

**MINUTES OF THE 57<sup>TH</sup> COMMISSION MEETING**

**HELD ON MONDAY 8 SEPTEMBER 2003 AT 11.00 AM**

**IN THE OFFICES OF THE NIHRC, TEMPLE COURT, BELFAST**

**Present:** Brice Dickson, Chief Commissioner  
Margaret-Ann Dinsmore  
Christine Eames  
Tom Hadden  
Paddy Kelly  
Frank McGuinness  
Kevin McLaughlin

**Apologies:** Tom Donnelly  
Harold Good  
Chris McGimpsey

**In Attendance:** Paddy Sloan, Chief Executive.

**1.0 Adoption of the Agenda**

- 1.1 A discussion paper on the Commission's casework function, prepared by Paddy Kelly and Frank McGuinness, had been circulated to Commissioners on 5 September 2003.
- 1.2 In absentia, Harold Good requested through the Chair that the discussion of this paper be postponed as he, as a member of the Casework Committee, would like to be present for this debate.
- 1.3 Sympathy for this position was expressed from the Chair.
- 1.4 Both Paddy Kelly and Frank McGuinness felt, on the contrary, that the content of their paper was central to the subsequent agenda items and should therefore be considered at this meeting.
- 1.5 There followed discussion from other Commissioners regarding the recommended circulation period for documents prior to Commission discussion and the importance of the input of two absent Commissioners who are central to the debate.

*At 11.30 am Kevin McLaughlin joined the meeting.*

- 1.6 The urgency of the issue and the challenges to the Commission presented in correspondence from Christine Bell were considered as a counter argument.
- 1.7 Margaret-Ann Dinsmore wished to note her concerns that a difficult debate has to happen but it is imperative that all relevant Commissioners should have

the opportunity to participate and that all material documents are available in advance. It was agreed through the Chair that the issues raised in Christine Bell's correspondence would be discussed under the original item 15 on the agenda, Casework, to which Frank and Paddy's paper pertains.

- 1.8 It was agreed that this item would now move up the agenda to item 8.
- 1.9 Margaret-Ann Dinsmore's dissent to this decision was noted. It was also noted that this discussion would take place in the absence of Commissioners Tom Donnelly, Harold Good and Chris McGimpsey.

## **2.0 Minutes of the 56<sup>th</sup> Commission Meeting**

- 2.1 The minutes of the 56<sup>th</sup> meeting of the NIHRC held on Monday 11 August were agreed as an accurate record.
- 2.2 The minutes of the special Commission meeting convened on 18 July 2003 will be approved at the October Commission meeting.

## **3.0 Matters Arising**

- 3.1 British Irish Rights Watch has agreed to meet with the Commission to discuss their concerns as expressed in correspondence. A date has yet to be identified.
- 3.2 Correspondence between the Chief Commissioner and Patrick Yu is to be circulated to all Commissioners together with copies of correspondence from the Chief Commissioner to the NICEM Executive Committee and membership. Commissioners had varying views on the appropriateness of the Chief Commissioner's correspondence to the NICEM Executive and membership.
- 3.3 Further details of the scrutiny of Casework bills of costs will be provided to Commissioners.
- 3.4 The content of the discussion with the Minister John Spellar at a meeting on 11 August 2003 was discussed. Concern was expressed that Commissioners might be labelled politically because of their perceived religious background and that particular political perspectives were identified as necessary among Commissioners. The expression of individual opinion should not be confused with a considered Commission position. A note of the meeting with John Spellar is to be prepared and circulated.
- 3.5 Counsel's advice has not as yet been received on the legal options available to the Commission to withdraw from cases on the basis of cost and if and how costs might be capped at the start of a case.
- 3.6 A date to visit asylum seekers in Maghaberry has not as yet been identified.

- 3.7 Views of the Commission as expressed in a meeting with John Steele were evident in his report on safety at Maghaberry prison.
- 3.8 A further draft of the Commission's response to the Quigley Review is to be circulated to Commissioners for final comments by the Chief Commissioner.
- 3.9 The strategy document on how to take forward the recommendations in *Learning to Grow Up*, the study of the rights of young gay, lesbian and bisexual people in the health service, is on the agenda for Commissioners consideration.

**4.0 The resignation of Patrick Yu**

- 4.1 Correspondence between the Chief Commissioner and Patrick Yu, NICEM Executive and the NICEM membership were to be tabled in advance of the discussion. A 15 minutes break ensued to allow the relevant paperwork to be assembled.

*The Commission meeting reconvened at 12.50 pm.*

- 4.2 The above correspondence was considered with the Chief Commissioner further advising that there had been to date no response from Patrick Yu to his two letters and phone call.
- 4.3 The letter of resignation sent from Patrick to the Secretary of State was then considered.
- 4.4 The concern expressed by Patrick regarding the Commission's contact with the OSCE was discussed. Tom Hadden detailed the chronology of that contact.
- 4.5 The first contact with the OSCE was through the Bill of Rights Working Group in November 2000. Contact was also made at that time with the Council of Europe Working Group on the Protection of National Minorities. Oral advice was received from both.
- 4.6 Written advice was subsequently sought from and provided by the OSCE and has now been sought from the Council of Europe.
- 4.7 The right not to be treated as a member of a minority is described in all international treaties referring to minority rights and the Commission therefore needs to accommodate that right with the need for monitoring regulations in the Northern Ireland situation. How best to reach that accommodation is an ongoing discussion with the Equality Commission. Patrick's further concern regarding the terminology used in the Bill of Rights, whether to refer to minorities or communities, was considered. Whether or not he was aware of the most recent debate on that issue within the Commission is unclear. Similarly there were divided views as to whether

Patrick's main concern was with the protection of ethnic minorities or the protection of the Catholic minority in Northern Ireland, or both.

- 4.8 Concern was expressed that Patrick chose, after his resignation, to pass on an internal Commission document to the Minister, John Spellar. Further concerns were expressed that the Commission had not as yet implemented all of its intended organisational changes.
- 4.9 Commonality in the issues raised by British Irish Rights Watch and Patrick's correspondence and in an article written by Colin Harvey, suggested to some Commissioners that Patrick's prime concern was the protection of the minority community and that this should not be confused with protection of the ethnic minority communities in Northern Ireland.
- 4.10 It was noted that various media presentations had been made of the Commission's position on this issue, which has not been agreed beyond that which was published in the Bill of Rights consultation document in September 2001.
- 4.11 The Commission acknowledged the current climate of increased polarisation and sensitivity to any perceived threats to a reduction in equality protections within the nationalist community.
- 4.12 Again the importance of clarifying externally that the Commission has not as yet arrived at any final position on this issue was emphasised.
- 4.13 It was agreed that the introduction to the proposed interim paper on the Bill of Rights, currently being drafted, could make an important contribution to clarifying the Commission's position. It was agreed among Commissioners that the community/minority debate is a work in progress. There was a lack of clarity as to Patrick's relative concerns regarding the protections of the ethnic minority and the treatment of the two main communities in Northern Ireland. Commissioners hoped to be able to discuss this further with Patrick directly.
- 4.14 Whilst the Good Friday Agreement refers to protecting the Catholic community, the use of the word community in a Bill of Rights has perceived implications for the Catholic minority which need to be debated.

*The Commission broke for lunch at 2.00 pm and reconvened at 2.35 pm.*

- 4.15 Commissioners were concerned that the current criticism of the Commission is deflecting from the value of ongoing work in progress. The various issues relating to the Bill of Rights process which have caused external concern, need to be assessed, summarised and addressed internally.
- 4.16 Some Commissioners felt that through the recent series of meetings with political parties, NGOs and individuals to discuss their concerns, the Commission was already aware of and addressing these issues.

- 4.17 The importance of the concerns of the broad nationalist family, politically and in the wider community, referring to the terminology community or minority, was further debated.
- 4.18 It was proposed that the Commission should invite key protagonists to meet with the full Commission to discuss how the Bill of Rights can provide protection to the Catholic minority community in Northern Ireland. Three separate meetings should be held to consider protections of the Catholic, Protestant and ethnic minority communities. The focus of the discussion should be Bill of Rights protections and should not stray into other issues.
- 4.19 Commissioners expressed concern that, as advised by Sinn Fein and SDLP, the Commission should not accelerate the debate in advance of the establishment of the political Round Table.
- 4.20 Although there was substantial discussion and some reservation expressed by Commissioners regarding these meetings it was agreed that meetings already held over the summer, particularly with political parties, had not had a satisfactory outcome. It was therefore agreed to invite representatives of political parties and those who have been particularly critical of the NIHRC's approach to the Bill of Rights, to meet with the Commissioners to discuss in particular the protection of minorities and how best to use international advices.
- 4.21 It was agreed that the initial meeting should focus on protections for the nationalist community and the following should be invited:
- Sinn Fein, SDLP, Inez McCormack, Christine Bell, Patrick Yu, Chris McCrudden, British Irish Rights Watch, CAJ and Colin Harvey.
- 4.22 There followed further discussion among Commissioners regarding the extent to which the Commission had fulfilled its commitment to consider and respond to Patrick Yu's resignation of 7 July. Although a range of meetings have been held internally and with other commentators over the summer period, not all Commissioners felt that enough had been done.
- 4.23 Paddy Kelly wished it noted that she is not content with correspondence from the Chief Commissioner to Patrick Yu and to NICEM which she had not previously seen and felt to be inappropriate. Christine Eames and Margaret-Ann Dinsmore wished their view to be recorded that the Chief Commissioner must have the authority to correspond with individual Commissioners, expressing his perspective on events.

*At 4.20 pm the Commission meeting broke for tea. At 4.35 pm the Commission meeting reconvened.*

**5.0 Report of the Joint Committee on Human Rights**

- 5.1 The Commission had already taken a decision to submit a response to the Joint Committee in the autumn. It was agreed therefore that the Commission would initially consider the 24 recommendations listed in the report of the Joint Committee.
- 5.2 Recommendation 1 – a revised Memorandum of Understanding has been drafted in discussion with the NIO and is reaching the final draft stage. A copy will go to all Commissioners.
- 5.3 Recommendation 2 – the Commission would reiterate the importance of maintaining independence and impartiality in its operation.
- 5.4 Recommendation 3 – further consideration needs to be given to the outworking of this recommendation to create a role for an independent Commission in the appointment of Commissioners.
- 5.5 Recommendation 4 – the Commission has supported the position that Commissioners should have experience, knowledge and expertise in human rights.
- 5.6 Recommendation 5 – the NIO should consult further on the recommendation to appoint Commissioners from outside NI, as this gives rise to several issues of principle and operational practicalities.
- 5.7 Recommendation 6 – The Commission agreed that the NIO should publish a clear statement of the criteria for the appointment of Commissioners which would identify where that statement does not reflect the thinking of the NIHRC.
- 5.8 Recommendation 7 – The Commission would reinforce the need for a more robust level of support from the Northern Ireland Office to the Commission as a corporate entity. The NIO and Human Rights Commission must remain independent of each other.
- 5.9 Recommendation 8 – The Joint Committee’s recommendation on the need for the Commission to avoid external pressure was accepted with the caveat that pressure should be qualified as “inappropriate” external pressure.
- 5.10 The recommendations relating to the resources of the Commission, 9 to 12, were endorsed by Commissioners.
- 5.11 Recommendations 13 – 15 on the Commission’s focus in its Strategic Plan are welcomed and relevant work that has been done by the Commission in the interim is to be identified to the Committee.
- 5.12 Casework criteria as referenced in recommendation 16 will be kept under review with the aim of developing law and disseminating human rights

principles. Some discretion within the criteria needs to be available to the Commission.

- 5.13 Under recommendation 17 work is still ongoing between the NIHRC and the Legal Aid department to ensure best practice for applicants.
- 5.14 The Committee's recommendations 18 and 19 reflecting increased investigative powers for the Commission were welcomed.
- 5.15 Recommendations 20 – 24 reflect the Commission's work on a Bill of Rights. An update will be provided to the Committee on current progress and the Commission would endorse the Committee's recommendation 23 that a Bill of Rights should support and enrich democracy.
- 5.16 Under recommendation 24 the Commission would support the Joint Committee's recommendations associated with the proposed political Round Table on a Bill of Rights, with the exception of the role of the Commission remaining "at arms length". The Commission is anxious to have an effective involvement with the Round Table whilst retaining its necessary independence. An update on progress with respect to the Round Table will be provided to the Committee.
- 5.17 It was agreed that the Chief Commissioner will draft an initial response to the Joint Committee Report for further consideration by Commissioners, prior to submission to the Committee when it reconvenes.
- 5.18 There followed further discussion among Commissioners about recommendation 8 referring to the independence of the Commission and the need to avoid inappropriate external pressure and the relationship of that point to the paper on casework presented to the Commission. It was also argued that this point related directly to issues raised in correspondence from Christine Bell and should therefore be considered in response to her letter.
- 5.19 The connection of this issue to the 'E' case, scheduled for hearing later in the week was also highlighted and discussed. It was agreed that the Commission continues to support the 'E' case and fully endorses the Casework Committee's decision to do so. This position represents any public statement that needs to be made in respect of the 'E' case later in the week.
- 5.20 There followed further discussion on the Commissioners' various concerns regarding the integrity of the Commission and of individual Commissioners in the context of recent publicity and criticisms. Paddy Kelly and Frank McGuinness expressed their disappointment that a discussion of Casework and the issues raised in Christine Bell's correspondence and in Recommendation 8 of the Joint Committee's report, were not given a fuller discussion at this meeting. They felt that this could have happened without recourse to their paper on Casework, which some Commissioners felt they had not had enough time to consider.

- 5.21 As a result, Paddy Kelly informed the Commission that, with deep regret, she could no longer participate in Commission meetings until these issues are resolved. She agreed to attend and participate in the discussion scheduled to take place on Casework and Christine Bell's correspondence. Paddy informed the Commission that she would be advising Christine Bell of her decision.
- 5.22 The Chief Commissioner expressed his regret at Paddy Kelly's position. He respected her decision and would ensure that the Commission would meet at the earliest juncture possible, to consider the issues about which she is concerned.
- 5.23 It was agreed that this topic would be discussed at a reconvened meeting of the Commission. The first opportunity for that to take place was Thursday 11 September, 6.00 pm – 9.00 pm; the next opportunity would be Monday 15 September, 6.00 pm – 9.00 pm or if necessary Monday 22 September at 2.00 pm.
- 5.24 Paddy Kelly will inform the office as to her availability for the meeting on 11 September. Should she not be available, this meeting will go ahead with the original agenda focusing on the Bill of Rights discussion on equality and democratic rights. Supper will be available from 5.30 pm.
- 5.25 The Commission will reconvene on Monday 22 September at 2 pm, to complete the remaining items on the agenda.
6. The meeting closed at 5.50pm.