Panel on

Justice and the Media

Report to the Attorney General for Ontario

August 2006

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The Honourable Michael J. Bryant
Attorney General for Ontario
Ministry of the Attorney General
720 Bay Street, McMurtry-Scott Building
Toronto, Ontario
M5G 2K1

Dear Mr. Attorney,

In January 2005, you announced the creation of a panel on justice and the media and issued a challenge to the seven of us: define the challenges and appropriate roles of the media in a 21st century justice system.

To this end we convened our first meeting, approved our terms of reference (please see Appendix A), called for submissions and created a public website.

The journalistic community came out in force: large and small, broadcast and print. So did all parts of the legal community: judges, police, lawyers, administrators. As panelists we were both impressed and distressed by what we heard. Some of the testimony was dramatic: a gentle man mourning his brother who killed himself after public airing of charges later withdrawn; a young reporter facing a criminal record because he didn't know the law of contempt; an angry children's advocate who showed us a section page picture of the central figure in an adoption case – a little girl, posed nearly unclothed. Other stories we heard were infuriating, some inspiring, and some almost comic. But we also heard many inspiring stories of intelligence, professionalism and compassion.

We were universally struck by the time, dedication and effort taken by those organizations and individuals who appeared before us and who wrote to us, and we have listed their names in Appendix B. They clearly took the objects of your initiative seriously and they are willing to continue working to the fulfillment of those objects. The frank exchange of ideas, the high quality of writing and the passion with which arguments were made gave us a greater understanding of the issues.

We learned many things, but two are fundamental:

1. the current system doesn't work as well as it should;
2. there is a keen desire from all sides to improve the operations and understanding between the justice system and the media.

Our report gives you our recommendations on the work that needs to be done. We also feel it is important that you understand the philosophical context within which the recommendations have been crafted.

In particular, you asked us if the roles and responsibilities of those involved reflect values that are suitable for a 21st century relationship.

Our answer is yes.

The founding principles of journalism: verification, independence, fairness, calling to account; and the fundamental principles of justice: presumption of innocence, open courts, equity – need no revision. They are the hallmarks of our democracy and the basis of our civilization. Our society has changed, and so has our technology. But the values of our journalism and our justice system can and must embrace these changes.

To accomplish that, we appreciate the need to carefully balance interests which some times appear to conflict. This is not an easy or simple process. The changes in our society and our technology have accelerated the necessity for clarity and fresh thinking.

Public confidence in our justice system is essential. If we are to have in Ontario the very highest standards, we believe some significant changes are in order. Too often we heard tales of a system whose rules have been applied unevenly and of journalism based on inadequate knowledge.

Mr. Minister, we asked you if there were any issues we could not examine. You replied in the negative. We have taken you at your word.

Our goal is that Ontario's justice system and the media should set the standards for excellence worldwide.

Our overriding vision is the following:

> Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.

In coming to this vision statement, the Panel articulated five underlying principles that have informed our discussions and helped frame our recommendations.

1. Openness: The administration of justice must be open. This means open access by the media and the public to court proceedings and court records, subject only to restrictions imposed by law.
2. Access: Procedures regarding access to information must be clear, consistent and timely.
3. Education: A high degree of information, understanding and education across the two professions is essential.

4. Equal yet independent players: The justice system and the media should not be perceived as partners, but rather as a relationship of equals. Each should respect the other's role in a constitutional democracy.
5. Respect for privacy rights: The privacy rights of children, victims of crime and other vulnerable people must be respected by both the media and the justice system.

The Panel respectfully asks the Attorney General to endorse this vision and the principles that accompany it.

Such support would be an important signal to both the justice system and the media who interact with it on a daily basis.

As you will see, our recommendations flow naturally from the principles enumerated above. We would like to add that the Panel has arrived at a consensus on all our recommendations. We believe they form an appropriate and modern balancing of the interests at stake.

We would also like to thank both you and the government for taking the initiative to delve into this important area. Our work would not have been possible without the tireless and dedicated efforts of Ministry staff led by Linda Kahn.

Finally, it has been a pleasure and honour to serve on this Panel.

Yours respectfully,

Chief Paul Hamelin
Past President, Ontario Association of Chiefs of Police

Justice James MacPherson
Court of Appeal for Ontario

Ralph Steinberg
Past President, Criminal Lawyers' Association

John Honderich
Former Publisher, Editor and Reporter for the Toronto Star

Trina McQueen
Broadcaster and Journalist, Professor of Broadcast Management, Schulich School of Business, York University

Benjamin Zarnett
Past President, The Advocates' Society

Paul Lindsay
Assistant Deputy Attorney General, Criminal Law Division, Ministry of the Attorney General

August 2006

EXECUTIVE SUMMARY

The Panel on Justice and the Media has made 17 recommendations to improve operations and understanding between the justice system and the media. It has based its recommendations on the following vision and principles:

Vision

Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.

Principles

Openness

Access

Education

Equal yet independent players

Respect for privacy rights

The Panel's recommendations address the following issues:

Openness:

- access to court records;
- use of tape recorders;
- cameras in the courtroom;
- media facilities at the courthouse;
- media lock-ups;
- affordable access to court records.

Education:

- increasing knowledge across the two professions;
- public education.

Electronic Age:

- notification of publication bans;
- electronic access to court records;
- online media guide;
- public justice-media website.

Ongoing Activities:

- justice-media liaison committee;
- press conferences/public commentary;
- *sub judice* contempt rule and shield law.

The Panel believes that the implementation of these recommendations, individually and collectively, will promote further development of the justice-media working relationship and improve the quality of justice reporting to the public.

I. OVERVIEW

Approach

The Panel sought, and received, information and opinions on many sides of the issues before it: some emphasized the right to a fair trial; others, the rights of a free press; still others, the balancing of competing interests of the public's right to know and privacy interests.

Much of the dialogue focused on ways that these two pillars of a modern society – the justice system and the media – can and should co-exist.

The Panel was also informed by legislation, case law and policies in Ontario and Canada (please see Appendix C). It heard of the special needs of children at risk, victims of crime and other vulnerable individuals interacting with the justice system.

It was apparent that the "current reality" is one with a certain amount of doubt and with outcomes that are frequently dissatisfying. The "preferred future" might be characterized by greater trust, with outcomes that are respectful to each other, leading to greater confidence in the administration of justice.

The Panel's report focuses on bridging the gap between current reality and a preferred future. In writing this report and making its recommendations, the Panel has aimed for a balanced approach that:

- considers the many dimensions of the public interest;
- recognizes that professionals in both "solitudes" have legitimate functions to play in a modern society;
- respects the significance of individuals and individual events in the justice system;

- keeps in mind that the cumulative impact of justice reporting is not about a single case, charge or encounter but rather the extent of the public's confidence in the administration of justice;
- acknowledges the effect of the electronic age on justice reporting.

Using this approach, the Panel has developed an overarching vision statement with accompanying principles that together form the basis for advancing understanding between the media and the justice system. Specific recommendations that address many aspects of systemic change – strategy, structures, people, systems and culture – are developed in chapters on Openness, Education, the Electronic Age and Ongoing Activities.

Each chapter includes recommendations on issues followed by a discussion of those issues.

Vision

The Panel's vision is that:

> **Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.**

Principles

The Panel builds on that vision statement by articulating the five principles or values that have informed its discussions and underlie its recommendations.

1. Openness: The administration of justice must be open. This means open access by the media and the public to court proceedings and court records, subject only to restrictions imposed by law.
2. Access: Procedures regarding access to information must be clear, consistent and timely.
3. Education: A high degree of information, understanding and education across the two professions is essential.
4. Equal yet independent players: The justice system and the media should not be perceived as partners, but rather as a relationship of equals. Each should respect the other's role in a constitutional democracy.
5. Respect for privacy rights: The privacy rights of children, victims of crime and other vulnerable people must be respected by both the media and the justice system.

II. OPENNESS

In this chapter the Panel addresses:

- *access to court records;*
- *use of tape recorders;*
- *cameras in the courtroom;*
- *media facilities at the courthouse;*
- *media lock-ups;*
- *affordable access to court records.*

Access to Court Records

RECOMMENDATION #1: ACCESS TO COURT RECORDS

(a) The Panel recommends that the Ministry of the Attorney General adopt policies and procedures to enhance public access to court proceedings, to information about pending court cases and to documents filed in court, consistent with the principles of openness discussed in this report and the other recommendations in this report.

(b) The Panel also recommends that the Ministry of the Attorney General take steps to ensure the consistent application of those policies and procedures throughout the Province.

The Panel also notes that:

- the policies and procedures should be sent to all court offices;
- training should be provided to relevant ministry staff;
- the policies and procedures should be available to the public on the Ministry's public website and also available on staff intranet sites.

Issue:

The loudest theme the Panel heard was the importance – and lack – of openness in the justice system. The problem in this respect is revealed most clearly by:

- uneven access to court records across Ontario's courthouses;
- unclear procedures regarding media enquiries in courthouses.

Sometimes, but not always, these differences have a large centre/small centre split.

What the Panel heard:

The difficulties that reporters frequently encounter in finding and accessing information about a case was a source of considerable frustration to presenters from the media.

For example, the Toronto Star, echoed by Sun Media Corporation, said: "Our primary concern is the growing obstacle that journalists in this province are experiencing gaining access to court documents … Public documents are being withheld … with little, or inconsistent, explanations as to why. Timely reporting is difficult …."

Some highlights of presentations, both oral and written, to the Panel include:

- Procedures for accessing court files are inconsistent. They vary from courthouse to courthouse and from court staff to court staff.
- Procedures to access information in the courthouse are frequently unclear. Reporters can spend too much time looking for either the information or for court staff to question.
- Few or inconsistent explanations are given when court documents are denied.
- Excessive delays are encountered in providing court documents – or reporters are forced to initiate formal applications.

Discussion:

An environment has grown over the years where the availability of records is often neither timely nor accessible.

Court records are instrumental tools of justice reporting. An environment where access is uneven or unjustifiably denied is not acceptable. The problems of lack of clarity and uneven practices need careful attention so as to improve operations on a practical, day-to-day basis.

The Panel strongly believes that Ontario has a great opportunity, and a great need, to improve both the reality and appearance of an open system. In keeping with the vision and principles the Panel suggests above, the Panel believes that a strong and consistent message needs to be conveyed to all in the justice system to embed "openness" as a value that can be applied as a practice daily in the justice system.

The Panel notes that a directive was developed by the Ministry of the Attorney General's Court Services Division in the fall of 2005 with the stated goal of bringing together existing policies and procedures and having them catalogued in one place.

There are examples elsewhere in Canada where clear and coherent policies regarding access to court records are made available and implemented for all court staff, including New Brunswick, Manitoba and Saskatchewan.

The Panel would also make reference to the Superior Court of Justice's Media Handbook – a Reference Guide. It is the Panel's understanding that the guide is being updated, but its commitment to set out the relevant statutes, case law and administrative information is undoubtedly useful.

Use of Tape Recorders

Recommendation #2: Use of tape recorders

The Panel recommends that as a general principle tape recorders be permitted in the courtroom by lawyers, persons acting in person and journalists for the purposes of accuracy. Accordingly, the Panel recommends that:

(a) s. 136 (2) (b) of the *Courts of Justice Act* be amended to permit the unobtrusive use of tape recorders at a court hearing without prior approval of the judge;

(b) in the interim, the use of tape recorders as now permitted by s. 136 (2) (b) of the *Courts of Justice Act* and the Practice Direction of Chief Justice Howland dated April 1989 be publicized by appropriate signage in all courtrooms.

Issue:

Although the *Courts of Justice Act* [s. 136 (2)] indicates that tape recorders may be used unobtrusively for note-taking purposes by lawyers, parties acting in person and journalists with authorization from the judge, Ontario courts are inconsistent in their practice of allowing tape recorders in courtrooms. This inconsistency of practice has persisted

notwithstanding that in April 1989 the then Chief Justice of Ontario issued a Practice Direction stating that:

> Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the *Courts of Justice Act*, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge.

What the Panel heard:

The Canadian Newspaper Association reflected on the problem:

> Although unobtrusive tape-recording has been available for several decades, and is accepted practice in other jurisdictions, Ontario courts are inconsistent in how they view use of tape recorders even as fact-checkers. It is difficult to understand how something that improves accuracy in court coverage can be forbidden.

Nevertheless, the Panel heard anecdotally of at least one court location that posted signs prohibiting such use and that practices were inconsistent across the province.

The Canadian Newspaper Association suggested "…that the courts [should] permit the presence of tape recorders in court rooms as an aid to ensuring accuracy in court coverage unless a judge has a clear and unambiguous objection on the grounds of interference with the administration of justice." This was supported by the Ontario Community Newspaper Association, the Ontario Association of Broadcasters and Metroland Printing, Publishing and Distributing.

Discussion:

The Panel's research showed that tape recorders have been incorporated into court practices in other jurisdictions. In British Columbia, for example, while the Supreme Court of B.C. has a general policy prohibiting tape recorders in courtrooms, under certain conditions it allows accredited journalists to bring tape recorders into the Court to help them report the proceedings accurately. Certain conditions must be met, including:

- the use of recording devices cannot be disruptive to the proceedings;
- such use cannot impose an additional expense on the court;
- such use must be for verification of journalists' notes only, and not copied or used for broadcast purposes.

It remains at the judge's discretion to exclude the devices for part or all of a case. The tape recorders can be used only in courtrooms, not other areas of the courthouse. A committee of journalists oversees the accreditation process.

In Manitoba, journalists can use tape recorders for verification purposes without making an application. They are not permitted to broadcast those recordings.

The Panel agrees that there is a need for clarity about the legitimate use of tape recorders in the courtroom. There are standards for this elsewhere in Canada and indeed in several court locations in Ontario itself.

Cameras in the Courtroom

Recommendation #3: Cameras in the courtroom

The Panel recommends that:

The *Courts of Justice Act* should be amended to permit cameras for proceedings in the Court of Appeal and Divisional Court, and for applications or motions in the Superior Court of Justice and the Ontario Court of Justice, where no witnesses will be examined at the hearing, subject to the discretion of the panel or judge, which discretion should be exercised recognizing the primacy of openness.

Further, on those unusual occasions where witnesses are called to testify in any of the above appeals, applications or motions, cameras for such proceedings would be permitted where the presiding judge, the parties and witnesses agree.

The Panel defines "cameras" as including television and still cameras. Note that the *Courts of Justice Act* does not define the word "camera," and s. 136 uses the following wording:

> 136 (1) Subject to subsections (2) and (3), no person shall,
>
> (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise….

Issue:

Television cameras are generally forbidden access to Ontario courts, and Ontario has not recently addressed this issue in a proactive way. There are strongly held views on the matter; and the Panel faced the question of open courts and public access on one hand; and security, privacy and standards of justice on the other.

What the Panel heard:

The law on the question is governed by s. 136 of the *Courts of Justice Act*, which generally prohibits the use of cameras in courtrooms – unless an exception is made by the judge under one of the following conditions:

- where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- in connection with any investitive, naturalization, ceremonial or other similar proceeding; or
- with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

The Panel heard from, among many others, two of the most passionate advocates on each side of this debate, namely, Dan Henry, counsel for the CBC and an executive on the board of "Ad IDEM" (Advocates in Defence of Expression in the Media), who supports cameras; and David Lepofsky, counsel with the Ministry of the Attorney General, lecturer and writer, who opposes cameras in the absence of a strong consent rule applying to all parties.

Arguments supporting Mr. Henry's point of view include:

- Television is the primary source of news for Canadians:
  - Excluding cameras from the court deprives citizens of easily available first-hand knowledge of a fundamental expression of our democracy and our civilization.
- Television can educate the public:
  - Particularly in a multi-cultural society, television may increase understanding of the values and tenets of the legal system.
  - American television is widely available and watched in Ontario. Citizens here have no viewing access to their own courts, but can watch the full activities of a foreign justice system.
- Television may open trials to public scrutiny:
  - Knowledge that a trial may be televised could encourage witnesses and other participants to prepare and testify better.
  - Potential witnesses viewing a trial might be encouraged to come forward to contradict misleading testimony.
  - A televised trial could enhance the perception of the fairness of the trial and the sentence.
  - A well-informed public might participate more fully in the justice system.

- Television can provide a full record of proceedings:
  - Modern television cameras are small, virtually noiseless and need little additional light.
  - The courts are the last closed expression of democracy. Parliaments, legislatures, elections and public hearings are all available by television for use by citizens, by educators and by history.

Arguments supporting Mr. Lepofsky's views include:

- Television may affect the behaviour of trial participants:
  - Witnesses may be reluctant to testify, may look and act differently, may embellish their testimony or alter it after seeing television.
  - Jurors might feel pressure, which could affect their judgment.
  - Lawyers could be tempted to "grandstand" or change their conduct of cases.
- Television highlights or news clips might be damaging to justice:
  - Re-broadcast and nightly analysis of trials provide a feedback loop that permits trial participants to become aware of public reaction, which could have a prejudicial effect.
  - Television may focus on sensational cases, which could diminish the dignity of the courts and foster disrespect.
- Television could inhibit access to the courts:
  - Victims may be reluctant to report crimes and testify; parties to civil disputes may refrain from bringing actions or may settle actions disadvantageously rather than face television exposure.
- Television could jeopardize the safety and privacy of trial participants:
  - There could be acts of revenge against witnesses, jurors, lawyers, judges, clerks and enforcement officers.
- Television could create additional costs:
  - Courtrooms may have to be adapted, and, because of the potential for jury contamination there could be longer, more costly jury sequestration.

Of course, these arguments, though framed as a debate between Mr. Henry and Mr. Lepofsky, were advanced by many other groups. In fact, nearly everyone who appeared before the Panel had something to contribute on this subject – and the opinions were not always the expected ones.

Discussion:

The debate over television in the courts is a passionate one, and is largely informed by the particular experience and ideas of the discussants. Although there has been academic interest in the issue, and conflicting articles, the Panel understands that, in the absence of a true control group, there can be no absolute knowledge whether television does or does not affect courtroom behaviour.

In the discussion of television in the courtroom, reference was often made to the now routine televising of public inquiries. More than 80 Canadian public inquiries have been televised. Many of these inquiries have concerned explosive public issues: for example, allegations of child abuse in the Mount Cashel scandal. Yet, the televising of these inquiries seems to be accepted by all who view or participate in them. However, the Panel was told, the inquiries consider issues of public interest, not the personal actions considered by the courts. As well, at a public inquiry, an individual's personal liberty is not at stake.

The Panel sought guidance from practices both across Canada and abroad.

Provinces such as British Columbia, Nova Scotia and Manitoba allow cameras in some courtrooms with prior permission of the court. In Newfoundland, cameras are allowed into a courtroom up to the time the judge enters. In other words, the media may film participants in the courtroom before the trial begins, but may not record the proceedings.

In British Columbia's Provincial Court, media wishing to televise or broadcast all or part of the proceedings in a particular case must apply to the presiding judge. The judge, who may use the B.C. Supreme Court's *Policy on Television in the Courtroom* and *Guidelines for Television Coverage of Court Proceedings* as a guide, may grant the application if he or she finds it is in the public interest and that to do so will not:

- affect the right of the accused to a fair trial;
- cause discomfort to any witness;
- interfere with any privacy rights that may override the public interest in televising the proceedings;
- have the potential effect of deterring witnesses in any future similar cases;
- cause additional expense to the Court; or
- otherwise potentially hamper the ongoing administration of justice in relation to Provincial Court proceedings.

The Canadian Judicial Council (CJC) has long expressed its concern with the impact of televising court proceedings on witnesses, jurors and trial court proceedings generally. Originally applied to all courts, the CJC first modified its position to exempt the Supreme Court of Canada, and in 2002 also exempted all appellate courts from this position. Its concern is now focused on trial court proceedings.

At the federal level, the courtroom proceedings of the Supreme Court of Canada are televised by the Canadian Parliamentary Affairs Channel (CPAC). It is possible to obtain a video of proceedings.

Internationally, there are a number of jurisdictions that permit cameras in courtrooms under certain conditions. For example:

- In the U.S., in 2001, all of the states had some provision for live or taped media coverage of court proceedings (television cameras, still photographers, still cameras and audio systems). Most permit the judge to decide if cameras will be allowed in a given case. Almost all courts require that media personnel allowed in the court must provide access to its video transmissions and its pictures to others requesting such access. All states that permit television, radio and photographic coverage of courtroom proceedings have adopted rules or guidelines governing such coverage.
- The supreme courts in eleven states regularly broadcast or webcast their hearings (Alaska, Connecticut, Florida, Indiana, Michigan, Missouri, North Dakota, Ohio, Vermont, Washington and Wisconsin).
- In the United Kingdom, the present law prohibits taking photographs, including television, film or video, in court or broadcasting any sound recording made in court. In November 2004, the Department for Constitutional Affairs issued a consultation paper, *Broadcasting Courts*, to encourage full public debate of the issues as it considers whether to permit broadcasting court proceedings. A pilot scheme for filming cases in the Court of Appeal ran for three weeks in the Royal Courts of Justice in November 2005. Filming was for research purposes only and not for broadcast to the public.

In the end, the personal views of the Panel members on the issue of television in the courts were diverse. However, our recommendation is unanimous. All Panel members believe in open courts and wish to see Ontario set the highest standards for public access. Nevertheless, it is clear to all of us that the great majority of the groups who participate in the justice system have grave and important concerns about television. A recommendation to amend the current restrictions on televising trials would not be acceptable.

We also believe that most of the concerns expressed to us apply to those proceedings in which witnesses are testifying orally. For appeals, motions and applications, where there are no such witnesses, the benefits of openness derived from televising proceedings outweigh the concerns. In such cases, televising should be broadly permitted. The court should always have discretion to exclude television, but only after giving due consideration to the value of openness. Where witnesses will testify at the hearing of an appeal, motion or application (a rare event) television should be allowed when the parties, witnesses and court agree.

For reasons similar to those which relate to television broadcasts, the right to use still cameras in courtrooms should be permitted in the same circumstances as televising is permitted.

Some may see this as a small step. We do not think so. Televising these proceedings will bring an entire body of legal argument and judicial process before the cameras, in some of the most important cases heard by our courts.

The people of this province will have an opportunity to be eye witnesses to important aspects of the justice system in action. Whether they watch for inspiration, education or even entertainment, they will be observers of a historic process, which is a critical element of our democratic system.

Media Facilities/Facilitating the Media at the Courthouse

Recommendation #4: Media facilities at the courthouse

The Panel recommends that:

(a) A staff media contact person should be identified for each court location so that media always know whom to contact when there are questions or disputes between the media and the staff in the courthouse.

(b) A room or location should be dedicated for the use of the media in each major courthouse and in other court locations wherever possible.

(c) There should be reserved seating for the media in courtrooms.

Recommendation #5: Media lock-ups

The Panel recommends that the Court of Appeal provide the media with the opportunity to view major decisions immediately prior to their release to the public through mechanisms and procedures such as lock-ups.

Issue:

The media, with short deadlines to meet, often spend much unproductive time and energy in the search for answers from the courts and from prosecutors. In addition, media reporting often operates without benefit of legal context. These difficulties can hamper the complete and accurate reporting of cases.

What the Panel heard:

Reporters told the Panel that they often have trouble finding the person with the authority to release documents in the courthouse. They also feel inconvenienced by the absence of a room in which to do their research.

In the vein of improving complete and balanced reporting, the Panel heard about practices in both other courts and in provincial ministries or departments that might be helpful models for Ontario's justice system to adopt.

The Supreme Court of Canada has an Executive Legal Officer, a lawyer, who handles:

- pre-session briefings to highlight cases;
- briefings on judgments on appeal;
- events similar to lock-ups, based on a protocol with the Press Gallery – these are off the record, and the protocol is posted through the Media portal on the Supreme Court's website;
- all media requests and requests for interviews.

That person is also secretary to the Court's media relations committee, comprising three justices of the Court, the Registrar and the Executive Legal Officer. Media are invited to participate in meetings.

The current Executive Legal Officer of the Supreme Court, Nancy Brooks, indicated to the Panel that in her opinion, attitudes have changed with direction coming from the Chief Justice and others that courts should be open public institutions and it is important for media to understand the case it is covering. The philosophy is to improve accuracy so that the judgment, its rationale and underlying issues can be explained to the media.

In England and Wales, the Lord Chief Justice announced that he was creating a communications office to support judicial office holders as of April 2005.

> The reason I am establishing this office is to increase the public's confidence in judges…In the past judges have been very well supported in our communications needs by successive Lord Chancellors who have generously made the facilities of their departmental press office available to us. However, I have been aware for some time that the judiciary needs to expand its communications base more widely, from a relatively narrow focus on media relations to a more comprehensive information service for the public as a whole. Although our relationship with the media remains important, a major element of the work of the new communications office will be to provide the public with a sound understanding of how judges operate.

Provincial prosecution models were also instructive. The Panel heard from Nova Scotia and British Columbia. Though structured differently, in both cases the prosecutions' communications role was independent of the Ministry of the Attorney General.

- Nova Scotia has an independent Public Prosecution Service (PPS), which reports directly to the Legislature rather than to the Attorney General. The Nova Scotia Public Prosecution Service has a director of communications (a former journalist). This position was established after the Westray Inquiry. The present director is responsible for internal communications, external stakeholder relations, media relations, issue management and crisis management. She sits at the PPS management table and has built trust and credibility with Crowns.
- In B.C., the role of Communications Counsel was established in 1998 for the Criminal Law Branch of the Ministry of the Attorney General. The role is set out under the *Crown Counsel Act* and is distinct from the ministry's communications. The Criminal Law Branch position includes public education, training and helping trial and appellate counsel respond to the media. The communications counsel's message may not always coincide with that of the ministry's communications – but the two entities have a good relationship that respects the role of the other.

The Panel has been advised that media reaction to the Communications Counsel's role in B.C. has generally been positive. As can be imagined, some reporters appreciate the convenience while others, especially those working on a particular case, would prefer direct contact with the trial counsel.

The individuals to whom the Panel spoke, from the Supreme Court of Canada, Nova Scotia and British Columbia, observed that in their opinions accuracy in reporting has improved with explanations of context.

The Panel also heard from the Ontario Association of Chiefs of Police and the Police Association of Ontario which pointed out that most police services boards now work with professionally trained media relations officers. Sometimes these are police officers; sometimes they are civilians. At all times these individuals must operate within a legislative framework.

The Panel heard from a representative of Ontario's Ministry of the Attorney General about its current communications policies and practices. The Ministry is quite aware of the role that timely, accurate information to the public via the media plays in enhancing confidence in the justice system.

The Panel was advised that the Ministry's model of media relations is based on a single point of contact. This model is used to provide information in a setting where the Ministry has dozens of field offices and approximately 6,000 employees, many of whom are in court and unavailable. Communication with the media is through the Ministry's media spokesperson. Individual Crowns may speak to the media if they wish to according to specified protocol and with the assistance of the Ministry's media spokesperson. The media spokesperson may also facilitate the work of the media by telling journalists where they can get further information.

The approach is based on a desire to ensure the proper administration of justice and the integrity of all matters before the courts, to ensure the accused's right to a fair trial is never compromised, to provide for the protection of and sensitivity to the needs of the accused, and to support the concept of open courts.

Media enquiries include criminal, civil, family justice, victims' services, court services, policy and corporate services. The Ministry receives about 2,000 calls per year, typically about a specific case, access to court documents or courthouse-specific information.

Regarding Crowns who work on criminal cases, the Crown Policy Manual for Ontario's Crown prosecutors includes a policy on Media Contact by Crown Counsel. That policy says:

> Public confidence in the administration of criminal justice is enhanced by the availability of appropriate and timely information concerning cases and the criminal process. However, public statements by Crown counsel should not compromise the public's perception of their impartiality and ability to function as public servants with quasi-judicial responsibilities…Crown counsel are agents of the Attorney-General and local Ministers of Justice. As a result of their quasi-judicial status, Crown counsel are required to deal with the media and the public differently than defence counsel.

Neither the Minister nor any individual Crown can speak about substantive matters relating to cases before the courts.

There are occasions where matters are addressed by the Crown or the Minister at the appropriate time, i.e., after the matter has been spoken to in court. The Ministry spokesperson can help Crowns who are unfamiliar with speaking to the media.

Discussion:

While the role of the Ministry's single spokesperson remains crucial for timely feedback to the media, there still seem to be areas where basic information could be expedited to reporters at courthouses.

The Panel encourages an environment that accommodates points of contact in the courthouse more conveniently. This would strengthen the ability of the media to do its job in a more thorough way. As well, a lock-up providing the media with an opportunity to review an important decision of the Ontario Court of Appeal before its release to the public (as the Supreme Court of Canada often provides) would enhance accurate reporting.

Affordable Access to Court Records

Recommendation #6: Affordable access to court records

The Panel recommends that the Ministry of the Attorney General set the cost of photocopying records with the primary goal of ensuring reasonable, affordable access to the public and the media of court records. Copies of Informations, Indictments and judicial interim release documents in criminal proceedings should be made available expeditiously to accused persons or their counsel free of charge by ordinary mail or at the court office. Photocopy services should be available on site for this purpose.

Issue:

The costs of photocopying court records in Ontario are significantly higher than in most other jurisdictions in Canada. The rates are steep in absolute terms as well as in relative terms.

What the Panel heard:

The Ministry of the Attorney General explained to the Panel that copying fees are prescribed under the *Administration of Justice Act* for each level of court. The fee for non-certified copies is $2 per page ($1 per page in Small Claims Court). The fee for certified copies is $3.50 per page ($4 in the Superior Court of Justice and the Court of Appeal).

The Canadian Association of Journalists (CAJ) was among those who criticized this fee, pointing out that the fee for accessing and copying court records for one research endeavour can run into the hundreds of dollars. "We submit the fee represents a significant and unjustifiable financial burden on journalists and the public."

Discussion:

The CAJ produced an inter-provincial cost comparison, indicating that viewing fees can run from $0 in some provinces to $10 (in Alberta, Saskatchewan and New Brunswick) to a high of $32 in Ontario. The per-page copy fees range from $0.25 in Prince Edward Island to $1.00 in Alberta and British Columbia to $2.00 in Ontario, Quebec and Newfoundland.

The Panel believes that the fee structure for photocopying is out of line with other jurisdictions and is excessive and that it requires adjustment.

III. EDUCATION

In this section the Panel addresses:

- *increasing knowledge across the two professions;*
- *public education.*

Increasing Knowledge Across the Two Professions

Recommendation #7: Continuing professional education

The Panel recommends that the Attorney General actively facilitate learning opportunities for professional organizations on justice-media topics using a range of venues and variety of formats, including conferences, online learning and mentoring.

In this respect, the Panel commends organizations such as the Radio-Television News Directors Association, the Advocates' Society and Legal Aid Ontario for their proposals to develop justice-media educational programs and suggests that the Attorney General take advantage of their offers of assistance.

Recommendation #8: Post-secondary professional education

The Attorney General, together with media and legal organizations, should encourage the inclusion of justice-media education in the curricula of law and journalism schools, and promote joint dialogue.

Issue:

The Panel found that an information gap and lack of understanding exist between some participants in the justice and media professions. Each would benefit from a greater understanding of the professional principles that guide, and the challenges that face, the other.

Some expressions of the tension between the two roles will sound familiar:

- The right to a fair trial may be compromised by naming suspects in the press, through pre-trial media coverage that may influence jury neutrality, and by "trying cases" in the press and on the courthouse steps.
- Freedom of the press may be compromised by publication bans and other restrictions on information.
- Judicial independence may appear to be compromised if members of the bench give interviews about a case.
- Freedom of the press may be compromised if journalists are compelled to name their sources of information. On the other hand, justice may be hindered if the credibility of the source cannot be evaluated.
- Independence of the press may be compromised if they are used by police to aid their investigations, either by publicizing requests for information or witnesses, or as informants.

The Panel believes that this situation has made it difficult for the two professions to see solutions in a more positive way.

What the Panel heard:

The Panel heard many endorsements of continuing professional education as a way to build bridges between justice and the media. Learning events are already taking place in some arenas. There are opportunities for a more consistent and thorough approach, one that builds on good practices within Ontario and elsewhere.

There are some noteworthy examples of educational opportunities, among them:

- The Ontario Association of Chiefs of Police Conference, September 2004, dealt with topics such as, "The Changing Face of Communications for Police Services in Ontario"; and "Media Relations and Communicating with Diverse Communities."
- In the spring of 2005, the University of Western Ontario Law School and the Public Information Committee of the Canadian Judicial Council sponsored a conference designed to enhance the knowledge of journalists about the Canadian

judicial system. The Council produced a very valuable "Glossary of Basic Legal Terms and Concepts for Journalists," and conference participants also received an outline of the Canadian justice system.

- Also in the spring of 2005, the Law Society of Alberta and the Court of Queen's Bench in that province sponsored a seminar called, "The Media and the Law: Delivering the Message: Is the Public Well Served?" Topics raised included who should control the disclosure of information? What will new technology bring in the courtroom? And how well is the public informed by the justice system and the media?
- In 2001, the Canadian Judicial Council joined with the Canadian Institute for the Administration of Justice in developing and piloting a one-day workshop on the media's role in the justice system held on Prince Edward Island. The workshop was attended by approximately 100 reporters, editors, producers, students, judges, lawyers and court officers.
- Subsequently, in 2004, the Canadian Judicial Council's Public Information Committee reported on two events that explored media issues, one held in Manitoba and another in Alberta as noted above.
- In 2004 and 2006, the Criminal Law Division of the Ministry of the Attorney General held a panel at its Spring Conference for Crowns on the Crown Policy on Media Contact and approaches to various scenarios.
- The Canadian Bar Association's annual Canadian Legal Conference featured Ian Hanomansing as its keynote speaker in the summer of 2005. He spoke about how the legal system and journalists can work cooperatively to "help people better understand what's happening in the courts."
- In the spring of 2006, the Ontario Court of Justice and the Ontario Conference of Judges addressed the media-law relationship at their conference called "Judging in an Open Age."

"In the past," as Tracey Tyler of the Toronto Star and others reminded the Panel, "the faculties of law and journalism at the University of Western Ontario offered an annual, two-week program in law for journalists…In addition, Justice David Cole of the Ontario Court of Justice teaches a 12-week course on sentencing and penal policy at the University of Toronto Faculty of Law," which has been attended by journalists and is amenable to shortening.

Ms Tyler pointed out that, "[s]entencing, in particular, is an important subject for journalists. It's a hot button issue. Stories about sentencing are the source of many people's information or misinformation about the justice system."

Some presenters offered suggestions. For example, Legal Aid Ontario made an offer to the Panel:

> With a client's and/or a lawyer's permission, Legal Aid Ontario would be happy to assist the media with tracking down and telling compelling human-interest stories… By working together, partners in the justice system and the media can develop a lasting relationship. There is an interest for both parties to maintain and build on these relationships – media get access to expert resources and contacts to help them tell stories that their audience cares about; and the justice system gets a chance to tell a more complete and accurate story of how it contributes to a healthy society. By telling a variety of stories, instead of just the stories that provoke fear and anger, we can both help the public to gain a better understanding of the justice system and how it works.

Similarly, the Radio-Television News Directors Association proposed assisting with education design and delivery, saying that:

> [We are] willing to assist the panel in the development of "Legal 101" professional development type sessions to educate the media on judicial procedures and offer a better understanding and impact of bans – statutory, discretionary, etc.

The Advocates' Society made the additional suggestion that:

> …organizations, like the [Advocates'] Society and Criminal Lawyers' Association [could consider providing] the media with names of advocates in different practice areas…from whom they can obtain information on legal and procedural issues on a no attribution basis. This option could exist in tandem with the creation of legal education programs for the media, developed by counsel in partnership with the media.

Discussion:

The Panel found some attractive instances of joint education in the United States. The most ambitious of these is the U.S. National Center for the Courts and Media. It was formed in 2000 by the U.S. National Judicial College, in collaboration with the Reynolds School of Journalism at the University of Nevada.

The Center's goals include providing quality instruction to judges and court personnel about the media's role in reporting on legal activities and the same for journalists regarding ways to better ensure accuracy in justice reporting.

The Panel was impressed by media representatives' recognition that they could benefit from more education on justice system principles and procedure in order better to report on it.

Consistency is the key here. Though the Panel has heard examples of educational opportunities, they are sporadic and ad hoc. Instead, these topics should be part of the learning curricula of major providers of education in the justice and media arenas.

The Panel also notes that in addition to face-to-face and electronic education, there are more experiential methods of adult learning that could be employed, such as internship exchanges, site visits or study tours and job-shadowing opportunities.

Of course, educating the next generation of professionals is critical as well. In this regard, there are examples of student education especially at the country's journalism schools. For example, Professor Klaus Pohle of Carleton University's School of Journalism told the Panel that Carleton offers a second-year media and law course on issues such as defamation, privacy law, publication bans and journalism law/ethics. In courses on reporting skills, students cover trials to learn what they can and cannot do.

Media courses in law schools deal with the legal issues around dissemination of information and the regulation of information providers. While topics may include defamation, privacy and publication bans, they appear to be targeted to students who wish to practise entertainment law, for example, more than understanding the role of the media in the justice system.

The law school course most applicable to media-court understanding is offered at the University of Toronto, Faculty of Law, where David Lepofsky from the Ministry of the Attorney General teaches a course on Freedom of Expression and Press. The course explores a broad range of theoretical and practical issues, including the clash between freedom of the press to report on court proceedings and the accused's right to a fair trial free from prejudicial activity.

Public Education

Recommendation #9: Public education

The Panel recommends that the Ministry of the Attorney General encourage and support the Ontario Justice Education Network to further develop its materials and outreach on the relationship of the justice and media systems.

Issue:

There is a need for greater public understanding about the justice system. The lack of awareness can have many effects, most importantly on public confidence: first in the administration of justice, and equally on the media's ability to report in an unbiased way.

What the Panel heard:

CTV captured the issue of public knowledge when it pointed out that there is little understanding of the role of the justice system, and of the roles and responsibilities of its stewards.

The County and District Law Presidents' Association (CDLPA) encouraged the Panel to consider community education and in that vein to look at the Ontario Justice Education Network (OJEN) as a vehicle for doing so. "There is a need for broad based public education and informed debate at the community level," CDLPA advised.

Discussion:

The Panel believes that the Ontario Justice Education Network could be very helpful in advancing public education on the respective roles of, and the relationship between, the justice system and the media in society.

OJEN is a collaborative network of organizations and individuals who work together on provincial and local levels to promote understanding, education and dialogue, supporting a responsive and an inclusive justice system. Its mandate reflects its suitability to this kind of work:

> With hundreds of volunteers including judges, lawyers, Crown attorneys, court managers and staff, educators and community representatives, OJEN facilitates opportunities for students and others to develop understanding of our justice system.

Among OJEN's programs are: "Courtroom to Classrooms" and online learning resource tools including one called, "Values of the Justice System," for Grade 10 Civics classes.

Education is a cornerstone of any system-wide improvements. The Panel hopes that the recommendations in this chapter will constitute an investment in the future of justice-media relations.

IV. ELECTRONIC AGE

When the Attorney General indicated that "[w]e have a legal system inherited from the 18th century operating in the media spotlight of the 21st century," the Panel believes he was referring largely to the underutilization of technology to enable progress.

This chapter addresses a variety of opportunities to enhance the justice system using 21st century tools. The topics addressed are:

- *notification of publication bans;*
- *electronic access to court records;*
- *online media guide;*
- *public justice-media website.*

Notification of Publication Bans

Recommendation #10: Notification of publication bans

The Panel recommends that the Ministry of the Attorney General and the judiciary establish an electronic notification system for discretionary publication bans to provide basic information in a timely manner.

Issue:

The issues concerning publication bans focus on the frequency with which they are issued and the manner in which people are – or are not – notified.

What the Panel heard:

Problems expressed to the Panel regarding publication bans included:

- the perception by the media is that "[t]here are too many automatic and routine publication bans, implemented without any discussion of their necessity in the circumstances, breeding the belief that publication bans generally are normal and desirable, rather than exceptional and only to be used when proven justifiable." (CBC)
- the sense that notification of bans can be last minute thus causing confusion for the media; or "[t]he content of notice to the media, when given, is often inadequate to permit the media and its counsel to make an informed decision as to whether to intervene." (Ad IDEM)

Concern was especially expressed regarding s. 486 of the *Criminal Code* which allows for a ban if "there is a real and substantial risk that the victim, witness or justice system participant would suffer significant harm if their identity were disclosed." This topic has become the subject of an interim policy on court files and documents under section 486 Publication Bans (Bill C-2 to amend s. 486 as of November 2005) from the Ministry's Court Services Division, saying that:

> Court files and documents subject to publication bans under sections 486.4 (1), (2), and (3) and 486.5 (1) or (2) of the *Criminal Code* are not accessible to the public without judicial direction. Before permitting members of the public to access court files or documents, court staff must ensure that a section 486 publication ban has not been noted on the information.
>
> Members of the public who require access to court files or documents under section 486 publication bans must make an application to the court.

The Ontario Association of Chiefs of Police also weighed in on this subject:

> …[I]ssues around how we [the police] manage information, for example, around a publication ban ordered by the courts, challenge us to balance the need of the public to "know" with the very real possibility that the demands of the public or media for details of a crime could impact the delivery of justice. It is an area which requires more discussion between police, the media and the courts to find the right balance, always keeping in mind that the delivery of justice should be paramount in such considerations.

A representative of the Ministry of the Attorney General pointed out that Crowns must approach such decisions through the lens of the best practices of the administration of justice, the fair trial interest of the accused and the fair trial interest of the public, in accordance with the *Charter*. While there are legitimate grounds for publication bans, the real issue is how the bans are written. In addition, the representative said, regimes such as those that exist in some jurisdictions to provide electronic notice of publica-

tion bans (see below) do not always suit the quick pace of a prosecutor's life, where an Assistant Crown may receive a case the day before and realize a publication ban is needed.

In response to a question from the Panel as to whether Crown Attorneys should be more aggressive in fighting against publication bans and advocating openness, the Ontario Crown Attorneys' Association made the point that this goes to the role of the Crown as a local minister of justice. The Crown has to determine what is in the best interest of justice, focusing on ensuring a fair trial.

A chart summarizing some pro's and con's may be helpful. It is adapted from Chief Justice Lamer's ruling in *Dagenais v. Canadian Broadcasting Corporation* (please see Discussion below):

Ordering bans may:	**Not ordering bans may:**
• limit freedom of expression	• maximize the chances of individuals with relevant information hearing about a case and coming forward with new information
• prevent the jury from being influenced by information other than that presented in evidence during the trial	• prevent perjury by placing witnesses under public scrutiny
• maximize the chances that witnesses will testify because they will not be fearful of the consequences of publicity	• prevent state and/or court wrongdoing by placing the criminal justice process under public scrutiny
• protect vulnerable witnesses (e.g., child witnesses, police informants, victims of sexual offences)	• reduce crime through the public interest of disapproval of crime
• preserve the privacy of individuals involved in the criminal process	• promote the public discussion of important issues
• maximize the chances of rehabilitation for young offenders	
• encourage the reporting of sexual offences	
• save the financial and/or emotional costs to the state, accused, victims and witnesses of the alternatives to publication bans (e.g., delaying trials, changing venues)	
• protect national security	

While it is clear that the trial or application judge retains the discretion to provide notice, some members of the media felt a sense of confusion or fear when trying to figure out publication bans. The more overriding concern, expressed by some members of the media, is that basic information about a case falls beyond the reach of the media, sometimes for no good reason.

Both the Canadian Bar Association and Ad IDEM have promoted principles for publication bans imposed at the discretion of the judge. These include: the importance of reasonable and timely notice to the media of applications for discretionary publication bans, opportunities for the media to make representations before such bans are issued and easy access to written records of such bans (as well as sealing orders, etc.).

Discussion:

There are two kinds of publication bans: those mandated in the *Criminal Code* and other legislation – for example, precluding the disclosure of the identity of a minor – and those imposed at the discretion of the judge. Much of the concerns relate to applications for discretionary publication bans.

From one perspective, while the media may be viewed as the public's watchdog of the activities of the courts, their right of access and right to publish should not interfere with the administration of justice or an individual's right to a fair trial.

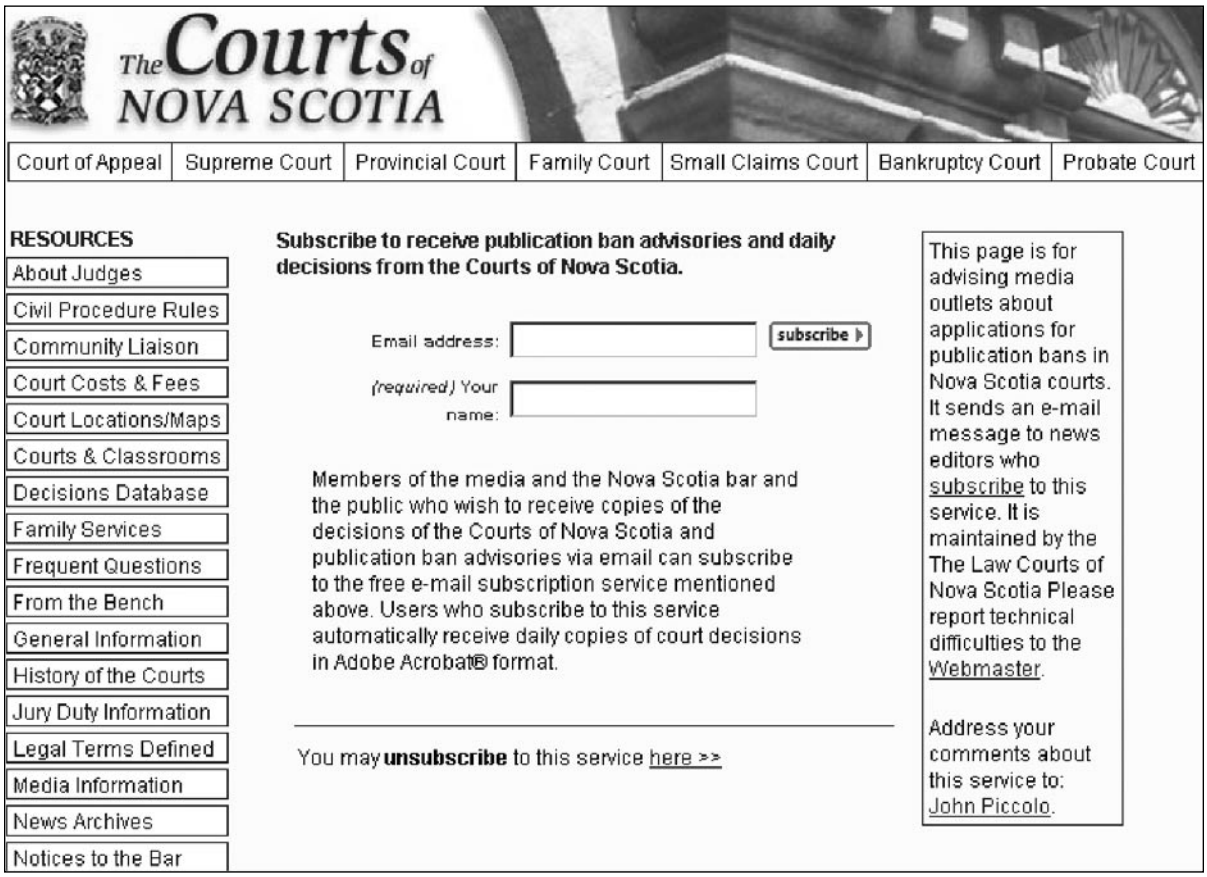
The landmark ruling in *Dagenais* by the Supreme Court of Canada in 1994 establishes that members of the media have standing to be heard and to raise objections in open court when a party requests that a judge impose a discretionary ban. Representatives of the media should be given reasonable notice and the opportunity to make submissions on an application for a publication ban.

The *Dagenais* ruling articulates the tests that judges should apply when considering an application for a common law ban or discretionary statutory ban. As described in Alberta Justice's Prosecution Pointer on Publication Bans, the test for a common law publication ban is that:

- the ban is necessary in order to prevent a real and substantial risk to the fairness of the trial because reasonably available alternative measures will not prevent the risk;
- the salutary effects of the publication ban outweigh the deleterious effects.

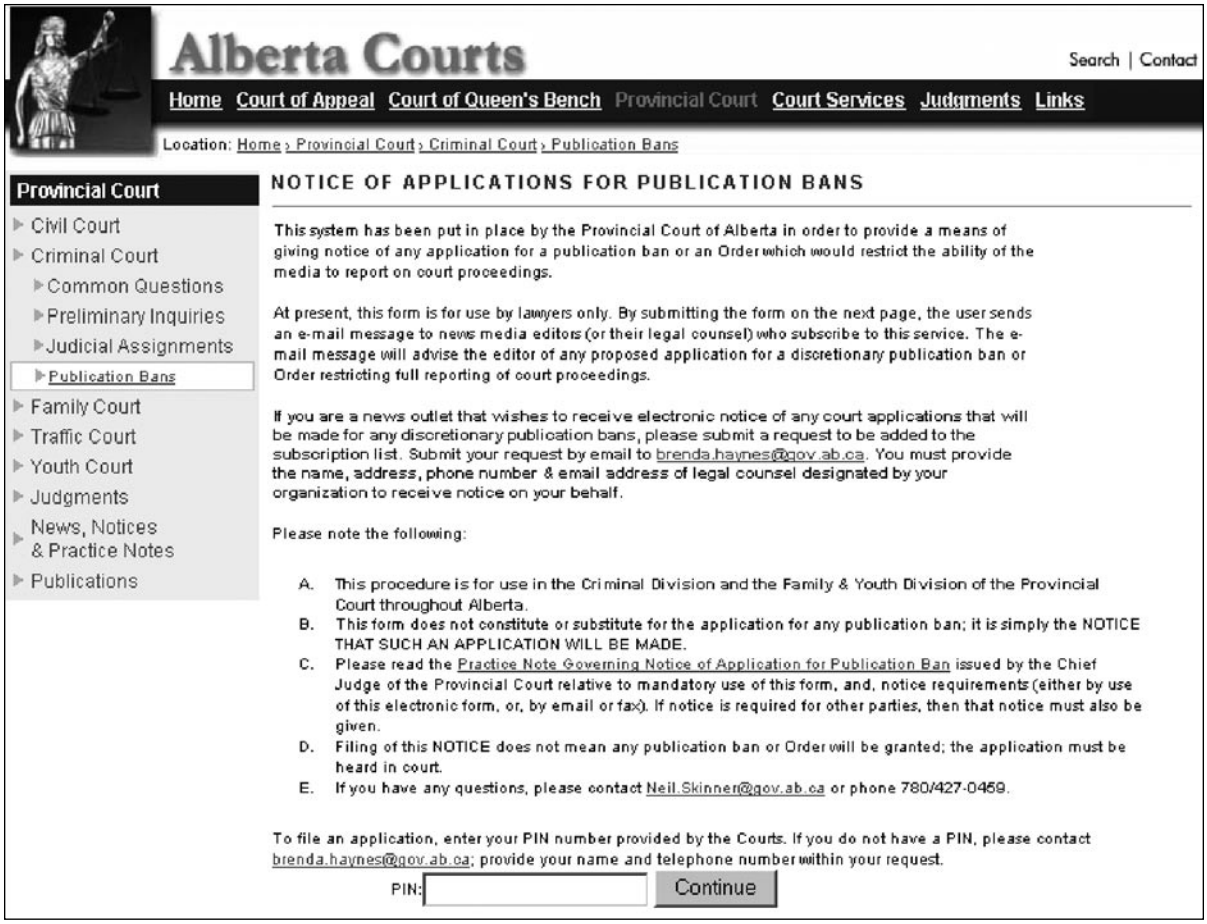
How have jurisdictions approached the notification issue? We find two examples in Nova Scotia and Alberta:

- Nova Scotia notifies the media of requests for, and the issuance of, publication bans. The Courts of Nova Scotia maintain a free email subscription service to advise media, members of the bar and the public of upcoming publication ban applications. Subscribers also receive daily copies of court decisions. Those wishing to apply for a publication ban complete an application form directly on the Courts website. Submitting the form sends an email message to subscribers notifying them of the application for a publication ban.



Screenshot: Courts of Nova Scotia – Subscribe to Publication Ban Advisories

- Similarly, in Alberta's Provincial Court, a media representative who wishes to receive electronic notice of any court applications that will be made for discretionary publication bans may register as an "interested party." To do so, however, the media representative must name a member of the Law Society of Alberta to receive the notice on their behalf, and provide a current email address for that member. Electronic notification is mandatory.



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NOTICE OF APPLICATIONS FOR PUBLICATION BANS

This system has been put in place by the Provincial Court of Alberta in order to provide a means of giving notice of any application for a publication ban or an Order which would restrict the ability of the media to report on court proceedings.

At present, this form is for use by lawyers only. By submitting the form on the next page, the user sends an e-mail message to news media editors (or their legal counsel) who subscribe to this service. The e-mail message will advise the editor of any proposed application for a discretionary publication ban or Order restricting full reporting of court proceedings.

If you are a news outlet that wishes to receive electronic notice of any court applications that will be made for any discretionary publication bans, please submit a request to be added to the subscription list. Submit your request by email to brenda.haynes@gov.ab.ca. You must provide the name, address, phone number & email address of legal counsel designated by your organization to receive notice on your behalf.

Please note the following:

A. This procedure is for use in the Criminal Division and the Family & Youth Division of the Provincial Court throughout Alberta.
B. This form does not constitute or substitute for the application for any publication ban; it is simply the NOTICE THAT SUCH AN APPLICATION WILL BE MADE.
C. Please read the Practice Note Governing Notice of Application for Publication Ban issued by the Chief Judge of the Provincial Court relative to mandatory use of this form, and, notice requirements (either by use of this electronic form, or, by email or fax). If notice is required for other parties, then that notice must also be given.
D. Filing of this NOTICE does not mean any publication ban or Order will be granted; the application must be heard in court.
E. If you have any questions, please contact Neil.Skinner@gov.ab.ca or phone 780/427-0469.

To file an application, enter your PIN number provided by the Courts. If you do not have a PIN, please contact brenda.haynes@gov.ab.ca; provide your name and telephone number within your request.

PIN: Continue

Screenshot: Alberta Courts – Notice of Applications for Publication Bans

British Columbia has also launched a publication ban notification pilot project, including a subscription/notification process regarding discretionary bans.

The Supreme Court of Canada's schedule of hearings, available on its website, includes a note where a publication ban is in effect. (It is also possible to subscribe to SCC emailed news releases.)

The Panel suggests that the appropriate officials in Nova Scotia, Alberta and British Columbia should be consulted for advice on how best to establish and operate such a system.

Electronic Access to Court Records

Recommendation #11: Electronic access to court records

The Panel recommends that the Ministry of the Attorney General and the judiciary ensure that, where practical, reasons for judgment and docket information of Ontario courts are available online.

Issue:

Electronic access to court records raises concerns such as the protection of privacy, accuracy and currency of information. It also calls into focus the principle of open courts.

What should Ontario's approach be?

Discussion:

The Panel notes practices in other jurisdictions. For example:

- In the U.S., Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from U.S. Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index. It is a fee-based service available over the Internet.
- The Supreme Court of Canada's website includes: case information, hearing schedules and notes re publication bans, news releases, bulletins, recent judgments and published judgments.
- British Columbia's Ministry of Attorney General and the B.C. judiciary have recently introduced Court Services Online. This service allows the media and the public online access to a variety of information.
- A partial sampling of other provincial courts indicates that most (though not all) provide judgments online. Nova Scotia and Alberta provide access through their courts; Saskatchewan through the Law Society of Saskatchewan. The Court of Appeal in Alberta also provides hearing lists and electronic filing.
- In Ontario, the Court of Justice and Superior Court provide access to their decisions via a link to CanLII. The Court of Appeal posts its judgments on its website.

In 2003, the Judges Technology Advisory Committee (JTAC) of the Canadian Judicial Council (CJC) prepared a discussion paper on issues arising from electronic access to court records and docket information.

The discussion paper certainly elicited lively debate, including responses from the

Canadian Newspaper Association, Ontario Bar Association and Law Society of Upper Canada. Some of this debate was highlighted to the Panel.

The JTAC discussion paper came to 33 conclusions, generally finding that, while privacy rights are certainly critical, the right to open courts usually outweighed the right to privacy.

The Panel is aware that the CJC will be issuing more specific guidance on access to court records, which will merit careful review and attention.

Online Media Guide

Recommendation #12: Online media guide

The Panel recommends that the Ministry of the Attorney General, in conjunction with justice and media representatives, develop an online Ontario justice system guidebook for the media.

Issue:

Information for the media about their rights, responsibilities and resources is fragmented and sometimes not available at all.

Discussion:

With respect to media guidebooks, there appear to be few comprehensive versions that are easily accessible, at least online.

The most highly developed media guide is in Nova Scotia. The draft Media Guidelines, which have been approved by judges in the Supreme Court and Court of Appeal, are posted on the Courts of Nova Scotia website and include information on policies in five major categories: access to courthouses and courtrooms; access to court documents; court records; media-related rules; and bans on publication.

Manitoba and B.C. courts also have media guides on their websites:

- Manitoba has a page on its website that gives some information about how to contact the media relations officer, Court policies affecting media coverage (cameras and audio recording equipment), access to court records and release of court judgments. The Manitoba Courts post an online dictionary of legal terms.
- B.C.'s Provincial Court has a "News and References" page that includes its media access policy with information about televising or broadcasting Court proceedings. Also listed are news releases, appointments and relevant articles.

A sampling of courts in U.S. states identified some media guides, including those in Tennessee, Wisconsin and Maryland.

Some courts in Australia and New Zealand also have media guides.

One of the recommendations of the Canadian Journalism Foundation's Bench-Bar-Media Communications Working Group (1996–1999) was for the development of introductory-level guidebooks on justice reporting for journalists, lawyers and judges. These guidebooks should include an introduction to each other's terminology and information on practices and procedures.

The Panel believes there is much value in an online media guide.

Public Justice-Media Website

Recommendation #13: Public justice-media website

The Panel recommends that the Ministry of the Attorney General and the justice-media committee (as described in Recommendation 14) should establish a public website to provide information on:

- the roles of all participants in the justice system;
- the structure of the justice system;
- the media's role in relation to the justice system;
- hyperlinks to docket information and judgments of Ontario Courts;
- public access to the justice system;
- other learning tools as are already available on the Internet.

This would be an enduring demonstration of the culture shift that Ontario is embarking upon with the initiatives suggested above.

Technology offers the justice-media relationship many opportunities. There are always cautions to consider but the Panel believes the recommendations presented here offer a balanced approach.

V. ONGOING ACTIVITIES

This chapter addresses three topics:

- *the importance of ongoing dialogue and problem solving;*
- *the need for continuing vigilance regarding statements in press conferences and other public forums;*
- sub judice *contempt rule and shield law.*

Establishing an Ongoing Justice-Media Liaison Committee

RECOMMENDATION #14: JUSTICE-MEDIA LIAISON COMMITTEE

The Panel recommends that the Attorney General establish an ongoing committee to:

- provide stewardship for the consideration of the Panel's recommendations;
- oversee the development of public information and opportunities for dialogue including a public justice-media website (as described in Recommendation 13);
- serve as an ongoing mechanism for identifying and solving issues that arise between justice and the media;
- identify evaluation indicators related to both the process of the committee and its outcomes.

Representation in the ongoing committee should include government, the judiciary, legal and police organizations and media organizations.

Issue:

The creation of the Panel resulted in a large number of issues being raised by interested groups and individuals who welcomed the opportunity to bring them to the Panel's attention.

A permanent venue has not existed before. The range of recommendations needed to improve current operations and understanding is proof of the importance of regular dialogue, issues identification and problem solving.

What the Panel heard:

Many written and oral presentations made to the Panel called for a mechanism for communication, consultation and problem solving.

There are instances in the past where representatives of justice and/or media organizations have come together to tackle problems and address opportunities on a time-limited basis.

In the late 1990s, a committee examined comments to the press in criminal prosecutions. The committee was convened by the Chief Justice of Ontario, the Hon. Charles Dubin, the president of the Criminal Lawyers' Association, Bruce Durno, and the Assistant Deputy Attorney General of Criminal Law, Michael Code. The committee comprised justice representatives, including prosecution, defence and police. The committee produced a draft protocol regarding media statements for all involved in the administration of criminal justice (please see Appendix D).

While the content of the protocol is important, the protocol also makes the valuable suggestion that an advisory group be established to oversee its implementation and to field suggestions for revisions. The committee also emphasized its educative role.

In the late 1990s, the joint Bench-Bar-Media Communications Working Group, coordinated by the Canadian Journalism Foundation, conducted a "survey of the attitudes and perceptions of members of the news media, judiciary and government" to reporting on justice issues.

The recommendations that emerged related to education and training, procedural and administrative improvements and bench-bar-media relationships.

The suggestions of this committee were valuable and indeed are mostly reinforced by this Panel's findings. Again, what is pivotal to the Panel is the proposal of an ongoing structure to facilitate problem solving and education.

Discussion:

The Panel's research points to the existence of other media-bar-bench liaison committees that allow for discussion and debate.

Nova Scotia has a Media Liaison Committee that is composed of members of the bench and media representatives. The committee meets regularly to discuss issues of mutual concern and reporters are encouraged to contact its members to raise matters for consideration.

In the United States, the National Center for the Courts and Media provides a neutral forum "to foster discussion about the inherent tensions between the right to a fair trial, as guaranteed in the Sixth Amendment of the U.S. Constitution, and the First Amendment right of the free press to conduct its work largely unfettered by governmental restrictions." As well as providing education and training, its goals include working with judges and journalists to help improve media access to public information and to continuously explore and solve relationship issues.

The members of the Panel have lived the axiom that process is sometimes outcome. Through its deliberations, members have come to a better understanding of the issues that separate and unite the institutions at hand and to realize the value and the potential of an ongoing committee. The Panel believes that the Attorney General has the opportunity to commit to the enduring importance of the justice-media relationship by establishing a permanent liaison committee.

If the Attorney General does choose to make that commitment, then a critical part of the strategy for implementing this report would be to establish an ongoing forum to serve as the steering committee for implementation.

Press Conferences/Public Commentary

Recommendation #15: Press conferences/Public commentary

The Panel recommends that, as it is important that all participants in the justice system be scrupulous in the making and reporting of comments, both before and after arrest, that might affect fair trial interests, the 1998 document called, "Protocol Regarding Public Statements in Criminal Proceedings," be revived and referred to the committee set out in Recommendation 14.

Issue:

Participants in press conferences need to be ever vigilant about the sometimes inflammatory manner in which information is conveyed to or by the media, which can be harmful to the administration of justice and to individual rights.

This issue was identified mostly in the context of police press conferences. While this was not a regular practice, it was brought to the Panel's attention. Many media presenters had a favourable view of dealing with the police. Furthermore, there is no doubt the media has a role to play in a community when a tragedy occurs. The objective is for all parties to be careful.

What the Panel heard:

The manner in which police and the media report information to the public is critical to ensuring fair trials and protecting privacy rights. The Panel heard of one press conference where comments made by the police went well beyond the communication of information and into the realm of opinion and were deemed acutely prejudicial to the accused person's right to the presumption of innocence. At the same time, examples were also discussed in which interviews of victims and potential witnesses by members of the media and other media reporting or commentary during the course of an investigation or trial may have had the same potential effect.

Bob LeCraw, a man whose brother James committed suicide after widely publicized charges were subsequently withdrawn, gave the Panel some practical advice about balancing the right to privacy with the public right to know: take away the inflammatory language during press conferences; ensure that press releases and conferences are not coupled with calls for increased resources; have protocols that direct police to name individuals as suspects but not as criminals; and, at the very least, the withdrawal of charges should be given as wide publicity as the arrest and charge.

The *Police Services Act* says that it is the responsibility of Police Services Boards to establish policies respecting disclosure of personal information, and that the purpose of disclosure includes keeping the public informed about the law enforcement, judicial or correctional processes about that individual.

Regulation 265/98 as amended to O. Reg. 297/05 under the *Act* also addresses what personal information about an individual may be disclosed by the police. This information includes their name, date of birth and address, the offence with which he or she is charged, the outcome of any judicial proceedings, the procedural stage of the justice process and the date of release from custody.

The role of police in the relationship with the media may be further complicated by the fact that other justice partners are more restricted in speaking in public.

There is some indication that the police have become more media savvy than others in the justice system. Many have dedicated resources to media relations and communicating with the public. "There is a very real perception," the Ontario Association of Chiefs of Police (OACP) says, "that the justice system sees itself as being independent from public scrutiny in ways that the police and media can't be."

The Ontario Association of Chiefs of Police pointed out that:

> [R]eluctance to provide information leads to a thirst for information by the public and the media that wrongly falls to police to address… Our police services are being put in positions where they are expected to answer for and even defend court decisions and government policies in relation to the carriage of justice. This should not be the role of a community's police service.

The OACP went on to say that the police are taking a proactive role in providing accessible information with the help of technology, e.g., community-alert websites. The audience is the public, not reporters.

The OACP indicated that while television portrays police work as fast, it is in fact tough slogging work. That slow timeframe can fly in the face of fast-paced media deadlines.

The role of Crowns vis-à-vis the media has been outlined in Chapter II above. The role of the bar generally is set out in the Law Society of Upper Canada's *Rules of Professional Conduct*, namely that:

> 4.06 The lawyer and the administration of justice:
>
> (1) A lawyer shall encourage public respect for and try to improve the administration of justice….
>
> 6.06 Public appearances and public statements:
>
> (1) Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.
>
> (2) A lawyer shall not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Discussion:

The Panel believes that the answers lie in work already started, namely the "Protocol Regarding Public Statements in Criminal Proceedings." This was brought to the Panel's attention by the Criminal Lawyers' Association and was developed by the Dubin Committee noted in the section above.

The guideline was approved by representatives of the prosecution, defence and police and included provisions against making "…an extrajudicial statement concerning a criminal matter that is before the courts awaiting trial or appeal, or where a warrant has [been] issued if it is reasonable to expect that the statement: i) will be disseminated by means of public communications; and ii) will have a substantial likelihood of materially prejudicing the criminal trial." The protocol went on to enumerate the conditions under which lawyers and police officers may state information for public dissemination, without elaboration.

The guideline was not formally implemented, however, and the Panel believes it ought to be.

Policies and practices need stewardship to be maintained and refreshed over time. The Panel believes this recommendation will go a long way towards serving those purposes.

Sub Judice Contempt Rule and Shield Law

Recommendation #16: Sub Judice Contempt Rule

The Panel recommends as a general principle that all appropriate steps be taken to provide greater clarity to journalists as to what they can publish prior to and during the trial.

Recommendation #17: Shield Law

The Panel recommends that the Ministry of the Attorney General conduct further policy analysis of the legal issues involved in shield laws. This research should be done with a view towards the Ministry setting out the issues and declaring its direction.

Issues:

The media's right of access is not absolute, particularly if it interferes with the administration of justice and a person's right to a fair trial. Judges have the power to control proceedings that are *sub judice* and, in the case of such interference, can impose limits on the media's access to information and/or ability to inform the public. Violation of those imposed limits can result in prosecution for contempt of court. Contempt at common law may arise where pre-trial publication of information interferes with the administration of justice.

The subject of shield laws – the protection or non-protection of the confidentiality of journalists' sources – garnered much attention in 2005 in the United States. The Panel recognizes it as an emerging issue in Canada as well.

What the Panel heard regarding the Sub Judice *Contempt Rule:*

Three presentations to the Panel addressed the importance of the *sub judice* contempt rule and adherence to it.

The Association of Law Officers of the Crown said that:

> Government representatives must be particularly mindful of complying with the *sub judice* rule (where a matter that is under judicial consideration or in court and not yet decided must not be commented on). They must also be careful to comply with…the *Freedom of Information and Protection of Privacy Act*, judicially ordered publication bans, judicially sealed records…[as well as]…rules of solicitor client privilege…and…Rules of Professional Conduct.

AIDWYC (Association in Defence of the Wrongly Convicted) is concerned about the trend away from a respect for the *sub judice* contempt rule to protect the fair trial rights of an accused from prejudicial media accounts. The media has the potential to greatly influence the public, including those who may serve as jurors in criminal trials. As a result of the decline in use of *sub judice* contempt power, the media now frequently contains information and commentary about the accused which could have drawn a contempt citation 15-20 years ago. This information can prejudice the fair trial rights of the accused.

The Criminal Lawyers' Association also expressed its concern about the erosion of the *sub judice* rule, especially with respect to the expanding scope of police press conferences. It suggested that media characterizations of the exclusion of evidence sometimes suggest that juries are tricked by the exclusion of evidence, instead of explaining the legal rationale for such trial rulings. The Criminal Lawyers' Association cited increased costs (for example, through changes of venue of trials), lengthier trials, miscarriages of justice and disrespect for the judicial system as consequences of failing to explicitly outline the proper parameters of justice reporting.

What the Panel heard regarding Shield Law:

Several presenters addressed the issue of the shield law. PEN Canada said that it strongly endorses the ruling of Madame Justice Mary Lou Benotto of the Ontario Superior Court who, on January 21, 2004, wrote in part:

> Inherent in the concept of confidentiality is the ability of the media to protect the identity of the source. The evidence establishes that sources may "dry-up" if their identities were revealed. Without confidential sources, many important stories of considerable public interest would not have been published. Confidential sources are essential to the effective functioning of the media in a free and democratic society…
>
> To compel a journalist to break a promise of confidentiality would do serious harm to the constitutionally entrenched right of the media to gather and disseminate information…
>
> …the eroding of the ability of the press to perform its role in society cannot be outweighed by the Crown's investigation…
>
> Often the more explosive the story is, the greater the risk to the informant if he or she is exposed.
>
> [*R. v. National Post*, 2004 CanLII 8048 (ON S.C.)]

PEN Canada urged the Panel "to recommend amendments to appropriate provincial and/or federal statutes to provide immunity from prosecution for journalists and authors who wish to protect the confidentiality of sources for their stories, based on the model that appears to work successfully in several states of the United States."

The CBC added that:

> Journalists perform a constitutionally-mandated function. A free and independent press requires freedom to collect information, which government may not want collected, and present it in a way that ensures the public is able to get access to the truth. At present in Ontario, there is no statutory protection for journalists performing their work, though there is recognition by the Supreme Court that a journalist/source relationship is one that deserves protection, and there is a common law "newspaper rule" that protects a journalist's sources at the discovery stage of civil litigation against the journalist… Many jurisdictions have adopted general shield laws for journalists.

Discussion:

The Panel advises against the erosion of the *sub judice* rule. Guidance on its application would greatly assist journalists. At the same time, when journalists are operating within specified rules of the court, they should be able to do so without fear.

VI. CONCLUDING REMARKS

The Panel on Justice and the Media is encouraged by the journey it has taken. It has learned from the people it heard from and it has benefited from the enthusiastic desire of all parties to improve both operations and understanding.

The Panel thinks that positive change in the working relationship can be achieved through its recommendations:

Openness:

- access to court records;
- use of tape recorders;
- cameras in the courtroom;
- media facilities at the courthouse;
- media lock-ups;
- affordable access to court records.

Education:

- increasing knowledge across the two professions;
- public education.

Electronic Age:

- notification of publication bans;
- electronic access to court records;
- online media guide;
- public justice-media website.

Ongoing Activities:

- justice-media liaison committee;
- press conferences/public commentary;
- *sub judice* contempt rule and shield law.

Through its deliberations, the Panel has sought to achieve a balanced approach to its recommendations. The media and justice systems are both complex and busy. The proposals made here are meant to promote increased effectiveness and efficiency.

APPENDICES

APPENDIX A – PANEL ON JUSTICE AND THE MEDIA TERMS OF REFERENCE

1. Purpose

The Ontario Panel on Justice and the Media will suggest ideas for improving understanding and operations between the media and the justice system. It will do so by presenting suggestions, best practices or guidelines.

2. Objectives

The relationship between the justice system and the media is in need of review to consider ways and means to modernize it while still respecting the appropriate roles and responsibilities of each.

The challenges of a 21st century relationship include:

- To determine if the **roles and responsibilities** of those involved reflect values that are suitable to a modern justice and media environment – with careful regard for legitimate functions and necessary standards;
- To identify ways to **improve mutual understanding** between participants in the justice system and those working in the media;
- To encourage broad **public access to information** about justice beyond those individuals who are directly involved in cases;

- To look at the **underlying policies and practices** in both sectors to see that they optimally reflect values that respect justice, the media and the public;
- To consider the unique issues and opportunities presented by conducting the business of justice and communications in an **electronic age**;
- To address **special requirements** when dealing with the justice system and children and communities at risk.

3. Members of the Panel

The Ontario Panel on Justice and the Media was established by Attorney General Michael Bryant in January 2005 with the intention of bridging the gap between the media and the justice system. The Panel brings together members of the media and participants in the justice system. The Panel includes:

- Chief Paul Hamelin, Past President, Ontario Association of Chiefs of Police;
- John Honderich, Former Publisher, Editor and Reporter for the Toronto Star;
- Paul Lindsay, Assistant Deputy Attorney General, Criminal Law Division, Ministry of the Attorney General;
- Justice James MacPherson, Court of Appeal for Ontario;
- Trina McQueen, Broadcaster and Journalist, Professor of Broadcast Management, Schulich School of Business, York University;
- Ralph Steinberg, Past President, Criminal Lawyers' Association;
- Benjamin Zarnett, Past President, The Advocates' Society.

APPENDIX B – LIST OF PARTICIPATING ORGANIZATIONS AND INDIVIDUALS

The Panel wishes to thank all the individuals and organizations that made oral and/or written submissions. Organizations were often represented by several spokespeople. Names of individuals who spoke to the Panel on behalf of organizations have not been listed unless they made separate submissions to the Panel.

Ad IDEM (Advocates in Defence of Expression in the Media)

The Advocates' Society

Association in Defence of the Wrongly Convicted

Association of Law Officers of the Crown

Bindman, Stephen, former legal affairs journalist

British Columbia, Ministry of Attorney General, Criminal Justice Branch

Brown, Barb, Hamilton Spectator

Canadian Association of Journalists

Canadian Broadcast Standards Council

Canadian Broadcasting Corporation

Canadian Newspaper Association

County and District Law Presidents' Association

Court of Appeal for Ontario

Criminal Lawyers' Association

CTV

Duncan, James L.

The Globe and Mail

Harper, R. John

Law Society of Upper Canada

LeCraw, Robert

Legal Aid Ontario

Makin, Kirk, The Globe and Mail

Metroland Printing, Publishing and Distributing Ltd.

Nova Scotia Public Prosecution Service, Communications Branch

Ontario Association of Broadcasters

Ontario Association of Chiefs of Police

Ontario Bar Association

Ontario Community Newspapers Association

Ontario Conference of Judges

Ontario Crown Attorneys' Association

Ontario Ministry of the Attorney General:

- Communications Branch
- Court Services Division
- Criminal Law Policy Branch
- Crown Law Office-Criminal
- Justice Sector Freedom of Information & Protection of Privacy Office
- Office of the Children's Lawyer
- Ontario Victim Services Secretariat

PEN Canada

Pohle, Professor Klaus, School of Journalism, Carleton University

Police Association of Ontario

Radio-Television News Directors Association

SUN Media Corporation

Superior Court of Justice

Supreme Court of Canada, Executive Legal Officer

Toronto Star

Tyler, Tracey, Toronto Star

Valentine, Dave

APPENDIX C – SOME CRITICAL LEGISLATION, CASE LAW AND POLICIES

The legislation, case law and policies that inform the justice-media relationship include:

- *Canadian Charter of Rights and Freedoms*
- *Canada Evidence Act*
- *Freedom of Information & Protection of Privacy Act*
- *Courts of Justice Act*
- *Administration of Justice Act*
- Pivotal legal decisions, e.g., *Dagenais, Mentuck, MacIntyre, Vickery*
- Ministry of the Attorney General Crown Policy Manual

The Panel heard from the Ministry of the Attorney General about the special needs of children in the justice system. The Office of the Children's Lawyer represents children, for example, in custody/access proceedings before the courts. The point was made that the media must be ever mindful to uphold the spirit of privacy laws with respect to children in the justice system: not to make identities known through "other" means of identification; to be aware of the impact of reporting not only on the child but also on his/her siblings.

In another presentation by the Ontario Victim Services Secretariat, the Panel heard the concerns that victims commonly express about the media with respect to real or perceived violations of privacy, and misrepresentation or inaccurate reporting.

It was observed that victims have also expressed that media coverage can reduce their sense of isolation and allow them to regain their voice.

The Panel also heard from the Canadian Newspaper Association on a point supported by the Ontario Community Newspapers Association and the Ontario Association of Broadcasters that:

> There are already sufficient legislative and other restrictions upon the media that are intended to protect children, victims and other vulnerable people. There is no need to add an administrative layer of protection on top of that currently available in law.
>
> The trial judge always has the discretion to protect sensitive/ private matters and the courts have developed protocols and guidelines for redacting information.

This balance was expressed well by the Ontario Bar Association:

> Privacy and open access to the justice system and freedom of expression (including freedom of the press) are all fundamental rights in a free and democratic society. None is absolute, nor are they mutually exclusive. An appropriate balance must be struck when weighing these competing interests.

It is against these backdrops, that is, a vision statement and set of principles and some overarching considerations, that the Panel has set out its recommendations.

APPENDIX D – PROTOCOL REGARDING PUBLIC STATEMENTS IN CRIMINAL PROCEEDINGS

DRAFT, APRIL 1998 ("DUBIN COMMITTEE")

In recent years, there has been a substantial expansion in public and media attention to criminal proceedings. This has led to increased demands for information from counsel, police and public officials regarding cases. There is a need for clear guidelines and education for all involved in the administration of justice to emphasize established and fundamental principles.

It is important that the public, including the media, be informed about cases in which a warrant has been issued or are before the courts. The administration of justice benefits from such public scrutiny. It is also important that an accused's right to a fair trial not be hindered by inappropriate public statements made before the case has concluded. Fair trials are fundamental to a democratic society. Accordingly, it is in the public interest that guidelines be established to ensure that accurate information regarding cases is made public in a timely and appropriate manner without jeopardizing a fair trial or causing public officials, lawyers, and police officers to violate their professional obligations.

I. PURPOSE:

The primary purpose of these guidelines is educational. They are to assist lawyers, police officers and public officials to have a common guideline for public statements regarding cases in which a warrant has been issued or is pending before the courts.

It is acknowledged that nothing in the guidelines:

a) limits the jurisdiction of the Court, the Attorney General or the public to initiate contempt proceedings in matters covered by the guidelines;

b) limits the jurisdiction of the Attorney General or Solicitor General or the Law Society of Upper Canada;

c) limits or interferes with the rights and privileges enjoyed by members of Parliament or the Provincial Legislature.

II. GUIDELINES

The following guidelines have been approved by representatives of the prosecution, defence and police and are provided to assist in responding to press requests for information and press releases.

a) A lawyer, police officer or public official should not make an extrajudicial statement concerning a criminal matter that is before the courts awaiting trial or appeal, or where a warrant has issued, if it is reasonable to expect that the statement:
   i) will be disseminated by means of public communication; and
   ii) will have a substantial likelihood of materially prejudicing the criminal trial.

b) Without limiting the generality of a), a statement ordinarily is likely to have the effect referred to in a) when it relates to:
   i) the character, credibility, reputation, criminal record of the accused or of a witness; (great caution should be exercised regarding the dissemination of information regarding other pending charges);
   ii) the existence or contents of any confession, admission or statement made by the accused or the accused's refusal or failure to make a statement;
   iii) the possibility of a plea of guilty to the offence charged or to a lesser offence;
   iv) the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests;
   v) opinions concerning guilt or innocence of the accused, the evidence or merits of the case.

c) Notwithstanding a) and b), a lawyer, police officer or public official may state for public dissemination, without elaboration:
   i) the general nature of the criminal charge or of the defence, including the fact that the accused is presumed innocent and denies the charge or charges;
   ii) information already contained in the public record in the proceedings in question that is not the subject of any judicial or statutory publication bans, such as the *Criminal Code* publication bans relating to evidence and exhibits at the bail hearing or the preliminary hearing;
   iii) the name, age, residence of the accused (in limited circumstances the occupation and family status of the accused) except where such information would identify the victim or complainant in violation of a *Criminal Code* prohibition on such identification;
   iv) the identity of the victim or complainant where such identification is not prohibited by the *Criminal Code*;
   v) the fact, time and place of the arrest, the charges, date and place of first court appearance;
   vi) the identity of the investigative agency and the length of the investigation;

vii) where the accused has not yet been arrested and a warrant has been issued, any information necessary to aid in the apprehension of that person or to warn the public of any danger the accused is reasonably expected to present, but no more information than is necessary to these two limited purposes;

viii) a request for assistance in obtaining evidence and information necessary to the prosecution or the defence.

d) While a criminal matter is pending trial no lawyer, police officer or public official shall make unsubstantiated out-of-court criticisms of the competence, conduct, advice or motivation of another lawyer, police officer, public official or of the judge involved in the matter.

e) Notwithstanding d), a lawyer, police officer or public official, may and should communicate reasonable suspicions of professional or judicial misconduct to the Law Society of Upper Canada, to the Canadian Judicial Council, to the Ontario Judicial Council, the Attorney General of Canada, the Attorney General of Ontario, Solicitor Generals, or the appropriate chief of police, for investigation, even though the suspicions may not yet be fully substantiated.

III. THE ADVISORY COMMITTEE

a) The Advisory Committee will monitor the guidelines, receive and make recommendations for amendments, assist in providing interpretations and explanations of the guidelines when requested, mediate when requested and most important, assist in educating the public, media, lawyers, police and public officials regarding the guidelines and their objectives.

b) The Advisory Committee will receive requests for assistance or advice from the Attorney General, the Solicitor General, police officers, police boards and police departments.

c) The Advisory Committee shall be composed of a representative from:

Attorney General – Ontario

Solicitor General – Ontario

Federal Department of Justice

Law Society of Upper Canada

Press

Public (to be appointed by Chief Justice)

Police

IV. LIST OF PARTICIPANTS IN PROTOCOL [not listed]

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British Columbia Law Institute	*http://www.bcli.org/*
Canadian Association of Broadcasters	*http://www.cab-acr.ca/*
Canadian Association of Journalists	*http://www.caj.ca/*
Canadian Bar Association	*http://www.cba.org/*
Canadian Forum on Civil Justice	*http://www.cfcj-fcjc.org/*
Canadian Institute for the Administration of Justice	*http://www.ciaj-icaj.ca/*
Canadian Judicial Council	*http://www.cjc-ccm.gc.ca/article.asp?id=5*
Canadian Newspaper Association	*http://www.cna-acj.ca/*
CanLII	*http://www.canlii.org/*
CBC	*http://www.cbc.ca*
CBC "TV on Trial"	*http://www.cbc.ca/tvontrial/*
Correctional Services Canada	*www.csc-scc.gc.ca*
Department of Justice, Newsroom	*http://canada.justice.gc.ca/en/news/*
Federal Court of Canada	*http://www.fct-cf.gc.ca/*
Law Courts Education Society, BC	*http://www.lawcourtsed.ca/index.cfm*
Law Society of Upper Canada	*http://www.lsuc.on.ca/about_en.jsp*
Manitoba Courts	*http://www.manitobacourts.mb.ca*
New Brunswick, Courts	*http://www.gnb.ca/cour/index-e.asp*
Newfoundland and Labrador, Provincial Court	*http://www.justice.gov.nl.ca/just/Provincial_court/*
Nova Scotia, Courts of	*http://www.courts.ns.ca/*
Ontario Association of Chiefs of Police	*http://www.oacp.on.ca/*
Ontario Courts (Guide to)	*http://www.ontariocourts.on.ca/english.htm*
Ontario Ministry of the Attorney General	*http://www.attorneygeneral.jus.gov.on.ca/*
Prince Edward Island, Courts	*http://www.gov.pe.ca/courts/*

Quebec, Justice	*http://www.justice.gouv.qc.ca/english/accueil.asp*
RCMP	*http://www.rcmp-grc.gc.ca/*
RCMP – BC – Media Relations	*http://www.rcmp-bcmedia.ca/index2.jsp*
RCMP – Ontario	*http://www.rcmp-grc.gc.ca/on/index_e.htm*
Saskatchewan, Courts	*http://www.sasklawcourts.ca/*
Supreme Court of Canada	*http://www.scc-csc.gc.ca/*

United States and other jurisdictions

American Journalism Review	*http://www.ajr.org/*
Australia, Federal Court	*http://www.fedcourt.gov.au/*
Australia, High Court	*http://www.hcourt.gov.au/*
Columbia Journalism Review	*http://www.cjr.org/*
Conference of State Court Administrators (COSCA)	*http://cosca.ncsc.dni.us/*
Courtroom 21 Project	*http://www.courtroom21.net*
Courtroom Information Project	*http://www.courtroominformationproject.org/*
Court Technology Forum	*http://www.courtechforum.com*
Criminal Justice Journalists	*http://www.reporters.net/cjj/*
Crown Prosecution Service	*http://www.cps.gov.uk/*
Media Liaison Guide	*http://www.cps.gov.uk/publications/communications/appomanual.html*
Delaware State Courts	*http://www.courts.state.de.us/*
The Freedom Forum	*http://www.freedomforum.org/about/default.asp*
Indiana Courts	*http://www.in.gov/judiciary/*
Institute for Justice and Journalism, USC Annenberg	*http://www.justicejournalism.org/*
Journalism.org	*http://www.journalism.org/*
Knight Institute for Specialized Journalism (Maryland)	*http://www.knightcenter.umd.edu/*
Maryland Judiciary	*http://www.courts.state.md.us/*
Maynard Institute for Journalism Education	*http://www.maynardije.org/*
Media Law Resource Center	*http://www.medialaw.org*

Medill School of Journalism, Northwestern University, Chicago; with its *On the Docket* page	*http://www.medill.northwestern.edu/medill/* *http://docket.medill.northwestern.edu/*
National Center for Courts and Media	*http://www.judges.org/nccm/*
National Center for State Courts	*http://www.ncsconline.org/*
National District Attorneys Association	*http://www.ndaa-apri.org/index.html*
National Institute of Justice	*http://www.ojp.usdoj.gov/nij/*
New South Wales, Australia, Lawlink	*http://www.lawlink.nsw.gov.au/Lawlink/Corporate/ll_corporate.nsf/pages/LL_Homepage_index*
New Zealand, Ministry of Justice	*http://www.justice.govt.nz/*
North Carolina, Courts	*http://www.nccourts.org*
Online Journalism Review	*http://www.ojr.org/*
PACER (Public Access to Court Electronic Records)	*http://pacer.psc.uscourts.gov/*
Poynter Institute, St. Petersburg, Florida	*http://www.poynter.org/*
Reporters Committee for Freedom of the Press	*http://www.rcfp.org/*
Tennessee, Administrative Office of the Courts	*http://www.tsc.state.tn.us/*
Victoria, Supreme Court (Australia)	*http://www.supremecourt.vic.gov.au*
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