

VICTIMS' RIGHTS IN CANADA

PUBLICATION BANS

What is a publication ban?

A publication ban is an order the Court makes that prevents anyone from publishing, broadcasting, or sending any information that could identify a victim, witness, or other person who participates in the criminal justice system. The publication ban is intended to allow victims, witnesses, and others to participate in the justice system without suffering negative consequences.

A victim's right!

The *Canadian Victims Bill of Rights* came into force on July 23, 2015. This Act gives every victim the right to have their privacy taken into account by authorities in the criminal justice system and to ask that their identity be protected. These rights are part of a victim's right to protection.

When can the Court order a publication ban?

The principle of openness is a key part of Canada's criminal justice system. As a general rule, all proceedings take place in open court and the names of all witnesses, victims, and accused persons are made public. There are exceptions. These occur when the Court orders a publication ban to protect a victim, witness or justice system participant. The Court will take

into account who the publication ban is for, the kind of offence and other factors when deciding whether to make the order. A publication ban may be appropriate, for example, to:

- encourage witnesses who are afraid to testify;
- protect vulnerable witnesses, including children and victims of crime;
- encourage victims and others to report offences that are usually under-reported, such as sexual offences; and
- protect the privacy of justice system participants.

How does the Court decide whether to order a publication ban?

The *Criminal Code* sets out the rules governing publication bans. These rules vary depending upon who is applying for the publication ban and the nature of the proceedings.

For example, the Court *must* inform victims who are under the age of 18 of their right to seek a publication ban and, if the victim requests one, the Court *must* order the publication ban. The Court must also tell all victims and witnesses of sexual offences who are under 18 that they have the right to seek a publication ban. If they ask for a ban, the Court *must* order it.



RIGHT TO INFORMATION



RIGHT TO PROTECTION



RIGHT TO PARTICIPATION



RIGHT TO SEEK RESTITUTION



RIGHT TO MAKE A COMPLAINT



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The *Criminal Code* also states that the Court *may* order a publication ban to protect the identity of any other victim over the age of 18 or any other witness if the Court believes that the order is “in the interest of the proper administration of justice.” The Court may also make this order for other people who participate in criminal proceedings such as a juror, police officer or police informant for offences involving criminal organizations, terrorism, and national security.

When deciding whether to order a publication ban for such victims, witnesses or justice system participants, the Court must take several factors into account. These include:

- the right of the accused person to a fair and public hearing;
- whether there is a risk that the victim, witness or justice system participant would be harmed if the public knew their identity;
- whether the order is needed to protect a victim, witness or justice system participant from intimidation or retaliation; and
- society’s interest in encouraging the reporting of offences and the participation of victims and witnesses and justice system participants (for example, court officers or jurors) in the criminal justice system.

The full list of factors is found in the *Criminal Code*.

How can a publication ban be requested?

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

- The prosecutor, victim, witness, or justice system participant must ask for a publication ban in writing. The person asking for the order must explain why he or she needs this type of protection.
- The request is made to the judge who will be hearing the case. If a judge has not yet been chosen, the request can be made to another judge of the same court.

- The prosecutor, the accused, and any other person who may be affected by the publication ban must be told about the application. The Court will decide whether to tell the media or anyone else who may be affected about the application. For example, local newspapers would need to know because a publication ban would restrict how they report on the trial or proceedings.
- The Court may hold a hearing to consider the request for the publication ban. At the hearing, the victim, witness or justice system participant can say why he or she needs the order. The prosecutor, the accused, the media, or other parties affected by the order may also speak.

What happens in a hearing?

A hearing to decide whether to order a publication ban is less formal than a trial and may be held in private, instead of in open court. The victim, witness, or justice system participant asking for the publication ban can speak for themselves or they can ask a lawyer to speak on their behalf.

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

What are the responsibilities of victims, witnesses, and others whose identity is protected by a publication ban?

It is important for victims, witnesses and justice system participants to realize that if the Court orders a publication ban, their name cannot be reported in the news and they cannot communicate with the media in any other way. For example, a victim cannot write a letter to the editor which identifies him or her as a victim or witness to the offence.

The victim, witness, or justice system participant may later decide that he or she no longer wants to continue the publication ban. He or she must then ask the Court for an order to end it and to state how the circumstances that made the order necessary have changed.

Where is more information available?

If you or someone you know has been a victim of crime, there is help. All provinces and territories offer services for victims of crime. They can help you if you need information or other assistance. The Victim Services Directory can help you to find victim services near you:

<http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/index.html>

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