



THE COURT OF APPEAL

Birmingham J.

Sheehan J.

Hogan J.

2016/591

L.C. (A MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND C.C.)

APPLICANT

AND

THE DIRECTOR OF OBERSTOWN PLACE OF DETENTION AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of the Court (ex tempore) delivered on the 9th day of January 2017 by

Mr. Justice Birmingham

1. Before the court today is an appeal by the Irish Human Rights Equality Commission against a decision of the High Court (Eager J.) refusing to allow it to be joined as amicus curiae in these proceedings and in three closely related proceedings.
2. A matter of very considerable significance is that the four cases are listed for hearing before the High Court tomorrow week and four days have been set aside for that hearing. Obviously this means that a very significant degree of urgency attaches to this present appeal.
3. By way of background, all four applicants are or have been detained in Oberstown Detention Centre in north Dublin. Essentially each of them claims that for part at least of their detention that they have been held in solitary confinement.

4. It appears that in late August 2016, there was a serious incident at the detention centre which involved a number of detainees gaining access to the roof and causing considerable damage there by fire. In broad terms the applicants allege that in the aftermath of the incident which it might in passing be noted, coincided with industrial action at the campus. That they were then confined to their cells for a period of weeks in conditions that amounted to or were the equivalent of solitary confinement.

5. A description the regime that applied in the period after the incident on the roof is provided by the applicants. However, it must immediately be said that a very different perspective indeed is offered by the Director of the Centre who stresses that his role is one of a person in loco parentis and that there was no question of people being confined to solitary confinement and certainly no question of people being kept in solitary confinement for prolonged periods by way of punishment.

6. In the High Court when the Commission sought to be joined, the applicants consented, but the respondents took a position of neither formally consenting nor formally objecting. They did however make submissions to the court raising issues which they suggested required consideration. Before this Court the Commission appellants have observed that while as a matter of form neutral on the issue in the High Court that in reality the position of the respondent authorities there was one of opposition to the joinder of the Commission.

7. Whatever uncertainty about the position of the authorities may or may not have existed in the High Court, there was none such in this Court where the authorities have opposed the inclusion.

8. The question of joinder was approached with very considerable care and attention in the High Court, where the trial judge delivered two judgments on the issue. Indeed it is fair to say in passing that if it was not for the particular time table that applies in deference

to the care with which the issue was approached in the High Court, this Court would very likely have wanted to reserve judgment.

9. But be that as it may, the first judgment in the High Court has been categorised, not entirely unfairly by the respondents as one that gave the Commission an opportunity to mend its hand to put further information before the High Court addressing areas of concern and interest. In fairness to the Commission that opportunity was taken up in part by way of a supplemental affidavit from Chief Commissioner Ms. Emily Logan. While her original affidavit has been somewhat terse the Commission though declined to provide information on two areas that had been identified by the High Court as of interest. Namely, the procedure by which the Commission had decided to seek to be joined and the method by which they had become aware of these and the related proceedings and the extent of their knowledge of these proceedings.

10. Insofar as these issues have featured in the second judgment which was delivered on the 21st December, 2016, the appellant Commission has criticised the reasoning of the trial judge's decision during the course of this appeal.

11. However, in my view the real focus of attention at this stage has to be on the nature of the proceedings that are listed before the High Court and the issues that are likely to arise in the course of those proceedings. It is not in dispute that the proceedings relate to significant human rights issues, the rights of juvenile detainees and the conditions under which juvenile detainees should be held. It involves issues about separation or segregation policies and practices in juvenile detention centres.

12. The Commission has by statute a right to apply to participate in proceedings. It is of course merely that and no more. It is a right to apply to participate, not a right to actually participate.

13. In terms of the issue which is going to be canvassed before the High Court, this is

an area where there is a significant international dimension. The Commission has a role in engaging with the United Nations Human Rights Commission, with the Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Commission also engages with the UN Committee on Rights of a Child. In those circumstances it does seem to me that the Commission is in a position to make a significant contribution in relation to international standards and international practices as well as to contribute in relation to other areas. Indeed the proceedings seem to me to be of a nature that is quintessentially appropriate for Commission involvement.

14. I have commented that the entitlement of the Commission is only one to apply to participate, but that entitlement to apply being specific statutory recognition is itself a significant statutory power indeed. If during the course of parliamentary debate or pre-legislative scrutiny, the question was asked “well in what sort of cases might the Commission seek to intervene?” or “in what sort of cases should the Commission seek to intervene?” then proceedings such as the present might have been given as an example of a case that would be appropriate for intervention.

15. There is one other area of concern in the High Court, which is what might be described as practical or housekeeping concerns. In the past when the Commission has intervened in proceedings, it has prepared its submissions after those of the applicant and respondents have been made available. Sequencing in this fashion reduces the risk of duplication and repetition and so minimises the likelihood that the involvement of an amicus will increase the costs and the duration of the proceedings.

16. Because there has been slippage to date in the exchange of submissions, (the slippage would seem to have initially been on the part of the applicants) adhering to that usual procedure gives rise to difficulties. The case management directions that have been given by the High Court mean that the submissions of the respondent need not now be

furnished until the day before the case is listed to start. However, before this Court counsel for the Commission has indicated that submissions can be prepared very quickly in response to the applicants' submissions once they have been furnished with them and the applicants' submissions are ready. Then once the respondents' submissions become available the Commission would be in a position to refine its submissions including if necessary doing so by deleting material now seen as superfluous.

17. The time table clearly is not ideal, but the difficulties that arise are really for the Commission and neither they nor anyone else are contemplating that the cases should be adjourned. If the Commission is prepared to and is in a position to meet the available time table and to work to that time table, then I do not see that the timing difficulties should be determinative of the issue and should serve to prevent the applicant Commission from participating.

18. In summary then, for my part I would allow the appeal and would permit the joinder of the Human Rights Commission. In doing so I am taking into account Ms. Logan's commitments that the Commission will bear its own costs and that it will not enter on the facts of the case and will confine itself to making legal submissions. On that basis I would remit the matter to the High Court for an early directions hearing.

*No redaction required
EJ*

*George Birmingham
15th 7th 2017*

Mr. Justice Sheehan: I agree with the judgment that has just been delivered in this matter by Mr. Justice Birmingham.

Mr. Justice Hogan: I have the opportunity of listening to the judgment which has just been prepared by Mr. Justice Birmingham and I agree with it.