
**Saskatchewan**
**Law Courts**

# PUBLIC ACCESS TO COURT RECORDS IN SASKATCHEWAN

## Guidelines for the Media and the Public

**Revised October 2011**

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**October 2011**

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# FOREWORD

*There is significant public interest in court decisions in Saskatchewan, particularly in the criminal area. Given that court decisions can have an immediate impact on the lives of citizens in the province, the public wants to learn more about how courts operate and make decisions and why certain results are reached in particular cases. The media is often the mechanism by which the public receives information about court proceedings.*

*These guidelines recognize that public understanding, respect and confidence in the administration of justice can be increased by facilitating media and public access to court records.*

*There are a wide range of requests for court records received by the courts every day. They differ in their nature and the records involved. It would be impossible to anticipate all of the types of requests. These guidelines summarize how court officials can be expected to respond to the most commonly encountered access requests. In providing specific direction for the most common situations, these guidelines are intended to enhance consistency of operations between court locations.*

*These guidelines are also intended to help communicate to the media and the public the approach that will be taken on access matters in specific situations. They serve as an informative and educative tool for those wishing to better understand how the court system operates and how it implements the open access principle. While they provide administrative direction in situations where there is no court order in place, the guidelines do not have the force of law and are subject to the decisions of individual judges and courts.*

# 1. INTRODUCTION – THE PRINCIPLE OF OPENNESS IN THE COURT

The general rule in Canada is that court records and court proceedings are open to the public. The Supreme Court of Canada has clearly recognized this fundamental principle of our legal system in decisions including *Dagenais v. Canadian Broadcasting Corp.,* [1994] 3 S.C.R. 835 and *R. v. Mentuck*, [2001] 3 S.C.R. 442. In a more recent decision, the Court noted:

> The open court principle is of crucial importance in a democratic society. It ensures that citizens have access to the courts and can, as a result, comment on how courts operate and on proceedings that take place in them. Public access to the courts also guarantees the integrity of judicial processes inasmuch as the transparency that flows from access ensures that justice is rendered in a manner that is not arbitrary, but is in accordance with the rule of law.
> (*CBC v. Canada (Attorney General)*, 2011 SCC 2)

The Court has also recognized that there are exceptions to this principle.

> The general principles are as follows: (1) Every court has a supervisory and protecting power over its own records. (2) The presumption is in favor of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right. (3) 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. Curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance. One of these is the protection of the innocent.
> *(A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 S.C.R. 175)

Saskatchewan's law courts endorse this open-court principle. Members of the province's judiciary strive for an appropriate balance between open courts and the fair administration of justice.

In some instances, legislation limits or restricts public access to records or to the courtrooms themselves. One notable example is the Youth Criminal Justice Act (YCJA), which denies access to records to most members of the public and media. The YCJA does not start with the principle of openness, emphasizing instead the rehabilitation of the young person and the need to protect access to youth court records. Further discussion of the YCJA and the limitations it places on access follow later in the document. Divorce proceedings and child protection hearings are two other examples where access to either the courtroom or court records (or both) is typically restricted.

## 2. PURPOSE AND CONTEXT OF GUIDELINES

**Purpose**

The purposes of these guidelines are to:

i. Enhance understanding of how the courts operate and implement access to court records;

ii. Provide guidance to those seeking access to court records and to court personnel responding to requests for access; and

iii. Ensure timely and responsive replies are provided to requests for access while ensuring that the ongoing operation of the courts is not negatively affected.

**Court records defined**

For the purpose of these guidelines, a court record is a document, information or other thing that is collected, received or maintained by a court in connection with a judicial proceeding. Court records include dockets or court lists of matters that are scheduled for court, but do not include records relating to case management or records generated for other internal court purposes.

For the purpose of these guidelines, court records include transcripts of proceedings and copies of tapes or CDs of court proceedings.

**Court orders limiting access or publication**

Judges dealing with a case are always in the best position to determine the process to follow in court proceedings, including dealing with issues of access to exhibits filed in court. If they have made an order in a specific case regarding access or publication, those are the rules that will apply to that case.

The purpose of these guidelines is to provide direction in situations where there is no court order in place. ***If a judge has made an order in a particular case, that order supersedes any part of these guidelines that are in conflict with that order.***

**Court records and privacy legislation**

*The Freedom of Information and Protection of Privacy Act* provides rules for how government institutions are to deal with records in their possession and control, particularly those records that

contain private information on individuals. However, section 2(2) of the *Act* specifically indicates that government institutions do not include the Court of Appeal, the Court of Queen's Bench for Saskatchewan or the Provincial Court of Saskatchewan.

Similarly, *The Health Information and Protection Act* adopts the same definition of government institution as is used in *The Freedom of Information and Protection of Privacy Act*, which means that *HIPA* also does not apply to the courts.

**Court responsibility for records**

Another significant difference between the rules regarding access to court records and the rules regarding privacy legislation is that courts can and do inquire into the use which a person will make of a record and the reason for the request.

As indicated in the Supreme Court decision in *MacIntyre*, courts have both a supervisory and protecting power over their own records. The role of a judge faced with an access request is further elaborated on in the *CBC* decision, at paragraphs 12, 14 and 19:

> Access to exhibits is a corollary to the open court principle. In the absence of an applicable statutory provision, it is up to the trial judge to decide how exhibits can be used so as to ensure that a trial is orderly. This rule has been well established in our law for a very long time…. Judges have always been required, in exercising their discretion, to balance factors that might seem to point in opposite directions…. there are cases in which the protection of social values must prevail over openness. In my view, a situation requiring the protection of vulnerable individuals, especially after they have been acquitted, is one such case.
> (*CBC v. Canada (Attorney General)*, 2011 SCC 2)

In order to fulfill this role, courts must confirm that adequate safeguards are in place to ensure that the records and information are not used for an improper purpose or to subvert the course of justice.

For those situations not specifically covered by the guidelines, a request should be made in writing to the appropriate court official, setting out the nature of the documents requested and the purpose for which they will be used. The court official will provide the request to a judge for review and the judge will direct what action will be taken. In some instances, the judge may require that a formal application for access be made.

**Individual responsibility for use of information**

The person obtaining access and using the information obtained from a court file must ensure he or she is aware of any orders a court has made on that file or any other legal restrictions that limit publication of court materials or proceedings in the case. For example, the person accessing a court record is responsible for determining whether a publication ban exists.

## 3. PRACTICAL CONSIDERATIONS – HOW THE COURTS OPERATE

**Structure of Saskatchewan's Courts**

There is no central repository of court records in Saskatchewan. **Access and information requests must be directed to the appropriate court – Court of Appeal, Queen's Bench or Provincial Court – and court location where the record is stored.**

The Court of Appeal has its office in Regina and requests for court records must be directed to the Registrar's Office. Both the Queen's Bench and Provincial Court operate under a regionalized structure, with a head office in Regina and regional offices across the province. In the Queen's Bench, this local manager is referred to as the Local Registrar; while in Provincial Court, the person is known as the Court Manager. These individuals are responsible for ensuring that access requests in each court office are dealt with appropriately. Contact information for all Queen's Bench Local Registrars and Provincial Court Managers is available on the courts' website (www.sasklawcourts.ca) by choosing "Court Locations and Sittings" from the left-hand menu on the Provincial Court or Queen's Bench sections of the website.

**Role of local court staff**

On a day-to-day basis, there are practical considerations that will affect how quickly court officials can provide access to information on court files. The primary responsibility of court officials is to ensure that court operations run smoothly and the administration of justice is carried out. The secondary responsibility is to perform related tasks, such as providing information pursuant to these guidelines. The primary service delivered by a court is the resolution of disputes. Responding to public access requests must not unduly impact the ability of court officials to provide the services necessary to maintain court operations.

As well, it is important to note that there are limitations on the assistance that court officials can provide in relation to an access request. Specifically, court officials:

- *will not* interpret or analyze information about court proceedings;
- *will not* recount the submissions made in court for anyone who did not attend court personally;
- *cannot* ensure that the information provided relates to a particular person in the community (the responsibility for determining the accuracy of connections or

relationships drawn between individuals in the community and individuals named in court documents lies with the person obtaining and using information obtained from court); and

- *will not* act as *de facto* reporters, for example by providing a detailed account of what occurred in court, when a journalist or other individual is not able to attend court.

**Court filing systems**

Filing systems also have an impact on how court records can be accessed. In the Court of Queen's Bench, court records are generally stored at the court house in the order in which they were filed. Search capabilities are somewhat limited and the main type of search that is possible is by the name of the parties.

At Provincial Court, court records are filed by date of appearance. For example, all of the files that will be needed for a particular court on a date are stored together. Search capabilities are also somewhat limited and the main type of search that is possible is a search by name of the accused or date of appearance. Given the current search capabilities at the Provincial Court, in order for a clerk to locate an Information, the best tools to facilitate a search are the name and date of birth of the accused or, alternatively, the name of the accused and the date she or he will be appearing in court.

In Provincial Court, various filing systems are used to sort search warrants. For example, in some court offices, they are filed by date of issue and place to be searched. As a result, to facilitate access to a particular search warrant, provision of this information is important. The searcher should discuss with the court official what information will assist in expediting the search in a particular court office.

Finally, court records in Saskatchewan are for the most part paper rather than electronic records. Depending on the date of the records, files may also have to be accessed from off-site storage. These are further limits on search capabilities and may also at times result in delays in processing requests for access.

**Additional contacts**

While most access and information requests are best handled at the court location where the record is stored, there are several people in the system who sometimes play a role in facilitating access requests. These people are the Executive Legal Officer of the Provincial Court, the Registrar/Executive Legal Officer of the Court of Queen's Bench, the Registrar/Executive Legal Officer of the Court of Appeal and the Communications Officer for the Saskatchewan Law Courts. Contact information for these individuals is set out below and can also be found on the court website:

***General Inquiries, Media Relations***
*Dawn Blaus*
*Communications Officer,*
*Saskatchewan Law Courts*
*306-787-9602*
*dblaus@sasklawcourts.ca*

***Provincial Court Inquiries***
*Jan Whitridge*
*Executive Legal Officer, Provincial Court*
*306-798-3189*
*jwhitridge@skprovcourt.ca*

***Court of Queen's Bench Inquiries***
*Jennifer Fabian*
*Registrar/Executive Legal Officer,*
*Court of Queen's Bench*
*306-787-0472*
*jfabian@judicom.ca*

***Court of Appeal Inquiries***
*Melanie Baldwin*
*Registrar/Executive Legal Officer,*
*Court of Appeal*
*306-787-5382*
*caregistrar@sasklawcourts.ca*

# 4. MAKING AN ACCESS REQUEST

**How to make an inquiry**

There are different ways to access court records and information – phone, fax and in person, for example. Certain methods may have implications for court officials and the efficient operation of the courts. As a result, and keeping in mind the courts' primary role is to administer justice, the courts control how information is provided and what type of information is provided by various means. Court staff will not search files to locate specific items on anyone's behalf.

*Telephone*

Limited information will be provided by court officials over the telephone. In many instances, a court official will be fielding multiple calls about the same file. It would not be an efficient use of court resources to require the official to provide detailed information over the telephone to multiple callers.

As an example of the type of brief information that can be confirmed by phone, a court official may confirm that an individual was sentenced on a particular date and indicate the nature of the sentence, such as a conditional sentence. However, the court official will not provide the list of conditions over the telephone. Typically, questions answered by phone in relation to criminal matters will be limited to:

- next appearance date
- nature of next appearance
- custody status
- date and general nature of charges (not a list of all charges where that list contains more than two or three charges)
- date and general nature of sentence

It is important for the media and others to be aware if a publication ban is in effect. Therefore, information about the existence of publication bans can be obtained by telephone. The media (or others receiving the information) will continue to be responsible for interpreting the scope of the publication ban and determining how it applies to the story they wish to publish or other use they plan to make of the information.

*Written request – mail, fax or in-person*

Written requests for access to court records can be mailed, faxed or dropped off at the court offices. Where a request is detailed or lengthy, an access request form as set out in Appendix A will be required. As well, an access form must be completed when a request is made for access to records from a court proceeding which has been concluded.

Typically, once access has been granted, searchers are required to attend at the court office to review the material and personally obtain copies. Court officials may also provide a written response by fax or mail, although in some cases there are too many records to make faxing feasible.

If the request involves photocopying specific records, there will be a per-page fee. There is also a per-page fee for transcripts.

*Verbal request - in person*

Individuals can inquire in person at the front counter of the Court of Appeal and any Queen's Bench court between the hours of 10 a.m. and 4 p.m., and from 8:30 a.m. to 4:30 p.m. at any Provincial Court office. There are per-page photocopying fees for any material that is copied.

If the record is older and stored off-site, there may be a delay in accessing the record.

*E-mail*

Local court officials in Court of Queen's Bench and Provincial Court offices across the province will not usually accept requests for access by e-mail or provide information on court files by e-mail. Court staff do not all have individual computers and, in many instances, share access to a computer. Given the current state of technology use at the court houses, this is not currently an efficient or reliable method for ensuring access.

The Court of Appeal is able to accommodate email requests and has a general email to which requests can be directed: caregistrar@sasklawcourts.ca.

**Search fees**

In the Court of Appeal, non-parties (individuals not involved in the legal matter) must pay a search fee of $20 for searches made on files closed within the past five years. To search a file closed more than five years earlier, a search fee of $40 is payable. Individuals must pay an additional fee of $20 if they wish to expedite the search and have it conducted on the day the request is made. Payment can be made by credit card.

In the Court of Queen's Bench, non-parties (individuals not involved in the legal matter) must pay a search fee of $10 for searches made on files closed within the past five years. For any other search, a search fee of $20 is payable. Fees must be paid before a search begins. Queen's Bench court offices do not have the ability to take payment by credit card for search fees. Deposit accounts may be arranged and fees will be deducted from the accounts as search requests are made.

**Broad or blanket searches**

If a broad or blanket request that will involve accessing multiple court files is desired, a written request form (Appendix A) must be completed and must indicate the reason for the search. Generally speaking, the court offices have limited search capabilities to be able to respond to inquiries such as, "How many lawsuits have been commenced against a particular entity in the province?" or "How many lawsuits against a particular entity are still outstanding?" Topical searches like, "How many lawsuits have been filed involving injuries caused by vicious dogs?" are not possible.

**Timing of response**

If a file is in use by the judge, access will not be available to it until such time as the judge no longer needs it. Similarly, court officials have conflicting demands on their time and must ensure that the necessary tasks involved in the operation of the court are carried out. It is impossible to impose any particular time frame on responses to access requests, given the variables involved. Blanket searches will, obviously, involve a lengthier time frame for response.

**Limits of search capabilities**

The courts do not warrant or guarantee that all files produced as a result of a search relate to the individuals about whom information is sought. For example, it is common for the name of the

same individual to be spelled differently on different occasions, initials may be added or deleted, aliases used. All of these issues add potential for errors and omissions in identifying files relating to a specific individual.

The person asking to see the court record must examine the record and make his or her own determination whether the court record pertains to the person who is the subject of their inquiry. There are numerous instances of multiple files existing under the same name even though the files do in fact pertain to different people.

Liability for the use of the information in the court file rests with the requester or user of the information. The court record is a record of proceedings that have occurred on a particular day and place. If the requester or user of the information attempts to connect those proceedings to people in the community, it is the legal responsibility of the person obtaining and using the information to ensure the accuracy of such connections.

**Respect for court officials**

In dealing with court officials, it is important to remember that they are representatives of the court. They should be treated with courtesy and respect. If, in the opinion of the court official, an individual requesting access to records displays aggressive, harassing, intimidating or otherwise disruptive conduct, the court official may use his or her discretion to discontinue the discussion with the person requesting access. The court official may also indicate that any further communication by the individual with the court office must be in writing only.

Court officials will report incidents of this type of conduct to the Registrars of the Court of Appeal or Court of Queen's Bench, the Executive Legal Officer of the Provincial Court and/or the Communications Officer for the Courts. Depending on the nature of the conduct in issue, further steps may be taken as appropriate. If the incident involves a member of the media, action taken to respond to the concern may involve contacting the assignment editor or manager of the news outlet.

# 6. ACCESS VERSUS PUBLICATION

There is a difference between access and publication and there are two areas where this distinction is important – 1) access to court records versus publication of the contents of those records, and 2) access to court proceedings versus dissemination of the information dealt with in those proceedings.

**Publication bans**

In many instances, the media may access information from court files although they may be prevented by a publication ban from publishing or broadcasting that information. A publication ban deals with dissemination of information, generally regarding the publication of facts that are the subject of a court proceeding. **A publication ban does not generally restrict access to the court proceedings or file.**

For example, when there is a publication ban, the public may still come to court and watch the proceedings. Depending on the nature of the matter, the public may still be able to access the court file, even if there is a publication ban. However, the person obtaining the information cannot publish the information outside of court. The terms of the publication ban will indicate the particular restrictions.

The person obtaining access and using the information obtained from a court file must ensure he or she is aware of any orders a court has made on that file or any other legal restrictions that limit publication of court materials or proceedings in the case.

Publication bans may have expiry dates set by the court or in applicable legislation. If no expiry date is set, then the order continues in effect until set aside by a subsequent court order.

*The Dagenais/Mentuck Test*

Judges considering an application for a discretionary court order that restricts access or publication apply a test developed by the Supreme Court of Canada. The test, commonly referred to as the *Dagenais/Mentuck* test, says such an order should only be made when:

a) it is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and

b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

**Sealing Orders**

Sealing orders have the effect of denying access to court files or parts of files. If a court file has been sealed, no one will be able to access the contents of the court file unless the order permits them to access the file or a judge amends the order to allow such access.

**Exclusion of the Public from Court Proceedings**

In some circumstances, the court may exclude the public from all or part of a court proceeding. Authority to impose such orders is usually reserved for those situations which involve highly personal, private or sensitive evidence or proceedings, the disclosure of which would harm innocent parties, business operations or imperil security interests.

For example, section 278.4 of the *Criminal Code* provides that a judge shall hold a hearing *in camera* to determine whether to order a person who has possession or control of counselling, child welfare and other personal records to produce those records to the court for review by the judge. This means that the public, including the media, are not entitled to be present at the initial hearing regarding production of this type of records.

## 6. WHEN ACCESS IS DENIED

Court officials are responsible for applying these guidelines, as well as the limitations on access that exist in legislation and the rules of court. In some cases, a court official may conclude that a particular request comes within one of the exceptions to the open access principle. When this happens, the court official will refuse the request and advise the individual requesting access that he or she may apply to court to have the matter determined by a judge.

All applications should be made to the court holding the records and should clearly indicate the following information: nature of the request, precise description of the records requested, reasons for the request and a description of the use which will be made of the records.

In recognition that these requests for access may sometimes be time-sensitive, every effort will be made to have the matter heard at the first opportunity. The judge hearing the application may give directions for notification of parties potentially affected by the application.

# 6. LEGAL LIMITATIONS ON ACCESS

There are a range of limitations on access and publication that can be found in case law, legislation and rules of court. The following sets out many of these limitations as they apply in Saskatchewan. While it is not an exhaustive list of every legal restriction that exists, it does set out the general principles and includes some of the limitations most commonly encountered.

**Civil law**

This area includes a wide range of civil matters, including bankruptcy proceedings, administration of estates and claims for damages for personal injury or contractual breaches.

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| **Bankruptcy** | All proposals, bankruptcies, appointments of trustees, and notices of receivers are maintained in a public record. Other related documents may also be kept by the Superintendent of Bankruptcy, though these need not be made public.<br>- *Bankruptcy and Insolvency Act*, s. 11.1.<br><br>The books and papers of the bankrupt are open to inspection only by those authorized under the *Bankruptcy and Insolvency Act*. These include the bankrupt, the affected creditors and the Superintendent.<br>- *Bankruptcy and Insolvency Act*, s. 23, 26(3).<br><br>Where the Superintendent of Bankruptcy takes action against a trustee, the record of the hearing is public unless the Superintendent concludes that such material should not be disclosed.<br>- *Bankruptcy and Insolvency Act*, s. 14.02(3). |
| **Cooperatives** | Any interested person may apply to have an investigative hearing heard in private.<br>- *Canada Cooperatives Act*, s. 332.<br><br>Documents produced as the result of such a hearing must be made publicly available if they are generally available under the *Canada Cooperatives Act*.<br>- *Canada Cooperatives Act*, s. 335(4). |
| **Credit Unions** | An application for an investigation under *The Credit Union Act* is held in private.<br>- *The Credit Union Act, 1985*, s. 134(3).<br>Any interested person may apply to have an investigative hearing heard in private.<br>- *The Credit Union Act, 1985*, s. 137. |

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| **Estates** | The Queen's Bench Rules of Court govern the public's access to wills and related documents.<br>- *The Administration of Estates Act*, s. 50(g).<br><br>Unless authorized by the court, no person other than a personal representative, beneficiary or other person with an interest in an estate or a person authorized by one of the above may have access to a Form 104 statement filed in connection with that estate. |
| **Examinations for Discovery** | Rule 191(4) of *The Court of Queen's Bench Rules* provides that examinations for discovery can be available for the use of the pre-trial judge but otherwise shall be sealed and not available for access. |
| **Freedom of Information Appeals** | Where a court is hearing an appeal from a decision of a department head under *The Freedom of Information and Protection of Privacy Act*, the court must take all reasonable steps to avoid disclosing the existence or content of any controverted information.<br>- *The Freedom of Information and Protection of Privacy Act*, s. 58(3). |
| **Health Information Appeals** | Where a court is hearing an appeal from a decision of a department head under *The Freedom of Information and Protection of Privacy Act*, the court must take all reasonable steps to avoid disclosing the existence or content of any controverted information.<br>- *The Health Information Protection Act*, s. 51(3). |
| **Mental Health Warrants** | These are not accessible by the public.<br>- *The Mental Health Services Act*, s. 38(2). |
| **Pre-Trials** | Rule 191 of *The Queen's Bench Rules of Court* sets out the rules for the conduct of pre-trials and deals with the confidentiality of information provided during these proceedings. Rule 191(15) provides that all communications in the pre-trial are privileged. |
| **Trade Secrets** | Access to court documents may be limited where these documents disclose trade secrets as to formulas, processes or patents. Contracts and operational documents are not considered to be trade secrets.<br>- *Scott v. Scott* [1913] A.C. 417 (H.L.); *Mitchell v. Intercontinental Packers Ltd.* [1996] S.J. No. 276 (Q.B.); *John Deere Ltd. v. Long Tractor Inc.* 2003 SKQB 24. |
| **Wills** | A registered will may be made available to the testator, a person authorized by the testator or any person who requires access to the will to enable the administration of the estate.<br>- *The Wills Act, 1996*, s. 49. |

**Criminal law**

This area deals with matters where the state has commenced a prosecution alleging that an offence under the *Criminal Code* or other federal or provincial legislation has occurred.

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| **Informations** | Informations become part of the public record when documents such as appearance notices, summons or arrest warrants requiring the attendance of the accused are confirmed, or issued and served, and are thus treated under the general principles set out in *MacIntyre*.<br>- *Leader-Post v. Neuls* [1992] S.J. No. 686 (Q.B.). |
| **Publication Ban – Sexual Offences** | The presiding judge may make an order directing that any information that could identify the complainant or a witness shall not be published, broadcast or transmitted in any way.<br>- *Criminal Code*, s. 486.4(1) |
| **Search Warrants** | Search warrants are generally only available to the public where:<br>(1) the warrant has already been executed, to ensure that the search is able to fulfill its purpose; and<br>(2) the search results in the seizure of evidence, to ensure that completely innocent parties are protected.<br>- *Nova Scotia (Attorney General) v. MacIntyre* [1982] 1 S.C.R. 175. |
| **Show Cause (Bail) Hearings** | Before or at any time during the proceedings, the presiding judge may, on application by the Crown, and shall, on application by the accused, make an order directing that evidence taken, the information given, the representations made and the reasons, if any, shall not be published, broadcast or transmitted in any way before such time as a) if a preliminary hearing is held, the accused is discharged or b) if the accused is tried or ordered to be tried, the trial is ended.<br>- *Criminal Code*, s. 517 |
| **Preliminary Inquiry** | Prior to the start of the inquiry, the presiding judge may on application by the Crown, and shall on application by the accused, make an order directing that evidence taken shall not be published, broadcast or transmitted in any way before such time as in respect of each accused a) is discharged or b) if ordered to stand trial, the trial is ended.<br>- *Criminal Code*, s. 539 |
| **Preliminary Inquiry Transcripts** | The principles of open access apply to criminal records and other records on the criminal file, however preliminary hearing transcripts will not be released by a court without authorization of a judge. |
| **Pre-Sentence, Medical, Psychiatric and Psychological Reports** | While the principles of open access apply to criminal records and other records on the criminal file, pre-sentence reports and medical/psychiatric/psychological reports, including counselling reports, will not be released by a court without authorization of a judge. |

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| **Other Records such as Criminal Records or Victim Impact Statements** | While there is no definitive case law regarding criminal records, victim impact statements and any other records on the criminal file, the principles of open access apply unless the judge orders otherwise. Appendix B explains how such requests are handled. |
| **Sentencing** | The same general principles set out for a trial apply to a sentencing hearing. These principles are less likely to lead to an exclusion order, since witnesses are generally not obliged to testify in a sentencing hearing, and since an accused who has pled guilty cannot generally claim undue hardship arising out of publicity surrounding the sentencing.<br>- *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)* [1996] 3 S.C.R. 480. |
| **Criminal Record to which a Pardon Applies** | No one is allowed access to court records relating to pardons, nor can the existence of such records be disclosed to any person, with two exceptions. Saskatchewan courts have adopted a policy that the subject of the pardon may be provided a copy of any court records that still exist if they, or a party acting on their behalf with their authorization, requests access. Such a request should be made in writing and should specify the purpose for which the request is being made. Secondly, access will be allowed if a judge authorizes the disclosure of a criminal record for which a pardon has been granted. |

**Youth criminal proceedings**

Unlike the situation for most court records, the *Youth Criminal Justice Act* does not start with the principle of openness. Rather, the Act denies access to records, unless the person requesting the information falls within a very limited set of exceptions as set out in the Act. Similarly, publication of names or other identifying information is, in most cases, prohibited.

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| **General Principles** | A young person's right to privacy receives special protections.<br>- *Youth Criminal Justice Act*, s. 3(1)(b)(iii). |
| **- Open court, publication and access limited** | While youth justice court proceedings are held in open court, there are presumptive limitations on the publication of the name of a young person or any information which connects the young person's name to a criminal offence. There are also presumptive limitations on access to records. Unless the person requesting access falls within section 119 or makes an application under that section, access must be denied.<br>- *Youth Criminal Justice Act*, s. 118(1), 119(1)(s), 119(8), 123(1).<br><br>The protections set out in *The Youth Criminal Justice Act* are interpreted in a stringent fashion and special care must be taken in this area regarding access and publication.<br>- *F.N.(Re.)* [2000] 1 S.C.R. 880<br><br>The names of the accused and any child victims or witnesses may not generally be published unless:<br>(1) the person reaches the age of majority and consents to publication;<br>(2) the judge concludes that publication is not contrary to the person's best interests or the public interest; or<br>(3) publication of the accused's name is necessary to assist in apprehension of an accused who poses a danger to others.<br>- *Youth Criminal Justice Act*, s. 110-111. |
| **- Exceptions to the ban** | Once information has been published under one of the above sections, the presumptive publication ban no longer applies.<br>- *Youth Criminal Justice* Act, s. 112.<br><br>The publication ban is not automatic where a young person is sentenced as an adult or commits a presumptive offence, but the young offender may apply for a publication ban.<br>-*Youth Criminal Justice Act*, ss. 75(3), 110(2)(a), 117. |
| **Youth Drug Detoxification and Stabilization Proceedings** | Proceedings pursuant to this Act are not public. Contact the Executive Legal Officer for assistance. |

**Family law**

This area includes a wide variety of family law-related matters, including actions for custody and access, support, distribution of family property, applications for orders under child protection legislation and other legislation providing for intervention orders.

| | |
|---|---|
| **General Principles** | The court has discretion to hear any family law proceeding in private. Family law proceedings include divorce, custody, access, support and adoption applications, child protection matters, maintenance enforcement proceedings, reviews of orders under *The Victims of Domestic Violence Act* and *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*.<br>- Queen's Bench Rule 586; *The Queen's Bench Act, 1998*, s. 99; *The Queen's Bench Act, 1998*, s. 2, definition of "family law proceeding".<br><br>Only the parties, their lawyers or anybody authorized by a party has access to the court record. The court has discretion to grant access to any other person who applies.<br>- Queen's Bench Rule 587.<br><br>Documents generated in a family law proceeding are generally confidential unless:<br>- the creator of the document consents;<br>- the document is referred to in open court, whether in the family law proceeding or another proceeding; or,<br>- the court orders otherwise.<br>Any person using family law documents contrary to the above rule is in contempt of court.<br>- Queen's Bench Rule 588 |
| **Adoption** | All applications for adoption are heard in private.<br>- *The Adoption Act, 1998*, s. 16(12).<br><br>Neither documentary information relating to adoption, nor information which may identify the parties involved, may be released or published without the consent of all parties.<br>- *S.F. v. Christian Counselling Services* 2004 SKQB 344. |
| **Child Protection** | The court may order that a child protection hearing be held in private, or may order a publication ban where a hearing is not held in private.<br>- *The Child and Family Services Act*, s. 26.<br><br>Any publication ban under the above section must be based on the best interests of a child, not on the best interests of the parents or other parties.<br>- *M.N.R. v. Saskatchewan (Minister for the Department of Social Services)* [1999] S.J. No. 282 (Q.B.). |

| | |
|---|---|
| **Child Protection (continued)** | Documentation of proceedings under *The Child and Family Services Act* may only be disclosed to non-parties where the Minister of Family Services sees fit to do so.<br>- *The Child and Family Services Act*, s. 74. |
| **Custody, Access, Parentage; Property Division** | The court may order a closed hearing or a publication ban where the consequences of possible disclosure outweigh the value of public access.<br>- *The Children's Law Act, 1997*, s. 13; *The Family Property Act*, s. 47. |
| **Divorce** | The court's discretion is that set out by the Court of Queen's Bench Rules. While the regulations under the *Divorce Act* officially take precedence, these do not regulate access to proceedings or documents.<br>- *Divorce Act*, s. 25(2), 26(1). |
| **Domestic Violence** | The court may order that a proceeding be held in private, or may order a publication ban if publication could harm either the victim or a child affected by the proceeding.<br>- *The Victims of Domestic Violence Act*, s. 9. |
| **Emergency Protective Intervention Orders** | The court may order that a hearing seeking a restraining order based on alleged or apprehended child abuse be held in private.<br>- *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, s. 14.<br><br>Documentation of proceedings under *The Child and Family Services Act* may only be disclosed to non-parties where the Minister of Community Resources and Employment sees fit to do so.<br>- *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, s. 20.<br><br>No information may be published which would identify a child victim.<br>- *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, s. 21. |
| **Maintenance** | The court may order a closed hearing or a publication ban where the consequences of possible disclosure outweigh the value of public access.<br>- *The Family Maintenance Act, 1997*, s. 18<br><br>Information arising out of maintenance enforcement is confidential and may not be disclosed or published.<br>- *The Enforcement of Maintenance Orders Act, 1997*, s. 14. |

***Appendix A***

# REQUEST FOR ACCESS TO COURT RECORDS

**Request made by:** ***This is a public document.***

Name: _____

Address: _____

Phone: _____ Fax: _____

**Information requested:**

Items to which access is requested (set out a detailed description of records requested):

_____

_____

(If this is a request for criminal court records, please specify as much of the following information as possible – full name of accused, date of birth of accused, Information number, charges, date of next court appearance)

Reason for requesting access:

_____

_____

I accept that this request is subject to the following conditions:

1. **The person making the request for access bears the legal responsibility for the proper use of this information, including ensuring whether a publication ban or other court order exists regarding the use of the information. Inappropriate use of this information could constitute contempt of court or lead to a charge under the *Criminal Code*.**

2. All search and photocopying fees must be paid in advance of receiving any material.

3. Adequate time must be allowed for the search. Failure to fully complete the form or provide any additional information requested by the court official will delay the search.

4. If files are located in other court offices, an access request must be directed to that office. Files will not be moved between court offices.

5. A search may not locate all of the files relating to a person. Alternate spellings or aliases will affect the search.

6. The court record is a record of proceedings that have occurred on a particular day and place only. It is not a criminal record search. A file may have been opened, but may not have resulted in a conviction. Files must be reviewed carefully by the searcher.

7. Files produced are not guaranteed to relate to the person named in the search. **Connecting the identity of court proceedings to persons in the community is the legal responsibility of the person seeking and using the information.**

**I confirm that I have read the conditions set out above and that I assume full legal responsibility for any subsequent use of information that I receive from the court files.**

Signed _____ Date: _____
Name of Searcher

---

Outcome of search – (Note whether any information provided and if so, name of person information was provided to)

_____

_____

_____

_____

Signed: _____ Date: _____
Name and Title of Court Official

# FREQUENTLY ASKED QUESTIONS REGARDING ACCESS

## Guidance for Court Officials Responding to Requests from the Media and Public

Please note: There are special rules that apply in youth justice court proceedings. If the question relates to a criminal matter involving a young person, please refer to Section C, which is specific to Youth Justice Court records.

## A. CIVIL FILES

**Q.** What is the general approach in dealing with access requests on civil files?

**A.** The general rule in civil files is that the records on the court file can be accessed if there is no legislative provision, rule or court order restricting access. There are some areas where caution is required, for example, examinations for discovery transcripts are subject to specific limitations on use. The examinations are not public proceedings but only become public when introduced in a court proceeding. Access will not be provided to examination for discovery transcripts on the court file. However, access will be provided to any motions that are made in relation to the examinations for discovery.

Another area where caution is required is pre-trial briefs. These are filed for use in the pre-trial and the rules indicate they will be kept confidential unless relied on at trial.

Prior to providing access to civil files, the court official must ensure that the pre-trial briefs and examination for discovery transcripts are removed from the file. The only exception will be when the pre-trial briefs or transcripts have been relied on at trial.

In estates proceedings, the general rule of open access applies to all records with the exception of statements of property in Form 104. No access to a statement of property will be provided to anyone other than a personal representative, beneficiary or other person with an interest in the estate or a person authorized by one of the above, unless a judge authorizes access to another party.

## B. ADULT CRIMINAL FILES

**Q.** What is the general approach in dealing with access requests on adult criminal files?

**A.** The general rule provides for access to adult criminal files unless there is a court order restricting access. In *Vancouver Sun (Re)*, [2004] S.C.R. 332, the Supreme Court wrote that the open court principle is inextricably linked to freedom of expression, protected by s. 2(b) of the Charter, and advances its core values. However, in exercising their supervisory role over records, courts may deny access if the ends of justice would be

subverted by the disclosure or the judicial documents might be used for an improper purpose (*Nova Scotia (Attorney General) v. McIntyre* [1982] 1 S.C.R. 175).

The ability of courts to place limitations on media and their activities was reaffirmed in *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2. It noted that restriction on access or activity may be justified in the interests of maintaining decorum in the court, protecting the justice system's truth-finding role, and respecting the privacy of participants in the justice system.

## Information Prior to First Appearance

**Q.** A request is received for an Information prior to the first appearance in court. When can it be provided?

**A.** Where an Information is sworn and there is proof on file that the documents requiring the accused's attendance have been confirmed, or issued and served, access to the Information can be provided prior to the first appearance.

*Examples:*
Where the accused was served with an appearance notice or promise to appear, access to the information can be provided when the court office receives the appearance notice or promise to appear which has been confirmed by the justice of the peace.

Where a summons was ordered, when the court office is provided with a copy of the affidavit of service of the summons, access to the information can be provided.

Where an arrest warrant was authorized, when the court office receives notification that the warrant was executed, access to the information can be provided.

## Search Warrants

**Q.** A request is received for access to a search warrant. When can the search warrant be provided?

**A.** Access to a search warrant is not automatic. The court official must have proof that the warrant has been executed and that property has been seized. This proof is found in the report to a justice, which is required to be filed with the Court. Until a return is filed, no information can be provided about the search warrant.

Where a search warrant information is sealed, court officials must not release any information unless an order has been made allowing for the release of information. As long as the terms of the sealing order do not prevent it, and a return is filed with the Court, the court official *may* be able to advise the person requesting access that a search warrant is filed, but that it has been sealed by court order.

Although search warrants are filed by address and date of search, if the searcher is not aware of this information, court officials should attempt to assist a searcher in locating the documents.

## Sexual assault

**Q.** What should a court official do if a request is received for an Information involving a sexual assault, particularly a child sexual assault, but a publication ban on the name of the victim has not yet been made in court?

**A.** In this instance, it is entirely appropriate for the court official to consult with a judge to determine what action to take in such a situation.

**Q.** When a publication ban has been made under section 486.4(1) or 486.5(1) of the *Criminal Code*, is the name of the victim blacked-out before a copy of the information is provided to anyone?

**A.** No. The difference between access and publication must be kept in mind. A publication ban does not limit access but rather prevents publication of the material. The onus for ensuring the publication ban is not violated rests with the person requesting access. There are sanctions for breaches of publication bans.

The court official should emphasize to the person requesting access that a publication ban exists. Ultimately, however, it is up to the individual seeking access to ensure they are aware of any orders a court has made in that file and any other legal restrictions that limit publication of court materials or proceedings in the case.

For those individuals requesting access who are familiar with the nature of publication bans and the appropriate use of information obtained from court, such as media, lawyers and court workers, copies of the information will be provided. For other individuals less familiar with the applicable rules, if the court official has a concern that there will be an inappropriate use made of the document after release, the court official may wish to consult with a judge prior to release of a copy of the document.

## Preliminary Hearing Transcripts

**Q.** A request is received for a copy of a preliminary hearing transcript. Can it be provided?

**A.** Preliminary hearing transcripts do not become part of the court file until after the matter is heard in court. If sentencing submissions have been made and the matter has been adjourned for sentencing, upon receipt of a written request, the presiding judge may authorize release of the preliminary hearing transcript. If a written request is received following sentencing, a judge of the court will determine whether the preliminary hearing transcript will be released.

## Medical/Psychiatric/Psychological Reports

**Q.** A request is received for a copy of a medical, psychiatric or psychological report. Can it be provided?

**A.** Medical, psychiatric and psychological reports, including counselling reports, do not become part of the court file until after the matter is heard in court. If sentencing submissions have been made and the matter has been adjourned for sentencing, upon receipt of a written request, the presiding judge may authorize release of the medical, psychiatric or psychological report. If a written request is received following sentencing, a judge of the court will determine whether the medical, psychiatric or psychological report will be released.

## Pre-sentence Reports

**Q.** A request is received for a copy of a pre-sentence report. Can it be provided?

**A.** Pre-sentence reports can contain highly personal information about persons not before the court, such as family members of the accused or the victim, and consequently public disclosure of the information in the report must be subject to court oversight.

The pre-sentence report does not become part of the court file until after the matter is heard in court. If sentencing submissions have been made and the matter has been adjourned for sentencing, upon receipt of a written request, the presiding judge may authorize release of the report. If a written request is received following sentencing, a judge of the court will determine whether the report will be released.

## Other Records or Reports

**Q.** Can access be provided to any other records on the court file relating to the accused?

**A.** Access to the records are not available until after the judge has dealt with the matter. After the matter is dealt with, if no court order has been made restricting access and subject to specific treatment elsewhere in these guidelines, the general rules of openness

apply. If a publication ban has been made on any of the information, the person requesting access should be advised of the existence of the ban.

## Victim Impact Statements

**Q.** A request is received for a copy of a victim impact statement. Can it be provided?

**A.** Victim impact statements, like pre-sentence reports, can contain highly personal information about persons not before the court and consequently public disclosure of the information in the report must be subject to judicial review.

There is a timing issue involved with the release of victim impact statements. The victim impact statement does not become part of the court file until after the matter is heard in court. If sentencing is not yet complete but the victim impact statement has been referred to in court, the judge should be consulted prior to the release of the victim impact statement.

Once sentencing is complete, if there is no court order preventing or limiting access, the general rules of openness apply. If no court order has been made limiting access, access should be provided. If a publication ban has been made regarding the name of the victim, the person seeking access should be advised and if practicable, a cover letter should be provided along with the victim impact statement, confirming that the publication ban is in existence. Ultimately, however, it is up to the individual seeking access to ensure they are aware of any orders a court has made in that file and any other legal restrictions that limit publication of court materials or proceedings in the case.

## Pardons

**Q.** Can access be provided to criminal records for which a pardon has been granted?

**A.** Only the subject of the criminal record for which a pardon has been granted or a party acting on his or her behalf with his or her authorization may access a criminal record for which a pardon has been granted. Access may also be provided if a judge has specifically authorized it.

## C. YOUTH JUSTICE COURT FILES

### No Access

**Q.** Why are the rules regarding Youth Court files so restrictive and how should access requests be dealt with?

**A.** Unlike the situation for most court records, **the *Youth Criminal Justice Act* does not start with the principle of openness.** Rather, the Act denies access to records, unless the person requesting the information falls within certain exceptions.

The general theory underlying the additional protections for information gathered under the *Youth Criminal Justice Act* is that the emphasis should be on rehabilitation of the young person. If information about the prior criminal activity of the young person follows the young person for the rest of their life, the chances of rehabilitation are lessened as the young person continues to bear the stigma of earlier mistakes.

The *Youth Criminal Justice Act* mandates that the general rule is no access to youth justice court records unless the access is specifically permitted under the Act or the Court has made an order allowing for the access. While the Act allows for an open court proceeding, it provides very specific protections for court records. **There is no specific permission given in the Act for access by media to the court records or the information in the court files.**

Exceptions to the no-access rules are set out in section 119 of the Act. Section 119(r) authorizes the Lieutenant-Governor in Council of a province to designate additional persons or classes of persons to have access to youth justice court records. In Saskatchewan, there is an Order-in-Council 271/2008 that permits additional classes of persons to have access to records for certain purposes. A copy of OC 271/2008 is attached as Appendix D to the Guidelines.

If the person does not fall within one of the exceptions specifically set out in section 119 or the Order-in-Council made under the authority of section 119, the person may apply to the court under section 119(s) for access.

### Information on Adjournment Dates

**Q.** If someone knows the name of the young person who has been charged and calls the court office to find out when the young person will be appearing in court, can this information be provided?

**A.** Yes, if the person provides a name of a young person, the court official may provide the adjourned date. The adjournment date can also be provided if the person provides an Information number rather than a name.

### Youth Dockets

**Q.** Can youth justice court dockets be publicly posted?

**A.** No – youth justice court dockets should not be posted in the courthouse nor should they be distributed to anyone unless the person falls within one of the exceptions in section 119 of the Act.

## D. FAMILY FILES

**Q.** What is the general approach in dealing with access requests on family files?

**A.** If it is a family matter, no access to the file will be provided by the Court of Queen's Bench to anyone other than the parties and their lawyers, unless a judge makes an order allowing access to another party. This includes fiats, judgments and reasons for judgments.

The reasons and judgments in family matters are generally available to the media and public through the Law Society website, at http://www.lawsociety.sk.ca. However, prior to being placed on the website, the judgments are reviewed and edited, to protect the interests of vulnerable parties such as the children. In some instances, initials are used instead of the names of the parties, based on the direction of the presiding judge. It is preferable to refer an individual requesting access to a judgment in a family file to the

website rather than providing a copy from the court file, as the court copies have not been edited. If this is not satisfactory to the party requesting a copy of the judgment, the court official will ask the presiding judge if the judgment can be provided from the court file or if it requires editing prior to being provided.

## E. GENERAL

### Exhibits

**Q.** What sort of access can be given to exhibits that have been filed in a court proceeding?

**A.** The answer depends on the nature of the proceeding. If it is a family matter, no access will be provided to anyone other than the parties and their lawyers, unless a judge makes an order allowing access to another party.

In a civil or criminal matter, the presiding judge will determine what access will be provided to exhibits. Requests to photograph, film, photocopy or otherwise reproduce the exhibits must be dealt with by the presiding judge.

At times, the media may request copies of documentary exhibits so that they can follow along with the evidence. This can assist in accurate reporting and is a practice to be encouraged, provided the presiding judge has given permission for copies to be made.

Arrangements for viewing exhibits may be made with the court clerk and/or the Court Manager or Local Registrar at times that are convenient for the court official, keeping in mind the other responsibilities which the court official must perform.

### Transcripts, Tapes or CDs of Court Proceedings

**Q.** Can individuals buy copies of the transcripts, tapes or CDs of court proceedings?

**A.** For access to transcripts, CDs and tapes of criminal court proceedings where a publication ban exists, judicial authorization is required unless the request for access is made by one of the parties to the proceeding, their counsel or a court-recognized member

of the media, who has been granted a court house clearance pass for the purpose of reporting to the public. Individuals receiving the transcript, tape or CD must not publish or rebroadcast it in any way and continue to be subject to the publication ban.

For all other proceedings, access will be granted upon payment of the fee required for the copy of the transcript, tape or CD on the understanding that the transcript or audio record must not be published or rebroadcast in any way.

### Filming or Photographing Jurors

**Q.** The media often ask if they can film jurors. Can we allow this?

**A.** This is a decision that should be made by the presiding judge. For various reasons, including the fear of retaliation, jurors generally do not want to be identified outside the courtroom. In previous cases, judges have generally indicated that jurors should not be filmed. Any activity that interferes with the jurors' ability to perform their duties is to be discouraged.

### Photographs of Judges

**Q.** The media will sometimes ask for pictures of judges. How should we respond?

**A.** This a decision to be made by the particular judge involved. Such requests should be referred to the judge for direction.

### Photographing or Filming Courtrooms

**Q.** Are the media allowed to take pictures of or film the interior of courtrooms?

**A.** Filming and photographing is allowed in the courtroom on ceremonial occasions, such as the swearing-in ceremony of a newly appointed judge. Empty courtrooms may also be photographed or filmed, but arrangements must be made through the appropriate court official. In Queen's Bench, this is the Local Registrar or Sheriff. In Provincial Court, this is the Court Manager or Manager of the Security/Detention Unit.

### Media Recording Court Proceedings Using Audiotape

**Q.** Are the media allowed to make audio recordings of court proceedings?

**A.** The media are generally allowed to make their own recording of proceedings, on the express condition that the recording will not be broadcast, and will be used only for the purpose of ensuring the accuracy of their story. Media representatives are encouraged to confirm with a court clerk ahead of time their intention to record proceedings and the parameters of such recording.

### Methods of Providing Access

**Q.** Is there any particular requirement as to what method must be used to provide access to court records?

**A.** The court controls the timing, place and method of providing access. Considerations such as workload and the demands of other court duties will affect the ability of a court official to respond to the various requests for access which are made. See the detailed review of methods of providing access in the Guidelines.

## F. HIGH-PROFILE CASES

**Q.** Are there any special considerations that apply to situations involving significant media attention?

**A.** In cases involving significant media attention, the Local Registrar or Court Manager should spend some time before the commencement of the trial considering and addressing the media issues that will arise, including how access to exhibits will be handled. The Courts Communications Officer should be contacted as part of this process.

In some instances, the presiding judge may arrange to meet with members of the media before the commencement of proceedings, to explain the manner in which access will be provided to exhibits during the trial and to allow for a discussion of any other matters which may need attention. These sessions can minimize issues that arise during trial.

Under the direction of the presiding judge, the court official may be asked to prepare a media information sheet, which addresses various issues. A sample trial sheet follows.

**SAMPLE TRIAL INFORMATION SHEET**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

**Media Information Sheet**

**Trial of XXXXXXXX**

The Honourable Madam Justice xxxxx xxxxx has issued a number of orders respecting media coverage of the trial of xxxx xxxxx:

- The identity of jurors is not to be published and photographing or filming of jurors is not permitted;
- Media will have normal access to filed exhibits at a time agreeable to the Sheriff;
- Filed exhibits may be photographed or filmed at a time agreeable to the Sheriff;
- Tape recorders and lap-top computers are allowed in court with the provision that no part of the tape recording of the proceedings may be broadcast;
- The empty courtroom may be photographed or filmed at a time agreeable to the Sheriff;
- A copy of the Crown's witness list will be available to media prior to opening statements by counsel for the Crown and accused.

Xxxxx xxxxxxx, Saskatchewan Courts Communications Officer and xxxx xxxxxx, Local Registrar, xxxxxxx Court of Queen's Bench, will be available to assist you throughout the trial.

**Contact numbers:**

| | |
|---|---|
| xxxxx<br>(LR/CM) | 555-5555<br>Email |
| Xxxxx<br>(Sheriff) | 555-5555<br>Email |
| Xxxxxx | 555-5555<br>555-5555 (cell)<br>Email |

# G. PROCESS

## Using JAIN to search for Records or Information

**Q.** Can JAIN be used to search for information or records in order to respond to an access request?

**A.** Since 1987, the Provincial Court has used a computer tracking system for cases called the Justice Automated Information Network (JAIN) which is a limited, cumbersome and somewhat dated computer data base. JAIN may be used to assist the court official in locating a file. However, JAIN itself is not a court record but rather a tracking system. As a result, JAIN will contain errors and omissions and should not be relied on as the source of information. It may be used to locate a file but the court official must confirm the information on the court file.

In some instances, an Information may be entered on JAIN before the document is filed in Court. No information shall be provided from JAIN in these situations, until the necessary documents have been filed with the Court.

In addition, caution should be used with JAIN searches as JAIN does not record whether or not a publication ban exists. Printouts from JAIN shall not be distributed outside the court offices.

## Existence of Publication Bans

**Q.** When a publication ban has been made in a case, are there any special precautions that should be taken?

**A.** Yes, special precautions should be taken. In Provincial Court, the face of the Information should be clearly and prominently stamped indicating that a publication ban has been made. In Queen's Bench, the existence of the publication ban should be noted at the front of the file. The onus continues to be on the person requesting access to review the entire court file to determine whether a ban exists, as the stamp or notation may be missed in some files.

In some instances, where the public is coming and going from a courtroom, the judge may direct that the clerk put a note on the courtroom door, on the dais, or in a clearly visible location, noting the existence of the ban.

### Uncertainty in Interpretation or Application of the Guidelines

**Q.** Who should the court official contact if there is any uncertainty regarding the interpretation or application of the guidelines?

**A.** If there is uncertainty about how the guidelines should be interpreted or applied, the court official should contact the Executive Legal Officer or Registrar of the Court for direction and guidance. In the absence of these individuals, the court official should contact the Communications Officer for the Courts. Contact information is as follows:

***General Inquiries, Media Relations***
*Dawn Blaus*
*Communications Officer,*
*Saskatchewan Law Courts*
*306-787-9602*
*dblaus@sasklawcourts.ca*

***Provincial Court Inquiries***
*Jan Whitridge*
*Executive Legal Officer, Provincial Court*
*306-798-3189*
*jwhitridge@skprovcourt.ca*

***Court of Queen's Bench Inquiries***
*Jennifer Fabian*
*Registrar, Court of Queen's Bench*
*306-787-0472*
*jfabian@judicom.ca*

***Court of Appeal Inquiries***
*Melanie Baldwin*
*Registrar, Court of Appeal*
*306-787-5382*
*caregistrar@sasklawcourts.ca*

### Requests for Access Not Covered in these Guidelines

**Q.** What process should be used if an access request is made which is not covered by these guidelines?

**A.** For those situations not specifically covered by the guidelines, a request should be made in writing to the court official, setting out the nature of the documents requested and the purpose for which they will be used. The form in Appendix A can be used for this purpose. The court official will provide the request to a judge for review and the judge will direct what action will be taken.

## H. STEP-BY-STEP PROCESS FOR RESPONDING TO REQUESTS

The following steps should be taken in determining how to respond to a particular request for access.

1. Does a court order exist in the case? If so, the terms of the order supersede these guidelines to the extent that the order and the guidelines conflict. What is the scope of the order? If there is any uncertainty, consult the judge who issued the order.

2. Is there any restriction in the Rules of Court or applicable legislation which relates to the access that is being requested? If so, what is the scope of the restriction?

3. Do these guidelines provide any specific direction as to how to handle the situation?

4. Do any of the circumstances exist which would require an application to court to resolve the issue?

5. If access can be granted, what is the manner (phone, fax, personal pick up) and time frame within which access can be provided, keeping in mind the other court responsibilities that must be carried out, the workload of the particular court office and the amount of material requested?

# WHAT COURTS HAVE SAID ABOUT ACCESS AND LIMITATIONS

As a general rule, all court proceedings are open to the public, including interlocutory proceedings.

- *(Nova Scotia (Attorney General) v. MacIntyre* [1982] 1 S.C.R. 175.)

The court has discretion whether or not to allow access to any exhibits before it, and whether or not to set limits on the use of such exhibits.

- Queen's Bench Rule 288; *Nova Scotia (Attorney General) v. MacIntyre* [1982] 1 S.C.R. 175.

Access may be limited based on four factors:

(1) The nature of exhibits as part of the court record – often another party holds a proprietary interest in the exhibit;

(2) The court's jurisdiction to inquire into, and regulate, the use to be made of the exhibits;

(3) The fact that the exhibits are open to public scrutiny when produced at trial; and,

(4) The value of public scrutiny at a particular stage of proceedings – while ongoing court actions are generally open, the value of public scrutiny is reduced after hearings have ended.

- *Vickery v. Nova Scotia Supreme Court (Prothonotary)* [1991] 1 S.C.R. 671 at p. 681-682.

The factors listed in *Vickery* must be considered in light of the framework developed in *Dagenais* and *Mentuck*.

- *Canadian Broadcasting Corp. v. Canada*, 2011 SCC 3 at paragraph 14.

Restrictions on the open court principle and freedom of the press in relation to judicial proceedings can only be ordered where the party seeking such a restriction establishes through convincing evidence that:

(a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and

(b) the salutary effects of the restriction outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

- *R. v. Canadian Broadcasting Corporation*, 2010 ONCA 726 at paragraph 20.

A file will not be sealed based solely on the presence of a vulnerable party; evidence must also be adduced as to the harm which will be suffered if the file is not sealed.

- *S.L.R. (Re)* [1992] S.J. No. 335 (Q.B.)

Among the orders available:
The court may allow access to documents under supervision, but refuse to allow copies or reproductions to be made.

- *Saskatoon Star Phoenix Group Inc. v. Saskatchewan (Attorney General)* 2002 SKQB 250; *R. v. S.(S.J.),* 2000 SKCA 5.

The court may allow full access to documents, but place a publication ban on portions of the evidence within.

- *Potash Corp. of Saskatchewan v. Barton* 2001 SKCA 56.

*The Queen's Bench Rules of Saskatchewan: Annotated* contains a lengthy review of cases dealing with openness in court proceedings, at pages G-15 to G-18 of the Rules.

This review in the Rules suggests as follows:

Limitations on openness are based on three principles:

1. The protection of vulnerable individuals, including infants, mentally disabled persons, young offenders, and victims of crime.
2. The fair resolution of trials where publicity may prejudice the outcome.
3. The protection of social interests, including national security and the administration of justice.

- *The Queen's Bench Rules of Saskatchewan Annotated,* p. G-17-G-18.

**CRIMINAL LAW GENERAL PRINCIPLES**

Proceedings are generally held in open court. The presiding judge has discretion to exclude some or all members of the public for some or all of the proceedings in the interests of:

(1) public morals;

(2) the maintenance of order;

(3) the proper administration of justice (including protecting interests of witnesses under 18 or justice system participants); or

(4) international relations or national security.

- *Criminal Code*, s. 486(1)

**PUBLICATION BANS**

A publication ban will only be ordered where other measures cannot prevent harm to the administration of justice, and where the positive effects of the ban outweigh the negative ones.

- *R. v. Mentuck*, [2001] 3 S.C.R. 442.

A publication ban or order which is overly broad is an error of law which may be appealed.

- *Dagenais v. Canadian Broadcasting Corp.* [1994] 3 S.C.R. 835; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)* [1996] 3 S.C.R. 480.

Where a publication ban is in place, it remains binding until appealed. Even if the ban itself is found to be without foundation, any party who contravenes it may be prosecuted.

10 April 2008 271/2008

TO THE HONOURABLE

THE LIEUTENENANT GOVERNOR IN COUNCIL

The undersigned has the honour to report that:

1. Sections 118 and 119 of the *Youth Criminal Justice Act* (Canada) provide, in part, as follows:

> "118(1) Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 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."
>
> "119(1) Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:
>
> . . .
>
> (r) a person or a member of a class of persons designated by order of the Governor in Council, or the lieutenant governor in council of the appropriate province, for a purpose and to the extent specified in the order;
>
> . . .
>
> (4) Access to a record kept under section 115 or 116 in respect of extrajudicial measures, other than extrajudicial sanctions, used in respect of a young person shall be given only to the following persons for the following purposes:
>
> (a) a peace officer or the Attorney General, in order to make a decision whether to again use extrajudicial measures in respect of the young person;
>
> (b) a person participating in a conference, in order to decide on the appropriate extrajudicial measure;
>
> (c) a peace officer, the Attorney General or a person participating in a conference, if access is required for the administration of the case to which the record relates; and

(d) a peace officer for the purpose of investigating an offence.

(5) When a youth justice court has withheld all or part of a report from any person under subsection 34(9) or (10) (nondisclosure of medical or psychological report) or 40(7) (nondisclosure of pre-sentence report), that person shall not be given access under subsection (1) to that report or part.

(6) Access to a report made under section 34 (medical and psychological reports) or a record of the results of forensic DNA analysis of a bodily substance taken from a young person in execution of a warrant issued under section 487.05 of the *Criminal Code* may be given only under paragraphs (1)(a) to (c), (e) to (h) and (q) and subparagraph (1)(s)(ii)."

2. It is desirable and in the public interest to designate certain classes of persons, as set out in the attached Schedule "A", as classes of persons the members of which, on request, shall be given access to a record kept under section 114 of the *Youth Criminal Justice Act* (Canada) and may be given access to a record kept under sections 115 and 116 of the *Youth Criminal Justice Act* (Canada), for the purpose of carrying out their duties, subject to their compliance with the terms and conditions set out in the attached Schedule "A" and the provisions of the *Act*.

The undersigned has the honour, therefore, to recommend that Your Honour's Order do issue pursuant to clause 119(1)(r) of the *Youth Criminal Justice Act* (Canada):

(a) repealing Your Honour's Order 384/2004, dated June 8, 2004; and

(b) designating the classes of persons set out in the attached Schedule "A" as classes of persons the members of which, on request, shall be given access to a record kept under section 114 of the *Youth Criminal Justice Act* (Canada) and may be given access to a

record kept under sections 115 and 116 of the *Youth Criminal Justice Act* (Canada), for the purpose of carrying out their duties, subject to their compliance with the terms and conditions set out in the attached Schedule "A" and the provisions of the *Act*.

RECOMMENDED BY:

Minister of Justice and Attorney General

RECOMMENDED BY:

Minister of Corrections, Public Safety and Policing

APPROVED BY:

Acting President of the Executive Council

ORDERED BY:

Lieutenant Governor

REGINA, Saskatchewan

**Schedule "A"** to OC 271/2008

Members of the following classes of persons, on request, shall be given access to a record kept under section 114 and may be given access to a record kept under sections 115 and 116 of the *Youth Criminal Justice Act* (Canada), subject to the provisions of the Act, applicable privacy legislation, government departmental protocols and the terms and conditions set out in this Schedule. This access is permitted from the date that a record is created until the end of the applicable period set out in subsection 119(2) of the *Youth Criminal Justice Act* (Canada):

(1) Courtworkers as defined in clause 13.1(1)(c) of *The Department of Justice Act* (Saskatchewan) acting on behalf of the young person to whom the record relates, with respect to youth court records;

(2) The Victims Services' workers within the Ministry of Justice, with respect to youth court records and police report summaries, for the purpose of assessing or reviewing applications for compensation under *The Victims of Crime Act, 1995* (Saskatchewan);

(3) The workers and/or volunteers of police-affiliated Victims Services programs and services in Saskatchewan with respect to youth court records and police report summaries, for the purposes of providing services and support to victims of crime;

(4) Saskatchewan Government Insurance workers for the proper administration of the provincial regulatory scheme for licensing and suspension of drivers of motor vehicles, including:

(a) the proper administration of *The Traffic Safety Act* (Saskatchewan), *The Automobile Accident Insurance Act* (Saskatchewan) and all related regulations and programs thereunder; or

(b) canceling, revoking, suspending, or otherwise dealing with any right, benefit, license, permit or privilege that may be cancelled, revoked, suspended or otherwise dealt with on the finding of guilt of a driving offence;

(5) Ministry of Social Services and the First Nations Child and Family Services Agencies who are officers under *The Child and Family Services Act* (Saskatchewan), for the purpose of carrying out their duties and responsibilities pursuant to *The Child and Family Services Act* (Saskatchewan);

(6) Counsel, judges, courts, or parties to the proceedings of a child protection matter in which the young person is involved;

(7) Workers under *The Saskatchewan Assistance Act* (Saskatchewan) who require it for determining the eligibility of an individual to participate in a program of, or receive

a product or service from, the Government of Saskatchewan, a government institution or a local authority, in the course of processing an application made by or on behalf of the individual to whom the information relates;

(8) Administrators of the Saskatchewan Workers' Compensation Board, for the purpose of assessing or reviewing applications for compensation under *The Workers' Compensation Act, 1979* (Saskatchewan);

(9) Members of provincial government ministries, police agencies and community agencies, for the purposes of screening into and providing programs and services to young persons through crime reduction strategies approved by the Deputy Minister of Justice;

(10) The following persons for the purpose of preparing any report ordered by the court, ensuring compliance with any order of the court or assisting them to properly carry out their programs and services in accordance with the *Youth Criminal Justice Act:*

(a) officers under *The Child and Family Services Act* (Saskatchewan);

(b) educators, educational administrators, member of boards of education or of the Conseil scolaire fransaskois involved in the education of the young person to whom a record relates;

(c) workers or contractors to the board of a regional health authority within the meaning of *The Regional Health Services Act* (Saskatchewan), directly engaged in providing mental health, drug services, alcohol services, medical services or other health related services to the young person to whom the record relates;

(d) workers or contractors employed by the Ministry of Health engaged in the planning of mental health services, alcohol and drug services, medical services or other health-related services for the young person to whom the record relates;

(11) Any bodies or workers succeeding any of the bodies or workers mentioned in (1) to (10) above;

(12) Workers in other jurisdictions who have the same responsibilities as the workers described in (1) to (11) above. These workers have access in circumstances similar to those described in (1) to (11) above.

(13) Employees of the Ministry of Justice and Attorney General for the purposes of providing legal advice, representing the Government of Saskatchewan on civil matters, conducting research and evaluation, training, data management, policy development and Ministry communications;

(14) Employees of the Ministry of Corrections, Public Safety and Policing, for the purposes of providing supervision of offender case management, consultation,

advice, training and quality assurance, data management, research, evaluation and policy development and Ministry communications;

(15) Employees of the Ministries of Corrections, Public Safety and Policing and Justice and Attorney General Shared Services, Information Management Branch, the Information Technology Office and contractors specifically employed for the purpose of developing and maintaining data management systems relating to young persons;

(16) Researchers or contractors authorized in writing by the Provincial Director (CPSP) for access to information maintained by the Ministry for the purposes of conducting research or evaluation.

(17) Researchers or contractors authorized in writing by the Executive Director of the Policy Planning and Evaluation Branch, Ministry of Justice and Attorney General, for access to information maintained by the Ministry for the purposes of conducting research or evaluation.