

CAJ's submission no. S404

CAJ's submission to the consultation of the Office of
the Lord Chief Justice on the Draft Practice Direction
on Third party Interveners

February 2013

About 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.

CAJ's submission to the Consultation of the Office of the Lord Chief Justice on the Draft Practice Direction on Third Party Interveners

Committee on the Administration of Justice ('CAJ')

1. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. CAJ welcomes the opportunity to respond to the Office of the Lord Chief Justice's consultation on the Draft Practice Direction on Third Party Interveners. CAJ has made third party interventions in its own name and jointly with other NGOs before the Northern Ireland Courts, the Supreme Court and the European Court of Human Rights.

Procedure for applications for leave to intervene as a third party

3. CAJ welcomes the recommendation¹ that an application for leave is made by way of letter obviating the need to file a Notice of Motion and requisite fee which can prove to be an obstacle to applicants such as NGOs and charities seeking to intervene.
4. CAJ seeks confirmation that the finalised Practice Direction makes it clear that that service can also be affected by way of e-mail, facsimile or post which is of particular importance when working to a restrictive timetable.
5. CAJ notes the requirement on an applicant to demonstrate to the Court that they have written to the parties confirming whether they consent to the application. We submit that applicants should confirm to the Court that they have corresponded with the parties, seeking their views, and they should submit the parties' response to the application for leave when they receive them, however, the failure of a party to respond to a request for consent, or to advise that it withholds consent, which may not in fact be on public interest grounds, should not be a determinative factor in considering an application for leave.
6. It may also be necessary on occasion to have an oral hearing of the leave application and CAJ would welcome guidance on the procedures surrounding this.

¹ Paragraph 8

7. CAJ would also welcome clarification on when an applicant will be given access to the pleadings before the Court and relevant correspondence between the parties and Court and who will be responsible for providing this.
8. CAJ would also respectfully submit that where leave has been granted to intervene in a lower court that this is used in support of an application at the appellate stage.
9. It would also be useful to have confirmation of the means by which a Court will advise of its decision to grant or refuse leave and the expected time frame for such a response.

Costs

10. CAJ notes the proposal² in respect of costs and submits that a third party intervener bear its own costs and that orders for costs should not be made in favour or against a third party intervener. Third Party Interventions made in the public interest by bodies such as NGOs and charities with limited financial means are often prepared with pro-bono assistance from counsel and the threat of adverse costs, subject to the Court's discretion, will have a chilling effect on a third party interventions. We submit that there should be a presumption that no order for costs will be made unless an intervention is a vexatious one. In the alternative, consideration should also be given to the use of Protective Costs Orders where interventions raise issues of public importance, it is in the public interest to make such an order and an intervener would not be in a position to bear costs.³

Notification of cases

11. A major factor which can impact on the effectiveness of a third party intervention is its timing. While applicants make efforts to be kept informed of relevant proceedings in which they may wish to assist a Court with public interest submissions, they would greatly benefit from earlier identification of suitable cases through the establishment of a register of pending public law proceedings, including leave applications, on the Northern Ireland Courts and Tribunals Service's website. Such a register providing a calendar of judicial review listings; identifying the key issues raised and the details of the solicitors for the parties, would greatly assist applicants in their considerations and help avoid any unnecessary delay to the timetabling of proceedings should an application to make a third party intervention be made.

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² Paragraph 13.

³ In accordance with R (Corner House Research) v Secretary Of State for Trade and Industry [2005] EWCA Civ 192 and as considered in Re McHugh's Application [2007] NICA 26, In the matter of an application by the Ulster Architectural Heritage Society for leave to apply for judicial review (unreported, 2009) and In the matter of an application by Ciara Patricia Thompson for judicial review [2010] NIQB 38.