

Supreme Court of Prince Edward Island



ACCESS TO COURT RECORDS

A Guide

December 1, 2021

PUBLIC ACCESS TO COURT RECORDS
Supreme Court of P.E.I.

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1. INTRODUCTION – THE OPEN COURT PRINCIPLE

The general rule in Canadian courts is that court records and court proceedings are open to the public. The Supreme Court of Canada has clearly recognized this principle in decisions including *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and *R. v Mentuck*, [2001] 3 S.C.R. 442. In *CBC v Canada (Attorney General)*, 2011 SCC 2, the Supreme Court recognized the crucial importance of the open court principle in a democratic society, as it ensures that citizens have access to the courts, which enables the public to comment on how courts operate and on proceedings that take place in the courts.

The Supreme Court of Canada has also recognized that there are exceptions to the open court principle. In *A.G. (Nova Scotia) v MacIntyre*, [1982] 1 S.C.R. 175, the Supreme Court stated that the general principles are as follows:

1. Every court has a supervisory and protecting power over its own records;
2. The presumption is in favor of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right; and
3. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose. Curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance. One of these is the protection of the innocent.

Each court has jurisdiction over its own records, and all policies respecting access to court documents, files and exhibits are subject to judicial direction.

The Supreme Court of P.E.I. strives for an appropriate balance between open courts and the fair administration of justice. The Court has jurisdiction over the court record, and the responsibility to ensure that access to the court record respects applicable laws, and the rights and interests involved.

2. PURPOSE AND CONTEXT OF GUIDE

This Guide arises from the premise that facilitating public access to court records is a foundation of public understanding, respect and confidence in the administration of justice. As court decisions have an impact on the lives of individuals, they are entitled to the opportunity to learn more about how courts operate and make decisions.

The processes described in the following pages summarize how court officials respond to the most common requests for access to court records. They are also intended to communicate to the public the approach that will be taken in specific situations. They serve as an informative tool for those wishing to better understand how the court system operates and how the court implements the open court principle.

While this Guide may provide direction in situations where there is no court order in place, it does not have the force of law.

Purpose

The purposes of this Guide are to:

- i. provide guidance to those seeking access to court records and to court staff responding to requests for access; and
- ii. ensure a timely response to requests for access without hindering the ongoing operation of the courts.

Court records defined

For the purpose of this Guide, a court record is a document, information or other thing that is collected, received or maintained by a court in connection with a court proceeding.

In this Guide, the court record includes the documents and other tangible items (such as exhibits) filed in the proceedings that come to the court, and the documents and information about the court proceedings, stored by the court. The court record 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 in the court file;
- transcripts of proceedings if already prepared;
- court exhibits; and
- audio recordings of court proceedings.

Court records and privacy legislation

The Freedom of Information and Protection of Privacy Act (the “*FOIPP Act*”) provides rules for how public bodies are to deal with records in their custody and control, including how to protect the privacy of personal information of individuals. However, the Supreme Court of PEI is excluded from this legislation. Section 1(k)(vi) of the *FOIPP Act* specifically states that a public body does not include the Supreme Court of Prince Edward Island. Further, section 4(1) states that the *FOIPP Act* does not apply to a record in a court file of the Supreme Court of Prince Edward Island.

Court responsibility for records

The Supreme Court of Canada has confirmed that courts have both a supervisory and a protecting power over their own records (*MacIntyre*). To fulfill its protecting role, the court will inquire into the reason for the request. There are cases in which the protection of social values must prevail over openness (*CBC v Canada*). In order to fulfil these roles, courts must confirm that adequate safeguards are in place to ensure that records and information are not used for an improper purpose or to subvert the course of justice. For this reason, while some court records are available on request, access to certain types of court records may not be granted or may only be granted with the permission of a judge.

Responsibility of Individual requesting information

The person obtaining access and using the information obtained from a court file must ensure they are aware of and comply with any orders a court has made on that file or any other legal restrictions that limit publication of court materials or proceedings in the case. For example, the person accessing a court record is responsible for determining whether a publication ban exists, and following the terms of any publication ban.

Court orders limiting access or publication

Judges are in the best position to determine the process to follow in a court proceeding, including dealing with issues of access to exhibits or other records filed in court. If they have made an order in a specific case regarding access or publication, those are the rules that will apply to that case.

This Guide provides direction in situations where there is no court order in place. If a judge has made an order in a particular case, that order supersedes any part of this Guide that is in conflict with the order.

3. ACCESS TO THE COURTHOUSE

Access to the Courthouse and Courtrooms

Under normal circumstances, the public areas of courthouses are open to everyone during regular hours of operation. Members of the public and the media may also attend sessions of the court, except in those circumstances where legislation requires, or a judge orders, that a proceeding, or part of a proceeding, be held in private.

Spectators in the courtroom must not disturb the court process. If court is in session, spectators should enter quietly and close doors to the courtroom gently. Spectators should not talk in the courtroom. The “bar” in a courtroom is a railing enclosing the part of the room where the judges and lawyers sit, witnesses are heard and accused persons are tried. Members of the public and media must stay behind the bar unless invited by the judge or the clerk.

Cameras and Electronic Recording Devices in the Courthouse

The use of audio, video and photography equipment is allowed inside courthouses (outside courtrooms) but only in designated media areas, as approved by the court.

The use of video and still cameras inside all courtrooms is prohibited, unless the presiding judge permits it. This includes the use of devices such as smart phones to record video and take photographs. Practice Note 42, at Appendix G, sets out the court’s practice relating to electronic devices.

Exclusion of the public from court proceedings

In some circumstances, the court may exclude the public from all or part of a court proceeding. Authority to impose such orders is usually reserved for those situations which involve highly personal, private or sensitive evidence or proceedings, the disclosure of which would harm innocent parties or business operations, or imperil security interests.

For example, the *Criminal Code* provides that a judge shall hold a hearing *in camera* to determine whether to order a person who has possession or control of counselling, child welfare and other personal records to produce those records to the court for review by the judge. This means that the public, including the media, are not entitled to be present at the initial hearing regarding production of this type of record.

As a further example, the *Youth Criminal Justice Act (YCJA)* denies access to records to most members of the public and media. The *YCJA* emphasizes the rehabilitation of the young person and the need to protect youth court records from access by the public.

Divorce proceedings and child protection hearings are two other examples where access to either the courtroom or court records (or both) is restricted.

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 unless the court makes an order allowing access.

4. COURT RECORDS MANAGEMENT

Court filing systems

Requests for court records may be made to the courthouse where the records are stored. The court has two registry offices, located in Summerside and Charlottetown. The Summerside court stores records relating to family law proceedings and small claims proceedings filed in Summerside. All other records are stored in Charlottetown. Audio recordings of court proceedings may be requested in Summerside or Charlottetown.

Filing systems have an impact on how court records may be accessed. Searches for court records may be by file number or party name. If a person requesting a court record does not know where the record is filed, court staff may assist if they are provided with the names of the parties and the type of proceeding.

Court records are paper records, although searches may be conducted via electronic means. Depending on the date of the records being requested, files may have to be accessed from off-site storage, which may result in delays in processing such requests.

Audio recordings of court proceedings are also court records. Appendix C provides the form for making a request for an audio recording of a court proceeding. Such requests are currently provided in CD format, but may also be requested in USB format.

Role of court staff

The primary responsibility of court officials is to ensure that court operations run smoothly and the administration of justice is carried out. A related task is providing court records pursuant to this Guide. However, responding to public access requests must not unduly impact the ability of court officials to provide the services necessary to maintain court operations.

There are limitations on the assistance that court officials may provide in relation to a request for access to a court record. Specifically, court officials do not:

- interpret or analyze information about court proceedings;
- recount the submissions made in court for anyone who did not attend court;
- search files to locate specific items on anyone's behalf; or
- confirm that the information relates to a particular person in the community (the responsibility for determining the accuracy of connections drawn between individuals in the community and individuals named in court documents lies with the person obtaining and using information accessed from the court).

Respect for court staff

In dealing with court officials, it is important to remember that they are representatives of the court, and should be treated with courtesy and respect. If, in the opinion of the court official, aggressive, harassing, intimidating or otherwise disruptive conduct is displayed by an individual requesting access to records, the court official may use their discretion to discontinue the discussion with the person requesting access. Court officials will report incidents of this type of conduct to the registrar of the court. Depending on the nature of the conduct in issue, further steps may be taken as appropriate.

5. MAKING A REQUEST FOR COURT RECORDS

How to make a request for court records

If an individual is entitled to access to a court record or some portion of a court record in respect of a court proceeding, they may obtain a copy of the court record or portion if:

- the record can be copied;
- the relevant fee is paid; and
- the request is in accordance with this Guide, subject to judicial discretion.

A request for access to a court record should be made to the court office where the record is stored. Individuals may inquire in person at the front counter of the court registry office between the hours of 8:30 a.m. and 4 p.m. Requests must be in writing. There are per-page photocopying fees for any material that is copied, set out at Appendix H to this Guide.

Written requests for access to court records may also be mailed or dropped off at the appropriate court office, provided the search fees (described at Appendix H attached), and photocopy fees are paid. Records are provided in hard copy form, or via a personal viewing by the requestor. Court records are not generally provided by mail, fax or email. Once access has been granted, requestors are required to attend at the court office to review the material and/or personally obtain copies.

A written request for access to court records may be made via the form attached to this Guide as Appendix A. In addition, the completion of one of the forms as set out in Appendices B and C of this Guide will be required when:

- the request involves a proceeding which is subject to a Publication Ban (Appendix B); or
- the request involves access to an audio recording of a court proceeding which has been concluded (Appendix C).

Proof of identity

Members of the public who request access to court records must provide proof of identity satisfactory to the registrar. Parties or other individuals authorized to access court records not otherwise available to the public may also be required to provide proof of identity satisfactory to the registrar. This typically occurs with records from the family section.

Viewing and Copying fees

Non-parties (persons not involved in the legal proceeding) must pay a fee to view a particular court file. A Schedule of Fees is attached as Appendix H. Payment of fees may be made by cash or debit card.

As noted above, if the request involves photocopying records, there will be a per-page fee, also set out in the Schedule of Fees attached as Appendix H.

Broad or blanket searches

Generally speaking, court offices do not have the search capabilities to be able to respond to inquiries such as, “How many lawsuits have been commenced against a particular business in the province?” or “How many lawsuits against a particular person are still outstanding?” In addition, topical searches such as, “How many lawsuits have been filed involving injuries caused by animals?” are not possible. In addition, as searches are conducted by name of party or court file number, bulk data requests may not be made to the court.

Electronic Searches

If an individual is unsure of the particular file to which they require access, they may conduct an electronic search of the Register of Actions at the Supreme Court in Charlottetown. Staff may provide assistance to individuals who wish to search electronically at the Supreme Court.

Timing of response to request for access

If a file is in use by a judge, access will not be available to the records until such time as the judge no longer needs them. Similarly, court officials have conflicting demands on their time and must ensure that the necessary tasks involved in the operation of the court are carried out. It is not possible to impose any particular time frame on responses to access requests, given the variables involved.

If the record is older and stored off-site, there may be a delay in accessing the record, and retrieval from storage requires an additional fee, set out at Appendix H.

Limits of search capabilities

The court does not guarantee that all records produced as a result of a search relate to the individuals about whom information is sought. For example, it is common for the name of the same individual to be spelled differently on different occasions, initials may be added or deleted, or aliases used. All of these issues add potential for errors and omissions in identifying files relating to a specific individual.

The person requesting access to the court record must examine the record and make his or her own determination about whether the court record pertains to the person who is the subject of their inquiry. Multiple files may exist under the same name even though the files pertain to different people.

Responsibility of Requestor

Persons obtaining access to court records are legally responsible to know and comply with all court orders or legislation respecting the use, publication or distribution of that record.

The court record is a record of proceedings that have occurred on a particular day and place. If the requester or user of the information attempts to connect those proceedings to people in the community, it is the legal responsibility of the person obtaining and using the information to ensure the accuracy of such connections.

Audio Recordings

Except as otherwise provided by statute, court order, or this Guide, a person who was present or entitled to be present in the courtroom for a proceeding, is entitled to access the audio recording of that proceeding. An exception, for example, is a child protection hearing.

The form at Appendix C to this Guide, “Request for Copies of Audio Recording of Court Proceedings” is required in order to request a copy of the audio recording of a proceeding. The form must be submitted to the courthouse in Charlottetown or Summerside, with the appropriate fee. The Schedule of Fees is at Appendix H to this Guide.

Access to Records Relating to Urgent Applications

Urgent applications, such as for an injunction, may involve confidentiality issues, or a request for a sealing order which the court is also being asked to rule on. If public accessibility to a given file is one of the issues to be determined in the application to the court, the records will not be made available until a judge rules on that part of the application.

Records relating to such applications are not accessible by the public or the media until the Prothonotary/Registrar has reviewed them. Reasonable efforts will be made to expedite this review.

If a publication ban is being requested in relation to a court file, records may be made available on condition that they must be treated as if the publication ban has already been ordered, until a judge rules on the request for a publication ban.

Access to Files While in Transition or During a Trial

Files in the possession of a judge before, during, or after a trial or other proceeding, are not immediately accessible to the public or the media. Requests for access to such files in transition are directed to the presiding judge through the courthouse administration staff. Subject to the judge’s approval, reasonable efforts will be made to provide access to records from the file at a convenient time. However, there may be time delays in accessing such records, as the proper administration of the proceeding is paramount.

6. ACCESS IS NOT PUBLICATION

There is a difference between access and publication and there are two areas where this distinction is important:

- 1) access to court records versus publication of the contents of those records; and
- 2) access to court proceedings versus dissemination of the information dealt with in those proceedings.

Publication bans

In many instances, the media may access information from court files although they may be prevented by a publication ban from publishing or broadcasting that information. A publication ban deals with dissemination of information, generally regarding the publication of facts that are the subject of a court proceeding. A publication ban does not generally restrict access to the court proceedings or record.

There are two kinds of publication bans: mandatory and discretionary. The *Criminal Code* and other legislation include some automatic publication restrictions (in matters heard under the *YCJA*, for example). The *Criminal Code* also requires that certain other bans be imposed upon request. These are mandatory bans. Other bans may be contemplated in legislation, but are left to the discretion of the judge. These are discretionary bans. At Appendix F is Supreme Court Practice Note 38, requiring that the media have reasonable notice of discretionary publication bans.

Depending on the nature of the matter, the public may still be able to access the court file, even if there is a publication ban. However, the person obtaining the information cannot publish the information outside of court. The terms of the publication ban will indicate the particular restrictions.

Anyone having access to a court record in a 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 record of any publication bans or restrictions that may apply, 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.

Publication bans may have expiry dates set by the court or by applicable legislation. If no expiry date is set, then the order continues in effect until set aside by a subsequent court order.

At Appendix B is the form required to request access to a court record subject to a publication ban.

Sealing orders

Sealing orders have the effect of denying access to court files or parts of files. An example of a record which may be subject to a sealing order is a search warrant and supporting documentation, pursuant to the *Criminal Code*. If a court file has been sealed, no one will be able to access the contents of the court file unless the order permits them to access the file or a judge amends the order to allow such access. The public may not have access to a sealed court record or to a sealed document within the court record, unless the court makes an order allowing access.

7. LIMITATIONS ON ACCESS

The following pages describe several of the limitations on access to court records that apply in the Prince Edward Island Supreme Court. It is not an exhaustive list, but sets out general principles and includes some of the limitations most commonly encountered.

Case Management Conferences, Pre-motion Conferences, Pre-trial Conferences

No one may have access to an audio recording of a case management conference, pre-motion conference or pre-trial conference. These proceedings involve obligations of confidentiality which are supported by a limit on their access.

Family Law Proceedings

Family law proceedings include divorce actions; proceedings relating to parenting orders, contact orders and support; adoptions; child protection matters; maintenance enforcement proceedings; and victim assistance orders and emergency protection orders. The public is generally excluded from family law proceedings, as the court has discretion to hear any family law proceeding in private.

The following individuals may have access to a court record in respect of a family law case, unless the court orders otherwise:

- 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.

Other individuals may be granted access to family court records only if the judge and the parties involved give their permission. Requests for access may be made, in writing, to the court. Staff will assist in relaying the request to the parties, if such notification may reasonably be carried out.

Child Protection Cases

Child protection hearings and appeals of child protection decisions are closed to the public, unless otherwise ordered by the court. The *Child Protection Act* stipulates that only the required parties may be present, and such other persons as the court may consider appropriate.

Court staff are therefore not permitted to provide public or media access to court records in child protection cases. In addition, no person is entitled to an audio recording of a child protection proceeding, in the interests of preventing disclosure of information from the proceeding.

Adoptions

The *Adoption Act* requires that an adoption hearing shall be held in private, and access to the court's files concerning an application to adopt shall be restricted, unless the court determines otherwise, having regard to the best interests of the child.

As adoption hearings are closed to the public, the records associated with such hearings are not accessible by the public.

Proceedings under the Maintenance Enforcement Act

Pursuant to the *Maintenance Enforcement Act*, the court excludes the public from court hearings regarding the enforcement of support obligations, to protect against the consequences of possible disclosure of financial or personal matters. As such hearings are closed to the public, the records associated with them are not accessible by the public.

Applications Relating to Incompetent Persons

Hearings of applications for the appointment of guardians or committees of incompetent persons are held in private. Likewise, access to the records relating to such applications is restricted unless the court determines otherwise.

Records relating to Criminal Proceedings

As noted earlier in this Guide, under the *YCJA*, a young person's right to privacy receives special protections. Youth justice court proceedings are subject to publication ban, and records are not accessible without court application.

Federal laws, including the *Criminal Code*, and the *Criminal Records Act*, place restrictions on access to court proceedings and records, in some circumstances. These may include records of bail hearings, or record suspensions (pardons). Jury lists are only available to parties in a proceeding, who must comply with any term or condition imposed by the court. With regard to wiretaps and various surveillance orders, access is not permitted, and their existence cannot be disclosed unless ordered by a judge.

Pre-sentence reports, bail verification reports, Gladue Reports, and medical, psychiatric or psychological reports may not be accessed unless a judge's permission is sought and obtained.

Victim impact statements are not subject to access until after they are read in court. After sentencing has been completed, and if the victim impact statement was read in court, they may be accessible only with a judge's permission.

Bankruptcy Records

Under the *Bankruptcy and Insolvency Act*, all proposals, bankruptcies, appointments of trustees, and notices of receivers are accessible to the public. However, the books and papers of the bankrupt are open to inspection only by those authorized, including the bankrupt, the affected creditors and the Superintendent of Bankruptcy.

Other Documents Related to Court Files

Other documents may be contained in the court file, even though they have not been filed in the case. Such documents are not publicly accessible. Some examples of these documents include:

- Correspondence between the trial coordinator and the parties to canvass available dates for court proceedings;
- Correspondence between court officials and an individual regarding fees paid to court (e.g., regarding an NSF cheque); and
- Fee waiver information.

Some documents may be filed in a sealed envelope within the court file. Court staff will remove such documents from the file before providing the records to a member of the public for inspection.

Exhibits

Exhibits in court proceedings may take many forms. Examples include:

- physical evidence (e.g., weapons, clothing);
- photographic/electronic evidence (e.g., photos, video, audio);
- business documents (e.g., phone records, bank records, business transaction records);
- expert reports (e.g., psychiatric reports, crime scene analyses, toxicologist reports); and
- forensic documents.

Judicial approval is required to obtain access to court exhibits, pursuant to the Exhibit Access Policy at Appendix D. Media and members of the public may make a written request for access to such a record, which will be submitted to the presiding judge. The form for making a request to access exhibits in a criminal proceeding is at Appendix E. The judge will provide direction about whether access may be granted (including any terms and conditions of access) or whether a formal application, on notice to the parties, is required to balance access rights, privacy interests, and the proper administration of justice.

Media and members of the public should direct their inquiries to court staff who will seek judicial direction about what is required in a particular case.

Court Decisions and Orders

Not all court decisions are released to the public. Some are oral decisions, with the resulting court order being subject to the access policies set out in this Guide. In addition, some written decisions are for the parties only.

All persons other than the parties or their lawyers seeking access to an unpublished court decision, must obtain permission of a judge.

REQUEST FOR ACCESS TO COURT RECORDS

Request made by: _____
(Please note Requestor must provide proof of identification)

| | |
|----------------|--------------|
| Name: _____ | |
| Address: _____ | |
| Phone: _____ | Email: _____ |

Information requested:

| |
|---|
| Set out the reason for the request, and a detailed description of records requested. _____ _____ _____ _____ _____ |
|---|

I accept that this request is subject to the following conditions:

1. **The person making the request for access bears the legal responsibility for the proper use of this information, including ensuring whether a publication ban or other court order exists regarding the use of the information. Inappropriate use of this information could constitute contempt of court or lead to a charge under the *Criminal Code*.**

2. All applicable fees for searches and photocopies shall be paid in advance of receiving any record.

3. Adequate time must be allowed for the search. Failure to fully complete the form or provide any additional information requested by the court official will delay the search.

4. A search may not locate all of the files relating to a person. Alternate spellings or aliases may affect the search.

5. The court record is a record of proceedings that have occurred on a particular day and place only. A file may have been opened, but may not yet have a final result. Files must be reviewed carefully by the searcher.

6. Files produced are not guaranteed to relate to the person named in the search. **Connecting the identity of court proceedings to persons in the community is the legal responsibility of the person seeking and using the information.**

I confirm that I have read the conditions set out above and that I assume full legal responsibility for any subsequent use of information that I receive from the court files.

Signed _____ Date: _____
Name of Requestor



Office Use only

Outcome of search – (Note whether any information provided and if so, name of person information was provided to.)

Proof of Identification Provided

Type of Identification _____

Signed: _____ Date: _____
Name and Title of Court Official

REQUEST FOR COPY OF A COURT RECORD
SUBJECT TO PUBLICATION BAN

Case Name: _____ Court File #: _____

Description of record: _____

Applicant's Name: _____

Applicant's Address: _____

Applicant's Phone Number: _____ Email: _____

Reason for Request: _____

THE PUBLICATION OF ANY INFORMATION WHICH MAY LEAD TO THE IDENTIFICATION OF THE COMPLAINANT, IS STRICTLY PROHIBITED.

I, the undersigned, understand and agree that the record which I will be provided pursuant to this request will be subject to the following terms and conditions:

1. I will not publish or broadcast the information from the record via any medium, including social media;
2. I will not distribute the record or its contents in any way;
3. I will store the record, and any information I gather from the record, in a secure place, where it cannot be accessed by anyone except pursuant to the terms of the publication ban.

I affirm that I am authorized to sign this agreement on behalf of the company or organization named below. I understand that this agreement is binding upon me personally and upon that corporation or organization.

Signature _____

Please note Requestor must provide proof of identification

Company/Organization _____ Date of Request _____

.....
Office Use only

Copy of record provided to _____

Proof of Identification Provided

Type of Identification _____

Signed: _____ Date: _____
Name and Title of Court Official

REQUEST FOR COPY OF AUDIO RECORDING
OF COURT PROCEEDINGS

Case Name: _____ Court File #: _____

Date of Proceedings: _____ Number of Days: _____

Heard before Justice: _____

Applicant's Name: _____

Applicant's Address: _____

Applicant's Phone Number: _____ Email: _____

Reason for Request: _____

**THE BROADCAST OF ANY AUDIO RECORDING OF COURT PROCEEDINGS, WITHOUT THE
PRIOR CONSENT OF A JUSTICE, IS STRICTLY PROHIBITED.**

I, the undersigned, understand and agree that the audio recording to be provided pursuant to this request will be provided subject to the following terms and conditions:

1. I will not broadcast the audio recording on social media, or any other medium without the prior consent of a Justice;
2. I will not distribute the audio recording without the prior consent of a Justice;

Note: The Crown may, without prior judicial consent, provide a copy of the audio recording to an accused person in a criminal proceeding (if self-represented) or to his counsel (if represented) to comply with existing laws respecting crown disclosure to an accused, after obtaining the same "no broadcast/distribution" undertaking from the recipient.

3. I will not copy, store or transfer the contents of the audio recording to any device, except as may be done by the software or operating system incidental to reviewing the contents;
4. I will not upload the audio recording or any of its contents in any way;
5. I will not allow any of these things to be done by anyone else;

6. I will store the audio recording in a secure place, where it cannot be accessed by anyone except pursuant to the terms of any order granting access to the audio recording.

I affirm that I am authorized to sign this agreement on behalf of the company or organization named below. I understand that this agreement is binding upon me personally and upon that corporation or organization.

Signature _____

Please note Requestor must provide proof of identification

Company/Organization _____ Date of Request _____

CD/USB Received By _____ Date Received _____

1. SUBMITTING THE FORM:

Completed and signed request form is to be submitted to the Charlottetown or Summerside Courthouse, in person. Requests are filled on a first-come-first-served basis. The time frame for production of CDs/USBs varies. We will call you as soon as your CD is ready to be picked up.

2. COST:

- a. Each CD/USB is \$20.00, plus delivery costs if the Applicant is unable to pick-up.
- b. Payment must be paid in full prior to production of CD/USB.

3. IF YOU ARE PURSUING AN APPEAL:

Should you require a transcript for appeal purposes, the decision of the Justice is to be transcribed by the attending Court Clerk. Contact the Trial Coordinator at 902-368-6023. These recordings are subject to Practice Note 22 of the **Rules of Court**, in particular:

- a. An audio recording of court proceedings may be used only:
 - (i) for the preparation of a typed transcript;
 - (ii) to permit the solicitor or party of record to review the testimony; or
 - (iii) to verify or supplement notes made for the purpose of preparation of material for broadcast or publication.
- b. An audio recording of a court proceeding shall not, either in whole or in part, be used for broadcast, audio reproduction or re-taping.

CDs/USBs must be transcribed by a certified transcription service. The Court of Appeal requires one hard copy and one electronic copy of the transcript and it is your responsibility to arrange and pay for the transcription and any copies.

4. RESTRICTIONS:

- a. The release of copies of audio recordings in relation to Young Persons' matters/hearings are subject to the provisions of sections 116 to 129 of the *Youth Criminal Justice Act*, or to the provisions of the *Youth Justice Act*, or the *Child Protection Act*.
- b. Recording of matters pursuant to the *Victims of Family Violence Act* are not available to anyone other than the parties or their lawyers without prior consent of the Prothonotary of the Supreme Court.
- c. Such other restrictions as may be imposed by the Court.

5. INSTRUCTIONS TO PLAY COURTSMART CD:

- Insert CD into computer - will automatically activate player. (Will not work on a regular CD player)
- **Session Selection** menu will appear
- Select required session and double click. Each session time is listed. Click "Play"
- **Playback** bar will pop up (similar to any cassette player)
- Green squares - microphones for different speakers. To hear only one speaker, click other green boxes to off position (red)
- To play a different session - exit playback to return to session list

**If you have any questions regarding this form or its requirements,
contact the court administration office in Charlottetown.**

**REQUEST FOR COPIES OF AUDIO RECORDING
OF COURT PROCEEDINGS**

(To be completed by Court Clerk)

Case Name: _____ Court File Number: _____

Date of Proceedings: _____ Number of Days: _____

Heard before Justice: _____

Applicant's Name: _____

Preparation of CD/USB:

Name of Court Clerk

Date CD/USB prepared

Signature of Court Clerk

Delivery of CD/USB:

Name of D/Registrar

Date CD/USB delivered to Applicant

_____ in person

Signature of D/Registrar

_____ certified mail/courier

Media Access to Exhibits

Although it is acknowledged that journalists should have timely access to exhibits during and after a trial concludes, the Court must ensure that such access does not interfere with the administration of justice. For that reason, the Court has adopted the following policy to maintain the integrity of exhibits and protect the administration of justice, while facilitating media requests for access.

1) Requests for Access During a Trial

- a) During a trial, a request for access to exhibits must be made to the judge, through the court clerk and the registrar. The court clerk will notify the Judge and the Registrar will arrange supervision, if the request is approved.
- b) Some judges may entertain informal requests for access to exhibits. Other judges may require a formal application to the Court.
- c) If access is granted, the judge may restrict what the exhibits may be used for (i.e. make them available for inspection but not for publication or broadcast). If the judge allows full access, those making the request will be allowed to view or photograph the exhibits.
- d) The judge may grant access only to those exhibits which have been properly admitted as evidence in open court.
- e) If the matter is being heard by a jury, the judge may grant access to exhibits admitted outside the presence of the jury (i.e. voir dire exhibits); however, their use is restricted by all applicable publication bans or court orders.
- f) In trials being covered by multiple media outlets, journalists are encouraged to make an application on behalf of the group. If access is granted, the court will arrange a time for all interested media to view the exhibits at once.
- g) Access will be arranged at the earliest opportunity, at a time convenient to both the court and the applicant(s).

2) Supervision

- a) Media who are granted access to exhibits must be supervised at all times by court staff in a secure area of the courthouse.

- b) Court staff approved to supervise access include the deputy registrars, sheriffs, the registrar (or their designate), and the court services manager.
- c) For groups of three (3) or more members of the media, at least two (2) approved court staff must be present to supervise access.
- d) Supervising staff must record each time access is granted in the Exhibit Access Log Sheet. A copy should be included in the court file.

3) Handling of Exhibits

- a) Only court staff identified in 2(b) are permitted to handle physical exhibits (i.e. drugs, currency, etc.). Media are not permitted to handle such items.
- b) Absent an order of a judge to the contrary, media shall be permitted to handle documentary exhibits (i.e. photobooks, reports, etc.), one exhibit at a time.
- c) Exhibits must be returned in the same condition and numerical order as they were when granted access.

COURT FILE NUMBER: _____

IN THE MATTER OF: _____

REQUEST BY MEDIA FOR EXHIBITS IN CRIMINAL PROCEEDINGS

I, _____, on behalf of
_____ (*media outlet*), request a copy of the following exhibits:

| Exhibit # | Description of Exhibit |
|-----------|------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

DATED at _____, Prince Edward Island, this _____ day of
_____, 20__.

Signature

[Once signed this Request for Exhibits form is to be provided to the Deputy Registrar, who will then determine from counsel whether they object to the exhibit being provided to the media]

Does counsel for the Crown object? YES / NO

Does counsel for the Defence object? YES / NO

PRACTICE NOTE 38**NOTICE TO MEDIA RE:
DISCRETIONARY PUBLICATION BAN, SEALING ORDER, RESTRICTED ACCESS
ORDER, OR CONFIDENTIALITY ORDER**

In *Dagenais v CBC*, [1994] 3 S.C.R. 835 the Supreme Court of Canada held that when a party seeks a discretionary publication ban, the media are entitled to reasonable notice of the application/motion and the opportunity to make representations before a decision on whether to issue a ban is made. In addition, parties occasionally request that the court issue a sealing order, restricted access order or confidentiality order in relation to all or portions of a court file.

For uniformity of practice, the following procedure is to be followed when a party makes an application/motion seeking a discretionary publication ban, sealing order, restricted access order or confidentiality order:

1. Any media entity who wishes to receive notice of the application/motion is required to advise the trial coordinator of the court, on an annual basis, of their contact information. Notice shall be provided by the court via email unless another method is specifically requested by the media entity and approved by the court.
2. The party seeking the discretionary publication ban, sealing order, restricted access order or confidentiality order shall contact the trial coordinator of the court, who will advise the party of the list of media entities that have requested notice.
3. All media entities that have provided their contact information to the court in advance will be given notice of the party's application/motion for a discretionary publication ban, sealing order, restricted access order or confidentiality order.
4. Each media entity will be given the same notice of the application/motion as prescribed to be given to a respondent (opposing party or parties) under the *Rules of Civil Procedure*. The notice from the court will include:
 - a) details of the order sought;
 - b) the time and place of the hearing;
 - c) the text of any interim orders which may have been granted; and
 - d) contact information of legal counsel for the party seeking the order. If the party seeking the order is not represented by legal counsel, the notice will provide the contact information of the party.
5. The presiding judge has discretion to determine the issue of standing of any media entity requesting to make representations on the application/motion.

Practice Note originally issued by Jacqueline R. Matheson (Chief Justice – Trial Division) September 22, 2005.
Amended by Tracey L. Clements (Chief Justice – Supreme Court of Prince Edward Island) July 27, 2021.

PRACTICE NOTE 42
THE USE OF ELECTRONIC DEVICES IN COURTROOMS
OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

This protocol applies to all persons attending the Supreme Court of Prince Edward Island Courtrooms throughout the Province of Prince Edward Island and sets out the permitted and prohibited use of electronic devices in these courtrooms.

Definitions

1. In this policy, the following definitions apply:
 - a. “courtroom” means a room in which a hearing takes place before a judicial officer.
 - b. “judicial officer” means a Justice of the Supreme Court, a Registrar, a Justice of the Peace or the Prothonotary.
 - c. “electronic device” means any device capable of transmitting and/or recording data, audio or video, including smartphones, cellular phones, computers, laptops, tablets, notebooks, personal digital assistants, pagers, video or still cameras, audio recorders or any other device which produces, records or transmits texts, audio, video, or still photographs.

Prohibitions on the Use of Electronic Devices

2. Except as permitted under this policy, the use of electronic devices in courtrooms to transmit and receive texts or to take photos or video images is prohibited.
3. An electronic device may not be used in a courtroom:
 - a. in a manner which interferes with the court sound system or other technology;
 - b. in a manner which interferes with courtroom decorum, is inconsistent with the Court functions, or otherwise impedes the administration of justice;
 - c. in a manner which generates sound or requires speaking into the device;
 - d. to record or digitally transcribe the proceedings except as permitted by this policy.

Permitted Uses of Electronic Devices

4. In courtrooms of the Supreme Court:
 - a. members of the media who have signed an undertaking with the Court;
 - b. lawyers who are members of the Law Society of Prince Edward Island, or who appear in the Supreme Court under the occasional appearance rule, or law clerks; and,
 - c. law enforcement officers;

may use electronic devices in silent mode to make notes, update a file, or to transmit or receive texts in a discreet manner which does not interfere with the proceedings.

Permitted Audio Recording by Media

5. In the courtrooms of the Supreme Court of Prince Edward Island, members of the media, who have given a written undertaking to the Court, may use electronic devices to audio record a proceeding for the sole purpose of verifying their notes and not for rebroadcast or any other purpose.

Discretion of Presiding Judge

6. Nothing in this policy affects the authority of the presiding Justice of the Supreme Court to determine what, if any, use can be made of electronic devices in a courtroom.

Publication Bans, Sealing Orders, Restrictions on Publication

7. Nothing in this policy alters the effect of a publication ban, sealing order or other restriction imposed by statute or the Court, limiting the publication of information.
8. Anyone using an electronic device to transmit information from the Courtroom, in accordance with this policy, has the responsibility to identify and comply with any publication bans, sealing orders, or other restrictions that have been imposed either by statute or by Court Order.

Penalties

9. A person using an electronic device in a manner prohibited by this policy may be subject to one or more of the following sanctions:
 - a) a direction to turn off the electronic device;
 - b) a direction to leave the courtroom;
 - c) forfeiture of the media=s exemption under this policy;
 - d) citation and prosecution for contempt of Court;
 - e) prosecution for any violation of a publication ban, sealing order, or other restriction on publication; or
 - f) any other order of the Court.
10. Persons permitted to use electronic devices under this policy are also required to abide by the Acceptable Use Policy for Prince Edward Island Court Services WI-FI Network, attached as Schedule "A".

(Sgd)

Jacqueline R. Matheson
Chief Justice - Supreme Court
of Prince Edward Island
September 9, 2014

SCHEDULE "A"

**Acceptable Use Policy for Prince Edward Island
Court Services WI-FI NETWORK**

This acceptable use policy is used to define what activities can be used on Court Services WIFI network.

1. The purpose of installation of a WI-FI network is to support persons who are accessing research materials and documents during court cases.
2. The WI-FI network is not to be used for any personal activity that may cause embarrassment to you or the courts, and must not be used to access or promote inappropriate sites, including but not limited to pornography, racism, hatred, gambling, obscenity or any illegal activities.
3. You are responsible and accountable for the use of your user ID, passwords and other access control items. They may not be shared.
4. You must not violate the privacy of other users and their accounts, regardless of whether those accounts are securely protected. Technical ability to access other's accounts does not, by itself, imply authorization to do so.
5. You should not leave your computer unattended and unlocked while logged into the network.
6. Willful or intentional violations of this agreement will be considered to be misconduct and violators of the agreement may be denied access to the Court WI-FI network.
7. The Court does not warrant that wireless access to the Internet will be uninterrupted, error free, or free of viruses or other harmful components.
8. Broadcasting of judicial proceedings is prohibited.

I have read and understand "The Acceptable Use Agreement for Prince Edward Island Court Services WiFi Network" and recognize that technical monitoring takes place to protect the system and ensure users are complying with this policy. I agree to access and use the Court provided computer technology only in accordance with the terms and conditions set out in this Agreement.

Date: _____

Name of User: _____

Witness: _____

User Signature: _____

Appendix H

SCHEDULE OF FEES FOR ACCESS TO COURT RECORDS

| | |
|-------------------------------------|----------|
| Photocopies : | |
| 1-5 pages | \$ 5.00 |
| 6-10 pages | \$ 10.00 |
| 11-15 pages | \$ 15.00 |
| 16-20 pages | \$ 20.00 |
| 21-30 pages | \$ 25.00 |
| 31-40 pages | \$ 30.00 |
| 41-50 pages | \$ 35.00 |
| 50+ pages | \$ 40.00 |
| | |
| Copy of audio recording | \$ 20.00 |
| | |
| File viewing | \$ 20.00 |
| | |
| File retrieval (for archived files) | \$ 50.00 |