THE HIGH COURT

[2015 No. 591 J.R.]

BETWEEN

INDEPENDENT NEWSPAPERS (IRELAND) LIMITED, SUNDAY NEWSPAPERS LIMITED, IRISH EXAMINER LIMITED, LANDMARK DIGITAL LIMITED T/A BREAKINGNEWS.IE AND THE NATIONALIST AND LEINSTER TIMES LIMITED T/A THE KILDARE NATIONALIST

APPLICANTS

AND

I. A.

RESPONDENT

JUDGMENT of Mr. Justice McDermott delivered on the 16th day of February 2018

1. The issue in this case concerns the lawfulness of reporting restrictions imposed by the Circuit Court in respect of the identification of an accused who pleaded guilty to offences contrary to the Criminal Law (Rape) Amendment Act 1990 and the Criminal Law (Sexual Offences) Act 2006.

2. Leave to apply for judicial review was granted to the applicants on the 27th October, 2015 (Noonan J.) for an order of *certiorari* of a decision by Her Honour Judge Mary Ellen Ring (as she then was) on 31st July, 2015 whereby she refused to lift reporting restrictions on a sentencing hearing which had been continued on 21st July, 2014 and further continued on 31st October, 2014. A declaration was also sought that there was no basis in law to restrict the hearing of a criminal trial in public whether by restricting publication of the name or identity of the respondent or otherwise on the 31st October 2014. It should be noted that the continuation of the order of 21st July 2014 after 31st October 2014 was not specifically addressed by the court on that date nor was the court invited to do so.

3. The respondent was born on 11th February, 1994. On 21st October, 2011 when aged seventeen he appeared before the Dublin Children's Court charged with a number of sexual offences alleged to have been committed between 23rd February, 2010 and 25th March, 2010 when he was sixteen. He was sent forward for trial. On 24th February, 2014 he pleaded guilty to one charge of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990 and two counts of attempted defilement of a child contrary to s. 3 of the Criminal Law (Sexual Offences) Act 2006. The case was adjourned for sentence.

4. At the time he committed these offences the respondent had just turned sixteen years of age. The injured party was born on 13th April, 1995 and was therefore fourteen years and ten months at the time of the events. The respondent at all material times claimed that he believed that she was older because her mother had falsified her age for social welfare purposes. The accused maintained that the events had taken place on a fully consensual basis. In those circumstances proof was sought of the injured party's age which was only produced on the eve of the trial. At that stage the applicant entered guilty pleas on the basis that consent was impossible as a matter of law by reason of the girl's age. Thus both the injured party and the accused were minors at the time the events took place. The offences involved a group of friends of roughly the same age including the injured party and two other accused who were part of the same social circle as the respondent. The learned judge made a ruling that since lack of consent was not in law an element of the attempted defilement offences evidence suggesting lack of consent in relation to those charges was inadmissible. The court adjourned sentencing and sought the assistance of the Probation and Welfare Service which prepared reports for 31st October, 2014.

5. When initially charged before the Children's Court, the respondent, because he was a minor, was the subject of a statutory restriction on his identification as an accused person. In addition, because he was charged with a number of rape offences, as a matter of law unless convicted his identity could not be revealed in any report of the proceedings.

Legal Principles

6. Article 34 of the Constitution provides that:-

> "Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public."

7. Section 93(1) of the Children Act 2001 as substituted by s. 139 of the Criminal Justice Act 2006 provides:-

> "93.(1) In relation to proceedings before any court concerning a child—
>
> (a) no report which reveals the name, address or school of any child concerned in the proceedings or includes any particulars likely to lead to the identification of any such child shall be published or included in a broadcast or any other form of communication, and
>
> (b) no still or moving picture of or including any such child or which is likely to lead to his or her identification shall be so published or included."

Under s. 93(4) it is an offence to broadcast or communicate matters referred to in section 93(1). The offence is more particularly described by reference to s. 51(3)-(6): upon the publication of any such material in a newspaper or periodical, it's proprietor, editor or publisher shall all be guilty of an offence. Section 93(6) provides that the provisions of s. 93 will not affect other statutory provisions concerning the anonymity of an accused or the law related to contempt of court. A child for the purpose of the section is a person under the age of eighteen years (section 3).

8. Section 8 of the Criminal Law (Rape) Act 1981 insofar as it is relevant provides:-

> "(1) After a person is charged with a rape offence no matter likely to lead members of the public to identify him as the person against whom the charge is made shall be published in a written publication available to the public or be broadcast except—

(a) ….

(b) after he has been convicted of the offence."

"A rape offence" is defined by s. 1(1) of the Act as "any of the following, namely, rape, attempted rape, aiding and abetting counselling and procuring rape or attempted rape and incitement to rape". This definition was amended by s. 12 of the Criminal Law (Rape) (Amendment) Act 1990 which substituted the following definition for "a rape offence":-

"any of the following, namely, rape, attempted rape, burglary with intent to commit rape, aiding, abetting, counselling and procuring rape, attempted rape or burglary with intent to commit rape, and incitement to rape and, other than in sections 2(2) and 8 of this Act, rape under section 4, attempted rape under section 4, aiding, abetting, counselling and procuring rape under section 4 or attempted rape under section 4 and incitement to rape under section 4".

The respondent was not convicted of any of these offences.

9. Under s. 6 of the Criminal Law (Sexual Offences) Act 2006 the definition of "rape offence" was extended to include a defilement or attempted defilement offence under s. 3. Thus a person accused of an attempted defilement contrary to s. 3 has a right to anonymity under the terms of s. 8(1) of the 1981 Act as amended. Upon conviction that protection no longer applies. However, circumstances may arise in which it is appropriate to continue a restriction if to reveal the identity of the accused would also result in the identification of a complainant (*K.L. v. Independent Star* [2011] 2 ILRM 272).

10. The protection of a complainant's anonymity is of somewhat wider application than that of an accused. It extends to offences which are categorised as "sexual assault offences" which include any rape, aggravated sexual assault or sexual assault offence under s. 1 of the 1981 Act as substituted by s. 12 of the 1990 Act. This protection is extended to cover an offence of defilement or attempted defilement under s. 6(3) of the 2006 Act.

11. A person accused of sexual assault does not have the same right to anonymity when charged or during the course of a trial. However, it may be that it becomes necessary to ensure that an accused's anonymity is preserved in order to protect the right to anonymity of the complainant in such a case.

12. In the case of proceedings against a child s. 94 of the 2001 Act also provides for the exclusion of all persons from the hearing save for officers of the court, the parent or guardian of a child concerned, persons directly concerned with the proceedings, bona fide members of the press and such other persons as the court may in its discretion permit to remain (s. 94 of the 2001 Act).

13. In addition, a trial judge has a constitutional duty to maintain the fairness of the trial and in doing so to make such orders as are appropriate to protect the rights of the complainant and an accused person to the protection of their identities as prescribed by law. When initially charged the respondent was a minor. He was prosecuted in respect of a number of sexual offences. Therefore, there was a statutory prohibition on his identification under s. 93 of the 2001 Act as substituted by s. 139 of the 2006 Act. That statutory protection continued until his eighteenth birthday. It did not require the making of any order. The provision is self-executing although the learned trial judge proceeded on the basis that an order of like effect was made from the time the accused was initially charged. A breach of the section is a criminal offence. In addition, there was a statutory prohibition on revealing the identity of an accused who is charged with a "rape offence" unless he is convicted of same. This protection applied to the charge of attempted defilement laid against the respondent but not in respect of the count of sexual assault.

14. The offences occurred in or about March 2010. The respondent was charged before the Children's District Court on 21st October, 2011 when aged seventeen. He was then returned for trial to the Dublin Circuit Criminal Court on 4th December, 2012 to facilitate the giving of evidence by video link in a Dublin court. He was by this stage eighteen years old. The matter was adjourned from time to time from 11th December, 2012 and during 2013 to facilitate the obtaining of a birth certificate for the injured party from her country of origin. The age of the victim was in issue. A trial date was set for 24th February, 2014.

15. On the trial date the respondent entered pleas of guilty to one count of sexual assault contrary to s. 2 of the Criminal Law (Rape) Amendment Act 1990 and two counts of attempted unlawful sexual intercourse with a minor or attempted "defilement" contrary to s. 3 of the Criminal Law (Sexual Offences) Act 2006. His two co-accused also pleaded guilty. These pleas were accepted shortly before the commencement of the trial but had been offered some two years previously. The sentencing of the respondent was adjourned until 21st July, 2014. Members of the press attended court on this occasion. Evidence was heard by the court and the case was adjourned until 31st October, 2014. The court sought the assistance of the Probation and Welfare Service and a report on the accused before finalising sentence. The court imposed a sentence of two years imprisonment suspended for a period of three years from that date.

16. The order made by the court on 21st July, 2014 provides:-

"… the court having heard the evidence tendered and the submissions on behalf of the respective parties and on the further application of counsel for the defence for an order continuing the reporting restrictions the court doth order that the said matter be adjourned to Dublin Circuit Criminal Court sitting at Court 5 CCJ at 11:00 on the 31/10/2014 before her Honor Judge Mary Ellen Ring for sentence and that reporting restrictions do continue.".

The order clearly reflects the fact that reporting restrictions applied before 21st July, 2014 and had been continued from the date of the plea which had been entered on 24th February.

17. The applicant submits that as of 24th February, 2014, the respondent was a convicted person and no longer entitled to the benefit of the protection of his identity under s. 8 of the 2001 Act. It is further submitted that he was clearly no longer entitled to any protection under s. 93 of the Children Act since he was now twenty years old.

18. On 31st October and 1st November, 2014 various articles appeared in publications owned and operated by the applicants concerning the respondent's conviction and sentence. The fourth named applicant admits to a publication online only. The respondent's solicitors wrote to each of the applicants complaining about these publications as breaches of the order restricting the identification of the respondent as the accused in the case on the basis that the order restricting publication of 21st October by the learned trial judge had been continued until 31st October and continued to apply thereafter, no application having been made to lift the order.

19. Following the imposition of sentence, accounts which were incorrect in significant details were published by the applicants alleging offences against the respondent of a far more serious nature than those to which he had pleaded guilty. In response, the respondent instructed his solicitors to issue defamation proceedings against each of the applicants. This of course necessitated the use of his name in the proceedings. If the matter proceeds to trial, it will be necessary for the respondent to give evidence in open court before a jury. Although there have been occasions upon which applications have been made in civil proceedings for the granting of anonymity to plaintiffs, no such application has been made in these proceedings. The threshold for the granting of such an application is very high.

20. The applicants did not provide the court with a copy of the order of conviction and sentence made on 31st July, 2014. The applicants claim that when sentence was imposed no reference was made to the reporting restriction which had been continued until that date in accordance with the order made on 21st July. No further order was made restricting publication of the proceedings or the identification of the accused or the complainant on 31st October but the learned trial judge was later satisfied that it continued in force because the court had not lifted the reporting restrictions nor had any application been made to the court to do so.

21. The court is satisfied that the criminal trial of the respondent concluded on the imposition of sentence on 31st October. There was no appeal by the respondent against the severity of the sentence and no appeal was taken by the Director of Public Prosecutions on the basis that the sentence imposed was unduly lenient. These criminal proceedings were therefore at an end (see *A. v. the Governor of Arbour Hill Prison* [2006] 4 I.R. 88: *Foley v. the Governor of Portlaoise Prison* [2016] IECA 411 and *Clarke v. the Governor of Mountjoy Prison [*2016] IEHC 278).

After Conviction and Sentence

22. The applicants state that each of them proceeded on the understanding that in accordance with the provisions of s. 8 of the Criminal Law (Rape) Act, 1981 as amended they were free to publish the name of the respondent at the conclusion of the sentencing hearing on 31st October, 2014. He was now a convicted person who had been sentenced. He was no longer a child.

23. A number of articles were published by the applicants in print and on line. The respondent's solicitors wrote to each of the applicants alleging that the articles were defamatory of the respondent and that they were guilty of contempt of court. Five separates sets of High Court proceedings seeking damages for defamation against each of the applicants were issued by the respondent. Each plenary summons issued in the name of the plaintiff and it is expressly pleaded that the damage caused to the respondent was aggravated by the publications which were in breach of various court orders which applied reporting restrictions. At para. 7 in each statement of claim it is claimed:-

> "Furthermore, the damage done to the plaintiff was aggravated by the said publications occurring in breach of various court orders, which applied reporting restrictions to the case. The defendants wrongfully identified him by name age and home address."

24. Damages are also sought because of untrue statements contained in these articles which allege that the respondent was guilty of much more serious sexual offences than those to which he had pleaded guilty and for which he had been sentenced.

25. These proceedings issued between March and June, 2015. The statements of claim followed shortly thereafter.

26. On 7th May, 2015 an application was made by the respondent to the learned trial judge for access to the court record of proceedings which was granted. In an affidavit sworn by Mr. Byrne, the respondent's solicitor in the course of these proceedings, he states that this application was made because of the applicants' request that he provide evidence of the existence of the reporting restrictions applicable. It is clear that no application was made prior to that heard on 31st July, 2015 by the applicants or any member of the press for clarification of the order of the court made on 21st July, or indeed 31st October, 2014 at the conclusion of the proceedings.

27. An application was made to the learned trial judge prior to the hearing on 31st July, 2015 that she lift or set aside the order continuing reporting restrictions made on 21st July, 2014 which was said to have been renewed on 31st October. It was submitted that no explicit mention had been made of the reporting restrictions on that date. It was also submitted by counsel for the applicants that the learned trial judge had confirmed on a previous date when the matter was listed that reporting restrictions were made pursuant to the Criminal Law (Rape) Act 1981 as amended. The learned trial judge considered that the reporting restrictions continued to be governed by the order of the 21st July after the imposition of sentence on 31st October.

28. At p. 12 of the transcript of 31st July, 2015 the learned judge stated that the recording of the hearing of 21st July, 2015 indicated that:-

> "… at the commencement of the case, Ms. Lacey for the DPP confirmed that the matter was *in camera*. I had asked "is the matter *in camera*?" because of the nature of the charge and Ms. Lacey confirmed for the DPP that the matter at that stage was *in camera*. At the end, Ms. Byrnes, on behalf of Mr. I.A, asked for reporting conditions to continue and my reply was that they would for the moment. So the application was not on behalf of the accused initially; it was on foot of a query I raised and confirmed by Ms. Lacey for the DPP that it was an *in camera* matter."

29. The learned judge confirmed that there was no reference to the Children Act, 2001 at that stage. The indictment contained counts against three accused which included charges of defilement which on their face would be subject to reporting restrictions until the ages of the accused were ascertained. She noted that such an order is normally made so that the full facts are made known to a judge who then decides whether or not to continue an order restricting publication.

30. The learned trial judge explained to the parties the basis upon which the order had been made as follows:-

> "the reality is when [a] case comes for sentence all the judge has is an indictment and the pleas that have been entered. That indicates the nature of the offence and there are certain considerations given to, for instance, the question of whether it should be *in camera* or not. And until the facts are opened fully, the other aspect of the case is the concern that the court would have in relation to the victim or injured party as to whether anything in the course of the facts is going to lead to the identification of the injured party and therefore even where names are not the same, the court has to be certain that there is anything in publishing facts of particular case that could, directly or indirectly, lead to the identification. So it is good and common practice that when a sentence is commenced, the sentencing judge will err on the side of caution, apply the relevant strictures in terms of publication and then[in] the fullness of time, having heard the facts, having heard the relationship, if any, with any injured party or whether the facts will in any way lead to any identification of the injured party, it is only then that the issue whether the order should continue or not is then usually

addressed and it wasn't addressed in this case. … and usually somebody applies and indeed I have had reporters apply for clarification in the course of hearings …"

Thus the learned trial judge continued the restriction until the ages of the accused were established and the court could be satisfied that the identity of the complainant would not be compromised by publication of the facts of the case or the identity of the accused.

31. The learned judge at pp. 44-46 of the transcript of 31st July set out the reasons for her decision to refuse the application to lift the restriction on publication in the context of the history of the case:-

> "… I dealt with this matter where the applicant or the plaintiff in civil proceedings, [the] defendant in the criminal proceedings *I.A.* was before the court in July, 2014 with two co-accused on various counts to which all accused had pleaded guilty. The facts were set out as they normally are but before the evidence proceeded, in light of the charges on the indictment which was before the court, I sought clarification and Counsel on behalf of the DPP confirmed at that stage that the matter was *in camera*. And the facts were then opened to the court including the various charges against each of the accused and evidence in relation to the injured party, the background of all the accused and victim impact evidence. And at the end of it, I adjourned the matter to 31st October to consider matters.
>
> I also sought in relation to the accused for the purposes of sentencing in July probation reports and I further asked the Probation Service to meet with the accused and [in] particular this accused plaintiff in relation to a number of matters that had been raised that were not satisfactory as far as I was concerned. So the matter went back for sentence to 31st October and on that date no application on the issue of reporting or clarity in that regard was sought by any of the parties and I overlooked to return to my previous decision which I had indicated at the end of the proceedings on 21st July, 2014 was on the basis that the reporting conditions previously put in place as far back as the District Court were to continue for the moment. There matters rested.
>
> However, it appears that publication ensued on the 1st November, 2014 in relation to the proceedings in this Court and the articles seen by the court set out what took place in this Court both in July and in October of 2014. This and the other accused were mentioned, this plaintiff/defendant [was] mentioned in those publications. No one, including Mr. I.A., the newspapers, the DPP or other accused who are not present here came to the court on 1st, 2nd, 3rd, 4th November of 2014 seeking to have clarity in light of the publication as to the decision that had been made of 21st July of 2014. In fact, nothing further occurred as far as the court was concerned until earlier this year, but there does seem to have been initial correspondence between the parties and as indicated, even arising from the correspondence, no one came back to court. In due course Mr. I.A. issued proceedings in March of this year which include among other things a complaint about publication in breach of the order of the 21st July of 2014. The other accused who were also before the court on the same bill of indictment and who were mentioned, it appears, outside of the complaint, haven't brought any proceedings.
>
> The order I made applied to all three of the accused. It was in relation to the proceedings on the bill. They were all also juveniles when the case commenced insofar as the charges to which they pleaded guilty occurred and they also were of similar age to this person. They also were adults at the date of sentence and there is long, clear authority that when it comes to dealing with persons who were juveniles at the date of an offence, the appropriate date is the date of sentence and they, as was Mr. I.A., were well into their majority when a sentence was imposed in October of last year. I haven't heard from them on the application being made on behalf of the newspapers because clearly if I revisited the order, it is not only the effect on Mr. I.A. but it is an affect … it will affect his co-accused and they haven't been in anyway invited to be present. They are not here. I don't know whether they are even aware of this application. So it puts this Court in a difficult position because clearly if I revisit the order in relation to Mr. I.A., well, then, that may give rise to unfairness in relation to the two other accused. Though I can't overlook the fact that they haven't complained in anyway as far as I can see about the publication. But that aside, for me to revisit the order in anyway has an on going effect in relation to those two accused or defendants now, having pleaded guilty, and they may wish to be heard.
>
> … the reality was the court had regard on 21st July, 2014 to the fact that facts were not known to the court. The evidence was then opened and at the end I indicated for the moment I would continue the reporting restrictions until I had made my final decision. It was my oversight but not in anyway picked up by any of the parties but that wasn't clarified.
>
> I know the decision I would have made had I been asked in October of 2014 to revisit the matter, but it wasn't done. There are now civil proceedings pending. An order today would have an effect not just on Mr. I.A. but his co-accused. So I am not making any further order and another court can decide I was wrong, that I was wrong in July, that I am wrong today on 31st July, 2015, but I made an order. No one came back. Publication occurred. That can't be undone. There are other parties that would be affected by me revisiting the order. They haven't been invited to come to the court and say whether they have any objection to it so in light of all that, the order that I made in July of 2014 stands and the parties can litigate the matter somewhere else and if I am wrong, I am wrong … I will not make an order that has an effect on people who are not before the court and I want to make that clear".

32. Counsel on behalf of the applicants then indicated to the court that he was not asking the court to do anything about the other defendants only about Mr. I.A. The learned trial judge reiterated that any alteration of the order might also have consequences for the other two co-accused who were not on notice of the application. Thus the applicants' sole concern was directed at the consequence of the publication of material in respect of the respondent. They did not seek a lifting of the order in respect of the other two co-accused in whom they had no interest and in respect of whom they clearly did not consider a restriction of publication to prejudice the public administration of justice under Article 34.1 of the Constitution. This distinction appears to derive from the civil proceedings which issued against them for damages arising out of their alleged misreporting of the facts of the case and a breach of the order restricting publication.

The Issues

33. Three issues arise for consideration in this application. The first issue concerns the extent to which reporting restrictions appropriate to a child at the time of the commission of an offence and when charged calculated to protect his anonymity under s. 93 of the Children Act 2001 as amended by s. 139 of the Criminal Justice Act 2006 continue to apply notwithstanding the fact that the child turned eighteen during the course of those proceedings and was twenty years old when he pleaded guilty to the offences and was sentenced. The second issue concerns whether s. 8 of the Criminal Law (Rape) (Amendment) Act 1981 as amended permitted the applicants to publish the identity of the respondent following his plea of guilty and the imposition of sentence notwithstanding the fact that the offences were committed and the charges were laid against him when he was under eighteen years of age. The third issue relates to the exercise by the court of its judicial discretion in the granting of the relief claimed.

Section 93(1)

34. The learned trial judge indicated in the course of the hearing on 31st July, 2015 and in an earlier hearing that the restriction on the publication continued by the order of 21st July, 2014 was based upon the need to ascertain the ages of those involved and to protect the complainant's identity under the provisions of s.7 of the Criminal Law (Rape) (Amendment) Act 1981 as amended. The learned judge accepted that the respondent had to be treated as an adult at the time of sentencing and not as a person who had the benefit of the provisions of the Children Act 2001 (as amended). This is the well-established norm in relation to the treatment of offenders who were underage at the time of the commission of the offence but in respect of whom sentencing takes place for whatever reason, at a time when they are eighteen years or older. It is however instructive to consider the sentencing principles applicable in such cases.

35. In *Director of Public Prosecutions v. J. H.* [2017] IECA 206 it was submitted on behalf of the appellant that although an adult at the time of sentencing the appellant ought to have been sentenced as a fifteen year old, his age at the time of the commission of the sexual offences the subject of the prosecution. In those circumstances, a custodial sentence ought only to have been considered as a last resort. This submission was based on ss 96 and 143 of the Children Act 2001 which provided that a court should not make an order imposing a period of detention on a child unless it was satisfied that detention was the only suitable way of dealing with the child. The court noted that s. 143 was designed primarily to ensure that the detention of a child offender should be a sanction of last resort because it was likely to be destructive of a child's normal development and education and hamper the opportunity for the child to achieve adulthood in what might be described as normal circumstances. It was also a concern that places of detention might facilitate children getting into bad company and paving the way towards criminality in adulthood. Mahon J. on behalf of the court stated:-

> "14. The same concerns will not however necessarily be present (if indeed present at all) in circumstances where a child offender is being sentenced as an adult. In such a case, a sentencing court is free to approach sentencing in a different and less constrained manner than if the offender was still a child. In such circumstances, the court is not concerned, in general terms, with the potential detrimental effect of a custodial sentence on the offender, at least to the same extent as it would in the case of a child.
>
> 15. What is relevant in the context of sentencing is the fact that the appellant, although now an adult, committed the crimes in question when he was fifteen years old. A sentencing court is required to access the offender's level of maturity at the time of the commission of the offence and to accordingly access his culpability as of that time."

36. The learned judge referred to the decision in *R v. Ghafoor* [2002] EWCA Crim 1857 a decision of the English Court of Appeal in which it was held that when a defendant crosses the age threshold between childhood and adulthood between the date of the commission of the offence and the date of conviction the court should first consider what sentence the defendant would likely have received if he had been sentenced at the date of the commission of the offence. This was said to be a powerful factor in sentencing because of the principle underlining the restriction of the sentencing power concerning young persons which reflects society's acceptance that young offenders are less responsible for their actions and therefore less culpable than adults. Therefore, the sentence should place greater emphasis on rehabilitation than on retribution or deterrence than in the case of an adult. However, as a matter of reality the convicted person, now an adult, is treated with due regard for the same principles underlying the provisions of the Children Act 2001 because of the situation in which he finds himself, as a person convicted of a serious offence who has crossed the age threshold. The appropriate sentence is assessed and the mitigating features are taken into account. This includes the age at which the offences were committed and the restrictive regime to which he could have been subjected if sentenced as a child. The rehabilitation of a young offender is a very important consideration (see *the People (DPP) v. N. H.* [2014] IECA 19 and *the People (DPP) v. G. (D)*. (Unreported Court of Criminal Appeal 27th May, 2005).

37. Against that background it is submitted on behalf of the respondent that the purpose and intention of s. 93 should also be considered in the case of an offender who has passed the age threshold. Here the respondent pleaded guilty and was sentenced when he was twenty years of age to offences which had been committed when he was approximately sixteen years old for which he was first prosecuted when he was seventeen years old. It is submitted that since the section provides protection from publication in any "proceedings" concerning a child which reveals the identity or any facts likely to lead to the identification of the child, that this necessarily subsists throughout the course of the proceedings and must continue following the conclusion of the proceedings. The court notes that s. 93(2) empowers the trial court to dispense in whole or in part with the requirements of the section to avoid injustice to the child or if the child is unlawfully at large for the purpose of apprehending the child or in the public interest. No such application was made in these proceedings but the legislation has clearly addressed circumstances in which the restriction may be lifted.

38. The submission is made that once the respondent was charged with the offences the protection of s. 93 is intended to apply to those proceedings until their conclusion and beyond regardless of the result and regardless of the age at which they are concluded. However, there are many reasons why proceedings once commenced when a child is under eighteen will not conclude before he has reached the age of majority. This may apply simply by way of happenstance or because of illness, or the accused absconds or other delays and factors over which neither the prosecution or the accused have control. There is no specific provision in s. 93 to cover this eventuality.

39. The provisions of s. 93 were considered in *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762 in which the applicant admitted responsibility for a quantity of heroin found in his home when he was sixteen years old. One year and four and half months later he was charged with an offence under s. 15 of the Misuse of Drugs Act 1977. There was no prospect therefore of his being tried before his eighteenth birthday. He would therefore be tried as an adult. He sought to prevent his trial on the basis that had it taken place earlier he would have benefitted from the provisions of the Children Act 2001 and particular sections 93, 96 and 99. The High Court granted the relief sought. In dismissing the appeal, the Supreme Court held that in the case of criminal offences alleged to have been committed by a child or young person there was a special duty on the State over and above the normal duty of expedition to ensure a speedy trial having regard to the sensitivities involved as reflected in the statutory provisions relied upon. Thus what might be an excusable delay in the case of an adult in a given case might not be acceptable in the case of the prosecution of a child.

40. Dunne J. in delivering the judgment of the court was satisfied that there was sufficient evidence before the High Court on which to base its conclusion that there had been "significant culpable prosecutorial delay". Dunne J. rejecting the submission that leave to apply for judicial review had not been granted on grounds specifically addressing s. 93 of the Act stated:-

> "35. It is important to bear in mind what the trial judge actually said in this regard. He stated that if the case had come to court when it ought to have done, Mr. Donoghue would have benefited from the provisions of s. 93 of the Act, as substituted by s. 139 of the Criminal Justice Act 2006. He added:

"It seems to me that this provision is of considerable practical significance. That is so in particular when the section is considered in combination with s. 258 of the Children Act 2001, which provides that subject to certain conditions, offences committed by persons under 18 years can become 'spent' after three years. The ability to expunge the record of conviction is particularly valuable if the original conviction did not and could not receive publicity"."

Dunne J. then considered the balancing exercise conducted by the High Court to establish whether something additional to the delay itself existed which outweighed the public interest in the prosecution of serious offences sufficient to justify the prohibition of the trial. The learned judge considered the potential adverse consequences which may be caused to a child by such delay and in particular, when the person turns eighteen, having committed the offence when a child. The court noted that one could attach little or no weight to the fact that someone would be tried as an adult in respect of an offence alleged to have been committed when a child, if that offence occurred shortly before their eighteenth birthday and if, for example, the offence involved was very serious. It was, however, only one of the factors to be considered. Dunne J. continued:-

"53. The trial judge in the course of his judgment outlined a number of features that would have applied to Mr. Donoghue had he been prosecuted expeditiously which were no longer applicable given that Mr. Donoghue would be tried as an adult as opposed to a child. They included the loss of anonymity, the fact that s. 96 of the Act (to the effect that a sentence of detention should only be used as a last resort) would no longer apply and the loss of the mandatory requirement to obtain a probation report in the circumstances set out in s. 99 of the Act. As the trial judge said, these are matters of real significance. Having done so he commented:-

"Two years in the life of a 16 year old boy is a very significant period indeed. In a case which is going to be contested and which may end in acquittal, it is highly undesirable that a young person should have an allegation hanging over his or her head for such a protracted period. If the case results in a conviction or if there is a plea of guilty, then the focus of attention is on the capacity of the court to intervene effectively and promote the rehabilitation of the young offender. If two years or more is to be lost then the court's capacity to intervene effectively will be greatly reduced".

54. It is difficult to disagree with the comments made by the trial judge above. It is appropriate to add that the special duty of expedition on the part of the State authorities in the case of offences alleged to have been committed by a child will be of benefit to the child offender but will also be of benefit to society as a whole if early intervention is effective in diverting the child away from crime. The potential benefit to the child offender and to society as a whole in diverting young people towards a crime free lifestyle will undoubtedly be diminished by delay.

55. Mr. Donoghue has demonstrated that the delay in this case has led to significant consequences for the manner in which he would be dealt with at trial … he has put something more into the balance to outweigh the public interest in having serious charges proceed to trial."

41. The decision of the Supreme Court in *Donoghue* identifies the value to a child of the anonymity rule under s. 93 but also recognises the reality that a person charged close to the age of eighteen in respect of an offence committed shortly before his charging is likely to face trial after he attains the age of eighteen. The court identified the potential prejudice that may arise for a person alleged to have committed an offence when a child if there is a delay in initiating and conducting a prosecution. This, in appropriate circumstances may lead to an intervention by the courts to prevent the further trial of the accused. It is clear that the High Court and Supreme Court in Donoghue recognised the prejudice which can arise from delay to a child who passes the threshold age of eighteen years. It is interesting to note the reference by Birmingham J. in the High Court to the provisions of s. 258 of the 2001 Act as quoted above concerning the nondisclosure of certain findings of guilt. Section 258 provides:-

"258(1) Where a person has been found guilty of an offence whether before or after the commencement of this section, and—

(a) the offence was committed before the person attained the age of 18 years,

(b) the offence is not an offence required to be tried by the Central Criminal Court,

(c) a period of not less than 3 years has elapsed since the finding of guilt, and

(d) the person has not been dealt with for an offence in that 3-year period,

then, after the end of the 3-year period or, where the period ended before the commencement of this section, after the commencement of this section, the provisions of subsection (4) shall apply to the finding of guilt.

(2) This section shall not apply to a person who is found guilty of an offence unless he or she has served a period of detention or otherwise complied with any court order imposed on him or her in respect of the finding of guilt. …

(4) (a) A person to whom this section applies shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or found guilty of or dealt with for the offence or offences which were the subject of the finding of guilt; and, notwithstanding any other statutory provision or rule of law to the contrary but, subject as aforesaid—

(i) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed or been charged with or prosecuted for or found guilty of or dealt with for any offence which was the subject of that finding, and

(ii) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to a finding or findings to which this section refers or any circumstances ancillary thereto."

42. Subsection (4)(b) and (c) provide further practical assistance to a person convicted of an offence committed whilst a child in that he or she is absolved from answering questions seeking information concerning findings of guilt or offences otherwise than in proceedings before a judicial authority. In effect the section provides a sun-set clause for convictions and assists a young offender in

his/her rehabilitation post-conviction having served the sentence imposed. When coupled with s. 93 the young offender convicted and sentenced prior to his eighteenth birthday is provided with a significant statutory tool to enable him to rehabilitate and progress in life. The respondent submits that this life-tool should also be available to him as a young offender who was charged when a child with offences committed when he was a child to which he pleaded guilty as an adult and for which he was subsequently sentenced as an adult. The proceedings should be regarded as the same set of proceedings once instituted when he was a child. This would be consistent with the spirit, intention and letter of s. 93 of the Act which itself provides a comprehensive code for the benefit of children charged with a criminal offences and some of the provisions of which are intended to extend into adulthood. However, I am not satisfied that s. 258 is of such a nature as to entitle the court to extend the clear provisions of s. 93 beyond the age of eighteen years to a person in the respondent's position.

43. While it is clear that the protection conferred by s. 93 continues for life in respect of a child who is prosecuted, convicted and sentenced under the age of eighteen, there is no specific provision extending those benefits when a child passes the threshold age limit of eighteen years in the course of the criminal proceedings. Thus for example, a child whose eighteenth birthday occurs in the middle of criminal trial or is convicted the day after his eighteenth birthday would not have the protection of s. 93 or the sentencing regime that would apply to a child. These specific protections under the Children Act 2001 only apply to a child – a person under eighteen years of age. In cases where offences committed by a child are only detected when they enter adulthood, he/she does not obtain the benefit of any of the provisions of s. 93 or any other provisions of the Children Act. There may be good policy reasons to vest in a court a discretion to extend the protections of anonymity in cases which overlap the transition between childhood and adulthood but this has not been addressed by the Oireachtas which has confined the protections to those under eighteen years. This is consistent with the well-established principles of sentencing applicable to an adult who has committed an offence as a child but comes to be sentenced as an adult considered in the case law set out above.

44. The court must uphold the provisions of Article 34.1 of the Constitution that justice shall be administered in public "save in such special and limited cases as may be prescribed by law". The restriction on publication or reporting matters that might tend to identify a child is specifically limited to persons under eighteen years. In *Irish Times Ltd. v. Ireland* [1998] 1 I.R. 359 the Supreme Court held that it was a fundamental right in a democratic State and a fundamental principle of the administration of justice under Article 34.1 that the people have access to the courts to hear and see justice being done save for limited exceptions. Any order restricting the contemporaneous reporting of legal proceedings by the press must be viewed as a curtailment of access by the people. Accordingly, any trial held in such circumstances is not a trial held "in public" within the meaning of the provisions of Article 34. There is no discretion to order a trial otherwise than in public. However, the court also held that the exercise of rights conferred by Article 34.1 could be limited not only by acts of the Oireachtas but also by the courts where it was necessary in order to protect an accused person's constitutional right to a fair trial, a right which was superior to any rights arising from the provisions of Article 34.1. In this case the trial had concluded when the publication occurred. Thus there was no threat to the right to a fair trial. Indeed the learned trial judge did not base her decision to continue the restriction on reporting on any perceived prejudice to the exercise of that right.

45. In the *Irish Times* case the Supreme Court held that the trial judge before imposing a ban on reporting must be satisfied that there was a real risk of an unfair trial if contemporaneous reporting is permitted and that the damage which such reporting would cause could not be remedied by the judge by appropriate directions to a jury or otherwise. The limitation of contemporaneous press reporting of a trial could only arise in exceptional circumstances following the application of the appropriate test and process. In reaching that decision the trial judge must consider a number of rights including the accused's right to a trial in due course of law pursuant to Article 38.1 and fair procedures under Article 40.3 of the Constitution. In addition, the trial judge must balance the community's right of access to the courts, to information about the hearing and the administration of justice in public under Article 34.1 and the right to freedom of expression under Article 40.6.i of the Constitution. The applicants had a right to report or communicate what occurred in court and the only restriction on publicity permitted is that which tends to deny an accused a fair trial.

46. As noted by Barrington J. the court in a proper case has ample powers to ensure a trial in due course of law under Article 38.1. The learned judge noted that the general incidents of a jury trial in a criminal case were well known to the framers of the Constitution and stated (at p. 402):-

> "Among these incidents is the duty of a trial judge in a criminal case to ensure that prejudicial matter of no probative value is not admitted in evidence before the jury. Thus if a question is raised as to whether an alleged confession was or was not made by the accused voluntarily the judge will investigate the voluntariness of the confession in the absence of the jury before deciding whether or not to admit it in evidence. This is because a jury of laymen could hardly be expected to exclude from their minds damaging evidence such as an alleged confession of guilt even though the alleged confession might be of no probative value in law. There would be little point however in the judge conducting his inquiry in the absence of the jury if the press were free to report everything which happened in the absence of the jury and if the members of the jury could read all about it in their newspapers.
>
> The common sense of the matter is so obvious that the press would have traditionally co-operated with the courts in not reporting evidence heard in the absence of the jury in a criminal trial. … If therefore the press were to put in jeopardy the right of an accused person to a fair trial, I have no doubt that the courts would have all powers necessary to defend and vindicate the constitutional rights of the accused. (See *the State (Quinn) v. Ryan* [1965] I.R. 70). I have no doubt therefore that a trial judge would, in a proper case have a right to prohibit the contemporaneous reporting of part, or even in an extreme case, of all of the evidence in a criminal trial."

47. It follows that the only possible jurisdiction of the learned trial judge to restrict the identification by the press of the respondent who is now an adult, following the sentencing hearing might derive from a claim that reporting the proceedings or publishing his name would render his trial unfair or otherwise violate some other constitutional right. It is clear, however, that as of 31st October, 2014 the respondent's trial had concluded. In the circumstances, in the absence of any statutory provision protecting his anonymity beyond the age of eighteen and any superior constitutional norms and rights that require to be protected other than those which arise under Articles 34.1, 38.1, 40.3 and 40.6.1 already discussed and in the absence of the identification by the learned trial judge of any other such right there was no lawful basis upon which to make an order restricting the reporting of the proceedings or the identity of the accused under s. 93 or within the powers exercisable by a trial judge under Article 38.1 (*Irish Times Ltd v. Ireland* [1998] 1 I.R. 359 at pp. 383 to 384 per Hamilton C.J., and *Independent Star Ltd v. O'Connor* [2002] 4 I.R. 166 at pp 174 to 175 per Kearns J.).

Section 8

48. The second issue concerns the protection afforded to an accused person under s. 8 of the Criminal Law (Rape) Act 1981 as amended which requires that no matter likely to lead members of the public to identify him as the person against whom the charge is made shall be published or broadcast until after he has been convicted of an offence. It was submitted that as of 21st July, 2014 the

respondent had already been convicted of an offence by reason of his pleas of guilty entered on 24th February, 2014. The court is satisfied that the learned trial judge was entitled notwithstanding the respondent's pleas of guilty to preserve the identity of the accused until such time as she was satisfied as to the age of the accused and whether the publication of his identity or the material facts of the case might reveal or tend to reveal the identity of the complainant. These were matters to the forefront of the judge's mind. The court is satisfied that these are legitimate matters which the trial judge was entitled to take into account in making the order so as to ensure trial in due course of law and as prescribed by law. The court is therefore satisfied that the order made on the 24th February continuing the restraint on publication of facts was lawful and in due exercise of the powers vested in the trial judge to ensure compliance with the statutory protections under ss. 7 and 8 of the 1981 Act as amended.

49. The court is also satisfied that similar considerations apply to the continuation of the restraining order on 21st July until 31st October, the date upon which sentence was imposed following receipt of the probation and welfare report. The court is therefore satisfied that the restraint on publication by the learned trial judge was in accordance with law until 31st October 2014.

50. The publication of proceedings in respect of children and the identification of complainants and accused persons in sexual offence cases are matters which are "prescribed by law". Some of the considerations applicable to this issue overlap with those related to s.93 discussed above. The court is satisfied that any order made in vindication of the protections afforded by these statutory provisions and/or necessitated by them was made within jurisdiction by the learned trial judge and was calculated to ensure the protection of the panoply of rights vested in those parties and a trial in accordance with law. As acknowledged in the case-law those protections and in particular, the protection of the complainant's identity transcend the immediate interests of the prosecution and the defence in a criminal trial. The protections are for the benefit of the community (*Independent Star Ltd. v. O'Connor supra* per Kearns J., at p.172). However, the continuation of the order beyond the 31st October, 2014 was not warranted by the necessity to ensure a fair trial or to protect the respondent's rights as a child or a person accused of a rape offence. There is no evidence to suggest that the preservation of his identity post-conviction was necessary to ensure the preservation of the complainant's identity under s. 7 of the Act.

51. The court is satisfied therefore that the order made on 21st July, 2014 though made within jurisdiction ought not to have been continued beyond the 31st October. No application was made at that stage to lift the reporting restrictions. It was accepted by the learned judge in her decision of 15th May 2015 that she did not advert to the lifting of the order at that time nor was any application made to her in respect thereof by the respondent, the Director of Public Prosecutions or any member of the media present.

Publication

52. It follows that at the time of publication of the various articles by the applicants on 31st October and 1st November, 2014 in respect of these proceedings, each of the applicants was in breach of an order of the Circuit Court restraining such a publication though an application not to continue the order would probably have been granted. However, the publications occurred without regard to the court order which was then in force and were a clear breach thereof. Whilst parties may in various ways seek to challenge the validity of orders or to appeal them when made, until such time as they are set aside by appeal or otherwise, they are entitled to respect and obedience by those to whom they are addressed. It is not open to any party, newspaper or broadcaster, to simply disregard those orders which they do not think are proper or should not have been made. As is clear from the case-law newspapers and broadcasters are highly aware of the steps that ought to be taken if it is considered that a court has overreached itself in restraining the publication of any material in the course of civil or criminal proceedings. A failure to comply with such an order without taking such steps is at the least unwise and may in other circumstances render a party liable to contempt proceedings.

53. In this case, having realised that the order remained in force the applicants somewhat belatedly took steps to have the order which they disobeyed set aside by the learned trial judge. It is that decision refusing to set aside the order which had been continued to 31st October and beyond, which the applicants now seek to have quashed. The declaration sought relates to the extension of the restriction beyond 31st October 2014.

The declaration sought

54. The application for a declaration is clearly directed to the continuation of the order on the 31st October 2014. I have determined that the order of 21st July was lawfully made. The applicants seek a declaration that there was and is no legal basis for an order restricting publication of matters beyond the hearing of 31st October. That is not the order made by the learned trial judge on 31st July 2015. The learned judge declined to lift an order previously made and unchallenged. No attempt was made to challenge the previous restrictions directly by way of judicial review within time. It seems to the court that the framing of this application for judicial review seeks to attack previous orders by challenging the refusal to lift them in July 2015 thereby collaterally attacking the previous orders but seeking to do so well outside the period provided under O.84 r.21(1). The declaration sought is in my view clearly outside the time limited under the rules. I am satisfied for that reason that the declaration should not be granted. I am also satisfied that it should not be granted in the exercise of the court's discretion for the reasons set out below.

The Decision of 31st May, 2015

55. It is accepted for the purpose of these proceedings that the order restraining publication of the proceedings on 21st July, 2014 was extended on the conclusion of proceedings on 31st October because it was not referred to by the learned trial judge and was not lifted specifically. There is no order exhibited in these proceedings which states that the restriction on publication should continue. The order of conviction and sentence is said to be silent on the matter. However, all parties accept that the effect of the failure to lift the restriction meant that it did not require a further formal order for its continuance (notwithstanding the fact that it was deemed appropriate to direct a specific extension of the restriction which was included in the order of 21st July).

56. The respondent's solicitors corresponded with the applicants and their solicitors in respect of the publication of articles on 31st October and 1st November, 2014. Initially, the respondent's solicitors corresponded with Independent News and Media plc. in respect of publications contained in their newspapers and on-line by letters dated the 1st and 3rd November. The solicitors for the first applicant asked to be provided with more specific information concerning the detail of the reporting restriction said to have been imposed. On 18th November a detailed letter of complaint in respect of alleged contempt of court and defamation was sent in respect of an article contained in the Evening Herald. It was noted in reply that the provisions of the Children Act in respect of anonymity of minor defendants do not apply once they attained their majority and therefore no longer applied to the respondent. It sought a copy of the reporting restriction order allegedly imposed in the case.

57. On 17th November, 2014 a similar letter was sent to the second named applicant in respect of a publication in the Sunday World. That article also alleged that the respondent had pleaded guilty to events which differed substantially from the facts of the case to which he had pleaded guilty. The article suggested that he was guilty of rape. Similar correspondence took place with the Irish Examiner Ltd., the third named applicant and the fourth and fifth applicants.

58. The solicitors for the first and second applicants rejected the claims made by the respondent on behalf of their client outright.

The solicitors for the other applicants apologised for the errors in their articles and offered to publish an appropriate apology if one could be agreed together with a small contribution to a charity. These offers were rejected.

59. The plaintiff issued proceedings against all of the applicants except the Sunday World on 4th March, 2015 and delivered statements of claim on 9th March. Proceedings issued against the Sunday World on 22nd June, 2015.

60. In the meantime, an application had been made to the learned trial judge on 7th May, 2015 by the respondent's solicitors. The learned judge confirmed on that date that the order of 21st July, 2014 restricting publication subsisted after the hearing of 31st October. The solicitors for the first and second applicants complained that they had not been put on notice in respect of this application. They did not make any inquiries with the Courts Service to determine the nature of any order made. A copy of the order made on 21st July, 2014 was perfected and furnished to the applicants' solicitors.

61. The respondent claims that their client was the main focus of the applicants' determination to continue to publish articles arising out of the criminal proceedings that concluded on 31st October, 2014. It is alleged that this is so because he has achieved considerable success in sport and issued defamation proceedings against them. They were not seeking to challenge the reporting restrictions made in the case of the co-accused none of whom issued defamation proceedings against the applicants. The respondent therefore submits that the judicial review proceedings are not calculated to ensure or protect the procedures guaranteed by Articles 34.1 or 40.6.i of the Constitution. The respondent emphasises the failure of the applicants to return to the Circuit Court to seek to have the restriction order lifted at an early stage. It is also emphasised on his behalf that the learned trial judge refused the application to lift the restriction on the basis that it would affect the two other co-accused who were not on notice of the application and because of the delay in making the application following the conclusion of the proceedings against him. The court is invited to exercise its discretion to refuse the reliefs sought because

> (a) Irrespective of whether the reporting restrictions are retrospectively invalidated, the applicants were still in breach of the existing court order and did so in the circumstances of gross carelessness and recklessness. This is a fact which the lifting of the court order cannot change.
>
> (b) There is no genuine or valid public interest consideration underpinning the applicants' application since the applicants have already published a full account of what they perceive to be the facts of the case which were clearly incorrect. Having disregarded the order of the Circuit Court restraining publication it is submitted the impugned order did not in fact operate in any way to curtail the applicants' freedom of expression under Article 40.6.i.
>
> (c) The reliance on a public law remedy against a private individual constitutes an attempt to exert pressure on him in relation to his private law proceedings for defamation against the applicants and to gain a strategic advantage in the defamation proceedings which were issued against the applicants in respect of which aggravated damages are claimed on the basis of publication in breach of a court order.
>
> (d) It is claimed that the applicants were guilty of inordinate delay in seeking to challenge the impugned reporting restrictions in the Circuit Court and in subsequently issuing the judicial review proceedings in respect of an order made on 31st October, 2014.

62. The learned trial judge refused to lift the order because of the delay by the applicants in applying to have it lifted and because the other two accused were not put on notice of the application which if successful would have affected them. The court is satisfied for the reasons set out above that the order placing a continuing restriction on publication ought not to have been continued after the 31st October. Though the court has determined that the orders of 24th February and 21st July, 2014 were validly made they could not have been validly continued on 31st October. The refusal of the learned trial judge to lift the order when the application was made some nine months later was understandable and based upon what the learned judge considered to be the overall unfairness in making such an order.

63. The court is satisfied that the application made on 31st May, 2015 seeking to challenge and reverse the continuation of the order beyond 31st October, 2014 ought to have been made much earlier and as soon as possible after its nature and substance was brought to the attention of the applicants. Had an earlier application been made it would likely have been granted. However circumstances had moved on considerably and the learned judge was entitled to take account of and enquire as to the reasons for the delay and the reality as to why it was now being made. One might have expected, if only out of respect for the court and its order, that the applicants would have taken steps to bring the matter immediately before the learned trial judge and explain, if not apologise for any breach of the order: they could then have applied to set it aside if they thought it was made in error.. The learned judge was clearly not satisfied with the explanation for the delay put forward by the applicants when the matter was brought before her in July, 2015. By that stage the applicants were responding to the proceedings issued against them and in particular, the claim for aggravated damages made by the respondent by reason of the publication of the materials set out in the articles concerning matters to which he had not pleaded guilty and identifying him specifically in breach of the court order. The learned judge also noted that the two other accused who had not initiated civil proceedings were not the subject of the application and had no notice of it. The contempt of court committed (if that is what it was) could not be undone by any court order by the learned trial judge as noted in her ruling.

64. It is clear from the submissions made to the learned trial judge and in this application that the applicants are concerned that they will suffer real prejudice in the course of the defence of the respondent's claim if the order is not set aside. It is difficult to see how they are otherwise prejudiced since they had published the identity and an extensive version of the facts of the case which was seriously flawed but nevertheless refers to the pleas entered by the respondent. Thus each applicant has published the material which they wished to publish: each wished to identify the respondent as the accused and this was done. The applicants if successful in quashing the order of 31st July will not thereby undo the publication which occurred in breach of the order which was continued beyond 31st October. That alleged contempt could not be undone.

65. The continuation of the restriction of 31st October, 2014 has not been the subject of a judicial review. An application to quash it post July 2015 would have been out of time. It is clear that time limits attached to potential court applications of varying kinds by all parties to the case. Thus the accused and the prosecution are also subject to time limits in respect of appeals against conviction and sentence. I am satisfied that the learned trial judge was entitled to consider the lapse of time in the circumstances when considering an application made to lift the order some nine months later. I am also satisfied that it was open to the learned trial judge to consider the delay as unreasonable and not the subject of any acceptable explanation. I am therefore satisfied that the learned trial judge was entitled to exercise a discretion in refusing the application notwithstanding this court's findings in relation to the continuation of the order beyond 31st October, 2014. I am not satisfied that the learned trial judge was compelled in the circumstances to make a finding in favour of the applicants on 31st May, 2015 following a breach of the court's order and a belated application to set it aside. If the

court is incorrect on this issue it is appropriate notwithstanding the finding made in respect of the continuation of the order beyond 31st October, 2014 to consider whether the court's discretion should be exercised against the granting of order of *certiorari* or the declaration sought.

Discretion

66. The court is entitled when considering the exercise of its discretion in judicial review proceedings to consider the behaviour of the applicants in the course of these proceedings and the proceedings before the learned trial judge. The court is satisfied that this application is brought to support the applicant's defence of the defamation proceedings brought against them by the respondent following the breach of the court order. They published that which they were enjoined not to publish. The applicants did not take early action to return to the court either to clarify the nature of the order made or to seek a lifting of the order as was done in other cases already cited in this judgment. It is a reasonable and well trodden route to resolve the matter. The applicants did not take any reasonable and timely steps to return to the Circuit Court notwithstanding the fact that the publication clearly became an issue within a very short time and the respondent had made clear allegations of contempt of court. In addition the applicants chose not to initiate a judicial review in respect of the continuation of the order of 31st October and allowed the period within which such application might have been made to pass. Having ostensibly breached an order of the Circuit Court one might have expected serious concern on the part of the applicants to clarify the situation as soon as possible with the court and if such breach had occurred inadvertently or otherwise to apologise for same and seek a rectification of the matter as soon as possible. This did not occur.

67. The court is satisfied that the applicants are to a large extent responsible for the situation in which they now find themselves. They have not felt inhibited in any way by the existence of the court order from publishing the material about which complaint is now made or identifying the accused. Thus the proceedings have been the subject of the extensive reporting in the outlets operated by the applicants. The applicants exercised their power to publish this material with no consequence other than being sued by the respondent. If the matter proceeds to trial the applicants will be entitled to defend the claim for aggravated damages by reference to the history of the making of the order of 21st July and its continuation beyond 31st October 2014 and the findings made in respect of same by this Court. I am not satisfied that this court should exercise its discretion in favour of the applicants for the purpose of assisting them in their strategy in defending the defamation proceedings. It is noteworthy that relief was not sought against the other two accused who did not issue proceedings against the applicants. Peculiarly, the effect of this application would, if successful, serve only to lift the restraining order in respect of the respondent alone and not in respect of coverage of the entire proceedings. This does not seem to me to suggest an application motivated solely by the applicants' interest in the public administration of justice and the exercise of their constitutional rights under Article 40.6.i. (see par. 16-167 of Administrative Law 4th Ed. Hogan and Morgan).

68. The court is also satisfied that it should have regard to the fact that this case was of a very serious and sensitive nature both for the victim and the respondent who were both minors at the time the offences were committed. The reporting of the matter does not appear to the court to have had appropriate regard for accuracy or these sensitivities. There is no doubt that the offences had a very serious effect on the victim. The purpose and intention of the sentence imposed by the court was to maximise the opportunity for the rehabilitation of the respondent as a young offender and maximise the prospect that he will lead a useful life in the future. This was in accordance with the sentencing principles applicable to young offenders who committed offences when minors. It is consistent with the principles of public policy underlying the relevant legislation. This is supported by the Oireachtas in the sun-set clause in respect of offences committed by those under eighteen years in s.258 of the Children Act 2001 quoted above. The passage of a relatively short time in this young person's life at this stage of his development and maturity has been recognised in a number of the decisions cited above as very significant when considering the right to a speedy trial. It is relevant to sentencing. It is also relevant in my view to the delay by the applicants in moving to lift the order in this case before the learned trial judge. The sentencing principles and post conviction regime imposed by the court and provided for in s.258 are intended to assist the respondent. He is able to the degree set out in s.258 to gain a substantial benefit and is shielded from the opprobrium of his conviction to the extent allowed under the section as time moves on. It seems to me that the respondent's submissions concerning the exercise of the court's discretion are well-founded. This is a further factor which leads me to conclude that I should exercise my discretion in refusing the relief sought.

Conclusion

69. For the reasons set out above I am not disposed in the exercise of my discretion to grant the relief sought.