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Inquiry into Nelson's murder dragged from its primary task

PLATFORM

By Mike Ritchie Committee on the Administration of Justice

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Rosemary Nelson was a member of the Committee on the Administration of Justice's executive committee.

We are therefore following with great interest the inquiry established to look into her murder.

Peter Cory, the Canadian judge tasked to examine whether there was a case to answer by the authorities in

relation to her death, said of Rosemary: "To her children she was simply their mother who loved and nurtured them.

"To Paul Nelson she was his wife, whom he loved.

"To her mother she was a good daughter; to her siblings a fine sister.

"To her clients she was an able solicitor who provided sound advice and able and courageous representation.

"She was a contributor to her community of Lurgan and to her profession.

"By their cowardly act, Rosemary Nelson's killers deprived her children of their mother's love and care, her husband of her love and comfort and the community of Lurgan of a very brave and able solicitor" (Cory report, page 9).

The inquiry recommended by Judge Cory is now into its 35th day of hearings.

The opening statement by counsel to the inquiry Rory Phillips took over two weeks and 39 witnesses have so far given evidence.

These have included defence lawyers, people from Rosemary's practice, journalists and the human rights community.

It has been possible to get a sense of the way in which the inquiry is developing.

Some reflections are therefore appropriate.

Overall approach

The inquiry approach is in danger of using detail to obscure the main issue it was invited to examine by Judge Cory.

Whereas the latter took at face value the allegations of threats against Rosemary, witnesses to the inquiry are probed in Byzantine detail concerning how they documented the allegations, whether the people making the allegations were trustworthy, whether their own note-taking was professional and so forth.

The focus appears to shift therefore to whether there were threats rather than whether the authorities, when confronted by the allegations of threats, took them seriously.

This was the approach even with Param Cumaraswamy, the former UN special rapporteur on the independence of judges and lawyers who took up Rosemary's case.

Questioning

Unusually, all questions to the witness are through counsel to the inquiry.

This is a different approach from that adopted by other inquiries, notably the Billy Wright and Bloody Sunday inquiries, where the other lawyers put their own questions to witnesses.

The intent is clearly to reduce the amount of time taken.

Counsel to the inquiry asks his own questions as well as questions submitted by all the parties to the inquiry – lawyers for Rosemary's family, the Police Service of Northern Ireland, the Northern Ireland Office and the security services (MI5 etc).

Counsel for the inquiry has complete discretion as to how many of the questions submitted he asks.

However, he does not indicate whose the questions are that he is asking.

There is currently a legal challenge to this methodology by lawyers for the police.

Approach to human rights

It is clear that one of the lines of defence by the government/police side is to attack and undermine the role of human rights activism.

There is constant questioning of the practice of informing as many international mechanisms as possible in the hope of exerting external scrutiny on practice in Northern Ireland.

After all, the case of Pat Finucane had shown that lawyers could become targets. The absence of any real response by the state to that death indicated a continuing unwillingness to properly protect defence lawyers.

Instead of taking the issue seriously, there remains a sense that the NIO/police, by the line of questions they are (we presume) submitting, are still irritated by the fact that external people such as Mr Kumaraswamy and US politicians had the temerity to question the way they did things.

Approach by state lawyers

The most upsetting aspect of the inquiry, however, is that the state – in the form of the police and NIO lawyers – appears to have adopted an adversarial approach that

seeks to throw the blame for Rosemary's murder back at her and her supporters.

Lines of questioning concerning her integrity, her capacity as a lawyer, her politics and activism all seek to nuance the fact that she and her family are the victims in all this.

To persist in dragging the inquiry away from its primary task – seeing whether the state did or did not adopt

the correct approach when warned of the threats against her – does not create the political generosity this society needs to move forward.

In our view the inquiry must seek to vindicate Rosemary's rights as the victim in all this.

Undermining her integrity, professionalism, commitment to human rights and the rule of law would not be a tenable outcome of the process.

Yet this is the danger of an approach that questions her qualities and courage.


- Mike Ritchie is director of the Committee on the Administration of Justice, a human rights NGO working across the community since 1981 for the highest standards in the administration of justice

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