



# Policy of the Provincial Court of British Columbia

## Bans on Publication

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| <b>Approved Date:</b>                            | <b>Policy Code:</b> |
| January 31, 2024                                 | BAN-1               |
| <b>Scope of Application</b>                      |                     |
| Applies to:                                      |                     |
| Provincial Court of British Columbia proceedings |                     |

### Purpose of Policy

To provide a general overview regarding examples of publication bans under the *Criminal Code*, *Youth Criminal Justice Act*, *Sex Offender Information Registration Act*, and *Provincial Court Act*.

### Policy

#### 1. Overview

1.1 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 (viewed in relation to dignity) and safety of a victim or witness, the identity of a young offender, or other important public interests.

1.2 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* and the *Youth Criminal Justice Act*. (Some statutes also contain provisions that restrict disclosure of information such as sections 24, 74(2)(e.1) and 75 of the *Child, Family and Community Services Act*.)

1.3 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.

1.4 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.



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1.5 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.

1.6 The following list of bans is not intended to be exhaustive, nor to replace reference to the specific statutory provisions. The Supreme Court of British Columbia also has a list of some publication bans on its [website](#).

1.7 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. Examples of each of these types of bans are set out below.

## 2. Automatic Bans

### 2.1 *Criminal Code*

- **Section 278.95** - makes it a criminal offence to publish, broadcast or transmit information from certain applications or hearings in cases involving sexual offences held 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, broadcast or transmit information from certain applications or hearings to obtain records pertaining to a complainant or a witness. A hearing under s. 278.4(1) and s. 278.6(2) 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, broadcast or transmit 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.



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- **Section 672.51(11)** - bans the publication of any disposition information provided to the court during the disposition hearing held after a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is given in respect of an accused where the information has been withheld from the accused or disclosure would be seriously prejudicial to the accused.

## 2.2 *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, for example, when a person has received an adult sentence.
- **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.

## 2.3 *Sex Offender Information Registration Act (SOIRA)*

- **Section 16(4)** - provides that, with limited exceptions, no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA.

## 2.4 *Provincial Court Act*

- **Section 3(6) and 3(7)** - section 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. Section 3(7) indicates that, despite section 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.

## 2.5 *Intimate Images Protection Act*

- **Section 13** - provides that in an application under s.5 or a claim under s.6 the decision maker must order a ban on publication of the name of the applicant or claimant, and the respondent in certain circumstances set out in the Act and the *Intimate Images Protection Regulation*.



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## 3. Bans Mandatory on Application

There are statutory bans that a judicial officer is required to order if requested by a party specified in the statute.

### 3.1 *Criminal Code*

- **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 victim or witness.
- **Section 486.4(2)** - on application by the victim, prosecutor or witness an order shall 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.<sup>1</sup>
- **Section 486.4(2.2)** - on application by the victim or prosecutor an order shall be made to ban publication, broadcast or transmission of any information that could identify a victim who is under the age of 18 in connection with an offence committed by an adult offender.
- **Section 517** - on application **by the accused** an order shall be made to ban publication, broadcast or transmission of the evidence, information or representations made 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.
- **Section 539** - on application by the accused, prior to commencing the taking of evidence, a judge shall order a ban that provides that evidence given at a preliminary inquiry not be published, broadcast or transmitted until the accused has been discharged or, if ordered to stand trial, the trial has ended.

## 4. Discretionary Publication Bans

The following is a list of publication bans that are discretionary as an order of the court is required before such a ban is in place. 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 considering exercising their discretion to impose a ban on publication of information regarding a matter before the Court. (See also *R. v. Mentuck*, 2001 SCC 76, *Sierra Club of Canada v. Canada (Minister of*

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<sup>1</sup> Those who are the subject of a publication ban may have the right to apply to revoke or vary a publication ban order.



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*Finance*), 2002 SCC 41, and *Sherman Estate v. Donovan*, 2021 SCC 25.). 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.

## 4.1 *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)(a)(i)** - an order made under this section can direct that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of an offence involving publication of an intimate image without consent.
- **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. <sup>2</sup>
- **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. 486.5(2.1).
- **Section 517** - on application **by the prosecutor** an order may be made to ban publication, broadcast or transmission of the evidence, information or representations made 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.
- **Section 539** - on application **by the prosecutor**, prior to commencing the taking of evidence, a judge may order a ban that provides that evidence given at a preliminary inquiry not be published, broadcast or transmitted until the accused has been discharged or, if ordered to stand trial, the trial has ended.

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<sup>2</sup> Those who are the subject of a publication ban may have the right to apply to revoke or vary a publication ban order.



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## 4.2 Youth Criminal Justice Act

- **Section 132** - permits an order to exclude the public from the courtroom for all or part of the proceeding.

### Contact:

Legal Counsel

### Policy History:

Approved by: Governance Committee

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.
- December 16, 2020: amended further to Bill C-75 changes to the *Criminal Code* and other updates regarding publication bans. Divided into 3 sections for automatic bans, bans mandatory on application, and discretionary publication bans.
- September 13, 2021: amended section 4 to reference *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25.
- August 3, 2023: amended section 3 to remove reference to section 486.4(3) of the *Criminal Code* further to *R. v. Coban*, 2022 BCSC 14.
- January 31, 2024: amended section 2 to reference the *Intimate Images Protection Act* and *Intimate Images Protection Regulation*. Amended section 2.3 to add the wording “with limited exceptions”; added footnotes to sections 3.1 and 4.1; and amended section 4.1 to reference section 486.4(1)(a)(i) of the *Criminal Code* further to Bill S-12 *An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act*.