

**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION
CONCERNING ITS INVESTIGATION INTO THE PUBLICATION OF DIVORCE
PROCEEDINGS: SECTION 12 OF THE DIVORCE ACT 70 OF 1979 (PROJECT
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The South African Law Commission has completed a report on the publication of divorce proceedings by the media. The report, containing draft legislation aimed at amending section 12 of the Divorce Act, 1979, has been submitted to the Minister for Justice and Constitutional Development on 29 August 2002.

The South African media are, in terms of sec 12 of the Divorce Act 70 of 1979, currently prohibited from publishing any particulars of a divorce action or any information which comes to light in the course of such an action other than the names of the parties to a divorce action, the fact that a divorce action between the parties is pending in a court of law and the judgment or order of the court. The prohibition does not apply to the publication of particulars or information for the purposes of the administration of justice, in a bona fide law report, or for the advancement of or use in a particular profession or science.

However, since the provision does not have extra-territorial operation, the foreign media who are allowed to attend proceedings in courts are unrestricted in their reportage of South African divorce proceedings. Since South African citizens have access to the foreign media and the press, the whole purpose of the prohibition is defeated.

There are furthermore clear indications that at present sec 12 of the Divorce Act is simply being defied by the South African media. An important reason why the section is not enforced is that it is seen as being unconstitutional. South Africa has a Constitution with a Bill of Rights which entrenches, amongst others, the right to freedom of speech, freedom of information and the rights to privacy and dignity. These rights are interactive and have to be balanced. Sec 28(2) of the Constitution furthermore specifically protects the rights of children.

During its deliberations the Commission found unanimous support for its view that sec 12, as it stands, is unlikely to survive constitutional scrutiny. The section is overly broad in that it imposes a blanket ban without giving the court any discretion to determine whether or in what respects the case should be held in camera or whether media disclosure should be permitted or prohibited. Since the section is also largely ineffectual for various reasons, it was clear that the section had to be either amended or repealed.

The Commission's investigation revealed four possible options for reform which were set out for comment in a discussion paper, published last year. In evaluating the response received to the discussion paper it was clear that most commentators felt that the privacy of parties to a divorce should be respected as far as possible; that in the context of divorce, it would be appropriate for the press to have to make out a case for publication; and that children involved in divorce cases stand in need of special protection.

In its report the Commission therefore recommends that section 12 of the Divorce Act, 1979 be amended to allow a court the discretion to -

- make an order to lift the general ban on publication and to grant leave to any party to publish such particulars of a divorce or such information or evidence which has come to light in the course of such an action, as the court may deem fit;
- protect the anonymity of parties in specific circumstances; and
- close the court at any stage of the proceedings where there is a likelihood that harm may result to a child as a result of the hearing of any evidence.

The amended section will also make it an offence to furnish particulars of a divorce action or any information or evidence which emerges during the course of such an action unlawfully to third parties.

The issues have been debated thoroughly. Responses from many interested bodies and individuals have been elicited, and consultations on the practical implications of the different options have been held. The Commission duly considered each contribution and incorporated the ideas put forward where appropriate. It is the opinion of the Commission that the proposed amendment of section 12 will achieve an appropriate balance between the very important constitutional right to freedom of expression on the one hand and the equally important right to privacy on the other.

ISSUED BY THE SECRETARY: SA LAW COMMISSION, PRETORIA
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