[IE] High Court refuses to strike out presidential candidate's claim over televised election debate

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On 11 April 2017, the High Court delivered a judgment in Gallagher v. RTÉ, concerning a presidential candidate's legal action against the public broadcaster RTÉ over a 2011 televised election debate. The claim centred on RTÉ's 2011 election debate, when the presenter had questioned the candidate about a statement concerning him that had just been made on the supposed official Twitter account of another candidate. It later turned out that the tweet had been attributed, in error, to the official Twitter account of the other candidate. In March 2012, the Broadcasting Authority of Ireland (BAI) held that the programme had been in breach of section 39(1)(b) of the Broadcasting Act 2009, being "unfair" to the candidate (see IRIS 2012-5/27). However, The Committee decided that the complaint was not of such a serious nature as to warrant an investigation or public hearing.

Nonetheless, in the High Court action, the candidate, who had not been elected, claimed RTÉ had acted negligently in putting the question to him over the tweet, and sought to undermine his credibility. The candidate also claimed RTÉ directed the debate with the improper aim of altering the course of the election, that RTÉ promoted the electoral chances of another candidate, and that RTÉ's conduct was targeted malice that was intended to damage him.

Many legal claims against Irish media result in protracted and expensive proceedings, and while the candidate's legal action had been initiated in 2013, it was still ongoing in 2017. Therefore, RTÉ sought an order dismissing the action, due to a failure of the candidate to make proper discovery to RTÉ (i.e. disclose relevant documentation). RTÉ claimed that the candidate had failed to make voluntary discovery over a year after RTÉ made the request, and six months after a court order.

In its judgment, the High Court held that two of candidate's affidavits were deficient, he had failed to swear an affidavit in the appropriate form, failed to make discovery of certain relevant metadata that he holds, and had failed, more generally, to make proper discovery of the documentation (including electronically stored information) in his possession or power. The High Court judge stated that "while I do not find that default to be wilful or contumelious, I am driven to the conclusion, in the context of the evidence I have sought to summarise, that it was negligent. Nonetheless, I do not think that it has yet

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compromised the prospect of a fair trial to the extent that the justice of the case warrants an order striking out the proceedings". Therefore, the Court dismissed RTÉ's request for the claim to be struck out. Instead, the Court ordered that the proceeding should continue, made various orders compelling the candidate to make proper discovery, and ordered both parties to indemnify 50% of the costs.

Gallagher v. RTE [2017] IEHC 237

http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/341e0effb184fd618025810e005150ac?OpenDocument

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