



POLICIES REGARDING  
PUBLIC AND MEDIA ACCESS  
IN  
THE PROVINCIAL COURT OF BRITISH COLUMBIA

Office of the Chief Judge  
Provincial Court Judiciary  
Provincial Court of British Columbia  
#602 - 700 West Georgia Street  
P.O. Box 10287 Pacific Centre  
Vancouver, BC V7Y 1E8

February 2011  
(Revised October 2011)  
(Revised November 2012)

**POLICIES REGARDING PUBLIC AND MEDIA ACCESS  
IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**February 2011**

(Revised October 2011)  
(Revised November 2012)

**Table of Contents**

<b>1. Introduction - The Principle of Openness .....</b>	<b>1</b>
<b>2. Access to Courthouses and Courtrooms</b>	
a. General Rule of Accessibility .....	2
b. Decorum when Court in Session .....	2
c. Movement Beyond the Bar .....	3
<b>3. Access to Court Records</b>	
a. General Rule.....	3
b. Access to Court Records for Adult Criminal Proceedings (and Traffic Court) .....	4
c. Access to Court Records for matters under the <i>Youth Criminal Justice Act</i> .....	10
d. Access to Court Records for Family Matters .....	11
e. Access to Court Records for Civil Small Claims matters .....	12
f. Access to proceedings at the Justice Centre .....	13
g. Access to Digital Audio Recordings (DARS) of proceedings .....	13
<b>4. Media Related Policies</b>	
a. General Overview .....	19
b. Cameras .....	19
c. Televising court proceedings .....	20
d. Computers .....	21
e. Electronic devices in courtrooms.....	21
f. Media accreditation policy .....	24
g. Judges' Reasons for Judgment.....	27
h. Interviews by media .....	28

Table of Contents Continued

5. Bans on Publication

Overview.....28

a. Automatic bans

- *Criminal Code of Canada* .....29
- *Youth Criminal Justice Act*.....30
- *Sex Offender Information and Registration Act* .....31
- *Provincial Court Act* .....31

b. Discretionary Publication Bans.....32

- *Criminal Code* .....32
- *Youth Criminal Justice Act*.....34
- *Extradition Act* .....35

## 1. INTRODUCTION - THE PRINCIPLE OF OPENNESS:

In *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, Madam Justice Wilson of the Supreme Court of Canada wrote the following regarding the purpose of having court proceedings open to the public and the media:

*In summary, the public interest in open trials and in the ability of the press to provide complete reports of what takes place in the courtroom is rooted in the need (1) to maintain an effective evidentiary process; (2) to ensure a judiciary and juries that behave fairly and that are sensitive to the values espoused by the society; (3) to promote a shared sense that our courts operate with integrity and dispense justice; and (4) to provide an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in the courts affects them.*

The general rule in Canada is that Court proceedings are open to the public, including the media, and may be reported in full. The Provincial Court embraces and is guided in its practices by that general rule.

The presiding judge, however, has the ability to control Court proceedings to ensure a fair trial and to protect the integrity of the process.

Permitting and encouraging the public to attend Court proceedings, and allowing access to Court records, will make the law more accessible and understandable to the public and may enhance their confidence in the administration of justice.

The Court recognizes the important role that the media plays in informing the public about the day to day operation of the Court. The average person learns about the legal system mainly through the images, audio and print that the media use to convey reports about Court proceedings.

Both the justice system and the public are best served when media coverage about specific matters before the Court is accurate and complete. Court officials and staff within the justice system have a responsibility to assist the public, including the media, to obtain access to information and records to which they are legally entitled and that will assist them to understand and accurately report on Court proceedings.

## **2. ACCESS TO COURTHOUSES AND COURTROOMS:**

### **a. General Rule of Accessibility**

As a general rule, members of the public and the media are welcome to attend all sessions of the Court. In rare circumstances, either legislation requires, or a judge may order, that a proceeding, or part of a proceeding, be held in private. In those circumstances, neither the general public nor the media may be present while Court is in session.

### **b. Decorum when Court in Session**

The judge and those participating in court proceedings need to hear clearly everything that is said, and to concentrate on the evidence and submissions. Therefore, persons observing when a Court is in session must act so as not to disturb the Court process. For example, doors to the courtroom should be closed gently if the Court is in session. Members of the public are asked to remain silent when in the Courtroom and to refrain from speaking loudly in the hallways outside of courtrooms.

If a member of the public or media must enter or exit a courtroom while Court is in session, he or she is urged to do so as quietly and with as little disruption to the proceedings as is possible.

The basic principle to be remembered is that the conduct of a trial or hearing must not be disturbed; on occasion and to protect the process, a judge may exercise his or her discretion to order that no one enter or leave the courtroom. Such an order might occur during the testimony of a particular witness, during an address by counsel to the

Court, or when the Court is giving a decision about a matter. If such an order has been made, the sheriff on duty will enforce it.

**c. Movement Beyond the Bar**

No member of the media or the public is permitted beyond the Bar in a courtroom, which by convention and long-established practice is an area reserved for counsel or self-represented litigants engaged in the presentation of a matter to the Court, unless express permission is given by the presiding Judge or Judicial Justice of the Peace. If a member of the media wishes to make an application to the presiding Judge to, for instance, comment upon a discretionary publication ban application, they may rise in the general gallery of the courtroom and ask the presiding Judge to allow him/her to come into the body of the Court beyond the bar to orally make an application related to the proceeding.

**3. ACCESS TO COURT RECORDS**

**a. General Rule**

It is an established rule that our Court is open to the public, but that access to court records must be supervised by the Court to ensure that the ends of justice are not subverted by inappropriate disclosure. Curtailment of public access is only justified where there is a need to protect a social value of superordinate importance. For instance, broad legislative restrictions exist with respect to access to court documents in regard to matters involving youth in family and criminal proceedings. Consistent application of the following access policies by Court Registries across the province is expected by the Court.

Case law on the subject of disclosure of court records indicates that there are several broad policy considerations involved in access to court file documents. The presumption is in favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of that right. Undoubtedly every court has a supervisory and protecting power over its own records. 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. See *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 SCR 175. The constitutional principles of freedom of expression and the openness of courts are of crucial importance. Freedom of expression "protects listeners as well as speakers" which means that listeners and readers, as members of the public, have a right to information pertaining to public institutions and particularly the courts. This is significant in terms of media access to courts and court records. As noted in *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326:

Here the press plays a fundamentally important role. It is exceedingly difficult for many, if not most, people to attend a court trial. Neither working couples nor mothers or fathers house-bound with young children, would find it possible to attend court. Those who cannot attend rely in large measure upon the press to inform them about court proceedings -- the nature of the evidence that was called, the arguments presented, the comments made by the trial judge -- in order to know not only what rights they may have, but how their problems might be dealt with in court. It is only through the press that most individuals can really learn of what is transpiring in the courts. They as "listeners" or readers have a right to receive this information. Only then can they make an assessment of the institution. Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media.

It is equally important for the press to be able to report upon and for the citizen to receive information pertaining to court documents.

Timeliness is essential to ensure access to court files and documents. The ability of court staff to facilitate timely access can be affected by various factors. For example, where on-site storage is limited, some files may be transferred off site. By necessity, the time required for access to files and documents that are stored off-site will be longer than for files and documents stored at the courthouse. In addition, court staff must prioritize their responsibilities to ensure matters scheduled before the court are proceeding, that the needs of parties and witnesses are met, and that judicial direction is followed. Against this background, court staff must facilitate access to court files and documents as quickly as possible.

**b. Access to Court Records for Adult Criminal Proceedings (and Traffic Court, as applicable)**

The following policy provides direction regarding access to court record information in adult criminal proceedings (and Traffic Court, as applicable). 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.

The manager or court administrator shall respond to a request for access to court records as quickly as reasonably possible. Noting the comments in the immediately preceding section (a. General Rule), the expectation of the Court is that for routine access requests, there should be no significant delay in the public and the media gaining access to court records.

Members of the public may have access to case information through Court Services Online (<https://eservice.ag.gov.bc.ca/cso/index.do>) or at a public inquiry terminal at the registry where the case is being heard.

Type of document	Access policy
<b>1. Affidavits</b>	Access restricted to Crown counsel, defence counsel and accused until after the matter is heard in court.
<b>2. Applications for Orders</b>	Access restricted to Crown counsel, defence counsel and accused until after application is heard. Wire-tap applications are completely restricted (s. 187 <i>Criminal Code</i> ).
<b>3. Application for Wire-Tap</b>	No access - (s. 187 <i>Criminal Code</i> )
<b>4. Bail Documents - Undertaking to Appear, Recognizance, Promise to Appear, Appearance Notice</b>	Unrestricted access except in the case of promises to appear and appearance notices if the Crown does not proceed with a charge, or a Justice of the Peace does not confirm process. (In these exceptions, access only to Crown counsel, defence counsel and accused). Regarding Surety Applications and Affidavits of Justification, there is no access except to the applicant and Crown counsel.

Type of document	Access policy
<b>5. Bans on Publication</b>	The general rule regarding bans on publication under ss. 276.3(1), 486.4, 486.5, 517, 520(9), 521(10), 539(1), 542(2) or 672.501 of the <i>Criminal Code</i> is that the onus is on the publisher not to publish. Documents subject to a ban on publication pursuant to ss. 276.3(1), 486.4, 486.5, 517, 520(9), 521(10), 539(1), 542(2), or 672.501 of the <i>Criminal Code</i> should be clearly marked as such with a copy attached of the relevant section of the Code containing the ban. All documents may be accessed by persons ordinarily having access to that document.
<b>6. Certification of Conviction</b>	Unrestricted access except after accused is pardoned, then restricted. However, a procedure is available for pardoned offenders to obtain access to their own pardoned court file. Inquiries in this regard can be made at a Court Registry.
<b>7. Court Lists</b>	Unrestricted access
<b>8. Court Orders</b>	Unrestricted access (except wire-tap orders, but including orders making reference to the <i>Sex Offender Information Registration Act</i> ).
<b>9. Criminal Record of the Accused</b>	Access only to Crown counsel, defence counsel, accused and probation officer concerned with the case. For absolute or conditional discharges, there is no access after one and three years respectively, from the date of sentencing. After the accused is pardoned, there is no access to information regarding the offence for which he or she was pardoned. However, a procedure is available for pardoned offenders to obtain access to their own pardoned court file. Inquiries in this regard can be made at a Court Registry.
<b>10. Exhibits</b>	Access only to Crown counsel, defence counsel, and accused, unless otherwise ordered by court upon application. If an order is granted providing access for viewing an exhibit, the viewing shall only occur under the supervision of registry personnel.

Type of document	Access policy
	The need for an application for access by the public to exhibits in a criminal proceeding is based on the need, established by the law, to consider the competing interests in respect of public access, distribution and broadcast of court exhibits. Requests for access should be made to the presiding Judge (if the case is pending or ongoing) or to the Administrative Judge (if there is no judge seized of the matter) of the Court in the location where the proceedings are or were held.
11. Information (including Ticket Informations and Certified Extracts of Tickets)	Unrestricted access.
12. Judges' Bench Books	No access without the permission of Judge concerned.
13. Letters of Reference and Other Correspondence not filed as Exhibits	Unrestricted access.
14. Medical Report (including psychiatric report)	Access only to Crown counsel, accused, defence counsel and the probation officer assigned to the matter, unless otherwise ordered by Court.
15. Pardon	No access to court file after a pardon has been granted. However, a procedure is available for pardoned offenders to obtain access to their own pardoned court file. Inquiries in this regard can be made at a Court Registry.
16. Presentence / Probation Report	Access only to Crown counsel, defence counsel, accused, and the probation officer assigned to the matter, unless otherwise ordered by Court.
17. Reasons for Judgment	Unrestricted access, subject to a ban on publication (see 5 above and 23 below).
18. Record of Proceedings, Case History Card or Calendar Card, Adjournment Minute Sheet	Unrestricted access, unless in-camera or <i>voir dire</i> proceedings, then restricted to the accused, defence counsel and Crown counsel.
19. Report to Crown Counsel / Circumstances Sheet	Access only to Crown counsel.  <b>(Note:</b> With the exception of the court administrator's copy of the first page, containing the accused's name, date of birth and address, these reports should <b>not</b> be

Type of document	Access policy
	located in registry files.)
<p><b>20. Search Warrants</b></p>	<p>Members of the public, including the media, can inspect search warrants, their Informations, and the Form 5.2 if all of the following conditions are met:</p> <ul style="list-style-type: none"> <li>• The search warrant has been executed;</li> <li>• Something has been seized as demonstrated by submission of a Report to a Justice (Form 5.2) or the goods seized have been brought before a Justice of the Peace;</li> <li>• There are no sealing orders in force;</li> <li>• There are no claims for solicitor-client privilege granted or under consideration by the Court;</li> <li>• The offence alleged was not committed by a young person.</li> </ul> <p>After a search warrant has been executed and nothing is found, inspection of the warrant and information on which the warrant was issued can only be made by the householder (upon presentation of identification confirming residency at the searched location), accused person, or his/her counsel and Crown counsel if:</p> <ul style="list-style-type: none"> <li>• There are no sealing orders in force;</li> <li>• There are no claims for solicitor-client privilege granted or under consideration by the Court;</li> <li>• The offence alleged was not committed by a young person.</li> </ul> <p>After a request for a sealing order has been approved, a copy of the sealing order will be accessible to the accused person, defence counsel, the householder, Crown counsel, and members of the public, including the media.</p> <p>Where, in accordance with this policy, a judicial officer has determined that search</p>

Type of document	Access policy
	<p>warrant documents are available for public inspection, photocopies will be made and placed in public access files immediately after the determination. In cases of lengthy informations, the first page(s) only may be placed in the public access file and a complete copy made on request. In the situation where multiple warrants were issued from one information, all search warrants must meet the criteria before any of the copies are placed in the public access file.</p> <p>A <b>public access file</b> will be maintained for copies of search documents (after a search and seizure has taken place and all other applicable access provisions have been met) and copies of sealing orders, after a judicial officer has determined that search warrant documents are available for public inspection. This convenience file will be arranged in chronological order and will include photocopies of documents available to the public.</p> <p>Members of the public have open access to the entire public access file and do not have to request specific cases.</p>
21. Summons	Unrestricted access.
22. Recording of Proceedings	See reference to Digital Audio Recording System, below at page 13, item “g”.
23. Transcripts	<p>Access to the court’s copy of the transcript only to Crown counsel, defence counsel and the accused. Copies of the transcript, unless restricted by order of the court, can be purchased. However, in cases where a publication ban is in place, the purchaser must first obtain a court order allowing access to the transcript. In addition to any terms of access or editing ordered by the court in considering that application, transcripts in cases where there is a publication ban in place must be marked as being subject to a ban.</p>

Type of document	Access policy
	When transcripts are sought by Corrections Canada or the BC Parole Board and a publication ban is in place, they do not require a court order for access, but the transcripts so provided to Corrections Canada or the B.C. Parole Board must be marked and accompanied by a standard form letter describing the ban.
<b>24. Recording Log notes (Clerk/Recorder's notes)</b>	If a person is permitted to receive a copy of an audio CD in accordance with the DARS policy below, that person is also entitled to receive the Log Notes accompanying that proceeding.
<b>25. Victim Impact Statements</b>	Access only to Crown counsel, accused, defence counsel, the victim and to Corrections officials who require access for preparation of presentence reports or parole hearings, unless otherwise ordered by Court.
<b>26. Warrants to/for Arrest</b>	Unrestricted access.

**c. Access to Court Records for matters under the *Youth Criminal Justice Act***

The *Youth Criminal Justice Act (YCJA)* contains both a publication ban and a ban on disclosure of information contained in a record that would identify a young person dealt with under the *Act* (s. 118). That section provides as follows:

Except as authorized or required by this *Act*, no person shall be given access to a record kept under sections 114 [court records] to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this *Act*.

In light of s. 118 and a purpose of the *Youth Criminal Justice Act* in protecting the privacy of young persons who fall within its provisions, Court registries will not provide public access to a youth court file other than to provide, when requested, the court file number for an individual, the next appearance date for the individual, and the custody status of the individual. Subject to the restrictions contained in the *YCJA* to protect the privacy of young persons, this policy, of course, does not limit the ability

of members of the public and the media to attend open court proceedings in relation to youth matters.

As an exception, s. 119(1) of the *YCJA* contains a list of people who are entitled to receive court records for a specific period. The media and the general public have no right of access to these files but may apply to the Court for access to the information. A judge may grant access to information under the *YCJA* if she or he is satisfied that the person seeking access has a valid interest in the record and that access to the record is desirable in the interest of the proper administration of justice (s. 119(1)(s)(ii)). Even if a person is granted access to information under such an order, that person cannot further disclose the information unless authorized under s. 129. There are also time restrictions for access provided under s. 119(1) (see s. 119(2)).

The provisions of the *YCJA* restricting access to records do not apply to records relating to an offence for which an adult sentence was imposed if all appeals are completed and the result is still that an adult sentence is imposed (s. 117).

**d. Access to Court Records for Family matters**

Rule 20(10) of the *Provincial Court (Family) Rules* [BC Reg. 417/98] provides that no one is entitled to search a registry file respecting an application under the *Family Relations Act*, an agreement filed under section 121 of that *Act*, or an application under the *Family Maintenance Enforcement Act*, except a party to the proceeding, a party's lawyer, a person named as a respondent, a person named as a party to the agreement, a family justice counsellor, or a person authorized by a judge.

Rule 8(15) of the *Provincial Court (Child, Family and Community Service Act) Rules* [BC Reg. 533/95], and Rule 9(14) of the *Provincial Court (Adult Guardianship) Rules* [BC Reg. 30/2001], both provide that only the following are entitled to search a registry file respecting a matter under either the *Child, Family and Community Service Act* or the *Adult Guardianship Act*: a party, a party's lawyer, or a person authorized by a party, by a party's lawyer or by a judge.

Regarding publication of matters that occur in family proceedings, section 3(6) of the *Provincial Court Act* provides as follows:

In relation to family or children's matters before the court, a person must not publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or party.

**e. Access to Court Records for Civil Small Claims matters**

Members of the public may have access to the court file at the registry where the case is being heard.

Members of the public may have access to specific court documents through Court Services Online. These documents include the Notice of Claim, Reply and Orders.

Members of the public may have access to case information through Court Services Online or at a public inquiry terminal at the registry where the case is being heard.

As with all information in a court record, access to exhibits is subject to the supervision of the courts and must be balanced against competing rights such as privacy interests. There is no automatic right of the public and media to access to exhibits in Small Claims matters, many of which are confidential and filed by the parties under compulsion by reason of production and disclosure orders. Access may be sought by application to the Presiding Judge or to the Administrative Judge (if there is no judge seized of the matter) of the Court in the location where the proceedings are or were held.

**f. Access to proceedings at the Justice Centre**

The Provincial Court operates a 24-hours-a-day, seven-days-a-week Justice Centre where Judicial Justices of the Peace (JJP's) consider federal and provincial search warrant applications.

With respect to search warrant documents, the Justice Centre is not a court registry and forwards all search warrant documentation to the relevant local court registry, which is where media must direct requests for access to search warrant documents.

In addition, JJP's at the Justice Centre preside over bail hearings from 8:00am to 11:00pm daily which occur by way of sophisticated video and telephone equipment. Media wishing to listen to bail proceedings can be connected by telephone to the proceedings by advising the Justice Centre staff at 604-660-3263.

**g. Access to Digital Audio Recordings (DARS) of proceedings**

Proceedings in the Provincial Court are recorded by a Digital Audio Recording System (DARS). The following section discusses listening to, and obtaining copies of audio recordings.

<i>Access rules of general application</i>	
In-camera proceedings	Access by way of CD, or by listening at court registry, only when ordered by the presiding Judge or presiding Judicial Justice of the Peace (JJP) or, in that Judge's or JJP's absence, the Administrative Judge or Administrative JJP, as the case may be, or a Judge or JJP assigned by the Administrative Judge or Administrative JJP, as the case may be.
Sealed files	
Pardoned files	
YCJA proceedings (the young person, their counsel and Crown counsel may listen to the audio recording at the court registry unless the proceedings were sealed)	
Publication bans (ban on publishing, broadcasting, transmitting)[However, a person who was present or was entitled to be present in the courtroom for a proceeding covered by a publication ban is entitled to listen to the audio recording by attending at the court registry unless the proceedings were sealed. However, anyone having access	

<p>to the audio recording is required to abide by the terms of any publication ban which may be in place.]</p>	
<p>Oral judgments and rulings [However, a person who was present or was entitled to be present in the courtroom when oral reasons for judgment were given is entitled to listen to the audio recording of oral reasons for judgment by attending at the court registry unless the proceedings were sealed. 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.]</p>	
<p>Settlement conferences/case conferences</p>	
<p>Audio recording of courtroom before or after court is in session</p>	

<b>Access rules for specific types of cases</b>	
<b>A. Criminal proceedings and traffic Court proceedings</b>	<b>Who may obtain CD of recording and on what basis</b>
	<p><b>1. Accused</b></p> <p>Only upon an Order from the presiding Judge/JJP [or in that Judge's/JJP's absence, the Administrative Judge/JJP or Judge/JJP assigned by the Administrative Judge/JJP]. Any Order should include terms:</p> <ul style="list-style-type: none"> <li>• restricting use of the CD, including a prohibition on release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet; and</li> <li>• requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required.</li> </ul>
	<p><b>2. Members of the legal profession</b></p> <p>On undertaking prohibiting release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet. The undertaking would require that the CD must be kept secure and must be destroyed when it is no longer required. The lawyer may play CD for client but lawyer must be present and client cannot record or be provided a copy of the CD.</p>
	<p><b>3. Journalists who are on the list of accredited journalists</b> and who are therefore permitted to audio record proceedings.</p> <p>Journalists must provide an undertaking and receive a desk order from a Court Services Justice of the Peace (CSJP), with terms that prohibit release of the 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</p>

	secure and to return it to the Registry when it is no longer required.
	<p><b>4. Any other access</b></p> <p>Access to a CD must be by court order by the presiding Judge/JJP or, in that Judge's/JJP's absence, the Administrative Judge/JJP, or Judge/JJP assigned by the Administrative Judge/JJP.</p> <p>However, if a Court Registry is equipped for public listening, 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 to listen to a recording. If the Registry is not equipped for public listening, public listening will only be permitted if ordered by the Court.</p>
<b>B. Family proceedings (FRA, CFCSA, etc.)</b>	<b>Who may obtain CD of recording and on what basis</b>
	<p><b>1. Parties (or a person authorized in writing by a party or authorized in writing by counsel for a party)</b></p> <p>Only upon an Order from the presiding Judge [or in that Judge's absence, the Administrative Judge or Judge assigned by the Administrative Judge]. Any Order should include terms:</p> <ul style="list-style-type: none"> <li>• restricting use of the CD, including a prohibition on release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet; and</li> <li>• requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required.</li> </ul>
	<p><b>2. Counsel for a party</b></p> <p>On undertaking prohibiting release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet. The undertaking would</p>

	<p>require that the CD must be kept secure and must be destroyed when it is no longer required. The lawyer may play CD for client but lawyer must be present and client cannot record or be provided a copy of the CD.</p>
	<p><b>3. Any other access</b></p> <p>Access to a CD must be by court order by the presiding Judge or, in that Judge's absence, the Administrative Judge, or Judge assigned by the Administrative Judge. However, if a Court Registry is equipped for public listening, parties or counsel for a party can listen at that facility. If the Registry is not equipped for public listening, public listening will only be permitted if ordered by the Court.</p>
<b>C. Civil (small claims) proceedings</b>	<p><b>Who may obtain CD of recording and on what basis</b></p>
	<p><b>1. Parties</b></p> <p>Only upon an Order from the presiding Judge [or in that Judge's absence, the Administrative Judge or Judge assigned by the Administrative Judge]. Any Order should include terms:</p> <ul style="list-style-type: none"> <li>• restricting use of the CD, including a prohibition on release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet; and</li> <li>• requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required.</li> </ul>
	<p><b>2. Members of the legal profession</b></p> <p>On undertaking prohibiting release to a third party, or its broadcast, transmission or reproduction in any way, including placement on the internet. The undertaking would require that the CD must be kept secure and must be destroyed when it is no longer required. The lawyer may play CD for client but lawyer must be present and client cannot</p>

	record or be provided a copy of the CD.
	<p><b>3. Journalists who are on the list of accredited journalists</b> who are therefore permitted to audio record proceedings</p> <p>Journalists must provide an undertaking and receive a desk order from a CSJP with terms that prohibit release of the 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.</p>
	<p><b>4. Any other access</b></p> <p>Access to a CD must be by court order by the presiding Judge or, in that Judge's absence, the Administrative Judge, or Judge assigned by the Administrative Judge.</p> <p>However, if a Court Registry is equipped for public listening, 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 to listen to a recording. If the Registry is not equipped for public listening, public listening will only be permitted if ordered by the Court.</p>

#### **4. MEDIA RELATED POLICIES**

##### **a. General Overview**

- i. When attending Provincial Courthouses in British Columbia, members of the media are asked to conduct themselves with the safety and dignity of the people coming and going from the Court uppermost in their minds. They should also be mindful of any publication bans or restrictions imposed by legislation or by the presiding judge;
- ii. These guidelines in no way interfere with the discretion of the presiding judge to resolve issues that arise in a specific trial or matter;
- iii. These guidelines apply to members of media organizations, as well as members of the public;
- iv. Whenever in courthouses, media who have sought and obtained accreditation [see accreditation process below, under b. Audio Recorders] are asked to keep their identification tags on their person at all times and produce them when so requested by a Sheriff or court official;
- v. Accredited media possessing identification tags will have priority in areas designated for the media unless circumstances relating to issues of safety and/or security make it impossible;
- vi. Accredited members of the media should give the Sheriff or Court Clerk as much advance notice as practical when they intend to use any audio recording device in any Courthouse;
- vii. Breaches of these policies will be reviewed by the Court's Community Engagement Committee which will recommend an appropriate course of action. Sanctions will normally be applied only to the media company or companies found to have breached the policies and not to the entire media community.

##### **b. Cameras**

As a general rule, when court is in session, the use of cameras - including television cameras and cell phone cameras - is prohibited in any Provincial Court in British

Columbia. Camera operators may take cameras into courtrooms for safekeeping if they terminate the power supply. Members of the media may apply to the Court for permission to record a particular session of the Court (see below under “Televising courtroom proceedings”).

Similarly, visual recording or photographing of a courtroom when Court is not in session is not permitted without the express permission of the Court.

Filming or visual recording requests in a courthouse for educational and court related information purposes may be approved at the discretion of the Chief Judge. Photographing, videotaping and filming in the court facilities are not otherwise permitted. Exceptions to the policy may be made for citizenship ceremonies, swearing in ceremonies for judges and justices of the peace or for artistic or heritage purposes, if the approval of the Chief Judge has been obtained in advance.

#### **c. Televising court proceedings**

Applications may be made to a judge of the Court to televise or broadcast all or part of the proceedings in a particular case. It is the policy of the Court that such applications may be granted in the discretion of the presiding judge, provided that he or she finds that it is in the public interest that the proceedings, or part of them, be televised or broadcast, and that to do so will not:

- a. affect the right of a party to a fair trial;
- b. cause discomfort to any witness;
- c. interfere with any privacy interests that may override the public interest in televising the proceedings;
- d. have the potential effect of deterring witnesses in any future similar cases;
- e. cause additional expense to the Court; or
- f. otherwise potentially hamper the ongoing administration of justice in relation to Provincial Court proceedings.

The presiding judge may use the BC Supreme Court Practice Direction on Television Coverage of Court Proceedings as a guide in assessing the merits of an application.

The onus of establishing that these conditions are met is on the applicant. The Court may adjourn an application in order that persons whose interests are engaged may obtain legal advice or representation, if to do so is not contrary to the interests of the parties or the public interest in having the matter proceed expeditiously.

The BC Supreme Court Practice Direction on Television Coverage of Court Proceedings can be found at the following link:

[http://www.courts.gov.bc.ca/supreme\\_court/practice\\_and\\_procedure/practice\\_directions/civil/PD%20-%202023%20Television%20Coverage%20of%20Court%20Proceedings.pdf](http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/PD%20-%202023%20Television%20Coverage%20of%20Court%20Proceedings.pdf)

#### **d. Computers**

Members of the public and the media are permitted to use portable computers in Provincial Court provided that they do not disturb the proceedings or interfere with the operation of the court's own electronic equipment, and that the computers are used solely for the purpose of note-taking.

#### **e. Electronic devices in courtrooms**

This policy sets out the permitted and prohibited use of electronic devices in courtrooms of the Court of Appeal, the Supreme Court and the Provincial Court of British Columbia.

#### **Definitions**

1. In this policy, the following definitions apply:
  - a. “accredited media” means media personnel who are accredited pursuant to the Courts’ *Media Accreditation Policy*.
  - b. “courtroom” means a room in which a hearing takes place before a judicial officer.

- c. “electronic device” means any device capable of transmitting and/or recording data or audio, including smartphones, cellular phones, computers, laptops, tablets, notebooks, personal digital assistants, or other similar devices;
- d. “judicial officer” means a Justice or division of the Court of Appeal, Justice of the Supreme Court, Provincial Court Judge, Master, Judicial Justice, Judicial Case Manager, Registrar or Justice of the Peace.

### **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 text is prohibited.
- 3. In addition, an electronic device may not be used in a courtroom:
  - a. in a manner that interferes with the court sound system or other technology;
  - b. in manner that interferes with courtroom decorum, is inconsistent with the court functions, or otherwise impedes the administration of justice;
  - c. in a manner that generates sound or requires speaking into the device;
  - d. to take photographs or video images;
  - e. to record or digitally transcribe the proceedings except as permitted by this policy.

### **Permitted Use of Electronic Devices in the Court of Appeal**

- 4. In a courtroom of the Court of Appeal, any person may use an electronic device to transmit or receive text in a discreet manner that does not interfere with the proceedings.

### **Permitted Use of Electronic Devices in the Supreme Court and the Provincial Court**

- 5. In courtrooms of the Supreme Court and of the Provincial Court

- a. accredited media; and
  - b. lawyers who are members of the Law Society of British Columbia,
- may use electronic devices to transmit and receive text in a discreet manner that does not interfere with the proceedings.

#### **Permitted Audio Recording by Accredited Media in All Courts**

6. In courtrooms of the Court of Appeal, the Supreme Court and the Provincial Court, accredited media may use electronic devices to audio record a proceeding for the sole purpose of verifying their notes and for no other purpose.

#### **Discretion of Judicial Officers**

7. Nothing in this policy affects the authority of the presiding judicial officer(s) to determine what, if any, use can be made of electronic devices in a courtroom.

#### **Publication Bans, Sealing Orders, Restrictions on Publication**

8. 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.
9. Anyone using an electronic device to transmit information from a courtroom 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

10. 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) a direction to forfeit the media accreditation card to the sheriff;
  - 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.

For more information about this electronic devices policy please contact:

Court of Appeal	Supreme Court	Provincial Court
<b>Timothy Outerbridge</b> <i>Law Officer</i> <a href="mailto:timothy.outerbridge@courts.gov.bc.ca">timothy.outerbridge@courts.gov.bc.ca</a> Phone: 604-660-0352	<b>Jill Leacock</b> <i>Law Officer</i> <a href="mailto:jill.leacock@courts.gov.bc.ca">jill.leacock@courts.gov.bc.ca</a> Phone 604-660-2720	<b>Gene Jamieson, Q.C.</b> <i>Legal Officer</i> <a href="mailto:gjamieson@provinciacourt.bc.ca">gjamieson@provinciacourt.bc.ca</a> Phone: 604-660-2864
	<b>Heidi McBride</b> <i>Law Officer</i> <a href="mailto:heidi.mcbride@courts.gov.bc.ca">heidi.mcbride@courts.gov.bc.ca</a> Phone 604-660-2750	

### f. Media accreditation policy

This policy describes the process by which media personnel can become accredited with the Court of Appeal, the Supreme Court, and the Provincial Court of British Columbia. Although applicable in all Courts in British Columbia, this policy is administered by the Supreme Court.

#### Media Accreditation Committee

1. The determination as to whether a person may be accredited under this policy is made by the Media Accreditation Committee, a committee external to the Courts, comprised of professional journalists.

2. The current members of the Media Accreditation Committee are set out below:

<b>Ian Bailey</b> <i>The Globe and Mail</i> , BC Bureau Email: <a href="mailto:ibailey@globeandmail.com">ibailey@globeandmail.com</a>	<b>Petti (Peg) Fong</b> <i>Toronto Star</i> - Vancouver Bureau Chief Email: <a href="mailto:pfong@thestar.ca">pfong@thestar.ca</a>
<b>Kim Bolan</b> <i>Vancouver Sun</i> Email: <a href="mailto:kbolan@vancouver.sun.com">kbolan@vancouver.sun.com</a>	<b>Jane Seyd</b> <i>North Shore News</i> E-mail: <a href="mailto:jseyd@nsnews.com">jseyd@nsnews.com</a>
<b>Terry Donnelly</b> <i>CBC Radio News</i> Email: <a href="mailto:terry.donnelly@cbc.ca">terry.donnelly@cbc.ca</a>	<b>Stephen Smart</b> <i>CBC News</i> Email: <a href="mailto:stephen.smart@cbc.ca">stephen.smart@cbc.ca</a>
<b>Keith Fraser</b> <i>The Province</i> E-mail: <a href="mailto:kfraser@theprovince.com">kfraser@theprovince.com</a>	

### Process

3. A person who wishes to become accredited under this policy must first contact a member of the Media Accreditation Committee and provide the information sought by the member, and identify any ethical code of conduct to which the applicant subscribes as a journalist.
4. If the member of the Media Accreditation Committee considers that the applicant is an appropriate candidate for accreditation, the member will so advise one of the Supreme Court Law Officers or their assistant.
5. On being advised that an applicant is an appropriate candidate for accreditation, the Supreme Court Law Officers or their assistant will provide the candidate with the necessary forms for completion.

### Requirements to become accredited

6. To complete the accreditation process under this policy, an applicant must:

- a. confirm that he/she has read the Canadian Judicial Council publication entitled [\*The Canadian Justice System and the Media\*](#), (Ottawa: Canadian Judicial Council, April 2010,
- b. confirm that he/she has read the Courts' *Policy for the Use of Electronic Devices in Courtrooms* (See pages 21 to 24),
- c. complete the *Media Accreditation Undertaking* and deliver it in accordance with paragraph 7,
- d. complete the *Media Accreditation Photo Identification Form* and deliver it in accordance with paragraph 7.

#### **Media Accreditation Undertaking and Photo Identification Forms**

7. The applicant must deliver the following items to [Accreditation@courts.gov.bc.ca](mailto:Accreditation@courts.gov.bc.ca)
  - a. a scanned copy of the completed, signed *Media Accreditation Undertaking* [the Media Accreditation Undertaking includes a term which states that the member of the media will “display the Media Accreditation Card issued to me by the British Columbia Sheriff Services whenever I am using an electronic device or audio recording in a courtroom.”]
  - b. a scanned copy of the completed, signed *Media Accreditation Photo Identification Form*
  - c. a digital photograph in j-peg format, 300 dpi

#### **Media Accreditation Card**

8. Once the completed forms and the digital photograph have been received in accordance with paragraph 7, Sheriff Services will prepare a Media Accreditation Card for the applicant.
9. The applicant will be contacted by Sheriff Services when the Media Accreditation Card is ready.
10. The applicant may pick up the Media Accreditation Card from Sheriff Services at the Vancouver registry of the Supreme Court, or on request, at another court registry.

11. Once the Media Accreditation Card has been picked up, the applicant's name will be added to the list of accredited media.

#### **List of accredited and Provision of updated Contact Information**

12. The Supreme Court will maintain a list of Accredited Media which will include email addresses, phone numbers and dates that accreditation expires.
13. Accredited media are required to keep the Supreme Court informed of any changes to contact information, including, if applicable, the media outlet for whom they work.

#### **Duration and renewal of media accreditation**

14. Media accreditation is valid for a period of three (3) years.
15. A person seeking to renew his or her media accreditation at the expiration of three years must follow the same process as is outlined in this policy for initial accreditation.

For more information about this policy, please contact a member of the Media Accreditation Committee or one of the following persons:

**Jill Leacock**  
*Law Officer*

[jill.leacock@courts.gov.bc.ca](mailto:jill.leacock@courts.gov.bc.ca)  
Phone: 604-660-2720

**Heidi McBride**  
*Law Officer*

[heidi.mcbride@courts.gov.bc.ca](mailto:heidi.mcbride@courts.gov.bc.ca)  
Phone: 604-660-2750

**Andrea Keen**  
*Law Officers' Assistant*

[andrea.keen@courts.gov.bc.ca](mailto:andrea.keen@courts.gov.bc.ca)  
Phone: 604-660-3022

**Gene Jamieson, Q.C.**  
*Provincial Court Law Officer*

[gjamieson@provincialcourt.bc.ca](mailto:gjamieson@provincialcourt.bc.ca)  
Phone: 604-660-2864

#### **g. Judges' Reasons for Judgement**

When a Judge issues written reasons for judgment, they will be filed with the Court registry, where a copy may be obtained. In addition, written reasons for judgment are often available on the Court's website at the following link: <http://www.provincialcourt.bc.ca/judgmentdatabase/index.html>. If, instead, the reasons for judgment are delivered orally without written reasons being provided, a transcript of oral reasons for judgment can be ordered, on an expedited basis if necessary.

Information in that regard can be obtained from the Court Registry. If it is anticipated there will be considerable media interest in a particular decision, efforts will be made by the Court to ensure that the decision is posted to the Court website as soon as possible after the decision has been delivered in court.

#### **h. Interviews by media**

Judges of the Court speak through their decisions and Reasons for Judgment. Judges therefore do not comment on specific cases that are or have been before the Court or may come before the Court in the future. Members of the media seeking general information about the Court are welcome to contact Mr. Gene Jamieson, Legal Officer, Office of the Chief Judge [604-660-2864].

### **5. BANS ON PUBLICATION**

#### **Overview**

While the media is, in general terms, entitled to publish information about proceedings in Court, there are exceptions to this right. The Court may, and frequently must, impose bans on the publication of information to protect the fairness and integrity of a trial, the privacy and safety of a victim or witness, or the identity of a young offender.

The presiding judge has the inherent jurisdiction to control court proceedings to ensure the fairness of the trial process. In addition, certain statutes contain provisions that either permit or require publication bans e.g. the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, and the *Child, Family and Community Services Act*.

This area of law is a complex one and journalists covering legal proceedings should familiarize themselves with the subject. If in doubt, it is strongly recommended that

media personnel seek legal advice on whether publication is permitted. There may be serious consequences for breaching a publication ban.

Court staff attempt to flag publication bans imposed in lengthy matters but the obligation remains on the media to ensure that they are aware of, and in compliance with, any ban that has been ordered.

Every journalist working within the court system must be constantly vigilant regarding the possibility that there is some form of publication ban in effect for the proceeding which is being covered in court. A breach of a publication ban may in some instances be an offence under legislation; other breaches can constitute a contempt of court, punishable by the court.

The following list of bans is not intended to be exhaustive, nor to replace reference to the specific statutory provisions. The list reiterates information on the website of the Supreme Court of British Columbia concerning that Court's "Publication Ban Notification Project."

As noted, there are essentially three types of publication bans. First, there are automatic bans which are in effect by operation of statute and do not require any court order or application by a party to the case in order to be effective. Second, there are bans that statutes require a judicial officer to order if requested by a party (e.g.: Criminal Code s. 517 when a publication ban is sought by the accused). Third, there are discretionary bans which must be specifically sought and ordered by the Court.

**a. Automatic Bans:**

***Criminal Code of Canada***

- **Section 276.3(1)** - makes it a criminal offence to publish information from a hearing under s. 276.1. A hearing under s. 276.1 may be held in cases involving sexual offences to determine whether evidence

regarding the prior sexual conduct of a complainant can be admitted during the trial. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.

- **Section 278.9(1)** - makes it a criminal offence to publish information from a hearing held under s. 278.3 to obtain records pertaining to a complainant or a witness. A hearing under s. 278.3 may be held in cases involving sexual offences. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.
- **Section 542 (2)** - makes it a criminal offence to publish an admission or confession that was given in evidence at a preliminary inquiry unless the accused has been discharged or, if the accused is ordered to stand trial, the trial has ended.
- **Section 648 (1)** - makes it a criminal offence to publish information about any portion of a jury trial which takes place in the absence of the jury before the jury begins deliberations on its verdict.
- **Section 672.51(11)** - bans the publication of any assessment report provided to the court during the disposition hearing held after a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is given in respect of an accused.

#### ***Youth Criminal Justice Act***

- **Section 110** - provides that no person shall publish the name of, or information related to, a person if it would identify that the person was a young person dealt with under the YCJA. However, publication is permitted when a person has received an adult sentence. In some cases, publication may also be permitted where the youth has been

convicted of a presumptive offence and the Crown sought an adult sentence but the court imposed a youth sentence. However, the judge has discretion in these cases to impose a publication ban (see s. 75). Presumptive offences include first and second degree murder, attempted murder, manslaughter, aggravated sexual assault and serious violent offences committed by a young person who has attained the age of 14 years.

- **Section 111(1)** - provides that no person shall publish the name of someone under the age of 18 who has been a witness or victim in connection with an offence committed or alleged to have been committed by a young person.

#### ***Sex Offender Information and Registration Act (S.O.I.R.A.)***

- **Section 16(4)** - provides that no person shall disclose any information that is collected pursuant to an order under *S.O.I.R.A.* or the fact that information relating to a person is collected under *S.O.I.R.A.*

#### ***Provincial Court Act***

- **Section 3(6) and 3(7)** - Subsection 3(6) prohibits publication in relation to a family or children's matters before the Provincial Court of anything that would reasonably be likely to identify the child or party. Subsection 3(7) indicates that, despite subsection 3(6), a report, comment or analysis concerning a proceeding may be published in a document designed primarily to assist those engaged in the practice of law or in legal or social research.

**b. Discretionary Publication Bans**

The following is a list of publication bans that can be considered discretionary in the sense that an order of the court is required before such a ban is in place (although in some instances ban orders are automatic once the application for it has been made). As a result of a Supreme Court of Canada decision in *Dagenais v. CBC*, [1994] 3 S.C.R. 835, judges must weigh the competing *Charter*-protected interests when they are considering exercising their discretion to impose a ban on publication of information regarding a matter before the Court. They must consider arguments raised by the media (freedom of expression) and by the person seeking the ban (right to a fair trial; security of the person) and then impose the minimal ban necessary to protect the fundamental rights in jeopardy.

- **Common law authority of a court** - the court has common law authority to govern its own processes, which permits it to ban publication of all or part of a proceeding or to exclude the public from the courtroom.

***Criminal Code***

- **Section 486(1)** - An order may be made to exclude the public from the courtroom for all or part of the proceeding.
- **Section 486.4(1)** - An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness.
- **Section 486.4(2)** - An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness under the age of 18.
- **Section 486.4(3)** - An order may be made in cases involving child pornography to ban publication, broadcast or transmission of any

information that could identify a witness who was under 18 years of age or, any person who is the subject of a representation, written material, or a recording that constitutes child pornography.

- **Section 486.5(1)** - Unless an order has been made under s. 486.4, an order made under this section bans publication, broadcast or transmission of any information that could identify a victim or a witness. Pursuant to s. 486.5(6), an order can be made to direct that the application for a ban under s. 486.5 be heard in private.
- **Section 486.5(2)** - An order bans publication, broadcast or transmission of any information that could identify a justice system participant who is involved in proceedings in respect of an offence referred to in s. 486.2(5).
- **Section 486(3)** - of the *Criminal Code* has been replaced by s. 486.4. However, bans ordered pursuant to it may still be in place. An order made under the former s. 486(3) bans publication of the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness.
- **Section 486(4)** - has been replaced by s. 486.5. However, bans ordered pursuant to it may still be in place. An order made under the former s. 486(4) bans publication of any information that could disclose the identity of a victim, witness, or justice system participant.
- **Section 517** - An order bans publication of the evidence and information given to the court during a bail hearing as well as the reasons given by the judge until the accused is discharged or, if ordered to stand trial, the trial has ended. (When the application is made by the accused the order must be granted by the court but the order is discretionary when sought by the Crown.)

- **Section 672.51(11) of the *Criminal Code*** - deals with disposition hearings under part XX.I (mental disorder) of the *Criminal Code* and prohibits the publication of any disposition information (as defined in s. 672.51) that is withheld or any parts of the proceeding from which the accused was excluded.
- **Section 539 of the *Criminal Code*** - provides that evidence given at a preliminary inquiry should not be published until the accused has been discharged or, if ordered to stand trial, the trial has ended.

#### ***Youth Criminal Justice Act***

- **Section 75(3)** - An order bans the publication of the identity or any information that could disclose the identity of a young person dealt with under the *Y.C.J.A.* The general rule under the *Y.C.J.A.* is that the identity of any youth dealt with under the *Y.C.J.A.* is subject to a publication ban. However, once an adult sentence is imposed, the publication ban no longer applies (see s. 110(2)(a)). The publication ban is also lifted where the young person is convicted of a presumptive offence (these are the more serious offences such as murder, attempted murder, manslaughter, aggravated sexual assault) but has received a youth sentence (see s. 110(2)(b)). However, in these cases, s. 75 requires the court to inquire whether the young person or the Crown wishes to seek a publication ban.
- **Section 65** - provides where a young person is charged with a presumptive offence, but the Crown advises the court that it will not be seeking an adult sentence, the court must order a publication ban on the identity, or any information that would disclose the identity of the young person.
- **Section 132** - permits an order to exclude the public from the courtroom for all or part of the proceeding.

### ***Extradition Act***

- **Section 26** - An order may be made to ban publication of the evidence of an extradition proceeding.
- **Section 27** - An order may be made to exclude the public from the courtroom for all or part of an extradition proceeding.