

**THE HIGH COURT**

**Record No. 2015/3350P**

**BETWEEN:**

**DENIS O'BRIEN**

**Plaintiff**

**-AND-**

**RAIDIÓ TEILIFÍS ÉIREANN**

**Defendant**

**AFFIDAVIT OF DAVID MURPHY**

I, **DAVID MURPHY**, Business Editor of Raidió Teilifís Éireann, of Montrose, Donnybrook, Dublin 4, aged eighteen years and upwards, **MAKE OATH** and say as follows:

1. I am the Business Editor of Raidió Teilifís Éireann (hereafter "RTÉ"), the Defendant, and I make this affidavit for, on behalf of and with the consent of the Defendant from facts within my own knowledge save where otherwise appears and where so otherwise appears I believe those facts to be true and accurate.
2. I beg to refer to the proceedings and pleadings herein when produced. I make this affidavit in response to the Plaintiff's application for interlocutory injunctions by Notice of Motion dated 30<sup>th</sup> April 2015 and to the grounding affidavit thereof sworn by the Plaintiff on the 30<sup>th</sup> April 2015 (hereafter "the Plaintiff's affidavit").
3. I make this affidavit in particular response to the second affidavit by Denis O'Brien sworn on the 11<sup>th</sup> May 2015 and the affidavit of Marcus Trench also sworn on the 11<sup>th</sup> May 2015.

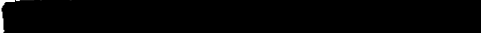
**The affidavit of Marcus Trench sworn on the 11<sup>th</sup> May 2015**

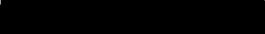
4. For the avoidance of doubt, RTÉ does not assert a public interest in knowledge of Mr O'Brien's banking affairs generally. Neither does it assert a public interest in knowledge of Mr O'Brien's banking affairs for their own sake. The public interest in question is, for reasons already articulated, specific to the affairs of IBRC against the backdrop not merely of state ownership thereof but the circumstances in which it came into being and the part it and its antecedent banks played in national affairs. More specifically and against that backdrop, I assert a public interest in the dealings between IBRC and major debtors. No doubt any bank with which Mr O'Brien may deal will be appraised, if the need arises, of the highly unusual circumstances particular to IBRC and the significance of those circumstances in national affairs. It does not appear from his affidavit that Mr Trench has been apprised of the circumstances particular to

IBRC.

5. Mr Trench also seems to ignore the fact that many circumstances arise in which, to a greater or lesser degree, confidential banking arrangements are disclosed to third parties. For example, where one bank is considering lending to a potential borrower it will ordinarily and of prudence demand details of the potential borrower's indebtedness to other banks. By way of another example, I am advised that discovery of bank accounts is a commonplace in litigation to which banks are not party. I am unaware that such instances generally result in Banks refusing to deal with the account-holders in question.
6. Insofar as Mr Trench asserts that disclosure of the banking information in question "could seriously undermine Mr O'Brien's bargaining position", I confess to difficulty understanding how that could be so as to loans current in 2012/2013 the position as to which has, no doubt, very substantially altered since.

**The second affidavit by Denis O'Brien sworn on the 11<sup>th</sup> May 2015**

7. I did not suggest and do not suggest that there was any expectation that the loans would not be paid in full. I do not suggest they were not paid in full. Neither do I suggest that, as to any extended period of the loans, Mr O'Brien did not pay interest in the ordinary way. 

8. As to bypassing the credit committee, whether Mr O'Brien suggested it or not is not the point and I never suggested that it was the point. 

9. 

10. 

11. 

[REDACTED]

12. [REDACTED]

13. I respectfully assert that there remains even in 2015 a weighty public interest in understanding the past management and governance of IBRC and its relationships and transactions with major debtors in 2012/2013 - [REDACTED]

[REDACTED] Indeed the provisional liquidators have within the last few weeks agreed to conduct a full review for the Minister for Finance of all large transactions by IBRC, which involved a loan write-off of more than €10 million, between 21 January 2009, the date of the nationalisation of IBRC, and February 7th 2013, the date of the appointment of the Special Liquidators to IBRC. In announcing the terms of reference of that inquiry the Minister stressed that the commission of this review is to serve the public interest.

I hasten to say that I do not assert that Mr O'Brien received any loan write off. Nor do I say that his loans would come within the scope of that inquiry.

[REDACTED] The public interest is essentially the same in both cases - understanding the past management and governance of IBRC and its relationships and transactions with major debtors.

14. Further, on 6 May 2015 the Dail debated an opposition motion, inter alia asserting, as to the history of IBRC prior to the liquidation, "*dissatisfaction that information, obtained through freedom of information, FOI, highlighted that relations and trust between the IBRC and the Secretary General, as well as officials in the Department of Finance, had broken down*". The Minister of Finance is the sole shareholder in IBRC. The leader of the opposition stated: "*There were issues about how major clients were handled by IBRC, such as .... Denis O'Brien .... This is all in the freedom of information documents.*"

15. In the minute of 25 July 2012 ("Exhibit DM5) the relationship between IBRC management and Denis O'Brien is expressly addressed in the context of general Ministerial dissatisfaction with IBRC management and IBRC management's assurance that its relationship between IBRC management and Denis O'Brien is close but not inappropriate.

16. I do not seek to dispute or affirm the Ministerial dissatisfaction or management's assertion – or indeed any assertion Mr. O'Brien may wish to make or not make in that regard. The role of RTE is to ventilate the facts of these issues of public interest so that the public can consider them.
17. In any event, whether the Department of Finance concerns in 2012 related to Mr. O'Brien specifically is not the point. Whether or not relating to Mr. O'Brien, the Department's concerns related to relations between IBRC management and major debtors. There can be no dispute but that Mr. O'Brien was a major debtor of IBRC.
18. The public role of the press and RTE in particular is not limited to taking an editorial position or drawing conclusions on matters of public interest – though there may be circumstances in which that is appropriate. The role of the press is wider; it includes the canvassing and ventilating of matters of public interest by way of identifying and contributing to debate on legitimate public concerns so they may be investigated, debated and considered by the body politic. Matters of public interest often must be identified and articulated initially partially, in increments and over time with contributions being made from various sources. It is not necessary in order that the public interest be engaged that wrongdoing be asserted – particularly at the start of the canvassing of a particular issue of public interest.

SWORN by the said DAVID MURPHY this

11<sup>th</sup> day of May 2015 at

RTE, Donnybrook Dublin 4  
 in the County of Dublin before me a  
 Commissioner for Oaths/Practising Solicitor and I  
 personally know the Deponent or the Deponent has  
 been identified to me by

who is personally known to me and  
 who certifies his/her personal knowledge of the  
 Deponent or the identity of the deponent has been  
 established by me by reference to a  
 containing a photograph of  
 the deponent before the affidavit was taken.

*David Murphy*

*Shane Grien*

COMMISSIONER FOR OATHS/ PRACTISING  
 SOLICITOR

**This Affidavit is filed on behalf of the Defendant by RTÉ Solicitors' Office,  
Montrose, Domybrook, Dublin 4, this 11<sup>th</sup> day of May 2015.**

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**Defendant**

**AFFIDAVIT OF DAVID MURPHY**

**RTÉ Solicitors' Office  
Montrose  
Donnybrook**