

FAQ ON THE WEBINAR ON E-FILING PRACTICAL TIPS AND BEST PRACTICES

Please note that some of the questions and answers below have been amended or expanded upon from those provided during the Webinar hosted on April 28, 2020.

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FORMATTING

1. What is the file size limit of a PDF document?

The maximum file size for e-filing is 100MB. The e-Toolkit offers advice to help reduce your file size. If you still cannot reduce the file size below 100MB, you may have to file your record in multiple volumes or parts. The e-Toolkit contains guidance on how to do this if necessary.

2. I have had a book of authorities rejected for filing because it was not paginated from start to end (like you would paginate a motion record). If each authority in the book of authorities is clearly paginated, is this sufficient?

You should politely advise the Registry Officer that the Court's Notice to the Profession dated May 7, 2013 regarding books of authorities specifically mentions that it is not necessary to number the pages in the book of authorities so long as the photocopies show the page or paragraph numbers of each authority. Please see <https://www.fct-cf.gc.ca/content/assets/pdf/base/notice-avis-7may2013.pdf>.

3. When e-filing evidence, do these documents have to be OCR searchable? Some documents provided by clients are scanned and not searchable, and as it is evidence we cannot often re-do the document so to make it searchable.

All documents submitted for e-filing should be formatted using optical character recognition (OCR). It is understood that some parts of the documents may still not be entirely searchable.

4. So just scanning your application record and saving as a PDF is not good enough? I have been doing this for several years with no objection. However, if the Court wants the PDF searchable, and with tabs, then there is no choice but to subscribe to Adobe Acrobat Pro.

As the Court relies more and more on e-filing, rules and standards around e-filed documents will continue to change, and parties must adapt. The *Federal Courts Rules* continue to apply to all documents, and deviating from them may result in your document being rejected for filing. The e-Toolkit contains links to several options for free software that will allow you to comply with the standards described in the e-Toolkit.

E-FILING PROCESS

E-service

5. Where parties do not agree to e-service, can I still use e-filing? How can I show the document was served in my e-filing?

The e-Toolkit contains a substantive chapter on e-service and Proof of Service. Please consult the e-Toolkit for a more detailed response.

In short, you may use e-filing if the other party does not agree to e-service. If you have served the other party by non-electronic means, you will need to scan and upload the same paper document you would have otherwise brought to the Federal Court offices as if you were filing in paper. This can include:

- A scan of an "affidavit of service" or a "solicitor's certificate of service". Please note that, as per the guidelines on e-filing, you can file a digital copy with typed signatures – so long as you retain a copy of the original until the end of your matter and at least 30 days after the expiry of all appeal periods.
- A scan of the "acknowledgement of service" or "acceptance of service" signed by the other party's solicitor or another person on their behalf (e.g. the page stamped and signed by the DOJ office).

Please note that in the province of Quebec a bailiff's report can also be used for proof of service.

6. Can the DOJ be served as a respondent via e-filing? Specifically for Application Records.

E-service and e-filing are separate processes, subject to different procedural rules. The requirement to serve the other party continues to apply, and parties may choose to not accept e-service. No matter the form of service, you must include proof of service with your e-filing. You are encouraged to consult the *Federal Courts Rules* on service, including Rules 127-148.

Submitting Your Documents

7. Is there a naming convention for the document being uploaded?

There is no naming convention for documents to e-file. It would be helpful to ensure your document is clearly and accurately labelled and in the correct file format. Otherwise, please follow the instructions as you interact with the e-filing portal.

8. What message does one receive to confirm that it has been properly submitted?

As outlined in the e-Toolkit, after you submit your documents through the e-filing system you will receive an initial e-mail confirmation of your submission. This initial e-mail does not mean your document has been accepted for filing. It just means that your document was received by the Court through the e-filing portal.

Once a Registry Officer has reviewed your filing, you will receive a **second** e-mail either:

- Confirming that your document has been filed; OR
- Rejecting your document for filing and providing the reasons for the rejection.

9. What happens if you make a mistake while e-filing (e.g. the name/file is wrong) and you did not notice before pressing submit? How does it get corrected?

Depending on the situation, the document may have already been accepted for filing, and a motion or informal request to amend may be required. Also note that if your document has been served this will complicate matters, as a new version must of course be served upon the opposing party. Should a situation like this occur, please contact the Registry as soon as possible and advise them of the problem. They will discuss your options with you.

10. Whose name goes in the contact info? The legal assistant doing the actual filing, or the name of counsel on whose behalf it is being filed?

Please list the name of whomever can answer questions about the e-filing itself from the Registry quickly, if the Registry calls.

11. Will the parties receive a "stamped filed" copy like at the registries?

The e-filing system will send an email to the filer once a document is accepted for e-filing. This email will have a link to the e-filed document, which will have an electronic filing stamp affixed to it.

Note that the Registry is serving all originating documents upon the Attorney General of Canada or other Minister when required, as indicated in the COVID-19 Practice Direction and Order of April 4, 2020. The Practice Direction and Order also states the following: "During the Suspension Period, the Registry may issue an originating document electronically, which shall be deemed to meet the requirements for issuance under the *Rules*."

12. Does the Federal Court prefer that letters to the Court be faxed or e-filed?

During the COVID-19 suspension period, letters must be submitted via e-filing, unless otherwise instructed by the Court. Outside of the COVID-19 suspension period, both options remain available to parties.

13. Once your materials have been submitted via e-filing and accepted by the Court (e.g. an Application for Leave and Judicial Review (AFLJR)), how/when will you receive a stamped/sealed copy of the AFLJR that you can then use for your Application Record?

Parties will not receive a certified copy during the Suspension Period. Simple copies included in a record during the Suspension Period will be acceptable, on a case-by-case basis and provided that any originating documents contained within were served and proof of such service is provided. We encourage you to consult the *Federal Courts Rules* and e-Toolkit for any further clarification.

See also the Practice Direction and Order of April 4, 2020, which discusses originating documents. The direction states (in part) the following: "During the Suspension Period, the Registry may issue an originating document electronically, which shall be deemed to meet the requirements for issuance under the *Rules*."

14. We have been told by various clerks that books of authorities could not be e-filed unless we were given permission by the Court. Does it fall under the "all documents" can be filed category?

This may be a case of the documents being too large for the Registry to print, especially if a hearing is upcoming in a very short time. In these cases, the Registry may request that print copies be provided. The ANNEX: Electronic Legal Service and Electronic Filing in the Federal Court (Amended March 1, 2013, available online at https://www.fct-cf.gc.ca/content/assets/pdf/base/Annex_English.pdf) and the e-Toolkit contains more information on when documents cannot be provided through e-filing, for example due to size or time constraints.

15. If a document is e-filed, does that mean the decision maker gets it electronically? Do they print it? For multi-tab records if the Court just prints the PDF for the decision maker then it could be less helpful for navigating materials during the hearing.

The decision maker will receive the electronic copy. Whether and how a document is printed depends on the preference of the decision maker. Please note that the Registry does not add Tabs to printed e-filings.

Parties are welcome to bring physical trial compendiums if they wish, but this is not required. If you plan on providing a supplemental paper copy, please indicate so in the e-filing comments.

16. Currently the filing time is EST – will that change in the future to account for time differences in other provinces?

Pursuant to *Federal Courts Rules* Rule 71.1(2), for an e-filed document, "the time of its receipt by the Registry is that time in the Eastern time zone" (EST). Any amendments for regions will require amendment of the *Federal Courts Rules*.

17. If we have 4 volumes, can we submit each volume separately in 4 different submissions on e-filing?

Yes, multiple volumes may be submitted at once. It is helpful if you indicate in the comments how many volumes are being submitted. Please note the limit of 100MB per volume.

18. What about documents that have a fee? Will the Court have access to online payment in the future?

The e-filing portal is free. During the COVID-19 Suspension Period, the Practice Direction and Order of April 4, 2020 states the following: "Effective April 6, 2020, for the duration of the Suspension Period, all fees payable on filing or issuance under item 1 of Tariff A of the *Federal*

Courts Rules are waived. With respect to fees relating to a proceeding against the Crown, the statutory filing fee (\$2.00) contemplated by section 48 of the *Federal Courts Act* is to be paid only after registry operations return to normal. In the meantime, the Registry will accept the documents for filing.”

After the COVID-19 Suspension Period, all tariff fees set out in the *Federal Courts Rules* will apply to e-filed documents. To pay the applicable tariff, parties must contact the Registry after submitting the electronic document. A major credit card is necessary.

Please see the e-Toolkit for further guidance.

19.If you have e-filed some pleadings initially in a matter but, due to problems encountered, wish to opt-out of e-filing, can you file subsequent pleadings by way of paper?

Yes, you may opt to file paper copies at any time. E-filing is an alternative to paper filing; you can choose to use both methods on the same file.

20.If a filing is rejected because it is incomplete (e.g. missing a document), is it necessary to resubmit everything, or can I just file the missing document? Can I add new documents to an existing proceeding?

If you submit a filing and a portion of that filing is missing (for example, one tab of a motion record), resulting in the filing being rejected, you will have to resubmit the entire filing again with the missing portion added in. However, if you have already started a proceeding and are simply filing a new document as part of that proceeding, you can do so through the e-filing portal without resubmitting anything else.

21.Can you e-file a document if you are outside Canada?

The e-filing portal is available worldwide, so long as there is an internet connection.

Please note however that the *Federal Courts Rules* that deal with the service of documents may have restrictions on addresses.

22.Just to confirm, a typed signature in an Application for leave and for judicial review is enough (so no need to sign and scan the document)?

When e-filing your materials, affidavits and statutory declarations must be signed and executed according to the applicable rules. However, you do not have to scan and upload the original for e-filing. For the purposes of e-filing, you can meet the “signature” requirement by either:

- Scanning the paper version of the document with the handwritten signature; or
- Filing a digital copy of the document with a typed signature.

Either way, you must **keep the original** document until the end of your matter and for at least 30 days after all the appeal periods have expired.

For typed documents other than affidavits and statutory declarations, you can meet the signature requirement in Rule 66(3) by e-filing the document with a typed signature.

Confidential Materials

23. How will confidential materials be filed electronically?

Confidential materials cannot be e-filed at this time.

Documents subject to a confidentiality order should not be filed using the e-filing portal. The Registry should be contacted to arrange for the submission of a confidential document. You may be able to email a secure version of the document (password-protected PDF, secure electronic file, etc.) to the Court's CMT email addresses and provide the Registry with appropriate instructions over email or phone. For further instructions about submitting confidential documents, please consult the e-Toolkit or contact the Registry.

24. When filing Motion Records which contain documents under a Confidentiality Order, assuming the confidential material is contained within a separate volume, can you file the Non-Confidential version electronically and send the appropriate sealed paper copies by manual filing containing the confidential material? Or should all volumes be sent in paper copy for manual filing?

If the matter is case managed, please consult with the case management team.

If the matter is not case managed, the entire document must be filed in paper format to ensure it stays together and is dealt with at the same time.

Urgent Matters

25. Should the filing location for e-filing be Ottawa when you are arguing an emergency stay on the phone from a region?

The e-filing location is normally the regional office closest to the e-filer, unless told otherwise by the regional office. In some cases, the conference will be initiated in the region with a judge elsewhere. The Registry is also able to find e-filings using file numbers or e-filing envelope numbers for new files.

26. What should you do if you are unable to reach a Registry Officer by telephone to advise that you will be e-filing a document on an urgent basis?

Urgent matters will be determined on a case-by-case basis. Examples of urgent matters include stays of execution of removals and injunctions.

The Registry must always be contacted by phone to be advised of urgent e-filings. Each regional office has a reception, so please call the regional office closest to you. If your call goes to voicemail at reception, please leave a message stating that you need to speak to a Registry Officer about an urgent hearing. If you reach the voicemail at a Registry Officer's desk, call reception again to ask them to forward on your contact details. Please only contact the Duty Registry Officer after regular business hours for urgent matters (i.e. evenings and weekends); this line is not checked during normal business hours.

Other

27. Will the e-filing guidelines discussed in this webinar also apply to the Federal Court of Appeal filings?

At this time, the e-Toolkit and the April 28, 2020 Webinar apply only to the Federal Court.

28. Will the public be able to access materials 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. Please see ANNEX: Electronic Legal Service and Electronic Filing in the Federal Court (Amended March 1, 2013, available online at https://www.fct-cf.gc.ca/content/assets/pdf/base/Annex_English.pdf). At this time, open online access to these documents is not available.

During the COVID-19 suspension period, physical on site facilities for electronic access will not be available. Depending on staffing resources, if electronic versions of the documents exist, it may be possible for the Registry to email them. Beyond the COVID-19 suspension period, please refer to the Annex mentioned above. Additional information may also be found in the original Notice to the Parties on Electronic Legal Service and Electronic Filing (available online at <https://www.fct-cf.gc.ca/content/assets/pdf/base/notice-avis-26feb2013.pdf>).

29. Do we have an ETA for the e-Toolkit being final? Or will it be a work in progress that should be consulted online every time we have something to file?

At this time, we do not have a hard deadline for a final version of the e-Toolkit. However, much of the e-Toolkit repeats requirements set out in the *Federal Courts Rules*, and formatting standards already described in various Practice Directions. The Court will continue to advise parties of ongoing updates to these directions.

30. Are there CPD hours associated with today's session?

We are in the process of seeking accreditation for Continuing Professional Development (CPD). Please check back to the Federal Court's page on e-filing Resources for updates.