

1 THE TRIBUNAL THEN RESUMED AS FOLLOWS ON THE 1ST OF  
2 NOVEMBER, 2001, AT 10:30 A.M.:

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4 CHAIRMAN: Good morning everyone.

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6 MS. DILLON: Morning, Sir. The first witness this  
7 morning is Mr. John Caldwell. Mr. Caldwell, please.

8 .

9 MR. FINLAY: Chairman, while Mr. Caldwell is being  
10 called, I think I should just perhaps - formally, what  
11 I should have done yesterday, when I addressed you on  
12 other fronts, that is ask for limited representation on  
13 his behalf. I am instructed by Miley & Miley. That  
14 obviously is why I am here.

15 .

16 MS. DILLON: Mr. Caldwell is a witness as to fact.

17 .

18 CHAIRMAN: Yes, that's right. Mr. Finlay, it is not  
19 usual to grant limited representation simply to a  
20 witness of fact. He is not a party. He is not - I  
21 think I will invite you to renew your application at a  
22 later date, when - if the situation changes. He is an  
23 a simple witness of fact, that is here -

24 .

25 MR. FINLAY: Well, My Lord, might I just pause for a  
26 moment and just confer very briefly with Mr. Hanratty.

27 .

28 CHAIRMAN: Certainly.

29 .

30 MR. FINLAY: Chairman, I have had a discussion with Mr.

1 Hanratty. I think we have managed to resolve the  
2 situation. For the moment that application can stand.

3 .

4 CHAIRMAN: You are welcome to renew your application  
5 later, if the situation changes.

6 .

7 MR. FINLAY: Yes, indeed.

8 .

9 CHAIRMAN: In any way. I don't want to rule it out. I  
10 just don't want to break with precedent.

11 .

12 MR. FINLAY: I don't think there will be any  
13 difficulty.

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15 CHAIRMAN: Very good, Mr. Finlay. Mr. Caldwell.

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1 MR. JOHN CALDWELL, HAVING BEEN SWORN, WAS EXAMINED BY

2 MS. DILLON AS FOLLOWS:

3 .

4 1 Q. MS. DILLON: Good morning, Mr. Caldwell.

5 A. Good morning, Ms. Dillon.

6 2 Q. You are a solicitor and have been since 1980. You are

7 an international financial consultant now, is that

8 correct?

9 A. I qualified in 1980 and have been a solicitor for many

10 years. I retired as a solicitor recently. I would

11 regard myself as a businessman and former solicitor and

12 consultant.

13 3 Q. Yes. And prior to March of this year, the Tribunal

14 had been in contact with you, the matter which we won't

15 be dealing with today, in connection with Jacksonway

16 and Paisley Park?

17 A. That's correct.

18 4 Q. And you had been corresponding with the Tribunal in

19 connection with that separate and distinct matter?

20 A. That's correct.

21 5 Q. Right. But in March of this year the Tribunal wrote to

22 you in connection with the matter that is the subject

23 matter of the present module, namely Messrs. Brennan

24 and McGowan, and their companies and affairs?

25 A. That's correct.

26 6 Q. And a letter was sent to you on the 30th of March,

27 2001, to your then solicitors, Messrs. Finbar Cahill &

28 Co., solicitors.

29 .

30 Simply for the screen, these documents are in the

1 folder entitled "Mr. Caldwell" that was previously  
2 used.

3 .

4 You received a letter dated the 30th of March, 2001.

5 It was sent to you requesting your consent to the  
6 making of an Order for Discovery and a narrative  
7 statement on the matters that had been identified in  
8 the letter?

9 A. I can remember a letter, yes. There were various  
10 matters identified in it.

11 7 Q. That is page 43. I will read the letter into the  
12 record, Mr. Caldwell.

13 .

14 The letter is entitled: "Re your client - John  
15 Caldwell. Re Canio Limited. Thomas Brennan, Joseph  
16 McGowan, related companies and matters.

17 .

18 Dear Mr. Cahill, I am directed by the Sole Member to  
19 write to you as solicitors for Mr. Caldwell.

20 .

21 The Tribunal is conducting certain inquiries relating  
22 to payments to Mr. Raphael Burke/Caviar Limited, by  
23 Messrs. Brennan and McGowan, including, but not limited  
24 to payments through companies beneficially owned or  
25 controlled by them, registered in the Channel Islands.

26 .

27 It appears from the investigations of the Tribunal to  
28 date that Mr. Caldwell, then of Binchys, acted as  
29 solicitor for Canio Limited."

30 .

1 Is that correct, Mr. Caldwell?

2 A. I didn't act for Canio Limited. I acted in some  
3 aspects of Canio Limited's affairs.

4 8 Q. The Canio Limited's solicitors were Bedell & Cristin,  
5 the Jersey solicitors?

6 A. That's correct.

7 9 Q. When they were conducting transactions in Ireland, they  
8 normally did that through Irish solicitors?

9 A. That's correct, they used Binchys, or Binchys and  
10 Partners in Ireland, and some of the conveyancing  
11 transactions would be carried out by some of the  
12 conveyancing people in Binchys, and I would deal with  
13 some other aspects of Canio's affairs.

14 10 Q. Yes. So, it would be correct to state that while you  
15 were a solicitor in Binchys, you did act for Canio  
16 Limited, even though you did not - the main solicitors  
17 for the company were Bedell & Cristin?

18 A. I would have been involved in some transactions of  
19 theirs, yes.

20 11 Q. And would you have had a knowledge of the dealings and  
21 affairs of Canio, insofar as you had dealt with them  
22 and insofar as you had dealt with two of the one-third  
23 shareholders, Mr. Tom Brennan, Mr. Joseph McGowan?

24 A. I have some knowledge of their affairs, yes.

25 12 Q. I will resume the letter now.

26 .

27 "It also appears that Mr. Caldwell may have acted as a  
28 solicitor for or have had dealings with some or all of  
29 the undermentioned companies, individuals and entities  
30 in the context of the Canio lands at Sandyford."

1 .  
2 There are a number of companies that are listed there,  
3 "1. Ardearn." Were you familiar with Ardearn Limited?

4 A. I am - I am familiar with Ardearn Limited, yes, in that  
5 I am familiar with the structure that exists above  
6 Canio Limited.

7 13 Q. And you were familiar with that structure at the time  
8 that you got this letter?

9 A. Yes, I would have been familiar with the structure,  
10 yes.

11 14 Q. "2. Gasche Investments Limited."

12 Were you aware that Gasche Investments Limited was one  
13 of the ultimate one-third holding companies in Canio?

14 A. Yes, I was.

15 15 Q. And were you also aware that Gasche Investments Limited  
16 was beneficially owned ultimately by Mr. Joseph  
17 McGowan?

18 A. I would have heard his name associated with that  
19 company.

20 16 Q. "3. Kalabraki Limited."

21 Were you aware that Kalabraki Limited was a one-third  
22 beneficial owner of Canio, and that its ultimate  
23 beneficial owner was Mr. Thomas Brennan?

24 A. I was aware that that company was a one-third owner,  
25 yes.

26 17 Q. Were you aware that Mr. Thomas Brennan was the ultimate  
27 beneficial owner of that company?

28 A. Yes, I was.

29 18 Q. And were you involved in advising Mr. Brennan in  
30 relation to the transfer of assets from Kalabraki

1 Limited to another trust company called Beachside

2 Holdings?

3 A. My recollection of that is, that that was largely done

4 by Mr. Don Reid of Stokes Kennedy Crowley.

5 19 Q. Did you have any involvement or advice with Mr. Reid in

6 connection with advising Mr. Brennan in connection with

7 those transactions?

8 A. I don't have a recollection of being involved in the

9 transfer between Kalabracki and Beachside.

10 20 Q. Not the actual transfer, but the setting up of the

11 structure into which the assets were transferred?

12 A. I don't have a recollection of being involved in that

13 aspect of the structuring.

14 21 Q. Do you have any recollection of discussing this matter

15 with Mr. Don Reid?

16 A. I don't.

17 22 Q. "4. Foxtown Investment Company Limited."

18 Were you aware that Foxtown Investments Company Limited

19 had an interest or was one of the one-third

20 shareholders in Canio?

21 A. Yes, I was.

22 23 Q. Were you aware of Mr. Finnegan's involvement with

23 Foxtown Investments?

24 A. I had heard his name associated with it.

25 24 Q. "5. Bedell & Cristin."

26 You presumably knew who Bedell & Cristin were?

27 A. I am aware that they are the lawyers for some of those

28 companies, yes.

29 25 Q. And you yourself had dealings with Bedell & Cristin,

30 Mr. Caldwell?

1 A. Yes, I did.

2 26 Q. And you had fairly extensive dealings with Bedell &  
3 Cristin, and in fact, visited Jersey on a number of  
4 occasions, both in the company of Mr. Brennan and on  
5 your own, to have dealings with Bedell & Cristin?

6 A. Yes, I did.

7 27 Q. So you would have been in no doubt as to who Bedell &  
8 Cristin were, and where they fitted in to the situation  
9 concerning Canio?

10 A. I am aware of their role, yes, in relation to Canio.

11 28 Q. Yes. Particularly as you yourself had a direct  
12 personal involvement with the solicitors in Bedell &  
13 Cristin?

14 A. Yes, that's right, I met them --

15 29 Q. "6. Financial institutions.

16 7. Stokes Kennedy Crowley accountants."

17 You were aware that Mr. Don Reid was an advisor to Mr.  
18 Tom Brennan and Kalabracki Limited?

19 A. Yes, I was aware that he was his advisor, yes.

20 30 Q. "Mr. DJ Barry College Trustees."

21 Do you know who College Trustees were, or Mr. Barry,  
22 what their involvement was with Foxtown?

23 A. I have no recollection of that.

24 31 Q. "Mr. James Gleeson"?

25 A. No recollection of that.

26 32 Q. "Mr. Hugh Owens of Grant Thornton", did you know Mr.  
27 Owens?

28 A. I knew Mr. Owens, yes.

29 33 Q. Did you know that Mr. Owens had been an accountant and  
30 advisor for Mr. Joseph McGowan and Mr. Thomas Brennan?



1 A. I knew that he had been an advisor of theirs for some  
2 years, yes.

3 34 Q. Did you know that Mr. Owens had been involved in  
4 setting up certain financial structures as a result of  
5 which certain funds were transferred to Jersey?

6 A. Financial structures? I was aware that Mr. Owens was  
7 involved in structuring of some land transactions into  
8 companies that Mr. Brennan and Mr. McGowan would have  
9 been associated with.

10 35 Q. And these were Jersey companies?

11 A. These were Jersey companies.

12 36 Q. And the Jersey companies were set up and operated by  
13 Bedell & Cristin, and the financial transactions or the  
14 financial advice was provided by Mr. Owens?

15 A. I knew that in relation to some, some of the  
16 transactions. I know from looking at the brief that  
17 there was a significant number of them. I would not  
18 have been aware of all of those transactions, but I  
19 certainly would have been aware of some of them in the  
20 '80s.

21 37 Q. For example, the Bellevue Avenue transaction, you had a  
22 direct involvement in that, yourself, isn't at that  
23 right?

24 A. In the Bellevue land transaction?

25 38 Q. Yes.

26 A. Yes, I was involved in that transaction.

27 39 Q. So that you would have been aware of the nature of the  
28 scheme that was set up and how it was operated through  
29 the Jersey companies, in so far as Bellevue Avenue was  
30 concerned?

1 A. I was aware of it at a stage in the transaction. Until  
2 I saw the briefing papers, again I had no recollection  
3 of it, until I saw the briefing papers. I certainly  
4 would have been involved, as is evidenced by the  
5 briefing papers, in some part of that transaction in  
6 the 1980's.

7 40 Q. No. 11, a Mr. AW Buller. Did you know who Mr. Buller  
8 was?

9 A. No idea.

10 41 Q. Yes. In No. 12, "Proceedings taken in 1985 by Lombard  
11 and Ulster (Banking) (Ireland) Limited against Canio  
12 Limited."

13 A. I was aware that there were proceedings in 1985, yes.

14 42 Q. Those proceedings were initiated by correspondence in  
15 May and June of 1985 from Binchys and Partners to Canio  
16 Limited. Mr. Hugh O'Neill acting for Binchys wrote on  
17 behalf of Lombard & Ulster to Canio demanding return of  
18 the monies that had been paid out in October 1984, and  
19 Mr. O'Neill was presumably your partner in Binchys at  
20 that time?

21 A. Mr. O'Neill was a partner, yes.

22 43 Q. And it is also clear from the documentation with which  
23 you have been furnished that the loan that was advanced  
24 by Lombard and Ulster, that the solicitors who acted on  
25 behalf of Lombard and Ulster were Binchys?

26 A. In advancing the loan they were, yes.

27 44 Q. And that prior, in April of 1985, the solicitors who  
28 had been acting for Lombard and Ulster were  
29 Fitzpatricks, but by October that firm had become  
30 Binchys Solicitors who still retained the work of

1 Lombard and Ulster?

2 A. I don't know when the name changed, but it did change.

3 45 Q. Yes. And that the firm were retained to act on behalf  
4 of Lombard and Ulster, in that transaction, and  
5 subsequently in May, and June of 1985, when things went  
6 wrong in the transaction, and the bank were looking for  
7 their money back, they retained your firm to act on  
8 their behalf?

9 A. The firm was already - again, I have no recollection of  
10 this. I only have the - what I know from looking at  
11 the briefing papers, in relation to it. The firm had  
12 been acting in the financial transaction in the loan,  
13 and continued for a period of time to act for the bank  
14 after that, before there was a split out and another  
15 firm then continued to act for the bank.

16 46 Q. Which was in Autumn of 1985, that the papers were sent  
17 to a separate firm of solicitors?

18 A. Yes.

19 47 Q. Right. We'll come back to deal with that later, Mr.  
20 Caldwell.

21 .

22 Number 13: "Instructions relating to the transfer of  
23 Canio's money circa ú115,000 in July 1985, from Jersey  
24 to a bank in Liechtenstein."

25 .

26 Were you aware of that transaction?

27 A. I have no recollection of the transaction, but I have,  
28 I have clearly from the briefing papers seen the  
29 correspondence in relation to it.

30 48 Q. And, in fact, I think very shortly after this letter

1           was sent to you, the documents relating to that  
2           transaction were also furnished to you, the documents  
3           the Tribunal had?

4    A.   I don't know what the timing sequence was. I was  
5           furnished with the documents, yes.

6 49 Q.   On the 30th of March, 2001, the same day as the letter  
7           you were furnished with the documentation relating to  
8           the transaction transferring ú115,000 from Canio  
9           Limited's bank account in Jersey to a bank account in  
10          Liechtenstein?

11   A.   I was furnished with documents, yes, transferring  
12          ú115,000 to Liechtenstein.

13 50 Q.   And those documents indicating that you had played a  
14          role insofar as the information that was sought from  
15          you from Mr. Wheeler was the name or the number of the  
16          L Bank account, and you were in a position to furnish  
17          that information to him?

18   A.   I believe there is a telex or something in the  
19          documents, which I sent to him, yes.

20 51 Q.   Who set up the bank account in Liechtenstein for Mr.  
21          Brennan?

22   A.   It would have been the lawyers in Liechtenstein who  
23          were dealing with the structure that was in  
24          Liechtenstein at the time.

25 52 Q.   Who instructed the lawyers?

26   A.   I would have met with the lawyers, and I think Mr.  
27          Brennan would have met with the lawyers as well.

28 53 Q.   Can you recollect when the bank account in  
29          Liechtenstein was set up?

30   A.   I have no recollection of that.

1 54 Q. Well, we will come to deal with that in due course,  
2 because it would appear from the documentation that has  
3 been furnished to the Tribunal and with which you have  
4 been circulated, that this account was opened on the  
5 23rd of May, 1985, and that immediately preceding that  
6 and subsequent to that funds from both Beachside and  
7 the Canio account were transferred into this account in  
8 Liechtenstein.

9 .  
10 It would also appear, Mr. Caldwell, from the  
11 documentation with which the Tribunal has been  
12 furnished, that the contact point between Mr. Brennan  
13 and the St. Anthony Foundation in Liechtenstein was Mr.  
14 John Caldwell?

15 A. I would have been the person that introduced him to the  
16 firm in Liechtenstein. He wouldn't have had any  
17 contact with anyone in Liechtenstein.

18 55 Q. So, would it be fair to say, and correct me if I am  
19 wrong, that you were the person that was instrumental  
20 in setting up the Liechtenstein Bank account, and the  
21 St. Anthony Foundation for Mr. Brennan?

22 A. I would have been involved in the establishment of the  
23 foundation. Having established the structure there,  
24 the structure then would have bank accounts established  
25 and would be the local people who would actually deal  
26 with the banks, in establishing those.

27 56 Q. And presumably Mr. Brennan would have been advised by  
28 somebody to avail himself of a foundation in  
29 Liechtenstein, such as the St. Anthony Foundation and  
30 to transfer his funds into that foundation?

1 A. Well, the funds being transferred were Beachside funds,  
2 which were being transferred. He would have received  
3 advice in relation to the structure that was being set  
4 up, yes.

5 57 Q. From whom did he get that advice, Mr. Caldwell?

6 A. I can only assume it was myself.

7 58 Q. Yes?

8 A. I have no recollection of it.

9 59 Q. But it would appear, and we will be going through the  
10 Liechtenstein documentation, including some that have  
11 been translated, shortly, but it would appear from that  
12 documentation that in or around May of 1985, for some  
13 reason, a decision was made to open a foundation in  
14 Liechtenstein for the benefit of Mr. Thomas Brennan and  
15 to transfer to that foundation funds that were standing  
16 both to Mr. Brennan's credit in Beachside and, also, in  
17 Canio Limited?

18 A. Well, there were funds transferred - I wouldn't accept  
19 at this stage that all the funds that were transferred  
20 were - that some of the funds were transferred were  
21 Canio funds. My understanding is that all the funds  
22 that were transferred were Beachside funds, but if you  
23 want to come to that later --

24 60 Q. We can come to it. You may take it, Mr. Caldwell, that  
25 the \$115,000 that was transferred was transferred out  
26 of a Canio Limited bank account, that was held in its  
27 name by Bedell & Cristin, and not from the Beachside  
28 bank account, which has a different reference. We will  
29 come to that in --

30 A. That is not my understanding. We will come to that,

1           yes.

2 61 Q.   Ultimately it may have been Mr. Brennan's view that he  
3           was the beneficial owner of those funds, and that they  
4           were, in his mind, Beachside funds, but technically  
5           they were transferred from the Canio Limited account.

6           That is where the money came from?

7    A.   The clear understanding was that they were Beachside  
8           funds.

9 62 Q.   That was your understanding?

10   A.   That is my understanding, yes.

11 63 Q.   Insofar as a decision was made in around May, it would  
12          appear, of 1985, to set up the Liechtenstein structure,  
13          and that it was on foot of your advice, I presume, that  
14          the structure was set up, can you indicate to the Sole  
15          Member of the Tribunal what precipitated the need for  
16          such a structure?

17   A.   Well, Mr. Brennan had been from 1983 reorganising his  
18          affairs. I had been involved in the reorganisation of  
19          his Irish affairs and the creation of a settlement in  
20          Ireland. He was separating out his personal assets and  
21          his personal wealth from the business type things, and  
22          we established a trust in Ireland to manage his horses  
23          and his horse activities, and we did a - the St.  
24          Anthony Foundation was similarly done, because we set  
25          that up and had a company underneath it, which was an  
26          American company to deal with some horses, which he was  
27          shipping to the United States, and that's what the fund  
28          were transferred for. And that is what he did with the  
29          funds when they were there, as I understand it.

30 64 Q.   Number 14 on that list is Sovereign - insofar as number

1 13 on that is concerned, then, you would have been  
2 intimately familiar with the bank in Liechtenstein to  
3 which the funds were transferred?

4 A. I wouldn't have been intimately familiar with it.

5 65 Q. Would you have had records in Binchys from which you  
6 could have obtained the information --

7 A. I would have --

8 66 Q. -- Mr. Caldwell?

9 A. I don't believe I would have any records or had any  
10 records in relation to that. Those sort of matters  
11 would have been left to the local lawyers and the local  
12 advisors to deal with.

13 67 Q. Yes. Did you have correspondence with the bank in  
14 Liechtenstein?

15 A. I have no recollection of having any correspondence  
16 with them. I wouldn't have expected to have any with  
17 them.

18 68 Q. I will arrange to have a file brought down from the  
19 Tribunal, that has been supplied by Binchys, Mr.  
20 Caldwell, which demonstrates reasonably extensive  
21 correspondence in relation to financial transactions  
22 passing between yourself and the bank in Liechtenstein  
23 dealing with Mr. Brennan's affairs. Just to refresh  
24 your memory in relation to the matter.

25 A. I am quite happy to look at that to refresh my memory,  
26 but I have no recollection of that.

27 69 Q. But it would appear, if such a file did exist, that  
28 there was a file of documents in the offices from  
29 Binchys from which you could have obtained information  
30 in relation to this bank account in Liechtenstein, even



1 if yourself couldn't recollect it?

2 A. I have no recollection of that. None whatsoever.

3 70 Q. All right. At No. 15 - No. 15 is transfer of Canio's -

4 sorry No. 14, "Sovereign Management Limited in

5 Guernsey." Did you know who Sovereign Management

6 were?

7 A. No.

8 71 Q. Okay.

9 A. I have no recollection of them.

10 72 Q. Yes. And No. 15:

11 .

12 "The transfer of Canio's money, ú58,000, in November

13 1984 from the client account of Bedell & Cristin at

14 Chase Bank Jersey, to an account of Charles Cain & Co.,

15 account No. 1354634 at Lloyds Bank plc in the Isle of

16 Man."

17 .

18 Insofar as that transaction was concerned, did you know

19 who Charles Cain & Co. were?

20 A. Yes, I am familiar with Charles Cain & Co., yes.

21 73 Q. And were you able to conduct an inquiry to satisfy

22 yourself as to why this money was paid to Mr. Cain and

23 to whom it was paid?

24 A. When I first saw this, I had no recollection whatsoever

25 about the ú58,000. It was in fact Mr. McGowan who

26 triggered my memory in relation to it. When he did

27 that, we then dug out a file and got some information

28 on it, which we circulated to the Tribunal.

29 74 Q. Mm-hmm. That transaction was a transaction in

30 connection with the proposed sale of Hollywood Rath by

1 Dollanstown to a company called Farefield Investments?

2 A. That's correct.

3 75 Q. And those funds were used as your colleague,

4 Mr. O'Hanrahan, has told the Tribunal, as a deposit

5 that was paid by Binchys to George Russell and Co. in

6 connection with the sale?

7 A. Yes, that's my understanding.

8 76 Q. Right. Who were the beneficial owners of Farefield

9 Investments?

10 A. At the time that it was established, it was established

11 - Mr. McGowan had the company established at the time

12 it was established. My understanding was that it was

13 being established in the context of enabling a third

14 party to acquire the lands. I haven't had an

15 opportunity to review the file in relation to it,

16 because the file was taken and handed over.

17 .

18 My recollection is that there was a third party who was

19 then involved in extensive discussions and

20 negotiations, moving towards the completion of the

21 acquisition of that property, which eventually did not

22 happen.

23 77 Q. As far as the company, Farefield Investments, was

24 concerned, Mr. McGowan was the person who had the

25 company. It is a Cypriot company?

26 A. It is a Cypriot company.

27 78 Q. Mr. McGowan was the person who had the company set up?

28 A. The company was set up in the context of a person

29 taking, taking over the land, buying the land, and the

30 - Mr. McGowan was the party involved in that initially,

1           yes.

2 79 Q.   In that initially. And the company was a company  
3           established and set up by you on instructions from Mr.  
4           McGowan?

5           A.   Yes, I would have given the instructions to set it up.

6 80 Q.   And the transaction in question, the €58,000, as I  
7           understand it, we will deal with the documents in more  
8           detail, was a transaction whereby some €60,000 Irish,  
9           which was the conversion value of the money that was  
10          transferred from the Isle of Man, was used to pay a  
11          deposit on purchasing Hollywood Rath which was owned by  
12          Dollanstown Estates, owned by Mr. McGowan?

13         A.   Yes, Dollanstown Estates was owned by Mr. McGowan, and  
14         my understanding was that the transaction was taking  
15         part with a third party, and that these funds were  
16         being paid to set that structure in place so that third  
17         party could ultimately acquire the property.

18 81 Q.   At its simplest, Mr. Caldwell, at its simplest, what it  
19         was, was Mr. McGowan in one guise, paying himself a  
20         deposit in another guise?

21         A.   It was more complex than that.

22 82 Q.   I have no doubt that it was more complex than that.

23         A.   In that there was a third party there, who was involved  
24         in the acquisition of it. Whatever the arrangement was  
25         between Mr. McGowan and that third party, I don't know  
26         what that arrangement was. I don't know what the  
27         timing was in relation to that. I do know there was a  
28         third party who was there to acquire the property. I  
29         do recollect that there were extensive discussions. As  
30         I say, I haven't had the opportunity to review the

1 file.

2 83 Q. This ú58,000 was part of the money that was advanced by  
3 Lombard and Ulster to Canio Limited?

4 A. That's correct, yes.

5 84 Q. This ú58,000 was part of Mr. McGowan's share of that  
6 money?

7 A. Correct.

8 85 Q. That money was then sent to Charles Cain in the Isle of  
9 Man, is that right?

10 A. Yes, it was. It was part of the Gasche money, yes.

11 86 Q. Yes. And that that money was then sent by Mr. Charles  
12 Cain, on request, to Binchys Solicitors, where it was  
13 converted to Irish pounds?

14 A. Yes, it was.

15 87 Q. It was then paid on foot of a letter from Binchys  
16 Solicitors to Mr. George Russell, as a deposit on a  
17 transaction involving the purchase of Hollywood Rath?

18 A. Correct.

19 88 Q. Yes. That's right. The owner of Hollywood Rath was  
20 Mr. Joseph McGowan?

21 A. Correct.

22 89 Q. So insofar as this sum of ú58,000 is concerned,  
23 Mr. Joseph McGowan is funding the purchase of his own  
24 property?

25 A. Mr. McGowan was - as I said, I don't know what the  
26 arrangement was with the third party, but he was  
27 facilitating the acquisition of the property by that  
28 third party.

29 90 Q. The money --

30 A. The money undoubtedly was money which came out of funds

1           that were his funds, in that they belonged to Gasche.

2 91 Q.   The letter goes on, Mr. Caldwell, to say:

3           .

4           "That the Sole Member has decided that it will be  
5           necessary for the purpose of his inquiries, A" - we  
6           needn't worry with paragraph.

7           .

8           "B. To require Mr. Caldwell (and Mr. O'Hanrahan) to  
9           give evidence on foot of the attached summons  
10          concerning the foregoing matters. Initially  
11          Mr. O'Hanrahan will be required to give evidence on  
12          Wednesday next, 4th April, 2001, in relation to the  
13          matters referred to at 13 and 15 above, and will  
14          subsequently be required to give evidence in relation  
15          to the remaining matters above referred to, and any  
16          other matters that may arise subsequent to the sending  
17          of this letter. I enclose copies of documents which  
18          will form the basis of the questions to be directed to  
19          Mr. O'Hanrahan on Wednesday next.

20          .

21          C. With the consent of Messrs. Brennan and McGowan and  
22          Finnegan, which I assume will be forthcoming today, to  
23          request Mr. Caldwell to prepare a detailed narrative  
24          statement concerning his knowledge and dealings with  
25          all the foregoing matters, including financial  
26          transactions in relation to Canio Limited and the  
27          aforementioned companies, individuals, entities and  
28          individuals and his dealings with Bedell & Cristin, it  
29          is hoped that Mr. Caldwell will be in a position to  
30          furnish such statement to the Tribunal within one week

1 from this date."

2 .

3 Insofar as that is concerned, paragraph C, was there  
4 any part of that that you didn't understand?

5 A. No, paragraph C is quite clear.

6 92 Q. Was there any part of paragraphs 1 to 14 or 1 to 15  
7 above that you didn't understand?

8 A. In terms of the text of them, no. I mean, I can read  
9 the 1 to 14, Ms. Dillon. In terms of the level of  
10 knowledge that one had, at the time of that letter  
11 there and the level of knowledge one has now, having  
12 read 5 and a half thousand pages of transcript of the  
13 brief, and having read quite a number of transactions,  
14 the level of knowledge and recollection now is  
15 considerably different than the level of knowledge and  
16 recollection when that letter issued.

17 93 Q. Yes. But insofar as we have gone through the items 1  
18 to 15 on that list and we have looked at them, when you  
19 received this letter from the Tribunal, did you have  
20 any doubt in your mind as to who Hugh Owens was, and  
21 what his function was in connection with the affairs of  
22 Canio or Messrs. Brennan and McGowan?

23 A. I knew who Hugh Owens was. I knew in some aspects what  
24 his functions were, yes.

25 94 Q. And you knew, from the Bellevue Avenue transaction,  
26 because you, yourself, were involved in the Bellevue  
27 Avenue transaction, what Mr. Owens' function was?

28 A. At the time I would have no recollection of the  
29 Bellevue transaction. I mean, a lot of things I  
30 remember now. My recollection has improved.

1 95 Q. Yes?

2 A. Because I have had the opportunity of reading  
3 transcripts, because I have had the opportunity of  
4 looking at briefing documents. At the time that that  
5 letter would have issued, my recollection of events,  
6 which were 15 to 20 years before, and without the  
7 benefit of any documentation, would have been quite  
8 limited.

9 96 Q. Mmm. You were also required, in paragraph D - you were  
10 being given notice that the Tribunal would require you  
11 to make "Discovery on oath, and produce to the Tribunal  
12 all documents and records in his possession, power or  
13 procurement relating to the foregoing matters. In that  
14 regard, the Sole Member will consider no sooner than  
15 Tuesday next, the 3rd of April, whether or not to  
16 require Mr. Caldwell and/or Mr. Michael O'Hanrahan,  
17 and/or the partners of Binchys to make Discovery of,  
18 and produce to the Tribunal all documents and records  
19 in their possession, power or procurement from the 1st  
20 of January, 1979 to date."

21 .

22 Was there any part of that that you didn't understand?

23 A. No. I mean, that is quite clear.

24 97 Q. Then you were invited, if you wished to, to make any  
25 submissions that you wished to make in connection with  
26 the matter. You were also served with an Order - page  
27 46, please, of that date to give evidence in relation  
28 to your knowledge and affairs of the dealings of Canio  
29 Limited and the matters, persons and companies referred  
30 to in the Tribunal's letter of the 30th of March, 2001.

1 .

2 So, was there any part of that that you didn't  
3 understand?

4 A. No, the Order is clear.

5 98 Q. Yes. The response that was received - it is the  
6 position, I think, that you were furnished, then, with  
7 Letters of Consent from Mr. Brennan and Mr. McGowan,  
8 relieving you from any difficulties you may have felt  
9 that you might have had in connection with legal  
10 professional privilege?

11 A. I received letters, yes.

12 99 Q. And you also received, even though it appears that you  
13 didn't act for Mr. Finnegan, subsequently a similar  
14 consent in connection with Mr. Finnegan and his  
15 companies?

16 A. I eventually received that, yes.

17 100 Q. So that insofar as you might have felt that was any  
18 impediment to your cooperation with the Tribunal in  
19 from a position of legal professional privilege, that  
20 was then eliminated from the equation?

21 A. Yes, when I received the letters, all privilege issues  
22 were gone.

23 101 Q. They no longer arose. You didn't make any submissions  
24 in connection to the proposed Order of Discovery, Mr.  
25 Caldwell, through your solicitors or otherwise?

26 A. There were no submissions made.

27 102 Q. So presumably, may I take it from that, then, that  
28 insofar as the proposed Order for Discovery was  
29 concerned, you were not - you felt you were in a  
30 position to comply with the Order, and that you didn't



1 anticipate any difficulties in complying with the Order  
2 for Discovery?

3 A. Whatever documents were there would have been available  
4 to comply with the Order for Discovery, yes.

5 103 Q. Yes.

6 A. And the --

7 104 Q. Sorry.

8 A. As I recollect it, the Order was directed to both  
9 Michael O'Hanrahan and to myself.

10 105 Q. No, your Order is a separate Order. We will come on to  
11 it in a moment.

12 .

13 On the 4th of April, 2001, you not having made any  
14 submissions - page 65 please - the Tribunal wrote to  
15 Finbar Cahill & Co., your then solicitors, notifying  
16 you that you had not made any submissions in relation  
17 to the proposed Discovery Order and serving you with a  
18 copy of the Discovery Order, informing you also that it  
19 was necessary to defer the public hearing to consider  
20 documents that had been requested.

21 .

22 You were asked to furnish the documentation as quickly  
23 as possible, but no later than the date specified in  
24 the Order. And this summons was also served on you at  
25 the same time, which is a summons to produce the  
26 documents that were specified in the Order for  
27 Discovery. You were served with both an Order from the  
28 Sole Member in relation to making an Affidavit of  
29 Discovery and also a summons to produce the documents.

30 .

1 Is there any part of that that you had any difficulty  
2 with?

3 A. The text speaks for itself.

4 106 Q. Yes. At page 68, there is a copy of the Order for  
5 Discovery, Mr. Caldwell, which was an Order requiring  
6 you to discover and produce to the Tribunal, and you  
7 will see that it is ordered that Mr. John Caldwell, of  
8 Binchys, 40 Lower Baggot Street - it is not a joint  
9 Order?

10 A. Yes, that's right. I believe there is one in similar  
11 terms in relation to Mr. O'Hanrahan.

12 107 Q. Exactly?

13 A. The Order did give me some difficulty in terms of its  
14 format, in that it was required to produce all  
15 documents, etc. relating to Ardcarn. The way that it  
16 is structured, and also in terms of all financial  
17 institutions, I mean, those were very, very general,  
18 very non-specific.

19 108 Q. And did you draw your concerns, in relation to the way  
20 the Order had been drawn, to the Tribunal?

21 A. I did not.

22 109 Q. No. So that insofar as the Tribunal was concerned, on  
23 receipt of this Order and in the absence of any  
24 communication from you that you had any difficulty with  
25 it, interpreting it or otherwise, it could be assumed  
26 that you would comply with the Order?

27 A. I didn't draw it to the attention of the Tribunal.

28 110 Q. You say that you now have difficulties in the format of  
29 the Order?

30 A. Well, I had difficulties at the time in the format of

1 the Order, yes.

2 111 Q. And at page 66 there is a copy of the Notice to  
3 Produce, which again is similar to the Order for  
4 Discovery that was made by the Tribunal, and it is  
5 correct to say, and I think you would have been aware,  
6 because Mr. O'Hanrahan is a partner of yours in  
7 Binchys, that Mr. O'Hanrahan received a similar Order  
8 for Discovery and also a summons, I think, in a similar  
9 fashion?

10 A. Yes, in terms of it being directed to myself and Mr.  
11 O'Hanrahan, I regard them, I regarded them as being  
12 directed effectively to the firm, for the firm to  
13 comply with them. It was in that context that I looked  
14 at that Order.

15 112 Q. You are familiar, Mr. Caldwell, with an Affidavit of  
16 Discovery?

17 A. I must admit, Ms. Dillon, with not being particularly  
18 familiar with an Affidavit of Discovery, because  
19 litigation is not something that I practiced in all the  
20 years that I have been involved in practice as a  
21 solicitor.

22 113 Q. You would have had available to you, either through  
23 Binchys through your partners that did deal with  
24 litigation, or through the offices of Finbar Cahill and  
25 Co., expertise and information as to how to provide a  
26 proper Affidavit of Discovery in compliance with an  
27 Order, if you had wanted it?

28 A. Well, there was obviously people within the firm who  
29 are familiar with Affidavits of Discovery, yes.

30 114 Q. On the 10th of April, your then solicitors wrote to the

1 Tribunal, page 76, in connection with the Order that  
2 had been served in the earlier letter of the 4th of  
3 April, saying that:

4 .  
5 "Thank you for the letter of the 4th of April.  
6 We have discussed same with our client.

7 .  
8 In your letter of the 30th of March you informed us  
9 that we could anticipate receiving from Messrs. Miley &  
10 Miley (acting on behalf of Messrs. Brennan and McGowan)  
11 and Messrs. Kennedy McGonagle Ballagh (acting on behalf  
12 of Mr. Finnegan) the consent of their respective  
13 clients."

14 .  
15 Noting that you had received a consent from Miley &  
16 Miley, and that you didn't have one from Messrs.  
17 Kennedy McGonagle Ballagh on behalf of Mr. Finnegan.

18 And Noting then, in the next paragraph, "We note the  
19 making of the Order. We would appreciate it if you  
20 would confirm that all fees, costs and expenses  
21 associated with the compliance of the Order, both by  
22 ourselves and our client, will be discharged by the  
23 Tribunal."

24 .  
25 And then setting out that you have no documents in your  
26 possession or control relating to Canio Limited.

27 .  
28 He advises that Messrs. Binchys do have some  
29 documentation and papers relating to Canio Limited and  
30 its dealings with some of the matters and parties

1 listed in the Order.

2 .

3 At page 77: "Our client anticipates being in a  
4 position to have such documents as are in Binchys'  
5 possession and control relating to Canio Limited  
6 delivered to the Tribunal by a representative of  
7 Binchys prior to the 24th of April."

8 .

9 So it is clear from that, that you understood what was  
10 requested of you in the Order for Discovery?

11 A. Yes, and that we were in the process of dealing with  
12 that, and that the documents were going to be delivered  
13 to the Tribunal.

14 115 Q. I think that Mr. O'Hanrahan did swear an extensive  
15 Affidavit of Discovery, and swore an Affidavit of  
16 Discovery, and you swore a shorter form Affidavit of  
17 Discovery?

18 A. Yes.

19 116 Q. Which I will come to in a moment. But insofar as your  
20 statement is concerned, on the 4th of May, 2001, the  
21 Tribunal wrote to your solicitors noting that you had  
22 not furnished the narrative, page 97 please, that you  
23 had not furnished the narrative statement, giving you a  
24 copy of the consent furnished by Mr. Finnegan, and  
25 noting that you were in default of the Order requiring  
26 you to make an Affidavit of Discovery?

27 A. In relation to the Affidavit of Discovery,  
28 Mr. O'Hanrahan, as you say, completed a comprehensive  
29 Affidavit of Discovery in relation to the Order. I had  
30 discussed how I should deal with the response, given

1 that I was replying to effectively the same Order which  
2 had been given in exactly the same terms.

3 .

4 I replied in a way which I thought dealt with the  
5 issue, in that it dealt with the substantive aspects of  
6 it, in referring to his affidavit, in saying that I had  
7 read his affidavit, and I think, from recollection,  
8 saying that I had nothing else to - other than what was  
9 in his affidavit. So - and that I was providing that,  
10 providing that Affidavit of Discovery for the sake of  
11 completeness.

12 .

13 So, as he had done an Affidavit of Discovery and had  
14 delivered up all the documents that existed, that were  
15 there in relation to it, he had seen that that  
16 completed the matter in relation to Discovery.

17 117 Q. Your solicitors informed the Tribunal that you were  
18 assisting Mr. O'Hanrahan in the preparation of his  
19 Affidavit of Discovery?

20 A. Yes, I did assist him, yes.

21 118 Q. So that in the course of preparing that Affidavit of  
22 Discovery, which as you have described, was a  
23 comprehensive Affidavit of Discovery, you would have  
24 had to have reviewed the files, to see what files were  
25 caught by the terms of the Order?

26 A. Well, I wouldn't have reviewed files on an independent  
27 basis. I mean, in the last, since - he would have  
28 identified files that he - that were there from the  
29 records and so on, that Binchys had, he would have told  
30 me what they were. He would have looked at those

1 files. I wouldn't have turned the pages on all of the  
2 files.

3 119 Q. But would you have been aware of the existence of a  
4 body of information which was the subject matter of  
5 Mr. O'Hanrahan's Affidavit of Discovery, which was  
6 relevant to the matters contained in the Order and  
7 which was being sent into the Tribunal?

8 A. I was aware that there were a series of files which  
9 fell within the Order and which Michael was preparing  
10 his Affidavit of Discovery in relation to.

11 120 Q. Well, you say in your Affidavit of Discovery, page 102,  
12 please, that you had considered Mr. O'Hanrahan's  
13 affidavit in detail.

14 .  
15 At paragraph 3 of your Affidavit you have sworn that:  
16 "The Tribunal has also made an Order of the 9th of  
17 April, 2001, directing my colleague, Mr. Michael  
18 O'Hanrahan, solicitor of Binchys Solicitors, to swear  
19 an Affidavit of Discovery in exactly the same terms as  
20 the Order. In compliance with the Order of the 9th of  
21 April, 2001, Michael O'Hanrahan has sworn an Affidavit  
22 of Discovery (Mr. O'Hanrahan's affidavit) dated the  
23 blank day of May 2001 (a copy of which I have read and  
24 considered in detail)."

25 A. I read his affidavit, yes.

26 121 Q. And considered it in detail?

27 A. That doesn't mean that I read all the files.

28 122 Q. But it enumerated the files that were available in  
29 Binchys that were relevant to the matters that were the  
30 subject matter of the Order?

1 A. Yes, it did. It listed the files.

2 123 Q. You go on to state in your affidavit:

3 "Apart from the documents referred to in Mr.  
4 O'Hanrahan's affidavit, I have no other documents  
5 falling within the terms of the Order in my power,  
6 possession or procurement. I have nothing to add to  
7 that affidavit, and file this affidavit for the sake of  
8 completeness."

9 A. Correct.

10 124 Q. The affidavit does not, Mr. Caldwell, comply with the  
11 Order that was served on you?

12 A. Well, I can't answer whether it does or it doesn't. My  
13 belief was, and my understanding was, that that did  
14 comply with it, that it, as Michael O'Hanrahan had  
15 dealt with the Affidavit of Discovery, had set out in  
16 detail everything that was there, that all of that  
17 information was going to the Tribunal. As both Orders  
18 were in exactly the same terms, that that affidavit was  
19 done to compliment his affidavit and to comply with the  
20 Order that had been directed to me.

21 125 Q. If we go back to the question, Mr. Caldwell. You were  
22 required by the Order for - that was made in relation  
23 to Discovery, independent of anything that Mr.  
24 O'Hanrahan might or might not have been doing, the  
25 Order that was made was an Order personal to John  
26 Caldwell of Binchys Solicitors to make Discovery of  
27 certain terms. Would you like to see the Order again?

28 A. The Order?

29 126 Q. Is that correct?

30 A. There was an Order directed to me, yes.



1 127 Q. Does this Affidavit of Discovery comply with that  
2 Order?

3 A. I believe that it does.

4 128 Q. Well, would you identify in that Affidavit of Discovery  
5 where you have listed the documents in connection with  
6 Ardcarn?

7 A. I believe it does, by making reference to  
8 Mr. O'Hanrahan's affidavit.

9 129 Q. Would you identify in your Affidavit of Discovery where  
10 you have listed the documents in connection with  
11 Ardcarn?

12 A. Clearly, Ms. Dillon, that Affidavit of Discovery does  
13 not list those documents in a schedule attached to it,  
14 that is a question of form, not substance.

15 .  
16 In terms of the substance of what that document does,  
17 the substance of that document, in my view, dealt with  
18 the Order that had been served on me, in that it drew  
19 on Mr. O'Hanrahan's Affidavit of Discovery, which was a  
20 comprehensive Affidavit of Discovery. The form may not  
21 be in whatever the form is for that, but the substance  
22 of the affidavit is, deals with the Order.

23 130 Q. This Affidavit of Discovery does not refer to any  
24 document other than Mr. Michael O'Hanrahan's Affidavit  
25 of Discovery, isn't that correct?

26 A. That's correct.

27 131 Q. Sorry, it refers to two documents, the Order for  
28 Discovery made by the Tribunal in paragraph two and Mr.  
29 O'Hanrahan's affidavit in paragraph three.

30 .

1 The Tribunal drew to your attention, on receipt of this  
2 document, the fact that it did not comply and that you  
3 did not comply with the Order that had been made in  
4 connection with you. Isn't that right? The Tribunal  
5 wrote to you on receipt of this documentation  
6 indicating that it was not sufficient for you to rely  
7 upon Mr. O'Hanrahan's affidavit?

8 A. I don't see what I could have done over and above that,  
9 Ms. Dillon, except to - when one looks at it now -  
10 except to repeat his affidavit in the form that it was  
11 in, in as a formality, because all of the documentation  
12 had already been provided to the Tribunal under his  
13 affidavit. I could not deliver any form documentation  
14 up to the Tribunal, because it already had been  
15 delivered to it.

16 132 Q. Right. And subsequently you received a notice letter  
17 on the 25th of June, 2001, that the Sole Member  
18 intended considering making a further Order for  
19 Discovery against you. That is at page 146.

20 .  
21 This is the Order proposed in relation to transactions  
22 involving Mr. Brennan, Mr. McGowan, Mr. Finnegan, Mr.  
23 Burke, page 146 and 147. You are familiar with that  
24 letter, Mr. Caldwell?

25 A. Yes, I can see the letter, yes.

26 133 Q. You received that letter, it was sent to your then  
27 Solicitors, who responded to it, Finbar Cahill and Co.

28 A. Yes.

29 134 Q. And that set out the parameters of an Order that the  
30 Sole Member proposed to make against you, a further

1 Order for Discovery, and your solicitors responded to  
2 the Tribunal acknowledging receipt and saying they were  
3 seeking instructions, page 148.

4 .

5 Did you make any submissions to the Sole Member in  
6 connection with that proposed Order?

7 A. I don't believe there were any made.

8 135 Q. And on the 10th of August, an Order in the terms of the  
9 notice that you had been given was made. Isn't that  
10 right?

11 A. I assume so.

12 136 Q. That is the notice at - the notice letter is at page  
13 165, which encloses the Order, noting that you had not  
14 made any submissions, and that "The Sole Member has  
15 today made an Order in the terms set out in the  
16 certified copy hereto and you will note the date of  
17 compliance."

18 A. During this time, the solicitors who were acting for me  
19 in Ireland had - were not in continuous communication  
20 with me. Between January of 2001 and September of  
21 2001, I spent just somewhere in the order of 30 odd  
22 days in Ireland. I don't live in Ireland. During this  
23 time period I would have been in, largely in North  
24 America. I wasn't in daily contact with the solicitors  
25 in Ireland. So weeks could go by and there would be no  
26 communication.

27 137 Q. Yes. I mean, is it the situation that wherever you  
28 were, you never had a fax machine available to you  
29 anywhere --

30 A. On occasion --

- 1 138 Q. -- to where this information could be sent?
- 2 A. On occasions I would have fax machines available to me,  
3 but not always. I was not always in contact with  
4 Finbar Cahill and Co.
- 5 139 Q. Yes. But insofar as the notice of the making of this  
6 Order was concerned, it would appear that Messrs.  
7 Cahill and Co. obtained, got the letter, and then were  
8 seeking to obtain instructions from you. And is it the  
9 position, then, that between the 26th of June, 2001,  
10 and the 10th of August, 2001, you were not able to make  
11 any contact with your then solicitor?
- 12 A. I don't know the answer to that, I have no clear  
13 recollection in relation to that. I spent a lot of  
14 time out of Ireland. I mean, I may have been in  
15 contact with them during that time, I may not.
- 16 140 Q. So, are you saying that you were unaware of the Sole  
17 Member's intention to consider making this Order?
- 18 A. I can remember seeing the letter. When I saw letter, I  
19 don't remember, Ms. Dillon.
- 20 141 Q. On the 10th of August, 2001, the Sole Member made  
21 another Order against you, Mr. Caldwell, which is the  
22 Order on page 164, which is similar in terms to the  
23 notice letter that you had received and which was  
24 served on your then solicitors, Finbar Cahill and Co.,  
25 and it required you to make Discovery on oath and  
26 produce to the Tribunal documents and categories of  
27 documents in connection with persons that are set out  
28 at paragraphs A to H?
- 29 A. I would not have seen that Order until late August at  
30 the earliest.

1 142 Q. Well, we are now in late October, early November, Mr.

2 Caldwell, and have you complied with that Order?

3 A. I have not responded to that Order.

4 143 Q. Have you sworn any affidavit in compliance with that

5 Order?

6 A. I have not sworn any affidavit.

7 144 Q. Why?

8 A. I didn't believe it was a matter that I required to

9 deal with.

10 145 Q. Why?

11 A. I thought that we had passed on beyond the point of me

12 having to deal with that, that I was giving evidence in

13 relation to this matter, and that I had no requirement

14 to actually produce a written response to it.

15 146 Q. Can you indicate any correspondence from the Tribunal

16 that waived from you your obligation to comply with

17 this Order?

18 A. I am not aware of any.

19 147 Q. Yes. And presumably, Mr. Caldwell, in anticipation of

20 giving evidence today, and in preparation for it, you

21 have reviewed all of the correspondence that has passed

22 between the Tribunal and yourself, your former

23 solicitors, and your present solicitors?

24 A. I haven't reviewed all of the correspondence. I

25 reviewed some of the correspondence that has passed,

26 yes.

27 148 Q. And is there any letter or correspondence from the

28 Tribunal that removes from you your obligation to

29 comply with the Order of the Sole Member of the 10th of

30 August, 2001?

1 A. I am not aware of any.

2 149 Q. Can you explain to the Sole Member when it is, then,

3 that you elected to flout his Order and not to comply

4 with it?

5 A. I haven't - I do not believe that I flouted his Order

6 in relation to it. I believe that we had - that I was

7 giving evidence in relation to whatever of those

8 matters were relevant. That is why I am here today, is

9 to give that evidence in relation to it. I did not

10 believe that the Order was still extant, that it was an

11 Order that required me to comply with it. There is

12 nothing in the correspondence, I accept, which removes

13 the need for that. That was my belief in relation to

14 it.

15 150 Q. Can you indicate to the Sole Member on what you base

16 that belief, Mr. Caldwell?

17 A. Well, the difficulties that arose between myself and

18 the Tribunal in terms of my attendance at the Tribunal,

19 I thought had brought us, had brought me to a situation

20 where I would be dealing with any issues that were in

21 the correspondence by my attendance here today, by the

22 evidence that I would give.

23 151 Q. In what way does your attendance to give evidence on

24 any issue obviate the necessity to give an Affidavit of

25 Discovery?

26 A. That was my belief. It may be a belief that was

27 incorrect. It was my belief.

28 152 Q. It is on what you are basing the belief that I am

29 seeking some information, Mr. Caldwell.

30 .

1       What was it that satisfied you, in your own mind, that  
2       your attendance now to give evidence at this stage  
3       obviated the necessity of you complying with that  
4       Order?

5       A.   In terms of the Order and looking at it, it is all  
6       documents and records, all documents and records have  
7       already been given over, through Binchys. There are  
8       successive and comprehensive documentation - has been  
9       given over in relation to all of the Binchys files,  
10      through a whole series of Affidavits of Discovery. I  
11      have no papers. I am not a member of that firm. I  
12      have no papers to hand over.

13 153 Q.   And what was the difficulty with putting all of that  
14      into an Affidavit of Discovery in the proper format and  
15      sending it into the Tribunal?

16      A.   If I thought that was a necessary part, I would have  
17      done that and sent it in.

18 154 Q.   At what stage, Mr. Caldwell, did you form the view that  
19      it wasn't necessary for you to comply with this Order?

20      A.   I am not sure that there was any specific point in time  
21      that I formed a view that I was not - that it was not  
22      necessary to comply with the Order. I mean, in terms  
23      of the information that is required under that Order  
24      and the giving over of documents, all of that has, all  
25      of that has been dealt with. In terms of putting an  
26      affidavit together to simply say what I've said, that  
27      all of that has been done, that is something that can  
28      be done for the sake of completeness, but in terms of  
29      the substantive side of it, all of the documentation is  
30      already with the Tribunal.

1 155 Q. That's not, with respect, Mr. Caldwell, - the content  
2 of the affidavit, if one were to be received was -  
3 could be a matter that could be debated or discussed  
4 with you. In the absence of you furnishing an  
5 Affidavit of Discovery, there is nothing to debate or  
6 discuss as to whether or not it is complete, full or  
7 otherwise. Isn't that the position?

8 A. Well, if there is no document provided, there is  
9 nothing to discuss.

10 156 Q. If there is no explanation provided, until now that is,  
11 as to why you have failed to comply with the Order?

12 A. Well, I regret not having given any explanation until  
13 this time.

14 157 Q. Is it the position that you also received, after the  
15 time for complying with this Order had passed, you  
16 received correspondence from the Tribunal bringing the  
17 fact of your default to your attention, and indicating  
18 that if you didn't comply, an application might be made  
19 pursuant to Section 4, to the High Court; an  
20 application to the High Court might be made in as far  
21 as this Order is concerned?

22 A. I have seen that correspondence, yes.

23 158 Q. Did that not draw your mind, or bring it to your  
24 attention, "Even though I have no documents, maybe I  
25 better stop ignoring this and prepare an Affidavit of  
26 Discovery."

27 A. It did not.

28 159 Q. No?

29 A. No, it did not.

30 160 Q. And I presume that your solicitor would have drawn it



1 to your attention, the fact that if you didn't comply  
2 with the Order of the Tribunal, that you were making,  
3 leaving yourself potentially liable to either  
4 enforcement procedures in the High Court or other more  
5 serious charges?

6 A. It wasn't a matter that was discussed.

7 161 Q. But it certainly was a matter that was drawn to your  
8 attention through the Tribunal's correspondence with  
9 your solicitor?

10 A. It was clearly in the Tribunal's correspondence with  
11 me, but I have not dealt with it in the terms that you  
12 are putting it to me. I thought that where we were, in  
13 terms of dealing with all these Brennan and McGowan  
14 issues, was being dealt with through the, through this  
15 forum, as opposed to the Order itself.

16 .

17 I don't recollect anything in the proceedings that took  
18 place between myself and the Tribunal which dealt with  
19 this Order, or required the enforcement of this Order.

20 If that had been, then clearly it would have been a  
21 matter that would have been dealt with.

22 162 Q. The issue, as you know, Mr. Caldwell, in relation to  
23 the High Court proceedings was to compel your  
24 attendance here, you having previously refused to  
25 attend, is that right?

26 A. That's correct.

27 163 Q. And in so far as there was any subject matter of the  
28 High Court Orders, it was to do with compelling you to  
29 attend to give evidence.

30 .

1 Was there anything in those proceedings, or in any of  
2 the documents grounding those proceedings that  
3 indicated that you did not have to comply with this  
4 Order?

5 A. There was no reference in those proceedings to this  
6 Order.

7 164 Q. And that you had been, indeed, informed by the Tribunal  
8 in correspondence, post August of 2001, that if you  
9 didn't comply with this Order, you could be the subject  
10 of enforcement proceedings, or more severe penalties,  
11 possibly?

12 A. If that is in the correspondence, it is in the  
13 correspondence, Ms. Dillon.

14 165 Q. That is the position, and it appears to be the position  
15 from the correspondence, Mr. Caldwell. I would have to  
16 suggest to you that you were taking a very cavalier  
17 attitude to this Order of the Tribunal?

18 A. I would treat nothing that the Tribunal does in a  
19 cavalier fashion. I have the height of respect for the  
20 Tribunal.

21 166 Q. If you have that much respect for the Tribunal, Mr.  
22 Caldwell, why didn't you swear an affidavit in  
23 compliance with the Order?

24 A. As I say, all of the information that is required under  
25 the Order had already been provided through the firm.

26 167 Q. Why didn't say that in an affidavit?

27 A. In hindsight, Ms. Dillon, that could have been said.

28 168 Q. How long would it take you to prepare an affidavit in  
29 compliance with this Order?

30 A. I can comply with that quite quickly.

1 169 Q. How long?

2 A. I could deliver that tomorrow morning.

3 170 Q. Right. If that was that simple, and that was that  
4 easy, why has it taken us to get you into the  
5 witness-box to give us an explanation as to why you  
6 haven't done it?

7 A. I have given the - I have given the only explanation  
8 that I have in relation to it, Ms. Dillon.

9 171 Q. Which is that you ignored the Order of the Tribunal, as  
10 I understand your evidence, you didn't seem to attach  
11 any importance to this Order or weight or significance  
12 to it, or something that you felt you had any  
13 obligation to comply with?

14 A. No, that is not correct. I didn't ignore it in that  
15 sense. I mean, I believe that the Order in all  
16 substantive issues had been dealt with by other  
17 representatives of the firm in providing comprehensive  
18 documentation to the Tribunal, running into, I don't  
19 know, how many thousands and thousands of pages of  
20 documents.

21 172 Q. You had your own representation, of course, Mr.  
22 Caldwell, independent of the firm's representation,  
23 isn't that right?

24 A. Yes, there was a firm --

25 173 Q. Yes. So that you were receiving your own separate  
26 legal advice from the very start of your involvement  
27 with the Tribunal through, at that time, Messrs. Finbar  
28 Cahill and Co., and Binchys were being presented by  
29 Crowley Miller?

30 A. In relation to Finbar Cahill and Co., they didn't take

1 an active position in terms of anything which was  
2 Binchys; orientated in the Brennan and McGowan side of  
3 things. They were more somewhere that documentation  
4 was sent to by the Tribunal. All of the Brennan and  
5 McGowan stuff was dealt with through a separate firm of  
6 solicitors, or directly between Binchys and the  
7 Tribunal.

8 174 Q. So that are you --

9 A. I did not look to them for advice. I mean, I didn't  
10 see them in an advice role in relation to this. I saw  
11 the matter as a matter that was being dealt with by  
12 Binchys directly with the Tribunal in providing all the  
13 information to it, or on occasions being dealt with by  
14 Binchys, the solicitors acting for Binchys.

15 175 Q. Is the position, then, that the person and the only  
16 person who made a decision not to comply with this  
17 Order, was yourself?

18 A. In terms of not providing an answer to, not providing  
19 an affidavit on foot of that, that would have been  
20 something that I would have done myself in relation to  
21 it. That was based on, as I say, the fact that I, the  
22 fact that I regarded the matter as having been dealt  
23 with through the flow of information that was coming  
24 from Binchys.

25 176 Q. Could you indicate the documentation that had been  
26 furnished by Binchys that deals with any of the matters  
27 that are set out at paragraphs A to H of that Order?

28 A. There are comprehensive affidavits of right of reply.  
29 I believe Mr. Duke in relation to lots of, many or all  
30 of the files that existed between Mr. Brennan and

1 Mr. McGowan and their various associated companies.

2 177 Q. As far as this Order is concerned, Mr. Caldwell, and we  
3 will stay with this Order, insofar as this Order is  
4 concerned, in the files of Binchys with which you are  
5 familiar, because you have so sworn to in your earlier  
6 affidavit, where are the documents that would be  
7 captured by this Order?

8 A. Well, the documents in relation to Mr. Brennan and Mr.  
9 McGowan would all be within the documents that were  
10 provided by Mr. Duke under the various Orders that were  
11 served on him. There wouldn't be any documents in  
12 relation to Mr. Finnegan or Mr. Burke. Mr. Owens'  
13 documents, anything relating to him would be within the  
14 - any Brennan and McGowan files that were provided. I  
15 don't know what servant or agent refers to any trust or  
16 settlement. Anything that related to Mr. Brennan's  
17 trust or settlements would be in the documents provided  
18 as well.

19 178 Q. Mm-hmm. I mean, for example, the Liechtenstein  
20 documents dealing with the Liechtenstein trust, would  
21 be caught under the terms of paragraph H of that Order,  
22 for example, and also probably paragraph G. Isn't that  
23 right?

24 A. I am not aware of having any documents in relation to  
25 the Liechtenstein trust.

26 179 Q. And you are not aware, I think, of any correspondence  
27 passing between yourself and Liechtenstein, the  
28 Liechtenstein St. Anthony Foundation?

29 A. I have no recollection of any correspondence.

30 180 Q. We have the file, I think, that was furnished by

1 Binchys dealing - it deals with correspondence, Mr.  
2 Caldwell, passing between a Mr. J Caldwell of Binchys,  
3 which I presume is yourself, and Mr. or Ms. Ebersberg  
4 in Prasadial Anstalt in Liechtenstein. They are all in  
5 English, so they don't seem to have any difficulty.  
6 They send you invoices and documents such as that sort.  
7 It was contained in a file that I think was known as  
8 the Mr. Tom Brennan personal file?

9 A. Mm-hmm.

10 181 Q. That was a file that was maintained by you, when you  
11 were in Binchys. If you want to familiarise yourself  
12 with the file and satisfy yourself that I am not  
13 misleading you in any way.

14 A. I wouldn't think for a moment that you are misleading  
15 me, Ms. Dillon. (File handed to witness.) Thank you.  
16 Yes, those are some documents relating to  
17 correspondence with Dr. Ebersberg, who was one of the  
18 lawyers in the law firm in Liechtenstein.

19 182 Q. Yes. So that there was correspondence passing between  
20 yourself and Liechtenstein, if I can use the generic  
21 term "Liechtenstein". It may have been the lawyers  
22 dealing with transactions that were being carried out  
23 on behalf of the Foundation; the transfer of funds to  
24 other parts of the world, in the purchase and sale of  
25 horses, matters such as that sort?

26 A. But this is not correspondence with the bank as such.  
27 This is correspondence with the administrator, the  
28 lawyer who was in charge of the Foundation.

29 183 Q. Oh, I see. I am sorry, I wasn't sufficiently precise  
30 in my questions, Mr. Caldwell.

1

2 Are you saying that you had no correspondence with the  
3 bank?

4 A. I don't have any recollection of any correspondence  
5 with the bank.

6 184 Q. But that you did have correspondence with the  
7 solicitors who were looking after Mr. Brennan's  
8 interests in Liechtenstein?

9 A. This documentation shows that I did have correspondence  
10 with the solicitors dealing with it, yes.

11 185 Q. And they are the people with whom you went, I think,  
12 when the Tribunal sought information in relation to the  
13 Liechtenstein Foundation, the St. Anthony Foundation,  
14 it was to the solicitors that you went to, isn't that  
15 right?

16 A. Yes, I would have wrote to the solicitors.

17 186 Q. I mean, obviously you were aware of the existence of  
18 the bank accounts, because you set them up?

19 A. I wouldn't have set the bank accounts up. I mean, that  
20 is not an accurate description of it. I mean, what  
21 would happen in a situation like this is that the  
22 Foundation would be established and that the people who  
23 are the directors or administrators or whatever they  
24 are described as, would establish the bank account for  
25 that. I wouldn't establish the bank account. I have  
26 no recollection of even meeting the bank involved in  
27 this.

28 187 Q. But when Mr. Wheeler needed information about the bank  
29 account to which he was to transfer the €115,000, it  
30 was to Mr. John Caldwell he went for the information,

1 and it was Mr. Caldwell who provided the information as  
2 to where the ú115,000 was to be sent?

3 A. And presumably that is because Dr. Ebersberg had given  
4 me the name of the bank at which he had established the  
5 bank account.

6 188 Q. I mean, it is clear that you were aware of the fact  
7 that there were bank accounts in Liechtenstein. The  
8 whole purpose of the St. Anthony Foundation, or one of  
9 the purposes was to establish a bank account in  
10 Liechtenstein into which funds were to be transferred?

11 A. Clearly a bank account was established. I would have  
12 been aware that a bank account was being established.  
13 But I have no recollection of where that bank account  
14 was, or who was involved in it, who were the signatures  
15 on it.

16 189 Q. You knew the account. 929, please.

17 .  
18 This is a telex from Mr. Wheeler to you, of June of  
19 1985. At this time, as you are aware, from reading the  
20 brief, Lombard and Ulster were threatening to sue Canio  
21 Limited. Binchys were acting or just about to act on  
22 behalf of Lombard and Ulster in instituting the  
23 proceedings, and it had become clear in early 1985 that  
24 the Canio lands might have been subject to two  
25 mortgages, one to Lombard and Ulster, the other to AIF,  
26 from 1981. And difficulties arose that culminated in  
27 the litigation, this is at the early stages of the  
28 matter. Just to set the matter in context.

29 .  
30 "Dear Mr. Caldwell" - this is a telex from Mr. Wheeler



1 to you, referring to the telephone conversation  
2 yesterday, - "have called the money but now find that I  
3 do not have details of the L Bank account. Please let  
4 me have these." What is being sought is information  
5 about the bank account?

6 A. Information about the identity of the bank, yes.

7 190 Q. You provide that information on the same day, page 930,  
8 please.

9 .  
10 And if we could just scroll it back and down a little  
11 bit opposite the date. If we could have the date. You  
12 will see in handwriting there is a reference "C 758".

13 A. Yes.

14 191 Q. That is the Bedell & Cristin internal reference for  
15 Canio Limited?

16 A. From the documentation, I would say that is the file  
17 reference, the file reference.

18 192 Q. Yes. The file reference. This is a fax. I presume  
19 "JC" is you?

20 A. I would presume so.

21 193 Q. So "Laurence Wheeler, further to your telex of even  
22 date, the bank account details are as follows:

23 Account Prasdial Anstalt, ref CE.  
24 Pro Diverse Bank in Liechtenstein."  
25 .

26 So they are bank account details?

27 A. Absolutely. I mean, again I have no recollection of  
28 it, but clearly the paper speaks for itself.

29 194 Q. But you set up the entire Liechtenstein structure,  
30 isn't that right? You set it up for Mr. Brennan. Mr.

1 Brennan didn't go over to Liechtenstein and set it up  
2 himself?

3 A. No, I would have been the person that spoke to, and  
4 dealt with the Liechtenstein attorneys for the purpose  
5 of setting up that structure.

6 195 Q. Yes. I think that is clear from other documentation  
7 that we have, Mr. Caldwell, in relation to  
8 Liechtenstein.

9 .  
10 If we could have page 5096, please. 5097.

11 .  
12 This is an instruction for formation of a St. Anthony  
13 Foundation, in Liechtenstein. It is for Thomas  
14 Brennan. And if we move down to the bottom of the  
15 page, you will see No. 23, "contact with Mr. Caldwell",  
16 and it is signed by Mr. Brennan?

17 A. Mm-hmm.

18 196 Q. Do you see that?

19 A. Yes, I do.

20 197 Q. And all of the correspondence between Prasadial  
21 Anstalt, if we go to - first of all, if you would like  
22 to look at page 5095, which if you speak German will  
23 probably mean something to you, but the translation of  
24 that document is at page 5096.

25 .  
26 And this, as translated, shows that on the 24th of May,  
27 1985, that the - you see paragraph 1. If we could  
28 scroll it down, "mediated by: Mr. John Caldwell."  
29 As I understand it, it means requested by Mr. John  
30 Caldwell. And it sets up the St. Anthony Foundation

1 and the date is the 23rd of May, 1985.

2 .

3 Then it goes on to deal with capital, object shares,  
4 Board of Directors, formation fees, administration  
5 fees, and that the - No. 22, the language that is to be  
6 used is English. Do you see that?

7 A. I see that.

8 198 Q. And then you see "persons authorised to give  
9 instructions" at No. 20. "Mr. Thomas Brennan and Mr.  
10 John Caldwell, both individually"?

11 A. I see that.

12 199 Q. And do you also see at No. 23: "Other remarks.  
13 Contact Mr. Caldwell. Contact with Mr. Caldwell is  
14 possible in urgent instances"?

15 A. I see that.

16 200 Q. Now, is it the position, Mr. Caldwell, that you were  
17 the person who set up this Foundation, or sorry, this  
18 Foundation, if we could be a little bit more precise.  
19 This Foundation was set up by the Liechtenstein lawyers  
20 on instructions from you on behalf of Mr. Brennan?

21 A. That's correct.

22 201 Q. Right. Did you advise Mr. Brennan that he should have  
23 in place such a structure?

24 A. I must have had discussions with him in relation - I  
25 have no recollection of it, but I presume I had  
26 discussions with him about the establishment of it.

27 202 Q. Well, I think Mr. Brennan has told the Tribunal that it  
28 was set up by you, on your advice?

29 A. I assume so. I mean, I have no recollection of it, Ms.  
30 Dillon.

1 203 Q. And if we go back, then, to the Order for Discovery  
2 that we were discussing, Mr. Caldwell, it would appear  
3 that all of those Liechtenstein transactions and any  
4 material, that it would appear from the documents we  
5 have just looked at, that because they were taking  
6 instructions from you, you are a person who had within  
7 your power or procurement the documents in relation to  
8 the Liechtenstein, St. Anthony Foundation. Isn't that  
9 right?

10 A. I have no knowledge of that, until I see these  
11 documents now. I have no recollection of that at all  
12 in relation to the foundation.

13 204 Q. But you could have got all the documents, couldn't you,  
14 had you asked them for all the documents?

15 A. I don't know that they would have, that I could have  
16 got all the documents in relation to it. I have no  
17 recollection of that particular piece of paper that's  
18 there. I have no idea as to what the extent of the  
19 instructions are that they would act on if I asked  
20 them.

21 205 Q. You knew that they had documents?

22 A. I knew that the Liechtenstein Foundation existed.

23 206 Q. You knew the lawyers were there. You had dealt with  
24 the lawyers. You knew the lawyers had documents.  
25 Isn't that right?

26 A. Well, if the Foundation existed, there would be  
27 documents, unless the matter was closed and they no  
28 longer existed.

29 207 Q. Well, keep it nice and simple, Mr. Caldwell. You dealt  
30 with a firm of solicitors, of which this Mr. or Ms.

1 Ebersberg is a representative in Liechtenstein. Isn't  
2 that right?

3 A. Yes.

4 208 Q. Okay. That firm of solicitors, on your instructions,  
5 set up a foundation. Isn't that right?

6 A. Yes.

7 209 Q. The ultimate beneficial owner of that foundation is Mr.  
8 Thomas Brennan, isn't that correct?

9 A. Yes.

10 210 Q. He is No. A on that list in front of you?

11 A. Yes.

12 211 Q. That Foundation, its assets were cash, money, isn't  
13 that right?

14 A. At one stage, yes.

15 212 Q. Yes. At one stage. Therefore, there was a necessity  
16 for a bank account, isn't that right?

17 A. Or the solicitors or the lawyers to hold it in a client  
18 account situation, yes.

19 213 Q. Okay. So, are you saying that you didn't know whether  
20 Mr. Brennan's money was in a bank account in  
21 Liechtenstein, or in a solicitor's client account in  
22 Liechtenstein?

23 A. I have no recollection.

24 214 Q. But had you asked the solicitors in Liechtenstein, or  
25 the lawyers in Liechtenstein, they would have told you,  
26 would they not, because they have to deal with you from  
27 the document we have just seen, whether or not the St.  
28 Anthony Foundation bank account was held by them or  
29 whether it was held in a bank?

30 A. Well, when I see that piece of paper, then, I have got

1           some instruction authority, but what the extent of the  
2           instruction authority is, I don't know. I have no  
3           recollection of having that instruction authority.

4 215 Q. But it would appear from the document that you did?

5           A. Well, the document speaks for itself. I mean, it is  
6           somebody else's document. I don't know the extent of  
7           the authority that goes with that document. I didn't  
8           even know of the existence of that document.

9 216 Q. But what efforts - but you knew of the existence of the  
10          firm of lawyers in Liechtenstein, did you not?

11         A. I did.

12 217 Q. Yes. So what efforts did you make to find out all  
13          there was to be found out about the St. Anthony  
14          Foundation or any other foundation set up by you for  
15          Mr. Brennan's benefit in Liechtenstein?

16         A. In relation to the Foundation, what I did was I  
17          suggested to Miley & Miley, who were the solicitors  
18          acting for Mr. McGowan, Mr. Brennan, that they deal  
19          directly with that, that organisation to obtain  
20          whatever information they had.

21 218 Q. These documents, Mr. Caldwell, were within your power  
22          or procurement, and that, I suggest to you, is  
23          manifestly clear.

24         .

25          When you received the information from the Tribunal,  
26          initially in relation to the €115,000, you initiated  
27          correspondence with, I don't know whether it is Mr. or  
28          Ms. Ebersberg?

29         A. It is Dr. Ebersberg.

30 219 Q. In Liechtenstein, isn't that right?

1 A. Yes, I wrote to him to obtain information from him to  
2 assist the Tribunal.

3 220 Q. And that information was limited to a query in  
4 connection with the €115,000, isn't that right?

5 A. At the time that was the only information that was  
6 being sought.

7 221 Q. What further information have you sought from  
8 Liechtenstein?

9 A. I haven't sought any further information from  
10 Liechtenstein. I have - in terms of information from  
11 Liechtenstein, Mr. Walsh of Miley & Miley was acting  
12 for Mr. Brennan, Binchys were finding themselves as  
13 being a postbox, effectively, between Liechtenstein and  
14 Miley & Miley, and I suggested that they deal directly  
15 with them and draw down from them any information that  
16 there was available. And I don't know what happened in  
17 relation to that. I assume that is what they did, and  
18 whatever they got they provided to the Tribunal.

19 222 Q. And if you were to ask Dr. Ebersberg, who is the  
20 lawyer, for copies of the lawyer's files in connection  
21 with the St. Anthony Foundation, presumably you will  
22 get them?

23 A. I don't know whether I would or not get them from him.  
24 I don't know the answers to that.

25 223 Q. But you haven't asked?

26 A. I haven't - I had no reason to ask him, Ms. Dillon, in  
27 relation to it, because the matter, in terms of the  
28 Liechtenstein Foundation, was being dealt with by Miley  
29 & Miley.

30 224 Q. If you look at paragraph H of the Order that you were

1 served on the 31st of August of 2001, you will see that  
2 paragraph H requires you to make Discovery in relation  
3 to:

4 .  
5 "Any person and any financial institution whether  
6 within the State or otherwise in connection with funds  
7 held by or on behalf of or for the benefit of any of  
8 the following:

9  
10 A. Any of the persons listed at 'A' to 'E' above."

11 .  
12 And the first person is Mr. Thomas Brennan. So within  
13 that would be called the Liechtenstein/St. Anthony  
14 Foundation, and any financial institution, whether it  
15 was a solicitor's bank account or whether it was an  
16 independent bank account for the St. Anthony  
17 Foundation.

18 .  
19 "B. Any trustees as set out in paragraph G.

20 .  
21 Next, "Any beneficiary of any trust as described at  
22 paragraph G." Next, "Any company in which any of the  
23 persons listed at A to E was a shareholder, whether  
24 registered legal beneficial, nominal or otherwise,  
25 director, controller and/or was otherwise connected  
26 with such company."

27 .  
28 And next, "Any solicitor" which again, I would suggest  
29 would capture Dr. Ebersberg, "accountant trust  
30 administrator."



- 1 .
- 2 And that is what Mr. Ebersberg does, he is a Trust
- 3 Administrator?
- 4 A. He's a lawyer.
- 5 225 Q. He is a Trust Administrator?
- 6 A. They don't have the concept of "trust" in
- 7 Liechtenstein.
- 8 226 Q. Right. But he is administering, or was administering
- 9 during this particular period in time, the St. Anthony
- 10 Foundation?
- 11 A. He was the lawyer dealing with it, out --
- 12 227 Q. He was dealing with you in connection with it, as the
- 13 correspondence shows, the file that you have seen?
- 14 A. Yes, it does.
- 15 228 Q. "Or other person providing professional or special
- 16 listed services to any of the persons listed at A to
- 17 E."
- 18 .
- 19 So presumably Dr. Ebersberg would be a professional
- 20 person providing a specialised service?
- 21 A. He is a professional advisor.
- 22 229 Q. Yes. Like yourself?
- 23 A. He is a professional advisor, yes.
- 24 230 Q. And I would say to you, Mr. Caldwell, that you had,
- 25 within your power or procurement, access to all of the
- 26 Liechtenstein documents, and other?
- 27 A. I --
- 28 231 Q. If you just let me finish. And other than the inquiry
- 29 you made to Liechtenstein, in connection with the
- 30 ú115,000, you have made no effort to obtain from

1 Liechtenstein any of the documents question?

2 A. I had no knowledge that I would have any power or  
3 procurement in relation to any documentation in  
4 Liechtenstein. The document that you show, that you  
5 are showing me, where my name is listed on, is as a  
6 person to give instructions. I have no recollection of  
7 that document. I am not aware that that document  
8 existed. I would have no expectation that I could call  
9 on the lawyers in a foreign jurisdiction to provide  
10 documentation to me.

11 232 Q. Well, if you had asked, they might have told you, Mr.  
12 Caldwell, but you didn't ask, did you?

13 A. No, I had no contact with these people, no contact with  
14 them.

15 233 Q. If you were preparing for compliance with the Order of  
16 the Sole Member of the 30th of August, 2001, I suggest  
17 to you that you would have been in contact with Dr.  
18 Ebersberg in connection with obtaining their documents,  
19 within the category of documents that are set out in  
20 that Order. I suggest to you, Mr. Caldwell, that you  
21 took a decision, for whatever purpose, not to comply  
22 with this Order and not to comply with - to provide the  
23 documentation to the Sole Member?

24 A. I would not have addressed my mind in relation to it.  
25 I would not have thought of even contacting him, Ms.  
26 Dillon, because I wouldn't have expected to be in a  
27 situation where I could call on lawyers in a foreign  
28 jurisdiction to provide documentation to me in relation  
29 to a client matter.

30 234 Q. It is a simple thing, Mr. Caldwell. If you don't ask,

1 you won't be told. If you didn't ask them whether they  
2 would give you the documents or not, you were never  
3 going to find out if they would give them to you. And  
4 you chose not to ask them?

5 A. It is not a question of a choice of not asking in  
6 relation to it. It would not have occurred to me to  
7 contact them in relation to it.

8 235 Q. On the 2nd of May - it was furnished to the Tribunal on  
9 the 2nd of May. On the 8th of May you furnished a  
10 statement to the Tribunal in connection with the  
11 matters that you had been asked to deal with in your  
12 narrative statement.

13 .

14 Now, just to remind you about what you were asked  
15 about. If we could have page 44.

16 .

17 This is a letter that we saw first this morning, of the  
18 30th of March, 2001, Mr. Caldwell, which, if we move  
19 down to paragraph C, you were being requested, with the  
20 consent of Messrs. Brennan and McGowan, "to prepare a  
21 detailed narrative statement concerning your knowledge  
22 of, and dealings with" - what do you understand by the  
23 words "knowledge of", Mr. Caldwell?

24 A. What I knew in relation to those matters.

25 236 Q. And "dealings with", what do you understand by the  
26 words "dealings with"?

27 A. Again, what activities transpired in relation to them.

28 237 Q. "...with all of the foregoing matters, including  
29 financial transactions in relation to Canio Limited,  
30 and the aforementioned companies, individuals and

1 entities, and his dealings with Bedell & Cristin.

2 .

3 It is hoped that Mr. Caldwell will be in a position to  
4 furnish such a position to the Tribunal within one week  
5 from this date."

6 .

7 And the companies and individuals that were listed, if  
8 we go back to page 43, are items numbered 1 to 14.

9 Sorry, numbers 1 to 15.

10 .

11 So you were clear in your own mind, I suggest to you,  
12 Mr. Caldwell, when you got this document what you were  
13 being asked about.

14 .

15 You were being asked to furnish to the Tribunal your,  
16 all of your information in relation to your knowledge  
17 and dealings with all of these matters, but that the  
18 main purpose of it was whatever knowledge or  
19 information you had about Canio?

20 A. The focus of it was in relation - the focus of that is  
21 in relation to Canio. I mean, at the time that I  
22 received that, I would have had a very limited  
23 recollection of quite, of quite - of the matters that  
24 are listed there. The knowledge that I have now, as I  
25 said earlier, is considerably more extensive than it  
26 was at the time. I was quite limited in my  
27 recollection of matters which were 15 to 20 years old,  
28 and several of the matters that are listed there, I  
29 would have no knowledge at all of.

30 238 Q. I will hand you a copy of your statement, Mr. Caldwell.

1 And would you identify for me in that statement where  
2 you have dealt with such knowledge as you had about  
3 Canio? (Statement handed to witness.)

4 A. I haven't specified anything in that specifically in  
5 relation to Canio, I don't think.

6 239 Q. Take your time.

7 A. Well, Canio comes up a number of types in relation to  
8 it, where I refer to it by reference to other things.

9 240 Q. Where do you deal with your level of knowledge and  
10 information about Canio itself?

11 A. I haven't put a paragraph into this which talks about  
12 Canio Limited as an entity itself.

13 241 Q. Where have you given any information about Canio in  
14 that statement?

15 A. As I say, it is - the words "Canio Limited" turns up a  
16 couple of times in relation to some of the comments  
17 that are here.

18 242 Q. Well, for example, Canio turns up in the following  
19 context, right; paragraph 6: "Financial Institutions:  
20 I did not act for any financial institution in relation  
21 to Canio Limited."

22 .

23 Now, I mean, what we are talking about here,  
24 Mr. Caldwell, was information you have about Canio, or  
25 information of your knowledge of dealings with Canio.

26 And it is clear from looking at this statement, that  
27 you did not provide any information to the Tribunal in  
28 this statement concerning your knowledge of, or your  
29 dealings with Canio Limited. Is that correct?

30 A. I have - in terms of my dealings with Canio Limited, I

1 had quite limited dealings with Canio Limited.

2 243 Q. Your limited dealings, where are they dealt with in the  
3 statement?

4 A. In relation to it - there is some reference in here in  
5 relation to Canio, in relation to Foxtown. What I  
6 didn't do in relation to this is write out several  
7 sentences in relation to what pieces of information I  
8 might have in relation to Canio.

9 244 Q. For example - if I could pause you there, Mr. Caldwell.

10 Did you know that Canio was owned by Kalabraki, Gasche,  
11 and Foxtown Investments?

12 A. I would have known that Canio was owned by, ultimately  
13 owned by those three entities, at some point in time in  
14 the past, yes.

15 245 Q. Yes. Did you tell the Tribunal that when you  
16 furnished your statement?

17 A. In terms of this statement, no, I did not.

18 246 Q. Yes.

19 .  
20 It might be an appropriate time to take a break.

21 .  
22 CHAIRMAN: I was just watching. We were sitting for an  
23 hour and a half. It is stressful. We will rise for  
24 twenty minutes.

25 .  
26 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
27 RESUMED AGAIN AS FOLLOWS:

28 .  
29 MR. FINLAY: I wonder, Sir, before we resume, might I  
30 just briefly mention, again with your permission, the

1 question of limited representation. It is something I  
2 am not sure that I will necessarily have to avail of,  
3 but it would be helpful to know the Tribunal's mind, I  
4 suppose, in relation to it at this stage.

5 .

6 CHAIRMAN: Well, I have been thinking about the matter.

7 As your client is involved in other aspects of the  
8 Tribunal, I think it will be appropriate that he should  
9 have limited representation. I grant it to you at this  
10 point in time. There is no point in - I was just  
11 thinking about the other matters. There are other  
12 aspects. I won't go into them now. They are  
13 manifestly there. I think there is no point in putting  
14 off the day. It would be reasonable that you --

15 .

16 MR. FINLAY: That is most helpful, Chairman.

17 .

18 CHAIRMAN: Thank you.

19 A. My apologies, Chairman, for being late.

20 .

21 247 Q. MS. DILLON: If I could taken you back, briefly,  
22 Mr. Caldwell, to something that we mentioned this  
23 morning. This is the Farefield transaction. It is the  
24 position that Mr. Martin Bullock of the Isle of Man was  
25 the director of Farefield Investments and Property  
26 Limited?

27 A. Again, from the briefing papers, I believe, he was,  
28 yes.

29 248 Q. And that he signed the documentation, such as the  
30 agreement to purchase, the option agreement to purchase

1 the lands at Hollywood Rath on behalf of Farefield

2 Investments?

3 A. Yes, I think that is right.

4 249 Q. They were signed by Dollanstown Estates by Joseph

5 McGowan and Anne Marie McGowan, I think?

6 A. I assume that is right, yes.

7 250 Q. And was Mr. Martin Bullock a person with whom you did

8 much business?

9 A. I would have known him for quite a few years, yes.

10 251 Q. Was it through you that Mr. Thomas Brennan's structures

11 were put in place in the Isle of Man with Mr. Martin

12 Bullock, the Silver - the name escapes me for the

13 moment - Steeple Stone?

14 A. Steeple Stone. Yes, I would have instructed, I would

15 have introduced him in relation to that, yes.

16 252 Q. Did you set up that structure for Mr. Brennan in the

17 Isle of Man?

18 A. It isn't my recollection that I actually set up that

19 structure for him. Mr. Brennan would have had his own

20 communication with Mr. Bullock, which evolved over the

21 years.

22 253 Q. And did you retain Mr. Bullock there to set up Steeple

23 Stone and the other matters, set up the other accounts

24 and companies in the Isle of Man for Mr. Brennan?

25 A. I can't remember that I did it for all of them, but

26 certainly for some of the companies, and some that were

27 set up in the Isle of Man, I would have been involved

28 in the setting up of those.

29 254 Q. Yes. Insofar as we were discussing this morning, the

30 documentation that might have been made available to



1           you or might be available or the existence or  
2           non-existence of bank accounts in Liechtenstein, do you  
3           remember we were discussing this, this morning?

4       A.   Yes.

5 255 Q.   You have in front of you a book of documentation. This  
6           file is, if I understand it, you can correct me if I am  
7           wrong, Mr. Caldwell, it is your own original file, a  
8           copy of your original file of Mr. Tom Brennan's  
9           personal affairs?

10      A.   I don't know. I mean, it may well be, yes.

11 256 Q.   It is described --

12      A.   It is described as that, yes.

13 257 Q.   It is so described. It is described as the personal  
14           file of Mr. Tom Brennan in the Affidavit of Discovery  
15           of Mr. Michael O'Hanrahan?

16      A.   That would have been a file I had, in that case, yes.

17 258 Q.   If you turn to page 53 of that file, you will see that  
18           there is a communication to you from Dr. Ebersberg of  
19           July the 2nd, 1992?

20      A.   Mm-hmm.

21 259 Q.   And it is dealing with the C Corporation M&S.A, which I  
22           presume is the St. Anthony Foundation and the  
23           M Corporation?

24      A.   Yes.

25 260 Q.   Is this Montizuma?

26      A.   "M" will be Montizuma, yes.

27 261 Q.   If you go down through the second paragraph of that -  
28           the first paragraph it says:

29           "Dear Mr. Caldwell, we refer to your fax of the 29th  
30           of May, 1992, and herewith send you the enclosed

1 statements. Please effect outstanding fees in the  
2 total amount Suisse Francs 22,415.75 to the account" -  
3 and an account number is given there of C Corporation  
4 with the bank in Liechtenstein, AG Vaduz.

5 .  
6 If you go to the documentation that is furnished to you  
7 with that, you will see on page 55 of the  
8 documentation, under the heading.  
9 "Re S.A Foundation statement bank in Liechtenstein, AG  
10 Vaduz current account 1.688-29592" and it goes on "bank  
11 in Liechtenstein."

12 .  
13 It sets out the balance in the account?

14 A. Balance of 368 Francs, I presume that is.

15 262 Q. Yes. Then there is another one beneath that with  
16 75,350 or whatever pounds?

17 A. That is page, sorry --

18 263 Q. Page 55.

19 A. Page 55. Yes, I see that. But there is a balance of  
20 ú78,891.69.

21 264 Q. Yes, it identifies the existence of two bank accounts  
22 by numbers that are held for the St. Anthony Foundation  
23 in the bank in Liechtenstein, isn't that right?

24 A. Yes, I see references to bank accounts.

25 265 Q. So, obviously, you, these being documents that were  
26 sent to you, you would have been aware, at least from  
27 1992, when you received these documents, that the St.  
28 Anthony Foundation had at least two bank accounts that  
29 were maintained for it in the bank in Liechtenstein AG,  
30 which I understand to be the name of a bank?

1 A. In 1992, if these documents are on the file in '92, in  
2 '92 I would have been aware of it. I would have no  
3 recollection of these documents.

4 266 Q. If you could scroll down to the bottom of that  
5 particular page. You will see it is dated 2/7/92?

6 A. Yes.

7 267 Q. So it is clear that at least whatever your knowledge or  
8 lack of knowledge may have been from the date that  
9 these accounts and matters were set up in 1985, through  
10 you, that at least by 1992 you were aware of the  
11 existence of bank accounts in which funds were held for  
12 the St. Anthony Foundation?

13 A. Well, this paper indicates in 1992, yes, I received  
14 this information, presumably to apply to Mr. Brennan.

15 268 Q. And that, again, therefore, that that was another  
16 source of information from which you could obtain  
17 material that would be relevant to the Order of the  
18 10th of August, 2001?

19 A. Well, these letters here, these documents formed part  
20 of Mr. Brennan's file, and that file would have been  
21 provided to the Tribunal, so the information would have  
22 been there.

23 269 Q. Provided by Messrs. Binchys Solicitors through Mr.  
24 O'Hanrahan's affidavit, and not provided by you,  
25 because you didn't identify or discover any of these  
26 documents in an Affidavit of Discovery?

27 A. But the firm was dealing with the Tribunal in relation  
28 to providing all of this information, Ms. Dillon. I,  
29 as I explained earlier, I spent very little time in  
30 Ireland, and did not spend very much time in Ireland

1 for many years. I tried to assist the firm in  
2 understanding the transactions as far as I can assist  
3 them and could assist them in relation to that, and in  
4 providing information to the Tribunal which was  
5 directed to various members in the firm.

6 270 Q. Yes. And if you were desirous of providing the  
7 Tribunal with information, I suggest to you,  
8 Mr. Caldwell, that you could have sought to obtain from  
9 the bank in Liechtenstein all its records in relation  
10 to the St. Anthony Foundation, and also from  
11 Dr. Ebersberg's company, in relation to the information  
12 that they had?

13 A. I would not have believed for one moment that a bank in  
14 Liechtenstein would provide me with any information on  
15 my request.

16 271 Q. Did you ask them?

17 A. I wouldn't even have thought it was necessary to ask  
18 them, because I wouldn't have believed for a moment  
19 that they would provide that information to me. As I  
20 have already spoken about the situation in relation to  
21 the instruction letter that was on Dr. Ebersberg's  
22 file.

23 272 Q. Even as far as Dr. Ebersberg is concerned, as we have  
24 seen from the documents earlier this morning, they were  
25 to act on foot of your instructions?

26 A. In saying that, that's the first I know in relation to  
27 that. I don't know the instruction, the extent of the  
28 instructions they would have acted on in relation to  
29 that.

30 273 Q. Presumably, Dr. Ebersberg, who appears to have been

1 operating the Trust on the Foundation on behalf of  
2 Mr. Brennan in Liechtenstein, had himself or her sought  
3 from the bank, the bank accounts and records, they  
4 would have been furnished to Dr. Ebersberg, who in  
5 turn, according to the documents we seen this morning,  
6 would have given them to you if you asked for them?

7 A. No, I don't know if they would have given them to him.  
8 I don't also know if he would have given them to me. I  
9 don't know the extent of my authority under that  
10 instruction. I didn't even know of its existence or  
11 recollect its existence until you showed me the  
12 documents this morning.

13 274 Q. If we could have page 3305 in connection with this  
14 matter.

15 .  
16 This is - after you raised your query with Prasadial  
17 Anstalt in connection with the ú115,000, in May of this  
18 year you received a letter, the 2nd of May,  
19 Mr. Caldwell, from a Mrs. F Clavadetscher, I think it  
20 says.

21 .  
22 "Dear Mr. Caldwell, we refer to your fax dated April  
23 27th, 2001, and may inform you that the amount of GBP  
24 ú115,000 was credited to the account of Prasadial  
25 Anstalt on July 8th, 1985 by Order of Bedell & Cristin.  
26 This amount has then been transferred to the account of  
27 St. Anthony Foundation in July of 1985. Please note  
28 that the corresponding files and bank statements have  
29 been ordered on microfilm and that we would have to ask  
30 you for settlement of our fees in connection with any

1 further research."

2 A. Mm-hmm.

3 275 Q. So they had the bank accounts and records, hadn't they?

4 A. The letter says so, yes.

5 276 Q. And they would given them to you if you settled their

6 fees; isn't that what they are saying?

7 A. Well, I don't know what that means in relation to that.

8 You may well be correct, and that may well have been

9 the situation, that if their fees would have been

10 settled, they would have handed them over, but my

11 understanding is that the inquiries with Prasdial

12 Anstalt were continued on and that they provided

13 information, I assume, bank account information to

14 Miley & Miley, and that that information was provided

15 to the Tribunal.

16 277 Q. Yes. We are not concerned with what other persons may

17 have done in compliance with the Orders for Discovery,

18 Mr. Caldwell. What we are discussing is your

19 obligation to comply with the Orders with which you

20 were served.

21 .

22 If you look at the second paragraph of that letter. It

23 says:

24 .

25 "Please note that the corresponding files and bank

26 statements have been recorded on microfilm."

27 A. Mm-hmm.

28 278 Q. Clearly, the bank statements were recorded on

29 microfilm. Do you agree that is what it is saying?

30 A. It is saying --

1 279 Q. "We will have to ask you for settlement of our fees in  
2 connection with any further reserve."

3 .

4 There is no indication in that correspondence that they  
5 would not have given you the bank statements if you had  
6 sought them?

7 A. There is no reference there that they wouldn't have -  
8 the reference to bank statement would, say, have been  
9 reference to their own bank statements, which is  
10 reference to Prasdial Anstalt. Whether they had bank  
11 statements in relation to the companies or not --

12 280 Q. Did you raise any queries as to whether you were in  
13 doubt to what bank statements they were referring to?

14 Did you raise any queries to them to eliminate any such  
15 doubt as to which bank statements they were dealing  
16 with?

17 A. At the time that this letter emanated, the only issue  
18 that I was aware that they were, that was being looked  
19 into was the issue of the ú115,000. That letter was  
20 written in the context of the ú115,000. The letter may  
21 take on greater significance later on, when other  
22 matters arise, but at the time the letter issued and  
23 the time I dealt with the letter and passed the letter  
24 on into the Tribunal's documentation, it dealt with -  
25 what it dealt with, which was the ú115,000.

26 281 Q. In fact, this documentation and correspondence, Mr.  
27 Caldwell, between yourself and Prasdial Anstalt was  
28 brought down to the Tribunal by your colleague, Mr.  
29 O'Hanrahan, when he was giving evidence, and had been  
30 found by him on your file in the room, and did not at

1 that stage form part of Mr. O'Hanrahan's Affidavit of  
2 Discovery. Because until that morning, according to  
3 Mr. O'Hanrahan's testimony he was unaware of the  
4 existence of the correspondence?

5 A. I am not. I can't comment on that.

6 282 Q. Yes. So when you suggest that this was given to the  
7 Tribunal, it is correct it was given to the Tribunal,  
8 but they are the circumstances, according to the  
9 evidence of Mr. O'Hanrahan, your colleague, in which it  
10 was furnished to the Tribunal?

11 A. Mm-hmm.

12 283 Q. If we could go back briefly to the Order, Mr. Caldwell,  
13 at page 164. Now, you had said this morning, in  
14 connection with your failure to comply properly with  
15 the first Order for Discovery, that a similar Order had  
16 been made against Mr. Michael O'Hanrahan, and that he  
17 had sworn a comprehensive affidavit, and therefore you  
18 felt that obviated the necessity of you doing likewise.

19 .  
20 Insofar as this Order is concerned, Mr. Caldwell, a  
21 similar Order was not served on Binchys, right?

22 A. Fine.

23 284 Q. So, insofar as you made a decision not to comply with  
24 this Order, it presumably was not in circumstances  
25 where you were satisfied someone else was furnishing  
26 the information?

27 A. I was aware that the parties who were listed on that  
28 had already been the subject of several other Orders of  
29 Discovery directed against other people in the firm,  
30 and I would have known that they would have given over,



1 on foot of complying with those Orders, all the  
2 documentation that Binchys had. The same Order, I  
3 accept, wasn't served on anybody else.

4 285 Q. Yes?

5 A. But my ability to comply with that Order was, in some  
6 ways, very - was very limited because all the  
7 information had already been given over.

8 286 Q. I suggest to you now, Mr. Caldwell, that that, in fact,  
9 is not correct, because it is clear from the  
10 correspondence we have seen, both contained in your own  
11 file with Mr. Brennan and Prasadial Anstalt, that the  
12 person with the connection or the "in" to the  
13 Liechtenstein bank accounts was yourself. And I  
14 suggest that if you look at the correspondence and the  
15 - any time that you sought information from Prasadial  
16 Anstalt, they furnished you with the information that  
17 you were - that was sought.

18 A. The information in relation to Prasadial Anstalt, I  
19 made, I had the contact with them when the €15,000  
20 arose. I handed over all the issues in relation to  
21 getting further information from Prasadial Anstalt,  
22 effectively, to Mr. John Walsh's office. Mr.  
23 O'Hanrahan wrote to them and said to them that they  
24 should continue the correspondence with Prasadial  
25 Anstalt and get whatever, obviously to get whatever  
26 information that organisation could give them.

27 287 Q. Yes.

28 A. I was out of the loop in relation to that, Ms. Dillon.

29 288 Q. You are not suggesting, Mr. Caldwell, that your  
30 obligation to comply with the Order that is on screen

1 in front of you was handed over by you to Miley & Miley  
2 Solicitors?

3 A. No, I am not suggesting that the Order, that  
4 compliance with the Order was handed over to Miley &  
5 Miley Solicitors. That is not something that I can do,  
6 but in terms of the substantive effect of the Order, in  
7 terms of whether the Tribunal was denied information as  
8 a result of any act or omission on my part, there was  
9 no act or omission on my part to deny the Tribunal any  
10 information. I pointed the people in the direction  
11 they should go, and I directed them to get that  
12 information directly to themselves, and they got that  
13 information, as I understood it, and provided it to the  
14 Tribunal.

15 289 Q. Yes. And where is it in correspondence that you have  
16 indicated to the Tribunal that this was your modus  
17 operandi, that you, yourself, weren't going to comply  
18 with the Orders, but you were going to send out other  
19 people, and point them in the right direction where  
20 they could get the information?

21 A. There is nothing on, in correspondence, in that regard  
22 Ms. Dillon, other than the facts themselves that that  
23 is what, in fact, happened.

24 290 Q. That is your evidence that that is what happened, Mr.  
25 Caldwell?

26 A. That is true, that is true.

27 291 Q. But insofar as you have corresponded, either yourself  
28 directly with the Tribunal, or through your former  
29 solicitors, or your present solicitors to the Tribunal,  
30 you have never up to this point in time indicated to

1 the Tribunal that what you did on receipt of these  
2 Orders was to direct other people to obtain the  
3 information and furnish it to the Tribunal, and elect  
4 yourself not to comply with the Order, the person to  
5 whom it was directed?

6 A. The other people were assisted by me in obtaining it,  
7 and certainly there is no correspondence from me to the  
8 Tribunal saying that that is - that that is what I was  
9 doing. The fact on the ground is that that is what  
10 happened in relation to it. The Tribunal was not  
11 prevented from getting any information from any of  
12 these sources as a result of any actions of mine.

13 292 Q. Neither was the Tribunal provided with any information  
14 by you, Mr. Caldwell, in compliance with the Orders?

15 A. The information, I agree the information was provided  
16 by other parties to the Tribunal.

17 293 Q. And I suggest to you, Mr. Caldwell, that you were in  
18 breach of both of the Orders of Discovery that have  
19 been made by the Tribunal. I think you would have to  
20 accept that that is so?

21 A. I don't accept that. In terms of the first one, I  
22 dealt with that in - by means of the affidavit that was  
23 filed in relation to that. In relation to the second  
24 one, all of the information that was required was  
25 there. And in terms of the proceedings that were taken  
26 by the Tribunal, this Order of Discovery was not an  
27 issue that you raised in those proceedings.

28 294 Q. I see. Do I understand your evidence then to be, Mr.  
29 Caldwell, that unless the Tribunal takes you to the  
30 High Court to get compliance, you are not going take

1 the Orders of the Tribunal seriously? Is that what you  
2 are suggesting?

3 A. No, Ms. Dillon. I would never suggest that. I mean,  
4 that would be such a disrespectful thing to say.

5 295 Q. What you have just said --

6 A. I wouldn't suggest that at all in relation to it. I  
7 would take the Orders of this Tribunal very, very  
8 seriously. And I would do all that I can to assist  
9 this Tribunal in getting the information which it is  
10 entitled to get, and I believe I have done that.

11 296 Q. What you have just said a moment ago was because the  
12 Tribunal did not seek enforcement of this Order, you  
13 decided it wasn't an issue?

14 A. In terms of the Tribunal not seeking enforcement of it,  
15 in addressing the Order, it would have left me with the  
16 impression, and it appears the wrong impression, from  
17 the way in which you are dealing with it, that this  
18 Order was largely, if not irrelevant, it was not a  
19 major issue, in that all of the information that falls  
20 out of this Order had been provided, and I assumed that  
21 the Tribunal was satisfied, but apparently wrongly.

22 297 Q. It is not, Mr. Caldwell, for you to decide whether the  
23 Tribunal has been furnished with all of the information  
24 in compliance with the Order. That is a matter for the  
25 Sole Member.

26 A. I take your point on that.

27 298 Q. It is not for you to make a decision as to whether you  
28 will give any response, or a limited response. It is  
29 your obligation, Mr. Caldwell, to comply with the  
30 Order, I suggest to you. Do you agree with that?

1 A. I take your point.

2 299 Q. And there has been absolutely no compliance by you with  
3 this Order, isn't that correct?

4 A. No compliance, in the sense that I have not delivered  
5 an affidavit in response to it.

6 300 Q. Have you furnished one document to the Tribunal in  
7 compliance with that Order?

8 A. Binchys have supplied --

9 301 Q. I am not asking you about - if you would answer the  
10 questions, Mr. Caldwell. You can elaborate on the  
11 answer in any way.

12 .

13 MR. FINLAY: I think the witness ought to be allowed to  
14 answer that question because there is an answer to that  
15 question.

16 .

17 CHAIRMAN: Just a moment, Mr. Finlay. Would you kindly  
18 address me and not counsel.

19 .

20 MR. FINLAY: Chairman, my remark was addressed to you.

21 .

22 CHAIRMAN: Well, I would like to be addressed in a more  
23 polite mode of address, please.

24 .

25 MR. FINLAY: I think, Chairman, if I may apologise for  
26 any impoliticity in the way I phrased it. I was purely  
27 making the comment that I thought that Mr. Caldwell,  
28 who is attempting to answer Ms. Dillon's question in a  
29 comprehensive way, ought, in fairness, in accordance  
30 with the procedures which you, yourself, identified

1 very comprehensively at the opening of this Tribunal,  
2 in terms of the treatment of witnesses, ought to be  
3 allowed so to do. That was merely what I was saying.

4 .

5 MS. DILLON: I have no - as I said to Mr. Caldwell, I  
6 would like him to answer the question, and then he  
7 could elaborate on it in any way that he saw fit. The  
8 question he was asked was has he supplied any document  
9 to this Tribunal in compliance with the Order that is  
10 on screen. He may give his answer and elaborate upon  
11 it in any way he sees fit.

12 .

13 CHAIRMAN: That's correct.

14 A. In terms of myself as an individual, I haven't sent any  
15 documents into the Tribunal. In terms of myself, as  
16 someone associated with a firm that was complying with  
17 Orders that the Tribunal had issued, I have assisted in  
18 all of that documentation being provided to the  
19 Tribunal.

20 302 Q. MS. DILLON: Yes. Insofar as you were asked to provide  
21 a detailed narrative statement dealing with your  
22 knowledge and dealings of the 15 individuals and  
23 entities listed in the Tribunal's original letter to  
24 you of the 30th of March, you furnished, by a statement  
25 which is - I beg your pardon - dated the 2nd of May,  
26 and furnished to the Tribunal on the 8th of May, 2001,  
27 a statement in compliance with that request?

28 A. I furnished a statement, yes, in relation to that.

29 303 Q. In the first paragraph, this is at page 109, please.

30 In the first paragraph of that statement you say:

1 .  
2 "I was requested to prepare a narrative statement  
3 concerning my knowledge of and dealings with 15  
4 individuals and entities and transactions listed in the  
5 letter."

6 .  
7 Isn't that right?

8 A. Yes.

9 304 Q. So you understood what the purpose of the statement  
10 was?

11 A. Yes, that's --

12 305 Q. You have identified it yourself in the very first  
13 paragraph in your statement, which is that you were to  
14 prepare a narrative concerning your knowledge of and  
15 dealings with --

16 A. Yes, that is what it says, Ms. Dillon.

17 306 Q. The request of the Tribunal was not limited to finding  
18 out whether you acted for certain parties or not, isn't  
19 that right?

20 A. Yes. The Trust of that is more comprehensive than  
21 that.

22 307 Q. Yes, absolutely. Did you, in fact, furnish to the  
23 Tribunal a narrative concerning your knowledge of and  
24 dealings with the 15 named individuals and entries and  
25 transactions?

26 A. I did not provide a narrative that sets out what the  
27 state of my knowledge was at that time.

28 308 Q. Why?

29 A. I dealt with it in this fashion at that time because I  
30 had some limited knowledge of what the situation was.

1 I didn't - the Order itself, not the Order, but the  
2 request for information was in very, very wide and  
3 general terms. I was unsure as to what information was  
4 requested, and I took a decision to deliver a statement  
5 in these narrow terms.

6 309 Q. Which was a statement by-and-large with two exceptions;  
7 identifying whether you had or had not acted for any of  
8 the persons, individuals or entities?

9 A. That's correct.

10 310 Q. And did not in any way provide any information of the  
11 level of your knowledge of or dealings with, with two  
12 exceptions, the entities and persons as set out in the  
13 letter. Isn't that right?

14 A. I didn't go into any details in relation to my  
15 knowledge at that time in relation to the various  
16 parties listed there.

17 311 Q. And insofar as Canio was concerned, Canio Limited being  
18 the company, you provided no information in connection  
19 with Canio Limited?

20 A. I provided very - well, other than the few references  
21 here, but no information in relation to it.

22 312 Q. Why?

23 A. I felt that if I was dealing with this, I would be  
24 dealing with it in evidence.

25 313 Q. Where in your statement did you indicate that you would  
26 elaborate upon this statement when you were giving  
27 evidence?

28 A. I did not say that in relation to it.

29 314 Q. And indeed, Mr. Caldwell, you elected on the last  
30 occasion not to come to give evidence in connection



1 with this statement?

2 A. That's correct, yes.

3 315 Q. Yes. So that had you not been persuaded otherwise to  
4 attend here, other than this document that is on  
5 screen, the Tribunal would not have been in possession  
6 of any other information, such as the information we  
7 have discussed this morning concerning Liechtenstein  
8 and the Farefield transaction and the monies that went  
9 out from the Lombard and Ulster monies?

10 A. Well, the Tribunal would have been in possession of  
11 that information from other sources. I would not be  
12 the sole source of information in relation to that. I  
13 don't know that I can add any nuances over and above  
14 what other people have already said to the Tribunal in  
15 relation to those matters.

16 316 Q. It is fortunate for the Tribunal that it has been  
17 furnished with this information from other persons,  
18 because if the Tribunal, with respect, Mr. Caldwell,  
19 was relying upon this statement, it wouldn't advance  
20 matters one bit?

21 A. But I have assisted in terms of making sure that all of  
22 the documentation was provided to the Tribunal, so that  
23 any information which was known to me would be made  
24 available to the Tribunal through that documentation.

25 317 Q. You were aware from the 30th of March, 2001, that you  
26 yourself had an involvement in the disbursement of the  
27 Lombard and Ulster monies, because the handwritten  
28 document with which you were supplied made reference to  
29 "Pay on the Order of J Caldwell." Isn't that right,  
30 Mr. Caldwell? I think it is a document that we are

1 very familiar with here. I am going to be very brief  
2 with it.

3 .

4 Page 1863. This is the document that was prepared in  
5 or around the time of the disbursement of the Lombard  
6 and Ulster loan, and that provided for the payment of  
7 ú60,000 to Caviar Limited. The bank account, Hill  
8 Samuel. That was Mr. Ray Burke's company. And  
9 underneath that it says:

10 "Pay to authority of J Caldwell."

11 .

12 Do you see that?

13 A. I see that, yes.

14 318 Q. Now, Mr. Hussey, who appears on behalf of Mr. Finnegan,  
15 has suggested to previous witnesses that that could be  
16 interpreted as meaning that the two by 25,000 to Caviar  
17 Limited, plus ú10,000, was a payment that was to be  
18 made on the authority of Mr. Caldwell. Is he correct?

19 A. No, he is not correct in relation to that.

20 319 Q. Insofar as the second transaction is involved, which is  
21 the Charles Cain transaction, 36 Finch Road, "1 by 58,  
22 place on deposit," is that the instruction that was to  
23 be paid out on the authority of J Caldwell?

24 A. The ú58,000, yes.

25 320 Q. Yes. That is the Farefield transaction that we spoke  
26 about earlier, in which Mr. McGowan, through your  
27 office, set up a company in Cyprus to buy his own  
28 property, in effect, as I understand it?

29 A. It is, as we say, to buy it in association with a third  
30 party, yes.

1 321 Q. Yes. And the "pay on the authority of J Caldwell" that  
2 is referred to there, is it your evidence that that  
3 refers to that transaction and not to the first  
4 transaction?

5 A. I have no knowledge whatsoever of the first  
6 transaction.

7 322 Q. But you were furnished with this document on the 30th  
8 of March, 2001, and you would have been aware, I  
9 suggest, from a very short period thereafter, that the  
10 focus of the Tribunal's inquiry at that point in time  
11 was the payment of ú60,000 to Caviar Limited, Mr.  
12 Burke's company?

13 A. I would have been aware in general terms of it, yes.

14 323 Q. And this document puts you there or thereabouts at the  
15 time this transaction was being conducted, because one  
16 part of it is referable to being conducted on your  
17 authority, namely, the 58,000 Charles Cain transaction?

18 A. I had no involvement in that financial transaction, in  
19 terms of the drawing down of the loan funds. Why my  
20 name appears on that is a function of the relationship  
21 with Mr. McGowan in terms of the payment of the 58,000,  
22 but the rest of the document means nothing to me.

23 324 Q. No, but what the document does, Mr. Caldwell, is that  
24 it - it places you in the transaction, the central  
25 transaction, which is the drawing down of the Lombard  
26 and Ulster loan, in that you are a person who is having  
27 something to do with one other transaction that is  
28 dealt with on that document?

29 A. I don't know that it places me in the situation. I am  
30 not being difficult, Ms. Dillon. I don't know that it

1 places me in the situation of being involved in the  
2 draw down of a Lombard and Ulster loan. It places me  
3 in the situation of being involved in the disbursement  
4 of the 58,000.

5 325 Q. Which was ultimately disbursed on your instructions to  
6 Mr. Charles Cain, and then on to Binchys and on to Reid  
7 and McNabb in --

8 A. That's correct.

9 326 Q. We have been through that. We don't need to go through  
10 it again. Once you saw that document, Mr. Caldwell, I  
11 presume you would have become aware of the importance  
12 of anything you could recollect surrounding this Canio  
13 transaction?

14 A. Not particularly, no. Because the document meant  
15 nothing to me. It wasn't my document. It would have  
16 triggered nothing in my mind in relation to the Canio  
17 --

18 327 Q. Yes. If I could turn to deal with another issue now,  
19 Mr. Caldwell, which is the Bellevue Avenue land  
20 transaction. You have looked at the documents in  
21 relation to this, and you are reasonably familiar, I  
22 presume, with the Bellevue Avenue land transaction?

23 A. In terms of the latter part of that transaction, yes.

24 328 Q. Yes?

25 A. There was --

26 329 Q. You were acting in the second part of that transaction?

27 A. This is the one with the third party purchaser.

28 330 Q. Yes, Farrell Homes?

29 A. Farrell Homes, yes.

30 331 Q. The 1.1 million?

1 A. Yes.

2 332 Q. Now, prior to that, there had been a transfer of money  
3 offshore to Jersey, ú304,000 had been transferred, and  
4 as we have heard, had been divided up, after deduction  
5 of expenses, among the various parties.

6 .  
7 Subsequently there were a number of attempts made to  
8 transfer the property between Victa and Oakpark, and  
9 use the ú304,000 that had been paid as a deposit, but  
10 they ultimately came to nothing and the property was  
11 sold to Farrell Homes.

12 A. Yes, I know the property was sold to Farrell Homes.

13 333 Q. It was sold to Farrell Homes by way of two Financial  
14 Indemnity Company of Ireland Limited policies?

15 A. Correct.

16 334 Q. FICOIL, I think the company was called?

17 A. FICOIL for short, yes.

18 335 Q. Yes. FICOIL. This was a company that had been set up  
19 by you and a Mr. John Mulholland, is that right?

20 A. No, the company itself was a company established by a  
21 UK tax consultant and advisor, and the company was  
22 administered by myself.

23 336 Q. By yourself?

24 A. Yes.

25 337 Q. All right.

26 A. But on his instructions and with his instructions.

27 338 Q. On Mr. Mulholland's?

28 A. On Mr. Taylor's instructions.

29 339 Q. In far as this transaction is concerned, the property  
30 was paid for by Farrell Homes by way of two Financial

1 Indemnity policies which were subsequently cashed?

2 A. Yes.

3 340 Q. The total value of the encashment was ú1.1 million?

4 A. Yes, so I believe. Again, I would have no

5 recollection, save for the papers.

6 341 Q. The companies that were involved in the transaction,

7 and for whom you acted, were Victa Investments Limited

8 and Worland Limited?

9 A. I would have acted in the transaction in what I

10 describe as the structural aspects of the transaction.

11 In relation to the canvassing and other aspects, other

12 people would have dealt with that, and Bedell & Cristin

13 would have dealt with their part of it in Jersey.

14 342 Q. One of the problems involved in the transaction, Mr.

15 Caldwell, was that Victa Investments Limited had been

16 liquidated the previous year, and no disposition of the

17 property had taken place, so it was necessary to insert

18 another company into the structure, and that company

19 was Worland. This has been the evidence to date. That

20 company was Worland?

21 A. Mm-hmm.

22 343 Q. The shares in Victa were owned by Worland?

23 A. Mm-hmm.

24 344 Q. And the shares in Worland were ultimately, in 1985, at

25 the time of this transaction, owned by a British Virgin

26 Islands land company called Echinus?

27 A. Yes.

28 345 Q. Mr. Brennan has told the Tribunal that he knows nothing

29 about Echinus, he doesn't know what part, parcel or

30 anything else Echinus had to play in the transaction.

1 It is clear that Echinus was the beneficial owner of  
2 the Worland shares.

3 .

4 Could we have 2271, please.

5 .

6 And if we scroll down to the bottom of that. If you  
7 would like to read it again, then, Mr. Caldwell. You  
8 see the schedule refers to Worland Investments Limited.

9 If we go back to the top?

10 A. Mm-hmm.

11 346 Q. You will see that the shares are being held by Mr.

12 Wheeler, as nominee and trustee for; the shares in

13 Worland are being held by Mr. Wheeler as nominee and

14 trustee of Echinus Limited of the British Virgin

15 Islands?

16 A. I see that, yes.

17 347 Q. Yes. Echinus Limited was not itself a party to the

18 transaction, but at the time of the transaction was the

19 owner, it would appear, of Worland?

20 A. Yes, from that document, yes.

21 348 Q. Yes. Mr. Brennan has been unable to assist the

22 Tribunal as to what the nature or purpose of Echinus

23 was?

24 A. Mm-hmm.

25 349 Q. And can you assist, first of all, as to what Echinus

26 was, who set it up, what its involvement in this

27 transaction was?

28 A. Well, Mr. Brennan contacted me about this some months

29 ago, when I was in the States. I had no recollection

30 at all of Echinus. From looking at the brief papers, I

1 can say that Echinus is a British Virgin Islands  
2 company, that it is what is called a hybrid company.  
3 It is a limited - it is a company that is limited by  
4 guarantee, having a share capital, that its purpose in  
5 a transaction like this would be to act like a trust  
6 owning the shares, but not a trust as such. And that  
7 it would have a series of, under its share structure,  
8 would have a situation where people are potential  
9 beneficiaries of that company, much as they would be  
10 potential beneficiaries under a trust. And the way it  
11 is structured is that they would not control the  
12 company, as such.

13 350 Q. And was this structure put in place in this transaction  
14 with Farrell Homes for the purpose of making the  
15 directors of Oakpark the beneficiaries in the  
16 transaction?

17 A. Yes, it would have been, yes.

18 351 Q. Was that set up by you?

19 A. I would have established this, this company, yes, so  
20 that the - and the directors of Oakpark would be the  
21 people who were the potential beneficiaries under the  
22 that company.

23 352 Q. Would the beneficiaries of Oakpark have been the people  
24 who ultimately received the funds?

25 A. Again, and this is coming from the papers that are  
26 there, as opposed to what I could recollect in relation  
27 to it. In terms of the papers that are there, the  
28 people who ultimately received the net funds in  
29 relation to it were the five directors of Oakpark.  
30 That was done by five companies being established, and



1 the funds paid into those companies equally.

2 353 Q. So that what happened in relation to these, this

3 particular transaction, in the first part of the

4 Bellevue Avenue transaction, the money was taken out to

5 Jersey and distributed between Mr. Brennan's company -

6 no - Mr. McGowan's company and Mr. Finnegan's company,

7 in the first part of the transaction?

8 A. I wasn't a party to the first part of the transaction,

9 but my recollection of what the papers say is the same

10 as you have just described it.

11 354 Q. Then, subsequently in 1985, I think, it happened in

12 1985 the property was then sold, and it was sold to

13 Farrell Homes for 1.1 million?

14 A. Yes.

15 355 Q. Victa Investments has been liquidated in the meantime

16 through somebody's oversight; Worland was substituted,

17 and the beneficial owner of Worland was Echinus

18 Limited?

19 A. I think that, again from looking at the papers, and it

20 appears that I visited Mr. Wheeler some days before

21 this Declaration of Trust was done.

22 356 Q. On the 31st of October, 1985, you were in Jersey?

23 A. I think it might have been, actually, an earlier date

24 that I was there.

25 357 Q. Yes?

26 A. And that this restructuring of the shareholding in

27 Worland into Echinus took place after that.

28 358 Q. Yes. And the restructuring was backdated, isn't that

29 right?

30 A. No, that is not correct.

1 359 Q. Sorry, what was backdated was the shareholding in Victa  
2 being held by Worland?

3 A. I have seen from the papers that there is some exchange  
4 of telexes in relation to that.

5 360 Q. And it --

6 A. I was not a party to any of those, and those telexes  
7 are directed between other people. They are not  
8 telexes in which I was involved.

9 361 Q. It had to be backdated because at the time the problem  
10 was discovered in relation to Bellevue, the company  
11 Victa was dissolved already, so that the reorganisation  
12 of the shareholding and the placing of the sharing in  
13 Worland had to be backdated prior to the date of  
14 dissolution?

15 A. I have seen the telexes that are in the brief in  
16 relation to that exchange between two parties, but I  
17 was not one of the two parties between whom those two,  
18 those documents exchanged.

19 362 Q. Right. But I think you would agree that that is what  
20 appears to have happened?

21 A. That is what appears to have happened, yes.

22 363 Q. It would follow that something like that had to take  
23 place, if the system was going to be put in place,  
24 because of the fact that Victa had been dissolved?

25 A. Well, I am not sure. I am not aware what the Jersey  
26 law position in relation to it is, but it seems that  
27 that was a solution that was proposed by the Jersey  
28 administrator several years before this transaction  
29 took place.

30 364 Q. It was the solution that was implemented, because if

1 one looks at the share certificates and the documents  
2 in relation to the holding of the shares in trust, one  
3 sees that the beneficial ownership of Victa is put into  
4 Worland?

5 A. From my reading of the documents, I wouldn't disagree  
6 with you.

7 365 Q. Insofar as the transaction, then, is concerned in  
8 relation to Echinus, which occurred in 1985, this was  
9 to effect a sale to Farrell Homes of the property?

10 A. Yes, the sale of Farrell - to Farrell Homes had taken  
11 place. Again, I am trying to piece it together from  
12 the documents as opposed to any clear recollection.  
13 The sale to Farrell Homes would have taken place, and  
14 when I would have gone to look at the Worland papers, I  
15 would have been looking to see who the owners of the  
16 shares were at that point in time. I would have been  
17 looking to see whether that was being held in a  
18 satisfactory manner, and from the fact that Echinus was  
19 put in place, I clearly formed the view that it was not  
20 a satisfactory way for the Oakpark people to hold the  
21 shares in Worland. And I would have discussed, I would  
22 have discussed with Mr. Wheeler the restructuring of  
23 the ownership.

24 366 Q. And the purpose of this restructuring was to make the  
25 directors of Oakpark, who were not themselves the  
26 beneficial owners of Worland, the ultimate recipients  
27 of the money. That was the thinking that was behind  
28 it?

29 A. My understanding at all times in relation to this was  
30 that the Oakpark directors were the beneficiaries of

1 the Bellevue lands, effectively. I don't know where  
2 the paper trail broke down in relation to it or if it  
3 did break down in relation to it. I have a notion that  
4 in the documentation there actually were Declarations  
5 of Trust in favour of them, but I may be wrong in that.

6 367 Q. But the purpose of this exercise was to provide that  
7 the beneficial owners of Worland would be Echinus, and  
8 that the people who would benefit through the Echinus  
9 company were the directors in Oakpark?

10 A. Correct.

11 368 Q. And when the property was ultimately sold, and I  
12 presume money was outstanding to various banks in  
13 connection with the money that had previously been  
14 advanced, the €304,000, and out of the €1.1 million  
15 there was approximately €637,500 left over?

16 A. I am not sure what the number is, but that sounds  
17 correct, yes.

18 369 Q. The Tribunal this morning received a statement from, I  
19 think you have been circulated with this through your  
20 solicitors, and I will give you a copy of it, Mr.  
21 Caldwell, to give you a chance to read it, from Mr.  
22 Michael Foley, who was one of the directors of Oakpark?

23 A. I have seen that this morning.

24 370 Q. Now, Mr. Michael Foley was scheduled to give evidence,  
25 but unfortunately will not be in a position to give  
26 evidence due to an accident. It is proposed to read  
27 his letter from his solicitor into the record. But in  
28 his statement --

29 .

30 MR. DEVITT: Sorry, Chairman, just if I may interrupt.

1 Mr. Noel Devitt for Mr. Foley and Bernard Cooke,  
2 instructed by Douglas and Barrett.

3 .

4 As I understand it, Ms. Dillon is correct in saying  
5 that Mr. Foley cannot appear. But as matters stand, we  
6 don't have instruction to allow the letter be read into  
7 the record. We don't have specific instructions. I  
8 don't anticipate that there will be difficulty, but I  
9 would prefer if that matter was addressed, perhaps, at  
10 the recess --

11 .

12 MS. DILLON: There is no difficulty with that. The  
13 document that has been furnished to the Tribunal has  
14 already been circulated, which was a document,  
15 apparently given to Mr. Foley by this witness at a  
16 meeting that took place in the offices of Binchys some  
17 considerable time ago. The content of the statement I  
18 can put to the witness, if it is necessary, without  
19 putting the actual document to the statement.

20 .

21 I simply felt that, in fairness to Mr. Caldwell, he  
22 should be allowed to read it, as we were only furnished  
23 with the documentation very late last night, and as Mr.  
24 Caldwell's advisors have only received it this morning,  
25 in fairness to Mr. Caldwell, he should be allowed read  
26 it. I can deal with it without put putting the actual  
27 document or reading the document onto the record.

28 .

29 MR. DEVITT: If that was possible, I would prefer that  
30 course of action.

1 .

2 CHAIRMAN: We will take that course of action.

3 .

4 371 Q. MS. DILLON: Do you have a letter, Mr. Caldwell, from  
5 Douglas and Barrett solicitors?

6 A. Yes, I do.

7 372 Q. They are summarising what they understand Mr. Foley's  
8 evidence would be if he hadn't had his unfortunate  
9 accident.

10 .

11 You will see that he refers in the third paragraph to a  
12 statement that was handed to him in 1985 at a meeting  
13 in the offices of Fitzpatricks which you chaired?

14 A. I see that.

15 373 Q. If you turn to look at the statement which he is  
16 talking about. You will see it starts with the words  
17 "Sale price - 637,500." Page 5188, please.

18 .

19 It would appear, from what Mr. Foley is saying and what  
20 the other directors of Oakpark are saying, is that  
21 there was a meeting at which this document was  
22 produced, and as a result of which their share of the  
23 proceeds of these funds were then dealt with in a  
24 particular way?

25 A. I have no recollection of it, but that may well be the  
26 case.

27 374 Q. But you have presumably read the statements of Mr.  
28 Cooke, Mr. Foley?

29 A. Yes, I have.

30 375 Q. And you have seen - do you dispute in any way what they

1 are saying in relation to how these funds were dealt  
2 with, and what was put in place?

3 A. In terms of the structure of how they were put in  
4 place, the amount, the net amounts of money was divided  
5 out between the five individuals equally, and the equal  
6 amounts of money placed in companies which were  
7 established.

8 376 Q. In the Isle of Man?

9 A. In the Isle of Man, yes.

10 377 Q. This sum of 637,500 appears to be the balance left over  
11 from the 1.1 million, after the banks had been paid.

12 From that is then deducted a number of, a series of  
13 fees, including fees. It says:

14 "Cost two by 5, establishment costs two by 5."

15 I presume that deals with the five companies that

16 subsequently set up those costs, are added up and

17 deducted from the total of ú637,500, leaving a net

18 balance of ú592,971.14. And then there is a conversion

19 between Irish Punts and Sterling done at the bottom?

20 A. Mm-hmm, I see that.

21 378 Q. And the money is then, according to the statements of

22 Mr. Brennan, Mr. Lyons, Mr. Cooke and what Mr. Foley

23 has said through his solicitors, these funds, and what

24 Mr. Brennan has said in testimony, these funds were

25 then divided between the five directors of Oakpark?

26 A. Yes, that is my understanding. Yes.

27 379 Q. And a separate company in connection with each person  
28 was set up in the Isle of Man?

29 A. Yes.

30 380 Q. The funds were then transferred to the Isle of Man?

1 A. Yes, I would assume that, yes.

2 381 Q. And it would appear, if you recollect from the  
3 documentation, that when the FICOIL policies were  
4 cashed in, bank drafts drawn on the Royal Bank of  
5 Scotland were sent to Bedell & Cristin, and then for  
6 onward transmission to the Isle of Man?

7 A. I recollect that from the documents, yes.

8 382 Q. Three of the bank drafts are, in fact, in the  
9 documents. A copy of one draft has been missing and  
10 the Tribunal has been unable to obtain it.

11 .

12 They were then sent to the Royal Bank of Scotland in  
13 the Isle of Man and, presumably, cashed?

14 A. I presume that they finished up in these companies,  
15 yes.

16 383 Q. They finished when you made your decision or the  
17 division took place between the five directors of  
18 Oakpark. Their respective portion of the balance that  
19 was left was transferred to an individual company in  
20 the name beneficially held by each of the directors?

21 A. It would have been transferred into their own  
22 individual structures.

23 384 Q. Right. It would appear from the statements, again, of  
24 Mr. Brennan, Mr. Lyons, and Mr. Cooke, and the letter  
25 from Mr. Foley, is that what happened was when they  
26 needed money out of these accounts, they went to you,  
27 and you obtained the money for them?

28 A. In some instances they would have contacted me, yes,  
29 and I would have contacted Mr. Bullock, or they would  
30 have done it directly themselves.



1 385 Q. Mr. Brennan says:

2 "When I required to draw down monies, I contacted John  
3 Caldwell and he made whatever arrangements were  
4 necessary."

5 .

6 Mr. James Lyons says that he does not hold and did not  
7 ever hold details of the accounts into which the money  
8 was placed, but that John Caldwell, solicitor, arranged  
9 for his share to be sent to the Isle of Man, a company  
10 was formed, and he was the beneficial owner of that  
11 company. And he did not have details of the accounts  
12 into which the money was lodged, and that all of his  
13 dealings in connection with Mr. Martin Bullock were  
14 through you?

15 A. In Mr. Lyons' case that would be correct, yes.

16 386 Q. And Mr. Cooke, when he gave his statement, said: "That

17 the transactions involving withdrawals from the  
18 investment were undertaken on my behalf, and on my  
19 instructions by Mr. John Caldwell of Binchys &  
20 Partners. The cash withdrawals were brought into the  
21 State by Mr. Caldwell, and subsequently handed to me.  
22 I applied these monies generally to defray expenses  
23 incurred in my farming operation, but would also have  
24 used same for personal living expenses."

25 .

26 Is Mr. Cooke correct?

27 A. Mr. Cooke would have dealt largely himself in relation  
28 to the funds. I would have had some involvement within  
29 some, but I have no recollection of how much in  
30 relation to it, but largely he dealt with his own

1 company and disbursement of his own funds.

2 387 Q. He says that he never received any statement from the  
3 management company?

4 A. That may well be the case.

5 388 Q. Is it the position that you did bring, that you did, on  
6 occasion for Mr. Cooke, bring cash in for the purposes  
7 of meeting their requirements?

8 A. If he had requested me to bring some cash back for him,  
9 I would have brought back some cash for him, yes. I  
10 would have contacted Mr. Bullock and he would have  
11 drawn some cash from the account, and I would have  
12 brought that back and handed it to him. The funds  
13 themselves were - there was no tax liability in  
14 relation to that, because there had been a tax  
15 settlement in relation to those companies, so the funds  
16 were his to use as he wished.

17 389 Q. But is it the position that you would physically go to  
18 Jersey and that Mr. - sorry, the Isle of Man, I beg  
19 your pardon, and that Mr. Bullock would give you the  
20 money?

21 A. If I was in the Isle of Man, he may give me some money  
22 to take back with me on my trip back again. On other  
23 occasions he might have sent it through DHL or --

24 390 Q. Is it part of the service that you were providing for  
25 the directors of Oakpark, that as and when they  
26 required cash from their investment companies in the  
27 Isle of Man, that they would come to you and they would  
28 say, "I need 5,000, 10,000" or whatever they needed,  
29 and that you would make arrangements and have the money  
30 there for them in cash, if cash is what they required?

1 A. If they required, if they wanted cash from the company,  
2 yes, but they were perfectly entitled to take the funds  
3 in cash if they wished to do so.

4 391 Q. We are not discussing entitlement - I have no  
5 difficulty with that. I am simply trying to find out  
6 what happened to the money, Mr. Caldwell.

7 A. Yes.

8 392 Q. Is it the position that if you were requested to  
9 produce the money in cash, you would make the  
10 arrangements, and if you were in Jersey, you would  
11 bring it back yourself and give it to them?

12 A. If I was in the Isle of Man --

13 393 Q. The Isle of Man?

14 A. Yes.

15 394 Q. Yes. You would provide that service?

16 A. I would oblige them, yes, in doing that, yes.

17 395 Q. Insofar as the tax situation is concerned, now that you  
18 have raised it, is it the position that the Oakpark  
19 directors and the company Oakpark entered into a tax  
20 settlement with the Revenue Commissioners in late - in  
21 early 1980's?

22 A. This is sort of the mid to mid-1980's, yes.

23 396 Q. That is the position?

24 A. That's right.

25 397 Q. And that is also included?

26 A. It included these funds.

27 398 Q. These funds, and that the tax position - there was no  
28 difficulty in relation to the tax position, but insofar  
29 as you were --

30 A. That's correct.

1 399 Q. -- insofar as you were performing a function, Mr.  
2 Caldwell, it would appear from the evidence, that  
3 presumably will be given by Mr. Brennan, Mr. Lyons and  
4 Mr. Cooke, that you were providing the services of a  
5 bank?

6 A. I wouldn't say that I was providing the services of a  
7 bank in relation to it. If they requested that some  
8 funds were drawn in cash, I would have arranged for  
9 those funds to be drawn in cash through Mr. Bullock. I  
10 would have no contact with the bank directly myself.  
11 Then those funds would have been made available to  
12 them. But I was not providing a banking service.

13 400 Q. And if we can go back briefly to deal with the  
14 Liechtenstein transaction, the transfer of the  
15 ú115,000. Sorry, the setting up of the Liechtenstein  
16 account occurred at a time when litigation was  
17 threatened between Lombard and Ulster and Canio, isn't  
18 at that right?

19 A. Yes, when I look at the papers, yes.

20 401 Q. And the Liechtenstein Bank account was also set up at  
21 the time when it was then clear to everybody that there  
22 was a dispute about the mortgages or the priority of  
23 the mortgages on the Canio lands between Allied Irish  
24 Finance and Lombard and Ulster?

25 A. The dispute was emerging at that point in time, yes.

26 402 Q. Is that the reason why the Liechtenstein St. Anthony  
27 Foundation was set up, Mr. Caldwell, to provide a safe  
28 haven for Mr. Brennan's money in the case that  
29 everything went terribly wrong for him?

30 A. No, Mr. Brennan had been involved in the reorganisation

1 of his own personal affairs for well over a year, and  
2 this was just part of the continuity of that. There  
3 was no setting up of the bank account to defeat any  
4 claims of any bank.

5 403 Q. Did your colleagues in Binchys know that you were aware  
6 or that you were instrumental in setting up this  
7 Liechtenstein Bank account for Mr. Brennan?

8 A. I wouldn't have thought so, no.

9 404 Q. Even though Binchys were, themselves, at that time the  
10 solicitors acting for Lombard and Ulster?

11 A. Binchys had acted in the draw down of the funds for  
12 Lombard and Ulster, on the loan account from Lombard  
13 and Ulster. Binchys had begun, again this is from the  
14 briefing papers because I would have no recollection of  
15 it, Binchys were involved in the beginning of the  
16 dispute that there was between Lombard and Ulster and  
17 Canio Limited over the security and the dispute with  
18 Mr. Russell.

19 .  
20 The firm itself would have been in a situation where  
21 the partners dealing with one part of it, one set of  
22 clients wouldn't be discussing those affairs with other  
23 partners within the firm. I certainly - it is  
24 certainly clear from the memos that are in the briefing  
25 document, that certainly I think in July I was aware of  
26 the difficulties.

27 .  
28 I had raised internally in Binchys that I believed  
29 there was a conflict of interest and that the firm  
30 shouldn't act for either Brennan and McGowan or Lombard

1 and Ulster in relation to the dispute, and that it  
2 should be other parties that act and represented both  
3 of them. And I think that is ultimately what happened  
4 in relation to it.

5 405 Q. You were aware in May of 1985 that there was a problem  
6 with Canio, because you received a memorandum from Mr.  
7 Hugh O'Neill, your colleague in Binchys, asking you to  
8 see could you obtain a copy of the resolution that was  
9 required by Lombard and Ulster?

10 A. Yes. And I received it, I believe, from the papers as  
11 well. I received something from Mr. Wheeler as well,  
12 that would have alerted me that there were  
13 difficulties.

14 406 Q. You were in Jersey - Document 4063 - on the 13th of  
15 May, 1985 with Mr. Tom Brennan?

16 A. I have seen that from the diary, yes.

17 407 Q. And on the 13th of May, and in subsequent days, on the  
18 13th of May, 1985, the first transfer of money takes  
19 place between the Beachside account of Mr. Brennan and  
20 Prasdial Anstalt. Page 893.

21 .  
22 This is the first transaction where the money is being  
23 moved in Chase Bank and Trust Company (Channel Islands)  
24 Limited to Prasdial Anstalt Pro Diverse Bank in  
25 Liechtenstein. It is being debited to the K181  
26 account, which was formally Kalabraki - the Beachside  
27 account?

28 A. Yes, it is a transfer from the Beachside account.

29 408 Q. Am I correct in thinking from that connection, that it  
30 was at your meeting on the 13th of May, of 1985, that

1           you informed Bedell & Cristin about the operation of  
2           the Liechtenstein Bank account and where the money was  
3           to be sent?

4        A.   I would have no recollection of that. That may well  
5           have been the situation, but I have no recollection of  
6           that.

7 409   Q.   It seems logical, if you look at the sequence of the  
8           correspondence.

9        A.   It may well have been.

10 410   Q.   You were the person who set up the Liechtenstein  
11           account, and the money is being transferred by Mr.  
12           Wheeler from Jersey to Liechtenstein. You are at a  
13           meeting in Jersey with Mr. Wheeler on the same day?

14       A.   As I say, I have no recollection, but it may well be  
15           the case.

16 411   Q.   And you will have seen from the documents we looked at  
17           this morning, that the formal Foundation was put in  
18           place on the 23rd of May of that year, 1985. It would  
19           appear, certainly, there is a very close proximity in  
20           time between the operation and the setting up of the  
21           Liechtenstein situation and the potential difficulty  
22           that was brewing in Ireland, over the Canio lands?

23       A.   Those events are happening in the same time frames, but  
24           as I say, the reorganisation of Mr. Brennan's affairs  
25           in terms of his Irish situation with the settlement  
26           that was done there, and also the situation that took  
27           place, was something that happened over a protracted  
28           period of time. I have no recollection of any  
29           activity, then, which was done in the context of the  
30           dispute. These funds that were transferred were

1 Beachside funds, and any other funds that were  
2 transferred, my understanding is that they were  
3 Beachside funds as well.

4 412 Q. The \$115,000 that was transferred, were not, in fact,  
5 from the Beachside account, they were from the Canio  
6 account?

7 A. In looking at the documents, and again it is in looking  
8 at the documents as opposed to recollection on it, the  
9 documents bear the reference for Canio, undoubtedly.  
10 The correspondence between Mr. Wheeler and Mr. Owens in  
11 relation to who owned those funds, which predates the  
12 transfer and that correspondence is in terms of both of  
13 them being of the view that the funds were jointly  
14 owned by the two structures, effectively.

15 413 Q. I think the correspondence, in fact, says jointly owned  
16 by Mr. Brennan and Mr. McGowan?

17 A. It says Mr. Brennan and Mr. McGowan.

18 414 Q. It doesn't refer to the structures at all, Mr.  
19 Caldwell?

20 A. You are correct.

21 415 Q. It refers to the individuals?

22 A. It refers to the individuals, yes, that it was jointly  
23 owned funds as opposed to Canio funds.

24 416 Q. Yes.

25 I may wish to revisit with you in re-examination, Mr.  
26 Caldwell, only for the purpose of organisation, the  
27 question of the filing of the Affidavit of Discovery  
28 that you referred to this morning, because I think the  
29 time period you have allowed yourself is too short, in  
30 saying that you would be in an approximation to have



1 the affidavit ready tomorrow. If you would just answer  
2 any questions that any of my colleagues have.

3 .

4 Thank you Mr. Caldwell?

5 A. Thank you, Ms. Dillon.

6 .

7 CHAIRMAN: Who wants to ask questions, and in what  
8 order? What order do you want to proceed in?

9 .

10 MR. HUSSEY: I have no questions.

11 .

12 MR. DEVITT: I have a couple of questions on behalf of

13 Mr. Cooke and Mr. Foley.

14 .

15 CHAIRMAN: Mr. Cooke, right.

16 .

17 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. DEVITT AS

18 FOLLOWS:

19 .

20 417 Q. MR. DEVITT: The statement that Mr. Cooke made to the

21 Tribunal, dated the 25th of July of this year was

22 opened to you. Perhaps it will assist if you refer to

23 it. I think you have it in front of you there.

24 .

25 The last paragraph of that letter, Mr. Cooke says:

26 .

27 "I am not aware of the precise manner which this

28 investment was managed on my behalf, and that I was not

29 in regular contact with Mr. Bullock."

30 .

1 Do you see that?

2 A. I see that, yes.

3 418 Q. Well, Mr. Cooke in his evidence, and indeed Mr. Foley's  
4 evidence, will be that if it wasn't for your  
5 participation or intervention, that they would not have  
6 any dealings with Mr. Bullock. Would you accept that?

7 A. I don't know. I mean, that may well be the case, that  
8 they would have no dealings with him, but my  
9 recollection in relation to Mr. Foley and Mr. Cooke is  
10 that both of them would have been in contact themselves  
11 directly with Mr. Bullock, and dealt with him in  
12 relation to the management of some of these funds and  
13 the acquisitions that were made by these companies.

14 419 Q. Well, are you in a position to say who introduced Mr.  
15 Cooke or Mr. Foley to Mr. Bullock in the first  
16 instance?

17 A. Oh, I would have been the party that introduced both of  
18 those gentlemen to Mr. Bullock.

19 420 Q. And in relation to the overall scheme or plan, the  
20 setting up of Echinus, if I am pronouncing the name of  
21 that company correctly, who would have been the author  
22 or the architect of that scheme?

23 A. I would have been the person that reviewed the  
24 structure and put that structure in place.

25 421 Q. And would you have done so in your role as solicitor to  
26 Oakpark and to the directors of Oakpark?

27 A. It would have been in the role, as I describe,  
28 transaction solicitor to the various parties involved  
29 in it.

30 422 Q. And would that role have included giving some tax

1 advice; how funds such as the funds arising from the  
2 Bellevue transaction might have been dealt with in a  
3 tax-efficient manner?

4 A. I have no recollection of the actual nature of the  
5 advice at the time, but I would have been seeking to  
6 structure it in a way which was tax-efficient from  
7 their point of view, in holding those funds.

8 423 Q. And were there any dealings with the Revenue with  
9 regard to tax compliance in relation to these schemes?

10 A. There would have been no necessity to have any  
11 correspondence with the Revenue in relation to the  
12 structure. There was dealings with the Revenue  
13 subsequently in relation to settling the tax affairs of  
14 the directors, and the companies arising from the  
15 various transactions.

16 424 Q. As I understand it, both Mr. Cooke and Mr. Foley's  
17 evidence will be that they had some hopes that this  
18 scheme would have been more tax-efficient than it was,  
19 and that ultimately they were made aware of a  
20 liability, they were made aware of a liability to the  
21 Revenue, which they settled. I think you mentioned the  
22 date of the mid-1980's. Is that what transpired?

23 A. The settlement with the Revenue arose in relation to  
24 the sale of the land, and in relation to their own  
25 individual positions, arising from those, the  
26 realisation of those funds. The sale of the lands and  
27 the tax that that triggered arose from a structure  
28 which was an inherited structure, in that it was a  
29 structure coming forward from Victa Investments, which  
30 was something from the 1970s, from what I can see from

1 the documentation. I was not involved in the  
2 establishment of that structure.

3 425 Q. Isn't it the case that in relation to the funds in the  
4 Isle of Man, if directors of Oakpark, such as Mr. Cooke  
5 or Mr. Foley, wanted information, that they would go to  
6 you for whatever information they sought?

7 A. On occasions they would have done that. On other  
8 occasions it is my belief that they went directly to  
9 Mr. Bullock for its information.

10 426 Q. And you had introduced them to Mr. Bullock. You had  
11 set up this relationship?

12 A. I had introduced them to Mr. Bullock, yes.

13 .

14 MR. DEVITT: No further questions, Sir.

15 .

16 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS

17 FOLLOWS:

18 .

19 427 Q. MR. HAYDEN: Just a number of short matters. I appear  
20 on behalf of Messrs. Brennan and McGowan. Just two  
21 quick questions, Mr. Caldwell.

22 .

23 I think in reply to Ms. Dillon in relation to the Victa  
24 and Worland, you had indicated that the exercise,  
25 so-to-speak, in the context of Victa, Worland and  
26 Echinus was in the context of the directors of Oakpark  
27 being the beneficiaries of the proceeds, the net  
28 proceeds?

29 A. Yes.

30 428 Q. And that Echinus was a structure put in place for the

1 purposes of that money, those net sums coming back to  
2 the directors?

3 A. That's correct.

4 429 Q. Mr. Brennan and Mr. McGowan and Mr. Finnegan have all  
5 given evidence to the effect that in relation to the  
6 Victa property, they had gotten a sum, the ú300,000 odd  
7 in the beginning, at the outset of the equation, and  
8 that they had no entitlement as owners of Victa,  
9 beneficial owners, their companies as beneficial owners  
10 of Victa to any more proceeds, qua beneficial owners,  
11 to any of the proceeds, and that would appear to be --

12 A. Yes.

13 430 Q. -- the context of this structure?

14 A. My understanding was that there were five individuals  
15 who were the beneficiaries of the Bellevue land  
16 company's transaction.

17 431 Q. Sorry --

18 A. And that was the directors and shareholders of Oakpark.

19 432 Q. Yes.

20 A. At no time was I aware, or can I recollect any  
21 awareness that Mr. McGowan or Mr. Brennan or Mr.  
22 Finnegan had had any involvement in it. I think that  
23 was from the papers I reviewed.

24 433 Q. Yes.

25 A. That seems to me to be clearly the historic situation  
26 in relation to it, and that there was a changeover  
27 which this ú304,000 that was paid out, which  
28 effectively took those three gentlemen out --

29 434 Q. Out of the equation?

30 A. Out of the structure altogether.

1 435 Q. That seems to equate to their understanding of the  
2 position. The other matter, then, is that there was a  
3 number of payments that were then under the, in the  
4 Bedell & Cristin accounts under the K181 reference. I  
5 think there were five payments, as such. I think  
6 correspondence that the Tribunal has seen has gone back  
7 and forth seeking clarification. Can you tell if those  
8 payments, those five payments were, in fact, anything  
9 to do with Mr. Brennan?

10 A. They were nothing do with Mr. Brennan.

11 436 Q. Thank you.

12 .

13 CHAIRMAN: Mr. Finlay.

14 .

15 MR. FINLAY: Thank you, Chairman.

16 .

17 I note that it is five to one, but if I might just  
18 mention to you before I commence my questioning, that I  
19 don't anticipate being more than ten minutes. I am  
20 entirely in your hands as to what you might wish to do.

21 .

22 CHAIRMAN: We will carry on.

23 .

24 MR. FINLAY: I would hope to finish within ten minutes.

25 .

26 CHAIRMAN: Very good on. Carry on now.

27 .

28 .

29 .

30 .

1 THE WITNESS WAS THEN EXAMINED BY MR. FINLAY AS FOLLOWS:

2 .

3 437 Q. MR. FINLAY: Mr. Caldwell, is it correct that you are  
4 not a litigation solicitor?

5 A. That's correct.

6 438 Q. And in relation to this issue of discovery and  
7 Affidavit of Discovery which has been raised this  
8 morning by Ms. Dillon on behalf of the Tribunal, is it  
9 correct that when you swore your Affidavit of Discovery  
10 on the 4th of May, 2001, that you were not then  
11 familiar with the specific form of an Affidavit of  
12 Discovery which was required by the rules of the  
13 superior courts?

14 A. That's correct.

15 439 Q. And when you swore that affidavit, which as we have  
16 seen this morning makes specific reference to the  
17 affidavit of Michael O'Hanrahan, which had been sworn,  
18 was it your belief, in swearing your affidavit, that in  
19 so doing you were complying with the Order against you,  
20 in substance?

21 A. Yes, I believe that I was complying in substance with  
22 the Order.

23 440 Q. Was it your understanding at that time that in, in  
24 relation to an affidavit of discovery, two persons  
25 could not in fact make discovery of the same set of  
26 documents?

27 A. That was my understanding.

28 441 Q. Are you aware now, particularly in the light of matters  
29 arising today, that the form of that affidavit of the  
30 4th of May, 2001, does not, in fact, comply with the

1 form prescribed by the High Court rules?

2 A. Yes, I am now aware of that.

3 442 Q. And in that regard, are you now prepared to rectify  
4 that deficiency?

5 A. I can put the Affidavit of Discovery into the proper  
6 format.

7 443 Q. Turning then to the Order of the Tribunal of the 10th  
8 of August, last, which was referred to earlier. Was it  
9 your understanding that the documents, or rather the  
10 topics referable to documents listed in that Order,  
11 had, in fact, been made available to the Tribunal in  
12 any event through other Affidavits of Discovery?

13 A. That was my understanding.

14 444 Q. You recollect, and reference has been made to it this  
15 morning, that proceedings were brought against you in  
16 the High Court in the recent past. Is it the case that  
17 in those proceedings no relief whatever or no claim  
18 whatever was made against you by the Tribunal in  
19 relation to the issue of discovery?

20 A. Yes, that's my understanding. Yes.

21 445 Q. Did you believe, arising from that fact, that discovery  
22 was not an outstanding issue on the Tribunal's side as  
23 between you and the Tribunal?

24 A. That was my belief.

25 446 Q. Subsequent to the conclusion of those High Court  
26 proceedings, I think it is correct that there was  
27 correspondence between Messrs. Miley & Miley, your  
28 present solicitors, and the solicitor to the Tribunal  
29 of Inquiry, preparatory to your appearing to give  
30 evidence, isn't that correct?



1 A. That's correct.

2 447 Q. And I wonder, with permission, might I just briefly

3 refer to page 294, which I gather it may be in the

4 technological system.

5 .

6 You will see, Mr. Caldwell, that this is a letter from

7 Miley & Miley of the - at page 294. Yes. That's the

8 letter.

9 .

10 That is a letter, I think, of the 19th of October. The

11 date is slightly obscured by a date stamp. That is a

12 letter, Mr. Caldwell, from your solicitors to the

13 solicitor to the Tribunal of Inquiry, which commences

14 as follows:

15 .

16 "We acknowledge receipt your letter of the 18th

17 instance with enclosures which we note, and which we

18 are obliged. The writer has given some thought over

19 the last few days as to how best Mr. Caldwell may be of

20 assistance to the Tribunal, and subject to your views,

21 we propose the following."

22 .

23 Then there is a list of proposals as to how best your

24 attendance at the Tribunal might be approached. Isn't

25 that correct?

26 A. That's correct.

27 448 Q. And if I then might ask to see, with permission, page

28 301, which is the letter from the Tribunal of the 23rd

29 of October in response. You see letter in the

30 following terms, thanking Miley & Miley for their

1 letter of the 19th of the October.

2 .

3 "The Sole Member has directed that Mr. Caldwell's  
4 change of solicitors should be dealt with as follows:"

5 .

6 At No. 1., enclosed is a CD Rom, there is a reference  
7 to the brief.

8 .

9 "2. Cahill and Co. will be requested to furnish  
10 materials previously furnished to them.

11 .

12 3. Mr. Caldwell's evidence on the 31st instant will be  
13 confined to issues relating to the current Brennan and  
14 McGowan module, a perusal of the transcripts will  
15 highlight the references to Mr. Caldwell in evidence to  
16 date.

17 .

18 4. Mr. Caldwell will be required to give evidence to  
19 the Tribunal in relation to work done for and advices  
20 given to Thomas Brennan and Joe McGowan in the course  
21 of various transactions which have been the subject of  
22 the Tribunal's public inquiry since the 15th of May,  
23 2001.

24 .

25 C. Various financial transactions and banking  
26 transactions specified to Mr. Caldwell in  
27 correspondence and orders to date.

28 .

29 D. St. Anthony Foundation, Liechtenstein.

30 .

1 5. All parties are referred to and work from, the  
2 entire brief and not from any selected portions  
3 thereof. In order to prepare for his evidence,  
4 therefore, your client should peruse the brief. These  
5 documents with which he has no connection whatsoever,  
6 either direct or indirect, will become immediately  
7 apparent to him in the course of such perusal.

8 .

9 6. It is confirmed that in so far as Mr. Caldwell will  
10 be required to give evidence in relation to any of his  
11 client, that such clients have waived issues relating  
12 to solicitor/client privilege, Mr. Caldwell has  
13 indicated, in a narrative statement, persons for whom  
14 he acted and did not act.

15 .

16 7. It is confirmed that all materials furnished to you  
17 on behalf of Mr. Caldwell may be released into the  
18 custody of Mr. Caldwell on condition that he observe  
19 the confidentiality requirements imposed by the Sole  
20 Member in relation to these documents, which are  
21 furnished as confidential documents of the Tribunal.  
22 The Sole Member requires that Mr. Caldwell retain the  
23 documents in his safe possession; that Mr. Caldwell  
24 does not copy the documents, or cause or allow any  
25 other person to copy the documents; that Mr. Caldwell  
26 does not disclose the contents of the documents to any  
27 person; and that they are retained safely for return to  
28 the Tribunal."

29 .

30 That is in relation to the conditions of disclosure of

1 documents.

2 .

3 Mr. Caldwell, when that letter was received by your  
4 solicitors and considered by you for the purpose of  
5 your attendance here today, was there anything that in  
6 that letter at that time that indicated to you that  
7 noncompliance with any Order of Discovery was still a  
8 matter which was of particular concern to the Tribunal?

9 A. There was nothing in that letter which indicated that  
10 to me.

11 449 Q. But despite all of that, Mr. Caldwell, it is now  
12 correct, is it not, that you are going to prepare and  
13 swear an affidavit in compliance with the outstanding  
14 Order of Discovery?

15 A. Yes, I will do that.

16 450 Q. It is five past one, Chairman. I hope I haven't  
17 overrun my estimate.

18 .

19 CHAIRMAN: Not at all you haven't.

20 .

21 MR. FINLAY: Those are my questions for Mr. Caldwell.

22 .

23 CHAIRMAN: Very good. Anybody else want to ask any  
24 questions. Ms. Dillon?

25 .

26 MS. DILLON: No.

27 .

28 CHAIRMAN: Well, in these circumstances, Mr. Caldwell,  
29 I am going to stand you down pro TEM.

30 .

1 Under the terms of the High Court Order of the 16th of  
2 October, you are "required to attend to the Tribunal  
3 from time to time in relation to matters raised in the  
4 Order of the Plaintiff of the 30th", that's us, "of  
5 March, and also on the 28th of July, 2000, at such  
6 exact time and place" - sorry, "on notification to you  
7 by the Tribunal as to the exact time and place, at  
8 least seven days in advance. Such notification to be  
9 effected by written notice by facsimile to Messrs.  
10 Miley & Miley."

11 .  
12 I think it would be desirable, actually, to add a rider  
13 to that, Mr. Stephen Miley, in fact, so that there can  
14 be no doubt as to which member of the firm it is to be  
15 addressed to.

16 .  
17 On those terms, do I understand that you are prepared  
18 to come back to us?

19 A. Yes, I am, Sir.

20 .  
21 CHAIRMAN: Very good.

22 .  
23 In those circumstances I will stand you down and you  
24 will be notified in due course.

25 .  
26 MS. DILLON: Yes, Sir. It might be better to leave the  
27 position in relation to Mr. Miley's outstanding  
28 Discovery to correspondence between - to Mr. Caldwell's  
29 outstanding Discovery to correspondence between the  
30 Solicitor to the Tribunal and Mr. Miley (SIC).

1 Obviously, we should expect to get the information and  
2 documents shortly. I do think that the period that  
3 Mr. Caldwell allowed himself in evidence this morning  
4 is optimistically short.

5 .

6 CHAIRMAN: That seems to be reasonable. I have no  
7 doubt that it will facilitate everybody to bring this  
8 matter to a successful conclusion.

9 .

10 Thank you, Mr. Caldwell.

11 A. I am obliged to you.

12 .

13 MR. FINLAY: I am obliged to you, Chairman.

14 .

15 THE WITNESS THEN WITHDREW

16 .

17 CHAIRMAN: We will sit again at twenty minutes past  
18 two.

19 .

20 THE TRIBUNAL THEN ADJOURNED FOR LUNCH:

21 .

22

23 .

24

25 .

26

27 .

28

29 .

30

1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 MR. HANRATTY: Mr. Michael Reynolds, please.

4 .

5 MR. MICHAEL REYNOLDS, HAVING BEEN SWORN, WAS EXAMINED

6 AS FOLLOWS BY MR. HANRATTY:

7 .

8 451 Q. MR. HANRATTY: Mr. Reynolds, are you the Acting Deputy

9 Dublin City Planning Officer?

10 A. Yes, I am.

11 452 Q. And were you asked by the Tribunal to examine the

12 Dublin Planning Register with a view to informing the

13 Tribunal as to the history, the planning history of a

14 site at Herbert Street known as Herbert Street

15 Plantation?

16 A. Yes, I was.

17 453 Q. And I think, pursuant to that request, you did, in

18 fact, examine the register, and are in a position to

19 tell us about the planning history of that site from

20 1965?

21 A. Yes, I am.

22 454 Q. And can you tell us about the first application, which

23 I believe was dated the 8th of January, 1965?

24 A. Yeah. On the 8th of January, 1965, Michael Scott &

25 Partners applied on behalf of Wates & Company Limited

26 of 13 D'Olier Street, Dublin 2 for planning permission

27 for the erection of an office block on the site in

28 question. That's the plantation site.

29 455 Q. Yes. And --

30 A. On the 25th of February, 1965, Dublin Corporation

1           decided to refuse permission for the proposed  
2           development, for the following two reasons --

3 456 Q.   If we could have 5189, please.

4           .

5           And I think the reasons are given on page 5190.

6           .

7           MR. HUSSEY: I am sorry, Sir. I wonder, I haven't seen

8           these documents. I've seen a statement of today's date

9           from Mr. Reynolds, his narrative statement, but I

10          haven't seen any documents that goes with it. I

11          wonder, have they been - I'm sorry, maybe - I'm sorry,

12          they are just in an envelope that's just been handed to

13          my solicitor. I'm sorry, Sir.

14          .

15          MR. HANRATTY: Does Mr. Hussey have them now?

16          .

17          MR. HUSSEY: I have them now.

18          .

19 457 Q.   MR. HANRATTY: You were going to say, Mr. Reynolds, the  
20          reasons for the refusal.

21          A.   Yes. The first reason says:

22          "It is anticipated that the site will be reserved as a

23          private open space in the Development Plan."

24          .

25          And the second reason, No. 2: "The proposed structure

26          would infringe the building line of Herbert Street."

27 458 Q.   And I think there was an appeal against that decision?

28          A.   Yes, the Applicant appealed against the decision of the

29          Corporation to the Minister for Local Government. And

30          on the 13th of April, 1966, the Minister for Local



1 Government decided to refuse permission for the  
2 proposed development for the following reason:

3 .

4 "1. The proper planning and development of the area  
5 require that the site should be reserved as a private  
6 open space."

7 459 Q. Then, if we could have page 5191.

8 .

9 Was the other application on the 11th of January, 1968?

10 A. On the 11th of January, 1968, Michael Scott & Partners,  
11 architects, applied for planning permission for the  
12 erection of a five storey office block on the site in  
13 question at the Plantation, Herbert Street. And on the  
14 8th of March, 1968, the Corporation decided to refuse  
15 permission for the proposed development, for the  
16 following reasons:

17 .

18 "1" --

19 460 Q. Page 5192, please.

20 A. -- "It is envisaged that the site will be reserved as  
21 open space in the Draft Development Plan 1968. This  
22 open space is a valuable element in the character of  
23 the area, and provides an attractive setting for the  
24 houses.

25 .

26 2. The proposed development would seriously injure the  
27 amenities of the adjoining convent and school, due to  
28 restriction of sunlight and outlook, and reduction of  
29 privacy."

30 .

1 The Corporation were advised that the Minister for  
2 Local Government had received an appeal against this  
3 decision. And some time later, on the 12th of June  
4 1968, the Department of Local Government wrote to the  
5 Corporation and informed them as follows:

6 .

7 "With reference to previous correspondence regarding an  
8 appeal under the Local Government Planning and  
9 Development Act 1963, in relation to the erection of a  
10 five storey office block at the Plantation, Herbert  
11 Street, I am directed by the Minister for Local  
12 Government to state that no further action is being  
13 taken on the appeal at present."

14 461 Q. Yes. If we could have page 5193, please.

15 .

16 MR. HAYDEN: In relation to the last letter, I wonder  
17 what page that was?

18 .

19 462 Q. MR. HANRATTY: I don't think we have that document. If  
20 we have, we'll furnish a copy.

21 .

22 I think it might be on the bottom of the document, or  
23 transcribed on the bottom of page 5191. If we could  
24 just check that on screen. Yes. It's transcribed, in  
25 effect.

26 .

27 If we could have page 5193, please.

28 .

29 Was there a further application, then, on the 21st of  
30 April, 1969?

1 A. Yes. On the 21st of April, 1969, Michael Scott &  
2 Partners applied to Dublin Corporation for planning  
3 permission for the erection of a four storey office  
4 block, over basement, on the site in question.  
5 .  
6 On the 5th of June, 1969, Dublin Corporation decided to  
7 refuse permission for the development sought, for the  
8 following reasons:  
9 .  
10 "1" --

11 463 Q. Page 5194, please. Yes, we have it on screen.

12 A. "1. This open space is an established and distinctive  
13 feature of this Georgian street, and the proper  
14 planning and development of the area required that the  
15 site should be reserved as open space in the interest  
16 of amenity. The erection of a building as proposed  
17 would, therefore, seriously injure the amenities of  
18 existing property in Herbert Street."

19 464 Q. And, then, on the 5th of August, 1970, there was a  
20 decision?

21 A. Yes. On the 5th of August, 1970, the Minister for  
22 Local Government decided to refuse permission for the  
23 proposed development, for the following reason:

24 .  
25 "1. The proper planning and development of the area  
26 require that the site of the proposed development  
27 should be retained as open space. Its use, as  
28 proposed, would seriously injure the amenities of  
29 property in the vicinity."

30 465 Q. Was there then a further application for permission by

1 Finnegan Menton on the 14th of March, 1975?

2 A. On the 14th of March, 1975, Finnegan Menton of 17  
3 Merrion Row submitted an application to Dublin  
4 Corporation for planning permission for a car park on  
5 the site known as The Plantation, Herbert Street,  
6 Dublin 2. The application was dated as having been  
7 made in the name of Pembroke Estates Management Limited  
8 of 17 Merrion Row, Dublin 2.

9 .

10 And on the 9th of May, 1975, Dublin Corporation decided  
11 to refuse permission for the change of use of the site  
12 in question to a car park, for the following two  
13 reasons.

14 .

15 Reason 1: "This open space is an established and  
16 distinct" --

17 466 Q. If we could have 5196 --

18 A. -- "...the houses of which are listed buildings and  
19 defined as within an area of outstanding civic design  
20 in the Dublin Development Plan 1971, and the proper  
21 planning and development of the area require that the  
22 site be reserved as an open amenity space, retaining  
23 all the existing trees and grass.

24 .

25 The location of the proposed car park on this site  
26 would, therefore, seriously injure the amenities of the  
27 properties in the vicinity.

28 .

29 2. The proposed car park would increase traffic  
30 volumes, and would tend to create serious traffic

1 congestion. (There are already severe problems in  
2 relation to traffic in the area, and it is the  
3 Corporation's policy to restrict further car parking).  
4 The proposed car park would endanger public safety by  
5 reason of serious traffic hazard, and would therefore  
6 be inconsistent with the proper planning and  
7 development of the area."

8 .  
9 This decision by the Corporation was appealed to the  
10 Minister for the Environment. And on the 27th of  
11 January, 1976, the Parliamentary Secretary to the  
12 Minister for Local Government, who had delegated  
13 functions in the matter, decided to refuse - to refuse  
14 the proposal, and gave the following reasons:

15 .  
16 "1. The proper planning and development of the area  
17 required that the site should be retained as open  
18 space, and its proposed use as a car park would  
19 seriously injure the amenity of property in the  
20 vicinity, and of the area generally.

21 .  
22 2. The use of the site as a car park would result in  
23 an increased volume of traffic in the area, and would  
24 tend to create serious traffic congestion, and would  
25 aggravate existing traffic hazards."

26 467 Q. Well, now, as a result of that, was a notice served  
27 requiring the Corporation to acquire the property?  
28 Page 5204, please.

29 A. Yes. I am aware that Mount Merrion Estates Limited,  
30 care of Moore Kiely and Lloyd, served a purchase notice

1 under Section 29 of the Local Government Planning and  
2 Development Act 1963, on Dublin Corporation in respect  
3 of the land known as The Plantation at Herbert Street.

4 468 Q. Was that notice served on the basis that there had been  
5 a refusal for a change of use previously by the  
6 Minister?

7 A. Yes. The permission for the change of use of the said  
8 lands had been refused on the 27th of January, 1976.

9 469 Q. And what did An Bord Pleanala then decide in relation  
10 to the matter?

11 A. An Bord Pleanala decided that the said lands could be  
12 rendered capable of reasonably beneficial use, by the  
13 development of the site as a car park, containing not  
14 more than 25 car parking spaces. And the Board in  
15 exercise of its power conferred on it by the  
16 Government, and the Planning and Development Acts 1963  
17 to '76, directed that "permission for such development  
18 shall, subject to the provision of the said Acts, be  
19 granted in the event of an application being made."

20 470 Q. Yes.

21 .  
22 And did that decision of the Board then, in effect,  
23 direct the Local Authority to grant a planning  
24 permission for surface car parking for 25 car parks in  
25 the event that there was an application for such a  
26 permission?

27 A. Yes.

28 471 Q. And was there any application or grant of such  
29 permission?

30 A. There was no application, according to my examination

1 of the Planning Register, for any subsequent  
2 application.

3 472 Q. For a car park?

4 A. In relation to a car park.

5 .

6 MR. HANRATTY: Yes. I might just, by way of  
7 clarification at this point, Sir, indicate that - you  
8 will recall that Mr. Finnegan gave evidence that he had  
9 obtained planning permission for a car park on this  
10 site. And in view of the information we received from  
11 the register, we were proposing to recall Mr. Finnegan  
12 to formerly put to him the fact that there was no such  
13 permission. I discussed it this morning with  
14 Mr. Hussey, and it would seem that while there was  
15 technically speaking no actual planning permission,  
16 there was, by reason of a decision of An Bord Pleanala,  
17 an authorisation, or a direction to the Local Authority  
18 to give permission, if it had been applied for.

19 .

20 And I think one could reasonably infer that that is  
21 what Mr. Finnegan was referring to, and I think in the  
22 circumstances it's not necessary to call him back.

23 .

24 CHAIRMAN: That seems --

25 .

26 MR. HUSSEY: I think that is so, Sir.

27 .

28 CHAIRMAN: That seems perfectly reasonable.

29 .

30 473 Q. MR. HANRATTY: In any event, notwithstanding that

1 authorisation, it appears that no such application was  
2 made?

3 A. Well, I couldn't find any record in the Planning  
4 Register of any such planning application.

5 474 Q. Yes. And even if it were made, it could only have been  
6 for a surface car park for 25 cars, is that right?

7 A. That is correct.

8 475 Q. And then on the 1st of March of 1983, there was an  
9 application by Brian O'Halloran & Associates?

10 A. Yes. On the 1st of March, 1983, Brian O'Halloran  
11 & Associates, 23 Herbert Place, Dublin 2 applied for  
12 planning permission for the erection of a three storey,  
13 over basement, offices, and a three storey, over  
14 basement, block of seven flats on behalf of Criteria  
15 Developments Limited of 11 South Frederick Street,  
16 Dublin 2.

17 476 Q. If we could have page 5198, please.

18 A. And then the Corporation decided this application,  
19 which is reference 526 of '83, decided to refuse  
20 planning permission for this - for two reasons --

21 477 Q. Page 5199. Yes.

22 A. Reason 1 was:

23 .  
24 "The site is an established and distinctive feature,  
25 providing an attractive grouping of trees complimenting  
26 the Georgian terrace on the opposite side of the  
27 street. The form of the proposed development would  
28 seriously impair the visual quality of the area, by an  
29 excessive reduction of open space, and the removal of  
30 trees would consequent serious injury to the amenities



1 of property in the vicinity. This injury would be  
2 exacerbated by the intrusion of excessively large  
3 buildings at variance with the architectural character  
4 of Herbert Street, and inimical to the amenities and  
5 development potential of adjoining premises to the west  
6 of the site.

7 .

8 2. The proposed development is not in accordance with  
9 the requirement of the Dublin Development Plan, and the  
10 office content of new development in this area should  
11 not exceed 40 percent of the total proposed floor  
12 area."

13 478 Q. There was an appeal then against that?

14 A. There was an appeal against that, that decision. And  
15 on the 5th of April, 1977, An Bord Pleanala decided the  
16 application.

17 479 Q. If we could have page 5200. I think An Bord Pleanala  
18 decided to grant permission?

19 A. Sorry. They decided -

20 .

21 480 Q. MR. HUSSEY: It can't be 1977. It's another decision.

22 It must be 1983 or onward?

23 A. Sorry. On the 9th of March, 1984, An Bord Pleanala  
24 decided to grant planning permission following an  
25 appeal. This appeal relates to the application which I  
26 have referred to previously, that is register reference  
27 526/83.

28 481 Q. Yes. And if we can just scroll back up a little bit.

29 I think the decision to grant, the reason is given in  
30 the first schedule, and the reason given there is that:

1 "It is considered that the development, if carried out  
2 in accordance with the condition set out in the second  
3 schedule hereto, would not be contrary to the proper  
4 planning and development of the area."

5 .

6 Isn't that right?

7 A. Yes, that's correct.

8 482 Q. And in the second schedule, then, there is the  
9 condition which An Bord Pleanala imposed, which was in  
10 relation to trees, which was, I think, similar to the  
11 second condition already imposed by the local  
12 Authority. Isn't that right?

13 A. Yes, it required that certain trees be kept on the  
14 site.

15 483 Q. And the reason given for that condition was that it was  
16 --

17 A. In the interests of amenities in the area.

18 484 Q. And that is signed by Anthony J Lambert, a member of  
19 An Bord Pleanala. And it's dated the 9th of March of  
20 1984?

21 A. Correct.

22 485 Q. Now, can I just ask you, briefly, about the zoning on  
23 the site.

24 .

25 First of all, what was its position under the Dublin  
26 City Development Plan 1971?

27 A. Under the 1971 Development Plan, the site - the site  
28 known as The Plantation at Herbert Street was included  
29 in Zone 3. Zone 3 had referred to the zone which was  
30 designated for residential and office use.

1 486 Q. Yes.

2 A. And --

3 487 Q. I think does it say "Compatible office use"?

4 A. Yes, the uses are set out on page 59 of the 1971

5 Development Plan, and which reads as follows:

6 .

7 "Residential and office", which is under the heading

8 use, "Zone 3." It's purposes or classes of use for

9 the area is indicated. The primary uses within that

10 area are residential and compatible office use. And

11 the residential uses are as set out as Zone 1, which is

12 a residential area.

13 .

14 And in relation to office use, it says, "Office use",

15 but does not include a branch bank or a bank office to

16 which the public normally has access, or a post office,

17 or any office incompatible with residential uses.

18 .

19 So what is involved here is residential use and

20 compatible office use.

21 .

22 The plan goes on to explain what an incompatible office

23 use is.

24 488 Q. Yes.

25 A. On the same page, that's page 59 of the Dublin City

26 Development Plan of 1971, it says:

27 "An incompatible office use is, for the purposes of

28 this Development Plan, one which materially affects the

29 character of an area, road or street, or detracts from

30 its amenities by reason of excessive size or scale,

1 intrusion on the privacy of existing residential  
2 property, degeneration of excessive traffic or noise,  
3 the conversion of front gardens for car parking, or the  
4 removal of front boundary walls or railings, or by the  
5 material alteration of an existing structure to the  
6 detriment of the visual amenities, or by other means."

7 489 Q. Yes. Well, then, in 1980 did the site have a zoning  
8 objective defined as B1?

9 A. Yes. The site in the 1980 Development Plan was Zone  
10 B1.

11 490 Q. And what is that?

12 A. I should explain, that in the 1971 Development Plan,  
13 that the Georgian areas, both north and south of the  
14 Liffey had been given a single zoning, "residential"  
15 and "office" for the most part. In the 1980 plan,  
16 following a review of the 1971 plan the position was  
17 refined, and the areas had been subdivided into B1 and  
18 B - B and B1.

19 .  
20 B1 applies to some of the Georgian areas, and also to  
21 certain areas which have institutional uses on them.

22 The site at Plantation Street was included in B1.

23 491 Q. Yes.

24 A. And the plan went on to explain the policies which  
25 would apply to different areas within the B zone.

26 492 Q. Yes.

27 A. Different emphasis were to be placed on whether renewal  
28 or conservation would apply, and also on the office  
29 content. It specifically made a point that, unlike the  
30 1971 plan, it specified that a 40 percent maximum

1 office content of the permitted floor space would apply  
2 to the areas zoned B1, and lie generally to the south  
3 and southwest of St. Stephen's Green, which would  
4 include this particular site.

5 493 Q. Yes. And did it - did the plan define an objective or  
6 a zoning objective for B1 for the purpose of protecting  
7 and improving or renewing the existing civic design?

8 A. Yes.

9 494 Q. And character?

10 A. The objective of the B1 zone is to protect, improve or  
11 renew the existing civic design character, and to  
12 provide for residential and such office use as is  
13 compatible with conservation and renewal requirements.

14 495 Q. Yes. Just as a matter of interest, what was the  
15 difference between B and B1?

16 A. Well, in the case of B, it would be regarded as being,  
17 at the time, of more importance from the point of view  
18 of conservation of the existing buildings.

19 496 Q. Yes.

20 A. There would be some greater flexibility in relation to  
21 the B1 zone.

22 497 Q. Yes, I understand.

23 A. Whereas the buildings in the B zone would be regarded  
24 of a higher quality at the time.

25 498 Q. So it would appear from that, that the permitted uses,  
26 both in the 1971 and the 1980 plan would include  
27 residential and office use?

28 A. That is correct.

29 499 Q. And car park?

30 A. Yes.

1 500 Q. But in the case of the 1980, it was qualified somewhat  
2 by reference to it being compatible office use?

3 A. Yes. And a more expansive policy in relation to the B1  
4 zone. And these policies are set out on page 92, 93 of  
5 the Development Plan.

6 .

7 MR. HANRATTY: Thank you very much, Mr. Reynolds. If  
8 you would answer any questions anybody else may have to  
9 put to you.

10 .

11 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HUSSEY AS  
12 FOLLOWS:

13 .

14 501 Q. MR. HUSSEY: Mr. Reynolds, I am asking you questions on  
15 behalf of Mr. Finnegan.

16 .

17 You said in your evidence that you were aware in 1977 -  
18 can I bring you back to that time - of the application  
19 that was made to An Bord Pleanala in respect of a  
20 purchase notice. Is that right?

21 A. Yes.

22 502 Q. When did you become aware of that?

23 A. I became aware of it today.

24 503 Q. You mean, there is no record within the Corporation of  
25 An Bord Pleanala's decision of the 5th of April, 1977,  
26 is that right?

27 A. I was asked to investigate primarily the planning  
28 application history on the site, and this is what I  
29 looked up in the Planning Register.

30 504 Q. Yes.

1 A. The decision by An Bord Pleanala is a decision under  
2 Section 29 of the 1963 Act, as amended. And it applies  
3 to a purchase notice. I was not asked to investigate a  
4 purchase notice.

5 505 Q. I see. I see. Would it not ordinarily be the case, if  
6 you are looking at the planning history of something,  
7 especially from the Dublin Corporation's point of view,  
8 which is the only place you could look - a member of  
9 the public looking at the Planning Register would go to  
10 Dublin Corporation to find out what planning was given  
11 in particular times, or what the planning history was  
12 of a site. There is no other place to go?

13 A. I accept that.

14 506 Q. I am just asking you.

15 A. The Planning Register, as far as I am concerned, does  
16 not contain - is not obliged to contain a purchase  
17 notice application. That is my information, unlike a  
18 claim for compensation.

19 507 Q. Yes. But there is a decision of An Bord Pleanala under  
20 the Planning Acts, isn't that right? There is a  
21 decision here. An Bord Pleanala was set up under the  
22 Local Government Planning and Development Acts, 1963 to  
23 1976, isn't that right?

24 A. That is correct.

25 508 Q. And a decision of An Bord Pleanala, is there some  
26 reason why that wouldn't be on the Planning Register?

27 A. The Planning Register, to the best of my knowledge, is  
28 not obliged to contain a reference to a purchase  
29 notice.

30 509 Q. I am talking about the decision of An Bord Pleanala

1 that was made on the 5th of April, 1977. Can you tell  
2 me why that is not on the Planning Register?

3 A. Because it's not a planning application decision. It  
4 applies to a purchase notice.

5 510 Q. But is not any decision of An Bord Pleanala not to do  
6 with planning? I would have thought it was?

7 A. An Bord Pleanala makes decisions on a number of items,  
8 but in relation to planning matters, they decide on  
9 planning applications which are in the Planning  
10 Register. But in the case of a purchase notice, a  
11 purchase notice is not entered into the Planning  
12 Register.

13 511 Q. I see.

14 A. To the best of my knowledge.

15 512 Q. I see. So --

16 A. And therefore, the decision of the Board would not be  
17 required to be in the Planning Register.

18 513 Q. I see. And if --

19 A. In fact, if I can explain to you. It's quite evident,  
20 from reading the decision of the Board, that the Board  
21 envisaged that the Planning Authority would have a  
22 planning application --

23 514 Q. Of course.

24 A. -- submitted to them subsequent to the decision of the  
25 Board on the 5th of April, 1977, and then they would  
26 exercise the powers conferred on the Local Authority,  
27 that where an application is made to them in accordance  
28 with the regulations, they then are able to exercise  
29 the actual necessary powers to actually determine that  
30 planning application.



1 515 Q. Of course. I appreciate that.

2 .

3 As I read the Order of An Bord Pleanala, dated the 5th  
4 of April, 1977; it's an Order directing the Local  
5 Authority that permission shall be granted in the event  
6 of an application being made under the Acts?

7 A. Yes.

8 516 Q. So that's a directive to the Local Authority?

9 A. Yes.

10 517 Q. Would the Local Authority not have notice of that  
11 Order?

12 A. They would have a notice --

13 518 Q. Where would they keep that notice?

14 A. They would be kept on the file relating to a purchase  
15 notice.

16 519 Q. Not on a planning --

17 A. Not on a planning file.

18 520 Q. So that if an application was made to the planners of  
19 Dublin Corporation, that file wouldn't be available to  
20 them, to know what An Bord Pleanala had directed? Is  
21 that what you are telling us?

22 A. I am saying that, for reasons I've explained, this  
23 decision by An Bord Pleanala is not a planning  
24 decision.

25 521 Q. Yes.

26 A. It's a decision made under certain sections of the Act,  
27 where a purchase notice has been served and is  
28 directing us - if an application were made at a later  
29 stage, I would expect that a copy of this notice would  
30 be placed on the then planning application - on the new

1 planning application which came in, and that it would  
2 be available for everyone to see.

3 522 Q. But who would find it?

4 A. Well, it was put on the file --

5 523 Q. What file? It's put on a purchase notice file, it's  
6 not put on a planning file.

7 .

8 MR. HANRATTY: With respect, Sir, I don't see the  
9 relevance of this line of questioning. What the  
10 witness is saying is correct as in point of law, that  
11 the Planning Register deals with planning applications  
12 and planning decisions. He has given his evidence that  
13 applications of this nature, or decisions of this  
14 nature of An Bord Pleanala are not included in the  
15 Planning Register. And I don't see that it's  
16 appropriate or necessary to get strident with the  
17 witness on the point.

18 .

19 It's quite clear from the document itself that the  
20 decision was a direction to the Local Authority to give  
21 permission in the event of an application, and all he  
22 said is there was no application, and it is therefore  
23 not on the register.

24 .

25 524 Q. MR. HUSSEY: So, it would be up to the person making  
26 application to notify the Corporation that this  
27 decision, this directive had been given from An Bord  
28 Pleanala, is that it?

29 A. That's correct, yes.

30 525 Q. I see. Now, this is a decision of An Bord Pleanala,

1 dated the 5th of April, 1977. I think An Bord Pleanala  
2 had just been set up at that stage, isn't that right?

3 A. An Bord Pleanala was established under the 196 - the  
4 1976 Act.

5 526 Q. Do you know when, in fact, they came into operation --

6 A. I don't know offhand what the is.

7 527 Q. They had taken over the powers of the Parliamentary  
8 Secretary, I think, under the old --

9 A. Certain functions of the actual Minister were  
10 transferred to the Planning Appeals Board, following  
11 their establishment of the Planning Appeals Board.

12 528 Q. Yes. And do you know at the time who - we have a name  
13 there, Mr. Denis Pringle as a member of An Bord  
14 Pleanala. Do you know the other members of the Board?

15 A. I can't - my memory doesn't extend back that far, as to  
16 who precisely were the members of the Board.

17 529 Q. Do you have any idea who the members of the Board were  
18 at that time?

19 A. I don't know.

20 530 Q. Mr. Finnegan regarded this decision by An Bord  
21 Pleanala, this directive, let's call it that, from An  
22 Bord Pleanala, forget planning permission for this  
23 site, or increasing the value of this site, it was open  
24 space, designated open space. The Corporation wouldn't  
25 move on it up to this point, but at this point, there  
26 is a directive now from An Bord Pleanala to grant  
27 planning permission, if one is applied for, for car  
28 parking spaces. Mr. Finnegan described that as the  
29 "thin end of the wedge" to increasing the value of the  
30 site on behalf of his clients, the Pembroke Estate.

1           Would that be a fair comment?

2       A.   Well, I am not an expert on valuation, so I am not  
3           going to comment on that.

4 531   Q.   Just looking at the history of this, of this site.

5           You've given the history from 1965 up to 1984. That's  
6           a span of nearly 20 years.

7       A.   Yes.

8 532   Q.   Of the applications that were made on the site, the  
9           first application was for a five storey office. Isn't  
10          that right? You just told us that?

11      A.   Yes.

12 533   Q.   A five storey office, that was refused. The next  
13          application was a four storey office, that was also  
14          refused?

15      A.   Yes.

16 534   Q.   The next application was for the car parking spaces?

17      A.   Yes.

18 535   Q.   And that was final - finally - at least we got a  
19          directive from An Bord Pleanala in respect of the car  
20          parking space, that use on the site, isn't that right,  
21          in 1977?

22      A.   Yes.

23 536   Q.   The next application was made in 1983. That's some six  
24          years later.

25      A.   Yes.

26 537   Q.   Right. And it was for two, three storey offices, one  
27          residence and one office?

28      A.   Yes.

29 538   Q.   Isn't that right?

30      A.   Yes.

1 539 Q. That's a significantly different application than had  
2 been made in the late '60s, isn't that right? Have you  
3 compared the different applications that were made?

4 A. No, I haven't. I wasn't asked to do so.

5 540 Q. I see. I see. But, I mean, I put it to you that two  
6 blocks, one of residential and one of offices for three  
7 stories, compared to a large five storey office block,  
8 that's quite a significant difference between those -  
9 the nature of that development, isn't that right?

10 A. Yes, I would expect that - I would accept that the  
11 scale and the use of both applications are  
12 significantly different.

13 541 Q. Yes. Obviously they take into account what might be  
14 compatible with the area and what - they obviously - no  
15 point in making an application which would be refused,  
16 or had been refused before. So obviously there would  
17 be some modification on what had gone before, to see if  
18 they could get around the Corporation's reservations  
19 about the particular application, isn't that right?

20 A. That - I wouldn't disagree with that statement.

21 542 Q. Now, we notice that in the refusals for the 1983  
22 application, there is two reservations, "Open space and  
23 trees", I think that's classed as one refusal reason,  
24 one reason for the refusal. And the other one is that  
25 it didn't comply with the 40 percent total offices?

26 A. Yes.

27 543 Q. Isn't that right? There is two --

28 A. There are two reasons for refusal, yes.

29 544 Q. So one, open space, trees, and the other, 40 percent  
30 offices. It didn't comply with that requirement.

- 1 .
- 2 I think within the canals there was - you couldn't have
- 3 more than 40 percent office. That's basically the
- 4 rule?
- 5 A. Yes - in fact, in all fairness, the reason, No. 1,
- 6 actually refers to much more than just trees --
- 7 545 Q. Open space --
- 8 A. The character of the area and so on.
- 9 546 Q. Of course, it's the same that had been refused before,
- 10 the open space, the amenity, all that sort of thing?
- 11 A. Yes.
- 12 547 Q. We've seen that, but the second refusal was on the
- 13 basis that the office/residential ratio didn't comply,
- 14 it was more than 40 percent. The offices were more
- 15 than 40 percent, isn't that right?
- 16 A. Yes, that's correct.
- 17 548 Q. Now, we notice that as well that the refusal here, it
- 18 says nothing about traffic or traffic hazard?
- 19 A. Yes.
- 20 549 Q. Isn't that so?
- 21 A. Yes.
- 22 550 Q. Which had been a factor in the earlier refusals?
- 23 A. Yes.
- 24 551 Q. That's not a factor in this refusal?
- 25 A. It's not stated to be a factor.
- 26 552 Q. Yes. It's not a factor in this refusal?
- 27 A. Well, it's not --
- 28 553 Q. Clearly, as far as the application, then, is concerned,
- 29 it had been watered down to that extent, that -
- 30 certainly whatever traffic generation, that wasn't

1 something that was preoccupying the minds of the  
2 Corporation in their refusal?

3 A. Obviously not.

4 554 Q. Yes. Now, both in the 1971 plan and the 1980 plan,  
5 offices and residential - if the right ratio was got,  
6 that was an acceptable use in the zoning of this site?  
7 If they get the mix right, as far as the plan is  
8 concerned, that would be an acceptable use for this  
9 site? It was zoned B1, isn't that right,  
10 residential/office?

11 A. Yes, insofar as just zoning is concerned.

12 555 Q. Yes.

13 A. If the zoning mix was correct, it would be in  
14 accordance with the zoning.

15 556 Q. Yes. I am only talking about the zoning now, because  
16 that's all the Development Plan can deal with - sorry  
17 --

18 A. I think - I wouldn't agree with you. The Development  
19 Plan deals with a lot more than that.

20 557 Q. I'm sorry, as far as we are concerned here, the only  
21 significance of the Development Plan is what  
22 designation in the Development Plan was designated -  
23 would be suitable for this site. And in the plan,  
24 residential office use was within the zoning within the  
25 plan?

26 A. Yes, but that zoning is actually qualified by - sorry,  
27 in relation to this site, is quite a specific statement  
28 in the plan, that its maximum 40 percent office  
29 content, and the rest residential.

30 558 Q. Yes. So that if - so that if that mix could be found,

1 then, as far as the zoning was concerned, it wouldn't  
2 have been a factor in the refusal. I know there are  
3 other factors, of course, that the Corporation have to  
4 think about, and rightly should think about, but as far  
5 as the zoning was concerned, if that mix was found,  
6 that - the zoning wasn't a factor in the refusal?

7 A. I agree.

8 559 Q. Can I just direct you to the Corporation's attitude to  
9 the appeal that was made in the 1983/84 application.  
10 It's on page 5168.

11 .  
12 This was when the application was - which had been  
13 refused by the Corporation was appealed to An Bord  
14 Pleanala, giving rise to the actual permission being  
15 granted, subject - this was the Corporation's,  
16 basically their submissions to An Bord Pleanala.

17 .  
18 Have you seen this document before?

19 A. I haven't seen this document before.

20 560 Q. I see. Well, can I give you time to read it, then. I  
21 don't want to take you short.

22 .  
23 MR. HANRATTY: I should say, Sir, that this witness was  
24 not asked to deal with this document, wasn't involved,  
25 as far as we are aware, in the production of this  
26 document, or indeed in the application of the subject  
27 matter of this document, and was only asked to attend  
28 here to give evidence as to the state of the Planning  
29 Register, so far as this site is concerned.

30 .



1 MR. HUSSEY: I see.

2 .

3 MR. HANRATTY: So certainly, insofar as he is asked to  
4 deal with the document, he's being asked for comment,  
5 to the extent that he wasn't, as I understand the  
6 position, involved himself.

7 .

8 MR. HUSSEY: I don't think this man was involved,  
9 himself. He is the witness now from the Dublin  
10 Corporation. I hadn't understood that his evidence was  
11 going to be limited in any way.

12 .

13 CHAIRMAN: If he has no function in it, and has no  
14 experience in it, how can he assist the Tribunal?

15 .

16 MR. HUSSEY: Well, he is the witness that's been  
17 presented from the Corporation.

18 .

19 CHAIRMAN: He is a witness who has read the register.  
20 He's investigated the register.

21 .

22 MR. HUSSEY: He's also the Planning Officer of Dublin  
23 Corporation. And he has told about the plans and the  
24 policy of Dublin Corporation in respect of these  
25 applications that had been made and had been refused.

26 He is able to give that evidence.

27 .

28 This is a letter from Dublin Corporation in respect of  
29 the appeal. I don't have any other witness - I can't  
30 imagine any other witness, unless you are going to call

1 the --

2 .

3 MR. HANRATTY: We are going to call Mr. O'Halloran  
4 directly after this witness --

5 .

6 MR. HUSSEY: Mr. O'Halloran didn't write this letter.  
7 He is not an official of Dublin Corporation. He is not  
8 --

9 .

10 MR. HANRATTY: Sorry --

11 .

12 CHAIRMAN: Just a moment. One person at a time.

13 .

14 MR. HANRATTY: What I am trying to point out is, the  
15 witness was called to give evidence to prove the  
16 planning history of the site from the Planning  
17 Register. Mr. Hussey is now embarking upon an inquiry  
18 with the witness in respect of correspondence in which  
19 he was not involved. Therefore, we can exclude any  
20 question of the witness giving evidence from his own  
21 knowledge of anything. And if Mr. Hussey could clarify  
22 that what he is asking the witness to do is to comment  
23 or give opinions on things, then the witness can be  
24 asked to do that, but can indicate to the Tribunal  
25 whether or not he is in a position to do it.

26 .

27 MR. HUSSEY: Sir, I am slightly --

28 .

29 CHAIRMAN: That seems to be a proper way of approaching  
30 the matter, and particularly having regard to the

1 contents of the letter of the 12th of September, 1983.

2 .

3 MR. HUSSEY: Yes. There is nothing controversial about

4 the letter.

5 .

6 CHAIRMAN: No. On the contrary --

7 .

8 MR. HUSSEY: Quite on the contrary - I just want to ask

9 this witness --

10 .

11 CHAIRMAN: All right. Ask him. But he is entitled to

12 decline, if he wishes to decline to express an opinion,

13 because he says he has no personal knowledge.

14 .

15 MR. HUSSEY: All right. I think I'll leave it until

16 maybe Mr. O'Halloran comes into the box.

17 .

18 CHAIRMAN: Anybody else want to ask any questions?

19 .

20 MR. HAYDEN: If I could ask a few questions?

21 .

22 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS

23 FOLLOWS:

24 .

25 561 Q. MR. HAYDEN: I appear on behalf of Brennan and McGowan,

26 sir.

27 .

28 Just briefly, in relation to the initial refusal on the

29 25th, in relation to the application of the 25th

30 February, 1965. It was refused at that stage on the

1 basis that it was anticipated that the particular site  
2 would be reserved as a private open space. And then,  
3 on the 8th of March, 1968, again one of the refusals.  
4 "It is envisaged that the site would be reserved as  
5 open space in the Draft Development Plan 1968." These  
6 are on the second page of your statement?

7 A. Yes, yes.

8 562 Q. So at that stage it was thought that the Development  
9 Plan, the proposed Development Plan, or, sorry, Draft  
10 Development Plan, it was anticipated that this area  
11 might be kept as an open space?

12 A. Yes.

13 563 Q. We know, as matters progressed, when one gets to the  
14 actual Development Plan for 1971, it's now a different  
15 zoning, in the sense that in the 1971 City Development  
16 Plan, it's a zoned 3?

17 A. Yes, that's correct.

18 564 Q. So the open space aspect that had been the basis of the  
19 earlier application - the earlier refusal, no longer  
20 features as an issue. It becomes a Zone 3 issue rather  
21 than what had been anticipated in the draft plan in  
22 '68, that it had been kept as an open space?

23 A. Doesn't become an issue, insofar as the technical  
24 zoning is concerned, but the quality of the space as a  
25 space with trees on it and so on was, obviously, an  
26 issue as far as the proper planning and development was  
27 - of the earlier was concerned.

28 565 Q. Yes. But as I understand it, I only got your statement  
29 today - well, it's only the 1st of November anyway, but  
30 just to try and find out, from the planning history, as

1 you saw it, from the register, the 1968 Draft  
2 Development Plan had anticipated this as being an open  
3 - zoned open space, that was what the original two  
4 refusals were; "We reserve as a private open space,  
5 25th of February" - going too fast again?

6 .  
7 On the 8th of March, 1968, the Corporation decided to  
8 refuse permission. Again it is envisaged that the site  
9 would be reserved as an open space in the Draft  
10 Development Plan.

11 .  
12 That's what the Planning Register shows, isn't that  
13 correct?

14 A. Yes.

15 566 Q. And when one gets to the 1971 Development Plan, Zone 3,  
16 the permitted uses in relation to Zone 3 is as you  
17 state in your statement, the zoning permitted, were  
18 residential and compatible office use?

19 A. Yes.

20 567 Q. So it now becomes one of whether or not it's a  
21 compatible office use, or permitted or compatible  
22 office use, still taking into account the overall  
23 planning and development of the locality. Isn't that  
24 correct?

25 A. Generally speaking, it's correct, but it's not fully  
26 correct, if you read the reasons for refusal given on  
27 the 9th of May, 1975.

28 568 Q. Well, will you just let me bring you to the general  
29 points that I am making, and then we'll get to the  
30 actual grounds of refusal.

1 .  
2 As I understand it, your function here is to help the  
3 Tribunal, or the Chairman, on the basis of having  
4 examined the planning file.

5 .  
6 CHAIRMAN: That's what he is doing. He does not - do  
7 not have any criticism of the witness in that regard.  
8 He is doing it, and to the best of his ability.

9 .  
10 569 Q. MR. HAYDEN: I didn't ask him for his assessment as to  
11 any particular grounds of refusal. I was asking about  
12 a matter of general history. I accept that, Sir, as  
13 every other witness is entitled.

14 .  
15 When one gets to the 1980 Dublin City Development Plan,  
16 it's zoning objective has become B1?

17 A. That's correct.

18 570 Q. And that affords a greater flexibility, as I understand  
19 it, in the context of the user or usage to which the  
20 site can be put, vis-a-vis a zone - a zoning B, isn't  
21 that correct? B1 offers greater flexibility?

22 A. Yes.

23 571 Q. And when you get to the actual refusal in 1983, which  
24 is the page 4 of - basically the two grounds on the  
25 bottom of page 4 of your statement. What you see there  
26 is: A refusal by the Corporation in relation to the  
27 form of the proposed development would seriously impair  
28 the visual quality of the area by an excessive  
29 reduction of open space and the removal of trees with  
30 consequent serious injury to the amenities of property

1 in the vicinity. This injury would be exacerbated by  
2 the intrusion of excessively large buildings at  
3 variance with the architectural character of Herbert  
4 Street and inimical to the amenities and development  
5 potential of adjoining properties to the west of the  
6 site."

7 .

8 Sorry, I am gone again.

9 .

10 MR. HANRATTY: This passage has already been read on to  
11 the record, in any event, and the witness has seen it.

12 In other words, the stenographer can find it elsewhere  
13 when she goes to it.

14 .

15 CHAIRMAN: What page are we on at the moment?

16 .

17 572 Q. MR. HAYDEN: The bottom of page 4, "E", that's one

18 ground for the refusal. The particular proposal was in

19 - not in your view - on the grounds of the refusal.

20 It may not be in keeping with what they thought B1

21 would warrant. And in page 2, the proposed development

22 is not in accordance with the requirement of the Dublin

23 Development Plan, that the office content of the new

24 development in this area should not exceed 40 percent

25 of the total proposed floor area.

26 .

27 So the refusals on that occasion seem to be more along

28 the lines of this not being kept as an open space, but

29 that what is going up on it, the B1 zoning, that it

30 should have a compatible office

1 development/residential. In other words, it's not -  
2 it's a matter of getting the mix right to satisfy the  
3 planners?

4 A. The reasons for refusal referred to the amount of  
5 building going on, on the site, and the character of  
6 the site, and obviously the intensity of use which was  
7 proposed.

8 573 Q. The mix?

9 A. Well, it's the mix that belonged to the amount of  
10 building on the site, and the effect it would have on  
11 the existing open character of the site.

12 574 Q. Sorry, I didn't mean the mix between residential and  
13 office. I might have oversummarised, but the overall  
14 mix taking into account site, trees, space, office use,  
15 residential use. It's how the whole combination of  
16 items were mixed to give the permission - or in  
17 relation to the use on site. That seems to be the  
18 basis by 1983 for Dublin Corporation's approach to it?

19 A. Well, it would seem to say that they got - that the  
20 Corporation at the time had difficulties with the  
21 principle of development even on site. That's my  
22 reading of Reason No. 1 for refusal.

23 575 Q. Well, I thought, just, sir, so we are all clear on  
24 this; you've read the planning file, you've extracted  
25 from it what's on the planning history of it, you  
26 weren't involved with the decision-making process --  
27 .

28 MR. HANRATTY: Mr. Hayden has asked a question. He got  
29 an answer he doesn't like, and now he is bringing him  
30 back to say "you are only supposed to be giving



1 evidence about the Planning Register" --

2 .

3 MR. HAYDEN: I am just repeating what Mr. Hanratty said

4 to Mr. Hussey when Mr. Hussey tried to put something to

5 this witness. Mr. Hanratty can't have it both ways.

6 He can't have it one way for Mr. Hussey and a different

7 way for me.

8 .

9 MR. HANRATTY: I am not having it any way, Sir. I am

10 drawing attention to the fact that Mr. Hayden asked a

11 very particular question in relation to the witness.

12 He asked the witness to interpret Clause 1, the witness

13 gave his interpretation, Mr. Hayden didn't like it and

14 then came back saying "You are only supposed to be

15 talking about the register anyway."

16 .

17 I am just saying that's not a fair and appropriate way

18 to question the witness --

19 .

20 CHAIRMAN: Would you mind asking the question again and

21 we'll find out what the answer was, and you are bound

22 by that answer, at least as far as it relates to that

23 question.

24 .

25 MR. HAYDEN: Sir, can I please make this clear. I

26 understood Mr. Hanratty to say that the witness was

27 here to give the Planning Register - history of the

28 Planning Register. Mr. Hussey sought to put matters to

29 him that were related to an interpretation of an

30 opinion. I haven't asked this witness for his opinion

1 on anything. I've asked him for what the register  
2 says. He offered, or he went in to say a view of an  
3 interpretation of Clause 1, which I didn't ask for. I  
4 just asked him to identify if Clause 1 and Clause 2 are  
5 the - are on the same refusals as related to the  
6 earlier refusal.

7 .  
8 Mr. Hanratty, to be fair to my client, Sir, is now  
9 seeking to coral my cross-examination into a course of  
10 action that is not my intent, nor do I intend to be  
11 bound by it, Sir. If you, Sir, ultimately rule one way  
12 or the other, let it be clear that it is on the basis  
13 of me being entitled to put to this witness, which I  
14 understand is to be the position, which is a planning  
15 permission refusal by Dublin Corporation on the grounds  
16 set out in Clause 1 and 2.

17 .  
18 MR. HANRATTY: Sir, we could waste the whole afternoon  
19 on this. The witness gave an interpretation of the  
20 condition in answer to a question put by Mr. Hayden.  
21 If Mr. Hayden doesn't wish the witness to give his  
22 interpretation, he can withdraw the question and  
23 withdraw the answer.

24 .  
25 MR. HAYDEN: I accept I didn't look for the answer, I  
26 didn't even put the question. The witness offered it  
27 all himself.

28 .  
29 Sir, let's be clear - let's be realistic about this. I  
30 received this witness's statement, dated the 1st of

1 November, today. I am now in the process of having to  
2 cross-examine him, which I am trying to do, and seeking  
3 to elicit from the witness, without ever having an  
4 opportunity to see what he said beforehand as to  
5 whether or not the Planning Development Plan for Dublin  
6 Corporation had changed --

7 .

8 CHAIRMAN: Could we just stop this argument and start -  
9 number one, ask the witness the question that you want  
10 to ask in relation to the particular decision of the --

11 .

12 MR. HAYDEN: Yes, Sir.

13 .

14 CHAIRMAN: Start there and let's take it  
15 stage-by-stage, and let's have clarity, and not  
16 confusion.

17 .

18 576 Q. MR. HAYDEN: In relation to the refusal in 1983, there  
19 are two grounds, isn't that correct?

20 A. That's correct, yes.

21 577 Q. And it would appear that the grounds, the refusal for  
22 the grounds - well, the Chairman can read Clause 1, but  
23 what I wish to draw your attention to is Clause 2,  
24 where one of the grounds is that the ratio is -  
25 shouldn't exceed 40 percent. That's on the top --

26 A. That's correct, yes.

27 578 Q. So in that regard, the measurance there, the 40  
28 percent, is something in the context of the Development  
29 Plan?

30 A. Yes.

1 579 Q. And that's an objective - as I understood you to give  
2 evidence to Mr. Hanratty? The 40 percent was generally  
3 applied?

4 A. Yes. It's specifically given in the Development Plan  
5 of 1980, in the written statement, as a policy for the  
6 control of use in the B1 zone, the St. Stephen's Green  
7 area.

8 580 Q. It's a policy issue?

9 A. Yes.

10 581 Q. Yes. But I take it - well, again, we are straying into  
11 planning expert opinion as distinct from asking you to  
12 look in relation to the planning file, but it is a  
13 policy that 40 percent was - that - the ratio that the  
14 Dublin Corporation would consider?

15 A. Yes.

16 582 Q. That being said, it seems, in relation to the 1980  
17 Development Plan, we are talking about a B1 zoning as  
18 distinct from the Draft Development Plan 1968, where at  
19 that stage it was envisaged that this would be retained  
20 as an open area. Would that be - given that the  
21 earlier refusal --

22 A. Yes --

23 .

24 CHAIRMAN: What has the 1968 Development Plan to do  
25 with this situation? You are talking of something that  
26 happened in 1983, in accordance with - and the  
27 direction is that the proposed development is not in  
28 accordance with the requirement of the Dublin  
29 Development Plan, that the office - a new development  
30 in this area should not exceed 40 percent of the total

1 proposed floor area. That's a directive in the plan.

2 .

3 MR. HAYDEN: It's a policy, Sir, not a directive. If

4 one wishes to get a planning expert in, there is a big

5 difference. But I am not - at the end of the day, the

6 only point I am making, Sir, since you've asked, is

7 that in 1968 when the planning applications were

8 refused, there was an envisaged open space reservation

9 by - by the time we come to the 1983 application there

10 is a different standard applying. That's the height of

11 it.

12 .

13 CHAIRMAN: That's the point you are making. Very good,

14 we'll record that as your objection, or your statement.

15 .

16 MR. HAYDEN: That's what I just got the witness to say.

17 Sorry.

18 .

19 Thank you, Sir.

20 .

21 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. FOX AS

22 FOLLOWS:

23 .

24 583 Q. MR. FOX: I have one brief question for the witness. I

25 want to put a question to Mr. Reynolds. I will be very

26 brief.

27 .

28 Mr. Reynolds, would it be fair to say that over the

29 years the criteria for adjudicating planning

30 applications has changed in line with, for instance,

1 socio-economic trends, demographic trends, things like  
2 that? In other words, that the criteria facing the  
3 people who have to adjudicate on planning applications  
4 have changed in line with all of those particular  
5 matters over the years?

6 A. Well, obviously, this is a matter of opinion, but I  
7 have no difficulty with dealing with the matter  
8 whatsoever --

9 584 Q. I am not asking for your opinion at all, Mr. Reynolds.  
10 I am just saying, isn't it a fact of life that we've  
11 had socio-economic changes, we've had demographic  
12 changes, major - from 1965 up to 1994, for instance?

13 A. Yes.

14 585 Q. So, for instance, as a case on point, I would assume,  
15 for instance, that we had a traffic flow in 1965,  
16 nowadays, for instance, that would appear to be a  
17 contradiction in terms, so do you follow the point I am  
18 making, that population flows - population increases  
19 with transfers in population between various parts of  
20 the city, and from the country to the city, all of  
21 these matters are changing continuously. Isn't that  
22 correct?

23 A. That's correct, yes.

24 586 Q. So over a period of say 20, 25 years these changes  
25 would be quite enormous, especially in a city like  
26 Dublin. Isn't that correct?

27 A. They would be enormous in certain areas.

28 587 Q. So it would follow suit, then, would it not, that the  
29 issues facing the adjudicators, the people who have to  
30 decide these planning issues, that all of these matters

1 have changed, so therefore they have to take new  
2 considerations on board?

3 A. Yes, they would have to take all these changes into  
4 account, they would have to change the fact that  
5 development plans have changed and been --  
6 .

7 MR. FOX: Yes. Thank you very much, Mr. Reynolds.

8 .

9 MR. HANRATTY: Thank you very much indeed, Mr.  
10 Reynolds.

11 .

12 THE WITNESS THEN WITHDREW

13 .

14 MR. HANRATTY: Mr. Brian O'Halloran, please.

15 .

16 MR. MARTIN: I represent Mr. Brian O'Halloran.

17 .

18 This is purely a housekeeping application at this  
19 stage. Mr. O'Halloran was due to be heard this  
20 morning. He is due to travel abroad tomorrow, and I am  
21 wondering in the circumstances whether the Tribunal  
22 will be finished with him today?

23 .

24 MR. HANRATTY: I don't see any difficulty. I don't  
25 anticipate that I will be terribly long with this  
26 witness. I've already indicated to the witness the  
27 documents I intend to put to him, and hopefully I'll be  
28 reasonably expeditious in leading his evidence.

29 .

30 CHAIRMAN: That's the situation, Mr. Martin, so far as

1 we can --

2 .

3 MR. MARTIN: Thank you, Sir.

4 .

5 MR. HANRATTY: I also should say, Sir, in fairness to

6 Mr. O'Halloran, that I indicated to him that there was

7 a planner here, and would he prefer to have that

8 evidence first, so that he could refresh his memory, as

9 it were, and he indicated that he would like that, on

10 my estimate that that witness would take 15 minutes. I

11 didn't anticipate that he would take the length of time

12 he did take.

13 .

14 CHAIRMAN: Well, we'll facilitate Mr. O'Halloran, in

15 any event.

16 .

17 .

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .



1 MR. BRIAN O'HALLORAN, HAVING BEEN SWORN, WAS EXAMINED

2 BY MR. HANRATTY AS FOLLOWS:

3 .

4 588 Q. MR. HANRATTY: Mr. O'Halloran, are you an architect and

5 a principal in the firm of Brian O'Halloran

6 & Associates?

7 A. Yes, I am.

8 589 Q. And in September of 1982, were you approached by

9 Mr. Joseph McGowan and his agent, John Finnegan, with a

10 view to your preparing a planning application for a

11 site known as The Plantation in Herbert Street?

12 A. Yes, I was.

13 590 Q. I think you were acquainted socially with Mr. McGowan,

14 in that you acted for Messrs. Brennan and McGowan in a

15 1980 planning application which you applied for and

16 obtained, but which wasn't subsequently proceeded with?

17 A. That's correct.

18 591 Q. And I think you also had previous dealings with Mr.

19 Finnegan, who you knew well socially?

20 A. That is correct.

21 592 Q. Now, I think that we've heard from the previous witness

22 as to the position under the Development Plan in

23 relation to Herbert Street Plantation, and that it was

24 a B1 designation, which he has explained to us. You

25 then, I think, proceeded to do your work in relation to

26 the preparation of a planning application, isn't that

27 so?

28 A. That's correct.

29 593 Q. And in the course of your work, from whom were you

30 receiving your instructions, and with whom were you

1 dealing in the context of this application?

2 A. We were dealing with John Finnegan on behalf of Brennan  
3 and McGowan.

4 594 Q. Yes.

5 A. And some of John Finnegan's staff from time to time.

6 595 Q. Yes. And by way of illustration, if you could look at  
7 page 5127. This, I believe, is your note of a meeting  
8 on the 1st of February, 1983, attended by Mr. Finnegan,  
9 Mr. French O'Carroll, and yourself, and a Ms. Nolan,  
10 who was an assistant or an architect in your office, is  
11 that correct?

12 A. That is correct.

13 596 Q. And at the beginning of your note it says that the  
14 purpose of the meeting was to discuss modifications  
15 proposed by yourself and to the sketch proposals  
16 provided by Mr. Finnegan?

17 A. That's correct.

18 597 Q. It appears from that, that Mr. Finnegan, in fact,  
19 himself provided sketch proposals for your  
20 consideration?

21 A. From the minutes, that would appear to be the case.

22 598 Q. Yes. And the meeting, then, went on to deal with other  
23 matters relating to the proposed application, such as  
24 site treatment, car parking, office buildings,  
25 apartment buildings and so on.

26 .

27 Then if I could just refer you to 5131. It's a letter  
28 dated the 16th of February, 1983, from your assistant,  
29 Ms. Nolan, to Finnegan Menton, in which she was seeking  
30 information which she required for the purpose of the

1 planning application. Isn't that right?

2 A. That's correct.

3 599 Q. And that information, I think, was subsequently  
4 obtained by Mr. Finnegan - sorry, from Mr. Finnegan's  
5 office, and then you made the application at page 5132.  
6 That's your letter of the 28th of February of 1983, in  
7 which you make the application for planning permission  
8 on the site, isn't that so?

9 A. That's correct.

10 600 Q. If I could just refer you briefly to page 5114. This  
11 is to David Gilligan from yourself in relation to this  
12 particular proposal. Who is Mr. Gilligan?

13 A. He was an architect who worked in the practice at that  
14 stage.

15 601 Q. Yes. And if I could refer you - if you could look at  
16 the top of the document, it says:

17 .  
18 "This is to confirm a few points of a telephone  
19 conversation earlier this morning with John Finnegan."

20 .  
21 If I could refer you to the fourth-last paragraph on  
22 that page, it says:

23 .  
24 "He has reiterated, according to his contacts in the  
25 Corporation Planning Department, that there is an  
26 expectancy for a mock Georgian facade. I informed him  
27 we would not necessarily abandon the idea of a more  
28 up-to-date approach. That policy would be deliberated  
29 with him at a much later stage."

30 .

1 And then it goes on to say:

2 .

3 "He again stressed the delicacy of the location of the  
4 site, and the need to approach the design very  
5 carefully.

6 .

7 He stressed, and I agreed, that no contact will be made  
8 by us with the Corporation Planning Department before  
9 our first meeting with him, at which you will outline  
10 how that contact might best be set up."

11 .

12 So Mr. Finnegan, it would appear from that, was having  
13 a fairly hands-on involvement in the application?

14 A. Absolutely, that was his style.

15 602 Q. I see. And while you had certain views from an  
16 architectural perspective as to what would be  
17 appropriate, he appeared to be leading strongly in the  
18 particular direction of a mock Georgian facade?

19 A. That is correct.

20 603 Q. You had a meeting, then, if I can refer you to page  
21 5149, a meeting on the 5th of May of 1983. And it's  
22 stated at the beginning:

23 .

24 "The purpose of the meeting was to discuss with John  
25 Finnegan the details of the reasons for the recent  
26 planning permission refusal, and that prior to a  
27 meeting arranged Tuesday, May 10th, with Dublin  
28 Corporation Planning Department, which will be  
29 preliminary to a further application for permission  
30 being made, the details of which must overcome the

1 reasons for refusal of the first application."  
2 .  
3 And if I could just refer you to the second-last  
4 paragraph on that page it says:  
5 .  
6 "Pending any negotiations prior to a second  
7 application, JJF" - I take it, it means Mr. Finnegan -  
8 "was emphatic that we should appeal the refusal, Brian  
9 O'Halloran --" who is "A"?  
10 A. Associates.  
11 604 Q. "-- & Associates to prepare a first draft. That will  
12 be discussed in due course with Mr. Finnegan. A second  
13 and probably final draft would then emerge, which would  
14 be submitted to An Bord Pleanala. Before that would be  
15 finalised, however, JJF would have the details checked  
16 with his own sources."  
17 .  
18 Then it says:  
19 .  
20 "The site is zoned B1. John Finnegan agreed, until a  
21 plan that we might prepare will have satisfied all of  
22 the conditions of the Corporation's policy for the  
23 site, compensation could not be claimed, i.e. if the  
24 Corporation have policies on development scales/size,  
25 and should we exceed that, then compensation could not  
26 be justifiably claimed."  
27 .  
28 So the refusal referred to, in that, had come , I think  
29 - if we could look at page 5145, on the 28th of April  
30 of 1983?

1 A. That's correct.

2 605 Q. Are you in a position to follow the pagination,  
3 Mr. O'Halloran? The pagination to which I am referring  
4 is on the top right-hand side of each page, but the  
5 documents are coming up on screen, in any event.

6 A. Yes, I am.

7 606 Q. Very good. The decision of the Local Authority, I  
8 think, is on the screen, and as you can see it's a  
9 notification of a decision to refuse. And we've had  
10 these already, but I think to just put them in context,  
11 we'll have a look at them again.

12 .

13 Condition number - sorry, Reason No. 1 is:

14 .

15 "The site is an established and distinctive feature,  
16 providing an attractive grouping of trees complimenting  
17 the Georgian terrace on the opposite side of the  
18 street. The form of the proposed development would  
19 seriously impair the visual quality of the area by an  
20 excessive reduction of open space, and the removal of  
21 trees would consequent serious injury to the amenities  
22 of property in the vicinity. This injury would be  
23 exacerbated by the intrusion of excessively large  
24 buildings at variance with the architectural character  
25 of Herbert Street and inimical to the amenities and  
26 development potential of adjoining premises to the west  
27 of the site.

28 .

29 2. The proposed development is not in accordance with  
30 the requirement of the Dublin Development Plan, that

1 the office content of the new development in this area  
2 should not exceed 40 percent of the total proposed  
3 floor area."

4 .

5 Just for the record, the decision order number of that  
6 decision is P1277, which is recorded at the top of the  
7 decision on the document. Isn't that right?

8 A. Yes.

9 607 Q. And the reference is WT/JC?

10 A. It looks like JC, yes.

11 608 Q. We've dealt with the meeting you had on May 5th. I  
12 think there was a further meeting on the 10th of May?

13 A. That's correct.

14 609 Q. This is a meeting with officials of the Corporation to  
15 discuss the matter with them, in view of the recent  
16 refusal. Page 5151, please.

17 .

18 And present at that meeting were Patsy McDonough -  
19 Corporation Planning Department. Mr. Coffey -  
20 Corporation Administration. And Mr. John Finnegan.

21 A. That's correct.

22 610 Q. And I take it you were there as well?

23 A. Oh, yes.

24 611 Q. And the purpose of the meeting is as recorded as to:  
25 "Review the background to the Corporation's reason for  
26 refusal of the application; to discuss what attitudes  
27 the Corporation have for the site, insofar as those  
28 might be included/taken into account in the design of a  
29 second scheme which would be the subject of a second  
30 application. In that context, to determine if the

1 Corporation might be prepared to trade the elimination  
2 of the residential block for a higher proportion of  
3 open space on the site, and in that way the second  
4 scheme might result in one block only being totally  
5 designated for offices."

6 .

7 And then you list out a number of points, but the  
8 second of those bullet points, if I could just refer to  
9 it, it's in reference to the statement by Mr. Coffey,  
10 where it says: "Mr. Coffey reiterated, the Corporation  
11 does not want a building on the site, and that the  
12 Corporation's policy to exclude any building whatsoever  
13 on the site is likely to be continued."

14 .

15 And that was a view, I think, expressed by Mr. Coffey  
16 at the time, isn't that right?

17 A. That's right.

18 612 Q. Then, on the 12th of May, 1983 - page 5155, please.

19 Did Mr. Finnegan write to you enclosing a letter which  
20 he had sent himself directly to the Corporation  
21 Planning Department?

22 A. Yes.

23 613 Q. And is that letter a letter of the 11th of May, 1983,

24 contained at page 5153?

25 A. That is correct. That is the letter.

26 614 Q. And in that letter he says to the - he has written to

27 Mr. Prendergast, "Assistant City Manager, Planning and  
28 Development, Dublin Corporation, Dublin 1, re The  
29 Plantation, Herbert Street, Dublin 2.

30



1 "Dear Mr. Prendergast, arising from the recent decision  
2 to refuse permissions for office and residential  
3 development at The Plantation, Herbert Street, we  
4 called in to see your officials, Mr. P McDonagh and Mr.  
5 Coffee to discuss what form of development you would be  
6 prepared to approve for this site.

7 .  
8 From discussions it would seem that the Corporation  
9 planners are most anxious to preserve the site as an  
10 established open space complimenting the Georgian  
11 terrace on the opposite side of the street. The only  
12 form of development which they would regard as suitable  
13 for the site would be car parking amongst the trees.

14 We cannot accept that this is a reasonable beneficial  
15 use on this site.

16 .  
17 The site is zoned for office and residential uses in  
18 the Dublin City Plan, and we are anxious to produce a  
19 development in accordance with the provisions of the  
20 Dublin City Plan. If we cannot get agreement on the  
21 form of the development, or the nature of the  
22 development we will be forced to seek compensation.

23 This compensation would take into account the  
24 established plot ratio of the site (2) and uses  
25 permitted under the Development Plan. At this time we  
26 want to know if the Corporation wishes to acquire the  
27 site and preserve it as open space, or if it intends to  
28 allow development?

29 .  
30 We would be most grateful for a meeting with you and

1 the Dublin Planning Officer to review what may be  
2 permitted on this site.

3 .

4 Yours faithfully, John Finnegan."

5 .

6 Now, I think it would appear from that, that the  
7 negotiations, as it were, consequent on the refusal,  
8 didn't appear to be getting anywhere or succeeding.

9 And were you instructed by Mr. Finnegan to appeal the  
10 decision of Dublin Corporation?

11 A. Yes.

12 615 Q. And if we'll have page 5158, please.

13 .

14 That's your letter to An Bord Pleanala of the 26th of  
15 May of 1983 incorporating your appeal against that  
16 decision, isn't that right?

17 A. That's correct.

18 616 Q. And in that letter you address the two reasons for  
19 refusal, which had been given by the Local Authority.

20 Isn't that so?

21 A. Correct.

22 617 Q. Now, if we could have page 5168, please.

23 .

24 On the 12th of September, 1983, I think the Local  
25 Authority sent in its views to An Bord Pleanala,  
26 incorporated in this letter. 5168.

27 A. Mm-hmm.

28 618 Q. I think, perhaps, you might look at 5166 first, a  
29 letter of the 30th of August, 1983, from you to An Bord  
30 Pleanala.

1 .  
2 And in that you say: "Three storey over basement  
3 offices, and three storey over basement flats at the  
4 plantation."

5 .  
6 Is that seven flats?

7 A. Seven flats.

8 619 Q. The application, just to be clear, was in respect of  
9 three storey over basement offices and three storey  
10 over basement apartment blocks, but seven apartments?

11 A. Correct.

12 620 Q. "Dear Sirs, in support of the above appeal, with  
13 reference to Reason No. 1 of Dublin Corporation's  
14 decision to refuse permission, we enclose two copies of  
15 our drawing 82/46/12 site plan with existing tree  
16 layout for the Board's consideration.

17 .  
18 This drawing illustrates the positions of the site's 17  
19 existing trees. As stated in our earlier letter of the  
20 26th May, 1983, to An Bord Pleanala, the proposed  
21 development would necessitate the removal of only four  
22 of these trees, these have been coloured red on the  
23 attached drawing. Two of the four are in poor  
24 condition, and by the Corporation's recent admission to  
25 the undersigned, will necessitate felling in the near  
26 future. A total of 13 mature trees would remain intact  
27 on the site.

28 .  
29 In the event of the development proceeding, it is our  
30 client's stated intention to take all necessary steps

1 to ensure the protection of these remaining trees, both  
2 during and after the construction of the buildings. We  
3 are therefore confident that no unnecessary removal of,  
4 or damage to trees will occur, and that there will be  
5 no consequent loss of amenity in the area.

6 .

7 We hope that the Board will take into account this  
8 submission and consider the application favorably.

9 .

10 Yours faithfully, Brian O'Halloran."

11 .

12 And I think, as we will subsequently see, that is the  
13 drawing which is referred to in the Board's subsequent  
14 decision, if I am not mistaken?

15 A. I would have to check that.

16 621 Q. We'll just put down that marker, and we'll check it  
17 when we come to consider the Board's decision.

18 A. Okay.

19 622 Q. But, in any event, then, on the 12th of September,  
20 1983, if we could have page 5168, the Local Authority  
21 wrote in, on the subject of trees, and it's "re erect  
22 three storey over basement offices and three story over  
23 basement block of the seven flats at The Plantation,  
24 Herbert Street:

25 .

26 The following are the comments of the Planning  
27 Authority on the grounds of appeal submitted in the  
28 above case:

29 .

30 The copy of the tree survey plan received from the

1 Appellants, and enclosed with your letter of the 1st  
2 instant has been examined. It is noted that four trees  
3 are marked as requiring removal to accommodate the  
4 proposed buildings. It is clear, however, that other  
5 trees would not survive if the development were to  
6 proceed.

7 .

8 By reference to the ground floor plan, as lodged with  
9 the application, it is evident that another tree at the  
10 rear of the proposed office building would have to be  
11 removed, and four more at the front would be similarly  
12 affected, or at least subjected to severe pollarding.

13 In either case, the trees would be lost or seriously  
14 disfigured.

15 .

16 It must be reiterated, that while the loss of the trees  
17 would be deplored, the primary objection of the  
18 Planning Authority is that the obtrusive aspect and  
19 design quality of buildings would be inconsistent with  
20 the architectural character and terrace formation of  
21 Herbert Street."

22 .

23 So it would seem that, in this letter, the Corporation  
24 are addressing the issue of the trees, and the points  
25 that you have made in relation to trees, but really  
26 laying out their stall as to the real basis of their  
27 objection in the last paragraph of their letter.

28 A. That would be the case.

29 623 Q. Then, I think, that letter, if we could have page 5170

30 - that letter from the Corporation was sent to you, I

1 think, by An Bord Pleanala, and this is their letter of  
2 the 14th September, 1983, in which they enclose Dublin  
3 Corporation's letter, which we've just read to you for  
4 your information. Isn't that right?

5 A. That's correct.

6 624 Q. And then, if we have page 5171.

7 .

8 On the 16th of September, 1983, you then, in turn, sent  
9 a copy of An Bord Pleanala's enclosure letter, but  
10 particularly the Dublin Corporation letter to Mr. Joe  
11 McGowan?

12 A. Correct.

13 625 Q. And you say: "I enclose a copy of An Bord  
14 Pleanala/Dublin Corporation's reply to our recent  
15 submission regarding the trees on the site.

16 .

17 Should we commission a report by the Tree Surgeons of  
18 Ireland to attempt to refute these allegations?"

19 That's from Ms. Nolan of your office?

20 A. That's correct.

21 626 Q. And it's copied to Mr. John Finnegan?

22 A. That's right.

23 627 Q. Then, on page 5172, we have the decision of the 9th of  
24 March, 1984, of An Bord Pleanala. There doesn't appear  
25 to be any further correspondence on your file between  
26 that last letter from yourself, or from An Bord  
27 Pleanala to you, in fact, and the actual notification  
28 of the decision by An Bord Pleanala?

29 A. That's correct.

30 628 Q. And does that mean that the question of the trees was

1 not, as far as you are aware, revisited between that  
2 time?

3 A. If we had, it would be on the file. So we have to  
4 assume that we didn't, because it's not on the file.

5 629 Q. Yes. So the last word on the file, so far as the  
6 merits of the application, is the Dublin Corporation's  
7 letter of the 12th of September, 1983. Is that right?

8 A. That seems to be the case.

9 630 Q. That's page 5169.

10 A. Mm-hmm.

11 631 Q. And you didn't, as it were, enter into any rejoinder  
12 with them subsequent to the date of that letter?

13 A. No, we didn't. We already felt that we had made our  
14 point --

15 632 Q. You set out your case --

16 A. -- in the letter of appeal.

17 633 Q. -- in the letter of appeal?

18 A. Yes.

19 634 Q. This is where you gave your detailed dissertation on  
20 the reasons given in the Local Authority's refusal?

21 A. Correct.

22 635 Q. And then going back to page 5172. This is, in fact,  
23 the decision of An Bord Pleanala. And as you can see  
24 there under the heading of "Decision", it's a decision  
25 to grant permission for the reason given in the first  
26 schedule, and the reason given in the first schedule,  
27 is that: "It is considered that the development, if  
28 carried out in accordance with the conditions set out  
29 in the second schedule, would not be contrary to the  
30 proper planning and development of the area."

1 .  
2 And then the second schedule gives a condition which  
3 they impose in relation to trees.

4 .  
5 So it would appear that, in effect, what the An Bord  
6 Pleanala did, was that insofar as the first condition  
7 was concerned, they, as it were, begged to differ. And  
8 insofar as the trees was concerned, they imposed a  
9 condition, which presumably, in their view, met the  
10 case so far as the preservation of trees was concerned?

11 A. I would agree with that.

12 636 Q. There is one further document on your file that I just  
13 want to ask you about briefly, Mr. O'Halloran. In  
14 fact, I don't think I've marked this on your documents,  
15 but I am sure you are familiar with it anyway. It's  
16 page 5137. It's an article which appeared in a  
17 newspaper, in the Irish Times. I am just trying to  
18 ascertain the date. It isn't dated. There is no date  
19 written on it.

20 .  
21 But this is an article by Frank MacDonald in connection  
22 with the thing. It seems to have attracted some  
23 attention, at least, according to that article?

24 A. Yes.

25 637 Q. And I think, if I am not mistaken, it was to do with  
26 this mock Georgian style of the building, is that  
27 right?

28 A. Correct.

29 638 Q. And he says at the start:

30 .



1 "An Taisc yesterday described as wicked a decision made  
2 by An Bord Pleanala to grant planning permission for  
3 offices and flats development on a long established  
4 tree-filled oasis."

5 .  
6 I think their objective was to the fact that it was a  
7 park. Mr. MacDonald's article seems to do with the  
8 architectural style of the building, is that right?

9 A. That's a good interpretation of it.

10 .

11 MR. HANRATTY: Thank you, Mr. O'Halloran. If you would  
12 just answer any questions which my colleagues may have  
13 to put to you.

14 .

15 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HUSSEY AS  
16 FOLLOWS:

17 .

18 639 Q. MR. HUSSEY: Thank you.

19 .

20 Mr. O'Halloran, can I just have Document 5168, please  
21 again. This letter is from the Corporation to An Bord  
22 Pleanala, in answer to your - to the appeal.

23 .

24 This is the 12th of September, 1983.

25 .

26 I think this is their submission, if you like, to  
27 An Bord Pleanala. I think it was all done in writing.  
28 There was no oral hearing or anything like that in  
29 respect of this?

30 A. Right.

1 640 Q. So this was all that An Bord Pleanala had before them  
2 as far as a response to your application or your  
3 appeal, as far as the Dublin Corporation was concerned,  
4 as far as you know? This would have been as much as  
5 what Dublin - what An Bord Pleanala would have had from  
6 --

7 A. From the Corporation --

8 641 Q. From the Corporation, as far as the submission on the  
9 appeal was concerned?

10 A. That's correct.

11 642 Q. Can I just go down through that letter with you.

12 A. Certainly.

13 643 Q. "The following are the comments of the Planning  
14 Authority on the grounds of the appeal submitted in the  
15 above case."

16 .

17 The first paragraph is about a tree survey plan.

18 That's all it concerns, it's about trees?

19 A. Mm-hmm.

20 644 Q. The second one is reference to the ground floor plan of  
21 the application, and again it's to do with - that  
22 another tree at the rear of the office building would  
23 have to be removed. Again, that's just about trees  
24 again?

25 A. Correct.

26 645 Q. That's their concern.

27 .

28 The last paragraph, then: "It must be reiterated that  
29 while the loss of trees would be deplored, the primary  
30 objection of the Planning Authority is that the

1       obtrusive aspect and design quality of buildings would  
2       be inconsistent with the architectural character and  
3       terrace formation of Herbert Street."

4       .

5       There is no mention of open space there?

6       A. No, there isn't.

7 646 Q. Or traffic?

8       A. No.

9 647 Q. So, as far as An Bord Pleanala was concerned, the

10       preservation of this as open space was no longer a

11       primary objective of Dublin Corporation?

12       A. They haven't stated it in their letter.

13 648 Q. That's what I am saying, as far as An Bord Pleanala is

14       concerned, from what they know from Dublin Corporation,

15       the preservation of this, as open space, is no longer

16       of primary concern to the Corporation?

17       A. That would be correct.

18 649 Q. Can I just - one more item now, Mr. O'Halloran. 5151.

19       .

20       This is the meeting that we had referred to earlier.

21       This was a meeting to review the Corporation's refusal

22       in respect of the application. This is the one we

23       referred to earlier --

24       A. Yes.

25 650 Q. Can I just go down through that, please, the points of

26       the meeting, just move down.

27       .

28       The - I think we've already had the point C, Mr. B McC,

29       they are both the Corporation officials:

30       .

1 "We affirm the Corporation should continue as an open  
2 amenity area", and it goes on to say, "from an initial  
3 total rejection of any building on the site at the  
4 commencement of the meeting, both P McD and Mr. C  
5 warmed to the trade offer put forward by John Finnegan,  
6 both agreed a carefully designed and well-detailed  
7 building of the correct proportions for the site might,  
8 in fact, work and contrary to their opinions earlier  
9 expressed."

10 .

11 Isn't that what happened --

12 A. Well, if it's stated in the minutes, that is what was  
13 said. There is no question about that.

14 651 Q. All right. Thank you very much, Mr. O'Halloran.

15 .

16 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS  
17 FOLLOWS:

18 .

19 652 Q. MR. HAYDEN: Mr. O'Halloran, I appear on behalf of  
20 Messrs. Brennan and McGowan.

21 .

22 Just, I think, in your statement to the Tribunal, you  
23 indicated that you were quite - you felt - you were  
24 reasonably confident that the permission would be  
25 granted in relation to the original application of  
26 Dublin Corporation, looking at all of the then applying  
27 Development Plan, et cetera. You thought you would be  
28 successful?

29 A. I have to say, I was very, very confident.

30 653 Q. Yes. I think - a point I was making to the official,

1 Mr. Reynolds, a few moments ago. If I could ask you to  
2 look at page 5159. And this is in - this is your page  
3 2 of your letter of the 26th of May 1983. It starts at  
4 page 5158. And on page 5158 we have the first reason  
5 for refusal, and your reaction or your response to that  
6 in relation to the planning. And it states in 5159 -  
7 this is the point I was making to Mr. Reynolds:  
8 .  
9 "However by its description of the site as an  
10 established and distinctive feature the Corporation  
11 seems to suggest that because it has until now remained  
12 undeveloped it should in some way be precluded from any  
13 form of development in the future. We submit that such  
14 a viewpoint would be totally at variance with the  
15 Corporation's own Development Plan.  
16 .  
17 The site was the subject of a number of planning  
18 applications up to 1975. If the Corporation had wished  
19 to restrict or prohibit development on site, it had  
20 ample opportunity to do so between the 1976 draft  
21 Development Plan and its adoption in 1980.  
22 .  
23 Therefore however much the Corporation may be opposed  
24 to the development of this site it is specifically  
25 provided for under the Development Plan."  
26 .  
27 And I think that was the grounds, one of the grounds in  
28 which the appeal was lodged, and one of the responses  
29 in relation to the first ground of refusal, that the  
30 Planning Authority may have had an aspiration, but they

1 had their opportunity in the context of the Development  
2 Plan between '76 and its adoption in 1980, and they did  
3 not in that Development Plan, when it was adopted in  
4 1980, make this an open area, an open space, preserved  
5 open space?

6 A. I would respond by saying that if they wanted to, they  
7 should have, and that it's a very strong point in our  
8 letter of appeal.

9 654 Q. Yes. The other point, then, to make on the grounds of  
10 the refusal. The 40 percent, I think you deal with  
11 that at page 5161. In fact, in submitting the plan,  
12 the existing Development Plan was obviously in your  
13 contemplation, because it had been adopted in 1980, but  
14 you actually point out to the board in your appeal  
15 application, in relation to the 40 percent:

16 .  
17 "We submit that having regard to the requirements of  
18 the area and the proper development of the site, the  
19 applicant has made very significant concessions in  
20 relation to plot ratio and site coverage, resulting in  
21 a proposed development substantially smaller than the  
22 maximum permitted."

23 .

24 A. That's correct.

25 655 Q. So --

26 A. The figure, in fact, was 60 percent of what would be  
27 maximally allowed.

28 656 Q. So it's 60 percent of - you were within the --

29 A. No, if you take the area of the site, and we are  
30 allowed from a total development point of view to cover

1 twice the total floor area of the submitted  
2 development, it was about 60 percent of that. We were  
3 well below what was normally allowed. And the reason  
4 we didn't go above the 60 percent was because we wanted  
5 to preserve the trees. If we made a bigger building,  
6 we would have resulted in taking more trees out. We  
7 didn't want to do that.

8 657 Q. So, for the Chairman's understanding, it is your  
9 position on the appeal that you stayed in the maximum  
10 limits --

11 A. Oh, well within.

12 658 Q. Well within. Thank you.

13 .

14 CHAIRMAN: Anybody else? Mr. Hanratty.

15 .

16 MR. HANRATTY: Just bear with me for a second, Sir.

17 .

18 CHAIRMAN: Certainly.

19 .

20 THE WITNESS WAS THEN RE-EXAMINED BY MR. HANRATTY AS

21 FOLLOWS:

22 .

23 659 Q. MR. HANRATTY: There was just one point that I wanted  
24 to ask you about, Mr. O'Halloran. It's at page 5165.

25 .

26 It's a letter of the 30th of August, 1983, from  
27 yourself to Mr. McGowan. And you say that:

28 .

29 "As a result of our telephone conversation earlier this

30 afternoon, the attached letter was rushed by hand to An

1 Bord Pleanala. I amended the draft somewhat to include  
2 the Corporation's recent admission that two of the four  
3 trees that must be removed to make way for the  
4 Development Plan are in a decayed condition and in the  
5 Corporation's opinion will require felling in the very  
6 near future."

7 .

8 That's the letter I think we've had.

9 .

10 "If there is anything further you require, please give  
11 me a ring. If you have not already done so, please do  
12 not forget to have the model brought to An Bord  
13 Pleanala as you recently undertook to do. Everything  
14 will be a help at this stage."

15 .

16 Is it the position that Mr. McGowan brought a model  
17 which you had caused to be made --

18 A. That is correct.

19 660 Q. -- to An Bord Pleanala? Apart from that, in general,  
20 with whom did you have communication and dealings so  
21 far as the preparation and submission of these planning  
22 applications were concerned, both the original  
23 application and the appeal?

24 A. John Finnegan, throughout.

25 661 Q. Did you have any correspondence with the Board about  
26 sending in a model, or how did the question of bringing  
27 in a model come up?

28 A. We decided, as we still do today, in fact we did it  
29 only two days ago, that very often to help the Board  
30 process an appeal, if they have use of a model which



1 was commissioned during the course of an application,  
2 that it should be helpful. A model was made in the  
3 case of this project. When this letter was written on  
4 the 30th of August 1983, that model would have been in  
5 Joe McGowan's house, which is in West Dublin, and it  
6 was purely from the point of view of convenes that we  
7 asked him, as we sometimes do with other clients, and  
8 have done in some recent weeks, "Would you please, Joe,  
9 bring the model to An Bord Pleanala. You have a truck,  
10 you are a builder, otherwise we would have to hire a van  
11 and the man to help carry it in." I suppose from a  
12 practical point of view it was to save ourselves doing  
13 so.

14 662 Q. And would this be done by arrangement with the Board or  
15 would you just arrive in with the model?

16 A. Unless it was a very big one, the size of this table,  
17 you would deliver it to the counter, you would say what  
18 the reference number of the job was and leave it there.  
19 And there is no great formality about it.

20 663 Q. And how would the Board know which appeal it related  
21 to?

22 A. Because we would have, obviously, given McGowan the  
23 reference number of the appeal.

24 664 Q. To put in with the model?

25 A. With the model, so that when he would go there, he  
26 would say this relates to appeal reference number so  
27 and so.

28 665 Q. Would it be normal to refer to the model in  
29 correspondence with the Board when a model is being put  
30 in or with a view to informing them in advance that a

1 model will be put in?

2 A. Not really. One could do that by telephone, just as  
3 easily.

4 666 Q. Yes. I see.

5 A. For example, we were at a hearing recently and we asked  
6 during the morning of the hearing if the inspector  
7 would like to have the model for the hearing.

8 667 Q. Yes?

9 A. And he said he would. And we arranged to have it  
10 rushed around for the afternoon, so that it would be of  
11 benefit for him to understand the scheme more fully.

12 668 Q. I understand that, just in relation to page 5114, we've  
13 had that already, but Mr. Finnegan, in the second last  
14 paragraph stressed, and you agreed, that no contact  
15 would be made with the Corporation Planning Department  
16 before the first meeting with him, and you would  
17 outline how that - he would outline how that contact  
18 might best be set up.

19 .

20 In the fourth last paragraph he says:

21 .

22 "He has reiterated, according to his contacts in the  
23 Corporation Planning Department, there was an  
24 expectancy for a mock Georgian facade." Did he  
25 identify to you who his contacts were?

26 A. No, he didn't. Nor did we ask him. May I just comment  
27 on that. If he hadn't given us that information, we  
28 would have gone on to our own contacts because that was  
29 the vital question that we wanted answered; should it  
30 be a contemporary building which we were inclined to

1 favour or should it be a mock Georgian building? There  
2 is no point sending in a design that might not be the  
3 one the Corporation favoured. So that's the first  
4 question to be answered.

5 669 Q. And I think the emphasis, as it were, by putting a line  
6 on either side, is yours?

7 A. Absolutely. And it's interesting, whereas my  
8 preference was for a contemporary building, we  
9 submitted a prestige building, and today the building  
10 that has been built is a contemporary building.

11 670 Q. The building is not in fact the same building that was  
12 the subject of this permission, an entirely different  
13 development?

14 A. An entirely different one.

15 671 Q. Thank you very much, Mr. O'Halloran.

16 .

17 MS. DILLON: Sir, there are a number of witnesses who  
18 are short witnesses who are also scheduled for today.

19 One of them, Mr. Lyons, has in fact apparently  
20 travelled from Mayo. He will be a very short witness,

21 Sir --

22 .

23 CHAIRMAN: I just want to release this witness. Thank  
24 you very much, Mr. O'Halloran, for coming down. Thank  
25 you.

26 .

27 THE WITNESS THEN WITHDREW

28 .

29 CHAIRMAN: We'll raise for five minutes, and I will sit  
30 to complete whatever witnesses you want.

1

MS. DILLON: Thank you, Sir.

3

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND  
RESUMES AS FOLLOWS:

6

MS. DILLON: Thank you, sir.

8

Mr. James Lyons, please.

10

MR. JAMES LYONS, HAVING BEEN SWORN, WAS EXAMINED AS  
FOLLOWS BY MS. DILLON:

13

14 672 Q. MS. DILLON: Good afternoon, Mr. Lyons. You are one of  
15 the directors of Oakpark Developments Limited?

16 A. That's right.

17 673 Q. And the company hasn't traded for a number of years,  
18 but you were a director and a participant in the  
19 company at the time of the sale of the lands to Farrell  
20 Homes in 1985?

21 A. That's right.

22 674 Q. These are the lands at Bellevue Avenue, Donnybrook?

23 A. Yes.

24 675 Q. And at that time the money that was paid, on foot of  
25 that sale, was distributed, some of it, between the  
26 five directors?

27 A. That's right.

28 676 Q. And the balance of the sale price of 1.1 million, was  
29 that used to pay off a bank?

30 A. Part of it was paid off to pay a bank.

1 677 Q. The other part was also used to pay - enter into a tax  
2 settlement in relation to liabilities that Oakpark had?

3 A. That's right.

4 678 Q. The balance of the money that was left, was divided  
5 among the five shareholders?

6 A. Yes.

7 679 Q. Of which you were one?

8 A. That's right.

9 680 Q. And you received a sum of approximately ú110,000?

10 A. 107,000, I think, to be exact.

11 681 Q. And this money was transferred into a company called  
12 Crayland Limited in the Isle of Man?

13 A. That's right, Crayland.

14 682 Q. And that Crayland Limited was a company that was  
15 operated by Mr. Martin Bullock?

16 A. Yes.

17 683 Q. But the introduction to Mr. Bullock, as I understand  
18 it, and the setting up of the Crayland of that  
19 situation in the Isle of Man, was a situation that was  
20 put in place by Mr. John Caldwell's solicitor?

21 A. Yes, that's right.

22 684 Q. And did you attend a meeting in 1985 with your other  
23 co-directors at which this distribution was agreed and  
24 discussed?

25 A. Yes.

26 685 Q. The Tribunal was furnished by Mr. Foley with a document  
27 showing the distribution, the amounts that were  
28 available for distribution at page 5188. And Mr. Foley  
29 says through his solicitor that this was a document  
30 that was produced at the time of the meeting in 1985 in

1 Mr. Caldwell's office. If you look at the screen  
2 beside you, Mr. Lyons, do you recollect seeing a  
3 document?

4 A. I can't recollect it.

5 686 Q. Very good. The operation of the Isle of Man account of  
6 Crayland Limited, how was that conducted? If you  
7 wanted money, how did you get it?

8 A. If I wanted money, I rang John Caldwell. He was my  
9 contact.

10 687 Q. And did Mr. Caldwell organise the money for you?

11 A. Yes.

12 688 Q. Did you make arrangements, then, to attend at Mr.  
13 Caldwell's office and collect the money?

14 A. Yes.

15 689 Q. And if I could ask you to deal briefly with one other  
16 topic. And this is the land on which Mr. Ray Burke  
17 built his house and the building of that house by  
18 Oakpark. You were a director of Oakpark in 1971?

19 A. Yes.

20 690 Q. And you were a director of Oakpark all through the  
21 1970s?

22 A. Yes.

23 691 Q. And Mr. Brennan has told the Tribunal that since he  
24 finished giving evidence in July of this year, and  
25 between then and coming back last Friday to give  
26 evidence, he has, despite his searches, been unable to  
27 locate any documentation that shows that Mr. Burke in  
28 fact paid for his house to Oakpark? Are you aware of  
29 any documentation, Mr. Lyons, that shows that Mr. Burke  
30 paid Oakpark for the building of the house at

1 Briargate?

2 A. I am not aware of any document, but as far as I  
3 understand, we were paid 15,000.

4 692 Q. Were you aware of the €15,000 being paid, Mr. Lyons, at  
5 the time?

6 A. Well, as far as I know, it was paid. I am fairly aware  
7 of it, yes.

8 693 Q. And can you tell us, with whom you discussed this? How  
9 do you know about the €15,000?

10 A. Well, Mr. Foley - I discussed it with Mr. Foley.

11 694 Q. And Mr. Foley told you that Mr. Burke had paid you  
12 €15,000?

13 A. Yes.

14 695 Q. The documentation passing between Oakpark's auditors  
15 and the Revenue Commissioners covering the years 1971,  
16 the 31st October 1972, which would be for the year  
17 October '71 to the 31st of October 1978, do not show  
18 receipt of any funds from Mr. Burke in connection with  
19 the building of this house?

20 A. I don't know.

21 696 Q. And in relation to the land on which the house was  
22 built, Mr. Lyons, was that included in the €15,000?

23 A. No. The company kept part of the land.

24 697 Q. And what did it do with the rest of the land?

25 A. It was sold later on.

26 698 Q. Did the company give the land on which Mr. Burke's  
27 house was built to Mr. Burke?

28 A. No. Well, as far as I know, the - it would have been  
29 included in the site, I'm sure. It probably won't be  
30 the site - I can't recall now. I can't - Mr. Foley was

1 handling all of that.

2 699 Q. Mr. Foley dealt with all of that, because your auditors  
3 told the Revenue Commissioners - page 4479, please -  
4 that the plot of land in question was given by the  
5 directors in lieu of sums due to them in respect of  
6 professional services. Do you see note 2 on the  
7 screen, Mr. Lyons?

8 A. My eyesight --

9 700 Q. Take your time.

10 A. Note 2?

11 701 Q. Note 2.

12 A. Yes, I would agree with that.

13 702 Q. Yes. So that the land that's being discussed there,  
14 Mr. Lyons, is Coleman's land, and that is the land on  
15 which Mr. Burke's house was built?

16 A. Yes.

17 703 Q. So it would appear that the Revenue - we are told that  
18 the directors had given the site to an unnamed person  
19 in lieu of fees?

20 A. Yeah, because Ray Burke - he was an auctioneer at that  
21 time.

22 704 Q. Yes.

23 A. I'm sure he was due fees.

24 705 Q. And if that is correct, then the site - no money  
25 changed hands in respect of the site?

26 A. Well, it will be in the fees.

27 706 Q. In the fees. And insofar as - can you assist at all as  
28 to why it would be that the auditors of Oakpark were  
29 never informed of the receipt of any monies between  
30 1971 and 1978 from Mr. Ray Burke, despite queries being



1 raised in connection with income of Oakpark by the  
2 Revenue Commissioners?

3 A. Well, that I don't know.

4 707 Q. Thank you very much, Mr. Lyons. If you'd answer any  
5 questions that anybody else has.

6 .

7 MR. HAYDEN: No questions.

8 .

9 CHAIRMAN: Anybody else want questions?

10 .

11 Thank you very much. Thank you for coming. You are  
12 now free to go.

13 .

14 THE WITNESS THEN WITHDREW

15 .

16 MS. DILLON: Mr. William Brennan, please.

17 .

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .

1 MR. WILLIAM BRENNAN, HAVING BEEN SWORN, WAS EXAMINED AS  
2 FOLLOWS BY MS. DILLON:

3 .

4 708 Q. MS. DILLON: I think, Mr. Brennan, that you are related  
5 to Mr. Tom Brennan?

6 A. A brother, yes.

7 709 Q. And you also were a director of Oakpark?

8 A. That's right.

9 710 Q. And you too received a sum of around approximately  
10 €110,000 from the distribution of the sale of the lands  
11 at Bellevue Avenue to Farrell Homes?

12 A. That's right.

13 711 Q. I think your funds were also placed in the name of a  
14 company called Deansbrook Limited in your case?

15 A. That's correct.

16 712 Q. And you did not have any contact or communication  
17 yourself directly with the Isle of Man, and you didn't  
18 have any correspondence with the Isle of Man?

19 A. That's right.

20 713 Q. Is it the position that whenever you required funds to  
21 be drawn down from this account in the Isle of Man,  
22 that you made those arrangements through Mr. John  
23 Caldwell?

24 A. That's correct.

25 714 Q. And can you just explain briefly to the Tribunal how  
26 your arrangements with Mr. Caldwell operated in  
27 relation to obtaining funds from the Isle of Man?

28 A. Well, if he was going over, he would collect them or  
29 get the monies sent back or a cheque or whatever.

30 715 Q. If you needed money, did you contact Mr. Caldwell?

1 A. Yes.

2 716 Q. If I could ask you, then, briefly, in relation to your  
3 - you are aware that Mr. Brennan has been conducting  
4 inquiries to see whether or not there are any documents  
5 that indicate receipt of monies from Mr. Ray Burke in  
6 connection with the building of Mr. Burke's house?

7 A. Well, I don't know. I didn't deal with that end of it.

8 717 Q. Yes. You didn't deal with that end of it?

9 A. No.

10 718 Q. Do you know or do you have any documents that indicate  
11 or show that Mr. Burke paid for his house?

12 A. No, I do not.

13 719 Q. And Mr. Brennan gave evidence on Friday that despite  
14 his best endeavours and searches since last July, he  
15 has been unable to uncover any documentation that shows  
16 that Mr. Burke paid for his house to Oakpark?

17 A. Yeah.

18 720 Q. And are you aware that the accounts of Oakpark between  
19 the years 1972 to 1978, despite correspondence with the  
20 Revenue in connection with the receipt of monies, do  
21 not disclose the receipt of any monies by Oakpark from  
22 Mr. Burke?

23 A. Yes.

24 721 Q. And if Mr. Burke had paid ú15,000, would you have  
25 expected that the accounts of Oakpark would have  
26 reflected that sum?

27 A. Yes. Yes.

28 722 Q. That suggests to you, therefore, Mr. Brennan, that  
29 Mr. Burke did not in fact pay for the building of his  
30 house?

196

1 A. Well, we always thought that he paid 15,000, though,  
2 for it, but I never did - I wasn't about in that end of  
3 it.

4 723 Q. You always - why did you think that, Mr. Brennan?

5 A. Well, that was the figure that was quoted, and we  
6 thought that he paid 15,000 for the house.

7 724 Q. Well, did he ever pay ú15,000 to you?

8 A. No, no.

9 725 Q. And the accounts of Oakpark and the correspondence that  
10 was generated between the Revenue Commissioners and  
11 your auditors, do not disclose the receipt of any such  
12 funds, isn't that the position?

13 A. Yeah.

14 726 Q. And it would also appear that insofar as your auditors  
15 were asked to supply an explanation to the Revenue in  
16 connection with the land on which the house was built,  
17 that the explanation that they furnished to the Revenue  
18 was that the land had been given in lieu of fees?

19 A. Yes.

20 727 Q. And did you understand that to be the position?

21 A. Yes.

22 728 Q. That Mr. Burke was given the site?

23 A. Yes.

24 729 Q. In lieu of fees?

25 A. Yes.

26 730 Q. And is there anywhere that the Tribunal could obtain  
27 the reconciliation that was affected between Oakpark  
28 and Mr. Burke to see how the valuation of this site was  
29 arrived at?  
30 A. No, I don't know about that.

197

1 731 Q. Are you aware of any such documents?

2 A. No.

3 732 Q. Who was the person in Oakpark who dealt with Mr. Burke?

4 A. I'd say Tom Brennan and Jack Foley.

5 733 Q. And insofar as an arrangement may have been made with

6 Mr. Burke, that he would take the site in lieu of fees,

7 was that an arrangement that you made with Mr. Burke?

8 A. No. No.

9 734 Q. Who was the person who would have made, if such an

10 arrangement was made, who would have done that?

11 A. I'm not sure, Jack Foley or Tom Brennan, probably.

12 735 Q. But it wasn't you?

13 A. No.

14 736 Q. Thank you very much, Mr. Brennan. If you would answer

15 any other questions that anybody may have for you.

16 .

17 MR. HAYDEN: Just one point.

18 .

19 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS

20 FOLLOWS:

21 .

22 737 Q. MR. HAYDEN: I think, in relation to the Farrell Homes,

23 the monies that you received and the other directors  
24 received form part of a tax settlement, I think, that  
25 was reached?

26 A. That's correct.

27 738 Q. And that was confirmed in a letter by Oliver Freaney &  
28 Company to the Revenue on the 28th of February 1989,  
29 and I think acknowledged as being a payment in  
30 settlement of the liabilities of the five directors in

198

1 correspondence from J Stone, Chief Inspector of Taxes,  
2 on the 7th of March 1989?

3 A. That's correct.

4 739 Q. That tax liability on those sums were discharged both  
5 on your behalf and the other directors?

6 A. That's right, yes.

7 740 Q. Thank you.

8 .

9 CHAIRMAN: Thank you very much. You are discharged.

10 Thank you.

11 .

12 THE WITNESS THEN WITHDREW

13 .

14 MS. DILLON: There is one other director of Oakpark,

15 Mr. Cooke, sir. If we could stand him over to the

16 morning, he will be the first witness in the morning.

17 .

18 CHAIRMAN: All right. If you want to stand him over.

19 If you want to do it now, you can do it. It's 25 past.

20 Is Mr. Cooke there?

21 .  
22 MS. DILLON: Well, if it suits you, Sir, then we can  
23 call Mr. Cooke now.  
24 .  
25 MR. DEVITT: Mr. Cooke would be anxious to be heard  
26 now, if that was possible.  
27 .  
28 CHAIRMAN: I assume his evidence is akin to the - it's  
29 not going to be long.  
30 .

199

1 MS. DILLON: Yes. Mr. Bernard Cooke, please.  
2 .  
3 MR. BERNARD COOKE, HAVING BEEN SWORN, WAS EXAMINED AS  
4 FOLLOWS BY MS. DILLON:  
5 .  
6 741 Q. MS. DILLON: Mr. Cooke, you also are a director of  
7 Oakpark and were involved in the division or  
8 distribution of the funds arising from the sale of the  
9 property at Bellevue Avenue to Farrell Homes?  
10 A. That's right.  
11 742 Q. You also received a sum in excess of ú100,000?  
12 A. That's right.  
13 743 Q. The distribution of those funds took place in the  
14 offices of Binchy's under the auspices of Mr. John  
15 Caldwell?  
16 A. That's right.  
17 744 Q. Your funds were, according to your statement, forwarded

18 to Mr. Martin Bullock in the Isle of Man for investment  
19 in the name of a company called Brackendale?

20 A. That's correct.

21 745 Q. And you - were you yourself in contact with  
22 Mr. Bullock?

23 A. No. I might have called him once or twice to get a  
24 statement out of him, but I didn't get anything.

25 746 Q. But you never got any statement?

26 A. No.

27 747 Q. How did you normally arrange the withdrawal of funds  
28 from the account?

29 A. Through Mr. Caldwell.

30 748 Q. And did you on occasion obtain cash from Mr. Caldwell?

200

1 A. I did, yes.

2 749 Q. That would be Sterling cash, I presume?

3 A. Yes.

4 750 Q. And how would you arrange to pick up that money; would  
5 Mr. Caldwell ring you and tell you he had it?

6 A. Yes, or I would know the date it went to him to pick it  
7 up, you know.

8 751 Q. And can I ask you, then, to deal with the second issue,  
9 which is the - Mr. Burke's house as built by Oakpark.

10 A. That's right.

11 752 Q. What's your understanding of the situation?

12 A. My understanding of the situation was that at one stage  
13 I recall asking Jack Foley, "Did you get the money for  
14 Ray Burke's house?" And he said, "That's taken care  
15 of."



16 753 Q. You recall that, do you?

17 A. Yeah. Way back I asked him, you know, because, I mean,

18 I wasn't involved with the book work as such. Jack

19 Foley, that was his department. He had done that and

20 collected the money and lodged it in the bank and

21 whatever the case was.

22 754 Q. But what he said to you, in response to your query,

23 which was, "Did you get the money on that?" The answer

24 was, "That's taken care of."

25 A. That's right.

26 755 Q. He didn't say to you, "Yes, I did"?

27 A. It's the same of getting it - he is taking care of it.

28 We all had our jobs, so --

29 756 Q. And you are now aware, I presume, as are the other

30 directors of Oakpark, that insofar as your accounts

201

1 were submitted to the Revenue on the subject of

2 examination by the Revenue between 1971 and 1978, there

3 is no receipt of funds from Mr. Burke in the accounts

4 of Oakpark?

5 A. Yes. I understand that.

6 757 Q. Can you assist at all as to how that would be, if the

7 sum of ú15,000 was paid?

8 A. No, because I was - I wasn't involved in the

9 bookkeeping.

10 758 Q. That was a matter for Mr. Foley?

11 A. That's right.

12 759 Q. And can you assist either in relation to the land on

13           which Mr. Burke's house is built?

14    A.   The land, what I understand, was offset against

15           auctioneers' fees.

16 760   Q.   And who did the reconciliation or agreement with

17           Mr. Burke that "this is how the fees would be offset"?

18    A.   I would say Tom Brennan or - Tom Brennan or Jack Foley.

19 761   Q.   And how much was offset?

20    A.   Whatever the price of the site was. I wouldn't know.

21 762   Q.   You were one of the directors --

22    A.   About 7,500, in that area, you know.

23 763   Q.   Of fees were offset?

24    A.   Yeah.

25 764   Q.   But the value of the site that's written down in your

26           books, as having been given to Mr. Burke, is ú3,918?

27    A.   Well, all I know is that's how it was paid. I don't

28           know what way it was paid.

29 765   Q.   And again, Mr. Cooke, not to chain you in any way, but

30           was this an arrangement, whatever arrangement it was

202

1           that was entered into between Mr. Tom Brennan and

2           Mr. Foley and Mr. Ray Burke?

3    A.   I don't know.

4 766   Q.   Well, it wasn't one that involved you directly?

5    A.   No, it didn't.

6 767   Q.   Did you have any dealings with Mr. Burke --

7    A.   No.

8 768   Q.   -- in connection with this matter?

9    A.   No.

10 769   Q.   And were you kept up to speed or informed by the other

11 directors in connection with what was happening?

12 A. Well, I mean, I had my job to do. I was running a  
13 site, and their job was to take care of the money and  
14 to take care of the financing.

15 770 Q. Yes. And you were happy enough with the assurance that  
16 you got from Mr. Foley that it had been taken care of?

17 A. Absolutely.

18 771 Q. And you can't assist at all as to why the accounts of  
19 Oakpark do not reflect any such payment?

20 A. No, I can't.

21 772 Q. Thank you very much. If you'd answer any questions  
22 that anybody else has, Mr. Cooke.

23 .

24 THE WITNESS WAS THEN EXAMINED BY MR. DEVITT AS FOLLOWS:

25 .

26 773 Q. MR. DEVITT: Very briefly, Mr. Cooke. In or about the  
27 time of Briargate in the early seventies, you were, of  
28 course, a director of Oakpark, is that correct?

29 A. That's right.

30 774 Q. Or on a daily basis, where were you involved?

1 A. I was involved in a site in Leixlip, County Kildare,  
2 and in or about the early eighties or mid-eighties with  
3 respect of the Bellevue lands transaction, where were  
4 you involved on a day-to-day basis.

5 A. Leixlip.

6 775 Q. And would you have had any direct involvement in either  
7 Briargate in the early seventies or Bellevue in the

8 mid-eighties?

9 A. No, none.

10 776 Q. So anything you know about that, you would have known  
11 through your fellow directors?

12 A. Correct.

13 777 Q. Now, just in respect of the statement you made to the  
14 Tribunal that's dated the 25th of July of this year.

15 A. Yes.

16 778 Q. And in particular in relation to funds that came from  
17 the Isle of Man.

18 A. Yes.

19 779 Q. You detail three payments or three items, monies that  
20 you received?

21 A. Correct.

22 780 Q. And they are the three sums that are set out and dated,  
23 one in 1987, one in 1989, and one in 1991.

24 A. Yes.

25 781 Q. Were you directly involved in arranging those yourself  
26 with Bank of Scotland in the Isle of Man, or did you  
27 receive assistance, or were you facilitated in any way  
28 by a third party?

29 A. No, John Caldwell took care of all of my monies that I  
30 needed or what I needed. When I wanted something, I

1 called John Caldwell, or I went into his office in  
2 Fitzwilliam Square.

3 782 Q. Is it your evidence to this Tribunal that those three  
4 payments that you have detailed in the letter were  
5 facilitated by Mr. Caldwell's involvement?

6 A. That's right.

7 783 Q. No further questions.

8 .

9 CHAIRMAN: Thank you very much.

10 .

11 MS. DILLON: Thank you very much, Sir. Half ten in the

12 morning.

13 .

14 CHAIRMAN: Half past ten in the morning.

15 .

16 MS. DILLON: Thank you very much.

17

18 THE TRIBUNAL ADJOURNED TO FRIDAY, NOVEMBER 2ND, 2001,

19 AT 10:30 A.M..

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