THE HIGH COURT

1999 No. 163COS

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 1990

AND IN THE MATTER OF PART (ii) OF THE COMPANIES ACT 1990 AND SECTIONS 8 AND 17

AND IN THE MATTER OF ANSBACHER (CAYMEN) LIMITED (FORMERLY GUINNESS MAHON CAYMEN TRUST LIMIT ED, ANSBACHER LIMITED AND CAYMEN INTERNATIONAL BANK AND TRUST COMPANY)

JUDGMENT of Mr. Justice McCracken delivered the 24th day of April, 2002.

By an Order dated 22nd September 1999 in these proceedings Johnson J. ordered:-

> *Pursuant to Section 8 of the Companies Act 1990 that the persons named hereunder be appointed as inspectors to investigate the offices of Ansbacher (Caymen) Limited (formerly Guinness Mahon Caymen Trust Limited Ansbacher Limited and Caymen International Bank and Trust Company Limited).*
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> *(a) The Honourable Mr. Justice Declan Costello*
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> *(b) Ms. Noreen P. Mackey Barrister at Law*
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> *(c) Paul F. Rowan Chartered Accountant*
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> IT IS ORDERED *that the inspectors investigate and report to the Court on the affairs of the company in the title hereof and in particular:- "(a) to examine and define the nature and extent of the company's Irish business from 1971 to date, i.e. the business*

carried out in the State or any other business carried out on behalf of Irish residents whether in the State or elsewhere.

(b) to identify as far as possible all of the parties who are either officers (including shadow directors) and agents of the company clients of the company or who otherwise assisted in the carrying out of the business at the relevant times.

(c) to examine whether the Companies Acts 1963 to 1990 were breached by the company its officers (including shadow directors) agents or third parties at the relevant time and if so to identify the provisions involved and the persons in default in each case.

(d) to examine whether the affairs of the company were conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose and if so to identify the statutory provisions involved and the persons in default in each case.

(e) to report on any related matters."

It appears that the inspectors report is nearing completion and will be presented to the High Court shortly. This application is brought by McCann Fitzgerald, who are Solicitors acting on behalf of two persons who have been informed by the inspectors that their names will appear in the report as being clients of the company. The first reliefs sought are:-

"(a) an Order directing that this application (and any subsequent application in these proceedings by these applicants) be heard in camera

(b) in the alternative, an Order for directions as to the manner in which this application, (and any subsequent application in these proceedings by these applicants) be heard."

Leave was given by Finnegan P. to McCann Fitzgerald to issue this motion in their name, but only on the basis that there would then be legal argument as to whether the motion itself can be heard in camera. It should be said that it has been made quite clear that the ultimate aim of the applicants is to challenge the portion of the Order which relates to the disclosure of clients of the company, and to prevent the publication of their names as such clients. This gives rise to a difficult chicken and egg situation, as if the application to have these matters heard in camera is itself made in open Court this would almost inevitably disclose the names of the applicants. Accordingly, I decided that I would hear a preliminary issue without hearing any evidence and still conduct it in the name of McCann Fitzgerald as to whether, without regard to evidence relating to the particular applicants, I had any power to order a hearing either in camera or which in some way limited the publication of the applicants names. Accordingly, at this stage I am treating this as purely a legal point.

Article 34.1 of the Constitution provides:-

"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."

In **Re R Limited** (1989) I.R. 126, which was in effect a consideration of the provisions of Section 205(7) of the Companies Act 1963 which is one of the

exceptions to Article 34 prescribed by law, Walsh J. also considered the limitations imposed by Article 34 and applied a literal interpretation of the Article, and said at p. 135:-

> *"The Constitution of 1937 removed any judicial discretion to have proceedings heard other than in public save where expressly conferred by statute. Indeed many matters which come under the heading "lunacy and minor matters" probably do not constitute the administration of justice but simply the administration of the estates and affairs of the Wards of Court."*
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> *It is already well established in our constitutional jurisprudence that a phrase such as "save in such special and limited cases as may be prescribed by law" which appears in Article 34 s. 1 of the Constitution is to be construed as a law enacted, or re-enacted, or applied by a law enacted by the Oireachtas subsequent to the coming into force of the Constitution."*

That case was followed by Laffoy J. in **Roe -v- Blood Transfusion Board** (1996) 3 I.R. 67, which was an application to allow the plaintiff to proceed with an action under an assumed name, on the basis that the Court had no jurisdiction to allow the plaintiff to prosecute the proceedings under a fictitious name and that to purport to do so would contravene Article 34(1) of the Constitution.

These cases adopted a strict and literal interpretation of Article 34.1. However, such interpretation has been somewhat relaxed by the Supreme Court in **The Irish Times Limited and Ors -v- Ireland** (1998) 1 I.R. 359. These proceedings were by way of judicial review of a decision of Judge A.G. Murphy in Cork Circuit Court whereby he made an Order restricting the reporting of certain criminal prosecutions. It

is of interest to note that the restrictions imposed did not prevent the reporting of the fact that the trial was proceeding, or of the names and addresses of the accused parties. It was made clear by the judge that he was not going to hold the trial in camera and that after the conclusion of the case the media would be totally free to report on it in detail. Notwithstanding this, both Morris J. (as he then was) in the High Court and the Supreme Court held that the effect of the restrictions imposed was that the trial was not going to be held "in public". The Supreme Court granted the Order of Certiorari sought by the applicants, but in the course of the judgments a number of comments were made concerning the extent of Article 34.1 of the Constitution. The applicant here relies strongly on some of these comments and I would propose to consider them in some detail.

Hamilton C.J. at p. 384 expressed his views as follows:-

"*It was submitted on behalf of the applicants that in the absence of "an express statutory provision" as that phrase was used by Walsh J in In* ***Re R Limited*** *(1989)* I.R. 126*, no general discretion lies in the Court to order a trial otherwise than in public and that as there was no statutory enactment relevant to the instant case, there was no discretion or jurisdiction vested in the learned Circuit Court Judge to make an Order that it be tried otherwise than in public.*

The effect of such submission, if valid, would be to remove from a trial judge the jurisdiction and discretion which he enjoyed at common law to prohibit reports of proceedings when he considered such reporting would frustrate or render impractical the administration of justice and to vest in the

Oireachtas solely the jurisdiction of deciding what aspects of the administration of justice would be conducted in private."

A literal interpretation of Article 34.1 of the Constitution if construed alone, would appear to support the submission made on behalf of the applicants but Article 34.1 must be construed in the light of the other provisions of the Constitution and in particular Article 38.1 which provides that:- "No person shall be tried on any criminal charge save in due course of law".

In her judgment in ***D -v- The Director of Public Prosecutions*** *(1994) 2 I.R. 465 Denham J. stated at p. 473 that:-*

"The applicant's constitutional rights must be protected. Under the Constitution Article 38 s.1 "no person shall be tried on any criminal charge save in due course of law."

The unenumerated rights of Article 40 s.3 incorporate a right to fairness of procedures. Fair procedures incorporate the requirement of trial by jury unprejudiced by pre-trial publicity. The applicant is entitled to a jury capable of concluding a fair determination of facts on the facts as presented at the trial.

The applicant's right to a fair trial is one of the most fundamental constitutional rights accorded to persons. On a hierarchy of constitutional rights it is a superior right."

While the public nature of the administration of justice and the constitutional right of the wider public to be informed of what is taking place in Courts established by the Constitution are matters of public importance these rights must in certain circumstances be subordinated to the interests of justice and the rights of an accused person which are guaranteed by the Constitution.

I am satisfied that the exercise of the rights conferred by Article 34.1 can be limited, not only by Acts of the Oireachtas, but also by the Courts where it is necessary in order to protect an accused person's constitutional right to a fair trial.

The right of an accused person to receive a fair trial is entrenched in our legal system and confirmed by the provisions of the Constitution and is a right superior to any rights arising from the provisions of Article 34.1 of the Constitution."

O'Flaherty J. after detailing certain circumstances in which reporting ought not to be allowed, such as the evidence in a trial within a trial or possibly where persons had been jointly indicted but had obtained an Order for separate trials, went on to say at p. 394:-

> *"It would be clear, however, that the Order made by the third respondent here went much further than had ever been allowed in the past. If valid here, it is an Order that could be made, in theory at least, in every type of case: criminal and civil. It must be that the exercise of such a jurisdiction is inconsistent with the Constitution."*

Denham J. appears to support the views of Walsh J. in **In Re R Limited**, except to extend the circumstances in which cases may be prescribed by law to a consideration of other constitutional provisions which would either expressly or impliedly require that cases should not be administered in public. She said at p. 398:-

> *"There is no general discretion in or statutes pursuant to Article 34.1 of the Constitution which empowered the learned Circuit Court Judge to order the hearing otherwise than in public. Applying the decisions of Walsh J. in* ***In Re R Limited*** *(1989) I.R. 126 at p. 135 and Finlay C.J. in* ***Irish Press plc -v- Ingersoll Publications Limited*** *(1993) I.L.R.M. 747 at p. 751, there is no law, that is statute, pursuant to Article 34.1 permitting the learned Circuit Court judge to limit access to the Courts.*
>
> *However, that does not dispose of the matter. While there is no discretion in Article 34.1 to order a trial otherwise than in public, Article 34.1 does not exist in a vacuum. There are competing constitutional rights, rights relating to other persons and in addition the Court has duties under the Constitution. The Court has a duty and jurisdiction to protect constitutional rights and to make such orders as are necessary to that end. There were several rights for consideration at the trial before the Circuit Court. The accused had a right to trial in due course of law (Article 38.1) and to a trial with fair procedures (Article 40.3) the trial judge had a duty to uphold the Constitution and the law and to defend the rights of the accused. Balanced against that was the community's right to access to the Court, to information of the hearing, to the administration of justice in public (Article 34.1). That right is clearly circumscribed by the terms of Article 34.1. However, also in*

the balance was the freedom of expression of the community, a freedom of expression central to democratic government, to enable democracy to function. There was also the freedom of expression of the press. Thus consideration should have been given to Article 40.6.1(i), which may include the publication of information: ***Attorney General for England and Wales -v- Brandon Book Publishers Limited*** *(1986) I.R. 597. The right to communicate (Article 40.3) was also a part of the panoply rights in the bundle of rights for consideration.*

None of the rights in consideration are absolute. Where there are competing rights the Court should give a mutually harmonious application. If that is not possible the hierarchy of rights should be considered both as between the conflicting rights and the general welfare of society: ***The People - v- Shaw*** *(1982) I.R. 1 at p. 56.*

The accused's right to a fair trial is superior to the other rights in the balance: ***D -v- Director of Public Prosecutions*** *(1994) 2 I.R. 465;* ***Z -v- Director of Public Prosecutions*** *(1994) 2 I.R. 476. However, categorising the rights and placing them in the appropriate hierarchy does not dispose of this matter.*

The test to be applied is whether there is a real risk that the accused would not receive a fair trial if the trial was held in public."

She then said at p. 400 under the heading "conclusion":-

"The fundamental constitutional principle that justice be administered in public means that the jurisdiction to make an Order limiting

contemporaneous press reporting of a trial arises only in exceptional circumstances where after applying the appropriate test and process the learned judge determines that there is a real and unavoidable risk of an unfair trial. If there is a real and unavoidable risk that the accused's would not receive a fair trial then there would be no question of the accused's right to a fair trial being balanced detrimentally against the other rights and consideration."

Barrington J. took a similar restrictive view of the phrase "as may be prescribed by law". He said at p. 401:-

"I would have no difficulty therefore in holding that the Order made by the learned trial judge so emasculated the right to a hearing in public as to constitute a denial of that right unless it could be justified by some other provision of Article 34 or by some other provision of the Constitution.

As Counsel for the third and fourth applicants has pointed out the exception "save in such special and limited cases as may be prescribed by law" contained in Article 34.1 refers only to laws enacted since the coming into operation of the Constitution. There is no Act of the Oireachtas passed since the coming into operation of the Constitution justifying the kind of Order made by the learned trial judge and therefore this Order must be held to be void unless it can be justified under some other provision of the Constitution."

The learned judge then went on to consider the provisions of Article 38.1 as to the rights of a person being tried on a criminal charge and said at p. 403:- *"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."*

Finally, Keane J. at p. 409 dealt with the importance of Article 34 and said:-

> *"Justice must be administered in public, not in order to satisfy the merely purient or mindlessly inquisitive, but because, if it were not, an essential feature of a truly democratic society would be missing. Such a society could not tolerate the huge void that would be left if the public had to rely on what might be seen or heard by casual observers, rather than on a detailed daily commentary by press, radio and television. The most benign climate for the growth of corruption and abuse of powers, whether by the judiciary or members of the legal profession, is one of secrecy.*
>
> *Article 34 envisages that in what it describes as "special and limited cases" which must be prescribed by law, justice may be administered otherwise than in public. Specific instances in which that power has been availed of or set out by O'Flaherty J. in his judgment. It could never be exercised so as to deprive the media completely of the power to publish contemporaneous reports of Court proceedings, since that would render the guarantee of the public administration of justice virtually meaningless."*

He then qualified this on p. 401 by saying:-

"The right of the public to be informed as to proceedings in Court is not, however, an absolute right: its exercise may, on occasions, have to yield to other constitutional requirements, specifically Article 38.1, which provides that:- "No person shall be tried on any criminal charge save in due course of law".

I have dealt in considerable detail with the five judgments in this case, as they really form the bedrock of the applicant's arguments. It has been urged upon me that the effect of these judgments is that the Courts have jurisdiction to hear legal proceedings in camera and/or to permit a party to use a pseudonym in circumstances where such a jurisdiction has not been conferred by law. I do not think that these judgments can be given that construction, and indeed it would be a gross distortion of the words of Article 34.1 if that were so. In my view what the judgments of the Supreme Court do establish is that the phrase "as may be prescribed by law" is extended beyond statute law to special and limited cases which may expressly or by inference be prescribed in the Constitution itself.

Some further assistance may be obtained from the subsequent case of **De Gortari -v- His Honour Judge Peter Smithwick** (1999) 4 I.R. 223. The circumstances of this case were rather unusual, in that French prosecuting authorities sought an Order pursuant to Section 51 of the Criminal Justice Act 1994 that evidence should be obtained by the applicant to assist the French authorities. The applicant refused to answer some of the questions put to him and claimed that he was not required to do so under the 1994 Act. The respondent ruled against him and the applicant instituted judicial review proceedings. An application was made to have these judicial review proceedings heard in camera, which application was refused in

the High Court and on appeal, confirming the High Court decision, Denham J. said at p. 229:-

> *"The right to have justice administered in public is not absolute. An accused's rights may require a hearing to be held otherwise than in public. There is an inherent jurisdiction in the Courts to order that a criminal trial be held otherwise than in public:* ***Irish Times Limited -v- Ireland*** *(1998) 1 I.R. 359. The right of an accused to a fair trial is one of the most fundamental constitutional rights afforded to persons and on a hierarchy of constitutional rights is a superior right:* ***D -v- Director of Public Prosecutions*** *(1994) 2 I.R. 465. A Court may limit the publication of proceedings where that is necessary in order to protect the right of an accused person to a fair trial. However, in order to exercise this discretion the trial judge must be satisfied (a) that there is a real risk of an unfair trial if contemporaneous reporting is permitted, and, (b) that the damage which any reporting would cause could not be remedied by the trial judge either by giving appropriate directions to the jury or otherwise."*

I think it is noteworthy that in this passage Denham J. appears to have construed the Irish Times case as relating to orders that criminal trials be held otherwise than in public. She continued at p. 231:-

> *"In this case there is no potential Irish criminal trial being investigated. There is no question of any risk to an Irish trial. There is no issue of unfair procedures in an Irish criminal trial. While the judicial review proceedings are an administration of justice they are not preliminary to an Irish criminal trial. Consequently, in balancing the relevant considerations, on the one hand*

are the civil proceedings, judicial review with a possibility of a criminal trial in another jurisdiction which has a different procedure, and a wish for confidentiality on the part of the applicant. On the other hand is the constitutional principle and procedure that the administration of justice be in public. The harmonisation of these principles is a matter of balance to be achieved by the Court."

She then set out at p. 233 her test and said:-

"I am satisfied that the test to be applied is the Irish test. The onus is on the applicant. He has not submitted any argument which brings the case within any of the exceptions under Article 34.1. There is no express exception created by the Act of 1994. In seeking the exercise of the inherent jurisdiction of the Court under Article 34.1 the factors which the applicant has put forward are (a) the French law of procedure and, (b) the applicant's wish to keep the matter confidential. Neither factor meets the requirements of Irish law: ***Irish Times Limited -v- Ireland*** *(1998) 1 I.R. 359. Neither matter is sufficiently weighty when balanced against the constitutional requirement that the administration of justice should be in public to warrant a decision in favour of the applicant. The Irish law requires that justice be administered in Ireland in accordance with the Irish Constitution. The Irish Constitution requires that the administration of justice should be in public except in specific and rare circumstances."*

In the same case Keane J. (as he then was), commenting on **The Irish Times Limited** case, said at p. 237:-

"In the judgments delivered in that case, it was also made clear that, apart from statute, cases could arise in which the requirements of Article 34.1 had to yield to another constitutional requirement, i.e. ensuring that the accused person has a fair trial, as where a trial within a trial was taking place or separate trials had been ordered of persons charged with the same offence.

Manifestly, this case does not fall within any of the "special and limited cases" identified in ***Irish Times Limited -v- Ireland.*** *It does not fall within any of the statutory exceptions and it is not claimed that any right of the applicant (who is not charged with any offence) to a fair trial will be prejudiced."*

He went on to emphasise that in that case no one had been charged with any criminal offence and there were no criminal proceedings in being. The judgments in that case would seem to confirm that the Supreme Court judgments in **The Irish Times Limited** case were intended to be restricted to criminal cases and to exceptions which arose under Article 38 of the Constitution. In particular, it was made quite clear that a desire for confidentiality could not under any circumstances be considered one of the special and limited cases prescribed by law.

The applicants here claim that they have a constitutional right to privacy as one of the unenumerated personal rights guaranteed by Article 40 and also a right to their good name pursuant to Article 40.3.2. This is undoubtedly so and I think the essential question before me is whether the existence of either of these rights could be said to be a constitutional provision which could be said under any circumstances to be a special and limited case prescribed by law as referred to in Article 34.1.

The nature of a right to privacy was considered by Hamilton P. (as he then was) in **Kennedy -v- Ireland** (1987) I.R. 587 where he said:-

> *"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 which flow from the Christian and democratic nature of the State. It is not an unqualified right. Its exercise may be restricted by the constitutional rights of others, or by the requirements of the common good, and it is subject to the requirements of public order and morality ..... the nature of the right to privacy must be such as to ensure the dignity and freedom of an individual in the type of society envisaged by the Constitution, namely, a sovereign, independent and democratic society. The dignity and freedom of an individual in a democratic society cannot be ensured if his communications of a private nature, be they written or telephonic, are deliberately, consciously and unjustifiably intruded upon and interfered with. I emphasise the words "deliberately, consciously and unjustifiably" because an individual must accept the risk of accidental interference with his communications and the fact that in certain circumstances the exigencies of the common good may require and justify such intrusion and interference. No such circumstances exist in this case."*

I would adopt that as being an accurate and comprehensive statement of the constitutional right to privacy of an individual.

The constitutional right to a good name derives directly from the wording of Article 40.3.2 which reads:-

> *"The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."*

The phrase "in particular" in that sub clause refers back to Article 40.3.1, showing that the right to a good name is simply one of the rights protected by Article 40.3.1. This Article reads:-

> *"The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizens."*

The first comment I would make is that Article 40.3 is a guarantee by the State to use its laws to protect the personal rights of citizens. However, what we have in this case is not a conflict between a personal right of the citizen and the law of the State, but a possible conflict between a personal right of the citizen under Article 40.3 and the constitutional provisions under Article 34.1, which latter are not part of the laws enacted by the State, but are part of the law enacted by the people. Furthermore, Article 40.3 only applies "as far as practicable", and only protects citizens from "unjust attack". It is not an absolute guarantee of the personal rights of the citizen.

No case has been cited to me in which a right to a good name or a right to privacy can justify anonymity in Court proceedings. A request for such anonymity was expressly refused by Laffoy J. in **Roe -v- The Blood Transfusion Service Board** (1996) 3 I.R. 67, although this case was heard before **The Irish Times** case. However,

the rationale for refusing anonymity as set out in that case seems to me to remain perfectly valid. Laffoy J. said at p. 71:-

> *"The plaintiff's stated objective in seeking to prosecute these proceedings under a fictitious name is to keep her identity out of the public domain. In my view, in the context of the underlying rationale of Article 34 s.1, the public disclosure of the true identities of parties to civil litigation is essential if justice is to be administered in public. In a situation in which the true identity of a plaintiff in a civil action is known to the parties to the action and to the Court but is concealed from the public, members of the general public cannot see for themselves that justice is done."*

It has been said in a number of cases that, while there may be a hierarchy of rights under the Constitution, initially the Court should attempt to reach a judgment which harmonises the possible conflicting rights, and it is only if this is not possible that the Court continues and considers the strength or rankings of respective rights. I entirely agree with this approach, and it seems to me that to extend the right to privacy or the right to a good name to anonymity in a Court case could not possibly be said to be a practicable way for the State to defend and vindicate these rights in the light of Article 34.1. As I have said, the personal rights are not absolute, and in considering the extent of such personal rights, one must do so in the light of other constitutional provisions including Article 34.1. The only harmonious construction of the personal rights must be that their exercise do not interfere with other constitutional requirements which are inserted for the public good. Were that not so, it would make nonsense of parts of the Constitution. In one sense it may violate a person's privacy

and a person's good name to have them charged with a serious offence before the Courts, but it could not possibly be said to be a violation of their constitutional rights if they are named, or that they have a constitutional right to be charged under an assumed name. Similarly, and I think it is analogous to the present case, if a person wishes to seek an injunction to restrain the publication of a libel, such person must make such application in their own name. There are of course cases envisaged by Article 34.1 where parties names will not be disclosed, such as the names of defendants in criminal proceedings who are minors, or the names of parties to matrimonial proceedings. These are matters regulated by statute.

Article 40.3.2 refers to the State protecting citizens as best it may from unjust attack. The applicants here have chosen a rather convoluted argument to show that they may be under unjust attack. They say that the Order of the High Court made in 1999 appointing the inspectors was ultra vires insofar as it directed them to publish the names of clients of Ansbacher, but of course that Order in itself was not an unjust attack on the applicants personally. They then go on to argue that, as a result of the ultra vires Order, the report of the inspectors will or may name them as clients of Ansbacher although in exactly what context we do not know, as of course the report has not been published. They argue that this would involve an accusation against them which might be considered by members of the public as accusations of impropriety or criminal offences, and therefore they would constitute an unjust attack. For the purpose of this application, I think it is probably fair on the applicants to assume that either they were going to be wrongly named as clients of Ansbacher or alternatively, if they were rightly so named, they have done absolutely nothing either legally or morally wrong. Assuming that to be so, the laws of this State do defend and vindicate the applicant's good name. The applicant is perfectly entitled, subject possibly to

claims of laches, to bring proceedings to set aside all or any part of the Order appointing the inspectors. If the report is published naming them as clients of Ansbacher, the applicant may well, depending on the circumstances, have rights to seek a judicial review of the decisions or findings of the inspectors. It is acknowledged by the applicants that they have been given an opportunity to make submissions to the inspectors, and presumably they have done so. They make no complaint about the conduct of the enquiries by the inspectors. If commentators or journalists seek to draw inferences from the report which are not justified by it but are drawn simply because the applicants are named as Ansbacher clients, they may have recourse to the laws of defamation. If at the end of the day they are charged with a criminal offence as a result of the inspector's report, they have the full protection of the State in defending themselves, as does anybody else accused of a criminal offence. It is by these means that the State protects the good name of a citizen. A very good example of how the State does so are the rules laid down by O'Dalaigh C.J. in **In Re Haughey** (1971) I.R. 217.

In my view, therefore, there is no possible harmonious construction of the Constitution whereby the applicants personal rights could be considered to give rise to any special or limited case prescribed by law as an exception to Article 34.1.

Finally, I would emphasise the views expressed in the passage I have already quoted from the judgment of Denham J. in **De Gortari -v- Smithwick** at p. 233 where she said that in seeking the exercise of the jurisdiction of the Court the factors put forward by the applicant were related to the French law of procedure and the applicants wished to keep the matter confidential. She commented:- "Neither factor meets the requirements of Irish law: **Irish Times Limited -v- Ireland.**

Neither matter is sufficiently weighty when balanced against the constitutional requirement of the administration of justice should be in public to warrant a decision in favour of the applicant."

This view was expressed subsequent to and in reliance on **The Irish Times Limited** case, and it simply confirms the view taken many years earlier by the Supreme Court in **Beamish & Crawford Limited -v- Crowley** (1969) 1 I.R. 142 at p. 146 where Ó'Dálaigh C.J. said:-

> *"On the grounds contra advanced on behalf of the plaintiffs, that which gives them most concern is the adverse effect of unfavourable publicity. One appreciates that the publicity associated with proceedings raising the issue that goods sold are not of merchantable quality can be damaging to the interests of the manufacturer. One need not waste sympathy on the manufacturer whose goods are not of merchantable quality; but the manufacturer whose goods are shown to be of merchantable quality does deserve sympathy. But publicity, deserved or otherwise, is inseparable from the administration of justice in public; this is a principle which, as the Constitution declares, may not be departed from except in such special and limited cases as may be prescribed by law: Article 34, section 1. I cannot accept that the fact that the trial will, for one of the parties, attract more undesirable publicity in one venue than in another is a matter proper to be taken into account in determining the venue."*

The fact that Article 34.1 requires Courts to administer justice in public by its very nature requires the attendant publicity, including the identification of parties

seeking justice. It is a small price to be paid to ensure the integrity and openness of one of the three organs of the State namely the judicial process, in which openness is a vital element. It is often said that justice must not only be done, but must also be seen to be done, and if this involves innocent parties being brought before the Courts in either civil or criminal proceedings, and wrongly accused, that is unfortunate, but is essential for the protection of the entire judicial system. I do not believe I am called upon to consider any hierarchy of rights in the present case, but if I had to do so, I have no hesitation whatever in saying that the right to have justice administered in public far exceeds any right to privacy, confidentiality or a good name.

I therefore refuse this application.