

# Introduction to Alternative Means for Protecting Vulnerable Complainants in Judicial Proceedings and Hearings

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Is there anything anyone doesn't know about O.J. Simpson? The media tidal wave that has resulted has created a particular image about O.J. Simpson which, depending on whom you speak to, is difficult to avoid. That is the situation a Canadian judge was trying to avoid in barring publication in the Homolka-Bernardo-Teale trials — but its effect is only partial, as some information has found its way out already. There can also be partial publication bans as far as the accused is concerned where the accused cannot face his or her accuser in Court.

On a related matter in terms of openness (or is it "openness"?), why is it that in the United States you can ask more questions to a potential juror than in Canada? Why is it a criminal offence in Canada for a journalist to report on what happens at a preliminary inquiry, pursuant to section 542(2) of the *Criminal Code*? Presumably this is on the basis that the preliminary inquiry evidence may not be used at trial. But on the other hand, why is it a criminal offence for a journalist to make public what is by definition "already" public?

We all have an interest — perhaps on occasion inordinate or extraordinary — in what happens in the courts. The public is interested in this — witness the 24-hour television in the United States delivering live trials direct from the courtroom (and jail cells) right into one's living room — and even in Canada, the Supreme Court of Canada has heard appeals by television and recently broadcasted appeals by television.

Ce n'est pas seulement un intérêt malsain, manifestant de la perversité; nous avons, c'est à dire notre société, aussi un intérêt à protéger des personnes vulnérables et en même temps protéger l'individu et son droit à un procès impartial.

This media attention — and I would say it is too easy for us to put the blame on the media (they simply give us what we want to see) — has an effect on society and on us in terms of:

— complete publication bans;

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- partial publication bans in the form of evidence being given from behind a screen or by video or by other means, particularly where the complainant is or may be vulnerable.

The panelists are:

- Michelle Fuerst — senior Toronto defence lawyer and co-author of Carswell's *Annotated Criminal Code*.
- Elizabeth Bennett — senior appellate crown counsel for Attorney General of British Columbia and — since September 1994 — now in private practice in Vancouver. She argued most recently the Osolin decision in the Supreme Court of Canada on the admissibility of medical reports in sexual assault cases.
- Dr. George Fraser, Director of the Anxiety and Phobic Disorders Clinic of the Royal Ottawa Hospital with a particular expertise in :
  - Satanic and demonic rituals and ritualisation;
  - Multiple personalities and hypnosis; and
  - Vulnerable victims.
- Stephen Bindman — an award-winning Southam News journalist specializing in legal issues and is the Southam-designated full-Bernardo/Teale trial.