

Correspondence 3A.3  
Meeting – 21/06/2012



Roinn an Taoisigh  
Department of the Taoiseach



13 June, 2012.

Ms. Fiona Cashin,  
Committee Secretariat,  
Committee of Public Accounts,  
Dáil Éireann,  
Dublin 2.

Dear Ms. Cashin,

I refer again to your letter of 9 May following my recent appearance before the Committee of Public Accounts.

As you requested, I wrote to Judge Moriarty enclosing the transcript of the Committee proceedings and requesting the information sought. I now enclose a copy of the reply I have received from him.

Yours sincerely,

A handwritten signature in purple ink, appearing to read 'Martin Fraser'.

Martin Fraser,  
Secretary General to the Government.

# **Tribunal of Inquiry**

**(Payments to Messrs Charles Haughey and Michael Lowry)**

*Appointed by instrument of*

*An Taoiseach*

*dated the 26th day of September 1997*

*Sole Member:*

*The Honourable Mr. Justice Michael Moriarty*



## **Tribunal Office**

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### **PRIVATE AND CONFIDENTIAL STRICTLY ADDRESSEE ONLY**

30<sup>th</sup> May, 2012

Mr. Martin Fraser,  
Secretary General,  
Department of the Taoiseach,  
Government Buildings,  
Upper Merrion Street,  
Dublin 2.

### **RE: TRIBUNALS OF INQUIRY (EVIDENCE) ACTS, 1921 AND 1979 (NO. 2) ORDER 1997**

Dear Mr. Fraser,

I refer to the above and in particular to your letter dated 18<sup>th</sup> May last, received by the Tribunal on 21<sup>st</sup> May, 2012, which enclosed a copy letter from Ms Fiona Cashin of the Public Accounts Committee Secretariat dated 10<sup>th</sup> May, 2012.

I note from Ms Cashin's letter that she had requested a response from you in relation to the queries raised by her in her letter on or before 24<sup>th</sup> May, 2012. Despite having received your letter on the afternoon of Monday, 21<sup>st</sup> May last, I am only now in a position to consider that letter and its contents as I have, for the past two weeks, been sitting continuously with the High Court on Circuit in Dundalk. Since a query was understandably raised at the Committee proceedings of 3<sup>rd</sup> May last as to whether my own ongoing Tribunal involvement was full-time or not, I should state that, while more than fair allowance has been made for that remaining commitment, High Court duties have nonetheless involved me in sittings of up to 2 weeks in Galway, Sligo, Cork and Dundalk, regular sessions in the Court of Criminal Appeal, and a limited amount of Judicial Review and Commercial Court work entailing reasonably substantial judgments.

With regard to the queries raised by Ms Cashin in her letter, I respond as follows:



1. I can confirm that the three senior counsels, Mr Coughlan, Mr Healy and Ms. O'Brien worked on a full-time basis over the term of their engagement by the Tribunal. I do recall an occasion upon which, at a relatively early stage of the Tribunal, one of the senior counsel sought and received my permission to fulfil a court commitment at a time when this did not impinge on the work of the Tribunal at public sittings. Needless to say senior counsel were at all times certified for the purposes of payment only in respect of days worked by them for the Tribunal. As indicated to your predecessor Mr. McCarthy, Mr Healy reduced his fulltime commitment to the Tribunal, from in or about the end of January, 2011, (approximately seven weeks before publication of Part II of the Report), Mr Coughlan having left the Tribunal the previous year due to illness. Ms. O'Brien left the Tribunal immediately after the publication of the Report on 22<sup>nd</sup> March, 2011.
2. Having delivered the final part of the Report on 22<sup>nd</sup> March, 2011, I promptly initiated a process designed to put in place a facility for the reception and consideration by me of such applications for third party costs as may be made by affected persons. In this regard, having ascertained such persons as might have an entitlement, the Tribunal wrote to approximately 340 persons informing them that applications should be made in writing and contain the basis on which they believed they were entitled to such an Order, whether in whole or in part, together with any written submissions that they might wish to make on the matter. Of those with whom the Tribunal has communicated in this regard, over 200 have proceeded to make an application for costs. I commenced consideration of these applications, on a case by case basis as expeditiously as possible bearing in the mind the overall scale of matters to be considered and the factors involved in forming conclusions in relation to each individual application and I am at present, in conjunction with my not inconsiderable court commitments, continuing to assess such applications as have been received. To date, I have made 59 Orders in respect of costs covering approximately 79 persons. Of the Third Party Orders already made, the Tribunal has received bills of costs of approximately € 1.8 million. In addition to this sum, the Tribunal has received a bill of costs from an affected party, in the sum of approximately €1 million, which does not fall within the ordinary Third Party costs procedure. This matter is being dealt with directly by the Tribunal.

Having read a copy of the transcript, and bearing in mind the queries raised and matters discussed by the Public Accounts Committee in respect of Third Party Orders for costs, I believe it might be of assistance if I outline the procedure being undertaken by the Tribunal in this regard.


Upon making an Order for costs, a copy of that Order is forwarded to both the solicitors for the applicant and to the office of the Chief State Solicitor. Orders for costs state, inter alia, that the costs in relation to a particular applicant are to be taxed, in default of agreement. It is not a matter for me, as Sole Member of the Tribunal, to make an Order in favour of an applicant in a particular monetary sum. This task falls to be determined by the taxation process, whereby Third Party cost Orders are taxed, in default of agreement, by the Taxing Master in a particular sum.



As you will see from the above, I have to date considered and made Rulings in respect of approximately 40% of the Third Party applications for costs received by the Tribunal, which applications have varied considerably in terms of the overall scale of matters to be considered. With regard to the consideration by me of the balance of the Third Party applications for costs received, it is certainly my intention that the consideration by me of those remaining applications and the delivery of Rulings in that regard be concluded before the end of this year, if not considerably sooner.

It is my understanding that a legal cost department is to be set up within the State Claims Agency to deal with applications for Third Party costs. The Tribunal will, of course, make itself available to assist this agency in every way. Upon concluding the above mentioned process in respect of the remaining Third Party applications the Tribunal will continue with its dual approach of on the one hand assisting, in any way it can, to ensure that any taxpayer exposure to potential third party legal costs bills be minimised to the greatest extent possible consistent with just entitlements, and on the other to continue with the ongoing procedure of deconstruction and wind down in so far as it can at present, a procedure already commenced and primarily under the direction of the Tribunal solicitor.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Michael Moriarty', written over a horizontal line.

**Michael Moriarty**  
**Sole Member**