

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY HER MAJESTY'S ATTORNEY
GENERAL FOR NORTHERN IRELAND**

Before Kerr LCJ, Campbell LJ and Coghlin J

KERR LCJ

Introduction

[1] This is an application by the Attorney General for the committal of James McDowell, the editor of the newspaper, the Sunday World, for contempt of court and for the imposition of fines on both the editor and the newspaper's publishers, Sunday Newspapers Ltd, for that contempt. Both respondents to the application admit that they have been in contempt of court.

Background

[2] Between 6 November 2005 and 15 July 2007 a series of articles was published in the newspaper which expressly or impliedly referred to the activities of one or other or both of two defendants in Crown Court proceedings. They were Laurence Kincaid and William Anderson. They had been returned for jury trial at Belfast Crown Court on counts of intimidation, criminal damage and malicious wounding. On 15 December 2006 they were arraigned. Anderson pleaded not guilty to the charge of intimidation but guilty to the offences of

criminal damage and malicious wounding. Kincaid pleaded not guilty to all three charges. The trial was fixed for 22 January 2007. That trial date was vacated when counsel for the defendants indicated that they intended to apply for a stay of proceedings because of articles that had appeared about their clients in the Sunday World. On 2 February 2007 Judge Grant imposed reporting restrictions in relation to the trial of the defendants. On 16 February 2007 a 'no publicity' order was made by the Crown Court forbidding publication of any details relating to the case.

[3] On 2 February Patricia Quinn, the marketing communications officer of the Northern Ireland Court Service (and then the deputy press officer), informed newspapers and other media outlets of this restriction. She has stated that she tried to contact Mr McDowell by telephone but was told that he was unavailable. She then told the woman who had answered her telephone call about the reporting restriction and emphasised that this should be communicated to the editor. Ms Quinn told the woman that if Mr McDowell needed to speak to her, he could telephone her and gave her mobile telephone number.

[4] The newspaper claims that this message was not relayed to Mr McDowell or, apparently, to anyone in authority. We are satisfied that Ms Quinn did indeed make the telephone call. The level of detail of her account admits of no other conclusion. We find it remarkable that the message was not passed on and can only conclude that this represents an extraordinary lapse in organisation on the part of the newspaper. Sadly, as further events vividly illustrate, this was by no means the only deficiency in the way that business was conducted at this newspaper. For an organ that claims to have been engaged in a high minded campaign against malign influences in our community, it operated in an astonishingly slipshod way. One is driven to the conclusion that the focus of the newspaper was on highly sensationalist reportage, couched in lurid and melodramatic language, rather than, as it should have been, on the checking of elementary facts.

[5] The order imposing restrictions on reporting was renewed on 14 March 2007 by Judge Marrinan who was then assigned as trial judge. On 9 March the defendants had applied to the judge for a stay of proceedings claiming that a fair trial was not possible owing to the publication, over a prolonged period, of articles about them in the newspaper. In his written ruling given on 26 March 2007 the judge dismissed the applications but, having reviewed the articles which had appeared in the newspaper up to that date, concluded that they created a risk of prejudice to the trial. On the question of the newspaper's circulation the judge concluded that there was significant household penetration of large parts of Belfast. Kincaid's alleged illegal activities, as reported in the newspaper, were said to have been committed in the Belfast/South Antrim area.

To meet the risk that he had identified, the judge ordered that a number of steps be taken, including that the proceedings be adjourned to September 2007 to a venue other than Belfast Crown Court. The trial date was fixed for 10 September and it was ordered that it take place in Coleraine. In the course of his ruling the judge said: -

“I have reviewed the various articles, particularly concerning the defendant Kincaid in 2006 and continuing into 2007. I am of the opinion that there is a risk of prejudice although the only source for these potentially prejudiced stories is one newspaper.”

He expressed the hope that with two Crown Court orders in place involving reporting restrictions (in fact, by then, there were three) and the anticipated intervention of the Attorney General (in relation to possible contempt proceedings), this cooling off period would be an effective remedy.

[6] The judge’s ruling also recorded his view that ‘it [was to] be anticipated that during this period no further prejudicial publicity would occur.’ This remark was prompted by the judge having seen a further relevant article in the newspaper on 11 March 2007. That this article should have appeared within two days of the application to stay the proceedings is both astounding and utterly reprehensible. This newspaper, which asserts that it is engaged in a fearless and altruistic crusade against drug dealers, was not even aware that it was the subject of the application to stay proceedings. One would have thought that, if they had a genuine concern about the activities of such as Kincaid and Anderson, the reporters involved in this much vaunted campaign might at least have kept abreast of the criminal proceedings against them. Had they done so, they would have been aware that, so far from advancing their avowed purpose, their reporting was placing in peril the successful prosecution of Kincaid and Anderson.

[7] On 14 March 2007 Kevin McGinty, a member of the Attorney General’s chambers, wrote to Mr McDowell to inform him that the Attorney was considering whether to commence proceedings against him for contempt. He pointed out that, despite the order of 2 February, the Sunday World had mentioned Kincaid in articles that appeared in the editions of 18 February and 11 March. This elicited a reply on 16 March from Messrs Fanning and Kelly, solicitors, on behalf of the Sunday World, in which it was stated that the newspaper was unaware of the court order made on 2 February.

[8] On 6 July 2007 Mr McGinty wrote to the newspaper’s solicitors. This letter set out in commendable detail a synopsis of ten articles appearing in the Sunday

World between 21 May 2006 and 11 March 2007 in which reference was made to the alleged criminal activities of Kincaid and Anderson. Mr McGinty invited the newspaper's solicitors to comment on whether there was any good reason that the Attorney General should not issue proceedings against the Sunday World and its editor for contempt. A holding reply to this letter was sent on 19 July 2007.

[9] Notwithstanding Mr McGinty's letters of 14 March and 6 July, a further article appeared in the Sunday World on 15 July in which Kincaid was described as a leader of the Loyalist Volunteer Force, an illegal paramilitary organisation. This article was written by Richard Sullivan, a journalist on the newspaper. He has said that the article was a 'filler' and was not intended as a substantive piece. Remarkably, although he appears to have been aware of the letter of 14 March 2007 from Mr McGinty, he claimed not to have read it and this prompted the extraordinary statement that the letter was not "at the forefront of" his mind. This statement is all the more astonishing since Mr Sullivan had been sent an email personally by Patricia Quinn on 14 March 2007 at 12.39pm informing him that there should be no further reporting about the trial of Kincaid or Anderson "or on any matter which could prejudice their trial".

[10] The trial did not take place in Coleraine on 10 September as scheduled. Ultimately, it was held at Omagh Crown Court in January 2008. Kincaid pleaded guilty to the offence of criminal damage and was found not guilty by direction on the charges of intimidation and malicious wounding. Anderson, who had previously pleaded guilty to the offences of criminal damage and malicious wounding, was found not guilty by direction on the charge of intimidation. In February Kincaid was sentenced to a term of imprisonment of nine months. This sentence was suspended for a period of twelve months. A sentence of two years' imprisonment was imposed on Anderson.

[11] From the correspondence that passed between Mr McGinty and the newspaper's solicitors, the affidavits filed by the respondents and the submissions made on their behalf by Brian Fee QC it appears that the case which the newspaper and the editor make is that the articles were published because it was "firmly believed" by the journalists and the editorial team that the prosecutions against Kincaid and Anderson were for scheduled offences which would not be heard before a jury. It is stated further that, had the newspaper known that these prosecutions were not for scheduled offences and would be proceeding before a jury, the material would not have been published. It has been accepted, however, that no check was made that this was indeed the position. It is also accepted that this could easily have been ascertained. It is further undeniable that if the newspaper had troubled to attend any of the various court hearings referred to above or to find out what had happened at

those hearings (either of which it could readily have done) it would have known of the restriction on reporting. That restriction, of course, arose not only because of the orders that had been made but also because of the obvious potential of the articles to prejudice the fair trial of the defendants.

[12] It is now claimed that the newspaper has “overhauled and reviewed its procedures of detecting and avoiding prejudice to criminal proceedings”. Moreover, the editor has offered the newspaper’s apology for publishing material “which may have prejudiced the prosecution of Anderson and Kincaid”. Mr Fee suggested that the prospect that the articles might have prevented the prosecution taking place bore very heavily with the editorial team and the journalists involved. He also stated that they all regarded the institution of the present proceedings as a very serious matter indeed and pointed out that this was the first occasion on which the newspaper had been the subject of contempt proceedings. Furthermore, he drew to our attention the fact that a journalist on the paper had been murdered and that the editor and his family had been the subject of threats because of its policy of exposing criminality.

[13] We have taken the submissions of Mr Fee closely into account but we feel bound to say that the newspaper’s self proclaimed role of the fearless exposé of crime does not rest easily with the gross irresponsibility of its staff in failing to carry out the most elementary of checks, to communicate vital messages, to disseminate to staff the letter from Mr McGinty and to heed and observe the warning contained in the e-mail to Mr Sullivan. Moreover, the sensationalist and graphic language in which the articles are expressed and the shallowness of their content do not distinguish them as intrepid exposés.

The relevant law

[14] In light of the respondents’ acceptance that they were guilty of contempt, we do not need to dwell on this aspect. The legal position was summarised in this court’s judgment in *Re Attorney General’s application* [2003] NIQB 73 and Mr Maguire QC for the Attorney General and Mr Fee accepted that the law was as expressed in paragraphs [8] to [18] of that judgment.

[15] One matter worthy of mention, however, is the timing of the respondents’ acknowledgment of guilt. This was not signalled until the hearing was imminent. Mr Fee suggested that this was because the respondents were actively considering with their legal advisers whether a partial defence based on the proposition that some of the articles may not have given rise to “a substantial risk of prejudice to the course of justice” would have been possible. We do not consider that such consideration should have deterred or delayed a prompt admission of guilt here. It was unmistakably clear from the outset that each of

the articles carried such a risk and that each constituted a serious interference with the course of justice. The failure of the respondents to acknowledge their guilt more promptly must be reflected in the choice of penalty appropriate to punish the contempt.

Disposal

[16] The articles involved in this application were not merely grossly contumelious, they placed in great peril the successful prosecution of both defendants on extremely serious charges. The contempt was repeated despite frequent opportunities to discover that the articles were in flagrant breach of court orders. It continued in the face of clear warnings from Mr McGinty and Ms Quinn. Much public money has been wasted in the hearing of the stay proceedings, the adjournment of the trial and the relocation of the court venue. It must therefore rank among the most serious of this type of contempt. We have concluded that the proper penalty is, in the case of the first respondent, Sunday Newspapers Limited, a fine of £50,000 and in the case of the second respondent, James McDowell, a fine of £10,000.