



Court of Appeal for British Columbia

Record and Courtroom Access Policy
Updated January 31, 2017

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Notice: The Court of Appeal's Access Policy is a living document and is subject to intermittent updates and amendments. Please check back frequently.

Last Revised on January 31, 2017: Section 1.6 updated to clarify cost exceptions and reflect change in procedure for requesting access to records. Section 1.7 updated to clarify record types and cost exceptions, and reflect change in procedure for requesting access to records. Embedded links tested throughout to ensure all operational.

1.0 ACCESS TO THE COURT RECORD

1.1 Presumption of Access

The Court of Appeal recognizes openness and accountability to the public as critical to democracy and the rule of law. As the Supreme Court of Canada stated in *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 at paragraph 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.

A right of access to certain court records is thus presumed. However, presumed rights of access must be balanced with protecting the privacy rights of individuals involved in court proceedings and with ensuring the proper administration of justice.

Advances in technology make the instantaneous transmission and wide dissemination of personal information possible. Commercial data mining, identity theft, and other potential breaches to personal privacy and security are risks that may require the restriction or denial of access to court records in certain circumstances.

In summary, as guiding principles the Court of Appeal:

- (1) Recognizes the open court principle as a fundamental constitutional protection by providing a presumptive right of access to most records;
- (2) Recognizes that restrictions on access are justified where serious risks to privacy or other important interests such as the proper administration of justice outweigh a presumptive right of access; and,
- (3) Recognizes that where restrictions on access are necessary, such restrictions should minimally impair that presumptive right of access.

1.2 Definition of the Court Record

The Court of Appeal's access policy is founded on the principle that the court has a common law supervisory power over its records. Pursuant to s. 32 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, the Court Services Branch of the Ministry of Justice is responsible for administering court records and enforcing directions given by the Court of Appeal concerning management of court records.

This access policy does not have the force of law. It is produced by the Registrar of the court to provide guidance to members of the public and the court registry on rights of access. Final determinations on access rights are always at the discretion of the Chief Justice, Justice(s) or Registrar and nothing in this policy prevents court-ordered redactions or withholding of records to protect privacy interests or the interests of justice.

For greater certainty, the court record includes anything on or by which information is stored that relates to proceedings before the Court of Appeal. The court record includes, but is not limited to:

- records filed or sent to the court;
- records of the court or tribunal under appeal;
- orders made or granted by the court, and supporting or related documents, such as reasons for judgment;
- scheduling or other internal court records, such as those used for case management or through case tracking systems;
- transcripts of proceedings if prepared;
- audio recordings of court proceedings, and
- clerks' notes from court proceedings.

There are two additional types of records beyond the court record:

1. **Court Administration Records:** The *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165 ("FIPPA") regulates court administration records. Court administration records include information gathered or produced for the purpose of managing programs and services of the Court Services Branch of the Ministry of Justice. You may access these records by making an access request under FIPPA to the [Ministry of Justice](#).

2. **Judicial Administration Records:** FIPPA defines judicial administration records as those records relating to a judge. Judicial administration records, including records created by judges, or those records that relate to support services provided to judges may be accessible at the discretion of the Chief Justice of British Columbia.

Court statistics may be found in the Court of Appeal's [Annual Reports](#).

1.3 Restrictions of Rights of Publication

Restrictions on rights of publication in relation to court records or information:

1. are usually in the form of a publication ban; and
2. usually allow access to court records, but restrict how that information may be communicated to others.

If court records are subject to restrictions on rights of publication, those restrictions are in place to protect privacy rights and ensure the proper administration of justice. Many publication bans that originate in the Supreme or Provincial Courts of British Columbia remain in effect during and frequently after an appeal.

Publication Bans: Where there is a publication ban in effect, a publication restriction notice will usually appear on the front page of the court's reasons for judgment. While access to records containing the restricted information is usually permitted, those obtaining access are responsible for obeying the publication bans by not publishing or broadcasting that information.

Registry staff will inform you of publication bans that have come to their attention. However, if you request access, you are responsible for observing and complying with publication bans in both the Court of Appeal and the courts below. Failure to do so may result in serious sanctions, including contempt proceedings. A list of common publication bans and their effects are listed in [Appendix "B"](#).

Statutory or Common Law Restrictions: In rare cases, federal or provincial statutes may restrict how information in a court record may be published. There may also be common law (non-statutory) restrictions or restrictions ordered by a court in a particular case.

Copyright Considerations: Appeal factums are prepared by or on behalf of the parties to proceedings. Those requesting factums filed in the Court of Appeal should contact the author directly to obtain information concerning potential copyright ownership and restrictions on reproduction. Contact information for the parties of record appears on the front cover of each factum.

1.4 Restrictions on Rights of Access

Restrictions on rights of access:

1. are usually in the form of a court order sealing the court file; and
2. restrict access to court records in the first place.

If court records are subject to restrictions on rights of access, those restrictions are in place to protect privacy rights and ensure the proper administration of justice. Many restrictions on rights of access that originate in the Supreme or Provincial Court of British Columbia remain in effect during and frequently after an appeal.

Sealing orders: If you would like access to a sealed file or record, you will have to apply before a Justice in chambers for an order permitting access. For instructions on how to bring an application and model forms, please see [Appendix "A"](#).

Statutory or Common Law Restrictions: In rare cases, federal or provincial statutes may restrict how information in a court record may be accessed. There may also be common law (non-statutory) restrictions or restrictions ordered by a court in a particular case. See also the restrictions in [Section 1.13](#).

Closed proceedings: In extremely rare cases, the Court of Appeal may conduct proceedings “in camera,” closing the courtroom to the public. If you would like access to records from a closed proceeding, you will have to apply before a Justice in chambers for an order permitting access. For instructions on how to bring an application and model forms, please see [Appendix “A”](#).

There is a presumptive restriction on access to bail terms within orders and reasons for judgment because they may contain sensitive personal information, such as the names and addresses of victims and witnesses.

1.5 Use of Personal Information in Reasons for Judgment

The Court of Appeal makes all of its reasons for judgment available to the public on its website, except some oral reasons decided in chambers that are not of precedential value. More information about judgments may be found on the ["About Judgments"](#) section of the Court's website.

With the publication of reasons for judgment online comes the necessity to protect personal information of litigants and witnesses, when such protection does not interfere with the open court principle.

Other than a person's name, reasons for judgment generally do not include personal data identifiers such as date and month of birth, social insurance numbers, telephone numbers or financial information.

In some cases, reasons for judgment may be subject to a publication ban. As described in [Section 1.3](#), a publication ban is an order of the Court that restricts how information about a person may be communicated to others. In obeying its own publication bans, the Court may use initials instead of full names or may redact certain information in its reasons. Reasons for judgment posted on the Court's website will always indicate on the front cover if the judgment is conforming to a publication ban.

In other cases, a Justice or Justices may use their discretion to initial or redact party names in reasons for judgment to protect innocent parties, such as children, from being identified in the absence of a publication ban.

Once the Court releases reasons for judgment, they are often re-published and distributed widely, including by the media, on websites and in electronic and paper case reporters. Reasons for judgment come to form part of the common law and may be relied upon by other decision makers in other cases and in other courts.

The Court therefore does not usually redact reasons for judgment after their release. For example, when a person has received a pardon for a criminal offence, the Court will generally not remove or otherwise redact its reasons for judgment once published. Instead, the Court relies on counsel and litigants to identify sensitive information that may require a publication ban prior to or during the hearing of an appeal.

If you wish to make an inquiry concerning the use of personal information in reasons for judgment, you may contact the Registrar or Legal Counsel by telephone or by letter.

1.6 Obtaining Access to a Civil Court Record (Other than a Family Court Record)

Access to any civil court records held by the Court of Appeal is presumed if there is no restriction on rights of access (see [Section 1.4](#)).

Some civil court records (e.g. Notice of Appeal, Notice of Application for Leave to Appeal, correspondence, judgments, orders and minute sheets) may be accessed by making an inquiry in person at the registry counter. Often these records are also available through [Court Services Online](#), the British Columbia electronic court registry. It is a good idea to check if the record is available electronically to save the time and expense of attending in person.

Other civil court records (e.g. factums, appeal records, appeal books and transcripts) may be accessed by [submitting an access request form](#). Search, photocopying or transmission costs will apply (exception for counsel of record and parties to the proceeding). Payment is required by cash or cheque before court records are released. The Court will send electronic copies (where available) as soon as possible after payment has been received. For photocopying requests please allow a minimum of 48 hours for completion, although in some cases the waiting period could be longer.

For information regarding access to family court records, please see [Section 1.8](#).

1.7 Obtaining Access to a Criminal Court Record

Access to criminal court records held by the Court of Appeal is subject to any restriction on rights of publication (see [Section 1.3](#)) and any restriction on rights of access (see [Section 1.4](#)).

You may request access to a notice of appeal or notice of application for leave to appeal, reasons for judgment and any order other than a bail order in a criminal appeal file at the registry counter without making a written application for access.

To request a criminal factum or sentence statement filed on or after October 1, 2012 that is not subject to publication or access restrictions at the time of the request, please [submit an access request form](#). Search, photocopying or transmission costs will apply (except for counsel of record and parties to the proceeding). Payment is required by cash or cheque before court records are released. The Court will send electronic copies (where available) as soon as possible

after payment has been received. For photocopying requests please allow a minimum of 48 hours for completion, although in some cases the waiting period could be longer.

If you seek access to any other criminal court record held by the Court of Appeal (e.g. a factum or sentence statement filed before October 1, 2012; a factum or sentence statement filed on or after October 1, 2012 that is subject to publication or access restrictions; an appeal record; an appeal book; or a transcript) you must submit a written request using the form in [Appendix "C"](#) to the Court of Appeal Registrar at:

Court of Appeal Registrar
RE: Access Request, [Court file No.]
Court of Appeal for British Columbia
400 – 800 Hornby Street
Vancouver, B.C. V6Z 2C5

Though a written request must be made, the governing legal principle remains that access is presumed. The request process is in place because the court recognizes that criminal court records may contain information the disclosure of which is harmful to innocent parties. Once the request is received, the Registrar may refer the request to the Chief Justice for consideration, who may seek the input of the parties to the appeal to provide their positions on the request.

1.8 Obtaining Access to a Family Court Record

Due to the sensitive nature of information in family law proceedings, you must apply before a Justice in chambers for an order permitting access. For instructions on how to bring an application and model forms, please see [Appendix "A"](#).

1.9 Obtaining Bulk Access

Bulk access means an arrangement that allows access, other than on a file-by-file basis, to all or a subset of the electronic court record relating to proceedings before the court.

All applications for bulk access must be made to the Judicial Access Policy Working Committee by contacting the Court of Appeal Registrar at the address set out in Section 1.7 above. Each application requires the execution of an agreement restricting the use of the information to protect the privacy interests of those whose personal information may appear within the court record.

1.10 Retention, Disposition and Storage of Records

The Court of Appeal ensures that physical records relevant to each proceeding are retained permanently, except for books of authorities. According to [Government Retention and Disposition schedules](#) court records are kept with the court for 6 - 20 years and then stored

indefinitely in off-site storage facilities managed by the [Government Records Service](#). Prior to 2004 archival court records would have been transferred to the [Provincial Archives](#). Registry and Judicial staff continue to provide access to physical records stored off-site.

1.11 Listening to Audio, Obtaining Transcripts or Reasons for Judgment

1.11.1 Audio and Minute Sheets (Clerks' Notes)

The Court of Appeal creates and keeps an audio record of all proceedings using a digital audio recording system (DARS), which was implemented in 2006. Prior to the implementation of DARS, the use of cassette tapes and written notes by court stenographers or court reporters was common.

Unless there is a restriction on access (see [Section 1.4](#)), if you were entitled to be present in the courtroom for a proceeding in the Court of Appeal, you may:

- except in the case of oral reasons for judgment, which are subject to editing by the justices, listen to the audio recording of that proceeding;
- review the record of the proceeding kept by the court clerk in the form of minute sheets ("clerks' notes"), which includes information about the parties and counsel appearing, the start and stop times, and the disposition of a hearing.

1.11.2 Requesting Minute Sheets or Listening to Audio Recordings

To request minute sheets or listen to audio recordings of Court of Appeal proceedings, please use the [minute sheets and audio recordings request form](#). The Court will not release a physical copy of a DARS audio recording under any circumstances.

1.11.3 Transcripts of Court of Appeal Proceedings

Transcripts of proceedings transcribe what happened in Court, such as the arguments made or questions asked by the judge or judges. They are different from copies of reasons for judgment, which are the judge's reasons for making an order. If you are requesting a copy of the judge's reasons, please see [sections 1.11.4](#) and [1.11.5](#) below.

If you can access the audio recording of a proceeding, you may also order and receive a transcript of that proceeding. To request transcripts of Court of Appeal proceedings, please contact transcription companies. This [checklist for transcription companies](#) can be used as a guide when you order transcripts.

To order a criminal transcript, contact [JC Word Assist](#) at 604-669-6550.

To order a civil transcript, contact any of these [Transcription Companies](#).

1.11.4 Reserved Reasons for Judgment

By the Court (three judges) or by a Judge in Chambers (one judge): When Justices take time to write their decision after the hearing, these decisions are called reserved or written reasons for judgment. It can take weeks to months to write a judgment. They are then released in open Court and are published on the [Court's website](#) at approximately 10:00 am on the day they are released.

1.11.5 Oral Reasons for Judgment

Oral reasons for judgment are decisions pronounced in court on the day of the hearing. Oral reasons for judgment are transcribed by judicial staff rather than by a transcription company. There is no public access to the audio recording of oral reasons for judgment because once transcribed they are subject to editing by the Justice or Justices who decided the appeal or application.

By the Court (three Justices): Oral reasons for judgment by a division of the Court are given by three Justices. The oral reasons for judgment are given a neutral citation, are published and can be accessed on the [Court's website](#), once approved and signed by the Justices.

By a Justice in Chambers (single Justice): Oral reasons for judgment in chambers are given by a single Justice. Oral reasons for judgment by a single Justice are not published, except where it is determined that a decision may be of precedential value. However, you may request a transcription of a judge's oral reasons for judgment.

1.11.6 Requesting Oral Reasons for Judgment

To request a transcription of oral reasons for judgment, please call or e-mail the Registrar's Assistant by:

Phone: 604-660-2729

E-mail: CA-orals@courts.gov.bc.ca

Please include in the e-mail subject line:

- the Court of Appeal file number (CA0XXXXX);
- a short style of cause (*Smith v. Jones*); and
- the date the judgment was given (July 15, 2010).

Example:

Subject: CA012345 *Smith v. Jones* July 15, 2010

A fee will apply if you are not counsel of record or one of the parties. Transcriptions are usually completed within 10 business days. The Court of Appeal does not offer an expedited transcription service.

1.12 Hearing Lists and Available Court Dates

Weekly hearing lists and daily chambers lists are [posted](#) on the Court of Appeal's website the Friday of each week. The public may obtain information about how a chambers application or appeal was decided from registry staff unless there is a restriction on rights of access (see [Section 1.4](#)).

1.13 Judicial Settlement Conferences

In accordance with *Judicial Settlement Conferences* (Civil Practice Directive, 19 September 2011), certain civil and family cases before the Court of Appeal are mediated by a Justice of the court prior to the hearing of an appeal. Any information that relates to a Judicial Settlement Conference shall not be released to the public under any circumstances without the express written permission of all litigants who participated in the Judicial Settlement Conference and the Justice who presided over that settlement conference.

1.14 Proceedings Under the Youth Criminal Justice Act, S.C. 2002, c. 1 ("YCJA")

In certain circumstances, access to, and publication of names or other information relating to young persons dealt with under the YCJA is prohibited by Part 6 of the YCJA. For this reason, to access records relating to any appeal involving a "child" or "young person" that was or is being dealt with under the YCJA, you must make an application. For instructions on how to make an application and model forms, please see [Appendix "A"](#) below.

1.15 An Individual's Criminal Record and Wiretaps

There are certain records that may appear within an appeal book or affidavit that are subject to statutory restrictions:

Criminal Records in the Case of Absolute or Conditional Discharges: If more than a year has elapsed since a person was discharged absolutely or three years has elapsed since a person was discharged on conditions, registry staff must not allow access to the record of the discharge or disclose the existence of the record or the fact of the discharge to any person other than the person who is the subject of the discharge or counsel acting on his or her behalf.

Criminal Records, Pardons and Certification of Conviction: The *Criminal Records Act* R.S.C. 1985, c. C-47 imposes restrictions on public access to criminal records. Registry staff must not allow access to any record that would disclose a conviction in respect of which a pardon has been granted or disclose the existence of the record or the fact of the conviction to any person, other than the person who is the subject of the pardon or counsel acting on his or her behalf. A pardon does not, however, entitle the pardon holder to a redaction or change in reasons for judgment issued by the Court.

Supreme or Provincial Court Wiretap Authorizations: Because of Part VI of the *Criminal Code*, the public may not access wiretap authorizations or any material submitted to the court in support of an application for a wiretap authorization or any material related to a wiretap authorization unless the court makes an order otherwise.

1.16 Obligations in the Event of a Breach or Suspected Breach

Any person who becomes aware of a breach or suspected breach regarding the use or disclosure of court records or regarding any section of this Policy, should immediately contact the Court's legal counsel at 604-660-0352.

2.0 ACCESS TO THE COURTROOM AND LIVE PROCEEDINGS

2.1 Presumption of Access

The British Columbia Court of Appeal welcomes and encourages members of the media and public to view the proceedings of the court. As discussed above in Part 1, the court recognizes the importance of the open court principle in maintaining public confidence in the administration of justice and preserving the integrity of the court system. The Court of Appeal recognizes the importance of providing access to courtrooms whenever possible to allow public scrutiny and full and accurate reporting of proceedings.

However, as discussed in *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, “it is sometimes necessary to harmonize the exercise of freedom of the press with the open court principle to ensure that the administration of justice is fair.” In very exceptional cases in the Court of Appeal, the courtroom may be closed to the public to protect the privacy interests of those participating in an appeal or to protect the administration of justice.

Despite the contents of this part of the access policy, the presiding Justice always has the discretion to regulate activity within the courtroom.

2.2 Courtroom Decorum

Those who choose to view courtroom proceedings are asked to conduct themselves in a way that is respectful of the dignity and safety of participants that are engaged in the process of presenting their appeal. Activities that might disrupt or interfere with proceedings are prohibited.

2.3 Use of Electronic Devices

Many of the risks associated with the use of electronic devices are reduced in the Court of Appeal because of the absence of live witnesses and juries. Accordingly, the policy of the Court of Appeal may differ from trial courts, such as the Provincial Court of British Columbia and the Supreme Court of British Columbia.

The use of electronic devices within courtrooms in the Court of Appeal is governed by the Joint Courts’ [Policy on the Use of Electronic Devices](#).

Warning: Members of the media or public who choose to use electronic devices to report on proceedings are reminded to check with counsel, the court clerk or registry staff concerning the existence of publication bans. The Court of Appeal will monitor media broadcasts and treat any breach of a publication ban very seriously. Breach of a publication ban may result in consequences, including criminal contempt proceedings. Common publication bans are listed in [Appendix “B”](#) to Part 1 of this access policy.

2.4 Video Recording or Televising Proceedings

In the case of video recordings, requests to record and/or televise court proceedings should be made to the Chief Justice through the Court of Appeal Legal Counsel at least sixty (60) business days prior to the hearing of an appeal and at least five (5) business days prior to the hearing of an application in chambers.

In addition to identifying the proceedings to be recorded, the request should describe the precise method by which the broadcast may take place and any logistical issues. For example, you should consider whether the proceedings can be filmed from the gallery or if access to the well of the courtroom will be required. Any potential impact on the privacy interests of those who might be affected by the broadcast of the proceedings should also be identified in the application letter.

In reviewing an application to photograph or televise court proceedings, the Chief Justice or presiding Justice may elect to contact parties to the appeal and consider whether:

1. privacy interests or the interests of justice outweigh the public interest in having the proceedings televised; or,
2. any potential disruptive effect that televising will have on the proceedings; or,
3. any potential additional expense to the court.

2.5 Audio Recording

The use of audio recording devices, including electronic devices for the purposes of recording audio, is prohibited in the courtroom, except by accredited journalists. The process for accreditation and the permitted use of audio recording devices is explained in the [Media Accreditation Process](#) and the Joint Courts' [Policy on Use of Electronic Devices in Courtrooms](#).

Journalists seeking accreditation must apply to a member of the Accreditation Committee and sign an undertaking to abide by the Courts' [Policy on Use of Electronic Devices in Courtrooms](#). Accredited journalists seeking to audio record appeal proceedings must display their identification and lanyard.

2.6 Media Interviews

The Justices of the Court of Appeal speak through their orders and reasons for judgment. The Chief Justice and Justices of the court do not comment on specific cases that are or have been before the court or may come before it in the future.

You may obtain general information about court proceedings by contacting the court Registry, Registrar or Legal Counsel through the court's general telephone inquiries line at **604-660-2468**.