TV CAMERAS IN THE COURTROOM – MEDIA CIRCUS OR PUBLIC RIGHT? LESSONS FROM THE VAN BREDA TRIAL

“The media’s right to freedom of expression is thus not just (or even primarily) for the benefit of the media: it is for the benefit of the public” (Extract from SCA judgment below)

The Henri van Breda criminal trial is the latest high-profile case to have gripped the public’s imagination, and the media broadcasts and livestreaming from the Court have played a significant part in that.

But there are potentially competing rights at play here - the rights of witnesses to privacy and security, the accused person’s right to a fair trial, the media’s right to freedom of expression and to publish information, and the public’s right to receive information and to see what’s happening in our criminal justice system.

How do our courts balance those rights?

At the start of the van Breda trial the Supreme Court of Appeal (SCA) laid down these guidelines for trial courts to follow –

Freedom of expression and the fair administration of justice are both essential to the proper functioning of any true democracy and should as far as possible be harmonised with one another.

Trial courts should not be bound by rigid rules but should exercise their discretion on a case-by-case basis, taking into account all the relevant circumstances. They can allow broadcasting, disallow it altogether, or allow it in a limited form (e.g. audio only).

Free speech goes hand in hand with open justice - ‘justice should not only be done, but should manifestly and undoubtedly be seen to be done’. Hence our general principle of open courtrooms.

There is no objection in principle to the media recording and broadcasting legal counsels’ addresses to the court and all rulings and judgments delivered in open court.

If a witness objects to coverage of his or her testimony, the court should make a witness-by-witness decision after considering the reasons given for the objection. The court can draw a distinction here between different types of witness - expert, professional (such as police officers) and lay witnesses.

If the judge decides that a witness has a valid objection to cameras, alternatives should be explored, such as disguising identity (special lighting techniques, electronic voice alteration etc), shielding the witness from the camera, or delaying broadcast until after the trial is over.

An accused person has a right to object to the broadcast of his/her trial and the court may exclude cameras if it finds the objection to be valid.

The nub of it is perhaps this conclusion: “… courts will not restrict the nature and scope of the broadcast unless the prejudice is demonstrable and there is a real risk that such prejudice will occur. Mere conjecture or speculation that prejudice might occur ought not to be enough.”

Applying those principles, the High Court later denied Mr. van Breda’s application to bar the broadcast of his evidence but left the door open for a future application “at any stage should the need arise”.

Expect to see cameras in a lot more high-profile criminal trials in future.