

## **THE BLOODY SUNDAY INQUIRY**

### **APPLICATIONS BY SIR BASIL HALL AND JOHN HERITAGE**

#### **SUBMISSIONS ON BEHALF OF THE CLIENTS OF MADDEN & FINUCANE**

1. The interested parties have received a copy of a letter from the solicitor representing Sir Basil Hall and John Heritage requesting that his clients be represented when they give their evidence and also when the soldiers give their evidence. They also seek permission to give their evidence in London.
2. We note first that the applications are made in response to an invitation from the solicitor to the Inquiry contained in a letter dated 8<sup>th</sup> May 2002. This letter has not been provided to us and we request sight of it.

#### ***REPRESENTATION***

3. We make no submissions on the issue of representation for these individuals save as appear below in connection with our submissions on their application to give evidence in London.

#### ***VENUE FOR THEIR EVIDENCE***

4. As to their application to give evidence in London, we note that this application is unlike the application made by the soldiers for change of venue as no subjective fears are expressed for the personal safety of either of these applicants, nor is any objective evidence produced to support such a proposition. This puts their application for change of venue in an entirely different category from that of the soldiers – whose evidence will be given outside Derry for security reasons *alone*.

## ***ARTICLE 2 OF THE CONVENTION***

5. It is not in dispute that our clients' rights under Article 2 ECHR are engaged in respect of this Inquiry. This was accepted by the Tribunal in its ruling on venue<sup>1</sup> and by the Court of Appeal in its subsequent decision on the issue when it said

The current Tribunal has correctly recognised at paragraph 26 of its Ruling on Venue that Article 2 places it under a procedural obligation, insofar as compatible with the substantive obligations imposed by that Article to conduct an official Inquiry that is effective.<sup>2</sup>

6. In the present application no fears are expressed for the safety of either of these witnesses should they be requested to give evidence in Derry. They do not invoke Article 2 of the Convention. In the absence of such considerations the families' Article 2 rights cannot be overridden.

## ***THE SUBSTANCE OF THE APPLICATION***

7. We note that three factors appear to ground the application:

- (a) Age and infirmity;
- (b) The stressful and tiring nature of the experience of giving evidence and;
- (c) Convenience.

### ***Age and Infirmity***

8. We are somewhat unclear as to the precise nature of the applications being made. It would appear that the application made on behalf of John Heritage is grounded on his health. We have not been furnished with a copy of the medical evidence underpinning that application and so are not in a position to comment on that aspect of his application. However, we can say that in assessing the application we submit that the Tribunal should be in possession of explicit medical evidence which directly addresses the effect travel to Derry to give evidence (and not merely the giving of evidence alone, given his determination to do so) would have on Mr Heritage's health.

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<sup>1</sup> See paragraph 26

<sup>2</sup> see paragraph 11

9. In respect of Sir Basil Hall it appears that there is no medical evidence suggesting that travelling to Derry to give evidence would have a detrimental effect on his health. The application on his behalf refers (at page 3) to the “general infirmity of age” but any claimed detrimental effect to his health (if any exists), above and beyond the stressful nature of the experience (which applies wherever it takes place), is not quantified. If an application is to be made on medical grounds, and it appears that this is not the case, medical evidence in the terms outlined above should be put before the Tribunal to support such an application. If there are no detrimental medical consequences for Sir Basil Hall of giving his evidence in Derry then we are bound to say that we see no reason why he cannot do so.

*The nature of the experience of giving evidence*

10. It appears from the application that many of the concerns expressed about the “stressful and exhausting” nature of the experience of giving evidence can be met by the grant of representation. In our submission this course should be preferred over that of change of venue. However, and in addition, the question of the nature of the experience of giving evidence and the atmosphere in the Guildhall was addressed by the Tribunal in relation to the issue of the venue for the soldiers’ evidence where it stated:

“Any inquiry into the use of lethal force by a state against its own citizens is likely to engender or rekindle very strong feelings, as no doubt Parliament appreciated when it decided upon the present Inquiry. Those said to be responsible for death and injuries are in the nature of things likely to find it an unpleasant and intimidating experience to give evidence, however justified they may consider their colleagues actions to have been, in the presence both of the relatives of those whom they shot dead and of those whom they wounded. This, however, is an unavoidable aspect of an inquiry of the present kind. What we cannot accept, however, is that the Guildhall is somehow an especially hostile or intimidating environment for the soldiers. To date the proceedings have been conducted in a quiet and calm manner; we have no grounds for supposing this will not continue

to be the case; and once again we should emphasise that we would have no hesitation in going elsewhere if these conditions did not continue to obtain.” (at para 42 of venue ruling)

11. It must be pointed out that the present applicants are not accused of being responsible for death and injury. They are both lawyers with very considerable experience of court proceedings and indeed at least some experience of public inquiries. They will, themselves, be aware of their rights as witnesses. It cannot be a surprise to them that they have been called to give oral evidence before the Tribunal. In addition, an experience where they are asked to appear in a courtroom setting before a number of people cannot be wholly unfamiliar to them given that they have led “public lives” (page 2 of the application) and “they have both had distinguished and wholly honourable careers in the Government Legal Service and the public service” (page 2 of the application). In these respects they are unlike the vast majority of witnesses who have given evidence before the Tribunal to date who have been ordinary civilians with little or no experience of public appearances, the workings of government or courtrooms.

12. The Tribunal’s past practice would tend to suggest that witnesses of this nature will be afforded representation by solicitor and counsel for **at least** the duration of their own appearance before the Tribunal. Further, those of us who have been involved with the Inquiry since the hearing of evidence commenced are aware of the measures taken by both the Tribunal and the Inquiry staff to ensure that witnesses give their evidence in conditions that minimise, insofar as is possible, the stress and anxiety inevitably associated with such an experience. The present applicants and their representative will not have experience of this but will no doubt be assured by the Tribunal that similar measures will be afforded to them. In this context the Tribunal has said

“We made it clear in our observations of December 1998 that justice can only be done and be seen to be done if the Inquiry is conducted in a calm and quiet manner, so that (among other things) all those who have relevant evidence to give have a proper and fair opportunity to be heard, without distraction or interference and without grounds for any

concern save that they should speak the truth. We have also made clear that we would have no hesitation in moving elsewhere if it seemed that these conditions could not be maintained.” (at para 39 of the venue ruling)

### ***Convenience***

13. We should also say that we do not accept convenience as an appropriate ground for this application. While we are aware of the comments made by Lord Saville at the opening of the Inquiry the Tribunal has since said (in December 1998)

“Whatever the rights and wrongs of what occurred on Bloody Sunday, in our view the natural place to hold at least the bulk of the oral hearing is, in the circumstances, where the events in question occurred....We have concluded on the information presently available to us that this factor, so far as the soldiers generally are concerned, ***outweighs personal convenience*** and the expenditure required to make appropriate security and accommodation arrangements.” (emphasis added)

14. In its ruling on the venue for the soldiers’ evidence it further commented

“We are a tribunal...charged with seeking the truth about Bloody Sunday. On that day in a city in Northern Ireland, citizens of the United Kingdom were killed and wounded by British troops. The events of that day, though of great national and international concern, have undoubtedly had their most serious and lasting effects on the people of that city. It is there that the grief and outrage that the events occasioned are centered. It seems to us that the chances of this Inquiry restoring public confidence in general and that of the people most affected in particular (which is the object of public inquiries of this kind) would be very seriously diminished (if not destroyed) by holding the Inquiry or a major part of the Inquiry far away and across the Irish Sea, unless there were compelling reasons to do so. It is for

similar reasons that public inquiries generally are held in or near to the place where the events to be investigated occurred.” (at para 5)

15. Of course the Tribunal is aware that, contrary to the assertion made on page 3 of the letter of application, the importance of evidence being given in Derry does not arise simply for those who were present in Derry on Bloody Sunday but rather for all those connected with Bloody Sunday, the impact and implications of which were felt most keenly in Derry. The outcome of the Widgery Tribunal is similarly of most concern to the people of Derry. In addition, the role played by those assisting Lord Widgery in his task is a matter of very grave concern to the families and the people of Derry. While it has been pointed out that this Tribunal is not an appeal from the Widgery Tribunal the evidence before it includes the evidence that was before that Tribunal. The manner of the collection of that evidence is therefore of crucial importance to the task of this Tribunal.

Dated this 10<sup>th</sup> day of June 2002

Seamus Treacy QC, SC

Fiona Doherty