



**Tribunal of Inquiry
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment
and Local Government dated the 4th day of November 1997
as amended by Instrument dated the 15th day of July 1998

**Decision re submissions of
Mr. Garret Cooney S.C.**

OF

**THE SOLE MEMBER
Mr. JUSTICE FEARGUS M. FLOOD**

Wednesday 4th August 1999

Decision re submissions of Mr. Garret Cooney S.C.

Before considering Mr. Cooney's submissions of 14th July 1999, certain fundamental matters must be stated.

This is an Inquiry as to fact. The current phase of the Inquiry relates to matters precedent to and contemporaneous with the payment of a sum of money to Raphael Burke in the month of June 1989.

In that regard the Tribunal is concerned to ascertain as a matter of fact the input and activities of Mr. Gogarty in arranging for the sale of the lands described in the letter of 8th June 1989 on behalf of JMSE Ltd - the nature and extent of his instructions - the relationship (if any) of the said payment to the said sale. This Inquiry is the first step in a sequence of inquiries as to the circumstances which form part of how the said lands came to be granted planning permission for development by the planning authority.

The Tribunal is presently only interested in the said first step. It has been expressly so stated. It is not presently engaged in considering the broader picture which it will proceed to when this phase has been completed. It is not considering any form of activity, establishing wrongdoing on anyone's part. Its function is not prosecutorial. At the end of this phase/module and indeed as

a conclusion of the Inquiry as a whole, it will not make and does not have power to make any finding of liability, civil or criminal, against any individual or entity. The Tribunal is not engaged in any form of adversarial activity.

Mr. Cooney's assumptions for each one of his complaints is based on a fundamental fallacy - namely his clients are being accused of wrongdoing by the Tribunal. That is not so. The Tribunal repeats that it is concerned with a factual inquiry as to how certain events came to take place and factually why they took a particular form or sequence.

The impact of Mr. Gogarty, on this part of the factual inquiry is quite limited in both time and activity. In time it spans at most a period of 18 months from June 1988 to December 1999 or early 1990 at most. It relates in activity, to steps he took to effect the sale of the said lands on (according to him) the instructions of Joseph Murphy Senior and the circumstances and relationship to the said transaction of the payment of a sum of money to Raphael Burke. In the actual transcript, this evidence is mainly to be found in the first 7 volumes.

The adversarial factor which Mr. Cooney complains of was introduced by him as Counsel for JMSE and Associates and by his fellow Counsel, Colm Allen for Bailey/Bovale Ltd. in very virulent language. His colleague Mr. Cush said *"On the instructions of my client let's be quite clear Mr. Gogarty is a malicious and artful liar and that is the case which we will be putting to Mr. Gogarty Sir, but*

it will relate only to those matters which he has dealt with in his evidence to this Tribunal."

In reply I responded *"This is the defined issue here today as between you and Mr. Gogarty, he is an artful liar. You are delightfully expressive Mr. Cush."* Malicious and artful liar to which I replied *"Let me not in any way reduce the quality of your expression. Malicious and artful liar vis a vis his version of the events as he gives them. You don't give any other version at all. He simply is not telling the truth at all."*

There can be no doubt what were the instructions of Mr. Cooney and his colleagues. Mr. Gogarty's credibility was put in issue from the moment the Tribunal sat. The pursuit of this issue has operated to introduce a deeply adversarial aspect to the process. While this development was unfortunate, it is within Mr. Cooney's clients' absolute right to raise and pursue it. It will be an issue which the Tribunal will have to adjudicate upon.

Mr. Cooney and his clients cannot complain if the rebuttals from Mr. Gogarty and his representatives are equally virulent. He too is entitled to defend his integrity. It is my task at the end of the day to assess his credibility in the light of the evidence tendered and in the light of his response to the challenge to his credibility. It is regretted that some 14 or 15 days of evidence were essentially concentrated on this issue and indeed that a great part of the remainder of the 71 days of evidence, which we have heard had elements which related solely to this aspect of the matter.

In the light of the rather more fluid principles of the admissibility of evidence which apply to a Tribunal, matters pejorative but not necessarily relevant to the issue for the Tribunal have crept in. It is my duty as the sole judge of fact to excise from my consideration such extraneous matter in the same manner as I would as a trial judge in a criminal matter direct a jury to excise it from their consideration.

A perusal of the statements of Joseph Murphy Senior and Joseph Murphy Junior furnished to the Tribunal, manifestly establish that there is no doubt in the mind of either of Mr. Joseph Murphy Senior or Mr. Joseph Murphy Junior of the issues of fact in this case and of their response to Mr. Gogarty's allegations. In short, as far as Mr. Murphy Senior and Junior are concerned, the issues of fact which will have to be determined by the Tribunal are crystal clear and that clarity of the real issues in this section or phase of the inquiry will not in any way be enhanced by an opening statement in relation to paragraphs 1 to 4 of the Terms of Reference.

I am satisfied:-

- (a) That there is no real foundation for Mr. Cooney's complaints that the legal representation for Mr. Gogarty is *"acting in an auxiliary role to the Tribunal team"*. Mr. Gogarty's legal representatives have simply responded to the charges against Mr. Gogarty's integrity. If at any time that was any truth in Mr. Cooney's complaint then objection should have been taken to it at the time. This was not done.

- (b) There are no allegations made by the Tribunal against his clients. The Tribunal simply requires their account of the events in relation to the sale of the said lands and/or the connection (if any) of the payment to Raphael Burke to the said sale.
- (c) The history of the lands and the rezoning thereof are in no way relevant at this point in time to his presentation of his clients' case. The issue which his client has to confront in so far as it is an issue is manifestly defined by the evidence of Mr. Gogarty and he can be in no doubt as to what the precise position is in relation to his client in that regard.

Finally, virtually all the submissions made by Mr. Cooney have been the subject of prior rulings by the Tribunal and this is simply a re-visitation of those topics.

The rulings in question were made on the following dates: -

1. 4th November, 1998.
2. 12th January, 1999.
3. 20th January, 1999.
4. 7th July, 1999.

Feergus M. Flood

Sole Member of the Tribunal

4th August 1999