

THE IN-COURT MEDIA COVERAGE GUIDELINES 2003

1. **Application of guidelines**

These guidelines:

- (a) Apply to all proceedings in the Court of Appeal, the High Court, and the District Court from 1 January 2004.
- (b) Do not have legislative force.
- (c) Do not create rights and should not be construed to create expectations.
- (d) Replace the Guidelines and Voluntary Code of Conduct for Expanded Media Coverage of Court Proceedings dated May 2000.

2. **Purpose**

- (1) These guidelines are intended to ensure that applications for in-court media coverage are dealt with expeditiously and fairly and that so far as possible like cases are treated alike.
- (2) 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) the importance of fair and balanced reporting of trials;
 - (e) court obligations to the victims of offences;
 - (f) the interests and reasonable concerns and perceptions of victims and witnesses.

3. **Interpretation**

- (1) For the purposes of these guidelines, -

the court means the Court of Appeal or the High Court or the District Court:

cover means:

- (a) film; or

- (b) take still photographs at; or
- (c) record:

film includes videotape:

Judge includes Master of the High Court:

media applicant means a person who has applied under these guidelines to cover a trial:

official witness means:

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

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

the standard conditions means:

- (a) in the case of an application to film for television, the conditions set out in Schedule 2;
- (b) in the case of an application to take still photographs, the conditions set out in Schedule 3;
- (c) in the case of an application to record for the purpose of radio, the conditions set out in Schedule 4:

trial includes:

- (a) any criminal proceeding or any part thereof;
- (b) any civil proceeding or any part thereof;
- (c) any appeal or any part thereof:

witness includes the accused 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.
- (2) Guidelines 5 to 14 apply subject to subclause (1).

5. Making application

- (1) Any person who wishes to cover a trial must apply to the court where the trial is to take place on the prescribed form in Schedule 1.
- (2) Any such application should be lodged with the Registrar of the court at least ten working days before the trial is due to start.
- (3) Any application lodged inside ten 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:
 - (a) The trial Judge (or presiding Judge in the case of the Court of Appeal);
 - (b) Counsel for the parties;
 - (c) Any unrepresented party;
- (5) If the trial is a sexual case, counsel for the Crown must provide a copy to the complainant and obtain his or her views about it.

6. Response to application

- (1) Within three working days of receipt of an application, any party receiving it must notify the Registrar, the media applicant, and the other parties in writing:
 - (a) That the application is not opposed; or
 - (b) That 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.

7. Decisions in sexual cases

- (1) If the trial is a sexual case and if the complainant opposes the application, the Judge will decline the application on the papers.
- (2) If the trial is a sexual case and if the complainant supports the application only on condition, the Judge must have special regard for the views of such complainant.
- (3) Guidelines 8 to 11 are subject to subclauses (1) and (2).

8. Decisions on the papers

- (1) A Judge may decline an application on the papers if it is lodged inside ten working days before trial.
- (2) A Judge may grant an application on the papers if:
 - (a) all parties have advised their consent or non-opposition; or
 - (b) the time for notifying any opposition has passed and no party has given notice of any opposition.
- (3) In all other cases, it is appropriate that there be a hearing of the application, in a manner directed by the Judge.

9. Decisions after hearing

- (1) At any hearing, the media applicant may appear in person, by a representative, or by counsel; and
- (2) The parties may appear in person or by counsel.
- (3) In considering the application, the Judge may have regard to:
 - (a) the principles set out in guideline 2;
 - (b) the media applicant's standing as a media organisation;
 - (c) the nature of the trial;
 - (d) any other relevant matters.
- (4) The Judge hearing the application may:
 - (a) grant authority to film the trial or take still photographs at the trial or record the trial, as the case may be, on the standard or other conditions;
 - (b) decline the application.

10. Witness protection as of right in criminal trials

- (1) Except in the case of the accused or an official witness (who may apply under guideline 11), witness protection 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 media applicant:
 - (a) in the case of television coverage, must ensure that the witness, if broadcast giving evidence, is not recognisable;

- (b) in the case of still photograph coverage, must not photograph the witness while he or she is in court or giving evidence.
- (4) Authority to cover the trial is subject to witness protection granted under this guideline.

11. **Additional discretionary witness protection**

- (1) This guideline applies to all witnesses in criminal trials (including official witnesses and the accused) and to all witnesses in civil trials.
- (2) Any witness or the party proposing to call the witness may apply by letter 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 three clear working days before the trial is due to start provided:
 - (a) the defence in a criminal case may apply orally to the presiding Judge as soon as possible after electing to give or call evidence; and
 - (b) The Judge may decide to consider any other application even if the three day time limit is not met.
- (4) Where 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 granted authority to cover 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 television camera or a photographer or radio crew is likely to lead to the witness not turning up to give evidence;
 - (d) whether being filmed or photographed or recorded may cause undue stress or anxiety to the witness;

- (e) whether being filmed or photographed or recorded may lead to intimidation or harassment of the witness;
 - (f) whether the witness's privacy interests outweigh the public interest in broadcasting that witness's evidence, given the likely significance of the evidence;
 - (g) any other relevant matters.
- (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;
 - (vii) may film the witness but must ensure that the witness, if broadcast giving evidence, is not recognisable;
 - (b) the witness's 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 television 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. **Name suppression and statutory prohibitions**

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 Justice Act 1985 or otherwise.

13. **Revocation of authority to cover a trial**

The Judge may at any time revoke authority to cover a trial if:

- (a) the media applicant or someone acting on behalf of the media applicant breaches these guidelines or any condition of the grant of authority to cover the trial; or
- (b) the Judge determines that the rights of any participant in the trial or the accused's right to a fair trial may or will be prejudiced if coverage continues; or
- (c) coverage of the trial is disrupting the proceedings.

14. **Minimum conditions**

- (1) The conditions on which authority to cover a trial are granted are minimum conditions.
- (2) The media applicant and those acting on behalf of the media 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;
 - (b) do nothing that may prejudice a fair trial.

15. **Method of communication**

Any written application or response under these guidelines may be delivered, posted, faxed or Emailed.

Schedule 1

APPLICATION FOR IN-COURT MEDIA COVERAGE

To the Registrar,

_____ .

1. We request permission to:
- (a) film for television
 - (b) take still photographs during
 - (c) record for the purpose of radio
- the following proceedings:

Case name _____

Number _____

Scheduled start date _____

2. We wish to cover:
- (a) the trial
 - (b) sentencing, should the accused be convicted
 - (c) the appeal
 - (d) other _____

3. Expected dates of coverage _____

4. *[In the case of television or radio]* Name of programme or programmes in which the film or recording may be used _____

5. The following conditions of coverage should apply:
- (a) the standard conditions

(b) the standard conditions as modified or expanded or both *[Give details on separate sheet]*

6. *[To be completed only if this application has been lodged out of time.]*

(a) This application was not filed in accordance with guideline 5(3) because

(b) This application, although filed out of time, should nonetheless be granted because

Applicant information:

Applicant's name _____

Solicitors¹ _____

Name of responsible person² _____

Business address³ _____

Postal address³ _____

e-mail address³ _____

¹ If retained.

² If solicitors have not been retained, give the name of the person within the applicant's organisation who is responsible for the application. If solicitors have been retained, give the name of the solicitor who is dealing with the application.

³ If solicitors have not been retained, this information should be provided by reference to the nominated person responsible for the application. If solicitors have been retained, this information should be provided by reference to the solicitor who is dealing with the application.

Telephone number³ (_____)_____

Fax number³ (_____)_____

Signed _____

Date _____

Registrar use

1. Date application received _____
2. If referred to counsel or an unrepresented party, give them a copy of the application and of the guidelines.

Schedule 2

STANDARD CONDITIONS FOR TELEVISION COVERAGE

1. Only one camera may be situated in the court room, regardless of how many people are given authority to film for television. In the event there is a dispute between those authorised to film for television as to whose camera will be situated in the court room, the Judge will rule.
2. The television 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 must take place.
5. No juror may be deliberately filmed and no broadcast may show the jury or any member of it.
6. Members of the public attending the trial or a view must not be filmed in the courtroom or in the course of the view.
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 accused as a witness under guideline 11, the accused may be filmed only:

- (a) when giving evidence; or
 - (b) when sitting in the dock, for the first 15 minutes of any sitting day, except 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 accused consents in writing through his or her counsel and the Judge does not prohibit such filming; or
 - (d) during sentencing, if the Judge grants leave.
10. No filming may take place 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 appropriately.
12. Film taken must not be broadcast on television until at least 10 minutes have elapsed.
13. Despite paragraph 12, film taken may be broadcast live 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 the Judge grants leave.
14. The media applicant must maintain a copy of all broadcasts using film taken in court or at a view and must supply a copy to the court if requested by the Judge.
15. Film taken must not be used, while the trial continues, other than in the programme nominated in the application form.
16. Film taken must not be used in any promotional broadcasts or as trailers.

Schedule 3

STANDARD CONDITIONS FOR STILL 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 any member of it.
5. Members of the public attending the trial or a view must not be photographed in the courtroom or in the course of the view.
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 accused as a witness under guideline 11, the accused may be photographed only:
 - (a) when giving evidence; or
 - (b) when sitting in the dock, for the first 15 minutes of any sitting day, except 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 accused consents in writing through his or her counsel and the Judge does not prohibit such photographing;
 - (d) during sentencing, if the Judge grants leave.
- 9. No photographs may be taken in court when the Judge is not present, except with prior leave of the Judge.
- 10. The media applicant and representatives of the media applicant must at all times conduct themselves in court appropriately.
- 11. Photographs taken must not be used, while the trial continues, other than in the print media published by the media applicant.

Schedule 4

STANDARD CONDITIONS FOR RADIO COVERAGE

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 foreman 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 appropriately.
5. Recording taken must not be broadcast on radio until at least ten minutes have elapsed.
6. Despite paragraph 5, recording taken may be broadcast live 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 the trial Judge grants leave.
7. The media applicant must maintain a copy of all broadcasts using recording taken in court and must supply to the court a tape of any broadcast or a transcript of any broadcast or both, if requested by the Judge.
8. Recording taken must not be used, while the trial continues, other than in the programme nominated in the application form.

