POST-CONSULTATION MEMORANDUM

Provincial Court Policy regarding criminal court record information available through Court Services Online (March 2016)

I. Introduction

During the summer and fall of 2015, the Office of the Chief Judge of the Provincial Court of British Columbia engaged in a broad public consultation[1] with respect to its development of policy for online access to adult criminal case information available through Court Services Online (CSO), a service hosted by the Court Services Branch (CSB) of the Ministry of Justice. In response to the Court's consultation memorandum (attached as **Appendix "A"** to this memorandum), the Court heard from over 60 individuals and organizations whose thoughtful submissions canvassed a broad range of opinions with respect to how privacy interests should properly intersect with the open court principle.

The challenging issues raised in this consultation will continue to confront policymakers and courts in the coming years as we experience the implications of technology that permits instantaneous and broad sharing of very personal information, in the context of respect for the important values of open courts and the privacy interests of individuals. The goal will always be to find a balance which enables both the parties to proceedings and the public to have confidence in the judicial process.

II. The issues

The issues raised in the consultation process focus on a review of the Court's current policy regarding disclosure through CSO of non-conviction information, together with a specific aspect of that information related to what is commonly called "peace bonds" issued under section 810 of the *Criminal Code*.

[1] The consultation included providing the Court's consultation memorandum (**Appendix "A"** to this memorandum) by email to media reporters, editors and media organizations on the Office of the Chief Judge's media contact list, as well as notices through the Law Society of British Columbia, the Canadian Bar Association, and the Courthouse Libraries of British Columbia. In addition, the consultation was publicized on the Court's website and through its Twitter account, as well as, by appearances by the Chief Judge on CBC radio broadcasts in the Lower Mainland, Vancouver Island and Prince George, British Columbia. Several newspaper articles were written about the consultation process.

As noted in the consultation memorandum, the current policy with respect to non-conviction case information is not to provide remote electronic access on CSO to such information where there has been a withdrawal, acquittal or dismissal of a criminal charge. In addition, where a stay of proceedings has been entered, information about that case is not available on CSO after one year from when the stay was entered.

With respect to peace bonds, CSO does not limit the availability of information about such court orders which, although not criminal convictions, nevertheless are orders made when the presiding judge is satisfied that there are reasonable grounds for a fear of injury or damage.

Submissions from a variety of individuals and organizations, including media organizations, provided spirited and compelling arguments, based on the open court principle, that information about proceedings in public courts should be made available in the broadest way possible with existing technology. In other words, CSO should provide information about the result in all cases whether that be a conviction, acquittal, dismissal, withdrawal of charges, peace bond or stay of proceedings. Such individuals or organizations would not draw a distinction between these categories with respect to the availability of information about them to the media and, therefore, to the public. A compelling suggestion was made that those acquitted, or whose charges have been withdrawn or stayed, will benefit from a public confirmation through CSO that the criminal charges against them were not sustained. In addition, arguments were made that if there is a pattern of an individual facing charges in serious matters but there are ultimately no convictions, the fact of these charges would be relevant information for a journalist or landlord seeking information about that person. As one news organization representative stated:

> Given that the Crown takes the process of charge assessment very seriously, it is important to know if one person has been charged with numerous offenses over the span of a few years, even if those cases result in stays, withdrawals or acquittals.

One journalist noted that in some instances there may be a strong public interest in knowing whether an individual has been subjected to criminal charges which were not later sustained. For example, the journalist made reference to the Robert William Pickton case where, before being charged and convicted of six murders, he had been charged with an earlier offence that was stayed. The journalist argued that there would be a strong public interest in that charge, despite the stay of proceedings, in light of the later murder convictions.

Forceful countervailing submissions were received that supported a limitation on broad access to information about cases that did not result in a conviction. As the consultation memorandum noted quoting an Alberta court decision:

> The mischief which could be created by allowing ready public access to the names of unconvicted accused is not difficult to imagine. Statutorily prescribed punishments for the convicted would pale in many cases in comparison to the *de facto* punishment created by posting information on the criminally charged for the benefit of the gossip and busybody.[2]

We received submissions from individuals confirming that CSO is used in the rental market to determine the suitability of individuals applying for rental property. It is apparent that these individuals consider acquittals, withdrawals and stays of proceedings to be relevant in evaluating applicants. Some submissions suggested that those individuals reviewing the results of such CSO searches would be sensitive to the context, including the fact that no conviction was entered. It is apparent, however, that others would see the non-conviction as information from which some form of negative inference could properly be drawn against a prospective tenant. The news organization's submission previously mentioned, commenting on how seriously Crown counsel takes its charging process, supports the assertion that negative inferences will be drawn from a criminal charge regardless of the outcome.

There were also submissions from some media organizations that recognized the hazards for individual privacy rights when such inferences are drawn, thereby undercutting the presumption of innocence embedded in Canada's Constitution through s. 11 of the *Canadian Charter of Rights and Freedoms*. Suggestions were made that these deleterious effects could be tempered if CSO was clear in explaining that a person who has been acquitted, for instance, continues to be entitled to the presumption of innocence.

Other organizations with particular expertise with respect to freedom of information and protection of privacy consistently pressed the point that non-conviction information should not be electronically and remotely available through CSO. For example, as noted in the consultation memorandum, the British Columbia Information and Privacy Commissioner, in an April 2014 Report made reference to the following:

> It is trite that the presumption of innocence is a core value and principle in our system of criminal justice… It is not merely the formal penal consequence of a criminal allegation that represents the punishment for criminal behavior. Often, it is the social stigmatization and public condemnation that are the worst implications for a convicted criminal. To disclose the status of an individual as having been a suspect, charged or acquitted of a criminal offense is to heap on them much, if not all, the suspicion and wariness the public feels towards those convicted.[3]

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[2] *Her Majesty the Queen in Right of Alberta et al v. Jay Krushell and The Information and Privacy Commissioner*, 2003 ABQB 252 at para. 49.

[3] Investigation Report F14-01 of the Information and Privacy Commissioner for British Columbia regarding "Use of Police Information Checks in British Columbia" (15 April 2014) at 20-21.

In her submission responding to the Court's consultation memorandum, the Information and Privacy Commissioner of BC, Ms. E. Denham, referenced "the reality that information about an individual's interaction with the justice system can lead to unjustified stigma, with information wrongfully suggesting that the individual is guilty of an offence or of wrongdoing, weakening the *Charter*-protected presumption of innocence, which, like the open court principle, is fundamental to our democratic society and rule of law."

The submission from the British Columbia Freedom of Information and Privacy Association made the point that there is currently much work being undertaken with British Columbia police forces, in consultation with the Office of the Information and Privacy Commissioner, to improve privacy safeguards for criminal record checks that are conducted through the police with the consent of the individual whose record is at issue. The Association stated as follows:

> At a time when police forces, in consultation with the OIPC, are working to improve privacy safeguards for these types of record checks, it is vital that the courts avoid providing a low or no cost way for employers, landlords and others to circumvent those already limited protections of British Columbian's privacy rights. In our joint submission with the BC Civil Liberties Association to the OIPC on this issue, we counseled against the release of non-conviction information as part of police information checks except in very limited circumstances. Given the complete absence of control over the use of information made available through CSO, we recommend that non-conviction information should not be made available.

This office received compelling argument from individuals suggesting that the importance of the open court principle can be properly advanced without sacrificing legitimate privacy interests of those who are not convicted of criminal offenses. In this regard, the former Interim Privacy Commissioner of Canada, Ms. C. Bernier, stated as follows:

> Judicial transparency, or the open court principle, is usually posited in opposition to the right to privacy. I submit that this is a false opposition: the open court principle applies to the courts, to put the exercise of their duties under public scrutiny. The right to privacy applies to individuals, to protect their freedom and integrity. Hence, the fulfillment of the principle of judicial transparency, shining a light on the court, does not inherently imply exposing the parties. It may be useful to go back to the original articulation of the principle of judicial transparency to remind ourselves of its actual scope and focus.

In this regard, the submission references the oft-quoted 1843 passage by Jeremy Bentham: "publicity is the very soul of justice… It keeps the judge [himself/herself], while trying, under trial."

The submission continued:

> It is critical, for the sake of this discussion, to focus on the scope and nature of the judicial transparency principle. It is meant to keep the court's process and reasoning to public scrutiny as a matter of accountability for fairness and respect of the rule of law. Hence, the object of the judicial transparency principle is the court and the information to be made public relates to the court. Turning the focus of scrutiny away from the court and towards the parties, obscure[s] accountability and intrude[s] upon privacy without assessment of necessity in the public interest… Posting [the] identity of the parties is not inherent to the realization of the judicial transparency principle. Consequently, identity of the parties is not necessary to transparency and should not be made public unless there is an overwhelming, preponderant need in the pursuit of public interest… [I]n the absence of a conviction or the issuance of a restraining order, it is difficult to argue the necessity of publicity. The "de facto punishment" referred to in the Alberta Court of Queen's Bench in the *Krushell* case, quoted in the consultation paper, is most eloquent on this point.

A. Conclusion regarding online access through CSO to acquittals, dismissals, withdrawals, and stays of proceedings

On balance, the need to protect individuals who have not been convicted from misuse of court record information outweighs the desirability of broad online public access to information about such cases and the individuals affected. A person who has not been the subject of an adverse conclusion in a criminal proceeding should not be exposed across the internet on CSO to the stigma identified in the submissions and described above. While it may properly be suggested that identifying those who have been convicted of offenses before the courts is consistent with the public interest, on balance, it cannot be fairly suggested that the public interest requires the ongoing exposure of individuals to public scrutiny through CSO when the criminal justice system has not sustained a criminal charge against them.

Nevertheless, there remains a public interest in information about events that occur in public court proceedings, including events such as acquittals, withdrawals of charges and stays of proceedings. That information will continue to be available by attendance at the relevant court proceedings or by requesting information about proceedings related to individuals at the Court Registry. In addition, at 17 Court Registries across British Columbia (see list in **Appendix "B"** to this memorandum) the Court Services Branch of the Ministry of Justice provides Justice Public Access Terminals (JPATs) which will continue to provide in-person access to court record information regarding the acquittal, dismissal, withdrawal or stays of charges for any Provincial Court adult criminal proceeding in British Columbia. However, subject to the comments in the next paragraph, such information will not otherwise be accessible through online remote electronic searches on CSO.

We heard compelling submissions from the media indicating that it would harm their coverage of court proceedings if they were unable to obtain Court results for matters they had been following if that result is an acquittal, dismissal or withdrawal of charges. They were concerned the case would simply disappear from CSO upon an acquittal being entered. In order to address this understandable problem, this office is directing CSB to continue to provide information through CSO for acquittal/dismissal/withdrawal cases for a period of 30 days after the acquittal/dismissal/withdrawal has been entered. It is expected this will assist members of the public and journalists monitoring specific cases through CSO to learn the result of that case if CSO is checked within a reasonable time after the end of the proceedings. If they are following the case they will know when the proceeding ends and if a conviction has not been entered, that information will be available on CSO for a period of 30 days. With respect to stays of proceedings, this office is directing CSB to continue preventing online remote access through CSO to adult criminal case information regarding stays of proceedings after one year from the entry of the stay.

B. Peace bonds

Strong submissions were received to suggest that peace bonds were of a similar nature to non-conviction information in the sense that no criminal offense has been found against the person subjected to a peace bond. Instead, the basis of a peace bond is a determination by a court that someone has reasonable grounds to be concerned about their safety and that the subject of the peace bond will consequently have some restrictions on their contact with that person. This process is different from other non-conviction situations in the sense that there have nevertheless been grounds established for the issuance of a peace bond. However, the grounds established, were not deemed sufficient for a criminal conviction.

Accordingly, there is not the same compelling argument for ongoing public disclosure of a successful peace bond application as there is with a conviction for which a pardon or record suspension has not yet been granted. Moreover, the non-criminal aspect of a peace bond needs to be recognized in determining the appropriate policy for remote electronic access to peace bond information.

A compromise position has been expressed by a number of parties consulted, including some journalists. Many of those making submissions could understand the desirability of limiting information about peace bonds to the period when the peace bond remains in effect. A sensible and fair balancing of the public interest and the privacy interests of those bound by peace bonds suggests that peace bond information should be available on CSO during the term of the peace bond order but not thereafter. In other words, once the peace bond has expired, the information should no longer be available on CSO.

III. Conclusion

As noted in the consultation memorandum, there had not been a broad public discussion with respect to the appropriate limits established by judicial policy to online access to adult criminal case information. The extent and engagement of the wide range of submissions received in response to the memorandum showed the thirst of those affected to weigh in on the issues. The Court has welcomed all perspectives and the resulting policy has benefitted greatly from this process. We are committed to continuing to learn from experience with this policy. As our collective understanding of the appropriate intersection of privacy rights and the open courts principle grows, we look forward to hearing suggestions for improvement.

IV. Policy Directions

1. CSB is being directed to prevent online remote access through CSO to adult criminal case information regarding acquittals, dismissals and withdrawals after 30 days from the entry of the acquittal, dismissal or withdrawal.

2. CSB is being directed to prevent online remote access through CSO to adult criminal case information regarding stays of proceedings after one year from the entry of the stay.

3. CSB is being directed to prevent online remote access through CSO to information regarding peace bonds issued once the peace bond has expired on its terms.

We thank all those who participated in this consultation process. We deeply appreciate the contribution you each made to the discussion and the wisdom you shared with us.

Yours truly,

Thomas J. Crabtree
Chief Judge
Provincial Court of British Columbia

Appendix "A"

THE PROVINCIAL COURT
OF BRITISH COLUMBIA

CONSULTATION MEMORANDUM

Consultation regarding criminal court record information available through Court Services Online (July 2015)

I. Background

Court Services Online (CSO) is a service of the Court Services Branch (CSB) of the Ministry of Justice which has, since 2008, provided online access to British Columbia Provincial Court criminal court record information. In general, the same information available through an in-person request at the Court Registry is available online.[1] CSB reports that on average, there are 130,000 searches and 80,000 views per month on the CSO criminal database.

CSO is operated by CSB as part of the executive of government carrying responsibility for the administration of justice in the province. The judiciary, as a separate arm of government from the executive, controls the courts and the judicial process. In this regard, the law provides the Provincial Court judiciary with a supervisory and protecting authority over Provincial Court records and court record information. Accordingly, while CSB operates CSO, the policy regarding what court record information can be posted on CSO is established by the Provincial Court judiciary through the Office of the Chief Judge (OCJ).

You can search details for Provincial Court criminal court files through a name or Court file number search. Depending on a specific file's access restrictions, you will be able to view some basic case profile for Provincial Court criminal files such as:

- File number
- Type of file
- Date the file was opened
- Registry location
- Name of participants

[1] CSO provides information from Court file records but not copies of the specific Court file records. In addition, if a publication ban exists, CSO may limit what court record information is available on CSO if there is a concern publishing such information online through CSO may constitute a beach of the publication ban. The banned information will, however, be generally available at the Court Registry with a direction that a person accessing that information must not breach the publication ban.

- Charges
- Appearances
- Sentences/dispositions
- Release information

There is, however, no ability to view court documents within the criminal E-search service. Access is based on publicly available information. Some files may offer you only limited information and in some cases none at all.

Legislation and/or policy established by the OCJ currently prevents access to the following Court record information, seeking to balance the right of the public to transparency in the administration of justice with the right of an individual to privacy:

- proceedings under the *Youth Criminal Justice Act;*
- convictions for which a record suspension or pardon has been granted under the *Criminal Records Act;*
- absolute and conditional discharges, after one and three years, respectively, from the date of sentencing, under the *Criminal Record Act*;
- stays of proceedings, after one year from the stay being entered;
- withdrawals, after the withdrawal has been entered; and
- acquittals or dismissal of charges.

II. Summary of consultation memorandum

Presently, the OCJ is considering expanding the category of court record information that is not available on CSO to include Peace Bond applications and orders and we seek to engage the public in a consultation on the subject.

As there has not been a broad public discussion with respect to other limits established by judicial policy (stays, withdrawals, and, most recently, acquittals/dismissals), the Chief Judge has asked that consideration of Peace Bonds be coupled with an opportunity for the public to comment on these other aspects of judicial policy as well. Such discussion or comment will assist the Chief Judge in determining whether such limitations need adjustment or achieve an appropriate balance between openness and privacy considerations.

In addition to the consideration of these policy issues, this consultation memorandum also presents an opportunity to explain the operation of publication bans in individual cases on CSO. Members of the media have expressed that the presence of a publication ban in a case results in CSO blocking access to case information. An explanation of this result is necessary, together with an invitation to comment on this policy and perhaps suggest reasonable alternatives.

This Consultation Memorandum therefore:

A. provides information about the policy limiting access to cases in which a stay, withdrawal, acquittal or dismissal has been entered;
B. explains the reasons for considering a further change to include Peace Bonds and policy change options;
C. provides information about the effect of publication bans on what information is available on CSO; and
D. invites your comments with respect to these matters.

III. Consultation

A. Information about limits on information related to stays, withdrawals, acquittals and dismissals being entered

Court record information held in electronic form is significantly more accessible than paper court records that are only available at the relevant Court Registry. If that court record information in electronic form is then made available through the internet, the information can in principle be accessed from anywhere one has an internet connection. Attendance at a physical Court Registry becomes unnecessary in order to obtain that court record information.

Public access to court record information is a fundamental aspect of the open court principle. One of the most recent Supreme Court of Canada acknowledgments of the importance of the open court principle was in Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2 (para. 1):

> The open court principle is of crucial importance in a democratic society. It ensures that citizens have access to the courts and can, as a result, comment on how courts operate and on proceedings that take place in them. Public access to the courts also guarantees the integrity of judicial processes inasmuch as the transparency that flows from access ensures that justice is rendered in a manner that is not arbitrary, but is in accordance with the rule of law.

The Court noted that freedom of the press is also of fundamental importance. Further, the media is the main vehicle for informing the public about court proceedings and, in that sense, freedom of the press is essential to the open court principle. The Court also acknowledged that it is nevertheless sometimes necessary to harmonize the exercise of freedom of the press with the open court principle to ensure that the administration of justice is fair.

The question the OCJ has had to address in developing policy with respect to criminal charges that have been stayed, withdrawn, or for which an acquittal or dismissal has been entered, is whether the openness of such court record information on the internet through Court Services Online is consistent with fairness in the administration of justice.

This question became posed in light of case law and concerns expressed by affected individuals about the significance of such expanded internet access to information when no criminal conviction has occurred. For example, this was discussed in Her Majesty The Queen in Right of Alberta et al v. Jay Krushell and The Information and Privacy Commissioner, 2003 ABQB 252. The applicant, Krushell, had sought a copy of the lists of the names of accused persons, the charges they faced and ancillary information prepared daily in relation to Alberta criminal dockets. The information was sought for the purpose of offering it for sale to the public via the internet. Krushell asked Alberta Justice (the public body which had control over the dockets) to provide the information, but the request was refused. That decision was ultimately upheld by the Alberta Court of Queen's Bench where, in the course of the decision, the presiding Judge stated as follows (paras. 49-50):

> The mischief which could be created by allowing ready public access to the names of unconvicted accused is not difficult to imagine. Statutorily prescribed punishments for the convicted would pale in many cases in comparison to the *de facto* punishment created by posting information on the criminally charged for the benefit of the gossip and the busybody. Similarity of names might create defamatory impressions. . . .
>
> While there is currently limited public access to this information via the physical daily posting of the criminal dockets on site, that does not justify posting world-wide for all time to all of those with access to the internet. Currently privacy is protected by the practical obscurity created by the physical inconvenience of attending at each courthouse to examine the criminal dockets by others than those who have personal involvement in the matters then before the courts....

Similarly, in the recent Investigation Report F14-01 of the Information and Privacy Commissioner for British Columbia regarding "Use of Police Information Checks in British Columbia" (April 15, 2014), the report noted the following (pp. 20-21):

> Many of the submissions offered thoughtful discussion regarding the problems that result from including non-conviction records as part of a record check. Numerous responses noted that this practice is in direct contradiction to the presumption of innocence – a long-standing and fundamental element of the Canadian criminal justice system and Constitution. One particularly compelling submission made this excellent point:

> It is trite that the presumption of innocence is a core value and principle in our system of criminal justice. It is enshrined as a constitutional right in the *Canadian Charter of Rights and Freedoms* under s. 11(d):
>
> > Any person charged with an offence has the right … to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.
>
> (…)
>
> It is not merely the formal penal consequences of a criminal allegation that represents the punishment for criminal behaviour. Often, it is the social stigmatization and public condemnation that are the worst implications for a convicted criminal.
>
> To disclose the status of an individual as having been a suspect, charged or acquitted of a criminal offence is to heap on them much, if not all, the suspicion and wariness the public feels towards those convicted.

Emails to the CSO Helpdesk indicate that the CSO services regarding criminal record information are frequently used as a form of criminal record check by employers and landlords. When information about acquittals, for instance, was available, CSO would receive a significant number of complaints from individuals suggesting they were negatively affected by information being widely available about charges for which no conviction occurred. We are advised that many writers express concern about the impact that this publicly available information has on their lives and believe that it is an invasion of their privacy, some noting that they realized the information was publicly available only after being sent a link to it by their co-workers or employers. The writers express concerns about the stigma applied to them, despite the fact that they were not convicted. While the goal of having the records publicly available is to increase the transparency of court processes and to hold the courts accountable for their work, some have suggested that the availability of information such as acquittals or dismissed charges violates the presumption of innocence.

B. Reasons for considering a change regarding peace bonds and policy change options

A question arises as to whether Peace Bonds entered into under the *Criminal Code* are similar in nature to stays/withdrawn/acquitted/dismissed charges such that information about such Peace Bonds should not be available on CSO. It is suggested that display of information about a Peace Bond creates the impression that the person at issue has a criminal conviction. A Peace Bond, of course, is not a criminal conviction. In other words, no finding of criminal conduct has occurred, although cause for entering into a Peace Bond was established.

i. Principles articulated at the Canadian Judicial Council

In May 2003, the Judges Technology Advisory Committee (JTAC) of the Canadian Judicial Council (CJC) presented a discussion paper entitled Open Courts, Electronic Access to Court Records, and Privacy which set a framework within which electronic access policies might be established.[2] This report concluded, based on jurisprudence from the Supreme Court of Canada, that "the right of the public to open courts is an important constitutional rule, that the right of an individual to privacy is a fundamental value, and that the right to open courts generally outweighs the right to privacy".[3] The Committee also concluded that "'open courts' includes both the right to be present in the courtroom as the proceedings are conducted and the right to access the court record and docket information upon which the judicial disposition was made".[4] The report discussed the "practical obscurity" of paper court files which contrasts sharply with the accessibility of electronic information.[5]

After receiving public feedback to this paper, the CJC approved a framework for a model policy developed by the JTAC for access to court records in Canada.[6] This framework recognized, firstly, that the realization of the open courts principle may be enhanced by adopting new information technologies; and secondly, that unrestricted electronic access might facilitate uses of information not strongly connected to the underlying rationale for open courts, and that might have a significant negative impact on values such as privacy, security and the administration of justice.[7]

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[2] Discussion Paper Prepared on Behalf of the Judges Technology Advisory Committee for the Canadian Judicial Council on Open Courts, Electronic Access to Court Records, and Privacy (May 2003).
[3] *Ibid* at 2.
[4] *Ibid* at 18.
[5] *Ibid* at 27. As the Committee noted, the phrase "practical obscurity" originated in the United States Supreme Court decision of *United States Department of Justice et al v Reporters Committee for Freedom of the Press et al*, (1989) 489 U.S. 749.
[6] Judges Technology Advisory Committee for the Canadian Judicial Council, Model Policy for Access to Court Records in Canada (September 2005).
[7] *Ibid* at ii.

The CJC's model policy proceeds from a starting point that the open courts principle is a fundamental constitutional principle and should be enabled through the use of new information technologies. Restrictions on access to court records can only be justified where:

a) they are needed to address serious risks to individual privacy and security rights, or other important interests, such as the proper administration of justice;
b) they are carefully tailored so that the impact on the open courts principle is as minimal as possible; and
c) the benefits of the restrictions outweigh their negative effects on the open courts principle, taking into account the availability of this information through other means, the desirability of facilitating open access, for purposes strongly connected to the open courts principle, and the need to avoid facilitating access for purposes that are not connected to the open courts principle.[8]

In general, the model policy retained the existing presumption that all court records are available to the public at the courthouse, and that where technically feasible, the public is also entitled to remote access to judgments and most docket information, including names of parties. The policy recommended that parties to cases should have both on-site and remote access to their own case file, but that members of the public should generally only have on-site access to the case file.[9] The CJC noted that new technologies increase the risks of misuse of court information for purposes including commercial data mining, harassment and discrimination.[10]

ii. Policy Change Options

The options set out below are not exhaustive, and public proposals for other ways to appropriately balance any privacy interests without unduly compromising the open courts principle are welcome.

1. *Status quo*

One option is not to change the current CSO access policy, continuing to allow Peace Bond information to be available online through CSO, while restricting remote on-line access to stay/withdrawal/acquittal/dismissal information.

[8] *Ibid* at ii-iii.
[9] *Ibid* at 13.
[10] *Ibid* at vii.

2. *Impose a Time Limit for Remote Access to Peace Bond information*

A time limit, for instance 5 years, could be established for the display Peace Bond information. Ninety-percent of Provincial Court criminal files are concluded within 1 year, 95% within 2 years, and more than 99% within 5 years. The public could access information on older (> 5 year) cases by attending at the Provincial Court Registry.

3. *Prevent Remote Access to Peace Bond information*

Writers requesting the removal of information often note that pardons/record suspension result in a file being blocked from view, while Peace Bonds, for instance, even after they have expired on their terms, remain viewable on CSO. There is no equivalent process to a pardon/record suspension for individuals who are or were subject to a Peace Bond.

4. *Use initials instead of names for Peace Bond information*

This idea was proposed by some of the writers requesting blockage of their information on CSO. It would preserve an openness to court processes while also preventing unnecessary stigmatization of those subject to a Peace Bond.

C. Information about the effect of publication bans on what information is available on CSO

As noted earlier, CSO is operated by CSB. However, since CSO reports court record information, and, by law, the judiciary has a supervisory and protecting power over court record information, CSO looks to the judiciary for policy direction about the content of information on CSO. Thus, the Chief Judge made the decision a number of years ago to have Provincial Court criminal court information made available on CSO when CSB was able to provide the infrastructure and resources to make it happen.

As you will see below, limitations on that infrastructure, as well as the law, have had some effect on how information can be presented through CSO and means less information about specific cases may be available on CSO than at the Court Registry.

Some users of CSO believe CSO to be the "new court registry". It is important to note that CSO is not a replacement for the Court Registry and was not designed to be a replacement. The "Understanding the Site" page on the CSO website for the traffic/criminal database search service states that CSO does not display all the public court record information that may be available at the Court Registry. CSO is a service in addition to that provided at the Registry.

While CSO is often the first step in finding court record information, the Court Registry remains the final source for accessing court record information.

Publication bans are the primary example of the difference between access to court records through CSO and access at the Registry. Because CSO is not a "manual" system (in other words, CSO staff does not review each court record information posted through CSO), the posting of information on CSO, of necessity, is governed by broad "business rules". We are advised by CSO that for the CSO search service to exist, it must be an automated and general system where business rules are applied to all cases.

For example, there is a business rule that limits the information that can be posted on CSO if there is a *Criminal Code* s. 486.4 ban in effect in a case. This is based on a CSO concern that, in some instances, posting the information usually available on CSO may result in a breach of the s. 486.4 ban (". . . any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way . . .") . Similar business rules apply when a s. 517 ban is in effect. And because CSO does not have the resources available to manually check each s. 486.4 ban (or s. 517 ban) case to determine if the usual CSO information could breach the ban, the general business rule is applied. In other words, it is not possible to have CSO staff review each file with a s. 486.4 or s. 517 ban to determine whether information may be made available through CSO and when in the cycle of a case it may be made available. This means that, when considered in the context of a particular case, the display for that case may appear overly restrictive.

CSO advises that while display of case details may not run afoul of the requirements of a ban in many or even most cases, the system business rule must be written to capture the case where the display of the details may breach the terms of the ban. As a result, all cases with a ban are swept into the system business rule so as to ensure that, over the spectrum of cases, court orders are respected and followed. It bears repeating that this only applies to the electronic access service of CSO. When information on an individual case is sought, the Court Registry continues to serve as the primary source of court record information. The policy from the Chief Judge's Office which governs access to Provincial Court records at the Court Registry is the Policy Regarding Public and Media Access in the Provincial Court of British Columbia.

It may be helpful to know that the traffic/criminal database accessed through CSO is the JUSTIN database. JUSTIN is an integrated case management and tracking system that provides a database comprising almost every aspect of a criminal case, including police reports to Crown counsel and police scheduling, Crown case assessment and approval, Crown victim and witness notification, court scheduling, recording results, document production and trial scheduling. CSO is one of many services that rely upon JUSTIN and the JUSTIN database. While JUSTIN is a very "robust" system that provides services to a large group of people across a number of agencies, it has limited flexibility to expand for new services.

D. Invitation to comment

On behalf of Chief Judge T.J. Crabtree, we invite your comments and perspectives on any of the matters raised in this memorandum and whether any adjustment to existing policies is necessary. Your comments are sought on or before **September 18, 2015** and can be sent to the OCJ at the following email or physical address (please mark correspondence "CSO Policy Consultation" and to the attention of Mr. Gene Jamieson, Q.C., Senior Legal Officer):

info@provincialcourt.bc.ca
or
Office of the Chief Judge
Provincial Court of British Columbia
337 - 800 Hornby Street,
Vancouver, B.C.
V6Z 2C5

We look forward to hearing from you.

Appendix "B"

List of Court Registries with JPATs
(see p. 5 of this memorandum)

Campbell River
Cranbrook
Kamloops
Kelowna
Nanaimo
Nelson
New Westminster
North Vancouver
Penticton
Port Coquitlam
Prince George
Richmond
Surrey
Vancouver
Vancouver - 222 Main (has multiple)
Vernon
Victoria