[IE] Court of Appeal judgment of disclosure of journalists' notes

IRIS 2017-3:1/20

Ingrid Cunningham
School of Law, National University of Ireland, Galway

The Irish Court of Appeal has ruled that the discovery of journalist's notes and other background material pertinent to an alleged defamatory publication concerning a former member of An Garda Síochána (Ireland's National Police Service), Lynda Meegan, is to be refused on the grounds that it was not specific enough to be granted.

The proceedings arose following an article which appeared in the Sunday Times newspaper on 14 September 2014. The article entitled "Convicted bomb maker was recipient of Garda intelligence" stated inter alia that a senior figure in the Continuity IRA had been identified by Special Branch as the person who had received sensitive information from a former Garda about operations against dissident republicans. The article named Joe Fee, "a convicted bomb maker from Monaghan" as "the focus of an investigation into the disclosure of information likely to be of use to terrorists". The article further stated that "the female officer is said to have sent texts to Fee and alerted him to the identities of dissidents arrested by Gardaí" and that the texts were "intercepted by Crime and Security, the Garda agency responsible for spying on dissidents". The article stated that "the officer, who cannot be named, resigned after being confronted" and that "she is the subject of a continuing criminal investigation".

The plaintiff, Ms Meegan, "states that she is the former member of An Garda Síochána referred to in the article and pleads that these allegations are false and defamatory of her". The Court of Appeal noted that "it is not disputed by the defendant newspaper, the Sunday Times, that Lynda Meegan is indeed the person referred to in the article, although the newspaper contends that she has not been identified in the piece in question". In the High Court, Justice Barr ordered discovery of the journalists' notes and other background material relevant to the alleged defamatory publication on the basis that the plaintiff was entitled in principle to the discovery as a consequence of The Sunday Times' plea of the defence of fair and reasonable publication on a matter of public interest pursuant to section 26 of the Defamation Act 2009, subject only to questions of journalistic privilege and legal professional privilege.

In the Court of Appeal, Judge Hogan observed that section 26 of the Defamation Act is a "novel provision" which "has yet to be successfully invoked in any

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reported defamation case" and is "clearly designed to provide a defence for publishers who show that they acted bona fide and that the publication was fair and reasonable having regard, in particular, to the matters set out in section 26 (2) of the 2009 Act".

Justice Hogan highlighted that in discovery, the material sought "must be both relevant and necessary" and was of the opinion that Ms Meegan had "not yet established that such discovery" was either of these. He opined that "the present section 26 defence is so general and imprecise" that Ms Meegan "cannot at present know the nature of the actual section 26 defence she will have to meet at trial, nor the facts which may be relevant in the context of any such defence." Judge Hogan stated that the "modern thinking" on discovery "suggests that discovery requests should be specific and focussed, so that the courts should be willing to confine categories of documents to what is genuinely necessary for the fairness of the litigation."

In reversing the decision of the High Court, Justice Hogan held that "it is at present premature to assess whether the discovery sought is genuinely necessary for the proper conduct of this litigation, at least until the scope and extent of the section 26 defence is clarified" and "particulars of the facts proposed to be relied upon" by the Sunday Times "in support of that defence are duly ascertained, whether by further pleading or by particulars."

Meegan v Times Newspapers Limited t/a The Sunday Times [2016] IECA 327, 09 November 2016

http://www.bailii.org/ie/cases/IECA/2016/CA327.html

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