



SUPREME COURT
of Newfoundland and Labrador

A GUIDE TO ACCESSING COURT PROCEEDINGS AND RECORDS
FOR THE PUBLIC AND MEDIA

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1. GENERAL

A. Scope of Guide

This guide attempts to explain the public's right to attend court proceedings and how members of the public can get access to the court record. It also explains some of the restrictions which are placed on access to, or publication of, information relating to court proceedings or information in the court record.

This guide applies to court proceedings and court records in civil, family and criminal matters in the Supreme Court of Newfoundland. Please note that the court is not governed by the *Access to Information and Protection of Privacy Act, 2015*, as it is not a "public body", as defined in that Act.

Note that the guide is subject to any applicable legislation, common law rule or court order which provides a different procedure or right of access.

If you have further questions in relation to anything discussed in this guide, please feel free to contact the court Registry or the Information Management Division:

<http://www.court.nl.ca/supreme/contact.html>

Please note that this document includes a glossary of terms at part 7.

B. The Open Court Principle

Openness of court proceedings is one of the cornerstones of our justice system and it includes access to all aspects of the court process. This principle is grounded in section 2(b) of the *Canadian Charter of Rights and Freedoms* which guarantees freedom of expression. The Supreme Court of Canada noted in the case of *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 at para. 23, that: "While the freedom to express ideas and opinions about the operation of the courts is clearly within the ambit of the freedom guaranteed by s. 2(b), so too is the right of members of the public to obtain information about the courts in the first place".

When court proceedings are open, the public can be sure that justice is done in a way that is not arbitrary and that the courts remain independent and impartial. The open courts principle fosters confidence in the justice system as well as the public's understanding of the legal process.

With that said, sometimes full access to court proceedings or court records is restricted, when the restriction is necessary to protect other social values of superordinate importance. Access may be limited by law (a legislative provision or a common law rule) or by a court order made by a judge.

2. ACCESS TO COURTHOUSES AND COURT PROCEEDINGS

A. Entering the Courthouse

The *Court Security Act, 2010*, permits the screening of persons coming into or leaving the courthouse. Please keep in mind that, if you are attending a court proceeding, you may need to allot extra time to pass through point-of-entry screening as you enter the courthouse.

B. Access to Court Proceedings

Members of the public can find information about upcoming court hearings by consulting the court's docket, which lists the matters being heard, the courtroom they are being heard in and the time of the hearing. The docket will be posted in the courthouse and is also available online at the following links:

General Division:

http://www.court.nl.ca/supreme/general/court_docket.html

Family Division:

http://www.court.nl.ca/supreme/family/court_docket.html

Members of the public may attend a hearing unless there is a restriction on access to all or part of a proceeding. Access to hearings may be restricted where a statute requires that it be held in the absence of the public (sometimes referred to as “*in camera*”, “private” or “closed”). Similarly, certain types of court appearances are not open to the public (settlement conferences, case management meetings, criminal pre-trial conferences). Table 1, below, provides a list of statutory provisions which require certain types of hearings be held in the absence of the public.

There are other statutory provisions, common law and court rules that permit a judge to make an order that a court proceeding be held in private, in his or her discretion (such as section 486 of the *Criminal Code* or rule F3 of the *Supreme Court Family Rules*). Where the judge has discretion regarding whether or not to order that a matter be closed to the public, the discretion must be exercised in accordance with the test set out in the cases of *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 and *R. v. Mentuck*, 2001 SCC 76.

Where the public is allowed to attend a court hearing, the spectators in the courtroom must not disturb the court process. If court is in session, spectators should enter quietly and close doors to the courtroom gently. Spectators should not talk in the courtroom. Members of the public must stay in the public seating area of the courtroom unless invited by the judge or the clerk.

Where a hearing is being held in private, only the judge, court staff, sheriff's officer(s), the parties and their counsel are permitted in the court room. The court clerk sitting in on the

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proceeding will, where directed by the judge, change the sign on the door to indicate that the matter is closed to the public and that entry is not permitted.

If the hearing is closed to the public and a judge notices a person present in the court room who does not appear to be counsel or a party, the judge can inquire into the person's interest in the proceeding. If a person refuses to leave the hearing when asked to do so, the judge can request the clerk or other staff member to ask that a sheriff's officer attend to remove the person from the court room.

Subject to the discretion of the presiding judge, witnesses that are not parties to the proceeding will, in the normal course, be asked to remain outside of the courtroom until they testify.

Table 1 – Mandatory restrictions on access to the court proceedings (not a complete list)

CRIMINAL PROCEEDINGS

- Some aspects of applications for judicial review regarding the list of entities involved in terrorist activities must be held in private [see *Criminal Code*, ss. 83.05, 83.06]
- The jury and the public must be excluded from the hearing of an application to admit evidence of previous sexual experience [see *Criminal Code*, s. 276.1(3)]
- The jury and the public must be excluded from hearings to determine whether evidence of previous sexual experience is admissible [see *Criminal Code*, s. 276.2(1)]
- Applications for production of a record containing personal information related to the victim or a witness in proceedings with respect to sexual interference, sexual exploitation, invitation to sexual touching, incest, corrupting children, indecent acts, keeping a common bawdy house, prostitution related offences, sexual assault, etc. must be *in camera* [see *Criminal Code* s. 278.4(1)]
- Applications after an officer has seized a document over which solicitor-client privilege is claimed shall be in private [see *Criminal Code* s. 488.1(10)]

FAMILY PROCEEDINGS

- Unless a judge otherwise orders, hearings under *Children and Youth Care and Protection Act* must be held in private [see s. 48(1)(c)]

CIVIL PROCEEDINGS

- Applications for an investigation of a corporation and an affiliated corporation shall be held in private [see *Corporations Act*, s. 359(5)]
- Applications for a contempt order will be heard in private where they involve a minor or mentally incompetent person or in which a secret process, discovery or invention is in issue [see *Rules of the Supreme Court*, 1986, r. 53.04]

C. Cameras and Electronic Recording Devices

Anyone bringing a camera, phone or any other device which can take pictures or record video or audio into a courthouse of the Supreme Court of Newfoundland and Labrador must comply with this policy and with any publication bans, sealing orders, or other restrictions imposed either by legislation, common law, or court order. It is the person's responsibility to identify any restrictions which may be imposed by statutory provisions, rules, or court order.

Anyone who uses a device in a manner that the presiding judge determines to be unacceptable may be ordered to turn off the device, leave the device outside the courtroom, leave the courtroom, or abide by any other order the presiding judge may make.

i. Civil and Criminal Proceedings

Unless the presiding judge orders otherwise, persons attending civil or criminal proceedings are permitted to:

- Record – but not transmit – audio during court proceedings for note-taking purposes only;
- tweet, text or use other forms of text-based communication when the court is in session;
- take photographs or make video-recordings in the courtroom, but only when the court is **NOT** in session (unless it is a ceremonial proceeding such as a call to the Bar, a swearing-in of a judge or a wedding, in which case this may be permitted during the proceeding); and
- take photographs, make video-recording or conduct interviews in the courthouse, but only if the Chief Executive Officer of the Supreme Court, in consultation with the Chief Justice, has specifically designated an area for this purpose or if the Chief Justice of the Supreme Court has expressly authorized it in writing.

The use of a device for any of the above purposes must be discreet and may not interfere with court proceedings. No one is permitted to speak on a communication device while the court is in session. All devices must be set to silent or vibrate mode.

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Notwithstanding the above, the use of communication devices while the court is in session is **NOT** permitted by jurors.

ii. Family Proceedings

Because of the nature of family proceedings, the recording of a proceeding and the use of cameras or communication devices in the courtroom is **NOT** permitted unless the presiding judge makes an order allowing it. Parties to adoption proceedings may request, and the presiding judge may authorize, that photographs be taken in the courtroom following the granting of an adoption order.

The use of cameras to take pictures, record video or conduct interviews of persons involved in family proceedings (such as child protection matters, adoptions, divorce proceedings, custody and access matters, child support matters and property division matters) is **NOT** permitted in the courthouse except where expressly authorized in writing by the Chief Justice of the Supreme Court or the Senior Administrative Judge of the Family Division.

3. ACCESSING THE COURT FILE

A. General

This section deals with how a person can get access to the court file. The court file here includes documents filed with the court, such as pleadings, briefs, and orders, as well as documents produced by the court, such as minutes and reasons for judgment. Please note that this section does not apply to exhibits or recordings of court proceedings. Access to exhibits is dealt with in part 4 and access to recordings of proceedings is dealt with in part 5.

The Registry is the custodian of the security and integrity of court records and has the responsibility of safeguarding them. This means that court staff will supervise a person's access to court records at all times.

If a person is permitted to view a document under this Part, that person is entitled to a copy of the document, upon paying the required fee (\$0.25/page). Alternatively, the person entitled to access may make notes or take photographs of the document.

If access to a file is restricted, this will be identified by a yellow label affixed to the front of the court file indicating the restrictions. While the Registry will attempt to inform members of the public about any existing restrictions on access to court records, persons who view or obtain copies of documents which are subject to a restriction on publication are responsible for complying with that restriction (a list of common restrictions on publication is included in Appendix A). Failure to do so may be an offence or constitute contempt of court.

If you have questions about how to access a document included in the court record, please contact the court Registry. Contact information for the court Registry may be found at:

<http://www.court.nl.ca/supreme/contact.html>

Please note that if you are not a party and you do not know the file number of the file you want to view, you will have to pay a \$20 fee for a Registry staff member to conduct a search. To request a search, you must complete the "Requisition for Search/Copy" found in Appendix B.

B. Party and Counsel Access to Court File

Parties to a proceeding and their counsel are permitted to have access to any document included in the court file of their proceeding, subject to some exceptions (for example, documents that are sealed are often only viewable with a Court order). To request access, the party or counsel for the party must make a request in person at the Registry counter. This applies in civil, criminal and family proceedings. Note that, in some cases, a judge may reserve the right to review court minutes before their release to a party to ensure their accuracy.

Parties to family proceedings and their counsel may also authorize other persons, in writing, to access their court records, but Registry staff members will require such persons to sign an undertaking before granting access. A sample undertaking is provided at Appendix C.

C. Public Access to Court File in Family Cases

Because of the nature of the information contained in family court records, access to court records is more carefully controlled. Rule F2 of the *Supreme Court Family Rules* provides that members of the public (i.e. not a party or the lawyer for a party) must make a formal application to a judge for access to a court record. This means you will have to complete an “interim application with notice” form and file it with the Court. The applicable form may be found at the following link:

<http://www.court.nl.ca/supreme/family/forms/F18.03A%20-%20Interim%20Application.pdf>

A judge will hear the application and determine whether access should be granted. Where a judge grants your application, the judge may place restrictions on that access (e.g., the judge may require redaction of personal information from the file, or grant access only to certain portions of the file).

Unless an order states otherwise, a separate application will be required every time a person seeks access to a family court record, even if that person has been granted access previously.

“Officers of the Court” (which includes lawyers) may request to view a file by filing an interim application without notice for a procedural order (see rule F2.02(3) of the *Supreme Court Family Rules*). Access will only be granted where the application is approved by a judge.

D. Public Access to the Court File in Civil and Criminal Cases

A member of the public may access any document in the court file in a civil or criminal proceeding, unless legislation, the common law, or a court order prohibits or restricts access to all or some part of the record. Table 2, below, sets out common, mandatory restrictions on access to documents filed with the court in civil and criminal proceedings. Other restrictions may be applicable in any given case.

Public requests for access to the court file in criminal or civil cases must be made in person at the Registry counter and access will be provided as soon as possible unless there is a restriction on access. Please note that immediate access might not be possible where:

- The file is with a judge for review or in court;
- The file is being used by parties, witnesses, interpreters or jurors at the time the request is made;
- The Registry staff member needs to seek judicial direction to ensure that possible restrictions on access are adhered to; or

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- The file must be retrieved from off-site storage or is in transit from another judicial centre.

Court orders restricting access to the court file may be made pursuant to the common law or statute. Where the judge has discretion to decide whether to order a restriction on access to the court file, the discretion must be exercised in accordance with the test set out in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 and later refined in *R. v. Mentuck*, 2001 SCC 76.

Table 2 - Mandatory restrictions on access to the court file in criminal/civil proceedings (not a complete list)

CRIMINAL PROCEEDINGS

- Any document relating to wiretap applications is not accessible by the public [see *Criminal Code*, s. 184.3(3), (7), and (8) and s. 187].
- Records relating to a complainant or a witness cannot be produced to an accused in proceedings relating to sexual interference, invitation to sexual touching, sexual exploitation, incest, anal intercourse, bestiality, corrupting children, luring a child, indecent acts, keeping a common bawdy house, procuring, prostitution and sexual assault [see *Criminal Code*, ss. 278.2-278.6]
- Documents seized by a peace officer which a judge has determined are subject to solicitor-client privilege must not be disclosed to the public [see *Criminal Code*, s. 488.1(4)]
- Pre-trial conference reports [see *Criminal Proceedings Guidelines*, rule 10]
- Victim impact statements, until opened and read in open court.
- The identity of a young person in matters under this Act must not be disclosed (with exceptions) [see *Youth Criminal Justice Act*, ss. 110(1)-(6), 112]
- Access to records kept by the court is prohibited except by certain specified persons [see *Youth Criminal Justice Act*, ss. 117-122, 124]

CIVIL PROCEEDINGS

- Contingency fee agreements cannot be disclosed
- All documents relating to money paid into court under Rule 20 cannot be disclosed to the public [see *Rules of the Supreme Court, 1986*, r. 20]
- Settlement conference briefs and materials [see *Rules of the Supreme Court, 1986*, r. 39B]

- Materials delivered to a judge for a mini-trial shall not be placed in the court file or disclosed to the trial judge [see *Rules of the Supreme Court, 1986*, r. 39C.03(1)]
- A mediator's report shall be sealed [see *Rules of the Supreme Court, 1986*, r. 37A.07(2)]
- Offers to settle [see *Rules of the Supreme Court, 1986*, r. 20A]
- Applications for approval of a settlement on behalf of a person under disability which has been refused shall be sealed and not disclosed to the trial judge [see *Rules of the Supreme Court, 1986*, r. 8.07A]

4. ACCESSING EXHIBITS

A. General

This section deals with how a person can get access to an exhibit filed with the court. The Registry is the custodian of the security and integrity of exhibits and must safeguard them for the period of time set out in the rules. This means that court staff will supervise a person's access to exhibits at all times.

If a person is permitted to access an exhibit under this Part, and the exhibit is capable of being copied (meaning the exhibit is a document) that person is entitled to a copy of the exhibit, upon paying the required fee (\$0.25/page). Alternatively, the person entitled to access may make notes or take photographs of the exhibit.

If access to an exhibit is restricted, this will be identified by a yellow label affixed to the front of the court file indicating the restrictions. While the Registry will attempt to inform members of the public about any existing restrictions on publication, persons who view or obtain copies of exhibits which are subject to a restriction on publication are responsible for complying with that restriction (a list of common restrictions on publication is included in Appendix A). Failure to do so may be an offence or constitute contempt of court.

If you have questions about how to access an exhibit included in the court record, please contact the court Registry. Contact information for the court Registry may be found at:

<http://www.court.nl.ca/supreme/contact.html>

If you are not a party and you do not know the file number of the file in which the exhibit you wish to examine is located, you will have to pay a \$20 fee for a Registry staff member to conduct a search. To request a search, you must complete the "Requisition for Search/Copy" found in Appendix B.

B. Party and Counsel Access to Exhibits

Parties to a proceeding and their counsel are permitted to have access to any exhibit included in the court record of their proceeding (unless access is restricted by order/legislation). To request access, the party or counsel for the party must make a request in person at the Registry counter. This applies in civil, criminal and family proceedings.

Parties to family proceedings and their counsel may also authorize other persons, in writing, to access exhibits, but Registry staff members will require such persons to sign an undertaking before granting access. A sample undertaking is provided at Appendix C.

C. Public Access to Exhibits in Family Cases

Because of the nature of the information contained in family court records, access to court records is more carefully controlled. Rule F2 of the *Supreme Court Family Rules* provides that

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members of the public (i.e. not a party or the lawyer for a party) must make a formal application to a judge for access to an exhibit in a family proceeding. This means you will have to complete an “interim application with notice” form and file it with the court. The applicable form may be found at the following link:

<http://www.court.nl.ca/supreme/family/forms/F18.03A%20-%20Interim%20Application.pdf>

A judge will hear the application and determine whether access should be granted. Where a judge grants your application, the judge may place restrictions on that access (e.g., the judge may require redaction of personal information from the file, or grant access only to certain portions of the file).

Unless an order states otherwise, a separate application will be required every time a person seeks access to a family court record, even if that person has been granted access previously.

“Officers of the Court” (which includes lawyers) may request to view a file by filing an interim application, without notice, for a procedural order (see rule F2.02(3) of the *Supreme Court Family Rules*). Access will only be granted where the application is approved by a judge.

D. Public Access to Exhibits in Civil and Criminal Cases

A member of the public may access an exhibit in a civil or criminal proceeding, unless legislation, the common law, or a court order prohibits or restricts access to all or some part of the record. Table 2, above, sets out common, mandatory restrictions on access to documents filed with the court in civil and criminal proceedings. Other restrictions may be applicable in any given case.

Public requests for access to exhibits must be made in writing to the court in the form included as Appendix D, below. The request must indicate the kind of access requested, e.g., viewing, copying, publishing or a combination thereof. The judge reviewing the request may require further submissions and/or a hearing.

Court staff may reject a request if: (a) access to the exhibit is prohibited by legislation or an order; or (b) the exhibit was tendered while the hearing was closed to the public. Please note that the parties’ consent is not required for the public to access exhibits.

Court orders restricting access to an exhibit may be made pursuant to the common law or statute. Where the judge has discretion to decide whether to order a restriction on access to an exhibit, the discretion must be exercised in accordance with the test set out in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 and later refined in *R. v. Mentuck*, 2001 SCC 76.

5. ACCESSING RECORDINGS OF COURT PROCEEDINGS

A. General

This section deals with how a person can get access to a recording of a proceeding held in court. It should be noted that, while the open court principle permits members of the public to observe court proceedings as they are taking place, it does not generally include a right to access to the sound recording of the proceedings produced by the court. The court may, however, in appropriate circumstances and where appropriate safeguards may be imposed, permit access to the sound recordings of civil and criminal proceedings. (See section 7(3) of the *Recording of Evidence Act*, which provides that the court may release a copy of the sound recording of a proceeding.)

Requests for access to the recording of a proceeding or to listen to a sound recording should be referred to the Information Management (IM) Division office in the General Division courthouse in St. John's, or to the Registry counter in any other judicial centre. Any such requests must be made using the form set out below in Appendix E and/or by emailing the appropriate information to the IM Division at IMDivision@supreme.court.nl.ca.

In some cases you may not be entitled to a copy of the sound recording, but you may be entitled to come into the Court to listen to the audio of a Court proceeding. If you would like to attend at the Court to listen to audio of a Court proceeding, you should contact the Court's Information Management Division to set up an appointment to do so. Not all judicial centres have appropriate facilities to permit a person to listen to sound recordings of court proceedings, however, and a request to listen to the sound recording may be denied on that basis.

Where a person is entitled to access the recording of the proceeding, they are entitled to a copy of the court minutes of that proceeding.

Any applicable fees must be paid for services requested from the court in relation to listening to or obtaining a copy of the sound recording of a court proceeding. This includes the search fee, the photocopying/printing fee, and the fee to obtain a copy of the sound recording on CD.

Access to the recording might not be granted immediately where court staff members have to inquire into whether there are any restrictions on access.

B. Restrictions on Use

Copies of the recording of proceedings, where released, are provided solely for the purposes of: the production of a transcript for an appeal; preparation in connection with the proceeding or related proceedings; or to confirm what transpired in the course of a proceeding. The recordings must not be broadcast or transmitted on television, radio, the internet, or in any other way. The recordings are intended for personal use and must not be provided to any other person, except as reasonably required in conjunction with the permitted uses – for example, the sound recording

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may be provided to a transcriptionist – or where a statutory, or common law duty requires the disclosure.

Any access to sound recordings permitted by the court is subject to any applicable restriction on publication (a list of common restrictions on publication is included in Appendix A). Court staff members will attempt to notify persons of any such applicable restrictions but it is the responsibility of the person listening to, or obtaining a copy of, the sound recording of a civil or criminal proceeding to comply with any applicable restriction on publication.

Persons obtaining access to copies of recordings of court proceedings will be required to sign an undertaking before being granted access. A copy of the required undertaking is included as appendix F. Breach of an undertaking provided to the court may be punishable by contempt.

C. Party Access to Recordings in All Cases

Subject to the availability of appropriate facilities, a party or the party’s lawyer may attend at the court to listen to the sound recording of any trial or hearing in a civil or criminal proceeding, whether open or closed to the public.

Subject to signing the required undertaking, a party may obtain a copy of the sound recording of any trial or hearing in a civil or criminal proceeding, whether open or closed to the public.

While a judge may direct, or the rules may stipulate, that case management appearances, conferences, or alternative dispute resolution processes occurring in court will be recorded for the judge’s note-taking purposes, these matters are not held “on the record”. The rationale for this is that parties should be encouraged to engage in full and frank discussions regarding the possibility of resolving issues and settling claims at these appearances, without fear that these recordings will be publically available. Because these recordings do not form part of the official court record of a proceeding, a party to a family, civil or criminal proceeding is not permitted to obtain access to the sound recording of any of the following types of court appearances without a court order:

- (a) a case management meeting in a civil proceeding, or a case management conference in a criminal proceeding;
- (b) a settlement conference in a civil proceeding or family proceeding, or a resolution conference in a criminal proceeding;
- (c) a mini-trial in a civil proceeding; or
- (d) a pre-trial conference in a civil proceeding or criminal proceeding or a trial readiness inquiry in a family proceeding;

(See the *Rules of the Supreme Court, 1986*, rules 18A.06(3)(d) and (i); and rule 39.06(1). See also rule 8.01(2) of the *Criminal Proceedings Guidelines*.)

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D. Public Access to Recordings in Family Cases

Because of the nature of the information contained in family court records, access to court records is more carefully controlled. Rule F2 of the *Supreme Court Family Rules* provides that members of the public (i.e. not a party or the lawyer for a party) must make a formal application to a judge for access to recordings of a family proceeding. This means you will have to complete an “interim application with notice” form and file it with the court. The applicable form may be found at the following link:

<http://www.court.nl.ca/supreme/family/forms/F18.03A%20-%20Interim%20Application.pdf>

A judge will hear the application and determine whether access should be granted. Where a judge grants your application, the judge may place restrictions on that access.

Unless an order states otherwise, a separate application will be required every time a person seeks access to a family court record, even if that person has been granted access previously.

“Officers of the Court” (which includes lawyers) may request access to the recording of a court proceeding by filing a desktop interim application, without notice, for a procedural order (see rule F2.02(3) of the *Supreme Court Family Rules*). Access will only be granted where the application is approved by a judge.

E. Public Access to Recordings in Civil and Criminal Cases

Where the court has the appropriate facilities to permit it, a member of the public may attend at the court to listen to the sound recording of any civil or criminal trial or hearing which was open to the public.

A member of the public may obtain a copy of the sound recording of any civil or criminal trial or hearing which was open to the public unless the proceeding is subject to a restriction on publication, distribution, or access.

No other access to recordings of court proceedings can be provided to a member of the public without a court order.

The order may be obtained by way of originating application (*ex parte*) for a copy of the sound recording, pursuant to s. 7(3) of the *Recording of Evidence Act*, filed in accordance with Rule 5 of the *Rules of the Supreme Court, 1986*. The application form, Form 5.02B, is available at the following link:

http://www.court.nl.ca/supreme/general/forms/civil_proceedings/form_502b_originating_appl_ep.pdf

Wherever possible, applications for access to a sound recording of a proceeding must be made to the judge who presided over the proceeding. If known, the name of the judge who presided over the proceeding should be noted to the Registry clerk at the time of filing the application.

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A judge, in considering whether to permit a member of the public to obtain a copy of the sound recording of a proceeding which was subject to a restriction on publication, may consider whether there is any risk that the sound recording might be used in contravention of the applicable restriction and whether the parties to the proceeding might encounter difficulties in enforcing the restriction on publication, once a copy of the sound recording is released.

A judge may consider whether notice should be given to the parties to the proceeding that is the subject of the sound recording. The judge may also consider whether some other form of access may be sufficient for the member of the public's purposes. Where a judge grants an application for access to a sound recording, the judge may impose such conditions on the access as he or she considers appropriate.

6. GETTING NOTICE OF APPLICATIONS TO RESTRICT PUBLIC ACCESS TO COURT PROCEEDINGS AND RECORDS

If there is an application to restrict the public or media's access to a court proceeding or record, the judge may direct the registry to provide notice to media organizations of the date and time of the hearing. The notice will be provided through the Court's Twitter account.

Please note that notice will only be sent if the application requests that the judge use his/her discretion to restrict access to the proceeding or record. Therefore, you will not receive a notice where legislation requires the hearing to be closed to the public and the media such as proceedings under the *Children and Youth Care and Protection Act*.

Further note that these hearings are usually held as soon as possible after the application is brought forward and therefore, it is likely there will be little time between when the media are advised of the hearing and the date of the hearing.

The notification procedure outlined here is provided as a courtesy. As a result, the court is not responsible for any missed or late notices or for any delay in the distribution or receipt of notices.

A. Getting notice

As noted above, the notice of the hearing will be sent out from the Court's Twitter account. If you wish to receive the notices, you must follow the Court. Notices will normally include the following information:

“A hearing to restrict access in matter [court file number] will be heard at [time, date, and place].”

If you require additional information regarding the details of the application, you may contact the Court's registry.

B. Making submissions on the application

Any representative of the media who wishes to make submissions to keep the proceeding or court record open to the public and the media should attend on the hearing date prepared to request standing and to make argument. The judge has the discretion to grant or deny standing to any representative.

C. Getting further information

If you have any questions, contact the Registry of the courthouse in your area. The contact info may be found at:

<http://www.court.nl.ca/supreme/contact.html>

7. GLOSSARY OF TERMS

The following terms have the assigned meaning in this guide.

“**Access**” includes attending a court proceeding or searching for, viewing, listening to, or receiving a copy of all or part of a court record. Not all types of access are always available.

“**Counsel**” means a lawyer for a party to a court proceeding.

“**Court file**” means any document filed with the court’s Registry (other than an exhibit). It includes documents filed with the court, such as pleadings, briefs, and orders, and documents produced by the court such as minutes and reasons for judgment.

“**Courthouse**” means the physical structure housing the courtrooms and includes the exterior portions of the building, such as steps, parking areas, and entranceways.

“**Court proceeding**” includes a trial, or a hearing of an application. It does not include a case management appearance, alternative dispute resolution process, or other type of appearance routinely heard in the absence of the public.

“**Court record**” includes all information held by the court about ongoing or completed cases, such as court files, exhibits, and recordings of court proceedings.

“**Exhibit**” is a piece of evidence that has been tendered by a party in the course of a court hearing or trial. It can be a document or “real evidence”, meaning a physical object (such as drugs, a weapon, etc.).

“**Information Management Division**” means the division of the Supreme Court charged with maintaining, organizing, and storing the court’s records and information.

“**Party**” means a party to a court proceeding and, unless the context requires otherwise, includes a party’s counsel.

“**Public**” includes the media as the media is the representative of the public. It does not include a party to a proceeding or their counsel.

“**Publication ban/restriction on publication**” means a court order or legislative provision which restricts the dissemination and publication of particular information about a court proceeding.

“**Registry**” means the registry counter in a courthouse. It is where the court’s files are kept.

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“Restriction/restriction on access” means any legislative or court ordered restriction on access to the court record or proceeding. It includes sealing orders, orders permitting a person to use a pseudonym, publication bans, or any other order which would limit the public’s right to know or disseminate information about a court proceeding.

“Sealing order” is a type of court order that prevents members of the public from accessing all or part of a court file or exhibit.

APPENDIX A - COMMON RESTRICTIONS ON PUBLICATION

Any person who attends court proceedings or who intends to publish or disseminate information regarding Court proceedings must comply with any restriction on publication that applies to the proceeding. It is the duty of those persons to be aware of the restriction. The following section includes statutory provisions which create some of the more commonly seen restrictions on publication for reference. Please note that this is not a complete list of all possible restrictions on publication.

A. Criminal Proceedings

i. Criminal Code, R.S.C. 1985, c. C-46

Section 276.3 – applications regarding a complainant’s prior sexual history

276.3 (1) *No person shall publish in any document, or broadcast or transmit in any way, any of the following:*

(a) the contents of an application made under section 276.1 [*an application to admit evidence regarding a complainant’s sexual history*];

(b) any evidence taken, the information given and the representations made at an application under section 276.1 or at a hearing under section 276.2;

(c) the decision of a judge or justice under subsection 276.1(4), unless the judge or justice, after taking into account the complainant’s right of privacy and the interests of justice, orders that the decision may be published, broadcast or transmitted; and

(d) the determination made and the reasons provided under section 276.2, unless

(i) that determination is that evidence is admissible, or

(ii) the judge or justice, after taking into account the complainant’s right of privacy and the interests of justice, orders that the determination and reasons may be published, broadcast or transmitted.

(2) Every person who contravenes subsection (1) is guilty of an offence punishable on summary conviction.

Section 486.4 – names and identifying information of complainant/witness in sexual offence case

486.4 (1) Subject to subsection (2), the presiding judge or justice may ***make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way***, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347 [***these include sexual offences such as sexual interference and sexual assault***], or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Section 486.5 – names and identifying information of witness/justice system participant

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

(2.1) The offences for the purposes of subsection (2) are

(a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the Security of Information Act; or

(d) an offence under subsection 21(1) or section 23 of the Security of Information Act that is committed in relation to an offence referred to in paragraph (c).

(3) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

- (8) An order may be subject to any conditions that the judge or justice thinks fit.
- (9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way
- (a) the contents of an application;
 - (b) any evidence taken, information given or submissions made at a hearing under subsection (6); or
 - (c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

Section 517 – applications for judicial interim release (bail applications)

517. (1) If the prosecutor or the accused intends to show cause under section 515 [*judicial interim release (or “bail”) applications*], he or she shall so state to the justice and the justice may, and shall on application by the accused, before or at any time during the course of the proceedings under that section, ***make an order directing that the evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice shall not be published in any document, or broadcast or transmitted in any way before*** such time as
- (a) if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or
 - (b) if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, ***the trial is ended.***
- (2) Every one who fails without lawful excuse, the proof of which lies on him, to comply with an order made under subsection (1) is guilty of an offence punishable on summary conviction.

Section 539 – evidence taken at a preliminary inquiry

- 539 (1) Prior to the commencement of the taking of *evidence at a preliminary inquiry*, the justice holding the inquiry
- (a) may, if application therefor is made by the prosecutor, and
 - (b) shall, if application therefor is made by any of the accused,
- make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before*** such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, ***the trial is ended***.

(2) Where an accused is not represented by counsel at a preliminary inquiry, the justice holding the inquiry shall, prior to the commencement of the taking of evidence at the inquiry, inform the accused of his right to make application under subsection (1).

(3) Every one who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction.

Section 648 – after jury has been given permission to separate

[Note: this section has been interpreted as applying to determinations made by a judge exercising the powers of a trial judge under s. 645(5), even before the jury in empaneled.]

648 (1) *After permission to separate is given to members of a jury under subsection 647(1), no information regarding any portion of the trial at which the jury is not present shall be published in any document or broadcast or transmitted in any way **before** the jury retires to consider its verdict.*

(2) Every one who fails to comply with subsection (1) is guilty of an offence punishable on summary conviction.

ii. Youth Criminal Justice Act, S.C. 2002, c. 1

Section 110 – names and identifying information of a young person dealt with under the Act

110 (1) Subject to this section, ***no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.***

(2) Subsection (1) does not apply

(a) in a case where the information relates to a young person who has received an adult sentence;

(b) in a case where the information relates to a young person who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under subsection 75(2); and

(c) in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.

(3) A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

(4) A youth justice court judge shall, on the ex parte application of a peace officer, make an order permitting any person to publish information that identifies a young person as having committed or allegedly committed an indictable offence, if the judge is satisfied that

(a) there is reason to believe that the young person is a danger to others; and

(b) publication of the information is necessary to assist in apprehending the young person.

(5) An order made under subsection (4) ceases to have effect five days after it is made.

(6) The youth justice court may, on the application of a young person referred to in subsection (1), make an order permitting the young person to publish information that would identify him or her as having been dealt with under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, if the court is satisfied that the publication would not be contrary to the young person's best interests or the public interest.

Section 111 – names and identifying information of a child or young person who was a victim or witness

111 (1) Subject to this section, *no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.*

(2) Information that would serve to identify a child or young person referred to in subsection (1) as having been a victim or a witness may be published, or caused to be published, by

(a) that child or young person after he or she attains the age of eighteen years or before that age with the consent of his or her parents; or

(b) the parents of that child or young person if he or she is deceased.

(3) The youth justice court may, on the application of a child or a young person referred to in subsection (1), make an order permitting the child or young person to publish information that would identify him or her as having been a victim or a witness if the court is satisfied that the publication would not be contrary to his or her best interests or the public interest.

B. Family Proceedings

i. Children and Youth Care and Protection Act, S.N.L. 2010, c. C-12.2

Section 52 – Child protection proceedings

52. A person ***shall not, with respect to a proceeding under this Act, publish or make public information that has the effect of identifying***

(a) a child who is a witness at or a participant in a proceeding or who is the subject of a proceeding;

(b) the child's parent or foster parent; or

(c) a member of the child's family.

ii. Family Law Act, R.S.N.L. 1990, c. F-2

Section 58 – Intimate financial or personal matters in a family proceeding

58. The court may exclude the public from a hearing, or a part of it, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of ***intimate financial or personal matters*** outweighs the desirability of holding the hearing in public and ***the court may by order prohibit the publication of a matter connected with the application or given in evidence at the hearing.***



APPENDIX B – REQUISITION FOR SEARCH/COPY

**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR
(GENERAL/FAMILY)**

REQUISITION FOR SEARCH/COPY

PART A: REQUESTOR INFORMATION

Date of Request: _____ Name: _____
Phone Number: _____ Firm: _____

PART B : REQUEST

I hereby request the Court to ^

- search for a Court file (complete Part C) copy a document in a Court file (complete Part D)
- search for a Court file and then copy a document in the file (complete Parts C and D)

PART C: SEARCH

The cost of each search is \$20.00. Each name is considered a separate search. Search results will not be provided until the fee is paid. Please provide as much information as possible.

Period of time to be searched: _____
(The date of death must be included in the line above for Probate searches)

Name of party to be searched:

- 1. _____ 3. _____
- 2. _____ 4. _____

**** You will be contacted when the search has been completed. ****

PART D: COPY

All copies made by the Court are subject to a copy fee of \$0.25 per page. Copies will not be provided until the fee is paid. You must have either the Court file number or the names of the parties to request a copy of a document from a Court file.

Court File Number: _____

Parties: _____

Document(s) to be Copied (include date of filing if possible): _____

Check this box if you want to know the cost of copying before the document is copied.

** You will be contacted when your document(s) is/are ready. **

Search/Copy completed on _____ by _____.

Total fee _____ received on _____ by _____.

APPENDIX C – UNDERTAKING FOR FAMILY FILE/EXHIBIT



**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR
(GENERAL/FAMILY)**

**UNDERTAKING TO OBTAIN
ACCESS TO FILE/EXHIBIT IN A FAMILY PROCEEDING**

TO BE COMPLETED BY PERSON OBTAINING DOCUMENT(S) OR EXHIBIT(S)

I _____, am being provided with a copy of (a) document(s) or exhibit(s) from the Court record. When provided with (this/these), I undertake that:

1. I will not publish, disseminate, or transmit the document or exhibit on the internet, or in any other way without the prior consent of a judge.
2. I will not assist, permit, or authorize another person to publish, disseminate, or transmit the document or exhibit on the internet, or in any other way without the prior consent of a judge.
3. I will only use the document(s) or exhibit(s) for preparation or use in connection with the proceeding (including obtaining a report from an expert).
4. I will not distribute the document(s) or exhibit(s) to anyone without the prior consent of a judge, except to persons who reasonably need access to assist with one of the uses permitted in clause 3.
5. I will not copy, save, upload, or download the document or exhibit, except onto a computer under my control, for my own personal use, or in order to share the document(s) or exhibit(s) with a person described in clause 4; and
6. I am responsible for complying with any applicable restrictions on publication.

I understand that breach of this undertaking may be punishable by contempt proceedings in the Court.

SWORN TO or AFFIRMED at _____, this _____ day of _____, 20____.	
_____ <i>Signature</i>	_____ <i>Signature of Person Authorized to Administer Oaths</i>

APPENDIX E – REQUEST FOR ACCESS TO COPY OF SOUND RECORDING



**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR
(GENERAL/FAMILY)**

**REQUEST FOR ACCESS TO COPY OF SOUND RECORDING OF
CIVIL OR CRIMINAL PROCEEDING**

REQUESTOR INFORMATION

Name: _____ Date of Request: _____

Phone Number: _____ Email: _____

Are you a party to the proceeding or the lawyer for a party: yes no

SOUND RECORDING INFORMATION

Court File Number: _____

Case Name: _____

Court Proceeding Date(s): _____

You may need a Court order to access the recordings of Court proceedings. Please consult the Guide to Accessing Court Proceedings and Records for the Public and Media for more information.

I have attached a Court order to this request: yes no

Any existing publication bans that affect the sound recording continue to apply.

CDs are \$20.00 each. An initial payment of \$20.00 is required upon request and any remaining monies owed are required upon receipt. Fees are payable to “Supreme Court of Newfoundland and Labrador.” CDs/tapes not picked up after 30 days will be destroyed, and any fees owing must be paid before another request can be made.

Audio collected by: _____ Date: _____

THIS SECTION FOR INTERNAL COURT USE

Processed by: _____ on this _____ day of _____, 20____

ID Provided (if applicable)

Courtroom numbers and date(s): _____

CDs _____ at \$20.00/CD = _____ paid

APPENDIX F – UNDERTAKING FOR ACCESS TO COPY OF SOUND RECORDING



**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR
(GENERAL/FAMILY)**

**UNDERTAKING REGARDING THE USE OF SOUND
RECORDING**

TO BE COMPLETED BY PERSON OBTAINING CD

I _____, am being provided with a copy of the recording of a Court proceeding. When provided with the recording, I undertake that:

1. I will not broadcast, or disseminate the sound recording(s) on radio, television, the internet, or in any other way without the prior consent of a judge;
2. I will not assist, permit, or authorize another person to broadcast or disseminate the sound recording(s) on radio, television, the internet, or in any other way without the prior consent of a judge;
3. I will only use the sound recording for one or more of the following purposes: the production of a transcript for an appeal; preparation in connection with the proceeding or a related proceeding; or confirming what transpired during the proceeding.
4. I will not distribute the sound recording(s) to anyone without the prior consent of a judge, except to persons who reasonably need access to the recording to assist with one of the uses permitted in clause 3, including: other lawyers, articling students or administrative support persons assisting me in relation to this matter; transcriptionists; and expert witnesses I have retained to assist me with this matter.
5. I will not copy, save, upload, or download the sound recording, except onto a computer under my control, for my own personal use, or in order to share the recording with a person described in clause 4; and
6. I am responsible for complying with any applicable restrictions on publication.

I understand that breach of this undertaking may be punishable by contempt proceedings in the Court.

SWORN TO or AFFIRMED at _____, this _____ day of _____ , 20____ .	
_____ <i>Signature</i>	_____ <i>Signature of Person Authorized to Administer Oaths</i>