



June 21, 2007

Opening Statement of September 1999[Home Page](#)**Delivered 20th September 1999**[Disclaimer and Waiver](#)

Good morning ladies and gentlemen.

[High Court Orders](#)[Decisions on Costs](#)

Before resuming the taking of evidence I wish to draw attention to a number of matters:-

[Transcripts](#)[Terms of Reference](#)

On the 12th January last, I sat to hear the evidence of Mr. James Gogarty and related evidence. I made an opening statement on that occasion and in the introduction to that statement I said as follows:-

[Witnesses](#)[Notice Board](#)[Tribunal Personnel](#)[Representation](#)[Interim Report](#)[Second Interim Report](#)[Third Interim Report](#)[Fourth Interim Report](#)

"The purpose of today's public sitting is to hear, at the earliest appropriate opportunity, the evidence of Mr. James Gogarty, a person named by the Oireachtas in the Terms of Reference of this Inquiry, and also any related evidence. The Tribunal has decided, in view of Mr. Gogarty's age, his general condition of health, and the importance of insuring that his evidence is available to the Tribunal, that the Tribunal should sit in public and hear his evidence at an early stage of the proceedings of this Tribunal.

[Arlington Quarryvale Decisions & Rulings](#)

This course is neither unprecedented or unusual. Courts and Tribunals frequently make arrangements to take the evidence of particular witnesses at a time, or at a place, out of the usual sequence or place in which the evidence would normally be heard. This is but a particular example of the established practice of hearing evidence de bene esse.

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The Tribunal has decided that the evidence of Mr. James Gogarty should, in the public interest, be heard at this time. Mr. Gogarty has appeared in answer to the witness summons served on him by the Tribunal and I intend to hear his evidence directly."

I went on to outline the nature of the Tribunal, the procedure that the Tribunal intended to follow in relation to the calling of witnesses and the furnishing of statements of their intended evidence in advance, and a number of other matters. I then heard oral submissions from a number of parties before I proceeded to hear the evidence of Mr. Gogarty.

I delivered a decision on the submissions on the 20th January 1999, in which I said, at page 4, as follows:-

"The Tribunal has decided not to require its leading Counsel to make a comprehensive opening statement at this time detailing the circumstances that led to the establishment of this Tribunal, the issues of fact which have to be inquired into by the Tribunal and a resume of all the evidence intended to be called before the Tribunal.

The reason for this decision is plain and clear. The evidence

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national dail
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The Irish Examiner

Cork based
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of Mr. Gogarty is simply being taken out of turn so as to ensure that that evidence, whatever its merit, is available for future consideration by the Tribunal.

The Tribunal, in due course, may adopt to the extent it considers appropriate some of the more traditional aspects of procedure in relation to the calling of evidence in public at a Tribunal. It seems to me that the dicta of Mr. Justice O'Flaherty, in the Supreme Court, to the effect that "matters of procedure are the servants rather than the masters of justice" is an appropriate consideration. I know of no constitutional requirement that says that a Tribunal can only hear evidence in public when leading Counsel to a Tribunal has made a full opening. In addition, the personal circumstances of Mr. Gogarty are such that his evidence should not be further delayed...."

In a further ruling by me, on submissions made by Counsel for Bailey/Bovale and Counsel for Mr. Burke, I ruled on 7th July last, as follows:-

".... the Tribunal will proceed to deal with all the matters set forth in its Terms of Reference at the conclusion of the evidence relating to James Gogarty, at which time the precise details of the planning history of the lands in question will be dealt with. I have already ruled that the subsequent planning history of these lands is not material to the first module of evidence. Once the present module has been completed the Tribunal will then move to deal in public with all other aspect of the inquiry once the preliminary investigative stages have been completed. The present sequence of evidence is limited to dealing with the evidence of James Gogarty and related evidence only..."

Support - if support is needed - for the approach adopted by me in not requiring to the making of a detailed opening statement before commencing to deal with what has been described as "the Gogarty module", is to be found in the report of the Royal Commission on Tribunals of Inquiry - usually referred to as the Salmon Report - which stated as follows:-

"In its discretion the Tribunal will direct whether or not Counsel instructed on its behalf should make an opening statement indicating the progress which has been made in the investigation before the evidence is heard."

It is my intention, and has always been my intention, that at the commencement of the next module of evidence, leading Counsel to the Tribunal will make an opening statement in which the work of the Tribunal in relation to that module, and the evidence which will be called, will be outlined. In that opening statement Counsel will also outline, in a general way, the other areas of work being undertaken by the Tribunal.

I would like to take this opportunity to remind all of the parties who have been granted representation before this Tribunal, and their various legal representatives, that this is

a Tribunal of Inquiry into fact. It is not a lis inter partes. It is not a criminal prosecution. The purpose of the inquiry is to establish, on the balance of probabilities, what occurred in relation to the various matters set out in the Terms of Reference. There is nobody on trial here. However, a strongly adversarial approach has been demonstrated by some of the parties who have been granted representation. It is my earnest wish that this adversarial approach should cease because it is not assisting the Tribunal in its work. Any party to whom representation has been granted is entitled to robustly protect its interests here, but should do so in a spirit of co-operation with the Tribunal which seeks only to establish, as far as it is possible to do so, the truth or otherwise of these matters under investigation.

Persons granted representation should make full and frank disclosure of material evidence and documents and any failure to do so are can only add to the length of the public hearings and increase the investigative work and cost of the Tribunal.

I now turn to the names of the witnesses whose evidence will be taken in the course of the remainder of this module. Whilst it is hoped as far as possible to keep to the schedule and the order set out hereunder, no guarantee can be given that in fact the evidence will be taken in this order as there are often circumstances beyond the control of the Tribunal that necessitate change at short notice. Much will depend on the co-operation of the parties appearing before the Tribunal.

In the recently circulated list (and on the Web page) the continuation of the evidence of Gabriel Grehan was to resume in the week commencing the 4th October 1999. On the 16th September 1999, the Tribunal received a letter from Mr. Peter O'Boyle, Solicitor for Mr. & Mrs. Grehan, indicating that his Counsel, who had already participated in the earlier hearing in relation to the evidence of Mr. Grehan, would be unavailable for a two week period commencing the 4th October 1999. In the circumstances because this is a part-heard matter, I have decided to defer the taking of the evidence of Mr. Grehan and other witnesses listed for the week beginning the 4th October until the week beginning the 18th October 1999. As a result, the witnesses listed for the week commencing the 11th October 1999, Mr. Thomas Bailey, Ms. Caroline Bailey, Mr. Joe O'Toole, Garda McEneaney and Mr. Pat Whelan will now be taken in the week commencing the 4th October 1999. The witnesses for the week commencing the 18th October 1999 namely, Joseph Murphy Junior, Mr. Frank Reynolds, Mr. Roger Copsey, Mr. Tim O'Keeffe, Mr. John Maher and other witnesses will now be taken in the week commencing the 11th October 1999.

I regret any inconvenience that may arise, but as can be seen from the letter from Mr. O'Boyle, the matter is entirely outside the control of the Tribunal.

I have also been informed that Mr. Pat Whelan is only

available for 1 day in the week beginning 20th September 1999, and as his evidence relates to a transaction by Bovale Developments Limited, Mr. Michael Bailey and Mr. Thomas Bailey, I have re-scheduled his evidence for the week commencing the 4th October 1999.

An up-to-date witness list is available both on the Web page and in hard copy from my staff here.

[<< Back >>](#)

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