



Policies of the Provincial Court of British Columbia

Access to Court Records

Effective Date:	Policy Code:
February 28, 2011	ACC-2
Scope of Application:	
Applies to all members of the public including media who wish to access court records of the Provincial Court of British Columbia.	

Purpose

To specify who has access to which types of court records, in accordance with any related legislative requirements.

Background

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:



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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.

Policy

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

- 1.1 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.
- 1.2 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 above policy statement, 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.



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1.3 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.

	Type of document	Access policy
1	Affidavits	Access restricted to Crown counsel, defence counsel and accused until after the matter is heard in court.
2	Applications for Orders	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>).
3	Application for Wire-Tap	No access – (s. 187 <i>Criminal Code</i>)
4	Bail Documents – Undertaking to Appear, Recognizance, Promise to Appear, Appearance Notice	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.
5	Bans on Publication	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 Criminal Code 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 Criminal Code 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.
6	Certification of Conviction	Unrestricted access except after accused is record suspended/pardoned, then restricted. However, a procedure is available for record suspended/pardoned offenders to obtain access to their own record suspended/pardoned court file. Inquiries in this regard can be made at a Court Registry.
7	Court Lists	Unrestricted access
8	Court Orders	Unrestricted access (except wire-tap orders, but including orders making reference to the Sex Offender Information Registration Act).
9	Criminal Record of the Accused	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 record suspended/pardoned, there is no access to information regarding the offence for which he or she was record suspended/pardoned. However, a procedure is available for record suspended/pardoned offenders to obtain access to their own record suspended/pardoned court file. Inquiries in



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		this regard can be made at a Court Registry.
10	Exhibits	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. 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 Regional 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 record suspension/pardon has been granted. However, a procedure is available for record suspended/pardoned offenders to obtain access to their own record suspended/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. (Note: 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 not be located in registry files.)
20	Search Warrants	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: <ul style="list-style-type: none"> • The search warrant has been executed;



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		<ul style="list-style-type: none">• 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;• There are no sealing orders in force;• There are no claims for solicitor-client privilege granted or under consideration by the Court;• The offence alleged was not committed by a young person. <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">• There are no sealing orders in force;• There are no claims for solicitor-client privilege granted or under consideration by the Court;• The offence alleged was not committed by a young person. <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 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 public access file 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</p>
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		public. Members of the public have open access to the entire public access file and do not have to request specific cases
21	Summons	Unrestricted access.
22	Recording of Proceedings	See reference to Section 5 - Digital Audio Recording System.
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> <p>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.</p>
24	Recording Log notes (Clerk/Recorder's notes)	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.
25	Victim Impact Statements	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.
26	Warrants to/for Arrest	Unrestricted access.

2. Access to Court Records for Matters under the *Youth Criminal Justice Act*

2.1 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.



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- 2.2 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.
- 2.3 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)).
- 2.4 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).

3. Access to Court Records for Family matters

- 3.1 Rule 20(10) of the Provincial Court (Family) Rules [BC Reg. 417/98] provides that no one is entitled to search a court file respecting an application under the Family Law Act, a filed agreement or an application under the Family Maintenance Enforcement Act, except a party, a lawyer (whether or not a lawyer of a party), a person who is named in the application as a respondent, a person who is named as a party to the agreement, a family justice counsellor, a person authorized by a judge, or a person authorized in writing by a party or a party's lawyer.
- 3.2 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.
- 3.3 Regarding publication of matters that occur in family proceedings, section 3(6) of the Provincial Court Act provides as follows:



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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.

4. Access to Court Records for Civil Small Claims matters

- 4.1 Members of the public may have access to the court file at the registry where the case is being heard.
- 4.2 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.
- 4.3 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.
- 4.4 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 Regional Administrative Judge (if there is no judge seized of the matter) of the Court in the location where the proceedings are or were held.

5. Access to Proceedings at the Justice Centre

- 5.1 The Provincial Court operates a 24-hours-a-day, seven-days-a-week Justice Centre where Judicial Justices (JJ's) consider federal and provincial search warrant applications.
- 5.2 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.
- 5.3 In addition, JJ'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.

6. Access to Digital Audio Recordings (DARS) of proceedings

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



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Access Rules of General Application

6.2 Access by way of CD, or by listening at court registry, is only granted when ordered by the presiding Judge or presiding Judicial Justice (JJ) or, in that Judge's or JJ's absence, the Regional Administrative Judge or Administrative JJ, as the case may be, or a Judge or JJ assigned by the Regional Administrative Judge or Administrative JJ, as the case may be. This policy applies to the following:

6.2.1 In-camera proceedings

6.2.2 Sealed files

6.2.3 Record Suspended/Pardoned files

6.2.4 YCJA proceedings

6.2.4.1 The young person, their counsel and Crown counsel may listen to the audio recording at the court registry unless the proceedings were sealed.

6.2.5 Publication bans (ban on publishing, broadcasting, transmitting)

6.2.5.1 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.

6.2.5.2 However, anyone having access to the audio recording is required to abide by the terms of any publication ban which may be in place.

6.2.6 Oral judgments and rulings

6.2.6.1 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.

6.2.7 Settlement conferences/case conferences

6.2.8 Audio recording of courtroom before or after court is in session.

Access Rules for Specific Types of Cases

6.3 Criminal Proceedings and Traffic Court Proceedings

	Who is requesting access?	On what basis may a CD of recording be obtained?
1	<i>Accused</i>	Only upon an Order from the presiding Judge/JJ [or in that



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		<p>Judge's/JJ's absence, the Regional Administrative Judge/JJ or Judge/JJ assigned by the Regional Administrative Judge/JJ]. Any Order should include terms:</p> <ul style="list-style-type: none"> 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 requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required
2	<i>Members of the legal profession</i>	<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>
3	<i>Accredited journalists</i>	<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 secure and to return it to the Registry when it is no longer required.</p>
4	<i>Any other access</i>	<p>Access to a CD must be by court order by the presiding Judge/JJ or, in that Judge's/JJ's absence, the Regional Administrative Judge/JJ, or Judge/JJ assigned by the Regional Administrative Judge/JJ. 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>

6.4 Family proceedings (FLA, CFCSA, etc.)

	Who is requesting access?	On what basis may a CD of recording be obtained?
1	<i>Parties (or a person authorized in writing by a party or authorized in writing by counsel for a party)</i>	<p>Only upon an Order from the presiding Judge [or in that Judge's absence, the Regional Administrative Judge or Judge assigned by the Regional Administrative Judge]. Any Order should include terms:</p> <ul style="list-style-type: none"> 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



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		<p>internet; and</p> <ul style="list-style-type: none"> requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required.
2	<i>Counsel for a party</i>	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
3	<i>Any other access</i>	Access to a CD must be by court order by the presiding Judge or, in that Judge's absence, the Regional Administrative Judge, or Judge assigned by the Regional 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.

6.5 Civil (Small Claims) Proceedings

	Who is requesting access?	On what basis may a CD of recording be obtained?
1	<i>Parties</i>	<p>Only upon an Order from the presiding Judge [or in that Judge's absence, the Regional Administrative Judge or Judge assigned by the Regional Administrative Judge]. Any Order should include terms:</p> <ul style="list-style-type: none"> 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 requiring that the CD must be kept secure and must be returned to the Registry when it is no longer required.
2	<i>Members of the legal profession</i>	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.
3	<i>Accredited Journalists</i>	Accredited 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



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		keep the CD secure and to return it to the Registry when it is no longer required.
4	Any other access	Access to a CD must be by court order by the presiding Judge or, in that Judge's absence, the Regional Administrative Judge, or Judge assigned by the Regional Administrative Judge. 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.

Policy History:

Approved by: Chief Judge Thomas J. Crabtree

Date: February 2011

History of Revisions:

- January 29, 2014 - Reformats but does not change content of Section 3 of "Policies Regarding Public and Media Access in the Provincial Court of British Columbia" February 2011, updated October 2011, and November 2012.
- February 21, 2014 - Inserted 'record suspensions' to references of 'pardoned' files or offenders as a result of changes to the *Criminal Records Act* which changed the term 'pardon' to 'record suspension' (applications processed and approved prior to March 12, 2012 are still referred to as 'pardons').
- May 2014 - Changed "Administrative Judge" to "Regional Administrative Judge" and "Judicial Justice of the Peace" to "Judicial Justice".
- November 2015 - Changed "registry file" to "court file", "Family Relations Act" to "Family Law Act", "agreement filed under section 121 of that Act" to "filed agreement", and "party's lawyer" to "a lawyer (whether or not a lawyer of a party)", and added "a person authorized in writing by a party or a party's lawyer" in section 3.1; changed "FRA" to "FLA" in section 6.4.