



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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**VICTIMS OF CRIME
- PUBLICITY**

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

VICTIMS OF CRIME - PUBLICITY (Practice Note)

On December 1, 1999 Bill C-79 was proclaimed into law. This law impacts significantly upon victim/witness rights and the imposition of publication bans by the courts.

Order Restricting Publication - Section 486(3)(b)

Previously, 486(3) enumerated the Criminal Code offences in 486(3)(a)(i); (ii) and (iii) which permitted the presiding Judge or Justice to make an order directing the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness not be published in any document or broadcast in any way.

The amendment in 486(3)(b) authorizes the court to issue such publication bans in cases involving “two or more offences being dealt with in the same proceeding where at least one of charge offences is referred to in any of paragraphs (a)(i), (ii) and (iii).

The section clarifies previous 486(3) by providing for publication ban on identity of sex offence complainants and will protect their identity as victims of sexual offence as well as any other offence perpetrated on them by the accused.

Ban on Publication - Section 486(4.1)

This is a new provision authorizing the court to make an order directing that the identity of a victim or witness, or any information that could disclose their identity, shall not be publicized in any document or broadcast in any way, in any proceedings against an accused “other than in respect of an offence set out in 486(3)”, where the Judge or Justice is satisfied that the order is necessary for the proper administration of Justice.

This provision will codify prevailing common law as established by the Supreme Court of Canada in the 1994 decision of *Dagenais et al*, 94 C.C.C. (3d) at 289.

Order Restricting Publication/Disclosure - Section 486(4.2)

An order made under 486(4.1) does not apply in respect of the disclosure of information in the course of administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Application - Section 486(4.3)

An order under s. 486(4.1) may be made on the application of the prosecution, victim or witness.

The impact of this provision makes it necessary for the Crown to develop guiding principles to assist in identifying the appropriate circumstances which will necessitate the Crown to make such applications.

Content of Application - Section 486(4.4)

The application must be in writing and set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Notice of Application - Section 486(4.5)

The applicant shall provide notice of the application to the prosecution, the accused, and any other person affected by the order that the Judge or Justice specifies.

Hearing May Be Held - Section 486(4.6)

The Judge or Justice may hold a hearing to determine whether an order under 486(4.1) should be made and the hearing may be in private.

Factors To Be Considered - Section 486(4.7)

In determining whether to make an order under section 486(4.1), the Judge or Justice shall consider:

- (a) the right to a fair and public hearing;
- (b) whether there is a real and substantial risk that the victim or witness would suffer significant harm if their identity were disclosed;
- (c) whether the victim or witness needs the order for their security or to protect them from intimidation or retaliation;
- (d) society's interest in encouraging the reporting of offences and the participation of victims and witnesses;
- (e) whether effective alternatives are available to protect the identity of the victim or witness;
- (f) the salutary and deleterious effects of the proposed order;
- (g) the impact of the proposed order on the freedom of expression of those affected by it; and
- (h) any other factor that the judge or justice considers relevant.

Conditions - Section 486(4.8)

An order made under section 486(4.1) may be subject to any conditions that the Judge or Justice thinks fit.

Publication of Application Prohibited - Section 486(4.9)

Unless the presiding Judge or Justice refuses to make an order under section 486(4.1), no person shall publish in any document or broadcast in any way

- the contents of the application referred to in section 486(4.3)
- any evidence taken, information given, or submissions made at a hearing under section 486(4.6), or
- any other information that could identify the person to whom the application relates as a victim or witness in the proceedings.

Failure to Comply with Order - Section 486(5)

This section has been amended to make it an offence punishable on summary conviction for failure to comply with an order under the new provision section 486(4.1).

Policy Considerations - Section 486(4.1)–Implications for Crown

This legislation allows for a publication ban to be requested for an offence(s) other than those referenced in s. 486(3)(a)(i)(ii) and (iii). Therefore, the potential exists for publication bans to be requested by the Crown, victim or witness for virtually all offences, but such orders will only be granted where the Judge or Justice is satisfied that it is necessary for the proper administration of justice.

In determining whether or not the Crown will request publication bans under s. 486(4.1), the Crown Attorney should assess thoroughly all the factors enumerated in s. 486(4.7). Only after such an analysis is it appropriate for the Crown Attorney to make an application pursuant to s. 486(4.3). It is recommended the Crown Attorney should personally interview the complainant and/or witness(s) and canvass the applicability of the 8 factors listed in s. 486(4.7). Where the Crown Attorney is satisfied such an application is necessary for the proper administration of justice, the Crown Attorney should initiate the application in compliance with s. 486(4.4), (4.6), (4.7), and (4.8).

Where the Crown Attorney is satisfied an application should not be made, a s. 486(4.3) application may still nonetheless be made by a victim or witness. In the event of same, the Crown Attorney should consult with and advise the Chief Crown Attorney of the decision not to seek a publication ban at which time the Chief Crown Attorney will review the decision of the Crown Attorney and determine whether or not it is an appropriate position for the Crown to take in the circumstances. This process is not intended to interfere with the discretion of the Crown Attorney but to ensure all the relevant factors have been thoroughly considered by the Public Prosecution Service

and to ensure uniformity throughout the Province where an application for a publication ban is made to the Court by a victim or witness(s).

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