



Mrs Rogers, CPL

ROYAL COURTS OF JUSTICE
BELFAST BT1 3JY

DX 393 NR BELFAST

(01232) 542555

Fax (01232) 546049

NPR/97/165

on
Mr David McIlroy
REK Division
Northern Ireland Office
Thames House
9 Millbank
LONDON SW1



20 August 1997

Dear David,

MARTIN McGUINNESS MP: APPLICATION FOR JUDICIAL REVIEW

As arranged on the telephone I am sending you, for information, the papers lodged by Martin McGuinness in the High Court.

The first stage in judicial review proceedings is an application to the Court for leave to apply for judicial review. This is normally an ex parte application but it is not unusual for the Court to invite the proposed Respondent to appear as it has done in this case. The Court is sitting today to fix a date for the leave application.

The Applicant is challenging the legality of the requirement placed upon him by the Parliamentary Oaths Act 1866 to swear an oath of allegiance to the Queen. He is also challenging the decision of the Speaker of the House of Commons to exclude him from access to the House of Commons facilities which are available to Members who do take the oath.

I am obtaining instructions through the Law Officers' Department, who have been in touch with an official of the House of Commons (although they have not yet been

able to contract the Speaker herself). At the leave hearing Counsel for the respondents will oppose the application on the grounds that the Parliamentary Oaths Act is, in the circumstances, unchallengeable and that the decision of the Speaker is non-justiciable. There may also be an issue as to whether the Northern Ireland Court is the appropriate forum.

I hope to instruct Mr Weatherup QC, Senior Crown Counsel, on his return from holiday shortly.

I will keep you informed of any developments.

Yours
sincerely

N P ROBERTS
CROWN SOLICITOR

Encs

Direct dial: (01232) 546052

P.S. Kerr J has adjourned this matter for two weeks when he will sit again to fix a date for the leave hearing.

Paddy.

PPS I am copying this letter and its enclosures to Sally Evans.

i:\cs\JR000719.doc

1997/105

DOCKET FOR EX-PARTE APPLICATION

19 No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

QUEEN'S BENCH DIVISION

11 2 AUG 1997 IN THE MATTER OF AN APPLICATION BY MARTIN McGUINNESS, MP,
RECEIVED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE PARLIAMENTARY OATHS ACT 1866

AND IN THE MATTER OF A DECISION BY THE SPEAKER OF THE HOUSE OF COMMONS

Mr. _____ to move on _____ day
the _____ day of August 1997, on behalf of the applicant for an order that (a)

(a) State in
precise terms
the order
required.

- a) a declaration that the Parliamentary Oaths Act 1866 insofar as it requires the applicant to swear or affirm allegiance to Her Majesty, Queen Elizabeth II or to forfeit his entitlement to sit in the House of Commons to represent the constituents of Mid-Ulster is incompatible with the applicant's constitutional right as a Member of Parliament, including his right to freedom of expression and with the rights of his constituents and is therefore unconstitutional and unlawful.
- b) an order of mandamus directed to Her Majesty's Government requiring it to introduce legislation to abolish the said requirement.
- c) declarations in relation to the decision of the Speaker of the House of Commons made in a Statement to the House of Commons delivered by her on 14th May 1997, whereby she denied the applicant, as a Member of Parliament who was and is not prepared to take the oath of allegiance, access to the services of the six Departments of the House and beyond that:
 - (i) the said decision was unlawful
 - (ii) the said decision was reached by a procedurally improper process; and
 - (iii) the said decision was irrational

d) an order of certiorari to remove into this Honourable Court and quash the said decision

e) damages

f) such further or other relief as the court deems just

g) costs

Signed:.....

Michael Flanigan

Michael Flanigan

Solicitor for the Applicant

207 Falls Road

Belfast BT12 6FB

1997/105

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY MARTIN MCGUINNESS, MP,
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE PARLIAMENTARY OATHS ACT 1866

AND IN THE MATTER OF A DECISION BY THE SPEAKER OF THE
HOUSE OF COMMONS

QUEEN'S BENCH DIVISION
12 AUG 1997
RECEIVED

STATEMENT

pursuant to the Rules of the Supreme Court
(Northern Ireland) 1980, Order 53 Rule 3(2)

1. The applicant is Martin McGuinness, Member of Parliament for the constituency of Mid-Ulster, of Gulladuff, Lavey, Co Derry.
2. The relief is sought:
 - a) a declaration that the Parliamentary Oaths Act 1866 insofar as it requires the applicant to swear or affirm allegiance to Her Majesty, Queen Elizabeth II or to forfeit his entitlement to sit in the House of Commons to represent the constituents of Mid-Ulster is incompatible with the applicant's constitutional right as a Member of Parliament, including his right to freedom of expression and with the rights of his constituents and is therefore unconstitutional and unlawful.
 - b) an order of mandamus directed to Her Majesty's Government requiring it to introduce legislation to abolish the said requirement.
 - c) declarations in relation to the decision of the Speaker of the House of Commons made in a Statement to the House of Commons delivered by her on 14th May 1997, whereby she denied the applicant, as a Member of Parliament who was and is not prepared to take the oath of allegiance, access to the services of the six Departments of the House and beyond that:
 - (i) the said decision was unlawful
 - (ii) the said decision was reached by a procedurally improper process; and
 - (iii) the said decision was irrational
 - d) an order of certiorari to remove into this Honourable Court and quash the said decision

e) damages

f) such further or other relief as the court deems just

g) costs

3. The grounds on which the said relief is sought are:

a) the requirement under the Parliamentary Oaths Act 1866 that all Members of Parliament swear the oath of allegiance to the monarch of the day is unlawful and unconstitutional as it is incompatible with the fundamental constitutional right to freedom of expression and in particular the applicant's right as an elected Member of Parliament to hold Irish republican political views, and results in unequal treatment between those Members of Parliament who hold Irish republican political views (and their constituents) and those Members of Parliament who do not (and their constituents).

b) the requirement to take the oath of allegiance and the Speaker's decision are incompatible with:

(i) European Community law

(ii) the European Convention on Human Rights and in particular with Articles 10 and 14 of the Convention

(iii) the spirit of domestic legislation, and in particular the provisions of the Northern Ireland Constitution Act 1973 and the Fair Employment Act 1986 and Section 1 of the Representation of the People Act 1983 and are therefore unconstitutional

c) The Speaker of the House of Commons:

(i) is guilty of illegality in reaching the said decision in that she lacked the jurisdiction to make this decision, whether by way of a Statement to the House, or at all

(ii) The Speaker of the House of Commons is guilty of procedural impropriety in reaching the said decision in that she failed to give any or adequate consideration to the terms of the applicant's democratic mandate; to those duties and responsibilities of a Member of Parliament which do not require a Member to take his seat in the House of Commons and which the said services were introduced in whole or in part to facilitate; or to the impact

which the denial of those services to the applicant would have upon his ability to properly fulfil those duties and responsibilities to his constituents and gave undue emphasis to the act of taking a seat in the House of Commons by oath of affirmation; she failed to give the applicant the opportunity to make representations before reaching this decision, which he was legitimately entitled to expect; and she has failed to provide proper or adequate or any reasons for this decision which he was legitimately entitled to expect.

- (iii) The Speaker of the House of Commons is guilty of irrationality in reaching the said decision in that: she acted in a way incompatible with the applicant's right to freedom of political expression including his right to work on behalf of his constituents in accordance with his democratic mandate and discriminated against him on the basis of his Irish republican political beliefs; she acted in a way incompatible with the fundamental constitutional right of the applicant's constituents both under the common law and under Articles 10 and 14 of the European Convention of Human Rights to freedom of political expression and to have the applicant work on their behalf at Westminster on the basis of his pre-election commitment that her decision was unreasonable arbitrary and capricious; and further and in the alternative that her decision was disproportionate and unjustifiable.

Dated this 11th day of August 1997.

Signed: *Michael Flanigan*

Michael Flanigan
Solicitor
207 Falls Road
Belfast

1997/105

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY MARTIN McGUINNESS, MP
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

QUEEN'S BENCH DIVISION
11 24 97
RECEIVED

AND IN THE MATTER OF THE PARLIAMENTARY OATHS ACT 1866

AND IN THE MATTER OF A DECISION BY THE SPEAKER OF THE HOUSE
OF COMMONS

1. I Martin McGuinness, Member of Parliament for the constituency of Mid-Ulster, of Gulladuff, Lavey, Co Derry make Oath and say as follows:
2. I am the applicant in the above proceedings and a member of Sinn Fein. I am a member of the party's Ard Comhairle (National Executive), and the party's Chief Negotiator in the current peace process. Having polled 16.1% of the vote at the last Westminster general election, Sinn Fein is the third largest political party in the North of Ireland.
3. In the last Westminster general election, I stood as the Sinn Fein candidate in the constituency of Mid-Ulster and on 2nd May 1997, I was elected as the Member of Parliament to represent the people of that constituency.
4. Sinn Fein is an Irish republican political party, committed to the principle that the Irish people have the right to self-determination and therefore the party does not recognise the sovereignty of the British monarch over any part of Ireland. It is party policy that Sinn Fein members elected to the British parliament refuse to swear or affirm any oath of allegiance to the British monarch. That is the mandate that I sought and received on the 1st May 1997.
5. It was made known to the Mid-Ulster electorate and was restated during my election campaign that I was not prepared to take my seat in the House of Commons. During my campaign, I also emphasised that although this meant I would not participate in the proceedings of the House of Commons, I intended, if elected, in addition to carrying out work on their behalf in the constituency, to attend Westminster and avail of the normal facilities afforded as a matter of course to Members of the House of Commons in order to represent my constituents' interests and fulfil my responsibilities as their Member of Parliament, insofar as I could do so short of taking my seat in the House of Commons.

This would have involved, among other things, raising issues of concern to my constituents with and lobbying on their behalf the relevant Government Ministers and appropriate Government Departments, including the Northern Ireland Office, situated at Westminster or in Whitehall, as well as other influential Members of Parliament and Members of the Select Committee on Northern Ireland Affairs.

6. At the date of the election, as Sinn Fein Members of Parliament, my colleague Gerry Adams, Member of Parliament for West Belfast and I were entitled to the use of an office within the Palace of Westminster. We were also entitled, without taking our seats by swearing or affirming the oath of allegiance, to avail of various facilities and services provided to Members of Parliament to enable and assist them to undertake their responsibilities to their constituents. In particular, in order to properly fulfil our democratic mandate, we hoped to make use of the office accommodation, the allowances for staff to help permanently staff the office, the research facilities, the facility to book rooms, the travel allowances and access to broadcasting services. We also had hoped that by having access to restricted areas we could make equal use of the informal contact with Ministers and other Members of Parliament as other Northern Ireland Members of Parliament and in this way to help foster a greater understanding of the political views of the constituency we represent and thereby advance the peace process. In our election material Sinn Fein sought support on this basis and on the clear understanding that if elected we would avail of the entitlements due to an MP who did not take the oath of allegiance to the British monarch.
7. Since my election as the Member of Parliament for Mid-Ulster, I have refused to take this oath.
8. I believe that the requirement under the Parliamentary Oaths Act 1866 to swear or affirm an oath of allegiance to the British monarch before a Member of Parliament can take and retain his or her seat discriminates against me on the ground of my political beliefs and denies me my fundamental constitutional right to freedom of expression of those beliefs. I believe that this requirement also discriminates against my constituents, who elected me in the knowledge that I am an Irish republican unprepared to take the oath of allegiance, and against the fundamental constitutional right of all of those who voted Sinn Fein in other constituencies to freely express their political views.
9. From this statutory requirement flowed the discriminatory ruling of the then Speaker of the House of Commons in 1924 that a Member of Parliament who did not take the oath of allegiance was not entitled to receive a Member's salary.

10. On 14th May 1997, Madam Speaker Boothroyd made a Statement to the House, withdrawing from any Member of Parliament who did not take their seat by oath or affirmation of allegiance their entitlement to use these and other facilities and services available to all Members of Parliament who did take the oath of allegiance by swearing or by affirmation. I refer to a copy of the said statement as published in Hansard upon which when marked "MMG1" I have signed my name.
11. As far as I understand, this is not a ruling of the Speaker in the House. Instead, the Speaker appears to have acted of her own initiative in this matter and I am not sure that she had authority to make such a far reaching decision affecting the constitutional rights of Members of Parliament to represent and work on behalf of their constituents, of their constituents to be represented at Westminster by their elected representative and generally of the 16.1% of the electorate of the North of Ireland who voted Sinn Fein at the last election to have their views represented as best they can be. I believe that this decision also discriminates against me on the ground of my political beliefs and against my constituents who elected me in the knowledge that I was an Irish republican who was unprepared to take the oath of allegiance.
12. Furthermore, the Speaker says in her Statement "I am sure therefore that the House would not wish to put unnecessary obstacle in the way of Members wishing to fulfil their democratic mandate by attending, speaking and voting in this House. Equally, I feel certain that those who choose not to take their seats should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members". This suggests that the Speaker was unaware and therefore did not take into account in reaching her decision that nowadays there are many ways of discharging the responsibilities of being an elected Member of Parliament without attending House of Commons debates and indeed I believe there are a number of Members who attend rarely if at all after taking the oath of allegiance but devote themselves instead to working on behalf of their constituents in other ways. It also suggests that the Speaker was unaware and therefore did not take into account in reaching her decision that my democratic mandate did not require me to take my seat by taking the oath of allegiance and could even be interpreted as precluding me from doing so.
13. Further to this announcement Gerry Adams and I travelled to Westminster on 19th May 1997, when we met with the Sergeant at Arms and the Clerk of the House who clarified that we were not entitled to avail of any of the services or facilities available to those Members of Parliament who took the oath of allegiance.

14. On 4th July 1997, my colleague Gerry Adams wrote to the Speaker to request reasons for her decision and to ask her to review her decision. By letter of 8th July 1997, she refused to reverse her decision but offered us a meeting after the summer recess. She did not offer and has at no time given any reasons for her decision. By letter of 8th August 1997, Gerry Adams wrote urgently requesting a meeting in the near future in view of the need to issue this application without further delay. A reply is presently awaited to that request. I refer to copies of the said correspondence upon, which when pinned together and marked "MMG2", I have signed my name.

15. The Speaker's decision has led to the present ludicrous position whereby I can meet the Secretary of State for Northern Ireland as Chief Negotiator for Sinn Fein to discuss how peace in Northern Ireland can be progressed, but I am denied access to her or her Ministers in the Palace of Westminster, other than the access an ordinary member of the public could be granted, despite having been elected a Member of that Parliament.

16. Since May, I have been involved in the election campaigns of Sinn Fein candidates in the General Election in the South of Ireland which was held at the beginning of June. In the immediate aftermath of that election campaign and until 20th July 1997, I was deeply involved in the protracted and extensive discussions which culminated in the IRA cease-fire declaration of 20th July 1997. Since 20th July 1997, I have been actively involved as Sinn Fein's Chief Negotiator in seeking to progress the peace process. During this period I was also involved in efforts to ensure a peaceful loyalist marching season.

17. For the above reasons, I was unable to give the consideration and time necessary to bringing this application before now.

18. Accordingly, I respectfully ask this Honourable Court to grant the relief sought therein.

Save where otherwise appears, I depose to the foregoing from facts within my own knowledge.

Maetin Mc Guinness

Sworn at 207 Falls Road, Belfast, this
10th day of August 1997 before me a Solicitor,

[Signature]

This affidavit is filed on behalf of the applicant by Michael Flanigan,
Solicitor, 207 Falls Road, Belfast.

1997/105

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

QUEEN'S BENCH DIVISION
11 2 AUG 1997
RECEIVED

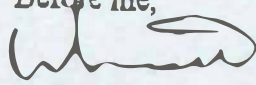
EX PARTE

MARTIN MCGUINNESS

EXHIBIT

This is the exhibit marked as "MMcG1", referred to in the affidavit of Martin McGuinness.

^{10th (Mac)}
Sworn this 8th day of August 1997.

Before me,

A Solicitor

Madam Speaker's Statement

Madam Speaker: I wish to make a statement about the availability of services in the House for those who do not take their seats after being returned here as Members.

This House has traditionally accommodated great extremes of opinion. I am sure therefore that the House would not wish to put any unnecessary obstacle in the way of Members wishing to fulfil their democratic mandate by attending, speaking and voting in this House. Equally, I feel certain that those who choose not to take their seats should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members.

The present position is that under the terms of the Parliamentary Oaths Act 1866, any Member who fails to take the oath or to make the affirmation that is required by law and who then votes or sits during any debate after the election of the Speaker is subject to a penalty of £500 on each occasion and his or her seat is automatically vacated. In 1974, one of my predecessors ruled that any such Member could not receive a salary, and this regulation also applies to allowances.

In the interests of the House, and making use of the power vested in the office of the Speaker to control the accommodation and services in the Commons parts of the Palace of Westminster and the precincts, I have decided to extend these restrictions. As from the date of the end of the debate on the Queen's Speech, the services that are available to all other Members from the six Departments of the House and beyond will not be open for use by Members who have not taken their seats by swearing or by affirmation.

For the avoidance of doubt, a schedule listing these various services will be appended to this statement in the *Official Report*. One of the purposes of this will, of course, be to enable officers and servants of the House and others to administer these new regulations with clarity and precision.

Of course, I accept that there may be occasional cases where an elected Member, for reasons of health or for other good reasons, cannot attend to take his or her seat immediately after election, but, nevertheless, desires to do so at the earliest possible moment. Provided such a Member sends me a letter informing me of his or her

inability to attend and signifying his or her intention to attend to swear or affirm at the earliest possible time, I will give instructions that these new regulations should not be applied. This should be done not later than the date of the end of the debate on the Queen's Speech or, in the case of a by-election, after 10 sitting days.

The House will have noted that the date which I have set for the introduction of these regulations is the end of the debate on the Queen's Speech. That is not an ideal date, but the House needs notice of these changes. In a future Parliament, the effective date both for the cessation of services and for the deadline for the sending of the letter requesting excusal will be the date of the Queen's Speech itself.

The services to which the new regulations apply include:

Legal services

Procedural services, including the tabling of questions, motions and amendments, and public petitions

Broadcasting services

Vote Office services

Services available from the Parliamentary Office of Science and Technology

The provision of passes, special permits and car parking facilities

Access to those areas within the parliamentary precincts which are open only to pass holders

The booking of Committee Rooms, conference rooms and interview rooms

Office accommodation services for Members and their staff

Computer services, except those available to the public

The allocation of Gallery tickets

The sponsoring of exhibitions in the Upper Waiting Hall

Members' medical services

Library and research services, except for those services of the Public Information Office generally available to the public

Services provided by the Official Report

Payroll and other financial services provided to Members and their staff

Insurance services

Catering services provided for Members and their staff, including the sponsoring of banqueting services

Police and security advice available within the precincts

Services in the Members' post offices

Travel services

1997/105

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

EX PARTE

MARTIN McGUINNESS

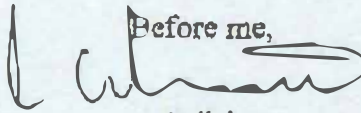
QUEEN'S BENCH DIVISION
12 AUG 1997
RECEIVED

EXHIBIT

This is the exhibit marked as "MMcG2", referred to in the affidavit of Martin McGuinness.

12th (hand)

Sworn this 12th day of August 1997.

Before me,

A Solicitor