

DISPUTE RESOLUTION ALERT

IN THIS ISSUE

VAN BRED A MURDERS & ZEPHANY NURSE: SCA RULES ON WHAT YOU'RE ENTITLED TO KNOW

The Supreme Court of Appeal (SCA) handed down a ground-breaking judgment on 28 September 2018 in the matter *Centre for Child Law & Others v Media 24 Limited & others* (871/17) [2018] ZASCA 140, reinforcing the public's right to be informed of crimes involving child victims, such as Van Breda and Zephany Nurse, and confirming the right of the public to be alerted to an accused's identity upon them turning 18.

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This matter centred around s154(3) of the Criminal Procedure Act, No 51 of 1977, which essentially prohibits the media from publishing any information which reveals or may reveal the identity of an accused or a witness in criminal proceedings if they are under the age of 18, unless the court orders that the publication would be just and equitable. Any violation of this section carries with it a criminal sanction of imprisonment of up to five years or a fine or both.

The Centre for Child Law (CCL) and other organisations working with children sought two extensions of the publication ban: firstly, to extend the publication ban on the identification of victims of crime under the age of 18 years (the Victim Extension) and secondly, to extend the duration of the ban on the publication of the identification of an accused, witnesses and victims beyond their 18th birthday (the Adult Extension).

The media respondents opposed both the victim extension and the adult extension.

The Victim Extension

The CCL sought a publication ban on the identity of all child victims involved in any crime, regardless of whether the matter is brought before the court or not. The CCL referred to the Van Breda murders in Stellenbosch and Zephany Nurse who was abducted from her family as a two-day-old baby, as case studies to illustrate the necessity of this extension.

This kind of protection was not afforded in any country anywhere in the world and could lead to numerous absurdities, as the ban will be triggered the moment the crime is committed and will operate even when the identification of the child is harmless or even beneficial for the child. For instance:

1. All of the cases reported in the newspaper would be stripped of children's names. All crimes involving families like the Van Breda's murder, would have to be anonymised.
2. The media would not be able to reveal the identity of a child who is injured in a motor accident, as negligent driving may have been involved. A child's school would not be able to wish her well in assembly and a church may not pray for her well-being.
3. A child displays bravery in surviving a crime – the media may not commend such bravery. Even the school may not publish a newsletter to that effect.
4. Envisage the history books without the photographs of Hector Peterson, the Vietnamese girl in the war running naked in the village, the two-year old refugee boy washed up on a beach. These are all moments in history that would not have been captured and published, as these are all child victims of crimes.

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The court did find that a child victim's identity should be protected if the child is at criminal proceedings.



The Adult Extension

The CCL also argued that the anonymity protection provided to a child accused, victim or witness in criminal proceedings should be extended into adulthood, after they turn 18.

The respondents indicated that this indefinite ban on the publication of the identity of a child accused, victim or witness, even once he/she is an adult and is capable of protecting him/herself from the glare of the media, would bear the following bizarre results:

1. A child who was a victim of a crime may not publish an autobiography when they are older describing their experience and overcoming their ordeal;
2. The media would not be permitted to publish news articles identifying an adult who was a child victim, publicising their stories as inspiration of perseverance and strength to the public;
3. The media would not be permitted to publish news articles celebrating the rehabilitation of a young accused back into the community; and
4. Articles informing the community about conviction and sentences of former child accused to draw the public's attention to important social and political issues would not be permissible.

Freedom of expression

The SCA held that the extension of the identity protection sought by the CCL, either in terms of the Victim or Adult Extension, is in conflict with the open justice principle and the right to freedom of expression, which are entrenched as fundamental rights in our Constitution. The court emphasised that limiting the media's freedom of expression, not only affects the media, but the rights of the public to receive important information.

Free press is the cornerstone of our constitutional democracy and the broad restrictions imposed on publication and expression would be a 'denial of democracy itself'. The extensive restrictions placed on the media and citizens of South Africa in the past also exacerbated the impact of violations of other fundamental human rights.

In terms of a majority decision, the SCA refused to extend the publication ban on identities of accused, witnesses and/or victims beyond the age of 18 as it was "overbroad" and would infringe the open justice principle and severely restrict the right of the media to impart information.

The court did, however, find that a child victim's identity should be protected if the child is at criminal proceedings.

This limits the protection of the child victim's identity if the child is "at criminal proceedings". In other words, the media is not prohibited from publishing information



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This judgment emphasises the public's right to receive valuable information about crimes committed within their communities and reinforces the media's right to impart such information.



about a child victim of a crime prior to the institution of such proceedings. If a child victim is not "at criminal proceedings" and wishes for his/her identity to be protected, the court may be approached for an order interdicting the media from revealing or publishing information that could reveal the child's identity. Similarly, if a child accused, witness or victim fears the public exposure in the media upon turning 18, the court may be approached for an interdict protecting their identity.

The SCA's judgment has been referred to the Constitutional Court to confirm the constitutional invalidity of s154(3).

Thereafter, depending on the outcome, Parliament may have to amend s154(3) to provide for the intricacies of the law relating to publication of the identities of child victims, accused and witnesses.

This judgment emphasises the public's right to receive valuable information about crimes committed within their communities and reinforces the media's right to impart such information.

Pieter Conradie, Anja Hofmeyr and Ashleigh Gordon

Tim Fletcher was named the exclusive South African winner of the **ILO Client Choice Awards 2017 – 2018** in the litigation category.



Richard Marcus was named the exclusive South African winner of the **ILO Client Choice Awards 2018** in the Insolvency & Restructuring category.

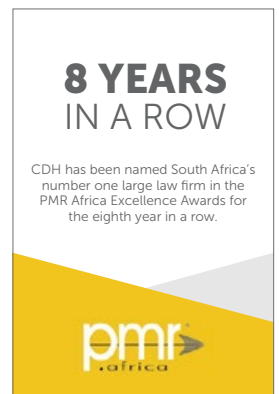
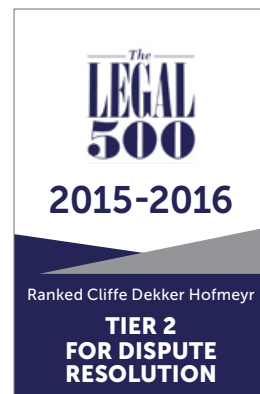



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