



NUNAVUT COURT OF JUSTICE

MEDIA USE OF TECHNOLOGY IN THE COURTROOM AND COURTHOUSE

“Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the very spur to exertion and the surest of all guards against improbity.”

Jeremy Bentham

1. GUIDING PRINCIPLES

The purpose of this policy is to guide the media in its access to and use of recording and communications technology within the courtroom and courthouse.

A fundamental aspect of the administration of justice is the constitutionally enshrined principle of open justice. Fair and accurate reporting of court proceedings forms part of this principle. The media, as members of the public, ordinarily have access to all court hearings.

However, this principle of openness is subject to certain exceptions. Restrictions upon the media’s use of technology inside a courtroom or a courthouse may be justified:

- a) To prevent improper interference with the court’s processes and the administration of justice;
- b) To protect legitimate privacy interests of a justice system participant;
- c) To ensure that vulnerable witnesses are able to speak freely in a difficult courtroom environment;
- d) To ensure public good order within the courthouse;
- e) To ensure that the public and justice system participants have unimpeded access to the courtroom;
- f) To prevent the compromise of important protections provided by law or by court order;

- g) To protect a litigant's right to a fair trial;
- h) To safeguard public morality.

2. DEFINITIONS

2.1 "Justice System Participant" means Court personnel, counsel, parties to a proceeding (such as the accused), witnesses, and any other individual taking part in a court proceeding.

2.2 "Member of the Media" means an individual who has been granted media accreditation in accordance with the process established by Court Services under its Media Accreditation Policy.

2.3 "Member of the Public" means an individual who is not a justice system participant or a member of the media.

2.4 "Non-Publication Order" means:

- a) an order made by a judge under the *Criminal Code of Canada* or the *Youth Criminal Justice Act* that:
 - i. prohibits the publication of any information tending to identify a named complainant in a criminal sexual assault allegation; or
 - ii. prohibits the publication of any evidence given, or arguments made in relation to certain types of hearings in a criminal matter.
- b) an order made by a judge at common law that prohibits or restricts publication of evidence given or information provided during a trial or hearing:
 - i. to protect a legitimate privacy interest of a witness or litigant; or
 - ii. to prevent any improper interference with court processes and the administration of justice.

2.5 "Publish" means to print or reproduce in any document or to broadcast or transmit in any way. This includes, but is not limited to, traditional print and broadcast media as well as internet-based media, blogs, twitter, and other instant public communications.

2.6 "Technology" means anything that records audio, still images or video, or that enables its user to communicate with people or technology not present in the courtroom or courthouse. This includes, but is not limited to:

- a) Laptops;

- b) Mobile email, social media, instant messaging, short message service (SMS) text messaging, and any other type of technology-enabled text-based communication software or hardware;
- c) Cellular phones, smart phones, and pagers; and
- d) Video recorders, cameras, cell phones, smart phones, personal data devices, webcams, or any computer-based software or hardware with video recording capacity.

2.7 “Witness Exclusion Order” means an order made by a judge to exclude potential witnesses from the courtroom so that they cannot hear the testimony of others.

3. SCOPE

This policy governs the use of all forms of recording and communications technology by the media in the courthouse, both inside and outside the courtroom.

3.1 Persons Covered

This policy sets out the principles governing the use of recording and communications technology by the media. It is not intended to apply to the use of technology by the judiciary, court personnel, officers of the court (including barristers and solicitors), corrections officers, peace officers, or other public officers who use this technology in the course of their employment.

For the purpose of this policy, a media representative who does not have Court Services accreditation, shall not be granted any media privileges under this policy and must follow the guidelines established for the general public in the *Public Use of Technology in the Courtroom and Courthouse* policy.

3.1.1 Media Accreditation Process

Court Services is responsible for the media accreditation process. Individuals seeking media accreditation should address any questions to Court Services personnel.

3.2 Types of Technology

This policy applies to the use of all the technologies specifically addressed in the definition above as well as any others that record audio, still images or video, or that enable its user to communicate with people or technology not present in the courtroom or courthouse.

3.3 Types of Proceedings

This policy applies to all proceedings of the Nunavut Court of Justice, the Youth Court of Nunavut, and Justice of the Peace Court, both civil and criminal, unless otherwise indicated.

3.4 Other Applicable Laws

The access provided for in this policy is subject to any applicable statutory or common law provisions regarding access to, or use of, technology in the courtroom. Members of the media have the ultimate responsibility to ensure that their use of technology is in full compliance with all statutory requirements and existing court orders.

It is the responsibility of all members of the media who use technology within the courthouse or the courtroom to familiarize themselves with this policy.

The Sheriff shall ensure that all accredited media representatives are given a copy of this policy when reviewing their accreditation.

4. PERMITTED ACTIVITIES

Members of the media may use certain technologies for specific purposes without seeking the permission of the Court.

4.1 Laptops

The use of laptops by members of the media for taking notes is allowed in the courthouse and all courtrooms, unless otherwise specified by the Manager of Court Operations or the presiding Judge. Other functions of the laptop may only be used in accordance with the rules outlined elsewhere in this policy.

4.2 Use of Sound Recording Technology

Members of the media may audio record proceedings in courtrooms to verify their notes of what was said and done in court. These recordings may not be used for the purpose of broadcast, transcription and distribution in print form, or electronic dissemination. The primary purpose of permitting the use of sound recording devices is to better enable the media to produce fair and accurate reports of the proceedings.

Any communication captured by the recording that is not part of the official court record, such as private discussions between counsel, may not be used for any purpose whatsoever.

4.3 Use of Live Text-Based Communications

Accredited members of the media may use live text-based communication technology to send copy to their employers from the courthouse and courtrooms. The responsible use of this technology by members of the media to produce fair and accurate reports of proceedings that may lawfully be published enhances the principle of open justice referenced above.

The use of live text-based technology inside a courtroom has the potential to interfere with the administration of justice. In the context of a criminal trial, live text-based communication or audio recording technology from inside a courtroom can be used to inform or coach potential witnesses about developments in the trial or evidence heard from other witnesses. This type of communication can circumvent a Court's exclusion order and influence the testimony to be given by subsequent witnesses. Justice may suffer as a result. Information posted from the courtroom on, for example, Twitter or Facebook about evidence ruled inadmissible by a Court may also adversely influence a jury. In a civil or family law context, simultaneous reporting from the courtroom may create additional pressure on witnesses by distracting or worrying them.

Live text-based communications shall not be used to circumvent a non-publication or witness exclusion order.

4.4 Use of Cellular Phones and Pagers

The use of cell phones for voice communication in the courthouse outside courtrooms is permitted as long as it does not interfere with court proceedings.

The use of other cell phone features, such as taking videos and texting, is governed by other applicable sections of this policy.

4.5 Public Ceremonial Occasions

Recording and communications technology may be used by members of the media during public ceremonial occasions, such as swearing-in ceremonies, unless otherwise indicated by the Court. Such use may be subject to reasonable directions given by the Manager of Court Services.

5. ACTIVITIES REQUIRING AUTHORISATION

Members of the media may request special permission to use a technology in a way or for a purpose otherwise prohibited by this policy. In deciding whether to grant the request, the following will be considered:

- a) The nature of the interests being litigated, whether private or public;

- b) The public importance of the issues being litigated;
- c) The nature of the proceeding, whether interlocutory or final hearing/trial;
- d) The position of the parties and other justice system participants on the proposed use of this technology;
- e) The form of the evidence to be presented;
- f) If witnesses are to be called, their respective ages and vulnerabilities;
- g) Whether witnesses would be deterred from appearing in other similar cases;
- h) The potential to disrupt or interfere with the Court's own use of technology within the courtroom;
- i) The potential to interfere with the administration of justice;
- j) Any additional expense caused to the Court by the proposed use of this technology;
- k) The intended purpose of the recording;
- l) The impact, if any, that the use of technology has on the right of the litigants to a fair trial; and
- m) Any other factors that the Court considers relevant.

The onus of showing that these factors weigh in favour of allowing the proposed use is on the applicant. If permission is granted, conditions of use may be imposed.

Applications for special leave must:

- a) be made in writing;
- b) be made with reasonable notice (at least one week prior to the intended date of use);
- c) outline the purpose of the proposed use; and
- d) explain why the factors above favour the proposed use.

Any requests mandated by this policy involving the Justice of the Peace Court must be made to a Judge of the Nunavut Court of Justice.

5.1 Use of Video and Photograph Recording Technology

Justice system participants need to concentrate on the proceedings at hand. Witnesses, lawyers, Judges, and other court workers may be distracted if photographs are being taken or videos are being recorded. Timid or vulnerable witnesses may be intimidated or discouraged from testifying by the glare of cameras inside a courtroom. They may also be more nervous or hesitant during testimony as a result of being recorded, which would interfere with the critical assessment of witness credibility.

5.1.1 Permission to Record Video or Still Images in the Courtroom During Proceedings

There may be some types of proceedings, or parts of a proceeding, that would not be affected by the use of silent video or photograph recording technology. Any member of the media wishing to use this technology inside a courtroom to record any part of proceedings must apply for special leave from the presiding Judge.

Unless specific authorisation has been granted, this permission does not

allow: publication or broadcast of the video or images; or

video recording or photographing a jury.

5.1.2 Permission to Record Video or Still Images in the Courthouse and in Empty Courtrooms

Permission to use video or photograph recording equipment in an empty courtroom or in other parts of the courthouse must be obtained from the Manager of Court Operations. Such permission will not be granted if the proposed use of technology threatens public order within the courthouse or interferes with the free movement of people to or from the courtrooms or other public areas of the building.

Conditions may be attached to any permission granted by the Manager of Court Operations, such as restrictions on the location or timing of recording. The Manager of Court Operations reserves the right to withdraw permission that has been granted to use this technology if its use subsequently threatens public order within the courthouse, interferes with public access to the courtrooms, or breaches a condition of use.

Unless specific authorisation has been granted, this permission does not allow:

video recording or photographing into courtrooms that are in use through open doors or windows.

5.2 Broadcasting Sound Recordings

The use of silent and unobtrusive audio recording technology for broadcast purposes by members of the media may be permitted upon application for special leave from the presiding Judge. This will only be allowed if the Court is satisfied that this use of technology will not be disruptive to the proceedings or to justice system participants and is not otherwise likely to interfere with the administration of justice.

6. PROHIBITED ACTIVITIES

6.1 Use of Cellular Phones and Pagers

The use of cellular telephones inside courtrooms for voice communication is prohibited. This use is disruptive to a hearing in progress and may interfere with a justice system participant's ability to focus on the issues at hand.

Those attending court are expected to either disable the transmission function of their cell phones and pagers or ensure that their unit is in silent mode.

6.2 Non-Publication Orders and Closed Proceedings

Members of the media must ensure that their use of technology does not identify a justice system participant, where disclosure or publication the participant's identity is prohibited by law, or publicize information that is either part of a closed proceeding or subject to a non-publication order.

6.3 Witness Exclusion Orders

Members of the media must ensure that their use of technology does not interfere with a witness exclusion order. Where such an order has been made, the details of witness testimony must not be published until after all witnesses in a proceeding have finished giving evidence.

7. CONSEQUENCES OF FAILURE TO COMPLY WITH THIS POLICY

Any member of the media found wilfully violating this policy or refusing to be bound by the directions of the Court or Sheriff may be asked to leave the courtroom or the courthouse by the Sheriff for the duration of the proceeding.

If the Court determines that the use of a particular technology is adversely affecting court proceedings, or a member of the media whose use of a technology is subject to conditions or restrictions is found to be in violation, the Court may:

revoke the individual's media accreditation,

withdraw permission to use the technology conditionally or absolutely, or

otherwise limit its use on such additional terms as the Court deems appropriate and just.

If the breach of this policy is repeated, or if there is a violation of a specific court order made to protect witnesses or the administration of justice, the person or persons violating the order may, in an appropriate case, be cited for contempt of court.