

[IE] Supreme Court Refuses Injunction against Television Station

IRIS 1998-4:1/4

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The Irish Supreme Court, in an important decision for the media and for investigative journalism, recently (*NIB v. RTE* - Supreme Court, 20 March 1998) lifted an injunction against RTE, the national public service broadcaster. In January, RTE had broadcast a news story to the effect that National Irish Bank (NIB) had operated offshore accounts designed to facilitate customers in evading tax. The Bank claimed that RTE's reports were ill-informed and that publication of the information would damage the relationship of trust and confidence between the Bank and its customers and damage irreparably the Bank's reputation. It therefore sought and got a temporary injunction preventing RTE from broadcasting information that would tend to identify customers or their accounts. The temporary injunction granted by the High Court was renewed several times over a period of five weeks. It was then discharged by the High Court and an interlocutory injunction refused. However, NIB immediately appealed that decision to the Supreme Court, which continued the temporary injunction until it could hear the appeal.

The Supreme Court, in a majority decision, recognised a duty and right of confidentiality between the bank and its customers, but concluded that, in the circumstances, the public interest in defeating wrongdoing outweighed the public interest in the maintenance of such confidentiality. However, the Court made clear that what it was vindicating was responsible journalism. It left it to RTE to decide whether to go ahead and name customers but warned that if it did so and wrongly named innocent investors, that would involve a serious libel on them and RTE would have to take the consequences.

Both the majority and minority judgments emphasised the role of the regulatory authorities, particularly the Revenue Commissioners. The minority would not have restrained RTE from passing the information to such authorities or indeed from pursuing the investigation they had legitimately undertaken. By reference to principles derived from English case-law, however, the minority judgment identified the essential issue as being whether RTE had established "a public interest in the disclosure of information which outweighs the public interest in confidentiality, and, if so, the extent of the disclosure which is legitimate". Having addressed that issue, the minority felt that RTE should not be free to disclose the names of customers and details of their accounts to anyone other than the

Revenue Commissioners. The majority, on the other hand, were prepared to free RTE but issued a further warning that RTE, as the national broadcaster ("a State body"), should cooperate with the regulatory authorities.

While the decision itself was warmly welcomed by the media, it must be pointed out that the common law approach to the balancing of rights engaged in in this case does not follow that of the European Court of Human Rights. As Ireland has not incorporated the Convention, the courts, as in this case, do not often refer directly to the Convention or to the case law of the European Court of Human Rights.

Supreme Court, 20 March 1998 - NIB v. RTE

