



Policy of the Provincial Court of British Columbia

Information Regarding Bans on Publication Policy

Effective Date:	Policy Code:
February 28, 2011	ACC-3
Scope of Application:	
Applies to Provincial Court of British Columbia proceedings.	

Purpose of Policy

To provide a general overview regarding publication bans.

Overview

While the media is, in general terms, entitled to publish information about proceedings in Court, there are exceptions to this right. The Court may, and frequently must, impose bans on the publication of information to protect the fairness and integrity of a trial, the privacy and safety of a victim or witness, or the identity of a young offender.

The presiding judge has the inherent jurisdiction to control court proceedings to ensure the fairness of the trial process. In addition, certain statutes contain provisions that either permit or require publication bans e.g. the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, and the *Child, Family and Community Services Act*.

This area of law is a complex one and journalists covering legal proceedings should familiarize themselves with the subject. If in doubt, it is strongly recommended that media personnel seek legal advice on whether publication is permitted. There may be serious consequences for breaching a publication ban.

Court staff attempt to flag publication bans imposed in lengthy matters but the obligation remains on the media to ensure that they are aware of, and in compliance with, any ban that has been ordered.

Every journalist working within the court system must be constantly vigilant regarding the possibility that there is some form of publication ban in effect for the proceeding which is being covered in court. A breach of a publication ban may in some instances be an offence under legislation; other breaches can constitute a contempt of court, punishable by the court.

The following list of bans is not intended to be exhaustive, nor to replace reference to the specific statutory provisions. The list reiterates information on the [website](#) of the



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Supreme Court of British Columbia concerning that Court's "Publication Ban Notification Project."

As noted, there are essentially three types of publication bans. First, there are automatic bans which are in effect by operation of statute and do not require any court order or application by a party to the case in order to be effective. Second, there are bans that statutes require a judicial officer to order if requested by a party (e.g.: Criminal Code s. 517 when a publication ban is sought by the accused). Third, there are discretionary bans which must be specifically sought and ordered by the Court.

Automatic Bans:

Criminal Code of Canada

- **Section 276.3(1)** - makes it a criminal offence to publish information from a hearing under s. 276.1. A hearing under s. 276.1 may be held in cases involving sexual offences to determine whether evidence regarding the prior sexual conduct of a complainant can be admitted during the trial. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.
- **Section 278.9(1)** - makes it a criminal offence to publish information from a hearing held under s. 278.3 to obtain records pertaining to a complainant or a witness. A hearing under s. 278.3 may be held in cases involving sexual offences. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.
- **Section 542(2)** - makes it a criminal offence to publish an admission or confession that was given in evidence at a preliminary inquiry unless the accused has been discharged or, if the accused is ordered to stand trial, the trial has ended.
- **Section 648(1)** - makes it a criminal offence to publish information about any portion of a jury trial which takes place in the absence of the jury before the jury begins deliberations on its verdict.
- **Section 672.51(11)** - bans the publication of any assessment report provided to the court during the disposition hearing held after a verdict of not criminally



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responsible on account of mental disorder or unfit to stand trial is given in respect of an accused.

Youth Criminal Justice Act

- **Section 110** - provides that no person shall publish the name of, or information related to, a person if it would identify that the person was a young person dealt with under the YCJA. However, publication is permitted when a person has received an adult sentence. In some cases, publication may also be permitted where the youth has been convicted of a presumptive offence and the Crown sought an adult sentence but the court imposed a youth sentence. However, the judge has discretion in these cases to impose a publication ban (see s. 75). Presumptive offences include first and second degree murder, attempted murder, manslaughter, aggravated sexual assault and serious violent offences committed by a young person who has attained the age of 14 years.
- **Section 111(1)** - provides that no person shall publish the name of someone under the age of 18 who has been a witness or victim in connection with an offence committed or alleged to have been committed by a young person.

Sex Offender Information and Registration Act (S.O.I.R.A.)

- **Section 16(4)** - provides that no person shall disclose any information that is collected pursuant to an order under S.O.I.R.A. or the fact that information relating to a person is collected under S.O.I.R.A.

Provincial Court Act

- **Section 3(6) and 3(7)** - Subsection 3(6) prohibits publication in relation to a family or children's matters before the Provincial Court of anything that would reasonably be likely to identify the child or party. Subsection 3(7) indicates that, despite subsection 3(6), a report, comment or analysis concerning a proceeding may be published in a document designed primarily to assist those engaged in the practice of law or in legal or social research.

Discretionary Publication Bans

The following is a list of publication bans that can be considered discretionary in the sense that an order of the court is required before such a ban is in place (although in some instances ban orders are automatic once the application for it has been made). As a result of a Supreme Court of Canada decision in *Dagenais v. CBC*, [1994] 3 S.C.R. 835, judges must weigh the competing *Charter*-protected interests when they are



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considering exercising their discretion to impose a ban on publication of information regarding a matter before the Court. They must consider arguments raised by the media (freedom of expression) and by the person seeking the ban (right to a fair trial; security of the person) and then impose the minimal ban necessary to protect the fundamental rights in jeopardy.

Common law authority of a court - the court has common law authority to govern its own processes, which permits it to ban publication of all or part of a proceeding or to exclude the public from the courtroom.

Criminal Code

- **Section 486(1)** - An order may be made to exclude the public from the courtroom for all or part of the proceeding.
- **Section 486.4(1)** - An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness.
- **Section 486.4(2)** - An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness under the age of 18.
- **Section 486.4(3)** - An order may be made in cases involving child pornography to ban publication, broadcast or transmission of any information that could identify a witness who was under 18 years of age or, any person who is the subject of a representation, written material, or a recording that constitutes child pornography.
- **Section 486.5(1)** - Unless an order has been made under s. 486.4, an order made under this section bans publication, broadcast or transmission of any information that could identify a victim or a witness. Pursuant to s. 486.5(6), an order can be made to direct that the application for a ban under s. 486.5 be heard in private.
- **Section 486.5(2)** - An order bans publication, broadcast or transmission of any information that could identify a justice system participant who is involved in proceedings in respect of an offence referred to in s. 486.2(5).
- **Section 486(3)** - of the Criminal Code has been replaced by s. 486.4. However, bans ordered pursuant to it may still be in place. An order made under the former s. 486(3) bans publication of the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness.



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- **Section 486(4)** - has been replaced by s. 486.5. However, bans ordered pursuant to it may still be in place. An order made under the former s. 486(4) bans publication of any information that could disclose the identity of a victim, witness, or justice system participant.
- **Section 517** - An order bans publication of the evidence and information given to the court during a bail hearing as well as the reasons given by the judge until the accused is discharged or, if ordered to stand trial, the trial has ended. (When the application is made by the accused the order must be granted by the court but the order is discretionary when sought by the Crown.)
- **Section 672.51(11) of the Criminal Code** - deals with disposition hearings under part XX.I (mental disorder) of the Criminal Code and prohibits the publication of any disposition information (as defined in s. 672.51) that is withheld or any parts of the proceeding from which the accused was excluded.
- **Section 539 of the Criminal Code** - provides that evidence given at a preliminary inquiry should not be published until the accused has been discharged or, if ordered to stand trial, the trial has ended.

Youth Criminal Justice Act

- **Section 75(3)** - An order bans the publication of the identity or any information that could disclose the identity of a young person dealt with under the Y.C.J.A. The general rule under the Y.C.J.A. is that the identity of any youth dealt with under the Y.C.J.A. is subject to a publication ban. However, once an adult sentence is imposed, the publication ban no longer applies (see s. 110(2)(a)). The publication ban is also lifted where the young person is convicted of a presumptive offence (these are the more serious offences such as murder, attempted murder, manslaughter, aggravated sexual assault) but has received a youth sentence (see s. 110(2)(b)). However, in these cases, s. 75 requires the court to inquire whether the young person or the Crown wishes to seek a publication ban.
- **Section 65** - provides where a young person is charged with a presumptive offence, but the Crown advises the court that it will not be seeking an adult sentence, the court must order a publication ban on the identity, or any information that would disclose the identity of the young person.
- **Section 132** - permits an order to exclude the public from the courtroom for all or part of the proceeding.



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Extradition Act

- **Section 26** - An order may be made to ban publication of the evidence of an extradition proceeding.
- **Section 27** - An order may be made to exclude the public from the courtroom for all or part of an extradition proceeding.

Policy History:

Approved by: Chief Judge Thomas J. Crabtree

Date: February 2011

History of Revisions:

- Reformats but does not change content of Section 5 of “Policies Regarding Public and Media Access in the Provincial Court of British Columbia” February 2011, updated October 2011, and November 2012