

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).

Courts are presumptively open, and, subject to some exceptions, the public may attend proceedings held in court. The policy of the Supreme 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 should be made to the presiding judge or his or her delegate. There are exceptions to this order requirement for counsel in good standing with the Law Society of Yukon.

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 the registry staff will try to notify a person requesting access to the audio recording of a proceeding of any publication bans, it is also 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, the *Rules of Court*, 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. The form to request access to an audio recording is attached and it should be submitted to the Court Registry.

The following guidelines apply to different types of court proceedings.

1) Civil 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.

Case management conferences

Case management conferences are not generally recorded. Where a case management conference is recorded, the recording will only be accessible by court order to the parties and their counsel.

Judicial settlement conferences

Per Practice Direction CIVIL-1, 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.

2) Family law proceedings:

Access to the courtroom audio recording of family law proceedings are restricted to parties and their counsel, unless an application is made to the court. See also section 173 of the *Children's Law Act*, RSY 2002, c. 31, as amended by S.Y. 2008 c. 1.

Family law case conferences

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

3) 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 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.

While the Court registry should inform members of the public and the media of any applicable publication bans, anyone listening to the audio recording of a criminal proceeding should also take steps to inform themselves of the existence of any such ban.

Case management conferences

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

4) 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).

5) 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 request form and an undertaking of counsel (both forms attached), 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.

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.

Veale J.
January 15, 2016

