

MEMO

TO: Provincial Court Staff

FROM: Chief Judge Nancy K. Orr

DATE: May 24, 2018

RE: Amendments to the *General Principles and Policies for Public Access to Court Files and Documents*

Following discussion at the recent Provincial Court Bench and Bar meeting, the following amendments to the *General Principles and Policies for Public Access to Court Files and Documents* were prepared to specifically address who can access court proceedings or obtain a CD of a particular matter, in accordance with how this is handled in other jurisdictions.

Attached is the amendment to the policy, which will follow section 4.1 in the document and will be numbered as **Section 5. Access to Court Proceedings**. It includes the following four appendixes:

Appendix "A" - application form

Appendix "B" - access order

Appendix "C" - undertaking to be provided by Crown counsel

Appendix "D" - undertaking to be provided by Defence counsel

You will note that counsel of record does not need to file an application- only an undertaking. The policy and appendixes are in word format and are to be adapted as necessary, to indicate the specific circumstances of the request.

(SGD) Nancy K. Orr
Chief Judge of the Provincial Court of Prince Edward Island

ADDENDUM
to *General Principles and Policies for*
Public Access to Court Files and Documents
May 24, 2018

5. Access to Court Proceedings

5.1 Proceedings in the Provincial Court of Prince Edward Island are recorded by a Digital Audio Recording System.

5.2 The following indicate the manner in which those proceedings can be listened to and when copies of audio recordings can be obtained.

5.3 If a court registry is equipped for public listening, or court staff are available to monitor the use of court facilities, parties, counsel, members of the legal profession, accredited journalists, and all members of the public, including journalists who are not accredited, can use the public listening facilities or the monitored court facilities to listen to a recording during normal business hours.

5.4 For a proceeding covered by a publication ban, a person is entitled to listen to the audio recording by attending at the court registry, unless the proceedings were sealed. However, anyone having access to the audio recording, whether by listening to it or by obtaining a Digital Audio Recording - CD is required to abide by the terms of any publication ban which may be in place.

5.5 A person is entitled to listen to the audio recording of oral reasons for judgment by attending at the court registry, unless the proceedings were sealed. However, it should be noted that 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.

5.6 An accused person may only have access to a Digital Audio Recording - CD of the court proceedings upon an order from the presiding Judge, or if unavailable, by the Chief Judge. The accused person must submit an application in the form attached as Appendix "A" and any order permitting access should include the terms in the Access Order attached as Appendix "B".

5.7 Counsel of Record may only have access to a Digital Audio Recording - CD of the court proceedings on providing an undertaking in the form attached as Appendix “C”, if Crown counsel, or Appendix “D” if defence counsel. The undertaking includes conditions that restrict the use of the copy and prohibit any further distribution of it.

5.8 Other lawyers may only have access to a Digital Audio Recording - CD of the court proceedings by providing a letter of authorization from the accused or counsel of record authorizing the lawyer to obtain a copy of the audio recording, and on providing an undertaking in the form attached as Appendix “C” if Crown counsel or Appendix “D”, if defence counsel. The undertaking includes conditions that restrict the use of the copy and prohibit any further distribution of it.

5.9 Accredited journalists may only have access to a Digital Audio Recording - CD of the court proceedings by a court order from the presiding judge, or if unavailable, the Chief Judge. Accredited journalists must make an application and providing an undertaking in the form attached as Appendix “A”, and an order for access, if granted, should be in the form attached as Appendix “B” with terms that prohibit release of the Digital Audio Recording - CD to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet. In addition, there must be a term that requires the journalist to keep the CD secure and to return it to the registry when it is no longer required.

5.10 Any other access to a Digital Audio Recording -CD of court proceedings must be by court order by the presiding judge, or if unavailable, by the Chief Judge. Any application for such access should be in the form attached as Appendix “A” and any order granted should include the terms in the Access Order attached as Appendix “B”.

5.11 For the purposes of clarification, no access to the following court proceedings, whether by way of CD or by listening at a court registry, is permitted, unless ordered by the presiding judge or if unavailable, by the Chief Judge, namely:

- a) in-camera proceedings;
- b) sealed files;
- c) record suspended/pardoned files;
- d) remand/release of prisoners before the Justice of the Peace;
- e) Youth Criminal Justice Act proceedings (save and except that the young person, their counsel and Crown counsel may listen to the audio recording at the court registry); and
- f) audio recording of courtroom before or after the court is in session.

CANADA
PROVINCE OF PRINCE EDWARD ISLAND
IN THE PROVINCIAL COURT

Court File Number:

BETWEEN:

HER MAJESTY THE QUEEN

INFORMANT

AND:

ACCUSED

ACCESS ORDER FOR DIGITAL AUDIO RECORDING- CD (Appendix "B")

1. The applicant _____
(a) has acknowledged in the attached application that the Digital Audio Recording- CD for the above court proceedings heard before Judge _____ on _____ in the Provincial Court House at _____, P.E.I is being provided solely for the purpose _____

_____ and;

(b) that any other use of the Digital Audio Recording -CD is prohibited.

2. The applicant must not:

- (a) copy, store or transfer the contents of the Digital Audio Recording- CD to any device, except as may be done by the software or operating system incidental to reviewing the contents, and such review shall only be carried out on computer equipment and peripheral devices belonging to the applicant;
- (b) upload the Digital Audio Recording- CD or any of its contents to the internet or otherwise make the Digital Audio Recording- CD or any of its contents available through any medium;
- (c) distribute the Digital Audio Recording- CD or any of its contents in any way; and
- (d) allow any of these things to be done by anyone else.

3. The applicant must not provide access to the Digital Audio Recording- CD or its content to anyone else.

4. When the Digital Audio Recording- CD is not being used for the purpose permitted in this application, the applicant must keep the Digital Audio Recording- CD 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 Digital Audio Recording- CD to the Provincial Court office that issued it _____.

6. If the applicant requires the Digital Audio Recording- CD beyond the date specified, the applicant must bring a further application for an order to extend the time to retain the Digital Audio Recording- CD.

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

Chief Judge of the Provincial Court
of Prince Edward Island

PROVINCIAL COURT OF PRINCE EDWARD ISLAND

**REQUEST BY CROWN COUNSEL FOR DIGITAL AUDIO RECORDING- CD
APPENDIX "C"**

UNDERTAKING OF CROWN COUNSEL:

I _____, request that the Digital Audio Recording- CD
for a court proceeding in the case of R. v. _____ heard
before Judge _____ on _____ at the Provincial Court
at _____, P.E.I. be provided to me solely for the purpose of

_____ and I understand that any other use is prohibited.

I undertake as follows:

1. The Digital Audio Recording- CD will not be copied for any reason.
2. The Digital Audio Recording- CD will not be accessed or used by anyone other than:
 - A) myself, another lawyer, articled student or staff member within the Crown Prosecutor's office who is assisting me in this matter; and/or
 - B) any third parties whose examination in good faith is necessary to assist me to prepare and conduct or review the prosecution or appeal in this matter.
3. The Digital Audio Recording- CD will be kept in a secure place where it cannot be accessed by persons other than those who are authorized to access it.
4. The Digital Audio Recording- CD will be returned to the Chief Clerk of the Provincial Court, Charlottetown, P.E.I. within sixty (60) days of the conclusion of the case, which includes any reviews of the conduct of the case and any appeals.

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

(Crown Counsel's signature and business address)

PROVINCIAL COURT OF PRINCE EDWARD ISLAND

**REQUEST BY COUNSEL FOR DIGITAL AUDIO RECORDING- CD
APPENDIX "D"**

UNDERTAKING OF COUNSEL:

I _____, request that the Digital Audio Recording- CD
Print Lawyer's Name
for a court proceeding in the case of R. v. _____ heard
before Judge _____ on _____ in the Provincial Court House
at _____, P.E.I. be provided to me solely for the purpose of

_____ and I understand that any other use is prohibited.

I undertake as follows:

1. The Digital Audio Recording- CD will not be copied for any reason.
2. The Digital Audio Recording- CD will not be accessed or used by anyone other than:
 - A) myself, another lawyer, articled student or staff member within my office who is assisting me in this matter;
 - B) my client, provided I am present during such access; and/or
 - C) any third parties whose examination in good faith is necessary to assist me to prepare and conduct the defence.
3. The Digital Audio Recording- CD will be kept in a secure place where it cannot be accessed by persons other than those who are authorized to access it.
4. The Digital Audio Recording- CD will be returned to the Chief Clerk of the Provincial Court, Charlottetown, P.E.I. if I cease to represent this accused, or within sixty (60) days of the conclusion of the case, including any appeals.

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

(Lawyer's signature and business address)

