

Electronic Legal Proceedings In Canada

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INTRODUCTION:

In this paper, we provide an overview of the various elements of electronic legal proceedings currently in use by Canadian courts. We review the laws and procedures surrounding the electronic filing of documents, electronic access to court records, electronic discovery, and the use of technology in Canadian courtrooms. This review includes both an analysis of the Canadian Model Policies that govern these issues and an overview of the practices in various Canadian jurisdictions. Within these areas of review, we note some of the concerns associated with electronic proceedings.

DISCUSSION:

1) Electronic Filing

Electronic filing refers to the filing of court documents (pleadings, originating notices, affidavits, etc.) prepared in an electronic format specified by the court and delivered by e-mail or over the internet. Electronic filing, or "e-filing" has recently proliferated in Canada, and is now available in a number of jurisdictions.

There has been a demand for e-filing systems to be introduced by the Canadian Courts for a number of years. In 2002, the Supreme Court of Canada and Federal Court of Canada commissioned an "Electronic Filing Study."¹ This study sought input on e-filing from members of the Canadian legal community. The objective of the study was to identify the perceptions of Canadian lawyers with respect to e-filing in order to help develop the range and characteristics of e-filing services.² This study found a tremendous demand for an e-filing system in Canada, with 73% of respondents to the survey indicating that there would be significant benefits to the ability to initiate court proceedings and file documents electronically.³

Since this survey was conducted, a number of Canadian jurisdictions have introduced some form of e-filing. These include the Supreme Court of Canada, the Federal Court of Canada, and the Ontario, British Columbia, Alberta, Newfoundland, Nova Scotia and Prince Edward Island Courts. Other Canadian jurisdictions are seeking to add e-filing systems. In 2008, the

¹ Canada, Supreme Court of Canada and Federal Court of Canada, *Electronic Filing Study: Report to the Supreme Court of Canada and Federal Court of Canada* (Ottawa: Compas Inc., 2002). Online: Federal Court of Canada <http://epac.fct-cf.gc.ca/study_e.pdf>

² *Ibid.* at 1.

³ *Ibid.* at 6.

Saskatchewan Court of Appeal conducted a feasibility study on how to achieve an effective e-filing procedure, with a view to implementing such a system in the future.⁴ Quebec, Manitoba and the Territories do not have e-filing systems in place at this time.

The nature of Canadian e-filing programs varies depending upon jurisdiction. Below is an overview of the system in place in each Canadian jurisdiction that offers e-filing.

The Supreme Court of Canada issued a practice note in December, 2008 which requires parties to file electronic versions of notices of appeal, factums, records and books of authorities.⁵ Such authorities are then accessible during hearings through equipment installed on the bench, lectern, each counsel table and the media table (designated to authorized members of the Canadian Press). The Supreme Court of Canada continues to require that a printed version of these documents be filed, although the number of printed copies required is reduced. A printed copy need not be served on opposing counsel if counsel accepts service of the electronic document.⁶

The Supreme Court of Canada specifies the format of the documents to be filed in the "Guidelines for Printed and Electronic Versions of Appeal Documents."⁷ Electronic documents must be in PDF format and a true representation of the printed version (in the case of a discrepancy, the printed version is official). Commenting functionality must be turned on, and specifications regarding the resolution of scanned documents (300 dpi) must be adhered to. All security systems within the document must be deactivated due to concerns that they may interfere with systems for the visually impaired and thus affect accessibility. Signatures are not required on electronic documents, but must be provided on the original printed copy.⁸

Documents must be copied onto a CD-ROM and sent to the Supreme Court by mail or courier. The CD must be labeled with the filing party's name, the file number and the statement of claim. An "Electronic Filing Form" provided by the Supreme Court of Canada must accompany the document being filed. Parties whose documents contain information subject to a sealing order or confidential information are required to contact the court in order to be provided with specific requirements for the redaction of the sensitive information.⁹

The Federal Court of Canada does not require e-filing, but allows e-filing in all Federal Court proceedings by any party or its legal representative pursuant to a November 28, 2008 Notice to the Profession.¹⁰ The Federal Court of Canada has contracted with Lexis-Nexis Canada for the implementation of an electronic filing system. Documents are filed in a PDF format through the

⁴ Potter Farrelly & Associates, "Electronic Filing Feasibility Study: Saskatchewan Court of Appeal" *Case Studies*. Online: Potter Farrelly & Associates <<http://www.potterfarrelly.com/upload/comb1.cs.workflow.pdf>>.

⁵ Supreme Court of Canada, *Notice to the Profession: Filing of Electronic Documents*, December 2008. Online: Supreme Court of Canada, <<http://www.scc-csc.gc.ca/ar-lr/notices-avis/08-12-eng.asp>>.

⁶ *Ibid.*

⁷ Supreme Court of Canada. *Guidelines for Printed and Electronic Versions of Appeal Documents*. Online: Supreme Court of Canada, <<http://www.scc-csc.gc.ca/ef-de/gl-ld-eng.asp>>.

⁸ Supreme Court of Canada, *Guidelines for Printed and Electronic Versions of Appeal Documents*, *supra*.

⁹ Supreme Court of Canada, *Guidelines for Printed and Electronic Versions of Appeal Documents*, *supra*.

¹⁰ Federal Court of Canada, *Notice to the Profession, E-filing Expansion*, November 28, 2008. Online: Federal Court of Canada <<http://cas-ncr-nter03.cas-satj.gc.ca/fct-cf/pdf/E-filing-notice.pdf>>.