

CHAPTER SEVENTEEN

PROHIBITION OF PUBLICATION AND COMMUNITY NOTIFICATION

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1. THE PROHIBITION OF PUBLICATION OF CERTAIN INFORMATION RELATING TO CRIMINAL PROCEEDINGS

There are a number of provisions in our current law prohibiting the publication of certain information relating to criminal proceedings and this is traversed quite extensively by the Project Committee in the discussion paper¹. The media have highlighted child abuse and raised public awareness of the problem and for that they must be commended. However it is submitted that certain reports have contributed to and resulted in the secondary abuse of children. In certain media reports child victims have been indirectly identified through interviews with their parents and school teachers². An example of this occurred on the 19h00 news broadcast of e-tv on 13 January 2002. The story involved the arrest of a school teacher in Potgietersrus on a charge of rape of his 7 year old daughter. In the course of the story the mother of the child was identified by revealing both her first name and surname.

It is clear that Section 154(3) of the Criminal Procedure Act³ prohibits the publication of any information that reveals or may reveal the identity of a witness or accused at criminal proceedings under the age of 18. The presiding officer is the only person who can authorise such publication if he or she is of the opinion such publication is just and equitable and in the interest of any particular person.

¹ at paragraph 23.1

² In *S v Citizen Newspapers (Pty) Ltd & Another, S v Perskorporasie van Suid Afrika Bpk en 'n andere* 1981 (4) SA 18 A the court held that the section envisaged a direct identification or identification by inference.

³ 51 of 1977

Therefore these media reports are unlawful. The media may respond by saying that the parents or school⁴ consented to being interviewed but the question then arises as to whether that was informed consent. In any event, in terms of the law only the presiding officer can consent to the release of the identity of the child.

The identification of child victims, who may or may not testify, is very serious and has enormous consequences on the healing of a victim. Even where victims are babies and prosecutions may not proceed to identify the victim now will still probably hold serious consequences for the victim in years to come. In revealing information that can lead to the identification of the child is therefore secondary victimisation.

We are in agreement with the Project Committee's recommendation that the NDPP prosecute violators of this provision. We propose that a statutory duty be placed on the NDPP for this purpose to ensure that the current situation of a lack of prosecutions not continue.

However as to the Project Committee's recommendation that the current law is adequate, we wish to submit that greater certainty could be achieved if the provision stated clearly that **no parent, guardian or care-giver may consent to the identity of a witness or accused below the age of 18 years being revealed**. This might seem unnecessary, however we are of the opinion that in this case it should be clear that parental authority cannot trump the decision of a presiding officer and this will serve not only to inform members of the media, but also parents or guardians who may be intimidated by media attention. The violation should nevertheless continue to rest with the individual who published the information.

2. COMMUNITY NOTIFICATION

We agree with the recommendation of the Project Committee that there should not be community notification along the lines of Megan's Law⁵, that there should not be a

⁴ This occurred in the above-mentioned example. In an interview conducted by William Bird of the Media Monitoring Programme, the *e-tv* news editor stated that the mother chose to identify herself.

⁵ Paragraph 42.7.7.7

register of sexual offenders solely to blame and shame sexual offenders⁶, nor should there be a register of alleged sexual offenders⁷. It is very important that we reiterate the reasons for not including provisions along these lines.

As far as the latter two registers are concerned we do not feel that these types of registers will hold up to constitutional scrutiny. As far as the Megan's Law community notification register is concerned, we feel there are pressing arguments that can be made that indicate that such a system is not practical in the South African situation.

There are criticisms leveled at the system of community notification by United States organisations themselves. The Association for the Treatment of Sexual Abusers⁸ states, *inter alia*, that:

- The level of protection of these laws is limited and community notification does not guarantee protection from harm
- While community notification is dependant upon risk assessment of the individual sex offender there is little evaluative data addressing validity and reliability of the risk assessment rating techniques being developed or used in the United States
- Notification to the community at large in the case of a sexual offender who abused a family member could result in the victim's and/or family's identity being revealed, and therefore potentially causing further victimisation.

The Centre for Sex Offender Management⁹ has noted that there are few studies on the effectiveness of community notification in the United States. The one study, (The Washington State Recidivism Study) revealed there was no significant statistical difference between the recidivism patterns of adult sex offenders who were subject to community notification (level III) and similar sex offenders released prior to the implementation of the law.

The Centre also notes the negative effects of community notification:

⁶ Paragraph 42.7.8.4

⁷ Paragraph 42.7.8.5

⁸ Community Notification Position Statement available on www.atsa.com

⁹ Community Notification and Education (April 2001)

- The potential for vigilantism by the community towards offenders
- Difficulties experienced by the states in complying with the registration requirements – e.g. inaccurate offender addresses
- Victim identification

If one looks at these problems coupled with the resources used in the United States to implement community notification – internet, media releases, door to door flyers, mailed flyers, the offender placing an advertisement in a local newspaper, posting of signs on an offenders home, CD-Rom lists- it is submitted that South Africa will not be able to implement an effective system of community notification. We do not have the resources that are available in the United States. The discrepancies between urban and rural life and informal housing arrangements would make community notification impractical. The vast potential for victim identification and the lack of research on notification available militates against the introduction of such a system.

Although the sentiment behind such a system is laudatory – to prevent further harm – there is no evidence this will not occur and South Africa has more pressing needs in terms of resource allocation to prevent sexual abuse.