



## PILOT PROJECT: ONLINE ACCESS TO COURT RECORDS

September 7, 2022

The Court is introducing a platform to provide the public and litigants with online electronic access to Court records. Allowing greater public access in the digital age will reinforce and enhance the open court principle.

This Notice to Parties and the Profession will be updated as the Court gains experience with the process and receives feedback on the pilot project, and as further phases of the project are introduced.

### Pilot Project Phase One: Online Access to Certain Court Records

As referenced in the Federal Court's [2020-2025 Strategic Plan](#), and further to additional consultations with the bar, online access to Court records is being introduced in phases. As part of the first phase, only records in the following categories will be made available online:

- Pleadings (e.g., statements of claim and defence, notices of application, notices of motion, notices of appeal) and written arguments (written representations, memoranda of fact and law) filed by parties through the Court's [e-filing portal](#) in matters that are:
  - commenced on or after **September 12, 2022**
  - in the areas of **Maritime and Admiralty, Class Actions, Indigenous Law, and Intellectual Property**
  - not subject to a confidentiality or other sealing order
- Court-generated documents (e.g., orders, directions, reasons, judgments) in the foregoing matters

For greater certainty, documents filed in proceedings commenced prior to September 12, 2022 will not be available via online access. The public may continue to obtain access to such documents through the Registry, provided they are not subject to a confidentiality Order. Documents meeting the foregoing criteria will be available for online access three business days after they are filed, to allow for document processing and to limit the potential for inadvertent posting of confidential documents. Copies will continue to be available from the Registry before and after they are posted. Future phases of the project will provide for additional records being available in these and other areas of the Court's jurisdiction.

Documents available through online access can be downloaded via the [Federal Court's website](#). Further information regarding the online access platform can be obtained via the [user guide](#) and the [online access FAQ](#) on the Federal Court's website.

## Protecting privacy interests – Exemption from online access

The open court principle requires that records filed in Canadian courts, including the Federal Court, be available to members of the public. The Supreme Court of Canada has recognized the open court principle as a fundamental rule that is a hallmark of a democratic society, fostering public confidence in the integrity of the court system and understanding of the administration of justice: *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, [1996] 3 SCR 480 at para 22. Given the importance of the principle, exceptions to it are limited and rare.

In the Federal Court, open access to court proceedings has long included the availability of court records through modern means, including obtaining documents from the Registry by fax or email. The Court sees the introduction of online access as being a logical extension of this continuum, creating a new and practical method to obtain court records that have always been available in other ways.

This said, the Court recognizes that making records that are already available through the Court registry available online may in exceptional circumstances raise concerns about security or privacy because of the loss of “practical obscurity”: *Sherman Estate v Donovan*, 2021 SCC 25 at para 80. As a result, it may be appropriate in some cases that information that is not subject to a confidentiality or sealing order is nonetheless not available online. The Court anticipates that such cases will be rare, for matters that are within the scope of this initiative.

Consistent with the foregoing, parties may file a request that all or part of certain records be exempt from online access. Parties and counsel filing documents through the e-filing portal will be required to indicate whether a request for an exemption from online access is being made and, if so, to file their request with the document. Such requests may be made by informal request in letter format. Other parties may respond. Given the importance of the open court principle, parties seeking an exemption will bear the onus to demonstrate that it is justified in the circumstances. The request will be referred to a member of the Court for determination before the document is made available online. If granted, the Court may require a party to file a version of the document that can be posted online.

The Court member determining the request will have full discretion to decide the matter. However, the Court anticipates that parties will be required to show that there is a serious risk that making the document available through the Court’s online platform, in addition to being available from the Registry, will result in a material adverse impact on the personal dignity or security of an individual. Relevant considerations in this assessment may include, but are not limited to, the nature of the information and the proceeding; the extent to which the concerns raised exceed the usual discomfort or potential embarrassment inherent in involvement in litigation and the disclosure of information in open court; and the relationship between any concerns identified and the values underlying the open court principle.

For clarity, nothing in this notice or the potential exemption from online accessibility affects the availability of, or requirements for, a confidentiality or sealing order, which remain subject to the conditions set out in the jurisprudence, notably *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41. Parties are reminded that documents containing confidential information should not be filed through the e-filing portal.