

Federal Court



Cour fédérale

**ANNEX**

**Electronic Legal Service and Electronic Filing in the Federal Court  
Amended March 1, 2013**

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## **Part I – Electronic Legal Service**

Electronic legal service of a document to a party in a proceeding in the Federal Court shall constitute valid service pursuant to rule 147 of the *Federal Courts Rules* when consistent with the requirements set out below.

**1. Notice of Consent** – A document shall not be served by electronic service unless the recipient has served their Notice of Consent to Electronic Service in the form provided below.

### **NOTICE OF CONSENT TO ELECTRONIC SERVICE**

*(General Heading — Use Form 66)*

The plaintiff *(or as the case may be)* consents to the electronic service of all documents in this action *(or as the case may be)* that are not required to be personally served.

Electronic service of the documents may be made to the following electronic address:

*(Set out the electronic address to which documents may be served)*

*(Date)*

*(Signature of solicitor or party filing notice)*

*(Name, address, telephone, fax number and email address of solicitor or party filing notice)*

The Notice of Consent shall be filed within 10 days of service on other parties. If a party consents to the electronic service of documents at an electronic address, that party shall also include the electronic address in all documents filed in Court.

**2. Electronic Legal Service Address** – this address may be:

- (a) an account at an electronic legal service provider; OR
- (b) an e-mail address.

**3. Validation of Service** – pursuant to Rule 147, validation of service should be sufficient to satisfy the Court that the document(s) came to the notice of the party to be served. Service may be validated by confirming receipt of the document(s) at the recipient party's Electronic Legal Service Address provided in the Notice of Consent, including:

- (a) e-mail delivery or read receipt (i.e., similar to automatic fax confirmation); OR
- (b) confirmation from an electronic legal service provider that the document was delivered to the recipient party's account at that service provider – see 2(a); OR
- (c) confirmation that an imbedded hyperlink in the message envelope was accessed; OR
- (d) verbal confirmation by the recipient party, counsel or paralegal; OR
- (e) other means sufficient to satisfy the Court that the document(s) came to the notice of the recipient party.

**4. Proof of Service** – proof of service is filed with the Court pursuant to Rule 146, including:

- (a) confirmation that service was effected electronically; AND
- (b) the Electronic Legal Service Address to which service was effected; AND
- (c) the manner in which service was validated (see item 3 above).

Proof of service may be filed electronically – see “signatures” under *Part II Electronic Filing*.

## 5. Additional Information

### ▪ **Consent: Change of Address, Withdrawal of Consent, and Change of Counsel**

An e-mail address in letterhead / correspondence does not constitute consent to receive electronic service. An Electronic Legal Service Address is considered valid unless and until the Court and all parties are notified in writing of its amendment or cancellation. Formal notice of change of counsel constitutes withdrawal of consent until a new Notice of Consent is provided.

### ▪ **Format**

Documents should be transmitted either in PDF or any other format acceptable to the recipient.

### ▪ **Validation of Service and E-mail**

Parties should note that although 3.(a) provides a minimum standard that allows the sending party to serve and file without undue delay, there remain situations where, notwithstanding a delivery receipt, the recipient does not get the document(s) [it is noted that this sometimes occurs with fax and mail processes as well]. After filing the document, the sending party may wish to use a second validation process to provide additional guarantees that the other party received the document.

Some e-mail servers filter out unknown e-mail addresses, and so parties may wish to include in their e-mail 'safe list' the e-mail address of other parties to facilitate receipt of documents sent electronically. Moreover, some e-mail servers limit the size of e-mails with attachments, often without any notice to either the sending or receiving party. These limits – *sometimes as low as a few megabytes in size* – may prevent receipt of a document being served. If in doubt, a party may wish to consider use of an electronic legal service provider to serve the document, where a hyperlink embedded in an e-mail can be used instead of an attachment.

The person serving a document should take all reasonable precautions to ensure that no malware is included with the document or e-mail, and the person receiving a document should take all reasonable precautions to protect against malware.

### ▪ **Issuance of Court documents**

A party's electronic legal service address may also be used by the Federal Court Registry to send directions, orders or judgments for which the form of transmission is not otherwise specified by the *Federal Courts Rules*.

### ▪ **Personal Service**

Personal service shall continue to be effected according to the specific requirements set out in the *Federal Courts Rules*.

### ▪ **Date and Time of Service**

For greater certainty, Rule 144 applies to electronic service on a holiday or after 5 p.m. *at the recipient's local time* (according to the recipient's civic address, as established by its address for service pursuant to Rule 2). In this case, a document is deemed to be served on the next day that is not a holiday.

### ▪ **Transmission failure**

Nothing in this Notice precludes a party from offering proof that the electronic transmission was not received in a timely manner for reasons beyond the control of the intended recipient.

## Part II - Electronic Filing

Electronic filing of a document in the Federal Court constitutes filing within the meaning of rules 2 and 72 of the *Federal Courts Rules* when consistent with the requirements set out below:

**1. Court E-Filing Application:** the document is filed via the e-filing application provided on the web site of the Court.

**Note:** The amendment set out in this Notice does not affect the validity of documents previously filed via an external service provider approved under the former E-Filing Notice,

**2. Document Format:** the document is filed in portable document format (PDF).

**3. Paper Copies:** Despite the fact that a document is accepted for filing by electronic transmission or fax, the Court may require that the Registry be provided with the same number of paper copies of the document as would have been provided had the document been filed in paper copy.

**When paper copies are NOT required:** paper copies need NOT be filed for electronically filed documents that have a complete paragraph or page numbering scheme if:

(a) the document (including attachments) is **100 pages or less; OR**

(b) the document (including attachments) is **500 pages or less** AND is filed at least **5 clear business days** before the hearing date (if any is scheduled).

Waiver by party: if a party wishes to file its own paper copies rather than relying on the Registry to print copies for the Court record (as provided above), the party should note this when filing the document, which shall be reviewed by the Registry officer upon receipt of the e-filed document. The party should file the paper copies within the time frames provided in the following section (“When paper copies are required”).

Urgent Matters: For urgent matters that are filed electronically, it is recommended that the filer call the local office to facilitate arrangements for a timely hearing.

**When paper copies are required:** for documents (including attachments) more than 500 pages long or without a complete paragraph or page numbering scheme, paper copies of the electronically filed document must be filed at the Court according to the following schedule:

(a) for “general sittings” motions, to be filed as soon as possible at the Registry office where the Court will hear the motion and no later than 2 p.m. on the last business day preceding the hearing; or

(b) for “special sittings” motions, to be filed in accordance with the Court’s direction or order or, if none has issued, to be filed as soon as possible at the Registry office where the Court will hear the motion and no later than 2 p.m. on the last business day preceding the hearing; or

(c) for other matters, within 7 days of the electronic filing.

**Important:** When filing paper copies pursuant to this section, a party should note on the document that it has already been submitted electronically. .

**Number of Paper Copies:** In those cases where paper copies are required, the filer should refer to the rules that normally govern filing of these documents to determine the number of copies required.

**4. Originating Documents:** an originating document may be filed electronically, subject to the following procedural requirements:

(a) Where a party is required personally to serve the document, s/he must provide sufficient paper copies of the document to the Registry or arrange for copies to be made by the Registry at the tariff set out in the Rules. The Registry will apply the seal of the Court to the documents and retain them for pickup at the Registry by the party so that s/he can effect the necessary service on the other parties.

(b) Pursuant to section 48 of the *Federal Courts Act*, proceedings against the Crown are instituted by filing in the Registry an original and two copies of the document in the form set out in the schedule to the *Act*. Although the original of such originating documents may be filed electronically, two paper copies should then be filed to fulfil the requirements of section 48 – these should be filed within 7 days of the electronic filing. The Registry will complete service on the Crown pursuant to Rule 133.

## 5. Additional Information

The following additional information is provided for greater certainty:

### ▪ Format Standards

Colour documents (e.g. photographs, diagrams) will be accepted electronically. However, the filer must advise the Registry that materials are in colour for those documents which are printed by the Registry (see “Paper Copies”).

PDF files should where possible be created directly from a word processing program (e.g. Word or WordPerfect). Where possible, only those documents that exist *only* in paper format should be scanned.

Filers must not incorporate in their PDF documents any properties that might restrict or prevent the Court and its staff from viewing, printing or searching the documents.

### ▪ Page Numbering

Most documents submitted to the Court already have a page or paragraph numbering scheme as required by the Rules and therefore do not require any special attention to ensure a reference structure is in place for citation. However, some documents do not have a numbering scheme set by the rules or are submitted with “tabs” to facilitate organization of document groups and cross-referencing between documents. In order for the Court to be able to print such documents while maintaining an effective reference structure, parties should apply one of the following pagination schemes:

(a) a single, continuous, and legible numbering scheme for both the ‘lead’ document in the

group (e.g., affidavit) and any related documents (e.g., exhibits), preferably in the bottom-right hand corner of each page (each related document should therefore NOT restart a separate numbering scheme), along with an index for the entire group; OR

- (b) a single, continuous, and legible numbering scheme, preferably in the bottom-right hand corner of each page, for the ‘lead’ document in the group and then a separate pagination scheme preceded by a letter or digit for each related document (e.g., A-1 to A-7, B-1 to B-44, C-1 to C-5, etc.), along with an index for the entire group.

In all cases where a paper copy is submitted to the Court, the numbering on the electronic version and the paper version should be identical.

- **Confidential documents**

Until further notice, documents placed under seal by law or documents for which the filer has sought or will be seeking a Court order for confidentiality should not be filed electronically.

- **“Signatures”**

A filer is not required to scan a document just to prove the presence of signatures. With the exception of affidavits and statutory declarations, documents filed solely with a typewritten signature are considered to meet the signature requirement under Rule 66(3).

For affidavits (including affidavits of service) and statutory declarations, the filer should file either a scanned version of the document with handwritten signature or an un-scanned version of the document with a typewritten signature. You should keep a copy of all documents sent electronically for 30 days after the expiry of all appeal periods. For paper-based documents that are scanned to a digital format for electronic filing, the *original* paper document should be kept.

- **Filing deadlines, Payment of Tariff, and Deemed date of filing**

Missed filing deadlines caused by delay due to technical difficulties or accessibility problems within a law firm’s own technical infrastructure will not be excused. The Courts Administration Service plans to have the Court web site and e-filing application available at all times, including when Registry offices are closed, other than minimal periods of scheduled maintenance.

There are no transaction fees to use the Court electronic filing system. However, where the *Federal Courts Rules* provide for a tariff that must be paid at the time of filing a document, the filing party must contact the Registry to arrange for payment, at which time the document will be filed and processed. Pursuant to Rule 71, a document is considered to be submitted for filing only once the tariff is paid. For documents sent electronically on a holiday, the party may contact the Registry on the next day that is not a holiday to arrange for payment of the tariff.

Filing a document electronically does not alter any filing deadline that may have been otherwise set for that document. A document that is accepted for filing is deemed to have been filed at the time *in the Eastern time zone* that the document was submitted for filing via the electronic filing system. However, a document that is submitted for filing on a holiday is deemed to have been filed on the next day that is not a holiday.

- **Receipt of filing**

Onscreen time-stamp of document receipt will be provided to the filer by the e-filing application immediately after submission to the Court registry. If a document is not accepted by the Registry for filing, an electronic notice will be sent to the filer that includes the reason why, or the Registry will contact the filer.

While the Court and CAS anticipate a timely review of an electronic document that is submitted, the actual filing may not occur until internal processing, including indexing and docketing, is completed. The Registry will review onscreen each document submitted to ensure its correct handling, as it does with all paper documents that are submitted. When a document has been successfully processed, it will be considered filed as of the time stamp on the submission.

An entry will be made in the Court's online docket when a document is accepted for filing. This is accessible via the Court web site.

- **Public access to documents filed electronically**

Any person may review, at the Court Registry office, the printed copy of electronic filings. Where facilities exist, the Registry may instead provide electronic access.