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**Position Paper:
The Publishing of Victims' Names**

The Ottawa Coalition to End Violence Against Women (OCTEVAW) trusts that all journalists, whether professionals or students, will exercise their good judgment based on their journalistic integrity when reporting on violence against women (woman abuse and sexual assaults). Journalists are guided by four main principles of journalistic integrity which include:

1. Seek truth and report it.
2. Minimize harm.
3. Act independently.
4. Be accountable.

(Source: <http://www.ontpress.com/codes/index.asp>)

OCTEVAW is in agreement with these principles. We also believe that all journalists should receive a victim/survivor's active and informed consent if there is any doubt in whether or not to include their name in a story be in a case of domestic violence or sexual assault.

Backgrounder:

There are questions surrounding the issue of the entitlement the media has in releasing the name(s) of victim(s) to the public. This report will focus on what rights victim's have in terms of protecting their privacy and the matter of consent in using victim's name and information. This report will consult the Victim Right of Bills, the Criminal Code, the Youth Criminal Justice Act and the Ontario Press Council to determine where the rights of the victim stand in relation to the rights of the media. Victims have to fight against the right of the media under Section 2 (b) of the Charter of Rights and Freedoms which states that we are guaranteed, "the freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." Let's take a look at what the Victim Bill of Rights has to say.

Victim's Bill of Rights

The Victims Bill of Rights addresses victims in their preamble when it maintains that it "believes that victims of crime, who have suffered harm and whose rights and security have been violated by crime, should be treated with compassion and fairness." The people of Ontario further believe that the justice system should operate in a manner that does not increase the suffering of victims of



crime and that does not discourage victims of crime from participating in the justice process.” Section 2 of the Victims Bill of Rights covers how victims should be treated by the court and by the public/media. It states that:

2. (1) Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials.

There is a lack of information about the publishing of victim’s names in the media in The Victim’s Bill of Rights. The Victim’s Bill of Rights covers many important aspects like accessing services, duties of law enforcement agencies, the prosecution and court administration but there is no specific reference to protecting victim’s from having their name or identifying information in the media. This may be an issue that needs to be addressed by advocates in clearly identifying where victim’s rights stand.

Criminal Code

The Victims Bill of Rights is not the only law victims have in protecting their name and identity, but the Criminal Code of Canada also deals with victims. The Criminal Code of Canada addresses the issue of the rights victims have under Section 486. The Criminal Code states:

- S. 486(1) permits the exclusion of the public in certain circumstances.
- S. 486 (2) (a) the interests of witnesses under the age of eighteen years are safeguarded in all proceedings
- S. 486(4) provide for an order prohibiting publication of the identity of sexual offence victims and young witnesses in sexual offence proceedings.
- S. 486(4)(1) provides that a judge may make an order prohibiting the publication of the identity of a victim or witness of any offence, on application, where it is established that the order is necessary for the proper administration of justice.

Therefore, a publication ban can be granted to victims under certain circumstances if the judge feels that the need to protect the victim exists. The Department of Justice reinforces this point by stating that, “publication bans are automatically imposed to protect the identity of victims (regardless of their age) in sexual offence cases and witnesses of these offences who are under 18.” A judge decides whether a non-publication order is appropriate when taking into consideration the following statements:

- the right of the accused person to a fair and public hearing;
- whether there is a real and substantial risk that the victim or witness would suffer significant harm if his or her identity were to be disclosed;
- the availability of effective alternatives to protect the identity of the victim or witness; and
- the impact of the proposed order on the freedom of expression of those affected by it.



Youth Justice Act

The factor of age comes into light in regards to the victim-media relationship and is addressed in the Youth Criminal Justice Act. The YCJA states that, “the name of the young person or any other information that could or would identify the young person as having been dealt with under the *Act* cannot be published.” The exception of publishing the name of a young person is when that young person received an adult sentence and also in some cases when the young person receives a youth sentence for a very limited number of offences under section 110 of the YCJA. The Criminal Code addresses youth under section 486(2) when discussing the prohibition of publishing victim’s names when they are less than eighteen years old.

Journalistic Integrity

A journalist from the Ottawa Citizen recommended looking at a website to get a better idea about what guides a journalist’s integrity in reporting certain information about victim’s. Under section six of the website titled, *Code of Conduct*, the media is guided by a code of professional ethics that has been established since 1966.

The four main principles include:

- ♀ Seek truth and report it.
- ♀ Minimize harm.
- ♀ Act independently.
- ♀ Be accountable.

(Source: <http://www.ontpress.com/codes/index.asp>)

The minimization of harm is an important principle that needs to be critically analyzed when discussing the publishing of victim’s names. Under this principle it states that there should be, “recognition that gathering and reporting information may cause harm or discomfort. The pursuit of the news is not a licence for arrogance.”

There is a specific reference to the treatment of juveniles and victims of sex crimes but there is no definitive statement about what journalists can and can not do with this information. The language used in this document is important to consider when realizing that it provides many gaps for journalists. It states only to, “be cautious about identifying juvenile suspects or victims of sex crimes.”

Journalists are left to using their own interpretation of whether the incident at hand meets their criteria of what is or is not cautious material. Journalists are also held to the principle that, “only an overriding public need can justify intrusion into anyone’s privacy.” The minimization of harm of individual’s needs to be redefined in stating a clear definition of when it is appropriate to publish victim’s names and when caution should be applied.



Under the principle of being accountable there is discussion that, “relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.” The only concrete and clear information in this section comes from children involved in sex crimes. It explains that, “the press must not, even if legally free to do so, identify children under sixteen who are victims or witnesses in cases involving sex offences.” Anyone over the age of sixteen must not be identified unless there is adequate justification and they are legally free to do so.

The Executive Secretary of Ontario Press Council recommended a better rule to follow from the Canadian Press Stylebook. The book states, “identifying alleged victims or other witnesses in sexual assault cases and some other sensitive areas may be banned by the court. Even if they are not banned, it is usually wrong to identify alleged victims of sexual assault without their active consent.” What becomes an important issue is what ethical guidelines specific newspapers adhere to and how they view the victim in each case. It is all up for interpretation and that is a scary realization when one becomes a victim and faces an uphill battle of where they stand not only in the justice system but in the media.

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