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Publication Restriction Notices

[1] Electronic preparation and publication of judgments offer clear advantages to courts, lawyers and members of the public. It allows for wider and timelier publication at less reproduction, distribution and storage costs. In order to allow courts to make the most of these advantages, the Canadian Citation Committee (CCC) developed the Canadian Guide to the Uniform Preparation of Judgments (the “Guide”). Approved in September 2002 by the Canadian Judicial Council, this Guide aims at disseminating best practices in electronic judgment preparation, thus streamlining their publication and improving public access to case law. The complete text of the Guide is available at: http://www.lexum.umontreal.ca/ccc-ccr/guide/guide.prep_en.html

[2] One of the Guide’s key standard consists of inserting a publication restriction notice in a decision when its publication is subject to a legal restriction (section 7.8 of the Guide). This notice, conspicuously located on the decision’s cover page, aims at informing members of the public and the media that the publication of this specific decision is restricted by a court order or by a statutory provision. It also provides information about the content of the publication ban so that the decision can be reported or published in full compliance with the law.

[3] The publication restriction notice must include the following details:

- a mention of the existence of the applicable statutory provision or court order;
- a description of the scope of the ban and of the type of information that should not be published, as for instance a reference to the specific individual whose identity must remain confidential, e.g. a complainant, a witness, a child; and
- as it applies:
 - for interim restrictions, the date or event after which the restriction will expire, when it is possible to determine, or
 - the fact that the decision released by the court to the public complies with the restriction and can be published, if that is the case.

[4] The notice should be located at the top of the decision, right after the names of the parties involved in the case. It should be preceded by a standard label such as “**Restriction on publication:**” or “**Ban on publication:**”. Here is an example:

Restriction on publication: By court order made under subsection 486.4(3) of the *Criminal Code*, information that may identify the persons who are the subjects of child pornography mentioned in this judgment shall not be published in any document or broadcast or transmitted in any way. Identifying information has been removed from this version of the judgment to comply with the court order.

[5] Please note that in order to avoid any uncertainty in this regard, it remains important to use the publication restriction notice even where the public version of the decision complies with the restriction, especially for matters where publication ban orders are routinely made and in situations where a statutory restriction usually applies.

[6] The following paragraphs provide further examples of publication restriction notices for some of the most frequently applicable publication bans in Canada.

1 Permanent bans pursuant to the Criminal code

Example 1:

Restriction on publication: By court order made under subsection 486.4(1) of the *Criminal Code*, information that may identify the person described in this judgment as the complainant may not be published, broadcasted, or transmitted in any manner.

Example 2:

Restriction on publication: By court order made under subsection 486.5(2) of the *Criminal Code*, the identity of the undercover police officers referred to in this judgment as “Officer 1” and “Officer 2” or any information that could disclose their identity shall not be published, broadcast, or transmitted in any manner. This version of the judgment complies with the order.

2 Interim bans pursuant to the Criminal Code

Example 3:

Restriction on publication: By court order made under subsection 517(1) of the *Criminal Code*, these reasons shall not be published in any document, or broadcast or transmitted in any way until the accused is discharged after the preliminary hearing, or, if the accused is committed to stand trial, until the end of the trial.

Example 4:

Restriction on publication: Pursuant to subsection 648(1) of the *Criminal Code*, no information regarding this portion of the trial shall be published in any document or broadcast or transmitted in any way before the jury retires to consider its verdict. This publication ban has expired on September 19, 2006.

3 Bans pursuant to the *Youth Criminal Justice Act*

Example 5:

Restriction on publication: Pursuant to subsection 110(1) of the *Youth Criminal Justice Act*, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as having been dealt with under this Act.

Example 6:

Restriction on publication: By court order made under subsection 111(1) of the *Youth Criminal Justice Act*, there is a ban on publishing information that may identify the child who has appeared as a witness in connection with these proceedings. This judgment has been redacted to comply with this requirement.

4 Bans related to family law or youth protection matters

Example 7:

Restriction on publication: Pursuant to subsection 75(2) of the *Child and Family Services Act*, there is a ban on disclosing the name of any person involved in the proceedings as a party or a witness or any information likely to identify any such person.

Example 8:

Restriction on Publication: By court order made under subsection 21(1) of the *Domestic Violence and Stalking Act*, there is a ban on publishing information that may identify the complainant in this matter. These reasons comply with this requirement and may be published.