



# **GUIDELINES RE: MEDIA AND PUBLIC ACCESS TO THE COURTS OF NOVA SCOTIA**

**A guide to the statutes and regulations, the current case law, and the rules, directives and policies of the Courts**

In no way does this document interfere with the discretion of the Judges to resolve issues that arise in a specific trial, nor with the Sheriffs' and Court Administrators' responsibilities to resolve security and safety issues.

The Supreme Court of Canada, in several rulings, has recognized that the media, as representatives of the general public, must be given special consideration when applying certain rules and policies of the Courts. As such, although this document applies to members of the public as well as the media, certain exemptions and priorities are afforded to members of the media to enhance their ability to do their work.

For example, the media are given priority in the "Designated Media Areas" and only members of the media are allowed to record the audio of court proceedings to help them with their note-taking (but not for broadcast).

**Developed in collaboration with representatives of the media and adopted by the Courts as of April 1, 2019.**

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## **1. OPEN COURTS AND THE RIGHT TO A FAIR TRIAL**

We live in a society that places a high value on openness in the justice system. In a 1989 Supreme Court of Canada case, *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, the Court explained the value of open courts:

*“The concept of free and uninhibited speech permeates all truly democratic institutions... As a result of their significance, the courts must be open to public scrutiny and to public criticism of their operation by the public.... the public interest in open trials and in the ability of the press to provide complete reports of what takes place in the courtroom is rooted in the need:*

- 1) to maintain an effective evidentiary process;*
- 2) to ensure a judiciary and juries that behave fairly and that are sensitive to the values espoused by society;*
- 3) to promote a shared sense that our courts operate with integrity and dispense justice; and*
- 4) to provide an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in our courts affects them.”*

Accordingly, the general rule in Canada is that trials are open to the public and may be reported in full.

By enabling the public to attend court proceedings and allowing access to court documents relating to trials, we educate our citizens about the law and enhance their confidence in the fairness of the legal system and the way it operates.

The media play a crucial role in informing the general public about what goes on in our Courts. The average citizen gains knowledge of the legal system primarily through the words and images conveyed by the media in news reports about court proceedings.

Both the justice system and the public at large are well served when media coverage of hearings and dispositions of specific cases is accurate and complete. Court officials and staff working within the justice system have a responsibility to assist the public, including the media, in obtaining the access to which they are entitled by law to report accurately on Court proceedings.

Members of the Judiciary, while ensuring openness, also have a responsibility to protect the integrity of the judicial process. As such, Judges have common law and statutory authority to set the appropriate balance between the right to a fair trial and the right of freedom of the press.

This guide is a reflection of that balance. It is based on Canada’s statutes and regulations, current case law, and the rules, directives, and policies of the Nova Scotia Courts.

## **2. ACCESS TO COURTHOUSES**

### **a) General Rule – Open Courts**

The public areas of courthouses and the courtrooms are open to everyone during normal hours of operation. Members of the public and the media are welcome to attend all sessions of the Courts except in those rare circumstances where legislation requires or a Judge orders that a proceeding, or part of a proceeding, be held in private.

There are exceptions to this general rule. (See “Access to Courtrooms” 3(b) Family Court Exception and 3(c) Supreme Court Family Division Exception)

### **b) Designated Media Areas (DMAs)**

DMAs are areas within the public space of Nova Scotia’s courthouses (outside the courtrooms). They are the areas in which the public and the media may operate electronic equipment such as cameras and audio recorders to take pictures, record video and conduct interviews.

When space in these areas is limited, priority will be given to members of the media. From time to time, Sheriff’s Officers may need to relocate or resize DMAs for security and safety reasons.

DMAs are not usually demarcated. But floor plans showing these areas are laid out in Appendix A of these guidelines and are also available in the courthouses.

In locations that do not have DMAs, the Sheriff’s Officers may limit the use of electronic equipment to specific areas of the courthouse. In both cases, the practical operational needs of the equipment operators will be balanced with the security and safety considerations.

### **c) Use of Electronic Devices in Courthouses (outside courtrooms)**

The use of audio, video and photography equipment is allowed inside courthouses (outside courtrooms) but only in Designated Media Areas (DMAs) in courthouses where these areas exist. (See “Designated Media Areas” 2(d) and Appendix A)

The use of phones inside courthouses (outside courtrooms) is allowed. If the phone is used as a camera or to record audio, its use is restricted to the Designated Media Areas. Inside courtrooms, the use of phones and audio, video, and photography equipment is restricted. For example, without a Judge’s permission, no one can take photographs or record video inside courtrooms, from a doorway or through a window into a courtroom.

Specific uses of phones are allowed in some Courts but not in others. Guidelines for use inside and outside courtrooms are set down in the Courts’ “Use of Electronic Devices Policy”. (See Appendices E1 to E3)

#### **d) General Rules Re: Use of Electronic Devices**

The following rules apply in all public spaces and areas of Nova Scotia's courthouses:

By convention, jurors are not to be shown in video or photographs that are broadcast or published and are not to be otherwise identified. (See Criminal Code s. 631(6)).

Published and broadcast photographs, audio, and video of people whose identity is protected by a publication ban must not include anything (such as tattoos) that might lead the public to ascertain the person's identity. Typically, the wording of a publication ban prohibits the publication or broadcast of "information that may lead to identification", not just names.

Shooting video and still photographs of the inside of a courtroom through the window of a courtroom door or through the door as it opens is not allowed. This applies while court is in session as well as when Parties are still in the courtroom just after proceedings end.

#### **e) Note Re: Balance of Rights**

Judges have a constitutional obligation to balance the right to freedom of the press (as expressed in *Dagenais v. Canadian Broadcasting Corporation* [1994] 3 SCR 835 and other judicial authorities) with the right to a fair trial and may, upon notice and (in some circumstances) after a hearing, further restrict the use of electronic devices.

#### **f) Interviews Inside Courthouses**

All media interviews are to be conducted within Designated Media Areas only (where they exist). If a member of the media wishes to arrange an exclusive interview in a quiet location, permission to use an empty courtroom or a conference room should be arranged with the Judiciary's Communications Director, the local Court Administrator, or the local Sheriff's Officer.

#### **g) Courthouses/Courtrooms as Set Locations**

Requests to use any part of the interior of a courthouse as a background or a set for film or television productions should be made to the Judiciary's Communications Director, the local Court Administrator, or the local Sheriff's Officer. Depending on the shooting schedule, there may be costs involved if courthouse staff is required after hours.

#### **h) Media Rooms**

In some courthouses, rooms have been set aside for use by members of the media. For example, in the Law Courts, on Upper Water Street in Halifax, a media room is available on the third floor at the north end of the public foyer. Sheriff's Officers can provide access to media rooms on a per-occasion basis. A personal key can also be provided by the Executive Office of the Judiciary. In other courthouses, Sheriff's Officers or administration staff can point out the location of media rooms (where they exist).

### **3. ACCESS TO COURTROOMS**

#### **a) General Rule**

Members of the public, including the media, are welcome to attend all sessions of the Courts except in those rare circumstances where legislation requires, or a Judge orders, that a proceeding, or part of a proceeding, be held “in camera” (without the public and media present). For example, Section 486(1) of the *Criminal Code* allows for the exclusion of the public/media if the Judge “... *is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security.*”

Section 276 of the *Criminal Code* (“*Evidence of complainant’s sexual activity*”) is another example of a proceeding, or part of a proceeding, that may be held in camera. Specifically, 276.2(1) allows for the exclusion of the public/media when the Court must determine whether such evidence is admissible.

Typically, but not always, closing a courtroom involves an application requesting it, notification to the media, and a court hearing to consider the application and any possible objections.

#### **b) Family Court Exception**

Sections 10(2) and 10(3) of the *Nova Scotia Family Court Act* stipulate that Family Court proceedings are not open to the public or the media and require the presiding Judge to “...*guard against any publicity...*”

As such, Family Court courtrooms are generally closed to the public and the media. Where a proceeding in Family Court falls under the *Children and Family Services Act*, it is open to the public except when the presiding Judge orders the public excluded. (See s. 93, s. 63(4) and s. 77(1) CFSA)

#### **c) Supreme Court Family Division Exception**

Proceedings of the Supreme Court Family Division are open to the public and the media. However, Counsel and/or the Parties may petition the Judge to ask everyone present in the public gallery to identify themselves and the Judge may exclude the public.

Under *Civil Procedure Rule 59.60(1)*, a presiding Judge “...*who is satisfied on either of the following may exclude members of the public from all or part of the proceeding:*

- a) *the presence of the public could cause emotional harm to a child who is a witness or a participant in the hearing, or is the subject of the hearing;*
- b) *it is in the interest of the proper administration of justice.*

#### **d) Youth Court Exception**

Section 132 of the *Youth Criminal Justice Act* and Section 31(1) of the *Youth Court Act* contain similar wording which allows a Youth Court Judge to exclude any or all members of the public from the courtroom. To paraphrase, a Judge may exclude a member of the public from the courtroom who is unnecessary to the conduct of the proceeding if the evidence to be adduced is seriously prejudicial to the young person, a witness or a victim, or if their exclusion is in the interest of maintenance of order or the proper administration of justice.

#### **e) Use of Electronic Devices in Courtrooms**

Without the permission of the presiding Judge, the use of video and still cameras inside all courtrooms is prohibited. This includes the use of other devices such as smart phones to record video and take photographs.

The use of other electronic devices (such as smart phones) in courtrooms is permitted under certain circumstances in some Courts but not in others. For example, in all but Youth Court, Family Court, Mental Health Court, and in Supreme Court during Challenge for Cause hearings during jury selection (and subject to any publication bans that may be involved), members of the public and the media may use an electronic device to transmit text information about a proceeding for publication (Twitter) unless the presiding Judge orders otherwise.

The Nova Scotia Courts' policy regarding the use of electronic devices is detailed and varies from Court to Court, as well as inside and outside courtrooms. It is advisable to review the policy carefully if you are planning to use electronic devices. (See "Use of Electronic Devices Policy" – Appendices E1 to E3)

**NOTE:** *Judges have a constitutional obligation to balance the right to freedom of the press (as expressed in *Dagenais v. Canadian Broadcasting Corporation* [1994] 3 SCR 835 and other judicial authorities) with the right to a fair trial and may further restrict the use of electronic devices inside courtrooms.*

#### **f) Cameras in the Court of Appeal**

The Court of Appeal has in place a protocol for requesting permission to bring media cameras into one of its hearings. It is outlined in "Webcasting and the Use of Cameras during Proceedings" – Appendix B.

In part, the protocol requires that anyone wishing to obtain approval to use a camera during the hearing of an appeal shall send a letter or email, no later than fourteen days prior to the date scheduled for the hearing, to the Registrar of the Court with a copy to each party to the appeal.

The panel or the Chambers Judge may authorize the court-provided webcasting in place of a media or person's camera in the courtroom.

Before moving forward with a request, please read the entire protocol found in Appendix B. There are more important details than outlined above that you need to consider.

### **g) Publication Ban Signs**

In the Court of Appeal and Supreme Court, whenever a proceeding covered by a publication ban or other sealing order is underway, a sign will be posted on the courtroom door. This sign reads "Publication Ban in Effect – see Court Clerk for details".

This is an indication that certain elements of the proceeding may not be reported on in publications or broadcasts. It does not mean the public and the media may not attend in court. And information about other parts of the proceeding, which are not covered by the ban, may still be published and broadcast.

If asked, the Court Clerk will relay details of the publication ban or sealing order provided to him/her by the presiding Judge. However, the onus is on the members of the media and the public to ensure that information covered by publication bans or sealing orders is not published or broadcast. Some publication bans and sealing orders are imposed under sections of the Criminal Code. (See Publication Bans and Sealing Orders – Section 6)

### **h) Decorum in the Courtroom**

The basic principle is that the court process must not be disturbed.

- i. Out of respect for the process, wearing hats, chewing gum, and consuming food or beverages are not allowed.
- ii. Individual Judges have a significant amount of discretion regarding the activities (not related to the court process) that are allowed or not allowed in their courtrooms while court is in session and may add to the list above – within the parameters set by the Charter of Rights and Freedoms, laws, regulations case law, Rules, and policies.
- iii. When entering or exiting a courtroom while a trial is in progress, it should be done quietly and unobtrusively. Doors to the courtroom should be closed quietly and gently.
- iv. On occasion, to protect the court process, a Judge may exercise his or her discretion and order that no one enter or leave the courtroom. This might happen during the testimony of a witness, during an address by counsel, or when the Judge is giving his or her decision.

**i) Movement beyond the Bar**

No member of the public or the media is permitted beyond the bar in a courtroom at any time without permission of the Court Clerk or a Judge. The “bar” is usually a railing or half-wall between the public gallery and the lawyers’ tables. If there is an urgent need to get a message to the Court Clerk or the Judge, it can be relayed through a Sheriff’s Officer.

**j) Media Tables**

A special table for the media has been set up in the Court of Appeal courtroom #502 on the 5<sup>th</sup> Floor of the Halifax Law Courts building. Some other courthouses, but not all, also provide special media tables in courtrooms. Please check with the Court Administrator or a Sheriff’s Officer.

#### **4. ACCESS TO OTHER COURT-RELATED PROCEEDINGS**

##### **a) Settlement Conferences**

Such proceedings are held in private and off the record, between the parties and a Judge. They are designed to achieve a negotiated settlement without the need for a trial. They are not open to the public or the media. Information relating to such proceedings, and any documentation provided to the Court for consideration, are also not publicly accessible.

Decisions resulting from Settlement Conferences are confirmed in open court or by order of the Court, and thereby become accessible as part of the public record in keeping with these guidelines. However, the content of the settlement agreement may be kept confidential as a condition of the agreement.

##### **b) Pre-trial and Case Management Conferences**

These proceedings are held to deal with pre-trial procedures and trial management issues. They are usually conducted in private in a conference room between the parties and the assigned Judge. Documents filed for the Judge's consideration during the conference may also become part of the publicly accessible court file. Any motions arising from such conferences are later held in open court in the usual way.

##### **c) Foreclosure Sales**

The public and the media may attend foreclosure sales. These proceedings are conducted by Sheriff's Officers or another person appointed by the Court.

The public and the media may record audio and video as well as take still photographs for publication and broadcast during these proceedings.

## **5. ACCESS TO COURT FILES AND RECORDS**

### **a) General Rule**

- i. As a general rule, documents filed with the Courts, exhibits accepted as evidence during proceedings, and audio recordings of court hearings are a matter of public record. However, access to some documents, exhibits, and recordings is restricted by legislation such as the Youth Criminal Justice Act and the Family Court Act as well as by Rules of the Courts.

In addition, documents, exhibits and recordings involved in proceedings which are covered by publication bans or by other court-imposed confidentiality orders may be open to public inspection but involve restrictions on the publication/broadcast of their content. Others may be sealed altogether.

- ii. The administration office in each courthouse holds all files and documentation related to cases heard in that location. The public and media may search the file indices or review documentation in these offices during office hours (generally 8:30 a.m. - 4:30 p.m.) upon paying any applicable fees.
- iii. “New filings” are indexed as they come into the courthouse administration office. However, the files associated with new filings are not available for viewing by the public and the media until all the related documents have been assembled into one file, prepared, and reviewed by the Prothonotary/Registrar.
- iv. Any viewing of files must be done in the courthouse administration office in the presence of a Sheriff or courthouse staff. In no case is a member of the public or the media permitted to remove documentation from the office.
- v. If photocopies are required, they will be made by staff or by the individual requesting them (depending on the facilities available). There is a fee per page copied. As well, members of the public and the media may photograph or video tape court documents.
- vi. In satellite courthouses where no permanent staff is present, advance inquiries about access should be made to the Court Administrator at the relevant main courthouse. On-site inquiries may be addressed to the Court Clerk or the Sheriff’s Officer.

## 5.1 ACCESS TO FILES – BY COURT

### a) Youth Court Files

Access to information and files about Youth Court proceedings is restricted under the *Youth Criminal Justice Act*: **118(1)** “*Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.*”

- i. The *Youth Criminal Justice Act* allows courts (s.114), police forces (s. 115) and the government (s. 116) to keep records about a young person who is dealt with under the Act.

The general rule is that information about young persons will not be disclosed if it would identify them as someone who has committed or is alleged to have committed an offence. Accordingly, only those people who are authorized under the *Youth Criminal Justice Act* may have access to records or receive the information contained in them (s.118(1)).

The Act specifically sets out who may have access to such records (see s. 119(1)(s) which would include media with a valid interest in the record to the extent directed by a judge). Authorized persons, on request, shall be given access to a record kept by the court, and may be given access to a record kept by the police or government, within the time periods during which access is allowed (see s. 119(1) and (2)).

After the applicable time period has elapsed, a judge may, on application, order an authorized person to be given access to all or part of a youth record (s. 123(1)) under the conditions specified.

- ii. Youth Court proceedings are open but covered by a statutory publication ban (in the Act) on information which would lead to the identification of the accused youth, youth victims, and youth witnesses. Some restrictions regarding the use of electronic devices also apply during the proceedings. (see Appendix E2 “Use of Electronic Devices Policy” – Youth Court)
- iii. Restrictions on access relating to YCJA matters do not apply if an accused youth is sentenced as an adult. But the restrictions are not lifted until all appeals or appeal deadlines are exhausted, and then, only if the adult sentence stands.
- iv. A person who is required or authorized to be given access to a record under the Act may be given any information contained in the record and may be given a copy of any part of the record (s. 122). In all cases, the publication bans in the Act continue to apply.

- v. Access to Youth Court dockets and information relating to them may be limited in varying degrees (depending on the size and nature of the community in which the Youth Court is sitting). Youth Court dockets may be posted but with initials (names and person numbers) of the accused removed or blacked out). In addition to the initials of the accused, the docket should contain the court file number.
- vi. Limited information about the Youth Court docket, as permitted by the Act, will be provided by courthouse staff upon request using the court file number and/or charges, and/or initials of the accused (or any combination of these pieces of information).
- vii. Access to information and files about Youth Court proceedings is similarly restricted under the YJA, which governs young people charged with provincial offences. Section 32(1) provides that a record maintained by the court concerning an offence by a young person shall not be disclosed unless the disclosure is desirable in the interest of the proper administration of justice. As an added protection, Section 32(2) provides that no disclosure shall be made when two years have elapsed from the finding of guilt unless an application is made to a Youth Court Judge with notice to the young person. Section 33 provides that every finding of guilt ceases to have effect for any purpose two years after the finding of guilt.

## **b) Family Court Files**

*Sections 10(2) and 10(3) of The Nova Scotia Family Court Act stipulate that Family Court proceedings are not open to the public or the media and require the presiding Judge to "... guard against any publicity ..."*

As such, Family Court files are not generally accessible by the public and media unless the case has been appealed to a higher court. However, the public/media may be granted access to Family Court files if the Judge and the Parties involved give their permission. Requests for access should be made, in writing, to the Court. The staff will assist in relaying the request to the Parties.

## **c) Supreme Court Family Division Files**

Anyone, (including the media) who is not a party to proceedings must notify the Parties in writing of a request to access their files (court documents or audio recordings of court proceedings) (see also Sec. 5.3(g) Audio Recordings and Transcripts). The person seeking access to the file must prepare the notice. This notice will be sent by the Court to the last known addresses of the Parties.

The Parties will then have 20 clear days to file an application with the Court to seal the file. If none of the Parties respond with an application to seal the file, the Applicant seeking access will be given access to the file.

If any of the Parties responds with an application to seal the file, the Court will schedule a date to hear the application and direct compliance with the notice requirements of Civil Procedure Rule 85. This Rule requires the applicant to notify the media of the application to seal the file, so the media may attend the hearing to argue their case.

#### **d) Mental Health Court Files**

Information and files in the Mental Health Court are not made available to the public or the media. However, proceedings of the Mental Health Court are open under certain publication restrictions and rules regarding the use of electronic devices. (See Appendix E2 “Use of Electronic Devices Policy” – Mental Health Court).

#### **e) Court of Appeal Files**

All files of the Court of Appeal are open to the public and the media unless the Court has specifically ordered that the file, or some part of the file, not be made available. Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

#### **f) Supreme Court Files**

All files of the Supreme Court are open to the public and the media unless the Court has specifically ordered that the file, or some part of the file, not be made available. Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

There are some limitations on access to certain documents such as Victim Impact Statements, Pre-Sentence Reports, Psychiatric or other Medical Reports and Assessments, Exhibits etc. For example, Pre-sentence Reports are only made public when they become part of the court record during sentencing and Medical Reports are only made available with the presiding Judge’s permission. (See section 5.2 ACCESS TO FILES – BY TYPE)

#### **g) Provincial Court Files**

Provincial Court files relating to adult criminal cases are open to the public and the media unless the Court has specifically ordered that the file, or some part of the file, not be made available. There are some limitations on access to certain documents such as Victim Impact Statements, Pre-Sentence Reports, Psychiatric or other Medical Reports and Assessments, Exhibits etc. For example, Pre-sentence Reports are only made public when they become part of the court record during sentencing and Medical Reports are only made available with the presiding Judge’s permission. (See section 5.2 ACCESS TO FILES – BY TYPE)

## **h) Small Claims Court Files**

In the Small Claims Court, all files are accessible unless the Court has specifically ordered that the file, or some part of the file, not be made available.

Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

## **i) Probate Court Files**

The Probate Court also sits under the jurisdiction of the Supreme Court. All records filed in the Registry of Probate are open to the public, after probate has been granted, unless the Court has specifically ordered that the record, or some part of the record, is not to be made available for public inspection.

Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

## **j) Bankruptcy Court Files**

The Bankruptcy Court is under Supreme Court jurisdiction. All of its files are open to the public unless the Court has specifically ordered that the record, or some part of the record, is not to be made available for public inspection.

Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

## **k) Domestic Violence Court Program Files**

This program is under the jurisdiction of the Provincial Court and is administered jointly by the Court and the Department of Justice. Its files are also open to the public and the media unless the Court has specifically ordered that the record, or some part of the record, is not to be made available for public inspection.

Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the file and they are given an opportunity to oppose the application if they choose to.

### **I) Court-Monitored Drug Treatment Program Files**

This program is under the jurisdiction of the Provincial Court and is administered jointly by the Court and the Department of Justice. Medical or “therapeutic” files are not open to the public and the media. Court files are unless the Court has specifically ordered that the record, or some part of the record, is not to be made available for public inspection.

Such an order, like a publication ban order, may or may not be imposed after the media have been notified of the application to seal the Court file and they are given an opportunity to oppose the application if they choose to.

## **5.2 ACCESS TO FILES – BY TYPE**

### **a) Children and Family Services Act Proceedings**

Files pertaining to cases under this Act, such as child protection and adoption, are not open for inspection by the public or media. Sealed documents in these files shall not be opened by any person, including courthouse staff, without a court order.

Civil Procedure Rule 60A.33 - Access to files and records states:

*“Only the following persons may have access to the files and records of the court respecting a proceeding under the Children and Family Services Act:*

- (a) a party, unless the party is a child and the judge at an interim hearing under Rule 60A.10(1)(a), or at any time under Rule 60A.11(3) makes an order to prevent emotional harm to the child;*
- (b) counsel for a party;*
- (c) any other person as directed by the judge on the motion of the person, with notice to the parties if the court directs, subject to the judge making an order to prohibit publication of a report of the proceeding or hearing under Section 94 of the Children and Family Services Act.*

### **b) Child Abuse Registry**

All Child Abuse Registry forms, where these are contained as part of a Supreme Court criminal file, are available for inspection by the public or media. However, there are restrictions on the publishing and broadcast of certain information, typically information that may lead to a child being identified. Access to the actual Registry database is also restricted. (See the Children and Family Services Act, Sections 66 and 94)

### **c) Dockets of the Nova Scotia Courts**

Family Court and Mental Health Court dockets are not made public.

Youth Court dockets are posted daily in the courthouses but may display initials instead of names. (See paragraph 5.1-a-v.)

Dockets for the Provincial Court, Supreme Court, Supreme Court Family Division, Court of Appeal, and Small Claims Court are posted daily in the courthouses.

The Court of Appeal, the Supreme Court, Supreme Court Family Division, and the Bankruptcy Court also post their dockets on the Courts website (go to [www.courts.ns.ca](http://www.courts.ns.ca) and look for the “Court Dockets” link at the top of the page).

**d) Exhibits**

If the trial is pending or on-going, requests for access to exhibits (physical evidence, including documents, photos, video, weapons, etc.) must be made to the presiding Judge. Some Judges may entertain informal requests. Other Judges may require a formal application to the Court.

The Judge may grant limited access to only those exhibits which have been properly admitted as evidence in open court. He or she may also restrict what the exhibits may be used for; make them available for inspection but not for publication or broadcast, for example.

Typically, if the presiding Judge has granted permission, those making the request will be allowed to view, photograph or take video of exhibits by the Court Clerk in a secure area of the courthouse with a Sheriff's Officer present at a time convenient to the Court and the applicant.

After the completion of the trial, and all appeals (or expiration of appeal deadlines), physical evidence exhibits are either returned to their owners, sent to the Nova Scotia Archives, or destroyed. Any inquiries about access at this point, should be directed to the Court Administrator.

**e) Funds in Trust**

Information regarding Funds in Trust shall only be released by court order.

**f) Peace Bonds, Emergency Protection Orders**

Generally, these are open for inspection by the public and the media unless a sealing order was imposed when they were issued and that order has been confirmed by the Supreme Court.

If a publication ban was imposed when the Bond or Order was issued, the file may be made available on an undertaking that it must be treated as if the publication ban has already been ordered until a Judge rules otherwise. All such Bonds and Orders are reviewed by a Judge of the Supreme Court.

Peace Bonds filed in the Family Court prior to the creation of the Supreme Court Family Division, are not open for inspection unless ordered by a Judge.

**g) Pre-sentence Reports**

In the Provincial and Supreme Courts, unless the presiding Judge directs otherwise, Pre-sentence Reports become accessible when they become part of the court record during sentencing.

## **h) Psychiatric and Medical Reports**

Unless directed by a Judge, reports provided by psychiatrists or other medical professionals are not publicly accessible:

- in **criminal** cases, prior to the conclusion of the case, including determination of sentence
- in **family law** cases, without the approval of the Parties
- in **civil cases**, respecting persons for whom a guardian has been appointed or persons claiming to be victims of sexual assault

Anyone seeking access to such reports may direct their request to the presiding Judge. Some Judges may entertain informal requests. Other Judges may require a formal application to the Court.

## **i) Search Warrants**

Search warrants (and information about them) are not accessible when:

- they have not yet been executed or were unsuccessfully executed (did not result in property being seized or charges being laid)
- they were sealed by a Judge or Justice of the Peace when issued to Police (neither the affidavit seeking the Order, nor information about them)
- a Report to a Justice regarding the warrant has not been filed
- they are part of a Youth Criminal Justice Act matter

Each Provincial Court courthouse keeps a search warrant log and a separate binder, which contains copies of the log sheets for search warrants (executed warrants on which reports to a Justice have been made and which are not sealed). When sealed warrants are unsealed, they will be added to these lists.

These lists are available for viewing by the public and the media on request.

## **j) Sheriffs' Records**

Documents referencing Family Court and Youth Court matters can only be made available by Court Order (Youth Court transport records, Family Court Document Service sheets, etc.). Sheriff cell lists containing only adult cases are open for public inspection. Cell lists which include youths' names are not open for inspection.

**k) Victim Impact Statements and Community Impact Statements**

In Provincial Court and Supreme Court, Victim Impact Statements and Community Impact Statements are accessible to the media and the public once they become part of the official court record, unless otherwise earlier ordered by a judge.

### **5.3 ACCESS TO FILES - BY CIRCUMSTANCES**

#### **a) Access to Files in Cases of Urgent Applications**

Litigants may file applications with the Courts requesting emergency actions such as injunctions. At times, these applications may involve confidentiality issues or even requests for sealing orders which the Court is also being asked to rule on.

These files are not accessible by the public or the media until the Prothonotary/Registrar has reviewed them. Every reasonable effort will be made to expedite this initial review.

If public accessibility to a given file is one of the issues to be determined by the Court, the file will not be made available until a Judge rules on the application.

If a publication ban is being requested in relation to the file, it may be made available on an undertaking that it must be treated as if the publication ban has already been ordered until a Judge rules on the application.

#### **b) Access to New Files**

For the same reasons outlined above, new files are not accessible by the public or the media until the Prothonotary/Registrar has reviewed them. Every reasonable effort will be made to expedite this initial review.

If public accessibility to a given file is one of the issues to be determined by the Court, the file will not be made available until a Judge rules on the application.

If a publication ban is being requested in relation to the file, it may be made available on an undertaking that it must be treated as if the publication ban has already been ordered until a Judge rules on the application.

#### **c) Access to Files While in Transition or During a Trial**

Files which are in the possession of a Judge, just before, during, or just after a trial, are not immediately accessible to the public or the media. Requests for access to such files "in transition" should be directed to the presiding Judge through the courthouse administration staff.

Subject to the Judge's approval, efforts will be made to provide access to the file at a convenient time - during a break in the court proceedings or the lunch period or just before or after the day's proceedings.

If there is a need to request access to a file during proceedings, a Sheriff's Officer should be asked to relay that message to the Court Clerk rather than moving beyond the bar in the courtroom to speak directly to the Clerk.

**d) Access to Information in Files**

Requests for information about trials, files, and court records (such as pending court appearances, verdicts, etc.) may be directed to the courthouse administration office. Staff will make every effort to locate the file or information being requested based on the identifying details provided. However, to guard against mistaken identities, members of the public and the media making such requests may be asked to provide more than just the name(s) of the Parties. If a search results in the finding of more than one case file containing the same or similar identifying details (e.g. names), all such information and/or files will be provided. The onus is then on the person making the request to determine which case is the one being requested.

**e) Requests Made by Telephone, Fax or Email**

Information such as pending court appearance dates, including the time and place of the hearing, may be requested without cost by telephone, fax or email. In criminal matters, the Act and section number of the charge may also be requested.

However, this does not apply to matters in Youth Court. Similar information covered by the *Youth Criminal Justice Act* (YCJA) must be requested in person. Restrictions set out in the YCJA will apply. (See paragraph 5.1-a Youth Court Exception)

Where more detailed information is requested by telephone, fax or email, a search fee will apply – without regard to whether the searcher holds a Bulk Search Punch Card or not. Such information can only be provided in the form of a copy of the relevant document faxed to the applicant - not summarized on the phone or in an email.

To guard against mistaken identities, members of the public and the media making such requests may be asked to provide more than just the name(s) of the Parties. If a search results in the finding of more than one case file containing the same or similar identifying details (e.g. - names), all such information and/or files will be provided. The onus is then on the person making the request to determine which case is the one being requested.

Faxed documents are subject to a per-page faxing fee with an additional charge for long distance calls. Courthouse administration staff will estimate the applicable fees and taxes before proceeding. Members of the public and the media will be billed accordingly.

**f) Search, Fax, and Copying Fees**

Members of the public and representatives of the media have equal rights of access to court records, subject to access restrictions in the YCJA and any fee charged to a member of the public is charged to a member of the media. Likewise, anything a member of the public receives at no cost, the same is provided to a member of the media without charge.

There is no charge for inquiries regarding a pending court appearance date for a particular individual, including the time and place of the hearing. In criminal matters, there is also no charge for inquiries regarding the statute and the section number of the charge.

Search fees are charged if the person making the inquiry requests details beyond the above, such as a full reading of the charge, or hearing, or sentencing information, or if the inquiry requires examination of the file to provide an answer.

The *Costs and Fees Act* provides for specific fees to be charged for inspection of any court record or document by any person other than the litigant or her/his lawyer, police, the victim of a crime, or a recognized agency inquiring on behalf of a victim.

Persons needing to frequently search court files may purchase a Bulk Search Punch Card. It may be presented in lieu of payment of search fees each time the holder requests access to files. This card may be used at any courthouse administration office within the Province of Nova Scotia. In addition to search fees, charges for copying and faxing documents may be applied to Search Punch Cards. Courthouse staff will try to estimate the total fees required prior to initiating the search.

When several files are grouped together immediately following a court hearing, the group of files may be searched or inspected, and the fee charged will be the fee for searching one file. Once the files are distributed or filed, a search fee per file shall apply.

Parties to an action, including their lawyers and police agencies involved, and including the victim of a crime or a recognized agency inquiring on behalf of a victim, are entitled to access a file without search fees.

#### **g) Audio Recordings and Transcripts**

- i. The Courts do not produce or provide text transcripts of proceedings. They make and maintain audio recordings of their proceedings.
- ii. Copies of these audio files are available to the public and the media except for those of the Family Court (see paragraphs 2-b, 3b, & 5.1-b) and any other recording to which a Judge has applied a sealing order.
- iii. To order a CD copy of the audio of court proceedings, the applicant must fill out and sign the form (available on the NS Courts website through the "For the Media" link). This form must be submitted to the administration office in the courthouse where the proceedings were held. A fee is charged for this service.
- iv. These audio recordings of court proceedings are provided on the signed undertaking that the audio will not be broadcast or widely copied and distributed.
- v. Any publication bans or sealing orders related to the case also apply to these audio recordings.

## **h) Listening to Audio Recordings of Court Proceedings**

It is not possible to listen to the audio recordings of court proceedings without ordering a CD copy of the audio file.

If the need is urgent and is for a small portion of the proceedings (such as the Agreed Statement of Facts), it may be possible to obtain an audio file by email.

Such a request, regardless of where in the Province the proceeding was held, should be made to the Judiciary's Director of Communications. However, the recording can only be provided with the approval of the presiding Judge.

## 6. PUBLICATION BANS

### a) Types of Publication Bans

There are two types of publication bans; mandatory and discretionary. This area of law is a complicated one, and members of the public and media are urged to familiarize themselves with the subject. On occasion, it may be prudent to seek legal advice on whether publication or broadcast is permitted. There can be serious consequences for breaching publication bans.

### b) *Dagenais* and Publication Bans

In *Dagenais v. Canadian Broadcasting Corporation* [1994] 3 SCR 835, and *R. v Mentuck*, 2001 SCC 76, the Supreme Court of Canada set out the framework for discretionary publication bans. It said Judges may only order a ban when it is necessary to prevent a serious risk to the administration of justice and there are no alternative measures and after weighing its effect on freedom of the press, the right to a fair and public trial and the efficacy of the administration of justice. If a Judge decides a ban is warranted, it is only to be as restrictive in scope and time as is necessary to achieve its purpose. The *Dagenais* decision also said that the media should have standing to be heard and to raise objections in open court when a party requests a non-statutory ban. At the same time, it left a Judge some discretion in deciding if and when the media will be given such standing.

### c) Publication Bans in the Nova Scotia Courts

- i. The Court of Appeal and Provincial Courts have Practice Directives which require that the media be notified when a Party applies for a discretionary publication ban or other form of confidentiality order. The Directives also require that the media be given an opportunity to argue against the request in open court, if they choose to.
- ii. In the Supreme Court, including its Family Division, requests for discretionary publication bans and other forms of confidentiality orders are dealt with under *Civil Procedure Rule 85.5* which follows much the same process as the Court of Appeal and Provincial Court Directives.

### d) Some Statutory Publication Bans

#### i. Youth Court

In general, the federal *Youth Criminal Justice Act* and the provincial *Youth Court Act* prohibit the publication of any information that would lead the public to identify the accused youth or any child or young person who is a victim or witness in a YCJA or YJA matter (not just his or her name) (see ss. 110 and 111 of the YCJA and s.30 of the YJA). This prohibition does not apply under some circumstances (see s. 110(2) of the YCJA).

ii. **Matters under the *Children and Family Services Act***

Information that has the effect of identifying a child witness, a child participant in a hearing, or a child who is the subject of a proceeding held under the CFSA cannot be published or made public. Nor can information that has the effect of identifying a parent, guardian, foster parent, or relative of the child. (See *Section 94(1) of the CFSA*) A ban may also be ordered if the Court is satisfied that publication would cause emotional harm to a child who is a participant, a witness, or is the subject of the proceeding. (See *Section 94 (2) of the CFSA*)

iii. **Evidence in a Bail Hearing**

Statutory bans are usually imposed on the publication of evidence presented at a Bail Hearing. They are compulsory if requested by the Defendant and discretionary if requested by the Prosecutor. They cover the content (evidence and information) of the hearing as well as the Judge's reasons for his/her decision. However, these bans have an "expiry date"; at the end of a preliminary inquiry if the accused is discharged (not sent to trial) or when the trial has ended if the accused is tried. In the case of a jury trial, the ban expires when the jury is sequestered and/or begins its deliberations. See *Criminal Code s. 517(1)* for details.

iv. **Evidence in a Preliminary Inquiry**

Statutory bans are also normally imposed on the publication of evidence taken at a Preliminary Inquiry. They are compulsory if requested by the Defendant and discretionary if requested by the Prosecutor. And they, too, expire at the end of the proceedings if the accused is discharged (not sent to trial) or when the trial has ended if the accused is tried. In the case of a jury trial, the ban expires when the jury is sequestered and/or begins its deliberations. (See *Criminal Code s. 539*)

v. **Proceedings of a Voir Dire**

In jury trials, no information regarding any portion of the trial at which the jury is not present, including any evidence taken, can be published until the jury has been sequestered and begins its deliberation (See *Criminal Code s. 648(1)*). Prior to that, only the fact that a voir dire was conducted can be published.

vi. **Admissibility of Evidence of Complainant's Prior Sexual Activity**

Section 276 of the Criminal Code ("Evidence of complainant's prior sexual activity") is another example of a proceeding, or part of a proceeding, that is covered by a statutory publication ban. This ban is broad and even prohibits the publication of the Judge's decision and his or her reasons. (See *Criminal Code s. 276.3 (1)*)

vii. **Proceedings Regarding Sexual Offences**

The identity of alleged victims, and witnesses under the age of 18, are usually protected by publication bans in such proceedings. The Judge is required to impose the ban if requested by the alleged victim, a young witness or the Prosecutor. (See Criminal Code s. 486.4)

## **APPENDICES “A”**

### **DESIGNATED MEDIA AREAS IN NOVA SCOTIA COURTHOUSES**

Designated Media Areas (DMAs) are areas within the public space of Nova Scotia courthouses (outside courtrooms). They are the areas in which the public and the media may operate electronic equipment such as cameras and audio recorders to take pictures, record video and conduct interviews.

When space in these areas is limited, priority will be given to members of the media. From time to time, Sheriff’s Officers may need to relocate or resize DMAs for security and safety reasons. The practical operational needs of the equipment operators will be balanced with the security and safety considerations.

DMAs are not usually demarcated. But floor plans showing these areas are in Appendix A of these guidelines and are also available in the courthouses.

### **FLOOR PLANS AND DESCRIPTIONS**

#### **Law Courts, Upper Water Street, Halifax**

Appendices A1 – A5: Pages 31 – 36

#### **Provincial Court, Spring Garden Road, Halifax**

Appendices A6 – A8: Pages 37 – 40

## APPENDIX A-1

### Floor Plans for “Designated Media Areas”

#### Halifax Law Courts (Upper Water Street)

##### Outside the Courthouse

For the purpose of these guidelines the grounds outside the courthouse buildings will be considered generally accessible to the media with the following caution. When attending courthouses throughout Nova Scotia, members of the media and everyone else, should go about their business with the safety and dignity of the other people coming and going uppermost in their minds.

In addition, for security and safety reasons, Sheriff’s Officers may need to set reasonable parameters around the prisoners’ entrance at the back of the buildings beyond which the media may not go.

##### Stairways

The stairways are narrow and dangerous when overcrowded. In the interest of safety, the operation of all types of camera and audio equipment is not allowed.

##### Interviews

All media interviews are to be conducted within Designated Media Areas only (where they exist). If a member of the media wishes to arrange an exclusive interview in a quiet location (other than the public areas of the courthouses), permission to use an empty courtroom or conference room should be arranged with the Judiciary’s Communications Director, the local Court Administrator, or the local Sheriff’s Officer.

##### 1<sup>st</sup> Floor and Parking Garages

There is no taking of still photographs and recording of video or audio allowed.

##### 2<sup>nd</sup> Floor Administration Office

If you wish to shoot video or still photographs or record audio in the courthouse administration office on the 2<sup>nd</sup> floor, you must first notify the Court Administrator, the Sheriff’s office or the Judiciary’s Director of Communications.

### **3<sup>rd</sup> Floor**

The designated media area begins at the front face (the face closest to the elevators and courtrooms) of the five pillars, from pillar #1 (being closest to public washrooms) to pillar #5 and extending back approximately two metres towards the windows. This area will be demarcated by benches and/or ropes for cases which attract greater media interest. Media will respect an imaginary line created by the five pillars at all other times. The media room located at the north end of the public hall beyond courtroom #304 is also considered a designated media area for the purpose of these guidelines. (See 3rd floor plan, Appendix A-2)

### **4<sup>th</sup> Floor**

The operation of all types of camera and audio equipment is not allowed except for the use of electronic devices inside the two courtrooms. See the Use of Electronic Devices Policy Appendices E-1 to E-3 (pages 37 to 42) for prohibitions, restrictions, and permissions regarding the use of electronic devices inside courtrooms.

### **5<sup>th</sup> Floor**

The designated media area begins behind an imaginary line created by the front face (the face closest to the elevators and courtrooms) of the three pillars, from pillar #1 (being closest to public washrooms) to the beginning of the narrow hallway beyond courtroom 502 and extending back approximately two metres towards the windows. The operation of all types of camera and audio equipment is not allowed beyond courtroom 502 towards courtroom 501 and the stairs. (See 5th floor plan, Appendix A-3)

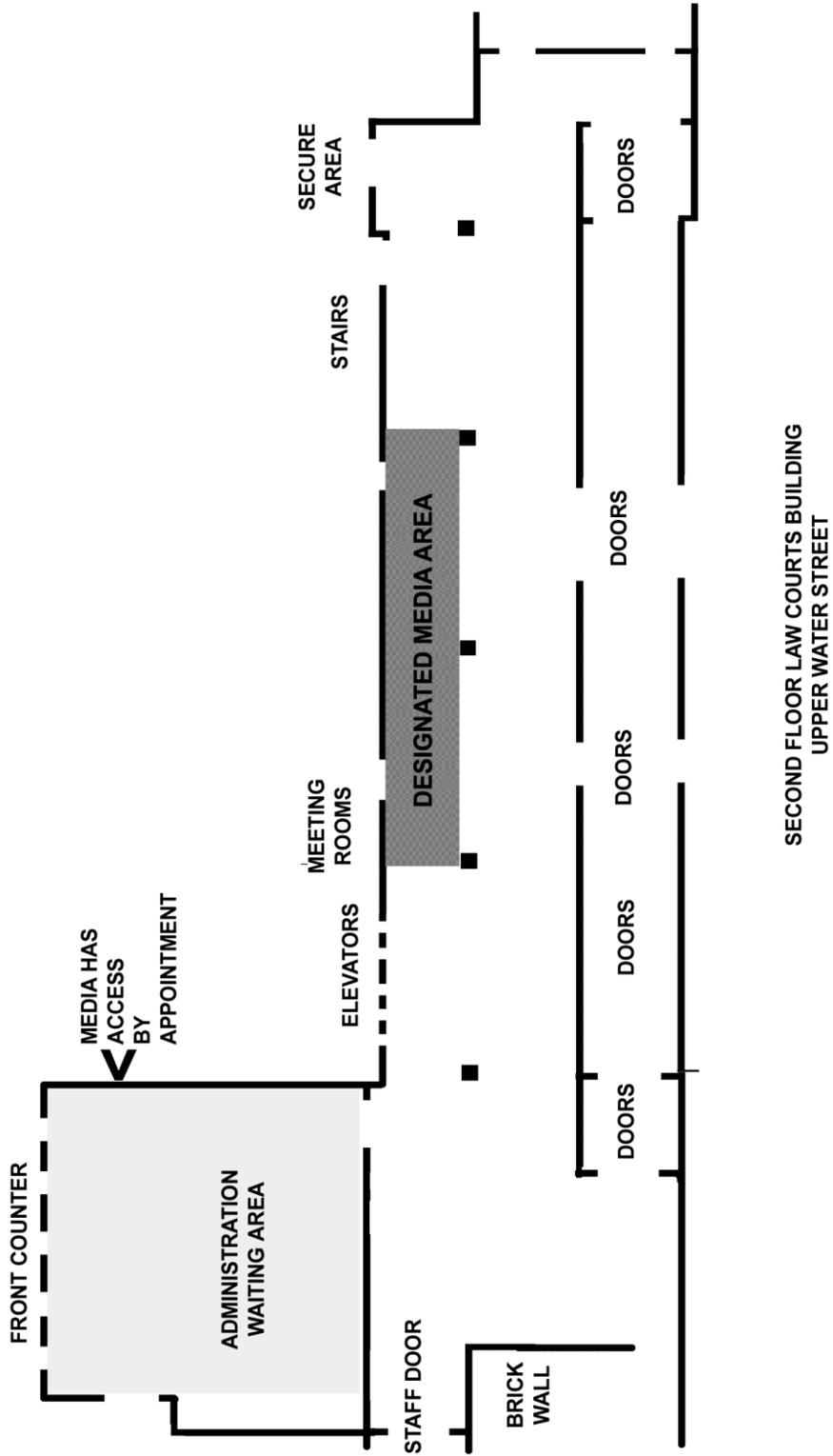
### **6<sup>th</sup> Floor**

This is secure office space and so media and public do not have access.

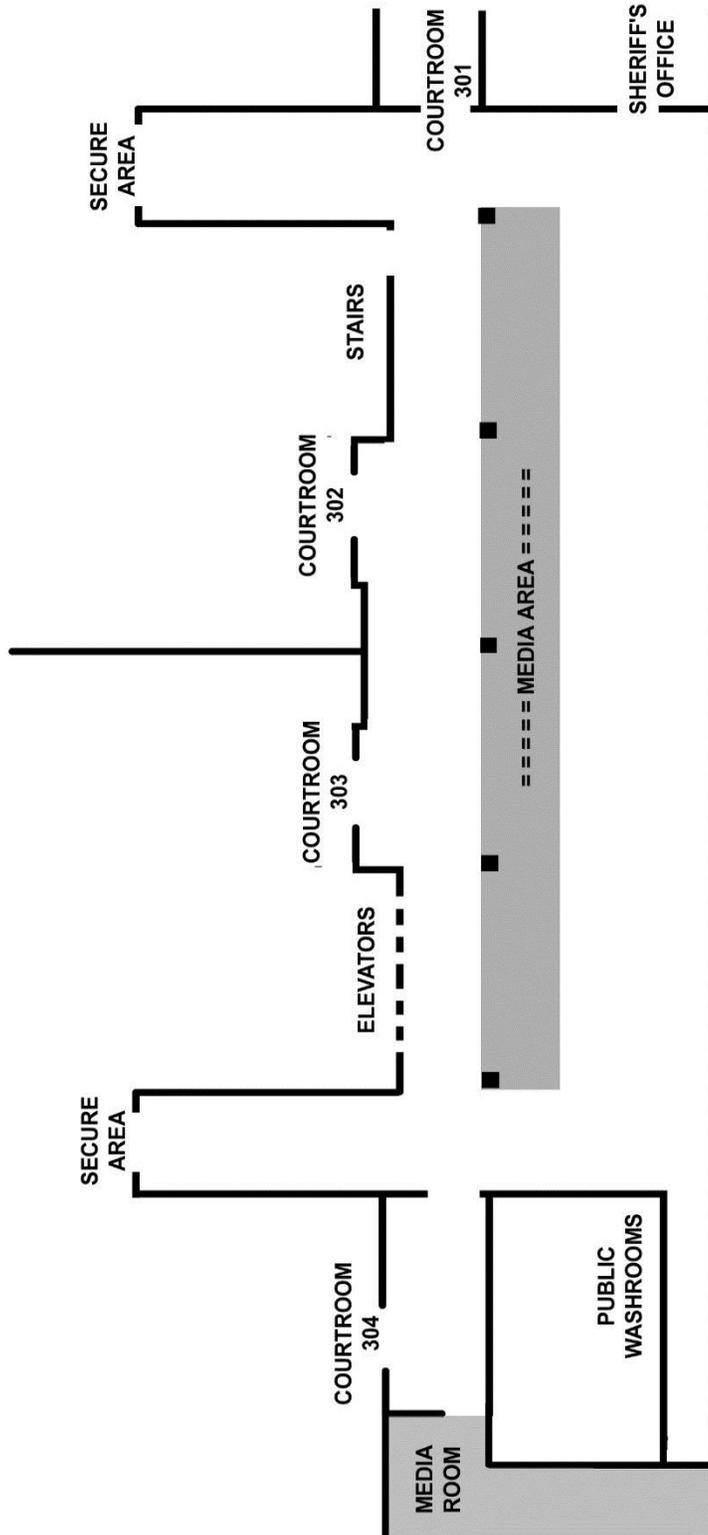
### **7<sup>th</sup> Floor**

The designated media area begins behind an imaginary line created by the front face (the face closest to the elevators and courtrooms) of the two pillars and extending from the wall perpendicular to, and to the north of, the elevators to the beginning of the narrow hallway beyond courtroom 701. The operation of all types of camera and audio equipment is not allowed beyond courtroom 701 towards the stairs. Do not block witness rooms or washrooms along back wall. (See 7th floor plan, Appendix A-4)

### APPENDIX A-2 Designated Media Areas in the Halifax Law Courts (2<sup>nd</sup> Floor)

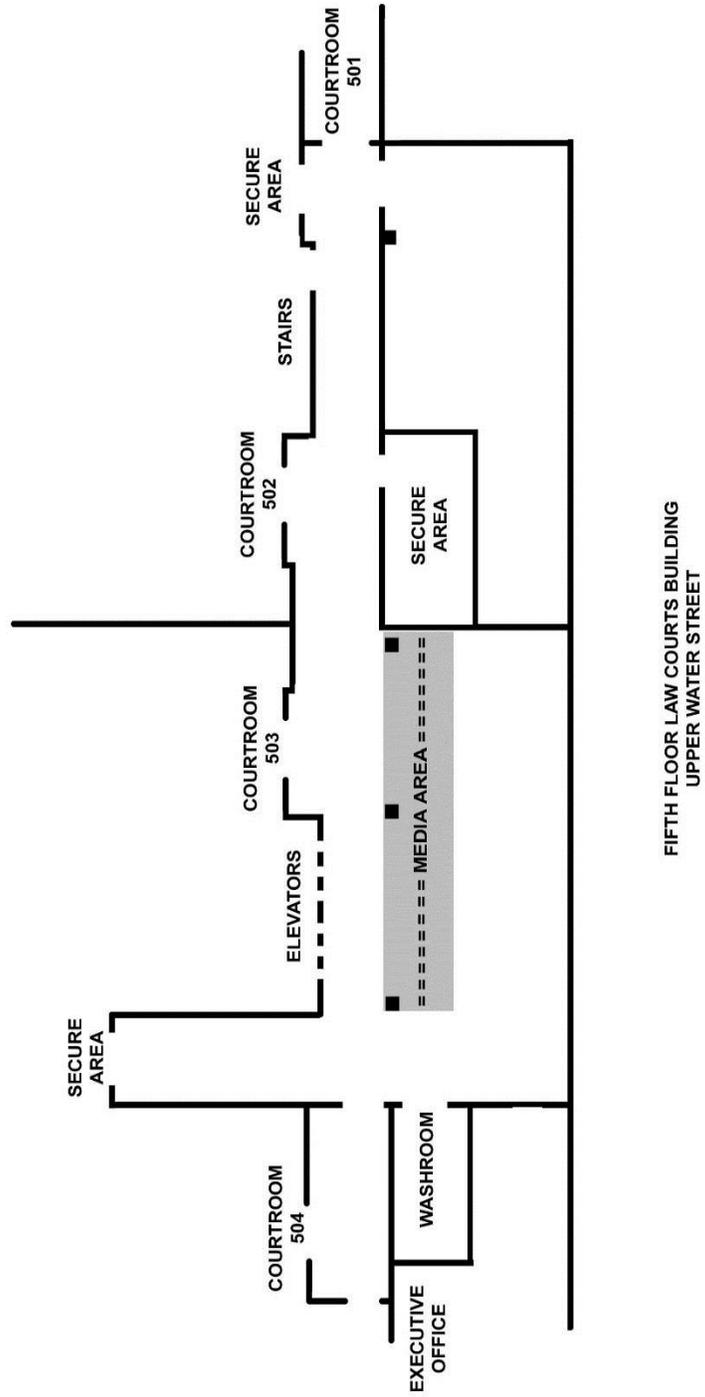


### APPENDIX A-3 Designated Media Areas in the Halifax Law Courts (3rd Floor)

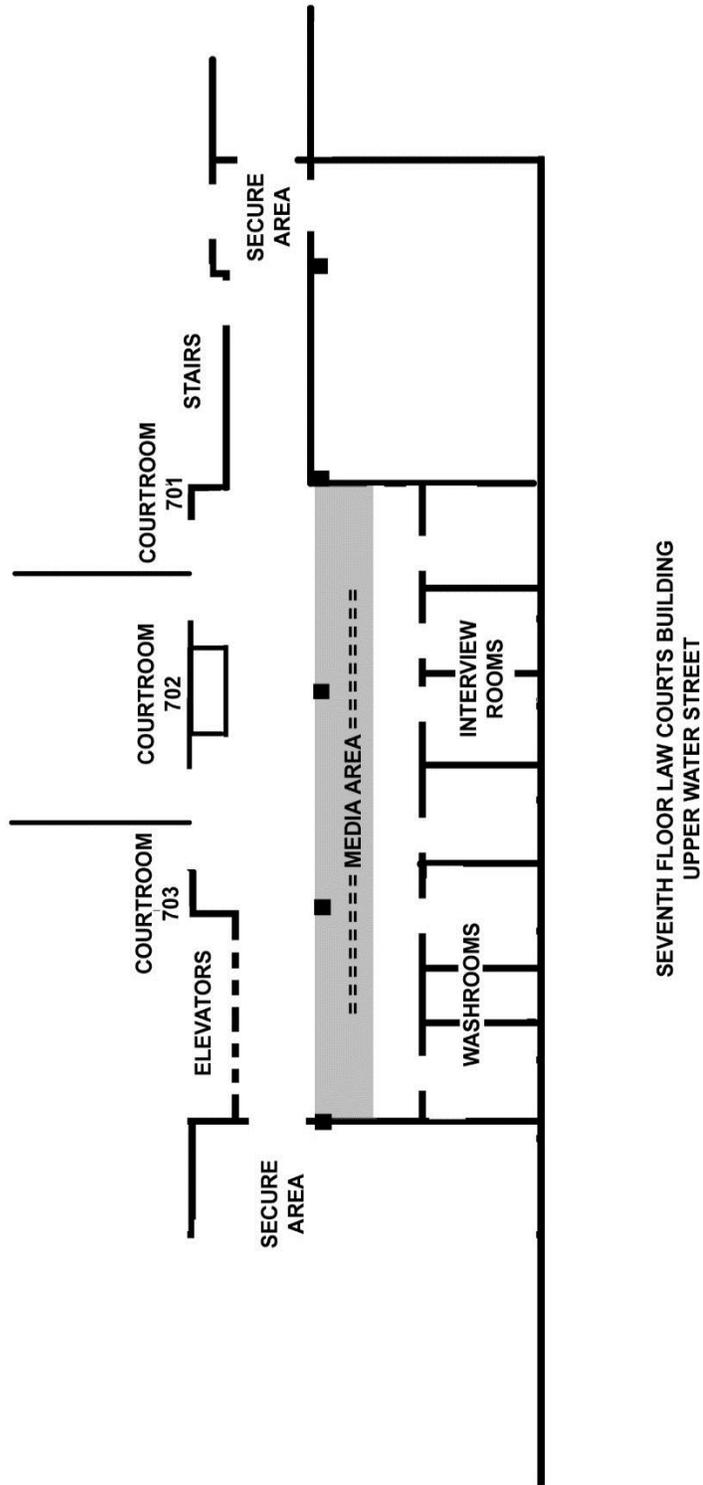


THIRD FLOOR LAW COURTS BUILDING  
UPPER WATER STREET

### APPENDIX A-4 Designated Media Areas in the Halifax Law Courts (5<sup>th</sup> Floor)



### APPENDIX A-5 Designated Media Areas in the Halifax Law Courts (7th Floor)



## **APPENDIX A-6**

### **Floor Plans for “Designated Media Areas” Halifax Provincial Court (Spring Garden Road)**

#### **Outside the Courthouse**

For the purpose of these guidelines the grounds outside the courthouse buildings will be considered generally accessible to the media with the following caution. When attending courthouses throughout Nova Scotia, members of the media and everyone else, should go about their business with the safety and dignity of the other people coming and going uppermost in their minds.

In addition, for security and safety reasons, Sheriff’s Officers may need to set reasonable parameters around the prisoners’ entrance at the back of the buildings beyond which the media may not go.

#### **Stairways**

The stairways are narrow and dangerous when overcrowded. In the interest of safety, the operation of all types of camera and audio equipment is not allowed.

#### **Interviews**

All media interviews are to be conducted within Designated Media Areas only. If a member of the media wishes to arrange an exclusive interview in a quiet location (other than the public areas of the courthouse), permission to use an empty courtroom or conference room should be arranged with the Judiciary’s Communications Director, the Court Administrator, or a Sheriff’s Officer.

#### **1<sup>st</sup> Floor**

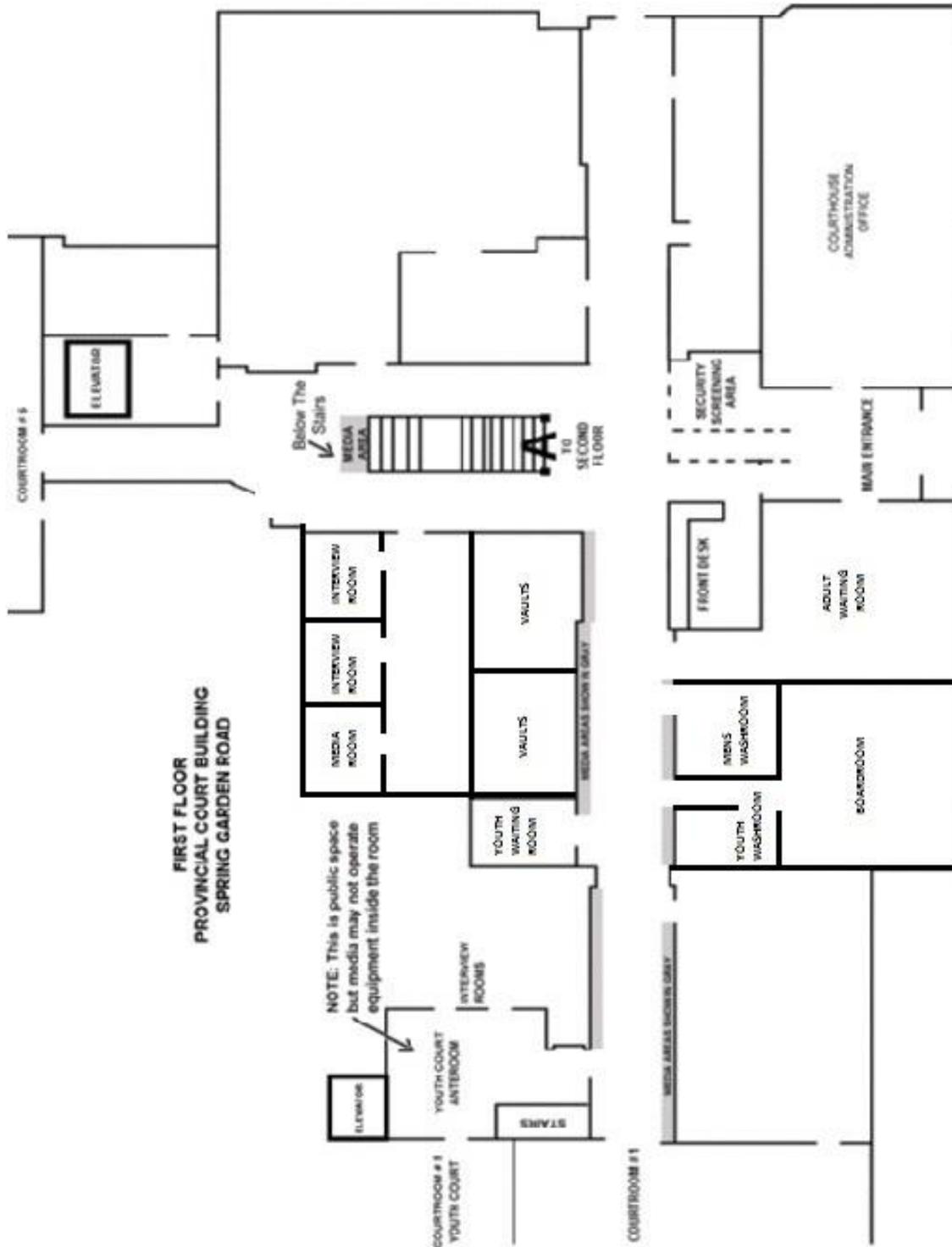
The Designated Media Areas are located in the hall to the left of the staircase (when facing it) along the side walls while trying not to block any doorways. Care should be taken to avoid including the security screening apparatus in video and still photographs. The area underneath the main staircase facing courtroom #6 is still available for use. Members of the media are asked to avoid blocking the flow of traffic as much as possible.

For security and safety reasons, the media are not permitted to operate their equipment inside the ante-room which is situated in front of the Youth Court (last room on the right along that same hall). This room is part of the courthouse’s public space, however, activity in the room may be subject to restrictions set out in the *Youth Criminal Justice Act - YCJA*. In addition to the prohibition on publishing a young person’s name, the *Act* speaks of not publishing “...other information related to a young person if it would identify...” which may include visual information such as unique tattoos or clothing.

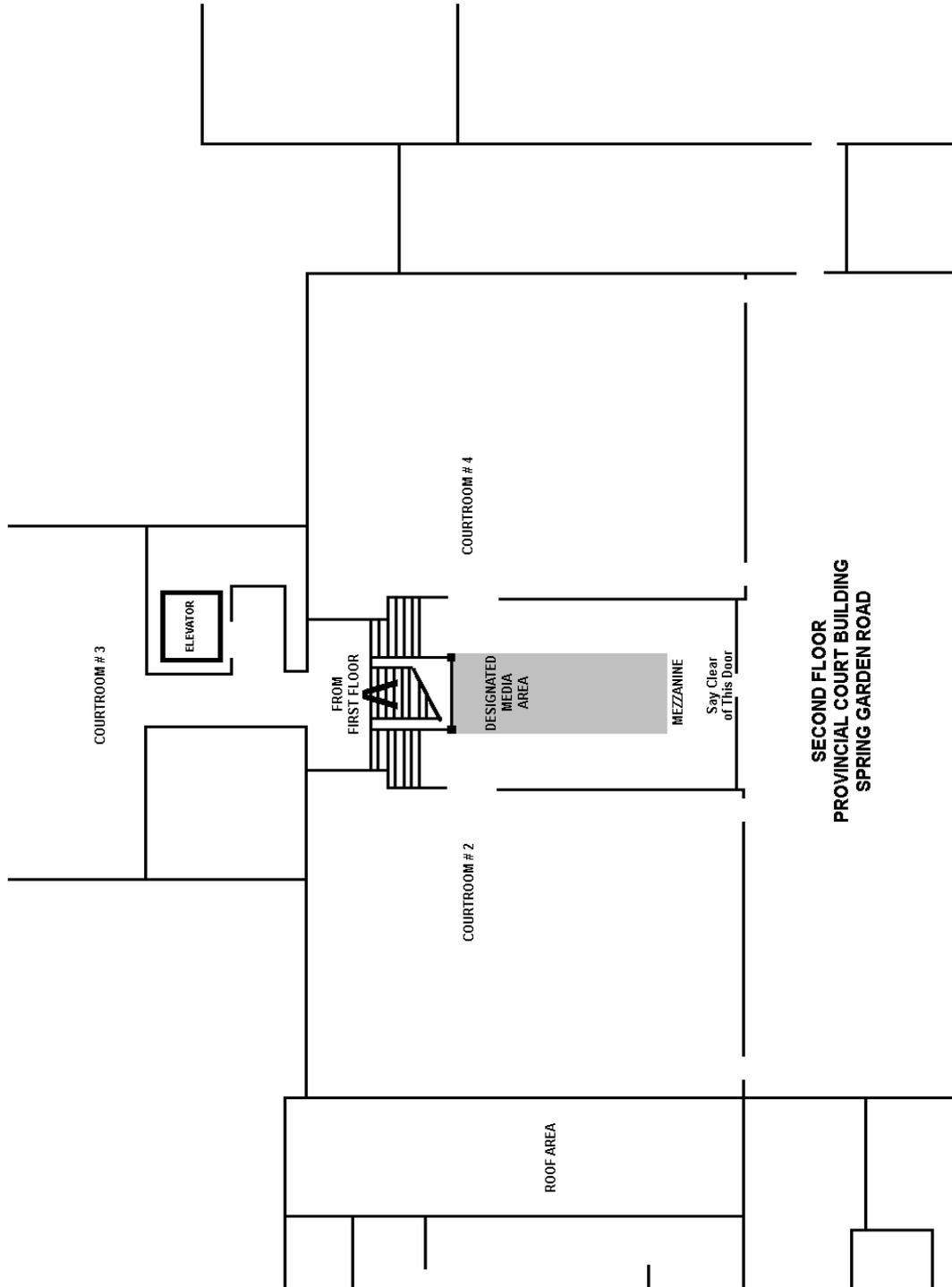
**2<sup>nd</sup> Floor**

The Designated Media Area extends back from the railing in between the two staircases that come up from the landing towards courtrooms #2 and #4. This is not specifically marked or sized but should be used appropriately based on the number of people and their movements on any given day. The media are not permitted to stand or use equipment on the landing between the main staircase coming up from the first floor and the two smaller stair runs leading to the 2<sup>nd</sup> floor courtrooms #2 and #4.

### APPENDIX A-7 Designated Media Areas in the Halifax Provincial Court (1<sup>st</sup> Floor)



**APPENDIX A-8**  
**Designated Media Areas in the Halifax Provincial Court (2<sup>nd</sup> Floor)**



SECOND FLOOR  
PROVINCIAL COURT BUILDING  
SPRING GARDEN ROAD

## **APPENDIX A-9**

### **Designated Media Areas in Other Nova Scotia Courthouses**

#### **Designated Media Areas in the Supreme Court - Amherst and Truro**

In both the Amherst (Victoria Street) and Truro (Church Street) Supreme Court Buildings, cameras are accommodated on the first floor only. Camera operators may not film or take photographs on the second floor or on the stairs/landing.

***NOTE:*** *DMAs are being developed in all courthouses in the Province. They will be added here as they are developed and approved.*

## **APPENDIX B**

### **Nova Scotia Court of Appeal Rule Re: Webcasting and the Use of Cameras during Proceedings**

**(Revised and Approved by NSCA October 2014)**

1. During any proceeding in the Nova Scotia Court of Appeal, the use of cameras for any purpose is not permitted without prior written approval as provided for in this Rule, except if the Court or a judge thereof, on its, his or her own motion, authorizes webcasting.
2. Anyone wishing to obtain approval to use a camera during the hearing of an appeal shall send a letter or email, no later than fourteen days prior to the date scheduled for the hearing, to the Registrar of the Court, with a copy to each party to the appeal. Anyone wishing to obtain approval to use a camera during the hearing of a motion in Chambers shall send a letter or email, no later than three days prior to the date scheduled for the hearing of the Chambers motion, to the Registrar of the Court, with a copy to each party to the application.
3. The letter or email shall specify the names of the parties, the date of the proceeding, a description of the equipment to be used, what images and sound is to be captured and the intended use of the recording (live broadcast, live webcast, news clips, documentary, etc.). Letters shall be sent to the Registrar, The Law Courts, 1815 Upper Water St., Halifax, NS, B3J 1S7 and emails to [Prothonotaryhfx@courts.ns.ca](mailto:Prothonotaryhfx@courts.ns.ca).
4. In the case of the hearing of an appeal, if any party to the appeal objects to approval being granted, they shall send a letter or email to the Registrar, with a copy to the person requesting approval and the other parties, within two clear days of their receipt of a copy of the request for approval. In the case of the hearing of a motion in Chambers, the letter or email of the person objecting shall be sent within one clear day of their receipt of a copy of the request for approval.
5. If the request relates to the hearing of an appeal, the panel of the Court scheduled to hear the appeal shall, with or without an oral hearing as it determines appropriate, after taking into account the public interest and the interests of the parties, make any decision it determines is just in the circumstances. If the request relates to the hearing of a motion in Chambers, the Chambers judge scheduled to hear the motion shall, with or without an oral hearing as he or she determines appropriate, after taking into account the public interest and the interests of the parties, make any decision she or he determines is just in the circumstances. Once made, the decision shall be communicated to the person requesting approval and the parties.
6. The panel or the Chambers judge may authorize court-provided webcasting in place of media or another person's camera in the courtroom.

7. Notwithstanding that a decision has been made by a panel or Chambers judge, in appropriate circumstances, a panel or Chambers judge at any time, whether in advance of or during a hearing, may grant, suspend, rescind or vary his, her or its decision.
8. Any person receiving approval to use a camera shall ensure arrangements are made to simultaneously share the “feed” or recording from their camera with anyone wishing to use it.
9. Documents on counsel tables, the clerk’s desk and the bench shall not be recorded so that the text can be magnified, read or deciphered.
10. Not more than one camera with one operator shall be used during a proceeding. The camera shall remain on a tripod fixed in one position designated by the panel or Chambers judge and the operator shall not move about the courtroom when court is in session. The camera shall operate without distracting noise and without spotlights, floodlights or other lighting additional to the lighting of the courtroom.
11. When approval is given, statutory publication bans and bans ordered by another Court shall be deemed to be in effect in the Court of Appeal unless revoked by an order of the Court or Chambers judge, and shall be observed in all broadcasts or other publication of the hearing.
12. Any recording made pursuant to this Rule during a proceeding, may only be used in accordance with the copyright statement on the Court’s website unless otherwise agreed to by the panel or Chambers judge.
13. When approval is given, photographs, video and audio of the courtroom and the court officers may be captured during a period of not more than two minutes immediately before the hearing commences and two minutes after the hearing concludes.
14. Only dialogue between counsel or parties and the bench, and formalities of the opening and closing of the Court, shall be captured. The recording or distribution of solicitor-client communications is prohibited.
15. Transcripts and/or video and audio tapes of all broadcasts of Court of Appeal proceedings shall not be destroyed for a minimum of six months and shall be made available within ten days without cost to the Court upon request of the Registrar.

## APPENDIX C

### Protocol for the Release of Court Decisions

In the interest of developing a consistent manner in which court decisions are released to the public and the media, to ensure the media are made aware of decisions that the Courts cannot “publish” on their website, and so the media have sufficient time to meet their deadlines, a protocol for the release of court decisions is outlined below.

This protocol provides for the release of court decisions to the parties in advance of the release to the public and the media.

- 1) Prior to the release of a Judge’s decision to the public and the media, the Judge’s judicial assistant will contact the Parties to the action and tell them when and how the decision will be released to them.

The parties will also be told when the decision is to be released to the public and the media.

No details will be provided to the Parties regarding the content of the decision at this point.

- 2) Except in unusual circumstances, court decisions are released to the public and the media at 1 p.m. on weekdays.

At the same time, they are posted on the Courts website here:

[http://courts.ns.ca/Decisions\\_Of\\_Courts/decisions\\_recent.htm](http://courts.ns.ca/Decisions_Of_Courts/decisions_recent.htm)

They are also uploaded to the Courts Decisions Database which can be searched here: <http://decisions.courts.ns.ca/nsc/en/nav.do>

As well, they are sent to various publishers, the Barristers’ library, and the Judges’ library. And they are sent to members of the media (only) who subscribe to receive decisions by email.

**NOTE:** *Only members of the media are eligible to subscribe to receive court decisions via email. Generally, only recognizable media email addresses will be accepted.*

Members of the media (only) who wish to receive copies of court decisions via email can subscribe to this free service by contacting the Judiciary’s Communications Director or the Manager of Publications. Contact information is found on the Courts website at [www.courts.ns.ca](http://www.courts.ns.ca). Click on the “For the Media” link at the top of any web page.

## **APPENDIX D**

### **Resources and Contacts**

These guidelines and other material related to public and media access can be found on the Courts of Nova Scotia website: [www.courts.ns.ca](http://www.courts.ns.ca). Look for the “For the Media” link at the top of any web page.

#### **1. Media Liaison Committee**

The Nova Scotia Judiciary has a Media Liaison Committee which is composed of Judges from each of the Courts, Director of Communications for the Judiciary, and media representatives. This Committee meets regularly to discuss issues of mutual concern. Reporters should feel free to contact their representatives on the committee to suggest matters for the Committee’s agenda.

A list of current members and their contact information can be found on the Courts of Nova Scotia website at [www.courts.ns.ca](http://www.courts.ns.ca). Look for the “For the Media” link at the top of any web page.

#### **2. Additional information**

If members of the media have any questions which are not answered by these media guidelines, they should contact the Communications Director for the Nova Scotia Judiciary. Contact information can be found on the Courts website [www.courts.ns.ca](http://www.courts.ns.ca).

However, if the issue of concern requires legal advice, a lawyer should be consulted. It is inappropriate for the Communications Director to provide legal advice.

## APPENDICES E1 to E3

### POLICIES RE: USE OF ELECTRONIC DEVICES

#### APPENDIX E1 - Use of Electronic Devices in the Following Courts

<p><b>Court of Appeal</b>  <b>Supreme Court</b>  <b>Supreme Court Family Division</b></p>	<p><b>Drug Court</b>  <b>Small Claims Court</b>  <b>Probate Court</b></p>	<p><b>Domestic Violence Court</b>  <b>Provincial Court</b>  <b>Bankruptcy Court</b></p>
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#### INSIDE COURTROOMS

Without permission of the Court, no person shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, in a courtroom:

- to carry on a conversation while court is in session
- to take still photographs or record video
- to transmit an audio or video recording
- that interferes with the proceedings or the courtroom recording system by producing any noise, vibration or electronic signal.

#### ALLOWED:

- keeping a phone on in vibrating mode only (but not talking on it)
- receiving any content
- inputting and transmitting general text only, if it does not interfere with proceedings or the courtroom recording system
- transmitting information about court proceedings while court is in session (except questions and answers in a Challenge for Cause hearing during jury selection), for publication by any means unless the presiding Judge orders otherwise and subject to any publication bans that may exist
- members of the media (only) may use electronic devices to record the audio (only) of the proceedings to augment their note-taking but not for broadcasting

#### PROHIBITED OR RESTRICTED

- making or answering a phone call while court is in session
- taking pictures, recording video, recording audio (media may record audio)
- transmitting pictures, video, or audio
- transmitting information, which is subject to a publication ban and questions and answers in a Challenge for Cause hearing during jury selection
- using an electronic device – or having one on – that disrupts what is going on in the courtroom or interferes with the courtroom recording system in any way

**EXCEPTION**

When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions and restrictions do not apply with regard to those specific events.

**INSIDE THE COURTHOUSE, OUTSIDE COURTROOMS**

Without permission of the Court, no one (except members of the media) shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, inside the courthouse to produce, record, or transmit audio, video, or still photographs.

**ALLOWED**

- speaking on a cell phone
- inputting and transmitting text only on an electronic device
- receiving any content

**PROHIBITED (by members of the public)**

- taking pictures
- recording video or audio
- transmitting pictures, video, or audio

**EXCEPTIONS**

- Members of the media (only) may use audio recorders, still/video cameras, and other devices to produce, record, or transmit audio, video, or still photographs inside the courthouse (not in courtrooms) but only within designated areas where these areas exist.
- When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions above do not apply with regard to those specific events. However, electronic devices may still only be used within designated areas where these areas exist.

***NOTE:*** Disagreements regarding the definition of “members of the media” shall be resolved by the presiding Judge.

## **APPENDIX E2 – Use of Electronic Devices in the Following Courts**

### **Youth Criminal Justice Court Mental Health Court**

#### **INSIDE COURTROOMS**

Without permission of the Court, no person shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, in a courtroom:

- to carry on a conversation while court is in session
- to take photographs or record or produce an image
- to transmit an audio or video recording
- that interferes with the proceedings or the courtroom recording system by producing any noise, vibration or electronic signal.

#### **PROHIBITED OR RESTRICTED**

**Members of the public** must turn off and put away all their electronic devices before entering the courtroom.

#### **Members of the media:**

- may not transmit information about court proceedings from inside a courtroom while court is in session, for publication and by any means (including Twitter, Texting, Email, etc.) without the permission of the presiding Judge
- may not answer or make a phone call while court is in session
- may not take pictures or recording video (but may record audio)
- may not transmit pictures, video, or audio
- may not use an electronic device – or have one on – that disrupts what is going on in the courtroom or interferes with the courtroom recording system in any way.

#### **ALLOWED**

- **Only members of the media:**
  - may keep a cell phone on in vibrating mode only (but not talk on it)
  - may receive any content
  - may input and transmit general text only, if it does not interfere with proceedings or the courtroom recording system
  - may use electronic devices to record the audio (only) of the proceedings to augment their note-taking but not for broadcasting

**EXCEPTION**

When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions and restrictions do not apply with regard to those specific events.

**INSIDE THE COURTHOUSE, OUTSIDE COURTROOMS**

Without permission of the Court, no one (except members of the media) shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, inside the courthouse to produce, record, or transmit audio, video, or still photographs.

**PROHIBITED (by everyone – see exceptions)**

- taking pictures
- recording video or audio
- transmitting pictures, video, or audio
- transmitting text information about court proceedings for publication and by any means (including Twitter, texting, email, etc.) without the permission of the presiding Judge

**ALLOWED (by everyone)**

- speaking on a cell phone
- receiving any content
- inputting and transmitting general text only (not text information about court proceedings) on an electronic device

**EXCEPTIONS**

- **Members of the media (only)** may use audio recorders, still/video cameras, and other devices to produce, record, or transmit audio, video, or still photographs (subject to any publication bans) inside the courthouse (not in courtrooms) but only within designated areas where these areas exist.
- When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions above do not apply with regard to those specific events. However, electronic devices may still only be used within designated areas where these areas exist.

***NOTE:*** Disagreements regarding the definition of “members of the media” shall be resolved by the presiding Judge.

## **APPENDIX E3 – Use of Electronic Devices in the Family Court**

**Family Court, by statute (*The Family Court Act of Nova Scotia*), is not open to the public or the media except during child protection hearings.**

### **INSIDE COURTROOMS (when court is open to public and media)**

Without permission of the Court, no person shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, in a courtroom:

- to carry on a conversation while court is in session
- to take photographs or record or produce an image
- to transmit an audio or video recording that interferes with the proceedings or the courtroom recording system by producing any noise, vibration or electronic signal.

### **PROHIBITED OR RESTRICTED (when court is open to public and media)**

**Members of the public** must turn off and put away all their electronic devices before entering the courtroom.

#### **Members of the media:**

- may not transmit information about court proceedings from inside a courtroom while court is in session, for publication and by any means (including Twitter, Texting, Email, etc.) without the permission of the presiding Judge
- may not answer or make a phone call while court is in session may not take pictures or record video (but may record audio)
- may not transmit pictures, video, or audio
- may not use an electronic device or having one on - that disrupts what is going on in the courtroom or interferes with the courtroom recording system in any way.

### **ALLOWED (when court is open to public and media)**

#### **Only members of the media:**

- may keep a phone on in vibrating mode only (but not talk on it)
- receive any content
- may input and transmit general text only, if it does not interfere with proceedings or the courtroom recording system
- may use electronic devices to record the audio (only) of the proceedings to augment their note-taking but not for broadcasting.

**EXCEPTION**

When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions and restrictions do not apply with regard to those specific events.

**INSIDE THE COURTHOUSE, OUTSIDE COURTROOMS**

Without permission of the Court, no one (except members of the media) shall use an electronic device, such as a phone, tablet, computer, camera, or audio recorder, inside the courthouse to produce, record, or transmit audio, video, or still photographs.

**PROHIBITED (by everyone – see exceptions)**

- taking pictures
- recording video or audio
- transmitting pictures, video, or audio
- transmitting text information about court proceedings for publication and by any means (including Twitter, Texting, Email, etc.) without the permission of the presiding Judge

**ALLOWED (by everyone)**

- speaking on a cell phone
- receiving any content
- inputting and transmitting general text only (not text information about court proceedings) on an electronic device

**EXCEPTIONS**

- **Members of the media (only)** may use audio recorders, still/video cameras, and other devices to produce, record, or transmit audio, video, or still photographs (subject to any publication bans) inside the courthouse (not in courtrooms) but only within designated areas where these areas exist.
- When official ceremonies such as a swearing-in or events such as Law Day, mock trials, or civil weddings are held in the courthouse, the prohibitions above do not apply with regard to those specific events. However, electronic devices may still only be used within designated areas where these areas exist.

***NOTE: Disagreements regarding the definition of “members of the media” shall be resolved by the presiding Judge.***

## **APPENDIX F – Exhibit Access Policy**

### **Nova Scotia Court of Appeal Supreme Court of Nova Scotia Provincial Court of Nova Scotia**

#### **Media Access to Exhibits**

The Supreme Court of Canada has recognized that the media, as representatives of the public, must be given special consideration when applying certain rules and policies of the Courts. Openness and access should be the rule, except in instances when a Judge deems it necessary to limit access to protect the administration of justice.

Although it is acknowledged that journalists should have timely access to exhibits during and after a trial concludes, the Courts need to ensure that access does not interfere with the administration of justice. For that reason, the Nova Scotia Courts have adopted the following policy to maintain the integrity of exhibits and protect the administration of justice, while facilitating media requests for access.

#### **1) Requests for Access During a Trial**

- a) During a trial, requests for access to exhibits must be made to the Judge, through the Court Clerk and the Judiciary's Communications Director. The Court Clerk will notify the Judge and the Communications Director will arrange supervision, if the request is approved.
- b) Some Judges may entertain informal requests for access to exhibits. Other Judges may require a formal application to the Court.
- c) If access is granted, the Judge may restrict what the exhibits may be used for (i.e. make them available for inspection but not for publication or broadcast). If the Judge allows full access, those making the request will be allowed to view, photograph or take video of the exhibits. If a journalist makes the request, and if resources allow, court staff should make copies of audio and/or video exhibits for media.
- d) The Judge may grant access to only those exhibits which have been properly admitted as evidence in open court.
- e) If the matter is being heard by a jury, the Judge may grant access to exhibits admitted outside the presence of the jury (i.e. voir dire exhibits); however, their use is restricted by all applicable publication bans or court orders.
- f) In high-profile trials being covered by multiple media outlets, the journalists are encouraged to make an application on behalf of the group. If access is granted, the Court will arrange a time for all interested media to view the exhibits at once.

- g) Access will be arranged at the earliest opportunity, at a time convenient to both the Court and the applicant(s).

## **2) Requests for Access During a Hearing in the Court of Appeal**

- a) During the hearing of an appeal, requests for access to exhibits must be made to the Panel, through the Court Clerk and the Judiciary's Communications Director. The Court Clerk will notify the Panel and the Communications Director will arrange supervision, if the request is approved.
- b) The provisions of Subparagraphs 1(b) to 1(g) of this Policy apply to requests for access during a hearing in the Court of Appeal, with any necessary modifications and when not inconsistent with this Paragraph 2.

## **3) Supervision**

- a) Media who are granted access to exhibits must be supervised at all times by Court staff in a secure area of the courthouse.
- b) Court staff approved to supervise access include the Court Clerk, Sheriffs, the Prothonotary (or his/her designate), the Court Administrator, and the Communications Director.
- c) For groups of three (3) or more members of the media, at least two (2) approved Court staff must be present to supervise access.
- d) Supervising staff must record each time access is granted in the Exhibit Access Log Sheet (found at the end of this document). A copy should be included in the court file.

## **4) Handling of Exhibits**

- a) Only Court staff identified in 3(b) are permitted to handle physical exhibits (i.e. drugs, weapons, currency, etc.). Media are not permitted to handle such items.
- b) Absent an order of a Judge to the contrary, media shall be permitted to handle documentary exhibits (i.e. photo books, reports, etc.), one exhibit at a time.
- c) Exhibits must be returned in the same condition and numerical order as they were when granted access.

**5) Requests for Access after a Trial, other than during a Court of Appeal Hearing**

- a) Once a trial has concluded, requests for access to exhibits that remain in the custody of the Court must be made to the Judiciary's Communications Director or the Prothonotary (or his/her designate) at the courthouse where the matter was heard.
- b) The same criteria for supervision and handling of exhibits apply for access granted after a trial and after an appeal.
- c) After the completion of a trial and all appeals or expiration of appeal deadlines, the Prothonotary may return exhibits to the party who tendered them, or exhibits may be destroyed or turned over to any person by order of a judge.
- d) Rule 84.04 of the Civil Procedure Rules governs the Prothonotary's role as exhibit custodian for exhibits that remain in the custody of the Court.

