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Justice, the media, and the Christchurch mosque terrorist

Journalism scholars Gavin Ellis and Denis Muller present part one of a case study in institutional co-operation

BACKGROUND

At 1.30 pm on 15 March 2019 a self-styled manifesto entitled *The Great Replacement* was posted online through a link on the 8Chan message board. Minutes later the manifesto and a text message warning of an imminent attack were sent to more than 70 email addresses including the office of the New Zealand Prime Minister. At 1.40 pm the author of the manifesto and the text messages entered the Masjid an-Nur Mosque in Christchurch and began firing semi-automatic weapons. His actions were live streamed via Facebook Live from a helmet camera. Forty-two worshippers died inside the mosque and a further victim was killed outside it before the gunman left for the Linwood Islamic Centre where he killed another seven worshippers. The two attacks left a further 40 people suffering gunshot wounds and two with other injuries. Two subsequently died of their injuries. The final death toll was 51. At 1.59 pm the gunman's car was rammed by police and Brenton Harrison Tarrant was taken into custody.

The gunman's video of the attacks spread rapidly through social media. Facebook blocked or removed about 1.5 million uploads of the video within the first 24 hours. The 17-minute sequence was recut and posted on other platforms such as YouTube. The Global Internet Forum to Counter Terrorism detected more than 800 distinct versions of the video, re-edited to circumvent detection systems (Graham Macklin "The Christchurch Attacks: livestream terror in the viral video age" ((2019) 12(6) *CTC Sentinel* at 18–29). His manifesto, which included references to Anders Behring Breivik, the Norwegian terrorist who killed 69 Workers' Youth League members at a summer camp on the island of Utøya in 2012, was also widely circulated.

Tarrant first appeared in the Christchurch District Court the following day in a hearing from which the public, but not news media, were excluded. Video and photographs of the accused were permitted but the court ordered his face be obscured. During the hearing, Tarrant made a hand gesture that has been interpreted as a white supremacist symbol (Anti-Defamation League Database "ADL's Hate Symbols" (2019) Retrieved from <www.adl.org/news/press-releases/ok-and-other-alt-right-memes-and-slogans-added-to-adls-hate-symbols-database>).

Media coverage of the attacks and of Tarrant's initial court appearance showed a sharp distinction between domestic and foreign news organisations — a phenomenon we have termed "the proximity filter" (Gavin Ellis and Denis Muller "The Proximity Filter: The effect of distance on media coverage of the Christchurch mosque attacks" (2019) 15(2) Kōtuitui: New Zealand Journal of Social Sciences Online at 332–348). Local journalists concentrated on the victims of the attacks while overseas outlets highlighted the terrorist's actions. All domestic media observed the requirement to obscure Tarrant's facial features in reports, but many foreign media ignored it.

While on remand in Auckland's maximum security prison, Tarrant was able to send a six-page letter to a supporter that warned a "great conflict" was coming and used language that could be construed as a call to arms. Although prisoners have a legislated right to send and receive mail there are exceptions and the New Zealand Corrections Service later acknowledged the letter should have been withheld. The service sought advice from Norwegian authorities based on their experiences in holding Breivik in custody and two officials visited New Zealand.

The accused made further court appearances via video link from prison. In April 2019 he was charged with 51 murder counts, 40 counts of attempted murder, and one terrorism charge. He did not enter a plea until a further video-link appearance in June of that year when, through counsel, he pleaded not guilty to all charges. The prohibition on publishing his facial features had been lifted before the plea hearing and his image was used widely by media. A further video appearance was scheduled in August to discuss a bid by the accused to change the court venue away from Christchurch but later the application was withdrawn. In March 2020 an unscheduled hearing was arranged at which Tarrant changed his plea to guilty on all charges. In July 2020, a month before the scheduled sentencing hearing, he decided to forgo legal counsel and to represent himself. The judge approved Tarrant's request after he was satisfied that Tarrant understood his rights to have legal representation and that he wished to waive them. The sentencing hearing was set down for 24 August 2020.

CONCERNS

The enormity of the Tarrant case was unprecedented in the New Zealand legal system. The nature of the crime, its scale, motivation and effect were such that it challenged not only the judicial system but the capacity of New Zealand society to cope with proceedings which relived events that had transfixed and traumatised the nation. Media interest, both domestic and international, was expected to be on a scale that matched that of the earthquake that devastated Christchurch and killed 185 people in 2011. The New Zealand Judiciary set about planning for the proceedings on the assumption that Tarrant's initial not-guilty plea would stand and that therefore there would be a trial taking many weeks. The over-arching objectives were two-fold: to preserve the rights of the accused to a fair trial, including the right to a public

hearing, and to administer justice. In order to maintain these fundamental rights, the court would be required to hold in check a range of influences, over some of which it had only tenuous control.

The day-to-day planning for the Tarrant hearing involved a wide range of government agencies: the Ministry of Justice, Police, Department of Corrections and Crown Law. Security services and the Department of Prime Minister and Cabinet, while not involved in the planning, were also involved in other issues arising from the attacks, including assessment of ongoing risks from white supremacists.

The planning took into account the risk that terrorism trials are likely to turn into a spectacle (Barbara de Graaff "Terrorists on Trial: A Performative Perspective" *ICCT Expert Meeting Paper* International Centre for Counter-Terrorism, The Hague 2011). Although Tarrant's pre-trial admission of guilt truncated proceedings, this did not significantly mitigate these concerns, and the news media potentially played significant roles in each of them. We have identified six specific areas of concern that had an impact on the planning:

1. Use of the hearing as an extremist platform;
2. Re-traumatising of survivors and others;
3. Behaviour of news media, including those beyond New Zealand's jurisdiction;
4. Capacity of the court to provide the necessary infrastructure and facilities;
5. Disinformation and misappropriation of court material; and
6. The impact of the above on open justice principles and fair trial rights.

Bruce Hoffman (*Inside Terrorism* (3rd ed, Columbia University Press, New York, 2017) at 10) states that terrorism is "designed to create power where there is none or to consolidate power where there is very little". The trial of Breivik in the Oslo District Court in 2012 demonstrated that, for some perpetrators, the attempt to exert this power extended into the courtroom. Before carrying out his attacks, Breivik was aware that a trial could provide him with a stage to the world. While his legal team confined itself to legal argument, he presented himself as the Caucasian hero who came to the rescue on behalf of a suppressed European people. He defended his attacks as the only way to prevent the Islamisation of the Continent, saying his actions were "based on goodness, not evil" and he was acting "out of necessity". Media around the world showed photographs and video of Breivik giving what he described in his manifesto as "the military salutation of the ... Knights Templar" (making a fist with his right hand, touching his heart, and then extending his arm) as he entered the courtroom on the first day of the trial (Jon Kelly "Breivik: What's behind clenched-fist salute?" *BBC News Magazine* 17 April 2012. Retrieved from <www.bbc.com/news/magazine-17739105>). Breivik claimed to have co-founded a Knights Templar organisation to act as a "leaderless network, comprising of self-driven cells". It did not exist.

Breivik was a role model for Tarrant (Adam Taylor "New Zealand suspect allegedly claimed 'brief contact' with Norwegian mass murderer Anders Breivik" *Washington Post* 15 March 2019). Both produced similar, heavily plagiarised manifestoes and Breivik was referenced in the Christchurch gunman's document *The Great Replacement*, which was banned as 'objectionable' by New Zealand's Chief Censor a week after the attacks. Their attacks on innocent civilians were similar and Tarrant's hand signal at his first appearance mimicked Breivik's salute, which the Norwegian repeated during an appeal court hearing over his conditions of imprisonment at Skein high-security prison following his conviction. Tarrant also followed Breivik's example in complaining about his prison conditions. Within a fortnight of his detention awaiting trial, Tarrant made a formal complaint to the Corrections Service when denied access to visitors and telephone calls (Carmen Parahi "Terror accused: I've got rights" *Sunday Star Times* (online ed, Auckland, 31 March 2019)).

Under Norwegian penal policy, Breivik had considerable freedom to send and receive correspondence. Through an administrative error in the New Zealand prison system, Tarrant exchanged letters with a Russian member of a far-right message board while awaiting trial. His letter later appeared on the 4chan message board and concluded with a statement that has been interpreted as a call to arms: "Do not forget your duty to your people". His mail privileges were subsequently curtailed.

Tarrant's initial not guilty plea contributed to fears that he, too, intended to use the court as a platform to propagate his extremist views. This raised the prospect that surviving victims, their family and acquaintances — and arguably the people of New Zealand, who had united behind the Muslim community — would be re-traumatised.

The danger of traumatisation exists in relation to victims of violence and is well understood. A British study of the incidence of repeat victimisation, retraumatisation and vulnerability of 54 victims of six types of violence found trauma symptomology may interfere with a victim's ability to engage with the criminal justice system (Nicola Graham-Kevan and others "Repeat Victimisation, Retraumatisation and Victim Vulnerability" (2015) 8 *The Open Criminology Journal* at 36–48). The study found that management and symptom alleviation for victims of violence should be a criminal justice priority. This finding is reinforced by other research indicating that complete recovery from trauma could be undone in the court process (Zoran Ilic "Psychological preparation of torture victims as witnesses toward the prevention of retraumatisation" in Z Spirić (ed) *Torture in War: Consequences and rehabilitation of victims*. International Aid Network. Belgrade 2004).

Solveig Laugerud and Åse Langballe analysed interviews with 51 witnesses in Breivik's trial and found that although the subjects found testifying a valuable opportunity to participate in the trial, emphasising the harm of the crime risked gratifying the perpetrator's impulses. One witness told them: "I didn't want him [Breivik] to think, every time he hears that we struggle, that he has succeeded with his plan. So, why should I talk about not being able to sleep at night, about going to a psychologist and a psychotherapist?" ("Turning the witness stand into a Speaker's Platform: Victim participation in the Norwegian legal system as exemplified by the trial against Anders Behring Breivik" *Law and Society Review* 51(2) (2017) at 227–251).

Breivik employed a range of strategies during his trial, some of which sought to counter the argument that he was insane. They received widespread attention in the media and many (international) commentators questioned whether he had been granted too much communicative power during the hearing (Tore Bjørgo and others "Performing Justice, Coping with Trauma: The trial against Anders Breivik, 2012" in B de Graaf & Alex P Schmid (eds) *Terrorists on Trial: A Performative Perspective* (Leiden University Press, Leiden,

2016). A survey at the time found per cent of respondents thought he had received too much media attention.

However, concerns about media coverage of Tarrant's case were conditioned by more recent (and closer) events. Our study of coverage of the Christchurch attacks found significant differences between domestic and foreign coverage of the attacks. While New Zealand media were empathetic to victims and strictly observed court orders relating to Tarrant's initial appearance, Australian media focused on the gunman and his violent acts. We found "much of the Australian coverage was written in an unflinching tone that would have seemed heartless or even ruthless had it been published directly to the affected community" (Ellis and Muller "The Proximity Filter" 2019). Even before the censor's orders, New Zealand mainstream media had refrained from carrying recordings of Tarrant's livestream — aside from a single broadcast of a brief extract before he entered the mosque — and had carried very little of the content of his manifesto. Many Australian media disregarded the court order prohibiting publication of images showing his face. Similarly they disregarded the censor's ruling on the manifesto and the livestream video of his attacks, both of which figured in coverage in Australia and further afield.

The consequences of overseas disregard of suppression orders was a source of concern in New Zealand legal circles before Tarrant's substantive hearing was scheduled. The New Zealand Bar Association expressed its concern that the trial of a man accused of murdering British tourist Grace Millane in Auckland could be undermined after at least seven British newspapers published his name, which was subject to a New Zealand court suppression order. Media management of the Millane case, *R v K* [2020] NZHC 233, which informed arrangements in Tarrant, is discussed later.

It was obvious from coverage of the Christchurch mosque attacks that the hearing of the case against Tarrant would attract considerable interest from international as well as domestic news organisations. Accommodating the needs of journalists and meeting the expectations of the public while guaranteeing a fair trial has been a balancing act for the courts for many years (New Zealand Bar Association "Bar Association concerned about prospect of undermining trial of Millane accused" Retrieved from <www.nzbar.org.nz/news/bar-association-concerned-about-prospect-undermining-trial-millane-accused>, 2018). Although the Tarrant case would not be on the scale of some of the 'trials of the century', high profile hearings have led to media circuses. At the 2005 molestation trial of entertainer Michael Jackson, 2200 members of the international media applied for accreditation.

Almost 300 people were attending the Masjid an-Nur Mosque and Linwood Islamic Centre when the attacks took place. The survivors and their families and friends in New Zealand and overseas were all considered to have been impacted by the shootings. A list of affected parties compiled by the Ministry of Justice for liaison purposes included more than 300 names. A number had expressed a wish to be heard by the court and many wished to attend the hearing. Both requests presented accommodation issues for court officials and for police, who were also charged with ensuring physical safety against any possible follow-up attack by white supremacists. A further concern was the safety of the accused, who would need to be flown from a high security prison in Auckland and then transported 16 kilometres each day from Christchurch Prison to court. The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses devotes a section to courtroom security and notes the need for strong judicial leadership: "This leadership is particularly important in terrorism cases because the heightened tensions and emotional atmosphere that accompany such cases have the potential to impact the conduct of the judicial proceedings." (Global Counterterrorism Forum *The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses* (2014) Retrieved from <www.thegctf.org/Portals/1/Documents/Framework%20Documents/2016%20and%20before/GCTF-The-Hague-Memorandum-ENG.pdf?ver=2016-09-01-150856-233>).

The behaviour of far right extremists posed not only potential security threats but also the possibility that material generated during the trial could be misappropriated and distorted to further the extremist's ideological ends and to retraumatise victims. A broad range of disinformation techniques have been employed by extremist groups and individuals to reinforce their worldview. These range from the creation of "alternative narratives", production of false and manipulated reports, curation of images and video, and the creation of memes, to the production of "deep fakes" that use artificial intelligence to manipulate images and sound to create a "new reality" (Baris Kirdemir "Hostile influence and emerging cognitive threats in cyberspace" *Cyber Governance and Digital Democracy 2019/3* (Centre for Economics and Foreign Policy Studies, Istanbul, 2019)).

The far right has utilised the full range of social media platforms in an effort to reach both a broad public audience and a narrow more specific group of followers (Stephane Baele and others, "Uncovering the Far-Right Online Ecosystem: An Analytical Framework and Research Agenda" *Studies in Conflict & Terrorism* available at <doi.org/10.1080/1057610X.2020.1862895>). The *8chan/pol* image board was used by Tarrant to announce his attack, provide links to his manifesto and to distribute a Facebook livestream video of the massacre. Two other right-wing extremists later used the platform to announce their attacks in similar fashion. Mainstream platforms such as Facebook and Twitter have been under pressure to remove extremist traffic. As a result, extremists have migrated to alternative platforms (Richard Rogers "Deplatforming: Following extreme Internet celebrities to Telegram and alternative social media" *European Journal of Communication*, 35(3) (2020) at 213–229).

The Gab platform, which has become a rallying place for many far-right figures banned from mainstream social media platforms, has an 'Australia' subgroup that grew from around 4,500 members in mid-March 2019 to over 45,000 members as of March 2021 (Cecile Guerin and others "A snapshot of far-right activity on Gab in Australia" *Research paper May 2021* Victoria University Centre for Resilient and Inclusive Societies, Melbourne).

However, the monitoring of extremist activity has led to a move to encrypted online services (Aleksandra Urman and Stefan Katz "What they do in the shadows: examining the far-right networks on Telegram" (2022) 25(7) Information, Communication & Society at 904–923 available <doi.org/10.1080/1369118X.2020.1803946>). Telegram, an end-to-end encrypted messaging service, is a prime platform for extremists and experienced a noticeable spike in use following the Christchurch attacks (Samantha Walther and Andrew McCoy "US Extremism on Telegram" (2021) 15(2) Perspectives on Terrorism at 100–124).

In addition, terrorist groups make sophisticated use of the Dark Web, which uses added layers of user security and presents an even greater challenge for governments, counter-terrorism agencies and security services (Gabriel Weimann (2016) 10(2) "Terrorist migration to the Dark Web" Perspectives on Terrorism at 40–44). To these concerns could be added more general worries over the public's use of social media during the hearing, from the immediacy of misinformation and order breaches on Twitter to widespread propagandising on Facebook and YouTube.

Each of these concerns arose in anticipation of a lengthy trial. Tarrant's change of plea reduced — but did not entirely eliminate — some of the concerns. While there would be fewer opportunities for him to use proceedings in the way Breivik had pioneered, his behaviour during sentencing and his right to address the court would continue to be potential flashpoints. The absence of a trial relieved victims of the need to give evidence and face cross-examination, but the New Zealand Victims Rights Act 2002 creates the right to make victim impact statements before sentencing. Tarrant would be present when these statements were made and his reaction, plus the likelihood that some victims would relive the events of 15 March 2019 could still potentially retraumatise them. The news media would have fewer opportunities to sensationalise proceedings but interest would remain intense and the propensity for international media to capitalise on the fact they were beyond New Zealand jurisdiction would be an ongoing challenge. So, too, would the ability of Tarrant sympathisers (and members of the general public) to misuse social media.

Overlaying all of these considerations was a matter that was beyond the power of the court to control. On 30 January 2020 the World Health Organisation declared a global health emergency after a virus forced Chinese authorities to close off the city of Wuhan. Twenty-eight days later the first case of COVID-19 was recorded in New Zealand.

MEDIA AND THE COURTS

The principle underpinning the role of the media in an open justice system is unchanged since Jeremy Bentham noted more than two centuries ago that "publicity is the very soul of justice". The nature of that publicity today would be unrecognisable to the 18th century philosopher, in terms of technology, scope, and reach (Jane Johnston "Three phases of courts' publicity: reconfiguring Bentham's open justice in the twenty-first century" (2018) 14 International Journal of Law in Context at 525–538). What would be equally unrecognisable, even to many 20th century New Zealand jurists, would be the changed relationship between the courts and the media.

The respective roles of the court and the media have led to tensions that, in some jurisdictions, are protracted and damaging. However, a former Head of Judicial Communications for England & Wales, Michael Wicksteed, told a Council of Europe judicial conference in Sophia it was "flawed logic" for judges to think there was no point in fostering relationships with journalists because they had no real influence over the media. "If a judge decides not to communicate in any meaningful fashion with the media — whether in the courtroom, or senior judges at an editorial level — then the chances of effecting any understanding between the judiciary and the media is doomed to failure," he said. "It's essential — in every country — that the judiciary, and in particular the senior judiciary, accept the need to establish a relationship and an understanding with their media opposites at all levels." He concluded by saying that when successful relationships are established, the outcome is a step forward towards the establishment of trust, leading to more accurate reporting and, in turn, better public understanding of the work and professionalism of the judiciary and the courts (Michael Wicksteed "Public Trust: The judiciary and its relationship with the media", speech to the High Level Conference on Integrity and Accountability of Judiciary, Sofia, Bulgaria 1–2 April 2014).

In New Zealand, although the media take seriously the accountability function that court reporting seeks to fulfil, the relationship with the judiciary is generally constructive. It has the advantage of formal lines of two-way communication that are absent in most other jurisdictions. The State judiciaries in Massachusetts and Connecticut have long-established groups that bring together judges, court officials and journalists, although there is no federal equivalent. A similar body was established in North Macedonia in 2018, with assistance from a United States programme to enhance democratic and civic institutions in the country after it gained independence in 1991 (Andrej Bozhinovski "Establishment of the Judicial Media Council of Macedonia as a tool for enhancing judicial transparency and a review of the formalisation of cooperation between judges and journalists" (2018) 7(2) Zagreb Law Review at 139–148). It is fair to say, however, that such bodies are rare.

A Media and Courts Committee has existed in New Zealand since 2001. Its membership comprises five judges, six media representatives, representatives of the Office of the Chief Justice, and a senior Registry official. The committee was preceded by a consultative committee chaired by the New Zealand Chief Justice which considered television media coverage in courts and developed terms of reference. The current terms were confirmed in 2019: undertake an ongoing review of measures governing court reporting; provide a high level, informal and confidential forum; provide advice to the Chief Justice and Heads of Bench about significant trends or issues; make recommendations to support open justice, and fair and accurate court coverage, and facilitate an open and constructive dialogue on open justice (<www.courtsofnz.govt.nz/about-the-judiciary/judicial-committees/#ft2_>).

The Media and Courts Committee was responsible for developing protocols for the use of cameras in courts and guidelines for in-court coverage. The guidelines contain comprehensive instructions on filming, photographing and recording in court, including the rights of witnesses, victims and court officers. There are "standard conditions" that govern the siting of cameras, prohibited categories (such as filming counsel's papers or members of the public in court), publication or broadcast delays (a standard 10-minute delay although there are exceptions such as verdicts and sentencing), and conditions governing filming of the defendant. The guidelines make it clear that all provisions (aside from statutory obligations) are at the discretion of the judge. They are appended to the Ministry of Justice's *Media guide for reporting the courts and tribunals* (<www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/>).

The ability of media to film and photograph in court varies enormously from one jurisdiction to another. In New Zealand, after five years of discussion, rules for a pilot programme were agreed in 1996 and 20 cases were covered over the three years of the pilot scheme. In 1999 the Higher Courts Judges' conference accepted a recommendation for

continuation under a set of rules that have been periodically updated and amended. Filming and photographing of trials are now standard features of in-court media coverage. In 2012 the rules were amended to provide for electronic communication from court.

The New Zealand Media and Courts Committee played an important liaison role during planning for the Tarrant court proceedings but its work was preceded by an initiative undertaken by another media industry body within a month of the Christchurch attacks, the Media Freedom Committee. This committee represents the mainstream media on media freedom and other media-related matters. Its membership includes the editors of the country's daily and weekend papers, the major broadcasters, weekly magazines, and their websites, as well as their industry organisations. Originally formed to represent newspaper interests, it was expanded in 2001 to become a media-wide body.

In April 2019 the Media Freedom Committee produced a protocol it said was born out of concern that "the accused may attempt to use the trial as a platform to amplify white supremacist and/or terrorist views or ideology". The editors of the country's five largest media organisations signed the protocol. They acknowledged the particular importance of media acting as the eyes and ears of the public "given the many victims' friends and families outside New Zealand who may otherwise be unable to engage in the trial process". They agreed to abide by a set of guidelines that would not only govern their reporting throughout the trial but would stay in force indefinitely. The guidelines included:

- Within the principles of open justice, limiting any coverage of statements that actively championed white supremacist or terrorist ideology;
- Not broadcasting or reporting on any message, imagery, symbols or signals promoting or supporting white supremacist ideology;
- Pixelating relevant parts of an image where the inclusion of such signals was unavoidable;
- Using senior journalists to cover the trial.

The chief advisor on judicial communications in the Office of the Chief Justice, Cate Brett, was provided with a draft of the protocol before its release and invited to comment on it. It was at her suggestion that the clause relating to the use of experienced journalists to cover the trial was inserted. The chair of the Media Freedom Committee, Miriyana Alexander, describes the protocol as "an important starting point". "It showed that there was a willingness from the media to ensure that, [in] our ongoing reporting of an incredible situation that had never happened before in New Zealand, we carried some responsibility," Alexander told the authors, "[t]he last thing we wanted to do was to give a platform to the (then accused) terrorist ... There was no desire to remove any of our rights. We simply gave an undertaking that we were going to behave in a certain way. And we all agreed that this was deeply important. We wanted to play our part" (Alexander interview, Auckland, 31 May 2021).

New Zealand Prime Minister Jacinda Ardern vowed never to utter the gunman's name, an attitude that garnered wide public support. Media outlets would not commit to a blanket ban on the use of his name but a number undertook to "use it judiciously" or "only when it was material to the story" (Craig McCulloch "How media plan to cover the accused Christchurch shooter's trial" Radio New Zealand 20 March 2019. Retrieved from: <www.rnz.co.nz/news/national/385140/how-media-plan-to-cover-the-accused-christchurch-shooter-s-trial>). The protocol did not, however, commit all media to a standard approach on naming him. Despite this, there was a persistent misapprehension that the protocol contained a ban on naming Tarrant. During coverage of the attacks New Zealand media received complaints from the public for not following the prime minister's example. Although most outlets limited use of his name, they felt obliged to mention his name at least once in any court reports.

'THE MILLANE TRIAL'

The 'Millane Trial' was so styled because the name of the accused, Jesse Shane Kempson, was suppressed throughout the proceedings. The reason for the suppression order by the trial judge, Justice Simon Moore (who chairs the Media and Courts Committee), was the fact that Kempson also faced two sets of unrelated charges including rape and sexual abuse. Had the jury been aware of those charges, Kempson's trial for the murder of Grace Millane could have been prejudiced, as would his subsequent trial relating to other complainants.

In spite of these potentially prejudicial effects, at least seven British newspapers published his name. The name was also published on the newspapers' websites, which were accessible in New Zealand.

Issues with media coverage of the high profile case had been anticipated by Justice Moore who, with the assistance of the judicial communications adviser Cate Brett, developed a media plan prior to the trial. The plan included registration for all media representatives who wished to attend the trial. In order to be accredited, the media representative and her/his employer would be required to agree to abide by all direction of the court even if the organisation operated outside New Zealand's jurisdiction. A process to control the distribution of all documents released by the court was also devised. It involved the use of individual copies (with unique identifiers) for each accredited media representative, which they were prohibited from copying to dissuade onward distribution to non-accredited parties. After discussion at a standing meeting of the Media and Courts Committee it was agreed that local media would not be held responsible for the way foreign syndication partners treated the material sent to them.

A number of overseas organisations declined to sign the registration agreement. Significantly, it was from among this group that the breaches of suppression orders occurred. In October 2020 Kempson was found guilty on those charges and suppression of his name lapsed in December 2020 after he exhausted avenues of appeal.

Justice Moore, in an interview with the authors (telephone interview, September 2021), conceded that there was little his court could have done if a foreign media company had simply ignored being cited for contempt. However, registration and tight control on court documents had ensured that accredited representatives abided by the court's wishes in order to have continued access throughout the trial. He also asked all registered media to attend a pre-trial session, at which court officials were also present, in order to explain the ground rules for access.

The New Zealand media, Justice Moore told us, had abided by the letter of his rulings and agreed procedures. "I think a lot of lessons were learned that we [later] tried to convey to the courts and to the media. One of the things I

learned and appreciated was that trust in the media — certainly local media — was rewarded. Local media expected the judge to play fairly. If they agreed to certain conditions, they expected me to react to any transgressions. They expected a level playing field for everyone. I do not think there is any doubt that the Media and Courts Committee is central [to that trust]. That is not down to me [as chair]. It is part of an evolution that goes back to the committee's foundation. There is a culture that has developed and been built on. There is a climate of trust and I have no doubt that the committee has been responsible for creating that level of trust."

Some of the procedures laid down by the judge in the Tarrant case can be traced to those developed for the Millane trial. How this played is described in part two of this series of articles, which focuses on the planning process for Tarrant. ❐

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set out in s IB 3, PUB00376 states that the nature of a company's business activities should be described by reference to: its core business processes (such as manufacturing, retailing, services); the type of products or services produced or provided; significant assets utilised in the business; significant suppliers or other inputs; scale (by reference to factors such as approximate turnover or size); and the main markets supplied to (for example, retail/wholesale, local/national).

Identifying that there has been a change in the nature of a company's business activities should not be too difficult, but determining whether the change is a "major change" is more challenging. Determining what constitutes a "major change" is understood with reference to s IB 3 which:

- without limiting the factors that may be taken into account in determining whether a major change in the nature of the business activities has occurred, requires consideration to be given to the extent to which assets used in deriving assessable income have remained the same or similar over the business continuity period; and
- explicitly permits certain major changes, which indicate that the underlying factors may be relevant to identifying whether there is a major change in the first place. The four permitted major changes are broadly changes to: increase the efficiency of a business activity; keep up to date with advancements in technology relating to a business activity; scale up a business activity; and produce/provide new products or services using same or similar assets.

It is clear from the discussion in PUB00376 that whether a change is a major change and whether a major change is a permitted change are questions of fact and degree. The relevant factors to be taken into account and the weight to be given to them will depend on a company's particular circumstances. This is highlighted by the examples provided in PUB00376. The examples range from a bakery that moves from mass-producing plain bread using automated systems to producing significantly fewer artisanal breads using wood-fired ovens, to a bookstore that installs a café counter, to a media group that divests its local newspaper businesses which previously accounted for the bulk of its turnover to focus on developing the online classified advertising business operated by a subsidiary. The examples in PUB00376 are helpful, but they do leave the reader with the impression that the BCT will be difficult to apply in practice to the complex realities of real-world commercial business operations.

Figure 1

	Ownership interest at time 1	Ownership interest at time 2	Ownership interest at time 3	Lowest ownership interest
Shareholder 1	100%	60%	50%	50%
Shareholder 2	0%	40%	40%	0%
Shareholder 3	0%	0%	10%	0%
Total				50%

Figure 2

	Ownership interest at time 1			Ownership interest at time 2		
	Loss Company	Profit Company	Lowest common interest	Loss Company	Profit Company	Lowest common interest
Shareholder 1	100%	100%	100%	49%	49%	49%
Shareholder 2	0%	0%	0%	51%	51%	51%
Total			100%			100%

❐