliged to conduct its Inquiry and all necessary proceedings in relation thereto in accordance with fair procedures and the principles of constitutional justice."*

Undoubtedly, the statements made in the Affidavit by Mr. Conroy cannot be the subject matter of a personal cross-examination of the deponent. Mr. Murphy, however, will have full access to the Tribunal to give his version on oath in relation to the said allegations. It is the duty of the Tribunal to fairly assess Mr. Murphy Senior's evidence and

to apportion to it the probative value to which he, as a witness, is fairly and properly entitled.

In my opinion, all proceedings in relation to this Affidavit should be in public sittings of the Tribunal.

Mr. Justice Feargus M. Flood  
Sole Member of the Tribunal