

MEDICAL COUNCIL OF IRELAND

FITNESS TO PRACTISE COMMITTEE

UNDER PART 8 OF THE MEDICAL PRACTITIONERS ACT 2007

RE: REGISTRANT [WITNESS B]

REGISTRATION NO: 405670

HEARING BEFORE THE FITNESS TO PRACTISE COMMITTEE

VIA ZOOM

ON WEDNESDAY, 30TH OCTOBER 2024 - DAY 4

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APPEARANCES

THE COMMITTEE :

MR. PAUL HARKIN - CHAIR
MS. MARY DEVINS
DR. MARY DAVIN-POWER

LEGAL ASSESSOR :

MR. DIARMAID MCGUINNESS SC

FOR THE CEO :

MR. HUGH McDOWELL BL

INSTRUCTED BY :

MS. SARA O'SULLIVAN
SOLICITOR
MESSRS. FIELDFISHER
SOLICITORS

FOR THE REGISTRANT :

MR. GERARD COLLERAN BL

INSTRUCTED BY :

ROBINSON SOLICITORS
SUITE 136
THE CAPEL BUILDING
MARY'S ABBEY
DUBLIN 7

ALSO PRESENT :

MR. ALEXANDER MURRAY
PROFESSIONAL STANDARDS SECTION OF
THE MEDICAL COUNCIL

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1 THE HEARING RESUMED ON WEDNESDAY, 30TH OCTOBER 2024, AS
2 FOLLOWS:

3
4 CHAIRPERSON: Good morning to you all. This inquiry
5 is taking place by way of the Trialview conferencing 10:56
6 platform. Please note the parties are not permitted to
7 make any recordings, be they video or audio, or to take
8 pictures during the course of this inquiry.

9
10 Access to documents at the remote hearing is restricted 10:57
11 to those who are permitted to view them ordinarily at
12 an in-person inquiry. Observers/members of the public
13 are not permitted to access or view documents. If for
14 some reason it's the case that documents are available
15 to view in error, observers are required to immediately 10:57
16 notify the administrator or a member of the
17 Professional Standards staff of such an occurrence.

18
19 This is an inquiry by the Fitness to Practise Committee
20 under part 8 of the Medical Practitioners Act of 2007. 10:57
21 This is an inquiry into allegations of professional
22 misconduct and/or poor professional performance and/or
23 a contravention of the provision of the Medical
24 Practitioners Act of 2007, including a provision of any
25 regulations or rules made under this act on the part of 10:57
26 a registered medical practitioner.

27
28 This is day four of the inquiry. The Committee
29 assembled here today comprises the same members that

1 heard day one, day two and day three evidence.

2
3 Now, although this inquiry is proceeding in public, the
4 complainant is being anonymised as "Witness A" and the
5 registrant is being anonymised as "Witness B". In the 10:58
6 event that either witness is inadvertently referenced
7 by their actual name or in a way that might identify
8 them, parties to this inquiry are ordered not to
9 disclose that identity, for example, in media
10 reporting. The transcript of this inquiry will be 10:58
11 amended, as necessary, to correct any inadvertent
12 disclosures.

13
14 So, with that point of correcting the transcript, I
15 want to just draw it to attention of the parties that 10:58
16 yesterday's transcript is available to the Committee
17 and we note that the references made in the opening
18 page to it being wednesday, the date is correct but the
19 day is wrong, so I wonder if our stenographer could
20 arrange for that to be corrected. And also there are 10:58
21 at least four references to "Witness B" by their name,
22 I would appreciate if those references could also be
23 corrected in the transcript.

24
25 So, with that, good morning to you all again. I'll ask 10:59
26 if there are any preliminary applications that either
27 side wishes to make?

28 MR. COLLERAN: Yes, Chair, I have an application and I
29 would seek to have that application heard in private.

1 CHAIRPERSON: Thank you. Mr. McDowell, do you have
2 any application you wish to make?

3 MR. MCDOWELL: No, and I have no issue with
4 Mr. Colleran's application being made in private.

5 CHAIRPERSON: I will ask Mr. McGuinness to advise the
6 Committee if that would be appropriate for an
7 application to be heard in private, without having
8 heard any details of what it might be?
9

10:59

10 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:
11

10:59

12 LEGAL ASSESSOR: Chairman, as you will be aware, the
13 default position is in to hear hearings in the inquiry
14 in public. However, applications relating to matters
15 that are occurring, or likely to occur, or which would
16 require the free discussion without fear of
17 consequences, it's common for the Committee to convene
18 in private to hear those applications so that they may
19 be considered fully without prejudicing any of the
20 parties in regard to it. And, accordingly, the
21 Committee has power to sit in private for those
22 purposes.

10:59

23 CHAIRPERSON: Thank you very much. Can I ask my
24 Committee colleagues if they are happy for us to
25 proceed in private, or if you wish, if you prefer for
26 us to discuss the matter before we make that decision,
27 I am happy to take your views?

11:00

11:00

28 MS. DEVINS: Chairman, I just wonder would it be wiser
29 to hear from Mr. Colleran making the application as to

1 the reason and is it one that might be likely to cause
2 prejudice later?

3 CHAIRPERSON: Thank you, Ms. Devins.
4

5 SUBMISSION BY MR. COLLERAN:

11:00

6
7 MR. COLLERAN: My reluctance to, as it were, explain at
8 this stage the nature of my application, it would
9 become very evident if the Committee allows me a
10 private hearing why that reluctance is there. And I
11 would urgently seek the Committee's dispensation on
12 this to allow for this hearing and it will become
13 abundantly clear.

11:01

14 CHAIRPERSON: Okay, thank you very much for that
15 Mr. Colleran. Dr. Davin-Power, do you have any
16 questions or do you wish to express a preference for us
17 to discuss it in private?

11:01

18 MS. DAVIN-POWER: I'm happy to discuss it in private.

19 CHAIRPERSON: Okay. We will return to our private room
20 for a moment to discuss the issue of hearing the
21 application in private.

11:01

22
23 THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND
24 CONTINUED AS FOLLOWS:

25
26 DECISION OF THE COMMITTEE

11:01

27
28 CHAIRPERSON: So I think all parties are back.
29 Mr. Colleran, I can advise you that the Committee has

1 discussed the matter and we are happy to hear your
2 application in private.

3 MR. COLLERAN: Thank you, Chair.

4 CHAIRPERSON: I will ask Mr. Murray to assist us to
5 having the public gallery cleared so that we are in
6 private session. 11:05

7
8 THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND
9 CONTINUED AS FOLLOWS:

10
11 PRIVATE SESSION 11:06

12
13 CHAIRPERSON: Thank you very much. Mr. Colleran, we
14 are happy to hear your application now.

15
16 APPLICATION BY MR. COLLERAN: 11:08

17
18 MR. COLLERAN: Thank you, Chair, and thank you,
19 Committee. It's a very short application and it is
20 this: Matters have arisen contrary to instructions 11:08
21 and, therefore, the application is that we come off
22 record in respect of representing the registrant.

23
24 The sensitivities around this have got to do with
25 matters, which I don't intend to detail, which have 11:09
26 found their way into the public domain through online.
27 In those circumstances, there is no option but to
28 come -- but to seek to come off record.
29

1 Further, I am instructed as well that I should apply
2 for an adjournment to allow the registrant make
3 whatever arrangements the registrant considers
4 necessary for to deal with these hearings.

5
6 Thank you, Committee.

7 CHAIRPERSON: Thank you, Mr. Colleran. I will invite
8 Mr. McDowell, if you have any response you wish to make
9 to that application?

10
11 SUBMISSION BY MR. McDOWELL:

12
13 MR. MCDOWELL: well, I suppose maybe the best thing to
14 do is take things in stages: So I am entirely neutral
15 on the application to come off record, and maybe the
16 appropriate way to deal with it is to address that
17 first and then address the question of the adjournment.
18 But the Committee can take it that my instructions are
19 to oppose the adjournment in the strongest possible
20 terms and I will address you on that in due course.

21
22 Sorry, I should say if you want me to address you it
23 now, of course I am happy to do that?

24 CHAIRPERSON: Just in the interest of keeping it as
25 cleanly as you described, I will just ask if my
26 Committee colleagues have any questions they wish to
27 put. I am mindful of the fact Mr. Colleran has been
28 quite curt in his application, so I suspect there's not
29 very much we can say to eliminate matters. But if

1 anyone can, I am sure Ms. Devins can, she is --
2 MS. DEVINS: well just may I ask, is the registrant
3 here himself?
4 MR. COLLERAN: No, the registrant is not present.
5 Solicitors -- Robinsons Solicitors have communicated 11:11
6 their intention to come off record.
7 MS. DEVINS: Just simply on the technicality, and
8 forgive me for this: If you, Mr. Colleran, have come
9 off record (a) are you in a position to make any
10 further applications? 11:11
11 MR. COLLERAN: Before --
12 MS. DEVINS: That is my just technicality really.
13 MR. COLLERAN: The registrant asked the solicitors, as
14 they were coming off record or indicating to him that
15 they had decided to come off record, stated to him that 11:11
16 they had decided to come off record, he sought time.
17 MS. DEVINS: I see, thank you.
18 MR. COLLERAN: And therefore I have his instructions to
19 make that application.
20 MS. DEVINS: Thank you. 11:12
21 CHAIRPERSON: Dr. Davin-Power, do you have any
22 questions in respect of the application?
23 MS. DAVIN-POWER: No, I don't. No, I don't. Thank
24 you.
25 CHAIRPERSON: I'm not sure, maybe you can't say any 11:12
26 more, Mr. Colleran, but you mentioned that the matter
27 of sensitivities, that some matters found their way
28 into the public domain. Is this referencing to matters
29 we have discussed in our public hearing yesterday?

1 LEGAL ASSESSOR: Chairman, I wonder could I offer a
2 legal advice --

3 CHAIRPERSON: Please.

4 LEGAL ASSESSOR: -- in relation to the matter?

5 CHAIRPERSON: Yeah, please do, that would be very
6 helpful.

11:12

7
8 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

9
10 LEGAL ASSESSOR: Firstly, Chairman, this advice is
11 intended to be protective of the ability of the
12 Committee to proceed, and it's intended to ensure that
13 the Committee isn't informed of matters which might
14 make it's function, and the continuation of it's
15 function of inquiry, difficult, if not impossible.

11:12

16 And I am therefore advising the Committee that it ought
17 not to press Mr. Colleran as to the factual -- the
18 further factual basis for the schism that's now clearly
19 come to pass between himself, his solicitors on the one
20 hand, and his client on the other. It's a very
21 difficult step for professional representatives to take
22 that, and I'm certain that they haven't taken that
23 lightly. And I'm just concerned that any further
24 elucidation of the basis for it might be a dangerous
25 path to go down in these circumstances.

11:13

11:13

11:14

26 CHAIRPERSON: Happy to accept that advice fully,
27 Mr. McGuinness. And I apologise to Mr. Colleran if I
28 was putting you in a difficult position there with my
29 question.

1 MR. MCDOWELL: Chair, I wonder could I just make a
2 remark?

3 CHAIRPERSON: Please.
4

5 SUBMISSION BY MR. MCDOWELL:

11:14

6
7 MR. MCDOWELL: It's not so much to do with the
8 application to come off record. But there doesn't seem
9 to me to be for a good reason for the Committee to
10 refuse that application, as matters stand. And, as I 11:14
11 understood matters yesterday, from just -- just from
12 watching what was going on in TrialView, it appeared to
13 me that [Witness B] was in the same room as his lawyers
14 and was watching the proceedings in their company and
15 providing instructions in realtime, and that's entirely 11:14
16 appropriate.

17
18 And it now appears, or I gather from Mr. Colleran --
19 and, sorry, nothing I say now is designed to be a
20 criticism of Mr. Colleran or Robinson Solicitors. But 11:14
21 it now appears, from what Mr. Colleran says, that
22 [Witness B] has absented himself from wherever they are
23 based. And I have to say that that is a matter of
24 significant concern in the circumstances of the
25 application now being made. Because, as you know, the 11:15
26 reason we are collected today is to facilitate the
27 cross-examination of witnesses on behalf of [Witness
28 B], and it appears that he has simply absented himself
29 from the hearing, in the knowledge that his lawyers

1 were applying to come off record and applying to
2 adjourn the matter on his behalf. And in my view --
3 and I am going to come on to the adjournment
4 application later on -- but he is effectively trying to
5 box the Committee in to being forced to accede to the 11:15
6 adjournment application, and I deprecate that conduct
7 on his part in the strongest terms because -- I mean
8 you don't need me to go over the delay and the
9 prejudice in this case again and again.

10
11 But so I actually do think that before the Committee
12 accedes to the application or considers acceding to it,
13 I would suggest to the Committee that it should ask
14 Mr. Colleran's solicitors to make contact with [witness
15 B] to see whether he can attend the hearing in perhaps 11:16
16 half an hour or an hour's time to resume the hearing or
17 to deal with the adjournment application. And if he
18 can't, I think a good reason needs to be put before the
19 Committee as to why he was able to appear yesterday but
20 somehow can't appear today. 11:16

21 CHAIRPERSON: Thank you very much for that
22 Mr. McDowell. So just in case I forget to say it,
23 Mr. Colleran, I didn't intend to infer any criticism of
24 you. So please be reassured of that.

25
26 So we have an application from you to come off record.
27 AS Mr. McDowell has said, there doesn't appear to be
28 any reason why we should not accept that application.
29 But I am going to just invite Mr. -- to keep us all on 11:16

1 the straight and narrow -- Mr. McGuinness to give his
2 advice on the matter of coming off record, and then we
3 deal with the question of an adjournment once we have
4 dealt with the first part of the application.

11:16

5
6 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

7
8 LEGAL ASSESSOR: Thank you, Chairman. In circumstances
9 where the parties are effectively ad idem on the issue
10 of whether Witness B solicitors should be permitted to 11:17
11 come off record, it appears to me that I ought to
12 advise the Committee that there is no reason why the
13 Committee should refuse to allow that to happen. It
14 would appear to be impossible to compel the
15 representatives to act, either contrary to instructions 11:17
16 or contrary to material that has affected their ability
17 to know how to proceed or what instructions they will
18 have.

19
20 As far as Mr. McDowell's comment about the absence of 11:17
21 Witness B is concerned, that seems to be an inference
22 on his part, I see a screen for Witness B there on the
23 screen, I don't know whether that means he is logged on
24 but just not switching his video on or not?

25 MR. MURRAY: I might be of help, that screen is 11:18
26 essentially a placeholder when the person is not logged
27 on.

28 LEGAL ASSESSOR: Yes and it may be helpful if Mr.
29 Colleran can confirm to the Committee that Witness B is

1 not present and is not giving you instructions today
2 there at the moment but has done so over the phone. Do
3 I understand that to be the position?

4 MR. COLLERAN: He has been in present and is gone and
5 is not in a position now to give instructions. But has 11:18
6 given the instruction to seek an adjournment.

7 LEGAL ASSESSOR: It may be helpful for the Committee, in
8 considering the matter now and any other application,
9 as to whether witness B has given any intimation as to
10 whether he is going to proceed to represent himself now 11:18
11 either today or on other days?

12 MR. COLLERAN: My instructions are he merely sought time
13 to make arrangements.

14 LEGAL ASSESSOR: Very good.

15 CHAIRPERSON: Okay, we have your advice, thank you for 11:19
16 that, Mr. McGuinness, in respect of the first part of
17 the application, Mr. Colleran coming off record.

18
19 Can we, for efficiency, deal with the second part which
20 is the adjournment? 11:19

21 MR. MCDOWELL: Chair, my application is that before
22 that application - before the adjournment application
23 is considered, I would ask that the Committee direct
24 Robinson's Solicitors to make efforts to have [Witness
25 B] log on to deal with the adjournment application 11:19
26 himself.

27
28 I know that Mr. Colleran was instructed to make the
29 adjournment application on his way out the door, so to

1 speak and I don't criticise him for that but really the
2 Committee needs to hear from [Witness B] why he was
3 here yesterday and why he is not here today and why he
4 can't not proceed today.

5
6 And I am not going to talk about the prejudice about
7 delay because you understand all that point but I just
8 do want to record for the record that when I logged on
9 this morning Dr. Russell, as I said yesterday, is
10 resident in Canada was waiting to give his evidence at 11:19
11 10:30 this morning. So it really is very
12 unsatisfactory now that there is even a possibility
13 that that wouldn't happen today.

14
15 So I won't say any more for the time being but I am not 11:20
16 really sure that the Committee can actually fairly
17 adjudicate an adjournment application based on the
18 understandably sparse instructions Mr. Colleran has on
19 it.

20 CHAIRPERSON: Yes, thank you for that, Mr. McDowell. 11:20

21 And, Mr. Colleran, anything else you would like to add?

22 MR. COLLERAN: No, I have nothing further to add except
23 what I've said.

24 CHAIRPERSON: Thank you, I appreciate that. The
25 Committee will go into private session to consider the 11:20
26 matter.

27
28 THE HEARING THEN ADJOURNED FOR A BRIEF RECESS AND
29 CONTINUED AS FOLLOWS:

1 DECISION OF THE COMMITTEE

2
3 CHAIRPERSON: Can I just confirm we are still in
4 private session?

5 MODERATOR: Yes, I can confirm we are still in private 11:36
6 session

7 CHAIRPERSON: Thank you. So thank you all for your
8 patience. The Committee has discussed the application
9 and is minded to accede to the first part of the
10 application, that is Mr. Colleran and Robinsons coming 11:36
11 off record for Witness B.

12
13 In respect of that second part of that application, the
14 adjournment, the Committee directs that either or both
15 the CEO and/or Robinsons attempt to make contact with 11:36
16 [Witness B] this morning to advise him that this
17 Committee is going to adjourn until 12 o'clock, at
18 which point we will resume to hear an adjournment
19 application.

20
21 And obviously if Mr. Colleran, as a courtesy to you, if
22 you have any further matters that you wish to put to us
23 in respect of the adjournment, we are happy to hear
24 that also. But we understand the position that you are
25 in. If it could be impressed upon [Witness B] that 11:37
26 witnesses have been assembled from outside of this
27 jurisdiction at an anti-social hour to allow [Witness
28 B] to cross-examine them, I'd like that message to be
29 relayed to [Witness B].

1 But we will hear formally the application for
2 adjournment and the reasons for why [Witness B] says he
3 needs an adjournment at 12 o'clock.

4 MR. MCDOWELL: Thank you Chair.

5 CHAIRPERSON: Thank you, all. And we will now adjourn 11:37
6 until then.

7 MR. COLLERAN: Just, Chair, just on clarity there: Is
8 it your expectation, or the Committee's expectation,
9 that I will have an involvement in that application for
10 adjournment? 11:37

11 CHAIRPERSON: The Committee is happy to hear from you
12 if you've anything that -- we want to be as fair to
13 [Witness B] as possible. So if there are any matters
14 that you wish to bring that would support the
15 adjournment application, we are happy to hear from you. 11:38
16 But you may not be, you may not feel that you are in a
17 position to do so, in view of the fact that you are
18 coming off record.

19 MR. COLLERAN: Yes, I have the only instruction that I
20 had, Chair, is that we seek -- that I seek time in 11:38
21 light of circumstances. And that is as far as the
22 instructions went.

23
24 And I am somewhat at a loss, subject to advice, perhaps
25 from Mr. McGuinness, as to -- as to what role I may 11:38
26 usefully play at such an application.

27 MR. MCDOWELL: Well, Chair, just to be assistance of
28 the Committee, a role that Mr. Colleran could usefully
29 play at 12 o'clock is at the very least to tell the

1 Committee or to recount to the Committee for his
2 efforts or his solicitor's efforts to contact witness B
3 in the intervening 20 minutes.

4 MR. COLLERAN: Yes that is -- but I think it probably
5 -- yes of course, Mr. McDowell and the Committee but I 11:38
6 would venture to say it may be limited to that
7 information.

8 CHAIRPERSON: Be it as it may I am happy to hear from
9 you what efforts and what success if otherwise we have
10 in contact [witness B]. I appreciate your assistance 11:39
11 in the matter and the difficult position you are now.

12 MR. COLLERAN: Very well, thank you.

13 MR. MCDOWELL: Thank you, Chair.

14 CHAIRPERSON: Thank you, we will now adjourn until 12
15 o'clock. 11:39

16
17 THE HEARING THEN ADJOURNED FOR A BRIEF RECESS AND
18 CONTINUED AS FOLLOWS:

19
20 CHAIRPERSON: So, thank you all. I wonder if either, 12:01
21 Mr. McDowell or Mr. Colleran, could advise us have
22 either party been able to make contact with witness B?

23 MR. COLLERAN: Yes, Chair, I can advise that Robinson
24 Solicitors made contact with witness B and he was
25 driving at the time. And he stated that he would be 12:02
26 able to join the hearing at 2pm. However, he also
27 indicated that he would need more time to secure legal
28 representation. That's as far as I can go with the
29 contact we've had with witness B.

1 CHAIRPERSON: well thank you very much for that,
2 Mr. Colleran, that's very helpful.

3 MR. MCDOWELL: Just so my solicitor also spoke with
4 [Witness B] and was given a similar explanation,
5 apparently he's driving to Limerick but he will log on 12:02
6 at 2pm.

7 CHAIRPERSON: And can I ask, Mr. McDowell, the CEO's
8 position in respect of hearing an adjournment
9 application? I know you oppose that application --

10 MR. MCDOWELL: Yes. 12:02

11 CHAIRPERSON: -- but the actual hearing of that
12 application?

13 MR. MCDOWELL: Yes, well obviously that application has
14 to be moved, and I think it should be moved at
15 2 o'clock by [Witness B], and I suggest we deal with it 12:02
16 then.

17 CHAIRPERSON: Okay.

18 MR. MCDOWELL: And I don't think there is any need for
19 Robinsons or Mr. Colleran to be here for that.

20 12:03
21 I should say that my instructions are that we are not
22 going to have Dr. Russell or Dr. Cullen this afternoon
23 because they made themselves available for the slots
24 that were set up this morning. So anyway that's maybe
25 a matter for later on. 12:03

26 CHAIRPERSON: Mm-hmm. Thank you very much for that,
27 Mr. McDowell. Mr. McGuinness, anything you would like
28 to say in advice to us?
29

1 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

2
3 LEGAL ASSESSOR: Chairman, in the light of the
4 established successful contact, and in light of the
5 intention apparent from what was relayed by witness B, 12:03
6 my advice is that the Committee also to, in accordance
7 with fair procedures and in deference to his right to
8 be heard on the matter, adjourn the matter to 2pm in
9 the circumstances without prejudice to whatever may
10 thereafter occur. Because whatever applications are to 12:04
11 be made will have to be adjudicated upon, obviously
12 having heard the submissions in the matter and having
13 considered all relevant factors.

14 CHAIRPERSON: Thank you very much for that,
15 Mr. McGuinness, I am happy to accept that advice 12:04
16 entirely. Any comments from either side in respect of
17 Mr. McGuinness' advice to the Committee?

18 MS. DEVINS: Absolutely none, other than to thank
19 Mr. Colleran and Mr. McDowell and their solicitors for
20 making that contact I suppose. 12:04

21 CHAIRPERSON: Yeah, likewise. So thank you,
22 Mr. Colleran, in particular for your participation and
23 for your assistance to the Committee. We very much
24 appreciate it.

25
26 We will adjourn then at this point until 2 o'clock and
27 I hope we will be in a position to hear the
28 application. 12:04

29 MR. MCDOWELL: Sorry, Chairperson?

1 CHAIRPERSON: Yes, indeed, Mr. McDowell.

2 MR. McDOWELL: Sorry to interrupt you. There is
3 another totally separate matter that I would like to
4 raise with you, if I could, and if I could do that now
5 if that is possible? 12:05

6 CHAIRPERSON: And do you wish Mr. Colleran to be here?

7 MR. McDOWELL: It's up to him.

8 MR. COLLERAN: I don't think I have any further role in
9 these hearings at this point. If that's my
10 understanding. 12:05

11 CHAIRPERSON: well thank you very much, Mr. Colleran
12 again. We won't detain you any further.

13 MR. COLLERAN: Thank you, good day.

14 CHAIRPERSON: Good day.

15 12:05
16 MR. COLLERAN AND ROBINSON SOLICITORS THEN WITHDREW FROM
17 THE PROCEEDINGS

18
19 CHAIRPERSON: So, Mr. McDowell, happy to hear you.

20 12:05
21 SUBMISSION BY MR. McDOWELL:

22
23 MR. McDOWELL: Yes. So, Chair, this morning at 6:38am
24 Ms. O'Sullivan, who is one of my instructing solicitors
25 in Fieldfisher, received an email. And the email was 12:05
26 received from the following email address:
27 racismhelpline@unitymedics.com and the email read as
28 follows:
29

1 "Dear Sir,

2
3 We have been informed that the Irish Medical Council
4 has been involved in racial discrimination and there is
5 a hearing ongoing regarding one of the practitioners. 12:06
6 We would be delighted if we are given access to attend
7 from now onward and previous days hearing as we want to
8 report on our website.
9 Thanks".

10 12:06
11 And it's signed off "Team Unity Medics". And if one
12 then clicks on the Unity Medics, the link to Unity
13 Medics, which is a website. And I don't know if that
14 can be shared via TrialView or alternatively I'd
15 suggest that the Committee Members can look it up on 12:06
16 their devices?

17 LEGAL ASSESSOR: Chairman, could I just intervene at
18 this point to raise an issue.

19 CHAIRPERSON: Please do.

20 12:06
21 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

22
23 LEGAL ASSESSOR: The hearings that the Committee are
24 conducting, apart from ones in private of necessity
25 where matters are discussed which would otherwise be 12:06
26 improper to discuss in public, and in those public
27 hearings they are open to, as I understand it, persons
28 to log on and view the proceedings. And I'm not sure
29 that any comment is necessary, or perhaps even proper,

1 about parties who may wish to log on if it is
2 appropriate for members of the public, or whatever
3 group, to see the proceedings as they are proceeding.
4 So I'm not clear as to the purpose for which
5 Mr. McDowell is bringing this to the Committee's 12:07
6 attention. And again this is just from an abundance of
7 caution on my part. I obviously wouldn't wish
8 Mr. McDowell to say anything at this stage, and
9 certainly in the absence of any party, which might or
10 might be perceived to create a risk of irreparable 12:07
11 prejudice. So my advice to the Committee is perhaps to
12 ask Mr. McDowell the purpose for which he is intending
13 to bring this to the Committee's attention without, if
14 possible, going into any detail on material or links.

15 12:08
16 SUBMISSION BY MR. McDOWELL:

17
18 MR. MCDOWELL: So the reason that I am bringing this to
19 the Committee's attention is because the CEO's concern
20 is that a person -- and I am not identifying that 12:08
21 person and I am not suggesting who it may or may not
22 be -- is acting in contempt of the Committee's
23 directions regarding the anonymisation of witnesses.
24 And I think that the Committee requires to be made
25 aware of the fact that somebody is so doing. 12:08

26 CHAIRPERSON: Thank you, Mr. McDowell. Mr. McGuinness,
27 anything further you wish to say?
28
29

1 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

2
3 LEGAL ASSESSOR: Only this, Chairman: In the light of
4 what Mr. McDowell has said about his position of not
5 identifying anyone who may be responsible for this, I'm 12:09
6 not sure that he is in a position to ask the Committee
7 to do anything at the moment in relation to the issue
8 but perhaps --

9 MR. MCDOWELL: I think that's correct. Because I don't
10 know who is acting in contempt of the Committee's 12:09
11 direction, I can't ask to you do anything about it.
12 And if Mr. McGuinness thinks it's more prudent for me
13 not to raise this issue, I am happy to. But the CEO
14 believed it was proper that the Committee should be
15 made aware of -- made aware of the fact that somebody 12:09
16 is not complying with a direction made by this
17 Committee.

18 CHAIRPERSON: And that's presumably always a risk that
19 we have with public hearings where somebody
20 inadvertently mentions the name of the individual. And 12:09
21 we've had at least four occurrences of that yesterday

22 MR. MCDOWELL: Yes.

23 CHAIRPERSON: And we rely on the compliance of those in
24 the public gallery to comply. So I'm not sure there is
25 much I can do in the absence of -- I'm not sure you are 12:10
26 asking me to do anything, Mr. McDowell, other than make
27 us aware that there is an individual or organisation at
28 large.

29 MR. MCDOWELL: Yes. well maybe I just say this then:

1 Somebody has named witness A in a public forum and
2 although it isn't expressed in these terms, I think
3 when one looks at it, it is in connection with this
4 Inquiry and that is a breach of the Committee's
5 direction on anonymisation. And I am just making the
6 Committee aware of that fact.

12:10

7 CHAIRPERSON: Okay, I think the Committee is happy to
8 be appraised of that fact but I am not sure there is
9 much more you are asking us to do, other than be aware
10 of that fact?

12:10

11 MR. MCDOWELL: Yes.

12 CHAIRPERSON: And I presume the CEO is at liberty to
13 take whatever action the CEO wishes in respect of that
14 alleged breach?

15 MR. MCDOWELL: Yes, I think so.

12:10

16 CHAIRPERSON: Yeah. Okay well listen thank you for
17 that, I know it has been not entirely satisfactory
18 progress being made.

19
20 We will resume at 2 o'clock to hear the adjournment
21 application. Without prejudice to what decision we may
22 make, it is clear from what you said the witnesses you
23 assembled for this morning were not available for this
24 afternoon.

12:11

25 CHAIRPERSON: Yes.

12:11

26 MR. MCDOWELL: So if it would be possible to convey to
27 those witnesses our thanks for making themselves
28 available and our sincere apologies for not being able
29 to hear their cross-examination today.

1 MR. MCDOWELL: Yes.

2 CHAIRPERSON: I think with that then if there is no
3 other matters we will adjourn until 2 o'clock.

4 MODERATOR: would you like the room to be still private
5 when it resumes at 2 o'clock? 12:11

6 CHAIRPERSON: I am happy to hear from Mr. McDowell
7 first of all on that.

8 MR. MCDOWELL: I don't see any reason for that, I think
9 it should be in public -- that being the default
10 position. 12:11

11 CHAIRPERSON: Yeah. I think that's right but again,
12 Mr. McGuinness, if there is anything you would like to
13 advise the Committee on, we are happy to take your
14 advice.

15 LEGAL ASSESSOR: I suppose the legal issue for the 12:12
16 Committee is, have the circumstances changed from this
17 morning's position whereby the application, albeit part
18 of it was to have the application for the adjournment
19 heard in private, has it changed such that the
20 Committee ought to make a different decision at this 12:12
21 point in time?

22
23 But it may be appropriate for the Committee to commence
24 in public and if an application is made by either party
25 it must, of necessity, consider it and consider it in 12:12
26 submissions.

27 CHAIRPERSON: Yes. Well unless any of my Committee
28 colleagues object, I am proposing that we resume in
29 public session and we will be open to hear if there is

1 any application for privacy before any further
2 adjournment application is made.

3
4 I might, with your assistance, Mr. McGuinness, come up
5 with a script for myself so that when we resume the
6 hearing at 2 o'clock, I can make that crystal clear to,
7 particularly witness B, who may not on that occasion be
8 represented. I wish him not to be at any disadvantage.

12:13

9 LEGAL ASSESSOR: Thank you, Chairman, yes.

10 CHAIRPERSON: Thank you. So, we will go into private
11 session, we will adjourn for now and resume at 2
12 o'clock.

12:13

13 MR. MCDOWELL: Thank you, Chair.

14 CHAIRPERSON: Thank you.

15 MS. DAVIN-POWER: Thank you, Chair.

12:13

16
17 THE HEARING THEN ADJOURNED UNTIL 2PM

18
19 THE HEARING CONTINUED AT 2PM AS FOLLOWS:

20
21 PUBLIC SESSION

13:53

22
23 CHAIRPERSON: Good afternoon to you all. Just by way
24 of introduction to orientation, I understand,
25 witness B, you are appearing here without presentation.
26 As Alexander has indicated, we are in public session
27 and I understand you have an application where you wish
28 to seek an adjournment.

14:09

1 Recognising you are not with legal counsel, I am sure
2 Mr. McGuinness will step in if there's anything he can
3 assist you with, though it is not his role to represent
4 you. He will provide, no doubt, any assistance he can.
5 But we are happy to hear your application now.

14:10

6
7 APPLICATION BY WITNESS B:

8
9 WITNESS B: Hi. So, for unexpected reason, I am in --
10 I put few evidence in front of the counsel and
11 unfortunately he neither accepted that evidence, and he
12 was neither denying that evidence. So I said you can
13 kindly give me in return that you will not proceed that
14 evidence. So after that, I mean, give some reason that
15 he cannot continue with this hearing and he withdraws.
16 So unfortunately I cannot continue without the counsel
17 at this stage.

14:10

18 CHAIRPERSON: Okay. Can I just check, you're in a
19 motor vehicle at the moment, are you?

20 WITNESS B: Sorry?

14:11

21 CHAIRPERSON: Are you in a car at the moment?

22 WITNESS B: Yes, I am in the car. Yes.

23 CHAIRPERSON: Can you assure me you are not driving at
24 the moment?

25 WITNESS B: No, no, I am just park on the side, you
26 know.

14:11

27 CHAIRPERSON: Perfect, thank you. Then I'll invite
28 Mr. McDowell to respond to your application.

1 SUBMISSION BY MR. McDOWELL:

2
3 MR. MCDOWELL: So I didn't actually catch the first
4 thing that was said about evidence so I'm just not sure
5 what was said there. But, as I understand it, what 14:11
6 Witness B said to the Committee is that his lawyers
7 indicated that they were no longer prepared to act for
8 him ,that he is therefore not represented, and he is
9 therefore not in a position to proceed.

10
11 So the difficulties that arise with that are as
12 follows:

13
14 Firstly, to provide the Committee what is now a
15 familiar timeline, this is a complaint which relates to 14:11
16 matters that commenced in 2016, eight years ago, over
17 eight years ago. It's a complaint that was made in
18 June of '19, so over five years ago, and it's a matter
19 that was referred to the Fitness to Practise Committee
20 I think in January 2022, and that is over two years 14:12
21 ago. So it's a matter of some antiquity and, as I've
22 stressed to the Committee on numerous occasions, the
23 Chief executive is very anxious to get this inquiry
24 resolved, and I know that that is an objective shared
25 by the Committee Members. 14:12

26
27 That is so firstly because in general or abstract
28 terms, the Chief Executive always wishes to proceed
29 with inquiries in an efficient and prompt fashion and

1 not to allow matters drag out. But, secondly -- sorry I
2 see witness B is reconnecting so I will just pause for
3 a moment.

4 CHAIRPERSON: Oh, yes, thank you for that.

5 MR. MCDOWELL: So I think that witness B is back. 14:13

6 WITNESS B: Yeah. I am hearing. [Audio interference] I
7 can hear you. You can continue, I can hear.

8 CHAIRPERSON: I might suggest, witness B, if you wish
9 to mute your camera so that you can hear clearly, I am
10 happy to allow that. 14:13

11 WITNESS B: Okay, that's fine. Go ahead, thank you.

12 MR. MCDOWELL: So that is the general objective of the
13 Chief Executive. But in this case, in particular, the
14 Committee is very familiar with the specific
15 circumstances that arise, and I am referring there to 14:13
16 the ongoing prejudice that witness A says she is
17 suffering by reason of the fact this inquiry hasn't
18 concluded in a hasty fashion and is continuing to be
19 drawn out. So, for those reasons, I say that the
20 Committee, that the balance of justice does not favour 14:14
21 the matter being adjourned again. So that is the
22 first thing to say.

23
24 The second thing to say is that, as the Committee
25 knows, the commencement of this inquiry was adjourned 14:14
26 on a number of occasions, or postponed on a number of
27 occasions, in late 2023 and early 2024, almost always,
28 though not exclusively, at the request of witness B.
29 And one of the reasons proffered for those postponement

1 applications was that witness B didn't have legal
2 representation. Ultimately the mat -- and, sorry, you
3 will recall that in early 2023 witness B dispensed with
4 the services of Daly Lynch Crowe & Morris Solicitors.
5 He then came to the inquiry on the 17th April as a lay 14:14
6 litigant and applied again for an adjournment, and that
7 application was refused, and he then absented himself
8 from the remainder of the inquiry, for the remainder of
9 those hearing days of the inquiry. He then engaged
10 Robinson Solicitors to act on his behalf, and obviously 14:15
11 that relationship has come to an end as of this
12 morning.

13
14 As a result of all of all of that, two witnesses in
15 particular, those are Shane Russell and Claire Cullen, 14:15
16 have now attended twice at the inquiry and on neither
17 occasion has witness B exercised the facility of
18 cross-examining them. And were the Committee to
19 accede to this adjournment application, I assume that
20 witness B would apply to the Committee to be allowed to 14:15
21 cross-examine them again in the future, which would
22 result in them attending on a third occasion, with all
23 of the jeopardy that another application of the kind
24 now before you would be made on behalf of witness B.

25 14:15
26 And just to deviate slightly from the adjournment
27 application for a moment, obviously witness B is
28 entitled to fair procedures but in my submission fair
29 procedures only goes so far, and witness B is not

1 entitled to the endless indulgence of this Committee
2 that he be repeatedly allowed to change solicitors,
3 defer hearings, call and recall witnesses, and put both
4 the Chief Executive and those witnesses to the enormous
5 inconvenience involved of attending before this 14:16
6 inquiry, not to mention the cost incurred by the Chief
7 Executive. And specifically with regard to this
8 morning, you know, Committee Members that Mr. Russell,
9 or Dr. Russell, attended remotely from Canada for the
10 entirety of the morning I think, for the purpose of 14:16
11 being cross-examined by witness B and that ultimately
12 didn't come to pass.

13
14 If the application that is before you today is acceded
15 to, we will be left in a position where, after the best 14:16
16 part of four days of an inquiry, evidence-in-chief has
17 been heard from four witnesses and one witness has been
18 cross-examined. And it is likely there would still be
19 five more witnesses to be called -- sorry, six more
20 witnesses to be called for evidence-in-chief by the 14:17
21 Chief Executive, all six of those witnesses would need
22 to be cross-examined by [Witness B] in addition to
23 Dr. Russell, Dr. Cullen and Dr. Lee. So there would
24 still be an enormous amount of the inquiry to get
25 through and there is no realistic possibility of the 14:17
26 inquiry being finished, certainly this side of
27 Christmas, and in all likelihood it would take until
28 sometime in the middle of next year to come anywhere
29 close to finishing the inquiry.

1
2 So the CEO has instructed me to convey to the Committee
3 in the strongest possible terms that the matter should
4 not be adjourned, it must continue, justice requires it
5 to be continued, and the Committee simply cannot 14:17
6 continue to indulge witness B in these endless efforts
7 to defer or put off the determination of this inquiry.
8

9 What I am suggesting to the Committee would happen is
10 as follows: I would call the three witnesses that we 14:18
11 have lined up for this afternoon, those are Mr. Kendlin
12 Hobbs, Ms. Kelly and Ms. Donegan. And I will call the
13 three witnesses tomorrow that I have lined up which are
14 Mr. Kavanagh and the two garda witnesses. And in my
15 submission witness B should be perfectly able to 14:18
16 cross-examine those witnesses today and tomorrow, if he
17 wishes to do so.
18

19 But in the event that he is not prepared to do that,
20 the show must go on without him, and I would really 14:18
21 would urge the Committee -- sorry, I just see we have
22 lost Mr. McGuinness so I will pause momentarily.

23 CHAIRPERSON: So Mr. McGuinness has rejoined us. We
24 just paused when we noticed you dropped off,
25 Mr. McGuinness. 14:19

26 LEGAL ASSESSOR: Yes, I don't know what occurred there.

27 CHAIRPERSON: No problem. I will hand back to you,
28 Mr. McDowell

29 MR. McDOWELL: Yes.

1 CHAIRPERSON: But I will take the interruption as an
2 opportunity just to remind anyone in the public gallery
3 the registrant's name was mentioned once inadvertently.
4 This Committee has made an order that neither the
5 witness A, the complainant, or witness B, the 14:19
6 registrant, should be identified in any media
7 reporting. So I just want to remind anybody who is in
8 the public gallery of that fact. And I will hand back
9 to you, Mr. McDowell.

10 MR. MCDOWELL: Thank you. So I'm not sure at what 14:20
11 point Mr. McGuinness fell off but I will just repeat
12 what I was saying, which is that I wish to be permitted
13 to call the witnesses that I had intended to call this
14 afternoon and tomorrow. Witness B is here and can
15 cross-examine them remotely from where he is or he can 14:20
16 absent himself, that is entirely a matter for himself.

17
18 But I would urge the Committee in the strongest terms
19 not to accede to an adjournment application because to
20 do so would simply kick this matter into the long 14:20
21 grass, continue the ongoing prejudice to witness A
22 that's being occasioned by the length of this inquiry,
23 and would leave us very, very far from being able to
24 complete matters.

25 14:20
26 All of the circumstances that surround the adjournment
27 application are, as far as I can make out -- although
28 the position isn't fully clear -- entirely of witness
29 B's own making, he and his solicitors have decided to

1 part company. And that is no reason, in my respectful
2 submission, for the matter to be adjourned,
3 particularly given the length of delay that's occurred
4 in this case to date. So, subject to any questions the
5 Committee has, those are my submissions. 14:21

6 CHAIRPERSON: Thank you, Mr. McDowell. So, Witness B,
7 you've heard Mr. McDowell's response to your
8 application, is there anything you'd like to say at
9 this point, either rebutting those arguments or
10 explaining why you feel it's necessary to seek an 14:21
11 adjournment?

12
13 SUBMISSION BY WITNESS B:

14
15 WITNESS B: Yeah, I mean I actually I have no legal 14:21
16 advice at this stage what to do because I mean they
17 just simply, you know, I mean the problem with the
18 LSRA members, I mean what could I say, I am already
19 make complaint to the LSRA --

20 CHAIRPERSON: So I am sorry -- 14:21

21 WITNESS B: -- and they don't take them seriously --

22 CHAIRPERSON: -- I am sorry to interrupt you --

23 WITNESS B: -- so probably, this is out of my control,
24 you know, so they just decide that they are not
25 continuing -- 14:21

26 CHAIRPERSON: Witness B, Witness B, can I just pause
27 you for a second because I am struggling to hear what
28 you said there, and you made some points, and I think
29 our stenographer is indicating that your signal had

1 broken up there. So could I get you just to repeat
2 what you just said there from the outset please? And
3 my apologies to you.

4 WITNESS B: I have done everything what are in my
5 control to make sure the inquiry concluded. The 14:22
6 problem with LSRA members, the counsel, solicitor, they
7 are prejudice to people of colour. I mean I simply put
8 few evidence, and neither he deny that is not true and
9 neither he -- the counsel, my counsel -- and neither he
10 was happy to give me in return that, you know, this, I 14:22
11 mean -- he was not denying and he was not accepting, so
12 and then he simply went out and he said we cannot
13 continue and he made some accusation on to me. But
14 probably what I would say I mean, it's not under my
15 control, so you can do whatever you feel appropriate, 14:22
16 you know.

17 CHAIRPERSON: Okay, I think I have captured that. Is
18 there anything that you would wish to add, Mr.
19 McDowell?

20 MR. MCDOWELL: No, Chair, thank you. 14:23

21 CHAIRPERSON: Thank you. And, Mr. McGuinness, is
22 there anything you'd like to say to Witness B or, if
23 not, perhaps you could give the Committee your advice
24 on the matter, please?

25
26 LEGAL ASSESSOR'S ADVICE TO THE COMMITTEE:

27
28 LEGAL ASSESSOR: Thank you, Chairman. Just as a
29 starting point in my submission and advice to the

1 Committee, the Committee insofar as it can, ought to
2 try and have a full understanding of the reason for the
3 adjournment. And I just thought it might be wise for
4 you, Chairman, to clarify with witness B that what he
5 was saying in the first part of his submission, and it 14:23
6 seems to be confirmed there, is that the basis for it
7 is that he presented some evidence, and he didn't need
8 to go into that with us, but gave some instructions to
9 his solicitor and counsel who, as I understood it,
10 weren't happy to go down that route and they decided 14:23
11 that they could no longer act rather than he
12 discharging them is --

13 WITNESS B: Yes.

14 LEGAL ASSESSOR: That may be an important issue to
15 consider. 14:24

16 CHAIRPERSON: Yes. So that was my understanding, and I
17 think witness B has confirmed that that is the case.
18 You might just indicate again, do you agree that that
19 was the scenario?

20 WITNESS B: Yeah I did not discharge them. I even at 14:24
21 that time told them, at least continue the inquiry
22 until the end of this session and you can go -- I mean
23 you can then discontinue but they did not listen.

24 CHAIRPERSON: Okay.

25 WITNESS B: They did not want to see the evidence, 14:24
26 that's the problem.

27 CHAIRPERSON: Okay, yes. So you are indicating that
28 your counsel didn't wish to receive evidence or take
29 instructions from you and they absented themselves or

1 they came off record?

2 WITNESS B: Yeah.

3 CHAIRPERSON: You didn't discharge them is what you're

4 telling us?

5 WITNESS B: No, I never discharge them. 14:24

6 CHAIRPERSON: Okay, I think Mr. McGuinness is right,

7 that's an important distinction to make sure we clearly

8 understand. So, Mr. McGuinness, I am happy for you to

9 give the Committee advice on the matter of adjournment

10 applications. 14:25

11 LEGAL ASSESSOR: Chairman, the Committee has obviously

12 power to adjourn if in it's discretion think it is

13 appropriate and proper to do so. It also has power of

14 course to proceed in the matter. And obviously the

15 Committee is aware that [Witness B] obviously left his 14:25

16 solicitor's office and has travelled to Limerick we are

17 told and is in a car. And that may or may not be a

18 feature or a fact that the Committee ought to consider

19 as to how, if the matter proceeds, it could proceed in

20 those circumstances or whether the Committee is 14:25

21 prepared to require it to proceed in those

22 circumstances. So it's on one interpretation a

23 practical issue and it may bear other interpretations.

24

25 But I just want to refer the Committee to a number of 14:26

26 paragraphs from the leading book on disciplinary

27 proceedings, and it's called Disciplinary Procedures in

28 the Statutory Professions, it's the second edition of

29 the book by Mr. Mills, Ms. Ryan and Mr. Scott-Byrne.

1 And paragraph 7 deals with adjournment applications
2 from 7.13 onwards. And at paragraph 17.15 (sic) it
3 says:

4
5 "Reasons for adjournment: Any grounds advanced for an 14:26
6 adjournment will typically be required to be sufficient
7 weight and will also have to reconcile with the
8 interest of justice and the interest of any other party
9 in the case. However, at the same time the inquiry
10 committee must give due regard to the applicant party 14:26
11 in determining whether to accede to an application
12 where grounds advanced for seeking an adjournment are
13 ostensibly robust. It may be open to the inquiry
14 committee to deliberate on whether there are reasons,
15 other than those advanced, which should be considered 14:27
16 relevant to the Committee's decision".

17
18 If I can just pause there. That would seem to be some
19 authority on the textbook writers that, whilst the
20 reason offered is the basis for it, other factors may 14:27
21 be taken into account in the Committee's ultimate
22 decision. The authors go on to say:

23
24 "In the English case of Gerstenkorn a medical
25 practitioner sought multiple adjournments of an 14:27
26 inquiry. After granting a number of adjournments, the
27 panel eventually decided to proceed with the inquiry.
28 While noting that the doctor's adjournment application
29 appeared a strong one, the court determined that there

1 were other factors at play that gave rise to a
2 reasonable concern that the doctor had no intention of
3 attending either on an adjourned date".

4
5 And there is a quotation here then:

14:28

6
7 "The panel specifically found it had no credible
8 assurances or any guarantee from Mr. Gerstenkorn
9 himself, that granting his application to adjourn would
10 secure his attendance in the future. The panel simply
11 could not be confident that an adjournment would result
12 in his attendance at a future reconvened hearing or
13 that, if he did attend, that he would not attempt to
14 prevent the proceedings from continuing".

14:28

15
16 "It was on this footing that I conclude that the
17 panel's decision to refuse an adjournment was fair,
18 reasonable and lawful in the circumstances".

14:28

19
20 And that is the end of that quotation.

14:28

21
22 Now, Chairman, the authors go on to consider a number
23 of different grounds of adjournment, and they draw a
24 distinction between the type of adjournment that may be
25 sought before an inquiry takes place, and those that
26 are raised during the course of a hearing.

14:28

27
28 There is one Irish High Court authority referred to at
29 paragraph 7.21 of the book and it says, as follows:

1
2 "The particular characteristics of the registrant
3 concerned may also be a relevant factor in deciding
4 whether the grounds advanced for an adjournment are of
5 a nature that should lead to the adjournment being 14:29
6 granted. In O'Duffy the High Court considered a
7 submission from a solicitor that he'd been entitled to
8 make a late application for an adjournment of a sitting
9 of an inquiry committee on the basis that he had been
10 unable to retain the services of counsel in advance of 14:29
11 the hearing. Kelly J made a number of observations
12 about both the reason advanced and the fact that the
13 reason was being advanced by a solicitor".

14
15 And there is a quotation from the judgment then, it 14:29
16 says:

17
18 "The applicant was cross-examined in respect of this
19 assertion of counsel being unable to appear before the
20 compensation fund hearing. His explanation was less 14:30
21 than impressive. I am quite satisfied that the
22 applicant made little or no effort to obtain either
23 legal advice or legal representation until the very
24 last moment. He would have me believe that he was
25 unable to get legal advice until the morning of 14:30
26 peremptorily-fixed hearing. I do not accept his
27 testimony in that regard. I cannot accept that a
28 solicitor would be unable to obtain counsel's advice on
29 a matter of importance to him over a period of five

1 weeks. The first telephone conversation with senior
2 counsel was on the day of the hearing but I am quite
3 satisfied that the only attempt which he made was to
4 contact senior counsel was, at the earliest, the
5 preceding day. Although he gave evidence of being 14:30
6 seriously concerned about his position with the Law
7 Society, he never gave any written instructions to
8 counsel to advise him, nor did he even write a letter
9 of instruction. Such contact as he made was by
10 telephone and even then at the last possible moment". 14:30

11
12 And that is the end of the quotation.

13
14 And I pause there to say that it may be that the
15 Committee would think that that case can be 14:31
16 distinguished from witness A's current circumstances in
17 this respect : He had appeared at the previous fitness
18 hearing, Fitness to Practise Committee hearing, when it
19 commenced in April and an adjournment application was
20 refused and he then went into medical for some short 14:31
21 time at least. And the Committee proceeded, as far as
22 it could safely do in accordance with fair procedures.

23
24 And in fairness to witness B, as the Committee knows,
25 he did instruct solicitor and counsel who engaged with 14:31
26 the Medical Council and made a number of applications
27 before the matter resumed and participated in agreeing
28 these dates. It may be fairly said that the
29 circumstances are not as identical as in the O'Duffy

1 case. But it is a matter for the Committee.

2
3 The other issue that the Committee must consider is the
4 question of prejudice. And obviously there is the
5 submission of Mr. McDowell that there is a risk of 14:32
6 ongoing prejudice to Witness A in the sense that the
7 proceedings will remain undetermined, or not to be
8 determined until a later date than they might otherwise
9 have been, and the Committee must consider that issue.
10 She has in fact, her cross-examination has taken place 14:32
11 and has concluded in that respect.

12
13 The authors of the book go on to consider the issue of
14 prejudice, and they refer to the O'Duffy case, and they
15 say at paragraph 7.23: 14:33

16
17 "Although the court in O'Duffy did not find in favour
18 of the applicant solicitor, implicit in the decision is
19 the fact that where a registrant can demonstrate
20 prejudice in the absence of an adjournment, that is a 14:33
21 matter that should be taken into consideration by the
22 Committee considering the adjournment application".

23
24 And it's a matter for the Committee to decide is the
25 applicant likely to be prejudiced, and perhaps to 14:33
26 balance that assertion of prejudice against the Chief
27 Executive's one, and see what the requirements of fair
28 procedure consider.

1 I did state that the authors draw a distinction between
2 pre-commencement inquiries and those where hearings are
3 underway. And at paragraph 7.24 they say:

4
5 "When an application is made for an adjournment during 14:34
6 a hearing many of the same principles apply. It has
7 also been observed in the context of professional
8 conduct proceedings that one circumstance in which an
9 adjournment ought to be granted during the proceedings
10 is where a registrant is presented with new evidence 14:34
11 which he has had no prior opportunity of considering".
12

13 Now obviously the Committee might properly conclude
14 that that is not a circumstance here, in the sense that
15 the evidence in the form of the core book has been made 14:34
16 known to the registrant at a very early stage and to
17 his different legal advisors. It says:

18
19 "An adjournment may also be necessary in circumstances
20 where a registrant wishes to apply for judicial review 14:34
21 of a decision of an inquiry committee and where, to
22 proceed with the inquiry, prior to the determination of
23 the judicial review would make little sense. Aside
24 from applications for the adjournment, there may also
25 arise a need for adjournments during longer hearings, 14:35
26 particularly where the case overruns the time allotted
27 to it due to the unavailability of dates of panel
28 members".
29

1 Now that is obviously not the case at the moment here.

2
3 The authors go on to consider the issue of supporting
4 evidence for an adjournment at paragraph 7.26:

5
6 "Where an application for an adjournment of this it may
7 be necessary to support that application with evidence,
8 such as a communication from an expert witness

9 indicating that he will unable to complete a report in
10 time, or where the adjournment application is on
11 grounds of illness produce a medical certificate, it
12 also may be that failure to produce supporting evidence
13 or the failure to produce supporting evidence of

14 sufficient weight would be an important factor for the
15 inquiry committee in deciding whether to grant an
16 adjournment on the grounds advanced. Where supporting
17 evidence is absent or wanting forth, the Committee in
18 question may refuse an adjournment application and go
19 on to determine the question before it in the absence
20 of the registrant.

21
22 A distinction may however need to be drawn between
23 circumstances where a registrant refuses to provide the
24 medical evidence that would support an adjournment on
25 medical grounds and circumstances where the relevant
26 information was not clearly requested by the inquiry
27 committee".

28
29 So that's an example of other circumstances where

1 prejudice may be said to be suffered by a registrant in
2 circumstances where there is a difficulty in obtaining
3 evidence. Here the Committee is faced with the
4 position now where, although the registrant had
5 obtained representation and was, it would appear,
6 proceeding well in terms of the representation until
7 this morning, and the issue -- one of the issues the
8 Committee may consider relevant is the sudden and
9 unexpected nature of the circumstances which has given
10 rise to the application.

14:36

14:37

11
12 Another issue that the Committee may consider relevant
13 or may consider it proper to inquire into further is
14 the position of Witness B at the moment. And the
15 Committee may or may not consider it relevant to
16 inquire into whether he intends to return to Dublin and
17 participate, or why he had left Dublin in the first
18 instance, if the Committee think that be relevant.

14:37

19
20 At the end of the day the Committee has to come to a
21 decision which takes all relevant matters into
22 consideration and is satisfied that it makes the
23 correct decision insofar as fair procedures are
24 concerned.

14:37

25
26 Witness B did appear to indicate that it's a matter for
27 the Committee to proceed, if it wishes. Now I may
28 have been overstating that but he certainly does appear
29 to be applying for an adjournment in order to seek

14:37

1 legal representation. The difficulty may arise for the
2 Committee in not knowing the ultimate fate of any next
3 day if it decides not to proceed.

4
5 So I don't want to say anything further but obviously 14:38
6 Witness B may wish to respond and Mr. McDowell may wish
7 to respond to any of those matters.

8 CHAIRPERSON: Thank you very much, Mr. McGuinness.
9 So, witness B, I'll give you the opportunity if you
10 wish to respond to anything that Mr. McGuinness has 14:38
11 said?

12
13 SUBMISSION BY WITNESS B:

14
15 WITNESS B: The only thing I would like to make is to, 14:38
16 you know, I am seriously concerned about all LSRA
17 member -- [lost connection].

18 CHAIRPERSON: And again unfortunately you have -- I
19 think he has disconnected?

20 MR. MURRAY: Yes, witness B has just disconnected 14:39
21 there.

22 CHAIRPERSON: Yes, we will just pause for a moment to
23 see if he can reconnect.

24 LEGAL ASSESSOR: Chairman, he appears to be there.

25 WITNESS B: Hello, can you hear me? 14:40

26 CHAIRPERSON: I can hear you now, witness B. So we
27 lost you just as you were about to speak but I would
28 like to give you an opportunity to respond to
29 Mr. McGuinness' advice.

1 WITNESS B: So my -- so my -- what I want to say there
2 in circumstances whether you proceed or you don't
3 proceed, the three so law firm: The Robinsons, Daly
4 Lynch, and Fieldfisher, they must be referred to the
5 LSRA of their conduct. They are not conducting in
6 honest way. There was certain evidence whenever I
7 proceed in the barristers, they don't accept that --
8 [lost connection].

14:40

9 CHAIRPERSON: And again we seem to have lost witness B.
10 Are you are still connected? Can you hear us witness
11 B?

14:41

12 WITNESS B: Yeah, I can hear you.

13 CHAIRPERSON: Okay. So again we lost you just as you
14 named three firms and indicated that you felt they
15 should be referred to another body.

14:41

16 WITNESS B: LSRA, because they cannot do this just in
17 the morning of the -- and the Robinsons cannot do this
18 just in the morning and give some inadequate reason,
19 they have to -- they cannot just simply discontinue and
20 throw me in front of the Committee. And I mean this is
21 completely inappropriate what they have done, you
22 know -- [lost connection].

14:41

23 CHAIRPERSON: Okay, again I think I have lost you
24 again, but I've captured that point I think. So you
25 feel that the behaviour of counsel has been
26 unacceptable in your opinion . Can you still hear me?
27 And I don't think we have witness B. So again we'll
28 pause for a moment to see if we can contact.

14:41

29 WITNESS B: Hello?

1 CHAIRPERSON: Hello, can you hear me?

2 WITNESS B: Yeah, I can hear you.

3 CHAIRPERSON: Okay, so again I think we captured the
4 point that you indicated your dissatisfaction with the
5 conduct by various legal firms.

14:42

6
7 If it would help you just to say you indicated at the
8 outset that you wished this inquiry to proceed without
9 delay. I accept the bona fides of your comment there.
10 You find yourself now without legal counsel -- and I
11 don't draw any negative inference from the fact you
12 don't have counsel but I'm acutely aware you are now
13 without counsel -- and I assume through no fault of
14 yours.

14:42

15
16 So, Mr. McGuinness has indicated that we might want to
17 inquire, you were with your solicitors this morning in
18 Dublin and you left after they indicated they wished to
19 not take instructions from you. Can you please explain
20 to me your rationale for travelling to Limerick, as I
21 understand you are now in?

14:43

22
23 Hello, witness B, can you hear me? And again we will
24 pause to see if we can get --

25 WITNESS B: Can you hear me?

14:43

26 CHAIRPERSON: Hello, witness B, can you hear me?

27 MR. MURRAY: They're just reconnecting there, Chair.

28 What might be of assistance is that in the past

29 TrialView has provided a phone link for people joining

1 an inquiry -- now we won't obviously have video but we
2 don't have video anyway --

3 CHAIRPERSON: Yes.

4 MR. MURRAY: That might be a way to get a better
5 connection. I am not sure if the moderator would be 14:44
6 able to set that up or if you want them to set that up?

7 CHAIRPERSON: Okay, I will try one more time with
8 Witness B, can you hear me?

9 WITNESS B: I can hear you. The reason we were
10 sitting in Law Society room and what happened then I 14:44
11 mean the counsel left and solicitor said we cannot
12 represent you. So I have to -- I mean that room was
13 rented so probably there was no solicitor, there was no
14 counsel, so I had to leave. So (inaudible) --

15 CHAIRPERSON: Again, unfortunately, your signal has 14:44
16 broken up. I am going to have to pause this for the
17 moment because we can't hear you clearly. I am going
18 to ask Mr. Murray if he can see if the TrialView
19 moderator can arrange for a telephone only link. If
20 can you still hear me, witness B, is it possible that 14:45
21 you could move to a location where you have a better
22 telephone signal?

23 WITNESS B: Yeah, I will try, the time you can call me,
24 thank you.

25 CHAIRPERSON: okay, so if you can try to get to a 14:45
26 location where you have a better signal or less
27 interference.

28 WITNESS B: Thank you very much.

29 CHAIRPERSON: And, TrialView moderator, I wonder is it

1 possible for you to arrange for a telephone connection
2 to be established?

3 MODERATOR: Yes, Chairman, those arrangements are being
4 done now, I think. Calling the registrant and hope he
5 can be back and sorted soon. 14:45

6 CHAIRPERSON: I appreciate your assistance in that
7 matter. It is clearly nothing that TrialView can do
8 anything about, but we greatly appreciate your
9 assistance. So I suggest just to give the parties an
10 opportunity to make those arrangements, with my 14:46
11 apologies to everybody for these technical issues.
12

13 The Committee will retire into private session and give
14 the parties space to establish a secure telephone
15 connection. 14:46
16

17 THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND
18 CONTINUED AS FOLLOWS:
19

20 CHAIRPERSON: So I hope, witness B, you can hear me but 14:50
21 just to avoid any confusion because I know your signal
22 broke up earlier, I want to just say to you before you
23 respond that this Committee is happy to accept your
24 bona fides that you wish this inquiry to proceed as
25 expeditiously as possible. 14:51
26

27 You find yourself without legal counsel and we are
28 happy to draw no inference from that, that is just the
29 circumstance you find yourself without. And you are

1 asking us to consider adjourning this Inquiry.

2
3 Mr. McDowell has conveyed his strong -- the CEO's
4 strong opposition to an adjournment and Mr. McGuinness
5 has given this Committee advice as to matters we should 14:51
6 consider.

7
8 Is there anything you would like to say to us in
9 respect of Mr. McGuinness's advice, is the first
10 question I have for you? 14:51

11 WITNESS B: whether you adjourn or you don't adjourn, I
12 want all these three law firms and all barristers to be
13 referred to the LSRA for their misconduct, it is not
14 appropriate for these LSRA members.

15 14:52
16 They are protecting themselves rather than, you know,
17 their primary duty is toward the Court, they are not
18 performing their duty towards the Court and they are
19 protecting their personal professional interests.

20 14:52
21 whether you adjourn or you don't adjourn, in both
22 circumstances therefore these three firms and all
23 barristers to the law -- to the LSRA why the Robinson
24 discontinued this morning? what was the reason they
25 have given to you? To me they have given -- I not 14:52
26 receive any email up to now why they have discontinued.

27 CHAIRPERSON: Okay, so those are observations you have
28 made and you are entitled to make any referral to any
29 organisation you wish. All we are concerned about is

1 the conduct of this Fitness to Practise Inquiry and the
2 facts are as of this morning your counsel and you have
3 parted ways, is that correct?
4 WITNESS B: well, yes, I did not discharge him, he --
5 CHAIRPERSON: No and we are clear about that. 14:53
6 WITNESS B: Yes.
7 CHAIRPERSON: You did not discharge but you have parted
8 company and you are now without legal representation.
9 WITNESS B: Yes.
10 CHAIRPERSON: You were in attendance this morning in an 14:53
11 office in Dublin and you have travelled to Limerick.
12 Is that because you reside in Limerick or is there some
13 reason why you have travelled to Limerick?
14 WITNESS B: I booked a hotel for four days in Dublin
15 and we have to meet in the room in the Law Society. 14:53
16 CHAIRPERSON: Yeah.
17 WITNESS B: I went early morning at around 9 o'clock to
18 the Society, we were discussing some evidence. And I
19 have shown him some more evidence from the foreigncy
20 (sic) and he was surprised to see that evidence. And 14:53
21 probably, after that, he went to talk to Ms. Georgina
22 Robinson and then he never came back. And that was
23 solicitor he said, he put some accusation onto me and
24 he left.
25 CHAIRPERSON: okay, that is clear but you're residing 14:54
26 ordinarily in Dublin for the next number of days, is
27 that correct?
28 WITNESS B: Yes.
29 CHAIRPERSON: Can I ask you what efforts you have made

1 since this morning to obtain alternative legal
2 representation?

3 WITNESS B: well I am very clear because of that fact,
4 there is no way that alternative legal representation
5 is possible within days, it will take months. I am 14:54
6 very clear because I contact any solicitor, do you
7 think this much -- I mean the barrister, I mean the
8 barrister I was with now he got a lot of time, you
9 know, and he has no idea what is going on. To be very
10 honest I have to tell him each and every step, "no, 14:54
11 this message is there, this message is there". I
12 mean, they have no idea what -- I am the one who was
13 doing on the background everything, you know.

14
15 So even if I go to another solicitor, I don't think it 14:55
16 will be possible within a day. I will talk to one of
17 the -- I Googled Ms. Sinead Taaffe that it will be most
18 appropriate if I talk to the Committee tomorrow in that
19 case I can have some word with any legal representative
20 what to do. 14:55

21
22 But unfortunately she said impossible to do by 2
23 o'clock so I just drive in the car. But before I say
24 anything else I will contact LSRA and I will get some
25 legal advice. 14:55

26 CHAIRPERSON: Okay, so I am clear, you have made at
27 this point no attempt to secure alternative legal
28 counsel?

29 WITNESS B: No, not possible.

1 CHAIRPERSON: You don't feel it is possible at short
2 notice. You have travelled to Limerick for reasons,
3 can you disclose what those reasons are? If they are
4 personal I don't need to know but if there is a
5 particular reason why you have left Dublin and
6 travelled to Limerick today?

14:55

7 WITNESS B: Because my house is in Limerick.

8 CHAIRPERSON: Okay, you are ordinarily residing in
9 Limerick. But you had booked accommodation --

10 WITNESS B: I live in Limerick.

14:56

11 CHAIRPERSON: Okay, that is fine, that is helpful to
12 know. You have heard Mr. McDowell's representation on
13 behalf of the CEO who strongly objects to an
14 adjournment. Is there anything in his points that you
15 would like to say now for the Committee to consider?

14:56

16 WITNESS B: well he is reasonable, you know, in a sense
17 that he has to say about his client and he is
18 reasonable, isn't prejudiced to everyone, not to his
19 client, witnesses, to me and everything. But therefore
20 the -- is it not his duty to refer the opposing party,
21 barrister and legal team, to the LSRA why they have not
22 done that, you know? It is not my fault, I am not a
23 legal person because he knows I cannot take him to the
24 Court. He is putting, you know, blame on to me. But
25 why -- he is a legal representative, why he does not,
26 you know, refer his own colleague to the LSRA, why they
27 have done that, you know.

14:56

14:57

28 CHAIRPERSON: well, I am sure he is able to speak for
29 himself. But you are right, you are not a legal expert

1 and to be honest it would be in your best interests and
2 our best interests if we focus on the interests before
3 you. There are serious allegations presented in a
4 Fitness to Practise Inquiry. We wish to be as fair to
5 you as possible but we have a duty to be fair to the
6 CEO also.

14:57

7
8 So, I think I have heard your reasons that you have
9 outlined and I don't draw any negative inference from
10 the fact that you do not have any counsel at the
11 moment.

14:57

12
13 Mr. McDowell, is there any further matter that you
14 would like to add at this point?

15
16 SUBMISSION BY MR. MCDOWELL

17
18 MR. MCDOWELL: Yes, two points I would like to make.
19 Firstly, I agree with all of the matters that Mr.
20 McGuinness discussed with you and I addressed this to
21 some degree earlier on. I do think that you shouldn't
22 look at the adjournment application in isolation. It
23 must be seen against the backdrop of the case in its
24 totality. The various adjournment applications that
25 have taken place to date. The extent of the delay and,
26 in particular, the recent quasi adjournment application
27 made, I think on 11th October and then the recusal
28 application that followed on from it, both of which, in
29 my submission, were efforts to dislodge these hearing

14:57

14:58

1 dates and both of which were unsuccessful.

2
3 So, whereas it is right and proper that you have regard
4 to the matters that Mr. McGuinness raised, I think you
5 are also entitled to have regard to the overall
6 circumstances of the case and the backdrop to the
7 application.

14:58

8
9 The second thing is that, as I said this morning, it
10 appears that witness B was present for all of
11 yesterday's hearing. It now appears he was informed
12 this morning that he -- that his lawyers were going to
13 come off record.

14:58

14
15 And for reasons that haven't really been explained, he
16 decided instead of equipping himself to attend this
17 inquiry properly and to deal with the matters arising,
18 he decided to get into his car and drive to Limerick
19 during the course of the day.

14:58

20
21 And I don't think the Committee should just, I don't
22 think, with respect, the Committee should say that was
23 something he was entitled to do. It actually shows a
24 clear disregard for this process that he would make it,
25 that he would, by deliberate choice, make it difficult
26 for him to participate in this hearing. That is not
27 really an acceptable way for him to conduct himself in
28 circumstances where he knew his solicitors were going
29 to come off record. He ought to have equipped himself

14:59

14:59

1 to deal with this matter properly in front of a
2 computer with a good WIFI signal and instead he has
3 decided to dial in from his car somewhere between
4 Dublin and Limerick.

5
6 And it's, in my submission, an affront to this process
7 that he would conduct himself in that way. So, I would
8 ask the Committee not to place any weight on the fact
9 that he has put himself in the position that he finds
10 himself now.

11 CHAIRPERSON: Thank you, Mr. McDowell. And witness B
12 is there anything further you would like to say before
13 we retire to consider your application?

14 WITNESS B: No.

15 CHAIRPERSON: Thank you. So, we will retire now into
16 private session to consider the application. Mr.
17 McGuinness will remain with us but he will not be
18 giving us any further legal advice. If any matter
19 arises that requires him to give us advice, we will do
20 that in public session such that both parties have an
21 opportunity to comment on that, to hear that advice and
22 to comment on it. So, we will now go into private
23 session to consider --

24 MS. DEVINS: Sorry, Chairman, may I just --

25 CHAIRPERSON: I am very sorry, Ms. Devins.

26 MS. DEVINS: Witness B, good afternoon. Can I just
27 clarify with you, did I understand you to say that you
28 are prepared for the matter to proceed in the morning
29 with your presence?

1 WITNESS B: Yes, I was.

2 MS. DEVINS: I see, thank you.

3 CHAIRPERSON: And my apologies, Ms. Devins --

4 MR. MCDOWELL: Sorry, I do think it would be helpful,
5 certainly from the CEO's perspective, it would be 15:01
6 helpful to understand precisely what commitment Witness
7 B is making in that respect? Is he saying that he will
8 proceed in the morning and actively engage with the
9 Inquiry or is he saying that the Inquiry (lost
10 connection). 15:01

11 WITNESS B: Ms. Davin-Power (sic) asked a question that
12 was I prepared this morning or is she asking will I be
13 prepared next morning? What she is asking?

14 MS. DEVINS: Tomorrow morning.

15 WITNESS B: Tomorrow morning, tomorrow morning. You 15:01
16 are asking me to cross-question myself, am I correct?

17 CHAIRPERSON: Can I pause you all for a moment, we have
18 lost Mr. McDowell who is going to reconnect, so my
19 apologies, just bear with me for a second.

20 15:01

21 And while we are waiting for him to connect, my
22 apologies to my Committee colleagues for not giving you
23 an opportunity to ask questions.

24

25 So, I think Mr. McDowell has returned. I will go 15:02
26 first of all to Ms. Devins to maybe clarify your
27 question to Witness B

28 MS. DEVINS: Yeah, thank you.

29 WITNESS B: I am talking to Ms. Davin-Power, Dr.

1 Davin-Power or the --

2 CHAIRPERSON: Ms. Devins has a question for you.

3 MS. DEVINS: Not Dr. Davin-Power. My name is Mary

4 Devins, Witness B.

5 WITNESS B: That is fine. 15:02

6 MS. DEVINS: I simply thought that you said you would

7 be prepared for the matter to proceed tomorrow morning,

8 am I correct?

9 WITNESS B: What I understood that -- I mean if I have

10 to proceed tomorrow I have to proceed myself, that is 15:02

11 what I can say. And all the documents are with

12 Robinson, so probably I have to, you know, proceed on

13 the basis of what I have in my head that is what I can

14 say.

15 MS. DEVINS: So you are not prepared to proceed 15:03

16 tomorrow?

17 WITNESS B: No, I don't think so. I need the legal

18 advice. I want to talk to some solicitor because I am

19 very shocked that they have done this just two hour

20 before. 15:03

21

22 And I am not able to, you know, what should I do now?

23 Because, I mean I understand I can proceed myself but

24 that I have to do things overnight. I cannot make the

25 decision in the car right now, I have to consider 15:03

26 overnight what should I do now.

27 CHAIRPERSON: Okay, thank you very much.

28 WITNESS B: I was very stressed out so I did not like

29 to go to hotel because I would be alone there, so I

1 decided to drive to my home so I can have at least my
2 friend.

3 CHAIRPERSON: Sure. So as a useful reminder to us all,
4 Fitness to Practise Inquiries are stressful matters for
5 registrants. We do not wish to add to your stress in 15:03
6 anyway. My general advice to anybody who faces an
7 Inquiry is that the prospect of it hanging over you is
8 probably infinitely worse than the prospect of it
9 proceeding. So it is always in our best interests for
10 an inquiry to proceed with the minimum delay as long as 15:04
11 it is fair to all parties.

12
13 As I said to you, I don't draw any negative inference
14 from the fact that you don't have counsel and I
15 understand that you are keen for the matter to proceed 15:04
16 also.

17
18 Mr. McDowell, just there was a back and forth there, I
19 just wasn't sure if you had any further points that you
20 wished to make? 15:04

21 MR. MCDOWELL: No, thank you.

22 CHAIRPERSON: No, okay, thank you. And I didn't ask
23 Dr. Mary Davin-Power if you had any questions or any
24 comments you wished to make.

25 MS. DAVIN-POWER: I would just like to ask witness B if 15:04
26 he was aware of the witnesses who had been organised
27 and who had committed to be present today. And I am
28 just wondering was he aware that so many people had
29 arranged to be present today for this hearing?

1 WITNESS B: I requested the Robinson Solicitor Mr. Ali,
2 it is not in my hand, I said "at least complete this
3 portion and then you can you know". But he said "the
4 counsel does not want to proceed". I said "okay". I
5 mean Mr. Ali he was the solicitor I was talking earlier 15:05
6 he said the counsel does not want to proceed and
7 Georgina Robinson does not want to proceed.

8 CHAIRPERSON: No, I understand that point, I think we
9 have got that chronology. But Dr. Davin-Power's
10 question to you was specifically about, did you know 15:05
11 that we had witnesses scheduled for this morning for
12 this Inquiry?

13 WITNESS B: what I told them "at least you can finish
14 you know the witnesses, we can deal with, what you
15 call, you know, the two witnesses, you know the two 15:06
16 witnesses. Only two witnesses, there are only one or
17 two questions and we can proceed you know the part".

18 CHAIRPERSON: Yes indeed.

19 WITNESS B: They were not, they said "no, we are
20 withdrawing". 15:06

21 CHAIRPERSON: I understand that. Does that answer your
22 question, Dr. Davin-Power?

23 DR. DAVIN-POWER: Yes, thank you.

24 CHAIRPERSON: Thank you. So the Committee will go in
25 to private hearing to consider the application. As I 15:06
26 said, Mr. McGuinness will remain with us but won't be
27 giving us any new advice.

28
29 THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND

CONTINUED AS FOLLOWS:

DECISION OF THE COMMITTEE

CHAIRPERSON: Thank you all for your patience. The Committee has considered carefully the submissions of both sides and the legal advice given to us by Mr. McGuinness.

15:34

We have determined that we will adjourn this Inquiry for this evening on a preemptory basis in that we will resume tomorrow at 10:30, as we had been scheduled to do.

15:34

We note that witness B has indicated that he wishes this Inquiry to proceed. We note that he now finds himself without legal representation and this Committee draws no inference from how he finds himself in this position but accepts that he did not discharge his counsel].

15 · 35

 $15 \cdot 35$

We are mindful of the fact that the CEO strongly objects to the adjournment application.

The Committee is aware that this Inquiry has faced multiple delays and adjournments, not all due to the registrant. We think it is in the interest of all parties that this Inquiry proceeds without further delay.

15:35

1
2 So we would urge Witness B to seek alternative
3 representation and to be in a location tomorrow where
4 he can be seen and heard such that this Inquiry will
5 resume tomorrow at 10:30.

15:35

6
7 I understand, Mr. McDowell, that this inconveniences
8 you again in terms of your witnesses that you had
9 scheduled for this afternoon. But I think this
10 Committee feels that to balance the fairness of both
11 sides, it is appropriate to give a short adjournment to
12 allow Witness B seek alternative representation.

15:36

13 MR. MCDOWELL: Thank you, Chair. We will try to figure
14 out overnight what witnesses are available tomorrow.
15 As I said earlier we have three witnesses lined up for
16 the morning and we might see what witnesses who were
17 originally to give evidence this afternoon might
18 instead give evidence tomorrow afternoon. So, I will
19 have an update on that at 10:30.

15:36

20 CHAIRPERSON: Thank you and the Committee is available
21 to sit all day tomorrow.

15:36

22 MR. MCDOWELL: Thank you.

23 CHAIRPERSON: Thank you for that. I know you have a
24 constraint in the morning, so 10:30 is the earliest we
25 can start, I think.

15:36

26 MR. MCDOWELL: Thank you.

27 CHAIRPERSON: So that adjourns this Inquiry for this
28 evening. Thank you all for your participation and for
29 your supports.

1 WITNESS B: Thank you.

2 MR. MCDOWELL: Thank you, Chair.

3 CHAIRPERSON: Thank you.

4
5 THE HEARING THEN ADJOURNED TO THURSDAY, 31ST OCTOBER
6 2024 AT 10:30AM
7
8
9

	4	abstract ^[1] - 30:27 abundance ^[1] - 24:6 abundantly ^[1] - 7:13 accede ^[5] - 13:5, 17:9, 32:19, 35:19, 40:11 acceded ^[1] - 33:14 accedes ^[1] - 13:12 acceding ^[1] - 13:12 accept ^[8] - 11:26, 13:28, 21:15, 42:26, 42:27, 49:7, 50:9, 52:23 acceptable ^[1] - 58:27 accepted ^[1] - 29:11 accepting ^[1] - 37:11 accepts ^[1] - 64:19 access ^[3] - 4:10, 4:13, 23:6 accommodation ^[1] - 56:9 accordance ^[2] - 21:6, 43:22 accordingly ^[1] - 6:20 account ^[1] - 40:21 accusation ^[2] - 37:13, 54:23 Act ^[2] - 4:20, 4:24 act ^[5] - 4:25, 14:15, 30:7, 32:10, 38:11 acting ^[2] - 24:22, 25:10 action ^[1] - 26:13 actively ^[1] - 60:8 actual ^[2] - 5:7, 20:11 acutely ^[1] - 50:12 ad ^[1] - 14:9 add ^[5] - 16:21, 16:22, 37:18, 57:14, 62:5 addition ^[1] - 33:22 address ^[5] - 9:16, 9:17, 9:20, 9:22, 22:26 addressed ^[1] - 57:20 adjourn ^[15] - 13:2, 17:17, 18:5, 19:14, 21:8, 21:26, 27:3, 28:11, 39:12, 41:9, 53:11, 53:21, 64:10 adjourned ^[5] - 31:21, 31:25, 34:4, 36:2, 41:3 ADJOURNED ^[8] - 7:23, 8:8, 16:28, 19:17, 28:17, 52:17, 63:29, 66:5 adjourning ^[1] - 53:1 adjournment ^[66] - 9:2, 9:17, 9:19, 13:3, 13:6, 13:17, 14:3, 15:6, 15:20, 15:22, 15:25, 15:29, 16:17, 17:14, 17:18, 17:23, 18:2, 18:3, 18:10, 18:15, 20:8, 26:20, 27:18, 28:2, 28:28, 32:6, 32:19, 32:26, 35:19, 35:26, 36:11, 38:3, 39:9, 40:1, 40:5, 40:6, 40:12, 40:28, 41:11, 41:17, 41:23, 41:24, 42:4, 42:5, 42:8, 43:19, 44:20, 44:22, 45:5, 45:9, 45:19, 45:24, 46:4, 46:6, 46:10, 46:16, 46:18, 46:24, 47:29, 53:4, 56:14, 57:22, 57:24, 57:26, 64:23, 65:11 adjournments ^[4] - 40:25, 40:26, 45:25, 64:26 adjourns ^[1] - 65:27 adjudicate ^[1] - 16:17 adjudicated ^[1] - 21:11 administrator ^[1] - 4:16 advance ^[1] - 42:10 advanced ^[7] - 40:5, 40:12, 40:15, 42:4, 42:12, 42:13, 46:16 advice ^[30] - 11:2, 11:10, 11:26, 14:2, 15:15, 18:24, 20:28, 21:6, 21:15, 21:17, 24:11, 27:14, 36:16, 37:23, 37:29, 39:9, 42:23, 42:25, 42:28, 48:29, 53:5, 53:9, 55:25, 59:18, 59:19, 59:21, 61:18, 62:6, 63:27, 64:7 ADVICE ^[14] - 3:4, 3:10, 3:12, 3:14, 3:17, 3:19, 3:24, 6:10, 11:8, 14:6, 21:1, 23:21, 25:1, 37:26 advise ^[8] - 6:5, 7:29, 14:12, 17:16, 19:21, 19:23, 27:13, 43:8 advising ^[1] - 11:16 advisors ^[1] - 45:17 affected ^[1] - 14:16 affront ^[1] - 59:6 afternoon ^[9] - 20:22, 26:24, 28:23, 34:11, 35:14, 59:26, 65:9, 65:17, 65:18 ago ^[4] - 30:16, 30:17, 30:18, 30:21 agree ^[2] - 38:18, 57:19 agreeing ^[1] - 43:27 ahead ^[1] - 31:11 albeit ^[1] - 27:17 Alexander ^[1] - 28:26 ali ^[2] - 63:1, 63:5 allegations ^[2] - 4:21, 57:3 alleged ^[1] - 26:14 allotted ^[1] - 45:26 allow ^[7] - 7:12, 9:2, 14:13, 17:27, 31:1, 31:10, 65:12 allowed ^[2] - 32:20, 33:2 allows ^[1] - 7:9 almost ^[1] - 31:27 alone ^[1] - 61:29 alternative ^[5] - 55:1, 55:4, 55:27, 65:2, 65:12 alternatively ^[1] - 23:14 amended ^[1] - 5:11 amount ^[1] - 33:24 AND ^[7] - 7:23, 8:8, 16:28, 19:17, 22:16, 52:17, 63:29 anonymisation ^[2] - 24:23, 26:5 anonymised ^[2] - 5:4, 5:5 answer ^[1] - 63:21 anti ^[1] - 17:27 anti-social ^[1] - 17:27 antiquity ^[1] - 30:21 anxious ^[1] - 30:23 anyway ^[3] - 20:24, 51:2, 62:6 apart ^[1] - 23:24 apologies ^[6] - 26:28, 37:3, 52:11, 60:3, 60:19, 60:22 apologise ^[1] - 11:27 apparent ^[1] - 21:5 appear ^[8] - 13:19, 13:20, 13:27, 14:14,			
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