



***The Supreme Court upholds a publication ban in a case setting aside a person's murder conviction.***

This appeal is about whether a publication ban in a concluded criminal case should be lifted in order to allow the media to report on a witness affidavit. It is the second time this appeal was brought before the Supreme Court of Canada.

Mr. Frank Ostrowski was convicted of first-degree murder in 1987 and sentenced to life in prison with no chance of parole for 25 years. In 2014, the federal Minister of Justice asked the Court of Appeal of Manitoba to decide if there had been a miscarriage of justice at his 1987 trial. In 2018, the Court of Appeal found that a miscarriage of justice had indeed occurred and set aside his conviction.

During his wrongful conviction proceedings before the Manitoba Court of Appeal, Mr. Ostrowski sought to enter an affidavit (a sworn statement) into evidence concerning the death of a witness involved in the proceedings. The Court of Appeal issued a publication ban over the affidavit. In its 2018 decision setting aside the Mr. Ostrowski's conviction, the Court of Appeal did not accept the affidavit into evidence, but ordered that the publication ban on its contents remain in effect.

In May 2019, the Canadian Broadcasting Corporation ("CBC") asked the Court of Appeal to lift the publication ban by way of a motion. The Court of Appeal refused, ruling that since it had already decided Mr. Ostrowski's case, it no longer had authority to reconsider the publication ban.

The CBC appealed the two decisions by the Court of Appeal to the Supreme Court of Canada: the 2018 decision ordering the publication ban, and the 2019 decision refusing to reconsider the publication ban.

The Supreme Court ruled in 2021 that the Court of Appeal did have the authority to reconsider the ban, and returned the CBC's motion to lift the publication ban for determination. The Supreme Court then adjourned the CBC's appeal of the ban itself.

The Manitoba Court of Appeal went on to dismiss the returned motion to lift the ban by unanimous decision. The Supreme Court is now considering the appeal it adjourned in 2021 regarding the 2018 decision.

As a general rule, court proceedings are open and public. This is known as the open court principle, and is protected by the right to freedom of expression guaranteed by the *Canadian Charter of Rights and Freedoms*. In light of recent [jurisprudence](#) from the Supreme Court of Canada on the issue, the CBC asked the Supreme Court to decide whether publishing the details under the ban would constitute a risk to the dignity of the people involved so serious that it justifies an exception to the open court principle.

The Supreme Court has dismissed the appeal. The judgment was delivered orally by Chief Justice Wagner on the day of the hearing, with written reasons to follow.

**The Court of Appeal did not make a mistake in issuing the publication ban or in ordering that it remain in effect.**

The Court delivered a unanimous judgment. It said there is a strong public interest in protecting the privacy of the spouse of the deceased witness and disclosure of the affidavit would reveal highly sensitive and acutely personal information that would directly engage the spouse's dignity interest. Moreover, the publication ban is necessary to prevent a serious risk to the dignity of the witness's spouse, it was not overbroad or vague and there was no reasonable alternative to its terms. Finally, the Court determined the benefit of the ban significantly outweighs its minimal negative effects on the right of free expression, and by extension, the principle of open and accessible court proceedings. The affidavit did not play a role in determining that a wrongful conviction had occurred. For these reasons, the Court upheld the publication ban.

---

**Breakdown of the decision: *Unanimous*:** The Court dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Martin](#), [Kasirer](#) and [Jamal](#) heard the appeal).

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

**Lower court rulings:** [Publication ban order](#) (Court of Appeal of Manitoba) | [Motion to set aside publication ban denied](#) (Court of Appeal of Manitoba) | [Judgment on Appeal](#) (Supreme Court of Canada) | [Remanded motion for reconsideration of publication ban dismissed](#) (Court of Appeal of Manitoba)

---