Bargate Murray

Max Mosley loses ECHR privacy case

Quentin Bargate, Senior Partner of the City of London law firm **Bargate Murray,** and a solicitor for nearly 29 years, comments on the Max Mosley case and whether there is a need for a well-crafted privacy law in England.

Quentin Bargate, Head of Litigation and Dispute Resolution at the City of London law firm, Bargate Murray, comments on the Mosley case and privacy

Twitter pages have been buzzing like honey bees with today's news from the European Court of Human Rights (ECHR) confirming that Max Rufus Mosley has not been successful with his ECHR case.

Mr Mosley's complaints were that, despite the monetary compensation awarded to him by the English courts, (£60,000 in damages and £420,000 for legal costs) he remained a victim of Article 8 of the Convention as a result of the absence of a legal duty on the *News of the World newspaper* to notify him in advance of their intention to publish material concerning him, thus giving him the opportunity to ask a court for an interim injunction and prevent the material's publication.

The reported circumstances of the Mosley case have been so widely disseminated that they do not require further elaboration, save to explain that Mr Mosley was relying on Article 8 (right to protection of private and family life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The ECHR held that there had been no violation of Article 8 and that Article 8 did not require a legally binding pre-notification requirement. Therefore, its absence in UK law had not breached Article 8. The Court noted that Mr Mosley had not referred to a single jurisdiction, in which a pre-notification requirement as such existed, nor had he indicated any international legal texts requiring States to adopt such a requirement; and the current UK system fully corresponded to the resolutions of the Parliamentary Assembly of the Council of Europe on media and privacy.

I should point out that today's chambers judgment is not yet final as any party may request that the case be referred to the Grand Chamber of the Court, within a strict three month period. If such a request is made, a panel of five judges will consider whether the case deserves further examination. In that event, the Grand

Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

In view of the long running nature of these proceedings - Mr Mosley's application to the ECHR was originally lodged on 29 September 2008 – It must be a real possibility that Mr Mosley's legal team will ask for the case to be referred to the Grand Chamber of the Court.

Newspaper proprietors will also breathe a sigh of relief following the comments of the ECHR that political and investigative reporting attracted a high level of protection under the Convention, in relation to freedom of expression. The stakes were high and it is worthy of note that the Guardian News and Media Group, and several others European media organisation filed written observations with the ECHR.

Super injunctions

The question arises whether this case represents a moment when the tide has turned against privacy and in favour of investigative journalism. Will the ECHR judgment speed up the demise of celebrity super injunctions, or accelerate the need for a fully formed privacy law?

The Chairman of the Press Complaints Commission, Baroness Buscombe, speaking on Radio 4 this morning, was of the view that a privacy law could not work because technology always stays one step ahead of the law – as Twitter has demonstrated. However, I think that is too simplistic an approach. There is no doubt that there is a balance to be struck, and while press freedom is a cornerstone of democracy, respect for privacy is also important. There may thus, in my opinion, still be a place for a limited and well crafted privacy law in England.

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For a link to the full ECHR press release (application no. 48009/08) click here:

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