

Ethically Approved Research - Summary Report

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Full Title of Research Study:	The Operation of the In Camera Rule in the District Court
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Student Research

If research was undertaken for an academic award please state:

Official title of the course:	NA
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Abstract:

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It is a fundamental principle of Irish constitutional law that justice should be administered in public. Chief Justice Hamilton wrote that, “*In a democratic society, justice must not only be done, but must be seen to be done*”. This means that members of the public and journalists can sit in open courtrooms and observe and comment on how justice is administered. However, there is an exception to this fundamental principle in that certain types of cases can be heard ‘otherwise than in public’. In other words, certain court proceedings can be held in private without members of the public attending, and there are strict limitations on what can be shared and reported. The *in camera* rule is the privacy rule that places limits on: a) who can attend the category of cases that are held ‘otherwise than in public’, b) what can be shared with others about these cases, c) who can access documents associated with these cases, and d) the exceptions to the rule for reporting and research purposes. The focus of this report is on the operation of the *in camera* rule in private family law proceedings (for example, guardianship, custody and access cases; domestic violence, abuse and coercive control; judicial separation and; divorce cases) and public family law cases (child care and child protection cases involving Tusla, Child and Family Agency). However, reference is also made to the operation of the *in camera* rule in other legal contexts such as criminal law proceedings and in cases where children are in conflict with the law.

A fundamental issue with the *in camera* rule is that the parameters of the rule have not been defined and delineated in legislation. Exceptions to the rule have been defined in law pertaining to media court reporting and research. However, due to the prolonged absence of a comprehensive legislative framework pertaining to the *in camera* rule, it has been largely left to the judiciary to define the inner and outer limits of the rule as it operates in areas such as child care and family law proceedings, criminal law and company law, as well as special care cases. The benefits of the *in camera* rule are to protect the right to privacy of the parties and any children to whom these proceedings relate, safeguarding potentially vulnerable parties in need of protection from abuse (for example, in domestic abuse cases), protecting the integrity of proceedings, and facilitating the administration of justice. However, there are also well-documented challenges to the operation of

the rule. At the apex of these challenges lies the lack of transparency concerning how justice is served behind the closed doors of courtrooms in family law and child care proceedings. Some would argue that the *in camera* rule, and the limited exemptions to the rule, have restricted knowledge and understanding of how private family law justice is administered in practice.

Irish Law

Irish case law concerning the phrase ‘otherwise than in public’ has made it abundantly clear that exceptions to the public administration of justice should be very strictly construed both in the context of the subject matter to which it applies, but also in relation to the procedures that are applied. Every departure from the rule should do no more than required to protect the countervailing interests in the proceedings such as the proper administration of justice and the protection of family life. However, a review of the case law and the relevant legislation would suggest that the *in camera* rule and its application have over time come to be interpreted in a manner that has resulted not only in transparency in certain types of legal proceedings being limited but has arguably negatively impacted the rights of children and family service users. Moreover, strikingly absent from the existing case law and legislation concerning the operation of the *in camera* rule is any reference to children and children’s rights. It is significant that while the international and domestic legal frameworks concerning the protection of children’s rights in the context of both private and public family law proceedings are well established, the only real acknowledgement of children in this context is that the rule must protect their privacy. While Article 42 A, and the need to consider the best interests of children as paramount in private and public law cases, has been firmly rooted in our constitutional and legislative frameworks since 2015, the extent to which the current manner in which the rule operates impacts the best interest of children in Ireland has received limited attention. This is concerning given the fact that decisions concerning the best interests of these children are made every day behind the closed doors of the court room (particularly in the lower courts) in the absence of any public scrutiny.

National survey

The survey data found that there was a strong sense from survey participants, who were mostly parents, that the *in camera* rule is attempting to achieve something positive. For example, participants felt that it protects children, it provides privacy and protection for litigants, and precludes members of the public from attending proceedings, allowing participants to tell their story. While participants believed there were benefits to the rule, many simultaneously expressed reservations about it, with some querying its application. A large cohort of participants were very critical about how the closed, private nature of family law proceedings due to the *in camera* rule led to a perceived reduction in transparency and accountability. While the media can report anonymously in such cases, this practice is not common. Slightly over half of the participants (55%) said that the *in camera* rule was not explained to them during their family law case. Close to 50% of participants said that they did not have a clear understanding of what the *in camera* rule allowed at the time of their case. When asked should the *in camera* rule be changed, close to eight in ten participants (79%, n=236) recommended that it should be changed.

The survey data also found that close to half of the participants (47%, n=140) indicated that the *in camera* rule was breached in their case; in most cases, the person responsible for the breach was a former partner/spouse.

Interviews with Judges

All of the Judges interviewed agreed that the main strength of the rule lies in its ability to protect the privacy of parties to the proceedings, and more importantly, any children impacted as a result. In addition, all Judges were very much aligned in their understanding of where the rule begins: that is when proceedings are instituted. However, the strength of agreement amongst Judges deteriorated as more aspects of the rule's operation were explored. There was less agreement amongst Judges as to when the rule's application ends.

In relation to understandings of the rule, there were some Judges who took a very strict and technical interpretation of the rule's application. For example, some judges were of the view that if someone wanted to talk about their experiences of the family law proceedings, they are prohibited from accessing such support without the leave of the court. Most Judges, however, took the view that it was not problematic for people accessing the family courts to speak to their experiences with close family members as long as they didn't disclose the content of the proceedings. The challenge here for someone is being able to make the distinction between the content of the legal proceedings and one's experiences thereof.

Focus groups with professionals, community groups, organisations, and academics

There was little consensus amongst professionals concerning the scope of the *in camera* rule in terms of its operation. One area where there was agreement was with respect to the need to clarify the rule in terms of nature and scope for both public and private family law proceedings. Professionals spoke about a collective lack of clarity and understanding of the *in camera* rule that extended to a misinterpretation and misapplication of the rule in some instances in practice.

Participants indicated that there was a disproportionate emphasis on the need to protect privacy of individuals to the potential detriment of other rights of parents and children. Many participants also expressed the view that the right balance needs to be struck between protecting families and children's privacy, while also ensuring the public's right to know how justice is administered. Professionals noted that strict applications of the *in camera* rule can result in individuals not being able to freely access necessary therapeutic supports; parties can be denied the support of a or an interpreter due to potential for the third party to breach the rule; and withholding copies of court reports (allowing a person to have time to digest its contents in a non-pressurised environment). Taken in isolation, these are all examples of potentially serious infringements of the right of access to justice.

Recommendations

The data outlined in this report confirms the benefit of having a rule that protects the rights of children and parties to the proceedings. Whilst the issues concerning the operation of the *in camera* rule are well documented, this is the first report that presents comprehensive research, and an evidence base to underpin changes which may be made to the rule. The following reforms are

recommended. 21 recommendations were made in the report: [all are available to read here](#). Two key recommendations were:

- It is recommended that a new title be given to this rule which is accessible for all family law court service users. This should be given priority so that there is a clear, concise explanation which is reflective of the actual meaning of the rule. It is recommended that a renaming of the rule to the ‘privacy and transparency rule’ would maintain a proportionate balance.
- This report recommends that the most comprehensive way of addressing many of the existing shortcomings surrounding the operation of the rule, including a redefinition of what it covers, information sharing, breaches and sanctions for breach, is the creation of primary legislation that would apply across all relevant proceedings held otherwise than in public which takes account of the recommendations listed above.

Report citation:

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Reference list :

The reference list is 15 pages long and not included here. The full reference list is accessible in the [full report text](#). Select references used in this report:

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