
**INQUIRY INTO THE RETIREMENT OF THE FORMER
COMMISSIONER OF POLICE**

A Ruling on the discontinuance of the criminal proceedings

Introduction

1. In my eventual report, in order to give context to the police investigation known and referred to in this Inquiry as Operation Delhi, I will need to outline, in general terms, the background which led to criminal proceedings against Thomas Cornelio, John Perez and Caine Sanchez ('the defendants') for conspiracy to defraud, misfeasance in a public office and various offences of computer misuse. I need not do so for the purposes of this ruling.
2. On 21 January 2022, after the defendants had been charged, and after the indictment had been preferred, the Attorney General gave notice that he was discontinuing those criminal proceedings. Mr Wagner, counsel for Mr McGrail has, very properly, enquired whether he can ask the Attorney General why he did so. This issue raises a number of knotty problems, which are better determined – or at least canvassed - now, rather than waiting until they arise during the course of the main Inquiry hearings, when they would become a serious distraction. The Inquiry Team identified a number of questions which arise, on which the Inquiry sought submissions, with which I will deal in turn.

Question 1: what was the legal basis on which the prosecution was ended?

3. Question 1 asked: 'What was the legal basis on which the prosecution discontinued: (a) section 59 of the Gibraltar Constitution; (b) section 223 of the Criminal Procedure and Evidence Act; (c) both; or (d) some other basis?'
4. The relevant part of section 59 of the Gibraltar Constitution Order 2006 ('the Constitution') provides as follows:

'59.(2)The Attorney-General shall have power in any case in which he considers it desirable so to do so ... (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.'

5. The Attorney General's statement of 21 January 2022 reads as follows:

'In exercise of the powers conferred on me by Section 59(2)(c) of the Gibraltar Constitution Order 2006, and all other enabling powers, I, Michael Llamas CMG QC, Her Majesty's Attorney General for Gibraltar, consider it desirable to discontinue the Criminal Proceedings issued against Thomas

Cornelio, John Perez and Caine Sanchez in respect of the following offence... [which were then set out in full].'

6. The terms of this statement make it abundantly clear that he was acting pursuant to section 59(2)(c) of the Constitution, as I have set out above. The addition of the words in his statement '*and all other enabling powers*', may unwittingly have given rise to confusion and to the erroneous suggestion that he was in fact acting - or also acting - pursuant to section 223 of the Criminal Procedure and Evidence Act ('CPEA').

7. I turn then to section 223, which is headed: 'Power of Attorney General to enter a nolle prosequi', the relevant parts of which read as follows:

'223(1) In any criminal case, at any stage before the verdict or judgment, as the case may be, the Attorney General may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Crown intends that the proceedings are not to continue.

(2) If the Attorney-General enters a nolle prosequi:[...]

(c) the discharge of the defendant does not operate as a bar to any subsequent proceedings against him on account of the same facts.'

8. As it seems to me, section 223 supplements section 59 of the Constitution by providing a procedure for exercising the power under section 59 but it does not give the Attorney General the power to discontinue proceedings, which is given by section 59.

9. I also need to refer to some parts of section 232(2) - (4) of the CPEA, which are relevant when I come to consider the Judgment of the Chief Justice in *Cornelio v R*, 2023/GSC/029, which read as follows:

(2) If, at any time before the indictment is preferred, the Attorney-General gives notice under this section to the Supreme Court that he does not wish the proceedings to continue, they must be discontinued with effect from the giving of that notice.

(3) The Attorney-General must, in any notice given under subsection (2), give reasons for not wishing the proceedings to continue.

(4) On giving notice under subsection (2) the Attorney-General-

(a) must inform the defendant of the notice; but

(b) need not give the defendant any indication of his reasons for not wishing the proceedings to continue.

(5) The discontinuance of any proceedings by virtue of this section does not prevent the institution of fresh proceedings in respect of the same offence.

I point out that in this case, the three defendants had been charged, and an indictment had been preferred.

10. The statutory discontinuance of criminal proceedings under section 59(2)(c) of the Constitution is to be distinguished from a nolle prosequi issued by the Attorney General in England and Wales as part of the Royal Prerogative, which – in the past at least – English courts have declined to question in the context of judicial review proceedings. In order to avoid compounding this confusion, I shall refer to the Attorney General’s action not as issuing a nolle prosequi but as the ‘discontinuance of the criminal proceedings’, which is the language used in section 59.

Question 2: ‘... is it relevant to ask why the AG discontinued the prosecution?’

11. Question 2 asked: ‘In the factual context of the Inquiry, is it relevant to ask why the Attorney General discontinued the prosecution?’

12. The discontinuance of the prosecution can only be relevant to Issue 5, which relates to Operation Delhi. It seems to me that the proper approach to this question is helpfully presented by Mr Gibbs KC in his submissions on behalf of Mr Richardson (at paragraph 6), which I accept and paraphrase. He submits that I should ask what influenced the Chief Minister and/or the Interim Governor to call for Mr McGrail’s resignation back in May/June 2020. I should then ask why the Attorney General discontinued the prosecution. Then if – but only if – both decisions were influenced by the same considerations, then why Mr Llamas discontinued the prosecution would be relevant to why Mr McGrail was asked to resign, which is the key question in Issue 5.

13. Mr Wagner (on behalf of Mr McGrail) submits that the Chief Minister triggered and then directed the events which forced Mr McGrail to take early retirement. He submits that in the investigation of Operation Delhi, the Chief Minister himself was ‘potentially implicated’ and a senior civil servant, Mr Caine Sanchez, and the Chief Minister’s close friend, mentor and business associate, Mr James Levy, were ‘key suspects’. Therefore, Mr Wagner’s case is that the Chief Minister’s motive in removing Mr McGrail was to protect him (the Chief Minister) from the personal and political danger presented to him, and to his government, by the investigation. Mr Wagner alleges that the Attorney General played ‘a key enabling role and was at all material times acting under the instruction of the Chief Minister’. Therefore, he argues, if the real reasons for discontinuing the prosecution were to protect the political reputation of the Chief Minister, and the Government from the fallout of the impending criminal trial, and if the Chief Minister and the Attorney General were driven by the same motives in discontinuing the trial as they had been in engineering Mr McGrail’s retirement, then the one is plainly relevant when considering the motives for the other. This is, in effect, the approach canvassed by Mr Gibbs.

14. Mr Cooper KC, on behalf of the defendants makes a similar submission, from a completely different perspective. He submits, in effect, that the investigation, and the prosecution, were improperly driven by political motives, and that the same, or at least related, political motives may have acted upon the mind of the Attorney General when he discontinued the prosecution. In the circumstances, he says that it would be quite artificial to examine whether there was political interference in the investigation and in the commencement of the prosecution, without examining whether there was political interference in its discontinuance.
15. Sir Peter Caruana KC, on behalf of the Government Parties, submits that Mr McGrail's essential allegation – which the Chief Minister strongly refutes – is that, aided and abetted by the Attorney General, he interfered in the police investigation to protect his friend, colleague and mentor, James Levy KC and it was their objections about the application for the search warrant at Mr Levy's office and his home which led directly to their engineering Mr McGrail's his retirement in June 2020. Whereas, submits Sir Peter, by the time of the discontinuance of the criminal proceedings in January 2022, fully 18 months later, James Levy had long since ceased to be a suspect, and most certainly he was not then a defendant in the criminal proceedings; so the discontinuance of the criminal proceedings against Cornelio, Perez and Sanchez, conferred no benefit whatsoever on James Levy. Therefore, so his argument goes, the discontinuance of the prosecution cannot possibly be relevant to Mr McGrail's retirement. But this argument seems to me to take a very restricted approach to this question and requires me, without having heard any evidence, to reject the suggestion made by Mr Wagner that the Attorney General in discontinuing the prosecution was motivated by a desire to protect the Chief Minister from the fallout of the trial.
16. Furthermore, Sir Peter argues that since – as he contends – the Attorney General had no statutory powers in relation to Mr McGrail's retirement and since – as he further contends – the Attorney General did not participate in the discussions, decisions or events leading to Mr McGrail's retirement, whatever reason he (the Attorney General) had for discontinuing the prosecution, in which the Chief Minister played no part, could not have been a reason for Mr McGrail's resignation. But, I observe, this submission makes a number of factual assertions which may – or may not – be borne out by the evidence, so I do not accept this part of his argument either.
17. Having considered all these arguments, it seems to me that now, before hearing any evidence, I simply cannot say with confidence that in the factual context of the

Inquiry, it is irrelevant to ask why the Attorney General discontinued the prosecution, indeed in the circumstances I have identified, it might be relevant.

18. However, having come to that conclusion, I am alert to Sir Peter Caruana's submission that even if the point is of 'any conceivable relevance' – to use his expressions – it might be 'too tangential and remote' or 'sterile' to give me any real assistance. Mr Santos, Counsel to the Inquiry, rather echoes these concerns; in his submissions, he urges me to be sceptical as to the practical benefit to be derived by the Inquiry enquiring into the reasons for discontinuing the prosecution. Sir Peter Caruana, on behalf of the Government has made clear that the Attorney General will refuse to give his reasons "*unless ordered to do so by a Court of final recourse*". I will consider later whether he is within his rights to do so and whether I can, as a matter of law, draw inferences as to the reasons. As it presently seems to me, if I came to the conclusion that the Attorney General had improperly helped the Chief Minister to engineer his dismissal, I might be able to use that finding to infer that he had an improper motive in discontinuing the prosecution but, without such a conclusion on that main point, it might be difficult to infer an improper motive for discontinuing the prosecution. If that be right, I may be unable to come to a conclusion about the reasons for the discontinuance of the prosecution unless and until I had already come to the conclusion that he had improperly helped the Chief Minister to engineer Mr McGrail's removal; so coming to a conclusion about reasons for discontinuing the prosecution is not going to help me as to the reasons for Mr McGrail's retirement.

I will keep this point under review and if any of the parties think that pursuing the reasons for discontinuing the prosecution is becoming an unprofitable distraction, I invite them to say so and I will re-consider the position.

Question 3: if so, within the Inquiry's Terms of Reference to ask the question?

19. Question 3 asked: 'If [it is relevant to ask why the Attorney General discontinued the prosecution], is it within the Terms of Reference of the Commission to ask the question?'

20. If, having heard the evidence, I was to conclude that it is relevant to determining Issue 5 to ask why the Attorney General discontinued the prosecution, it must be within the Inquiry's Terms of Reference to ask that question, otherwise I would be deliberately excluding relevant evidence or information, which could not be right. Conversely, if I was to conclude that it would not be relevant, then to pursue the matter would plainly not be within the Terms of Reference.

Questions 4 and 5

21. Question 4 asked: 'If [it is relevant to ask why the Attorney General discontinued the prosecution], can the Attorney General properly be asked why he discontinued the prosecution? Question 5 asked: 'If so, is the Attorney General entitled – or even required – by law to decline to answer the question ...'. These two questions are conveniently considered together.

22. Section 59(5) of the Constitution is in these terms:

'In the exercise of the powers conferred upon him by this section the Attorney General shall not be subject to the direction or control of any other person or authority.'

23. Section 83 of the Constitution provides as follows:

'No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction'.

24. It is plain, therefore, that despite section 59(5), the discontinuance of the prosecution by the Attorney General is amenable to judicial review. The question then arises whether in the course of a judicial review, the Attorney General can be asked why he discontinued the prosecution. There is a long line of English authorities to the effect that the Attorney General (or as in some jurisdictions the DPP) may voluntarily give the reasons, or some of the reasons, for discontinuing prosecutions, if he chooses to do so, but if he chooses not to, he cannot be compelled to do so. This rule is based upon the principle that the Attorney General is the guardian of the public interest, and may be influenced by factors which are not within the public knowledge, and which might cause damage to the public interest if they were known.

25. The most authoritative statement of this principle is in the opinion of the Judicial Committee of the Privy Council in *Mohit v DPP of Mauritius* [2006] UKPC 20, which considered the evidence which might be available to a court in the course of judicial review proceedings of the decision of the DPP to discontinue proceedings:

'That evidence will include any reasons the DPP may choose to give. But it is for the DPP to decide whether reasons should be given and, if reasons are given, how full those reasons should be. The English authorities cited above show that there is in the ordinary way no legal obligation on the DPP to give reasons and no legal rule, if reasons are given, governing their form or content. This is a matter for the judgment of the DPP, to be exercised in the light of all relevant circumstances, which may include any reasons already given. The Supreme Court must then decide on all the material before it,

drawing such inferences as it considers proper, whether the appellant has established his entitlement to relief.'

26. Dudley CJ took a similar view in *Cornelio and ors v R (op.cit)*, when considering the application by the Operation Delhi defendants for discovery of documents as ancillary to the recovery of their costs in the criminal proceedings against them.

27. I turn to paragraphs 18, 21 and 22 of his judgment

'18. Section 223 falls to be contrasted with section 232 of the CPEA which provides for the discontinuance of proceedings after a defendant has been sent for trial. The difference between the sections is that a section 232 discontinuance can only be effected before the indictment is preferred and [Attorney General] must in his notice of discontinuance to the Supreme Court, give reasons for not wishing the proceedings to continue, albeit he need not give the defendant any indication of his reasons. [...]

21. There is a second aspect to sections 223(1) and 232(2) of the CPEA which bears consideration and which relates to the specific request for disclosure of the reasons for the entering of the nolle prosequi. By virtue of section 232(3) and, (4) if [the Attorney General] discontinues proceedings under that provision, he must give reasons for the discontinuance to the court but "need not give the defendant any indication of his reasons". Section 223 is silent as to the requirement if any as to the giving of reasons. Reading these provisions which are found in the same Part of the same Act, in my judgment it is clear that [the Attorney General] has no obligation to give reasons when entering a nolle prosequi.

22. It follows from Mohit that there is no legal obligation on the part of [the Attorney General] to give reasons for the discontinuance of proceedings. To seek any such reasons from knowledge which may have been acquired by the DPP would be to subvert the statutory provisions and [Attorney General's] right not to provide them. That said, at such stage as all the evidential material falls to be considered, it may be proper to draw inferences from the failure to provide the reasons.'

28. Counsel for the Inquiry, and Sir Peter Caruana, submit that I should follow this decision.

29. Mr Wagner and Mr Gibbs rely on sections 8(2), 10 and 12 of the Commissions of Inquiry Act 1888, to require the Attorney General to answer the question. Which provisions were not relevant to the decision of the Chief Justice. I need to set these provisions out.

'8. (1) The commissioners...may require the attendance before them... of any person whose evidence in the judgment of such commissioners may be material to the subject matter of any inquiry to be made by the commissioners under this Act, and may require such person to bring before them all such books, papers and writings as to such commissioners may

appear necessary for arriving at the truth of all matters to be inquired into by them under this Act.

(2) Every such person shall attend before the commissioners and shall answer all such questions as may be put by the commissioners touching the matters to be inquired into by them, and shall produce all books, papers and writings required by them, and in his custody or under his control, according to the tenor of the summons:

Provided always that no statement made by any person in answer to any question put by such commissioners shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding civil or criminal.

10. ...and no person shall be excused from answering any question put to him by the commissioners on the ground of any privilege, or on the ground that the answer to such question will tend to incriminate such person.

12. If a person ...

(b) being in attendance as a witness refuses ... to answer any question to which the commissioners may legally require an answer;

the commissioners may certify the offence ... to the Supreme Court .. and the court may thereupon inquire into the alleged offence and ... punish ... that person in like manner as if he had been guilty of contempt of the court.'

30. Mr Wagner and Mr Gibbs submit that the 'natural construction' of these sections, or 'the starting point by virtue of the wording', is that in an Inquiry subject to the 1888 Act, the Attorney General is required to answer the question, if it is asked of him and, furthermore, that it would be a contempt for him to refuse. Mr Gibbs and Mr Wagner argue that since the decision to discontinue the prosecution is subject to judicial review, it would be odd if they were not also susceptible to these provisions of the 1888 Act. But, as *Mohit* establishes, even in a judicial review the Attorney General cannot be compelled to give reasons for issuing a notice of discontinuance.

31. Mr Wagner seeks to distinguish *Cornelio* on the basis that it was decided in the context of an application for disclosure in a case for the recovery of criminal costs; furthermore, he says the Chief Justice was making a decision not on the Constitution but on the application of the relevant sections of the CPEA as cited above. Indeed, he says that the Government Parties are quite wrong to justify the Attorney General's refusal to answer the question on the Constitution, which – as he points out – does not give the Attorney General any exemption from the provisions of the 1888 Act. He says that if the Attorney General is really saying that he was acting in the public interest when he refused to give reasons, he

should make an application to the Inquiry, in private if necessary, to be excused from giving reasons on the grounds of public interest immunity, supported in the usual way by a certificate setting out why he considers there is a public interest in not revealing the reasons for the discontinuance; and that it would then fall to me, as Commissioner, to decide whether to uphold his application to be excused from giving reasons on the grounds of public interest immunity.

32. Sir Peter Caruana and Counsel to the Inquiry meet this argument by relying on Annexes to the Constitution.

Annex 1, Section 32 of the Constitution provides that:

Subject to this Constitution, the Legislature may make laws for the peace, order and good government of Gibraltar.

Annex 2, Paragraph 2(1) provides that:

Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

33. The Commissions of Inquiry Act was passed in 1888, nearly a century and a half ago and long before many of the modern lines of authority had been developed. They submit that the 1888 Act must be construed as being subject to Annex 2, paragraph 2(1) of the Constitution. Furthermore, they submit that the Chief Justice has decided in *Cornelio* that, under the Constitution, the Attorney General cannot be compelled to answer why he discontinued a prosecution.

34. It is convenient here to address question 7, which asks if I am either bound by, or alternatively required to afford persuasive weight to the judgment of the Chief Justice in that case. I think according to the strict principles of precedent, a Commissioner of an Inquiry in Gibraltar is not bound by a decision of the Supreme Court in Gibraltar, in an application to seek discovery in costs application in a criminal case, even if the Chief Justice presided. But, in my opinion, the Chief Justice was doing far more than that, he was making a reasoned ruling on the same section 59 of the Constitution, to which the same points of principle apply as apply in this Inquiry. It is for the Chief Justice to state the law; it is for me to follow the law of Gibraltar; accordingly, I regard the judgment of the Chief Justice on such a matter, in such circumstances, as being highly persuasive. More than that, I regard his decision as being entirely in accordance with authority. Indeed, I do not doubt that he was correct. In my opinion, the Constitution permits the Attorney General to be asked why he discontinued the prosecution, but he is entitled to

refuse to answer the question. Furthermore, he cannot be compelled to disclose documents relating to the reasons which he had.

35. If I had ruled against the Government on this point, it would have been open to them to make an application on the grounds of public interest immunity that the Attorney General need not give the reasons for discontinuance because it would damage some vital national interest but this situation does not arise because I have accepted the Government's argument that he is not obliged to answer the question pursuant to the Constitution.

36. In my opinion, the application of this principle does not blunt the efficacy of judicial supervision of the decision of the Attorney General because, even if he refuses to give reasons, I can draw such inferences as are appropriate, a topic to which now I turn.

Question 6: Is the Inquiry entitled to draw any inference?

37. I move on to question 6: 'Is the Inquiry entitled to draw any inference(s) from a failure by the Attorney General to answer the question in (2) above?'

38. Sir Peter Caruana argues that since I have found that the Attorney General is legally entitled to refuse to say why he discontinued the prosecution, it cannot be right that I could draw an adverse inference against him for exercising a legal right.

39. In support of that proposition, he cites the speech of Viscount Dilhorne in *Gouriet v HMAG & ors* [1978] AC 435:

'In the discharge of any of the duties to which I have referred, it is, of course, always possible that an Attorney-General may act for reasons of this kind and may abuse his powers. One does not know the reasons for the Attorney-General's refusal in this case but it should not be inferred from his refusal to disclose them that he acted wrongly.'

40. But *Gouriet* was an attempt to review the decision of an English Attorney General acting under the Royal Prerogative, whereas we are concerned with the judicial supervision of a statutory power under the Gibraltar Constitution. Furthermore, *Gouriet* was decided long before the scope of judicial review had been developed further.

41. As Counsel to the Inquiry has pointed out, it is difficult to see how there can be any effective judicial review of the Attorney General's actions without the tribunal of fact being able to draw inferences, from all the relevant circumstances, about the reasons which may have caused him to act and, as it seems to me, one of those circumstances is surely that he has not himself given reasons. I think that such a

conclusion is supported by the extracts in *Mohit* and *Cornelio v R*, which I have already cited.

42. Sir Peter Caruana further submits that, if any inferences can be drawn, they should be limited to a consideration of whether a decision to discontinue was 'made in a lawful, proper and rational manner', but without considering the sufficiency or adequacy of the reasons. I note that he is unable to cite any authority for this. In any event, as Counsel to the Inquiry points out, a court may need to draw inferences about the reasons for the discontinuance of a prosecution in order to decide whether the decision was made in a lawful, proper and rational manner.
43. Sir Peter Caruana then argues that such authority as there is gives power to review a decision to discontinue a prosecution only to courts of law, in the context of judicial review. But the policy reasons which give that power to the courts, apply equally to public inquiries. I see no reason why the same power does not vest in public inquiries and I am sure that it does. I therefore reject this argument also.
44. Having decided that I can draw appropriate inferences, it is a separate question whether it would be proper to draw inferences in the circumstances of this Inquiry. Counsel to the Inquiry submits that it would be premature to decide this question until all of the evidence has been heard, examined and challenged as necessary. I see force in this.
45. I move on to another point. Sir Peter Caruana has made clear, on behalf the Government Parties, that the Attorney General is able, ready and willing to give me, as Commissioner, in the presence of the Counsel and Solicitor to the Inquiry, but otherwise in private, and subject to conditions of continuing confidentiality, the reasons why he discontinued the prosecution.
46. In these circumstances, Sir Peter Caruana submits that where I am able to find out from the Attorney General the reasons he gave for discontinuing the prosecution, it would be inappropriate to draw inferences as to those reasons from all the other evidence, when such inferences may be mistaken. Since my duty is to discover the facts, he submits it would be wrong to deny myself access to the best evidence of the facts by hearing the reasons from the Attorney General himself. In effect he asks: why speculate as to the reasons, when by asking the question myself I can discover the reasons. He is wrong to call reasoned inferences, mere speculation but his point loses no force if I use the formula: why draw inferences as to the reasons, when by asking the Attorney General the question myself I can discover the reasons, or at least the reasons given.

47. It would, I suppose, be possible to draft a protocol setting up suitable procedures, to ensure proper disclosure, to provide for a secure hearing, to allow questioning by Counsel, and by me, to allow for recording of the proceedings, and for the secure storage of the documents and of the recordings and for the publication of a closed report. All this can be done and has been done in other Inquiries. So the practical difficulties could be overcome.
48. But there is, in my opinion, a more fundamental flaw in this approach, since Sir Peter – perhaps understandably – has made the suggestion presupposing that the Attorney General would give the real, truthful, reasons why he discontinued the prosecution and furthermore that such an explanation would withstand examination and even challenge in a private hearing. Of course, I cannot – and would not – enter upon this secret hearing with the assumption that I will inevitably accept the reasons given by the Attorney General as being truthful, or even if truthful, as being adequate. Let us suppose that I was to accept the reasons given by the Attorney General and found those reasons to be adequate; I could then give a closed judgement to that effect and then say, in an open hearing, that I have accepted the reasons given and they are quite different from the reasons which Mr McGrail alleges he was dismissed, and therefore the reasons for discontinuing the prosecution are not relevant to the Inquiry and therefore the point cannot be pursued further. But that would satisfy no one; I would have accepted evidence given in secret without public challenge or examination, which cannot be right.
49. What would happen if I was not to accept the reasons given? I could, I suppose, say in a public hearing that I have not accepted the reasons given, but where would we go from there. I would then be driven to attempt to draw inferences as to the reasons for the discontinuance, whilst – presumably – discounting what I had heard in these secret hearings, a position which Sir Peter Caruana was seeking to avoid by hearing the evidence in secret.
50. Let us further suppose that I rejected the Attorney General's explanation of the reasons. That would create even worse problems. What if I even concluded the prosecution was indeed discontinued to protect the Chief Minister, could I properly remain silent, without sharing my conclusion with the Core Participants and indeed with the public. This would put me, and indeed counsel, in an impossible position. It would also engage Mr Wagner's point that such a finding would damage the Attorney General's credibility, but this would be a point that he could not develop because he would not know what evidence I had rejected, nor the reasons for doing so.

51. I am grateful to Sir Peter for floating this proposal, but I have come to the clear conclusion that, when properly analysed, it would cause far more problems than it would solve. The best course is to proceed and for me to hear the evidence and then to consider what, if any, inferences I can properly draw.

Question 7: is the Inquiry either bound by, or alternatively required to afford persuasive weight to' the judgment of the Supreme Court in *Cornelio and ors v R*?

52. I have already answered this question (at paragraph 34 above) and I need not repeat what I wrote there.

Sir Peter Openshaw DL,

Commissioner.