

# **SUPREME COURT OF BRITISH COLUMBIA**

## **Court Record Access Policy**

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This policy is divided into four parts:

- Part I:** General Principles and Policies
- Part II:** Access to the Court File
- Part III:** Access to Audio Recordings of Court Proceedings
- Part IV:** Procedures for Access Applications

## **PART I: GENERAL PRINCIPLES AND POLICIES**

### **Introduction**

British Columbia's court system is based on fundamental principles of openness and accessibility. These principles reflect society's interest in providing for public scrutiny of its key institutions, including the court, so that there can be confidence that these institutions are functioning as they should.

Public access to the courts is achieved mainly through the public's ability to attend and view and listen to court proceedings. Members of the public may attend any court proceedings, subject to some limited exceptions where a statutory rule or safety or other significant concerns require a closed courtroom.

Access to the court's record involves additional considerations. This is partly because the court record (which is described below) consists of many different types of documents and other items, created at different stages of the proceedings by different people for different purposes. Statutory restrictions and constitutional and other rights and interests of parties to the proceedings or third parties may require some limitations on public access to certain parts of the court record.

### **Purpose of this Policy**

The purpose of this document is to set out the Supreme Court of British Columbia's ("court") policy for public access to the court record.

### **The Court Record**

In this policy, the court record includes the documents and other tangible items (such as exhibits) filed in the cases that come to the court, and the documents and information about the court proceedings, stored by the court. The court record therefore includes:

- the pleadings, affidavits, and other documents filed or sent to the court by the parties and, in criminal proceedings, charging and related documents
- records of orders made or granted by the court, and supporting or related documents
- scheduling or other internal court documents in the court file
- transcripts of proceedings if prepared
- court exhibits
- audio recording of court proceedings, and
- court clerk's log notes from court proceedings.

### **Judicial Direction**

The court has jurisdiction over the court record, and the responsibility to make sure that access to the record respects the applicable laws, and the constitutional and other rights and interests that are involved. For this reason, the court establishes the general guidelines governing access, and

judges of the court determine issues concerning access in individual cases where more specific direction is necessary.

## **Administration of the Court Record**

The Court Services Branch of the Ministry of the Attorney General is responsible for the care and maintenance of the court record, and for implementing the general guidelines and specific directions regarding public access to the court record issued by the court. The daily administration of the court record is carried out by the registry staff in the courthouses across the province.

Any Court Services Branch policies about procedures or fees applied during that administrative process are made by Court Services Branch, not the court, and, as a result, the court expresses no view about them.

## **Default Access Policy**

The public may access the court record as provided by this policy.

For access to parts of the court record that are not expressly addressed in this policy, the public may apply to the court for an order permitting access.

No one can obtain a copy of a transcript or audio recording of a court proceeding except in accordance with this policy.

## **Closed Courtroom Proceedings**

Under various sections of the *Criminal Code* as well as in some civil or family proceedings, the public may be excluded in whole or in part from a court proceeding. These proceedings are known as *in camera* or closed courtroom proceedings. If the courtroom is closed for a hearing or portion of a hearing, the public may not have access to the court record (or to the portion of the court record that is related to the proceedings that took place in the closed courtroom) unless the court makes an order allowing access.

## **Sealed Files**

No one may have access to a sealed court record or a sealed document within the court record unless the court makes an order allowing access.

## **Timeframes for Public Access**

The ability of registry staff to facilitate timely access to the court record can be affected by various factors, including availability of staff resources and other tasks of priority to the judiciary and the registry. In addition, the timeframes required for access to files and documents that are stored off-site will necessarily be longer than for files and documents stored onsite at the courthouse.



## **PART II: ACCESS TO THE COURT FILE**

This part applies to public access to the physical court file and to information, documents and other materials contained within the court file. It is divided in to four sections:

**Section 1** - Access to Criminal Proceeding Court Files and Documents

**Section 2** - Access to Civil Proceeding Court Files and Documents

**Section 3** - Access to Family Proceeding Court Files and Documents

**Section 4** - Access to Court Exhibits

For access to the audio recording of court proceedings or to log notes, see Part III - Access to Audio Recordings of Court Proceedings.

## **Section 1 - Access to Criminal Proceeding Court Files and Documents**

This section discusses some of the main types of material or information in the court record as it relates to criminal proceedings and some of the main factors that affect public access to the court record in criminal proceedings.

### **Absolute Discharges**

The *Criminal Records Act* R.S.C., 1985, c. C-47 imposes restrictions on public access to criminal records. If more than a year has elapsed since a person was discharged absolutely, registry staff must not allow access to the record of the discharge nor disclose the existence of the record or the fact of the discharge to any person other than the person who is the subject of the absolute discharge or counsel acting on his or her behalf. A request for access by the person who is the subject of the discharge must be made in accordance with the procedure established by the court registry.

*See also* Conditional Discharges and Pardons

### **Access for Accused, Counsel of Record and Others**

Unless sealed, the court file including court exhibits in respect of a criminal proceeding are open to inspection by:

- an accused
- counsel of record
- a person assigned to prepare a pre-sentence report.

No other person may have access to the court file including court exhibits in respect of a criminal proceeding except in accordance with this policy.

### **Audio Recording**

*See* Part III - Access to Audio Recording of Court Proceedings

### **Bail Documents**

Bail (or “judicial interim release”) applications involve various classes of documents, including material filed or submitted by the accused person (such as affidavits or reference letters) and documents created by the court (such as conditions of release).

Documents relating to bail applications are not available to the public before a judge has heard and determined the bail application.

After a judge has heard and determined the application, a person seeking access may apply to the judge, or to the Chief Justice or Associate Chief Justice.

## **Closed Courtroom Proceedings**

If the public is excluded from a criminal court proceeding pursuant to a legislative provision, common law rule or court order, there is no public access to the court record (or to that portion of the court record which is related to the publicly excluded proceedings) unless the court makes an order allowing access.

## **Complainant's Sexual History Evidence: Section 276 Criminal Code**

Section 276 of the *Criminal Code* limits the use to which an accused can put evidence of the complainant's sexual history, in a trial of a sexual offence. To use any such evidence, the accused must apply to the trial judge under s. 276.1. By s. 276.1 and s. 276.2, the application proceedings are heard in camera (in a closed courtroom) with the public excluded. As a result, there is no public access to the documents filed in relation to the application or the hearing.

Various publication bans apply in relation to the documents, evidence, and the judge's determination and reasons, depending on the circumstances: s. 276.3.

## **Conditional Discharges**

The *Criminal Records Act* R.S.C., 1985, c. C-47 imposes restrictions on public access to criminal records. If more than three years has elapsed since a person was discharged on conditions, registry staff must not allow access to the record of the discharge nor disclose the existence of the record or the fact of the discharge to any person other than the person who is the subject of the conditional discharge or counsel acting on his or her behalf. A request for access by the person who is the subject of the conditional discharge must be made in accordance with the procedure established by the court registry.

*See also* Absolute Discharges and Pardons

## **Copies**

If the public is entitled to access to the court record or some portion of the court record in respect of a criminal proceeding without first obtaining a court order, they may obtain a copy of the court record or portion if:

- the document can be copied; and
- the relevant fee is paid.

Where an order is required for access to the court record or some portion of it, copies will only be provided if the order which authorizes access also authorizes the registry to provide a copy of the court record or portion of the court record.

## **Court Clerk Log Notes**

*See* Part III - Access to Audio Recording of Court Proceedings Court

## **Criminal Records Information**

The registry staff will only provide information and documents relating to matters that are either before the court or have been before the court. The registry staff cannot provide information about an individual's general criminal record. Members of the public who seek this type of information will be referred to local police services.

Where a copy of an accused person's criminal record is filed in the court file or is marked as a court exhibit, there is no public access unless the court makes an order allowing for access.

## **Exhibits**

See Section 4 - Access to Court Exhibits

## **Hearing Lists**

### **Before Hearing**

The hearing list provides the name of the accused, the courtroom, the date of the hearing and the time for the hearing. Hearing lists are posted on the court's website on the day of the hearing and are also posted in the courthouse.

### **After Hearing - Results & Future Appearance Dates**

The public can obtain information about the results of an appearance including the name of the accused, the courtroom, the date of the hearing, the time for the hearing and disposition from the registry unless a sealing order has been made or the public has been excluded from the courtroom.

For matters that have been before the court within the last 5 days, the public may obtain this information from the Court Services Branch website:

<http://www.ag.gov.bc.ca/courts/court-lists/criminal/index.htm>

For any matter and for matters which were before the court more than 5 days ago, information may not be immediately available through the registry and may take time to retrieve from storage.

## **Indictments**

The indictment is the document by which charges are filed in this court. In the Provincial Court, where charges usually begin, the charging document is called an information.

The public is entitled to access to indictments and informations, unless the proceedings are under the *Youth Criminal Justice Act* (see below).

For some charges, bans on publication may apply to some of the content of the indictment or information, such as the name of the alleged victim of the offence charged. It is the responsibility of the person receiving the indictment to identify and comply with any bans.

## **Mental Health Records**

The public may not access documents in the court record which are related to:

- assessment reports prepared for the court under section 672.11 of the *Criminal Code* (mental disorder);
- any written information filed with the court regarding an accused person's fitness to stand trial; or
- any written information filed with the court regarding whether an accused person should be found not criminally responsible due to mental disorder

unless the court makes an order allowing access.

## **Orders**

The public may have access to an order made in criminal proceedings unless the court record or the order is sealed.

## **Pardons**

The *Criminal Records Act* R.S.C., 1985, c. C-47 imposes restrictions on public access to criminal records. Registry staff must not allow access to any record of a conviction in respect of which a pardon has been granted nor disclose the existence of the record or the fact of the conviction to any person, other than the person who is the subject of the pardon or counsel acting on his or her behalf. A request for access by the person who is the subject of the pardon must be made in accordance with the procedure established by the court registry.

*See also* Absolute Discharges and Conditional Discharges

## **Pre-Sentence Reports**

In some criminal cases, the judge who finds an accused person guilty will ask that a Pre-Sentence Report be prepared, detailing the accused person's background and circumstances, and describing the sentencing facilities and programs that may be appropriate.

Pre-Sentence Reports are not available to the public before a judge has imposed sentence.

After the judge has imposed sentence, a person seeking access to a Pre-Sentence Report may apply to the judge, or the Chief Justice or Associate Chief Justice.

## **Production Orders to Third Parties re Sexual Offences: s. 278.1 to s. 278.9**

For trials of sexual offences, an accused person may apply to the trial judge for an order requiring a third party to bring to court confidential records concerning the complainant or witness. Examples include medical, counselling, or school records in the possession of a hospital, medical professional, or counsellor.

By s. 278.4 and s. 278.6 of the *Criminal Code*, the application proceedings are heard *in camera* (in a closed courtroom) with the public excluded. As a result, there is no public access to the documents filed in relation to the application or the hearing.

Various publication bans apply in relation to the documents, evidence, and the judge's determination and reasons, depending on the circumstances: s. 278.9.

### **Production Orders to Third Parties re Other Offences: O'Connor Applications**

For trials of offences not covered by s. 278.1 through s. 278.9 of the *Criminal Code* (see Production Orders to Third Parties re Sexual Offences, above), an accused may apply to the trial judge for production of confidential records in the possession of third parties. The procedure for the application is described in the common law (*R. v. O'Connor*, [1995] 4 S.C.R. 411 and *R. v. McNeil*, 2009 SCC 3)).

There is no public access to material relating to an O'Connor application, unless a court makes an order allowing access.

### **Publication Bans**

The presence of a publication ban does not prevent access to the court file in a criminal proceeding; however, anyone having access to a court file in a criminal proceeding is required to abide by the terms of any publication ban in place. Although registry staff will try to notify the person requesting access to the court file of a proceeding of any publication bans or restrictions that may apply and will advise that publication, broadcast or transmission of the information contained in the court record could be an offence at law, it is the responsibility of the person requesting access to the court record to identify any publication bans or restrictions that apply and to comply with them. Failure to comply with the publication ban may result in serious sanctions including contempt of court proceedings.

### **Reasons for Judgment**

Reasons for judgment include:

- rulings made before the final disposition of the guilt or innocence of the accused person
- reasons for judgment as to the guilt or innocence of the accused person, and
- reasons for judgment imposing sentence.

The court's website publishes written reasons for judgment, and some transcribed oral reasons for judgment given by the judges of the court since 1990:

<http://www.courts.gov.bc.ca/>

Subject to the restrictions following, the public may have access to reasons for judgment in a criminal proceeding unless the court record or the reasons for judgment are sealed.

Because s. 648 of the *Criminal Code* makes it an offence to publish, broadcast or transmit any part of the trial that was heard at a time when the jury was not present and because an accused has the

ability to change the mode of trial from judge alone to judge and jury in certain circumstances, reasons for rulings made before the final disposition of guilt or innocence of the accused will not be released to the public before the delivery of the jury's verdict in a jury trial or before the judge has rendered a decision on the guilt or innocence of the accused in a trial by judge alone, unless the judge directs otherwise. Requests for access to the reasons for judgment before the final disposition of guilt or innocence of the accused should be addressed to the trial judge or to the Chief Justice or Associate Chief Justice.

Rulings or reasons for judgment which are not covered by s. 648 of the *Criminal Code* may still be subject to publication bans. The publication ban does not necessarily act to prevent public access; however, it does restrict what use can be made of the information contained in the reasons for judgment. Anyone having access to a court file in a criminal proceeding is required to abide by the terms of any publication ban which may be in place. Although registry staff will try to notify the person requesting access to the court file of a proceeding of any publication bans or restrictions that may apply and will advise that publication, broadcast or transmission of the information contained in the court record could be an offence at law, it is the responsibility of the person requesting access to the court record to identify any publication bans or restrictions that may apply, and to comply with them. Failure to comply with the publication ban may result in serious sanctions including contempt of court proceedings.

### **Sealed Files**

The public may not have access to a sealed court record or a sealed document within the court record in a criminal proceeding unless the court makes an order allowing access.

### **Synopsis**

For pre-trial conferences in criminal cases, Crown counsel may file a Crown Synopsis setting out a brief summary of the case which, as at the time of its preparation, the Crown expects to present at the later trial. The synopsis does not bind the Crown, and is intended only as a tool to assist the judge managing the case, in order to ensure that the case is properly scheduled and proceeds in an orderly and efficient manner.

The public is not entitled to access to the Crown Synopsis, unless the court makes an order allowing access.

### **Transcripts of Criminal Proceedings**

Court files for criminal proceedings may include transcripts of the proceedings before the court or another court (for example, the Provincial Court at a preliminary inquiry).

The public is not entitled to have access to the transcripts of criminal proceedings unless the court makes an order allowing access. This procedure allows the trial judge to determine whether or not the transcript includes sensitive or protected content to which restrictions apply.

### **Victim Impact Statements**

During sentencing proceedings, victims of the offence may file written victim impact statements describing the effects of the offence.

Victim impact statements are not available to the public before a judge has imposed sentence.

After the judge has imposed sentence, a person seeking access to a victim impact statement may apply to the judge, or to the Chief Justice or Associate Chief Justice.

## **Warrants**

### **Generally**

#### **Sealed Warrants**

No one may access warrants which are sealed pursuant to the *Criminal Code* or any other legislative or common law authority unless the court makes an order allowing access. For the purposes of this policy, a Sealed Warrant includes the warrant, any information or documents filed in support of the application for the warrant, any information related to the execution of the warrant, and any information, documents or other evidence obtained as a result of the warrant.

#### **Unexecuted Warrants**

The public may not access unexecuted warrants and registry staff cannot provide any information about unexecuted warrants.

### **Specific Types of Warrant**

#### **Search Warrants and General Warrants**

Search warrants issued under the *Criminal Code* or other statutes (most commonly the *Controlled Drugs and Substances Act* or the *Income Tax Act*) give investigators the right to search a place and to seize things as evidence of offences.

General warrants permit peace officers to use devices or investigative techniques described in the warrant if a search and/or seizure without the warrant would violate section 8 of the *Charter of Rights and Freedoms* (the right to be secure against unreasonable search or seizure).

Specialized search warrants allow for the seizure of specific items (such as proceeds of crime) or bodily substances (such as blood or DNA samples) or hand impressions.

Search warrants and general warrants are publicly accessible, if:

- The warrant has not been sealed by court order;
- The warrant has been executed and a seizure has been made; and
- If required, a Report to a Justice (Form 5.2) has been filed with the court, and an order for detention has been made under s. 490 of the *Criminal Code*.

The same general rules apply to many specialized warrants, including DNA warrants, bodily substance warrants or impression warrants.



### Arrest Warrants

A Warrant for Arrest authorizes the arrest of an individual identified in the Warrant for Arrest. Warrants for Arrest are rarely filed with the court. However, if they are, the public may have access after execution of the warrant, unless a sealing order or other court order restricts or limits access.

### Number Recorder Warrants

A Number Recorder Warrant authorizes the installation and monitoring of a device which can record or identify the telephone number or location of the telephone from which a telephone call originated or at which it is received or is intended to be received. Number Recorder Warrants are issued pursuant to s. 492.2 of the *Criminal Code*.

The public may not access a Number Recorder Warrant unless the court makes an order allowing access to the Number Recorder Warrant.

### Tracking Warrants

A Tracking Warrant authorizes the use of a tracking device which is a device which can ascertain by electronic or other means the location of any thing or person. Tracking Warrants are issued pursuant to s. 492.1 of the *Criminal Code*.

The public may not access a Tracking Warrant unless the court makes an order allowing access to the Tracking Warrant.

### Wiretap Authorizations

Because of Part VI of the *Criminal Code*, the public may not access wiretap authorizations or any material submitted to the court in support of an application for a wiretap authorization or any material related to a wiretap authorization unless the court makes an order allowing access to the wiretap authorization or the other material.

## **Youth Criminal Justice Act Proceedings**

Section 119 of *Youth Criminal Justice Act* (YCJA) prohibits public access to the court file or document of YCJA proceedings or other proceedings that make reference to YCJA information except to the limited class of people listed; therefore, there is no public access to the court file or document of YCJA proceedings unless the court makes an order authorizing access.

## **Section 2 - Access to Civil Proceeding Court Files and Documents**

This section discusses some of the main types of material or information in the court record as it relates to civil proceedings, and some of the main factors that affect public access to the court record in civil proceedings.

### **Affidavits**

Affidavits and attached exhibits in civil proceedings become part of the court record when filed. The public may access an affidavit and an exhibit which is attached to an affidavit where that affidavit is filed with the court unless a statutory provision, common law rule or court order restricts or limits access.

### **Closed Courtroom Proceedings**

If the public is excluded from a court proceeding pursuant to a legislative provision, common law rule or court order, there is no public access to the court record (or to that portion of the court record which is related to the publicly excluded proceedings) unless the court makes an order allowing access.

### **Copies**

If the public is entitled to access to the court record or some portion of the court record in respect of a civil proceeding without first obtaining a court order, they may obtain a copy of the court record or portion if:

- the document can be copied; and
- the relevant fee is paid.

Where an order is required for access to the court record or some portion of it, copies will only be provided if the order which authorizes access also authorizes the registry to provide a copy of the court record or portion of the court record.

### **Exhibits**

See Section 4 - Access to Court Exhibits

### **Hearing Lists**

#### **Before Hearings**

The hearing list provides the name of the parties, the courtroom, the date of the hearing and the time for the hearing. Hearing lists are posted on the court's website by 8:30 a.m. on the day of the hearing and are also posted in the courthouse.

#### **Post - Hearing Results and Future Appearance Dates**

The public can obtain information about the results of an appearance including the name of the parties, the courtroom, the date of the hearing, the time for the hearing and disposition from the

registry unless a sealing order has been made or the public has been excluded from the courtroom. Information may not be immediately available through the registry and may take time to retrieve from storage.

## **Orders**

The public may have access to an order made in civil proceedings unless the court record or the order is sealed.

## **Pleadings**

The public may have access to the pleadings in civil proceedings, including the initiating documents, unless a sealing order restricts or prohibits access.

## **Publication Bans**

The presence of a publication ban does not prevent access to the court file in a civil proceeding; however, anyone having access to a court file in a civil proceeding is required to abide by the terms of any publication ban in place. Although registry staff will try to notify the person requesting access to the court file of any publication bans or restrictions that may apply and will advise that publication, broadcast or transmission of the information contained in the court record could be an offence at law, it is the responsibility of the person seeking access to the court record to identify any publication bans or restrictions that apply and to comply with them. Failure to comply with a publication ban may result in serious sanctions including contempt of court proceedings.

## **Reasons for Judgment**

The public may have access to written reasons for judgment in a civil proceeding unless the court record or the reasons for judgment are sealed.

## **Sealed Files**

The public may not have access to a sealed court record or to a sealed document within the court record in a civil proceeding unless the court makes an order allowing access.

## **Transcripts of Civil Proceedings**

With some exceptions, including those set out following, anyone who was entitled to be present in court for a civil proceeding may have access to the transcript of the proceeding including the right to have a copy of the transcript. If a transcript has not been prepared, upon payment of the appropriate fee, a person entitled to have a transcript may request that a transcript be prepared.

### **Transcripts of Case Planning Conferences**

Because of Supreme Court Civil Rules 5-2(7), no one may have access to a transcript of a case planning conference unless the court makes an order permitting access to the transcript of the case planning conference.

**Transcripts of Settlement Conferences**

Because of Supreme Court Rule 9-2(2), no one may have access to a transcript of a settlement conference unless the court makes an order permitting access to the transcript of the settlement conference.

**Transcripts of Trial Management Conferences**

Because of Supreme Court Civil Rule 12-2(8), no one may have access to a transcript of a trial management conference unless the court makes an order permitting access to the transcript of the trial management conference.

## **Section 3 - Access to Family Proceeding Court Files and Documents**

This section discusses some of the main types of material or information in the court record as it relates to family law proceedings, and some of the main factors that affect public access to the court record in family proceedings.

### **Statutory Provisions**

Due to the nature of family law proceedings including adoption proceedings, public access to the court record in family proceedings is restricted by statute.

#### **Adoption Proceedings**

No person other than the Provincial Director of Adoptions or his or her designate may access the court record in respect of adoption proceedings unless the court issues an order granting access as a result of s. 41 of the *Adoption Act*.

#### **Child, Family and Community Service Act Proceedings**

Supreme Court Family Rule 22-8(1)(b) says that no one other than

- a party's lawyer;
- a party;
- a person authorized in writing by a party; and
- a person authorized in writing by a party's lawyer

may have access to the court record in respect of proceedings involving orders under the *Child, Family and Community Service Act*.

#### **Family Relations Act and Divorce Act Proceedings**

Supreme Court Family Rule 22-8(1)(a) says that no one other than

- a lawyer, whether or not a lawyer for a party
- a party;
- a person authorized in writing by a party; and
- a person authorized in writing by a party's lawyer

may have access to the court record in respect of a family law case, which is defined by Supreme Court Family Rule 1-1(1).

#### **Separation Agreements**

Because of Supreme Court Family Rule 22-8(6), no one other than

- a party;
- a party's lawyer;
- a person authorized in writing by a party; or

- a person authorized in writing by a party's lawyer

may have access to a separation agreement filed under s. 122 of the *Family Relations Act*.

## **Closed Courtroom Proceedings**

If the public is excluded from a court proceeding because of a legislative provision, common law rule or court order, there is no public access to the court record (or to that portion of the court record which is related to the publicly excluded proceedings) unless the court makes an order allowing access.

## **Copies**

If the public is entitled to access to the court record or some portion of the court record in respect of a family proceeding without first obtaining a court order, they may obtain a copy of the court record or portion if:

- the document can be copied; and
- the relevant fee is paid

Where an order is required for access to the court record or some portion of it, copies will only be provided if the order which authorizes access also authorizes the registry to provide a copy of the court record or portion of the court record.

## **Court Record Information**

Supreme Court Family Rule 22-8(2) authorizes the Registrar to compile and maintain a record of:

- the parties as identified in the style of cause (which is the name of the case, usually the parties' names e.g. *Lee v. Smith*);
- the case file number as set out in the style of proceedings;
- the category or type of proceeding;
- the date the proceeding was started

If the Registrar maintains this record, members of the public may have access to it unless a statutory provision, common law rule or court order restricts access.

## **Exhibits**

See Section 4 - Access to Court Exhibits

## **Hearing Lists**

### **Before Hearings**

The hearing list provides the name of the parties, the courtroom, the date of the hearing and the time for the hearing. Hearing lists are posted on the court's website on the day of the hearing and are also posted in the courthouse.

### **Post-Hearing Results and Future Appearance Dates**

The public can obtain information about the results of an appearance including the name of the parties, the courtroom, the date of the hearing, the time for the hearing and disposition from the registry unless a sealing order has been made or the public has been excluded from the courtroom. Information may not be immediately available through the registry and may take time to retrieve from storage.

### **Orders**

The public may have access to an order made in family proceedings unless the court record or the order is sealed.

### **Publication Bans**

The presence of a publication ban does not prevent access to the court file in a family proceeding; however, anyone having access to a court file in a family proceeding is required to abide by the terms of any publication ban in place. Although registry staff will try to notify the person requesting access to the court file of any publication bans or restrictions that may apply and will advise that publication, broadcast or transmission of the information contained in the court record could be an offence at law, it is the responsibility of the person seeking to have access to the court record to identify any publication bans or restrictions that apply, and to comply with them. Failure to comply with the publication ban may result in serious sanctions including contempt of court proceedings.

### **Reasons for Judgment**

The public may have access to written reasons for judgment in a family proceeding unless the reasons for judgment or the court record are sealed.

### **Sealed Files**

The public may not have access to a sealed court record or a sealed document within the court record in a family proceeding unless the court makes an order allowing access.

### **Transcripts of Family Proceedings**

With some exceptions, including those set out following, anyone who is entitled to access the court record in a family law proceeding may have access to the transcript of that proceeding including the right to have a copy of the transcript. If a transcript has not been prepared, upon payment of the appropriate fee, a person entitled to have a transcript may request that a transcript be prepared.

### **Transcripts of Judicial Case Conferences**

Judicial case conferences are confidential and no one may have access to a transcript of a judicial case conference unless the court makes an order permitting access to the transcript of the judicial case conference.

**Transcripts of Trial Management Conferences**

Because of Supreme Court Family Rule 12-2(8), no one may have access to a transcript of a trial management conference unless the court makes an order permitting access to the transcript of the trial management conference.

**Transcripts of Settlement Conferences**

Because of Supreme Court Family Rule 7-2(2), no one may have access to a transcript of a settlement conference unless the court makes an order permitting access to the transcript of the settlement conference



## **Section 4 - Access to Court Exhibits**

This section discusses access to court exhibits. For the purposes of this policy court exhibits means tangible items, including documents that are formally entered as evidence in a trial or a court hearing. For the purposes of this policy, a court exhibit is different from an exhibit attached or appended to an affidavit and filed with the court.

Examples of court exhibits to which this section applies include:

- physical evidence (e.g., guns, knives, clothing);
- photographic/electronic evidence (e.g., photos, videotapes, audiotapes, compact discs);
- business documents (e.g., phone records, bank records, business transaction records); and
- expert reports (e.g., psychiatric reports, crime scene analyses, toxicologist reports)

When an exhibit is being viewed, the registry staff will supervise the viewing to ensure the integrity of the exhibit is maintained.

### **Court Exhibits in Criminal Proceedings**

Access by the public to court exhibits in a criminal proceeding must always be determined on application because of the need of the court to consider the competing interests in respect of public access, distribution and broadcast of court exhibits.

An application for access to a court exhibit in a criminal proceeding must be brought in accordance with the procedures set out in PART IV - Procedure for Applications.

### **Court Exhibits in Civil Proceedings**

Access by the public to court exhibits in a civil proceeding must always be determined on application because of the need of the court to consider the competing interests in respect of public access, distribution and broadcast of court exhibits.

An application for access to a court exhibit in a civil proceeding must be brought in accordance with the procedures set out in **PART IV - Procedure for Applications**.

### **Court Exhibits in Family Proceedings:**

Because of Supreme Court Family Rule 22-8(5), no person other than:

- a party;
- a party's lawyer
- a person authorized in writing by a party; and
- a person authorized in writing by a party's lawyer

may have access to a court exhibit unless the court makes an order allowing access to the exhibit.

An application for access to a court exhibit in a family proceeding other than that which is provided by Supreme Court Family Rule 22-8(5) must be brought in accordance with the procedures set out in PART IV - Procedure for Applications.

## **PART III: ACCESS TO AUDIO RECORDING OF COURT PROCEEDINGS**

This part applies to public access to the audio recording of court proceedings. It is divided into 3 sections:

**Section 1** - Introduction

**Section 2** - Listening to the Audio Recording of a Proceeding

**Section 3** - Obtaining Copies of the Audio Recording of a Proceeding

For access to the court file, see Part II - Access to the Court File

## **Section 1: Introduction**

The court creates and keeps an audio record of court proceedings (“audio recording”) using a digital audio recording system (“DARS”). Prior to the introduction of DARS, the methods used to create the court’s record included analog recording (cassette tapes) and written notes made by court stenographers or court reporters.

Courts are open, and justice is done in public. Unless constitutional or other laws require a different approach, or the court otherwise orders, the hearing rooms where the parties present their arguments to the court are open to the public and no one (whether party or witness) appears in court under a pseudonym.

The open court principle on which this policy is based allows members of the public to observe court proceedings as they are taking place; however, it does not generally include a right to make or keep an audio or video recording of the proceedings. In appropriate circumstances the court will release a copy of the audio recording where the appropriate safeguards can be put in place.

## **Section 2: Listening to the Audio Recording of a Proceeding:**

This section discusses the court's policy for listening to the audio recording of a proceeding and for accessing the court clerk's log notes.

### **Audio Recording**

Except as otherwise provided by statute, the Rules of Court, court order, or this policy, a person who was present or entitled to be present in the courtroom for a proceeding, is entitled to listen to the audio recording of that proceeding.

Not all court registries are currently equipped for the public to listen to the audio recording of court proceedings. However, steps are being taken to address this.

### **Case Planning Conferences**

Because of Supreme Court Civil Rule 5-2(7), no one may listen to the audio recording of a case planning conference unless the court makes an order permitting access to the audio recording of the case planning conference.

### **Closed Courtroom Proceedings**

If the courtroom is closed for a proceeding or portion of a proceeding, a person who was present during the proceeding may listen to the audio recording of that proceeding.

A person who was excluded from the proceeding is not entitled to listen to the audio recording of the proceeding, unless the court makes an order permitting the excluded person to listen to the audio recording.

### **Court Clerk Log Notes**

During a trial or other hearing, the court clerk will record information about the trial or hearing including appearance information, witness names, start and stop times for proceedings, the result of a hearing, etc. ("log notes").

A person, who is entitled to listen to the audio recording of a proceeding in accordance with this policy or by court order, is also permitted to have access to the log notes that relate to it. Applications for copies of the log notes are discussed in Section 3, Obtaining Copies of the Audio Recording.

### **Judicial Case Conferences**

Judicial case conferences are confidential and no one may listen to the audio recording of a judicial case conference unless the court makes an order permitting access to the audio recording of the judicial case conference.

## **Jury Charges**

An individual who was present or who was entitled to be present in the courtroom when a jury was charged is entitled to listen to the audio recording of the jury charge.

## **Oral Reasons for Judgment**

Unless the proceedings were sealed, a person who was present or who was entitled to be present in the courtroom when oral reasons for judgment were given is entitled to listen to the audio recording of the oral reasons for judgment.

The audio recording of oral reasons for judgment is not the final version of the reasons for judgment. The oral reasons for judgment are not final until they have been transcribed, edited and signed by the judge who gave them.

## **Pardons**

No one is entitled to listen to or obtain a copy of the audio recording in respect of proceedings in which a pardon has been granted unless the court makes an order allowing access to the audio recording.

## **Publication Bans**

The presence of a publication ban does not prevent access to the audio recording of a proceeding; however, anyone having access to the audio recording of a proceeding is required to abide by the terms of any publication ban which may be in place. Although registry staff will try to notify the person requesting access to the audio recording of any publication bans or restrictions that may apply and will advise that publication, broadcast or transmission of the information contained in the court record could be an offence at law, it is the responsibility of the person requesting access to the audio recording to identify any publication bans or restrictions that may apply, and to comply with them. Failure to comply with the publication ban may result in serious sanctions including contempt of court proceedings.

## **Settlement Conferences**

Because of Supreme Court Civil Rule 9-2(2) and Supreme Court Family Rule 7-2(2), no one may listen to the audio recording of a settlement conference unless the court makes an order permitting access to the audio recording of the settlement conference.

## **Trial Management Conferences**

Because of Supreme Court Civil Rule 12-2(8), no one may listen to the audio recording of a trial management conference unless the court makes an order permitting access to the audio recording of the trial management conference.

## **Section 3: Obtaining Copies of the Audio Recording of a Court Proceeding**

This section describes the court's policy concerning who may obtain a copy of an audio recording of a proceeding and on what basis.

### **Criminal Proceedings**

#### **Accused**

An accused person in a criminal proceeding may make an application in accordance with the Supreme Court Criminal Rules and Part IV of this policy, for an order authorizing the accused person to have a copy of the audio recording of the proceeding or a portion of the proceeding.

If the court makes an order authorizing the accused person to have a copy of the audio recording of a proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

#### **Counsel of Record**

Counsel of record in a criminal proceeding may obtain a copy of the audio recording of the proceeding or a portion of the proceeding upon providing an undertaking in the form attached as Appendix A.

The undertaking includes conditions that restrict the use of the copy and prohibit any further distribution of it.

#### **Other Lawyer**

A lawyer who is not counsel of record in a criminal proceeding may obtain a copy of the audio recording of the proceeding or a portion of the proceeding by providing:

- an undertaking in the form attached as Appendix A, and
- a letter of authorization from a party or counsel of record in the proceeding, authorizing the lawyer to obtain copy of the audio recording.

#### **Other Person**

A person other than the accused or counsel of record in a criminal proceeding may make an application in accordance the Supreme Court Criminal Rules and Part IV of this policy, for an order authorizing him or her to have a copy of the audio recording of the criminal proceeding.

If the court makes an order authorizing the applicant to have a copy of the audio recording of a proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

## **Civil Proceedings**

### **Case Planning Conferences, Trial Management Conferences, Settlement Conferences**

The Supreme Court Rules say that no one may have access to an audio recording of a case planning conference, a trial management conference, or a settlement conference unless the court makes an order permitting access to the audio recording.

A person seeking a copy of the audio recording of a case planning conference, a trial management conference, or a settlement conference must make an application in accordance with the Supreme Court Rules and Part IV of this policy.

If the court makes an order permitting a person to have a copy of the audio recording of a case planning conference, a trial management conference, or a settlement conference, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

### **Other Civil Proceedings**

For civil proceedings other than case planning conferences, trial management conferences, and settlement conferences, the court's policy in relation to who may obtain a copy of the audio recording and on what basis is described following:

#### **Party**

A party to a civil proceeding may apply to obtain a copy of the audio recording of that proceeding by making a without notice application in accordance with Supreme Court Civil Rule 8-4 and Part IV of this policy.

If the court makes an order permitting the party to have a copy of the audio recording of the proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

#### **Counsel of Record**

Counsel of record in a civil proceeding may obtain a copy of the audio recording of a civil proceeding upon providing the undertaking attached as Appendix A.

#### **Other Lawyer**

A lawyer who is not counsel of record may obtain a copy of the audio recording of a civil proceeding or portion of a civil proceeding by providing:

- an undertaking in the form attached as Appendix A;
- a letter of authorization from a party or counsel of record authorizing the lawyer to obtain copy of the audio recording.



### **Other Person**

A person, other than those categories of persons listed above, may apply to obtain a copy of the audio recording of a civil proceeding by making an application in accordance with the Supreme Court Civil Rules and Part IV of this policy.

If the court makes an order authorizing the applicant to have a copy of the audio recording of a civil proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

### **Family Proceedings**

#### **Judicial Case Conferences, Trial Management Conferences, Settlement Conferences**

The Supreme Court Family Rules say that no one may access an audio recording of a judicial case conference, a trial management conference, or a settlement conference unless the court makes an order which permits access to the audio recording.

A person seeking a copy of the audio recording of a judicial case conference, a trial management conference, or a settlement conference must make an application in accordance with the Supreme Court Family Rules and Part IV of this policy.

If the court makes an order permitting a person to have a copy of the audio recording of a judicial case conference, a trial management conference, or a settlement conference, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

#### **Other Family Proceedings**

For family law proceedings other than judicial case conferences, trial management conferences, and settlement conferences, the court's policy in relation to who may obtain a copy of the audio recording and on what basis is described following:

#### **Party**

A party to a family proceeding may apply to obtain a copy of the audio recording of that proceeding by making a without notice application in accordance with Supreme Court Family Rule 10-8 and Part IV of this policy.

If the court makes an order permitting the party to have a copy of the audio recording of the proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

#### **Counsel of Record**

Counsel of record in a family proceeding may obtain a copy of the audio recording of a family proceeding upon providing the undertaking attached as Appendix A.

### **Other Lawyer**

A lawyer who is not counsel of record may obtain a copy of the audio recording of a family proceeding or portion of a family proceeding by providing:

- an undertaking in the form attached as Appendix A;
- a letter of authorization from a party or counsel of record authorizing the lawyer to obtain copy of the audio recording.

### **Other Person**

A person, other than those categories of persons listed above, may apply to obtain a copy of the audio recording of a family proceeding by making an application in accordance with the Supreme Court Family Rules and Part IV of this policy.

If the court makes an order authorizing the applicant to have a copy of the audio recording of the family proceeding, the order may include conditions that restrict the use of the copy and prohibit any further distribution of the audio recording.

## **PART IV: PROCEDURE FOR APPLICATIONS**

This part provides directions for bringing applications, other than without notice applications, where an order is required for access to:

- the court file
- a transcript or the audio recording of a proceeding, or
- other parts of the court record.

### **Form of Application**

An application for an order must be brought in accordance with the applicable Rules of Court, (e.g., Supreme Court Civil Rules, Supreme Court Family Rules or Supreme Court Criminal Rules) unless the court directs otherwise.

### **Hearing of Application**

Applications for access to the court record for any ongoing proceeding will be heard by the judge or master who is seized of the proceeding.

Applications for access to a transcript or the audio recording of a case planning conference, judicial case conference, trial management conference, or settlement conference will be heard by the judge or master who presided.

Applications for access to the court record for any proceeding that has concluded will be heard by the judge or master who presided at the hearing.

Where the judge or master who presided at the hearing is not available to hear the application for access to the court record (e.g., because of retirement or illness) or where no particular judge or master is associated with the proceeding, the Chief Justice or the Associate Chief Justice or his or her designate will hear the application.

Applicants should be aware that, especially for concluded proceedings or proceedings adjourned for a lengthy time, it may not always be possible to schedule an application before the appropriate judge or master on short notice because a judge or master may have many ongoing obligations in other proceedings and in the various court registries across the province.

### **Model Access Order for Audio Recordings**

An applicant seeking an order authorizing the applicant to have a copy of the audio recording of a proceeding or a portion of a proceeding must use the Model Access Order found in Appendix B. The Model Access Order includes conditions that restrict the use of the copy and prohibit any further distribution of the audio recording. Where an applicant seeks an order in terms that vary from those contained in the Model Access Order, the applicant must:

- a. identify the differences in the terms sought as compared with the Model Access Order
- b. explain to the court the basis upon which it may make an order authorizing access on terms different from those provided for in the Model Access Order.

## APPENDIX A - UNDERTAKING OF COUNSEL

1. I, \_\_\_\_\_ [insert counsel's name] acknowledge that:
  - (a) the DARS disk is being provided to me solely for the purpose of [*describe the specific activity that release of the disk is intended to facilitate – e.g. “to review the evidence of the complainant in the case of R. v. X, in order to prepare the plaintiff’s case in the proceeding Y. v. Z.” etc.,*] and that
  - (b) any other use of the disk is prohibited.
  
2. I undertake that I will not:
  - (a) copy the disk;
  - (b) store its digital contents on, or transfer those contents to, any other device;
  - (c) upload the disk or any of its content to the Internet or otherwise make the disk or any of its content available through any medium;
  - (d) distribute the disk or any of its content in any way;
  - (e) use the disk for the preparation of unofficial transcripts of the proceedings; or
  - (f) allow any of these things to be done by anyone else.
  
3. I undertake that the disk will not be accessed by anyone except those individuals enumerated below in (a) or (b), and further that where such individuals are accessing the disk, it will be under my personal direction and control:
  - (a) other lawyers, articled students or administrative staff members within my law firm who are assisting me in this matter;
  - (b) \_\_\_\_\_an expert witness (or \_\_\_\_\_a lawyer from outside my law firm) whom I have retained to assist me in this matter.
  
4. If it is not feasible for the expert witness or counsel described in paragraph 3 (b) to review the disk while it is under my personal direction and control, I acknowledge that I must apply to the court for an order allowing such individuals to receive the disk directly. I understand that in that event, the expert or outside counsel must appear personally before the court and will be made subject to the same conditions to which I am subject in this undertaking.
  
5. I acknowledge that I may allow my client to listen to the disk in my presence but I undertake that I will not provide my client with the disk or a copy of the disk.
  
6. When the disk is not being used for the purpose permitted by this undertaking, I undertake that I will keep the disk in a secure place where it cannot be accessed by persons other than those who are authorized pursuant to the terms of this undertaking.
  
7. I undertake to destroy the DARS disk and render it inoperable on or before the earliest of the following:
  - (a) the date on which the purpose for which the disk was provided to me as described in paragraph 1 has concluded, and
  - (b) \_\_\_\_\_[*insert here either the last currently scheduled court or chambers date for the proceeding, or an earlier specified date*]. If I require the disk beyond the date specified, I acknowledge that I must provide a new undertaking to the issuing registry before expiry of the date here specified.

## APPENDIX B - MODEL ACCESS ORDER

1. The DARS disk is being provided to the applicant:
  - (a) solely for the purpose of [*describe the specific proceeding and the activity that release of the disk is intended to facilitate – e.g. “to review the evidence of the complainant in the case of R. v. X, for the purpose of preparing the plaintiff’s case in the proceeding Y. v. Z.” etc.*], and that
  - (b) any other use of the disk is prohibited.
  
2. The applicant must not:
  - (a) copy the disk,
  - (b) store its digital contents on, or transfer those contents to, any other device;
  - (c) upload the disk or any of its contents to the Internet or otherwise make the disk or any of its contents available through any medium;
  - (d) distribute the disk or any of its contents in any way, or
  - (e) allow any of these things to be done by anyone else.
  
3. The applicant must not provide access to the disk or its contents to anyone else.
  
4. When the disk is not being used, the applicant must keep it in a secure place, where it cannot be accessed by anyone except pursuant to the terms of this order.
  
5. The applicant must return the DARS disk to the court registry from which it was issued on the earliest of the following:
  - (a) the date on which the purpose for which the disk was provided to the applicant as described in paragraph 1 has concluded, and
  - (b) \_\_\_\_\_ [*insert here either the last currently scheduled court or chambers date for the proceeding, or an earlier specified date*]. If the applicant requires the disk beyond the date specified, the applicant must bring a further application to the court for an order extending the time that the applicant may retain the disk before the disk must be return to the court registry.



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