	that any participation in litigation involves. Furthermore, as non-parties and non-witnesses, there is no opportunity for the named persons to defend themselves before the court." • This reasoning is somewhat astonishing in the latitude it could open up – but dicta

Access to court documents

Access to court files, particularly evidence, is important for the media. Court proceedings increasingly use documents rather than oral evidence. As was stated by Spigelman CJ in *Ryde Local Court*, there is no common law right to obtain documents filed in proceedings. Once a document has been used in trial, there is a more compelling case for disclosure.

- Reg 28.05 of the *Supreme Court (General Civil Procedure) Rules* allows for access to documents by any person, unless the Prothonotary has the opinion that it should remain confidential;
- R 1.11(4) of the *Supreme Court (Criminal Procedure) Rules* a document is not open for inspection unless the Court so provides

This involves a degree of discretion. One might imagine that decisions to release documents could be highly arbitrary and involve a degree of self-interest and perhaps cognitive bias towards convenience in the administration of justice.

John Fairfax Publications Pty Ltd v Ryde Local Court (2005) 62 NSWLR 512	Media interests sought court documents relating to an apprehended domestic violence order. The application was dismissed. • The main submission was that the claimants had a right of access. However, open justice is a principle not a freestanding right. • It is appropriate for the court to have regard to the principle of open justice when determining applications for access under any express or implied power to grant access. The principle has purposes related to the operation of the legal system. Its purposes do not extend to encompass issues of freedom of speech and freedom of the press. • The principle of open justice is not engaged at the time of the filing of the proceedings. It is only when relevant material is used in court that it becomes relevant
R v Hudson [2008] VSC 463	Application for a release of a DVD of CCTV footage showing an assault by Hudson. In Coghlan J's brief reasons for refusing release of the DVD he noted that there was graphic and brutal content of which the media interests did not seek release; there was footage of the victim which she would not want released, and if those parts were edited out then "there is nothing really of public interest left". The DVD was never played in Court. Coghlan J refused to release any part of it.
DPP v Williams (Ruling No 1) [2015] VSC 107	Angela Williams was convicted of murdering her partner. After Williams' sentence was handed down the media requested her record of interview with police. Williams strongly opposed the application. • There is a legislative offence which prohibits use of ROIs except to authorised persons. Courts are the only bodies who can allow access. • Relevant considerations derived mainly from WA authorities, construing a similar provision, include: o Whether publication could adversely affect the administration of justice; o Whether there was an investigation or trial on foot; o Whether publication would be in the public interest o The interviewee's opinion is said to be relevant because release despite opposition could discourage voluntary participation in interviews; o Whether the record discloses graphic details of offending; o Whether release will enhance the fair and accurate reporting of the case; o The privacy of the interviewee, interviewers and others; o The principle of open justice (where the ROI has been played in open court) o The nature of the proposed publication o The level of contemporaneous public interest in the case Reasons against disclosure • There is no evidence of broad and ongoing public interest • Nine wanted the footage to use in A Current Affair program which Hollingworth J anticipated would be used to 'second-guess' the jury • The media already has access to extensive transcripts to report the case (*not video though!)* • The ROI was lengthy and the jury considered it over a long period. The program would only show a small extract.

	• To engage in such an exercise, in order to invite the public to assess for themselves the correctness of the jury's decision, has the potential to undermine unfairly the jury's verdicts in a way that would be inimical to the interests of justice. • Care needs to be taken that the victims of domestic violence (Williams' children) are not traumatised by further reporting.
DPP v Bracken [2014] (Ruling No 16) VSC	The media applied for photographs and CCTV footage of the deceased. • Maxwell P noted that there had been fair and accurate reporting of the trial and the media would continue to report responsibly in the future • However, the footage itself was brief and graphic. Taken by itself, it provides no proper basis on which any viewer could make a verdict about whether the acquittal was justified or not. • The footage, and any report containing the footage, would be incapable of conveying subleties about the legal framework of self-defence and the exceptional complexity of the family violence alleged • It would be inimical to the public interest for information to be disclosed if that disclosure carried a substantial risk of creating in the public mind a misunderstanding, or a misapprehension, of the task which the jury had to undertake, or of the basis upon which they were asked to consider the facts • Given the complexities I have already described, the graphic nature of the footage, and the risk of misapprehension or misunderstanding of the verdicts, there is an associated risk of unjustified hostility towards Mr Bracken.
Court Information Act 2010 (NSW) (not yet in force)	• The NSW Act provides more clarity about types of information that may be accessed. It defines 'open access information' including transcripts of proceedings in open court, indictments and originating process, written submissions (s 5). Restricted access information includes evidence not heard in open court; voir dire transcripts, police or psychological reports (s 6). • The media has an entitlement to open access information unless the court otherwise orders (s 8). The media must obtain leave of the court or restricted access information. In determining whether to release, the court must have regard to factors like the public interest, the principle of open justice, the reason for which access is sought, privacy or safety, the use for which the material is sought, any other factors considered relevant (s 9(2)).

Sharon Rodrick, 'Open Justice, the Media and Avenues of Access to Documents on the Court Record' (2006) 29(3) *UNSW Law Journal* 90

- The increased need for efficiency in the conduct of court proceedings has meant that much information is simply not read or spoken. This is harmful to the open justice principle because a member of the public who wishes to understand a case can no longer do so by sitting in court.
- Any inability to access information can have a detrimental impact on reporting.
- The media's ability to access information depends on the stage of proceedings. Documents which have been filed before the trial have little nexus with 'open justice'. Where documents have been used or referred to but not read in open court, there is a stronger 'open justice' justification.

Rights of access

- In the US, there is a general right (but not an absolute right) to copy and access judicial records: *Nixon v Warner Comms*. This common law right promotes public understanding and scrutiny of judicial proceedings. It has also been linked, much more recently, to freedom of speech.
- Australia's constitutional guarantees include the implied freedom of political communication, which following *Lange* has not been considered applicable to the judiciary as it relates to Parliament and the executive.
- There is also a principle that openness is an essential characteristic of a Ch III court: *Grollo v Palmer*. Even if this principle were applied to public records it does not necessarily prescribe who may access documents or what exceptions are justified.

General court rules

- Court rules provide a combination of 'right' to access and having to seek leave. For instance, the Federal Court Rules permit a member of the public to access evidence given orally, but leave is necessary for evidence given by affidavit. The Magistrates Court provides access only to the final orders of the court: although it nonetheless would have an implied power to release docs.

Rodrick suggests that open justice supports a right of access to documents deployed in open proceedings. In contrast, the "ability to peruse documents that have been lodged with the court in respect of a proceeding does not promote understanding of the judicial system or create confidence in it, if the documents have not yet seen the light of day in open court. Most documents on the court record are created by the parties and