

Australian Broadcasting Corporation v O'Neill (2006) 227 CLR 57

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Facts

- This case concerned an injunction on broadcasting by the Australian Broadcasting Corporation ("ABC") of a documentary about the respondent, Mr O'Neill, entitled "*The Fisherman*".
- In 1966, three children of the Beaumont family in South Australia disappeared.
- In November 1975, Mr O'Neill was convicted of a murder in Tasmania in February 1975 of a nine-year-old boy. In May 1975, he confessed to murdering another boy, also aged nine, a month before.
- After his conviction for the first murder and sentencing to life imprisonment, prosecutors decided not to proceed with charges in relation to the April 1975 murder. The documentary alleged Mr O'Neill was linked with the disappearance of many other children, including the Beaumont children. These allegations were widely reported by Tasmanian media.
- Former Victorian detective Gordon Davie and Roar Film Pty Ltd ("**Roar**") produced "*The Fisherman*", which the ABC wanted to screen on 28 April 2005. On 15 April 2005, Mr O'Neill commenced defamation proceedings against the ABC, Mr Davie and Roar after the film was shown at Hobart's Summer Film Festival in January 2005. He also applied for an interlocutory injunction against the ABC to prevent the televising of the documentary until resolution.
- The Tasmanian Supreme Court granted the injunction.
- The ABC pleaded the statutory defence that the film was true and for the public benefit. Crawford J held that the ABC could likely show the imputations were true but it would be difficult to establish the publication was for the public benefit. The Full Court of the Supreme Court dismissed an appeal by the ABC. The ABC appealed to the High Court.

Issues

- Was there sufficient grounds to grant an interlocutory injunction?

Held

- The High Court held that there was a strong case against granting the interlocutory injunction.
- The matters that a court must consider when deciding whether to grant interlocutory injunctive

relief are:

- whether the applicant for relief has shown a *prima facie* case for the grant of final relief;
 - whether the balance of convenience including, as an element, the adequacy of damages as a remedy for any breach, favours the grant of interlocutory injunctive relief; and
 - whether there are any discretionary considerations that tend for or against the grant of relief.
- The Court held that the Full Court erred by failing to give enough weight to the significance of free speech in considering prior restraint of publication and to the consideration that only nominal damages may be awarded if showing “*The Fisherman*” was found to be defamatory.

Quotes

“The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief ... The second inquiry is ... whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted.”

(Gummow and Hayne JJ at paragraph [65])

Full Text

The full text is available here:

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2006/46.html>

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