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### Is Access to Court Transcripts in Canada an A2J Issue?

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**The National Self-Represented Litigants Project**

# **Is Access to Court Transcripts in Canada an A2J Issue?**

**June 2018**

**Kaila Scarrow, Becky Robinet, & Julie Macfarlane**

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## **Access to Transcripts and Access to Justice**

Access to Justice requires that self-represented litigants (SRLs) be able, if they wish, to obtain a record of a court proceeding they have participated in.<sup>1</sup> This is to ensure they did not miss hearing something important, and are able to comprehensively review what was said in the courtroom. Court hearings habitually use legal jargon that those without legal training may not understand, and as a result, the import of what is said by either the judge or the litigants' lawyers during the hearing may be missed. Additionally, emotions and stress levels are usually high during a hearing, and sometimes the court appearance itself is brief. As a result of these factors it is sometimes critical, or at the least very helpful, for SRLs to be able to review what happened from the comfort of their own homes without the pressure they faced in the courtroom.

## **Why We Did This Research**

Since the NSRLP's inception in 2013, self-represented litigants have frequently told us that they have difficulty obtaining transcripts of their court proceedings.

This year, we asked for, and gathered further information from, SRLs who experienced this process, and heard more about the specific challenges they faced. In listening to and reading their stories, it was evident that not only can it be very difficult to obtain a transcript, but transcript costs sometimes further hinder individual access. The following quotes from SRLs illustrate these access issues.

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<sup>1</sup> Matters falling under the Youth Criminal Justice Act have restrictions regarding who can access these transcripts. This is governed by the Act, specifically section 119 and includes the party, parents of party, lawyers of party, the victim to the offence, etc. *Youth Criminal Justice Act* (S.C. 2002, c. 1, s. 119). These restrictions exist to protect the identities of children. In Ontario, "under Section 45(4) of the *Child and Family Services Act (CFSA)*, child protection hearings and appeals of child protection decisions are closed to the public unless ordered by the court. Access to transcripts of *CFSA* proceedings may only be given to a party to the hearing or a party's solicitor." "Court Transcript Standards and Procedures Manual." Section 2.2.9. *Government of Ontario, Ministry of the Attorney General*. December 12, 2017.

“My impression is that the Ontario system is well-intended but it is very out-of-touch with the people it is trying to serve. It’s obviously not difficult to get a transcript if you have the right contacts – but that little black book of phone numbers is not something that Joe or Jane Average has access to.”

“The transcript of my trial was almost \$2,000 and I could never have paid for it to address the appeal.”

“I have had many transcript challenges. Aside from the \$4.86 per original or photocopied page they are charging, they refused to do excerpts (or) provide copies, and denied they ever did originals even when the reasons mention they are in the file.”

In January 2018, the NSRLP began a research project to gather complete information on how court transcripts are obtained throughout Canada. This required research into the availability, procedure, and cost of obtaining a transcript in each province and territory, as no national standard currently exists.

We sought to determine how each province and territory deals with requests for court transcripts, to track differences and similarities by location, and to assess whether there was one method that stood out as being the most efficient and conducive to Access to Justice.

During our research, a number of other access issues arose. For instance, there is considerable variation in the format in which the courthouse provides a transcript; some provide only audio CDs, while others provide the written transcript. Some provinces require court transcripts if an SRL’s case is moving to the appeal level. There is also significant variation in transcript costs across the country.

## **Our Research Process**

To address the concerns we hear from SRLs, we set 3 questions to answer in each province/territory:

- (1) Is it possible to obtain a transcript of the relevant hearing?
- (2) What is the process for obtaining a transcript?
- (3) What is the cost of obtaining a transcript?

We began with a thorough internet search, typically starting with provincial court websites. Most of the time this proved effective; however, some provinces and territories do not have comprehensive webpages that provide a concrete explanation of the process and cost of obtaining a transcript. It was already evident at this early stage of our research why many SRLs experience difficulty accessing transcripts.

In situations where we were unable to find adequate answers to our 3 questions via court websites or through other online resources, we turned to contacting those involved in the transcription process. For instance, in Nova Scotia, we were unable to find information regarding the cost of obtaining a transcript. The Nova Scotia Court website provides a list of authorized transcriptionists who would provide audio CDs of the court proceedings. So, we contacted three of the companies listed and were able to gather more information from them relating to the process and cost of obtaining a transcript.

In other situations where the website contained little to no information and a Google search was insufficient, we telephoned courthouses. This proved highly effective in some provinces, but very disappointing in others. Larger provinces have automated phone systems, and it is difficult to obtain the information you are looking for without speaking to a person who can answer questions. On the other hand, in smaller provinces it is generally easier to reach a staff person who can answer questions over the phone.

Finally, when telephone calls to courthouses proved ineffective, we turned to lawyers practicing in that province who have knowledge of the process. For instance, in Quebec and Alberta, we contacted local lawyers who were able to provide details that supplemented our information, or filled in the gaps left by courthouse websites and/or our follow-up telephone calls.

Ultimately, we found the process of answering the 3 basic questions to be quite frustrating. While we were eventually able to answer the 3 questions in each province or territory using a combination of the above methods, in some cases this was a lengthy and confusing process. In addition, some issues remain unclear. It became clear to us very quickly why the NSRLP fields so many communications on the issue of access to transcripts from frustrated SRLs.

## Summary of Findings

In researching litigant access to court transcripts in Canadian provinces and territories, we found many differences in procedures and in the costs of obtaining a transcript. While some similarities exist, there are far more significant differences.

With respect to the first of our 3 questions – is it possible to obtain a transcript? – we found the majority of provinces offer access to court transcripts at all court levels, with the Alberta and Manitoba Courts of Appeal being the major exceptions. We have received numerous complaints from SRLs unable to obtain court transcripts from the Alberta Court of Appeal. As well, while provinces and territories allow for individuals to obtain copies of their court transcripts, each jurisdiction has certain limitations or exceptions to this general rule (typically Youth Criminal Justice cases<sup>2</sup> and child protection cases). There are yet further variations among provinces in relation to whether a member of the public who is not a party to the proceedings may obtain a transcript.<sup>3</sup> In addition, in some jurisdictions, settlement and case management conference transcripts are not provided.

The *process* for obtaining court transcripts varies among the provinces and territories, although many start out the same way, with the litigant filling out a “request for transcript” form. One major difference we came across was that

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<sup>2</sup> See s.119 of the Youth and Criminal Justice Act

<sup>3</sup> For example, in Manitoba, all proceedings except for those under the Youth and Criminal Justice Act may be accessed by anyone: <http://www.manitobacourts.mb.ca/transcripts/transcript-information/>; in BC, the public is not allowed to access criminal proceeding transcripts, but they are allowed to access civil transcripts ([http://www.courts.gov.bc.ca/supreme\\_court/media/BCSC\\_Court\\_Record\\_Access\\_Policy.pdf](http://www.courts.gov.bc.ca/supreme_court/media/BCSC_Court_Record_Access_Policy.pdf)) (Rule 2.1.23 page 16); in Ontario, all court transcripts (other than YCJA and certain restricted ones set out in s.2 of the Guidebook) are available to the public. (<https://www.courttranscriptontario.ca/home/faq#12>)

some courthouses offer only an audio CD, which the litigant must then take to a private stenographer for transcription. Others provide in-house transcription.

The *cost* for court transcripts varies significantly across provincial and territorial borders. Some provinces and territories charge per page, others per word, while Alberta – we were shocked by this – charges per character. Moreover, fee waivers for indigent or impoverished litigants do not generally apply to court transcripts<sup>4</sup>.

There is no single national standard for access to transcripts, and every province manages the distribution and production of court transcripts as they see fit. This lack of consistency is a significant factor in the distress, confusion, and concern surrounding this process, and also demonstrates why SRLs feel at a disadvantage when it comes to obtaining copies<sup>5</sup>: knowledge of the process is difficult to ascertain, procedures vary, and the cost of transcripts can be extremely burdensome. We believe that this lack of uniformity is a serious Access to Justice problem.

## **Detailed Analysis**

### *1. Availability of Transcripts*

Our research showed that court transcripts are available, in some form, in every province.

We also believe (from what many SRLs have told us) that access to transcripts increases the likelihood of settlement, with litigants able to thoroughly review what was said in, for example, a settlement conference, before signing any agreement. This is, in part, a practical matter of ensuring understanding, and in part, a procedural justice issue, where an SRL will be more willing to consider a settlement proposal that they have had the opportunity to calmly review and thoroughly understand. Without access to transcripts, SRLs sometimes develop theories of unfair treatment (for example, “the court is hiding the truth”), which

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<sup>4</sup> For example, in Ontario, see the Fee Waiver regulations (O Reg 2/05); in British Columbia, see the Supreme Court Civil Rules, rule 20-5, and the Supreme Court Civil Rules and Supreme Court Family Rules, Schedule 1, Appendix C.

<sup>5</sup> As the first quote on page 2 illustrates.



are likely the consequence of their inability to check their recollection and understanding against a written transcript.

Our research shows that most provinces have exceptions to the general rule that individuals can access a copy of their court transcript. For instance, in civil and family proceedings in British Columbia, court transcripts are available with the exception of case planning conferences, settlement conferences, and trial management conferences.<sup>6</sup> Similarly, in Manitoba, pre-trial conferences and case management conferences are generally not recorded, unless ordered by the judge, and thus a court transcript would not be available.<sup>7</sup>

While there are a number of accessibility issues regarding obtaining a transcript, two particularly problematic cases stand out. First, we found a significant lack of clarity regarding the availability, process, and cost of obtaining a transcript from the Alberta Court of Appeal. We have heard from numerous SRLs on this particular issue. We reached out to a lawyer who has been practicing in this area for more than 30 years, and he experienced the same difficulty as we did in obtaining clarity on this. We were able to eventually confirm that it is possible to obtain a Court of Appeal transcript, but only with judicial authorisation (see also below)<sup>8</sup>. Meanwhile, in Manitoba, Court of Appeal hearings are typically not monitored, and as such, transcripts are not available.<sup>9</sup> Since an individual who wishes to appeal a Court of Appeal decision is required to obtain a copy of the Court of Appeal transcript,<sup>10</sup> the lack of

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<sup>6</sup> *Supreme Court Civil Rules*, BC Reg 168/2009, s.5-2(7): Proceedings at a case planning conference must be recorded, but no part of that recording may be made available to or used by anyone without court order.

*Supreme Court Civil Rules*, BC Reg 168/2009, s.9-2(2): Proceedings at a settlement conference must be recorded, but no part of that recording may be made available to or used by any person without court order.

*Supreme Court Civil Rules*, BC Reg 168/2009, s.12-2(8): Proceedings at a trial management conference must be recorded, but no part of that recording may be made available to or used by any person without court order.

<sup>7</sup> “Transcript Information”, *Manitoba Courts*, <http://www.manitobacourts.mb.ca/transcripts/transcript-information/>

<sup>8</sup> “Order a Courtroom Transcript.” *Alberta Courts*, <https://www.alberta.ca/order-courtroom-transcript.aspx>.

<sup>9</sup> “Transcript Information”, *Manitoba Courts*, <http://www.manitobacourts.mb.ca/transcripts/transcript-information/>.

<sup>10</sup> *Rules of the Supreme Court of Canada*, SOR/2002-156, s. 38(1)(c): An appellant’s record shall be bound and shall consist of . . . evidence, including excerpts of transcripts unless the transcripts are reproduced in full in accordance with subrule (2), and affidavits.

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-156/FullText.html - s-38>

availability or difficulty in obtaining transcripts from the Court of Appeal creates another Access to Justice issue for SRLs.

Similarly, in order for an SRL to obtain a transcript for a Family Law Conference in Ontario<sup>11</sup>, the litigant must first obtain a court order, meaning a judge makes the ultimate decision on whether a request for transcripts is approved. This seems like an unnecessary use of judicial resources. With such large numbers of self-represented parties in the system now, accessing transcripts should not be a question of law for judges to decide, but instead should be available to parties to a proceeding “as needed” to ensure Access to Justice. The same criticism would apply to the lack of recording in case management, case planning, pre-trial, and settlement conferences in British Columbia and Manitoba (above).

## *2. Procedure to Obtain a Transcript*

Early on in our research, it became apparent that the procedures for obtaining court transcripts vary significantly among Canadian provinces and territories.

The most common procedure is a variation on a simple application form (often called a “Transcript Request Form”) which requires applicants to fill out general information regarding their case, including the case file number and presiding judge, followed by administrative approval (typically by an authorized court transcriptionist or other court services staff person) and payment of a fee.

There are also differences in exactly what applicants for transcripts receive in response. Some provinces provide litigants with a written transcript while others (for instance Quebec and Nova Scotia) provide an audio CD, which the litigant then must take to an authorized transcriptionist/private stenographer for transcription. This two-step process may extend how long it takes for a litigant to obtain a written transcript, which could in turn raise difficulties in complying with time limitations with respect to appeals.

Other differences we noted include whether the transcript request form can be submitted online, or must be delivered in person. Our research showed that in Alberta, Ontario, and Manitoba, transcript request forms can be submitted

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<sup>11</sup> “Court Transcript Standards and Procedures Manual.” Section 2.2.11. *Government of Ontario, Ministry of the Attorney General*. December 12, 2017.

online or via fax, while in some provinces, for example Quebec and PEI, individuals are required to visit the courthouse to deliver the form in-person. The latter approach adds to the personal time an SRL must invest in order to prepare and file materials, attend court, and so on. It is not clear why electronic submission cannot be uniform across the provinces.

### 3. Transcript Costs

One of the most significant and common concerns voiced by SRLs is the cost of obtaining a court transcript. This is unsurprising given that the primary reason that individuals become self-represented is their lack of resources to pay for legal services, either from the beginning of their case, or as a result of a lengthy legal process that has depleted their resources.<sup>12</sup>

One similarity we observed across most provinces is that the cost depends upon the rapidity with which a litigant needs to receive their written transcript. For instance, in Ontario, Nunavut, Nova Scotia, Manitoba, and Alberta the faster a litigant requires a transcript, the costlier it will be. Two exceptions to this are Saskatchewan and New Brunswick, where the cost of a transcript is not affected by the time frame in which it is required. However, it is notable that in New Brunswick, civil (but not family) litigants must hire a private stenographer to transcribe an audio CD (see also (2) above). This may both extend the length of time it takes to obtain a written transcript, and in some cases, increase the overall costs.

Another broad similarity we observed among the provinces is that most require a copy of the transcript (either whole or in part) if a litigant wishes to appeal a decision. This may prove a further bar to appeal, since almost without exception, the cost of obtaining the transcript must be borne by the litigant. There are a few exceptions – for example, as we learned from a phone call with the PEI courthouse, in that province the court will bear the cost of producing the relevant portions of the court transcript in the event of an appeal from a criminal trial.<sup>13</sup>

Another provincial idiosyncrasy we discovered was that in Saskatchewan, the cost of obtaining a transcript *for the purposes of an appeal* affects how much the

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<sup>12</sup> Dr. Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants”, 2013 at page 12.

<sup>13</sup> Based on information provided by court staff.

court charges (it may be more costly).<sup>14</sup> In law, appeals are generally permitted if a litigant can make the argument that the lower court decision was based on a mistake of law or fact. Adding a further logistical barrier by increasing the (already significant) cost of obtaining a transcript for the purpose of challenging a court's decision appears contrary to the principle of Access to Justice.

In other provinces, there are additional concerns with respect to transcript procedures for appeals. There are strict timelines for appealing a decision, but many SRLs tell us that they cannot make the decision about an appeal until they have been able to see the transcript of the lower court decision. Because the speed with which a transcript is required affects the cost in most provinces (see above), litigants are under pressure to decide very quickly whether they wish to appeal a court decision in order to avoid these increased costs. Having just gone through a difficult emotional, financial, and sometimes physically taxing trial, SRLs often need time to decide whether they wish to proceed further with the case, even if they believe there has been an issue of law or fact that has rendered the decision incorrect or unfair. The longer they take to make this call, the more money they will end up having to pay.

Some provinces have legislation governing the cost of producing a transcript (for example, Ontario and Manitoba),<sup>15</sup> and this prevents individual courts from setting higher costs. But this is not the norm, and the cost of obtaining a transcript varies significantly across the country. The most expensive place to obtain a transcript is the Yukon, where the lowest price per page is \$13.75.<sup>16</sup> Compare this with Alberta's pricing, using an average of 2000 characters per page (Alberta charges per character), where the cheapest rate will be \$8 per page. The lowest cost for obtaining a transcript we found was the Northwest Territories, where the courts charge a uniform 2.00 per page.<sup>17</sup> In Nunavut, Manitoba, and New Brunswick, the courts charge \$3.00 per page, with a higher rate for expedited transcript.<sup>18</sup> The total cost of obtaining a transcript can be

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<sup>14</sup> "Guidebook for Appellants (Civil & Family Matters)", *Saskatchewan Law Courts*, <https://sasklawcourts.ca/online-help-guide/civil-and-family-matters/guidebook-for-appellants/prepare-your-documents>.

<sup>15</sup> Man Reg 322/87R, s. 8(3)(i).; O Reg 94/14, s. 2.]

<sup>16</sup> "Court Transcripts", *Government of Yukon*, [www.justice.gov.yk.ca/prog/cs/1028.html](http://www.justice.gov.yk.ca/prog/cs/1028.html).

<sup>17</sup> "Services – Transcripts", *Northwest Territories Courts*, [www.nwtcourts.ca/Services/transcripts.htm](http://www.nwtcourts.ca/Services/transcripts.htm). (cost is outlined on the Request Form)

<sup>18</sup> "Transcript Fees", *Manitoba Courts*, [www.manitobacourts.mb.ca/transcripts/transcript-fees/](http://www.manitobacourts.mb.ca/transcripts/transcript-fees/); "Court Fees – Transcripts", *Government of New Brunswick*,

very high even in provinces with lower charges, depending on the length of the transcript.

Among provinces providing audio CDs as opposed to written transcripts (see above), there are also cost variations. For example, Newfoundland and Nova Scotia charge a flat rate to obtain the audio CD (in Nova Scotia the flat rate is \$22.57 plus HST<sup>19</sup>) whereas Quebec charges per minute of recording<sup>20</sup>.

Whatever the specific price tag in each province and territory, the cost of obtaining transcripts at any court level significantly impedes access. Moreover, fee waiver regulations do not generally apply to transcript costs. This means that in many cases SRLs are unable to review and sometimes fully comprehend what has taken place in their hearing, what may be possible in terms of a settlement, and whether or not there are grounds for appeal.

## **Recommendations**

We have a number of concerns about current practice in access to court transcripts in Canada. There is a lack of uniformity across the country with respect to cost and procedure, meaning that the ease and expense of access is affected – sometimes significantly – by where an individual litigant resides. In some provinces, the procedure for obtaining court transcripts is unclear, in others it is complex and cumbersome, and in others the exceptionally high cost of transcript preparation raises significant Access to Justice issues.

Every Canadian should be able to expect fair and equal access to their court transcripts. Individuals who have legal representation are able to rely on counsel for information and explanation about what transpires during court hearings, and if they wish or need (for the purposes of appeal) to obtain a transcript, they can rely on counsel’s expertise to navigate the procedure. In contrast, SRLs are at a clear disadvantage. In addition, represented litigants with limited resources may also be unable to afford the additional cost of obtaining a transcript.

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[www2.gnb.ca/content/gnb/en/services/services\\_renderer.627.Court\\_Fees\\_-\\_Transcripts.html - serviceFees.](http://www2.gnb.ca/content/gnb/en/services/services_renderer.627.Court_Fees_-_Transcripts.html-serviceFees)

<sup>19</sup> “Request for Copies of Audio Recording of Court Proceedings”, *Nova Scotia Courts* [courts.ns.ca/FAQs\\_General/get\\_transcript\\_of\\_trial\\_pop\\_up.htm](http://courts.ns.ca/FAQs_General/get_transcript_of_trial_pop_up.htm)

<sup>20</sup> The cost is \$8.95 for the first 25 minutes of recording and then an additional \$0.30 per additional minute of recording. This information is from a lawyer practising in Quebec.

## 1. Procedure

There is a need for a national standard for access to transcripts. Differences amongst provincial procedures are confusing, time-consuming, and expensive.

We recommend that each province and territory develop comprehensive online information for transcript requests (Ontario provides a good model<sup>21</sup>). This should include clear instructions and a telephone number and/or an email address to enable individuals who have questions to easily contact a regional specialist.

A new system for accessing transcripts recently implemented by Alberta<sup>22</sup> appears to provide a good model for a set of basic procedural steps (all online) as follows:

- (i) Visit the provincial court website, which should be easily accessible through a Google search of “order court transcript [insert province/territory]”;
- (ii) Review the necessary information, provided in a simple checklist, that is required to complete the online form;
- (iii) Complete the request form;
- (iv) Pay the required fee;
- (v) Download the transcript.

Audio CDs are important for visually impaired individuals who would have difficulty with a written transcript. However, we suggest that all courts offer written transcripts as well, unless a litigant prefers to hire an authorized court transcriptionist or private stenographer to transcribe the audio recording. In such cases, it would be optimal if an appropriate court services staff person could be responsible for sending the necessary information to the private stenographer chosen by the litigant. This would avoid placing an additional time and stress burden on individual litigants (and especially SRLs).

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<sup>21</sup> “Authorized Court Transcriptionists for Ontario.”, *Government of Ontario*, [www.courttranscriptontario.ca/home/home](http://www.courttranscriptontario.ca/home/home).

<sup>22</sup> “Order a Courtroom Transcript.” *Alberta Courts*, [www.alberta.ca/order-courtroom-transcript.aspx](http://www.alberta.ca/order-courtroom-transcript.aspx).

## 2. Cost

Generally, the costs involved hinder the ability of litigants to obtain transcripts, and in some cases, may make it difficult or even impossible for an individual to appeal a decision. We propose that a reasonable, uniform, per-page calculation of cost be adopted across all provinces and territories, since this is the simplest and clearest approach to calculating transcript cost. We also recommend that serious consideration be given to including the cost of obtaining a transcript within existing fee waiver schemes for indigent litigants.

### Conclusions

Despite our concentrated efforts, we still have some unanswered questions as a result of discrepancies in local courthouse practices. As well, current operating procedures are susceptible to change. What is clear from our research is that the problems many SRLs experience trying to obtain copies of transcripts amplify their distrust of the justice system and their feeling that the system conspires against them, placing many obstacles in their path. The following comments from SRLs are typical, and illustrative of this perception:

“The lack of transparency is just a daily part of hiding what is really happening in the judicial system . . . Until these really dishonest and non-transparent methods of behaviour come to an end, we the public, really do not have any actual access to the courts”

“It’s as though they are hiding meritorious arguments and want to hinder you from advancing to the next level”

The *status quo* in relation to access to court transcripts contributes to failing public faith in the Canadian justice system. We believe that implementing the recommendations above would go a significant way towards addressing this.