



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2024/01/22

Number: CPD - 7

Title:

Criminal Practice Direction

Procedure for Applications to Vary or Revoke a Publication Ban Under s. 486.51 of the *Criminal Code*

Introduction:

This practice direction sets out the general procedure for applying under s. 486.51 of the Criminal Code to vary or revoke a publication ban made under s. 486.4 or 486.5 of the Code. Section 486.51 was enacted on October 26, 2023, and provides that a person who is the subject of an order made under either of those provisions may request that the prosecutor apply on their behalf to have the order varied or revoked. The person who is the subject of the order may also make the application themselves, or another person may apply on their behalf.

A practice direction that is substantively identical to this one is being issued in the Provincial Court.

Direction:

1. This practice direction applies to an application brought under s. 486.51 of the *Criminal Code* to vary or revoke an order made under s. 486.4 or 486.5.
2. According to s. 486.51(1) and (2), an application may be made by:
 - a. Crown counsel, upon the request of a person who is the subject of the order;
 - b. the person who is the subject of the order; or

- c. another person acting on behalf of the person who is the subject of the order.
3. Generally, the application should be made to the court that made the order under s. 486.4 or 486.5, except:
 - a. if a trial or pre-trial proceedings have taken place in the Supreme Court of British Columbia, or are ongoing, the application should be made in Supreme Court; or
 - b. if the court to which the application under s. 486.51 is made orders or directs that the application should be made to a different court because the court is unable to act in the circumstances, such as where, for example, the other court has more recently dealt with the proceedings or has dealt with the proceedings on a broader evidentiary basis.

The application will be determined by a judge as described in paragraph 11 of this practice direction.

4. An applicant may commence an application by completing the “Applicant” and “Application Details” sections of Form **PCR318 (Application to vary or revoke publication ban under section 486.51)** and submitting the completed form to the applicable [court registry](#) for filing. Form PCR318 is available in electronic form for download at [Criminal Court Forms \(gov.bc.ca\)](#) or from the registry.
5. Submission of the application by email is preferred, with the subject line: “Publication Ban – Application to Vary or Revoke”. The email addresses for all British Columbia court registries may be found at: [Courthouse locations - Province of British Columbia \(gov.bc.ca\)](#).
6. If the applicant is unable to submit the application by email, they may do so in person at the court registry counter or by fax.
7. If the applicant is a person identified in paragraph 2b or 2c above, and is submitting the application by email, the applicant will need to provide satisfactory evidence of their identity and should contact the court registry to do so.
8. If the applicant is a person identified in paragraph 2c above, the applicant must provide:
 - a. confirmation in writing from the person who is the subject of the order that the person wishes the applicant to apply on their behalf; or
 - b. an explanation as to why it is unnecessary or inappropriate to require the person who is the subject of the order to provide such written confirmation.

The court may also require further information in order to verify that the application is being made at the request of the person who is the subject of the order.

9. If the applicant is a person identified in paragraph 2b or 2c above, the court registry receiving the application will provide a copy of it to Crown counsel. Notification of Crown

counsel is necessary at the outset to ensure that the court has the information about the underlying proceedings, and any related proceedings, to determine whether varying or revoking the order that is the subject of the application may affect the privacy interests of another person as described in s. 486.51(2).

10. Within 14 days of receipt of an application, Crown counsel should complete the “Crown Counsel” section of the form and submit the form by email to the appropriate court registry. If Crown counsel cannot reasonably respond within 14 days, they may apply to extend the time for response.
11. The application will be determined by the judge who conducted or is conducting the trial, sentencing, or pre-trial proceedings, or is assigned to do so. If that judge is no longer available or where no particular judge is assigned to the underlying matter, the application will be determined by the Chief Justice, Associate Chief Justice, or their designate.
12. If the judge determines, based on the information in the form, that the order that is the subject of the application may be varied or revoked as sought by the applicant, the judge may grant the application and that order will be noted on the relevant section of the form.
13. If the judge determines that a hearing is required, the applicant will be notified, and should contact Supreme Court Scheduling to arrange for a hearing before that judge or, if that judge is unable to act or unavailable for a hearing, another judge designated by the Chief Justice or Associate Chief Justice.
14. If the applicant is someone other than Crown counsel, Crown counsel will be notified of the hearing date.
15. Crown counsel is expected to be prepared at the hearing to make submissions regarding the factor set out in s. 486.51(4).

Heather J. Holmes
Associate Chief Justice