

TRIBUNAL OF INQUIRY

INTO

COMPLAINTS CONCERNING SOME GARDAI 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

Ruling of Mr. Justice Frederick Morris on applications for costs concerning Term of Reference (e) the Explosives Module

After the publication of the first Interim Report of the Tribunal in relation to Term of Reference (e), known as the Explosives Module, in July 2004, each of the parties to whom representation had been granted was written to by the Tribunal inquiring as to whether they wished 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. Written submissions were sent to the Tribunal by a number of parties. Some parties also made formal oral submissions before the Tribunal on the 20th of September 2004. Before dealing with the specific applications lodged on behalf of each of the parties, I will set out a number of general matters which concern the exercising of my discretion as to the awarding of costs pursuant to Section 6 (as amended).

Section 6 of the 1979 Act (as amended by the 1997 and 2004 Acts) provides as follows:-

6(1) Where a Tribunal or, if the Tribunal consists of more than one member, the Chairperson of the Tribunal, is of opinion that, having regard to the findings of the Tribunal and all other relevant matters (including the terms of the resolution passed by each house of the Oireachtas relating to the establishment of the Tribunal, or failing to

cooperate with or provide assistance to, or knowingly giving false or misleading information to, the Tribunal) there are sufficient reasons rendering it equitable to do so, the Tribunal or the Chairperson, as the case may be, may either of the Tribunal's or the Chairperson's own motion, as the case may be, or on application by any person appearing before the Tribunal, order that the whole or part of the costs –

- (a) of any person appearing before the Tribunal by counsel or solicitor, as taxed by a Taxing Master of the High Court, shall be paid to the person by any other person named in the order.
- (b) incurred by the Tribunal, as taxed as aforesaid, shall be paid by the Minister for Finance by any other person named in the order.

(1A) The person who for the time being is the sole member of a Tribunal or is the Chairperson of a Tribunal consisting of more than one member:

- (a) may make an order under subsection (1) in relation to any costs referred to in that subsection that were incurred before his or her appointment as sole member or chairperson and that have not already been determined in accordance with that subsection, and
- (b) shall, for that purpose have regard to any report of the Tribunal relating to its proceedings in the period before his or her appointment.

(1B)

- (b) of subsection (1A) shall not be taken to limit the matters to which regard is to be had under subsection (1).

6(2) any sum payable pursuant to an Order under this section shall be recoverable as a simple contract debt in any court of competent jurisdiction.

6(3) any sum payable by the Minister for Finance pursuant to an order under this section shall be paid out of monies provided by the Oireachtas.

Section 6 (as amended) gives the Tribunal a wide discretion in respect of the Orders which it can make as to costs. In exercising this discretion, the Tribunal can have regard to a number of matters. The first matter specified by this section is the "findings of the Tribunal". The interpretation of this portion of the section has given rise to some difficulty. In the 1997 Act, Section 6 only provided that the Tribunal could have regard to "the findings of the Tribunal and all other relevant matters". That section was considered by the Supreme Court in *Goodman International v The Honourable Mr. Justice Liam Hamilton*,

Ireland and the Attorney General [1992] 2 IR 542. In analysing Section 6, McCarthy J. stated at P.605 of the report:

Section 6: The liability to pay costs cannot depend upon the findings of the Tribunal as to the subject matter of the inquiry. When the inquiry is in respect of a single disaster, then, ordinarily, any party permitted to be represented at the inquiry should have their costs paid out of public funds. The whole or part of those costs may be disallowed by the Tribunal because of the conduct of or on behalf of that party at, during or in connection with the inquiry. The expression “the findings of the Tribunal” should be read as the findings as to the conduct of the parties at the Tribunal. In all other cases the allowance of costs at public expense lies within the discretion of the Tribunal, or, where appropriate, its Chairman.

In his judgement Finlay C.J. expressly agreed with the construction placed on Section 6 of the 1979 Act by McCarthy J. O’Flaherty and Egan JJ. also agreed in general terms with the judgment of McCarthy J.

In the 1997 Act, the Oireachtas inserted the following into section 6 after the words “and all other relevant matters”, the words “(including the terms of the resolution passed by each house of the Oireachtas relating to the establishment of the Tribunal or failing to cooperate with or provide assistance to, or knowingly give false or misleading information to, the Tribunal)”. The amended Section 6 has not as yet been the subject of judicial interpretation.

The Law Reform Commission published a consultation paper on Public Inquiries, including Tribunals of Inquiry, in 2003. In that paper they argued that given the additions made to Section 6 in the 1997 Act, the major change thereby effected was to enable the Tribunal when exercising its discretion under Section 6 to have regard to its findings on the substantive issues. The Law Reform Commission stated at page 286 of the consultation paper:

The major change is directed at the main point under consideration here, namely whether in deciding whether to award costs, a Tribunal may take into account its findings on the substantive issue or whether it is confined to the party’s behaviour before the Tribunal. The following points are relevant. First, the fact that the Tribunal is enjoined to pay regard to the fact that a person has “failed to cooperate with or knowingly given false information to the Tribunal” is now (in contrast to the original 1979 Act wording) stated explicitly. It is critical that there can, therefore, be no room for the suggestion that the phrase “the findings of the Tribunal” should be taken to mean a finding as to whether a person has failed to cooperate with the Tribunal. Instead this key phrase must bear its natural meaning, that is, the findings of the Tribunal as to the substantive issue. The second point tending in the same direction concerns the phrase “including the terms of the resolution ... relating to the

establishment of the Tribunal”. These words, too, make it clear that in awarding costs, the Tribunal must take into account the facts found in relation to the subject matter which it was mandated, by its Terms of Reference to explore. In short, mention of the “Terms of Reference” points the Tribunal in the direction of its findings on the substantive issue, as a relevant factor to be taken into account in deciding on costs. This confirms the first point.

This interpretation of Section 6 was accepted by His Honour Judge Alan P. Mahon, S.C., Chairman of the Tribunal of Inquiry into Certain Planning Matters and Payments in a ruling issued by him titled, ‘Ruling on the Principles to be Applied in Respect of Certain Applications for Costs’, delivered on the 30th of June 2004.

A submission was made on behalf of the Association of Garda Sergeants and Inspectors, to the effect that the interpretation suggested by the Law Reform Commission and adopted by Mahon, J. in his ruling, was not correct. They submitted that that analysis requires one to conclude that, without disturbing the phrase, “the findings of the Tribunal”, the legislature has reached a conclusion which is exactly the opposite to that reached by the Supreme Court in respect of the correct meaning to be attributed to that phrase. They submitted that that analysis ignored the fact that the original section required the Tribunal to have regard to firstly, the findings of the Tribunal and secondly, to all other relevant matters: the section as amended, does no more than identify some of the other relevant matters; it does not purport in any way to alter or amend the phrase “the findings of the Tribunal” which was the subject of the Supreme Court’s judgement in the Goodman case. They further submitted that the analysis of the Law Reform Commission in relation to the significance of the insertion of the Terms of Reference into the amended version of Section 6, ignores the fact that the Terms of Reference are but one of the other “relevant matters” identified in the amendment and are clearly not an aspect of the amendment intended to impact upon the expression “findings of the Tribunal”. They submitted that it was much more likely that the Oireachtas had in mind the type of Term of Reference which commands a Tribunal to complete its business in as economical a manner as possible and requests that costs incurred by reason of the failure of individuals to cooperate fully and expeditiously with the Tribunal, so far as consistent with the interests of justice, be borne by such individual. They argue that it would have been remarkably easy for the draughtsmen of the legislation to have amended the phrase, “the findings of the Tribunal” to provide that it should be read as including the substantive findings of the Tribunal in relation to the matters into which it is inquiring, if that was what was required. They point out that this was exactly what the Supreme Court had held the phrase did not mean, and accordingly they argue that if it was the intention of the Oireachtas to effect an overturning of that decision, it would have been easy to insert the necessary words to make this clear. They argue that the 1979 Act did no such thing but rather left the phrase wholly undisturbed. A submission along similar lines was also made by counsel for Ms. Adrienne McGlinchey and Ms. Karen McGlinchey in his written submission on costs.

The Tribunal is informed by Michael Cush, S.C., who appeared for A.G.S.I., that in unspecified judicial review proceedings pending before the High Court at present, an application had been brought, with leave of the Court, to enable the applicant in those proceedings to challenge the correctness of Mahon J's interpretation of Section 6 (as amended).

In the approach which I have adopted in determining this issue I do not find it necessary to reach a decision on the correct interpretation of the words "findings of the Tribunal" in Section 6 (as amended). I have proceeded on the basis that a substantive finding by me of wrongdoing on the part of a person, would not necessarily deprive that person of the opportunity to have costs awarded in their favour. In respect of each applicant, I have considered whether that person has cooperated fully with the Tribunal by furnishing it with documents, by furnishing it with all the information in their knowledge or procurement, by telling the whole truth to the Tribunal investigators and by telling the whole truth in the witness box. Where people have done so, they have been deemed to have cooperated with the Tribunal. In such circumstances, I have been prepared to grant them their costs irrespective of the finding that may have been made as a result of their cooperation and truthful testimony. However, where persons have deliberately withheld giving all the information within their knowledge, or where they have told lies in an attempt to prevent the Tribunal getting to the truth, thereby prolonging the work of the Tribunal, I have refused to award them costs in respect of such evidence. Counsel for the Tribunal, Mr. Charleton, S.C., submitted that the Tribunal had been extended, and put to considerable additional work, as a result of the lies told by these witnesses characterised as lying in the Report on this module. As he said, the task of the Tribunal became one of prising open of "a nut hardened by lies". There is merit in this submission. It has to be remembered that the people of Ireland will have to pay the costs that I award to any party. Where a person has told lies to the Tribunal, or has attempted to mislead the Tribunal, or otherwise deflect it from its search for the truth, I will not ask the people of Ireland to pay such person's legal costs and expenses.

In the course of his submission, Mr. Cush, S.C. also urged upon me that in the exercise of my discretion I should have regard to the principle of proportionality. He submitted that I should not refuse costs to a witness merely because his evidence may not have been accepted on one issue, but where he has given evidence on other matters which has been accepted by the Tribunal. I accept the general thrust of this submission. I have only withheld costs where people have either deliberately withheld the truth, or deliberately told lies. Even where this has been done by a witness, I have had regard to whether or not that person did provide cooperation to the Tribunal on other aspects of their evidence. If they did, I have given them a percentage of their costs. I think that this is a fair and reasonable way in which to approach the matter.

It has also been urged upon me both by counsel representing the A.G.S.I. and counsel representing the McGlinchey sisters, that I should not have regard to

the capacity of any party to actually pay their own costs when deciding whether to grant them the costs of appearing before the Tribunal with solicitor and counsel. It was argued that to do so, would have grave constitutional implications. It is submitted that it would in effect be treating persons differently based on a financial ability to discharge their own costs. While it is not necessary for me to rule on this submission, as I have neither awarded, nor refused, any party their costs based on any perceived financial ability or inability on their part to discharge same, I do believe that this submission is correct.

It was also urged in written submissions that costs should be awarded on a solicitor and client basis, rather than as party and party costs. I note the differing approaches have been taken by previous Tribunals in this regard. The Tribunal of Inquiry into the Whiddy Island disaster, the Tribunal of Inquiry into the Beef Processing Industry and the Tribunal of Inquiry into the Blood Transfusion Service Board, awarded costs on a party and party basis. Whereas the Tribunal of Inquiry into the Infection with HIV and Hepatitis C of persons with haemophilia and related matters and the Tribunal of Inquiry (Dunnes payments) awarded costs on a solicitor and client basis.

In my opinion, an award of costs on a solicitor and client basis is appropriate where the costs have been incurred between the solicitor and his or her own client. In such circumstances, the client has knowledge the amount of work being undertaken by the solicitor on his behalf. He can control the level of service provided by his legal advisors. Where an Order for Costs is made by this Tribunal, such Order will be directed to the Minister for Finance who will discharge the ultimate bill from monies made available by the Oireachtas. The Minister for Finance has no control whatsoever over the amount of legal services provided to a party by his legal team during the course of the Tribunal. In such circumstances, it seems to me that it is only equitable that costs should be awarded on a party and party basis. This will enable a party in whose favour an Order is made to obtain costs in respect of legal work reasonably undertaken by their legal advisors and at a reasonable rate. Accordingly, the Orders which will issue from the Tribunal will be on a party and party basis.

Specific Applications

I turn now to the various applications for costs submitted for consideration by the Tribunal. This will be dealt with in the order in which they were heard by the Tribunal.

Ms. Yvonne Devine

Ms. Devine worked with Adrienne McGlinchey in Letterkenny prior to moving with her to Buncrana and later to Clonmany and Ballyliffin. During this time she was with Ms. McGlinchey for many of the incidents which were the subject of the Tribunal's inquiries. The Tribunal is satisfied that Ms. Devine deliberately withheld valuable information which would have been within her knowledge concerning the activities undertaken by Ms. McGlinchey. Had she

given a full and frank account of matters which must have been within her knowledge, the work of the Tribunal would have been significantly shortened. Unfortunately she did not do so. She gave an account which fell far short of the full truth. By her evidence she sought to minimise her knowledge of and involvement in the events the subject of the Tribunal's Terms of Reference. By failing to give a full account of all that she knew, she failed to cooperate fully with the Tribunal. A portion of her evidence was helpful. Accordingly, I will make an Order that 50% of the legal costs incurred by Ms. Devine should be paid by the Minister for Finance.

Ms. Eleanor McDermott

Ms. McDermott gave evidence on issues which occurred in 1999. They were not at all central to the Tribunal's Inquiry. She also provided a statement to the Tribunal. There was considerable divergence of evidence as to what she had said at various times and why she may have said the things that she did. In the end, the Tribunal did not think it necessary to make any finding of fact as regards the evidence of Ms. McDermott. Her involvement with the Tribunal was brief and peripheral to its deliberations. Having considered her position I consider she is entitled to her costs limited in the manner indicated in the order granting her representation.

Garda Martin Leonard

Garda Leonard gave evidence on three important issues; the find adjacent to Oatfield on 4/6/1994, the withdrawal of her statement by Ms. Sheenagh McMahon and the encounter with the Carty investigation team in Sligo, when he accompanied Detective Garda Noel McMahon to those interviews. On none of these three issues is the Tribunal satisfied that the account given in evidence by Garda Leonard represented the truth. I am satisfied that his evidence was given in such a way as to mislead the Tribunal in relation to his actual motivation for taking the course that he did on each of these three important occasions. On each occasion, Garda Leonard attempted to portray the events as being innocent in character. For the reasons set out in the Report, the Tribunal is satisfied that this was not the case. The Tribunal is satisfied that Garda Leonard gave evidence in an effort to mislead the Tribunal in relation to these three important events. I refuse Garda Leonard's application for costs.

Garda P.J. Thornton

Garda Thornton gave evidence in relation to the find adjacent to Oatfield on the 4th of June 1994. As has been stated in the report, I am not satisfied that any of the main witnesses on this issue, including Garda Thornton, told the truth concerning this find, or how it was dealt with subsequently in Letterkenny Garda Station. Due to the failure on the part of these witnesses to provide a full and honest account, the Tribunal has not been able to take the matter any further. In failing to tell the whole truth concerning this matter, Garda Thornton failed to give full cooperation to the Tribunal. I refuse his application for costs.

The Garda Representative Association

The Garda Representative Association sought limited representation before the Tribunal, primarily for the purpose of making recommendations as to any changes which might be recommended by the Tribunal for the future. Their cooperation with the Tribunal was reasonable. When their solicitor was asked for any assistance he gave it in a timely and efficient way. The Tribunal was assisted by the Garda Representative Association in its deliberations and particularly by the interesting evidence of Garda P.J. Stone. Accordingly, the Association is entitled to its costs.

The Gallagher family

Members of the Gallagher family gave evidence to the Tribunal concerning a search which was carried out on their lands by the Gardaí and Army over a number of days in March 1997. They also gave evidence that no member of the family was a member of, or involved with, any paramilitary organisation, nor did they support such activities in any way. As stated in the report, the Tribunal accepted in full the evidence of the Gallagher family. By giving testimony that was clear and honest, they have assisted the Tribunal greatly. They are entitled to their costs.

Detective Garda Noel McMahon

In his interviews with the Tribunal's investigators and in his evidence before the Tribunal, Detective Garda McMahon lied in an effort to mislead the Tribunal. Subject to some very minor exceptions, his evidence was rejected in respect of all the central matters considered by the Tribunal. He attempted to mislead the Tribunal in relation to his knowledge of, or involvement in, each of the finds the subject of the Tribunal's Term of Reference. He gave a misleading and untruthful account of his dealings with Adrienne McGlinchey and Superintendent Kevin Lennon. I am satisfied that this was done in a calculated way in an attempt to prevent the Tribunal ascertaining the truth. I totally refuse his application for costs.

Mr. Pearse Devine

Mr. Pearse Devine gave evidence on two matters that were peripheral to the main focus of the Tribunal's Inquiry. In written submissions filed on his behalf, it was pointed out that no finding was made in the report that Mr. Devine had given false or misleading evidence, knowingly or otherwise. It was also pointed out that it was not stated or suggested in the report that Mr. Devine had failed to cooperate with the Tribunal. While these observations as to the content of the report are correct, I do not consider that the absence of any reference in the report to Mr. Devine's evidence, or to the question of whether he cooperated with the Tribunal, inhibits me from considering his application for costs in the same way as any other applicant in respect of whose evidence a definite finding was made in the report. There is no reference to his evidence, because his contribution to matters in issue was extremely

peripheral. While the Tribunal has doubts as to whether Mr. Devine told the whole truth in respect of the matters on which he gave evidence, it cannot go so far as to make a definite finding that he did not do so. Accordingly, bearing in mind the limited nature of his representation before the Tribunal, I am prepared to grant him his application for such limited costs as his involvement in the Tribunal requires.

Ms. Adrienne McGlinchey

In the report it was repeatedly stated that the Tribunal approached the evidence of Ms. Adrienne McGlinchey with extreme caution. She was found to have lied to the Tribunal in three important areas. Firstly, she lied about the nature and extent of her contact with Sergeant Bobby Mullally, Sergeant Hugh Smith and Detective Garda Matt Tolan prior to moving to Buncrana in 1991. As a result of this false testimony, the Tribunal was forced to embark on a detailed analysis of all her dealings with Gardaí in the years 1987 to 1991. This involved a considerable wastage of valuable time before the Tribunal. Secondly, she attempted to portray her dealings with Detective Garda Noel McMahon and Superintendent Kevin Lennon as occurring solely due to alleged blackmail on the part of Detective Garda McMahon, that if she did not do as he wished, he would ensure that she was prosecuted for various offences. The Tribunal did not accept this evidence, but found that she had at all times willingly participated in the events the subject matter of the Tribunal's Inquiry. Thirdly, she made a number of unfounded allegations in her statements to the Carty team. Some of these she did not repeat in evidence. Instead, she maintained that portions of her long statement to the Carty team were not her words, but were insertions on the part of the detectives who had taken the statement from her, or were deliberately taken out of context by them so as to give a misleading impression of what she had said. The Tribunal did not accept her allegations in this regard. Finally, there were a number of allegations which she acknowledged she had made and which she formally withdrew in evidence. All of these matters caused the Tribunal considerable time and difficulty in its search for the truth.

However, the matters detailed above have to be weighed against the following points which are in her favour. The main allegations made by Ms. McGlinchey concerning the corrupt activities on the part of Detective Garda McMahon and Superintendent Lennon concerning the "finds" and other matters the subject matter of the Tribunal's Term of Reference, were accepted by the Tribunal for the simple reason that on each event her testimony was supported by cogent independent evidence. This enabled the Tribunal to independently accept the facts to which she had testified. In short, the Tribunal found that in respect of the matters central to its inquiry Adrienne McGlinchey had told the truth.

A second point which I consider should be weighed in her favour is a point of public policy. Adrienne McGlinchey was what could be termed a "whistle blower". It has to be recognised that by giving evidence of corruption on the part of certain members of the Gardaí, she was taking a courageous stand. The Tribunal recognises that if people such as Adrienne McGlinchey were not prepared to act as whistle blowers, it would be difficult for any investigating

agency to track down corruption. Where a person has given evidence which enables a Tribunal to expose corruption, I am of the view that in general that person should get their costs. Bearing all of the matters set out above in mind, I think it is reasonable to award Adrienne McGlinchey 75% of her costs.

Ms. Karen McGlinchey

While her involvement in the Tribunal was much less than that of her sister, Ms. Karen McGlinchey's evidence was accepted by the Tribunal. It is appropriate that she should recover her limited costs.

Ms. Sheenagh McMahon

The comments made above in relation to whistle blowers also apply to Ms. Sheenagh McMahon. Her evidence was accepted in full by the Tribunal. Given the fact that she had to give evidence against her former husband, it took great courage for her to come before the Tribunal to give her evidence. She gave that evidence in a straightforward and honest manner. By so doing, she furnished great assistance to the Tribunal. She is entitled to her costs.

Association of Garda Sergeants and Inspectors

The Association of Garda Sergeants and Inspectors initially sought representation on its own behalf in a general way by application made on the 15th of July 2002. At that time three reasons were given why it should be granted representation. They were, firstly, the potential for difficulty that may arise in having the Commissioner represent all members of the force, particularly where a conflict of interest may arise. Secondly, that the association could form a link or conduit type role between the Tribunal and members of the association and thirdly, that the association would have an interest in making submissions at the end of the Tribunal's deliberations. On the basis of that application representation was granted to the association on the 22nd of July 2002. There was a peculiarity in relation to that representation which was that two different firms of solicitors were going to act for the association and its members. This was by agreement between the firms of solicitors and the association itself. During the course of the hearing of the Explosives Module, application was made by counsel acting on behalf of the association for representation on behalf of a number of individual sergeants. These applications were granted. An application for costs have been made on behalf of the named sergeants and also on behalf of the association.

To deal firstly with the application for costs on behalf of the individual members of the association; in relation to Sergeants Bobby Mullally, Hugh Smith, Sylvie Henry, Danny Kelly, Martin Moylan and John O'Keeffe, the Tribunal is satisfied that they cooperated with the Tribunal by furnishing documents within their possession and by giving their evidence in an honest

and accurate manner. They are accordingly entitled to their costs. Ex-Sergeant James Leheny provided considerable assistance to the Tribunal by furnishing an amount of documentation including a signed copy of the so-called "letter of satisfaction" and the note sent to him by Superintendent Lennon in June 1994. His evidence on all but one matter, was accepted by the Tribunal. However, in respect of the find at Oatfield on the 4th of June 1994 and subsequent events, the Tribunal was not satisfied that he gave a full account of all that he knew concerning these events. In the circumstances he is entitled to 75% of his costs.

In relation to the costs of the Association itself, bearing in mind the limited nature of its involvement with the Tribunal as indicated in the submissions made on its behalf on the 15th of July 2002 and the ruling that I gave in this regard on the 22nd of July 2002, I think it is appropriate that the association should get its costs on this limited basis. The fact that there are two firms of solicitors acting on behalf of the one entity, is a matter entirely for agreement between the association and its respective solicitors. The fact that there were two firms of solicitors representing the same association cannot affect the overall amount of costs to which it is entitled at the end of the day.

Mr. Paudge Dorrian

Mr. Dorrian gave evidence in relation to one issue only. It was not central to the Tribunal's inquiry into its Terms of Reference. It concerns the matters discussed at a series of meetings held between Chief Superintendent Denis Fitzpatrick and Mr. Dorrian in relation to his application for the position of Judge of the Circuit Court and certain allegations against Superintendent Kevin Lennon. There was a conflict in evidence between that of Mr. Dorrian and Chief Superintendent Fitzpatrick as to what was said at these meetings. At paragraph 1.60 of the Tribunal's report, the Tribunal accepted that Chief Superintendent Fitzpatrick told the truth as to the import of his meetings with Mr. Dorrian. The Tribunal rejected the evidence of Mr. Dorrian. In the circumstances, he must be treated in the same manner as other witnesses who have not cooperated with the Tribunal. Accordingly, he is not entitled to his costs.

Superintendent Kevin Lennon

Superintendent Kevin Lennon represented himself before the Tribunal. On the 20th of September 2004, he presented a bill for consideration by the Tribunal in the sum of €37,600.00. This was made up of typing expenses of €400.00 for the period March 2003 to June 2003, together with a further sum of €700.00 in respect of typing for the period September 2003 to June 2004. He claimed €100.00 for supplies and photocopying in the period March 2003 to June 2003 together with a further €400.00 for the same items in the period September 2003 to June 2004. By far the greatest portion of the bill was in respect of "research, discovery and labour costs" in the sum of €36,000.00

represented as being calculated at 6 hours per night at €40.00 per hour for a total of 150 nights.

It is arguable that the provisions of Section 6 (as amended) may not apply where a party has represented himself before a Tribunal. However, in view of my decision on other aspects of this application, it is not necessary for me to decide whether a person who represents himself could ever recover any expenses or outlays necessarily incurred by him in the course of appearing before a Tribunal. That question can be left open.

Superintendent Lennon lied to the Tribunal on almost every issue on which he gave evidence. He lied about the nature and extent of his involvement with Adrienne McGlinchey and Detective Garda Noel McMahon. He lied about his knowledge and involvement in the finds and other matters the subject matter of the Tribunal's Inquiry. He attempted to mislead the Tribunal on all of the central issues. On these, his evidence was rejected in total. In these circumstances, Superintendent Lennon is not entitled to his costs. I would add that the idea that the people of Ireland should be asked to pay him €40.00 per hour for the many hours that he undoubtedly spent trying to deceive the Tribunal and prevent it getting to the truth, is unrealistic.

Signed:

Mr. Justice Frederick R Morris
Sole Member of the Tribunal

Date:
