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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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2012/97455/01

QUEEN'S BENCH DIVISION (CROWN SIDE)

Jordan's (Hugh) Application [2012] NIQB 64

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IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION TAKEN BY THE CORONER FOR NORTHERN IRELAND

(DISCLOSURE OF STALKER/SAMPSON REPORT)

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DEENY J

[1] This is an application brought by Hugh Jordan, father and next of kin of Patrick Pearse Jordan. In it his legal representatives seek to quash a decision of the Coroner refusing disclosure of the Stalker/Sampson narrative and analysis reports and the transcript of the evidence given by Officer M at the trial of Martin McCauley. In fact the latter document has been given to the next of kin, as soon as the Coroner received it I was told, but after proceedings were issued.

[2] The quite complex chronology leading up to this application is set out in the first affidavit of Fearghal Shiels, solicitor to the next of kin, of 4 September 2012. It will be recalled that the inquest is into the death of Mr Jordan's son who was shot dead by Sergeant A of the Royal Ulster Constabulary on 25 November 1992. The inquest is currently due to start on Monday 24 September 2012 with the swearing in of a jury. Mr Shiels advised that in or about May 2009 the Coroner's Service became aware that material which was held in the Stevens' database relating to the earlier inquiries by Deputy Chief Constable Stalker and Chief Constable Sampson, into the fatal incidents of November and December 1982, potentially contained material relevant to the Pearse Jordan Inquest and other historic inquests. There followed a later notification of this to the next of kin and some controversy about the difficulty or otherwise in searching this database for relevant matters. Suffice it to say that the next of kin ultimately became aware that the Officers A, M and V in the Jordan

inquest had been interviewed in the course of the Stalker/Sampson investigations into the deaths of Seamus Grew and others. At the preliminary hearing on 23 September 2011 the present Coroner stated: "This goes well beyond credibility in a situation which may have similar fact nuances".
He might well have to "invite the jury to consider wider implications".

[3] It transpired that Miss Quinlivan, now QC, and her solicitor, had in fact access to the Stalker/Sampson material as they were instructed in those inquests, to be held in 2013 and 2014, relating to those incidents. Mr Barry McDonald QC who was to and is in this application leading Miss Quinlivan was not in that position, at that time. He then signed an undertaking, breach of which constitutes a contempt of court, to receive and keep safe the documentation and use it only for the purposes of these i.e. the Stalker Sampson inquests and any directly related legal proceedings. He is unsure of the date of that but it would seem to be around late December 2011. Mr McDonald makes the point that he was being given the material for the Jordan inquest and seeks to infer from that that it must be implicit that the Jordan inquest was covered by the undertaking but this was not accepted by either the Coroner's representatives or the Chief Constable's representatives.

[4] Mr Shiels avers that "both senior counsel who represent the applicant in the inquest and who have read and considered the contents of the Stalker/Sampson Reports in their entirety, as well as the witness statements of the overlapping witnesses in the Pearse Jordan Inquest are of the view that this material is not merely potentially relevant but relevant to the Pearse Jordan inquest and further should be available to be deployed in cross-examination of witnesses if this inquest is to be an "effective" investigation into the death of Pearse Jordan as required by Article 2 of the Convention (par 4).
[Judicial underlining throughout].

[5] The topic seems to have been the subject of several more preliminary inquiries and Mr Shiels avers that at a preliminary hearing on 18 May 2012 the Coroner stated that it was relatively clear from the efforts made to recover the material that he considered the material to be relevant to this matter and material which goes very much to credibility issues and that he had "no issue" in relation to the use of the material. But he had not seen the material at this time, counsel points out.

[6] In early June material relating to certain officers was provided i.e. their statements and interviews from the earlier investigation. It is important to note the volume and nature of this material. In relation to M it consists of two statements after caution, three witness statements, three sets of interview notes and a note of service. In relation to V the next of kin were given no less than four statements after caution, six witness statements and five sets of interview notes. They also got Sergeant A's statement under caution, witness statement and interview notes, likewise from the Greater Manchester Police. There are 196 pages in all. But the solicitors for the next of kin still sought confirmation that they could deploy material

from the Stalker/Sampson narrative and analysis reports in the course of the inquest.

[7] It may be appropriate to say a word about those reports while noting that this is based just on the information which I have received at the leave hearing. There are apparently some 83 boxes of papers relating to the investigations into these fatal incidents and the subsequent police handling of them. Detective Chief Constable Stalker prepared a number of interim reports. Chief Constable Sampson then reviewed his work. Their Reports together apparently come to about 6 lever arch files from which the next of kin have extracted material for two files which they say contain relevant matters to the Jordan inquest. This is the material they wish to deploy in cross-examination at the inquest. See my comments on the limits of cross-examination as to credit in Re C, D, H and R, and Jordan (Anonymity and Screening)[2012] NIQB 62 at [27] – [30]. The Coroner indicated on 12 June that he had asked the Senior Coroner to rule on this issue. He on the same date wrote that in the absence of agreement by the Police Service of Northern Ireland to waiving the undertaking, which was not forthcoming, he could not accede to the application. The next of kin contend that they have only a limited amount of the underlying documentation which might be relevant because they were content to rely on the Stalker/Sampson Reports. The nature of these reports, in so far as the court has seen them, is of a summary of what a variety of civilian and police witnesses said happened at the scene and subsequently followed by recommendations of the two senior English police officers. The next of kin argue that the narrative aspects of the Reports are helpful summaries of fact which will save time. The alternative is to be given the original statements of any officers that contradict Officers A, M and V but that is more time consuming and less satisfactory, they say. There was correspondence from the next of kin in June, July and up to and including 7 August seeking an urgent ruling about these reports. Dr McGleenan submitted that there had been delay on the part of the next of kin in bringing this application but I find against that. They only got the ciphers at the end of April and appear to have pursued this matter actively both before and afterwards.

[8] On 17 August 2012 the Coroner conveyed his decision. In fairness to the Coroner I should set out the letter in full from the Coroner's Service.

> "Patrick Pearse Jordan Inquest: Stalker/Sampson Materials
>
> The Coroner has now read the Stalker/Sampson narrative and analysis reports in their entirety. Mindful of the oral and written submissions made by counsel in respect of this matter, the Coroner has concluded that the reports themselves are not relevant to the determination of the issues in the Jordan inquest. It would not therefore be appropriate to order that those reports be disclosed to interested parties for the purpose of the Jordan inquest.

> You have been provided with the statements and also the question and answer sessions of those officers concerned in Stalker/Sampson who are also witnesses in the Jordan Inquest (namely Officers A, M and V). The Coroner is satisfied that the material is relevant to the credibility of those officers and that it be can be deployed by counsel in examining the witnesses in question in the course of the Jordan Inquest."

[9] This is the decision challenged by the next of kin. They point out that the submissions hitherto made were of a limited nature and they would wish to deploy their analysis of the Stalker/Sampson narrative and analysis reports to persuade the Coroner otherwise, although that is not how it was put in the earlier correspondence.

[10] Following the issuance of proceedings here the Coroner Mr (now His Honour Judge) Sherrard swore an affidavit on 17 September 2012. He does not dispute the remarks attributed to him by Mr Shiel but in relation to the first remarks points out, at paragraph 7 of his Affidavit, that he was not in the position of having read those reports himself not having carriage of the Stalker/Sampson Inquest and that furthermore he is contemplating source materials concerning those episodes.

[11] I take the opportunity to say that I fully accept that and also his statement at paragraph 13 to the effect that when he said that none of the material was relevant he also meant potentially relevant. See In Re Windsor Securities Ltd [2005] NICA 34 per Kerr LCJ at [24-26]. See also In Re Windsor Securities Ltd [2004] NIQB 38 per Girvan J.

[12] Mr McDonald did not seek to challenge the decision of McCloskey J in Re Siberry [2008] NIQB 147 with regard to the irrelevance of opinion evidence from the Prison Ombudsman with which I agree. See also Sherrard v Jacob [1965] N.I. 151, C.A.

[13] I also agree with the Judge's comment at [61] that the Coroner is entitled to a substantial measure of latitude, with the court's supervisory role lying "towards the lower end of the scrutiny scale." I dealt with this topic at Section V of In Re C, D, H, and R, and Jordan (Anonymity and Screening) op. cit., especially [38]. In the present case I am considering inter alia whether Mr Jordan's Article 2 adjectival rights are engaged. As the ECHR has ruled the inquest is not subject to Article 6: Bubbins v UK (2005) 41 EHRR 24.

[14] The leave hearing was heard before me on 18, 19 and 21 September. Mr Barry McDonald QC appeared with Ms Karen Quinlivan QC for Mr Jordan. Professor Sean Doran appeared for the proposed respondent, the Coroner. Mr Turlough Montague QC and Dr Tony McGleenan QC appeared for the Chief Constable and

Mr Kevin O'Hare appeared for Officers A, M and V. I gave my ruling on 24th September.

[15] Mr McDonald took a preliminary point objecting to the participation of the Coroner in the Judicial Review hearing on foot of the decision of the Court of Appeal in Re Darley [1997] NI 384. I ruled against him, in part because of the decision of the Court of Appeal in In Re Windsor Securities Ltd [2005] NICA 34 at [24-26] and by inference therefrom. This ruling is recorded if required.

[16] The second preliminary issue was raised by Dr McGleenan. Mr McDonald said it was necessary for the court to have the Stalker/Sampson narrative and analysis reports opened to it but he had signed an undertaking not to discuss these reports save in connection with Stalker/Sampson or proceedings directly related to it, which he did not claim involved this case. He said he had signed the undertaking specifically for Jordan. Dr McGleenan having taken the point, very helpfully suggested that a resolution of it might be if the court sat in closed session with restricted recording. Less helpfully Mr McDonald neither consented to this nor offered any alternative solution. Having been apprised that such an approach had been used, for example in some public interest immunity hearings, I agreed to adhere to that in another ruling which is available if required. Only those members of the Bar and solicitors who had signed the undertaking (nearly a dozen) attended the closed hearing with myself. For the avoidance of doubt all 'parties' therefore were represented while Mr McDonald laid out his case and his opponents replied.

[17] Mr McDonald acknowledged that there were many volumes of Stalker/Sampson. They only wanted to have disclosed to them, he said, two lever arch files which they said were relevant. He opened to me the decisions of Morgan J in (2008) NIQB 100 and Gillen J in (2010) NIQB 66 both in regard to Chief Constable's Applications in regard to inquests. I take those decisions into account, including [12] of the judgment of Morgan J as he then was. Counsel acknowledged, on 19 September, that as his solicitor's correspondence had presaged, the lawyers for the next of kin wanted to deploy the Stalker/Sampson material at the inquest but he said there was an anterior issue before the court as to the Coroner's finding that it was not relevant. I have refreshed my memory of and taken into account all his submissions.

[18] As I had said when this case was first mentioned to me I had thought a pragmatic solution might be for the counsel to the next of kin to indicate what particular points they felt they wanted to make and invite counsel for the Coroner to agree that they could do so. That did not find favour because of the contention on the part of the next of kin that it was all relevant. Nor did my suggestion that the disclosure should be to counsel and the solicitors of the next of kin without troubling Mr Jordan himself find favour. Counsel for the Coroner opposed this as well as counsel for the next of kin; on different grounds of course. It must be borne in mind that the counsel for the next of kin and their solicitor have all seen this material and signed the necessary undertaking. It would be inappropriate in the circumstances to

set out the substance of these reports, the secrecy of which the Chief Constable still seeks to maintain. Suffice to say that from my note Mr McDonald referred to passages between pages 257 and 927 of the exhibits bundle to his solicitor's affidavit. It is difficult to summarise this material without inappropriate disclosure but he was seeking to show that there might be relevant parallels between some of the circumstances discovered in Stalker/Sampson and those applicable to the death of Pearse Jordan. Some of it e.g. pages 257 to 264 contained expressions of opinion. Some of it was explanatory e.g. who was who under different letters of the alphabet. I could well see that it will be a lot easier for him and Miss Quinlivan to conduct the case having read this material. Some of it was of interest but clearly not of relevance to Jordan e.g. page 306, 314. But almost all of the material related to the involvement of Officers M and V in the incidents of 1982. Sergeant A's role is more restricted. As I have mentioned above, however, very extensive information has been given about M and V (and A) already. Counsel sought to argue that it was necessary to have formal disclosure to the next of kin and his lawyers in order to persuade the Coroner to widen the scope of the inquiry to allow him to deploy this material in cross-examination. But for what purpose was such disclosure and submissions to be put? I take one of the few illustrations that Mr McDonald was able to give of material which he said went outside the source material they had been formally given about A, M and V. He will wish to put to V that he was responsible for a particular improper course of action 10 years before the death of Pearse Jordan. V will, if consistent with his later statements to Stalker/Sampson, already disclosed, say he was directed to do that by a superior officer. Counsel wants to put that that superior officer denied doing so to the Stalker Sampson team. The Coroner may well allow Mr McDonald to put to the witness that that superior officer denies giving such an instruction. Counsel could then put that whatever the truth of the matter one police officer or another is being untruthful about the incidents of 10 years before the death of Pearse Jordan, thirty years ago. I am <u>not</u> directing the Coroner to allow those questions but it seems to be me illustrative of pragmatic steps falling very far short of the disclosure of six volumes of narrative and analysis reports. To express the matter as a continental judge might do – here is the problem – what is the solution? Wholesale disclosure or, at most, a few relevant questions permitted? Of course, wide-ranging cross-examination as we know it is not the norm in other important jurisdictions of Europe.

[19] Counsel is concerned about some policies. What is to stop him asking when the policy in force in 1992 for some particular issue came into force? Again I am not ruling that such is in fact relevant but I mention it as one of the things raised by counsel in his highly articulate submissions. I can see matters in the material to which he drew attention which it would be right to put to M and V so as to try and damage their credibility but it does seem that all or virtually all of those are to be found in the material already disclosed, as Professor Doran later pointed out.

[20] Testing the intentions of the next of kin in this regard, bearing in mind my duty not to be the cause of delay to this much delayed inquest, I asked how many of the topics dealt with in the list of contents to be found in page 866 of the exhibits

would the next of kin hope to touch on. According to my note Mr McDonald wished to address no less than 10 of these topics, despite the very modest factual justification for doing so.

[21] The Coroner was not persuaded that the narrative and analysis reports add anything material in probative terms to the case the next of kin would make to cast doubt on the reliability and veracity of the police account of certain aspects of the Jordan fatal incident? Mr McDonald said that the Coroner's reference to probative value was the wrong test. But Professor Doran pointed out that the U.S. Federal Code of Evidence links probative value with relevance. We need not go so far; my eye falls on Phipson on Evidence, 14th Edition, paragraphs 7.01 and 7.02. In the first of those paragraphs headed Facts and Issues one finds this.

> "Facts and Issues, which are sometimes called 'principal' facts are those necessary by law to establish the claim, liability or defence, forming the subject matter of the proceedings; and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are, therefore, determinable primarily by the substantive law, and secondly by the pleadings."

The learned authors then go onto deal with facts relevant to the issue.

> "Facts, relevant to the issue, which are sometimes called "evidentiary" facts, are facts which render probable the existence or non-existence of a fact in issue or some relevant fact."

The wording in the 17th Edition differs but not materially. In fact counsel's submission seems inconsistent with the next of kin's own Order 53 Statement, para. 2 (v), with its reference to the "the probative value of such material". I am persuaded by Professor Doran that this was a view the Coroner was entitled to reach. I do so after a greater exposition of the material on behalf of the next of kin than the Coroner enjoyed.

[22] The next of kin, or his counsel, contend on foot of the judgments of Morgan and Gillen JJ that these matters must be at least potentially relevant. But counsel for the Coroner exposes the logical flow in that argument. The Coroner has looked at the material, at which stage it might have been potentially relevant and has found it not only not potentially relevant but not relevant at all. The judgments of my two colleagues did not relate to a situation such as this where there were extensive materials not relating to this man's death but to the death of certain other men 10 years' previously. The Coroner has made his decision on scoping. He has given his ruling and like that of any judicial decision-maker that should be respected, subject to any appeal or review after the event. I do not think he is obliged to endlessly re-open and debate matters because one of several parties is unhappy with his ruling.

[23] There was some discussion about the recommendations made by the two English police officers who investigated in the 1980's but Mr McDonald assured the court that there was "no way" that he was seeking to introduce the opinions of Mr Stalker and Mr Sampson. Professor Doran emphasised the Coroner's driving imperative to proceed (though one must express sympathy for the argument of the next of kin that a very large part of any previous delay here arose from the reluctance of past Chief Constables to give materials to the Coroners which the courts have found ought to have been provided). I cannot go into too much detail about his substantive arguments as they also involve a contrast between the disclosed material about A, M, V and the Stalker/Sampson reports. Suffice it to say that he did demonstrate that there seemed to be nothing more of benefit to the next of kin in attacking the credibility of these then police officers in the undisclosed material than in the disclosed material (save possibly the points I deal with at [18] above). Therefore, the Coroner was correct in saying that the undisclosed material was not of probative value and not relevant.

[24] He rejected Mr McDonald's argument that the scope of the inquest, which was always intended by Mr Sherrard to be wide and which will be Article 2 compliant, had not yet been settled. It was not, he submitted, the thrust of the next of kin's argument to expand the scope but to deploy this material at the hearing in cross-examination.

[25] I put to him that as he had not objected to Mr McDonald using his personal knowledge of these narrative and analysis reports to put the case before me in closed session, he, or rather the Coroner, could not logically object to Mr McDonald doing the same thing at the inquiry i.e. asking the Coroner for leave, in a closed session, to put some snippet of information outside the disclosed material if it emerged that it had acquired relevance and was of probative value. He accepted the logic of that while not having any express instructions on the point. Mr Montague QC likewise accepted the point, without prejudice, although concerned at any attempts to start satellite topics which would add to delay. I will say a word more about his submissions on the issue of potential relevance. I accept his submission that the next of kin cannot have a right to demand disclosure of documents, particularly of one remove, merely because they say they are relevant when the Coroner who is the judicial officer charged with this inquest has ruled that they are not relevant. Similarly that deals with the argument that the Coroner had a closed mind. Again, like any judge he has been asked to give a ruling and he has given it. He is not obliged to entertain re-openings of points which he has already decided.

[26] The opportunity has been taken to open these matters before me over three days and as is now apparent it does not seem to me that the Coroner is in error in thinking that submissions would not assist him further. Indeed, as counsel points out he has had the great advantage of reading these statements at Seapark in their unredacted form. He relied on two dicta from Regina v Inner West London Coroner, ex parte Dallaglio [1994] 4 All ER 139. Simon Brown LJ said at page 155:

> "The inquiry is almost bound to stretch wider than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the Coroner whose rulings upon the question will only be exceptionally susceptible to judicial review."

Sir Thomas Bingham MR at page 164 said the following:

> "It is for the Coroner conducting an inquest to decide, on the facts of a given case, at what point the chain of causation becomes too remote to form a proper part of his investigation. That question, potentially a very difficult question, is for him."

[27] I have dealt with Mr McDonald's submissions in reply in the course of this judgment. I think it worth mentioning, in addition, one matter which I raised with him which troubled me. If he were successful in this application and persuaded the Coroner, contrary to his present ruling, that he should widen the scope of the inquest to allow Mr McDonald to roam through the narrative and analysis reports of Stalker/Sampson, which would be consistent with his solicitor's letter saying they wished to deploy this material, how would the jury deal with that? If the jury repeatedly hear that there is a conflict between what some police officers said in and after 1982 and what other police officers said how do they resolve that? I have, above, indicated a pragmatic solution to that but it was not one that emerged from Mr McDonald's submissions. Rather he urged me not to attempt to micro-manage the inquest for the Coroner. I am entirely in agreement with him on that topic.

Conclusions

[28] I remind myself that this is a leave hearing and that the applicant is entitled to leave if he can show an arguable case with some prospect of success. However, as has been said before, by Kerr J, inter alia, there is no point in granting the leave if the judge hearing the application can see no prospect of granting it. That is my position here.

[29] The Order 53 statement, which I have taken into account, seeks an order of certiorari to quash the decision of the Coroner "refusing disclosure of the Stalker/Sampson narrative and analysis reports" and an order of mandamus compelling the Coroner to provide the same. In his decision letter of 17 August the Coroner concluded that the reports themselves are not relevant to the determination of the issues in the Jordan inquest. It seems to me that he was entitled to reach that conclusion. The applicant seeks to rely on only two of some six files which make up the Stalker/Sampson narrative and analysis reports which does not thereby justify the disclosure of the whole. Of those two volumes it seems clear that much is not relevant to any issue in the Pearse Jordan inquest. Furthermore the applicant through his counsel concedes that the opinion evidence of the recommendations of Mr Stalker and Mr Sampson are not sought to be relied on by the applicant. The case is that some material in these volumes links M, V and A, to practices which may

touch on their credibility and what was done in the aftermath of the shooting of Pearse Jordan. But as I say that falls far short of what in fact they have claimed. There was no application to amend and on that simple ground I consider that the application has no prospect of success and refuse leave.

[30] In case I am thought wrong in that I turn to consider the Coroner's second ground of rejection. On a fair reading of the Coroner's decision letter of 17 August it can be seen, by his reference to the material about A, M and V which has been disclosed to the next of kin and which he is invited to use as relevant in the inquest, that the Coroner considers that in any event any materials which are in the narrative and analysis reports do not add anything to the source material already provided. It seems to me that that is a conclusion to which he is entitled to come. It is within his responsibilities. He has the advantage of having read all the unredacted material which I have not seen. If, as I acknowledge may be the case, there are a few points which should properly be put to the officers by Mr McDonald which are not in the source material currently disclosed, he should apply to the Coroner for leave to put those in some acceptable form. That possibility, on which the Coroner with his detailed knowledge of the whole matter can rule at the inquest, even if one calls it a "potential relevance", does not justify the disclosure to the next of kin of the Stalker/Sampson narrative and analysis reports. I observe that it is scarcely likely that this 71-year-old gentleman could add anything to the forensic analysis of two Queen's Counsel and their solicitors. I can see no unfairness to him in him having the benefit of the lawyers having read the narrative and analysis reports without he having a similar advantage. See [35] below. As indicated above at [25] I think that counsel should be released from their undertaking sufficiently to make such an application, in closed session if necessary.

[31] In case others took a different view of those two matters from me, I think it proper to address the alternative submission made by Dr McGleenan on behalf of the Chief Constable, with which Professor Doran and Mr O'Hare agreed. His contention was that this was a strategy to explode the inquest and he pointed to the number of topics in the contents list which counsel for the next of kin wished to address. He pointed out that these were all with regard to the 1982 shootings and that addressing them would fundamentally alter the shape and scope of the inquest commencing on 24 September.

[32] He pointed out that if Mr McDonald was allowed to put to A, M or V statements from other persons interviewed by Stalker/Sampson those witnesses, by definition being criticised, in public, albeit anonymous, but subject to later exposure in certain circumstances, would be entitled to ask to see the whole of the statement or perhaps statements from which the quotation was being put. It seems to me there is force in that submission. Fairness may well dictate that. If a witness is cross-examined on the basis of what a later witness will say the witness being cross-examined will at least know that someone will get the chance to cross-examine the later witness. That is not the case here. It may well be that the Coroner would have to concede that the witness sees those statements. Mr McGleenan says that

there is a team of five persons working on the Stalker/Sampson Inquiry reports for the inquest that is due to start in a year's time and last a year. That work is nowhere near complete. In all likelihood redacted copies of the statements of other officers are not available, he says.

[33] Separately from that but consistently with it counsel points out that A, M and V may ask for advice and separate legal representation in that eventuality. Mr McDonald says they have known they were facing this inquest for a considerable time and they have known more recently that he has been given their statements and interview notes and they have not sought legal representation. But that is not to say that if they are now faced with volumes of Stalker/Sampson material they will not now seek such representation, with ensuing delay.

[34] These matters must be seen in the light of the grave delay which has taken place with regard to this inquest. The European Court of Human Rights in Jordan v United Kingdom (2003) 37 E.H.R.R. 2 at paragraph H31 (cc) to H36 (hh) considered the issue of delay and concluded that the inquest proceedings did not commence promptly and were not pursued with reasonable expedition. I am now dealing with this case nine years later and I have conceived my duty to be to deliver this judgment rather more quickly than I would have wished, particularly given the warnings on behalf of the next of kin of further appeals. The parties received my ruling the working day after the hearing and this written judgment two days later. I would hold that even if I had concluded that the Coroner had erred, which could only have been to the modest extent, if any, that the materials in the narrative and analysis reports were relevant or potentially relevant and probative over and above the source materials already disclosed, I would not have interfered with the Coroner's decision because of the significant danger of real delay arising from such an outcome and the possibility of a prolonged delay until after the Stalker/Sampson inquests had concluded in contrast with no or negligible benefit to the next of kin.

[35] I trust the Coroner and the Chief Constable will contribute to expedition and avoid delay in the conduct of the inquest as they are under a duty to do. But it is clear from the Strasbourg jurisprudence that the court takes into account the approach of applicants such as the next of kin to delay also. Nor are counsel exempt from such duty. I see from the Code of Conduct for the Bar of Northern Ireland adopted by the Bar in General Meeting on 6 March 2003 at 8.05 the following:

> "A barrister must in every case endeavour to avoid unnecessary expense and waste of the Court's time."

Perhaps 8.07 is relevant also:

> "A barrister must exercise personal judgement about the substance and purpose of questions asked and statements made. A barrister is personally responsible for the conduct and presentation of a client's case in court and

must guard against being the channel for questions or statements which are only intended to insult or annoy either the witness or some other person."

The end of that is not relevant here but it is the barrister's duty to present the case, not for the client to prepare a series of questions for him to put. See also 8.10 and 8.11. And see [30] above. See also [29] and [31] of In Re C, D, H and R, and Jordan [2012] NIQB 62.

[36] The duty of avoiding delay of course also applies to the Legal Services Commission as a further emanation of the State. I am sure that they have sought to address this duty by giving speedy decisions on applications for legal aid of this sort. I feel it right to remind those charged with this duty that they should take into account whether the grant, or refusal, of legal aid could cause delay in a situation where delay should at any reasonable cost be avoided. They should take into account the practical benefit of any application for legal aid and whether the applicant for legal aid could obtain remedy without the expense, to the public, of legal proceedings and the risk of delay. I see that Treacy J expressed similar sentiments in Howard's Application [2011] NIQB 125 at [37].

[37] Lord Bingham in Jordan v Lord Chancellor [2007] NI 214, 216 at [41] wrote of "the forthcoming, but lamentably delayed, inquest". Five years on it has just begun. It behoves all parties to avoid any further delay. One consideration not to be overlooked is the stress to the witnesses caused by the delay and by the repeated adjournments of the hearings.

[38] Finally, I wish to express my accord with the views of the Court of Appeal in McLuckie v The Coroner for Northern Ireland [2011] NICA 34 per Higgins LJ at [26] as to the proper course with regard to these inquests. The Coroner is entitled to run his own court. If he rules against counsel they should note that and if the verdict goes against them they may, if it is proper to do so, rely on an adverse ruling as part of their case to set aside a verdict. I was most surprised to find, as the recording will show, that counsel for the next of kin here seemed to presume that they would be seeking to strike down the verdict of the inquest, which they presumed would be adverse to them, in one way or another, before the inquest had even begun.

[39] For all these reasons it would be wrong to grant leave here to the applicant to open a new and irrelevant front in this litigious conflict which has already gone on longer than any continuous period of war of which I am aware in the history of the peoples of these islands since the defeat of the aged but gallant Earl of Shrewsbury by the banks of the Dordogne on 10 October 1453 brought to an end the Hundred Years War.