



***The Supreme Court rules that courts of appeal have the authority to lift their own publication bans after cases are closed.***

The Supreme Court of Canada was asked if the Manitoba Court of Appeal could lift a publication ban it had previously issued in the case of Mr. Stanley Frank Ostrowski. The question arose after the Canadian Broadcasting Corporation (CBC) had asked to see a document covered by the ban.

Mr. Ostrowski was convicted of first-degree murder in 1987 and sentenced to life in prison with no chance of parole for 25 years. In 2009, Mr. Ostrowski asked Manitoba's Minister of Justice to review his conviction. Later that year, he was released from prison pending the outcome of that review. By then, he had served 23 years of his sentence.

In 2014, the Minister of Justice asked the Court of Appeal to decide if there had been a miscarriage of justice at trial. During its proceedings, the Court of Appeal ordered a publication ban on a sworn statement called an affidavit, which Mr. Ostrowski wanted to submit as evidence. While the appeal court did not accept the affidavit into evidence, it ordered the publication ban to remain in effect indefinitely.

In 2018, the appeal court found that a miscarriage of justice had indeed occurred at Mr. Ostrowski's 1987 trial. It said he did not have access to important information that could have helped his defence at the time. As a result, the appeal court set aside Mr. Ostrowski's conviction.

In May 2019, the CBC asked the appeal court to lift the publication ban, so that it could read the affidavit. The appeal court refused, on the basis that it had already given its judgment in the case, so it no longer had authority to reconsider the publication ban.

**After deciding a case, a court of appeal may reconsider a publication ban in limited circumstances**

The Supreme Court has ruled courts of appeal may consider lifting their own publication bans after the end of proceedings. Writing for the majority, Justice Kasirer explained that a court cannot rehear a case after rendering its judgment. This is called the doctrine of *functus officio*. But afterwards, the court still has the authority to control access to the court record. As a result, a court may reconsider a publication ban made during the case. As Justice Kasirer said, even after the case comes to an end, "important decisions about the openness of the court record may need to be taken".

This does not mean that a court of appeal may reconsider a publication ban at any time or for any reason. It can do so in two situations only: first, if there was a change in circumstances; or second, if someone affected by the publication ban, such as the media, was not given notice at the time of the ban.

In this case, Justice Kasirer said there were no change of circumstances. But the Court of Appeal must still decide if the CBC's request meets the second condition. He referred the case back to the appeal court to do so.

**Publication ban**

A publication ban is an order that a court makes to prevent anyone from publishing, broadcasting or transmitting information in a court file, to protect either the evidence in the case or the identity of a victim, witness or other person involved.

**Court proceedings are open and public**

As a general rule, court proceedings are open and public. This is known as the open court principle, which is protected by the constitutional right to freedom of expression. It is an essential feature of our democracy.

Given the importance of the open court principle, publication bans apply in limited circumstances only.

---

**Breakdown of the decision:** *Majority:* Justice Nicholas [Kasirer](#) allowed the appeal from the Court of Appeal's decision refusing to reconsider the publication ban. He held that the Court of Appeal did in fact have jurisdiction to reconsider the publication ban and referred the case back to that court. The appeal of the publication ban specifically was adjourned "*sine die*" (indefinitely) (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#) and [Martin](#) agreed) | *Dissenting:* Justice Rosalie [Abella](#) would have dismissed the appeals. She said the CBC failed to ask the Court of Appeal to reconsider the publication ban in a timely manner.

**More information (case # 38992):** [Decision](#) | [Case information](#)

**Lower court rulings:** [judgment](#) (Court of Appeal of Manitoba) | [appeal](#) (Court of Appeal of Manitoba)

---