



Publication Ban

What is the purpose of a publication ban?

A judge's order prohibiting the public and media from broadcasting or publicizing the identity of victims and witnesses is intended to protect the privacy of victims and witnesses of crime. The publication ban may enable victims and witnesses to participate in the justice system without suffering adverse consequences.

When can a judge order a publication ban?

The principle of openness is one of the hallmarks of our criminal justice system. As a general rule, all proceedings take place in open court and the names of witnesses, victims and accused persons are made public. There are instances in which the law makes an exception but these are rare — avoiding simple embarrassment or inconvenience are not sufficient reasons to justify a publication ban.

As of December 1, 1999, the *Criminal Code* will provide that the judge **may** make an order to protect the identity of any victim or witness, or any information that could disclose his or her identity, **if** the judge is satisfied that the order is “necessary for the proper administration of justice.”

The *Criminal Code* also provides that a judge **must** order a publication ban to protect the identity of all victims of sexual offences and witnesses of sexual offences who are less than 18 years old. In these cases, the judge tells the victim, witness or Crown prosecutor that they may make a request for this protection. If a request is made, the judge must order a publication ban.





How does a judge decide whether a non-publication order is appropriate?

The *Criminal Code* provides guidance for judges to assist them in determining whether to order a publication ban in non-sexual offences. The judge must take into consideration any relevant factors, including:

- the right of the accused person to a fair and public hearing;
- whether there is a real and substantial risk that the victim or witness would suffer significant harm if his or her identity were to be disclosed;
- the availability of effective alternatives to protect the identity of the victim or witness; and
- the impact of the proposed order on the freedom of expression of those affected by it.

How does a victim or witness get a judge to consider making a publication ban?

The *Criminal Code* sets out the steps for seeking out a publication ban:

- The victim or witness must make an application or request for a publication ban in writing. It is essential for the victim or witnesses to indicate why he/she needs this type of protection.
- The victim or witness makes the application to the judge who will be hearing the case. If a judge has not yet been assigned to the case, the victim or witness may make the request to any superior court judge in the jurisdiction.
- The Crown prosecutor, the accused and any other person that may be affected by the publication ban must be notified about the application. The judge will decide whether the notice should be provided to the media or others that may be affected. For example, local newspapers would need to know, because a publication ban would restrict how they report on the trial or proceedings.
- The judge may hold a hearing to consider the request for the publication ban. At the hearing, the victim or witness has an opportunity to say why the order is necessary for him or her. The Crown prosecutor, the accused, the media or other parties who are affected by the order may also speak.

What happens in a hearing?

A hearing to decide whether to order a publication ban may be held in private, rather than in open court. The hearing is generally less formal than a trial. The victim or witness requesting the publication ban can speak for themselves or a lawyer can speak on their behalf.

Where the judge agrees that a publication ban is necessary to protect the identity of the victim or witness, the judge will order the ban. The order could have certain terms or conditions attached — for example, it may be effective only for a fixed period of time.

What are the responsibilities of victims and witnesses who successfully obtain a publication ban?

It is important for victims and witnesses to realize that if a judge makes a publication ban, they will not be permitted to discuss the case with any reporter or communicate with the media through any other means — for example, by writing a letter to the editor which identifies him or her as a victim of or witness to the offence.

If the victim or witness later decides that he or she no longer wants the publication ban to continue, he or she must apply to the court for an order terminating it. It may be necessary to state why the circumstances that made the order necessary have changed.

Are publication bans new?

Publication bans to protect the identity of sexual assault victims and witnesses have been part of the *Criminal Code* since 1988. The common law has recognized that judges may protect the identity of any victim or witness in appropriate cases. As of December 1, 1999, procedures have been incorporated into the *Criminal Code* to reflect the common law.

Where is more information available?

If you or someone you know have been a victim of crime, help is available. All provinces and territories have services for victims of crime. They can help if you need information or other assistance.

For more information about Canada's justice system and links to victim services, visit our Web site:

<http://canada.justice.gc.ca/victim>

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