



## NUNAVUT COURT OF JUSTICE

### Practice Directive # 47

**In certain circumstances, counsel acting for parties in Child Protection proceedings and the Director of Child and Family Services may be able to come to an agreement as to the consent release of child protection records.**

**This practice directive creates a process for the release of such records without the necessity of appearing in court where all parties consent and the Court has no concerns.**

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### DISCLOSURE OF CHILD PROTECTION PROCEEDINGS IN CUSTODY/ACCESS CASES

On occasion, counsel acting for parties in custody or access proceedings may wish to obtain child protection records in the hands of the Director of Child and Family Services that they believe are necessary and relevant to a proper determination of the issues before the Court in the custody or access proceeding. The Directors' files are subject to statutory confidentiality by virtue of section 72(2) of the *Child and Family Services Act*. In these cases, counsel must bring an application for production of documents in the hands of a third party, pursuant to Rule 231 of the *Nunavut Rules of Court*.

The application shall be brought by filing a notice of motion which is accompanied by an affidavit in which the deponent sets out the basis for his or her belief that the records are necessary and relevant to the issues in the proceedings and, if possible, should identify what records are sought or the time frame governing the records in question. The notice of motion and affidavit should be served upon the Director (or the Director's counsel) and all other parties to the proceeding.

If the parties and the Director agree that the child protection records sought are relevant and necessary and the parties and the Director have signed a consent to the release of the records in the form attached, with such modifications as may be necessary to address the specifics of an individual file, the party seeking the disclosure of the records shall submit to the court, on the return date of the notice of motion, an Order containing the terms set forth in the Consent. If the Court has no concerns with respect to the issuance of the Order, one will issue as a matter of course.

If all parties and the Director are in agreement, the parties may apply for the issuance of an Order through the Registry without the necessity of having to speak to the matter in court.

If the parties or the Director are not in agreement with the production of the records, the matter shall be argued on the return date of the motion or whenever it can be scheduled for argument. To assist the Court, the Director shall provide a summary of the documents in the possession of the Director.

Any Order obtained must be served on the Director's counsel who shall then, as soon as is reasonably possible, provide all parties with a copy of the material sought.

This Practice directive comes into force immediately.

DATED at the City of Iqaluit, Nunavut, this 22<sup>nd</sup> day of May 2015.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey

Madame Justice S. Cooper

Mr. Justice A. Mahar

Madame Justice B. Tulloch