

HCA/2020-06/XM

APPLICATION FOR A RULING ON DISCLOSURE

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

APPLICATION BY

CRAIG MURRAY

xxxxxxxxx, EDINBURGH, EH10 xxxxxx

RESPONDENT

HUMBLY SHEWETH THAT:

1. The respondent considers that, in respect of the petition and complaint for contempt of court that has been brought against him, the Lord Advocate has failed to disclose information that would materially weaken the Lord Advocate's case and materially strengthen the respondent's case. The respondent has sought disclosure of that information from the Lord Advocate; the Lord Advocate has responded that the information sought is not relevant to the present proceedings and so will not be disclosed.
2. The respondent first sought disclosure of the information on 31 July 2020. Since then, question of disclosure has been the subject of ongoing consideration. Two recent circumstances have led the respondent to conclude that an application for disclosure is now necessary and appropriate. The first is the recent lodging by the Lord Advocate of further written submissions in support of the petition. These make extensive, new submissions on the question of intent/*mens rea* for contempt and on whether the respondent engaged in responsible journalism, matters on which, for the

reasons set out below, the information materially strengthens the respondent's Article 10 case and materially weakens the case now put in the Lord Advocate's in his most recent submissions (see paras 13-23 of those submissions). The second is that substantial parts of the information sought now have been the subject of evidence to the Scottish Parliament's Committee on the Scottish Government's Handling of Harassment Complaints about Alex Salmond.

3. The respondent accordingly applies to the Court for a ruling on whether the information in question would materially weaken the Lord Advocate's case and materially strengthen the respondent's case. Although contempt of court proceedings are not ones to which Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 applies, Article 6 does apply (*Robertson and Gough v HM Advocate* [2008] JC 146 per the Lord Justice-Clerk (Gill) at paras 41, 64 and 65; *Kyprianou v Cyprus* (2007) 44 EHRR 27 at para 64), and the test for disclosure under the 2010 Act and Article 6 is the same: under Article 6, the Crown must disclose to the defence any material of which it is aware which would tend either to materially weaken the Crown case or materially strengthen the case for the defence (*McInnes v HM Advocate* 2010 SC 28 per Lord Hope at para 1). Accordingly, the Court is asked to consider this application as it would an application for a ruling on disclosure under sections 128(2), 139(2) or 140E(2) of the 2010 Act.

4. The information in question is:

(a) A series of written communications involving Peter Murrell, Chief Executive Officer of the SNP, and Sue Ruddick, Chief Operating Officer of the SNP. They discussed *inter alia* a pub lunch or similar occasion between Ian McCann, a SNP staff member working for them, and xxxxxxxxxxxxxxxx, one of the complainers in the *HM Advocate v Salmond* trial. At the lunch, Mr Murrell and Ms Ruddick expected xxxxxxxxx to firm up her commitment to giving evidence against Alex Salmond, and to discuss progress on bringing in others to make complaints. They expressed dissatisfaction at

Mr McCann for his performance in achieving these objectives and expressed doubt as to his commitment to the cause.

(b) A communication from Ms Ruddick to Mr Murrell in which she explained to Mr Murrell that progress on the case was being delayed by Police Scotland and/or the COPFS's saying there was insufficient evidence, and in which communication she expressed the sentiment that, if the police/Crown would specify the precise evidence needed, she would get it for them.

(c) Text messages from Mr Murrell to Ms Ruddick stating that it was a good time to pressure the police, and that the more fronts Alex Salmond had to fight on the better.

(d) Communications from Ms Ruddick about her visits to a number of locations, including the Glenrothes area, and including in conjunction or discussion with xxxxxxxxxxxx. These communications detail their unsuccessful attempts to find witnesses who would corroborate allegations of inappropriate behaviour against Alex Salmond. They include a report of a meeting with young people who were small children at the time of the incident they were seeking to allege, who did not provide the corroboration sought.

(e) A message from xxxxxxxxxxxx stating that she would not attend a meeting if xxxxxxxxxxxx were also present as she felt pressured to make a complaint rather than supported.

(f) Messages in the WhatsApp group of SNP Special Advisers, particularly one saying that they would "*destroy*" Alex Salmond and one referring to Scotland's '*Harvey Weinstein moment*', employing the #MeToo hashtag.

5. The respondent saw this information before he published the articles and tweets that are the subject of these proceedings. The respondent considers that the information in question would materially weaken the Lord Advocate's case and materially strengthen his case because: (i) it materially strengthens the respondent's case on

Article 10; and (ii) it materially weakens the Lord Advocate's case, and materially strengthens the respondent's case, on the alleged breach of section 11 of the Contempt of Court Act 1981.

Article 10

6. The Lord Advocate's petition founds on a number of articles published by the respondent on his website. In those articles, the respondent provided reporting of and commentary on the *HM Advocate v Salmond* trial, but also provided wider commentary on the trial and the political context in which it took place. It was in the course of that wider commentary on the trial that the respondent stated his reasonable belief that the criminal charges against Alex Salmond were the result of orchestrated work by senior members of the Scottish Government and the Scottish National Party. It is that broader reporting on the wider context of the trial that is of significance to the present application and to the respondent's Article 10 case because the respondent's commentary on the trial is indissociable from his commentary on the trial's wider context.

7. Before publishing his articles and tweets on the wider context of the trial, the respondent saw the information set out at paragraph 4(a)-(f). The respondent considered that this information was genuine and that it showed that senior members of the Scottish Government/SNP had sought improperly to involve themselves in the inquiry into Alex Salmond, that they had discussed the possibility of pressuring the police, and that certain of the complainers had felt pressured by the involvement of senior members of the Scottish Government or SNP. The respondent, in answering this petition, thus relies on Article 10 ECHR and, in particular, that as journalist he acted responsibly and in the public interest in publishing his articles and tweets, and, most significantly, that he did so because of the information he had seen. It was, and remains, a matter of considerable public interest and importance that high-ranking members of the SNP would improperly involve themselves in an

investigation into a political rival, and express sentiments such as a desire to obtain whatever evidence the police needed and a desire to pressure the police.

8. The information set out at paragraph 4 above materially strengthens the respondent's Article 10 case and materially weakens the Lord Advocate's case because disclosure of it: (i) confirms that the information exists and is genuine (as the respondent believed it to be when he saw it); (ii) supports the respondent's evidence that he saw the information before he published; and (iii) supports his submission that, before he decided to publish commentary on the trial and its wider context, the respondent acted as responsible journalist and published what he did because of the importance of the information, and because he reasonably believed it was in the public interest to publish it.

Section 11

9. The information materially weakens the Lord Advocate's case, and materially strengthens the respondent's case, on the alleged breach of section 11 of the Contempt of Court Act 1981. This is because in inviting the Court to find that the respondent has breached the section 11 order preventing publication of the names of the complainers in *HM Advocate v Salmond*, the Lord Advocate asks the Court to draw an inference that the respondent intended to name the complainers. For instance at paragraph 39 and 40 of his initial written submissions, the Lord Advocate relies on, among other publications, the respondent's tweet of 27 March 2020, which reads:

"The SNP is not split. A tiny cabal of highly paid careerists within the party engaged in a criminal conspiracy to frame an innocent man, for their own personal and political gain. Root out that cancer, expel those crooks, and 99.99% of the party will be sound as a bell."

The information set out at paragraph 4 will enable the respondent to rebut any such submission. The information supports his evidence that his true intention was not to

publish the names of the complainers, but rather the other members of the Scottish Government/SNP who had engaged in the actions set out at paragraph 4 above. The information thus materially weakens the Lord Advocate's case and materially strengthen the respondent's case in respect of section 11 of the Contempt of Court Act 1981.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS:

- (i) To rule that the information specified at paragraph 4 above would materially weaken the Lord Advocate's case and materially strengthen the respondent's case on Article 10 ECHR;
- (ii) To rule that the information would materially weaken the Lord Advocate's case and materially strengthen the respondent's case on section 11 of the Contempt of Court Act 1981; and
- (iii) To take further or other action as to your Lordships shall seem proper.

IN RESPECT WHEREOF

**JOHN SCOTT QC
PAUL HARVEY, ADVOCATE
13 JANUARY 2020**