

TRIBUNAL OF INQUIRY
INTO
COMPLAINTS CONCERNING SOME
GARDAÍ IN THE DONEGAL DIVISION

Appointed by Instrument made by the
Minister for Justice, Equality and Law Reform
on the 24th day of April, 2002 entitled
Tribunals of Inquiry (Evidence) Act, 1921
(Establishment of Tribunal), 2002

RULING ON APPLICATIONS FOR COSTS

Concerning Hearings of the Tribunal in respect of Terms of
Reference (c), and (j)

Ruling of Mr. Justice Frederick Morris on applications for costs
concerning Terms of Reference (c) and (j)

Introduction

Term of Reference (c) of the Tribunal's Terms of Reference required the Tribunal to urgently inquire into the following matter:

"Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of An Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th of September, 1998."

The hearings into the matters concerned with this Term of Reference were known as the "Harassment sub-module". The Tribunal reported its findings on this Term of Reference in its seventh report. That report was delivered to the Minister for Justice, Equality and Law Reform on the 25th of September 2008. The report was published by the Minister on the 7th of October 2008. The seventh report of the Tribunal also dealt with the Tribunal's findings under Term of Reference (j), which required the Tribunal to urgently inquire into and report upon the following matter:

“The effectiveness of the Garda Síochána complaints inquiry process vis-à-vis the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001.”

The hearings concerning this Term of Reference were known as the “Garda Complaints sub-module”.

Following upon the publication of the seventh report, each of the parties to whom representation had been granted was afforded an opportunity by the Tribunal to seek an Order for Costs from the Tribunal pursuant to Section 6 (as amended) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2004. A number of parties made written submissions to the Tribunal. The Tribunal has already given a number of rulings on costs following the publication of its previous reports. In the course of these rulings, the Tribunal has set out a statement of the legal principles which it has applied in exercising its discretion in relation to the awards of costs which have been made. In addition, in Chapter 17 of the Tribunal’s sixth report, the Tribunal drew together a clear statement of the principles on which costs are awarded by it. The Tribunal notes that in none of the written submissions received, has it been suggested that heretofore the Tribunal has proceeded on an incorrect legal basis in relation to the legal principles applicable to its determination of costs issues. That being the case, it is not proposed to restate the general legal principles on which the Tribunal has proceeded in determining the costs issues arising out of the seventh report. These general principles have been fully set out in Chapter 17 of the Tribunal’s sixth report.

This ruling deals with the application for payment of their legal costs made by parties arising out of the publication of the seventh report. I will now set out my ruling in relation to each of the applications received.

Applications on behalf of Mr. John O’Dowd, Garda Noel Keaveney, Garda Shaun Barrett, Garda Phelim Moran and Mr. Michael Lavelle

Mr. John O’Dowd had been stationed in Raphoe Garda Station for some time prior to 1997, which was the period under specific review in terms of the allegations of harassment made by members of the extended McBrearty family against the Gardaí. He accompanied Sergeant John White on many of the inspections of the McBrearty licensed premises. He also had interaction with various members of the McBrearty family and their staff. As stated in the seventh report, the Tribunal is satisfied that Mr. O’Dowd gave an honest account of his dealings with members of the McBrearty family in the relevant period. When Mr. McBrearty Senior refused to continue giving evidence, or to undergo cross-examination in the Harassment sub-module, Mr. O’Dowd could have stood upon his rights and refused to answer allegations made by Mr. McBrearty Senior in respect of which he had not been given the opportunity to challenge same by means of cross-examination. However, Mr. O’Dowd did not stand upon his rights in this regard. He gave evidence and was prepared to answer any questions put to him by any party who wished to do so. In the circumstances, Mr. O’Dowd has fully co-operated with the Tribunal in its inquiry into the Harassment sub-module. Subject to the ruling made hereunder in respect of joint representation, it is appropriate that Mr. O’Dowd should be allowed his legal costs in respect of this sub-module.

Garda Noel Keaveney and Garda Shaun Barrett were also represented by the legal team retained by the Garda Representative Association. Garda Barrett and Garda Keaveney gave relevant evidence concerning their interaction with Frank McBrearty Senior and his staff following their transfer to Raphoe in the summer of 1997. They also gave evidence in relation to the allegation which was known as the "BSE allegation". This allegation was to the effect that the Gardaí had misappropriated funds which had been set aside to prevent the spread of animal disease, which was known as the "BSE operation" and had used these funds to finance overtime so that extra raids and inspections could be carried out on the McBrearty premises. The Tribunal was satisfied that there was no truth whatsoever in this allegation. While this allegation arose as part of the second anonymous allegations document, the substance of the allegation was examined as part of the Harassment sub-module.

The Tribunal is satisfied that Gardaí Barrett and Keaveney gave honest evidence concerning their participation in the inspections of the McBrearty licensed premises. The Tribunal also accepted their evidence concerning the work carried out by them under the BSE operation. The evidence given by these Gardaí was of assistance to the Tribunal in its deliberations. Subject to the ruling made hereunder in respect of their joint representation by the legal team acting on behalf of the Garda Representative Association, it is appropriate that Gardaí Barrett and Keaveney should have their costs in respect of the Harassment sub-module paid by the Minister for Finance.

Garda Phelim Moran was also represented by the legal team acting on behalf of the GRA. He gave evidence concerning the inspections of Frankie's nightclub on which he accompanied Sergeant White. His main evidence concerned the events which occurred on the night of 9th/10th February 1997. This concerned the allegation made by Mr. Paul Quinn that drugs which were found upon him that night, had been placed in his jacket pocket by the Gardaí. The Tribunal accepted this assertion. However, the Tribunal also accepted as truthful the evidence given by Garda Moran in respect of his involvement in the events that night. The Tribunal is satisfied that he had not been a party to any unlawful conduct that night. It is appropriate that he should receive an order for payment of his costs. As he was jointly represented by the legal team acting on behalf of the GRA, the order will take the form as set out below.

An application was also received for payment of costs on behalf of former Garda Michael Lavelle. Mr. Lavelle had taken part in a number of inspections of the McBrearty licensed premises. I am satisfied that he gave his evidence fairly and honestly. He is entitled to his costs.

Mr. O'Dowd, Garda Barrett, Garda Keaveney, Garda Moran and Mr. Lavelle were all represented by the legal team which had been retained by the Garda Representative Association to look after the interests of the Association and the interests of its present and former members. As in previous modules, I consider that it is equitable in such circumstances to direct that there should be a single set of costs recoverable by the Association in respect of the joint representation afforded to the Association and to those named members and former members of the Association. Accordingly, the order will be for one set of costs to cover the joint representation of the Association and of Mr. O'Dowd, Garda Barrett, Garda Keaveney, Garda Moran and Mr. Lavelle on the hearing of the Harassment sub-module.

Application on behalf of Mr. William Flynn

In the Harassment sub-module, joint representation was given to Mr. William Flynn and members of his family. They were represented by solicitor and counsel. Mr. Flynn gave evidence in relation to a number of discrete matters. The first concerned a report which had been prepared by Sergeant Hannigan and which contained imputations in respect of Mr. Flynn's character. In evidence before the Tribunal, Sergeant Hannigan accepted that part of the content of that report was factually incorrect. He apologised to Mr. Flynn for the content of that report. Mr. Flynn also gave evidence in relation to a document known as a "defamatory flier" which appeared on the streets of Raphoe on the night of the 17th/18th of March 1997. Mr. Flynn's name appeared in that document coupled with a reference to a Russian proverb. Mr. Flynn believed that the document was defamatory of him. He also believed that the document was produced by Gardaí who wished to discredit his investigation. The Third matter on which Mr. Flynn gave evidence was in a respect of a divisional circular issued by Chief Superintendent Denis Fitzpatrick on the 27th of February 1998. Mr. Flynn believed that this was a further effort on the part of the Gardaí to discredit him and his investigation. Mr. Flynn also gave evidence in relation to an incident that occurred on the June bank holiday weekend of 1997, when he believed that he and his family were harassed by members of the Gardaí, while he was visiting the village of Raphoe. Mr. Flynn also gave general evidence of his contacts with Frank McBrearty Senior and of communications that he had with various members of the Gardaí at that time, communicating his concerns in relation to the level of Garda attention being paid to his client's premises.

Members of Mr. Flynn's family also gave evidence before the Tribunal. In particular, Mr. Flynn's wife and daughter gave evidence in relation to the incident which occurred on the June bank holiday weekend of 1997. The Tribunal was entirely satisfied that all of the Flynn family did their best to give their honest recollection of that episode. The Tribunal is satisfied that Mr. Flynn has done his best to tell the truth in relation to the matters that were of concern to him and which he regarded as harassment of him by the Gardaí. In the circumstances, it is appropriate that the Flynn family should receive an order for payment of the legal costs in this sub-module. As they were jointly represented by the same solicitor and counsel, it is appropriate that there should be a single order for costs concerning their joint representation before the Tribunal on the Harassment sub-module.

An application was also received from Mr. William Flynn personally. In a letter dated the 28th of October 2008, Mr. Flynn stated as follows:

"I refer to the above and completely divorced from my solicitor and barrister I wish to apply for my personal costs, i.e. professional time in monitoring daily transcripts, liaising and meeting with my legal team and instructing them re: the above module in matters concerning me and where the Chairman would allow a professional hourly rate in respect of same and where the Chairman would also consider allowing a professional fee for the disruption of my day to day business in co-operating with the Tribunal on a daily basis in relation to the above module."

Having considered the matter carefully, I am satisfied that there was no need for Mr. Flynn to monitor daily transcripts of the Tribunal for the purpose of attending at the

Tribunal and giving his evidence relating to these matters. No doubt, a formal meeting with his solicitor for the purpose of instructing him was necessary and possibly a meeting with counsel to ensure that his areas of complaint were properly presented to the Tribunal. In my opinion, Mr. Flynn's involvement called for no more than a normal interaction with his solicitor and counsel and does not call for any special treatment by the Tribunal. His position is no different to any other person attending at the Tribunal who is required to devote time to assist the Tribunal. I understand that Mr. Flynn's viaticum has been sent to him, but has been returned to the Tribunal.

Mr. Flynn was a witness before the Tribunal on the Harassment sub-module. As such if he incurred any particular costs or expenses by virtue of his attendance before the Tribunal, these can be considered by the Registrar not as part of a payment of legal costs but as witness expenses when same are properly vouched. Accordingly, I refuse Mr. Flynn's application in the terms set out in his letter dated the 28th of October 2008, but remind him that if there are any particular costs or expenses incurred by him in connection with his attendance at the Tribunal, these can be considered by the Registrar to the Tribunal when same are submitted in a properly vouched format.

Application on behalf of Mr. John White

Mr. White was a central witness in the Harassment sub-module. The core allegations made by members of the McBrearty family were made against Mr. White. He furnished documents to the Tribunal in advance of the hearings. Save for one issue, his evidence was not seriously challenged before the Tribunal. He gave detailed evidence concerning all of the inspections that he carried out of the McBrearty licensed premises. He also gave detailed evidence concerning the inspections that he carried out on other licensed premises in the village and surrounding area. He also gave evidence in relation to the instructions and interaction that he had had with his superior officers during the relevant period.

The fact that a finding was made that the level of Garda attention which was paid by Sergeant White and others to the McBrearty premises was improper and amounted to harassment, did not reflect a finding as to the honesty or accuracy of the evidence given by Mr. White on these issues. I am satisfied that in giving his evidence on this sub-module, Mr. White co-operated with the Tribunal in its inquiry. Furthermore, when Mr. McBrearty Senior refused to continue to give evidence, Mr. White did not insist on his constitutional right not to have to answer allegations in respect of which he had not had a chance to challenge same by way of cross-examination. In adopting this approach, Mr. White further assisted the Tribunal in its work.

I am conscious that on the Paul Quinn issue, the Tribunal did not accept the evidence given by Mr. White. However, having regard to the totality of his evidence and the level of his co-operation on this sub-module, I do not propose to make any deduction from the award of costs. Accordingly, Mr. White is entitled to receive a full order for payment of his costs on the Harassment sub-module.

Applications on behalf of Sergeant Joseph Hannigan, Sergeant Sarah Hargadon and Retired Detective Sergeant Hugh Smith

An application for payment of costs was received on behalf of Sergeant Joseph Hannigan. Sergeant Hannigan had been the sergeant in Raphoe for a number of years prior to the death of Mr. Barron in October 1996. He was intimately aware of the difficulties of carrying out effective policing in Raphoe. Indeed, he had sent up to his superiors a number of reports requesting more manpower in Raphoe Garda Station. Sergeant Hannigan made these reports available to the Tribunal. His evidence greatly assisted the Tribunal in its understanding of the policing of the area prior to the arrival of Sergeant White in January 1997.

Sergeant Hannigan also gave evidence of his dealings with members of the extended McBrearty family. He also gave limited evidence on the Paul Quinn issue. Finally, he gave evidence on the situation which pertained in Raphoe in the months and years after the departure of Sergeant White in August of 1997. On all of these matters, Sergeant Hannigan's evidence was accepted by the Tribunal as honest and accurate. In giving such evidence he co-operated fully with the Tribunal. Subject to the ruling hereunder in relation to joint representation, he is entitled to an order for payment of his costs on the Harassment sub-module.

An application was received for payment of costs on behalf of Sarah Hargadon. She was transferred to Raphoe in the summer of 1997. She gave evidence concerning her perception of the situation in Raphoe prior to her transfer to that village. She also gave evidence as to the enforcement of the liquor licensing laws in Raphoe after her arrival in the village. She gave evidence concerning an undercover operation which was mounted in December of 1997. She also gave evidence concerning the situation in the village after the departure of Sergeant White in August 1997. Finally, Sergeant Hargadon gave evidence concerning what was known as the "BSE allegation". I am satisfied that her evidence was given in a straightforward and truthful manner. I am satisfied that she did her best to tell the truth on all the matters put to her. In so doing she assisted the Tribunal. She is entitled to an order for her costs subject to the ruling on joint representation set out below.

Retired Detective Sergeant Hugh Smith gave evidence concerning an occasion on which he was called to assist in Raphoe due to the presence of a large number of persons on the street one weekend evening. He also gave evidence concerning one of the allegations of Garda harassment made by Mr. William Flynn. I accepted Mr. Smith's evidence in full. He is entitled to an order for payment of his costs subject to the ruling of joint representation set out below.

As Sergeants Hannigan and Hargadon and Mr. Smith were all jointly represented by the legal team representing the Association of Garda Sergeants and Inspectors, it is appropriate that the order for payment of their costs should be an order for payment of one set of costs to cover the joint representation of the Association and of its present and former members on the hearing of this sub-module. As has happened in the past, the AGSI were represented by two different firms of solicitors. That was a matter of choice for the Association. It was in the nature of an "in-house" arrangement between the clients and their solicitors. It cannot affect the amount of

costs recoverable from the Minister for Finance on foot of the order for costs which will issue from the Tribunal.

Application on behalf of Mr. Paul Quinn

Mr. Quinn gave evidence concerning the allegation that drugs had been planted on him by the Gardaí on the night of the 9th/10th February 1997. In the seventh report I found as a fact that Mr. Quinn did not knowingly have in his possession drugs when he arrived at Frankie's nightclub that night. For the reasons set out in the seventh report, I was entirely satisfied that the drugs were placed in his jacket by a member of the Gardaí. I am satisfied that Mr. Quinn told the full truth in relation to the events of that evening. He provided considerable assistance to the Tribunal. It is appropriate that he should receive an order for payment of his costs on this sub-module.

Application on behalf of Ms. Donna Quinn

Ms. Donna Quinn gave evidence concerning the inspections carried out by the Gardaí of the public house premises which was run by her and her husband in 1996 and 1997 in the village of Raphoe. While the Tribunal did not make a finding that there had been harassment of her pub by the Gardaí, it accepted that that may well have been the perception which Ms. Quinn had having regard to the totality of the events which were occurring at that time. Accordingly, the Tribunal was satisfied that she did her best to give her honest recollection of the events of that troubled time. She is entitled to an order for payment of her costs on this sub-module.

Application on behalf of Mr. Thomas Coffey

An application was received from Messrs. Traynor & Co. Solicitors on behalf of Mr. Thomas Coffey. Mr. Coffey gave evidence in relation to an incident where he alleged that he had been assaulted by certain gentlemen. He alleged that this had occurred due to the fact that he was working for Mr. William Flynn, who in turn was working for Mr. Frank McBrearty Senior at the time. Mr. Coffey further alleged that the Garda investigation of this incident was not thorough or complete because they were antagonistic to anyone working for the McBreartys. Having examined the circumstances surrounding the making of the complaint and the subsequent Garda investigation thereof, the Tribunal did not accept that the Gardaí had not acted properly on that occasion. However, I am also satisfied that Mr. Coffey did his best to assist the Tribunal. He gave his evidence in accordance with his honest beliefs. He co-operated with the Tribunal in its inquiry. He is entitled to an order for payment of his costs.

Applications on behalf of the Association of Garda Sergeants and Inspectors and the Garda Representative Association

At the outset of the Tribunal's hearings, the AGSI and the GRA each applied for limited representation for the purpose of reporting back on the content of the hearings to their relevant Association's so that each Association would be in a position to formulate submissions and otherwise assist the Tribunal in its work. The Tribunal made a limited order for representation on the basis outlined, as it seemed sensible to have the views of each Association available to the Tribunal at the

conclusion of each module. In particular, it was felt that the views of the two Associations would be helpful in formulating recommendations, which might be made to the Minister for Justice, Equality and Law Reform in relation to procedural and other reforms which might be made to improve the service provided by An Garda Síochána.

In the Harassment sub-module, the legal teams acting on behalf of the GRA and AGSI, also acted on behalf of a number of present and former members of their respective Associations. Where this happened and where it was appropriate to make an award of costs, I have done so on the basis that there should be one single set of costs recoverable, to cover the joint representation of each Association, together with their respective members. It would be unrealistic and inequitable to allow the same legal team to recover costs twice, or three times over, where they have represented their respective Associations and particular named members of the Associations in the course of a single sub-module. In reality, the Associations and the members were jointly represented by the same legal team. In such circumstances, I am satisfied that a single set of costs is the appropriate measure of recoverable costs. It would be illogical and inequitable to allow the same legal team to recover one set of costs in respect of their protection of the interests of each Association, together with a further set of costs in respect of their protection of the interests of named members in each sub-module. Accordingly, I refuse to make any separate order for costs in respect of the representation of the AGSI or the GRA in the Harassment sub-module. As already outlined, each Association will receive a single order for costs in respect of the representation by their lawyers of the Association and of their present and former members.

Ruling on Costs Applications in respect of the Garda Complaints Sub-Module

I turn now to deal with the applications received arising out of that portion of the seventh report dealing with the Garda Complaints sub-module. The reader of that report will be aware that the subject matter of this sub-module was limited in two respects: firstly, it only concerned an examination of the effectiveness of the Garda complaints process concerning the handling of the complaints lodged by Frank McBrearty Senior and his family and, secondly, it only concerned complaints lodged by these people during the years 1997 and 2001. I will now deal with each of the applications received in respect of this sub-module.

Application on behalf of the Association of Garda Sergeants and Inspectors

An application was made on behalf of the Association of Garda Sergeants and Inspectors by Messrs. Seán Costello & Co. and Messrs. Smyth O'Brien Hegarty Solicitors for payment of their costs. They informed the Tribunal that while they had not attended at the hearings of the Garda Complaints sub-module, they had received the daily transcripts thereof and had reported where necessary back to their Association on matters arising in the course of the evidence. They stated further that following receipt of the seventh report, they reviewed the section of the report dealing

with Term of Reference (j) and advised their clients on its content. It is on this basis that they apply for payment of their costs in the Garda Complaints sub-module.

Having regard to the actual wording of Term of Reference (j) and to the extremely limited nature of the inquiry undertaken by the Tribunal under this Term of Reference, I cannot see that there was any matter on which the AGSI could have required any legal assistance. If the Association wished to keep abreast of developments in the course of the sub-module, they could have had an officer of the Association glance through the transcripts to see if there was anything of interest to the Association therein. Having regard to the fact that the Tribunal was examining the effectiveness of the complaints procedure and also having regard to the fact that the entire complaints procedure had been replaced by the introduction of the Garda Síochána Ombudsman Commission in 2005, I cannot accept that it was necessary or reasonable for the Association to retain its solicitors in the manner described. Accordingly, I refuse this application for costs.

Application on behalf of the Garda Síochána Complaints Board

The Garda Síochána Complaints Board gave great assistance to the Tribunal in its inquiry in this sub-module. As far back as 2002, they made available to the Tribunal copies of all the relevant documentation. This was furnished in a logical and easily manageable format. They also furnished a helpful statement on the issues arising. Officers of the Board attended meetings with Tribunal personnel. All of this took place prior to the time that evidence was given on this sub-module.

In relation to the evidence that was furnished, I am satisfied that the evidence which was given by Mr. Bryan O'Brien and Mr. Seamus McKenna SC on behalf of the Garda Síochána Complaints Board, was an honest and fair appraisal of the dealings which the Board had with the McBrearty group of complainants. It is appropriate that the Garda Síochána Complaints Board should be awarded an order for payment of its costs on this sub-module.

Two further points should be made clear in relation to this order for costs: firstly, this order will include the evidence given on Day 660 concerning the allegation of political interference in the complaints process. The evidence of Mr. John Bruton and Mr. Dermot O'Callaghan was taken on that day due to the travelling difficulties encountered by Mr. Bruton. While that evidence was taken during the hearings concerning the Harassment sub-module, it was in fact part of the hearings in the Garda Complaints sub-module and was merely interposed during the hearings into the Harassment sub-module. Accordingly, the order for costs in favour of the Garda Síochána Complaints Board will include the attendance of its legal representatives on Day 660.

The second matter to which I should draw attention concerns the level of legal representation retained on behalf of the Garda Síochána Complaints Board. They were represented before the Tribunal by a solicitor, two senior counsel and one junior counsel. In granting the Board an order for payment of its costs, the Tribunal is not to be taken as authorising any particular level of representation on behalf of a party appearing before it. Once a party had obtained a right to be legally represented before the Board, it was up to that party to decide what level of legal representation it

required for the adequate protection of its reputation and good name before the Tribunal. However, that does not mean that parties are at large as to the amount of legal costs which they can recover from the Minister for Finance. The orders which the Tribunal issues grant costs on a party and party basis. If a matter cannot be agreed between a party and the Minister for Finance as to the level of representation that was reasonable in the circumstances, then it is up to the Taxing Master as to what level of legal representation was reasonable in the circumstances. This will govern the amount of costs recoverable from the Minister for Finance.

I turn now to a number of discrete matters that were contained within the application for costs submitted on behalf of the Garda Síochána Complaints Board. Included in that application, was a request that Mr. Bryan O'Brien should recover fees on the following basis:

"In the case of Mr. O'Brien, who the Tribunal acknowledges gave clear and cogent evidence to the Tribunal, which was of great assistance to the Tribunal, Mr. O'Brien made a very significant commitment to and undertook extensive work in reviewing and in compiling a review of all of the relevant complaints dealt with by the Garda Síochána Complaints Board between the years 1997 and 2001. It was because of Mr. O'Brien's commitment and work in this regard that the Tribunal was in the position to obtain a clear and cogent outline of the detail of and the manner in which the complaints were dealt with by the Garda Síochána Complaints Board. The effort and commitment of Mr. O'Brien in this regard, significantly contributed to the efficient and lucid presentation of the evidence given on behalf of the Garda Síochána Complaints Board to the Tribunal. In these circumstances, the Garda Síochána Complaints Board is seeking to recover as part of its costs, the costs incurred by the Garda Síochána Complaints Board in availing of the invaluable input made by Mr. O'Brien who came out of retirement, having officially retired on the 1st of October 2001, to review the complaints and collate relevant documentation and evidence necessary for consideration by and presentation to the Tribunal and his fees for attendance and giving evidence. It is respectfully submitted that Mr. O'Brien's fee should be calculated on the basis that he was an expert witness before the Tribunal."

The Tribunal has acknowledged the great assistance which Mr. O'Brien gave to it in carrying out its inquiry under this Term of Reference. However, the Tribunal does not accept that he should be treated as an expert witness. He was at all times a witness as to fact. He was never retained by the Tribunal to give any expert evaluation on any matter. If he suffered financial loss in respect of the time that he spent meeting with Tribunal personnel, or in preparing for giving his evidence to the Tribunal, or for the days spent attending at the Tribunal to give evidence, then any such costs and expenses will be considered by the Registrar to the Tribunal as part of the usual witness expenses, if they are submitted in writing and properly vouched.

A similar application was made in respect of unspecified expenses payable to Mr. Seamus McKenna SC who gave evidence before the Tribunal on Day 686. The Tribunal had specifically scheduled his appearance before it for that date so as to minimise inconvenience to him and his legal practice. However, if by virtue of attending before the Tribunal, Mr. McKenna SC lost work and consequently suffered financial loss, this too can be considered in the usual way as part of witness expenses if and when it is submitted and vouched to the Registrar to the Tribunal.

Finally, an application was made for payment of costs to Mr. Gordon Holmes. Mr. Holmes is the current Chairman of the Garda Síochána Complaints Board. The application on his behalf was made in the following terms:

"The Garda Síochána Complaints Board is also seeking to recover as part of its costs, the expenses payable to Mr. Gordon Holmes, Chairman of the Garda Síochána Complaints Board as his presence was required throughout the hearing of the relevant module being the person responsible for the general administration of the Board."

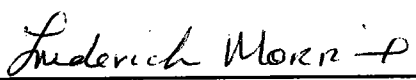
Mr. Holmes was never listed to give evidence before the Tribunal on this sub-module. The Tribunal did not request or retain Mr. Holmes to carry out any particular function or task. The Tribunal cannot pay costs and expenses to persons who were never intended to be called to give evidence before it. If Mr. Holmes incurred costs and expenses in assisting the former members of the Board to deal with the issues arising in the course of this sub-module, he will have to seek payment for his costs and expenses from the Garda Síochána Complaints Board itself.

Application on behalf of Mr. John Bruton

An application was lodged by Messrs. McCann Fitzgerald Solicitors on behalf of Mr. John Bruton. Mr. Bruton gave evidence on a discrete issue arising in the course of the Garda Complaints sub-module. His evidence was taken on Day 660. I am satisfied that Mr. Bruton gave a full and honest account of his dealings with Mr. Jim Higgins concerning the matters being raised by the McBrearty group of complainants at that time. It is appropriate that he should receive an order for payment of his legal costs in respect of his limited participation in the Garda Síochána Complaints sub-module.

That concludes my ruling on the applications for costs arising out of the publication of the Tribunal's seventh Report.

Signed:


The Hon Mr. Justice Frederick Morris
Sole Member of the Tribunal

Date:

13th November 2008