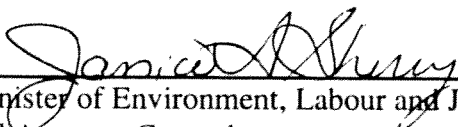

**General Principles and
Policies for Public Access to
Court Files and Documents**

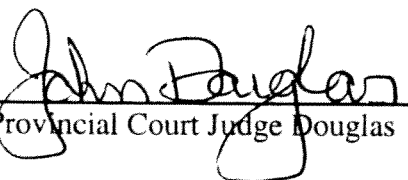
Approval of
Environment, Labour and Justice
and
The Provincial Court of Prince Edward Island
General Principles and Policies for Public
Access to Court Files and Documents

The attached principles and policies concerning public access to court files and documents are approved effective January 1, 2013. These principles and policies have been endorsed by the Provincial Court of Prince Edward Island, December 31st, 2012.

Dated at Charlottetown, this 31st day of December 2012, to come into force and effect on January 1, 2013.



Minister of Environment, Labour and Justice
and Attorney General



Chief Provincial Court Judge Douglas

General Principles and Policies for Public Access to Criminal Court Files and Documents

1.1 Open & Accessible Court System

Openness has long been recognized as a cornerstone of the common law and a basic principle of Canadian judicial proceedings. Public access guarantees the integrity of judicial processes by demonstrating that justice is administered in a non-arbitrary manner and in accordance with the rule of law.

The open court principle is not just about the right to attend proceedings. It is really about access to information that is relevant to the resolution of court proceedings. Accordingly, not only are the judicial proceedings themselves public, but so too, for the most part, are the documents that are part of them.

Although freedom of the press is fundamental and court proceedings at all stages are presumptively open, the right is not absolute. As noted by the Supreme Court of Canada in 2005, “. . . *under certain conditions, public access to confidential or sensitive information related to court proceedings will endanger and not protect the integrity of our system of justice. A temporary shield will in some cases suffice; in others, permanent protection is warranted. Sometimes restrictions are mandated by legislation and sometimes they are imposed through the exercise of judicial discretion.*”

(from *Access to Court Information* by Gerard E. Mitchell)

1.2 Judicial Direction

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

1.3 Making Requests for Access By Telephone

It is important to bear in mind that in many instances, a court official will be fielding multiple calls about the same file. It would not be an efficient use of court resources to require the official to provide detailed information over the telephone to multiple callers. As a result, limited information will be provided by court officials over the telephone.

Note: It's important for the media outlets to be aware if a publication ban is in effect. As a result, information about the existence of publication bans can be obtained by telephone.

2.1 General Principle of Public Accessibility

In general, once process is issued (i.e., an Information is sworn and an arrest is made or a summons is served), criminal court files and documents are publicly accessible, unless

legislation, common law rule or a court order restricts access. **Note: However, if the information is in respect of an offence to which an order restricting publication could be made (for example for the offences for which a publication ban can be made pursuant to s. 486.4 of the Criminal Code), then no access is to be granted to the information until the prosecutor has had an opportunity to make an application for a publication ban or has indicated that no such application will be made.** This will often occur at the first court appearance, but unless it is specifically noted on the information that a publication ban is not being sought, public access should not be provided to such an information until it can be confirmed that the prosecutor has had an opportunity to request one. Providing immediate public access to the information where a publication ban can be and usually is made defeats the purpose of the publication ban, and may significantly impact the rights and privacy of witnesses and/or complainants.

2.2 Criminal Court Files and Documents with Restricted Access

Exceptions to the general principle of public accessibility are outlined below:

2.2.1 Documents in Youth Criminal Proceedings

General Rule:

Court files and documents of youth criminal proceedings or other proceedings pursuant to the *Juvenile Delinquents Act*, *Young Offenders Act* and *Youth Criminal Justice Act*, that make reference to youth criminal information are not accessible to the public, unless the young person receives an adult sentence and:

- the appeal period has elapsed; or
- an appeal has been heard and the court of appeal has upheld the adult sentence, and
- there is no publication ban in place

YCJA records are accessible to persons listed in the YCJA, or if a court order is obtained pursuant to the YCJA.

Exception for information about courtroom location and future court dates:

Future court dates in youth matters are available to the public if sufficient information is provided to allow court staff to access the information in a reasonable amount of time. To obtain the information, the request must include the full name of the young person. Any of the following additional information will assist in accessing the information:

- court file number;

- last court date;
- charges against the young person; and
- date of birth.

Alternatively, the request can include the young person's initials, along with the last court date and court location.

If an exclusion or sealing order has been made in the *YCJA* matter, disclosure of next court date information is not permitted.

2.2.2 Documents Relating to a Peace Bond Application

An individual or peace officer may make an application to the court for a peace bond to request that a person be ordered to keep the peace. To begin the application, the complainant presents an Information at an initial interview with a justice of the peace. If the justice of the peace confirms a summons, any documents relating to the application are accessible to the public once the defendant has been served with it (or in rare circumstances, has been arrested), unless otherwise ordered by the court. If the justice of the peace refuses to issue a summons, there is no public access to the documents.

2.2.3 Warrants

Warrants Under the Criminal Code

1. Search Warrants and General Warrants

Search warrants give investigators the right to search and seize property. Specialized search warrants also exist for the seizure of blood samples, controlled substances, counterfeit money, a disorderly house, drugs, hate propaganda, lumber or lumbering equipment, obscene material, precious metals and proceeds of crime.

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).

Search warrants and general warrants, including those under the *Controlled Drugs and Substances Act*, are publicly accessible, if all of the following occur:

- the warrant has not been sealed by court order;
- the warrant has been executed and a seizure has been made; and
- a Report to a Justice Form 5.2 has been made and filed with the court office or an order of detention has been received from the presiding judicial official.

Forensic DNA warrants are publicly accessible if the warrant has not been sealed by court order.

2. Sealed Warrants

Under subsection 487.3(1) of the *Criminal Code (CC)*, the presiding judge or justice may make an order sealing documents related to any warrant or any authorization to enter a place. Public access to sealed warrants is only permitted by order of the court. All documents related to sealed warrants, including electronic surveillance (e.g. wiretapping), are sealed in accordance with the terms of the sealing order.

3. Tracking Warrants and Number Recorder Warrants

Staff must seek judicial direction when a third party requests access to tracking warrants¹ issued under section 492.1 and number recorder warrants² issued under section 492.2 of the *Criminal Code*.

4. Warrants for Arrest

Warrants of arrest and/or copies of these warrants are generally not provided to the court. If a warrant of arrest or copy of a warrant of arrest is in the court file, court staff should treat the warrant in the same manner as the Information. Any public access restrictions that apply to the Information (e.g., *YCJA*) would also apply to the warrant. If the Information is publicly accessible, the warrant is accessible as well.

Unexecuted Warrants

Court staff cannot confirm the existence of an unexecuted warrant under the *Criminal Code*.

¹ A tracking warrant authorizes the use of a tracking device.

² A number recorder warrant authorizes the installation and monitoring of a telephone number recorder.

2.2.4 Search Warrants

Prior to execution a warrant does not form part of the public record and therefore there is no access to unexecuted warrants: *Nova Scotia (A.G.) v. MacIntyre*, (1982) 1 S.C.R. 175.

Where a search warrant has been executed and nothing has been found, access to both the warrant and the documents relating to it is restricted to "interested parties", e.g. the person searched, police, etc.

Where a search warrant has been executed and something has been found, access to the warrant and to the information upon which it has been issued is unrestricted, unless subject to a sealing order.

2.2.5 Production Orders

There are two distinct types of production orders provided for under the *Criminal Code*. The different public access to the two is summarized below.

Proceedings and records relating to a complainant or witness are not publicly accessible unless so ordered by the court. Production orders however, are to be managed in the same fashion as search warrants and may be publicly accessible if the requirements outlined below have been met.

Record Relating to a Complainant or Witness

A judge may grant an accused access to a record relating to a complainant or a witness. No person shall publish:

- the contents of an application by an accused who seeks production of a record;
- evidence taken, information given or submissions made; or
- the determination of the judge and reasons provided.

Production of Document

A judge or justice of the peace may order a person to produce a document or prepare a document from data under the care and control of a person. The proceedings for and documents produced are publicly accessible if:

- the production order has not been sealed by court order; and
- a Report to a Justice Form 5.2 has been made and filed with the court office or an order of detention has been received from the presiding judicial official.

2.2.6 Court Files and Documents under *Criminal Code* Publication Bans

When a publication ban is applied for and imposed by the court (e.g., s. 486.4 related to sexual offences or s. 517 related to judicial interim release or bail hearings), the court file and documents are still accessible to the public. Staff will notify the recipient that the file or document is under a publication ban and will warn him or her that publication, broadcasting or transmitting in any way the information governed by the publication ban could be a violation of law.

2.2.7 *In Camera* / Publicly-Excluded Proceedings

Under various sections of the *Criminal Code*, the public may be excluded in whole or in part from a court proceeding. These proceedings are known as *in camera* or publicly excluded proceedings. If the public is excluded from a court proceeding, the public cannot access the records relating to that portion of the proceeding, except by court order.

s. 486(1) - Exclusion of the public in certain cases; s. 486.5(6) - Judge may hold private hearing to determine whether a publication ban under s. 486.5(1) or (2) should be made; s. 276.1(3) and s. 276.2(1) - Evidence of complainant's sexual activity; s. 278.4(1) and s. 278.6(2) - Production of record to accused; s. 482.34(5) - Hearing to determine reasonableness of expenses in relation to an application of review of special warrants and restraint orders; s. 672.5(6) - Exclusion of public from all or part of a disposition hearing re: mental disorder; s. 672.5(10) and s. 672.51(6) - Exclusion of accused and/or certain persons from a mental disorder disposition hearing.

2.2.8 Court Files and Documents in Section 276.1 and 278.2 Applications

Applications under section 276.1 (evidence of complainant's sexual activity) and section 278.2 (production of record to accused) of the *Criminal Code* require that specific documents be filed with the court. These documents may be filed at the time of the application or before the court date.

The presiding judge or justice will consider the application in a mandatory *in camera* proceeding. In the case of a section 276.1 application, if the presiding judge or justice grants the application, a mandatory *in camera* hearing will be held to determine if the evidence is admissible. In the case of a section 278.2 application, if the presiding judge or justice orders the record be produced to the court, he/she may hold an *in camera* hearing to determine whether to produce the record to the accused.

Documents filed in advance of these mandatory *in camera* proceedings are not publicly accessible prior to the court hearing, except by court order.

2.2.9 Documents and Court-ordered Reports of a Sensitive Personal Nature

Access requests for:

- pre-sentence reports;
- sexual deviancy reports;
- 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; and
- any written information filed with the court regarding whether an accused person should be found not criminally responsible due to mental disorder,

must be referred to a judge of the court if the presiding judge is not available. As previously noted, any reference to *Youth Criminal Justice Act* information contained in *Mental Health Act* records is not publicly accessible.

2.2.10 Sealed Files and Documents

If the court seals a file or court document, public access is only permitted by order of the court.

2.2.11 Documents Relating to Absolute and Conditional Discharges

The *Criminal Records Act* of Canada denies public access to criminal records:

- after one year, if the defendant has received an absolute discharge; or
- after three years, if the defendant has received a conditional discharge.

If an absolute or conditional discharge has been ordered, court staff shall not permit access to the court documents and must not disclose the existence of these documents after the specified periods noted above, to any one other than the person who is the subject of the discharge or counsel acting on his or her behalf. Requests for access by the person who is the subject of the discharge must be made in writing to the court.

2.2.12 Documents Relating to a Pardon

If a pardon has been granted, documents relating to the original conviction in the custody of a department or agency of the Government of Canada are not publicly accessible, without prior approval of the Federal Minister of Justice

If a pardon has been granted, court staff must not allow access to the court documents and must not disclose the existence of these documents to any person, other than the person who is the subject of the pardon or counsel acting on his or her behalf. Requests for access by the person who is the subject of the pardon must be made in writing to the court. (Use request form)

2.3 Court Dockets

The docket is a list of names of the accused persons and the charges scheduled to be heard in a specific courtroom, on a specific date, and at a specific time.

Youth Criminal Justice Act dockets must remain confidential and are not publicly accessible. All other dockets are publicly available.

Court staff must make dockets available to the public at no charge, by either posting the docket in a location convenient to the public or by making it available at the court counter.

NOTE: Due to storage limitations in the court office, some older court dockets may not be immediately available at the court counter. The time required to access older dockets that are not stored in the court office might be longer.

2.4 Summary Proceedings Act Court Documents

In general, court documents related to the *Summary Proceedings Act* are publicly accessible, unless otherwise ordered by the court.

However, the following court documents for *Summary Proceedings Act* proceedings are not publicly accessible:

- applications for an order of examination under the *Mental Health Act*, and
- all proceedings against young persons commenced under the *Youth Justice Act*.

2.5 Criminal Records

Unless there is an exception created by statute or court order, all records of the court are public. Therefore, all persons are entitled to information as to the outcome of any criminal proceedings in relation to any charge against any particular person (unless the court makes an order to the contrary, or the court or one of its designates invokes the court's jurisdiction to restrict access for good cause).

2.6 Financial Records

Access to court financial information and documentation relating to it is restricted to "interested parties." All such requests shall be in written form to the court. (Use request form)

3.1 Exhibits in Criminal Cases

Criminal

Judicial direction is required regarding public requests for access to court exhibits. Request is made by application to the court. If the trial is ongoing, application is made to the presiding judge.

3.2 Exhibits

After the completion of case appeal period, exhibits are either returned, sent to archives or destroyed.

4.1 Fees for Public Access to Court Documents

Criminal

No charge to access criminal documents or files. If a person requires a copy, the fee is \$1.00 per page or \$3.50 for a certified copy.

If a person requires a CD of any criminal court proceeding, the fee is \$20 per CD. All such requests shall be in writing to the court. (Use request form)

Other fees payable in the Provincial Court:

- | | |
|--|-------|
| i. To conduct a criminal conviction search and provide a copy | \$20 |
| ii. To prepare and provide each certificate of conviction | \$20 |
| iii. For completion of an application for a record suspension (pardon) | \$100 |