

PRACTICE NOTE 38

NOTICE TO MEDIA RE: DISCRETIONARY PUBLICATION BAN, SEALING ORDER, RESTRICTED ACCESS ORDER, OR CONFIDENTIALITY ORDER

In *Dagenais v CBC*, [1994] 3 S.C.R. 835 the Supreme Court of Canada held that when a party seeks a discretionary publication ban, the media are entitled to reasonable notice of the application/motion and the opportunity to make representations before a decision on whether to issue a ban is made. In addition, parties occasionally request that the court issue a sealing order, restricted access order or confidentiality order in relation to all or portions of a court file.

For uniformity of practice, the following procedure is to be followed when a party makes an application/motion seeking a discretionary publication ban, sealing order, restricted access order or confidentiality order:

1. Any media entity who wishes to receive notice of the application/motion is required to advise the trial coordinator of the court, on an annual basis, of their contact information. Notice shall be provided by the court via email unless another method is specifically requested by the media entity and approved by the court.
2. The party seeking the discretionary publication ban, sealing order, restricted access order or confidentiality order shall contact the trial coordinator of the court, who will advise the party of the list of media entities that have requested notice.
3. All media entities that have provided their contact information to the court in advance will be given notice of the party's application/motion for a discretionary publication ban, sealing order, restricted access order or confidentiality order.
4. Each media entity will be given the same notice of the application/motion as prescribed to be given to a respondent (opposing party or parties) under the *Rules of Civil Procedure*. The notice from the court will include:
 - a) details of the order sought;
 - b) the time and place of the hearing;
 - c) the text of any interim orders which may have been granted; and
 - d) contact information of legal counsel for the party seeking the order. If the party seeking the order is not represented by legal counsel, the notice will provide the contact information of the party.
5. The presiding judge has discretion to determine the issue of standing of any media entity requesting to make representations on the application/motion.

The court may dispense with compliance with this practice note in appropriate circumstances, including in recognition of the settlement privilege exception to the open court principle, as set out in *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37.

Practice Note originally issued by Jacqueline R. Matheson (Chief Justice – Trial Division) September 22, 2005.
Amended by Tracey L. Clements (Chief Justice – Supreme Court of Prince Edward Island) July 27, 2021, **updated April 1, 2022.**