[GB] Scope of Interfering with Journalists' Privilege of Protecting Sources Clarified

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The Court of Appeal has recently overturned a decision ordering defendants - including a media company - to disclose the identity of the source of confidential information, namely draft legal advice (subsequently discarded) and the circumstances in which it came to the defendants' notice. In the trial judge's opinion, the information "was of topical concern and serious public interest deserving discussion and comment in the media but for the fact that it was confidential to the claimants". No internal inquiry within the lawyers' office was undertaken to establish who was responsible for acquiring the information.

The Appeal judges held that, although the trial judge had correctly balanced the relevant interests in the case (protection of confidential sources and legal professional privilege), at the very minimum, other efforts to establish the identity of the source should have been made. Further, even if the source had been revealed, the culprit may not have been revealed. Thus, there would have been damage to the public interest in protecting sources and no compensating benefit to the interest in legal professional privilege. "It was important that when orders were made requiring journalists to depart from their normal professional standards the merits of their doing so in the public interest were clearly demonstrated. This was a one-off infringement of professional legal confidentiality which did not justify making an inroad on the privilege of the journalist." The requirement of Section 10 of the Contempt of Court Act 1981 (that disclosure should be ordered in the interests of the administration of justice) had not been met.

Times Law Report, 26 April 2000. (1)Sir Elton Hercules John (2) Happenstance Ltd (3) William A Bong Ltd (4) J Bondi Ltd (5) Eversheds (A Firm) v. (1) Express Newspapers (2) Rosie Boycott (3) Rachel Baird (2000).

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