

CAJ's submission no. S. 268

CAJ's commentary on
'Inquiry into how the Attorney General for
Northern Ireland will participate in proceedings
of the Northern Ireland Assembly'

October 2010

Promoting Justice /
Protecting Rights

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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 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, Human Rights First (formerly 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, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

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

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18th October 2010

Dear Lord Browne

‘Inquiry into how the Attorney General for Northern Ireland will participate in proceedings of the Northern Ireland Assembly’.

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to comment our views relevant to the Terms of Reference (TOR) for the above-named inquiry. The TOR dictates that Inquiry look into a variety of issues, not least the relationship between the Assembly and the Attorney General (AG). Generally speaking, it is our view that the interaction and relationship should be transparent and open.

At this stage, we offer only the following brief comments in relation to each relevant aim of the Inquiry, according to the Terms of Reference (TOR). This is an area that we intend to research further – particularly in relation to accountability of the Public Prosecution Service – and thus may have more substantive comment to make at a future date

1. Consider the legislation that underpins the work of the Attorney General

Regarding the legislation relating to the work of the Attorney General’s office, it appears that there are loose ends which need to be tied up through legislation. For example, that the AG is meant to be the chief legal advisor to the Executive is not yet grounded in legislation, as noted by John Larkin in his 2009 report **Establishing the Office of the Attorney General for Northern Ireland**.

The Justice (Northern Ireland) Act 2004 (section 8) states that the Attorney General is to provide human rights guidance for criminal justice organisations. We are concerned that there are no further provisions (which perhaps could be addressed in legislation or in the Memorandum of Understanding between the AG and PPS) concerning the scope of this power, or the ability to review compliance with such guidance.

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In the report **Establishing the Office of the Attorney General for Northern Ireland**, John Larkin wrote that section 8 ‘is a significant provision [that] goes beyond the European Convention on Human Rights to encompass an unspecified but potentially wide range of international human rights standards. It therefore gives the potential to bring best practice standards across a wide range of areas into local practice.’ However, *qua* Attorney General he recently remarked on the ‘inescapable ambiguity’ of the idea of human rights, and stated that ‘it is not satisfactory to condemn some piece of national legislation or some judicial decision by measuring it against (capital letters) International Human Rights Standards. The value of those standards should be derived less from their status as decisions or acts by an assembly or international organisation than from their success in expressing truths about the dignity of human beings.’¹ This is somewhat worrying given that the AG, in providing ‘human rights guidance’ to the agencies within the criminal justice system, should be offering guidance that *is* measured against international standards. This could perhaps be clarified in legislation.

It is also worth highlighting that these are not just standards but obligations under international human rights law, which in signing and ratifying the relevant covenants, the government has freely undertaken to uphold.

Furthermore, it could be clarified that beyond providing human rights guidance to criminal justice organisations, in his capacity as legal advisor to the Executive, the AG may have a role in advising the Executive in relation to their responsibilities under international human rights law.

2. Review relevant elements of the report of the Attorney General on Establishing the Office of the Attorney General for Northern Ireland (DP628) including the relationship between the Attorney General and the Public Prosecution Service

Bearing in mind the need to foster public confidence in the Public Prosecution Service, and ensuring the independence of the Public Prosecution Service, whilst perhaps not appropriate to return to the ‘superintendence’ dynamic between the Attorney General and the PPS of the past, it is important to strengthen and clarify the ‘consultative’ relationship that presently exists. CAJ believes that the present arrangements regulating the PPS do not satisfactorily hold the PPS accountable.

¹ John Larkin QC speech at a Conference of the Northern Ireland Human Rights Commission on 16 September 2010.

The necessity of independence from political influence does not necessarily mean that there cannot or should not be political accountability. The Scottish model is one example of how this can work in practice.

In relation to the PPS, the Attorney General's powers are now limited to suspension or removal of the Director or Deputy Director on the grounds of misbehaviour or inability to perform the functions of office. There are significant questions relating to accountability regarding non-operational substantive aspects of the PPS. According to Section 42 of the Justice (Northern Ireland) Act 2002, the PPS 'may' consult with the AG, who may give advice and guidance, but it is unclear whether this is only at the invitation of the Director of the PPS; indeed the arrangements between the Director of the PPS and the AG in general appear to be too loose.

3. Examine the terms of the appointment of the Attorney General

We offer no comment at this time in relation to this aspect of the Inquiry's TOR.

4. Examine the roles of Attorneys General in other areas in relation to legislatures

This issue has been looked at to varying degrees by several stakeholders, and CAJ offers no additional comments at this time. Professor John Jackson, a member of the Criminal Justice Review Group, has recently recommended that Northern Ireland look beyond the arrangements in the UK and Republic of Ireland, perhaps to New South Wales.²

5. Obtain the views of the parties represented in the Northern Ireland Assembly on how they would wish to see the Attorney General being accountable to the Assembly both in plenary and to Committee(s) for his own office and the Public Prosecution Service

No comment.

² Prof Jackson spoke in relation to the PPS at the CAJ Conference on 23 September 2010 at Holiday Inn, Belfast.

6. Produce recommendations on the extent to which the Attorney General will report to the Assembly

CAJ believes that the Attorney General should be able to speak to the Assembly *ex officio*, as well as at the behest of the Assembly and that this should be made explicit in the Standing Order. Recommendation 44 of the CJR was that the Attorney General 'should be enabled by Standing Orders to participate in Assembly business, for example through answering questions or *making statements*'.

Additional comments:

A number of the powers which the Attorney General had prior to devolution have since been transferred to the Advocate General, in accordance with the Justice (Northern Ireland) Act 2002. Given that the Advocate General is meant to deal with excepted matters, it appears in fact that the Advocate General may wield considerable power in Northern Ireland, if he so chooses, particularly in relation to national security matters. The impact that this may have in the operation of the office of the Attorney General, and indeed criminal justice more generally, warrants further examination.

There are other issues relating to the role of the Advocate General which appear cloudy, and therefore need further scrutiny and clarity (for example, the Justice (Northern Ireland) Act 2004 section 8(9) states that the AG 'shall consult' with the Advocate General before making human rights guidance to the criminal justice agencies – we are unclear why this would be necessary).

Thank you again for your request for our input to your Inquiry and we hope these very preliminary comments will be useful. We look forward to further engagement in the debate.

Yours sincerely,

Mike Ritchie
Director

For further information please contact the CAJ office on 02890 316000 / info@caj.org.uk