



SUPREME COURT OF CANADA

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Case in Brief: *La Presse inc. v. Quebec*

Judgment of October 6, 2023 | On appeal from the Superior Court of Quebec
Neutral citation: 2023 SCC 22

The Supreme Court confirms publication bans on matters heard before the juries were empanelled in two criminal cases.

Section 648(1) of the *Criminal Code* is an automatic ban prohibiting the publication or broadcast of information about portions of a criminal trial at which the jury is not present. At issue in this case is whether and, if so, how this automatic ban applies before the jury is empanelled (meaning constituted), given section 645(5) of the *Criminal Code*. Section 645(5) confers jurisdiction upon trial judges, since 1985, to deal with any matter that would ordinarily or necessarily be dealt with in the jury's absence before it has been empanelled. The Supreme Court of Canada heard together two appeals on this issue.

In both cases, numerous matters were dealt with before the empanelment of the jury, including requests to exclude some evidence from the trial and stop the proceedings for abuse of process, as well as a constitutional challenge. In the first case, Frédéric Silva was tried in the Superior Court of Quebec on four counts of murder and one count of attempted murder. In an unrelated case, Aydin Coban was charged in British Columbia with several offences relating to child pornography, extortion, child luring and harassment.

Certain media outlets applied for orders allowing the publication of information from the hearings on those matters. The judges in both cases dismissed their applications, concluding that s. 648(1) applies before the empanelment of the jury. Information from those hearings could therefore not be published until the juries retired for deliberations or were dismissed.

The media outlets then asked to appeal directly to the Supreme Court of Canada, relying on a case called *Dagenais*. In that case, the Supreme Court said a third party, like the media outlets, could appeal a publication ban in a criminal proceeding directly to the Court under section 40 of the *Supreme Court Act*.

The Court granted the media outlets leave to appeal; however, it ultimately dismissed their appeals.

Section 648(1) of the *Criminal Code* applies before the jury is empanelled only to matters dealt with under section 645(5).

Writing for a unanimous Court, Chief Justice Wagner ruled that the automatic publication ban in section 648(1) applies not only after the jury is empanelled, but also before it is empanelled with respect to matters dealt with under section 645(5). As the Chief Justice explained, "this conclusion follows from an understanding of the text of s. 648(1) when considered in its full context and in light of Parliament's purpose. This interpretation does not expand the coverage of the publication ban: only matters that were captured by the ban prior to the enactment of s. 645(5) continue to be captured by it today."

In Mr. Silva's case, the requests to stop the proceedings and exclude certain evidence from trial had to be heard by the trial judge. They could be heard before the jury was empanelled only by virtue of the trial judge's jurisdiction under section 645(5). It follows that they were covered by the automatic publication ban. Likewise in Mr. Coban's case, the media had applied for a declaration that section 648(1) applies only after the jury has been empanelled. Chief Justice Wagner concluded that the trial judge's dismissal of that request was consistent with the proper interpretation of section 648(1).

Court openness and trial fairness

Chief Justice Wagner noted that both the open court principle and trial fairness serve to instill public confidence in the justice system. The public can understand the work of the courts, and thus come to trust the judicial process and its outcomes, only if informed of what a judge decides and why the particular decision is made. The media play a crucial role in making this possible. The protection of fair trial interests, such as the right to an independent, impartial and representative jury, is also essential to public confidence in the administration of

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justice. Publication bans like the one imposed by s. 648(1) are limitations on court openness that protect the right of the accused to, and society's interest in, a fair trial.

Breakdown of the decision: *Unanimous*: Chief Justice [Wagner](#) dismissed the appeals (Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: In Mr. Silva's case: [Motion to lift orders prohibiting publication](#) (Superior Court of Quebec)
| In Mr. Coban's case: [Judgment on scope of s. 648\(1\) publication ban](#) (Supreme Court of British Columbia)
