

**COMMISSION OF
INVESTIGATION**

into

**The Dublin and Monaghan
Bombings of 1974**

Interim Report

November 2005

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1. Introduction

The commission of investigation into the Dublin and Monaghan bombings of 1974 (hereinafter referred to as “the commission”) was established by Order of the Government made under section 3 of the Commissions of Investigation Act 2004.

Notice of the Order of the Government was published in the 13th May 2005 edition of *Iris Oifigiuil*.

The terms of reference of the commission were also published in the 13th May edition of *Iris Oifigiuil*. A copy of the terms of reference is contained in Appendix A of this Interim Report.

The commission has decided pursuant to section 6(6) of the Commissions of Investigation Act 2004 to request An Taoiseach, as specified Minister under that Act, to consider a revision of the time frame for the submission of the final report in this statutory investigation.

This interim report is submitted to An Taoiseach pursuant to the provisions of section 33(3) of the Commissions of Investigation Act 2004.

2. Establishment

The Secretary General to An Taoiseach, Mr. Dermot McCarthy, arranged office accommodation for the commission at Dublin Castle and assigned three officers from the Department of An Taoiseach to act as the administrative staff to the commission.

The commission appointed a Senior Counsel under the provisions of section 8 of the Commissions of Investigation Act 2004 to advise and assist the investigation. The commission also appointed a person with legal training and specialized information technology expertise to assist in the investigation.

The commission spent considerable time taking expert advice and seeking assistance in establishing in its offices appropriate electronic and other systems of security to protect sensitive documentation and information. These measures were necessary because the commission was required under its terms of reference to seek access to sensitive and secret documentation and information that included security source and other intelligence-type material which, in many instances, could be exempt from production in court

proceedings by reason of continuing claims of confidentiality and claims of privilege attaching to them.

The importance of the subject matter contained in the terms of reference and the time frame for the investigation has meant that the commission staff has had to work on a consistent basis beyond normal office hours, and have had to undertake additional administrative duties normally outside their remit. On a continuous basis sensitive and secret documentation has had to be processed by the staff in a manner that ensures as far as practicable its confidentiality.

3. Work Method

This commission is the first commission of investigation established under the provisions of the Commission of Investigation Act 2005.

The model of investigation provided for by the Commissions of Investigation Act 2004 is highly regulated and is, in many respects, unique. The commission has been required, without the benefit of suitable

precedents, to establish new structures and procedures to take account of these requirements.

In establishing and operating its investigative practices and procedures the commission is required by section 10(2) of the Commissions of Investigation Act 2005 in conducting its investigation, to the greatest extent possible consistent with the duties of the commission under that Act, to seek the voluntary co-operation of persons whose evidence is desired, and to facilitate such voluntary co-operation.

In that regard the commission prepared and published a “Rules and Procedures” document as required by the provisions of Part 3 of the Commissions of Investigation Act 2004. A copy of the commission’s ‘Rules and Procedures’ is contained in Appendix B of this Interim Report.

4. The President of the High Court

The statutory regime under the Commissions of Investigations Act 2004 provides for eight statutory applications to the High Court for relief under that Act. The existence of these powers of application to the High Court is,

in the commission's view, critical to a fair and effective investigation process.

The High Court is required under section 47(1) of the Commissions of Investigation Act 2004 to "...give such priority as, having regard to all the circumstances, it reasonably can to the disposal of proceedings in the Court ...” under the Act.

No rules have yet been made under section 47 (2) of the Commissions of Investigation Act 2004 to facilitate these various applications.

The President of the High Court, Mr. Justice Finnegan, has provided significant assistance to the commission in this matter by publishing a Practice Direction on the 21st July 2005 setting out interim rules regulating these various High Court applications pending the coming into operation of rules of court regulating the procedure in such proceedings. A copy of that Practice Direction is set out in Appendix C of this interim report.

5. Documentation obtained

The commission has assembled a considerable archive of documentation and information concerning the Dublin and Monaghan bombings of 17th May 1974.

The terms of reference of this investigation require the commission to seek to establish “...the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for ...”

To attempt to establish what documentation is missing it is necessary to first attempt to establish what relevant documentation or information exists in relation to the Dublin and Monaghan bombings.

The task of establishing what relevant documentation and information currently exists in relation to the Dublin and Monaghan bombings has taken a considerable period of time and effort on the part of the commission.

It is remarkable, when account is taken of the various investigations, inquiries, and proceedings that have preceded this statutory investigation that no adequate archiving or listing of the relevant documentation and

information appears to have previously existed concerning these bombing atrocities.

The commission had to identify potential sources of documentation or information, secure access to that material where possible, conduct a preliminary examination as to possible relevance, arrange for copying of these documents and then list and assess the relevance of each document to the investigation.

This has been a difficult, labour intensive, and time-consuming aspect of the investigation to date and for reasons beyond the commission's control may not yet be complete.

In particular instances the commission has found certain documentation that in previous proceedings were stated to be missing. In other instances the commission may be in a position to establish that other relevant documentation has been lost.

The commission is satisfied that, consistent with the requirements of the Commissions of Investigation Act 2005, the remaining amount of

documentation and information likely to be obtained in this investigation has been identified and is likely to be relatively small in quantity.

6. Co-operation

The commission has expended considerable efforts in seeking the voluntary co-operation of persons it considers may be in a position to assist the investigation.

The commission has sought to engage with all persons involved in its work on a voluntary basis and to avoid, to the extent possible, invoking the mandatory powers available to the commission under the provisions of the Commissions of Investigation Act 2004.

In that regard the fact that the functions, duties and powers of the commission are comprehensively set out in the Commissions of Investigation Act 2004 has been of material assistance in informing and reassuring the persons concerned with this investigation of their rights and responsibilities in relation to this investigation.

The commission is satisfied that had it proceeded to invoke, on a general basis, the mandatory statutory powers available to it the progress of this investigation would have been much slower and the time frame for the investigation wholly unrealistic.

7. Evidence heard

The commission has heard evidence from a number of persons in this investigation. The commission has also received affidavits of documents and affidavits dealing with certain matters of evidence.

8. Work remaining to be done

(1) The commission has further evidence to take from a limited number of persons. The commission is satisfied that a further short period of time is required to obtain this evidence.

(2) The commission has also identified further documentation from a limited number of sources that it requires to inspect in relation to this

investigation. The commission is satisfied that a further short period of time is required to facilitate this work.

(3) The Commissioner of An Garda Siochana has, at the request of the commission, invoked certain procedures uniquely available to him in an attempt to obtain for the commission disclosure of documentation relevant to this investigation that is at present unavailable to the commission. The location of the documentation sought may be outside this jurisdiction. The commission is satisfied that a further period of time is required to facilitate the operation of these procedures.

(4) A number of the victims of the Dublin and Monaghan bombing atrocities decided in September 2005 to engage with the work of the commission. These persons have, in a relatively short time, gone to considerable lengths to disclose documentation and information to the commission. The commission has put in train certain investigative steps as a result of disclosures made by these victims. The victims have also requested an additional period of time to produce further material to the commission. The commission considers that a reasonable period of time should be

afforded to facilitate the request made by these victims and to conclude the commission's related investigations.

(5) The commission has requested the United Kingdom Government to afford the commission an opportunity to meet with certain United Kingdom agency personnel, and to inspect certain documentation in the possession of the United Kingdom Government. The location of the persons and the documentation sought to be inspected is outside the jurisdiction. A response to this request is awaited. The commission considers that a further reasonable period of time should be afforded to facilitate the United Kingdom Government consideration of this request.

(6) The commission is required by the provisions of Part 5 of the Commissions of Investigation Act 2004 to comply with a mandatory regime of disclosure of its draft, or part or parts of its draft final report to certain persons concerned in this investigation so as to afford to them an opportunity to make appropriate submissions on the content of such drafts. This process requires that a reasonable period of time be afforded to such parties to consider and make submissions to the commission on such drafts. Persons entitled to these rights include person's resident outside the

jurisdiction. The commission is satisfied that this statutory process requires a further limited period of time to conclude this aspect of the commission's investigation.

9. Legal costs

The present indications are that the legal costs likely to be payable to the legal representatives of persons concerned with this investigation will not be significant.

To date neither the commission, nor any person concerned in the investigation, has made an application to the High Court under the Commissions of Investigations Act 2004 or commenced any other form of related legal proceedings.

The reasons for this situation include:

- (a) the central importance placed by the Commissions of Investigation Act 2004 on voluntary co-operation with the investigation,

- (b) the fact that a significant number of persons associated with this investigation are public authorities or statutory agencies, and

- (c) the determination of the commission, in so far as practicable, to facilitate voluntary co-operation.

The final stages of this investigation may incur further legal costs associated with the mandatory statutory processes contained in the provisions of Part 5 of the Commissions of Investigation Act 2004 concerning the preparation of a final report.

In the event that there are no applications to the High Court the legal costs incurred in this investigation are likely to be those provided for in the commission's financial guidelines, and consequently not likely to be significant in the overall costs of this investigation.

10. Time frame

The commission is required by the provisions of section 32(4) of the Commissions of Investigation Act 2004 to endeavour to submit its final

report to An Taoiseach, as specified minister under that Act, by the 14th November 2005.

The commission is satisfied that, consistent with its duties under the Commissions of Investigation Act 2004, the time frame specified in the Order establishing the commission is no longer appropriate, and that a further short period of time is required to conclude this investigation.

The commission requests An Taoiseach, as the specified Minister, to give consideration under the provisions of section 6(6) of the Commissions of Investigation Act 2004 to revising the time frame for the submission of the commission's final report to the extent consistent with the objective of having the investigation conducted and the report submitted as expeditiously as a proper consideration of the matters set out in the commission's terms of reference permits.

The commission considers that a revised date of the 31st January 2006 may be a realistic date for the conclusion of the investigation. If the commission arrives at the view that the requests made for documentation and information

that have an out-of-jurisdiction aspect are unlikely to be forthcoming then the time frame for conclusion of the investigation may be shorter.

The commission is determined to complete its task as speedily as possible consistent with the importance of its task, the requirements of its governing statute, and due consideration of fair practices and procedures for all concerned in its investigation.

Dated this 8th November 2005.

Patrick MacEntee, SC, QC,

Sole Member.

APPENDIX A

Extract from Iris Oifigiuil 12th May 2005

COIMISIÚN IMSCRÚDÚCHÁIN,
BUAMÁIL BHAILE ÁTHA CLIATH AGUS
MHUINEACHÁIN 1974.

TÉARMAÍ TAGARTHA

Tabhairt faoi imscrúdúchán críochnúil agus tuarascáil a dhéanamh ar na nithe sainiúla seo a leanas a gceapann an Rialtas gur cás suntasach leis an bpoibál iad.

(1) Cén fáth gur cuireadh deireadh le himscrúdúchán an Gharda Síochána i mBuamáil Bhaile Átha Cliath agus Mhuineacháin i 1974?

(2) Cén fáth nár lean na Gardaí ar an eolas seo a leanas:

(i) faisnéis go raibh vean bán, le pláta cláraithe Sasanach, páirceáilte lasmuigh den Roinn Poist agus Telegrafa i Rae Portland agus gur facthas níos déanaí í páirceáilte i limistéar domhainmhara chalafoirt farantóireachta B&I i mBaile Átha Cliath, agus an teagmháil a rinneadh ina dhiaidh sin le hoifigeach de chuid Arm na Breataine ar bhád farantóireachta a bhí ag fágáil an chalafoirt sin.

(ii) faisnéis a bhaineann le fear a bhí ag fanacht ag an *Four Courts Hotel* idir an 15 agus an 17 Bealtaine, 1974 agus a theagmhálacha leis an UVF;

(iii) faisnéis maidir le ceannaire de chuid Arm na Breataine a liomhnaítear a facthas i mBaile Átha Cliath ag tráth na buamála;

agus

(3) I ndáil leis na doiciméid atá ar iarraidh:

(i) na doiciméid go díreach (faisnéis Roinne, Garda agus aon doiciméid ábhartha eile) nach bhfuil cuntas orthu;

(ii) na cúiseanna a mhíníonn cén fáth go bhfuil na doiciméid imithe ar iarraidh;

(iii) cibé an féidir na doiciméid atá ar iarraidh a aimsiú anois; agus

(iv) cibé an bhfuil na córais atá i bhfeidhm faoi láthair dóthanach chun cosc a chur ar dhoiciméid den sórt sin dul ar iarraidh arís.

Obair imscrúdúcháin a rinneadh cheana maidir le buamáil Bhaile Átha Cliath agus Mhuineacháin i 1974 a chur san áireamh, lena n-áirítear Tuarascáil an Choimisiúin Fiosrúcháin Neamhspleáigh, Tuarascáil Deiridh an Chomhchoiste um Dhlí agus Ceart, Comhionannas, Cosaint agus Cearta an mBan, Ráitis Ionchoisne agus Imscrúdúchán Inmheánach an Gharda Síochána.

Tuarascáil deiridh a sholáthar don Taoiseach ag tráth nach déanaí ná sé mhí ó dháta bunaithe an Choimisiúin.

RÁITEAS COSTAS AGUS CREAT AMA DON
IMSCRÚDÚCHÁN

Bunófar an Coimisiún Imscrúdúcháin do thréimhse sé mhí. Beidh air tuarascáil deiridh a dhéanamh chuig an Taoiseach, mar an tAire sonraithe, ag tráth nach déanaí ná deireadh na sé mhí ó dháta a bhunaithe.

Beidh an Coimisiún comhdhéanta de Chomhalta Aonair. Beidh Abhcóide Sínearach agus triúr d'fhoireann tacaíochta ar Fhoireann an Choimisiúin

Is €604,880 an meastachán do tháillí dlí, tuarastail agus costais riaracháin eile don Choimisiún do thréimhse sé mhí. Ní chuireann sé sin aon chostais trífú páirtí a d'fhéadfadh an Coimisiún a dhámhadh san áireamh.

COMMISSION OF INVESTIGATION,
DUBLIN AND MONAGHAN BOMBINGS OF 1974.

TERMS OF REFERENCE

To undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern.

(1) Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?

(2) Why the Gardaí did not follow-up on the following leads:

(i) information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;

(ii) information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;

(iii) information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings;

and

(3) In relation to the missing documentation:

(i) the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;

(ii) the reasons explaining why the documentation went missing;

(iii) whether the missing documentation can now be located; and

- (iv) whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.

To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation.

To provide a final report to An Taoiseach not later than six months from the date of establishment of the Commission.

STATEMENT OF COSTS AND TIMEFRAME FOR INVESTIGATION

The Commission of Investigation will be established for a period of six months. It will be required to make a final report to the Taoiseach, as the specified Minister, not later than the end of six months from the date of its establishment.

The Commission will comprise a Sole Member. Staffing of the Commission will comprise a Senior Counsel and three support staff.

The estimated legal fees, salaries and other administrative costs for the Commission total €604,880 for a six month period. This does not include any third party costs that may be awarded by the Commission.

[3]

COMHAIRLE CHONTAE LAOISE LAOIS COUNTY COUNCIL

LAOIS COUNTY COUNCIL (MOUNTMELICK TOWN) CAR PARK BYE-LAWS 2005

ROAD TRAFFIC ACT 1994

In accordance with Section 36 of the Road Traffic Act 1994, notice is hereby given that Laois County Council propose to introduce Car Park Bye-Laws for the town of Mountmellick.

A copy of the draft bye-laws referred to above are available for inspection for one month from Monday 16th May 2005, at The Courthouse O'Moore Street, Mountmellick, and at Áras an Chontae, J.F.L. Avenue, Portlaoise, Co. Laois during normal opening hours. A copy of the draft Bye-Laws may also be purchased.

Office Hours: Monday-Friday 9.00 a.m.-5.00 p.m.

Submissions or observations with respect to the draft bye-laws may be made in writing to the undersigned to be received no later than 5.00 p.m. on Friday 1st July 2005.

GERRY GIBSON,
Director of Services,
Transportation and Infrastructure,
Laois County Council,
Áras an Chontae,
James Fintan Lalor Avenue

COMHAIRLE CHONTAE LAOISE LAOIS COUNTY COUNCIL

LAOIS COUNTY COUNCIL (MOUNTMELICK TOWN) PARKING PLACES BYE-LAWS 2005

ROAD TRAFFIC ACT 1994

In accordance with Section 36 of the Road Traffic Act 1994, notice is hereby given that Laois County Council propose to introduce Parking Places Bye-Laws for the town of Mountmellick.

A copy of the draft bye-laws referred to above are available for inspection for one month from Monday 16th May 2005 at The Courthouse O'Moore Street, Mountmellick, and at Áras an Chontae, J.F.L. Avenue, Portlaoise, Co. Laois during normal opening hours. A copy of the draft Bye-Laws may also be purchased.

Office Hours: Monday-Friday 9.00 a.m.-5.00 p.m.

Submissions or observations with respect to the draft bye-laws may be made in writing to the undersigned to be received no later than 5.00 p.m. on Friday 1st July 2005.

GERRY GIBSON,
Director of Services,
Transportation and Infrastructure,
Laois County Council,
Áras an Chontae,
James Fintan Lalor Avenue,
Portlaoise.

Tel: 0502 64000, Fax: 0502 22313
Email: www.laoiscoco.ie

[9]

AN GARDÁ SÍOCHÁNA

Tá an Rialtas inniu tar éis

- (1) Dónall Proinsias Ó Cualáin
(Donal Francis Folan)

a cheapadh chun céim Ard Cheannfoirt sa Garda Síochána, le héifeacht ón 15 Bealtaine, 2005;

- (2) Séamus Mac an Bhreithúin
(James Brown)

a cheapadh chun céim Cheannfoirt sa Garda Síochána, le héifeacht ón 15 Bealtaine, 2005; agus

- (3) Seán Mairtín Mac Mathúna
(John Martin McMahon)

a cheapadh chun céim Cheannfoirt sa Garda Síochána, le héifeacht ón 28 Bealtaine, 2005.

D. Mac CÁRTHAIGH
Ard-Rúnaí an Rialtais



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Rules and Procedures

July 2005

State Apartments, Upper Castle Yard, Dublin Castle, Dublin 2

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Introduction

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 (hereinafter referred to as “the commission”) was established by Order of the Government made under section 3 of the Commissions of Investigation Act 2004.

The commission was established on the 13th May, 2005 and intends to conclude on the 14th November, 2005.

The terms of reference of the commission were published in *Iris Oifigiúil* on the 13th May, 2005. A copy of the terms of reference of the commission are set out in Appendix 1 of these Rules and Procedures.

Mr. Patrick MacEntee, SC, QC was appointed sole member of the commission under section 7 of the Commissions of Investigation Act 2004.

The commission is required to undertake a thorough investigation and to report to the Taoiseach on the specific matters of significant public concern set out in the terms of reference.

The commission is also required under Part 3 of the Commissions of Investigation Act 2004 to publish its Rules and Procedures for the information of all persons who are involved in this investigation.

A copy of the Commissions of Investigation Act 2004 is to be found at Appendix 2 of these Rules and Procedures.

These Rules and Procedures are a general guide. They are not intended to constitute an exhaustive definition or description of the duties, functions or powers of a commission of investigation under the Commissions of Investigation Act 2004.

These Rules and Procedures are definitive as and from the date hereof. It may in the future be necessary to add to, or alter, these Rules and Procedures in which circumstance the amended form of these Rules and Procedures will be made available to all parties involved in the work of this commission.

Definitions

The Commissions of Investigation Act 2004 provides definitions of certain words which, in other contexts, may have different or enhanced meanings. It is for this reason that your attention is drawn to the meanings attributed to certain words in this commission of investigation.

| | |
|------------------------|--|
| “the Act” | means, unless otherwise stated, the Commissions of Investigation Act 2004. |
| “authorised person” | means Mr. Patrick MacEntee, SC, QC, the sole member of the Commission of Investigation into the Dublin and Monaghan bombings of 1974 or a section 8 person. |
| “Commission” | means, the Commission of Investigation into the Dublin and Monaghan bombings of 1974 established by Order of the Government published in <i>Iris Oifigiúil</i> on the 13 th May, 2005. |
| “the Court” | means the High Court. |
| “document” | includes any book, record or other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electrical device, whether or not stored, maintained or preserved in a legible form. |
| “evidence” | includes any expression, orally, in writing, or otherwise, of an opinion, belief or intention. |
| “investigation” | means an investigation carried out by a commission of investigation in accordance with its terms of reference under the Commissions of Investigation Act 2004. |
| “legal costs” | means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor. |
| “personal information” | includes private addresses, private telephone numbers, private family information and details of medical conditions. |
| “legal representative” | means a barrister or solicitor in current practice. |

| | |
|----------------------|---|
| “person” | includes any individual, body corporate, or unincorporated body. |
| “section 8 person” | means a person appointed under section 8 of the Commissions of Investigation Act 2004 to advise and assist a commission of investigation in relation to the investigation. |
| “sole member” | means Mr. Patrick MacEntee, SC, QC a person appointed under section 7 of the Commissions of Investigation Act 2004 as sole member of the Commission of Investigation into the Dublin and Monaghan bombings of 1974. |
| “terms of reference” | means the terms of reference of the Commission of Investigation into the Dublin and Monaghan bombings of 1974 published by the Government in <i>Iris Oifigiúil</i> on the 13 th May 2005. |

Governing principles

In formulating these Rules and Procedures the commission has adopted a number of guiding principles in relation to this investigation. These principles are as follows:

Thoroughness

The commission is required by its terms of reference to undertake a thorough investigation of the specific matters of significant public concern.

Fairness

The commission has during the currency of its existence a continuing duty of fairness to all persons involved in the investigation.

Urgency

The commission is required by its terms of reference to carry out its investigation and report to the Taoiseach within a period of six months. This limited period of time requires the commission to carry out its functions with considerable urgency.

Rights

The commission has, during the currency of its existence, a continuing duty to have regard to, and take due account of the constitutional and legal rights of all persons involved in the investigation.

Co-operation

The commission asserts that during the currency of its existence there is a continuing duty on all persons concerned with its investigation to promptly and urgently co-operate with the commission.

Application

All persons involved with the commission, including all witness and their legal representatives are deemed to agree to adhere to these Rules and Procedures.

Discretion

Subject to the requirements of the Commissions of Investigation Act 2004 and these Rules and Procedures the conduct of and the procedure to be followed in this investigation are under the control and discretion of the commission.

Independence

Section 9 of the Commissions of Investigation Act 2004 requires the commission to be independent in the performance of its functions.

Documents

The commission urgently requires access to documents in the possession or power of persons which documents the commission considers may be relevant to its investigation.

As a general rule the commission will initially seek to assess the extent of relevant documents in the possession or power of such persons.

The commission will then seek to take copies of those documents as a matter of urgency.

The commission may also seek to inspect those documents in their particular locations.

In the event that a person has, in the opinion of the commission, declined, failed, or neglected to co-operate with, or subsequently withdraws co-operation from, the commission in permitting access to documents that may be in the possession or power of that person, or for other good reason, the commission will consider using its compulsory powers of production under Part 3 of the Commissions of Investigation Act 2004.

Where the commission considers that it may exercise its compulsory powers of production it will, as a general rule, do the following:

- Notify the person concerned of the fact that the commission intends considering exercising its compulsory powers of production in relation to documents that may be in that persons' possession or power.
- Notify the person concerned of the documents sought by the commission.

- Notify the person concerned of the reason why the documents are sought by the commission.
- Notify the person concerned of the time-scale that may be imposed by the commission for the production of documents.
- Invite the person concerned to make submissions to the commission promptly but prior to any decision which the commission may make in regard to such documents.

Where the commission has decided to direct or order a person to produce documents it will notify that person as soon as practicable thereafter of the decision of the commission.

Documents produced to the commission by a person in respect of whom a request, direction or order for discovery has been made must be listed in an affidavit of documents. A suggested draft affidavit of documents is set out in Appendix 3 of these Rules and Procedures.

The Rules of the Superior Courts (1986), as amended, apply with any necessary modifications in relation to documents sought by the commission. For your information the text of the Rules of the Superior Courts (No.2) (Discovery), 1999 (S.I. no. 233 of 1999) is set out in Appendix 4 of these Rules and Procedures.

The original of the affidavit of documents required by these Rules and Procedures together with copies of the scheduled documents must be provided to the commission within the time specified in the request, direction, or order for discovery.

Access to documents

The commission is required urgently and effectively to obtain access to all documents relevant to its terms of reference.

The prompt and effective co-operation of all persons who may have relevant documents in their possession or power is essential to the work of the commission.

There is a duty on all such persons to identify promptly the locations and categories of all documents that may be relevant to this investigation.

The decision as to whether a document is relevant to this investigation is a matter for the commission and not for the person from whom documents are sought.

Preservation of documents

Section 31(1) of the Commissions of Investigation Act 2004 imposes a specific statutory duty on any person who has in his or her possession or power a document, or information

in any form, relating to any matter within the commission's terms of reference to preserve that document or information for the duration of the commission, or the completion of a subsequent tribunal of inquiry.

A person in breach of this statutory duty to preserve a document or information may be guilty of a criminal offence under section 31(2) of the Commissions of Investigation Act 2004.

The text of section 31 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Redaction of documents

A person who has produced documents or information to the commission pursuant to a request, direction or order may request the commission to redact irrelevant personal or other specified information for the purposes of its use and/or publication by the commission.

Where a person wishes to request such redaction they must, at the time that document or information is produced to the commission, set out in writing the following:

- details of the material or content sought to be redacted,
- particulars of any facts or circumstances relevant to this request, and
- any legal submissions considered relevant to that request.

Where the commission has received a request for redaction of documents or information the commission will notify the person making such request as soon as practicable thereafter of the commission's decision in respect of each such request.

Privilege and confidentiality

A person who has been requested, directed or ordered to provide documents, evidence or information to the commission may request the commission to consider a claim of privilege or duty of confidentiality in relation to the contents of the documents, evidence or information.

Examples of a claim of privilege include legal professional privilege and executive privilege.

Where a person wishes to assert a claim of privilege or a duty of confidentiality that person must, at the earliest opportunity after receipt of a request, direction or order from the commission, indicate in writing to the commission:

- the specific documents, evidence or information in respect of which it is sought to make a claim of privilege or assert a duty of confidentiality,
- the precise privilege or duty of confidentiality asserted,
- particulars of any facts or circumstances relevant to the privilege or duty of confidentiality asserted, and
- any legal submissions in support of the claim of privilege or duty of confidentiality.

Where a person asserts a claim of privilege or a duty of confidentiality over documents section 21(4)(b) of the Commissions of Investigation Act 2004 requires that the person asserting such claim provide the documents concerned to the commission in advance of a ruling by the commission on the claim of privilege or confidentiality.

Where a person has asserted a claim of privilege or a duty of confidentiality in relation to documents, evidence or information the commission will determine that claim in accordance with section 21 of the Commissions of Investigation Act 2004 and will notify that person as soon as practicable thereafter of its ruling in that regard.

The text of section 21 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Evidence

The commission may receive any evidence that it, in its discretion, considers helpful in fulfilling its mandate whether or not such evidence would be admissible in a court of law.

A witness who attends voluntarily, or by direction, or order, before the commission to give evidence or produce documents may be required to give their evidence on oath or affirmation. The terms of the oath are set out in Appendix 5 of these Rules and Procedures. The terms of the affirmation are set out in Appendix 6 of these Rules and Procedures.

The commission may, where it considers it appropriate to do so, receive evidence by way of affidavit. A suggested draft of such affidavit is set out at Appendix 8 of these Rules and Procedures.

The commission may receive any evidence that it, in its discretion, considers to be helpful in fulfilling its mandate by affidavit, live video link, video recording, sound recording or by any other mode of communication or transmission as appropriate.

Where a person gives evidence to the commission otherwise than by attending in person before the commission, or by means of a video link, that person must provide to the commission, within a period specified by the commission, a sworn affidavit

acknowledging that the evidence concerned was given by him or her; that the evidence was given voluntarily; and that to the best of his or her knowledge and belief the content of that evidence is true and accurate. A suggested draft affidavit verifying evidence is set out at Appendix 9 of these Rules.

Working method

Section 11 and section 12 of the Commissions of Investigation Act 2004 regulates important aspects of the manner in which the commission carries out its investigative function.

The text of sections 11 and 12 are set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

The commission is required to carry out its investigation in private, save in statutorily specified circumstances.

Any person who discloses evidence heard, or documentation produced in private to the commission may commit a criminal offence.

When a person attends before the commission to give evidence the commission can give directions as to the persons, if any, who may be present while that evidence is heard. The commission may also direct that legal representatives of persons, other than the witness concerned, may be present, if the commission is satisfied that the presence of such person or persons would be in keeping with the purposes of the commission and would be in the interests of fair procedures.

The commission may, in its discretion, permit a witness to be cross-examined by or on behalf of another person.

Where a person is directed by the commission to attend as a witness before it, or where that person attends voluntarily to give evidence, or if such person is a person about whom evidence is to be given to the commission the commission will disclose to such person the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence which that person may give or has already given to the commission.

Where the commission discloses evidence to a person in these circumstances the commission will give that person an opportunity, within a specified period of time, to comment by written or oral submissions on such disclosed evidence.

A draft of a Disclosure Notice is set out in Appendix 7 of these Rules and Procedures.

The commission may, when considering the evidence to be disclosed to any person during its investigation, rule, in its discretion, not to disclose the source of that evidence or the source of a document produced by a witness in evidence.

Witnesses

The commission is required by section 13 of the Commissions of Investigation Act 2004, before a person gives evidence to the commission, to provide that person with a written statement specifying the commission's powers under sections 16, 17 and 28 of the Commissions of Investigation Act 2004 and indicating that, if the person does not voluntarily co-operate with the commission or withdraws co-operation, the commission may exercise any of those powers that it considers necessary.

The text of sections 13, 16, 17 and 28 are set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

A copy of this witness notice is set out in Appendix 10 of these Rules and Procedures.

For the purposes of obtaining evidence the commission may, in its discretion, do all or any, of the following:

- direct a person in writing to attend before the commission to give evidence before the commission on a date and at a place and time specified and/or to produce in evidence before the commission any specified document that is in the person's possession or power,
- direct a person to answer questions that it believes to be relevant to a matter under investigation,
- examine a witness on oath or affirmation,
- require the person to furnish information by way of statutory declaration,
- use written interrogatories,
- examine or cross-examine a witness to the extent that it thinks proper, in order to elicit information relevant to the matter under investigation,
- direct a witness to produce to it any specified document that is in his or her possession or power,
- direct a person in writing to provide it with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a matter under investigation, and specifying in that affidavit any of the listed documents that the person objects to producing to it and the basis for the objection,
- direct a person in writing to send to it any specified document that is in the person's possession or power,

- direct a person who has made a statement or answered a question while being interviewed by a person under section 8 of the Commissions of Investigation Act 2004 to provide it with a sworn statement in a form acceptable to the commission confirming, if such is the case, that the statement was made or the answer given voluntarily and that to the best of the person's knowledge the content of the same is true and accurate,
- give any other directions that appear to the commission to be reasonable and fair.

Section 12 of the Commission of Investigation Act 2004 provides that where a person is directed to attend as a witness before the commission, or who attends voluntarily to give evidence to the commission, or about whom evidence is given to the commission, the commission will disclose to that person the substance of any evidence in its possession that, in its opinion, the person should be made aware of for the purposes of the evidence that that person may give or has already given to the commission.

The commission is also required to give a person to whom it has made a disclosure of the substance of evidence or documents an opportunity to comment by written or oral submissions on such disclosed evidence.

The text of section 12 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Non-compliance

Section 17 of the Commissions of Investigation Act 2004 provides that if a person:

- has failed, without reasonable excuse, to comply with a direction of the commission under section 16 of the Commissions of Investigation Act 2004, or
- has failed, without reasonable excuse, to comply with a request under section 14(5) or 21(5), or
- otherwise has obstructed an investigation,

and the commission incurs costs that it would not have otherwise incurred the commission may, in writing, direct that person to pay to the Minister for Finance those costs, including legal costs as taxed by a Taxing Master of the Court and costs arising from any delay in completing the investigation.

There is also provision in section 17 of the Commissions of Investigation Act 2004 for other persons affected by a failure to comply with a direction; a failure to comply with a request; or by another person having obstructed an investigation to seek a direction from the commission that the person responsible for that act or omission to pay the person adversely affected all or part of any costs (including legal costs as taxed by a Taxing

Master of the Court) that he or she has incurred as a result of the act failure, omission or obstruction.

The text of sections 14(5), 16, 17 and 21(5) are set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Powers

The commission may with the consent of the occupier, or under the authority of a warrant issued under section 29 of the Commissions of Investigation Act 2004, do all or any of the following:

- enter at any reasonable time any premises in which the authorised person has reasonable grounds to believe there are any documents, or there is information in any form, relating to any matter within the commission's terms of reference;
- inspect any documents, or information in any form, on the premises;
- secure for later inspection any documents, any information in any form and any equipment in which those documents or that information may be held, if the authorised person has reason to believe that the documents or information may be relevant to the investigation;
- secure for later inspection the premises, or any part of the premises, but only if the authorised person considers it necessary to do so in order to preserve for inspection documents or information in any form that the authorised person has reason to believe may be kept there and may relate to the investigation;
- take copies of or extracts from any documents or any electronic information system on the premises, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
- remove for later examination or copying any documents, or information in any form, that the authorised person has reasonable grounds to believe may relate to a matter under investigation and retain them for the period that he or she considers reasonable;
- direct any person on the premises to produce to the authorised person any documents, or information in any form, kept on the premises;
- direct any person on the premises having charge of, or otherwise concerned with the operation of, data equipment or any associated apparatus or material to provide the authorised person with all reasonable assistance in relation to the equipment, apparatus or material;

- direct any person on the premises to give to the authorised person any information that the authorised person may reasonably require with regard to a matter under investigation.

The text of section 29 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Guidelines on legal costs

The commission is required by section 23(4) of the Commissions of Investigation Act 2004 before a person gives evidence to the commission, to provide that person with a copy of the guidelines on legal costs published by the Government in relation to this commission.

A copy of these guidelines is set out in Appendix 11 of these Rules and Procedures.

The text of section 23(4) is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

The order of examination

When a person is required to give evidence to the commission the order of examination, in general, will be as follows:

- The commission, or, at the request of the commission its counsel, will first examine the witness. This evidence may be adduced by both leading and non-leading questions.
- A person, who the commission has directed is appropriate to be present while the evidence of a witness is heard, may, subject to the discretion of the commission, cross-examine that witness to the extent of their specific interest.
- Where the commission has directed that a person may be present while the evidence of a witness is heard, the legal representatives of that person may, by direction of the commission, also be present where the commission is satisfied that their presence would be in keeping with the purposes of the investigation and in the interests of fair procedures.
- A person, when giving evidence to the commission, may have their legal representatives present, and such legal representatives may, subject to the discretion of the commission, examine their client at the conclusion of cross-examination by persons (other than the commission or its counsel) present while that evidence is heard.
- The commission, or at the request of the commission its counsel, may finally further question a witness.

- Except with the permission of the commission, no person other than the commission, or at the request of the commission its counsel, may speak to a witness about his or her evidence while the witness is giving any part of his or her evidence.
- Except with the permission of the commission, commission counsel and any other person permitted to be present (including their legal representatives) may not speak to a witness about his or her evidence while being cross-examined by a person present or their legal representatives while that evidence is heard.

Immunities and privileges

A person who gives evidence to the commission or sends documents to it has the same immunities and privileges in respect of that evidence, and is, in addition to the penalties provided by the Commissions of Investigation Act 2004, subject to the same liabilities as a witness in proceedings in the High Court.

A statement or admission made by a person to the commission, or to a person appointed under section 8 of the Commissions of Investigation Act 2004, or a document given or sent to the commission pursuant to a direction or request of the commission to that person, or a document specified in an affidavit of documents made by the person and given to the commission pursuant to a direction or request of the commission is not admissible as evidence in any criminal or other proceedings with the exception of a tribunal of inquiry.

Legal representation

All persons who have an involvement with the commission may, if they consider it appropriate to do so, retain legal representatives to assist them in their dealings with the commission.

There is no requirement that a person retain a legal representative.

The fact that a person has retained a legal representative does not relieve that person of his or her personal duties to the commission.

If a person has retained a legal representative that legal representative should, as soon as practicable after being retained do the following:

- contact the commission and disclose to the commission the name of the person for whom the legal representative acts,
- identify the person or persons themselves,
- specify an address for correspondence with them,

- provide telephone, fax numbers, an e-mail address, and
- if possible, a telephone number for contact outside normal business hours.

Submissions

The commission welcomes, where appropriate, submissions from any person involved in this investigation.

Such submissions should be communicated in writing to the commission, within a time specified by the commission, and should:

- set out full details of any matter of concern,
- set out full and precise particulars of any facts or circumstances relevant to that concern,
- set out full details of any legal submission considered relevant to that concern,
- identify the portion of the terms of reference to which the concern relates, and
- identify the name, address, telephone and fax numbers, and e-mail address of the legal representatives, if any, of such person.

Where appropriate a person's written submissions may, subject to the discretion of the commission, be augmented by oral submissions provided the person or that person's legal representatives notifies the commission in writing of the following:

- the specific matters to be canvassed,
- the specific extracts from any documents to be referred to,
- any documents to be referred to,
- a realistic time estimate for the making of those submissions.

Time

Time is of the essence in relation to this investigation.

The time limits for compliance with requests, directions and orders made under the Commissions of Investigations Act 2004 will, in general, be short.

The time limits traditionally employed in litigation in the courts are not appropriate to this investigation, having regard to its specified completion date.

If a person who is required to take any step in relation to this investigation within a specified limit wishes to contend to the commission that such time limit cannot reasonably be complied with, the person concerned should write to the commission at the first available opportunity, and not later than the expiry of the time limit concerned, setting out:

- the particular time limit that it is contended cannot be complied with within the specified time,
- the factual basis for this claim, and
- the period of time said to be required to comply.

The commission may, in the exercise of its discretion, abridge or enlarge the time for compliance with any request, direction or order it has made.

Limited funding of legal costs

The provisions of sections 23 and 24 of the Commissions of Investigation Act 2004 strictly regulate the recovery of legal costs by a person arising out of that person's involvement with the commission.

The text of sections 23 and 24 are set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

It is important to note that the regimes for recovering legal costs that may operate in the courts or in a tribunal of inquiry are not appropriate guides to the recovery of legal costs in relation to a commission of investigation.

The Government has published guidelines regulating the payment to witnesses of legal costs necessarily incurred by them in connection with this investigation. This is an important document and the commission invites you to read it carefully.

A copy of these guidelines on legal costs is set out in Appendix 11 of these Rules and Procedures.

Procedure for seeking legal costs

Where a person, who has been involved in the investigative work of the commission, requests the commission to direct, under section 24 of the Commissions of Investigation Act 2004, that all, or part, of that person's legal costs (necessarily incurred) be paid to that person he or she should make such request in writing to the commission not later than seven days after that person has given evidence or produced documentation to the commission and specify the following:

- the name of the person making the request,
- the address of the person making the request,
- the telephone and fax numbers of the person making the request,
- an e-mail address for the person making the request,
- the factual basis upon which it is claimed that legal costs were necessarily incurred,
- the factual basis upon which it is claimed that the level and amount of costs are reasonable,
- the total amount of legal costs claimed, and
- the amount of Value Added Tax on those legal costs.

The commission, in considering a request for recovery of legal costs, is required by section 24 of the Commissions of Investigation Act 2004 to have regard to specific criteria set out in that sub-section before making any decision in relation to a claim of legal costs. The legal costs that can be claimed are limited to those specified in section 24 of the Commissions of Investigation Act 2004.

The text of section 24 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Procedure for seeking certain other expenses

Where a person, who has been involved in the investigative work of the commission and has incurred heavy expenses (other than legal costs), requests the commission to direct, under section 24 of the Commissions of Investigation Act 2004, that all, or part, of these expenses be paid to that person he or she should make such request in writing to the commission not later than seven days after that person has given evidence or produced documents to the commission and specify the following:

- the name of the person making the request,
- the address of the person making the request,
- the telephone and fax numbers of the person making the request,
- an e-mail address for the person making the request,
- the factual basis upon which the expenses are claimed including all original vouchers and receipts in respect of such expenses,

- the total amount of expenses claimed, and
- the amount of Value Added Tax on those expenses, if any.

The commission, in considering a request for recovery of certain other expenses, is required by section 24(5) of the Commissions of Investigation Act 2004 to have regard to specific criteria set out in that sub-section before making any decision in relation to a claim for certain other expenses. The expenses that can be claimed are limited to those specified in section 24(5) of the Commissions of Investigation Act 2004.

The text of section 24 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Costs cut-off date

No request for claims of legal costs or other expenses will be considered by the commission that are received by the commission after the close of business on the 1st November, 2005.

Exceptions to these Rules and Procedures

These Rules and Procedures may, in the discretion of the commission, be altered, departed from or varied if the commission is satisfied for good reason, including the nature of the matter arising, the urgency of the matter, the consent of all or any persons affected by the matter, provided always that any such alteration, departure or variation does not trench upon the thoroughness, timeliness or fairness of the investigation.

Amendment of these Rules and Procedures

These Rules and Procedures may, in the discretion of the commission, be amended and revised as appropriate, provided always that any such amendment or revision does not trench upon the thoroughness, timeliness or fairness of the investigation.

Reports

The commission is required under the provisions of Part 5 of the Commissions of Investigation Act 2004 (sections 32 to 41 of the Act) to prepare a written report based on the evidence received by it setting out the facts it established in relation to the matters referred to it for investigation.

Before submitting an interim or final report to the Taoiseach the commission is required by section 34(1) of the Commissions of investigation Act 2004 to send a draft of the report, or the relevant part of the draft report, to any person who is identified in or identifiable from the draft report.

A person is identifiable from a draft report if the report contains information that could reasonably be expected to lead to the person's identification.

Section 34(2) of the Commissions of Investigation Act 2004 provides that at the time the draft report, or the relevant part of the draft report is sent to a person that person must be sent a notice specifying the time allowed by the commission for making submissions or requests under sections 35(1) and 36(1) of the Commissions of Investigations Act 2004 or applications to the court under section 35(1)(b) of the Commissions of Investigation Act 2004.

A copy of a draft interim report notice is set out in Appendix 12 of these Rules and Procedures. A copy of a draft final report notice is set out in Appendix 13 of these Rules and Procedures.

Before submitting an interim or final report to the Taoiseach the commission is required to give written notice of any amendments to any person identified in or identifiable from the report and who is affected by the amendments.

The text of Part 5 is set out in a copy of the Commissions of Investigation Act 2004 in Appendix 2 of these Rules and Procedures.

Contact

The offices of the commission are at the State Apartments, Upper Yard, Dublin Castle, Dublin 2. The offices are open during the hours of 9.30 to 13.00 hours and 14.00 to 17.30 hours.

The commission telephone number is 01-633 6844.

The commission fax number is 01-633 6835

The commission e-mail address is info@commissiondmb.ie

APPENDIX 1

EXTRACT FROM IRIS OIFIGIUIL 13TH MAY 2005

APPENDIX 2

COMMISSIONS OF INVESTIGATION ACT 2004

APPENDIX 3

AFFIDAVIT OF DOCUMENTS



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Affidavit of Documents

I, _____ [name], of _____ [address],
_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documentation and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.
4. I have read the Rules and Procedures document published by the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.

5. I have read the _____ [request/direction/order] of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 directed to _____ [name person] dated the __ day of _____, 2005.
6. I am aware of, and understand, the requirements of sections 10, 14, 16, 17, 28 and 31 of the Commissions of Investigation Act 2004.
7. I have in my possession, power or procurement the data, document and information relating to the terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 set out in the Part A and Part B of the First Schedule to this affidavit.
8. I consent to the production of the data, documentation and information in Part A of the First Schedule.
9. I object to the production of the data, documentation and information in Part B of the First Schedule.
10. The grounds of my objection to the production of the data, documentation and information in Part B of the First Schedule are:

[In respect of each individual item of data, documentation or information to which objection is taken specify the ground of objection and specify all facts and circumstances relevant to that objection].

11. I have had, but have not now, in my possession, power or procurement the data, documentation or information in the Second Schedule.
12. The data, documentation and information identified in the Second Schedule were last in my possession, power or procurement on the __ day of _____, 2005.
13. The full circumstances in which the data, documentation and information identified in the Second Schedule are no longer in my possession are:

[Set out full and detailed particulars as to the circumstances in which each individual item of data, documentation and information identified in the Second Schedule is no longer in your possession, power or procurement, and as to whom did you give each such data, documentation or information and the possible locations of the originals or copies of that data, documentation or information.]

14. According to the best of my knowledge, information and belief I have not now, and never had in my possession, power or procurement any data, documentation or information whether by myself, or through the agency of any other person whatsoever, other than the data, documentation or information listed in the First and Second Schedule to this affidavit.
15. The inquiries and searches for data, documentation and information relevant to the terms of reference of the commission of investigation carried out by me, or on my behalf, prior to the swearing of the affidavit of documents are:

[Set out full and detailed particulars of all inquiries made, and searches undertaken].

SWORN this __ day of _____, 2005
At _____ [address] by _____ [name]
Before me _____ [name]
a Commissioner for Oaths/Practising Solicitor
and I know the deponent.

FIRST SCHEDULE

Part A

[list data, documentation and information]

Part B

[list data, documentation and information]

SECOND SCHEDULE

[list data, documentation and information]

APPENDIX 4

RULES OF THE SUPERIOR COURTS (NO.2) (DISCOVERY) 1999 (S.I. NO.233 OF 1999)

APPENDIX 5

OATH FOR A WITNESS

OATH

I swear by Almighty God that the evidence I shall give to this Commission of Investigation shall be the truth, the whole truth, and nothing but the truth.

APPENDIX 6

AFFIRMATION FOR A WITNESS

AFFIRMATION

I do solemnly and sincerely declare and affirm that the evidence I shall give to this Commission of Investigation shall be the truth the whole truth and nothing but the truth.

APPENDIX 7

DISCLOSURE NOTICE



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Disclosure Notice

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 is required by Section 12 of the Commissions of Investigation Act 2004 to disclose to you the substance of any evidence in the possession of the commission that, in the opinion of the commission, you should be made aware of for the purposes of the evidence that you may give or have given to the commission.

This is an important document and the commission invites you to read it carefully.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the commission for such information or assistance as it may be in a position to provide to you.

Contact may be made as follows:

Postal address : Commission of Investigation into the Dublin and Monaghan Bombings of 1974, State Apartments, Upper Yard, Dublin Castle, Dublin 2.

e-mail address : info@commissiondmb.ie

Telephone : 01-633 6844

Fax : 01-633 6835

1. Introduction

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 was established under Section 3 of the Commissions of Investigation Act 2004 by Order of the Government published in the May 13th, 2005 edition of *Iris Oifigiúil*.

2. Terms of reference

The terms of reference of the commission are set out in the Order made by the Government and are as follows:

To undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern:

- 1) Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?
- 2) Why the Gardaí did not follow-up on the following leads:
 - (i) information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;
 - (ii) information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;
 - (iii) information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings;

and
- 3) In relation to the missing documentation:
 - (i) the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;
 - (ii) the reasons explaining why the documentation went missing;
 - (iii) whether the missing documentation can now be located; and
 - (iv) whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.

To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation. To provide a final report to An Taoiseach not later than six months from the date of establishment of the Commission.

3. Powers

The Commissions of Investigations Act 2004 provides specific statutory powers to the commission to facilitate the discharge of its function. These powers include powers relating to witnesses and documents, power to direct certain persons to pay costs, and powers of entry and inspection.

The text of the Commissions of Investigation Act 2004 is set out in the First Schedule to this Disclosure Notice.

The commission wishes to specifically draw your attention to section 12 of the Commissions of Investigation Act 2004 which sets out the duty of the commission to disclose the substance of evidence to you and to give you an opportunity to comment by written or oral submissions.

4. Section 12

Section 12 of the Commissions of Investigation Act 2004 provides:

(1) Subject to subsection (2), a commission shall disclose to a person-

(a) who is directed to attend as a witness before the commission,

(b) who attends voluntarily to give evidence to the commission, or

(c) about whom evidence is given to the commission,

the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence that person may give or has given to the commission.

(2) Subsection (1) does not require the disclosure of the source of any evidence given or document produced by a witness while giving evidence in private under section 11, unless the commission considers that, in view of the purposes of the investigation or in the interests of fair procedures, the source should be disclosed.

(3) A commission shall give a person to whom it discloses the substance of evidence under subsection (1) an opportunity to comment by written or oral submissions on the evidence.

5. Co-operation

The commission is required by Section 10 of the Commissions of Investigation Act 2004 to seek the voluntary co-operation of persons whose evidence is desired by the Commission in relation to any matter within its terms of reference, to facilitate such co-operation, and to conduct its investigation as expeditiously as possible.

The commission is required to make its final report to the Taoiseach not later than the 14th November 2005.

In the event that you do not voluntarily co-operate with the commission, or you withdraw co-operation, the commission will consider exercising its compulsory powers under the Commissions of Investigation Act 2004.

6. Legal representation

You are entitled to have a legal representative present to advise you when you give evidence to the Commission. If you have no legal representative present to advise you the Commission will advise you of your legal rights and obligations while giving evidence.

1. Disclosure

The evidence disclosed to you under section 12 of the Commissions of Investigation Act 2004 is set out in the Second Schedule to this Disclosure Notice.

2. Confidentiality

The contents of any evidence given, or the contents of any document produced, by a witness while giving evidence to the commission must not be disclosed by any person except in the circumstances specified in section 11 of the Commissions of Investigation Act 2004.

A person in breach of this statutory duty of confidentiality may be guilty of a criminal offence under section 11(5) of the Commissions of Investigation Act 2004.

The text of section 11 is set out in a copy of the Commissions of Investigation Act 2004 in the First Schedule to this Disclosure Notice.

Dated the [Month] [Day] [Year]

Signed:

**Patrick MacEntee, SC, QC
Sole member**

First Schedule

[Commissions of Investigation Act 2004]

Second Schedule

[evidence disclosed by the commission]

APPENDIX 8

AFFIDAVIT



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Affidavit

I, _____ [name], of _____ [address],
_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documents and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.

4. I have read the Rules and Procedures document published by the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.

5. I have read the _____ [request/direction/order] of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 directed to _____ [name person] dated the __ day of _____, 2005.

6. I am aware of, and understand, the functions and powers of a commission of investigation established under the Commissions of Investigation Act 2004 and my own personal duties and obligations to that commission.

7. The evidence deposed to in this affidavit is:

(a) given by me, _____ [name],

(b) given voluntarily, and

(c) to the best of my knowledge and belief this evidence is true and accurate.

8. [Set out in numbered paragraphs below the evidence to be sworn].

SWORN this __ day of _____,2005
at _____ [address] by _____ [name]
before me _____ [name]
a Commissioner for Oaths/Practising Solicitor
and I know the deponent.

APPENDIX 9

AFFIDAVIT VERIFYING EVIDENCE



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Affidavit verifying evidence

I, _____ [name], of _____ [address],
_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documentation and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.
4. I have read the Rules and Procedures document published by the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.
5. I have read the _____ [request/direction/order] of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 directed to _____ [name] dated the __ day of _____, 2005.
6. I am aware of, and understand, the functions and powers of a commission of investigation established under the Commissions of Investigation Act 2004 and my own personal obligations to such commission.

7. I am a person who has given evidence to the commission otherwise than by attending before the commission (or, if appropriate, by means of a video link) pursuant to section 14(4) of the Commissions of Investigation Act 2004.

8. I refer to a text copy of my evidence given on the ___ day of ____, 2005 at _____ [address] upon which and marked with the letter "A" I have signed my name prior to swearing this affidavit.

9. I have read the text copy of my evidence given on the ___ day of ____, 2005 at _____ [address] and I confirm that:

- (a) this evidence was given by me, ____ [name], on the ___ day of ____, 2005 at _____ [address],
- (b) this evidence was given voluntarily, and
- (c) that to the best of my knowledge this evidence is true and accurate.

SWORN this ___ day of _____, 2005
at _____ [address] by _____ [name]
before me _____ [name]
a Commissioner for Oaths/Practising Solicitor
and I know the deponent.

APPENDIX 10

WITNESS NOTICE



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Witness Notice

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 is required by Section 13 of the Commissions of Investigation Act 2004 to inform you in writing before you give evidence to the commission as to the functions and powers this commission, and as to your rights and obligations in relation to the commission.

This is an important document. The commission invites you to read it carefully in advance of giving any evidence to the commission.

At the commencement of your giving any evidence to the commission, the commission will seek to establish the receipt by you of this notice.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the commission for such information or assistance as it may be in a position to provide to you.

Contact may be made as follows:

Postal address : Commission of Investigation into the Dublin and Monaghan Bombings of 1974, State Apartments, Upper Yard, Dublin Castle, Dublin 2.

e-mail: info@commissiondmb.ie

Telephone : 01-633 6844

Fax : 01-633 6835

1. Introduction

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 was established pursuant to Section 3 of the Commissions of Investigation Act 2004 by Order of the Government published in the May 13th, 2005 edition of *Iris Oifigiuil*.

2. Terms of reference

The terms of reference of the commission are set out in the Order made by the Government and are as follows:

To undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern:

- 1) Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?
- 2) Why the Gardaí did not follow-up on the following leads:
 - (i) information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;
 - (ii) information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;
 - (iii) information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings;

and

- 3) In relation to the missing documentation:
 - (i) the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;
 - (ii) the reasons explaining why the documentation went missing;
 - (iii) whether the missing documentation can now be located; and
 - (iv) whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.

To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation. To provide a final report to An Taoiseach not later than six months from the date of establishment of the Commission.

3. Powers

The Commission of Investigations Act 2004 provides specific statutory powers to the commission to facilitate the discharge of its function. These powers include powers relating to witnesses and documents, power to direct certain persons to pay costs, and powers of entry and inspection.

The text of the Commissions of Investigation Act 2004 is set out in the schedule to this Witness Notice.

In particular, sections 16, 17 and 28 of the Commissions of Investigation Act 2004 set out important powers that may, in the discretion of the commission, be invoked by the commission.

4. Section 16

Section 16 of the Commissions of Investigation Act 2004 provides:

- (1) For the purposes of an investigation, a commission may do any or all of the following:
 - (a) direct in writing any person to attend before the commission on a date and at a place and time specified in the direction and there to give evidence and to produce any document that is in the person's possession or power and is specified in the direction;
 - (b) direct a witness to answer questions that it believes to be relevant to a matter under investigation;
 - (c) examine a witness on oath or affirmation or by use of a statutory declaration or written interrogatories;
 - (d) examine or cross examine any witness to the extent the commission thinks proper in order to elicit information relevant to a matter under investigation;
 - (e) direct a witness to produce to the commission any document that is in his or her possession or power and is specified in the direction;
 - (f) direct in writing any person to—
 - (i) provide the commission with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a matter under investigation, and
 - (ii) specify in the affidavit any of the listed documents that the person objects to producing to the commission and the basis for the objection;
 - (g) direct in writing any person to send to the commission any document that is in the person's possession or power and is specified in the direction;

- (h) direct a person who made a statement or answered a question while being interviewed by a person appointed under *section 8* to provide the commission with a sworn statement in a form acceptable to it confirming, if such is the case—
 - (i) that the statement was made or the answer given by him or her voluntarily, and
 - (ii) that to the best of his or her knowledge the content is true and accurate;
 - (i) give any other directions that appear to the commission to be reasonable.

- (2) The powers of a commission under *subsection (1)* may be exercised by any member authorised in accordance with *section 15(3)* by the commission’s rules and procedures to receive evidence on its behalf, and for that purpose a reference in *subsection (1), (3), (6), (8) or (9)* of this section to “a commission” or “the commission” is to be read as a reference to the authorised member.

- (3) A person who attends, whether voluntarily or otherwise, before a commission is entitled to be paid by the specified Minister such amount in respect of the expenses of his or her attendance as is determined in accordance with guidelines prepared by that Minister with the consent of the Minister for Finance and after consulting with the commission.

- (4) The rules of court relating to the discovery of documents in proceedings in the Court apply with any necessary modifications in relation to the disclosure of documents under *subsection (1)(f)*.

- (5) Where a statement made or an answer given to a person appointed under *section 8* is confirmed in accordance with a direction under *subsection (1)(h)* of this section, the statement or answer is considered to have been received as evidence by the commission.

- (6) Where a person does not comply with a direction given by a commission under this section, the Court may, on application by the chairperson or, if the commission consists of only one member, by the sole member—
 - (a) order the person to comply with the direction, and
 - (b) make any other order the Court considers necessary and just to enable the direction to have full effect.

- (7) If a person against whom an order is made under *subsection(6)(a)* fails to comply with the direction specified in the order, the Court may deal with the matter as if it were a contempt of the Court.

- (8) A person who, without reasonable excuse, fails to comply with a direction under *subsection (1)(a)* to attend before a commission is guilty of an offence.
- (9) The failure of a person to comply with a direction under *subsection (1)(a)*—
- (a) may be punished as a contempt even though it could be punished as an offence, and
 - (b) may be punished as an offence even though it could be punished as a contempt,
- but the person is not liable to be punished twice.
- (10) In *subsection (3)* “expenses” does not include any legal costs.

5. Section 17

Section 17 of the Commissions of Investigation Act 2004 provides:

- (1) If as a result of a person—
- (a) failing, without reasonable excuse, to comply with a direction under *section 16*,
 - (b) failing, without reasonable excuse, to comply with a request under *section 14(5)* or *21(5)*, or
 - (c) otherwise obstructing an investigation,

a commission incurs costs that it would not otherwise have incurred, it may, in writing, direct the person to pay to the Minister for Finance those costs, including legal costs as taxed by a Taxing Master of the Court and costs arising from any delay in completing the investigation.

- (2) If any person who attends before or gives evidence to a commission is adversely affected as a result of an act or omission described in any paragraph of *subsection (1)*, the commission may—
- (a) on its own initiative, or
 - (b) at the request of the person adversely affected,

direct the person whose act or omission had that result to pay to the person adversely affected all or part of any costs (including legal costs as taxed by a Taxing Master of the Court) that he or she incurred as a result of the act or omission.

- (3) A direction of a commission to pay costs under *subsection (1)* or *(2)* does not take effect until it is confirmed by the Court on application by the chairperson of the commission or, if a commission consists of only one member, by the sole member.
- (4) On application under *subsection (3)* for an order confirming a direction of the commission to pay costs to the Minister for Finance or another person, the Court may-
 - (a) make an order confirming the direction with or without modification, or
 - (b) refuse to make such an order.
- (5) Subject to *subsection (3)*, any sum payable pursuant to a direction under this section may be recovered as a simple contract debt in any court of competent jurisdiction.
- (6) A person may be directed to pay costs under this section even though the act or omission that resulted in the direction is punishable as contempt or as an offence against a provision of this Act and the direction does not prevent the person being punished for contempt or the bringing of proceedings in respect of the offence.

6. Section 28

Section 28 of the Commissions of Investigation Act 2004 provides:

- (1) Subject to *section 27*, any authorised person¹ may do any or all of the following:
 - (a) enter at any reasonable time any premises in which the authorized person has reasonable grounds to believe there are any documents, or there is information in any form, relating to any matter within the commission's terms of reference;
 - (b) inspect any documents, or information in any form, on the premises;
 - (c) secure for later inspection any documents, any information in any form and any equipment in which those documents or that information may be held, if the authorised person has reason to believe that the documents or information may be relevant to the investigation;

¹ **An authorised person is defined by section 26 of the Act as (1) any member of the commission; or (2) any person appointed under section 8 of the Act and authorised by the commission in writing to exercise the powers given in section 28 to authorised persons.**

- (d) secure for later inspection the premises, or any part of the premises, but only if the authorised person considers it necessary to do so in order to preserve for inspection documents or information in any form that he or she has reason to believe may be kept there and may relate to the investigation;
 - (e) take copies of or extracts from any documents or any electronic information system on the premises, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
 - (f) remove for later examination or copying any documents, or information in any form, that the authorised person has reason to believe may relate to a matter under investigation and retain them for the period that he or she considers reasonable;
 - (g) direct any person on the premises to produce to the authorized person any documents, or information in any form, kept on the premises;
 - (h) direct any person on the premises having charge of, or otherwise concerned with the operation of, data equipment or any associated apparatus or material to provide the authorised person with all reasonable assistance in relation to the equipment, apparatus or material;
 - (i) direct any person on the premises to give to the authorized person any information that the authorised person may reasonably require with regard to a matter under investigation.
- (2) Despite *subsection (1)*, an authorised person may not enter a private dwelling or the part of any premises that is used as a private dwelling, except—
- (a) with the consent of the occupier, or
 - (b) under the authority of a warrant issued under *section 29* by a judge of the District Court.
- (3) When exercising powers under this section, an authorised person may be accompanied by a member of the Garda Síochána.
- (4) The production of a document in compliance with a direction under this section does not prejudice a person’s lien on the document.

7. Co-operation

The commission is required by Section 10 of the Commissions of Investigation Act 2004 to seek the voluntary co-operation of persons whose evidence is desired by the commission in relation to any matter within its terms of reference, to facilitate such co-operation, and to conduct its investigation as expeditiously as possible.

The commission is required to make its final report to the Taoiseach not later than the 14th November, 2005.

In the event that you do not voluntarily co-operate with the commission, or you withdraw co-operation, the commission will exercise its powers under Sections 16, 17 and 28 of the Commissions of Investigation Act 2004 as it considers necessary.

8. Legal representation

You are entitled to have a legal representative present to advise when you give evidence to the Commission. If you have no legal representative present to advise you the Commission will advise you of your legal rights and obligations while giving evidence.

Dated the [Month] [Day] [Year]

Signed:

Patrick MacEntee, SC, QC
Sole member

Schedule

[Text of the Commissions of Investigation Act 2004]

APPENDIX 11

GUIDELINES ON LEGAL COSTS



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

General Guidelines on Payment of Legal Costs and Other Expenses to Persons Who Become Involved with the Commission of Investigation

Purpose of General Guidelines

1. These General Guidelines have been made by An Taoiseach, as the specified Minister, following consultation with the Commission and with the consent of the Minister for Finance, as required by the Commissions of Investigation Act 2004.
2. These Guidelines should be read in conjunction with that Act¹.
3. The Commission operates in accordance with these guidelines on costs but is independent in the performance of its functions as set out in the Commissions of Investigation Act 2004.

What Expenses (Other Than Legal Costs) Can A Person Expect To Recover?

4. A person who attends as a witness before the Commission of Investigation is entitled to payment of the expenses incurred by reason of that attendance².
5. The expenses to be covered are travel and transport costs, accommodation, meals and any other expenses that are necessarily incurred as a direct result of attendance before the Commission.

Expenses related to loss of earnings will not be paid, unless the person concerned can show to the satisfaction of the Commission that s/he has suffered undue hardship by reason of his/her attendance.

¹ **In the event of any dispute, the terms of the Act shall prevail.**

² **Section 16(3) of the Act refers.**

Expenses will not be paid to any serving public servant whose expenses have been met by his/her employer.

Payment in respect of accommodation and meals will be made on the basis of vouched expenses, subject to the following upper limits:

- a maximum of €137 in respect of an overnight stay
- a maximum of €39 in respect of a period of 10 hours or more
- a maximum of €16 in respect of a period of 5 hours or more

Where possible, public transport (bus or rail) should be used. Taxis should only be used where another reasonable alternative does not exist. In the event that use of a private car is necessary, expenses will be met at the rate of €1.24 per mile.

6. A person may also request the Commission of Investigation to pay “heavy expenses”³ (other than legal costs) incurred because of
- the nature, volume or location of the documents produced by the witness
 - the location outside the State from which the witness travelled to attend before the Commission
 - any other factor not within the control of the witness.

It is a matter for the Commission to decide what constitutes “heavy expenses” on a case-by-case basis. The Commission may, on being satisfied that they were necessary in the circumstances, direct that such amount of those expenses as it considers reasonable be paid to the witness.

What Legal Costs Can a Person Expect to Recover?

7. A witness may request recovery of legal costs necessarily incurred.⁴
8. Legal costs shall not be paid except where
- a) the good name or conduct of the witness are called into question by any evidence received by the Commission, or
 - b) other personal or property rights of the witness are at risk of being jeopardized as a result of any evidence received by the Commission.

³ **Section 24(5) of the Act refers.**

⁴ **Sections 23 and 24 of the Act refer.**

9. 'Legal costs' means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor.
10. Discovery costs may be included as legal costs for a party who has been granted legal representation before the Commission, in which case payment of costs of discovery will be decided in the context of payment of overall legal costs.
11. The amount of legal costs to be paid by the Taoiseach, as the specified Minister, shall be assessed by the Commission in the light of the relevant provisions of the Act⁵.

These Guidelines do not place any restriction on the number or type of legal representatives that may be engaged by a party who has been granted legal representation by the Commission of Investigation.

The commission may, in its discretion, limit the amount of legal costs recoverable in respect of such representation (including the number of those representatives).

These Guidelines specify a maximum daily rate for Senior Counsel, Junior Counsel and Solicitor in respect of their appearance before the Commission (see paragraph 13 below).

12. The commission is to be satisfied that any legal costs to be paid were necessarily incurred and that the level and amount of those costs are reasonable.
13. The amounts payable in respect of appearance by a legal representative before the commission are:

| | |
|----------------|--|
| Senior Counsel | A maximum of €1008 per day (excluding VAT) |
| Junior Counsel | A maximum of €672 per day (excluding VAT) |
| Solicitor | A maximum of €800 per day (excluding VAT) |

14. The amounts payable in respect of the following affidavits that may be furnished to the commission are:

⁵ **Sections 23 and 24 of the Act refer.**

| | |
|---------------------------------|---|
| An affidavit of documents | A maximum of €1000, subject to the exemption set out below |
| An affidavit verifying evidence | A maximum of €500 per affidavit (to cover payment to all legal representatives) |
| An affidavit | A maximum of €500 per affidavit (to cover payment to all legal representatives) |

These maximum limits may only be exceeded in respect of an affidavit of documents that requires discovery costs in excess of that limit and where, in the commission's view:

- the volume of documents discovered is substantial
- the documents disclosed were relevant to the commission's terms of reference
- the legal normalities in relation to the swearing of the affidavit of documents was properly and promptly complied with, and
- these costs were necessarily incurred.

15. To the extent possible, legal representation shall be granted on a joint basis to parties with similar interests, and in any event, the costs incurred by such parties shall be assessed by reference to the potential reduction in legal costs that could have been secured through such joint representation irrespective of whether such joint representation occurred, with the distribution of allowable costs to be determined by the commission by reference to the criteria in the Act.⁶

16. These Guidelines are definitive as to all legal costs or expenses (including heavy expenses) that may be recoverable by a person who seeks to recover such costs or expenses from the commission. No payment shall be made in respect of brief fees, instruction fees or any other legal costs or expenses, other than those legal costs and expenses expressly specified in these Guidelines.

⁶ Sections 23 and 24 of the Act refer.

APPENDIX 12

DRAFT INTERIM REPORT NOTICE



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Draft Interim Report Notice

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 is required by Section 34(2) of the Commissions of Investigation Act 2004 to give you notice in writing specifying the time allowed for making:

- (a) submissions or requests to the commission under section 35(1)(a) or section 36(1) and,
- (b) applications to the High Court under section 35(1)(b)

of the Commissions of Investigation Act 2004.

This is an important notice. The commission invites you to read this notice carefully. The contents of this notice contain matters that, in the opinion of the commission, concern you.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the commission for such information or assistance as it may be in a position to provide to you.

Contact with the commission may be made as follows:

Postal address: State Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

E-mail address: info@commissiondmb.ie

Telephone no. : 01-633 6844

Fax no. : 01-633 6835

Introduction

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 has prepared a draft interim report in relation to its investigation into the matters specified in its terms of reference. A copy of the draft report or part of the draft report is set out in **Schedule 1** of this notice.

The purpose of this notice is to afford you an opportunity within the time period specified by the commission to exercise your statutory rights under the Commissions of Investigation Act 2004 to make submissions or requests to the commission, or applications to the Court concerning the draft report or part of the draft report.

The terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 are set out in an Order of the Government published in the May 13th, 2005 edition of *Iris Oifigiúil*. A copy of these terms of reference is set out in **Schedule 2** of this notice.

The commission wishes to bring to your notice the provisions of sections 34, 35, 36 and 37 of the Commissions of Investigation Act 2004. A copy of the text of the Commissions of Investigation Act 2004 is set out in **Schedule 3** of this notice.

Section 34

Section 34 of the Commissions of Investigations Act 2004 provides:

34. (1) Before submitting the final or an interim report to the specified Minister, a commission shall send a draft of the report, or the relevant part of the draft report, to any person who is identified in or identifiable from the draft report.
- (2) The draft report must be accompanied by a notice from the commission specifying the time allowed for making-
 - (a) submissions or requests to the commission under section 35(1)(a) or 36(1), and
 - (b) applications to the Court under section 35(1)(b).
- (3) For the purposes of this section and section 35, a person is identifiable from a draft report if the report contains information that could reasonably be expected to lead to the person's identification.

Section 35

Section 35 of the Commissions of Investigation Act 2004 provides:

- 35.-(1) A person who receives a draft report or part of a draft report from a commission under section 34 and who believes that the commission has not observed fair procedures in relation to the person may, within the period specified by the commission-
- (a) submit to the commission a written statement setting out the reasons for the belief and requesting the commission to review the draft in the light of the statement, or
 - (b) apply to the Court for an order directing that the draft be amended before the submission of the report to the specified Minister.
- (2) After considering a statement submitted under subsection (1)(a) and reviewing the draft report, the commission may-
- (a) amend the report, including by omitting any part of the report based on evidence received without observing fair procedures,
 - (b) apply to the Court for directions, or
 - (c) submit the report to the specified Minister without making any amendments.
- (3) After hearing an application under subsection (1)(b) or (2)(b), the Court may make any order or give any directions it thinks fit, including a direction to the commission to do one or more of the following:
- (a) submit the draft report to the specified Minister without making any amendments;
 - (b) give a person specified by the Court an opportunity to give any evidence or make any submissions that it considers should, in the interests of fair procedures, be received by the commission before the draft report is finalised;

- (c) submit the draft report to the specified Minister after making such amendments as the Court may direct.
- (4) Before submitting the report to the specified Minister, the commission shall give written notice of any amendments made under this section to any person who is identified by the amendments.

Section 36

Section 36 of the Commissions of Investigation Act 2004 provides:

36.-(1) A person who receives a draft of a report or part of a draft report from a commission under section 34 may, within a period specified by the commission, request the commission to omit from the report any information provided by the person to the commission-

- (a) that the person considers to be commercially sensitive, and
 - (b) the disclosure of which is not, in the person's opinion, necessary for the purposes of the investigation.
- (2) After considering the request, the commission shall review the draft report and may, if satisfied that the information is commercially sensitive and that its disclosure is not necessary for the purposes of the investigation, omit the information from the report.
- (3) For the purposes of this section, information is commercially sensitive if its disclosure could reasonably be expected to-
- (a) materially prejudice the commercial or industrial interests of the person who provided that information to the commission or of a group or class of persons to which that person belongs, or
 - (b) prejudice the competitive position of a person in the conduct of the person's business, profession or occupation.

Time

The commission is required to specify the time allowed to you for making:

- (a) submissions or requests to the commission under section 35(1)(a) or section 36(1), and

(b) applications to the Court under section 35(1)(b)

of the Commissions of Investigation Act 2004.

The time specified to you to make submissions or requests to the commission, or applications to the Court is a period of ____ days.

The time specified will expire on the __ day of ____, 2005.

Confidentiality

The contents of the draft report or part of the draft report provided to you must not be disclosed, or the fact that you have received that draft report or part of a draft report must not be divulged in any way, except with the prior written consent of the commission or to the extent necessary for the purposes of an application to the Court.

Contravention of this statutory requirement of confidentiality is a criminal offence.

Section 37 of the Commissions of Investigation Act 2004 provides:

37.-(1) A person who receives a draft of a report or part of a draft report from a commission under section 34 shall not disclose its contents or divulge in any way that the draft or part of the draft has been sent to that person, except-

- (a) with the prior written consent of the commission, or
- (b) to the extent necessary for the purposes of an application to the Court.

(2) A person who contravenes subsection (1) is guilty of an offence.

Dated this ____ day of _____, 2005.

Signed: _____

Patrick MacEntee,SC,QC.

SCHEDULE 1

Draft interim report or part of the draft report

SCHEDULE 2

Terms of reference

SCHEDULE 3

Commissions of Investigation Act 2004

APPENDIX 13

DRAFT FINAL REPORT NOTICE



**Coimisiún Fiosrú
(Buamáil Baile Átha
Cliath agus Muineachán 1974)**

**Commission of Investigation
(Dublin and Monaghan
Bombings of 1974)**

**Patrick MacEntee, S.C., Q.C.
Sole member**

Draft Final Report Notice

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 is required by Section 34(2) of the Commissions of Investigation Act 2004 to give you notice in writing specifying the time allowed for making:

- (a) submissions or requests to the commission under section 35(1)(a) or section 36(1) and,
- (b) applications to the High Court under section 35(1)(b)

of the Commissions of Investigation Act 2004.

This is an important notice. The commission invites you to read this notice carefully. The contents of this notice contain matters that, in the opinion of the commission, concern you.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the commission for such information or assistance as it may be in a position to provide to you.

Contact with the commission may be made as follows:

| | |
|-----------------|--|
| Postal address: | State Apartments, Upper Castle Yard, Dublin Castle, Dublin 2. |
| E-mail: | info@commissiondmb.ie |
| Telephone no. : | 01-633 6844 |
| Fax no. : | 01-633 6835 |

Introduction

The Commission of Investigation into the Dublin and Monaghan Bombings of 1974 has prepared a draft final report in relation to its investigation into the matters specified in its terms of reference. A copy of the draft report or part of the draft report is set out in Schedule 1 of this notice.

The purpose of this notice is to afford you an opportunity within the time period specified by the commission to exercise your statutory rights under the Commissions of Investigation Act 2004 to make submissions or requests to the commission, or applications to the Court concerning the draft report or part of the draft report.

The terms of reference of the Commission of Investigation into the Dublin and Monaghan Bombings of 1974 are set out in an Order of the Government published in the May 13th, 2005 edition of *Iris Oifigiuil*. A copy of these terms of reference is set out in Schedule 2 of this notice.

The commission wishes to bring to your notice the provisions of sections 34, 35, 36 and 37 of the Commissions of Investigation Act 2004. A copy of the text of the Commissions of Investigation Act 2004 is set out in Schedule 3 of this notice.

Section 34

Section 34 of the Commissions of Investigations Act 2004 provides:

- 34.- (1) Before submitting the final or an interim report to the specified Minister, a commission shall send a draft of the report, or the relevant part of the draft report, to any person who is identified in or identifiable from the draft report.
- (2) The draft report must be accompanied by a notice from the commission specifying the time allowed for making-
- (a) submissions or requests to the commission under section 35(1)(a) or 36(1), and
 - (b) applications to the Court under section 35(1)(b).

- (3) For the purposes of this section and section 35, a person is identifiable from a draft report if the report contains information that could reasonably be expected to lead to the person's identification.

Section 35

Section 35 of the Commissions of Investigation Act 2004 provides:

- 35.- (1) A person who receives a draft report or part of a draft report from a commission under section 34 and who believes that the commission has not observed fair procedures in relation to the person may, within the period specified by the commission-
- (a) submit to the commission a written statement setting out the reasons for the belief and requesting the commission to review the draft in the light of the statement, or
 - (b) apply to the Court for an order directing that the draft be amended before the submission of the report to the specified Minister.
- (2) After considering a statement submitted under subsection (1)(a) and reviewing the draft report, the commission may-
- (a) amend the report, including by omitting any part of the report based on evidence received without observing fair procedures,
 - (b) apply to the Court for directions, or
 - (c) submit the report to the specified Minister without making any amendments.
- (3) After hearing an application under subsection (1)(b) or (2)(b), the Court may make any order or give any directions it thinks fit, including a direction to the commission to do one or more of the following:
- (a) submit the draft report to the specified Minister without making any amendments;
 - (b) give a person specified by the Court an opportunity to give any evidence or make any submissions that it considers should, in the interests of fair procedures, be received by the commission before the draft report is finalised;

- (c) submit the draft report to the specified Minister after making such amendments as the Court may direct.
- (4) Before submitting the report to the specified Minister, the commission shall give written notice of any amendments made under this section to any person who is identified by the amendments.

Section 36

Section 36 of the Commissions of Investigation Act 2004 provides:

36.-(1) A person who receives a draft of a report or part of a draft report from a commission under section 34 may, within a period specified by the commission, request the commission to omit from the report any information provided by the person to the commission-

- (a) that the person considers to be commercially sensitive, and
- (b) the disclosure of which is not, in the person's opinion, necessary for the purposes of the investigation.

(2) After considering the request, the commission shall review the draft report and may, if satisfied that the information is commercially sensitive and that its disclosure is not necessary for the purposes of the investigation, omit the information from the report.

(3) For the purposes of this section, information is commercially sensitive if its disclosure could reasonably be expected to-

- (a) materially prejudice the commercial or industrial interests of the person who provided that information to the commission or of a group or class of persons to which that person belongs, or
- (b) prejudice the competitive position of a person in the conduct of the person's business, profession or occupation.

Time

The commission is required to specify the time allowed to you for making:

- (a) submissions or requests to the commission under section 35(1)(a) or section 36(1), and

- (b) applications to the Court under section 35(1)(b) of the Commissions of Investigation Act 2004.

The time specified to you to make submissions or requests to the commission, or applications to the Court is a period of ____ days.

The time specified will expire on the __ day of ____, 2005.

Confidentiality

The contents of the draft report or part of the draft report provided to you must not be disclosed, or the fact that you have received that draft report or part of a draft report must not be divulged in any way, except with the prior written consent of the commission or to the extent necessary for the purposes of an application to the Court.

Contravention of this statutory requirement of confidentiality is a criminal offence.

Section 37 of the Commissions of Investigation Act 2004 provides:

37.-(1) A person who receives a draft of a report or part of a draft report from a commission under section 34 shall not disclose its contents or divulge in any way that the draft or part of the draft has been sent to that person, except-

- (a) with the prior written consent of the commission, or
- (b) to the extent necessary for the purposes of an application to the Court.

(2) A person who contravenes subsection (1) is guilty of an offence.

Dated this ____ day of _____, 2005.

Signed: _____

Patrick MacEntee, SC, QC.

SCHEDULE 1

Draft interim report or part of the draft report

SCHEDULE 2

Terms of reference

SCHEDULE 3

Commissions of Investigation Act 2004

THE HIGH COURT

Commissions of Investigation Act, 2004

1. The following procedures shall apply to applications to the High Court under the Commissions of Investigation Act, 2004 ("the Act") pending the coming into operation of rules of court regulating the procedure in such proceedings.
2. An application made under any of the following sections of the Act shall be made by originating notice of motion ("the notice of motion"):
 - (a) an application for a direction under paragraph (a) of section 11(3) of the Act;
 - (b) an application for an order under section 16(6) of the Act ;
 - (c) an application for an order under section 17(3) confirming a direction of a commission of investigation ("commission") to pay costs under subsections (1) or (2) of section 17 of the Act;
 - (d) an application for an order under section 21(7) of the Act;
 - (e) an appeal against a determination of a commission under section 22(1) of the Act;
 - (f) an application for an order under section 35(1)(b) of the Act;
 - (g) an application for directions under section 35(2)(b) of the Act;
 - (h) an application for directions under section 38(2) of the Act.
3. (1) The notice of motion shall be entitled in the matter of the relevant section of the Act pursuant to which the application is made, on the application of the applicant. Where orders, directions or other reliefs are sought as against any person or persons, the notice of motion shall additionally be entitled as between the applicant and such person or persons as respondents, and shall contain the names and addresses of each respondent. The notice of motion shall specify the particular reliefs sought against each respondent and the particular provision or provisions of the Act authorising the granting of each such relief.

(2) The notice of motion shall be grounded upon an affidavit sworn by or on behalf of the applicant, and shall be served, together with such a copy of such affidavit and any exhibits thereto, upon each respondent and upon such other person or persons as the Court may direct. The provisions of Order 52, rule 6, of the Rules of the Superior Courts (concerning notice) shall apply to the service of the notice of motion.
4. In the case of an application for a direction under paragraph (a) of section 11(3) of the Act, save where the Court otherwise directs, the grounding affidavit shall exhibit in a sealed envelope, particulars or a transcript of the evidence, or (as the case may be) a true copy of the document sought to be disclosed or published, which envelope is to be opened only by or at the direction of the Court. This procedure shall apply to references made to such evidence or document in any other affidavit in respect of such application.
5. In the case of an application for an order under section 16(6) of the Act, the notice of motion shall specify the direction given by the commission compliance with which is sought and specify the relief sought of the Court in order to enable the direction to have full effect. Where such direction has been given in writing, the grounding affidavit shall exhibit a true copy of the document containing such direction.
6. In the case of an application for an order under section 17(3) of the Act, the grounding affidavit shall specify the basis on which the commission has, under subsection (1) or (2) of section 17 of the Act, as the case may be, directed the respondent to pay the costs concerned.
7. In the case of an application for an order under section 21(7) of the Act, the notice of motion shall specify the request made by the commission of the respondent under section 21(5) of the Act and, where such request was made in writing, the grounding affidavit shall exhibit a true copy of such request.

8. In the case of an appeal against a determination of a commission under section 22(1) of the Act,

(a) the notice of motion shall specify the request, question or direction, referred to in section 21(2) of the Act, in response to which the respondent claimed to be entitled to refuse to disclose information or produce a document, and

(b) the grounding affidavit shall

(i) where the determination of the commission was made in relation to a document, exhibit any written statement provided by the appellant in accordance with section 21(4)(b) of the Act or affidavit provided by the appellant in accordance with section 16(1)(f) of the Act, and

(ii) exhibit a true copy of the document, if any, containing or recording the determination made by the commission under section 21(2) of the Act.

9. In the case of an application for an order under section 35(1)(b) of the Act, the grounding affidavit shall exhibit the draft report or part of such draft received by the applicant.

10. In the case of an application for directions under section 35(2)(b) of the Act, the grounding affidavit shall exhibit

(a) the draft report or part of such draft the subject of the application, and

(b) the written statement submitted to the commission in accordance with paragraph (a) of section 35(1) of the Act.

11. In the case of an application for directions under section 38(2) of the Act, save where the Court otherwise directs, the grounding affidavit shall exhibit in a sealed envelope the relevant part or parts of the final report or interim report the subject-matter of the application, which envelope is to be opened only by or at the direction of the Court. This procedure shall apply to references made to such report in any other affidavit in respect of such application.

12. On the date first fixed for the hearing of the notice of motion (or on any adjournment of such hearing), the Court may give such directions and make such orders, including the fixing of time limits, for the conduct of the proceedings as appears convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings, which may include:

(a) directions as to the service of notice of the application on any other person, including mode of service and the time allowed for such service (and the Court may for that purpose adjourn the hearing of the notice of motion or further hearing of such application to a date specified), and

(b) directions as to the service of any further affidavit by any party upon any other party or parties.

13. This practice direction shall cease to have effect on the coming into operation of the rules of court referred to above.

Dated this 21st day of July, 2005

President of the High Court