

CNJ

CITE UNSEEN: Cyberspace has given birth to a new standard for electronic case reference and citation

Martin Felsky

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The convenience of new legal research technology brings with it new uncertainties. How do you know that case law on the Web hasn't been tampered with? What's the proper way of citing a judgment published on a court's Web site and nowhere else? How do you refer to an important passage in an on-line judgment if there are no fixed page numbers? How can you find and refer to case law from Australian or American courts?

As the world of paper and pages gives way to the realm of electronic files and screens, the old methods of reference and citation must be adapted.

Lawyers who grew up in the familiar hospitality of the law library should be comforted to know that new standards are already in place alongside the traditional rules.

■ A NEW STANDARD

Because electronic documents can be readily formatted with different fonts and margins, the concept of a page reference has

never been workable in the computer environment. In 1996, after two years of consultation, the Canadian Judicial Council (CJC) approved a document called *Standards for the Preparation, Distribution and Citation of Canadian Judgments in Electronic Form*. (A copy may be obtained from the Council's Web site, www.cjc-ccm.gc.ca.)

Although the 1996 standard covers several important formatting elements, its main recommendation was paragraph numbering of every judgment.

According to the recommendation, every new paragraph in a judgment should begin with an Arabic serial number at the margin, enclosed in square brackets. For example:

[23] This is the first sample paragraph.

[24] The second sample paragraph contains a subparagraph, which is not numbered:

Quoting from another judgment, this passage is considered part of paragraph 24, and not a new paragraph.

[25] The next new paragraph starts here.

Some courts have developed their own templates and macros to automate the paragraph numbering procedure, while CJC has assisted others. The good news is that the standard is applied consistently, and paragraph numbers can be used with confidence whether citing to an electronic copy or a printed version.

The standard has been adopted by almost all Canadian courts with federally appointed judges. Quebec plans to implement the standard as part of a more general technology upgrade. As of September 1999, 20 of 28 federal courts use paragraph numbering in 90 percent or more of their judgments, and most of the others have been using paragraph numbers in a substantial portion of their

Read about ...

Cite Unseen	1
Technology Initiatives in P.E.I.	3
E-filing in B.C.	5

decisions. Several provincial courts and administrative tribunals are also using the paragraph numbering standard.¹

■ TELL IT TO THE JUDGE

So you've found your case, reported under the new standard with the numbered paragraphs. But you still need to present it to your opponent, your client or the judge, and that's where you may run into some problems.

Judgments posted on the Web (by one of the 10 Canadian courts currently publishing their own judgments) will not appear in printed reports for weeks or months and indeed may never be chosen for printing at all. Is it appropriate to provide a URL or Web address? Or is the court docket or file number the only acceptable route?

The Canadian Citation Committee was established as an ad hoc working group of legal specialists in 1997 to address this question. Under the leadership of Professor Daniel Poulin of the University of Montreal, the committee has proposed a neutral citation standard that could be consistently applied in all courts across Canada.

The main feature of a neutral citation standard is that it applies to a judgment irrespective of where the judgment might be published. To use an analogy, if you were referred to a passage from the Bible by chapter and verse, you could find it in any edition of a Bible, in print form or on-line. With a neutral citation standard for judgments, the same universality would apply. For reported cases, the neutral citation would be used as a parallel cite; it's not intended to replace the law report cite.

Lawyers already use neutral citation standards for referencing statutes and regulations, so the transition to a neutral case citation standard will not be difficult. The Canadian Association of Law Librarians endorsed the principle of neutral citation on June 2, 1999. On June 28, the Canadian Judicial Council approved the Neutral Citation Standard. As of this writing, the standard has been adopted by the British Columbia and Alberta Courts, and by the Quebec Tribunal des professions.

The new form of citation is elegant and simple. It consists of the style of cause, a four-digit year, a designated abbreviation for the court identifier, and a serial number to identify the particular decision. For example, a decision from the British Columbia Court of Appeal would look like this (including a pinpoint reference):

Big Harbour Coffee v. H. Bean, 1999 BCCA 256 § 55

■ THE REAL THING

The authenticity of judgments on the Web should be of concern to everyone, because until there's some way of guaranteeing authenticity, it seems that law reporting will have to maintain an official paper version. To address this constraint and the risks of tampering, the legal community should adopt industry standards for authentication.

In 1997, the Canadian Association of Law Librarians and the Legal Research Network jointly held a summit called "The Official Version." One of the topics was authentication, and both organizations are still involved in proposing a solution. For more information, see the CALL Web site at www.callacbd.ca.

The Judges Technology Advisory Committee of the Canadian Judicial Council has decided to begin revising the 1996 paragraph numbering standard, in light of recent technological developments and also to ensure consistency with the new Neutral Citation Standard. One of the exciting aspects of the work on standards is its international scope. Since the Web is truly worldwide, countries that publish their judgments on the Web — in particular the United States, Australia and New Zealand — are considering the development of an international standard to facilitate inter-jurisdictional research.

Since our Neutral Citation Standard is consistent with that of the American Bar Association and is expressly designed to support a national identifier, Canada is well positioned to be an active participant in the domain of worldwide legal research. As foreign law is more accessible, Canadian lawyers will be in a better position to advise clients doing business globally.

A copy of the Neutral Citation Standard can be obtained electronically through the Canadian Citation Committee's Web site at www.droit.umontreal.ca/citation/en. Paper copies may be obtained from the Canadian Judicial Council, Suite 450, 112 Kent Street, Ottawa K1A 0W8, 613-998-5182, fax 613-998-8889.

Martin Felsky is Director of integer.aktif, Canada's leading legal technology consulting firm, and publisher of Not in Print, the Weekly Web Guide for Lawyers. He is also a member of the Canadian Citation Committee.

¹ The author thanks Ruth Rintoul of Quicklaw for providing these statistics.

TECHNOLOGY INITIATIVES IN P.E.I. COURTS

John McQuaid, Justice
The Supreme Court of Prince
Edward Island, Appeal Division

In 1994 the Supreme Court of P.E.I. realized it was necessary to automate some or all of its functions. In the same year, the Department of Provincial Affairs and Attorney General, which is responsible for the administration of the courts, undertook the installation of wiring to accommodate a local area network (LAN) and the acquisition of computers for judges. The department also undertook a complete review of its IT requirements. As the department's responsibilities go well beyond the administration of the courts, the court sought permission to participate directly in this process with other officials of the department.

A working group was constituted that included a justice of the court and the registrar. After lengthy consultations, the group prepared a report identifying the IT priorities for the department. The courts were placed at the top. The primary reason for this placement was because the Supreme Court had no IT functionality and the Provincial Court was using a Mapper System operated on a mainframe that the government wished to stop using as it was not Y2K compliant. Consequently, the go forward to automate court functions was given by the Minister on the condition a solution be found that would meet the case management and administrative needs of both courts.

After consulting with officials of the department, personnel in the computer services division of the provincial government, and personnel in provincial court, the next step was to

undertake a review of what would be necessary to accomplish the task of introducing technology into the Supreme Court and finding an application to replace Mapper in the Provincial Court. A visit was made to the National Center for State Courts in Williamsburg Virginia, the result of which was to gain an appreciation for the technology available and how to best approach the acquisition of a suitable application. It became clear to us that we required a very comprehensive case management and court administration system that would not only serve our needs at present but would also serve as a foundation for future requirements and innovations.

We also came to the conclusion, on the basis of the advice provided to us, that prior to selecting a product or developing one of our own, we should undertake a comprehensive business process re-engineering of both courts. Proposals were sought from various management consulting firms with expertise in this area and a suitable firm was chosen. Over the course of approximately six months this firm conducted a thorough review of the administrative operations of the Supreme Court and the Provincial Court. Every individual in the court, including each individual judge, was consulted privately and in groups. Consultations were also held with individuals and organizations who dealt directly with the courts, namely, police, lawyers, probation officers, corrections, victim services and others.

A detailed report was prepared and it made recommendations with respect to the administrative functions of both courts.

Most significantly, it recommended the courts acquire comprehensive case management and administration software capable of interfacing with related agencies such as corrections, police, the Crown, motor vehicle and victim services. The report also recommended the implementation of an electronic system for registering personal property, a function which was administered by the registrar's office of the Supreme Court. Finally, the report recommended that the written decisions of the Supreme Court, which were being distributed to members of the bar and the media in paper format (necessitating many photocopies and much staff time), be distributed electronically via the Internet. In relation to the case management and administration system, it was recommended that we acquire a product "off the shelf" rather than write or develop our own application.

We set about to act on these recommendations. The installation of the personal property registration system in electronic form was completed within one year. The primary effect of this initiative is that the work related to the functions associated with personal property registration, which were previously performed by court staff, are now removed from the court registrar's office thus freeing up staff and storage space for other functions. In co-operation with the provincial government and their personnel responsible for the province's Web site, the decisions of the Supreme Court, from January 1, 1997, to the present, are now published on the Internet thereby eliminating the time-consuming task of photocopying and distributing the reasons.

The development and the implementation of the court case management and administration system have not proceeded quite so smoothly. Acting on the recommendation of the business process re-engineering report, the department responsible for acquisitions prepared a Request for Proposal which was circulated to various vendors. A number of proposals were received and short-listed to three. All three were requested to make a three-day presentation to staff, judges and representatives of agencies dealing directly with the courts. Every participant was provided with an evaluation form and the final selection was made almost exclusively on the basis of these evaluations. Implementation began in April 1997.

Having purchased a product off the shelf which, in the opinion of those who had evaluated it, was capable of doing what our functionality dictated, everyone thought it would be a relatively short period of time before we would be in a "go live" mode. This was April 1997 and we did not go live in Provincial Court until May 2000 and the Supreme Court will not be using the system until September 2000. It would be misleading to say the project unfolded as we expected. There are many reasons for this and it would be impossible for me to do them justice in the space available here. However, although we were buying a product off the shelf, and despite the business process re-engineering study, everyone (including the vendor) underestimated the extent of the functions we required the application to perform and the ability of the application to perform those functions without extensive modifications to the "shelf" product. My recommendation for others considering the purchase of similar software is to be completely aware of its functionality in the context of your own court or else be totally committed to altering some of your business processes to meet the functionality of the software.

When we are operational, we are confident we will have an excellent application capable of not only managing the records of both courts but also serving as an excellent foundation on which to build related applications. In Provincial Court the system is performing quite well since its introduction in May.

Our application will register and monitor everything involved with a case, including complete financial administration, tracking, docketing, scheduling of resources and recording disposition. With one entry, information relating to everything from a provincial summary offence ticket to a complex civil case will be stored electronically and made available to the court and those agencies with the appropriate interface. Furthermore, it will provide public access to some information such

as the registration of judgments affecting land pursuant to the provisions of the *Judgment and Execution Act*.

This move toward a comprehensive technology solution in court administration has served as springboard to further innovation. With the completion of our renovated courthouse in April 1999, we acquired a digital recording system for the Supreme Court that will provide high quality audio recording of evidence retrievable with a few key strokes. The software associated with the system provides judges with the capability to make notes as the evidence is recorded. These notes, which are secure to the judge, are easily retrievable, as is the audio, from the judge's desktop. This product was selected in the same fashion as the court case management system. There was extensive consultation with, and evaluation by, the staff and the judges. The judge's bench in each courtroom has been provided with a computer or computers with high resolution flat monitors, thereby facilitating the use of the digital recording system and the software we are acquiring to assist us in moving toward the complete electronic factum in the court of appeal. The department is also seriously exploring the introduction of electronic filing and is about to undertake consultations with vendors and court users as to the feasibility of this technology. Finally, the Internet exists as our best window to the public and we hope to continually update our site so that some of the court information stored electronically may be conveniently and economically accessed by the public.

All judges and staff in both courts are enthusiastically embracing these initiatives which have been generously supported by two governments over the past six years. It has been exciting to be a part of the process and we are all optimistic that the IT requirements of both the Provincial Court and Supreme Court in Prince Edward Island will be adequately addressed both for the present and the future. I would be pleased to discuss the further details of these initiatives at any time.

Notice anything different from the previous issue of this newsletter? The publisher has changed its name from Judges Computer Advisory Committee to Judges Technology Advisory Committee, with a mandate to "promote the effective use of technology by the Courts to enhance access to justice." The change was made to better reflect the work of the Committee, which extends beyond mere computer usage to areas such as standards and technology. If you have suggestions for topics you wish the Committee to consider, please contact any of the members listed at the end of this issue.

ELECTRONIC FILING IN BRITISH COLUMBIA

Jennifer Jordan, Registrar
British Columbia Court of Appeal

■ BACKGROUND

Since 1997, Court Services personnel and judicial staff have been working on the concept of electronic filing of civil documents in the Supreme Court and Court of Appeal of British Columbia. Initially, work was done to determine the costs and benefits of such a system and later, a market research firm studied the demand for such services, the willingness of users to pay for these services, and the features that would interest potential clients.

From the study, it became clear that the potential users of the proposed system were interested in more than access to electronically filed documents. To meet their requirements, the electronic filing system would need to relate to case tracking, management and scheduling systems.

In order to fully realize the benefits of an e-filing system, an upgraded and integrated set of court-related applications was required. This larger initiative has been named the Electronic Justice Services Project (EJSP).

■ CURRENT PROBLEMS

The civil court process relies on information extracted from filed documents to initiate cases, to schedule court hearings, and to provide information to the judiciary in court. Paper is the only current source for these activities and information.

The use of paper documents requires attendance at the appropriate registry to file documents or to access information in a file, as well as to pay fees for filing or information. This may take place in any of more than 40 Supreme Court registries in the province. The delays inherent in such a system are evident, and computer technology provides an opportunity for the justice system to improve the efficiency of its business processes and the level of service offered to the public.

■ PLANNING AND FUNDING

Since May 2000, the Court Services Branch has begun the process of presenting a submission to Treasury Board for approval in principle of the draft EJSP business case and of seeking approval to engage in a tendering process for bids on the design and development of EJSP systems.

It is anticipated that a pilot project could commence as early as April 2002, with the Vancouver implementation of e-filing starting in October 2002 and the commencement of a provincial rollout plan in early 2003.

■ COURT SERVICES ON-LINE

The electronic filing portion of the EJSP project has been named Court Services On-line. This project would encompass both intranet and extranet sites for the purpose of managing access to Court Services On-line. External registered users would access the system through a ministry extranet, while judges and internal registry staff would access the system through an intranet.

While funding for detailed design and development has not yet been approved, staff members have been defining requirements for an electronic filing system. The guiding principle of this system is the judicial requirement that there be no increase in the cost of doing business and that there be no change to the right of the public to access information currently provided free of charge.

Aside from the regular court fees that would be collected electronically, it is envisioned that individual transaction fees would be charged and general service fees collected, depending on the type of services required. Such fees would replace the fees currently charged by agencies for filing court documents and the statutory fees collected for searching files and copying file documents.

Court Services On-line would provide a variety of electronic services to the user. Aside from the ability to electronically file documents in any of the Supreme Court or Court of Appeal registries, the system would allow a user to access the court file electronically (subject to current restrictions on access to files), to receive electronic notification of events and to interface with a financial system that would either debit an account or accept payment of fees through MasterCard or Visa.

■ ELECTRONIC FILING

Electronic filing involves the creation of legal documents through a computerized template. The template would be completed in the law office and sent electronically to the courthouse. The courthouse computer would perform edit checks and send an acknowledgment of filing. The filing would either be accepted and forwarded to the

next process, or rejected and returned to the sender. A rejection would be accompanied by a notice explaining the reasons for the rejection — essentially, a checklist of missing items.

Once a document was accepted, the system would date, time and registry stamp it. If the document filed was an initiating document, the system would assign the next case number to the file. The document would then be stored and indexed, and could be routed to another area for manual processing. The stamped document would be returned to the submitting office electronically. Further activity might occur, including:

- A document might be printed out and served manually, if necessary.
- Information from the document could be sent to the court’s tracking or scheduling system to update the court file.
- The system would administer the collection of filing fees as well as transaction fees.
- The final document would be stored and made available to view or print in its final format.

Where required, documents would be signed with digital signatures. The system would also allow a document to be created with multiple signatures.

A decision was made to exclude affidavits from the current project scope. The difficulty in having a non-registered user sign a document presents technical complexities beyond the scope of the project. One solution would be to adopt the Ontario model of filing a certificate confirming that an affidavit had been sworn.

■ CASE FILE ACCESS AND SEARCH SERVICE

In addition to electronic filing, an important feature of the system, which is not present in the manual system, would be to provide province-wide access to case information, both to documents filed electronically and to selected case information. Accessible data would be subject to judicial policy, which is currently being defined in an Access Policy.

An authorized user would have access to an index of court-record information. The index would contain a summary of the case file information, including a list of all documents filed on the case (manually or electronically).

Such a user would be able to view, print or download copies of electronically filed documents. It is not in the scope of the project to provide electronic access to documents that are filed manually. The index, however, would record the fact that a document had been filed manually.

Once the case tracking and scheduling systems were implemented, the authorized user would also be able to access detailed case file index information provincially.

■ ELECTRONIC NOTIFICATION

Registered users of the system would be able to sign up for an electronic notification service. The service would electronically notify users of defined events that might occur on a file in which they were interested.

■ SECURITY

The integrity of any system is governed by the security measures adopted to prevent unauthorized access to information. Case law, judicial court rules and directives govern the general access requirements and restrictions, this may be augmented by orders on individual files. As well, the security must prevent access to other applications, specifically judicial administrative systems.

The recognized security framework would include digital signatures, public and private key encryption, audit log controls and restricted control through user-account administration.

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