

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR CONTEMPT OF COURT
OFFENCES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

MEMORANDUM OF OBJECTS AND REASONS

CONTEMPT OF COURT BILL, 2016

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**A BILL FOR A LAW TO PROVIDE FOR CONTEMPT OF COURT
OFFENCES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - Introductory

1. This Law may be cited as the Contempt of Court Law, 2016.

Short title

2. In this Law -

Interpretation

“Constitution” means the Constitution of the Cayman Islands contained in Schedule 2 to the Cayman Islands Constitution Order, 2009;

“court” means the Grand Court and the Court of Appeal; and

“proceedings” means any proceedings, civil or criminal, before a court.

PART 2 - Contempt by Publication

The strict liability rule 3. In this Part “the strict liability rule” means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular proceedings regardless of intent to do so.

Limitation of scope of strict liability 4. (1) The strict liability rule applies only in relation to publications, and for this purpose “publication” includes any writing, speech or other communication in whatever form which -

- (a) is either addressed to the public at large or any section of the public; or
- (b) having regard to the nature of the communication or the identity of the person or persons to whom the same was addressed, the person making the communication should have been aware would come to the attention of the public at large or a section of the public.

(2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

(3) Subject to subsection (4), the strict liability rule applies only to publications made when proceedings are active within the meaning of section 5.

(4) The strict liability rule shall not apply in the case of a publication coming into existence before proceedings become active within the meaning of section 5 notwithstanding that that publication remains available to the public at large or a section of the public after proceedings have become active but the court seised of those proceedings may order any publisher or distributor of the publication to take such steps as may be specified in the order to ensure that the publication does not come to the further attention of the public at large or a section of the public so long as such proceedings remain active.

(5) A publisher or distributor who, having notice of an order under subsection (4), fails to comply with the order commits an offence of contempt of court.

Proceedings: when active 5. (1) In this section -

“appellate proceedings” means proceedings on appeal from or for the review of the decision of a court in any proceedings;

“criminal proceedings” means proceedings against a person in respect of an offence which are not appellate proceedings; and

“other proceedings” means proceedings other than criminal proceedings and appellate proceedings.

(2) Criminal proceedings become active upon the first to occur of the following steps, namely -

- (a) arrest without a warrant;
- (b) the issue of a warrant for arrest;
- (c) the issue of a summons or a warrant to appear; or
- (d) the service of an indictment or other document specifying the charge.

(3) Criminal proceedings cease to be active -

- (a) upon an acquittal;
- (b) upon the giving of any other verdict whether of the jury or of the court; or
- (c) by discontinuance or operation of law.

(4) Where, in appellate proceedings relating to criminal proceedings, the court remits the case to the court below or orders a new trial, any further or new proceedings which result shall be treated as active from the conclusion of the appellate proceedings but, without prejudice to the application of any other branch of the law of contempt, the strict liability rule shall not otherwise apply to appellate proceedings.

(5) Other proceedings are active -

- (a) from the time when a date for the hearing is fixed;
- (b) if no such date is fixed, when the hearing begins; or
- (c) in the case of a trial in the Grand Court, when the action is set down for trial until the proceedings are disposed of or discontinued or withdrawn,

and ,for this purpose, any motion or application made in or for the purposes of any proceedings, including any pre-trial review or case management conference, is to be treated as a distinct proceeding.

Defence of innocent publication or distribution

6. (1) A person does not commit the offence of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if, at the time of publication, having taken all reasonable care, he does not know and has no reason to suspect that relevant proceedings are active.

(2) A person does not commit the offence of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if, at the time of distribution, having taken all reasonable care, he does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(3) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

Contemporary reports of proceedings held in public

7. (1) Subject to this section a person does not commit the offence of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(2) In any proceedings specified in subsection (1) the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

(3) For the purposes of subsection (1), a report of proceedings shall be treated as published contemporaneously -

- (a) in the case of a report of which publication is postponed pursuant to an order under subsection (2) of this section, if published as soon as practicable after that order expires; and
- (b) in the case of a report of committal proceedings of which publication is permitted only by virtue of an order made pursuant to subsection (3), or at a time specified in subsection (5), of section 112 of the Criminal Procedure Code (2014 Revision), if published as soon as practicable after publication is so permitted.

Discussion of public affairs

8. A publication made as, or as part of a discussion in good faith, of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

Savings

9. Nothing in this Part -

- (a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule; or
- (b) implies that any publication is punishable under that rule which would not be so punishable apart from those provisions.

10. Proceedings for a charge of contempt of court under the strict liability rule 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.

Consent required for institution of proceedings

PART 3 - Other aspects of law, jurisdiction and procedure

11. (1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases -

Publication of information relating to proceedings in private

- (a) where the proceedings relate to the wardship or adoption of a child or wholly or mainly to the guardianship, custody, maintenance or upbringing of a child, or rights of access to a child;
- (b) where the proceedings are brought under section 18 of the Mental Health Law, 2013 or section 14 of the Grand Court Law (2015 Revision);
- (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings; or
- (e) where the court, having power to do so, expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2015 Revision)

(2) Without prejudice to subsection (1), the publication of the text or a summary of the whole or part of an order made by the court sitting in private shall not of itself be contempt of court except where the court, having power to do so, expressly prohibits the publication.

(3) In this section -

- (a) “child” means a person under the age of eighteen; and
- (b) references to a court sitting in private include references to a court sitting in camera or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

Procedure

12. (1) Without prejudice to the application of section 7 of the Constitution, on the hearing of an application for committal or on the court acting of its own motion, the court shall not proceed to determine whether or not a person is guilty of contempt unless it is first satisfied that the alleged contemnor -

- (a) has been provided in writing, in a language which he understands, with full details of the nature and cause of the accusation against him;
- (b) has had adequate time and the facilities for the preparation of his defence;
- (c) if he so wishes, has had adequate access to legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance and the interests of justice so require, through a legal representative at public expense provided pursuant to the Legal Aid Law, 2015;
- (d) has examined witnesses against him and has obtained the attendance of and examination of witnesses on his behalf under the same conditions as witnesses against him; and
- (e) has had the free assistance of an interpreter if he cannot understand or speak the language used in court.

(2015 Revision)

(2) Subsection (1) shall apply to the exercise by the court of its jurisdiction under sections 28 and 29 of the Summary Jurisdiction Law (2015 Revision) and sections 42 and 45 of the Criminal Procedure Code (2014 Revision) as it does to the exercise by the Grand Court of its inherent jurisdiction and for this purpose -

- (a) "court" includes the Summary Court; and
- (b) the determination of the liability of a witness to pay a fine pursuant to section 42, or to be committed pursuant to section 45, of the Criminal Procedure Code (2015 Revision) shall be treated as a determination whether a person is guilty of contempt of court.

(2015 Revision)

Penalties for contempt

13. (1) A person who commits an offence of contempt of court is liable on conviction in a court of competent jurisdiction to a fine or to imprisonment for a term of two years, or to both.

