

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 22ND MARCH

2001 AT 11:30AM:

CHAIRMAN: Mr. Healy, will you give those present an indication of what's happening.

MR. HEALY: I am sorry, Sir, but I think the problem is the continuing problem that we have had over the past few days was exacerbated yesterday and again today, and hopefully it has been brought under control now because, as I said, this is a live issue between the Revenue Commissioners and Mr. Lowry. I hasten to add that it does not in any way involve any dispute, as it were, between the Tribunal and either Mr. Lowry or the Revenue Commissioners.

Now, the first witness I want to call is a witness I mentioned in opening, Mr. Liam Liston, who is a Senior Inspector of Taxes employed by the Revenue Commissioners and is based in the Investigation Branch. And one of the things I said in opening yesterday was that, from information made available by Mr. Lowry to the Revenue Commissioners by way of a disclosure, the Revenue Commissioners were under the impression that there was  $\text{€}718,000$  of unassessed income being disclosed by Mr. Lowry. Mr. Lowry contended that the amount of unassessed income was in the order of in or about  $\text{€}500,000$ . It now appears that what the Revenue

believed to be the case is that there was in or about at least  $\frac{1}{2}$ 618,000 of unassessed income, or at least that is their current appreciation of the position.

They are not limiting themselves to that, but insofar as an earlier impression may have been created that there was  $\frac{1}{2}$ 718,000 as a definitive figure, they are no longer of that view.

Mr. Lowry continues to contend that the amount due is in the order or the amount of unassessed income is in the order of  $\frac{1}{2}$ 500,000. In addition, I should say that it is Mr. Liston who was the official, as it were, in the forefront of the investigation conducted by the Investigation Branch into Mr. Lowry's Income Tax affairs. And it is Mr. Liston, therefore, who had to deal with the issue, or the potential issue of, which is all it is at this stage, of criminal liability, and that, therefore, it was Mr. Liston who ultimately gave Mr. Lowry the caution that I mentioned yesterday. And in case an impression may have been created that the Tribunal gave him a caution, this obviously is inaccurate and there can be no question of the Tribunal cautioning people in connection with their tax affairs.

Now, I want to call Mr. Liston now, please. Mr. Liam Liston.

MR. BARNIVILLE: Sorry, before Mr. Liston takes the box, I want to raise a matter with the Tribunal which I

did raise with Mr. Healy prior to the Tribunal sitting, and to some extent Mr. Healy has clarified the point that I wished to make. And it arose, Sir, from a number of, and in particular one very misleading newspaper headline. I am referring to a headline published in the edition of the Irish Times this morning, which stated that "Mr. Lowry was cautioned by the Tribunal". Now, I am grateful to Mr. Healy for clarifying that matter and I appreciate the Tribunal doesn't wish to get itself involved in correcting reports in the newspaper, but I wish to make it clear, Sir, that the headline is most misleading and, could I say, damaging to Mr. Lowry's interests. And if the Tribunal is in a position to give any instruction or direction to the press that its reporting should be fair and accurate, certainly my client would be grateful if the Tribunal did just that.

That is merely just one of a number of what I would be suggesting are very misleading accounts of the evidence given yesterday and submissions made yesterday to the Tribunal. And I am grateful, as I say, to Mr. Healy for clarifying that issue, which does demonstrate clearly that the headline in today's Irish Times is very misleading. I am not sure whether the Tribunal is in a position, really, to take the matter any further. I think it's important that I outline to the

Tribunal my real concerns, my client's real concerns of the manner in which the matter was reported yesterday.

CHAIRMAN: Well, clearly, Mr. Barniville, I have neither real nor purported censorship powers in any sense in relation to reporting of the Tribunal proceedings, but I have no doubt those professionally covering today's hearing will note the particular matter you alluded to and the concern that has occasioned your client. The experience of the Tribunal as regards the vast preponderance of its dealings with the media has been positive, and I have no doubt that members of the media present and concerned will seek and continue to maintain high professional standards and have regard to the potential interests of persons who may be affected by the Tribunal's deliberations.

MR. HEALY: Mr. Liston, please.

LIAM LISTON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

Q. MR. HEALY: Mr. Liston, you are a Senior Inspector of Taxes employed in the Revenue Commissioners based at the Investigation Branch, isn't that right?

A. Correct. I am one of them.

Q. And I think you were appointed an Inspector of Taxes in accordance with Section 85(2) of the Taxes Consolidation Act, 1997, and you have held this

appointment since the 23rd November of 1978?

A. Correct.

Q. Obviously you were appointed under a different section, but, in any case, it's the Consolidation Act that you now get your authority from?

A. That is correct, yes.

Q. You say you are an Authorised Officer under a number of sections of the Income Tax Code. You say that in 1996, in December of 1996, you were requested to examine and inquire into the tax affairs of Michael Lowry and Garuda Limited trading as Streamline Enterprises. Streamline Enterprises is the trade name of Garuda, which is effectively Mr. Lowry's company, isn't that correct?

A. That's correct, yes.

Q. The examination was to establish whether Michael Lowry and Garuda Limited had made a full return of their income profits and gains for tax purposes. The period covered by your examination started at the commencement of trading of Streamline Enterprises in 1987 up until the 31st December, 1996, inclusive.

A. Correct.

Q. You say that shortly after the Revenue received certain information concerning Mr. Lowry's affairs and after disclosures which were made in the press concerning his tax affairs, the Revenue received a letter on the 2nd December from his then tax agents, Messrs. Oliver

Freaney & Associates, who wrote to you stating that they wished to inform you that and I am quoting from their letter now "There may be errors in or omissions from the following returns:

In the case of Mr. Lowry: Income Tax, CGT, RPT and CAT.

In the case of Garuda: Corporation Tax, PAYE and VAT."

The letter went on to say: "Our clients are taking instructions to establish the facts and quantify any errors/omissions so that the returns may be amended.

We will write to you again."

Now, that letter is, in fact, addressed to

Mr. Donnelly is that Mr. Paddy Donnelly who has given evidence here already

A. That's correct.

Q. at the Setanta Centre, Nassau Street. And presumably it was from him that you received a copy of it, is that right?

A. That's correct, and the letter was dated 2/12/'96.

Q. Yes. Since then, you say that the focus of your examination has been the gathering of material and documentation, which includes material identified in the McCracken Report, is that right?

A. Correct.

Q. In the course of your dealings with Mr. Lowry, Mr. Lowry, on the 7th January, 1997, produced a certificate to the effect that he had availed of the

1993 amnesty. In those circumstances, you were, at least prima facie, prohibited from making inquiries concerning the years 1991/1992, that being one tax year, and prior to that without first making an application to the Revenue Commissioners, to re-open those years to the Appeal Commissioners?

A. To the Appeal Commissioners, correct.

Q. Just to clarify that, having availed of the amnesty in 1993, Mr. Lowry was effectively entitled, on the face of it, to rely on a certificate certifying that he had availed of the amnesty to prevent you looking at tax years prior to the amnesty in simple terms, would that be right?

A. Correct, unless I went before the Appeal Commissioners and they granted me the right to do so.

Q. Yes. On the 3rd November of 1997, on foot of an application by you, the Appeal Commissioners granted Revenue the right to investigate years covered by the amnesty period?

A. Correct.

Q. That application, I think, may have been commenced sometime, when in advance of November, there may have been various dealings with the Appeal Commissioners, but, in fact, ultimately, the application was consented to by Mr. Lowry, is that right?

A. Yes, it was after five hearings, Mr. Lowry consented.

Q. But the order, in fact, was made on consent?

A. It was, yes.

Q. An Income Tax appeal remains open in respect of the year 1992/1993?

A. Correct.

Q. Which is the amnesty year, is that right?

A. It is the final year in making the amnesty declaration, one is also obliged to rectify any irregularities or otherwise or undisclosed income, if there is a disclosure to make, in respect of '92/'93 so as to comply fully with the requirements of the amnesty.

Q. You then go on to say that, under cover of a letter dated 18th April, 1997, from Ernst & Young, Chartered Accountants, you received a submission in respect of Michael Lowry disclosing his additional liability for Income Tax covering the years 1991/1992, up to 1994/1995 tax years; Residential Property Tax covering the year 5th April, 1993, to 5th April, 1996; and in respect of Garuda, PAYE and PRSI for the years 1989/'90 up to 1992/'93. The submission also covered Value Added Tax for the period 1989/'90 up to 1994/'95. That submission was made without prejudice. It also included a document entitled 'Statement of Affairs Michael Lowry and Catherine Lowry together with Capital Reconciliation Statements'. It included a calculation in respect of the outstanding property tax is that Residential Property Tax, is that right

A. Correct.

Q. for Mr. Michael Lowry. It contained a calculation of the PAYE/PRSI liability of Garuda Limited. It calculated the outstanding Value Added Tax for Garuda Limited and it also included a bank draft for  $\text{€}100,000$  made payable to the Revenue Commissioners as a payment on account of liabilities.

Now, I think this may be the time for me to ask you whether I am right in thinking that Mr. Lowry, in fact, ultimately paid more money, either on account or otherwise, in respect of his tax liabilities; is that right?

A. That is correct. He paid  $\text{€}327,000$  in total in respect of those submissions.

Q. Including that  $\text{€}100,000$ ?

A. That was inclusive of that.

Q. So he has paid  $\text{€}327,000$ ?

A. In respect of that submission. I am referring only to that submission. Not anything to do with any other tax liabilities.

Q. You say that the submission made by Mr. Lowry contained information suggesting to you, in any case, that his unassessed income amounted to several hundred thousand pounds, but there is, I think, a dispute between the Revenue Commissioners on the one part, and Mr. Lowry and his advisers on the other part, as to the extent of

the undeclared income disclosed by his submission.

And I think the Revenue position is that the amount of undeclared income is at least  $\text{€}18,000$ , is that right?

A. In accordance with that submission, taken on the basis of what they submitted,  $\text{€}18,000$  would be the figure, but that doesn't necessarily mean that that's the end of it, because I have reason to believe that there should be additional amounts other than that.

Q. But you are saying that that submission discloses unassessed income of  $\text{€}18,000$  at least, is that right?

A. In that figure, yes.

Q. And Mr. Lowry's advisers are saying, no, it only discloses in or about  $\text{€}500,000$  of undeclared income, isn't that right?

A. That's correct.

Q. So there is a dispute between the Revenue Commissioners and Mr. Lowry as to what Mr. Lowry's own disclosures show, isn't that right?

A. Yes.

Q. The day you received that submission, you acknowledged it without prejudice, because you may want to take up other matters, isn't that right?

A. Yes, because I had advised them prior to that, by letter, that I was considering criminal matters as well, tax offences.

Q. I understand. Now, Mr. Lowry's advisers took the view, up to that point, that they were making

disclosures to you of information that, as far as they were concerned, you were not aware of, isn't that right? That's their position?

A. Well, that may be their position, but it wasn't the fact that I wasn't aware of them, but I would have been able to get them through various legislation

Q. I am not interested in that. I am only interested in what your position is and what their position is.

Their position is, 'we are disclosing information to you'. Your position is, 'I don't accept you are disclosing things to me I don't know', isn't that right?

A. To say at that particular point in time that I didn't know them would be I wouldn't have known all of those at that particular time, but that didn't mean that I wouldn't have been able to get access to them, because, in addition to I having powers to go, as I said, to obtain this information, it was also in the public media.

Q. I understand. Am I right in thinking that Mr. Lowry's advisers believed that they were making a voluntary disclosure to the Revenue Commissioners?

A. That's what they were maintaining, but I don't agree with that.

Q. They contend it's a voluntary disclosure but you don't agree?

A. No, and I had advised them, on the 15th January, as to

how I was dealing with it.

Q. You can appreciate, Mr. Liston, that I am not trying to assess here, at least not at these sittings, what tax is or is not due. I am merely trying to establish what the status, if you like, is, of the relationship between Mr. Lowry and the Revenue Commissioners.

Mr. Lowry says he is making a voluntary disclosure for their own very good reasons, and you, for your own very good reasons, take the view that he is not making a voluntary disclosure?

A. That's correct.

Q. On the 20th May, 1997, you say that you wrote to Mr. Lowry's then agents, Ernst & Young, setting out a list of queries arising from the information that they had given to you and submissions they had made. You subsequently sent several reminders requesting a reply to your letter, but to date you have not received a reply.

Now, I think that there is some there are a number of things happening at the same time, and there is some dispute between the Revenue Commissioners and Mr. Lowry as to whether replies are warranted. And am I right in thinking that you are aware that there was correspondence on the 9th May, 1997, from the Revenue Solicitor to Messrs. Arthur Cox, Mr. Lowry's then solicitors; and also from you yourself, on the 4th November, to Messrs. Ernst & Young, concerning these

matters. Let's deal with the letter of the 9th May first.

A. Yes, I have the letter of the 9th May here. That's from the Revenue Solicitors, yes.

Q. I'll just put it up on the overhead projector. It's a letter from the Revenue Solicitor; you can't tell from the top, but from the bottom. It's addressed to

Messrs. Arthur Cox. It says:

"Dear Sirs, I am in receipt of your letter of the 6th inst. I wish to refer to a letter from Liam Liston, Inspector of Taxes, to Messrs. Ernst & Young, of the 15th January, 1997, which clearly indicated that the Revenue are carrying out an investigation into tax offences which may emerge to have been committed by their client, Michael Lowry. And that when the investigation into the affairs of Mr. Lowry are finalised, then their client's tax liability can finally be dealt with.

"The Revenue Commissioners are extremely anxious to discuss all matters touching on Mr. Lowry's tax affairs provided they can do so fully and provided that those discussions will not prejudice, in any way, the proper investigation of potential criminal liability.

However, in their investigations, they seek not to be limited only to matters arising after the 6th April, 1991. They have, therefore, advised Messrs. Ernst &

Young that no further meetings or discussions will take place until such time as the Appeal Commissioners have ruled on the application of the Inspector of Taxes under Section 5 of the Waiver of Certain Tax, Interest and Penalties Act, 1993."

What that last sentence means, I think, is that they have advised Messrs. Ernst & Young that no further meetings or discussions will take place until such time as the Appeal Commissioners have ruled on the application to re-open the amnesty, is that right?

A. That is correct.

Q. So that there was, therefore, a gap between that date, the 20th May 1997, and November of 1997, during which the Revenue had indicated to Mr. Lowry's then tax agents that no discussions or meetings would take place, isn't that right?

A. That is correct.

Q. And that could perhaps explain why you may not have received a response to your queries, at least during that period. I think that subsequently those developments were overtaken, after November, by a letter that you wrote to Messrs. Ernst & Young in connection with the then status of your criminal investigation, is that right?

A. That is the letter of the 4th November, '87?

Q. Yes.

A. That would be correct, yes.

Q. And in that letter, you said addressed to Messrs.

Ernst & Young:

"Dear Sirs, I am writing to inform you that I have formed the opinion offences under Section 94, Finance Act 1983, Section 9 of the Waiver of Certain Tax, Interest & Penalties Act 1993."

That's the Amnesty Act, is that right?

A. Yes.

Q. I will just read that sentence again in a way which perhaps makes more sense to non-tax experts: "I am writing to inform you that I have formed the opinion that offences under the Amnesty Act and under Section 516 of the Income Tax Act, 1967, as amended by the Amnesty Act, have been committed by your client, Mr. Michael Lowry."

Is that a correct summary of

A. You omitted to refer to Section 94, Finance Act, 1983.

Q. I am sorry, I beg your pardon.

A. The offences are specified under Section 94 of the Finance Act, 1983.

Q. So what you are saying is that you have formed the opinion that offences had been committed under Section 94 of the Finance Act, 1993, Section 9 of the Amnesty Act, Section 516 of the Income Tax Act, 1967, as amended by the Amnesty Act, is that right?

A. It would be Section 94 of the Finance Act, 1983, not

'93.

Q. I see. You say: "I now wish to arrange a meeting with Mr. Lowry with a view to formally cautioning him.

Please advise me as soon as possible of a suitable date, time and venue for me to meet with your client.

It is in this context that all submissions made by you on behalf of Mr. Lowry or by himself are received by me."

So do I understand that last sentence to mean that any submissions made by the tax agents on behalf of Mr. Lowry or by Mr. Lowry himself would be received by you in the context of a criminal investigation, is that right?

A. Correct, and on the basis of a caution.

Q. I see. Now, I think we know that subsequently Mr. Lowry attended for interview at your office on the 24th February, 1998. That was for the purpose of enabling you to administer the caution, is that right?

A. That is correct.

Q. Can you just explain to me, Mr. Liston, why there was a gap between November and February? Was it something to do with arranging diaries or what?

A. Well, I was also getting material and interviewing other personnel in connection with my inquiries.

Q. I understand, but was it you indicated to Mr. Lowry that you'd wait until February to administer the

caution, or was it that there were difficulties in arranging an appointment?

A. I didn't indicate there was any difficulties about meeting him. It just came about at that time. I can't state specifically why.

Q. You say that: "As at that stage, I had determined that the question" "As at that stage, I had determined that the question of criminal prosecution had reached the point where Mr. Lowry could be affected by any admissions he would make. I informed his advisers that I would issue a caution and, in fact, a caution was issued at the meeting."

Mr. Lowry was accompanied, I think, by his solicitor at the meeting, is that right?

A. That's correct.

Q. You go on to say that to advance your investigations, you required details of Mr. Michael Lowry's dealings with financial institutions. In order to obtain this information, you made an application in accordance with Section 908 of the Taxes Consolidation Act, and High Court Orders were made on foot of those applications.

Now, I think those applications are not made on notice to the taxpayer, or are they? Perhaps you can

A. On that situation, they weren't, no.

Q. They weren't?

A. No.

Q. So Mr. Lowry wouldn't have been aware that you were making those applications?

A. Not at that time.

Q. You go on to say that during the course of your inquiries, you interviewed six parties and gathered material and documentation in connection with the refurbishment of Mr. Michael Lowry's Glenreigh residence, and other matters. This necessitated meeting with personnel which included the architect, the builder, the quantity surveyor and Dunnes Stores personnel, all in connection with the execution of the works and payment for them, would that be right?

A. Which works are you referring to?

Q. In Glenreigh?

A. That would be part of it. There were other matters as well.

Q. You say that on the 2nd December, 1997, you visited the premises of Garuda Limited at Abbey Road, Thurles, for the purpose of removing their records. You were informed that the records were in the possession of the Department of Enterprise, Trade and Employment for the purposes of investigation of affairs into Garuda Limited by the Authorised Officer appointed under the Companies Act 1990. These original records were subsequently given to the Moriarty Tribunal by the Authorised Officer when his report was completed. Some of the copy documents were subsequently made

available by Mr. Fisher to you directly, isn't that right?

A. That is correct.

Q. On the 26th February, 1998, you wrote to Mrs. Catherine Lowry, whoever's the secretary of Garuda, and to Mr. Lowry and his solicitor, requesting a letter of consent allowing you access to the Garuda records.

And that consent has not been received to date, isn't that right?

A. Correct.

Q. I think you understand that, from my opening, I made certain remarks about the current state of the requests for those documents, so far as the Tribunal is concerned; that the Tribunal, while it has custody of them, has no right of control over them. You are aware of that?

A. I am aware of that, yes.

Q. Now, you are aware, Mr. Liston, from what I said, I think, in my opening remarks, that there are many details of your dealings with Mr. Lowry and with Garuda that the Tribunal does not intend to go into at this stage, isn't that right?

A. Correct.

Q. And this statement contains merely an outline of the nature of the relationship between you and of the points of dispute, if you like, isn't that right?

A. Yes.

Q. You have obviously done a lot more work and have been involved in a lot more than this short statement would suggest, isn't that correct?

A. Correct, yes.

Q. And as I think I mentioned at the outset, so far as the collection of actual tax due, money due, or which may be due by Mr. Lowry, there is, as we indicated, a difference of opinion as to the amount due; there is a dispute as to whether Mr. Lowry is entitled to assert that he is voluntarily disclosing things to the Revenue Commissioners, but there is an overall complication: That you are conducting now what appears to be an investigation, which could lead, you can't say obviously, to a criminal prosecution; isn't that right?

A. The latter part is a matter for the DPP.

Q. Yes, so that Mr. Lowry's hands are, to some extent, tied by his lawyers who are telling him, well, you better not make admissions to the Revenue Commissioners, but the speed with which the Revenue Commissioners can carry out their work is also hampered because a criminal investigation has to be conducted slowly and very carefully, isn't that right?

A. Well, it is slowly, it has to be conducted carefully.

Q. I don't suggest that you do it slowly rather than do it quickly, but you can't do it as quickly as you conduct, what I call, a civil investigation. If you want to resolve a civil dispute it can be resolved much more

quickly?

A. Yes, it must be done meticulously.

Q. And I am sure you will do it that way. Thank you very much.

MR. O'DONNELL: Just at the outset, I appear on behalf of Mr. Lowry. I appreciate the careful way in which the Tribunal and, indeed, the Revenue team have dealt with this aspect of the matter, and you will appreciate that there are constraints upon me in the way in which I address Mr. Liston's evidence for the same token. For that reason, I don't propose to ask him any questions in relation to the substance of the tax affairs. I am anxious, given the matters that Mr. Healy has outlined, that my silence in that regard would not be regarded as, in any sense, an acceptance or admission. Those are obviously matters for another day, matters which we will fully contest if and when they arise.

For that reason, I propose to just ask Mr. Liston a few questions in relation to matters that touch on the substance of the amount of tax at issue.

CHAIRMAN: I will certainly note that position, and I understand that admissions effectively hinder to some extent.

THE WITNESS WAS EXAMINED AS FOLLOWS BY

MR. O'DONNELL:

Q. Mr. Liston, can I just get the sequence of events clear with you. I think there was a letter on the 2nd December, 1996, from Messrs. Oliver Freaney to the Revenue in relation to Mr. Lowry's affairs?

A. That is correct.

Q. And there was subsequently, on the 18th April, 1997, a formal submission made by Messrs. Ernst & Young on behalf of Mr. Lowry, and you have discussed that with Mr. Healy?

A. Correct.

Q. Thereafter, I think there was correspondence from Messrs. Arthur Cox on behalf of Mr. Lowry, with, I think, the Revenue, in relation to seeking to resolve the matter. That was the posture they were adopting.

I fully appreciate the posture you have adopted in response, but that was the proposal that was made or the approach that was made, isn't that right?

A. That would certainly be the approach, yes.

Q. And that is not unusual, in this type of instance, that there would be attempts made to resolve the matter?

A. Not unusual, but to say that they were resolving it entirely

Q. No, I am not suggesting that they were resolving it entirely, I am just identifying that contact was made with a view to attempting to resolve the matter on a particular basis; what you might call a civil basis?

A. The contact in relation to the civil basis would have been primarily for myself. However, there was a combination of correspondence in relation to the criminal aspect of it between myself and also from the Revenue Solicitor's office.

Q. Yes, I appreciate that, but as I say, contact was made with a view to attempting to resolve to settle this matter on a civil basis. And in the context of Revenue, a civil basis means tax, interest and penalties, which is sort of a hybrid position there, the penalties can be imposed as a matter of civil law by the Revenue?

A. On a civil basis, that is correct, yes.

Q. And contact was made, in your opinion - I fully understand your position in relation to it, but the reason why Ms. Cooke, if I can bring it to that, is writing the letter in May 1997 is that Messrs. Arthur Cox have been writing saying, is it possible to meet to resolve these matters?

A. Yes.

Q. And then in response, she says, very fairly, that you have indicated that there is a criminal investigation under way. That the Revenue Commissioners are extremely anxious to discuss all matters but only if they can be those discussions will not prejudice in any way the proper investigation of the potential for criminal liability?

A. That would be the general trend.

Q. The Revenue are concerned not to prejudice a position that they were adopting?

A. That is correct.

Q. Or might adopt?

A. Yes.

Q. And she said that in any event, there could be nothing could happen until the issue of the lifting of the certificate under the tax amnesty was decided by the Appeal Commissioners?

A. Nothing could happen in relation to the amnesty years.

Q. Yes. And what she said was: "No further meetings or discussions will take place until such time as the Appeal Commissioners have ruled on that issue."

A. That is correct. That's according to her letter.

Q. And I think that, subsequent to that, I think there were two adjourned hearings before the Appeal Commissioners - in fact, one had proceeded, that was the 24th March, 1997; and then there was one on the 26th May, 1997. Nothing they were adjourned the matter came before the Appeal Commissioners and was adjourned?

A. You had the specific dates there. There were some adjournments but I don't have the specific dates in front of me.

Q. I don't think there will be any controversy on it, but, subject to correction, I think there was then a hearing

on the 29th September, 1997, at which it was indicated on Mr. Lowry's behalf that he would consent to the lifting of the certificate?

A. That would be correct.

Q. And that became that was made a formal order by the Appeal Commissioners, pursuant to your application, on the 3rd November, 1997?

A. Correct.

Q. And I take it, then, that it's not a coincidence that at that point, the Appeal Commissioners have dealt with what Ms. Cooke says has to be dealt with before any further discussions can take place?

A. That was then dealt with.

Q. So that bar had now been passed. I take it it's not a coincidence that it's the following day, 4th November, that you very properly write your letter on the 4th November, 1997, to Messrs. Ernst & Young saying that you wish to formally caution Mr. Lowry?

A. That is correct.

Q. That was am I right in assuming that that was a reaction to the fact that you had now passed that point of having the Appeal Commissioners make that determination?

A. That would be more or less it.

Q. In that regard, you said: "I now wish to arrange a meeting with Mr. Lowry with a view to formally cautioning him. Please advise as soon as possible

date, time and venue for me to meet with your client.

It is in this context that all submissions made by you on behalf of Mr. Lowry or by himself are received by me."

You are setting out there, in clear and unmistakable terms, firstly that it has to be discussed, and told he doesn't have to say anything in response; and secondly, you are saying that, 'anything you do say, any submission you do make, any discussion you do have, may form part of a criminal prosecution'?

A. Correct.

Q. And that 'you are not obliged to do so'?

A. Not obliged to do which?

Q. To provide me with any such information, submission or response. The caution the terms of the caution that you administer, say precisely that: you don't have to answer any questions, and, if you do, they may be use in evidence against him?

A. That is correct.

Q. And that's where the trail of discussions and resolution, as it were, ended, with you properly taking that position, and Mr. Lowry's advisers, criminal lawyers, properly taking the position under no circumstances they would have to advise their client not to respond?

A. It was my position, I presume it was also correct for

his advisers.

Q. Now, I know that at a later stage in this Tribunal, the Tribunal will perhaps be drawing comparisons between the treatment of different taxpayers, and I don't want to ask you any extensive questions about that. But can I just take it that, as I understand it, what you have said and what the Revenue position is, that no that while a criminal investigation is being considered or being pursued, while a prosecution is being considered, there can be no question of a settlement?

A. There is no settlement discussion on a civil basis.

Q. While the question of a criminal prosecution is still live, to use Mr. Healy's phrase

A. It doesn't prevent Mr. Lowry making payments.

Q. I understand that, but there can be no

A. There will be no settlement.

Q. settlement and agreement on the part of the Revenue?

A. That is correct.

Q. Until that matter is resolved?

A. Yes.

Q. By the same token, it follows, does it, that if there is a settlement, that that resolves all matters and would remove the question of criminal prosecution? I am not talking about Mr. Lowry's position here, I am just talking about generally, the corollary of that must be true?

A. You are talking generally rather than in this case?

Q. Yes?

A. If there is a settlement for tax interest and penalty, that would settle it.

Q. We know that in respect we know that in respect of, for example, Mr. Haughey's tax affairs, that a settlement was entered into in respect of those certain issues that arose in that respect. You must be aware of that?

A. I am aware of certain things, but I have no dealings with Mr. Haughey's affairs.

Q. Mr. Haughey's affairs never passed across your desk

A. No.

Q. or the desk of your Investigation Branch, as far as you know, is that right? I don't want to get into this in any detail; it's not, as it were, my business, but I just want to confirm with you?

A. I am making no comment on the latter.

Q. You are aware that a settlement was entered into?

A. I am aware a partial settlement was entered into.

Q. And in relation to reference to the Price Waterhouse Report in this case in respect of Mr. Lowry, Mr. Lowry's name appeared in the Price Waterhouse Report. That was the genesis of the information which was supplied to you and which, indeed, was disclosed in the media in November 1996?

A. It was yes, in relation to his house. There was a reference to his house, yes.

Q. And can you also confirm, in general, without getting into anyone's affairs, that I think a settlement had been entered into in respect of other persons

MR. CONNOLLY: Sir, we are straying into the tax affairs of other persons who are not represented here. We are they may not be named, but that's what the witness is being asked, Sir.

CHAIRMAN: Well, I don't Mr. Liston has said he had no dealings with the other case, which is quite obviously being referred to. I don't think I can inhibit Mr. O'Donnell putting some general matters, subject to the witness's express statement that he was not privy to the dealings in the Haughey case.

MR. CONNOLLY: I think the question was dealing with other persons apart from Mr. Haughey. That's why I am objecting to it.

MR. HEALY: Could I be of assistance? At some stage, the Tribunal has intimated to both the Revenue Commissioners and Mr. Lowry this matter may be addressed; more particularly, the precise issues being addressed by Mr. O'Donnell may be addressed, and I am concerned about one thing: None of the material before the Tribunal today and before the public has been made available to Mr. Haughey or his advisers. And insofar as comparisons are being made, and I do appreciate some

of the points being made by Mr. O'Donnell, but maybe now is not the time to make them or to pursue them, at least more intensive than he wishes to pursue them, without giving notice to the relevant parties.

MR. O'DONNELL: I hadn't intended to pursue it further than this question. I simply wanted to raise the issue at this point because the focus of the inquiry at this point is to effectively understand if Mr. Lowry, through my act or any other person, received favourable treatment from the Revenue. And I think in that regard, if his tax affairs come to light in the context of a very general report, that it is relevant to know whether prosecutions were contemplated in other cases, or if, as I understand to be the case, settlements were entered into in every other case.

That's all I wanted to pursue with Mr. Liston today, and if he is in a position to confirm, in respect of the Price Waterhouse Report, that settlements which are the antithesis of prosecution which can't coexist with prosecution were entered into, I think that evidence has already been given before this Tribunal and the McCracken Tribunal, that a global settlement was entered into. I don't think I am dealing with anyone's individual affairs or, indeed, anything that hadn't already been disclosed. If Mr. Liston can deal with that, that's all I am interested in dealing with.

I am grateful for Mr. Healy's intervention and acknowledgements that the matter of comparison, as it were, of favourable or unfavourable treatment be addressed separately. But I do wish to establish that if Mr. Lowry, by any token, has not been treated with undue favouritism by the Revenue in relation to other persons similarly situated because that is, I understand, the burden of Section J. I don't propose pursuing it any further than that, Sir.

CHAIRMAN: What is your state of knowledge, Mr. Liston, as regards dealings with completely separate taxpayers who may have come to have been alluded to in the Price Waterhouse Report?

A. I have no comment to make on them.

MR. O'DONNELL: I won't pursue it any further.

CHAIRMAN: I think it's preferable if it's to be constituted the subject matter of another inquiry that all persons are fully on notice of the actual gravamen

MR. O'DONNELL: I hadn't intended pursuing it any further. Those are my questions of Mr. Liston.

MR. CONNOLLY: I have no questions, Sir.

CHAIRMAN: Can I take it in conclusion, Mr. Liston, as seemed to be implicit in what you have stated as

regards the meeting that you held with Mr. Lowry and his solicitor in your office on the 24th February 1998, that ultimately it transpired to be only a meeting of a couple of minutes, of a very formal and perfunctory nature?

A. It lasted much longer than that, Your Honour. Because I put the questions to him, lengthy questions

CHAIRMAN: Yes, but as regards the actual giving of the caution, and your communicating to him his legal entitlements, that portion of it was very brief.

A. That was very brief, yes.

CHAIRMAN: Very good. Thank you very much.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. O'Donghaile please.

MR. O'DONGHAILE, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. O'Donghaile, I think you are currently the officer in charge of the Taxes Investigation Branch including the Prosecution Unit.

A. That's correct.

Q. And you have already made a statement to the Tribunal concerning the Revenue's treatment of Mr. Haughey's farming activities and Capital Gains Tax arising on the disposal of Rath Stud?

A. Correct, yeah.

Q. And I think what the Tribunal has asked you to do, in a very general way at this stage, is to give an overview of the Revenue's position dealing with Mr. Haughey and Mr. Lowry, isn't that correct?

A. Correct.

Q. Matters will be gone into, perhaps in greater detail perhaps at a later stage, but at the moment, you are just giving a general overview?

A. Correct, yeah.

Q. Now, I think you have informed the Tribunal that you are aware of the action taken in Revenue in relation to the two cases mentioned. Both cases have been under investigation for sometime. In one case [Mr. Lowry] the investigation commenced before the publication of the Report of the McCracken Tribunal. In the other case [Mr. Haughey] the investigation started following the publication of the Report. In both cases, the investigations are ongoing and Revenue is using its powers as appropriate to advance the investigations, isn't that correct?

A. That's correct, yes.

Q. Now, I think you have informed the Tribunal that you are in a position to recount the developments to date in both cases. The actions taken in each case were geared to the circumstances of the case.

A. Yes, correct.

Q. But you said that before doing this, you might just summarise in general the approach which Revenue follows in dealing with cases. Up to the early 1990s, tax evasion was, in almost all cases, dealt with by way of recovery of the tax underpaid with interest and penalties as appropriate, is that correct?

A. Correct.

Q. Only a small number of cases were advanced to court. Between 1985 and 1995, there were only two successful prosecutions for tax evasion, is that correct?

A. To the best of my knowledge, I think I have seen them all.

Q. Since 1996, Revenue has progressively put in place a more active prosecution policy for serious evasion, is that correct?

A. Correct.

Q. Under this policy, Revenue itself carries out investigations and sends cases direct to the DPP whose decision it is as to whether a prosecution should be initiated, is that correct?

A. That's correct, yeah.

Q. In selected cases for investigation for the purpose of prosecution, Revenue follows the criteria it has published. A critical element is the assessment of the likely availability of evidence to sustain a prosecution. Given the intensive work involved, only a small number of cases were brought to court this year

under this policy.

A. That's correct.

Q. And you now wish to go on and deal in summary form of the two cases Mr. Haughey and Mr. Lowry.

A. Yes, indeed.

Q. Now, if I could just go back for a moment over the general position. Up to the early 1990s, if a prosecution was pursued, and there were very few in number as you say, that was a matter for the Gardai who ultimately sent a report to the Director of Public Prosecutions and the Director of Public Prosecutions would decide whether or not to proceed with a prosecution?

A. Yes. We would refer cases where we might suspect serious offences had occurred to the Gardai or to the DPP who in turn might refer them to the Gardai but there would have been very few of those.

Q. The Revenue were not in the preparation of prosecutions?

A. No, we weren't. I mean, it wasn't we didn't see it, I suppose at the time, as our core business, it is still not our core business. Our core business is collecting money but we have taken this on board as an important part, an important element of our business at this stage. It wasn't the case up until '96.

Q. In '96, you adopted a policy to carry out the investigation of cases which might lead to a

prosecution yourselves, isn't that correct?

A. Correct.

Q. And that was in the context of compliance, isn't that to achieve compliance?

A. In a sense, compliance, indeed. Essentially, I suppose, if you are looking for a rationale for it, what we are saying is that prosecution seems to be a weapon which is useful in perhaps deterring evasion but perhaps more importantly in underpinning public confidence in Revenue administration and I think they are that's the rationale essentially for it .

Q. Now you say that in dealing with the affairs of Mr. Charles Haughey as have been discussed during the course of evidence at this Tribunal and the McCracken Tribunal, I think that you say that Revenue has used all available powers to progress the inquiry. Revenue investigators have visited persons identified as having information concerning the payments to Mr. Haughey or his financial affairs, is that correct?

A. That's correct.

Q. Relevant documents, including bank documentation identified as relevant, were procured using available powers and High Court Orders were obtained as necessary, is that correct?

A. Correct, yeah.

Q. Detailed information has also been requested from Mr. Haughey, is that correct?

A. Correct.

Q. While some of the information requested has been supplied, the legal advice given to Mr. Haughey by his advisers is that he should answer to the Moriarty Tribunal first before replying to Revenue, is that correct?

A. That's correct.

Q. There is no admission by Mr. Haughey that he has received taxable gifts, is that correct?

A. Yeah.

Q. I'll come back to that, if I may, in a moment. Even though it can be shown that Mr. Haughey benefited from substantial funds made available to him, it has not yet been possible to identify conclusively the taxable source of all these payments, is that correct?

A. That's correct, yeah.

Q. A complex series of offshore transactions is involved and certain individuals who were directly involved in orchestrating the movement of funds are deceased, is that correct?

A. Correct.

Q. He, that is Mr. Haughey, was not obliged to keep any records of gifts or personal expenditure. Consequently significant difficulties exist in relation to the gathering of evidential material, is that correct?

A. That's correct, yeah.

Q. In relation to the tax assessments of the payments

mentioned in the McCracken Report, Revenue's investigations enabled it to prepare a satisfactory case for the scheduled rehearing in the Circuit Court following the ruling of the Appeal Commissioners against the Gift Tax assessment issued by Revenue in respect of the payments?

A. Yes, I think you have heard evidence on that.

Q. But you said that Revenue felt that having regard to all the cases and taking into account legal advice, there was considerable merit in settling the civil liability if a substantial offer was made and the amount of the settlement, as we have already heard and dealt with, was over  $\text{€}1$  million?

A. Correct, and again we have heard evidence on that, yeah.

Q. You say that the ongoing revelations at this Tribunal have been of assistance to Revenue in its inquiry and the tax implications of all relevant information including that which emerges from the Tribunal proceedings will be considered by Revenue, is that correct?

A. Yes.

Q. Now, that is the general overall view of how matters are being dealt with, have been dealt with and are being dealt with?

A. And are being dealt with, correct.

Q. Now, turning to the case of Mr. Lowry and Garuda.

A. Sorry, before you go, could I just clarify a point in my statement which if it hasn't been dealt with already. There is a figure in it which I want to change. 718 should read 618. Mr. Liston has already dealt with that, so I think...

Q. That's fine. I think we'll use the expression that was used, "at least  $\frac{1}{2}$ 618,000".

A. Sure.

Q. In the case of Mr. Lowry and Garuda Limited, investigations commenced in December 1996, isn't that correct?

A. Correct, yeah.

Q. And arising from the findings of the Price Waterhouse Report and the McCracken Tribunal, a large body of evidence emerged which strongly indicated that, and you use the expression, "under the counter income payments" were made to Mr. Lowry, isn't that correct?

A. Yeah, that's one way of describing it.

Q. That's it's just a way of describing it?

A. Yeah.

Q. Now, I think a submission was received from Mr. Lowry's tax agents

A. Then tax agents.

Q. Then tax agents. That has been dealt with, in fact, by Mr. Liston?

A. Correct.

Q. And perhaps I'll just leave it at that at the moment.

That evidence has been given. And again I don't think you have anything to add at the moment to the further evidence given by Mr. Liston that at present, consideration is being given to the question of whether a prosecution would be recommended or sent for the consideration of the DPP, isn't that correct?

A. Well, preparation of a file for the DPP.

Q. And there is that ongoing difficulty arising between the Revenue and Mr. Lowry and his advisers in light of the caution which was issued to Mr. Lowry and the position the Revenue has adopted and the position Mr. Lowry has adopted on the basis of advice?

A. Yes, correct.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Just a view brief short questions.

You refer there, you say "arising from the findings of the Price Waterhouse Report." I don't want you to go into that in any detail other than to confirm that the Price Waterhouse Report extended to many more individuals than Mr. Lowry?

A. Yes, it did.

Q. And to the payment of what you describe as "under the counter income payments"?

A. Except in Mr. Lowry's case, he perhaps stood out a little bit more than some of the others.

Q. There were a large number of others in that report a number of others?

A. There were others mentioned, but I am not certain that the figures would have added up to the ones in Mr. Lowry's case, but go on anyway.

Q. That figure of \$618,000 that you referred to represents income not assessed for tax or undeclared or whatever

A. Yes, that's as we understand the submission that was made to us, yes.

Q. That's income upon which tax should have been paid and indeed in respect of which Mr. Lowry has made some payments. I appreciate

A. Correct, \$327,000, yeah.

Q. And finally, you say that the matter was referred to the Admission Committee of Investigation Branch and put on a prosecution footing. That was early in 1997, is that correct?

A. No. That would have been later in '97. I think, from memory, perhaps October maybe, November.

Q. Can I take it though that from before that, it was treated as a potential prosecution case?

A. Well, certainly we were looking at it in the context of serious offence case. There was an implication that - more than an implication - there was an implication of a serious tax offence or tax offences, so our approach to it was to examine it in that context without

necessarily getting into a position where we had the evidence of that.

Q. I appreciate that

A. But anyway, as it developed, we got into that position, yes.

Q. In a sense, that was your approach almost from, to use a colloquialism Mr. Coughlan will no doubt know, also from the 'get go'?

A. From an early stage, yes.

MR. CONNOLLY: I have no questions, Sir.

CHAIRMAN: Thank you very much, Mr. O'Donghaile.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witnesses, Sir, in relation to this matter at the moment which will be apparent has been dealt with in rather a general way because of the ongoing relationship which exists between the Revenue and Mr. Haughey and the Revenue and Mr. Lowry at the moment. The Tribunal would intend returning to these matters in a more specific way at a later stage, but for the moment, Sir, that is the available evidence and the Tribunal will notify, on its website, when the next public sittings will be in relation to the Tribunal's business.

CHAIRMAN: Obviously, in the context of what I have intimated about our anxiety to bring the evidence to a

conclusion, that will be done at the very earliest possible vantage point. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.