HOUSE OF LORDS SESSION 2005–06
[2005] UKHL 35

on appeal from: [2004] NICA 23

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

R

v.

Z (Appellant) (On Appeal from the Court of Appeal in Northern Ireland) (Northern Ireland)

ON
THURSDAY 19 MAY 2005

The Appellate Committee comprised:

Lord Bingham of Cornhill
Lord Woolf
Lord Rodger of Earlsferry
Lord Carswell
Lord Brown of Eaton-under-Heywood

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R *v.* Z (Appellant) (On Appeal from the Court of Appeal in Northern Ireland) (Northern Ireland)

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LORD BINGHAM OF CORNHILL

My Lords,

1. In an indictment dated 11 June 2003, four defendants were charged (among other counts) with belonging "to a proscribed organisation, namely the Real Irish Republican Army", contrary to section 11(1) of the Terrorism Act 2000. They objected that the Real Irish Republican Army (to which I shall for convenience refer as "the Real IRA") was not a proscribed organisation within the meaning of section 11(1). Girvan J, sitting in the Crown Court at Belfast, upheld the objection for reasons given in a judgment delivered on 25 May 2004 and acquitted the defendants on those counts. The acquittals prompted the Attorney General for Northern Ireland to refer the following point of law for the opinion of the Court of Appeal in Northern Ireland under section 15 of the Criminal Appeal (Northern Ireland) Act 1980:

> "Does a person commit an offence contrary to section 11(1) of the Terrorism Act 2000 if he belongs or professes to belong to the Real Irish Republican Army?"

The Court of Appeal (Kerr LCJ, Nicholson and Campbell LJJ), for reasons given by the Lord Chief Justice in a judgment of 30 June 2004, differed from the judge and answered that question in the affirmative. In this appeal, the acquitted person (anonymised as Z) contends that the question should be answered negatively.

2. The statutory provision most directly in issue in the appeal is section 3 of the Terrorism Act 2000, which provides:

"3 Proscription

(1) For the purposes of this Act an organisation is proscribed if—

(a) it is listed in Schedule 2, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) Subsection (1)(b) shall not apply in relation to an organisation listed in Schedule 2 if its entry is the subject of a note in that Schedule.

(3) The Secretary of State may by order—

(a) add an organisation to Schedule 2;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(4) The Secretary of State may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism.

(5) For the purposes of subsection (4) an organisation is concerned in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise concerned in terrorism."

Section 11 creates the offence of belonging or professing to belong to a proscribed organisation. Other sections create other offences related to proscribed organisations. In section 121 "organisation" is defined to include "any association or combination of persons". Schedule 2 to the Act, entitled "Proscribed organisations", lists a number of such organisations, of which the first 14 have an Irish or Northern Irish provenance. First on the list is "The Irish Republican Army" (henceforward, for convenience, "the IRA"). One of these listed organisations, the Orange Volunteers, is the subject of a note in the Schedule:

> "The entry for The Orange Volunteers refers to the organisation which uses that name and in the name of which a statement described as a press release was published on 14 October 1998."

The IRA entry is not the subject of any note. The Real IRA is not, as such, listed. Hence the simple submission made for the acquitted person that the Real IRA is not a proscribed organisation for purposes of the 2000 Act.

3. The proscription of organisations dedicated to politically-motivated violence is not a novelty in Ireland. A scheme for proclaiming associations to be dangerous was established by the Criminal Law and Procedure (Ireland) Act 1887, and in 1918 five associations (not including the IRA) were proclaimed to be dangerous. After Partition similar provision was made. Regulation 24A, made by the recently-established Government of Northern Ireland under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, criminalised membership of any of a number of organisations including the IRA. Over time, additions were made to the 1922 list, including (in 1966, by S R & O (NI) 1966/146):

> "The organisation at the date of this regulation, or at any time thereafter, misappropriating, or claiming to use, or using, or purporting to act under, the name 'the Ulster Volunteer Force' or any division or branch of such organisation howsoever described."

In June 1939 the Government of the Irish Free State, which had earlier prohibited a number of bodies including the IRA under the Constitution (Declaration of Unlawful Associations) Order 1931 (No 73/1931), exercised a power conferred by section 18 of the Offences against the State Act 1939 to declare "that the organisation styling itself the Irish Republican Army (also the IRA. and Óglaigh na hÉireann) is an unlawful organisation and ought, in the public interest, to be suppressed" (Unlawful Organisation (Suppression) Order 1939 (No 162/1939)).

4. In section 19(1) of the Northern Ireland (Emergency Provisions) Act 1973 Parliament legislated to make it a criminal offence to belong or profess to belong to "a proscribed organisation". Subsections (3), (4) and (5) were to this effect:

> "(3) The organisations specified in Schedule 2 to this Act are proscribed organisations for the purposes of this section; and any organisation which passes

under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name.

(4) The Secretary of State may by order add to Schedule 2 to this Act any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it.

(5) The Secretary of State may also by order remove an organisation from Schedule 2 to this Act."

Schedule 2 listed six proscribed organisations, of which the first was the IRA. No express reference was made to any other organisation bearing the name IRA or any variant of that name.

5. The subsections of the 1973 Act to which I have just referred were almost literally re-enacted in section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1974 which, however, added in subsection (5):

> "In this section 'organisation' includes an association or combination of persons."

The only proscribed organisation expressly specified in the Schedule to this Act was the IRA.

6. The legislative formula adopted in 1973 and 1974 was repeated in a series of counter-terrorism statutes relating to either Northern Ireland or Great Britain: see section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1976, when only the IRA was expressly specified in the Schedule; section 21 of the Northern Ireland (Emergency Provisions) Act 1978, when the IRA was the first of seven organisations expressly specified in Schedule 2 (and the definition of "organisation" was omitted); section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1984, when the IRA was the first of two organisations expressly specified in Schedule 1 (and "organisation" was defined to include "any association or combination of persons", the definition now found in section 121 of the 2000 Act); section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1989, when the IRA was the first of two organisations expressly specified in Schedule 1; section 28 of the Northern Ireland (Emergency Provisions) Act 1991, when the IRA was the first of nine organisations expressly specified in

Schedule 2 (and the definition of "organisation" was again omitted); and section 30 of the Northern Ireland (Emergency Provisions) Act 1996, when the IRA was the first of ten organisations expressly specified in Schedule 2 (and the definition of "organisation" was once more omitted). In none of these statutes was express reference made to any organisation other than the IRA bearing that name or any variant of it.

7. The Northern Ireland (Sentences) Act 1998 ("the 1998 Sentences Act") was enacted to give partial effect to the Multi-Party Agreement made on 10 April 1998 (Cm 3883, 1998), commonly known as the Good Friday Agreement. It provides for the accelerated release of prisoners serving sentences of imprisonment for terrorist offences who meet four conditions. These conditions require the prisoner in effect to renounce violence. Thus the second of the conditions (section 3(4)) is that the prisoner is not a supporter of a specified organisation. The third condition (section 3(5)) is that, if the prisoner were released immediately, he would not be likely

> "(a) to become a supporter of a specified organisation, or
>
> (b) to become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland."

The application of these conditions depends on the definition of "specified organisation" and a mandatory duty imposed on the Secretary of State, to be found in section 3(8), which provides:

> "A specified organisation is an organisation specified by order of the Secretary of State; and he shall specify any organisation which he believes—
>
> (a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
>
> (b) has not established or is not maintaining a complete and unequivocal ceasefire."

Subsection (9) relates to the exercise of the Secretary of State's judgment under subsection (8)(b), and is not germane to the present appeal. Subsection (10) imposes further duties on the Secretary of State:

"The Secretary of State shall from time to time review the list of organisations specified under subsection (8); and if he believes—

(a) that paragraph (a) or (b) of that subsection does not apply to a specified organisation, or

(b) that paragraphs (a) and (b) apply to an organisation which is not specified,

he shall make a new order under subsection (8)."

8. In exercise of the power conferred by section 3(8) of the 1998 Sentences Act, the Secretary of State made, up to June 2003, four Northern Ireland (Sentences) Act 1998 (Specified Organisations) Orders. In the first (SI 1998/1882, made on 30 July 1998), four organisations were specified: "The Continuity Irish Republican Army", "The Loyalist Volunteer Force", "The Irish National Liberation Army" and "The 'Real' Irish Republican Army". In the second (SI 1998/2869, made on 18 November 1998), The Loyalist Volunteer Force was omitted but the three other organisations previously specified were again specified. In the third (SI 1999/1152, made on 11 April 1999) The Continuity Irish Republican Army and the 'Real' Irish Republican Army were again specified, The Irish National Liberation Army was not specified and two organisations were specified for the first time: "The organisation using the name 'The Orange Volunteers' and being the organisation in whose name a statement described as a press release was published on 14th October 1998" and "The Red Hand Defenders". In the fourth (SI 2001/3411, made on 12 October 2001), the four organisations specified in the third order were again specified, but there were three additions: The Loyalist Volunteer Force, The Ulster Defence Association and The Ulster Freedom Fighters. A fifth Order (SI 2004/3009, made on 14 November 2004) postdated the judgment now under appeal.

9. Reference has been made above to section 3 of the 2000 Act, the proscription provision on which this appeal turns. The 2000 Act does, however, cross-refer to the specification provisions of the 1998 Sentences Act. In section 107 it is provided:

"*Specified organisations: interpretation*

For the purposes of sections 108 to 111 an organisation is specified at a particular time if at that time—

(a) it is specified under section 3(8) of the Northern Ireland (Sentences) Act 1998, and

(b) it is, or forms part of, an organisation which is proscribed for the purposes of this Act."

Section 108 relates to evidence and provides, so far as material:

"(1) This section applies where a person is charged with an offence under section 11.

(2) Subsection (3) applies where a police officer of at least the rank of superintendent states in oral evidence that in his opinion the accused—

(a) belongs to an organisation which is specified, or

(b) belonged to an organisation at a time when it was specified.

(3) Where this subsection applies—

(a) the statement shall be admissible as evidence of the matter stated, but

(b) the accused shall not be committed for trial, be found to have a case to answer or be convicted solely on the basis of the statement."

10. Sections 107 and 108(1)-(3) of the 2000 Act were not new provisions. Following the atrocity perpetrated at Omagh on 15 August 1998, understood to be the responsibility of the Real IRA, Parliament was recalled in early September 1998 and enacted (on 4 September 1998) the Criminal Justice (Terrorism and Conspiracy) Act 1998 ("the 1998 Terrorism and Conspiracy Act". Sections 1 and 2 of this Act amended the 1989 Act (which related to Great Britain) and the 1996 Act (relating to Northern Ireland) by inserting provisions corresponding to what were to become sections 107 and 108(1)-(3) of the 2000 Act. Sections 107 and 108 apply to Northern Irish-related terrorism whether in Northern Ireland or Great Britain. It was an important object of the 2000 Act to assimilate the proscription regimes which had previously operated separately for Northern Ireland and Great Britain, and also to extend the proscription regimes to terrorist organisations, at home or abroad, not involved in Northern Irish-related terrorism.

11. When the list of proscribed organisations listed in Schedule 2 to the 2000 Act is compared with the list of organisations specified in the

fourth specification Order, it is evident that a number of Northern Irish-related bodies appear in the former list but not the latter. Of the seven organisations specified in the fourth specification Order, five (all of them loyalist) are proscribed under Schedule 2 to the 2000 Act also. But whereas the fourth specification Order, like its predecessors, specifies "The 'Real' Irish Republican Army", Schedule 2 refers to "The Irish Republican Army", and whereas the fourth specification Order specifies "The Continuity Irish Republican Army", Schedule 2 refers to "The Continuity Army Council".

12. The reasoning of Girvan J can, I think, be analysed as involving six steps. (1) The Real IRA is identified under the 1998 Sentences Act as an organisation separate and distinct from the IRA. (2) Section 3(1)(b) of the 2000 Act focuses on whether the organisation of which a defendant is said to be a member operates as an organisation under the name specified in Schedule 2 to the 2000 Act. (3) The members of the Real IRA have a programme and purpose different from that of members of the IRA. (4) A person who links himself to the Real IRA to participate in a programme of continued republican violence despite the ceasefire could scarcely be said to have become a member of the IRA. (5) The Real IRA is not a proscribed organisation for the purposes of section 3 of the 2000 Act. (6) Were it to be accepted that the Real IRA was an organisation operating under the name of the IRA, the Crown would have to adduce evidence to establish that the organisation to which a defendant belonged did carry on its operations and activities under the name of the IRA.

13. The Court of Appeal took judicial notice of certain facts which Mr Barry Macdonald QC, SC, for the acquitted person, did not challenge as inaccurate:

> (1) Until 1969 an organisation calling itself the IRA existed as a cohesive unit dedicated to unification of the 32 counties of Ireland, to which end it resorted to occasional violence (para 28 of the judgment).
>
> (2) In about 1969 a major split occurred in the ranks of the IRA. Some members, claiming to be the true inheritors of the mantle of the IRA, in effect declared a ceasefire in 1972. They became known as the Official IRA. Other members (becoming known as the Provisional IRA) continued to assert their right and intention to use

violence for the purpose of achieving unification. The two organisations existed independently of each other thereafter (para 28).

(3) In 1994 and again in 1997 the Provisional IRA declared a ceasefire. Dissident groups within the Provisional IRA opposed these moves, and in late 1997 one group (calling itself the Real IRA) dissociated itself from the leadership of the Provisional IRA and declared that the ceasefire was over (para 30).

(4) The Real IRA claimed responsibility for a number of acts of violence, most notably the bombing of Omagh in August 1998 (para 30).

(5) When the 2000 Act was passed, Parliament was well aware of the existence and activities of the Real IRA (para 32).

14. From these facts the Court of Appeal inferred, first (para 29), that in making it a criminal offence to belong or profess to belong to the IRA the legislature considered that such a provision was efficacious to make membership of both the Official and the Provisional IRA illegal and, secondly (para 32), that Parliament plainly intended to proscribe the Real IRA in the 2000 Act and intended that members of the Real IRA should be liable to prosecution under that Act for belonging to a proscribed organisation. The court concluded (para 34):

> "Given the history of proscription and in particular the fact that Parliament had frequently enacted proscription provisions designed to include both elements of the IRA (Official and Provisional) within the single rubric 'The Irish Republican Army', we have concluded that it was the intention of the legislature to include the 'Real' IRA within that term and that the legislation must be so construed."

The court explained the difference between the language of the 1998 Sentences Act and the 2000 Act in para 35 of the judgment:

> "This simply reflects the fact that some organisations within the generic term, 'The Irish Republican Army', were not on ceasefire and were not entitled to benefit from

> the accelerated release of prisoners scheme. They had to be identified separately, therefore. This was not necessary for the purpose of proscription since it was intended that all manifestations of the IRA should be proscribed."

15. In considering the meaning of section 3(1)(b) of the 2000 Act, the court considered (para 38) that its purpose

> "is to ensure that organisations that grow up as a result of schism within a named terrorist organisation and operate under a broadly similar name should be proscribed."

Had it been necessary to do so (para 41), the court would have held that the "Real" IRA was the same name as "The Irish Republican Army" for the purposes of section 3(1)(b). The court rejected a submission that article 7 of the European Convention on Human Rights had been violated. While acknowledging, on the authority of *Kokkinakis v Greece* (1993) 17 EHRR 397, para 52, that a criminal offence must be clearly defined in law, the court was of opinion (paras 51-52) that the offence charged against the acquitted person had been clearly defined.

16. In argument before the House, as in the Court of Appeal (see paras 23 and 33 of the judgment), Mr Macdonald realistically accepted that the Real IRA is a terrorist organisation deserving of proscription and that the intention of Parliament was that it should be proscribed. But he insisted that the task of the court is to interpret the provision which Parliament has enacted and not to give effect to an inferred intention of Parliament not fairly to be derived from the language of the statute. For this proposition he was able to cite a wealth of familiar but powerful authority: *Salomon v A Salomon & Co Ltd* [1897] AC 22, 38, per Lord Watson; *River Wear Commissioners v Adamson* (1877) 2 App Cas 743, 763, per Lord Blackburn; *Brophy v Attorney-General of Manitoba* [1895] AC 202, 216, per Lord Herschell LC, for the Privy Council; *Attorney-General for Canada v Hallet & Carey Ltd* [1952] AC 427, 449, per Lord Radcliffe for the Privy Council; *Ulster Transport Authority v James Brown & Sons Ltd* [1953] NI 79, 114, per Lord MacDermott CJ; *Corocraft Ltd v Pan American Airways Inc* [1969] 1 QB 616, 638, per Donaldson J; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613, per Lord Reid. Mr Macdonald also relied on the important principle of legal policy, exemplified by *Tuck & Sons v Priester* (1887) 19 QBD 629, that a person should not be penalised except under a clear law, should not (as

it is sometimes said) be put in peril on an ambiguity: see *Bennion, Statutory Interpretation*, 4th ed., (2002) p 705. Thus Mr Macdonald submitted that, whatever Parliament may have wished or intended, the Real IRA is not an organisation listed in Schedule 2 and no process of construction, properly so called, could lead to the conclusion that it is. Similarly, the Real IRA does not operate under the same name as an organisation listed in that Schedule: it operates under a name which is different, and intentionally different because chosen to convey that the Real IRA is a body separate in its membership and distinct in its aims from the IRA.

17. The Attorney General in his argument did not take radical issue with the principles of construction on which Mr Macdonald relied, and I would not for my part wish to throw doubt upon them. But the interpretation of a statute is a far from academic exercise. It is directed to a particular statute, enacted at a particular time, to address (almost invariably) a particular problem or mischief. As was said in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687, 695 para 8:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

In the present case the historical context seems to me to be of fundamental, and in the end conclusive, importance.

18. All the Westminster and Stormont statutes to which I have referred above, whether taking effect in Northern Ireland or Great Britain, were directed to a common end: the elimination of Irish-related terrorism. (The Irish Act of 1939 had additional, rather wider, objects: see *The People (DPP) v Quilligan and O'Reilly* [1986] IR 495, 504, per Walsh J). The object of all these statutes, with the exception of the 1998 Sentences Act, was to suppress such terrorism by stifling the organisations which were dedicated to violence for political ends. By criminalising membership or professed membership of such bodies and other more active acts of participation, it was intended if possible to close them down but at least to impede their functioning. For nearly half a century after 1922 references to the IRA were unproblematical

since, however shadowy and secretive that body might be, there was never more than one body bearing, or claiming to bear, that name or any part or variant of it.

19. By 1973, when the first in the modern series of statutes was enacted, that was no longer so. Nor, importantly, was it thought to be so. As the Court of Appeal recorded, the existence of two groups, the Official IRA and the Provisional IRA, each claiming to be the true embodiment of the IRA, loyal to its aims and ideals, was a known fact. In designing a proscription regime to counter the formidable threat which terrorism then presented, there was no doubt a choice of legislative techniques, one particular, one general. The particular approach would have proscribed the Provisional but not the Official IRA. The general approach was to proscribe the IRA using a blanket description to embrace all emanations, manifestations and representations of the IRA, whatever their relationship to each other, including the Provisional IRA. One course which would, if considered, have been rejected out of hand would have been to proscribe the IRA, meaning only the original IRA if it still existed or the Official IRA if it did not, since it would have been entirely futile to proscribe a body believed to have foresworn terrorism and omit a body believed to present a potent terrorist threat.

20. While a case could have been made for what I have called the particular approach, I do not find it hard to understand why (if considered) it was not adopted. The fissiparous nature of republican paramilitarism was already evident. One schism had already occurred. There might be further schisms. Or the separated groups might coalesce. And then perhaps split again. It would be very hard, if not impossible, for the authorities to prove the identity of a particular group or the relationship of one group to another at a given time. They would, to borrow language used by Lord Hewart CJ in a very different context (*Coles v Odhams Press Ltd* [1936] 1 KB 416, 426), be "taking blind shots at a hidden target". So the name IRA, intended to be comprehensive as embracing "any organisation which passes under a name mentioned in [Schedule 2] … whatever relationship (if any) it has to any other organisation of the same name" (section 19(3) of the 1973 Act), was understandably favoured. There was, no doubt, a risk on this approach that a group within the extended IRA family would be proscribed which was currently non-violent although appearing to be concerned in terrorism or in promoting or encouraging it, but it might well have been thought unlikely that a body bearing the name IRA or any variant of it would be at all friendly to parliamentary democracy.

21. What was well known in 1973 became even better known over the blood-stained years which followed, during which Parliament had occasion to consider proscription not only when enacting the series of statutes already referred to but also when renewing, on an annual basis, those in force. Nothing can be clearer than that the Provisional IRA, as the principal authors of terrorist violence over these years, were understood to fall within the proscription regimes laid down in the various statutes.

22. The situation was, I think, transformed in 1998: first, because of the Good Friday Agreement, to which partial effect was given in the 1998 Sentences Act; and secondly, because of the Omagh bombing, attributed to the Real IRA as currently the active purveyors of IRA violence, and the 1998 Criminal Justice Act. The Sentences Act was no doubt directed to the objective of ending terrorist violence in Northern Ireland but its method, of offering freedom to convicted terrorists willing to renounce violence, was quite different from that adopted in the earlier legislation. To achieve its object a particular legislative approach was called for, so as to deny freedom only to supporters or likely supporters of groups currently practising or judged likely to practise violence. This, in my opinion, explains the particularity of, and the frequent changes in, the series of Specification Orders, which at all times included the Real IRA. When, in the wake of the Omagh bombing, Parliament amended the proscription provisions in the 1989 and 1996 Acts by enacting sections 1 and 2 of the 1998 Terrorism and Conspiracy Act (substantially repeated in sections 107 and 108 of the 2000 Act), it would have been nonsensical to leave the Real IRA outside the reach of those provisions. That Parliament did not intend to do so is in my opinion clearly shown by section 2B(1) inserted into the 1989 Act and section 30B(1) inserted into the 1996 Act, reproduced in section 107 of the 2000 Act and quoted in para 9 above. There is here the clearest recognition that an organisation may be specified under section 3(8) of the 1998 Sentences Act and either be or (importantly) form part of an organisation which was proscribed for purposes of the 2000 Act. The Real IRA was consistently specified under section 3(8). It either was, or formed part of, the IRA, an organisation proscribed for purposes of the Act. It may very well be that the Real IRA and other groups within the IRA family are separate in their membership and distinct in their aims, but this is precisely the type of unfathomable enquiry which subsections (1)(a) and (b) of section 3, read together, were intended to preclude. It would invite an almost theological enquiry, as in deciding whether the Old Believers in Russia or the Old Catholics in The Netherlands, Germany, Austria, Switzerland, Poland and elsewhere are the true keepers of the faith. Subsections (1)(a) and (b), although expressed in different language, in my opinion reproduce the effect of the formula

first enacted in section 19(3) of the 1973 Act, and it imposes a single composite test: is this the body listed in the Schedule or a part or emanation of it or does it in any event operate under the name of an organisation listed in the Schedule? To that question the only possible answer on the admitted facts of the present case is the affirmative answer which the Court of Appeal gave. It is noteworthy that the Special Criminal Court sitting in Dublin on 10 October 2001, on more extensive evidence, reached a somewhat similar conclusion, quoted by the Court of Criminal Appeal McGuinness, O'Donovan and Herbert JJ (see *Director of Public Prosecutions v Campbell* (unreported), 19 December 2003):

> "…the labels such as 'official', 'provisional', 'continuity' or 'real' are irrelevant in considering whether a particular person or group of persons are within the ambit of the Suppression Order ie that he or they belong to an organisation which styles itself the Irish Republican Army or the IRA or Óglaigh na hÉireann. The so called 'Real IRA' are on all fours with the original IRA as it existed in 1939 in terms of the philosophy, objectives and structure and members of that group are within the ambit of the Suppression Order of 1939."

23. Mr Macdonald did not in oral argument press his submission based on article 7 of the European Convention, no doubt recognising that if he did not succeed on his construction argument he could scarcely succeed on this. His judgment was in my opinion correct. The principle expressed in para 52 of the European Court's judgment in *Kokkinakis* (see para 15 above) is not in question. A person should not be exposed to criminal liability if the law does not clearly define the offence he is said to have committed at the time of his committing it. It would be unjust to punish him for conduct he could not reasonably have known to be criminal. But that is not this case. No member of the Provisional IRA in the years after 1973 and no member of the Real IRA in the late 1990s could have been unaware that he was a member of a proscribed organisation.

24. For these reasons I would answer the referred question in the affirmative and dismiss the appeal. In accordance with the ordinary practice, the acquitted person will receive his costs of the appeal to the House out of central funds and the Attorney General will bear his own costs.

LORD WOOLF

My Lords,

25. My Lords, I have had the advantage of being able to read the speech of my noble and learned friend, Lord Bingham of Cornhill, in draft and gratefully adopt his account of the facts leading up to the present appeal and the history of the statutory provisions dealing with the proscription of terrorist organisations in Northern Ireland and in the United Kingdom. I have also had the advantage of reading the speech of my noble and learned friend, Lord Brown of Eaton-under-Heywood. I also adopt the account of the history of the activities of the three different organisations of the Irish Republican Army (the "IRA"), the Official IRA, the Provisional IRA and the Real IRA set out by the Lord Chief Justice of Northern Ireland in his judgment in the Court of Appeal. I do so because Mr Barry J Macdonald QC SC who appeared on behalf of Z accepted that this account of the history was generally accurate.

26. Her Majesty's Attorney General for Northern Ireland, Lord Goldsmith QC, rightly described the issue which we are required to decide as a short point of interpretation. However, "short points of interpretation" are not always easy to resolve and I have not found the issue that we are required to determine on this appeal entirely straightforward. Its difficulty is illustrated by the fact that although Lord Bingham and Lord Brown are in agreement as to what should be the result of the appeal their reasons for coming to their opinions differ.

27. The issue is set out in the reference of the Attorney General, pursuant to section 15(1) of the Criminal Appeal (Northern Ireland) Act 1980 as raising the following question:

> *"Does a person commit an offence contrary to section 11(1) of the Terrorism Act 2000 if he belongs or professes to belong to the 'Real Irish Republican Army'?"*

28. This question requires your Lordships to give their opinion on the following two points of law:

"i. Is the 'Real Irish Republican Army' an organisation listed in Schedule 2 of the Terrorism Act 2000 ("the 2000 Act")?

ii. Does the 'Real Irish Republican Army' operate under the same name as an organisation listed in Schedule 2 of the Terrorism Act 2000?"

29. Because it is so important to the issues I set out the terms of section 3 of the 2000 Act:

"(1) For the purpose of this Act an organisation is proscribed if-

(a) it is listed in Schedule 2, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) Subsection (1)(b) shall not apply in relation to an organisation listed in Schedule 2 if its entry is the subject of a note in that Schedule.

(3) The Secretary of State may by order-

(a) add an organisation to Schedule 2;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(4) The Secretary of State may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism.

(5) For the purpose of subsection (4) an organisation is concerned in terrorism if it-

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise concerned in terrorism."

30. Section 121 of the 2000 Act defines "organisation" as including "any association or combination of persons". This is clearly a wide and flexible definition.

31. Schedule 2 sets out 35 proscribed organisations of which the relevant organisation "the Irish Republican Army" is mentioned first.

There is no other organisation which includes the words "the Irish Republican Army" mentioned.

32. The only other section that it is necessary to refer to is section 107 of the 2000 Act which makes it clear that an organisation which is proscribed by the 2000 Act can have constituent parts. (See section 107(b)).

33. Mr Macdonald's submissions on behalf of the acquitted person are attractively simple in relation to section 3. He relies upon two well established approaches to the interpretation of legislation which I would not question. The first is that it is the court's function to ascertain the intention of Parliament *as expressed in the legislation*. To emphasise this point, Mr Macdonald cited various well-known authorities but for my purposes, it is not necessary to do other than accept the general principle already stated. The same is true of his other principle of interpretation, namely that, as the provisions of the 2000 Act with which we are concerned are penal in effect (since section 11 of the 2000 Act makes it an offence to belong or profess to belong to a proscribed organisation), the provisions of the 2000 Act must be construed strictly. Here, Mr Macdonald relies upon the statement of Lord Esher MR in *Tuck & Sons v Priester* (1887) 19 QBD 629, 638. Lord Esher stated:

> "If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections."

34. Basing himself upon those two well established principles, it is Mr Macdonald's case that, as section 3 does not refer to the *Real* Irish Republican Army, the Real IRA is not a proscribed organisation. Realistically, Mr Macdonald accepts that all members of Parliament will have intended to proscribe the Real IRA but he submits Parliament passed an Act which, contrary to the intention of its members, did not contain the language needed to achieve Parliament's objective. This, submits Mr Macdonald, may be unfortunate, but it is not a disaster because as section 3 makes clear, action can be taken which should have been taken in the 2000 Act before it was enacted to include the Real IRA expressly. As to the ability to correct the situation, if this is necessary, Mr Macdonald is undoubtedly correct, but if he is correct it also follows that, if the Real IRA changes its name to the New IRA or a

further organisational split takes place in which the Real IRA and the Real IRA 2 was created, there would be the same problem as is raised on this reference.

35. The position is, however, not as simple as Mr Macdonald would wish on behalf of his clients. There is now no organisation which can claim that it and it alone is entitled to be known as the IRA. In fact, there are at least three organisations which it would not be inaccurate to describe as being the IRA. There is the Official IRA, the Provisional IRA and the Real IRA. Faced with this situation, notwithstanding the principles on which Mr Macdonald relies and indeed, because of those principles, the House is, as it seems to me, forced to ascertain the intention of Parliament when it included the words "Irish Republican Army" in Schedule 2. Was Parliament referring to one or more and if so which of the organisations to which I have referred, or perhaps to other organisations that might claim that they are the IRA? When the issue is approached in this manner, it is ironic that it is the Real IRA, an organisation that claims now to personify the principles for which the IRA, in its opinion, stands, should be arguing so strenuously not to be the IRA.

36. Faced with this situation it is not in conflict with the principles on which Mr Macdonald relies for the courts to examine appropriate material to ascertain what Parliament meant should be the effect of section 3 and Schedule 2 to the 2000 Act when it used the language they contain. The proper approach, in my view, has been admirably expressed in terms upon which I could not improve by Lord Bingham of Cornhill in *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, 695. There relating to a different context, Lord Bingham stated the position as follows:

> "7. Such is the skill of parliamentary draftsmen that most statutory enactments are expressed in language which is clear and unambiguous and gives rise to no serious controversy. But these are not the provisions which reach the courts, or at any rate the appellate courts. Where parties expend substantial resources arguing about the effect of a statutory provision it is usually because the provision is, or is said to be, capable of bearing two or more different meanings, or to be of doubtful application to the particular case which has now arisen, perhaps because the statutory language is said to be inapt to

apply to it, sometimes because the situation which has arisen is one which the draftsman could not have foreseen and for which he has accordingly made no express provision.

8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

37. In accord with Lord Bingham's approach, here the controversial provision, namely to whom the reference to the IRA should be applied, has to be read not only in the context of the statute as a whole but in the context of the situation which led to its enactment. When this is done, there can be no doubt and any other view would be absurd, that the words of section 3 and Schedule 2 were intended to include the Real IRA which was the most active of the different organisations at the time of enactment. This conclusion is re-enforced when the relevant language of section 19 of the Northern Ireland (Emergency) Provisions Act 1973 ("the 1973 Act") is considered which for present purposes is as follows:

"(1) Subject to subsection (7) below, any person who-

(a) belongs or professes to belong to a proscribed organisation; or

(b) solicits or invites financial or other support for a proscribed organisation, or knowingly makes or receives any contribution in money or otherwise to the resources of a proscribed organisation, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both, and on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

(2) The court by or before whom a person is convicted of an offence under this section may order the forfeiture of any money or other property which at the time of the offence he had in his possession or under his control for the use or benefit of the proscribed organisation.

(3) The organisations specified in Schedule 2 to this Act are proscribed organisations for the purposes of this section; and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, *whatever relationship (if any) it has to any other organisation of the same name.*

(4) The Secretary of State may by order to Schedule 2 to this Act any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it.

(5) The Secretary of State may also by order remove an organisation from Schedule 2 to this Act."

(emphasis added)

38. A comparison of section 19(3) of the 1973 Act with section 3(1) of the 2000 Act makes it clear that, allowing for the difference in style in drafting in 1973 and today, section 19(3) of the 1973 Act is virtually identical in meaning to section 3(1) of the 2000 Act. The only difference is that the final words of section 19(3), "whatever relationship (if any) it has to any other organisation of the same name" have been discarded when drafting the 2000 Act.

39. The concluding words of section 19(3) of the 1973 Act which are not repeated in section 3(1) of the 2000 Act convey a strong message

that the language which preceded those concluding words was to be given a generous application.

40. Schedule 2 to the 1973 Act contains the names of six proscribed organisations, the first of which is "the Irish Republican Army".

41. Interestingly, by the time the 1973 Act was passed, the Provisional IRA were on the terrorist scene. It was, by the time of the 1973 Act, the most active of the terrorist bodies and it is inconceivable that the language of section 19(3) and Schedule 2 could be interpreted in context as not proscribing the Provisional IRA. The Official IRA was, however, also on the scene, although quiescent.

42. In the case of section 19(3), I do not understand Mr Macdonald to disagree with the view that the section as a whole was apt to proscribe both the Official IRA and the Provisional IRA or at least the Provisional IRA. So far as the IRA was concerned, it was a blanket provision. It matters not whether the Provisional IRA are regarded as being the Irish Republican Army for the purposes of section 19(3) or they are regarded as being a name "which passes under a name mentioned in that Schedule". The point is entirely academic. The effect of section 19(3) as a whole is that the organisation that chose to carry on its activities under the name "Provisional IRA" was to be proscribed in the same way as the Official IRA was to be proscribed. The intent of the language that Parliament used was that there should be a seamless whole which was apt to make any organisation which operated under a name that included the words the "Irish Republican Army" proscribed. After all, organisations calling themselves the Official, Provisional or Real IRA have no monopoly in the name IRA but claim to be the IRA. They use the preface to differentiate between themselves but the important parts of their names are the words IRA.

43. Techniques in drafting of section 3 of the 2000 Act and section 19(3) of the 1973 Act differ. Section 3(1) of the 2000 Act is drafted more succinctly and more clearly than its predecessor. It is in a crisper, more contemporary style. However, there is no reason to think that the difference in style means that it should be interpreted in any different way from its predecessor in the 1973 Act. The concluding words of section 19(3) are omitted but although they gave an insight into the intention of the earlier subsection, the omission does not mean that the later subsection should be interpreted differently from its predecessor. Both subsections were intended to ensure that any organisation which has the IRA as part of its name was proscribed.

44. Parliament intended by the language it used that it should be unnecessary to engage in the sort of semantic and technical arguments that we have been involved in on the hearing of this appeal. Insofar as it is of any relevance, the difficulty that I have with Mr Macdonald's argument is that if the *Provisional* IRA can be, for the purposes of section 3(1)(a), the IRA, why is the same not true of the *Real* IRA. Both organisations came into existence by the same process at different dates. Both organisations regarded themselves as the successors of the "true" or *Official* IRA.

45. It is interesting that section 3(2) recognises that there may be a note in Schedule 2 which will prevent an organisation being proscribed as a result of section 3(1)(b). It is surprising that section 3(2) does not apply to both limbs of section 3(1). The only explanation that I find which is satisfactory for this difference in treatment is that section 3(1)(a) was intended to apply to the original organisation (the Official IRA) and section 3(1)(b) was intended to apply to any other organisation bearing the name IRA, including both the Provisional and the Real IRA who were both in existence at the time of the 2000 Act. The power to make a note was included because in 2000 it was recognised that the Provisional IRA, unlike the Real IRA, was engaged in the peace process. However, I do not find it necessary to come to any final decision about this because it is of no practical consequence. In any event, section 3(3) gives the Secretary of State ample power to add to or amend Schedule 2 to respond to any changes on the ground which mean that it is no longer necessary to proscribe a particular organisation.

46. I would, therefore, like my noble and learned friend, Lord Bingham of Cornhill encourage an approach to section 3(1) which involves treating the subsection as a composite whole.

47. For the reasons given in this opinion and by Lord Bingham, in his opinion, I would dismiss this appeal.

LORD RODGER OF EARLSFERRY

My Lords,

48. I have had the advantage of reading in draft the speech which is to be delivered by my noble and learned friend, Lord Brown of Eaton-under-Heywood. I am in entire agreement with it and, for the reasons he gives, I too would dismiss the appeal.

LORD CARSWELL

My Lords,

49. This appeal serves as a very good example of the principle of statutory construction that in seeking to ascertain the mischief towards which a statute is directed it can be of prime importance to have regard to the historical context. My noble and learned friend Lord Bingham of Cornhill addressed this issue in *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, 695 when he said in para 8 of his opinion:

> "The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty … Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

If the words of a statutory provision, when construed in a literalist fashion, produce a meaning which is manifestly contrary to the intention

which one may readily impute to Parliament, when having regard to the historical context and the mischief, then it is not merely legitimate but desirable that they should be construed in the light of the purpose of the legislature in enacting the provision: cf *Karpavicius v The Queen* [2003] 1 WLR 169, 175-176 paras 15-16, per Lord Steyn.

50. Lord Bingham of Cornhill has set out in his opinion the material facts and the applicable legislation, which I gladly adopt and need not repeat. A summary of the history of the Irish Republican Army ("IRA") since 1969 was set out in the judgment of Kerr LCJ in the Court of Appeal. I am satisfied that the Court of Appeal and this House were entitled to take judicial notice of these facts, none of which was disputed by Mr Macdonald. I think that it is important to bear in mind, first, that every manifestation of violent republican paramilitarism has been the result of a split from a previously existing organisation. Secondly, every such manifestation has regarded itself, in the words of McGuinness J in the Irish Court of Criminal Appeal in *Director of Public Prosecutions v Campbell* (unreported), 19 December 2003 as "the carrier of the flame of republicanism, the possessor of roots of legitimacy". This is no doubt the reason why each has laid claim to the title Óglaigh na hÉireann, the name of the Irish Volunteers who played a part in the 1916 Easter Rising and subsequently became the original or "Old" Irish Republican Army.

51. At the time of passing the Terrorism Act 2000, as well as when it enacted the predecessor legislation, Parliament would have been very well aware of these facts. It has used the same term "The Irish Republican Army" throughout the series of statutes by which the IRA has been proscribed, in the knowledge that during that time there have been no fewer than four organisations using that title with different prefixes. By the time that the 2000 Act was passed, the Real IRA was in active being and the Omagh bombing had been attributed to it. It is inconceivable that Parliament did not intend to proscribe it, as Mr Macdonald frankly accepted, but his argument was that the statutory wording was such that it had not succeeded in doing so. I cannot accept this argument. It is in my view entirely clear that the words "Irish Republican Army" were intended as an umbrella term, capable of describing all manifestations or splinter groups. If this were not so, one could reach the absurd position that a group of disaffected members of one of the organisations could break away and give itself a similar prefix, such as "Genuine" or "Original", yet be free of the statutory proscription.

52. Mr Macdonald for the appellant sought to escape from this by submitting that by the time Parliament passed the Northern Ireland (Emergency Provisions) Act 1973 the Provisional IRA was the only organisation regarded as the IRA and that in the public mind it and it only had become and still remained the Irish Republican Army. It therefore was the body at which the proscription in the 1973 Act and successive enactments was aimed, and this was certainly the case when Parliament passed the Terrorism Act 2000. In my opinion this argument is unsustainable. Whatever the standing in the popular mind of the Provisional IRA at the present time, as to which I express no opinion, it cannot be successfully maintained that in 1973 it had succeeded in supplanting any other organisation to the extent of holding the position in ordinary parlance of *the* Irish Republican Army. The split from what became known as the Official IRA was of relatively recent occurrence and public documents such as the Diplock Report (Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland) (Cmnd 5185), published in December 1972, regularly refer in the same breath to the Official IRA and the Provisional IRA. It cannot be supposed that a few months later Parliament could have regarded the Provisional IRA as the only body fitting the description of "The Irish Republican Army".

53. A further argument advanced on behalf of the appellant was that the inclusion of the names of the Cumann na mBan and Fianna na hÉireann, the women's branch and junior wing respectively of the IRA, tended to show that the name "Irish Republican Army" in the legislation was not intended to be an umbrella term, otherwise it would have been unnecessary to name these organisations specifically. I think that this argument also fails. It is not difficult to understand why the legislature should have named them separately for the sake of certainty. Unless judicial notice had been taken that they came under the umbrella of the IRA, a case might have been made that they were not proscribed and it would then have been necessary for the prosecution to adduce the very type of evidence that proscribing specific organisations by name was designed to avoid.

54. I accordingly conclude that the Real IRA is included in the term "The Irish Republican Army" in Schedule 2 to the 2000 Act. I would answer the certified question in the affirmative. I would do so on the basis, like my noble and learned friend Lord Brown of Eaton-under-Heywood, that the case comes within section 3(1)(a) of the Act. Like him, I consider that paragraphs (a) and b) of section 3(1) are mutually exclusive. I would reserve my opinion on the ambit of section 3(1)(b), which may require decision on some future occasion.

55. I would therefore dismiss the appeal.

LORD BROWN OF EATON-UNDER-HEYWOOD

My Lords,

56. I have had the opportunity of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill and gratefully adopt his exposition of the relevant facts and the legislation as it has developed down the years. I agree with Lord Bingham's conclusion and with almost all of his reasoning. My only reservation will shortly become clear.

57. The question for your Lordships' determination is whether a person commits an offence contrary to section 11(1) of the Terrorism Act 2000 (the "2000 Act") if he belongs or professes to belong to the Real Irish Republican Army (the "Real IRA"). Section 11(1) provides that a person commits an offence if he belongs or professes to belong to a proscribed organisation.

58. Section 3(1) provides that for the purposes of the 2000 Act an organisation is proscribed if:

> "(a) it is listed in Schedule 2, or
>
> (b) it operates under the same name as an organisation listed in that Schedule."

Schedule 2 to the Act lists amongst other proscribed organisations: "The Irish Republican Army" (the "IRA").

59. At paragraph 22 of his speech Lord Bingham concludes that section 3(1)(a) and (b) "imposes a single composite test: is this the body listed in the Schedule or a part or emanation of it or does it in any event operate under the name of an organisation listed in the Schedule?" It is this part of my Lord's reasoning with which I have some difficulty.

60. True it is, of course, that section 3(1) offers two alternative bases upon which an organisation can properly be found to be proscribed. True it is too that it is unnecessary for the prosecution to specify on which basis a section 11 charge is brought: ultimately all that matters is whether or not the accused belongs (or professes to belong) to a proscribed organisation, and not the basis of any finding that he does. But what worries me about my Lord's approach is that it tends to obscure, if not evade, the specific questions which to my mind have to be addressed and answered on this appeal. Section 3 provides for two mutually exclusive ways in which an organisation may be regarded as proscribed. I think it necessary to examine whether the Real IRA is indeed proscribed in one of these ways.

61. In my opinion the Crown's case here stands or falls upon the first limb of section 3(1), their contention that the appellant belonged to an organisation listed in Schedule 2. This particular appellant was charged under section 11 with belonging to the Real IRA. He might just as well, however, have been charged with belonging to the IRA. I repeat, the question for this House is whether a member of the Real IRA commits an offence contrary to section 11: the particular form of charge cannot affect the answer to that question. One can therefore pose the critical question arising under section 3(1)(a) in either of two ways:

1) Is the Real IRA listed in Schedule 2?
   or
2) Does a member of the Real IRA belong to the IRA?

62. Whichever way one poses the question it is necessary to construe what is meant by the term "The Irish Republican Army" within Schedule 2. The Attorney General's submission is that this is an umbrella or generic name (a blanket description as my Lord calls it) intended and apt to include all manifestations of that body. In the Northern Ireland (Emergency Provisions) Act 1973, following the split in 1969 between the Official IRA and the Provisional IRA (and the Official IRA's declaration of a ceasefire in 1972) the name covered both branches. Similarly in 2000, after the further split in May 1997 between the Provisional IRA and the Real IRA (and the Real IRA's commission of the Omagh bombing in August 1998), the name covered both factions (and in turn Continuity IRA). The IRA, in short, as a named organisation, encompasses any and all smaller organisations which by their name claim to embody or represent the IRA.

63. Mr Macdonald QC, SC for the appellant is, of course, forced to acknowledge that the Real IRA was (even) more, rather than less, deserving of proscription than the Provisional IRA and that Parliament must have intended in 2000 to proscribe it but, he submits, the legislation simply failed to achieve this. He submits that the name, the IRA, certainly by the time Schedule 2 was enacted in 2000, unambiguously meant the Provisional IRA and nobody else. The question as to which body was referred to as the IRA in 1973—whether the Official IRA, the Provisional IRA or both—is more problematic for him but, he argues, by 2000 there could be no doubt about it: it was the Provisional IRA alone.

64. He furthermore submits that the 2000 Act as a whole is drafted in terms which make it clear that Schedule 2 lists single organisations only and not groups of organisations even if they have the same object, let alone if they have conflicting objects and are thus in a real sense rival organisations. In this regard he relies in particular upon the statutory scheme for deproscription: section 3(3)(b) (which enables the Secretary of State by order to remove an organisation from Schedule 2), section 4 (which allows the organisation or any person affected by its proscription to apply for a section 3(3)(b) order), and sections 5-9 (which provide for appeals against the refusal of such a deproscription application). This whole deproscription scheme, he argues, cannot work if the Secretary of State is able to list an umbrella group of organisations under a generic name. Take this very case and assume that the Real IRA (or perhaps less unrealistically the Provisional IRA) had wished to be deproscribed: the Secretary of State could achieve this only by deproscribing *all* the organisations within the group.

65. Finally Mr Macdonald submits that if an umbrella organisation can be listed there would be nothing to stop the Secretary of State from simply listing "all organisations engaged in terrorism in Northern Ireland".

66. In my opinion there is no substance in any of these arguments. I see no warrant for construing "the IRA" to mean "the Provisional IRA" at any time, least of all after 1997 when plainly the Real IRA constituted the greater terrorist threat. Once the original IRA had begun to fracture into other organisations incorporating the name, the term "the IRA" would most naturally apply to each and all of them. No problem in reality arises with regard to deproscription. In the situation postulated by Mr Macdonald, the Secretary of State, if minded to deproscribe a sub-group within a named umbrella organisation, would simply

deproscribe the whole named organisation and immediately then reintroduce the remaining organisation(s) within the umbrella to the Schedule under a more specific label; alternatively amend the Schedule in some other way, perhaps by the addition of a note, to achieve this objective. Nor does this approach carry with it the consequence that the Secretary of State could simply list "all organisations engaged in terrorism in Northern Ireland" as Mr Macdonald suggests. What the Secretary of State must proscribe are *named* organisations and "the IRA" is precisely that: the issue is simply as to which persons comprise "the IRA" within the meaning of the 2000 Act.

67. Were there any conceivable doubt about all this, it is to my mind conclusively settled by an understanding of the effect of sections 107 and 108 of the 2000 Act. As Lord Bingham explains in paragraphs 9, 10 and 22 of his opinion, these provisions had their precursors in amendments made to the 1996 Act in the immediate aftermath of the Omagh bombing in 1998 and their effect is to allow opinion evidence to be given by a senior officer in a section 11 case that the person charged belongs to a *specified* organisation. A *specified* organisation is defined by section 107 as an organisation specified under section 3(8) of the Northern Ireland (Sentences) Act 1998, which is *or forms part of* a *proscribed* organisation. It necessarily follows from this that a *specified* organisation may be part of a larger *proscribed* organisation. Given, moreover, that section 3(8) of the 1998 Act provides for the specification of only those terrorist organisations which are not operating a full ceasefire, these, in cases where they form part only of a proscribed organisation, are likely to be following a different and more violent objective than the non-specified part(s) of the proscribed organisation. The scheme of the legislation, in short, is custom built for the Real IRA, a specified organisation, to be regarded as part of the proscribed organisation, the IRA.

68. As I said earlier, the Crown's case to my mind stands or falls on section 3(1)(a) of the 2000 Act. If the Real IRA are not comprised within the name "the IRA" and thus listed in Schedule 2 to the Act, I cannot see how they can be said to be operating under "the same name." Section 3(1)(b) seems to me intended and apt to cover only those cases where an organisation operates under an identical name to that of an organisation listed in Schedule 2—say, for example, The Irish National Liberation Army—but asserts that it is completely independent of the listed organisation. But for paragraph (b) it could claim not itself to be proscribed under the Act.

69. It is therefore on the basis of section 3(1)(a) alone that I too would answer the referred question in the affirmative and dismiss the appeal.