

STOP THE PRESSES, BUT NOT THE TWEETS: WHY AUSTRALIAN JUDICIAL OFFICIALS SHOULD PERMIT JOURNALISTS TO USE SOCIAL MEDIA IN THE COURTROOM

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I INTRODUCTION

People living in Western countries expect to be able to obtain information instantly.¹ If someone is driving and wants to find out if there is a traffic jam nearby that could delay their reaching their destination, they can check social media and find out right away.² If someone wants to learn if their favourite store has a sale, they can just browse the store's Twitter page to find out.³ Other information that people may expect to obtain just as quickly is what occurs during court proceedings. In Australia, '[t]he media's right to contemporaneously and fully report proceedings in [its] courts is properly regarded as a significant element of [its] legal system.'⁴

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¹ David Isaacson, 'On My Mind: Instant Information Gratification' (2002) 33(2) *American Libraries* 39, 39.

² Desiree Hill, *Twitter: Journalism Chases the Greased Pig* (MA (Journalism) Thesis, University of North Texas, 2010) 2.

³ Ibid.

⁴ *Director of Public Prosecutions (on behalf of Smith) v Theophanous and Others* (2009) 27 VR 295, 38 (Osborne J).

Johnston communicated with seven different Australian court information officers about their court's current social media policies.⁵ Five of the seven court information officers said that 'they were aware of the use of Twitter by the news media in the coverage of courts in their jurisdiction.'⁶ Nevertheless, only one Australian state, Victoria, has released a policy that permits journalists to use social media in the courtroom.⁷ This issue presents new opportunities to court officials.⁸

Some basic information about social media follows: social media allow its users to create profiles, usually using photos and personal information, and communicate with other users.⁹ Facebook and Twitter are examples of social media sites.¹⁰ Twitter is a social media site that registered users can use to post comments of 140 characters or less.¹¹ People can respond to the comments by mobile text, instant messaging or the internet.¹² It is free to establish a Twitter account,¹³ and over one million people use it.¹⁴ Facebook

⁵ Jane Johnston, 'Courts' New Visibility 2.0' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media* (Halstead Press, 2012) 41, 49.

⁶ Ibid 51.

⁷ Supreme Court of Victoria, *Media Policies and Practices* (26 August 2010) 6 <http://www.supremecourt.vic.gov.au/resources/52d4064b-f5c1-408b-ad06-5f62d2bda4fc/media_procedure_policy.pdf>.

⁸ Bruce Phillips, 'The Federal Court: Breaking New Ground' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media* (Halstead Press, 2012) 79, 81.

⁹ Audrie Garrison, *Tweeting from the Courtroom: The State of Social Media Reporting in Judicial Proceedings and How the Debate on Cameras Helped Shape It* (MA (Journalism) Thesis, Indiana University, 2011) 4.

¹⁰ Ibid.

¹¹ Jacob E. Dean, 'To Tweet or Not to Tweet: Twitter, "Broadcasting," and Federal Rule of Criminal Procedure 53' [2010] 79 *University of Cincinnati Law Review* 769, 769.

¹² Ibid.

¹³ Ibid.

¹⁴ Adriana C. Cervantes, 'Will Twitter Be Following You in the Courtroom?: Why Reporters Should Be Allowed to Broadcast During Courtroom Proceedings' (2010) 33 *Communications and Entertainment Law Journal* 133, 152.

allows people or organisations to create a profile and post information to share with others.¹⁵

This article explores the issue of journalists using social media in the courtroom. After a short description of the relationship between court officials and the media, and how social media changed the media industry, it will then analyse the benefits of permitting journalists to use social media in the courtroom and the actions that court officials in four common law jurisdictions have taken on this issue. The article ultimately argues that Australian court officials should release a standard policy that permits journalists to use social media in the courtroom and it provides a draft of such a policy.

II THE RELATIONSHIP BETWEEN COURT OFFICIALS AND THE MEDIA

The relationship between court officials and the media is complex and it has changed over time. The open justice principle is at the heart of this relationship, which states that ‘judicial proceedings must be conducted in an open court to which the public and press have access.’¹⁶ Judges have said that the open justice principle is a presumption in criminal trials.¹⁷ A reason for open justice is that it helps ‘to inform the public about the workings of the third arm of government and to ensure that courts and judges administer the justice system in a way that will maintain and foster its integrity, fairness and efficiency.’¹⁸ The principle reassures the public that judicial officials administer trials fairly and without prejudice.¹⁹ It

¹⁵ David Barnfield, ‘Effectiveness of Suppression Orders in the Face of Social Media’ (2011) 33(4) *Bulletin* 16, 16.

¹⁶ *Scott v Scott* [1913] AC 417, quoted in *McJannett v Daley (No 2)* [2012] WASC 386 (25 October 2012) [4] (Le Miere J).

¹⁷ *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 573 (1980).

¹⁸ *Re Hogan; Ex parte West Australian Newspapers Ltd* [2009] WASCA 221 [50] (8 December 2009), quoted in *Re Peter Mervyn Bartlett; Ex Parte R* [2012] WASC 34 [22] (6 February 2012) (McKechnie J).

¹⁹ *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 569 (1980).

also discourages witnesses from committing perjury²⁰ and allows the public to ‘judge whether our system of criminal justice is fair and right.’²¹

Open justice ‘was derived from observation of the actual practice of dispute resolution over long periods of time.’²² England has embraced the open justice principle ‘from time immemorial.’²³ Early colonial American court officials also started implementing the open justice principle.²⁴ Open justice is considered ‘one of the most fundamental aspects of the system of justice in Australia.’²⁵ Currently, Australian State and Federal court officials allow the public to attend the majority of court proceedings, in accordance with the open justice principle.²⁶

As a result of the open justice principle, journalists may attend court proceedings.²⁷ It is critical to the open justice principle that journalists attend court proceedings and later report them, because the public cannot attend court on a daily basis to see what occurs themselves.²⁸ When journalists use social media in the courtroom, they give the public the most up to date information about what occurs in court, and help to implement the open justice principle.

²⁰ *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 569 (1980).

²¹ *Maryland v Baltimore Radio Show, Inc.*, 338 U.S. 912, 910 (1950)(Frankfurter J.), quoted in *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 574 (1980).

²² Spigelman, CJ, ‘Seen to Be Done: The Principle of Open Justice’ 11 (Speech delivered at the 31st Australian Legal Convention, Canberra, 9 October 1999) <http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/vwPrint1/SCO_speech_spigelman_091099>.

²³ *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 567 (1980), quoting E. Jenks, *The Book of English Law* (Ohio University Press, 6th ed, 1967) 73-74.

²⁴ *Richmond Newspapers, Inc. Et Al. v Virginia Et Al.*, 448 U.S. 555, 567 (1980).

²⁵ *John Fairfax v District Court of NSW* (2004) 61 NSWLR 344, 18 (Spigelman CJ).

²⁶ Isolde Lueckenhausen, ‘Facebook v a Fair Trial? Court Reporting Restrictions and the Internet’ (2009) 92 *Precedent* 15, 15.

²⁷ *Scott v Scott* [1913] AC 417, quoted in *McJannett v Daley (No 2)* [2012] WASC 386 (25 October 2012) [4] (Le Miere J).

²⁸ Lueckenhausen, above n 26, 15.

According to the Chief Justice of the Supreme Court of Canada, Beverley McLachlin, open justice is also crucial to the rule of law.²⁹ She stated that the rule of law ‘cannot exist without open justice and deep public confidence in the judiciary and the administration of justice. And the media is essential to building and maintaining that public confidence’³⁰ because it informs people of the logic and principles that judicial officials use in their decisions.³¹

Court officials and the media have an interdependent relationship. Court officials depend on the media to inform the public about court matters.³² The media provides court officials with ‘the means by which justice is seen to be done.’³³ When a judge imposes a sentence on an accused to try to deter others from committing a similar crime, the deterrence only works if the public is aware of the sentence.³⁴ Judicial officials depend on the media to inform the public about the sentence, thereby implementing the deterrent effect.³⁵ Journalists depend on court officials to provide them with information that they can report to the public.

The relationship between judicial officials and the media has some challenges. Judicial officials sometimes find that media reports about court proceedings differ greatly from what actually occurred.³⁶ Journalists have also criticised court officials for not providing them with sufficient access to court documents and proceedings.³⁷ To

²⁹ Beverley McLachlin CJ, ‘The Relationship Between the Courts and the Media’ [4] (Speech delivered at Carleton University, Canada, 31 January 2012) <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2012-01-31-end.asp>>.

³⁰ Ibid.

³¹ *R v Tait and Bartley* (1979) 24 ALR 473, 492 (Brennan, Deane and Gallop JJ).

³² Ibid [9].

³³ Chris McLeod, ‘Wrestling with Access’ [2004 - 2005] 85 *Reform* 15, 15.

³⁴ Paul de Jersey CJ, ‘Courts and the Media in the Digital Era: A Judicial Perspective’ in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media* (Halstead Press, 2012) 35, 36.

³⁵ Ibid.

³⁶ Michael Kirby J, ‘Improving the Discourse Between Courts and the Media’ (2008) 35(6) *Brief* 20, 20.

³⁷ Jane Johnston, ‘The Court-Media Interface: Bridging the Divide’ (2005) 30(1) *Australian Journalism Review* 27, 27.

prevent this from occurring, most Australian courts now have a media or public information officer.³⁸ The media or public information officer's work 'involves bridging the gap between the judiciary and the media.'³⁹ He or she provides court documents to journalists (i.e. transcripts) and he or she liaises between the media and the judiciary.⁴⁰ Judicial officials hope that media or public information officers help to improve the accuracy of articles about court proceedings.⁴¹

*John Fairfax Group Pty Ltd (Receivers and Managers Appointed) and Another v Local Court of New South Wales and Others*⁴² ("Fairfax") states exceptions to the open justice principle, which other cases mention or apply.⁴³ One of the exceptions occurs when open justice would negatively impact 'the attainment of justice'⁴⁴ in a specific case or cases generally.⁴⁵ For example, if open justice is permitted when a police informant testifies in court, this may discourage other police informants from providing evidence.⁴⁶ The second exception occurs when open justice could hurt the public interest, such as when a journalist informs the public about secret matters of national security discussed in a court proceeding.⁴⁷

³⁸ Ibid 28.

³⁹ Ibid.

⁴⁰ Ibid 29.

⁴¹ Ibid 31.

⁴² *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) and Another v Local Court of New South Wales and Others* (1991) 26 NSWLR 131, 141 (Kirby P).

⁴³ See, eg, *Rinehart v Welker* [2011] NSWCA 403 (19 December 2011) [36] (Bathurst CJ, McColl, Young JJA); *R v Goldman (No 3)* [2004] VSC 167 (9 Mar 2004) [17] (Redlich J); *V v M* [2009] NSWSC 1084 (9 October 2009) [20] (Brereton J); *Western Australia v Heijne* [2009] WASC 162 (10 May 2009) [9] (McKechnie J).

⁴⁴ *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) and Another v Local Court of New South Wales and Others* (1991) 26 NSWLR 131, 141 (Kirby P).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

Judicial officials can decide that traditional media cannot report on cases that involve an exception to the open justice principle.⁴⁸ Similarly, judicial officials can decide that journalists cannot use social media when the proceedings involve an exception to the open justice principle. This section of the article argued that the open justice principle is the heart of the relationship between the courts and journalists and journalists should be permitted to use social media in the courtroom because of the open justice principle. This article will next discuss how social media has changed the media industry.

III HOW SOCIAL MEDIA HAS CHANGED THE MEDIA INDUSTRY

The creation and significant use of the internet and social media internationally has impacted print media.⁴⁹ The circulation of American newspapers has decreased since the mid-2000s.⁵⁰ Some newspapers ceased operating,⁵¹ while others stopped publishing a paper version and started publishing a small online version instead.⁵² Between 2006 and 2009, American daily newspapers cut their spending on editorials by \$1.6 billion.⁵³ Print newspapers' advertising revenue decreased, while online newspaper advertising increased.⁵⁴ The staff at many online newspapers are experienced

⁴⁸ Ibid.

⁴⁹ Brian Fitzgerald, Cheryl Foong and Megan Tucker, 'Web 2.0, Social Networking and the Courts' (2011) 35(3) *Australian Bar Review* 281, 286.

⁵⁰ Lili Levi, 'Social Media and the Press' [2011 – 2012] 90 *North Carolina Law Review* 1531, 1537.

⁵¹ Ibid.

⁵² John Kostouros, *Who Are These Guys? Courts Face a Rapidly Changing News Industry* (2011) National Center for State Courts, 41 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctmedia/id/32>>.

⁵³ Levi, above n 50, 1538.

⁵⁴ Marenet Jordaan, *Social Media in the Newspaper Newsroom: The Professional Use of Facebook and Twitter at Rapport and the Mail & Guardian* (MPhil (Journalism) Thesis, Stellenbosch University, 2012) 3 <<http://scholar.sun.ac.za/handle/10019.1/20101>>.

journalists who left their print or broadcast news occupations.⁵⁵ Mainstream news media use social media as a way to quickly release breaking news.⁵⁶ The number of journalists that use social media as part of their reporting has increased internationally.⁵⁷ In a 2009 survey co-researched by George Washington University in the United States, over half of the 371 journalists who participated in the survey stated that they believed that social media was important to the stories that they created.⁵⁸ The Society for New Communications Research's survey of over 200 journalists in 2011 revealed that 75 percent use Facebook when they report news and over 69 percent use Twitter.⁵⁹ As such, journalists should be able to use social media in the courtroom to provide courtroom information to social media users because that is how they are increasingly providing news to the public.

Citizen journalists are a new type of journalist that has emerged recently on the internet and social media.⁶⁰ Citizen journalists write for online newspapers with few staff and depend on articles from contributors who may be community activists.⁶¹ Community foundations often finance citizen journalists.⁶² The quality and accuracy of citizen journalists' content varies.⁶³ As a result of citizen journalists, the definition for the word 'journalist' is uncertain.⁶⁴

⁵⁵ Kostouros, above n 52, 42.

⁵⁶ Mark L. Tamburri, Thomas M. Pohl and M. Patrick Yingling, 'A Little Bird Told Me About the Trial: Revising Court Rules to Allow Reporting from the Courtroom Via Twitter' (2010) 15 *Electronic Commerce & Law Report* 1415, 1416.

⁵⁷ Jordaan, above n 54, 13.

⁵⁸ Ibid 18.

⁵⁹ Ibid.

⁶⁰ Kostouros, above n 52, 42.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Nic Newman, *Mainstream Media and the Distribution of News in the Age of Social Discovery* (2011) Reuters Institute for the Study of Journalism, Department of Politics and International Relations, University of Oxford, 10 <<http://ora.ox.ac.uk/objects/uuid:94164da6-9150-4938-8996-baddef6b507>>.

In terms of courts' reporting, court reporters used to write notes while they were in the courtroom, and later filed their writing outside the courtroom.⁶⁵ Technology removed journalists' need to leave the courtroom to file their writing.⁶⁶ Prior to the internet and social media, only professional journalists could report on trials.⁶⁷ Social media and the internet have enabled any person to sit in a courtroom and post information for the public to read, provided that he or she is permitted by a judicial officer.⁶⁸

Social media has caused some challenges for court officials. When a high-profile trial occurs, court officials must decide which journalists will receive reserved seating.⁶⁹ They must also decide whether citizen journalists should be allowed to sit in the area reserved for journalists.⁷⁰ Court officials must decide whether or not to provide citizen journalists with the court records that they request.⁷¹ For example, some court officials have changed how they normally assist journalists because of citizen journalists. Court officials are considering how they can ensure the accuracy of articles about court proceedings because of the entry of many inexperienced journalists.⁷² Some court officials distribute their media releases to citizen journalists.⁷³ Several court officials prepare materials in a news story format for inexperienced journalists to easily understand.⁷⁴ Some court agencies, such as the Minnesota Court Information Office in the United States, allow citizen journalists to attend the same training as professional journalists.⁷⁵ Courts officials

⁶⁵ Lord Chief Justice of England and Wales, *A Consultation on the Use of Live, Text-Based Forms of Communications from Court for the Purposes of Fair and Accurate Reporting* (7 February 2011) Judiciary of England and Wales, 3 <<http://www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/cp-live-text-based-forms-of-comms.pdf>>.

⁶⁶ Ibid.

⁶⁷ Fitzgerald, Foong and Tucker, above n 49, 286.

⁶⁸ Ibid.

⁶⁹ Kostouros, above n 52, 43.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid 44.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

also post media guides on their websites to help inexperienced journalists.⁷⁶ Journalists should be able to use social media in the courtroom because they receive assistance from court officials to ensure that the information that they post is accurate.

This section of the article has discussed how social media has changed the media industry. It will next explore the benefits of court officials permitting journalists to use social media in the courtroom.

IV THE BENEFITS OF ALLOWING JOURNALISTS TO USE SOCIAL MEDIA IN THE COURTROOM

The Utah Judicial Council Study Committee on Technology into the Courtroom states

the potential public benefits flowing from electronic media coverage of open judicial proceedings are substantial. While relatively few judicial proceedings are likely to attract electronic media coverage, those that do are likely to be of significant public interest and concern. Permitting electronic media coverage will allow the public to actually see and hear what transpires in the courtroom, and to become better educated and informed about the work of the courts.⁷⁷

When journalists tweet in the courtroom, they can inform the public of what occurs at court more quickly than traditional media.⁷⁸ This can make the public become more engaged with the courts.⁷⁹ If the

⁷⁶ Ibid.

⁷⁷ Utah Judicial Council Study Committee on Technology Brought into the Courtroom, *Final Report* (10 April 2012) Reporters Committee for Freedom of the Press, 11 <http://www.rcfp.org/sites/default/files/docs/20121120_133113_cameras_in_court.pdf>.

⁷⁸ Sally Jackson, 'Judges Have Final Decision on Twitter,' *The Australian* (online), 19 October 2009, <<http://www.theaustralian.com.au/news/judges-have-final-decision-on-twitter/story-e6frgal6-1225788184795>>.

⁷⁹ Levi, above n 50, 1533.

public are more engaged with the courts, then this could potentially increase confidence in the judiciary. When journalists use social media inside the courtroom, they do not miss any of the court proceedings because they have to leave the courtroom to use social media or submit a story.⁸⁰ This could potentially make journalists' stories more accurate. Journalists who use social media in the courtroom cause less disruption in the courtroom than journalists who must constantly leave the courtroom to use social media and re-enter it afterward.⁸¹

Many news readers enjoy reading news from the courtroom on social media. For example, in Wichita, Kansas, journalist Ron Sylvester of *The Wichita Eagle* was allowed to use Twitter while he sat in the courtroom during Theodore Burnett's trial.⁸² Burnett was accused of being paid to murder a pregnant 14 year old girl.⁸³ At the end of the first day of trial, many people who read Sylvester's tweets from inside the courtroom sent him emails and tweets that stated that they enjoyed reading his tweets.⁸⁴

Using social media in the courtroom can ensure that courts face 'greater scrutiny.'⁸⁵ Dean states that the more that the public can access a trial, the better it is for the accused, because this lessens the

⁸⁰ 'Opening Courts to Social Media Proposed by Panel,' *CBC* (online), 26 October 2012 <<http://www.cbc.ca/m/rich/technology/story/2012/10/26/tec-social-media-courts.html>>.

⁸¹ Newsgathering Committee, Defense Counsel Section, Media Law Resource Center, *Model Policy on Access and Use of Electronic Portable Devices in Courthouses and Courtrooms & Memorandum in Support for MLRC's Model Policy on Electronic Devices* (2010) Supreme Court of Arizona, 13 <<http://www.azcourts.gov/Portals/74/WIRE/06072012/5Policies.pdf>>.

⁸² Debra Cassens Weiss, *Capital Murder Trial Chronicled Via Twitter* (15 May 2008) *ABA Journal*, <http://www.abajournal.com/news/article/reporter_covers_murder_trial_on_twitter>.

⁸³ *Ibid* [1].

⁸⁴ Ron Sylvester, 'A Community Watches a Story Unfold' (2011) Spring *Nieman Reports* [6] <<http://www.nieman.harvard.edu/reports/article/102627/A-Community-Watches-a-Story-Unfold.aspx>>.

⁸⁵ David Banks, 'Tweeting in Court: Why Reporters Must Be Given Guidelines,' *The Guardian* (online), 15 December 2010 <<http://www.guardian.co.uk/law/2010/dec/15/tweeting-court-reporters-julian-assange>>.

possibility of perjury and misconduct occurring.⁸⁶ The effects that Dean states may not actually occur when journalists use social media in the courtroom, because trial participants may have no idea that journalists are using social media. Trial participants may think that journalists are simply using their laptops or texting work colleagues. Journalists who use social media in the courtroom can help people who want to attend court to watch a trial, but cannot because the court is too far away.⁸⁷ *U.S. v W.R. Grace*⁸⁸ is an example of this. The trial involved asbestos contamination in Libby, Montana.⁸⁹ The prosecution submitted that the defendant's employees knew that their mine released toxic mine dust into the town.⁹⁰ Many people who lived in Libby had asbestos in their lungs.⁹¹ Libby was a four hour drive from Missoula, where the trial took place; therefore, some Libby residents could not travel to Missoula to attend the trial.⁹² Information about the trial was tweeted during the trial regularly.⁹³ Many people who could not attend court were quite pleased to read updates about the trial on social media.⁹⁴

This section of the article discussed the benefits of permitting journalists to use social media in the courtroom. The next section will examine which courts currently permit journalists to use social media in the courtroom.

⁸⁶ Dean, above n 11, 787.

⁸⁷ Nadia White, 'Cover Story: UM's Grace Case Project: Experiment in Live Trial Coverage Keeps the Faith in Justice' (2010) 36 *The Montana Lawyer* 6, 7.

⁸⁸ 504 F 3d 745 (9th Cir, 2007).

⁸⁹ White, above n 87, 7.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.* 8.

V ARE THE COURTS CURRENTLY LETTING JOURNALISTS USE SOCIAL MEDIA IN THE COURTROOM?

Canadian, American, British and Australian courts have differing approaches to permitting journalists to use social media in the courtroom. Kitley J, of the Ontario Superior Court of Justice in Canada, stated that Canadian ‘provinces are struggling with what to do with this.’⁹⁵ Still, Canadian, British and Welsh judicial officials have made the greatest efforts to address this issue.

This section will examine the actions, or lack thereof, that judicial officials took in the four jurisdictions mentioned about this issue to date. On a micro level, judicial officials decide the issue for specific cases. On a macro level, judicial officials or the government make decisions about this issue for entire courts or jurisdictions.

A *Micro Level*

1 *Courts that Allow Journalists to Use Social Media in the Courtroom Because Journalists Already Started Using Social Media in the Courtroom or Requested Permission.*

Some judicial officers simply decide that they will allow journalists to use social media in the courtroom for a specific trial because journalists already started using social media in the courtroom or requested permission to do so. They do not apply existing law to the case.

⁹⁵ Richard J. Brennan, ‘Tweets from the courtroom Should Be Allowed in All Provinces Say Legal Expert,’ *The Toronto Star* (online), 14 November 2012, [14], <<http://www.thestar.com/news/canada/article/1287606--tweets-from-the-courtroom-should-be-allowed-in-all-provinces-say-legal-experts>>.

*Roadshow Films Pty Ltd v iiNet Limited (No 3)*⁹⁶ was a Sydney Federal Court case about whether an internet service provider breaches copyright laws when its subscribers illegally download movies.⁹⁷ Two technology journalists, Andrew Colley from *The Australian* and Liam Tun from *ZDNet Australia*, tweeted from the courtroom using their laptops.⁹⁸ Colley and Tun published their tweets on their personal Twitter pages.⁹⁹ Their Twitter pages stated their names and the media companies that they worked for.¹⁰⁰ Hundreds of people followed Colley and Tun's tweets.¹⁰¹ When Cowdroy J discovered who the two men were twittering in the courtroom he did not stop them.¹⁰² Cowdroy J stated

[t]his proceeding has attracted widespread interest both here in Australia and abroad, and both within the legal community and the general public. So much so that I understand this is the first Australian trial to be twittered or tweeted. I granted approval for this to occur in view of the public interest in the proceeding, and it seems rather fitting for a copyright trial involving the internet.¹⁰³

Officials at the High Court of Australia later stated that they would ban all live tweeting in the final appeal of the case, because they ban social media from the courtroom.¹⁰⁴ It would be interesting to speak with journalists who attended both trials and ask them whether their readers preferred their reporting at the first or the second trial. Unfortunately, that is outside the scope of this article.

At Julian Assange's bail hearing at the City of Westminster Magistrates Court, journalists requested Riddle J's permission to use

⁹⁶ [2010] FCA 24.

⁹⁷ *Roadshow Films Pty Ltd v iiNet Limited (No. 3)* [2010] FCA 24, [3].

⁹⁸ Jackson, above n 78.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ *Roadshow Films Pty Ltd v iiNet Limited (No. 3)* [2010] FCA 24, [4].

¹⁰⁴ Nic Christensen, 'Reporters' Live Tweeting from Court Risks Mistrials,' *The Australian* (online), 5 December 2011, [8], <<http://www.theaustralian.com.au/media/digital/reporters-live-tweeting-from-court-risks-mistrials/story-fna03wxu-1226213631453>>.

social media in the courtroom.¹⁰⁵ Riddle J permitted the journalists to use social media from court,¹⁰⁶ provided they were ‘quiet and did not interfere with court business.’¹⁰⁷ Later that week, Assange had another bail hearing at the High Court.¹⁰⁸ At the High Court Ouseley J refused to let the journalists use social media in the courtroom.¹⁰⁹ He stated that ‘the issues involving Twitter go beyond the possible relationship to sound recording, and may include the potential for distraction and disruption to the appropriate atmosphere of the court – what might be termed, perhaps a bit pompously, its dignity.’¹¹⁰ Ouseley J also stated that ‘a considered policy decision’ on the issue was required.¹¹¹ The Lord Chief Justice for England and Wales subsequently published a policy on social media in the court.¹¹²

Some American judges release decorum orders that are policies for a specific trial that state various requirements for a trial, such as whether the media can use social media in the courtroom.¹¹³ Releasing individual decorum orders that state whether journalists can use social media in the courtroom is not the ideal solution to decide whether journalists can use social media in the courtroom. It is not sufficiently predictable for the journalists who cover trials. A better solution is for court officials to release a standard policy, which is a macro level solution.

¹⁰⁵ ‘Lord Chief Justice Allows Twitter in Court,’ *BBC* (online), 20 December 2010, [9], <<http://www.bbc.co.uk/news/uk-12038088>>.

¹⁰⁶ *Ibid* [10].

¹⁰⁷ ‘U.K. Judge Allows Tweeting at Assange Hearing,’ *CBC News* (online), 16 December 2010, [5], <http://www.cbsnews.com/2100-202_162-7152649.html>.

¹⁰⁸ ‘Lord Chief Justice Allows Twitter in Court,’ above n 105, [11].

¹⁰⁹ *Swedish Judicial Authority v Assange* [2010] EWHC 3473 (Admin) (16 October 2010) [1] (Ouseley J).

¹¹⁰ *Ibid* [3].

¹¹¹ *Ibid* [4].

¹¹² ‘Lord Chief Justice Allows Twitter in Court,’ above n 105, [3].

¹¹³ *Commonwealth of Pennsylvania v Sandusky*, 25 Pa. D. & C. 5th Common Pleas Court of Centre County, Pennsylvania, Criminal Division 429, 442.

2 *Courts that Apply Existing Law to Decide Whether to Allow Journalists to Use Social Media in the Courtroom*

There are few reported cases on this issue to date. The American judgments on the topic involve judges applying existing law. In *US v Shelnutt*,¹¹⁴ a journalist at the *Columbus Ledger-Enquirer* newspaper requested permission from Land J to tweet during a criminal trial.¹¹⁵ The prosecution did not argue the issue.¹¹⁶ Land J applied rule 53 of the Federal Rules of Criminal Procedure¹¹⁷ to make his decision.¹¹⁸ Rule 53 states '[t]he court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.'¹¹⁹ Land J used a dictionary definition to define the word 'broadcast:' 'broadcast' includes 'casing or scattering in all directions'¹²⁰ and 'the act of making widely known.'¹²¹ Land J felt that tweeting would cast information at the trial to the public and the trial would be widely known.¹²²

Rule 53 was originally drafted to apply to television and radio broadcasts of trials.¹²³ Prior to 2002, the rule stated that the 'taking of photographs'¹²⁴ and 'radio broadcasting'¹²⁵ were not allowed.¹²⁶ In 2002, Rule 53 was amended and the word 'radio' was deleted from broadcasting.¹²⁷ The Rule simply stated that broadcasting was

¹¹⁴ 37 Media L. Rep. 2594, 2594 (MD Ga, 2009).

¹¹⁵ Ibid 2594.

¹¹⁶ Ibid 2595.

¹¹⁷ Fed. R. Crim. P. 53 (1999).

¹¹⁸ *US v Shelnutt*, 37 Media L. Rep. 2594, 2595 (MD Ga, 2009).

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid 2596.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

forbidden.¹²⁸ The change was made to interpret the word broadcasting more widely.¹²⁹ Cervantes states that Land J in *Shelnutt*

did not properly discuss why tweeting is unlike the broadcasting of audio or visual information in reaching its decision to include Twitter under the blanket prohibition of Criminal Procedure Rule 53. Hopefully, subsequent courts will make this distinction since the coverage that each type of broadcasting provides differs.¹³⁰

Brenner believes that Land J in *Shelnutt* erred in refusing to permit journalists to tweet during the trial.¹³¹ She states that the goal of Rule 53¹³² was to prevent journalists from disrupting trials.¹³³ She added that ‘there seems to be no reason why a reporter tweeting during a criminal trial is any more disruptive than letting a reporter take notes by hand or on a laptop during a trial or letting an artist create sketches that will later be broadcast to the public via television.’¹³⁴ Dean states that the definition that Land J used in *Shelnutt* was ‘over inclusive’¹³⁵ because if one uses his dictionary definition of broadcasting

any form of press would be broadcasting because it takes facts and disseminates them to the population at large. Under this interpretation, newspaper, magazine, and television reporting would all be prohibited under Rule 53. Any individual who attended a criminal trial and talked to others about his or her experience would be broadcasting. The result is untenable; therefore, broadcasting cannot be defined so broadly as to prohibit anything that casts or scatters in all directions, or makes information more widely known.¹³⁶

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Cervantes, above n 14, 149-150.

¹³¹ Susan W. Brenner, ‘Internet Law in the Courts’ (2010) 13(9) *Journal of Internet Law* 30, 34.

¹³² Fed. R. Crim. P. 53 (1999).

¹³³ Brenner, above n 131, 34.

¹³⁴ Ibid.

¹³⁵ Dean, above n 11, 784.

¹³⁶ Ibid 785.

Dean's statement is too broad. A small local paper, which is a type of press, would probably not 'scatter in all directions,'¹³⁷ but an online article might. Using Land J's definition of broadcast, online articles about trials would not be allowed. If online articles about trials were not allowed, it would be a disaster for news organisations that shifted their efforts from print to online and millions of people who read news online.

In *Connecticut v Komisarjevsky*,¹³⁸ the accused was charged with capital felony and sexual assault in the first degree.¹³⁹ The accused applied to Blue J to forbid journalists from using Twitter at his trial.¹⁴⁰ Blue J applied Connecticut Rules of Court section 1-11(b),¹⁴¹ which stated that when an accused is charged with sexual assault '[n]o broadcasting, television, recording or photographing' of the trial is allowed.¹⁴²

Blue J stated that this law clearly forbids journalists from using television and radio at trials, but it was 'not clear'¹⁴³ whether social media was allowed.¹⁴⁴ Blue J then attempted to find a definition for the term 'broadcast.'¹⁴⁵ He found dictionary and statutory terms for the word out of date and unhelpful.¹⁴⁶ He stated that he would interpret the word 'broadcast' by constructing 'an interpretation that comports with the primary purpose of the rule in question.'¹⁴⁷

¹³⁷ *US v Shelmutt*, 37 Media L. Rep. 2594, 2595 (MD Ga, 2009).

¹³⁸ 2011 Conn. Super. LEXIS 403 (2011).

¹³⁹ *Connecticut v Komisarjevsky*, 2011 Conn. Super. LEXIS 403, 403 (2011).

¹⁴⁰ *Ibid.*

¹⁴¹ *Connecticut v Komisarjevsky*, 2011 Conn. Super. LEXIS 403, 403 (2011); Conn. Rules of Court s 1-11(b)(2008).

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid* 404-7.

¹⁴⁶ *Ibid* 406-7.

¹⁴⁷ *Ibid* 407.

Blue J explained that the purpose of section 1-11(b)¹⁴⁸ was to protect a victim of sexual assault from having to contend with ‘the indignity of having his or her ordeal vividly conveyed.’¹⁴⁹ However, ‘it cannot sensibly extend beyond voices and photographic or televised images to the actual words spoken in court or descriptions of courtroom events.’¹⁵⁰

Blue J held that section 1-11(b)¹⁵¹ did not apply to Twitter and journalists could use it at Komisarjevsky’s trial.¹⁵² Nevertheless, if journalists were ‘disruptive’¹⁵³ while tweeting in court, then he would forbid them from tweeting in the courtroom.¹⁵⁴

Blue J’s decision that section 1-11(b)¹⁵⁵ did not apply to Twitter was a reasonable decision, given that journalists tweeting from court need not take photographs at court or record voices or images. It is interesting that Blue J could not find a definition of the word broadcast that was not out of date, while Land J did not find this to be a problem. Land J used his definition of broadcast approximately two years before Blue J stated that he could not find a definition for broadcast that was not out of date. Blue J would most probably have known about Land J’s judgment and rejected Land J’s definition of broadcast. This adds further weight to the idea that there were problems with Land J’s definition of the word broadcast. If the two cases appeared in an Australian jurisdiction, the judicial officer may have applied the open justice exceptions to the case and found that neither case would have fallen under an exception to the open justice principle, because the cases would not have negatively impacted ‘the attainment of justice,’¹⁵⁶ or the public interest.¹⁵⁷

¹⁴⁸ Conn. Rules of Court s 1-11(b)(2008).

¹⁴⁹ *Connecticut v Komisarjevsky*, 2011 Conn. Super. LEXIS 403, 408 (2011).

¹⁵⁰ *Ibid.*

¹⁵¹ Conn. Rules of Court s 1-11(b)(2008).

¹⁵² *Connecticut v Komisarjevsky*, 2011 Conn. Super. LEXIS 403, 413 (2011).

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ Conn. Rules of Court s 1-11(b)(2008).

¹⁵⁶ *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) and Another v Local Court of New South Wales and Others* (1991) 26 NSWLR 131, 141 (Kirby P).

In Wichita, Kansas, Marten J permitted journalist Ron Sylvester of *The Wichita Eagle* to tweet from the Federal Court at the trial of six gang members.¹⁵⁸ Marten J permitted Sylvester to tweet from the courtroom by applying Federal Rule of Criminal Procedure 57(b).¹⁵⁹ This rule states

[a] judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator was furnished with actual notice of the requirement before the noncompliance.¹⁶⁰

One may wonder why Land J in *Shelnutt* chose to use rule 53 of the Federal Rules of Criminal Procedure¹⁶¹ to forbid journalists from using social media in that trial, while Marten J used rule 57(b)¹⁶² of the same rules to permit it. Both trials were criminal cases in federal courts, so one might assume that the judges would apply the same rule to make their decisions. It will be interesting to see whether future American Federal Court judges who decide upon this issue choose to follow Land J or Marten J's decision.

B *Macro Level*

1 *Consolidated Practice Directions and Policies Not Permitting Social Media in the Courtroom*

The consolidated practice directions of the Supreme Courts in Western Australia and Queensland generally address whether

¹⁵⁷ Ibid.

¹⁵⁸ Larry Magid, 'Twitter in the Court: Federal Judge Gets It,' *CNet* (online), 9 March 2009, [1], [3], <http://news.cnet.com/8301-19518_3-10191261-238.html>.

¹⁵⁹ Jacob E. Dean, 'To Tweet or Not to Tweet: Twitter, "Broadcasting," and Federal Rule of Criminal Procedure 53' [2010] 79 *University of Cincinnati Law Review* 769, 770; Fed. R. Crim. P. 57(b)(1999).

¹⁶⁰ Fed. R. Crim. P. 57(b)(1999).

¹⁶¹ Ibid P. 53.

¹⁶² Ibid P. 57(b).

journalists can use social media in the courtroom.¹⁶³ The South Australian Courts' media handbook also does.¹⁶⁴

The Supreme Courts of Western Australia and Queensland have practice directions that apply to people generally in the courtroom.¹⁶⁵ The Queensland practice directions state that 'laptop computers that do not communicate via a cellular network may be used during court proceedings provided doing so does not interrupt proceedings.'¹⁶⁶ Queensland Chief Justice Paul De Jersey states that 'tweeting is permitted [in the courtroom], though not by jurors.'¹⁶⁷ Even though it appears that journalists may use social media in the courtroom in Queensland, it is recommended that court officials in Queensland release a policy on the issue so that journalists learn the limits of their social media use in the courtroom. The Western Australian practice directions forbid anyone from using a mobile telephone in its courtrooms (consequently, social media use is not possible) because it causes the Court's electronic recording devices difficulties.¹⁶⁸ It would be interesting to learn if the position in Western Australia changes if mobile telephones no longer cause problems to the Court's electronic recording devices in the future.

¹⁶³ Supreme Court of Western Australia, *Practice Direction No 3.1 – Video and other Cameras, Tape Recorders, Two-way Radios and Mobile Telephones*, 2009; Supreme Court of Queensland, *Practice Direction no 1 of 2009 – Recording Devices in Courtrooms: Supreme Court*, 10 March 2009.

¹⁶⁴ Sylvia Kriven, *A Handbook for Media Reporting in South Australian Courts* (12 August 2008) Courts Administration Authority of South Australia, 11 <<http://www.courts.sa.gov.au/ForMedia/Pages/Media-Handbook.aspx>>.

¹⁶⁵ Supreme Court of Western Australia, *Practice Direction No 3.1 – Video and other Cameras, Tape Recorders, Two-way Radios and Mobile Telephones*, 2009; Supreme Court of Queensland, *Practice Direction no 1 of 2009 – Recording Devices in Courtrooms: Supreme Court*, 10 March 2009.

¹⁶⁶ Supreme Court of Queensland, *Practice Direction no 1 of 2009 – Recording Devices in Courtrooms: Supreme Court*, 10 March 2009, [4].

¹⁶⁷ Paul Weston, 'Judge Backs Social Media in Courts,' *The Sunday Mail* (online), 13 February 2011, [5], <<http://www.couriermail.com.au/ipad/courts-to-allow-in-social-media/story-fn6ck51p-1226005089785>>.

¹⁶⁸ Supreme Court of Western Australia, *Practice Direction No 3.1 – Video and other Cameras, Tape Recordings, Two-way Radios and Mobile Telephones*, 2009, 35.

The South Australian Courts' media handbook states that journalists should turn off their mobile telephones while in the courtroom.¹⁶⁹ One can infer that this means that journalists cannot use social media in the courtroom. Chief Court Reporter Sean Fewster also states that journalists cannot use social media in South Australian courtrooms.¹⁷⁰

2 Court Rules and Orders

The court rules of the American States of Mississippi and Utah state procedure regarding journalists using social media in the courtroom. The Utah Rules permit journalists to use social media in the courtroom provided they file a written request at court at least one day prior to the relevant court proceeding.¹⁷¹ Journalists in Mississippi can use social media in the courtroom without permission, provided that they inform court officials of their intention at least 48 hours before the relevant court proceeding.¹⁷² Journalists should not need to request permission to use social media in the courtroom prior to every court proceeding. This creates too much work for journalists and court officials. A better method is for court officials to keep a list of journalists who they permit to use social media in the courtroom. When a judicial official decides that journalists cannot use social media for a particular case, the judicial official can contact the relevant journalists by email to inform them, which is more efficient.

The Utah and Mississippi rules state several limitations on the use of electronic devices in the courtroom.¹⁷³ The Mississippi rules state

¹⁶⁹ Kriven, above n 164, 11.

¹⁷⁰ Sean Fewster, 'South Australian Lawyers Say Live Tweeting from the Court Room is OK,' *Adelaide Now* (online), 17 July 2012, [6], <<http://www.news.com.au/technology/south-australian-lawyers-say-live-tweeting-from-the-court-room-is-ok/story-e6frfro0-1226428526187>>.

¹⁷¹ *Utah Code of Judicial Administration*, Rule 4-401.01(3)(A).

¹⁷² *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 5 (2003).

¹⁷³ *Utah Code of Judicial Administration*, Rule 4-401.01(6); *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rules 3 and 4 (2003).

that electronic coverage of certain types of matters is not allowed, except if the presiding judge provides it.¹⁷⁴ These matters include: divorce, child custody, adoption, domestic abuse, delinquency and neglect of minors and motions to suppress evidence.¹⁷⁵ The Mississippi rules also state that electronic coverage of various types of witnesses is not allowed.¹⁷⁶ These witnesses include: police informants, minors, undercover agents, relocated witnesses, victims and families of victims of sex crimes and victims of domestic abuse.¹⁷⁷ It is interesting that the Mississippi rules list so many specific types of cases that journalists may cover by electronic media, as opposed to simply stating family law cases generally. It is recommended that journalists should not be able to use social media during any type of family law proceeding due to its sensitive nature. Both rules briefly state that if journalists do not follow the rules then a court official may sanction the relevant journalist.¹⁷⁸ The Utah rules state that the relevant person or people may face contempt charges and any other sanctions allowed by law.¹⁷⁹ The Mississippi rules state that the relevant person ‘may be sanctioned by measures deemed appropriate by the court.’¹⁸⁰

Judicial officials of the United States District Courts for the Southern District of Florida released administrative order 2009-12 that states that the media cannot use social media in courtrooms.¹⁸¹ While some jurisdictions have passed rules and orders pertaining to journalists using social media in the courtroom, other judicial officials have unofficial court policies about this issue.

¹⁷⁴ *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 3(c)(2003).

¹⁷⁵ *Ibid.*

¹⁷⁶ *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 3(d) (2003).

¹⁷⁷ *Ibid.*

¹⁷⁸ *Utah Code of Judicial Administration*, Rule 4-401.01(5); *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 9.

¹⁷⁹ *Utah Code of Judicial Administration*, Rule 4-401.01(5).

¹⁸⁰ *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 9 (2003).

¹⁸¹ United States District Court, Southern District of Florida, *In Re: Prohibition on Electronic Transmissions and Cellular Phone Use Inside Courtrooms* (23 March 2009) <http://www.flsd.uscourts.gov/?page_id=123>.

3 *Unofficial Court Policies*

The Federal Court of Australia has an unofficial policy that individual judges of the court can decide whether he or she will allow journalists to use social media in the courtroom.¹⁸² In New South Wales, clause 9A(1) of the *Courts and Other Legislation Further Amendment Act 2013* (NSW) amended the *Court Security Act 2005* (NSW) to forbid people from using social media in the courtroom.¹⁸³ The Act does not state an exclusion for journalists to use social media in the courtroom. However, in the Act's second reading speech, the New South Wales Attorney General and Minister for Justice stated that regulations accompanying the Act will allow journalists to use social media in the courtroom.¹⁸⁴ He did not specify whether journalists would need to seek permission to use social media in the courtroom. The regulations have not been enacted, as at the date of this article.

Australian court officials should publish official policies on this issue. This will give journalists clarity on whether they can use social media in the courtroom and whether there are any limitations on its use. It will also make it easier for judicial officials to punish journalists who violate their instructions about this issue, because the policy can state the sanctions that journalists will face if they breach the policy.

4 *Official Court Social Media Policies and Model Policies Permitting Journalists to Use Social Media in the Courtroom*

Johnston recommends that court officials give journalists 'clear guidelines'¹⁸⁵ about social media use in the courtroom and that court officials update those guidelines regularly.¹⁸⁶ Lagan agrees, and adds

¹⁸² Phillips, above n 8, 81.

¹⁸³ *Courts and Other Legislation Further Amendment Act 2013* (NSW), sch. 1, s 9A.

¹⁸⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 November 2012, 17244 (Greg Smith).

¹⁸⁵ Johnston, above n 5, 54.

¹⁸⁶ *Ibid.*

that the type of court should influence the court's guidelines.¹⁸⁷ For example, family court officials should not allow journalists to use social media in their courts.¹⁸⁸ Lower court officials should permit journalists to use social media in the courtroom because it shows the public that 'minor crimes are being dealt with.'¹⁸⁹ Former New South Wales Attorney-General John Hatzistergos recommends that when considering whether court officials should allow electronic media to be used in the courtroom, one considers 'any adverse impact on the rights of victims of crime and the protection of witnesses.'¹⁹⁰ One should also 'consider the rights of jurors, defendants and other parties to proceedings.'¹⁹¹

Australian court officials should adopt an official model policy that allows journalists to use social media in the courtroom. A model policy is recommended, as opposed to a court rule, because a policy is a document that stands on its own, so it is easier to modify. Since social media is so new, court officials may want the flexibility to change the policy easily over the next few years while they experiment to create the best policy. Australian court officials can examine the policies of other jurisdictions to decide upon a model policy and they can also consider using the model policy found in the appendix to this article, or parts thereof. While the Australian jurisdiction of Victoria has an official policy that expressly permits journalists to use social media in the courtroom,¹⁹² the other States should not adopt it because it requires journalists to obtain permission prior to using social media in the courtroom.

¹⁸⁷ Bernard Lagan, 'Evidence in 140 Characters or Less,' *The Global Mail* (online), 30 August 2012, [23], <<http://www.theglobalmail.org/feature/evidence-in-140-characters-or-less/361>>.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Chris Merritt, 'ABC Doco Opens Door to More Media Access to Courtrooms,' *The Australian* (online), 10 September 2012, [24], <<http://www.theaustralian.com.au/business/legal-affairs/abc-doco-opens-door-to-more-media-access-to-courtrooms/story-e6frg97x-1225916772123>>.

¹⁹¹ Ibid [25].

¹⁹² Supreme Court of Victoria, above n 7, 6.

Common law jurisdictions that currently have policies about electronic media in the courtroom that state that journalists may use it include: Victoria,¹⁹³ England and Wales,¹⁹⁴ the Federal Court of Canada¹⁹⁵ and the following Canadian provinces: British Columbia,¹⁹⁶ Ontario,¹⁹⁷ Saskatchewan,¹⁹⁸ Nova Scotia,¹⁹⁹ New Brunswick²⁰⁰ and Alberta.²⁰¹ The Canadian Centre for Court Technology (“CCCT”)²⁰² and the American organisation the Media Law Resource Center (“MLRC”)²⁰³ also proposed policies.

¹⁹³ Ibid.

¹⁹⁴ Judiciary of England and Wales, *Practice Guidance: The Use of Live Text-Based Forms of Communication (including Twitter) from Court for the Purpose of Fair and Accurate Reporting* (14 December 2011) 3, <<http://www.judiciary.gov.uk/publications-and-reports/guidance/2011/courtreporting>>; The Supreme Court of the United Kingdom, *Policy on the Use of Live Text-Based Communications from Court* [5] (February 2011), <<http://supremecourt.gov.uk/docs/live-text-based-comms.pdf>>.

¹⁹⁵ Federal Court of Canada, *Policy on Public and Media Access* (23 August 2012) <http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/MediaPolicy>.

¹⁹⁶ Provincial Court of British Columbia, *Policy on Use of Electronic Devices in Courtrooms* (17 September 2012) 2, <http://www.courts.gov.bc.ca/supreme_court/media/PDF/Policy%20on%20Use%20of%20Electronic%20Devices%20in%20Courtrooms%20-%20FINAL.pdf>.

¹⁹⁷ Ontario Superior Court of Justice, *Protocol on the Use of Electronic Devices in the Courtroom* (1 February 2013) [4], <<http://www.ontariocourts.ca/scj/en/notices/protocols/>>.

¹⁹⁸ Courts of Saskatchewan, *Twitter and Other Text-Based Forms of Media Communication from Saskatchewan Courtrooms* (2010) 1, <http://www.sasklawcourts.ca/docs/Twitter_Protocol_2012.pdf>.

¹⁹⁹ The Courts of Nova Scotia, *Use of Electronic Devices in Nova Scotia Courthouses* (2007) <http://www.courts.ns.ca/media_access/electronic_devices_policy_08_03.htm>.

²⁰⁰ Drapeau, CJ, Smith CJ and Jackson CJ, *Directive Respecting Electronic Devices in the Courtroom* (June 2012) CBC, [7], <<http://www.cbc.ca/news/canada/new-brunswick/story/2012/07/16/nb-courtroom-electronic-devices.html>>.

²⁰¹ Court of Queens Bench of Alberta, *Electronic and Wireless Devices Policy* (January 2012) [2] <www.Alberta_courts.ab.ca/qb/Electronic_Policy_FINAL.pdf>.

²⁰² Canadian Centre for Court Technology, *Guidelines Regarding the Use of Electronic Communication Devices in Court Proceedings* 2 (November 2012) <<https://modern-courts.ca/documentation/Use%20of%20Electronic%20Communication%20Devices%20in%20Court%20Proceedings.pdf>>.

²⁰³ Newsgathering Committee, Defense Counsel Section, Media Law Resource Centre, above n 81, 3.

The majority of the policies have similar definitions for electronic communication devices. For example, the CCCT defines electronic communication devices as ‘all forms of computers, personal electronic and digital devices, and mobile, cellular and smart phones.’²⁰⁴ The Albertan policy defines electronic and wireless devices as ‘includes computers, laptops, tablets, notebooks, cellular phones, smart phones, PDAs, iPhones, iPads, iPods, and any other cellular device.’²⁰⁵

The CCCT²⁰⁶ and MLRC policies²⁰⁷ and the policies of the Federal Court of Canada,²⁰⁸ Ontario,²⁰⁹ Saskatchewan,²¹⁰ New Brunswick,²¹¹ Alberta,²¹² British Columbia²¹³ and England and Wales²¹⁴ permit journalists to use social media in the courtroom without seeking the court’s permission. The English and Welsh policy (which covers all courts except the United Kingdom Supreme Court) explains why its judicial officials do not require journalists to seek the court’s permission as follows:

[i]t is presumed that a representative of the media or a legal commentator using live, text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live, text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal

²⁰⁴ Canadian Centre for Court Technology, above n 202, [2].

²⁰⁵ Court of Queens Bench of Alberta, above n 201, [2].

²⁰⁶ Canadian Centre for Court Technology, above n 202, 2.

²⁰⁷ Newsgathering Committee, Defense Counsel Section, Media Law Resource Centre, above n 81, 3.

²⁰⁸ Federal Court of Canada, above n 195.

²⁰⁹ Ontario Superior Court of Justice, above n 197, [4].

²¹⁰ Courts of Saskatchewan, above n 198, 1.

²¹¹ Drapeau, CJ, Smith CJ and Jackson CJ, above n 200, [7].

²¹² Court of Queens Bench of Alberta, above n 201, 1.

²¹³ Provincial Court of British Columbia, above n 196, 2.

²¹⁴ Judiciary of England and Wales, *Practice Guidance: The Use of Live Text-Based Forms of Communication (including Twitter) from Court for the Purpose of Fair and Accurate Reporting* (14 December 2011) 3, <<http://www.judiciary.gov.uk/publications-and-reports/guidance/2011/courtreporting>>.

commentator who wishes to use live, text-based communications from court may do so without making an application to the court.²¹⁵

The Saskatchewan and British Columbian policies refer to ‘accredited’²¹⁶ media being able to use social media in the courtroom without seeking court officials’ permission. The Saskatchewan policy states that media ‘who have been accredited by the Court Services Division of the Ministry of Justice’ can use live-text based communications from court.²¹⁷ The British Columbian policy states that accredited media ‘means media personnel who are accredited pursuant to the Courts’ Media Accreditation Policy.’²¹⁸ There is a separate British Columbian policy that relates to journalists becoming accredited.²¹⁹ The policy states that the relevant journalist has ‘read and will abide by the court’s *Policy for the Use of Electronic Devices in Courtrooms* and the publication *The Canadian Justice System and the Media*.’²²⁰ A committee of professional journalists decide whether journalists can become accredited.²²¹ Australian courts should implement an accreditation system for journalists who use social media in the courtroom similar to the one used in British Columbia. This will help to ensure that the only journalists who may use social media in Australian courts have basic knowledge of courtroom etiquette.

²¹⁵ Ibid.

²¹⁶ Courts of Saskatchewan, *Twitter and Other Text-Based Forms of Media Communication from Saskatchewan Courtrooms* (2010), [5], <http://www.sasklawcourts.ca/docs/Twitter_Protocol_2012.pdf>; Provincial Court of British Columbia, *Policy on Use of Electronic Devices in Courtrooms* (17 September 2012), [5a], <<http://www.provincialcourt.bc.ca/downloads/pdf/Policy%20on%20Use%20of%20Electronic%20Devices%20in%20Courtrooms.pdf>>.

²¹⁷ Courts of Saskatchewan, above n 198, [5].

²¹⁸ Provincial Court of British Columbia, above n 196, [1a].

²¹⁹ Courts of British Columbia, *Media Accreditation Policy*, <http://www.courts.gov.bc.ca/supreme_court/media/PDF/Media%20Accreditation%20Policy%20-%20FINAL.pdf>.

²²⁰ Ibid 2.

²²¹ Court of Appeal of British Columbia, Supreme Court of British Columbia and Provincial Court of British Columbia, ‘New Policy on Use of Electronic Devices in the Courtroom’ [4], (Media Release, 1 August 2012) <<http://www.provincialcourt.bc.ca/downloads/pdf/Press%20release%20%201%20August%202012.pdf>>.

The MLRC model policy is broader than the other policies that permit journalists to use social media in the courtroom. It states that ‘bloggers and other observers seated in the courtroom may use electronic devices to prepare and post online news accounts and commentary during the proceedings,’²²² provided that they do not ‘interfere with the administration of justice, pose any threat to safety or security, or compromise the integrity of the proceeding.’²²³ The MLRC’s model policy may be so inclusive about journalists because a media centre created it, as opposed to court officials. Research for this article could not find that bloggers and other observers in Australian courts belong to a professional society that can impose sanctions if court officials’ policies are not followed. In addition, bloggers and other observers may not receive the training that accredited journalists do to help ensure that their social media posts and tweets are accurate. If bloggers and other observers can find some way to join a relevant professional society and receive the requisite training, then they should also be allowed to use social media in the courtroom, as part of the open justice principle.

The Victorian and Nova Scotian guidelines differ from the other policies about whether journalists need to seek permission before using social media in the courtroom. The Victorian guidelines state that journalists require the presiding judge’s ‘express permission’²²⁴ to use social media in the courtroom.²²⁵ The Nova Scotian guidelines differ depending on the type of social media used.²²⁶ All social media (except Twitter) can be used in all Nova Scotian courts without permission.²²⁷ Journalists can use Twitter in the Nova Scotia Court of Appeal without seeking permission.²²⁸ Journalists must seek the presiding judge’s permission to use Twitter in the Nova Scotia Supreme Court and Provincial Court.²²⁹ It is interesting that Nova Scotian courts released the only policy that appears to treat

²²² Newsgathering Committee, Defense Counsel Section, MLRC, above n 81, 3.

²²³ Ibid.

²²⁴ Supreme Court of Victoria, above n 7, 6.

²²⁵ Ibid.

²²⁶ The Courts of Nova Scotia, above n 199.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

Twitter differently than other social media. The policy does not state reasons for this difference. Perhaps the different treatment is due to Twitter's 140 character limit for tweets or because of problems with Twitter's reputation.

The British Columbian policy states that it is in the individual judge's discretion to forbid journalists from using social media in their individual courtroom.²³⁰ It is important that this statement is included in a model policy for Australian courts. This will ensure that judicial officers can forbid journalists from using social media in the courtroom when it would interfere with the exceptions to the open justice principle mentioned in *Fairfax*.²³¹ Some of the policies state limitations to journalists using social media in the courtroom. The British Columbian policy states that

- an electronic device may not be used in a courtroom:
- a. in a manner that interferes with the court sound system or other technology;
 - b. in a manner that interferes with courtroom decorum, is inconsistent with the court functions, or otherwise impedes the administration of justice;
 - c. in a manner that generates sound or requires speaking into the device;
 - d. to take photographs or video images;
 - e. to record or digitally transcribe the proceedings except as permitted by this policy.²³²

The Albertan and Ontarian policies list similar limitations.²³³ The British and Welsh policy (for all courts, except the United Kingdom's Supreme Court) limitations prohibit taking photographs

²³⁰ Provincial Court of British Columbia, above n 196, 2.

²³¹ *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) and Another v Local Court of New South Wales and Others* (1991) 26 NSWLR 131, 141 (Kirby P).

²³² Provincial Court of British Columbia, above n 196, [3].

²³³ Court of Queens Bench of Alberta, *Electronic and Wireless Devices Policy* (January 2012) 2, <www.Alberta_courts.ab.ca/qb/Electronic_Policy_FINAL.pdf>; Ontario Superior Court of Justice, *Protocol on the Use of Electronic Devices in the Courtroom* (1 February 2013) [4], <<http://www.ontariocourts.ca/scj/en/notices/protocols/>>.

in the courtroom absolutely.²³⁴ It also prohibits recording the proceedings without permission.²³⁵ Similar limitations should be inserted into the Australian policy because taking photographs and recording proceedings without permission would negatively affect the court's decorum. It could also make jurors' identities' public, which would be a serious problem.

Some of the policies state penalties for not following them. The British Columbian policy states that if the policy is violated the relevant person may be subject to various sanctions, which include a direction to turn off their electronic device or leave the courtroom, or be found in contempt of court.²³⁶ The Albertan policy has a similar penalties section.²³⁷ The model Australian policy should have a similar penalties section. Potential sanctions will put pressure on journalists to abide by the policy and help ensure that the exceptions to the open justice principle are not breached. If the model Australian policy lists sanctions for journalists who breach the policy, judicial officials should ensure that they follow through and punish any wrongdoers.

The appendix to this article contains a model policy for Australian courts to use about journalists using social media in the courtroom. Australian courts should also develop an accreditation policy for journalists who may use social media in the courtroom to accompany the policy that is similar to British Columbia's. The model policy in this article is based on the other courts' existing policies that would respect the open justice principle and its exceptions.

It is worth considering why Victoria is the only Australian State that has a policy that states that journalists can tweet in the courtroom, as at the date of the publication of this article. Perhaps it is because of the Chief Justice of Victoria's highly positive stance

²³⁴ Judiciary of England and Wales, above n 214, 1.

²³⁵ *Ibid.*

²³⁶ Provincial Court of British Columbia, above n 196, [10].

²³⁷ Court of Queens Bench of Alberta, above n 201, [9].

toward social media. Warren CJ is 'committed to accelerating the use of social media as a vehicle to communicating the work of the court.'²³⁸ It is also worth considering why Canadian, English and Welsh courts are ahead of Australian courts on this issue. Perhaps Australian journalists have not requested the ability to use social media in the courtroom or journalists in Canada, England and Wales put additional pressure on the courts that Australian journalists have not. Alternatively, perhaps additional courts besides Western Australia experience technological problems when journalists use social media in the courtroom. It is also possible that the Australian public will not be particularly interested in this issue until a very interesting case or cases commence that they are interested in.

Judicial officials in some common law jurisdictions are currently considering whether they should draft social media policies for journalists attending their courts. The Lord President of Scotland is considering the English and Welsh guidance on this issue and intends to create a similar guidance for Scotland.²³⁹

5 Safeguards the Court and the Media Can Use if they Permit Journalists to Use Social Media in Court

Some judicial officials and governments are taking additional steps to ensure that they make the right decision for their court or jurisdiction on this issue, as opposed to simply drafting policies about this issue and publishing them.

The former Chief Justice of South Australia, John Doyle, established a committee of South Australian judges and public

²³⁸ Kerry O'Shea, 'Social Media – Its Impact and Challenges on Court Reporters, Juries and Witnesses' (Paper Presented at AIJA Criminal Justice in Australia and New Zealand – Issues and Challenges for Judicial Administration Conference, Sydney, 9 September 2011) 2, <<http://www.aija.org.au/Criminal%20Justice%202011/Papers/O'Shea.pdf>>.

²³⁹ Lord President of Scotland, 'Use of Live Text Based Communications from Court' (Media Statement, 14 December 2011) 2, <<http://www.scotland-judiciary.org.uk/24/839/Use-of-live-text-based-communication-from-court>>.

servants to examine the use of social media in the courtroom.²⁴⁰ The Supreme Court Criminal Procedure Rules Committee in Pennsylvania, United States, announced that it will evaluate whether it will allow journalists to tweet in court.²⁴¹ The Lord Chief Justice of England and Wales published an interim practice guidance about using social media in the courtroom on 20 December 2010.²⁴² After issuing the interim guidelines, the Lord Chief Justice consulted many stakeholders about this issue between February and May 2011.²⁴³ The stakeholders included: the judiciary, the Attorney General, the Director of Public Prosecutions, the Bar Council and the Society of Editors.²⁴⁴ In December 2011, the Lord Chief Justice provided a new guidance that replaced the interim practice guidance.²⁴⁵ It is recommended that judicial officials organise committees to discuss this issue. This will likely ensure that judicial officials make the best decisions for their courts. Additionally, it is important for judicial officials to consult with journalists to understand journalists' point of view.

The Chief Justice of the Supreme Court of Canada also recommends that court officials should share best practices amongst each other.²⁴⁶ In Australia, it would be particularly useful for court officials to consult court officials in Canada and the United Kingdom about this issue. This will permit Australian court officials to benefit from what court officials in those countries have learned so far from implementing their policies.

In the United States, Burns J of the Cook County court, forbade anyone, including journalists, from using social media during the trial of the man accused of killing Oscar winner Jennifer Hudson's

²⁴⁰ Sean Fewster, above n 170, [6].

²⁴¹ Tamburri, Pohl and Yingling, above n 56, 1415.

²⁴² Judiciary of England and Wales, above n 214, 2.

²⁴³ *Ibid* 1.

²⁴⁴ *Ibid*.

²⁴⁵ *Ibid* 2.

²⁴⁶ McLachlin CJ, above n 29, [32].

family.²⁴⁷ To ensure that the media did not use social media in court, he had a member of the sheriff's department follow journalists' Twitter accounts while the court was in session.²⁴⁸ Burns J required journalists to provide their Twitter names to court officials.²⁴⁹ Court officials in Australia who are hesitant to permit journalists to use social media in the courtroom may want to consider taking similar actions to Burns J when they preside over a trial wherein journalists cannot use social media. This could help keep the journalists accountable. News organisations can also take steps to help ensure that journalists properly follow policies about social media use released by the court. *The Guardian* newspaper in the UK provided media law revision sessions to its journalists because its sports reporter Jamie Jackson tweeted a juror's name during a trial.²⁵⁰ It is recommended that Australian newspapers provide information sessions to their staff about using social media. Journalists who use social media in the courtroom should attend all relevant training sessions offered to them.

6 Alternatives

If judicial officials decide not to allow journalists to use social media in all courtrooms, they can provide alternative options to journalists. Judicial officials may permit journalists to use social media in courtrooms wherein there are no witnesses or jurors. The United Kingdom Supreme Court's *Policy on the Use of Live Text-Based Communications* states that there are no witnesses or jurors in its courtrooms²⁵¹ and one can infer that this is the reason why journalists can use social media from its courtrooms. One can also infer that this is the reason why this court has a policy that is

²⁴⁷ Michael Tarm, 'Judges, Journalists Clash Over Courtroom Tweets,' *Yahoo News* (online), 16 April 2012, [3], <<http://news.yahoo.com/judges-journalists-clash-over-courtroom-tweets-185319151.html>>.

²⁴⁸ *Ibid* [16].

²⁴⁹ *Ibid*.

²⁵⁰ Andrew Pugh, 'Law Refreshers for Guardian Staff in Wake of Juror Tweet,' *Press Gazette* (online), 15 February 2012, <<http://www.pressgazette.co.uk/node/48751>>.

²⁵¹ The Supreme Court of the United Kingdom, *Policy on the Use of Live Text-Based Communications from Court* (February 2011) [3], <www.supremecourt.gov.uk/docs/live-text-based-comms.pdf>.

separate to the one released for all other courtrooms in England and Wales.

In Edmonton, Canada, Clackson J forbade electronic devices from being used during the first-degree murder trial of Mark Twitchell.²⁵² Instead, Clackson J allowed journalists to use computers and social media in a separate courtroom that received a delayed audio recording of the proceedings.²⁵³ Land J in *Shelnutt* would not permit journalists to use social media in the courtroom, but he made a room near the courtroom available to journalists to use social media.²⁵⁴ Permitting journalists to use electronic devices in a separate courtroom is not recommended. There may be technical problems with a delayed audio recording. This alternative also requires court officials to give additional space to journalists when the additional space may not be available. It is far better to permit journalists to use social media in the courtroom where the relevant court proceeding takes place.

It is also possible for judicial officials to permit court proceedings to be webcasted. This involves court officials recording their own proceedings and posting the proceedings on their website.²⁵⁵ Webcasting can provide the public with access to recordings quickly, so that it is practically live.²⁵⁶ Stepniak states that providing webcasts to the media results in more accurate articles about court proceedings because journalists can check what they wrote against the webcast.²⁵⁷ Some Australian Court officials webcast their trials and hearings and stream them on their websites,²⁵⁸ though most do

²⁵² Alexandra Zabjek, 'Fairness Cited in Courtroom Electronic Ban for Twitchell Trial,' *Canada.com* (online), 16 March 2011, [1], <<http://www2.canada.com/story.html?id=4450407>>.

²⁵³ *Ibid* [5].

²⁵⁴ *US v Shelnutt*, 37 Media L. Rep. 2594, 2598 (MD Ga, 2009).

²⁵⁵ Wayne Martin J, 'Access to Justice – Broadcast of Court Proceedings' (2007) 34(4) *Brief* 17, 18.

²⁵⁶ *Ibid*.

²⁵⁷ Daniel Stepniak, 'Cameras in Court: Reluctant Admission to Proactive Collaboration' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and Media* (Halstead Press, 2012) 66, 74.

²⁵⁸ *Ibid* 72.

not.²⁵⁹ For example, Victorian Supreme Court officials tape the audio of sentences and civil judgments and then upload them, sometimes within a half an hour of the hearing.²⁶⁰ However, some Australian Court officials do not webcast proceedings because of insufficient resources.²⁶¹

Webcasting trials is an excellent idea. It allows court officials to have control over what journalists and the public see. It helps ensure that journalists receive accurate information. However, webcasting trials, on its own, is insufficient to replace journalists using social media in the courtroom, because it does not provide the public with instant written information online about the relevant proceeding. It can take a newsreader seconds to read a tweet, but it can take several minutes for her or him to find the correct part of the webcast to watch. Court officials should permit journalists to use social media in the courtroom because court officials will not need to use many resources to permit it to happen and the public can stay engaged with the court.

This section of the article has strongly argued for Australian courts to release policies that permit journalists to use social media in the courtroom. This section has also discussed the alternatives to permitting journalists to use social media in the courtroom, and found them unsatisfactory.

VI CONCLUSION

According to the Chief Justice of the Supreme Court of Canada, Beverley McLachlin, ‘as the media invent and re-invent themselves, so must judicial understanding evolve of how we relate to the media.

²⁵⁹ Ibid 74.

²⁶⁰ Ibid 72.

²⁶¹ Ibid 74.

We must look forward; we dare not hang back.’²⁶² For Australian judicial officials to move forward, they should release a policy that permits journalists to use social media in the courtroom. Besides supporting the principle of open justice, it can give journalists a clear understanding of judicial officials’ expectations of their social media use in the courtroom.

While ‘(c)riticism of the courts, like death and taxes, is guaranteed,’²⁶³ it does not need to be on this issue. Australian judicial officials should examine the success of the Canadian policies and the English and Welsh policies mentioned in this article, if possible, prior to releasing their final policy about journalists using social media in the courtroom. Australian judicial officials should also consult Australian journalist organisations prior to releasing their final policy to properly consider journalists’ point of view. Finally, Australian judicial officials should consider using the model policy stated in this article, or any parts of it that they find relevant.

²⁶² Mike Blanchfield, ‘Tweet Justice Looms Large for Judges,’ *The Globe and Mail* (Toronto), 2 January 2012, A5.

²⁶³ Paul de Jersey CJ, above n 34, 39-40.

VII APPENDIX

Possible Model Policy for Australian Courts

Introduction

This policy states Australian accredited journalists' permitted and prohibited uses of electronic devices in all Australian courtrooms,²⁶⁴ except family courts.²⁶⁵ It is based on the following:

- a. Judicial officials must ensure that court proceedings are interrupted as little as possible;²⁶⁶
- b. The principle of open justice;²⁶⁷ and
- c. Permitting accredited media to use electronic devices in the courtroom assists the media to inform the public about court proceedings.²⁶⁸

Definitions for the Policy

- a. "accredited journalists" means journalists who are accredited pursuant to the Courts' *Media Accreditation Policy*;²⁶⁹
- b. "courtroom" means a room in which a hearing occurs;²⁷⁰
- c. "electronic device" means 'any device capable of transmitting and/or recording data or audio, including smartphones, cellular phones, computers, laptops, tablets, notebooks, personal digital assistants, or other similar devices';²⁷¹ and
- d. "judicial officer" means any justice of the peace, magistrate, registrar, master or judge in Australia.²⁷²

Use of Electronic Devices in the Courtroom

1. Accredited Journalists may use electronic devices in courtrooms to send and receive messages and use social media, without seeking permission,²⁷³ except as follows:
 - a. If the accredited journalist interferes with court technology;²⁷⁴

²⁶⁴ Provincial Court of British Columbia, above n 196, 1.

²⁶⁵ *Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings*, Rule 3(c) (2003).

²⁶⁶ Courts of Saskatchewan, above n 198, 1.

²⁶⁷ *Ibid.*

²⁶⁸ Judiciary of England and Wales, above n 214, 2.

²⁶⁹ Provincial Court of British Columbia, above n 196, 1.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ Court of Queens Bench of Alberta, above n 201, 2.

- b. If the accredited journalist takes photographs, videos or audio recordings in a courtroom;²⁷⁵ or
- c. A court order or legislation forbids the public from attending the court proceeding.²⁷⁶

Judicial Officer's Discretion

- 2. Notwithstanding this policy, the presiding judicial official(s) can use their discretion to decide whether Accredited Journalists may use electronic devices in his/her/their courtroom.²⁷⁷ If the presiding judicial official(s) decides to use their discretion not to permit social media in the courtroom, he/she/they must provide express reasons.

Publication Bans

- 3. Accredited Journalists must abide by any publication bans that the judicial official(s) release.²⁷⁸

Penalties

- 4. An accredited journalist that does not follow this policy may be subject to one or more of the following penalties:²⁷⁹
 - a. He or she may be instructed to turn off their electronic device or provide it to the court whilst he or she is in the courtroom;²⁸⁰
 - b. He or she may be instructed to leave the courtroom;²⁸¹
 - c. He or she may lose their media accreditation;²⁸²
 - d. He or she may be prosecuted for contempt of court;²⁸³
 - e. He or she may be prosecuted for breaching a suppression order;²⁸⁴ or
 - f. Any other order that the relevant Judicial Official thinks fit.²⁸⁵

²⁷⁵ Ibid.

²⁷⁶ Canadian Centre for Court Technology, above n 202, 2.

²⁷⁷ Provincial Court of British Columbia, above n 196, 2.

²⁷⁸ Canadian Centre for Court Technology, above n 202, 2.

²⁷⁹ Provincial Court of British Columbia, above n 196, 3.

²⁸⁰ Court of Queens Bench of Alberta, above n 201, 2.

²⁸¹ Ibid.

²⁸² Provincial Court of British Columbia, above n 196, 3.

²⁸³ Ibid.

²⁸⁴ Provincial Court of British Columbia, above n 196, 3.

²⁸⁵ Ibid.