

Federal Court



Cour fédérale

NOTICE TO THE PARTIES AND THE PROFESSION

**DOCUMENT RETENTION SCHEDULE
PURSUANT TO RULE 23.1 OF THE *FEDERAL COURTS RULES*
January 18, 2021**

Preamble

As a superior court of record, the Federal Court is responsible for the conservation of records necessary for the performance of its judicial duties. Historically, court records have been retained primarily to ensure that courts followed precedents, which was possible only if the precedents, including the underlying record, were accessible in perpetuity. However, court precedents are now easily available via both commercial and free jurisprudential databases.

The great majority of Court records are never consulted after being sent to the Court's archives. As a result, many courts of record around the world now adopt retention schedules to ensure that records of special historic value and core records of the judicial process are conserved, while allowing for certain classes of other documents on the court file to be destroyed. The historic approach – maintenance of all documents for “perpetuity” – has resulted in ever-increasing archival expenses to maintain many classes of court documents that are never accessed once the proceeding, including appeals, is completed. Few trial courts can justify allocating scarce resources to meet this historic ideal.

While courts of record in different jurisdictions have interpreted their obligations differently, there appears to be unanimity about preserving certain documents in perpetuity – judgments and orders, books of recorded entries and books of minutes of hearing. Other classes of records are preserved only as set out in each court's retention protocol and schedule.

RETENTION SCHEDULE

Pursuant to Rule 23.1 of the *Federal Courts Rules*, the Court may establish a schedule for the retention of files, annexes, and records:

Rule 23.1 The Administrator shall retain all files, annexes — other than the exhibits — and records that are required by these Rules to be kept for the period of time specified in the retention schedule established by the Court.

Following public consultation, the Court hereby adopts the following retention schedule.

A. **Court files that were NOT adjudicated on the merits: 7-year retention schedule:** applicable to all documents, *subject to the exception below*, for Court files that were:

- i. dismissed at the leave stage, if applicable; or
- ii. dismissed for failure to prosecute (abandoned); or
- iii. discontinued; or
- iv. resolved by judgment on consent of the parties.

Destruction of Documents: subject to Advance Notice (see section C, below), documents on these files may be destroyed 7 years from the date that the file was dismissed, discontinued, or resolved by judgment on consent of the parties. **Exception:** Judgments, Orders, minutes of hearings, and index and docket entries, which shall be maintained in perpetuity.

B. **Court files that were adjudicated on the merits: 15-year retention schedule:** applicable to all documents, *subject to the exception below*, for Court files not included in category A (as defined above).

Destruction of Documents: subject to Advance Notice (see section C, below), documents on these files may be destroyed 15 years from the date that final judgment was rendered, including any appeal. **Exception:** Judgments, Orders, minutes of hearings, and index and docket entries, which shall be maintained in perpetuity.

C. **Advance Notice:** a list or database (as appropriate) of files selected for destruction under this retention schedule is to be made available by the Administrator of the Courts Administration Service for a period of at least 3 months prior to the scheduled destruction, allowing any person:

- (a) to request a copy of any public documents on a file that are subject to destruction, to be provided to the requestor upon payment of the applicable tariff under the *Federal Courts Rules*, subject to the Administrator's discretion to waive the tariff if only a single request is received within the request period for a document that will otherwise be destroyed; or
- (b) to make written submissions that extended retention (whether temporary or permanent) of any document on a file is justified, on the basis that the document has special public or historic importance or is of continuing value for reference in other litigation.

D. **Retention of Electronic Version of Documents:** for the purpose of meeting the retention obligation under Rule 23.1, the Administrator may retain an electronic version of a document upon satisfaction that the *integrity* of the document and the *reliability* of the necessary electronic infrastructure are both maintained.

E. **Implementation:** The Administrator of the Courts Administration Service shall be responsible for implementation of this retention schedule.

Paul Crampton, Chief Justice

RETENTION SCHEDULE ANNEX – PHASE I

The Administrator intends to implement the retention schedule established by the Court via an initial disposal project phase starting in 2021. Subsequent phases will be announced following completion and assessment of the initial phase.

The following subset of files that meet category A and category B criteria have been identified for destruction in this first project phase:

Proceeding type: Immigration (IMM) files

Date range: files closed in the following years: 1995-1996-1997-1998-1999-2000

Retention categories included in first project phase:

- **Category A:** Court Files that were NOT adjudicated on the merits: 7-year retention schedule
- **Category B:** Court Files that were adjudicated on the merits: 15-year retention schedule

Approximate number of Court files: 33,230

Public database of files subject to destruction: the index and docket information for the Court Files subject to destruction pursuant to this first project phase is available online via a searchable database: <https://www.fct-cf.gc.ca/en/court-files-and-decisions/files-subject-to-disposal>

Publication date: January 18, 2021

Deadline for copy / extension requests: April 18, 2021

Earliest destruction date: April 18, 2021

Exception: Judgments, Orders, minutes of hearings, and index and docket entries, which shall be maintained in perpetuity.

Request for a Copy of a Document

Interested individuals may submit an online request for a copy of any document on a Court file that is subject to destruction under this Notice. Please complete the form at: <https://www.fct-cf.gc.ca/en/court-files-and-decisions/files-subject-to-disposal>

Request for Extended Retention of a Document

Interested individuals may make submissions that extended retention (whether temporary or permanent) of any documents on a file is justified, on the basis that the documents have special public or historic importance or are of continuing value for reference in other litigation. Please complete the form at: <https://www.fct-cf.gc.ca/en/court-files-and-decisions/files-subject-to-disposal>