Submission to the Victorian Law Reform Commission inquiry into contempt of court and the Judicial Proceedings Reports Act

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Introduction

I thank the Commission for the opportunity to make this submission. It is written primarily from a journalistic rather than legal perspective and for that reason is confined to the chapters of the consultation paper that seem to me most directly relevant to journalism. These are:

> Chapter 6: Disobedience contempt
> Chapter 7: Contempt by publication (1) – sub judice contempt
> Chapter 8: Contempt by publication (2) – scandalising the court
> Chapter 9: Prohibitions on publications under the Judicial Proceedings Reports Act

The general thrust of this submission is that the existing contempt laws are oppressive of journalism and that in many respects the balance between the public interest in the administration of justice and the public interest in the media's providing information has been struck in the wrong place.

This submission attempts to suggest ways in which this might be remedied. It is written in a spirit of deep respect for the law and for the courts that administer it.

Chapter 6: Disobedience contempt

Definition

In paras 6.8 to 6.12, which define disobedience contempt, there is no mention of the shield laws that have been introduced in several Australian jurisdictions, including Victoria, over the past decade. The purpose of these laws is to provide journalists with a conditional privilege against being forced to disclose in court proceedings the identity of confidential sources.

The rationale for this is that journalists have a clear professional ethical obligation to keep the secrets entrusted to them in the course of their work and that there is a public interest in their doing so. This obligation is stated in clause 3 of Australia's only national journalistic code of ethics, that of the Media, Entertainment and Arts Alliance, in the following terms:

> Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

It is that last sentence that imposes a comprehensive ethical obligation on journalists.

It would reinforce the rationale behind the shield laws if their existence was acknowledged in the law of contempt because it would be a further statement of the importance of balancing the public interest in the proper administration of justice with the public interest in the media's being able to obtain information, as recognised in the shield laws.

Victoria's shield laws are contained in the Evidence Amendment (Journalist Privilege) Act 2012. It is not proposed that this entire Act be made part of the law of contempt; an acknowledgement of its existence and the inclusion of contextual provisions setting out how it fits with the law of contempt would suffice.

Elements

Similarly the elements of disobedience contempt should be expanded to include a reference to shield laws. In circumstances where an alleged contemnor has invoked the shield laws albeit unsuccessfully, the party bringing the proceedings for contempt should be required to acknowledge that an application for shield-law protection was made, and the arguments for and against the application can be re-litigated in the context of proceedings for contempt.

This is one way in which the summary nature of proceedings for disobedience contempt could be subjected to review.

Jurisdiction

This raises the issue of jurisdiction. The court conducting the proceedings in which the shield laws have been unsuccessfully invoked should be required to refer any resultant charge of contempt to a higher court for determination. This would add another layer of protection for journalists' sources and for journalists themselves.

Lest it be thought that this is too elaborate a procedure for what is essentially a side issue in a trial, the serious fate that frequently befalls whistleblowers and other confidential informants tells us that it is in fact an issue that can carry very heavy consequences and therefore should be dealt with in proceedings where the protection of sources is the central issue.

Those consequences can include the imposition of a criminal conviction on a journalist for contempt. This is a disproportionately severe penalty for a person who is doing no more than adhering to his or her professional ethical obligations. The consequences for sources can be a good deal more severe: loss of employment, prosecution, family breakdown, broken careers, threats, intimidation and reprisals.

Nature of proceedings

If the distinction between criminal and civil contempt is to be retained – and it is noted that this is an open question – then proceedings taken against a journalist for contempt where the protection of a source is the issue should in all cases be defined as civil proceedings.

This would remove the stigma of criminality from a journalist for merely doing his or her ethical duty and remove what can be a serious long-term impediment to a person's career.

Enforcement

It is accepted that the courts must have the ability to enforce their orders in the interests of the proper administration of justice.

However, as the consultation paper makes clear, the hybrid criminal-civil nature of the law has led, in Justice Michael Kirby's words, to a lack of conceptual coherence, uncertainty, inadequacies and fictions (p77). These are enemies of press freedom. Uncertainty leads journalists – especially news executives who have to make decisions on these matters under pressure of time – to take the cautious route and leave out material that may well be in the

public interest. Where there is uncertainty, the legal advice available to them is of little help when the lawyer cannot be reasonably sure how the law will play out.

Moreover, the lack of procedural safeguards traditionally available to people accused of serious criminal offences is a further affront to press freedom.

This submission supports the recommendations of the Australian Law Reform Commission, the Law Reform Commission of Western Australia and the New Zealand Law Commission that the law of contempt should be enshrined in statute.

Such a statute should have specific provisions relating to journalism of the kind already discussed here:

> Where journalists are in contempt for protecting a confidential source, the case should be civil and not criminal.
>
> The case should be heard by a higher court than the one allegedly held in contempt.
>
> The considerations of public interest in the media's being able to obtain and publish information, and the potential consequences for enforced disclosure, as set out in the shield laws, should be bases for a defence and for mitigation of penalty.

Chapter 7: Sub judice contempt

Fundamentally, this submission supports the concept of sub judice contempt and the rationale behind it. An American-style system, which sometimes turns criminal proceedings into a celebrity circus or trial by media, offends the sensibilities of an Australian culture accustomed to the treatment of criminal proceedings as matters of grave concern to be dealt with strictly according to law.

The care taken by Australian courts to ensure that the presumption of innocence is protected and that juries arrive at their verdicts based on admissible evidence heard in court represents a protection for individual liberties that is of the first importance.

In my view, the primary challenge to sub judice contempt law arises not from any fundamental disagreement with these foundational precepts but from the effects on media and on jurisdictional reach of the digital communications revolution.

A secondary challenge arises from the inconsistent way in which the courts have interpreted the tendency test.

Effects of the digital revolution

The digital technology that has driven the development of social media, the convergence of the previously disparate media platforms of newspapers, radio, television and online, and the creation of the continuous and rapidly moving 24/7 news cycle, brings both opportunities and challenges to the courts.

My reading of the consultation paper leaves me with the impression that the opportunities are being overlooked and that the main focus is on the challenges.

So I am starting with the opportunities.

Digital technology provides the means by which reporters can cover court proceedings in great detail and in real time. From the point of view of open justice and the public interest, this is an extraordinarily positive development.

It allows a far swifter and more comprehensive coverage than was ever possible in the pre-digital era, when a reporter sat down at the end of the day and compressed the day's proceedings into a story of 400 or 500 words – often fewer -- with no room for expansion.

In the newspaper lingo of the time, type was not made of rubber.

Well, in effect, it now is. Coverage of court proceedings can run to infinite length. We saw how well this served the public in the coverage of the banking royal commission, when the proceedings were constantly updated on news websites.

We saw it too when the three Federal ministers, Sukkar, Hunt and Tudge, were brought before the Court of Appeal to give an account of themselves over contempt of that court.

And most recently we saw it with the coverage of the sentencing of George Pell and of his appeal. In those cases, of course, it was augmented by live television streaming of the proceedings.

Big media organisations committed substantial resources to make this happen: teams of two or three reporters taking turns to keep up the flow of material.

While there is always a risk that a mistake will be made, that risk has always existed. The fact that the information is sent in small bites probably reduces the risk because the bites are self-contained and consist of a straight account of what has just happened.

When the time comes to synthesise them into a coherent story at the end of the day, they provide a source for double-checking.

The second opportunity arises from the fact that digital technology enables anyone with access to a computer and the skills of basic literacy to be a journalist.

Obviously this is a two-edged sword, but for the courts there is an opportunity to have their proceedings reported more widely than just through the professional mass media by assisting freelancers and so-called citizen journalists, who have their own websites, to report the courts.

Upon inquiry, I have been told by Victorian Court Services that there is no provision for the training of people like this. That seems to me to be a missed opportunity. A training course in court reporting, leading to some kind of accreditation, might well attract a relatively small but valuable cohort of freelancers and citizen journalists whose presence would augment the thinned-out ranks of full-timers.

It is easy to conceive of a business model for these people in providing court coverage for media outlets unable or unwilling to employ staffers to do the job.

Accreditation is sometimes a dirty word in journalism because of connotations with limits on press freedom, but in fact accreditation of journalists is long established and well accepted. An obvious case is CFA accreditation. People who complete the CFA course are accredited and are particularly valuable to both the CFA and the media during bushfire emergencies because they know what to do, how to behave and how to get stories without getting in the way.

The negative challenges that arise from the digital revolution have been well rehearsed and are given extensive treatment in the consultation paper. Those challenges are real and substantial.

One of them – related to the opportunity just discussed -- is that with the hollowing out of established newsrooms as a result of the financial impact of digital technology on newspapers, radio and television, there are no longer the numbers of experienced court reporters that the courts became accustomed to in the past.

What courts now see is the appearance at the press benches of young people they have never seen before and may never see again, and whose understanding of court proceedings, especially as they relate to the sub judice rules, is an alarmingly unknown quantity. My colleague Margaret Simons has researched this and her report is cited in the consultation paper.

Another challenge comes from the corner-cutting and outright plagiarism that occurs in some of these hollowed-out newsrooms. They pick up and re-publish reports from newspapers or on radio or television provided by experienced court reporters, and sometimes add in extraneous or prejudicial information. The Yahoo7 case of 2017 is still fresh in the memory.

As was clear from that case, not only was the individual journalist inexperienced, but the editorial supervision of her was disgracefully inadequate.

A further challenge comes from the global reach of news platforms and the global interconnectedness of news providers. This was dramatically illustrated by the Pell case, the fallout from which, at the time of writing, is still making its way through the courts.

Leaving aside the merits of the prosecutions currently on foot in that matter, it is simply impossible for the courts in Victoria, or any other jurisdiction for that matter, to control what is disseminated through these global media networks.

It seems to me to be more sensible to look at what should be done as a matter of practical reality.

The Hon Frank Vincent has argued forcefully that the judiciary should have faith in the conscientiousness, fair-mindedness and capability of juries to reason their way to their verdicts based on the evidence presented in court, regardless of what they may have seen or heard outside the court.

He and others have noted that juries are no longer sequestered, the courts having recognised that jurors are not so fragile and suggestible as used to be supposed.

While there are authoritative opinions the other way, as a matter of practical reality it seems to me that the Vincent approach is the more workable.

However, the issue of timing is also relevant. The consultation paper notes (p86) research indicating that a juror's recall of *pre-trial* publicity is piecemeal, whereas their recall of *in-trial* publicity is greater. If follows that in-trial publicity has the greater potential to be prejudicial.

That research provides grounds for arguing that the field of concern is therefore quite narrow, being bounded by the period during which a trial is in progress.

As for pre-trial publicity, in high-profile cases there is likely to be a hangover period of indeterminant length, but ARC-funded research I did in 2017 on the issue of violence against

women showed that people's recall even of high-profile cases tends to be influenced by factors other than media coverage.[1]

For example, the rape and murder of Jill Meagher was readily recalled by research participants in Victoria. Extensive media coverage was a major factor behind their readiness of recall. However, it was by no means the only one. Among the other powerful factors were the randomness of the crime, the sense that it could have happened to anyone, the psychopathic brutality involved, its closeness to home, the fact that many could identify with Jill Meagher as someone just like them going innocently about her lawful occasions, and their sense that it was an outrage against all norms of civilised life.

Similar patterns emerged among respondents in New South Wales and Queensland in respect of high-profile cases there.

It seems unlikely, therefore, that extensive media coverage alone, especially if it occurs some time before a trial, will leave indelible impressions on potential jurors unless other factors of the kind mentioned above are present. It may well be that further research would assist the commission and subsequently the legislature to arrive at a more nuanced view of this element in potential juror prejudice.

However, on what we know at the moment, it seems as a matter of practical reality to be better to concentrate the law's efforts on in-trial publicity or publicity that occurs very shortly beforehand, rather than to try to take proceedings over publicity that occurs an appreciable time before the trial begins.

The issue of publication in the online environment is a further challenge. We are already seeing that treating every new downloading of an item as a new publication is having a disproportionately oppressive effect in defamation law. The definition of publication adopted by the NSW Commission referred to in the consultation paper (p88) strikes a better balance between prejudice and freedom of the press.

If this approach were adopted, then the place of original publication becomes relevant and it seems sensible as a matter of practical reality to define this as the jurisdiction where the trial is to be held. If the original publication occurred outside that jurisdiction, then proceedings for contempt should not be available. Otherwise, where would the line be drawn?

The risk of over-reach here is that the courts will make themselves objects of ridicule in cases where it is patently obvious that the courts could not enforce the law. It is exactly this undermining of public respect for the courts that the law of contempt is designed in part to prevent.

Finally on these issues raised by the online world, social media is anarchic. However, data from the global Edelman Trust Index show that since 2015, trust in social media as a source of news and information has declined quite sharply and trust in professional mass media as a source of news and information has correspondingly risen. In 2018, the gap between the two was 23 percentage points in favour of professional mass media; in 2019 the gap was 22 points.[2]

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[1] Violence Against Women, Qualitative Phase Report, June 2017, Centre for Advancing Journalism, University of Melbourne (unpublished).

[2] https://www.edelman.com/sites/g/files/aatuss191/files/2019-02/2019_Edelman_Trust_Barometer_Global_Report.pdf

A further important online development has been the emergence of the fragmentation and echo-chamber phenomena, as shown by a meta analysis by the US political scientist Cass Sunstein in his book *#republic*[3]. For present purposes, the relevance of these developments is that increasingly online audiences are fragmenting into echo chambers in which the likeminded talk among themselves. Their audiences are not to be found among the wider population. This raises questions about the practical effects of social media on the minds of potential jurors.

Moreover, there is a strong argument that the crudeness and violence of language employed in these online sites undermines their credibility in the eyes of ordinary reasonable people. As the consultation paper notes in the context of scandalising the court (p123), the Law Commission of England and Wales has concluded that the very extremity of the language prevents most people from taking it seriously.

Taken together, then, these considerations suggest that while prejudicial material on social media is not to be lightly disregarded, as a matter of practical reality it is not something the courts can do much about. It would be a mistake, therefore, to frame contempt laws that affect professional mass media – which is more highly trusted and against whom the law can often be enforced – by reference to the risks posed by social media.

The question of 'tendency'

I have repeatedly used the phrase "as a matter of practical reality" because it forms a critical part of the test for "tendency". The consultation paper sets out the test as formulated by the High Court in *Hinch v Attorney-General (Victoria)* (p85). In the same case, Chief Justice Mason stated that the risk of prejudice must be "substantial". Other authorities quoted by the consultation paper add the words "serious interference".

Therefore, I submit that the "tendency" test in *Hinch* should have these two elements added to it in a phrase like "substantial risk of serious interference", and that this test, or one very like it, should be part of any statutory law of contempt. As Chief Justice Mason said, it would strike an appropriate balance between the administration of justice and freedom of expression.

Allied to this is the definition of the "pending" period. As the Law Commission of England and Wales is quoted in the consultation paper as saying (P91), many reputable publications treat the final verdict as the end of the pending period. That is true in Australia too, and the definition of the pending period ought to be amended to reflect this reality.

The public interest principle

It would help the media immensely if the law would turn its collective mind to a workable and agreed definition of the public interest. It was profoundly unhelpful of the High Court to resort in *Hinch* to extreme events such as "a major constitutional crisis" or "imminent threat of nuclear disaster" as representing matters of public interest sufficiently important to outweigh the administration of justice.

There will always be degrees of public interest and degrees of interference in the administration of justice arising from public ventilation of issues before the court. The Bread Manufacturers' principle, despite its entertainingly recondite name, has provided a useful rule of thumb for the media.

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[3] Sunstein, C. (2017) *#republic: Divided democracy in the age of social media*, Princeton, Princeton University Press

However, it would be even more useful if the law could provide at least some broad guidance as to what is likely to fall within the compass of public interest. The media themselves have made some attempts. They usually encompass matters concerning:

Public health and safety
The performance of public duties by public officials
The performance of public institutions and public companies
The expenditure of public money
The performance of markets
The performance of any enterprise in which the public has been invited to invest money or trust.

This is not very far from the public interest test in the defence of comment in defamation law. Other examples are scattered about in numerous court judgments and rules of practice. Consolidating them into an agreed definition which was then included in a statutory law of contempt would be a great step forward.

Suppression orders

It is bizarre and inexplicable that Victorian courts should issue more suppression orders than the rest of Australia put together. Recently I had the opportunity of asking the Hon Frank Vincent in a public forum why he thought this was happening. He replied that judges were understandably wary of the inexperience of many journalists now turning up in their courts, and concerned that they might inadvertently cause a trial to be aborted or at least prejudiced.

As I have said earlier, that is entirely understandable, although there are positive measures the court system could take to better equip people to report the courts.

But Mr Vincent also offered a further explanation. He spoke of a "toxic" relationship between the courts and the media, having previously referred in his 2017 review of the Open Courts Act to the development of "mutual distrust" between the judiciary and the media. This is a tragedy, and it was certainly not always the case. At *The Age* in my time (1986-1993) we had a most constructive relationship with the courts. Occasionally the Chief Justice would come to lunch with senior editorial executives of the paper and we would discuss matters of mutual interest and concern.

On an earlier occasion, when I was Chief of Staff of *The Sydney Morning Herald* I felt able to phone the then Chief Justice of New South Wales, Sir Laurence Street, because of an acute difficulty that had arisen that day concerning a judge and one of my court reporters. Not only did he readily take my call, but together we resolved the difficulty there and then.

Now, I acknowledge that the corporate leadership of our major newspapers is not perhaps as strong as it once was, having been destabilised by the effects of the digital revolution, with consequential mergers and acquisitions that have removed power from editors and placed it elsewhere.

But that cannot be the whole story, and I am at a loss as to what the other factors might be. In the context of this exploration of contempt laws, however, it is relevant because when an authority such as Mr Vincent speaks on these matters, they are deserving of serious consideration.

Looked at from the perspective of journalism, the use of suppression orders on the scale we presently see in Victoria is oppressive. Mr Vincent's review showed that attempts by Parliament

to discourage the practice, as with the Open Courts Act, seem to have borne little fruit. So the media write critically of the Bench and this is hardly calculated to improve relations.

Some circuit-breaker seems to be called for, and the Law Reform Commission would do Victoria a great service if it was able to find a way to create one as part of this investigation.

Meanwhile, pre-emptive suppression orders and take-down orders continue to be a source of controversy. Criticisms of their use, aside from ubiquity, are that they are often too broad, open-ended in duration and applied without adequate reasons being given. These criticisms were canvassed by Mr Vincent in his review, along with recommendations to remedy the situation. I am not going to rehearse them here except to say that they seem deserving of unqualified support.

Suppression orders should continue to be available to the courts. We have recently seen, in the Pell case, how necessary they can be, and no journalist, academic or media lawyer I have spoken to about it has said the order was unnecessary in that case. It is largely a question of necessity, scope and duration.

Chapter 8: Scandalising the court

One of the most pointedly accurate passages in the Commission's consultation paper (p120) was this quotation from the Law Commission of England and Wales:

> There is something inherently suspect about an offence both created and enforced by judges which targets offensive remarks about judges.

It captures much that is untenable about this form of contempt: conceptually self-serving; inherently lacking in even the appearance of impartiality.

We live in an age when all forms of authority are not just under scrutiny but often the targets of strong, even intemperate, criticism. The judiciary is not immune from this and there is no reason why it should be.

As the consultation paper says (p121), this form of contempt is grounded in an assumption that public confidence in the administration of justice rests on public confidence in the judiciary.

The paper does not say so in terms, but the reader can readily infer that a further link in this chain of logic is that public confidence in the judiciary will be shaken if judges are the subject of criticism.

Those assumptions do not seem to be grounded in any evidence. If the law of scandalising the court is to be retained – and I don't believe it should be – then it needs to be tempered by a statute requiring any allegation to be tested against the right to free speech and including a defence of public interest.

As a general proposition, the whole concept of "scandalising the court" has a nineteenth century whiff of *lese majeste* about it which is out of place in today's world and invites people to think the courts have lost touch with reality. This seems to me to represent a greater threat to the standing of the court than occasional outbursts claiming bias, corruption or incompetence by a court.

Even sustained criticism of the courts seems not the affect public confidence in them. For example, after the native title decisions of the High Court, senior ministers in the Howard

Government lambasted the court in a sustained campaign over many months. This onslaught even included an assertion that the Government would appoint a "capital C Conservative" to the court as a means of trying to influence its approach to matters of law, thus politicising the Bench.

None of this seemed to shake public confidence in the court nor in the suitability of the next judge appointed, Justice Callinan. If anything, the attack rebounded politically on the Government.

When serious allegations of corruption are made, there are due processes of law to deal with them. Without doubt the most significant example of this was the case of Justice Lionel Murphy of the High Court. It will be remembered that the allegations against Justice Murphy arose from articles published in *The Age* in 1984 under the heading "Network of Influence". A commission of inquiry led to his being charged with conspiring to pervert the course of justice. He was convicted, appealed successfully, and was acquitted at a re-trial.

While the case was, and remains, a topic of passionate controversy among some lawyers, journalists and politicians, it played out in public according to law and did no discernible harm to the standing of the High Court. If anything, it demonstrated to the public that no one is above the law, and that the courts are perfectly prepared to deal with a judge according to law on the same terms as they deal with anyone else.

The case of former Justice Marcus Einfeld is another instance where the law took its course, ending with a sentence of imprisonment, but from which the Federal Court lost no public standing.

It seems to me that the best way for the courts to enhance their standing with the public is to be as open and transparent as possible, and not to take refuge in powers to punish people for criticising them. When the public is able to see the quality of judicial work, their respect for the courts increases. We saw this with the public reaction to the sentencing of George Pell, in the aftermath of which there was widespread public praise for Chief Judge Peter Kidd.

Not every case will demand this kind of exposure, but the general point is that openness and transparency are what raise public trust in any institution. As previously argued, anything the courts can do to enhance reporting of the courts will be good for the courts, as well as serving the principle of open justice.

Chapter 9: The Judicial Proceedings Reports Act

The quaint prohibition on publishing "indecent" matter on the grounds that it might cause "injury to public morals" should be repealed. A provision so absurdly out of touch with contemporary community standards brings the law into disrepute.

The protection of divorce and related proceedings prioritises the privacy of the parties in what are essentially personal and often painful proceedings over public curiosity – which is not the same as the public interest. However, if the Victorian laws merely duplicate what the Commonwealth Family Law Act provides by way of protection, then they should be repealed.

On the question of directions hearings, I advocate keeping the law simple. It is important that journalists understand the risks of prejudice arising from publishing contents of directions hearings when they concern arguments about what evidence should be put to the jury. If the present system is working and is broadly understood by journalists, I would leave well alone.

I also see no reason why the present system for reporting pre-trial proceedings such as bail applications and committal proceedings should be changed. Here there is a strong public-interest argument in favour of these proceedings being open to public scrutiny.

First, it contributes to open justice when the public can see who has been granted or denied bail for what and under what circumstances. Second, these proceedings sometimes provide an important part of a larger story, as when someone on bail commits a serious offence, giving rise to legitimate public debate about why bail was granted. Third, committing someone for trial on an indictable offence is inherently a matter of public interest.

While it is true that these proceedings are commonly one-sided in that the prosecution is able to outline its case while the defence is often reserved, there is usually a quite long lapse of time between the committal and the trial.

There is no evidence in the consultation paper that this pre-trial publicity has led to miscarriages of justice at trial, so I see no reason for denying public scrutiny of these proceedings, even if it does mean that the reputation of an accused person is damaged in circumstances where he or she might ultimately be acquitted. Here, the balance should favour the public interest over the private interest.

This balance should be struck differently, however, in cases of sexual assault. Here, the interests of the victim should be paramount. It is not just a question of embarrassment and humiliation; it is above all a question of personal privacy and dignity.

We have seen recently two cases where the victims of alleged predatory sexual behaviour have been unwillingly dragged into public view. One was the ABC reporter Ashleigh Raper and the other was the actor Erin Jean Norvill. Both had complained privately, and both wanted the matter kept private, not because of a sense of embarrassment or humiliation but because they considered the matter to be essentially private, going to the dignity of their persons.

For these reasons, I support the prohibitions in Section 4(1A) of the Act. I do not have a view about where in the law they should be located, but journalists in Victoria would be familiar with the Judicial Proceedings Reports Act, so why move them?

However, it is consistent with making the victim's interests paramount that those victims who wish to speak should be able to do so, on condition that in doing so they do not prejudice court proceedings. The law should be amended to give effect to that proposition.

A similar principle should apply with respect to family violence cases.

As the consultation paper says, raising awareness of the prevalence and nature of family violence is an important public-policy objective. One way in which this is done is by the media's reporting of it.

Where the courts have the power to impose automatic restrictions on this reporting, journalists are likely to stay away from these stories for fear of being in contempt or of breaching the Act.

The more fully these cases can be reported, the more the media can contribute to raising public awareness and so help develop a healthier public narrative around this subject.

Therefore I submit that rather than have the courts impose an automatic restriction, victims should be asked by the court whether they want those restrictions imposed or not. It may be, for instance, that a victim will want any sexual element of the violence suppressed but not more general non-sexual violence or contextual information.

The media would then be able to give effect to the victim's wishes and where the victim agreed to have certain information reported, more information would be provided to the public than would be the case if automatic court-imposed restrictions applied.