
# Guidelines

# For Canadian Courts

## Management of Requests for Bulk Access to Court Information by Commercial Entities

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# 1 PURPOSE

This paper, commissioned by the Canadian Judicial Council (the CJC), provides guidelines to assist Canadian courts to manage requests for bulk access to **Court Information** by third parties, particularly commercial entities.

It builds upon the Court Information Management Policy Framework to Accommodate the Digital Framework prepared for the CJC in 2012 (‘**The Framework’**) and leverages collaboration with Dr Martin Felsky in relation to a parallel project he has led for the CJC regarding the definition of **Judicial Information** in conjunction with the ongoing movement by Canadian courts to the Cloud.

This report is the result of discussions with Dr Felsky, court stakeholders, and the CJC Technology Committee.

Throughout this document defined terms from **The Framework** are referenced in **bold font**.

## 1.1 Background

Courts across Canada are grappling with requests by commercial entities for bulk access to **Court Information** to aggregate, analyze, repackage, commercialize and distribute it, particularly court decisions, orders, and other documents typically found in **Court Records**.

This demand has traditionally been driven by publishers of research systems and precedent databases. Increasingly, however, requests are coming from a more diverse range of organizations, some motivated by intent to apply advanced analytics or machine learning algorithms to predict individual and collective decision-making outcomes based on features such as judges or counsel names, and fact patterns.

Independently of these formal requests, there is also considerable potential for data mining of **Court Information** residing on the Internet by aggregators or publishers aiming to repackage and distribute it without authority. Such entities are rarely committed or motivated to maintain its integrity.

In an era of growing distrust regarding the reliability of information and, some might argue, increasing pressure on the core tenets that underpin our democratic institutions, it is imperative for the judiciary to take a proactive role in policy formulation to ensure public confidence in the justice system is not eroded by unreliable or inappropriate representation of **Court Information**.

While access to **Court Information** must be a core tenet underpinning ‘open justice’, it is also important to balance this by mitigating the risk that inadvertent release of private or sensitive information residing in court files does not cause harm to vulnerable people, undue distress or a risk of identity theft arising from malicious use.

The judiciary as the ‘stewards’ of **Court Information**, have a clear charter to establish mechanisms to maintain control over the quality and integrity of **Court Information** and to determine who should receive access to it.

As outlined in **The Framework**, In the days when **Court Information** was located primarily on paper based files that could only be accessed via personal attendance in court or registries, this physicality provided a form of 'practical obscurity' that in effect circumvented many of the risks associated with potential exposure of private or sensitive information residing in court files.

Today, in our digitized environment, it is exponentially easier to provide access to a broader range of **Court Information** on-line, to the world at large. While this may be seen as a positive step forward in terms of increased access and transparency, and supportive of the 'open courts' principle, it does mean that mechanisms will need to be established to protect private and sensitive information including **Judicial Information** that is commonly intermingled with other data on court files.

These mechanisms include guidelines, governance and contractual arrangements. Technology itself, is another tool that can provide protections when access rules are built into on-line case management systems, court websites and bulk access gateways. Technology is, however, only a tool and technology systems must be designed to implement the established guidelines regarding access, privacy and other core values developed by the judiciary.

The objective of this report is to propose a common approach and guidelines to assist Canadian courts responding to requests for bulk access to **Court Information**. The proposed mechanisms are aimed at recalibrating the core principles of 'access' and 'open courts' in the context of digital information and on-line service delivery. Access issues were much easier to navigate at a time when court information was held in paper files and the need for physical attendance at a courthouse effectively meant that information was practically obscured and thereby protected from broad, inappropriate use. It is now more challenging to balance 'access' principles with other important principles including preserving integrity, safeguarding the administration of justice, protecting the reputation and integrity of the court and the judiciary, and mitigating risks associated with misuse of private or sensitive information.

**The Framework** specifically identified some potential risks associated with an overly cavalier approach to the 'open courts' principle in an era where **Court Information** is stored in electronic rather than paper format, where sensitive **Judicial Information** and private data is intermingled with other information on court files and databases and when the effective protections afforded by practical obscurity are no longer present.

A more recent, emerging consideration, many will see as a risk, is the trend towards application of predictive analytics and artificial intelligence (AI) algorithms to **Court Information**. While there are some potential benefits from these developments, there are also some risks associated with incorrect predictions and the ramifications of reliance upon the output from biased or poorly designed machine learning models. The key question here though is whether it is the role of the judiciary to make determinations about the quality or effectiveness of such services and whether courts are in any event resourced to wade into such territory.

## 1.2 Court Information Categories

**The Framework** defined various categories of **Court Information**. These definitions were recently reviewed and updated by Dr Felsky in his report entitled *Model Definition of Judicial Information (September 2020)* which has been endorsed by the CJC. You will find under Appendix A a graphic from Dr Felsky's report which provides the summary of key terms and their definitions.

Definitions are needed to facilitate clear understanding of the important differences between the specific types of **Court Information** found on **Case Files**.

As was canvassed in **The Framework**, generic requests for open access to ***Court Records*** are precarious if the term is ill-defined. Court information management policy needs to accommodate the important differences between various categories of **Court Information** and to establish appropriate access arrangements for each category, in a granular way, to avoid inappropriate release of information that could expose private or sensitive information, cause embarrassment, harm or a loss of confidence in the judicial system.

## 1.3 The Judiciary's Role in Court Information Policy Formulation

**The Framework** provided a rationale to encourage the judiciary to adopt a leadership role in policy formulation in relation to ***all*** **Court Information**.

It was intended that the policy charter would encompass all **Court Information**, not merely the narrower defined category of **Judicial Information**.

**Judicial Information** requires special considerations and enhanced protections, however, the policy mandate for the judiciary should extend to all **Court Information**. This is because public confidence in the court system is directly impacted by the integrity and accessibility of **Court Information**. A policy void as it pertains to **Court Information** will not only negatively impact public confidence; it may also open the door to policy formulation by those without an awareness of or interest in preserving the cornerstone tenet of an effective legal system: judicial independence. The judiciary are best placed to establish policies to preserve this cornerstone tenet.

There may be circumstances whereby a Department of Justice could take an active role in policy formulation in relation to **Court Information** via delegation by the judiciary, for example, in circumstances where the judiciary are not resourced or are otherwise unable to take on the task. In such situations, however, the exercise will still require active oversight by and collaboration with the judiciary. Those formulating proposed policies need to be well informed of the nuances, complexities and unique considerations relating to Judicial Independence. Often these important concepts, which are unique to courts, are not well appreciated by 'whole of government' technologists and officers without legal training within government departments.

In commissioning this engagement, and by acknowledging the parallel project led by Dr Felsky relating to the movement of Canadian court data into the Cloud and the need to define **Judicial Information** in that context, the CJC has taken a decisive step forward to provide leadership for the Canadian judiciary in relation to policy formulation for **Court Information**.

## 1.4 Approach

The research underpinning this paper is structured around three key questions:

- *Who* wants bulk access to **Court Information**?
- *What* do they want? (i.e. what categories of **Court Information** do they want?)
- *Why* do they want it? (i.e. for what purpose do they want it?)

The focus is then to propose a pragmatic framework to guide Canadian courts in relation to bulk access requests by third parties, using the following three mechanisms:

- Governance
- Guidelines
- Contract arrangements

This paper merely proposes a starting point for each of these for CJC consideration. It is anticipated that each proposed mechanism will require consideration and potentially enhancement or modification by the judiciary prior to implementation.

After implementation, the effectiveness of each of the proposed mechanisms will need to be reconsidered and regularly modified by the CJC in response to the ever-evolving categories of court access requests and technology developments.

## 2 WHO WANTS BULK ACCESS?

While the scope for this paper is focused on requests for bulk access to **Court Information** by commercial providers, such requests should be considered within the broader context of access requests.

Third parties seeking bulk access to **Court Information** can be categorised as:

- *Start-up legal tech companies*
- *Established legal tech companies*
- *Academic institutions*
- *Credit reference agencies*
- *Press*
- *Not for profit organisations*
- *Government agencies*

The commercial landscape for legal information services is constantly evolving and most publishers and other legal information service providers now incorporate some form of analytics or artificial intelligence within their product offerings.

Well established, commercial publishers such as Lexis Nexis www.lexisnexis.com and Thomson Reuters www.thomsonreuters.com have for many years invested in powerful analytics and AI to augment their global legal information service offerings.

Credit Reference Agencies (e.g. Equifax and TransUnion) have long been consumers of **Court Information** via bulk access arrangements. Similarly, sentencing database providers have, for decades, input court orders and case characteristics into their traditional statistical, rule-based algorithms in order to 'calculate' comparative sentence range reports for criminal prosecutors, defense lawyers and judges.

Many credit reference agencies and sentencing database providers are now enhancing their offerings using predictive AI analytics and algorithms.

Commercial entities requesting **Court Information** increasingly include new innovators and start-ups that are recent entrants to the legal services market. Some examples include:

- Rangefinder www.rangefindr.ca/
- Alexsei www.Alexsei.com
- Knomos www.knomos.ca
- Blue J Legal www.bluejlegal.com/ca
- Vlex, Justia, Compass and Vincent www.disruptlaw.ca
- Loom Analytics www.loomanalytics.com

# 3 WHAT DO THEY WANT?

The categories of **Court Information** commonly sought by third parties include:

- Caselaw (judgments, court decisions)
- Transcripts of court proceedings
- Initiating documents filed in court (statements of claim, notice of appeal)
- Notices of defence or counter-claim
- Court orders
- Sentences and sentencing remarks in criminal cases
- Identity of lawyers, judges, parties
- Briefs and facta (submissions or outlines of argument prepared by lawyers)
- Judicial workload statistics

Increased use of video conferencing platforms to conduct court hearings during the COVID-19 pandemic is likely to lead to a growing demand for access to video recordings of these proceedings. To that end, the establishment of dedicated YouTube channels or similar services could be contemplated. Exhibits electronically submitted or filed during such proceedings should be treated as normal exhibits and subjected to normal access arrangements as identified in the guidelines.

**Court Information** often incorporates private or sensitive information that could cause harm or embarrassment in the wrong hands. Similarly, **Judicial Information** needs special protection. Such data can become intermingled with other less contentious categories of information and complicates access as well as potential for on-line delivery.

The mechanisms recommended in this paper are designed to assist courts to respond to such requests and should be considered in the broader context of **The Framework**.

# 4 WHY DO THEY WANT IT?

The main purposes for which third party providers seek **Court Information** are to provide inputs for the following:

- Judgment research databases
- Sentencing comparison databases
- Precedent databases
- Predictive services (inferencing algorithms to statistically predict court outcomes based on feature comparisons)
- Credit reference services
- General legal research services
- Productivity studies
- Journalism

Each of these categories may be a candidate **Purpose** as outlined in the following sections.

The application of predictive analytics and AI algorithms to **Court Information** is rapidly escalating and this is, understandably, causing some concern within the judiciary.

Such concerns are to some extent justified because there have been many examples of data being misinterpreted, 'predictions' being unreliable, and AI algorithms incorporating bias.

However, technological innovation, is exceedingly difficult to quash, control or monitor, and an attempt to do so or to make determinations about quality or effectiveness, might lead courts into some controversial waters that are difficult to navigate and virtually impossible to resource.

A more pragmatic approach is proposed whereby the courts establish protocols and mechanisms to control, as far as practicable, the terms under which bulk access to **Court Information** is provided to third parties. What happens beyond that point in terms of re-packaging of the information cannot in a practical sense be controlled by the judiciary and an attempt to do so would be highly problematic.

The proposed approach is to instead control bulk access to **Court Information**, the raw material that third parties require to create their products or services. Thereafter, it is recommended that courts merely endeavor to influence the quality, reliability, and effectiveness of the third party services via terms of use arrangements so that risks and exposure are mitigated.

The competitive market for legal information services will continue to innovate with emerging technologies such as AI and analytics. This development cannot and should not be prevented by courts. However, courts do have a responsibility and opportunity to influence the quality and mitigate the risks associated with the use of **Court Information** needed to create such services. Ultimately, it will be the consumers of the third party commercial services who will determine those that will succeed and those that will fail.

# 5 GOVERNANCE

The first mechanism in the proposed bulk access approval **framework** is governance.

In this context, the following recommendations are proposed to ensure **Court Information** access requests can be managed more collaboratively and consistently, across Canadian courts.

**Recommendation 1**

***Registry of pre-approved third parties:*** It is recommended that the CJC maintain a Registry of **Third Parties** to who bulk access to **Court Information** has been granted by any Canadian court and also a record of those third parties to whom access has been denied.

The Registry should facilitate a more consistent and collaborative approach to requests for Court Information across all Canadian jurisdictions.

**Recommendation 2**

***Registry to keep key details:*** The Registry should record key details such as:

- The name of the Third Party applicant
- Contact names for the Third Party applicant
- The date the application was made
- Type of access sought (bulk via API, extract, statistical, etc.)
- Jurisdiction and court
- Timeframe during which access is required
- The date the application was approved or rejected
- The Court Information Categories to which the applicant was granted bulk access (judgments, court orders, transcript, etc.)
- The Purpose for which bulk access was granted (if approved)
- The reason for which bulk access was denied (if rejected)
- The Duration i.e. the term during which access is to be provided (if approved)
- Contact name at the court in relation to the application (e.g. court registrar)
- Reasons for approval or rejection (optional) by reference to due diligence or other relevant considerations

**Recommendation 3**

The Registry would provide a summary of third party access approvals that have already been granted to provide insight for subsequent access requests by the same or similar third parties to multiple jurisdictions. It would be persuasive, rather than prescriptive.

Different courts may have different criteria to consider when contemplating bulk access arrangements. A family law jurisdiction may make a different determination to a criminal law or civil jurisdiction for example.

As a simple aid to decision-making, the Registry should enable all courts to benefit from the prior decisions of other courts and to leverage any contemporaneous due diligence or analysis activities that may have been undertaken by other courts in relation to third party requests.

**Recommendation 4**

***Consistent approach:*** Increased consistency of approach through collaboration across multiple courts, should deliver benefits to the community through more consistent, predictable, transparent and efficient access to **Court Information**. Third party providers should also benefit from the availability of more efficient, transparent, and consistent protocols through which they may request bulk access to any **Court Information** from any Canadian court.

**Recommendation 5**

***Clear approval process:*** The approval process in relation to any access request should involve the applicant providing all the information necessary to enable a balanced and informed assessment by the judiciary or delegate. A sample form is contained in Appendix B by way of example. This example of a standard form was developed taking into consideration a form used by the British Columbia courts. Access to a standard form should also provide applicants with transparency surrounding the criteria used to assess their applications.

**Recommendation 6**

***Details to be provided by applicants:*** A third party seeking bulk access to **Court Information** should provide the court with:

- A summary of the purpose for which the data is to be used
- Identification of the specific category of Court Information they are seeking to access
- Information to support the court's due diligence decision-making process as outlined in Recommendation 5
- An undertaking to comply with the Terms of Use of the data (see Guideline 23 – Terms of Use Requirements for Third Parties)

**Recommendation 7**

***Bulk access requests:*** It may be beneficial to create a standard 'Application Form for Access to Court Records' to be used by all Canadian courts to ensure the necessary information is contained in each bulk access request to ensure the court receiving the application is in a position to make an informed decision. Refer to proposed form in Appendix B.

The benefit for third parties would be a greatly simplified process whereby they could submit access requests with multiple jurisdictions using the same process and information.

**Recommendation 8**

***Guidelines:*** The CJC may approve initial guidelines (those in the following section are proposed as drafts and as a starting point) regarding bulk access requests and may make them available to all courts and potentially also to the public via the CJC website.

The first release of the guidelines by the CJC should provide a baseline to be reviewed on a regular basis to ensure they evolve over time to continually adapt to address the ever-evolving nature of court access requests and technological developments. Guidelines are discussed is section 6.

# 6 GUIDELINES

The second mechanism in the proposed bulk access approval framework is guidelines.

The guidelines outlined in this section are proposed as initial candidates to ensure **Court Information** access requests can be managed collaboratively and consistently, across Canadian courts.

They are designed to provide a suggested starting point. It is anticipated that they will be refined and augmented as the CJC deems appropriate via the governance arrangements outlined in the preceding section.

The proposed guidelines in this section are based on the core values that underpin an effective court system as identified in **The Framework**.

*Accessibility* is a foundational tenet in an open justice system. However, *Accessibility* is not an absolute value that has no limits. Curtailment of bulk access to certain **Court Information** may sometimes be necessary to protect other important values that underpin an effective justice system such as *Fairness, Independence, Transparency, Efficiency, Quality* and *Human Dignity or Privacy*.

**The Framework** suggests that a cornerstone objective that underpins the 'open courts' principle is to instil *Public Confidence* in the court system. Therefore, when there is doubt about the delicate balance between competing values, such as access and privacy, it is suggested that policy formulation may be facilitated by framing the question: Will access to the data in question facilitate Public Confidence in the court? This will sometimes mean that compromises need to be made between competing values.

## 6.1 Guidelines for Courts regarding Bulk Access Requests

***Guideline 1 (Third Parties, Approved Categories and Purposes)***

Courts should when considering whether to provide bulk access by a **Third Party** consider the **Categories of Court Information** and the **Purposes** for which it has already been made available by another Canadian court. This information should be recorded in the Register maintained by the CJC as identified in the Governance section of this document.

***Guideline 2 (Court Record)***

Information that forms part of the official **Court Record** (a subset of the information typically found on a **Case File**) should be considered as a candidate category for bulk access subject to protection of private or sensitive information as outlined in these guidelines.

Note, the definitions **Court Record** and **Case File** in **The Framework** may have presented some confusion. In essence, it is not the terminology that is important, in as much as the definitions themselves. Essentially it is necessary to identify information categories to determine in relation to each field, report or document or other artefact, the extent to which it should be made publicly accessible or suppressed to protect privacy or to otherwise protect another core values that impact public confidence in the judicial system.

***Guideline 3 (Lawyer Work Product)***

Lawyer work product and communications 'delivered' to the court or judge and placed on the **Case File** do not form part of the official **Court Record** and should not be made available to third parties in bulk access format for onward distribution or commercialization.

***Guideline 4 (Expert Reports)***

Expert reports that have not been formally admitted into evidence do not form part of the official **Court Record** so they should not be made available in bulk access format for onward distribution or commercialization.
*(Note: there may be other categories of documents that need to be identified)*

***Guideline 5 (Evidence Tendered but not Admitted)***

Documents 'marked for identification' before or 'tendered' during a hearing are often 'placed' on the **Case File** for convenience purposes but they do not officially become part of the **Court Record** unless and until they are formally admitted into evidence (e.g. by the judge ordering admission and by the assignment of an exhibit number). Therefore, they should not be included in third party bulk access arrangements unless and until they have become part of the official **Court Record**.

***Guideline 6 (Court Forms)***

Court forms that have legislative references in court rules are officially 'filed' with court registries in accordance with those court rules and become part of the formal **Court Record** as soon as they have been accepted as 'filed' by registry officers. They are, therefore, candidates for bulk access arrangements subject to the other policies regarding private and sensitive information.

*Note: Consider whether documents submitted to court in accordance with Practice Directions or Practice Notes should be similarly classified. Often these contain significant lawyer work product and may contain sensitive or personal information so it might be relevant, prima facie, to exclude them from bulk access arrangements on the basis that they are not part of the official Court Record.*

***Guideline 7 (Judicial Information)***

**Judicial information** as defined in Dr Felsky's paper on that subject is a special category of **Court Information** that should never be a candidate for bulk access by third parties.

***Guideline 8 (Transcripts)***

Transcripts of court proceedings become part of the official **Court Record** once verified and are, as such, candidates for third party access requests. However, such requests should be subject to privacy constraints i.e. transcripts containing personal information should not be made available to non-parties unless the court or the court's delegate has undertaken a prior privacy risk assessment. Such requests should also be considered subject to any other specific pre-existing court arrangements regarding republication of transcript.

***Guideline 9 (Video & Audio Recordings)***

Video and audio recordings of court proceedings often form part of the **Court Record** and, as such, they are candidates for third party access requests. However, given the unique characteristics of such materials including the potential for subsequent broadcasting, access requests of this nature should be subject to specific court policies, protocols and judicial discretion.

***Guideline 10 (Revocation)***

Courts should maintain full discretion to revoke **Approved Third Party** access arrangements at any time and for any reason.

***Guideline 11 (Intellectual Property)***

There is no assignment of any intellectual property rights associated with the provision of bulk access to **Court Information** by any **Approved Third Party**.

***Guideline 12 (Maintain Court Depositories)***

Courts should maintain control over their own depositories of **Court Information** to avoid over-dependency on third party recipients even if there is a reciprocal arrangement in place whereby a third party provides the court with its value added product offering in return for bulk access to the **Court Information** that is used as raw input data to create that product.[1]

***Guideline 13 (Interfaces)***

Courts should, where budget permits, include an Application Program Interface (API) capability within the design of their court (e.g. registry) case management systems to facilitate secure, bulk, automated data exports of **Approved Categories of Court Information** by **Approved Third Parties** for **Approved Purposes**. These API's should operate within the clearinghouse repositories (refer Guideline 12).

***Guideline 14 (Security)***

Courts should endeavour to deliver **Court Information** that is approved for bulk access via a secure data repository location (e.g. a 'clearing house' facility) that is external to court systems rather than allowing a direct connection to extract data from court systems.

***Guideline 15 (Security)***

Courts should ensure their security advisors also known as Judicial Information Technology Security Officers (JITSOs) approve the technical design of bulk access solutions arrangements and should also arrange for them to be reviewed at least annually including third party penetration tests and audit log reviews where appropriate.

[1] For example: in some US courts, the judiciary has lost control over the **Court Information** contained in their registries when e-lodgement was outsourced to commercial providers without adequate contractual and information governance policy safeguards. In some cases this meant the court relied on the third party commercial provider for access to its own information.

***Guideline 16 (Privacy)***

Courts should implement a data minimization policy to limit the collection of personal data within **Court Information** to ensure that only the Personally Identifiable Information (PII) that is absolutely necessary to facilitate the adjudication of the case is collected from parties and litigators to be maintained within court technology systems. This may necessitate a review of court rules, processes, procedures, and forms to remove any requirement to provide personal information that is not necessary for the effective adjudication of the case.

Implementation of this policy should mitigate the risk that members of the public who actively or inadvertently become involved in court proceedings will, as far as possible, be protected from unnecessary distress, embarrassment, the risk of identity fraud and threats to personal safety through unnecessary disclosure of their personal information.

***Guideline 17 (Privacy)***

Courts should take reasonable steps to establish protocols to mitigate the risk that personal details of vulnerable people (e.g. witnesses, jurors, victims of crime, children involved in juvenile matters) may be inadvertently disclosed when providing **Court Information** to third parties under bulk access arrangements.

***Guideline 18 (Privacy)***

Personal de-identification principles should be applied to published judgments, transcripts and other information that is made publicly accessible. The CJC's Use of Personal Information in Judgments and Recommended Protocol (2005) should be adopted when writing and publishing judgments.

***Guideline 19 (Key Indicators)***

Courts should provide bulk access to statistical information regarding key indicators such as:

- Clearance rates
- Time to disposition
- Age of active pending cases
- Age of reserved judgments

This data should be divided by case categories and it should be anonymised to remove identification of parties, lawyers or judges.

***Guideline 20 (Key Indicators)***

Requests for statistics that fall outside the realm of those already produced by courts need not necessarily be accommodated if their production will require costs or an allocation of resources beyond those that are reasonably available. This may require, on a case by case basis, a proportionate assessment of the benefit to be derived as compared with the cost of the exercise.

***Guideline 21 (Mitigation of Risk regarding Data Scraping)***

While it is impossible to ***prevent*** unauthorised data scraping from court websites, it is possible to make it extremely ***difficult***. It is recommended that courts engage technical expertise to implement measures on their websites to mitigate these risks and to constantly review these measures. Regular review is necessary because any technical solution will be quickly circumvented by the constant creativity and innovation in the web scraping domain. Some examples of current technology options include:

- Monitoring IP requests to detect & block high volume frequent requesters
- Requiring a login for access to identify users (it may be false of course but it will be informative)
- Change class and ID in the website HTML code
- Embed information inside media objects rather than within HTML
- Use of CAPTCHA's for frequent requesters
- Creation of Honey Pot pages
- Adding 'terms of service' that users must accept which prohibits scraping

***Guideline 22 (Purpose)***

An applicant for bulk access to **Court Information** must demonstrate a valid scholarly, journalistic, research or government purpose, or that granting access should facilitate the conduct of judicial proceedings, contribute to the administration of justice or serve the public interest.

***Guideline 23 (Terms of Use Requirements for Third Parties)***

**Approved Third Parties** to whom bulk access to **Court Information** has been granted must comply with the following "CJC Terms of Use regarding Bulk Access to Court Information by Third Parties" available from the CJC website:

1. **Approved Third Parties** must only use the **Court Information** they receive for the **Approved Purpose**.

2. **Approved Third Parties** should take reasonable steps to ensure that the **Court Information** is presented accurately and is not modified, used, or published in a manner that could cause it to be misrepresented or misinterpreted.

3. **Approved Third Parties** may aggregate, annotate, mark-up, extract features, add hyperlinks or other value-add elements to **Court Information** to aid analysis, research or interpretation but they should not cause it to be misrepresented by modification of the content of the original source data.

4. **Approved Third Parties** should use best endeavors to ensure their data repositories are updated within 72 hours of each data set becoming available to them via a court's bulk access facility to ensure concurrency, reliability, and integrity of their services.

5. **Approved Third Parties** must take reasonable steps to avoid the risk that personal details of vulnerable people (e.g. witnesses, jurors, victims of crime, children involved in juvenile

matters) could be published in the event that such information is contained in any **Court Information** they receive." [2]

6. **Approved Third Parties** should endeavor to comply with the W3C Web Content Accessibility Guidelines[3] to maximize the potential for people with disabilities to access their services containing **Court Information**.

7. The court is not responsible for any loss, damage or other ramifications associated with reliance upon **Approved Third Party** provider services containing **Court Information**.

8. **Approved Third Party** recipients of bulk **Court Information** should make reasonable attempts to obfuscate any PII contained in the **Court Information** they receive before publishing it.

9. The court maintains full discretion to withdraw consent in relation to bulk access arrangements at any time and without an obligation to provide a reason. In such circumstances, the **Approved Third Party** will remove all **Court Information** from their services within 4 weeks of the receipt of notice of withdrawal of consent.

10. The court also maintains full discretion to require any **Approved Third Party** to remove any nominated **Court Information** from their service at any time, for any reason. In such circumstances, the **Approved Third Party** will remove the nominated **Court Information** as soon as practicable or as otherwise approved by the court.

11. The costs of accessing **Approved Categories of Court information** must be borne by **Approved Third Parties**.

12. **Approved Third Parties** must conduct regular Privacy Impact Assessments[4] to mitigate the risk of inappropriate disclosure of personal information contained in any **Court Information** they receive.

13. Unless justification can be provided in relation to an alternative hosting arrangement, all **Court Information** made available to third parties in bulk form should be hosted in a data center in Canada.

[2] As regards juror privacy issues see "Making the Case for Juror Privacy: A New Framework for Court Policies and Procedures by Paula L. Hannaford http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/juries&CISOPTR=31

[3] https://www.w3.org/WAI/standards-guidelines/wcag/
[4] https://fr.wikipedia.org/wiki/Privacy_Impact_Assessment

# 7 CONTRACT ARRANGEMENTS

The following wording is recommended for use in agreements with **Approved Third Parties** in order to effectively incorporate the Terms of Use protections outlined in Guideline 23 into any third party agreements:

> *"Approval is granted to (insert **Approved Third Party**) to receive bulk access to the nominated categories of Court information for the **Approved Purposes** identified below on the condition that the CJC Terms of Use regarding Bulk Access to Court Information available at (insert CJC hyperlink) are adhered to at all times during the term of this agreement"*
>
> *(insert list of **Approved Court Information Categories** and **Approved Purposes**)*

This approach should effectively ensure the CJC policies, as they evolve, will be incorporated into the contractual terms of the bulk access agreements while allowing the CJC the flexibility to continue to review and recalibrate those policies over time, as required, based on practical experience, emerging risks and technology developments.

## APPENDIX A – SUMMARY OF KEY TERMS AND THEIR DEFINITIONS

<table>
<tr><td colspan="4">COURT INFORMATION / INFORMATION JUDICIAIRE<br>Information that is received, collected, stored, used or produced by a court in relation to its mission.</td></tr>
<tr><td>Court Operations Information</td><td colspan="3">Judicial Information<br>Renseignements de la magistrature</td></tr>
<tr><td>Information related to the supervision, management and direction of matters necessary for the operation of the Court or other matters assigned to the Executive by law or agreement.</td><td>ADJUDICATIVE<br>Information related to the exercise of a judicial function.</td><td>ADMINISTRATIVE<br>The supervision, management and direction of matters necessary for carrying out judicial functions, including:<br><br>• The scheduling, preparation, assignment, and adjudication of proceedings;<br>• The education, performance, conduct and discipline of Judicial Users;<br>• The governance of Court information and technology; and<br>• All other matters assigned to the judiciary by law or agreement.</td><td>PERSONAL<br>Personal Information of Judicial Officers</td></tr>
<tr><td colspan="3">Case file / Dossier judiciaire<br>A Case File contains the Information that relates directly to a single court proceeding or to a number of related court proceedings that have all been assigned the same case file number. It includes the Information that comprises the Court Record and any other Information that has been captured or placed in the Case File.</td><td></td></tr>
<tr><td colspan="3">Court Record / Documents judiciaires[5]<br>Information and other tangible items filed in proceedings and the information about those proceedings stored by the court.<br><br>Framework: “This term refers to the “Official” Court Record. It is the portion of the Case File that will be made accessible to the public, subject to privacy constraints regarding, for example, disclosure of personal information etc. The Court Record should be preserved indefinitely whereas the rest of the Case File is usually destroyed after a defined period of time.”</td><td></td></tr>
</table>

[5] In Quebec, “Documents d’activité des tribunaux” (synonymous with “Documents judiciaires”) is translated as “Court Records (plural).” This is a broad category that includes the “Dossier judiciaire”, or Case file. In the *Framework*, which is followed here, the Court Record (singular) is a part of the broader Case File. There does not appear to be a corresponding term in Quebec for the narrower concept of Court Record.

# APPENDIX B – TEMPLATES - FORM - REQUESTS FOR BULK ACCESS TO COURT INFORMATION

Insert Court
Address and
Logo Here

# Application for Access to Court Records - Detailed Form

*Authorizing access to the Court records does not offer or provide any form of indemnity, to the party given access to by the court, for any liability, damages or expenses that may arise in relation to the use of such records or of any information contained therein.*

## *(I) The Applicant*

1. Name(s) of the organization(s) and email address(es) that should be used to send the court record information. If more than one organization is involved in the application, explain how they are affiliated?
   *Note: If you wish to receive the court record information by mail, please provide us with your complete mailing address.*

2. Provide information about the specific group(s) within your organization (e.g. corporate services, research team, etc.) that will be using court information, including the purpose for which it will be used.

## *(II) The Purpose*

3. Describe the purpose for which the court record information will be collected, used, and/or distributed and why such information is necessary. Also, identify the legislative authority, if any, for the collection, use, and distribution of the court record information and whether the information is being collected for commercial use by the applicant.

4. The purpose of providing access to court record information is to better facilitate the conduct of judicial proceedings and to improve access to court record information where the public interest is served. Explain how the applicant's use and proposed distribution of court records information supports the primary purposes mentioned above.

## *(III) The Information*

5. Identify the court record information that you wish to collect, use, and/or distribute. Be as specific as possible by identifying the court level, the data elements, the documents, and the timeframes. If requesting access to court record information from more than one level of court, list the information from each court separately.

6. Identify whether or not this court information is available from any other source(s).

7. Describe how the information will be used.

## *(IV) Form of Access*

8. Describe the type of access requested (e.g. paper records or electronic records).

## *(V) User Access*

9. In the following table, identify who will have access to the court record information.

| **User name** | **Title** | **Contact Information** (email address, telephone and/or mailing address) |
|---|---|---|
| | | |
| | | |
| | | |

10. Describe why these users require access.

11. Have these users been screened for security purposes? If so, identify the security clearance level of each user who has been screened and briefly describe the method of screening.

12. Are all the users under the direct supervision of the applicant (e.g. are any users located at a different facility or under the supervision of a different organization)?

13. Which user will have the primary responsibility for the care and control of the court record information and what is his/her relationship to each of the other users (e.g., research supervisor responsible for direct supervision of each user)?

## *(VI) Copying, Storing and Distributing Information*

14. Will copies be made of the court record information and, if so, why?

15. Describe how copies of the court record information, will be securely stored by the applicant.

16. Describe how the court record information will be shared, distributed orpublished and to whom? If applicable, it is necessary to specify the legal authority of the applicant for the sharing and distribution of court record information. Explain why it is necessary to include personal identifying information in suchsharing, distribution and/or publication. Alternatively, you must undertake to obliterate or remove such court record information before sharing, distributing and/or publishing.

17. What is your plan for the retention and disposal of the court information after its use?

## *(VII) Security and Privacy of Information*

18. What are the security arrangements for the protection of the court record information? For example, will the court record information be stored on stand-alone computers controlled by the applicant, will information be stored "in the cloud" or accessed remotely, will information be password protected, and what security measures including authentication measures are used by the applicant?

19. Having regard to legislative security and privacy requirements, what policies and procedures of the applicant are designed to meet the legislative requirements? For example, policies and procedures for correcting inaccurate information, and for meeting the requirements of protection of personal information legislation.

## *(VIII) Undertaking Statement*

By checking this box, I undertake not to rebroadcast or publish the information received outside the parameters identified in this Form. ☐

## *(IX) How to Submit your Application*

Once your application is complete, please send it as an email attachement to:

Insert name of court staff to receive the application form

Insert title of court staff to receive the application form

Insert email address of court staff to receive the application form

*If you prefer to send your application form by mail, please send it to the following mailing address.*

Insert complete address of the court

## *(X) Summary (for office use only)*

1. Access approved ☐ Access denied ☐
2. Names and titles of assessors :

| Name(s) | Title(s) | Contact Information |
|---|---|---|
| | | |
| | | |
| | | |

3. General Comments (if applicable):

| |
|---|
| |

Insert Court
Address and
Logo Here

# Application for Access to Court Records - Simplified Form

## *Instructions*

The Simplified form should only be used:

1. If you have already completed an Application for Access to Court Records - Detailed form.
2. Your access has already been approved.
3. The information that you originally submitted as to the following eligibility criteria has not changed:
   - Applicant
   - Purpose
   - Information
   - Form of Access
   - User Access
   - Security and Privacy of Information
4. If there are any changes to the information you are providing related to any of the above eligibility criteria, or if there are any changes in your application related to the topics under headings (II) The Information or (III) Copying, Maintaining and Distributing Information; those changes should be clearly identified and described under those sections.
5. Authorizing access to the Court records does not offer or provide any form of indemnity, to the party given access to by the court, for any liability, damages or expenses that may arise in relation to the use of such records or of any information contained therein.

## *(I) The Applicant*

1. Name(s) of the organization(s) and email address(es) that should be used to send the court record information.

## *(II) The Information*

2. Identify the court record information that you wish to collect, use, and/or distribute. Be as specific as possible by identifying the court level, the data elements, the documents, and the timeframes. If requesting access to court record information from more than one level of court, list the information from each court separately.

## *(III) Copying, Maintaining and Distributing Information*

3. Will copies be made of the court record information and, if so, why?

4. Describe how the copies of the court record information will be stored by the applicant.

5. Describe how the court record information will be shared, distributed or published and to whom? If applicable, it is necessary to specify the legal authority of the applicant for the sharing and distribution of court record information. Explain why it is necessary to include personal identifying information in such sharing, distribution and/or publication. Alternatively you must undertake to obliterate or remove such court record information before sharing, distributing and/or publishing.

## *(IV) Undertaking Statement*

By checking this box, I undertake not to rebroadcast or publish the information received outside the parameters identified in the Form. ☐

## *(V) How to Submit your Application*

Once your application is complete, please sent it as an email attachement to :

Insert name of court staff to receive the application form

Insert title of court staff to receive the application form

Insert email address of court staff to receive the application form

*If you prefer to sent your application form by mail, please send it to the following mailing address.*

Insert complete address of the court

## *(VI) Summary (for office use only)*

1. Access approved ☐ Access denied ☐
2. Names and titles of assessors:

| Name(s) | Title(s) | Contact Information |
|---|---|---|
| | | |
| | | |
| | | |

3. General Comments (if applicable):

| |
|---|
| |