

Inquiries Update

Rosemary Nelson Inquiry courts

The Police Service of Northern Ireland (PSNI) has been granted leave to judicially review the decision of the Rosemary Nelson Inquiry refusing the PSNI the right to cross examine witnesses who make serious allegations against individual police officers and the police force as a whole.

In the matter of an application by the Chief Constable of the Police Service and Stephen Walker for leave to apply for Judicial Review, on 26th June 2008, Counsel for the Chief Constable argued before Mr Justice Treacy that the Inquiry decision goes to the heart of the issue of fairness. He argued that the procedure that was adopted by the Inquiry is uniquely different to that of the Robert Hamill Inquiry, the Saville Inquiry and the Billy Wright Inquiry. He argued that the right of cross examination is crucial where serious allegations have been made against individual police officers and the police force as a whole. He relied amongst other things on a letter sent on or around February 2008 by Mr P J Barra McGrory QC who represents the widow of Rosemary Nelson, raising concerns about the Inquiry's extremely restrictive approach to the right to cross examination. Counsel suggested that Mr McGrory QC relied in his letter on the cardinal principles advocated by the Salmon Commission allowing cross examination to ensure procedural fairness.

The Salmon Commission (otherwise known as the Royal Commission on Tribunals of Inquiry) reported in 1966 on the now non-extant Tribunals of Inquiry (Evidence) Act 1921 (the 1921 Act) and recognised that whilst public inquiries are necessarily inquisitorial in nature (as they are specifically concerned in establishing the truth), they must promote fair treatment of individuals, safeguarding witnesses and interested parties to the Inquiry so as to provide a level playing field and avoid causing injustice.

Under the 1921 Act, Tribunals were free to determine their own procedures of evidence. Similarly, the tribunal and/or the panel of the Rosemary Nelson Inquiry under section 44 of the Police (Northern Ireland) Act 1998 is free to determine its rules of procedure.

In contrast Mr Phillips QC, Counsel for the Inquiry argued that this application should be struck out as it was not made promptly and within three months from when the issue arose. He argued that the Inquiry published the relevant protocol and provided PSNI with the witness statement in 2007. This argument proved to be unsuccessful as on 1st July 2008, Mr Justice Treacy granted leave on all grounds. He decided that the application was made promptly to the Court. He also stated that he would have extended the time limit if it was necessary to do so, as the case raises important public interest issues. The full hearing is expected to take place on 12th September 2008.

Robert Hamill Inquiry

In relation to the Robert Hamill Inquiry Mr Justice Weatherup handed down his judgment on 1st July 2008 *In the matter of an application by Jessica Hamill for Judicial Review*. He allowed the families "appeal" and held that the Secretary of State (SoS) had misdirected himself in applying the wrong test when considering whether or not to extend the terms of reference to include the decisions of the Director of Public Prosecutions (DPP). He found that the SoS erred in law in concluding that he will only in exceptional circumstances cause the decisions of the DPP to be reviewed by the Inquiry. He should have considered whether there was sufficient public concern to do so. He found that the test applied by the SoS "*did not correspond to the statutory test of public interest*" which the Inquiries Act 2005 had provided for. He remitted the matter to the SoS for a fresh consideration.

Weatherup J did not uphold the family's contention alleging procedural unfairness and apparent bias in relation to the involvement of the Attorney General on account of the office's dual role as the legal adviser to the Ministers and as the superintendent of prosecutions in Northern Ireland. The family in the proceedings contended that the fact that an official in the Attorney General (A-G) office had been in the past involved in the initial prosecutorial decisions in relation to Robert Hamill murder, who had instructed Mr Perry QC to advise the SoS on the possible extension of the terms of reference of the Inquiry, gives the appearance of bias and lack of independence in the very least. Weatherup J, however, held that it is apparent to the fair-minded and informed observer that the A-G was only informing the SoS by disclosing their interest and stance for opposing the extension of the Inquiry's terms of reference.

The Inquiry is not now expected to commence its oral hearings before November 2008 waiting for the SoS to review his decision.

Billy Wright Inquiry

In relation to the Billy Wright Inquiry the controversial disputed resignation of Senior Counsel to Inquiry Derek Batchelor QC raised concerns about the extent to which the Inquiry would be impeded and/or disrupted. In mid June 2008, a new Senior Counsel Mr Angus Stewart QC was appointed. It is not yet clear if seamless transition is possible due to the monumental information, material and documents with which he has to acquaint himself to effectively enquire into the truth surrounding Mr Wright's death. The Inquiry nonetheless announced that it will resume its oral hearings on Monday, 8th September 2008.