

**2001 No 3918**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**BRESLIN AND OTHERS**

**-v-**

**MCKENNA AND OTHERS**

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**Ruling on Legal Representation for Discovery**

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**MORGAN J**

[1] On 28 January 2005 I issued my ruling on the discovery application made by the plaintiffs pursuant to Order 24 Rule 7 seeking access to Books of Evidence and transcripts of various criminal proceedings in which five of the defendants were involved. I indicated in the ruling that I would allow 14 days for any representations as to whether I should recommend to the Legal Services Commission that legal aid should be given to the defendants to enable them to make representations.

[2] By letter dated 11 February the solicitors formerly on record for the third named defendant wrote making three points:

(a) The third named defendant does not want to share legal representation with any other defendant in these proceedings;

(b) The third named defendant is appealing his conviction and the appeal is due to be heard in May 2005. If he is successful he contends that the material will no longer be relevant or acceptable;

(c) The Legal Services Commission had refused his legal aid application inter alia because he was a man of straw. He contends that the plaintiffs have already been compensated through the criminal injuries system and may have no further right to damages.

[3] The last point is one which can be examined at the trial but does not seem to arise as an issue at the stage of this discovery application. The first point depends upon the court concluding that representation is required.

[4] At paragraph 10 of my earlier ruling on this issue I set out the test which governs the issue of relevance at this stage. Whether or not the appeal is successful the material sought is of a kind which may lead the plaintiffs on a train of enquiry which can advance their case that the third named defendant was connected with the Real IRA at the time of the bombing. The test of relevance does not depend on the safety of the conviction.

[5] In the circumstances I do not consider that article 6 of the Convention or the common law makes it appropriate for me to recommend the grant of legal representation at this stage to the third named defendant. No other defendant has made representations within the allotted time.

[6] I want to make it clear that this ruling relates solely to the discovery issue. I have indicated to the plaintiffs that upon compliance with the Order I will expect them to set out in general terms in writing the evidence upon which they intend to rely in order to prove their case. I intend to provide copies of that document to each of the defendants and at that stage will consider any representations made to me about the need for legal representation to protect the defendants' interests.

[7] In accordance with my ruling I will consider any further representations made to me about the proposed Order within the 28 day time limit.