

**Neutral Citation: [2016] NIQB 45**

**Ref: COL9975**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**Delivered: 17/05/2016**

**15/87969/01**

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

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Moreland's (Marc) Application (Judicial Review) [2016] NIQB 45**

**IN THE MATTER OF AN APPLICATION BY MARC MORELAND AS  
PERSONAL REPRESENTATIVE OF THE ESTATE OF CAROLINE MORELAND  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

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**COLTON J**

**Introduction**

[1] The applicant is the son of Caroline Moreland. When she was aged 34 she was abducted from her home in Belfast on 2 July 1994. Her body was discovered near Rosslea, Co Fermanagh, 15 days later on 17 July 1994. He avers that she was abducted, interrogated, tortured and eventually shot by the IRA on the basis of an allegation that she had been working as an informer for the security services. He exhibits a transcript which it is claimed was taken from an audio recording of part of her interrogation in which she admitted passing on information to the security services about IRA activities.

[2] Following her murder her death was investigated by the RUC. Although this resulted in the arrest of two individuals no person has been charged or prosecuted in relation to her death.

[3] In the course of the leave hearing I was referred to an extensive body of material dating from 2003 onwards commenting on the activities of what has been referred to as "the IRA's internal security unit" and in particular the role played by a British Agent allegedly known by the name "Stakeknife". It is alleged that he played a leading role in this unit. It is further alleged that he was permitted to continue his engagement with the IRA in order to enhance his position therein and to provide

intelligence to the security forces. As a consequence it has been alleged that he was directly involved in a series of murders of civilians including Caroline Moreland.

[4] Since this material has come into the public domain there have been increasing calls for a full independent investigation into the activities and handling of this agent. This culminated in a direction by the DPP on 21 October 2015 pursuant to Section 35(5) of the Justice (Northern Ireland) Act 2002.

[5] I refer to a press release issued by the PPS concerning this decision on 21 October 2015:

“The Director of Public Prosecutions ... has announced ... that he has requested the Chief Constable investigate a range of offences which relate to the activities of an individual who is commonly known under the codename “Stakeknife”.

The Director has requested two new investigations in this regard. The first will seek to examine the full range of offences alleged to have been committed by this individual and will also include an investigation into any criminal activity that may have been carried out by security service personnel.

Outlining his decision to require the Chief Constable to carry out the investigation the Director said:

‘I have been made aware of the scope and range of possible offences that may have been carried out by this individual and also members of intelligence agencies.

This information has been provided to me by the office of the Police Ombudsman, Dr Michael Maguire, who is now conducting a painstaking review of all available material.

The Ombudsman has carried out a comprehensive analysis of material emanating from the three investigations carried out by Lord Stevens into allegations of collusion. A common link across a significant number of potential crimes, including murder, was the alleged

involvement of an agent of military intelligence codenamed "Stakeknife".

... In the light of all of this information I concluded that I must exercise my powers to request that the Chief Constable investigate matters which may involve offences committed against the law of Northern Ireland and did so on August 11 2015.

... The terms of each investigation have been referred to the Police Ombudsman ... so that he can consider if any investigation into the action of the police should take place."

[6] A pre-action protocol letter in this matter was sent on 2 June 2015. The respondent responded on 18 June 2015 and on 14 August 2015 the applicant was granted legal aid to bring this challenge which was lodged on 18 September 2015. The application was reviewed by the court on 5 November 2015, 3 December 2015, 8 December 2015 and 29 January 2016 when the court was updated on the Chief Constable's response to the Director's request.

[7] The applicant seeks the following relief:

- (a) a declaration that the respondent's failure to adopt a thematic or overarching approach to this investigation is unlawful;
- (b) a declaration that the failure to devote sufficient resources to this investigation is unlawful;
- (c) a declaration that the delay in the investigation in relation to this matter is unlawful;
- (d) a declaration that the respondent's failure to ensure a sufficiently independent investigation is unlawful;
- (e) a declaration that the failure to keep the applicant informed as to the status of the investigation is unlawful;
- (f) an order of mandamus compelling the PSNI to adopt a thematic or overarching approach to the investigation;
- (g) an order of mandamus compelling the PSNI to devote more resources to this investigation;

- (h) damages;
- (i) such further and other relief as the court may deem appropriate;
- (j) costs.

[8] I am grateful to counsel in this matter, Mr Hugh Southey QC and Mr Sean Devine BL for the applicant and Mr Paul McLaughlin BL for the proposed respondent for their detailed written and oral submissions. Because this is a leave hearing I do not propose to rehearse the detail of those submissions.

[9] In short the central issue in this case is whether or not the PSNI have a current legal obligation by reason of Article 2 of the ECHR to conduct a further investigation into the murder of Caroline Moreland.

[10] There are clearly significant legal issues as to whether or not Article 2 is engaged in this matter. This turns on the legal interpretation of a number of well-known cases on this issue namely Re McKerr [2004] 1 WLR 807, Re McCaughey [2012] 1 AC 725 and Keyu [2015] 3 WLR 1665.

[11] For the purposes of a leave application I am of the view that there is an arguable case that Article 2 is engaged.

[12] There is also a factual dispute as to whether or not, even if Article 2 is engaged, the applicant has provided a sufficient evidential basis for invoking any Article 2 rights. In this regard, I have considered the guidance provided on this point in the cases of Brecknell v United Kingdom [2007] ECHR and Janowiec v Russia [2014] 58 EHRR 30. Brecknell refers to the test in the following way:

“The court takes the view that where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures.”

[13] In Janowiec the test was put in this way:

“Such an obligation on the part of the authorities to take the investigative measures may be triggered when a plausible, credible allegation, piece of evidence or item of information comes to light which is relevant to the identification and eventual prosecution or punishment of those responsible.”

[14] I have come to the view that for the purposes of a leave hearing there is an arguable case that there is sufficient material to meet this test and that the PSNI is under an obligation to take further investigative measures.

[15] It is important of course to recognise that at this stage I am only deciding the issue of whether I should grant leave to apply for judicial review. It is often said that the applicant faces a low threshold to meet the arguability standard and therefore the grant of leave should not be taken as a prediction of success in respect of any ground for which leave is granted. I also remind the parties that the court's function is strictly that of review of the legality of the actual decisions of the respective authorities and in particular the court is not concerned with a process by which it substitutes its views for those of the public authorities concerned. It is not the role of the court to become involved in the supervision of the investigation of a crime or to interfere with the operational decisions of an investigating authority absent some clear breach of public law. Nor should the court impose a disproportionate burden on the investigating authority.

[16] Accordingly, I grant leave to the applicant to seek judicial review of the Chief Constable's decision not to carry out an investigation into the murder of the applicant's mother in the context of his investigation into the alleged activities of the agent known as "Stakeknife".

[17] The grounds for leave set out in the Order 53 Statement are extensive with multiple factors relied upon in respect of each ground.

[18] I propose to grant leave on the grounds that it is arguable that the Chief Constable of the PSNI is under an obligation to carry out an Article 2 compliant investigation into the death of Caroline Moreland and has arguably acted unlawfully by reason:

- (a) of a failure to include an investigation into her death as part of the investigation into the activities of "Stakeknife";
- (b) of delay;
- (c) of the requirement to ensure an independent investigation; and
- (d) of a failure to involve the next of kin of the deceased to the extent necessary to safeguard their legitimate interests.