

Troup C (Colin)

From: MacLean CR (Colin)
Sent: 08 November 2005 08:30
To: Henderson RM (Richard) (Solicitor); Lord Advocate; PS/JD; Lewis E (Liz); Permanent Secretarys Private Office; Press Education
Cc: Ferguson SE (Shirley); Troup C (Colin); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General; Tullis D (Douglas); Minister for Education and Young People; PS/ED
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Minister

Copy as before + Perm Sec, Robert Gordon, Press Education and Liz Lewis

I note that Lord Advocate has agreed with the advice from Richard and asked that the appeal include Time Bar grounds. The appeal will be lodged today. I assume that means this may become public soon.

I entirely understand the legal concerns. However, given the clear public statements made by you and First Minister in 2004 about the need for the Executive to help ensure victims of historic abuse had access to justice, I expect you will be subject to very strong public criticism about what will probably be described as a change of position, lack of faith and hypocrisy. I suggest that you alert Cabinet to the current situation tomorrow (since they agreed the original strategy for dealing with these cases).

Can Rachel provide a brief draft SCANCE contribution for the Minister, and can she and Press Education please work up defensive lines, cleared with OSSE, against press queries and the inevitable challenges from INCAS.

Colin

-----Original Message-----

From: Henderson RM (Richard) (Solicitor)
Sent: 07 November 2005 15:31
To: Lord Advocate
Cc: Ferguson SE (Shirley); Troup C (Colin); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General; Tullis D (Douglas); Minister for Education and Young People; MacLean CR (Colin); PS/ED
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Lord Advocate

The Lord Advocate will have seen the Minister for Education's note of 6th November; attached, in which the Minister comments;

" I would hate to get into a position where we defended on Time Bar grounds and won and, therefore, the merits of the case were not heard. I think this would leave us looking as if we were acting at odds to the spirit in which the First Minister's statement was made i.e., that we recognise some people were wronged. I would prefer that we did **not** defend on time bar grounds but rested on the merits of our arguments on the other grounds."

There is obviously a considerable degree of interest in the arguments which are to be deployed in this case.

However in view of the Lord Advocate's express note of 4th November, and given that the Grounds of Appeal must be lodged by no later than tomorrow 8th November, and further given that the Grounds of Appeal may be more easily adjusted by deleting rather than seeking to include grounds, we will unless instructed by the Lord Advocate to the contrary, arrange for the Grounds of Appeal as drafted, including the appeal on Time Bar issues to be lodged in court tomorrow morning

The form of the Grounds is attached.

List D cases
WKN/1/125

Troup C (Colin)

From: Troup C (Colin)
Sent: 14 November 2005 13:50
To: Ferguson SE (Shirley); Lord Advocate
Cc: Thomson KAL (Ken); Henderson RM (Richard) (Solicitor); Anderson L (Lindsay); McConnell-Trevillion L (Louyse)
Subject: RE: McEwan V Hendron & others

Shirley

Thanks for this. I have had the following note from private office.

The Lord Advocate has seen this and has commented as follows:

"Given Counsel's views on prospects of success I think we should consider very carefully whether we should continue to advise Ministers to maintain this ground of appeal. The stick that Ministers will take in the press will not be worth it if there are few prospects of success. Perhaps you could feed this thought to OSSE in preparing the paper for Cabinet."

No doubt you will wish to take this into account with your clients. Happy of course to discuss.

Colin

-----Original Message-----

From: Ferguson SE (Shirley)
Sent: 14 November 2005 11:29
To: Lord Advocate
Cc: Troup C (Colin); Thomson KAL (Ken); Henderson RM (Richard) (Solicitor); Edgar R (Rachel); Anderson L (Lindsay)
Subject: McEwan V Hendron & others

<< File: note on prospects PC SS 1111051.doc >>

Lord Advocate,

I enclose for your information a Note on Prospects of the timebar arguments in the case which has been prepared by Paul Cullen, QC and Sean Smith, Advocate. This Note was requested following the lodging of the Grounds of Appeal and the consultation with Counsel, a note of which was previously forwarded with briefing dated 3 November. Should you require any further information then please let me know.

Shirley Ferguson

OSSE- B2

Ext [REDACTED]

Tracking:	Recplent	Delivery	Read
	Ferguson SE (Shirley)	Delivered: 14/11/2005 13:50	Read: 14/11/2005 13:56
	Lord Advocate	Delivered: 14/11/2005 13:50	Read: 14/11/2005 13:51
	Thomson KAL (Ken)	Delivered: 14/11/2005 13:50	
	Henderson RM (Richard) (Solicitor)	Delivered: 14/11/2005 13:50	
	Anderson L (Lindsay)	Delivered: 14/11/2005 13:50	
	McConnell-Trevillion L (Louyse)	Delivered: 14/11/2005 13:50	

W W N / 1 / 25

McConnell-Trevillion L (Louyse)

From: McConnell-Trevillion L (Louyse)
Sent: 08 November 2005 15:15
To: McGuigan K (Karen)
Cc: Lord Advocate; Solicitor General; Troup C (Colin)
Subject: Cabinet Note on List D Schools Appeal

Karen

As we discussed, I've supplied a draft form of words for the Lord Advocate to submit to Cabinet, regarding the time bar point in relation to the List D schools historic abuse appeal.

Regards

Louyse

HISTORIC ABUSE IN LIST D SCHOOLS - ARTHUR McEWAN V THE REVEREND JOSEPH HENDRON & OTHERS**GROUND OF APPEAL FOR THE SCOTTISH MINISTERS**

The Scottish Ministers were required to lodge grounds of appeal in this case, which is concerned with historic abuse in List D schools, by 8th November 2005. As drafted, those grounds of appeal include a point relating to time bar.

I understand that the Minister for Education and Young People has expressed a preference not to defend the claims on what he considers to be a relatively technical ground relating to time bar. I do not understand him to have instructed that the time bar point should be abandoned. The grounds of appeal were framed on advice from Senior Counsel instructed in this matter on behalf of the Scottish Ministers. Senior Counsel, with whom I agree, has advised that our arguments on time bar are a substantial defence rather than a technicality. Time bar rules exist to protect defenders from stale claims which are extremely difficult to investigate and respond to in a fair and proportionate manner. They have been relied upon by the Scottish Ministers in other high profile cases e.g. slopping out, and any decision not to take the point in any particular case would require very careful consideration.

Lodging grounds of appeal which include time bar ensures that our position in respect of that line of argument is preserved. However, it remains open to the Scottish Ministers subsequently not to seek to argue this point. It is also possible that the pursuer may be able to persuade the court to exercise its discretion to permit a late claim. It would remain my view that we should continue to pursue this ground but I would welcome the views of Cabinet.

WON/1/125

Troup C (Colin)

From: Henderson RM (Richard) (Solicitor)
Sent: 08 November 2005 11:35
To: Ferguson SE (Shirley)
Cc: Troup C (Colin); Thomson KAL (Ken); Anderson L (Lindsay)
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Shirley

Have spoken to Lord Advocate. We should lodge the grounds this pm.

Richard

-----Original Message-----

From: Henderson RM (Richard) (Solicitor)
Sent: 08 November 2005 11:17
To: Lord Advocate
Cc: Ferguson SE (Shirley); Troup C (Colin); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General; Tullis D (Douglas); Minister for Education and Young People; MacLean CR (Colin); PS/ED
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Lord Advocate

Thank you for your note of 7th November.

I understand that the matter has been brought to the attention of the Minister and that the Minister has indicated that he has already given his view on this matter.

We require to lodge the Grounds of Appeal this afternoon at the latest.

The Minister's concerns I think circulate around the risk that we might win on the time bar point. It may be worth bearing in mind that Counsel's advice was that the success of our s.19A arguments was questionable. However counsel still advised that the appeal point be taken.

In the circumstances we propose to lodge the grounds of appeal this afternoon as advised in my note of 15.31 yesterday.

Richard M Henderson

-----Original Message-----

From: Orman C (Chris) **On Behalf Of** Lord Advocate
Sent: 07 November 2005 18:31
To: Henderson RM (Richard) (Solicitor)
Cc: Ferguson SE (Shirley); Troup C (Colin); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General; Tullis D (Douglas); Minister for Education and Young People; MacLean CR (Colin); PS/ED
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Action - Forwarded to Richards inbox - Catherine

Richard

Copy as above

The Lord Advocate has seen your advice of this afternoon. He is content with your proposal but asked that the Minister for Education and Young People be informed of our course of

action. The Lord Advocate would like this to be discussed at tomorrow's meeting (now at 1530 hrs in VQ).

Thanks

Chris Orman
 APS/Law Officers
 Tel: [REDACTED]

-----Original Message-----

From: Henderson RM (Richard) (Solicitor)
Sent: 07 November 2005 15:31
To: Lord Advocate
Cc: Ferguson SE (Shirley); Troup C (Collin); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General; Tullis D (Douglas); Minister for Education and Young People; MacLean CR (Collin); PS/ED
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others

Lord Advocate

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The form of the Grounds is attached.

<< File: mcewan v hendron.grounds of appeal revised PC 011105.doc >>

I also attach a copy of Counsel's note as attached with Mrs Ferguson's note of 3rd September for completeness.

<< File: summary of timebar advice 281005.doc >>

Richard M Henderson

<< Message: RE: HISTORIC ABUSE IN LIST D SCHOOLS: McEWAN V. HENDRON -- URGENT >>

-----Original Message-----

From: Orman C (Chris) **On Behalf Of** Lord Advocate
Sent: 04 November 2005 16:06
To: Ferguson SE (Shirley)
Cc: Troup C (Collin); Henderson RM (Richard) (Solicitor); Thomson KAL (Ken); Anderson L (Lindsay); Edgar R (Rachel); Solicitor General
Subject: RE: Arthur McEwan v The Reverend Joseph Hendron and Others