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Winner of the Council of Europe Human Rights Prize

CAJ's response to the
Draft Financial Investigations (NI) Order 2001
February 2001

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the whole community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

CAJ'S RESPONSE TO THE DRAFT FINANCIAL INVESTIGATIONS (NI) ORDER 2001

Introduction

CAJ welcomes this opportunity to comment on the Draft Financial Investigations (NI) Order 2001 ("the proposed Order"). Although CAJ recognises the need to combat money laundering and to trace the proceeds of crime, we believe that certain provisions of the proposed Order raise important civil liberties concerns. Specifically, we believe that the proposed Order would undermine both the right to financial privacy and the lawyer-client relationship.

Financial Privacy

In pertinent part, the proposed Order would:

- (1) extend the financial investigation powers held by the RUC under the Proceeds of Crime (NI) Order 1996 to Customs and Excise Officers;
- (2) enable a financial investigator to require all financial institutions to reveal whether they have a business relationship with a specified person (extending "general bank circulars");
- (3) extend the authority of financial investigators by authorising them to investigate the extent or whereabouts of any property subject to confiscation; and
- (4) empower an investigator to require solicitors to confirm whether they have acted for a named person in respect of certain types of business and inquire into the details of that business.¹

The proposed Order builds upon the Proceeds of Crime (NI) Order 1996, which established the role of the "financial investigator." When the 1996 Order was first enacted, CAJ was deeply troubled by its impact on the right to financial privacy. The government's latest proposals have further deepened our concerns. By extending the availability and powers of financial investigators, the government would be further eroding financial privacy rights. CAJ is extremely concerned that the government has been quick to sacrifice these rights without establishing that less intrusive alternatives would be inadequate and without carefully examining all the implications of its proposals.

By accessing people's financial records, the government is able to gather all sorts of information about them. As Justice Douglas of the United States Supreme Court observed in 1974:

In a sense a person is defined by the checks he writes. By examining them the agents get to know his doctors, lawyers, creditors, political

¹ See "Summary of Proposals," Explanatory Document.

allies, social connections, religious affiliation, educational interests, the papers and magazines he reads, and so on *ad infinitum*.²

Today, as technology launches us toward a cashless marketplace, there are electronic records of an ever-increasing number of transactions. Thus, the “Big Brother” concerns identified by Justice Douglas more than twenty-five years ago are even more disturbing today than they were then. As advances in computer technology make it easier to collect and store vast amounts of personal financial information, a broad protection of privacy rights becomes more and more essential.

Although measures like those contained in the proposed Order might assist the government in rooting out criminal gain, these kinds of goals must be balanced against the goals of protecting civil liberties. The government must not simply extend the powers of financial investigators without first carefully explaining how the new powers will affect people’s rights to keep their financial affairs private. CAJ also believes that the law must provide for significant civil penalties against the government when a financial investigator abuses his or her powers.

Lawyer-Client Relationship

CAJ is particularly concerned at the impact of the proposed Order on the lawyer-client relationship. The proposed Order would require solicitors to confirm whether they have acted for a named person on certain types of transactions. If a solicitor has acted for that person, the financial investigator could then require the solicitor to provide “specified details” about the nature of the transaction.

These new investigation powers would clearly undermine the legal professional privilege. This privilege exists to protect confidential communications between clients and their lawyers. In protecting a client’s confidences, the privilege encourages the complete and candid exchange of information. In so doing, the privilege promotes compliance with the law; solicitors can only give reliable legal advice if their clients provide them with all of the information relevant to the legal issue at hand.

Diluting the legal professional privilege not only renders attorneys less effective, however, but also discourages people from seeking any legal advice at all. In discouraging people from learning about their legal rights and responsibilities, the government would effectively be damaging its own crime-reduction agenda. It would also mean that the state was interfering with a person’s right to consult with a lawyer.

CAJ is also very concerned about the implications of the draft Order for the safety of solicitors. The Order, which is unique to Northern Ireland, has been explained as being targeted at “paramilitary godfathers.”³ As the Secretary of State is surely aware, there is a history in Northern Ireland of lawyers being falsely associated with the causes of their clients. Two lawyers have been killed because of their human rights work and their perceived political beliefs.

² California Bankers Association v. Shultz, 416 U.S. 21, 85 (1974).

³ See “Laying Down the Law on Drugs Crime,” Belfast News Letter (November 22, 2000).

In sum, CAJ believes that the proposed Order would seriously damage both the right to financial privacy and the lawyer-client relationship.

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