

SUPREME COURT OF YUKON

PRACTICE DIRECTION
GENERAL-10

*Access to Audio Recordings of
Court Proceedings*

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

Listening to the audio recording of a court proceeding

Courts are presumptively open, and, subject to a very few exceptions, the public and media may attend proceedings held in court. The public may listen to an audio recording of any court proceeding that they directly observed or could have directly observed at court, unless prohibited by statute, the *Rules of Court*, court order, or court practice directions. The form to request access to any recording from the Court via the Registry is attached.

Listening to an audio recording will occur in the Court Registry or other supervised listening facility.

The following guidelines apply to various court proceedings.

Civil proceedings

The public and media may listen to all parts of a 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 by court order before testifying may **not** listen to the audio recording of any part of that proceeding until it has concluded. Anyone else who was specifically excluded from the proceeding by court order may **not** listen to the audio recording without a court order.

Case management conferences

Civil case management conferences are not generally recorded. Exceptions are in the presiding judge's discretion and are for example, when one of the parties is self-represented; or when the matter is highly contentious; or when there are legal arguments and a decision is rendered. Where a civil case management conference is recorded, the recording will be accessible after approval by the Court on request, including reasons, by the parties and their counsel. Requests made by anyone other than the parties must also include reasons and be approved by the Court. Counsel or the parties must be advised. Recordings of settlement discussions in case management will not be disclosed, except to the parties on request to and approval of the presiding judge.

Judicial settlement conferences

Practice Direction CIVIL-1 states judicial settlement conferences are recorded by the judge. The recording is for the use of the judge only and will be stored in a sealed envelope in a separate file. Access to the recording by the parties may be granted by the presiding judge on request.

Family law proceedings

Access to the courtroom audio recording of family law proceedings is restricted to parties and their counsel. Parties and counsel must complete the request form. Anyone else must make a formal application under the *Rules of Court* and obtain a court order. See also s. 173, privacy of court proceedings, of the *Children's Law Act*, RSY 2002, c. 31, as amended by SY 2008 c. 1, which restricts access to a proceeding and recording under the *Act* at the discretion of the judge.

Family law case conferences

Practice Direction FAMILY-3 states family law case conferences are recorded by the judge. The recording will only be accessible by court order to the parties and their counsel.

Criminal 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 by court order before testifying may **not** listen to the audio recording of any part of that proceeding until it has concluded. Anyone else who was specifically excluded from the proceeding by court order may **not** listen to the audio recording without a court order.

Case management conferences

Criminal case management conferences are not generally recorded. Exceptions are in the presiding judge's discretion and include for example, where the accused is self-represented. Where a criminal case management conference is recorded, the recording will be accessible after approval by the Court on request, including reasons, by the parties and their counsel. Requests made by anyone other than the parties must also include reasons and be approved by the Court. Counsel or the parties must be advised. Recordings of settlement discussions in case management will not be disclosed except by the parties on request to and approval of the presiding judge.

Appeal and judicial review 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).

Other proceedings

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

Publication Bans

The Court registry will make best efforts to inform members of the public and the media of any applicable publication bans; but anyone listening to the audio recording of a proceeding is responsible for complying with any publication ban.

Obtaining a copy of the audio recording of a court proceeding

Counsel in good standing with the Law Society of Yukon

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

Counsel must complete the Request for Copy of CD (attached) and provide an Undertaking of Counsel (attached). Once approved, a CD will be provided to counsel by registry staff. A cost may be associated with this service.

The undertaking sets out counsel's obligations about access to the recording by third parties and prohibits further copying and distribution of the audio file.

Parties, media, and the public

Parties, media, and the public must make an application and obtain a court order 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 (attached), a draft Order for a CD of Digital Recording in Form 54A and submitting both 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 even jail.

Duncan C.J.
November 2, 2022

UNDERTAKING OF COUNSEL

(Digital Audio Recording – CD)

Court File Number: _____

Style of Cause: _____

Court Location: _____

Date: _____

- In the Supreme Court of Yukon
 In the Territorial Court of Yukon

1. I, _____, a registered member of the Law Society, acknowledge that the DARS CD for the above proceedings heard on _____, in courtroom # _____ before _____ is being provided to me solely for the purpose of, (describe the specific activity that release of the CD is intended to facilitate – e.g. "to review the evidence of the witness in the case of R. v X; or in order to prepare the claimant's case in the proceeding Y. v Z." etc.)

and that any other use of the CD is prohibited.

2. I undertake that I will not:

- a) copy the CD;
- b) store its digital contents or transfer those contents to any other device;
- c) upload the CD or any of its content to the Internet or otherwise make the CD or any of its content available through any medium;
- d) distribute, broadcast or transmit the CD or any of its content in any way;
- e) use the CD for the preparation of unofficial transcripts of the proceedings;
- f) allow any of these things to be done by anyone else.

3. I undertake that the CD will not be accessed by anyone except those individuals enumerated below in (a) or (b), and further, that where such individuals are accessing the CD, it will be under my personal direction and control:

- a) other lawyers, articled students or administrative staff members within my law firm who are assisting me in this matter; or
- b) _____ an expert witness or, _____, a
Name Name
lawyer from outside my law firm whom I have retained to assist me in this matter.

4. If it is not feasible for the expert witness or counsel described in paragraph 3(b) to review the CD while it is under my personal direction and control, I acknowledge that I must apply to the court for an order allowing such individuals to receive the CD directly. I understand that in that event, the expert or outside counsel must appear before the court and will be made subject to the same conditions to which I am subject in this undertaking.

5. I acknowledge that I may allow my client to listen to the CD in my presence but I undertake that I will not provide my client with the CD or a copy of the CD.

6. When the CD is not being used, I undertake that I will keep it in a secure place where it cannot be accessed by persons other than those who are authorized pursuant to the terms of this undertaking.

7. I undertake to destroy the DARS CD and render it inoperable on or before the earliest of the following:

- a) date on which the purpose for which the CD was provided to me as described in paragraph 1 has concluded; or
- b) _____
(insert here either the last currently scheduled court or chambers date for the proceeding, or an earlier specified date)
- c) If I require the CD beyond the date specified, I acknowledge that I must provide a new undertaking to the issuing registry before expiry of the date here specified.

Business Address:

Signature:

Print Name:

Telephone Number:

Date: