

Media Access to Courts in South Australia

Ross Duncan reports on some recent somersaults by the South Australian Supreme Court

South Australia's rocky relationship with the principle of open justice reached new heights of absurdity recently. This article presents a brief chronology of events over a few weeks in the Adelaide autumn this year which saw one Supreme Court judge ban media sketch artists from his court; another allow television cameras to record proceedings before him; the Chief Justice ban sketch artists from the Supreme Court altogether, then suddenly reverse that decision.

Banning of sketch artists

On 26 March 1992 Mr Justice Cox, presiding over a murder trial, banned sketch artists from his court. While it has long been standard procedure in South Australia for the media to seek permission for their artists to sketch in court, Justice Cox's blanket prohibition was both unexpected and, to the author's knowledge, unprecedented.

His Honour stated that he found the sketching of people including the accused, witnesses and jurors both intrusive and an invasion of privacy. He did not accept the argument that any member of the public could be sketched, photographed or even interviewed outside court and that, therefore, there is nothing wrong with sketches inside a courtroom.

The Advertiser and other media organisations were advised that they would be in contempt if sketch artists were in his courtroom in the future. The media then protested to the Chief Justice.

Television crews allowed

On 31 March 1992, Mr Justice Millhouse, in what was described as a landmark move, allowed not only sketch artists but press photographers and television cameras into his court. The permission was given in proceedings involving a hospital's attempts to prevent the South Australian Health Commission closing it down after withdrawal of funding.

The hospital had asked for the cameras to be allowed on the basis of strong media and community interest in the case. Justice Millhouse stated that his courtroom was a public place and he did

not see any reason why cameras could not be allowed in. Attorney-General Chris Sumner stated that he would be seeking from the judiciary a consistent policy on the issue of pictorial representation of court proceedings.



The first policy

On 28 April 1992 Chief Justice King issued a letter to media organisations setting out the new consistent policy. In part the letter stated:

"The judges have decided that there should be a uniform policy prohibiting the use of television and other cameras and also prohibiting sketching in the courtrooms." (emphasis added). "Many persons in the courtroom ... are there under compulsion of law. They ought not on that account be made involuntary subjects of television or other photography or the work of sketch artists."

The letter concluded that:

"It is an unfortunate fact of life that persons who come to court... are subjected to the attention of television and other photographers, often amounting to harassment, on the public footpaths in the vicinity of the courts and the judges feel obliged to ensure that such attention is not extended to the courtroom itself."

The Australian Journalists' Association and media organisations protested to the Chief Justice and the Attorney General.

Opposition legal affairs spokesman Trevor Griffin stated he saw nothing wrong with artists sketching in court. South Australian Law Society President, Neville Morcombe QC, said that he welcomed the uniform approach.

The second policy

On 25 May 1992 the Chief Justice issued another letter to the media. That letter stated that media sketch artists would be allowed back into South Australian Supreme courtrooms. This decision was made "in the light of further information." This further information was not revealed.

Moreover, a spokesman for Chief Justice King stated that the new policy differed from the situation before the ban. Media organisations would now be permitted to illustrate events in court as a matter of course except under circumstances in which a judge decides it should not take place. The ban on still and motion photography cameras remained in place.

It is extraordinary that at a time when the admittedly controversial issue of allowing television cameras into courtrooms is being seriously debated throughout Australia, (and on rare occasions allowed) and when tribunals like the W.A. Inc Royal Commission have established elaborate audio-visual facilities for the media, South Australia's Supreme Court should have seen it necessary, if only as an aberration, to ban sketch artists. In my view the whole episode will certainly not help Adelaide erase its reputation as the suppression capital of the country.

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Political Advertising

On 28 August 1992 the High Court of Australia declared the so-called "political advertising ban" imposed on all electronic media unconstitutional. The Court's reasons are yet to be handed down, but will be analysed in a future edition of the Bulletin.