

A GUIDE FOR MEDIA REPORTING IN THE FAMILY COURT

Introduction

Accredited members of the news media can usually attend the Family Court and in many instances also report on proceedings.

However, because the court deals with sensitive and deeply personal matters, and involves vulnerable participants - especially children - more reporting restrictions apply than is typical in other divisions of the District Court.

In the interests of transparent justice and to ensure the court is as open and accountable as possible, it is important that court reporters do not feel these rules exclude them from the Family Court. Therefore, this guide aims to assist reporters who wish to cover Family Court proceedings in an accurate, fair and balanced way. It should also help reporters to navigate the various procedures with a degree of assurance, and with least disruption to the court and its participants.¹

This guide does not create rights additional to those in the Family Court Act 1980.

Matters Before The Family Court

The Family Court is a division of the District Court. It deals with about 60,000 applications a year.

The court is not open to the public, but it is usually open to accredited news media. Judges can ask court reporters to leave the court. Judges may invite the parties to proceedings to indicate their view about reporters being present.

Some 36 statutes come within the Family Court's largely civil jurisdiction. Commonly, the court hears cases concerning separation, dissolution of marriage, spousal maintenance and child support. Two-thirds of disputed applications before the court concern care arrangements for children. Matters concerning children's care and protection and domestic violence also feature prominently in the court's workload. The court rules on applications for adoption, surrogacy and child abduction; and deals with disputes involving relationship property and estates of deceased persons.

Less widely appreciated is that the court also deals with issues not strictly considered family matters, such as legislation governing the treatment of people with mental illness, intellectually disability and substance addictions who are held in compulsory care, and those who are incapacitated and not able to make decisions concerning their own care because of their age and/or disability.

¹ *The guide does not cover every situation and does not constitute legal advice. News media are advised to seek independent legal advice whenever in doubt.*

What Can Be Reported

Several statutory prohibitions apply to the publication of proceedings in the Family Court. Reporting restrictions vary depending on the Act of Parliament under which proceedings are brought.

However, reports of many proceedings can be published without the court's permission or leave, provided they do not include identifying information where either a person under the age of 18 or a vulnerable person is the subject of, party to, or is referred to in the proceedings.

This is covered by sections 11B-11D of the Family Court Act 1980, and applies to proceedings brought under the:

- Adoption Act 1955
- Care of Children Act 2004
- Child Support Act 1991
- Children, Young Persons, and their Families Act 1989, in respect of applications for continued detention in a secured facility, applications relating to the care and protection of children and young persons, and applications relating to the Trans-Tasman transfer of protection orders and protections proceedings
- Domestic Violence Act 1995
- Family Proceedings Act 1980
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- Mental Health (Compulsory Assessment and Treatment) Act 1992
- Property (Relationships) Act 1976
- Protection of Personal and Property Rights Act 1988
- Substance Addiction (Compulsory Assessment and Treatment) Act 2017

The definition of a vulnerable person depends on the statute under which proceedings are brought, and journalists should consult those statutes or get legal advice on the provisions. Judges may also identify as vulnerable other people who are considered susceptible to adverse consequences from publication. If in doubt once in court, the reporter can seek guidance from the judge by way of a written note passed to the court taker.

Examples² of participants considered vulnerable are:

- a person who is protected by or who has applied for a protection order under the Domestic Violence Act 1995
- a person in respect of whom the Family Court has jurisdiction under Part 1 or 3 of the Protection of Personal and Property Rights Act 1988
- a person who is a proposed patient, patient, or restricted patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992
- a person who has applied to the Family Court for the issue of a declaration under section 28 of the Births, Deaths, and Marriages Registration Act 1995
- a person who is a proposed care recipient or care recipient within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

² *This list is not exhaustive*

A conservative approach is advised. Some hearings may involve more than one statute, each with different reporting restrictions. In those cases particular care needs to be taken so that reporting one aspect of a case does not inadvertently breach prohibitions or restrictions that apply in another matter, under a different law.

(For example, when parties are before the court on a matter which taken on its own appears able to be reported and the parties identified, there may exist parallel or historic applications or orders under a different statute involving one of the parties or participants for which strict reporting prohibitions continue, such as a protection order or certain types of property orders.)

Where there is a statutory prohibition on publication, it is misleading for any media report to suggest that the judge has prohibited publication of relevant details when it is Parliament's direction that these details are automatically suppressed.

Before Coming To Court

Even when news media are permitted to attend a Family Court hearing, reporters should always advise the registrar in advance that they want to cover Family Court.

The registrar will want to be satisfied the journalist is an accredited journalist and understands the reporting restrictions that apply. Therefore, journalists should arrive at court early and carry suitable identification.

Family Court judges also want to know who is in their court, who is taking notes, and to be able to identify them. If they know news media are present, they are better placed to give clear instructions and guidance from the bench about what can and cannot be reported.

Parties to a case, particularly vulnerable participants, may also need some explanation and reassurances from the bench about the role and presence of news media.

On a purely practical basis, many courtrooms used for Family Court hearings are small, and may not have a press bench or dedicated seating. If court staff know in advance that a journalist will be attending, seating may be arranged.

News media wishing to film, record audio or take photographs in the Family Court must apply in the usual way under the *In-court Media Coverage Guidelines*.

In Court

News media queries are best dealt with before a hearing starts or during any adjournment.

Any journalist who becomes unsure during proceedings about what they are permitted to report may seek guidance from the court at an appropriate time that does not disrupt proceedings, such as during an adjournment.

After Court

It is not uncommon for Family Court proceedings to extend over several years. Judges appreciate that this can make it logistically difficult for news media to cover a matter from the outset through to its conclusion, and that media at times may seek to rely on court documents or a judge's written decision.

Under the Family Court Rules 2002 (Rule 429), anyone can seek permission to access court files or documents such as judges' minutes and decisions. However, there is no general right of access as applies to certain documents in criminal and civil proceedings in the District Court under their relevant rules, the Criminal Procedure Rules 2012 or District Court Rules 2014.

A decision on whether to release a document or to allow a file or part of a file to be viewed is made by a registrar or a judge after considering whether the applicant has a genuine and proper interest in accessing a file.

Applications for permission to see or obtain court documents are made to the registrar at the court where the matter was dealt with, either in writing or using the forms on the Ministry of Justice website.

Journalists who rely on information contained in court documents supplied by parties need to be sure they are not breaching reporting restrictions, including any that may flow indirectly from matters dealt with under different statutes during previous or parallel hearings.

Journalists who wish to interview parties to a case after it is disposed of need to be mindful that any statutory prohibitions remain in place, irrespective of a party's view about being identified. Any orders prohibiting publication also remain in force unless specifically discharged.

Laurence Ryan
Principal Family Court Judge
14 August 2017