

Advising Sexual Assault Complainants on Varying or Revoking Publication Bans in Criminal Trials

Janet Dickie, Chantal Paquette,
and Morrell Andrews

March 12, 2025



The Perspective of a Victim

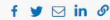
Morrell Andrews

She wanted to tell you about her sex assault. The court won't let her

She never asked for a publication ban on her own name. "I wanted my words to be public. I wanted my words to help make change."



By **Alyshah Hasham** Courts Reporter
▲ Fri., April 16, 2021 ⌚ 7 min. read



She wanted to tell you about her sex assault. The court has finally let her

Morrell Andrews found herself the subject of a publication ban she didn't want and didn't need — "I am the victim, I don't need protection," she says.



By **Alyshah Hasham** Courts Reporter
▲ Fri., May 14, 2021 ⌚ 4 min. read



READ THE CONVERSATION



My Voice, My Choice

No longer silent, more victims of sexual violence fight publication bans imposed in their names

When abusers go to trial, survivors who want to tell people what happened are often thwarted by court orders that are costly and time-consuming to undo. These women want to change that

ZOSIA BIELSKI > AND MOLLY HAYES >

PUBLISHED JUNE 5, 2023

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This article was published more than 6 months ago. Some information may no longer be current.



Carrie Low, Jade Neilson, Brandy Mullen, Kelly Favro and Morrell Andrews are members of My Voice, My Choice, a group pressing for legislation allowing sexual-assault survivors like themselves to opt in or out of court publication bans on their identities.

JESSICA DEEKS/THE GLOBE AND MAIL

An initiative created by victim-complainants for victim-complainants, to demand amendments to how publication bans were being used

Active from 2022 to 2023

WATERLOO REGION

Sexual assault victim fined in Kitchener court for breaking order protecting her identity

'A great injustice has been done to a victim,' sexual assault support centre says

By Gordon Paul Record Reporter

 Thursday, March 18, 2021 | ⌚ 2 min to read



KITCHENER — A sexual assault victim pleaded guilty on Wednesday to breaking a publication ban protecting her identity.

The Waterloo Region woman got a transcript of the judge's reasons for finding the man guilty of sexual assault and sent it to friends and family, described in court by

WHY WE CHANGED THE LAW

Problems Pre-2023

- No requirement for the victim-complainant to consent to having a (potentially permanent) publication ban on their identity
- No obligation for Crowns or the Court to inform a victim-complainant they have a publication ban in place
- No awareness about how to have an unwanted publication ban removed or if it was possible
- No consistency in the legal system about how the law was applied
- Allowed offenders and accused to argue why the victim-complainant should be permanently silenced

Our Goals


- Allow victim-complainants to attribute their own experience of sexual offences without being criminalized
- Grant victim-complainants an informed choice in the application of a 486.4 publication ban
- Simplify the process to lift a publication ban at any time before, during, or after court proceedings without the need to hire a lawyer
- Produce comprehensive, accessible, multi-lingual, and public information about 486.4 publication bans (on government websites)


S-12 44th Parliament, 1st session
Monday, November 22, 2021, to Monday, January 6, 2025

An Act to amend the Criminal Code, the Sex Offender
Information Registration Act and the International Transfer
of Offenders Act

 **Bill type**
Senate Government Bill

 **Sponsor**
[Sen. Marc Gold](#)

 [Text of the bill](#)






 **This bill received royal assent on Thursday, October 26, 2023**
Statutes of Canada 2023, c. 28

[Debates of the Senate](#)

Progress

Details

About

Senate			▼
	First reading	Completed on Wednesday, April 26, 2023	▼
	Second reading	Completed on Tuesday, May 30, 2023	▼
	Consideration in committee	Completed on Tuesday, June 20, 2023	▼
	Report stage	Completed on Wednesday, June 21, 2023	▼
	Third reading	Completed on Thursday, June 22, 2023	▼

House of Commons			▼
	First reading	Completed on Tuesday, September 19, 2023	▼
	Second reading	Completed on Thursday, October 5, 2023	▼
	Consideration in committee	Completed on Monday, October 23, 2023	▼
	Report stage	Completed on Wednesday, October 25, 2023	▼
	Third reading	Completed on Wednesday, October 25, 2023	▼

BILL S-12

R. v M.E. (ONCJ 2024)

[5] In the past, applications such as these were burdened by legal uncertainty and onerous procedural complications. Section 486.51 of the *Criminal Code* has removed these burdens. This provision, which became law on October 26, 2023, has clarified this area of criminal procedure and streamlined the application process for victims of crime. It expressly addresses the following areas of prior uncertainty:

- (1) Notice to the accused person is not required, nor does the accused person have standing in relation to the application: see ss. 486.51(5) & 486.51(6).
- (2) The application may be considered in chambers: see s. 486.51(2).

[6] Further, it is implicit in the provision that a court retains jurisdiction to consider a s. 486.51 application even after the criminal proceedings have ended. This is a relevant consideration for a statutory court like the Ontario Court of Justice. Allowing these applications to be brought in the Ontario Court following a completed matter is consistent with the legislation's overall intention to provide efficient access to justice for individuals who make an informed decision to no longer be shielded by a publication ban that would otherwise exist in perpetuity. It is also consistent with the inherent jurisdiction of all courts to control their own process: see *Canada Broadcasting Corp. v Manitoba*, 2021 SCC 33, at paras. 36-40; *Adams*, *supra*.

R. v M.E. (ONCJ 2024)

[7] On the present application, the facts involve some victims seeking revocation but not others. I have considered whether granting this application impacts on the privacy interests of these other individuals: s. 486.51(2)-(5). I have determined that it does not. My order will expressly address this concern with the following language:

Publication bans made in this matter pursuant to [section 486.4](#) of the *Criminal Code* as related to Kaylyn Knab and Reyva Verma are revoked. All other s. 486.4 publication bans related to information #1211 998 22 12100508 remain in force.

[8] Finally, while the provision requires the prosecutor to bring the motion, and while the Crown has indicated their consent to the application being granted in this case, I do not consider Crown consent as a necessary precondition for revocation, for reasons previously stated in *R. v. Evans*, [2020] O.J. No. 4228, at paras. 22-27.

R. v M.E. (ONCJ 2024)

[9] Section 486.51 seeks to support victims who may actively choose to speak about their experiences. Compelling state counsel to bring the application at their behest furthers this valid legislative objective. What is not required by the provision, however, is state agreement with an individual's decision. In this way, the provision promotes the agency and independence of victims of crime in determining their own path forward. As Arif Virani, the Minister of Justice, said in the House of Commons on September 20, 2023, during second reading of this legislation:

Bill S-12 also includes important and useful reforms of publication ban provisions. **These reforms aim to empower victims of crime by ensuring that their wishes are respected when it comes to issuing, lifting or changing publication bans**, and that their right to information about their case is fully upheld.

...

When someone has the courage to reopen an immensely painful chapter in their life in order to lift a publication ban, I firmly believe our justice system needs to make it easier for them to heal and not retraumatize them. That is critical.
[emphasis added][1]

Overview of section 486.51

Janet Dickie, Crown Counsel

- Role of Crown Counsel
- Overview of publication bans
- Section 486.51 application to vary or revoke a section 486.4 or 486.5 publication ban
- When a victim or witness asks the Crown to file the application

Important to note

This presentation is strictly for training purposes. It is not legal advice, and it should not be used in any way as legal advice.



Role of Crown Counsel

Quick overview

Prosecutorial Independence

BC Prosecution Service policy Guiding Principles ([GUI 1](#)) contains a full discussion of Crown Counsel's role and prosecutorial independence.

See also BC Prosecution Service Information Sheets:

- [Role of the BC Prosecution Service](#)
- [Role of Crown Counsel](#)
- [Independence in Prosecutions](#)

Crown Counsel cannot give victims or witnesses legal advice

For example, when a victim or witness contacts Crown Counsel seeking to vary or revoke a publication ban, we should encourage them to seek independent legal advice.

Publication Bans

Overview of the different
types of publication bans
and why they exist



Many different types of pub bans

Temporary publication bans regarding evidence and submissions in the *Criminal Code* include:

- section 517 (bail hearing, on application)
- section 538 (preliminary inquiry, on application)
- section 648 (proceedings on *voir dire* in a jury trial, automatic)

Publication bans to protect victims & witnesses in the *Criminal Code* are:

- section 486.4 & 486.5

Different types of bans, cont.

Common law publication bans can be also made

- both provincial and supreme court judges have jurisdiction to order a common law publication ban
- either temporary or enduring

486.4 & 486.5: enduring orders

- 486.4 and 486.5 publication bans remain in effect unless varied or removed by a court having jurisdiction to do so
- they survive the death of the witness or complainant

R v K (V) (1991), 4 CR (4th) 338 (BCCA); *R v Canadian Broadcasting Corp*, [1998] NWTR.67 (NWTSC), aff'd 1998 CanLII 6998 (NWTCA)

486.4 publication ban

- Mandatory order, on application for:
 - any victim on enumerated sexual, human trafficking and sex trade offences, regardless of the victim's age
 - any witnesses (non-victims) who are under 18 on enumerated sexual, human trafficking and sex trade offences
 - victims under 18, on any type of offence

(Note: the automatic publication ban for child abuse material offences, section 486.4(3), is of no force or effect in BC: *R v Coban*, 2022 BCSC 14)

486.5 publication ban

Discretionary order, on written application to a judge (not JP) for:

- a publication ban for a victim or witness not provided for under section 486.4
- permit a judge to order a publication ban for:
 - adult victim on an offence not enumerated in section 486.4
 - under-18 witness on any offence not enumerated in section 486.4
 - adult witness on any offence

What is banned?

Section 486.4 and 486.5 orders, when made, direct everyone that **"any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way"**.

"Transmitted in any way" has a very broad interpretation...

Why have publication bans?

- sections 486.4 and 486.4 are part of a suite of “testimonial accommodations”: sections 486 – 486.7
- testimonial accommodations are intended to encourage participation in the criminal justice process, which will also promote reporting of offences

Why have pub bans, cont.

- most victims on sexual offences want a publication ban for different reasons, such as:
 - reduce the risk of public discussion – re-traumatizing
 - victim-blaming & vilification (online and in-person)
 - some victims cannot have family, or a foreign state, learn about the offence for fear of retribution
- however, as has been discussed, some victims and witnesses do not want a ban

BC Prosecution Service policy

Several BC Prosecution Service policies guide Crown Counsel to consider, at the earliest stages of a prosecution, whether to apply for a publication ban. For example, these policies provide guidance on this issue:

- [Child Victims and Witnesses \(CHI 1\)](#)
- [Sexual Assaults - Adult Victims \(SEX 1\)](#)
- [Victims of Crime \(VIC 1\)](#)
- [Vulnerable Victims and Witnesses \(VUL 1\)](#)

Section 486.51

Application to vary or revoke a
486.4 or 486.5 publication ban



486.51: background

The SCC said a court which has made an enduring order can vary or revoke it: *R v Adams*, [1995] 4 SCR 707.

New section 486.51 – enacted in October 2023, provides a statutory process to vary or revoke section 486.4 and 486.5 publication bans.

(*R v Adams* would continue to apply to other enduring orders, such as an enduring common law publication ban, and possibly circumstances not contemplated by the statutory provision)

Court Information Sheet

BC Court Services Branch's Information Sheet:

- [Application to vary or revoke publication ban under section 486.51 - information sheet](#)

Court Practice Directives & Form

BC Provincial Court (BCPC) criminal practice direction
[CRIM 19](#)

BC Supreme Court (BCSC) criminal practice direction
[CPD-7](#)

The same [application form](#) (PCR318) is used in both court levels

BC Prosecution Service information sheet

The BC Prosecution Service has also published an Information Sheet: [Publication Bans](#). This can be provided to members of the public.

who can make the application?

- ❑ victim/witness who is the subject of the publication ban (486.51(2))
- ❑ Crown Counsel, if the victim/witness requests them to do so (486.51(1))
- ❑ a person, other than Crown Counsel, who is acting on behalf of the victim/witness (486.51(2))

streamlined process

Section 486.51 seems to contemplate applications to proceed by way of desk order, since the provision says a hearing can be directed by the court only:

- **when another person's privacy interests, protected by the same or any other ban, will be impacted by the variation or revocation of the ban at issue**

(Section 486.51(3))

486.51(2): another's privacy interest

486.51(2) reads, in part:

... the court ... shall, without holding a hearing, vary or revoke the order, unless the court is of the opinion that to do so may affect the privacy interests of any person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person.

(emphasis added)

486.51(2)–(3): privacy issues

- the application should identify whether there are:
 - other victims or witnesses protected by the same order
 - any other publication bans in the same or related proceedings that protect the privacy of the application victim/witness or anyone else
 - whether there are any duplicate 486.4 or 486.5 orders made in provincial and supreme courts when the accused is tried in supreme court (BCSC)

application needs identify all relevant orders & privacy interests

- all publication bans sought to be varied or revoked should be listed on the same application
- anyone protected by the same or a related ban has to be listed on the application

which court level?

- the court that made the order has jurisdiction, regardless of whether the matter has proceeded to another level (486.51(2))
- most 486.4 and 486.5 orders are made in provincial court (BCPC), because that is where almost every criminal charge is commenced

which court level? (cont.)

- however, both the BCPC and BCSC Practice Directions say that the application should be made in the BCSC whenever trial or pre-trial proceedings have taken place, or are ongoing, in the BCSC and a judge may direct that the application be filed in the BCSC
- in such cases, the BCSC will most likely have the current file knowledge to assess whether other relevant publication bans exist (e.g., section 468 pub ban) and whether another victim or witness' privacy interests may be impacted

486.51(4) hearing

486.51(4) says:

In order to determine whether the order should be varied, the court shall take into account whether it is possible to do so in a manner that protects the privacy interests of any other person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person.

(emphasis added)

Accused does not have standing

- section 486.51(5) says that notice of the application does not need to be given to the accused
- section 486.51(6) says, "*The accused shall not be permitted to make submissions in relation to the application*"
- but the accused must be informed by the Crown of the variation or revocation of the order, if it occurs (486.51(7))

486.51 application not necessary to obtain transcripts

- if a victim or witness who is the subject of a publication ban wants a transcription of the evidence, rulings, or decision, they do not need to ask to remove the publication ban
- file an application to a judge to request a redacted transcription
- contact Court Services Branch if you have any questions

When the Crown is asked to file the application

Prosecutorial
Independence



When Crown is asked to file the application

- Crown Counsel are required to file the application if the victim/witness requests Crown Counsel to do so (s. 486.51(1)) (but not if someone else asks)
- Crown Counsel can facilitate the process by filing the written application
- however, Crown Counsel cannot provide legal advice to or representation for the victim or witness
- Crown Counsel should suggest that the victim or witness obtain independent legal advice ([Victims of Crime \(VIC 1\)](#))

Crown's independent role

- Crown Counsel retain prosecutorial independence throughout, and we independently assess the Crown's position on the application
- Crown Counsel should consult with their Administrative Crown Counsel before opposing an application to vary or revoke ([Victims of Crime \(VIC 1\)](#))
- however, Crown Counsel are not bound by the victim or witness' position on whether there should be a publication ban or whether it should later be varied or revoked

Crown's independent role, cont.

- the Crown may advise the court that it does not agree with the application and request a hearing
- this is regardless of whether the Crown files the application for the victim/witness (at their request) or we are responding to their application
- the courts are relying on the victim/witness seeking to vary or revoke the order, as well as the Crown, to inform them of other's privacy interests at stake and all relevant orders

ILA for Complainant's

- Initial advice
- Complainant's under 18 years old
- Safety planning
- Who pays for this?

Order Restricting Publication – Sexual Offences

- **486.4 (1)** Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of...

Limitation

- **486.4 (4)** An order made under this section does not apply in either of the following circumstances:

...

(b) the disclosure of information is made by a person who is the subject of the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by an order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that other person.

Limitation – Victim or Witness

- **486.4 (5)** An order made under this section does not apply in respect of the disclosure of information by the victim or witness when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness.

Prosecution – Limitation

- **486.6 (1.1)** A prosecutor shall not commence or continue a prosecution against a person who is the subject of the order unless, in the opinion of the prosecutor,
 - (a) the person knowingly failed to comply with the order;
 - (b) the privacy interests of another person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person have been compromised; and
 - (c) a warning to the individual is not appropriate.

Advice to the Accused

- No say
- What the ban is meant for
- Can apply for own publication ban should the test be met
- Not an opportunity to try this in the public forums/media

QUESTIONS AND ANSWERS



**THANK
YOU!**