

Media and Reporting Protocol in the Youth Court

The Youth Court is a division of the District Court. Its proceedings are not open to the public. However, media are legally entitled, and permitted, to attend Youth Court proceedings under 329(1)(l) of the Oranga Tamariki Act 1989 (“the Act”), and are welcome to do so. The reporting of Youth Court proceedings is subject to a statutory prohibition against publication, except with the leave of the Judge that heard the proceedings. The Youth Court wishes to adopt an open approach to publication, and will generally take the least restrictive approach necessary in all the circumstances of a case, consistent with the principles of the Act.

The key statutory provision regarding the publication of reports of Youth Court proceedings is s 438 of the Act, which is set out in full at the end of this Protocol. The following notes will act as a guide to the application of s 438, subject to the discretion of the Youth Court Judge in individual cases. Of course, these notes have no legislative force and do not create rights additional to those in the Act.

1. “Accredited” news media reporters are entitled **as of right** to be present at any hearing of proceedings in a Youth Court: see s 329(1)(l) of the Act. Reporters are welcome to attend, but may be asked to demonstrate accreditation, usually by providing appropriate written documentation.
2. Leave of the Court is required before any person publishes any report of proceedings in the Youth Court (s 438(1) of the Act).
3. Such a request, wherever possible, should be made in writing, in advance, to the Court Registrar. If necessary it can be made orally by the news media representative in Court when the case is first called. Alternatively leave may be sought orally or in writing at the completion of the case.
4. A Youth Court Judge may seek the views of the youth advocate, the Police, and other relevant parties regarding the request to publish.
5. In deciding whether leave to publish should be granted, **the welfare and best interests of the child or young person shall be the first and paramount consideration**: s 4A(1)¹ of the Act applies to s 438. This is one of the rare situations in which this section applies to youth justice proceedings.
6. If leave to publish is granted, the permission will usually be unconditional. On some occasions the leave to publish may be subject to specified conditions.
7. It is only in rare cases that leave to publish will be refused, such as in order to protect witnesses who may be later giving evidence in trials in the District/High Court or to ensure that a fair trial is not prejudiced.
8. Leave of the Court is also required to publish or report from a Youth Court decision published on the District Court website. The website’s publication of a decision is not permission for anyone else to publish.
9. It is recognised that it would be inappropriate and contrary to the New Zealand Bill of Rights Act 1990 for the Youth Court to adopt a practice of requiring to see and approve an intended report prior to publication. Such a power will only be exercised in special cases, such as suggested above. However, a Youth Court Judge may be willing to assist in ensuring that a report is accurate and complies with s 438 of the Act; there is no objection to an intended report being submitted to a Youth Court Judge on that basis.

10. If leave is given to publish, then there are certain matters under s 438(3) of the Act that are absolutely prohibited and which cannot ever be published. A Judge does not need to order suppression of these details as they are automatically suppressed. A Judge can never approve publication of these details. These details include:
 - a. The name of the child or young person or the names of the parents or guardians or any person having care of the child or young person.
 - b. The name of any school the child or young person is or was attending.
 - c. Any other name or particulars likely to lead to the identification of the child or young person or of any school that the child or young person is or was attending.
 - d. The name of the complainant / victim.
11. It is quite wrong and misleading for any media report of any Youth Court proceedings (for which leave has been given to publish in accordance with this Protocol) to suggest that the Judge has prohibited publication of any of those four details listed in 10, above. This is because, as explained, it is Parliament's direction that these details are automatically and absolutely suppressed.
12. Section 38 of the Act prohibits publication of the proceedings of any Family Group Conference ("FGC"). However, a Youth Court Judge will ordinarily give leave to publish details discussed in the Youth Court relating to the "plan" formulated by the FGC. Attention is drawn to s 38(3) of the Act, which absolutely prohibits the publication of any particulars that could lead to the identification of a particular person who was the subject of, or a participant in, the FGC. Generally, the Youth Court will be vigilant to guard the "confidentiality/privacy" of the FGC, but equally will not want to suppress the details of what was agreed as part of the FGC, and discussed in Court, unless that might prejudice the treatment or rehabilitation of the young person or otherwise compromise the principles or provisions of the Act.
13. The *In-Court Media Guidelines 2016*, which relate to the filming, still photography or voice recording of Court proceedings, apply to the Youth Court, as the Youth Court is a division of the District Court. Where media coverage as contemplated by those Guidelines is sought, then those Guidelines must be complied with, subject of course to s 438 of the Act.

John Walker
Principal Youth Court Judge
21 August 2019

Oranga Tamariki Act 1989

438 Publication of reports of proceedings under Part 4

- (1) Subject to subsection (2), no person shall publish any report of proceedings under Part 4 except with the leave of the court that heard the proceedings.
- (2) Nothing in subsection (1) applies to the publication of—
 - (a) any report in any publication that—
 - (i) is of a bona fide professional or technical nature; and
 - (ii) is intended for circulation among members of the legal, medical, or teaching professions, officers of the Public Service, psychologists, counsellors carrying out duties under this Act, counsellors and mediators carrying out duties under the Care of Children Act 2004 or the Family Proceedings Act 1980, or social workers, or other delegates of the chief executive or subdelegates:
 - (b) statistical information relating to proceedings under this Act:
 - (c) the results of any bona fide research relating to proceedings under this Act.
- (3) In no case shall it be lawful to publish, in any report of proceedings under Part 4,—
 - (a) the name of any child or young person or the parents or guardians or any person having the care of the child or young person; or
 - (b) the name of any school that the child or young person is or was attending; or
 - (c) any other name or particulars likely to lead to the identification of the child or young person or of any school that the child or young person is or was attending;
 - (d) the name of any complainant.
- (4) Nothing in this section shall be construed to limit—
 - (a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or
 - (b) the power of any court to punish any contempt of court.
- (5) Every person who contravenes this section commits an offence against this Act and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$2,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1974 No 72 s 24; 1980 No 94 s 169; 1982 No 135 s 6

Amendments

1 Clause 5: The phrase “s 6 of the Act applies to s 438” was replaced with “s 4A(1) of the Act applies to s 438”. Section 6 was repealed and s 4A was inserted by ss 12 and 10 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.