

**TRIBUNAL OF INQUIRY
(PAYMENTS TO MESSRS CHARLES HAUGHEY
AND MICHAEL LOWRY)**

**Appointed by instrument of An Taoiseach, dated 26th day of September, 1997,
pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 and 1979.**

**TRANSCRIPT OF PROCEEDINGS HELD IN DUBLIN CASTLE,
BEFORE MR. JUSTICE MICHAEL MORIARTY (CHAIRMAN),
ON FRIDAY, 31st OCTOBER, 1997 AND FOLLOWING DAYS:**


**TRANSCRIPT OF PROCEEDINGS ON
WEDNESDAY, 26TH OF FEBRUARY, 2003.**

Day Number

190

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the above named proceedings.

✓  Mary
McKeon

✓  Viola
Doyle

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Tel.....+353 1 8722833
Fax.....+353 1 8724486
After Hours.....+353 1 2862097
Email.....info@doylecourtreporters.com

1 he try to influence me at any stage.

2 333 Q. Now, obviously with the benefit of hindsight in
3 certain circumstances we are all aware in life that we
4 may approach things differently or do things
5 differently. Insofar as the award of the second GSM
6 licence is concerned, and so far as your knowledge and
7 awareness is concerned, are you as satisfied today in
8 relation to the integrity of that process as you were
9 in May of 1996?

10 A. Yes, I am, I am conscious of the fact that the
11 Tribunal has raised matters, Mr. Shipsey, but you can
12 take it that I am happy to stand over this
13 competition, and I am as happy today as I was at the
14 time.

15

16 MR. SHIPSEY: Thank you.

17 A. Thank you, Mr. Shipsey.

18

19 CHAIRMAN: Mr. Fitzsimons?

20

21 THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

22

23 334 Q. MR. FITZSIMONS: Mr. Loughrey, I have some questions
24 to ask, the purpose or object of them will be to seek
25 to support the process.

26

27 Are you aware of the fact that Persona have issued
28 High Court proceedings against the State claiming
29 damages and effectively attacking the process?

30 A. Mr. Fitzsimons, as you know is, I left the Department

1 in January, 2000, but I was, I think I was made aware
2 of that through a former colleague and I am certainly,
3 since I have arrived at the Tribunal, I know this to
4 be the case, yes.

5 335 Q. Yes. Now, that case, when it ultimately comes to the
6 High Court, may cover a great deal of the ground that
7 has been covered here, and the same case will be made
8 against the licence as has been made by Mr. Healy and
9 Mr. Coughlan --

10

11 MR. COUGHLAN: Sorry, I object to that question, Sir.
12 It is an almost inappropriate question. The Tribunal
13 makes no case and My Friend Mr. Fitzsimons,
14 Mr. Fitzsimons, sorry, knows that the Tribunal makes
15 no case. It is calling this Tribunal into question if
16 he is suggesting that the Tribunal is making a case.
17 The Tribunal inquires.

18

19 CHAIRMAN: It certainly is, Mr. Fitzsimons, I consider
20 it a most regretful observation from somebody of your
21 seniority.

22

23 MR. FITZSIMONS: Mr. Chairman, I have absolutely no
24 doubt whatsoever that Tribunal counsel subjectively
25 consider themselves to be engaging in an inquiry. I
26 have absolutely no doubt that they are doing their
27 absolute best in this regard. No doubt whatsoever.
28 But regrettably, Sir, objectively what we have
29 witnessed here and when I say "we", I am referring to
30 experienced counsel for all parties, is an attack on

1 aspects of the process. Now, I am not speaking of the
2 entirety of the questioning of Mr. Healy and
3 Mr. Coughlan, but we have seen just within the past
4 hour, Mr. Coughlan making a case using pejorative
5 terminology to this witness to attack part of the
6 process.

7
8 We heard Mr. Healy, over a lengthy period of time,
9 raising his voice at Mr. Brennan, and making a strong
10 case on various aspects, telling the witness he was
11 wrong from time to time in relation to what he had
12 done from time to time during the process.

13
14 Now, Sir, the object of these lines of questioning was
15 to show up or to attempt to show up what Tribunal
16 counsel appear to consider or are defects in the
17 process and in my submission, there can be absolutely
18 no other construction placed upon the way in which the
19 questioning at issue was conducted.

20
21 CHAIRMAN: Well, Mr. Fitzsimons --

22
23 MR. FITZSIMONS: Now, Sir, as I say, I have no doubt
24 that both Mr. Healy and Mr. Coughlan believe that they
25 are engaging in an inquiry, but the fact of the matter
26 is, that they have put propositions to witnesses
27 relating to alleged -- they have alleged defects in
28 the process to witnesses, which is putting a case, and
29 that case will be the same case we can anticipate that
30 Persona will make against the State in the High Court

1 when that claim ultimately comes on to hearing.

2

3 Sir, I appreciate that you may obviously -- I will
4 obey any direction you give but, Sir, we have sat
5 through what has happened here, listened to it,
6 observed it, and we are experienced counsel, and what
7 happened is a case has been made against the integrity
8 of the process, and civil servants have been attacked,
9 both openly and by implication in relation to the
10 manner in which they have conducted their duties. And
11 most unfairly, in my submission, in some instances.

12

13 MR. MCGONIGAL: Mr. Chairman, I want to fully support
14 what Mr. Fitzsimons has just said. I think it is
15 right and proper and it is about time that it was
16 said.

17

18 CHAIRMAN: I am not going to be drawn into a row that
19 serves no useful purpose at this time. I consider
20 that these concerted applications being made in this
21 manner are exceedingly unhelpful to the process. I am
22 not going to make any intemperate observations, much
23 as I might be tempted to do so. I am satisfied that
24 the form of this Tribunal which I have been required
25 by the Oireachtas to undertake requires a most
26 painstaking and detailed examination of this immensely
27 large licence award. Because of the circumstances
28 that have appeared, it has proved necessary for the
29 Tribunal, in its confidential process of inquiry, to
30 examine in great detail both the evolving stages of

1 the process and all stages of any possible involvement
2 or connection on the part of Mr. Lowry with that
3 process. In devising a procedure that will implement
4 the will of the Oireachtas in attending to those
5 matters, I am satisfied that the format that has been
6 decided upon by me is an appropriate one. Namely,
7 that the Tribunal counsel who takes a particular
8 witness and obviously Mr. Loughrey, and his colleague
9 Mr. Brennan, are very much the most substantial and
10 important witnesses, will undertake what, in effect,
11 is a multiple task.

12
13 First of all, they will be required to take the
14 witness through the detailed statements of intended
15 evidence that will be prepared in the course of many
16 protracted meetings held in the course of confidential
17 inquiries. Then it will be the task of counsel for
18 the Tribunal to take up possible matters that may
19 appear in the public interest to require examination
20 in the discharge of that remit. This has proved a
21 protracted process and I am not going to comment upon
22 all the elements that may have added to the
23 protraction of that process at this stage, but I
24 consider a remark by any eminent counsel such as
25 Mr. Fitzsimons to the effect that there has, to some
26 extent, been an, effectively, prosecution, that in
27 some sense is a forerunner of the proceedings brought
28 by a disappointed aspirant is regrettable, unfounded
29 and utterly incorrect. It has been long, it has been
30 painstaking and tedious, but in the context of the

1 facts that had to be inquired into, I believe what has
2 been done has been the only adequate and acceptable
3 way of discharging the onerous task that was entrusted
4 in me by the Oireachtas, and I greatly regret the
5 suggestions which appear to be made on a concerted
6 basis that there is some unwarranted or improper
7 motive on the part of me or of Tribunal counsel.

8
9 MR. SHIPSEY: Sir, I reject and resent any suggestion
10 of a concerted effort on behalf of any counsel before
11 this Tribunal. I was completely and totally unaware,
12 before Mr. Fitzsimons got to his feet, that he was
13 going to make any reference to a perception of a
14 particular line being adopted by Tribunal lawyers.

15
16 CHAIRMAN: I haven't in the slightest sought to impugn
17 you, Mr. Shipsey, in those remarks.

18
19 MR. SHIPSEY: Sorry, Sir, I would like to say that I
20 would wish to associate myself and agree with what
21 Mr. Fitzsimons had said, but I was unaware that he was
22 going to say it. I would like, for the record, on
23 behalf of Mr. Desmond and IIU to say that similar
24 concerns have been expressed by Mr. Desmond in
25 relation to the procedure.

26
27 CHAIRMAN: As he has in many instances directed to me
28 in person, as you are aware, Mr. Shipsey. Am I
29 correct in that?

30

1 MR. SHIPSEY: That is so, Sir, yes.

2

3 MR. FITZSIMONS: Mr. Chairman, please --

4

5 MR. COUGHLAN: No --

6

7 CHAIRMAN: Sorry, Mr. Fitzsimons, I am sorry. Sorry,

8 Mr. Fitzsimons --

9

10 MR. FITZSIMONS: Sorry, Sir --

11

12 CHAIRMAN: -- this is a gross discourtesy to the
13 witness.

14

15 MR. FITZSIMONS: The word 'concerted' was used by you
16 in the course of your previous remarks twice. That is
17 a most unfair and personal comment to make, and I must
18 ask you, Sir, to withdraw it. It is quite
19 unwarranted. I stood up in response to Mr. Coughlan
20 and made my application. And you, Sir, have suggested
21 that somehow or another some sort of concerted action
22 was taking place here which is absolutely not the case
23 and I must ask you, Sir, in fairness, and in justice,
24 to please withdraw that comment.

25

26 CHAIRMAN: Mr. Fitzsimons, does it remain the essence
27 of your observations to the Tribunal, that Tribunal
28 counsel is engaging in some form of unwarranted and
29 unacceptable attempts to impugn the interests of
30 persons involved in the successful consortium that are

1 in a sense a forerunner to High Court proceedings yet
2 to be brought? Because I consider that grossly
3 reprehensible and regrettable.

4
5 MR. FITZSIMONS: Sorry, Sir, that is an absolute, with
6 the greatest of respect, that is an absolute
7 mischaracterisation of what I have stated and I would
8 ask the record to be looked at if necessary for that
9 purpose. And I think, Sir, it is an unfair
10 characterisation. I was simply making the point that,
11 and I did say that a case was made against the
12 witnesses. That is my view, Sir, objectively, rightly
13 or wrongly, but I have said that the counsel
14 subjectively, I have no doubt, believe that they are
15 simply engaging in an inquiry, and I made the point
16 that the case as made is, in all probability, going to
17 be along the same lines in the Persona action. That
18 is all I have said, Sir. And I was leading into the
19 follow-on from that when Mr. Coughlan objected and
20 this unfortunate exchange commenced. But I must ask
21 you, Sir, the word 'concerted' is very offensive and
22 unfair. I have had no consultation with any counsel
23 or party before making these points and I would --

24
25 CHAIRMAN: If you tell me that, Mr. Fitzsimons, I
26 utterly accept it.

27
28 MR. FITZSIMONS: Thank you, Chairman.

29
30 CHAIRMAN: I am only anxious to lower the temperature

1 and to proceed on what will be hopefully getting close
2 to the final stages of Mr. Loughrey's long period in
3 the witness-box.
4

5 MR. FITZSIMONS: Absolutely, Sir.
6

7 CHAIRMAN: I believe it is in all our interests that
8 we try and proceed. And as ever, in any situation if
9 I have over-reacted or if I have expressed anything
10 that appears to reflect on the integrity of able and
11 senior counsel, such as appear on all sides here, I
12 certainly would never wish that to be the case. And I
13 hope in that vein we can proceed, please, with the
14 evidence.
15

16 MR. FITZSIMONS: Thank you, Sir.
17

18 MR. COUGHLAN: Perhaps if I could just assist
19 My Friend and calm matters down as well. When
20 Mr. Healy completed his examination of Mr. Brennan, I
21 think in fairness to Mr. Fitzsimons, he did say that,
22 "Mr. Chairman, Mr. Healy is engaged in the most
23 thorough and comprehensive examination of the witness
24 for the purpose of ascertaining and testing the facts,
25 both examination and cross-examination, insofar as any
26 arises -- any issues arise vis-a-vis my clients on
27 this witness, it would probably arise primarily in
28 relation to the meeting of the 3rd of May and
29 Mr. Johansen's memo of that date.
30

1 "Now, Mr. Healy has put to the witness the content of
2 the memorandum and having regard -- reviewed the
3 evidence, and indeed other matters which concern my
4 client, it doesn't seem to me that it would assist the
5 Tribunal if I were to attempt to go over the ground
6 again, it seems to me that Mr. Healy has covered the
7 ground both from the point of view of my client and
8 the Tribunal."

9
10 So, I think that that's clear reflection and I think
11 perhaps we could calm matters down.

12
13 CHAIRMAN: I hope we can. Mr. Fitzsimons.

14
15 336 Q. MR. FITZSIMONS: Now, one of the -- it is difficult
16 now to, how does one phrase it? I will just phrase it
17 in the abstract. One of the attacks on the process
18 relates to the ownership issue?

19 A. Quite.

20 337 Q. Now, I think you would agree with me that this is a
21 mixed question of fact and law, because it involves --
22 any decision on it involves a consideration of
23 contractual and legal issues?

24 A. I believe I understand what you are saying,
25 Mr. Fitzsimons, yes.

26 338 Q. Now, the questions put to you in relation to this
27 topic by Tribunal counsel have confined themselves, I
28 would suggest, to areas of fact and have not taken
29 into account any legal principles or indeed any
30 contractual principles that may be relevant, isn't