



**THE SUPREME COURT OF BERMUDA
PRACTICE DIRECTION
ISSUED BY THE CHIEF JUSTICE**

Ref. A/50

CIRCULAR NO. 22 OF 2015

ACCESS TO COURT RECORDS IN CIVIL CASES

1. Order 63 rule (4) of the Rules of the Supreme Court 1985 provides as follows:

“4. Right to inspect, etc. certain documents filed in the Registry

(1) Any person shall, on payment of the prescribed fee, be entitled during such hours as the Registrar may direct to search for, inspect and obtain a copy of any of the following documents filed in the Registry, namely-

- (a) the copy of any writ of summons or other originating process,*
- (b) any judgment or order given or made in court or the copy of any such judgment or order, and*
- (c) with the leave of the Court, which may be granted on an application made ex parte, any other document.*

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and obtaining a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.”


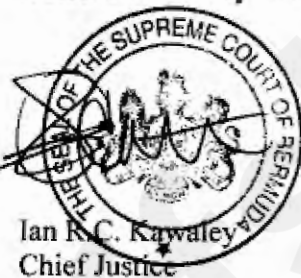
2. Order 63(4)(a) of the Rules has not been given effect to in practice for many years because of the view that it was inconsistent with the provisions of the Supreme Court (Records) Act 1955. The position was clarified by the Supreme Court in *Bermuda Press Holdings Ltd.-v- Registrar of the Supreme Court* [2015] SC (Bda) 49 Civ (24 July 2015).

3. With effect from 1st December 2015, members of the public will be entitled in civil cases, as they have been for many years in England & Wales, BVI and Cayman, amongst other common law jurisdictions, to apply without leave, on payment of the requisite fee, for copies of (a) originating process, and (b) judgments and orders in civil and commercial matters save for the following categories of cases:

- (a) any case where by Order of the Court public access to such documents has been restricted;
- (b) divorce proceedings and any other proceedings related to children;
- (c) applications in relation to arbitration proceedings;
- (d) applications for directions in relation to trusts;
- (e) cases relating to the administration of the estates of deceased persons;
- (f) any other category of case which may be identified from time to time by way of Circular by the Registrar.

4. In due course it is anticipated that access to court records will be dealt with more comprehensively by rules of court.

Dated this 12th day of November 2015

 
Ian R.C. Kawaley
Chief Justice

cc: Attorney-General's Chambers
Bermuda Bar Association
Office of the Director Public Prosecutions
Legal Aid Office
Magistrates' Court

PUBLIC ACCESS TO COURT RECORDS: FAQ

1. Q: What legal principles govern access by members of the public who are not involved in a case to obtain copies of Court records?

A: There are three main gateways for gaining automatic access to Court records if you are not a party to proceedings:

- (1) where a case is no longer 'pending' or active because it is finally concluded, you can apply to the Registry for copies of documents under the Supreme Court (Records) Act 1955;
- (2) where a case is pending, you can apply to the Registry for copies of any originating process (e.g. a writ, petition or originating summons) or orders made in the case under Order 63 rule 4 of the Rules of the Supreme Court 1905; and
- (3) where reference is made in the course of a public hearing or in a public judgment to any documents on the Court file, you have a common law right to apply for copies of the relevant document(s). This access right was established in *Bermuda Press (Holdings) Ltd.-v-Registrar of Supreme Court* [2015] SC (Bda) 49 Civ (24 July 2015).

2. Q: Are any fees payable for obtaining copies of documents? If so, how much does it cost?

A: Yes. The current fees are: \$10.00 (Praecipe to inspect file) + \$25 (Search Fee) + 50 cents per photocopied page.

3. Q: Are there any restrictions on the automatic right of access to documents described above?

A: Yes. Automatic access to documents in current or pending cases **is not** available in respect of the following categories of cases on privacy grounds:

- (1) any case where by Order of the Court public access to such documents has been restricted by a file sealing order;
- (2) divorce proceedings and any other proceedings related to children;
- (3) applications in relation to arbitration proceedings;
- (4) all proceedings in relation to the administration of trusts;
- (5) cases relating to the administration of the estates of deceased persons;

(6) any other category of case which may be identified from time to time by way of Circular by the Registrar.

4. **Q:** When can requests for documents be made to the Registry?

A: Between the hours of 9:00 a.m. and 12:30 p.m. on Monday, Tuesdays and Wednesdays.

5. **Q:** Is it possible to obtain access to documents which are not automatically available in any circumstances?

A: Yes. It is possible to apply to the Registrar for permission to view and/or obtain copies of documents not automatically available. The Registrar will consult the parties to the case in question and then exercise the Court's discretion under Order 63 rule 4 of the Rules of the Supreme Court 1985.

6. **Q:** If the Registrar refuses to allow access to a document, can this decision be challenged?

A: Yes. A decision by the Registrar can be appealed to a Judge of the Supreme Court. The Judge's decision is subject to a right of appeal to the Court of Appeal for Bermuda.