

## **PATRICK FINUCANE – THE UNITED KINGDOM: NORTHERN IRELAND**

On February 13<sup>th</sup> 1989, Patrick Finucane was shot dead in front of his wife and three children by 3 masked men. Patrick Finucane was a lawyer in Northern Ireland who had acted as defense counsel on many politically sensitive cases including, just before his assassination, a case alleging Royal Ulster Constabulary maltreatment of persons in custody. Mr. Finucane was assassinated weeks after the Royal Ulster Constabulary had delivered death threats to Mr. Finucane and 4 weeks after Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, in a Committee Stage debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17 January 1989 said:

"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."

Protestant terrorists took credit for the killing the following day.

Most informed observers believed that Mr. Finucane was 'executed' because of his work as a lawyer and that the Royal Ulster Constabulary was involved in some capacity in his murder.

The following official proceedings into the murder of Patrick Finucane have taken place:

1. Inquest held September 6<sup>th</sup> 1990.
2. Stevens Inquiry #1 headed by John Stevens, then Deputy Chief Constable of the Cambridgeshire Constabulary, mandated to investigate allegations of collusion between members of the security forces and loyalist paramilitaries commenced on 14 Sept. 1989 and a report was presented 5 April 1990.
3. Stevens Inquiry #2 headed by John Stevens, then Chief Constable of the Northumbria Police, mandated to inquire into the alleged involvement of Brian Nelson and members of the Army in the death of Patrick Finucane. This Inquiry commenced April 1993 and reports were presented 25 April 1994, 18 Oct. 1994 and 21 January 1995.
4. Stevens Inquiry #3 headed by John Stevens, then Deputy Commissioner of the Metropolitan Police, mandated to conduct an independent investigation into the murder of Mr. Finucane.
5. The Cory Collusion Inquiry headed by The Honourable Peter Cory, former Justice of the Supreme Court of Canada, arose out of the Northern Ireland peace process and, in particular, the Weston Park Agreement of 2001 which required that the United Kingdom and Irish governments to appoint a judge of international standing from outside both jurisdictions to investigate allegations of security force collusion in loyalist paramilitary killings, including the murder of Patrick Finucane and to decide whether to recommend a Public Inquiry into any of the killings. The Cory Collusion Inquiry Report on Patrick Finucane was ordered by the House of Commons to be printed 1 April 2004. The report had been completed in October 2003 and Cory had released his recommendations to the Finucane family in February 2004.

The Cory Collusion Inquiry Report on Patrick Finucane recommended a Public Inquiry into the murder of Patrick Finucane. Mr. Cory concluded,

“Some of the acts summarized [in the report] 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.”

Patrick Finucane’s widow, Geraldine Finucane brought a civil suit against the Ministry of Defense and Brian Nelson for damages for her husband’s murder and the judgment of the European Court of Human Rights (ECtHR) was released 1<sup>st</sup> July 2003. The ECtHR found that the Inquest and all three Stevens Inquiries had failed to “provide a prompt and effective investigation into the allegation of collusion by [UK] 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* (“Everyone’s right to life shall be protected by law...”). The UK government breached its obligation “in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility”.

The UK government responded to the Cory recommendations and the judgment of the ECtHR by introducing to Parliament on 24<sup>th</sup> November 2004, the Inquiries Bill. The Bill, in the opinion of LRWC and many other individual and organizational commentators, restricted the previous statutory system for establishing and conducting inquiries into issues of public importance and impairs human rights enforcement. 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.

## **LRWC ACTION**

**February 23<sup>rd</sup> 2005:** Open letter to Prime Minister Blair and Attorney General Goldsmith calling for an immediate Inquiry under the under the *Tribunals of Inquiry (Evidence) Act of 1921* (“1921 Act”) into the 1989 murder of lawyer Patrick Finucane.

**March 21<sup>st</sup> 2005:** LRWC endorsed *The Inquiries Bill: The Wrong Answer: A Joint Statement by:* Amnesty International, British Irish RIGHTS WATCH, The Committee on the Administration of Justice, Human Rights First, The Human Rights Institute of the International Bar Association, INQUEST JUSTICE, Lawyers’ Rights Watch Canada  
The Law Society of England and Wales, Pat Finucane Centre, Scottish Human Rights Centre.

## **RECENT DEVELOPMENTS**

**April 1, 2004:** The UK government committed to establishing public inquiries into three deaths allegedly involving collusion between members of the UK security forces and paramilitaries in Northern Ireland, but fails to include Finucane case among them. The government promised to revisit the issue after the conclusion of prosecutions. With respect to the Finucane case, the Honourable Peter Cory had found that: “This may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions.”

**September 27, 2004:** UK authorities announced that an inquiry into the death of Patrick Finucane would be established, but it would be held on the basis of legislation that would be introduced shortly, not under the Tribunal of Inquiry (Evidence) Act of 1921. Amnesty International and other human rights groups and

interested parties viewed the announcement with great suspicion as the new legislation would require the inquiry to take into account “the requirements of national security.” Amnesty International strongly suspected that the UK authority would use concern for “national security” to curtail the inquiry’s ability to shed light on the state’s collusion into the death of Patrick Finucane.

**November 25, 2004:** The Inquiries Bill (Bill) had first reading in the House of Lords. The Bill, if enacted, would replace the existing Tribunal of Inquiry (Evidence) Act of 1921.

**December 9, 2004:** The Inquiries Bill was debated in the House of Lords and was set to progress to a Grand Committee with the preliminary schedule for discussion on January 18, 19 and 31, 2005.

**March 2005:** The Bill went to first and second reading March 1st and 15th in the House of Commons and to the Standing Committee on March 22, 2005.

**March 2005:** A Congressional hearing was held in Washington the week of March 14, 2005 to examine the status of the recommendations by the Honourable Peter Cory. Ambassador Mitchell Reiss (US Special Envoy on Northern Ireland), Geraldine Finucane, Jane Winter, Elisa Misaiming and Maggie Berne all testified.

**March 15, 2005:** On 15th March, 2005, the Honourable Peter Cory, formerly a Justice of the Supreme Court of Canada wrote a letter to Congressman Smith that was sharply critical of the Bill, saying with reference to the Finucane case, “The proposed new Act would make a meaningful inquiry impossible.” He also observed that, “the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step” and concluded that he “cannot contemplate any self respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed act”.

**March 2005:**

The Bill was also criticized by the Joint Committee on Human Rights, the Public Administration Select Committee, Lord Saville, chair of the Bloody Sunday Inquiry and DCA Minister Baroness Aston. The Bill has been criticized as potentially violating Article 2 of the European Convention on Human Rights (ECHR) by inhibiting effective investigations of deaths and offending independence requirements by granting Minister powers to withdraw funding and withhold publication of Inquiry reports. Also criticized were Ministerial powers in the Bill to restrict public access to inquiry proceedings and materials. (see JCHRC Summary below)

**April 7 2005:**

The Inquiries Bill received the Royal Assent and so is now law. The U.K. government announced last week at the UN Commission on Human Rights that, in the Finucane case, the majority of the inquiry will be held in private. The Finucane family will not co-operate with any inquiry set up under this law.

**May 2006:**

The U.K. government reports that an Inquiry will be held under the new act and that the government is looking for space and for a judge to preside and anticipate the inquiry commencing in the fall of 2006. News reports indicate that the government is having some difficulty in finding a judge which is not surprising given the opposition even amongst members of the judiciary to the Inquiries Act 2005. The

Finucane family is not intending to cooperate with an Inquiry under the Inquiry Act 2005.

LRWC and other human rights groups will continue to press for an inquiry into the 1989 execution of Patrick Finucane that properly meets the requirements of both national (U.K.) and international law.

LRWC says that such an inquiry must:

- a) be held in public
- b) be headed by a judge of international standing
- c) have terms of reference which allow an examination of all the circumstances surrounding the death of Patrick Finucane
- d) have all the necessary powers to subpoena, witnesses, documents and other evidence
- e) command the confidence of the Finucane family and international observers
- f) allow the Finucane family legal representation and standing as a party on an equal basis with all other parties
- g) produce a report which is published to the public in full.

This may necessitate an inquiry outside the terms of the Inquiries Act 2005.

#### **JOINT COMMITTEE ON HUMAN RIGHTS**

On Monday 24<sup>th</sup> January [2005] the Joint Committee on Human Rights, a parliamentary committee made up of members of both Houses of Parliament which monitors the compatibility of legislation with the European Convention of Human Rights and the Human Rights Act 1998, published its report on the Inquiries Bill. A copy of the relevant section of the report is attached and is also available at <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/26/2605.htm>

The Committee expressed a number of concerns about the suitability of the Bill's provisions when it comes to providing an effective investigation in cases involving the right to life (Article 2 of the Convention) and the right to freedom from torture or inhuman or degrading treatment or punishment (Article 3). Their concerns are highlighted in bold by the Committee themselves. In relation to the right to life, the Committee makes reference to the case of Patrick Finucane.

In particular, the Committee has expressed concern about:

- the exercise of the Minister's power to suspend an inquiry and its potential to compromise the independence of an inquiry (paragraph 2.15 of the report)
- the risk that suspension would negate the requirement for promptness and reasonable expedition (paragraph 2.29)
- the power to issue restriction notices limiting attendance at inquiries or the disclosure of evidence or documents, which the Committee says could compromise the independence of the inquiry and violate Article 2 (paragraph 2.19)
- the possibility that restriction notices could impair an inquiry's effectiveness by limit public accountability and restricting the access of next-of-kin to the inquiry's proceedings, in breach of Article 2 (paragraph 2.26)
- the Minister's power over the publication of an inquiry's findings, which could compromise independence and the appearance of independence, and violate Article 2 – the Committee considers the inquiry chair should be responsible for publication of the report (paragraph 2.20)

- the Minister's power to withhold funding should the inquiry stray outside its terms of reference, which undermines the role of the chair and creates the potential for undue ministerial influence (paragraph 2.21)
- the Minister's discretion to appoint a person to an inquiry despite that person's interest in or association with the matters under investigation by the inquiry (paragraph 2.22)
- the possibility that family members might not receive legal aid (funding for legal representation) for inquiries (paragraph 2.28).

All these concerns apply to both the right to life and to the right to freedom from torture.

In sum, the Committee has expressed major concerns that the Bill as it stands is at odds with important human rights protections.