



Contempt of court in Queensland: Making public statements and taking actions while Court proceedings are on foot

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What is this factsheet about?

This factsheet outlines the risks that may arise when making statements or taking actions in public about court proceedings which are on foot, particularly describing the rule of ‘contempt of court’, and how to avoid these risks.

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What to consider when making public statements and taking actions related to matters in court

When a matter is currently before a court or tribunal, there are certain risks that anyone wanting to make public comments relevant to the proceedings should be aware of,

particularly, but not limited to, people who are parties to the proceeding. The key issue to be aware of is a claim that the person is guilty of 'contempt of court', particularly 'sub judice contempt', which has various elements discussed below.

Making public statements, or taking actions about court proceedings while they are ongoing may impact the proper administration of justice. If this occurs, the people involved in making the statements or taking action may be guilty of 'contempt of court', and may risk fines and other penalties, including and for serious instances, imprisonment. Sub judice contempt applies where a publication has, as a matter of practical reality, a tendency to interfere with the course of justice in a particular case.¹

There can be serious penalties imposed for contempt of court. Other issues must also be considered, such as defamation, as with any public communication.

What is contempt of court?

Contempt of court is the rule that a court may impose a penalty on those who interfere with the administration of justice or disregard the authority of the Court.²

The rule was developed to ensure that:

- (a) justice is appropriately and efficiently administered without disruption;
- (b) court proceedings proceed fairly without external influence; and
- (c) the authority, confidence and respect of the court is not undermined.

Who does contempt of court apply to?

The rule of contempt of court applies to everyone. This means that anyone can be found guilty of contempt of court including:

- the parties to court proceedings;
- lawyers representing those parties;
- jury members and witnesses;
- court officers themselves;
- the media reporting on a hearing; and
- the public at large.

What words or actions constitute contempt of court?

Contempt of court can apply to a broad range of words or actions. In its most common forms, contempt of court includes the following categories:

- (a) sub judice contempt (also known as contempt by publication) – publication of information that interferes with or prejudices ongoing proceedings;

¹ *John Fairfax & Sons Pty Ltd and Reynolds v McRae* (1955) 93 CLR 351.

² *Lewis v Ogden* (1984) 153 CLR 682.

- (b) contempt in the face of the court – disruptive behaviour in or near the courtroom which prevents the administration of justice;
- (c) disobedience contempt – non-compliance by parties participating in legal proceedings with court orders or undertakings;
- (d) juror contempt – misconduct by jurors which interferes with the proceedings; and
- (e) contempt by scandalising the court – publication of information that impairs the public confidence of the court and its officers.

In Queensland, there are also specific behaviours which legislation deems contempt of court.³ These include:

- (a) insulting a judge or witness;
- (b) misbehaving in a court or where court proceedings are taking place if outside of the court itself;
- (c) interrupting proceedings; and
- (d) assaulting or obstructing a person attending court.

Examples of conduct that could constitute contempt of Court more broadly

- Assaulting or threatening a person in court such as judicial officers, barristers or solicitors (e.g. throwing paint at a judge).⁴
- Breaching a court order not to publicise certain information or make statements about the proceedings.⁵
- The failure to disclose documents which are directly relevant to issues in proceedings.
- Making derogatory remarks about a judge or magistrate (e.g. barrister in Queensland was found guilty of contempt for calling magistrate ‘a complete cretin’).⁶
- Sharing a post published by someone else that contains contemptuous material.
- Protesting inside or outside of a Court, where that protest disrupts the Court proceedings.
- Sharing document filed in Court, or obtained through the Court proceedings, where they are not already in the public domain.
- Displaying a public sign alleging that a judge, a magistrate and the Queensland Supreme Court generally is corrupt.⁷
- Issuing a media release seeking to put pressure on the other party or the judge to take a certain position in the proceedings.

³ *Justices Act 1886* (Qld), s 40.

⁴ *Wilson v Prothonotary* [2000] NSWCA 23.

⁵ *Emmanuel College v Rowe* [2014] QSC 238.

⁶ *Attorney-General for State of Queensland v Lovitt QC* [2003] QSC 279.

⁷ *Attorney-General (Qld) v Mathews* [2020] QSC 258.

- Interrupting the judge or other parties during court proceedings, or speaking over other persons.

Do the words or actions have to be intentional?

A person does not have to intend to interfere with the administration of justice to be found guilty of contempt of court.⁸ Further, a person is not required to know that the content of materials they were sharing was contemptuous, or that there are court proceedings were on foot. For disobedience contempt, a party may be found in contempt of court for inadvertently failing to court orders or undertakings. However, these matters will be relevant when considering whether a penalty should be imposed.

When does contempt of court apply?

Conduct can only constitute contempt of court when court proceedings are still ongoing. Therefore, a person cannot be found in contempt once the judgment is entered and the proceedings are complete. While the risk is lower, statements or actions made prior to costs being finalised, sentencing being completed or prior to any appeal period expiring may also constitute contempt of court or in other ways prejudice your case.⁹

Specific types of contempt of court

Sub judice contempt of court

Sub judice contempt of court is a specific type of contempt of court which refers to the publication or sharing of information which could interfere with or prejudices ongoing proceedings.

The purpose is to ensure that people participating in a hearing (especially criminal hearings) are afforded a fair trial and materials published in the media do not unfairly influence witnesses, the jury or Court more broadly. In this way sub judice contempt is an exception to the principles of freedom of expression and open justice.

Sub judice is a Latin phrase meaning ‘before a judge or court’ or ‘not yet judicially decided’. It is also known as contempt by publication.

Sub judice contempt is not limited to traditional media, or publication by journalists. In

⁸ *Ex parte Tuckerman*; *Re Nash* [1970] 3 NSW 23; *Registrar of the Court of Appeal v Collins* [1982] 1 NSWLR 682; *Attorney-General (NSW) v Mirror Newspapers Ltd (Bradley case)* [1962] NSW 856; *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351.

⁹ *Ex parte Attorney-General*; *Re Truth and Sportsman Ltd* [1961] SR (NSW) 484.

our digital media landscape, it is therefore particularly important to be aware that posting on social media can constitute publication.

Breach of Harman principle

One specific form of disobedience contempt is a breach of the Harman principle (also known as the Harman undertaking). The Harman principle prevents parties to litigation from using documents and information obtained in the course of court proceedings for another collateral or ulterior purpose.

The Harman principle applied to the following documents which may be filed in court:

- documents produced in discovery;
- documents produced under a subpoena;
- answers provided as part of requests for further information (also known as interrogatories);
- witness statements;
- expert reports; and
- affidavits.

However, it typically does not apply originating applications, notices of appeals or similar documents. It also does not apply to pleadings, so long as those pleadings do not refer to materials provided that they do not contain any information obtained from another party under compulsion through the litigation process.

The Harman principle applies to litigants, their lawyers and anyone else who receives information in the course of proceedings (such as experts).

The Harman principle ceases to apply once a document enters the public domain. This means once it has been 'adduced' or entered as evidence or read in Court.

IMPORTANT: filing a document is not the same as entering that document formal into evidence during the hearing. Not all documents that have been filed are in the public domain.

The public interest defence

In certain circumstances a public interest defence may be raised for contempt by publication.¹⁰ Sub judice contempt, also known as contempt by publication, seeks to balance the freedom of speech and discussion of matters of public interest with the right for persons facing legal proceedings to have a fair trial unprejudiced by media comment.

¹⁰ *Ex parte Bread Manufacturers Ltd* (1937) 37 SR(NSW) 242; *Hinch v Attorney General (Victoria)* (1987) 164 CLR 15.

The test for whether a publication constitutes contempt of court is whether it has a real and definite tendency to prejudice or embarrass particular proceedings. However, when a publication involves the discussion of public affairs and the criticism of executive decisions, freedom of speech will only be curtailed where it is necessary to prevent a real and substantial risk of prejudice to the administration of justice.

Case study: the Bread Manufacturers Principle

The first case to explore the public interest defence was *Ex parte Bread Manufacturers Ltd; Re Truth & Sportsman Ltd* (1937) 37 SR (NSW) 242. This case involved statements published in the tabloid newspaper *Truth* which were critical of bread manufacturers, their role in maintaining the high price of bread and alleged they were operating as a bread cartel. One article was headed "Bread brigands on the war path", other statements included that they were "bread racketeers" and that there existed an "avaricious food ring". At the same time, Court proceedings were also on foot against the bread manufacturers alleging amongst other matters a conspiracy keeping bread prices high. The Court considered the balance between a need for the freedom of the press in reporting on important public issues, and the need to ensure a fair trial for the bread manufacturers. The Court ultimately determined that the statements published in *Truth* had a real risk of impacting the outcome of the hearing due to unfairly influencing the public perception of bread manufacturers, including the perception of potential future jurors for the case and the comments were found to be contempt of court.

Penalties and remedies

Penalties and remedies

If a person is found guilty of contempt of court, there are a variety of penalties and remedies which may be applied. Penalties are discretionary and include:

- imprisonment;
- fines;
- injunctions (e.g. restraining the person from carrying out the conduct again or prohibiting the person from attending court again);
- taking a security (or bond) to ensure future good behaviour; and
- censure (being a strong denouncement of the contemptuous conduct).

Other considerations

Defamation or other legal consequences

Conduct which amounts to contempt of court may have other legal consequences. For example, contempt by publication may give rise to defamation proceedings.

Read: Factsheet – Access to Justice: Understanding Defamation in Australia

Statements may impact settlement proceedings

Making public statements while parties to court proceeding are attempting to reach a settlement may be detrimental to the settlement negotiations between parties.

Costs risks

If you are a party to a proceeding, your actions may also give rise to costs risks if your activity prejudices the other parties to the proceedings.

Legal professional privilege

Public statements about legal advice you have received may also be considered a waiver of legal professional privilege, meaning that the advice is no longer confidential and can be used against you in proceedings.

IMPORTANT

Where are you a party to proceedings, we strongly recommend seeking legal advice prior to making public statements.

Hints and tips for avoiding contempt of court

DOs	DON'Ts
<ul style="list-style-type: none">• Stick to the facts of the matter, and objective statements about your position on an issue or non-confidential event that has happened. For example, as a party you can describe your grounds and concerns about a project generally.	<ul style="list-style-type: none">• Make disparaging statements about people involved in proceedings, especially the Judge, Magistrate or Tribunal Member.
<ul style="list-style-type: none">• You are also free to make statements about events which occurred prior to the commencement of the court proceedings.	<ul style="list-style-type: none">• Make negative statements about the impartiality or credibility of the Court or Tribunal (eg. 'this is a kangaroo Court').
<ul style="list-style-type: none">• When organising protests, make sure you don't disrupt the Court	<ul style="list-style-type: none">• Share information which is confidential or not allowed to be published, which can include court

or prevent it from operating as usual.	documents filed and served on the matter.
<ul style="list-style-type: none"> • Make sure to comply with any orders issued by the Court in your proceedings. 	<ul style="list-style-type: none"> • Exaggerate or overstate your case or another party's case.
<ul style="list-style-type: none"> • Check whether there are any confidentiality or non-publication orders or requirements before releasing information. 	<ul style="list-style-type: none"> • Even where you think it is true, don't make claims that judges, court staff or the legal system are corrupt while proceedings are ongoing.
<ul style="list-style-type: none"> • Where unsure, err on the side of caution. If possible seek legal advice about statements or actions prior to making them. 	<ul style="list-style-type: none"> • Make statements which may be considered to be seeking to influence the judge's decision on a matter e.g. don't say things like: 'The judge should clearly decide to refuse the project.'

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