

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI 2017-004-10259  
[2019] NZHC 676**

**THE QUEEN**

v

**MARK STEPHEN TALBOT**

Hearing: On the papers  
Counsel: N R Williams for the Crown  
A F Pilditch and DCS Morris for the Defendant  
Judgment: 3 April 2019 at 11:30am

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**JUDGMENT OF JAGOSE J  
[In-court media coverage]**

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*Solicitors/Counsel:*  
Meredith Connell, Auckland  
Fletcher Pilditch, Barrister, Auckland  
Cook Morris Quinn – City Branch, Auckland

[1] The defendant, Mark Stephen Talbot, has pleaded guilty to one representative charge of failing to disclose a relevant interest, contrary to provisions of the Securities Markets Act 1988. Mr Talbot comes before me for sentencing on 9 April 2019.

[2] The New Zealand Herald, Stuff Limited, and Radio New Zealand each apply variously to film, take photographs, and record sound on standard conditions at the defendant's sentencing. A responsible person for each of the media applicants contends their respective organisation and staff to have been trained in their obligations under the in-court media coverage guidelines and will abide by them.<sup>1</sup>

[3] The Crown does not oppose the applications, but Mr Talbot's counsel, Fletcher Pilditch, does. He attributes to the media applicants an intention "to take photographs of the defendant when the defendant is in the dock with security guards present". He says such is misguided, because by convention defendants facing a maximum penalty of a fine (as is the present case) are not required to enter the dock. And he says any photograph of the defendant in the dock would "inaccurately display" court security measures as embarrassing, unfair, and disproportionate to the defendant and his offending. Last, he says photographs of the defendant already exist in the public domain, and therefore the media applications serve no useful purpose.

[4] Be that as it may, the standard conditions for film, photographs, and audio recording are contained in Schedules 1 to 3 to the In-Court Media Coverage Guidelines

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<sup>1</sup> The details of the respective applications are: New Zealand Herald (Sam Hurley), to film and take photos for use in the *New Zealand Herald* and on nzherald.co.nz; Radio New Zealand (Anneke Smith), to take photos and record sound for use on Morning Report, Checkpoint and news bulletins and on radionz.co.nz; and Stuff Limited (Catrin Owen), to take photos for use on stuff.co.nz and 9nine.com.au.

The New Zealand Herald's application also refers to "NZME syndications". Clauses 17 and 12 respectively of the Guidelines' Schedules 1 and 2 provide:

While the trial continues, [film/photographs] taken must not be used other than in the [programme/print media or [on the] website nominated in the application form. They cannot be made available to third parties without the Court's permission.

NZME syndications are such 'third parties' for the purpose of the guidelines.

Stuff Limited's application also proposes the "[n]ame of the publications in which the photos may be used" to be "Stuff Ltd" and "Nine News". I do not understand either of those to be 'publications' as that word is used in the application form. I am prepared to accept the application may be intended to be made for a television or radio programme named 'Nine News'. I do not know what publication is intended by reference to 'Stuff Ltd'. If that is a publication by reason of some syndication arrangement, my comments in the preceding paragraph apply.

2016 (the “Guidelines”). Relevantly, a defendant may only be filmed or photographed “during sentencing, if the Judge grants leave”.<sup>2</sup> Such is to be distinguished from media entitlement to film or photograph a defendant “when giving evidence”, or “when sitting in the dock for the first 15 minutes of any sitting day, *but not when, during that period, ... a sentencing is underway*” (emphasis added).<sup>3</sup> No film or photographs or sound recording may be taken in court when the Judge is not present – again, “except with prior leave of the Judge”.<sup>4</sup> The ‘standard conditions’ do not permit filming or photographing Mr Talbot in court during sentencing (or, and including sound recording, in my absence).

[5] The Guidelines thus require special justification for filming or photographing a defendant during sentencing (or, and including sound recording, in my absence). Inferentially, by reference to the Guidelines’ guiding principles, filming or photographing a defendant during sentencing (or, and including sound recording, in my absence) will not in itself “provide or assist in providing an accurate, fair and balanced report of the hearing”.<sup>5</sup> That is despite “the principle that the media have an important role in the reporting of trials [of which sentencing is a part]<sup>6</sup> as the eyes and ears of the public”.<sup>7</sup> No foundation has been proposed for granting the applicants leave to film or photograph Mr Talbot in court during sentencing (or, and including sound recording, in my absence).

[6] I therefore decline the media applicants permission to film or photograph Mr Talbot in court during sentencing (or, and including sound recording, in my absence). Otherwise the applicants may film, photograph, or record sound at Mr Talbot’s sentencing in court in accordance with Schedules 1 to 3 to the Guidelines.

—Jagose J

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<sup>2</sup> Guidelines, Schedule 1, clause 11; Schedule 2, clause 8.d.

<sup>3</sup> Schedule 1, clause 9.b; Schedule 2, clause 8.b.

<sup>4</sup> Schedule 1, clause 11; Schedule 2, clause 10; Schedule 3, clause 3.

<sup>5</sup> Guideline 2.1.

<sup>6</sup> Guideline 3.1, definition of ‘trial’.

<sup>7</sup> Guideline 2.3.c.