

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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SEANAD ÉIREANN ON 16 FEBRUARY 2017

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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON THURSDAY, 29TH JULY 2021 - DAY 155

155

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

GWEN MALONE STENOGRAPHY
SERVICES

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4. DETECTIVE INSPECTOR MICHAEL COPPINGER
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6. RETIRED DETECTIVE SUPERINTENDENT DECLAN MULCAHY
7. ASSISTANT COMMISSIONER MICHAEL FINN
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22. MR. ALAN MULLIGAN, ACTING EXECUTIVE DIRECTOR
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26. INSPECTOR BRIAN DOWNEY
27. MONICA CARR, HEAD OF DIRECTORATE, HUMAN RESOURCES AND PEOPLE DEVELOPMENT
28. MR. BRIAN SAVAGE
29. CHIEF SUPERINTENDENT ANNE MARIE CAGNEY
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33. CHIEF SUPERINTENDENT MATT NYLAND
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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 29TH JULY
2 2021:

3
4 **CHAIRMAN:** Good morning everybody who is online and
5 available. Mr. Barnes, are you going to open the
6 proceedings or what do you want to say? 10:28

7 **REGISTRAR:** I am going to leave it to you.

8 **CHAIRMAN:** Okay. Have we got everybody online? well,
9 we will see as we go along.

10 10:29
11 I would like to invite people to make applications for
12 costs, but before I do that, can I just clarify, is
13 there anybody who has any application other than a
14 simple application for costs? In other words, is any
15 party seeking to apply for costs as against any other 10:29
16 party to the proceedings? So, if I don't hear any
17 application of that kind, I will simply proceed through
18 the list of parties about whom we have been notified
19 and who intend to apply.

20 10:30
21 So, there being no such applications, I will proceed.
22 First of all, have I got Mr. Kelly? Mr. Matthias Kelly
23 online and available? All right, can I just check, is
24 anybody available online? Is there anyone out there
25 looking for -- 10:30

26 **MR. KELLY:** Chairman, can you hear me now?

27 **CHAIRMAN:** Yes, Mr. Kelly, good morning. Sorry, not
28 only can I hear you, I can see you Mr. Kelly. Yes.

29 **MR. KELLY:** Good morning, thanks very much. On behalf

1 of Garda Keogh I make an application that his costs be
2 made out of public funds, that's for his solicitor,
3 myself as senior counsel, and the two junior counsel
4 also instructed.

5 **CHAIRMAN:** Yes. Mr. Kelly, are you seeking an order 10:31
6 specifying the number of counsel?

7 **MR. KELLY:** It would be of assistance, Chairman, I
8 think in due course.

9 **CHAIRMAN:** Yes. Well subject to what Mr. McGuinness or
10 Mr. Murrinan may say about the matter, I don't believe, 10:31
11 Mr. Kelly, I have jurisdiction to direct the Taxing
12 Master in respect of the particular number of counsel.

13 **MR. KELLY:** Yes.

14 **CHAIRMAN:** If I have such jurisdiction I am happy to
15 make an order that covers your solicitor, yourself and 10:31
16 your two junior colleagues. If I have the power, I
17 will make that order. Assuming I don't have the power,
18 I will make a recommendation that the taxation should
19 proceed on the basis of solicitor and three counsel as
20 described. So I will make that recommendation. I 10:32
21 propose, Mr. Kelly, that if an issue arises on which
22 the Tribunal can assist or can make an order, then if I
23 say liberty to apply in respect of any such issue, I
24 think that probably covers the situation.

25
26 Let me just check, let me just confirm with
27 Mr. McGuinness. Is that your understanding,
28 Mr. McGuinness, what I have just explained to
29 Mr. Kelly?

1 **MR. MCGUINNESS:** Yes, Chairman. The issue is, of
2 course, one of reasonableness and the Tribunal has no
3 explicit function in determining those matters, but as
4 long as it provides for the costs of solicitor and
5 counsel in a general way, I think that should suffice. 10:33
6 I mean, I should remind the Tribunal perhaps that at an
7 earlier stage when the Tribunal was intent on
8 commencing the hearings in June of 2019, obviously
9 Garda Keogh had some different counsel involved and I
10 think he had two seniors at that stage. The Tribunal 10:33
11 will know that we served a very considerable amount of
12 it documentation at that stage. It necessitated an
13 adjournment of the commencement and further voluminous
14 documentation was served and at that stage the
15 representation appeared to go from two senior and one 10:33
16 junior, to one senior and two junior, which appeared
17 completely reasonable in the circumstances, having
18 regard to the comity of arms.

19 **CHAIRMAN:** So there's no difficulty, Mr. Kelly, about
20 our view as to what's appropriate and reasonable. The 10:33
21 only question is whether I have jurisdiction to
22 actually make the order. So I'll make an order for
23 your costs. As I said, if I have the power I'll do so;
24 if I don't, I will make a recommendation to that
25 effect. In the event of any issue arising on which the 10:34
26 Tribunal can have a say, liberty to apply.

27 **MR. KELLY:** I am very much obliged, Chairman, thank you
28 very much.

29 **CHAIRMAN:** Thanks very much, Mr. Kelly. Now, I think

1 Ms. McGrath, Mr. Patrick McGrath, is he around, or
2 Mr. Kane?

3 **MR. KANE:** Chairperson, I am going to move the
4 application, if that is agreeable.

5 **CHAIRMAN:** Certainly, absolutely. 10:34

6 **MR. KANE:** Chairperson, I think the correspondence the
7 Tribunal received indicated there was an
8 application was made --

9 **CHAIRMAN:** Sorry Mr. Kane, have you grown a beard since
10 we last saw you. 10:35

11 **MR. KANE:** I have, Chairman.

12 **CHAIRMAN:** Good man. Sorry. Mr. Kane, you're looking
13 for your costs.

14 **MR. KANE:** Yes, Chairperson. Just one clarification, I
15 think the letters indicated that we were seeking costs 10:35
16 on behalf of Fergal Greene, Stephanie Treacy, both of
17 whom appeared at the substantive part of the Tribunal.

18 **CHAIRMAN:** Yes.

19 **MR. KANE:** And also David Turner. Can I just say,
20 Chairperson, there was also two other witnesses or 10:35
21 individuals from whom statements were requested, and
22 that's Thomas Kelly and Brian Lynskey. So I am
23 applying for the costs of all those individuals,
24 Chairperson.

25 **CHAIRMAN:** So you're applying for an order in each of 10:35
26 those cases?

27 **MR. KANE:** Yes, Chairperson.

28 **CHAIRMAN:** I think it's appropriate to make a separate
29 order for each such person. Let me just see what

1 Mr. McGuinness has to say about Mr. Lynskey, who is the
2 other person you mentioned?

3 **MR. KANE:** Thomas Kelly.

4 **CHAIRMAN:** Mr. Kelly and Mr. Lynskey, any issue there,
5 Mr. McGuinness? 10:36

6 **MR. MCGUINNESS:** No, Chairman. I think it is
7 appropriate to say that we did require the submission
8 of statements from them and it was appropriate for them
9 to get the appropriate legal advice at that time.

10 **CHAIRMAN:** Very good, such costs are appropriate to be 10:36
11 decided by the Taxing Master, Mr. Kane, there is no
12 difficulty about that. I will make the orders in each
13 of those cases.

14 **MR. KANE:** Chairperson, in the case of Fergal Greene
15 and Stephanie Treacy, who had a substantial 10:36
16 involvement, could I ask the Tribunal to make an order
17 in terms similar to those which you have granted to
18 Mr. Kelly, please?

19 **CHAIRMAN:** That is for senior counsel and two junior
20 counsel. 10:36

21 **MR. KANE:** Yes, if it please you, Chairperson.

22 **CHAIRMAN:** Mr. McGuinness?

23 **MR. MCGUINNESS:** Yes, Chairman, obviously --

24 **CHAIRMAN:** It is a less obvious case, Mr. Kane, to be
25 perfectly honest, it is a less obvious case than 10:37
26 Mr. Kelly's because they were concerned right through
27 from the very beginning with a vast volume of
28 materials.

29 **MR. KANE:** Yes.

1 **MR. MCGUINNESS:** I don't want to usurp the function of
2 the chief legal costs adjudicator at all in any sense.
3 Obviously from the point of view of a Tribunal
4 generally there's a large degree of uncertainty about
5 when a witness will be taken. 10:37

6 **CHAIRMAN:** Sure.

7 **MR. MCGUINNESS:** When their interests are affected by
8 the appearance of other witnesses, and obviously the
9 necessity to be vigilant. Those parties who have been
10 granted representation must be vigilant about the 10:37
11 transferring of those rights.

12 **CHAIRMAN:** Thank you very much. Mr. McGuinness is
13 indicating a degree of sympathy for you, Mr. Kane. I
14 will say this: Look, I will make the order for costs
15 in each of the cases, I think I am better not saying 10:37
16 anything about the number of counsel. If you have a
17 particular issue on which the Tribunal can help, come
18 back, but I would have more difficulty, as I said, I
19 would have more difficulty in any specification than I
20 would have had in -- but Mr. McGuinness says, look, 10:38
21 taking the way Tribunal operates and counsel's
22 arrangements and everything else, he says it is
23 reasonable and I go along with that. In other words, I
24 adopt Mr. McGuinness's observations, which are very
25 much in your favour. 10:38

26 **MR. KANE:** Yes, Chairperson. Thank you very much for
27 that, Chairperson.

28 **CHAIRMAN:** Thanks very much. Now, Ms. O'Rourke, are
29 you there? I can see you, Ms. O'Rourke, you want to

1 apply for costs.

2 **MS. O'ROURKE:** Yes, Chairperson. I appeared with
3 Mr. Dockery and Ms. Gleeson, instructed by Reddy
4 Charlton in respect of eight parties and I am applying
5 for the costs of each of those parties. I will just 10:38
6 identify them to you, Chairperson.

7 **CHAIRMAN:** Yes.

8 **MS. O'ROURKE:** They are Inspector Farrell, Inspector
9 Baker, Sergeant Harron, Sergeant Lyons, Sergeant Keane,
10 Sergeant Moylan, Sergeant Monaghan and Detective 10:39
11 Sergeant Martin. And Chairperson, I am referring to
12 them under their current roles.

13 **CHAIRMAN:** Of course, that is no difficulty and that is
14 sensible, Ms. O'Rourke.

15 **MS. O'ROURKE:** In that regard, I would also ask, 10:39
16 Chairperson, that it was reasonable for each of these
17 parties to engage, both solicitors and senior counsel
18 and junior counsel. I would ask insofar as possible
19 that the Chairperson would make a recommendation or, if
20 you have the power to do so, an order for two senior 10:39
21 counsel, Chairperson, for one junior and for the
22 solicitors.

23 **CHAIRMAN:** Okay.

24 **MS. O'ROURKE:** Chairperson, you will be aware, and
25 Mr. McGuinness has identified the evolving nature of 10:39
26 matters and the necessity to be vigilant.

27 **CHAIRMAN:** Yes.

28 **MS. O'ROURKE:** And also the cooperation which I
29 respectfully say was afforded by each of these eight

1 parties, Chairperson.

2 **CHAIRMAN:** There's no question in my mind,
3 Ms. O'Rourke, that you're entitled to your costs for
4 each of those parties. I think I would adopt the same
5 approach as I did with Mr. Kane's application. In 10:40
6 other words, I have adopted Mr. McGuinness's
7 observations in regard to the exigencies of appearing
8 in a Tribunal and the pressures that that puts, given
9 that it extends over a long period of time, with a very
10 large amount of material. So I will simply repeat, I 10:40
11 will simply adopt the same approach as I did with
12 Mr. Kane.

13 **MS. O'ROURKE:** Thank you, Chairperson. One slight
14 housekeeping matter and again, I think it may be the
15 same issue, Chairperson. I don't know if it is 10:40
16 necessary to certify, insofar as is required, for
17 stenographers or transcripts.

18 **CHAIRMAN:** I don't think I need to certify for that. I
19 am not so keen to get into an issue -- if I can leave
20 it. I don't want to trespass on the Taxing Master's 10:41
21 function. But, Ms. O'Rourke, if there is a big issue
22 you can get in touch with the -- your solicitor get in
23 touch with the Tribunal solicitor and we will try and
24 sort something out expeditiously.

25 **MS. O'ROURKE:** Thank you, Chairperson. 10:41

26 **CHAIRMAN:** Okay. Now, Mr. Carroll. Is Mr. Carroll
27 here.

28 **MR. CARROLL:** Yes, Chairperson.

29 **CHAIRMAN:** Yes, a similar application, Mr. Carroll, who

1 are your clients?

2 **MR. CARROLL:** Superintendent Noreen McBrien, I
3 represented with Mr. Ferry, junior counsel, instructed
4 by Carthage Conlon, solicitor. We only had myself and
5 one junior. 10:41

6 **CHAIRMAN:** Yes.

7 **MR. CARROLL:** So as far as the court or as far as the
8 Chair can make a recommendation of the reasonableness
9 of that, obviously Superintendent McBrien was heavily
10 involved, particularly in the earlier issues in the 10:42
11 case and some of the later issues, and I ask the Chair
12 that as far as a recommendation can be made, that it
13 was reasonable to have one senior and one junior
14 representing her interests before the Tribunal. I ask
15 that that recommendation be made. 10:42

16 **CHAIRMAN:** I have no difficulty with that, Mr. Carroll.
17 I make the order for costs and I have no difficulty
18 insofar as it's open, well, it's certainly open to me
19 to make a recommendation, I have no difficulty
20 whatsoever about that. I doubt there will be any issue 10:42
21 on that question, Mr. Carroll, I would be very
22 surprised if anybody raised an issue on that. Thanks
23 very much.

24 **MR. CARROLL:** Thank you.

25 **CHAIRMAN:** Now, Ms. Nolan. Is Ms. Nolan around? 10:42

26 **MS. NOLAN:** Chair, may it please you.

27 **CHAIRMAN:** Oh thanks very much. Thanks, Ms. Nolan.
28 Good morning. Ms. Nolan, who are you applying for
29 costs in respect of?

1 complex than the issues that had arisen in relation to
2 our other client.

3 **CHAIRMAN:** That was your call, I have no difficulty in
4 making those orders. And insofar as it is not open to
5 me to make an order, I will make a recommendation. I 10:45
6 think your approach, it seems to me, was entirely
7 reasonable and entirely justified. So that is my view
8 and recommendation and I have no difficulty in making
9 those orders.

10 **MR. CONNELLAN:** I am very grateful, Chairman, thank you 10:45
11 very much. Thank you.

12 **CHAIRMAN:** Now, Mr. McGarry, I think you are there
13 somewhere?

14 **MR. MCGARRY:** Yes, Chairman, thank you. I hope you can
15 hear me, Chairman. 10:45

16 **CHAIRMAN:** Loud and clear, Mr. McGarry.

17 **MR. MCGARRY:** Thank you, as you know, I appeared with
18 Mr. O'Connor, instructed by Costello Solicitors for
19 assistant former Assistant Commissioner Fanning and I
20 have the same application as Mr. Carroll made a couple 10:45
21 of moments ago.

22 **CHAIRMAN:** So ordered. Mr. McGarry, and same
23 recommendation insofar as it is required.

24 **MR. MCGARRY:** Thank you very much, Chairman.

25 **CHAIRMAN:** Now, Mr. Byrnes, where is Mr. Byrnes? 10:45

26 **MR. BYRNES:** May it please you, Chairman. As the
27 Tribunal will recall, I appeared in respect of Mr. John
28 Barrett, led by Mr. Seamus Clarke, and Felix McTiernan
29 from Noble Law Solicitors. I make a similar

1 application as --

2 **CHAIRMAN:** Similar order, similar recommendation.

3 **MR. BYRNES:** Thank you, Chairman.

4 **CHAIRMAN:** Now, I think have Mr. Groarke? Have I got

5 Mr. Groarke. 10:46

6 **MR. POWER:** Judge, that might be Conor Power.

7 **CHAIRMAN:** I am sorry, Mr. Power, my list -- I was

8 wondering what you were doing. Yes, Mr. Power, you're

9 looking for costs for --

10 **MR. POWER:** Chief Superintendent Aidan Glacken, 10:46

11 Chairman.

12 **CHAIRMAN:** I appreciate the situation, Mr. Power. Is

13 that your only client, the only person you're appearing

14 for here?

15 **MR. POWER:** Here today, it is, indeed, yes, this 10:47

16 morning.

17 **CHAIRMAN:** Very good.

18 **MR. POWER:** Junior counsel and solicitor. I don't mean

19 to talk over you, Chairperson.

20 **CHAIRMAN:** No, no, no, we're on the same wavelength, 10:47

21 Mr. Power. Order as sought.

22 **MR. POWER:** I am very much obliged, thank you very

23 much.

24 **CHAIRMAN:** Thank you very much.

25 **MR. POWER:** Good day. 10:47

26 **MR. MCGUINNESS:** Chairman, might I just intervene and

27 say that I have received a request from a colleague who

28 is in a slight bit of difficulty.

29 **CHAIRMAN:** Yes.

1 **MR. MCGUINNESS:** If one could disrupt the order and
2 take Mr. Meehan on behalf of the department.
3 **CHAIRMAN:** Certainly.
4 **MR. MCGUINNESS:** He just wants to outline the position
5 with regard to the Minister and her department in this 10:47
6 regard.
7 **CHAIRMAN:** Certainly. Mr. Meehan, where are you?
8 **MR. MEEHAN:** I am here, Judge, I don't know if you can
9 see me.
10 **CHAIRMAN:** I can, certainly, no problem. 10:47
11 **MR. MEEHAN:** I apologise to all my colleagues for
12 interrupting. I am here for the Minister for Justice,
13 Chairman.
14 **CHAIRMAN:** Yes.
15 **MR. MEEHAN:** I just wanted to outline that the Minister 10:48
16 for Justice won't be seeking her costs.
17 **CHAIRMAN:** Thank you very much.
18 **MR. MEEHAN:** I just wanted to outline that to the
19 court.
20 **CHAIRMAN:** Very appropriate. Thanks very much for 10:48
21 clarifying that, Mr. Meehan, it is an entirely proper
22 position to adopt. The Tribunal appreciates your
23 appearance and your submission and the position of the
24 Minister. Thank you very much.
25 **MR. MEEHAN:** Thank you, Chairman. 10:48
26 **CHAIRMAN:** That leaves Mr. O'Higgins, I think. Yes, I
27 see you there, Mr. O'Higgins.
28 **MR. MÍCHEÁL O'HIGGINS:** Thank you, Chairman. As
29 indicated -- sorry, I should indicate, I appear for the

1 Commissioner of An Garda Síochána and certain other
2 named Gardaí who appeared before this module.

3 **CHAIRMAN:** Yes.

4 **MR. MÍCHEÁL O'HIGGINS:** As indicated in correspondence
5 from the Chief State Solicitors, Chairman, and 10:49
6 consistent with previous modules, the Commissioner does
7 not intend to make an application for costs in this
8 matter.

9 **CHAIRMAN:** Thanks very much, Mr. O'Higgins. Thank you
10 for appearing to confirm that position, which the 10:49
11 Tribunal considers is entirely proper and appropriate
12 and appreciates your appearance today to confirm that
13 position. So, thank you very much indeed. So, no
14 order in respect of An Garda Síochána and those named
15 clients who are not seeking their costs. Thank you 10:49
16 very much.

17 **MR. MÍCHEÁL O'HIGGINS:** Thank you, Chairman.

18 **CHAIRMAN:** So, Mr. McGuinness, yes.

19 **MR. MCGUINNESS:** Chairman, I should just point out that
20 we had written to a number of other bodies from whom we 10:49
21 had sought either witness statements, documents or
22 other material, whether filed voluntarily or by way of
23 discovery, and I have in mind in particular the
24 policing authority.

25 **CHAIRMAN:** Yes. 10:50

26 **MR. MCGUINNESS:** with whom we engaged over a period,
27 who were very cooperative in that regard. They have
28 communicated with the Tribunal and have indicated that
29 they are not seeking any order for costs -

1 **CHAIRMAN:** Oh very good.

2 **MR. MCGUINNESS:** - from the Tribunal in that regard.
3 And again, I would just like to thank them for their
4 cooperation and their attitude.

5 **CHAIRMAN:** Basically, Mr. McGuinness, have we got 10:50
6 everybody that we have --

7 **MR. MCGUINNESS:** The remainder is GSOC then, Chairman.
8 And again, the Tribunal has not just in this module but
9 in other modules sought documentation, witness
10 statements and, where necessary, under the provision of 10:50
11 an order, GSOC have, of course, cooperated fully in the
12 conduct of our inquiries and assisted us in that
13 regard. Similarly, they have indicated that they are
14 not seeking an order for costs -

15 **CHAIRMAN:** Good. 10:50

16 **MR. MCGUINNESS:** - in respect of their matters. I
17 should also note that, of course, thanks to Chairperson
18 Ms. Justice Ring, she also provided investigators that
19 you had inherited from Judge Charleton's modules, which
20 were of great benefit to the Tribunal. 10:51

21 **CHAIRMAN:** Certainly, that is something that I think we
22 have acknowledged, at least I hope we have acknowledged
23 in the report but if and insofar as it isn't or isn't
24 adequately done, I certainly endorse what
25 Mr. McGuinness said about the assistance given to us by 10:51
26 the provision of investigators, but that's a separate
27 question.

28

29 Can I take it then, Mr. McGuinness, that every relevant

1 party who might have been engaged or might have
2 considered an application for costs, we have accounted
3 for everybody?

4 **MR. MCGUINNESS:** I believe so, Chairman.

5 **CHAIRMAN:** Very good. Thanks very much, people. Thank 10:51
6 you, Mr. O'Higgins, thanks very much Mr. Kelly. That
7 disposed of the proceedings. As I say, if there is any
8 issue on which the Tribunal's assistance is ultimately
9 required, we're not looking for our assistance to be
10 required, but in extremis and in default of any other 10:52
11 solution to the problem, liberty to apply, okay. Thank
12 you very much indeed. Thanks very much. Okay.

13
14 So that is the end of today's proceedings, thanks very
15 much, I am happy to say. Very good. 10:52

16 **MR. KELLY:** Bye.

17 **CHAIRMAN:** Thank you, Mr. Kelly, bye, thanks,
18 Mr. O'Higgins. We can close down the shop now at this
19 stage.

20 10:52

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