

Media Audio and Video Recordings in the Courtroom Guidelines (The MAVRIC Guidelines)

INTRODUCTION

At the request of the Chief Justice of Manitoba, the Chief Justice of the Court of Queen's Bench and the Chief Judge of the Provincial Court (the "Court Chiefs"), a committee was formed to consider issues related to the courts and media. The committee was fairly diverse and included two representatives of the media (selected by the media), a representative of the legal profession (selected by the Manitoba Branch of the Canadian Bar Association), court administrators, prosecutors (both federal and provincial appointed by their departments), a lawyer for the Winnipeg Police Service, a judge from each level of court, and a representative from the Law Society of Manitoba (the Committee).

The Committee recognized that whatever changes are made must be with a clear recognition that the primary consideration is the effective administration of justice. It noted that there had been a number of significant technological advances in the last decade with the advent of the Internet and wireless communications. The Committee was of the view that the time had come for the Courts to address these new realities.

Indeed, the Courts have already begun. A protocol respecting the use of a high speed secure wireless system by lawyers in the courthouse was recently implemented. This protocol is limited to lawyers and for court and professional purposes only. This system, which will provide counsel with a computer communication link to their offices, is expected to facilitate their work by streamlining scheduling and by providing them with additional case management, research or consultation opportunities.

The Committee tabled with the Court Chiefs a report that contained a number of recommendations relating to the media. Given the evolving technologies, it was agreed that the implementation of any guidelines would be reviewed on a regular basis. The Committee also agreed that any request to broadcast be limited to proceedings in the Court of Appeal and, with respect to the other courts, only to the delivery of reasons for decision. In other words the broadcast of hearings where testimony is given is not contemplated at this time.

CONTEXTUAL BACKGROUND

The open court principle

Courts must be open to the public. This has been described as the open court principle and explained by the Supreme Court of Canada in *Named Person v. Vancouver Sun*, [2007] 3 S.C.R. 252 (in paras. 31 and 32) as follows:

The “open court principle” is a “hallmark of a democratic society”, as this Court said in *Vancouver Sun (Re)*, [2004 SCC 43 \(CanLII\)](#), [2004] 2 S.C.R. 332, 2004 SCC 43, at para. 23. This principle, as the Court noted in that case, “has long been recognized as a cornerstone of the common law” (para. 24), and has been recognized as part of the law since as far back as *Scott v. Scott*, [1913] A.C. 417 (H.L.), and *Ambard v. Attorney-General for Trinidad and Tobago*, [1936] A.C. 322 (P.C.), where Lord Atkin wrote, at p. 335: “Justice is not a cloistered virtue”. “Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity” (J. H. Burton, ed., *Benthamiana: or, Select Extracts from the Works of Jeremy Bentham* (1843), at p. 115).

Open courts have several distinct benefits. Public access to the courts allows anyone who cares to know the opportunity to see “that justice is administered in a non-arbitrary manner, according to the rule of law”: *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996 CanLII 184 \(S.C.C.\)](#), [1996] 3 S.C.R. 480 (“CBC”), at para. 22. An open court is more likely to be an independent and impartial court. Justice seen to be done is in that way justice more likely to be done. The openness of our courts is a “principal component” of their legitimacy: *Vancouver Sun*, at para. 25.

Role of the media with respect to the open court principle

There can be no doubt of the importance of the media in our democratic society. Again, as was explained by the Supreme Court of Canada but this time in *Canadian Broadcasting Corporation v. New Brunswick (Attorney General)*, [1991] 3 S.C.R. 459 (at page 475):

The media have a vitally important role to play in a democratic society. It is the media that, by gathering and disseminating news, enable members of our society to make an informed assessment of the issues which may significantly affect their lives and well-being.

While courts are open to the public, few members have the opportunity to attend those courts in person. Courts almost always take place during the day when most people are otherwise occupied. Not every Manitoban lives in a community where the court sits and this is especially so for the Court of Queen's Bench and the Court of Appeal. As such, most people rely on the media to tell them what happens. As a result, the media play an important role with regard to informing the public about the operation of the courts and the open court principle.

Specific concerns with respect to audio and video recordings

There are several legitimate concerns surrounding the use of audio and video recordings in the courtroom that must be taken into account. The justice system relies on people willing to give evidence, often where their own safety may be at risk. Televising proceedings may discourage independent witnesses from coming forward or from testifying fully and candidly. There is also a concern that cameras may encourage theatrics. There is also a security concern that those who work in the system (crown attorneys, police, lawyers and judges) may be more vulnerable if their images are broadcast. Finally, given the nature of recordings, there is a concern that broadcasts may be used inappropriately or manipulated. In a world where electronic images can easily be captured, stored, manipulated and broadcast, these concerns have to be taken seriously.

The ultimate decision to allow any broadcast rests with the court

It is important to remember that any recommended course of action with respect to audio and video recordings in a courtroom is not meant to in any way fetter a court's discretion. Any application for broadcast will be granted solely at the discretion of the presiding judge or, in the case of a proceeding in the Court of Appeal, of a chambers judge of that court. The ultimate decision to allow or refuse any broadcast rests with the court.

GUIDELINES

1) Definitions

For the purposes of these guidelines, the following definitions apply:

- 1.01 Eligible participating media: means *bona fide* media professionals representing *bona fide* media organizations which have agreed to abide with these guidelines as per section 3;
- 1.02 Audio recording: means a storage device on which sound has been recorded;
- 1.03 Broadcast: means when *eligible participating media* transmit, send out or communicate an *audio recording* and/or a *video recording*;
- 1.04 Proceeding: means only those court proceedings identified in 2.01 and taking place in the Law Courts Building at 408 York Avenue, Winnipeg, Manitoba;
- 1.05 Video recording: means a storage device on which images have been recorded but does not include still cameras (non-video). Still images could, of course, be captured from the video feed.

2) Applications Limited to Certain *Proceedings*

- 2.01 It is understood that any application will be limited;
 - A) to *broadcast only proceedings* in the Court of Appeal and,
 - B) with respect to the other courts, to *broadcast only proceedings* where the delivery of reasons for decision are given (see also 2.04 below for certain restrictions)

It is always understood that any application to *broadcast a proceeding* will be granted solely at the discretion of the presiding judge or, in the case of a proceeding in the Court of Appeal, of a chambers judge of that court.

- 2.02 Still camera photography (non-video cameras) in courtrooms will not be permitted because it could be disruptive and intimidating to witnesses. Still images can, of course, be captured from the *video recording* that is allowed;
- 2.03 Any counsel or other participant in the *proceeding* who objects to having their image and or voice *broadcast* shall raise their opposition for the court's consideration.
- 2.04 Finally, the following types of matters will generally not be considered for *broadcast*:
- a) any matter in which a party to the *proceedings* is under the age of 18 years or was at the time of the event that gave rise to the *proceedings*;
 - b) family law and child custody cases;
 - c) bail matters, including where a psychiatric assessment has been requested;
 - d) matters relating to sexual offences;
 - e) matters involving trade secrets or business information of a confidential nature;
 - f) matters that would identify or tend to identify a confidential informant, undercover police officer, police investigative technique, police intelligence or other sensitive information;
 - g) applications for challenges to a jury panel, jury selection, and proceedings in jury trials conducted in the absence of the jury, including all pre-trial applications in relation to jury trials;
 - h) cases in which the public has been excluded by order under the Criminal Code;
 - i) cases where the safety of a participant may be jeopardized by *broadcast*; and

- j) pre-hearing conferences, applications for publication bans and applications for *broadcast*;

3) Eligible Participating Media

- 3.01 All *audio recording* and *video recording* feeds will be limited to *eligible participating media*.
- 3.02 *Eligible participating media* must also sign an undertaking acknowledging that they have reviewed these guidelines in advance of any broadcast and agree to abide by its terms.

4) Application for Leave to Broadcast

- 4.01 An *eligible participating media* must apply for permission to *broadcast a proceeding*;
- 4.02 An application for *broadcast* shall be brought using the same style of cause and court suit number for which *broadcast* is sought, with the applicant shown as an additional party designated as 'media intervener' on documents related to the application for *broadcast*.
- 4.03 The application must be served on all parties to the *proceeding*;
- 4.04 An application for an order permitting *broadcast* shall be made to the Registrar, upon written notice to the parties or their counsel of record, not less than fourteen days before the day scheduled for the hearing of the *proceeding* unless leave is granted from the judge presiding over the *proceeding* or in the case of a *proceeding* in the Court of Appeal, from a chambers judge of that court.
- 4.05 Only one order permitting *broadcast* shall be made in any *proceeding*, as a result, only the first properly filed application shall be considered;

- 4.06 The application shall state the purpose, scope and nature of the coverage sought. It shall be accompanied by a draft of the order sought, by the written consent of any party to the *proceedings* and confirmation that arrangements have been made for pooling the *broadcast* to other *eligible participating media*. Applications must be supported by affidavit.
- 4.07 *Broadcast* will only be permitted where there is an order of the court in accordance with these guidelines or unless ordered otherwise by a court;
- 4.08 The application shall be heard before the judge presiding over the *proceeding* or in the case of a *proceeding* in the Court of Appeal, before a chambers judge of that court;
- 4.09 It is often the practice for judges delivering reasons for decision to enter the courtroom, pronounce the order and provide the court clerk with any written reasons for distribution to counsel. These guidelines are not meant to in any way alter that practice should the judge so choose;

5) Objection to Application

- 5.01 A notice of objection to the application for *broadcast* shall be filed with the Registrar with notice to the media intervener and all other parties or their counsel within two clear days of the receipt of the notice of application, unless leave is granted from the judge presiding over the *proceeding* or in the case of a *proceeding* in the Court of Appeal, from a chambers judge of that court;
- 5.02 If no objection is filed, the order permitting *broadcast* may be made without a hearing;
- 5.03 Even if no objection is filed or even when all parties consent to an order for *broadcast*, the judge presiding over the *proceeding* or in the case of a *proceeding* in the Court of Appeal, the chambers judge of that court, still maintains the discretion to refuse an order for *broadcast*;

5.04 A notice of objection shall include a date for a hearing on the application for *broadcast*, not earlier than two clear days after filing the objection, and shall give two clear days notice of the hearing, in writing, by facsimile transmission, by telephone or orally, to the applicant and the other parties (or their counsel).

6) Hearing of Application

6.01 The judge hearing the application may either grant the order for *broadcast*, deny the order, or grant the order with conditions. The decision to grant or deny the order for *broadcast* is an exercise in judicial discretion;

6.02 As mentioned in 5.03, even when all parties consent to an order permitting *broadcast*, the judge presiding over the *proceeding* or in the case of a *proceeding* in the Court of Appeal, the chambers judge of that court, still maintains the discretion to refuse an order for *broadcast*;

6.03 Only one order permitting *broadcast* shall be made in any appeal or application;

6.04 *Broadcast* (other than *audio recordings* to supplement note-taking) in the Court of Appeal of Manitoba, the Court of Queen's Bench of Manitoba or the Provincial Court of Manitoba is not permitted except in conformity with these guidelines or unless ordered otherwise by the court and;

6.05 No *proceeding* will be rescheduled to permit *broadcast* or to deal with an application for *broadcast*;

6.06 Any counsel or other participant in the *proceeding* who objects to having their image and or voice *broadcast* shall raise their opposition for the court's consideration.

6.07 Without meaning to be exhaustive, it shall be grounds for refusal of an order permitting *broadcast*:

- a) if the prejudice, disadvantage, hardship or other valid reason apprehended by a party resulting from the *broadcast* outweighs the interest of the public in granting the order; or
- b) if the *broadcast* of the *proceedings* to which the application applies is shown not to be in the public interest or in the interest of the administration of justice;

7) Standard conditions to apply

7.01 The following mandatory conditions apply to all *broadcast* orders granted:

- a) Cameras shall not be used to record documents on counsel tables, the clerk's desk or the bench in such a manner that the text can be magnified, read or deciphered;
- b) The camera shall remain on a fixed tripod and neither the operator nor other media personnel shall move about the courtroom when the court is in session. The equipment shall be maintained in good working order and operate without distraction;
- c) The camera operator shall wear neat business apparel;
- d) Signal lights showing when the equipment is operating shall not be visible;
- e) *Broadcast of proceedings* shall be delayed provided that with permission of the court they may be *broadcast live*;
- f) Only dialogue between counsel or parties and the bench shall be recorded and/or *broadcast* and, in particular, there shall be no recording of conversations between counsel or between counsel and their clients or witnesses at any time;

- g) Copies of all recordings shall not be destroyed for a minimum of six months and shall be made available to the court if required;
- h) There shall be no visual *broadcast* of members of the public in attendance;
- i) Still camera photography (non-video cameras) in courtrooms will not be permitted because it could be disruptive and intimidating to witnesses. Still images can, of course, be captured from the *video recording*;
- j) A notice will be placed on the door of the courtroom indicating that the *proceedings* are being *broadcast*;
- k) There shall be no camera shots closer than the head and shoulders of any individual;
- l) Should a court, pursuant to the exercise of its discretion as set out in 2.03 or 6.06, bar the broadcast of any image or voice, the media will not *broadcast* a photo of any such counsel or participant if it decides to broadcast an *audio recording* of that party.

8) Rescinding, suspending or varying order

8.01 Notwithstanding any prior order to the contrary, the court may rescind, suspend or vary an order for *broadcast* at any time.