

THE HIGH COURT

[Record No. 2014/385 MCA]

**IN THE MATTER OF A CONTEMPT OF COURT AND IN THE MATTER OF AN APPLICATION PURSUANT TO ORDER 44 OF THE RULES
OF THE SUPERIOR COURTS 1986**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

INDEPENDENT NEWS AND MEDIA PLC, CLAIRE GRADY AND STEPHEN RAE

RESPONDENTS

JUDGMENT of Ms. Justice Iseult O'Malley delivered the 24th day of April 2015.

Note: Only the "Summary and conclusion" of this judgment may be published until further order.

Summary and conclusions

In order to avoid the creation of any fresh prejudice to the pending criminal trial, the body of this judgment may not be reported upon in any detail until further order, which will occur after the trial. This section of the judgment may be reported and will be placed upon the Courts Service website, on the basis that the court has dealt with the trial of a criminal charge in open court and will be pronouncing its verdict in open court.

In this application the Director of Public Prosecutions seeks orders of attachment, committal and sequestration as against the respondents. The basis for the application is the publication of certain material relating to an individual who is currently awaiting trial by jury in the criminal courts.

Having considered the evidence, submissions and relevant authorities I am satisfied beyond reasonable doubt that the respondents have committed the offence of contempt of court. I reach this conclusion because I am satisfied that the publication, which was made after the accused had been charged and returned for trial, gratuitously identified and associated the accused person with particular types of behaviour relevant to the charges to be considered by the jury.

I have not accepted the argument put forward by the defendants that the lapse of time between publication and trial means that there is no risk to the fairness of the trial. The authorities on this issue are clear – such lapse of time may be relevant where an accused seeks to prohibit a trial on the basis of prejudicial publicity, but has no bearing on the question of contempt. The relevant date here is the date of charge, and the publication here undoubtedly occurred after the charges were brought.

I have also not accepted the case made that other persons have published material relevant to the criminal charges without action being taken by the Director. This is primarily because it is no defence to a criminal charge to say that other persons have committed similar offences and have not been charged, unless there is evidence of *mala fides* on the part of the prosecutor.

I have accepted that there is no evidence of intention on the part of the respondents to interfere with the course of justice. However, on the law as it stands there is no requirement to prove intent for this offence.