



HIGH COURT OF AUSTRALIA

Public Information Officer

28 September 2006

AUSTRALIAN BROADCASTING CORPORATION v JAMES RYAN O'NEILL

The High Court of Australia today lifted an injunction on the broadcasting by the ABC of a documentary about Mr O'Neill, entitled "The Fisherman".

In November 1975, Mr O'Neill was convicted of the murder in Tasmania in February 1975 of a nine-year-old boy. In May 1975, he signed a confession to the murder of another boy, also aged nine, a month before. After his conviction for the first murder and sentencing to life imprisonment, Tasmanian prosecutors decided not to proceed with charges in relation to the April 1975 murder. The documentary alleges Mr O'Neill is linked with the disappearance of a number of other children, including the Beaumont children – Jane, aged nine, Arnna, aged seven, and Grant, aged four – at or near Glenelg beach in Adelaide on Australia Day 1966. Allegations that Mr O'Neill had murdered other children were widely reported by Tasmanian media. Former Victorian detective Gordon Davie and Roar Film Pty Ltd produced "The Fisherman", which the ABC was to screen on 28 April 2005. On 15 April 2005, Mr O'Neill commenced action for defamation against the ABC, Mr Davie and Roar Film following the showing of the film at the Hobart Summer Film Festival in January 2005. He also applied for an interlocutory injunction against the ABC to prevent the televising of the documentary pending the defamation trial.

In the Tasmanian Supreme Court, Justice Ewan Crawford granted the application. The ABC conceded the film was capable of conveying imputations that Mr O'Neill is a suspect in the disappearance and murder of the Beaumont children and that he is a multiple killer of children. Tasmania's new *Defamation Act* took effect on 1 January 2006, but the 1957 *Defamation Act* applied to the proceedings for the injunction. The ABC relied on the statutory defence that the film was both true and for the public benefit. Justice Crawford accepted that the ABC could probably show the imputations were true but held that it would be difficult to establish that publication was for the public benefit. The Full Court of the Supreme Court, by majority, dismissed an appeal by the ABC. The ABC appealed to the High Court.

The Court, by a 4-2 majority, allowed the appeal. The majority held there was a strong case against the granting of the interlocutory injunction. It held that Justice Crawford and the Full Court majority 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 the showing of "The Fisherman" were found to be defamatory.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*