

# HOUSE OF LORDS UPHOLDS LANDMARK COURT OF APPEAL DECISION ON PRIVACY

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Today in London, the House of Lords rejected an application for permission to appeal brought by Niema Ash against the Court of Appeal decision which had upheld Canadian singer Loreena McKennitt's right to "the human dignity of privacy". The judgement has huge implications for the right to privacy of anyone facing intrusive media scrutiny.

In December 2006 British Court of Appeal upheld the High Court judgment of Mr. Justice Eady who found that Loreena McKennitt's privacy had been intruded upon and the duty of confidence owed to her by a former friend and employee had been violated.

The House of Lords said that the petition for appeal "did not raise an arguable point of law of general public importance."

Niema Ash, a UK resident, had self-published a book about the Canadian singer/composer in the summer of 2005. After a 10-day High Court trial in November of 2005, certain passages of the book were restrained by order of Eady J. Subsequently, Ms. Ash and her solicitors appealed the ruling and were heard by a three person appeal panel in November of this year.

The Court of Appeal, led by Lord Justice Buxton, determined that there was no error in approach or law by Mr. Justice Eady. In the judgment handed down in December 2006, the Court found that Eady J was right to conclude that numerous passages of the book, such as those dealing with the drowning death of Ms. McKennitt's fiancé and her subsequent grief, "were remarkably intrusive."

In commenting on the result Ms. McKennitt said:

"I am very grateful to the courts, including the House of Lords, the Court of Appeal and Mr Justice Eady who have recognized that every person has an equal right to a private life. If an aspect of career places one directly in the public eye or if extraordinary events make an ordinary person newsworthy for a time, we all still should have the basic human dignity of privacy for our home and family life.

"As an artist I naturally feel strongly about freedom of expression, and I feel vindicated that the law supported my view that freedom comes with responsibility for decency, fairness and truth."

The case of McKennitt vs Ash has generated interest in legal circles and among various media interests because it has moved to clarify the effect of the Human Rights Act 1998 on English law and, in particular, the incorporation of the right to respect for a private life as described in Article 8 of the European Convention on Human Rights. Moreover various media parties sought to intervene and the Court of Appeal duly considered their detailed legal submissions.

Ms. Ash and her solicitors had argued before the Courts that she wanted to “tell her story” and that the Article 10 right to freedom of expression allowed her to override Ms. McKennitt’s Article 8 rights to privacy.

Mark Thomson, Ms. McKennitt’s solicitor from the London law firm Carter-Ruck, pointed out: “This is a landmark decision for protection of privacy in this country. With an intense focus on the facts of the case at trial Mr Justice Eady performed a proportionate balancing exercise on the parties’ respective rights. The judgment has helped define the breadth of privacy rights, the relevance of accuracy in the material disclosed and the extent to which the public interest is truly served by mere curiosity.”

The judgment also indicated that the breach of confidence and Ms. Ash’s signed confidentiality agreement could not be justified by a supposed public interest defence of revealing alleged malfeasance or hypocrisy in relation to a private real estate transaction. In fact Eady J found that the evidence presented in court proved there “was nothing to Ms. McKennitt’s discredit whatever.”

Ms. McKennitt stated:

“This is a victory as well for those writers who view their work with integrity, and for those who understand that the duty of the press to question government and corporations should not be interfered with nor taken lightly. We also realize that the essence of a free society is the personal autonomy of the individual to think, feel, and interact socially without unwarranted intrusion. There is no public interest in delving into matters that are truly personal.”

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