SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MARTIN J

QUEENSLAND NEWSPAPERS PTY LIMITED	First Applicant
and	
GOLD COAST PUBLICATIONS PTY LIMITED	Second Applicant
and	
JOHN FAIRFAX PUBLICATIONS PTY LIMITED	Third Applicant
and	
SEVEN NETWORK (OPERATIONS) LIMITED	Fourth Applicant
and	
JADE MICHAEL LACEY	First Respondent
and	
DIONNE MATTHEW LACEY	Second Respondent
and	
DIRECTOR OF PUBLIC PROSECUTIONS	Third Respondent

BRISBANE

..DATE 11/10/2007

ORDER

HIS HONOUR: Leave is granted to amend the application to replace - to delete State of Queensland as third respondent and insert Director of Public Prosecutions.

...

HIS HONOUR: This is an application on behalf of Queensland Newspapers and other entities seeking to have the order made on 9 October 2007 pursuant to section 12 of the Bail Act set aside.

The capacity to deal with such an order is not immediately apparent on the face of the Bail Act. Section 12 provides the Court with a discretion to make an order of the type referred to in that section, and that discretion is clear where it refers to the capacity that the Court "may make an order". The capacity to make an order and the discretion to make such an order carries with it, in my opinion, the capacity to vary, enlarge or terminate that order as the circumstances require.

It would, for example, be open to terminate such an order if it became known that an applicant for bail had decided to plead guilty to the offences. It is also, I think, the case that when material facts have not been fully put before a Court that the discretion is enlivened to deal with the order that was made in a way which reflects any non-disclosure.

The discretion to vary, terminate or enlarge is enlivened at least by a change in circumstances or by the provision of

information or other material which bears upon the making of such an order which was not available at the time the order was made. That discretion, in my opinion, applies to the entirety of the section 12 process.

I accept that the application of section 12 is subject to the balance of the Act. A section of any Act must be read in context, but as Justice Douglas observed in Queensland Newspapers Pty Limited v Stjernqvist, (2007) 1 Queensland Reports 171:

> "Although the power under section 12 is a statutory power informed by the legislative context in which it appears, any Court exercising that jurisdiction should keep in mind the general principles about the limited and necessary circumstances in which non-publication orders might be made."

And I refer, without setting out in detail, to the observations of his Honour in that case and the references he makes to the decision in John Fairfax Publications Pty Limited v The District Court of New South Wales.

The discussion of the principles by Justice Moynihan in the State of Queensland v Nuttall, [2007] Queensland Supreme Court 79, is of assistance but is not as relevant in that it relates to the regime under a different piece of legislation.

The point at which I find that my jurisdiction and discretion is enlivened to make a change to the order is the material provided to me in the affidavit of Phillip Thomas Beattie. It sets out the publicity which has been afforded the

circumstances of this case from at least the 10th of May 2007 to the 29th of September 2007.

The material which has been exhibited to Mr Beattie's affidavit discloses that there has been, on a number of occasions, detailed reporting of matters relating to the charges against the two respondents to this application, details which were, in major respects, put before me with respect to the bail application two days ago. I was not at that time informed that there had been this publicity, nor the extent and detail of that publication in newspapers, in particular in the southeast corner of Queensland. To my mind that material was relevant. It is sufficient for me to find that my jurisdiction to change the order, if otherwise appropriate, has been enlivened.

The authorities referred to by Mr Flanagan in his submissions, some of which are found in Justice Douglas's decision in Stjernqvist, make clear that there is a well-recognised principle of open justice and that the media does have a particular part to play in the preservation and exercise of that principle.

There is a difficulty imposed by the nature of a bail application in dealing with questions of open justice when there is, in effect, no contradictor before the Court. In this case both applicants made an application for an order under section 12 and Mr Copley for the DPP made a separate application but for a much more limited order.

Submissions have been put to me today dealing with the effect that a change in an order might have on the administration of justice generally and more particularly on the manner in which this Court, and I presume other Courts, deal with bail applications.

As I observed two days ago, bail applications are an unusual proceeding in that material is placed before a Court which might not otherwise appear before the Court in any other form. There is, as Mr Callaghan, submitted, a restriction, an absolute restriction, on the defendants being able to give evidence orally or be cross-examined on such an application. There is an interest not only that bail applications be available to be dealt with in the public arena, but also an interest that applicants for bail be able to have their cases heard with reasonable expedition. The notion that there might be some requirement that notice be given of an application under section 12 is one I reject. The Act does not contemplate that.

That means, of course, that an application like this will be necessary if there is to be a change in the order, but that is, in my opinion, the inevitable result of an attempt to ensure that bail applications are dealt with fairly and expeditiously and on the odd and unusual occasion when an order under section 12 is made then this process will have to be undertaken.

The circumstances of this case are such that I do not think that the order I propose to make is going to have an effect on bail applications generally. If it does then the effect it may have is that where applicants for bail are aware that there has been substantial, detailed, and repeated publication of matters which are before the Court on a bail application, then those applicants should, if they seek an order under section 12, place the details of that publication as best they can before the Court as it is a relevant consideration.

Having heard the submissions on behalf of the applicants and in particular having been provided with the material disclosing the extent of publicity which has already been given to the circumstances of this case, I intend to vary the order made.

The variation I intend to make is in terms similar to those which have been handed up to me by Mr Copley, the variation being that the terms of the order be deleted and replaced with this order.

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HIS HONOUR: It should be clear to those who read the order that publication of the terms of the order itself would be a breach. I make that order.

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HIS HONOUR: No order as to costs.

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