



COURT OF APPEAL

APPENDIX “B”

List of Common Publication Bans

Publication Bans under the *Criminal Code of Canada*

A list of publication bans and their intended effects is provided below. In each case, a judge may have stipulated additional terms and conditions within the order that may apply to the ban. Wherever possible, registry staff and the original court order imposing the ban should be consulted to define the precise terms of the publication ban.

While most publication bans have their origins in the Provincial or Supreme Court, the effect of the ban will often apply to proceedings in the Court of Appeal unless the ban had expired prior to the commencement of the appeal.

More detailed descriptions of publication bans, when they might be imposed, and how they relate specifically to the interests of the media are available through the Canadian Judicial Council’s publication, [The Canadian Justice System and the Media](#).

I. AUTOMATIC BANS UNDER THE *CRIMINAL CODE*

Section 276.3(1) *Evidence of sexual conduct of complainant*

Restricts publication of information about a hearing that determines the admissibility of evidence about the sexual conduct of a complainant, other than the conduct which is the subject matter of the charge. These hearings are held without the jury and the public. The ban is automatic once an application under s. 276.1 of the *Criminal Code* is made.

Applies indefinitely, unless a Justice determines that decision reached or evidence reviewed may be published, broadcasted or transmitted.

Section 278.9(1) *Hearings to obtain personal information records*

Restricts publication of information relating to applications made by an accused charged with certain sexual offences when the accused applies for production of records in the possession of third parties relating to the complainant. The ban applies automatically when an accused makes an application for production under s. 278.3 or “in camera” hearings are held under s. 278.4 and 278.6.

Applies indefinitely, except in certain circumstances where a judge may order publication.

Section 487.2 ***Search warrants***

Restricts publication of information relating to search warrants.

Applies unless and until a charge has been laid in respect of any offence in relation to which the warrant was issued or party subject to the search consents.

Section 542(2) ***Admissions or confessions at a preliminary inquiry***

Restricts the publication of admissions and confessions tendered at a preliminary inquiry.

Applies until the accused is discharged, or, if ordered to stand trial, until that trial has ended.

Section 648(1) ***Trial information in absence of jury***

Restricts publication of any part of a trial heard in the absence of a jury unless the jury has been sequestered. Applies to certain pre-trial motions prior to the formation of the jury (empanelment).

Applies until the jury begins deliberations, except the judge can extend the ban to include deliberations.

Section 672.51(7) ***Mentally disordered accused & disposition hearings***
Section 672.51(11)

Restricts the publication of information relating to disposition hearings, which are held when an accused is found to be not criminally responsible or unfit to stand trial due to a mental disorder.

Applies indefinitely, unless otherwise ordered.

Section 649 ***Disclosure of jury proceedings***

Restricts jurors from discussing any information relating to the proceedings while the jury was outside the courtroom.

Applies indefinitely.

II. MANDATORY BANS ON APPLICATION UNDER THE *CRIMINAL CODE*

Section 517(1) ***Judicial interim release hearings at trial (bail)***

Restricts publication of the evidence, information and representations as well as the reasons of the judge relating to bail

applications. The order is mandatory when sought by the accused, otherwise it is discretionary.

Applies until the preliminary inquiry is held and the accused is discharged. If the accused is committed to trial, the ban expires at the end of the trial.

Section 539(1) *Preliminary inquiries*

Restricts the publication of evidence called at a preliminary inquiry. The ban is mandatory if the application is made by the accused, otherwise it is discretionary.

Applies until the accused is discharged or, where there is an order that the accused stand trial, until that trial has ended.

Section 486.4 *Sexual assault and extortion offences*

Restricts publication of information that would identify a complainant or witness. Applies to several offences, primarily of a sexual nature.

Applies until it is varied or discharged. Breach of this ban is an offence punishable by summary conviction pursuant to s. 486.6.

III. DISCRETIONARY BANS UNDER THE *CRIMINAL CODE*

Section 486(1) *General provisions for exclusion orders*
Section 486(2)

General provision allowing a judge to exclude the public from the courtroom.

May apply indefinitely, but you should consult the ban's precise terms.

Section 486.5 *Protection of victims and witnesses*

General provision allowing for the protection of witnesses or victims. Applies to the contents of the application for the ban and information that might identify the victim, witness or justice system participant.

May apply indefinitely, but you should consult the ban's precise terms.

Section 487.3 *Information used to obtain search warrant or production order*

Restricts disclosure of any information relating to a search warrant, production order, or authorization to enter a dwelling house. Generally, these orders apply to information relating to the issuance

of these warrants, orders, or authorizations, but additional terms may apply.

Applies for a period at the discretion of the judge.

Section 537(1)(h) *General provision for exclusion from preliminary inquiries*

Restricts access to the courtroom for preliminary inquiries.

Applies for a period at the discretion of the judge.

Section 631(3.1) *Identification of jurors*

Section 631(6)

Restricts publication of the identity of, or any information that might identify jurors.

Applies indefinitely, unless otherwise ordered by the court.

IV. AUTOMATIC BANS UNDER THE YOUTH CRIMINAL JUSTICE ACT (“YCJA”)

Section 110(1) *Identity of offender*

Restricts the publication of information that would identify a young person as defined under the YCJA. The ban does not apply in certain circumstances, such as where the young person has received an adult sentence.

Applies indefinitely, unless the information is published by that young person under s. 110(3) or 110(6) of the YCJA. The ban may also be temporarily suspended when that young person is at large under s.110(4).

Section 111(1) *Identity of Witness or Victim*

Restricts the publication of information that may identify a child or young person as defined by the YCJA if disclosure of that information would identify them as being a victim or witness in connection with an offence alleged to have been committed by a young person.

Applies indefinitely, unless the information is published by that young person or their parents under s. 111(2) or 111(3) of the YCJA.

V. DISCRETIONARY BAN UNDER THE *EXTRADITION ACT*

Section 26 *Evidence on extradition proceedings*

Restricts the publication of any evidence given at a judicial interim release hearing or bail hearing under the *Extradition Act*, S.C. 1999, c. 18.

Applies until the person is discharged or, if surrendered, the trial by the extradition partner has concluded.