

LAWYERS' RIGHTS WATCH CANADA

Promoting human rights by protecting those who defend them

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February 18, 2005

The Right Honourable Tony Blair
10 Downing Street
London, England
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The Right Honourable Lord Goldsmith
Attorney General's Chambers
9 Buckingham Gate
London, England
SW1E 6JP

Dear Sirs:

**Re: A. Lawyers' Rights Watch of Canada (LRWC)
 B. Murder of Mr. Patrick Finucane, Solicitor, February 12, 1989
 C. Hearing under the *Tribunals of Inquiry (Evidence) Act 1921*; and
 D. International Response to the Finucane Case – Appendix 1**

Lawyers' Rights Watch of Canada (LRWC) is a national organization that advocates on behalf of lawyers to protect their rights to independence and security and to ensure their ability to practice free from reprisals. Circumstances surrounding the death of Mr. Patrick Finucane fall within our mandate.

1.0 LRWC Position

1.1 LRWC joins with the Finucane family and other intervenors to demand that the United Kingdom government immediately institute an inquiry under the *Tribunals of Inquiry (Evidence) Act of 1921* ("1921 Act") into the 1989 murder in Northern Ireland of lawyer Patrick Finucane. The inquiry must comply with national and international standards including those set out in the UN *Manual on the Effective Prevention and Investigation of Extra-legal and Summary Executions*. These standards require that such an inquiry be:

- a) independent of all government agencies accused or alleged to be culpable by omission or commission;
 - b) empowered to compel testimony and the production of documents;
 - c) transparent;
 - d) empowered to exhaustively investigate all of the unresolved allegations of collusion by government agents; and
 - e) empowered to recommend appropriate prosecutions.
- 1.2 The Inquiries Bill currently before Parliament will not protect the public interest, nor the interests of Mr. Finucane's surviving family. The proposed legislation is constitutionally aberrant. A proper inquiry into this matter must be immediate and transparent and the proposed legislation will do nothing to achieve these goals.
- 2.0 Background
- 2.1 Mr. Finucane represented, amongst other clients, high-profile IRA members. On February 12, 1989, Mr. Finucane was murdered in a planned, deliberate and well organized execution by Ulster Protestant paramilitaries. Since 1966, 1071 murders have been attributed to Protestant terrorist groups. Mr. Finucane was shot in his home. His wife was injured in the attack and his three children witnessed the murder. Since then, other lawyers with similar practices in Northern Ireland have been murdered, including Rosemary Nelson in 1999.
- 2.2 The limited official documentation released to date establishes that officials from the following three government agencies knew or ought to have known that Patrick Finucane was a target for execution:
- a) FRU: the Force Research Unit of the UK Army, tasked with handling undercover agents in Northern Ireland and the Irish Republic;
 - b) RUC SB: the Royal Ulster Constabulary (Special Branch), which was the civilian police force responsible for law enforcement and protection against terrorists in Northern Ireland; and
 - c) MI5: the United Kingdom Security Service mandated to protect the UK against threats to national security.
- 2.3 None of these three agencies, all charged with responsibility for keeping the public peace and ensuring adherence to the law, acted to protect Mr. Finucane or to apprehend the plot against him. Mr. Finucane was not given any warning by these agencies that would have enabled him to protect himself.
- 2.4 It is equally clear that there is a culture of collusion between these same agencies and the people who carried out the murder of Mr. Finucane. The evidence of collusion is stark. There remains a multitude of unanswered questions as to the extent and breadth of the relationships and the culpability of various individuals and specific agencies. To date, there has been no determinative investigation of these relationships. In this delay, those who have committed murder, been party to murder or otherwise complicit in murder, enjoy impunity.

2.5 Shortly before his murder, Mr. Finucane had been involved in a number of high-profile cases:

- a) in 1989, successfully challenging the conditions under which both Republican and loyalist prisoners were held in solitary confinement;
- b) in 1988, winning a ruling in Northern Ireland's Court of Appeal that members of the Security Service suspected of being involved in a killing could be compelled to give evidence at Coroner's Inquests;
- c) in 1988, securing the acquittal of Patrick McGeown in the Casement Park Trials. Mr. McGeown had been charged with the murder of two plain-clothed British soldiers after they had driven into the funeral cortege of a person killed by loyalists some three days earlier; and
- d) less than two weeks before his murder, filing two applications with the European Commission on Human Rights challenging the legality of the United Kingdom's derogation from the European Convention on Human Rights surrounding the security situation in Northern Ireland.

2.6 To date, proceedings surrounding the murder of Patrick Finucane have included:

- a) a Coroner's Inquest held September 6, 1990;
- b) the Stevens Inquiry (1 through 3), which commenced in September 1989, to investigate:
 - i) generally the allegations of collusion between members of the security forces and loyalist paramilitaries;
 - ii) the involvement of Brian Nelson and members of the Army in the death of Patrick Finucane; and
 - iii) an independent specific investigation into the murder of Mr. Finucane; and
- c) the Cory Collusion Inquiry, headed by Peter Cory, former Justice of the Supreme Court of Canada, arising out of the Weston Park Agreement of 2001. The Weston Park Agreement required that the United Kingdom and Irish governments appoint a judge of international standing to investigate allegations of security force collusion in loyalist paramilitary killings, including the murder of Patrick Finucane.

2.7 The *Cory Collusion Inquiry Report* (October 2003) recommended a public inquiry into the murder of Patrick Finucane be held. Justice Cory concluded that:

Some of the acts summarized above are, in and of themselves, capable of constituting acts of collusion. Further, the documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicate to me that there is strong evidence that collusive acts were committed by the army (FRU), the RUC SB and the Security Service. I am satisfied that there is a need for public inquiry.

2.8 Additionally, the European Court of Human Rights (ECtHR) in a July 1, 2003 judgment found that the Coroner's Inquest and all three Stevens Inquiries had failed to "provide a prompt and effective investigation into the allegation of

collusion by security personnel” and in so doing the United Kingdom government had violated Article 2 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*.

- 2.9 The ECtHR also found that the UK government had breached its obligation “in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.”
- 3.0 Significant questions remain that can only be answered by an inquiry properly constituted and empowered to compel witnesses and production of documentation, including the significant body of documentation that continues to be withheld at military and civilian levels.
- 4.0 Immediacy
- 4.1 The continued delay in implementing Justice Cory’s recommendation is a breach of the Weston Park Agreement of 2001 by the United Kingdom government.
- 4.2 The delay and the incomplete quality of various investigations to date are without justification.
- 4.3 Prosecutions by the Department of Public Prosecutions surrounding the murder of Mr. Finucane have been delayed, narrow and ultimately unsuccessful as a means of inquiry into the truth. Proceedings against FRU informant Brian Nelson did not include charges related to the Finucane murder and ended with Nelson entering guilty pleas to far lesser crimes. FRU officers participated in efforts to minimize his sentence. Nelson served a short period of time in custody and has now disappeared from public view. Charges against RUC SB informant William Stobie also ended in dubious circumstances when the prosecution was discontinued. The prosecution of Ken Barrett ended without significant inquiry or a public airing of evidence when Barrett pled guilty.
- 4.4 Further delay in holding an exhaustive and transparent inquiry into all questions of culpability and collusion in the murder of Patrick Finucane are unacceptable and unwarranted. This inaction constitutes a continuing violation of the rights of the Finucane family and is contrary to the larger public interest. The rule of law presupposes that the public must have confidence that crimes will be investigated effectively by the executive branch of government and brought to the judiciary in a timely fashion. Any new legislation that may be proposed will be further delayed in the committee process and in its eventual reading and enactment. As new legislation, it will be untested and unfamiliar in its initial application. Little or nothing will be settled by precedent, practice or consensus.
- 4.5 Most importantly, the passage of time continues to diminish the likelihood of any successful inquiry into the truth. Memories fade or become ossified with time. Documents and real evidence can go missing; people can become ill or die. This problem has already been demonstrated by the murder of RUC SB informant William Stobie on December 12, 2001, who was an important witness.

5.0 Transparency

5.1 In order to discharge its obligations, the UK government must order an inquiry that is transparent and effective. In particular, there must be a full and frank hearing of the evidence surrounding the collusive acts of FRU, RUC SB and MI5.

5.2 All these intelligence agencies are parties to the culture of collusion that surrounded the death of Mr. Finucane. Most troubling, however, are their continued efforts at obstruction. The Stevens 3 Inquiry concluded that RUC SB and FRU took active steps to withhold relevant documentation from their Inquiry. Some relevant documentation was disclosed only after significant legal pressure. Concerns arising from this obstructionist behaviour were voiced by Justice Cory in his report:

The willful concealment of pertinent evidence, and the failure to co-operate with the Stevens Inquiry, can be seen as further evidence of the unfortunate attitude that then persisted with the RUC SB and FRU. Namely that they were not bound by the law and were above and beyond its reach. These documents reveal the government agencies (the army and RUC) were prepared to participate jointly in collusive acts in order to protect their perceived interests. Ultimately the relevance and significance of this matter should be left for the consideration of those who may be called upon to preside at a public inquiry.

5.3 The willful concealment or fabrication of evidence itself amounts to a crime. In this case, by protecting their perceived interests, the government agencies involved are attempting to ensure that their culpability in the death of Mr. Finucane is not revealed.

5.4 The issue of disclosure by interested parties of relevant documentation (and lack of disclosure) exhibits the limitations of the Stevens Inquiries and the Cory Inquiry. Without the power of subpoena for both witnesses and documentation, any fact finding process is ultimately bounded by the participation and good faith of those that are the subject of the investigation. The limited documentation that the government agencies have revealed to date appears as an attempt to paint a picture of innocence, a picture belied by other evidence.

5.5 Each of these agencies, in their own version of events, display internal inconsistencies. Additionally, their versions of events are inconsistent as between each other. These types of inconsistencies have to be investigated where evidence can be compelled and tested by examination and cross-examination.

6.0 FRU Collusion

6.1 Allegations surrounding the collusion of FRU require the forum of the 1921 Act to address the following matters:

- a) the frequency and nature of interactions between the informant Nelson and his handlers at FRU before, during and after the day of the murder are inconsistent with FRU's current position that they had no knowledge of the Finucane murder;
- b) FRU's contention that they received no information from Brian Nelson regarding the targeting of Patrick Finucane is internally inconsistent with FRU's perception and recognition of Nelson as a primary targeter of loyalist death squads;
- c) Nelson's allegations that he had told FRU of the upcoming murder of Mr. Finucane;
- d) FRU's continued assistance to Nelson and his efforts on behalf of his paramilitary group including FRU participation in reconnaissance missions, provision of information to Nelson about potential targets and FRU's ultimate failure to restrain the criminal activities of Nelson and his group. Justice Cory states in his report:

The documents I have examined disclose that army handlers and superiors turned a blind eye to the criminal acts of Nelson. It, again, is contrary to common experience and common sense that the army handlers would take another course in matters as it pertains to Mr. Finucane.

- e) the assertion by the informant Nelson that the commanding officer of FRU advised him to not talk to the Stevens Inquiry and also provided techniques for frustrating the investigation efforts of the Stevens Inquiry;
- f) Cory's conclusion that when Nelson was ultimately tried for matters surrounding the Finucane murder, the commanding officer of FRU provided "misleading evidence" in efforts to reduce Nelson's sentence. For example, an FRU office suggested that the actions of Mr. Nelson saved approximately 217 lives; further analysis by the detectives involved in the Stevens Inquiry indicate that, at best, two lives were saved by the actions of Nelson and no arrests were ever made based on information received from Nelson. The evidence of the commanding officer was later found to be a facile construct of statistics and amounted to what has been described as a "script." These types of efforts by FRU after Nelson's operational usefulness to their organization had come to an end suggest a continuing interest on the part of FRU to control and maintain relations with Nelson to protect their position on prior joint actions;
- g) the existence of undisclosed documentation surrounding the informant Nelson and Patrick Finucane and the apparent mishandling, concealment or destruction of those records. Of particular interest are the missing FRU notes surrounding various conversations with Nelson at material times prior to and after the murder of Patrick Finucane;
- h) the apparent knowledge of FRU, two days after the murder, of Nelson's role and their failure to advise the civilian police investigators;
- i) FRU's overall practice of overlooking and/or participating in the criminal activities of their informants for the professed sake of "agent security";
- j) FRU's awareness of various protection rackets Nelson participated in to

extract extortion money from building firms in the Belfast area and FRU's awareness of Nelson's efforts at witness tampering and destruction of evidence. Members of the Stevens Inquiry estimate that Mr. Nelson was involved himself in over 50 crimes;

- k) FRU's tendency, shared with RUC SB, to identify a solicitor with his clients;
- l) allegations of former FRU officer "Martin Ingram" that FRU knew of three separate plans to assassinate Patrick Finucane (including two aborted attempts) and that Mr. Finucane was not warned in any of these instances;
- m) Martin Ingram's allegations that a more senior member of the paramilitary loyalists (Tommy Lyttle) was also working for RUC SB and, as such, must have also known of the targeting of Patrick Finucane;
- n) the allegations of investigators with the Stevens Inquiry that they had conclusively established that FRU had been using Brian Nelson to actually direct targeting of Republican individuals;
- o) allegations by journalists who have examined documents chronicling the contact between FRU and their informants that suggest that the intended purpose of the intelligence agency was, in part, to refocus the killing power of loyalist paramilitaries away from random acts and towards more "legitimate" Republican targets;
- p) allegations in Mr. Nelson's personal journal, made contemporaneously with his dealings with FRU, that he had warned FRU as to the targeting of Patrick Finucane. As a private aide memoire made by Mr. Nelson, this information is of particular relevance and probity;
- q) the apparent altering of FRU documentation by FRU personnel and the supply of these doctored records to the Stevens Inquiry in 1990;
- r) the suspicious circumstances surrounding a fire at the Stevens Inquiry offices during that stage of the Inquiry when FRU was under pressure to deliver documents. A whistleblower has subsequently claimed that the fire was set deliberately in order to give FRU more time to respond to the pressure being exerted by the Stevens Inquiry;
- s) deliberate efforts by FRU to mislead Stevens Inquiry investigators, including telling them that they were not running any agents. It was only after the arrest of Nelson by the Stevens Inquiry that the Inquiry team discovered that this was a complete and utter fabrication; and
- t) allegations by Stevens Inquiry investigators that the informant Nelson, with FRU knowledge, had shared his targeting files with other loyalist paramilitary groups, thus putting the use of that information outside of the already loose control of FRU.

7.0 RUC SB Collusion

7.1 Allegations surrounding the collusion of RUC SB require the forum of the *1921 Act* to address the following matters:

- a) RUC SB's prior failure to act on confirmed threats on the life of Patrick Finucane in 1981;
- b) RUC SB's failure to act or otherwise take any action on William Stobie's information that there was going to be an attempted murder of an

- individual whom the loyalists considered a "top PIRA man";
- c) RUC SB's failure to follow up on informant Stobie's information regarding one of the likely murder weapons (9 mm Browning pistol). No steps were taken by RUC SB to trace this weapon and RUC SB did not provide any information, nor co-operate in a meaningful way with its own civilian police investigators;
 - d) the allegations of Tommy Lyttle, through the BBC, that two RUC SB detectives had originally suggested murdering Finucane. Tommy Lyttle died in October 1995;
 - e) RUC SB's failure to act on William Stobie's 1990 admission surrounding the murder of Patrick Finucane;
 - f) the allegations made by CID Officer Johnston Brown that a prominent loyalist (now known to be Ken Barrett) had confessed to being one of the two gunmen in the Finucane murder and that RUC SB made significant efforts to suppress and obstruct any further investigation;
 - g) Ken Barrett's allegations, through the BBC, that RUC SB officers had worked to convince him that Finucane was a legitimate target and that FRU informant, Brian Nelson, had personally supplied him with the target material on Finucane;
 - h) RUC SB's institutional bias regarding threats by Protestant loyalists against Catholics and, conversely, threats by Catholic IRA towards Protestants. Targets of IRA threats were routinely notified. Catholic targets of loyalist threats were rarely notified;
 - i) the circumstances and context of RUC SB's briefing to MP Douglas Hogg that underpinned his comments to the House of Commons in January 1989,

I have to state as a fact, but with great regret, that there are in Northern Ireland, a number of solicitors who are unduly sympathetic to the cause of the IRA

Justice Cory, dealing with this aspect of RUC SB conduct, stated,

Yet there is nothing in the document that indicates that Patrick Finucane was a terrorist or that he belonged to a terrorist organization. From a review of the documents it could be inferred that RUC SB tended to identify a solicitor with his clients.

This approach by FRU and RUC SB violated the United Nations Basic Principles on the Role of Lawyers which, under Principle 18, states that, "lawyers shall not be identified with their clients or their client's causes as a result of discharging their functions"; and

- j) Allegations by CID detectives that RUC SB knew the name of Ken Barrett within days of the murder, and that RUC SB had never informed them that William Stobie was one of its agents and was involved with Mr. Finucane's death.

8.0 MI5

8.1 Allegations surrounding the collusion of MI5 require the forum of the *1921 Act* to address the Security Services':

- a) awareness of the 1981 and 1985 threats on Patrick Finucane and their decision, along with RUC SB, to take no action to intervene or halt the attack; and
- b) failure to act in 1988 when they had received information that Patrick Finucane had been singled out for attack.

9.0 The records of FRU, Security Services and RUC SB all indicate a failure to notify or otherwise warn a multitude of targets of loyalist paramilitary action. Each of these government agencies had a legal duty to act and failed to do so. As a result of their failure, death ensued.

10.0 Privilege

10.1 There is no justification for claims that disclosure of the information and documentation referred to is protected by privilege. This evidence will be highly probative of the issue of collusion by the intelligence agencies and is critical to an effective inquiry. Continuing non-disclosure runs contrary to the principles of "open justice" and the injuries caused by the denigration of this principle far exceed any injury that could be contemplated by the ultimate disclosure of this evidence. The conclusion of Mr. Barrett's trial and sentencing now eliminates any roadblocks to an immediate inquiry into the larger issues of collusion.

11.0 The Coroner's Inquest, the Stevens Inquiries and the *Cory Collusion Inquiry Report* were fettered by a lack of institutional independence or by a limited scope of review. A fully empowered hearing under the *1921 Act* would have no such limitations.

12.0 As commented by Justice Cory, continued delay on this matter only brings with it more speculation, myth and suspicion. Without an independent and fully empowered public inquiry, there will continue to be a widely held view that those members of the intelligence agencies involved will not be held accountable for their illegal actions. Such inaction on the part of the UK government is contrary to the 1998 Good Friday Agreement that sought the reform of the police service to augment the themes of accountability and respect for human rights. More specifically, continued inaction will be a disservice to the September 1999 Report on the Independent Commission on Policing (the "Patten Commission").

13.0 The Inquiries Bill

13.1 The shortcomings of the Inquiries Bill have attracted significant public criticism as well as specific concerns outlined by the Joint Committee on Human Rights.

13.2 The Inquires Bill currently before Parliament will do little more than accentuate the overwhelming atmosphere of distrust that pervades Mr. Finucane's murder.

Restrictions on public access and expansive public interest immunity will be seen as codifying the type of malevolent values that brought us to this tragic situation. Most troubling is the issue of accountability. Inquiries would be answerable to the executive branch as opposed to Parliament and the public. These provisions are contrary to the history and path of a constitutional government where democracy and the rule of law are paramount. The fox cannot stand guard.

14.0 Conclusion

14.1 Lawyers, and particularly lawyers who take on unpopular and difficult cases, are the crucible to the criminal justice system. Patrick Finucane was such a lawyer. His death and the lack of official response certainly contributed to the subsequent murders of other lawyers in Northern Ireland. Without the assurances of security and independence, these professionals will be unable to adequately defend individuals in courts of law. The unfortunate consequence of this will be the deterioration of the important balance between the State and the individual. In the absence of a full and effective investigation of Finucane's murder and prosecutions of those responsible, no advocates are safe and rights enforcement is illusory; it has become something that occurs at the pleasure of the state. In this case, it is clear that Patrick Finucane suffered reprisals solely for his professional role. Those reprisals, while taken by terrorists, were also the product of collusive action by FRU, RUC SB and MI5.

14.2 At the Coroner's Inquest police refuted the claim that Mr. Finucane was a member of an extremist group and described him as a law-abiding citizen going about his "professional duties in a professional manner." Ten years later, Sir Ronnie Flannigan, Chief Constable from 1996 to 2002, re-emphasized that Mr. Finucane, along with Rosemary Nelson, were both "highly professional solicitors doing nothing than their professional best to represent the interest of their clients."

14.3 Rosemary Nelson, a Human Rights Lawyer practicing in Northern Ireland, testified before the U.S. House International Relations Committee on September 29, 1998. Ms. Nelson emphasized the continuing significance of the Finucane matter for lawyers practicing in Northern Ireland. She stated:

Since then [July 1997] my clients have reported an increasing number of incidents when I have been abused by RUC officer, including several death threats against myself and members of my family. I have also received threatening telephone calls and letters. Although I have tried to ignore these threats, inevitably I have had to take account of the possible consequences for my family and for my staff. No lawyer in Northern Ireland can forget what happened to Patrick Finucane or dismiss it from their minds.

14.4 On March 15, 1999, the Irish News reported Rosemary Nelson criticizing RUC inaction in the face of continuing illegal loyalist activities: "The law has been flouted openly...It is not about conflicting rights here, it is about the rule of law."

- 14.5 Hours after that interview was published, Rosemary Nelson was murdered by a bomb exploding under her car. A small loyalist splinter group, the Red Hand Defenders, claimed responsibility.
- 14.6 An investigation under the *1921 Act* must be convened immediately and conducted in a transparent fashion. Without the powers of a full and independent inquiry, the malignant atmosphere surrounding Mr. Finucane's murder will continue unabated. Any other inquiry of lesser means will ring hollow.
- 14.7 The unresolved murder of Mr. Finucane will remain an obstacle to peace in Northern Ireland. Truth must be heard and those responsible must reconcile with the larger community before anyone can anticipate a hopeful future.

Yours truly,

Hugh Gwillim
Barrister & Solicitor

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atth.

Appendix 1

15.0 International Response to the Finucane Case

15.1 Excerpt from "Beyond Collusion – The U.K. Security Forces and the Murder of Patrick Finucane," Lawyers Committee for Human Rights (2003), at page 98:

In the 14 years since Patrick Finucane's murder, many distinguished voices from around the world have joined his family's call for an independent public inquiry. This long list includes the Irish government, the U.S. House of Representatives, the Northern Ireland Human Rights Commission, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, and the U.N. Special Representative of the Secretary General on Human Rights Defenders. The list also includes a host of bar associations, such as the Bar Council of Northern Ireland, the International Bar Association, the American Bar Association, and the Association of the Bar of the City of New York. In addition, the Law Society of Northern Ireland, the Law Society of England and Wales, and the Law Society of Ireland have all called for a public inquiry into the murder. Many human rights organizations have also actively campaigned for a public inquiry. These groups include Amnesty International, British Irish Rights Watch (BIRW), the Committee on the Administration of Justice (CAJ), Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the Irish Council for Civil Liberties (ICCL), the Lawyers Committee for Human Rights, Liberty, the Pat Finucane Centre, and Relatives for Justice. On February 12, 1999, the tenth anniversary of Finucane's murder, an international petition calling for a public inquiry was published in several U.K. newspapers. The petition was signed by more than 1,300 lawyers.³¹¹

³¹¹ See Testimony of Michael Finucane, U.S. House of Representatives, International Operations and Human Rights Subcommittee of the House International Relations Committee, September 24, 1999.