

**Remarks of the Hon. Marilyn Warren AC,
Chief Justice of Victoria,
on the presentation of the
2009 Victoria Law Foundation Legal Reporting Awards**

The media and judges: a joint community interest

It is not often judges have some of the media as a captive audience to speak our 'judicial mind' on what the media does with our work.

Essentially, I think, we are all about the public interest, the *community* interest. The media say the public has a right to know. Judges say the community has a right to justice and accuracy.

Judges are not political animals. We do not behave as politicians do in the media. We do not conduct polling, push policies, implement strategic media message plans, conduct interviews, facilitate leaks or answer media questions. Judges do not engage in 'political spin'. We

perform in court, deliver our judgments and sentences. We let our written words speak.

Judges do not have media machines of tens and tens of professional journalists to promote the message.

Sometimes judges feel up against it. They are an easy target because the media knows there will not be an answer. These days judges are encouraged to speak to and engage with the community to convey the message of justice.¹ Judges do that – they speak widely: at professional gatherings, universities, schools, conferences and many public occasions. The point is that when it comes to the crunch part, the decision, the sentence, only the words in court are spoken.

Thus we are vulnerable. Judges need a strong, rigorous, courageous and ethical media corps to inform the community.

This established relationship of the media and the judges has opened the courts to the community and has provided

¹ The Hon. Rob Hulls MP, Deputy Premier and Attorney-General for the State of Victoria, *The dynamics of law in a rapidly changing world: constitutional issues, human rights and the rule of law – the Commonwealth principles of the relationship between the three branches of government* delivered 8 April 2009 at the 16th Commonwealth Law Conference, Hong Kong.

a level of transparency and openness, essential elements of an effective legal system. The community relies on the media to deliver insightful, balanced and accurate reporting and the media have a responsibility to convey this.

The recipients of the Legal Reporting Award 2009 are here today because they have shown excellence in their approach to court reporting. They have shown integrity and have taken seriously their responsibility to the community to produce unbiased, measured and considered reporting. For this they are to be congratulated.

Judges see how valuable such reporting is, not only to the court but also to the parties, their families, the profession and the wider community.

The ability for a court to deliver justice and uphold the rule of law can become very difficult when the media takes a sensationalist approach to reporting. A journalist has no special legal rights in court above and beyond those granted to any other citizen. They have, however, at the discretion of the court, been granted a number of

privileges which facilitate the courts and the communities desire for open justice.²

These privileges include, the courtesy of sitting at the press bench during a trial; being able to take notes in court; having priority over ordinary citizens for a position in the courtroom when the court is full; having access to documents and evidence tabled in court and transcripts of court proceedings.³

Judges will often allow reporters to remain in court when the court has been closed to the general public, on the condition that they do not report on the proceedings, for example voir dire hearings, or identify some witnesses.

There is always a delicate balance sometimes a tension between the principle of open justice and other interests, such as the right to a fair trial and the due administration of justice.⁴ Past court journalists have counselled that the golden rule to court reporting is to only report what is said before a jury.

² The Journalist's Guide to Media Law, Mark Pearson, 3rd Edition, Chapter 4 Open Justice, Page 63
Access to the Courts

³ Ibid.

⁴ The Journalist's Guide to Media Law, Mark Pearson, 3rd Edition, Chapter 4, Open Justice Page 65

In Victoria we are privileged to have a fine media corp who in the last few years have managed to cover at a high professional level complex commercial litigation, tricky terrorist, underworld and police corruption cases largely without problems. This has been achieved through mutual respect for the role of the judges and courts and the role of the media.

It is troubling then that some reporters either ignore or push the boundaries of other golden rules such as *sub judice* and contempt of court. I understand the ever increasing pressures of deadlines. I too appreciate the public's need and desire to remain constantly informed and, therefore, the greater emphasis on online media. The effects of publishing such material can prejudice a fair trial; it can act to scandalise the court and thus undermine public confidence in the administration of justice⁵.

Another of these 'golden rules' was that once proceedings are 'pending', and until a matter is mentioned in court, reporters were restricted to just the 'bare facts' of the crime. So why has it been over the past decade or more that the media have gone beyond the 'bare facts'? And

⁵ The Journalist's Guide to the Media, 3rd, Chapter 5, Contempt of Court, Page 85

how much longer can prosecutors and courts ignore potential or actual *sub judice* contempt of court? Is it just a question of media flexing their ever-growing freedom-of-speech muscles while citing public interest? Or has it been brought upon them with changes in technology that now see any person on the street becoming a freelance photographer through the advent of mobile phones with cameras.

Newspapers now encourage readers to send in their photos of yesterday's storm damage, this morning's pile-up on the freeway, or worse, a shooting in some quiet residential street. Is it any wonder courts have to make suppression orders, not to stop someone from being named, but to preserve the very essence of justice – a fair trial. Just recently this court drew the line back in the sand, effectively saying, enough: "a person has been charged, court proceedings are pending, an end is required to pre-trial publicity."

There is a risk to justice if police, prosecutors, lawyers and litigants act like politicians to market their message. Judges will not do that. If they ever did the judicial oath would be breached. We are not about judicial

personalities. We are the blind face of justice serving the community.

We ask for three things: first, the media abide by the *sub judice* rules; second, accuracy in reports; third, turn on our voice through a simple step – provide the hyperlink to our judgements when our cases are reported. Indeed, I now see hyperlinks in the printed media as an ethical and professional obligation. There is no excuse in the Supreme Court.

Individually, I believe journalists, especially seasoned court and legal reporters, still harbour the golden rules. Collectively though, the competing pressures of on-line demands, ratings and deadlines force them to follow the pack and bow to editorial decision makers. They should remain strong, courageous and principled.

The recipients today have shown that quality court reporting, where one is promoting not inhibiting justice, is indeed rewarding. Deliberately, I have raised questions. I am regularly advised to put myself in the position of a reporter, to see things from the media's perspective as to why a certain story is published, why a particular angle is

penned. But I do wonder whether any media have stopped and put themselves in the position of a judge who has the carriage of a pending proceeding and who is dealing with the very human aspects of trial and appellate work.

Today's awards speak volumes for the quality of court reporting and court reporters in Victoria.

Congratulations and thank you for your dedication to the Victorian justice system.