

MAGISTRATES COURTS OF QUEENSLAND

CITATION: *Australian Broadcasting Corporation & Ors v Queensland Police Service & Ors* [2019] QChCM 3

PARTIES: **Queensland Police Service**
(First Respondent)

v

A
(First Child Defendant/ Second Respondent)

B
(Second Child Defendant/Third Respondent)

Australian Broadcasting Corporation
Queensland Newspapers Pty Ltd
Sunshine Coast Newspaper Company Pty Ltd
Channel Seven Brisbane Pty Ltd
TCN Channel Nine Pty Ltd
Network Ten Pty Ltd
(Applicants)

FILE NO/S: CM19756/19(0); CM20110/19(8)

DIVISION: Childrens Court

PROCEEDING: Application to be present at a proceeding s.20(3)(c)(i)
Childrens Court Act 1992

ORIGINATING COURT: Childrens Court, Maroochydore

DELIVERED ON: 30 October 2019

DELIVERED AT: Maroochydore

HEARING DATE: 2 October 2019

MAGISTRATE: S Tonkin

ORDER: **Application refused.**

CATCHWORDS: Childrens Court, closed court, Youth Justice, indictable offence, Committal Proceedings, mass media presence, reporting Childrens Court proceedings, prejudice to interests of child defendant, open justice, public interest

COUNSEL: Mr P McCafferty QC (Applicants)

Mr J Allen, Solicitor (First Respondent)

Ms Reece (Second Defendant/Respondent)

Ms C Lovel (Third Defendant/Respondent)

SOLICITORS: ABC Legal
 Queensland Police Service
 Legal Aid Queensland

- [1] In early September 2019 residents of the Peregrine area were evacuated due to a large bushfire that was unable to be controlled for some days. One house was destroyed and numerous others were threatened. It was a terrifying experience and spectacle, and the fire danger persisted for some time.
- [2] Two children aged 14 years and 15 years respectively, have been charged with endangering a particular property.¹
- [3] The charges are serious and cannot be finalised by a Magistrate sitting in the Childrens Court. That is normally by law a closed court.² The court does, however, have the power to permit one or more representatives of mass media to be present if in the Court's opinion their presence would not be prejudicial to the interests of the child.³
- [4] The guilt or innocence of children has to be eventually determined by a Judge sitting in the Childrens Court of Queensland, in Maroochydore. That is an open court, however subject to legal restrictions on what can be reported in the media.
- [5] The charges must firstly be processed before a Magistrate in the Childrens Court at Maroochydore.
- [6] The Queensland Police Service is currently in the process of preparing a Brief of Evidence, consisting of the statements of witnesses, and other forms of evidence, which are likely to include photographs and technical reports by experts. That will be made available to the legal representatives for the children, and presented to the Magistrate in the Childrens Court at the Committal Hearing – possibly as soon as 20 November 2019.
- [7] If the evidence is sufficient to support the charges, the Magistrate will commit the children to the Childrens Court of Queensland, either for trial or sentence before the Judge.
- [8] Normally the committal process in this court is minimalist in nature and purely administrative – especially if the legal representatives consent to the children being committed to the Childrens Court of Queensland.

¹ Section 462 *Criminal Code Act 1899* (Qld).

² Section 20 *Childrens Court Act 1992* (Qld).

³ Section 20(3)(c) *Childrens Court Act 1992* (Qld).

- [9] Six media organisations, represented by Mr McCafferty QC have applied for access to the Childrens Court to observe and report on the committal process.
- [10] He submitted that the Court's decision should be based on the long-established principles set out in *R v Sun Newspapers Pty Ltd ex parte Attorney-General* [1993] 1 Qd R 682.
- [11] That case concerned a newspaper account published during the criminal trial of two accused, held in the years following the revelation of scandalous and criminal behaviour of public officials by the Fitzgerald Inquiry. The newspaper account incorporated unbalanced and misleading commentary by the journalist, of aspects of the earlier trial of the Bjelke Petersen-era Police Commissioner Terry Lewis, and included sensationalist discussion of diary entries which the trial judge in the case of the two accused, had emphatically warned the jury were not corroborative of guilt.
- [12] Criminal cases under discussion in that case concerned offending by adults, and the issue was whether the unbalanced commentary by the journalist amounted to contempt of court.
- [13] In the argument as to whether the publication was a fair and accurate account of the earlier Lewis trial, Byrne J had occasion to visit the principles that apply to media reporting of court proceedings.⁴
- [14] His Honour emphasised the public interest in media dissemination of fair and accurate reports of court cases which then enables informed public discussion of court process. The public can then decide whether our system of criminal justice is fair and right. Justice is, after all, administered in the name of society.
- [15] Byrne J went on then to discuss the importance to this process, of the accounts being fair and accurate, and not distorted.
- [16] After the completion of submissions, Mr McCafferty QC handed up some additional authorities:
- *Qiangdong Liu v Fairfax Media Publications Pty Ltd & Ors* [2018] NSWCCA 159, where a wealthy adult witness argued unsuccessfully for an order suppressing his identity on the basis that disclosure in the media might affect his business interests and reputation.
- The principle of open justice in criminal proceedings was held to be more important than some minor discomfort he might suffer as a result of his name being associated with a sexual assault matter in which he was not implicated.
- *Queensland Newspapers Pty Ltd v Stjernqvist* [2006] QSC 200, where an open-ended order by an Acting Magistrate prohibiting publication of matters relating to a committal proceeding in connection with rape charges had been made purportedly under s.12 of the *Bail Act 1980*.

⁴ *R v Sun Newspapers Pty Ltd ex parte Attorney-General* [1993] 1 Qd R 682 at p.687.

The Court hearing the “attack” on the order ruled that as s.12(1) derogates from the fundamental principles that the administration of justice should be carried out in public, nothing should be done to discourage the publication to a wider public of fair and accurate reports of proceedings that have taken place in court, resulting in a requirement that the section should be construed strictly⁵, that is, narrowly.

Douglas J went on to review the authorities, which stress that the exercise of the power to prohibit the publication of proceedings conducted in open court should be exercised only in exceptional cases, respecting the fundamental importance of the principle of open justice.

His Honour quoted the High Court in *Re Application by the Chief Commissioner of Police (Victoria)* (2005) 214 ALR 422 at pp.448-449:

“.....
 [119] *It is not sufficient for the assurance of open justice in this country that the doors of a court should be unlocked. Fair and accurate reports of what occurs in courtrooms is an essential attribute of the administration of justice in Australia.*”

- [17] These cases concerned the reporting of cases involving adults whether as accused or witnesses.
- [18] There is no doubt that open justice, that is, courts open to the public and the publication in the media of court proceedings, is an essential pillar of democracy.
- [19] Parliament has however, legislated some exceptions, including for domestic violence applications⁶, some of the evidence in sexual offence proceedings⁷, and proceedings in the Childrens Court⁸. Those Acts of Parliament contain restrictions on publication of identifying information about parties, victims and others.
- [20] Obviously publication restrictions alone do not provide sufficient protection, so Parliament has taken the further step of excluding the public (including the media) from the courtroom in such cases, unless the particular court gives permission.
- [21] In the case of children charged with criminal offences, in addition to limiting access to Childrens Court proceedings and restricting publication of identifying information, a comprehensive set of special principles is to be applied. The Charter of Youth Justice Principles is set out in Schedule 1 of the *Youth Justice Act 1992*. The Principles are designed to balance public safety and the need to hold offenders accountable for their actions, with the special vulnerability of children, and the importance of preventing entrenching of offending behaviour.
- [22] For this court to decide that the media should be allowed into the court to report the proceedings, it would have to find that that would not be prejudicial to the interests of the children.

⁵ *Queensland Newspapers Pty Ltd v Stjernqvist* [2006] QSC 200 at [23].

⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s.158(1).

⁷ *Criminal Law (Sexual Offences) Act 1978* (Qld) s.5(1).

⁸ *Childrens Court Act 1992* (Qld) s.20.

- [23] As I have said, the present application concerns children aged 14 and 15, with no previous contact with the Childrens Court.
- [24] There has been extensive media reporting of the events of early September. Mr James Hoy's affidavit affirmed on 1st October 2019 annexes a large sample of those reports. Many contain dramatic and sensationalist headlines and commentary and reports of arson attacks by both adults and children in many parts of the country, associated with mention of the charging of these two children.
- [25] The reports include commentary by experts including a headline "*Bushfires deliberately lit by 'cunning, versatile criminals' more common in school holidays expert warns*" above a photograph with the by-line "*Two teenagers were charged over a bushfire at Peregrin Springs on Queensland's Sunshine Coast*"⁹.
- [26] It is hard not to conclude that at the very least the media reporting is careless in the conflating of the charges against these children with the activities of every cunning criminal arsonist in the country. At worst, there is some evidence of a disregard for the presumption of innocence and the court processes preliminary to any finding of guilt.
- [27] A special responsibility is vested in the media to report accurately, comprehensively and responsibly, as the media is so influential in the formation of public opinion. Understandably there is a legitimate interest among the public in the present proceedings, and the media is the means by which information about the outcome of police investigations is publicised. As I have already said, the eventual result of the prosecution of the two children will be available to be reported on, together with the process by which the result is achieved, in the Childrens Court of Queensland.
- [28] At this point in time there is not yet any evidence before this court about the allegations against these two children. Additionally, and importantly, they are entitled to the presumption of innocence - the overriding principle in criminal proceedings – which appears to have received no emphasis in the media reports.
- [29] Evidence of their current circumstances is before the court in affidavits. They are unable to continue to attend their schools, their identities appear to be widely known in their communities, they have received on-line threats of violence, and in public places they have been targeted with aggression and verbal abuse.
- [30] In one case, one of them was chased by a group of youths apparently intent on harm. One child has had to leave their part-time employment, and a sporting team. Each is undergoing counselling to cope with the resulting psychological consequences.
- [31] Mr McCafferty QC argued that the media is not to blame for distress the children are enduring, and in any case, such distress is irrelevant to the issue of whether permission should be given. If the media is unable to attend court, he submitted, inaccurate speculation will arise about their bail position and the committal proceedings. The circumstances are sufficiently exceptional that the media presence should be permitted.

⁹ Page 50 Annexures to Affidavit of James Hoy affirmed 1 October 2019.

- [32] In his concluding remarks he suggested that if the presence of seven media representatives in court was likely to intimidate, then one person could be appointed by the organisations to attend on behalf of all.
- [33] The children were each represented by barristers instructed by Legal Aid Queensland. Ms Reece (with whose comments Ms Lovel joined) argued that the overriding principle is not open justice, but protection of the children from the repeated scrutiny by the media and the resultant risk (which has been borne out by their experiences) of public vilification before they have even been dealt with.
- [34] Even Police (consistent with their obligations under the Charter) have been arranging for the children (who are on bail) to be escorted through the court precincts via a rear, and then internal, entrance, for fear that their safety is in jeopardy during court appearances. This is most unusual.
- [35] It is true that accurate reporting of the proceedings is vital, if only to ensure the due administration of justice is upheld. Equally, the wellbeing of the children involved must be protected during the conduct of the proceedings.
- [36] It is not possible to conclusively find that the circumstances the children are presently experiencing are the direct result of legitimate media reporting. Nevertheless I am satisfied that admitting the media to this court every time the charges are mentioned, when little or no substantive information will be available to report, is likely to provide an opportunity to re-ignite hostile reaction to the two children via reporting that may be, even if unintentionally, inflammatory. Indeed even the report of my colleague Acting Magistrate Andrew Walker's adjournment of the media application to 2nd October for further submissions, concluded with the following paragraph:
- “In Queensland, there is a general rule courts should conduct their proceedings in public and only in wholly exceptional circumstances should the public be excluded from proceedings.”¹⁰*
- [37] Given the legislated exceptions I have referred to earlier in my reasons (including for matters in the Childrens Court) this is, of course, an incomplete statement of the legal position and does the media a disservice. It leads the public to believe that the court is in some way extending unusual protection to these particular child defendants. Indeed a correct statement of the position would be to say that the admission of the media to committal proceedings in the Childrens Court is the exception to the rule and most likely seldom permitted. I am not privy to any statistics in this regard.
- [38] I am not satisfied the applicants have established that admitting the media to the courtroom would not be prejudicial to the interests of the children. The presence of at least one additional person in the closed court, and the creation of further opportunities to draw adverse attention to the defendant children at a time when they are particularly vulnerable, and when the temptation to speculate about the allegations and the outcome of the case with no available factual basis, is irresistible

¹⁰ Sunshine Coast Daily (subscriber only), September 18, 2019 5:50 pm *Court denies media bid to access Peregian fire cases.*

on the part of media outlets, as has already been demonstrated by early media reports and will have a tendency to result in harm to the children. It is likely to be prejudicial to their interests.

- [39] I consider it would be appropriate for the Registrar to disclose to the media representatives on application, the next date to which the defendants may be remanded from time to time, and whether the matter is for mention or committal mention. If and when they are committed for trial or sentence, that may also be disclosed via the Registrar, as well as the status of their bail.
- [40] The application is refused.