

# Judicial Communications Office

Thursday 30 June 2011

## COURT OF APPEAL RULES ON APPLICATION FOR REPORTING RESTRICTION

### Summary of Judgment

**The Court of Appeal on 10 June 2011 allowed an appeal against a decision by the Coroner not to impose a reporting restriction order on the fact that a witness at an inquest was serving a life sentence for a murder that was unrelated to the inquest at hearing. Publication of the judgment was postponed until the conclusion of the inquest proceedings.**

The appeal was heard by Lord Justice Higgins, Lord Justice Girvan and Sir John Sheil.

Duncan McLuckie (“the appellant”) is a former member of the Royal Signals. On 17 May 1972 he was part of a group of regular soldiers and members of the UDR engaged in an exercise involving a simulated terrorist attack. As this was taking place near the border the soldiers were issued with live rounds in addition to the blank rounds to be used in the exercise. They were not issued with attachments to their rifles which prevented a live round being fired. In the course of the exercise the appellant fired a live round which struck Sergeant Major Bernard Adamson (“the deceased”) of the UDR who later died in hospital. The appellant maintained that he never intended to fire a live round at the deceased. An inquest was conducted in Belfast on 18 December 1972 and the jury returned an “Open” verdict.

On 7 November 2007, the Attorney General for England and Wales directed a new inquest be conducted. A number of preliminary hearings hearing took place before the Senior Coroner, Mr Leckey. At a hearing in September 2009 it was disclosed in open court that the appellant was convicted of murder in 1989 and was currently serving a life sentence in HMP Frankland in Durham. The appellant had indicated that he would give evidence to the inquest by way of a video link from the prison.

On the day the inquest was due to commence, Counsel for the appellant made a submission to the Coroner that the appellant’s conviction for murder and the fact that he was giving evidence by video link from the prison were irrelevant for the purposes of the inquest and should not be referred to. It was also submitted that, in order to avoid prejudicing the jury, the Coroner should make a reporting restrictions order postponing any publication of the fact that the appellant had been convicted of murder and that he was in prison. It was stated that this restriction should be in place until the jury had returned its verdict. The Coroner asked the journalists who were present in court if they wanted to make submissions on Counsel’s submission. Written representations by the media were produced the following day. After a

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short adjournment the Coroner made a ruling refusing the application for a reporting restriction.

Counsel for the appellant subsequently made an emergency application for leave to bring judicial review proceedings. The application was refused by Mr Justice Treacy and the inquest was resumed shortly afterwards. Counsel for the appellant then said that she needed time to consider whether to appeal the judge's ruling. The Coroner was concerned about this and commented that the matter could have been raised at one of the earlier preliminary hearings, particularly as some of the deceased's family had travelled from America for the inquest. Ultimately, however, he decided that there was no alternative but to discharge the jury and set a new date for the inquest.

The appellant appealed against Mr Justice Treacy's ruling. It was submitted that there was a substantial risk of prejudice to the appellant should there be press coverage during the period of the inquest hearing of his conviction and that this risk could not be overcome by the Coroner giving directions to the jury. It was also claimed that Mr Justice Treacy should have taken into account the passage of time since the last media report of the issue as this could have meant that any previous coverage would have faded from the memory of the jurors.

Lord Justice Higgins, delivering the judgment of the Court of Appeal, said that the freedom of the media to report court proceedings is well recognised and of long standing. It is now enshrined in Article 10 of the European Convention on Human Rights. He commented that, not unnaturally, any encroachment on that freedom is rightly approached with caution by the courts and jealously defended by the media. Lord Justice Higgins said the Court had considerable sympathy with the Coroner and Mr Justice Treacy for the manner and circumstances, not least the haste, in which the original application for the postponement order and subsequent application for judicial review were made.

The Court of Appeal considered the power of the court to make an order postponing publication of court proceedings in order to avoid a substantial risk of prejudice to the administration. This power is contained in section 4(2) of the Contempt of Court Act 1981. It also referred to a leading case which sets out the systematic approach to be taken in applications to restrict the media in what they can report.

Lord Justice Higgins said that the first question to be considered is whether publication of the information about the appellant during the inquest would give rise to "a not insubstantial risk" of one of the jurors reading this and being influenced in some way by the fact that the appellant had been, since the death of the deceased, convicted of murder even though it had been accepted by all parties that the conviction for murder was irrelevant for the purposes of the inquest. The Court of Appeal considered that there was in this case a not insubstantial risk of prejudice to the administration of justice.

The second question was whether an order postponing publication would eliminate this risk. Lord Justice Higgins said that it would. The next question was whether measures other than postponement could overcome the risk. The judge said that it

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was for the relevant court to make a value judgment on this bearing in mind the approach in case law that the court should only impose an order where it is necessary and if making an order, the court must go no further than necessary as orders under s.4(2) should be regarded as a last resort.

Lord Justice Higgins said that the Coroner appeared to have considered only whether the media reporting that the appellant was a prisoner was a matter which would give rise to a substantial risk of prejudice rather than the further fact that the conviction for murder had been stated in open court at an earlier preliminary hearing. Lord Justice Higgins commented that as a period of 8 months had elapsed since the last report of the appellant's conviction, the risk of prejudice could be overcome if the Coroner was to implement measures other than a reporting restrictions order such as to question potential jurors individually in advance of the jury being sworn, or for the appellant to give evidence by video link without any disclosure of the fact that he is a prisoner. This latter approach would eliminate any need for the Coroner or counsel to address the jury individually or collectively on that subject.

The Court of Appeal therefore allowed the appeal and quashed the Coroner's ruling to refuse to impose a reporting restrictions order. The case was returned to the Coroner for him to further consider the application in accordance with the terms of this judgment.

Concluding his remarks, Lord Justice Higgins said that this application and the appeal are examples of the satellite litigation that has arisen in relation to inquest proceedings and which has caused many delays in the inquest system. He said that a culture has developed whereby decisions by coroners in preparation for and during the conduct of inquest proceedings are frequently and immediately challenged by way of judicial review. Lord Justice Higgins commented that in the context of criminal proceedings the law and practice of the court has been to discourage satellite judicial review proceedings, leaving challenges to decisions made during the course of criminal proceedings to be considered at the conclusion of the trial process. He said the Court of Appeal felt compelled to question why different considerations should apply in the context of inquests:

*"When an inquest results in a verdict, that verdict may itself be challenged in an application for judicial review but that will be at a time when the court will have the benefit of appreciating the whole context of the inquest. What may appear to be of potential or theoretical importance during preliminary hearings or inquest proceedings before the Coroner, and which often leads to satellite litigation, may turn out to be of no such importance in the overall context of the inquest."*

**NOTES TO EDITORS**

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1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).
2. The inquest into the death of Sergeant Major Bernard Adamson concluded on 21 June 2011. The jury found that the cause of death was accidental discharge of a live round by Signalmán McLuckie. The exercise was carried out in breach of army regulations reference pamphlet 21 (ie live and blank ammunition should not have been mixed on the exercise). No blank firing attachment was available or fitted. The jury also found that Lieutenant Colonel Starling was dismissive of concerns raised by Sergeant Major Adamson regarding the possession of both live and blank ammunition.

The jury also found that there were a number of other facts relevant to the circumstances that led to the death:

- Every witness interviewed had never recalled an exercise taking place before or after the incident where live and blank ammunition was issued on the same exercise;
- The decision to disregard the regulation contributed to the death of Sergeant Major Adamson;
- There was no adequate medical cover;
- Signalmán McLuckie was placed in an unexpected situation with insufficient time to prepare for the exercise. This contributed to the mistake of loading the live magazine.

**ENDS**

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