

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Ballymaconnolly Sons of Conquerors Flute Band's application [2012] NIQB 63**

**AN APPLICATION BY BALLYMACONNOLLY SONS OF CONQUERORS  
FLUTE BAND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

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**WEATHERUP J**

[1] This is an application for leave to apply for judicial review of a decision of the Parades Commission of 14 August 2012 imposing a condition on this evening's parade in Rasharkin limiting the number of participating bands to 25. Mr McQuitty appeared for the applicant and Mr Kennedy for the Commission.

[2] The first matter is that the applicant is described as Ballymaconnolly Sons of Conquerors Flute Band and no individual applicant has been named. There is an application for anonymity for reasons set out concerned with personal safety. I accede to the application for anonymity and the application for leave will continue in the name of the band.

[3] The second matter is that the application is urgent as the event is due to take place this evening. Accordingly this application necessarily was completed expeditiously and on coming on for a leave hearing this morning was treated as a rolled-up application that considered not only leave but also the substance of the issue. A replying affidavit was also filed today on behalf of the Commission.

[4] The grounds on which the application is brought are, in summary, that the decision of the Commission was unreasonable, that it was contrary to the applicant's legitimate expectation, that it did not have proper regard to the Commission's published policies, that it failed to take into account a number of relevant matters,

that it was beyond the powers of the Commission as set out in the Public Processions (NI) Act 1998 and the Human Rights Act 1998, that it was arbitrary, in breach of procedural fairness and adequate reasons were not given. I must congratulate Mr McQuitty on a very comprehensive statement of grounds provided in a short period of time in order to mount this application.

[5] The Determination of the Commission of 14 August 2012 set out the background to the Rasharkin parade which included the comment that the parade is one of the most contentious and challenging parading situations facing the Commission. Among other matters the determination referred to the issue of dialogue between the parade organisers and the local community as that is at the heart of this dispute. At paragraph 9 the Commission stated that it has always been clear in its view that a solution to the issues surrounding this and other parades in Rasharkin would be greatly assisted through dialogue. Both the present Commission and its predecessors have asked both sides involved in the issue of parading in Rasharkin to enter into direct dialogue aimed at facilitating a lasting resolution of the issues. In its Determination in respect of the parade in 2011 the Commission set out its belief that it was imperative that the band committed to a dialogue process. Since the parade last year the Commission stated that it had made three separate attempts to encourage a process of dialogue, namely in August 2011, in Autumn 2011 and in Spring 2012 and each time the band either refused to discuss the terms of reference or to attend a meeting to discuss them. The Determination also referred to a very recent attempt through a PSNI initiative to initiate dialogue and while the Rasharkin Residents Association accepted the draft terms of reference the band had not done so.

[6] The Commission stated -

“In the absence of direct dialogue and taking account of the representations it has heard the Commission considers it appropriate on this occasion to place conditions on the parade.

“The Commission has also had regard to the issue of engagement. One of the seven fundamental principles identified by the North Report is that all those involved should work towards resolution of difficulties through accommodation.

As stated at paragraph 4.4 of the Guidelines the Commission takes into account any communication between parade organisers and their local community or the absence thereof. Further the Commission will assess the measures, if any offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community.

[7] All of these considerations and others, and I have focused on the issue of engagement, led to a determination that limited the number of bands to 25 rather than the previous number of around 40 bands.

[8] The applicant's affidavit set out the background and with regard to the issue of engagement referred to meetings with the Commission on 25 April 2012 and 7 August 2012 and to a number of attempts to engage in dialogue where it was stated that "a significant number of dialogue processes have been mooted in an attempt to resolve issues in relation to this parade at a local level". The affidavit referred to processes that would have involved Mediation NI, the Parades Commission itself, a member of Seanad Eireann, the Archbishop of the Church of Ireland, the Office of the First and Deputy First Minister, the Northern Ireland Office and the Police Service of Northern Ireland. For various reasons none of these processes, nor the other processes referred to by the Commission, led to any consultation process.

[9] The Commission affidavit was sworn by Peter Osborne the Chairman of the Commission. Again I have to congratulate Mr Kennedy on putting together this exposition of the Commission's position in such a short time. The affidavit set out the history of the matter and I refer in particular to a meeting of representatives of the Commission and the bands that occurred on 7 August 2012 in relation to the issues surrounding the parade. Mr Osborne stated that the number of bands taking part in the parade were raised at the start of the meeting and was discussed at some length in the course of the meeting. Mr Osborne listed the issues that emerged and stated that "... the Commission also made it clear that the scale of the parade was a factor considered in 2011. The Commission discussed imposing a restriction on the number of bands in 2011." The applicant may not have known that the Commission had discussed that possible condition the previous year. However at paragraph 12 it was stated - "The 2011 determination made it clear that the scale of the parade was a factor it would look at in the future but urged, through the determination and subsequent meetings and communication, both parties to enter dialogue to resolve this and other issues." Further at paragraph 14 it was stated that "... the Commission had hoped that progress could be made and that no Determination would be required, however the lack of progress allied to the on-going concerns ... left the Commission of the opinion that the number of bands that should take part should be restricted to 25, rather than the 44 notified or the 35-40 that usually parade."

[10] The basis of the decision to limit the number of bands was the lack of progress on engagement between the bands and the residents. Behind that factor of course lay all the tensions set out in the papers arising from the differing views that each side has as to the parade. However the Commission has in effect decided to limit the bands in the parade because of the lack of progress in relation to communication, dialogue and engagement between the bands and the residents. The first question becomes whether that decision is a legitimate exercise of the powers of the Commission.

[11] It is not at all clear from the papers that the Commission actually addressed its mind to the issue of the exercise of powers to impose conditions to restrict numbers for that purpose. That the Commission has a general power to limit numbers, for example, because of public order concerns or the organisational requirements of the police, is evident. Whether the Commission can exercise the power for the purpose that the Commission has decided to do so in the present case is the issue that has to be determined.

[12] Every statutory power must be exercised for a proper purpose. The permitted purposes will arise expressly or impliedly from the terms of the legislation granting the power. The legislation which governs the Commission is the Public Processions (Northern Ireland) Act 1998. This is supplemented by Rules, Procedures and Guidelines. Section 8 of the Act provides the power to impose conditions on public processions and the Commission may issue a determination in respect of a proposed public procession imposing on the persons organising or taking part in it such conditions as the Commission considers necessary. The affidavit from the Commission Chairman states that the Commission did consider the condition to be necessary.

[13] Section 8(5) provides that in considering in any particular case what condition should be imposed by the determination the Commission shall have regard to the Guidelines.

[14] Section 8(6) provides that the Guidelines shall in particular provide for the Commission to have regard to various matters such as any public disorder or the risk of damage to property or disruption to the life of the community and for present purposes at “(c) any impact which the procession may have on relations within the community.”

[15] The Guidelines set out the different factors laid down in the legislation and as stated above those factors include the impact which the procession may have on relations within the community. Paragraph 4 of the Guidelines addresses the issue of community relations and refers to the location of a parade, the route that is proposed to be taken, the type and frequency of parades and related protest meetings and at paragraph 4.5 under the heading ‘Communication with the Local Community’ it is stated -

“The Commission will also take into account any communications between public procession or related protest meeting organisers and the local community, or the absence thereof, and will assess the measures, if any, offered or taken by organisers to address genuinely held relevant concerns of members of the local community. The Commission will also consider the stance and attitudes of local community members and representatives.”

[16] The framework described above provides a basis on which the Commission may take the step it has taken. The power to impose conditions is laid down in the Act; the Act also requires the Commission, in imposing conditions, to have regard to the Guidelines; the Act further requires the Guidelines to provide that the Commission has regard to community relations; the Guidelines that have been adopted state that the Commission will take into account communications between the organisers and the community, or the absence thereof and the measures taken by organisers to address concerns. The framework leads to the conclusion that the absence of communication between the local community and the organisers is a factor which the Commission is entitled to take into account in considering the conditions to be imposed. Thus the imposition of the condition limiting the number of bands because of the absence of engagement is a condition imposed for a permitted purpose.

[17] The applicant objects to the engagement issue being taken into account so as to reduce the band numbers from 40 to 25 on the ground that it was but an arbitrary and unreasonable, in the sense of irrational, step taken by the Commission. Of course any conditions that are imposed must be relevant to the statutory purpose sought to be achieved and must be rational and must not be arbitrary. However there is a history to the issue of the number of bands participating in the parade. Last year when the parade was being considered the number of bands was a feature of the deliberations and the determination of 2011 at paragraph [8] referred to the local community being opposed to the parade because of the large number of bands taking part in a small village; at paragraph [9] it was stated that the Residents Group made it clear that the number of those taking part and supporting the parade should be proportionate and manageable in a small predominantly nationalist village; at paragraph [14] the Commission examined whether a parade of the scale proposed was sustainable and the Commission stated its belief that the issue needed to be addressed in the future and should form part of the dialogue process that the Commission would be seeking to resume soon after the 2011 parade had taken place. Thus the approach adopted in 2012 was flagged up in the 2011 determination. I do not accept that the imposition of the condition restricting the number of bands was an arbitrary step as it was considered in 2011 when it was a factor which the Commission tied in with the issue of dialogue. Further the issue of communication was raised at the meeting which took place between representatives of the parade and the Commission on 7 August 2012 and the possibility of the reduction in numbers was discussed at that meeting. The condition is rational and relevant to the purpose and not arbitrary.

[18] The applicant contended that there was a legitimate expectation that there would be no restriction on the number of participating bands. A legitimate expectation may arise from a promise or practice that a particular course of action will be followed. There is no basis for any such legitimate expectation in the present case. The issue of the number of participating bands was raised last year and in the pre-Determination meeting with the Commission.

[19] Mr McQuitty contended that what was being required by the Commission was the improper imposition on the organisers of mediation structures fixed by the Commission. The Procedural Rules of the Commission at paragraph 4.1 under the heading 'Supporting Mediation' refers to structures to facilitate cross community communication. The structures may already be in existence or civil or community forums may be set up or there may be a desire to establish new structures and in that event the Commission may facilitate such structures. However the Rules state - "It is not the Commission's intention to prescribe the form that such structures should take". In the present case are the Commission prescribing a form of structures contrary to their own Rules? The Commission did try to facilitate three processes of medication which were unsuccessful. A fourth process was undertaken by the PSNI where the Commission was not the facilitator. Nor are the Commission the facilitators in relation to the other proposals that have been attempted by the organisers, none of which has been successful. I am satisfied that the Commission is not prescribing the form of the structure to facilitate cross community communication.

[20] Further Mr McQuitty contended that the condition was a disproportionate inference with the right to freedom of assembly and association. These rights under article 11 of the European Convention on Human Rights are qualified rights and not absolute rights. The condition amounts to a restriction on the rights. Such a restriction must be prescribed by law and necessary in the interests of public safety, the prevention of disorder or crime or the protection of the rights and freedoms of others.

[21] As to whether the interference is according to law I am satisfied that the imposition of the condition is provided for under the legislation and falls within the scope of the legislation. As to whether the condition has a legitimate aim I am satisfied that the aim is that of promoting engagement between parade organisers and local communities. I am satisfied that the aim is legitimate in that it is directed to promote good community relations by preventing disorder and protecting the rights and freedoms of the local community. The two sides may debate whether engagement will help community relations and whether imposing this condition will help to achieve that aim. That is not for the Court to assess but rather it is for the Commission to assess. The Commission may be right or wrong in the way they are approaching the parade but the Commission is the statutory body that Parliament has designated should undertake this task. The Court has to determine whether the Commission's decision contravenes any legal requirement and not whether the Commission are to be adjudged right or wrong in the line they have taken or whether they should take a different line. As to whether the condition is rationally connected to the aim I am satisfied that that is the case. As to whether there is undue interference with the right to freedom of assembly and association this is a balance between the private interest of the parade organisers and the public interest. I am satisfied that the imposition of the condition is proportionate.

[22] The reason for the imposition of the condition is clear. It is not a reason which the applicant accepts. I have found that the Commission is entitled to impose the condition for that reason. I do not find that any of the applicant's grounds for challenge to the decision of the Commission have been made out. The application for judicial review of the determination of the Parades Commission of 14 August 2012 is dismissed.