Neutral Citation no. [2007] NIQB 6 | *Ref:* **DEEC5741**

Judgment: approved by the Court for handing down | *Delivered:* **2/2/07**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY DAVID WRIGHT FOR JUDICIAL REVIEW OF A DECISION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND

DEENY J

[1] I gave judgment in relation to this application on 21 December 2006. I found the decision of the Secretary of State to have been made unlawfully, I acceeded to the application of his counsel, Mr Bernard McCloskey QC, that I should not grant relief at that stage but should hold a remedies hearing, as is not uncommon at the present time.

[2] Counsel for the applicant, the respondent and the Inquiry Panel then lodged in due course very helpful skeleton arguments on this issue. The submission of the applicant at that stage was that certiorari was the natural and proper remedy which should follow the judgment of the court; see Berkeley v Secretary of State for the Environment and Others [2000] 3 All ER 897 HL, per Lord Hoffman.

[3] Counsel for the Inquiry Panel and the respondent, however, urged the court not to grant any remedy or to grant the remedy of a Declaration and not Certiorari. They stressed the importance of the work of the enquiry and the need to progress that and drew attention to the repeal of the Prisons Act (Northern Ireland) 1953 under which the enquiry had been originally set up before its conversion to an inquiry under the Inquiries Act (2005). Counsel for the Secretary of State pointed out that some 23 notices had been issued pursuant to Section 21 of the 2005 Act. The Enquiry had agreed to pay costs and expenses for legal representatives pursuant to Section 40 of the same Act. Costs, already of £3.9 million, had been incurred. The quashing of the decision would cause real uncertainty, and considerable and indisputable delay, in their submission.

[4] In the events, on the morning of the remedies hearing, 29 January 2007, Mr Alan Kane, on behalf of the applicant, informed the court that for "pragmatic and personal reasons" his client no longer wished to seek the remedy of Certiorari. Nevertheless he did press me to make a declaration in the terms of the court's findings in the judgment. While such an attitude on the part of the applicant is not binding on the court I consider that it recognises the realities of the situation that now exists. The court is entirely content not to grant Certiorari in all the circumstances. However given the importance of the matter, and given that the judgment inevitably had to deal with the very wide ranging grounds initially relied on, it does seem to the court, in the exercise of its discretion, that a Declaration should issue.

[5] Mr McCloskey QC while preferring merely the judgment to stand, in his helpful skeleton argument drew attention to the contrasting alternatives of Certiorari and declaratory relief. In the course of oral argument he informed the court that the summary of the court's decision at paragraph 67(b) of the judgment was viewed as most helpful. I will therefore grant a Declaration that the decision of 23 November 2005 to convert the Inquiry into the death of Billy Wright from one under the Prisons Act (Northern Ireland) 1953 into an inquiry under the Inquiries Act 2005 was unlawful:

(a) because the Secretary of State failed to take into account the important and relevant consideration that the independence of such an inquiry was compromised by the existence of Section 14 of the 2005 Act but was wrongly advised that an equivalent power existed under the Prisons Act; and

(b) because he was advised and appeared to take the view that there was a presumption in favour of acceding to the request of the Inquiry that it be converted into an inquiry under the Inquiries Act 2005.