Neutral Citation Number: [2006] IEHC 35

THE HIGH COURT

[1998 No. 89 COS]
[1998 No. 132 COS]

IN THE MATTER OF NATIONAL IRISH BANK (UNDER INVESTIGATION) AND IN THE MATTER OF NATIONAL IRISH BANK FINANCIAL SERVICES LIMITED (UNDER INVESTIGATION) AND IN THE MATTER OF THE COMPANIES ACT, 1990

Judgment of Mr. Justice Kelly delivered the 10th day of February, 2006

This application

1. This is an application brought by the Director of Corporate Enforcement (the director). He seeks access to documents held by the Inspectors (the inspectors) appointed to investigate the affairs of National Irish Bank Limited and National Irish Bank Financial Services Limited (the companies). The application is made pursuant to s. 12 of the Companies Act, 1990, (the Act) as amended by s. 14 of the Company Law Enforcement Act, 2001.

2. In the alternative the director seeks non-party discovery against the inspectors pursuant to O. 31, r. 29 of the Rules of the Superior Courts (RSC).

Background

3. In 1998 the inspectors were appointed to investigate and report on the affairs of the companies. Following the delivery of a number of interim reports the inspectors delivered their final report in July, 2004. Upon delivery of that report I heard an application with a view to giving directions and making orders as envisaged under ss. 11, 12 and 13 of the Act. I *inter alia* directed that the inspectors report be published in its entirety on 30th July, 2004.

4. The inspectors report made serious findings in relation to improper practices at the companies. Those improper practices *inter alia* had the effect of facilitating tax evasion and the levying of unwarranted fees and interest charges. The inspectors analysed the knowledge and responsibility of senior officers within the companies and concluded that certain of them bore responsibility for the improprieties identified.

5. On foot of the report the director issued nine separate notices of motion against persons named and criticized in the report. Each motion sought a disqualification order against the named respondent pursuant to the provisions of s. 160 the Act.

6. One of the respondents, Mr. Nigel D'Arcy, did not contest the director's application and in a reserved judgment which I delivered on 26th October, 2005, I made a disqualification order against him with a duration of ten years from that date. The remaining eight respondents against whom similar orders are sought are contesting the director's application.

7. At the outset I made it clear, and it is accepted by all parties to the litigation, that all eight respondents to the s. 160 applications brought by the director are entitled to have their applications considered individually and on their own merits. For the sake of convenience and with a view to minimising costs, the present applications have been brought on a single notice of motion.

8. The application under s. 12 of the Act is brought within the investigation proceedings which commenced in 1998. It is agreed that the alternative application for discovery (although brought on the same motion paper) is to be treated as a separate and distinct application for non-party discovery brought individually in each of the eight applications which seek the s. 160 orders. Such applications are governed by the provisions of O. 31, r. 29 RSC and the jurisprudence which has developed on foot of that rule.

The reasons for the application

9. In the originating notices of motion which seek orders under s. 160 of the Act the director makes it clear that on the hearing of those applications he will be relying on the report of the inspectors. He will be basing his case upon the facts found and opinions expressed by the inspectors. He is clearly entitled to do so pursuant to s. 22 of the Act.

10. That section provides as follows:-

> *"A document purporting to be a copy of a report of an inspector appointed under the provisions of this Part shall be admissible in any civil proceedings as evidence –*
>
> *(a) of the facts set out therein without further proof unless the contrary is shown, and*
>
> *(b) of the opinion of the inspector in relation to any matter contained in the report."*

11. The director contends that he needs access to the documents specified in the notice of motion grounding this application because of the nature of the defences which have either been delivered or intimated will be delivered by each of the eight respondents. In respect of some of the respondents, the time for delivering their affidavits in response has not yet expired. Nonetheless the director contends that there are certain common themes to the defences which have been intimated.

12. Each respondent seeks to challenge certain of the inspectors' findings of fact and/or the conclusions which they reached as a result of those findings.

13. A number of the respondents sought (and indeed have been granted) access to documents held by the companies in order to enable them to prepare their defences.

14. The respondents are seeking such documents in order to enable them to adduce evidence to rebut the findings of the inspectors.

15. The director contends that the approach of the respondents amounts to an attack on the findings of the inspectors. In order to be able to deal with such attack he must, he says, have access to the documents upon which the inspectors based their findings. He makes it clear that this is not an attempt by him to expand upon or go beyond the grounds set forth in the originating notices of motion seeking the s. 160 orders. Neither does he wish to pursue a separate or fresh investigation using the material to which he now seeks access. He contends that this application arises only because the respondents have sought to present what he describes as a collateral attack upon the findings of the inspectors. He contends that if he cannot have access to these documents he will be seriously disadvantaged in pursuing his claim against each of the eight respondents.

16. I have little doubt but that the director is quite entitled to adduce whatever relevant evidence he wishes in support of his s. 160

application and is not confined merely to the inspectors report. He cannot of course adduce evidence outside the grounds notified to the respondents as the basis for his application. Subject to that obvious limitation, he may adduce whatever relevant evidence he wishes. This application is an attempt by him to obtain documents which he may wish to put in evidence at the trial of the s. 160 applications.

The documents sought
17. The director seeks either access to (pursuant to s. 12 of the Act) or discovery of (pursuant to O. 31, r. 29 RSC) the documents categorised below.

> *"A. Copies of all documents relevant to the inspectors' adverse findings against:*
>
> *(i) Mr. Dermott Boner*
>
> *(ii) Mr. Frank Brennan*
>
> *(iii) Mr. Patrick Byrne*
>
> *(iv) Mr. Kevin Curran*
>
> *(v) Mr. Michael Keane*
>
> *(vi) Mr. Jim Lacey*
>
> *(vii) Mr. Tom McMenamin*
>
> *(viii) Mr. Barry Seymour*
>
> *comprising all branch and other audit reports, all documents made available by or on behalf of the inspectors to each respondent and/or his advisers requesting his comments or observations on the provisional findings of the inspectors and any replies thereto and any further correspondence or submissions passing between the inspectors and each respondent and/or their respective advisers.*
>
> *B. Copies of the transcripts of evidence of:*
>
> *(i) Mr. Dermott Boner*
>
> *(ii) Mr. Frank Brennan*
>
> *(iii) Mr. Patrick Byrne*
>
> *(iv) Mr. Kevin Curran*
>
> *(v) Mr. Michael Keane*
>
> *(vi) Mr. Jim Lacey*
>
> *(vii) Mr. Tom McMenamin*
>
> *(viii) Mr. Barry Seymour*
>
> *(ix) Mr. Nigel D'Arcy*
>
> *C. All documents (not contained in A above) indicating to whom Mr. Patrick Byrne reported within NIB for the duration of his tenure as head of finance or a similar role and the extent to which he formed part of the senior management of the bank in that period and all documents which indicate the extent and nature of his responsibilities.*
>
> *D. All documents relevant to the inspectors finding that responsibility for the improper practices rested with senior management rather than the branch managers, including any documents indicating that the operational environment in the bank was target driven, that managers felt under pressure to meet various targets (including for fee income and deposits), that they had negligible participation in target setting, that many of them considered the targets to be unreasonable and that they feared criticism and possible humiliation before their fellow managers if they did not meet the targets set."*

18. In its original form the director sought at A, copies of all documents relevant to the inspectors' adverse findings against the individuals "*to include all branch and other reports…*". At the hearing, that was amended. The director now seeks the documents relevant to the inspectors' adverse findings "*comprising all branch and other audit reports …*" This amendment means that the director now seeks the documents specified in the notice of motion and no more.

The inspectors' procedures
19. In the inspectors' final report they set out the details of the two phases in which their investigation was carried out. This procedure had been approved of by Shanley J. in his judgment of 13th July, 1998.

20. In the affidavit sworn by the inspectors on this application they say as follows:

> *"The second phase of the investigation was conducted in the following manner:-*
>
> *· Once we prepared our provisional findings, we then wrote to every individual who could be adversely affected by*

them, setting out the provisional findings which affected the recipient and details of the evidence relevant to his or her knowledge and responsibility. In this letter, each person was invited to attend before us for the purpose of making whatever submission or argument they might wish to present. In addition they were informed that they could give evidence themselves, call witnesses and examine any witnesses if they so wished. They were requested to let us know whether they wished to attend before us or make a written submission.

· We received numerous requests for documentation and for transcripts of the evidence of other persons interviewed by us.

· Where cross-examination of a witness was sought, adequate notice had to be given to the witness, his or her availability confirmed, and a date fixed which suited all parties. Altogether 24 witnesses were cross-examined.

· A number of individuals introduced expert witnesses; several also offered further direct evidence.

· In addition, we and our legal advisers had to deal with a substantial volume of correspondence from the lawyers of the persons involved.

· Not all the parties to whom we wrote in this phase of the investigation sought to cross-examine witnesses. With one exception, however, all made written submissions, the majority supplementing these by oral submissions through counsel.

· In arriving at our conclusions in regard to any individual, we relied on evidence notified to such individual and on any additional evidence adduced by the individual by way of examination or cross-examination of a witness or witnesses.

· Where any conflict arose between the evidence of any individual and the evidence of a witness or witnesses which would support an adverse finding, the individual was given an opportunity to cross-examine such witness or witnesses.

· Following the completion of our provisional findings in respect of individuals, we furnished our draft report to the bank on 1 August, 2003. In our letter accompanying the draft, we informed the bank, as we had informed each individual to whom we had written at the commencement of the second phase, that in addition to making a submission either written or oral, or both, the bank would be entitled to cross-examine witnesses on whose evidence we were relying, and to call further evidence if it wished. The bank did not take up the option of calling or cross-examining any witnesses. Furthermore, the bank in its subsequent reaction paper did not take issue with anything contained in the draft report and did not seek any change in it. Accordingly, the final report was in substance unaltered from that passed to the bank on 1 August, 2003."

Documents sought at A
21. The inspectors, having set forth the above procedure conclude that all of the documents relevant to their adverse findings against the persons identified at para. A of the notice of motion should be in the possession of those parties. They also point out that in respect of branch and other audit reports they simply obtained copies of documents from the companies. Thus such documentation should be in the possession of the companies.

22. In my view, the inspectors are correct in the conclusions which they have drawn concerning the documents sought under this heading. Such documents are obtainable from either the respondents to the s. 160 motions or from the bank.

Documents sought at B
23. The documents sought here consist of transcripts of evidence given by the named individuals to the inspectors. Having regard to the procedure which was followed by the inspectors each individual named in para. B ought to be in possession of his own transcript. Indeed, the inspectors aver in their affidavit that the majority of the relevant individuals identified "*would be in possession of transcripts of the evidence as transcripts were furnished on request and the majority of individuals requested same*".

24. It is to be noted that the director seeks the transcript of evidence of Mr. Nigel D'Arcy. The s. 160 application brought against him has already been dealt with. His transcript is sought in respect of the s. 160 application which has been brought against Mr. Jim Lacey. On the evidence before me it is highly likely that all of these transcripts are available from the individuals named in para. B, without recourse having to be had to the inspectors.

Documents sought at C
25. Although the inspectors contend that the documents sought here require them to identify background or supporting documents and material relevant to certain of their findings I am inclined to the view that all documents in this category must be within the possession of National Irish Bank. Indeed I am not sure that either access to or discovery of such documents will be required by the director. A notice to admit facts or the delivery of appropriate interrogatories should elicit information from Mr. Byrne as to whom he reported whilst he was head of finance, what his responsibilities were and the position which he occupied in the senior management of the bank.

26. If however I am wrong in this view and the inspectors are correct then this part of the application will be governed by the same conclusions as I come to in respect of the next category of documents.

Documents sought at D
27. The inspectors contend that this request requires them to identify background or supporting documents and material relevant to certain of their findings. They say that the issues raised under this heading are so broad that they concern the overall operation of the bank.

28. In the form in which para. D is framed they anticipate that any order which the court may make, whether for disclosure or discovery of such documents, will involve them in "*undertaking a mammoth task of reviewing the entire of the material and information which became available*" to them in the course of their investigation.

29. The inspectors point out that they have in their possession from the bank, 52 bankers' boxes of material. They contain copies of

documents, the originals of which were retained by the bank. In addition there are six filing cabinets and four roll covered cabinets of material which would include some additional bank-supplied copy documents together with material generated by the inspectors and their staff during the course of the investigation. They point out that only a person who is very familiar with the material would be in a position to carry out the exercise of reviewing all the documents to identify which of them fall into each category. Those documents would then have to be organised in such a manner as to make them available for inspection and copying. They find it impossible to estimate how many hours or days that exercise might take but they aver that it would be "*an extremely time consuming process*".

30. They also point out that such an exercise, if it has to be undertaken, will involve the incurring of additional costs over and above any legal costs. They point out that there is no provision under the Act for the payment of any of their costs once they have delivered their final report. This problem has been largely solved on a practical level by the agreement on the part of the director to discharge not merely the legal costs but any other costs or expenses which the inspectors may incur in complying with any order which the court may make.

31. I am satisfied that the inspectors are correct in the view which they take concerning the obligations that would be placed upon them if an order were made requiring them to provide access to or discover the documents in question. Because the order sought requires disclosure of documents "*relevant to the inspectors' findings*" they will have to make a judgment which will involve them in identifying every such document relevant to the findings specified at para. D. That would involve a review of the entire of the material and information which became available to them in the course of their six year investigation. It would truly be a mammoth task.

32. Whilst the inspectors have made it clear that they will comply with whatever direction this court may give they point out that such an application has implications, not just for them personally, but for the conduct of future examinations. They aver that they understood that their function was to investigate and deliver a report and that the contents of such report were then given a certain evidential status. The present application raises a question as to what obligation, if any, they have after the delivery of their final report. They point out that as their functions are determined solely by statute they are anxious to ensure that any step taken by them is within lawful authority.

33. This is an issue of principle which the inspectors have raised. I will deal with it first.

The inspectors
34. The inspectors are concerned to ascertain whether, once they have delivered a final report under s. 11 of the Act, they have any obligation to provide access to or make discovery of documents.

35. The director contends that s. 12(1) of the Act gives a wide discretion to the court to direct the inspectors to provide access to the documents sought. Alternatively he contends that they can be obliged to make non party discovery under O. 31, r. 29 RSC. In that regard he argues that they cannot be in a different position to any other party, whether their rights and obligations arise by statute or not, who has documents in his or her possession which might be made the subject of such an order.

Section 12
36. Section 12(1) reads:-

> *"Having considered a report made under s. 11, the court may make such order as it deems fit in relation to matters arising from that report including –*
>
> > *(a) an order of its own motion for the winding up of the body corporate, or*
> >
> > *(b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company, provided that, in making any such order, the court shall have regard to the interests of any other person who may be adversely affected by the order."*

37. Sub-paragraph (a) has no relevance to the present application. The application is not made under sub-para. (b). Rather the director relies upon the general provision which is contained in the first part of s. 12 where the court is given a discretion to make such order as it deems fit in relation to matters arising from an inspectors report. The director contends that, provided the order relates to a matter arising from the report, the court has power to order the inspectors to provide access to the documents which the director seeks.

38. In April 2005, the director sought an order pursuant to s. 12 of the Act requiring the inspectors to identify the members of the audit committee of National Irish Bank. The inspectors had criticised the audit committee in the course of their final report but did not identify the members of that committee by name. The director sought the order so that he might consider bringing an application for an order under s. 160 against the members of that committee.

39. I delivered a reserved judgment on that application on 19th April, 2005.

40. In the course of argument on that application the inspectors raised considerations not dissimilar to the ones which they raised on this one. Whilst I commented upon them in the course of that judgment I nonetheless decided the application on the merits. I refused the director's application. I did so on the assumption that there was power to make an order of the type sought. I expressed doubts about there being such a power but did not decide the case on that basis. I must however decide that issue on this application, at least insofar as the documents sought at para. D are concerned.

41. In In *Re: Ansbacher (Cayman) Limited* [2004] 3 I.R. 193, Finnegan P. had to consider an application under s. 12 (1)(b) of the Act. The order was not sought pursuant to s. 12(1) as is the case here. The application was made by the Revenue Commissioners who sought access to documents obtained by the inspectors in that case in the course of their investigation but which were not included in the appendices to their report.

42. In the course of his judgment Finnegan P. said as follows:-

> *"The first legal issue to arise is the construction of s. 12(1) of the Act of 1990.*
>
> *The section gives the court a wide discretion – it may make such order as it deems fit. Accordingly in determining whether to make an order the court must take into account all relevant circumstances. What is relevant in the*

circumstances of any particular application may vary and I propose only to deal with those circumstances which I consider relevant on the present application. However on every application in exercising the discretion, the court must have regard to the interests of any person who may be adversely affected by its order. While this is expressly mentioned where reliance is placed on s. 12(1)(b) of the Act of 1990, it equally applies to every other application under the section. It is to be noted that the discretion conferred upon the court is not limited to the circumstances mentioned in ss. 12(1)(a) and (b) of the Act of 1990, in that these provisions are regulated by the word 'including' so that the discretion of the court may be exercised in cases falling outside these provisions."

43. Those views of the President were echoed in a judgment which I delivered in this investigation on 23rd July, 2004. There I pointed out that s. 12(1) confers a wide jurisdiction on the court. I said:-

> *"The court may make such order as it deems fit in relation to matters arising out of its consideration of a report made by inspectors pursuant to s. 11. The court appears to be at large as to what order it can make under this provision."*

44. In the judgment which I delivered in the investigation on 19th April, 2005, whilst I reiterated that position I also went on to say:-

> *"However, any order which it might make on foot of the discretion given by this section would have to be consistent with other provisions of the same Act."*

Investigations

45. When inspectors are appointed to a company under part II of the Act they are obliged to investigate the affairs of that company in order to enquire into matters specified by the court. They are then obliged to report to the court on their investigation. They are conferred with wide powers. At the conclusion of the investigation they "*shall make a final report to the court*" (see s. 11).

46. In general the court leaves it to the inspectors appointed by it to decide how and in what manner they present their report to the court. They have a wide discretion in that regard. As was said by Lord Denning M.R. in *Maxwell v. Department of Trade* [1974] 1 Q.B. 523:-

> *"Fourth: the inspectors have to make their report. They should state their findings on the evidence and their opinions on the matters referred to them. If the report is to be of value, they should make it with courage and frankness, keeping nothing back. The public interest demands it. It may on occasion be necessary for them to condemn or criticise a man. Before doing so, they must act fairly by him."*

47. The same judge said in respect of inspectors in *Re Pergamon Press* [1971] 1 Ch 388:-

> *"They have to make a report which may have wide repercussions. They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers…….They must be masters of their own procedure. They should be subject to no rules save this: they must be fair. This being done, they should make their report with courage and frankness, keeping nothing back. The public interest demands it."*

48. In the present case the inspectors submitted a final report to the court in conformity with their statutory obligation under s. 11. As I said in the judgment of 19th April, 2005, a final report means just that.

49. The court did not direct any further investigation be conducted or any further information be delivered. Rather the court directed publication of the report as a final report.

50. In my view the inspectors are correct when they argue that just as there is a need for finality in litigation so there is also a need for finality in investigations. That is what the legislature has ordained by speaking of the presentation of a final report. I do not believe that the legislation and s. 12 in particular envisage some form of rolling process where, notwithstanding the delivery of a final report by them, inspectors might be asked to revisit all of the documents in their possession in order to identify which documents support particular findings made by them. Such an exercise would be inconsistent both with the notion of a final report and indeed the task which the statute requires inspectors to undertake.

51. Inspectors are not appointed as evidence gatherers but rather as investigators whose job is to make a report. Their function is inquisitorial. When they produce a final report they ought not to be asked to conduct further work for others who may wish to challenge or to stand over the report prepared by them.

52. Further support for this view can be found in the fact that the legislature, whilst providing in s. 13 for the payment of expenses incidental to an investigation, makes no provision for the payment of expenses incurred when an investigation is completed. The investigation of the companies here has been finished since July, 2004.

53. In my view it was not the intention of the legislature that an order of the type sought here ought to be granted. To grant such an order would be inconsistent with the statutory scheme and with the final nature of the report delivered by the inspectors.

54. Indeed there is also a good practical reason for taking this view. If this application were acceded to it is possible, perhaps likely, that the respondents might seek similar access to other documents which they perceived might be helpful to their contentions. Indeed, applications for further and better access might also manifest themselves thereby giving rise to an almost endless obligation being placed upon the inspectors to revisit their report and to identify documents which are supportive of conclusions reached or opinions expressed. In my opinion this was never envisaged or contemplated by the legislation.

55. It is also to be noted that in affording the inspectors report the special status which it has under s. 22 of the Act, value was placed on the inspectors' conclusions and opinions rather than on the information gathered.

56. It follows that in my opinion the court not ought to make an order of the type sought and the application for access under s. 12 is therefore refused.

Non-party discovery

57. Before the 1986 Rules of the Superior Courts came into force it was not possible to obtain an order for discovery of documents against a person who was not a party to the suit before the court. Order 31, r. 29 changed that position, or to put it in the words of

Barron J. in *Holloway v. Belenos Publications Limited (No. 2)* [1988] I.R. 494, the rule broke new ground.

58. It is quite clear, both from the wording of the rule and the jurisprudence which has developed upon it that the power given to the court under it is a discretionary one. As was said by Egan J. in *Fusco v. O'Dea* [1994] 2 I.R. 93:-

> *"Such an order is in the courts discretion and is not available as of right."*

59. The director argues that this discretion should be exercised in his favour so as to require the inspectors to make discovery in each of the eight s. 160 applications. He contends that the inspectors are in no different position to any other non party to litigation who may have documents in their possession. In my view that contention is not correct.

60. The inspectors came into possession of such documents as they hold on foot of their appointment as inspectors to conduct an investigation pursuant to an order of this court. They did so. Their investigation is over. Their final report has been delivered. They should not in my view be asked to do more since their task is complete.

61. If the director cannot obtain the documents under s. 12 of the Act because to do so would be inconsistent with the final nature of the report and the scope and scheme of the legislation, then he cannot do so by transforming the application into one for non-party discovery. In other words he cannot circumvent the refusal of his s. 12 application and seek to obtain the documents by the side wind of non-party discovery.

62. The inspectors' task is done: their statutory function is complete. They cannot in my view be asked to revisit their report and the documents generated by their investigations so as to make discovery as sought.

63. It follows that the director's application for non party discovery as against the inspectors is refused.

64. Lest however I am incorrect in the conclusions which I have come to, both in respect of the s. 12 and the non party discovery application, I will consider what order ought to be made on the merits, assuming an entitlement to make such.

The merits

65. Whether the director's application is considered as one for access under s. 12 or non party discovery under O. 31, r. 29 RSC he has formidable hurdles to surmount.

66. In my judgment of 19th April, 2005, I held that if there was jurisdiction to make an order of the type sought there under s. 12 there would have to be a real and pressing need for it and a substantial benefit to be gained by it. The same considerations apply here.

67. The case law on O. 31, r. 29 demonstrates that whilst the utility of the provision is obvious the courts have tended to interpret it in a rather restrictive fashion as is said by Delaney and McGrath in "*Civil Procedure in the Superior Courts*" 2nd edition at para. 10 – 69:-

> *"…It is clear from the wording of the rule and the case law which has evolved in relation to it that much stricter requirements have to be observed before a litigant can obtain an order for non party discovery than exist in relation to obtaining an order against another party."*

68. In *Chambers. v. Times Newspapers Limited* [1999] 2 I.R. 424, Morris P. said:-

> *"In my view, however it is undesirable and the court should be slow to put someone, not a party to the action, to the trouble of making discovery if it can be avoided. I am satisfied that an order should only be made against a third party in circumstances where the documents in question are not readily available to be discovered by a party to the action or where in the particular circumstances of the case the court in the interests of justice requires that it should be done."*

69. Later in that judgment he also said that:-

> *"As a general principle third party discovery, with all the inconvenience which it involves, should only be ordered when there is no realistic alternative available."*

70. This view is entirely consistent with that expressed by the Supreme Court *in Allied Irish Banks Plc v. Ernst and Whinney* [1993] 1 I.R. 375. There Finlay C.J. said:-

> *"After it has been established to the satisfaction of the court that a person not a party has, or is likely to have, in his possession documents which are relevant to an issue arising, the court still has a further discretion. This arises from the fact that the rule provides that, upon being established, the leave of the court to make the order for discovery still is required.*
>
> *I take the view that the further discretion thus arising must relate, even where documents may be in the custody or procurement of a stranger to the action, and where they may have some relevance to the issues arising in the action, to a consideration of particular oppression or prejudice which would be caused to the person called upon to discover such documents, not capable of being adequately compensated by the payment by the parties seeking it of the costs of making such discovery."*

71. Earlier in this judgment I expressed my opinion concerning the availability of the documents sought at A, B, and C from sources other than the inspectors. Insofar as those documents are concerned I am not on the merits satisfied that the director has shown a real and pressing need so as to justify an order being made under s. 12. Neither should an order be made on the merits under O. 31, r. 29 since there is a realistic alternative available to the director in that he can obtain these documents either from respondents to the s. 160 motions or the companies.

72. When it comes to the documents sought at D it is clear that whilst many of the documents which fall within its purview may be obtainable from entities other than the inspectors, only they can marry the relevant documents to the pertinent findings identified at para. D. Such an exercise would, on the uncontroverted evidence of the inspectors, constitute a mammoth task. Having regard to the fact that their investigation took six years to complete and generated the quantities of documents already referred to in this judgment I would, as a matter of discretion refuse the orders sought.

73. In my opinion an order under O. 31, r. 29 would be inappropriate because of the oppressive burden that it would place upon the inspectors. Likewise an order under s. 12 would, as a matter of discretion, be inappropriate because I am not satisfied as to either the real and pressing need for such an order or of any substantial benefit to be gained by it.

74. Orders of the type sought at para. D in effect, ask the inspectors to provide a rationale for the conclusions reached and opinions expressed by them by reference to documents which came into their possession in the conduct of the investigation. That is not a task which they should be asked to embark upon. To compel them to do so by order of the court would impose an oppressive burden upon them and it would not be beneficial to the conduct of investigations under the Companies Acts.

75. In any event, much if not all of the documents sought at D will be available from other sources and it will be open to the director to put such documents in evidence as he believes support the findings of the inspectors. It is not however appropriate that the inspectors should be asked to engage in an *ex post facto* rationalisation of their conclusions and opinions by reference to documents.

76. As I already pointed out s. 22 of the Act gives a special status to the facts found and the opinions expressed by the inspectors in their report. It is not concerned with the information gathered by them. They were not appointed as evidence gatherers and they should not now be asked to identify the documentary evidence which they relied upon in finding the facts and forming the opinions which they did. As a matter of discretion I would therefore refuse these applications on the merits even if my views as to the position of the inspectors are incorrect.