

Opening Statement of Michael Kingston

1300 29 January 2021 Committee Room 4, LH2000, Leinster House

The Joint Committee on Transport and Communications Networks meeting regarding Pre-legislative scrutiny of the General Scheme of the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill 2020.

I would like to thank the Chair and all members of the Committee for the opportunity to appear today, and the Committee Secretariat for their enormously hard organizational work and for affording me such courtesy and assistance in amongst the difficulties of this COVID 19 pandemic. I deeply commend the Committee members for the earnest manner in which you are continuing the business of Ireland on behalf of Irish society.

The fact that we are here today is symptomatic of that work, that desire to ensure our citizens are afforded the opportunity to be heard in the development of important legislation. The Committee has of course read my correspondence dated 4th January 2021 and my briefing Note. I am accompanied today by barrister, Ciaran McCarthy.

We come here with solutions in order to help the Committee and indeed the Government, through the Transport Department, to get this legislation right. I say that the Department of Transport must take a step back, and listen, so that collaboratively we learn from the mistakes of the past, and work together for a better future, one that will save lives in the maritime community: our merchant seafarers, pleasure craft users, fishers, and emergency services; one that will protect the environment, and will save millions in wasted resources surrounding unnecessary tragedies.

I make it clear that, although at this stage I have quite a lot of experience working with multiple world Governments, International Organizations, and the United Nation's International Maritime Organization, as set out in my letter, I appear here today in my personal capacity.

But I also come here with a very heavy burden on my shoulders, one that I did not ask to carry, but that my life's work, given the circumstances I evolved into, in my own father's tragic death in the Whiddy Island Disaster in 1979, lent to many people contacting me to help them, people from all over Ireland, from all your constituencies, who have lost beloved relatives or been involved in accidents, where they have not got to the bottom of what happened or are confused by the investigative process. They have heard me explaining continuously the importance of implementing maritime safety regulation correctly in Ireland, including the issue that is before us today. Ciaran McCarthy has echoed those sentiments. I have also been contacted by a multitude

of Department officials, MCIB investigators, former MCIB investigators, and former Department surveyors, with deep reservations about the current system, and its short comings. The CJEU Judgment of 09 May 2020 has affirmed what was being said. I would like to pay tribute to their bravery in putting their trust in me, and I would like the Committee to know that they, like me, appreciate your engagement and vest their faith in you, in our democracy. Because, until you acted, there has been a very serious democratic deficit in the manner in which the Department of Transport have pursued maritime casualty investigations. That includes the misleading, unwittingly, of this very Committee and the Oireachtas by successive well intentioned Ministers and MCIB chairpersons, regarding the independence of the MCIB, and more recently the findings of the CJEU in respect of impartiality.

This legislation has to be fit for purpose, given the very serious consequences of the past, of the Departments determination to ignore international best practice and, as we know, ultimately, ignore international mandatory law, first the United Nation's 2008 Casualty Investigation Code, and then the 2009 EU Directive, resulting in the CJEU Judgment, knowing this to be wrong, and despite clear direction to rectify it by Minister Noel Dempsey in 2009, and it is clear that it was not brought to the attention of the incoming Minister in 2011, who unwittingly signed off on the incorrect transposition into Irish law of the EU Directive in July 2011. How this happened is a very serious matter for the Oireachtas, given the consequences for Irish citizens, and not least the issue of faith we as a society place in public officials and the standard of ethics expected of them.

The simple fact is that the MCIB was doomed from the start, because, despite the 1998 Report of the Investigation of Marine Casualties Policy Review Group initiated by Sean Barrett T.D in 1996, analyzing International best practice and recommending that it was imperative that the MICB be independent, it then went against its own findings in its conclusions to say that, *'because we are a small country'* we can ignore international best practice, and it accordingly advised that the Chief Surveyor and the Secretary General or/ her his nominee should be on the Board. We now know that International best practice has finally caught up with the Department through our membership of the European Union. The 1998 report also set out the required competence investigators should have in seafaring, engineering and naval architecture, and that of the MCIB Chairperson in maritime experience, and it set out that investigators must have adequate resources, including technical and financial. That has not happened. There are too, so many other findings of the 1998 Report that have not been implemented and now is our chance to rectify this.

For reasons that I have explained in my Briefing Note to the Committee the Proposed Act does not address these issues sufficiently. And in particular, amongst several other issues set out, we need

an independent investigative unit headed by a full-time principal investigator, with full time assistance from qualified maritime professionals, in line with Aviation and Rail, in an independent office from the Transport Department, finally bringing us in line with International best practice-

I, with the advice of Ciaran McCarthy, am here to discuss all these issues and elaborate on further detail as per my briefing note, and any other issues the Committee wish to raise, to the best of my ability.

We are all proud of Ireland and want to help our nation to get things right. Now is our chance, with Minister Ryan's leadership for the maritime community, and for that we are indebted to your Committee.

Thank you Chair

Michael Kingston

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