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Many courts across the country are using their court Web sites to independently publish their reasons for judgment on the Internet. The Canadian Legal Information Institute has initiated a project on behalf of the Federation of Law Societies of Canada to consolidate all the decisions of the various courts across the country on one Web site — [www.canlii.org](http://www.canlii.org).

This site, which is now operational, contains the Federal Statutes and Regulations as well as written decisions from the following courts and tribunals:

- The British Columbia Court of Appeal
- The Supreme Court of British Columbia
- The Alberta Court of Appeal

- The Provincial Court of Alberta
- The Saskatchewan Court of Appeal
- The Saskatchewan Court of Queens Bench
- The Saskatchewan Provincial Court
- The Ontario Court of Appeal
- The Provincial Court of Quebec
- Human Rights Tribunal (Quebec)
- Tribunal des professions (Quebec)
- Supreme Court of P.E.I. Appeal Division
- Supreme Court of P.E.I. Trial Division
- Yukon Court of Appeal
- Nunavut Court of Justice

Plans are underway for the remainder of the courts in Canada, as well as additional tribunals, to post their decisions. CanLII's promoters are also pursuing a much more complete coverage of Canadian legislative material. When completed, this site will serve as an invaluable research tool not only for lawyers but judges as well.

The site also offers an electronic bulletin to which users may subscribe. Take a look, it is great!

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# COMPUTER-BASED EDUCATION AT THE NATIONAL JUDICIAL INSTITUTE

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*George Thomson*  
*Executive Director*  
*National Judicial Institute*

The National Judicial Institute (NJI) has a number of projects underway that involve the use of the computers and other technologies to deliver education to Canada's judiciary.

The NJI is undertaking these initiatives in addition to, not in place of, existing seminar programming in order to reach more judges and provide greater flexibility in the available methods of learning. The NJI has decided to proceed carefully and in a number of different formats in order to discover which approaches work best with this unique audience. These are early days in the delivery of computer-based education and experiments in the United States and elsewhere have not all been successful.

Over the next year, the following initiatives are being considered and a number of these should be in place by the end of 2001:

## ■ REFERENCE TOOLS

- The indexed, on-line library of NJI papers will be expanded and made more accessible
- A prototype will be developed in the family law area for an electronic bench book (in conjunction with the Courts in Ontario, Manitoba and British Columbia)

## ■ QUICK LEARNING TOOLS

- A bi-weekly family law e-broadcast that provides readers with information on recent developments, is now in place
- A similar e-broadcast in criminal law that identifies major developments and provides a portal into other, existing summaries of recent developments, is now being put together
- A training module in sentencing will be developed. It will consist of an interactive Web-based, mini-course on sentencing issues and calculations and be available through the NJI Web site.
- A training module in child support is being explored; it would be an interactive, Web-based mini-course that builds on the electronic bench book

## ■ INSTRUCTOR-LED COURSES

- In conjunction with the Canadian Association of Provincial Court Judges, the NJI will offer judges the opportunity to analyze problems in areas of the law, with the discussions moderated by experts in the field. In 2001, the courses will cover the following:
  - current issues in sentencing
  - current issues in sexual assault trials
  - fact finding
  - criminal law evidence

## ■ COMBINATION TECHNOLOGIES

- A combination Web-based course and face-to-face seminar in the area of genetics and the law is under development
- A video-conference mini-course in family law will be offered on a topic to be covered at the 2001 National Family Law Seminar

## ■ OTHER INITIATIVES

- Technology and the Judiciary, a three-day conference in February 2001 to explore how best to use technology to bring education to the judiciary
- A fully functioning Web site that will not only provide information about NJI initiatives, but will also permit on-line registration for NJI courses.

Overall, this represents an attempt to engage the technology in its broadest possible sense and, in so doing, to better understand the needs and predisposition of the judiciary. As these experimental programs are implemented, the NJI encourages all who "attend" to provide feedback. They are also requested to offer suggestions on how to make the programs better, along with proposals for future computer-based educational projects.

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# THE STATUS OF ELECTRONIC FILING IN ONTARIO

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Fran Kiteley, Justice  
Superior Court of Justice (Ontario)

## ■ CIVIL JUSTICE REVIEW

The Civil Justice Review was co-chaired by Justice Robert A. Blair (now Regional Senior Justice for Toronto Region) and Assistant Deputy Attorney General Sandy Lang. It released two reports. One of them made recommendations for changes to streamline the process and increase the efficiency of the system for all participants, including the Bench, the Bar, courts administration and the public throughout Ontario. One of the recommendations was for changes to the technological infrastructure in the courts that would, among many other things, allow for the electronic filing of court documents.

## ■ TORONTO ELECTRONIC FILING PILOT PROJECT

In 1996, Justice Susan Lang, then Regional Senior Justice for Toronto, and representatives of the Ministry of the Attorney General, struck a committee with representatives of the Bar to create a Toronto pilot project. The Committee would implement some of those recommendations and would itself make recommendations regarding permanent changes to the technological infrastructure of the now Superior Court of Justice.

Regional Senior Justice Lang chaired the Steering Committee which included representatives from the judiciary, the Bar and the Attorney General. As a result of the close co-operation and commitment of all participants, the first electronic filings were made in August 1997, which was approximately 16 months after the first meeting of the Steering Committee had been held.

Initially about 100 law firms volunteered. During the period between August 1997 and the spring of 1999, 84 firms were active participants representing approximately 1,300 litigation lawyers. Acceptance grew over the life of the project. Within a year from start-up, participating firms filed twice as many eligible documents electronically as they did on paper.

The system was capable of generating 142 documents based on eight templates using readily understood drop-down menus that were integrated into the law firms' technological environment. Training was provided to the law firms and complemented by an ongoing help-line with

three seamless levels of intervention. Modest amendments to the Rules of Civil Procedure were required to enable the pilot project.

At the time of development in 1996 and 1997 and out of concerns at that time about security, the Steering Committee was not prepared to use the Internet. Initially the MS-Exchange client and the dial-up communication software used to communicate with the court had problems. Enhancements were integrated into that software to make it more functional and user friendly.

The Superior Court in Toronto has used Sustain software since about 1990, originally in DOS and, during the development of this project, in Windows. Law firms were required to purchase what became known as the Sustain "elf-key" at a cost of approximately \$250.00 US. As a result of direct access into Sustain, the data in the template automatically populated the Sustain data base for the case and eliminated most manual intervention. The availability of the data means that a detailed case history of the action was readily available.

Documents may be filed seven days a week, 22 hours a day. If transmitted after business hours, a document is not "filed" until business hours commence the next day. A receipt is generated about 40 minutes after filing. Filing fees are taken from the firms' bank accounts by a pre-authorized debit system (PAD) that reports client file numbers to the firms along with the amount.

In 1997, a methodology for e-signature was not accessible. For those documents on which signatures had historically been required, an alternative solution was found. In those cases, the template required the inclusion of certification such as:

I certify that I have in my possession an affidavit of service by X which deposes to service of A on B date.

I certify that I have in my possession a petition for divorce (or sworn financial statement) signed by the petitioner.

I certify that I have complied with the requirements of the *Divorce Act* (to discuss mediation etc.)

Only lawyers were allowed to participate. Therefore, the certification process could have professional consequences if it was found not to be accurate. In each case where certification was

used, the lawyer could be required to produce the document on demand (e.g., affidavit of service) or in any event it had to be served in paper form (petition and financial statement).

While only lawyers participated, there was a commitment by the Steering Committee to enable members of the public to participate at the earliest opportunity.

The Steering Committee released a favourable evaluation report in the spring of 1999.

The role of the Steering Committee ended on June 30, 1999, when the Ministry of the Attorney General assumed full responsibility for e-filing in light of its move toward Integrated Justice. Contemporaneously with that occurring, the Civil Rules Committee made amendments to alter the status of the rules from pilot project to permanent status. Currently any lawyer in Ontario with access to the court's software can participate.

While the Steering Committee is no longer overseeing the project, statistics remain available which indicate the following as of October 31, 2000:

|   |        |       |
|---|--------|-------|
| Number of firms in the project:         | 93     |       |
| Number of active firms:                 | 36     | (39%) |
| Number of inactive firms:               | 57     | (61%) |
| Total number of successful e-filings:   | 12,433 |       |
| Total number of unsuccessful e-filings: | 4,867  |       |

While the unsuccessful e-filings appear high, they are related to minor issues, usually involving errors in completing the templates such as: lawyer's Law Society identification number, name of filing party and case number. Those errors which relate to the functionality of the templates remain modest in comparison to all of the other errors. The error is discovered primarily as a result of the edit checks imbedded in the template and an error message is returned to the filer. Once the error is corrected, it becomes a successful e-filing.

There are a number of reasons for the reduction in number of active firms: law firm enhanced software incompatible with the e-filing system; the e-filing system not keeping pace with client software changes; and some support and communication issues that will be referred to below.

Commencing in January 1999, five volunteer law firms participated in an Internet pilot project by which filings were routed through the Internet rather than through a wide area network. The firms involved in the Internet pilot have reported positively on the experience.

## ■ INTEGRATED JUSTICE PROJECT

In 1997, the Ministry of the Attorney General and the Ministry of the Solicitor General and Correctional Services, in keeping with the Ontario government's intention to reduce costs through partnering with corporations in the private sector, entered into a partnership with a private consortium. The Consortium, consisting of four Canadian technology companies, was to develop a coherent technological infrastructure for participants in the Ontario justice system. The partnership was named the Integrated Justice Project (IJP). The basic purpose of IJP is to provide an electronic data base that is integrated throughout courts, police and corrections. An important vehicle for achieving that basic purpose is the electronic filing process for court documents throughout Ontario.

Shortly after creation of the IJP, Chief Justice LeSage (Superior Court of Justice) and then Chief Justice Linden (Ontario Court of Justice) created the Judicial Advisory Committee. The mandate of the advisory committee has been to ensure that when changes are introduced, they produce an effect that is "as good as, if not better than" the existing systems. This has signaled a message that regression will not be tolerated. The Judicial Advisory Committee members have included Associate Chief Justice Heather Smith, Associate Chief Justice Marietta Roberts, Justice Mary Lou Benotto, Justice Douglas Coe, Justice George Czutrin, Justice Tom Granger, and Justice Janet Simmons.

As a result of the creation of IJP, when the Toronto Electronic Filing Pilot Project Steering Committee (chaired by Regional Senior Justice Lang) ended its oversight role on June 30, 1999, IJP took over that function.

Since July 1999, and particularly in the winter and spring of 2000, there have been some challenges in the operation of the Toronto e-filing project (perhaps reflected in the reduction in number of law firms) that seem to have been related to communications and support issues. Regional Senior Justice Blair convened a meeting in June 2000 to identify and address those issues. As a result, a small group representing Bench, Bar and IJP is in the process of reviewing the operation of the Toronto project to ensure that it thrives. All concerned share the view that continued success of the Toronto project is important to future acceptance of electronic filing.

As indicated above, one of the main elements in the IJP strategy is electronic filing. There have been some challenges in moving forward. To meet those challenges, the Ontario Electronic Filing

Steering Committee has recently been created and is chaired by Justice Douglas Coe. This committee again includes members of the Bench, Bar, courts administration and IJP. It's recent creation augers well for early progress in electronic filing.

IJP is hoping to initiate electronic filing early in 2001. The architecture it proposes will differ from the Toronto project. Templates with drop down menus will be replaced with forms with check boxes. The initial payment mechanism will be only credit card debits but IJP is committed to making PAD available. The Internet will be the communications vehicle and initially, the transmission of the information will not automatically populate the data base and human intervention at the court side will be required until the new Internet-based file management version of Sustain is introduced. Eventually, it will be an end-to-end system. While the current proposal is not perfect, it is considered by most of those involved as a sign of progress.

In the spring of 2000, the Civil Rules Committee created a sub-committee to address the technological impact of IJP on the Rules of Civil Procedure. That sub-committee is chaired by Justice John Morden. Its work includes developing definitions that respond to the technological infrastructure for

basic concepts such as "electronic" information and "signature" and establishing information technology standards. Those decisions are fundamental to ensuring that court rules are functional in the technological environment.

In the immediate future, issues related to signatures on documents have to be addressed. Where possible, the need for signatures may be eliminated. Where signatures will always be required (such as in affidavits), digital signatures and encryption are being considered with the consequential issues such as who is the Certifying Authority for judges and masters and how will members of the public access the system. That work is ongoing.

■ THE COURT OF APPEAL OF ONTARIO

Effective January 4, 1999, parties are required to file an electronic version of the factum and the transcript in civil appeals. That procedure is encouraged in criminal appeals. Counsel are encouraged to include an e-mail address on all documents filed with the court. Further details are available in the notice to the profession which is found at [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca).

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## E-FILING AT THE SUPREME COURT OF CANADA

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*Danielle Beaulieu  
Director, Registry Automation Projects  
Supreme Court of Canada*

The Supreme Court of Canada (SCC) is in the first stages of its e-filing project. The Court wishes to provide a secure means, on the Internet, for users to file documents electronically within the next few years. The main users of the e-filing system will be counsel and some unrepresented litigants. The documents filed electronically in both civil and criminal cases will thereby provide the information base that the Court needs to render its decisions. Counsel and litigants who file electronically will reduce some of their printing, travel and courier costs. This system should be secure, bilingual and cost effective to participants in the justice system.

Making electronic documents available on-line to parties, lawyers, the media and the public should greatly enhance accessibility to the Court. Internet access to the Court's electronic records can save time, money, and effort. Improved access to Court records may also foster a more comprehensive

understanding of the court system and of the issues of fundamental importance raised in SCC cases. Public access to filed documents must not harm legitimate privacy interests or compromise protections established by law or court order.

The project so far has been focussed on researching e-filing initiatives in other jurisdictions such as New Mexico, Ontario and British Columbia. Of particular interest is a document produced by the National Center for State Courts and West Law, entitled *Guidebook for Electronic Court Filing*. This document is available on the National Centre for State Courts' Web site (<http://www.ncsc.dni.us/NCSC/TIS/TIS99/ELECTR99/EfileWest.htm>).

It is important to note that the Court has not yet selected a format for documents filed electronically. In order to address format issues and standards, the Court is following the discussions of the XForms group of the World Wide Web Consortium (W3C) and the XML Law group. The Court will also discuss this issue among others with its main user groups.

■ PROTOTYPE

The Court is adopting a prototype approach to develop its e-filing system. It is expected that there will be three to four prototypes. Each succeeding prototype will contain more elements and have more depth than the previous prototype. Each prototype will assist the Court in clarifying the specifications for the complete system.

The first prototype should be operational by the spring of 2001. It will focus on automating the front-end of the system without automating the back-end. A Web page available from the Court’s Web site will be designed and developed to permit e-filing.

Links between the e-filing system and the case management system will be developed. This will reduce the amount of entry required by Court staff. Counsel will use Web-based forms to enter information about the documents they are filing. This information will be transferred to the Court’s case management system after Registry staff has approved a document for filing. Templates will be created for most documents and they will be available for downloading from the Internet.

The Court expects that the first prototypes will be tested in a pilot project involving only one regular user who will file all documents electronically. Given that the first prototype will not include links to a document management system, the electronic documents will be printed out by Court staff.

The next prototypes will include other features such as links to a document management system, links to fees/finance system and public access to view filed documents.

■ KEY CONSIDERATIONS

As with all other e-filing projects, there are many major issues to be examined. These will be discussed with the various user groups who will be consulted throughout the development process. The issues include the difficult question on the format of a document to be used, the question of user fees and the question of users with no technological access. Court Rules will need to be modified to reflect the new processes.

Some issues relate to more functional problems such as how to deal with documents requiring a signature from someone other than the person filing the document. The most controversial issue may very well be whether electronic filing should be mandatory.

The prototype approach will allow the Court to try to resolve some of these issues in a real setting. The analysis of a prototype will contribute greatly to the enhancements of the next prototype. The pilot approach will allow the Court to obtain feedback from a client prior to opening up the system to a large audience.

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