

**INSTRUMENT**

entitled

**Tribunals of Inquiry (Evidence) Act 1921 (Appointment of Tribunal) Instrument**

**2017**

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To be made by the Minister for  
Justice and Equality

WHEREAS a resolution in the following terms was passed by Dáil Éireann on 16 February 2017 and by Seanad Éireann on 16 February 2017:

“That Dáil Éireann<sup>1</sup>:

bearing in mind the serious public concern about allegations that senior members of An Garda Síochána sought to discredit Sergeant Maurice McCabe because of complaints he made about the performance of An Garda Síochána;

noting the Protected Disclosure that was made by Superintendent David Taylor to the Minister for Justice and Equality on 30<sup>th</sup> September, 2016, and noting the Protected Disclosure made by Sgt Maurice McCabe on 26<sup>th</sup> September, 2016, alleging an orchestrated campaign, directed by senior officers, to discredit Sergeant Maurice McCabe by spreading rumours about his professional and personal life;

noting the decision of the Minister for Justice and Equality on 7<sup>th</sup> October, 2016, to request a Judge to investigate whether there was an orchestrated campaign, directed by senior officers, to discredit Sergeant Maurice McCabe by spreading rumours about his professional and personal life;

noting that, having completed his review, it is the opinion of Mr. Justice Iarfhlaith O’Neill that a Commission of Investigation should be established;

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<sup>1</sup> In the resolution of Seanad Éireann, the reference is to Seanad Éireann.

mindful that senior members of An Garda Síochána have denied the existence of or their involvement in any orchestrated campaign to discredit Sergeant McCabe as alleged in Superintendent Taylor's Protected Disclosure;

bearing in mind allegations that there may have been inappropriate contacts between An Garda Síochána and TUSLA in relation to Sgt. McCabe, Garda Keith Harrison and concerns that such contacts may have also taken place in relation to other members of An Garda Síochána who had made allegations of wrongdoing within An Garda Síochána;

noting that a public inquiry is the most appropriate way to investigate these serious allegations so as to ensure public confidence in An Garda Síochána and to respond to the public disquiet caused by these allegations;

resolves that it is expedient that a tribunal be established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011, to be chaired by Mr. Justice Peter Charleton, Judge of the Supreme Court, to inquire urgently into the following definite matters of urgent public importance:

- [a] To investigate the allegation made in a Protected Disclosure under the Protected Disclosures Act 2014, on the 30<sup>th</sup> of September, 2016, by Superintendent David Taylor, wherein he alleges that he was instructed or directed by former Commissioner Martin Callinan and/or Deputy Commissioner Nóirín O'Sullivan, to contact the media to brief them negatively against Sergeant Maurice McCabe and in particular to brief the

media that Sergeant McCabe was motivated by malice and revenge, that he was to encourage the media to write negatively about Sergeant McCabe, to the effect that his complaints had no substance, that the Gardaí had fully investigated his complaints and found no substance to his allegations and that he was driven by agendas.

- [b] To investigate the allegation of Superintendent Taylor in his Protected Disclosure, that he was directed to draw journalists' attention to an allegation of criminal misconduct made against Sergeant McCabe and that this was the root cause of his agenda, namely revenge against the Gardaí.
- [c] To investigate what knowledge former Commissioner Callinan and/or Commissioner O'Sullivan and/or other senior members of the Garda Síochána had concerning this allegation of criminal misconduct made against Sergeant McCabe and whether they acted upon same in a manner intended to discredit Sergeant McCabe.
- [d] To investigate the creation, distribution and use by TUSLA of a file containing false allegations of sexual abuse against Sergeant Maurice McCabe that was allegedly sent to Gardaí in 2013, and whether these false allegations and/or the file were knowingly used by senior members of An Garda Síochána to discredit Sergeant McCabe.
- [e] To investigate whether the false allegations of sexual abuse or any other unjustified grounds were inappropriately relied upon by Commissioner O'Sullivan to discredit Sergeant Maurice McCabe at the Commission of

Investigation into Certain Matters in the Cavan/Monaghan district under the Chairmanship of Mr. Justice Kevin O'Higgins.

- [f] To investigate whether senior members of An Garda Síochána attempted to entrap or falsely accuse Sergeant McCabe of criminal misconduct.
- [g] To investigate such knowledge which former Commissioner Callinan and Commissioner O'Sullivan had concerning the matters set out in [a], [b], [c], [d], [e] and [f] above.
- [h] To investigate contacts between members of An Garda Síochána and:
- Media and broadcasting personnel,
  - members of the Government,
  - TUSLA,
  - Health Service Executive,
  - any other State entities,
  - or any relevant person as the Sole Member may deem necessary to carry out his work
- relevant to the matters set out in [a], [b], [c], [d], [e] and [f] above.
- [i] To examine all records relating to the telecommunications interactions used by Superintendent Taylor, former Commissioner Callinan and Commissioner O'Sullivan, in the period from the 1<sup>st</sup> of July, 2012, to the 31<sup>st</sup> of May, 2014, to ascertain whether there are any records of text messages or other telecommunication interactions relating to the matters set out at [a], [b], [c], [d], [e] and [f] above and to examine and consider the content of any such text messages or other telecommunication interactions.

- [j] To examine all electronic and paper files, relating to Sergeant Maurice McCabe held by An Garda Síochána and to consider any material therein relevant to [a], [b], [c], [d], [e] and [f] above.
  
- [k] To investigate whether Commissioner O'Sullivan, using briefing material prepared in Garda Headquarters, influenced or attempted to influence broadcasts on RTÉ on the 9<sup>th</sup> of May, 2016, purporting to be a leaked account of the unpublished O'Higgins Commission Report, in which Sergeant McCabe was branded a liar and irresponsible.
  
- [l] To investigate whether a meeting took place between former Commissioner Callinan and Deputy John McGuinness on the 24<sup>th</sup> of January, 2014 in the carpark of Bewley's Hotel, Newlands Cross, Co. Dublin and to examine and consider the circumstances which led to any such meeting, the purpose of such meeting and matters discussed at such meeting.
  
- [m] To investigate such knowledge which Commissioner O'Sullivan had of the meeting referred to in [l] above.
  
- [n] To investigate contacts between members of An Garda Síochána and TUSLA in relation to Garda Keith Harrison.
  
- [o] To investigate any pattern of the creation, distribution and use by TUSLA of files containing allegations of criminal misconduct against members of An

Garda Síochána who had made allegations of wrongdoing within An Garda Síochána and of the use knowingly by senior members of the Garda Síochána of these files to discredit members who had made such allegations.

[p] To consider any other complaints by a member of the Garda Síochána who has made a protected disclosure prior to 16<sup>th</sup> February, 2017 alleging wrong-doing within the Garda Síochána where, following the making of the Protected Disclosure, the Garda making the said Protected Disclosure was targeted or discredited with the knowledge or acquiescence of senior members of the Garda Síochána.

And to adopt a modular approach to this inquiry so that the matters set out at [a] – [o] inclusive shall be inquired into in the first instance, and thereafter upon consultation with the Sole Member the Government shall, if requested by the Sole Member, take steps to appoint another Judge to continue and conclude the work of the Tribunal namely the matter at [p] above as the second module.

And to report to the Clerk of the Dáil and to make such findings and recommendations as it sees fit in relation to these matters as expeditiously as possible;

and further resolves that -

- (I) the tribunal shall report to the Clerk of the Dáil on an interim basis not later than three months from the date of establishment of the tribunal

and also as soon as may be after twenty days of witness testimony of the tribunal on the following matters:

- (a) the number of parties then represented before the tribunal,
  - (b) the progress which will then have been made in the hearings and work of the tribunal,
  - (c) the likely duration (so far that may then be capable of being estimated) of the proceedings of the tribunal, and
  - (d) any other matters that the tribunal considers should be drawn to the attention of the Houses of the Oireachtas at the time of the report (including any matters relating to its terms of reference),
- (II) the inquiry shall be completed in as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it;
- (III) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the tribunal should, as far as it is consistent with the interests of justice, be borne by those individuals; and
- (IV) the Clerk of the Dáil shall within 14 days of receipt of any report from the tribunal either apply to the High Court for directions regarding publication of the report or arrange to have it laid before both Houses of the Oireachtas.”

NOW, I, Frances Fitzgerald, T.D., Minister for Justice and Equality, in pursuance of those resolutions and in exercise of the powers conferred on me by section 1(1) (as adapted by the Tribunals of Inquiry (Evidence) Act 1921 Adaptation Order 1936 (S.R. & O. No. 25 of 1936)) of the Tribunals of Inquiry (Evidence) Act 1921, make the following instrument:

1. This Instrument may be cited as the Tribunals of Inquiry (Evidence) Act 1921 (Appointment of Tribunal) Instrument 2017.
2. A tribunal (hereinafter called the "Tribunal") is appointed to inquire into, report and make such findings and recommendations as it sees fit to the Clerk of Dáil Éireann on the definite matters of urgent public importance specified in the resolution passed by Dáil Éireann on 16 February 2017 and the resolution passed by Seanad Éireann on 16 February 2017, the text of which resolutions is set out in the recital to this Instrument.
3. The Honourable Mr Justice Peter Charleton, a judge of the Supreme Court, is appointed to be the sole member of the Tribunal.
4. The Tribunals of Inquiry (Evidence) Act 1921 shall apply to the Tribunal.

GIVEN under my Official Seal,

17<sup>th</sup> February 2017.

James Stanger

Minister for Justice and Equality.