On Publication Bans and Freedom of Speech

Media outlets have asked the Ontario Court of Appeal to decide that certain publication bans violate the Charter of Rights and Freedoms ("Charter"). The media has been trying to gain access to the trial of the "Toronto 17," the group of individuals arrested for allegedly plotting to bomb Parliament last year. Information surrounding the trial has ceased since the individuals utilized section 517 of the Criminal Code, which allows an accused person to automatically invoke a publication ban upon their request. Section 517 states that:

"(1) If the prosecutor or the accused intends to show cause under section 515, he or she shall so state to the justice and the justice may, and shall on application by the accused, before or at any time during the course of the proceedings under that section, make an order directing that the evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice shall not be published in any document, or broadcast or transmitted in any way before such time as
(a) if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or
(b) if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, the trial is ended."[1]

The media argues that such bans violate the freedom of expression and press guarantees in s. 2 of the Charter. Section 2 states that everyone has the right to "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."[2]

One counsel for the media, Paul Schabas, has argued that the public has a compelling interest in the details of the trial. Schabas said, "Once this case went into the courthouse in Brampton, it went under a cone of silence, a cloak of secrecy, and in spite of all (police) statements about this case…five accused were released and the public is not allowed to know why."

The Crown, conversely, has argued that bans are necessary to give the accused a fair trial. The Crown has stated that the absence of bans will be an incentive for individuals to waive their right to a fair trial in order to avoid litigation with the media over such bans.

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[1] Criminal Code, R.S.C. 1985, c. C-34, s. 517.
[2] The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 2(b).