

Biography

Professor William Binchy is Regius Professor of Law at Trinity College, Dublin Law School, Ireland. He is a member of the Irish Human Rights Commission and specializes in private international law, the law of torts and family law. He is a Barrister-at-Law, a consultant to the Department of Foreign Affairs and represented Ireland at the Hague Conference on Private International Law. Professor Binchy has also campaigned widely over proposed amendments to the Constitution of Ireland.

Legal Information Management, 11 (2011), pp. 155–158
© The British and Irish Association of Law Librarians

doi:10.1017/S1472669611000533

Law Reform in Northern Ireland

Abstract: Professor Brice Dickson offers forthright views relating to law reform issues in Northern Ireland against the background of the peace process.

Keywords: law reform; legal systems; Northern Ireland

Introduction

Now that Northern Ireland has at last attained a certain stability and peacefulness (even if virtually every day there are still bombs, hoaxes or shootings, which only by luck or good policing have not yet resulted in numerous casualties), there is an opportunity for elected politicians to settle down to serious law reform. While responsibility for anti-terrorism law remains a matter reserved for Westminster,¹ the devolution to Stormont of responsibility for policing and justice has certainly added impetus to the drive for change².

The Alliance Party's David Ford, elected as Minister of Justice on a cross-community vote in the Northern Ireland Assembly, has been in post since April 2010 and will remain in office until at least April 2012, when the mechanism for choosing the Minister will be reviewed. Ford has put in train a series of important reform processes that have the potential to make a significant difference to the efficiency and effectiveness of the local legal system.

criminal law – have done very well out of the troubles. The Northern Ireland Legal Services Commission has indicated that in 2009–10, for example, payments from the legal aid fund to solicitors amounted to £62 million, with £46 million going to 100 firms³. Barristers received a total of £35 million, with an incredible £30 million going to just 100 individuals⁴. The Minister has insisted that new rules on costs be adopted in order to reduce the fees payable in complex criminal cases. As one might expect, these rules have not been well received by the professionals and some have refused to undertake legal aid work as a result. When pressed in public, however, they find it hard to defend their position. Even after Ford's reforms lawyers in Northern Ireland will in many cases be paid at higher rates than lawyers anywhere else in these islands. To claim, as the solicitors' Criminal Bar Association has done, that defendants in criminal cases will not receive a fair trial if the cuts in legal aid rates are accepted is to suggest that lawyers in England and Wales, who work on even lower rates, are already breaching that right – an outrageous proposition.

Legal costs

First and foremost, the Department of Justice has taken on the vexed question of legal costs, in particular the sums claimed by lawyers for legal aid work. During the past 30 years many members of the legal professions in Northern Ireland – especially those specialising in

Prison Service

The need for change in the way Northern Ireland's prisons are run has also achieved much attention of late. A Review Team headed by Dame Anne Owers, a former Chief Inspector of Prisons in England and Wales, has produced an interim report painting a very grim picture of

the current prison regime. She describes the Northern Ireland Prison Service as 'demoralised and dysfunctional, resigned to bad press and routine criticism'⁵. There had previously been very critical reports from both HM Inspectorate of Prisons and the Criminal Justice Inspector of Northern Ireland⁶. What appears to have happened is that the culture which developed amongst prison officers during the worst days of the troubles – when their terms and conditions were kept favourable because of the egregious attacks they faced from various paramilitary groupings – has survived the peace process. In addition, and at some considerable expense, the Prison Service has continued to maintain a separate prison regime for affiliates of paramilitary organizations in Northern Ireland, a situation which undoubtedly adds to the tensions in Maghaberry Prison. The Service also has a poor record in preventing attempted and actual suicides.

The Prison Service has not been 'Pattenised' in the way that the Royal Ulster Constabulary was in 2001, so it remains a very Protestant organisation and one that does not fully appreciate the centrality of rehabilitation to the modern approach to imprisonment. There are currently more prison officers than prisoners in Northern Ireland and the cost of imprisonment per prisoner is a lot higher than in other parts of the United Kingdom. It remains to be seen whether generous redundancy packages will be made available to prison officers in the same way as they have been to police officers (one Assistant Chief Constable recently left the Police Service with a redundancy package worth £500,000, though another ACC turned down such an offer and is staying in her post⁷). The Prison Review Team's final report, due later in 2011, will doubtless set the cat amongst the pigeons in a way that may even lead to industrial action by the Prison Officers' Association.

Discrimination law

Earlier this year a decision was taken by the UK government (this still being a non-devolved issue) that it would no longer apply the 50:50 recruitment policy for new members of the Police Service of Northern Ireland. That policy, in place since 2001, required at least 50% of new recruits to the Police Service to be Catholics⁸. By 2011 it had helped to increase the proportion of Catholics in the force from 8% to almost 30%. But it required an exemption from an EU Directive on discrimination⁹ and in the modern era, where people are defined by much more than their perceived religious affiliation, it is surely an aberrance that should be dispensed with. What still remains, amazingly, is the exemption from discrimination law enjoyed by schools when they recruit new teachers: governors are permitted, for example, to favour a Catholic applicant over a non-Catholic applicant for a job as a mathematics teacher in a Catholic school¹⁰. Moreover, anyone applying for a job in a public sector organisation in Northern Ireland, or currently employed

in such an organisation, must submit to being labeled by the employing body as a perceived Protestant or a perceived Catholic (unless they are from outside Northern Ireland)¹¹. Employers must also review the composition of their workforce to see if there is 'fair participation' in employment by Protestants and Catholics¹². The Equality Commission for Northern Ireland also polices what people can wear at work: a Rangers or Celtic top, for example, would not be deemed conducive to a neutral or harmonious working environment and could land the employer with liability in the Fair Employment Tribunal.

Tribunal Reform

Tribunal reform is another matter which at long last is making some progress in Northern Ireland. Problems with delay and backlogs have been greatly reduced at the Office of Industrial Tribunals and the Fair Employment Tribunal, but wider organisational reform comparable to what has occurred in England and Wales in the last decade has yet to be completed. All tribunals are gradually being brought under the administrative control of the renamed Northern Ireland Courts and Tribunals Service, and a better system is in place for ensuring that the recruitment of tribunal members is rationalised under the aegis of the Northern Ireland Judicial Appointments Commission¹³. That body also oversees the appointment of Lay Magistrates. These officials do not play as crucial a role as they do in England and Wales, because all magistrates' courts and youth courts in Northern Ireland are chaired by legally qualified District Judges (Magistrates Courts). However they still help to ensure that a lay perspective is brought to bear in the dispensation of justice at the lower level end of the scale.

Juryless Crown Courts

There are still juryless Crown Courts in Northern Ireland, but they are no longer referred to as Diplock courts. Offences which the Director of Public Prosecutions deems to be connected to paramilitary organisations can be 'certified' as ones where a trial without a jury is called for,¹⁴ the assumption being that if jurors were to be involved they would be at significant risk of intimidation (the risk of bias is probably much less than it was in the 1970s and 1980s). Dissident republicans are increasingly active, even if the incidents rarely attract attention from national news broadcasters. Several people are awaiting trial for the murder of two soldiers and a police officer in 2009. The only silver lining to this very dark cloud of terrorism is that the violence has re-energised virtually all elected politicians to ensure that the Good Friday and St Andrews Agreements are fully implemented in ways that promote reconciliation between communities. The Northern Ireland Executive is currently pondering a new 'Cohesion, Sharing and

Integration' programme (following the rubbishing of an earlier draft¹⁵) and the pressure is on to make sure that a new approach is rolled out over the next four years (no elections are due in Northern Ireland until 2015). There are more peace walls in Northern Ireland now than there were when the Good Friday Agreement was reached in 1998; the greatest of all current challenges is to dismantle these without increasing the risk of further violence.

The Deepening Peace Process

As the peace process deepens various public inquiries that were set up in the wake of the 1998 settlement are coming to fruition. The publication in 2010 of the Saville Report on Bloody Sunday in 1972 was widely seen as a major turning-point, not least because of the statesman-like apology issued by the Prime Minister, David Cameron¹⁶. The subsequent reports into the killings of the loyalist paramilitary Billy Wright¹⁷ and the solicitor Rosemary Nelson¹⁸ have also been fairly well received, even if the failings of the prison, police and governmental authorities in both cases were condemned as negligent rather than as collusive. The imminent report into the killing of Robert Hamill will doubtless be very embarrassing to the Chief Constable and will require yet another apology. Meanwhile, no inquiry has yet commenced into the murder of solicitor Pat Finucane in 1989, but the police's Historical Enquiries Team and the Office of the Police Ombudsman are quietly going about their business of investigating other long-standing unsolved murders and allegations against the police. The Police Ombudsman's report into the bombing of McGurk's bar in 1971¹⁹ showed that the RUC jumped much too readily to the conclusion that it was caused by the premature explosion of an IRA bomb being minded on the premises rather than by a bomb planted by loyalist paramilitaries, which in fact it was.

Positive Reform in N.I.

In its 2007–11 session the Northern Ireland Assembly managed to enact some very important legislation. The Charities Act (NI) 2008 introduces long overdue changes to the regulation of charitable bodies whilst the Commission for Victims and Survivors Act (NI) 2008 puts in place a mechanism for ensuring that those who suffered most during the troubles can have their current needs better addressed. The Employment Act (NI) 2010 helps keep Northern Ireland's law in line with that in England and Wales in this important field, and the Planning Act (NI) 2011 has the potential to greatly improve the efficiency of the antiquated system for seeking planning approval. The merger of district policing partnerships and community safety partnerships, brought

about by the Justice Act (NI) 2011, is also greatly to be welcomed, as is the provision for appointment of a Commissioner for Older People, someone who will have even greater powers than the post-holder in Wales (the only other such person in these islands)²⁰. Alas, no legislation has yet been enacted to give Northern Ireland a Legal Services Ombudsman, and the powers of the Prisoner Ombudsman need to be strengthened by being enshrined in statute.

Northern Ireland Law Commission

One of the new bodies established in the wake of the Good Friday Agreement (albeit after a delay of nine years) is the Northern Ireland Law Commission²¹. This institution has just completed its first programme of law reform and has issued impressive reports on the reform of land law and of business tenancies, each with draft legislation appended²². Land law reform has been an ambition of progressive lawyers in Northern Ireland for decades – ever since the province missed out on the Birkenhead legislation for England and Wales in the 1920s. While the Law Commission's proposals are relatively modest, they do at least suggest the abolition of the doctrines of estates and tenure, long-standing impediments to a more rational and modern system of land ownership. The whole of Northern Ireland is now designated as registered land territory, but all titles will not be registered until fresh conveyances have occurred in relation to each piece of unregistered land. E-registration, while foreseen in the near future, is not yet a reality. This was one reason why the Law Commission was reluctant at this stage to be more radical in its proposed reforms.

Law Publishing in N.I.

All in all it is an exciting time to be a student or practitioner of law in Northern Ireland. Access to information is facilitated by the steady stream of publications emerging from SLS Legal Publications in Belfast²³ and also from 'mainland' publishers²⁴. SLS's *Bulletin of Northern Ireland* remains an indispensable tool for keeping in touch with developments on an almost monthly basis, and the commitment of LexisNexis Butterworths to the *Northern Ireland Reports* and the *Northern Ireland Judgments Bulletin* seems as strong as ever. The website of the Northern Ireland Courts and Tribunals Service is much improved too. The *Northern Ireland Legal Quarterly*, edited by Professor Sally Wheeler in the School of Law at Queen's University Belfast, is still a stalwart periodical, even if its focus is on national and international developments rather than on those occurring more locally.

Footnotes

- ¹The precise demarcation of responsibilities is set out in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (SI 976).
- ²This occurred following the Hillsborough Castle Agreement between local political parties on 5 February 2010 (see www.nio.gov.uk/agreement_at_hillsborough_castle_5_february_2010.pdf).
- ³www.nilsc.org.uk/uploads/press/documents/Solicitor%20Payments%202009_2010.pdf.
- ⁴www.nilsc.org.uk/uploads/press/documents/Counsel%20Payments%202009_2010.pdf.
- ⁵www.prisonreviewni.gov.uk/28_february_2011_dame_anne_owers_press_release_interim_report.pdf.
- ⁶For an example, see HM Inspectorate's report on Maghaberry Prison in 2002 (www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/machaberry2002-rps.pdf) and the CJl's report on an unannounced full follow-up inspection of Maghaberry Prison 19–23 January 2009 (www.cjini.org/CJNI/files/a2/a258078a-5376-4c89-88c8-13d4e0e4f3ee.pdf).
- ⁷www.u.tv/news/Assistant-Chief-Constable-to-retire/0294bc80-9ad0-4232-9111-67f00600167e.
- ⁸Police (NI) Act 2000, s 46.
- ⁹Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Art 15(1).
- ¹⁰*Ibid.* Art 15(2) and Fair Employment and Treatment (NI) Order 1998, art 71(1).
- ¹¹Fair Employment and Treatment (NI) Order 1998, art 53(3) and (4), and Fair Employment (Monitoring) Regs (NI) 1999, regs 8, 9, 11 and Schs 2 and 3.
- ¹²Fair Employment and Treatment (NI) Order 1998, art 55(1).
- ¹³See NIJAC's *A Guide to Judicial Careers in Northern Ireland*, 5th ed, 2011.
- ¹⁴Justice and Security (NI) Act 2007, ss 1–9.
- ¹⁵See the 2010 consultation paper at www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf.
- ¹⁶www.parliament.uk/business/news/2010/06/prime-minister-makes-statement-on-saville-inquiry.
- ¹⁷www.billywrightinquiry.org.
- ¹⁸www.rosemarynelsoninquiry.org.
- ¹⁹www.policeombudsman.org/Publicationsuploads/McGurk's-Final-Report.pdf.
- ²⁰Commissioner for Older People Act (NI) 2011.
- ²¹Justice (NI) Act 2002, ss.50–52.
- ²²See www.nilawcommission.gov.uk/index/completed_projects-2.htm.
- ²³See, e.g., Fionnuala Connolly, *Immigration Law in Northern Ireland* (2011) and Barry Valentine, *Criminal Procedure in Northern Ireland* (2010). The current author's *Law in Northern Ireland: An Introduction* will be published by SLS in September 2011.
- ²⁴See, e.g., Gordon Anthony, *Judicial Review in Northern Ireland* (Hart Publishing, 2008).

Biography

Brice Dickson has been Professor of International and Comparative Law at Queen's University Belfast since 2005. Before that he was the foundation professor of law at the University of Ulster (1991–1999). Between 1999 and 2005 he was seconded to serve two terms as the first Chief Commissioner of the Northern Ireland Human Rights Commission, a statutory body established as a result of the Belfast (Good Friday) Agreement. He is widely published including: *The European Convention on Human Rights and the Conflict in Northern Ireland* (OUP, 2010) and *The Judicial House of Lords, 1876–2009* (OUP, 2009 – co-edited).