

The ethics of covering sexual violence: how much detail is too much detail? Jennifer Babin-Fenske vs Sudbury Star

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A 2018 news article about a man convicted of molesting his young daughter reveals the difficult balance journalists must find between individual rights, and the community's right to know.

Introduction

The [original article](#), "Sudbury man gets four years for molesting daughter," was published by the *Sudbury Star* on February 26, 2018.¹ Written by Keith Dempsey, the story included graphic details and descriptive imageries of the sexual assault against the victim. Shortly after the article was published, a complaint was filed against the *Sudbury Star* by Jennifer Babin-Fenske, who claimed the content was unnecessarily explicit and potentially triggering for readers.

The article reported the details of the trial and the sentencing of the man who molested his underaged daughter. It also elaborated on the various sexual acts committed by the assailant. The article ends with quotes from the trial, including the crown attorney and the defence lawyer. Among the phrases Babin-Fenske found unnecessarily explicit and inappropriate included expressions such as "he asked me to come over and touch his penis"; "I woke up in the middle of the night and felt him putting his fingers inside my vagina."; and, "...use a dildo on her."

Babin-Fenske [compared these graphic details to pedophile pornography](#)² and found them to be highly inappropriate for young people, family members, and sensitive readers who may be offended. She also questioned who the intended audience was, and if the newspaper was going for "shock value" in their choice of included details in a sexual assault against a minor.

¹ Dempsey, Keith. "Sudbury Man Gets Four Years for Molesting Daughter." *The Sudbury Star*, 26 February, 2018.

<https://www.thesudburystar.com/2018/02/27/sudbury-man-gets-four-years-for-molesting-daughter>

² "2018-18: Babin-Fenske vs Sudbury Star." *National NewsMedia Council*, 13 April, 2018.

<https://www.mediacouncil.ca/wp-content/uploads/2018/04/NNC-decision-April-13-2018.pdf>.
News release.

Audio Clip - BABIN-FENSKE CLIP #1³

“My initial complaint was that reading the articles, the description of Sorry, my kids are here. The description of the sexual abuse was so graphic, and in detail, that I felt it was unnecessary. And I really questioned why they were putting that detail like, who is their audience? Are they trying to do the shock value? Are they trying to attract more people to be like, oh, yeah, this newspapers, like trash we can read, like, details like that. And it really felt like, like I said, a trashy magazine, or a romance novel. I mean, I, I've read romance novels. And I'm like, there you go. It's right there in the article. And I felt it was very inappropriate because you're talking about real people. And those people in their families and their kids or their grandparents are going to be reading this. So in some cases, I believe that the victims were named. And in the other case, it was an underage victim. So and that was a whole other side of things where I thought, why are we reading the details so that we can imagine what is happening to this underage child?”)

The complaint

In her interview, Babin-Fenske said this incident was not her first time filing a similar complaint to the Sudbury Star. She told J-Source that the article “Sudbury Man cleared of sex charges,” written by Harold Carmichael, [published](#) on December 1, 2017, reflected the same problem.⁴ She says she emailed the paper about her concerns regarding the inclusion of explicit details in the article shortly after it was published. The Sudbury Star did not reply, nor did they revise their article, she told the National NewsMedia Council (NNC) in a filed complaint afterwards.

In her complaint, Babin-Fenske wrote: “When children read newspaper stories online, they should be sheltered by some of the details. When adults read stories online, they really don't want to feel like they are reading a romance novel. These details are extremely descriptive and unnecessary to give us a factual and accurate story. I don't need to know about the oral sex, when the man is finished and how she just lied there.”

³ Babin-Fenske, Jennifer. Interview by Ganimat Kaur and Kiyoung Lee. 11 July 2021.

⁴ Carmichael, Harold. “Subury Man Cleared of Sex Charges.” *The Sudbury Star*, 1 December, 2017, <https://www.thesudburystar.com/2017/12/02/sudbury-man-cleared-of-sex-charges>

Audio Clip - Babin-Fenske clip 2⁵

“...do they not know how to paraphrase? Like, what what is their training in, in writing in journalism? Like when you know, yes, I'm not I'm not a writer. I do have like, I have a PhD, I had to write theses. I had to do you know, this kind of thing. But I had to learn how to paraphrase. So I'm not quoting or you know, doing plagiarism, or any of that. So I'm like, yeah, you can, you can be you can be descriptive. You can describe if there's a horrific event, you can describe it in a way that it's horrific. And that, the perhaps, more of the emotions or, or the effect on the person, then saying, oh, and look, I'm just saying, you know, and now this person was decapitated by this. It's like, no, you don't have to, actually, write, yeah, the graphic details.”

What does Canadian law say about this?

In her complaint about the February 26 article, Babin-Fenske compared it to child pornography.

The *Criminal Code* defines child pornography as: “any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act (*Criminal Code*, RSC 1985, c. C-46, s 163.1(1)(b)).”⁶

Lisa Taylor, a former lawyer and CBC journalist and current professor at Toronto Metropolitan University's School of Journalism, explains that this article would not constitute what is considered child pornography. “The level of detail, whether it goes from informational to voyeuristic, is a tough call,” Taylor says⁷. “[But] part of the reason this person complained to the NewsMedia Council is because the story made them feel very uncomfortable. [The] Journalists' job is to bring uncomfortable truths to the people every single day.”

⁵ — Interview by Ganimat Kaur and Kiyoung Lee. 11 July 2021.

⁶ Criminal Code, R.S.C., 1985, c. C-46, s 163.1 (1)
<https://laws-lois.justice.gc.ca/eng/acts/c-46/section-163.1.html>

⁷ Taylor, Lisa. Interview conducted by Kiyoung Lee. 1 October, 2021.

“Journalists covering proceedings in court have their work protected by what’s called ‘qualified privilege,’” added Taylor. “That means that they’re able to say things that, in a different realm, might be problematic.” However, Taylor believes that even without the protections of qualified privilege, it’s unlikely journalists could face a charge of creating child pornography, while covering a trial about childhood sexual assault. “...we know that child pornography is created primarily with an interest for sexual purposes, the purpose of sexual gratification. Whereas covering a criminal trial is about telling people what’s happening in their public system of justice,” Taylor told J-Source. “...certainly there will be overlap, but because the purpose is so different,...a journalist’s coverage of a trial involving childhood sexual assault is not in anyway tantamount or on par with the creation of actual child pornography.”⁸

Additionally, Taylor points out, the *Criminal Code* limits journalists from reporting specific details that would allow most people to identify the child victim. Taylor believes the details that were provided in the article did not allow people to identify the child victim. And although Babin-Fenske may have been “harmed emotionally” by what she read in the article, she has not suffered a direct harm herself by the details included in the article. “There’s nothing in the Criminal Code that says ‘we will not repeat horrific details’. There’s no restriction on that,” said Taylor.⁹

Audio Clip - TAYLOR CLIP #2

So no, in criminal law, the woman who complained to the NewsMedia Council, hasn’t suffered a direct harm. Like, in terms of how we frame it criminally. She clearly feels harmed emotionally, it seems like it has caused her some trauma. But we don’t have that breadth of criminal law, you know if I walk down my street and I am violently assaulted and I catch up with you next week in another interview I tell you about it you may also be kinda vicariously traumatised by that but there is no law that protects you from the harm someone caused me. So no this complainant would not have any recourse. And then when we get to the complainant in the criminal matter, it appears she wouldn’t either. The only thing I didn’t see there and I didn’t read it carefully enough to fully understand, but I don’t think there’s anything in there to inadvertently identify her, because sometimes we can pull together enough details, like if someone is in a small town, and they were 16 at the time it happened and they had 3 younger brothers and one

⁸ — Interview conducted by Kiyoung Lee. 1 October, 2021

⁹ Taylor, Lisa. Interview conducted by Kiyoung Lee. 13 August, 2021.

older sister who is in nursing and their dad is a beloved basketball coach, well in a small town that's enough to identify someone, because that can only be so many people. But based on my quick read I didn't see anything like that. There was no collection of little breadcrumb clues that we could put together. Because the only restriction, in the Criminal Code, is that the young victim of a sexual assault, any victim of a sexual assault in fact, cannot be identified. And we know that identified means more than named. So you can not name someone, but still identify them. And all our Criminal Code asks, is that they are not identified. There's nothing in the Criminal Code that says 'we will not repeat horrific details'. There's nothing. There's no restriction on that.

It's legal to report these details, but is it ethical?

The Canadian Association of Journalists' [Ethics Guidelines](#)¹⁰ states that “we [the journalists] serve the public interest, and put the needs of our audience – readers, listeners or viewers – at the forefront of our newsgathering decisions.”

The Femifesto Media Guide, titled [Use the Right Words: Media Reporting on Sexual Violence in Canada](#), is a free guide for journalists when reporting on sexual violence published in 2015 by Femifesto, a Toronto-based feminist organization. Among the recommendations included in their [Checklist on Reporting Sexual Assault](#) is: “Ensure that every detail you include about the assault serves to honour the survivor's story or to contextualize sexual assault in broader culture. If a graphic detail does neither of these it doesn't need to be in the story.”

UNICEF's [Ethical Guidelines for Journalists](#), with regards to reports on Gender-Based Violence (GBV) states: “When reporting on GBV, it is important to distinguish between what is ‘in the public interest and what is ‘of interest to the public,’” and warns journalists of reporting in a sensationalist way.¹¹ Although this ethical guideline is intended mainly for journalists reporting for UNICEF, it is a useful standard for anyone reporting on children who have suffered GBV, which includes sexual violence.

¹⁰ “Ethics Guidelines” *Canadian Association of Journalists*, June 2011.
<https://caj.ca/ethics-guidelines>

¹¹ “Ethical Guidelines for Journalists.” *United Nations Communications Group*. December 2016.
https://www.unicef.org/afghanistan/media/2136/file/afg-publication_UN%20Ethical%20Guidelines%20for%20Journalists%20-%20English.pdf%20.pdf

How have similar complaints in the past been dealt with?

- [2019: Powell vs Toronto Sun, released on January 14, 2020:](#) The NNC stated that the Toronto Sun article published on November 6, 2019, “Man, 52, accused of sexually assaulting three children,” by Sam Pazzano, included explicit details of six specific incidents of sexual assault, and referenced details of the victims and their family. The complainant, Louise Powell, argued the details in the article were insensitive to the victims. Powell also questioned how certain details were obtained. The Toronto Sun responded to the complaint by removing such details two days after its original publication date. However, the publication failed to notify its readers about the corrections. So while the NNC acknowledged that the Toronto Sun took corrective action to resolve the complaint, it also pointed out that The Sun failed to be transparent in its use of sources and the corrections - in other words, they did not notify readers about the corrections.¹²
- [2019-07: A.B. vs Soo Today,](#) released on February 20, 2019: The NNC stated that they have considered and upheld two complaints about [a news article](#) published in Soo Today, a news outlet based in Sault Saint Marie, Ontario on December 18, 2018. The article reported on the sentencing of two men who were found guilty of sexually assaulting a minor. The article described the graphic details of the assault based on the information from the judge’s sentencing decision. The article also included details of the victim including the date and the location of the assault, the age of the victim, and the event that the victim attended before the assault. The editorial staff included a content warning and an editor’s note explaining the graphic nature of the article at the top and disabled the comment section. The NNC found that these details were enough to identify the individual considering the case. Although the NNC did not question the accuracy of the report, they raised concerns about the graphic and explicit details about the attack and the victim. The NNC also emphasized that journalistic standards call for a further level of sensitivity when reporting on cases involving children and minors. They also pointed out how certain details of the victim can identify them in the local and community reporting. The NNC also explained how the graphic nature and the details provided

¹² “2019-96: Powell vs Toronto Sun.” *National NewsMedia Council*, 14 January, 2020. <https://www.mediacouncil.ca/decisions/2019-96-powell-vs-toronto-sun/>. News release.

within the article could potentially overshadow the focus of the article, which was the sentencing of the two assailants.¹³

- [2016-11 Rex vs Prince George Citizen](#), released on February 17, 2016: The NNC dismissed this complaint about the reporting of a sexual assault case and the handling of the comment section by the Prince George Citizen, a weekly newspaper in Prince George, British Columbia. The complainant Stephanie Rex argued that the details presented in the article were sufficient to identify the victim and their family. Rex also voiced her concern that articles related to Indigenous people can create an opportunity for racist commentaries, and that the comment section should be closed. The publication said it complied with the publication ban and denied that the details provided in the complaint were sufficient to identify the victim. The publication also explained that after receiving a phone call and an email from other concerned readers, they disabled the comments section, 11 hours after the story was published. The editor stated that he is open to further discussion on ways to improve reporting on cases like these in the future. After considering all these points, the NNC dismissed the complaint. The NNC also noted that the Prince George Citizen provided an editorial examining the issues around handling similar stories.¹⁴

How the editor of The Sudbury Star chose to respond:

Donald Macdonald, the City Editor of the Sudbury Star, responded to the complaint by agreeing that the story was too explicit. He subsequently removed two of the sentences in question in the article online: “he asked me to come over and touch his penis,” and, “I woke up in the middle of the night and felt him putting his fingers inside my vagina.” The sentence, “The daughter also said that one time when she was in her bedroom, her father came in, held her down and tried to use a dildo on her”, remained in the story. Macdonald said he found the edited article to be appropriately balanced.

¹³ “2019-07: A.B. vs Soo Today.” *National NewsMedia Council*, 20 February (year not provided), <https://www.mediacouncil.ca/decisions/2019-07-a-b-vs-soo-today/>. News release.

¹⁴ “2016-11 Rex vs Prince George Citizen.” *National NewsMedia Council*, 17 February, 2016 <https://www.mediacouncil.ca/decisions/2016-11-rex-vs-prince-george-citizen/>. News release.

In a [record](#) of the complaint from the National News Media Council, Macdonald explained the effort in such reporting to strike a balance between conveying “the full horror of such crimes” and respecting the sensitivities of readers. He agrees that in this case, the Sudbury Star went too far.

The NNC expressed appreciation of the actions taken by the Sudbury Star and [accepted](#) the argument that “some degree of detail is necessary to convey the horror of the crime.” It also however, pointed to the fact that the Sudbury Star did not offer a content warning for readers, and advised that best practice requires editors to include a graphic content warning at the top of articles that include details of sexual violence.¹⁵

Babin-Fenske, however, felt the changes were insufficient, and expressed concerns about future similar reporting. On the latter point, the NNC concluded that it “...is not able to take action on future events.”

Audio Clip - Babin-Fenske clip #3¹⁶

So the media counsel again, I don't, I'm not familiar with them what they can do. So I was, if there's a scale, I'm like out of 10 I'd be like, Well, seven, like, I'm happy that they did respond. I'm happy that they contacted Sudbury stir. I don't know if it's like a slap on the wrist or anything to have this happen. I guess the part that I wasn't satisfied with is that they felt that the Sudbury star reacted appropriately. Because I still feel like they left a lot in that article inappropriate in my mind or again, not. So yeah. So that's where they I wouldn't give them 10 out of 10 because they did say, oh, yeah, the cyberstart dealt with it. They they amended it.

Let's discuss:

- How do journalists find the balance between individual and public interest rights?
- How do we define ‘serving the public interest’?

¹⁵ — *National NewsMedia Council*, 13 April, 2018.

¹⁶ — Interview by Ganimat Kaur and Kiyoun Lee. 11 July 2021.

At the heart of this case study is a difficult question - what does *servicing the public interest* mean for journalists? As per the Canadian Association of Journalists ethics guidelines, what does it mean to put the needs of our viewers, listeners and readers at the forefront of our newsgathering and editorial decisions?

Does serving the public interest mean content warnings? Does it mean editing out details that make people uncomfortable? Or does it mean paraphrasing graphic details to soften their impact? Where do we draw the line in terms of the information we provide in telling these stories? In other words, where's the balance between what is legally permissible, and ethically responsible to report?

Dean Jobb addresses the issue of fair and balanced reporting about court cases, when those cases include graphic evidence and language, in his book *Media Law for Canadian Journalists*. "Good court reportage conveys the horror of a crime and the reality of court proceedings, but with restraint. Writers who unduly exploit courtroom drama and emotion run the risk of distorting reality and may expose the media as a whole to accusations of sensationalising events to attract readers, viewers or listeners."¹⁷ Jobb is referring to court cases, but his advice could apply to any news story that includes graphic content.

Clearly, some reports are going to offend people and may include details that are triggering in some instances. Moreover, in the age of widespread social media, news stories can be copied and spread to people across the globe. It's important to take these factors into consideration and think carefully about how we convey meaning when reporting on sensitive topics. Words matter. No one knows that better than journalists!

But there's another side of this issue: something else that journalists must take into consideration. What if making our audience uncomfortable *is* putting their needs first? As Lisa Taylor points out, with regards to the 2018 news article about the man convicted of molesting his young daughter: "This...is a story we need to confront in all its ugliness. That's why I will always...err a little more on the side of more detail, not less detail."

¹⁷ Jobb, Dean. *Media Law for Canadian Journalists, third edition* (Toronto: Emond Montgomery Publications Limited, 2018); p. 171

Audio Clip - Lisa Taylor clip 1¹⁸

Part of the reason this person complained to the news media Council is because the story made them very uncomfortable. And damn right, it should make them very uncomfortable. The news, just as the woman who complained to the news media Council is saying, you know, she's uncomfortable. It's not our job. Journalists job is to bring uncomfortable truths to people every single day. And the crime of familial sexual assault is an insidious reality. For countless children and countless more survivors. We cannot tell these stories because they troubled people. If you open your favorite news site or read your favorite newspaper or watch the evening news, and you finish going well, I feel pretty good about all that. Somebody has failed. They're not doing their job. You know, should we relegate the stories of mass unmarked graves in residential schools to the second section of the newspaper because that is a horrible truth. Hell, now we need to confront it in all its ugliness. This again, is a story in which we need to confront and all its ugliness so that's why I will always for all those on minute reasons. Those are the reasons I will always err a little more on the side of more detail, not less detail.

News often contains ugly, disturbing information. The discovery of mass, unmarked graves of Indigenous children at former residential schools. Cases of horrific animal abuse. The police killing of unarmed Black people. Mass rape used as a weapon in civil wars. [The photo of the washed-up body of a young refugee child, who drowned while trying to escape the civil war in Syria.](#)¹⁹ These are some obvious examples, but what about other, less obvious examples of reporting that may upset people? [The archived complaints to the NNC reveal a long list of topics that are considered sensitive issues by some - from reporting on mental health to reporting on impaired drivers.](#)²⁰

¹⁸ — Interview conducted by Kiyong Lee. 13 August, 2021.

¹⁹ Koksal, Nil; Mayor, Lisa. "The Family of Alan Kurdi, The Syrian 'Boy on the Beach' is Coming to Canada." *CBC News*, 27 November, 2015.

<https://www.cbc.ca/news/world/alan-kurdi-family-canada-refugees-1.3338703>

²⁰ "Complaint type - Sensitive issues." *National NewsMedia Council*.
<https://www.mediacouncil.ca/complaint-type-sensitive-issues/>

Epilogue

It is important to engage with our audience, and to remain open to their complaints. We should consider a spectrum of editorial approaches and when necessary, editorial responses. Content warnings can be specific while also defending the decision to include the content. For example: “This article contains content describing the sexual assault of a child as described in court. We chose to include it because we feel it is in the public’s interest to know the full horror of this crime.” In addition to detailed content warnings, whenever graphic content is included, we should consider providing context and analysis in our news reports as well, to avoid distortion and sensationalism.

It is difficult, if not impossible, to avoid upsetting some people in our audience. That is the nature of news. But it does not serve the public interest to give the audience unlimited power over journalists. Journalists must be free to report on the facts, even when those facts are ugly.