



Canadian  
Resource Centre for  
**VICTIMS  
OF CRIME**

— Dedicated to Justice —

# **PUBLICATION BANS: A VICTIM'S RIGHT TO PRIVACY**

**PREPARED BY THE CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME**

*This paper is intended as a general guide for people who may become susceptible to crime or for victims that are already involved in the criminal justice system. Please do not hesitate to contact our office if you require clarification or for a referral to an agency in your community that may be able to provide services to you.*

*(Revised August 2022)*

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## What is a Publication Ban?

In Canada, a publication ban is an order that the Court might make to prevent anyone from either publishing, broadcasting, or sending information that might identify a victim, a witness, or any other person who is participating in the criminal justice system.

The publication ban ordered by the Court is done to allow victims, witnesses, and any other person involved in the publication ban, to participate in the criminal justice system without suffering negative consequences.

There is a general rule in Canada's criminal justice system that all proceedings take place in open court, therefore the names of those involved during the trial are made public, including all witnesses, victims, and accused persons. However, there are exceptions to this rule; when the Court orders a publication ban to protect the identity of a victim, witness, or criminal justice system participant.

It is the responsibility of those attending the court proceedings or who access court documents to verify if there is a publication ban for any people participating in that specific trial. It is also their responsibility to comply with the publication ban. There may be penalties for breaching the publication ban. To check if there is a publication ban in place, contact the Court connected to the case.

## A Victim's Right:

- The Canadian Victims Bill of Rights came into force on July 23rd, 2015.
- This Act provides every victim with the right to have their privacy taken into account by authorities in the criminal justice system as well as the victim's right to have their identity protected.

## When Might the Court Order a Publication Ban?

The Court orders a publication ban to protect a victim, witness, or criminal justice system, participant. When deciding whether to make the order for a publication ban, the Court will take into account **who the publication ban is for, the kind of offence committed**, and other factors.

For example, a publication ban may be appropriate, to:

- Encourage witnesses who are afraid to testify;
- Protect vulnerable witnesses, such as children and victims of crime;
- Encourage victims and others to report offences that are usually under-reported, for example, sexual offences; and
- Protect the privacy of those participating in the justice system.

## How Does the Court Decide Whether to Order a Publication Ban?

The rules that govern publication bans are set out in the *Criminal Code of Canada*. These rules will vary depending on who is applying for the publication ban and the nature of the proceedings.

- For example, the Court must inform victims who are under the age of 18 of their right to seek a publication ban. The court must also tell all victims and witnesses of sexual offences who are under the age of 18 that they can request a publication ban. In both cases, if these people request one, the Court *must* order the publication ban.

Publication bans can also be ordered to protect the identity of victims *over* the age of 18 or any other witness involved. As stated in the *Criminal Code of Canada* that the Court may order a publication ban if the Court believes this is “in the interest of proper administration of justice”. This type of publication ban and decision can also be made for others who are participating in the criminal proceedings, such as a juror, a police officer, or a police informant, when the offences in question involve criminal organizations, terrorism, and national security.

The Court will need to take into account a multitude of factors when determining if a publication ban for these types of victims, witnesses or justice system participants should be ordered. These include:

- The right of the accused person to a fair and public hearing
- Whether there is a risk that the victim, witness, or justice system participant would be harmed if the public knew their identity
- Whether the order is needed to protect a victim, witness, or justice system participant from intimidation or retaliation
- Society's interest in encouraging the reporting of offences, the participation of victims and witnesses and justice system participants (for example, court officers or jurors) in the criminal justice system

The full list of factors is found in the Criminal Code of Canada.

## How can a Publication Ban be Requested?

The *Criminal Code of Canada* sets out the steps to request a discretionary publication ban:

- The prosecutor, victim, witness, or justice system participant must ask for a publication ban in writing. The person who is asking for the order must explain why they need this type of protection.
- The request for the publication ban is made to the judge who will be hearing the rest of the case. If a judge for the case has not been appointed at the time of the request for the order, the request can be submitted to another judge in the same court.
- The prosecutor, the accused, and any other person who may be affected by the publication ban must be told about the application for the order. The Court will decide whether to inform the media

or anyone else that may be affected by the order of the application. For example, certain newspapers that might be reporting on the trial or proceedings would need to know about the publication ban as it would restrict what they can report.

- The Court might hold a hearing to consider the request for the publication ban. During the hearing, the victim, witness, or justice system participant can explain their concern and why they need the order in place. Others who may be affected by the order, such as the prosecutor, the accused, the media, or other parties affected, can also have the opportunity to speak during the hearing.

## What Happens in a Publication Ban Hearing?

Hearings that are specifically to decide whether there needs to be an order for a publication ban are less formal than trial hearings. The hearings might also be held in private instead of in open court. Those asking for the publication ban can speak for themselves in Court or they can ask a lawyer to speak on their behalf.

The publication ban will be ordered if the Court decides that the publication ban is needed to protect the identity of the victim, witness, or justice system participant. There might be certain terms or conditions attached to the order — for example, the publication ban might be effective for only a fixed period.

## What are the Responsibilities of Victims, Witnesses, and Others Whose Identity is Protected by a Publication Ban?

Victims, witnesses, and justice system participants need to realize that if the Court orders a publication ban for them, their names cannot be reported in the media. It is also important for them to realize that this also means that they cannot communicate with the media in any other way. For example, a victim cannot write a letter to the editor which identifies him or her as a victim of or witness to the offence.

## Is Lifting or Removing a Publication Ban Possible?

The person that has the publication ban on their name may later decide that they no longer want to continue the publication ban. In this case, they can ask the Court for *an order to end the publication ban*. When they ask the Court to end the publication ban, they need to be able to show how the circumstances that made the publication ban necessary have changed. In cases where the Court denies the request to end the publication ban, the person involved must still comply with the publication ban.

## Where Can I Find More Information?

If you or someone you know has been a victim of crime, there is help available. Each province or territory has services for victims of crime. These services might be able to assist you if you need information or other assistance.

The [Victim Services Directory](#) on the Department of Justice website can help you to find victim services near you. For more information on publication bans, visit the Government of Canada [website](#).

### Information on Publication Bans by Province:

Provinces and territories sometimes have their exceptions or specifications regarding publication bans. Please visit the following website on publications of the specific province or territory you would like more information about. If you are still seeking information or have more questions, please contact victim services in the area you are located or are looking for information about.

#### ALBERTA

- Publication Ban: <https://www.alberta.ca/publication-ban-child-intervention.aspx>
- Victim Services: <https://victimservicesalberta.com/>

#### BRITISH COLUMBIA

- Publication Ban: [https://www.courts.gov.bc.ca/supreme\\_court/publication\\_bans/about/index.aspx](https://www.courts.gov.bc.ca/supreme_court/publication_bans/about/index.aspx)
- Victim Services: <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-a-victim-of-a-crime/victim-of-crime>

#### MANITOBA

- Publication Ban: <http://www.manitobacourts.mb.ca/general-information/attending-court-and-access-to-court-record-information/>
- Victim Services: <https://www.gov.mb.ca/justice/crown/victims/index.html>

#### ONTARIO

- Publication Ban: <https://www.ontario.ca/page/publication-bans>
- Victim Services: <https://www.attorneygeneral.jus.gov.on.ca/english/ovss/>

#### QUEBEC

- There is limited online information available for publication bans in Quebec. For more information on publication bans in this area, contact the Court of the trial.
- Victim Services: <https://www.justice.gouv.qc.ca/en/victims/victims-of-crime/>

#### **NEW BRUNSWICK**

- Publication Ban: [http://www.legal-info-legale.nb.ca/en/index.php?page=services\\_victims\\_crime](http://www.legal-info-legale.nb.ca/en/index.php?page=services_victims_crime) or <https://www1.gnb.ca/nota/FAQ.aspx>
- Victim Services: [https://www2.gnb.ca/content/gnb/en/departments/public-safety/community\\_safety/content/victim\\_services.html](https://www2.gnb.ca/content/gnb/en/departments/public-safety/community_safety/content/victim_services.html)

#### **NEWFOUNDLAND AND LABRADOR**

- Publication Ban: <https://court.nl.ca/provincial/goingtocourt/etiquette.html>
- Victim Services: <https://www.gov.nl.ca/victimservices/>

#### **NORTHWEST TERRITORIES**

- There is limited online information available for publication bans in Northwest Territories. For more information on publication bans in this area, contact the Court of the trial.
- Victim Services: <https://www.justice.gov.nt.ca/en/victim-services/>

#### **NOVA SCOTIA**

- Publication Ban: [http://www.courts.ns.ca/Publication\\_Ban\\_Notice/pubbanform.htm](http://www.courts.ns.ca/Publication_Ban_Notice/pubbanform.htm)
- Victim Services: [https://novascotia.ca/just/victim\\_Services/contact.asp](https://novascotia.ca/just/victim_Services/contact.asp)

#### **NUNAVUT**

- Publication Ban: <https://www.nunavutcourts.ca/index.php/court-policies/practice-directives> or <https://www.nunavutcourts.ca/phocadownloadpap/EN/PDs/PD3-DiscretionaryPublicationBans.pdf>
- Victim Services: <http://nupli.ca/index.php/victim-en>

#### **PRINCE EDWARD ISLAND**

- Publication Ban: <https://www.courts.pe.ca/publication-bans>
- Victim Services: <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/victim-services>

#### **SASKATCHEWAN**

- There is limited online information available for publication bans in Saskatchewan. For more information on publication bans in this area, contact the Court of the trial.
- Victim Services: <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/help-from-victim-service-units-and-agencies#community-based-programs>

## YUKON

- There is limited online information available for publication bans in Yukon. For more information on publication bans in this area, contact the Court of the trial.
- Victim Services: <http://www.justice.gov.yk.ca/prog/cor/vs/>

## Contact Us

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