

APPLICATION OF MR. FRANK McBREARTY JUNIOR

**The following application was made by Mr. Frank McBrearty Junior
to the Chairman of the Tribunal
by letter dated the 19th of November 2006.**

- “1. I require legal aid for my family and I. We also require that the Barron Module be reopened in order that the full truth and facts come out.
2. I require all interview notes taken by D/Inspt Eammon O’Grady, D/Sgt Gerard McGrath, Retired D/Sgt John Melody and D/Garda John Fitzpatrick over their entire careers.
3. I require all statements taken by D/Inspt Eammon O’Grady, D/Sgt Gerard McGrath, Retired D/Sgt John Melody and D/Garda John Fitzpatrick over their entire careers.
4. I require to cross examine the following Gardaí, D/Inspt Eammon O’Grady, D/Sgt Gerard McGrath, D/Sgt John Melody, John Fitzgerald, Denis Fitzpatrick, Joe Shelly, John McGinley, Tina Fowley, Sgt O’Toole, D/Garda Michael O’Malley, D/Garda McEntee, Garda Harkin, D/Sgt Brennan, D/Garda Anderson, D/Garda Keating, Supt McGovern, Supt Gallagher, Mr Durak SC for Garda Commissioner, all the handwriting experts, and the witnesses listed in Frank McBrearty Snr and Frank McBrearty Jnr arrest and detention module, and finally the Minister Michael McDowell.
5. I require all transcripts on CD and hard copy of all the people at the Tribunal who have made allegations against my family and I.
6. I require that D/Inspt Eammon O’Grady, D/Sgt Gerard McGrath, D/Sgt John Melody and D/Garda John Fitzpatrick submit themselves to cross examination by Frank McBrearty Jnr before their legal teams cross examine Frank McBrearty Jnr and that Frank McBrearty Jnr does not be cross examined until they submit to this request.
7. I require a proper explanation as why the Tribunal need my medical records and why the Tribunal wants me to be medically examined.”

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 IN RESPECT OF APPLICATION OF MR. FRANK McBREARTY JUNIOR DATED THE 19TH OF NOVEMBER 2006

Ruling of Mr. Justice Frederick Morris in respect of application of Mr. Frank McBrearty Junior dated the 19th of November 2006

By letter dated the 19th of November 2006, Mr. Frank McBrearty Junior made an application to the Tribunal. It was made in the following context. Mr. Frank McBrearty Junior on the 25th of October 2006 at Donegal Town courthouse declined to answer any questions put to him in cross-examination in the course of his evidence to the Tribunal and staged a walkout. Since that date he has requested that the Tribunal allow him the opportunity to submit to cross-examination on any date following the 6th of December 2006 following his return from a business trip to the United States. The Tribunal has decided to allow him to return to the Tribunal to give his evidence under cross-examination and to remedy his refusal to do so on the 25th of October 2006. The Tribunal has directed that he give his evidence on the 12th of December 2006 at 10.30 a.m. In the meantime, Mr. McBrearty Junior has submitted this application to the Tribunal.

The application concerns a number of issues:

1. Mr. McBrearty Junior states that he requires Legal Aid for his family and himself and “that the Barron module be re-opened in order that the full truth and facts

come out". The Tribunal has in a number of rulings made clear the position in relation to Legal Aid. The Legal Aid Scheme in its civil or criminal form does not apply to the workings of this Tribunal. At the conclusion of each module or sub-module an application for costs may be made on behalf of any party who is legally represented at the Tribunal. That Order will be made by me in the exercise of my discretion as provided pursuant to the provisions of Section 6 of the Tribunals of Inquiry (Evidence) Act 1921 to 2002. The basis upon which that discretion will be exercised is fully set out in the Rulings of the Tribunal as to costs made in respect of various applicants following the publication of the first five reports of the Tribunal. These Rulings are available at the Tribunal's website at www.morristribunal.ie. A number of parties who are represented by solicitors and counsel and who were obliged to maintain representation at the Tribunal over very lengthy periods, have benefited from the making of such orders for costs. In the present sub-module concerning Mr. McBrearty Junior's arrest and detention it was envisaged that the hearings would be of three to four weeks duration. If Mr. McBrearty Junior chose to be legally represented during this period the Tribunal envisages that an application for costs could be ruled upon shortly after the issuing of a report in respect of his detention.

The second element of this paragraph of the application relates to Mr. McBrearty Junior's request that the "Barron Module" be re-opened. The Tribunal has concluded its inquiry into the investigation into the death of the Late Mr. Richard Barron and the progress, management and effectiveness of that Garda investigation thereof with particular reference to the management of informants. Its conclusions are set out in the second report of the Tribunal. Following the publication of that report, orders for costs in favour of various parties, including Mr. McBrearty Junior and his family, were made by the Tribunal in respect of such legal representation as they maintained at the Tribunal when it held its hearings in Donegal Town. I also observed in that ruling that had Mr. McBrearty, Junior and his family been legally represented for the entire period of that module it is most likely that a full order for costs would have been made covering such representation. It is not intended to re-open this module.

2. Detective Inspector Eamon O'Grady, Detective Sergeant Gerard McGrath, Retired Detective Sergeant John Melody and Retired Garda John Fitzpatrick all interviewed Mr. McBrearty Junior whilst he was detained at Letterkenny Garda Station on the 4th of December 1996. In the course of that detention, Gardaí maintained that Mr. McBrearty Junior made an alleged confession to the involvement in the death of the Late Mr. Barron to Detective Sergeant Melody and Detective Garda Fitzpatrick. The Tribunal has determined that that statement is false. Its present inquiry is focused on how that statement came to be made. In paragraphs 2 and 3 of his present application, Mr. McBrearty Junior requires that all statements and interview notes taken by the four named Gardaí "over their entire careers" be furnished to him. The Tribunal does not have these documents in its possession. I do not consider this application to be of any assistance to me in my present work. Presumably, what is contemplated is that I should base my conclusions as to how the present statement came into existence by reference to some other events and that I should conduct a trawl through the careers of each of these Gardaí with a view to ascertaining if there

are any cases of allegations similar to those made against these Gardaí by Mr. McBrearty Junior and, that I should conclude, if such cases exist, that they acted wrongfully on the occasion of the detention of Mr. McBrearty Junior on the 4th of December 1996. I do not consider that such a trawl is relevant or of assistance to the issue which I have to decide in relation to this detention. The primary facts that I have to address arise from the evidence which Mr. McBrearty Junior and the four Gardaí can give to me on their sworn testimony, properly tested under cross-examination and focused upon the real issues concerning this statement. If I thought that other sufficiently cogent, reliable and relevant evidence that would assist me in this aspect of the inquiry lay elsewhere, I would obtain it. The trawl suggested by Mr. McBrearty Junior would be an unwieldy and unreasonable undertaking having regard to the discreet issue with which I am concerned. It would unreasonably extend the work of the Tribunal to areas which are not the subject of the Terms of Reference in respect of issues which are undefined, open ended and without a clear focus. Under its Terms of Reference the Tribunal is directed to complete the inquiry “in as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it.” As matters stand, I am having considerable difficulty in getting the full story from Mr. McBrearty Junior who is the complainant in respect of his two detentions. The Tribunal has recently exercised considerable time, resources and patience in trying to procure from him his full evidence in relation to what he says happened to him in the course of his detentions. So far, he has not provided the full cooperation which the Tribunal needs in order to investigate his complaints. It is unrealistic to make application to the Tribunal to extend its investigation to other areas when he has failed to complete his evidence in relation to the very issues which are the subject of the Terms of Reference. I will continue to seek the relevant evidence from all parties directly involved in the detentions of Mr. McBrearty Junior in order to ascertain the truth of what happened. The best evidence in that regard is the evidence of Mr. McBrearty Junior and that of the four named Gardaí. In addition, I hope to have the assistance of a number of expert witnesses on document analysis and handwriting. Mr. McBrearty Junior can assist me in that endeavour by submitting to cross-examination as now agreed by him on the 12th December 2006. This part of the application is refused.

3. In the fourth paragraph of his application Mr. McBrearty Junior states that he requires to cross-examine seventeen named Gardaí, together with counsel for An Garda Síochána and the Tánaiste and Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, TD. In addition, he seeks the right to cross-examine all handwriting experts and all witnesses who testify in the sub-module relating to Mr. Frank McBrearty Senior. Mr. McBrearty Junior has a right to cross-examine all witnesses called in respect of the sub-module dealing with his arrest and detention. That has never been an issue. He is entitled to exercise that right himself or through solicitor and counsel. If he wishes to call any witnesses who are not on the list of witnesses to be called by the Tribunal, he may make application to the Tribunal in that regard and furnish a list of the names of those witnesses together with a reason as to why each witness should be called and is relevant to the evidence in his sub-module. I will decide as to whether it is appropriate to allow that witness to be called. This is in accordance

with the established practice of the Tribunal. At the moment it is not intended by the Tribunal to call counsel for the Garda Commissioner, or the Tánaiste and Minister for Justice, Equality and Law Reform as witnesses in respect of this sub-module and I would require a further application from Mr. McBrearty Junior setting out particular reasons as to why this position should change before I would permit any change in that regard.

Mr. Frank McBrearty Senior has repeatedly stated in evidence that he would not be cross-examining any witness on his own sub-module. I do not see how Mr. McBrearty Junior has any standing to cross-examine on behalf of his father. Mr. McBrearty Senior has not made any application to me that his son be permitted to cross-examine on his behalf. If he does, I will consider it in the ordinary way.

4. The fifth paragraph of Mr. McBrearty Junior's application requires that all transcripts on CD and hardcopy of all the people at the Tribunal who have made allegations against his family and Mr. McBrearty Junior be furnished to him. The transcripts of all the Tribunal's modules with the exception of the Explosives, Ardara and Burnfoot modules, and the detention modules concerning other persons and which did not concern Mr. McBrearty Junior, have been furnished to him. Mr. McBrearty Junior has been furnished with all relevant transcripts. Insofar as a CD ROM or floppy disc version of transcripts already supplied in hardcopy has not been furnished, this will now be done by the Tribunal's administrative staff by arrangement with the stenographers. It should also be noted that in more recent months the daily transcripts of the Tribunal have been available at the Tribunal's website.
5. The sixth paragraph of Mr. McBrearty Junior's application "require(s)" that Detective Inspector Eamon O'Grady and Detective Sergeant Gerard McGrath, Retired Detective Sergeant John Melody and Retired Detective Garda Fitzpatrick submit themselves to cross-examination by Frank McBrearty Junior before their legal teams can examine him and requires that "Frank McBrearty Junior is not to be cross-examined until they submit to this request". The Tribunal has already heard the evidence-in-chief of Mr. Frank McBrearty Junior. It wished to proceed immediately to his cross-examination in Donegal Town. Mr. McBrearty Junior refused to be cross-examined by those against whom he has made very serious allegations of assault, verbal abuse, forgery and the fabrication of a false confession against him and/or obtaining a false confession by means of a trick. It is clear that each of these Gardaí either by themselves or through their counsel are entitled to cross-examine Frank McBrearty Junior in relation to these allegations in vindication of their constitutional rights to fairness of procedures as set out in numerous judgements of the Supreme Court. This procedure also accords with the orderly, and efficient running of the business of this, or any other Tribunal, or court. I see no reason to depart from it. Allegations have been made. Those accused are entitled in their defence to challenge the man who made them. Mr. McBrearty Junior has the duty to submit himself to cross-examination. Others in Mr. McBrearty Junior's extended family, including the ladies of the extended Quinn family, (some of them unrepresented) have done so with dignity and courage. The Gardaí in turn will then be examined and cross-examined by counsel to the Tribunal and Mr. McBrearty Junior if he so wishes. This application is refused.

6. In the seventh paragraph of Mr. McBrearty Junior's application he seeks an explanation as to why the Tribunal needs his medical records and has requested him to submit himself to medical examination. That matter will be dealt with in private correspondence with him.

Signed:

Mr. Justice Frederick R Morris
Sole Member of the Tribunal

Date:
