

# **Policy: Access to Court Records in Manitoba**

## **1.0 Introduction**

### **1.1 Principle of Openness**

An open court that permits access to both court proceedings and court records is of fundamental importance to a free and democratic society. This ensures that justice is not only done but seen to be done. This principle of openness is founded in historic common law principles which have been referred to by the Supreme Court of Canada in decisions such as *Nova Scotia (Attorney General) v. MacIntyre* [1982] 1 S.C.R. 175, wherein Dickson, C.J. for the majority of the court stated the following:

Many times it has been urged that the 'privacy' of litigants requires that the public be excluded from court proceedings. It is now well established, however, that openness is the exception and openness the rule. Public confidence in the integrity of the court system and understanding of the administration of justice are thereby fostered. As a general rule the sensibilities of the individuals involved are no basis for exclusion of the public from judicial proceedings. The following comments of Laurence J. in *R. v. Wright*, 8 T.R. 293, are apposite and were cited with approval by Duff J. in *Gazette Printing Co. v. Shallow* (1909), 41 S.C.R. 339 at p. 359:

Though publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings.

...

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 favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right.

### **1.2 Purpose**

The purpose of this policy is (1) to provide assistance to members of the public seeking access to court records maintained by Manitoba's three courts: The Court of Appeal, Court of Queen's Bench of Manitoba and The Provincial Court of Manitoba; and (2) to assist court personnel in responding to requests for access.

### **1.3 Definition of Public**

For the purpose of this policy, public includes any person; media organization; and private or governmental department or agency for which there is no statutory or other authority defining their access to court records. Public does not include the judiciary, judicial officers, and staff directly related to the operation of the court. Public also does not include the parties or their lawyers respecting access to the record in their case.

## **2.0 Access to Court Records**

### **2.1 Definition of Court Record**

For the purpose of this policy, court record is defined as any document or other material (physical or electronic) that is received or maintained by the court pertaining to or in connection with a judicial proceeding. It does not include any judicial administration records such as the scheduling of judges in trials, the content of judicial training programs, statistics of judicial activity prepared by or for a judge, or a judge's case notes.

### **2.2 General Access**

- 2.2.1** Information contained in a court record is accessible and may be viewed, except as may be excluded under 2.3.
- 2.2.2** A copy of information contained in a court record, such as a document, is generally permitted. However, in regard to some parts of the court record, the permission or an order of the court may be required to obtain a copy.
- 2.2.3** Court personnel will respond to a request for information contained in a court record within a reasonable time having regard for such factors as the volume of the information requested, whether the information is readily available or stored off-site, e.g. archived, etc. Some court information may be provided by court personnel via telephone, facsimile, regular and electronic mail.
- 2.2.4** Fees may be charged to access and copy court record information.
- 2.2.5** A court order banning or prohibiting publication of certain information contained in a court record does not affect access to that court record. Persons who request access to information contained in that court record are bound by the provisions of the order banning publication.

### **2.3 Exclusions**

- 2.3.1** The following court record information **is** excluded from public access:
  - Application and supporting material for the interception of private communications (“wiretap”) and any order made in consequence
  - Information (charge) where process (summons) has not been effected/served/denied/not issued, or warrant (first instance) has not been executed
  - Search warrant and Information in support, where a Report to a Justice has not been filed and objects have not been found as a result of the search
  - Jury list and current Jurors’ Roll
  - Resolution conference memorandum (criminal)
  - Pre-trial brief
  - Case conference brief
  - Case Management Information Statement

- ❑ Judicially Assisted Dispute Resolution brief
- ❑ All information contained in a youth court record pursuant to the provisions of the *Young Offenders Act* and/or the *Youth Criminal Justice Act*
- ❑ All information contained in an adoption court record pursuant to the provisions of *The Adoption Act*
- ❑ All information contained in a child protection court record pursuant to the provisions of *The Child and Family Services Act*
- ❑ Any information that is sealed by an order of the court

**2.3.2** The following court record information is excluded from public access until it becomes evidence in the court proceeding:

- ❑ Assessment report
- ❑ Exhibit book before trial
- ❑ Transcript of examination for discovery
- ❑ Pre-sentence report
- ❑ Victim impact statement
- ❑ Report of expert evidence
- ❑ Any other information as designated by a judge

### **3.0 Electronic Access**

Subject to the exclusions set out in 2.3, electronic access is given to court record information of the Court of Appeal and the Court of Queen’s Bench in Manitoba respecting civil, family and adult criminal proceedings. At this time, there is no electronic access to Provincial Court records. The following information may be obtained electronically via the courts web site <http://www.manitobacourts.mb.ca> or at <http://www.jus.gov.mb.ca>.

- ❑ court file number and title of the proceedings
- ❑ a listing of the documents filed, the document number and date filed with the court, document name and brief notes as to the contents of the document
- ❑ names of court parties and the name of their lawyer, contact information for the lawyer
- ❑ the date and time of next court hearing(s) in the court proceeding
- ❑ reference to any related court files
- ❑ general information as to available court dates to assist in the scheduling of a matter before the court
- ❑ a view of the daily court hearing list for court locations throughout Manitoba
- ❑ prejudgment and postjudgment interest tables from April 1993

## **4.0 Access to Court Proceedings**

### **4.1 General Access**

Access to a court proceeding is generally permitted.

### **4.2 Court Proceedings Not Open to the Public**

Some court proceedings are not open to the public in accordance with statutory authority, rules of the court, or at the discretion of the court. Some examples of these are:

- ❑ Child protection (in accordance with *The Child and Family Services Act*)
- ❑ Case conference; pre-trial conference; Judicially Assisted Dispute Resolutions (judicial mediation); resolution conference (in accordance with the rules of the court)
- ❑ Application to obtain a search warrant or wiretap (in accordance with the *Criminal Code*)