



Policy of the Provincial Court of British Columbia

APPENDIX A

(This form is available from the Ministry of Attorney General [website](#).)

UNDERTAKING OF COUNSEL (Digital Audio Recording - CD)

- In the Supreme Court of British Columbia
- In the Provincial Court of British Columbia

Court File Number:
Style of cause:
Court Location:
Date:

1) I, Print counsel's name _____, acknowledge that I am a lawyer in good standing with the Law Society of British Columbia, or a visiting lawyer authorized to practice law in British Columbia pursuant to s. 15(1)(e) of the *Legal Profession Act*; the DARS CD for the above proceedings heard on _____ in courtroom _____ before _____ is being provided to me solely for the purpose of,

Describe the specific activity that release of the CD is intended to facilitate – e.g. “to review the evidence of the witness in the case of R. v. X, or in order to prepare the case including cross examination(s) in the proceeding Y. v. Z.” etc.

and that any other use of the CD is prohibited.

2) I undertake that I will not:

- a. copy, store or transfer the contents of the DARS CD to any device except as may be done by the software or operating system incidental to reviewing the contents, and such review shall only be carried out on computer equipment and peripheral devices belonging to my firm or employer, to me or to a person identified in paragraph 3 of this undertaking;
- b. upload the DARS CD or any of its contents to the Internet or otherwise make the DARS CD or any of its content available through any medium save and except as permitted by the terms of this undertaking;
- c. distribute the DARS CD or any of its contents in any way save and except as permitted by the terms of this undertaking;
- d. use the DARS CD for the preparation of an official transcript of the proceedings; however, I may direct my administrative staff to produce an unofficial transcript to be used for internal purposes. For the purpose of this undertaking, an official transcript is a transcript prepared by an official reporter pursuant to the *Official Reporters Regulations, BC*; and
- e. distribute or disseminate an unofficial transcript of the proceedings beyond the individuals authorized to access the contents of the DARS CD in this undertaking. For the purposes of this undertaking, distribution or dissemination does not include relying on an unofficial transcript prepared from the DARS CD to make submissions or including brief quotations from an unofficial transcript in written submissions, provided that its origin in an unofficial transcription is made clear to the Court;
- f. attach an unofficial transcript to an affidavit prepared for any court proceeding;
- g. allow any of these things to be done by anyone else.

3) Except as otherwise provided by this undertaking, I undertake not to allow anyone to access the DARS CD except those individuals enumerated in this paragraph and that where such individuals are accessing the DARS CD, I will provide such individuals with a copy of this undertaking:

- a. other lawyers, articled students or administrative staff members within my law firm, office or who are employed by my employer, and who are assisting me in this matter;
- b. Name _____ an expert witness. For the purpose of this undertaking, an expert witness is a person who has been retained by a party or ordered by the Court to provide opinion evidence in a proceeding; or
- c. Name _____ a witness (e.g., police witness or civilian witness who are listening to their own evidence).

4) I may, after providing a copy of this undertaking, allow in my presence or in the presence of an individual identified in paragraph 3(a),

- a. an accused in a criminal proceeding who is my client to listen to that portion of the DARS CD and to read an unofficial transcript of that portion of the proceedings for which the accused was present or was entitled to be present either in person or by some other means;
- b. a person who is a party in a civil proceeding (including a family proceeding) who is my client to listen to that portion of the DARS CD and to read an unofficial transcript of that portion of the proceedings for which my client was present or was entitled to be present either in person or by some other means; and
- c. a witness in any proceeding to listen to and, to read an unofficial transcript of, the portion of the DARS CD which contains the witness' own evidence.

UNDERTAKING OF COUNSEL – DARS CD



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- 5) I may, after providing a copy of this undertaking, allow an expert witness to listen to that portion of the DARS CD and to read that portion of an unofficial transcript of the proceedings which relates to the opinion that the expert witness will be providing in the proceeding.
- 6) Other than as provided by paragraphs 3-5, I undertake that I will not provide the DARS CD, a copy of the DARS CD or an unofficial transcript of the DARS CD to anyone without first obtaining a court order authorizing such dissemination.
- 7) When the DARS CD or an unofficial transcript is not being used for the purpose permitted by this undertaking, I undertake that I will keep the DARS CD and any unofficial transcript(s) in a secure place where neither can be accessed by persons other than those who are authorized to access the DARS CD or the unofficial transcript.
- 8) I undertake to destroy the DARS CD and render it inoperable on or before: _____
insert here either the last currently scheduled court or chambers date for the proceeding, or another specified date
- 9) I undertake that if I require the DARS CD beyond the date specified, I will provide a new undertaking to the issuing registry prior to expiry of the date specified in this undertaking.

Law Society Number: _____	Telephone Number: _____
Business Address: _____	Print Name: _____
	Signature: _____
	Dated: _____

UNDERTAKING OF COUNSEL – DARS CD



Policy of the Provincial Court of British Columbia

APPENDIX B

(This form is available from the Ministry of Attorney General [website.](#))

ACCESS ORDER (Digital Audio Recording - CD)

- In the Supreme Court of British Columbia
- In the Provincial Court of British Columbia

Court File Number:
Style of cause:
Court Location:
Date:

<p>1) The applicant, _____, <small>Print name</small></p> <p>(a) acknowledges that the DARS CD for the above proceedings heard on _____ in courtroom _____ before _____ is being provided solely for the purpose of,</p> <p><small>describe the specific activity that release of the disk is intended to facilitate -- e.g. "to review the evidence of the witness in the case of R. v. X; or in order to prepare the case including cross examination(s) in the proceeding Y. v. Z." etc.</small></p> <p>_____</p> <p>and;</p> <p>(b) that any other use of the DARS CD is prohibited.</p>	ACCESS ORDER – DARS CD
<p>2) The applicant must not:</p> <ul style="list-style-type: none"> a. copy, store or transfer the contents of the DARS CD to any device except as may be done by the software or operating system incidental to reviewing the contents, and such review shall only be carried out on computer equipment and peripheral devices belonging to the applicant; b. upload the DARS CD or any of its contents to the Internet or otherwise make the DARS CD or any of its content available through any medium; c. distribute the DARS CD or any of its contents in any way; and d. allow any of these things to be done by anyone else. 	
<p>3) The applicant must not provide access to the DARS CD or its content to anyone else.</p>	
<p>4) When the DARS CD is not being used for the purpose permitted by this order, the applicant must keep the DARS CD in a secure place, where it cannot be accessed by anyone except pursuant to the terms of this order.</p>	
<p>5) The applicant must return the DARS CD to the court registry that issued it on or before:</p> <p>_____</p> <p><small>insert here either the last currently scheduled court or chambers date for the proceeding, or another specified date</small></p>	
<p>6) If the applicant requires the DARS CD beyond the date specified, the applicant must bring a further application to the court for an order extending the time that the applicant may retain the DARS CD.</p>	
<p>Signature: _____</p> <p>Judge: _____</p> <p><small>Print name</small></p> <p>Dated: _____</p>	



Policy of the Provincial Court of British Columbia

Contact:
Legal Officer

Policy History:

Approved by: Governance Committee

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
- January 2018: Changed section 1(12) to reflect no access to judges’ bench books and section 6 to reflect the updated DARS Access Order and Counsel Undertaking
- June 18, 2018: Added second paragraph under “Purpose of Policy” following comments in *R. v. Backer*, [2018 BCPC 72](#), paragraph 15.
- June 28, 2019: Deleted words “is not a court registry and” in section 5.2.
- December 10, 2019: Section 1.3 Chart updated as follows: #5 - section 276.3(1) repealed and replaced 278.95; #10 - to provide that when counsel files a Notice of Appeal they will have the same access rights to exhibits as counsel of record in the Provincial Court; #14 - to clarify that section is about a medical report relating to an accused; #17 – to add a section regarding production orders to third parties (sexual offences); and, #20 - to include cases where solicitor-client privilege is granted as an example of when a sealing order may be in force. Sections 3.3 (access to family court file number and location) and 5 (sealed files) added.
- September 25, 2020: Sections 1 (#20) and 6 updated to include reference to File Transfer Protocol (FTP) for accredited journalists.