

## THE HIGH COURT

[2001 No. 131P]

BETWEEN

ALAN GRAY, PHYLLIS GRAY  
AND FRANCIS GRAY

PLAINTIFFS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

**Judgment of Mr. Justice Quirke delivered on the 17th day of January, 2007**

The first and second named plaintiffs are the married parents of five children. The third named plaintiff is their eldest son, who is now 26 years old.

The plaintiffs' family was permanently resident in Blanchardstown, in Dublin until 1995 when the family moved to Ballybunion in Co. Kerry under the terms of a rural resettlement scheme introduced by the government.

After arrival in Ballybunion the family was accommodated in houses close to the town for two successive 12 month periods. The family members were then provided with a permanent house in Marconi Avenue in Ballybunion, which is a small housing estate in the town. They settled successfully into their new home and the first-named plaintiff, Alan Gray, who is a steel erector, obtained employment at various locations in Kerry, in Co. Clare and in Co. Cork.

On a date between the 8th April 1999 and the 12th April 1999 the plaintiffs and their family members decided to abandon their home in Marconi Avenue in Ballybunion and to return to live permanently in Dublin.

They claim that they were forced to abandon their home by reason of the unlawful actions of members of An Garda Síochána in Kerry who, they claim;

(a) wrongfully, negligently and unlawfully disclosed to journalists in The Kerryman newspaper and The Examiner newspaper and to other journalists and members of the media that James O'Donoghue, who was and is a dangerous convicted rapist, was living with them in their home in Marconi Avenue, Ballybunion. As a result, it is claimed, the plaintiffs were subjected to abuse, harassment and intimidation of such a character that they were obliged to leave their home in Ballybunion permanently.

(b) acted in breach of a duty of confidence owed by the State to the plaintiffs not to disclose sensitive and inflammatory information to the media when such disclosure was likely to place the information in the public domain and to result in the harassment and intimidation of the plaintiffs and a violation of their constitutionally protected right to live peacefully in their home.

(c) on the 4th April, 1999, through two of its members, unlawfully entered the plaintiffs' home in Marconi Avenue, assaulted and battered the third-named plaintiff, Francis Gray and threatened James O'Donoghue with physical violence if he did not leave Ballybunion.

The plaintiffs claim damages for personal injuries, loss, damage, upset, inconvenience and distress which, they say, they have suffered as a direct consequence of the unlawful actions of members of the Gardaí who are the servants and agents of the State.

**Relevant facts**

1. In February of 1999, Alan Gray, at the request of his brother, agreed to provide his nephew, James O'Donoghue with temporary accommodation for a short time in the Gray home in Ballybunion. James O'Donoghue had been convicted on a charge of violent rape and had been sentenced to serve a term of 15 years imprisonment.

He had served 12 years of that sentence and was due to be released on the 15th February. He had earlier convictions for robbery and indecent assault. Arising out of his earlier convictions he complained that he had been subjected to a serious assault. He made it known that he was very fearful that he would be violently assaulted upon his release from prison. It was because of his fears that his father requested his brother, (the first-named plaintiff, Alan Gray), to provide him with temporary accommodation in Ballybunion.

Alan Gray agreed to do so for a short time, (estimated to be a few weeks). Alan Gray's wife, Phyllis, the second-named plaintiff was very unhappy with this arrangement but was reluctantly persuaded to agree to accommodate James O'Donoghue for a short time.

Immediately after his release on the 15th February, 1999, James O'Donoghue, who was then in his early 30's, arrived in Ballybunion where he took up residence in the Gray family home in Marconi Avenue.

2. After their arrival in Ballybunion in 1995 the plaintiffs' children had settled happily into the community in Ballybunion. They attended the local community school and actively and happily participated in community activity.

In February of 1999, when James O'Donoghue arrived in Ballybunion the plaintiffs' daughter Lucy was sixteen years old. Their sons, Alan (Junior), Paul and Robert were aged thirteen years, ten years and eight years respectively.

At that time there were six uniformed and one detective Gardaí attached to Ballybunion Garda Station. The Garda Station was manned between the hours of 9 a.m. and 2 p.m. daily and was under the administrative and supervisory control of the Garda District Headquarters at Listowel.

3. On 25th March, 1999 Garda Daniel O'Connor, a uniformed Garda attached to Ballybunion Garda Station, was requested to investigate the whereabouts of James O'Donoghue on 16th March, 1999. The request came from the Garda Divisional Headquarters at Listowel and arose as the result of an enquiry from a Garda Martin Walsh of Ronanstown in Dublin. Garda Walsh was then investigating a criminal sexual offence in Clondalkin in Dublin which was alleged to have occurred on 16th March, 1999.

Arising out of the enquiry Garda O'Connor went to Marconi Avenue in Ballybunion on 25th March, 1999. He met with the first and second named plaintiffs, Alan and Phyllis Gray, who were walking close to their home. Garda O'Connor had a conversation with Mr. and Mrs. Gray who confirmed that Mr. O'Donoghue was then residing with them in their family home.

4. The enquiry from Garda Martin Walsh was recorded in a book called an "Occurrence Book" which was maintained at the Garda Divisional Headquarters at Listowel.

Garda Daniel O'Connor recorded the result of his enquiries about James O'Donoghue by way of a written report which was transmitted to a Garda officer called a Collator, who was based in Tralee Garda Station. The report contained details of the convictions, former addresses and a description of James O'Donoghue and the opinion of Garda O'Connor, (a), that James O'Donoghue intended to remain "...in Ballybunion permanently as he claims he cannot go back to Dublin ..." and, (b), that he would probably re-offend.

On 8th April, 1999 Garda John Keane, who was a Collator based at Tralee Garda Station, recorded the details contained in Garda O'Connor's report in a typed document, (the Collator's Report), which he sent to the Chief Superintendent in Tralee with a copy to the Superintendent in Listowel.

A document known as a "Collator's Bulletin" was then issued and circulated to all of the Garda stations in the Kerry Division. This document contained all of the details relating to James O'Donoghue which had been included in Garda O'Connor's earlier report and greater detail of the nature of and circumstances surrounding his earlier offences.

It was acknowledged by all of the relevant Garda witnesses who testified in these proceedings that the contents of, (i), the "Occurrence Book", in the Garda Divisional Headquarters in Listowel, (ii), the Report submitted to the Collator by Garda O'Connor, (iii), the Collator's Report and, (iv), the Collator's Bulletin were all sensitive, confidential documents to which only members of An Garda Síochána had access.

It was also acknowledged by the Garda witnesses that members of An Garda Síochána were advised and were aware that the contents of those documents should not under any circumstances be disclosed to members of the public, members of the media or anyone other than authorised Garda officers.

5. On Sunday, 4th April 1999 Detective Garda O'Neill who was then the sole Detective Garda attached to Ballybunion Garda Station visited to the Gray family home at Marconi Avenue. He was accompanied by Detective Garda Queally who was a detective then attached to Listowel Garda Station.

Conflicting evidence was adduced in these proceedings by Francis Gray, (the third named plaintiff), and Det/Gardaí O'Neill and Queally as to what occurred during that visit. Francis Gray alleged that when he answered a knock on the door of the house Det/Garda O'Neill immediately assaulted him by standing on his foot and pushing him back into the house. He said that he was then told to leave the house whilst the Gardaí spoke to James O'Donoghue, (who was then located in the sitting room). Det/Gardaí O'Neill and Queally denied this allegation and gave a different account of what occurred.

6. Alan and Phyllis Gray had a conversation with James O'Donoghue between the 3rd April and the 6th April 1999 during which they told him that the Gardaí had spoken to them and that they wished him to return to Dublin. He agreed to do so. Consequently Mr. and Mrs. Gray drove him to Dublin on Tuesday, 6th April 1999. They returned to Ballybunion arriving at approximately 2.00 pm on Wednesday, 7th April 1999.

Immediately after their return they received a number of telephone calls from local journalists and other persons enquiring as to whether or not James O'Donoghue was resident in their home. Some journalists indicated to them that his presence there would be disclosed in the newspapers the following day.

The plaintiff's daughter Lucy Gray who was then sixteen years received unpleasant and distressing telephone calls from her contemporaries and others. The calls related to the presence of James O'Donoghue within her home. Lucy Gray, whose evidence I accept without qualification, was affected adversely by these calls and by the fact that her friends appeared to abandon her as a result of the disclosures relating to James O'Donoghue.

The first and second named plaintiffs visited Ballybunion Garda Station and advised the Gardaí at the station that they had returned James O'Donoghue to Dublin.

Mrs. Phyllis Gray was very distressed at the prospect that local and other newspapers might disclose details of James O'Donoghue's criminal history and the fact that he had been accommodated in the Gray family home. She became very distressed at the Garda Station and was interviewed by Sergeant McCarthy.

Sergeant McCarthy was sympathetic to her but advised her that since there was local media interest in James O'Donoghue's presence in the area, there was a correspondingly high probability that details of his location would be published in the newspapers.

Sergeant McCarthy said that he got the impression from Mrs. Phyllis Gray that she wished to stay in Ballybunion and felt that she might be able to do so provided that details of the presence of James O'Donoghue within the Gray family home were not published in the local newspapers.

7. The North Kerry edition of The Kerryman newspaper dated Friday, April 9th, 1999 contained an article on its front page by journalist named Conor Keane. It was published and circulated on the streets of Ballybunion, (and elsewhere in Kerry), on the evening of the Wednesday, 7th April, 1999.

Mr Keane's article was headed "Garda concern over sex pervert" and stated that the Gardaí in North Kerry were "uneasy about the presence in Ballybunion of a serial violent sex offender...who has taken up temporary residence in the resort ..." The article continued:

"However, it is understood that he is expected to leave this weekend.

The Gardaí are not commenting in any way to the media about the case but the Kerryman understands that they only became aware of the man's presence in Ballybunion as a result of routine Garda enquiries following the rape and sexual assault of two young girls in the Clondalkin area of Dublin.

The man has only recently been released from jail. Garda enquiries into the whereabouts of known sex offenders following the Clondalkin sex attacks resulted in the discovery that the repeat offender was staying in Ballybunion."

Conor Keane, the journalist who wrote the article, testified in these proceedings. He stated that he wrote the article because he received an anonymous telephone call from a woman who claimed to be a concerned parent in Ballybunion. She told him that a serious

sex offender was living in the town. Mr Keane said that he had verified the caller's information by speaking to a number of people.

When asked if he had spoken to a member or members of An Garda Síochána he refused to answer. He stated that he could not do so because his answer might identify the source or sources of his information. He claimed that he had a duty to protect his sources at all times.

When asked if he could exclude members of the Gardaí as a source or sources of his verification he refused to do so, again claiming that he had an obligation not to disclose the source of his information.

When asked if the words which he had published stating that "Gardaí are not commenting in any way about this case" were true, he answered "Yes".

When asked "did they ever comment to you?" He replied "I can't answer that question".

8. On the 8th and 9th of April, 1999 and on successive days thereafter, a series of articles appeared in local and national newspapers. Many were published under such headlines as "Get rapist out of town" and "Resident rapist feared by families".

The plaintiff and members of their family were confronted by journalists and photographers who converged upon their home and subjected them to very unpleasant and intrusive behaviour. Newspaper accounts persisted continuously between the 9th and 16th April.

By the 12th April 1999 the plaintiffs and their family had returned to Dublin permanently.

9. For six months the plaintiffs and their family were provided with overnight "bed and breakfast" accommodation in Dublin. In consequence the plaintiffs and their five children were required to sleep in a single bedroom each night and to leave the premises no later than 10.00 am the following morning. They were permitted to return to the premises after 5.00 pm. During the intervening period they were confined to sit in their family motorcar or to walk within Dublin city. During daytime the family survived on "takeaway" meals and "fast food" restaurant facilities.

They were then accommodated for a further six months in a two-roomed apartment in North King Street. Subsequently they were provided with a Local Authority house in North Circular Road where they are now resident.

10. Phyllis Gray suffered from severe stress arising out of the events which occurred in Ballybunion in March and April of 1999. As a consequence she suffered a moderate to severe depressive syndrome, experienced intermittent suicidal ideation and made one suicide attempt as a consequence.

After initial treatment in the psychiatric section of the Mater Hospital in Dublin she was treated with anti-depressant medication. She suffered on-going symptoms for the time including a relapse which required further medication and her treating psychiatrist was of the view that "a significant emotional scar will remain which will render her vulnerable to further depressive episodes."

She was diagnosed as suffering from Post Traumatic Stress which had reduced in intensity and had finally resolved by early 2006. She has now successfully discontinued to her medication and can be considered to have recovered from the effects of the events which occurred in Ballybunion in 1999.

11. Superintendent Michael Maher, who is the Superintendent District Officer in Listowel, was the appropriate officer to whom enquiries from the media ought to have been directed in April 1999. Testifying in these proceedings he said that no journalist or other member of the media had contacted him in relation to the presence of James O'Donoghue in Ballybunion in 1999. He had not disclosed to any member of the media or to any unauthorised person that James O'Donoghue was resident in Ballybunion at the relevant time. He also said that he was not aware that any other member of the Garda Síochána in the Kerry area had made such a disclosure and he did not believe that they had done so.

A member of the Gardaí who disclosed to an unauthorised person information which came into his or her knowledge in the course of Garda duty, (and which was not otherwise available to members of the public), would be acting in breach of the provisions of the Garda Síochána (Discipline) Regulations 1989.

He stated that it was necessary for the Gardaí to take "sensible precautions" when they became aware that potentially dangerous sex offenders were resident in particular areas. These precautions included surveillance of the offender and constant monitoring of his behaviour and whereabouts.

He stated that it would not be appropriate for Gardaí to notify neighbouring residents of the location of convicted sex offenders. He said that this might give rise to the risk of hysteria in the area concerned and lead to "vigilantism". Disclosure to neighbours might result in "... a bigger crime on your hands than what you were trying to prevent..."

Gardaí were concerned to ensure the safety, (a), of the offender and, (b), of the other occupants of the house where the offender was resident.

### **Assault and Battery**

It is claimed that on the 4th April, 1999 Detective Gardaí O'Neill and Queally unlawfully entered the plaintiffs' home in Marconi Avenue and assaulted and battered Francis Gray within the house. It is claimed that they also threatened James O'Donoghue with physical violence if he did not leave Ballybunion. I found the evidence of the three witnesses who were relevant to this occurrence to be unsatisfactory and inconclusive.

I accept the evidence of Mrs. Phyllis Gray that she was present in the family home and was in an upstairs bedroom when the Gardaí arrived. However she stated that she did not witness the events which were, (a), complained of by Francis Gray and, (b), denied by the two Gardaí.

Having regard to the overall quality of the evidence adduced in relation to this occurrence I am not satisfied that the plaintiffs have discharged the onus which lies upon them of proving on the evidence and on the balance of probabilities that Francis Gray was subjected to an assault or battery in his family home on the 4th April, 1999.

### **Negligence**

In *Ward v. McMaster* [1988] I.R. 337 the Supreme Court (McCarthy J.), identified the duty of care owed by public bodies to ordinary members of the public. The Court cited, (at p.347), with approval the dicta of Wilberforce L. J. in *Anns v. Merton London borough* [1978] A.C. 728, (at p 751 and 752), in which a "two stage test" was applied by the Court in relation to claims for damages for such alleged negligence. McCarthy J. observed, (at p.349) that:

"I prefer to express the duty as arising from the proximity of the parties, the foreseeability of the damage, and the absence of any compelling exemption based upon public policy. I do not, in any fashion, seek to exclude the latter consideration, although I confess that such a consideration must be a very powerful one if it is to be used to deny an injured party his right to redress at the expense of the person or body that injured him."

In *Hanahoe v. Hussey* [1998] 3 I.R. 69 the High Court (Kinlen J.) considered a claim that the publicity attendant upon the search of a solicitors' offices was procured by means of a member or members of An Garda Síochána disclosing or "leaking" sensitive information to journalists, (including the fact that a warrant had been issued permitting the Gardaí to conduct a search of the plaintiffs' premises).

The Court noted (at p. 105) that the State respondent in that case had, in their submissions, acknowledged that "disclosure emanating from careless conduct on the part of one or more Gardaí would amount to negligence under the principles set out in *Ward v. McMaster* [1988] I.R. 337" and endorsed that view. Finding that the plaintiffs had suffered damage by the result of the negligence of the Gardaí the Court awarded the plaintiffs damages.

The proximate relationship between the State and those of its citizens who may be affected by the by the State's procurement of sensitive and confidential information is undeniable. That relationship can give rise to a duty of care owed by the State to persons who may be adversely affected by the disclosure or publication of such information. The negligent disclosure of sensitive and confidential information by Gardaí to journalists or other members of the media will give rise to a cause of action for damages for negligence if the disclosure results in reasonably foreseeable loss, damage or injury to a person affected by the disclosure.

In the instant case the following facts have been proved by way of evidence:

1. that the journalist Conor Keane received an anonymous telephone call from a woman who provided him with limited information indicating that a sex offender was living in Ballybunion.

2. that Mr. Keane spoke to certain persons for the purpose of verifying the information which he had received.

3. that Mr. Keane received the following detailed information from the persons to whom he spoke:

- (a) confirmation that James O'Donoghue was resident in Ballybunion,

- (b) information that the Gardaí "only became aware of ... (James O'Donoghue's).. presence in Ballybunion as a result of routine Garda enquires following the rape and sexual assault of two young girls in the Clondalkin area of Dublin"

- (c) information that James O'Donoghue "has only recently been released from jail" and

- (d) information that James O'Donoghue was "expected to leave this weekend",

4. this was the information which formed the basis of the article which Conor Keane wrote and which was published in the North Kerry edition of The Kerryman dated Friday April 9th ,1999.

5. that the only written record of Garda enquiries undertaken arising out of a rape in Dublin in March 1999 was an entry in the "Occurrence Book" maintained in the Garda Divisional Headquarters at Listowel, in Co. Kerry and dated the 25th March, 1999.

6. that the other details concerning the criminal and other history associated with James O'Donoghue were recorded in, (i), Gda O'Connor's Report, (ii), the "Collator's Report", and,(iii), the "Collator's Bulletin"

7. that only authorised members of An Garda Síochána had access to the documents identified in 4 and 5 above and

8. that the enquiry from Garda Martin Walsh on 25th March, 1999 related to the investigation of a sexual offence in Dublin in Clondalkin on the 16th March, 1999 (confirmed by Garda Daniel O'Connor in evidence).

It has been suggested on behalf of the defendants that a local hotelier, (Mr. Quilter), or local children attending a "roller-disco" within Mr. Quilter's premises or a prominent local County Councillor might have disclosed the relevant information to Mr. Keane. I reject that suggestion *inter alia*, because, at the time when Mr. Keane's article was published, the details contained within Mr. Keane's article were not known to Mr. Quilter or to the children who attended at his "roller-disco" or to the relevant County Councillor.

The precise information which was published in Mr. Keane's article (and in particular the reference to "routine Garda inquiries following the rape... in the Clondalkin area of Dublin...") was information which was only available and accessible to members of An Garda Síochána.

Mr. Keane, in evidence, refused to exclude members of An Garda Síochána as the source of the information. He sought to invoke a questionable privilege in support of his refusal.

Having regard to the facts which I have found to be proved and to Mr Keane's refusal to exclude members of An Garda Síochána as the source of his information, I am satisfied on the evidence and on the balance of probabilities that the information and verification which gave rise to the publication of Mr. Keane's article came from a member or members of An Garda Síochána.

This Court is acutely conscious of the dilemma facing the officers of An Garda Síochána when circumstances arise such as those which arose in this case. The presence of a dangerous convicted rapist within any community will be a genuine and legitimate source of concern for local members of An Garda Síochána. When that occurs it will be reasonable for Gardaí to take appropriate steps to ensure that such persons do not pose a risk to the public and in particular to children.

Mr. Maher S.C. on behalf of the State argued that there may be a duty upon Gardaí, in such circumstances, to warn potential victims and their family members of the presence of an offender in their neighbourhood. In support of his contention he relied upon a decision of the Ontario Court, (General Division), in the case of *Doe v. The Board of Commissioners of Police for the Municipality of Metropolitan Toronto* 160. D.L.R. (4th), 1998 at 697.

In that case a number of women were used as bait without their knowledge or consent in order to attract a predator whose specific identity was unknown to the police at the time but whose general identity was known. The police made the decision not to warn the intended victims. The reason for the decision was that their investigation would have been jeopardised.

The Court found that, having decided not to warn the plaintiff, the police had taken no steps to protect her although they knew her to be at risk of an almost certain attack. The Court held that the police had failed to take reasonable care for the plaintiff and had denied her the opportunity to take steps to protect herself from attack. For that reason the Court held that the police were liable to the plaintiff in damages.

The facts of the instant case are quite different. It was evident, from the evidence of Superintendent Maher, that, on the particular facts of this case, it would have been inappropriate for Gardaí to warn neighbouring residents of the presence of James O'Donoghue in Ballybunion. He stated that such a course could have resulted in the commission of serious criminal offences and should have been avoided.

He stated that, as a general principle, it is inappropriate for Gardaí to disclose the location of convicted sex offenders to journalists or to other organs of the media.

He identified what he called "reasonable precautions" which should be undertaken by the Garda Síochána in order to minimise the risk to potential victims of the proximity of offenders like James O'Donoghue. He spoke of the need for Gardaí, in such circumstances, to acquaint themselves with the offender and to place him under continuous surveillance, to monitor his movements and to make him aware of their presence.

He was at pains to stress the need for prompt and sensitive handling of information of the type which came into the possession of An Garda Síochána in relation to the presence of James O'Donoghue in Ballybunion.

I accept the evidence of Superintendent Maher on this issue. He identified a careful, sensible and appropriate policy adopted by senior officers in An Garda Síochána before 1999 which was to be applied when convicted sex offenders became resident in particular areas.

That policy could, (and should), have been successfully applied to the presence of James O'Donoghue in Ballybunion in 1999. Local Gardaí, at the relevant time, knew, or could, upon enquiry have discovered, that James O'Donoghue would be resident in the Gray family home for a very short period, (estimated to be no more than a few weeks). It was a short-term problem which should have been resolved by the application of the correct and prescribed Garda policies.

Although some steps were taken in relation to the matter which were consistent with stated Garda policy, other steps taken by a member or members of the Garda Síochána were in clear breach of Garda policy and of the provisions of the Garda Síochána, (Discipline), Regulations 1989.

Those steps were also in breach of the duty of care which the State owed to the plaintiffs not to unnecessarily expose the plaintiffs to the risk of foreseeable damage and injury resulting from the negligent disclosure of confidential information procured by and within the possession of the State.

The plaintiffs have suffered distress, upset and inconvenience as a result of the State's negligence and the second named plaintiff, Mrs Phyllis Gray has suffered personal injury as a consequence.

It follows that the plaintiffs are entitled to recover damages from the State.

### **The right to Privacy**

It is also claimed that since the State, through the agency of members of the Gardaí, violated the plaintiffs' constitutionally protected right to privacy and to the peaceful enjoyment of their home, by unlawfully disclosing confidential and sensitive information to members of the media. This, it is contended, caused the plaintiffs to be subjected to abuse, harassment and intimidation of such a character that they were obliged to leave their home in Ballybunion permanently.

In *Kennedy and Ors v. Ireland and the Attorney General* (1987) 1 I.R. 587 the High Court, (Hamilton P.), having adopted an earlier definition of the right to privacy as "the right to be let alone" continued (at p. 592);

"the right to privacy is not an issue, the issue is the extent of that right or the extent of the right to be let alone. Though not specifically guaranteed by the Constitution, the right of privacy is one of the fundamental personal rights of the citizen.... It is not an unqualified right. Its exercise may be restricted by the constitutional rights of others, by the requirements of the common good and it is subject to the requirements of public order and morality."

That case concerned deliberate, conscious and unjustifiable electronic eavesdropping by agents of the State upon private telephone lines used by the plaintiffs. The Court found that the plaintiffs' rights had been violated and awarded damages.

The violation of the plaintiffs' rights in *Kennedy* was clear. It was caused by deliberate and reprehensible intrusions, by agents of the State, into the private lives and conversations of the plaintiffs without justification. The intrusions included electronic interference by servants of the State who listened to the plaintiffs' conversations, recorded them, transcribed them and made transcripts of the conversation available to other persons.

The facts of the instant case are different. It is true that the peaceful enjoyment by the plaintiffs of their home was disturbed and their privacy was invaded. It is true that they suffered harassment and intimidation and distress and inconvenience as a result of the wrongful disclosure by members of the Gardaí of confidential information about a guest within their home.

However, it is contended on behalf of the State that the plaintiffs' right to privacy in this case was necessarily restricted by the need to vindicate the constitutional rights of others and by the requirements of the common good.

In *R v. Chief Constable of the North Wales Police and Others* [1999] 1 Q.B. 396, the Court of Appeal in England considered an appeal by a married couple who had been released from prison having served long sentences for the commission of sexual offences against children.

By reason of adverse publicity in the local press and angry response from neighbours they had been moved from one location to another on a number of occasions until they finally obtained accommodation in a caravan in an area where they intend to remain. A police officer who had filed a report indicating that the applicants posed a threat to large numbers of children (who frequented the caravan site during holiday periods), met with the applicants and tried to persuade them to move on.

The police request was made pursuant to advice contained within a police policy document intended to address the risk of re-offending by convicted paedophiles. The document indicated that information acquired by the police should be released on a "need to know" basis to protect potential victims. The police officer showed the owner of the caravan site material from local press relating to the applicants' conviction and they were told by the site owner to leave the site.

They sought judicial review by way of declarations that, (a), the policy and, (b), the decision to inform the caravan owner of their convictions, were unlawful.

The Court of Appeal held *inter alia*, that although the convictions of the applicants had been in the public domain, the police could only publish the information if it was in the public interest to do so and that to disclose the identity of paedophiles to members of the public was a highly sensitive decision which should only be taken when there was a pressing need to do so.

However, it was held that since the police had not been motivated by any improper considerations and since it was impossible to categorise their decision as irrational, (a), the policy of the police and, (b), the decision were not unlawful.

In the instant case it has been established by way of evidence and on the balance of probabilities a member or members of An Garda Síochána negligently disclosed confidential and sensitive information to an organ of the media arising out of a request from a journalist for verification of information which was already in the possession of the journalist.

On the evidence it is unlikely that the information would have been published without the verification which was provided. In the light of the evidence of Superintendent Maher I am satisfied also that the disclosure of the information to Conor Keane cannot be excused by reason of any public policy consideration such as the need to protect the constitutional rights of others or the interests of the common good.

It follows that I am satisfied that the unlawful and negligent disclosure by a member or members of An Garda Síochána of the relevant information to Mr. Keane comprised a violation of the constitutionally protected right enjoyed by each of the plaintiffs to privacy and the peaceful enjoyment of their home.

It has been contended on behalf of the defendants that the State is not vicariously liable for the negligent or unlawful acts or omissions of members of An Garda Síochána in circumstances such as those which have given rise to these proceedings. I do not accept that contention.

The liability of the State for the tortious acts and omissions of its servants and agents is well settled. Liability can be avoided where a servant or agent is acting outside the scope of his or her employment. However, the civil wrong which has been established in this case was a wrong committed by a servant and agent of the State. The wrong was the unlawful disclosure of confidential and sensitive information procured by the State. The duty to keep that information confidential rested with the State.

The State is vicariously liable in such circumstances for the negligence of its servants and agents and for any breach by its servants and agents of the constitutionally protected rights of its citizens arising out of that negligence.

### **Damages**

The plaintiffs suffered distress, upset and inconvenience as a result of the unlawful acts of the servants and agents of the State.

The most severe upset, distress and inconvenience to which the first named plaintiff, Alan Gray was subjected occurred during the first six months after his return from Kerry to Dublin. For a subsequent six months he was similarly inconvenienced and distressed. During that time and for sometime thereafter he was affected by his wife's illness arising out of the psychological and psychiatric damage which she suffered as a result of the events which are the subject of these proceedings. With the passage of time, the stress, anxiety, distress and inconvenience suffered by the first named plaintiff reduced and ultimately resolved.

Accordingly, the first named plaintiff Alan Gray is entitled to the sum of €15,000.00 to compensate him for the upset, distress, inconvenience and disruption of his life which resulted from the unlawful actions of the State in March and April of 1999.

I am satisfied that the third named plaintiff Francis Gray suffered a certain amount of inconvenience and upset as a result of the events of April of 1999. He sustained most disruption and inconvenience during the six months after his return from Kerry to Dublin. He is entitled to recover the sum of €5,000.00 to compensate him for that inconvenience, upset and disruption.

The second named plaintiff Phyllis Gray was the person who suffered most as a result of these events.

She suffered a moderate to severe depressive syndrome, had intermittent suicidal ideation and made a suicide attempt as a consequence. She required treatment, (including anti-depressant medication), in the psychiatric section of the Mater Hospital in Dublin. She had ongoing symptoms including a relapse which required further medication. She was rendered vulnerable to further depressive episodes arising out of Post Traumatic Stress which did not finally resolve until early 2006.

Mrs. Phyllis Gray was the "driving force" behind the decision of the Gray family to move to Kerry in 1995. I accept without qualification her evidence that she was very reluctant to permit James O'Donoghue to reside in the family home and agreed to do so only for a very short period of time. I accept also that it was her intention that she and her family should remain in Kerry permanently and that her husband had agreed to give effect to that intention.

I am satisfied on the evidence and on the balance of probabilities that by reason of what occurred in March and April of 1999 the hopes and expectations of Mrs. Phyllis Gray that she and her family could live a peaceful life in Kerry were frustrated and she was forced to return to a life which she did not wish to lead in Dublin.

On the evidence she has overcome very substantial obstacles and has adapted to her changed circumstances. However, she suffered very considerably in order to do so and overcame serious personal injuries and in particular Post Traumatic Stress and psychological injury of a severe nature.

By virtue of her own resolve she has successfully overcome her injuries. They reduced in intensity and have finally resolved over a period of more than six years.

In the light of the serious injuries sustained by Mrs. Gray and of her ongoing symptoms and having regard to the substantial inconvenience, disruption and upset which she has endured, I am satisfied that she is entitled to recover damages in the amount of €50,000.00 from the defendants.