

JESSE SLANKARD

**JURY SECRECY, CONTEMPT OF COURT AND
APPELLATE REVIEW**

**LLM RESEARCH PAPER
LAWS 549: LAW OF CONTEMPT**



2017

Contents

I	INTRODUCTION	3
II	PART ONE: JURY TRIALS AND SECRECY	4
	A The right to trial by jury	4
	B The jury secrecy rule	5
	C The rule in New Zealand	7
	D The Law Commission’s proposal to codify the rule	9
III	PART TWO: EXCEPTIONS TO SECRECY AND APPELLATE REVIEW	12
	A Misconduct undermining fairness	12
	B Appellate review of juror misconduct in New Zealand	14
	1 Matters intrinsic to deliberations	15
	2 Matters extrinsic to deliberations	16
	3 Exceptional circumstances	18
	C Issues arising	18
IV	PART THREE: THE LAW IN ENGLAND AND WALES	18
	A Section 8 of the Contempt of Court Act 1981	19
	B Reform of s 8	20
	C Sections 20D to 20G of the Juries Act 1974	21
	D Practice Directions	22
V	PART FOUR: REFORM IN NEW ZEALAND	23
VI	CONCLUSION	24

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 7,419 words.

I Introduction

In stark contrast to the transparency of most procedures characteristic of the justice system, decisions by juries are made in private and the reasons for their decisions are kept secret. The jury secrecy rule is considered essential to the proper administration of justice in the context of trial by jury.

This paper is focused on the application of the rule after the delivery of the jury's verdict and the impact of the rule on investigations into allegations of juror misconduct. It responds to the recent suggestion from the New Zealand Law Commission that a statutory offence applying to persons who disclose matters relating to jury deliberations be established and with a corresponding defence that would allow disclosure after delivery of the jury's verdict in circumstances where juror misconduct may have resulted in a miscarriage of justice.¹

The first part provides an overview of the law relating to jury trials in New Zealand and the jury secrecy rule. It points out that there is no statutory prohibition on jurors speaking out about their deliberations after the verdict is delivered. While the High Court's decision in *Solicitor-General v Radio New Zealand Ltd* establishes that it is likely a contempt of court for persons to approach jurors to elicit information about their deliberations and/or to publish that information, the position in respect of jurors is not clear.²

The second part sets out the exceptions to the jury secrecy rule that allow the appellate court to direct investigations into allegations of juror misconduct and to hear evidence about misconduct on appeal. As it stands, there is a concerning lack of clarity around the obligations and liabilities of jurors and practitioners in this area. Establishing a statutory offence prohibiting disclosure of jury deliberations would add much needed certainty for jurors, practitioners and the courts. It would also secure the interests protected by the jury secrecy rule.

The third part describes the law in England and Wales, where recent reforms have put in place detailed exceptions to the rule that enable investigations into allegations of juror misconduct which may have resulted in a miscarriage of justice.

The final part suggests a similar regime should be established in New Zealand. In the author's view a specific and relatively narrow avenue of complaint for jurors, consistent

¹ New Zealand Law Commission *Contempt in Modern New Zealand* (IP36, Wellington, 2014).

² *Solicitor-General v Radio New Zealand Ltd* [1994] 1 NZLR 48, (1993) 10 CRNZ 641.

with the recent reforms in England and Wales, ought to be included in any statutory offence prohibiting disclosure of jury deliberations.

II Part One: jury trials and secrecy

A The right to trial by jury

In New Zealand, defendants in criminal trials have the right to elect trial by jury for any offence that is punishable by two years or more.³ A jury trial can be elected in certain civil cases too,⁴ however, records suggest this course is rarely taken.⁵ Where elected, juries are empaneled from a list comprised of randomly selected members of the community.⁶ At the commencement of the trial, jurors are asked to swear an oath or affirmation in the following terms:⁷

Do each of you swear by Almighty God (or solemnly, sincerely, and truly declare and affirm) that you will try the case before you to the best of your ability and give your verdict according to the evidence?

Having sworn or affirmed the oath, the jury goes on to perform the role of fact-finder. In a criminal trial, the group of 12 men and women apply their collective common sense to determine whether the evidence presented in court establishes that the defendant is guilty of a particular offence. There is a practical utility in all of this in that the jury brings “a diversity of life experiences and knowledge to criminal proceedings which judges may lack”.⁸ In addition, trial by jury carries a significant symbolic value for democratic societies.⁹ The jury acts as the conscience of the community and provides a safeguard against the powers of the state.¹⁰ For example, Lord Devlin likened it to a “little parliament” and stated that “trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives”.¹¹

³ New Zealand Bill of Rights Act 1990, s 24(e).

⁴ See ss 19A and 19B of the Judicature Act 1908.

⁵ New Zealand Law Commission *Review of the Judicature Act 1908* (IP29, Wellington, 2012) at [9.12].

⁶ See s 9(3) of the Juries Act 1981.

⁷ Jury Rules 1990, Form 2.

⁸ New Zealand Law Commission *Juries in Criminal Trials Part One: A discussion paper* (PP32, Wellington, 1998) at 13.

⁹ *Ibid*, at 12.

¹⁰ *Ibid*.

¹¹ Lord Devlin *Trial by Jury* (Stevens & Sons, London, 1956).

It is essential, therefore, that juries are able to deliberate and decide cases free of improper influence. The common law has long sought to ensure jurors remain anonymous, deliberate in private and that the content of the jury's deliberations is kept secret.¹²

B The jury secrecy rule

It is a longstanding rule that the secrecy of the jury room is regarded as inviolate.¹³ In general, the rule prohibits disclosure of matters relating to the jury's deliberations both during the trial and after delivery of the verdict. As explained in the introduction, the focus of this paper is on the application of the rule after the delivery of the verdict.¹⁴

The rule can be traced back to the English case of *Vaise v Delaval*,¹⁵ decided in 1785. The case involved an affidavit from a juror in a recently concluded trial that alleged the jury had tossed a coin to determine its verdict. Lord Mansfield rejected the evidence stating "the Court cannot receive such an affidavit from any of the jurymen themselves, in all of whom such conduct is a very high misdemeanour".¹⁶ The rationale at the time was that the rule would protect the jurors from self-incrimination.¹⁷

The courts have since identified other justifications for the rule. In the 1922 decision in *Ellis v Deheer* Lord Atkin held that evidence from a juror about their deliberations is inadmissible for two reasons: first, "to secure the finality of decisions arrived at by the jury";¹⁸ and second "to protect the jurymen themselves and prevent them being exposed to

¹² See The Honourable Murray Gleeson *The Secrecy of Jury Deliberations* [1996] 1 Newcastle L Rev 1.

¹³ Arlidge, Eady and Smith *On Contempt* (4th ed, Seet & Maxwell, London, 2011) at [11-355]; see *Ellis v Deheer* [1922] 2 KB 113. See also John Rosshirt "Evidence: admissibility of jurors' affidavits to impeach jury verdict" (1956) 31 Notre Dame L Rev 484; and Enid Campbell "Jury Secrecy and Contempt of Court" (1985) 11 Monash Law Rev 169.

¹⁴ For a discussion of the application of the rule during the course of trial see United Kingdom Law Commission *Contempt of Court (1): Juror Misconduct and Internet Publications* (No 340, 2013) at [4.28]; see also Enid Campbell "Jury Secrecy and Contempt of Court" (1985) 11 Monash Law Rev 169.

¹⁵ *Vaise v Delaval* (1785) 99 ER 944.

¹⁶ *Ibid*: cited in John Rosshirt, above n 13, at 484.

¹⁷ See *R v Mizra (Shabbir Ali)* [2004] 1 AC 1118 at [95]; and *R v Pan; R v Sawyer* [2001] 2 SCR 344 at [49].

¹⁸ *Ellis v Deheer*, above n 13, at 121.

pressure to explain the reasons which actuated them arriving at their verdict”.¹⁹ In *R v Young* the Court explained:²⁰

To give the court power, after verdict, to inquire into those deliberations, would force the door of the jury room wide open. If one dissident juror or sharp-eared bailiff alleged irregularities in the jury room, the court would be pressed to inquire into the jury’s deliberations.

Such an inquiry would cut to the heart of the jury system which depends on open and frank discussion between twelve people in the secrecy of the jury room.²¹ To achieve that, jurors must be confident their opinions will not be shared with the outside world²² and the rule has oft been described as essential to the proper administration of justice in this context.²³

On the other hand, commentators have noted that the rule contrasts with ordinary procedures characteristic of the administration of justice: where public scrutiny and accountability promote good decision making and acceptance by the parties and the public of the result.²⁴ For example, Baldwin and McConville described it as “absurd” that:²⁵

12 individuals, often with no prior contact with the courts are chosen at random to listen to evidence (sometimes of a highly technical nature) and to decide upon matters affecting the reputation and liberty of those charged with criminal offences. They are given no training for this task, they deliberate in secret, they return a verdict without giving reasons, and they are responsible to their own conscious but to no one else.

By preventing subsequent inquiry into this process, any misconduct or mistake that may have occurred is unlikely to be detected. The result is twofold: the rule has the potential to do harm by preserving a possible miscarriage of justice: and, putting aside its symbolic value, it is difficult to measure the efficacy of the jury system.²⁶ Thus, in 1965 the England

¹⁹ Ibid.

²⁰ *R v Young* [1995] QB 324 at 330.

²¹ New Zealand Law Commission *Contempt in Modern New Zealand* (IP36, Wellington, 2014) at [5.65]-[5.68]. See also *Solicitor-General v Radio New Zealand Ltd*, above n 2; *R v Papaodopoulos* [1979] 1 NZLR 621; *Prothonary v Jackson* [1976] 2 NSWLR 457; *Attorney-General v Seckerson* [2009] EWHC1023 (Admin), [2009] EMLR 20; *R v Mizra*, above n 17; *R v Pan*, above n 17; *McDonald v Pless* [1915] 238 US 264.

²² Ibid.

²³ Ibid.

²⁴ See Gleeson, above n 12.

²⁵ John Baldwin and Michael McConville *Jury Trials* (Clarendon Press, Oxford, 1979) at 1.

²⁶ Although there has been the occasional research into jury trials, including: Warren Young and others *Jury Trials in New Zealand: a survey of jurors* (Wellington, 1999).

and Wales Departmental Committee on Jury Service reported: “it is impossible to make a proper assessment of the merits of trial by jury in the absence of the adequate knowledge of what does happen when the jury retires”.²⁷

In any event, the courts have decided the interests protected by the rule outweigh its potential for damage. For example, in *McDonald v Pless*, the Supreme Court of the United States described its application as “the lesser of two evils”, stating that the court is often forced to choose between redressing potential injury to a litigant and “inflicting the public injury which would result if jurors were permitted to testify as to what happened in the jury room”.²⁸

As it stands, England and Wales,²⁹ Canada³⁰ and various Australian states³¹ have legislated to make it a criminal offence for any person to disclose details relating to jury deliberations. In New Zealand, enforcement of the rule is left in the hands of the courts and the inherent power to punish, through contempt of court, conduct which risks undermining the administration of justice.

C The rule in New Zealand

It is not a statutory offence in New Zealand for any person to disclose matters discussed in the jury room. In fact, there is no statutory prohibition in relation to such conduct. The closest provision is s 29B of the Juries Act 1981 which falls well short of providing the jury system with the type of protection discussed above:

29B Retirement and non-communication

...

- (4) After retiring to consider their verdict and until returning a verdict or being discharged, the jurors must not discuss the case except in the course of their deliberations.

²⁷ See *The Report of the Departmental Committee on Jury Service* (Cmnd 2627, London, 1965) at [355].

²⁸ *McDonald v Pless*, above n 21.

²⁹ See the Juries Act 1974 (E&W) s 20D.

³⁰ See the Criminal Code RSC 1985 (CAN), s 649.

³¹ See, for example, the Jury Act 1977 (NSW), ss 68A-68B. Although this provision provides much wider scope for disclosure of jury deliberations after the verdict. See Jennifer Tunna “Contempt of Court: divulging the confidences of the jury room” [2003] *Canterbury L Rev* 3. In contrast, in Victoria ss 77 and 78 of the Juries Act 2000 (VIC) prohibit disclosure of deliberations but also provide a detailed list of exceptions to this prohibition.

The provision is poorly worded insofar as it implies that the prohibition on jurors discussing the case ends with the delivery of the verdict.

Fortunately, the jury secrecy rule and its enforcement was thoroughly reviewed by the High Court in *Solicitor-General v Radio New Zealand Ltd.*³² The case concerned publication of statements made by jurors to a Radio New Zealand reporter about their involvement in the 1990 trial that resulted in David Tamihere's conviction for the murder of two Swedish backpackers. The issue was whether Radio New Zealand had committed a contempt of court by, first, approaching the jurors and, second, publishing their comments. At the time of the trial the bodies of the victims had not been found and there was much attention from the media. When, around a year later, a victim's body was found, a reporter from Radio New Zealand contacted and interviewed members of the jury in the case and broadcasted the interviews to a national audience.³³ It was never revealed how Radio New Zealand obtained details of the jurors' identities.³⁴ Most of the jurors were annoyed by the reporter's approach, and two contacted the police. However, at least one "the ninth juror" spoke at length about the trial and was quoted as saying, inter alia, that he had had second thoughts about the verdict.³⁵

Radio New Zealand's conduct was inconsistent with the jury secrecy rule.³⁶ The Court echoed the concerns listed above: that breach of the rule threatened the administration of justice in that it undermined "finality of the jury's verdict, candour, and full participation in jury deliberations, and the privacy of jurors".³⁷ In relation to the last point, it elaborated:³⁸

The privacy of jurors is an equally important consideration...generally jurors serve in the impression their privacy will be respected and their identity remain undisclosed; that they will not be interviewed about their deliberations not called upon to explain their verdict.

The Court considered it "beyond argument that conduct which may undermine the jury system or public confidence in it is capable of constituting contempt".³⁹ There are two elements to the offence of contempt in this context. The first is that there must be a real

³² *Solicitor-General v Radio New Zealand Ltd*, above n 2.

³³ *Ibid*, at 643.

³⁴ The Court noted that notwithstanding a few exceptions the jury list is to be kept confidential as per s 9(6) of the Juries Act 1981.

³⁵ *Ibid*, at 644.

³⁶ *Ibid*, at 645.

³⁷ *Ibid*, at 646.

³⁸ *Ibid*, at 647.

³⁹ *Ibid*, at 647.

risk, as distinct from a remote possibility, that the alleged conduct will undermine public confidence in the administration of justice.⁴⁰ Where the conduct involves publication of information, relevant factors include the statements published, the timing of their publication, the size of the audience reached, and the likely nature, impact and duration of their influence.⁴¹ The second element of the offence is that the defendant must have knowingly engaged in the conduct or be responsible for it. But there is no requirement that the defendant intended to undermine public confidence in the administration of justice.⁴²

The Court found that Radio New Zealand was in contempt of court on two occasions. First, when it approached the jurors to elicit information about the deliberations and the reasons for the verdict. Radio New Zealand had breached the jurors' privacy. There was a real risk that such behaviour could result in reluctance to carry out the role, weaken public confidence in the system and ultimately lead to its demise.⁴³ The second contempt of court occurred when Radio New Zealand published the jurors' comments. This was a clear breach of the jury secrecy rule. While the publication revealed little about the deliberation process, it occurred on a number of occasions and reached a wide audience.⁴⁴

The decision in *Radio New Zealand Ltd* establishes that it is likely a contempt of court to approach a juror to elicit information about jury deliberations or to publish information obtained from a juror about those deliberations.⁴⁵ Because the jurors themselves weren't charged with any offense it remains unclear whether they too are liable for contempt of court if they speak out about their deliberations.⁴⁶

D The Law Commission's proposal to codify the rule

In 2014, New Zealand's Law Commission reviewed the law of contempt in New Zealand. Among the issues identified were the lack of clarity surrounding the jury secrecy rule and its enforcement through contempt of court.⁴⁷

⁴⁰ Ibid, at 648. See also *Solicitor-General v Radio Avon Ltd* [1978] 1 NZLR 225.

⁴¹ Ibid, at 649. See also *Hinch v Attorney-General* 1987 VR 721.

⁴² Ibid, at 648.

⁴³ Ibid, at 650.

⁴⁴ Ibid.

⁴⁵ John Burrows and Ursula Cheer *Media Law in New Zealand* (6th edition, Lexis Nexis, Wellington, 2010) at 580.

⁴⁶ New Zealand Law Commission *Contempt in Modern New Zealand*, above n 1.

⁴⁷ Ibid, at Chapter 5.

The Commission pointed out that a juror who discusses their deliberations in breach of a direction not to do so could be guilty of an offence under s 365(1)(c) of the Criminal Procedure Act 2011.⁴⁸ Section 365(1)(c) makes it a contempt of court where any person “willfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings”. In that case a finding of contempt of court would depend on whether the direction was given at all and its terms. Moreover, the provision is unlikely to apply after the completion of the trial.⁴⁹

To better understand the size of the problem, the Commission went on to identify the occasions on which the jury secrecy rule has been breached in New Zealand. It referred to “a few cases” in which jurors have made disclosures to the media, including following the retrial of David Bain in 2009.⁵⁰ Shortly after Mr Bain’s acquittal, an article in the New Zealand Herald recorded that a juror in the trial approached the media to share her experience. The article was careful to note that the juror would not disclose the jury’s deliberations or the reasons for her decision and its content was limited to discussing the pressure the juror was under as a result of the trial’s publicity.⁵¹ To date, no juror in New Zealand has been charged with contempt of court for disclosing matters relating to their role.

This is not the case in other jurisdictions. For example, in recent years the England and Wales courts have jailed two jurors for contempt of court following disclosures made on social media. In 2011, Joanne Frail was imprisoned for eight months after she, while serving as a juror, communicated with the defendant on Facebook.⁵² In 2013, Kasim Davey was jailed for two months for declaring on Facebook that he wanted to “fuck up a paedophile” after learning he would be serving on a trial involving allegations of sexual offending.⁵³ The Crown Prosecution Service in England and Wales has emphasized that

⁴⁸ Ibid, at [5.58].

⁴⁹ Ibid.

⁵⁰ See an article published by the New Zealand Herald entitled “Bain Juror: we were hounded” (10 January 2017) <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10576894>; See also an article published by Stuff entitled “Jurors stand by their disputed cruelty verdict” (10 January 2017) <<http://www.stuff.co.nz/national/4814205/Jurors-stand-by-their-disputed-cruelty-verdict>>.

⁵¹ Ibid.

⁵² *Attorney General v Frail* [2011] EWHC 1629.

⁵³ *Attorney General v Davey* [2013] EWHC 2317. Other recent examples of jurors taking to social media include an Australian juror, involved in the high-profile murder trial of Gable Tostee, posting about the trial on Instagram. Although there was no prosecution in that case. See an article published by the Guardian entitled “‘Happy Hump day!’ The Instagram post that nearly aborted the tinder murder trial” (10 January 2017)

“given the potential damage to the administration of justice that arises from the commission of these offences, there is an expectation that these offences will be prosecuted”.⁵⁴

Moreover, commentators have noted that social media presents a unique challenge to the administration of justice in this context in that it allows jurors to broadcast their deliberations online, instantly connecting with a large community of friends and followers.⁵⁵ The Commission was aware of the challenges presented by social media and noted that it is important not to be “unduly complacent” in this regard.⁵⁶

In the author’s view, a statutory offence prohibiting disclosure of jury deliberations, along the lines of the offence described in *Radio New Zealand Ltd*, would usefully clarify the law relating to disclosure of jury deliberations. As discussed in the remaining parts of this paper, it is essential that the offence contain an exception that would allow disclosure after the delivery of the verdict for the purpose of investigating allegations of juror misconduct.⁵⁷

The Commission was careful to explain that if a statutory offence is established it would need to include an exception for “disclosure in the interests of justice where there has been some irregularity, such as juror misconduct during deliberations, to avoid what is potentially a miscarriage of justice”.⁵⁸ The Commission put forward two options for reform:⁵⁹

- follow the United Kingdom approach and provide a specific and relatively narrow avenue of complaint for a juror; or
- take a broader approach and provide a general public interest defence. This option might be preferred on the basis that a complaint to an official body will not always be enough and that public and media scrutiny may be

<<https://www.theguardian.com/media/2016/oct/21/happy-hump-day-the-instagram-post-that-nearly-forced-a-mistrial-in-the-tinder-trial>>.

⁵⁴ See The Crown Prosecution Service (10 January 2017)

<http://www.cps.gov.uk/legal/h_to_k/juror_misconduct_offences/>.

⁵⁵ See United Kingdom Law Commission *Contempt of Court (1): Juror Misconduct and Internet Publications*, above n 14, at 92; ATH Smith “Repositioning the Law of Contempt: The Criminal Justice and Courts Act 2015 (2015) 11 The Criminal Law Rev 845; Brian Fitzgerald, and others “web2.0 social networking and the courts” (2012) 35 Aust Bar Rev 281 at 290; Rachel Dunning “#Juryduty – Jurors using social media” (2014) 3 NZLSJ 211.

⁵⁶ New Zealand Law Commission *Contempt in Modern New Zealand*, above n 1, at [5.73].

⁵⁷ Other possible exceptions to the rule, including to allow disclosure during the course of the trial and for the purposes of research into jury trials are outside the scope of this paper.

⁵⁸ New Zealand Law Commission *Contempt in Modern New Zealand*, above n 1, at [5.83].

⁵⁹ Ibid.

required if there is genuine concern about the safety of a conviction.

There is a large body of case law concerning the situations in which jurors may be questioned about the reasons for their decision in order to uncover a potential miscarriage of justice. Before going on to consider which of the Commission's options ought to be preferred, the next part provides an overview of appellate authority on juror misconduct in New Zealand and the types of issues that arise in this area.

III Part Two: exceptions to secrecy and appellate review

A Misconduct undermining fairness

There are a multitude of ways in which juror misconduct might prejudice a trial. For example: the jury may adopt a method to decide the case that appears unfair;⁶⁰ there may be bullying or domineering behavior within the jury room;⁶¹ jurors may hold biases that prejudice their decision;⁶² or jurors could seek information outside of that provided to them in court.⁶³

Generally, the courts have strived to ensure there are safeguards in place to protect against unfairness resulting from such misconduct. To this end: the jury is randomly selected; judges tend to give directions about how to deal with interference or improper behavior during the conduct of the proceedings; jurors unhappy with a verdict have an opportunity to voice their objection in public at the time it is declared; and the appellate court can review the sufficiency of the evidence in any given case.⁶⁴

Notwithstanding the jury secrecy rule, there are also occasions on which the courts will hear evidence from jurors about the reasons for their decisions. For example, in *R v Pan* the Supreme Court of Canada drew a distinction between conduct that is intrinsic to jury deliberations and conduct that is extrinsic. The Court explained that the latter is not subject to the secrecy rule:⁶⁵

The common law rule does not render inadmissible evidence of facts, statements or events extrinsic to the deliberation process, whether originating from a juror or from a third party that may have tainted the verdict.

⁶⁰ For example, see *Vaise v Delaval*, above n 15.

⁶¹ For example, see *Tainui v R* [2008] NZCA 119.

⁶² For example, see *R v Tinker* [1985] 1 NZLR 330, (1984) 1 CRNZ 437.

⁶³ For example, see *Tuia v R* [1994] 3 NZLR 553, (1994) 11 CRNZ 678.

⁶⁴ *R v Mizra*, above n 17, at [50]. See also United Kingdom Law Commission, above n 14, Chapter 5.

⁶⁵ *R v Pan*, above n 17.

A similar approach was taken by the House of Lords in *R v Mizra*.⁶⁶ However, there, Lord Hope added that the right to a fair trial demands careful scrutiny of the secrecy rule and allegations of conduct that amounts to “a complete repudiation” by the jury of their function ought not to be covered by it.⁶⁷ With reference to *Vaise v Deval*, His Lordship explained “a trial which results in a verdict by lot or the toss of a coin... is no trial at all”.⁶⁸

However, commentators have observed that the distinction between matters that are extrinsic and intrinsic to jury deliberations is not always clear. To illustrate the point, the authors of *On Contempt* refer to *R v Young*, which involved an allegation that jurors staying in a hotel had consulted a Ouija board to contact the deceased in a murder trial.⁶⁹ The Court had little difficulty in finding that the allegation involved conduct extrinsic to deliberations.⁷⁰ However, the authors question whether the result would be the same if the Ouija board was consulted by all the jury members in the jury room in the course of their deliberations.⁷¹ Although, it is likely that such conduct would be seen as a complete repudiation by the jury of its function, warranting further inquiry.

New Zealand’s courts have adopted the distinction described in *Pan*. For example, in *Tuia v R* the Court of Appeal said there are two circumstances in which evidence of a juror can be put before a court:⁷²

The first is where the evidence relates to an issue extrinsic to the jury’s deliberations. The second is where there is a sufficiently compelling reason to depart from the normal rule of confidentiality.

In 2006, the rule was incorporated into legislation with the enactment of s 76 of the Evidence Act 2006:

76 Evidence of jury deliberations

(1) A person must not give evidence about the deliberations of a jury.

⁶⁶ *R v Mizra*, above n 17, at [50]: see also *R v Smith* [2005] UKHL 12; and *R v Thompson* [2010] EWCA Crim 1623.

⁶⁷ *Ibid*, at [123] and [166].

⁶⁸ *Ibid*, at [123].

⁶⁹ Arlidge, David Eady and ATH Smith *On Contempt* (4th ed, Sweet & Maxwell, London, 2011) at [11-370]; *R v Young*, above n 20.

⁷⁰ *R v Young*, above n 20, at 330.

⁷¹ Arlidge, Eady and Smith, above n 69, at [11-370].

⁷² *Tuia v R*, above n 63, at 556.

- (2) Subsection (1) does not prevent the giving of evidence about matters that do not form part of the deliberations of a jury, including (without limitation)–
 - (a) The competency or capacity of a juror;
 - (b) Any conduct of, or knowledge gained by, a juror that is believed to disqualify the juror from holding that position.
- (3) Subsection (1) does not prevent a person from giving evidence about the deliberations of a jury if the Judge is satisfied that the particular circumstances are so exceptional that there is a sufficiently compelling reason to allow that evidence to be given.
- (4) In determining, under subsection (3), whether to allow evidence to be given in any proceedings the Judge must weigh–
 - (a) the public interest in protecting the confidentiality of jury deliberations generally;
 - (b) the public interest in ensuring that justice is done in those proceedings

The select committee report on the Evidence Bill confirms the intention was for the provision to carry over the rule at common law:⁷³

It is intended that [clause 72, now s 76] reflect the current law. Evidence regarding matters outside the deliberation, such as the competency or conduct of a juror, should be allowed. Evidence regarding deliberations should be allowed if the judge is satisfied that the circumstances are so exceptional that there is a sufficiently compelling reason to allow that evidence to be given.

Accordingly, pursuant to subs (2) there is no exclusion on evidence concerning matters that are extrinsic to the jury’s deliberations. Under subs (3) the court may hear evidence that is intrinsic to the jury’s deliberations only in exceptional circumstances.

B Appellate review of juror misconduct in New Zealand

New Zealand’s courts have consistently applied the distinction between matters that are extrinsic and intrinsic to the deliberation process.⁷⁴ The case law discussed below demonstrates this distinction, as well as the type of conduct that can influence the fairness

⁷³ See Evidence Bill 2005 (256-2) (select committee report) at 9.

⁷⁴ Despite some early confusion surrounding the rule: see Jeremy Finn “Jury Confidentiality and Appellate Review” [1987] NZLJ 44.

of jury trials, and the circumstances in which such conduct has come to light and been investigated.

1 Matters intrinsic to deliberations

In *R v Papadopolous*, the appellant was convicted of arson before, around two weeks after the verdict was delivered, one of the jurors in the case swore an affidavit stating that she did not agree with the verdict read by the foreperson.⁷⁵ The Court of Appeal found the juror had not indicated her dissent at the time the verdict was read.⁷⁶ Cooke J considered her statement that “if I had been asked if they were guilty I could not have answered yes” was excluded by the jury secrecy rule.⁷⁷ His Honour added that it would be a “major inroad into the principle of the finality and secrecy of jury verdicts and deliberations” to allow the juror to give evidence and be cross-examined about her state of mind at the time of the verdict.⁷⁸

In *Papadopolous* the Court had the benefit of a second affidavit sworn by the foreperson of the jury which refuted much of the first juror’s allegations. The foreperson provided the affidavit to the Court after learning of the first juror’s complaints when they were published in the media.⁷⁹

Pearson v R was decided after the enactment of s 76 of the Evidence Act 2006.⁸⁰ The appellant in *Pearson* was convicted by a majority verdict⁸¹ after a retrial on one charge of sexual violation by rape. 11 days after the verdict, the minority juror approached the appellant’s counsel and told him that: the foreperson had been “planted” on the jury because he was so persuasive; the trial Judge’s *Papadopoulos* direction had left the jury with the impression that they had to reach a verdict; and the foreman had said the accused was probably already in prison for rape and had probably done it before.⁸² The appellant made an application for the juror to be interviewed by an independent barrister.

⁷⁵ *R v Papadopoulos*, above n 21, at 625.

⁷⁶ *Ibid*, at 624 and 625.

⁷⁷ *Ibid*, at 625-627. The Court’s ruling is consistent with the decision of the Privy Council in *Nanan v The State* [1986] 3 WLR 304.

⁷⁸ *Ibid*, at 628. Similarly, in *Tainui v R*, above n 61, the Court of Appeal refused to order an investigation after a juror indicated that there had been pressure from other jurors.

⁷⁹ *R v Papadopoulos*, above n 21, at 622-623.

⁸⁰ *Pearson v R* [2011] NZCA 572.

⁸¹ See s 29(c) of the Juries Act 1981.

⁸² *Pearson v R*, above n 80, at [12].

Section 76 does not address the issue of whether a court should order a juror to be interviewed. Rather, the provision is directed at the admissibility of any material obtained from the interview. Nonetheless, the Court considered it would be inappropriate for it to direct that a juror be interviewed if it was not already convinced the evidence would be admissible and went on to apply the threshold set out in s 76 to the appellant's application.⁸³

The Court declined the application with reference to the earlier decision of *Worrell v R* which also involved an affidavit from a minority juror unhappy with the majority's verdict.⁸⁴ The juror in *Worrell* claimed that other jurors had misunderstood the law, reversed the presumption of innocence, sought swift resolution, and had been intimidated by the public and the media.⁸⁵ The Court in *Pearson* noted that there were no complaints from the other jurors and it was not unusual for minority jurors to express concerns about a verdict they disagreed with.⁸⁶

The Court was critical of the appellant's counsel for speaking with the juror about the deliberations and said counsel should have directed the juror to the Registrar of the Court. Further, having spoken to the juror, counsel should have sworn an affidavit about the encounter and withdrawn himself from the case.⁸⁷

2 *Matters extrinsic to deliberations*

In *JM v R*,⁸⁸ the appellant had been convicted of cultivating cannabis when, around two months later, a police prosecutor told the Crown prosecutor in the appellant's trial that he had spoken with a juror or a person associated with a juror in the case. The juror had told him that "the Crown did not prove it" and the jury had conducted its own inquiries and "found out about his other things".⁸⁹ The prosecutor recorded the conversation in a memorandum which was disclosed to the appellant. The appellant appealed his convictions and in application for directions from the Court of Appeal, sought to interview members of the jury about the statement.

⁸³ Ibid, at [19].

⁸⁴ Ibid, at [17].

⁸⁵ *Worrell v R* [2011] NZCA 63.

⁸⁶ Ibid, at

⁸⁷ Ibid, at [11].

⁸⁸ *JM v R* [2016] NZCA 383.

⁸⁹ Ibid, at [6]. This statement was possibly a reference to the fact that the appellant had previous convictions which did not form part of the evidence against him.

The Court of Appeal considered the allegation that the jury “conducted its own inquiries” must have involved conduct occurring outside of their deliberations and therefore fell within s 76(2)(b).⁹⁰ The appellant did not need to show exceptional circumstances and the application was allowed on the basis that it was in the “interests justice” to obtain the evidence sought. The Court directed an independent barrister to interview the foreperson of the jury to inquire into whether any juror brought information into the jury room beyond that which was introduced as evidence.⁹¹

Similarly, in *R v Sacuturaga*,⁹² shortly after the appellant had been convicted of multiple charges of sexual violation by rape, a juror from his trial wrote a letter to the Court stating that the jury had been approached by a “Court runner” on the third day of their deliberations. The runner told them that if they did not reach a decision that day they would have to spend another night in a hotel. The juror said that she then felt pressure to reach a verdict. The Court held that further evidence from the juror, the foreperson and the runner could be obtained about the runner’s comment.⁹³ In this case the allegations involved a comment made outside of the deliberation process by a person who was not a member of the jury and could therefore be investigated without offending s 76 of the Act.

In *R v Tinker*, the appellant was convicted for possession and supply of cannabis.⁹⁴ On appeal, the Court heard evidence from a member of the panel from which the jury trying the appellant’s case was selected. The deponent was not selected but was required to attend the trial for the following two days. During this time, the deponent said they overheard members of the jury talking about the appellant. One of the jurors said that they had seen the appellant at the local tavern and believed that she had been dealing drugs there.⁹⁵ The Court considered the evidence was credible and the juror had shown bias which may have unfairly influenced the verdict.⁹⁶ The appellant’s conviction was quashed and a retrial was ordered.⁹⁷

Other occasions on which the courts have heard evidence about juror deliberations include: following allegations that medical records relating to the defendant had been taken into the jury room;⁹⁸ and following allegations that a juror went to a chemist to determine whether

⁹⁰ Ibid, at [9].

⁹¹ Ibid.

⁹² *R v Sacuturaga* [2009] NZCA 480.

⁹³ Ibid; see also *Sacuturaga v R* [2010] NZCA 323.

⁹⁴ *R v Tinker*, above n 62.

⁹⁵ Ibid, at 438.

⁹⁶ Ibid, at 439.

⁹⁷ Ibid.

⁹⁸ *Tuia v R*, above n 63.

an ingredient for the manufacture of heroine could be purchased and reported his findings in the jury room.⁹⁹

3 *Exceptional circumstances*

In *Neale v R*, the Court of Appeal described the exception at s 76(3) as a “very narrow escape hatch” reserved for exceptional cases.¹⁰⁰ For example, it referred to the jurors’ use of a Ouija board in *R v Young*.¹⁰¹ There are no examples of such cases in New Zealand. Further examples from E&W include: evidence that a juror had not been able to understand English;¹⁰² and evidence that a juror had been in a drunken slumber during the course of the trial.¹⁰³

C *Issues arising*

While the courts have consistently applied the distinction between matters that are intrinsic and extrinsic to the jury’s deliberations, the cases discussed above suggest a concerning lack of clarity around the circumstances in which disclosure of jury deliberations may be made and investigated. In many cases, allegations of juror misconduct are disclosed as a result of chance or happenstance. When disclosure does occur, practitioners appear uncertain about how to respond to it appropriately. The result is that the courts are regularly required to determine whether a miscarriage of justice has occurred or should be investigated with very little information, often on the basis of a single affidavit from a single juror who may not understand what is and is not relevant to this determination.

This is not the case in England and Wales, where recent reforms have defined the exceptions to the jury secrecy rule and established a statutory procedure for investigations into allegations of juror misconduct.

IV Part Three: the law in England and Wales

⁹⁹ *R v Bates* [1985] 1 NZLR 326, (1984) 1 CRNZ 433.

¹⁰⁰ *Neale v R* [2010] NZCA 167 at [12].

¹⁰¹ *Ibid.*

¹⁰² *Ras Behari Lal v King-Emperor* (1933) 50 TLR 1.

¹⁰³ *Ex Parte Morris* (1907) 72 JP 5.

The United Kingdom Parliament has recently sought to clarify the circumstances in which a person will be in contempt of court for breaching the jury secrecy rule with the enactment of the Criminal Justice and Courts Act 2015 and amendment to the Juries Act 1974.

A Section 8 of the Contempt of Court Act 1981

The 2015 Act repealed s 8 of the Contempt of Court Act 1981 which previously provided:

8 Confidentiality of jury’s deliberations.

- (1) Subject to subsection (2) below, it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.
- (2) This section does not apply to any disclosure of any particulars—
 - (a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict, or
 - (b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,
 or to the publication of any particulars so disclosed.
- (3) Proceedings for a contempt of court under this section (other than Scottish proceedings) shall not be instituted except by or with the consent of the Attorney General or on the motion of a court having jurisdiction to deal with it.

Section 8 was enacted in the wake of the Court’s decision in *Attorney General v New Statesman and Nation Publishing Co*, in which it was held that a juror who had published an article about the jury’s deliberations was not in contempt of court.¹⁰⁴

However, while the provision served to fill the “lacuna in the law” left by the decision in *New Statesman*, it came under criticism for its “absolute nature”.¹⁰⁵ In *Attorney General v Scotcher* it was argued that jurors who breach s 8 with the aim of uncovering a miscarriage of justice ought to be entitled to a defence.¹⁰⁶ The House of Lords rejected that argument

¹⁰⁴ *Attorney General v New Statesman and National Publishing Co Ltd* [1981] QB 1.

¹⁰⁵ United Kingdom Law Commission *Contempt of Court (1): Juror Misconduct and Internet Publications*, above n 14, at 90 and 91.

¹⁰⁶ *Attorney General v Scotcher* [2005] UKHL 36, [2005] 1 WLR1867.

and said that the proper course would be for the juror to disclose concerns to a court which, Their Lordships held, was not prohibited by s 8.¹⁰⁷

B Reform of s 8

In 2013, s 8 was reviewed by the United Kingdom Law Commission. The Commission was in favour of reforming the provision, as were the majority of consultees including the Criminal Cases Review Commission (CCRC). The CCRC is an independent public body established by statute.¹⁰⁸ Its role is to investigate alleged miscarriages of justice in England, Wales and Northern Ireland.¹⁰⁹

The CCRC submitted that “the important thing is to uncover misconduct”.¹¹⁰ It did not agree that “a miscarriage of justice is a price worth paying for juror confidentiality”.¹¹¹ Drawing on its experience in the area, the CCRC explained that jurors “often do not understand what they can/cannot say” and, since the CCRC “does not know what it does not know”, it was not possible to say whether information was being held back in any given case due to the impediment of s 8.¹¹² However, the risk of self-incrimination was a significant factor for jurors in this context and the CCRC was in favour of a defence from that point of view.¹¹³ An additional concern was the lack of clarity around the obligations and liabilities of practitioners informed of allegations of juror misconduct.¹¹⁴

On the other hand, a few submitters including members of the judiciary, noted that the phenomenon of “jurors’ remorse” could lead to unnecessary and undesirable disclosures in situations where a juror has had a change of heart.¹¹⁵ The Commission’s view was that a “clear and tightly defined” defence would address this concern:¹¹⁶

The terms of the defence can be drafted in a manner which will give confidence to jurors that they can disclose deliberations in the right way, if the need demands it, but also warn them that they should not disclose in any other circumstances.

¹⁰⁷ Ibid, at [29].

¹⁰⁸ See s 8 of the Criminal Appeal Act 1995.

¹⁰⁹ See The Criminal Cases Review Commission (4 February 2017) <<http://www.ccr.gov.uk>>.

¹¹⁰ United Kingdom Law Commission *Contempt of Court (1): Juror Misconduct and Internet Publications*, above n 14, at 93.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid, at 95.

¹¹⁶ Ibid.

Thus, the Commission recommended that, inter alia, s 8 be reformed to “provide a specific defence where a juror discloses deliberations to a court official, the police or the CCRC in the genuine belief that such disclosure is necessary to uncover a miscarriage of justice”.¹¹⁷ Many of the Commission’s recommendations were carried over into the Criminal Justice and Courts Act and the amendments to the Juries Act 1974, including the defence relating to disclosures necessary to uncover a miscarriage of justice.

C Sections 20D to 20G of the Juries Act 1974

As it stands, s 20D of the Juries Act 1974 provides:

20D Offence: disclosing jury’s deliberations

- (1) It is an offence for a person intentionally—
 - (a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in proceedings before a court, or
 - (b) to solicit or obtain such information, subject to the exceptions in sections 20E to 20G.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney General.

Sections 20E to 20G contain a detailed list of exceptions to the offence under s 20D. Section 20F sets out the exceptions to the rule that apply after the verdict has been delivered and the jury is discharged. Pursuant to subs (1) and (2) it is not an offence under s 20D for any person to disclose information to a member of the police force, a judge of the Court of Appeal, the registrar of criminal appeals, the judge of the court where the relevant proceedings took place or any member of staff at the court. In each case, the person making the disclosure must reasonably believe that a contempt of court has been or may have been committed by a juror connected to those proceedings or that a juror in the proceedings has conducted themselves in a way that may provide grounds for an appeal against conviction or sentence.

¹¹⁷ Ibid.

The remaining subsections allow information disclosed to be passed on for the purpose of an investigation. For example, under subs (4) a judge of the Court of Appeal may disclose information to a “relevant investigator”. Subsection (10) defines relevant investigator as including a police force, the Attorney-General, the CCRC, the Crown Prosecution Service.

Finally, s 20G makes it clear that it is not an offence to solicit disclosure of jury deliberations for the purpose of correcting a miscarriage of justice: where one of the exceptions listed at ss 20E(1)-(4) and 20F(1)-(9) apply.

D Practice Directions

A detailed anything that may prevent one or more of the jurors from remaining faithful to their set of Practice Directions have also been established following the enactment of the Criminal Justice and Courts Act.¹¹⁸ The directions apply in circumstances where a “jury irregularity” is suspected. “Jury irregularity” is broadly defined as:¹¹⁹

oath or affirmation to ‘faithfully try the defendant and give a verdict according to the evidence’. Jury irregularities take many forms. Some are clear-cut such as a juror conducting research about the case or an attempt to suborn or intimidate the juror. Others are less clear-cut – for example, when there is potential bias or friction between jurors.

Where an irregularity comes to the attention of the court after the jury has been discharged the directions state that the issue should be communicated to the Registrar of the court in a neutral manner.¹²⁰ The Registrar should consider whether an offence has been committed and whether the irregularity may provide grounds for an appeal. If it appears that an offence has been committed the Registrar should contact the Private Office of the Director of Public Prosecutions to consider a police investigation.¹²¹ If the information appears relevant to a ground of appeal, the Registrar should inform the defence who may then make an application for leave to appeal.¹²² Where an application for leave to appeal includes a

¹¹⁸ *Criminal Practice Directions 2015* (13 January 2017) <<http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-VI-trial-2015.pdf>>.

¹¹⁹ *Ibid*, at [26M.2].

¹²⁰ *Ibid*, at [26M.46]. See also the obligations on the prosecution and the defence at [26M.52] and [26M.53].

¹²¹ *Ibid*, at [26M.49].

¹²² *Ibid*, at [26M.50].

ground relating to jury irregularity, the Registrar may refer the case to the Full Court to decide whether to direct the CCRC to conduct an investigation.¹²³

V Part Four: reform in New Zealand

Returning to the New Zealand Law Commission's two proposals for reform, it is the author's view that a specific and relatively narrow avenue of complaint for jurors, consistent with the recent reforms in England and Wales, ought to be included in any statutory offence that prohibits disclosure of jury deliberations.

The statutory offence should expressly set out the exceptions to it. This should include a defence for disclosures made for the purpose of identifying a possible miscarriage of justice. The wording of the exception contained in s 20F provides a useful template:

20F Offence of disclosing jury's deliberations: further exceptions

- (1) It is not an offence under section 20D for a person to disclose information to a person listed in subsection (2) if—
 - (a) the disclosure is made after the jury in the proceedings mentioned in section 20D(1) has been discharged, and
 - (b) the person making the disclosure reasonably believes that— (i) an offence or contempt of court has been, or may have been, committed by or in relation to a juror in connection with those proceedings, or (ii) conduct of a juror in connection with those proceedings may provide grounds for an appeal against conviction or sentence.
- (2) Those persons are—
 - (a) a member of a police force;
 - (b) a judge of the Court of Appeal;
 - (c) the registrar of criminal appeals;
 - (d) a judge of the court where the proceedings mentioned in section 20D(1) took place;
 - (e) a member of staff of that court who would reasonably be expected to disclose the information only to a person mentioned in

¹²³ Ibid, at [26M.58].

paragraphs (b) to (d).

Such a provision would better inform jurors of what they can and cannot talk about and provide them with an opportunity to voice their concerns in the right way, making it clear that any other form of disclosure, for example to the media, could result in criminal charges.

A provision that enables legitimate recipients of that information to pass it on for the purpose of an investigation would serve to clarify the obligations and liabilities of practitioners in this area. Similarly, subs (4)-(10) of s 20F provide a useful template.

Furthermore, a set of practice directions for practitioners and the courts, along the same lines as the Practice Directions in place in England and Wales, would provide a consistent course of conduct for such investigations. A significant point of difference between New Zealand and England and Wales in this context is that there is no equivalent to the CCRC in New Zealand. Rather, the New Zealand courts have appointed independent barristers to conduct inquiries into juror misconduct. That is perhaps the next best thing to the CCRC and should be continued, with the aid of the practice directions, in the absence of any specialised body.

In the author's view, the alternative "general public interest defence" put forward by the Law Commission is only likely to add to the current confusion. Such a broad defence would undermine the certainty gained by establishing a statutory offence for disclosure of jury deliberations as it would be difficult to predict when and in what circumstances the defence could apply. Moreover, the "public and media scrutiny" resulting from disclosure in a public forum would seriously undermine the interests protected by the jury secrecy rule.

VI Conclusion

Trial by jury is a fundamental right in New Zealand and throughout common law jurisdictions. The rule that the deliberations of the jury are to be held in strict secrecy is essential to the proper administration of justice in this context. Secrecy secures the finality of the jury's decision, ensures that jurors are able to engage in free and frank discussion during their deliberations and protects their privacy. However, it also has the potential to prevent inquiries into juror misconduct that may have resulted in a miscarriage of justice.

Somewhat surprisingly, there is no statutory prohibition in New Zealand on jurors speaking out about their deliberations after the delivery of the verdict and it is not clear whether a juror who does so is guilty of an offence. Indeed, there is a concerning lack of clarity in this area of the law. This is particularly so given the advent of the internet and the impact that social media has had on the way that juries behave and function. In that context, the

Law Commission's 2014 review of the law of contempt of court is timely and the proposal for a statutory offence that applies when persons disclose matters relating to jury deliberations has the potential to provide much needed clarity in this area of the law.

It is essential that the offence contains exceptions necessary to allow investigations into juror misconduct that may have resulted in a miscarriage of justice. The case law is...As it stands, disclosures about misconduct are often made as a result of chance or happenstance. Practitioners appear uncertain about how to respond to them. And the courts are regularly required to determine whether a miscarriage of justice has occurred or should be investigated with little information. In the author's view, a specific procedure allowing investigations into allegations of juror misconduct, similar to that in place in England and Wales, would add much needed clarity for jurors, practitioners and the courts alike. Moreover, it would strike the correct balance between maintaining the interests protected by the jury secrecy rule while also ensuring that potential miscarriages of justice resulting from juror misconduct are able to be investigated and addressed.

BIBLIOGRAPHY

TEXTS

Arlidge, Eady and Smith *On Contempt* (4th ed, Seet & Maxwell, London, 2011)

John Baldwin and Michael McConville *Jury Trials* (Clarendon Press, Oxford, 1979)

John Burrows and Ursula Cheer *Media Law in New Zealand* (6th edition, Lexis Nexis, Wellington, 2010)

Lord Devlin *Trial by Jury* (Stevens & Sons, London, 1956)

ARTICLES

Enid Campbell “Jury Secrecy and Contempt of Court” (1985) 11 Monash Law Rev 169

Rachel Dunning “#Juryduty – Jurors using social media” (2014) 3 NZLSJ 211

Jeremy Finn “Jury Confidentiality and Appellate Review” [1987] NZLJ 44.

Brian Fitzgerald, and others “web2.0 social networking and the courts” (2012) 35 Aust Bar Rev 281

The Honourable Murray Gleeson *The Secrecy of Jury Deliberations* [1996] 1 Newcastle L Rev 1

John Rosshirt “Evidence: admissibility of jurors’ affidavits to impeach jury verdict” (1956) 31 Notre Dame L Rev 484

ATH Smith “Repositioning the Law of Contempt: The Criminal Justice and Courts Act 2015 (2015) 11 Criminal L Rev 845

Jennifer Tunna “Contempt of Court: divulging the confidences of the jury room” [2003] Canterbury L Rev 3

CASES (NZ)

JM v R [2016] NZCA 383

Neale v R [2010] NZCA 167

Pearson v R [2011] NZCA 572

R v Bates [1985] 1 NZLR 326, (1984) 1 CRNZ 433.

R v Papaodopoulos [1979] 1 NZLR 621

R v Sacaturaga [2009] NZCA 480

Sacaturaga v R [2010] NZCA 323

R v Tinker [1985] 1 NZLR 330, (1984) 1 CRNZ 437

R v Worrell [2011] NZCA 63

Solicitor-General v Radio Avon Ltd [1978] 1 NZLR 225

Solicitor-General v Radio New Zealand Ltd [1994] 1 NZLR 48, (1993) 10 CRNZ 641

Tainui v R [2008] NZCA 119

Tuia v R [1994] 3 NZLR 553, (1994) 11 CRNZ 678

CASES (UK)

Attorney General v Fraill [2011] EWHC 1629

Attorney General v Davey [2013] EWHC 2317

Attorney General v New Statesman and National Publishing Co Ltd [1981] QB 1

Attorney General v Scotcher [2005] UKHL 36, [2005] 1 WLR 1867

Attorney-General v Seckerson [2009] EWHC1023 (Admin)

Ellis v Deheer [1922] 2 KB 113

Ex Parte Morris (1907) 72 JP 5

Nanan v The State [1986] 3 WLR 304

R v Mizra (Shabbir Ali) [2004] 1 AC 1118

R v Smith [2005] UKHL 12

R v Thompson [2010] EWCA Crim 1623

R v Young [1995] QB 324

Ras Behari Lal v King-Emperor (1933) 50 TLR 1

Vaise v Delaval (1785) 99 ER 944

CASES (AUS)

Prothontary v Jackson [1976] 2 NSWLR 457

CASES (US)

McDonald v Pless [1915] 238 US 264

CASES (CAN)

R v Pan; R v Sawyer [2001] 2 SCR 344

REPORTS (NZ)

New Zealand Law Commission *Contempt in Modern New Zealand* (IP36, Wellington, 2014)

New Zealand Law Commission *Juries in Criminal Trials Part One: A discussion paper* (PP32, Wellington, 1998)

New Zealand Law Commission *Review of the Judicature Act 1908* (IP29, Wellington, 2012)

Warren Young and others *Jury Trials in New Zealand: a survey of jurors* (Wellington, 1999)

REPORTS (UK)

The Report of the Departmental Committee on Jury Service (Cmnd 2627, London, 1965)

United Kingdom Law Commission *Contempt of Court (1): Juror Misconduct and Internet Publications* (No 340, 2013)

LEGISLATION AND BILLS (NZ)

Evidence Bill 2005 (256-2)

New Zealand Bill of Rights Act 1990

Judicature Act 1908

Juries Act 1981

Jury Rules 1990

LEGISLATION (E&W)

Criminal Appeal Act 1995

Criminal Justice and Courts Act 2015

Contempt of Court Act 1981

Juries Act 1974

LEGISLATION (AUS)

Jury Act 1977 (NSW)

Juries Act 2000 (VIC)

OTHER

Crown Prosecution Service (10 January 2017)

<http://www.cps.gov.uk/legal/h_to_k/juror_misconduct_offences/>

Criminal Cases Review Commission (4 February 2017) <<http://www.ccrcc.gov.uk>>

Criminal Practice Directions 2015 (13 January 2017)

<<http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-VI-trial-2015.pdf>>.

The Guardian “‘Happy Hump day!’ The Instagram post that nearly aborted the tinder murder trial” (10 January 2017)

New Zealand Herald “Bain Juror: we were hounded” (10 January 2017)

<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10576894>

Stuff entitled “Jurors stand by their disputed cruelty verdict” (10 January 2017)

<<http://www.stuff.co.nz/national/4814205/Jurors-stand-by-their-disputed-cruelty-verdict>>.