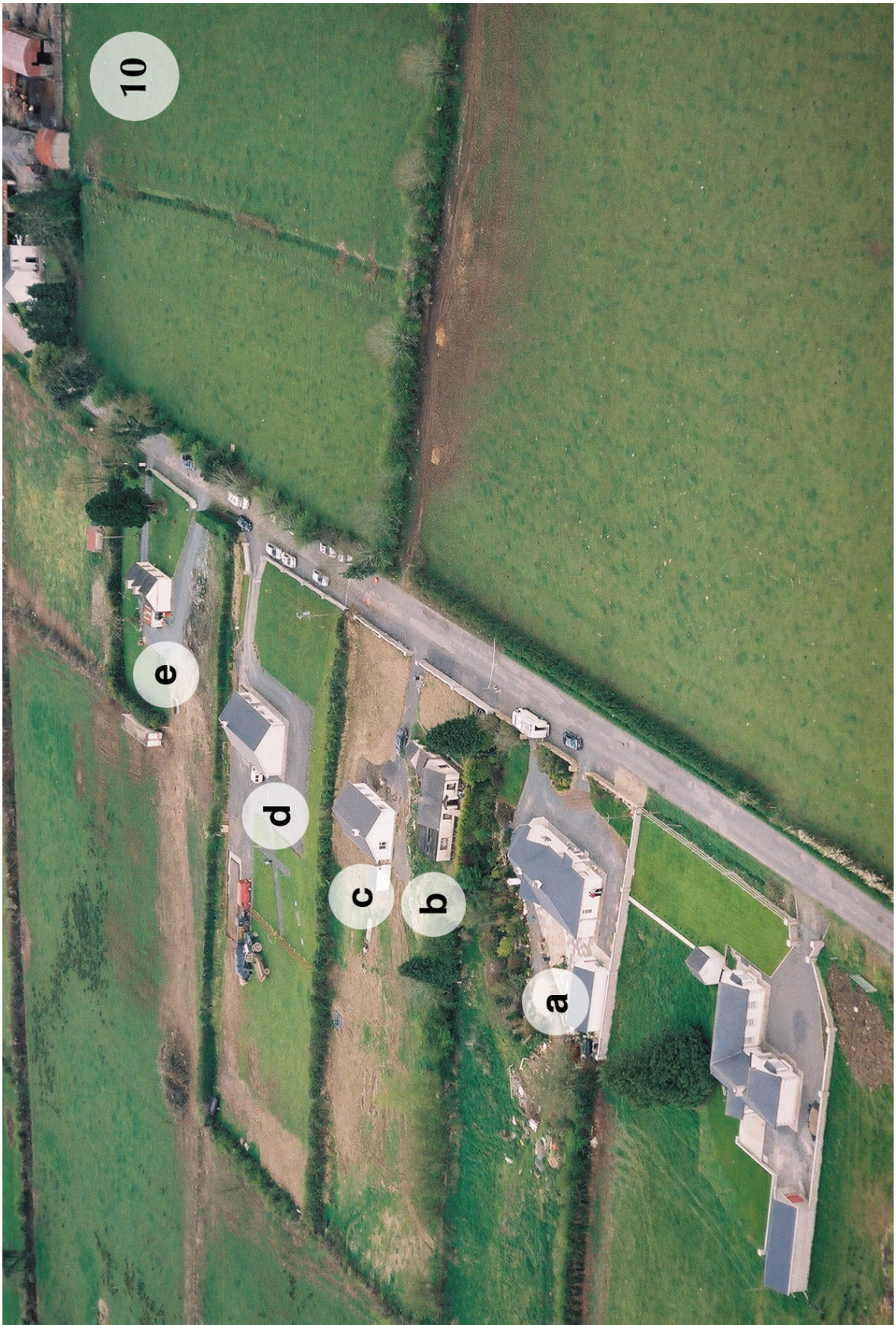




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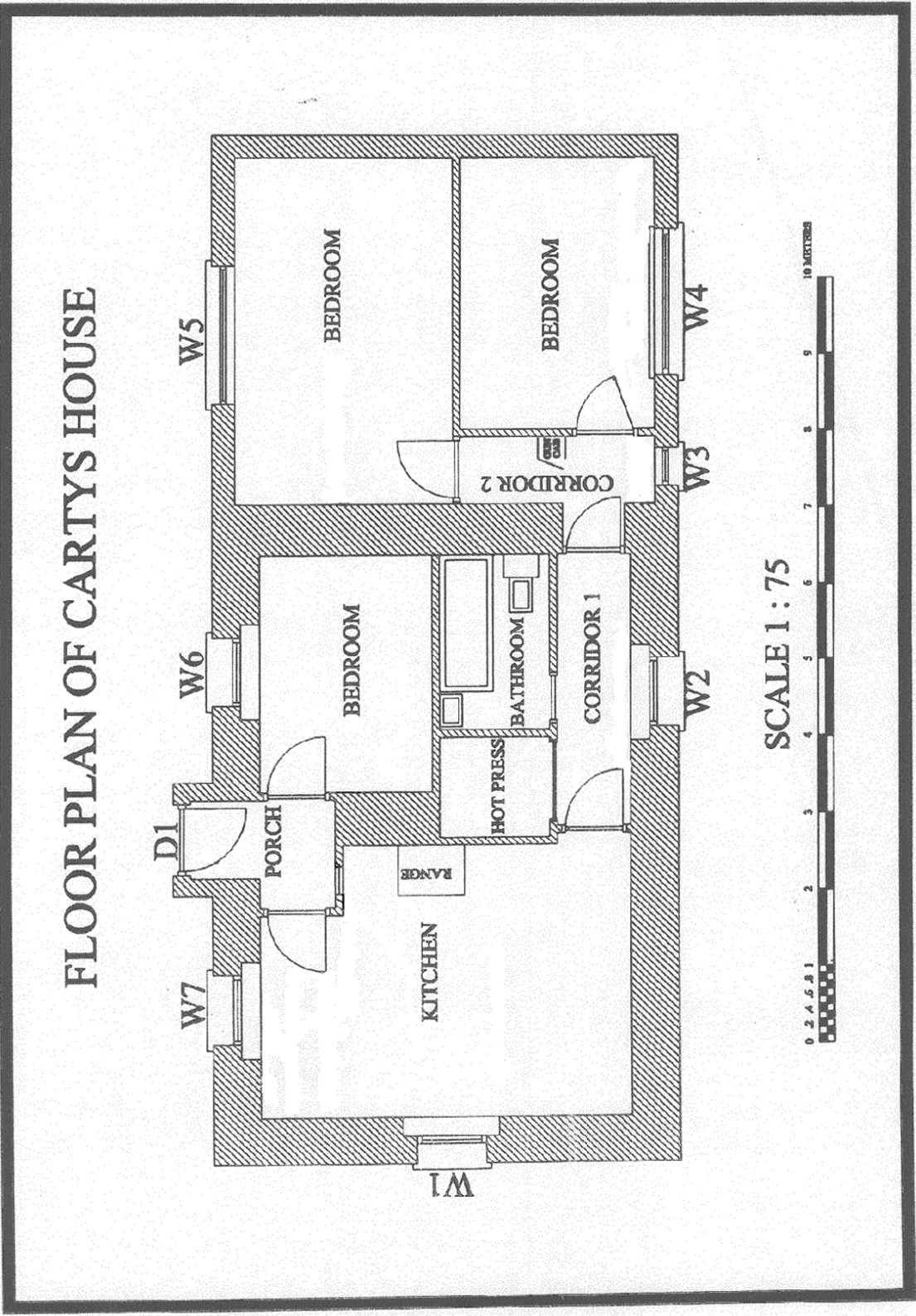






APPENDIX 6

Floor plan of the Carthy house



[Source: Garda Mapping Section]

APPENDIX 7

Rulings and Statements

- A. Ruling, 20th May, 2003
“Five/Seven Live” broadcast
- B. Ruling, 18th July, 2003
Expert testimony and further evidence from Dr. Shanley
- C. Ruling, 7th October, 2003 (modifying Ruling of 18th July, 2003)
Modules 1 and 2
- D. Ruling, 29th October, 2003
Ascertaining and assessing evidence
- E. Ruling, 13th January, 2004
Chairman’s function in questioning and assessing witnesses
- F. Ruling, 16th January, 2004
Fifth bullet
- G. Ruling, 24th March, 2004
RTÉ application
- H. Statement by the Chairman, 27th May, 2004
Proposed review of gun law
- I. Ruling, 9th July, 2004
RTÉ module
- J. Preliminary Ruling, 3rd November, 2004
Improper press publicity
- K. Ruling, 19th November, 2004
Front page article published in the *Sunday Independent* on 31st October, 2004 and stated to be an exclusive story written by Maeve Sheehan
- L. Ruling, 19th November, 2004
The application made by counsel for the Commissioner and the group of junior garda officers relating to the evidence of Ms X

APPENDIX 7.A

Ruling of the Chairman made on 20th May, 2003, re “Five/Seven Live” broadcast

Mr. Rogers, on behalf of ERU officers, in particular the negotiators, Detective Sergeant Jackson and Detective Garda Sullivan, has applied for liberty to examine Chief Superintendent Tansey on an RTÉ radio broadcast, part of the “Five/Seven Live” programme on 20th April, 2000, which purported to be a report on the ongoing events at the Carthy home in Abbeylara at that time. The broadcast has been played to the Tribunal. Mr. Rogers makes three criticisms of it:

1. John Carthy’s name was referred to several times.
2. Details were given as to the extent of garda activities around and about the Carthy home, and including reference to the number of armed gardaí who were in the vicinity at that time.
3. A friend who lives in the district, when interviewed, gave certain intimate personal details about John Carthy. She also assured him that everyone loved him and she encouraged him to come out of his house and, by implication, to surrender.

It was submitted:

- (a) that John Carthy was likely to have heard the broadcast, bearing in mind that he had a large radio in the kitchen where he spent, it seems, most of his time and that in fact, he left his house soon after being urged to do so by his friend:
- (b) that although the Garda Síochána had no legal power to interfere with media coverage of events, (I should add, of course, other than to keep reporters and others away from the immediate scene in the interest of their own safety) they, the gardaí, did have power to urge particular restraint on the part of the media in the interest of saving life and to avoid interference with garda negotiations. Mr. Rogers wishes to investigate what restraint, if any, was sought to be imposed by the Garda Síochána on RTÉ. (I should add that strictly that is a matter for Superintendent Farrelly of the Garda press office, but I accept that it is reasonable to question Chief Superintendent Tansey also in the matter as the senior divisional garda officer at the scene.)
- (c) it is also submitted by Mr. Rogers that RTÉ as the state broadcaster, had a particular obligation to exercise care and restraint in its reporting of the event at Abbeylara, and that in the premises it failed in its obligations in that regard. In response to the latter submission, Mr. David Keane of counsel has applied on behalf of RTÉ for representation at the Tribunal. Mr.

Gageby, senior counsel for the Carthy family, also indicated to the Tribunal that his clients had other complaints about the RTÉ coverage of events at Abbeylara which he proposes to raise when the subject of media coverage is under review. In the light of the foregoing, I make the following rulings:

1. In all the circumstances, it is fair and reasonable that RTÉ be granted representation at the Tribunal by solicitor, senior and junior counsel limited to its coverage of events at Abbeylara and its obligations in that regard.
2. Mr. Rogers is entitled to examine Mr. Tansey on matters arising out of the “Five/Seven Live” radio broadcast on 20th April, 2000.
3. As RTÉ have a right to defend any allegations made against it by Mr. Rogers and/or counsel for any other party, it is proper to allow it time to prepare its defence in that regard and also to have reasonable knowledge in advance as to what particular allegations are being made against it.
4. I am satisfied that the appropriate course which I believe is fair to all, is that the “Five/Seven Live” broadcast and other relevant radio and TV broadcasts should be dealt with as a separate module. Parties who are critical of RTÉ and/or the Garda Síochána as to any broadcast relating to Abbeylara should furnish to the Tribunal solicitor brief details of such complaints for transmission to the solicitors for RTÉ. They in turn should furnish a response together with statements from witnesses they may wish to have called on this issue.
5. It is the Tribunal’s intention that the media module shall be brought on for hearing at an early date. In the meantime, examination of Chief Superintendent Tansey should continue, but excluding media matters. He will be recalled in the course of the media module for further examination in that regard.

APPENDIX 7.B

Ruling of the Chairman made on 18th July, 2003, re expert testimony and further evidence from Dr. Shanley

I am surprised to learn from Mr. Rogers that he does not know the parameters of what is being investigated in the segment of this Inquiry which is presently underway. To clarify any doubt there may be in the matter this segment of investigation on which we are now engaged is an examination of what happened at Abbeylara on 19th and 20th April, 2000; John Carthy's state of mental health and the history relating thereto; how he behaved; what appeared to have caused his behaviour; how the Garda Síochána responded to the situation and dealt with it and whether their response was appropriate in the prevailing circumstances. This aspect of the Inquiry is likely to include reports and testimony of qualified experts by way of commentary on the garda performance in dealing with the situation presented by John Carthy at his home and such reports would also take cognisance of the training relevant officers had received. Such experts may make recommendations as to guide-lines which might be adopted by the Garda Síochána in dealing with any similar situation involving a mentally ill person whose behaviour is motivated by his/her mental condition. This is what the present segment of the Tribunal's work is about.

Expert Testimony

I have already intimated, and I now make a formal ruling, that opinions expressed by experts should not be referred to in the examination of witnesses unless and until they are furnished in reports provided by such experts which have been duly circulated to all relevant parties.

The *modus operandi* on which experts have been briefed to advise the Tribunal and have agreed to do so is that before furnishing final reports they shall consider the transcript of evidence of all relevant witnesses, statements and pertinent documentation. As mentioned already, such final reports will be furnished to the solicitors for the parties concerned. All witnesses and others referred to in such reports, or by inference implicated therein, will be entitled to be heard in respect thereof if they so request. Furthermore, if a party challenges any aspect of such reports they may apply to the Tribunal to have called in evidence any expert or experts as nominated by them to deal with matters contained in or arising out of the report or reports furnished by experts briefed on behalf of the Tribunal or any other party. (This includes the evidence of relevant witnesses such as medical experts) Such an application will be granted on terms that a report from the proposed expert will be furnished to all interested parties; counsel for the Tribunal will examine the proposed witness who may be cross-examined on behalf of other interested parties

after which counsel for the proposing party will examine the witness. The foregoing arrangement as to the introduction of witnesses who any party might wish to call was agreed at the commencement of proceedings. I repeat it now in the specific context of expert evidence to remove any possibility of doubt in the matter.

Mr. Rogers has sought not merely the final reports of the Tribunal's expert witnesses but also interim notes and preliminary documentation made by them prior to the furnishing of final reports. For the reasons advanced by Mr. McGrath in his submission I have no doubt that it would be wrong and patently unfair to experts to require them to provide preliminary documentation which they may have furnished before having the opportunity of considering all relevant evidence. The basis on which they have agreed to accept briefs on behalf of the Tribunal is patently fair and reasonable. I refuse Mr. Roger's application that experts shall be obliged to furnish any documentation other than their final reports and, where appropriate, documentation referred to therein.

In course of this Inquiry, like most others, new relevant evidence emerges from time to time not previously flagged in statements furnished by proposed witnesses as, for example, that Detective Sergeant Russell had trained as a psychiatric nurse including service in a mental hospital for several years before entering the Garda Síochána. It is proper that such evidence should be investigated and taken into account in the same way as other information of which notice had been given. However, the Tribunal recognises that new unflagged evidence or information may create a difficulty in that witnesses called prior to the emergence of new evidence will not have had an opportunity to comment on it and may wish to do so. I understand that some time ago it was intimated to Mr. McGuinness by counsel for the Tribunal that it was proposed that at the conclusion of evidence in each segment of Inquiry witnesses would be asked whether they wished to give further testimony and, if so, on what matters. The Tribunal would then rule upon each such request and, if granted, the witness would be called to give further testimony on the matters concerned. I understand that this proposal may not yet have been raised with all other parties. It seems to me that it is reasonable and fair to all concerned and I propose to adopt it. The criteria in deciding whether a witness may be recalled, when and on what matters will relate, *inter alia*, to whether they arise out of evidence or reports which were not known to the witness when giving evidence originally or relate to matters which were not put to him/her originally.

Dr. Shanley

The part played by Dr. David Shanley, a leading specialist in psychiatry, in the treatment of John Carthy's mental condition has loomed large in this investigation – not least because it has emerged in evidence that for some weeks prior to his death Mr. Carthy had been concerned about his mental health; so concerned that he had asked his sister, Marie, to contact Dr. Shanley and arrange an appointment to see him at St. Patrick's Hospital in Dublin. She complied with that request and the psychiatrist arranged to see Mr. Carthy on 20th April which in the event was the day he was killed. This is one of the points on which I would welcome further evidence from Dr. Shanley. Is John Carthy's apparent concern in March/April before his death about his

mental state and need for treatment by a psychiatrist in whom he appears to have had confidence and trust indicate that if Dr. Shanley had been able to make contact with him at Abbeylara, or by phone there, he would have had a reasonably good prospect of persuading his patient to co-operate with him and to avail of the immediate in-patient psychiatric treatment which he, Dr. Shanley, was ready and willing to provide for him at St. Patrick's hospital. I assume that if Dr. Shanley had been successful in persuading John Carthy to leave his house unarmed for the purpose of availing of the doctor's offer of in-patient treatment in hospital the police would have collaborated fully and would have arranged for the doctor and his patient to be conveyed immediately to St. Patrick's for treatment there as promised, and that any question of action by the police or the Director of Public Prosecutions would be postponed at least until Mr. Carthy's treatment had been completed and a report on the outcome and the events at Abbeylara had been received from Dr. Shanley. It appears that without his gun John Carthy presented no risk to anyone. This is a matter on which the opinion of the Garda Síochána and of the DPP also should be obtained.

Other matters on which I believe it would be helpful to obtain the opinion of Dr. Shanley include the following:

- i. The apparent gravity of Mr. Carthy's mental state and his perception of it on 19th/20th April in the light of his actual behaviour in and about his house including shooting at members of the gardaí and at a police car; the episode about six weeks earlier in Galway and his own recognition that he required mental treatment from Dr. Shanley.
- ii. The likely effect of his apparent acute antagonism towards the gardaí, local and from Dublin. Did Mr. Carthy's failure to respond to Detective Sergeant Jackson over a period of 22 hours indicate a likelihood that he would not collaborate with the gardaí or any of them?
- iii. In all the circumstances, is it likely that a person who John Carthy knew, had confidence in, trusted and respected would have the best prospect of meaningful dialogue with him?
- iv. Having regard to John Carthy's mental state during the siege:
 - (a) Should he have been asked as a first step while still seriously agitated to surrender his gun? Would that be conducive to calming him?
 - (b) Should the emphasis from the beginning have been to calm him?
 - (c) How important was it to ascertain from him, or through others what had motivated his irrational behaviour with the gun in his house?
 - (d) If his motivation had been discovered is it likely to have been helpful to accommodate his fears in some way if that were feasible? For example, if it emerged that the cause of his distress and violent reaction was the imminent demolition of the old family home which had long association with his late father and other ancestors. Would the arrangement of a postponement of

demolition by the local authority until after John Carthy had had hospital treatment and was in a position to consult his solicitor in the matter, have been a possible advantage?

- (e) What approach by the negotiator was desirable in an effort to establish rapport with John Carthy in the light of his mental situation?
- (f) To that end, and bearing in mind his vehement antagonism towards the police, was it desirable to meet promptly as a gesture of goodwill any reasonable, viable request which he might make, such as the provision of cigarettes and the production of a solicitor?
- (g) Is it likely that failure to meet such requests would aggravate further his antagonism towards the police and militate against the establishment by the negotiator of rapport with him?
- (h) Assuming that John Carthy, a heavy smoker, had run out of cigarettes when he had asked the police to supply some to him, to what extent would his existing hyper-mental state have been aggravated by nicotine withdrawal over a 22-hour period. From the medical point of view was it wise to allow that situation to happen? Might it have been a motivating factor in causing him to leave the house when he did and head towards the village of Abbeylara where he normally purchased cigarettes?
- (i) As it was obvious to all that John Carthy was a mentally sick man who was then displaying manifestations thereof, would it have been desirable to seek medical advice about compliance with his request for cigarettes?
- (j) Having regard to all of the facts relating to John Carthy and his irrational behaviour on 19th and 20th April, 2000 is there anything that might establish or suggest that his motivation for leaving home with his gun and heading towards Abbeylara was to have himself shot and killed by the police – a phenomenon which has occurred in the United States of America where it is known as “suicide by cop”?

It has been suggested that Dr. Shanley should be recalled as a witness before Sergeant Jackson testifies. I do not accept the validity of that proposition for this reason. It appears that Sergeant Jackson never made contact with Dr. Shanley directly or by telephone, prior to the shooting of Mr. Carthy. Accordingly, his conduct was unaffected by any information, opinion or advice he might have received from the doctor if he had made contact with him. However, I have intimated to the parties that there are matters which I wish to have raised with Dr. Shanley, details of which are referred to herein. I recognise that Sergeant Jackson as designated negotiator, had a pivotal role on the garda side at Abbeylara and I am concerned that he should have no doubt whatever as to the fairness of the Tribunal's procedures and for that reason I am willing to have a concession made. A further report will be obtained

from Dr. Shanley and circulated to the parties. He will be recalled to give further evidence prior to Sergeant Jackson.

As to the scene commanders and other senior officers referred to by Mr. Rogers who he submits also should be recalled prior to Sergeant Jackson's evidence I refuse that application. Superintendents Shelly and Byrne, the scene commanders, were questioned at length about the siting of the negotiating point. Their evidence has been referred to by Mr. MacGrath in his submission. Both specifically stated that they approved of Sergeant Jackson's proposal as to the position of the negotiating point even after shots had been fired at the megaphone and cement block which had been placed on the wall in that area. It has been noted also by Mr. MacGrath in his submission that Superintendent Byrne was questioned specifically about whether Dr. Shanley should have been contacted as soon as his identity had been ascertained. Needless to add, if relevant evidence emerges which was not known when the foregoing senior officers gave evidence, application may be made for their recall to deal with any such matter on which they may wish to comment.

It is intended that the work of the Tribunal will continue until the end of July. There are a number of garda and civilian witnesses whose evidence is likely to be short and uncontroversial. An itinerary will be furnished presently to the solicitors for the parties so that witnesses will be available when required. Mr. Tom Walsh and Mr. Martin Shelly also will be called to complete their evidence. Dr. Shanley, Sergeant Jackson and other ERU members will give evidence in that order when the Tribunal hearings resume in September.

APPENDIX 7.C

Ruling of the Chairman made on 7th October, 2003, re Modules 1 and 2

Before continuing with today's proceedings, I want to refer to the ruling which I made on 18th July last, relating to evidence to be adduced at the Tribunal; notably in this segment of it. You will recall that Modules one and two relate to, first, John Carthy, his family background and education, his health, social and work history and his relationship with the Garda Síochána. Secondly, the events at and about the Carthy home at Abbeylara on 19th and 20th April, 2000, including the background to such events and the response of the Garda Síochána thereto. The latter aspect includes factual information regarding the training received by relevant police officers, as outlined in their statements, in dealing with situations such as that presented by John Carthy at the time.

When making my ruling on 18th July, I had in mind that in the interest of saving significant time and costs, it would be desirable to expand Modules one and two to include expert testimony on the issue of appropriate police training in dealing with such events and expert evidence on how a similar situation might be dealt with in other broadly similar jurisdictions.

The ruling was made on the premise that all relevant reports from experts to be introduced by the Tribunal would be circulated to the parties concerned in good time before Detective Sergeant, now Inspector, Michael Jackson and other ERU members were called to give evidence.

In the event that has not been possible, because experts have informed the Tribunal that they would not be in a position to furnish final reports until they had an opportunity of studying the transcript of Sergeant Jackson's evidence and that of other relevant officers who have not yet testified.

In these circumstances, it is necessary to revert to the Tribunal's original intention as to the content of Modules one and two. Accordingly, Sergeant Jackson and other police officers, in giving evidence about training, will specify at this stage only factual information about relevant training received as already outlined by them in statements furnished to the Tribunal. Cross-examination on such training and an analysis of its adequacy will be postponed to a later stage within Modules three and four, which will be separately considered. Garda witnesses who have already given evidence may be recalled if they wish to be heard on the issue of training.

Accordingly, the order made on 18th July is modified in the light of the foregoing ruling.

APPENDIX 7.D

Ruling of the Chairman made on 29th October, 2003 on ascertaining and assessing evidence

Before we commence the business of today, there is a matter which I want to deal with. Mr. Rogers made an allegation yesterday which has caused me very great concern. He has intimated that his clients are concerned that they are not getting a fair hearing at this Tribunal and that I appear to be in some way prejudiced against them.

I want to assure all that these fears are totally groundless. There are two matters about which I am giving you now a preview of my report because they will be, I can assure you, contained in it in due course. The first point is this: I have approached my task in this Tribunal, in investigating the death of John Carthy, from the premise that the crisis presented by him at his home in Abbeylara was unique in Irish police experience; was potentially extremely difficult to contend with and was a very far cry from the crisis situations for which the ERU and the Garda Síochána are trained to deal with.

I fully appreciate the gravity and unique difficulty of the problem which faced the scene commanders and the ERU, who were the officers primarily concerned in contending with it.

Secondly, the pivotal police witnesses at this Tribunal have been Detective Sergeant Jackson, as he then was, the negotiator; and Detective Sergeant Russell, the strategic tactician, both of the ERU. They have given evidence at great length and have been subjected to in-depth searching examinations by counsel and by me. Two points emerge beyond doubt in my mind arising out of that evidence. Both of these officers, I am absolutely satisfied, did their best to bring the situation at Abbeylara to a peaceful end without loss of life or injury, and worked with, I believe, great devotion in attempting so to do.

Second, both emerge as honourable, courageous police officers who have endeavoured to give a fair, balanced account of what they did at Abbeylara, which is, if I may say so, an object lesson for others to follow. In due course, I will have to assess their evidence and that of other officers and decide whether the situation that was presented by Mr. Carthy at Abbeylara was correctly handled and/or what should or should not have been done in that regard. I have made no decision on such matters and I await further evidence, including expert police testimony in that regard.

In considering the evidence of police officers who were eyewitnesses to the fatal shooting of John Carthy, it will be appreciated by all, I am quite sure, that I must live

in the real world and appreciate the possibility that some such officers might colour their testimony in a way designed to justify or support the shooting of John Carthy. This entails a careful dissection of their evidence to test its credibility. If I did not take that course, I would be failing in my duty in this Tribunal. In so doing, it ought not to be regarded in any sense as an indicator of prejudice, and I hope I have now made that point abundantly clear to all concerned.

APPENDIX 7.E

Ruling of the Chairman made on 13th January, 2004 on his function in questioning and assessing witnesses

Before we continue the work of the Tribunal I wish to respond to submissions made by Mr. Murphy and Mr. McGuinness on 19th December, the final day of our Michaelmas hearings. Mr. Murphy's address arose out of submissions made by Mr. Rogers, his counsel, on the previous day and my response to them. Mr. McGuinness's submission relates in the main to a criticism of my response to Mr. Murphy's submission.

I have considered the transcripts of evidence in their entirety from the commencement of Professor Harbison's testimony and I have several observations in that regard. However, before introducing them, there is one fundamental matter which it is evident needs to be addressed once more so that it is fully understood by the parties and by their legal advisors. As stated many times previously, the Tribunal is not a court of law but, in accordance with the legislative instruments from which it derives its authority, it is a Tribunal of Inquiry into the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara on 20th April, 2000 and related matters. I have been appointed to conduct the Inquiry as Sole Member of the Tribunal and to report to Dáil and Seanad Éireann as soon as reasonably practicable. I have been provided with the services of a solicitor and team of counsel to assist me in my work. Their contribution in that regard has been of enormous value to me and, I believe, to all parties concerned in the investigation. To facilitate the conduct of the Tribunal's work, rules of procedure have been devised by me under which, *inter alia*, a broad framework has been laid down regarding the calling and examination of witnesses. In short, all witnesses are examined in the first instance by counsel for the Tribunal and are subsequently examined on behalf of other interested parties, including the party who introduced the particular witness. There is nothing in the Tribunal's procedures or otherwise which preclude me from questioning witnesses as they give their testimony on any matter which I perceive requires clarification or elaboration or any matter which seems to me to be pertinent to the particular witness in the context of the module under investigation. It has been, and will continue to be, my practice to take that course. I believe that in the interest of conducting an efficient inquiry and the establishment of all necessary facts it is proper so to do. It is also time saving. In some types of court trial it may be a useful approach by the trial judge to postpone any intervention he might wish to make until the witness has given his evidence in full, including examination by interested parties and re-examination. In my opinion that is not the best course for a Tribunal chairman and I prefer the procedure to which I have referred for the reasons already stated. A number of witnesses in this Tribunal have each given evidence over a period of several days and some such testimony, particularly of a professional or technical

nature, may not be immediately understandable in full and may require elaboration to establish clarity. Furthermore, in connection with a particular strand of evidence there may be an additional matter relating thereto which I perceive should be investigated with the witness. It is far easier for the examiner and the examinee to deal with such matters as they arise, thus enabling the evidence to retain an appropriate structure. If the examiner is obliged to pile up his queries until the end of the witness's evidence and then go back over testimony given perhaps several days earlier to elucidate further information, the end result is likely to confuse the witness and to give rise to an unnecessary repetition of large parts of his or her evidence again – thus wasting time and devaluing the evidence of the witness. The difficulty of time loss and confusion may be aggravated if it transpires that one or more counsel wish to re-examine the witness, as they are entitled to do, arising out of answers given by him/her to the Chairman. All of these problems are likely to be avoided by the structure I have laid down and which I intend to pursue.

Turning now to my observations on the transcripts:

- (1) My questioning of Professor Harbison was designed to help me to follow and to understand his evidence as he gave it. Regarding the calf wound sustained by Mr. Carthy; the witness was unable to remember when and by whom he was informed that only four shots were fired at the deceased, all from behind. He does not seem to be aware that in addition to ERU officers, there were numerous local armed gardaí in the vicinity of Mr. Carthy as he walked towards Abbeylara, including Detective Sergeant Foley and Garda Boland who were on the road near the command vehicle. Professor Harbison regarded the calf wound as indicating either an independent fifth shot or, alternatively, a re-entry emanating from wound no. 3 in the deceased's left calf, although he stated that that would postulate a high-stepping straight leg action by Mr. Carthy. The witness preferred the latter hypothesis but accepted the former as another possibility.

Previous evidence had established that Detective Sergeant Quinn, a ballistics expert of long experience, had been instructed soon after the event to carry out a ballistics examination. In that regard he examined all the ERU guns which had been at the scene and checked on the issue to and return of ammunition by each such officer. He found that two shots had been fired from two guns, making four shots in all. He found that no other shots were fired from ERU weapons. He had attended the post-mortem of which he had many years previous experience. He did not examine any of the guns which local gardaí had at the scene; neither did he check on ammunition issued to and/or returned by such officers to their stations in accordance with Garda regulations in that regard, or held in their possession. No records have been furnished regarding ammunition which had been held in the possession of Sergeant Foley, Garda Boland or Detective Garda Quinn (among others) at the scene.

Sergeant Foley and Garda Boland were in close proximity to Mr. Carthy as he walked towards Abbeylara carrying his shotgun in what was perceived

by them to be a threatening manner ready for immediate firing. Both officers stated in evidence that they feared for their lives or the lives of others in the vicinity. Sergeant Foley reiterated what he had already specified in his statement to the Culligan Inquiry that as Mr. Carthy advanced towards him with his gun in a dangerous, threatening way he said to his colleague, Boland, *"we are going to have to do it"*. He referred to ERU officers calling on John Carthy to leave down his gun. They followed him up the road without firing and he thought that he and his colleague would have to shoot Mr. Carthy. He prepared to shoot and a split second later ERU officers fired at the deceased. It appeared that he believed that he or Garda Boland would have to fire at Mr. Carthy, but they did not do so as ERU officers then opened fire and fatally wounded the deceased, thus removing the perceived danger presented by him. Other local armed gardaí at the scene did not give evidence on whether or not they used their weapons or in corroboration of Sergeant Foley and Garda Boland.

The foregoing is in brief the extent of the information available to the Tribunal regarding the use or otherwise of garda guns at the scene when Mr. Rogers made his intervention on 18th December.

(2) Mr. Rogers's intervention and submissions made by him in support thereof:

Immediately before the intervention Dr. Harbison had reiterated in evidence his preferred opinion as to the calf wound (i.e. that it was more likely to be a re-entry from wound No. 3) then adding *"because that keeps it within the four bullets"*. I then responded as follows: *"Don't worry about the number of bullets. It is possible that there could have been a fifth bullet fired by a non-ERU officer."* At that point Mr. Rogers intervened. It was explained to him by me that I was asking the witness *"to postulate for the moment that there might have been a fifth shot"*. In the light of the pathologist's own evidence at that time and the information, or lack of it, available to the Tribunal to which I have referred, I am satisfied that it was obviously fair and reasonable to invite the witness to elaborate on his alternative opinion (though not his preferred one) already expressed that the calf wound may have been caused by a fifth bullet. Mr. Rogers then went on to accuse me of leading evidence as to a possible fifth shot and contended that it was *"entirely outrageous"* for me to say *"It may be that somebody fired a shot"* (meaning a fifth shot). Reference was then made to the evidence presumably of Sergeant Foley and Garda Boland in which both denied having fired any shot at the scene. Other local armed gardaí in the vicinity at the relevant time did not give evidence on that issue and, as previously stated, none of their weapons were ballistically examined, nor was the ammunition issued to them checked except regarding two officers who had been stationed at Burke's house. I commented to Mr. Rogers: *"I have to discover whether they are [telling the truth] or not."* He responded by alleging that that also was an *"outrageous suggestion"*. In the light of the pathologist's opinions;

evidence and information before the Tribunal at that time and the absence of relevant ballistic or other evidence in support, it was wrong to imply that the Tribunal must accept the veracity of Sergeant Foley's evidence per se and was not entitled to query its veracity and/or to investigate the conduct of the local armed officers who might possibly have been responsible for the "fifth bullet" if there was one and that Dr. Harbison cannot be asked to postulate the possibility of a fifth bullet and to expand on evidence already given by him in that regard. On reflection, I hope that allegations against me of "*entirely outrageous comments*" were made in the heat of the moment and that perhaps I may have been wrong in interpreting them as attempted bullying by counsel.

The remaining submission made by Mr. Rogers I construed as an attempt by him to advise me on how to conduct the Tribunal in the matter of witness evidence. His contention appears to have been that I am bound by procedure to leave it entirely to counsel for the Tribunal to ask all questions on my behalf and that I ought not to make any intervention of my own. At the commencement of my observations in this document I have specified the role I have played and will continue to play in the conduct of the Tribunal which I believe is appropriate and entirely justified. I regard Mr. Rogers's submission and advice as ill-founded and having no reasonable justification. However, it occurs to me that it also may have been an observation made by him in the heat of the moment or he may not have been fully cognisant of all relevant facts as outlined herein.

As to difficulties which have emerged from time to time between Mr. Rogers and I; it occurs to me on reflection that they may arise out of misunderstandings which he or I may have as to the attitude of the other. That situation sometimes arises in litigation. It needs to be recognised by those concerned who should make real efforts to avoid repetition. For my part, I am happy to make that effort. No comments of mine were ever intended to be of a personal nature. I have not now and never had any personal animosity towards Mr. Rogers whom I have known for many years since my days at the Bar. I probably was less patient with him on occasions than ought to have been the case. I do sometimes succumb to impatience as I have already conceded to Mr. McGuinness.

- (3) Mr. Murphy's submission on behalf of certain named gardaí for whom he acts as solicitor and Mr. Rogers and other counsel act as barristers.

I have already responded to Mr. Murphy on 19th December. I have elaborated herein on the submissions made by Mr. Rogers and why I regarded them as being unjustifiable. I don't think that it would be helpful to go over the ground again. However, there are two points on which it is proper that I should comment.

First, I am very disturbed, though I readily understand, the concern which has been expressed to Mr. Murphy by his clients. It is, of course, difficult for lay people, even for some lawyers, to understand fully the implications of perceived technical difficulties raised by counsel with a Tribunal Chairman. Some such submissions may be well founded; some, though held not to be well founded, may be properly and justifiably brought by counsel; others may not only be unfounded but have no sustainable basis and amount to an unwarranted interference in the working of the Tribunal and the source of unnecessary trouble and delay. I regarded the submissions made by Mr. Rogers on 18th December as being all in the latter category and were so treated by me for the reasons I have already explained. However, I am very concerned to make absolutely clear that my response to Mr. Rogers does not imply any criticism whatever of his clients or any of them. I recognise that it is of fundamental importance that they, and all others concerned with the final outcome of this Tribunal, shall receive from me a careful and entirely impartial response. All may rest assured that that is what they are getting and will continue to receive.

Secondly, I have already referred to the fact that the allegation made by Mr. Rogers that particular comments of mine on 18th December were “*entirely outrageous*” may have been made by him in the heat of the moment. If that is so, I was wrong in interpreting them as attempted bullying.

Thirdly, as to the advice given to me by Mr. Rogers that I should leave it to counsel for the Tribunal to examine witnesses and that I ought not to make any intervention in that regard I have addressed that point herein. On reflection, I have stated already that perhaps that submission also was not intended by him to be offensive and that it may have been made in the heat of the moment. As already stated, I am willing to construe it in that way.

In summary, I recognise that I may have been unfair in concluding that the conduct of Mr. Rogers appeared to have amounted to attempted bullying tactics for whatever motive and that his behaviour is out of kilter with other counsel appearing at this Tribunal. If I was wrong in harbouring and expressing such thoughts then I regret having done so. As already stated, I hope that for the remainder of the Tribunal there will be a better understanding between Mr. Rogers and I. Both of us should exercise vigilance in that regard and for my part I shall do so.

Since preparing this statement I received on Saturday evening, 10th inst., Mr. Murphy’s letter to Mr. Nolan of that date and another letter has been received by him on 12th January. Much of what they contain is already dealt with herein. Any remaining matters will be responded to in correspondence.

The last matter on which I wish to reply is the submission made by Mr. McGuinness on 19th December which relates in the main to my response to Mr. Murphy that morning.

I don't think that it is helpful to go over old ground again. It seems to me that his concerns are covered already in this statement. I hope that he is satisfied I have made a generous response in all the circumstances in the interest of restoring harmony in the affairs of the Tribunal.

APENDIX 7.F

Ruling of the Chairman made on 16th January, 2004 regarding a ‘fifth bullet’

There is a ruling which I believe it is proper to make at this time in the light of evidence heard by the Tribunal on Wednesday last, 14th January. I have already made clear in my statement on 13th January that on 18th December when questioning Professor Harbison I had not rejected the truth of Detective Sergeant Foley’s evidence that he had not shot the late John Carthy and had no responsibility for the possible “fifth bullet”. In fact, as indicated in my statement I had reached no conclusion on 18th December on the veracity of Sergeant Foley’s assertion, but that, in the absence of corroborative evidence, it was necessary to investigate it and also the conduct of other local armed officers who possibly could have fired the perceived “fifth bullet”. The Tribunal’s state of knowledge on 18th December derived from the evidence of Professor Harbison and reports furnished by Professor Milroy, a distinguished British pathologist, in which both had postulated, *inter alia*, the possibility that Mr. Carthy’s calf wound may have been caused by a “fifth bullet”. That was the issue I had embarked on pursuing with Dr. Harbison in evidence when the first intervention of counsel occurred that day. I was not seeking to identify the shooter, if there was one, but to probe the strength of the pathologists’ contention that the calf wound might have been caused by a fifth bullet. I don’t think that there can be any doubt that it was proper to pursue that line of inquiry.

On 13th January Professor Milroy furnished a supplementary report to the Tribunal based upon an examination of the late Mr. Carthy’s clothing, notably his jeans, which the witness had carried out for the first time a few days previously. He gave evidence that in the light of his examination of the clothing he was now satisfied that there was no evidence that a fifth bullet had struck Mr. Carthy’s right calf either directly or by way of ricochet from the road surface. His analysis of the relevant pathology was in my opinion cogent and entirely supportive of his revised opinion that the calf damage was in fact caused by wound No. 2 in the scrotum area and that particular bullet, having struck and damaged the pelvic bone, was thereby deflected downwards by about 90 degrees where it entered and exited the right calf (wound No. 9). That explanation also ruled out the premise that Mr. Carthy would have to have been walking in a straight-legged goose-step fashion and in fact it was consistent with a normal gait. Professor Milroy’s revised opinion was put to Professor Harbison in evidence and he also accepted that the calf wound emanated from wound No. 2 or perhaps wound No. 3 and had no independent existence. I am satisfied that the evidence of both pathologists on 15th January, particularly that of Professor Milroy, is conclusive in ruling out the possibility previously expressed by them that there may have been an independent fifth bullet which caused the calf injury directly or indirectly by way of ricochet. It is appropriate, in the interest of the officers

concerned, having heard all relevant evidence, that I should now formally make that finding. Accordingly, it transpires at this stage that there is no evidence that Sergeant Foley, his colleague Garda Boland or any of the armed local officers, in the vicinity of the command vehicle or elsewhere in that area, shot and wounded Mr. Carthy in his right calf. It is unfortunate that the foregoing pathology evidence derived from the deceased's clothing and the change of professional opinion thus brought about was unknown to anyone on 18th December. If counsel and I had been aware of it then the difficulties which emerged that day would never have arisen. I have no doubt that in the light of the revised pathology evidence, first intimated in Professor Milroy's statement of 13th January, it is right that Sergeant Foley, Garda Boland and other local armed officers should have the benefit of a Tribunal finding as to the purported "fifth bullet" now rather than at a later date. I am happy to take that course. The possibility of Mr. Carthy having been wounded by a fifth bullet is no longer an issue in the Tribunal.

APPENDIX 7.G

Ruling of the Chairman made on 24th March, 2004, re RTÉ application

An application to the Tribunal has been made by Mr. Hanratty S.C., on behalf of RTÉ regarding its response to the Abbeylara crisis which led to the death of John Carthy on the evening of 20th April, 2000 at about 6:15 p.m. and in particular relating to the content of a broadcast on that issue during the course of the opening part of its “Five/Seven Live” news and current affairs programme which commenced at 5:00 p.m. that evening on RTÉ 1, the presenter being Mr. Myles Dungan.

The following facts are not in dispute:

1. Mr. Dungan identified Mr. Carthy as being the man who was under siege by the police at his home.
2. Mr. Niall O’Flynn, a reporter who was at the scene on behalf of RTÉ, described the situation there in some detail, including the presence of the armed ERU unit and other local armed gardaí.
3. Mr. O’Flynn had located and interviewed Fr. Fitzpatrick, the parish priest of Abbeylara, and two friends of John Carthy: a neighbour, Mr. Michael Heaney and Mrs. Mary McDowell.
4. Mr. Heaney and Mrs. McDowell were interviewed by way of vox pop. Each described their impressions of the deceased and their association with him over the years. Each was asked if they could talk to John Carthy now had they a message for him? Both responded and, in effect, urged him to surrender to the gardaí. Mrs. McDowell referred to certain intimate personal details in the life of the deceased, including the recent break-up of a relationship with a girlfriend and the alleged reasons why that had happened. The latter topic had not been raised by the garda negotiator, though known by him, as he had been advised by the family that it would be upsetting for Mr. Carthy to do so, and he had been asked by them not to introduce that subject.
5. Detective Sergeant Jackson gave evidence that at approximately 5:00 p.m. he spoke again to John Carthy by loudhailer. He told him that his sister Marie was very anxious to speak to him. He also mentioned Dr. Shanley in the same vein. Mr. Carthy’s response was to point his gun and cause Sergeant Jackson to duck down behind the boundary wall whereupon he shot at a loose concrete block which had been placed on the top of the wall nearby and knocked it down. His level of agitation then increased

between 5:10 p.m. and 5:30 p.m. approximately. It was more severe than it had been earlier in the day. There was ongoing agitation and noise of damage to property coming from the house during that period.

6. John Carthy had a substantial portable radio in his kitchen which was often switched on during the siege – sometimes for the purpose of drowning Sergeant Jackson’s voice in course of his attempted negotiation by megaphone.
7. Most of the radio sound comprised music and it is likely that it was, in the main, tuned to Shannonside Radio, a local station, or some other station where music predominates.
8. The only evidence that the radio was ever tuned to RTÉ 1 relates to the news bulletin from that station at 1:00 p.m. on 20th April in course of which reference was made to the Abbeylara siege but without mentioning John Carthy by name or furnishing any personal details about him. Detective Garda Shane Nolan who was on the roadway at the boundary between the Carthy and Farrell properties at that time gave evidence identifying the broadcast. There is no evidence that anyone identified the “Five/Seven Live” programme from Mr. Carthy’s radio that evening.
9. A photograph taken in the Carthy kitchen by a garda investigator soon after the death of John Carthy includes a good shot of the radio in question. It has been examined by two experts, Mr. James Goulding, the technical services controller with Sony Ireland, and Mr. Kelly, an RTÉ engineer. Both are satisfied that the station indicator shows that the radio was not tuned within the ambit of RTÉ 1 either on the FM or medium wave bands, but was within the ambit of Shannonside local radio. However, the indicator could have been reset by John Carthy after the relevant part of the “Five/Seven Live” broadcast which ended at about 5:15 p.m.
10. The Garda Síochána do not have authority in law to prohibit the media from publishing information about criminal activity. However, in appropriate circumstances they may in the interest of saving life and in the common good request the media not to publish the identity of an armed person who is under siege or any personal information regarding that individual which might inhibit garda negotiators in dealing with him. It is alleged that such a request was made to members of the media who gathered at Abbeylara during the siege, including RTÉ personnel.
11. John Carthy armed with his shotgun, left the house at 5:45 p.m. The gun was broken open but at or about the time when he reached his gateway, he closed the gun. He walked past three ERU officers who were on the road nearby, opened his gun again and discarded one cartridge. The other cartridge remained and he closed the gun once more. He walked towards Abbeylara holding the gun in what was perceived by local armed officers (on the road a short distance ahead of him) to be a threatening way which

put them in fear of their lives. The ERU officers similarly interpreted his conduct. Two of them fired at him. He was shot twice in the legs by one and twice in the back by the other, the latter causing his death.

It has been submitted on behalf of RTÉ that, in the light of the foregoing, the probability is that John Carthy did not hear the “Five/Seven Live” broadcast on RTÉ 1 on the evening of 20th April and there is insufficient evidence to establish that he may have done so. Accordingly, whatever the content of that broadcast, there is no sustainable evidence that it had any bearing on John Carthy or on his subsequent conduct in leaving his house, armed as described, and walking towards Abbeylara.

It is further submitted that to direct the calling of all relevant witnesses for the purpose of examination on behalf of RTÉ and perhaps on behalf of other parties also, is to embark on a lengthy, costly exercise with very little, if any, prospect of establishing a probability, or even a likelihood, that John Carthy heard the broadcast in question.

Having considered all of the information on the foregoing issue presently before the Tribunal, it seems to me that Mr. Hanratty’s primary submission is well founded. No party has indicated that there is any witness who might establish that John Carthy’s radio was tuned to RTÉ 1 at the material time on 20th April and that he probably heard the “Five/Seven Live” broadcast. All the indications are that a detailed investigation in that regard as urged by Ms Nerney, S.C. for her clients, would not establish evidence from which I might properly hold that John Carthy had heard the “Five/Seven Live” broadcast or any part of it. On the contrary, the evidence of Sergeant Jackson indicates that Mr. Carthy’s attention was probably taken up with the negotiator’s attempts to arrange for Ms Carthy’s and Dr. Shanley’s attendance at the negotiation point to speak with him. At 5:06 p.m. Mr. Carthy responded to that effort by shooting the concrete block off the top of the boundary wall behind which Sergeant Jackson was sheltering and for the next fifteen or twenty minutes he was greatly agitated and violent within the house. That was the time when the broadcast was taking place.

Even if Mr. Carthy had heard the broadcast and sufficient evidence emerged to sustain that proposition, a further crucial factor would remain to be established i.e. that the deceased’s conduct in leaving his house as described probably was motivated by what he had heard in the broadcast. Sadly, we will never know what prompted him to do what he did. Suffice to comment presently that there are a number of possible explanations for his conduct which are unrelated to the “Five/Seven Live” broadcast. He may have been motivated by learning that his sister, Marie, and Dr. Shanley wanted to speak to him. He knew that they were near at hand in the Abbeylara direction and he may have preferred to speak to them directly rather than having the unsatisfactory arrangement of public one-way communication on a megaphone which he had rejected. Alternatively, the probability is that he was by then suffering grievously from nicotine withdrawal, no cigarettes having been provided for him by the police since his request about fifteen hours earlier, and in his aggravated bipolar hyper state he may have decided to walk to his supplier in the village of Abbeylara and obtain cigarettes there. In the further alternative, there

are expert opinions that John Carthy's motivation may have been what is called "suicide by cop" in the United States; or he may have decided to shoot a local garda officer, several of whom were on or about the road in the Abbeylara direction.

The end result would appear to be that even if John Carthy heard the "Five/Seven Live" broadcast, it would be very difficult indeed to be satisfied as a matter of probability that it significantly influenced his subsequent conduct in leaving the house.

However, that is not the end of the matter. Mr. Hanratty concedes that there are two other issues which his clients must address. First, whether RTÉ personnel were asked by Supt. Farrelly, or anyone on behalf of the Garda Síochána, not to broadcast John Carthy's identity or personal details relating to him in course of the siege. In all the circumstances was it reasonable for such a request to have been made to RTÉ and other interested media? Should it have been complied with?

Secondly, what was the purpose of Mr. Dungan's broadcast on 20th April regarding the siege of John Carthy at Abbeylara? Why were Mr. Heaney, and Mrs. McDowell recruited to address personal messages to John Carthy one of which included a statement on air of intimate personal details regarding a romantic relationship which had terminated?

Was the purpose of the broadcast to reach and influence John Carthy? It appears from the transcript of it that RTÉ, and in particular its local correspondent at Abbeylara, was aware that throughout the siege garda negotiators were endeavouring to establish a rapport and meaningful contact with Mr. Carthy.

The motivation of RTÉ as to the "Five/Seven Live" broadcast requires to be investigated by the Tribunal regardless of whether or not the broadcaster was successful in reaching John Carthy. Furthermore, the issue as to whether the conduct of RTÉ amounted to an unjustified interference with the Garda Síochána in their efforts to negotiate with John Carthy also requires consideration.

The foregoing are the issues which will be addressed, *inter alia*, in the media module in due course. They will not include the question as to whether John Carthy is likely to have heard the "Five/Seven Live" broadcast.

APPENDIX 7.H

Chairman's statement made on 27th May, 2004 regarding the proposed review of gun law

Before concluding our activities this term I wish to refer to the 6th Module of the Tribunal's Inquiry as outlined in my Opening Statement of 7th January, 2003. This module, which concerns a review of statute law regarding gun licences and the rights of citizens to possess and use firearms, will be considered by the Tribunal, probably in mid-July.

What it entails is as follows.

A review of the relevant statute law in Ireland and a comparison with that in other comparable jurisdictions. In particular it is pertinent to consider the following matters:

- i. Should there be a statutory requirement that applicants for gun licences (including annual renewal thereof) shall furnish to the licensing authority medical certificates in a prescribed form from a medical doctor in active practice who knows the applicant and certifies that in terms of physical and mental health he/she is fit to possess a firearm and to be granted a licence in respect thereof?
- ii. Should there be a provision for withdrawal of such licences and the right to possess firearms in circumstances where the issuing authority has reasonable grounds for believing that a licensee is temporarily or permanently unfit to hold a licence and to possess a firearm by reason of mental or psychiatric disorder or other such disability?
- iii. If a medical or legal advisor has good reason to believe that such a situation may exist regarding a particular patient or client, should the advisor have a statutory obligation to inform the police or other appropriate authority of his/her belief and/or opinion?
- iv. Should the statute law provide that the immediate adult family of such a licensed gun-holder have an obligation regarding the removal of a firearm from a licensee so disabled, where such family member has reasonable grounds for believing that the licensee is unfit to possess a firearm and that continued possession may constitute a danger to the licensee or others?
- v. If statute law is amended to provide that a gun licence and right to possess a firearm may be revoked by the issuing authority in such circumstances, should the licensee have a statutory right of appeal? Are there comparable statutory provisions in other relevant jurisdictions?
- vi. It is also proposed to examine the statute law, together with official reports and recommendations published in other comparable jurisdictions, which

are pertinent to matters raised in this Tribunal and to the possible amendment of our law. Copies of all such official documentation will be furnished to relevant parties. As such reports and recommendations probably speak for themselves, it is not presently intended to call the authors thereof as witnesses, but contra evidence may be introduced by any interested party.

- vii. Consideration by the Tribunal of existing statute law and possible amendment thereof in the light of events at Abbeylara includes an assessment of whether medical practitioners, or other professional persons such as solicitors, should have a statutory obligation to report to the licensing authority if they have reasonable grounds for believing that a patient or client is or has become unfit to hold a gun licence and to possess a firearm by reason of mental illness or similar disability (including the effects of drug addiction). The introduction in evidence of professional opinion, including those of appropriate professional organisations, medical and legal, is relevant to this question. Likewise, possible amendment of the existing statute law regarding the licensing of firearms in possession of members of the public is of interest to gun clubs and other relevant sporting organisations. All such bodies are entitled to be heard in that regard and the Tribunal will accommodate interested parties when the foregoing questions are introduced in evidence in due course.

Representations have been received from a number of interested parties. I wish to remind all others (including professional bodies) who may wish to be heard in relation to this aspect of the Tribunal's work, that submissions should be furnished to the Tribunal not later than Friday, 18th June, 2004.

APPENDIX 7.I

Ruling of the Chairman on 9th July, 2004, re RTÉ module

This Ruling is quoted in full in Chapter 9.

APPENDIX 7.J

Preliminary Ruling by the Chairman made on 3rd November, 2004, re improper press publicity

My attention has been drawn to the dominant front page story in the *Sunday Independent* of 31st October under a large banner headline “***Dramatic New Evidence in Abbeylara Case***” with beneath it a subsidiary headline “***Abbeylara family row over land may have affected siege victim Carthy’s state of mind prior to his death***”. Beneath that are pictures of the late John Carthy and of his sister, Marie, and on one side a small statement in block capitals “***Maeve Sheehan Exclusive***”. The four column article is continued on page 3 under another large bold type caption which reads “***Dramatic new evidence in Inquiry into Carthy death***”. Under that is a colour picture of the old Carthy home with beneath it a caption in block bold type “***Family Friction?***” followed by a reference to the house at Abbeylara.

Briefly stated, the background to the article is that last Friday, 29th October, as part of its preliminary investigative stage, the Tribunal heard applications from Mr. McGuinness S.C., counsel for the Commissioner who represents all garda officers and from Mr. Rogers S.C. who represents certain junior officers who had involvement at Abbeylara and who have been granted separate representation. Each sought a ruling that Ms X should be required to give oral testimony in public session. No counsel challenges Ms X’s veracity regarding the contents of detailed written statements furnished by her to the Tribunal, copies of which have been circulated to the solicitors for interested parties.

The primary issue for debate at the hearing of the applications was whether or not the evidence of Ms X might be relevant to any issue which the Tribunal is required to address under its Terms of Reference from the Oireachtas, and whether, in all the circumstances, it was entitled in law to disregard, and should disregard, the constitutional right to privacy which Ms X enjoys as to her personal relationships and private life. How should conflicting constitutional rights be assessed and weighed in all the circumstances?

Both counsel for garda interests sought to have the application heard in public. This was contrary to the practice of the Tribunal on other occasions relating to preliminary investigations. I decided not to depart from previous practice and I ruled that the applications should be heard in private session. Accordingly, the application proceeded in private and all persons other than solicitors and counsel for interested parties were excluded. It was made clear to the solicitors concerned that they were entitled to inform their clients about what transpired at the hearing but no further publication beyond that should occur pending my ultimate ruling on the issues. This

direction clearly included the media. Publication to the latter obviously would defeat the Tribunal's direction that the applications in question should be heard in private.

Turning now to Ms Sheehan's article; the first two paragraphs are as follows:

"The former girlfriend of John Carthy, the Abbeylara siege victim, has given dramatic new evidence to the Barr Tribunal which Gardaí claim could shed new light on his mental state in the months before his death.

The woman known as [Ms X inserted by me in lieu of the witness's christian name used in the article] claims that Carthy had a dispute with his family over land and had, as a result, a strained relationship with relatives."

The author then goes on to refer to written statements made by Ms X to the Tribunal (all of which had been copied to the solicitors for concerned parties). She then continues:

"Her account is regarded as hugely significant by gardaí because it apparently conflicts with testimony given to the Tribunal that there was no friction between Carthy and his relatives. The family could not be contacted."

Ms Sheehan refers to numerous submissions made by Mr. Rogers on the Ms X application and at earlier Tribunal hearings. Twice she incorrectly describes his function at the Tribunal:

"The garda's legal team, led by Mr. John Rogers, want Ms X to be allowed to testify before the Tribunal."

and later:

"John Rogers, the garda's senior counsel, has suggested at Tribunal hearings that there was friction between Carthy and some relatives and that he was suicidal."

Interestingly, Ms Sheehan makes no reference to arguments advanced by Mr. McGuinness and she seems unaware that he is and has been throughout the work of the Tribunal, counsel primarily concerned in presenting the case for the Garda Síochána, including the scene commanders, and other senior officers who directed the police operations at Abbeylara.

It is evident that Ms Sheehan's article is heavily slanted towards the arguments of Mr. Rogers on behalf of his clients. The general tenor of it strongly suggests the probability that she has been briefed by one of Mr. Rogers's clients or someone on their behalf who is privy to information relating to Ms X which has been circulated on behalf of the Tribunal to relevant solicitors and regarding what transpired on the hearing of the Ms X application on 29th October. If that is so, then it amounts to a serious wrong per se having regard to the privacy attached by the Tribunal to the applications about the proposed evidence of Ms X. However, it is even more serious than that. Assuming that Ms Sheehan has utilised all relevant information furnished by her informant, it appears that she has been seriously misled and manipulated.

The essence of the case which Ms Sheehan makes about an alleged Carthy family row over land i.e. ***“The Dramatic new Evidence”*** in the page 1 headline, is contained in the following passage:

“In her new statements, Ms X is understood to suggest that Carthy and his sister, Marie, had a dispute over a plot of land, which John had inherited from a relative and was allegedly under pressure from relatives to share. His former girlfriend suggests that the alleged disagreement was a source of distress to him. This is strenuously denied by the Carthy family.”

The information about the alleged land furnished by Ms X in her written statement to the Tribunal is as follows:

“John gave out about his sister saying his mother wanted him to sign over some of his land that he inherited from his uncle. He was outraged.”

The uncle referred to was his mother’s bachelor brother who owned the land and died intestate in 1987.

It appears that Ms Sheehan’s informant did not tell her that the Tribunal had evidence (also disclosed to interested solicitors) that Mr. Carthy’s contention that he owned the land in question was untrue. The Tribunal ascertained that the property mentioned by Mr. Carthy to Ms X comprised approximately 15 acres of rural land near Toneymore, Abbeylara, registered under the Registration of Title Acts. The title register establishes that the owner of the land now and at all material times is and was Mrs. Rose Carthy. Her son never had any title to the land and did not inherit it from his uncle as he alleged to Ms X.

Mrs. Carthy had told her son that she intended to leave the land to him on her death. Statements from mother and sister indicate that there was no dispute with John Carthy about the land. I assume that if Ms Sheehan had been told by her informer about the foregoing facts as promulgated to interested parties on behalf of the Tribunal, it would cause her to realise that the veracity of Mr. Carthy’s contention to Ms X about family pressure on him as alleged owner of the land could not be true. The end result is that the author of the article has been put in a position, it could well be unknowingly, of promulgating with major nation-wide press publicity allegations of a family dispute over land based on an allegation of ownership of the land by Mr. Carthy which is patently wrong in the light of the true facts as to the ownership of the land in question. Publication of these unjustified allegations concerning the ownership of the land has caused substantial distress for Mrs. Carthy and her daughter, Marie. I hope that the error will be rectified by the *Sunday Independent* as prominently as Ms Sheehan’s article in its last issue.

Regarding the motivation for misleading Ms Sheehan and for instigating her article in the *Sunday Independent*; it seems clear that her informer’s primary intention was to thwart and circumvent my direction regarding privacy relating to the applications about the evidence of Ms X and, secondly, to promote a contention based on fundamentally incomplete information that there was disharmony in the Carthy family as between mother, son and daughter. I do not intend to waste Tribunal time and to

incur expense in pursuing the matter any further bearing in mind that the informer's apparent deception of Ms Sheehan has been exposed as the cheap, dishonest ploy that it is. Those who, it seems, were intended to benefit from it are, I apprehend, greatly embarrassed by the outcome of the dishonest conduct of Ms Sheehan's informer.

Since drafting this memorandum my attention has been drawn to a letter received from Messrs. Garrett Sheehan and Company, solicitors for the Carthy family, referring to the *Sunday Independent* article and requesting that I investigate the matter to ascertain who was Ms Sheehan's informant. Sadly, such investigations are usually fruitless and are often met with denials and also concealment of truth by some of those investigated. Furthermore, journalists usually protect their sources. However, in this case as Ms Sheehan may have been deceived and dishonestly manipulated by her informer, and her newspaper has been placed in an invidious position on that account, she may be disposed to disclose her source of information. Accordingly, on reflection, I have come to the conclusion that Ms Sheehan should be invited to answer the following questions:

1. Who informed her about the information contained in her article?
2. Was she told by her informer that the contention of John Carthy to Ms X that he was
 - (a) the owner of the land which had given rise to a family dispute, and
 - (b) that he had inherited the land from his deceased uncle, was wrong in both respects?
3. Was she told by her informer that the relevant land certificate and entries in the land register establishes that the land in question is and was at all material times the property of Mrs. Rose Carthy and that her son, John, never had any title to the property?
4. Was she told that the previous owner, Mrs. Carthy's brother, had died intestate without issue in 1987?
5. When her article was written and published was she aware of the foregoing facts regarding the ownership of the land and that Mr. Carthy's contention that he was the owner and that he had inherited it from his late uncle was untrue?

When the Tribunal receives Ms Sheehan's response to the questions asked of her, I will consider the matter again.

APPENDIX 7.K

Ruling by the Chairman on 19th November, 2004 regarding a front page article published in the *Sunday Independent* on 31st October, 2004 and stated to be an exclusive story written by Maeve Sheehan

The publication comprises a banner front page headline ***“Dramatic New Evidence in Abbeylara Case”*** with beneath it a subsidiary headline ***“Abbeylara family row over land may have affected siege victim Carthy’s state of mind prior to his death”***. Beneath that are pictures of the late John Carthy and of his sister, Marie, and on one side a small statement in block capitals ***“MAEVE SHEEHAN EXCLUSIVE”***. The four column article is continued on page three under another large bold type caption which reads ***“Dramatic new evidence in Inquiry into Carthy death”***. Under that is a colour picture of the old Carthy home with beneath it a caption in block bold type ***“FAMILY FRICTION?”*** followed by a reference to the house at Abbeylara. In essence Ms Sheehan’s story about “new evidence” is based upon a statement furnished by the late Mr. Carthy’s girlfriend who in the interest of anonymity shall be referred to as “Ms X”. It is also based on other information provided by her informant and certain matters which she is likely to have learned from colleagues who had covered earlier public hearings of the Tribunal.

As already indicated in a preliminary ruling made on 3rd November the background to the article is that on Friday, 29th October, as part of its preliminary investigative stage, the Tribunal heard applications from Mr. McGuinness, S.C., counsel for the Commissioner, who represents all garda officers, and Mr. Rogers, S.C. who represents certain junior officers who had involvement at Abbeylara and who have been granted separate representation. Each sought a ruling that Ms X should be required to give oral testimony in public session arising out of her statement to the Tribunal, copies of which had been circulated to the solicitors for interested parties.

The primary issue for debate at the hearing of the application was whether or not the evidence of Ms X might be relevant to any issue which the Tribunal is required to address under its Terms of Reference from the Oireachtas and, whether in all the circumstances it was entitled in law to disregard, and should disregard, the constitutional right to privacy which Ms X enjoys regarding her personal relationships and private life. How should conflicting constitutional rights be assessed and weighed in all the circumstances?

Both counsel for garda interests sought to have the application heard in public. This was contrary to the practice of the Tribunal on other occasions relating to preliminary investigations. I decided not to depart from previous practice and I ruled that the

applications should be heard in private session. Accordingly, it proceeded in private and all persons other than solicitors and counsel for interested parties were excluded. It was made clear to the solicitors concerned that they were entitled to inform their clients about what transpired at the hearing but no further publication beyond that should occur pending the Tribunal's ultimate ruling on the issues. This direction clearly included the media. Publication to the latter obviously would defeat the Tribunal's direction that the applications in question should be heard in private. It is pertinent to refer again to the relevant parts of Ms Sheehan's article. The first two paragraphs are as follows:

"The former girlfriend of John Carthy, the Abbeylara siege victim, has given dramatic new evidence to the Barr Tribunal which gardaí claim could shed new light on his mental state in the months before his death.

The woman known as [Ms X] claims that Carthy had a dispute with his family over land and had, as a result, a strained relationship with relatives."

The author then goes on to refer to written statements made by Ms X to the Tribunal (all of which had been copied to the solicitors for concerned parties). She then continues:

"Her account is regarded as hugely significant by gardaí because it apparently conflicts with testimony given to the Tribunal that there was no friction between Carthy and his relatives. The family could not be contacted."

Ms Sheehan refers to numerous submissions made by Mr. Rogers on the Ms X application and other matters at earlier Tribunal hearings. She wrongly described his function at the Tribunal:

"The garda's legal team, led by Mr. John Rogers want [Ms X] to be allowed to testify before the Tribunal."

and later:

"John Rogers, the garda's senior counsel, has suggested at Tribunal hearings that there was friction between Carthy and some relatives and that he was suicidal."

The story continues:

"[Ms X's] testimony would appear to lend some support to his argument, which has been rejected by Carthy's relatives.

Last year Mr. Rogers used the extracts from the letter [what letter is not stated] to show that Carthy was not well leading up to events at Abbeylara in April 2000, and to show that there was "friction" in his relationship with his sister, Marie.

Mr. Rogers also challenged the testimony of Mr. Carthy's friend, Martin Shelly, who said he was "happy" and "very well" at the time of the siege and got on "brilliantly" with his sister. Carthy's family denies any friction. They blame his death on garda ineptitude."

The story then refers to a number of issues previously examined by the Tribunal and then continues:

“Carthy’s family said that gardaí had totally mishandled the siege.”

A number of grounds advanced in support of the family case are then specified including the following:

“Carthy also intimated that he had no intention of killing anyone in a telephone call to a friend in the middle of the siege. The family has also rejected Mr. Rogers suggestion that Carthy was suicidal and that he may have planned his own death by emerging to face the gardaí with a loaded shotgun. Mr. Rogers has argued ‘Given this man put his mother out of the house and said goodbye to her; that he had said to Alice Farrell that the party was over and there would be no more laughing, given that he came out armed in the way he did to confront the gardaí, it must in fact be conjectured that John in fact intended that he should die’.”

The foregoing quotation from an earlier submission made by Mr. Rogers would be known only to someone with access to the relevant transcript of evidence.

Ms Sheehan’s story then continues:

“A majority of the expert witnesses called to testify on Carthy’s mental state reject the ‘suicide by cop’ theory.”

On its face it is evident that Ms Sheehan’s story is slanted towards arguments advanced on behalf of garda interests — in particular by Mr. Rogers. The general tenor of it suggests a likelihood that she had been briefed by someone associated with a garda party or someone on their behalf who is privy to information contained in the Ms X statement which had been circulated on behalf of the Tribunal to relevant solicitors, and other related information concerning the case of the junior officers which is retailed in the article. This raises an issue as to whether the Tribunal’s privacy ruling had been deliberately ignored and thwarted.

Assuming that Ms Sheehan used all relevant information furnished by her informant, it appears likely that she was seriously misled and manipulated by whoever orchestrated the plot to have the story written and published.

The essence of the case which Ms Sheehan makes about an alleged Carthy family row over land i.e. ***“The Dramatic New Evidence”*** in the page 1 headline is contained in the following passage:

“In her new statement, [Ms X] is understood to suggest that Carthy and his sister, Marie, had a dispute over a plot of land which John had inherited from a relative and was allegedly under pressure from relatives to share. His former girlfriend suggests that the alleged disagreement was a source of distress to him. This is strenuously denied by the Carthy family.”

The information about the alleged land furnished by Ms X in her written statements to the Tribunal is as follows:

“John gave out about his sister saying his mother wanted him to sign over some of his land that he inherited from his uncle. He was outraged.”

The uncle referred to was his mother’s bachelor brother who owned the land and died intestate in 1987.

Solicitors acting for Ms Sheehan and Independent Newspapers have advised the Tribunal that her informant did not tell her that the Tribunal had evidence (also disclosed to interested parties) that Mr. Carthy’s contention that he owned the land in question was untrue. The Tribunal had ascertained that the property mentioned by Mr. Carthy to Ms X comprised approximately 15 acres of rural land near Toneymore, Abbeylara, registered under the Registration of Title Acts. The title register establishes that the owner of the land now and at all material times is and was Mrs. Rose Carthy. Her son never had any title to the property and did not inherit it from his uncle as he alleged to Ms X. The Tribunal also had information (conveyed to interested solicitors) that Mrs. Carthy had told her son that she intended to leave the land to him on her death. Ms Sheehan was not informed of that information either or that statements from Mrs. Carthy and her daughter had been obtained by the Tribunal (and also furnished to interested solicitors) that there had been no dispute between John Carthy and any member of his family about land.

Another fact of which all interested parties would have been well aware from professional and other evidence given to the Tribunal was that one of the manifestations of the deceased’s mental illness was a risk of being subject to delusions. That may explain his allegation about an alleged dispute over land. Such a possible explanation was or should have been apparent to all interested parties in the light of the reality regarding the ownership of the land.

I assume that if Ms Sheehan had been told by her informer about the foregoing facts as promulgated to relevant parties on behalf of the Tribunal, it would cause her to realise that the veracity of Mr. Carthy’s contention to Ms X about family pressure on him as alleged owner of the land could not be true. The end result is that the author of the article was put in a position, it could well be unknowingly, of promulgating with major nation-wide press publicity allegations of a family dispute over land based on an allegation of ownership by Mr. Carthy which is patently wrong in the light of the true facts regarding title to the land in question. Publication of these unjustified allegations concerning the ownership of the land has caused substantial distress for Mrs. Carthy and her daughter, Marie. Surprisingly, notwithstanding the true facts now known to them, the *Sunday Independent* did not publish in its issue of 7th November or since then an apology to the Carthy family and to the Tribunal or even a correction of the fundamental errors in Ms Sheehan’s story. This is not what is reasonable to expect from a reputable newspaper.

Regarding the motivation for misleading Ms Sheehan and for instigating her erroneous article in the *Sunday Independent*; the story as published would seem to

indicate that its purpose was to promote a contention based on fundamentally incomplete information that there was disharmony in the Carthy family as between mother, son and daughter and to indicate that new evidence had emerged which challenged testimony to the contrary which had been given to the Tribunal by various witnesses.

Ms Sheehan appears to have been given sight of a statement made by Ms X to the Tribunal. She accepted the veracity of the information therein contained about the alleged family dispute between son, mother and daughter i.e. she accepted the statement made by Ms X on its face value. She did not check out the matter with the Tribunal; the Carthy family or their solicitor, Mr. Peter Mullan. It appears that as purported "proof of veracity" Ms Sheehan's informer introduced her to a copy of the statement made by Ms X.

In consequence of the information furnished to her and the contrary information which was withheld, the essence of the story she wrote was fundamentally unfounded and was obviously harmful to the Carthy family. She would have been already well aware from evidence at the Tribunal widely publicised in the media that John Carthy was from time to time afflicted by serious mental illness. The statement made by Ms X indicates that he was suffering a manifestation of it at the time referred to by her. As already indicated, there seems to be a probability that Mr. Carthy's outburst to Ms X about being pressurised by the family to share land he had allegedly inherited from his late uncle was in reality the product of delusion associated with his mental state. Parties to the Tribunal would be aware that there was an illustration of a similar delusion which John Carthy had during the siege about his cousin and close friend, Tom Walsh, allegedly not having visited him while he was detained in a particular local psychiatric hospital on occasions prior to the Abbeylara incident. Mr. Walsh has stated in evidence and the Tribunal accepts that there was no truth in Mr. Carthy's allegations about his cousin who had in fact visited him in hospital.

The Tribunal has in correspondence put relevant queries to Independent Newspapers and Ms Sheehan. By letter dated 3rd November their solicitors stated:

"It is the editorial policy of Independent Newspapers (Ireland) to at all times adhere to honest and accurate reporting in all its publications. It is therefore with regret that our clients, through your Ruling, have now learned that John Carthy was not the legal owner of land; that his mother had told him he would inherit the land and that the Tribunal had received evidence from Mrs. Carthy and her daughter that there was no dispute with John Carthy in respect of the land.

The article was based on information provided by a source in respect of a statement [Ms X's statement] furnished to the Tribunal and published by us in good faith. The journalist (Maeve Sheehan) went to considerable lengths to verify the information furnished to her. Unfortunately, however, our clients were unaware of the findings arrived at by the Tribunal in its private deliberations on Friday, October 29th, 2004. Had this information been brought to our clients' attention, it would undoubtedly have been published also.

Our clients take this opportunity to assure the Tribunal that it was certainly not their intention to interfere in the investigations or decisions of the Tribunal or in any way obstruct its work."

It seems that the editorial policy of Independent Newspapers does not extend to apology for harmful error or even correction of mistakes.

In reply to various questions raised by the Tribunal it was indicated in effect that Ms Sheehan was in fact deceived by her informant as to the true facts. However, the identity of the informant was not revealed and it was stated that *"Our clients regret that they cannot reveal the source of the information in question. This policy is in line with European and NUJ guidelines"*. The Tribunal is surprised that that attitude has been taken in the present case bearing in mind that the newspaper and its journalist seem to have been deceived and manipulated by their informant. However, the Tribunal recognises that the newspaper's failure to identify its source is the traditional response of the media when asked to furnish such information. Their perceived duty of confidentiality in that regard and an obligation to protect the anonymity of informants is recognised as a long-established custom in journalism which it appears is widely regarded in that profession as sacrosanct. The Tribunal takes cognisance of the fact that, over the years, many journalists have gone to jail rather than reveal their sources and have become heroes in their profession on that account. At first sight it would appear in the present case that exceptional circumstances prevail which justified disclosure of the informant's identity i.e. that the newspaper and the journalist were deliberately deceived as a result of which an erroneous and damaging article was written and widely publicised to the detriment of the journalist and the newspaper. However, it must be recognised that the situation may not be as straightforward as it appears. It is possible that Ms Sheehan's informant was himself/herself innocent of deception i.e. he/she may have been recruited to act in the interest of a party to the Tribunal and in that regard was furnished with partial information only – in particular Ms X's statement, the production of which would appear to establish for Ms Sheehan an apparent "proof of veracity" for the essence of the case the informant was seeking to make. He/she may have had no knowledge of the other information about title to the land which deprives the article of fairness and authenticity. It is possible that the informer may have had no knowledge of the Tribunal's ruling regarding privacy of Ms X's statement.

Taking all the foregoing factors into consideration the Tribunal is of opinion that there is probably no useful purpose in pursuing the editor of the *Sunday Independent* and/or Ms Sheehan to ascertain the identity of her source. The Tribunal has neither the time nor the resources to embark on expensive and probably lengthy litigation which is most unlikely to achieve the hoped for result of revealing the identity of Ms Sheehan's informant or even ruling out the responsibility of any particular party in that regard. However, it has pursued inquiries with all Tribunal parties who could possibly have had involvement in the matter.

The issue the Tribunal is required to address is who orchestrated the furnishing of Ms X's statement to Ms Sheehan and other information regarding the importance

the Garda attached to it and comments on submissions made by Mr. John Rogers for his clients that the relationship between John Carthy and his immediate family was not as stated in evidence by a number of witnesses and also that he was suicidal?

Is it possible to draw any conclusion from the article per se other than that its primary purpose is to promote the garda case? The answer to that question is “ No”.

Can there be any doubt that the source of the statement made by Ms X which was given to or shown to Ms Sheehan as apparent “proof of veracity” by her informer emanated from one or other of four sources associated with the Tribunal i.e. Mr. Murphy’s clients, their legal advisors or their union advisors; the Carthy family, their advisors or associates; the Commissioner or Ms X and her advisors or associates. As already indicated Ms X’s statement was a private document which the Tribunal circulated only to the solicitors for the first three parties above referred to and, of course, Ms X’s solicitor would have retained a copy of her statement. It was made clear by the Chairman at the private hearing relating to Ms X’s evidence on 29th October that her statements were private and that the solicitors concerned might discuss them with their clients but no further publication was permitted.

Can there be any doubt that the objective of the informer was to provide the journalist with a titillating Sunday newspaper story which would encourage her to write a prominent article on the lines which she did and on the basis that the information furnished by Mr. Carthy to Ms X as retailed by her was true. I am entirely satisfied that the answer to that question is also “No”.

Contrary to the contention made by her solicitors that Ms Sheehan “*went to considerable lengths to verify the information furnished to her*” the Tribunal has learned from Mr. Peter Mullan, the solicitor for the Carthy family, that neither he or any of his clients were approached by Ms Sheehan prior to publication of her article. If she had conducted such an inquiry (for example, if there had been a simple telephone call to Mr. Mullan) she would have learned that she was mislead by her informer. Mr. Mullan’s investigation has also established that his client, Ms Marie Carthy, was for the first time approached by Ms Sheehan after publication of the article and she was told that the journalist had tried to contact her but had been unable to reach her by telephone. It is of interest that Mr. Murphy, the solicitor for the junior Garda officers, ascertained in course of his investigation that on Saturday, 30th October, at approximately midday, Mr. P.J. Stone, General Secretary of the Garda Representative Association (GRA) contacted Mr. Murphy and told him that Ms Sheehan had contacted him the previous evening at approximately 8:00 p.m. It is stated that “*Ms Sheehan sought information on what had transpired in the private session on Friday the 29th October.*” Mr. Stone was not aware of what had transpired and told Ms Sheehan that he was socialising at the end of a busy week and did not wish to discuss any matter with her. The following morning she left a message on his mobile phone asking him to contact her. Mr. Murphy advised Mr. Stone about how he should reply to the journalist but “*in the event Mr. Stone considered that the wiser course of action was not to return the telephone call and he did not have any further contact with Ms Sheehan or anyone connected to Independent Newspapers*”. Mr.

Murphy also informed the Tribunal that “Ms Sheehan contacted Mr. Joseph Dirwan, the President of the Association of Garda Sergeants and Inspectors (AGSI) at approximately 1:20 p.m. on Saturday, 30th October. She sought information on what had transpired in the closed session. Mr. Dirwan had no information on that matter and made no comment to Ms Sheehan.” Ms Sheehan’s approaches to the respective chief officers of the garda associations prompts the question why did she associate them with the information that had been given to her by her informant? Her conduct seems to indicate that she had been informed that they had a connection with Mr. Murphy’s clients.

The final matter for consideration is an assessment of the issue as to whether any of the four parties in question, or anyone associated with them, was, directly or indirectly the source of Ms Sheehan’s information.

Might anyone acting on behalf of the Commissioner or his advisors, directly or indirectly, have orchestrated Ms Sheehan’s article and in particular furnished her with or have given her a sight of Ms X’s statement? In reply to correspondence the Chief State Solicitor stated that neither he, the Commissioner or any other person to their knowledge is aware of the identity of Ms Sheehan’s informant or the identity of the person or persons on whose behalf the information was given to her. He also stated that Ms X’s statement was not furnished by him to anyone other than his client and legal advisors. All concerned were aware of its private nature and that it should not be disseminated to others. I note that the Commissioner and his advisors had no knowledge of or connection with the furnishing of information to Ms Sheehan or any media person. I accept that he and they were aware that that conduct was not only wrong but I apprehend it is probable that they would also appreciate its potential for substantial harm to the garda case.

Might anyone acting on behalf of the Carthy family directly or indirectly have briefed Ms Sheehan, or anyone on her behalf, with Ms X’s statement and other information subsequently referred to by the author in the *Sunday Independent* article? The partial information received and accepted by Ms Sheehan and retailed in the journalist’s story is not only false but also patently harmful to the Carthy family. It was widely publicised in a newspaper which has the largest circulation in Ireland. I cannot envisage any credible reason why someone on behalf of the Carthy family would furnish the information to Ms Sheehan on which her story was based and that they would stimulate the writing of an article in the newspaper which is so obviously critical of the Carthy family and in particular of Ms Marie Carthy. Can it be credibly suggested that someone, being a member of the Carthy family or connected with them, has devised or put in train an extraordinarily devious plan designed to instigate Ms Sheehan’s article in order to cause the Garda to be blamed for doing so? Such conduct would push the realms of machiavellian deceit into new territory far beyond the bounds of reality. I am satisfied beyond any doubt that no one associated with the Carthy family had any connection whatever with Ms Sheehan’s article.

I am also satisfied neither Ms X or anyone associated with her did anything to instigate the story in the *Sunday Independent* or had any part whatever in its

publication. Ms X has made it clear to the Tribunal that she was greatly distressed by John Carthy's death and by her relationship with him and that she has been particularly concerned to put these events behind her and to rebuild her future. She has emphasised frequently that she does not wish to relive that tragedy in her life and it is abundantly clear that she does not wish to stimulate media publicity in that regard.

The remaining party which had access to Ms X's statement and related statements obtained by the Tribunal and also knowledge of other matters referred to in Ms Sheehan's story comprises Mr. Murphy's clients, their advisors and the union associations who combined to instruct Mr. Murphy to act for his clients. They start at a disadvantage in that, as previously stated, the article is clearly slanted in favour of the garda and more particularly Mr. Murphy's clients. Their leading counsel is referred to six times by Ms Sheehan. She does not refer to the Commissioner or to his counsel at all.

Mr. Murphy was invited to investigate this matter with his clients, their advisors and the executive of the associations who instructed him to act for his clients originally. He has done so and has informed the Tribunal in correspondence that neither he, his staff, his counsel, his clients or the executives of the respective garda associations concerned had made any contact with Ms Sheehan or anyone connected with Independent Newspapers in relation to the article; neither did any of them furnish material connected with the Tribunal including "*any material connected with the statement of Ms X*" to the journalist or anyone acting for her. No one consulted by him has any knowledge of the identity of Ms Sheehan's informer. The only pre-publication contacts Mr. Murphy has ascertained were the telephone calls which Mr. Stone and Mr. Dirwan had with Ms Sheehan to which I have already referred. Mr. Murphy did not state in his letter whether Ms X's statement and/or other related material furnished by the Tribunal had been given by him or by his staff to his clients or their association representatives or any such person prior to publication of the article.

It has been urged on behalf of Mr. Murphy's clients that notwithstanding Ms Sheehan's refusal to reveal her source, steps should be taken in an effort to prevail on her to rule out Mr. Murphy's clients or anyone associated with them as having provided the information in question. That is an unreal suggestion. It is highly improbable that Ms Sheehan knows any of Mr. Murphy's clients — far less all of them and their association and legal advisors and that she could rule out all of them as being her informant — even if willing to do so which seems highly unlikely having regard to the uncompromising attitude about disclosure which has been taken on her behalf. Furthermore, it is credible that if one or more of Mr. Murphy's clients or associates devised a strategy (a conclusion I have not made) to encourage a Sunday newspaper to publish an article based on Ms X's statement in the guise of "*dramatic new evidence*" that a couple of months before his death there was a serious dispute over land between John Carthy, the alleged owner, and his sister, Marie, who it is suggested wanted a share in it, and that contrary to other evidence, the reality may have been that John Carthy was not on good terms with his family, particularly his

sister, in the period culminating in his death. If such a strategy was embarked upon it would be highly unlikely that one of Mr. Murphy's clients or advisors would have been recruited as Ms Sheehan's contact and informer. In such circumstances I apprehend that it would be much more likely that a third person unconnected directly with any party to the Tribunal would have been engaged as informer. It would not have been necessary to tell him/her that Mr. Carthy's contentions about ownership of the land in question were untrue and may have been the product of delusion associated with his mental illness at the time. He/she could be appraised only of information helpful to the garda case. In short, it would have been desirable that the informer should be an innocent purveyor of dishonest information based on Ms X's statement. He/she could be clothed in a mantle of credibility by furnishing him with a copy of Ms X's statement to give to or show to Ms Sheehan and thus to establish bona fides, veracity and reliability. It would not be necessary in those circumstances for the informer to reveal full identity but only to indicate to her a credible connection with the garda case.

The Tribunal is also mindful of another factor emerging from Ms Sheehan's article which points to complicity by someone associated with the gardaí i.e. her reference to *"dynamic new evidence which the gardaí claim could shed new light on his [Mr. Carthy's] mental state in the months before his death"*. The word *"new"* has clear significance in the context of the garda case. One of the arguments strenuously pursued by counsel for both segments of the police in favour of having Ms X called as a witness in public session is a contention that the garda parties should have been informed by the Tribunal when it first obtained the information received from Ms X even though specifically given by her in confidence. This is a matter which will be dealt with in the forthcoming ruling in the Ms X evidence issue. Its relevance in the context of Ms Sheehan's story is that it appears to be a further indicator that the journalist's informer was associated with the garda case.

In fairness to all concerned it is important to take cognisance of the following facts:

- i. Mr. Murphy's clients and their association advisors are not lawyers. None of them were present at the private hearing of the Ms X application on 29th October and may not have been aware of what transpired on that occasion.
- ii. Although, if they were involved, they appear to have had a copy of Ms X's statement for transmission to Ms Sheehan as proof of veracity and bona fides, they may not have been aware of other information furnished to Mr. Murphy by the Tribunal regarding the actual ownership of the land in question and related matters. In short, it is possible that they may not have been fully aware of the wrongfulness and gravity of what they were doing if in fact they were responsible.
- iii. It is likely that they wanted wide media publicity for what was perceived to be information helpful to the garda case arising out of Ms X's statement and also for other pro garda information given to Ms Sheehan.
- iv. They may have been displeased with the ruling of the Tribunal that the Ms X application would be heard in private, thus excluding their presence;

and they may have been informed that their legal team feared that there might be a subsequent ruling by the Tribunal, if it was decided to hear viva voce evidence by Ms X, that that also might be held in private – thus preventing the gardaí from obtaining media publicity for their case regarding the alleged relationship between John Carthy, his mother and sister.

If there was such an attitude towards the Tribunal's privacy ruling regarding the application on 29th October and a possible future ruling to the same effect about Ms X's evidence, the perpetrators, without knowing or appreciating the realities of the case regarding the ownership of the land in question or the wrongful implications of what they proposed to do or of the harmful implications of it for the garda case, could have taken the matter into their own hands and proceeded with their plan to encourage Ms Sheehan to write and publish her article so as to ensure that the public at large would know what they wrongfully perceived was the apparent strength and importance of the garda case about the relationship between John Carthy and his sister.

There is one fact which might be regarded as indicating that gardaí or their agents were not responsible for stimulating Ms Sheehan's article. Her story contains an amount of information and allegations which are critical of the garda conduct at Abbeylara. It seems to me that that does not detract from a probable scenario that the catalyst which generated the article was as the newspaper headline makes clear alleged "***Dramatic New Evidence in Abbeylara Case***" derived from the Ms X statement which in turn bolsters garda allegations about the Carthy family. I apprehend that Ms Sheehan, as an experienced competent journalist, would not wish to present a wholly one-sided story to the public but would attempt to balance it by referring to various contentious issues and submissions to the Tribunal which are contrary to the garda interest. Such information would have been readily obtainable by her from journalist colleagues who have been covering evidence at the Tribunal and would be familiar with such matters which most of them probably had reported already.

Conclusions

The Tribunal has considered with great care Ms Sheehan's article and also the foregoing information arising out of its investigation as specified herein. It has reached the following conclusions:

1. There is a strong probability that Ms Sheehan's informant is associated directly or indirectly with one or other of the four parties already specified herein whose solicitors had received from the Tribunal copies of Ms X's statement and other related information and documentation.
2. It does not seem to be even remotely likely that any individual or group unconnected with the Tribunal or any of the four parties to which I have referred might be responsible for orchestrating a scheme which was

intended to induce Ms Sheehan to write and publish her article. There are three reasons which lead to that conclusion:

- (a) There is nothing to indicate why any unconnected third party might wish either to gratuitously benefit the garda case through press publicity or to harm the gardaí by orchestrating a situation whereby they were likely to be blamed for wrongly instigating Ms Sheehan's article.
 - (b) Such an unconnected third party would not have had access to Ms X's statement or to the other details relating to the garda case, including transcripts of evidence, which are contained in the journalist's story.
 - (c) There is nothing to indicate why an unconnected third party would embark on such a remarkable scheme of deliberate deception.
3. I am satisfied that neither the Carthy family or Ms X, or anyone associated with them, had any connection whatever, directly or indirectly, in orchestrating Ms Sheehan's story much of the content of which is so obviously contrary to their interests.
4. It is probable that the person or persons directly or indirectly responsible for orchestrating the story and for putting in train a scheme whereby Ms Sheehan was informed of information helpful to the garda case comprising titillating "new" evidence likely to be of particular interest to her as a *Sunday Independent* journalist, was a member of the Garda Síochána or someone associated with the police.
5. The information ascertained does not establish whether either of the garda parties to the Tribunal has any specific involvement or culpability in this matter. Responsibility for orchestrating Ms Sheehan's erroneous, harmful story and what may well be a deliberate failure to comply with the Tribunal's ruling regarding privacy of Ms X's documentation raises an issue of fundamental importance with far-reaching consequences for the perpetrator. I have no doubt that the onus of proof in deciding that issue, if it is possible to do so, is analogous to that in a criminal trial ie. proof of guilt beyond reasonable doubt. Suspicions, however strong and apparently well founded they may be, are not sufficient. The information which has emerged does not go far enough to prove complicity of either garda party beyond reasonable doubt. Accordingly, I make no findings in the matter against either the Commissioner or Mr. Murphy's clients.

The *Sunday Independent* article has caused offence not only to the Carthy family but also to the Tribunal. However, as already stated, I do not believe that there is any useful purpose in taking the investigation any further and expending valuable time and resources in what in all probability would be a fruitless exercise. Accordingly, the Tribunal has decided to terminate its investigation of this matter.

I note also the additional proposals made by Mr. Murphy on behalf of his clients. With respect, to take up more time in further investigations as he suggests would be most unlikely to have any practical benefit either for his clients or the Tribunal.

APPENDIX 7.L

Ruling by the Chairman on 19th November, 2004 regarding the application made by counsel for the Commissioner and the group of junior garda officers relating to the evidence of Ms X

In this ruling I shall refer to the lady who is the subject-matter of the application as Ms X. All the statements, letters and other documents relating to her which have been furnished on behalf of the Tribunal to the solicitors for interested parties shall be returned to the Tribunal's solicitor by the solicitors who received them. They shall also return all copies made by them and which have been issued to their clients or any other person or which have been made by any recipient. The Tribunal will substitute amended documentation in which the person concerned is referred to only as Ms X and all information which might facilitate anyone in tracing her shall be expunged.

No one directly or indirectly associated with any party to the Tribunal shall divulge to the media or any person the identity of Ms X or information which might reveal her identity or present whereabouts and activities or the content of any document relating to her or any relevant transcript of evidence shall not be furnished to any such person. The Tribunal wishes to make it abundantly clear again that the Ms X documents and other related documentation are private and must not be divulged outside the confines of the Tribunal.

The Application

The application relates to written statements and a letter, originally furnished in confidence, which the Tribunal has received from Ms X in which she describes in detail the history of an intimate personal relationship which she had with the late John Carthy while they both resided in Galway in January and February, 2000 and an explanation of how and why it was terminated by her towards the end of February that year. Associated with the latter documents are others, including two letters written by Mr. Carthy to Ms X in February and March, 2000; statements obtained by the Tribunal in response made by Mrs. Rose Carthy and Ms Marie Carthy, the mother and sister of the deceased, regarding matters arising out of information given by Ms X. There are also written responses of Dr. John Sheehan, psychiatrist, and Dr. Ian McKenzie, psychologist, to the information furnished by Ms X. Her personal truthfulness and the veracity of what she has stated has not been contested by counsel for any party to the Tribunal, though some information furnished to her by Mr. Carthy has transpired to be erroneous and may be the product of delusion on his part arising out of a manifestation of his mental illness. Ms X's counsel, Mr. Patrick

McCarthy, S.C., has informed the Tribunal that his instructions are that his client can add nothing further to the information she has given in her statements.

Counsel for both garda parties submit that the information furnished by Ms X should be the subject-matter of oral testimony to be given by her in public on the ground that it is relevant to issues which the Tribunal is required to address under its Terms of Reference from the Oireachtas. It is further argued that, if held to be relevant, Ms X's testimony is required by law to be heard in public notwithstanding her prima-facie constitutional right to privacy as an innocent party in respect of an intimate, personal relationship and the harm which publicity is likely to bring about for her.

It is accepted by counsel for all parties that the root issue which I have to determine on the application is whether or not the statements made by Ms X are relevant to any issue which the Tribunal has to determine under its Terms of Reference from the Oireachtas. These are as follows:

“to inquire into the following definite matter of urgent public importance:

- the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co. Longford on 20 April, 2000; and to report to [the Oireachtas] and to make such findings and recommendations as it sees fit in relation to these matters; . . .”*

The Ms X statements

Essentially her statements supplement information already known to the Tribunal from evidence which it has received. She confirms that in early January, 2000 she met John Carthy in Galway; there appears to have been an immediate mutual attraction between two persons of similar age and general background. An intimate, personal relationship developed rapidly through, it seems, almost daily contact. She found that John Carthy had a friendly, caring, affectionate personality. He was working at that time and was happy. She describes them as getting on well together and it appears that a real loving relationship was emerging between them. This is borne out by subsequent correspondence which John Carthy had with Ms X. At or about the end of January Mr. Carthy's situation changed radically in two respects. First, his lease of accommodation ended and he had to find an alternative place to live and also temporary accommodation in the meantime. His friends were unable to help him originally and he told Ms X that his sister, Marie, was not prepared to let him share her one room bedsit as a temporary measure. In a statement furnished to the Tribunal in response Ms Carthy denies that she was asked by her brother to accommodate him at that time. She stated that she had done so occasionally in the past. The end result was that Ms X provided accommodation for John Carthy with her for a period of weeks. It transpired to be a very distressing time for her.

The second downturn in Mr. Carthy's life then was the loss of his job and a dispute in that regard which led to trade union involvement and a one-man picket mounted by him at his employer's premises. He was distressed that his fellow workers, though offering their support originally, failed to give it.

It is evident that the combined effect of the foregoing events comprised a serious, quite sudden decline in Mr. Carthy's circumstances which lead to a relapse of his mental illness and the onset of a manifestation of mania which brought about a major change in his personality and relationship with Ms X. She described that his attitude towards her changed radically. He became "*domineering, possessive, jealous, argumentative and demanding of her time*". He remained unemployed and she was obliged to provide for him. He was not physically abusive to her, but he subjected her to ongoing verbal abuse and insults. The end result was that what seemed to be a beautiful personal relationship developing between them was destroyed by a manifestation of his mental illness, probably arising out of the downturn in his life at that time. Ms X appears to have been shattered by John Carthy's changed personality. Nonetheless she persevered with the relationship for some weeks but, as there appears to have been no improvement in his behaviour, she decided in the end that it could not and ought not to continue and that it would have to be terminated. And so she brought it to a final end on or about 20th February, 2000.

John Carthy's reaction to the termination of the relationship is contained in a letter written by him to Ms X in an effort to restore the situation between them. It confirms her account and he recognised that his conduct towards her, the product of his mental illness, had brought about what he regarded as a tragedy in his life. It is appropriate to quote the contents of that letter in full as it not only corroborates Ms X's information but it explains the extent of John Carthy's knowledge and appreciation of his mental illness at that time. It also makes clear the importance which he attached to the severing by her of his relationship with her and the fact that he regarded it as a great tragedy in his life. In all probability it was one of the factors which contributed, with other major events, to unbalancing his mind at Abbeylara two months later to an extent far beyond what had ever happened to him before. His letter is in the following terms:

"26/02/00

Toneymore,
Abbeylara,
Co. Longford

Dear [X]

I do not want to get you into trouble with your boss, by phoning you at work, I just want to let you know, that I am missing you and let you know how I feel about you.

You know that I believe that a person should not be with someone unless they love them, as I do you. I hope you feel the same, furthermore whatever decision you make I will respect it and will not be pestering you. I think too much of you to upset you any further. I give you my deepest apology for the upset and annoyance I have put you through.

I haven't told you this before but due to the fact that from time to time I get elated (high) has caused me not to get deeply involved with someone until I met you. You are the first I told about this problem I have. I have been perfect for quite some time and I'm fine again thank God. I am sure

you can understand somewhat, . . . The way I have been acting in the last few weeks has put a lot of strain both on you and those closest to me. Marie in particular has been very upset and my friendship with "Pepper" has been put under strain. To them I owe a lot. But it is you [X], I have hurt most and it is this that upsets me most.

I do not wish to use this problem as an excuse for my behaviour but it is this that has made me so impatient and argumentative and so overbearing over the last while. I admire you for your honesty and you should always be in the future as trust is always best, in the long run.

I am sure we would be still together were it not for me being elated and my mood swings.

Being elated has never got me into trouble really but if it means that I have lost you, it has been very costly and ruined my happiness.

When I am "high" everything, must in my mind, be instant. Although it is usually a pleasurable experience being elated causes a lot of frustration for loved ones. As for my feelings at the moment. I have never been as happy with anyone before and I hope all is not lost.

It seemed to me, to be the real thing, "I never thought love could feel so good". I told you on numerous occasions that I would be honest with you and I mean every word I say.

I feel something this good, only comes along once in a lifetime and I hope all is not lost. My friends could not understand why I was so happy when I met you, they didn't realise how much you meant to me and you still do. With the elation goes big ideas, racing thoughts that has left me impatient. I hope you understand. My mood is fine now due to the emptiness and sadness due to missing you.

Maybe I don't deserve a second bite at the cherry but I believe everyone deserves a second chance. The way I have been acting irrationally over the past few weeks hasn't happened for five years up until now. [That statement is untrue in the light of evidence relating to in-patient mental treatment.] So while it has caused a lot of hassle to both you and Marie it is not a persistent problem and I hope you can take this into consideration.

Maybe we could meet to have a chat. I think we owe that to each other. I will be in Galway probably next Wednesday or Thursday. Maybe we could meet then "hopefully".

I hope this letter gives you some idea of how I still feel about you. I hope it also gives you some explanation of the reason for my out of character behaviour which led to this situation.

No matter what has happened you still mean everything to me and I hope we can sort things out. By the way I hope you had a good weekend.

Your happiness is most important to me and I mean that. I could write all night but what I have written, means something to you, hopefully. It's now 1.50 a.m. I should go to bed.

Missing you more than words can say.

Love John XXX''

That letter, and another to Ms X shortly afterwards, did not bring about any change and, it seems, did not weaken her resolve that the relationship should remain terminated.

The next event after the ending of the relationship as established by evidence is that it immediately sparked off conduct by John Carthy on 20th February in Galway which so concerned Mr. Carthy's sister, Marie, that she orchestrated his arrest by the police for the purpose of an immediate medical examination of him by Dr. Dymphna Horgan (a general practitioner) while he was in police custody. She found him to be elated but not manifesting signs of serious mental disturbance. She recommended a referral to Dr. Shanley who she was told by John Carthy had been giving him psychiatric treatment. Ms Carthy made an appointment for her brother to see Dr. Shanley at St. Patrick's Hospital, Dublin on Holy Thursday, 20th April which transpired to be the day on which he was fatally shot.

Evidence has established that John Carthy returned to his home at Abbeylara. He obtained employment locally but gave it up in the week before his death – probably because of excessive drinking. Serious storm clouds continued to gather in his life. These included the fact that Holy Thursday was the tenth anniversary of his father's death (a relationship which had been particularly important to him); it coincided with what John Carthy appears to have understood as an imminent disaster i.e. the demolition of the original family home by the local authority as a new house on site had been provided to replace it. The old house had been the Carthy family home for generations. He associated it particularly with his father and grand-father. He did not want it to be destroyed and he seems to have indicated an intention to defend it against all comers, including the gardaí, if necessary. It has been clearly established, and it does not seem to be in dispute, that the coalition of perceived disasters in John Carthy's mind on 18/19/20th April, 2000 finally drove him into a far more grievous manifestation of mental derangement than he had ever displayed before. In particular, it entailed for the first time physical violence and that in an extreme form over a protracted period of about twenty-seven hours which involved firing from his house thirty shots with his shotgun which were mostly directed at garda officers who were in his vicinity. It is evident that the manifestation of mental illness displayed by John Carthy at Galway and on other occasions during the previous ten years were of minor significance by comparison with what transpired at Abbeylara and it is evident also that what happened at Galway and/or elsewhere earlier did not constitute an advance warning of the profound change in John Carthy's conduct which became manifest in the last two days of his life. In short, a further in-depth investigation of his comparatively modest manifestation of mental illness at Galway or earlier, and of the intimate personal relationship between John Carthy and Ms X, are not remotely likely to furnish relevant new information or shed any significant light on the huge manifestation of mental illness displayed by Mr. Carthy at Abbeylara and how the garda should have dealt with it in the light of the information then at

their disposal or information and assistance which might have been available to them if they had sought it at that time.

Other aspects of Ms X's statement to which Mr. McGuinness and Mr. Rogers attach significance and which they contend are relevant to issues which the Tribunal must determine are as follows:

1. John Carthy's contention relayed to Ms X that when in need of temporary accommodation his sister, Marie, had refused to let him share her bed-sit (not "house" as Mr. McGuinness described it). It is contended that that bears upon the issue of the closeness or otherwise of a relationship which is relevant to an assessment of the family circumstances and background.

There are two points which emerge out of that submission. First, the family relationship between brother, sister and (to a lesser extent) mother in the context of garda performance at Abbeylara is relevant only in the context of the possible use of Ms Marie Carthy by the garda as a potential conduit with her brother during the siege at Abbeylara. This turns upon what the garda knew or ought to have known about the relationship during the events at Abbeylara. Any information in that regard, whether true or false, which emerged *ex post facto* the event is patently irrelevant to the issue about whether or not Ms Carthy's collaboration could or should have been availed of by the negotiator in course of the siege.

Secondly, it is probable that Mr. Carthy was in the process of mental disturbance when he alleged to Ms X that his sister would not provide him with temporary accommodation in her bed-sit. Ms Carthy has denied that contention and it must be recognised that there is evidence that he was suffering from delusions during that period of illness, *vide* his erroneous contentions to Ms X about his ownership of land and an alleged family dispute in that regard. It is pertinent also to point out that in his letter to Ms X quoted herein the reality of an ongoing close, caring, loving relationship which his sister appears to have had with her brother is clearly corroborated by him. I should add that the delusions which John Carthy may have displayed in Galway would appear to have little, if any, bearing on the subsequent explosive escalation of his mental illness as displayed by him at Abbeylara.

2. The next point relating to Ms X's statement is Mr. Carthy's apparent delusion about his ownership of certain land and an alleged dispute with his sister about it which she denies. This, it is submitted, is new information which should be investigated. For reasons already stated, I am satisfied that it has no bearing and could not have had any bearing on the police conduct of events at Abbeylara as the alleged information was not known to them at that time.
3. The next matter relates to an incident which occurred after the onset of John Carthy's mental illness in Galway which put in train the volte-face in his conduct towards Ms X.

The following passage occurs in her statement concerning an incident after the disintegration of their relationship had become manifest.

“We were in the car and John started fighting with me and insulting me. He wanted me to stop the car but I wouldn’t. I didn’t want anything to happen to him. I didn’t want it on my conscience. When we arrived back in Galway I gathered John’s stuff and threw him out. I had had enough. It was then for the first time I was told by his sister, Marie, that John thought an awful lot of me, but he suffered from depression. Again I was sucked in. I felt sorry for John and all was forgotten.”

Mr. McGuinness has submitted that a detailed investigation of that incident was necessary and that it was relevant to inquire into *“what were the consequences that she feared so much for John that she was afraid to stop the car? It seems to imply that there was some action or intention or threatened action, one doesn’t know until one inquires.”*

Mr. Rogers took the matter further and submitted that the passage I have quoted is evidence of suicidal ideation. I have no doubt that these submissions have no substance or justification. What emerges is that on a foggy night while driving from Athenry to Galway after a drinking session there a row developed between John Carthy and Ms X, the driver of the car, which included insulting observations about her by him. He wanted her to stop the car but she wouldn’t do so. It seems abundantly clear that his reason for that demand was that in his volatile rage he wanted to get out of the car there and then and leave her. Ms X’s concern may well have been that she did not wish to leave him on the side of a country road on a foggy night somewhere between Athenry and Galway probably having had alcohol taken and, therefore, at risk of injury from traffic. There is nothing whatever in her statement to indicate that his reason for demanding that she stop the car was that he wished to hurt himself, far less to commit suicide. If that had been his intention it is likely that he would have opened the door of the car and thrown himself out. It appears that he made no attempt to do so. The situation at the time was that his relationship with Ms X was still ongoing though at risk and, indeed, was retrieved through the good offices of Marie Carthy later that night, and the tragedy for John Carthy of its termination had not yet happened. The relevance of that particular episode has not been established and it is not a sufficient ground for requiring Ms X to undergo oral examination about it in public.

The circumstances relating to the ending of the relationship between Ms X and the deceased

4. Mr. Carthy’s own correspondence makes it abundantly clear why the relationship came to an end and that has been introduced in evidence. There is no justification whatever for raking over with Ms X. the intimate details of a tragic event in her life. I am surprised that such an insensitive submission should be made.

5. It is submitted that the reaction of Ms X to John Carthy's letters and her interpretation of them should be investigated in oral examination. Again, this entails delving into an intimate personal tragedy for no purpose which might be of use to the Tribunal in addressing any of the issues before it. The significance of the letters is that they throw light on John Carthy's thinking on important matters including why a relationship of great importance to him had foundered. Her interpretation of the letters is not significant per se in the context of the Tribunal's deliberations. Even if it had any significance, her interpretation of the letters is also made quite clear in her statement and further elaboration would be over-indulgence.
6. It is submitted that there should be an opportunity for examination of Ms X on the subject of whether John Carthy had intimated to her "*his hostility to the gardaí in January to April, 2000*" and in particular having regard to his arrest in Galway on 20th February. It is submitted that Ms X is potentially capable of giving evidence in that regard.

This submission gives rise to three observations. First, Ms X had no personal contact with John Carthy after two phone calls made by him at the end of February and beginning of March. There was nothing about the gardaí in the letters which she received. Secondly, there is no evidence that she had ever received any information from him about his attitude towards the police. Thirdly, his arrest on 20th February at Galway was orchestrated by his sister, Marie, who was concerned to obtain medical help for her brother at that time. It is probable that he would have been aware of that and it is unlikely to have given rise to annoyance by him about the arresting police in Galway. Even if it had, Ms X probably would not have heard about it as her relationship with John Carthy was then over. Again, for reasons already stated, whatever might emerge on that topic now could have no bearing on the performance of the Garda at Abbeylara. There is no justification whatever for exposing Ms X to a trawl for information which might possibly emerge even though there is nothing to support that possibility. I should add also that there is already substantial independent testimony about John Carthy's attitude towards the local police at Granard. It would be quite wrong to expose Ms X to the publicity of cross-examination on that issue on the off-chance that something of interest might emerge. Despite Mr. Rogers's remarkable contention to the contrary, I do not believe that any competent counsel for the Garda would query Ms X about whether John Carthy had ever made any adverse observations about the police without knowing what her answer would be. I am sure Mr. Rogers would agree on reflection that that is so.

7. It is submitted that oral testimony by Ms X is necessary in order to assess the opinions expressed by Dr. Sheehan, the Tribunal's psychiatrist, and Dr. McKenzie, psychologist, that there is nothing in her statements which causes them to resile from the professional opinions which they have already expressed. I am satisfied that that submission is also not well founded. Dr. Sheehan and Dr. McKenzie are professionals of great experience who have

high reputations in their respective areas of expertise. If either of them considered that they required more information from Ms. X then they would have asked for it. Neither has done so. Furthermore, I have to repeat again that Ms X's statement was not information known to the garda at Abbeylara or which could have been discovered by them if they carried out proper investigations in course of the siege which is the definitive issue I have to consider.

8. Mr. Rogers contends that John Carthy's behaviour towards Ms X should be investigated by oral examination of her because the conduct to which she was subjected by him "*belies any of the descriptions we have heard before*". That is not so. There is abundant evidence of hyper behaviour by John Carthy, including putting his mother out of her house; verbal aggression in pubs which caused him to be barred from attendance and threats to shoot or injure various people which were such as to cause the gardaí to deprive him temporarily of his shotgun.

Mr. Rogers also contends that Ms X should be required to elaborate on why she states that she was frightened of John Carthy. Whatever the reasons for her fear may have been, she does not allege any physical violence by him. The cause of her fear is obviously a very far cry from the extreme violence demonstrated by the deceased during the siege at Abbeylara and clearly has no significant bearing on it.

The foregoing submission by Mr. Rogers is not well founded, not least because on any view it is *ex post facto* the event and it is irrelevant to the issues I have to determine regarding Garda performance at Abbeylara.

9. Notwithstanding the very clear explanation given by Mr. MacGrath, S.C. leading counsel for the Tribunal at the commencement of the application, of the reason for the delay there had been in obtaining the ultimate detailed statement from Ms X and her waiver of confidentiality regarding an earlier letter to the Tribunal, Mr. Rogers has persisted in wholly unfounded criticism of the Tribunal's handling of the matter which is unfair and unworthy of him. I hope that it will be withdrawn. I am well aware that Ms X has been greatly distressed by the tragedy of her relationship with John Carthy, its termination and his fatal shooting at Abbeylara two months later. I regard it as entirely understandable that having furnished her detailed letter to the Tribunal setting out fully, and it is generally agreed truthfully, an extensive account of her relationship, she hoped that she would be left in peace to rebuild her life. Thereafter, she changed her address, her employment and even her mobile phone number to preserve anonymity and her family were unwilling to give any information about her. It took many months to trace her after receipt of the Commissioner's letter in November, 2003 and to prevail on her to consult a solicitor. Eventually, she did so and very soon afterwards her statement was obtained through his good offices and she waived confidentiality regarding the content of her original letter. There is no doubt whatever that the Tribunal's legal team responded in an exemplary way in

seeking and obtaining the understandably reluctant cooperation of Ms X and allegations of unreasonable delay on their part have no justification.

10. Both counsel strenuously pursued a contention that if Ms X's statement is regarded as relevant I am obliged at law to hear her evidence viva voce in public session notwithstanding the fact that she is an innocent person in the context of the Tribunal with a prima facie constitutional right to privacy regarding an intimate personal relationship and that, if obliged to give public testimony, she would be exposed to a real risk of harmful media exploitation.

Various legal authorities were opened by counsel but none of them were pertinent to the issue of relevance or the issue of the balance between conflicting constitutional rights.

Conclusions

I have already addressed a number of matters which arose out of the submissions by counsel for the respective garda parties and I do not propose to revisit them. There is one pertinent fundamental issue which to my surprise was not addressed by either counsel and which lies at the root of an assessment of this application regarding the alleged relevance of the proposed evidence of Ms X. It is this. What the Tribunal is enjoined by the Oireachtas to investigate and report on is the Garda response to events at Abbeylara on 19th and 20th April, 2000 from the time when the police first became involved in the matter on the evening of 19th April up to the fatal shooting of Mr. Carthy by an ERU officer at about 6:00 p.m. on the following evening. This entails an assessment of their involvement in the light of all relevant factors at the time of the siege including the knowledge available to them then; what they might have learned and advantages which may have been available to them at that time if the prevailing circumstances had been properly assessed and investigated by the police.

Nothing which has come to light, whether correct or erroneous, since the shooting of Mr. Carthy could have had any bearing on Garda conduct during the siege as it was not then known to any of the officers concerned. Ms X had no contact with the Garda until a month after John Carthy's death. Accordingly, her evidence could have no relevance to police performance during the Abbeylara siege. Apart from that fundamental matter, there are other reasons for deciding against calling Ms X to testify viva voce and they are referred to already in this ruling. Ms X is entitled to vindication of her constitutional right to privacy regarding an intimate personal relationship with John Carthy and no valid reason has been advanced which would justify depriving her of that fundamental right.

There is one remaining matter for decision. The written statements and letter furnished by Ms X to the Tribunal which have been the subject-matter of this application are not evidence, *per se*, and the Tribunal cannot, in the absence of general agreement, give the information contained therein that specific status. However, the statements and related documents have been furnished to all

interested parties. The accuracy of the information provided and the veracity of Ms X have not been challenged and much of what she has stated is corroborated by other admissible evidence. Accordingly, it seems to me that it would be unreal to prevent counsel for any party from referring in final submissions to facts stated by Ms X. However, it must be borne in mind that her information, though apparently fair and truthful, has not been subjected to any oral scrutiny and, therefore, its value is subject to that limitation. The same observations apply to statements furnished to the Tribunal by Mrs. Rose Carthy and her daughter, Marie, in response to particular observations made by Ms X in her statements.

APPENDIX 8

Proposed application form for a Firearm Certificate

Are you applying for (tick box which applies):

- ☐ The grant of a firearm certificate
- ☐ The renewal of a firearm certificate

Part A: Personal Details

1. Title (Mr., Mrs., Ms, etc.)

2. Surname

3. Forename(s)

4. Previous Names

Have you ever changed your name?

Yes ☐ No ☐

If you answered “yes” provide documentary proof of such change.

5. Gender

Male ☐ Female ☐

6. Date of Birth

7. Residential Address

8. **Business or Professional Address**

9. **If you have lived at an address or addresses other than that stated at 7 above during the last five years provide details**

10. **Telephone numbers**

Home

--

Work

--

Mobile

--

Email address

--

11. **Occupation**

--

12. **Have you ever held a firearm certificate?**

Yes ☐ No ☐

If you answered “Yes” provide full details below including the certificate number(s), and the Garda district from which the certificate was issued. If you have retained the certificate(s) they should be attached to this form.

--

Part B: Previous History

A “Yes” answer to the questions in this part does not necessarily mean your application will be refused. It may lead to further investigation.

13. Offences

Have you ever been found guilty of, or do you have charges pending for, any offence in Ireland or abroad?

Yes ☐ No ☐

If you answered “Yes” provide full details on a separate sheet.

14. Firearm Certificate Refusal / Revocation

i. Have you ever been refused a firearm certificate?

Yes ☐ No ☐

If you answered “Yes”, state the year and indicate by whom

ii. Have you ever had a firearm certificate revoked?

Yes ☐ No ☐

If you answered “Yes”, state the year and indicate by whom

iii. Has any member of your household been refused a firearm certificate?

Yes ☐ No ☐

If you answered “Yes”, state the year and indicate by whom

iv. Has any member of your household had a firearm certificate revoked?

Yes ☐ No ☐

If you answered “Yes”, state the year and indicate by whom

Part C: Medical History

A “Yes” answer to the questions in this part does not necessarily mean your application will be refused. It may lead to further investigation.

15. Have you ever had or been treated for?

i. A mental disorder, depression, stress, nervous disorder or other psychiatric or psychological condition?

Yes ☐ No ☐

ii. Alcohol or drug related use or conditions?

Yes ☐ No ☐

iii. Any medical condition that may affect your possession or use of firearms?

Yes ☐ No ☐

iv. Do you have any physical disability that may affect your possession or use of firearms?

Yes ☐ No ☐

v. In the case of a renewal application, has there been any deterioration in your health, disorder, condition or disability since you last applied for a firearms certificate?

Yes ☐ No ☐

vi. During the past 2 years have you experienced a breakdown of a significant relationship, job loss or bankruptcy?

Yes ☐ No ☐

If you have answered “Yes” to any of the above you may be requested to provide full details on a separate sheet. Such details may involve a request that you obtain a medical report from a doctor who treated you or is familiar with your condition. In the event of such a request you will be required to furnish the name and address of each such treating doctor and of the general medical practitioner you have attended during the period of five years ending on the date of this application.

Part D: Safety Course and Safe Storage

16. Have you passed a recognised firearms safety course?

Yes ☐ No ☐

If you answered “Yes” attach the original certificate to this form.

17. Give the addresses of the locations at which it is proposed that the firearm and ammunition will be stored

Part E: Details of Firearms

18. Give full details of the firearm(s) which is (are) the subject matter of this application

Part F: Reasons for Requiring the Firearm

19. State in full the reason(s) why you require the firearm in respect of which this application is made

20. Are you a member of a gun club?

Yes ☐ No ☐

If you answered "Yes" provide details of the gun club and of your membership.

21. Do you propose to shoot over land which you own?

Yes ☐ No ☐

If you answered "Yes" provide details of the location of the land and of your ownership thereof.

If you answered "No" provide details of the identity of the owner of lands over which you propose to shoot, the exact location of the lands together with an appropriate authority or letter of consent from that person.

22. Do you propose to apply for a licence pursuant to section 29(5)(a) of the Wildlife Act 1976 authorising you to hunt and kill protected wild birds and hares?

Yes ☐ No ☐

Part G: Conditions of Grant of Firearm Certificate

23. Have you a good lawful reason for requiring the firearm in respect of which the certificate is applied for?

Yes ☐ No ☐

24. Can you be permitted to have in your possession, use, and carry a firearm or ammunition without danger to the public safety or to the peace?

Yes ☐ No ☐

25. Are you a person declared by section 8 of the Firearms Act, 1925 to be **disentitled to hold a firearm certificate** [such persons should be listed in any explanatory memoranda accompanying this form]?

Yes ☐ No ☐

Part H: Referees

The applicant shall provide two referees:

- i. An adult close relative;
- ii. A person over thirty years of age, resident in Ireland, who has known the applicant for upwards of five years and is a person of good standing and repute.

26. **1st Referee**

Name of 1st Referee

Address of 1st Referee

Telephone number of 1st Referee

Home

Work

Mobile

Email address of 1st Referee

Date of Birth of 1st Referee

What is your relationship to the Applicant?

How long have you known the Applicant?

1st Referee's Declaration

I declare that:

- To the best of my knowledge and belief the information given in answer to questions 1 to 22 above is true;
- The photographs enclosed with this application bear a current true likeness of the Applicant, and that I have signed the back of one of the photographs to this effect together with the date on which the likeness was compared; and
- I know of no reason why, in the interest of safety to the Applicant and to others, the Applicant should not be granted a firearm certificate on foot of this application.

In tendering myself as a referee I am aware that I may be the subject matter of a check of garda records; that I may be contacted and interviewed by a member of the Garda Síochána; that I may be required to give evidence in Court in relation to this application and that I understand that it is a criminal offence knowingly or recklessly to make a false statement in order to procure a firearm certificate.

Signature of 1st Referee

--

Date

--

27. **2nd Referee**

Name of 2nd Referee

Address of 2nd Referee

Telephone number of 2nd Referee

Home

Work

Mobile

Email address of 2nd Referee

Date of Birth of 2nd Referee

What is your relationship to the Applicant?

How long have you known the Applicant?

2nd Referee's Declaration

I declare that:

- To the best of my knowledge and belief the information given in answer to questions 1 to 22 above is true;
- The photographs enclosed with this application bear a current true likeness of the Applicant, and that I have signed the back of one of the photographs to this effect together with the date on which the likeness was compared; and

- I know of no reason why, in the interest of safety to the Applicant and to others, the Applicant should not be granted a firearm certificate on foot of this application.

In tendering myself as a referee I am aware that I may be the subject matter of a check of garda records; that I may be contacted and interviewed by a member of the Garda Síochána; that I may be required to give evidence in Court in relation to this application and that I understand that it is a criminal offence knowingly or recklessly to make a false statement in order to procure a firearm certificate.

Signature of 2nd Referee

Date

Part I: Declaration

28. I declare that the information I have supplied for this application is true and correct. I understand that it is an offence to intentionally supply incorrect particulars or misleading information. I consent to the Garda Síochána making inquiries into my fitness to possess or own a firearm and authorise **any person** approached by the Garda Síochána in this matter to release or disclose all relevant information.

Applicant's signature (Signed in front of a member of Garda Síochána)

Witnessed by (member of the Garda Síochána)

Station

Date

Part J: To be completed by the Issuing Authority

29. Having regard to section 4 of the Firearms Act, 1925, I am satisfied that the applicant:

- has a good reason for requiring the firearm in respect of which the certificate is applied for;
- can be permitted to have in his possession, use, and carry a firearm or ammunition without danger to the public safety or to the peace; and
- is not a person declared by the Act to be disentitled to hold a firearm certificate.

Signature of issuing Authority

Station

Date