

CONSULTATION PAPER

ELECTRONIC ACCESS TO COURT DOCUMENTS

Purpose of this consultation

The Superior Courts Judiciary and Provincial Court Judiciary are inviting comments from the legal profession and the public on remote access to electronic documents through Court Services Online (CSO). Electronic documents are filed court documents that are stored in an electronic format in the court record system administered by Court Services Branch, Ministry of Attorney General. Electronic documents include documents that are electronically filed in the registry and documents that are scanned into the court record system.

This paper provides a background to the issues of access to electronic court documents and provides a list of the documents that are being considered for access through CSO. For further background on electronic access to court records, see “Open Courts, Electronic Access to Court Records, and Privacy” prepared on behalf of the Judges Technology Advisory Committee, Canadian Judicial Council, May 2003.¹

Court Services Online search and e-filing

Court Services Branch, in conjunction with the Superior Courts Judiciary and Provincial Court Judiciary, is developing web-based applications for providing access to court registry services over the internet. In December 2004, Court Services Online (CSO) search service was implemented provincially. For a search fee of \$6.00/file, CSO provides internet access to public information from Provincial and Supreme civil court files and Court of Appeal court files. The search results may include information on parties, a list of filed documents and applications. At this time, CSO does not allow access to electronic documents.

In 2006, CSO functionality will be expanded to include an electronic filing service. This service will allow registered CSO users to electronically file Supreme Court and Provincial Court documents in the court registry². The requirements for electronic filing are set out in the Electronic Filing Pilot Project Rule for each of the Court of Appeal, Supreme Court and Provincial Court (Small Claims matters).

British Columbia will be the first jurisdiction in Canada to implement a comprehensive electronic court record system. The electronic court record system is a suite of systems that includes the electronic access and filing

¹ Located at www.cjc-ccm.gc.ca, under Publications, Reports and Papers.

² Court of Appeal will be included at a later date.

services, the ability to accept, stamp and seal documents electronically, and the ability to store and maintain the court record in an electronic format.

In tandem with the technological changes, the Judiciary is taking a leadership role in considering questions involving access to electronic court record information including electronic court documents.

Access to court records

The Judiciary approves access to and disclosure of court record information. This authority is exercised through legislation, the common law, rules of court and Judicial policy.

The rationale for access to court records is to facilitate the judicial process and to improve access to court record information where the public interest is served. The approach of the Judiciary has been to seek the appropriate balance of the right of the public to transparency in the administration of justice with the right of an individual to privacy.

Electronic access issues

The major issue that arises with regards to electronic access to court documents is “the relationship between two fundamental values: the right of the public to transparency in the administration of justice and the right of an individual to privacy.”³ Public access to court record information and documents ensures transparency in the administration of the judicial process and the public understanding of the matters before the court. However, sensitive information may be contained in the documents filed with the court which, if disclosed, could expose an individual’s personal information and interfere with privacy.

In the paper system, the privacy of individuals involved in the court process has been, in large part, protected by the difficulties associated with searching the paper court file. Access to personal information in paper records is limited by the cost, effort and physical challenges of searching and compiling information from files held in individual court registries. The personal information is protected by a ‘practical obscurity’ resulting from these challenges.

Electronic access to information can create new avenues for the collection and storage of personal information. Data collection companies have the capacity to “data-mine” or capture from on-line systems the personal information of large numbers of individuals. Depending on the database, the personal information that is available may include addresses, phone numbers, social insurance numbers, financial and medical information. This information can be reorganized and sold for commercial purposes. While individuals cannot collect information on the scale of commercial enterprises, individuals can remotely search and

³ “Open Courts, Electronic Access to Court Records and Privacy”, footnote #1, paragraph 4.

collect personal information on other individuals. As a result, one of the primary concerns of many jurisdictions is the potential for identity theft.

There are ways to minimize the risks associated with electronic access to court record information. The design of the CSO system prevents the wholesale capture of the database. The limited search parameters prevent the user from “surfing” for information. A user must identify a specific file and pay a service fee before accessing any information associated with that file. If electronic documents associated with a matter become accessible through CSO, the user will need to locate the file, pay the service fee and navigate to the “documents” tab before accessing the document and its contents. As all information is available on a file basis, the user cannot search for a document or information in a document without locating and identifying the relevant file first.

Legal professionals and others using the court system can minimize access to personal information by eliminating in documents filed non-essential references to information that may be sensitive, such as the complete date of birth of a party or party addresses and phone numbers.

Finally, Judicial policy, which governs the type and nature of the information that is available through CSO, can restrict access to certain information through CSO to limit the exposure of sensitive information.

Thus, benefits provided by electronic filing and access, such as the ability to facilitate access to the court record in the public interest, may be realized without compromising individual privacy.

Documents under consideration

Court documents filed electronically through CSO will be stored and maintained in the electronic format. CSO will have the functionality to allow all or some of these documents to be accessible remotely as part of file search results. This means that documents could be made viewable to a user who is able to locate the file in the file index and who pays the search service fee for access to the file through CSO.

Before allowing documents to be accessible through CSO, consideration must be given to the extent and nature of any sensitive information that is contained in the documents. Some types of documents are inherently unsuitable for access through CSO. For example, affidavits or exhibits may contain very sensitive information or untested allegations. However, other documents contain little personal information and access may serve the public interest.

The documents noted below are the only documents currently being considered by the Judiciary for access through CSO. The rationale for this list of documents, containing the initiating documents, pleadings, notices of motion and orders, is

that these documents, generally, contain little personal information while providing information about the nature of a case, its progress and its disposition.

In keeping with the restriction on the search of family files in Supreme and Provincial Court, remote access is not being considered to documents in family law proceedings.

The Superior Courts Judiciary and Provincial Court Judiciary are seeking comments from the legal profession and the public on access to the following list of electronic documents through CSO.

Court of Appeal	Supreme Court – Civil	Provincial Court – Small Claims
Notice of Appeal	Writ of Summons	Notice of claim
Application for Leave to Appeal	Petition	Reply
Application for Cross Appeal	Statement of claim Statement of defence / reply	Third Party Notice
Notice of Appearance	Counterclaim	Orders
Notice of Motion for Leave to Appeal	Third Party Notice	
Notice of Motion	Appearance	
Certificate of Readiness	Notice of Motion	
Notice of Application to Vary an Order of a Justice	Orders	
Notice of Motion for Indigent Status		
Notice of Settlement or Abandonment		
Orders		
- Court		
- Chambers		
- Consent Orders		
- Consent Order to Remove from inactive list		
Appointment before Registrar		
Bill of Costs		
Certificate of Costs		

In particular, the Judiciary would like your views on:

- whether any of these documents are unsuitable for access through CSO and why;
- whether other documents would be suitable for access through CSO and why;
- access to documents through CSO in general.

Your comments

You may provide your comments to Jennifer Jordan, Registrar of the Court of Appeal, as Chair of the Judicial Access Policy Working Group:

By mail:

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