An Chartlann Náisiúnta
National Archives

Reference Code:	2021/47/36
Creator(s):	Department of Foreign Affairs
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Ruling of Belfast Coroner (Leckie) on Crown's application concerning public interest immunity and the screening of witnesses.

I have received from a contact in the CAJ the transcript of the Belfast Coroner's recent ruling in the Whiterock Road shooting inquest: to reject the Crown's Public Interest Immunity Certificates and to rule that three undercover soldiers should attend the inquest and give evidence without screens.

On a quick reading, Leckie's judgement appears hard hitting and decisive viz:

- "it would appear to me that where there are no documents a Public Interest Immunity Certificate is not an appropriate vehicle of objection and I so hold...I believe that the role of a Public Interest Immunity Certificate is a very limited one. As I have said before, essentially it is a tool for dealing with documents".

- The Crown "sought also to justify the use of a Public Interest Immunity Certificate in a situation where there are no documents by saying that such a certificate is for the assistance of the Court. For my own part I do not require assistance in that form, as I take the view that counsel for the Crown should be well able to advise me of the relevance of public interest in the course of oral evidence. In any event, a Public Interest Immunity Certificate was not formulated to assist the court, but rather to protect the public interest as certified by the Minister".

- "I have held that a Public Interest Immunity Certificate is an inappropriate means of grounding a claim by the Crown for screening". (Leckie also complains that the Minister amended the original certificate during the

inquest in an effort to screen witnesses from persons not legally represented as well as from persons legally represented). Leckie, taking up a central weakness of the inquest system, states "As there is no provision for legal aid at an inquest, it is common for properly interested persons to be unrepresented".

- Leckie criticises as unrealistic the Crown's submission that in view of the fact finding role of an inquest, experience at civil and criminal courts should not be a guide as to what happens at a Corner's court. He goes on to explain his reasoning:

  - "an inquest is often the only inquiry into a death arising in controversial circumstances".

  - "the existence of Rule 9(2)" [of the Coroner's Rules"] "which provides that a person suspected of causing the death is not a compellable witness has been a source of continuing aggravation".

  - He asserts that "the onus is on the Crown to persuade me to depart from the principle of open justice". He goes on to cite as supporting principles elements of the LCJ's judgment in the Doherty case e.g.

    > "the exceptions [to administering justice in public] are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done".

  - having quoted at length from the Doherty judgment, he asserts that his own approach to the screening of witnesses should not be different from what prevails in other courts. He invokes Judge Hart's refusal of

an application to screen two undercover soldiers in the trial of Millar, McFadden and McMonagle, which he finds to be a good analogy of the present case.

Comment

Leckie's ruling has been well received by the families of the three deceased and by the CAJ. Elements of the ruling reflect a dissatisfaction, which we would share, with the inquest system and its argumentation may be of use to us. That said, the CAJ are resigned to its being overturned on appeal. The Crown yesterday decided to appeal the ruling.

Declan Kelleher
6 May, 1993

A474