

---

# Concurrent wrongdoers - the importance of joining all relevant parties to proceedings

*Published 12 April 2018*

The recent ruling in the High Court case of *Kehoe v RTE* saw the jury in that case calculating the apportionment of liability between two parties, a rare occurrence in defamation actions in this jurisdiction.

In *Kehoe*, a former Sinn Fein county councillor, Nicky Kehoe, sued RTE in relation to comments made about him during a live radio debate on the 'Saturday with Claire Byrne' show. During the course of the debate, former Labour Party TD, Joe Costello, alleged that a "member of the IRA army council" controlled Sinn Fein county councillors on Dublin City Council, directing them on how to vote on Council matters. Sinn Fein TD, Eoin O Broin, who was also taking part in the debate, subsequently named Mr. Kehoe as the person to whom Costello was referring.

Mr. Kehoe, a former IRA member, who had previously been jailed for paramilitary activities as part of the IRA, argued that the broadcast was defamatory. He said that Mr. Costello's allegations were false and that he had not attended meetings of Dublin City Council with a view to controlling Sinn Fein councillors' votes. He also strenuously denied that he was a member of the IRA army council. Mr. Kehoe argued that he had spent 26 years rebuilding his reputation since his release from prison and that the comments uttered during the course of the radio debate had reversed this in "one swipe".

In its defence, RTE denied Mr. Kehoe had been defamed and also denied that it was liable for the matters complained of, in circumstances where it was a live show and Mr. Costello made the remarks complained of. Mr. Kehoe had elected to issue proceedings only against RTE, as broadcaster, and not Mr. Costello.

The jury found that the broadcast did suggest that Mr. Kehoe was not a fit person to be involved in the democratic process. It found that RTE was 35% responsible and Mr. Costello was 65% responsible for the defamation and assessed damages at €10,000, with no aggravated damages. However, because Mr. Kehoe had not sued Mr. Costello, pursuant to the Civil Liability Act 1961, he could only recover €3,500 from RTE, being 35% of the overall award. The judge adjourned the matter to 16 April to deal with the issue of legal costs.

The judge explained to the jury that, under the Civil Liability Act, where there had been more than one person responsible for the alleged wrongdoing, it was Mr. Kehoe's responsibility to pursue all parties. Where Mr. Kehoe had chosen only to pursue RTE and not Mr. Costello, Mr. Kehoe was liable for this. Conversely, had Mr. Kehoe sued both parties, he could have pursued RTE for the entire sum, pursuant to the 1% rule under Irish law.

The ruling in *Kehoe v RTE* illustrates the importance of potential plaintiffs conducting due diligence in advance of instituting proceedings and ensuring that all liable parties are joined as defendants to the proceedings. Failure to do so could ultimately result in a much reduced award for the plaintiff, as Mr. Kehoe discovered in *Kehoe v RTE*.