

BETWEEN

FRANCIS SHORTT

PLAINTIFF

AND
 COMMISSIONER OF AN GARDA SIOCHANA,
 IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Finnegan P. delivered on the 12th day of October 2005

1. On the 28th February 1995 the Applicant was convicted on 13 counts after a trial at the Dublin Circuit Criminal Court. The convictions were based on the proposition that the Applicant was aware of and permitted drug dealing on his premises the Point Inn, Quigleys Point, Co. Donegal in the period between June and August 1992. On the 1st March 1995 he was sentenced to three years imprisonment on each count to run concurrently and to a fine of IR£10,000. He appealed his conviction and sentence to the Court of Criminal Appeal. The appeal against conviction was dismissed on the 23rd June 1996. The appeal against sentence was allowed to the extent that the fine of IR£10,000 was remitted. The Defendant served that sentence less statutory remission the period for which he was imprisoned accordingly was 27 months. The Criminal Procedure Act 1993 section 2 provides for an application by a convicted person to the Court of Criminal Appeal on the grounds that a new or newly discovered fact shows that there has been a miscarriage of justice in relation to his conviction. The Plaintiff availed of this provision. On the 20th November 2000 the Director of Public Prosecutions told the Court of Criminal Appeal that there was no opposition to this application and it was accordingly allowed, that is, his conviction was quashed on the statutory ground that new or newly discovered facts made it proper that this should be done. The Plaintiff then applied to the Court of Criminal Appeal pursuant to section 9(1) of the Criminal Procedure Act 1993 for a certificate that a newly discovered fact showed that there had been a miscarriage of justice and on the 31st July 2002 that Court so certified. That certificate having been obtained the Plaintiff then had the option of applying to the Minister for compensation or of instituting an action for damages arising out of the conviction: section 2(2) of the Act provides as follows -

"(2) A person to whom sub-section (1) relates shall have the option of applying for compensation or of instituting an action for damages arising out of the conviction."

2. The Plaintiff opted to institute this action for damages.

3. I suggested to the parties that having regard to the phrase "damages arising out of the conviction" the Court in assessing damages could have regard only to matters arising following the conviction and not to matters which arose in the course of the investigation or the trial. The parties submitted that it is appropriate to adopt a purposive interpretation of section 9(2) and in effect to read the section as providing for damages "arising out of the miscarriage of justice". I was referred to the decision of the Court of Appeal in *The Independent Assessor v O'Brien & Others* 29th July 2004 which deals with the corresponding provisions in the United Kingdom. While there is considerable difference in the statutory provisions in the United Kingdom the objectives of the provisions appear to me to be the same. As the parties are in agreement that I should assess damages pursuant to section 9(2) of the Act in respect of the period commencing on the date on which the Plaintiff was charged I propose to do this. I propose, as agreed between the parties, to adopt the approach in *The Independent Assessor v O'Brien and Others* and make a single award of damages rather than to break the same down into a number of discrete heads of award in respect of various headings of claim which could be maintained at common law. Thus the Plaintiff claims damages pursuant to the provisions of section 9 of the Criminal Procedure Act 1993 and I propose to make an award of damages on that basis insofar as the events in respect of which claim is made occurred after the Plaintiff was charged. The Plaintiff claims further or in the alternative damages for breach of constitutional rights, for conspiracy, for negligence and breach of duty, for malicious prosecution, for false imprisonment, for loss of reputation including but not confined to damages for libel and slander and damages for deliberate and conscious abuse of statutory power. I do not propose making awards under any of those headings in respect of anything which occurred after the Plaintiff was charged notwithstanding that the evidence would entitle a claim on all or any of such basis to succeed in the alternative to the claim under section 9. I will however have regard by analogy to the common law in relation to such claims insofar as the Plaintiff claims damages and aggravated and/or exemplary damages in respect of his claim under section 9. I adopt this approach upon the basis that the parties are in agreement that I should do so. As to the date upon which the Plaintiff was charged this was not given in evidence: however summonses were served shortly after the Plaintiff was notified of the intention of the Gardai to object to the renewal of the licences for the Point Inn. In these circumstances I propose adopting as the date of charge the 1st October 2002.

4. The Defendant accepts that the matter should proceed as an assessment and in effect the issues will be causation and remoteness of damage.

The Plaintiff's Claim for General Damages

5. The Plaintiff, his wife Sally Shortt and John P. Ward gave evidence.

The Plaintiff's Evidence in Chief

6. He was born on the 25th January 1935 and is now 70 years of age. The sequence of events giving rise to this claim commenced on the 18th April 1992 when the Plaintiff was 57 years of age. They culminated in his conviction in the Dublin Circuit Criminal Court on the 28th February 1995 when he was 60 years of age. As to the Plaintiff's background he was born in County Donegal the son of a Customs Officer. He was educated initially in Donegal and later in Dundalk to which town his father had been transferred. He obtained his Leaving Certificate and took a job for a year and then joined Kennedy Crowley & Company as an Articled Clerk to Mr. Niall Crowley and qualified as a Chartered Accountant in 1966 at the age of 31. After qualification he continued with Kennedy Crowley & Company subsequently Stokes Kennedy Crowley. He married in 1967. There are five surviving children of the marriage, Guilescio born in 1972, Natasha born in 1974, Sabrina born in 1977, Christian born in 1980 and Ezeriah born in 1982.

7. The Point Inn was owned by his Great Grandfather and then his Grandfather. His Father inherited it in the early 1950s. At some point it was taken over by the Plaintiff's brother Louis who had experience in hotel management. Following his wedding the Plaintiff went to Canada where he worked as a Chartered Accountant with the firm of Deloitte Pender Haskins and Sells in Winnipeg and later Pete Marwick Mitchell in Vancouver. He then took a commercial appointment with a property developer where he remained for a year. In December 1970 he together with his wife and young son set off to travel around South America in a camper van. Tragically his young son was killed in an accident in Mexico. The Plaintiff and his wife returned to Ireland in 1971. He immediately got involved with his brother Louis in the running of the Point Inn but also engaged in other commercial enterprises. At that time the Point Inn had a substantial business in entertainment at weekends operating a cabaret lounge and having traditional Irish music in the bar. At that

time his involvement in the Point Inn was at weekends. The business at the Point Inn was affected by the Northern Ireland troubles. On the 16th December 1973 the premises was seriously damaged by a bomb. The compensation from that incident was used to build a state of the art nightclub/cabaret lounge which remained in use up to the destruction of the premises by fire in 1995. At the end of the 1970s he sold a poultry business in which he was engaged after which the Plaintiff had full time involvement in assisting his brother Louis running the Point Inn. In 1988/89 he commenced an aquaculture business in Lough Foyle which business failed in 1991. The Plaintiff's brother Louis died in March 1991 by which date a Mr. Colm Quinn had become involved in the business. Louis Shortt's widow and Colm Quinn continued to run the business but not very successfully. By the end of 1991 the Plaintiff had acquired the other interests in the Point Inn and he and his wife become full owners of the same.

8. When the Plaintiff took control of the Point Inn in 1991 it was run down and was not trading well. While the bar operated every night the discotheque/cabaret operated one night per week only. The Plaintiff closed the premises and with the aid of a mortgage of IR £50,000 on his family home they were re-equipped and renovated. The premises re-opened after some six months on the 18th April 1992. It had a themed discotheque - dungeon style with a real style guillotine in the middle. It had a capacity for 850 people and initially operated on Sunday night only while the bar opened every night. In the malicious injury claim arising out of the fire his evidence was that the discotheque attracted 450 patrons 90% of whom were from Northern Ireland. Food was provided in the nightclub and on Sundays in the licensed premises. Across the road from the Point Inn was an eight acre site running down to the sea. The Plaintiff decided that it would be ideal for a caravan park and in 1989 he sought and obtained planning permission for such a development.

9. The nightclub under the style "The Dungeon" opened on the 18th April 1992. The opening was advertised widely. On the opening night at approximately 1 a.m. the nightclub was visited by Sergeant John McPhillips of the local Garda Station in Muff village. He checked that the bars were closed. On leaving the premises in the hearing of patrons he told the Plaintiff "Get your house in order". The Plaintiff asked Sergeant McPhillips to speak to him outside and when outside asked him for an explanation but did not receive one. Arising out of this the Plaintiff telephoned and made an appointment to meet with Superintendent Brian Kenny, the Garda Officer in charge of the district. Superintendent Kenny agreed to look into the events of the opening night. No mention of illegal drugs was made in the course of that meeting. The nightclub operated again on the following Sunday and again Sergeant McPhillips arrived this time with two or three other Gardai and on this occasion he repeated his comments. The next Sunday there was a further Garda inspection. While the opening night had been very successful numbers attending the nightclub declined over the following four to five weeks. The Plaintiff does not attribute this solely to the visits of the Gardai but rather to the form of entertainment being provided. As a result of discussions with other nightclub owners the Plaintiff decided on changes. The name was changed to "Rave in the Cave". While the music was much the same it was now continuous and produced on synthesisers. The revamped nightclub commenced on the 16th May 1992 and as on each previous occasion on which the nightclub operated there was a Garda visit again by Sergeant McPhillips with seven other Gardai. On the 17th May 1992 the Plaintiff wrote to Superintendent Kenny with a view to having the attendance by Gardai reduced. He also wrote to Sergeant McPhillips complaining of victimisation and discrimination on the same day. He categorised the correspondence as an attempt to pour oil on troubled water. Again on the 7th June at 10.30 p.m. approximately Sergeant McPhillips with seven or eight uniformed Gardai set up a check point about one mile from the Point Inn on the road leading from Northern Ireland. The occupants of cars were asked if they were going to the Point Inn and if they said they were their cars were searched. After midnight Sergeant McPhillips again with seven or eight Gardai entered the premises and inspected the same. The inspection lasted some fifteen minutes. After the premises closed the Gardai returned to carry out a further inspection looking for illegal drugs. No trace of illegal drugs was found. Again the Plaintiff complained to Superintendent Kenny and sent the letter by fax and immediately thereafter spoke to Superintendent Kenny and arranged to meet with him on the following day. At that meeting it was agreed that under cover Gardai should attend at the premises to address the possibility of drugs being dealt in there. Some two weeks later two under cover Gardai, Detective Garda Noel McMahon and a female Garda, Garda Finnegan attended at the premises. Thereafter on each night that the nightclub operated until the 3rd/4th August 1992 under cover Gardai attended at the premises. During this period while Sergeant McPhillips continued to attend at the premises from time to time he did not attend on every night the nightclub was operating. On the 21st June 1992 Inspector Lennon attended at the premises and spoke to the Plaintiff about the possibility of illegal drugs being on the premises.

10. On the night of 3rd/4th August 1992, the August bank holiday weekend, at about 12.30 a.m. the Plaintiff observed a group of men wearing helmets with visors running out of the car park towards the main entrance of the nightclub. They were Gardai. The first Garda knocked the Plaintiff out of his way by striking him in the chest with his helmet. There were about 60 Gardai involved and they ran into the premises. Most were wearing helmets with their visors down and carrying flash lamps. Other Gardai broke in two emergency exits with sledge hammers. Patrons were manhandled some being pushed against the wall and spreadeagled. Some of the male patrons had their pants pulled down. The Garda presence lasted about an hour. During the incident the Plaintiff spoke to Inspector Lennon who showed him a search warrant. Some ten or twelve patrons were arrested. The following day the Plaintiff sent a further letter of complaint to Superintendent Kenny. In that letter he complained that other nightclubs in the area were not being subjected to the same level of supervision. He also complained by letter to the Commissioner in identical terms. The incident was reported in the Derry Journal of the 4th August 1992.

11. Following this under cover Gardai continued to attend at the premises. There was at least one other roadblock similar to that which I have described.

12. The annual licensing District Court for 1992 was to be held in September and during September the Plaintiff received notice of intention by the Gardai to object to his liquor licence, dancing licence and restaurant certificate at the annual licensing District Court. Shortly thereafter the Plaintiff was served with 32 summonses which alleged that the Plaintiff knowingly allowed the dealing of drugs on his premises on various dates. The objection was not proceeded with immediately but was adjourned to the 18th September 1992 on which date the District Court refused to renew the licences. The Plaintiff appealed to the Circuit Court and the Plaintiff continued to trade pending the appeal. While Garda inspections continued it was with less frequency. The Plaintiff was personally aware of one further roadblock at Muff.

13. Thereafter events complained of post dated the date I have fixed as the date of charge the 1st October 1992. On the night of the 12th/13th February 1993 there was a further significant Garda raid on the premises involving between 80 and 100 Gardai very similar to the previous raid. Again doors were broken in. Inspector Lennon served a search warrant on the Plaintiff. The raid lasted some 1½ hours and between twelve and fifteen patrons were arrested. Some tablets were found. Again the Plaintiff wrote letters of complaint including letters to the Minister for Justice and the Garda Complaints Board.

14. At this time a threat to the Plaintiff's life was made by the IRA and he closed the premises on the 8th September 1993 and next opened at the Christmas period for four or five days. The threat was repeated early in January 1994 and the premises were again closed. The Plaintiff's belief is that that threats arose as a result of adverse publicity following the Garda raids. The premises were re-opened in April 1994 but now operated on a Friday rather than a Sunday night and for just one night per week. Throughout the Summer of 1994 there were regular Garda roadblocks. On the 30th September 1994 there was a third major Garda raid this time with

very close to 200 Gardai which was conducted in a similar manner to the two previous major raids. In addition to damage to doors tables and signs were damaged. A number of arrests were made and searches were conducted in the car park. Again the Plaintiff wrote letters of complaint and the raid was the subject of an article in the Derry Journal.

15. The Plaintiff appeared before the District Court on a number of occasions in respect of the summonses which had been served upon him in late 1992. In February 1993 the Plaintiff elected for a trial before a jury in the Circuit Court. The appeal against the refusal to renew the licence continued to be adjourned pending conclusion of the criminal proceedings. The prosecution applied to have the Plaintiff's trial transferred to Dublin and this was acceded to. The first trial which commenced in late October 1994 was aborted due to prejudicial reporting in newspapers. The Plaintiff found the newspaper reporting at that time offensive and considered it disadvantageous to his business. The first aborted trial caused him a great deal of stress.

16. The second trial commenced in February 1995 and lasted eight days.

17. At this point Counsel for the Plaintiff referred to the Judgment of Hardiman J. delivered on the 31st July 2002 on the application for a certificate pursuant to section 9(1) of the Criminal Procedure Act 1993 and in particular to those passages dealing with newly discovered material in pages 31 to 38 of the Judgment. In summary these were as follows –

(1) An allegation by Mrs McMahon, estranged wife of Detective Garda McMahon that he had told her that he had perjured himself at the Plaintiff's trial.

(2) Evidence of Adrienne McGlinchy that she was given money to purchase drugs and asked by Detective Garda McMahon to plant the drugs at defined places in the Point Inn on the night of a raid so that the Gardai would be in a position to find them or purportedly buy them from dealers on other nights. While Ms McGlinchy did not in fact plant drugs she gave evidence that she was later told by Detective Garda McMahon that the drugs had in fact been planted for him by other persons.

(3) Detective Garda McMahon admitted that he forewarned Adrienne McGlinchy after the raid of the 2nd August of the next raid.

(4) A number of documents were found in the possession of Detective Sergeant McMahon.

18. In its conclusion the Court of Criminal Appeal said in relation to the matters set out briefly above and in more detail in pages 31 to 38 in the Judgment of that Court –

"Cumulatively, however, they leave the Court in no doubt that a miscarriage of justice occurred".

19. The Court found that the second statement of Detective Garda McMahon which was relied on at the trial was false and that his first statement which had been suppressed was quite inconsistent with a significant aspect of Detective Garda McMahon's evidence.

20. Following his conviction the Plaintiff was handcuffed in court and taken down. The trial and conviction received widespread publicity. He was photographed being taken away from court. He was taken to Mountjoy Prison. At Mountjoy Prison he was required to strip and shower and was given prison garb comprising denim pants and a denim shirt which were too big for him. He was placed in a cell with two other prisoners shortly to be joined by two other prisoners. He felt threatened by the presence of the other prisoners who were in their twenties the Plaintiff himself then being sixty years of age. For the second night and the following twelve weeks he had a cell to himself. This cell was in the old prison and measured 10' x 7'. It was in disrepair. It had one window high up. The floor was of lino badly burnt and unclean. His bed had a thin horse hair mattress. There was a stench. The cell was infested with mice and cockroaches. There were no washing or toilet facilities. The toilet was a small aluminium soup pot. He was confined to the cell for seventeen hours each day. He had to slop out each day in the toilet area the floor of which was generally covered with urine, excreta and vomit. He was allowed out of the cell to collect his meals which he then took back to the cell to consume. Apart from taking air in the exercise yard in the morning and afternoon he read in his cell. He found it difficult to cope with his loss of freedom. On a number of occasions he was taken back to the Four Courts in relation to outstanding summonses. On these occasions he was placed in a holding cell with some twenty other prisoners which cell was in a deplorable condition.

21 After the first trial aborted the Plaintiff decided to sell the Point Inn. Gardai continued to attend at the premises and this affected the business and there was a real risk that the licences might not be renewed. In July of 1994 he was refused insurance on the Point Inn by his then Insurer and was unable to obtain insurance elsewhere. He instructed John O'Doherty & Company, Estate Agents to place the Point Inn on the market: he intended to retain the caravan park which was then under construction. The asking price for the Point Inn was IR£500,000. While there was interest no sale was concluded and the Plaintiff believed this to be because prospective purchasers were awaiting the outcome of the trial in the belief that the premises could be obtained at a lesser price if he should be convicted. After the second trial it was imperative that the premises be sold because of the likelihood that the licences would be lost. However on the morning of the 26th March 1995 the Point Inn was destroyed by fire. He was very low at this time. A particularly bad day was the 29th March 1995 the anniversary of the death of his first son. After this he started to use the gymnasium and this helped him. On the 5th April 1995 he received a letter from the Institute of Chartered Accountants in Ireland that they proposed to institute disciplinary proceedings against him arising out of his conviction. On the successful outcome of the appeal pursuant to the Criminal Procedure Act 1993 section 2 disciplinary proceedings which had been instituted were dismissed.

22. Following the conviction the licensing matters pending against the Plaintiff were resumed and on two successive days he attended Sligo Circuit Court on the appeal against the order of the District Court refusing to renew the licences.

23. A Receiver was appointed over the Point Inn and the caravan park by the International Fund for Ireland in September 1995. The Fund had approved the Plaintiff for a grant of IR£221,000 IR£75,000 of which was paid to him and the same was secured by a charge on the Point Inn and the caravan park. The Receiver sold the Point Inn in its fire damaged state and the caravan park for IR£152,000 together with VAT. The indebtedness to the International Fund for Ireland and secured creditors and the costs and expenses of the Receiver were discharged. There was nothing left for the Plaintiff.

24. While in prison the Plaintiff suffered from illness. In the gym he damaged his arm and shoulders and was prescribed pain killers. These had a severe effect on his stomach. There was a gradual increase in the pain in his neck and shoulders and he continued to suffer from stomach problems with cramps and vomiting and sleep disturbance. This continued for some seven months before he was sent to the Mater Hospital. The neck and shoulder symptoms were diagnosed as related to his work in the gym. He was treated with injections of cortisone. About this time he applied for temporary release to attend the baptism of his grandchild but was refused. He sought temporary release to attend his daughter's 13th birthday party on the 23rd August 1995 but was again refused. From the first

day he entered into Mountjoy he developed depression and was consistently depressed for most of the first two months. Thereafter his depression was intermittent. He was treated by prescribed medication. He was given tablets to help him sleep but after time was able to dispense with these. In prison he also suffered from vertigo and high blood pressure. He practised meditation twenty minutes each morning and each night to help him cope with his situation and this gave him relief.

25. While in prison he saw a television programme "Drugs in Donegal" in which Superintendent Kevin Lennon appeared in front of the ruins of the Point Inn and stated that the proprietor was then currently serving a term of imprisonment in relation to illegal drugs. This upset him greatly. Also there were several violent incidents in the prison which upset him greatly. In October 1995 his appeal was pending and a proposal was communicated to him. If he should drop his appeal the State would not proceed on six outstanding charges pending against him and he would be transferred to an open prison and shortly thereafter released to join his family. He did not accept the offer. At this time also the six outstanding charges were proceeding. By this stage he had lost some 2½ stone in weight which he attributed to stress, anxiety and depression. His first fourteen applications for temporary release were refused. Christmas was a particularly depressing period and he greatly missed his family. He was allowed weekly visits from his wife but following each visit he would sink into a state of depression and so he asked her to cut down on the number of visits. He had a concern that his situation was affecting his children. He had school reports in respect of his son Christian that he was cheeky and a negative influence on other students and on Ezeriah that he was unsettled and careless in concentration. They were having fights as a result of other children calling the Plaintiff a drug dealer. At this time Christian was 14 and Ezeriah 12 years of age.

26. The trial on the outstanding six charges was set for the 13th March 1996 but did not proceed being adjourned pending the outcome of the Plaintiff's appeal and ultimately a nolle prosequi was entered in respect of the same. His belief at the time was that the reason for the adjournment was that the Director of Public Prosecutions wanted the appeal dealt with before the hearing of the further six charges so that in the event that the appeal was unsuccessful the Plaintiff would be before the court as a person with a prior conviction. At about this time also the Receiver withdrew the appeal against the refusal of renewal of the licences attached to the Point Inn. This upset him. At this time also his wife became ill and this added to his concerns both for his wife and his children. She would be required to spend some time in hospital and there would be no one to look after the children. The Plaintiff applied for temporary release to enable him to look after the children for this period but this was refused.

27. The Plaintiff's appeal against conviction and sentence was heard on the 13th May 1996 and Judgment was reserved. The Plaintiff was optimistic about the outcome. Judgment was delivered late in July of that year and the conviction was affirmed and the only benefit to the Plaintiff was that he was relieved of the monetary penalty.

28. Having spent twelve weeks in the cell which I have previously described the Plaintiff was moved to the Training Unit in Mountjoy and remained there subject to one interruption until the first week of January 1997 when he was transferred to Castlereagh Prison where he finished his sentence on the 14th May 1997 and was released. The interruption related to a period of twelve weeks when he was transferred back to the main prison for disciplinary reasons. In the Training Unit he had a cell of his own. The cell was quite new and comfortable. The building was new. He had wash up facilities but not a toilet. If he wished to go to the toilet he pressed a bell and was normally let out. The officers were more civil than in the main prison except for one officer who was a bully and gave him "a lot of grief". Dining was in the dining hall. If he wished he could take the food back to his cell. He undertook two courses one in creative writing and one in computers. While the leaflet which he was given about courses promised remission if a prisoner applied himself he received no remission. He did however receive temporary release for four days at his second Christmas and shortly thereafter was transferred to Castlereagh which was described as an open prison. The prison itself was surrounded by a high wall but it was open in the sense that the prisoners lived in newly constructed detached houses and conditions were much better than in Mountjoy. There were no educational facilities there and no library. He spent his time walking in a circle around the yard.

29. In March 1997 he had further medical problems related to high blood pressure and developed vertigo. He had a heart problem before he went to prison but this deteriorated while in Castlereagh. On examination it was found that his heart was missing every seventh beat. His Consultant attributed this to stress. While in Castlereagh Prison the Plaintiff got temporary release every weekend. On one weekend however he suffered a back injury and was unable to return. A medical certificate was sent to the prison. However the Gardai arrived at his house and checked that he was in bed. He returned to prison four days late on a walking stick. As a result of this incident his release date which was scheduled for May 2nd 1997 was cancelled. In fact he was released some two weeks later which was two weeks earlier than his actual release date.

30. On release from prison the Plaintiff found himself practically bankrupt without a job or business. He had received nothing out of the receivership. He was at risk of being struck off by his Institute. He was now almost 63 years of age and he was depressed and angry at what had occurred to him and his family and in despair. He applied for and was given disability benefit on the basis of his back. He was treated with anti depressant medication. He was obsessed with establishing that he was not guilty and with clearing his name. Within his own community he felt ostracised. He was viewed like a pariah. He attended Mass and Holy Communion every Sunday but felt he was being cold shouldered by the congregation and stopped going to the church. He did not socialise. His relationship with his children had been damaged and they were no longer there for him as in the past.

31. After his release he set about a malicious injury claim in respect of the destruction of the Point Inn. For this purpose a certificate is required from the Chief Superintendent of the Gardai and he had very considerable difficulty getting this. Some three years following his release passed before the certificate came to hand. The claim was defended by Donegal County Council in that they relied on the Malicious Injury Act 1981 section 12 to reduce or exclude compensation upon the basis that the Point Inn had been used for illegal purposes as evidenced by the Plaintiff's conviction for knowingly allowing the sale, supply, distribution and possession of controlled drugs on the premises and further that there may have been a direct connection between the use of the premises for illegal purposes and the attack thereon which caused the damage. This added to his sufferings and concerns. The plea was only withdrawn on the date of the hearing after his conviction had been set aside. This compounded the delay by the Garda authorities in issuing the necessary certificate which did not issue for two years and nine months following application for the same.

32. The application pursuant to the Criminal Procedure Act 1993 section 2 was listed for hearing on 20th November 2000 and the period preceding this was particularly stressful for him and while he was informed in October 2000 that there was going to be no objection from the D.P.P. in those proceedings it was still a very anxious time for him. The application pursuant to the Criminal Procedure Act 1993 section 9(1) was heard by the Court of Criminal Appeal in May 2002 and lasted some four weeks. The Judgment was not delivered until the end of July 2002 and again this was a very stressful and anxious time for the Plaintiff. Following that he had to attend on an appeal to the High Court in relation to his malicious injury claim. In the Circuit Court the Plaintiff had been awarded IR£261,850 against which award the Donegal County Council appealed. On appeal the award was reduced to IR£100,000 and was made on the basis of diminution in value of the Point Inn and the caravan park and on the basis that the premises were without a licence.

33. While as a result of his conviction being set aside and a certificate under the Criminal Procedure Act 1993 section 9(1) being

obtained the attitude towards him of the majority of his community has improved but not of all. He now mixes very little with that community. He has returned to Mass. He is still not working. The main reason for this is that he continues to have trouble with his back and also has had to spend a very considerable amount of time assisting his legal team for the present case. Having regard to his age it would be difficult to get a job. He remains angry at what has happened to him. Prior to the events giving rise to this claim the Plaintiff had a drink problem. In 1988 he was admitted to the Rutland Clinic after which he did not drink until May 1993 when he resumed drinking as a result of the actions of the Garda Siochana. Thereafter he continued to drink on and off until early in 2005. He is not drinking at the moment and had not had a drink for some six months. However in the course of this hearing he lapsed. The Plaintiff no longer suffers from vertigo or with his blood pressure. He still suffers with his heart and with his back.

34. A book of medical reports was put in evidence. It is sufficient for present purposes if I record the opinion of Professor Brian Lawlor, Consultant Psychiatrist following an assessment of the Plaintiff on the 15th September 2004 –

"Although Mr. Shortt has a normal mental state examination at present he has experienced significant emotional distress and two episodes of depression related to events surrounding his dramatic experiences of imprisonment and miscarriage of justice. The prognosis for his depressive episode should be relatively good with resolution of the underlying triggering events. There are ongoing feelings of anger and frustration regarding his experiences and he may benefit from supportive psychotherapy in this regard. The prognosis for his alcohol abuse is reasonably favourable as well as long as he maintains his aftercare programme. Once again resolution of the ongoing stressor should have a positive effect in this regard."

35. In a report from the Plaintiff's general practitioner, Dr. Daniel McGinley it is reported that the Plaintiff was having significant difficulties in acclimatising back to his home/family situation. There were relationship difficulties when he was released home. He found the situation stressful. No medication was prescribed in relation to this. On the 9th September 1997 the Plaintiff was prescribed anti depressant medication for depression and this was repeated on 15th October 1997 and in November 1997.

36. The Plaintiff then dealt with his claim for special damages. At the time of the events giving rise to his claim the Point Inn and the caravan park were free of charge. The Plaintiff's private residence had been mortgaged to secure a loan of IR£50,000 which sum was invested in developing the Point Inn. The caravan park across the road from the Point Inn comprised of 7½ acres. Both the Inn and the caravan park were held by a company: however it was agreed between the parties that the properties should be treated as being the property of the Plaintiff. The caravan park had 80 metres frontage to the road and 150 metres frontage to Lough Foyle. Planning permission was obtained for the development of the caravan park in February 1991. The permission was in respect of 40 permanently sited caravans and 20 touring caravans together with a service block with toilets, showers, changing rooms, a recreation room, a swimming pool and a putting green. The Plaintiff was approved for a grant of IR221,000 by the International Fund for Ireland. The grant was repayable in certain circumstances and was secured by a debenture on the company's assets. Work started in 1991 and was carried out by direct labour. The field was levelled out and services laid. The service block was constructed to the point where it was ready to be roofed. Sub roads had been laid but not yet tarmacadamed. At that point in the development a problem arose with Donegal County Council as the service block was 1 or 1½ metres too high and a Stop Order was served in September 1991 and as a result work stopped. This corresponded with the Point Inn being closed. For the purposes of the development a new architect was retained and an application for retention with variations was made and this was successful in April 1994. The Plaintiff had received £75,000 an interim payment of the International Fund for Ireland grant. This was made on foot of a certificate of the Plaintiff's architect that expenditure of IR£154,000 had been incurred. Of that IR£154,000 some IR£100,000 was spent in cash and the remainder was represented by extended credit from suppliers. Some suppliers were eventually paid out of the receivership.

37. Special damages are being claimed under four headings:

- (1) Loss of earnings from the Point Inn.
- (2) Loss of capital value of the Point Inn.
- (3) Loss of capital value of the caravan park.
- (4) Loss of future earnings.

38. The majority of the income of the Point Inn related to the discotheque which was licensed for 850 persons. On the malicious injury application the Plaintiff's evidence was that it attracted 450 patrons. The income from the nightclub was increasing year on year and in the latter period of its operation well known DJs from England were being used but substantial fees had to be paid to them and the door cover charge correspondingly increased. The increase did not affect the numbers attending. However the accounts are not completely accurate. As a result of a VAT audit the Plaintiff had been obliged to pay an additional IR£21,000 for each year of two years of assessment. The problem arose because monies were being taken out of the door charges without this being reflected in the accounts. Notwithstanding the Garda activity of which he complains the enterprise was very profitable. Had he not been imprisoned he would have expected an annual profit of IR£150,000. Had it not been for his conviction and the burning of the Point Inn he would have continued both the bar and nightclub operation and had no intention of ever selling it. The retention permission for the caravan site provided for 60 sites, a service block, a pitch and putt course, a tennis court and a swimming pool. The projected cost was some IR£500,000.

39. If necessary he could have raised further finance for the purpose of the development of the caravan park on his family home which was worth IR£500,000 but with a mortgage of IR£50,000 on the same. Because of the Plaintiff's trial and conviction the development of the caravan park did not proceed further. Had he been able to complete the development of the caravan park his intention was to run it for some 2 – 3 years and sell the permanent sites on the same to caravan owners. At this time such sites are achieving €30,000 but at that time he was thinking in terms of IR£15,000 to IR£20,000. A number of suppliers were owed money in respect of the development of the caravan park and they had registered judgment mortgages against the Plaintiff's property and which judgment mortgages were discharged by the Receiver out of the proceeds of sale of the Point Inn and the caravan park. In addition to borrowing the Plaintiff expected to be in a position to discharge some of the cost of developing the caravan park out of cash flow. The Plaintiff also claims the sum of IR£10,000 which he paid for legal fees in respect of his first trial.

40. A Book of Correspondence was put in evidence. The following are relevant –

1. Letter dated 15th February 1993 the Plaintiff to the Minister for Justice in which he stated – "There is also the additional hazard that some sections of the paramilitaries in Northern Ireland are taking it upon themselves to render their own brand of ruthless justice on people who they deem to be involved in drugs".
2. Letter dated 13th October 1993 the Plaintiff to the Gardai at Muff, Co. Donegal in which he stated –

"9th September 1993 Provisional IRA issued a death threat to Frank B. Shortt. As a consequence the Point Inn was forced to go out of business".

3. Letter dated 12th April 1995 Patrick F. O'Reilly & Company, Solicitors to International Fund for Ireland to the Plaintiff which sets out the reasons for the appointment of a Receiver in the following terms –

"We are advised that a director of the company, Frank Shortt, has been convicted and fined for permitting the sale of illegal drugs at the Point Inn, property comprised in the lands covered by the Board's fixed charge.

Further, we are advised that the Point Inn has been burnt down.

We are further advised that the project which was grant aided by the Board was never completed by you although the offer letter at Condition 5 required completion by September 1991.

The debenture required the company to maintain adequate fire, public liability and employers liability insurance cover on the premises, the subject of the Board's fixed charge. We understand this Covenant has also been breached."

The Plaintiff's Evidence on Cross Examination

41. In cross examination the Plaintiff said that up to the date the Stop Order was put on the development of the caravan park approximately IR£100,000 of his own money had been spent on the development. IR£64,000 of this is disclosed on the audited accounts and IR£30,000 was obtained by way of loan from a friend. The Plaintiff himself invested IR£19,000. The balance of the cost of the development was covered by credit from suppliers. The estimated cost of the development envisaged by the 1989 planning permission was IR£330,000 and by the 1994 permission IR£580,000. A certificate signed by the architect for IR£150,000 was submitted to the International Fund for Ireland and against this the sum of IR£75,000 was advanced to the Plaintiff. As a result of the 1994 permission a considerable amount of the expenditure already incurred was wasted and the revised development was considerably more expensive. The architect's estimate included value added tax and as the Point Inn was paying VAT it would be possible to recoup this so that the net cost was IR£518,900. To complete the project he would require further finance. In January 1994 further funds had been sought from the International Fund for Ireland. He would have sought further finance from ICC. Further funds could have been obtained by mortgaging his family home. It was put to the witness that taking all the proposed financial arrangements into account he would have had to find some IR£90,000 himself. At the time there were two judgment mortgages on the premises in favour of suppliers and charges for rates in the amount of IR£12,601.69 and IR£4,047.28. These charges would carry interest. He had a successful action against Donegal County Council for IR£35,000 and Donegal County Council deducted the sums due for rates and interest from this and paid him the balance: however his solicitor was slow in having the charges removed from the title. One of the judgment mortgages was in favour of James Barr & Sons who supplied bricks, cement and blocks for the caravan park development. Notwithstanding these charges he did not anticipate any difficulty in raising further monies by way of mortgage on his family home. He never approached a lender in relation to a further mortgage on his family home. The Receiver sold the Point Inn and the caravan park at public auction after the Point Inn had been destroyed by fire and the licences had been lost although an appeal was pending in respect of that. The Receiver had agreed with the Gardai that if the premises were sold there would be no objection to an application for renewal of the licenses by the purchaser. The Point Inn and the caravan park realised IR£152,000 at auction plus VAT. He did not believe the price achieved represented the market value and he believed that sales by Receivers or Liquidators traditionally make very poor prices on the open market. He acknowledged that there was another charge on the lands in favour of a firm of solicitors Hayes Dixon & McNulty in the amount of IR£927.73. This represented the solicitors fees in respect of a High Court action against Donegal County Council. That sum was discharged on the 25th January 1995. He accepted that in 1992 or 1993 he decided to sell the Point Inn and the caravan park and this was before the Receiver was appointed and before the fire at the Point Inn. The premises were advertised. There was interest from a prospective purchaser in England and from a syndicate in Derry but no solid offer was received. He accepted that was because his asking price of IR£500,000 was too high as was a later asking price of IR£450,000. He accepted that on the appeal to the High Court in relation to the malicious injury claim the evidence was that an offer of IR£400,000 was received in April 1995 and not accepted. Mr. Justice Geoghegan on the basis of valuation evidence led by the parties and on which there appeared to be no agreement accepted that the value of the caravan park was IR£40,000 and accordingly of the IR£152,000 achieved by the premises IR£40,000 could be attributable to the caravan park. The Plaintiff's valuation evidence given at that appeal was given by Mr. Doherty, the auctioneer entrusted with the sale of the premises by the Plaintiff. The grant from the International Fund of Ireland envisaged the development of the caravan park being completed by September 1991.

42. The Plaintiff believed the changes in the economy meant it was unlikely that he would have disposed of the caravan park. Since 1991 property prices had increased substantially and caravan parks had become very popular. Had he received a good offer it was likely that he would have sold the caravan park and invested the proceeds elsewhere. However he would never have accepted IR£40,000 for the caravan park site. While he had not the funds available to complete the development of the caravan park he could have raised the same. When the International Fund for Ireland required repayment of the grant had he not been in prison he could have raised the necessary amount on the security of his family home. While the Stop Order was in place on the caravan park he did not seek to raise further finance as there would be little point in doing so. As of November 1993 on enquiry of the International Fund for Ireland he was told that the remainder of the grant was still available. The permission for retention obtained from Donegal County Council also permitted additional caravan sites but required considerable changes to the amenities and buildings as constructed and to the lay-out of services. The appointment of a Receiver by the International Fund for Ireland was precipitated by the fire at the Point Inn. However a letter dated 12th April 1995 from the Solicitors to the Fund also cites the conviction of the Plaintiff as a precipitating event. Had the Plaintiff been able to raise IR£75,000 that would have prevented the appointment of the Receiver but as he was in prison he was unable to do this. Insurance on the Point Inn was cancelled in July 1994. Notwithstanding the absence of insurance he continued to trade. Proceedings were instituted against the Receiver to restrain him from selling the property and these were unsuccessful. The cost of these proceedings reduced the amount available to the Receiver so that there was nothing left for the Plaintiff out of the proceeds of sale. There were also proceedings taken by the Receiver against the Plaintiff and his wife under the Companies Acts. The Receiver took no steps to obtain a certificate to enable the malicious injury claim to be prosecuted. The company's properties were included in the accounts for 1993 at Director's valuation of IR£301,027 considerably higher than the price achieved. He agreed that no returns in respect of employees were made to the Revenue from 1990 to 1995: at that time the premises operated only one night per week as a discotheque and the licensed premises only opened in the evenings. In 1994 and 1995 the licensed premises did not open mid week at all but only on Friday, Saturday and Sunday. The staff in these circumstances were paid without deduction. If deduction had been made he would have been unable to get staff.

43. The Plaintiff accepted that the Dungeon Disco was generally dark. However he did not agree that it was necessary for the Gardai

to have flash lights to identify people when inspecting the premises. The nightclub continued until 2 a.m. and required a special exemption order. There may have been occasions where the nightclub operated without a special exemption order. This led to one conviction in respect of the 2nd September 1991 which was before the Plaintiff took control of the premises. There were five further convictions for the offence between May 1992 and May 1993 when the Plaintiff was in charge of the premises. It may have been to these that Sergeant McPhillips was referring when he told the Plaintiff to put his house in order. The witness accepted that other licensed premises in the vicinity were visited by the Gardai but they were not subjected to raids such as the three raids conducted on his premises nor were road blocks directed at those premises. It was put to the witness that "raves" are essentially different to other kinds of discos in that they have a hyped up atmosphere with continuous music. The music has a throbbing beat. He was not aware then that there was a concern that the type of entertainment offered was attractive and inviting to people in the drug scene. He was unaware of any association between the consumption of water and non stop dancing with the taking of drugs. He was at all times aware of the possibility of drugs being sold and used on the premises and it was for this reason that he was willing to co-operate with the Garda under cover operation. After the first major raid he accepted the reality that drugs were being used on the premises. At his meeting with Superintendent Kenny on 9th June 1992 he did not recall Superintendent Kenny saying that raves were attractive to drug users. He agreed that he was aware that on the first hint of Gardai entering premises those holding drugs throw them into lavatories or basins or to the floor. He accepted that in these circumstances it is necessary if a search is being carried out that the premises be immediately occupied by Gardai so that there is no advance warning.

44. With regard to the appointment of a Receiver he believed that a precipitating event was the absence of insurance.

The Plaintiff's Evidence on Re-Examination

45. The Plaintiff's family home is a very old Georgian house in a rural area on three acres. It has four bedrooms and a swimming pool with a view of Lough Foyle. As far as he is aware the Garda under cover operation did not lead to any convictions. As a result of the major raids four persons were arrested and charged with possession but none were convicted. There had been media coverage of the major raids on the Plaintiff's nightclub: if there were raids on other premises there was no publicity in relation to the same. Were it not for the prosecution he would have developed the Point Inn and the caravan park. He believed that the income from the Point Inn would have been of assistance towards making repayments on any mortgage to develop the caravan park. He had received an informal valuation of his family home as of October 2004 at €1m. In order to complete the development of the caravan park under the 1994 permission IR£560,000 was required: IR£146,000 of this was available from the International Fund for Ireland and a further IR£160,000 had been approved by ICC. He still had available a significant equity in the family home and in the Point Inn and the caravan park and could have re-organised his borrowings. There was also the prospect of a malicious injury award although this was being delayed by the non availability of the Garda certificate that the fire was caused by a subversive organisation. Had he not been in prison he could have readily raised the IR£75,000 necessary to satisfy the International Fund for Ireland and prevented the receivership: as he was in prison he was not earning.

Evidence of Sally Shortt the Plaintiff's Wife

46. The witness gave evidence confirmatory of that of the Plaintiff. She visited the Plaintiff the day after he was imprisoned. He looked completely different: he was shocked and looked terrible and was angry and upset. She visited him in prison thereafter and saw his condition deteriorate to the point where he was an old man and like a zombie. She did not think he would survive the prison term. When released from prison the Plaintiff was in good form but later went into another state of depression as he was too old to go and look for a job. He had no income and no prospects. His sole income was a disability allowance. While the Plaintiff was in prison she continued to run the Point Inn until the fire. The Friday night disco was managed by the Plaintiff's son but the witness attended. During that period the Gardai still attended at the premises. As a result of the fire it was not possible to re-open the premises. To provide an income the witness worked as a nurse doing night duty. She also had a Prisoner's Wife Allowance. The Plaintiff did manage to get a job for a short time. Prior to his imprisonment the children had a great relationship with the Plaintiff but this never really recovered when he was released from prison.

Evidence of John P. Ward

47. The witness is a solicitor practising in Donegal. He was consulted by the Plaintiff in relation to his problem of obtaining a certificate from the Gardai in relation to the malicious injury claim. Later he took over the malicious injury claim. He had difficulty obtaining expert witnesses within Donegal because of the perception of the Plaintiff and had to obtain them outside the county. Donegal County Council defended the case bitterly. They served a notice under section 12 of the Malicious Injuries Act 1981. In addition to the application to Donegal County Council he also acted for the Plaintiff in the proceedings pursuant to the Criminal Procedure Act 1993 section 2 and section 9(1). In his experience the successful outcome to these two sets of proceedings did not alter the attitude of the community towards the Plaintiff in that he was still regarded as guilty.

Special Damages

48. Two witnesses were called on behalf of the Plaintiff in relation to special damages – Mr. Des Peelo, a Chartered Accountant and Mr. John Young an Auctioneer and Valuer.

Evidence of John Young

49. Mr. Young furnished the Court with two reports one on the Point Inn and one on the caravan park. With regard to the Point Inn he had not inspected the premises prior to the fire or their reconstruction. As described to him the Point Inn was a detached neo Georgian style residential seven day licensed premises well known as an entertainment venue and extending to approximately 4000 square feet with a manager's flat overhead. There was good road frontage and a car park. In addition to its seven day intoxicating liquor licence the premises had the benefit of a public dance licence and a restaurant certificate. He was advised that the business carried on was a family run entertainment trade conducted approximately three nights per week which was geared towards the younger element with clientele coming from a wide catchment area to be entertained by well known cabaret/show business personalities. The turnover for the year ended 27th March 1995 was IR£177,000 of which IR£100,000 was derived from door receipts. The projected turnover for 1996 was IR£188,430 of which IR£125,960 was represented by door receipts. The premises are close to Derry city fronting on to a busy main road in a scenic coastal district and had potential for development. In his opinion the open market value of the Point Inn if fully operational at the dates given is as follows –

As at March 1995 €685,000

As at 17th February 2003 €1,150,000

50. In relation to the caravan park he had regard to the planning permission granted in April 1994, the existence of a grant from the International Fund for Ireland and the estimated cost of the development at €741,286. He based his valuation on an annual rent per site of €1,269. He assessed the value of the caravan park in his report as follows –

As at March 1995 €200,000

As at February 2003 €400,000

51. In evidence the witness said that he had updated his position as at the date of his evidence – November 2004. The licensed premises as they then existed have been considerably upgraded as a modern licensed premises up to modern day standards and was then for sale with an asking price of €2.5m. and an offer of €1.7m. has been received. These figures support the view which he formed when making his initial valuation of the potential of the licensed premises. The cost of bringing the original premises up to the present standard would be in the order of €750,000. He is aware that Mr. Morrissey, Valuer on behalf of the Defendant, in his report valued the premises in 1995 at €325,000. He agrees with Mr. Morrissey that an entertainment as opposed to a traditional licensed premises has a more limited market: however the premises could readily have been converted into a traditional licensed premises. Mr. Morrissey in his valuation took into account the reputation of the premises following the Plaintiff's conviction but the witness had not done so. He took the view that a prospective purchaser could distance himself from any reputation and that is in fact what happened when the premises were redeveloped. He did not envisage a purchaser having any unusual difficulty in getting finance to purchase the premises. He did not agree with Mr. Morrissey's approach in focusing on turnover figures per se and not considering potential.

52. With regard to the caravan park he had revised the figure which he placed on the same in February 2003. Over the past weeks he had obtained evidence of some sales of caravan parks in County Donegal. A seven acre developed caravan park with 50 serviced sites at Tulley Bay, Clonmany, Co. Donegal was sold in December 2000 for IR£600,000 (€762,000) equivalent to €108,857 per acre. On the 27th October 2004 a developed caravan park with 25 sites at Neim, Portnoo, Co. Donegal of 1.85 acres was sold for €1.43m. that is some €57,000 per site. In the light of these he has revised his valuation to €560,000 on the basis of a site with zoning for a caravan park. He arrives at this figure by applying a value of €70,000 per acre.

53. With regard to his historic valuation as at 1995 he has since learnt of the sale of a caravan park in Skerries, Co. Dublin in 1997: the site was 8½ acres zoned amenity lands and developed as a caravan park and achieved €381,000 or €44,000 per acre. The witness's 1995 valuation was less than €30,000 an acre.

54. The witness referred to an excerpt from the Practice Handbook of the I.A.V.I. dealing with licensed premises and which he wrote. This reflected the approach which he had adopted in relation to the Point Inn. With regard to the caravan park he would agree that the price of €1.43m. obtained for the site at Neim was a sensational price. However that site was obtained with a view to developing it as holiday homes. He is satisfied that the price achievable for caravan sites is almost as high as that achievable for holiday homes and his figure of €70,000 per acre takes this into account. Mr. Morrissey in his opinion quotes an annual charge of €1,000 or €1,100 per site for caravan sites with beach frontage and contrasts the Plaintiff's site as being isolated. The witness did not consider the site isolated as it was close to the foreshore on the peninsula and in a pleasant scenic area and while it has a rural aspect it is on a coastal route. Mr. Morrissey's report suggests a capital value of £20,000 per caravan site in a four star site. He postulates a value of between €10,000 and €15,000 per site for the Plaintiff's site giving a value between €400,000 and €600,000: against this would have to be set off the cost of upgrading the site to ensure that it is fully compliant with planning. Mr. Morrissey accepts that the value of €560,000 placed on this site would be appropriate if the site was fully compliant with planning permission and had appropriate grading.

55. Mr. Younge was cross examined. He was aware that the Point Inn and the was offered for sale in 1993 at IR£300,000. He considered this a low price. He accepted that a sale was not achieved at that price and that that was a relevant factor in valuing the premises as of 1995. He was aware that Mr. Shortt had offered the entire premises for sale in 1994/1995 at IR£500,000 and that while there was an interested party at IR£400,000 to IR£420,000 the premises were not sold. He was aware that Mr. O'Doherty, an Auctioneer advising the Plaintiff valued the caravan park as it was then at IR£40,000. He did not agree with Mr. Morrissey's approach in basing his valuation of the Point Inn on turnover as this ignored potential.

56. As to the current valuations Mr. Morrissey agreed with him that to upgrade the Point Inn to their present standard would have cost some €750,000. The premises as they now exist are of a much higher standard and radically different in terms of accommodation and turnover. The fact that the Point Inn had been developed bears out his opinion that the Point Inn had potential. The valuation of €1.15m. which the witness placed on the Point Inn was based on some 15 to 20 comparisons. The witness did not agree that the most secure way of valuing the Plaintiff's properties was to do so as of 1995.

57. The witness was aware that in the course of the malicious injury application appeal the Plaintiff's valuer placed a value on the caravan park of approximately IR£40,000. The witness in arriving at his valuation did not pay particular attention to the standard to which the site was to be developed. He agreed that the higher the standard the higher the cost of development. The witness agreed that the site at Portnoo differed in that it was a beach front property and in a popular area of Donegal and an area more popular than that in which the Plaintiff's site is situated. The Portnoo site was also developed to a very high standard. The witness was not in a position to give evidence as to the cost of upgrading the Plaintiff's caravan park to four star standard.

58. It was put to the witness that Mr. Morrissey would value the Point Inn as within the range €605,000 to €630,000 and that this figure is based on statistics available as to the increase in the price of alcoholic drinks since 1995 and statistics on numbers passing through doors at nightclubs. He disagreed with Mr. Morrissey's approach in that it focused exclusively on turnover as this was to ignore potential. The witness agreed that the comparisons he used for the Point Inn were not identical in that they operated as ordinary licensed premises throughout the week and as a nightclub on three to four nights a week.

59. In re-examination the witness said that it was possible to value licensed premises without any information as to turnover. Because the Point Inn operated on such a limited basis it had a greater level of potential for development. The witness did not necessarily distinguish between a beach front caravan park and the Plaintiff's site. In his valuation of the caravan park he has valued it as a site with the benefit of zoning.

Evidence of Des Peelo

60. Mr. Peelo is a Chartered Accountant. He prepared a report for the purpose of the hearing. He had seen a report prepared by Mr. Ray Jackson on behalf of the Defendant. Insofar as Mr. Peelo and Mr. Jackson gave evidence as to the capital value of the Point Inn and the caravan park I propose to ignore same in favour of the evidence of valuers called by the parties.

61. In respect of the Point Inn up to March 2003 the witness estimates the loss of net of tax profits at €533,062: Mr. Jackson on behalf of the Defendant gives a figure of €531,585 his figure however being in respect of a nine year period as opposed to the witness's eight year period. The witness was prepared to accept Mr. Jackson's calculations. As the difference between Mr. Peelo and Mr. Jackson is so small I propose to treat them as being in agreement and ascribe a figure of €550,000 to this head of damages for the period up to date.

62. With regard to loss of net of tax profits to date from the caravan park the witness's calculation is €187,458 as against Mr. Jackson's calculation of €38,000. In the course of cross examination the witness accepted that it was unlikely that the Plaintiff would

have been able to develop the caravan park and this element of the Plaintiff's claim was then abandoned.

63. The witness was referred to Mr. Jackson's calculation of losses and in particular to a sum of €178,131 which in Mr. Jackson's opinion should be deducted from any award to the Plaintiff. The sum was made up of the sum of €51,157 which he treated as received from the receivership and €126,974 received on foot of the malicious injury claim. He was asked if it was proper to set off these sums against the Plaintiff's claim. Mr. Peelo agreed that the sum of €126,974 is a proper set off against the capital value of the Point Inn and the caravan park. Mr. Jackson however set it off against the losses claimed generally rather than against the premises. The sum of €51,157 was applied in satisfying creditors and legal fees. Without further information the witness was uncertain in relation to the sum of €51,157 the proceeds of the liquidation. Had the Plaintiff not been charged and convicted there would have been no receivership.

64. The witness then gave evidence as to the general economic climate between 1992 and 1995. At the end of September 1992 the United Kingdom left the European Monetary System and interest rates increased dramatically. Ireland devalued at the end of January 1993. The currency system did not get resolved until March 1993 when interest rates began to stabilise. Throughout 1993 very few properties were sold or even put up for sale because of the uncertainty over interest rates. The market revival commenced in the Spring or Summer of 1994 and confidence came back to the property market. For most of 1993 and into 1994 the property market was difficult. There was a gradual recovery throughout 1994 beginning in urban centres and somewhat later in rural areas.

The Defendant's Case

65. The Defendant called two witnesses Mr. Ray Jackson a Chartered Accountant and Mr. Tony Morrissey an Auctioneer and Valuer.

Evidence of Mr. Jackson

66. Mr. Jackson handed in his report to the Court. In his view the Plaintiff had insufficient funds available to him to enable him to complete the campsite project. He considered the question of the capital value of the campsite to be one for a valuer rather than an accountant. In the witness's opinion the claim should be mitigated by the sum of €51,157 received from the receivership and €126,974 received from the malicious injury claim. As to the caravan park development he sees it as a pipe dream as the required finance was not in place. In his opinion the Plaintiff would not have been in a position to raise the necessary funds for the development of the same. In the witness's view in dealing with the capital value of the Plaintiff's business for the purposes of compensating him it would be appropriate to include the same at current value.

Evidence of Tony Morrissey

67. A report by Mr. Morrissey dated 17th February 2003 and two letters of the 26th October 2004 and 29th October 2004 were put in evidence. For the purposes of giving evidence he had inspected the site and had availed of information on turnover contained in the Plaintiff's discovery. He had examined the licensing history. He obtained information as to the manner in which the premises operated. With regard to the licences there were two endorsements on the same and the licences had not been renewed. He was aware that the premises were not insured. He investigated all sales of licensed premises in the Inishowen peninsula in the period January 1994 to December 1995. He spoke to the agents who had carriage of the sale of premises in the area in that period. Of nineteen premises offered for sale in that period only two had been sold and in respect of these he looked at the ratio between turnover and sale price. In relation to the Point Inn the profit margin on turnover was very much in line with the industry norm. Turnover and profit margin are important in arriving at a valuation and these will dictate the level of mortgage repayment which a purchaser could make. He valued the Point Inn as a going concern to include good will, seven day licence, fixtures and fittings but exclusive of stock. He took account of the Manager's accommodation overhead.

68. The witness had inspected the caravan park on the 4th September 2005 although on that date he had not been asked to value the same. He was aware of the sale of a caravan park at Neirn, Portnoo, Co. Donegal in October 2004 for €1.43m. The site had planning permission for 40 permanent sites and 20 tourist sites with ancillary accommodation. The purchaser intended to develop the same by building ten to twelve houses. The annual charge for a caravan site in Donegal for four star beach front sites is between €1,000 and €1,100 per site. Having regard to this he arrived at a value of €550,000. He did not consider the site at Skerries mentioned in evidence by Mr. Young as comparable: geographically it is different: it is sea front whereas he would describe the Plaintiff's site as lakeshore and beach front carries a significant premium. He regards the Plaintiff's site as isolated in that there is nothing around it in terms of another caravan site. Compared to other sites in particular Jack's Hole at Brittas Bay the site looked tired and needed money expended on it. A sea front site in Donegal could achieve €20,000 per site. The Plaintiff's site not being sea front would have a value of €10,000 to €15,000 per site. This gives a spread of values between €400,000 and €600,000. These figures relate to a developed planning compliant four star site.

69. On the basis of the two premises which were sold in the Inishowen peninsula he put a value of €325,000 on the Point Inn as of 1995. He availed of figures available from the Central Statistics Office which showed an increase of 50% in the average price of alcoholic drinks between 1995 and 2004 and he applied this to the turnover of the premises for drink sales. He did a similar exercise but with less information available from the Central Statistics Office in respect of door receipts. On these calculations the present turnover for liquor sales would be €146,655 net of VAT and door receipts €190,500 net of VAT. He applied the current turnover/profit ratio to these figures and that gave an overall value of €531,000. The overhead accommodation had a value between €75,000 and €100,000. Taking this into account he places a current value on the premises if they still existed in their original form at €630,000. With regard to Mr. Younge's valuation of the Point Inn as of 1995 if the premises could achieve the additional turnover which Mr. Younge postulated he would not disagree with his valuation. However the premises had been offered for sale and a purchaser had not been achieved at IRE£300,000 and Mr. Young would appear to have ignored this. With regard to Mr. Peelo's evidence as to the economic situation in 1992, 1993 and 1994 statistics showed that 2.7% of the stock of licensed premises in Dublin changed hands in 1992 while in the previous year it had been 6.9%. However the figures for 1993, 1994 and 1995 were 4.5%, 4.25% and 5.16% which suggests that the problems in the market had resolved. In calculating the current value of the caravan park he had not ascribed anything to the touring caravan sites: they are in the nature of short lets. The profit margin on sales of alcohol in rural areas is now 47% to 55%. He accepted that the profit margin at the Point Inn was 77% in 1995 and 76% in 1994 and that that was in line with the industry norm for entertainment venues. However the operational overheads for entertainment venues are higher than on a traditional pub. Further the figures of 77% and 76% profit are distorted because they include door money. In a rural traditional pub one would expect a profit margin of 35% to 45%. The witness agreed that a purchaser would be impressed with the increase in turnover reflected in the accounts for the Point Inn and would also have regard to potential for further growth. In the witness's opinion the market for entertainment venues was much smaller than for traditional licensed premises. In arriving at a value the witness had applied a figure of 1.25 times turnover on drink and food giving a value of €325,000. The witness was questioned as to whether he had taken into account as a factor the Northern Ireland ceasefire or the celtic tiger: from his replies it would appear that he had not but that these had no relevance to the manner in which he arrived at a current value for the premises having based his valuation on his experience of the ratio between turnover and profit margins.

Assessment of the Evidence

A. The Plaintiff's Evidence

70. I accept the Plaintiff's factual account as to what occurred and the effect upon him of his being charged, of his abortive trial, his trial and his imprisonment and the situation which he faced and still faces. I am of the view that insofar as the Plaintiff has not yet been vindicated in the eyes of the community the award of damages in this action will fully vindicate him. I do not propose making an award of general damages into the future. His account was not challenged in cross examination. The Defence essentially confined itself to arguments on causation and remoteness of damage and quantum in relation to special damages. Thus it was argued that the Defendant was not liable in respect of the fire at the Point Inn and the consequences of the same the receivership and its consequences.

71. I am satisfied that the Plaintiff has established in evidence causation, that is the required factual nexus between the events of which he complains, principally his conviction, and the closing of the Point Inn and the fire there and its sale together with the caravan park by the Receiver. The fire at the Point Inn was temporally related to the Plaintiff's conviction. The Gardai certified the fire as subversive I am satisfied that it occurred by reason of a perception that the Plaintiff was involved in dealing in drugs fortified by the conviction. The Plaintiff received threats from the IRA and closed the premises. As a matter of probability I am satisfied that the threat was ultimately carried out in terms of the burning down of the premises: however this occurred only after his conviction and as a matter of probability the conviction was the proximate cause, the circumstance that triggered this. Incidentally Donegal County Council shared this view. By way of defence to the Plaintiff's malicious injury claim it raised section 12 of the Act and only withdrew this when the conviction was overturned by the Court of Criminal Appeal. The fire and the receivership occurred at a time when the Plaintiff was in prison. Were he not in prison if on the basis of delay in carrying out the caravan park development the International Fund for Ireland had sought to recover the grant I am satisfied that the Plaintiff could have satisfied their claim by raising a mortgage on his family home and in which events the receivership would not have occurred and as a matter of probability the Plaintiff's entire enterprise would not have collapsed. I am satisfied that these losses were foreseeable. Earlier in this Judgment I have referred to letters dated the 19th February 1993 from the Plaintiff to the Minister for Justice and the 13th October 1993 to the Gardai at Muff referring to the IRA threats. This correspondence is sufficient to make the fire which ultimately occurred foreseeable. I do not ignore the circumstance that threats were received after media publicity in relation to the Garda raid on the premises on the night of the 3rd/4th August 2002 but I consider it significant that nothing occurred to give effect to the threats until immediately after the Plaintiff's conviction.

B. The Evidence of Mr. Peelo and Mr. Jackson

72. Effectively their evidence was confined to one element of quantum namely the loss of net of tax profits of the Point Inn. They were effectively add idem and on the basis of the same as indicated above I propose to assess this loss at €550,000.

C. The Valuation Evidence

A. The Caravan Park

73. In his report of February 1993 Mr. Younge the Plaintiff's Valuer valued the caravan park at €400,000. He revised this in his oral evidence on the basis of comparisons to €560,000 as a site appropriately zoned and with the 1994 permission in place. While the comparisons to which he referred were of assistance I have come to the conclusion that he did not sufficiently take into account the differences between those comparisons and the subject site. Particularly I accept the evidence that the subject site is somewhat less attractive than the sites at Tulley Bay and Neim to which he referred and I would discount somewhat his valuation on this account. The site at Nairn was sold as a site for housing/holiday home development and realised a sensational price. Each of these sites was sold in a developed state and I have no satisfactory evidence of the current cost of developing the Plaintiff's site.

74. Mr. Morrissey the Defendant's Valuer approached his valuation on a somewhat different basis. He sought to place a value on the site as developed in accordance with the 1994 permission and arrived at an upper figure of €600,000. To arrive at the value of the site in its present condition from this figure would have to be deducted the cost of developing it which in 1994 was estimated at IR€560,412 but with credit for the outstanding portion of the International Fund for Ireland grant €146,000. I have no evidence of the current cost of development. In addition Mr. Morrissey ascribed no value to the touring caravan sites which were provided for in the 1994 permission: I have no evidence of appropriate value to be ascribed to such a site. Again the evidence before me is that of the works carried out pursuant to the 1989 permission for the caravan park portion of same would have reduced to some extent the cost of completing the development envisaged by the 1994 permission. For the purpose of the exercise of evaluating Mr. Morrissey's evidence I propose taking as the present value of this work the amount certified by the Plaintiff's architect IR£150,000 or approximately €190,000 and allow one half as being of benefit to the 1994 development. On the basis of Mr. Morrissey's evidence to arrive at a valuation an exercise such as the following would require to be carried out:

Valuation at €15,000 per acre per permanent site €600,000

Valuation of touring caravan sites (estimated) say €100,000

€700,000

Less net cost of development

Gross costs as per 1994 estimate €710,000

Less

Balance International Fund for Ireland grant €185,000

One half value of works under 1991 permission €95,000

€280,000 €280,000

Net Cost of development €430,000 €430,000 _____

Net Value of site €270,000

75. I do not have the evidence to conduct this exercise and I am satisfied that there are too many imponderables in this calculation for me to rely upon the same and accordingly I propose to have regard to the approach in evidence of Mr. Younge. I propose to discount the same somewhat as I believe he has in arriving at a valuation failed to take into account sufficiently differences in location between the comparisons which he relied upon and the Plaintiff's site. I also take into account that the site at Neim was acquired for development as housing/holiday homes and achieved a spectacular price. Mr. Younge himself regarded the price obtained as including a premium. I also take the view that any valuation of the caravan park would be influenced by the cost of development at current figures and I have no evidence of this. Doing the best I can in these circumstances I propose to ascribe a value to the caravan park as of the date of hearing of €350,000.

The Point Inn

76. In his valuation of the Point Inn Mr. Younge had regard to the premises in their present condition they having been extensively re-developed. Both Mr. Younge and Mr. Morrissey have agreed that an appropriate figure for the costs of that re-development is €750,000. At the date of his valuation November 2004 the premises were for sale with an asking price of €2.5m. and an offer of €1.7m. had been received. These figures are used in support his valuation in his report of February 2003 of €1.15m. for the premises. Mr. Younge understood that the Plaintiff operated the premises as an entertainment venue on three nights per week while the evidence was that the bar operated three nights per week and the discotheque one night: this misinformation would have had an effect on Mr. Younge in estimating the potential of the business carried on at the Point Inn. Mr. Morrissey approaches the valuation on a different basis concentrating exclusively on turnover. He did not take into account potential. He took into account the stigma attached to the premises by reason of its licensing history – two endorsements and an objection to the renewal of the licences pending. Upon this basis he placed a valuation on the Point Inn of €630,000.

77. I am satisfied that some adjustment must be made to the approach of each of the Valuers. It is unrealistic to think that a purchaser of the premises would invest €750,000 in developing the same after purchase yet at the time of purchase would ascribe to the vendor the full enhanced value of the premises resulting from such investment in terms of the premises themselves and the increased trade which he would undoubtedly expect to result. Put another way the purchaser is carrying the risk of a substantial investment and would expect a return on the same. He would value the premises in their condition at the date of purchase, add a premium for potential and would I have no doubt expect at the completion of reconstruction to have premises worth more than the total of the purchase price and the cost of reconstruction to reflect the risk undertaken. On the other hand I am satisfied that Mr. Morrissey erred in not allowing some element for potential in his valuation. I admit that there is a difficulty in doing so. The Plaintiff is a Chartered Accountant and clearly on his evidence an ambitious businessman with experience not just of the licensed and entertainment trades but also of property development in Canada, a poultry business and an aquaculture business. Notwithstanding this the licensed premises traded only at weekends and the discotheque one night per week. If the potential was there to develop these businesses I would have expected evidence of attempts to expand the opening hours by trading as licensed premises every evening and as a discotheque two or three evenings per weekend but there is no such evidence. The explanation it may be is to be found in correspondence introduced in evidence in which the Plaintiff attributes 90% of his trade to persons travelling from Northern Ireland and it may be that one could not expect them to travel other than at weekends. This suggests to me that the potential was limited. I am not satisfied as a matter of probability that had the Plaintiff continued to operate the licensed premises that he would have developed it in the same manner or to the like extent as it developed under the purchaser. The Plaintiff's focus was on entertainment. The purchaser of the premises developed the same as a licensed premises with sixteen bedrooms and a seventy seater restaurant and function room which suggests to me that the purchaser operated the premises essentially as a small licensed hotel. The approach which I propose to adopt is to take Mr. Morrissey's figure based on turnover and adjust the same as best I can to take into account potential which he omitted and stigma in respect of which he made a deduction. I have no evidence of the amount of the deduction made by Mr. Morrissey in respect of these factors. Insofar as stigma is concerned I do not believe that the existence of two endorsements would concern a purchaser as these would be removed from the licence upon transfer to him. With regard to the objection to the renewal of the licence what in fact happened is that the objection was withdrawn when an application for renewal was made by the purchaser: it appears that the purchaser had received assurances to this effect. In these circumstances it is probable that a purchaser from the Plaintiff would have taken the same view. As to potential I note that the premises is situated close to Derry City from where 90% of its custom is derived and fronts on to a busy main road. Doing the best I can on the evidence available to me I propose to ascribe a value to the Point Inn at today's date of €700,000. However in awarding damages I am satisfied that it is appropriate to deduct from this sum the amount of the malicious injury award €126,974. In addition the Point Inn and the caravan park were sold by the Receiver for €193,040.

78. The Plaintiff received a benefit from the proceeds of sale as follows –

(i) Repayment of grant to International Fund for Ireland €95,250

(ii) Payment of creditors €21,555

79. These sums must be deducted in arriving at the loss to the Plaintiff. The balance of the monies coming to the Receiver were applied as follows –

Receiver's fees €43,084

Legal Fees €40,244

Balance paid to the Plaintiff's Solicitors

and retained by them €8,770

80. As I take the view that the Receivership as a matter of probability would not have occurred were it not for the events complained of in these proceedings the International Fund for Ireland relying inter alia upon the Plaintiff's conviction and the fact that the Point Inn had been burnt down as grounds to appoint a receiver these amounts should not be deducted from the capital value of both premises the Point Inn and the caravan park as I have assessed them.

81. The evidence before me is that the Plaintiff would have been unable to develop the caravan park in accordance with the 1994 permission and in these circumstances the grant to the International Fund for Ireland would have been repayable. It was in fact repaid out of the receivership.

82. In these circumstances damages flowing from the loss of the Point Inn and the caravan park are as follows –

Caravan Park €350,000

The Point Inn €700,000

€1,050,000

Less proceeds of malicious injury claim €126,974

Less benefit received from receivership

(i) Repayment of grant €95,250

(ii) Payment of creditors €21,555

€243,779 €243,779

€806,221

The Claim at Common Law

83. The claim at common law is in relation to events which occurred prior to the Plaintiff being charged which date I have taken as 1st October 1992. The events can briefly be summarised as follows –

1. The attendance at the Point Inn on the 18th April 1992 of Sergeant McPhillips and his regular attendances thereafter with a small number of Gardai to inspect the same.

2. Roadblocks on the main road from Derry to the Point Inn on two occasions. While the roadblocks may have been erected on more than two occasions I have direct evidence of just two.

3. The raid on the Plaintiff's premises on the night of the 3rd/4th August 1992 by a large number of Gardai and their conduct in the course of such raid.

84. There are a number of matters which I consider relevant. When the Plaintiff re-opened his premises as the Dungeon on the 18th April 1992 it already had a licensing history. There were two endorsements arising out of sales after hours. The Plaintiff admitted that at times he had not obtained a special exemption order but nonetheless carried on business after ordinary licensing hours. Having regard to this I am satisfied that the attendances by Sergeant McPhillips on the premises with a small number of Gardai were appropriate to ensure compliance with the licensing laws. While subsequent events might raise a suspicion that the attendances were otherwise motivated I am not satisfied as a matter of probability that this was so.

85. With regard to the two roadblocks of which I heard evidence I am not satisfied that these were directed otherwise than at persons who intended to attend at the Plaintiff's premises. Their objective was to intercept persons who might have with them controlled drugs either for sale or consumption. The first such roadblock occurred on the 7th June 1992 after the Plaintiff's premises had re-opened as the Rave in the Cave. While I am satisfied that the Plaintiff had no knowledge at that time of the connotation of "rave" I am satisfied that that word at that time among the generation availing of the Plaintiff's premises enjoyed a connotation with drug use in conjunction with dancing. For this reason I am not satisfied that the setting up of these two roadblocks was motivated by any improper purpose: it may equally have been a legitimate exercise on the part of the Gardai to prevent the sale or consumption of controlled drugs on the premises there being a legitimate concern that the name of the premises might attract persons intent on supplying or consuming controlled drugs.

86. Finally with regard to the events on the night of the 3rd/4th August 2002 this was a search carried out pursuant to a search warrant. The effect of the evidence is that if such an operation is to be successful an element of surprise is necessary and it is necessary in effect to saturate the premises with Gardai so as to prevent those persons in possession of drugs disposing of the same in the toilets or by discarding them on the floor. On the evidence I am not satisfied that the Garda operation was an abuse of the powers conferred by the search warrant. Again while subsequent events might suggest an improper purpose I am not satisfied as a matter of probability that this was so. There is however a complaint that the operation was unnecessarily heavy handed. Some furniture was destroyed and an emergency exit was broken down with a sledge hammer from inside. I have no evidence as to special damages which were incurred as a result of this conduct and which conduct could not reasonably be said to be incidental to the powers conferred by the search warrant. I propose to award damages in respect of the same under the heading of breach of constitutional rights. In the absence of evidence as to the cost of remedying the damage I propose to award the sum of €5,000 by way of general damages.

Claim under the Criminal Procedure Act 1993 section 9(1)

(i) General Damages

87. In terms of general damages it seems to me appropriate to regard the claim for the purposes of assessing damages as analogous to one for defamation and accordingly the dicta of the Supreme Court in *De Rossa v Independent Newspapers plc* 1999 4 I.R. 432 are relevant. Thus it is not necessarily appropriate in arriving at an award to have regard to the level of damages for personal injury and the award should be sufficient to operate as a vindication of the Plaintiff to the public in general and in particular to the community in which he lives. The Court should make an overall award which whilst having regard to the level of awards made in respect of the several torts comprised in the claim reflects the wrong suffered by the Plaintiff. The major elements in the account given by the Plaintiff for which he requires to be compensated are the following –

1. The effect upon the Plaintiff of being charged, tried, convicted and imprisoned in terms of stress and anxiety. I must have regard to his first trial having been aborted and the second and his appeal against conviction, his two applications

under the Criminal Procedure Act 1993 to the Court of Criminal Appeal, his involvement in the licensing issues, his involvement in the malicious injury application and his involvement with the Receiver. All of these I am satisfied imposed upon him great stress and anxiety.

2. The period of 27 months for which he was detained in prison taking into account the conditions under which his sentence was served. I am satisfied however in this regard that awards of damages in cases involving short periods of false imprisonment for example to a Plaintiff wrongfully suspected of shoplifting are of no assistance: I am satisfied that it is not appropriate to extrapolate from such awards on a time basis and attempt thereby to produce a multiplicand.

3. The effect upon him physically and mentally and in terms of personal injury of his imprisonment.

4. His exclusion from family life.

5. The effect upon his reputation and standing in his community. With regard to the latter account should be taken of the odium which attaches to the offences of which he was wrongfully convicted. I must also have regard to the evidence that while his successful applications to the Court of Criminal Appeal have rehabilitated his reputation in the eyes of many within the community in which he lives there are others who harbour an attitude that there is no smoke without fire and continue to regard him differently than they did in the period prior to the circumstances giving rise to this claim. However I take the view that the award in this case will finally vindicate the Plaintiff.

6. The Plaintiff suffered personal injury as documented in the medical report and outlined by him in evidence. When he sustained injury there was delay in referring him to hospital.

7. The Plaintiff is a Chartered Accountant. His conviction led to his membership of his Institute being under threat.

8. He was 57 years of age when the events of which he complains commenced. His final vindication comes with the award of damages which he will receive in this action and his suffering can fairly be said to have spanned a period of twelve years. He entered prison at the age of 60 a time of life when it must be expected that the rigours of prison life would have a greater effect upon him than on a younger man. While in prison he had hanging over him a further six charges with a real possibility of his being convicted and having a further lengthy prison sentence imposed upon him and which threat was not removed until 2000.

88. Taking all the circumstances into account I award the Plaintiff the sum of €500,000 general damages.

(ii) Aggravated and Exemplary Damages

89. It can be said that both aggravated and exemplary damages are awarded in respect of the external circumstances accompanying the cause of action. The former are measured on the basis of compensation. They represent additional compensation to a Plaintiff where his sense of injury is heightened by the manner in which or the motive for which the act giving rise to the claim was committed. Such damages represent a recognition of the added hurt or insult to a Plaintiff who has been wronged and a recognition of the cavalier or outrageous conduct of the Defendant. They can extend to conduct subsequent to the conduct which gives rise to the claim. See *Conway v INTO* 1991 2 I.R. 305. Having regard to the evidence adduced on the application for a certificate pursuant to the Criminal Procedure Act 1993 section 9(1) it is fair to say that the Plaintiff was sacrificed in order to assist the career ambitions of a number of members of the Garda Síochána. However the Court must be diligent to ensure that there is no element of double compensation. The award of general damages by analogy to the common law in relation to those causes of action which the Defendant's conduct would constitute is intended to take account of injury to feelings, loss of dignity, humiliation, frustration, helplessness and despair including in the case of a claim under the 1993 Act despair at the failure of the criminal justice system. In these circumstances I do not think it appropriate to make an award under this heading.

90. As to exemplary damages I adopt from the Law Reform Commission Report on Aggravated Exemplary and Restitutionary Damages a passage at paragraph 1.01 –

"The aim of exemplary damages is twofold: to punish the Defendant and to deter both the Defendant and others from engaging in conduct that is extremely malicious or socially harmful, in Lord Devlin's own words "to teach a wrongdoer that tort does not pay". An exemplary damages award may also be intended to vindicate the rights of the Plaintiff or as Lord Devlin stated in *Rookes v Barnard* to vindicate the strength of the law. It has the additional, incidental effect of providing compensation and satisfaction to the Plaintiff. In the context of the Constitution the particular purpose of exemplary damages is to vindicate and defend individual constitutional rights, to punish the Defendant's disregard of them and to deter their breach."

91. While an argument exists as to the rationality of awarding exemplary damages where liability is vicarious the Supreme Court had no difficulty in making such an award in *McIntyre v Lewis & Others* 1991 1 IR 121: in respect of a claim for assault, false imprisonment and malicious prosecution against Gardai and the State the Plaintiff was awarded compensatory damages of IR£5,000 and exemplary damages of IR£20,000. However the Court must also be conscious that it does not award double compensation here. In the circumstances of this case there was an outrageous abuse of power by the Garda Officers involved. Evidence was planted. Perjured evidence was relied upon. It had not been expected by them that the Plaintiff would be sent to prison but when he was they took no step to remedy the situation. I propose to mark this conduct. I am satisfied that the circumstances of this case fully justify an award of substantial exemplary damages. However again I must be conscious of the risk of awarding double compensation. I propose to award the Plaintiff under this heading the sum of €50,000.

The Award of Damages

General Damages at common law €5,000

General Damages under Criminal Procedure Act 1993

Section 9(2) €500,000

Exemplary Damages €50,000

Special Damages under Criminal Procedure Act 1993 Section 9(1)

Legal Fees €12,650

Loss of the Point Inn and the caravan park €806,221

Loss of net of tax profits at the Point Inn €550,000

Total: €1,923,871
