

APPROVED

**THE HIGH COURT  
JUDICIAL REVIEW**

[2022] IEHC 597

[2022 156 JR]

**BETWEEN**

**EAMONN BUTTERLY**

**APPLICANT**

**AND**

**MYRA CULLINANE, CORONER FOR THE DUBLIN DISTRICT, THE MINISTER  
FOR JUSTICE, IRELAND, AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**AND**

**THE FAMILIES OF THE 47 DECEASED REPRESENTED BEFORE THE  
STARDUST INQUEST BY PHOENIX LAW, PATRICIA KENNEDY (MOTHER OF  
MARIE KENNEDY), THE COMMISSIONER OF AN GARDA SÍOCHÁNA AND  
DUBLIN CITY COUNCIL**

**NOTICE PARTIES**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 2<sup>nd</sup> day of November,**

**2022**

**Introduction**

1. I refer to my judgment of today's date where I consider whether or not and in what circumstances a verdict of unlawful killing is available in the forthcoming inquests into those who died in the Stardust tragedy on 14<sup>th</sup> February 1981. Another issue that fell to be determined was the applicant's entitlement to costs under the Coroners Acts, 1962 – 2020 (The Coroners Acts) or otherwise at law.

2. The legal representatives of the families (the notice parties) applied under s. 60 of the Coroners Acts for free legal aid. The provisions of s. 60 enable the coroner to make such an order.

3. The applicant has been named as an "interested party" by the first named respondent (the Coroner) at the forthcoming inquests. It is anticipated that the hearing of these inquests will be both lengthy and detailed requiring the presence of the applicant, through his legal advisors.

### **Judicial Review**

4. The applicant has sought the following reliefs on the issue of costs:

"In the alternative, if a finding or verdict of unlawful killing is available, or investigation or consideration of evidence exclusively related to the blame to be attached to particular persons is admissible, in the Stardust fire inquests:

- (i) A declaration that the failure to make any provision for the applicant to apply for legal aid to participate in the Stardust fire inquests or to apply for his costs of participating in the said inquests constitutes a failure on the part of the respondents to conduct the said inquests in accordance with their procedures, and/or a breach of natural and constitutional justice, and/or a failure to vindicate the applicant's rights under the Constitution, including his right to his good name and his right to fair procedures.

- (ii) A declaration that the provisions of the Constitution require any inquest under the Coroners Acts, 1962 – 2020 to be conducted in accordance with fair procedures and natural and constitutional justice and that require that an interested person, including the applicant, must have some means by which he or she may apply for legal aid to participate in the Stardust fire inquests or to seek to recover his costs of participating in the said inquest after its conclusion.
- (iii) A declaration that, insofar as the provisions of the Coroners Acts, 1962 – 2020 do not provide any mechanism through which the applicant may apply for legal aid to participate in the Stardust fire inquests or to apply for its costs of participating in the inquests, the said Acts are invalid having regard to the provisions of the Constitution and in particular Article 40.3 hereof.”

### **Submissions**

5. The applicant submitted that not only can he not apply for legal aid, but he also cannot apply for his costs for participating at the inquests. It is submitted that this is in breach of fair procedures, the principle of equality of arms and is fundamentally unfair as it places him at a considerable disadvantage relative to every other interested party. The applicant relied upon *JF v. DPP* [2005] 2 IR 174 and *O’Brien v. Personal Injuries Assessment Board* [2009] 3 IR 243.

### **Consideration of costs issue**

6. The issue of the provision of free legal aid was considered by the Supreme Court in *The State (Healy) v. Donoghue* [1976] IR 325 and by the ECHR in *Airey v. Ireland* [1979] 2 EHRR 305. These cases and others considered the availability of free legal aid in the context of a person asserting his or her Constitutional rights such as the right of access to the courts, a right to your good name and a right to “equality of arms”. I do not believe that these rights are engaged at an inquest held under the Coroners Acts.

7. In my earlier judgment I concluded that a verdict of unlawful killing was available provided no person was identified or identifiable. The restrictions on the verdict of unlawful killing arise by reason of the provisions of ss. 30 and 31 of the Coroners Acts. It follows that the concern of the applicant about his good name does not arise at an inquest hearing. Under the Coroners Acts, as considered by the various authorities which I referred to in my earlier judgment, an inquest is a non-judgmental, fact-finding inquisitorial process.

8. The applicant is entitled to fair procedures in the course of the inquest. However, these procedures are not of the order that arise in an adversarial process. The applicant is not a party and is not defending himself against allegations as might be the case in civil or criminal hearings. Thus the applicant's right of access to the courts is not engaged at an inquest.

9. In *Skeffington v. Ireland and the Attorney General* [2020] IEHC 296 Pilkington J. considered the issues of the non-availability of legal costs in the PIAB process stating:

*"88. Of course, I accept this plaintiff's entitlement to seek legal advice, but I do not see the prohibition upon the recovery of those legal costs in any subsequent taxation of costs or within the payment of expenses within s. 44 of the 2003 Act, to be unconstitutional. Within this case, I do not discern that s. 51B has operated as a bar on a claimant obtaining his/her constitutional right of access to the courts as required.*

*89. The courts have considered, on the basis of the authorities opened to this court, in the context of the 2003 Act and otherwise, the obligations of the right of access to the courts and the right of legal representation before an administrative panel. What they have not done is to assert that the inability to recover legal costs associated with that legal representation before an administrative panel, where there are limits by legislation on the recovery of those costs, is, in and of itself, incompatible with the Constitution.*

*90. Section 51B enjoys the presumption of constitutionality. It is apparent that no caselaw within this jurisdiction makes it clear or incumbent upon any court in determining the constitutionality of legislation to ensure or require that provision be made for the discharge of legal fees, to which any claimant might avail within an administrative process and/or with this PIAB process.”*

I believe that an inquest is an “administrative process” even though it is dealing with extremely important issues as to the how, when, where and circumstances of a person’s death.

### **Conclusion**

**10.** By reason of the foregoing, I refuse the reliefs sought by the applicant.

**11.** As this judgment is being delivered electronically, I will direct that any submissions on the issue of costs be filed no later than the 18<sup>th</sup> day of November and I will adjourn the matter until the 25<sup>th</sup> day of November to consider as to how the issue of costs will be dealt with.