

# In-Court Media Coverage Guidelines 2016

## 1. Application of guidelines

These guidelines:

- a. apply to all proceedings in the Court of Appeal, the High Court and the District Court and any other statutory Tribunal that by order of that Tribunal choose to adopt them;
- b. do not have legislative force;
- c. do not create rights and should not be construed to create expectations;
- d. do not affect any statutory prohibitions; and
- e. replace the In-Court Media Coverage Guidelines 2012.

## 2. Guiding principles

1. All film, photographs and recordings taken of courtroom proceedings that are used or published must provide or assist in providing an accurate, fair and balanced report of the hearing, and must not be used or published out of context.
2. Applications for in-court media coverage are to be dealt with expeditiously and fairly and that so far as possible like cases are to be treated alike.
3. In making decisions and exercising discretions under these guidelines, the court may have regard to the following matters:
  - a. the need for a fair trial;
  - b. the desirability of open justice;
  - c. the principle that the media have an important role in the reporting of trials as the eyes and ears of the public;
  - d. court obligations to the victims of offences; and
  - e. the interests and reasonable concerns and perceptions of the parties, victims and witnesses.

## 3. Interpretation

1. For the purposes of these guidelines:

**court** means the Court of Appeal or the High Court or the District Court, or any other Court or Tribunal that adopts these guidelines.

**cover** means:

  - a. film; or
  - b. take photographs; or
  - c. record.

**film** includes videotape and other forms of digital storage of moving images.

**high profile trial** means a trial likely to attract more than five media representatives through much of the trial.

**Judge** includes an Associate Judge of the High Court.

**media applicant** means a member of the media who has applied under these guidelines to cover a trial.

**Media and Courts Committee** means the committee of judicial and media representatives set up by the Chief Justice.

**member of the media** means:

  - a. a person who is in the court for the purpose of reporting on the proceedings and who is either subject to or employed by an organisation that is subject to –

- i. a code of ethics; and
  - ii. the complaints procedure of the Broadcasting Standards Authority or the Press Council; or
- b. any other person reporting on the proceedings with the permission of the court.

**official witness** means:

- a. a witness giving evidence in his or her official capacity, as opposed to personal capacity; or
- b. an expert witness.

**publish** means disseminate to the public in any form (and **published** and **publication** have corresponding meanings).

**record** means to audio record (and **recorded** and **recording** have corresponding meanings).

**sexual case** means a proceeding in respect of an offence against any of sections 128 to 142A and 144A of the Crimes Act 1961.

**standard conditions** mean:

- a. in the case of an application to film, the conditions set out in Schedule 1.
- b. in the case of an application to take photographs, the conditions set out in Schedule 2.
- c. in the case of an application to record, the conditions set out in Schedule 3.

**trial** includes:

- a. any criminal proceeding or any part thereof;
- b. any civil proceeding or any part thereof; and
- c. any appeal or any part thereof.

**video camera** means any device capable of filming a trial and includes a television camera.

**witness** includes the defendant in a criminal proceeding.

**witness applicant** means a witness who has made an application under guideline 11.

**witness protection** means protection as defined in guideline 10(3).

2. Where any word or expression in any rule or form in these guidelines is not defined in these guidelines but is defined in the High Court Rules, it has the meaning given to it in those rules, unless the context otherwise requires.

## 4. Discretion of the court

1. All matters relating to in-court media coverage are at the discretion of the court.

## 5. Notes and electronic records and communications

1. No-one other than members of the media may make a record in court, whether that record be in the form of notes or film or recording, unless given permission by the Judge.
2. No-one other than members of the media may make an electronic communication from inside the courtroom to outside the courtroom.
3. Any such record-taking or communication must be done as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
4. While the Judge is sitting in court for chambers or in closed court, no electronic communication may take place.
5. Information taken or communicated electronically must not be published or be the subject of any publication until at least 10 minutes have elapsed.
6. Despite subclause (5), information communicated electronically may be published or be the subject of publication immediately or at any time:
  - a. if the trial is an appeal; or
  - b. on the taking of a jury's verdict; or
  - c. on a sentencing; or
  - d. if it is the Judge's summing up; or
  - e. if the trial Judge grants leave.
7. Copies of all publications of information obtained from court must be retained until the

conclusion of the trial or disposition of any subsequent appeal or any related proceedings, and for a further 12 months. A copy must be supplied to the court if requested by the Judge or the Media and Courts Committee.

## 6. Making an application

1. Any person who wishes to cover a trial must apply to the court where the trial is to take place in the form prescribed in Schedule 1.
2. Any such application should be filed with the registrar of the court at least 10 working days before the trial is due to start, except in relation to a first appearance in a criminal matter.
3. Any application, except one in relation to a first appearance in a criminal matter, lodged inside five working days before the trial must contain an explanation for the delay and the reasons why it should be granted despite the delay.
4. On receipt of an application, the registrar must refer it promptly to the trial Judge (or presiding Judge in the case of the Court of Appeal).
5. If the trial is a sexual case, counsel for the Crown must provide a copy of the application to the complainant and obtain his or her views about it.
6. In relation to District Court hearings and trials which do not involve a jury, the application must be made as soon as practicable after the hearing is scheduled.

## 7. Response to application

1. Within three working days of receipt of an application, any counsel or party receiving it must notify the registrar, the applicant and the other parties in writing that:
  - a. the application is not opposed or
  - b. the application is opposed (in whole or in part) and the reasons for the opposition.
2. In sexual cases, the Crown must notify the registrar of the complainant's views about the application.

## 8. Pre-hearing meetings with media

1. A Judge presiding over a high profile trial may hold a conference with counsel and media applicants prior to the trial to ensure that the trial can be conducted with the involvement of the media, without misunderstandings, mistakes or delays.

## 9. Decisions

1. A Judge may grant or decline any application on the papers.
2. If the Judge considers it appropriate that there be a hearing of the application, the Judge may make directions and set a date and time for hearing.
3. At any hearing, the applicant may appear in person, by a representative or by counsel.
4. The parties may appear in person or by counsel.
5. In considering any application, the Judge may have regard to:
  - a. the principles set out in guideline 2;
  - b. the standing of the media applicant or the media applicant's employer;
  - c. the nature of the trial; and
  - d. any other relevant matters.
6. The Judge determining the application may:
  - a. grant authority to film, photograph or record the trial, as the case may be, on the standard or other conditions; or
  - b. decline the application.

## 10. Witness protection as of right in criminal trials

1. Except in the case of the defendant or an official witness (who may apply under guideline 11), witness protection from being filmed, photographed or recorded is available as of right in a criminal trial for any witness who seeks it.
2. Witness protection under this rule may be sought by notification to the presiding Judge at any time prior to the witness commencing to give evidence.
3. Witness protection means that the applicant:
  - a. in the case of filming or recording must ensure that the witness, if published giving evidence, is not recognisable.
  - b. in the case of photographs, must not photograph the witness while he or she is in court or giving evidence.
4. Before any witness is called the person calling that witness must advise the court that that witness understands witness protection and has chosen whether or not to be filmed.
5. This protection is also available to victims reading victim impact statements.

## 11. Additional discretionary witness protection

1. This guideline applies to witnesses in criminal trials not covered by guideline 10 and to all witnesses in civil trials.
2. Any witness or the party proposing to call the witness may apply by written application to the registrar of the court in which the trial is to be held for a ruling that the witness not be filmed, photographed or recorded.
3. The application must be lodged at least two working days before the trial is due to start provided:
  - a. the defendant in a criminal trial may apply orally to the presiding Judge as soon as possible after electing to give or call evidence.
  - b. the Judge may decide to consider any other application even if the two day time limit is not met.
4. Where a written application is made under this rule, the applicant must promptly notify all other parties and any person seeking or granted authority to cover the trial.
5. On an application under this guideline, the Judge may hear from the applicant, the parties, and any person seeking or granted authority to cover the trial, but is not obliged, in the case of an application made during the trial, to defer ruling on the application because any person covering the trial is not present.
6. In considering the application, the Judge may have regard to:
  - a. the principles set out in guideline 2;
  - b. whether covering the trial is likely to affect adversely the quality of the evidence to be given by the witness;
  - c. whether the presence of a camera or recorder is likely to lead to the witness not giving evidence;
  - d. whether being filmed, photographed or recorded may cause undue stress or anxiety to the witness;
  - e. whether being filmed, photographed or recorded may lead to intimidation or harassment of the witness;
  - f. whether the witness' privacy interests outweigh the public interest in publishing or using that witness' evidence, given the likely significance of the evidence; and
  - g. any other matters that the Judge considers relevant.
7. The Judge may rule that:
  - a. any person covering the trial:
    - i. must not film the witness while he or she is in court or giving evidence;

- ii. must not film the witness anywhere between the time of the ruling and the end of the trial;
  - iii. must not photograph the witness while he or she is in court or giving evidence;
  - iv. must not photograph the witness anywhere between the time of the ruling and the end of the trial;
  - v. must not record the witness while he or she is in court or giving evidence;
  - vi. must not record the witness anywhere between the time of the ruling and the end of the trial; and
  - vii. may film or record the witness but must ensure that the witness, if published giving evidence, is not identifiable; or
- b. the witness' application is declined.
8. Where the Judge makes a ruling under subclause (7)(a), authority to cover the trial is subject to that ruling.
9. Where the Judge makes a ruling in terms of subclause (7)(a)(i) or (ii), the video camera must be either removed from the court while the witness is giving evidence or turned away from the witness so that it is apparent to the witness that he or she is not being filmed.

## 12. Children and young persons

1. No persons under the age of 18 shall be filmed, photographed or recorded. The Judge has a discretion to permit such filming, photographing or recording, but shall have regard to the effect of publicity on the child or young person's present and future welfare, and the factors in guideline 11(6).

## 13. Court officers

1. Any Corrections officer or security officer who appears, other than persons employed by the Ministry of Justice, may apply by written application to the registrar of the court in which the trial is to be held, for a ruling that the person not be filmed, photographed or recorded.
2. The procedure and factors set out in guideline 11 will apply.

## 14. Name suppression and statutory prohibitions

1. An authority granted to cover a trial is subject to any statutory prohibition or court ordered prohibition on the publication of names or particulars or evidence under the [Criminal Procedure Act 2011](#) or otherwise.
2. When there is such a prohibition the witness cannot be photographed, filmed or recorded, without permission of the Judge.

## 15. Revocation of authority to cover a trial

1. The Judge may at any time revoke authority to cover a trial if:
  - a. the applicant or someone acting on behalf of the applicant breaches these guidelines or any condition of the grant of authority to cover the trial;
  - b. witnesses or parties are being subjected to unreasonable media pressure outside the courtroom;
  - c. the Judge determines that the rights of any participant in the trial or the defendant's right to a fair trial may or will be prejudiced if coverage continues; or
  - d. coverage of the trial is disrupting the proceedings.

## 16. Conditions

1. Media representatives must comply with the directions in the Ministry of Justice Media Guide, in particular media identification and courtroom etiquette which are set out in Schedule 5 of these guidelines.
2. The conditions on which authority to cover a trial are granted are minimum conditions.
3. The applicant, and those acting on behalf of the applicant, must at all times ensure that they do not commit contempt. In particular, they must ensure that they:
  - a. do not interfere with the due administration of justice; and
  - b. do nothing that may prejudice a fair trial.

## 17. Method of communication

1. Any written application or response under these guidelines may be delivered, posted, or emailed.

## Schedule 1 – Standard conditions for film

1. Only one camera may be situated in the courtroom, regardless of how many people are given authority to film. It is recognised that a Judge on application might in special circumstances permit a second camera. In the event there is a dispute between those authorised to film as to whose camera will be situated in the courtroom, the Judge will rule.
2. The camera must be situated in a position approved by the Judge.
3. Any person wishing to instruct the camera operator during a court session must sit next to the camera operator and must give any instructions as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
4. While the Judge is sitting in court for chambers or in closed court, no filming can take place.
5. No juror may be deliberately filmed and no publication may show the jury or juror.
6. Members of the public attending the trial must not be filmed in any way that could lead to their identification.
7. Counsel's papers must not be filmed.
8. Exhibits must not be filmed without leave of the Judge.
9. Subject to any protection granted to the defendant as a witness under guideline 11 or 12, the defendant may be filmed only:
  - a. when giving evidence;
  - b. when sitting in the dock for the first 15 minutes of any sitting day, but not when, during that period, a verdict is being taken or a sentencing is underway; or
  - c. at any time during the trial, including the time when the jury is taking a view or delivering its verdict, if the defendant consents in writing through his or her counsel or in person and the Judge does not prohibit such filming.
10. Filming of any party, witness, counsel or the Judge must not involve a close-up showing less than the head and shoulders of the person filmed, and must not focus on any particular feature of the person being filmed such as fingers, hands, mouth or eyes.
11. No filming can take place in court during sentencing or when the Judge is not present, except with prior leave of the Judge.
12. No filming can take place if the camera does not have an operator, and the camera should be switched off at all such times.
13. The media applicant and representatives of the media applicant must at all times conduct themselves in court with courtesy and decorum.
14. Film taken must not be published until at least 10 minutes have elapsed.
15. Despite clause 14, film taken may be published at any time:
  - a. if the trial is an appeal; or
  - b. on the taking of a jury's verdict; or
  - c. on a sentencing; or
  - d. if it is the Judge's summing up; or
  - e. if the Judge grants leave.
16. The media applicant must maintain a copy of all publications or broadcasts using film taken in court or at a view for 10 years and must supply a copy to the court if requested by the Judge.

17. While the trial continues, film taken must not be published or used other than in the programme or on the website nominated in the application form. It cannot be made available to third parties without the Court's permission.
18. Once the trial is over film or recordings may not be published or used, except by an applicant who received permission to film. Any other use can only be with the Court's permission.

## Schedule 2 – Standard conditions for photographs

1. The photographer must be situated in a position approved by the Judge.
2. Any person wishing to instruct the photographer during a court session must sit next to the photographer and must give any instructions as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
3. While the Judge is sitting in court for chambers or in closed court, photographs must not be taken.
4. No juror may be deliberately photographed and no photograph published may show the jury or a juror.
5. Members of the public attending the trial must not be photographed in any way that could lead to their identification.
6. Counsel's papers must not be photographed.
7. Exhibits must not be photographed without leave of the Judge.
8. Subject to any protection granted to the defendant as a witness under guideline 11 or 12, the defendant may be photographed only:
  - a. when giving evidence; or
  - b. when sitting in the dock for the first 15 minutes of any sitting day, but not when, during that period, a verdict is being taken or a sentencing is underway; or
  - c. at any time during the trial, including the time when the jury is taking a view or delivering its verdict, if the defendant consents in writing through his or her counsel or in person and the Judge does not prohibit such photographing; or
  - d. during sentencing, if the Judge grants leave.
9. Filming of any party, witness, counsel or the Judge must not involve a close-up showing less than the head and neck of the person photographed, and must not focus on any particular feature of the person being filmed such as fingers, hands, mouth or eyes.
10. No photographs may be taken in court when the Judge is not present, except with prior leave of the Judge.
11. The media applicant and representatives of the media applicant must at all times conduct themselves in court with courtesy and decorum.
12. While the trial continues, photographs taken must not be used other than in the print media or website nominated in the application form. They cannot be made available to third parties without the Court's permission.
13. Once the trial is over photographs may not be used, except by the applicant who received permission to photograph. Any other use can only be with the Court's permission.

## Schedule 3 – Standard conditions for audio recording

1. While the Judge is sitting in court for chambers or in closed court, no recording must take place.
2. Jurors must not be recorded in the courtroom or elsewhere other than when the foreperson of the jury delivers the jury's verdict.
3. No recording may take place in court when the Judge is not present, except with prior leave of the Judge.
4. The media applicant and representatives of the media applicant must at all times conduct themselves in court with courtesy and decorum.
5. Recordings must not be used or published until at least ten minutes have elapsed.
6. Despite clause 5, recordings taken may be published at any time:
  - a. if the trial is an appeal; or
  - b. on the taking of a jury's verdict; or
  - c. on a sentencing; or
  - d. if it is the Judge's summing up; or
  - e. if the trial Judge grants leave.
7. The media applicant must maintain a copy of all publications or broadcasts using recordings taken in court for 10 years and must supply to the court a copy if requested by the Judge.
8. While the trial continues, recordings taken must not be used other than in the programme or on the website nominated in the application form. They cannot be made available to third parties without the Court's permission.
9. Once the trial is over a recording may not be used, except by the applicant on a follow-up programme or on the website. Any other use can only be with the Court's permission.

## Schedule 4 - Media identification

Before court begins media representatives must provide suitable identification to the registrar of the court, which shows that they are members of the media (as that term is defined in these guidelines). Suitable identification is an identification card or letter from the member's organisation along with their personal identification (for example a driver licence). These requirements are designed to ensure that only members of the media can benefit from the use of the press bench and the ability to take notes or electronic records or communicate information.

## Schedule 5 - Courtroom etiquette

Media representatives must not interrupt or disrupt the court process, or distract participants, and must treat that process with the same courtesy and respect as other participants. This requirement applies to all members of the media including journalists, camera operators, sound technicians and photographers. In particular, media representatives should note the following guidelines:

- Please attend court suitably and professionally dressed (minimum of smart casual).
- Where possible, sit in the area provided for the media.
- Do not eat or drink in the courtroom.
- Stand when a Judge enters or leaves the court.
- If members of the media wish to enter or leave a courtroom while a trial is in progress, they should do so quietly and not disrupt the Court. If they cannot leave without causing a disturbance they should not leave until there is an adjournment. Do not leave during closings or a summing-up in a criminal jury trial.
- Remain as quiet as possible in the courtroom. Ensure that digital devices are silent.
- Do not speak into devices.

Sometimes a Judge might order that no one enter or leave the courtroom, to ensure quiet and focus. This might happen during the testimony of a particular witness or during an address by counsel, or when the Judge is giving a decision.

If the Judge addresses a member of the media during the court proceedings and a response is required, the Judge should be addressed as "Your Honour".