

Federal Court



Cour fédérale

ANNEX

**Electronic Legal Service and Electronic Filing in the Federal Court
Amended July 21, 2009**

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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 party may give consent, in a specific proceeding, to receive documents at an Electronic Legal Service Address by formal notice of that address included along with the party’s civic address for service under Rule 2 in a document filed on the Court record.

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

- (a) an account at an electronic legal service provider; OR
- (b) an e-mail address. A party *may* also consent to receive e-mail *but with no attachments* by including the words “No Attachments” after the e-mail address in the Notice of Consent. The party serving a document should then use a hyperlink to the document or other method provided by an electronic legal service provider.

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

▪ Electronic Legal Service Address

Up to 3 separate e-mail addresses may be listed, in which case all addresses shall be served, though a single confirmation of receipt is sufficient to validate service. Use of an Electronic Legal Service Address does not relieve a party from having a civic address for service.

Note for pilot phase of electronic legal service: where a recipient party’s Electronic Legal Service Address is an account at an electronic legal service provider, the sending party shall likely require an account at the *same* service provider in order to serve a document electronically. Communication between different service providers may be possible once industry standards are established for a multi-vendor environment.

▪ **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 – *usually 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*. For time-sensitive documents issued by the Court, the Registry shall also provide notice by phone that a document has been sent electronically.

▪ **Personal Service**

For this pilot phase of electronic legal service, personal service shall continue to be effected according to the 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 which case a document, other than an originating document or a warrant, is deemed to be served at 9:00 a.m. on the next business day. Otherwise, the date of service shall be the date that the electronic document is transmitted by the sending party.

▪ **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, and upon so finding, the Court may extend the time for taking the action required of the intended recipient or grant such other relief as it deems just.

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. Approved E-Filing Provider: the document is filed via an e-filing provider approved by the Court. Upon release of this notice, the following provider has been approved:

Federal Court : http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index

2. Document Format: the document is filed in portable document format (PDF). Graphic file attachments (e.g., a scanned exhibit) may be in PDF or tagged image file format (TIFF).

3. Paper Copies:

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 in the “Document Handling Instructions” section of the e-filing envelope, 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: A print-out of the electronic filing confirmation message must be attached to the paper copies.

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.

Official Court file: if a party is exempted, pursuant to this provision, from filing a paper copy, the Registry shall print a paper copy for the official court file. Although transition to an electronic court file is under consideration by the Court, the paper copy remains the official court file until further notice.

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:

▪ User Accounts

A filing will be the sole responsibility of the user whose account was used to file the document. The filer's unique user ID and password will identify the filer and provide an electronic signature for electronically filed documents. User IDs and passwords are obtained from the e-filing provider.

For law firms, litigation support staff may register as well. Once a law firm has registered for an account with the service provider, the firm may enroll as many lawyers and support staff as required. Each of these individuals will be assigned a unique user ID associated with the firm. The firm has the ability to assign roles and change or rescind user IDs as required.

▪ Format Standards

Following the proposed court filing standards recommended by the international standards-setting body (Legal XML), it is proposed that all lead documents be submitted in PDF. Attachments to these documents (e.g. exhibits to affidavits, such as scanned items like bills of lading, receipts, photos) may be filed in PDF or TIFF.

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). PDF conversion software is available on the e-filing provider’s interface. Where possible, only those documents that exist *only* in paper format should be scanned.

Filers must submit in PDF or TIFF all documents referenced as exhibits or attachments at the same time as filing the affidavit or other “lead” document.

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 and attachments, preferably in the bottom-right hand corner of each page (attachments to the lead 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 and then a separate pagination scheme preceded by a letter or digit for each attachment to the lead 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 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:

- (i) file either a scanned version of the document with handwritten signature or an un-scanned version of the document with a typewritten signature; and then

(ii) confirm an onscreen signature attestation and undertaking: *“The document we are electronically submitting to the court is an electronic version of the paper document that has been signed by the solicitor of record / affiant / authorized person. We have the signed document in our client file and will produce it in court if required to do so.”*

Electronically filed documents that require original signatures must be maintained in paper form by the filer until one year after all time periods for appeals expire. Upon request of the Court, the filer must provide original documents for review.

▪ **Filing deadlines and Deemed date and time of filing**

Missed filing deadlines caused by delay due to technical difficulties related to Internet access or the e-filing provider’s web site or its system availability will not be excused. Neither will delayed filings due to system or accessibility problems within the law firm’s own technical infrastructure be excused. Note, however, that the e-filing provider plans to have its web site available at all times, including when Registry offices are closed, other than minimal periods of scheduled maintenance.

If the e-filing management software at the Federal Court Registry is unavailable, the time stamp on the “envelope” submitted by the e-filing provider will be indicative of the applicable date and time of filing for the documents.

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 shall be considered to have been filed at the time the document was submitted for filing, unless the Court orders otherwise. Documents submitted at or before 11:59:59 p.m. (Pacific Time) on a business day will be considered filed on that business day. Documents not submitted on a business day will be considered filed on the next business day.

▪ **Receipt of filing**

Onscreen acknowledgement of document receipt will be provided to the filer by the e-filing provider’s system immediately after submission of the filing envelope and document(s). Filers will later receive an electronic filing confirmation “receipt” for each document submitted, once the Registry has in due course processed the filing and acknowledged whether a document was accepted, referred back to counsel, sent to the Court for directions, etc. For each document that has not been accepted, an electronic notice will be sent to the filer that includes the reason why.

While the Court and CAS anticipate a timely review of an electronic document that is submitted, the actual filing and acknowledgement 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.

A web “url” link to a proxy of the Court’s copy of the e-filed document and any attachments will be provided to the filer in the filing acknowledgement message. This allows users to review the

Court's version on file to satisfy themselves that it conforms to the original.

- **Court filing fees**

The e-filing provider will employ an online payment method where filers pay their Court filing fees. Government of Canada departments are not allowed to use credits cards and similar instruments to transfer funds from one federal government entity to another, so government lawyers will have their filing fees charged to their individual offices.

- **Public access to documents filed electronically**

Until further notice, only parties, counsel and litigation support staff to a proceeding may view electronic documents pertaining to that proceeding. However, any person may review at any Registry office the paper copies of electronic filings that have not been sealed by the Court.

- **Wrong document being filed, or a document filed in the wrong case**

If a document is electronically filed in error, the filer shall immediately notify the Registry.