



IN THE TERRITORIAL COURT OF YUKON

PRACTICE DIRECTION
TECH-1

*Access to DARS Audio Recordings of
Court Proceedings*

The Territorial Court of Yukon creates and maintains audio recordings of court proceedings using a digital audio recording system (DARS).

Courts are presumptively open, and, subject to some exceptions, the public may attend proceedings held in court. The policy of the Territorial Court of Yukon is that the public may listen to an audio recording of any court proceeding that they could have directly observed from the body of the court. This right does not include an automatic right to a copy of the audio recording of the proceeding, and listening will generally take place in the court registry or other court-supervised listening facility. If a member of the public or media wants a copy of the audio recording of a court proceeding, an application for a court order should be made to the presiding judge or his or her delegate using the Request for a Copy of CD from Court Recording form. The requirement for a court order does not apply to counsel in good standing with the Law Society of Yukon.

Publication bans

An audio recording of a proceeding may be subject to a publication ban, which means that while a member of the public or the media can access an audio recording, they may not be able to report on it or write about certain aspects of it. Although registry staff will try to notify a person requesting access to the audio recording of a proceeding of any publication bans, it is the responsibility of the person requesting access to identify any restrictions and comply with them.

Listening to the audio recording of a court proceeding

Except as otherwise provided by statute, court practice directions, court order, or the guidelines that follow, a person who was present or was entitled to be present in the courtroom for a proceeding is entitled to listen to the audio recording of that proceeding, and can do so on request where appropriate facilities exist. Application to listen to an audio recording may be made by completing the Request to Listen to a Court Recording form and submitting it to the court registry.

The following guidelines apply to different types of court proceedings.

1) Criminal and territorial offence proceedings

The public and media may listen to all parts of the proceeding that took place in court, except any portions where the courtroom was closed to the public (*in camera* proceedings).

A witness who was excluded from a proceeding prior to testifying may not listen to the audio recording of that proceeding until it has concluded. Anyone else who was specifically excluded from the proceeding may not listen to the audio recording without a court order.

Exception related to Youth Criminal Justice Act (“YCJA”) and Young Persons Offences Act

Recordings of proceedings involving young persons are considered court records pursuant to the YCJA and are generally not accessible without a court order. See s. 119 of the YCJA for details.

Pre-trial conferences

Criminal pre-trial conferences are not generally recorded. Where a pre-trial conference is recorded, the recording will only be accessible by court order to the parties and their counsel.

2) Child Protection proceedings

Access to the courtroom audio recording of child protection proceedings is restricted to parties and their counsel, unless an application is made to the court. See also section 162 of the *Child and Family Services Act*, S.Y. 2008 c. 1.

3) Small Claims Court proceedings

The public and media may listen to all parts of the proceeding that took place in court, except any portions where the courtroom was closed to the public (*in camera* proceedings).

A witness who was excluded from a proceeding prior to testifying may not listen to the audio recording of that proceeding until it has concluded. Anyone else who was specifically excluded from the proceeding may not listen to the audio recording without a court order.

Small Claims pre-trials

Small Claims pre-trials are not generally recorded. Where a pre-trial conference is recorded, the recording will only be accessible by court order to the parties and their counsel.

4) Other proceedings

Access to recordings of other types of court proceedings not explicitly referred to in this guideline require an application to the court.

Obtaining a copy of the audio recording of a court proceeding

1) Counsel in good standing with the Law Society of Yukon

Counsel who are members in good standing with the Law Society of Yukon are able to obtain a copy of any audio recording that could otherwise be listened to in a court-supervised listening facility.

Following the completion of the Request for Copy of CD from Court Recording and Undertaking of Counsel forms, a CD will be provided by registry staff. A cost may be associated with this service.

The Undertaking sets out counsel's obligations with respect to access to the recording by third parties and also prohibits further copying and distribution of the audio file.

2) Parties, media, and members of the public

A court order is required before parties, media, and members of the public are able to obtain a copy of the audio recording of a court proceeding, even if that audio recording could be listened to in a court-supervised facility. Application for a court order may be made by completing the Request for Copy of CD from Court Recording form and submitting it to the court registry.

Any order granted will contain conditions limiting the recipient's ability to copy and distribute the audio recording, including conditions about third party access. A failure to comply with a court order could be punished through a contempt proceeding, and a finding of guilt could result in a fine or jail.

Chief Judge K. Ruddy
April 6, 2018