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Wednesday, February 25, 2009

QC stresses need for legal protection for Troubles commission witnesses



Lord Eames: lack of clarity over scale and extend of legal representation at commission raised

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FRANK MILLAR, London Editor

THE “INFORMATION recovery” process envisaged by the Eames Bradley report could hamper reconciliation in Northern Ireland by discarding vital legal protections and procedures enshrined in the common law.

That is the view of Peter Smith QC, who served as a member of the Patten Commission on the reform of the RUC.

He was speaking to The Irish Times as Lord Eames and Denis Bradley – co-chairs of the Consultative Group on the Past – prepared to appear before the Northern Ireland Affairs Committee at Westminster.

While certain to face Unionist and Conservative fire over the proposed “recognition” payments to the families of all “victims” of the Troubles, Lord Eames and Mr Bradley might expect some support from MPs for their efforts to meet parliamentary and public concern by capping the cost of future inquiries into past events.

Mr Smith's intervention, however, seems certain to augment fears that a "cost driven" process could come at the price of justice for some who are eventually summoned to appear before the proposed Independent Legacy Commission.

The Eames-Bradley report lays stress on the need for its proposals to be "human rights compatible" and recognises that witnesses may need access to legal advice.

Against that, Mr Smith said, the apparent guarantee against self-implication sat alongside a power to compel witnesses and the production of papers, in proceedings intended to be non-adversarial, in which it appeared a person accused of serious wrong-doing or criminality would be denied the basic courtroom rights to face his or her accuser, and to challenge them by means of questioning by their lawyer.

"The position in the common law world is that where serious allegations are to be made, an individual must have these rights," said Mr Smith.

"For any commission or tribunal to adjudicate on a person's alleged criminal behaviour without these essential safeguards would be revolutionary."

Mr Smith said he thought any proposal to permit adverse judgments to be made against individuals by the proposed commission without proper legal challenge "would give rise to grave disquiet" among lawyers and human rights activists generally.

While understanding mounting public concern at the costs generated by the Saville Inquiry into Bloody Sunday, Mr Smith also suggested there was no obvious alternative if individuals were to be properly protected.

"If the courts could protect people on their own we would already have dispensed with the need for lawyers," he said, adding that it was "the dialectic between the prosecution and the defence" which aimed, albeit imperfectly, to establish the truth in legal proceedings.

Raising a lack of clarity about the scale and extent of the legal representation to be made available to people brought before the proposed commission, Mr Smith said that even the ability to be questioned by his or her own lawyer could be as vital to an accused person's interests during proceedings as the cross-examination of witnesses.

These rules, he stressed, were designed not only to protect individuals "but to ensure that the court or tribunal does not come to the wrong conclusion".

Mr Smith said he believed the importance of protecting individuals in any search for truth could not be overstated, given the commission's potential power to require admissions from witnesses that could destroy their reputations, or, in some cases at least, put their lives at risk.

This article appears in the print edition of the Irish Times

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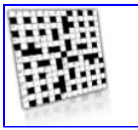
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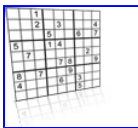
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