

VICTIMS' RIGHTS IN CANADA

PUBLICATION BANS FOR COURT CASES

What is a publication ban?

A publication ban is an order made by the court that prevents anyone from publishing, broadcasting, or transmitting (such as sharing on social media) any information that could identify a victim, witness, or other person who is the subject of the order. Many of the rules governing publication bans are set out in the *Criminal Code*.

Publication bans enable victims and witnesses, and others, to participate in the criminal justice system without suffering the negative consequences of being publicly identified. In some circumstances, publication bans can also be ordered to prevent the disclosure of information that could identify a juror, prosecutor, or judge. Publication bans may also be ordered in cases related to organized crime, terrorism, or national security.

The length of a publication ban will vary on a case to case basis. Some are in effect until they are removed and others are only in effect for a specified time period.

Publication bans aim to:

- encourage victims of sexual offences to report under reported crimes by protecting their identity
- protect the identity of a juror
- protect victims and vulnerable witnesses
- prevent the name of a young person charged with a crime from being published
- reassure victims and witnesses who are afraid to testify
- ensure a fair trial
- protect the privacy of justice system participants

What happens once a publication ban is ordered?

Once a publication ban is in place, any information that could identify the person who is protected by the publication ban cannot be published in any document, broadcasted, or transmitted in any way. Information that could lead to the identification of the person may include the name of the victim, details like where the offence took place, the relationship between the victim and the accused/offender, or the name of the accused/offender.

The terms of the publication ban apply to everyone, including those whose identity is protected by the publication ban. This means that, with some exceptions, even the person whose identity or information is protected by a publication ban is not able to publish in any document or broadcast or transmit information that identifies them in connection to the crime.

There are exceptions set out in the *Criminal Code* for when a person protected by a publication ban would be allowed to speak about certain information. For example, publication bans ordered to protect the identity of a victim of a sexual offence do not apply to:

- the person who is the subject of a publication ban who discloses information about themselves, in any forum and for any purpose, as long as they don't reveal the identity of someone else who is the subject of a publication ban
- the person who is the subject of the publication ban if they disclose information to a health care professional, support group, counsellor, legal professional, or to someone in a relationship of trust with them (e.g., a close friend or family member)



RIGHT TO INFORMATION



RIGHT TO PROTECTION



RIGHT TO PARTICIPATION



RIGHT TO SEEK RESTITUTION



RIGHT TO MAKE A COMPLAINT



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

Process for a publication ban to be ordered

There are two main processes for publication bans, depending on who they seek to protect. One type is **mandatory**, meaning that if it is requested it has to be ordered, and the other is **discretionary**, meaning that a judge will need to decide if the publication ban is in the best interest.

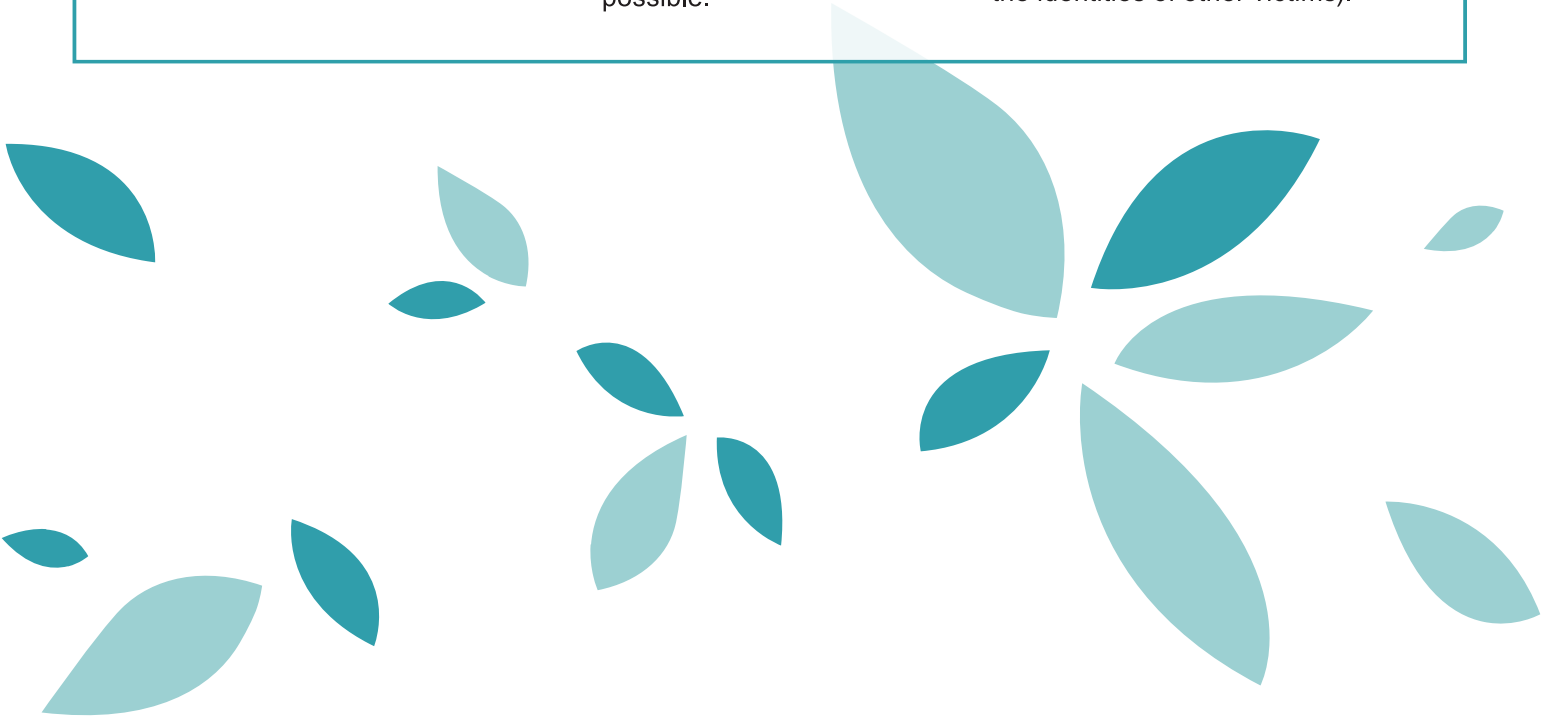
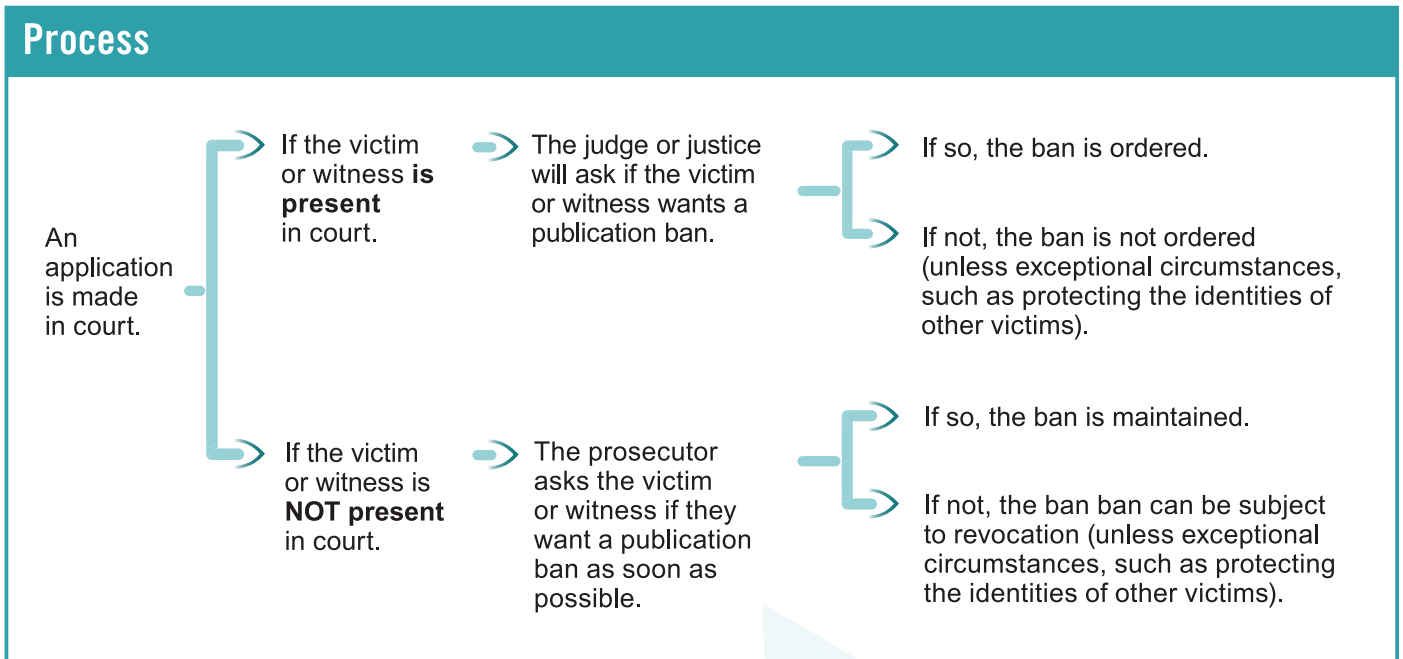
Mandatory bans

If requested, it must be ordered.

These bans apply to:

- victims of sexual offences
- witnesses of sexual offences that are under 18
- all victims who are under 18 (regardless of the offence)

In all cases, victims and witnesses must be informed by the prosecutor that they have the right to request the revocation or modification of the order.



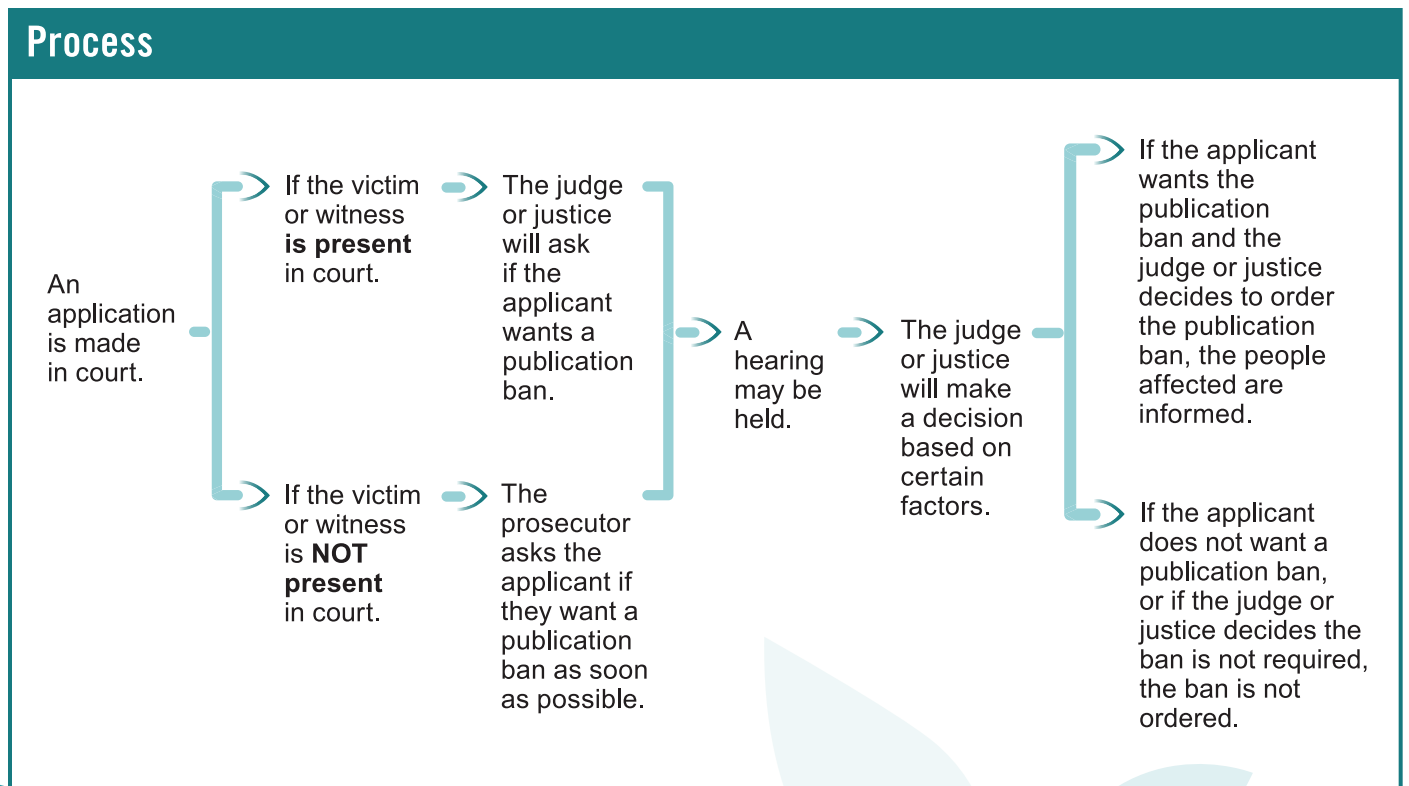
Discretionary bans

Anyone who wishes to have a publication ban can ask for one. If requested, a judge or justice will decide if a publication ban is in the best interest.

These bans apply to:

- any victim above the age of 18
- any victim or witness not covered by a mandatory ban
- in certain cases, justice system participants (such as jurors, judges, prosecutors)

In all cases, victims and witnesses must be informed by the prosecutor that they have the right to request the revocation or modification of the order.



How does the judge or justice decide to order a discretionary publication ban?

In cases where a publication ban is being considered for a victim/witness or justice system participant, the judge or justice will consider the wishes of that person. There are also a number of statutory factors that must be considered, including:

- the right to a fair and public hearing
- if there is a real and substantial risk that the victim, witness or justice system participant would be harmed if their identity was disclosed
- if the order is needed to protect a victim, witness or justice system participant's security or to protect them from intimidation or retaliation
- society's interest in encouraging the reporting of offences and the participation of victims, witnesses, and justice system participants in the criminal justice process

Can a publication ban be modified or revoked?

A victim, witness, or justice system participant may decide that they no longer want to be the subject of a publication ban or they may wish to have certain conditions modified. If that is the case, they should inform the prosecutor who will, as soon as possible, make an application on their behalf. In some cases, a victim or witness may wish to retain their own legal representative to apply to modify or revoke the publication ban for them.

If the Court is of the opinion that modifying or revoking the order would not affect the privacy interests of another person subject to any publication ban order, they must grant the application without holding a hearing. Otherwise, the Court must hold a hearing to see if the order can be modified or revoked.

What is the process to modify or revoke a publication ban?

Inform the Court of the request to modify or revoke the publication ban.

As long as the application does not affect the privacy interests of another person whose identity is protected by a publication ban, the publication ban must be modified or revoked.

A hearing must be held if the Court is of the opinion that the privacy interests of another person whose identity is protected by a publication ban could be affected.

The Court considers if it is possible to modify or revoke the order while protecting the other person's privacy interests.

In any case, if the publication ban is modified or revoked, the prosecutor must notify the accused of this.



What recent changes were made to publication bans?

On October 26, 2023, changes to the *Criminal Code* came into force that amended the publication ban provisions for victims, witnesses, and justice system participants. Those changes aimed to:

- require more direct conversations with victims about whether a publication ban should be imposed
- provide victims, witnesses, and justice system participants a clearer voice in the criminal justice process and to be treated with compassion, respect, and dignity
- improve the process to modify and revoke publication bans to make it clearer and easier to follow
- make it clear that a person who is the subject of a publication ban can share their own information in certain circumstances, including in private conversations and to seek support
- provide clarity that the opinion of the accused or offender is not a relevant factor in the revocation or modification of a publication ban

- clarify when a prosecution for a breach of a publication ban shall not occur
- provide protection to victims, witnesses and justice system participants who choose to keep the publication ban in place but still want to share their personal information

These changes have immediate effect and apply to all publication bans issued under sections 486.4 and 486.5 of the *Criminal Code*, including those that had already been issued.

Where is more information available?

If you or someone you know are a victim of crime, there is help. All provinces and territories offer services for victims of crime and can provide support if you need information or other assistance. The [Victim Services Directory](#) can help you find victim services near you.

To learn more about your rights under the *Canadian Victims Bill of Rights*, or to register a complaint, contact the [Office of the Federal Ombudsman for Victims of Crime](#).

Disclaimer

This fact sheet contains general information regarding victims' rights. This information is of a general nature and is not intended as a substitute for professional legal advice. For legal advice or assistance, we recommend contacting a lawyer or a legal aid program.

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