

1 THE TRIBUNAL RESUMED ON TUESDAY, 4TH MARCH 2003 AT 11 A.M.

2 AS FOLLOWS:

3

4 CHAIRMAN: Good morning everyone. Mr. Gallagher.

5

6 MR. GALLAGHER: Before Mr. O'Higgins resumes his cross-examination, I should
7 say that certain new information has come to the attention of the Tribunal.

8

9 The Tribunal will recall that in the course of my examination of Mr. Dunlop in
10 relation to the meeting which he said took place with Mr. Cosgrave at
11 Newtownpark Avenue on the 11th November 1992, I put it to Mr. Dunlop that our
12 enquiries did not reveal that any removal or funeral had taken place at that
13 church on that day, and that in fact was the position at the time that I put
14 that to Mr. Dunlop. It has been subsequently put to him in good faith by
15 Mr. O'Higgins that no removal or funeral took place at that church on that
16 date.

17

18 This morning I learned that following further enquiries there was, in fact, a
19 removal of a Dr. Dillon of Newtownpark Avenue who had died in Dalkey Lodge
20 Nursing Home. Perhaps for the record I would read into the record of the
21 Tribunal the death notice which appeared in the newspaper on Wednesday, 11th
22 November 1992.

23

24 "Dillon, Doctor, Dr. Des, late of Brandon, Newtownpark Avenue, Blackrock,
25 County Dublin, November 10th, 1992. Died peacefully in Dalkey Lodge Nursing
26 Home. Many thanks for their care and support. Beloved husband of the late
27 Maeve. Father of Kevin and Anne. Father-in-law of Mary and Ciaran. Grandad
28 of Kate, Steve, Gwen and David. Thank you Dad for your love and wisdom. We
29 love you. Removal this Wednesday evening from Sheehan's Funeral Home, 71
30 George's Street Upper, Dun Laoghaire to the church of the Guardian Angels,

1 Newtownpark Avenue, Blackrock, arriving at 5.30 o'clock. Funeral tomorrow
2 (Thursday) after 10 o'clock mass to Glasnevin Crematorium. RIP."

3
4 I said that the official enquiries proved negative and the Tribunal was led to
5 believe that there had been no such removal and I have brought this new
6 information to the attention of my colleagues this morning before the Tribunal
7 was due to sit. Matters only came to my attention at about so 20 to 11 today
8 and the photocopy of the newspaper in question has been circulated to the legal
9 teams here.

10
11 CHAIRMAN: Thank you. Mr. O'Higgins, before you commence, we have been made
12 aware of the content of a letter from Mr. Cosgrave's solicitor to Mr. Dunlop's
13 solicitors dated 3rd March. And having regard to paragraph one there we wish
14 to state the following: The Tribunal has already decided that any in depth or
15 detailed cross-examination of Mr. Dunlop's tax affairs should await a
16 designated module at a later stage in which this and other detailed financial
17 evidence will be investigated in public. Therefore, any questions designed to
18 query Mr. Dunlop's tax affairs in detail at this stage will be disallowed. The
19 Tribunal has in any event full discovery of all documentation relating to Mr.
20 Dunlop's tax affairs both from Mr. Dunlop and from the Revenue Commissioners
21 and such matters will be fully investigated in due course, and in the light of
22 evidence given at this and any subsequent modules.

23
24 If you wish to proceed.

25
26 MR. O'HIGGINS: Well, I would have a submission to make to the Tribunal.

27
28 CHAIRMAN: Put it on this basis; if it is reasonably short by all means do so
29 now, otherwise tomorrow morning having furnished us in writing the broad
30 principles of what your submission will be.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

MR. O'HIGGINS: Well, it is a short submission, Mr. Chairman.

CHAIRMAN: Thank you.

MR. O'HIGGINS: Now, Mr. Chairman, for the third time now we have arrived in to represent our client's interest and for the third time we find a substantial premise and portion of our cross-examination, which was carefully prepared and carefully executed, has now been undone. Now, let's be reasonable about this. I don't doubt for a second that the reason this has occurred this morning is human error and one must have absolute sympathy with human error, people are not machines, this Tribunal is not a machine and I for one have no difficult with an error occurring and I don't doubt that the reason why it was furnished to us in circumstances this morning is as a result of human error and I want to put that to the fore and I want to stress for the Tribunal that we are taking a reasonable view of this latest development and latest setback.

Now, that being so, Mr. Chairman, human error being what it is, myself and Mr. Burke and my solicitor have placed upon us a very very serious task and responsibility. We have to defend a man's good name. We have to defend a man's good name in circumstances where allegations which if proved to be true would be scurrilous and would justify this man being shunned by all right thinking members of society, the effect of which would be to destroy him professionally and to cause a huge encroachment and body blow to his personal existence as he knows it.

Now, this Tribunal is vested with a responsibility. That responsibility, in my respectful submission, is not being met and it is not, in my submission, a simple question of falling in some way or another short as a result of its substantial brief or anything of that sort. The short comings which are

1 occurring and recurring again and again and again, in my respectful submission,
2 I would make the following two observations: Number one, they are
3 substantial -- in fact, I would make three observations:

4 Number one, they are substantial, number two, they are all avoidable; and
5 number three, although they might in the first instance be predicated by human
6 error, the real fault is not in a person making a mistake but in the system
7 which this Tribunal has proposed to adopt and a system as far as I am aware
8 which is absolutely unique within the concept of tribunals. The Morris
9 Tribunal is not engaging in any of this; hoarding all the information for
10 itself and then drip feeding it throughout the Inquiry. The Morris Tribunal,
11 as I understand it, is taking the view they will ship the box loads of
12 documents around to all the lawyers and it will be their headache and
13 responsibility to go through them to see if there is anything that will assist
14 their client. The Morris Tribunal is not taking the view that we keep
15 everything on the basis we scrutinise it and we will make decisions which will
16 affect your client. And affect them, let there be no misunderstanding about
17 this, affect them they do.

18
19 This is the third situation. We had a bank statement which has been produced
20 to us accompanied by a withdrawal which completely compromised an element of
21 our cross-examination. We had a cheque or 1,500 plus VAT, that while it did
22 not compromise our cross-examination in that it fell outside the period of the
23 election campaign certainly turned what in colloquial terms might have been a
24 clean hit into a glancing blow.

25
26 We also found that a cheque which we had fortuitously managed to obtain for two
27 and a half thousand pounds to enable us to obtain this attack on credibility.
28 If we hadn't fortuitously come upon it the Tribunal weren't going to give it to
29 us, not at all. We were all going to sit there in total ignorance that there
30 existed a hard piece of documentary evidence to firmly contradict and undermine

1 that man's testimony against my client, and the Tribunal were going to sit
2 there in good conscience and let us not have it until module 20, the
3 financials, in five years time.
4

5 The reason why this submission is to be a short submission is because we have
6 covered all of this ground at enormous length the first morning we were in here
7 before the Tribunal made its opening statement, We made submissions about
8 giving us the information. That was followed up, first of all, with regard to
9 the identity of the November transaction and followed up again by a very
10 substantive application, what we would term as a substantive application, maybe
11 the Tribunal would not agree and followed up again with further correspondence.
12 We beat a path to the door of the Tribunal. We beat a drum at every single
13 opportunity.
14

15 And all this morning's chaotic disclosure points up to is the correctness, in
16 my respectful submission, of the position adopted by us, because, Mr. Chairman,
17 we cannot conduct a cross-examination dependent upon information which the
18 Tribunal furnishes in good faith and, I haven't the slightest hesitation, every
19 screed of it was furnished in good faith to discover the next day or next week
20 that the whole thing was wrongly premised. And the explanation incidentally,
21 in my respectful submission, as to why that is happening to us isn't because
22 somebody made a mistake. The explanation as to why that happens, in my
23 respectful submission, is because this Tribunal has adopted a system, a unique
24 system, where it says, no, we will hold the information, we are not going to
25 give you this background information, you are not going to have the same access
26 to information that we do. And if you make enquiries or you write letters we
27 will perhaps filter the information which we ourselves have and we will filter
28 it back to you in such a way that that might give you some help in preparing
29 your client's case.
30

1 The reality of the situation is, I ask the Tribunal to accept this in good
2 faith, junior counsel, Mr. Burke, has worked very hard on this case as has my
3 solicitor and, incidentally, as I have myself, and we don't come in here
4 willy-nilly and suddenly start cross-examining Mr. Dunlop about there not being
5 a funeral, that just isn't something that happens. That is something that
6 occurs as a result of lengthy consultations among the lawyers assessing the
7 information that is made available to them, similarly with the bank information
8 and similarly with the two and a half thousand payment in the election. When
9 we come in and cross-examine on that it just doesn't happen. It is not a
10 spontaneous utterance. It is a carefully constructed cross-examination for a
11 particular purposes. Because my client is dealing with events of ten or 12
12 years ago and the more a contest on evidence becomes a bald averment followed
13 by a bald denial the more, to quote the English case law, "justice is on the
14 hazard and the lessed is a forensic inquiry", and all sorts of confirmatory
15 details assume an importance which they would not have in an event under
16 investigation which occurred three months or six months ago.

17
18 So, I am renewing my application. I do so on the basis of no satisfaction
19 whatsoever that what the very factors which we highlighted as likely to occur,
20 in my respectful submission, have occurred. But what I am saying comes back to
21 this: The Tribunal must order its business in a way that it is fair to
22 participants. In my respectful submission it is unfair that we don't have the
23 same material that the Tribunal does. It is unfair that we carefully do our
24 best to construct our client's case to come in one day one week later to find
25 information furnished to us which completely deconstructs that. In my
26 respectful submission it is not a fair process.

27
28 Of course they are the three instances that have popped above the parapet. We
29 are wondering what the ticking time bomb is, what other information is there
30 that wouldn't be knocking our case down because, oddly enough the only stuff

1 that has come out of the water line is the bit that knocks us. But we know as
2 trained lawyers who are used to looking at a documentary trail, who are used to
3 looking at the global picture, that there is probably within the Tribunal lots
4 of information which we might have used to undermine this witness' credibility.
5 And indeed I note what the Chairman says in terms of a ruling in detailed tax
6 matters and naturally I will be bound by that ruling, that is the ruling of the
7 Tribunal. But I do say, respectfully, if in module 20 when that detailed
8 examination takes place and it in some way or another vindicates some stance or
9 even my client's overall steps in this procedure he is going to have to live
10 with the ignominy of a cloud over his head for years when, if I had that
11 information now and we had the possibility to analyse it we would be in a
12 position to say to Mr. Dunlop, no, that line you are taking is objectively or
13 manifestly capable of being shown as least objectionable or possibly incorrect.

14
15 So it comes down to this, Mr. Chairman: This Tribunal has an awesome
16 responsibility. It is not even like a criminal court where there is a jury,
17 where there are all the protections under the constitution. The people who
18 come in here don't have any of that. In those circumstances they are even more
19 heavily dependent upon the Tribunal to get it and to do it right. And the
20 allegations that are being made against my client they are of heinous conduct,
21 they are of criminal conduct and this passage that is frequently quoted from
22 the Goodman case, which is to the effect of there being no legal consequences,
23 no accused, no charge sheet, no finding, no jail, no acquittal, no
24 consequences. If you read it quickly you might be persuaded to think that the
25 whole thing doesn't matter but, in my respectful submission, it is a passage
26 that is misinterpreted, because all it says is there are no legal consequences.
27 It doesn't purport to say that there aren't other consequences and they are
28 massive consequences for anybody in here trying to meet these allegations. And
29 it is very very simple, Mr. Chairman, if the Tribunal cannot run its affairs in
30 such a way that allows a person to properly and appropriately prepare their

1 case and to construct a cross-examination that won't be deconstructed
2 subsequently after the event, if it cannot do that, or if it cannot make
3 available all the information on an equal footing, if it can't do that, in my
4 respectful submission, given that we are here without the protections which
5 would be availed of in a court setting, the Tribunal, in my respectful
6 submission, must stop its business.

7
8 I am not making this application as I did on the opening day in terms of what
9 lay ahead. I am not making it as I did over a day and a half on the threshold
10 of my cross-examination. I am making it, in I had set aside what I had thought
11 was an hours work to cover the cross-examination, I am setting it five or six
12 days in cross-examination when I should be getting ready here to leave the
13 building. And I am doing it against a background, not of a commencement or
14 threshold of anything, I am doing it as I should be leaving and I am doing it
15 in circumstances where I can't point to very very tangible aspects which are
16 unsatisfactory. This isn't an academic argument. This isn't a theoretical
17 disadvantage which my client has been placed under. It is in my respectful
18 submission an actual disadvantage. It is one he ought not to be labouring
19 under. He is labouring under it repetitively. And in those circumstances I am
20 calling on the Tribunal to cease because the system it has adopted is such
21 that, in my respectful submission, it is unworkable.

22
23 MR. O TUATHAIL: Mr. Chairman, could I be heard on behalf Senator Lydon?

24
25 MR. O'DULACHAIN: Mr. Chairman, there is another matter I want to advert to
26 and it might be an appropriate time and it has certain resonance with
27 Mr. O'Higgins' application.

28
29 CHAIRMAN: May we deal with one matter at a time.

1 JUDGE MAHON: Mr. O'Higgins, can I just ask you, you refer to human error
2 quite a few times in your opening sentences, whose human error are you
3 referring?
4

5 MR. O'HIGGINS: I am assuming this document only furnished this morning --
6

7 JUDGE MAHON: Which document is this?
8

9 MR. O'HIGGINS: The document which has been read into the record.
10

11 JUDGE MAHON: The funeral notice?
12

13 MR. O'HIGGINS: Yes. I am assuming the reason that has not been forthcoming
14 earlier is somebody made a mistake, that is all.
15

16 JUDGE MAHON: There was no mistake made. There was an investigation made out
17 at an earlier stage which turned up a blank and that was made clear by
18 Mr. Gallagher when he was examining Mr. Dunlop at an earlier stage. New
19 information has now come to hand and I would have thought while I accept that
20 it is inconvenient and annoying to you and to your client that this matter may
21 have to be re-visited by him surely it is a simple matter for you to get
22 instructions from Mr. Cosgrave as to whether or not he attended a removal or a
23 funeral of Dr. Des Dillon. It is not a hugely complex matter.
24

25 MR. O'HIGGINS: Sorry, Judge, you have said that new information has come to
26 light and implicit in that is, or perhaps implicit in that is that information
27 which was not in existence has only come about now.
28

29 JUDGE MAHON: It was not known to the Tribunal before now and as soon as the
30 Tribunal became aware of it you were informed. There had been an enquiry made

1 in the church and the information obtained was information along the lines
2 suggested by Mr. Gallagher when he was examining Mr. Dunlop. This is new
3 information. It has to be made available to you and to be made public and it
4 is not a matter I would have thought that requires a huge extra amount of work
5 on your part. It is a matter surely that can be dealt with in a matter of
6 minutes on taking new instructions from Mr. Cosgrave. Mr. Dunlop can be
7 further cross-examined by you in relation to that particular evidence given the
8 new information that is now available.

9
10 MR. O'HIGGINS: Judge, with respect, it is not as simple as that. The
11 question of whether there was a removal or a funeral in the church, it is not a
12 murder investigation, It is not rocket science, and the basic starting point
13 one would have thought would be the newspapers of the day. And it is the
14 Tribunal's role to investigate that. I am not making an issue that somebody
15 made a mistake, but is the Tribunal seriously telling me, because it sounds
16 suspiciously like it, that the investigation that was carried out by them was
17 perfectly adequate and the fact that somebody has carried a further
18 investigation now simply means that an investigation which was fully adequate
19 has now become a better investigation? Is that what the Tribunal is saying?

20
21 JUDGE MAHON: Mr. O'Higgins, with respect, we don't have to explain to you
22 the extent of the investigation that was carried out. An enquiry was made. It
23 came up with a blank. That was made clear by Mr. Gallagher. Further
24 information has now become available. You can criticise it if you wish, the
25 extent of the enquiries that might have been made at an earlier date, but the
26 fact is that we now have new information. It is not a hugely complex matter.
27 It is a matter that can be dealt with simply on you taking instructions from
28 Mr. Cosgrave.

29
30 MR. O'HIGGINS: Well, I am sorry, Judge, but respectfully I can't see it in

1 those simple terms because time and time again when I sought to impugn Mr.
2 Dunlop and when he was asserting his case I intervened with, yes, it is just as
3 true as that funeral that occurred on Newtownpark Avenue or like interventions.
4 So, it is not just simply a question of saying you can re-run those three or
5 four questions. We have premised, as we were perfectly entitled to do, in my
6 respectful submission, that as one of the pillars undermining its credibility
7 and that is why I asked this Tribunal to accept, I know that we haven't been as
8 quick as everyone might have liked, but we don't just come in here and throw
9 lines out here and there, it is after a careful consideration.

10
11 JUDGE MAHON: Mr. O'Higgins, surely if Mr. Cosgrave didn't attend the removal
12 he is in no worse or better position today as he was last week.

13
14 MR. O'HIGGINS: Except that every time we put it to Mr. Dunlop that your
15 account about how true all of this is as true and as certain you were about
16 there being a removal, every element of that is undermined.

17
18 JUDGE MAHON: Mr. O'Higgins, surely it is simply a matter of Mr. Cosgrave,
19 through you, confirming whether or not he was at a funeral. If he wasn't at a
20 funeral then there is no need to waste any further time on this. If there was,
21 if he did attend having the information he now has then the matter can be
22 re-visited, if you wish, with Mr. Dunlop.

23
24 MR. O'HIGGINS: I certainly will do that, but I am not going to be foolish
25 enough to think that anything that I will do in that department, given the very
26 strong line we have taken at an earlier stage about this funeral, is engaging
27 in anything other than damage limitation.

28
29 JUDGE MAHON: No, but isn't it simpler that the matter just proceed now and
30 if you want to re-visit the matter later today or on Wednesday, having had a

1 further consultation with your client, then there is no difficulty about doing
2 that.

3
4 JUDGE FAHERTY: Mr. O'Higgins, I just want to add something. Would you
5 accept as a premise, Mr. Gallagher having put to Mr. Dunlop in his examination
6 that there was no funeral, given that information has come to the attention of
7 the Tribunal now, he would in any event have to re-visit that matter with Mr.
8 Dunlop in re-examination and he would not be able to do that had he not --
9 everybody been circulated with the relevant information in advance.

10
11 MR. O'HIGGINS: Of course, Judge, and I commend the Tribunal for acting with
12 the alacrity with which it has when the new information came to light. I have
13 no difficulty with that. But my complaint on it is that the Tribunal has
14 adopted a procedure and the procedure can be summarised as follows: We'll keep
15 all the information, we'll give it to you when and how we see fit. We made an
16 argument that that is an unsafe system of work and we say that what has
17 happened this morning is yet but the third or fourth --

18
19 JUDGE MAHON: Mr. O'Higgins, we haven't concealed anything.

20
21 MR. O'HIGGINS: I never used the word "concealed".

22
23 JUDGE MAHON: But we haven't hoarded information or concealed anything. This
24 information came to light this morning. So, your criticism, I think, is
25 totally unfair. The information as soon as it became available this morning
26 has been made available to you. It's news to us as it is to you. It is not
27 anything -- it is not a hugely complex matter. Why can't we just deal with it?
28 You will be given as much time as necessary to deal with it and if you want to
29 re-visit Mr. Dunlop on that issue it can be done. We are simply wasting time
30 in discussing about your complaining about the fact that we didn't discover

1 this earlier, unfortunately that didn't happen. It has now been discovered.
2 It is a simple, straightforward piece of information and it can be, I think, I
3 have no doubt at all it can be quite simply and easily dealt with by you.
4

5 MR. O'HIGGINS: Ultimately it will be a matter for the Tribunal as to the
6 cause and affect of the whole matter. That will be outside my domain. I would
7 certainly hope that I would not engage in criticism that was unfair. I have to
8 look after my client's interest and I am doing my level best to do that. As
9 far as why it can't simply be done in the manner you describe, our considered
10 consideration of this development is re-visiting it is a little bit like horses
11 and stable doors.
12

13 JUDGE MAHON: Surely it is a question, did he or did he not attend a funeral
14 of a Dr. Dillon. If he didn't attend a funeral of Dr. Dillon then your
15 cross-examination does not have to be re-visited in any shape or form. If he
16 did then there may be some questions that will have to be put to -- or should
17 be put by you to Mr. Dunlop.
18

19 MR. O'HIGGINS: My practical difficulty, Judge, doesn't arise with the
20 matters that I can now put to Mr. Dunlop. The practical difficulty that arises
21 is we constructed our cross-examination on a particular basis and we placed
22 considerable emphasis on the fact that this man had sworn there was a funeral
23 taking place as recently as last Friday I relied upon it as strong
24 circumstantial evidence to suggest the diary entry was a forgery and I was now
25 on the interpretation of that news report doing the man an injustice.
26

27 It is not looking forward, forward is fine, I can put my client's instructions,
28 it is looking back. And I can tell this Tribunal we would have a approached
29 our cross-examination in a different way.
30

1 It is a cumulative affect. It is the funeral, it is the bank statement, it is
2 the 15 hundred plus VAT, It is two and a half thousand pound cheque that we
3 garnered that we would not have known about.

4
5 JUDGE MAHON: We are not a jury.

6
7 MR. O'HIGGINS: I have to say, Judge, I really don't understand that remark.

8
9 JUDGE MAHON: I said we are not a jury so we are well able to understand all
10 the evidence.

11
12 MR. O'HIGGINS: I habitually practice in courts where there are juries and
13 non-juries and my approach to a cross-examination is, to say the least, what I
14 want to do is to be able to push lines of cross-examination which either
15 advance my client's case or damage my opponents, that is the adversarial system
16 and the matters to which I have referred, whether they are being tried as
17 judges of fact by juries or judges is neither here nor there, in my respectful
18 submission.

19
20 JUDGE MAHON: Are you prepared to resume the cross-examination?

21
22 MR. O'HIGGINS: I will be bound by any ruling the Tribunal will make. But I
23 would ask the Tribunal to note, while I am bound by the -- I am asking the
24 Tribunal to rule that the cumulative affect of what had happened that we have
25 now had three or four very particular instances of our cross-examination being
26 undone. I am asking the Tribunal to rule on my submission that that in effect
27 has meant that the system is unworkable and unfair and that in consequence the
28 time should now cease.

29
30 JUDGE FAHERTY: That was the first paragraph of your submission earlier this

1 morning as I understand it.

2

3 MR. O'HIGGINS: It was.

4

5 JUDGE FAHERTY: That is what I understand you are renewing.

6

7 MR. O'HIGGINS: I am renewing that on the basis it is no longer now a
8 theoretical submission and, in fact, that argument was based upon a submission
9 that the Tribunal had failed in its inquisitorial role. I am now making the
10 same submission but on substantially different grounds, that the system being
11 put in place is an unworkable one and in consequence the Tribunal should cease
12 its function.

13

14 CHAIRMAN: Do you wish to respond?

15

16 MR. GALLAGHER: I do briefly. I don't wish to get involved in any kind of
17 criticism of the submission in any way, but I do want to draw attention to the
18 fact that this Tribunal ruled at an early stage as to the manner in which it
19 would conduct this module and it ruled that it would defer substantial issues,
20 financial issues to a later stage to a later module, that included the finances
21 of Mr. Dunlop, Mr. Cosgrave, Senator Lydon and all others, except in what might
22 be an exceptional situation. ^^ For that reason financial records were not
23 circulated as part of this module. It had not been intended to deal with any
24 payment such as the cheque for 2,500 pounds or how it was dealt with, what the
25 bank records showed etc. That was produced, I have to say, to my surprise in
26 the course of the cross-examination. And because it had been introduced and
27 because there was to my recollection a cheque which was made payable to Egan
28 Cosgrave, which was the name of the payee referred to by Mr. Dunlop, this
29 matter was drawn to the attention of the Tribunal and the Tribunal then ruled
30 that in the circumstances, given the evidence that had been illicit and the

1 cheque that had been put in cross-examination, that the cheque for 1,815 pounds
2 should be circulated. That, as I say, was brought about because an issue of
3 the cheque had been raised in evidence.

4
5 Likewise, the statement, the bank statement was something that was again raised
6 in evidence and because it transpired when it was raised I recalled that there
7 had appeared to have been, at one stage when I examined the records appeared to
8 be a time like between the date on which transactions occurred at one branch
9 and were recorded in another, again drew that to the attention of the Tribunal.
10 The Tribunal directed that the statement should be circulated and the relevant
11 documents should be circulated.

12
13 It was in those circumstances that the earlier material came into being and I
14 have already indicated it in my submissions to this Tribunal that it is
15 inevitable, and I experienced in earlier modules of this Tribunal, dealing with
16 other matters have shown that new documents and new material will arise from
17 time to time and that is as it should be, because this is an inquiry, an
18 ongoing inquiry and when evidence is given or material comes to hand it must be
19 looked at and investigated if the Tribunal is to do its job.

20
21 It is unfortunate and I regret that the information that has come into our
22 possession today was not in our possession at an earlier stage, but that is the
23 fact and we have to deal with it as we find it. It is a matter of personal
24 regret to me that that material wasn't available at an earlier stage but these
25 things happen and I can't do otherwise than to say I am sorry it happened.

26
27 In any event, The Tribunal I say is acting fairly, It has already ruled on the
28 matters which Mr. O'Higgins has again sought ruling, and in my respectful
29 submission it is open to Mr. O'Higgins to deal with this information having
30 taken instructions from his client. There is no great big deal about it as

1 Judge Mahon has said, either Mr. Cosgrave was at the funeral or he wasn't at
2 the funeral. If he wasn't at the funeral there is no problem.

3
4 I have nothing further to say at this time.

5
6 CHAIRMAN: We will rise for ten minutes.

7
8
9 THE TRIBUNAL RESUMED AFTER THE SHORT ADJOURNMENT

10 AS FOLLOWS:

11
12 CHAIRMAN: The following is the Tribunal's ruling on Mr. O'Higgins' last
13 submission.

14
15 THE TRIBUNAL GAVE THEIR RULING AS FOLLOWS:

16
17 Mr. O'Higgins has submitted that in the light of the cumulative affect of
18 additional or new evidence being circulated and because of the damaging effect
19 such new evidence has had on the cross-examination of Mr. Dunlop by
20 Mr. O'Higgins the Tribunal should cease its deliberations.

21
22 Having regard to the nature and volume of the matters being investigated by the
23 Tribunal it will happen from time to time that new evidence will emerge, either
24 because earlier enquiries proved inadequate or because it is simply discovered
25 for the first time. We are satisfied that when this does happen it is
26 essential that the interested parties are made aware of it as soon as possible.
27 We are satisfied that this has been done to date.

28
29 We are also satisfied that appropriate enquiries were made as to whether or not
30 a funeral took place on the date in question. The fact is that this morning

1 new evidence came to light and that it has been notified to Mr. Cosgrave's
2 counsels as soon as possible following its discovery. Furthermore, we are
3 satisfied that this new evidence is relatively straightforward and easily dealt
4 with by Mr. Cosgrave and that no prejudice arises in consequence thereof.

5
6 Our ruling in relation to the evidence of Mr. Dunlop's tax details made earlier
7 this morning stands.

8
9 The Tribunal, therefore, declines to cease to work as suggested by
10 Mr. O'Higgins.

11
12 MR. O'HIGGINS: Thank you Mr. Chairman.

13
14 CHAIRMAN: When you are ready.

15
16 MR. GALLAGHER: Mr. Dunlop, please.

17
18 MR. O'DULACHAIN: Mr. Chairman, before you move on there was a matter I had
19 raised in examination of Mr. Dunlop and which I indicated would be the subject
20 of further enquiries and that should be brought back to the Inquiry. As of
21 Friday my solicitor's enquiries are complete and I am in a position to clarify
22 various matters to the Tribunal and insofar as it is --

23
24 CHAIRMAN: First of all, by all means in due course do so, and I would
25 greatly appreciate it. Secondly, let us finish one person dealing with the
26 witness and if the resolution of the problem you had is capable of being
27 reduced to writing and sent to us in advance we would appreciate it.

28
29 MR. O'DULACHAIN: The correspondence has been forwarded to the Tribunal, but
30 it is a matter, and I think there are matters that arise from it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

CHAIRMAN: Is it short?

MR. O'DULACHAIN: Well, it is short.

CHAIRMAN: All right.

MR. O'DULACHAIN: I don't mind dealing with it later today or whenever suits.

MR. GALLAGHER: Can I suggest, I haven't seen the correspondence so I will not be in a position to respond it. Can I suggest that it will be deferred until another time?

CHAIRMAN: Another time. By arrangement with Mr. Gallagher as to when it will be dealt with when you circulate it and he has had an opportunity of dealing with it.

MR. O'DULACHAIN: He has been given the documentation as of last week.

CHAIRMAN: Perhaps we can make arrangements for tomorrow morning when we sit.

MR. O'DULACHAIN: Thank you.

CHAIRMAN: Very good. Mr. Dunlop.

CROSS-EXAMINATION OF MR. DUNLOP BY MR. O' HIGGINS CONTINUED

AS FOLLOWS:

1 MR. O'HIGGINS: Thank you, Mr. Chairman.

2 Q.1 Mr. Dunlop, you were to check for us, and I am only interested in the
3 generalities of this because the Tribunal has both made a formal ruling and
4 already given an indication that your tax matters are to be the subject of a
5 specific study and investigation at a later stage, but in general terms you
6 were to go through the figures and to tell us how much of your declaration to
7 the Revenue was related to contributions, I am talking about a global figure
8 now, that you had received from developers?

9 A. Other than what I told you on Friday I think it was, Mr. O'Higgins, in relation
10 to the Shefran account which the declaration mainly refer to and the 175, none.

11 Q.2 None?

12 A. None.

13 Q.3 Well, that makes that easier. Insofar as we are talking about the balance
14 between 175 and 420 they are non-development monies?

15 A. Correct.

16 Q.4 Right, well that makes that easier. Now, you told us and one could readily see
17 the logic of this, there is no difficulty about it, that the reason, for
18 instance, that you didn't declare, for example, what you say was the 25,000
19 from Mr. Kennedy was because having disbursed that money you had no reason to
20 believe that it was an income; isn't that right?

21 A. Yes.

22 Q.5 And similarly any other development monies you disbursed you wouldn't have
23 cause to see them as an income; isn't that right?

24 A. Correct.

25 Q.6 I think you told us that out of the 450,000 that you had received from
26 developers in or around you had disbursed, you estimate, 350 thousand of that,
27 isn't that right?

28 A. Approximately.

29 Q.7 Approximately. And the other 100,000, the 100,000 you didn't disburse.

30 A. The other 100,000 I didn't disperse with it -- sorry, you are asking what I did

1 with it?

2 Q.8 Well, it was income I would presume.

3 A. Would I have regarded it as income I used myself?

4 Q.9 Did you declare that in your --

5 A. No.

6 Q.10 It wasn't a full declaration as far as that was concerned?

7 A. No, it was a payment on account and it is an ongoing matter.

8 Q.11 I am sorry, Mr. Dunlop, let's not get at cross purposes. I am not talking
9 about what money you paid, I am seeking to establish that when you made your
10 declaration to the Revenue in 1998 you did not include that 100,000.

11 A. No.

12 Q.12 So it was incomplete to that extent?

13 A. Correct.

14 Q.13 You have told us, and I am going to respect what you have asked about this, or
15 what you have said about this, that your motive was for personal circumstances;
16 isn't that right?

17 A. Yes.

18 Q.14 And I am going to accept that in the sense that I have no wish whatsoever to
19 pry as to what those circumstances were and I am not going to and I am giving
20 you full advance notice of that, that I am not going to do that. But what I am
21 going to suggest to you is that when you say the motivation was personal
22 circumstances, that was the driving force, that that is not true?

23 A. No.

24 Q.15 Right. Well, here let me put to you why I am making that case to you, and
25 there are a variety of reasons, but the first one which is a good place to
26 start is out of your own mouth and I want to put a passage to you from Mr. O
27 Tuathail's cross-examination, it is to be found on page 349, 28th January,
28 question 147. Now Mr. O Tuathail was asking you whether you had decided this
29 all on your own or whether you had been acting in concert with other people and
30 Mr. O Tuathail said: "Yeah, summarising your evidence. In other words, it was

1 a Frank Dunlop decision. It had nothing to do with any other party who told
2 you that was the way to do things or this was the way the system worked." And
3 your reply was: "No, no, no. It was not told to me or advised to me or
4 whatever, and I'll just enter one caveat and one caveat only", and this, Mr.
5 Dunlop, is you being careful and precise: "And that is in normal circumstances
6 when one is dealing with money or discussing money with a variety of people,
7 including bank managers from time to time they make discussions. That's all.
8 I am not saying that in any way to mitigate the answer I have given you, I am
9 giving you the answer and that is the answer." Do you see that?

10 A. Yes.

11 Q.16 Do you see also, just for memory purposes, you delivered that in a very bright
12 and breezy manner and you can see the answer doesn't in any way dovetail what
13 circumstances praying on your mind or the need to get honest; isn't that right?

14 A. The question was, it had nothing to do with any other party, and I say, no, it
15 hadn't anything to do with any other party but that from time to time dealing
16 with money or discussing money would with a variety of people, including bank
17 managers, from time to time they make suggestions.

18 Q.17 The essence of what you were seeking to convey there was that it was a sole
19 decision but so far as other people were involved you are suggesting the bank
20 manager might have said to you, listen, Frank, better time to regularise this?

21 A. Not on that occasion. What I was seeking to convey, and perhaps didn't in the
22 proper fashion, was that discussions took place with the bank manager or the
23 deputy bank manager from time to time in relation to tax, that's all.

24 Q.18 Well, will you accept -- go this far with me, the explanation advanced there
25 was bank manager inspired and personal circumstances would appear on the face
26 of them to be different explanations?

27 A. No, I don't -- no, I don't think I would go that far with you, Mr. O'Higgins,
28 and I respect the premise of your question in that you are not going to ask me
29 in relation to personal circumstances and thank you for that. But I mean the
30 fact of the matter is that I did say that in that period significant events had

1 occurred and that I was the one who went to my accountant and initiated the
2 proceedings.

3 Q.19 You have told us that tied into the personal circumstances was the fact that
4 you wanted to conduct your business in a more honest way.

5 A. Well, I wanted to regularise matters.

6 Q.20 But the point that one of the things that was gnawing at you was as a result of
7 the personal circumstances, was the dishonesty element of it was making you
8 uncomfortable?

9 A. Yes.

10 Q.21 That is a fair summary?

11 A. That is a fair summary.

12 Q.22 Again, I am putting to you various premises as to where that doesn't follow and
13 one of them is what I pointed to as two different reasons, you disagreed on
14 that. The next one is you just told us that there was 100,000 which was income
15 out of the 450,000 that the developers had given to you but you didn't declare
16 that, isn't that right?

17 A. Yes.

18 Q.23 Let me suggest to you why you omitted to do that aside from the singular fact
19 it was a dishonest thing to do, it was because if you had said to the Revenue
20 or anybody else, I have got 450,000 from various people but I have disbursed
21 350 of it and it and it isn't income but I do have a hundred of taxable income,
22 that would have been to invite attention in respect of your dealings with
23 county councillors and so forth, isn't that right?

24 A. That may well be the case based on the premise of your question, but the fact
25 of the matter is that, as I have outlined to you, I went to my accountant at
26 the particular time, I gave him information and he constructed the figures and
27 I gave him a cheque or payment and the matter is under intense investigation
28 from that point on.

29 Q.24 You didn't forget to tell the Revenue about the hundred thousand, you made a
30 conscious decision not to do?

1 A. I don't think I made a conscious decision to do or not to do anything in
2 relation to that. What I consciously decided with my accountant was to begin
3 the process of regularising my tax affairs.

4 Q.25 But it is a little bit like state of mind, like marriage or otherwise, you
5 can't be a little bit married, Mr. Dunlop. You are either going to the Revenue
6 to say, look, I am here to put my hands up and to make an honest statement of
7 my affairs, or alternatively you are there as a tactical manoeuvre to declare
8 only what you have to do. Which of the two was it?

9 A. I think it was the latter because as a result of the procedure that we adopted,
10 or the approach that I adopted, we were required as I think I outlined on the
11 advice of my accountant what the Revenue Commissioners would do.

12 Q.26 Was it a tactical move?

13 A. No, no. I am saying I went to my accountant in the circumstances that I have
14 outlined to regularise my tax affairs.

15 Q.27 Again I am confused. Were you going to the Revenue as I suggested there are
16 only two states of mind, I want to know which one you entertained. There are
17 only two states of mind you can reasonably have, one is, hello, Revenue people,
18 through your agent or otherwise, I want to make a clean breast of things and I
19 want to declare to you all the monies in respect of which I have not paid tax.
20 That is one state of mind. The second state of mind is, dear, Revenue, I am
21 disclosing some of the bogus, or some of the income on which I should have paid
22 tax, but I am not going to declare the rest of it. Which state of mind?

23 A. Number one glue.

24 Q.28 You were there to do the full monty?

25 A. To do the full monty.

26 Q.29 How did you forget the hundred thousand?

27 A. It is not a case of forgetting in the circumstances that I went to my
28 accountant I told him I had undeclared income. I outlined it for him. He
29 computed it. I gave him a cheque. We sent them a second cheque and as a
30 result of which the Revenue Commissioners demanded to know everything it just

1 wasn't declared, Mr. O'Higgins.

2 Q.30 But, Mr. Dunlop, you above everybody else or anybody who finds themselves in
3 that unfortunate position, their accountant is going to say to them, these
4 fellows will be out scraping the dirt out of your fingernails, was the rather
5 colourful phrase you used?

6 A. Yes.

7 Q.31 The bit of advice you get before them scraping your fingernails is, look, we
8 are only going to get one shot of this because we are going in, we are
9 declaring a whole load of income, money that was income, and the first thing if
10 they can show that you are still lying to them they are not only scraping the
11 dirt from your under your fingernails metaphorically you are going to be
12 prisoner for life that is the other bit of advice you get.

13 A. I don't think I had either advice in those terms, but the facts of the matter
14 are I declared what I declared, did not declare what I have said and the matter
15 is still under adjudication.

16 Q.32 I am putting to you, and I am going to move on from it because I told you I am
17 not going to barrack you any further. We have established there was a hundred
18 thousand undeclared and I am putting that forward to you as evidence that this
19 was a tactical and further dishonest statement to the Revenue, do you agree or
20 disagree?

21 A. I disagree that it was tactical.

22 Q.33 Do you disagree it was dishonest?

23 A. I do.

24 Q.34 You think it is all right to go along to the Revenue and say, I am here to
25 declare 100,000 and not all my monies?

26 A. No, I don't.

27 Q.35 Next thing, just to take this slightly out of sequence and not to be unfair to
28 you I am still talking tax, Shefran was set up as concealment from the Revenue.

29 A. Shefran was established for fee income other than through Frank Dunlop &
30 Associates.

1 Q.36 And was the Rathfarnham account also set up for concealing from the Revenue?

2 A. Yes.

3 Q.37 And also to be able to pay money out to councillors which would not be readily
4 seen?

5 A. In general terms.

6 Q.38 So that it would have a dual motive to that extent?

7 A. Yes.

8 Q.39 Shefran, we have established, was set up in March of 1990, isn't that right?

9 A. 1990, yes.

10 Q.40 On a date we haven't been able to ascertain, your accountants bought it off the
11 shelf, is that right, subject to the name?

12 A. Subject to the name, the name is an acronym, as you know, and it is "Shefran"
13 not "Shefron" because that shows how the acronym was arrived at.

14 Q.41 They bought it, they were the listed directors and then at a stage subsequently
15 you had the directors changed over to offshore, isn't that right?

16 A. Yes.

17 Q.42 Do you know when that was? You might not remember at this stage.

18 A. Offhand I cannot tell you, but I think it is a matter that can easily be
19 checked for you and I will willingly do it.

20 Q.43 Incidentally, Mr. Dunlop, I am caveating this because it was only a detail that
21 was noticed, we looked at a number of your companies and the date of birth for
22 you seems to be differing on a lot of them, is that an accident or what?

23 A. My date of birth?

24 Q.44 Yeah.

25 A. Well, I don't think there is any doubt about my date of birth --

26 Q.45 I don't think there is, it seems to be recorded, was that just an accident?

27 A. Well, I assume it is, it is not something I have ever reverted to, it must be
28 an accident. The 9th of the 10th '47.

29 Q.46 I accept that. Sorry, I interrupted you, can you tell us when the offshore
30 directors went in place?

1 A. Not offhand, it is something I can check for you.

2 Q.47 In any event we know that Mr. A's development, he purchased that land in July
3 of 1990 as best we can ascertain and the material contravention vote would
4 appear to be February of 1991, isn't that right?

5 A. Yes. February/March of 1991, certainly -- sorry, just for a moment,
6 Mr. O'Higgins, it may have been later, because I do believe the trip that we
7 said we organised in relation to that particular development I think that took
8 place, I can check in my diary, but I think that took place in March of 1991.

9 Q.48 March of 1991?

10 A. So that would be prior to the vote.

11 Q.49 So March/April 1991, I mean that is an interesting thing in itself because
12 certainly the impression which was sown in my mind was that was a big gap
13 between Mr. A and you becoming involved in illegality but, in fact, it is bang
14 there in the middle, isn't it?

15 A. I am not a loss.

16 Q.50 Well, I was under the impression that the Mr. A development, this all happened
17 around 1989 or 1990?

18 A. 1990.

19 Q.51 But, in fact, the critical vote was March or April 1991; isn't that right?

20 A. Yes, I can -- if you wish I can just check this for you immediately. Yes, I
21 said to you, correct me if I am wrong, Mr. O'Higgins, but I think I said to you
22 that I thought that the trip to visit the site in my diary shows that that took
23 place on Monday, 4th March 1991.

24 Q.52 All right.

25 A. So that was prior to the vote.

26 Q.53 That is around the time where the Rathfarnham account was set up and monies
27 were being channelled out of that for a vote which was held on 16th May, isn't
28 that right?

29 A. The Rathfarnham account was established on 9th April 1991.

30 Q.54 And the vote was on the 16th May, isn't that right, of '91, another vote where

1 you say you have been paying on a separate development --

2 A. I beg your pardon, yes.

3 Q.55 And also that motion had originally been tabled in February of 1991, so Mr. A's
4 development was falling very four square within a period where you were
5 beginning to act unlawfully?

6 A. Yes.

7 Q.56 We know that you entered into a contra deal for your fee where you swapped the
8 fee for equity, isn't that right?

9 A. Yes.

10 Q.57 I may have picked you up wrongly on this on Friday, but what I understood you
11 to say was you went to the Revenue and you made your declaration and
12 subsequently they came back and asked you for a statement of assets, isn't that
13 right?

14 A. A statement of affairs.

15 Q.58 Which included a statement of assets?

16 A. Correct.

17 Q.59 Which included you declaring interest in Mr. A's concern, isn't that right?

18 A. Yes.

19 Q.60 Am I right in thinking that was the first time you ever made any reference to
20 that above the water line?

21 A. It is the first -- it was a Statement of Assets, so it had to be declared as an
22 asset. I think what I said to you on Friday, subject to correction, I am not
23 absolutely certain when the dividends in relation to that particular
24 development began to flow, whenever tax was paid on them, but as a Statement of
25 Asset in relation to that particular development the Statement of Affairs
26 declaration was the first time it was declared as an asset.

27 Q.61 Your evidence has been that in 1996 there was income of 15,000 pounds?

28 A. Yes.

29 Q.62 Was tax declared on that?

30 A. Yes.

1 Q.63 It was. Did you ever declare to the Revenue that the benefit in kind of
2 75,000, did you ever declare that?

3 A. No -- well, first of all, I am not absolutely certain what you mean that it is
4 a benefit in kind.

5 Q.64 I am using it loosely, but let me put in non-legal terms. A man owed you
6 75,000 pounds.

7 A. Yes.

8 Q.65 You agreed to waive it in exchange for the equity.

9 A. Correct.

10 Q.66 The equity thereby being valued at 75,000 in 1990/'91.

11 A. In 1991 returns.

12 Q.67 Yes. Did you in your 1991 returns say, I am 75,000 pounds richer as result of
13 work done arising out of that equity participation?

14 A. No.

15 Q.68 But you knew you had to?

16 A. I probably did.

17 Q.69 Of course you did. And you knew also when you went along in October 1998 that
18 you had to declare it then, did you do it at that stage?

19 A. October 199 --

20 Q.70 When you made your initial 450,000 declaration of income did you make reference
21 to that?

22 A. No. The first time we made reference to it, as I said to you already, as an
23 asset was in the Statement of Affairs subsequent to the voluntary declaration.

24 Q.71 You also said in evidence that Shefran had income from an significant property
25 investment which you said was not an apartment, is that Mr. A?

26 A. No, sorry, Shefran -- could you ask me that question again? You mentioned an
27 an apartment, excluding that if you like.

28 Q.72 I am excluding that if you like. I took a note that in 2000 from somewhere
29 that Shefran had income from what was described by you as a significant
30 property investment which was unspecified but the investment did not come from

1 an apartment, that is my note of it, it may not be an accurate note. Does that
2 make sense?

3 A. I think that makes sense.

4 Q.73 Was that income from a significant property investment, was that Mr. A?

5 A. Part of.

6 Q.74 Part of Mr. A?

7 A. Part of the shareholding of Mr. A is in Shefran's name.

8 Q.75 So Shefran was being set up in 1990/'91 for concealment purposes and the rent
9 which was to come on-line was going to be coming through Shefran, isn't that
10 right?

11 A. Yes.

12 Q.76 Can you explain this to me, if you had gone to the bother of having your
13 shareholding undeclared and your income being paid to Shefran which we know was
14 a device to hide from the Revenue, how could that rent income be declared, are
15 you mistaken about that?

16 A. I don't think I am, Mr. O'Higgins, as I said part of the shareholding in A, as
17 you referred, is in Shefran's name and Shefran is an acronym for two people and
18 I think the usage of Shefran in the context was to -- for the specific purposes
19 of avoiding using my own name as shareholder in the particular development
20 which would appear in public documentation and as the public documentation
21 shows, particularly the accounts, on annual basis that Shefran is listed as a
22 shareholder.

23 Q.77 Really what I am getting at is, to use your phrase, that part of the
24 shareholding which was in Shefran's name --

25 A. Mmm.

26 Q.78 -- which was yielding income that was never declared to the Revenue?

27 A. No, no, any income arising out of the investment or the shareholding tax was
28 paid on it.

29 Q.79 At the time?

30 A. At the time.

1 Q.80 What we have established is that your interest in Mr. A's development, the
2 contra deal, was never declared and it was never declared in October '98 and
3 you didn't declare the 100,000, but what I want now to turn around to is
4 something slightly different. Here you were, you were actually incurring a tax
5 liability on monies which you did not believe there was a liability for tax,
6 and what I am referring to there is you say, you remember the 175,000 from
7 Mr. B to Shefran?

8 A. Yes.

9 Q.81 We got you to agree on the following: Some of it was income and some of it was
10 paid out to councillors?

11 A. No, I don't think I said that. I said that the -- I regarded the monies
12 invoiced to Mr. B through Shefran as income.

13 Q.82 I will rephrase the question. In applying the 175,000 you paid some of it to
14 councillors and some of it you used for your own personal benefit?

15 A. I regard it as income and they declared it, because as I say I regarded it as
16 income.

17 Q.83 Let's just look at the hard facts. You bought an Arc Life policy for 12 and a
18 half thousand?

19 A. Yes.

20 Q.84 You cleared off a loan of 20,800?

21 A. Yes.

22 Q.85 And you put 30 into an option, isn't that right?

23 A. Yes, having -- yes, in broad terms, yes, having lodged the money I used it
24 for -- part of it for an option.

25 Q.86 For the option?

26 A. Yes.

27 Q.87 I wonder are you right about that. Just bear with me for one moment, Mr.
28 Dunlop. You see, you paid the money in for the option -- you paid the money in
29 for the option in August of the 1992, 22nd, is when you gave it to your
30 solicitor?

1 A. That's when I bought the option --

2 Q.88 Yeah.

3 A. -- on the Naas road.

4 Q.89 Yes.

5 A. Yes.

6 Q.90 In August of '92, isn't that right?

7 A. Yeah.

8 Q.91 You couldn't have been withdrawing it from any bank account because the records
9 show that that bank account was dormant from, I think, it is September of '91
10 to November of '92. In fact there wasn't 30,000 or anything like 30,000 in it?

11 A. Which bank account, Mr. O'Higgins?

12 Q.92 The Rathfarnham account.

13 A. But I don't recollect ever saying that I lodged the 30,000 or the monies into
14 that particular bank account.

15 Q.93 Where do you say the 30,000 came from?

16 A. You see, there are two bank accounts that we are discussing here. There is the
17 Rathfarnham account and there is the Shefran account.

18 Q.94 And Shefran had 28,000 lodged in April of '92 and I think taken out in jig
19 time?

20 A. April of '92.

21 Q.95 Am I right about that?

22 A. Let me just check.

23 Q.96 I am going on memory only.

24 A. Right. There is a sum payable to Shefran in the sum of 40,000, on 13th April
25 of 1991.

26 Q.97 Yes.

27 A. Of which 20,652.63 was used to defray a loan, a loan account.

28 Q.98 Okay.

29 A. There was a cheque payable to Shefran on 16th May 1991 in the sum of 25,000
30 pounds.

1 Q.99 Yes. Sorry, is that May '91?

2 A. May' 91.

3 Q.100Yeah.

4 A. There is a cheque payable to Shefran dated 7th June '91 in the sum of 15,000
5 pounds and there is a further payment of 40,000 pounds to Shefran in late May
6 of '91.

7 Q.10140, yeah?

8 A. For 40. Yes.

9 Q.102But none of those, you see, the nearest you are able to get to August '92 is a
10 cheque for 40,000 on 13th April, isn't that right?

11 A. Well, I don't have the Shefran account lodgment debit and credit lodgment in
12 front of me here, but what I have said to you is that part of the monies into
13 Shefran out of Mr. B, I believe, I disposed of them in that fashion.

14 Q.103I know you do and I am challenging -- not challenging, I am testing the
15 veracity of that evidence. You see if you got 40,000 in April of '92
16 straightaway 20.6 is gone on the loan?

17 A. Mmm.

18 Q.104And you are not paying into your solicitor until the 22nd August the 30,000,
19 isn't that right?

20 A. Yes.

21 Q.105Did you get any other Shefran monies from 13th April and 22nd August of that
22 year?

23 A. Yes, I believe, I did but I don't have the sheet in front of me here.

24 Q.106All right. We will return to that because in fairness I can't expect you to
25 know these figure at this remove at the top of your head.

26 A. Can I ask you before you proceed? You are looking for other monies.

27 Q.107From Shefran?

28 A. Lodged into Shefran.

29 Q.108I am really, the starting point would be monies you got from Shefran --

30 A. I got through Shefran?

1 Q.109-- which you might have applied the 30,000 option in August 1992. At present
2 as the lie of the land suggests that in April you got 40,000 and 20 of that
3 went on the loan, so we can exclude that. I think your evidence orally has
4 been that you got another 30,000 in or around that time?

5 A. Yes.

6 Q.110But you can check that?

7 A. Yes.

8 Q.111We will come back to that, but here is taking your best case on the 175, you
9 had 30 for the option, we have a query on that but let's put it into the pot,
10 you have 20 on your own, isn't that right?

11 A. Yes.

12 Q.112That is 50 and you have 12 and a half on the Arc Life, isn't that right?

13 A. Yes.

14 Q.113That is 62 and a half, isn't that right?

15 A. Yes.

16 Q.114That would leave a balance of 112.5, isn't that right?

17 A. Mmm.

18 Q.115Which was applied to councillors?

19 A. No, I did not say that and I do not have in front of me the schedule of
20 receipts into -- of monies into Shefran and the dispersal out of Shefran for
21 various purposes which we have compiled, and I just don't have it with me
22 sitting here now, but we do have a fairly concerted list of receipts into
23 Shefran and payments out of Shefran over that period.

24 Q.116Let's try and take it on a slightly simpler basis, so we can try and keep it on
25 terra firma and away from confluence. Between April and June you got a number
26 of monies Shefran, isn't that right, you got 25, 15 and 40, isn't that right?

27 A. Yes.

28 Q.117That comes to 80,000, isn't that right?

29 A. Correct.

30 Q.118And your evidence to this -- your account to this Tribunal has been that those

1 monies were applied for the purpose of assisting a vote on 16th May 1991?

2 A. That was part of my evidence, yes.

3 Q.119So whatever about the difference between 80 and 112 we are all clear on this,
4 the 80 was so applied, isn't that right?

5 A. I cannot say that definitely, I cannot say that it was definitely applied in
6 that fashion, yes, it may well have been.

7 Q.120Can we use the other phrase you seem to be happy with, as a matter of
8 probability?

9 A. As a matter of probability.

10 Q.121Let's take that now. There is 80,000 as a matter of probability which you
11 didn't deal with as income you gave to other councillors?

12 A. Yes.

13 Q.122Taking that as a starting point that is 80,000 off the 175 which you did not
14 believe was income?

15 A. No, I regarded all of the monies invoiced to Mr. B through Shefran as income,
16 as fees, and as a consequence in October, or October, yes, 1998, in the
17 voluntary declaration to the Revenue Commissioner I included it as income.

18 Q.123But you see the contradiction, Mr. Dunlop, you have told us and no-one doubts
19 this or doubts the logic of it rather. You have already told us in evidence
20 that Mr. Kennedy's 25,000 wasn't interested to be income by you because you had
21 dispersed it, isn't that right?

22 A. Yes.

23 Q.124How can you say, Mr. Kennedy's 25,000 wasn't income, but the 80,000 which I
24 gave for Mr. B I did consider that as income?

25 A. Because that is how I always regarded it and that is how I invoiced it albeit
26 through Shefran and so declared it. The monies from Mr. Kennedy in contrast
27 were in cash.

28 Q.125So, are you saying the mere fact that the dispersement was paid in cash is a
29 different distinction to one that was paid by cheque or draft?

30 A. Not necessarily. What I am saying to you is that the invoices, and there were

1 invoices, to Mr. B in the name of Shefran were for fee income in relation to a
2 project. The monies from Mr. Kennedy were in cash specifically by mutuality
3 for dispersement to councillors.

4 Q.126 Can you see, just let's take it in stages because I am being over ambitious.

5 Can you see that there is a contradiction that you assert 25,000 from
6 Mr. Kennedy because I dispersed it is not income, but 80 that you received from
7 Mr. B that, I disbursed is income?

8 A. No, I don't believe that there is a contradiction, you know, real or imagined.
9 What I am saying, and what I did say to you on a number of occasions, is that
10 there is documentary evidence to the fact that I invoiced Mr. B through Shefran
11 for fee income, and by arrangement with Mr. B arising out of specific
12 circumstances which are applicable elsewhere in another module, but I am just
13 making that point because sometimes when you look at these things from a
14 clinical 20/20 retrospective point of view, as you do, Mr. O'Higgins, and you
15 are entitled to do, I am not saying that as a criticism, please don't take it
16 as a criticism, it loses sight of the context. The 175 was invoiced as fee
17 income. The reality is that the 175 should have been invoiced to Mr. B through
18 Frank Dunlop & Associates.

19 Q.127 But here is the reality, Mr. Dunlop, but including that 80,000 as income to the
20 Revenue for services rendered you were incurring a VAT bill of approximately, I
21 would say, 13,000 pounds and you were including on top of that an income tax
22 bill of probably around 34,000 pounds a liability of 47 plus huge penalties and
23 interest running over ten years which is going to leave you with potential
24 liability of around, we will look at the fine print in due course, of around
25 200,000, isn't that right?

26 A. I don't dispute the execution of your sums, I am not going to dispute that.

27 Q.128 What you are asking the Tribunal to believe is that you furnished to the
28 Revenue immediately on account a liability of nearly 50,000 pounds together
29 with penalties and interest on money which you never actually used as income
30 but disbursed it to other people, that is what you are asking the Tribunal to

1 believe?

2 A. No, what I am asking the Tribunal to believe is that I invoiced Mr. B through
3 Shefran for fee income in specific circumstances using Shefran in specific
4 circumstances and I regarded that money as fee income and, therefore, declared
5 it.

6 Q.129And again, because we are going to try and put it in the jigsaw as to what is
7 happening at the time, this is at the very time when Mr. Kennedy is giving you
8 25,000, which you don't apply, and he is asking you to apply nefariously but
9 Mr. B is giving you 175 which includes 80 and which you do apply but you never
10 tell Mr. B, isn't that right?

11 A. Broadly correct.

12 Q.130It is just one o'clock, Chairman, I don't know whether this would be an
13 appropriate time to break.

14

15 CHAIRMAN: It is.

16

17 JUDGE MAHON: Mr. O'Higgins, it seems to me that we are perhaps going around
18 in circles to some extent in relation to these sums. Can we assume that it is
19 agreed by everyone that Mr. Dunlop's evidence so far in relation to the sums is
20 to the effect that the 175,000 pounds was returned by him to the Revenue
21 Commissioners as fee income even though it included about 80,000 pounds --

22

23 MR. O'HIGGINS: Minimum.

24

25 JUDGE MAHON: -- minimum of 80,000 pounds given to councillors because he
26 had -- and his explanation for that is that he had invoiced Mr. B for 175,000
27 pounds, and that is his explanation whether we like it or not, and that in
28 relation to the 25,000 pounds because no invoice had issued --

29

30 MR. O'HIGGINS: I don't think, Judge, this is a matter the witness can

1 clarify if needs be, but it is not just simply if an invoice didn't issue
2 because again if we approach this, if you look back to what was said earlier,
3 the 350 out of the 450 which was dispersed, he said that he didn't treat the
4 350 as income because he had dispersed it and Mr. Kennedy's 25 was presumably
5 somewhere in there.

6

7 JUDGE MAHON: But insofar as his evidence has been given in the past half
8 hour or so the 25,000 pounds was not returned as income, he gave as an
9 explanation that it was in cash and hadn't been invoiced.

10

11 MR. O'HIGGINS: But when I asked him was the cash the turning factor he said
12 not necessarily.

13

14 JUDGE MAHON: I noticed that, but in my event you agree that is --

15

16 MR. O'HIGGINS: I do. Basically the inconsistency I pointing up is that he
17 can regard 350 as not earned income but when it comes to this particular slice
18 he includes a minimum of 80 which he would be entitled on the same logic not to
19 treat as income. It might help matters if I were to put two more questions to
20 give context to that.

21

22 JUDGE FAHERTY: Mr. O'Higgins, you might clarify with Mr. Dunlop when he
23 declared the 175,000.

24

25 MR. O'HIGGINS: (To the witness): You declared that in October 1998?

26

27 JUDGE FAHERTY: That is what I understand but I just want to confirm that.

28 A. Yes.

29

30 JUDGE FAHERTY: Just before you go Mr. O'Higgins, as I understand the witness'

1 evidence and this is in the context you are putting, a while ago he said, he
2 made a distinction between the two accounts, the Shefran account and the
3 Rathfarnham account, and he makes a further distinction vis-a-vis Mr. Kennedy,
4 but as I understand it what he was replying to you was that he was saying
5 Shefran was used to conceal fee income, income that would have been -- fees
6 that would have been invoiced in the ordinary way, but that simply he did not
7 want to declare that to the Revenue at that time, whereas the Rathfarnham
8 account was for monies which he was getting for, as he says, illicit purposes
9 in dispersements to county councillors. So, that there is a fee that ought to
10 have been declared back in the early 1990s that wasn't, that he was simply
11 hiding that from the Revenue. That he is saying that were fees. Now, that is
12 as I understand his evidence.

13
14 MR. O'HIGGINS: Except, Judge, the only problem with that is it is agreed
15 that as a minimum of 175, 80 thousand was used to pay to councillors.

16
17 JUDGE FAHERTY: Yes, I understood that.

18
19 MR. O'HIGGINS: And it is also established, I believe, that some of that 80,000
20 went through the Rathfarnham account before being transmitted to councillors.

21
22 JUDGE FAHERTY: Yes, I understand that also but I just wanted to make the
23 distinction as I understand his answers to you earlier.

24
25 MR. O'HIGGINS: It does strike me, Mr. Dunlop, to put brackets on this I
26 should put to you incidentally why you went to the Revenue and took, and paid
27 50,000 in tax, plus the enormous penalties which can accrue, when you had on
28 your evidence a good belief for treating it as non-income, but why you elected
29 to that, why 50,000 plus penalties was more attractive to you was if you went
30 to the Revenue and said, look, I got 175 in but my net amount is 95 and they

1 said, well, is the other 80 that would have meant you would have had to say, I
2 paid it out to councillors and you didn't simply want to go down that avenue.
3 That is why you included the gross figure

4 A. No, I don't accept the construction that you are putting in relation to --

5 Q.131But you understand it.

6 A. I understand what you are saying. I have no difficulty in understanding that,
7 Mr. O'Higgins, but the end point is that why didn't I go into the Revenue
8 Commissioners and come in here to this Tribunal and say look I received 350,000
9 or whatever it was from X, Y and Z and I gave it as legitimate contributions?
10 Why didn't I do that? Sorry, I beg your pardon I shouldn't put that in
11 question form --

12 Q.132Because, Mr. Dunlop, having tied yourself to the Revenue declaration it wasn't
13 open to you to do that.

14

15 Whenever the Tribunal would --

16

17 CHAIRMAN: Very good. Tomorrow, half past ten.

18

19 THE TRIBUNAL ADJOURNED UNTIL WEDNESDAY, 5TH MARCH 2003

20 AT 10.30 A.M.

21

22

23

24

25

26

27

28

29

30

