Neutral Citation No. [2010] NIQB 91 | *Ref:* **GIL7917**

Judgment: approved by the Court for handing down | *Delivered:* **27/05/10**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION (CROWN SIDE)

_____

Chief Constable of PSNI's Application (Leave Stage) [2010] NIQB 91

IN THE MATTER OF AN APPLICATION BY THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION TAKEN BY HER MAJESTY'S SENIOR CORONER IN NORTHERN IRELAND IN RELATION TO THE RESUMPTION OF INQUESTS INTO THE DEATHS OF

SERGEANT JOHN QUINN
CONSTABLE ALAN McCLOY
CONSTABLE PAUL HAMILTON
JAMES GERVAISE McKERR
EUGENE TOMAN
JOHN FREDERICK BURNS
MICHAEL JUSTIN TIGHE
PETER JAMES MARTIN GREW
RODERICK MARTIN CARROLL

_____

GILLEN J

Application

[1] The substantive issue in this case was an application for declaratory relief sought by the Chief Constable of the Police Service of Northern Ireland with respect to the correct approach to be adopted to the disclosure of materials in Coronial inquests particularly where an application for Public Interest Immunity might require to be brought. The issue in the instant case had arisen in the context of deaths described by the Senior Coroner for Northern Ireland as those which "might be labelled as controversial deaths occurring during the course of the height of the troubles" involving an issue as to whether or not any of the deaths were caused as a consequence of an intention to kill on the part of the security forces.

[2] The particular context of the application before me was the decision of HM Senior Coroner for Northern Ireland (the Coroner) to direct that the Chief Constable make available to him redacted copies of the Stalker and Sampson inquiry reports for onward dissemination to the other interested parties in relation to the proposed resumption of inquests into the deaths of the persons named in the title of this application (the notice parties).

[3] At the hearing before me, representations were made by counsel on behalf of the Chief Constable for Northern Ireland, the Coroner and the notice parties. In addition a solicitor represented the family of Constable McCloy.

[4] Having heard representations from all the parties, I dismissed the Chief Constable's application for declaratory relief. I awarded costs to the Coroner.

[5] The issue that now has to be determined is whether or not an order for costs should also be made in favour of the notice parties.

Principles conventionally governing orders for costs in favour of third parties in opposing an unsuccessful challenge.

[6]Whilst the court is vested with a wide discretionary power in matters of costs , I consider that the leading authority in this matter is to found in Bolton Metropolitan District Council v Secretary of State for the Environment (Practice Note) (1995) 1 WLR 1176 at 1178f-1179a("the Bolton guidance"). The judgment of Lord Lloyd distilled the following principles in relation to a planning appeal challenge where the Secretary of State's decision granting planning permission to a developer had been upheld.

> "(a) When successful in defending his decision, the Secretary of State will normally be entitled to the whole of his costs. He should not be required to share his award of costs by apportionment.
>
> (b) The developer will not normally be entitled to his costs unless he can show that there was likely to be a separate issue on which he was entitled to be heard … or unless he has an interest which requires separate representation.
>
> (c) A second set of costs is more likely to be awarded at first instance, than in the Court of Appeal or House of Lords.

> (d) An award of a third set of costs will rarely be justified even if there are in theory three or more separate interests."

[7]Fordham (Judicial Review) Handbook 4th Edition at paragraph 18.1.7 records that although this was a planning appeal, the Bolton guidance is treated as being of assistance in judicial review cases generally. I respectfully adopt that approach.

[8] In R (Smeaton on behalf of SPUC) v Secretary of State for Health (2002) 2 FLR 146(Smeaton's case), the court considered judicial review proceedings to challenge the making of a statutory instrument permitting the sale of emergency contraception to women of 16 years. Addressing costs of a notice party the court stated at paragraph 431:

> "… The normal rule, even in what (counsel) calls ordinary cases (that is, cases which do not involve a public interest challenge), is that two sets of respondents' costs are not awarded against an unsuccessful claimant for judicial review."

[9] The theme of these authorities is endorsed by Larkin and Scoffield (Judicial Review in Northern Ireland) at paragraph 16.21 where the authors state:

> "It is very unusual for a third party (whether appearing in support of or in opposition to the application) to be awarded its costs. This is because the third party is not required to take part in the proceedings and does so at its own choice. It is thought, therefore, that it is reasonable to expect it to do so at its own expense."

That certainly has been the approach adopted in Northern Ireland e.g. the Court of Appeal in Re SOS (NI) Limited's Application (2003) NIJB 252 (CA).

Exceptions to the general rule

[10] There may be exceptions this approach and there are instances where notice parties have been awarded costs. Illustrations of where this has occurred are as follows:

(a) there is some separate issue on which the notice party was entitled to be heard which would not be addressed by the respondent or where separate representation for some other reason was required. In Smeaton's case Munby

J, awarded costs to a third party who had supplied the contraception in question on the basis he was the real defendant. At paragraph 438 he said:

> "The simple reality is that this case without the active participation of Schering (the party mentioned) would have been a 'hamlet without the Prince'. The reality, as it seems to me, is that once these proceedings had been begun Schering had no practical option but to seek to intervene."

(b) the notice party had a "very special interest", e.g. that his liberty was at stake (see R (The Secretary of State for the Home Department) v Mental Health Review Tribunal (2002) EWCA Civ. 868) or where a discrete issue has been argued by a third party even though that may not be necessary to decide the issue (see R v Secretary of State for Agriculture Fisheries and Food ex p ISK Biosciences Ltd 8 October 1997 unreported.)

(c) it was a particularly important case and the claimant must have appreciated the inevitable involvement of notice parties in launching the proceedings (see R v Director General of Electricity Supply, ex p First Hydro Company 2 March 2000 unreported.

Applying these principles to the instant case

[11] I have come to the conclusion that this is not a case which is suitable for an award of a second set of costs to the notice parties. I have formed this conclusion for the following reasons.

[12] First, whilst the representations of counsel on behalf of the notice parties undoubtedly made a significant contribution to the argument dilating upon several of the points at issue, that in itself does not warrant the grant of a second set of costs. The fact that the notice parties may have introduced a difference in emphasis from the argument made by the Coroner does not derogate from the core fact that this was a challenge to a decision of the Senior Coroner as to the manner in which he should conduct the Coronial process. It may well have ramifications for inquests of this nature in many instances. The case surrounded the role of the Coroner and the nature of disclosure to be made by within the Coronial process. The notice parties had no conflicting interest with this albeit they had separate interests. They were in no sense the real defendants in this case. Without their presence the case would have gone ahead, albeit perhaps with some differences in emphasis but nonetheless covering the same ground. That they were entitled to separate representation, with an interest separately to protect which they argued compellingly and skilfully, does not of itself warrant the grant of a second set of costs (see R (Bedford) v London Borough of Islington (2002) EWHC 2044 (admin).

[14] Ms Quinlivan, who appeared on behalf of several of the notice parties, argued that a number of the crucial affidavits in the proceedings were filed by the notice parties dealing for example with the procedure being adopted by different coroners in other inquests. There is no doubt that that was a helpful intervention, but inevitably that issue would have arisen in any event and would have been explored with the Coroner by the court had the Coroner not addressed it.

[15] In all the circumstances therefore I have concluded that this case should be dealt with in the conventional manner and that no costs should be awarded in favour of the notice parties.

[16]Finally Mr McGleenan, who appeared for the Chief Constable in this discrete matter of costs, reminded me that I had reserved the costs to this hearing of an earlier application by the notice parties to dismiss the substantive application for failure to comply with the time limits for service of the Notice of Motion. I refused that submission. I have concluded that I should make no order as to costs in that matter largely because I recognise that there may conceivably have been some uncertainty on the part of the notice parties as to the date of my grant of leave to bring the Motion on Notice.