

CAYMAN ISLANDS



CONTEMPT OF COURT BILL, 2022

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**A BILL FOR AN ACT TO CODIFY CERTAIN CONTEMPT OF COURT OFFENCES; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Portfolio of Legal Affairs (PLA)



Memorandum of OBJECTS AND REASONS

This Bill is part of the contempt of court review conducted by the Law Reform Commission. The Bill seeks to codify the strict liability rules along the lines of sections 1 to 7 of the UK Contempt of Court Act, 1981 but with modifications to reflect the procedural law of the Islands and to take account of more recent developments.

PART 1 - PRELIMINARY

Clause 1 provides the short title to the legislation.

Clause 2 contains interpretation provisions.

PART 2 - CONTEMPT BY PUBLICATION

Clause 3 defines the strict liability rule which 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.

Clause 4 provides the limitations on the scope of the strict liability rule. The rule applies to publications —

- (a) which create a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced; and
- (b) which are made when proceedings are active within the meaning of clause 5.

The clause also provides that unless ordered otherwise by the court under subclause (4), the strict liability rule does not apply in the case of a publication coming into existence before proceedings become active within the meaning of clause 5, notwithstanding that that publication remains available to the public or a section of the public after proceedings have become active.

Clause 5 defines when proceedings are active.

Clause 6 provides for the defence of innocent publication or distribution.

Clause 7 provides for the contemporary publication of reports of legal proceedings held in public and the limits on such publication.

Clause 8 provides that 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.

Clause 9 is a savings clause and provides that nothing in sections 3 to 8 of the legislation —

- (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.

Clause 10 provides that 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 Director of Public Prosecutions or on the motion of a court having jurisdiction to deal with it.

PART 3 - OTHER ASPECTS OF LAW, JURISDICTION AND PROCEDURE

Clause 11 sets out the types of proceedings in which the publication of information relating to proceedings before any court sitting in private shall be contempt of court. These include proceedings —

- (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; and
- (b) where the proceedings are brought under section 18 of the Mental Health Act (2022 Revision) or section 14 of the Grand Court Act (2015 Revision).

Clause 12 sets out the procedure for dealing with contempt of court.

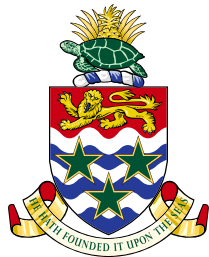
Clause 13 sets out the penalty for contempt of court.

Clause 14 repeals section 27 of the Grand Court Act (2015 Revision). Section 27 of the Grand Court Act (2015 Revision) deals with summary powers to deal with contempt of court.

Clause 15 contains transitional provisions.



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CAYMAN ISLANDS



CONTEMPT OF COURT BILL, 2022

A BILL FOR AN ACT TO CODIFY CERTAIN CONTEMPT OF COURT OFFENCES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Contempt of Court Act, 2022.

Interpretation

2. In this Act —

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

“**court**”, unless otherwise expressly provided, 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 rule

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 addressed to the public or a 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 or would likely come to the attention of the public or a section of the public.
- (2) The strict liability rule applies —
- (a) to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced; and
 - (b) subject to subsections (3) and (4), to publications made when proceedings are active within the meaning of section 5.
- (3) Subject to subsection (4), the strict liability rule shall not apply in the case of a publication in existence before proceedings become active within the meaning of section 5 notwithstanding that that publication remains available to the public or a section of the public after proceedings have become active.
- (4) Where the court seized of proceedings under subsection (3) is satisfied that there is a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced by a publication, the court may make an order directing 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 or a section of the public so long as those 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;
 - (d) the filing in a summary court or the Grand Court of a charge or indictment or other document specifying the charge; or
 - (e) the service of a charge or an indictment.
- (3) Criminal proceedings cease to be active —
 - (a) upon an acquittal;
 - (b) upon the giving of any other verdict, whether by the jury or by the court; or
 - (c) by discontinuance or by 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 those proceedings are disposed of or discontinued or withdrawn, and, for this purpose, any motion or application made in or for the purposes of the other 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, the person does not know and has no reason to suspect that the 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 matter to which that rule applies if, at the time of distribution, having taken all reasonable care, the person does not know that it contains such matter and has no reason to suspect that it is likely to contain such matter.
- (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), where it appears necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, the court may 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), if published as soon as practicable after that order expires; or
 - (b) in the case of a report of committal proceedings of which publication is permitted only —
 - (i) by virtue of an order made pursuant to section 112(2) of the *Criminal Procedure Code (2021 Revision)*; or
 - (ii) at a time specified in section 112(5) of the *Criminal Procedure Code (2021 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 sections 3 to 8 —
- (a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;



- (b) implies that any publication is punishable under the strict liability rule which would not be so punishable apart from those sections; or
- (c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

Consent required for institution of proceedings

- 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 Director of Public Prosecutions or on the motion of a court having jurisdiction to deal with the proceedings.

PART 3 - OTHER ASPECTS OF LAW, JURISDICTION AND PROCEDURE

Publication of information relating to proceedings in private

- 11.** (1) The publication of information relating to proceedings before a court sitting in private shall not of itself be contempt of court except in the following cases —
- (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 Act (2022 Revision)* or section 14 of the *Grand Court Act (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.
- (2) Without prejudice to subsection (1), the publication of the text of an order 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) 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.
- (4) 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.

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 the alleged contemnor understands, with full details of the nature and cause of the accusation against the alleged contemnor;
 - (b) has had adequate time and the facilities for the preparation of the alleged contemnor's defence;
 - (c) if the alleged contemnor so wishes, has had adequate access to legal assistance of the alleged contemnor's own choosing or, if the alleged contemnor 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 Act, 2015*;
 - (d) has examined witnesses against the alleged contemnor and has obtained the attendance of and examination of witnesses on the alleged contemnor's behalf under the same conditions as witnesses against the alleged contemnor; and
 - (e) has had the free assistance of an interpreter if the alleged contemnor cannot understand or speak the language used in court.
- (2) Subsection (1) shall apply to the exercise by the court of its jurisdiction under sections 28 and 29 of the *Summary Jurisdiction Act (2019 Revision)* and sections 42 and 45 of the *Criminal Procedure Code (2021 Revision)* as it does to the exercise by the Grand Court of its inherent jurisdiction and for this purpose —
- (a) “**court**” includes a summary court; and
 - (b) the determination of the liability of a witness to pay a fine pursuant to section 42, or to be committed to prison pursuant to section 45, of the *Criminal Procedure Code (2021 Revision)* shall be treated as a determination of whether a person has committed an offence of contempt.

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.
- (2) Where a court referred to under subsection (1) commits a person to prison for contempt of court, the court, if it believes that it is in the interest of justice so to do, may order the earlier discharge of the person.



Repeal of section 7 of the Grand Court Act (2015 Revision)

- 14.** Without prejudice to section 11 of the *Grand Court Act (2015 Revision)* and the inherent jurisdiction of the Grand Court to punish for contempt of court, section 27 of the *Grand Court Act (2015 Revision)* is repealed.

Transitional provisions

- 15.** (1) Where, upon the commencement of this Act, proceedings in respect of an offence of contempt of court are pending or are in progress before a court of competent jurisdiction —
- (a) the proceedings shall continue to be dealt with and shall be completed or otherwise determined as if this Act had not come into force; and
 - (b) the person shall be liable to the relevant penalty as if this Act had not come into force.
- (2) Where, upon the commencement of this Act, a person commits the offence of obtaining, disclosing or soliciting 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 —
- (a) the proceedings in respect of that offence shall continue to be dealt with and shall be completed or otherwise determined as if this Act had not come into force; and
 - (b) the person shall be liable to the relevant penalty as if this Act had not come into force.

- (3) A person commits an offence and shall be liable to the relevant penalty under this Act where that person, prior to the commencement of this Act, obtained or solicited 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 and discloses those particulars, opinions, arguments or votes after the commencement of this Act.

Passed by the Parliament the day of 2022.

Speaker

Clerk of the Parliament

