

Neutral Citation No: [2023] NIKB 47

Ref: FOW12137

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 17/04/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY CHRISTOPHER CUMMINGS
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY THE CORONER IN THE INQUEST
TOUCHING ON THE DEATH OF SEAMUS DILLON**

**Mr Bunting KC and Mr Scott BL (instructed by KRW Solicitors) for the Applicant
Mr O'Donoghue KC and Mr McKenna BL (instructed by the Legacy Inquest Unit) for the
proposed Respondent Ms Hannigan KC and Ms Fee BL (instructed by the Crown
Solicitors) for the Chief Constable of the Police Service of Northern Ireland and the
Ministry of Defence**

FOWLER J

Introduction

[1] The applicant was shot and paralysed in a gun attack at the Glengannon Hotel on 27 December 1997. His co-worker and close friend, Seamus Dillon, was killed in this attack. An inquest into the death of Seamus Dillon is due to open before His Honour Judge Greene (the Coroner) on 17 April 2023. In October 2022 the Coroner made a provisional decision to refuse the applicant properly interested person designation and after further argument this decision was finalised in January 2023. It is this decision which is under challenge in these proceedings.

[2] Given the proximity of the inquest hearing, this application was completed expeditiously and in coming on for a leave hearing it was decided to treat it as a rolled-up application that considered not only leave but also the substance of the issues raised.

Background

[3] On the night of the attack the applicant and the deceased were working together as doormen at the hotel. Both men had been convicted of scheduled offences and served sentences for republican paramilitary activity. Earlier the same day, Billy Wright, a prominent member of the LVF had been killed inside the Maze prison. The applicant was concerned that there would be some form of retaliatory attack on the nationalist community because of tensions in the area.

[4] At around 11:00pm the applicant and deceased were walking back towards the main hotel entrance when he heard a number of loud bangs and the next thing he recalls is waking up in the Royal Victoria Hospital. While the applicant survived this attack, he sustained life changing injuries, is paraplegic, and has reduced life expectancy.

[5] It appears that on the night of the attack loyalist terrorists drove up to the door of the Glengannon Hotel and opened fire on the applicant and Seamus Dillon with a VZ58 automatic rifle. There is concern on the part of the deceased's next of kin and the applicant that those involved in the attack have been assisted by agents of the State and whether the attack could have been prevented or warned of.

[6] The reasons for Mr Cummings' concerns can be summarised as:

- (i) the RUC did not give a warning to the Glengannon Hotel that evening, unlike other premises attended by Catholics (which may have been because the hotel was known to employ former republican prisoners);
- (ii) the car used in the attack had links to Loyalist paramilitaries and the police drove past it just after it had been stolen and failed to stop it;
- (iii) there were serious investigative failings into the attack;
- (iv) recent reports indicate a link between the LVF and security services;
- (v) the VZ58 rifle used in the attack was used in other attacks where collusion may have played a role.

[7] The applicant argues that he has a clear interest in exploring these wider issues in the inquest concerning the death of Mr Dillon. Accordingly, he applied for properly interested person designation on 19 May 2022 which was initially refused on 4 October 2022. At this time the Coroner held that:

“To the extent that there is an overlap between the interests of both the family of the deceased and Christopher Cummings, those interests can be met by the grant of properly interested person status to the family of the

deceased and there is no sustainable good reason to expand the range of properly interested persons to include those that were injured in the absence of any evidence tending to suggest that the survivor victim was in some way culpable for the death or an intended target of the attack.”

[8] Further oral and written submissions were invited from the applicant and served on 16 November 2022 with a renewed application for properly interested person designation heard on 16 November 2022. This renewed application for properly interested person designation, centred on the applicant’s article 2 ECHR right to an investigation into the near-fatal attack on him, was refused in a written decision of 9 January 2023. In this ruling the Coroner held that:

“Christopher Cummings has no freestanding right to request that an inquest investigate the circumstances by which he came to suffer catastrophic injury. This is because the Coroner’s jurisdiction is limited, depending on the type of inquest to be heard, to establishing by what means or, alternatively, the broad circumstances by which a deceased died. While the means or circumstances by which a survivor came to be injured may overlap with the means or circumstances of the deceased’s death, and to that extent be relevant to the task of the inquest, the injury that befell the survivor is not the focus of the inquest.”

The Grounds of Challenge

[9] In his Order 53 Statement dated 20 March 2023, the applicant contends that the decision to refuse the applicant properly interested person designation ought to be set aside for the following reasons:

- (a) Illegality – the Coroner erred in law by failing to apply the correct test of whether the applicant has a proper interest in participating at the inquest.
- (b) Irrationality – the Coroner took into account irrelevant factors, including whether the applicant was an intended target, and failed to take into account the applicant’s article 2 right to an investigation into the near-fatal attack on him as pointing towards him having a proper interest in the inquest.

Properly interested person designation

[10] It is not in dispute that coronial law in this jurisdiction relating to properly interested persons is governed by rule 7(1) of the Coroners (Practice and Procedure) Rules NI 1963 (the “1963 Rules”). This rule provides that:

“(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, **any person who in the opinion of the coroner is a properly interested person** shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor, provided that the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.

(2) If the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease, any person appointed by a trade union to which the deceased at the time of his death belonged shall be deemed to be a properly interested person for the purpose of this Rule.”
(Emphasis added)

[11] However, rule 7(1) does not define what is a ‘properly interested person’, rather it permits such persons to examine witnesses at an inquest provided questions asked are, in the opinion of the coroner, relevant and proper.

[12] In Leckey and Greer, ‘Coroner’s Law and Practice in Northern Ireland’ the authors suggest at paras 7-33 that the following non-exhaustive list of persons can typically be considered as properly interested persons:

- “(i) the next of kin of the deceased;
- (ii) the executor(s) of the deceased’s will or persons appointed as the deceased’s personal representative;
- (iii) solicitors acting for the next of kin;
- (iv) insurers with a relevant interest;
- (v) anyone who may, in some way, be responsible for the death;
- (vi) others at some special risk or appearing to the coroner to have a proper interest.”

[13] The Presiding Coroner for Northern Ireland’s Legacy Inquests Case Management Protocol at para 14 also considers applications for properly interested person designation. Para 14 provides:

“14. Decisions on the status of a Properly Interested Person will be taken by the Coroner at as early a stage of the inquest process as possible. Anyone seeking designation as a Properly Interested Person shall make an application in writing to the Coroner, unless the Coroner is satisfied it is not necessary to do so. The application shall set out the applicant’s proper interest in the inquest; any risk of criticism it is said that they may face as a result of the inquest proceedings; any direct or significant role they are said to have played in the matters relating to the death of the individual or other matters within the provisional scope of the inquest; or any other significant interest they have in the inquest.”

[14] Carswell LCJ in *Re Northern Ireland Human Rights Commission* [2000] NIQB 61 at para 11, cited the above list with approval. He also went on to observe that coroners in Northern Ireland when dealing with applications for properly interested person designation often look to England and Wales decisions for guidance. This obviously, being subject to the differences between the statutory regimes operating in Northern Ireland and England and Wales. Up until June 2023 rule 20(2)(h) of the Coroners Rules 1984 was effectively an analogue of rule 7(1) of the 1963 Rules. Given the exact wording used in both rules - ‘person who in the opinion of the coroner, is a properly interested person’ - English authorities can be of particular assistance.

[15] Before going on to consider the case law in this area, it is also worth noting at this stage rule 15 of the 1963 Rules, which provides that:

“The proceedings and evidence at an inquest shall be directed **solely** to ascertaining the following matters, namely:

- (a) **who** the deceased was;
 - (b) **how, when and where** the deceased came by his death...”
- (Emphasis added)

[16] The decision in *R v Coroner for the Southern District of Greater London, ex p. Driscoll* [1993] 159 JP 45 is informative when approaching the issue of properly interested person designation. This was a case involving the shooting of the deceased who was in a flat with his wife and his behaviour was such that the police considered it necessary to surround the property and eventually shoot the deceased. The deceased’s sisters, who had kept in regular contact with him and were not on good terms with the deceased’s wife, applied to be properly interested persons. They did not fall within any of the usual categories automatically to benefit from properly interested person designation. Their application fell to be determined under the

category of persons who in the opinion of the coroner are properly interested persons. The Coroner refused the applications, and the decision was judicially reviewed.

[17] Kennedy LJ observed that the court will always be slow to interfere with the coroner's exercise of discretion in whether or not to afford properly interested person designation to an applicant. However, the court would do so where the coroner has taken irrelevant matters into account and reached a conclusion no reasonable coroner properly directing himself could have arrived at. It was not considered possible to define in general terms who should be regarded as a properly interested person because the circumstances of each case will vary considerably. What was required was to look at the rule as a whole in the context of the case as a whole. The mere fact of being a witness will rarely be enough. What must be shown is a desire to participate more than by the mere giving of evidence in the determination of how, when and where the deceased came by his death. However, a coroner is unlikely to be assisted in determining properly interested person designation by whether other members of the deceased's family propose to participate and exercise their rights as properly interested persons. Pill LJ agreed with the above observations and added that a properly interested person applicant's interest must be reasonable and substantial, and not trivial or contrived and one genuinely directed to the scope of the inquest.

[18] The decision in *Driscoll* was followed in *R (Platts) v HM Coroner for South Yorkshire (East District)* [2008] EWHC 2502 (Admin). In this case a former partner of a deceased wished to be a properly interested person and participate in the inquest into his death. Quashing the decision to refuse properly interested person designation, Wilkie J held that the word 'properly' in the English equivalent of rule 7(1) imports not only the notion that the interest must be reasonable and substantial and not trivial or contrived, but also that the concern of the applicant seeking properly interested person designation is genuinely directed to the scope of the inquest in question. Specifically, whether the state had let down the deceased.

Scope of the inquest - Article 2 ECHR

[19] The scope of the present inquest is as yet not determined by the Coroner. However, it is agreed that the evidence to be heard by the inquest is informed by rule 15 of the 1963 Rules as set out above at para 15. Such evidence must relate solely to ascertaining who the deceased was, when and where he died, and how he died. However, to ensure an article 2 ECHR compliant inquest and determine how the deceased met his death, a coroner may conduct an inquest designed to answer in what broad circumstances the deceased's death occurred – a Middleton Inquest as provided for in the authority of *R v HM Coroner for West Somerset ex p Middleton* [2004] 2 AC 182. At para 20 of *Middleton* Lord Bingham observed that to meet the procedural requirement of article 2 an inquest should ordinarily determine, however brief, the disputed factual issues at the heart of the case. He went on at para 35 to state that the words '... how ... the deceased came by his death' should be interpreted to mean, not simply by what means but in the broader sense of 'by what means and in what circumstances.'

[20] Lord Bingham further considered the issue of article 2 compliance in the context of an inquest in the case of *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653. At para 31 he held that:

“The purposes of such an, investigation [article 2] are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practises and procedures are rectified; and that those who have lost their relative may have the satisfaction of knowing that lessons learned from his death may save the lives of others.”

Accordingly, article 2 inquests have a broader purpose than simply answering the narrow statutory wording of rule 15.

[21] Such a broad type of inquest is usually required where, as in the present case, the role of state agents falls to be examined. It is agreed that in the inquest concerning the death of Mr Dillon, the role of the RUC, the Army and that of the Security Services may well be examined. Questions of concern for both the deceased’s next of kin and the applicant will likely be explored, such as; who, if anyone knew about the imminence and/or location of a terrorist attack; the identity of the attackers; their associations and locations prior to and in the aftermath of the attack; how the investigation into the killing was conducted - were evidential leads followed or ignored, were there investigative failing and if so why?; the history and provenance of the VZ58 rifle and ammunition used in the attack and what information did the State have as to the existence and whereabouts of this weapon or ammunition? It is common case that both the applicant and the next of kin of Mr Dillon are concerned and have a common interest in the events that led to both men being shot by the same terrorists, at the same time and location on the night of this attack.

[22] It is agreed that the Coroner was correct as a matter of law when he determined it is necessary to hold an article 2 ECHR compliant inquest into the death of Mr Dillon in the prevailing circumstances. Having paid due regard to the Supreme Court decision in *Re McQuillan and Others* [2022] AC 1063, he was also correct that the temporal reach of the Human Rights Act 1998 encompassed the present inquest.

Applications for properly interested person designation and impugned rulings

Application one

[23] A first application for properly interested person designation on behalf of Mr Cummings was drafted by counsel and served on 19 May 2022. In summary, this application argued at para 14 that under article 2 ECHR there is an obligation on the part of the State:

“... to investigate the circumstances of the near-death situation [the applicant] was in at the time of the incident in which Mr Dillon died. Since an inquest is still to be held into Mr Dillon’s death, the inquest can be the vehicle to satisfy the Article 2 obligation.”

While acknowledging that the 1963 Rules provides a discretion to grant properly interested person designation, it was submitted that Mr Cummings’ article 2 right is engaged in the circumstances, and he should be properly interested person designation in the pending inquest. That when exercising such discretion, the Coroner must have regard to the purpose of the inquest and the requirements of article 2. Particularly, where an article 2 obligation is owed to an applicant and an inquest has not commenced then the default position ought to be that the Coroner should make that individual a properly interested person to ensure full involvement with the inquest.

Ruling one

[24] In his first ruling, dated 4 October 2022, on properly interested person designation for Mr Cummings, the Coroner refused his application. At para 2 the Coroner states that in approaching the question of properly interested person designation he had considered the leading case, in this jurisdiction, of *In Re Northern Ireland Human Rights Commission* and the observations of Carswell LCJ. This case having discussed the English Divisional Court decision of *Driscoll*, where the meaning of the phrase ‘properly interested person’ was discussed. He further went on to state he had considered guidance on properly interested person designation in the decisions of the London bombings on 7 July 2005, Hillsborough Football Stadium Disaster, Kingsmill and Colwell inquests.

[25] The Coroner identified the limited nature of the applicant’s evidence as can be seen from his statement to police and his subsequent affidavit supporting his application. He concluded that Mr Cummings did not fall into any category identified by Carswell LCJ, other than potentially a person in category (vi) in para 12 above, as being ‘... at some special risk of appearing to the coroner to have a proper interest.’ Cognisant of this, the Coroner then identifies the circumstances by which a person may validly qualify to be designated a properly interested person. He identified those circumstances correctly, as being situations in which a survivor is the intended victim of a pre-planned attack or where he or she is to be the subject of potential criticism arising from the circumstances of the death. The Coroner concluded that from his consideration of the available evidence, that Mr Cummings was not at risk of any

suggestion of wrongdoing or open to criticism nor was there any evidence he was a pre-planned target of the attackers.

[26] In conclusion, the Coroner determined that the focus of the inquest must be on the circumstances of the death. That insofar as the interests of the family of the deceased and Mr Cummings overlap those interests can be met by the grant of properly interested person designation to the family of the deceased. He went on to state that:

“There is no sustainable good reason to expand the range of properly interested persons to include those that were injured in the absence of any evidence tending to suggest that the survivor victim was in some way culpable for the death or an intended target of the attack.”

His expectation is that the applicant will attend the public hearings and give evidence. The Coroner indicated that he will facilitate continued communication with the coroner’s office and counsel to the inquest. He allowed for further written and oral representations to be made on properly interested person designation if required.

Renewed application for properly interested person designation

[27] On 17 October 2022 the applicant renewed his application and at para 5 argued that:

“The coroner's reasoning does not address the application of Article 2 ECHR to Mr Cummings, despite this being the cornerstone of Mr Cummings’ application. Mr Cummings relies upon his previous written submissions on the engagement of Article 2 ECHR...”

The applicant thereafter essentially repeated the original application.

Ruling two

[28] In his second ruling dated 9 January 2023 the Coroner maintained his refusal of properly interested person designation stating:

“Mr Cummings ... invites me to specifically determine whether article 2 is engaged in relation to him as a separate and distinct consideration.

4. My consideration of article 2 in relation to Seamus Dillon is a response to my obligation to hold an effective inquest into the circumstances surrounding his death. Compliance with the article 2 rights which are

presently engaged will be within the inquest which do not require a consideration of any other person's article 2 rights.

5. Christopher Cummings has no freestanding right to request that an inquest investigate the circumstances by which he came to suffer catastrophic injury. This is because the coroner's jurisdiction is limited, depending on the type of inquest to be heard, to establishing by what means or, alternatively, the broad circumstances by which a deceased died. While the means or circumstances by which a survivor came to be injured may overlap with the means or circumstances of the deceased's death, and to that extent be relevant to the task of the inquest, the injury that befell the survivor is not the focus of the inquest."

The application for Judicial Review

Applicants challenge

[29] The applicant's two grounds of challenge are:

- (i) **Illegality** – the Coroner applied the wrong test in refusing the application, specifically:
 - (a) The correct test is whether the applicant has a '*proper*' interest in participating in the inquest: rule 7(2) of the Coroner's (Practice and Procedure) Rules (Northern Ireland) 1963. A proper interest is one that is "reasonable and substantial and not trivial or contrived" *R v Coroner for the Southern District of Greater London, ex p. Driscoll* (1993) 159 JP 45.
 - (b) The coroner directed himself that "there is no sustainable good reason to expand the range of properly interested persons to include those that were injured in the absence of any evidence tending to suggest that the survivor victim was in some way culpable for the death or an intended target of the attack." This was an added gloss to the test of proper interest, which was unsupported by any authority.
 - (c) The coroner separately asked whether the applicant's "participation as a properly interested person could enhance the quality of the evidence in the inquest as a whole." This was also the wrong test. The test is whether the applicant has a proper interest in participating, not whether he will enhance the evidence.
 - (d) The coroner also directed himself that, insofar as there is an overlap between the interests of the family of the deceased and the applicant,

those interests can be met by the grant of properly interested person designation to the family of the deceased, and not to the applicant. This was an error of law. The existence of an overlap between the interests of the applicant and those of another property interested person does not disentitle the applicant from such designation. In contrast, any such overlap tends to suggest that the applicant does have a proper interest in participating in the inquest.

- (ii) **Irrationality** – the decision was irrational in that:
- (a) The coroner had regard to irrelevant factors, such as whether the applicant was an intended target of the attackers.
 - (b) The coroner failed to appreciate that the applicant was likely to have been an intended target of the attackers, in the same way as Seamus Dillon was.
 - (c) The coroner failed to have regard to the fact that the applicant had an article 2 right to an investigation into the near-fatal attack on him and that this was a factor pointing towards his having a proper interest in participating at the inquest.
 - (d) The coroner failed to have any adequate regard to the applicant's reasons for seeking to participate in the inquest, set out in his grounding affidavit.

[30] Concerning illegality, the applicant first, at ground (1)(a), argues that the Coroner failed to apply the proper test in refusing the applicant properly interested person designation. That at no stage did the coroner ask himself the right question, which is whether the applicant's interest was reasonable and substantial, and not trivial or contrived as suggested in *Driscoll*. That nowhere in either of his written rulings did the Coroner set out or apply *Driscoll*, but rather he misunderstood *Driscoll* and the other key authorities on this point. The Coroner in the present case failed to ask the right questions or misunderstood the key decisions and fettered his discretion by narrowing the issues to a consideration of the impact of the applicant's evidence, the lack of evidence of wrongdoing on the part of the applicant and whether he was a pre-planned target of the attack.

[31] It is clear from the Coroner's rulings that while he made no specific mention of the case of *Driscoll* it was no doubt to the forefront of his mind in that he refers to a number of decisions such as Lady Hallet's consideration of properly interested person designation in respect the survivor victims in the London bombings of 2005 inquest, where she deals with the observation of Kennedy LJ and Pill LJ. He also refers to the decisions within this jurisdiction, of *In Re Northern Ireland Human Rights Commission*, *Kingsmill Inquest and Colwell*, all decisions which deal with the principles set out in *Driscoll*.

[32] The factual circumstances of *Driscoll* involved an application by close blood relatives, sisters who had a difficult relationship with the deceased's wife. Their interests did not appear to overlap or align. None of these features appear in the present case and while *Driscoll*, is important guidance on principles to be applied, it can be distinguished on the facts. In such circumstances the Coroner was entitled and correct to look to the other decisions he referred to. While it may have been preferable for the authorities and the principles to have been set out in more detail, this in my opinion does not amount to an error of law.

[33] The discretion provided for in the Rules is to be exercised by the Coroner having regard to the unique circumstances arising in the case. Each application for properly interested person designation requires a fact specific determination on its own merits. The weight to be attached to different competing factors considered within the scope of the inquest is a matter entirely for the discretion of the Coroner.

[34] Second, at ground 1(b), it is submitted that the coroner misdirected himself in law in requiring that a survivor victim will only be a '*proper person*' where they are likely to be the subject of criticism or where they are the pre-planned intended target of a fatal attack. There is no authority for the proposition that a survivor applicant is required to show they will potentially be subject of criticism or occurred in circumstances where he was an intended target.

[35] In this regard, the Coroner is clearly dealing with category (vi) of Leckey and Greer's non-exhaustive list of persons potentially capable of being afforded properly interested person designation, specifically "others at some special risk or appearing to the coroner to have a proper interest." The Coroner was in the circumstances of this case entitled to consider whether the evidence available to him as to whether the applicant was likely to be subject to criticism or an intended target. He was equally entitled on his review of the presently available evidence to conclude he did not come within this category.

[36] The ruling in the inquest of *Samuel Marshall* [2023] NI Coroner two is an example of where this was considered and formed the basis of why two persons present when Mr Marshall was shot were granted properly interested person designation. This case involved a gun attack on the deceased, Colin Duffy, and Hugh McCaughey as they left Lurgan police station after having signed bail. Mr Marshall was killed, however, both Duffy and McCaughey survived the attack. On an application for properly interested person designation for the survivors of the attack, the Coroner in this case determined at para 23:

"[23] I am not satisfied that the fact the applicants are survivors of the attack is a sufficient basis on its own to give them a proper interest in the proceedings sufficient to for me to exercise my discretion and give them properly interested person status in the circumstances of this inquest. I am not satisfied that their desire to explore

whether the deceased was let down by the security forces or whether there was collusion is sufficient either - that is not the role of a witness. I am not satisfied the suggested centrality of their evidence creates a proper interest, nor that their credibility will be in issue. The importance of their evidence is not a basis upon which to provide properly interested person status, nor is any challenge to their credibility as a witness. Witnesses, including those whose evidence is contentious, frequently give evidence of importance to inquests without properly interested person designation.

[24] However, looking at the events leading up to Samuel Marshall's death will inevitably involve some degree of scrutiny of the association between the applicants and the deceased, as well as why one or more of them was targeted by the gunmen; and it is likely one or more of them will be alleged to have had terrorist associations within the ambit of the circumstances of the death. In light of the potential for critical comment about them in respect of criminality, I am prepared to exercise my discretion and grant properly interested person status in this instance. This should not be read as meaning that I consider every individual who potentially faces an allegation of criminality during the course of evidence at an inquest should be given properly interested person status."

This is a distinctively fact specific decision.

[37] It is quite clear that in the present inquest the Coroner has no such concerns in respect of Mr Cummings. There is no prospect of Mr Cummings falling under any suspicion regarding the incident. There is no prospect of any criticism whatsoever being levelled at Mr Cummings. He was not a pre-planned intended target of the attack. He is not at any special risk due to the proceedings. The information available to the Coroner appears to indicate that the applicant was a survivor victim without more and, in this respect, is indistinguishable from the overwhelming majority of the other survivors of legacy atrocities in such cases as the London bombings of 2005 and the Kingsmill Inquest. The Coroner in my view was entitled to find as he did, and this does not amount to an error of law.

[38] Third at ground 1(c) the applicant argues that it was an error of law that the Coroner required the evidence of a properly interested person to enhance the quality of the evidence in the inquest as a whole and that it was a wrong test to be applied. I agree with the respondent in respect of this ground of challenge, in that this was a question which the Coroner was not required to ask. However, it did not impact

adversely on the applicant, if anything it was in his favour, since presumably had he found that his evidence would have enhanced the quality of the evidence it would have been something that he would have considered before exercising his discretion. I do not consider this to be an error of law.

[39] Fourth at ground 1(d) the applicant argues that the Coroner erred in law in determining that given the overlap in interests as between the next of kin and the applicant, those interests can be met by the grant of properly interested person designation to the next of kin. In fact, the Coroner granted properly interested person designation in respect of two family members. In other words, the Coroner has found already that two family members have the same interests and has given both properly interested person designation. Whereas in the applicant's case he finds he has the same interest as the family but refuses properly interested person designation and that the applicant submits is inconsistent. The fact that two family members have a proper interest does not prevent the applicant from having one. That often in inquests properly interested persons and the next of kin share interests, *Driscoll* suggests that the fact next of kin and properly interested persons interests align is of doubtful relevance and the proper question for the court is whether the applicant falls within rule 7 and not whether other persons do. It is argued the Coroner erred in law in this regard.

[40] It is clear that being a survivor victim makes the applicant keenly interested in knowing the detailed circumstances by which he came to be attacked in the same shooting in which the deceased was killed. It is worth noting at this stage the only effective distinction between those who are designated properly interested persons and those who are not is the entitlement to cross examine witness through counsel and/or solicitor. As indicated by Lady Hallet, the absence of designation does not prevent the applicant from approaching independent counsel for the inquiry to ensure their arguments and legitimate lines of inquiry are pursued. Indeed, this is what the Coroner recognised in his ruling. There is no error of law apparent in this regard.

Irrationality

[41] In relation to irrationality, in grounds 2(a) and (b), it is the applicant's case that the Coroner had regard to irrelevant facts, particularly that the applicant was not likely to be the focus of criticism, was not a pre-planned intended target of the attack, and that his interests overlapped with those of the next of kin. Both these grounds have been argued above and for the same reasons set out in paras 31, and 35-40, I reject that these grounds.

[42] Ground 2(c) argues that the Coroner failed to have regard to relevant facts; the applicant submits the coroner failed to pay regard to the applicant's article 2 right to an investigation in circumstances where collusion is a likely to be an issue. It is not the applicant's case that the mere fact that the applicant has an article 2 right to an investigation means that the Coroner has an obligation at law to also investigate his injury. That is not the applicant's case. The point being made is that the applicant has

an article 2 right to an investigation into the same circumstances that arise in the inquest. Therefore, his interests cannot rationally be classed as trivial or contrived.

[43] I have reminded myself that the inquest is concerning the death of Mr Dillon. In the absence of his death there would not be an inquest. While this inquest may potentially look at aspects of collusion, investigative failings, and lack of warning of the attack and while there may be an obligation on the state to investigate the attack upon Mr Cummings these are not the primary focus of the inquest. As sympathetic as I feel towards Mr Cummings and the injuries he sustained, I must bear in mind as did the Coroner that the primary functions of the inquest are to inquire into the statutory questions about the death. This will amply be covered in the inquest by independent counsel to the inquest and counsel for the family of the deceased. There is nothing of a unique perspective put forward by Mr Cummings or his counsel which could only properly be reflected by questions asked by them over and above those to be asked by counsel for the next of kin and/or counsel to the inquest. This position was clearly reflected in the Coroner's rulings. I see no irrationality in respect of the Coroners decision on this issue.

[44] Ground 2(d) in my view is without merit. It is clear from reading the rulings in the round that the applicant's grounding affidavit was considered carefully by the Coroner.

The Test for Leave

[45] In this jurisdiction it is well-established that the test for leave to apply for judicial review requires an applicant to show "an arguable ground for judicial review on which there is a realistic prospect of success", per Nicholson LJ in *Re Omagh District Council's Application* [2004] NICA 10.

Conclusion

[46] The 1963 Rules provide the Coroner with a discretion whether or not to grant properly interested person designation. The Coroner, having regard to the unique circumstances arising in this case, and on consideration of all important competing factors relevant to the scope of the inquest, was entitled in the exercise of his discretion to refuse the applicant properly interested person designation.

[47] In the circumstances of the present case, I do not consider there are arguable grounds for judicial review or a realistic prospect of success and for the reasons set out above I refuse leave.