



## THE COURT OF APPEAL FOR SASKATCHEWAN

### Public Access Protocol

This protocol sets out the general guidelines that the Court of Appeal for Saskatchewan has adopted regarding:

- public access to hearings and other proceedings at the Court of Appeal, and
- the record maintained by the Court of Appeal.

This protocol is designed to achieve the appropriate balance between the open court principle and the fair and proper administration of justice in accordance with the rule of law.

In this protocol, a *proceeding* means an appeal hearing before the Court of Appeal or an application hearing before the Court, a judge of the Court, or the registrar of the Court.

In the Court of Appeal, the *court record* is maintained by the registrar of the Court and may be accessed through the Court of Appeal registry.

This protocol does not apply to access to the court record involving requests for information in bulk. It also does not apply to proceedings in, or the court records maintained by, the Court of King's Bench for Saskatchewan or the Provincial Court of Saskatchewan.

### THE COURT OF APPEAL

Under *The Court of Appeal Act, 2000* (Saskatchewan), the Court of Appeal is a superior court of record having appellate jurisdiction. This means the Court of Appeal does not typically hear and determine a legal dispute in the first instance by hearing evidence, deciding facts, identifying and applying the relevant law, and thereby reaching a decision.

Having appellate jurisdiction, the principal function of the Court of Appeal in properly constituted appeals is to review first-instance decisions made by the Court of King's Bench, the Provincial Court and certain administrative tribunals for error. If error is found, the role of the Court is to address it. To do this, the Court reviews the decision under appeal and the record of the proceedings in the lower court or tribunal. Consequently, parts of the record maintained by the Court of King's Bench, the Provincial Court or an administrative tribunal sometimes become part of the court record maintained by the Court of Appeal.

The Court of Appeal hears appeals in both civil and criminal matters in Saskatchewan. However, the Court of Appeal does not conduct trials or hold re-hearings of matters. Except in rare and

specific circumstances, the Court of Appeal does not receive oral testimony from witnesses. Where the Court grants a party permission under Rule 59 of *The Court of Appeal Rules (Civil)* to adduce evidence that is not already in the record of the proceedings in the lower court or tribunal, that typically occurs through the filing of an affidavit. Because there is no oral testimony in most proceedings in the Court of Appeal, the Court's proceedings are not recorded for evidentiary purposes nor are they transcribed.

The open court principle does not allow direct access to the judiciary. Judges of the Court of Appeal and the registrar do not comment on specific proceedings or their own decisions. They can rarely speak in public on those subjects. Accordingly, judges do not answer questions or give interviews regarding chambers applications, appeals or their decisions. The judges and the registrar may take opportunities in appropriate forums to discuss the role of the Court of Appeal or broader topics relating to the administration of justice.

## THE OPEN COURT PRINCIPLE

The general rule in Canada is that court records and court proceedings are open to the public.

The open court principle is a tenet of Canadian constitutional democracy. It holds that the public has a general right to attend and observe the proceedings in a courtroom. The openness of court proceedings and access to the court record maintain public confidence in the integrity of the judicial system, facilitate better understanding of the administration of justice, and ensure that the judiciary remains accountable.

The open court principle is more than a requirement that justice not be carried out in secrecy. The Supreme Court of Canada affirmed that the open court principle is a fundamental principle of our legal system and our democracy in *Dagenais v Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 SCR 835, and in *R v Mentuck*, 2001 SCC 76. In *Canadian Broadcasting Corp. v Canada (Attorney General)*, 2011 SCC 2, the Supreme Court of Canada wrote:

[1] 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.

The majority decision of the Supreme Court in *Edmonton Journal v Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 SCR 1326, states that the open court principle is rooted in the need:

- to maintain an effective evidentiary process,
- to ensure that the judiciary and juries behave fairly and are sensitive to societal values,
- to promote a shared sense that our courts operate with integrity and dispense justice, and
- to provide an ongoing opportunity for the public to learn how the justice system operates and how the law that is applied daily in the courts affects them.

The open court principle also protects the media's right to access courts and maintains the circumstances necessary for the media to fulfil their role as surrogates for the general public.

In *A.G. (Nova Scotia) v MacIntyre*, [1982] 1 SCR 175, the Supreme Court recognised that there are exceptions to the openness of court proceedings. It identified the governing principles as follows:

- every court has a supervisory and protecting power over its own records,
- there is a presumption in favor of public access and the burden of dispelling the presumption lies upon the person who would deny the exercise of the right, and
- a court can deny access when the ends of justice would be subverted by disclosure or when judicial documents might be used for an improper purpose.

In some instances, federal or provincial legislation also limits or restricts public access to court records or to courtrooms themselves. For example, under the *Youth Criminal Justice Act* (Canada) most members of the public are denied access to youth court records to foster, in part, the rehabilitation of young persons. Child protection matters are another example where public access to the courtroom, court records, or both is typically restricted.

Given that the open access to the courts is a constitutional principle of Canadian democracy, *The Freedom of Information and Protection of Privacy Act* (Saskatchewan), *The Health Information Protection Act* (Saskatchewan) and the *Personal Information Protection and Electronic Documents Act* (Canada) do not apply.

## ATTENDANCE AT COURT OF APPEAL PROCEEDINGS

Everyone is permitted to attend a Court of Appeal proceeding in a courtroom, subject to some exceptions and conditions.

The Court of Appeal conducts proceedings in Regina and Saskatoon. Almost all proceedings before the Court of Appeal or a judge of the Court are open to the public. Public notice of most proceedings is provided on the [Courts of Saskatchewan website under: Court of Appeal – Court Schedule](#).

Members of the public and the media can attend a proceeding in person or remotely.

### **In-person Attendance**

When attending a proceeding at the courthouse, members of the public are expected to go about their business having the safety and dignity of others at the courthouse uppermost in mind.

In a courtroom, members of the public are expected to follow proper courtroom etiquette that does not distract the presiding judge or judges, court parties, or otherwise interfere with the court process.

Seating space in Court of Appeal courtrooms is limited. For security and safety purposes, Deputy Sheriffs and court staff will consider the size of the courtroom when admitting the public to a proceeding. While proceedings are open to the public, no one is permitted access to the “well” of the courtroom (i.e., beyond the bar) or allowed to approach the dais where the judges are seated.

In the courtroom, members of the public cannot use electronic devices such as laptops, tablets or smart phones unless the presiding judge or judges permits it in advance. Photographs, video and audio recordings are also prohibited inside Court of Appeal courtrooms, except with permission granted by the Court.

Note: Accredited members of the media, lawyers, self-representing litigants and on-duty law enforcement officials are permitted to use electronic devices in a courtroom, provided that they are set to silent mode. Further detail on this is provided later in this document under the heading *RECORDING OR BROADCASTING OF COURT PROCEEDINGS IS PROHIBITED*.

### **Remote Attendance**

The Court of Appeal allows remote access to proceedings through the Webex video conferencing platform. Persons who wish to remotely attend a proceeding must contact the Court of Appeal registry in advance of the proceeding to obtain a hyperlink to the Webex meeting.

Everyone is prohibited from taking photographs, capturing video or audio, or saving screenshots of a proceeding or the audiovisual recording of a proceeding, unless expressly permitted to do so by the presiding judge or judges. Further detail on this, including an exception for the media, is provided later in this document under the heading *RECORDING OR BROADCASTING OF COURT PROCEEDINGS IS PROHIBITED*.

### **Additional Restrictions**

Notwithstanding the above, the presiding judge or judges may also impose additional limits on access to or use of a courtroom to prevent disruption of a proceeding or interference with the administration of justice.

## **THE COURT RECORD**

The *court record* is information and other tangible items (e.g., physical evidence) filed with the Court of Appeal in respect of its proceedings. The court record also includes information about those proceedings that is stored by the Court and accessible to the public through the registry.

In this protocol, *information* includes recorded information in any medium or format, regardless of how it was created, including whether generated by human, artificial, mechanical or other means. The official court record of the Court of Appeal is maintained in electronic form by the Court of Appeal registrar, although the registry also maintains paper copies on some physical files.

The court record includes decisions made by the Court and judges of the Court. These decisions are also public documents and, if they have been issued with a neutral citation (i.e., 2026 SKCA XXX), they will usually be available online through the non-profit organization [Canadian Legal Information Institute \(CanLII\)](#).

The court record does not include *administrative information* or *judicial information*.

*Administrative information* is information that is related to or produced in the exercise of administrative functions at the Court of Appeal, such as information about court staff, scheduling, training, eCourt and court administration. It includes factual information provided to litigants and

others on subjects including the practices, policies, directives, protocols and procedures of the Court, as well as information about the functions and responsibilities of court staff. Administrative information is not part of the court record and, except to the extent it is posted on the Courts of Saskatchewan website, is not accessible to the public.

*Judicial information* includes the audiovisual recordings of court proceedings, adjudicative information and personal information of judicial agents and judicial officers. Judicial information is not part of the court record and is not accessible to the public. The following definitions help to clarify what qualifies as judicial information:

- *Audiovisual recordings* means audio, visual or audiovisual recordings or transmissions of proceedings generated or stored by the Court of Appeal, whether generated via the Webex application or otherwise.
- *Adjudicative information* is information that is related to or produced in the exercise of the adjudicative function and includes bench books, research memos, log notes, and audiovisual recordings, etc.
- *Personal information of judicial agents and judicial officers* includes any electronic or paper record or information created by or about a judicial officer or judicial agent that does not constitute a court record. Examples of this include (without limitation) travel and location information, expense claims and reimbursements, scheduling within a court calendar, judicial administration work product, personal account information, personal communications of any type, personal calendars, notes, research and working papers and private or personal affairs.

## ACCESS TO THE COURT RECORD

The public may request access to the court record at the Court of Appeal in the following ways, which are always subject to applicable publication and disclosure bans.

### **In-person Access to the Court Record**

The court record may be accessed by attending in-person at the Court of Appeal registry in the Victoria Avenue Courthouse located at 2425 Victoria Avenue, Regina, Saskatchewan. The office is open from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding statutory holidays. There is a drop-box outside the door to the registry where written requests for access may be left for the registrar.

In the case of in-person access, no information or documents secured or fastened on the court file may be removed from the file, nor may the spiral or other binding (e.g., a plastic Cerlox binding) be removed and then rebound. The court file must be viewed in a designated area only and may not be removed from the registry premises under any circumstances.

### **Written Requests for Access to the Court Record**

The Court of Appeal registry will accept written requests for access to the court record. This can be done by way of physical mail addressed to the Registrar, Court of Appeal for Saskatchewan,

2425 Victoria Avenue, Regina, Saskatchewan, S4P 4W6. It can also be done by email addressed to [caregistrar@sasklawcourts.ca](mailto:caregistrar@sasklawcourts.ca).

### **Responsibility of Person Accessing and Scope of Access**

Liability for the use of information in the court record always remains with the person who requested or obtained the information. To maintain a person's accountability for the use of the court records that they obtain, a person requesting access to the court record may be required to provide proof of their identity satisfactory to the Court of Appeal registrar before accessing the court record.

Persons who request access to the court record are solely responsible for setting the detail and scope of their requests for information. The registrar and registry staff have discretion to require a person requesting access to the court record to complete a formal written request if the request is detailed or lengthy.

The registry will process a request for access to the court record in the form in which it receives the request (e.g., in-person or in writing), although the registry may amend a request to conform with any limitations on its ability to search the court record.

The court record is voluminous, and the Court of Appeal registry has limited personnel. The registry's principal duty is the proper operation of the Court. Access to the full court record or detailed information by telephone and email may be limited for reasons of accountability, practicality, efficiency and resource management. The registry is unable to efficiently respond to broad or topical inquiries, such as, "How many appeals have been commenced against X?" or "How many appeals involve sexual assault convictions?" Moreover, the registry cannot warrant a specific response time on requests for access to the court record. If the record of a proceeding is older and physically stored off-site, it will take longer to obtain access to it. Further, if the record of a proceeding is in use by a judge or judges of the Court, the registry will not be able to facilitate access to it until it is no longer needed by the judge or judges.

In every case, persons who request access to the court record are solely responsible for ensuring that the information they receive from the registry fulfils or satisfies the terms of their request.

**Obtaining access to the court record does not automatically mean that information can be published or disclosed. It is always the sole responsibility of persons accessing or relying on the court record to comply with any ban on the publication or the disclosure of information contained in the court record.** Further detail on this is provided later in this document under the heading PRIVACY, DISCLOSURE AND PUBLICATION BANS.

The Court of Appeal registrar and registry staff have discretion to immediately discontinue contact with anyone who is being aggressive, harassing, intimidating or otherwise displaying disruptive conduct.

## **Fees for Access to the Court Record**

The Court of Appeal registry charges fees in the amounts prescribed by the Lieutenant Governor in Council. As of the date of this protocol, the fees that apply to access to the court record include the following:

- \$1 per-page photocopying fee
- \$10 per certified copy of a document
- \$20 per name search for a civil proceeding by a non-party
- \$20 per written search certificate in respect of a civil proceeding
- \$20 plus \$1 per civil file for bulk civil-proceedings inspections
- \$75 per United States waiver application
- \$100 per records suspension application

All fees must be paid in advance and are payable in person by Visa, MasterCard, cash or cheque or by telephone with a credit card.

## **PRIVACY, DISCLOSURE AND PUBLICATION BANS**

Under the open court principle, individuals whose personal information is contained in or otherwise becomes part of the court record have no reasonable expectation of privacy or confidentiality in respect of that information. Commercial information or other information that is contained in or otherwise becomes part of the court record is also subject to public scrutiny under the open court principle.

### **Mandatory Publication Bans**

In some instances, federal or provincial legislation limits or restricts public access to court records or to courtrooms themselves. For example, most members of the public are denied access to youth court records under the *Youth Criminal Justice Act* (Canada). In addition, on the request of a litigant, the Court or a judge may seal or redact certain court records to protect the confidentiality of personal or commercial information or to maintain consistency with orders made by another court or a tribunal.

### **Discretionary Publication Bans**

Non-statutory (or discretionary) publication bans are rarely sought or obtained at the Court of Appeal level. Before such an order is made, the applicant must establish that a ban is warranted, notwithstanding the Court's general preference for, and the public interest in, open and accessible proceedings.

When a party to an appeal asks the Court or a judge to impose a discretionary publication ban, members of the media have standing to object in open court (*Dagenais v Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 SCR 835). In the exercise of the Court's common law or discretionary authority to impose publication bans, the Court or a judge will weigh all competing *Charter* rights (e.g., freedom of expression, right to a fair trial) and impose the minimum ban necessary to protect those rights. If a party to an appeal applies for a discretionary publication ban, the Court of Appeal registrar will notify the media.

The Court of Appeal and its registrar will exercise every reasonable effort to ensure that accessibility of the court record is consistent with statutory and court-ordered publication and disclosure bans.

## RECORDING OR BROADCASTING OF COURT PROCEEDINGS IS PROHIBITED

While courtrooms are open to the public, under Rule 73 of *The Court of Appeal Rules (Civil)*, except as otherwise provided by law, “no person shall record by any device, machine, or system the proceedings in the court or in chambers without leave of the court or a judge, as the case may be”. This prohibition applies whether the proceeding is attended in person or remotely.

A *recording device* is any device, machine or system, including an application on a device and AI agents, that may be used for recording, creating, processing or transmitting video images, still images or the audio of any proceeding.

If a person records a proceeding without permission of the Court or a judge, they may be charged with the common law criminal offence of contempt of court, which covers any behaviour that disobeys or disrespects a court order, disrupts court proceedings or interferes with the administration of justice. If convicted following a hearing, an offender may be penalized through the imposition of a fine or a term of imprisonment.

Broadcast or distribution in whole or in part of any audiovisual recording of Court of Appeal proceedings without the prior written authorisation of the Court or a judge is prohibited.

### **Media Audio Recording**

The audio recording of Court of Appeal proceedings by members of the media holding valid accreditation through the Ministry of Justice (Saskatchewan) is governed by the [\*Saskatchewan Law Courts Electronic Text-Based Communication from Saskatchewan Courtrooms: Media Protocol\*](#).

### **Media Video Recording/Broadcasting**

The video recording and/or broadcasting of Court of Appeal proceedings by members of the media holding valid accreditation through the Ministry of Justice (Saskatchewan) is governed by the [\*Court of Appeal – Cameras in the Courtroom Protocol\*](#).