



APPENDIX A: NON-PUBLICATION ORDERS

NUNAVUT COURT OF JUSTICE COURT RECORDS ACCESS POLICY

A person accessing court records assumes a legal responsibility to ensure that those records are not used so as to breach any non-publication orders that may apply to the information contained therein.

For the purpose of non-publication orders, “publish” means to print or reproduce in any document or to broadcast or transmit in any way. This includes, but is not limited to, traditional print and broadcast media as well as internet-based media, blogs, Twitter, and other instant public communications.

This appendix describes the various types of non-publication orders that the court may impose under the *Criminal Code*, the *Youth Criminal Justice Act* and the *Extradition Act*. Some non-publication orders will be noted on the charging document (either an Information or Indictment). Other types of non-publication orders always apply, regardless of whether the court explicitly imposes them.

The person accessing court records is responsible for determining which, if any, non-publication orders apply to the information that they receive.

I. AUTOMATIC NON-PUBLICATION ORDERS UNDER THE *CRIMINAL CODE*

Section 276.3(1) *Evidence of sexual conduct of complainant*

Restricts publication of information about a hearing that determines the admissibility of evidence about the sexual conduct of a complainant, other than the conduct which is the subject matter of the charge. These hearings are held without the jury and the public. The non-publication order is automatic once an application under s. 276.1 of the *Criminal Code* is made.

Applies indefinitely, unless a Justice determines that decision reached or evidence reviewed may be published, broadcasted or transmitted.

Section 278.9(1) *Hearings to obtain personal information records*

Restricts publication of information relating to applications made by an accused charged with certain sexual offences when the accused applies for production of records in the possession of third parties relating to the complainant. The non-publication order applies automatically when an accused makes an application for production under s. 278.3 or “in camera” hearings are held under s. 278.4 and 278.6. Applies indefinitely, except in certain circumstances where a judge may order publication.

Section 487.2 *Search warrants*

Restricts publication of information relating to search warrants.

Applies unless and until a charge has been laid in respect of any offence in relation to which the warrant was issued or party subject to the search consents.

Section 542(2) *Admissions or confessions at a preliminary inquiry*

Restricts the publication of admissions and confessions tendered at a preliminary inquiry.

Applies until the accused is discharged, or, if ordered to stand trial, until that trial has ended.

Section 648(1) *Trial information in absence of jury*

Restricts publication of any part of a trial heard in the absence of a jury unless the jury has been sequestered. Applies to certain pre-trial motions prior to the formation of the jury (empanelment).

Applies until the jury begins deliberations, except the judge can extend the non-publication order to include deliberations.

Section 672.51(7) *Mentally disordered accused & disposition hearings*

Section 672.51(11)

Restricts the publication of information relating to disposition hearings, which are held when an accused is found to be not criminally responsible or unfit to stand trial due to a mental disorder.

Applies indefinitely, unless otherwise ordered.

Section 649 ***Disclosure of jury proceedings***

Restricts jurors from discussing any information relating to the proceedings while the jury was outside the courtroom.

Applies indefinitely.

II. AUTOMATIC NON-PUBLICATION ORDERS UNDER THE YOUTH CRIMINAL JUSTICE ACT (“YCJA”)

Section 110(1) ***Identity of offender***

Restricts the publication of information that would identify a young person as defined under the YCJA. The non-publication order does not apply in certain circumstances, such as where the young person has received an adult sentence.

Applies indefinitely, unless the information is published by that young person under s. 110(3) or 110(6) of the YCJA. The order may also be temporarily suspended when that young person is at large under s.110(4).

Section 111(1) ***Identity of Witness or Victim***

Restricts the publication of information that may identify a child or young person as defined by the YCJA if disclosure of that information would identify them as being a victim or witness in connection with an offence alleged to have been committed by a young person.

Applies indefinitely, unless the information is published by that young person or their parents under s. 111(2) or 111(3) of the YCJA.

III. MANDATORY NON-PUBLICATION ORDERS ON APPLICATION UNDER THE CRIMINAL CODE

Section 517(1) ***Judicial interim release hearings at trial (bail)***

Restricts publication of the evidence, information and representations as well as the reasons of the judge relating to bail otherwise it is discretionary.

Applies until the preliminary inquiry is held and the accused is discharged. If the accused is committed to trial, the non-publication order expires at the end of the trial.

Section 539(1) *Preliminary inquiries*

Restricts the publication of evidence called at a preliminary inquiry. The non-publication order is mandatory if the application is made by the accused, otherwise it is discretionary.

Applies until the accused is discharged or, where there is an order that the accused stand trial, until that trial has ended.

Section 486.4 *Sexual assault and extortion offences*

Restricts publication of information that would identify a complainant or witness. Applies to several offences, primarily of a sexual nature.

Applies until it is varied or discharged. Breach of this non-publication order is an offence punishable by summary conviction pursuant to s. 486.6.

IV. DISCRETIONARY NON-PUBLICATION ORDERS UNDER THE *CRIMINAL CODE*

Section 486(1) *General provisions for exclusion orders*

Section 486(2)

General provision allowing a judge to exclude the public from the courtroom.

May apply indefinitely, but you should consult the order's precise terms.

Section 486.5 *Protection of victims and witnesses*

General provision allowing for the protection of witnesses or victims. Applies to the contents of the application for the order and information that might identify the victim, witness or justice system participant.

May apply indefinitely, but you should consult the order's precise terms.

Section 487.3 ***Information used to obtain search warrant or production order***

Restricts disclosure of any information relating to a search warrant, production order, or authorization to enter a dwelling house. Generally, these orders apply to information relating to the issuance of these warrants, orders, or authorizations, but additional terms may apply.

Applies for a period at the discretion of the judge.

Section 537(1)(h) ***General provision for exclusion from preliminary inquiries***

Restricts access to the courtroom for preliminary inquiries.

Applies for a period at the discretion of the judge.

Section 631(3.1) ***Identification of jurors***

Section 631(6)

Restricts publication of the identity of, or any information that might identify jurors.

Applies indefinitely, unless otherwise ordered by the court.

V. DISCRETIONARY NON-PUBLICATION ORDERS UNDER THE *EXTRADITION ACT*

Section 26 ***Evidence on extradition proceedings***

Restricts the publication of any evidence given at a judicial interim release hearing or bail hearing under the *Extradition Act*, S.C. 1999, c. 18.

Applies until the person is discharged or, if surrendered, the trial by the extradition partner has concluded.