

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

CRI-2019-009-2468

THE QUEEN

v

BRENTON HARRISON TARRANT

Counsel: M Zarifeh and B Hawes for Crown
Defendant in Person
PHB Hall QC as Standby Counsel

Date of Minute: 6 August 2020

MINUTE OF MANDER J
Conditions of media coverage and remote accessing

[1] The sentencing of Brenton Harrison Tarrant on 51 charges of murder, 40 charges of attempted murder, and a charge of having engaged in a terrorist act is set to proceed in the High Court at Christchurch on 24 August.¹ The sentencing will take place in open court as is required by law.² Accredited media will be present in court, as they have been for each of the procedural hearings and for the hearing on 26 March 2020 when Mr Tarrant pleaded guilty.

[2] Up until the entering of guilty pleas media have been constrained in what they have been able to report from these hearings because of the need to preserve the defendant's right to a fair trial. I acknowledge the professionalism shown by the

¹ Crimes Act 1961, ss 172 and 173(1); Terrorism Suppression Act 2002, s 6A.

² Criminal Procedure Act 2011, s 196.

journalists who have been present in court over the past year and who have abided by the necessary prohibitions on publication.

[3] Open justice is a fundamental principle underpinning our system of justice. There can be no doubt that the first sentencing for offending against New Zealand's Terrorism Suppression Act 2002 is of significant public interest. It is also the first time New Zealand's courts have dealt with the massacre and wounding of people targeted because of their ethnicity and religious beliefs. The number of people directly impacted by the events of 15 March 2019 number in the hundreds; those whose lives were affected in some way number in the thousands.

[4] The need for justice to be seen to be done is strong.³ Alongside the requirement for transparency and openness there are a number of other important principles and considerations to be taken into account at sentencing. Foremost among these is the Court's interest in ensuring the hearing is conducted in a manner which upholds the dignity of the Court and safeguards the rights of all participants. The Court is also aware of the need to take what steps it can to minimise the re-traumatisation of victims and their families and avoid, to the extent possible, the hearing causing further potential harm.

[5] It is for this reason that the law imposes specific rights and responsibilities on news media when reporting on the courts, and why the courts reserve the right to determine whether and under what conditions media may be permitted to supplement their coverage with audio and video recordings and photography.

Applications before the Court

[6] The Court has been informed that journalists from 11 New Zealand news organisations and 18 overseas organisations have registered their intention to report on the hearing. Due to the border restrictions and quarantine requirements in place to combat the COVID-19 pandemic, it will be difficult for journalists based overseas to attend court in person. For this reason, provision has been made for overseas news

³ *Rogers v Television New Zealand Ltd* [2007] NZSC 91, [2008] 2 NZLR 277 at [118]–[119], citing *Broadcasting Corporation of New Zealand v Attorney-General* [1982] 1 NZLR 120 (CA) at 122–123.

media who have completed the necessary accreditation process, and who have been approved by the Court, to observe the hearing remotely.

[7] Provision is also being made for victims and families unable to attend court in person to observe the hearing remotely.

[8] To date, nine New Zealand news organisations and 16 overseas news organisations have made application to record, film and or photograph the sentencing hearing.

[9] The purpose of this minute is to:

- (a) set out the conditions under which the Court has agreed to provide remote access to media and victims unable to attend in person; and
- (b) inform media of the Court's directions with respect to reporting of the sentencing and the conditions which will apply to film, sound recordings and still photography.

Principles and legal framework

[10] Under the Criminal Procedure Act 2011 media who meet the statutory definition are entitled in almost all circumstances to be present in court during hearings.⁴ However, the Court may determine what information can be published about a hearing and when it can be published. Criteria which guide such decisions may vary according to the nature and content of the case and any relevant statutory provisions.

[11] With respect to this sentencing hearing, media are reminded that under New Zealand law the identities of complainants and witnesses under the age of 18 are automatically suppressed.⁵ Media should also be aware that the classification of the defendant's manifesto and video recordings of the mosque shootings as objectionable

⁴ Section 198.

⁵ Criminal Procedure Act, s 204.

publications under the Films, Videos, and Publications Classification Act 1993 remain in place. Any re-publication of this content is prohibited and constitutes an offence.⁶

[12] The In-Court Media Coverage Guidelines 2016 (the Guidelines) set out some of the factors the Court may have regard to when exercising its discretion whether, and under what conditions, to permit filming, recording and/or still photography during a hearing. These include:⁷

- the need for a fair trial;
- the desirability of open justice;
- the principle that the media have an important role in the reporting of trials as the eyes and ears of the public;
- court obligations to the victims of offences; and
- the interests and reasonable concerns and perceptions of the parties, victims, and witnesses.

[13] While fair trial considerations are no longer relevant, the scale and nature of the offending with which the sentencing is concerned gives rise to other considerations, including whether steps may be required to limit the extent to which victims are exposed to publicity. The Court may also be obliged to prevent the wider dissemination of harmful material and under a duty to prevent its own processes from being used for ulterior purposes.⁸

[14] A significant part of the sentencing hearing will involve the reading of victim impact statements. Under the Guidelines, victims who elect to deliver a victim impact statement, either in person or by way of a pre-recorded statement, have an automatic right to elect not to be identified, recorded, filmed or photographed.⁹ In some circumstances the Court may order that witnesses not be filmed or photographed outside of the court while a hearing is in progress.¹⁰

⁶ Films, Videos, and Publications Classification Act 1993, ss 123–132.

⁷ Guideline 2(3).

⁸ See the discussion on the Court's inherent powers to prevent abuse of its processes in *Rogers v Television New Zealand Ltd*, above n 3, at [111].

⁹ Guideline 10(5).

¹⁰ Guideline 11(7).

[15] The Court also has discretionary powers to prohibit the publication and distribution of victim impact statements if it considers this may be necessary to protect the victim's "physical safety or security, emotional welfare, and privacy".¹¹

[16] As well as protecting the dignity and privacy of victims, the Guidelines contain a number of provisions which recognise the interests of other participants who may be impacted by the presence of a camera in the courtroom, including the defendant and Corrections officers.¹² As noted earlier, the Court also has a duty, particularly in the context of offending against the Terrorism Suppression Act, to ensure it is not used as a platform and is obliged, to the extent possible, to prevent it being used as a vehicle to cause further harm.

[17] Taken together, these concerns suggest the need for a precautionary approach. The following orders reflect that caution. They are intended to facilitate the media's access to audio-visual content of the sentencing without compromising the Court's ability to discharge its duties and fulfil its obligations to those participating in the hearing and to the wider community.

In-court media coverage

[18] There will be no live reporting of the sentencing hearing. This prohibition applies to media and anyone observing the hearing, whether in the courtroom, in auxiliary courtrooms or remotely online.

¹¹ Victims' Rights Act 2002, s 27.

¹² Schedule 1 provides:

...

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.

...

11. No filming can take place in court during sentencing or when the Judge is not present, except with prior leave of the Judge.

...

[19] Subject to this, and to the normal conditions which apply to filming and recording in court during a sentencing, accredited news media will have access to recordings of the following under a pool arrangement:

- (a) the opening of the sentencing hearing, with the defendant in the dock (provided Corrections staff are not identifiable);
- (b) the reading of the summary of facts;
- (c) the presentation of submissions; and
- (d) the delivery of the sentence.

[20] Reporting will be permitted during the midday adjournment and at the end of the sitting day.¹³ Before the midday and 5pm adjournment the Judge will direct whether any restrictions are to apply to what can be published or broadcast from the prior session.

[21] As is the usual practice, only one videographer and one still photographer will be permitted in the courtroom at any time. The media organisations providing this service will be required to provide access to this content to other media under a pool arrangement.

Filming of victims

[22] Only those victims who have given their express consent are to be photographed, filmed or recorded in court delivering their victim impact statements. Victims' decisions in this regard will be made available to media before the commencement of each session. Filming and photography in the Law Courts is prohibited.

¹³ The normal sitting day commences at 10 am and adjourns at the following times:

- (a) 11.30–11.45 am: morning adjournment;
- (b) 1–2.15 pm: midday adjournment;
- (c) 3.30–3.45 pm: afternoon adjournment; and
- (d) 5 pm: end of sitting day.

Overseas media and media accessing under syndication arrangements

[23] Overseas media seeking access to the pool content in their own right, or under a syndication agreement with a New Zealand media organisation, will only be granted permission if they have completed the necessary registration process and formally agreed to be bound by all court orders and New Zealand law, including the laws of contempt of court, and sub judice, and which govern publication of the content of the proceeding and the identification of participants *as if they were enforceable in the country in which they operate*.

Other applicants

[24] The Court has received applications to cover the sentencing from other persons not of the mainstream media but who have a professional interest in the event, including researchers and students. Because of the sensitive nature of the hearing and the privacy concerns of some victims, including those who may seek suppression of their identity, in-court reporting is restricted to members of the news media who are subject to the usual codes of ethics and professional accountabilities.

Conditions of remote access

[25] Provision is being made for victims and their families who are unable to attend court in person to view the hearing remotely. A similar provision is being offered to approved overseas media affected by travel restrictions. The requirements of this minute and the orders made have application to anyone accessing the court hearing remotely.

[26] The technology used to facilitate remote access may differ for different users. In every instance, approval to view the hearing remotely will be subject to the following further conditions:

- (a) No person is permitted to record the hearing. This includes a prohibition on downloading or capturing, by any means, sound or images from the video feed, whether by software or digital devices,

including cell phones, and a prohibition on electronic sharing of any content from the hearing.

- (b) No person is permitted to publish any report of the sentencing while it is in progress. This includes a prohibition on posting reports of, or images from, the sentencing on social media platforms or in other media.

[27] The purpose of these prohibitions is to preserve the integrity of the court process and protect the privacy and dignity of victims and others participating in the hearing.

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Mr Tarrant