DISTRICT COURT OF QUEENSLAND

CITATION:	*Brose v Baluskas & Ors (No 8)* [2020] QDC 98
PARTIES:	**TRACEY ANN BROSE** (Plaintiff) **v** **DONNA JOY BALUSKAS** (First Defendant) and **MIGUEL BALUSKAS** (Second Defendant) and **TRUDIE ARNOLD** (Third Defendant) and **IAN MARTIN** (Fourth Defendant) and **KERRI ERVIN** (Fifth Defendant) and **LAURA LAWSON** (Sixth Defendant) and **CHARMAINE PROUDLOCK** (Seventh Defendant)
FILE NO/S:	D148 of 2016
DIVISION:	Civil
PROCEEDING:	Application
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	29 May 2020
DELIVERED AT:	Southport
HEARING DATES:	13 December 2019 and 10 February 2020
JUDGE:	Muir DCJ
ORDER:	**It is ordered that:** 1. **The application is dismissed.** 2. **The parties have until 4.00pm Friday 5 June 2020 to provide written submissions as to costs (of no more than 2 pages) to be emailed to my Associate**

within that time. Otherwise the cost order will be: that the applicant pay the respondent's costs of the application.

CATCHWORDS: DISTRICT COURT– POWERS OF COURT – EXPRESS POWERS – IMPLIED POWERS – where applicant is a non-party to proceedings – where applicant sought to inspect and copy exhibits tendered in a civil trial under rules 980 and 981 of the Uniform Civil Procedure Rules– whether the court has express power to permit a non-party to inspect or copy exhibits – whether rules 980 and 981 relate to exhibits – whether an implied power is called for in the circumstances of the case – whether non-party access to exhibits is necessary in the circumstances of the case

CIVIL PROCEDURE – SEARCH AND COPY – OPEN JUSTICE – ACCESS TO EXHIBITS – where applicant is a journalist seeking to inspect and copy exhibits tendered in a civil trial – where judgment has since been delivered – where there has been significant media coverage of the proceedings – whether rules 980 and 981 of the Uniform Civil Procedure Rules relate to exhibits – whether the court has power to permit a non-party to inspect or copy exhibits – whether non-party access to exhibits is necessary in the circumstances of the case

LEGISLATION: *Acts Interpretation Act 1954* (Qld) – Schedule 1.

Criminal Practice Rules 1999 (Qld) rr 56, 56A, 57.

District Court of Queensland Act 1967 (Qld) ss 68, 69.

Evidence Act 1977 (Qld) s133.

Federal Court Rules 2011 (Cth) r 2.32.

Supreme Court of Queensland Act 1991 (Qld) ss 85, Schedule 1 s27(g).

Uniform Civil Procedure Rules 1999 (Qld) – rr 981, 980, 975B, 984A.

CASES: *ACCC v Abb Transmission and Distribution* [2002] FCA 609.

Attorney-General v Walker (1849) 3 Ex 242.

Australia Meat Holdings Pty Ltd v Higgs [2006] QDC 81.

Basha v Basha [2010] QCA 123.

British American Tobacco Australia Services Ltd v Cowell (2003) 8 VR 571.

Brose v Baluskas & Ors (No 6) [2020] QDC 15.

Caltabiano v Electoral Commission of Queensland & Anor (No.3) [2009] QSC 186.

Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd (No 4) [2010] NSWLEC 91.

Champion v Fay [1983] 2 Qd R 416.

Deputy Commissioner of Taxation v Shi (No.2) [2019] FCA 503.

Deputy Commissioner of Taxation v Hawkins [2016] FCA 164; (2016) 341 ALR 255.

Dobson v Hastings [1992] Ch 394.

GI Personal Investments Services Ltd v Liverpool and London Steamship Protection and Indemnity Association Limited (FAI General Insurance Co Limited intervening) [1999] 1 WLR 984 CA.

Grassby v R (1989) 87 ALR 618.

Herald and Weekly Times v Magistrates Court of Victoria [1999] 3 VR 231.

Herald and Weekly Times v Magistrates Court of Victoria (2000) 2 VR 346.

Hogan v Hinch (2011) 243 CLR 506 at 532.

John Fairfax Publications Pty Ltd v District Court of NSW (2004) 61 NSWLR 344.

John Fairfax Publications Pty Ltd v Ryde Local Court (2005) NSWLR 512.

Mason v Ryan (1884) 10 VLR (L) 335.

Montes v Barclay Motors (Bodyworks) Pty Ltd [1968] Qd R 556.

Pelechowski v Registrar, Court of Appeal (1999) 198 CLR 435.

Police v Baden-Clay [2013] QMC 6.

R v Clerk of Petty Sessions, Court of Petty Sessions Hobart; Ex parte Davies Brothers Ltd (1998) 8 Tas R 283.

R Lucas & Son (Nelson Mail) Ltd v O'Brien [1978] 2 NZLR 289.

Rabvue P/L & Anor v Malcolm Douglas Consultants P/L & Ors [2010] QDC 150.

Robertson v Australian Casualty & Life Ltd [1992] QSC 45.

Seven Network Limited v News Limited (No.9) [2005] FCA 1394.

Smith v Harris [1996] 2 VR 335.

Steven v Trewin & van den Broek [1968] Qd R 411.

Tagget v Sexton (2009) 255 ALR 522.

Titelius v Public Service Appeal Board (1999) 21 WAR 201.

Velocity Frequent Flyer Pty Ltd v BP Australia Ltd [2019] QSC 29.

COUNSEL: J Hunter for the applicant

H Blattman and R J Anderson QC for the plaintiff/respondent

SOLICITORS: News Corporation Pty Ltd for the applicant, Ms Vanda Carson

Bennett & Philp Lawyers for the plaintiff/respondent

Introduction

[1] Vanda Carson, a journalist employed by Queensland Newspapers Pty Ltd, has applied for access to and copies of a number of the 78 exhibits tendered during the course of a defamation trial conducted before me between 8 October 2019 and 1 November 2019.[1] Such an order is said to be necessary for the purpose of Ms Carson writing further newspapers articles (in the public interest) on the perils of online publications in the context of the law of defamation.[2]

[2] The plaintiff/respondent opposed the application on five main grounds:
(a) First, that there is no jurisdiction for making the orders sought.
(b) Secondly, the principle of open justice does not require access to the exhibits from the trial;
(c) Thirdly, public access to the exhibits will likely be distressing to both parties and non-parties who are the subject of those exhibits;
(d) Fourthly, the granting of access to the exhibits will result in publication of matters entirely collateral to the real issues in the case; and
(e) Fifthly, granting access may result in the publication of defamatory material under the cloak of statutory privilege for fair reporting of court proceedings.

[3] Ultimately the following three questions emerged for my determination:
(a) First, does the District Court have an express power to make orders allowing inspection and copies of exhibits in civil proceedings?
(b) Secondly, if there is no express power, is it necessary to imply a power to make orders allowing inspection and copies of exhibits in civil proceedings in the circumstances of this case?
(c) If a power exists, should the court exercise its discretion to make the orders sought?

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1 It was uncontroversial that the 78 exhibits are not held on the physical file relating to this proceeding but rather separately to the file.

2 Subsequent to this application being heard by me on 10 February 2020, I published my Judgment in the substantive proceedings on 28 February 2020; See *Brose v Baluskas & Ors (No 6)* [2020] QDC 15.

[4] In my view and for the reasons discussed below, the answer to all of these questions is "no".

The District Court's power to grant access to exhibits

[5] The District Court is an inferior court, so its jurisdiction is that conferred by statute. It follows that its powers arise either expressly or impliedly by statute. It is instructive to observe that "jurisdiction" and "power" are different but not necessarily discrete concepts.

[6] Jurisdiction has been described as the "authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision."[3] A court may have jurisdiction but lack the power to grant particular relief. As Sackville AJA observed relevantly in *Tagget v Sexton* (2009) 255 ALR 522 at 542:[4]

(a) A court, in the exercise of its jurisdiction, has the powers expressly or impliedly conferred on it by legislation;

(b) Such powers include the powers that are incidental and necessary to the exercise of the court's jurisdiction;

(c) The lines are blurred between the two concepts for example by the use of the expression "inherent jurisdiction" which "in truth is the power of a court to make orders of a particular description."

[7] The starting point therefore is a consideration of any express power enabling this court to make the orders sought.

Express Power

UCPR and Evidence Act (Qld)

[8] The applicant identified provisions of the *Uniform Civil Procedure Rules* 1999 (Qld) ('UCPR') and the *Evidence Act* 1977 (Qld) ('Evidence Act') as conferring the necessary power on this court to make orders allowing third parties access and copies of exhibits in civil proceedings.

[9] The applicant referred to rr 980 and 981 of the UCPR as being relevant. These rules, which appear in Chapter 22, Part 2 provide as follows:

"**980 Copies of documents**

(1) A person may ask the registrar for a copy or a certified copy of a document filed under these rules.

(2) The person asking for the copy must pay any prescribed fee for the copy or certified copy.

(3) The registrar must give to the person a copy or certified copy of the document as the case may be.

(4) The copy must have the seal and the word 'copy' stamped on it.

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[3] *Tagget v Sexton* (2009) 255 ALR 522 at 542 [118]. Per Sackville AJA (footnotes omitted).

[4] Ibid at [115] to [119]. (footnotes omitted)

981 Searches

(1) A person may ask the registrar to search for and permit the person to inspect a document in a court file.

(2) If the person is not a party or a representative of a party, the person asking for the search or inspection must pay any prescribed fee for the search or inspection.

(3) Subject to any court order restricting access to the file or document, or the file or document being required for the court's use, the registrar must comply with the request, unless there is not enough information for the registrar to be able to comply with it.

(4) The registrar may also, on payment of the prescribed fee, issue a certificate of the result of the search." [Emphasis added]

[10] The application seeks orders for access to and copies of the exhibits. Under r 980, the entitlement is to ask the register for a copy of a document filed, but under r 981 the entitlement is to ask the registrar to "search for" and to permit the person "to inspect" a document "in a court file." Whilst it is preferable to use the language of the rule, nothing turns on the applicant's use of the expression access in her application. It is obvious what she is seeking. It is understandable that two orders are sought – they go hand in hand. Given the stated purpose of this application, there is little utility in the applicant being able to inspect the exhibits if she cannot also take copies of the exhibits she wants.

[11] Initially, after identifying these rules, the applicant submitted that she did not seek to advance the argument of an express power under the UCPR "any further" given the "strength of [her] position at common law" and the lack of clarity in jurisprudence on the point [of the court's power under the UCPR].[5] But subsequently the applicant maintained that subject to the provision in sub-rule 981(3), r 981 UCPR permitted her to "inspect" the exhibits.[6]

[12] The applicant submitted that the effect of both UCPR rr 980 and 981 is that "all documents on a Queensland civil court file are public documents which non-parties can obtain access to."[7] I accept this as a broad proposition but is necessary to identify what "documents" fall within the scope of these rules.

[13] The applicant submitted that the word "document" in r 981 should be interpreted broadly in accordance with the definition of "document" in Schedule 1 of the *Acts Interpretation Act 1954* (Qld) Schedule 1, which provides as follows:

"document includes—

(a) any paper or other material on which there is writing; and

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device)."

5 Applicant's submissions dated 30 January 2020 at para 5.

6 Supplementary outline of submissions on behalf of the applicant filed 10 February 2020 at [2].

7 Applicant's submission filed 31 January 2020 at [4].

[14] But this overlooks two things. First, not all exhibits are a 'document' within this definition (for example, physical objects such as prototypes and samples can also be exhibits in a civil trial). Secondly, r 981 uses the expression "document in a court file" as opposed to a "document" generally.[8]

[15] The applicant submitted that the fact that the exhibits have not been physically added to the court file in this matter, does not mean that a document tendered at trial is not a "document in a court file." I accept that as a general principle that if I was to find that "a document in a court file" included an exhibit, the fact that the exhibit was physically located separately from the file does not matter. But that does not resolve the issue of whether an exhibit is a document in a court file.

[16] The applicant conceded that r 980 does not provide her with the right to obtain a copy of an exhibit because such a document is not "filed" under the UCPR. I accept this concession is appropriate and consistent with a plain reading of this rule. The applicant did not otherwise identify how r 980 is relevant to the issues for my determination. But in my view this rule is relevant because rr 980 and 981 must be read together.

[17] The language used to reference or describe "documents" in rr 980 and 981 is different. Under r 980(1), copies of documents are only available where the document is "filed" under the UCPR. The expression "document in a court file" is not defined in the UCPR.[9] The only other occasion is it used in these rules is in r 975B (which appears in Chapter 22 - Documents, Registry & Solicitors, Part 1 - Documents, Division 4 - Particular Provisions For Electronically Filed Documents). This rule provides as follows:

975B Retention and status of document electronically filed

(1) A document electronically filed at the registry—
   (a) may be retained in electronic form by the registry; and
   (b) is taken for all purposes to be a document in a court file.

(2) If, under rule 981, a person asks to inspect a document that was electronically filed, the person may inspect the document in either electronic or paper form, at the discretion of the registrar. [Emphasis added]

[18] This rule appears in a Division which makes provision for documents to be electronically filed rather than filed in paper form, and expressly provides that a document electronically filed pursuant to the rules "is a document in a court file" which is (either in paper or electronic form) under r 981.

[19] Given that the only other reference to the phrase "documents in a court file" in the UCPR relates only to documents filed under the UCPR, it follows by implication that search and inspection under r 981 is not permitted unless it is of a document filed.[10]

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8 The phrase "document in a court file" is not defined in the *Acts Interpretation Act 1954* (Qld).

9 The *Acts Interpretation Act 1954* (Qld) Schedule 1 definition of ***document*** is a broad one and not of any assistance given that the relevant expression used in r 981 UCPR is "document in a court file."

10 I have not been able to locate a case on point – and I was not referred to any authority on this point. But consistent with my conclusion, the Butterworth annotated rules at [981.10] relevantly states: "*Copies of documents are only available where the document is filed under these rules: see subr 980(1). By inference, search and inspection would not be permitted of documents not filed on a court file, for example correspondence*."

[20] Further, it is instructive that UCPR r 984A provides a specific regime for the return and disposal of exhibits, relevantly as follows:

"984A Disposal of exhibits

(1) This rule applies to an exhibit held by a court in a finalised proceeding.

(2) The registrar may give notice in the approved form to a party, the solicitor for a party or any other person who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.

(3) If the exhibit is not collected from the registry within 3 months after the notice is given, the registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.

(4) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.

(5) If the registrar returns, destroys or otherwise disposes of an exhibit under this rule, the registrar must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.

(6) In this rule—

exhibit includes an unfiled document held by the court.

finalised proceeding means a proceeding—

……" **[**Emphasis added**].**

[21] This rule (which appears in Chapter 22, Part 2 – Registry, along with rr 980 and 981) provides (unlike documents that are filed and kept in the court file), a regime for an exhibit to be returned to "the owner" or "the person entitled to possession" or otherwise destroyed. Relevantly also is that the definition of "exhibit" refers to "an unfiled document held by the court" which suggests a clear distinction between an exhibit and a document filed or "document in a court file" under this Chapter.

[22] I therefore find that r 981 UCPR does not expressly allow the registrar or this court to order a search for an exhibit in a court file or to permit inspection of an exhibit in a court file.

[23] But if I am wrong, it is necessary to deal with the other submissions made by the applicant.

[24] First, (and by an analogy of sorts), the applicant referred to the provisions of r 57(2) of the *Criminal Practice Rules 1999* (Qld) ('*Criminal Practice Rules*') which states relevantly:

"To remove any doubt, it is declared that the court file for a proceeding does not include any of the following for the proceeding-

(a) …

(b) an exhibit;

(c) …"

[25] The applicant submitted that because the Civil Rules Committee had not made such an express disclaimer that an exhibit is not a "document in a court file" in the UCPR, this suggested that in the civil context, the position is not so clear, and it may be that an exhibit can be regarded as a document in a court file.[11]

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[11] Applicant's submissions at [5].

[26] I reject this submission primarily because it is incorrect as a matter of statutory interpretation. And in any event, r 57(2) of the Criminal Practice Rules is (at least on one view) consistent with a finding that an exhibit is also not a document in a court file in a civil proceeding. But ultimately the applicant's submission overlooks that the Criminal Practice Rules also expressly provide a process where a non-party such as the applicant can apply for a copy of an exhibit tendered at a criminal trial, both for publication and non-publication.[12] Currently no equivalent rule exists in the civil context.

[27] Finally, the applicant submitted that exhibits are within the class of documents contemplated by rr 980 and 981 UCPR because tendered documents come to be in the custody of an officer of the court having been impounded pursuant to s 133 of the Evidence Act. The applicant also submitted that the broad discretion under this section [s 133] "plainly" gives this court a power to allow the application to be granted.[13]

[28] Section 133 of the Evidence Act states as follows:

> "**133 Impounding documents**
> Where a document has been tendered or produced before a court, the court may, whether or not the document is admitted in evidence, <u>direct that the document shall be impounded</u> and kept in the custody of an officer of the court or of another person for such period and subject to such conditions as the court thinks fit." [Emphasis added]

[29] I reject the applicant's submissions that s 133 advances her case in either of the ways contended for or at all. First, s 133 of the Evidence Act contemplates a direction by the court that a document produced [including by tender] be kept in the custody of an officer of the court or other person, for such period and subject to such conditions as the court sees fit. It does not follow by corollary or otherwise that the court is then somehow empowered to release such a document to a third party. Secondly, there is nothing on a plain reading of this section that gives this court a separate or distinct power to make the orders sought by the applicant. Thirdly, the fact that s 133 refers to impounded documents sheds no light on what is meant by the phrase "document in a court file" in r 981 of the UCPR.

[30] It follows from the above, that I am not satisfied that:

(a) an exhibit is a document within the purview of either rr 980 r 981 UCPR; and

(b) the power to "impound" exhibits under s133 of the Evidence Act broadens the meaning of "a document filed under these rules" in r 980 or a "document in a court file" in r 981 to include an exhibit.

<u>*District Court Act & "Inherent" Power*</u>

[31] Section 68 of the *District Court of Queensland Act 1967* ('District Court Act') (which appears in part 5 of that Act) sets out the civil jurisdiction of the District Court to hear

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12 *Criminal Practice Rules 1999* (Qld) ss 56(2) and 56A.

13 The applicant cited not authority for this proposition and did not otherwise develop this submission.

and determine matters. This section does not include an express power to make orders allowing third parties to access, inspect or copy exhibits.

[32] Section 69 of the District Court Act sets out the powers of the District Court relevantly as follows:

69 Powers of District Court

(1) Subject to this Act and to the rules of court, the District Court has, for the purposes of exercising the jurisdiction conferred by this part, all the powers and authorities of the Supreme Court, including the powers and authorities conferred on the Supreme Court by an Act, and may in any proceeding in like manner and to like extent—

(a) grant such relief or remedy; and

(b make any order, including an order for attachment or committal in consequence of disobedience to an order; and

(c) give effect to every ground of defence or matter of set-off whether equitable or legal;

as may and ought to be done in like cases by a judge of the Supreme Court.

Example of power conferred on the Supreme Court by an Act—
the power of the Supreme Court under the *Land Title Act* 1994, section 127 (Removing a caveat) to order that a caveat be removed

(2) Without affecting the generality of subsection (1), the District Court shall, in any proceedings in which jurisdiction is conferred under this part, have power to grant relief—

(a) by way of a declaration of rights of the parties; and

(b) by way of injunction, whether interim, interlocutory or final, in the proceedings; and

(c) by staying the proceedings or part thereof; and

(d) by appointing a receiver including an interim receiver.

(3) …….

(4) The appropriate officer of the District Court shall, in addition to any duties otherwise imposed on the officer, discharge—

(a) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(b) any duty imposed on the officer by any order of the court.

(5) For the purposes of subsection (4) the appropriate officer of the District Court shall have the powers of the relevant officer of the Supreme Court.” [Emphasis added]

[33] The applicant submitted that “even if the existence of an inherent power in the District Court were to be doubted,”[14] s 69 of the District Court Act grants this court all the powers and authorities of the Supreme Court in its exercise of its civil jurisdiction [and thus empowers this court to make the order sought].

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[14] Applicant’s submissions filed 10 February 2020 [at 10].

[34] The applicant did not develop the concept of the "inherent power" of this court but it is not entirely accurate to describe this court as having a broad and general inherent power akin to that of the Supreme Court.[15] As an inferior court, the District Court has unlimited power over its own process and may order a stay to prevent an abuse of its process[16] but as a statutory inferior court, the more accurate articulation is to speak of the implied power of the court.[17] In *Basha v Basha*[18] the Queensland Court of Appeal held that the reference to "inherent" jurisdiction in the appellant's submissions should be understood as a reference to the "implied power of an inferior court to strike out a proceeding to prevent abuse of that court's process" or to the 'co-existence' of UCPR rr 5(4), 280 and 371 with both the Supreme Court's inherent jurisdiction and the District's court's powers under s 69(1), without resort to any concept of the inherent jurisdiction of the inferior court. [19]

[35] The issue of an implied power is discussed under that heading below. But otherwise I am not satisfied that any power to make the orders in this case can be derived from this courts general power over its own processes. In my view the orders sought are clearly matters of substance (the rights of non-parties to inspect and copy exhibits) - not process. But in any event such orders are not ancillary to or within the general powers discussed in the preceding paragraph.

[36] I accept that s 69 of the District Court Act grants this court all the powers and authorities of the Supreme Court for the purposes of exercising its civil jurisdiction, enabling it "in like manner and to like extent" to make any order a Supreme Court judge might in a similar proceeding.[20] I have been unable to identify any specific power under the *Supreme Court of Queensland Act 1991* ('Supreme Court Act') nor have I been referred to or ascertained a case on point where a judge in the Supreme Court has made the orders contemplated in this case.[21] But otherwise the applicant's submission overlook that this court's power under the District Court Act is qualified in two ways. First, there must be a matter in which the District Court has jurisdiction conferred by Part 5 of the District Court Act; and secondly the powers must be exercised for the purpose of exercising that jurisdiction. It follows that relief cannot be granted (even if there is a matter where the jurisdiction of the court has been properly invoked), unless that particular relief is for the purpose of exercising that jurisdiction.[22]

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15 *Rabvue P/L & Anor v Malcolm Douglas Consultants P/L & Ors* [2010] QDC 150 at 100 per Andrews SC DCJ.

16 *Steven v Trewin & van den Broek* [1968] Qd R 411 at [417]; see also *District Court of Queensland Act 1967* (Qld) s 69(2)(c).

17 *Basha v Basha* [2010] QCA 123 at [23] ('**Basha**'). See also the discussion by McGill SC DCJ in *Australia Meat Holdings Pty Ltd v Higgs* [2006] QDC 81 at [9] recognising that there is authority that all courts, including inferior courts, have an inherent jurisdiction to correct irregularities in their procedure, and for that purpose to set aside proceedings which are void or irregular: *Mason v Ryan* (1884) 10 VLR (L) 335 at 340; *Montes v Barclay Motors (Bodyworks) Pty Ltd* [1968] Qd R 556 at 560; *Champion v Fay* [1983] 2 Qd R 416 at 417.

18 [2010] QCA 123.

19 *Basha v Basha* [2010] QCA 123 at [23].

20 Ibid.

21 In *Caltabiano v Electoral Commission of Queensland & Anor (No.3)* [2009] QSC 186 referred to in paragraph 43 below the court did not consider the issue of access to exhibits by a non-party – only access to documents in a file under r 981 by such a party.

22 *Robertson v Australian Casualty & Life Ltd* [1992] QSC 45, per Derrington J at p 2.

[37] I accept that the jurisdiction of this court was properly invoked by the proceeding, but I am not satisfied that the making of orders allowing third parties access to exhibits is relief necessary for the purpose of exercising that jurisdiction.

[38] It is necessary then to consider whether there is power under any relevant rules of court.

Rules of Court

[39] Section 85 of the Supreme Court Act provides as follows:

85 Rule-making power

(1) The Governor in Council may make rules of court under this Act for—

(a) the practices and procedures of the Supreme Court, the District Court or the Magistrates Courts or their registries or another matter mentioned in schedule 1; or

(b) the admission of persons to the legal profession under the *Legal Profession Act 2007*, including fees relating to admission; or

(c) the assessment of costs for the *Legal Profession Act 2007*, part 3.4, division 7; or

(d) any law giving jurisdiction to the Supreme Court, the District Court or the Magistrates Courts, including a law of the Commonwealth.

Note—

See *the Magistrates Courts Act 1921*, section 57C, for the rules of court for a proceeding, other than an appeal, under the *Domestic and Family Violence Protection Act 2012*.

(2) A rule may only be made with the consent of the rules committee.

(3) Rules made under subsection (1)(b) may make provision of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of—

(a) the rules applying immediately before the commencement of the *Legal Profession Act 2004*, section 27 to the operation of that Act after the commencement; and

(b) other matters about admission dealt with under the *Legal Practitioners Act 1995* before the commencement of the *Legal Profession Act 2004*, section 27 to the operation of *Legal Profession Act 2004* after the commencement.

(4) Rules of court (other than rules for a matter mentioned in subsection (1)(b) or a matter relevant to criminal jurisdiction or criminal proceedings, other than proceedings in relation to contempt of court) are to be called the *Uniform Civil Procedure Rules*."

[40] It follows that the Supreme Court has the power to make rules regarding subject matter outlined in Schedule 1 of the Supreme Court Act. That Schedule sets out the subject matter for rules and in particular at s 27 provides as follows:

> "**27 Practice and procedure in criminal jurisdiction**
>
> Practice and procedure in the courts' criminal jurisdiction (including any appellate jurisdiction) generally, including, for example, the following—
>
> (a) forms for proceedings;
> (b) applications;
> (c) lawyers' and court's duties;
> (d) pre-trial matters, including, for example, subpoenas and pre-trial directions and rulings;
> (e) regulating trial proceedings;
> (f) evidence;
> (g) the custody and inspection of exhibits;
> (h) the recording of proceedings and access to the records;
> (i) appeals, including, appeals to the Court of Appeal and the District Court;
> (j) listing trials, sentences, applications and appeals for hearing, and setting hearing dates;
> (k) filing, receipt, service, issue or transmission electronically of forms and other documents and material for use in, or in connection with, proceedings, including, electronic representations or equivalents of seals, stamps and signatures and their validity."

[41] There is no equivalent to s 27(g) in Schedule 1 of the Supreme Court Act relating to the civil jurisdiction. Surprisingly (in my respectful view), there is also no specific rule empowering this court to make orders enabling non-party access to exhibits in civil proceedings such as exists in the criminal jurisdiction as discussed in paragraphs [24] to [26] of these Reasons.

[42] It follows from the above analysis that I am not satisfied that there is an express or inherent power in the District Court to grant a non-party access to exhibits tendered in civil proceedings.

Implied Power

[43] The applicant appeared to contend that it was necessary to consider whether this court may have some separate power at "common law" to permit non-party access to exhibits. [23] To the extent that this may have been the case, I reject such a notion. But I accept that the common law principles are relevant to the assessment of a power by

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[23] Paragraph 3 of the "Supplementary Outline of Submission on Behalf of the Applicant" dated 10 February 2020; Paragraph 5 of the Applicant's Submission filed 31 January 2020 referred to "the strength of the applicant's position at common law" making it unnecessary to advance an argument that an express power exists. The respondent's submissions [Further submission on behalf of the respondent dated 6 February 2020- filed 10 February 2020] submitted there was no jurisdiction under any rules of statute but then referred to "the applicant, at best, reliant upon the common law, which has long considered that the public does not have a right of access to exhibits."

necessary implication; and to the relevant considerations as to whether an order ought to be made if such a power exists.

[44] It is well established that, in addition to express powers conferred by statute, inferior courts "may have implied powers upon the basis that a grant of power carries with it the power to do everything necessary for its exercise."[24] In other words this court has such implied powers that are necessary in aid of the court's express jurisdiction[25] (for example, the way a particular witness gives evidence).

[45] In explaining what was meant by 'necessary' in *Grassby v R*, Dawson J held that:

> "Recognition of the existence of such powers will be called for whenever they are required for the effective exercise of a jurisdiction which is expressly conferred but will be confined to so much as can be derived by implication from statutory provisions conferring particular jurisdiction."[26] [Emphasis added]

[46] The test of 'necessary implication' was said by the majority in *Pelechowski v Registrar, Court of Appeal (NSW)* to be understood as follows:[27]

> "The term "necessary" in such a setting as this is to be understood in the sense given it by Pollock CB in *Attorney-General v Walker*, namely as identifying a power to make orders which are reasonably required or legally ancillary to the accomplishment of the specific remedies for enforcement provided in Div 4 of Pt 3 of the *District Court Act*. In this setting, the term "necessary" does not have the meaning of "essential"; rather it is to be "subjected to the touchstone of reasonableness." [citations omitted] [Emphasis added]

[47] However, in *John Fairfax Publications Pty Ltd v Ryde Local Court ('Ryde Local Court')*[28] the NSW Court of Appeal observed that such a test could be applied with "varying levels of strictness" according to the circumstances of each case,[29] with the limit being that "what is "reasonably necessary" cannot be stretched to encompass what is merely desirable or useful. It remains a test of necessity."[30] Chief Justice Spigelman's comments in *Ryde Local Court* are particularly apposite to the present case:

> "Where, as here, the implication is of a power which conflicts with the principle of open justice, the test of necessity must be applied with strictness. Accordingly, it is necessary to determine that the objective of ensuring the fairness of a subsequent trial cannot be achieved in any other way."[31] [Emphasis added]

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24 *Grassby v R* (1989) 87 ALR 618 at 628 per Dawson J.

25 *Grassby v R* (1989) 87 ALR 618 at 628; 168 CLR 1 at 17, cited in *Pelechowski v Registrar, Court of Appeal* (1999) 198 CLR 435 at [50].

26 *Grassby v R* (1989) 87 ALR 618 at 628 per Dawson J.

27 *Pelechowski v Registrar, Court of Appeal (NSW)* [1999] HCA 19 at [51].

28 (2005) NSWLR 512.

29 *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) NSWLR 512 at [40].

30 *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) NSWLR 512 at [44]-[45].

31 *John Fairfax Publications Pty Ltd v District Court of NSW* (2004) 61 NSWLR 344 per Spiegelman CJ at [51]; cited in *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) NSWLR 512 at [40].

[48] The application of this principle in practice can be contrasted in two cases: *Ryde Local Court* and *Herald and Weekly Times v Magistrates Court of Victoria*[32] ('*Herald & Weekly Times*').

[49] In *Ryde Local Court,* a non-party applicant sought to gain access to "all documents contained on the court record," in respect of a domestic violence proceeding, including the originating application and a medical certificate which had been tendered in court.[33] Despite the applicant placing considerable weight on the principle of open justice, the application was ultimately dismissed on the basis that:

> "The principle of open justice called for no more than that the existence of an apprehended violence order complaint and the existence of a consent order, together with the order made, be publicly available. Those facts and the order were made available. Nothing more was required to permit a fair and accurate report of what the court did."[34]

[50] In *Herald & Weekly Times,* several media organisations sought access to documents tendered during a hand-up committal, including witness statements and charge sheets. Crucially, the Chief Magistrate had issued some years earlier a non-binding Guide which contemplated the media having access to exhibits and other documents, and set out the circumstances in which those documents could be accessed ('the Papas guidelines'),[35] which was then replaced by a practice direction which required media companies to direct enquiries regarding access to brief and other material directly to the ODPP.[36] The Magistrate refused access, stating in his reasons that:

> "The interests of the public are best served in the maintenance of the openness of the processes of the court by public hearings and reportage on those proceedings. There are dangers to the public interest in allowing too deep a scrutiny of documents lodged with the Court if there is no firm control kept over such a procedure. Thirdly, I am of the opinion that in the present case that the fair trial of the defendants, if there is to be one, will be unfairly prejudiced by the release of the statements to be tendered, especially those statements made by various of the civilian witnesses. <u>It is interesting to note that the coverage given,</u> at least, in The Age for this day <u>does not indicate that the reporter responsible was under any particular difficulties in understanding the evidence and reporting on elements of the cross-examination</u>."[37] [emphasis added]

[51] The media organisations then sought, by way of originating application, an order from the Victorian Supreme Court quashing the decision of the Magistrate. That application was supported by "a number of affidavits sworn by experienced journalists whose evidence established that it was very difficult to understand the cross-examination of witnesses without being granted access to witness statements," and "that without such access it was difficult, if not impossible, to produce an accurate

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32 [1999] 3 VR 231.
33 *John Fairfax Publications Pty Ltd v Ryde Local Court* [2005] 62 NSWLR 512 at [8].
34 *John Fairfax Publications Pty Ltd v Ryde Local Court* [2005] 62 NSWLR 512 at [8].
35 *Herald and Weekly Times v Magistrates Court of Victoria* (2000) 2 VR 346 at [8].
36 *Herald and Weekly Times v Magistrates Court of Victoria* (2000) 2 VR 346 at [9].
37 *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 at 236 [12].

and balanced report [and] there was now a strong deterrent to the reporting of committal proceedings."[38]

[52] At first instance, Mandie J dismissed the application, noting that:

> "There are no doubt powerful public policy arguments for the provision of documentary access to the media and the public as I have already suggested, but an adequate and workable mechanism should be provided to deal with the problems by clear legislation or by rules of court and not by stretching the statutory language."[39]

[53] On appeal, the Court of Appeal took a different approach, finding that the Magistrate's power to grant access to documents was a necessary implication of the Papas guidelines, but otherwise dismissed the appeal on the basis that it was not necessary to make the declaration sought by the appellants:[40]

> "The fact that the magistrate is given no express power to permit such access does not, I think, necessitate the conclusion that the magistrate has no power to do so. It can only have been on the assumption that the magistrate's control of proceedings at a committal included a power to permit such access that the Papas guidelines were able to function at all."[41]

[54] In reaching their decision, the Court of Appeal placed great weight on both the existence of the Papas guidelines (and subsequent practice direction) which specifically contemplated the orders sought,[42] and the difficulties faced by reporters in accurately reporting committal proceedings.[43]

<u>Open Justice Principle</u>

[55] The applicant placed considerable reliance on the principle of "open justice" in support of her submission that this court has the power to make the orders sought. But this submission overlooks that the open justice principle is just that – a principle not a substantive right,[44] and there "is no common law right to obtain access to a document filed in proceedings and held as part of a court record."[45]

[56] The High Court made the following relevant observations in relation to the concept of "open justice" in *Hogan v Hinch*:[46]

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[38] *Herald and Weekly Times v Magistrates Court of Victoria* (2000) 2 VR 346 at [18] citing *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 at 237 [13].

[39] *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 at 249 [49].

[40] *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 at 361-2 [41].

[41] *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 at 361 [38].

[42] *Herald and Weekly Times v Magistrates Court of Victoria* (2000) 2 VR 346 at [8]-[9], [20], [38] and [42].

[43] Ibid at [7], [15] and [39].

[44] *John Fairfax Publications Pty Ltd v Ryde Local Court* [2005] 62 NSWLR 512 at [29].

[45] *John Fairfax Publications Pty Ltd v Ryde Local Court* [2005] 62 NSWLR 512 at [31], citing *R Lucas & Son (Nelson Mail) Ltd v O'Brien* [1978] 2 NZLR 289 at 305–307; *Dobson v Hastings* [1992] Ch 394 at 401–402; *Smith v Harris* [1996] 2 VR 335 at 347–350; *R v Clerk of Petty Sessions, Court of Petty Sessions Hobart; Ex parte Davies Brothers Ltd* (1998) 8 Tas R 283; and *Titelius v Public Service Appeal Board* (1999) 21 WAR 201 at 219 [74]–[88], 223 [99]; see also *Herald and Weekly Times v Magistrates Court of Victoria* [1999] 3 VR 231 AT 361 [40]..

[46] (2011) 243 CLR 506; [2011] HCA 4 at [20].

> "An essential character of courts is they sit in public. That principle is a means to an end, and not an end in itself. Its rationale is the benefit that flows from subjecting court proceedings to public and professional scrutiny. It is also critical to the maintenance of public confidence in the courts. Under the Constitution, courts capable of exercising the judicial power of the Commonwealth must at all times be and appear to be independent and impartial tribunals. The open court principle serves to maintain that standard. However, it is not absolute."[47] [Emphasis added]

[57] The authorities relied upon by both parties illustrated how various courts have applied principles of open justice to the issue of public or non-party access to a range of court documents but do not assist in determining the source of this court's power.

[58] For example: the applicant referred to the decision of Atkinson J in *Caltabiano v Electoral Commission of Queensland & Anor (No.3)*.[48] That case concerned an application that only the parties to the proceedings be permitted to inspect the court's file in the proceeding or take copies of documents contained in that file. The orders were not opposed by the parties. Ultimately, Atkinson J made orders that were more confined than those sought by the parties. The effect of her Honour's orders was to prevent non-parties from accessing specific documents on the court file which contained the private electoral information. The restriction was only granted because the "secrecy of a ballot is a fundamental constitutional rule of our democracy and ought not be threatened in any proceedings."[49] In this case Atkinson J relevantly observed as follows:[50]

> "This rule [r 981] is a very significant rule in the *Uniform Civil Procedure Rules* in that it gives practical effect to the important principle of openness of justice. It is critical to the operation of the courts in Queensland that the principle of open justice operates except where there is some other principle which requires that principle to be qualified or curtailed in some way.
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> …
>
> I've attempted to fashion an order which goes no further than it needs to go to give effect to the rule of open justice, qualified in proceedings of this type by the need to protect the secrecy of the ballot."[51] [Emphasis added]

[59] This application was made prior to the hearing of the substantive proceeding[52] and does not advance the applicant's case to the extent submitted. It is obviously

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47 On the facts in *Hogan*, there were good reasons to depart from open justice – suppression orders in criminal cases concerning sex offenders being found to be one such reason.

48 [2009] QSC 186.

49 *Caltabiano v Electoral Commission of Queensland & Anor (No.3)* [2009] QSC 186, page 1-4, ll 49-50.

50 Ibid, Page 1-3.

51 This further quote is at p 1-5.

52 The application under r 981 was heard in May 2009 and judgment delivered in June 2009; the substantive application was heard over 4 days in in August 2009 with judgment being delivered on 17 September 2009: see *Caltabiano v Electoral Commission of Queensland & Anor (No 4)* [2009] QSC 294.

distinguishable to the present facts most crucially because the material sought was contained within documents that were filed under the UCPR, and not exhibits tendered during a trial or hearing.

[60] The applicant also relied on a number of Federal Court authorities[53] including those set out by Steward J in *Deputy Commissioner of Taxation v Shi (No.2)*[54] (*'Shi'*). The facts of *Shi* are distinguishable from the present, because r 2.32(2) of the *Federal Court Rules* 2011 (Cth) gives a non-party an ability to inspect certain documents – but not affidavits. However, pursuant to r 2.32(4), a non-party may seek from the court, leave to inspect a document that the person is otherwise not entitled to inspect. In that case, the court accepted that where an affidavit had been read in open court and used and deployed ordinarily, the court would grant access to it by a third party. This recognised, as an example of open justice, that it would enable members of the public to see why and how the court has disposed of matters before it.[55]

[61] These observations are consistent too with those of French CJ said in *Hogan v Hinch*[56] as follows:[57]

> "It is a common law corollary of the open-court principle that, absent any restriction ordered by the court, anybody may publish a fair and accurate report of the proceedings, including the names of the parties and witnesses, and the evidence, testimonial, documentary or physical that has been given in the proceeding."

[62] This approach is contrary to that of the English Court of Appeal in *GI Personal Investments Services Ltd v Liverpool and London Steamship Protection and Indemnity Association Limited & Others*.[58] That decision concerned whether a non-party could access the written submissions of the parties because it would assist in other litigation – and not for media purposes. Ultimately, in granting access to the submissions, the Court of Appeal made the following relevant observations:[59]

> "So far as concerns documents which form part of the evidence or court bundles, there has historically been no right, and there is currently no provision, which enables a member of the public present in court to see, examine or copy a document simply on the basis that it has been referred to in court or read by the Judge. If and insofar as it may be read out it will 'enter the public domain' in the sense already referred to, and a member of the press or public may quote what is read out, but the right of access to it for purposes of further use or information depends upon that person's ability to obtain a copy of the

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53 For example: *Seven Network Limited v News Limited (No.9)* [2005] FCA 1394.

54 [2019] FCA 503 at [13]-[26].

55 *Deputy Commissioner of Taxation v Hawkins* [2016] FCA 164; (2016) 341 ALR 255 at [7] and [9]; *ACCC v Abb Transmission and Distribution* [2002] FCA 609.

56 (2011) 243 CLR 506 at 532.

57 It is necessary to observe that *Hogan v Hinch* concerned breaches of suppression orders and whether such orders (restraining access to material) were unconstitutional. They were found not to be. The question in the present matter is not whether access ought to be restricted, but whether the court has a power to grant access in the first place.

58 [1999] 1 WLR 984 CA; This decision was referred to by the respondent.

59 *GI Personal Investments Services Ltd v Liverpool and London Steamship Protection and Indemnity Association Limited & others* [1999] 1 WLR 984 CA p 995 at [F].

document from one of the parties or by other lawful means. There is no provision by which the court may, regardless of the wishes of the parties to the litigation, make such a document available to a member of the public. Nor, so far as documents are concerned, do I consider that any recent development in court procedures justifies the court contemplating such an exercise under its inherent jurisdiction". [Emphasis added]

[63] The applicant referred to the decision of *Police v Baden-Clay*[60] ('*Bayden-Clay'*), and submitted the (then) Queensland Chief Magistrate found that a magistrate conducting a committal hearing had power "at common law" to permit the media over objection, to inspect and copy a photograph in exhibit. But it is more correct to say that in the absence of an express power, the Chief Magistrate found that it was necessary to find an implied power to grant access to exhibits because:[61]

"Where cross-examination relies on documentary exhibits it may well be necessary for the media to access those exhibits in order to make a fair and accurate report of that cross-examination. I so find in this case." [62] [Emphasis added]

[64] That finding is consistent with the authorities discussed above, which establish that an implied power will only "be called for"[63] if it is "reasonably necessary in the circumstances of the case."[64]

[65] In the present case, Senior Counsel for the applicant accepted that there had been "no complaint" as to the fairness or accuracy of the current reporting of the matter. Indeed, the affidavit by Ms Carson in support of her application does not identify any particular difficulty faced by her or any of her colleagues in preparing an accurate report of the case. The evidence (as demonstrated by the earlier newspaper articles about this case exhibited to the affidavit) was that the applicant and other journalists had no difficultly in providing readers with a detailed coverage of the trial and the issues in the proceedings. Further, journalists were present in court for most if not all of the trial, and no application to inspect or copy exhibits was made at that time.

[66] Whilst I accept that it may be desirable or useful to have "access" to the exhibits as sought by the application for further reports, I am not satisfied that granting access is "necessary" to the requisite standard for the applicant to provide a fair and accurate report of the proceeding (including my recent judgment).

[67] I am also not satisfied that in the circumstances of this case, the implication of such is power is reasonably necessary or legally ancillary for the effective exercise of a

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[60] [2013] QMC 6 per Butler SC, CM.

[61] At the time, rule 56A of the *Criminal Practice Rules* was in full force and effect, but was not applicable to committal proceedings because of the Act's definition of "trial" for the purposes of rule 56A. But that definition was amended 3 months after the decision was handed down, such that now Magistrates hearing committal hearings do have an express power to grant access pursuant to the *Criminal Practice Rules*.

[62] *Police v Baden-Clay* [2013] QMC 6 at [40] per Butler SC, CM.

[63] *Grassby v R* (1989) 87 ALR 618 at 628 per Dawson J.

[64] *Attorney-General v Walker* (1849) 3 Ex 242 at 25, cited in *Pelechowski v Registrar, Court of Appeal (NSW)* (1999) 198 CLR 435 and *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) 62 NSWLR 512 at [44].

jurisdiction which is expressly conferred on this court under the District Court Act or the UCPR.

[68] It follows that I am not satisfied that I have the power, either express, implied or otherwise to make the orders sought.

Discretion to Grant Access

[69] If I am wrong and such a power exists either expressly or by implication, it is necessary to consider whether or not orders allowing the inspection and copies of exhibits in this case ought to be granted. In exercising the discretion, the authorities establish, and I accept, that considerable weight should be given to:

(a) the principle of open justice; and

(b) whether a particular exhibit has been "deployed" in the proceedings;[65] and

(c) whether there are any genuine and legitimate concerns about confidentiality.[66]

[70] As stated earlier, I have published detailed reasons [550 paragraphs over 130 pages] setting out the basis of my findings in this case.[67] Bearing in mind the principles identified above, the following matters are instructive to the exercise of my discretion:

(a) the court's judgment is publicly accessible. It outlines in some detail the court's reasoning and the evidence relevant to the court's decision;

(b) the trial of this proceeding was open to and attended almost on a daily basis by various representatives of the media – including the applicant. The proceedings were closely reported on by the applicant throughout the trial without any access to the exhibits. No such application was made during the course of the trial;

(c) copies of the exhibits are not necessary in order to scrutinise or understand the written judgment;

(d) the further articles sought to be written by the applicant will not be advanced or assisted by the provision of the exhibits.

[71] It is useful to consider some of the individual exhibits.

[72] It is reasonable to infer, as I do, that the exhibits that the applicant is most interested in obtaining are exhibits 18, 19 and 35. These are also the exhibits the respondent is the most concerned about the applicant having access to. These exhibits are the letters from the Education Department to the respondent concerning allegations of misconduct made against her, her suspension pending investigation and her subsequent reinstatement as principal. Exhibits 18 and 19 contain serious allegations against the respondent which led to her suspension but most crucially and as reflected in exhibit 35, the allegations were not substantiated and the respondent was reinstated.

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65 *Deputy Commissioner of Taxation v Shi (No.2)* [2019] FCA 503 at [23].

66 *Caltabiano v Electoral Commission of Queensland & Anor (No.3)* [2009] QSC 186; See also *British American Tobacco Australia Services Ltd v Cowell* (2003) 8 VR 571; *Velocity Frequent Flyer Pty Ltd v BP Australia Ltd* [2019] QSC 29; *Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd (No 4)* [2010] NSWLEC 91.

67 *Brose v Baluskas & Ors (No 6)* [2020] QDC 15.

These exhibits contain matters of a confidential and sensitive nature. They were admitted into evidence on the basis that their contents were relevant to the respondent's subjective evidence of the hurt and distress she was experiencing at the time being caused mainly or solely by the online publications of the defendants.

[73] Given the specific and confined relevance of these exhibits is not necessary for open justice to be achieved that the contents of these documents be disclosed to understand how and why my findings in relation to the respondent's hurt and distress were made. It follows that I accept the applicant's submissions that third party media access to these documents is not necessary to fairly report on the trial or to scrutinise the judicial process.

[74] Exhibits 7 to 11, 21, 22, 26, 28, 41-44, 46-48 relate to former students of the school. Some parts of these exhibits contained detailed private information about vulnerable young people and the publication of these exhibits would, in my view, be most distressing to those who are their subject. Most relevantly, they were ultimately neither determinative of any issue nor deployed in my judgment. It follows that I am not satisfied it is necessary to the principle of open justice for these exhibits to be widely or publicly distributed.

[75] The terms of settlement between the respondent and other defendants (exhibits 29-32) two of which (exhibits 31 and 33) are expressed to be confidential. These documents were admitted on the basis that such settlements are a relevant factor in mitigation under the *Defamation Act* 2005 (Qld). The relevant details of each of the settlements are set out in my judgment. It is not necessary for the attainment of open justice or otherwise that access to these documents be provided to the applicant.

[76] Overall, I am not satisfied that the interests of justice warrant any of the exhibits in this case being made available to the applicant for inspection and copying. In reaching this conclusion, I have also considered that some of the exhibits (for example, the newspaper articles) are otherwise accessible. But I am not persuaded that it is necessary to make a separate order for the inspection and copying of these exhibits.

Order

[77] I therefore order that the application is dismissed.

[78] Given the outcome, my current view is that costs ought to follow the event so that the appropriate order as to costs is that the applicant ought to pay the respondent's costs of the application. But if another order as to costs is sought, I will allow the parties until 4.00pm Friday 5 June 2020, to provide short written submissions of no more than 2 pages which should be emailed to my Associate. Otherwise the cost order will be as foreshadowed.