

Can reporters publish or broadcast evidence in a trial?

Usually court proceedings and all of the evidence in a trial may be published, broadcast, or transmitted unless a Judge orders that the information be put under a ban or a restriction, or unless a statute so states.

Judges order bans or restrictions when it is in the best interests of, or necessary for, the proper administration of justice to do so, for example, to make sure that trials will be fair, to keep witnesses safe, and to protect the identity and/or the privacy of witnesses or victims.

Information that is usually under a ban or a restriction includes:

- Evidence heard at a preliminary inquiry (see Section 539 of the *Criminal Code* below), or at a judicial interim release (bail) hearing (see Section 517 of the *Criminal Code* below);
- Information that would suggest the name or reveal the identity of a young person involved in the case (see *Youth Criminal Justice Act* below);
- Information regarding any portion of a jury trial at which the jury is not present in the courtroom (see Sections 648 and 645 of the *Criminal Code*).

Judges sometimes impose bans or restrictions on the publication, broadcast or transmission of other information, such as the identity of a complainant or witness (see Section 486.4 of the *Criminal Code* below).

Do the NWT Courts have any written policies about publication bans or restrictions?

Yes. The Supreme Court of the Northwest Territories has issued a Practice Direction (<http://www.nwtcourts.ca/directives/pd9.pdf>) which applies to all applications for discretionary bans or restrictions made in the Supreme Court. This includes bans or restrictions on publication, broadcast, or transmission, made pursuant to common law, which is law made by past court decisions.

How can I find out if there is a ban or restriction in place?

There are three main ways to find out if a judge has ordered a ban or restriction:

1. Listen carefully when the judge is talking. He or she will make this order in court.
2. Look at the court file. If there is a ban, the file will have "Publication Ban" stamped on the front. There will be similar language for a restriction. The information will also say what contents are covered by the ban or restriction and the date the ban or restriction was imposed.
3. Ask the court clerk if there is a ban or restriction in effect.

What are the types of bans or restrictions?

A Judge has the authority to control court proceedings, but three sections in the *Criminal Code*, as well as Part 6 of the *Youth Criminal Justice Act*, are the most commonly used provisions resulting in bans or restrictions:

1. Section 486.4:

This section allows for a ban or restriction on publication, broadcast, or transmission of any information that could identify the complainant or witness in a proceeding. The application for a ban or restriction may relate to:

- The identity of a complainant, or a witness;
- A complainant, victim, or witness who could be harmed if his/her identity was made public;
- A complainant's or witness's right to privacy;
- An accused's right to a fair and public hearing

A Section 486.4 ban or restriction lasts until the Court lifts it. In many cases, it is never lifted. If a Section 486.4 ban or restriction is ordered in a lower court (for example, Territorial Court), it may still be in place if the case is appealed to a higher court.

2. Section 517:

This section allows a judge to order a ban or restriction of the publication, broadcast, or transmission of information heard on a judicial interim release hearing. An order made under section 517 is for a specified period, and is lifted either when an accused is discharged after preliminary inquiry, or when an accused's trial is completed (the proceedings may still be subject to other bans or restrictions, for example, a ban or restriction pursuant to section 486.4 of the *Criminal Code*, which is **not** automatically lifted if an accused is discharged, or an accused's trial is completed).

3. Section 539:

This is a restriction on the publication, broadcast, or transmission of evidence heard at a preliminary inquiry. At a preliminary inquiry, if an accused is ordered to stand trial, this restriction is in effect until the trial is ended; if the accused is discharged after a preliminary inquiry, the ban or restriction is automatically lifted (the proceedings may still be subject to other bans or restrictions, for example, a ban or restriction pursuant to section 486.4 of the *Criminal Code* which is **not** automatically lifted if an accused is discharged).

4. *Youth Criminal Justice Act*, Part 6:

Under the *Youth Criminal Justice Act*, there can be no publication, broadcast, or transmission of any information that would suggest the name or reveal the identity of a young person dealt with under the *Youth Criminal Justice Act* [section 110(1)]. However, there are certain situations where section 110(1) does not apply [see subsections 110(2) and (3)].

As well, witnesses and victims who are children or young persons cannot be identified in Youth Justice Court matters [section 111(1)], though again, there are exceptions [see subsection 111(2)].

Note: the examples given above are not exhaustive. Please refer to the *Criminal Code* or the *Youth Criminal Justice Act* for further information.

How can I challenge a ban or restriction?

You can apply to the Court for standing when the hearing begins. If the Court determines that you have standing, then you have the right to be heard on the application. It is usually a good idea to have a lawyer help you challenge the ban or restriction. You will need evidence to support your argument that there should not be a ban or restriction. The person or party asking for the ban or restriction will also need evidence to support his or her argument.

How can I find out if a ban or restriction has been lifted?

There are four main ways to find out:

1. Listen carefully when the judge is talking. He or she will make this order in court.
2. Ask the court clerk if the ban or restriction is still in place.
3. If your lawyer helped you to challenge the ban or restriction, ask your lawyer.
4. Some bans or restrictions are automatically lifted at certain times, such as when an accused is discharged after a preliminary inquiry, or in some circumstances after the trial is over.

Are there other things that people cannot publish, broadcast, or transmit, but are not covered by a ban or restriction?

Yes. Any child protection matter is covered by legislation that prohibits the disclosure or communication of information. Members of the public are not permitted to see the file. If the file is confidential, the court clerk will tell you that you cannot see the file, and there may be a "Closed Court" sign on the courtroom door. Sometimes an entire file that was previously public will become confidential if a certain type of evidence is called. A Judge may order any file to be sealed. In

this case the public would not have access to any information on the file. Obtain legal advice if you have questions about what you should do in this situation.

Sometimes a judge will order that an information to obtain a search warrant be sealed. If an information to obtain a search warrant is not sealed by order, and if the report to justice has been filed and items were seized, the information to obtain and the search warrant are public.

If evidence in a case is under a ban or restriction, how can I make sure that I follow it?

The most important thing is to be sure that you understand what the ban or restriction covers. For example, if there is a ban or restriction on publishing, broadcasting or transmitting identifying information about a victim, make sure you do not name the victim or give information that would identify him or her. Every case is different, so talk to a lawyer if you have questions.

What are the consequences of contravening a ban or restriction?

It is an offence to contravene or breach a ban or restriction punishable by a fine or imprisonment or both.

How can I get a lawyer who can help me?

Call the NWT Law Society for a referral: 873-3828.