



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2024/08/06

Number: CPD - 8

Title:

Criminal Practice Direction

Publication Bans in Criminal Proceedings – In Court Practice

Summary:

This practice direction is to improve the clarity of publication bans made in criminal proceedings, and the accuracy of court records documenting them. It will also make information about the terms and the duration of bans more accessible to parties and other interested people while the proceedings are taking place in the Court, as well as later when there is a reason to consult the court record.

The practice direction asks counsel or any other person applying for a discretionary or mandatory publication ban (but not an automatic ban) to assist the Court, its staff, and the public by bringing a draft form of order specifying the precise legal (statutory or other) basis that allows for the ban, the exact terms sought, and the proposed duration of the ban, or by stating this information on the record if it is not practicable to prepare a draft order in advance. The practice direction also encourages Crown counsel to provide a list of any subsisting Provincial Court bans at the time the indictment is filed, and asks counsel to raise the status of any outstanding interim publication bans before the conclusion of the proceedings.

Direction:

Application of this Practice Direction

1. This practice direction applies to “discretionary” and to “mandatory” publication bans in criminal proceedings in the Supreme Court. A mandatory ban is an order that a statute requires the court to make if a person specified in the statute requests the order. A

discretionary ban may be imposed where the court exercises its discretion pursuant to an authorizing statute or the court's inherent jurisdiction.

2. The practice direction does not apply to "automatic" publication bans. Automatic publication bans come into effect as a matter of law without an application or a court order when a statutory provision prohibits publication, broadcast or dissemination of certain information. It is nonetheless helpful to the Court, as well as to the media and the public, for counsel to identify on the record any relevant automatic bans that they know about, but this is not formally required.
3. The practice direction does not replace or remove the legal obligation on the applicant to satisfy the Court that the publication ban should be ordered. Nor does it displace the process for giving notice of an application for a discretionary publication ban, which is set out in [Practice Direction 56 – Notification of Publication Ban Applications](#) and continues to apply.

Applications made in Supreme Court

4. Anyone seeking a discretionary or a mandatory publication ban in a criminal proceeding must speak to the application in court. The applicant should be prepared to provide the Court and the other party or parties with the following:
 - a. the statutory or other legal basis for the proposed publication ban;
 - b. a precise and detailed statement of the terms of the order sought, including, as applicable, the name of the person(s) or the specific information that would be the subject of the ban. If, in the applicant's view, the name(s) or specific information should not be stated in open court, the applicant should provide a sufficiently precise and detailed description of the person(s) or information to ensure that the terms of the order, if granted, will be clear;
 - c. for time limited statutory bans, or bans pursuant to the Court's inherent jurisdiction, the proposed duration of the ban and, if the ban would be time limited, the date or event upon which it would expire; and
 - d. a draft form of order. If it is not practicable for the applicant to bring a draft form of order to the application hearing, the applicant should orally provide the information described in paragraph 4(a)-(c), and submit a draft form of order to the registry shortly after the hearing.
5. If the applicant's position is that an order sought banning the publication of the identity of a victim or witness (e.g. under ss. 486.4 or 486.5 of the *Criminal Code*) would have the effect of also banning the publication of the name of the accused person, the applicant should state this on the record at the application hearing, and explain the basis for the position.

Criminal Proceedings in the Supreme Court Where a Publication Ban Was Made in the Provincial Court

6. When Crown counsel first submits an indictment for a case, they are encouraged where reasonably practicable to also submit a list of any mandatory or discretionary publication bans ordered in the Provincial Court that continue to apply, with the statutory basis for and the terms of each ban. This information assists the Court to identify any potential inaccuracies in how the Provincial Court bans have been recorded.

Interim Publication Bans

7. For the purpose of this practice direction, an interim publication ban means a discretionary ban that is intended to have a limited duration until the full application for a publication ban can be heard on its merits on notice to any interested parties.
8. Anyone seeking an order for an interim publication ban must precisely describe the proposed duration of the ban and the date or event upon which it would expire.
9. If the court grants an interim publication ban, the person who sought it should raise the status of the ban on the record prior to the conclusion of the case in Supreme Court so that there is an opportunity to address it, if necessary.

Confirming the Accurate Recording of Publication Bans

10. After a hearing in which a publication ban is granted, and before counsel leave the courtroom, counsel are encouraged, where feasible, to confirm with the court clerk that any publication ban granted has been accurately and completely recorded.

Heather J. Holmes
Associate Chief Justice