



Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters

Established by the Minister for Justice and Equality under the Tribunals of Inquiry (Evidence) Act 1921, on 17th February 2017 by instrument

The Hon Mr Justice Peter Charleton

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Ruling as to costs application of Inspector Pat O'Connell

The tribunal sat on Thursday 16 May 2019 to hear an application for the tribunal to discharge the costs of Inspector Pat O'Connell from public funds. This is the tribunal's ruling on that application.

Law as to costs at a tribunal

Section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979 gives a tribunal express power to make an order for costs (either in favour of or against a party to the tribunal) when the tribunal is "of the opinion that, having regard to the findings of the tribunal and all other relevant matters there are sufficient reasons rendering it equitable to do so." Section 6 of the 1979 Act was considered in *Goodman International v Hamilton*.¹ Hederman J in his judgment said it was clear that the various amendments contained in the 1979 legislation were made "to give tribunals set up under the relevant legislation further efficacy."² McCarthy J, in his judgment, said that the 1979 Act as a whole "must be construed as subject to the constitutional framework and in particular involving fair procedures."³ A tribunal is not a contest between parties. It is a public inquiry that is called by the Oireachtas into matters of public moment. A person represented before a tribunal is there because he or she has something to answer to, or is a witness to a public issue, or is an expert. If a person claims that some dreadful wrong has been committed by a public institution, the Oireachtas is the party setting up the inquiry. If a person sues the public institution, that individual is a litigant. Costs are awarded at the discretion of the court depending on the outcome. If the person is a witness at a tribunal, he or she is there because of what he or she said. That person is obliged to tell the truth, in accordance with an oath or affirmation. To fail to tell the complete truth is to put the public inquiry nature of the tribunal in jeopardy of not finding where the truth lies. Tribunal costs are not dependent on whether a person did something wrong but rather on cooperation, central to which is telling the truth. As McCarthy J said:

¹ [1992] 2 IR 542.

² [1992] 2 IR 601.

³ [1992] 2 IR 605.

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 "findings of the tribunal" should be read as 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.⁴

The above fits in with the rationale behind costs orders in the first place. In litigation, for the reasons set out above, costs orders follow the event, that is the finding of criminal or civil responsibility. But as tribunals are set up in the public interest by the Oireachtas, the public should bear the costs of same subject to what findings the tribunal makes about the conduct of a particular party before it. Such reasoning is consistent with what Denham J said in *Murphy and Others v Mahon and Others*⁵ as follows:

Ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds. However, this may be lost if the party fails to cooperate with the tribunal. Thus a chairman has to consider the conduct of, or on behalf of, a party before a tribunal. The power to award costs is affected by lack of cooperation, by non-cooperation with a tribunal. Non-cooperation could include failing to provide assistance or knowingly giving false or misleading information.

Fundamentally the issue is whether a party has cooperated with a tribunal so as to be entitled to his or her costs. A person found to be corrupt who fell on his sword and fully cooperated with a tribunal would be entitled to assume, unless there were other relevant factors, that he would obtain his costs. This is to facilitate the running of a tribunal.⁶

A subsequent amendment was made to section 6 of the 1979 Act by the Tribunals of Inquiry (Evidence) (Amendment) Act 1997. This added to section 6 of the 1979 Act by providing what "relevant matters" a tribunal could have regard to when making orders for costs. The relevant matters include the terms of reference of the tribunal, failing to co-operate with or provide assistance to the tribunal, or knowingly giving false or misleading information to the tribunal. Section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979 which deals with costs now reads as follows:

Where a tribunal, or, if the tribunal consists of more than one member, the chairman of the tribunal, is of the 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 co-operate 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 chairman, as the case may be, may by order direct 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:

⁴ [1992] 2 IR 605.

⁵ [2010] IR 136; see also dicta of Hardiman J at paragraph 176 of the judgment, page 189.

⁶ *ibid* at 164; see also Fennelly J at paragraph [358], at 229-330.

(b) incurred by the tribunal, as taxed as aforesaid, shall be paid to the Minister for Finance by any other person named in the order.

The effect of the above amendment was considered by the Supreme Court in *Murphy and Others v Mahon and Others*.⁷ Here an order for costs was quashed on the basis that the tribunal made findings of obstruction, hindering and substantive findings of corruption which are criminal offences and used same to ground a costs order. As to whether the 1997 amendment changed the view held up to then that the phrase the "findings of the tribunal" did not mean the findings of the tribunal relating to the subject matter of the inquiry but rather the conduct of the parties before the tribunal, the court was of the view that it did not. In this regard Fennelly J said at paragraphs 125 to 127 as follows:

If it be the case that the amendment to s. 6(1) has the effect of investing in the Tribunal the power to refuse to award costs by reason of the substantive findings it has made, it is difficult to see how its findings could any longer be described as being devoid of legal consequence, made in *vacuo* or sterile. I cannot accept the submission made on behalf of the defendants that the necessary intervention of the Taxing Master or of processes of execution alters that fundamental fact. It is incumbent on this court to address, only in the last resort, a question as to the constitutional validity of a statute. To that end, the court must, so far as the words used by the legislature so permit, interpret those words so that they do not conflict with the Constitution. In the present case, that task is simplified by the availability of the judgments in *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542. The link created by s. 6(1) of the Act of 1979, as interpreted by the Tribunal and as upheld by Smyth J., appears to empower the Tribunal to penalise a witness before it in respect of costs by reason of its substantive findings. Clearly, this court, when delivering judgment in that case did not contemplate any such possibility. The *dictum* of McCarthy J. avoids conferring that power on the Tribunal. If this court had thought otherwise, the result of *Goodman International v. Mr. Justice Hamilton* might well have been otherwise. At the very least, the reasons given by Finlay C.J. would of necessity have had to be different.

The Oireachtas can be taken to have been aware in 1997 of the decision in *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542. If the legislature had intended to negate the effect of the judgment of McCarthy J., it could have adopted clear wording to that effect. In fact, it has left intact the words which were interpreted by McCarthy J. I agree that if the section, in its present form, were the only matter to be interpreted, it is at least open to the meaning that the Tribunal may have regard to its substantive findings when deciding on costs. The matter is not, however, *res integra*. This court has said, *per* McCarthy J., that a tribunal may not have regard to its substantive findings when deciding on costs. The words which he interpreted are still in this section. The additional words interpolated in 1997 do not inevitably reverse the principle enunciated by the court in 1992. It is possible, without doing violence to language, to interpret the words in parentheses as qualifying both "the findings of the Tribunal" and "all other relevant matters". In the light of the decision in *Goodman International v. Mr. Justice Hamilton* and the obligation to interpret in conformity with the Constitution, I think that is the correct interpretation.

⁷ [2010] IR 136.

I am satisfied, therefore, that the Tribunal, in making a decision as to whether to award costs is not entitled to have regard to its substantive findings on the subject matter of its terms of reference

It is accepted by all the parties making submissions that deceit before a tribunal can entitle it to discount an award of costs or to refuse costs to a party. In that regard, a tribunal report should not be parsed or analysed to seek gradations of acceptance or rejection of a witness's evidence. If evidence is rejected but not described specifically as mistaken, it comes within the comment of Geoghegan J in *Haughey v Moriarty*⁸ as follows:

As the question of costs does not really arise yet, I am reluctant to make any comments on it but as it has featured so prominently in the arguments I think I should say this. In my opinion, power to award costs under the Act of 1997 is confined to instances of non-co-operation with or obstruction of the Tribunal but that of course would include the adducing of deliberately false evidence and that is why the statutory provision specifically requires regard to be had to the findings of the Tribunal as well as all other relevant matters. However, I merely express that view by way of *obiter dicta*...⁹

It is part of the exercise of judicial restraint not to take the character of a witness beyond what is necessary to the decision. Instead a clear choice as between evidence is to be made, or in accepting as true or rejecting evidence. For a judge, and tribunal chair-people are judges or retired judges in modern times, to say that evidence is rejected or not accepted is to indicate that that test is met. If testimony is described as mistaken or as a failure of recollection, then the test is not met. In construing a tribunal report, the entire report needs to be considered to give the necessary context.

Tribunal letter of 18 October 2018

On 18 October 2018, the tribunal wrote to the solicitors representing Inspector Pat O'Connell as follows:

Dear Mr Hegarty,

We refer to previous correspondence and to your representation before the tribunal. The report of the tribunal was published on 11th October 2018 and you have been furnished with a copy of the report on behalf of your client or clients. The tribunal report, in any event, appears on www.disclosuretribunal.ie and has done since publication.

The tribunal intends dealing with any issue as to legal costs arising from representation before the tribunal at the earliest possible time. Accordingly, the tribunal would be obliged if you would indicate the following:

1. Whether your client or clients seek an order for costs from the tribunal;
2. Whether your client or clients intend seeking an order for costs against any other party or parties to the tribunal - in which case please identify that party or those parties;

⁸ [1999] 3 IR 1.

⁹ *ibid* at 14.

3. Whether your client or clients intend making submissions that any other party or parties should not receive costs or that such costs ought to be reduced to a stated percentage of costs;
4. In the case of paragraphs 1 and 2 above, please furnish brief submissions setting out the basis upon which your client or clients argue that there is an entitlement to such orders;
5. In the case of paragraph 3 above, please furnish brief submissions as to why such other party or parties should not receive costs or should only receive a stated percentage of their full costs.
6. In all such submissions, please state clearly the facts, circumstances and principles of law upon which you propose to rely.

The tribunal now regards it as essential that all orders related to its work should be finalized. The tribunal would therefore be much obliged to receive submissions within 21 days from the date of this letter.

Yours truly,

Elizabeth Mullan
Solicitor to the Tribunal

18th October 2018

Submissions as to costs

By letter dated 4 December 2018, the solicitors on behalf of Inspector Pat O'Connell sought costs in these terms:

INTRODUCTION

Inspector Pat O'Connell was classified as a "C" witness in relation to the above module.

INSPECTOR O'CONNELL'S EVIDENCE

Inspector O'Connell's evidence to the the (sic) Tribunal was of fundamental importance in resolving important issues of fact having regard to the terms of reference of this module.

Inspector O'Connell gave evidence on day 15. His evidence was not only relevant in relation to the allegations he personally faced but was also relevant in relation to the overall context of events surrounding the allegations that within An Garda Síochána there were attempts to entrap or falsely accuse Sergeant McCabe

His evidence was frank and detailed. He co-operated at all times with the work of the Tribunal and dealt with each question from the Tribunal legal team and from any party present at the Tribunal. In advance of the public hearings, he assisted the Tribunal in its investigation:

- a) By making extensive discovery of documentation relevant to this module.
- b) Submitted three comprehensive statements to the Tribunal in relation to the policing duties he carried out during the relevant period with particular emphasis

on his treatment of Sergeant McCabe while he was stationed in Baileboro District.

During the course of his evidence Inspector O'Connell was queried on issues of fundamental importance by Counsel for the various parties:-

1.1 Allegation of Rape

During the course of Inspector O'Connell's evidence he gave specific detail in respect of the thoughts of members within the Baileboro district as to the validity of the allegation of rape against Sergeant McCabe.

1.2. Erroneous Report

During the course of Inspector O'Connell's evidence he gave specific detail in respect of the Erroneous Report and the Garda response once it became apparent, including communications with Tulsa.

1.3. Delay in reporting mistake

During the course of Inspector O'Connell's evidence he gave specific detail in respect of the delay in reporting this mistake to Assistant Commissioner Kenny.

1.4 Email communications from Fiona Ward

During the course of Inspector O'Connell's evidence he gave specific detail in respect of the correspondence he received from Fiona Ward on 28 July 2014.

1.5 Assistant Commissioner Kenny.

Inspector O'Connell provided direct evidence in respect of his knowledge of the role Assistant Commissioner Kenny played once he received the information in respect of the validity of the allegations against Sergeant McCabe.

1.6. Contact with various government agencies.

During the course of Inspector O'Connell's evidence he gave specific detail on contact between An Garda Síochána and Tulsa. He gave direct evidence in respect of the attitude within An Garda Síochána and the general practice of treating the different branches of the HSE as being solely Tulsa.

Queries from the Chairman

During the course of his evidence Inspector O'Connell was directly asked a number of queries by Mr. Justice Charleton.

1.7. Queries in respect of the mood in Baileboro Garda Station

During the course of Inspector O'Connell's evidence the Chairman sought specific clarification from him in respect of the mood within the Baileboro Garda district in April/May 2014. Inspector O'Connell gave extensive detail in respect of the fact that it was hugely divisive in Baileboro at that time [footnote reading as follows: "line 21 page 101 to line 21 page 104 Transcript day 15."]

1.8. Queries in respect of attitudes of Garda members to Sergeant McCabe

During the course of Inspector O'Connell's evidence the Chairman sought specific detail in respect of local Garda member's attitude to Sergeant McCabe.

1.9. Queries in respect of local Garda managements attitude to Sergeant McCabe

During the course of Inspector O'Connell's evidence the Chairman sought specific detail in respect of local Garda Management attitude to Sergeant McCabe.

1.10. Queries in respect of the erroneous report

During the course of Inspector O'Connell's evidence the Chairman sought specific detail in respect of the response of Senior Garda Management, once they became aware of the error in the report.

1.11. Queries in respect of An Garda Siochána members reservations

During the course of Inspector O'Connell's evidence the Chairman sought specific detail on whether members of An Garda Siochána had reservations in dealing with this matter, due to the risk of being embroiled in the controversy

THE TRIBUNAL REPORT

The Tribunal, in its Third Interim Report relied upon Inspector O'Connell's evidence to determine a wide variety of contested allegations. A number of examples are set out above:

Mr Justice Charleton's commentary

Mr Justice Charelton in his report praises Inspector O'Connell for giving refreshingly direct evidence in respect of the working environment within the Baileboro Garda District. He quotes Inspector O'Connell's evidence extensively in his report:-

“Yes, the mood would have been—and if I can go back even before that ... in 2007 and '8 in particular, the issues that Sergeant McCabe were raising, I would have had knowledge of those because of my direct involvement as a training sergeant, so I would have been familiar with the issues that he was raising. That certainly there was— it was hugely divisive in Bailieboro then at that time. Complaints started to be made. A blame- game essentially emanated between local management and Sergeant McCabe, in my view, and in April/May 2014 the mood was that it had escalated, and it certainly was a case that, you know, nobody knew where this was going to end, and there was probably a reluctance to get involved, certainly, you know, to approach Sergeant McCabe about anything, I would be of the view ... I guess Sergeant McCabe felt he had no option but to pursue it through those avenues because he had—there was avenues that had been tried at local level and had failed ... Like, there is no doubt, I mean, that there's huge negativity been cast on the organisation, and there is a lot of very good work still going on behind the scenes... In terms of Maurice bringing it to that level, my own view on it was, listen, the man feels that he needs to bring — that he needs to bring it to that route, then obviously he feels that he is being forced into that route. I mean, there is a certain amount ... of information relating to this ... There would have been a lot of people who wouldn't have been happy. And even, like, I mean, when the initial divisiveness in Bailieboro, I could sense that when I used to go [there] as a training sergeant, that there was a divide there, and obviously people wouldn't have been happy that this was casting so much negativity on the organisation. That would be a given” (footnote reading as follows: Page 56 Third Interim Report of the Tribunal of Inquiry into Protected Disclosures made under the Protected Disclosures Act 2014 and certain other matters.)

Justice Chareilton also relied on Inspector O'Connell's direct evidence in respect of attitudes to Maurice McCabe within An Garda Siochana once the issue rose to national prominence. He again quotes Inspector O'Connell's evidence in his report in respect of this issue:-

"Well, from a personal perspective ... and I can only give you from a personal perspective, there would certainly have been a reluctance and an element of fear that if you made contact, that you were going to find yourself embroiled into further controversy, and that was a genuinely-held fear at that time, because the situation was now gone to national prominence at Commissioner level, and there was a reluctance and a fear, a general fear, that if you contacted Sergeant McCabe you might end up embroiled in something that you had nothing to do with".

CONCLUSION

In the circumstances, it is respectfully submitted that Inspector O'Connell is entitled to an order for costs of his legal representation.

DATED: 4 December 2018

SIGNED: Reddy Charlton Solicitors, 12 Fitzwilliam Place, Dublin 2

Tribunal gives notice as to concerns

In accordance with the requirements of natural justice, the tribunal gave notice of its concerns as to why it might consider not awarding Inspector Pat O'Connell costs or only a percentage of his costs. That was done by letter dated 8 May 2019 and was in the following terms:

Dear Mr Hegarty,

Thank you for your submission on costs received on the 4th of November 2018. The tribunal is presently considering same. In accordance with the case law in relation to any finding with regard to your client's co-operation with the tribunal which may impact on costs and which the tribunal may make, I am writing to you on behalf of the tribunal and inviting you to make submissions in relation to same.

As you are aware, section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1997 provides as follows:

"(1) Section 6 of the Tribunals of Inquiry (Evidence) Amendment Act 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 co-operate 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;”

The Supreme Court (Denham J.) in *Murphy v Flood* [2010] 3 IR 136 and others has held as follows:

“30. Further, section 6 of the act of 1979, as inserted by section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997, gives to the statutory power in relation to costs.

This includes a specific reference enabling regard to be had to a failure to co-operate with the tribunal...

37. The power and authority of the Tribunal is limited to that given to it by the terms of reference and the law, and so the tribunal may make findings of a lack of co-operation, from minor to major. I would not attempt a list of activities or omissions which may be deemed to be a lack of co-operation...”

Later in that judgment Ms. Justice Denham endorsed the following paragraph of Geoghegan J’s judgment in *Haughey v Mr Justice Moriarty and Others* [1999] 3 IR 1 (at page 14):

“As the question of costs does not really arise yet, I am reluctant to make any comments on it but as it has features so prominently in the arguments I think I should say this. In my opinion, power to award costs under the Act of 1997 is confined to instances of non-co-operation with or obstruction of the Tribunal but that of course would include the adducing of deliberately false evidence and that is why the statutory provision specifically requires regard to be had to the findings of the Tribunal as well as other relevant matters”;

Furthermore, commencing at paragraph 63 of the judgment, Ms. Justice Denham said as follows:

“...I am of the opinion that the issue for a chairman is whether a party has co-operated with a tribunal.

Ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds. However, this may be lost if the party fails to co-operate with the tribunal. This a chairman has to consider the conduct of, or on behalf of, a party before a tribunal. The power to award costs is affected by lack of co-operation, by non-cooperation, with a tribunal. Non-cooperation could include failing to provide assistance or knowingly giving false or misleading information.

Fundamentally the issue is whether a party has co-operated with a tribunal so as to be entitled to his or her costs.”

In view of the above, the position would appear to be that the duty to co-operate with a tribunal includes the duty to give truthful evidence to the tribunal and that the giving of untruthful evidence to the tribunal is something the tribunal can have regard to in making any order as to costs.

As you are aware the third interim report of the tribunal was published in October 2018. The following paragraphs appeared at pages 6 to 7 thereof:

“The Tribunal is exercising the High Court discretion in relation to costs, as limited by that principle and informed by the relevant legislation.

Truth in that regard remains paramount. Even though a person is required in the public interest to appear and testify as to matters of public importance before a tribunal of inquiry, those giving evidence are still obliged to be witnesses of truth. If a person has engineered a situation unfairly or deceitfully which results in public expense of a tribunal of inquiry, that fact should be capable of being reflected in a costs order. Where a person makes serious and unjustifiable allegations against another party to the tribunal, an order as between those parties may be made, allowing also for an order, if appropriate, in a proportionate way against the Minister for Finance.”

In relation to whether or not your client co-operated with the tribunal by telling the truth, the following would appear to be relevant:

- The issue as to whether or not an email was received from Fiona Ward of Rian, which email provided contact details for a TUSLA social worker. The tribunal said as follows: “Inspector O’Connell claims to have been busy, transferring out of the district and celebrating that with a gathering, and says that he perhaps deleted the relevant email. The tribunal does not accept his evidence in this respect.” (page 94).

The tribunal is presently considering what, if any, portion of costs should be ordered to be paid to you and in light of the above is inviting you to make oral submissions prior to making any decision on the matter.

To that end a hearing has been convened for Thursday the 16th of May next at 10 am at the Hugh Kennedy courtroom at the Four Courts.

Yours truly,

Elizabeth Mullan
Solicitor to the Tribunal

8th May 2019

Further submissions as to costs

Further written submissions as to costs dated the 15th of May 2018 (sic) were received by the tribunal. On behalf of Inspector Pat O’Connell the following was said:

Whilst it is acknowledged that the Tribunal did not accept Inspector O’Connell’s evidence with regard to this issue, it is respectfully submitted that Inspector O’Connell was not knowingly untruthful or misleading. Inspector O’Connell’s evidence in relation to this discrete issue was his honest recollection of what occurred. His intention was not to be untruthful or deceitful. Indeed, adopting the words of the Chairman, from the above quotation, he was not trying to engineer a “a situation unfairly or deceitfully” and this suggestion has never been made.

Hearing of 16 May 2019

The tribunal held an oral hearing on the issue of costs and heard representations on behalf of Inspector Pat O'Connell. The transcript of the hearing is on the tribunal's website at www.disclosuretribunal.ie and should be considered in full as to the ruling in this case.

Decision

The issues relevant to Inspector Pat O'Connell are those stated in the tribunal's letter of 8 May 2019 but should again be repeated:

The issue as to whether or not an email was received from Fiona Ward of Rian, which email provided contact details for a TUSLA social worker. The tribunal said as follows: "Inspector O'Connell claims to have been busy, transferring out of the district and celebrating that with a gathering, and says that he perhaps deleted the relevant email. The tribunal does not accept his evidence in this respect." (page 94).

For the reasons set out above, evidence which is mistaken remains evidence which does not impact on entitlement to costs. Evidence which is rejected does.

For Inspector Pat O'Connell the argument was made that unless someone is described as a perjurer, the tribunal cannot discount costs. This is about cooperation, which requires all of the truth. It was also said that this was merely a case of bad memory and preferring the evidence of another party and that the tribunal specifically noted how "refreshing" the evidence of that witness was. No more need be said than what was in the report. It is unnecessary to repeat the report as reading it in full is required for the appropriate context. It is on the tribunal's website at www.disclosuretribunal.ie and may be read there.

It is just unacceptable to testify as to the issue above in the way that Inspector O'Connell did. But, there was his other evidence and the revelation of how people dealing with Sergeant Maurice McCabe within the gardaí actually felt. This evidence was refreshing and clearly true. There was very little of this kind of evidence; Superintendent Cunningham was another case in point but further analysis is unnecessary. Thus, this latter point as to assistance to the tribunal has validity and justifies the tribunal in awarding some costs. Doing the best that is possible and in the knowledge of having sat through all of the evidence and having considered all of the documents, in the context of the report and of the entirety of this document and the concerns therein expressed, taking all of the factors into account, in terms of benefit as well as of detriment, the tribunal is justified in awarding Inspector Pat O'Connell 80% of his costs. It should also be pointed out that he was well and responsibly represented as part of a group of gardaí of middle rank and that no issue as to costs arises there.

All of the costs rulings of the tribunal are on a party and party basis, no other. In default of agreement on costs, same are to be referred to taxation.

Approved 31 July 2019
