SUPREME COURT OF QUEENSLAND

CITATION:	*Re A* [2018] QSC 184
PARTIES:	**IN THE MATTER OF AN APPLICATION FOR BAIL BY A** **On 3 and 7 August 2018:** **R** (respondent Crown) **v** **A** (applicant for bail) **On 7 August 2018:** **QUEENSLAND NEWSPAPERS PTY LTD** (first applicant) **CHANNEL SEVEN BRISBANE PTY LTD** (second applicant) **FAIRFAX DIGITAL AUSTRALIA & NEW ZEALAND PTY LTD** (third applicant) **NINE NETWORK AUSTRALIA PTY LTD** (fourth applicant) **AUSTRALIAN BROADCASTING CORPORATION** (fifth applicant)
FILE NO/S:	BS No 7879 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED EX TEMPORE ON:	3 August 2018; 7 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	3 August 2018; 7 August 2018
JUDGE:	Davis J
ORDER:	**On 3 August 2018:** **1. There be no reporting of the details of this application except:** **i. The fact that a person has been charged under chapter 68 of the *Criminal Code* (Qld);** **ii. The fact that the person has applied for bail;** **iii. The fact that the alleged offence is murder; and**

iv. The results of the application.

2. Any person is at liberty to apply for an extension of the material disclosable under this order.

Further on 3 August 2018:

1. The applicant for bail be admitted to bail on the terms of the draft order.

On 7 August 2018:

1. The orders made under section 12 of the *Bail Act* 1980 (Qld) on 3 August 2018 are dissolved and it is ordered that there be no reporting of the details of the bail application that would identify or have the effect of identifying the person the subject of the bail application until the earlier of:

(a) There is no longer any step that could be taken which would lead to the person the subject of the bail application being retried under Chapter 68 of the *Criminal Code* (Qld);

(b) If the person the subject of the bail application is retried under Chapter 68 of the *Criminal Code* (Qld) – the trial ends;

(c) The Court of Appeal or the court before which the person is being retried makes an order authorising publication of matters identifying or having the effect of identifying the person the subject of the bail application (to the extent of the matter so authorised).

CATCHWORDS: EVIDENCE – MISCELLANEOUS MATTERS – NON-PUBLICATION OF EVIDENCE – ORDERS – NON-PUBLICATION OF IDENTITY – where an applicant for bail is charged with murder under chapter 68 of the *Criminal Code* (Qld) – where the applicant for bail was previously acquitted of murder – whether specific non-publication orders should be made

Bail Act 1980 (Qld), s 12
Criminal Code (Qld), s 17, s 598, s 678B, s 678F, s 678I, s 678J, s 678K

John Fairfax & Sons Ltd v Police Tribunal of New South Wales (1986) 5 NSWLR 465, cited
Queensland Newspapers Pty Ltd v Stjernqvist [2007] 1 Qd R 171; [2006] QSC 200, cited
R v Carroll (2002) 213 CLR 635; [2002] HCA 55, cited

COUNSEL: C Morgan for the applicant for bail
M Lehane for the respondent Crown

P J McCafferty for the first to fifth applicants (on 7 August 2018)

SOLICITORS: Legal Aid Queensland for the applicant for bail
Office of the Director of Public Prosecutions (Qld) for the respondent Crown
Bartley Cohen for the first to fifth applicants

Ex tempore reasons delivered 3 August 2018:

[1] **HIS HONOUR**: Section 678K contained within chapter 68 of the *Criminal Code* (Qld) is in terms limiting the publication by any person of any matter for the purposes of identifying or having the effect of identifying an acquitted person who is being retried under this chapter, or, paraphrasing, is at risk of being retried under the provisions of chapter 68. There is also s 12 of the *Bail Act* 1980 (Qld) and the inherent jurisdiction of the Court to limit publication.

[2] Quite apart from the obvious policy considerations in s 678K, there are often difficulties where there has been publication of details in complicated matters where the alleged offence is very old. Those complications are multiplied when one looks at what the Court of Appeal must consider under chapter 68 and the types of orders that the Court can make. On the other hand, though, there is clearly a public interest in knowing the fact that the Crown is moving under chapter 68 in relation to a matter, and the genre of the offence the subject of the application. It also seems to me that the result of the application before me may be of some public interest and will not identify the present applicant.

[3] No media outlet has appeared to make any submissions this morning, but their rights should, I think, be preserved. So the order I will make is that there shall be no reporting of this application before me, except:

1. the fact that a person has been charged under chapter 68 of the *Code*;

2. the fact that the person has made an application for bail;

3. the fact that the offence alleged is murder; and

4. the results of the application before me.

[4] Any person is at liberty to apply for an extension of the material disclosable under the orders I have just made.

[5] THE COURT ORDERED THAT:

1. There be no reporting of the details of this application except:

    i. The fact that a person has been charged under chapter 68 of the *Criminal Code* (Qld);

    ii. The fact that the person has applied for bail;

    iii. The fact that the alleged offence is murder; and

    iv. The results of the application.

2. Any person is at liberty to apply for an extension of the material disclosable under this order.

Further ex tempore reasons delivered 3 August 2018:

[6] **HIS HONOUR:** The Applicant applies for bail after having been arrested on a charge of murder, which is alleged to have been committed [in Queensland] in [the 1980s]. The Applicant was tried for that murder in [the 1980s] and was acquitted. But for the provisions of chapter 68 of the *Criminal Code* (Qld), which is entitled "Exceptions to double jeopardy rules", the Applicant would have a complete defence to the charge by force of s 17 of the *Code*. He could when arraigned plead his prior acquittal,[1] and then rely upon the statutory embodiment in s 17 of the *Code* of the common law defence of *autrefois acquit*.

[7] Chapter 68 was enacted and later amended so as to apply retrospectively. It operates so that in certain circumstances the Court of Appeal may order a retrial, notwithstanding the prior acquittal. It is neither necessary nor desirable to descend to a detailed examination of chapter 68 and how chapter 68 might operate in relation to the Applicant.

[8] However, it is necessary to say some things about chapter 68. Once a person such as the Applicant is arrested, an application must be made to the Court of Appeal. That application will be successful and an order made by the Court of Appeal for a retrial if there is fresh and compelling evidence against the acquitted person in relation to the offence and, in all the circumstances, it is in the interests of justice for the order to be made.

[9] Here, at the [original] trial, there was [particular evidence led].

[10] The new evidence is [redacted]. Whether that evidence is fresh and compelling is obviously a matter for the Court of Appeal.

[11] As already observed, the Court of Appeal must also be satisfied that it is in the interest of justice for the order to be made. Section 678F identifies various criteria for determining whether it is in the interests of justice for an order to be made and, naturally enough, a significant criteria is whether the Applicant can now have a fair trial. The Crown asserts that for the most part witnesses are still available, although that does, it seems, at least admit that some might not be. Again these are all matters for the Court of Appeal, not for me on an application for bail. For my purposes, it is sufficient to observe that the Crown has, it seems on the material before me, addressed the various elements of an application under chapter 68.

[12] On the question of bail, there is s 678J. This is in the following terms:

> "**678J Bail**
>
> (1) This section has effect despite anything to the contrary in the Bail Act 1980.
>
> (2) There is a presumption in favour of bail for a person who is charged with an offence for which a retrial is

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1 See section 598(2)(d) of the *Code*.

> sought under this chapter until the application for the retrial is dealt with."

[13] Section 678B is the section under which the application to the Court of Appeal is to be made by the director in this case. Section 678B specifically concerns retrials for the offence of murder. Of course, there are many statements in the cases that the granting of bail on a charge of murder is very much the exception rather than the rule. This is because, amongst other things, murder attracts a mandatory life sentence, and by s 16 of the *Bail Act*, a person charged with murder is in a show cause situation.[2]

[14] However, any such approach to a bail application brought upon a charge laid in reliance upon the provisions of s 678B are statutorily abrogated by the provisions of s 678J. Section 678J, which I have read and which clothes the Applicant with a presumption in favour of bail, is clearly contemplated to operate where the charge is one of murder.

[15] Mr Lehane, who appears for the Crown, opposes the application for bail. He produced to the Court a careful and detailed submission in writing, which I had the opportunity to read carefully before coming to Court.

[16] In the written submission, he refers fairly and properly to s 678J and he puts his application really on these bases. The presumption ought to be rebutted because, firstly, the nature of the offence, namely, murder, and the fact a life sentence is mandatory upon conviction. There are difficulties with that submission because of the interrelationship between ss 678B and 678J of the Code, as I have described them. However, Mr Lehane submits, probably rightly, that at least in a broad sense the nature of the offence is relevant to the risk of flight.

[17] The second thing he points to is the strength of the new evidence. He submits that the new evidence would increase significantly the chances of a conviction on the retrial. That is difficult to assess at the moment in the light of the material that is before me, but I am of a mind to generally accept it for the purposes of this application. Of course, this matter is a long way from retrial. The Crown must convince the Court of Appeal that the provisions of chapter 68 are satisfied and that the acquittal should not be a bar to a new trial.

[18] The third matter which Mr Lehane pointed to is that the Applicant will not be in custody long because the procedures prescribed in chapter 68 ought to be dealt with fairly quickly. The submission that the Applicant will not be in custody long may not come as a great comfort to the Applicant, but also I am far from convinced that the submission can be accepted as a matter of fact.

[19] The provisions of chapter 68 broadly reflect those that were introduced in the United Kingdom and were adopted in New South Wales. There has been at least one case that I am aware of in New South Wales. However, the provisions are new to Queensland in the sense that they have not previously been used and they have not yet been considered by the Court of Appeal. One can imagine that litigation under chapter 68 may not, in fact, be brief.

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[2] Sections 13 and 16.

[20] They were the major matters that were relied upon by Mr Lehane, though I have not overlooked the other matters that have been mentioned by him, both before me and in his careful written submission.

[21] Ms Morgan appears for the Applicant. She also provided a written submission that I had an opportunity to read before coming to Court. Again, it is a well thought through and careful submission. She refers to the presumption created in her client's favour under s 678J and submits that it has not been discharged by the Crown.

[22] The Applicant has a criminal history, but the most recent entry is almost 20 years ago and was what can be described as a minor offence of dishonesty. He clearly has ties to the jurisdiction, having lived for a long time in Queensland. He is presently in receipt of a disability pension and suffers from health problems, which clearly limit his mobility, including being visually impaired and awaiting [surgery].

[23] Ms Morgan has offered a draft order which sets out conditions upon which the Applicant could be granted bail. These include a residential condition, which, of course, is standard, a reporting condition requiring him to report five days a week and provisions designed to keep the Applicant in Queensland. A curfew condition was offered, but, in my view, that is not necessary.

[24] The procedure under chapter 68 is an extraordinary procedure in that it is an exception to the double jeopardy principles, which, of course, have been part of the common law and part of the *Code* by s 17 for a very long time. No doubt because of the exceptional nature of the provisions of chapter 68, s 678J creates a presumption in favour of the grant of bail to a person who is charged notwithstanding that he has the benefit of a prior acquittal of that charge.

[25] Having regard to the conditions which can be placed on a bail order, in my judgment the Applicant is not an unacceptable risk of flight. There is no real suggestion that he is a risk of reoffending while on bail or interfering with witnesses. I find that the Crown has failed to discharge the onus which is cast upon it under s 678J of the *Code* by creating a presumption in favour of bail for an Applicant and I will order bail on terms of the draft which has presented to me with three amendments. I have deleted order 3, which imposed a curfew. I have deleted draft order 5, which related to the curfew provision. And I have amended paragraph 6 to read:

> "The Applicant must not contact or attempt to contact any Crown witnesses, either directly or indirectly, except through his lawyers."

[26] Other than that, there will be an order as per the draft.

[27] THE COURT ORDERED THAT:

1. The applicant for bail be admitted to bail on the terms of the draft order.

Ex tempore reasons delivered 7 August 2018:

[28] On 3 August 2018, I heard an application for bail by a person I will simply identify as Mr A, he being the person who had been arrested on a charge of murder. The offence allegedly occurred in [the 1980s]. Mr A was tried in [the 1980s] and was acquitted.

[29] I granted Mr A bail. There were media present during the application. As the offending is decades old and the impact of reporting upon a fair trial may have been an issue, I made an order under s 12 of the *Bail Act* 1980 (Qld). The order I made was in these terms:

> "1. There be no reporting of the details of this application except:
>
> i. The fact that a person has been charged under chapter 68 of the Criminal Code (Qld);
>
> ii. The fact that the person has applied for bail;
>
> iii. The fact that the alleged offence is murder; and
>
> iv. The results of the application.
>
> 2. Any person is at liberty to apply for an extension of the material disclosable under this order."

[30] I gave leave to any person to apply for variation of that order, as interested parties, obviously members of the media, had not been heard on the issue. On any application, detailed submissions by all parties would be expected. That, fortunately for me, has occurred.

[31] Queensland Newspapers Pty Ltd, Channel 7 Brisbane Pty Ltd, Fairfax Digital Australia and New Zealand Pty Ltd, Nine Network Australia Pty Ltd, and the Australian Broadcasting Corporation have now all applied pursuant to the leave given to vary the orders I made under s 12 of the *Bail Act*.

[32] Thankfully for me, as anticipated, experienced Counsel have appeared for all parties and for Mr A and the Crown, and detailed submissions have been made. The case against Mr A involves the provisions of chapter 68 of the *Code*, headed "Exception to double jeopardy rules". In essence, chapter 68 exists as an exception to the defence of *autrefois acquit* which is statutorily embodied in Queensland in s 17 of the *Code*.

[33] Section 17 of the *Code* provides a defence to a charge, namely, relevantly here, that the person charged has been previously acquitted of the charge. By s 598(2)(d), a person charged with an offence may plead the prior acquittal in answer to an arraignment. Any arrest of a person upon a charge of an offence to which the person has already been acquitted would no doubt, in the absence of provisions such as those in chapter 68, constitute an abuse of the power of arrest.

[34] Section 678I of the Code provides as follows:

> "**678I Authorisation of police investigations**
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> (1) This section applies to any police investigation of the commission of an offence by an acquitted person in relation to the possible retrial of the person for the offence under this chapter.
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> (2) For the purposes of this section, a police investigation is an investigation that involves, whether with or without the consent of the acquitted person—
>
> (a) any arrest, questioning or search of the acquitted person, or the issue of a warrant for the arrest of the person; or

(b) any forensic procedure carried out on the person or any search or seizure of premises or property of or occupied by the person.

(3) A police officer may carry out or authorise a police investigation to which this section applies only if the director of public prosecutions—

(a) has advised that, in the opinion of the director of public prosecutions, the acquittal would not be a bar to the retrial of the acquitted person in this State for the offence; or

(b) has given written consent to the police investigation on the application in writing of the commissioner, or a deputy commissioner, of the police service.

(4) The commissioner, or a deputy commissioner, of the police service may make an application for the police investigation only if satisfied that relevant evidence for the purposes of an application for a retrial under this chapter—

(a) has been obtained; or

(b) is likely to be obtained as a result of the investigation.

(5) The director of public prosecutions may give consent to the police investigation only if satisfied that—

(a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and

(b) it is in the public interest for the investigation to proceed.

(6) Despite the *Police Service Administration Act 1990*, section 4.10, the commissioner of the police service may not delegate powers of the commissioner under this section to a police officer or staff member."

[35] Therefore, provided the appropriate approvals are obtained, s 678I effectively remedies any bar to the police arresting a suspect, notwithstanding the suspect's previous acquittal of the charge. Chapter 68 contemplates that a person will be arrested and charged and then an application will be made to the Court relevantly here under s 678B. That is in these terms:

"**678B Court may order retrial for murder—fresh and compelling evidence**

(1) The Court may, on the application of the director of public prosecutions, order an acquitted person to be retried for the offence of murder if satisfied that—

(a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and

(b) in all the circumstances it is in the interests of justice for the order to be made.

(2) The Court may order a person to be retried for the offence of murder under this section even if the person had been charged with and acquitted of a lesser offence.

(3) If the Court orders an acquitted person to be retried for the offence of murder, the Court must quash the person's acquittal or remove the acquittal as a bar to the person being retried.

(4) On the retrial, section 17 does not apply in relation to the charge of the offence of murder."

[36] Section 678B(4) expressly nullifies the effect of s 17 on any re-trial of the offence to which there has been an acquittal. It follows then that a plea of autrefois acquit, pursuant to s 598(2)(d), could not be made on an arraignment on a re-trial held pursuant to s 678B.

[37] Interestingly, s 678H assumes that a new indictment will be presented if the re-trial is ordered. The person is not tried on the original indictment so would have to plead to the new indictment. Once the person is charged and the *Bail Act* is engaged, s 678J modifies the operation of the *Bail Act*. Normally, by force of ss 13 and 16(3) of the *Bail Act*, a person charged with murder is in a show cause situation, so the Court will refuse to grant bail unless the accused shows that his detention in custody is not justified.

[38] Section 678J is in the following terms:

"**678J Bail**

(1) This section has effect despite anything to the contrary in the *Bail Act 1980*.

(2) There is a presumption in favour of bail for a person who is charged with an offence for which a retrial is sought under this chapter until the application for the retrial is dealt with."

[39] Section 678K then provides restrictions upon publication of certain material. That section provides as follows:

"**678K Restrictions on publication**

(1) A person must not publish any matter for the purpose of identifying or having the effect of identifying an acquitted person who is being retried under this chapter or who is the subject of—

(a) a police investigation, or an application for a police investigation, mentioned in section 678I; or

(b) an application for a retrial, or an order for retrial, under this chapter.

(2) Subsection (1) does not apply if the publication is authorised by order of the Court or of the court before which the acquitted person is being retried.

(3) The relevant court may make an order authorising publication only if the court is satisfied that it is in the interests of justice to make the order.

(4) Before making an order under this section, the relevant court must give the acquitted person a reasonable opportunity to be heard on the application for the order.

(5) The relevant court may at any time vary or revoke an order under this section.

(6) The prohibition on publication under this section ceases to have effect, subject to any order under this section, when the first of the following paragraphs apply—

(a) there is no longer any step that could be taken which would lead to the acquitted person being retried under this chapter;

(b) if the acquitted person is retried under this chapter—the trial ends.

(7) Nothing in this section affects any prohibition of the publication of any matter under any other Act or law.

(8) A contravention of a prohibition on publication under this section is punishable as contempt of the Supreme Court."

[40] Interestingly, there is what has been described here as a "gap" in s 678K. The prohibition applies during the police investigation and then in relation to a re-trial. There is a gap between the time of the application being made to the Court of Appeal and it being concluded. I will return to the question of the gap shortly.

[41] Section 678K(2) enables the Court to authorise publication contrary to s 678K but it is only the Court before which the acquitted person is being re-tried which has jurisdiction. That assumes that the jurisdiction to vary the restriction on publication created by s 678K only applies once a re-trial has been ordered.

[42] Section 678K identifies two categories of matters, the publication of which are prohibited. These are:

1. matters which are published "for the purpose of identifying the acquitted person"; and

2. matters which have the effect of identifying the acquitted person.

[43] Section 12 of the *Bail Act* is in the following terms:

"**12 Restriction on publication of information, evidence and the like given in bail application**

> (1) Where the complainant or prosecutor or a person appearing on behalf of the Crown opposes a defendant's release under this part or the *Youth Justice Act 1992*, part 5, the court, at any time during the hearing of the application for bail, may make an order directing that the evidence taken, the information furnished, the representations made by or on behalf of either party or the reasons given by the court for the grant or refusal of bail or release under section 11A or any part thereof or any of them shall not be published by any means—
>
> (a) if an examination of witnesses in relation to an indictable offence is held—before the defendant is discharged; or
>
> (b) if the defendant is tried or committed for trial—before the trial is ended.
>
> (2) A person who fails without lawful excuse, the proof of which lies upon the person, to comply with an order made under subsection (1) commits an offence against this Act.
>
> Maximum penalty—10 penalty units or imprisonment for 6 months."

[44] Section 678K of the *Code* and s 12 of the *Bail Act* operate in very different ways. Section 12 assumes that the rules of open justice apply to the reporting of a bail application and any restriction on publication must be Court ordered. Section 678K legislatively imposes restrictions on publication of material independently of any order. A breach of that section is punishable by contempt.[3]

[45] Any orders I make today are orders varying the orders I made on 3 August 2018 under s 12. Any orders made today will not, of course, authorise breach of s 678K of the *Code*. Therefore, if I exempt from publication some material which would otherwise be covered by the order on 3 August and the material exempted is published, the applicants would still be in breach of s 678K of the *Code* if the material published:

1. was published for the purposes of identifying an acquitted person, namely, Mr A; or
2. had the effect of identifying Mr A.

[46] This aspect is particularly important because of the objective nature of one of the categories of the material prohibited to be published by s 678K. I am unaware of what material is already in the public domain. There was no doubt extensive reporting of the [original] trial and the acquittal. It is probably the case, although I do not decide it, that whether the publication of some matter has the "effect of identifying an acquitted person" — here, Mr A — is determined by reference to what evidence is already in the public domain.

[47] Putting that in the context of the present case, the applicants, at least in one of their alternative applications, want exempted from the s 12 prohibition the following:

1. the applicant for bail is male;

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3 See s 678K(8).

2. the alleged offence occurred in [the 1980s] in [Queensland];

3. at the original trial, [particular evidence was led].

[48] Depending upon what is already in the public domain, that evidence, together with the fact that the applicant for bail was acquitted, may very well be evidence which has the effect of identifying Mr A. If that is the case, then the applicants would have breached s 678K and potentially be liable for contempt.

[49] It was submitted on behalf of the applicants that some information was already in the public arena via a media release by the Queensland Police Service. My preliminary view, and I do not finally decide it, is that the fact that others may have published material which might identify an accused or might assist in identifying an accused does not give a defence to those who publish similar material.

[50] In all, I wish to make it very clear that any order I might make today varying or dissolving the s 12 order I made on 3 August would be no defence to proceedings brought against anyone who breaches s 678K. The orders sought varying the orders of 3 August are as follows:

> "1. Pursuant to paragraph 2 of the orders made under section 12 of the *Bail Act 1980* (Qld) ("the Bail Act") in this proceeding, an order varying the order made to the following terms:
>
> (a) That the details of this application that would identify or have the effect of identifying the person the subject of this application shall not be published until the earlier of:
>
> (i) There is no longer any step that could be taken which would lead to the person the subject of this application being retried under Chapter 68 of the *Criminal Code* (Qld);
>
> (ii) If the person the subject of this application is retried under the *Criminal Code* (Qld) – the trial ends;
>
> (iii) The Court of Appeal or the court before which the person is being retied[4] makes an order authorising publication of matter identifying or having the effect of identifying the person the subject of this application (to the extent of the matter so authorised).
>
> 2. Alternatively, pursuant to paragraph 2 of the orders made under section 12 of the Bail Act in this proceeding, an order varying the order made to the following terms:
>
> (a) That there be no reporting of the details of this application except:
>
> (i) The fact that a man has been charged under Chapter 68 of the *Criminal Code* (Qld);
>
> (ii) The fact that the alleged offence occurred in [the 1980s] in [Queensland];
>
> (iii) The fact that the man has applied for bail;

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4 No doubt a typographical error for "retried".

(iv) The fact that the alleged offence is murder;

(v) The fact that the type of fresh evidence against the person the subject of the application is [redacted];

(vi) The fact that [particular evidence] was led at the original trial;

(vii) The fact that at the hearing of the bail application his Honour Justice Davis speculated whether the [new] evidence is fresh evidence for the purpose of Chapter 68 of the *Criminal Code* (Qld) as there was [particular evidence] led at the original trial;

(viii) The results of the application.

(b) That the prohibition on publishing the details of this application applies until the earlier of:

(i) There is no longer any step that could be taken which would lead to the person the subject of this application being retried under Chapter 68 of the *Criminal Code* (Qld);

(ii) If the person the subject of this application is retried under the *Criminal Code* (Qld) – the trial ends;

(iii) The Court of Appeal or the court before which the person is being retied[5] makes an order authorising publication of matter identifying or having the effect of identifying the person the subject of this application (to the extent of the matter so authorised)."

[51] I decline to make orders in terms of paragraph 2. The way the application has been brought and argued — and when one has regard to the terms of s 678K and its interrelationship with s 12 and the principles of open justice — it is undesirable that the Court begin to identify the type of material which ought to be exempted from general publication under s 12.

[52] I intend to make an order in terms of paragraph 1. What paragraph 1 does is effectively extend s 678K across what has been identified as the gap. That is justified, in my view, because of the policy behind s 678K, namely, that the privacy of the acquitted person ought to be preserved. It is also justified, because, as the High Court said in *R v Carroll*,[6] a person is entitled to the full benefit of his acquittal. Mr A is entitled to that benefit and an order in terms of paragraph 1 will achieve that.

[53] Where we are then left is that s 678K will simply operate on its terms with the extension made by force of an order in terms of paragraph 1. No further order under section 12 is justified. There are many statements which explain the importance of the principles of open justice which include, of course, the desirability of proper reporting of the workings of the Court.[7] There obviously must be some good reason in the administration of justice for a section 12 order to be maintained.[8]

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5 Again, "retried".

6 (2002) 213 CLR 635.

7 See, for instance, cases such as *Queensland Newspapers Pty Ltd v Stjernqvist* [2007] 1 Qd R 171.

8 See *John Fairfax & Sons Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465.

[54] Here, submissions were made on behalf of Mr A. There are really two bases to seek a section 12 order beyond that which I am making. These were:

1. that the information apparently sought to be published is likely to identify Mr A. That concern is met by section 678K whose operation is effectively extended by the order I intend to make.

2. the information is misleading, as the evidence is not fresh and compelling. Whether the report is accurate is not a matter for me today. What is relevant is whether the proposed reporting will interfere in some way with the administration of justice, typically where it will offend the right of Mr A to a fair trial, if it comes to that.

[55] There is no evidence of any specific prejudice. Consequently, I will dissolve the orders I made on 3 August and I will then make orders in terms of paragraph 1 of the amended application.

[56] THE COURT ORDERED THAT:

1. The orders made under section 12 of the *Bail Act* 1980 (Qld) on 3 August 2018 are dissolved and it is ordered that there be no reporting of the details of the bail application that would identify or have the effect of identifying the person the subject of the bail application until the earlier of:

   (a) There is no longer any step that could be taken which would lead to the person the subject of the bail application being retried under Chapter 68 of the *Criminal Code* (Qld);

   (b) If the person the subject of the bail application is retried under Chapter 68 of the *Criminal Code* (Qld) – the trial ends;

   (c) The Court of Appeal or the court before which the person is being retried makes an order authorising publication of matters identifying or having the effect of identifying the person the subject of the bail application (to the extent of the matter so authorised).