
Northern Ireland

LEGAL AID TO
OPPOSE DISCRIMINATION—
NOT LIKELY !

Issued by
**THE CAMPAIGN FOR SOCIAL JUSTICE IN
NORTHERN IRELAND**

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HISTORICAL BACKGROUND

The division of Ireland was effected by the Government of Ireland Act, 1920, (H.M. Stationery London Office) an Act of the British Parliament. Clauses were inserted in this Act to safeguard the religious minorities in both the new states of Northern and Southern Ireland.

A fundamental part of the Act, Section 5, amongst other things~ lays down that the Parliament of Northern Ireland shall not "make a law so as either directly or indirectly . . . give a preference, privilege or advantage or impose any disability or disadvantage, on account of religious belief . . ."

This section also repeals any pre-existing legislation "by which any penalty, disadvantage or disability is imposed on account of religious belief . . ." "a clear sign of the fundamental importance which Westminster attached to safeguards in the Northern Ireland constitution itself against religious discrimination.

Section 8 (6) further strengthens the obligations laid upon the Northern Ireland government in this matter.

Legislation, however, needs to be revised at intervals to keep up with changing conditions and to close loopholes becoming apparent with the passage of time. This has never been done in the case of the Government of Ireland Act, so far as religious discrimination is concerned.

THE CAMPAIGN FOR SOCIAL JUSTICE IN NORTHERN IRELAND TRIES TO GO TO LAW ABOUT RELIGIOUS DISCRIMINATION

Early in 1964, having collected and published a large amount of information on religious discrimination, the Campaign decided that legal action should be taken against an urban district council in the specific matter of religious discrimination in allocating houses.

The eminent Legal Authority engaged informed the members of the Campaign that the 1920 Government of Ireland Act offered no adequate method of securing redress against discrimination. Although the Conservative and Unionist Party (in power since 1922) allowed discrimination to continue, it was careful not to pass any law contravening the 1920 Act: nor did it need to. The Unionists simply used their political majority to do as they wished, and in the areas where they had no majority, they were not averse to gerrymandering, e.g. Londonderry, which has a 67 per cent Catholic majority, is undemocratically ruled by a 33 per cent Unionist minority.

There seemed nothing the Campaign could do through legal action.

THE CAMPAIGN TRIES AGAIN

In the Spring of 1964, when Sir Alec Douglas-Home visited Northern Ireland, he stated at a press conference and later on television that any person who felt himself discriminated against could seek redress in the courts under the 1920 Act.

The Campaign for Social Justice thereupon wrote to Sir Alec asking how this legal action could be taken. (See the Campaign pamphlet "Northern Ireland, Why Justice can not be done—the Douglas-Home Correspondence")

Sir Alec, in a series of five letters to us, gave no real answer to our problem and we came to the conclusion that he was either unable or unwilling to help the cause of justice in the matter of religious discrimination in Northern Ireland.

AND AGAIN

At a public lecture in the Queen's University of Belfast in February, 1965, Mr. J. McCartney, LL.B., of the Faculty of Law, outlined some relevant sections of the 1920 Act under which Roman Catholics could seek redress against discrimination.

Later in the year this theme was further elaborated in another public lecture given by Mr. H. G. Calvert, LL.M., also of the Queen's University Law Faculty, entitled "Northern Ireland, Religious Discrimination and Legal Restraint". In it he too indicated a method whereby discrimination against Catholics could be opposed.

Mr. Calvert also made the point that the Legal Aid Scheme which only came into operation in Northern Ireland in November, 1965, seventeen years after it was instituted in the rest of the United Kingdom, should be of enormous advantage to the underprivileged working-class Catholics who were suffering a great deal,

The Campaign Committee consulted a solicitor in November, 1965, and instructed him, on behalf of a Catholic textile worker, John Patrick McHugh, to commence proceedings against Dungannon Urban District Council for discrimination in the matter of Council housing allocation.

Mr. McHugh was born and lived all his life in Dungannon but had lately been forced to live outside the town boundary to secure a house. He is married man with a wife and four children. He was then living in a damp, rat-infested, two roomed house. He is on the Council's waiting-list for eight years. This man had been proposed by the Dungannon Independent Councillors no less than sixteen times between July 1964 and August 1966, without success. In that time the Unionist-controlled Dungannon Council has allocated houses to young newly-wed Protestants, to Protestants coming from as far away as forty miles and to Protestants who already occupied excellent council houses. Some of these people were not even on the Council's housing waiting-list !

By means of gerrymandering the Unionist party controls two thirds of the seats on the Council in Dungannon, which has a Catholic majority.

If there was any protection under the Government of Ireland Act, surely it could be invoked here. If Legal Aid existed, surely this man should be able to avail of it. It appeared so to the members of the Campaign who instructed their solicitor to apply for Legal Aid for Mr. McHugh.

When the solicitor lodged the Legal Aid Application Form with the Law Society of Northern Ireland its secretary wrote to him asking what the heading was under which Aid was being sought, whether it was "action for a declaration, or application for order of mandamus, prohibition or certiorari".

THE CAMPAIGN WAS NOW SPENDING MONEY TO SECURE " FREE " LEGAL AID

Rather than prejudice the application by submitting it in the wrong way, our solicitor advised us it would be safer to consult Senior Counsel about the method to be used.

The cost of this, paid out of Campaign funds, was £70.

Senior Counsel advised us that technicalities in the law might make it impossible for Mr. McHugh to take direct action against Dungannon Urban District Council, and that it would be better if the action were brought by a ratepayer in the council area. Mr. Anthony Sheridan, a working man and a ratepayer, aggrieved at the misuse of Council powers in the allocation of houses, offered to be the plaintiff and Legal Aid was applied for on his behalf.

The services of Junior Counsel were required to prepare and submit an amended Legal Aid Application Form. This and other legal expenses is expected to cost the Campaign a further £30, or more.

LEGAL AID REFUSED

The Campaign was notified that Legal Aid had been refused. The refusal saying "the proceedings to which the application related are not proceedings for which legal aid may be given." There was no further information about the reason for its rejection.

Advice of Counsel was again sought and an appeal was made against the refusal, the case being argued before the Legal Aid Committee by Junior Counsel on 23rd Sept. 1966. The Committee reserved its decision and not until 2nd Nov., did it announce the rejection of the appeal because the applicant "has not shown reasonable grounds for taking or being a party to proceedings"

Such rejection of Legal Aid appears to be contrary to the spirit and purpose of the Legal Aid Scheme

our legal advisers inform us that for working people to finance litigation themselves, up as far as the House of Lords, where their opponents would undoubtedly force it, were they to lose the case in a lower court, could cost up to £20,000.

Therefore, denial of Legal Aid amounts to denial of access to the courts. This effectively prevents most Northern Ireland citizens from taking Sir Alec Douglas-Home's advice, or indeed from taking the same advice given by many Northern Ireland ministers, the latest being that of the Attorney General Mr. E. W. Jones, Q.C., when he spoke at Londonderry on 29th October, 1966, namely, to seek legal redress against religious discrimination. Mr. Jones also asserted that there was no religious discrimination in Northern Ireland nor had there ever been any.

CONCLUSIONS

May we end by quoting from The 1966 Year Book of the National Council for Civil Liberties, an all-party, London-based British institution which is above reproach.

“The introduction of a Legal Aid scheme—seventeen years following that in Britain—will make easier the defence of civil liberties if the regulations within which the scheme is to work are not used restrictively. Legal aid is being sought by citizens of Dungannon in an attempt to challenge in the Courts discrimination against Roman Catholics in the allocation of houses. At present their application is submerged in the machinery of the Legal Aid Committee. Rejection of legal aid would be widely regarded as a new form of discrimination in itself, designed to prevent this frontal attack on the power to discriminate.”

Through the years the British Conservative party could usually count upon up to twelve Ulster Unionists voting with them in the House of Commons at Westminster. Thus they condoned discrimination and gerrymandering and never modified the 1920 Act. They also allowed a ‘convention’ to grow up by which injustices in Northern Ireland were not allowed to be discussed in the Westminster Parliament.

The Campaign draws attention to Section 75 of the Government of Ireland Act, 1920 which states:

“Notwithstanding the establishment of the Parliament of Northern Ireland, or anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in Ireland and every part thereof.”

This is a clear, unequivocal statement and is recognised by all political parties. Sir Alec Douglas-Home clearly acknowledged it in his correspondence with the Campaign for Social Justice, and Miss Alice Bacon, a British Minister, has since accepted it on behalf of the Labour Government as a clear statement of the constitutional position.

The Westminster Government recently expressly applied the Prices and Incomes Act 1966 to Northern Ireland, despite the fact that the Act deals with matters within the powers delegated to Stormont. Thereby it demonstrated that it is prepared to exercise its over-riding authority when it regards this as expedient.

The present British Labour Government has refused the request of over a hundred of its own back-benchers called the “Campaign for Democracy in Ulster” group to set up a Royal Commission to enquire into Northern Ireland affairs.

Surely it is anomalous for Britain to concern itself so seriously with matters of justice in so many other countries, whilst doing nothing about the situation in Northern Ireland ?

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