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*Children and the Media: Professional and Legal Issues*

ALL too often the issue of children and the coverage of minors in the media – itself a broad and diverse family – is debated at the epicentre or at the extremes of a particular controversy such the Roscommon abuse and neglect case, the death of a child in care or where children have been embroiled either as protagonists or collateral damage in high profile civil or criminal proceedings.

Often, too, such atypical actions are accompanied by sensationalist coverage by some sections of the media, coverage which itself becomes the story or the target of ire by children's rights advocates, families and other parties including the media itself.

The good news is that, for the most part, children receive a good outing in the press.

On a daily basis we journalists carry out what might otherwise constitute gross invasions of their privacy with the express consent of their parents, guardians and the state.

But there are areas that court controversy including:

- Media coverage of juvenile offenders
- Where children are embroiled in family law proceedings including adoption, divorce, custody and maintenance disputes
- Where children are embroiled in child care proceedings
- Where children are directly or indirectly affected by an adult, usually a parent or a person in a position of trust, who face criminal proceedings for abuse and neglect of minors.

I propose to speak briefly about each of these categories.

And, mindful of the ongoing sensitivities surrounding the Roscommon incest and neglect case and the distress some media coverage has caused to the children of that union, I will nevertheless use its publicity journey as a case study of how and why we need to reform our in camera rule in a way that strikes a balance between protecting children and the public interest.

JUVENILE OFFENDERS

The first area, that of juvenile offenders, is relatively straightforward and one that, in the main, is beset with little difficulties from a legal or practical perspective.

As with the coverage of rape and sexual assault cases, there are strict rules surrounding the reporting of children who appear before the Children's Court.

Nothing can be done to expose the identity of the minor, but this anonymous model is one that allows vital scrutiny of the judicial and prosecutorial process as it pertains to juvenile offenders and their interactions with various state agencies.

## FAMILY LAW PROCEEDINGS

The case for relaxing the In Camera rule in family law proceedings is overwhelming. It has been for a very long time.

The blanket ban confirmed in and reiterated across several statutes is ostensibly designed to protect the privacy of families and children embroiled in family law cases but the unwarranted and disproportionate secrecy is an affront to the public interest and to families seeking justice in the courts.

No one, including the media, expects the veil of secrecy to be lifted entirely in family law cases.

But it should be pierced sufficiently to enhance public confidence in the family law courts; to scrutinise the wide powers of discretion given to and the conduct of judges and to promote proper public debate that, in turn, will lead to better informed social and legal policies in this area.

Almost 15 years ago the Law Reform Commission, in its report on Family Courts, identified a legion of problems with our family law system and the difficulties posed by the extreme nature of the In Camera rule.

It noted that judges do not always have the necessary experience or aptitude, that there is no proper system of case management and that the In Camera rule protected the privacy of family members but offered little or no opportunity for external appreciation, criticism or even realisation of what is happening within the system.

Unlike legal issues such as murder and manslaughter which, thankfully, affect small portions of society, family law has the potential to affect us all.

And it is nothing short of a scandal that the operation of the family law courts does not command the proper levels of public confidence and scrutiny that it deserves.

As journalists, we hear on a daily basis about the perceived unequal struggle of fathers, married and unmarried, in the family law courts; of conduct unbecoming of certain judges and we routinely hear – from both mothers and fathers – of a family law system that is seemingly plagued by bias and discrimination meted out by autocratic or incompetent judges.

We hear nothing at all from the children, of course, whose voices are silenced.

We have no way of confirming or dispelling the myths or perceptions that stalk the family law courts, but what we do know is that we can not adequately defend or unduly criticise the system because of this disproportionate lack of scrutiny of the courts and the risk of prosecution if we dare try to do so.

The public, including those seeking justice in the family law courts, are thus deprived of vital information and a corpus of knowledge and experience as they seek to affirm and protect their rights.

In frustration reporters - quietly egged on by family law practitioners or others such as government officials who keep us in the loop – can resort to strategic, risky breaches of the In Camera rule in order to highlight a particular ruling or trends in the family courts.

Often, the public interest demands such breaches even where the law does not permit them.

From a legal and ethical perspective, the path of committing a wrong to expose an even greater wrong is a constant, treacherous one for journalists and editors.

And distinguishing such breaches from isolated, blatant or gratuitous breaches of the In Camera rule, on those rare occasions where we do cross the constitutional line we do so in the belief and expectation that the public interest is both our shield and sword.

The In Camera rule was partially relaxed by the 2004 Civil Liability and Courts Act which led to the enlightened establishment and instant abandonment of the Courts Service Family Law Reporting Pilot Project.

The year long project, led by my colleague Carol Coulter of the Irish Times, provided a vital insight into the operation of the family law courts and her observations helped to dispel some myths as well as shine a light on family law practice.

But a one off snapshot is not good enough: we need, subject to the necessary restrictions, to permit the press to report consistently and openly on family law matters.

There are plenty of models worldwide for us to learn from.

Any model can and should place the need to protect families from invasions of their privacy at its core and there should be tough and tangible penalties for those reporters and media organisations who overstep the mark by breaching anonymity.

As Lord Justice Wall of the English Court of Appeal has said, judges deal with issues and journalists deal with stories.

Lord Wall said that the gap had to be bridged and urged the media had to negotiate a protocol for reporting of family law cases.

We need to meet the press halfway, he said, and suggested some ways of doing so including publishing anonymised judgments on a database, issuing press statements with the main points of judgments and allowing journalists to sit in on court cases and produce conscientious reports on same.

It is not beyond the media and the judiciary or lawmakers, assisted by the Press Council, to devise a necessary protocol guided by the principles of the Press Council's code of conduct, especially principles 5 and 9 which address the issues of privacy and children.

The failure to relax, not abolish the In Camera rule, is inexcusable.

But, as with the constitutional obsession with the family based on marriage which has led to a two tiered legal system that separates children into first and second class citizens, we lack the political will to embrace the necessary reform.

## CHILDCARE PROCEEDINGS

The operation of the In Camera rule in family law proceedings is mere child's play compared to the unconscionable manner in which it can be applied to children in care. On a day to day basis, journalists face prosecution for making public information into the activities of State authorities or private enterprise that such bodies want to keep secret and immune from scrutiny.

Material that the media, as watchdogs over and agents of the public interest, have a duty to publish.

Whilst the protection of the identity of children and related parties in child care proceedings are paramount, the treatment of children in care – 180 of whose deaths in the hands of the authorities are currently being investigated – is a matter of public law in the broadest sense.

All too often, the need to protect the identity of troubled children coincides with the need to protect the system that is failing them.

And it is suspected that the need to protect children by hiding behind the In Camera rule is in fact a cloak used to protect and indemnify the apparatus of the State.

There is, in my view, a fundamental conflict of interest where a body such as the Health Services Executive that is facing difficult questions about the handling of children in its care, should be able to benefit from a secrecy rule that protects its conduct and staff from legitimate public inquiry.

That is not to say that the authorities are not dealing with difficult cases.

Indeed, Senior Counsel Mary Ellen Ring – speaking in the aftermath of calls for a public inquiry into the HSE’s handling of the death of murdered teenager Daniel McAnaspie - advocated a relaxing of the In Camera rule in child care cases so that the public may realise how difficult these cases are and why children come into care.

Our financial recklessness aside, one of the most enduring and horrendous legacies in Ireland has been the neglect and abuse of children, whether by the State and religious orders in institutions, by priests as has occurred in the endless waves of clerical sex abuse scandals or the abuse of children in their homes.

All of this abuse and neglect has flourished and has been protected by a secrecy culture.

Abuse occurs primarily in private settings and any exposure of that abuse requires, to some extent or another, violations of the privacy of both the abuser and abused.

There is no other way.

And there are times when the public interest justifies the invasion of privacy of individuals, even very vulnerable ones: the RTE documentary on the Leas Cross nursing home is a case in point.

In the end, it comes down to a balancing of rights.

This much was recognised recently by Judge MacMenamin when he ruled, despite the understandable objections of some of the children in the Roscommon abuse case, that a report into the HSE handling of the case should be made public.

In that ruling, he made a number of orders preventing the publication of any information that alone, or in conjunction with other information, could lead to the children being identified.

Media were also banned from contacting any of the children, even once they became adults.

The judge, who met privately and informally with the six children, said his decision was reached on balance because of the deep concerns which the children have regarding any further publicity.

“The question comes down to a balance of rights – such as the right to freedom of expression, the constitutional rights and guarantees due to children generally, including life and bodily integrity; as compared to the rights to privacy, dignity, good name and the strong wishes of those oppose,” said the judge.

## LESSONS FOR THE FUTURE

What a pity the publicity train that left the station when the separate but related criminal proceedings against both parents took their course.

All along, measures could have been taken that would have mitigated but not eliminated entirely, against some of the more severe effects of the publicity that attended these proceedings.

The media was not entirely at fault and I believe that there are valuable lessons for all to be gleaned from the Roscommon case.

In the final analysis, although the issue of children and the media is an emotive and divisive one, there is much common ground and I think that we all share a belief that children should be protected as best we can subject to other considerations such as the public interest.

The hard lesson we have learned and must never repeat is that children suffer most when we fail to shine a light on the dark corners of our human experience.