



Covering the Courts:
A Basic Guide for Journalists

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Table of Contents

| | |
|--|----|
| A quick guide to Court proceedings | 3 |
| Contempt of Court | 5 |
| Defamation and privilege | 8 |
| Restrictions on reporting | 9 |
| Finding your way around the Courts | 12 |
| Who's who in court and where to find out | 12 |
| Court documents | 12 |
| Court Registries..... | 13 |
| Daily Law Lists | 13 |
| Etiquette in court | 14 |
| Judges' titles | 14 |
| Further recommended reading..... | 14 |

A quick guide to Court proceedings

Criminal offences are summary or indictable. Summary offences are dealt with by a magistrate. Indictable offences are dealt with by a judge and jury, and cover the more serious criminal charges.

If someone is charged with an indictable offence, the defendant will first appear in the Magistrates' Court.

If the defendant pleads guilty, they will be committed to the Supreme Court for sentence. The accused is then dealt with by the judge by way of plea hearing (pre-sentence hearing) and then sentencing.

If the defendant pleads not guilty, he or she will be committed to the Supreme Court for trial. Before a trial is conducted before a jury, the Court may make a preliminary proceedings order which authorises the taking of evidence from specified witnesses in the Magistrates Court in advance of the trial in the Supreme Court.

It is important for journalists to remember when covering a trial that the accused, the person on trial, is innocent until proved guilty, and you should not state alleged crimes as fact. You may quote the prosecutor saying, for example, "the accused marched into the bank, brandishing a shotgun, ordered everyone to lie on the floor and then emptied the safe". But your report must make it clear that you are quoting someone saying that in court, not stating it as fact without attributing it.

It is therefore safer to say, 'A woman accused of snatching a tray of rings from a jewellery shop window ...', or, 'The prosecutor told the jury that the woman snatched a tray of rings ...', than simply to say, "A woman who snatched a tray of rings etc has gone on trial in the County Court".

A plea of not guilty means the charges are being contested, whereas a plea of guilty means there is no contest that the crime has occurred, and the only task for the court is to impose sentence.

Reporting a trial conducted before a jury needs care. This is the area where contempt is a particular concern. There are also rules which prevent any contact with jurors, even innocuous conversations with jurors.

It is not possible now under Tasmanian law, and in most states, to reveal the secrets of the jury room, even if they are offered to you. The law prohibits the naming of jurors, and protects jury confidentiality.

It is also contempt to report anything said in court during a trial, in the absence of the jury. This is a 'golden rule' of court reporting. There are often parts of a trial called a *voire dire*, a term which loosely refers to a judge deciding whether evidence should be admitted and heard by the jury, or other legal argument about what can be said to the jury. The court will not be closed during the *voir dire*, and reporters are able to stay. But you must not report anything said in the absence of the jury. If there is anything newsworthy or interesting arising from the *voir dire*, it must wait until after the trial is over, and there is no longer a risk of the jury hearing material which has been excluded.

It is common for pre-trial issues to be determined by the trial judge in criminal trials, to save time and interruption once the case opens before a jury. They often involve issues such as admissibility of evidence. As with a *voire dire*, these proceedings should be regarded as part of the trial, and not able to be reported, because they are made in the jury's absence.

Sometimes a judge rules certain evidence to be inadmissible. The safe rule here is not to report it. If something has been reported, which is later ruled inadmissible, again, the safe rule is not to report it again. If you are writing for on-line, extra care needs to be taken.

Care is needed if a co-accused is to have a separate trial, or the accused faces several separate trials. Judges commonly make non-publication orders preventing or limiting reporting until all trials before juries are completed. Subject to any non-publication orders, if a related trial is

imminent, your report of the first trial should be written with the need to prevent prejudice to the subsequent trials.

It is important always to include whether the accused has pleaded guilty or not guilty, or any special plea eg not guilty by reason of insanity.

If the accused is pleading not guilty on the ground of mental impairment, the court will need to be satisfied by evidence that this is the appropriate plea. In practical terms this means that the accused committed the crime but was not legally responsible for his actions due to insanity. See the *Criminal Justice (Mental Impairment) Act 1999*. Check with your legal advisers for any reporting restrictions in these cases.

Contempt of Court

Contempt of court as it affects the media generally refers to reports and headlines, which could have a prejudicial affect on proceedings. In practice these are usually criminal proceedings, and particularly cases which are tried by a jury. But civil cases could also be affected. There are juries in some civil cases in Tasmania.

Contempt of court is an area of the law that is designed to ensure that a fair trial is achieved, without unfair or prejudicial reports from the media. Competing against this is the public interest in a right to free speech. The law favors the right to a fair trial, and courts are always very keen to prevent 'trial by media'.

A common term is *sub judice* contempt, which simply means that while a case is before the courts, or proceedings are pending, there are dangers for the media if reports reveal prejudicial material. Prejudice can simply mean strongly supporting the case one way or another, when it is up to the court to determine the issue. The contempt period begins when a charge is laid, a warrant is issued or someone is arrested (or with a civil case, when a writ is issued), and finishes when the proceedings are over. In a criminal case, the proceedings end when someone has been sentenced, if convicted of the crime, or acquitted. But technically the time

expires when the time for an appeal has expired, because of the possibility of a retrial before another jury if an appeal succeeded.

Contempt does not just involve the possibility of influencing jurors by giving them information that they should not have, but can also cover influencing witnesses. It is unwise to interview people involved in cases, including witnesses, and publish those interviews before proceedings are completed.

Remember the golden rule: do not report anything said in the absence of the jury.

Contempt is really a fairly simple concept, although it is a complex area of the law. If you bear in mind that it is designed to ensure a fair trial, not affected by the media giving information to a jury which goes beyond what is said in court, or by comments about the people and issues in the trial, the rules are easy to follow.

Fining a media organisation \$75,000 for contempt of court for a comment about an accused person, then on trial, Justice Gillard said:

'[The accused] was entitled to a trial by 12 members of the community, free from bias or prejudice. He was entitled to be tried by a jury who decided the case in accordance with the evidence free from outside influence. Even the most unpopular defendant is entitled to a fair hearing and a decision made in accordance with the evidence uninfluenced by outside factors..... Trial by media is unacceptable.

The sub judice rule in its application ... is simple, unequivocal and easy to comprehend. [It] forbids any publication of the circumstances of the trial or the character of the accused which had a tendency to prejudice the trial, and the only real exception ...is a fair and accurate report of the proceedings. All members of the media would be well-advised to proceed on the basis that other than reporting the actual proceedings in the court, nothing should

be stated in the media concerning the trial, the court, the accused or witnesses.'

R v Nationwide News Pty Ltd (Unreported, Supreme Court of Victoria, Gillard J, 18 February 1998)

When cases that have received extensive publicity at the time of the offence get to trial, reporters should be careful not to background the case beyond what is told to the jury. This is something of particular relevance to television reports using file footage.

Reporters should also avoid stating that accused people on trial are in custody, or giving a prison address, unless it is clear to the jury that someone is in custody, or was at the relevant time, because the charge involves an assault in prison, for example. It is considered prejudicial to the accused to reveal either that he was denied bail, or is in jail on another offence. Photographs of accused people showing them in handcuffs getting out of a prison van, could also be a problem before a verdict has been reached, if the jury does not know that the accused is in custody.

In summary, reporters should be extremely careful to avoid:

- Revealing prior convictions
- Breaching any non-publication order
- Reports that imply guilt or innocence of the accused
- Reports including interviews that could affect witnesses
- Comments, as distinct from reports of the court case
- Confessions
- Pictures of the accused where identity is an issue
- Reporting evidence etc in the absence of the jury
- Any contact with jurors

If in doubt, seek legal advice.

Defamation and privilege

The other area of the law that concerns the media and court reporting is defamation. A detailed discussion of defamation is not necessary here, and journalists are encouraged to seek advice from their legal advisers. For court reporting purposes, a very basic definition is that something is defamatory if it is harmful to someone's reputation, and is published to a third party, which would cover any publication by the media.

Carefully written court reports are protected from defamation (see Defamation Act 2005 s.29). The law gives a protection to reports of what is said in court, so that material which is otherwise defamatory can be safely reported. This protection, called a privilege, covers reports of court proceedings that are faithful and accurate, so there is no danger of being sued for defamation for a court report, provided it is fair and accurate. It must therefore not be one-sided, for example, it cannot report the prosecution case prominently and ignore the defence; and the facts must be right, as stated in court, and your report must be neutral. If it is unlikely you will be reporting the entire proceeding, but only parts of it, it is important to say in your copy, 'The trial (or hearing) is continuing', which indicates it is not a complete report.

There is little room for interpretive or creative reports of court cases, particularly when there is or will be a trial by jury. These should wait until later, until verdict or more preferably, sentence has been delivered.

The privilege applies only to what is said in court, and not to comments made outside the court. Comments may be defamatory, and they may also be prejudicial, so care is needed. It is therefore important that your copy makes it clear what is said in court, and what is said outside. The privilege also applies to documents used in court.

Bail justices and out of sessions hearings: Out of court sessions are usually conducted by bail justices, or if appropriate, by a magistrate on 24 hour call. These hearings are open, and should be accessible to the

public, including the media. Reporters are able to be present in most instances, subject to security considerations in particular cases. They can be regarded as quasi-court proceedings, however, extreme caution should be exercised to avoid reporting references to prior convictions or admissions made by an accused, without seeking legal advice. See the Justices Act 1959 s 37A for reporting restrictions.

Restrictions on reporting

There are several hundred statutory restrictions on reporting, in numerous Acts of Parliament. Reporters should make themselves familiar with the more common and important pieces of legislation and seek legal interpretation. Legislation is often reviewed and amended by Parliament. Reporters need to keep abreast of any amendments.

In particular, reporters should familiarise themselves with:

- **Evidence Act 2001 s194K:** This prohibits the direct or indirect identification of people who are the victims of sexual assaults, or witnesses in criminal proceedings arising therefrom. For example, where the victim is related to the offender, and the charge is sexual assault by a boyfriend, partner or husband, or a male family member (incest), the offender cannot be named, because to do so would identify the victim. There are also restrictions on what may be reported at committal hearings of sex offence cases.
- **Evidence Act 2001 s194L:** This enables the Court to make an order prohibiting the publication of any evidence or argument in any civil case that involves an allegation of any kind of sexual assault if it is of the opinion that the printing or publication of the evidence, argument or particulars may cause a witness to be degraded, distressed or humiliated.
- **Youth Justice Act 1997 s.31 and s.108** generally prohibit publication of any information in respect of any proceedings that are to be, are being or have been taken in the Magistrates Court (Youth

Justice Division) if the information identifies, or may lead to the identification of, a youth who is the subject of, or a witness in, the proceedings

- **Magistrates Court (Children's Division) Act 1997** s12 generally prohibits publication in any way of a report of the proceedings of the Court (principally child protection proceedings) if the report identifies, or contains any information, picture or film that may lead to the identification of, a child who is the subject of, a party to, or a witness in, the proceedings
- **Justices Act 1959** s 37A imposes restrictions on the matters that can be reported from a bail application hearing.
- **Family Violence Act 2004** s32 prohibits publication of proceedings under that Act involving children, and the Court may make such an order in relation to adults involved in proceedings under that Act.
- **Admission to Courts (Supreme Court) Regulations 2006** r.5 enables a judge to order that a particular member of the public, or the public generally be sent out of, or refused admission to, the court if the Judge is of the opinion that it is necessary, or desirable, for the purpose of securing order and safety in a court or for the public interest.
- **HIV/AIDS Preventive Measures Act 1993** s.42: This allows a magistrate to restrain publication of the name of someone who is HIV positive, and the whole or any part of the court proceedings. It is not an automatic provision but applies if the magistrate grants an order to do so.
- **Family Law Act 1975 (C'th)**: s.121 prohibits the identification of people involved in cases before the court, including children, but it does not close the court. The prohibition on identification extends to Family Court cases heard elsewhere, such as an appeal to the High Court. A judge may grant an order under Section 121 that permits

people to be identified, and frequently does, for example, when children have been abducted.

Please note that any of the above prohibitions on reporting identity apply to both direct and indirect identification. The relevant person does not need to be specifically named in order to be identified. Details of the circumstances of offences can also lead to identification, and could breach, for example, the prohibition on identifying sexual assault victims or children involved in Children's Court proceedings.

With photographs or footage, concealing the face of an offender may not be sufficient to prevent identification. Distinctive clothing, a broken arm, or other visual feature, may identify someone. Each case must be assessed on its merits.

There are a number of categories of witnesses where care should be exercised, even if a non-publication order has not been made. For example, it is generally inadvisable to reveal the identity (including photographs) of :

- an undercover police officer, or
- a police informer

as this could put them at risk. It is an offence under the Witness Protection Act 2000 (section 13) to disclose information about the identity or location of someone in witness protection, or even to disclose that a person is on the program.

All courts have powers to make non-publication orders which may prohibit reporting of all or specified parts of proceedings. It is contempt of court to disobey an order. If you think it is unreasonable, apply to the court to have it lifted or modified, but do not ignore an order simply because you disagree with it.

Sometimes people in civil cases, and children, are referred to simply by initials, to protect their privacy. This must be respected as it reflects the Court's application of the publication restrictions.

Finding your way around the Courts

Who's who in court and where to find out

Each judge has an Associate, who sits in front of the judge in court. Lists of Judges' Associates are on the court's website. These people are generally very helpful with information to confirm charges, names, addresses and so on.

The lawyers representing parties in court are barristers and solicitors. Barristers wear wigs and gowns in higher courts. A Queen's Counsel (QC) or Senior Counsel (SC) is a senior barrister, also often referred to as a silk and wear a black ribbon rosette hanging from the back of their robe.

In a criminal trial, the prosecutor sits at the end of the bar table closest to the jury box, and defence counsel is at the other end of the bar table.

Court documents

In general, and subject to a Judge's order to the contrary, the initiating documents in court proceedings, such as the criminal *indictment* or a civil *writ*, are public documents which you may ask to examine.

The media can apply in writing for access to documents which have been tendered. Do not publish anything prejudicial, such as prior convictions and confessions, without legal advice.

The safe position is not to regard these documents as privileged until they are part of the proceedings in court, so you should be cautious about quoting clearly defamatory material from a writ when it is filed. It would be safe to do so when the document has been used before the court.

The Supreme Court has introduced protocols for reporters applying for access to material tendered in court, for permission to use laptops, tablets and audio-recording devices, and for access to transcripts.

Reporters should ensure that they are familiar with these protocols. They are published on the Supreme Court of Tasmania website.

More information on access to documents in the Supreme Court can be found in the Media Policies & Practices manual.

Court Registries

The Principal Registry for the Supreme Court is at Salamanca Place, Hobart. Certain parts of civil files, except those marked confidential, may be searched. The Supreme Court Rules 2000 r.33 provides that persons who are not a party to the proceedings (eg. journalists) are not permitted to search the following documents without the permission of a Judge:

- any judgment, order, transcript of a proceeding or other document with respect to proceedings in chambers;
- any affidavit, interrogatories, answers to interrogatories, list of documents given on discovery, admissions, evidence taken on deposition, subpoena or document lodged in answer to a subpoena;
- any document which the registrar considers ought to remain confidential to the parties

Daily Law Lists

The three local Tasmanian newspapers publish the daily lists for court sittings in the relevant region each day. The lists are also published on the Supreme Court website and on a free subscription service via Jade Barnet website. The daily lists are also posted in the foyers of the Supreme Court buildings.

You should be aware that in the Supreme Court, all judgments, sentences and significant rulings by judges in trials are available on the Internet. Access is available via the Supreme Court's website and at AustLII[®].

Etiquette in court

It is customary to bow to the magistrate or judge when you enter or leave the courtroom. Please try to move around the court as unobtrusively as possible. There are usually press seats provided. If you enter (or get up to leave) the court as the oath is being administered to a witness, stand still until the oath is finished. Make sure all mobile phones or PDAs are switched to silent.

A Guide to Courtroom Etiquette is published on the Supreme Court of Tasmania website.

More information on electronic equipment can be found in the Supreme Court's Media Policies & Practices manual.

Judges' titles

Judges of the Supreme Court are called Justice [Smith]. It is important to get these details correct, because mistakes reflect against you and your organisation. The Supreme Court also has an Associate Judge, who performs a range of judicial functions mainly in the civil jurisdiction. They are called Associate Justice [Smith], and in court, addressed as "Your Honour". Their hearings are open like any other court hearing.

If you are speaking to a judge, call him or her "Your Honour".

The Tasmanian Director of Public Prosecutions is responsible for prosecuting most of the criminal trials and pleas in the Supreme Court. The Commonwealth DPP also prosecutes a smaller number of criminal prosecutions in the Supreme Court.

Further recommended reading

The ABC All-Media Handbook, is an extremely helpful little book, highly recommended.

The Journalist's Companion to Australian law by Geoffrey Gibson, published by Melbourne University Press, is a very helpful book written by an adviser to the ABC.

Media Law in Australia by Armstrong, Blakeney and Watterson, is excellent and deals clearly with the subject for laymen.

The Journalist's Guide to Media Law by Mark Person is an excellent book blending practical advice with legal cases, published by Allen & Unwin.

The Law of Journalism in Australia by Sally Walker is a classic text and excellent, but more technical.

A very helpful and practical book, aimed directly at court reporters, is *Court Reporting in Australia* by Peter Gregory, who was chief court reporter at *The Age* for some 17 years. It is published by Cambridge University Press.

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