



Scottish Parliament
Public Petitions Committee
T3.40
Edinburgh
EH9 91SP

For the attention of Andrew Howlett

Email: andrew.howlett@scottish.parliament.uk

Our Ref: LS/74/10/AMcC/mm

Date: 25 February 2013

Consideration of Petition PE1455

Dear Mr Howlett

I refer to the above and in particular to your email dated 4 February 2013 addressed to Michael Clancy, the Society's Director of Law Reform which has been passed to me for my attention.

I apologise for missing the initial deadline but I am grateful to you for providing an extended deadline of 25 February in order to allow preparation of a response.

The Society's comments are as follows:-

The Society has now had an opportunity to consider the terms of Mr Macfarlane's Petition No.1455 which calls on the Parliament to urge the Scottish Government to consider the need for new legislation to create a free of charge public right of access to information generated in relation to Court proceedings, including all documents which have been read in open Court, whether aloud or not, and to proactively publish this information on line.

The Society notes the terms of the helpful SPICe briefing prepared for the Public Petitions Committee and in particular the statement that members of the public and the media are free to attend and report on Court cases in most circumstances but that this right may be restricted where there are vulnerable parties or witnesses such as children or where matters to be discussed are highly sensitive such as national security interests.

The Society agrees that the public right to scrutinise the justice process is an important principle in democratic societies.



The Society further notes that sentencing statements are produced and published on line in serious criminal cases which explain a Judge's sentencing decision and also in civil cases written judgements may also be publically available but that other material presented to the Court such as witness statements, expert reports, documentary and physical evidence is not generally available to the public, although it is a matter for the Judge to order particular information to be released where the circumstances of the case justify it.

The Society considered the case of HMA v Hainey (2012) HCJDV10 where the Court considered the issue of public access to Court documents when the BBC asked to see photographs which were trial productions in the above case. In that case Lord Woolman ruled that a number of photographs featuring the victim only should be disclosed. He did rule also that one photograph featuring the victim and the victim's grandmother should not be disclosed having applied the proportionality test that the Article 10 ECHR right to freedom of expression founded upon by the BBC in the above case did not override the grandmother's right to respect for private and family life as provided for in terms of Article 8 of the ECHR.

Lord Woolman did, however, allow the publication of the photographs of the victim alone were considered suitable for publication on the basis that the right to freedom of expression or more particularly the principle of open justice indicated that the BBC is entitled to access these photographs.

The Society further notes from this Judgement that Lord Woolman considers that the correct approach is to consider Articles 8 and 10 and undertake a balancing exercise.

Accordingly, the duty of the Court is to examine with care each application for a departure from the rule of open reporting by reason of rights under Article 8

The Society does not believe that the terms of the Petition are consistent with this balance.

Furthermore, the Society notes that certain Court documents are in the ownership of parties rather than the Courts themselves and that there would also be both data protection issues and financial implications incurred by Scottish Court Service in the provision of a public right of access to any document produced before a Court.

I trust that this information is of some assistance.

Should you, however, wish to discuss further, please do not hesitate to contact me.

Yours sincerely

Alan McCreadie
Deputy Director, Law Reform