

INTRODUCTION

Brice Dickson, Chief Commissioner, Northern Ireland Human Rights Commission

I particularly welcome the occurrence of today's conference at Queen's University on the provisional proposals put forward by the Northern Ireland Human Rights Commission (NIHRC) for a Bill of Rights for Northern Ireland. The Centre for Human Rights at Queen's University is to be congratulated for taking the initiative in organising the event. I am also pleased that the proceedings of the conference will be published in the form of a special issue of the Northern Ireland Legal Quarterly, and thanks are due to the current editor of that journal, Mr David Capper, for agreeing to such a proposal.

In this short opening address I wish to explain where the NIHRC has got to in its process for formulating advice on a Bill of Rights and make some introductory remarks to help set the scene for the more detailed presentations to follow.

The NIHRC officially launched its project on a Bill of Rights for Northern Ireland on 1 March 2000, at joint events in Belfast and Derry / Londonderry. We immediately began meeting with individuals and groups to gather their views on what should be contained in the advice we would ultimately be submitting to the Secretary of State. We produced a training manual and video so that people could be prepared to act as facilitators at subsequent meetings and thereby cascade down an awareness of the Bill of Rights project throughout the community. To date some 600 individuals have been trained as facilitators. In the summer of 2000 we published 11 different pamphlets to flag up some of the key issues likely to arise in the discussion of a Bill of Rights. In the autumn of 2000 we established nine independent working groups to provide the NIHRC with specialised advice on particular kinds of rights. Their reports were published in January 2001.

After many meetings in the spring and summer of 2001, the NIHRC eventually published its consultation document called *Making a Bill of Rights for Northern Ireland* in early September 2001. The document represents the NIHRC's initial efforts at producing a set of proposals for people to comment on. We are expecting a large response to the document – people should find it easier to comment on actual proposals than on what they would like to see written on a blank page. In October 2001 the NIHRC published a child-friendly version of the consultation document and summary versions have been made available in English, Irish, Ulster-Scots and Cantonese.

Officially the deadline for submitting comments to the NIHRC on the consultation paper was 1 December 2001, with 31 January 2002 being the deadline for children and young people. We fully recognise, however, that a three-month consultation period has not been long enough to allow everyone who wants to submit views to do so, particularly those organisations which themselves have to consult with their members before submitting views. At present the Commissioners intend to finalise their views on all the points

made to them in the submissions by 31 May 2002 and to publish their final advice to the Secretary of State shortly thereafter. However that date may still shift, especially as four new Commissioners have just been appointed to the NIHRC.

As I see it, the twin purposes of today's event from the NIHRC's standpoint are to gather the views of a rather more specialised audience than would be usual in this context and to encourage thinking "outside the box". To change the metaphor, I hope we can all apply both a wide-angle lens and a magnifying lens when we are examining the NIHRC's provisional proposals. I know there will be adversely critical remarks, but I know as well that they will be made constructively and in a spirit of co-operation rather than confrontation. By way of introduction to the presentations and discussions I want to make just three basic points.

First, throughout this debate it is important to be aware of the NIHRC's functions as laid down by statute. Under section 69(7) of the Northern Ireland Act 1998:

"The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement."

Paragraph 4 of the Belfast Agreement reads as follows:

The new Northern Ireland Human Rights Commission . . . will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

Shortly after the NIHRC's establishment in March 1999 the then Secretary of State, Dr Mo Mowlam, wrote to the NIHRC to ask for such advice to be provided. But she did not set a time limit by which the advice should be supplied. The NIHRC immediately began to plan how to go about consulting and advising as requested. It decided to consult as widely and as deeply as it could, in the way described above. The consultation paper is the interim product of that consultation. It contains not just discussion about what rights might be included in a Bill of Rights but also actual draft clauses.

Some of our critics, and the next speaker, Austen Morgan, falls into that category, would argue that the NIHRC, in producing an actual draft Bill of

Rights, has exceeded its mandate. They say, for example, that the NIHRC was required to advise only on “the scope for defining rights” and not on the rights themselves. The former phrase, they continue, suggests that the NIHRC should merely set out the different options for protecting rights additional to those already protected. Personally I do not accept that interpretation of our mandate, which in my view is certainly broad enough to justify what the NIHRC has come up with so far, but I would remind those critics that even if they are right in the way they interpret this particular part of the NIHRC’s mandate they cannot deny that the supposedly superfluous part of our advice can itself be perfectly easily legitimated as an exercise of the duty the NIHRC has under section 69(3)(b) of the Northern Ireland Act 1998, which reads:

“The Commission shall advise the Secretary of State. . . of legislative and other measures which ought to be taken to protect human rights. . . on such occasions as the Commission thinks appropriate.”

My second introductory point is that, when considering what advice to give the Secretary of State, it is essential that the NIHRC bear in mind the work already carried out on a Bill of Rights by other institutions both here and abroad. Back in 1977, for example, the Standing Advisory Commission on Human Rights issued a report, largely written by Anthony (now Lord) Lester, calling for a Bill of Rights based on the European Convention on Human Rights. The preference was for a Bill of Rights applicable throughout the United Kingdom, but the report added the following:

We believe that in the event of the return of devolved legislative and executive functions to a new government in Northern Ireland (either before or after the incorporation of the European Convention into domestic law), it would be desirable for the enabling legislation to include a clear and enforceable charter of rights for Northern Ireland...This charter of rights could be more comprehensive than the European Convention and should be framed in the light of whatever at the time seem to be the special needs of the people of Northern Ireland.¹

The present NIHRC could also do well to look at other draft Bills of Rights already in existence in this part of the world, such as the one published by the Committee on the Administration of Justice in 1990. We should look too at Bills in place elsewhere in the world. In 1982, for example, Canada abandoned the doctrine of Parliamentary sovereignty and gave to its Supreme Court the power to interpret, and ultimately to declare invalid, all Canadian statutes in the light of the Canadian Charter of Rights and Freedoms. In 1996 the Republic of South Africa chose the same path, this time creating a special Constitutional Court to interpret and apply the Bill of Rights. When the United Kingdom handed Honk Kong back to China in 1997 it did so only after putting in place a Bill of Rights based on the United Nations’ International Covenant on Civil and Political Rights.

¹ *The Protection of Human Rights by Law in Northern Ireland* (Cmnd 7009), at para 6.15.

Lest it be thought that a Bill of Rights for Northern Ireland is an idea attractive only to academics and so-called do-gooders, it is worth recording that all the political parties currently active in Northern Ireland have at some stage in the recent past declared themselves to be in favour of a Bill of Rights for Northern Ireland. The views of parties at Westminster are less well-known. When I spoke recently with the Conservative Party's Shadow Secretary of State for Northern Ireland, Mr Quentin Davies, he seemed reluctant to accept the notion that a Bill of Rights just for Northern Ireland would be sensible (despite the wording of the Belfast Agreement). The British Labour Party, which of course does not allow people who live in Northern Ireland to join the Party, is not currently in favour of a Bill of Rights for the whole of the United Kingdom and informal indications from the Secretary of State are that he still needs to be convinced that a comprehensive Bill is appropriate for Northern Ireland. The NIHRC argues that a Bill of Rights for Northern Ireland would be a good thing in itself, regardless of whether it is backed up by the Belfast Agreement, by party manifestos, by political expediency or by popular belief.

My third and last point is that it is worth remembering the context in which a Bill of Rights will be operating if it is enacted. Northern Ireland is a part of the United Kingdom but its people may eventually vote to join the Republic of Ireland. Moreover, Northern Ireland is a deeply divided society, one which has experienced serious violence for more than 30 years. There will be a continuing constitutional dispute here for the foreseeable future and there will also be a continuing risk of violence. We all know, regrettably, that supposedly politically motivated violence is still a part of our landscape. Questions arise, therefore, about which "constitutional" issues, if any, a Bill of Rights should deal with and about how a Bill of Rights should provide, if at all, for a future emergency situation caused by terrorism. A Bill of Rights, of course, is not itself a written Constitution, but merely part of one. It would not normally deal with sovereignty issues. In any event the Belfast Agreement and the Northern Ireland Act 1998 already deal with many constitutional and related issues. Likewise the criminal law, or special laws on decommissioning, may be deemed sufficient to cope with any increased threat arising from terrorism. But the NIHRC needs to re-consider these issues in depth and to take some clear decisions on them.

In a similar vein, "democratic" rights may deserve to be included in the Bill, but where should we draw the line in that regard? Is the preservation of a consociational (power-sharing) government something that should be protected by the Bill? Should the cross-community voting system in the Assembly be guaranteed, or something akin to it? In more general terms, what constraints should be imposed on politicians when they are deciding which policies to adopt in the realm of social and economic rights in Northern Ireland? Can a Bill of Rights legitimately impose constraints on the public expenditure decisions of politicians? Should a Bill of Rights seek in any sense to provide for the mediation of disputes when rights conflict and should it say more about duties and responsibilities as a counterweight to rights? Does it make sense for a Bill of Rights to confer rights but not at the same time to confer access to means of enforcing those rights?

These and many other questions remain to be resolved by the NIHRC in the coming months. Today's conference will, I feel sure, make a significant contribution to the Commissioners' deliberations.

Thank you all for attending and now let battle commence!