

186

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BY FAX - HARD COPY TO FOLLOW

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Departmental Solicitor's Office
Victoria Hall
12 May Street
BELFAST BT1 4NL

16 September 1996

Ms R. N.

SUB JUDICE PRINCIPLE

I am writing further to our telephone conversation earlier this afternoon, when I asked you to provide urgent advice on the relevance, if any, of the principle of sub judice in relation to certain proceedings which are being brought at the all-party negotiations for the alleged breach of the Mitchell principles of democracy and non-violence.

I explained to you that the Alliance Party has made a formal representation that certain parties are in breach of the Mitchell principles of democracy and non-violence. The Alliance complaint is set out in the attached statement and is qualified in a subsequent letter from Lord Alderdice dated 16 September (also enclosed). As you know, the Governments have indicated that parties participating in the all-party negotiations must affirm their total and absolute commitment to the six principles of democracy and non-violence outlined at paragraph 20 of the Report of the International Body.

Under Rule 29 of the Rules of Procedure for the Negotiations adopted on 29 July, a formal procedure has been established under which the Governments will determine the appropriate action, if any, to be taken in response to a formal representation. Rule 29 states as follows:

"If, during the negotiations, a formal representation is made to the Independent Chairmen that a participant is no longer entitled to participate on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence as set forth in the Report of 22 January 1996 of the International Body, this will be circulated by the Chairmen to all participants and will be subject to appropriate action by the Governments, having due regard to the views of the participants."

The Independent Chairmen have now circulated the formal representation by the Alliance Party, together with Lord Alderdice's letter of 16 September and the subsequent responses to the formal

representation on behalf of the Ulster Unionist Party, the Democratic Unionist Party and the Ulster Democratic Party. Without more, therefore, the way would be open to hold a formal hearing on the Alliance party representation, probably on Wednesday morning.

However, on Friday the attached statement was issued by Rev William McCrea MP taking issue with, inter alia, one aspect of the formal representation by the Alliance Party and suggesting that legal proceedings may be issued as a result. As you will see, the statement suggests that these matters are now sub judice.

During our preliminary discussion of this matter earlier today, I said that it was not immediately clear to me that the principle of sub judice, as expressed by Reverend McCrea, would be likely to have any bearing on the Rule 29 proceedings. However, we agreed that it would be desirable to obtain independent legal advice on this point in order to place the matter beyond doubt.

I would be grateful therefore to have your advice, as a matter of urgency, as to when the rule of sub judice in relation to civil proceedings would take effect. More specifically, I would welcome your advice as to whether the application of the principle of sub judice would inhibit the ability of the participants in the all-party negotiations to proceed with the Rule 29 proceedings arising from the formal representation made by the Alliance Party in relation to, inter alia, the DUP.

I very much regret having to impose on you at such short notice, but you will appreciate that Ministers would wish to have urgent legal advice on this point as early as possible this week.

I hope that I have provided you with sufficient background information to enable you to consider this matter. I shall, however, be pleased to provide any additional information you may require.

(Signed)

D A LAVERY

hcc PS/Michael Ancram (B&L)
PS/Sir David Fell
Mr Leach (B&L)
Mr Watkins
Mr Hill (B&L)
Mr Maccabe
Mr Stephens
Mr Whysall
Mr Jagleman

PS/Secretary of State (B&L) - B
PS/Sir John Wheeler (B&L) - B
PS/Michael Ancram (B&L) - B
PS/Malcolm Moss (DMSO, DCE & L) - B
PS/Baroness Deaton (DSD, DANI & L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Leach - B
Mr Leach (B&L) - B
Mr Steele - B
Mr Watkins - B
Mr Wood (B&L) - B
Mr Beeton - B
Mr Priestly - B
Mr Hill (B&L) - B
Mr Lavery - B
Mr Maccabe - B
Mr Perry - B
Mr Stephens - B
Ms Sharucha - B
Ms Mapstone - B
Mr Whysall (B&L) - B
Ms Collins, Cab Off (via IPL) - B
Mr Dickinson, TAU - B
Mr Lamont, RID FCO - B
RMA Dublin - B
Mr Westmacott (via RID) - B
Mr Campbell-Bannerman - B

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Office of the Independent Chairmen

- cc PS/Secretary of State (B&L) - B
- PS/Sir John Wheeler (B&L) - B
- PS/Michael Ancram (B&L) - B
- PS/Malcolm Moss (DHSS, DOE & L) - B
- PS/Baroness Denton (DED, DANI & L) - B
- PS/PUS (B&L) - B
- PS/Sir David Fell - B
- Mr Thomas - B
- Mr Bell - B
- Mr Legge - B
- Mr Leach (B&L) - B
- Mr Steele - B
- Mr Watkins - B
- Mr Wood (B&L) - B
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- Mr Priestly - B
- Mr Hill (B&L) - B
- Mr Lavery - B
- Mr Maccabe - B
- Mr Perry - B
- Mr Stephens - B
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- HMA Dublin - B
- Mr Westmacott (via RID) - B
- Mr Campbell-Bannerman - B

TO: All Participants

FROM: The Independent

SUBJECT: Alliance Party

Copies of "An Alliance Party Submission on Breaches of the Mitchell Principles" (as modified by the UUP response to the submission) as well as copies of the rebuttal submissions referred to in that submission are herewith distributed for participants.

The Progressive Unionist Party has chosen to stand by its submission in rebuttal of the DUP Notice of Indictment and the determination of the Government and will make no further submission.

Participants will be notified as soon as possible of the timing of a plenary session to discuss the Alliance Party submission and rebuttals of that submission.

Enclosures:

- An Alliance Party submission on breaches of the Mitchell Principles
- UUP Response to the Alliance submission on alleged breaches of the Mitchell Principles
- DUP response to the Alliance Party's submission on alleged breaches of the Mitchell principles dated 10 September 1996
- Ulster Democratic Party response to Item 2 of the Alliance Party submission