



Northern Ireland
Assembly

Ad Hoc Committee on a Bill of Rights

OFFICIAL REPORT (Hansard)

Briefing by Professor Brice Dickson

3 December 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Emma Sheerin (Chairperson)
Mr Mike Nesbitt (Deputy Chairperson)
Ms Paula Bradshaw
Mr Mark Durkan
Miss Michelle McIlveen
Mr John O'Dowd

Witnesses:

Professor Brice Dickson Queen's University Belfast

The Chairperson (Ms Sheerin): Professor Brice Dickson is joining us via StarLeaf. He is an emeritus professor at the school of law in Queen's University. In 1999, he was appointed chief commissioner of the Human Rights Commission here, and he was in that position until 2005. Professor Dickson, I welcome you to the meeting.

Professor Brice Dickson (Queen's University Belfast): Thank you very much.

The Chairperson (Ms Sheerin): Thank you for joining us this afternoon, and thanks for the submission that you provided us with. Do you want to begin your briefing?

Professor Dickson: OK. Thank you, Chair, and thank you to the Committee for inviting me to give evidence today. You mentioned that you received my paper, which is quite lengthy, I am afraid. I will summarise it over the course of the next 10 minutes, if that is all right.

The Chairperson (Ms Sheerin): Of course.

Professor Dickson: The paper is entitled 'Getting to Yes on a Bill of Rights for Northern Ireland'. Unless your Committee chooses a path that is different from the one that has already been well-trodden by the Human Rights Commission and the Bill of Rights Forum, for example, you will not be able to reach an agreement on what a bill of rights should say, and you will not be able to put proposals to the UK Government that they would be willing to accept. Many of the witnesses from whom you have heard to date have argued for a fairly comprehensive bill of rights. I am not in that camp, although I used to be; I now think that, as far as a bill of rights here is concerned, less is more, by which I mean more in the sense that a shorter bill of rights would stand a much higher chance of actually being enacted.

The harsh political reality is that the UK Parliament is not going to enact a bill of rights for Northern Ireland if doing so would mean that people in Great Britain would then have fewer human rights, especially fewer social and economic rights, than people here. Likewise, it is often forgotten that the Belfast Agreement requires the Irish Government to enact legislation in the Republic to match whatever is contained in a bill of rights for Northern Ireland. The Irish Government are, therefore, I suggest, also unlikely to approve of a bill of rights for here if it is to contain rights that the Government in Ireland do not want to extend to people in the South.

There must have been a reason why, according to your terms of reference, as set out in the 'New Decade, New Approach' document, you were asked to consider a bill of rights that is:

"faithful to the stated intention of the 1998 Agreement".

That phraseology was, I strongly suspect, chosen as a not-so-subtle intimation that a bill of rights is much more likely to gain cross-party agreement here, as well as Government agreement in London and Dublin, if it is tailored much more closely to the rights issues that were referred in the Belfast Agreement but which have not yet been fully dealt with, either through the Human Rights Act or through other legislation.

In that context, I think that it is instructive to return to the response that the UK Government gave to the advice issued by the Human Rights Commission back in 2008. The then Labour Government rejected most of the commission's proposals because they thought that they went beyond what was particular to Northern Ireland and trespassed into areas relevant to the rest of the UK. However, the Government did think that there was room for accepting some of the commission's proposals. In fact, there were five areas from which the Government were prepared to consider legislation. They were, first, equality, representation and participation in public life; secondly, identity, culture and language; thirdly, sectarianism and segregation; fourthly, victims and the legacy of the conflict; and, fifthly, criminal justice. Those are all issues that can be traced back to the Good Friday Agreement, and I think that your Committee should look at them again and try to work out how they could best be dealt with in a bill of rights.

In 2009, the UK Government seemed already prepared to include three particular rights in a bill of rights from the list of issues that I have just mentioned. They were the right to equality before the law; the right of the people of Northern Ireland to identify as British, Irish or both; and the right to fair electoral systems here. In my paper, I have provided extracts from existing legislation, which you could draw upon to fashion appropriate provisions on the other issues listed by the Government as worthy of consideration. The examples that I have cited are taken from Northern Ireland's own statute book, from legislation that applies only in Great Britain, from constitutional provisions in Germany and South Africa and from human rights treaties such as the UN Convention on the Rights of the Child and the European Framework Convention for the Protection of National Minorities.

In case your Committee remains nervous at the prospect of basing provisions in a bill of rights on these sorts of precedents, I want to note that many of the precedents do not confer rights on individuals at all. Rather, to pick up a bit of what Judge Humphreys was saying, they impose duties on public authorities, and not all legal duties automatically mean that individuals have then the right to claim a personal remedy if a duty is not fulfilled. As you will know from the report on economic and social rights that you considered last month, which was mainly prepared by members of the Human Rights Centre at Queen's, including me, many kinds of rights can be protected by means other than making them justiciable by individuals in court.

In paragraph 34 of my paper, I have been so bold as to suggest a couple of provisions that could be included in a bill of rights to help to ensure that, at the governmental level at least, steps are taken to promote reconciliation, tolerance, mutual respect and mutual understanding; shared and integrated education and housing; the development of communities; the advancement of women in public life; and adherence to the principles of mutual respect for the identity and ethos of both communities and of parity of esteem. One or two of the suggestions that were made in the Human Rights Commission's 2008 advice are also helpful in that context.

Those are the sorts of issues that should be provided for in a bill of rights. They are very particular to Northern Ireland, given that we are a deeply divided society. Providing for them would give reassurance and confidence to everyone who lives here. Indeed, if the Assembly were to back such provisions, it would send out a very positive signal that the politicians that we elect can, at times, come together to do something very positive to help make this a better place in which to live. A bill of rights

of that nature would also stand a much greater chance of attracting the support of the two Governments.

The supplementary rights that I suggested could be enacted at Westminster in the form of a Human Rights (Northern Ireland) Act. That Act could provide that, when read together with the Human Rights Act 1998, it constitutes the bill of rights for Northern Ireland as provided for in the Belfast Agreement. The additional rights that the Human Rights Commission and others want to see protected in Northern Ireland, many of which I support, but which are not particular to the North, could then be protected by the Assembly as and when the opportunities arise. The Assembly has demonstrated its desire to protect human rights by exercising its legislative competence. It has done so, for instance, in the fields of bullying in schools, cooperation in providing children's services, addressing the needs of people who live in rural areas and, even as we speak, enhancing the rights of victims of domestic abuse.

In the New Decade, New Approach deal, one of the Executive's five priorities is said to be:

"Delivering a fair and compassionate society".

That sounds like a human-rights approach to policymaking, especially as the document goes on to promise benefits such as an anti-poverty strategy, robust actions to end sectarianism, a target for social and affordable home starts, the extension of welfare mitigation measures and a childcare strategy. Therefore, it can hardly be argued that the Executive are against the very idea of human rights.

My view is that we should allow the Assembly to get on with protecting human rights without waiting for them to be enshrined in a bill of rights that is passed at Westminster. In fact, whether human rights are protected at Westminster or by the Assembly makes little practical difference on the ground. After all, the whole point of devolution is to allow devolved regions to take responsibility for governing themselves. As you heard from other witnesses, that is the path that Scotland and Wales have taken. Northern Ireland should take the same path.

Finally, my paper refers to threats to human rights that are potentially thrown up by the EU-exit process. As long as article 2 of the protocol on Ireland/Northern Ireland in the withdrawal agreement is faithfully adhered to, there should be no such threats. It is true that some provisions in the UK's Internal Market Bill could pose a risk, but they should become irrelevant if a trade deal is agreed in the coming days or weeks, as we all hope will be the case.

Chair, that is my summary. Thanks for listening.

The Chairperson (Ms Sheerin): Thank you very much, Professor Dickson. As you pointed out, your written presentation was lengthy, but it was very interesting. You covered everything in great detail. You and Mr Humphreys mentioned the constitutional situation. I feel that it is strange that I am not the person to bring up that subject. As a Sinn Féin MLA, my position on that is, obviously, clear. You mentioned the support, particularly in the context of 2020 and the COVID-19 pandemic, shown towards the NHS and healthcare workers. A lot of goodwill has been shown towards healthcare workers and everything that they have gone through this year, notwithstanding the vote in the Dáil last night, but that is a separate issue. You then draw on the fact that the support for the NHS from the general population suggests that very few people would object to healthcare as a right in a bill of rights. Can I get more detail on your thinking on that?

Professor Dickson: The reality, although hardly anyone admits to it, is that there already is a right to healthcare not only in Northern Ireland but throughout the UK. In fact, it is a right to healthcare free at the point of delivery. There is a constitution of the National Health Service that guarantees that right. There is not a statute or any constitutional provision that guarantees it, but the long and the short of it is that the law of Northern Ireland already protects the right to free healthcare. There are minor exceptions, unfortunately, as regards asylum seekers, but, for the vast majority of the people living here, whatever their political background or belief, they have that right already. It would be a very small thing for the UK Parliament or the Assembly to enact in legislation the right to free healthcare. The right is already there.

Likewise, people talk about the need for education rights. In our domestic law, there is already the right to education up to the age of 16 at least, and the right to training thereafter. It would be a small thing to include any such existing right in a bill of rights.

That answer does not suggest that the right to free healthcare needs to go into a bill of rights for Northern Ireland. My answer is confirming that the right is already there. If it were enshrined in legislation — any kind of legislation — that would just bring home to people the current reality.

The Chairperson (Ms Sheerin): That brings me on to my next point. We could see in the North over the past year, with the decriminalisation of abortion services, that, because the services have not been commissioned by our local Health Minister, women have not been able to access that right, although it is enshrined in law as passed by Westminster.

I then think of rights for transgender people. We have one gender identity service in the North, and it is at a standstill and has been for three or four years. While, on paper, the right to healthcare for trans individuals exists, it is not happening in reality or in practice because there has not been anything to bring trusts or the Health Department to account for why that service has not been delivered. In response to that, the Health and Social Care Board has said that it is a resource issue and that there is not the personnel, but some people have suggested — it is probably my perception — that, were there an impetus on the Health Minister to prove that efforts had been made to address that situation, we might have a different result for those who are currently without the healthcare that they need.

Professor Dickson: In my submission, I draw attention to, I think, three examples of courts in Northern Ireland ordering Ministers, basically, to get on with what they are legally obliged to do, be it to provide an anti-poverty strategy or a language strategy or compensation for victims of the Troubles. In theory, and, perhaps, in practice, action should be taken through the courts to make abortion services available. If there is a law saying that they have to be made available, a judge is likely to order the relevant Department to make such provision.

The Chairperson (Ms Sheerin): The problem here is that abortion services are legal and have been decriminalised, but the motivation is not there. That is where I see the possibility and opportunity from a bill of rights. Thank you very much.

Mr Nesbitt: Professor, good afternoon and thanks for engaging with us.

Professor Dickson: You are welcome.

Mr Nesbitt: You said that you are more of a minimalist today than you used to be, and you gave the reasons for that. Does that go beyond your pragmatic analysis of the possibilities of what we might be able to agree?

Professor Dickson: Probably, yes. I am a strong supporter of human rights because I am a strong supporter of a free, fair and compassionate society. That is what human rights are all about. I do not like the word "minimalist" because it suggests that I think that a short bill of rights would be unimportant or insignificant — quite the opposite. I see a bill of rights, as provided for in the Good Friday Agreement, as being the fulfilment of the function of the Good Friday Agreement, which is to bring our divided society together and allow us all to live harmoniously and peacefully together. That is the added value that a bill of rights, as provided for in the Good Friday Agreement, could bring.

All the other rights that could be in a bill of rights, and are found in places like Canada and South Africa, deserve to be protected in Northern Ireland just as much as they are anywhere else. They can be protected by the Assembly, given the extensive competences that the Assembly has under the Good Friday Agreement. The Assembly could provide those social and economic rights and other rights if it wished to in a similar way to what Scotland and Wales are proposing to do.

Mr Nesbitt: I am fascinated by your reminder of the obligation that the Belfast Agreement places on the Government of Ireland in terms of rights. It states that the Government in Dublin would bring forward measures that would:

"ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland."

I assume that, at the time, that was a one-off commitment, thinking that, if there were a bill of rights, it would come through Westminster. Does it apply to laws and statutes passed at the Assembly, such as those that you cited on bullying in schools and victims of domestic abuse?

Professor Dickson: That is an interesting suggestion. I do not think that it was intended to extend to that extent. The context in which you find that provision in the Good Friday Agreement relates to the rights and safeguards mentioned in the agreement, and the bill of rights idea can be found in that part of it. That is what the Irish Government are obliged to match if there were a bill of rights for Northern Ireland.

Obviously, I cannot speak for the Irish Government, although they have been quite supportive of the Northern Ireland Human Rights Commission's advice to the Secretary of State for Northern Ireland. There is a deal of rhetoric in that support. If put on the spot, I am not so confident that the Irish Government would be prepared to enact in the South of Ireland all the rights that are recommended in the Northern Ireland Human Rights Commission's advice.

Mr Nesbitt: If it were more open-ended rather than being a more specific commitment, surely the implication would be that the Northern Ireland Assembly could continually pass legislation that would have an impact on the Republic of Ireland.

Professor Dickson: Yes, that is a good reason for not adopting that interpretation, because it is a rather absurd one.

Mr Nesbitt: Justice Humphreys made me think of something when we were talking about whether we should pass a bill of rights through the Assembly or through Westminster. If it went through Westminster and a statute in Northern Ireland was challenged because it was contradictory to a bill of rights, I have always imagined that such a challenge would come from an individual or a group, or maybe a political party. However, could it be the case that Westminster could continually take us to court?

Professor Dickson: Potentially, yes. The British Government could take the Northern Ireland Government to court, just as Ministers in the Northern Ireland Government sometimes take their fellow Ministers to court. It is a theoretical possibility, but a more likely scenario is that an individual or an organisation that thinks that the Northern Ireland Assembly has acted in breach of a bill of rights, as passed by Westminster, would take the matter to court.

Mr Nesbitt: Justice Humphreys talked about a constitution Act. I am sure that that it is well beyond this Committee's terms of reference, but I wonder what your thoughts are. Is that something that appeals?

Professor Dickson: I would need to know more about what exactly Justice Humphreys is getting at. The reality is that we already have a constitution of a sort, which is the Northern Ireland Act 1998, which implements the Good Friday Agreement and has been extensively amended ever since, including as a result of the 'New Decade, New Approach' document. Like a lot of lawyers and judges, he wants the law to be tidy and accessible and all in one place, and there is much to be said for that as regards the general public's access to the law; that is important. I do not see much of substance being changed if what Justice Humphreys was suggesting on his slide in the previous presentation were to be implemented. It is more a procedural and consolidating activity.

Mr Nesbitt: Thank you very much, Professor Dickson.

Ms Bradshaw: Thank you, Professor Dickson, and welcome to the Committee. Your submission references the fact that the 'New Decade, New Approach' document did not include, as previous agreements did, a call for a single equality Bill. As you will know from 20-odd years of looking into the matter, the biggest proponents for a bill of rights will be sectoral groups — I do not mean that churlishly. Could a single equality Bill properly address a lot of the complaints and meet a lot of the aspirations of the likes of the disability sector and the carers sector as opposed to a bill of rights? We could have greater control over the drafting and implementation of a single equality Bill in Northern Ireland.

Professor Dickson: Yes. There is a great need for a single equality Bill. We were to get one back in 2001, as you know, and, as I explain in the submission, somehow it has fallen off the radar. The result is that, from being a jurisdiction where equality rights were better protected than anywhere else in these islands, we have now got to a situation where, in Northern Ireland, equality is less well protected than in the Republic of Ireland or in England, Wales or Scotland. Without even including it in a bill of rights, the Assembly could turn round tomorrow and suggest an equality Bill for Northern Ireland,

which would, at the very least, bring us here up to the standards that already exist in Great Britain and the Republic. The Equality Commission has a detailed set of recommendations on its website for plugging the existing gaps. One of them is already mentioned in the 'New Decade, New Approach' document, which is the need for legislation to protect older people against discrimination in the realm of goods, facilities and services. It exists in relation to employment but not in relation to other matters. That protection is there in Great Britain and in the Republic, but it is not here. That is just one example of the gaps that have opened up here. In my view, the Assembly should get on and enact a single equality Bill.

Ms Bradshaw: My second question relates to the rejection in 2001 by the former Secretary of State, John Reid, of the draft proposals. He looked at five areas — equality, identity etc. To what extent do you think that, with the passage of time and given the policies and legislation that we have passed in Northern Ireland, a lot of the deeply divided societal issues that you reference have been addressed and that these five areas are not quite as prevalent and present as a major factor in life in Northern Ireland?

Professor Dickson: They have been addressed to some extent. The Government made a recommendation that there be a right enshrining fair electoral systems. I think that our electoral systems are pretty fair at the moment. We have had legislation on shared education and on the rights of victims, although that took a long time to come about. We still do not have the rights on equality, which you just mentioned. We still do not have legislation properly dealing with culture and language. We have the Together: Building a United Community (T:BUC) strategy, but it is not accompanied by statutory performance measures or indicators that allow an objective observer to decide whether, in fact, the Executive Office is fulfilling its responsibilities under that strategy or whether the changes that are being made are making any difference at all to the harmoniousness of our society. We do not have proper legislation on the right to integrated education, and that is one of the big gaps. I am afraid that it did not appear in the Human Rights Commission advice of 2008, even though, to my mind anyway, you could not think of a more particular circumstance to Northern Ireland than the fact that our children are educated in separate schools. Something has been done about those issues, but a lot more needs to be done, Paula.

Ms Bradshaw: You talked about a shorter bill of rights, and I propose that it would almost codify in law what is pretty much there, with some add-ons as you have just mentioned, and be more of a symbolic document with quite a descriptive preamble that sets the context of where we have been and where we are going in Northern Ireland. What are your thoughts on that?

Professor Dickson: Yes, that pretty much sums up what I am suggesting. It would have symbolic significance. The people of Northern Ireland, in my view, are crying out for some kind of statement from their elected politicians that they have a recipe for allowing us to live harmoniously together in a free, fair and just way, and that is without any regard to the constitutional status of this place. It does not matter what flag we live under; what matters are the conditions under which we live, and a bill of rights, in the way that I have suggested, picking up the topics that were mentioned in the Good Friday Agreement and in subsequent agreements such as the St Andrews Agreement, would go a long way to reassuring people and giving them confidence that the Troubles are over, peace is solid, we will continue to have quality governance here and that our basic rights are protected. Over and above that, the Assembly can do a lot more, but, as far as the Good Friday Agreement requirements are concerned, the former is more urgent, I think.

Ms Bradshaw: Thank you very much.

The Chairperson (Ms Sheerin): Do you have a question, Michelle?

Miss McIlveen: I am OK, thank you. It has been covered.

The Chairperson (Ms Sheerin): I thought that you had said that. I will go now to Mark.

Mr Durkan: Thank you, Chair. I have no questions for Brice. I just want to thank him for his input. Thank you, Brice.

Professor Dickson: Thank you, Mark.

The Chairperson (Ms Sheerin): John, what about you? You are muted.

Mr O'Dowd: Sorry, Chair. This is maybe more of a comment than a question. Thank you, Brice, for your presentation and submission. I think that there are strong indications for society to realise that the conflict is over, we have stable government, and politics can work. We have dragged ourselves out of conflict. The arena of politics is very difficult at the best of times, but, given our history, it is a more difficult arena here. We have, despite ourselves at times, proved that politics can work. There is a responsibility on one of the co-guarantors of the Good Friday Agreement: the British Government. The best way to stabilise any peace process is to honour the peace agreement that brought the peace process into being. The fact that the British Government have failed to implement a bill of rights is a fundamental flaw in that process. I, as an elected representative, carry huge responsibility. On this occasion, however, a lot of the responsibility rests with the co-guarantor of the agreement.

Professor Dickson: First, you are suggesting that the Good Friday Agreement mandated a bill of rights: it did not. It asked the Human Rights Commission to give advice on what might be in a bill of rights and then left it up to the UK Government to decide whether to go ahead and enact such a bill of rights.

The second and perhaps more fundamental point is that you, as an MLA, and all your colleagues are in a position to guarantee many of the rights that you want to see in a bill of rights enacted by the British Parliament. I am a bit surprised in general that nationalists are prepared to hand over to the UK Parliament the decision-making power over what should be in a bill of rights for Northern Ireland when the Assembly has the competence to protect rights in all sorts of areas already.

Mr O'Dowd: In relation to your first response, there is a High Court judge in the room, so I am not going to contest law at the moment. There is the spirit of the law, and then there is the written law. It was accepted by all that the spirit of the Good Friday Agreement was that the British Government would legislate for a bill of rights. Trust me, if the Westminster Parliament wishes to devolve international treaties to the Assembly, I will gladly take those on board. There are international treaties over which the British Government at Westminster have competency but the Assembly does not. That is why there has been a call for Westminster to legislate for a comprehensive bill of rights, which is all the more important now, considering that we are withdrawing from the EU and that the current Government's stated intention is to withdraw from international human rights Acts. That is why it is with Westminster.

Professor Dickson: I do not think that you are right on that, John. The reason why places such as Scotland and Wales can do what they are doing as regards, say, the UN Convention on the Rights of the Child is that the legislation devolving powers to them allows them to implement, in the way in which they want, international treaties that the British Government have ratified. The legislation devolving power to the Northern Ireland Assembly gives it exactly the same powers. You could therefore make the UN Convention on the Rights of the Child part of Northern Ireland law, if you can persuade your fellow MLAs to do so.

Mr O'Dowd: As regards other international treaties, does the Assembly have the competency to bring about a comprehensive bill of rights, as envisaged by the Human Rights Commission report?

Professor Dickson: It has the power to incorporate in the domestic law of Northern Ireland any human rights in international treaties that the UK has ratified, and many of the provisions in the Human Rights Commission's advice pick up on the human rights provisions in the treaties. For example, the provisions in the Framework Convention for the Protection of National Minorities, which Dermot Nesbitt talked about, and which I have mentioned as well, could be incorporated in the domestic law of Northern Ireland, if the Assembly wanted to do so.

Mr O'Dowd: OK. Thank you.

The Chairperson (Ms Sheerin): No problem, John. All members have had a chance to ask questions. Professor Dickson, thank you very much for joining us this afternoon. You can take your ease at this point.

Professor Dickson: Thanks very much, Chair. Thanks for having me.