

INQ 0005

APPLICATION FOR SCREENING

RULING

1. This is an application by INQ 0005, a soldier who was on duty in Londonderry at the time of Bloody Sunday, that he be screened while giving evidence to this Inquiry.

2. The basis of the application may be found in Paragraph 8 of Part I – Open of the formal application. This reads:

“8. INQ 0005 fears that were he to give evidence unscreened he would be exposed to an appreciably increased risk of terrorist attack. In particular it is submitted that if INQ 0005 were to give evidence unscreened there would be a real risk that his anonymity would be compromised and that it would be possible to trace him. It is submitted that these fears are objectively justified.”

3. The Tribunal has discussed on a number of occasions the principles to be applied when dealing with an application for screening. We draw particular attention to the written Ruling delivered on 29 May 2002 in regard to an application by Dr. John Martin and a Ruling delivered orally on 20 June 2002 in regard to applications by Soldiers H and 104. It is

unnecessary to set out those principles again at any length; it is their application to the present case with which the Tribunal is concerned.

4. If indeed INQ 0005 fears that by giving evidence unscreened he would be exposed to an appreciably increased risk of terrorist attack and this fear is objectively justified, the next step is for the Tribunal to balance the protection afforded by screening against any adverse consequences for the Inquiry of hearing his evidence screened.
5. The application is in two parts, the first an open part which has been distributed to the interested parties and the second a Schedule marked Part II which is confidential to the members of the Tribunal, its Counsel and the Solicitor to the Inquiry. Since the precise factual basis for the fears expressed by INQ 0005 and which appears in Part II cannot be stated without defeating the purpose of the application, the Tribunal must proceed on the footing that Part II remains confidential.
6. In accordance with its practice when an application is made for screening, the Tribunal has asked the relevant security organisation to prepare a threat assessment. In such an assessment the Tribunal seeks to be informed whether by giving evidence unscreened there will be a significant increase in the vulnerability of the witness to attack, in this case by terrorists.

7. The Tribunal has distributed to the parties a summary that it is satisfied represents as much of the assessment as can properly be disclosed. The summary reads:

“Soldier INQ 0005 would be at greater personal risk giving evidence to the Tribunal unscreened, than if he were screened. This assessment is based primarily on the increased likelihood of Soldier 0005 being recognised as a result of (redacted); and the possibility thereafter of locating him to his home address through publicly available sources of information.

The recommendation is “that screening Soldier INQ 0005 whilst he gives evidence may enhance his personal security, prevent further exposure of his identity, and therefore reduce his vulnerability to subsequent attack.”

8. In delivering its Ruling on the application by Soldiers H and 104 the Tribunal drew attention to the approach taken on behalf of the soldiers on their application for anonymity, namely that the soldiers would be seen by the families and the public when they gave evidence so that the inroads on the public and open nature of this Inquiry were limited. That approach was endorsed by the Court of Appeal. See in particular paragraphs 56 and 68 of the Judgment of Lord Woolf M.R., given in July 1999 on the Anonymity application and paragraph 55 of the Judgment of Lord Phillips M.R. given

on 19 December 2001 on the Venue application. Nevertheless it is apparent that there may be particular circumstances personal to the individual which justify screening, notwithstanding the benefit of anonymity.

9. While the Tribunal is constrained in dealing with this aspect of the application, it is satisfied from the confidential schedule and from the threat assessment that indeed there are special, personal circumstances which are likely to have the effect of destroying INQ 0005's anonymity should he give evidence unscreened. In that event he would be exposed to a significant increase in the risk of reprisals. In those circumstances the Tribunal is of the view that the balance called for leads to the conclusion that the application should be granted.

10. Objection has been taken to the making of this application at such a late stage in the Inquiry. Delay in making a screening application is not of itself a bar to the making of an order. Its relevance lies in the light an explanation may throw on the genuineness of any fears expressed by the applicant and the weight to be attached to them. If, taking an explanation into account, the Tribunal is satisfied that those fears are genuine and that in other respects screening is warranted, delay does not preclude the making of an order.

11. The applicant's solicitor has provided the Tribunal with an explanation of the chronology in this case. Because that chronology bears on matters in the confidential schedule it is not possible to say more than that circumstances explain the making of the application at this stage. The Tribunal remains satisfied that the applicant's subjective fears are genuine.

12. There will be an order in the terms sought by paragraph 2 of the application. We should add that the more limited order granted in the case of Dr. Martin is, in our view, not sufficient in this case to give the protection which is properly sought.

Lord Saville

The Hon. William Hoyt

The Hon. John Toohey

2 October 2003