

THE TRIBUNAL RESUMED ON THE 22ND JUNE 2005 AS FOLLOWS:

CHAIRMAN: You have completed your examination,

Mr. Coughlan, and Mr. O'Neill is next.

MR. O'NEILL: Thank you. Good morning, Chairman.

CHRISTOPHER CLAYTON WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

Q. MR. O'NEILL: Good morning, Mr. Clayton. Hugh O'Neill is my name, and I appear on behalf of the Trustees of the 1964 settlement. And if you don't mind, I'd like to ask you a few questions.

I'd like to start first with the assessment for C.G.T. in November of 1986. That was the assessment that gave rise to the potential liability for 38.8 million.

A. Yes.

Q. As appears from the letter that the Revenue wrote out of the curtesy to the Trustees alerting them of the impending assessment, it's clear that the value for the date in March, the 16th March of 1985, was 120 million?

A. I think 14th March, whoever date it was, that was the date given by Capital Taxes Branch, yes.

Q. 14th March was 120 million. And I just want to ask you, do you have a book of the documents? It's Book Number 65.

A. Yeah.

Q. And I just want you to look at Tab 9 first.

A. Yes.

Q. And this is the exercise of the Capital Taxes Branch Dr. Thornhill and Mr. Reid carried out in relation to the valuation of the shares?

A. Mm-hmm.

Q. And on the fifth page into that, the bottom of page 26, you have valuations for Discretionary Trust Tax and valuations for Capital Gains Tax. And the figures for Discretionary Trust range this is after a discount range from 120 million to 128 million and the C.G.T. from 126 to 140.

A. Yes, I see that.

Q. Then if you turn to the next tab, which is a revision of that document, and the you'll see on the first page it's a revision of the 12th March 1986. The initial document I had referred to was 25th February, 1986. This is the 12th March, 1986.

A. The next tab, yes, Tab 10.

Q. You'll see the revision to the document of February, this was revision of the 12th March of 1986, and we have the same figures in respect of we have the same gross figures in respect of Discretionary Trust Tax and Capital Gains Tax, if you compare the two.

A. That's the situation.

Q. There doesn't appear in those circumstances to be any discount applied, but on the following page, you will see references to the question of deductions, important difference between C.A.T. and the C.G.T. legislation which have a bearing on the question of deductions, and these issues are complex, and counsel's opinion has been sought.

A. Yes.

Q. And then the following paragraph refers to discounts:

"Counsel has been asked to confirm for Discretionary Trust Tax purposes shareholding as deemed to have control." And there are deemed provisions, I think, in that particular piece of legislation.

A. Yes.

Q. There aren't such deemed control provisions in the C.G.T. legislation?

A. No, there aren't.

Q. And the question also arises, what type of control? Is it more than 50%, or is it more than 75%? And the valuation practice then has been given 5 to 15% discount for the scenario of a 50% to 75% control; in other words, if you hold between 50% and 75%, you will be given a discount of 5 to 15%?

A. Yeah.

Q. And then in the there is then an examination of the issue in relation to C.G.T., and I think you'd accept that as a matter of principle, the discount, except in a straightforward case where there is obviously control, the discount to be applied to C.G.T., and particularly any discount to be applied in this case, would be greater for C.G.T. than it would be for Discretionary Trust Tax?

A. I am not clear about that. What discount are you talking about? There is

Q. A discount unless the asset to be valued is one which of itself gives control; in other words, if the Trustees owned 100% of the ordinary shares and the ordinary shares had

full and absolute rights, issues of control wouldn't come into account. But in the situation here, where the Trustees had very limited voting rights or, sorry, the ordinary shareholders had very limited voting rights, an issue as to how you value those, do you regard that, those voting rights or that holding as giving control or not giving control. Those are issues that must be considered under both the Discretionary Trust Tax provisions and also under the C.G.T. legislation?

A. There are certainly issues to be considered for Capital Gains Tax purposes. Whether in fact there is any discount at all to be applied, that issue would arise.

Q. And it would appear, certainly, that and I know you are being asked questions in relation to valuation discounts, which I think you properly said are really matters which you'd refer to the expertise of the Capital Taxes Branch; and I accept, obviously, that, and I don't want to push you too far on any of this, but it does appear from the first paper submitted by the Capital Taxes Branch, Dr. Thornhill and Mr. Reid, that they were applying a greater discount for the C.G.T. than they were for the Discretionary Trust Tax?

A. I haven't studied that aspect of it. If you say so.

Q. If I just draw your attention, in case I don't want to mislead you, in any event. If you go back to Tab Number 9, the page I referred you to, the page numbered 26 at the bottom.

A. Yes, I see a discount of 5%.

Q. For Discretionary Trust, and 15% for C.G.T.

A. Right.

Q. And that is explained previously. Although we only have extracts from that report, it's explained on the previous pages, pages 3 and 4 of the extract that we have.

A. Yes, that's right, in paragraph 6.

Q. Now, the assessments that were or the capital values applied for the purposes of the assessment for both Discretionary Trust Tax and C.G.T. were 100 million in respect of Discretionary Trust Tax and 120 million in respect of C.G.T.?

A. Yes. Certainly 120 million for C.G.T. I think you are absolutely correct on the 100 for the DTT.

Q. And if you turn then to Tab 13, this is a meeting that you had with Mr. Pairceir, Mr. O'Cathain, Messrs Reid and Thornhill from the Capital Taxes Branch.

A. That's right.

Q. And according to that note, it seems to have been agreed that the valuations would be 100 million, presumably, and 120 million in respect of Discretionary Trust Tax and C.G.T. respectively?

A. Correct.

Q. I can refer you to the assessment for Discretionary Trust Tax. I don't think there is any doubt about that.

A. No, there doesn't seem to be, no.

Q. And it doesn't appear that those figures you'll correct

me if I'm wrong, I hope that those figures had appeared previously in any of the papers drawn up by the Capital Taxes Branch, or indeed by any other section of the Revenue?

A. I can't say offhand if they did. This may have been the first time. I just don't know.

Q. Well, it seems from my examination, and indeed we may not have been given all the papers, and it would appear that there are other Revenue papers which we haven't seen

A. They may well have appeared in earlier papers. I can't check them now, and it's possible, certainly it appears here at this stage in June of 1986.

Q. And that figure and let's just concentrate on the C.G.T., because that was the figure with which you were concerned. The C.G.T. figure of 120 million doesn't actually refer back to any similar figure contained in the previous documentation that we have looked at, the two reports?

A. Apparently not, but obviously opinions as to what the valuation, what the correct valuation figure of C.G.T. would have varied somewhat, would have been kicked around over the course of the preceding weeks or months.

Q. Matters developed as people concentrated more on the particular issues?

A. Quite. I mean, a figure which appeared in Month 1 for any valuation of any asset might be quite different in Month 5 as a result of various deliberations.

Q. And it seems, just staying on Divide Number 13, or Tab Number 13 for the moment, the meeting of I think it's the 5th June of 1986, that that those figures, and specifically the figure of 120 million, didn't contain any discount or deduction because of the lack of control.

If you just if you see underneath, where those figures appear in the note: "100 and 120 generally agreed.

Question: What deduction to apply to 120 for lack of control?" And then "Opinion" and the portion blanked out "awaited on this."

A. Yes, I see that.

Q. If I may use the phrase "shorthand", I suppose, the figure of 120 was a gross figure?

A. So it seems. I did certainly request from Capital Taxes Branch the what figure was to be taken for C.G.T. purposes for settlement purposes, and that's for C.G.T. assessment purposes. And the figure that I got back informally, in due course, was 120. They were well conscious of the fact that there was a different valuation situation arising for C.G.T.

Q. And whatever your views may be on the appropriateness or not of any discount, ultimately would it be fair to say that you deferred to the Capital Taxes Branch?

A. No question about it. There couldn't be any second-guessing in relation to that. They were the specialists, the experts, and unless their figures were clearly wrong, and they certainly were not clearly wrong in

this case, I was bound by them.

Q. And if you apply a discount for lack of control to the 1985 figure, it follows that you also apply a similar discount or apply similar principles to the base figure in 1974?

A. Unless there were something materially different between

Q. In the absence of any change?

A. between '75 and '85.

Q. And in case can I ask you to turn to Tab 49. This is Mr. O'Cathain's note, and it's jumping a couple of years forward. It's now 1988, the 3rd March of 1988. And if you turn to the fifth page of that document. At the top of the fifth page, he's effectively performed the exercise that you had identified in your letter

A. Correct.

Q. and shown how the 38.8 million applies, and as I say, it's clear from those figures that there is no discount applied either to the 120 million or, of course, to the 5.5 million.

A. That would seem to be so, yes.

Q. And in fact he raises an issue in relation to the discount to be applied, in the last paragraph starting on that page.

A. Yes, he raises the "In addition, there is the question of whether a discounting factor should be applied." Yes.

Q. Now, you are aware of the rights attaching to the ordinary shares. There were limited voting rights, so rights to vote. And indeed, I think this is summarised in Tab Number 9.

A. Well, now, I wouldn't classify myself as an expert on that.

I haven't looked at the memorandum or articles of association or whatever in recent times.

Q. I appreciate that. You had at the time, though, looked at it, and one of the notes we were given yesterday would appear to suggest that you looked at this matter quite in some detail and formed your own views on the matter?

A. There was a consideration in relation to the voting rights and the preference shareholders' rights, and that matter was addressed in our senior counsel's opinion, I think, speaking from memory, on the 6th June 1986.

Q. We haven't seen that. But could I ask you to turn to Divide Number 9 again, where Dr. Thornhill sets out or summarises the rights attaching to the ordinary shares in this case.

A. Yes, in paragraph 7.

Q. Paragraph 7, that's right. And just to remind you what the voting rights and the only voting rights of the ordinary shareholders had were, "1. They had a right to vote on a resolution for increasing or reducing the capital of the company.

"2. They had a right to vote on the winding-up of the capital.

and "3. They had a right to vote for varying or abrogating the rights or privileges attached to the ordinary shares.

A. Yes.

Q. As a matter of common sense, ordinary shares or shares in a

company having those rights, those limited voting rights are of less value, however much it may be, are of less value to shares which wouldn't have those voting restrictions?

A. Ordinarily one would expect that to be the case. But I think if you go forward to Tab 10, page 33, of a further paper, paragraph 47, the conclusion commences with the statement: "Subject to counsel's opinion and further discussion, the position appears to be as follows."

Now, you said that you don't have counsel's opinion there. I have seen it in recent times, and counsel has addressed the issue of the valuation of shares with reference to the voting situation. And he raises a doubt as to whether any discount is appropriate.

Q. And if you look at the if you you have referred to paragraph 47 at Tab 10, and the three scenarios, so to speak. "Subject to counsel's opinion", this paragraph is headed.

A. Yes.

Q. Dealing with Discretionary Trust Tax first, and then Capital Gains Tax.

"1. Under Capital Gains Tax, 2(a), if the hypothetical purchaser is able to enfranchise the ordinary shares" in other words, get rid of the restrictions applying to his or to the shareholding?

A. Mm-hmm.

Q. And secondly, then, the benefit of being able to wind up

and, on a winding-up, presumably simply pay off the preference shares, pay them off at par, i.e. 1 each, and then keep the balance of the funds.

A. Quite. And the page 34, or that paragraph 2 concludes on page 34 with reference to a suggested discount, a question of a discount of up to 18%.

Q. If A and B don't apply?

A. If this and that, any discount in excess of 18% appears, subject to further research, to be bringing us into uncharted territory. Now, these are all matters which I have only, you might say, secondary knowledge. As I say, I am not an expert in the area of unquoted shares.

Q. I appreciate that, and I'm not going to delve into the specific percentages. I am just dealing with the principle because it is something that you seem to have considered, and rightly considered, at the time. And I think you prepared we were given a memorandum, or sorry, yes, it is a memorandum addressed from you to Dr. Thornhill of the 8th May of 1986. We were given that questioned, I think.

A. So I gather this morning that you have a copy of that paper.

Q. Do you have a copy of that in front of you?

A. I don't. But I think I should be able to lay my hands on it, if you bear with me.

Q. I'm sure we'll be able to provide you with one if you don't have one.

A. What date did you say was on it?

Q. The 8th May, 1986. It's headed on stationery of Revenue Commissioners and addressed to Dr. D. Thornhill.

A. Oh, yes, I have that now, a typed memo, yes.

Q. It's headed "Bowens case. I have read senior counsel's note of 18th March". That's the document, yes?

A. That is the document.

Q. If you turn down, looking at and reading this in the context of the issues addressed by Dr. Thornhill in the document at Tab 10 and the possible scenarios in relation to the shareholding under the heading of "Capital Gains Tax". The first being enfranchisement. If you look at paragraph number 3 of your note of the 8th May.

A. That's right, yes.

Q. It says "Clearly Article 58" that would be the articles of association of the company "The ordinary shareholders do not have unrestricted voting rights. I also agree with counsel's opinion they do not have the right or power to widen their voting rights."

So in other words, counsel seems to have stressed the view, and you agree, that there is no entitlement to enfranchise those rights; is that fair?

A. That is that seemed to be the case, yes.

Q. And then you continue, still under the heading of enfranchisement, but perhaps it should be a separate heading: "However, I have doubts about counsel's other views on the powers of ordinary shareholders. See the

following paragraphs."

A. Yes.

Q. And that would arise in the context, and particularly in this case, in the context of what in fact is the value of the ability to be able to wind up the company, presumably, relating it back to Dr. Thornhill's note?

A. Yes, of course, that is a factor, yeah.

Q. And I don't I will if needs be, but I don't want to delay the Tribunal, but this is something I addressed with Mr. O'Cathain. And would it be fair to summarise it to say that his evidence, or and indeed your belief, that if there was a winding-up, there would be significant taxes payable; there'd be C.G.T. payable on the distribution, on the deemed disposal or actual disposal by the company to the liquidator, and there would also be C.G.T. on the benefit going to the shareholder?

A. There could be significant taxation implications on the winding-up of a company, depending on the on all the factors, all the particular circumstances of the company and of the shareholders. Significant tax considerations could arise.

Q. Well, in normal cases, and subject to losses that may be available, in normal cases, there will be a potential liability, assuming there is a gain, there will be a potential liability of the company on liquidation; in other words, on the disposal to the liquidator?

A. Yes, I would ordinarily expect that. There could be other

liabilities to surface or to emerge in that situation.

Q. And also, if the shareholders the company is now wound up, instead of having the shares, they now have the underlying assets of the company. There would be a deemed or an actual disposal of the shares?

A. Yeah, well

Q. And a liability, again subject to a gain arising, a liability in the hands of the shareholders?

A. Before I could agree 100 per cent with you, I'd like to see the entire parameters of what you are setting out there.

Q. To be fair to you and I don't want to mislead you what I'm suggesting is that while in theory the shareholder has a right to call upon or to vote upon a winding-up, and presumably achieve a wind-ing up. The downside is quite significant, because it would give rise to significant capital taxes.

A. That's a very hypothetical it is a hypothetical situation.

Q. It is of course hypothetical. But it arises in the context of what or to what account do you take of this right to vote on a winding-up in the context of discount or no discount to the value of the shares in 1985?

A. I think it's a matter of opinion, and as I indicated, our senior counsel indicated or mentioned serious doubts as to whether any discount would be applicable in relation to that voting-rights situation.

Q. I'm just coming back to your note. Whatever advice he

gave, you had difficulties with some of that advice?

A. That memo that I wrote on the 8th May, 1986, preceded our counsel's opinion. It was my note was an effort to put in my tuppence worth on the debate, but the final decision as to what discount, if any, was applicable would have been for Capital Taxes Branch and the then Chairman.

Q. I don't want to dwell on this too long, but he seems to have given you some form of opinion as he referred to in the first paragraph. "Read senior counsel's note"

A. On the 18th March, and there was a further opinion.

Q. He gave a further opinion?

A. That's right.

Q. But I think you'd accept, in principle, that it would be difficult to resist any discount, forget about the size of the discount; it would be difficult to resist any discount to the value of these shares having regard to the restricted voting rights?

A. There could be a difficulty. I would say it's not an impossible situation to argue for to be arguing for zero discount. But I take the point.

Q. Well, it's well-nigh impossible, isn't it? There is a significant difference between having absolute and uncontrolled voting rights and having these very limited voting rights. But it may be, you say, close to zero, but it has to be something, doesn't it?

A. I could certainly understand an argument being made by the other side in relation to a discount, but I could also

understand an argument being made against that.

Q. We'll move on from that.

Can I bring you to the settlement of the Discretionary Trust Tax. And you were not involved in that, obviously; you were involved in the C.G.T. section.

A. I wasn't involved in it at all.

Q. But you did, as you fairly said, obviously at some stage learn of the settlement?

A. Yes.

Q. And you may or may not have been in this hall when Mr. O'Cathain gave his evidence to the effect that the following, or the settlement at 82 million was of critical importance and was centrally important from the Revenue's point of view in the context of C.G.T., and I think you'd agree with that assessment?

A. I wouldn't say it was of critical or central importance. It was highly relevant, in my opinion, but it wasn't a critical issue.

Q. Well, those are the words he used. You would it had significant relevance, did it not?

A. It was relevant. No question about that.

Q. And I think you have told Mr. Coughlan yesterday that the Appeal Commissioner would and probably or could and probably would have asked the question, "Look, what happened on the Discretionary Trust Tax front? What was the valuation on that basis?"

A. I think that I would have expected that question to come

from the Appeal Commissioners if the case had gone before them.

Q. And to be fair to you, I think Mr. Coughlan has then engaged you in legal arguments, and I don't want to do the same; but as to whether or not, having regard to the terms of the settlement, one could stand up and object to the Appeal Commissioner knowing anything about that?

A. Yes. I'm not an expert in that area of law, but the expression "without prejudice" would not, I think, necessarily mean that one could not disclose the amount of the valuation for DTT purposes. It would mean that one was not bound by that for C.G.T. purposes.

Q. And that would certainly, for what it's worth, that would certainly be my reading, that you can argue that that was agreed at that level in different circumstances and in different considerations, and because the amount of tax was relatively small, 3%, 1%, not gone into in the same detail?

A. And a different date.

Q. And yes, although the date yes, a different date, but the date in fact spanned four years?

A. Yes, that's a practical matter as regards DTT administration.

Q. No, I think it goes more than that.

A. But the basic the figure of 82 million that was hammered out related to the year 1984.

Q. It related also to '85, '86?

A. It followed that it applied for '85, '86.

Q. I don't think that's correct. What you are in fact referring to is the practice, either statutory based or not, of not revisiting a valuation for three years afterwards?

A. I don't think anybody could seriously suggest that the actual market value of the company was exactly the same in '84, '85 and '86.

Q. Or '87. And I fully accept that.

A. They had to be different.

Q. Absolutely, but what we have here is a compromise figure, and in other words, one could say, "Yes, you are quite right; this could have been approached in a different way".

It could have been approached on the basis that the valuation in 1984 is, by way of illustration, 70 million, '85; 75, and so on?

A. I have absolutely no idea how that figure of 82 was arrived at. As is clear, I was not involved in that, those deliberations at all.

Q. You weren't involved in the deliberations; that's clear.

Obviously, however, we have heard the evidence of Dr. Thornhill. It was a figure that Dr. Thornhill was happy to settle on, and his evidence was, as far as he can recollect, he would have recommended or if asked by Mr. Pairceir would have said "Yes, I am happy with that", or "I'm reasonably happy with that figure".

A. Yes, he would have been as I recall it, he reported to the Chairman. And I'm not sure if he recommended

acceptance of the figure, but certainly the Chairman endorsed the figure.

Q. Can I bring you to a hypothetical situation. The assessment was raised, the C.G.T. assessment was raised in November '86, before this settlement, before the Discretionary Trust Tax settlement

A. That's correct.

Q. at 82 million. And in circumstances where the Revenue, for Discretionary Trust Tax purposes, happy to live with or happy to accept a figure of 82 million. If the assessment, the C.G.T. assessment, was raised after the settlement of 16th March 1987, presumably and I am not criticising, and this is with the benefit of hindsight presumably it would have been raised for a different figure. In other words, 120 must have come down.

A. I would expect Capital Taxes Branch to have given a somewhat different figure to the 120 at that stage.

Q. A lower figure, obviously?

A. Sorry?

Q. A lower figure?

A. Almost certainly, yes.

Q. And I have heard your evidence to the effect that once an assessment is raised, that it isn't the practice and appealed it isn't the practice to raise a fresh assessment pending the determination or before any appeal is determined?

A. That's a matter of routine, it's been practice and law for

decades. This situation may be different for other taxes, but in relation to income tax, Capital Gains Tax, corporation tax, an assessment of whatever figure is there, whether three days later if people discover it's not quite right, that's the figure which goes before the Appeal Commissioners, even though people are agreed that it should be something else.

Q. But in a context where there isn't I mean, there is a dispute, but the Revenue accept that the figure for good reason, I mean, and not anything wrong with the original assessment in terms of being raised to the best of the ability of the Inspector, as I think it's required to be raised.

A. Yes.

Q. Having been initially raised to the best of the ability of the Inspector, he then discovered further information which leads him to the view that the assessment is too high, and in those circumstances, it is open under the legislation, is it not, for the Inspectors to issue a fresh assessment?

A. Under the self-assessment legislation, I would think probably yes. Under the old legislation, I don't think there was that provision. It's of academic interest, because the position would be that if the case were going before the Appeal Commissioner, the Inspector could come in straight away and say, "Listen, that figure is too high or too low".

And I'm not arguing the point, but what you have in front

of you for decision is the amount of the chargeable gain, or the amount of the taxable profits, or whatever, and the figure of 100, 120 or 5 million, whatever, is kind of an academic figure. It's not of critical importance.

Q. And the appeal that took place in this case, the C.G.T. appeal, was in the first instance confined to the issue of liability. I suppose the liability, the issue of valuation

A. To the point of law, yes.

Q. And presumably, if the issue of both liability and quantum valuation was to take place on the appointed date, the Revenue presumably would have said, "Look, there is the assessment on a capital value of 120 million, we have to accept maybe that's a little bit high"?

A. It could have gone forward, or they could have said, "Listen, the point of principle is this", and if it had gone to a higher court, it would have been on the basis that it would be referred back ultimately for agreement on the for decision as to the amount of the assessment.

Q. No, I appreciate that. That was the agreed formula, or the agreed way forward, by both parties, I think.

A. Yes, to simply settle a point of law.

Q. And again, I mean, I am asking you a hypothetical situation, because there wasn't any liability at the end of the day. But let us assume that the appeal that took place in this case was an appeal not only confined to the issue of liability, but also dealing with the issue of valuation

and the issue of the amount of tax. Presumably, on the basis of what you say, the Revenue would have told the Appeal Commissioner that "Look, we're standing over the liability issue; we do accept that maybe the assessment is a little bit high"?

A. That would have been a possibility. They could say "The assessment is a bit high or a bit low, but we stand on the liability."

Q. But in this particular case, having regard to what had happened since the assessment was raised, isn't it clear that the Revenue really couldn't stand over the figure of 120 million?

A. I thought we were discussing simply the point of procedure. The point of the quantum would have been left to one side.

Q. Sorry. It's hypothetical because the valuation issue was parked. But if the valuation issue did come before the Revenue Commissioners in the same day, or indeed in any other day, having regard to what had happened in this particular case, isn't it fair to say that it's likely the Revenue it's hypothetical, of course isn't it likely that the Revenue would have said, "Look, there is an assessment based on a valuation in 1985 for 120 million; we accept that may be slightly on the high side"?

A. I don't think that that would be said in the absence of a full valuation hearing.

Q. That's what I mean. A full valuation hearing is taking place. Let us assume a full valuation hearing is taking

place. Hypothetical, I accept.

A. In the case of a full valuation hearing, one would be hearing arguments from the both sides, and the Appeal Commissioner would decide at the end of the day, it's X or Y or whatever.

Q. But what I understand your evidence to be and I am not criticising the assessment that was raised in 1986; it was raised to the best of your knowledge and ability at the time. But as matters develop, what you have said is had the assessment been raised after the settlement of 1987, it's likely to have been for a lower figure?

A. It could well have been a lower figure, yes.

Q. And in those circumstances, when one comes before the Appeal Commissioner, it's not surely it's not the practice of the Revenue, simply because of the date upon which they have raised the assessment, to seek to impose on the taxpayer, or potential taxpayer, a particular liability in quantum?

A. No, they wouldn't be going in saying "This is the amount of the liability, and we're not budging 1 cent from that".

That would the not be happening. There would be considerable argument, I would imagine, as regards the valuation, and the Revenue could say that "Well, observing in the light of further consideration, we don't think that it was as high as 120; maybe it was only 110".

We just don't know what might emerge in the course of the researches prior to the appeal hearing.

Q. But on the basis of the statutory duties, that the Inspector has to raise the assessment to the best of his ability?

A. Yes.

Q. If he learns matters subsequent to raising that assessment, having done it to the best of his ability, surely there is an obligation and I'm sure there is a practice within the Revenue, and I think you have, in a sense, said there is that you will tell the Appeal Commissioner, without conceding the case entirely, that "Look, this may be a little bit high"?

A. That would inevitably come out during the course of the appeal hearing, inevitably.

Q. Now, can I turn to a different issue. In 1987, in April/May of 1987, the notes, the internal Revenue notes, particularly the notes of Mr. O'Cathain, seem to be raising issues as to whether or not there is a liability to tax, leaving aside the question of valuation.

A. Yes, that question was being explored by him.

Q. And I think you may have said that it would be Revenue practice to play the devil's advocate.

A. Sorry?

Q. It may be Revenue practice to play the devil's advocate, to look at the pros and cons?

A. I am not sure I could say it would be Revenue practice, but I would regard it as being valuable addition to the proceedings.

Q. But all the discussions seem to have, at this stage, been fairly negative in respect of the issue on liability?

A. I wouldn't

Q. The only views that are expressed in these documents in May of 1987. Perhaps I mean, I should refer you to the documents. If you turn to Tab 34, a meeting of the 15th May of 1987.

A. Yeah, I have Tab 34, 15 May, '87, yes.

Q. I am looking at the third page, which is the typed version.

And at the bottom of that page, there are references first to the Revenue's Statement of Practice, and then first reference to the well, reference to the Statement of Practice and to case law, the Bond -v- Pickford, and the two issues which in fact become the central issues in the appeal hearing, and have identified, the first being if the appointment is revocable, that's going to prevent any deemed disposal or actual disposal?

A. That was a view which was expressed at the appeal hearing.

Q. I'm just saying, what Mr. O'Cathain has here done has identified that as an issue?

A. He has identified that as an issue arising from the UK Inland Revenue Statement of Practice.

Q. And which records the or relies upon or is based upon the House of Lords decision in the Pickford case?

A. Well, I wouldn't say that it relies upon that. First of all, I don't think it was the House of Lords; I think it was the Court of appeal. And the Statement of Practice

followed the decision in Pickford, but I'm not clear as to why, in fact, they did so. I suspect that, in fact, they issued the Statement of Practice in, if this is correct, in August of 1984 which reference to the particular circumstances that applied in the UK and which were not relevant here. The UK statements of practice have to be read in context.

Q. Sorry, I don't want to cut across you, and what I simply I suppose I don't, and I am sure the Tribunal don't want to relitigate the entire appeal. If there is a point you want to make, I don't want to stop you. I'm not going to question you in relation to whether or not that statement is correct. What I simply want to do is to highlight, and if you want to qualify your answer, please do highlight the fact that Mr. O'Cathain at this stage had identified an issue which was going to be to have determined by the Revenue, or by the Appeal Commissioner?

A. He identified what seemed to him to be an issue. I don't see, by the way, that the power of revocation was a critical issue at all in the Pickford case. I would preface I should have prefaced all of that by saying we are not a province of the United Kingdom, and we are not obliged to follow anything that they say. In fact, we have differed significantly from them in the past, even on the very same point of law.

I recall, for example, a case I don't have the details, but it was well known in the bloodstock area, as regards

the famous case of Sharkey -v- Wernher, where the UK took a line following a court decision there, and we decided, in our wisdom, not to follow the same line at all. I think, in fact, the UK Statement of Practice in 1984 possibly reflected the fact that a deferral of tax on a deemed disposal was possible under their Finance Act of 1982, they introduced what's called a hauled-over relief, I think, in relation to a deemed disposal. We had no such provision here, so it was very easy for them to say in that, don't bother about the tax in that situation; but we didn't have that.

Moreover, I would, with great respect to our colleagues in the Inland Revenue, they have been open to a fair measure of criticism in relation to their in relation to attitudes and policies they have taken and interpretations they have adopted. If I may

Q. All right, and I don't want to cut across you. What you're saying is that the Statement of Practice, whatever provenance it had in the UK, had a much more limited provenance in this country, in fact had no it had no basis in this country except and insofar as the Appeal Commissioner or the courts may decide to follow the English authorities?

A. Limited or no basis, perhaps. I don't see that we would slavishly follow the UK Statement of Practice at all.

Q. I'm not suggesting that. I simply want to summarise. I don't want to get bogged down in the details of the actual

pros and cons.

I think your point is that the Statement of Practice has some force in the UK, and whatever force it has in the UK, it's significantly less it may be something to which the courts or the Appeal Commissioner would read with interest; whether or not the Appeal Commissioner or the courts want to follow that is another matter altogether?

A. If the matter were to be raised before the Appeal Commissioners now, I would be highly critical of that Statement of Practice and the question of and the possibility of it being accepted here. I don't have the full text of the statement of practice. I have seen an extract from it. It does seem to have been very brief, nevertheless. It couldn't be a case of a one-size-fits-all document applicable to all common law jurisdictions, irrespective of differences in national legislation and without regard to national case law.

Now, in the context of these proceedings, I did some research, and I discovered the Australians issued a Statement of Practice in relation to what constitutes a new trust, a new settlement. And they issued a nine-page document which seems to be far more relevant to the issue. It is not prescriptive, authoritarian, and it does provide a complete analysis of the subject and provides a long list of the various factors that would have to be considered when one is considering was there a new settlement or not.

Q. All right. And the secondary I mean, the second issue

that Mr. O'Cathain had identified is whether or not, in fact, leaving aside the issue of revocation of the appointment, whether or not the effect of the deed of March of 1985 was to vest the assets in the Trustees, but in their capacity as Trustees of a new settlement. In other words, did they agree the new settlement, or was it simply a continuation within the old settlement?

A. That was the basic issue, was it a new settlement or not.

Q. If you turn then to Divide 35. Sorry, what the Chairman I think asked at the end of the meeting on the 15th May was he asked Mr. O'Cathain to do a study on the four tax cases and to compare them with the deed of the 14th of 1985, the last sentence of Divide 34.

A. The last page of Divide 34 sorry, of

Q. 34, sorry, I am just bringing you back to 34. What the Chairman had asked Mr. O'Cathain to do was to do a study of the four tax cases and compare them with the deed in this case?

A. Yeah.

Q. And then he comes back, it would appear, on the 22nd Divide 35 on the 22nd May, and refers to a meeting of that date. At the end of the meeting, he gave copies of the summaries of the various decisions referred to there, and then he says: "In light of my review of the case, I said they seemed to have good grounds for arguing for continuing settlement." And if there was a continuing settlement, there wouldn't be a disposal; isn't that right?

A. That would be so, yes.

Q. And did you, at that stage, have any doubts or any greater doubts than you might have previously had or less certainty, perhaps; put it that way as to the issue of liability?

A. It didn't materially affect my opinion. I considered at the outset there was liability. I did not change my mind from reading all that had arisen after that time. I can't say that I had any difficulty whatsoever with the

Q. You can't say that you

A. I can't say that I had any difficulty whatsoever with the decisions of the English courts in relation whatever difficulty I had with the UK Statement of Practice, I don't have a difficulty with the decisions in the English courts, the High Court, Court of Appeal, House of Lords, in the cases quoted. Two cases which have figured most prominently here are the case of *Roome & Denne -v- Edwards*, and there is *Bond -v- Pickford*.

Q. But I don't think I mean I think you have difficulty with those cases

A. I don't have difficulty with them.

Q. You don't?

A. I don't have difficulty. I accept the rationale behind them. And I think we but they are not relevant to this, really, at all. The *Pickford* case, which is mentioned here, is of interest in that the life-span of what I might call the secondary trust was of brief duration.

Q. Sorry to cut across you. I accept your evidence that you say that you, for various reasons honestly held, obviously were of the view that those cases did not affect the issue of liability in the particular case that was before the Revenue at that stage?

A. Correct.

Q. In other words, the Dunnes case?

A. Correct, yes.

Q. And can I just ask you to turn to Tab 58. And this is Mr. Sherlock's note in the context, or written after the appeal hearing has taken place, but before any decision of the Appeal Commissioners is issued.

A. Mm-hmm.

Q. And he is weighing up the pros and cons of what will happen if the case is lost, if the case is won, where it will end up.

A. Yeah.

Q. And he says in his final paragraph do you have that, the final paragraph?

A. Yes.

Q. "At this stage it is felt if the Revenue lose before the Appeal Commissioners, the matter will go no further."

So presumably something had happened, between the date of the assessment in 1986 and this date in October 1988, to shake the views of the Revenue and their legal advisers as to the issue of liability?

A. Whatever shaking occurred, occurred I think in early

September of '88, because our counsel gave an opinion, I think towards the end of August, or perhaps the beginning of September in '88, supporting the point of law that we had taken.

Q. And he seems again, I don't doubt what you say, but if you turn to paragraph 60, and this is written after the decision has issued from the Appeal Commissioners, and the Appeal Commissioners have held there is no liability to C.G.T.

And he says, in the third-last paragraph: "Frankly, I would find it difficult to disagree with the opinion of the Appeal Commissioners. While the creation of a revocable appointment on the last possible day for the exercise of the power of appointment in the original settlement was undoubtedly a device to prevent a vesting so as to give rise to a Capital Gains Tax, and to that extent the device was merely a device, nonetheless I have to say that it appears to have been successful in achieving its purpose."

In other words, he seems to, at that stage, be of the view that the issue in relation to the appointment being revocable was a central issue and one that was a determinative factor in the case before the Appeal Commissioners.

A. That is reasonably representative of what he says there.

However, I would observe that he was aware of the power of the revocation clause from the very outset, from the time that he saw the first deed, from the time he first saw the

deed. He gave an opinion in relation to that in July of '85. He repeated that on a number of occasions after that, and I think the last occasion, as I have indicated that on which he repeated his belief that there was liability, was just before the appeal hearing, I think on the 15th September; that's just before the appeal hearing. He was aware at all stages of the revocation clause in the 1985 deed. Revocation did not come out of the blue.

Q. But for whatever reason, you are not suggesting, of course, that what's expressed in the letter of the 15th November, this letter before you now, is anything other than the genuine views of the senior counsel in question?

A. Oh, I am not suggesting that for a second. I would point out that he is not absolutely unequivocal. He says he is not unduly surprised, and he says it appears to have been conferred appears to have been successful, and so on. I would have a very considerable difficulty in relation to the alleged power of revocation on which the case seems to have been decided.

Q. You still have that doubt?

A. A huge doubt in relation to power of revocation.

Q. But you seem, in terms of the opinions that we have seen, the expressions of opinion that we have seen, you seem to be perhaps in a minority of one. We have the senior counsel

A. That doesn't make me wrong, Mr. O'Neill.

Q. Absolutely, I accept that. And I would well, can I just

go through them. You have the senior counsel; you have the two Appeal Commissioners, that's three; you have Mr. O'Cathain, that's four; and you. Those seem to be

A. Hold on. As regards Mr. O'Cathain, that's not really the case. He was exploring possibilities.

Q. He seems to he expresses a view, did you not see, in Tab 34?

A. That was at a certain date of exploring possibilities, but he expressed other views at all times.

Q. Yes, but having

A. Anyway, we can leave that aside.

Q. All right.

A. You were saying I was in a minority of one.

Q. As you say, it doesn't necessarily mean to say that you were wrong.

A. If I could just mention two things. I don't know were there five or six senior counsel engaged on the Trustees' side in the drafting of that deed of 1985.

Q. And indeed, if I can refer you to Divide Number 12. We have a letter from Oliver Freaney to the Inspector of Taxes before any assessment was raised 17th April, 1986. And this was in response to a request for a return for Capital Gains Tax purposes. And they are saying that there isn't any need to make a return because there is no disposal.

And what they say, "we are informed by these solicitors"

that's the Trustees' solicitors "that the deed of

appointment was drawn by junior counsel after consultation

with four other independent senior counsel, and that they are advised and of themselves satisfied that the appointment effected does not create disposition of the trust assets which would give rise to a claim for Capital Gains Tax."

A. We don't know exactly what they said or what reservations or caveats or doubts were expressed in the opinions which they gave. I would also raise the question, if it was that simple, why were there five senior counsel involved in the case?

Q. Well, is there anything as you say yourself, because you are in a minority of one doesn't mean that you are wrong; but can I put it this way: The more people you have on your side expressing the same view, the more likelihood is that you are right; isn't that correct?

A. Not necessarily. If I could refer you to a recent case which you may be aware of, a case which was decided in the House of Lords in January last, the case of Trennery, which involved Capital Gains Tax also. I have no doubt that the other side's counsel were self-righteous and the special Commissioners who comprised the highly respected Malcolm Gammie, and the highly respected Avery-Jones, QC, agreed with him. The case was appealed by the Revenue. The Revenue won at the High Court. There was appeal to the Court of Appeal. The three appeal judges at the Court of Appeal reversed the High Court; in other words, they held against the Revenue. It went to the House of Lords, and

the three House of Lords the three judges in the House of Lords held for the Revenue.

If you look at the numbers there, it was obviously a very considerable number of people who felt that the Revenue had no case. They were ultimately reversed, ultimately overruled in the House of Lords. But we are talking about very eminent people at all stages. Eminent people can be very wrong. Moreover, I would also go on to say that the Appeal Commissioners themselves, in giving their decision, they didn't give a written judgement, but it appears that they did say that they were not expert in that area of law and they found the case difficult. They said "It was a very difficult case in an area with which we are not familiar". That does to the exactly inspire confidence.

I would also say that the comment made by one of the Appeal Commissioners after the decision was given, sometime after it, would imply that he expected Revenue to be taking the case further. They certainly did not suggest to me that they were very confident in their decision. They had to give a decision; they gave it against the Revenue. But I don't think they were that confident about it.

Now, if you want me to talk about the power of revocation, I'll be happy to do that.

Q. I don't want to get into the actual I do not want to get into the details of the actual tax case. What I am simply saying to you is that the majority and it doesn't mean to say that it's correct the majority of the opinions

within the Revenue appear to be to the effect that there is not, or there is not likely to be a liability for C.G.T.?

A. I could not accept that. Certainly at the time that I last handled the case, I was firmly of the opinion there was liability. The then Chairman, Seamus Pairceir, was firmly of the opinion there was liability. Sean O'Cathain had explored both possibilities. Our senior counsel was firmly of the view that there was liability. There was a change on his part during the course of the appeal hearing by reference to the power of revocation, and with respect, I do not think that he was correct in changing his mind.

Q. And that's a view you are entitled to hold, not a view shared by the majority, or by, it would appear, any of the senior counsel involved. And because

A. I think you are wrong. I think the power of revocation issue was something which should have been explored in far more detail than it was. I think I am not saying what the final outcome of the case would have been if the case had gone to the Supreme Court, but I do think that the power of revocation provision was wrong, was really a piece of nonsense, and to decide the case by reference to that power to the purported power of revocation was quite wrong.

Q. And to take that phrase further, "a piece of nonsense", it means that the opinion you got from senior counsel in relation to this issue of revocation was a piece of nonsense as well; is that what you're saying?

A. The opinion in

Q. You say this issue in relation to revocation is a piece of nonsense. Are you suggesting, then, that the senior counsel who acted for and advised the Revenue was talking about a piece of nonsense when he suggested that the issue of revocation wasn't sensible?

A. I wouldn't adhere to have those words put into my mouth. I say I simply do not accept what he said in November in relation to that. I would be quite happy to explore the power of revocation issue with you to show you what a piece of nonsense it really is.

It is being suggested that in fact the Trustees could actually appoint an asset to an individual, and it's being suggested that that asset could then be called back by those Trustees. Now, if in fact the recipient

Q. Sorry, Mr. Clayton; I have no doubt that you have considerable experience in relation to tax law. Isn't that a matter of trust law, not tax law?

A. There is a matter of there is a matter of trust law here which I think really could well be explored by the courts.

It seems to be

Q. Do you have an expertise in relation to trust law?

A. I can't say that I have any particular I have no specialist expertise in that area.

Q. Do you have an expertise in relation to trust law?

A. I speak, as you might say, as a layman in relation to this.

It seems when a person gets an asset under power of

revocation, that person, if he or she has any sense, will take steps without much delay to remove that asset from that power of revocation by perhaps putting it into another Discretionary Trust, possibly located in Gibraltar or Liechtenstein or somewhere like that.

Q. What you are saying, as a layman, that the views expressed by the senior counsel, who would have considerable expertise in relation to trust law, is wrong. You are entitled to that view, but can you accept that perhaps in an objective scenario, one, in those circumstances, might give more credence to the senior counsel's view, who is an expert on this issue, over your view, talking as a layman?

A. I think a layman's view in fact, that comes out in the Australian Statement of Practice which I referred to earlier. One has to look at the overall facts of the case.

Q. Can you just answer the question?

A. The senior counsel offered to give a full opinion in the matter.

Q. Can you answer the question, please, Mr. Clayton.

A. What is the question?

Q. Do you want me to repeat it? You do.

A. I do indeed.

Q. I asked you, looking objectively at the matter, do you think more credence should be paid to your views, expressed as a layman on trust law, as against the views expressed by senior counsel, very experienced in the field of trust law?

A. No, I'm not saying which should get the greater credence.

Q. Are you saying they should be equally treated?

A. I am not saying that.

Q. Do you think that senior counsel's views in those circumstances should get greater credence?

A. No, I'm not saying that.

Q. Do you think your views should get greater credence?

A. I do not accept his opinion in the matter. I do not accept the Appeal Commissioners made the right decision.

Q. As a layman you are saying they were all wrong, all of them were wrong; "They are all out of step except me"?

A. That's a rather unfair way of putting it.

Q. Well, that's the effect of what you are saying, isn't it?

A. I pointed out to you that there were people in the Revenue who held a quite different view.

Q. Now, can I move on to another issue, please.

There is some issue being made to you by Mr. Coughlan yesterday in respect of the absence of information that you had from the Trustees. Just to put this in context, and I am going to ask you some questions

A. Absence of information

Q. Information generally, and I just want to go through the process of what you required to come to your conclusions in relation to liability, and if there is liability, quantum.

Dealing first with quantum. In essence, or in theory, it's relatively straightforward. What you have to do is first identify the sustainable profits, annual profits?

A. You are talking

Q. I'm talking about valuation.

A. There is a lot of issues come in the question of valuation of a company.

Q. The most significant issue, of course, was one of valuation. The tax follows on?

A. It does, yes.

Q. From the valuation?

A. Yeah.

Q. And in relation to the valuation, what you are doing is, you are looking at the accounts of the company on the valuation date, and you are identifying, in the context of private company, the sustainable annual profits, and you are then applying a multiplier?

A. Well, as has been mentioned a few times, I am not an expert on valuation issues; but there is a wide range of factors which come into the valuation of a company. As you say, there is the profits, which of course is an obvious yardstick. You have comparables, perhaps, which could be considered, but the differences between the comparables has to be taken on board. You have to consider the state of the economy, prospects. And as we mentioned earlier, the marketability of the shares.

Q. But, look, what I'm saying is in theory, it's relatively straightforward. In applying it in practice, it may become more difficult. What you were doing, effectively, is applying a multiplier to the annual profits, isn't that right, whatever the

A. That is one way of doing things, but there is another

Q. That's the way it was approached in this case.

A. In the Capital Taxes Branch. As I say, I am not the Capital Taxes Branch.

Q. I'm just asking if you can identify what information you required. Because you knew the basis of valuation; you knew that you start off with the accounts with the annual profits; you apply what you consider to be the appropriate multiplier. You knew full well that whatever multiplier you were applying, you, the Revenue

A. I am sorry, Mr. O'Neill, I'm not with you at all. I wasn't actually looking for any valuation figures from the other side.

Q. I just

A. It's the Capital Taxes Branch people who would have been concerned with that issue, not me.

Q. It's just that Mr. Coughlan asked you yesterday, or mentioned on a number of occasions that all of these internal discussions within the Revenue were taking place against a background where the Trustees hadn't provided figures or

A. Something like that was mentioned a few times, but I'm not aware that they gave anything. But on the other hand, I wouldn't expect I wouldn't have expected to get any such document, myself, from the Trustees.

Q. So you don't think that's a relevant factor?

A. Sorry?

Q. You would agree that's not a relevant factor in the context of the Revenue's assessment of what the liability may be, or indeed

A. Whether or not wouldn't be the issue. Whether Capital Taxes Branch got them or not would be a far more relevant point.

Q. Now, there is a veiled suggestion in the questioning put to you yesterday that somehow the Revenue were I don't mean to use this in too pejorative a sense, but they were massaging the figures down from the 38.8 million down to ultimately the 16 million, and I just want to ask you a few questions in relation to that veiled suggestion.

MR. COUGHLAN: There is no such veiled suggestion. I raised the question that the figures were worked on, so My Friend can ask questions about that. The Tribunal makes no veiled suggestions, and I made none.

CHAIRMAN: It's a question of the facts, Mr. O'Neill, let's not get into any question of allegations. It's not the business of this Tribunal.

MR. O'NEILL: I did indicate that I was using it I didn't intend it to use it in a pejorative sense.

Q. Sorry, these figures were being worked on. The suggestion is that these figures were being worked on to bring the valuation down from or the potential liability down from 38.8 million to 16 million.

A. Various possibilities were being looked at, the various parameters were being explored, the valuation and discount

factors and so on.

Q. You had, at this stage and we're talking about the period of May of 1987 you had at that stage, of course, the settlement of Discretionary Trust Tax valuation at 82 million?

A. Mm-hmm.

Q. You had another factor in the context of the extent of the liability was the valuation you applied in 1974.

A. Mm-hmm.

Q. And it was suggested in fact that the first time any issue in the context of increasing that valuation from 5.5 million to 8 million arose at this stage, and I just want to ask you to look at the slim booklet of documents, I think it's a black folder, is it? I think this is Book Number 66. And this is a note of the 4th May of 1987, I think, of Mr. O'Cathain. Sorry, it's the second tab within that book. Do you have that? It's headed "Bowen-settlement."

And I am not sure, on the photocopy that you have, whether the date at the top left-hand corner is clear. From a better copy, we see that it's in fact 4th May of 1987. I just want to put the note, the context or the note in context with the date.

If you turn to the third page of that document.

A. Third page?

Q. Third page. And under the paragraph number 5, it seems to read: "There could be made a case for increasing the MV at

6/4/74 to 8 million see note 14/11/86 on" and I can't

read the rest of those next two words.

"This would reduce the tax from 23.69 to 19.55."

A. Yes.

Q. And I'm not sure that the two words, what they mean. But

it would appear from that and we haven't been given a copy of the note of the 14th November 1986 but it would appear from that that even back at that date, there were discussions in relation to the base value, the 1974 value perhaps being 8 million. We don't know exactly what it said.

A. There were discussions all the time. I mean, what is the value of this thing?

Q. It's not something that first emerged, it would appear, at this time in May

A. So it would seem from this note, yes.

Q. And if I just refer you to a question that you were asked yesterday excuse me; it wasn't asked of you. A question was put to Mr. O'Cathain, when he was giving evidence, by the Tribunal, and it's a question on day 292, page 106, question 516. I'll simply read it out to you.

A. Please do. I don't have the documents with me.

Q. "Was there any discussion between you and anyone within the Revenue, or indeed outside the Revenue, that 'We will massage the figures in this case so as to let off so as to excuse the Trustees of a liability which we, the Revenue, believe they have'."

And the answer to that question, by Mr. O'Cathain, was:

"The question hardly warrants reply. It is a preposterous suggestion." And I presume you would agree with that?

A. I was here when he said that, and I would endorse what he said. I am not conscious of and wasn't aware of anything improper in the handling of the case.

Q. And the inquiry we're now or the Tribunal is now conducting is against a backdrop where there was a meeting if I am wrong, the Tribunal will correct me where there is a meeting arranged by Mr. Haughey between Mr. Pairceir and Mr. Dunne?

A. Mm-hmm.

Q. And that was arranged, it would appear, in May of 1987?

A. If you say so. I don't have the documents in front of me.

Q. In fact, by that stage all the issues in relation to valuation had been raised; in other words, before May of 1987, we had the settlement of the Discretionary Trust valuation at 82 million?

A. Mm-hmm.

Q. We had had reference to the base value in 1974 of possibly 8 million, and we don't know what that document says. And we had had discussion from Day One in relation to the issue of discount, and a debate as to how much that discount should be?

A. Those issues were

Q. All of those issues were in the minds of the Revenue and didn't emerge for the first time in May, or after any

meeting between Mr. Pairceir and

A. I think that's a fair comment.

Q. Can I ask you a hypothetical situation in relation to a situation where you have said, of course, that the Revenue would not raise an assessment unless they believe there is a liability to the tax. They won't chance their arm, so to speak?

A. No, it would be quite wrong to do so.

Q. To go to the opposite extreme, if, after the assessment is raised, the Revenue realise in fact there is no legal basis for raising that it's a hypothetical question in those circumstances, presumably the assessment would be withdrawn?

A. In effect, yes, that would happen. If in fact an assessment were made on a person and the person proved that there was no liability, to the satisfaction of the Revenue, the assessment would be cancelled.

Q. Or even without that the person's intervention, if the Revenue realised themselves that they had made a fundamental error, it would be withdrawn?

A. Absolutely, yes.

Q. And presumably without that, the two certainties of one, we are quite satisfied there is no liability; to the other extreme, we are quite satisfied there is a liability.

Presumably cases arise in which there are doubts, genuine doubts after the assessment has been raised?

A. Yes.

Q. In the context of discussions that may take place between the taxpayer and assuming there are negotiations would the Revenue factor into those discussions the issue in relation to the doubt? In other words, would they give some or be prepared to accept a slightly lower figure because there was an actual doubt in respect of the liability or not?

A. I don't believe that they should do that, but I think realistically, it's possible that a significant doubt about the amount of liability might have an influence on the negotiations. It shouldn't; they should be separate issues. But in the real world, I think a significant doubt might say, "Okay, we'll come down an extra 1% because of that".

Q. Can I ask you to turn to Tab 45 please. And Mr. Coughlan has asked you this refers to conversations, one of them, they seem to be they should all, I think, be dated July of 1987. One is dated October, it seems to be clear.

MR. COUGHLAN: I conceded that to Mr. Clayton yesterday, and it's just something one of our junior counsel brought to my attention that perhaps Mr. O'Cathain might clarify, it may be, it may be that the date of October is correct, because everything else appears to have a line, everything is written on a line, and it seems to be squeezed in. So I'm just not sure about the date. It may be that it's referable to the issue above. I don't know.

A. I recognise what you have said, Mr. Coughlan, but the

chronology of the manuscript would suggest

MR. COUGHLAN: I was just bringing it to the attention

it may be that it relates to the same issue, and it was

therefore put in there to follow the issue that was but

it doesn't make much difference.

A. In relation to that, I would say, like, the note attaching

to that doubtful date says "Per CC, Appellants interested

again". Well, I had no contact with the case after

September.

Q. MR. O'NEILL: I suppose it's probably a matter for

Mr. O'Cathain to clarify, in any event.

A. I am sure he would be happy to do that.

Q. I was simply drawing reference to that in case you were

misled by the dates. But let's leave aside the dates

because I don't think they are of particular significance.

Because the first date I want to ask you about or the

question I want to ask you about is under the date of the

27th July, and I think we can probably assume that's a

correct date. And there is a reference there to

"Apparently BD wants to deal with C.A.T. also now as if the

beneficiaries had or were taking the shares", and "The

C.A.T. would be in the order of 30 million."

And I think, just to put this conversation in context, what

one was dealing with in the context of Capital Acquisitions

Tax was at some stage, either now, i.e. as a result of the

'85 deed, or at some stage in the future, there was going

to be, or there was potentially going to be a C.G.T.

liability; and if the company increased in value, so would the amount of tax was going to increase in value, subject to the indexation.

A. The amount yeah, if the company increased in value, tax would not necessarily increase in value because of possible variation in the rate of Capital Gains Tax. As we know, the rate of Capital Gains Tax came down significantly

Q. Indeed?

A. after that.

Q. With the benefit of hindsight, we can say that.

A. We can indeed. And in fact, it could have gone the other way.

Q. It could have. But ultimately, certainly as of 1987, everyone recognised that at some stage, either now or in the future, unless there was a change in law, there was going to be a liability to C.G.T.?

A. At some stage, but the timing of that stage was very much open to question.

Q. Absolutely. And if the law remained as it was, as the company became more valuable and the shares became more valuable, potentially the tax liability was going to be larger?

A. Yes.

Q. And in essence, if one paid if there was a disposal in 1985, tax would obviously be paid on that, C.G.T., and the base cost then, in respect of the ultimate appointment, would be the 1985 figure?

A. Yeah.

Q. So to put it somewhat crudely, perhaps, the 1985 liability, if it existed, was in one sense a payment on account of the ultimate tax to be payable at the end of the day. I know that's slightly crude, but isn't that in effect, it's paid in installments, in a sense?

A. I wouldn't sharply disagree in the way you have put it. It's not exactly right, but I take the point.

Q. And the discussions, and indeed from Day One and before any appointment was made in 1985, the Trustees had inquired of the Revenue what "If we make an appointment, we would like to make an appointment now, an absolute appointment, what's the likely liability?"

And I think there were discussions, and the figures that were being thrown up were just too much; they were too high. It couldn't be paid, as far as the Trustees were concerned.

A. That was what was said to us, yes.

Q. And what was here happening, and perhaps highlighted again in Tab 47, was inquiries about bringing an end to the trust at this stage, and what would the full liability be. This matter was being revisited, this time by Mr. Dunne.

A. Yes.

Q. And it's in those circumstances that the question of Capital Acquisitions Tax applies?

A. Yes. There is a very peculiar suggestion being made there on the 10th September, apparently some suggestion was being

made that they wanted to go back on everything and proceed on the basis that the deed of 14th March '85 was invalid and that they became absolutely entitled. It's a very curious thing to have said to us at that stage of the proceedings, two and a half years after the event.

Q. And what you are recording there is or can I put it this way: Mr. Pairceir is relaying to you the conversation he had with the Bowens, either the Trustees or Mr. Dunne?

A. I am not quite sure who he had been talking to.

Q. Somebody on the Dunnes side, so to speak?

A. Somebody on the other side, at any rate.

Q. And at that stage, of course, any issue in relation to the looking to the whole purpose of the appointment, in other words, looking behind the legal documentation executed, the Ramsey principle, that had been scotched by the High Court at this stage?

A. I am not sure it had been scotched by the High Court.

Q. 31 July of '87 was the date of the decision in the High Court?

A. Was it? In fact I never thought that the Ramsey -v- Rawlings and Dawson -v- Furnis proceedings were relevant in this case at all. I thought it was simply a matter of interpretation of legal deeds.

Q. And isn't it your understanding that what was here happening, however it may be worded, is a consideration of a situation of the likely tax bill if the trust an end is put to the trust, an appointment is made, a final

appointment is made vesting absolutely all or part of the assets in one or more people?

A. Well, that note suggests that would have retrospective effect going back to 1985. It ties in with what seems to have emerged in the 1990s arising from a dispute with the family.

Q. And the deed I see the wording, but the deed could be not declared invalid, but it could have the effect that it may have had could have been removed by the revocation of that deed, by the revocation of the appointment?

A. Not

Q. And then you would have fallen back on the default provisions?

A. Not necessarily. I think "invalid" could refer to a whole variety of circumstances, a wide variety of circumstances.

Q. You are quite right. You couldn't just ignore the deed. You'd have to the deed was there, and it couldn't be ignored; it wouldn't the parties couldn't, by agreement, agree to declare it invalid sorry, the parties

A. The question had been raised at the beginning, could the Trustees do this? Could they actually do this, execute the deed of '85 in relation to the ordinary shares? And the Revenue accepted that, "Yes, probably", and that was accepted.

Q. And as you say, this wasn't being looked at, or as far as you were concerned, you didn't think there was any legs in the Ramsey argument, and indeed the assessment had been

made on the basis that the deed of 14th March 1985 effected a particular result?

A. It effected a particular result. In my opinion, it created a new settlement.

Q. You couldn't have it both ways, obviously.

A. Sorry?

Q. The Revenue couldn't have it both ways and weren't trying to have it both ways?

A. You couldn't have it both ways. In the Revenue opinion, a new settlement had been created.

Q. Now, finally, I just want to ask you your overview in relation to this. And in a sense, you have answered it already.

As far as you are concerned, in your dealings in relation to this matter, this C.G.T. assessment and the manner in which it was subsequently dealt with, the manner in which it was prepared for hearing before the Appeal

Commissioners, etc., there was nothing unusual or irregular in that insofar as your dealings were concerned?

A. Up to the time that I was involved in the case that is, up to 11th September, '87 I wasn't aware of anything improper in the processing of that case.

Q. And you weren't asked by anyone to, within the Revenue or indeed outside, to deal with this potential taxpayer, the Trustees, in a more favourable way than a normal taxpayer would be dealt with?

A. Absolutely not.

Q. And you wouldn't have dealt with them in any way other than in accordance with the law?

A. I have always tried to treat all the taxpayers even-handedly.

Q. Insofar as you were aware that other people were dealing with this case, there was nothing irregular, underhand, hidden in relation I'm talking about Revenue officials nothing underhand, hidden, irregular in the way they were dealing with the matter?

A. Speaking for the time that I referred to, I am not aware of anything underhand at all. Obviously, there were discussions taking place at which I wasn't present, and so on, but I have no reason to believe that anything improper ensued from those discussions.

Q. And can I just ask you finally to look at Tab 33. And I am looking at the first page of the typed version. You'll see at the bottom of the third paragraph well, the third paragraph: "23 million was too much for him to pay now. He would like to come to some agreement. Some agreement if possible. The Chairman pointed out that Revenue claim is for the full amount and that he was only nominee for the Dail and the Board in this matter but he would seek further advice on the matter."

It appears from that document, assuming it's accurate, that Mr. Pairceir was saying, "Look, our bill is for 38.8 million; we are sticking to that at the moment".

A. That is as the matter stood at that time, that was the

assessment.

Q. That was the assessment, and the assessment was still at large, so to speak well, was still at large?

A. Yes, it was. It was.

Q. And while the while internally the Revenue may have had difficulty with that assessment in their dealings with and Mr. Pairceir's dealings with the Trustees and/or Mr. Dunne, they were taking the hard line, the assessment is 38.8 million, and that's what we are talking about?

A. That's an interpretation being put on that paragraph. I'm not altogether sure if that's a proper interpretation.

This matter came up yesterday, and I didn't see the paper at the time. The word "now" is underlined. I think that would suggest that there would be a cash flow problem in relation to the payment of the liability, whatever liability was going to be agreed. And I think the Chairman's response would have been, "I can't take account of that; I can't take account of your cash flow situation," except perhaps as Sean O'Cathain indicated, there could be a question of applying, I think, Section 34 in relation to hardship and spreading of the liability. But that is as far as that would have gone, I think.

Q. But whatever that means, whether it means that he will not entertain phased payments or is still looking for the 38.8 million, whichever is the correct interpretation, there isn't any suggestion there that Mr. Pairceir is treating the Trustees in any particular favourable manner?

A. No, no, not at all, no.

Q. Thank you, Mr. Clayton.

A. You are welcome, Mr. O'Neill.

MR. CONNOLLY: I have some questions on behalf of the Revenue Commissioners.

A. Yes, Mr. Connelly.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Firstly, I want to ask you some questions about the efforts on behalf of the Revenue to seek to settle the amount of C.G.T. liability after they had reached agreement in March of 1987 on the Discretionary Trust Tax issues.

A. Yeah.

Q. Now, I appreciate you weren't involved in this, but you have been asked a number of questions by my colleagues, and I want to discuss that with you.

The figure that had been put in place by way of an assessment for C.G.T., as you indicated, had been made at a date prior to the March 1987 settlement. Now, I think you agreed with Mr. O'Neill that you weren't necessarily bound by that, nor were other officials bound by that absolutely.

Other matters could come into play as the situation evolved?

A. Correct.

Q. And whereas the Revenue obviously would take into consideration whatever information, if there was any, which was put in place from the other side at the time of the

Discretionary Trust Tax settlement, there was also good reason for the Revenue internally to debate the issue as to what was the right amount to settle upon if there was going to be a settlement?

A. Correct. Bearing in mind the uncertainties of an Appeal Commissioners hearing in relation to valuation.

Q. At the moment I'm just looking at the valuation of certainties; the other matters, I'll come to in a moment.

I think you have already said this was an unquoted company.

There would have been all sorts of points to be made as to what was the real value of the company in 1974 and the company in 1987, and to avoid all of that uncertainty, it was good housekeeping to try to agree a figure if at all possible?

A. Yes.

Q. And the approach taken by the Revenue was to start with the 82 million which had been put in place, albeit in a different context, in 1987, when the Discretionary Trust Tax settlement was put in place?

A. Yes.

Q. There was nothing wrong while we aren't comparing like with like, in some ways, it still was based on the overall gross value of the shareholding in the Dunnes Stores companies?

A. That's right.

Q. So in that sense it was a good value, it was a valuable starting point if you were going to get into useful

discussions on a settlement?

A. It was undoubtedly a reference point.

Q. And the approach taken by Mr. O'Cathain and others from that point onwards was to look at what other factors would be taken into account, and I think this was explored by both Mr. Coughlan and Mr. O'Neill. One of the matters that now had to be taken into account was the reduction by way of a discount that would have to come into play in this type of tax which was specifically excluded under Capital Acquisitions Tax under statute. This is the deemed control provision?

A. Yeah.

Q. So that was one factor that was going to be taken into account?

A. Correct.

Q. All right. And it was a judgement call that would have to be put in place by the appropriate Inspector as to how much discount should be applied for the lack of control in the way a voting rights in a company when you were looking at what was the value of the shares under consideration?

A. Correct, and as I indicated, it was counsel's opinion which raised doubts about whether any discount was appropriate. And there was internal documentation talking about 5% up to 30%.

Q. That's right. And the position inside the Revenue was that this was not something that was looked at, if you like, on a basis of trying to cut corners or anything like this.

There was an evolving situation which involved enlightened debate by expert people inside the Revenue, and that happened over a period of time.

A. Doing their work as honestly as possible.

Q. Indeed. And the approach which was taken by Mr. O'Cathain is reflected in one particular document well, it's in a number of documents, but one of the documents which comes to the later stages of the evolved wisdom of the Revenue on this issue is at Tab 40, which I'll ask you to look at.

Sorry, I beg your pardon, it's Tab 49 I want to bring to your attention. It's been referred to by some of my colleagues, and I want to you look at it again. It's the last page of Tab 49. It's a memo of the 3rd March 1988 from Mr. O'Cathain. The full document has already been opened to the Tribunal.

But what emerges at the end of it is that Mr. O'Cathain was looking at a discount of 20%, which would reduce the Capital Gains Tax to 15.6 million and allow a value forward of 65.6 million. That was his thinking, but at that time. Now, I'm not asking whether you agree or disagree with it, but that was a figure that was arrived at, as we have seen from the papers, over a period of time when there had been discussions going back and forward between various people, and not just Mr. O'Cathain.

A. That's right. That's right. It was a one of a number of figures that had been produced by him.

Q. And if we were to look for a reasoning as to why the

Revenue, if well, let me put the question another way.

In simplistic terms, one could look at this potential tax liability of the Dunnes Trust as having reduced dramatically, from 39 million at the time of your assessment, which was before the March '87 settlement in relation to Discretionary Trust Tax, down to a potential tax liability of 16 million in 1988, and what I'm asking is to consider the documentation on this. There had been debate inside the Revenue from a number of officials who had an input into this that led to this figure being a reasoned conclusion on the part of the Revenue as to what should be an appropriate figure for settlement.

A. There obviously had been debate. I was out of it by March '88, but nobody could absolutely say stand up and say the correct discount here is 12.3%, or that the value of the company was 93,750,000. These were imprecise figures, and all tallying with the statement, of course, that everybody knows about, that valuation, of course, is not an exact science.

Q. The question I'm really putting to you is that the reaching of this figure was reasonable if you take a particular course along the way in exercising judgement calls, as was in fact done by the Revenue officials.

A. There is a rationale to that, yes.

Q. And it was a rationale that was reached not just by one man, but by a number of persons in an evolving situation where there had been enlightened debate over a period of

time internally?

A. That is not to say that everybody agreed that the figure should be such and such. Some people say there is an argument for another figure, but these are figures which are open to rational argument.

Q. But in seeking to reach a settlement rather than going to fight the issue as to what was the appropriate tax liability in terms of quantum, there was nothing wrong with the rationality which led to this conclusion being reached?

A. Not that no

Q. I'm not asking you to agree or disagree with it, but there were plausible reasons why this conclusion could be reached by an appropriate official in the Revenue Commissioners?

A. Yes, conscious of the fact that if the case had gone to a valuation hearing, the Appeal Commissioners would have heard arguments of the kind that we have been talking about here in the Tribunal in the last few days. They would have, as I said, indicated quite easily for appellants, shall we say, to muddy the waters when it comes to valuation matters.

Q. And looking at the other side of the coin, that's the base figure, the 1974 figure which would have to be subtracted from the overall figure. This was discussed in Tab 40; this was the passage I wanted to draw to your attention a moment ago.

This was a meeting attended by yourself, and Tab 40, in May of 1987. If you look at the second paragraph: "Market

value of the 999,000 ordinary $\frac{1}{21}$ shares at 6th April 1974, the value of the holding at 6 April 1974 before applying discounting could be argued to have been 8 million. See John Reid's valuation paper of this matter attached."

A. That is attached, yes, I see that.

Q. And Mr. Reid was one of the original authors of the document with Dr. Thornhill in assessing what was the overall gross valuation of these shares; isn't that correct?

A. Yes, I am looking at his paper. He mentions a figure in paragraph 3 of 8.1 million, and paragraph 4 of 7.5 million, and he argues various matters in relation to that. And the paper also has attached to it a summary of possible discounts.

Q. So allowing for a possible higher base figure, and allowing for the application of a discount, there were plausible reasons why a figure of $\frac{1}{21}$ 16 million was a realistic settlement figure to be proposed by the Revenue Commissioners, or accepted by the Revenue Commissioners if it had been proposed by the Dunnes Trust, in 1987?

A. There would be it would be possible to justify a figure of 16 million by reference to what we have been talking about. The other factor, which we have referred to already, is the uncertainty as to what would emerge at an Appeal Commissioners hearing. And also, of course, as I discussed with Mr. O'Neill, the influence of the doubt on the legal point.

Q. Well, now, that brings us to the other issue, the liability issue.

A. Yes.

Q. Now, the two cases in the United Kingdom that were giving rise to some concern on the part of the Revenue were the Ramsey case and the Furnis -v- Dawson case, and in a way, they had no application here?

A. I don't believe they had. I certainly did not entertain them. I did not think that they were relevant to this case.

Q. Because they came into play in a tax avoidance situation, where you were looking at a document as to whether or not it was a complete device or sham and should look through the document?

A. Yes.

Q. And that's not what the Revenue were doing in this particular case. What the Revenue were doing was contending that a tax liability arose on construction of a document; you weren't seeking to strike down the document. Isn't that the position?

A. That is correct. The document in relation to the ordinary shares in '85 was a very complex deed. I think that's generally accepted. Especially when associated with the 1964 deed, there was a tremendous degree of complexity in relation to it, but there was no question of certainly, at a certain stage, of striking down the deed. And certainly, in my mind, no question of applying the Ramsey

Rawlings and Furnis -v- Dawson situations?

Q. Well, we know that at the end of July in 1988, Ms. Justice Carroll in the High Court went in a case called McGrath against the Revenue Commissioners, went sorry, 1987 went in a different direction, and the Supreme Court endorsed her view in the summer of 1988. Those are the dates in which those approaches were taken. So that the position in Irish law was that the courts were concerned to look at what a document says rather than trying to get behind the document and ask people what they thought was the intention of the document, and so on.

A. That certainly is so, and it would have been my line, certainly, in relation to the 1985 deed, that the reality of what had happened was most important. You can't strike down a deed it's very difficult to strike down a deed simply by reference to the term of the deed.

Q. Right. But there was some discussion in the Revenue as to whether they could get behind this device, as Mr. Fennelly called it, the 1985 document, whether the Revenue could get behind it by seeing what was the intention of the parties.

I think there was even discussion as to whether some of the persons involved in the putting in place of the 1985 trust would be called to give evidence and might be cross-questioned by the Revenue counsel. That was something that was being looked at.

A. It was being that issue was being surfaced on a relevant basis.

Q. And if that had have been possible, it might have given rise to some sort of trump card for the Revenue to play to get behind the device, as we'll call it, of the 1985 trust document?

A. It might have had that effect. It might also have had the effect of concentrating the minds of the family members as to who was entitled to what and what they were asked to do.

Q. What you mean by that is that the whole deck of cards would fall down, because then you would have no C.G.T.; you'd have each of the individual beneficiaries having a tax liability. Is that what you're saying?

A. Not necessarily "falling down", but I think "reconstructed" perhaps might be a better expression in relation to that. But as you say, it would be an individual there would be a C.G.T. liability on the Trustees as disponers to the individual family members.

Q. But if the whole trust went down, if the whole of the documentation is held up as a sham, then obviously the C.A.T. is to be paid by the individual beneficiaries because the shares devolve on them?

A. Yes.

Q. But that is something that was more likely to come into play in hard negotiations between the Revenue and Dunnes Stores, rather than as something that was going to come into play before the Appeal Commissioners, because the Revenue were going before the Appeal Commissioners purely and simply on whether C.G.T. liability arose in relation to

the 1985 situation?

A. It was only the point of law which was argued, but I think right up to the summer of '88, judging from these papers, the question was being raised with senior counsel, how about witnesses? The question of getting witnesses to attend and give evidence was raised. This had been raised way back three years earlier in 1985, to find out what actually had gone on.

Q. In that sense, the debate about the Furnis -v- Dawson line of thinking in the English courts was relevant, but it became irrelevant in Ireland once the courts decided in the McGrath case that you couldn't look behind a document?

A. I wouldn't actually put it like that. If I could refer to some notes which had an influence on my thinking in this matter.

I attended a seminar in London in late November 1984; that's just a few months before the critical events of March '85. And main speaker at that seminar was a Professor Frommel, an American Professor, and he spoke quite frankly about Revenue approaches, Inland Revenue approaches to schemes and so on. And if I may simply read out what he has said, it's about ten lines on this.

"The Inland Revenue have accepted the definition of 'sham' as provided by Lord Diplock in the 1967 Snook case. No other country has accepted such a narrow definition. As a result, preposterous schemes have been accepted by the Revenue as being technically valid even though they could

not be regarded as genuine by any reasonable person".

He goes on: "The Inland Revenue's preparation" and I say it's the UK Inland Revenue "preparation of many cases seems to have deficient and marked by 1. Inadequate research, and 2. A ready acceptance of nonsensical facts, e.g. in the Frost and Gubay cases".

He proceeds: "The Revenue's counsel have also been efficient in many cases. How can Revenue argue their cases the way they do?" is what he said. And I am sure I am not pleasing too many people in this room with this comment.

He goes on to say: "The general performance for counsel for taxpayers is not much better". Now, critically, he says: "The facts of the case are extremely important. In many cases, the case stated has been so written as regards facts that the nature of the House of Lords decision has been thereby determined wrongly. Court decisions have been very inconsistent and are largely unpredictable. The end results in Ramsey, Rawlings, Dawson are not unreasonable, but the logic of their decisions, the ratio decidendi can not be understood by normal means, if at all."

Now, I heard him say that in November of '84, and from then on, I took a view that we should, if possible, get witnesses to say substantiate what was being suggested to us. It had worked, I would have to say, in a number of avoidance cases after I had left that area, the principle was applied, get people to give evidence.

Q. Well, one way or the other, the prospects of calling

witnesses in relation to this C.G.T. appeal were unlikely, especially following on what the courts had said in the McGrath case in this jurisdiction?

A. The application of Ramsey -v- Rawlings was not to be expected.

Q. It wasn't to be expected. The Ramsey case was not being followed in this jurisdiction, and witnesses couldn't be asked as to what was the meaning of a particular document in this jurisdiction?

A. No so much the meaning for a document, but what actually happened.

Q. The purpose of the document?

A. The purpose of the document, what happened, what conversations, what discussions took place, what was their understanding of the situation.

Q. All right. Whatever about your anything in 1984, there was an element of uncertainty, certainly, which would have been in everyone's mind at that time; but in 1988, certainly this was a more difficult situation as far as the Revenue were concerned, in getting to the bottom of what this trust was all about in the way of cross-questioning witnesses. It was going to be even more difficult. That's what I'm putting to you.

A. It would have been more difficult, obviously, with the lapse of time.

Q. Well, now, the Appeal Commissioners determined the appeal in a particular way. What then followed was the Revenue

took stock of their situation, which was the appropriate course of action to take, following an adverse decision from the Appeal Commissioners. And the Revenue Commissioners then took the advice of senior counsel that the Inspector dealing with it, Mr. Savage, agreed with that view, consulted with the Chairman. The Chairman decided, having consulted with the Appeal Commissioners, that he didn't think there was any point in appealing the matter further.

That was an appropriate set of steps to have been taken by the Revenue. Whether you would have taken a different course yourself, if you were given the exclusive choice of it, isn't the point I'm asking you about, but there is nothing wrong with that set of steps having been followed by the Revenue Commissioners; that would have been the appropriate course of action in that situation?

A. Well, it's for consideration whether the steps whether enough steps were taken or whether they were complete. For example, the senior counsel offered to give a full opinion in the matter, and he wasn't taken up on that offer. You are aware, under legislation, that once Revenue have expressed dissatisfaction with an Appeal Commissioners decision, they can demand a case stated within 21 days and then proceed to the High Court whenever the High Court is ready to hear the case, if they decide to proceed with the case.

It seems to me, looking at it now and I wasn't involved

in it that the decision not to proceed to the High Court was taken perhaps somewhat hastily; that it might have been better to get a full opinion, to consider the matter fully, and then decide whether to proceed with the with bringing the case to the High Court or not.

Q. Was there not a time limit, then, of 10 days, or something of that nature?

A. No, 21 days, and payment of $i\frac{1}{2}20$ to go and demand a case stated. But the case stated could take six months or a year in which to be prepared.

Q. But in any event, the steps that were taken, no one disagreed with the views expressed by the senior counsel of the Inspector?

A. Not that I am aware of, no.

Q. And that was a decision which was taken by the Revenue Commissioners following the advice of an outside senior counsel which was accepting a view taken by the two independent Commissioners on this point. That was an evolving wisdom on the part of the Revenue at that stage, that reached a culmination, when the Chairman decided, having consulted with his colleagues as Commissioners, not to proceed further with the appeal at that point?

A. It was the Commissioner who consulted with his colleagues, and but there is no apart from that short manuscript note, there is no record of that. The Appeal Commissioners, as I said earlier, were quite prepared to admit that they found it a difficult case, and they were

dealing with an area with which they were not familiar.

Q. Well, of course the Inspector would have been given a certain amount of autonomy generally; this is Mr. Savage?

A. I would hesitate about that in this particular instance by the way, technically the Inspector was not Mr. Savage; Mr. O'Siochain. Mr. Savage was handling the case. I don't know what length of experience he had on Capital Gains Tax, but he wasn't as experienced as myself or Sean O'Cathain in that area.

I have given reasons why I would be would have thought it profitable to pursue the case to the Supreme Court. I remain of the opinion that if the case had gone to the Supreme Court, that the Revenue would have won at Supreme Court. I couldn't, obviously, be certain as to the outcome, but I think that we would have won.

Q. Well, there were other views.

A. There were other views, of course there were.

Q. And they were views which were held sincerely by competent people that were reaching different conclusions to the one that you are expressing now?

A. They reached different conclusions, yes. The amount of money involved in this case was, even on the figure of 16 million, was staggeringly high. Translated into current terms, it translates to $\frac{1}{2}$ 40 million. The extra expense of going to the High Court and Supreme Court would have been minimal by comparison.

Q. Well, it was something that was taken into account, because

we have seen a memo as to what would be involved in going up to the next level of court, and so on. But what was taken into account, ultimately, was whether there would be a success or failure if the matter went further, and that was what was debated by counsel, the Inspector, the Commissioners at this time?

A. It was considered, obviously, at the appeal hearing. The case was decided on a point which I think was quite wrong. And there was no full opinion provided by senior counsel, which, as a result, did not enable full consideration of the case to be made.

Q. Well, I have to suggest in this case, where the senior counsel took a very clear-cut view that we have seen on the screen in that particular letter, there was little point to be gained by seeking a more fulsome opinion from him unless there was somebody writing down at this stage that they had reservations as to whether he was right or wrong, and that doesn't appear to be the case from any of the documents at the time.

A. No, it doesn't seem to have been the case. I think that might be regarded as being a deficiency.

Q. On whose part?

A. On the part of the Revenue; that a full opinion should have been sought, the explanations for that, because as I said earlier, the power of revocation did not come out of the blue. It was there; it had been known since 1985. It would have been interesting to find to establish why in

fact senior counsel thought or changed his mind. He held a certain view almost right up to the appeal hearing and changed his mind during the course of the appeal hearing.

Q. But he was entitled to take a different view when he had heard what the other side had to say and when he had reconsidered the matter, especially after the Appeal Commissioners agreed with the other side. He was entitled to do that.

A. He certainly was, but if in fact he had provided a full opinion, I think matters might have been explored more fully, and perhaps he might have, again, modified his view of the matter .

Q. I want to ask you now about the Discretionary Trust Tax being set off against income tax for a period of time. The appropriate place to start on this is at Tab 91, which is a document from Mr. O'Connell, dated the 20th February 1998, addressed to Deloitte & Touche, in relation to this particular settlement.

This is a letter from one of the witnesses yet to come in the Tribunal, writing to the tax agents of the Dunnes Trustees concerning their assertion that they had no liability for income tax in relation to dividends which were being used to allow them to pay Discretionary Trust Tax.

A. That's right.

Q. And you'll see that he says that you are mistaken in

relation to these matters, and he goes on midway through the first paragraph: "In fact it would have been surprising if such a matter was raised. As the law stood at that time, the rate of tax credit matched exactly the standard rate of income tax, and this situation continued until 5 April 1988. The subsequent mismatching of credits with tax rates has given rise to liability for the years of assessment '1988/'89 and 1990/'91 to 1996/97 inclusive. Notices of assessments to reflect this liability" for the various years.

Now, can I suggest that you have had a chance to look at the documentation concerning this matter. I know you weren't actually the person being who was a decision maker on these items, but I'm going to ask you to make some comments on these matters because you have seen the relevant documentation.

A. Yes.

Q. The first of these is, on the documentation, it does appear, does it not, that the initial arrangement that was put in place was in a specific and limited context; that's to say that there was an arrangement that the Discretionary Trust Tax would be set off against income tax at a particular time when both were at the same rate?

A. The alleged agreement related to a time when there was an equality between the two figures.

Q. And it would be impossible for the Revenue to forgive income tax for an undefined period after that, especially

in the context where income tax rates might change as a result of subsequent legislation?

A. I wouldn't have thought it appropriate at all to have such an agreement an open-ended agreement applicable to just one taxpayer? I simply could not accept that that would be done.

Q. And at that time there were Discretionary Trusts which were making which were receiving dividends or monies from outside in order to be able to pay Discretionary Trust Tax

A. Yes.

Q. who could have availed of such a beneficial arrangement if they had been alerted to this?

A. Quite so. And it would have been entirely proper to advise them of that, and that would have been a relatively easy matter. Certainly by statements of practice prior to that, or prior to 1990, when I became Chief Inspector in 1990 I introduced a magazine, a briefing magazine for tax practitioners, whereby changes, concessions, whatever, would be notified to all practitioners. I thought that was a matter of good corporate governance.

Q. Whatever about being circulated to all tax agents on the outside after a particular time, certainly it would be something that would have to be circulated internally in the Revenue, so that somebody coming across a similar situation would know that this was how the Revenue chose to deal with a matter of this kind?

A. I would have expected that to be done if there had been anything of that nature. I don't believe there was.

Q. And if there was such an agreement ever reached with the Revenue, and obviously the assertion being made through Revenue witnesses is there was never such an arrangement, but if there was ever such an arrangement of that kind and of that importance, one would have thought that it would have been included in the March 1987 settlement in relation to Discretionary Trust Tax.

A. One would certainly expect that. It would

Q. If it wasn't there, you'd certainly expect that some document from around that time would have existed in the way of a side agreement or a letter from the tax agents asserting that position?

A. Precisely. If they were so confident that there was such an agreement, surely they would have been quite happy to put that in writing to the Revenue in making a return of income and Capital Gains to the Revenue in due course, say, "There is this income, but it's not chargeable, because of this agreement we have".

Q. And as it happened, this matter did go before the Appeal Commissioners, and no documentary corroboration of this assertion was ever produced from the tax agents; isn't that correct?

A. I believe so, according to the papers, yes.

Q. And I think one of the places you would look for such an internal document in the Revenue would have been I think

it's the Dublin Audit District No. 7, where they would have access to rulings which would affect other potential taxpayers on this type of matter?

A. That's right, that was the successor to Sean O'Siochain's district who dealt with discretionary trusts, yes.

Q. When the matter came down the stream to Mr. O'Connell in 1998, that's where he correctly looked to see was there any documentation on the matter, and found nothing; that was at appropriate place to look in the Revenue at that time?

A. It would have been, if not the first port of call, certainly the second or third.

Q. You were asked yesterday to look at Tab 26 on this particular issue by Mr. Coughlan, and you answered some questions yesterday. On the second page of what's on Tab 26, there is a reference to an allowance in relation to surcharges, but I have to suggest that that's something separate and doesn't throw any light on this issue of whether income tax was waived or waivable in relation to the Discretionary Trust Tax which had been paid.

A. I don't think it's of any relevance to the present issue.

Q. A matter of that kind, which would allow for the waiving or forgiveness of income tax, would come into play under the heading of "General Care and Management", which is a catch phrase which stems from various pieces of tax legislation; that's the only basis on which it could be operated within statutory authority?

A. There has been a certain amount of debate as to the limits

provided, or which arise from the care and management provisions. It doesn't enable

Q. You used an expression, this would have been extrastatutory. And I am not disagreeing with that expression, but in order to make it intrastatutory, one would have to look at the legislation possibly under the headings dealing with care and management if there was any authority for an arrangement of this kind?

A. I don't think it would be proper to invoke the care and management provisions to I don't think it would be proper at all to invoke the care and management provisions to allow a concession to one taxpayer, unpublicised. I would have a general view about extrastatutory concessions anyway. I would think that if at all possible, they ought to be covered by legislation as soon as possible.

Q. But if an arrangement was to be put in place that was going to operate on a continuing basis into the future, that would be something that would have to operate in the way of an interpretation or a ruling or something like that; and if that was the basis for it, it would then have to be circulated internally in the Revenue, and preferably also to tax agents, so they would know where their clients stood on the matter?

A. I would say necessarily to tax agents. They really ought to know that this practice is now accepted by the Revenue.

Q. Self-assessment came in in 1988 in relation to income tax. So that at that stage, it would have been incumbent on the

taxpayer, that's the Dunnes Trust in this situation, to bring to the attention of the Revenue this particular matter, rather than waiting until the matter arose at some stage later, in later years?

A. It would have been necessary at that stage, in fact there is a provision, stretching way back to 1968, I think, Section 6 of the Miscellaneous Provisions Act of 1968, provided that or gave a requirement that if a taxpayer had a liability to tax, he was to notify the Revenue; he or she was to notify the Revenue within one year of the end of the year of assessment.

So it wasn't actually dependent on self-assessment.

Self-assessment made it much more clear, and because of all the work that went in at that time

Q. It was all the clearer after 1988.

A. Well, there was so much publicity involved that people were not in any doubt as to what they should do.

Q. What's your view as to whether it's plausible that some special arrangement was put in place of this kind to forgive income tax because of the Discretionary Trust Tax arrangements which were put in place in 1987?

A. I don't believe there was any such arrangement.

Q. The care and management provisions are in place in the tax legislation, are they not, to provide a certain degree of flexibility in arranging tax affairs of individual taxpayers?

A. Yes.

Q. So that to ease the job of the Revenue, both in raising assessments, and more to the point, recovering money sooner rather than later; isn't that that's the purpose of that flexibility?

A. A certain degree of flexibility to operations, not to be entirely rigid when certain situations arise.

Q. Now, again looking at this particular this suggested arrangement. After the cross-cutting arrangements that we heard about having been put in place by Dr. Thornhill, when he came into the picture at a particular stage in the Revenue sorry, the cross-cutting, we were told about it by Dr. Thornhill; Mr. Pairceir put in place the cross-cutting arrangements at a particular time. But that inevitably meant that there was a greater amount of communication within the Revenue in relation to particular taxpayers, whereas previously they might not have been considered in the same their affairs might not have been considered in the same holistic way as they would have been previously?

A. Well, certainly I'd say, as of now, because of the reorganisation or restructuring in Revenue, we would certainly be taking a holistic view. And that would certainly apply to a case the size of the Dunnes. The Large Cases Division was created to handle very large taxpayers.

But that is not to suggest in any way that there wasn't good communications, there weren't good communications

between the Capital Taxes Branch and the Chief Inspector's branch. We knew each other well. Very good relations between the officers in both branches, and there is no reason to think that information information flowed freely between one and the other, between Capital Taxes Branch and the Chief Inspector's Office.

Q. Yeah. Well, what I want to ask you about is in this situation, we certainly in 1987 and 1988, there was a greater flow of information between Revenue officials in different departments than previously might have been the case a number of years earlier. There was now more accountability and certainly more communication. The result of that would have been that if there was any validity in this assertion that there was to be a waiver of income tax in relation to these dividends, a greater number of people would have known about it than previously would have been the case?

A. There is no question about that. As I say, we were on very good terms, and if there had been such an agreement, that would have undoubtedly been communicated and become known to everybody involved in the matter.

Q. And whether we are looking at the waiving of this income tax or any other suggested special treatment, favourable treatment of the Dunnes Stores tax, I have to suggest that it would have been impossible to put in place special and favourable treatment for the Dunnes Trust tax liabilities without a considerable number of persons in the Revenue

knowing about it.

A. That is correct. And I would have no doubt that one could depend on the people concerned raising questions as to what is the basis for this, and should it not apply to other taxpayers also.

Q. So in the event that there is any suggestion to be raised that there was some improper outside influence being brought to bear in relation to one particular tax official, there would have been all sorts of checks and balances in place where other persons, not subject to that outside influence, would have been asking awkward questions.

A. I think that's a good way of putting it: There were checks and balances to restrain that or not so much restrain, but constrain it.

CHAIRMAN: Mr. Coughlan, I'm not sure if you have much to raise. I've gone on a little bit longer because I am conscious we have a commitment to another witness.

MR. COUGHLAN: I have just one short question.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Just on the last point

A. Hopefully a short answer.

Q. on the checks and balances and the clear communications between Capital Taxes Branch and the Inspectorate's office.

A. Yes.

Q. why, and the evidence you have just given, that in respect of the Trustees of other Discretionary Trusts that

tax, income tax was paid by them. You gave that evidence in answer to a question from my colleague here?

A. Sorry, I didn't quite catch that.

Q. You said that in respect of other Trustees of other Discretionary Trusts

A. That's right. They would have been entitled

Q. No, that they paid tax. The Tribunal wants to know, with this checks and balances, with this good communication, why the situation in relation to the Trustees of the Dunnes Trust continued up to the mid-1990s without the issue being raised that they weren't paying income tax.

A. The good communications that I referred to was in relation to ordinary matters. And in relation to the point that was being raised as regards whether there was a concession or not, a concession of that nature would have been communicated to from Capital Taxes Branch to the Chief Inspector's Office.

Q. A pertinent fact, one might have thought, to take into account as to whether or not there was some arrangement, was the fact that no income tax was being received?

A. Well, as I said I think yesterday, Revenue can't be fretting about whether a taxpayer has paid everything. We have 2 million taxpayers to handle. Okay, as I indicated just now to Mr. Connolly, we have a Large Cases Division which would ensure that there would be, perhaps, that certain situations would be more in mind, more in the officials' minds; but certainly at that stage, there

wouldn't have been the same unity.

As of now, if a similar situation were to arise, it would all be handled on the same table, that things would be brought together much more clearly. But the ultimate, the final responsibility rests with the taxpayer.

Q. And does that responsibility rest with the taxpayer not just in respect of income tax, but rests with the taxpayer in respect of Capital Gains Tax and Capital Acquisitions Tax and Discretionary Trust Tax also?

A. Correct. It rests with the taxpayer.

Q. And that is to pay the tax which is appropriate?

A. To pay the tax which is appropriate at the right time.

Q. Thank you.

CHAIRMAN: On the different viewpoints that emerged in the cases you referred to in the 1980s, the couple of English cases and the McGrath case, I think the decision in the House of Lords early this year that you referred to in fact summarised the different schools of thought, and I think it set forth that one of those schools of thought was to the effect that where a particular instrument or legal scheme designed to avoid tax leaves substantially intact the basic dealings between parties and the basic financial consequences, the courts should be slow to imply that an otherwise tax bearing transaction should thereby be tax exempt; am I right in thinking that's the view to which you might feel a certainly affinity?

A. Chairman, I am impressed with your knowledge of the case.

CHAIRMAN: Indeed not, but it's a debate that goes on.

I am very obliged for your assistance today and yesterday,

Mr. Clayton. We'll take up the next witness at

MR. COUGHLAN: We'll take the witness about ten past two.

The witness is coming for two o'clock.

CHAIRMAN: Ten past two.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: Mr. Philip Curran, please.

PHILIP CURRAN, HAVING BEEN SWORN, WAS EXAMINED BY MR. HEALY

AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Curran. Thank you very much

for your attendance, and sorry for any inconvenience caused

to you to date.

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

Do you have a copy of a memorandum which you provided to

the Tribunal, which was perhaps provided by the Revenue

Solicitor, which contains the information you are giving

the Tribunal?

A. Yes.

Q. I'll be referring you to that in a moment.

Now, in 1988, you were the Chairman of the Revenue

Commissioners; isn't that right?

A. Yes.

Q. And your previous career in the civil service had been, I

think, in Finance and in Customs and Excise; would that be

right?

A. In the Department of Finance, yes, for a number of years, and then in the Revenue Commissioners Office, but dealing with Customs and Excise matters.

Q. And you came to be appointed a Revenue Commissioner, was it from the Department of Finance, or from within the Revenue?

A. From within the Revenue.

Q. And prior to becoming Chairman of the Revenue Commissioners, had you been an ordinary Revenue Commissioner, if you like. One of the three Revenue Commissioners, as opposed to the Chairman?

A. Yes.

Q. And for how long had you been a member of the Revenue Commissioners without being a Chairman, an ordinary member?

A. About five years.

Q. That is from about 1983; would that be right?

A. Yes.

Q. Now, can you just help me a little on the role of the Chairman of the Revenue Commissioners vis-a-vis both the Revenue Commissioners as a whole with i.e., the whole of the Revenue, and also with regard to your relationship with the other two Revenue Commissioners?

A. Well, to be very not easy to deal with that very briefly, but I'll do my best.

Q. Thank you.

A. The Chairman, as head of the Office, is the accounting officer, and as such, he must report to the Public Accounts Committee and is responsible for the vote, primarily. But

he has to answer for the general administration of the office, which would normally include things like major organisational matters, staffing matters, and so forth.

Now, those, if you like, very briefly, would be the functions which you might say are particular to the Chairman.

Now, in addition to his role as Chairman, the Chairman is also a Commissioner. Now, the three Revenue Commissioners, in practice, divide up the work of the office between them.

And over time, going back years, some chairmen have come from a taxes, Inland Revenue background, and some, rather fewer, have come from a Customs and Excise background.

Now, it depends on what the Chairman has been previously doing before he's appointed Chairman, what particular area of the office administration he will take on from the technical point of view. In my case, when I was promoted to Chairman, I said I will continue to act as Commissioner mainly in Customs and Excise matters, and the other two Commissioners would then divide up the general taxes Inland Revenue work between them. And this is more or less the way things worked.

Q. So, in relation to, if you like, the technical work of Revenue, then, I'm right in thinking that the Commissioners divided up the technical areas of responsibility between themselves?

A. Yes.

Q. In relation to the question of responsibility for

accounting for money got in, or for that matter, money paid out, and accounting for the financial aspect of the operation of the Revenue Commissioners, the Chairman was the accounting officer. And could I come to the other aspect that I'd like you to tell me something about; that is, the relations between the three Revenue Commissioners.

Is the Chairman, as it were, more of a president or a presiding officer between all three of them, or is he more of a boss, if you like, the superior of the other two in official terms, in hierarchical terms?

A. Oh, I think you'd have to say yes, in hierarchical terms, yes, certainly. But I'm not quite sure where your question is leading.

Q. I had the impression and I'm sure I was quite wrong based on sort of a general, purely general knowledge of this, that the Chairman was the sort of *primus inter pares*, that he sort of presided, if you like, at discussions between the three Revenue Commissioners if something needed to be drawn to their attention. I didn't realise that he was in fact, that the other Revenue Commissioners were in fact below him in the pecking order; that he was their superior, or I think as it's now put, their superordinate?

A. Well, that would certainly be true in matters of staffing, promotions, internal organisation and so forth.

Q. I see.

A. But in the matter of giving decisions or rulings on taxation matters, it would be, I suppose, better to call

him primus inter pares, because any of the three Commissioners was legally entitled to give a ruling on a tax matter, and he didn't have to consult either of the other two Commissioners, whether it be the Chairman or not; he had full authority to do that on his own authority.

Now, depending, of course, on the importance or scale of the matter, he might very well mention it to his colleagues, but not legally necessary.

Q. For the proper functioning of the office, I suppose, in terms of human relationship, it would be better if important decisions were the result of some degree of consultation between the members, purely as a way of as a good practice for conducting the day-to-day affairs of the office?

A. Yes, I'd agree.

Q. Now, needless to say, this is an extremely busy office, and the job of Chairman of the Revenue Commissioners is an extremely busy one; and I think am I right in thinking that the Chairman is provided with a Private Secretary and various private secretarial assistance in the form of other officials?

A. Correct.

Q. And is he provided with more staff, in that sense, than the other ordinary Commissioners, because of the additional duties he may have to fulfil?

A. Difficult. From recollection, each of the other two Commissioners would have a Private Secretary. The Chairman

would have a Private Secretary, but also possibly one or two other personal assistants, because of the volume of correspondence coming through the office.

Q. I just want to refer you to your own Memorandum of Intended Evidence. Do you have one of these large books, or perhaps you just have your own Memorandum of Intended Evidence?

A. I just have my own.

Q. What I will propose to do is to go through it and to read it, and if I need to, I'll come back to one or two aspects of it that I might want some clarification on.

This is Document Number document in Book 64. It's in Leaf 3, Memorandum of Intended Evidence of Mr. Philip Curran.

"Mr. Curran was not personally involved in the administration of capital taxes either before or after his appointment as Chairman. His only contact with Mr. Bernard Dunne and Mr. Noel Fox was at the meeting in March of 1988.

This was an informal and superficial discussion and was fully dealt with in his evidence to the McCracken Tribunal, when they did not contact him again. He had no input into the preparations for the hearing of the Capital Gains Tax appeal before the Appeal Commissioners. The decision not to appeal the adverse determination of the Appeal Commissioners was based on legal advice. On that basis, he would have concurred in the decision.

"To the best of his recollection, he was not aware that Seamus Pairceir was acting as adviser to Mr. Bernard Dunne

and the Trustees after his retirement.

"With regard to documentation regarding his dealings with Mr. Dunne in 1988, which were not apparently produced to the McCracken Tribunal, when the McCracken Tribunal was constituted, he had been in retirement for a number of years. He was contacted by Mr. MacDomhnaill concerning the question of any contacts or political representations. He mentioned a meeting with Mr. Haughey which he regarded as harmless. It was in that way that he was asked to attend a meeting with counsel for the McCracken Tribunal and subsequently the Tribunal.

"In relation to the issue raised as to why contacts between Mr. Pairceir and representatives of Dunnes between 11 May and 11 September 1987 were not mentioned to the McCracken Tribunal during Mr. Curran's discussions with counsel for the McCracken Tribunal, he mentioned a number of matters. This issue did not arise, and he was not asked about it.

However, at the time, Mr. Curran did not know about the meeting between Mr. Pairceir and the Taoiseach in 1987. He had never seen Mr. O'Cathain's note of the 11 May 1987 until furnished to him in connection with inquiries made by this Tribunal in March of 2005. Also, he had not previously seen the other documentation concerning the meetings and contacts between Mr. Pairceir and Dunnes in 1987.

"He must have received the briefing note Mr. O'Cathain dated" "He must have received the briefing note from

Mr. O'Cathain dated 3 March 1988 which stated: 'The former Chairman met Mr. D on a number of occasions, and you will have details of this on file.' At the time, Mr. Curran did not have the file note on the matter. When he would have seen the briefing note in 1988, it would not have surprised him at all to have read that a Chairman had met Mr. Dunne on a number of occasions, because chairmen do sometimes meet people. The matter did not occur to him in 1987 at the time of the McCracken Tribunal. Had he thought about it then, he would have assumed that other people in the Revenue would have dealt with the matter."

Sorry for delaying you, Mr. Curran; I was about to ask you about to give you a document. And one page of it has been incorrectly photocopied, so I'm getting that page rephotocopied.

The last few matters you were dealing with in your memorandum related to the circumstances of the evidence or the circumstances in which you gave evidence to the McCracken Tribunal, and you were telling the Tribunal that you had been retired at that stage. When in fact did you retire, approximately?

A. '90, I think it was.

Q. 1990?

A. Yeah.

Q. And do I take it, therefore, that when you were, as it were, drawn into the inquiries being conducted by that Tribunal and the investigations being carried out in

advance of those inquiries, you were being assisted by the then current officials of the Revenue Commissioners' offices?

A. From recollection and you will appreciate, now, it's a number of years ago.

Q. Yes, of course.

A. From recollection, what happened with the McCracken was that there was an initial general-type query, almost a trawl, I think I might call it. I can't remember the precise terms in which the query was phrased, but someone in the Revenue contacted me and said they wanted to know about any contacts, whatever, representations, whatever, and I thought it was better for me to mention this meeting with the Taoiseach.

Q. Sorry, I am not asking you about that at all. I quite understand how that arose.

A. But you are asking me how this came about. I understood I was to deal with my own involvement, and I presume that other people in the Revenue would deal with their involvement, and it didn't occur to me that it was my function to talk about meetings that other people had. That's about the bones of it.

Q. Yes, I'll come to that detail later. I was more concerned with the general framework in which you provided assistance. I take it from what you have just said to me that in fact you received the queries through the then officials of the Revenue Commissioners?

A. Yes, correct.

Q. And when you or if you did meet with members of the Tribunal legal team, you were assisted by the Revenue Commissioners at that time, by the officials of the Revenue Commissioners at that time?

A. I can't remember who was present when I met the Tribunal lawyers. I think possibly, possibly someone from the Revenue Solicitors Office; I am not sure.

Q. Were documents provided to you at that time to assist you in responding to queries from the Tribunal?

A. Yes, I think possibly they were, but I can't remember what they were.

Q. I want to take you through your evidence, and I then want to draw to your attention a number of documents. I have a transcript of your evidence, and I'll let you have a copy of it in a moment. I'm not going to go through every single line of it, because I don't want to detain you that long.

What I'm giving you now is a copy of the transcript of the proceedings of the McCracken Tribunal on Day 15, which was the 11 July, 1997. And if I just take you through the first few lines, it may remind of you some of the evidence you gave.

You were examined by Mr. Collins, and it starts off at page 102, Question 569:

"Mr. Curran, I think you are a former Chairman of the Revenue Commissioners, having occupied that position for

three years.

"Answer: Correct.

"Question: I think you retired around December, October 1990. I think you had been for a number of years Assistant Principal Officer in the Department of Finance.

"Answer: Yes.

"Question: And you had also been in the Revenue Commissioners with particular responsibility in the areas of Customs and Excise?

"Answer: Correct.

"Question: In your capacity as Chairman of the Revenue Commissioners, what sort of contact would you normally have with individual taxpayers or professionals on their behalf?

"Answer: Not a great deal, not a great deal of direct contact, because the direct contact would be with staff, the inspectors or the customs officers or excise or whoever. The Chairman didn't formally meet the taxpayers as a routine matter.

"Question: Would it follow, therefore, that a meeting between the Chairman of the Revenue Commissioners and a taxpayer, or somebody on his behalf, was a matter of some moment and importance?

"Answer: Well, I wouldn't necessarily say that. I think a Chairman would always consider whether he should meet someone who looked for an interview. It would depend on the circumstances.

"Question: How would it come about that a taxpayer would

be able to get an interview with the Chairman of the Revenue Commissioners?

"Answer: The normal thing would be that the taxpayer would, I suppose, write a letter, and a Private Secretary would show it to the Chairman. The Chairman would look at it, and I can't think of any specific reasons, but if something about the thing struck him, he'd say, "Maybe I should just see this person to see who is involved.

"Question: In your time as Chairman, can you make any estimate of the number of requests from taxpayers you would get per annum to deal with some tax matter?

"Answer: Not very many. I don't know; I'd be guessing. Three or four a year, perhaps, at the most. Some of these would be possibly people who would presume, on a rather slim acquaintance, to say, "Well, maybe I'll go and see him".

"Question: Aside from individual taxpayers approaching you in one form or another, do you or did you get representations from politicians, perhaps on behalf of constituents or otherwise, in relation to tax matters?

"Answer: Indeed, yes. As Mr. MacDomhnaill mentioned, there was a regular flow of such representations and letters and whatever.

"Question: And can you make an estimate of how many times a year you'd get a representation from a politician asking that you might meet with a taxpayer or deal in some fashion with a taxpayer's affairs?

"Answer: It would be very seldom a politician would ask, in my experience, would have asked me to meet a particular taxpayer; but it was quite commonplace that a politician would ask us to have a taxpayer's case looked at sympathetically, or whatever.

"Question: You had, I think, a Private Secretary and two assistants when you were Chairman of the Revenue Commissioners?

"Answer: That's correct.

"Question: What percentage of their time would be dealt dealing with the representations of one form or another from politicians?

"Answer: I would say a large proportion of their time. As I said, there is a continuous stream of such representations from public representatives.

"Question: If you get a question from a Minister or Taoiseach for a meeting with a taxpayer or representative, how would you treat such a question?

"Answer: I would treat it very seriously, seeing as it would come from a member of the Government. I would treat it with the respect it deserved.

"Question: Can I bring you to an occasion which I think is around March of 1988, when I think you received a telephone call or a message from the then Taoiseach, Mr. Haughey.

"Answer: Yes.

"Question: Can you just describe to the Tribunal what happens, starting with the contact from the Taoiseach's

Department.

"Answer: My Private Secretary told me there was a message from the Taoiseach's office that the Taoiseach, Mr. Haughey, wanted to see me, so

"Question: Was that in itself usual, or an unusual event?

"Answer: Not that unusual, to this extent, that I would have met the Taoiseach, Mr. Haughey, maybe three or four times a year. Now, usually it would be with Finance officials to discuss prospects for the Revenue, etc., but occasionally it would be just myself who discussed whatever was on his mind. I wouldn't know until I got there what this was about. I would just get the summons.

"Question: Right. Right.

"Answer: So on this occasion I arrived, and the subject was Ben Dunne.

"Question: Did you know before you went to the meeting with the Taoiseach?

"Answer: No, I can't honestly remember that. I don't think that mattered very much.

"Question: I take it that you went to his office?

"Answer: Pardon?

"Question: I take it you went to his office, obviously.

"Answer: Oh, I certainly did.

"Question: And were just the two of you present at that meeting?

"Answer: Just the two of us present, just the two of us were present, correct.

"Question: And can you describe for the Tribunal the conversation that took place between yourself and Mr. Haughey?

"Answer: I have I can't remember the exact words, and it wasn't a long meeting, but very briefly, the sense of it was that Ben Dunne had been talking to him, and he painted the picture which we all know, happy to acknowledge, that the Dunnes Stores business is booming and Ben and the family were making an awful lot of money, but that there was some problem he had about I think it was about the family trust and the question of Capital Gains Tax.

"Now, he wasn't specific; he just said that Ben Dunne said he would like to talk to the Chairman of the Revenue about his problems. And the sole thing that the Taoiseach said to me was, 'Would you see him?' I said 'Certainly'. I mean, I'd have seen Ben Dunne even if he approached me directly without any intervention from the Taoiseach.

"But the Taoiseach didn't ask me to do anything in particular. He just asked me would I see him, that he wanted to have a chat. I think that was the sense of the meeting we had.

"Question: Did you have any discussion with the Taoiseach with regard to the merits of whatever the tax concerns Mr. Dunne had?

"Answer: No.

"Question: Did the Taoiseach make any suggestion to you one way or another as to how you should treat or deal with

those tax matters?

"Answer: No.

"Question: Did you form any impression or inference from the fact that he had sent for you, asked to you meet Mr. Dunne, that he was communicating any form of implication to you that Mr. Dunne should be dealt with in some favourable fashion?

"Answer: No. The impression I got was this, that he was facilitating Mr. Dunne in arranging a meeting with me, and that was the size of it. There was nothing more to it than that, as far as I could detect.

"Question: Is it fair, therefore, and fair to Mr. Haughey, to say that he didn't put any pressure on you one way or the other in relation to any tax aspect of Mr. Dunne's affairs?

"Answer: That's quite right. He put no pressure whatsoever.

"Question: Would Mr. Haughey have requested you on other occasions to meet with other taxpayers, like Mr. Dunne or other people, without mentioning anybody's names, but was this the type of request that he would make from time to time to you, or was this a once-off or a relatively once-off request?

"Answer: It was more or less a once-off request.

"Question: Did you think there was anything unusual about it?

"Answer: No, I didn't. I knew that Ben Dunne obviously

was one of the leading businessmen in the country.

Naturally I would assume he would know the Taoiseach, and I didn't see anything at all extraordinary in the Taoiseach asking me to meet him. As I said, the impression I got was that the Taoiseach was just trying to facilitate Ben Dunne in arranging a meeting.

"Question: Given that you would have met Mr. Dunne in any event if he had approached you directly, did you not find it somewhat strange that the approach was made through the Taoiseach?

"Answer: No, I didn't, because I think in some ways it's a characteristic of Irish people, I think, that you know, they like to feel that they have an introduction; put it that way.

"Question: Right. How long did your meeting with Mr. Haughey last?

"Answer: Oh, I couldn't ten minutes, perhaps.

"Question: And consequent upon that meeting, what did you do?

"Answer: Oh, my recollection was that I went back to my office, and my recollection was that Ben Dunne and his staff, or his staff was to contact my office to make the appointment.

"Question: What happened then?

"Answer: Well, obviously somebody did. I don't remember the details, but the upshot of it was that Ben did come to see me in my office at Dublin Castle, accompanied by Noel

Fox.

"Question: Did you ever had you ever met with Mr. Dunne before?

"Answer: No.

"Question: And did you personally, as distinct from other people in the Revenue Commissioners, ever meet with any professional advisers on behalf of Mr. Dunne in relation to his or the company's tax affairs before?

"Answer: No. We never met anyone in that respect.

"Question: Or in relation to the trust's or the Trustees' tax affairs?

"Answer: No.

"Question: Had you ever met Mr. Fox before?

"Answer: No.

"Question: In any capacity?

"Answer: No, any capacity.

"Question: Had you ever met Mr. Dunne at all in any social or other capacity?

"Answer: Never.

"Question: All right. The meeting took place in your office in Dublin Castle. Can you remember how long after that meeting with Mr. Haughey this meeting took place?

"Answer: I honestly can't remember now, but I assume it would have been shortly afterwards.

"Question: Right. Had you been briefed by your officials on any aspect of the Dunnes tax affairs before the meeting?

"Answer: Yes, because, as you mentioned, my background was

not to do with taxes; so before the meeting, I had to get a very short briefing note from the relevant expert on the staff about whatever it was, the Capital Gains or the trust or whatever.

"Question: I think when you say your background wasn't in taxes, you had been in Customs and Excise and so on.

"Can you describe the meeting between yourself on the one hand and Mr. Dunne and Mr. Fox on the other?

"Answer: Once again, it was a fairly brief meeting, Mr. Dunne did all the talking. Mr. Fox was there. He didn't as I recollect, he wasn't asked to contribute to the discussion. And without recollecting actual words, what happened was that Mr. Dunne talked around the subject, the subject being the accumulating tax in the trust. So much so that at the end of his discussion, it wasn't clear to me what he wanted. So I said to him that I don't have the exact words, but the sense of what happened was this, the discussion ended like this. I said to him,

"Well, look, why don't you go away and sit down and figure out what exactly it is you want to do and put it to me, and then I will get my people to look at it closely and see to what extent will the law permit us to meet your requirements on this. And he said words to the effect that "a man can't ask for fairer than that. Thank you very much." That was the conclusion of the meeting.

"Question: The problem, as you describe it, in terms of the tax accumulating in the trust, was that the difficulty

that the value of the trust was increasing, and that if the beneficiaries were to extract money out it, then they were going to be liable to various forms of capital taxes, if that were to occur.

"Answer: That was it. The business was doing so well that the value of the shares was increasing spectacularly, and with it the potential for tax liability was mounting.

"Question: Right. Did either Mr. Fox or Mr. Dunne have a as sometimes happens, any particular proposal which they were putting to you for your consideration?

"Answer: Not at the meeting. As I said, I couldn't decipher what precisely Mr. Dunne wanted me to do.

"Question: And when you asked him to go away and come back to you with something, what had you got in mind?

Answer: Well, what I had in mind first of all was what I'd like to see in black and white what precisely he proposed to do, because it wasn't clear to me from the meeting what exactly he wanted."

Then there is a discussion about a suggestion that the Revenue have a practice of giving an okay to people for certain proposals, and I think you gave perhaps a correct view of what the true Revenue practice is.

If you go down to Question Number 617, you were asked:

"Question: But if you were asking him to come back to you or your officials with regard to some proposal, you must have had in mind that he would put together some form of transaction or proposal to extract the assets in a tax

efficient way and in an entirely, may I add, lawful and official tax planning way?

"Answer: I figured if he had gone to the trouble of setting up a meeting with me, he must have a particular angle or aspect in mind. It did occur to me perhaps that he thought perhaps I was a fresh mind on the subject, unprejudiced by years of studying tax law, that if he talked around it enough, that I might shed new light on the subject. I don't know. As I said, I can't figure out what exactly he wanted, and as I say, he didn't come back to me on it.

"Question: When you said 'Come back to me', did you mean that he should come back to you personally, or to someone within the Revenue:

"Answer: Obviously it was open to him either to come back to me personally or to have his personal advisers submit a proposal or whatever. We weren't very specific about it.

"Question: Suppose he or Mr. Fox had come back to you with a particular proposed course of action by way of some tax planning and then come back to you personally, what would you have done with such a proposal?

"Answer: Oh, I would have immediately referred it to the relevant experts in the office to look at it and see how far would the law permit us to go in meeting the proposal.

"Question: Did either Mr. Dunne or Mr. Fox ever come back to you, or to anybody in the Revenue, to your knowledge, with any such transaction or proposal?

"Answer: As I said, they never came back to me. Now, there may well have been contact with the relevant sections in the office; I'm not personally aware of that.

"Question: Did you have any further contact or involvement in relation to this matter!

"Answer: No.

"Question: Did Mr. Haughey ever contact you subsequently to inquire as to how the meeting went or what the outcome was?

"Answer: No. And as I said, there would have been opportunities for that, because I met him a few times subsequently, but he never mentioned it again.

"Question: And you never discussed it subsequently with Mr. Haughey?

"Answer: Never. No, never.

"Question: Finally, Mr. Curran, and in fairness to both Mr. Dunne and Mr. Haughey, is there anything in the incident that you have just described which you would characterise as in any way untoward or improper, either on the part of Mr. Haughey or on the part of Mr. Dunne?

"Answer: Absolutely not."

That was the end of your evidence, I think.

Now, I am right in thinking, am I, that when you gave that evidence, you didn't have access to a lot of documents that had been brought to your attention for the purpose of the evidence you are giving me?

A. That's correct.

Q. Just before we go into one or two details of that. I just want to ask you one or two questions arising from other evidence that we have heard in the last few days.

You were, as you have described, the Accounting Officer of the Revenue Commissioners. Do I take it from that that you were the officer who would have to stand over information provided for the appropriation accounts and things like that, or is it the estimates, is that the correct term?

A. That's right, that's right, yes.

Q. You may not have heard this evidence, but in the last few days some attention has been paid to the fact that

Mr. Pairceir, your predecessor, was alive, to use a neutral word, to the issue that there was quite a large figure in the I suppose the appropriation accounts, as likely to come in from C.G.T., a figure of 38.8 million; do you see what I'm getting at?

A. Not entirely.

Q. All right.

A. You see, the appropriation accounts relate to the vote; that is expenditure by the Revenue Commissioners Office, and the Accounting Officer is Accounting Officer for the vote; that is, there is a big an awful lot of documentation and so on about that.

In relation to the Revenue accounts, I think your question was that Mr. Pairceir would have known that some figure might appear in the receipts, the Revenue receipts account, not in the appropriation accounts.

Q. You can correct me on the technicalities of this, and I'll certainly be guided by you. Can I put it this way:

Revenue had issued an assessment for Capital Gains Tax for the year 1985; this assessment had been issued to the Dunnes Trustees. Therefore, Revenue were signalling, if you like, that they expected to get in or about 38.8 million in in Capital Gains Tax on this particular assessment.

Now, there were other assessments to Capital Gains Tax as well, but they were rather small; in the order of around 10 million or so, 10 to 15 million. So the vast bulk of what would have been a very big figure for Capital Gains Tax, in terms of the assessments of which the Revenue had given notice, was accounted for by this particular Capital Gains Tax assessment; and I'm just wondering, were you alive to that at the time?

A. No. I had none of those figures.

Q. And you don't recall anyone drawing to your attention:

"Look, we have got to watch this; there is a very large sum of money; people are going to be asking us when are we getting it, or have we got it in"?

A. No, nothing of that sort.

Q. You mentioned that you would have had meetings with taxpayers rarely, but that you would have got a lot of letters in from TDs making representations and asking for sympathetic treatment for taxpayers who were constituents of theirs and so forth. And are they matters that would be

put before you for your attention?

A. It would depend who was making the representations.

Q. I see.

A. And the Private Secretary would normally show me letters, say, from members of the Cabinet, for example, on behalf of their constituents, and normally I would sign replies to those. But for the vast bulk of the representations addressed to the Chairman, the Private Secretary would deal with them; he would get the information, and he would sign the reply. He would perhaps he had a lot of discretion in this. He'd show me something that he thought might be slightly unusual, but the general run of things, that things were perfectly straightforward; you just had to reply and tell whoever is making the representations what the position was.

Q. Yes. And I suppose some of those representations would come on behalf of people who had, as it were, a case to make, and some might come on behalf of people who, after you'd looked into it, had no case to make?

A. Yes, yes.

Q. And you'd send back an appropriate answer, saying, "We'll look into this; there seems to be something here", or "I am afraid there is nothing we can do for your constituent; the law is clear", etc., etc.?

A. We'd usually we were conscious of the fact that when we sent a letter back to whoever was making the representations, that he would wish to have this letter to

show his constituents that he was doing his best.

Q. Of course.

A. That's the way it worked.

Q. Did you have a relationship with Mr. Haughey during your term as a member of the civil service?

A. When I became Chairman, I think I doubt if I had meetings before that, but the relationship would consist of being present at a meeting, usually with officials from the Department of Finance, and these meetings were usually concerned with budgetary matters.

Q. I see.

A. So, I mean, I would have met him in these circumstances quite a few times.

Q. And when you became you have indicated that when you were Chairman of the Revenue Commissioners, you would meet him, perhaps not regularly, but that you would be summoned to his office to discuss things about which you would have had no notice?

A. That's true.

Q. And you wouldn't know what it was you were asked to discuss until you got there?

A. That's usually it. I mean, if you get a message, as a civil servant, you get a message that the Taoiseach wants to see you, I mean, that's it; you just go.

Q. I see.

A. And listen.

Q. I think, as you have said, it's a summons?

A. Well, more or less. A polite request, yes.

Q. I think you describe some of these meetings as simply a request from Mr. Haughey to discuss whatever was on his mind?

A. Yeah.

Q. Would it be Revenue matters? Would it be

A. Oh, usually something to do with the Office of the Revenue Commissioners in its various manifestations, shall we say.

Q. And it wouldn't be to do with the affairs of individual taxpayers?

A. Not really. But once or twice it would be.

Q. And are there records of those meetings kept, either on your side or on the Taoiseach's side?

A. No, not that I know of.

Q. There would be nobody present at any of those meetings?

A. No.

Q. And how would you follow up on any of those discussions?

A. Well, they were they weren't such enormously important things that they required a lot of action. I might just make inquiries to see had some of other officials not gone about their business in the appropriate manner, or was there anything that had to be investigated or looked at. But there was never any question of trying to reduce a tax bill or let somebody off scot-free who deserved to be prosecuted, or anything of that sort.

Q. But there wouldn't be, am I right in thinking, anything that would warrant your having your Private Secretary

come along with you and take a note and

A. Oh, no, no, never.

Q. In the ordinary way, the Secretary General of most departments had a direct relationship with the political master, the Minister; isn't that right?

A. Correct, yes.

Q. And the Revenue Commissioners is unique, in that there isn't such a direct relationship?

A. Correct.

Q. Because the Revenue Commissioners are an independent grouping of individuals set up to administer Revenue at arm's length from Government; isn't that right?

A. Correct.

Q. That's not to say, of course, that Government can't benefit from the input of the Revenue Commissioners on fiscal, financial and other matters, but it's set up independently, and for that reason doesn't have a political head; isn't that right?

A. Correct.

Q. Did you regard it as unusual that from what the Taoiseach must have known was your very busy day-to-day calendar, you would, without notice, be summoned from Dublin Castle to make your way all the way over to Merrion Street just to discuss whatever was on his mind?

A. No, I think the Taoiseach, as head of the Government, is entitled to do that if he wants to. I was a civil servant; I wouldn't argue.

Q. But you don't remember ever having to engage in you never remember having to make a significant note or commit something to writing or work out your thoughts in something, having met him?

A. No.

Q. Were these meetings of any value, or were they just to humour the Taoiseach?

A. I don't know, I don't know what value he got out of them. He may have told whoever was talking to him, that "Look, I have mentioned this to the Chairman", and as I say, that was the end of it.

Q. But the Taoiseach was also a very busy man. Wouldn't it have been easy to just have made a phone call, or drop you a note, or get his Private Secretary to do it? What do you think?

A. Well, I think he had his own personal way of operating, and I think he liked to meet people, and he was a very for example, in relation to the meetings that I mentioned about financial matters, he was a very hands-on Taoiseach in that respect, because he took a very close, detailed interest in all these things which normally would be the preserve of the Minister for Finance, but he himself wanted to be involved in it in detail.

So, as I said, I think it was his normal way of operating.

He just wanted to be personally involved in things.

Q. Was there a sense in which you felt that he was a political officer in authority over your Department?

A. Oh, that's unquestionably true. I mean, when you say that the Office of the Revenue Commissioners is independent, that needs to be sort of qualified.

Q. I see.

A. First of all, we are all civil servants. Secondly, it's perfectly clear that in matters of organisation, staffing, remuneration, etc., we are anything but independent. We are strictly under the control and direction of the Minister for Finance. And this idea of independence relates purely to the technical function of carrying out the duties in relation to tax and Customs and Excise and whatever. It's simply a convention going back to the foundation of the State that the Minister for Finance does not, in fact, give any directions to the Revenue Commissioners about how to deal with individual taxpayers, and the same would go for the Taoiseach. So the Commissioners are independent in that respect.

Q. Wasn't it a waste of your time, then, to be going down to Merrion Square to be discussing all these matters with somebody, if he had no power to direct you and you had no power to take direction, and that the whole thing was just eating into your busy day?

A. No. Certainly in the matter of possible changes in tax policy and estimates and whatever, the office would have a considerable input into the preparations for the annual budget.

Q. I follow that.

A. So from that point of view, we certainly it was anything but a waste of time.

Q. But would I be right in thinking that if you were to meet the Taoiseach in relation to something that was going to form one of the inputs into the budget, or into tax policy in a general way, that you would be accompanied by the appropriate official with expertise in that area, and you would know in advance of meeting the Taoiseach what it was you were expected to assist him on?

A. Well, we normally wouldn't have a particular question to deal with. I would attend with usually with one of the Commissioners, and we would go armed with as much statistical information, up-to-date figures as we had, and tried to play our part in the discussion. That's the way it happened.

Q. I see.

Could I ask you to look at a document. Do you have this red book, Mr. Curran? Do you have it in any form?

A. Not here.

Q. You may have these documents yourself, you may have received them, at least I hope you have, in some other form. I must apologise that you don't have a lot of room there. So take your time in trying to find Leaf 48 in that book.

A. This is about February '88; is that right?

Q. Correct. I'll tell you what you have there. And if I could just digress for a moment to say, Mr. Curran, if you

want to stop at any time, or you need to pour yourself a glass of water or take a rest, just tell me.

A. Thank you.

Q. What you have got in front of you is a note made by Mr. Sean O'Cathain. Do you remember him in your office at the time you were

A. I remember he provided a briefing note to me.

Q. That's right. You may have known him as John Keane; sometimes he used the English version of his name. But I think he has an interest in the Irish language, and sometimes he used the Irish version.

A. I can't clearly recollect that I have ever met him.

Q. I see.

A. Yes.

Q. Well, what you have got in front of you is a series of manuscript notes he made. And on the next page, you have a printed transcription. Now, I'll go through the manuscript, maybe I'll use the overhead projector, and you keep an eye on the transcription and if there is any difference, we can sort them out.

The first entry is for the 29/2/88: "Received notification of days for appeal. 9 and 10 June '88. Advised John Reid CTB" I think that means "Capital Taxes Branch" "And Declan Sherlock, Revenue Solicitor he will advise."

I think that what, from subsequent events, we know that refers to is the notification that the Revenue

Commissioners had received the days fixed for hearing of

the Dunnes Trust C.G.T. tax appeal. It had been adjourned from time to time.

The next entry is for the 1/3/88, which was the following day. "Call from Mr. Howard of Chairman's office. Chairman out till next week. Taoiseach directed today that Chairman meet him at 5.30 re BND" Bernard and Norah Dunne "later agreed to wait till next week."

That records a note from I think that would be your Private Secretary, Mr. Howard; is that right?

A. Yes, yes.

Q. Presumably of some information he had received involving a direction from the Taoiseach that you meet him that day; but obviously, on being told that you were out, that he would wait till the following week.

Can I just ask you, was it usual to receive, as it were, a summons from the Taoiseach with as little notice as that:

"Come along at 5.30pm today"?

A. No, that would be unusual.

Q. Unusual?

A. Yes.

Q. Would it? I see. So that would betoken a degree of urgency of some kind?

A. I suppose it would.

Q. The next note is for the next day, the 2/3/88: "Mr. Howard rang requesting brief explanatory note for Mr. Liam Reason and for Chairman. I suggested he contact Cathal MacDomhnaill also."

The next entry is for the following day. It says:

"Briefing note sent. Copy to John Reid" and another official whose name I am afraid nobody has been able to decipher so far.

Underneath that "Maybe BD is looking for a change in regulation of Section 82 Finance Act 1982 which would defer the charge on the disposal by the Trustees by reducing the cost forward by the amount of the chargeable gain.

"This could only apply from a current date."

Then another note: "Seeking amnesty relief."

Then underneath that: "Interest at 15% for the 1/1/87 on even 100 million would be 17.5%, equal to 1.75 million."

So, I just should say that Mr. O'Cathain has informed the Tribunal in evidence that "seeking amnesty relief" did not mean that he got a message that somebody was seeking amnesty relief; it's a note of his speculation that's possibly what somebody might have been seeking, or that's possibly what the meeting might have been about.

But I think the first thing that's clear from this, and you can disagree with me if you like, is that unlike the other occasions when you were asked to the Taoiseach's Office to discuss something, on this occasion, notice was given of what it was you were being asked to address; maybe not the details, but the name of the individual involved in the Taoiseach's request was notified to your Department. Isn't that right?

A. Yes.

Q. Now, you'll recall that in your evidence and I'm not criticising you for it; you didn't have these documents I think it's fair to say you weren't sure you thought you probably hadn't got notice of what the Taoiseach wanted to talk to you about, but it's clear from this that you would have had notice; isn't that right?

A. In this case, yes.

Q. I think when you gave evidence to the McCracken Tribunal, you weren't clear about whether you got notice or not.

A. Yes, I don't remember.

Q. You didn't have the benefit of these documents?

A. Yes.

Q. But what these documents suggest is that you had notice, and that some care was being taken to ensure that you were well briefed before you went to the Taoiseach's Office; is that right?

A. You see, I asked for a briefing note, but I didn't want to get too much detail, because I didn't know precisely what the Taoiseach had in mind. And in any case, I was not going to get into the technicalities of the capital taxes thing. So from recollection, when I went to the Taoiseach, I wouldn't have any very comprehensive knowledge or background of what was involved. I would only have known, in a general way, that there was a problem about the trust.

Q. I think if you look at the next document, in Leaf 49.

Would I be right in thinking that you would, in any case, have been aware, in a general way, that the Revenue

Commissioners were involved in a very large case with the Dunnes Trust?

A. Oh, yes, yes.

Q. And the next document is headed "Note for An Cathaoirleach"; you can just see that at the top. It's been cut off a little in the photocopying, I think. And you'll be glad to know I'm not going to go through the details of it, but that is a general account of the trust, and how the trust came to be involved in an issue with the Revenue Commissioners, and it gives a general account of the dealings the Revenue Commissioners had had with the Trustees and how the Revenue Commissioners had arrived at their calculations of some of the tax that was due. I think that's somebody else will correct me if I'm wrong in this; I think that's a reasonably fair account of what this document is.

A. That's the briefing note I got before I met Ben Dunne.

Q. Before you met Ben Dunne?

A. For the purposes of my meeting with Ben Dunne, this was the briefing note I got.

Q. I see. Do you not think that that's probably also the briefing note you had before you met the Taoiseach?

A. I honestly don't know. I don't think so. I doubt it. It could be.

Q. The reason I am suggesting it could be is that if you look at the previous document again, Mr. O'Cathain notes that he sent a briefing note, and then he says "Copy to Mr. Reid"

and another official, and then he is discussing what he thinks Ben Dunne might be looking for. But that's on the 3/3, which is just shortly after the request is relayed from Mr. Howard that the Taoiseach had directed that you'd meet him, and it's in advance of the date fixed for the meeting, which would have been the 8th March 1988.

A. I don't know; there doesn't seem to be any note, or date on at that briefing note, but

Q. If you look at the very last page of the documents I have given you, and there are two documents there. If you look at the very last page, the first word on the top left-hand side is "A 10% discount would reduce the Capital Gains Tax". Do you see that?

A. Yes.

Q. And there's a date on that of the 3rd March 1988.

A. Yes.

Q. Now, it may be that you only got some of the pages and not all of the pages on that date. In all, you have five pages in front of you; isn't that right?

A. Yes, yes.

Q. Well, the first two pages have, at the end of the second page, a signature.

A. Yes.

Q. Now, there's no date on that signature.

A. Yes.

Q. And the next three pages the next four pages, sorry are the ones that have, at the end of them, the signature

and the date?

A. Yes.

Q. Whatever about the first two pages, it would seem that the second four pages I thought there were only six the second four pages were certainly, as far as we can judge from the papers here, prepared on the 3rd March, and it may be that you had only that document, containing a statement of facts and comment, before you went to the Taoiseach. Is that possible?

A. You see, from my point of view, it wouldn't make much difference whether I had all these before the meeting with the Taoiseach, because, as I said, there is a lot of detail there which I would not have thought that I would be involved in in any discussion with the Taoiseach.

Q. I see.

A. Because I would say, "Look, this is not my area; I am not an expert on this; I will have to have the experts deal with it." I was not ever going to take on personally any role in relation to this tax matter. I was just going to, if you like, listen, in a general way, to what people had to say and to pass on the word to those who were dealing with it in the office.

Q. I see. Now I want to refer you to another document; it's in the book of documents within a black folder that I think you got at lunchtime, Book 67 or after lunchtime, sorry.

I want you to look at Document Number 2. Now, this document is dated the 9th March 1988. I think earlier,

when I said that your meeting was the 8th, I was wrong in that; it must have been the 9th. It is in any case the following week, or the week following the phone call to your Private Secretary, Mr. Howard, and it's dated 9/3/88.

Again it's in Mr. Sean O'Cathain's hand, and it's a note of a "Call from Liam Reason" one of your fellow Commissioners "Chairman going to Taoiseach today.

"I advised him of some points not in my briefing memo."

Now, again that would appear to suggest that a briefing memo had been prepared in advance, though I quite understand your point that you didn't want to get involved in the detail.

Then Mr. O'Cathain goes on recording, as far as I can judge from this document, what he told Mr. Reason.

"1) If we won, they would lose the Section 63/85 relief for C.G.T. against C.A.T. of the same event." That is a reference, I think, to setting off one capital tax against another where they arise from the same transaction.

"2) The 1985 deed drawn by SC (per agents) in consultation with four other senior counsel. This was done in the light of four recent British Revenue tax cases and two statements of practice in an attempt to exclude it for C.A.T. and C.G.T.

"3) We could lose.

"4) The British Revenue hold over relief for the '85 type disposal but too late now to legislate to affect 1985."

I think that's a suggestion that a possible way of dealing

with this type of thing would be to adopt a British Revenue relief available to taxpayers in a deemed disposal situation.

"5) The difficulty for them of getting cash to pay large liability.

"6) That valuation at April '88 for trust tax would be needed anyway.

"7) That the case was extraordinarily complex, due partly to the amount involved and the two capital taxes, and that they had made no submissions.

"8) I explained the deemed control provisions for C.A.T. and the effect of valuing holdings of unquoted shares.

"9) He agreed that the most that could be done would be for the Chairman to listen to whatever An Taoiseach had to say and to offer to look into any suggestions made."

Now, at the time, do you know whether Mr. Reason was the member of the Revenue Commissioners who would have been responsible for capital taxes, or that branch or section?

A. Well, I don't remember now, but looking at the documents, it looks as though he was.

Q. We can check it with Mr. O'Cathain, but it does look like that.

A. Yes.

Q. Do you remember, before going to see the Taoiseach, having a discussion with him about the subject matter of what it was, or at least of the object of what it was the Taoiseach wanted to talk to you about?

A. No, I don't believe I had any discussion with him.

Q. I suppose from this note it would appear that there must have been some awareness on Mr. Reason's part that you were going to meet the Taoiseach?

A. Yes.

Q. And there must have been some awareness on his part of the purpose of your going to meet the Taoiseach?

A. That Ben Dunne was to be mentioned, yes, yes.

Q. And I suppose it would seem natural that having regard to the amount of work that seems to have been done, that Mr. Reason might have discussed the matter with you, as it was his area of expertise?

A. I don't think so. I don't think I would have looked for a discussion, because I didn't want to get into it very deeply. I just wanted to listen what was to be said and then see take it from there.

Q. But I suppose in order to arm yourself to understand the issues, wouldn't it have been a good idea to speak to the Commissioner or to get some sort of low-down, as it were, from the Commissioner with responsibility for that area before you went to meet the Taoiseach, so that

A. No, I think the briefing note I had I thought was sufficient.

Q. So you are satisfied, then, that you did get a briefing note?

A. Oh, certainly I remember that clearly, yes.

Q. Before you met the Taoiseach, not

A. That's the point. It appears that I got it before. I know I had it before I met Ben Dunne, but it appears now I probably had it before I met the Taoiseach; I'm not sure.

Q. And I suppose, judging from your past experience of meeting the Taoiseach when you wouldn't know what might be on his mind, and where, therefore, you couldn't be criticised by anyone for any discourtesy in not being well armed for a discussion, in this case, you knew that the Taoiseach knew that you had notice of what he wanted to talk to you about, in a general way; isn't that right?

A. Yes, yes.

Q. And wouldn't it seem reasonable, then, that you'd try to gin up on it in some way?

A. No. My personal view would be that I would be much better advised to go along with one hand as long as the other, and not pretend to have a lot of detailed knowledge, but just to listen.

Q. I see. Why would you adopt that stance, as it were? What's the advantage or reasoning behind adopting that stance?

A. The reasoning behind it is that I simply was not competent to deal in detail with capital taxes matters.

Q. I see.

A. And there was no way I was going to pretend that to the Taoiseach.

Q. I see. Do you see the note at Item Number 9 on this, where Mr. O'Cathain records Mr. Reason saying and you'll

appreciate that we are not in a position to avail of

Mr. Reason's assistance "He agreed that the most that could be done would be for the Chairman to listen to what An Taoiseach had to say and to offer to look into any suggestions made."

Do you recall having any discussion with Mr. Reason along those lines before you went down?

A. No.

Q. From the additional documents that you have now received, including some of the ones that we have been discussing, does that help you in any way, or does it stimulate your memory in any way of the meeting you had with the Taoiseach?

A. No, it doesn't, because the documents had very little to do with my meeting with the Taoiseach, which, as I think I said before, was in very general terms indeed, and didn't involve meeting dealing with figures or anything of that sort. It was just a very general discussion, and very brief.

Q. What sort of general things did you discuss?

A. I beg your pardon?

Q. What sort of general things did you discuss?

A. At this meeting with the Taoiseach?

Q. Yes.

A. Well, just as I mentioned, I think you read out my evidence to the McCracken Tribunal; it was a very brief and superficial recital of the basic facts, that Dunnes were

facing a huge tax problem because of the increase in value of the business and the fact that the shares were in a trust, and if there was any attempt to what's the word, a disposition or something, out of the trust, it would incur a huge tax bill. That's all. I mean, there was no great detail about it.

Q. What was the point in telling you all of that? Sure you knew all of that yourself. Nothing the Taoiseach could tell you about those matters could improve on the amount of knowledge you'd get from an official in five seconds; isn't that right?

A. No. As I said, he just seemed to be interested in, how shall I put it, introducing Ben Dunne to the Chairman, shall I put it that way. It was to facilitate a meeting; that's the most I can remember about it.

Q. But you do recall that he seemed to be well informed enough to give you a general account of the fact that the Dunnes business was doing well, and that this had created tax problems resulting, and that there had been in fact an accumulation of tax problems due to the trust?

A. Well, obviously somebody had been talking to him about it, and he knew he knew the broad lines of the problem.

Q. But this took some time, obviously, this meeting?

A. Pardon?

Q. It took some time?

A. What took time?

Q. The meeting with the Taoiseach.

A. You mean how long did my meeting last?

Q. Yes, yes.

A. A very short time. Five to ten minutes at the most.

Q. I see. And then you left and went back up to the Castle?

A. That's right, yeah.

Q. And did you wonder at all why the Taoiseach would summon you from your very busy schedule and absent himself from his own very busy schedule just to talk to you for five minutes about the general outline of a trust?

A. No. It didn't strike me as odd. I thought the Taoiseach would be entitled to do that if he felt like it. He didn't absent himself from his business for very long; a few minutes, five or ten minutes.

Q. He absented you from yours for a while, obviously.

A. Well, half an hour; the time it took to get from the Castle to Merrion Street and back.

Q. But your officials were preparing papers for you and briefing papers and busying themselves about it for the previous three days?

A. Yes, well, of course they had done a lot of work on it anyway, apart altogether from my meeting with the Taoiseach or with Ben Dunne. You see, when I came to meet Ben Dunne, I was not aware of all the fine details of what had been going on in the previous couple of years in the office, because I wasn't involved in it.

Q. Yes.

A. I only had a very general overall impression of it.

Q. But the Taoiseach wasn't going to be able to improve your overall impression, was he?

A. Oh no. He had no details, no.

Q. Could I ask you to go to Leaf Number 51 in the red book you have. I'm going to hand it up to you, and perhaps

Mr. Brady could open it at Leaf Number 51.

Now, just before I refer you to the document itself, was there any degree of urgency communicated to you by the Taoiseach as to whether anything should be done or could be done for the Dunnes?

A. Well, no, there was no sense of particular urgency other than the fact that if the Taoiseach of the country asked me to meet somebody, well, I would go about that fairly quickly. I wouldn't put it on the long finger.

In any case, the arrangement was that the Taoiseach was to advise Ben Dunne that he should contact my office for an appointment. So to that extent, I didn't have to take any initiative. It was up to Ben Dunne.

Q. I see. And I quite understand that if the Taoiseach wanted you to meet somebody, especially somebody involved in a huge tax case

A. Yes.

Q. or maybe somebody even involved in a small tax case, but where it was a big tax case for the person involved, you'd meet them. But that is a piece of information that he could communicate to you in a telephone call or get his Private Secretary to communicate, isn't it?

A. Yes, he could, yes.

Q. You'd have given it just as much you'd have attended to it with just as much expedition, wouldn't you?

A. Oh, yes, yes.

Q. If you'd look at this document, please, Mr. Curran. It's dated the 11/3/88. And again it's a note of Mr. O'Cathain.

And it's to Mr. O'Cathain's notes that we are obliged, really, for a narrative of what happened at this time, and indeed during the whole period that the Tribunal is covering.

There is a typed transcript behind this note as well, and if you want to look at the typed transcript, and I'll do my best to go through the manuscript, and again, if any differences arise, we can sort them out.

"11/3/88: Rang LR and" I think that means Liam Reason "Chairman saw An Taoiseach BD confused and under tremendous pressure. An T will have him briefed of Revenue position, and he, BD, will probably be advised to contact Revenue. He may do so by contacting the Chairman.

"I suggested that we should allow payment of C.A.T. and C.G.T. by installments in" I am not sure whether that's "gift" or "fifth" situations; I think there has been some dispute about it. But in any case, "gift" or "fifth" I think Mr. O'Neill said Mr. O'Cathain confirmed it was "gift". I'll read that again.

"I suggested that we should allow payments of C.A.T. and C.G.T. by installments in gift situations say over 5

years with interest running at 8% from Day 1 along the lines in Britain.

"I pointed out our 55% C.A.T. versus 30% in Britain and our 30 to 60% C.G.T. versus 30% in Britain.

"Also that the allowing of the C.G.T. as a credit against C.A.T. with cost forward at market value was a very valuable relief here, better than the English holdover relief.

"He suggested I do some figures of liability on different assumptions."

Now, the first part of that note deals with an account Mr. Reason was apparently giving Mr. O'Cathain of what he understood to have transpired, at least in part, at your meeting with the Taoiseach. Does that ring any bells for you as to how the meeting proceeded?

A. It looks as though, from this note, that I told Liam Reason that I had had the meeting, and I don't understand the statement that "An Taoiseach will have him briefed of the Revenue position." As I say, I just don't understand that because I don't I don't know how the Taoiseach would brief Ben Dunne of the Revenue position, since I didn't brief the Taoiseach about it. So, I mean, it conveys nothing to me. But it is correct to say that in the end, that Ben Dunne will be advised to contact Revenue. That would be right.

Q. And he may do this by contacting the Chairman, which I think is what you said in evidence to the McCracken

Tribunal?

A. That's right.

Q. Is it possible that when you went to the Taoiseach, you gave him the benefit of the briefing documents you had got, saying, "Look, there is a lot of very valuable information here which I can't fully follow because I'm not an expert, but you may be able to read it"?

A. No. No, no.

Q. I presume that as Mr. Reason obviously wasn't at the meeting, he can only have got this impression of what happened from speaking to you?

A. Yes.

Q. And do I take it that you informed him after the meeting, or maybe the next day or whatever it was, that

A. Yes, oh, I would, because that would be normal procedure.

I would immediately inform the Commissioner who is in charge of it?

Q. And is there any reason to assume that Mr. Reason would have got would have misunderstood anything you told him so as to cause him to give an incorrect impression to Mr. O'Cathain of what had happened?

A. I don't know. As I say, I can't account for that phrase. I don't know where it comes from. But, you see, it's three links down; it's something I said to Mr. Reason, Mr. Reason said to Mr. O'Cathain, in the end something else comes out.

Q. Bearing in mind that this wasn't your specific area of expertise, and having regard to what you said earlier that

you felt the best, I use "tactic", but not using the word pejoratively, to employ when going to a meeting where you don't have an area of expertise, or where the subject is not within your area of expertise, is to go with your hands hanging, is it possible that you would have said to the Taoiseach, "I will arrange to have my staff provide you with the relevant information so that you can brief Mr. Dunne on the Revenue position, in general terms"?

A. No way. Nothing of that sort arose. I think there was there was no suggestion by the Taoiseach that he was going to get involved in any details. So that would not have arisen.

Q. I see. To come back to something you said a moment ago, and I think you also said in evidence to the McCracken Tribunal: As far as you were concerned, the purpose of the meeting was simply to arrange for you to receive a request for a meeting from Mr. Ben Dunne?

A. Yes, as far as I am concerned, that was the whole beginning and end of it.

Q. Just to facilitate a meeting?

A. Just to facilitate a meeting.

Q. When you went to see the Taoiseach, I think you weren't aware, am I right, that Mr. Dunne had already met officials and the Chairman of the Revenue Commissioners before you in relation to this matter?

A. I can't be sure of that. I may well have heard that well, it was in the briefing note, anyway.

Q. I appreciate that, but as you said, you weren't paying too much attention to that?

A. It wasn't an important item in my mind.

Q. I suppose if you were acutely aware of it, and I appreciate the point you are making that you may not have read the briefing note in detail, if you were aware that Mr. Dunne had met Mr. Pairceir and that he and Mr. Fox had met Mr. Pairceir, and indeed that they had had a series of meetings with Mr. Pairceir, is it reasonable to assume that you'd have said to Mr. Haughey, "But sure look, he knows he can meet me any time; hasn't he met Mr. Pairceir before? There is no problem."

A. Well, I wouldn't have referred to Mr. Pairceir. All I would have said was that I have no problem meeting him.

Q. But would you have wondered why it was that Mr. Dunne was asking the Taoiseach to arrange for him to have a meeting with the Chairman of the Revenue Commissioners when he had already had a series of meetings with the Chairman of the Revenue Commissioners?

A. No, that wouldn't surprise me, because I think for someone in Mr. Dunne's position, or the Trustees, if you like, facing a very difficult and complicated legal situation and a potentially very difficult and high tax bill, I think anyone in his position, I imagine, would go around and talk to anybody they could possibly meet, and keep going round and talking to anybody in the hope that somewhere, some new inspiration might arise. I presume that's what it was.

Q. But you have told me already that you had no expertise in these matters; you weren't going to involve yourself either in dealing with Mr. Dunne or Mr. Haughey in the details, because it wasn't your area of expertise.

A. Yes, but

Q. Isn't it strange that you wouldn't have said to the Taoiseach, "Look, I'll do my best, I'll meet him, but I can't do anything for this man; I'm not up to speed on this stuff at all. It's not my indicator of expertise, and he has already met somebody else. He can go any time and meet the Chairman of the Revenue Commissioners or meet the individuals dealing with it."

You never thought to say that to him?

A. To the Taoiseach?

Q. Yeah.

A. I don't know. You see, the Taoiseach may well have known a lot more about these meetings than he told me.

Q. Of course.

A. I don't know.

Q. I appreciate that.

A. I simply dealt with the thing straight down the middle. He asked me to meet Ben Dunne, and I said, "Right, I'll meet him, listen to him."

Q. You now know from information the Tribunal has provided you with that Mr. Dunne had already met Mr. Pairceir on several occasions, and that his introduction to Mr. Pairceir came via Mr. Haughey; you are aware of that?

A. I am now.

Q. Yes, you are now. Of course you weren't then. And knowing that Mr. Dunne had enjoyed considerable access to the Chairman, and knowing that this was the second time within a year that he had asked the Taoiseach to arrange a meeting with the Chairman of the Revenue Commissioners, looking back on it, do you think the request carried some implication that the Revenue should look at Mr. Dunne's affairs with more sympathy because the request came on this second occasion with the authority of the Taoiseach?

A. Well, first of all, at the time, to the best of my recollection, I didn't know that the Taoiseach was personally involved in arranging meetings with Mr. Pairceir. But as for the rest, to arrange a meeting with me seemed a simple enough matter.

Q. Obviously very simple. You were only too willing to accommodate Mr. Dunne, as you would have been willing to accommodate any taxpayer in the circumstances.

A. Yes.

Q. But what I'm asking you to do, with the benefit of hindsight, because you now have additional information you didn't have then, if you knew then, for instance, that Mr. Dunne had seen Mr. Pairceir, that he had seen Mr. Pairceir at Mr. Haughey's request, would you have said to him that he had negotiated with Mr. Pairceir, would you have said to Mr. Haughey, "Sure, we have done all we can, we met Mr. Dunne, we met him at your request already;

why are you asking me a second time?"

A. I'm not quite sure what are you asking me to speculate on something?

Q. Yes.

A. To say to the Taoiseach that surely this was unusual?

Q. Well, to say, "Why am I being asked Ben to do something that"

A. I was only being asked for the first time.

Q. Of course you were.

A. A Chairman, a second Chairman was being asked, yes, that's right.

Q. Looking back on it, do you think that the request was being relayed or conveyed to you with the special authority of the Taoiseach so as to have some impact on you, some more impact on you, some greater impact on you than it would otherwise have?

A. I think, as I said to the McCracken Tribunal, in my discussion with the Taoiseach then, there was no implication, suggestion, pressure, request, anything of that sort from the Taoiseach, to do anything in particular for Mr. Dunne or the Trustees. The thing was solely focused on the question of would I meet, would I meet Mr. Dunne, set up a meeting? That was it.

Q. And you conveyed to your staff that well, conveyed to Mr. Reason, and he conveyed to the Revenue officials dealing with this, that the Taoiseach had requested that this meeting take place?

A. Oh, yes, yes.

Q. And this was the second time, therefore, that the Revenue officials dealing with this matter became aware that the Taoiseach had intervened to request meetings with the Chairman; isn't that right?

A. Well, I don't know that. And I don't know whether the rest of the Revenue staff knew that either, that the Taoiseach had requested the previous meetings. I don't know about that.

Q. To judge from Mr. O'Cathain's notes, certainly he knew, and Mr. Clayton, who were the senior officials dealing with that matter, knew, and I think Mr. Reid may have known.

A. So be it, yeah.

Q. And on this occasion, it's clear that Mr. Reid knew, and Mr. O'Cathain knew, and Mr. Reason knew?

A. Oh, well, there was no secret about it. I mean, after the meeting, when I came back, I told them that I had been requested to meet Ben Dunne. There was nothing to be hidden there.

Q. And would it be wrong, then, to draw any conclusion or any improper conclusion from the fact that twice in the one year, the Chairman of the Revenue Commissioners was being asked by the Taoiseach to meet Mr. Dunne?

A. I don't know that it's a matter for me to draw conclusions. I was simply reporting what happened.

Q. I suppose that's fair enough.

Thank you very much.

CHAIRMAN: Are you going to be long, Mr. O'Neill?

MR. O'NEILL: No, I will be less than five minutes, sir.

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

Q. MR. O'NEILL: Mr. Curran, in your evidence to the McCracken

Tribunal in July of 1997, some eight years ago, you

expressed the view that there was nothing untoward, nothing

irregular in your meeting with Mr. Dunne, and indeed with

Mr. Fox. Mr. Fox accompanied Mr. Dunne. Isn't that right?

A. Yes.

Q. And I assume there is nothing in that intervening period,

and from the documentation that you have seen, to change

your mind in relation to that; there was nothing untoward

or irregular in your meeting with Mr. Dunne?

A. Nothing.

Q. And Mr. Fox?

A. Correct.

Q. And nothing untoward or irregular in that meeting because

it had been set up at the request of the then Taoiseach?

A. No, nothing wrong.

Q. The decision made to or not to appeal the Capital Gains

Tax case before that had been lost before the Appeal

Commissioners, that was a decision made I think at the

request of Mr. Reason; he involved you and the other

Commissioner?

A. Yeah.

Q. And can we take it that the reason not to appeal was not

made because you were trying to do the Revenue were

trying to convey any favours on the Trustees; the decision was made on the basis that the advice the Revenue were receiving was that the case was not going to be won on appeal?

A. That was the basis of the decision, yes.

Q. Thank you, Mr. Curran.

MR. CONNOLLY: Just one matter I want to deal with.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: In 1987 and 1988, inside the Revenue, on the capital taxes side, there were a number of senior Revenue officials who had expertise in the construction the interpretation of trusts and the tax consequences that stemmed from that; isn't that right?

A. Yes.

Q. And that information would have been available to you or any other members of the Commissioners, if you wanted it, in 1987 and 1988?

A. Yes.

Q. Thank you.

CHAIRMAN: Thank you very much indeed for attending,

Mr. Curran, and for your assistance and cooperation.

That concludes, and will we resume at 10.30 in the morning?

MR. COUGHLAN: 10.30, sir.

CHAIRMAN: So be it. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 23RD JUNE 2005.