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.
- 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.
- 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.
- 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.

PROVINCIAL COURT OF PRINCE EDWARD ISLAND

Appendix "A" **REQUEST for an ACCESS ORDER FOR Digital Audio Recording- CD**

The applicant requests that the Print Name
Digital Audio Recording- CD for a court proceeding heard before Judge
in the case ofon
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at, P.E.I be provided to the applicant solely for the purpose of Court location
and understands
that any other use is prohibited.
The applicant agrees to be bound by the following conditions if the Digital Audio
Recording- CD is provided, namely:
1. Not to 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;
2. Not to 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;
3. Not to distribute the Digital Audio Recording- CD or any of its contents in any way;
4. Not to allow any of these things to be done by anyone else.
5. Not to provide access to the Digital Audio Recording- CD or its content to anyone else.
6. When the Digital Audio Recording- CD is not being used for the purpose permitted in
this application, the applicant agrees to keep the Digital Audio Recording- CD in a secure place,
where it cannot be accessed by anyone, except pursuant to the terms of any order granting access
to such Digital Audio Recording- CD.
7. The applicant agrees to return the Digital Audio Recording- CD to the Provincial Court
office that issued it on or before the date specified in the access order.
8. If the applicant requires the Digital Audio Recording- CD beyond the date specified, a
further application must be made to the court for an order extending the time the applicant may
retain the Digital Audio Recording- CD.
Signature of Applicant:
Print Name:
Address of Applicant, including email & phone numbers:

CANADA
PROVINCE OF PRINCE EDWARD ISLAND
IN THE PROVINCIAL COURT

Court File Number:

Chief Judge of the Provincial Court

of Prince Edward Island

WEEN	HER MAJESTY TE	HE QUEEN		INFO	PRMANT
) :				A	CCUSED
<u> </u>	ACCESS ORDER FOR	R DIGITAL AUDIO R	ECORDING-		(Appendix "B")
1.	The applicant				
(a)	has acknowledged in th	he attached application	that the Digit	tal Audio	Recording- CD for the
above of	court proceedings heard	before Judge	on_		
in the P	court proceedings heard Provincial Court House a	nt	, P.	E.I is being	ng provided solely for
the pur	pose				
					and
(b) tha	at any other use of the l	Digital Audio Recordi	ng -CD is pro	hibited.	
2.	The applicant must not:				
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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 I	Digital Audio Recording- CD
Print Crown Counsel's Name for a court proceeding in the case of R. v		heard
before Judge		
at		
	and I understand that	t any other use is prohibited.
I undertake as follows:		
1. The Digital Audio Recording- CD will	not be copied for any re	ason.
 The Digital Audio Recording- CD will A) myself, another lawyer, articled stroffice who is assisting me in this matter; at B) any third parties whose examination and conduct or review the prosecution or ap The Digital Audio Recording- CD will be by persons other than those who are authorial. The Digital Audio Recording- CD will be a conducted and the conducted are authorial. The Digital Audio Recording- CD will be a conducted and the conducted are authorial. The Digital Audio Recording- CD will be a conducted and the conducted are authorial. 	udent or staff member w nd/or on in good faith is neces opeal in this matter. be kept in a secure place zed to access it.	sary to assist me to prepare where it cannot be accessed
Charlottetown, P.E.I. within sixty (60) days reviews of the conduct of the case and any a	s of the conclusion of the	
Dated at , Pr	ince Edward Island this	day of , 20
	(Crown Counsel's sig	gnature 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 Digita,	al Audio Recording- CD
	awyer's Name		
for a court proceeding	g in the case of R. v		heard
		in the	
at	,	P.E.I. be provided to me so	olely for the purpose of
		and I understand that any	other use is prohibited.
I undertake as follo	ws:		
1. The Digital Audio	Recording- CD will no	ot be copied for any reason.	
A) myself, ano assisting me in this m B) my client, p	ther lawyer, articled stud atter; rovided I am present dur rties whose examination	ot be accessed or used by ardent or staff member within ring such access; and/or in good faith is necessary to	my office who is
_	Recording- CD will be those who are authorize	kept in a secure place when	re it cannot be accessed
Charlottetown, P.E.I.		returned to the Chief Clerk nis accused, or within sixty	
Dated at	, Prince	Edward Island this day	of , 20
		(Lawyer's signature	and business address)