



Model Definition of Judicial Information

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BACKGROUND AND PURPOSE

The purpose of this document is to propose a single model for identifying, defining and classifying the terms “Judicial Information” and “Judicial Users” which could be recommended for use by all courts in Canada. Such definitions are required for claiming control over information, whether in the hands of the court, the judiciary, or third parties; protecting the security of sensitive information (in accordance with the *Blueprint*¹); safeguarding the independent oversight of judicial administration; migrating to the cloud (as contemplated in the *Cloud Guidelines*), and developing a retention schedule. In fact, the establishment of a common definition and framework for identification and classification is necessary to allow the courts to react and respond to the evolution of technology, court operations and the practice of law.

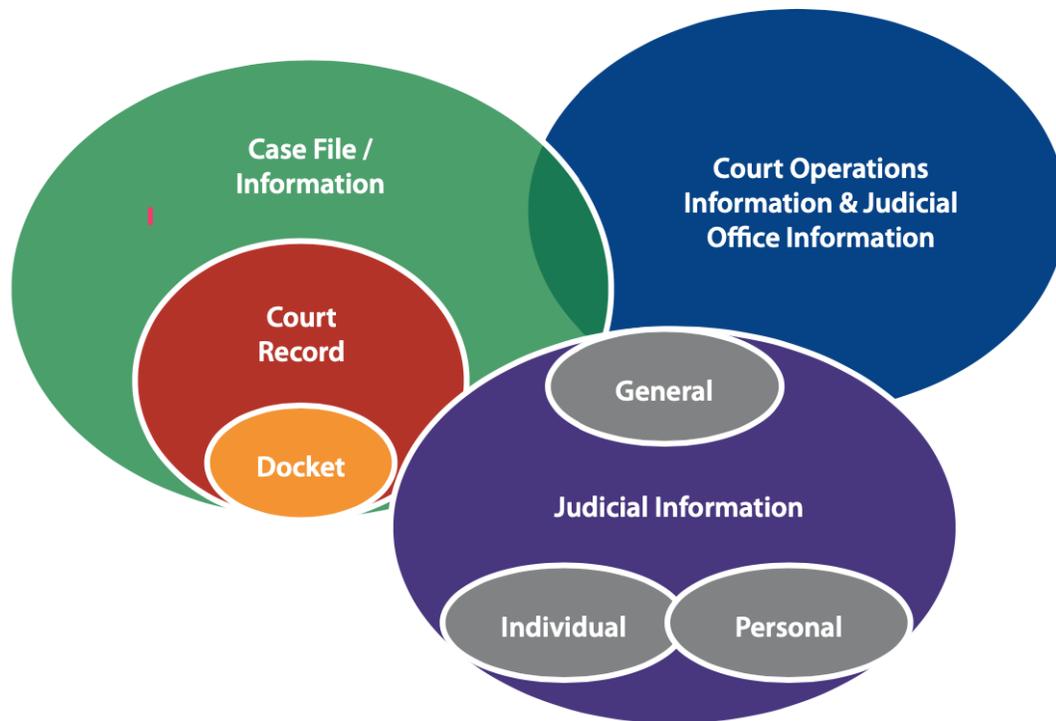
This work is a companion to the *Background Report* presented to the Council’s Technology Committee on February 16, 2020. Past efforts at defining Judicial Information have tended to emphasize the distinctions between Judicial Information and Court Information. Using a broad constitutional model, it seemed simple (and appropriate) to assign the governance of Court Information to the Executive Branch (as the body legally responsible for the administration of justice) and the governance of a distinct yet smaller collection of so-called Judicial Information to the judiciary. The definition of Judicial Information as proposed in the 2013 *Framework* was adopted in the *Blueprint* and in some courts.

It is important to note that while the *Framework* helped isolate “Judicial Information” from the broader category of “Court Information,” it did not purport to limit the judiciary’s policy-making role in that regard. On the contrary.

Council’s focus on Judicial Information as a data source distinct from Court Information helped many courts to develop policies protecting the core of judicial independence, deliberative secrecy and personal privacy. The *Blueprint* (and the subsequent *Cloud Guidelines*) assigned special status to information derived from the adjudicative process, to data about judicial education, productivity and discipline; and to the personal information of judges.

Figure 1 below is taken from the *Framework*. It shows the interrelationships of key terms as defined in 2013. Note that the heading refers to “Court Information”:

¹ All references are listed in Annex 6.

Diagram 4: Court Information Terms and Inter-relationships*Figure 1 – Diagram of Court Information from the Framework, 2013*

Contrary to the narrower focus that has been historically applied, the *Framework* was intended to apply to all Court Information. While Judicial Information is a special category of Court Information that may demand enhanced measures to protect judicial independence, the judiciary should not consider itself limited to policy-making in that regard alone.

Given the broad and comprehensive scope of the *Framework*, and its detailed proposed definitions, why is further work required of Council now? The main reason is that the landscape has changed. Technology moves quickly, bureaucracy moves slowly. 2013 seems a lifetime ago. For example:

1. Many Canadian judges have had their office productivity tools and data (email, word processing, calendar) moved to the cloud, and most others are in transition or in the planning stages of such a move; for the Council, this is the key driver for a reassessment of what constitutes Judicial Information.

2. Some courts have implemented electronic case management and e-filing systems, and more are in development. This represents a significant change in the form and accessibility of Court and Judicial Information.
3. Concerns about the erosion of judicial independence in some jurisdictions continue to prompt more innovative thinking in respect of information and technology governance.
4. New technologies such as analytics and artificial intelligence are driving more sophisticated requests for bulk access to Court and Judicial Information.
5. Despite the availability of the *Framework* as a guide to policy development in the area, there is growing recognition that few courts have actually developed robust information governance policies.
6. The sudden restrictions imposed on courts in light of COVID-19 has been a wake-up call for the urgent need for policies and procedures in respect of virtual hearings and e-filing solutions.
7. As policies are developed, inconsistent approaches to the definition of key terms add unnecessary cost and complexity.

The benefits of a model definition are therefore clear:

1. Lowering the risks of moving sensitive information to the cloud and managing online case management systems.
2. Developing clearer scopes for agreements such as MOUs in relation to information governance, the sharing of roles and responsibilities and the opportunity to cooperate more meaningfully with the executive branch.
3. The ability of courts to consistently and appropriately respond to novel requests for bulk access to court information, balancing the open courts principle against legitimate needs for confidentiality, privacy and integrity.
4. Improving the decision-making process and reducing risk and liability, on a solid foundation of information governance policies.
5. Smoothing the transition from in-person to virtual proceedings to maximize access to justice and the efficiency of court administration.
6. Increased standardization and consistency in how information is governed across all courts and jurisdictions to enhance public trust in the system, reduce conflicts and lower costs.

TABLE OF KEY DEFINITIONS

The definitions table illustrates the complex, interwoven relationships among the different types of information in a court. This is one of the important distinctions between the pre-computer days and today. Before courts used digital information systems, all court information was in the form of a “document” or “record.” These were physical items that were filed in manila folders and lodged in steel filing cabinets. Today we are dealing with invisible data, often not in the form of a document or file but in the form of a database entry, an embedded object or a hypertext link. A judge’s case notes are clearly “Judicial Information” but how do we isolate them when they are embedded in a PDF file or comprise text in a field in a database of an online case management system?

The table shows that some Court Operations, Administrative and Adjudicative Judicial Information may be found within the Case File and Court Record. For example, a draft judgment is Adjudicative Information, but when finalized it forms part of the Court Record. Some Registry Office Information about a particular proceeding could find its way into the Case File. The model below provides flexibility, is consistent with the constitutional premise of the administration of justice, and at the same time shows how the judiciary must be involved in developing governance policies over a broad swathe of Information.

COURT INFORMATION / INFORMATION JUDICIAIRE			
Information that is received, collected, stored, used or produced by a court in relation to its mission.			
Court Operations Information	Judicial Information <i>Renseignements de la magistrature</i>		
Information related to the supervision, management and direction of matters necessary for the operation of the Court or other matters assigned to the Executive by law or agreement.	ADJUDICATIVE Information related to the exercise of a judicial function.	ADMINISTRATIVE The supervision, management and direction of matters necessary for carrying out judicial functions, including: <ul style="list-style-type: none"> • The scheduling, preparation, assignment, and adjudication of proceedings; • The education, performance, conduct and discipline of Judicial Users; • The governance of Court information and technology; and • All other matters assigned to the judiciary by law or agreement. 	PERSONAL Personal Information of Judicial Officers
Case file / Dossier judiciaire			
A Case File contains the Information that relates directly to a single court proceeding or to a number of related court proceedings that have all been assigned the same case file number. It includes the Information that comprises the Court Record and any other Information that has been captured or placed in the Case File.			
Court Record / Documents judiciaires²			
Information and other tangible items filed in proceedings and the information about those proceedings stored by the court.			
<i>Framework:</i> “This term refers to the “Official” Court Record. It is the portion of the Case File that will be made accessible to the public, subject to privacy constraints regarding, for example, disclosure of personal information etc. The Court Record should be preserved indefinitely whereas the rest of the Case File is usually destroyed after a defined period of time.”			

² In Quebec, “Documents d’activité des tribunaux” (synonymous with “Documents judiciaires”) is translated as “Court Records (plural).” This is a broad category that includes the “Dossier judiciaire”, or Case file. In the *Framework*, which is followed here, the Court Record (singular) is a part of the broader Case File. There does not appear to be a corresponding term in Quebec for the narrower concept of Court Record.

MODEL DEFINITIONS

These proposed definitions derive from a number of sources, including the *Framework*, the references cited in Annex 6, and documents referred to in the *Background Report*.

Term	Definition
Case File / <i>Dossier judiciaire</i>	A Case File contains the Information that relates directly to a single court proceeding or to a number of related court proceedings that have all been assigned the same case file number. It includes the Information that comprises the Court Record and any other Information that has been captured or placed in the Case File.
Court Information / <i>Information judiciaire</i>	Court Information is Information that is received, collected, stored, used or produced by a court in relation to its mission.
Court Operations Information ³	<p>Information related to the supervision, management and direction of matters necessary for the operation of the Court or other matters assigned to the Executive by law or agreement (such as a Memorandum of Understanding).</p> <p>In Quebec, Case Management Tools (<i>Outils de gestion des causes</i>) and Court Monitoring Tools (<i>Outils de suivi des affaires judiciaires</i>) are included as subsets of the broad category of Court Records (<i>Documents d'activité des tribunaux</i>) and are probably best included under Court Operations Information.</p>
Court Record / <i>Document judiciaire</i>	Information and other tangible items filed in proceedings and the information about those proceedings stored by the court. Refers to the “Official” recorded Information of a proceeding. It is the portion of the Case File that is made accessible to the public, subject to privacy constraints regarding, for example, disclosure of personal Information.
Information	Information includes recorded information in any medium or format, regardless of how it has been created. This includes information generated by human or other means.
Judicial Administration /	The supervision, management and direction of matters necessary for carrying out judicial functions, including:

³ For the *Framework* definition and examples see *Framework* p. 66.

Term	Definition
<i>Administration judiciaire</i>	<ol style="list-style-type: none"> 1. the scheduling, preparation, assignment and adjudication of court events; 2. the education, performance, conduct and discipline of Judicial Users; 3. the governance of Court Information and technology, and 4. all other matters assigned to the judiciary by law or agreement (such as a Memorandum of Understanding).
<i>Judicial Information / Renseignements de la magistrature⁴</i>	<p>Irrespective of who created it or how it was created, Judicial Information includes:</p> <ol style="list-style-type: none"> 1. Personal Information of Judicial Officers (Annex 5); 2. Information related to the exercise of a judicial function (“Adjudicative Information,” Annex 3), and 3. Information related to Judicial Administration (“Administrative Information,” Annex 4).
<i>Judicial Agent / Agente ou agent judiciaire</i>	<p>A Judicial Agent is a Judicial User who supports a Judicial Officer and may include court staff such as executive officers, lawyers, paralegals, law clerks, JITSOs, law students, articling students, judicial clerks, administrative assistants, as well as independent consultants working under retainer or contract. (See Annex 1B: Judicial Agents.)</p>
<i>Judicial Officer / Officière ou officier judiciaire</i>	<p>A Judicial Officer is a Judicial User acting in a judicial or quasi-judicial capacity, and includes judges, deputy judges, masters, justices of the peace, registrars, prothonotaries or anyone else authorized to act in an adjudicative role. (See Annex 1A: Judicial Officers.)</p>
<i>Judicial User / Utilisateur ou utilisatrice judiciaire</i>	<p>A Judicial User performs or supports judicial functions and may be authorized to access Judicial Information at various levels of permissions, depending on their role.</p>

Annexes 1-5 list particular examples gathered from courts across the country: these lists are meant to be illustrative, not exhaustive, and may be modified to suit different purposes.

⁴ While “*Information Judiciaire*” has been used for “Judicial Information” in the past, in French it means “Court Information.” To avoid confusion, it is proposed that “Judicial Information” be translated as “*Renseignements de la magistrature*.”

ANNEX 1A: JUDICIAL OFFICERS

- Assessment or taxation officers
- Associate Chief Judge / Justice
- Chief Judge / Justice
- [Puisne] Judge / Justice (including Supernumerary / Retired)
- Magistrate
- Master
- Prothonotary, Deputy Prothonotary
- Registrar, Deputy Registrar
- Senior Regional Judge / Justice
- Other judicial or quasi-judicial decision makers

ANNEX 1B: JUDICIAL AGENTS

- Administrative Assistant
- Bailiff
- Conciliator / Mediator
- Court Clerk
- Court Reporter
- Counsel
- Executive Officer
- External counsel, consultants and advisers
- JITSO (Judicial Information Technology Security Officer)
- Law Clerk
- Legal Counsel, Legal Officer
- Paralegal
- Public Relations Officer
- Publications Director
- Scheduling / ROTA Manager
- Sheriff
- Social media manager
- Supervisor of Court Administration
- Supervisor of Judicial Support
- Other

ANNEX 3: ADJUDICATIVE INFORMATION

Corresponding Framework definition:⁵ *Individual Judicial Information* includes work product, research material and professional development information of staff Lawyers, Law Clerks and Judicial Officers.

- Bench books
- Bench memos or research memos prepared for a Judicial Officer
- Case planning conferences
- Communications and correspondence
- Condensed books and transcript
- Court clerk log notes
- Court Rules and Court Forms (blank)
- Court digital audio recordings and minute sheets
- Draft transcripts
- Judicial activities external to the court
- Jury charges
- Orders, endorsements, rulings, decisions, judgments and reasons for judgment
- Publication bans
- Recordings, notes or transcripts
- Reports - medical, psychiatric, financial
- Research material
- Settlement conferences
- Transcripts
- Trial management conferences
- Weekly Lists (Redacted or un-redacted)
- Working notes and annotations
- Other

ANNEX 4: ADMINISTRATIVE INFORMATION

Corresponding Framework definition: *General Judicial Information* includes information used by Chief Justices, committee materials, statistics, research material, and court-wide professional development information.

- Activity workload statistics

⁵ The three categories of “Judicial Information” here (Adjudicative, Administrative and Personal) correspond broadly to the *Framework’s* categories of “Individual, General and Personal respectively. For each category the original *Framework* definition is provided for cross-reference purposes. The new terminology is intended to make the distinctions clearer while maintaining the broad outline of the *Framework’s* approach.

- *Ad hoc* appointments
- Appointment of various officials and representatives
- Attendance at educational programs
- Audio and video conferencing setup and configuration
- Blank electronic forms or templates
- Business intelligence
- Case management and tracking data
- Committee management
- Committee materials
- Communications with governments and other justice system stakeholders
- Conduct and discipline management
- Conference management
- Contracting and tender administration
- Court reporting
- Court-wide professional development information
- Courthouse telephone lists
- Education and training content and management
- E-filing systems information
- Emergency contact lists
- Administrative activities external to the court
- Financial resources management
- Governance management
- Human resources management
- Information and records management
- Information produced by the Executive Office
- Inventory management
- Judicial administration research material
- Language, translation and interpretation management
- Office of the Chief Judge / Justice information
- Policies, policy development and procedures
- Professional development information of Judicial Users
- Publication and public/media relations management
- Reporting and approving judicial leaves of absence
- Research, library and knowledge management
- Scheduling information (ROTA) (e.g. court events, sittings, orders, hearings, conferences, appearances)
- Standards setting e.g. for decision publication format
- Statistics
- Technology management
- Webcasting and televising of proceedings
- Other

ANNEX 5: PERSONAL INFORMATION OF JUDICIAL OFFICERS

Corresponding Framework definition: *Personal Judicial Information* includes information produced by, on behalf of, or relating to a Judicial Officer that does not directly relate to the function or role of the Judicial Officer and is not associated with a Case.⁶

- Audit logs containing summaries of computer system activities
- Conduct, discipline information
- Contact lists
- Educational program attendance record
- Expense claims and reimbursements
- File access log and user audit trail
- Judicial administration work product
- Judicial education program content
- Judicom messages, posts and other information
- Location tracking / security swipe card
- Personal account information
- Personal communications including email, voice mail, text messages etc.
- Personal calendar
- Personal notes, research or working papers
- Private or personal affairs and social interactions
- Scheduling of a Judicial Officer within a court calendar
- Social media drafts and posts
- Software applications or other electronic repositories
- Statistics showing a Judicial Officer's individual activity or workload
- Travel and location information
- Website browsing and search history
- Workload and performance information
- Other

⁶ [Footnote 38, *Framework*:] The Administration of Justice Committee's Definitions Working Group concluded that it was not useful to venture a detailed definition of Personal Judicial Information beyond this. In each jurisdiction, it will be necessary to provide precise guidance to technologists in relation to Judicial Internet browsing history logs, email repositories, contact lists, calendars, text messages and voice mail when considering candidate information for this category.

ANNEX 6: REFERENCES

1. *“Judicial Information”: Definitions and Templates*. A Background Report to the Canadian Judicial Council Technology Subcommittee, February 18, 2020.
2. Canadian Judicial Council, *Blueprint for the Security of Judicial Information*, Fifth Edition 2018.
3. Canadian Judicial Council, *Guidelines for Migration of Judicial Information to a Cloud Service Provider*, September 2019.
4. Canadian Judicial Council, *Management Policy Framework to Accommodate the Digital Environment*, 2013.
5. *Métalexique de l’information judiciaire dans le cadre du projet de gouvernance et de gestion de l’information judiciaire (Québec) v.0.9*.
6. Precedents received by Council from Nova Scotia.
7. Supreme Court of British Columbia *Court Record Access Policy*.
8. British Columbia Court of Appeal *Operational Records Classification System*.