

## **THE SCOTSMAN 16 MAY 2002**

### **Dark day for the new democracy of Scotland**

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THE Lord Advocate was making a statement when he stopped in mid-sentence to allow a bearded, elderly man to take his seat. Colin Boyd's instinctive gesture and the silence of a parliament as Darshan Singh Chhokar, the father of the murdered waiter Surjit Singh Chhokar, slowly entered the public gallery seemed to symbolise the importance of the ordinary citizen in Scotland's new democracy.

Whether one believes that the Chhokar family were justified in all of their criticisms of the police, the prosecution service and ministers in the handling of the death of their son, theirs was a case of great importance for the nation and our legal system.

It was therefore right that last year the chief law officer of the Crown and the justice minister were held to account in a democratic forum and that the family were there to bear witness to it. Nothing could bring back a beloved son lost, but the Scottish Executive, held to account by parliament, would try to ensure that the same mistakes were not made again.

It is in the context of the hoped-for greater democracy and accountability that home rule should have brought that we must view the ruling yesterday by the Presiding Officer, Sir David Steel, to refuse a debate on the subject of Shirley McKie.

The case of the former detective, who was cleared of perjury after what was claimed to be her fingerprint was found at a murder scene she denied visiting, raises disturbing questions over the rights of an individual to obtain justice in this country. It also raises broader questions about devolution.

First, the rights of the individual and some facts. No fewer than 160 fingerprint experts have categorically stated that it was not Ms McKie's fingerprint at the murder scene, but the fingerprint officers at the Scottish Criminal Record Office (SCRO) have been cleared of any wrong-doing by an internal inquiry.

Ms McKie lost a compensation case against her former employers, Strathclyde Police, on the grounds that she could not prove they acted maliciously when she was prosecuted for perjury. She is now taking action against Scottish ministers, SCRO and Glasgow council as the police authority. She no longer has a career.

At every stage in this process, which began in 1997, Ms McKie, supported by her father, Iain, a former chief superintendent, claims that she has been hindered and thwarted. Even now, no-one will tell her whether it is the ministers, the council or the organisation itself she should be pursuing in her current case. Everyone hides behind lawyers. No-one takes responsibility. She is at her wits' end and feels that she is but a helpless individual at the mercy of an uncaring and unresponsive system.

Like the Chhokars before her, she sought help through her elected representative and held out the hope that parliament would be the place where injustice could be

exposed, debated and eventually corrected. She was wrong.

Yesterday, Sir David, acting on legal advice, ruled that the SNP's Mike Russell could not stage even a short member's debate on the issue.

The obvious denial of natural justice to Ms McKie is alarming in itself, but Sir David's ruling has highlighted the second and more worrying issue - the role of the parliament at a time when there is growing cynicism about the political process.

There are, of course, differences between the Chhokar and the McKie cases which it is only fair to state. The former originally involved a criminal case and could not be debated in parliament until that case was over for fear of prejudicing a jury trial. The McKie case is now a civil one, but there are few who believe that a debate in parliament, long after the criminal trial, would prejudice legal proceedings likely to be held in front of one judge who will be beyond any outside influence.

However, the principle behind the efforts of the Chhokar family or Ms McKie and her family to get a fair hearing is the same. It is in the nation's democratic forum that the public services and public servants are held to account.

In the first instance, parliament should be able to hear details of the case. MSPs should be able to make contributions and ministers should listen to the debate and seek to explain what has happened where it falls within their responsibilities.

That Sir David is not allowing his to happen is bizarre. Newspapers and broadcasters - who also have legal advice - are free to carry details of the case, but the parliament is not.

For example, this column can report details of the first motion Mr Russell tabled in parliament two weeks ago and which was only recently ruled out of order by the Presiding Officer's officials. It noted the continuing injustice done to Ms McKie and stated that she had lost her career as a result of wrong identification of fingerprints by officials at SCRO. The motion also claimed that the report from within SCRO which led to no action being taken against the officials concerned was a blatant attempt to justify the unjustifiable, but it commended the honourable conduct of Jim Wallace, the justice minister, who apologised to Ms McKie in parliament in June 2000.

You judge: is that the kind of detail that you think could affect an experienced judge making a judgment in a civic case? The answer is obviously no, yet the parliamentary authorities objected to this form of words. And will this columnist and his editor be taken off to prison for publishing these details? No. Well, we hope not.

In order to save his debate, Mr Russell was forced to amend the motion to excise any mention of Ms McKie. But finally, when Sir David read the MSP's speech, given to him in advance as a courtesy, the Presiding Officer vetoed the debate.

In a statement to MSPs yesterday, Sir David said that there was no question of gagging parliament. He said that freedom of speech had a central place in the parliament and that the ability of members to represent their constituents was an essential and cherished duty. He added that there had to be regard to the interests of

justice.

To members of the public grown increasingly cynical about power and the powerful, it will seem that, once again, the establishment is protecting its own.

Shirley McKie's father said this week that he had been a great supporter of the Scottish parliament when it was established, but now he is deeply disillusioned. There are many more like Iain McKie out there - those who hoped that the parliament would be different and have had their hopes dashed.

With this ruling, Sir David, who as a Liberal has long been a campaigner for openness and freedom of information, has cast a shadow over the parliament he campaigned so long to establish. He has intervened on the side of the state against the citizen. He has championed the rights of the executive arm of government over that of an individual MSP.

This case is not just a tragedy for Shirley McKie; it is a dark day for our new democracy.