

Automobile Injury Appeal Commission Web Posting Policy - Written Decisions

NOTHING IN THIS POLICY LIMITS OR AFFECTS AN APPELLANT'S RIGHT TO APPLY, PURSUANT TO SECTION 92, FOR A HEARING CLOSED TO THE PUBLIC.

I. INTRODUCTION

Prior to June 1, 2008, appeals were filed, processed, heard and decided without the protection of personal identities. Written decisions of the Commission were posted on two websites - the Commission's site and CanLII - in original form with no procedures applied to minimize, remove or protect the identity of the Appellant and other parties prior to posting the decision on these websites. This was in accordance with the policy of open hearings and public decisions in the courts.

In the meantime, matters relating to the protection of personal information and the balance between that protection and open hearings have drawn considerable public and political interest. The Supreme Court of Canada has developed and applied the *Dagenais/Mentuck* framework for balancing the right of the public to have access to court information with the right of individuals to preserve their privacy and other important values such as the proper administration of justice. That test would allow restrictions on electronic access to court information only where:

- (a) such restrictions are necessary to prevent a serious risk to the rights of individuals to protect their privacy or to other important interests such as the proper administration of justice;
- (b) the restrictions are carefully tailored to minimally impair the open courts principle; and
- (c) the salutary effects of the restrictions outweigh their deleterious effects on the open courts principle, taking into account the continuing availability of this information at court houses etc.¹

This policy attempts to find a balance between our commitment to the open courts principle and our interest in protecting the privacy of parties to our proceedings, by application of the *Dagenais/Mentuck* framework quoted above.

¹ *Synthesis of the Comments on JTAC's Discussion Paper on Open Courts, Electronic Access to Court Records, and Privacy* prepared on behalf of the Judges Technology Advisory Committee, January 2005

II. WEB POSTING POLICY – WRITTEN DECISIONS

Effective June 1, 2008, appeals will continue to be filed, processed and heard without masking personal identities. Copies of such decisions will be available from the office upon specific request.

However, identities will be masked for purposes of posting to the internet. Therefore, after written decisions are issued to the parties, the following policy will be applied by Commission staff:

1. For purposes of publishing decisions, Appellant names will be removed from the title page and, if necessary, throughout the document and initials substituted.
2. Commission staff will review decisions and may delete potentially identifying information that is not necessary to the decision. Where deletions are made, “[information]” will be substituted. For example, when the town of residence is deleted, the decision will read: “The Appellant is resident in [town]”. Any such changes will require the approval of the Chair or the Manager of Operations and the consent of the Panel. When the only changes are to substitute initials for names, the revised decision will not be referred to the Panel.
3. Decisions published on the internet prior to the implementation of this policy will be revised in accordance with this policy and the revised decision substituted for the decision currently posted.
4. Appropriate software is available and used by others (i.e. CanLII) to prevent a general Google (or other search engine) search from linking names to cases on the website. Similar software will be placed on our website, if possible and if necessary, in light of the changes in this policy.