

Appeal No. VA05/3/061

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Personal Injuries Assessment Board**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office(s) at Lot No. Block 1, Tallaght, Tallaght Springfield, Tallaght West, County Dublin.

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Leonie Reynolds - Barrister**

**Member**

**Maurice Ahern - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 25TH DAY OF JANUARY, 2006**

By Notice of Appeal dated the 27th day of July, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €735.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"The rateable valuation is excessive having regard to the tone of the list for comparable office accommodation in the locality. The occupier is exempt from rates having regard to the provisions of the Valuation Act 2001 and particularly Section 15(3)."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25<sup>th</sup> October, 2005. At the hearing the appellant was represented by Mr. Paul Coughlan, B.L., instructed by Ms. Eve Mulconry of Arthur Cox, Solicitors. Mr. Brendan Conway, B.L., instructed by the Chief State Solicitor, appeared on behalf of the respondent and Mr. Francis Twomey, Valuer Grade 1 in the Valuation Office, was also present.

### **The Issue**

At the outset Mr. Coughlan confirmed to the Tribunal that the only issue was that of the rateability of the subject property, the quantum having been agreed by the valuers prior to hearing at €685 without prejudice to his client's contention that the property was not rateable having regard to section 15(3) of the Valuation Act 2001.

### **Appellant's Evidence**

Mr. Coughlan then opened the appellant's submissions to the Tribunal. The submissions had been furnished in writing to the Tribunal prior to the hearing.

He submitted that the Personal Injuries Assessment Board (hereinafter referred to as "the Board") was an "office of State" within the meaning of Section 15(3) of the Valuation Act, 2001 and thus the relevant property was in the direct occupation of the State. He referred to the Tribunal's decision in **VA04/2/038 – Legal Aid Board v Commissioner of Valuation** ("the **Legal Aid Board** case") wherein the Tribunal enumerated two primary principles in relation to an office of State:

1. It must be close to the epicentre of Government policy.
2. If it is to qualify as an office of State there must be a certain level of integration and control by the State.

He said that the circumstances in the instant case were on all fours with the **Legal Aid Board** case. There was only one differentiating factor and that was a difference without distinction, namely the question of the staff not being civil servants. That was not determinative in the **Legal Aid Board** case and he would be calling evidence to demonstrate that the conditions and terms of employment of the staff of the Board closely mirrored those of civil servants and so were almost identical with those of the **Legal Aid Board**.

He pointed out that the functions of the Board were clear and are set out in detail in the Personal Injuries Assessment Board Act, 2003. They are virtually on all fours with the functions identified in the **Legal Aid Board** case.

He submitted as follows: The Board was established by Section 53 of the Personal Injuries Assessment Board Act 2003 as a body corporate with perpetual succession and an official seal and has powers to sue and may be sued, in its corporate name, and has with the consent of the Minister for Enterprise, Trade and Employment (hereinafter called “the Minister”) and the Minister for Finance, power to acquire, hold and dispose of land and interest in land and to acquire, hold and dispose of any other property. It is, subject to the provisions of the Act, independent in the performance of its functions.

Section 54 of the Act deals with the functions of the Board, the Board having all necessary powers to ensure the performance of its functions under the terms of the Act.

Under section 55 of the Act the Minister may, with the consent of the Minister for Finance, confer on the Board by order such additional functions connected with the functions for the time being of the Board as he or she thinks fit.

Board Members are appointed by the Minister and are restricted to 11 in number; the period of membership is fixed by the Minister, is restricted and shall not exceed 5 years.

The Chairperson and Vice-Chairperson are appointed by the said Minister. A member of the Board may, at any time, be removed by the Minister for stated reasons.

The Chief Executive of the Board is appointed by the Board with the consent of the Minister and may be removed from office by the Board for stated reasons. He/She is accountable to the Committee of Public Accounts established by the Dáil and to other Oireachtas committees.

The staff of the Board are appointed by the Board with the consent of the Minister and the Minister for Finance. They are not civil servants, but are public sector employees.

The grades and numbers of staff, and the appropriate level of remuneration for each grade are determined by the Board again with the consent of the Minister and the Minister for Finance. They are paid out of moneys made available to the Board by the Oireachtas. The Minister can transfer members of his staff to the Board.

The members of the Board and the members of staff, acting in good faith, are indemnified against all action or claims in respect of the discharge of their functions.

Finance is granted to the Board by the Minister after consultation with the Board and with the sanction of the Minister for Finance out of moneys provided by the Oireachtas and for the purpose of expenditure by the Board in the performance of its duties.

The Board also has the power to borrow money for current expenditure again with the consent of the Minister and the Minister for Finance.

The Board's accounts must be submitted to the Minister on demand and, whenever requested, the Minister may examine the accounts and books of the Board.

Every year accounts must be submitted to the Comptroller and Auditor General for audit.

Annual Reports must be submitted to the Minister after the end of each financial year and the Minister must lay copies of these reports before each House of the Oireachtas.

The principal functions of the Board are set out clearly in Section 54 of the Act.

Section 3 sets out the civil actions to which the Act applies. Section 11 deals with the procedures for application for assessment and Section 20 deals with the provisions relating to the making of an assessment.

Parties involved in an assessment by the Board have 28 days to indicate whether or not they accept the assessment. If the claimant fails to state acceptance or rejection in writing in response to the statutory notice then he is deemed not to have accepted it. On the other hand, if the respondent fails to indicate acceptance or rejection then he/she is deemed to have accepted it.

If the claimant or respondent indicates rejection then the Board must issue a document, referred to in the Act as an authorisation, enabling the party concerned to proceed to the court in the normal manner. It does not oust the jurisdiction of the courts. It is a radical new departure in assessing damages for personal injuries. The Board cannot be avoided, however, as it is the first port of call.

The functions are not commercial in nature like Aer Lingus, ESB etc. The Board is taking on a task hitherto the sole preserve of the courts. It does not exclude the courts, it spares the courts and serves the public good – the common good. Its functions relate to matters of law and justice. The Board applies the same principles of law as are applied in the courts.

In relation to the submissions made by the respondent Mr. Coughlan stated that Mr. Conway was attempting to reduce what the Board does. This was wrong, he said. The Board was not engaged in “private matters”, namely civil suits resolution. They were not an arbitrator – like in a building contract. They were established under statute. He then referred to the comment at the end of Paragraph 2 of the Respondent’s Submissions, namely that the Appellant was *“no more an office of State than a solicitor, accountant, witness or other person involved in any civil action which falls within the remit of the Personal Injuries Assessment Board”*. Mr. Coughlan described this statement as astonishing. A solicitor or accountant did not require a government minister to do acts in relation to his business and he certainly could not make orders in the same manner as the courts or indeed the Board.

### **Appellant’s Witness**

Ms. Helen Moran, Director of Business Support Services in the Board, having taken the oath, stated that the Board’s front line services were outsourced to a company in Clonakilty which acted as a help desk. She further said that when the Board was set up staffing grades (all civil service equivalents) and numbers were determined by the Board in consultation with the Minister and with the consent of the Minister for Finance. In reply to Mr. Coughlan she stated that when more staff were needed the Board had to go back to the Minister for sanction. They could not advertise posts without the prior consent of the Minister. A précis of Ms. Moran’s evidence had been handed to the Tribunal prior to the hearing.

Mr. Conway said that he did not wish to cross examine Ms. Moran.

### **Respondent's Submission**

Mr. Brendan Conway, BL, opened the respondent's submissions, a copy of which had been furnished in writing to the Tribunal prior to the hearing. He submitted that not every state agency is an "office of State" pursuant to Section 15(3) of the Valuation Act, 2001. Criteria must be identified. The Valuation Tribunal had attempted to do this in the **Legal Aid Board** case and the criteria identified there were not necessarily exhaustive and might be supplemented or reduced in the future.

An "office of State", he said, must be something that could be identified reasonably closely with a Department of State i.e. have a level of ministerial control and integration. Secondly it must have a government-type function.

In the case of the Personal Injuries Assessment Board it was submitted that the Board fell to be categorised as an arbiter in private, civil dispute and was therefore not identified as an "office of State". It could not be categorised as "government type business" for the reason that under the Doctrine of Separation of Powers and as a matter of fact, private civil dispute resolution was not the business of Government. Mr. Conway then proceeded to assess the Board against the criteria identified by the Tribunal in the **Legal Aid Board** case, as follows:

**Function:** The Board conducted government-type business but it could not be taken that the Board was involved in government business simply because it dealt with law and justice. It must be so involved in such a way as could be categorised "government type" business as carried out by the Executive as in a Department of State and not by an Organ of State (e.g. the courts)

**Staffing:** The Board did not employ civil servants.

**Closeness to the epicentre of government policy:** Mr. Conway said there was no basis for this argument in relation to the Board. Government policy was set and administered by the Executive established under the Constitution. Government Departments functioned on behalf of the Executive. The Board, he said, was not within "an ass's roar" of the epicentre of government policy. The Board was on a par with a national school in the country. It operated under the broad authority of government policy. The Board was nothing more than a State

agency. The State set up the Board as an actor in the legal process of the state and it was not an organ of State.

**Integration with and control by the State:** Mr. Conway said that there was undoubtedly strong government control but that only identified the Board as a State agency. All the control referred to related to housekeeping. The Board was not controlled by any Minister in its core function of arriving at assessments of amounts of damages due in private, civil actions. The purpose and function of the Board could not reasonably be stated to be closely associated with any Department of State. Private, civil disputes could not be so categorised. The functions of the Board were more comparable to those of any private legal practice than to any function of government business. He maintained that the Board under Section 53 of the Act was independent in the performance of its functions. He also pointed out that there was no section in the Act giving the Minister power to make general directives on policy unlike the position in the **Legal Aid Board** case.

The staff of the Board, unlike the staff in the **Legal Aid Board** case, did not have civil servant status. The Board did not have power to employ solicitors unlike the position in the **Legal Aid Board** case.

Commenting on Mr. Coughlan's submission Mr. Conway said it was never a function of government to be involved, as the Board was, in assessment of compensation between private parties; the statement that the Board was involved in matters of law and justice and in functions hitherto the preserve of the courts was too broad and in any case, the courts were out of consideration here being an organ of State; there was no evidence of ministerial control in the day-to-day operations of the Board as claimed by Mr. Coughlan nor was such control provided for in sections 53 and 54 of the Act.

In response Mr. Coughlan reiterated his arguments stating that the Board met all the criteria set by the Tribunal in the **Legal Aid Board** case. Mr. Conway was trying to limit section 15(3) to Departments of State and to equate "Department" with "office" but the section used the words "Department or office of State" where "or" was disjunctive. The State must order its business and the courts carry out functions of the State. "State" could not be cut down to mean government or government department. Mr. Conway ignored the financial control of the Board the funding of which was a control factor. With regard to the absence of ministerial

policy directives in this case Mr. Coughlan said it was incorrect to interpret the Tribunal's determination in the **Legal Aid Board** case as meaning that a body was not an office of State if there were no such policy directives.

## Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings:-

1. The Board is a separate legal corporation with perpetual succession established under the Personal Injuries Assessment Board Act, 2003. It has power to sue and may be sued under its corporate name.
2. There is a very strong degree of ministerial control.
3. The Act does not give the Minister power to issue general directives as to policy. However the Minister and the Minister for Finance have to be consulted in respect of nearly all the Board's functions and on nearly everything carried out by the Board. The fundamental objects of the Act the Board works under give the Minister full control and authority.
4. All the members of the Board are appointed by the Minister for a certain period and are paid from funds made available by the Oireachtas and are under the control of the Minister and the Minister for Finance. The Chairperson and Vice-Chairperson are appointed by the Minister and with the consent of the Minister for Finance.
5. All accounts of the Board must be submitted to the Comptroller and Auditor General for audit in each financial year and reports must be sent to the Minister and copies laid before each House of the Oireachtas. Other State bodies of a commercial nature are not obliged to do this.
6. All expenses incurred by the Minister in the administration of the Act are paid out of funds provided by the Minister. The Board being a non commercial body gets its funding from the Oireachtas and with the consent of the Minister for Finance.
7. Two Governments Ministers are involved in nearly all aspects of the functions of the Board.
8. The members of the Board and employees are not civil servants. They are public sector employees all appointed and regulated by the public law and for the most part involving ministerial consent.



9. The modus operandi of the Board, unlike other State bodies of a commercial nature, is closely linked to three organs of State, the Executive, the Legislature and the Comptroller and Auditor General. This indicates a very high degree of integration and control by the State, particularly as regards funding, accountability and appointments to the Board and of staff.
10. The Minister has to be consulted on nearly all functions of the Board and this indicates, in the Tribunal's view, that such functions are close to the epicentre of Government business.
11. The Board is a body acting in the interest of the common good and in the interest of the State in setting up a system for making assessments of compensation in personal injuries cases without the need for legal proceedings.

**Determination**

In view of the aforesaid the Tribunal concludes that the Personal Injuries Assessment Board is an "office of State" within the meaning of Section 15(3) of the Valuation Act, 2001 and is accordingly exempt from paying rates.

And the Tribunal so determines.