

THE TRIBUNAL RESUMED ON THE 30TH JUNE, 2005 AS FOLLOWS:

CONTINUATION OF EXAMINATION OF BEN DUNNE BY MR. COUGHLAN:

Q. MR. COUGHLAN: Thank you, Mr. Dunne. I don't intend being very much longer with you, Mr. Dunne. Just a few matters.

I think I was going through the various items which you had brought to the attention of the McCracken Tribunal and then going through matters which arose in the course of this Tribunal's work and matters being brought to your attention, is that correct, yesterday?

A. That's correct, sir.

Q. And I think we had dealt with the question of the Wytrex, that it was when the matter was brought to your attention by this Tribunal that you then had some recollection about matters, not a great deal of recollection about matters, but until matters were brought to your attention by the Tribunal, you had no recollection of the Wytrex payment?

A. Oh, the Wytrex payment, yes.

Q. Isn't that right? Now, I think you did inform the McCracken Tribunal, and it was the subject of some consideration by that Tribunal of the three drafts amounting to $\text{€}210,000$ which you say you gave to Mr. Haughey at Abbeville on the Saturday morning, isn't that right, and that would have been those payments would have been in November of 1991. Do you remember those

A. They were the Montgomery, Scott and yes, I remember that.

Q. You remember that, and that was brought to the attention of

the McCracken Tribunal, and in fact it was the subject of some consideration by that Tribunal. You remember Mr. Smyth was involved, and

A. I think originally I thought I gave them to members of the family, and then it transpired, yes, that's correct, sir.

Q. Now, I think you didn't inform the McCracken Tribunal about the what I'll describe as the Carlisle payments. I think those were three cheques as well, I think, that found their way into the Carlisle bank account and back out of that account to somewhere else; isn't that right?

A. That's correct, sir, yes.

Q. It was only when they were brought to your attention by this Tribunal that you began to have some recollection, I think particularly in relation to you having some vague recollection of contact with John Barnicle, with Mr. Barnicle; is that right?

A. I recall that, yes.

Q. And just dealing with those Carlisle payments for a moment sorry, dealing with what we described as the Carlisle cheques, at the moment, I think that again these were three cheques which you had drawn; isn't that correct? They started off as three of your cheques, or Dunnes Stores cheques?

A. Yeah, that's correct, yes, sir.

Q. And I think the evidence was that Mr. Michael Irwin was involved in bringing, I think, the cheque books, or understanding where the drawings were coming from. I think

one of them related to a Neville's Bakery account; isn't that right?

A. I can't remember the detail, but I remember Michael Irwin was involved.

Q. We needn't go into the detail. And I think it was when this Tribunal brought your attention to the 20,000 which you gave at the luncheon in Abbeville, that you only had a recollection of that then; isn't that right?

A. That's correct, sir.

Q. Now, I just want you to deal with one or two documents, just to tidy up things now, if I may. I just want to bring something to your attention, I don't know if you can or cannot comment on it, and it's just in the evidence given by Mr. Bowen to the Tribunal, he gave us certain documents as well, mostly notes he made of various meetings or telephone conversations he had, and I just want to bring to your attention, and this is in Book 64; do you have that with you?

A. I have it here. Just one second now, sir.

Yes, I have Book 64 now.

Q. Mr. Bowen's evidence is at Divider 9, if you go to that firstly?

A. Yes, I have it in front of me, sir.

Q. And if you then go to Tab 11, behind Divider 9, there is just a handwritten note, if you can get that, please.

A. Book 64.

Q. Divider 9.

A. Is that where Divider 9 says "Brian, this note is to confirm a discussion this morning"?

Q. Book 64 is the book which contains the statements of the various witnesses. Do you know that one?

A. It's 090605/64?

Q. Yes.

A. I must be looking at the wrong divider, sir.

Q. When I say "Divider 9", I mean the big white divider with the black

A. I have you now.

Q. You see after that there are a number of tabs, the coloured tabs. And if you go to Number 11, please.

A. "Client discussion record"; is that right?

Q. That's it. And then you see "Client: Dunnes Trust. C.G.T. appeal", and the date of this note is the 4th June of 1987.

A. I am looking at the typed version of the handwritten.

Q. You are looking at the typed version, very good.

"Contact in attendance, Mr. O'Cathain, Office of Chief Inspector of Taxes". That was the person or the office dealing with the matter, with the issue on the Revenue side.

Then if you go down, and then you see: "Telephone from Mr. OC.

"He confirmed the Revenue would not argue value until appeal was determined in principle. Counsel to be employed" and they mention and then he is informing

Mr. Bowen here that "He understands that Ben Dunne has been talking to Seamus Pairceir." Do you see that?

A. I see that, yes, sir.

Q. Now sorry, I beg your pardon. "He understands that

B. Dunne again been talking to Seamus Pairceir."

A. Yes.

Q. Indicating that you had been talking to Mr. Pairceir on a number of occasions; do you agree with that what the note says?

A. It indicates that, definitely, sir.

Q. And can I take it that from your point of view, looking at matters now, that if you were talking to Mr. Pairceir, which seems to be the case, that not only that Mr. Fox would have been aware of it, but that Mr. Bowen would also have been aware?

A. It appears that that's the case there, yeah.

Q. Now, I just want to if we could very briefly now

A. Plus, I'd just like to add one other point, that I don't think I ever spoke to Mr. Pairceir on my own. I think all my conversations

Q. Yes, I take your point. I take the point you are making on that.

A. Okay. Just for the record.

Q. It does appear, though, from the notes, and whether you have any recollection or not, that Mr. Pairceir appears to have been on his own?

A. From this note, is it, sir?

Q. No.

A. I don't think Mr. Pairceir well, you see, I can't be sure, but I have no recollection of Mr. Pairceir ever speaking to me on the phone.

Q. All right. Or at any meeting I mean any meeting

A. On my own

Q. There is confusion. You are saying that when you met Mr. Pairceir, what you are really saying is you'd have seen Mr. Pairceir and you'd have been accompanied by Mr. Noel Fox; isn't that what you're

A. I mean, I would say without any recollection, I would say that's definite.

Q. What I'm saying to you is this: that I don't know, and I'm just asking you, do you have any recollection it would appear from the notes that at any meetings that you had with Mr. Pairceir, that Mr. Pairceir was at the meeting by himself, on his own?

A. Sorry, can you repeat the question?

Q. Yes. That at any meetings that you were present with Mr. Pairceir, that Mr. Pairceir was on his own.

A. Was there any meeting?

Q. No. The notes

A. Yes, sir.

Q. are recording information coming back from Mr. Pairceir.

A. Yes, sir.

Q. And they describe meetings which you had with him, and the point you wish to make is that any meetings that you may

have been at with Mr. Pairceir, that you would have been accompanied by somebody.

A. Correct.

Q. What I am asking you is to think deeply now as to whether Mr. Pairceir was accompanied by anybody.

A. I recall one meeting with Mr. Pairceir, and I believe Mr. Pairceir was on his own at that meeting.

Q. All right. Thank you.

Now, I want you to now go back to Mr. Uniacke's document, if you wouldn't mind, please, and I'll give you the one we were looking at yesterday. And it's at Divider

A. Is it a different book or same book, sir?

Q. No, stay in the same book, Mr. Dunne. I think it's Divider 12, have you got that?

A. Yes, sir.

Q. And it's Tab Number 5.

A. Yes, sir.

Q. Now, I just want to go back to that paragraph which commences "BD currently has an affidavit sworn by an internal accountant in Dunnes Stores showing the widespread dissipation of company funds." We have discussed the question of dissipation of company funds yesterday, and I'm not going to ask you further about that.

On the question of an affidavit sworn by an internal accountant, Mr. Michael Irwin was an internal accountant, isn't that right, in Dunnes Stores?

A. One of many, yes.

Q. And Mr. Michael Irwin was aware of an issue which you were identifying here of this question of dissipation of company funds; isn't that right?

A. I'd say one of many as well, yes, sir. When I say one of many, one amongst some, if you know

Q. Yes. But, for example, we know about Mr. Michael Irwin's involvement on your instruction, if I can put it that way in relation to the Carlisle payments; isn't that right?

A. Yes, yes, sir.

Q. And I think Mr. Michael Irwin, if I can put it this way, was available to your side in respect of any dispute with your family and the Trustees, isn't that right, as matters transpired?

A. I suppose because he lost his job, he would have been more on my side than the other side. But I don't think he really wanted to get involved in the dispute at all, if that answers the question.

Q. But he was an accountant who knew of the situation; isn't that right?

A. He did, yes, sir.

Q. Can you remember whether you or Mr. Smyth had spoken to Mr. Irwin or any other accountant at this stage? Can you remember that?

A. I can't, but I would think and I'm going back using logic again I would have said to I could have said to Mr. Smyth that if I wanted let's say we came up with the

idea, I don't know exactly, but to be to be helpful and as truthful as I possibly can be, it could well have happened that I could have said to Mr. Smyth, "Look, you know, I could get Michael Irwin"; because he was after being fired, I would have had an idea I think he was after being fired at this stage, or he knew he was on the way out when I was on the way out; I'll put it to you that way.

Q. I think that seems to have been what we all understood to be the situation.

A. Correct. So without I don't I can't say I spoke to Michael Irwin, but and I don't know what Michael Irwin would have done when push would come to shove, but I certainly could have said to Smyth, "Yeah, I can get an affidavit". I was capable of saying that, or it would have been the way I think.

Q. Yes indeed. Now, I just want to, then, if I might then return to the question of that document which reads: "Part of his evidence will refer to the payment of $\frac{1}{2}$ million."

That particular now, I think yesterday, when I was taking you through the list of matters, payments, meetings and matters of that nature, and we dealt with the Tripleplan payment, which was the first big payment

A. Yes, sir.

Q. isn't that right?

I think you said to me, when we were going through that, and it's yesterday's evidence, page 298, Question 507, and

it's an answer you give. You say: "That strikes me here, I think that and I told you this when I got a complete memory loss, it certainly I find it very difficult, and I try to understand it. And just to make a point to you, sir, that if I had recalled the Tripleplan payment when I was fighting with my family and when I wrote that letter" I think you are referring to the document in fact, or perhaps to the replies to particulars.

A. I think it's the reply to particulars I would have been referring to.

Q. "If I had recalled it, I would have put it in. There is no reason in my mind as I am sitting here, I am trying to give a bit of logic."

A. That's correct, sir.

Q. Because one thing that is certain is that the particulars were delivered I think were those particulars delivered very close to the day for the hearing of the action between you and the Trustees and the members of your family, to the best of your knowledge?

A. I don't know, but I mean, it's I think that can be easily established.

Q. The particulars seem to have been delivered in November of 1994, 16th November, 1994.

A. Okay, sir.

Q. The case was settled very soon sorry, 16th November is the date of the settlement; I beg your pardon.

If you go to page 87 of the McCracken Tribunal report, the

detail request for Notice for Particulars, which was sent to your solicitors, was dated the 7th November, 1994; do you see that? On page 88.

A. Yes, sir.

Q. And then on page 89, 90 and 91 is your solicitor's reply to that request, and that gives the breakdown and the itemised figures; isn't that right?

A. Yes, sir.

Q. Now, it's undated, but we can take it it must have been after the 7th November 1994?

A. Yes, sir.

Q. Because it's in response to that. And on the 16th, the case was settled; isn't that right?

A. On the when?

Q. On the 16th November, the case was settled. You can take it from me

A. I don't know, I mean, I don't know. But the facts are there.

Q. And the case was settled on this basis, wasn't it, Mr. Dunne, that there was an appointment made to you by the Trustees of one-fifth of the ordinary shares in the trust, that's the ordinary shares in the company, and that they were purchased back; isn't that right? Isn't that what the settlement what happened in the settlement? You got your one-fifth value, your full value out of the company?

A. I think because there was somebody out of MOPs who acted I am trying to think of the solicitor and I am not

sure whether they were appointed to me and I immediately had to appoint them, but, yeah, and it was something separate that I had with the Revenue, but

Q. You had to deal with the Revenue in relation to a Capital Acquisitions Tax in relation to matters.

A. They were for a second appointed to me.

Q. Yes.

A. Okay.

Q. But what I'm really getting at is you got your full one-fifth value out of the company; that's how the case was settled. Isn't that right?

A. I don't know whether I got my one-fifth. I got a value

Q. You got one-fifth of the ordinary shares; you got the value for those?

A. Whether I got the full value for them or not, nobody knows. I got a price.

Q. You got a price?

A. Correct, sir.

Q. An agreed valuation. It was based on an agreed valuation, wasn't it, between it?

A. Yeah, it must have been.

Q. It must have been.

Now, I asked you yesterday, and you made your response to it, on the whole question, as I put it to you, that the matters which you say that you have no recollection of were not brought to the attention of the McCracken Tribunal, or indeed to the attention of this Tribunal, until matters

were brought to your attention by this Tribunal, that that was all for the purpose, as I said yesterday or asked you yesterday, of clouding or obscuring the true purpose for which the payments were made. And I must suggest to you that the true purpose, Mr. Dunne, for which the payments were made, was to do with the tax position of the trust.

A. I have only one response to that, sir: That's not correct.

The reason the true position, as you refer to it, that the facts weren't given by me that I know now, is that I had forgotten them, sir.

Q. Well, can I then ask you, Mr. Dunne, this, and in fairness to you, as you say to matters not being brought to the attention of the McCracken Tribunal, you weren't the only one that was in possession of information which could have been brought to the McCracken Tribunal the attention of the McCracken Tribunal, in fairness to you. But the stated reason by you for agreeing to make a payment to Charles J. Haughey was that you admired the man, and when you were informed that money was being sought from a number of people, that you were concerned, if I can use the term, of a Judas perhaps, in some way perhaps betraying or making public that payments had been made to Mr. Haughey. That's been your stated reason.

A. I don't think I would have used the word "Judas". I would have said to keep it quiet. The less involved, the better chance of keeping it quiet. I don't think I would have referred to a Judas.

Q. Sorry, you were the one who

A. I used twelve apostles and

Q. And that Jesus was betrayed by one. That's why I used the term "Judas".

A. One crucified him. I didn't use the word "Judas". I was referring to him, obviously, when I said one of them crucified him.

Q. All right. And you and Mr. Fox have given evidence to this Tribunal previously that the sum being sought could have varied, in Mr. Fox's understanding, of around $\frac{1}{2}$ 900,000, that you agreed over time to pay, you thought, 700-odd thousand pounds, or there or thereabouts, but even taking the million that you spoke about on television, I take all those three figures and say, let's call it broadly in that area. And that, on your evidence and Mr. Fox's evidence, was what really was being sought by Mr. Traynor, isn't that right, on behalf of Mr. Haughey?

A. I just want to make one distinction, because you asked me yesterday, and I agreed, you know, you can see and I'm quite entitled to get the whole transcript, but I don't it to be mixed up. What I said on television as against what I'm saying under oath here, I want to separate that.

Q. All right.

A. Just for the record. And I'm not saying I went on television and wasn't telling the truth. But I would have abbreviated it, because I had been thinking about things that I said, and you know, I might be back here in a week's

time, but I just want to make a big a big difference between being sitting in this Tribunal under oath and sitting in front of a camera, sir.

Q. All right. But

A. I go along with what you said, absolutely, whether it's the 7 or 9 or a million, I have no difficulty having just registered that point with you, sir.

Q. And on the evidence of yourself and Mr. Fox, that was the approach which Mr. Traynor made; isn't that right? He made

A. Well, that's what Fox told me.

Q. Yes. Now, we know from the evidence that has been given by both yourself and Mr. Fox that there might have been an acceleration that you needed time to pay, but that Mr. Traynor came back and indicated that a certain amount of money was needed a little bit quicker than was anticipated by you. You thought, when you gave evidence to McCracken, that that related to the John Furze payment?

A. That's correct.

Q. I think when you dealt with the matter here, yourself and Mr. Fox accepted that it must have been in relation to the Tripleplan payment.

A. Yeah, I am not sure whether I conceded that point, but if evidence said I did

Q. It must be in relation to the first payment, anyway?

A. Yeah.

Q. And according to you and Mr. Fox, the only contacts which

Mr. Traynor had were asking for the actual payments, isn't that right, after his initial contact with Mr. Fox requesting a payment at all?

A. I want to be very careful here, sir. When you say according to me and Mr. Fox, I just want to be according to me; I don't want to get tied up on

Q. According to you?

A. Yeah.

Q. According to you

A. Yes, sir.

Q. as a result of information you received from Mr. Fox

A. Okay, sir.

Q. Mr. Traynor made the first approach for a contribution at all; isn't that right?

A. That is correct.

Q. According to you, on information you received from Mr. Fox, the subsequent contacts by Mr. Traynor was in respect of, first of all, accelerating the first payment?

A. That is correct, sir.

Q. And subsequently passing information on about banking routes and information

A. Account numbers.

Q. account numbers?

A. Yes, sir.

Q. And according to you, Mr. Fox did not come back to you and say that Mr. Traynor has indicated that what you agreed to pay in the first instance should be increased; isn't that

right?

A. No, nobody ever came back to me, no.

Q. You see, how come, then, Mr. Dunne, that you paid twice the amount?

A. I would just I mean, I have no explanation for it except it just happened, and every time Fox I wasn't keeping, or Fox wasn't keeping a note of it, but it happened. I have no explanation for that.

Q. You see, again I must suggest to you that that is just another indication that the money was paid for a purpose, and not just out of an admiration for somebody, and that the purpose was the purpose you indicated to Mr. Uniacke; in other words, that money was paid for the purpose of the trust and its tax.

A. Sir, the answer the money was paid for one purpose, and that was to pay a debt that Mr. Haughey had.

Q. Thank you very much, Mr. Dunne.

CHAIRMAN: There may be some questions for you, Mr. Dunne, from some of the other legal practitioners, and following the usual practice here, I'll leave you to the end, Mr. Moloney.

Mr. O'Neill?

MR. O'NEILL: I have no questions.

CHAIRMAN: Very good. Mr. Nesbitt?

MR. NESBITT: I have no questions.

CHAIRMAN: Mr. Connolly?

MR. CONNOLLY: I have no questions.

MR. MOLONEY: I have no questions, Chairman.

CHAIRMAN: Well, it's been a briefer outing today,

Mr. Dunne. Thank you very much for your assistance.

A. Thank you, sir.

THE WITNESS THEN WITHDREW

MR. HEALY: Mr. Seamus Pairceir, please.

SEAMUS PAIRCEIR, PREVIOUSLY SWORN, WAS EXAMINED

BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Pairceir. Please sit down.

Thank you for your attendance, Mr. Pairceir. You are of course already sworn from an earlier sitting, and may I just acknowledge our appreciation of your assistance and cooperation with the Tribunal legal team in preparing for today's evidence.

In the context of all the matters that you dealt with and discussed with them, and since I don't think you have direct legal representation yourself, I understand what Mr. Healy proposes is to split your evidence between two shorter shifts over today and tomorrow. And if, in the course of that, at any stage you want a little bit more time to think about anything, or you want a break, please convey that to me, and I'll facilitate you in any way I can.

A. Thank you very much.

Q. MR. HEALY: Thank you, Mr. Pairceir.

I just want to make sure that we all have the same documents. Now, I have a Book of Documents, described as

Tribunal Book Number 64, which contains a list of statements or memoranda of intended evidence of various witnesses, including your memorandum; and appended to the various memoranda are a number of relevant documents. Now, do you have your own Memorandum of Intended Evidence with you?

A. They were supplied to me by the Tribunal. But in total, they weigh 14 pounds in weight, so I did not bring them with me today.

Q. Very sensible.

Now, what I propose to do is, apart from dealing with general preliminary queries, is to go through your Memorandum of Intended Evidence fairly quickly, and I might deal with one or two queries arising out of it, and then leave it aside and go through the various documents contained in another book, which I'll provide you with a copy of.

I had hoped to get through most of that today. If not, I'll get through it between today and tomorrow, and we can deal with any queries tomorrow, then.

Now, the period that the Tribunal wants to ask you about or inquire about is from about 1985 to 1987. And during that entire period in the Revenue Commissioners, you were the Chairman of the Revenue Commissioners; is that right?

A. Yes.

Q. Now, prior to that, had you been an ordinary Revenue Commissioner?

A. Yes.

Q. And for how long had you been an ordinary Revenue Commissioner?

A. I was made a Revenue Commissioner in 1980, and I became the Chairman in 1983, and I resigned in 1987, in September.

Q. Now, the three Revenue Commissioners have, I think by one or two witnesses, been referred to as "the Board"; is that a loose way of referring to them, or how would you describe the three Revenue Commissioners together in their sort of, if you want, corporate capacity?

A. Well, they are referred to loosely as "the Board". But the they are a managing board; they are not a board like a board of directors as we understand it under the Company Law. They are the what I might call the senior executives of the various branches. The very large organisation reports to various ones, and the responsibility is split between them.

Q. I understand that. The Revenue Commissioners, or the responsibility of the Revenue Commissioners is for the independent control and management of the entire tax regime, with the exception of two elements, I think: that is the Appeal Commissioners and the role of the courts in adjudicating on taxation disputes; would that be right?

A. The Appeal Commissioners are totally separate from the Revenue Commissioners, and they are very insistent on that. So, therefore, they always hold their meetings in buildings separate to the headquarters of the Commissioners, which

used to be, in my time, Dublin Castle.

Q. I think in your time they were operating in Stephen's Green?

A. That's right.

Q. But apart from that element, or that feature of the tax regime, the rest of the tax regime is wholly under the control and management of the Revenue Commissioners; isn't that right?

A. That is correct.

Q. And apart from the question of managing and controlling the tax regime, apart from, in other words, the administrative aspect of that, there are also, presumably, policy or legislative dimensions to the work of the Revenue Commissioners; judging from what we have heard from other witnesses, would I be right in thinking that the Revenue Commissioners have an input into policy, certainly to fiscal policy at budget times and at other times?

A. Yes, the Revenue Commissioners, because they are operating in the field of taxation, have very large input into changes in the legislation or innovations in legislation, because they are concerned about the nature of the Code and their technical knowledge of it, and they are also concerned about the feasibility of actually operating any particular piece of statute.

Q. Now, there is, unlike other Government agencies or other Government functions, there is no formal political head of the function that is carried out by the Revenue

Commissioners; isn't that right?

A. The Revenue Commissioners, as a matter of practice, report, but not in a subordinate sense, to the Minister for Finance.

Q. But the Minister for Finance doesn't have any control over the Revenue Commissioners?

A. No sorry, I mean he does not have any control over the

Q. I suppose if I might put it this way, he has a closer association with the Revenue Commissioners than he would have with any other function of Government, but the Revenue Commissioners' association with him is not the same as the association that any other, we'll say, Secretary General would have with his responsible Minister?

A. That is correct. That comes about under the oh, the Ministers and Secretaries Act of I think 1924. And various boards which had been a feature of British Revenue administration were then abolished or subsumed into departments, but the Revenue Commissioners, which had been established under order during the transitional provisional Government had been established as one of the first organs of State. And it remained and still remains in that way, though theoretically, they can under the law, they could be abolished and subsumed into the Department of Finance. But that was never that was an idea at the time, but it was never found practicable.

Q. Now, the ordinary day-to-day work of the Revenue

Commissioners by that I mean the three Revenue

Commissioners does not, presumably, in the ordinary way, involve dealing with individual cases. You might be asked for a comment on them, but you wouldn't be dealing you don't have a case load as a Commissioner, in the ordinary way?

A. No. A Commissioner wouldn't have a case load in the sense of case work where a whole lot of stuff comes through to him. But the Commissioner who happens to be in whose responsibility certain things are taking place, if he constantly has what you might call matters which deserve decision at the highest point, or maybe sometimes where as, when matters are often so complex that it is only natural that there are differences of opinion at various levels, and then the particular Commissioner is responsible for coming to some kind of conclusion, in cooperation and in consultation with the officers dealing with the matter.

Q. I appreciate that. This case, perhaps for very obvious reasons, by that I mean the Dunnes Trust case or the taxation of the Dunnes Trust, was one that involved you and other a number of other high-level officials almost working as a team under your close or closely in association with you from the very beginning; is that right?

A. Well, the legislation concerning Discretionary Trust Tax and the legislation or Capital Gains Tax, all around the same time, came down on the Dunnes interests. The Capital

Gains Tax was organised under the Chief Inspector's Office, who reported to me; and the Capital Acquisitions Tax was under the responsibility of a Commissioner, another Commissioner, Commissioner Reason.

So that when we got to the Dunnes business, we had to deal with what technically I would call the crossover point, so that it would be whatever was to be done would be done by agreement with everybody centrally.

Q. But am I right in thinking I think other officials have, I think, intimated as much that perhaps, as I have said, for perfectly obvious reasons, you were closely involved with this case from the very beginning right up until you retired?

A. Yes. It was a very large case. Dunnes was a very large company, and they were potentially liable to very serious tax impositions. And so that I naturally took an interest in it.

Q. Now I want to just look at your very briefly go through your Memorandum of Intended Evidence

A. I should like to say that this is put together, with my agreement, from responses that I made to the solicitor.

Q. Yes. The solicitor addressed queries to you, and you provided, if I may say so, extremely prompt responses each time which were then incorporated into this memorandum.

A. I seem to have been doing very little since February except responding to this Tribunal.

Q. I see. Now, what I propose to do is, unless you prefer to

read this out yourself, I'll read it out, and if you want to pull me up on any part of it, please do so. And then I'll start dealing with the documents.

A. I'd prefer for you to read it out.

Q. Of course.

First heading is: "Meetings between Mr. Pairceir and Mr. Bernard Dunne in 1987."

"Mr. Pairceir first met Mr. Bernard Dunne on the 5th May 1987." Now, I think that date, in fairness to you, may have been put in there on the basis of information with which you were being supplied by the Tribunal, and it may not be the correct date, unless you have very hard information to say that it is; because I think the Tribunal has now worked out that it must have been an earlier date that you met Mr. Dunne.

A. Well, I don't really know. I accept the dates.

Q. I'll come to the detail of it. I simply want to point out that that date wasn't one while you agreed you met Mr. Dunne I think around that time, the date is something that was perhaps supplied to you by the Tribunal, or as a result of information supplied to you by the Tribunal, and the Tribunal has now obtained further information from the Revenue Commissioners from which it appears that you may have met Mr. Dunne in April. And we'll come to that in the documents.

A. Yes.

Q. "The meeting with Mr. Dunne was arranged at the request of

Mr. Charles Haughey. Mr. Pairceir does not remember when Mr. Haughey asked him to meet Mr. Dunne and does not recall the terms of that request, apart from Mr. Haughey asking him to meet Mr. Dunne. During the period following the change of Government, Mr. Pairceir attended many meetings chaired by Mr. Haughey. Also, the Taoiseach's committee dealing with the proposed IFSC was set up and met weekly in the Taoiseach's Department under the chairmanship of Mr. O'hUiginn. Mr. Pairceir was a member of the IFSC Committee. It was probably after one or other of those meetings that Mr. Haughey made his request. Mr. Pairceir doubts very much that there was anyone else present when Mr. Haughey's request was made to him.

"Mr. Pairceir has no record of the meetings he had with Mr. Dunne during either 1987, nor any detailed recollection of them, apart from the fact that the subject matter of the meetings had to do with the consequences of the exercise by the Dunnes Trustees of the power of appointment in 1986."

I think that should be 1985.

"Mr. Pairceir did not meet with Mr. Dunne on any other matter. Mr. Pairceir accepts the manuscript notes prepared by Mr. O'Cathain and furnished to him under cover of a letter from the Tribunal dated 9 February, 1985, as a summary of the subject matter of the meetings. It is Mr. Pairceir's recollection that Mr. Noel Fox attended with Mr. Dunne. Earlier meetings which Mr. Pairceir had had with Mr. Noel Fox and Mr. Frank Bowen, referred to more

fully below, did not reach any agreed conclusion, and the meeting with Mr. Dunne was probably by way of an attempt to resume some kind of negotiation.

"The meetings beginning in" it's now April, I think "1987 with Mr. Dunne did not reach any agreement between the Revenue Commissioners and the Trustees. Mr. Pairceir wishes to confirm that Mr. Haughey asked him once only to meet with Mr. Dunne, and the subsequent meetings arose out of the progress, or lack of progress, at the preceding ones.

"You say that you had earlier, sometime in 1986, been asked by the then Minister for Finance, Mr. Bruton, to meet the Dunnes Trustees in connection with the potential tax consequences arising from the exercise of the power of appointment by the Trustees, and also in connection with Discretionary Trust Tax."

A. I would like to say that in relation to paragraph 4, that that should have been 1985, and the Minister was Mr. Alan Dukes. I recalled it to be Mr. Alan Dukes, but I confused the dates, and then I came to the conclusion, because I thought it was 1986, that that was after the Government was reshuffled by Dr. Garret FitzGerald, so I then put in Mr. John Bruton. But I am afraid he is an innocent party in all of this.

Q. In any case, we know from the documents and from the evidence given by other witnesses that it must have been Mr. Dukes. So your own memory seems to be correct.

"Mr. Fox and Mr. Bowen were probably present at those meetings."

Next heading is "Waiver of interest on Discretionary Trust Tax in May of 1987."

"Mr. Pairceir has examined the papers enclosed with the Tribunal's letter of the 21st March, 2005, including the copy of Mr. Reid's manuscript note of the 25th May, 1987.

It would appear that at a meeting on the 25th May, 1987, Mr. Pairceir conceded that $\frac{1}{2}$ €2,450 interest accrued after the date of the settlement on the 16th March might be foregone. Mr. Pairceir does not recall the circumstances, but it was probably because the total interest payable up to the date of settlement was already $\frac{1}{2}$ €405,287. It was not uncommon for the Revenue to concede some interest in arriving at a settlement of liabilities.

"During Mr. Pairceir's time as accounting officer, the matter of all interest accrued not being collected was raised at the Public Accounts Committee, and as a result, a memorandum dealing with the issue was submitted to the Attorney General. The authority for the practice was claimed to be the provision, which is in every Finance Act, placing the taxes and duties imposed under the care and management of the Revenue Commissioners. The Attorney General's opinion agreed broadly with the Revenue view."

A. Could I add that I have since examined this matter further, and I have looked up I am not claiming that I was aware of this at the time, but I'm only putting it as background

I looked up the legislation dealing with the collection of tax and interest in the Capital Acquisitions Tax 1976, and I find at Section 44, that "Where, in the opinion of the Revenue Commissioners, there are complications in the circumstances of the gift or in the value of the gift, the Commissioners may compound the tax payable."

Now, there are also provisions in Section 41 that "Where a payment is made on account, the sum due is applied first in discharge of the interest", so that these two of course I don't know whether I was aware of this at the time, but I think that the complications in the value of the gift are quite clear.

Q. Paragraph 7: "After an interval of nearly 18 years, Mr. Pairceir does not remember having agreed to waive interest in this instance, nor why. The only thing that strikes him is that the economic and budgetary positions were extremely bad in 1986 and 1987, and it may be that he hoped that forgoing the interest accruing after the date of the settlement might have led to payment. According to the documents available to the Tribunal and furnished to Mr. Pairceir, payment of the tax and interest in the sum of 3,564 ½3,564,000 was made by Oliver Freaney & Co on the 25th May of 1987."

A. Which is the same day.

Q. Yes.

Next heading is: "Contention by the Trustees that the Revenue Commissioners agreed the Trustees would have no

further liability to income tax on distributions made for the purposes of the payment of Discretionary Trust Tax."

"Mr. Pairceir is astonished at the suggestion that he agreed or decided that income tax liability would not arise in respect of any distribution made to the trust to enable it to discharge its liabilities, and that such liability would apparently never, in any circumstances, arise.

Mr. Pairceir has not heard of the contention until he received the Tribunal's letter of the 25th March, 2005.

Next heading: "Retention of Mr. Pairceir as adviser to Mr. Bernard Dunne and the Trustees of the Dunnes Settlement of the Dunnes Group.

"In 1988, following Mr. Pairceir leaving the Revenue in September 1987, he was engaged in an advisory role to the Customs House Docks Development Authority in connection with aspects of the Master Agreement between the development companies and the Customs House Docks Development Authority. At the same time he was also engaged by the Industrial Development Authority in connection with the promotion of the International Financial Services Centre. Mr. Noel Fox of Oliver Freaney & Co accountants was a member of the Customs House Docks Development Authority and he asked Mr. Pairceir if he would help in researching the issues arising from the pending appeal by the Trustees in relation to the Capital Gains Tax assessment raised by the Revenue Commissioners, and Mr. Pairceir agreed to do so. Mr. Pairceir studied

commentaries on the UK Capital Gains Tax legislation, a limited number of precedent cases, and the various statements of practice published by the British Revenue on the topic. He prepared various papers by way of analysis of the range of potential outcomes to the appeal then pending. Following his agreement with Mr. Fox to undertake research on the case, he had a brief meeting with Mr. Fox and Mr. Dunne. The services which he provided were concerned only with the tax aspects of the case law. There was never any question of Mr. Pairceir representing the Trustees in their dealings with the Revenue Commissioners. The services which he agreed to provide were advisory services as described above. He did not agree to provide services by way of "the representation of the Trustees in their dealings with the Revenue Commissioners." Nor was there ever any question of his being asked to provide such services.

"Later in 1989 Mr. Pairceir did some further work with the staff of Oliver Freaney & Co in connection with PAYE problems in Dunnes Stores arising from payments and other perks where PAYE had not been properly applied. In 1990/'91 Mr. Pairceir helped in preparing a paper to be addressed to the Minister for Finance looking for some alleviation of the perceived difficulties created by the Discretionary Trust Tax where the trust was a trading entity. In the event, nothing came of it.

"With regard to the items of the 1990 correspondence

enclosed with the Tribunal's letter of the 9th February, 2005, which are concerned with the Dunnes Trust liability for Discretionary Trust Tax, Mr. Pairceir has found some papers which include the letters from Dr. Thornhill to him dated 30th May 1990 and 13th June, 1990. Payments include a copy of a letter dated 6th June, 1990, from Mr. Pairceir to Mr. Fox suggesting that payment on account should be made.

"Mr. Pairceir has noted from his diary for the period that at the time he was in contact with Mr. Thornhill in connection with a VAT problem arising for IFSC companies, Dr. Thornhill, in addition to being the Assistant Secretary in charge of the administration which dealt with Discretionary Trust Tax, was also the Assistant Secretary in charge of VAT policy and legislation. Mr. Pairceir had a number of meetings with Dr. Thornhill in connection with the VAT issue. It appears from the letters that there was some delay by the Dunnes Trustees in dealing with the return for Discretionary Trust Tax purposes and Mr. Pairceir must have asked Dr. Thornhill about it.

Mr. Pairceir realised that these contacts with the Revenue amount to him having contact with the Revenue on behalf of the Trustees and can be categorised as acting in a representative capacity.

"With regard to contacts with the Revenue other than Dr. Thornhill, it appears from Mr. Pairceir's records that he had a meeting with Mr. Cathal MacDomhnaill, then

Chairman of the Revenue Commissioners, on the 5th June, 1996, in connection with certain proposals which the Dunnes Trustees wished to make arising from the onerous tax consequences of the Dunnes Trust. The object of the meeting is described in Mr. Pairceir's note in the following terms: "My purpose in meeting with him was to discuss the problem in outline, that I was not engaged in negotiation, and that I would not be asking him, at this stage, to commit to any particular line of action." For the services provided in 1988 and 1989, Mr. Pairceir was paid $\text{€}10,000$ together with VAT of $\text{€}2.5$ thousand on the 2nd August, $\text{€}198,810,000$, together with the same amount of VAT on the 2nd October 1989. Both invoices were addressed to Mr. Bernard Dunne and were paid by him. Mr. Pairceir did not receive any other payments.

Next heading is "Evidence to the McCracken Tribunal".

"With regard to the inquiries made by the McCracken Tribunal, Mr. Haughey asked you in May 1987 if you would meet Mr. Dunne. You did not regard Mr. Haughey's request to you as constituting a representation or submission as mentioned in the McCracken Tribunal's letter of the 8th April 1997."

I now want to leave that book aside, although I may be referring to one or two documents from it; but I think, rather than burden you with having to hold two books, I am going to ask you to look at Book 65. If there are aspects of Book 64 to which I need to refer you, I'll arrange to

refer you to individual documents.

Mr. Pairceir, the documents that you have just been handed are documents provided to the Tribunal by Mr. Frank Bowen, one of the Trustees of the Dunnes Trust. And the first document I want to refer you to is a note headed "Alan Dukes". It's on Tab 2, Leaf 9 of Book 64.

A. I think I have been given copies of them.

Q. Yes, I am going to hand these extra documents to you individually, so that you won't be burdened with having to balance two books on your knees at the one time. And just the delay is that I am trying to ensure that there is a copy put on the overhead projector as well.

This is a note prepared by Mr. Bowen in anticipation of a meeting that had been arranged for him with Mr. Alan Dukes.

In fact, I am wrong in that. He had prepared notes in anticipation of the meeting. This is actually an account of the meeting he had with Mr. Dukes. If you look at the typed version, which should be easier to read, it heads and it correctly states that it's the notes of a telephone conversation Mr. Bowen had with Mr. Dukes on the 15th February, 1985.

And the first note is: "Meeting with S. Parker who will contact me re meeting to discuss situation with SP" meaning Seamus Pairceir "and senior Revenue officials.

So it would appear that in or around that date, you must have received some contact with Mr. Dukes alerting you to the fact that he had told Mr. Bowen that you would contact

Mr. Bowen with a view to setting up a meeting with Revenue officials, it would seem to follow, wouldn't it?

A. Around that time, I would have seen the Minister, Mr. Alan Dukes, quite a lot. You know, he was Minister for Finance in hard times.

Q. The other document that you have handed to you is in the same book, and it's at Leaf 3, Tab 3. And it simply records a conversation with you at which arrangements for the meeting were made. 3:00pm in the Upper Castle Yard.

Now, do you remember meeting Mr. Bowen around this time?

A. I remember meeting the Trustees around this time, including Mr. Bowen.

Q. Yes, and I think you were accompanied by some Revenue officials; is that right?

A. Oh, yes.

Q. I think the purpose of the meeting was, on the Dunnes part, was to draw to your attention what they saw as potential tax implications for them that were looming in March of 1985?

A. That is correct.

Q. And in case you are not familiar with the critical dates, the deed setting up the Dunnes Trust provided effectively for a form of default vesting in various beneficiaries in March of 1985 if no appointment had been made prior to that date.

A. Yes, I recall that.

Q. They were, as far as I can see, testing the waters with a

view to seeing how much tax they might have to pay in the event of that vesting going ahead.

A. I honestly don't recall, but I think it's quite logical that's what they were concerned about. And it is very close to the actual date in which they did make the appointment.

Q. It is, it's very close.

A. These comments I find very extraordinary.

Q. You mean the comments

A. After one individual, the word "legalistic".

Q. I am not suggesting you made those comments

A. I would not say such a thing about any of these gentlemen.

By the way, Mr. McDermott was not the Chief Inspector.

Q. I see.

A. But I mean

Q. You may rest assured that nobody has ever suggested that you made those comments, nor have they ever been put on the projector. They are personal comments about individuals.

A. Sorry about that. Thank you very much.

Q. I want to refer you to Document Number 5 in Mr. Bowen's leaf of documents, Tab 5 in Mr. Bowen's Book of Documents.

I'm going to give you a copy.

(Document handed to witness.)

Q. MR. HEALY: And this is a both a handwritten and a typed version of Mr. Bowen's note of a meeting of the 7th March between the Trustees and you, and I think a number of other Revenue officials as well. There is a note of this meeting

in the Revenue Commissioners' documents, and I'll refer you to that in a moment.

A. The date I have here is the 19th February, '85; is that the same one? Typed version of handwritten note dated 19th February by Mr. Frank Bowen. Maybe that's the date of the note.

Q. Well, I'll just ensure that Mr. Brady understands that you have the same document as I have. Are we now looking at the same document?

A. 7th March, 1985?

Q. Yes.

A. Headed "Derek Spiller".

Q. Correct.

A. He was the Private Secretary to the Chairman.

Q. He was the Private Secretary to the Chairman, yes. And if you look at the notes, they are broken down into 14 numbered points: "Recognise real nature of problem almost inescapable", is the first note.

Second: "Law does not say what must be taken into account, for example, employment etc."

Seems to suggest that somebody is making the point that it's all very well to be saying that you are giving a lot of employment and you should get special treatment, but the law doesn't say that giving employment entitles to you special tax treatment."

If you disagree with any of comments that I am making, you can just interrupt me.

Next item is "Argued down lowest 80 million

Tax 74 million:"

I think what Mr. Bowen meant by that, according to his evidence, was that you had pointed out to him that you had argued your people down to the lowest valuation that they could justify, 80 million, and on that basis, the tax would be in or about 43 million.

Then that there was a remark to the effect that that's the law the awfulness in other words, whether you liked it or not, that's what the law provided.

The next point: "Other things we can do, care and management of taxes is responsibility". I'm not sure whether anyone understood what that meant; maybe you can throw some light on it.

A. I can't imagine how it could come into this conversation.

Q. "Interest implications"

A. And if it means anything at all, it's the responsibility to collect the tax.

Q. That it isn't your job, in other words, to be considering social or political dimensions; your job is just to organise the tax system and ensure that people that owe the tax, pay it.

"Interest implications at 15% per annum." I think that speaks for itself.

"Does not bring into account real considerations that brought you here." I think Mr. Bowen pointed out that where he put something in quotation marks, it was something

he was attributing to what you had said, and again that seems to be a repetition, perhaps, or an echo of what you may have said earlier, that again, issues that are extraneous to the provisions of the Taxes Acts are not relevant.

The next point is "Down from where he was yesterday". That may refer to perhaps an earlier conversation where you had indicated that where you may have indicated that the figures might have been higher.

Then it goes on: "Problems of the economy put pressure on me that I cannot resist."

Does that ring any bell with you, a note like that?

A. I recognise the phrases, but I have no recollection of the context of this meeting of March 1985.

Q. It goes on: "How you would meet bill." It's a suggestion as to how the money might or might not be paid.

"How can I move away"; I think that may be a suggestion that you have no alternative but to collect the tax.

Then the next note is: "Too much between 34 and 80", which I think is perhaps a suggestion that the gap between the valuation that Dunnes were putting on their company, at 34 million, and the Revenue valuation at 80 million, was too great.

and I think the next reference is to the fact that you had no objection to Dunnes putting in submissions against, or arguments against the 80 million.

And the last point is: "Meet with Minister." I think what

was being proposed is that they might go to the Minister to see could they advance their case for special treatment.

A. Well, obviously I don't really know, but what did happen as a result of the earlier meetings with the Trustees was that a team was put together from the Capital Acquisitions Tax Branch, who were the people who had the most experience in the valuation of unquoted shares, and the Inspectorate who had skills in relation to the Capital Gains Tax which would arise. They did put together an analysis based on the standard works which deal with the valuation of unquoted shares, and arrived at I have seen some figures in the region of 80 million. That's what that process was about, I recall that, because a document was produced where they agreed about the issues and agreed about the valuation.

Q. Could you just explain that last part to me? A document was produced by who?

A. By the on the Revenue side, by the expert people. They produced a fairly bulky report; they analysed the company and made various decisions about whether they would take the P/E ratio and all these other things that they talk about in the valuation in unquoted shares. It was a long exercise.

Q. And would you agree with Mr. Bowen's evidence that his recollection is that you had said that you had argued your people down, I think was the way he put it; another way he put it was that the tax bill at 43 million was as low as you could possibly get it?

A. Well, I wouldn't agree with the "down" idea. I don't recall, but I would favour the idea of getting to a justifiable figure which would stand up if we had as we would have to go into court.

Q. I don't I'm not suggesting that you were suggesting to Mr. Bowen that you had come down from a justifiable figure to a lower figure. Maybe it's an expression that we know people frequently use in negotiations indicating that "Other people are arguing for a higher figure, but I have come here with the lowest figure that is would be acceptable from the point of view of the Revenue, and I have argued my people down to it", or words to that effect?

A. I don't think I'd be concerned with the lowest figure. I would be concerned about a justifiable figure, which is a different thing.

Q. Presumably the only justifiable figure is the lowest figure. The taxpayer can't be expected to pay any higher figure than the lowest justifiable figure?

A. Well, while that is true, the courts are crowded with cases where people have differed on what that figure was.

Q. I appreciate that.

A. So that there is no the idea of coming to the a justifiable figure, and to find that on further pursuit of a case, that you don't get that, that is the problem of having different Tribunals looking at these questions from a different perspective.

Q. Yes. But

A. And in this matter of the valuation of unquoted shares, it is not an exact science.

Q. But

A. I mean, there isn't a number which is the answer.

Q. Of course there isn't. But am I right in thinking that at the same time, you couldn't have proceeded with any figure except the one that you regarded as the lowest justifiable figure?

A. I would proceed with the figure where the experts had advised me that that figure would stand up, and that they had examined it carefully, and I would go with that. But I would certainly I mean, I don't agree with this idea that that must be the lowest figure. The lowest figure could be the wrong figure.

Q. You couldn't proceed with a figure that you thought was higher than the taxpayer owed; you could only proceed with a figure that you honestly believed to be the correct figure. Isn't that right?

A. I think it's fairly clear that's what I'm saying.

Q. Mr. Bowen has also said to the Tribunal in his evidence that he and his colleagues have done calculations in 1985, that he had come with a figure of 12 or 15 million, I think Mr. Uniacke said 16 million, and that that table was or that figure was on the table in 1985; that that figure was on the table as the amount of tax they would be prepared to pay in 1985.

A. How much?

Q. 16 million well, he said 12 or 15; Mr. Uniacke said 16.

A. They may well have. I don't recall it. I can hear its echo, though.

Is there anything in the documents to tell me that that figure is there?

Q. Nothing in the documents.

A. Because I have searched all that territory. So that is okay. So that was evidence he gave here?

Q. Correct.

A. I mean, I am not doubting his evidence; I am only just surprised that I didn't come across this before if it was in the text.

Q. What the Trustees are saying is that at the meeting, they were indicating that the amount of money they had available, or they believed they had available to pay tax was a figure of 12 or 15 or 16 million, and that that was the figure they were putting on the table to pay tax, and at that stage, it would have been C.A.T. of course.

CHAIRMAN: I think we can probably agree 16, because my note of Mr. Bowen's evidence, he said 12 to 15, or maybe a little bit more. So that really equates with Mr. Uniacke.

Q. MR. HEALY: But just so you understand what I'm saying, they weren't putting a value of that much on the company; they were simply saying that's the amount of money they had to pay tax, and that they could run with any tax treatment that came up with that sort of figure. Do you recall that being mentioned?

A. No, nor do I recall that kind of a discussion taking place.

Q. I see.

A. How could we argue about the liability of something which hadn't occurred?

Q. Well, it was due to occur, wasn't it?

A. But hadn't occurred. So that the commitment to a situation, and the degree of zeal that you can expect an official to put in it, is quite different when there is a potential liability than just when it is mere speculation and discussion. I mean, there wasn't anybody offered 16 million.

Q. Well, there was a liability looming at that stage?

A. Looming?

Q. Yes.

A. Well

Q. Within a matter of days, wasn't there?

A. The officials in the Revenue could not possibly engage in a negotiation about an assessment which had not been made yet, and in respect of which no liability had arisen. It was a discussion about what potential action the Trustees might take, and it was a conversation on that speculative level.

It's not up to me, Your Honour, to ask questions, but were any Revenue officials asked this question about the 16 million?

CHAIRMAN: I think not.

Q. MR. HEALY: No, they had given their evidence before it

arose.

A. Sorry?

Q. They had given their evidence before it arose.

A. Oh, I see.

Q. There is a note, I'm not going to go through the details of it, contained at Leaf 3 of Book 65, dealing with this meeting, and there is no reference in that note to any sum for tax being on the table. Have you read that note? I don't want to take you through every word of it. If you look at Leaf Number 3 of the red book.

A. Oh, yes, a note of the 7th March.

Q. Yes.

A. Oh, yes.

Q. The note is dated the 6th March, but that must be a mistake.

A. Yes.

Q. I don't know if you have read it. I don't want to take you through it, but there is no reference in that note to 16 million, or any other figure, being on the table, as it were?

A. As far as I recollect, this is a treatise on the actual process of valuation of which Michael O'Connell was a leading proponent, the late Michael O'Connell.

I have read it. I recall now that I see it. It really is an overview of the territory which has to be traversed if you are going to do this kind of exercise.

Q. Well, I think it goes further than that

A. I appreciate, but in the context of the Dunnes in the marketplace.

Q. But to be fair to Mr. Bowen, if you go to the third page of that document, the first sentence is "The parties have submitted a valuation of 34 million for the company. This is calculated as follows". Do you see that sentence?

A. Yes.

Q. And it gives a capital value for the company at 68 million, and then an allowance was being sought for the size of the holding and the nonvoting element and lack of marketability at 50%. Do you see that?

A. Yes.

Q. And they are proposing a net value of 34 million.

A. Yes.

Q. And I suppose if you were to apply, whether it's C.G.T. or C.A.T., or both, to that, you might come up with a figure somewhere in the region of 16 million; would you accept that?

A. That's right.

Q. In the note that Mr. Bowen provided the Tribunal with, and to which I referred you a moment ago, Mr. Bowen referred to going to the Minister, and we know something about that from him and from Mr. Ben Dunne, who gave evidence yesterday and this morning. Do you recall, or have you any recollection of any feedback from the Dunnes regarding any dealings they had with the Minister around this time?

A. No.

Q. Had you had do you recall your contacts with the Minister, with reference to the Dunnes Trust, around this time?

A. I know he asked me to see them because I saw them. And I think there is a note somewhere in the papers that I spoke to him afterwards.

Q. You spoke to the Minister afterwards?

A. To the Minister. I think that's somewhere in the obviously I don't remember that, but it seems that I had some conversation with the Minister about that.

Q. Can you recall what you would have said to the Minister?

A. I sometimes don't recall what I said last week.

Q. I find myself in the same position, but

A. I am sure a lot of us don't.

When you consider that around this kind of time in 1985, February, March, I would have lots of contact with the Minister. We'd be going into the Finance Bill time, and I would meet and by the way, when Alan Dukes was Minister for Finance, I saw him at least once a week, and frequently more often, and he phoned me at home. He was my Minister, you see.

CHAIRMAN: I think the earlier evidence we heard suggested that in any event, matters such as the AIB/ICI issue tended to dominate considerations for the Minister in ensuing weeks, and the matter didn't progress.

A. My recollection is that the that it was right in the middle of this period in March 1985, when the AIB/ICC

thing, which was a huge crisis in the economy, and the whole banking system. So practically everything else took second place to that. Thank you very much.

MR. HEALY: Mr. Dunne mentioned that in the course of a discussion with Mr. Dukes, Mr. Dukes suggested that he didn't see how there could be any problem for Dunnes paying a tax bill, a substantial tax bill, running into tens of millions at that time, on the basis, as he saw it, that the company had expanded a lot over the previous years, and if they simply stopped expanding for a few years, they'd save 1/230 million or thereabouts. Do you remember any discussion like that with Mr. Dukes?

A. No.

Q. Anything to the effect that "This company has plenty of money if they just stop expanding for a little while"?

A. No.

Q. If you just go to Document Number 6 in Book 65 now, in the red book. This is a handwritten note of Mr. Reid, and on the following page you'll find a typed script, which is sometimes, but not always, completely accurate.

It refers to a meeting in the Chairman's office on the 10/1/86.

"Present, Chairman, Assistant Secretary, Christopher Clayton and self" meaning Mr. Reid.

"Discussed mainly bringing in outside expert Chairman not too happy with 15(3) or with Arnott's P/E.

Christopher Clayton wanted same reduction in wealth tax '75

figure for C.G.T. base rate, meet again 17/1/86. Do nothing meantime."

You may not, obviously, remember that meeting, but it would seem that at that stage, which was the 1st of 1986, you were involved with senior officials in working up the tax treatment of the Dunnes Trust to the point where ultimately an assessment would be raised?

A. Yes, something like that.

Q. And I'm come back to these documents in a moment, but bearing that date in mind, it was from around that date onwards that you began to advance the preparations to issue the assessment which was not in fact issued until approximately eleven months later, in November of 1986.

Now I want to go back to 1985

A. Can I comment on that last remark, please?

Q. Do, please.

A. Is that the appropriation accounts and the report of the Comptroller and Auditor General always contained a table of tax assessed and uncollected, and this subject had received a lot of attention when I was the accounting officer, and a lot of meetings were taken up. As a matter of history, there were lots of very large assessments lying around, and the collection of civil debt was not very effective. In relation to a sum like this in Capital Gains Tax, where we were still a distance I didn't want to have a huge arrear of Capital Gains Tax considering the economic state of the country just sitting there and nothing

happening.

Q. And the finger being pointed at Revenue?

A. Sorry?

Q. And the finger being pointed at Revenue.

A. That's right. As well as that in circumstances where one could not reveal that there were special reasons for it.

Q. I think we'll come to that in more detail.

A. I just mention the whole idea of because you mentioned that the assessment wasn't raised until sometime afterwards. And it had to do with that. A lot of my concerns at that time had to do with what seemed to be ineffective collection of tax. We consistently failed to make the budget estimate. They were very bad times.

Q. Well, I am anticipating something that we'll come to in the documents. I think you emphasised at least once, if not more than once, to judge from the notes, or from the documents from the Revenue, that it was important to get this assessment right, and that the officials should take their time about it and make sure they got it right. That would be from early 1986 onwards, that there was going to be no rushing into it, both for the reasons you mentioned and obviously because if you didn't get it right, then more fingers would be pointed at you and more, perhaps, unnecessarily negative comments would be made.

But in any case, I want to refer to what happened in the balance of 1985 between the time of your meeting with Mr. Bowen and the note I have just referred you to on the

Revenue books.

Now, again, just to put this document in context. This is the first document I am referring you to, if you go to the typed version which describes the document, as well as containing a transcription of it, this is a typed version of two handwritten pages dated the 2nd August, 1985, by Mr. Frank Bowen, of a telephone conversation with Mr. Pairceir, and it's contained in Book 65, Divider 9, Tab 7 64, sorry.

A. Are these the ones I have here in front of me?

Q. Yes. The first document I want to refer you to should be the top document, dated the 2nd August, 1988. The words at the very top are "Dunnes Trust".

A. '85?

Q. Underneath that you have the date, and next to the date you have "S. Parker". Have you got that document?

A. Yes.

Q. Mr. Bowen describes that as a note of a telephone conversation he had with you on this date. And I think he suggests he records you as saying that you now had a position on this, and that you would like to talk and meet. That the position had crystallised; and this is presumably referring to the time that had passed between your previous meeting with the Dunnes in March of 1985 and this time in August of 1985. And what you seem to be saying is that the March '85 deed was a new settlement, and not, as the Dunnes ultimately successfully contended, a continuation of the

old settlement.

A. Yes, that was the Revenue position.

Q. That there was no beneficial ownership and possession, and therefore no C.A.T., but that there would be C.G.T. on the basis of what we all now know as a contention that there had been a deemed disposal.

Then, that there was he then refers to what he calls "Areas valuation compromise". I suppose there is always room for compromise on a valuation.

"Would we accept the C.G.T. position", would Dunnes accept the C.G.T. position.

"Revenue believe it's a new trust", which is repetition of what's already stated.

Point 7 is: "Came into possession as against themselves", meaning the Trustees came into possession as against themselves.

And the next point is a point that seems to have been floating around for a while, that "It was not within the power originally." That may be a reference to one of two things: It may be a reference to Clause 3, that it wasn't within the power of the Trustees to do what they did; or possibly it may mean that what the Trustees were now doing was setting up a new trust altogether.

In any case, there is then a reference to "17th August 2 weeks"; that may be a suggestion for a time for a meeting. And the last point on the next point

A. Or it might be a reference to my being on holidays.

Q. It might be.

The last point is "Needs to raise assessment within reasonable time."

So I think at that point you must have been putting down a marker that the Revenue had formed a view on this as regards there being an occasion of charge, and that you would that you would have to, within a reasonable time, raise an assessment.

A. Yes. I see the next document, by the way, is marked "After holidays". So somebody had holidays.

Q. Again, that seems to be a note of a conversation you had with Mr. Bowen with a view to setting up a meeting; isn't that right?

A. Yeah.

Q. Because clearly no meeting, to judge from the documents, appears to have taken place in the meantime. I am not going to go into the detail of the document, but if you look at some of the points being mentioned.

Firstly, there is a suggestion that it was unlikely there'd be any compromise. And the procedure was mentioned, the assessment would issue, Public Accounts Committee; that's perhaps a reference to the fact that once the assessment had issued, it would form part of the figures you'd be giving to the Minister for Finance, and which would ultimately be accessible by the Public Accounts Committee as to the amounts of outstanding C.G.T.

Then there is a reference to perhaps proceeding by way of a

nominal assessment, so that all that would go into the published Government estimates would be a nominal assessment, allowing the liability to be determined first and leaving the assessment to follow on, depending on the result.

Then underneath that, "Argument on liability and valuation" in other words, that there were two distinct issues, that there would be disputes both as to the liability of to pay tax and as to the valuation of the assets?

A. I don't understand the reference to "nominal assessment", because you have to get if you want to go for an assessment, you have got to go for at least the amount that you feel you are obliged to collect. I mean, you can't put in an a notional assessment and then try additional assessments later on.

Q. I'm not saying that you are suggesting that, though the idea could have been canvassed within Revenue, but it seems to have been canvassed at that meeting, whether it was suggested by you or Mr. Bowen, certainly one can understand from Mr. Bowen's point of view, considering he was anxious to maintain confidentiality, that he would prefer to proceed in that way.

A. That might be true, yes.

Q. Then there is reference to Discretionary Trust Tax, that was also looming. Then at the end "Will probably win", meaning that I think you had suggested that the Revenue would probably win, that the case law was against the

Dunnes, but that there were risks. And I think Mr. Bowen has summarised that as you saying to him you thought you'd win, but the case law was against the Dunnes, but you recognised that there were risks.

A. Well, in a matter like that, I don't have to say.

Everybody knows there are risks in a matter like that.

There are no certainties.

Q. Now, the other document

A. Sorry, this note of the 9th August seems to have been elaborated into a full note at 7B.

Q. I'm not going to go into that any great detail, unless you want me to.

A. I am just saying the territory seems to have been covered.

Q. All 7B does, it's a file note of the 9th August 1985, is that it summarises the position up to that date, more or less along the lines that we have canvassed, and it simply expands on the various contacts Mr. Bowen had with you over the preceding weeks.

The next document which I am just going to mention is at 8 in the Tab 8 in the leaf of Mr. Bowen's documents.

This is a note of a meeting Mr. Bowen had with you on the 23rd October, 1985. I just want to refer you to Point 4, numbered Point 4, and there are three sub-points. The first is "Meeting not a continuation meeting". The second is "Nothing on the table". The third is "This is not a change of attitude".

And on the face of it, they seem to be rather cryptic

comments, and Mr. Bowen explained that what these meant was that you were indicating that the parties, as it were, were now in a new situation I'm referring, for the benefit of anyone who wants to refer to it, to Day Number 296, page 36, of Mr. Bowen's evidence.

But I'll just summarise it to you, Mr. Pairceir, in the following terms: Mr. Bowen was saying that you were effectively indicating that this was a new ball game. All that discussion on valuation, all those previous offers that Dunnes had made, that was now over. That you were starting completely afresh, and that I think the formal part of the process was going to begin, an assessment was going to issue. And maybe that has an echo in some of the things you said to me a moment ago when I referred you to the meeting of the 7th March, and you were wondering how Dunnes could, as it were, put money on the table without there being an assessment. He suggests that at this point, you were certainly saying to him that from now on, it was going to be in the formal process, that the assessment would in due course be issuing. Does that ring any bell with you?

A. No, it doesn't. But I quite see that negotiations, or discussions, or something had been going on, and we weren't getting anywhere nearer, and so the point about it is we had to go into action and make it a matter of business. I could imagine myself saying that. But not in an unfriendly way; merely to explain where I stood.

Q. I think that's clear. He noted what you said. There was no change in attitude. You weren't all of a sudden going to become hostile or anything.

A. No.

Q. Now, if we go back to the red book, and I have already referred you to Leaf 6, which was the meeting in your office on the 10/1/86.

A. Oh, yes, this is Mr. Reid's note?

Q. Yes. If you pass on from that now to Note to Document Number 7, or the document in Tab 7. It's another meeting, again in your office. You were present, Dr. Thornhill was present, Mr. Clayton was present, Mr. Reid was present, and at this point I think some of the same issues are being discussed, the question of using an external valuer and so forth.

A. This was during the process in which the officials were producing the valuation?

Q. Precisely. If you go to Document Number 9 now Tab 9 in the same book, the process has reached the point where Mr. Thornhill is sending you a paper for discussion on the valuation of the shares in the Dunnes case.

A. Yes.

Q. And you won't find every page of that paper in here, though if you want to have it, you can have it. But the portions of the paper I want to refer you to are really at the end, and if you go to page number 26 of the paper, which is about three or four of the exhibited pages into the

document.

A. I have it.

Q. You'll see that the officials at this point have arrived at some views concerning the value that ought to be put on the company, and effectively on the trust assets for the purpose of the two taxes that were then under consideration: Discretionary Trust Tax and Capital Gains Tax.

Now, Discretionary Trust Tax was being valued as of January of 1984. I am not going to refer you to the part of the paper that says that; you may take it it's correct. And Capital Gains Tax was being valued as at or the valuation for Capital Gains Tax was as at March 1985. And in the case of Discretionary Trust Tax, there is a discount of 5% provided for, and that's analysed in paragraph 6 of the paper, and produces, depending on which figure you use for earnings or maintainable profits, do you see that, Item E in each calculation do you see that?

A. I am at page 26 and 27.

Q. Yes, if you are at page 26, you'll see the heading "Conclusion."

A. Yes.

Q. And underneath that you see a heading, "Discretionary Trust"?

A. Yes.

Q. The valuation for Discretionary Trust was as at a date in 1984. And the first item, subparagraph (a), produces a

value for the company based on an earnings of 8.5 million per annum and a price/earnings ratio of 15, generating a value of 127.5 million. And then a discount is provided for the nature of the holding; do you see that?

A. Yes.

Q. Generating a figure of 120 million if you use a figure for maintainable earnings of 8.5, and a figure of 135 if you use the figure of 9 for maintainable earnings.

And then underneath that you have a figure for Capital Gains Tax of 148.5 million on the basis of a figure for maintainable earnings of 9, and 165 million on the basis of a figure for maintainable earnings of 10 million.

And in each case, there is a larger discount of 15%, and that is to take account of the fact that the shares had very restricted rights. Do you see that?

A. Yes.

Q. Now, do you recall getting these figures?

A. No.

Q. Do you recall being surprised that they were higher, maybe, than had been thought at the time of the original discussions back in February and March of 1985?

A. No.

Q. You can see that the you agree with me that the figures for they were generating figures for the value of the company well in excess of the 80 million that you were discussing as a sort of tentative figure at that stage?

A. Oh, yes. But I don't recall that.

Q. Now, could I ask you to go to Document Number 11, please, or the document in Tab 11.

There are a number of issues dealt with at this meeting, and I can certainly provide you with the whole document.

It's a report of a meeting held in the Chairman's office on the 12 March, 1986, at which you were present,

Dr. Thornhill was present, Mr. Reid was present,

Mr. Clayton, Mr. McDermott and Mr. Keane were present.

Mr. Keane being Mr. O'Cathain.

And if you look at Item B on the first page of that document, and this is to come to the point I mentioned to you earlier, where the note records that you said that "We should not rush into an assessment for C.G.T.; that there were good reasons (including the size and complexity of the case and the nonavailability of 1984 consolidated accounts) for delaying until we were totally satisfied with our valuation."

You went on to say that "Any assessment made prior to the 31st May 1986 would automatically be published in the appropriation accounts in November."

I think that takes up a point you made earlier as well. So to deal with that latter point first. If you put in an assessment and you hadn't worked it up sufficiently well, you could be providing a hostage to fortune in terms of the appropriation accounts; isn't that right?

A. Yes, that is true. Also, the characteristics of the assessment that we were dealing with were unique to that

kind of situation in Capital Gains Tax, and they were not like the assessment of direct taxes, the process of which had been well honed in, and you always had figures, etc.

And we have, again, this point that I don't wish to overemphasise, but that this it rests on a valuation being put on the shares. And, therefore, I think that we should be reasonably sure about it.

I also notice in passing that this P/E, price/earnings ratio, which was very popular at the time, was not a mathematical skill, and from time to time it would become very much discredited, because it was subject to artificial variation by actions by the company. And generally people have gone away from it.

Q. Companies could inflate or deflate their profits in any particular year?

A. Yeah. And to take an overview of a particular industry, to try and look at P/Es, there is also so many variables within each particular company that you know, it wasn't mathematics, where you came up with the answer.

Q. Oh, I appreciate that, and no one is suggesting that this was an exact science. And I think, in fairness to the officials who carried out the work

A. They didn't either.

Q. They were alive to that?

A. Oh, yes, very much so. I am only I know they were alive to it, but I am only drawing attention to it in the context of giving evidence here today, for the record.

Q. They have drawn the attention of the Tribunal to this, and in their paperwork, it's quite clear that they seek to make allowances at various points in arriving at their conclusions for some of the factors you have mentioned.

And I think we are about to come on to perhaps that's a crude way of dealing with some of those points. If you go to Document Number 13, which is Mr. O'Cathain's note of a meeting in June on what day, it's not clear 1986, at which you were present, Mr. Clayton was present, Mr. O'Cathain was present, Mr. Reid was present, and Mr. Thornhill was present, I think; he is described as Mr. Thornton.

You may find the typed transcript easier to read.

The first item is the first note is "Norah died 8/3/86 further charge to C.A.T." This is a reference to the fact that in view of the obviously at that point, just recent death of the late Norah Dunne, there would be a further charge to inheritance tax on the trust at the rate of 3%; you are aware of that 3% rate of C.A.T. applicable to Discretionary Trusts.

A. What do they call it, the one-off?

Q. Yes, the one-off 3%. And then underneath that, Discretionary Trust Tax, each year the annual 1%, or as it was then, 1%.

The next point that is referred to is "The deemed control provisions for C.A.T. are applied." In other words, that in valuing shares or assets consisting of shares, for the

purpose of Capital Acquisitions Tax, any frailties attaching to the shares in terms of control are ignored.

A. Yeah.

Q. The next point that's made on the left-hand side, anyway, which I can decipher is "100 and 120 generally agreed."

That seems to be a reference to figures for the value of the company. We know that ultimately you proceeded to assess the trust for DTT, Discretionary Trust Tax, and the 3% tax on the basis of a valuation of 100 million, and you proceeded to assess the Trustees for C.G.T. on the deemed disposal on the basis of a valuation of 120 million. And if you think about the figures

A. The inspectors did.

Q. Yes. Well, the Revenue did; that's what I meant.

A. I didn't raise assessments.

Q. Well, if you think back to the figures I mentioned a moment ago, the Discretionary Trust Tax figures that were generated by the work that had been carried out by the officials ranged from 120 to 128, and obviously, for safety, to incorporate a margin of error, they were reduced to 100. And the figures for Capital Gains Tax, which ranged between 148.5 and 165 for, again, presumably, reasons connected with allowing a margin of error, they were reduced to 120 million.

The next reference is to, is it "Question what deduction to apply to 120" I think that means 120 million "For lack of control opinion of counsel awaited on this."

A. Yes.

Q. Now, do you remember this question of control being a feature, the discussions that you were having in 1986 and 1987 concerning the valuation of these shares and the valuation of this company?

A. Well, I don't really, but I can quite understand how it would be a subject.

Q. And it seems that at this stage there was a question as to whether a discount would be applied to the 120, but that this would await the opinion of counsel.

A. Yes, that seems to be the case.

Q. If you go on Leaf Tab 14. This is a note of Mr. Reid's which refers to a meeting that you had with Mr. Bowen and Mr. Fox. It says: "Assistant Secretary, "Please see enclosed copy of notes sent to Chairman by Christopher Clayton. I phoned the Chairman regarding Maurice Kennedy, and while I was on to him, he told me the background to the notes.

"He had had a meeting (on his own) with Bowen and Fox. The valuation was not discussed in any detail, except that the Chairman said that this was the bottom line. Bowen and Fox made the old protestations about the uniqueness of the group and its contribution to employment, etc., and then said that they were going to see the Minister, apparently to remonstrate about the inequity of the C.G.T. charge in a situation where there is no cash benefit. The notes are to assist the Chairman in the event of a request by the

Minister to justify the C.G.T. charge.

"The Chairman will be on holidays for the first 3 weeks in August. Nothing further is likely to happen until we know what is the reaction to the meeting with the Minister. The date of the proposed meeting was not mentioned."

Now, at that stage an assessment hadn't issued; isn't that right? We know that.

A. Yes, that's right.

Q. And Mr. Bowen and Mr. Fox were meeting with you, at a time when you must have had a figure in your head, to judge from this note: You mentioned a valuation and pointed out that this was the bottom line?

A. Yeah.

Q. I think by this time I was just checking the Revenue had had the benefit of the opinion of counsel, which was, I think, to the effect that there was to be no discounting, and therefore, presumably, that enabled you to run with the figure of 120 million. I am trying to just conceive what figure you'd have been mentioning at that time, and I imagine it must have been 120 million, unless you ever remember having a different figure.

A. No.

Q. If you go to Document Number 15, which is the next document. And this is a note of Mr. Thornhill. It seems to be a file note to himself, in which he says: "I discussed this case today with the Chairman. He indicated that I should now proceed administratively with routine

aspects of the case (issue of reminders etc.). he said that he would also speak to Mr. Bowen and inform him of our intention to proceed with the case as far as the DTT aspects were concerned, this would mean the immediate issue of an assessment in respect of the tax liability which arose with effect from 25 January 1985. He would contact me when he had spoken to Mr. Bowen, issue of an assessment would wait until then. He told me that he had also informed the Minister for Finance that his intention was to proceed 'administratively' as the last round of negotiations had not resulted in progress."

That would seem to suggest that you must have, in the meeting which I have just referred to with Mr. Bowen and Mr. Fox, you must have tried, to some extent, to negotiate some resolution of the differences between the Revenue and the Dunnes; would that be right?

A. You're referring now to Document Number 14, is it?

Q. I am referring to Document Number 15, and I'm saying that Document Number 15 says that the last round of negotiations had not resulted in progress, and I am suggesting that that must refer to or probably refers to the meeting that is mentioned in Document Number 14.

A. Document Number 14 is a note of

Q. Yes, it's a note of a meeting.

A. of a discussion I had with John Reid in respect of a meeting I had with Mr. Bowen and Mr. Fox.

Q. Yes. At which, according to Mr. Reid in any case, you had

stated that the valuation figure was the bottom line. And I'd suggest that you wouldn't have been using a valuation figure at that stage unless it was the figure that the Revenue had decided to run with.

A. Oh, yes, yes, that's true.

Q. And you pointed out to me earlier, there was no point in negotiations unless you had an assessment. Well, you didn't have an assessment, but presumably you had a figure that was going to form the subject of an assessment, the 120?

A. Yes.

Q. And that whatever discussions you had had, they hadn't advanced matters, or they hadn't resulted, as you put it, in progress, and therefore you were now going to issue the assessment; you were going to run with the 120?

A. That's right.

Q. Do you recall if any figures were mentioned by Dunnes at any of these meetings?

A. No.

Q. Just to clarify your last answer, do you mean you don't recall whether figures were mentioned, or that you recall a meeting and that figures weren't mentioned?

A. I don't recall either the meetings or the figures, but I obviously recall them in the sense, when I see the documents and the reports of the various Revenue officers with whom I discussed this, that all of these meetings took place. And I certainly recall that I had meetings, but if

you ask me down to the detail

Q. I'm not asking you down to the detail of the individual ones we can pass on from that.

A. You asked me about details.

Q. We can pass on from that. I appreciate the point you are making that you remember the discussions in general.

Do you remember figures being mentioned at those discussions, in general, prior to the issue of the assessment?

A. I don't. We are talking about 1986. It would be difficult for anybody to believe, if I were to sit here, that I'd remember the details of a meeting I had in August 1986. I mean, it's quite outrageous to expect me to have such a memory.

Q. Do you remember, at any time in 1986, figures being mentioned?

A. The meetings in 1986 had to do with figures. I remember that. What those figures were, I don't know.

Q. I see. But they were probably figures, then, on both sides being mentioned, or being traded, as it were?

A. I don't think so. I think that all of the figures that I dealt with came from the process which was going on between the officials who were trying to value the unquoted shares, and to arrive at the consequences for the Dunnes of the Discretionary Trust Tax and the Capital Gains Tax. But and I quite appreciate that you know, we have to have this

Q. I take your point, Mr. Pairceir. And that's my sense of the documents as well; that you weren't being given any figures by the Dunnes. And you had put the 120 million to them, and that all you got was protestations about how inequitable and so on it was. I am just trying to be sure in my own mind that no figures were mentioned on the Dunnes side.

A. Or if they were, I didn't record them, or whoever I reported it to didn't record them.

Q. Yes.

A. Yeah, I agree with that.

Q. I suppose if the figures if you felt the figures were important, you'd have recorded them, or you'd have drawn it to somebody's attention?

A. There is no possibility that I would remember anything that happened in 1986, down to figures. I don't remember 1986.

CHAIRMAN: Well, I am rather hoping we just get up to the November meeting, which is of some substance; and perhaps we should pause for lunch, then.

Q. MR. HEALY: I think following that meeting, you had further telephone conversations with Mr. Bowen I'll just briefly take you through the records of them. If you go to Document Number 16.

A. 16?

Q. Yes, Tab Number 16. If you look at the transcript, Mr. Bowen's recollection I think is that he was telling you he was going to go to the Minister, and you were telling

him he'd have to face up to the liabilities. Do you see those two words in the transcript?

A. Yes, I do, yes.

Q. Then you appear to have told him that the "big bang" C.G.T.

charge will not be made just yet, but that the C.A.T.

liability will be the subject of two assessments. Telling

him that you weren't yet going to issue the assessment, the

"big bang", as they call it, and there is a record that

they were going to see the Minister the following week, and

the suggestion is that this would advance matters.

If you go on to document the document in Tab 18, this is

a note, and again the transcript is the best way to look at

it. It's a note of Mr. Thornhill's, I think, and it's a

record of a discussion he had with you in which he says:

"I discussed the case this afternoon with the Chairman. He

informed me that the boys are due to meet on the 3

November. I understood this to mean that the principals in

the case were due to meet the Minister on that date. He

also said that he had told the Minister that there was

nothing that he (the Minister) could do about the case, and

that he (the Chairman) had already waited 'too long

indefensibly long' in dealing with this case.

And you asked Mr. Thornhill to defer taking any action on

the DTT case until after the 3 November.

That seems to suggest that you were in contact with the

Minister, and you told him that there was nothing he could

do, meaning nothing he could do on the taxes on the law as

they stood, and you waited too long, that you'd have to get on with it. Would that be a fair way of putting it?

A. Yes.

CHAIRMAN: We are right on one o'clock.

I think we'll fix ten past two, if that suits you,

Mr. Pairceir. We'll adjourn for lunch.

MR. HEALY: Sir, I am not sure that Mr. Pairceir is in a position to come in the afternoon.

CHAIRMAN: You have some difficulty this afternoon, Mr. Pairceir?

A. No, but I raised with the Tribunal I had arranged that I would be heard by half days. This is in recognition of my age, and other personal matters.

CHAIRMAN: I had intimated that to you at the outset, Mr. Pairceir. And please be assured I'll fully facilitate you in that regard.

Well, are we nearly up to the November meeting now?

MR. HEALY: I am not sure what quite November meeting you have in mind, sir, unless you mean

CHAIRMAN: Well, it's been a long enough session for the witness this morning. Will I say eleven o'clock rather than tomorrow morning, then.

Thank you, Mr. Pairceir. We'll resume and hope to conclude your evidence starting at eleven o'clock tomorrow.

A. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 1ST JULY 2005