

Federal Court



Cour fédérale

**NOTICE TO THE PARTIES AND THE PROFESSION
PILOT PROJECT (TORONTO LOCAL OFFICE ONLY): IMM E-PROCESS
Amended July 4, 2019**

The *Federal Court Citizenship, Immigration and Refugee Law Bar Liaison Committee* brings together representatives of the Federal Court, the Department of Justice (Canada), and the main entities representing citizenship, immigration and refugee law lawyers (the Canadian Bar Association, RLA, AQAADI, and CARL) to provide a forum for dialogue, review litigation practice and rules, and discuss potential efficiencies and improvements. Its Sub-Committee on Electronic Filing, Service & Hearings, created in 2017, has developed the pilot project set out below for Immigration (IMM) proceedings under which a small number of cases would proceed via an electronic process model. This pilot project, initially for the Toronto local office, builds on the Court's national [e-filing portal](#), which allows any party to file a document electronically. Following an assessment of feedback from this pilot project, the Court is hopeful that the framework can be expanded to other cities.

« Paul S. Crampton »
Chief Justice

IMM e-process pilot framework

Overview: pilot project for IMM proceedings under which a small number of cases would proceed via an electronic process model.

Goal: the purpose of the pilot is:

- To validate an efficient / reliable model for electronic IMM proceedings.
- To test processes / standards / systems (including e-filing portal, electronic service options, preparation and delivery of an electronic version of the certified tribunal record, use of optical character recognition applications, network and systems capacity, as well as registry, court, & litigants' work processes).
- To identify obstacles and find solutions / alternatives.

Scope: the pilot would be limited to the following:

- Lawyers: volunteers from private / public bar identified by member groups in Liaison Committee
 - opt-in approach for all participants
 - not in scope: proceedings initiated by self-represented litigants
- Case-type: applications for judicial review of decisions of the Immigration and Refugee Board
 - not in scope: proceedings for which a confidentiality motion will be filed
 - not in scope: other decisions (e.g., VISA, H&C, PRRA, etc.)
- Geography: IMM applications filed for hearing in the Toronto office only

- not in scope: proceedings in other cities, though these may be added in subsequent phases
- Volume: ideally, at least 10 Applications for Leave per month; maximum 15 e-CTR requests / month; during initial pilot start-up, participation in the pilot may be limited.
- Duration: at least 9 months to allow for evaluation of a sufficient number of cases (on the merits).
- The scope and terms of the pilot may be revised from time to time.
- Court: Federal Court proceedings only.
 - Not in scope: appeals to the Federal Court of Appeal.

Procedural Framework for IMM pilot e-process

a) Selection of Cases

- Initial selection of case by Applicant, who should file a request (see [Annex A](#)), before filing the Perfected Application Record, to request that the file proceed under this pilot.
 - Proceedings for which a confidentiality motion will be filed should not be proposed for the pilot; a proceeding may be withdrawn from the pilot if the Applicant subsequently decides to file a motion for confidentiality.
- Respondent must agree to proceed under pilot ([Annex A](#)).
- If both counsel agree, the Registry will refer the perfected file to a duty judge who is participating in the pilot to base the leave decision on the electronic record.
- If leave is granted, the Judicial Administrator will assign a judge for a judicial review hearing on the merits, who will rely on the electronic record.
- Subject to availability, judges participating in the pilot will be assigned to these cases (motions, leave application, and hearing on the merits) – due to limits on judicial availability, not all cases will proceed under the pilot.
- The Tribunal may opt-out of the pilot on a case by case basis, in which case it shall provide standard paper copies of the certified tribunal record according to the existing process.

b) Document format standards

- Electronic documents should follow the format standard (“*Preparing the Electronic Document to be Filed*”) set by the Supreme Court of Canada in its [Guidelines for Preparing Documents to be Filed with the Supreme Court of Canada \(Print and Electronic\)](#).
- Of particular note: “Text that is scanned to PDF format must use the Optical Character Recognition (OCR) feature. Using the OCR feature will ensure that your scanned PDF version is searchable (if the document is created with word processing software and saved as a PDF file, it should automatically be searchable). To confirm that your document is searchable, use the word search feature of any software designed to view PDF documents.”

c) Filing of Documents

- Reference: e-filing [Notice](#) / [Annex](#) issued in 2013 by the Court.
- E-filing [portal](#) on Federal Court web site.
- Originating document:

Option 1 – (i) filing of print version of Application for Leave, (ii) issuance by the Registry (with court seal), (iii) personal service on the Respondent; (iv) Application to be scanned by Registry into Proceedings Management System.

Option 2 – (i) electronic filing of the Application for Leave, (ii) issuance by the Registry (with court seal), (iii) personal service on the Respondent. Counsel may arrange by phone for payment of the tariff and preparation of the print copies for subsequent pickup; otherwise, there may be a short delay at the counter to have the documents prepared.

- A subsequent phase of the pilot may provide for issuance by the Registry of an electronic version of the Application for Leave for electronic service on the Respondent.
- Subsequent documents:
 - Filed electronically via the Court’s e-filing portal.
 - File the request ([Annex A](#)) before filing the Perfected Application Record.

d) Service of documents

- Parties should file a Consent to electronic service (per Rule 141 of the [Federal Courts Rules](#)).
- Service of originating document – see “Filing of Documents” above.
- Service of subsequent documents:
 - served at the electronic service address set out in the consent filed under Rule 141;
 - the Department of Justice will file, in each case proceeding under this pilot, a Notice of Consent to Electronic Service under Rule 141;
 - note: although Applicants may select an e-mail address as their address for electronic service, this cannot be used for transfer of the electronic certified tribunal record under the first phase of the pilot (due to file size as well as privacy issues) – see h) Transfer of electronic version of Certified Tribunal Record, below;
- Large documents – if the document that is being served is 20 MB or more, it is recommended that the serving party contact opposing counsel to ensure that service can be effected by e-mail. Unless the document can be sent in parts via multiple e-mails, service shall be effected with the document(s) delivered on a CD/DVD. Note that the Department of Justice e-mail server does not accept documents over 25 MB.
- Confirmation of service – it is recommended that one of the following be noted in the certificate of service:
 - (a) an automated confirmation message from the recipient’s e-mail account or server, or;
 - (b) a message from the recipient (e.g., counsel, or paralegal on his or her behalf).

e) Paper copy exemption

- The E-Filing [Notice](#) / [Annex](#) sets a 500 page cut-off for e-filed documents, above which parties must normally provide a paper copy.
- For the pilot, there will be no requirement to file a paper copy even if the document is over 500 pages.

f) Motions

- Motion for extension of time:

- filed electronically via e-filing portal.
- Motion for stay of deportation:
 - ‘after-hours’ motions may proceed under the pilot framework subject to availability of counsel for the Respondent, and a judge who is participating in the pilot; otherwise, the motion may be heard based on a paper record or hybrid record (electronic motion record from Applicant and paper motion record from Respondent);
 - if the motion is to be heard during regular business hours, the motion records can be filed by both parties electronically via the e-filing portal.
- Motion for confidentiality (Rules 151/152):
 - the sub-Committee’s recommendation is not to include proceedings within the pilot for which a motion for confidentiality will be filed; a proceeding will be withdrawn from the pilot if a motion for confidentiality is filed.

g) Leave determination

- The Court will adjudicate the application for leave based on an electronic record.
- If leave is granted, the following revised paragraph will be used in the Order of the Court:

Paragraph 4: Upon request by the parties, this application for judicial review shall be conducted pursuant to a pilot electronic hearing procedure, under which the parties *may* electronically file documents, without any requirement then to file a print version of the documents.

Paragraph 5: The Tribunal shall send a single certified copy of its record electronically to each party and to the Registry of the Court on or before XXX 201X. However, if for any reason it is not feasible for the Tribunal to send copies of its record electronically by this date, the Tribunal shall, in its discretion:

- (a) send certified paper copies of its record to the parties and to the Registry of the Court on or before the date set out above, in which case the application for judicial review be withdrawn from the pilot electronic hearing procedure; or
- (b) *on consent of both parties*, send a single certified copy of its record electronically to each party and to the Registry of the Court by a later date agreed by the parties, but without any other date in this Order being altered.

- The Order granting leave will be signed in paper copy by the Court.
 - Electronic / digital signatures may be evaluated in a subsequent phase of the pilot.
- An electronic copy of the Order will be sent to the parties at the electronic address for service provided in the parties’ Rule 141 consent forms and to the Tribunal at its preferred e-mail address.

h) Transfer of electronic version of Certified Tribunal Record (CTR)

- The certification in paper copy shall be scanned into a document that is either:
 - a) separate from the CTR, but stored on the same CD/DVD (or other medium) with the CTR; or
 - b) merged as the first page of the CTR.

- Additional certification options may be considered for a subsequent phase of the pilot.
 - Transfer of the e-CTR from the Tribunal:
 - CD/DVD sent by registered mail / courier – includes detailed CD label.
 - Additional transfer options for the CTR may be considered for a subsequent phase of the pilot.
- i) E-hearing process**
- For most IMM hearings, which rely on a relatively small documentary record, it is not necessary to use advanced document management / display technology.
 - Judge / counsel would use the e-record uploaded to a laptop / tablet, with print-on-demand option.
 - **Important note regarding internet access:** although internet access points may be available for parties in the hearing room, internet access is not guaranteed; ***counsel are expected to bring all necessary materials in electronic format on their tablet / laptop and, if required, to arrange their own wireless internet access.***
 - For longer, more complex hearings, parties may request a pre-hearing conference to discuss the procedure to be followed at the hearing.
- j) Issuance of decision**
- The Judgment & Reasons will be signed in paper copy by the Court.
 - Electronic / digital signatures may be evaluated in a subsequent phase of the pilot.
 - An electronic copy of the Judgment & Reasons will be sent to the parties at the electronic address for service provided in the parties' Rule 141 consent forms and to the Tribunal at its preferred e-mail address.
- k) Certified questions / appeals**
- Subject to direction by the Federal Court of Appeal, any appeal would proceed according to the standard appeal process under the Rules.

Annex A – Request Letter

TO: Federal Court Registry
FROM: Counsel for the Applicant / Respondent (as the case may be)
DATE:
RE: IMM e-Process Pilot

The Applicant / Respondent (as the case may be) requests that this application be processed by the Court under the IMM e-Process Pilot Project. In particular, the Applicant / Respondent (as the case may be):

- intends to file all documents via the Court's e-filing portal, though reserves the right to proceed with a motion that might be heard via a paper record as an exception to the pilot, or to withdraw from the pilot and proceed via a print record;
- does not expect to file any motion for confidentiality within this proceeding, though reserves the right to withdraw from the pilot if such a motion is filed;
- submits, along with this request, a consent pursuant to Rule 141 of the *Federal Courts Rules* for electronic service of all documents;

- (if applicable) confirms that the Applicant's / Respondent's (as the case may be) record contains some material in both French and English, and therefore requests that the proceeding be adjudicated by a bilingual judge;
- acknowledges that any participant in the pilot project (Applicant / Respondent / Court / Tribunal) may, with appropriate notice in writing, opt out of the pilot in any given case;
- acknowledges that this matter will be assigned the standard 90 minutes of hearing time, which will not be extended by technology-related delays; any excess time that will be required should be requested if leave is granted, through a joint notification by counsel to the Scheduling office.

(signed)

Counsel for Applicant / Respondent (as the case may be)