

Group Briefing

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Media can now access court records

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From 1 August 2018, the media will have access to documents opened in an Irish court, or taken to have been opened in an Irish court. This is a welcome development for the media and has been implemented to facilitate the fair and accurate reporting of court hearings. Parties should be aware that this potentially means that documents filed in proceedings which might make reference to commercially sensitive and/or confidential information may be accessed by the media even if that content has not necessarily been read out in court.

There has been no change to the rules on non-party access to court documents.

OPENED IN COURT

If legal proceedings progress to hearing, or if there is an interlocutory motion, certain documents will be opened in court i.e., they will be read into the court record. The documents may not necessarily be read word for word, beginning to end. A document may be taken to have been opened in open court where, for example, reference is made in court to relevant passages from the document and some of the passages are read in part or in full, or where the judge has read the document in advance and has indicated that he/she is treating it as having been opened in court.

MEDIA ACCESS

The media have always had the right to report what was said in open court (subject to limited exceptions), but they have not until now had a specific right to access documents referred to in open court.

Now bona fide members of the press or broadcast media may request that information contained in a court record be disclosed to them for the purpose of facilitating the fair and accurate reporting of a court hearing. This means that they may:

- » inspect the court record under the supervision of an officer of the court or Courts Service personnel; or
- » take a copy of a document forming part of the court record on the undertaking that they will return the copy once they have finished reporting on the hearing; or
- » be given a press release or other information (orally or in writing) by an officer of the court or by Courts Service personnel concerning the proceedings.

The member of the media seeking access will have to verify that he/she is a bona fide member of the press or broadcast media.

Restrictions on the reporting of certain

types of court case (e.g. cases heard in private) will continue in place and the court may in appropriate circumstances place specific restrictions on what the media may report.

The Courts Service is expected to publish guidelines on this new right of access before the beginning of the new legal term in October.

ACCESS TO COURT RECORDS BY NON-PARTIES

In theory at least, non-parties have a right to access documents opened in court. In Allied Irish Bank plc v Tracey (No2) the High Court held that non-parties to court proceedings are entitled to access documents which have been freely opened in court and which are not subject to any reporting or other restrictions. The Court said this is “simply part and parcel” of the requirement, set out in the Irish Constitution, that justice be administered in public.

However, there is currently no easy way to exercise this right. In practice the

Central Office of the High Court does not allow non-party access to documents opened in court, unless the person seeking access has a letter of consent from the parties to the proceedings. Absent the parties’ consent, it appears that the only way to access court documents opened in court is to make an application to the judge who dealt with the proceedings.

COURT DOCUMENTS THAT ARE FREELY ACCESSIBLE

Judgments of the Irish superior courts are ordinarily published on the website of the Courts Service, except in respect of cases heard in private or cases subject to reporting restrictions. The judgments can be accessed free of charge.

In respect of High Court cases only, a freely accessible database allows anyone to view the list of documents which have been filed in a particular case. However, this database does not provide access to the actual documents filed.

In Supreme Court cases only, it is possible to obtain a copy of the written

submissions of counsel on payment of a small fee once the relevant appeal has commenced. Where the submissions contain information the publication of which is prohibited by law or court order, the parties must provide the court registrar with a redacted copy of the submissions. However, the parties do not have an automatic entitlement to redact information which they simply do not want published to the world at large, e.g. commercially sensitive or confidential information.

Also when the Supreme Court has decided an application for leave to appeal, the appellant’s Application for Leave and the Respondent’s Notice are published on the website of the Courts Service, together with the determination of the Supreme Court. As in the case of written submissions, if either document contains information the publication of which is prohibited by law or by court order, the relevant party must provide the court registrar with a redacted version of the document.

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