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LAW OF PUBLICATION BANS, PRIVATE HEARINGS AND SEALING ORDERS

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As the Internet allows information to be instantly disseminated on a global scale, new questions about the need for and effectiveness of publication bans are arising. This book is the only work that provides a comprehensive review of the relevant statutory provisions and common law principles relating to publication bans in Canada. This resource also covers restrictions on access to courts and court information by the public and media.

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This release features updates to the case law and commentary in Chapters 1 (Open Courts and Freedom of Expression), 2 (Common Law Bans and Access Restrictions), 3 (Civil Courts), 4 (Crime), 7 (Statutory Publication Bans, Access Restrictions), 8 (Practice and Procedure), and 9 (Television and Other Electronic Access).

Highlights

- **Open Courts and Freedom of Expression – Openness – Public Interest in Open Courts; Freedom of Expression – Public Interest in Freedom of Expression; Media Role in Freedom of Expression; Limits on Openness – Private Hearings; Common Law Bans and Access Restrictions – Informer Privilege – Second Stage – Minimal Intrusion on Court Openness** – The Supreme Court stated that court openness ensures the accountability of the judiciary, and in doing so it supports an administration of justice that is impartial, fair, and in accordance with the rule of law. The Supreme Court described a procedure that would result in disclosure of at least a certain amount of information to the public, including news media who might wish to pursue a review of the issued confidentiality orders: *Societe Radio-Canada c. Personne designee* 2024 CarswellQue 5475 (S.C.C.).
- **Common Law Bans and Access Restrictions – Administration of Justice – Holdback Information** – Confidentiality was sought by the Crown and defence over certain exhibits tendered at the sentencing of a person whose actions were treated as terrorism. A sealing order and publication ban were sought to protect public safety. Specifically, it was argued that a note found after the arrest would result in the glorification of the attack and encourage copycat attacks. The judge declined the request in part because the Crown has not shown how the publication of these items would cause further harm to public safety: *R. v. Sert*, 2024 CarswellOnt 8194 (Ont. S.C.J.).
- **Crime – Criminal Code – Trials – Publication Bans – Complainant’s Sexual History** – The Supreme Court of Canada concluded that the publication ban at section 278.95 of the *Criminal Code* does not extend to appellate proceedings, including proceedings in the Supreme Court of Canada itself. However courts have implied jurisdiction to control their processes and records. Pursuant to this implied jurisdiction, a court has discretion to make orders for the conduct of a hearing, including orders that a hearing proceed in camera, and orders for the sealing of filed materials: *R. v. T.W.W.*, 2024 CarswellBC (S.C.C.).