
Access to Court Records

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Justice and Public Safety



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The following guidelines are provided by the Department of Justice and Public Safety, Court Services Division, and are posted online to enhance public access to court records. Policies and guidelines regarding access to court records are periodically reviewed and updated, subject to the direction of the judiciary.

There is 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 staff 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.

The material provided here is the same as the material on public access to court records provided to court staff.

1. INTRODUCTION

1.1 Principle of Openness

The open court principle is founded in historic common law principles which have been referred to in numerous Supreme Court of Canada decisions, the most recent being [Sherman Estate v. Donovan, 2021 SCC 25](#) [at paragraph 30]:

Court openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy (Canadian Broadcasting Corp. v. New Brunswick (Attorney General), 1996 CanLII 184 (SCC), [1996] 3 S.C.R. 480, at para. 23; Vancouver Sun (Re), 2004 SCC 43, [2004] 2 S.C.R. 332, at paras. 23-26). ... Limits on openness in service of other public interests have been recognized, but sparingly and always with an eye to preserving a strong presumption that justice should proceed in public view.

(Dagenais v. Canadian Broadcasting Corp., 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835, at p. 878; R. v. Mentuck, 2001 SCC 76, [2001] 3 S.C.R. 442, at paras. 32-39; Sierra Club, at para. 56)

1.2 Court Responsibility for Records

Though the general rule is that the public has a presumptive right of access to court proceedings and court records, the Supreme Court of Canada has held that courts do have a supervisory and protecting power over their records. While ensuring openness, members of the judiciary also have a responsibility to protect the integrity of the judicial process.

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

[Attorney General of Nova Scotia v. MacIntyre, [1982] 1 S.C.R 175, at page 189]

Judges may be asked to set the appropriate balance between the constitutional requirement of open courts against other rights and interests of the public and participants to court proceedings, namely privacy and security of individuals and the proper administration of justice. For this reason, while some court records are available on request, access to certain other types of court records may not be granted or may only be granted with the permission of a judge.

[Chapter 3](#) provides more information on restrictions on access to court records. For information regarding access to certain records in specific types of proceedings, see [Chapters 4 to 8](#) in these guidelines.

Structure of New Brunswick's Courts

Requests for access to court records must be directed to the appropriate level of court – Court of Appeal, Court of King's Bench or Provincial Court – and the court location where the record is stored.

The New Brunswick Court of Appeal is located in Fredericton and requests for their court records must be directed to the Registrar's Office in Fredericton. Both the New Brunswick Court of King's Bench (Trial Division and Family Division) and the New Brunswick Provincial Court operate out of regional offices in the judicial districts throughout the province; therefore, requests must be made at the regional office in the location where the proceeding took place.

Detailed contact information is available on the New Brunswick Courts website:

- Provincial Court: [Provincial Court Locations \(courtsnb-coursnb.ca\)](#)
- Court of King's Bench: [Court of King's Bench Locations \(courtsnb-coursnb.ca\)](#)
- Court of Appeal: [Office of the Registrar – Contact Information](#).

1.3 Role of the Media

The media plays a crucial role in informing the general public about the administration of justice and judicial processes, due to the fact that the average citizen gains knowledge of the legal system primarily through the words and images conveyed by the media in news reports about court proceedings.

The justice system and the general public are well served when media coverage of court proceedings is accurate and complete. Accurate and complete media coverage helps to ensure public confidence in the integrity of the justice system by providing a clear understanding of the administration of justice as well as ensuring judicial accountability.

For this reason, court officials and staff working within the justice system have a responsibility to assist the public, including the media, in obtaining the access to which they are entitled.

1.4 Role of Court Staff

On a day-to-day basis, there are practical considerations that will affect how quickly court staff can provide access to court records. The primary responsibility of court staff is to ensure court operations run efficiently in order that the administration of justice may be effectively carried out; this includes making sure that:

- matters scheduled before the court are proceeding,
- the needs of parties, lawyers, witnesses, interpreters and jurors are met, and
- judicial direction is followed.

Given these priorities, court staff will facilitate access to court records as quickly and efficiently as possible.

There are, however, limitations on the assistance that court staff can provide in relation to requests for access:

- Staff will not interpret/translate or summarize information contained in court records or related to court proceedings.

- Staff will not provide legal advice.
- Staff will not recount what occurred in court for those who did not attend court personally.
- Staff cannot ensure that the information provided relates to a particular person in the community. The accuracy of the information provided depends on the search parameters given; ensuring the accuracy of any information relating to the request is the responsibility of the requester.

1.5 Purpose and Application

The purpose of these guidelines is to set out the principles governing public access to court records, consistent with applicable legislation and common law rules, to

- promote consistency in public access to court records between court locations,
- provide guidance to those seeking access to court records and to court staff responding to requests for access, and
- ensure timely and responsive replies are provided to requests for access while ensuring that the ongoing operation of the courts is not negatively affected.

These guidelines apply to the public's access to court records in criminal, family and civil matters, at both trial and appeal levels, unless otherwise indicated. (NOTE: For specific information regarding access to records in the Court of Appeal, see [Chapter 8](#).) The guidelines are not intended to be a substitute for legal advice or a review of the relevant legal authorities; the following chapters do not provide an exhaustive list of every legal restriction that exists. Rather, they set out the general principles and include some of the limitations most commonly encountered.

Judicial Direction

These guidelines do not limit the jurisdiction of the court, but merely provide direction in the most commonly encountered situations. If a judge makes an order in a specific case regarding access to or publication of information in the court record, those are the rules that will apply to that case. For more information regarding restrictions on access or publication, see [Chapter 3](#).

Other Applicable Laws

The access provided for in these guidelines is subject to any applicable legislation, common law principles (case law), court rules or court orders regarding access to court records. For example, there are legislative provisions that require certain court records to be kept confidential, such as legislation involving child protection or adoption.

Court Records and Privacy Legislation

The New Brunswick *Right to Information and Protection of Privacy Act* (RTIPPA) provides rules for how public bodies are to deal with records in their possession and control that contain private information on individuals. However, the definition of "public body" in the RTIPPA specifically excludes the New Brunswick Court of Appeal, Court of King's Bench, Provincial Court and Small Claims Court; section 4 of the RTIPPA also states that the Act does not apply to information in a court record. Similarly, the New Brunswick *Personal Health Information Privacy and Access Act* (PHIPAA) adopts the same definition of "public body" as used in the RTIPPA, which means that PHIPAA also does not apply to the courts.

1.6 Court Record Defined

The Canadian Judicial Council defines “court record” as the “information and other tangible items filed in proceedings and the information about those proceedings stored by the court” (see *Model Definition of Judicial Information*, September 2020). This term refers to the “official” recorded information of a proceeding; it is the portion of a case file that is made accessible to the public, subject to any legislative provision or court order restricting access.

Courts maintain an ‘official’ court record of each case, whether electronic, paper, or a combination of both, where:

- a) it is a permanent element of the proceeding before the court;
- b) it is retained under legislative authority or administrative principles of the court; or
- c) it has a legal significance for the future.

While the court record is preserved indefinitely, the rest of a case file is usually destroyed after a defined period of time, in accordance with applicable retention schedules.

Court Operations Information

Court operations information is information related to the supervision, management and direction of matters necessary for the operation of the court, and includes:

- listing of court proceedings in relation to one or more cases;
- court calendars;
- correspondence, personal notes, memoranda, drafts, or similar documents prepared and used by judges, judicial officers, court officials, or other court personnel;
- work produced by registry executives, managers and staff;
- court staff HR matters;
- facilities management;
- IT infrastructure management;
- statistics; and
- security.

Court operations information is not part of the court record unless a judge or judicial officer expressly so directs and only to that extent.

Judicial Information

Judicial information is information stored, received, produced or used by or for a judge or judicial officer. It also includes information stored, received, produced or used by staff or contractors working directly for or on behalf of judges such as executive officers, law clerks, law students, clerks of the court, or court stenographers.

Judicial information does not form part of the court record. However, information authored by a judge, such as orders or published reasons for judgment, form part of the court record once filed in the court record.

2. GENERAL ADMINISTRATION

Although members of the public have a presumptive right of access to court records, access may be limited by legislation or by a court order. Chapter 3 provides more information on restrictions on access to court records. For information regarding access to certain records in specific types of proceedings, see [Chapters 4 to 8](#) in these guidelines.

While there are different ways to request access to court records, **the request must be made at the office in the court location where the proceeding took place**. The permitted method can vary depending upon the level of court and the type of information requested; requests for access to certain types of records in the case file, court exhibits, and recordings of court proceedings require the completion of an access request form.

Court staff require specific information in order to conduct a search:

- For **criminal** court records, the accused's first and last name are required. To narrow the search, more information may be needed; i.e., case file number, charge(s), accused's date of birth, name of a co-accused or victim.
- For **civil/family** court records, the case file number, or a party's first and last names will be required; additional information may be needed to help narrow the search.

Court staff will make every effort to locate the case file or information being requested based on the identifying details provided. If a search produces more than one case file containing the same or similar identifying details (e.g., names), all such information and/or files will be provided. The onus will be on the person making the request to determine which case file is the one being requested. Persons obtaining access to court records are legally responsible to know and comply with all court orders or legislative provisions respecting the use and distribution of that record.

NOTE: ANY VIEWING OF CASE FILES MUST BE DONE IN THE COURT OFFICE AND IN THE PRESENCE OF COURT STAFF.

2.1 Dockets

Court Dockets for the Provincial Court and the Court of King's Bench are available on the New Brunswick Courts website: [New Brunswick Courts \(courtsnb-coursnb.ca\)](http://courtsnb-coursnb.ca). Lists of cases and motions scheduled in the Court of Appeal can also be found on the Courts website.

2.2 Telephone Requests

Limited information will be provided by court staff over the telephone; if more detailed information is required, the caller may attend at the court office to review the record further.

Typically, questions answered by telephone in relation to criminal matters will be limited to:

- next appearance date
- nature of next appearance
- date and general nature of charges (not a list of all charges)
- date and general nature of sentence (not of list of all conditions)

NOTE: Telephone requests do not apply to proceedings involving youth matters. Similar information covered by the *Youth Criminal Justice Act* must be requested in person, and restrictions set out in the YCJA will apply (see [Chapter 5](#) regarding restrictions on access to youth court matters).

Information about publication bans can be obtained by telephone; court staff will inform the caller of publication bans that have come to their attention. **However, the individual requesting the information is responsible for observing and complying with any applicable publication bans; failure to do so may result in serious sanctions, including contempt proceedings.** See [Chapter 3](#) for more information on publication bans.

2.3 Verbal (in-person) Requests

Individuals can inquire in person at the court office where the proceeding took place during office hours. A completed access request form will be required when:

- the request involves access to records from a proceeding which has been concluded; or
- court staff directs the applicant to complete the form.

Historical Searches

Searches for information from closed cases may take longer. The paper files for historical matters are not stored in the local court offices, so retrieval may take some time.

2.4 Access Request Form

For some access requests, an individual will be required to complete a request form and submit it to the court office in the location where the proceeding took place. Completed access request forms may be mailed, emailed, faxed, or dropped off at the court office. The “Access to Court Records Request Form” is available [online](#) or at the court office.

Court staff will review the status of the court record before providing access, to ensure that only publicly accessible documents are made available for viewing by members of the public or the media. Staff must limit access to court records when legislation or a court order require a restriction; some requests may require judicial direction (for example, requests for access to exhibits). For more information about requesting access to exhibits, see [section 2.5](#).

If there are no access restrictions, court staff will provide the results of the search upon payment of any applicable search and/or copy fees. Any viewing of case files must be done in the court office in the presence of staff.

If judicial direction is required, the access request form will be reviewed by the presiding judge, or if the presiding judge is unavailable, the Chief Justice/Associate Chief Justice or Chief Judge/Associate Chief Judge, as the case may be, or their designates. The reviewing judge will make a determination regarding the request for access. If access is authorized on the basis of the access request form, court staff will contact the requester to coordinate access in accordance with any directions of the judge. Any applicable fees must be paid before access to the court record will be permitted.

If the reviewing judge determines that the request cannot be authorized based on the access request form alone, they may direct that the requester bring a court application seeking access. For more information on bringing an application for access to a court record, see [section 2.9](#).

2.5 Access to Exhibits

Exhibits are documents or objects provided as evidence in court. Unlike records produced by the court, or pleadings and affidavits filed by parties, exhibits are the property of parties or non-parties; the court maintains custody and supervision over exhibits. While generally available to the public, there are exceptions; public access to certain exhibits may require judicial direction before public access can be granted.

Although it is acknowledged that the public should have timely access to exhibits, the court needs to ensure that access does not interfere with the administration of justice.

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. ...

(Canadian Broadcasting Corp. v. The Queen, 2011 SCC 3, [2011] 1 S.C.R. 65, para. 12)

Requesting Access To Exhibits

Generally, exhibits that are entered into evidence during the course of a trial or hearing are publicly accessible ('entered into evidence' means the exhibit was marked, numbered and entered on a list during the course of the proceeding). **Access to exhibits may only be exercised under the supervision of court staff, at a mutually convenient time.**

There may be times, while facilitating requests for access, when judicial direction is required to maintain the integrity of exhibits and protect the administration of justice; in some cases, the requester may be required to complete an "Access to Court Records Request Form". Examples include:

- requests to access an exhibit that includes sensitive information about people who may or may not have been involved in a trial (e.g., intimate or graphic images; personal information such as social insurance numbers; etc.);
- requests to access an exhibit that require special instructions to maintain the integrity of the exhibit;
- requests to photograph, film, photocopy, or otherwise reproduce an exhibit.

Court staff will facilitate access to the exhibit in accordance with the judge's directions (i.e., any terms and conditions of access). Any completed access request forms will be retained by court staff.

IMPORTANT TO NOTE RE: EXHIBITS

- Exhibits which are part of a court record that is covered by a publication ban or by another court-imposed confidentiality order may be open to public inspection but involve restrictions on the publication/broadcast of their content. See [Chapter 3](#) for more information regarding restrictions on publication of court records.
- After the completion of a trial and all appeals, or the expiration of appeal deadlines, exhibits may be returned to the party who tendered them, or be destroyed.

For specific information regarding access to exhibits in proceedings in the Court of Appeal, see [Chapter 8](#) in these guidelines.

2.6 Recordings of Court Proceedings

The purchase of court recordings is governed by section 14 of the *Recording of Evidence Act*. Access may be granted upon approval of the judge, provided that access to material contained in the recording is not restricted by legislation or a court order and that provision of the copy of the recording would not be prejudicial to the interests of justice. There is a fee associated with a request to purchase a court recording (see [Attachment A](#)). A "Request for Purchase of a Court Recording" form must be completed by the person requesting the recording and approval by a judge of the appropriate court must be received before the recording will be issued.

NOTE: The open court principle may conflict with other principles, such as protecting the safety of justice system participants, particularly informants in criminal matters, and protecting the privacy rights of those whose voices and images are being recorded in court proceedings. Justice system participants, be it witnesses, lawyers, claimants, defendants, or judges, are being recorded, not because they personally choose to be recorded but because it is required, in some cases under penalty of law, for the proper functioning of the system of justice. **As such, court recordings may not be transcribed or published in any document, broadcast or transmitted in any way, and may not be provided to a third party.**

See [Chapter 8](#) for specific information regarding access to recordings of proceedings in the Court of Appeal.

2.7 Transcripts of Court Proceedings

A transcript of a court proceeding may be purchased unless access is restricted by legislation or a court order. Sealing orders and confidentiality requirements may restrict access to a transcript. To release a transcript from a sealed or confidential matter, it is necessary to first obtain a court order.

Unlike photocopied documents, transcripts are more expensive and take more time to access because of the work needed to prepare them. An individual requesting a transcript must complete a "Transcript Order Form". Upon completion of this form, a transcript will be prepared and completed in accordance with production policies (a request may take 30 to 180 days depending on the type of request). A transcript will not be released until payment is received in full for the transcript. For those requests from the public (including the media), a 90% deposit will be required to start preparation of the transcript. If the deposit paid is more than the cost of the transcript, the difference will be refunded.

NOTE: Like any court record, a person obtaining a transcript is legally responsible to know and comply with all court orders or legislation respecting the use and distribution of that transcript. For example, information contained in a transcript may be subject to a publication ban (i.e., transcript of a bail hearing or a preliminary inquiry).

2.8 Fees

See [Attachment A](#) for information about the fees associated with accessing court records (i.e., for searches, photocopies, transcripts, recordings, etc.).

2.9 Court Applications

An application for an order allowing access to the court record or a portion of the court record must be brought in accordance with the applicable court rules (the [New Brunswick Rules of Court](#) for the Court of King's Bench and the Court of Appeal, and the [New Brunswick Rules of Provincial Court Practice](#) for the Provincial Court) unless the court directs otherwise.

2.10 Broad or Blanket Searches

Generally speaking, courts have limited search capabilities to be able to respond to blanket requests and requests based on only general or vague information. Court staff do not conduct topical searches (or litigation searches). However, the public may search the [New Brunswick Court Index](#) (online) at no cost; this database includes basic information for civil, small claims, bankruptcy and probate cases (i.e., participants and case location). If the individual wants to view particular files, they must submit a completed access request form to the appropriate court office and pay any applicable fees. As there is no central repository of court records, such requests must be directed to the appropriate level of court and the court location where the court record is stored.

2.11 Timeframes for Public Access

The public's right to access is **not a right to instantaneous access**, nor is it a right to unsupervised access. Access may be delayed until the individual making the request can be supervised without undue interference with court operations. Because a case file may contain information or documents that are not publicly accessible, court staff must also ensure that only publicly accessible information and documents are provided to members of the public for inspection.

Timeliness is essential to ensure access to court records. The ability of court staff to facilitate timely access can be affected by various factors. Record retention schedules outline the requirements for storing files on-site or off-site, as well as when records can be destroyed or stored by the Provincial Archives. Where on-site storage is limited, some files may be transferred off site sooner than set out in the retention schedules; the time required for access to court records that are stored off site will be longer.

2.12 Limits of Search Capabilities

The accuracy of the information provided depends on the search parameters given; court staff do **not** warrant or guarantee that all court records produced as a result of a search relate to the individual(s) 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 court records relating to a specific individual.

Ensuring the accuracy of any information relating to a request is the responsibility of the person obtaining and/or using the information. 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 individual who is the subject of their inquiry. There are numerous instances of multiple case files existing under the same name even though the files do in fact pertain to different people.

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

3. RESTRICTIONS ON ACCESS OR PUBLICATION

While court records are generally accessible to the public, there are situations where access to a court record is restricted or the publication of information in a court record is prohibited. This Chapter describes the different types of restrictions and how they affect access and publication.

Restrictions on access prevent members of the public (including the media) from viewing the affected court record unless they first obtain a court order to permit access. Examples of orders that restrict access include sealing orders, confidentiality orders and orders excluding the public from court proceedings.

Restrictions on publication prohibit publishing any of the information in a court record protected under the publication ban. The ban prohibits the dissemination of the information in print, on radio or television, or via the Internet or other form of social media; however, the court record is still accessible to the public.

Court staff will notify an individual seeking access if a court record is under a publication ban (if known) and will warn them that publishing, broadcasting or transmitting in any way the information protected by the publication ban could be a violation of law. An individual seeking access to a court record subject to a publication ban should familiarize themselves with the subject, as **it is the responsibility of the person accessing information contained in a court record to inform themselves of any publication bans or other restrictions that may exist and to comply with such a ban or restriction.**

For information on some common restrictions on certain court records in different types of proceedings, see [Chapter 4](#) (for criminal matters), [Chapter 5](#) (for youth court matters), [Chapter 6](#) (for family matters) and [Chapter 7](#) (for civil matters); see also [Chapter 8](#) for specific information regarding access to records in the Court of Appeal.

3.1 Statutory Restrictions on Access or Publication (no court order required)

Sometimes there is legislation that sets a restriction on access to or publication of information in a court record, without the need for a court order. For example, section 119 of the *Youth Criminal Justice Act* sets out restrictions on who can access youth court records.

Some examples of statutory restrictions on publication include (this is not an exhaustive list):

- Section 278.95(1) *Criminal Code* – regarding an application to admit evidence of a complainant's prior sexual conduct, the content of the application, the evidence and information given and representations made at the hearing, and the judge's decision
- Section 542(2) *Criminal Code* – the fact of or details of any admission or confession tendered at a preliminary inquiry
- Section 648(1) *Criminal Code* – any portion of a trial at which the jury is not present
- Section 110(1) *Youth Criminal Justice Act* – any information that could identify a young person as a young person dealt with under the Act

- Section 111(1) *Youth Criminal Justice Act* – any information that could identify a young witness or a young victim in connection with proceedings under the Act
- Section 26 *Provincial Offences Procedure for Young Persons Act* – any information that could identify a young person as a young person dealt with under the Act, or a child or a young person as a witness or a victim in connection with proceedings under the Act.

3.2 Orders Restricting Publication or Public Access

There may also be situations where a court makes an order that restricts access to a court record or prohibits publishing information in the court record. There are two types of court orders that restrict access or publication: mandatory and discretionary.

- A **mandatory order** is when a law says that a judge “shall” (must) make an order. Usually, a party must first apply for the order, but there are a few laws that require the judge to make an order even if no one applies for it (this is different from a statutory restriction, which applies to everyone without a court order being required).
- A **discretionary order** is when the judge can choose whether to make the order. When deciding whether to make a discretionary order that restricts access or publication, the judge applies a test developed by the Supreme Court of Canada that was reformulated in *Sherman Estate v Donovan*, 2021 SCC 25 (para. 38).

In some cases, whether a restriction is mandatory or discretionary will depend on who is requesting the restriction (i.e., in the case of publication bans on the evidence given at a bail hearing or at a preliminary inquiry).

- Section 517(1) *Criminal Code* – Upon the application of the accused, the court must order a ban on the content (evidence and information), and the judge’s reasons at a judicial interim release (bail) hearing; the order is discretionary if the prosecutor requests the ban.
- Section 539(1) *Criminal Code* – Upon the application of the accused, the court must order a ban on the publication of evidence taken at preliminary inquiry – the court must order the ban upon application of an accused; the order is discretionary if the prosecutor requests the ban.

NOTE:

Some court orders that restrict access or publication are permanent; they will apply in other proceedings in the same case, and in an appeal from the trial court’s ruling. Restrictions ordered by one court usually remain in effect in the court appealed to unless that court actually removes the restriction by an order of its own.

Some restrictions are temporary; they may expire when the trial or proceeding is over, or when directed by a judge. For example, the ban on the publication of evidence taken at a preliminary inquiry expires at the end of the proceeding if the accused is discharged (not sent to trial) or when the trial has ended if the accused is tried.

3.3 Private Hearing Records

In some circumstances, the public may be excluded from all or part of a court proceeding; these proceedings may be called “private”, “closed”, or “*in camera*” (these guidelines use the term “private hearing” to encompass all these types of proceedings). Generally, a private hearing is reserved for a situation which involves highly personal, private or sensitive evidence or proceedings.

If a court proceeding is held in private because of a legislative provision, common law rule or court order, a member of the public or the media seeking access to the court record (or to the portion of the record related to the private hearing) must complete and submit a request form; see [section 2.4 Access Request Form](#).

3.4 Sealed Court Records

Legislation or a court order may seal a court record; the seal may affect all or part of the case file. Sometimes a sealing order is required, and sometimes the order is at the judge’s discretion. A sealing order typically provides the date the court record was sealed and the name of the judge who sealed the documents, but it does not disclose information about the content of the sealed documents; in such a case, the sealing order itself is accessible unless otherwise ordered by the judge. If a sealing order contains information that is under seal, judicial permission is required for access to the sealing order.

Members of the public and the media must first obtain a court order authorizing access to a sealed court record.

3.5 Confidential Court Records

Sometimes legislation or a court order makes information, or a document, in a case file confidential. For example, all records and documents relating to the adoption of any person on file with the court are confidential (subsection 110(1) *Child and Youth Well-Being Act*).

While a confidential court record is not physically sealed, there is no public access without a judge’s order. *Members of the public and the media can have access to a confidential court record only if they first obtain a court order permitting such access.*

Existence of sealed or confidential court records

Generally, members of the public and the media are entitled to know that a court record exists, even when a file is sealed or is subject to a confidentiality order. While public knowledge of the existence of a court record is a minimal requirement for openness, disclosure of the existence of the court record must be made in a manner that does not disclose its content. Furthermore, there may be situations when even disclosing the existence of a court record is prohibited by legislation or by a court order. Court records are exempt from provincial and federal access to information legislation.

3.6 Pseudonyms / Anonymity Orders

A court order may permit a witness or a party to use a pseudonym (an alternate name), testify behind a screen or in some other way prevent anyone, even people in the courtroom, from identifying the person. The identifying information is also concealed in the case file by a sealing order or by redacting the documents in the case file.

Anonymity or pseudonymity orders preclude access to the identifying information, but there may still be public access provided the identifying information is removed from the case file. Upon receiving a search request for a case file that has an anonymity/pseudonymity order on it, court staff must seek instructions from the judge.

4. ACCESS IN CRIMINAL MATTERS

Most criminal matters are dealt with in the Provincial Court; however, some criminal proceedings are dealt with in the Trial Division of the Court of King's Bench (for example, jury trials). Generally, court records dealing with adult criminal matters are available to the public once process is issued (i.e., the accused has been arrested or has received an appearance notice or a summons). Court staff can release information about an accused after the first court appearance on the charges.

NOTE: For information regarding restrictions in youth criminal justice matters, see [Chapter 5](#).

As stated previously, there are exceptions where legislation or a court order restricts access to court records; this section provides information on some common exceptions to the general principle in adult criminal matters (it is not an exhaustive list).

Criminal Record Checks

Some people believe that court staff can provide an official criminal record check. The court case management system is not a comprehensive database of criminal charges or criminal dispositions and does not constitute an official criminal record. Only police services can undertake an official criminal record check for employment or related purposes.

4.1 Exhibits

Exhibits in criminal matters may take many forms; examples include:

- physical evidence (for example, guns, knives, clothing);
- photographic/electronic evidence (for example, photos, videotapes, audiotapes, compact discs);
- business documents (for example, phone records, bank records, business transaction records);
- expert reports (for example, psychiatric reports, crime scene analyses, toxicologist reports).

Consistent with the open court principle, exhibits in criminal matters are available to the public and the media. However, requests for access to certain exhibits require judicial direction; examples include:

- requests for access to exhibits that include sensitive information about people who may or may not have been involved in the trial; examples include photographs, audiovisual recordings, psychiatric assessments, pre-sentence reports, and victim impact statements;
- requests for access to exhibits that require special storage instructions (e.g., to be kept frozen);
- request for access to exhibits that would reveal personal information about a person who has not reached the age of majority or who is a vulnerable person.

For more information on requesting access to exhibits, see [Section 2.5](#). For information on reports that may be entered into the court record during sentencing (i.e., pre-sentence reports and victim impact statements), see [Section 4.14](#) regarding materials on sentencing.

See [Chapter 8](#) for specific information regarding access to exhibits in proceedings in the Court of Appeal.

4.2 Informations

An Information is the court document that starts the prosecution of most offences. It is a statement in writing and under oath that someone has committed an offence. Informations are publicly accessible when the document is laid in court, and documents such as appearance notices, summons or arrest warrants requiring the attendance of the accused are confirmed, or issued and served.

NOTE: Where an accused is ordered to stand trial after a preliminary inquiry, the prosecutor will prepare an **indictment** and file it with the Court of King's Bench. An Indictment is accessible in the same manner as an Information in the case file; this includes endorsement sheets and witness lists appended to the Indictment.

4.3 Pre-Enquête Hearings (or Private Prosecutions; s. 507.1 Criminal Code)

A *pre-enquête* is a forum for a private citizen to lay an Information alleging an offence. The judge will conduct a *pre-enquête* hearing to determine whether legal process should issue (i.e., whether to issue a summons or a warrant for the arrest of the accused). While the Attorney General will ordinarily refrain from formally intervening until after the *pre-enquête*, a Crown prosecutor will attend the hearing to act as a representative of the Attorney General. Generally, a *pre-enquête* hearing is not open to the public (where a *pre-enquête* is open to the public, a publication ban will usually be issued regarding any information that would identify the accused).

- If process is issued, the documents of the *pre-enquête* hearing become publicly accessible once the accused has been arrested or the summons has been served, unless there are legislative restrictions to access (for example, the *Youth Criminal Justice Act*) or a court order restricts access.
- If process is not issued, the documents and recordings of the *pre-enquête* hearing are not publicly accessible.

4.4 Warrants

A warrant is a court order that authorizes a specific act, such as an arrest or a search of someone's home. Most types of warrants can be issued in either Provincial Court or the Court of King's Bench; *wiretap warrants are issued only in the Court of King's Bench*.

Type of Warrant	What the warrant gives legal authority for
Arrest warrant	To take a person into custody and deprive them of liberty (s. 511 <i>Criminal Code</i>)
Blood sample warrant	To draw blood for various driving offences to detect drugs or alcohol (s. 320.29 <i>Criminal Code</i>)

Type of Warrant	What the warrant gives legal authority for
<i>Controlled Drugs and Substances Act (CDSA) warrant</i>	To search a building, place or receptacle for controlled substances (s. 11 <i>Controlled Drugs and Substances Act</i>)
DNA warrant	To obtain DNA samples from suspects for comparison to samples seized during an investigation (s. 487.05 <i>Criminal Code</i>)
<i>Feeney</i> warrant	To enter a dwelling-house or other place to apprehend a fugitive or suspect (s. 529 <i>Criminal Code</i>)
General warrant	To use any device or investigative technique or procedure or do anything described in the warrant (s. 487.01 <i>Criminal Code</i>)
Search warrant	To search a building, place or receptacle (s. 487 <i>Criminal Code</i>)
Tracking device warrant	To place a device in or on anything (often a vehicle) to track it during an investigation (s. 492.1 <i>Criminal Code</i>)
Transmission data recorder warrant	To install a device to record transmission data relating to the data generated by transmitting a telecommunication, but not including the content or meaning of the communication (s. 492.2 <i>Criminal Code</i>)
Wiretap warrant	To intercept private communications on a phone or in a residence or vehicle (s. 186 <i>Criminal Code</i>)

4.4.1 Arrest Warrants

Warrants of arrest may or may not be filed with the court; practices for filing warrants of arrest vary depending on the police service. If an arrest warrant or copy of an arrest warrant is in the case file, it would be publicly accessible in the same manner as the Information (i.e., after the accused has been arrested), provided no other public access restrictions apply.

Bench warrants may also be issued and executed anywhere in Canada against a person who does not appear in court or remain in attendance for their scheduled court appearance. Information about these warrants is publicly accessible, provided no other public access restrictions apply.

4.4.2 Search Warrants / General Warrants

A search warrant is a court order that directs owners of private property to allow the police to enter and search for items named in the warrant.

Specialized search warrants also exist for:

- the seizure of bodily substances for DNA analysis
- controlled drugs and substances
- counterfeit money
- hate propaganda
- lumber or lumbering equipment

- obscene material
- proceeds of crime

A general warrant permits the use of devices or investigative techniques described in the warrant if a search and/or seizure without it would violate section 8 of the *Charter of Rights and Freedoms* (the right to be secure against unreasonable search or seizure).

Applications to obtain a search warrant are heard in private. Prior to execution, a search warrant does not form part of the public record and therefore access to unexecuted warrants is restricted: *Nova Scotia (A.G.) v. MacIntyre*, (1982) 1 S.C.R. 175. Search warrants, including those under the *Controlled Drugs and Substances Act*, are publicly accessible, **if**:

- the warrant has been successfully executed (i.e., a seizure has been made);
- a Report to a Justice has been filed with the court by the relevant police or investigating agency; **and**
- the warrant has not been sealed by a court order.

Where these criteria are met, members of the public may inspect the warrant, the information upon which the warrant was issued, and the report.

Court staff do not have authority to provide any information about a search warrant or related documents (including confirming the existence of an application for a search warrant) if:

- the warrant has not been executed;
- the warrant was unsuccessfully executed (i.e., did not result in property being seized); **or**
- the warrant was successfully executed, but a Report to Justice regarding the warrant has not been filed with the court.

Requesting Access To Search Warrants

Individuals seeking access to search warrants must provide enough information for court staff to be able to identify the records sought. This may include, if known,

- the location/address searched
- the date the warrant was executed
- the name of the person (often a police officer) or agency who sought the warrant;
- the name of the judge who approved the warrant; or
- the date the warrant was signed.

While an individual seeking access to a search warrant may not be able to provide all of these details, sufficient information is necessary to allow court staff to identify the warrant requested. Court staff will attempt to assist the individual based on the information provided in the request. If an individual seeking access believes that a search warrant has been executed, but there is no information publicly accessible at the court office, the individual may wish to obtain further details from the police or enforcement agency.

4.4.3 Tracking Device Warrants and Transmission Data Recorder Warrants

Members of the public and the media may not access a warrant for a tracking device (issued under s. 492.1 *Criminal Code*) or a warrant for a transmission data recorder (issued under s. 492.2 *Criminal Code*) unless the court makes an order allowing access to the warrant.

4.4.4 Wiretap Warrants

Part VI of the *Criminal Code* prohibits the public from accessing wiretap authorizations, 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 allowing access to the wiretap authorization or the other material. Section 193 *Criminal Code* prohibits the use or disclosure of information pertaining to intercepted private communications, including disclosing the existence of such communications.

4.4.5 Sealed Warrants

A judge may make an order sealing a warrant and all documents relating to the application for the warrant (s 487.3 *Criminal Code*). This is referred to as a sealing order. Access to a sealed warrant is only permitted by a further order of the court.

A sealing order typically provides the date the warrant was sealed and the name of the judge who sealed the documents, but it does not disclose information about the content of the warrant. Assuming that is the case, the sealing order is accessible unless otherwise ordered by a judge. However, if the sealing order contains confidential information that is under seal, judicial permission is required for access.

Given the confidential nature of sealed records and the limited information available to court staff where a warrant is sealed (e.g., the location, address, or subject searched is often itself confidential), **staff may not always be able to identify the warrant sought.** Persons seeking access to the sealed records may bring an application to the judge who made the order, or to a judge of the court where any proceedings arising out of the investigation may be held.

4.5 Production Orders (ss. 487.014, 487.015, 487.016, 487.017 and 487.018 *Criminal Code*)

A production order is made by a judge and is similar to a search warrant. When a production order is made, the person in possession of the information identified in the order must produce it upon request to the law enforcement agency. There are five different types of production orders:

- General production order (s. 487.014 *Criminal Code*) – requires a person to produce or prepare a document from data in his/her possession or control.
- Trace specified communication production order (s. 487.015 *Criminal Code*) – requires a person to prepare a document containing data that identifies a device or person involved in the transmission of a communication.
- Transmission data production order (s. 487.016 *Criminal Code*) – requires a person to prepare or produce a document providing information including the origin, destination, date, time, or duration of a telecommunication.
- Tracking data production order (s. 487.017 *Criminal Code*) – requires a person to prepare or produce a document containing data about the location of an individual or thing.

- Financial data production order (s. 487.018 *Criminal Code*) – requires a financial or commercial institution to produce account details, such as the name and other identifying information about the owner, the status and type of account, and the day it was opened or closed.

A judge hears applications for production orders in private. Information about an application for a production order, including the documents and/or information supporting the application, are publicly accessible **if**:

- the production order has not been sealed by court order;
- the production order has been executed; **and**
- documents or data were produced in response to the order.

IMPORTANT NOTE RE: PRODUCTION ORDERS:

- The documents (or data) produced are not available to the public or the media unless they are later marked as exhibits. For more information on requesting access to exhibits, see [section 2.5](#).
- Unlike search warrants, a report is not required to be filed when a production order is executed. If an individual seeking access believes that a production order has been executed, but there is no information publicly accessible at the court office, the individual may require further details from the police or enforcement agency prior to the court office releasing any information.

4.6 Identity Protection

Ban on Publishing Name or Identifying Information

The judge may order a ban on publishing the name of (or any information that could identify) a victim (complainant), witness or justice system participant. While publication bans do not affect public access to the file, it is an offence to publish the protected information in any document or broadcast or transmit it in any way. It is the obligation of the person obtaining access to information in a court record to determine if there is a publication ban in effect and to comply with such ban. Publication bans on identity are indefinite unless otherwise ordered by the court; see [Chapter 3](#) for more information on publication bans.

- In proceedings concerning sexual offences, human trafficking offences, or the offences of extortion or charging a criminal interest rate, the judge must inform the victim and any witness who is under age 18, of the right to apply for a publication ban. The order banning publication is mandatory if the victim, the witness or the prosecutor applies for it (subsections 486.4(1), (2) *Criminal Code*).
- In proceedings concerning any offence, **if the victim is under age 18**, the judge must inform the victim of the right to apply for a publication ban. The order banning publication is mandatory if the victim or prosecutor applies for it (s. 486.4(2.2) *Criminal Code*).
- In proceedings concerning child pornography, the judge must make an order banning publication of the identity of any witness who is under the age of 18 or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of section 163.1 (s. 486.4(3) *Criminal Code*).

- In any proceedings, the judge may make an order banning publication of the identity of a victim or a witness (s. 486.5 *Criminal Code*).
- The judge may order a publication ban to protect a justice system participant in proceedings concerning criminal organizations, terrorism or the *Security of Information Act* (Canada). The hearing of these applications for a publication ban may be held in private (s. 486.5 *Criminal Code*).

Non-Disclosure of Witness' Identity (Section 486.31 Criminal Code)

The judge in a criminal proceeding may make an order that prohibits the disclosure of any information that could identify a witness; the judge may hold a private hearing to determine whether to make such an order. Where non-disclosure is ordered, identifying information about the witness is not publicly accessible; court staff must review the case file before providing access and remove any documents that could disclose the witness' identity.

4.7 Private Hearings

Although the court usually hears proceedings against an accused in open court, the public may be excluded in whole or in part from a court proceeding under various sections of the *Criminal Code* (for example, under section 486 a judge may order a private hearing on the grounds set out in that section).

Some criminal proceedings must be heard in private, while others may be heard in private, at the judge's discretion. If the public is excluded from a criminal proceeding, there is no public access to the court record (or to that portion of the court record which relates to the private hearing) unless the court authorizes such access. A member of the public or the media seeking access to a court record (or to a portion of the record) related to a private hearing must complete and submit an access request form.

The following are examples where a private hearing must/may be held:

Complainant's Sexual History Evidence (s. 276 Criminal Code)

Section 276 of the *Criminal Code* limits the use to which an accused can put evidence of the complainant's sexual history, in a trial of a sexual offence. To use any such evidence, the accused must apply to the trial judge under the relevant provisions of the *Criminal Code*. A private hearing is required to consider the application (section 278.93), as well as to determine whether the evidence is admissible (section 278.94). As a result, there is no public access to the documents filed in relation to the application or the hearing.

Accused in Possession of Records Relating to Complainant (S. 278.92(2) Criminal Code)

When an accused has records relating to a sexual assault complainant and seeks to admit them into evidence, the proceedings relating to admissibility must be held in private (sections 278.93, 278.94). The contents of the application, any evidence taken, the information given, and the representations made during the admissibility proceedings are subject to a publication ban. The judge's decision will not be published unless the judge decides that the evidence is admissible, or the judge makes an order permitting publication (section 278.95).

Personal Information Records – Third Parties (Ss. 278.1 To 278.9 Criminal Code)

For trials of sexual offences, an accused person may apply to the trial judge for an order requiring a third party to bring to court confidential records concerning the complainant or a witness. Examples

include medical, counselling, or school records in the possession of a hospital, medical professional, or counsellor.

- The judge must hold a private hearing to determine whether to order the person who has possession or control of the record to produce it to the court for review (section 278.4).
- If the judge orders the record be produced to the court for review, the judge may hold a private hearing to determine whether the record should be produced to the accused (section 278.6).

There is a ban on publishing the contents of the application, the evidence taken, the information given, and the submissions made at a hearing; publication of the judge's decision (including reasons) is also prohibited, unless the judge orders that the decision may be published (section 278.9 *Criminal Code*).

O'Connor Applications

For applications to determine whether there will be production of third-party records in non-sexual offence cases, there is no mandatory requirement for a private hearing to determine the relevance of the records. However, an order excluding the public may be requested by one or both of the parties either at the time of the application or in their documents filed before the court date. Until the judge hearing the application determines whether or not the public should be excluded, any documents filed in advance of these proceedings are not publicly accessible, except by court order.

See [Chapter 3](#) for more information on restrictions on access or publication, specifically [section 3.3](#) regarding "Private Hearing Records".

4.8 Judicial Interim Release (Bail)

Members of the public can attend bail hearings (also called a "show cause" hearing) and bail review hearings; while these court records are accessible, publication bans are usually imposed on the evidence presented at such hearings. The publication ban covers the content (evidence and information) of the hearing as well as the judge's reasons for decision.

- A publication ban is mandatory if requested by the defendant and discretionary if requested by the prosecutor (section 517 *Criminal Code*).
- If ordered, the ban continues until such time as the accused is discharged (i.e., not sent to trial) or, if ordered to stand trial, until the end of the accused's trial. It does not matter whether the trial is heard in the Provincial Court or the Court of King's Bench, the ban remains in place until the trial ends. In the case of a jury trial, the ban expires when the jury is sequestered and/or begins its deliberations.
- To request reports and other exhibits from bail and bail review hearings, see [section 4.1](#) above regarding exhibits in criminal matters and [section 2.5](#) regarding request to access such exhibits.

4.9 Preliminary Inquiries

The public can attend a preliminary inquiry and the court record is accessible; however, a ban is usually imposed on the publication of evidence taken at a preliminary inquiry (section 539 *Criminal Code*). Like bail hearings, the ban is compulsory if requested by the defendant and discretionary if

requested by the prosecutor. If ordered, the ban continues until such time as the accused is discharged (i.e., not sent to trial) or, where the accused is ordered to stand trial, when the trial is ended.

NOTE: There is also a **statutory restriction** (ban) on publishing a report of an admission or confession in a preliminary inquiry (section 542(2) *Criminal Code*). This ban continues to be in effect until the accused is discharged or, if ordered to stand trial, until the end of the accused's trial.

4.10 Jury Trials and Jurors

Proceedings to empanel (select) a jury are open to the public. The court may order a ban on publishing the names or identifying information of jurors. To protect juror anonymity in court, prospective jurors are called by their assigned juror numbers and not by their names.

Proceedings of a Voir Dire

There is a **statutory restriction** (ban) on publishing any information heard during the jury's absence, until such time as the jury has been sequestered and/or begins its deliberation (section 648(1) *Criminal Code*). Prior to that, only the fact that a *voir dire* was conducted can be published.

4.11 Post-Conviction Records

4.11.1 Absolute and conditional discharges

Upon conviction, if the judge orders an absolute discharge, the offender is regarded as not having been convicted of the offence. The offender cannot again be charged with the same offence. A conditional discharge is similar to an absolute discharge, except that the offender must comply with conditions set out in a probation order for a specified time. If the offender violates these conditions, the discharge may be revoked (a conviction will then be entered, and an appropriate sentence imposed). The conditional discharge becomes absolute if the offender complies with the conditions as set out in the order.

Under the *Criminal Records Act*, court staff cannot disclose the existence of a court record where an offender received a discharge, **and**

- it has been **more than one year** since the offender received an **absolute discharge**, or
- it has been **more than three years** since the offender received a **conditional discharge**,

unless the request for access is made by the individual who is the subject of the discharge or that individual's lawyer.

4.11.2 Record Suspensions (Pardons)

A record suspension (formerly called a pardon) allows people convicted of a criminal offence to have their criminal record kept separate and apart from other criminal records. If a record suspension has been granted, all documents and information related to the original conviction are not publicly accessible, and court staff cannot confirm the existence of these records. A Certificate of Conviction for a pardoned offence can be generated for the offender to whom the record suspension relates upon written request and payment of any applicable fees.

4.12 Medical, Psychiatric and Psychological Reports, or Assessments under the *Criminal Code* (ss. 672.11 or 752.1)

Unless the court orders otherwise, reports or assessments provided by psychiatrists or other medical professionals are not part of court record and not available until read into court or dealt with by presiding judge. Requests for access to such reports or assessments are directed to the presiding judge for direction; while some judges may entertain informal requests, other judges may require a formal application to the court.

4.13 Proceedings under the *Provincial Offences Procedure Act* (POPA)

In general, court records related to proceedings under the *Provincial Offences Procedure Act* are publicly accessible, unless restricted by a court order. Access to a psychiatric report relating to an order for examination under section 110 of the Act is subject to judicial direction; requests for access to such reports are directed to the presiding judge.

NOTE: For information regarding proceedings against young persons commenced under the *Provincial Offences Procedure for Young Persons Act* (POPYP), see [Chapter 5 Restrictions on Access to Youth Court Matters](#).

Private Hearings (POPA)

A judge may exclude the public for all or part of a proceeding where it would be in the interests of public morals, the maintenance of order, the proper administration of justice or the protection of the reputation of a minor (section 111(2) POPA).

Publication Bans (POPA)

Where necessary to protect the reputation of a minor, a judge may make an order prohibiting the publication or broadcast of the identity of the minor or any part of evidence taken during a proceeding that discloses the minor's name or information that would identify the minor (section 111(3) POPA).

Search Warrants (POPA)

Search warrants issued under the *Provincial Offences Procedure Act* are accessible in accordance with the policy for criminal search warrants. In general, search warrants are accessible if:

- the warrant has not been sealed by court order;
- the warrant has been executed and a seizure has been made; and
- a Report on Execution of Search Warrant (Form 48) has been filed with the court by the relevant police or investigating agency.

Publication or Broadcasting of Information Relating to a Search Warrant Under POPA

Section 145 of the *Provincial Offences Procedure Act* prohibits the publication or broadcasting of information relating to a search warrant issued under the Act or to a search made under a warrant issued under the Act, unless

- a charge has been laid in respect of any offence in relation to which the warrant was issued, or
- a court order allows a person to publish or broadcast the information.

4.14 Sentencing

The same general principles set out for a trial apply to a sentencing hearing.

Materials on sentencing – In preparation for sentencing, a judge may direct the preparation of certain documents that will give the judge information to help determine the appropriate sentence for an offence. These documents are not part of the court record and not available until read into court or dealt with by the presiding judge.

Pre-Sentence Reports

A judge may direct a probation officer to prepare and file a pre-sentence report (section 721(1) *Criminal Code*). The purpose of the report is to give the judge information about the offender to help the judge decide on the appropriate sentence for the offence. Unless the presiding judge directs otherwise, pre-sentence reports become publicly accessible when they become part of the court record during sentencing. Since these reports can contain highly personal information about persons not before the court, court staff may seek judicial instructions before public access is granted.

Victim Impact Statements

A victim impact statement is a written statement prepared by a person affected by a crime. Victim impact statements are publicly accessible once they become part of the official court record, unless the presiding judge orders otherwise. Like pre-sentence reports, these statements can contain highly personal information about persons not before the court; therefore, court staff may seek judicial instructions before public access is granted.

NOTE: If a publication ban has been made regarding the name of the victim, the person seeking access to the victim impact statement should be advised that there is a publication ban in effect; however, it remains the responsibility of the individual obtaining access to ensure they are aware of any court orders and any other legal restrictions that limit publication.

5. ACCESS IN YOUTH COURT MATTERS

Any level of court, Provincial Court, Court of King's Bench or Court of Appeal, can hear youth justice matters, but most often the Provincial Court hears them. Information in youth court matters is generally **not** publicly accessible.

While members of the public and media can usually attend youth court proceedings, there is legislative authority for the judge to exclude any or all members of the public (including the media) from the courtroom (section 132 *Youth Criminal Justice Act*; section 111 *Provincial Offences Procedure Act*). There is a **mandatory publication ban** on identifying a young person as an accused or as a victim in youth court matters.

5.1 *Provincial Offences Procedure for Young Persons Act (New Brunswick)*

The *Provincial Offences Procedure for Young Persons Act* (POPYP) is provincial legislation that deals with young persons who are charged with provincial offences, and it applies to proceedings commenced against young persons under the *Provincial Offences Procedures Act* (POPA). Members of the public and the media do not have access to court records from these proceedings except as directed by a judge.

Section 26 of POPYP prohibits the publication of any report relating to an offence or a proceeding (i.e., hearing, adjudication, sentence, review or appeal) in which the name of a young person is disclosed (this includes when the young person is an accused, or when a child or young person is a victim of or a witness to the offence). It also prohibits publishing any report where information serving to identify any such young person or child is disclosed.

5.2 *Youth Criminal Justice Act (Canada)*

The *Youth Criminal Justice Act* (YCJA) is federal legislation that provides the framework for young persons who are charged with criminal or other federal offences.

Access to Youth Court Records

Unlike the situation for most court records, the YCJA does not start with the principle of court openness. Rather, the Act denies access to youth court records (this includes records kept by a review board under the YCJA), unless the person requesting the information falls within a very limited set of exceptions (YCJA, section 119(1)). For more information on who can access records under the YCJA, see [Table 1](#). There are also limits on the time period during which YCJA records are accessible (YCJA, section 119(2)). For more information regarding access periods for YCJA records, see [Table 2](#).

Even in situations where access to a youth court record is permitted, information concerning a youth will not be provided over the telephone as it is not possible to confirm the identity of the caller. While the general public (including the media) have no right of access to youth court records, they may apply to the court for an order authorizing access.

Exhibits in Youth Court Matters

Members of the public and the media cannot access exhibits in youth court proceedings, except with a court order. A member of the public or the media seeking access to such an exhibit must apply to the court for an order authorizing such access.

Identity Not To Be Published

Subject to limited exceptions under the YCJA, no person may publish the name of a young person or any other information if it would identify them as being dealt with under the Act; this includes a young victim's or witness's name or identifying information. (YCJA, sections 110 and 111).

NOTE: In addition to bans on publishing information that would identify a young person in connection with proceedings under the YCJA, bans under the *Criminal Code* may apply in youth proceedings.

Table 1

Persons Permitted to Access Youth Court Records
Only those persons listed in subsection 119(1) of the <i>Youth Criminal Justice Act</i> can be given access to court records related to proceedings under the Act:
(a) the young person to whom the record relates;
(b) the young person's lawyer or the lawyer's representative;
(c) the Attorney General;
(d) the victim of the offence or alleged offence to which the record relates;
(e) the young person's parents during the course of proceedings or the term of sentence;
(f) an adult permitted by the court to assist the young person during the course of proceedings or the term of sentence;
(g) a peace officer, for law enforcement purposes or for a purpose related to the administration of the case during the course of proceedings or the term of sentence;
(h) a judge, court or review board, for a purpose related to proceedings against the young person (including proceedings after the young person becomes an adult);
(i) the provincial director or the director of the correctional facility or penitentiary where the young person is serving a sentence;
(j) a person participating in a conference or an extrajudicial measures program, if required for the administration of the case;
(k) a person acting as ombudsman, privacy commissioner or information commissioner, who is investigating a complaint to which the record relates;
(l) a coroner or a person acting as a child advocate, in the course of their duties under an Act of Parliament or the Legislature;
m) a person acting under the <i>Firearms Act</i> ;
(n) a member of a department or agency of a government in Canada (or of an organization that is an agent of, or under contract with, the department or agency), for a purpose set out in subparagraphs 119(1)(n)(i)-(v);
(o) a person carrying out a criminal record check for a government in Canada, for purposes of employment or the performance of services (with or without remuneration);
(p) an employee or agent of the Government of Canada, for statistical purposes under the <i>Statistics Act</i> ;
(p.1) an employee of a department or agency of the Government of Canada, for the purpose of administering the <i>Canadian Passport Order</i> ;
(q) an accused or their lawyer, who swears an affidavit to the effect that access to the record is necessary to make a full answer and defence;
(r) a person designated by order of the Governor in Council or Lieutenant-Governor in Council, for a purpose and to the extent specified in the order;
(s) a person with a valid interest in the record, to the extent directed by a judge, if access is (i) desirable in the public interest for research or statistical purposes, or (ii) desirable in the interest of the proper administration of justice.

Table 2

Access periods for YCJA records		
119(2)		Period of access
(a)	extrajudicial sanction	2 years after the young person consents to the sanction
(b)	acquittal	2 months after the appeal period expires; or if an appeal is taken, 3 months after all appeal proceedings have been completed
(b)	verdict of not criminally responsible on account of mental disorder	no time limit specified
(c)	charge is dismissed or withdrawn, or the young person receives a reprimand after being found guilty	2 months after the dismissal, withdrawal, or finding of guilt
(d)	charge is stayed, with no proceedings taken against the young person for a period of one year	1 year after the charge is stayed
(d.1)	recognizance under subsection 14(2) or 20(2)	6 months after recognizance expires
(e)	absolute discharge	1 year after the young person is found guilty
(f)	conditional discharge	3 years after the young person is found guilty
(g)	summary conviction offence	3 years after the young person completes the sentence for that offence
(h)	indictable offence	5 years after the young person completes the sentence for that offence
Extending the access period		
Further offences during the access period		
119(2)		Period of access
(i)	summary conviction offence while a young person	The latest of <ul style="list-style-type: none"> • the access period for the first offence; • the period ending 3 years after the young person completes the sentence for the new offence
(j)	indictable offence while a young person	The latest of <ul style="list-style-type: none"> • the access period for the first offence; • the period ending 5 years after the young person completes the sentence for the new offence

Prior to granting access to a youth court record, court staff must consult section 119(1) of the YCJA to confirm that the requestor is entitled to access, as well as section 119(2) of the YCJA to confirm that any applicable access period has not expired. When court staff are unsure whether access can be authorized under the YCJA, they should seek clarification from the judiciary.

NOTABLE EXCEPTIONS RE: ACCESS:

- Restrictions on access relating to YCJA matters do not apply if a young person is sentenced as an adult. But the restrictions are not lifted until all appeals or appeal deadlines are exhausted, and then, only if the adult sentence stands (YCJA, section 117).
- If a young person commits an offence as an adult and is subsequently convicted of that offence, any youth court records which are still accessible under the YCJA are to be treated like an adult court record (YCJA, section 119(9)).
- Only certain persons can have access to medical and psychological reports or to the results of forensic DNA analysis (YCJA, section 119(6)).
- If the court has withheld from any person all or part of a medical or psychological report or a pre-sentence report, that person must not be given access to that report or that part of the report (YCJA, section 119(5)).

6. ACCESS IN FAMILY MATTERS

In New Brunswick, the Family Division of the Court of King's Bench deals with all family matters such as marriages, divorces, division of marital property, claims for spousal and/or child support, and parenting and contact orders (formerly custody and access), at the trial level. The Family Division also deals with matters relating to adoption, child protection, consent to medical treatment of minors, changes of name, presumptions of death, as well as matters relating to the care of persons in need of support or representation,¹ including the management of their property.

Access to court records in the Family Division is unrestricted **unless legislation or a court order restricts access** to a particular type of file, document or information. Sometimes legislation requires that access to certain court proceedings and court records be restricted, and sometimes a judge has discretion whether to make an order restricting access. For more information regarding discretionary orders, see [Chapter 3](#).

The information below includes some commonly encountered restrictions with respect to proceedings and court records in the Family Division (it is not an exhaustive list).

Confidential Court Records

When a request is made for access to Family Division court records, staff must check the case file for any specific restrictions. There may be confidentiality requirements imposed by a court order (i.e., under ss. 11.4 of the *Judicature Act*, a judge may order certain reports filed in proceedings in the Family Division be treated as confidential and not form part of the public record). Some court records in the Family Division are subject to confidentiality requirements required by legislation; i.e., court record related to adoption ([see section 6.2](#)) or child protection ([see section 6.3](#)).

A member of the public or media may only have access to a confidential record if they first obtain a court order permitting access. An application for an order allowing access to a confidential record must be brought in accordance with the [New Brunswick Rules of Court](#).

Private Hearings

A judge of the Family Division may hear a proceeding in open court or *in camera* (ss. 11.3(1) *Judicature Act*). Under section 134 of the *Child and Youth Well-Being Act*, the court may order that the public be excluded from all or part of a proceeding under that Act (for example, a child protection hearing).

Public access to a court record (or a portion of the record) related to a private hearing in the Family Division will require judicial authorization. For more information on private hearings, see [Chapter 3 Restrictions on Access or Publication](#).

Publication Bans

Some court records in the Family Division are subject to publication bans required by legislation; for example, the *Child and Youth Well-Being Act* (CYWBA) expressly prohibits anyone from publishing, making public or contributing to the publication of the name or identity of a child or the parent of a child who is or has been the subject of a proceeding under that Act, without first obtaining a court

¹ New legislation was introduced in the Legislature in the Fall of 2022 to replace the *Infirm Persons Act*, RSNB 1973, c.1-8; the new *Supported Decision-Making and Representation Act*, SNB 2022, c.60, came into force on January 1, 2024.

order (s. 21 CYWBA). A judge may also make an order prohibiting the publication or broadcast of information related to a proceeding in the Family Division.

While a publication ban does not restrict access to the case file, **it is the responsibility of any person accessing information contained in a court record to inform themselves of any publication bans or other restrictions that may exist and to comply with that ban or restriction.** For more information on publication bans, see [Chapter 3 Restrictions on Access or Publication](#).

6.1 Private Family Matters

6.1.1 Parenting and support

The *Family Law Act* (FLA) applies to couples who have never married or to married couples who are choosing to separate without divorcing. Applications under the FLA may include matters of parenting time and decision-making responsibility (formerly custody and access), as well as support obligations; however, the Act does not apply to divorce matters. Generally, court documents filed in proceedings under the FLA are publicly accessible, unless legislation or a court order restricts access.

- Under subsection 4(1) of the *Family Law Act*, the court may order that a proceeding under the Act be heard in private.
- Subsection 4(2) of the *Family Law Act* prohibits anyone from publishing or making public the name of a child or the parent of a child who is (or has been) the subject of a proceeding under the Act, unless having first obtained permission from the Court (ss.4(3) FLA). This prohibition includes contributing to the publication of the name by writing, editing or approving an article or other document for the purpose of publication, including on the Internet and in any other manner (ss. 4(4) FLA).
- There is a potential for case files to include information related to child protection matters (ss. 7(2) *Family Law Act*). Any child protection documents in these files must be put into an unsealed envelope, marked "Child Protection - Confidential." This information must be removed from the case file before access is provided to members of the public or media. For more information on child protection matters, see [section 6.3](#).
- Using the court's common law powers, a judge may order a publication ban, sealing order or other restriction on access or publication. For information on discretionary orders, see [Chapter 3 Restrictions on Access or Publication](#).

The *Interjurisdictional Support Orders Act* (ISOA) applies to applications for a support order (child or spousal) when a parent and/or former spouse lives outside New Brunswick. The information contained in an ISOA application will form part of a case file and may be publicly accessible; however, information obtained with respect to the whereabouts of a person named in a 'request to locate' received under ss. 37.1(1) is confidential (ss. 37.1(3) ISOA).

Office of Support Enforcement (formerly the Family Support Orders Service)

The *Support Enforcement Act* applies to cases involving the enforcement of support obligations in New Brunswick. Information collected and managed by the Office of Support Enforcement is not a court record, and may only be disclosed in accordance with that Act or its regulations.

Child Support Recalculation Service

Information collected and managed by the Child Support Recalculation Service is not a court record, and may only be disclosed in accordance with the *Family Law Act* or the *Child Support Recalculation Service Regulation* under that Act.

6.1.2 Divorce Matters

The *Divorce Act* (Canada) applies to all matters involving divorce, and may include spousal support, child support and parenting arrangements. There are no statutory restrictions on access to case files under the *Divorce Act*; therefore, access to divorce files is unrestricted unless there is a court order restricting access (using the court's common law powers, a judge may also order a publication ban, sealing order or other restriction on access or publication). For information on discretionary orders, see [Chapter 3 Restrictions on Access or Publication](#).

NOTE: There is a potential for divorce files to include information related to child protection matters (ss. 7.8(2) *Divorce Act*). Any child protection documents in these files must be put into an unsealed envelope, marked "Child Protection - Confidential." This information must be removed from the file before access is provided to members of the public or media. For more information on child protection matters, see [section 6.3](#).

6.1.3 Marital Property

The court may order that a statement filed under section 12 of the *Marital Property Act* (disclosing particulars of property and debt), be treated as confidential and not form part of the public record, if public disclosure of any information contained in the statement would be a hardship on the person giving the statement or on any other person (s. 13 MPA).

6.1.4 Parentage

The *Family Services Act* includes provisions to determine parentage of a child. While the Act sets out certain circumstances where it is presumed that a person is the parent of a child, it also includes provisions that allow an application to be made for a declaration of parentage in other situations. Information in relation to any person or matter under the *Family Services Act* is confidential to the extent that its release would reveal personal information about a person identifiable from the release of the information (ss. 11(1) FSA). A member of the public or the media seeking access to court records in a matter under the FSA must obtain a court order authorizing such access.

6.1.5 Other Court Records Related To Private Family Matters

Affidavits

Affidavits and attached exhibits in family proceedings become part of the court record when filed. The public may access an affidavit and an exhibit that is attached to an affidavit where that affidavit is filed with the court, unless legislation or a court order restricts access.

Correspondence

Other documents may be contained in a case file, even though they have not been “filed” with the court; as such, they are not automatically publicly accessible. Some examples of these documents include:

- correspondence between the court office and the parties to canvass available dates for events;
- correspondence between the court office and an individual regarding fees paid to court (for example, regarding an NSF cheque);
- correspondence between the court office and an institution/agency (for example, police, Office of Support Enforcement, Registrar General) necessary for the institution/agency to enforce or register an order; and
- fee waiver information.

Correspondence is **not** part of the court record that is subject to access.

Exhibits

Exhibits provided as evidence in family proceedings are the property of parties or non-parties, but the court maintains custody and supervision over them. In private family matters, most exhibits are documents or reports. Exhibits may be publicly accessible after they have been entered into evidence, unless legislation or a court order restricts access. Requests for access to certain exhibits may require judicial direction; for example:

- The exhibit contains personal information that relates to personal integrity or capacity, including photographic evidence.
- The exhibit contains personal information regarding a person’s health or psychosocial situation.
- The exhibit would reveal personal information about a person who has not reached the age of majority or who is under a disability.
- The exhibit would tend to reveal personal information of a third party.

Exhibits Attached to an Affidavit

If the exhibit is attached to an affidavit that was filed with the court, it is a document filed in a proceeding (Rule 4.05(4) *NB Rules of Court*), and is publicly accessible unless a legislative provision, common law rule or court order restricts access.

Exhibits Referred to in an Affidavit

An exhibit may be referred to in an affidavit as being produced and shown to the deponent. Instead of attaching the exhibit to the affidavit, the party will leave the exhibit with the clerk for the court’s use. In this case, the exhibit is not “filed” with the court and is not publicly accessible, unless a judge

orders otherwise. At the end of a proceeding, such exhibits must be returned to the party who filed the affidavit (or to their lawyer) (Rule 4.05(5) *NB Rules of Court*).

Exhibits Entered Into Evidence

An exhibit that is entered into evidence in the course of a hearing or trial (meaning, marked, numbered and entered on a list by the court stenographer) may be publicly accessible, but such access will be subject to judicial direction. NOTE: At the end of the hearing/trial, exhibits that were entered into evidence may no longer be in the custody of the court as they must be managed in accordance with Rule 54.04 of the *NB Rules of Court*.

To access an exhibit entered into evidence, the requester may be required to fill out an access request form that will be submitted to the presiding judge. The judge will provide direction about whether access may be granted (including any terms and conditions of access) or whether a formal application, on notice to the parties, is required to balance access rights, privacy interests and the proper administration of justice. Media and members of the public should direct their inquiries to court staff who will provide a copy of the access request form and seek judicial direction about what is required in a particular case.

Financial Statements

Financial statements and other income information or documents filed in a family proceeding are publicly accessible, unless a judge (or a master, as the case may be) orders that the statement, information or documents be treated as confidential and not form part of the public record. See Rules 72.14(8), 73.11(6) and 81.08(7) *NB Rules of Court*.

Legal Briefs

A legal brief (also called a pre-hearing or pre-trial brief) is a written statement used as the basis for arguing a case; briefs contain legal and factual arguments as well as supporting authorities. In the Court of King's Bench, legal briefs are filed with the court in accordance with the Practice Directive regarding the "Electronic Submission of Pre-Hearing Briefs". Generally, legal briefs are publicly accessible after argument has been heard.

Medical/Psychiatric/Psychological Reports

Under subsection 51(1) of the *Family Law Act*, the court may require that a child or parent undergo a psychiatric, psychological, social, physical or other examination or evaluation. Public access to any report regarding such an examination/evaluation requires judicial authorization.

Settlement Conferences

All discussions, statements or representations made at or in preparation of a settlement conference (and any record of those discussions, statements or representations) are privileged and confidential (Rule 50.10(3) *NB Rules of Court*).

6.2 Adoption Matters

Under subsection 110(1) of the *Child and Youth Well-Being Act (CYWBA)*², all records and documents relating to the adoption of any person are confidential; this includes adoption records and documents on file with the court. It is an offence for a person with access to records or documents relating to adoptions, to disclose information on any adoption otherwise than in compliance with

² The new *Child and Youth Well-Being Act*, SNB 2022, c.35, was proclaimed and came into force on January 26, 2024; Part 7 of the CYWBA replaces Parts V and V.1 of the *Family Services Act* regarding records and documents relating to adoption matters.

Part 7 of the Act (ss. 123(1) CYWBA). Information concerning adoptions can only be released by the [Post Adoption Disclosure Services of the Department of Social Development](#).

6.3 Child Protection Matters

Access to child protection files is restricted to the parties in the action. Subsection 22(1) of the *Child and Youth Well-Being Act* (CYWBA)³ provides for the confidentiality of information in relation to child protection matters under the Act to the extent that its release would reveal personal information about a person identifiable from the release of the information. Therefore, a member of the public or the media seeking access to court records in child protection matters must obtain a court order authorizing such access.

The *Child and Youth Well-Being Act* expressly prohibits a person from publishing, making public or contributing to the publication of the name or identity of a child or the parent of a child who is or was the subject of a child protection proceeding, without a court order (s. 21 CYWBA).

6.4 Family Violence Matters

6.4.1 Intimate Partner Violence Intervention Act (New Brunswick)

Under the *Intimate Partner Violence Intervention* (IPVI) Act, a person experiencing intimate partner violence may apply for an emergency intervention order. These orders may contain a variety of temporary conditions to enhance the safety of victims, such as a provision for the applicant to temporarily stay in the family residence while the partner must move out. An emergency intervention order may also contain a provision prohibiting publication of the name and address or other identifying information of the applicant or a child (paragraph 4(5)(j) IPVI Act).

- Subsection 13(1) of the IPVI Act prohibits disclosure of any information in a court document or record relating to a proceeding under the Act that identifies or may identify the home or business address of an applicant.
- Subsection 13(2) of the IPVI Act provides authority for the court to exclude the public from a hearing or any part of a hearing
- Under subsection 13(3) of the IPVI Act, the court may make an order prohibiting the release of information pertaining to an emergency intervention order or a hearing.

³ New stand-alone child welfare legislation was introduced to modernize provisions of the *Family Services Act* (Parts I, II, III, IV) in relation to children and youth. The *Child and Youth Well-Being Act*, SNB 2022, c.35, which was proclaimed and came into force on January 26, 2024, applies to records and documents in child protection matters.

6.4.2 Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)

The *Family Homes on Reserves and Matrimonial Interests or Rights (FHRMIR) Act* is federal legislation that applies to married couples or common-law partners living on-reserve (where at least one partner is a First Nation member or Status Indian). Under the FHRMIR Act, a spouse or common-law partner experiencing family violence may apply for an emergency protection order.

Where a hearing is held to review an emergency protection order (para. 17(3)(b)) or to hear an application to vary or revoke an emergency protection order (ss. 18(1)):

- The court may make an order to exclude the public from the hearing (para. 19(1)(a)).
- The court may order a publication ban on the name or identifying information of a party, child, or witness. A publication ban does not restrict access to files, but court staff will inform the requester about the ban (para. 19(1)(b)).
- The court may make an order prohibiting disclosure to the public of any information in a court document or record related to a proceeding. This order makes the court documents confidential. It restricts access to the documents, unless the person who wants to see the documents can obtain a court order to permit access. The order prohibits anyone who has the information from disclosing it to others (para. 19(1)(c)).

7. ACCESS IN CIVIL MATTERS

In New Brunswick, the Trial Division of the Court of King's Bench hears civil law matters, excluding family disputes heard in the Family Division. Trial Division Judges also preside over criminal trials, with or without a jury; and the Trial Division hears appeals relating to summary conviction offences tried in the Provincial Court.

Probate Court

Although distinct from the Court of King's Bench, the Probate Court is presided over by a Court of King's Bench judge. Every judge of the Court of King's Bench has jurisdiction over probate matters. Subject to any court orders restricting access, Probate Court records are unrestricted.

Small Claims Court

The Small Claims Court is a separate court established under the *Small Claims Act*; adjudicators are appointed under the Act to hear and determine certain types of civil claims up to \$20,000. Although distinct from the Court of King's Bench, the judicial districts for the court are the same as the judicial districts established for the Court of King's Bench under the *Judicature Act*. Under the *Small Claims Act*, the clerks of the Court of King's Bench are also clerks of the Small Claims Court.

Access to court records in civil matters in the Trial Division or to court records in the Small Claims Court is unrestricted, unless legislation or a court order restricts access. When a request is made for access to these court records, staff must check the case file for any specific restrictions.

7.1 Court Records Related to Civil Matters

Affidavits

Affidavits and attached exhibits in civil proceedings become part of the court record when filed. The public may access an affidavit and an exhibit that is attached to an affidavit where that affidavit is filed with the court, unless legislation or a court order restricts access.

Correspondence

Other documents may be contained in a case file, even though they have not been "filed" with the court; as such, they are not automatically publicly accessible. Some examples of these documents include:

- correspondence between the court office and the parties to canvass available dates for events;
- correspondence between the court office and an individual regarding fees paid to court (for example, regarding an NSF cheque);
- correspondence between the court office and an institution/agency (for example, police) necessary for the institution/agency to enforce or register an order; and
- fee waiver information.

Correspondence is not part of the "court record" that is subject to access.

Legal Briefs

A legal brief (also called a pre-hearing or pre-trial brief) is a written statement used as the basis for arguing a case; briefs contain legal and factual arguments as well as supporting authorities. In the Court of King's Bench, legal briefs are filed with the court in accordance with the Practice Directive regarding the "Electronic Submission of Pre-Hearing Briefs". Generally, legal briefs are publicly accessible after argument has been heard.

Medical/Psychiatric/Psychological Reports

Public access to reports provided by physicians, psychiatrists or other medical professionals requires judicial direction. Members of the public and the media seeking access must complete and submit an access request form.

Offers To Settle

Under the New Brunswick *Rules of Court*, the fact that an offer to settle has been made cannot be stated in the pleadings, and will not be communicated to the court until after all questions of liability and any relief to be granted have been decided (see Rule 49.05(2)). If a party files an Offer to Settle (Form 49A) with the court, it would form part of the court record after the conclusion of the trial.

Settlement Conferences

All discussions, statements or representations made at or in preparation of a settlement conference (and any record of those discussions, statements or representations) are privileged and confidential (Rule 50.10(3) *NB Rules of Court*).

7.2 Exhibits

Exhibits provided as evidence in civil proceedings are the property of parties or non-parties, but the court maintains custody and supervision over them. In civil matters, most exhibits are documents or reports. Exhibits may be publicly accessible after they have been entered into evidence, unless legislation or a court order restricts access. Requests for access to certain exhibits may require judicial direction; for example:

- The exhibit contains personal information that relates to personal integrity or capacity, including photographic evidence.
- The exhibit contains personal information regarding a person's health or psychosocial situation.
- The exhibit would reveal personal information about a person who has not reached the age of majority or who is under a disability.
- The exhibit would tend to reveal personal information of a third party.

Exhibits Attached to an Affidavit

If the exhibit is attached to an affidavit that was filed with the court, it is a document filed in a proceeding (Rule 4.05(4) *NB Rules of Court*), and is publicly accessible unless a legislative provision, common law rule or court order restricts access.

Exhibits Referred to in an Affidavit

An exhibit may be referred to in an affidavit as being produced and shown to the deponent. Instead of attaching the exhibit to the affidavit, the party will leave the exhibit with the clerk for the court's use. In this case, the exhibit is not "filed" with the court and is not publicly accessible, unless a judge

orders otherwise. At the end of a proceeding, such exhibits must be returned to the party who filed the affidavit (or to their lawyer) (Rule 4.05(5) *NB Rules of Court*).

Exhibits Entered Into Evidence

An exhibit that is entered into evidence in the course of a hearing or trial (meaning, marked, numbered and entered on a list by the court stenographer) may be publicly accessible, but such access will be subject to judicial direction. NOTE: At the end of the hearing/trial, exhibits that were entered into evidence may no longer be in the custody of the court as they must be managed in accordance with Rule 54.04 of the *NB Rules of Court*.

To access an exhibit entered into evidence, the requester may be required to fill out an access request form that will be submitted to the presiding judge. The judge will provide direction about whether access may be granted (including any terms and conditions of access) or whether a formal application, on notice to the parties, is required to balance access rights, privacy interests and the proper administration of justice. Media and members of the public should direct their inquiries to court staff who will provide a copy of the access request form and seek judicial direction about what is required in a particular case.

7.3 Private Hearings

If the public is excluded from a civil proceeding because of a legislative provision or court order, public access to the court record (or to that portion of the court record which is related to the private hearing) requires judicial authorization. For more information on private hearings, see [Chapter 3 Restrictions on Access or Publication](#).

7.4 Publication Bans

In general, when a publication ban is imposed, the public can still access the case files and documents. Court staff will notify the person who is accessing the file or document that is under a publication ban and warn him or her that publication could be a violation of law. **However, it is the responsibility of the person accessing the court record to inform themselves of any publication bans or other restrictions that may exist and to comply with that ban or restriction.** For more information on publication bans, see [Chapter 3 Restrictions on Access or Publication](#).

7.5 Sealed Files and Documents

A sealing order typically provides the date the file was sealed and the name of the judge who sealed the documents, but it does not disclose information about the content of the sealed documents. Assuming that is the case, the sealing order is accessible unless otherwise ordered by the judge. However, if the sealing order contains confidential information that is under seal, judicial permission is required for access. For more information on sealed court records, see [Chapter 3 Restrictions on Access or Publication](#).

8. ACCESS TO COURT OF APPEAL RECORDS

In general, the record in the New Brunswick Court of Appeal is accessible, subject to any legislative provision or court order restricting access. However, if access to a court record is restricted at a lower court, a person may not access that record at the Court of Appeal without an order granting access.

The duty to keep the records of the Court of Appeal lies with the Registrar (*Judicature Act*, R.S.N.B. 1973, c. J-2, ss. 2(1), 59), and **only those court records in the Registrar's custody may be accessed by a member of the public or media**. If a court record is not in the Registrar's custody, staff will not arrange to have the record transferred from another court office; an individual seeking access to such records must submit their request to the court office where the record is located.

Requests for access to court records in the custody of the Registrar must be directed to the Registrar's office, in Fredericton. The office may be contacted by phone at (506) 453-2452, or by email at nbca-canb@gnb.ca. Detailed contact information may be found on the Court of Appeal's website at [Office of the Registrar – Contact Information](#).

Individuals seeking access to Court of Appeal records must complete a request form and submit it to the Registrar's office; the "Request for Access" form is available [online](#) or at the Registrar's office.

Correspondence

Correspondence that may be included in a case file is not part of the "court record" that is subject to access. This includes correspondence between the Registrar's office and members of the Court of Appeal, or between the Registrar's office and the parties regarding the scheduling of hearings.

Exhibits

In the Court of Appeal, the Registrar has custody of exhibits which form part of the court record in an appeal proceeding. Physical exhibits, however, are not transferred to the Registrar's office. Requests for access to exhibits in the Registrar's possession must be directed to staff in the Registrar's office, who may seek judicial direction. There may be times when judicial direction is required to maintain the integrity of exhibits and to protect the administration of justice. Where access is granted, exhibits may only be viewed under the direct supervision of staff in the Registrar's office.

IMPORTANT TO NOTE RE: EXHIBITS IN AN APPEAL PROCEEDING

After an appeal, the Registrar must return exhibits (which form part of the court record) to the trial court, or to the parties who produced them or their lawyers (Rules 54.04 (5) and (6), and 63.08(4) *NB Rules of Court*).

Exhibits which are part of a court record that is covered by a publication ban or by another court-imposed confidentiality order may be publicly accessible but involve restrictions on the publication/broadcast of their content. See [chapter 3](#) for more information regarding restrictions on publication of court records.

Publication Bans

Staff in the Registrar's office will inform a requester of publication bans that have come to their attention. However, the individual requesting access is responsible for observing and complying with publication bans, including any that may have been ordered in the courts below; failure to do so

may result in serious sanctions (i.e., contempt proceedings). For more information on publication bans, see [Chapter 3 Restrictions on Access or Publication](#).

Recordings of Proceedings

Recordings of hearings in the Court of Appeal belong to the Province and are held by the officer designated by the Province for that purpose (*Recording of Evidence Act*, S.N.B. 2009, c. R-4.5, ss. 1 (definition of “evidence”), 7-9, 10(1)). Access to recordings of proceedings in the Court of Appeal is governed by the practice directive “Access to Audio Recordings of Appeal Hearings”, which may be found on the Court’s website: [Practice Directives - NB Courts \(courtsnb-coursnb.ca\)](#).

Settlement Conferences

In accordance with Rule 62.1.06(1) of the *New Brunswick Rules of Court*, settlement conferences in civil appeals are held in private. Any record of discussions, statements or representations made at, or in preparation of, the settlement conference is privileged and confidential (Rule 62.1.09(3) *NB Rules of Court*).

Submissions of Parties

Each party to an appeal in a civil appeal proceeding must submit a written submission to assist the Court (Rules 62.14 and 62.19 *NB Rules of Court*); written submissions may also be required in criminal appeal proceedings (Rules 63.12 and 63.16 *NB Rules of Court*). In the Court of Appeal, written submissions are generally accessible once filed with the Registrar.

ATTACHMENT A : FEES

PROVINCIAL COURT		
	Fee	Exemptions
a photocopy of a document (para. 2(a) of Regulation 2009-76 – <i>Provincial Court Act</i>)	\$0.50 per page	<p>The following persons are exempt from paying the prescribed fees (s. 3 Reg. 2009-76 - PCA):</p> <ul style="list-style-type: none"> • an agent of the Attorney General of New Brunswick; • a member of the Royal Canadian Mounted Police; • a member of a police force governed by the <i>Police Act</i>; • a person who has enforcement responsibilities under an Act of the Legislative Assembly or under an Act of the Parliament of Canada; • a person who is a party to a legal proceeding for which legal aid services are being provided under the <i>Legal Aid Act</i>.
a certificate of conviction in respect of an offence under a federal Act (para. 2(b) of Regulation 2009-76 – <i>Provincial Court Act</i>)	\$25.00 per certificate	
a transcript (or a paper copy of the transcript) (para. 4(1)(a) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$3.00 per page	<p>The following persons are exempt from paying the prescribed fees (ss. 4(3) Reg. 2009-143 – REA):</p> <ul style="list-style-type: none"> • an agent of the Attorney General of New Brunswick; • a party to a legal proceeding to whom legal aid services are being provided under the <i>Legal Aid Act</i>; • a party whose legal services in a proceeding are paid for by the Minister of Justice or the Attorney General of New Brunswick; • the Director of Support Enforcement designated under subsection 4(1) of the <i>Support Enforcement Act</i>.
an electronic copy of a transcript (only the person who ordered a paper copy of the transcript can obtain an electronic copy) (ss. 5(3) of <i>Recording of Evidence Act</i> ; para. 4(1)(b) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$10.00	
a copy of a recording of the evidence or part of the evidence given in a proceeding before a court (ss. 4(2) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$20.00	

COURT OF KING'S BENCH (Trial Division and Family Division)		
	Fee	Exemptions
a transcript (or a paper copy of the transcript) (para. 4(1)(a) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$3.00 per page	<p>The following persons are exempt from paying the prescribed fees (ss. 4(3) Reg. 2009-143 - REA):</p> <ul style="list-style-type: none"> • an agent of the Attorney General of New Brunswick; • a party to a legal proceeding to whom legal aid services are being provided under the <i>Legal Aid Act</i>; • a party whose legal services in a proceeding are paid for by the Minister of Justice or the Attorney General of New Brunswick; • the Director of Support Enforcement designated under subsection 4(1) of the <i>Support Enforcement Act</i>.
an electronic copy of a transcript (only the person who ordered a paper copy of the transcript can obtain an electronic copy) (ss. 5(3) of <i>Recording of Evidence Act</i> ; para. 4(1)(b) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$10.00	
a copy of a recording of the evidence or part of the evidence given in a proceeding before a court (ss. 4(2) of Regulation 2009-143 – <i>Recording of Evidence Act</i>)	\$20.00	
for photocopying (Rule 78.01(i) <i>NB Rules of Court</i>)	\$0.50 per page	<p>The prescribed fees are not payable by (Rule 78.03(2) <i>NB Rules of Court</i>):</p> <ul style="list-style-type: none"> • a party represented by a solicitor who is an agent of the Attorney General of New Brunswick, • a party whose legal services in a proceeding are paid for under a legal aid program, or • the Public Trustee. <p>Family Division:</p> <p>Rule 72.24(2.1) / Rule 81.20(3)</p> <p>If the Registrar waives payment of a fee under Rule 72.24(2) (or Rule 81.20(2), as the case may be), the administrator shall waive payment of a fee under Rule 78.01(i) or (k), in the following circumstances:</p> <p>the solicitor for the party certifies that remuneration for legal services in the proceeding has not been and will not be paid and payment of the fee would impose financial hardship,</p> <p>the solicitor for the party files a Certificate of Solicitor with the Registrar at the same time as the Petition for Divorce, Joint Petition for Divorce, Answer or Answer and Counter-Petition is filed (or, at the same time as the Application or Answer is filed, as the case may be), or the party is a recipient of assistance under the <i>Family Income Security Act</i>.</p> <p>Rule 73.20 – A party is not required to pay fees to the administrator or a sheriff, where the party is a recipient of assistance under the <i>Family Income Security Act</i> or legal services in a proceeding under this Rule are paid for under a legal aid program.</p>
for a search (Rule 78.01(k) <i>NB Rules of Court</i>)	\$10.00	

SMALL CLAIMS COURT		
	Fee	Exemptions
for a photocopy of a document (para. 71(1)(e) of Regulation 2012-103 – <i>Small Claims Act</i>)	\$0.50 per page	The prescribed fees are not payable by (ss. 71(2) Reg. 2012-103 - SCA): a party represented by a solicitor who is an agent of the Attorney General of New Brunswick, or the Public Trustee.
for a certified copy of a document (para. 71(1)(f) of Regulation 2012-103 – <i>Small Claims Act</i>)	\$10.00	
for a search (para. 71(1)(g) of Regulation 2012-103 – <i>Small Claims Act</i>)	\$10.00	

PROBATE COURT	
	Fee
on every search into proceedings (section 3 in Appendix A of Regulation 84-9 - <i>Probate Court Act</i>)	\$10.00
for making copies of documents not requiring certification (section 9 in Appendix A of Regulation 84-9 - <i>Probate Court Act</i>)	\$0.50 for first page; \$0.25 for each additional page

COURT OF APPEAL		
	Fee	Exemptions
for photocopying (Rule 78.02(f) NB <i>Rules of Court</i>)	\$0.50 per page	The prescribed fees are not payable by (Rule 78.03(2) NB <i>Rules of Court</i>): a party represented by a solicitor who is an agent of the Attorney General of New Brunswick, a party whose legal services in a proceeding are paid for under a legal aid program, or the Public Trustee.
for a search (Rule 78.02(f) NB <i>Rules of Court</i>)	\$10.00	

ATTACHMENT B : DEFINITIONS

The following definitions apply for the purpose of these guidelines:

Access	May include a search, viewing a file and making/obtaining a copy of all or part of a file. Not all types of access are always available.
Act	A law passed by Parliament or the Legislature. It is also called a “statute”.
Appeal	The judicial process by which one party to an action resorts to a superior court to correct what he or she perceives to be an incorrect determination of the original proceedings.
Case file	<p>A case file contains the information that relates directly to a single court proceeding or to a number of related court proceedings that have all been assigned the same case file number. It includes the information that comprises the court record and any other information that has been captured or placed in the case file.</p> <p>The case file may be electronic or paper, or a combination of both; it will contain the court record and may include transitory case information (i.e., correspondence; financial transaction information; minutes and log notes by court staff; and any applicable information contained in the electronic case management system).</p>
Court record	<p>Information and other tangible items filed in proceedings and the information about those proceedings stored by the court. Refers to the “Official” recorded information of a proceeding. It is the portion of the Case File that is made accessible to the public, subject to privacy constraints regarding, for example, disclosure of personal information.</p> <p>The court record does <u>not</u> include court operations information or judicial information (such as judicial training programs, judge and trial schedules), or any correspondence or personal notes, memoranda, drafts, or similar documents or information prepared and used by judges, judicial officers, court officials, or other court personnel.</p>
Docket	<p>The list of matters to be heard in a courtroom on a certain day.</p> <p>“Docket information” is the manual or computer index of the court record, sometimes also called the “registry system”. It lists the events in the matter before the court including appearances in court and filed decisions, orders, and documents.</p>
Exhibit	A document or an object formally entered as evidence on the court record.
Forensic assessment	A psychiatric or psychological assessment of the mental condition of an accused.
In camera	The hearing of a case in private, the public being excluded.

Indictment	The formal procedure used to deal with serious charges. Also, the formal document by which the Crown sets out the allegation that a person has committed a crime. Indictments are tried in the Court of King's Bench.
Information	An Information is the court document that starts the prosecution of an offence. It charges the accused with offences under a statute such as the <i>Criminal Code</i> or another Act of Canada or New Brunswick. In criminal law, the "laying of an Information" is a process whereby a person is accused of an offence, causing the launching of a prosecution.
Judgment	Refers to any decision rendered by judges or judicial officers, including endorsements and orders, as well as any disposition or reasons given in connection with such decision.
Judicial officer	A person acting in a judicial or quasi-judicial capacity including justices, judges, hearing officers, masters, or anyone else authorised to act in an adjudicative role.
Legislation	Includes Acts (or statutes), as well as regulations, or rules of court.
Media	The main means of mass communication, especially newspapers, radio, television and Internet, and the reporters and journalists working for media organizations, whether based in Canada or elsewhere.
Party (or Parties)	<ul style="list-style-type: none"> • In criminal matters - a party includes the defendant and their lawyer, the Crown prosecutor, and parents or legal guardians. • In civil matters - a party includes any persons named in the style of cause of a court proceeding, their lawyer and any litigation guardians.
Personal information	<p>Personal information means information that may be used to establish a person's identity or to obtain access to information relating their private and personal affairs including:</p> <ul style="list-style-type: none"> • financial account numbers and records; • tax file numbers and returns; • social insurance numbers; • fingerprint numbers; • driver's licence numbers; • medical insurance numbers; • passport numbers; • personal telephone numbers; • date of birth; • home address; • personal email addresses; and • any other information that can be used to establish a person's identity.
Pleadings	A formal statement of the cause of action or defence.
Preliminary inquiry	A hearing to determine whether there is enough evidence to force the accused to stand trial.

Private hearing	A hearing in a courtroom that is closed to the public. Also called “closed courtroom” or “in camera.”
Prosecutor	One who appears on behalf of the government in criminal cases; also referred to as “Crown Prosecutor.
Pseudonym	A false or fictitious name used in place of a party’s, complainant’s, or a witness’s actual name.
Public	Includes any person, corporation or media organization. It does not include the judiciary, judicial officers and staff directly involved in the operation of the court. Nor does it include parties or their lawyers seeking access to their respective case files.
Publication ban	Legislation or a court order that prohibits the publication, broadcasting or transmission in any way, of information in a court record. Publication bans do not limit viewing the information or receiving copies of court documents. See chapter 3 for more information on publication bans.
Publish	To place information in any publicly available place such as a newspaper, a broadcast, the Internet, or social media.
Sealing order	A judge’s order directing that a document, exhibit, or file be sealed in an envelope or in secure storage and made inaccessible to everyone, including court staff. Legislation may also require a document, exhibit or file to be sealed.
Search warrant	A court order giving a person the right to enter a specified location, place, receptacle, etc. to search for specific objects.
Summons	A court order requiring a person to appear before a judge.
Voir Dire	A trial within a trial to determine the admissibility of evidence.
Warrant	A written authorization by a judge allowing police to search premises, arrest a suspect, etc.
Young person	Under the <i>Youth Criminal Justice Act</i> and the <i>Provincial Offences Procedure for Young Persons Act</i> , a person who is or, in the absence of evidence to the contrary, appears to be twelve years of age or older, but under eighteen years of age and, if the context requires, includes any person who is charged under either Act with having committed an offence while the person was a young person or who is found guilty of an offence under either Act.