

INTERNATIONAL ASSOCIATION OF JUDGES  
CONFERENCE IN KAZAKHSTAN, SEPTEMBER 2019

**THIRD STUDY COMMISSION QUESTIONNAIRE –  
SUBMISSION FROM  
CANADA**

*“The Media in Criminal Cases: Protecting the Integrity of the Proceedings and Communications  
with the Media”*



## SUPERIOR COURT OF JUSTICE

**To:** The Honourable Justice Conlan  
**From:** Jessica Bishara, Judicial Law Clerk  
**RE:** Third Study Commission Questionnaire 2019 for Kazakhstan - *ANSWERS*

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**1. Are there regulations about how the media work inside the courthouse and the courtroom? If yes, please explain.**

There is a set of rules in the “Consolidated Provincial Practice Direction”. This Practice Direction applies to all Superior Court of Justice courthouses in the province. The Practice Direction sets out many rules for various issues relating to the court, including rules that apply to the media. The full Practice Direction is available publicly online [here](#).

Similarly, Quebec has rules of practice for its Superior Courts. There are the “Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division”, which is available [here](#). There are also the “Rules of Practice of the Superior Court of Québec in Civil Matters” is available [here](#).

Courts may also make posters or notices summarizing certain rules from the Practice Direction, and post them around the courthouse for convenience.

In addition to the main, province-wide Practice Direction, there are also region-specific ones. These are similarly available publicly online and can be accessed [here](#).

Aside from these practice directions, there are a few statutes that govern media behaviour in courts. For example, several statutes impose “publication bans” for certain cases, which restrict or eliminate the media’s ability to publish things about those cases.

Here are a few examples of statutes that provide for publication bans:

- *Criminal Code of Canada*
- *Youth Criminal Justice Act*
- *Child and Family Services Act*

Finally, judges have authority under common law to impose publication bans in certain cases.



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2. **Are the media permitted to transmit directly from the courtroom, or make a record of the proceedings? If no, how does the court prevent such transmission (for example by using Twitter) or record taking? If yes, do you think that direct transmission from a criminal courtroom can be damaging for the case? Please explain in what way, and which situations you find the most at risk?**

Each judge has the discretion to decide whether the media can transmit directly from the courtroom. As an example, some judges let media representatives Tweet from the courtroom.

Of course, the media cannot transmit information where to do so would breach a publication ban. Anyone transmitting information from the courtroom is responsible for identifying and complying with any publication bans or restrictions.

Per the Practice Direction, the media and journalists are allowed to use electronic devices to make an audio recording of a proceeding, but only for the purpose of note-taking. The audio recordings cannot be sent from the electronic device to any other location.

There are similar rules in Quebec. Per the *Rules of practice of the Quebec Superior Court in Penal Matters*, s. 8, the media may record proceedings on audiotape, including any decision rendered, unless the judge orders otherwise. Similarly to Ontario, broadcasting the recording would be prohibited.

There are a few ways a court can prevent unauthorized transmission and ensure compliance.

Firstly, offenders can be ordered to turn off their device, leave their device outside of the courtroom, or exit the courtroom altogether. A judge can make any other appropriate order. Court staff and police officers are available to assist with enforcement, if needed. Secondly, and more rarely, an offender can be found in contempt of court.

Direct transmission from a criminal courtroom can be especially damaging if it takes place during a time in the trial when the jury is not present. The transmission could later be seen by a jury, and this could compromise the entire trial.

3. **May the media talk to the judge(s), the jury members, the prosecutor, the defence lawyer, the accused, the witness etc. before, during and/or after the hearing? If yes, are any conditions attached to this?**

The media is free to speak to the prosecutor, the defence lawyer, the accused, or any witness, assuming of course that the person is willing to talk.



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Judges generally do not speak directly to the media or answer questions about cases.

The media cannot talk to jurors – the *Criminal Code* prohibits jurors from disclosing information about the jury's deliberations. This means that it is a criminal offence for a juror to reveal the content of the jury's secret discussions.

**4. Are there any restrictions on what the media may report before/during the case, and/or after the verdict? If yes, please explain. Do these restrictions apply in every case?**

The media has a constitutional right to publish information about cases.

However, there are exceptions. There are sometimes restrictions on what the media can report about a case.

Firstly, as mentioned, a judge has authority under the common law to order a publication ban. A judge would prohibit the media from publishing information about a case if it is necessary to prevent a serious risk to the proper administration of justice and where reasonably alternative measures will not prevent the risk. A judge will decide this on a case-by-case basis.

Secondly, there are a few statutes that provide for publication bans. Here are a few examples:

- The media cannot publish information that identifies a child involved in a child protection case (per the *Child and Family Services Act*).
- It is illegal to publish the name of a young person (under 18) involved in a crime under the *Youth Criminal Justice Act*.
- There are certain temporary publication bans under the *Criminal Code* that prohibit publication until a trial has ended or the accused is discharged.

Sometimes, during a trial, a jury is excused from the courtroom while the judge and the parties discuss an issue. The jury is not meant to hear these discussions. However, the media and other members of the public would often still be allowed to remain in the courtroom and listen to the discussions. To ensure that the media does not turn around and publish this information for the jury to see, the *Criminal Code* prohibits the publication of information that is discussed in a trial in the absence of the jury.



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5. **Have you ever experienced a situation where a party in a case has been influenced by the media in a manner that was damaging for the case? For example a juror/jury who wants to find the defendant guilty due to a media report that suggests the accused is guilty, or a witness who says, as a result of reading about the case in the media, something quite different when giving evidence to that which they said during the investigation? If yes, how did you handle the problem?**

*[Does Your Honour have an example in mind that you personally experienced? If not, I am happy to ask around or search for examples.]*

6. **What can a judge do to ensure that the members of the court or the jury remain unbiased and are not influenced by the media? Is there anything you view as being particularly important, or essential?**

A judge can give a jury instructions about the importance of keeping an open mind until all the evidence is presented and the trial is finished. There can also be a jury instruction about avoiding the influence of the media.

During particularly sensitive times in a trial, a jury may be sequestered. The *Criminal Code* provides for the sequestration of juries during their deliberation to ensure there is no outside influence.

7. **Do the media, during the hearing, have special privileges compared to others in court? If yes, which do you find the most relevant or significant?**

Per the province-wide Practice Directory, media representatives are allowed to use electronic devices in silent mode and in a discreet and unobtrusive manner in court, unless a judge orders otherwise.

This is a special privilege that is allowed to the media – as well as members of the legal community, such as lawyers – that is not generally allowed to the public. The public is expected to totally turn off phones and other electronic devices.

In Quebec, the media is allowed to record proceedings on audiotape. This is a special privilege that is not allowed to the general public.



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- 8. Do the courts communicate the content of a verdict to the media and the public and, if yes, in what way? Do you have, for example, a court spokesman or a media judge or do you give press releases or have some other form of communication with the media? If yes, which do you find the most relevant or effective?**

Courts do communicate the content of verdicts to the public.

Once a judge has finished writing their decision for a case, the court sends it to a website called “CanLII”. This is a database that is freely available to the public, including the media. It contains cases from across Canada and is searchable based on key words, location, and so on.

The Ontario Superior Court of Justice’s website also provides access to these decisions. Likewise, the Superior Court of Quebec’s website provides access to decisions (link [here](#)).

Courts are also increasingly using Twitter to communicate with the public (including the media). These Twitter accounts allow court officials to speak with a public in a way that is easily digestible for the reader.

- 9. Do the courts cooperate in any other way with the media and, if yes, in what way? If yes, which do you find the most relevant or effective?**

Every so often, a judge may want to communicate with the media about a special issue.

To give a recent example, a regional senior judge from Ontario used his courtroom to hold a news conference a few months ago. The court invited members of the media to come to the courtroom, and cameras were allowed. The judge wanted this opportunity to talk about government funding issues that were causing serious issues for the courts.



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### **Conduct in the Courtroom**

**Visitors are welcome  
in the courtrooms of Ontario.**

- **Silence is required; therefore all cell phones and pagers must be turned off.**
- **Use of cameras, recording devices or photo phones is not permitted.**
- **You may not eat, drink, chew gum, or read newspapers in the courtroom.**
- **Please remove sunglasses and all hats other than religious head coverings. Appropriate attire is required.**
- **When the judge enters or leaves the courtroom, please stand.**
- **Do not make noise, enter or leave the courtroom while the judge is speaking.**

***Thank you for your cooperation.***