

Media Law Briefing from Professor Tim Crook UK Media Law Pocketbook 2nd Edition.

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Police investigation into finances of the SNP, contempt of court, and the applicability of UK Supreme Court ruling in ZXC on reasonable expectation of privacy for crime suspects

It has not gone without notice that very high profile political figures in Scotland, namely former SNP First Minister Nicola Sturgeon, her husband and former SNP Chief Executive Peter Murrell, and the party's treasurer Colin Beattie have all been arrested, questioned and released without charge.

Police Scotland is investigating what happened to £660,000 of donations given to the SNP by independence activists for use in a future independence referendum campaign.

The UK Supreme Court's decision in ZXC v Bloomberg in February 2022 set a high bar of reasonable expectation of privacy versus public interest freedom of expression for crime suspects investigated by the police, questioned voluntarily, or arrested, questioned and released without charge.

But this was an English case and it is not binding in Scotland which has its own and separate media law jurisdiction. See Fergus Whyte's article for Law Society of Scotland 'Police enquiries: a private matter? The Supreme Court has upheld a privacy-based claim by an individual subject to a criminal investigation but not charged. This article considers the ruling, and its possible effect in Scotland' at:

<https://www.lawscot.org.uk/members/journal/issues/vol-67-issue-04/police-enquiries-a-private-matter/>

Mr Whyte explains another key difference in the process between Scotland and England: 'Only after the CPS has made a decision on the case is the suspect formally charged (Director's Guidance on Charging – Sixth Edition, Crown Prosecution Service). In Scotland, a police decision to "charge" is in fact a decision that they will refer the case to the Crown Office & Procurator Fiscal Service ("COPFS") for it to decide what further action to take. There are a wide range of options available to COPFS other than instituting proceedings.'

What is clear is that Police Scotland did not publicly identify Nicola Sturgeon or the other people who have been arrested and questioned. See: 'Investigation into Scottish National Party funding and finances – update' at: <https://www.scotland.police.uk/what-s->

[happening/news/2023/june/investigation-into-scottish-national-party-funding-and-finances-update/](#)

The police statement also says 'The matter remains active for the purposes of the Contempt of Court Act 1981 and the public are therefore advised to exercise caution if discussing it on social media.'

The Strict Liability Rule in the 1981 Contempt of Court Act that publication of information when a case is active (after arrest for example) will be a contempt of court if it creates a substantial risk of serious prejudice is fully engaged in such cases whether in Scotland, England and Wales, or Northern Ireland.

And this issue is being commented on and discussed in Scotland and elsewhere. On February 7th 2023 COPFS in Scotland used its official Twitter channel to publish a reminder about the Contempt of Court Act restrictions. See: <https://twitter.com/COPFS/status/1623075639224946689>

And Roddy Doyle KC, Scotland's Dean of the Faculty of Advocates, thought he should use his Twitter account to make a 'public service announcement' about contempt of court risks, presumably in respect of social media commentary: <https://twitter.com/RoddyQC/status/1667968068671119361>

What is the right judgment call where the suspect makes an extensive public statement declaring innocence? Early media contempt of court case law in England from 1983 established that it is possible to create a substantial risk of serious prejudice to the prosecution case as much as to that of a defendant whether or not the matter goes to jury trial.

The SNP finances police inquiry story is a difficult case history to navigate given the intense public interest status of the suspects.

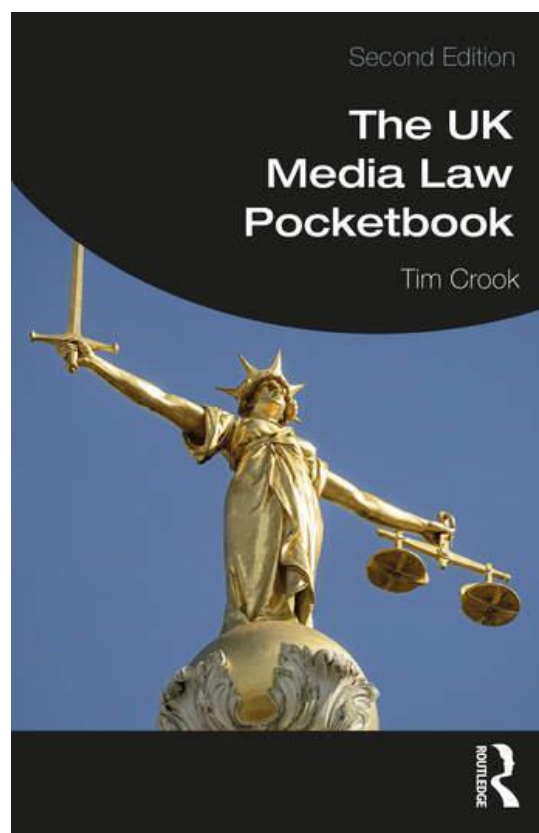
An example of how the BBC is managing this is the story published online 13th June 2023: 'Calls for Nicola Sturgeon to be suspended from SNP following arrest' at: <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-65874678>

The [Section 5 defence in the 1981 Contempt of Court Act](#) also applies: '5. **Discussion of public affairs.** 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.'

Imagine the decisions British media would have to make should equivalent political figures in England be subject to investigation for serious criminal allegations.

These media law decisions are also influenced by any context of law officer warnings and a situation developing where the boundaries are set by the extent to which media publishers and social media communicators are pursued for alleged breaches of contempt of court law.

Fraser Myers, the deputy editor of Spiked Online, has been prompted to discuss the dilemmas and comparative media law issues in 'Why can't we talk about the Nicola Sturgeon scandal? Contempt-of-court laws have chilled the debate we need about the former first minister's arrest' at: <https://www.spiked-online.com/2023/06/12/why-cant-we-talk-about-the-nicola-sturgeon-scandal/>



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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