



PRACTICE DIRECTION REGARDING THE ELECTRONIC CONDUCT OF MATTERS DURING THE COVID-19 PANDEMIC

(“Practice Direction – Electronic Conduct of Matters – COVID-19”)

October 26, 2020¹

Given the exceptional and evolving circumstances concerning COVID-19, and subject to any further Practice Direction that may issue, this Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Pandemic applies until further notice:

I. APPLICATION

1. This Practice Direction Regarding the Electronic Conduct of Matters at the Court of Appeal for Ontario applies to all matters, including both appeals and motions.
2. Subject to any order of the court, all matters to be heard on or after October 26, 2020 will be conducted pursuant to this Practice Direction. All materials filed on or after November 9, 2020 must be filed in accordance with this Practice Direction. Materials filed between October 26, 2020 and November 6, 2020 must be filed in accordance with the [Amended Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Emergency](#). Materials filed before November 9, 2020 for pending matters do not have to be refiled.

II. HEARINGS

3. During the COVID-19 pandemic, hearings may occur: (i) in-person; (ii) remotely by video and/or audio conference; or (iii) in-writing.

¹ Paragraphs 20 and 23 of this Practice Direction were revised on November 5, 2020. The title of this Practice Direction and paragraphs 1, 30 and 32 were revised on December 16, 2020.

4. Counsel are not required to gown for appearances at this time. Instructions regarding remote and in-person appearances are linked on the court's website under the banner "Practice Directions and Notices regarding COVID-19" at <https://www.ontariocourts.ca/coa/en/notices/covid-19/>.

III. ELECTRONIC FILINGS

A. *Electronic Filing Requirement*

5. The requirements of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the *Criminal Appeal Rules*, S.I./93-169, the *Family Law Rules*, O. Reg. 114/99, and all existing Practice Directions and Guidelines requiring the filing of hardcopy documents in the Court of Appeal for Ontario are dispensed with for the period of time during which this Practice Direction is in effect, unless otherwise stated herein or ordered by the court.
6. All documents that are required for the hearing of any matter are only required to be filed in electronic format. If hardcopy materials have already been filed, parties must file electronic copies of all materials necessary for the hearing of any matter, as set out below, and in accordance with the times set out in the [Practice Direction Concerning the Reinstatement of Times Prescribed in Civil Proceedings in the Court of Appeal for Ontario](#), the [Practice Direction Concerning the Reinstatement of Times Prescribed in Criminal Proceedings in the Court of Appeal for Ontario](#) and the [Practice Direction Concerning the Reinstatement of Times Prescribed in Proceedings Arising Under the *Provincial Offences Act* in the Court of Appeal for Ontario](#). As set out in those practice directions, unless otherwise directed by the court:
 - a. If hardcopy materials have already been filed in any open civil matter, the parties must file electronic copies of all materials necessary for the hearing of the matter as soon as reasonably possible and at least 45 days before any scheduled hearing; and
 - b. If hardcopy materials have already been filed in any open criminal matter or matter arising under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, the parties must file electronic copies of all materials necessary for the hearing of the matter as soon as reasonably possible and in accordance with the following:
 - i. electronic copies of the appeal book, transcripts, appellant's factum, and any other materials necessary for the hearing of the appeal (e.g. an application to admit fresh evidence) must be filed at least 45 days before any scheduled hearing;² and
 - ii. electronic copies of the respondent's materials must be filed in accordance with the applicable prescribed times.

² Paragraph 6(b)(i) does not apply to inmate appeals.

B. Service and Filing of Electronic Materials

7. In the event that an affidavit of service cannot be commissioned due to COVID-19, the affidavit must still be completed, signed and e-filed, accompanied by either an acknowledgment from the document(s) recipient or an explanation as to why the acknowledgment could not be obtained.
8. Subject to an order dispensing with this requirement and except as otherwise set out in this Practice Direction, documents filed electronically are to be filed in accordance with the [Guidelines for Filing Electronic Documents at the Court of Appeal of Ontario](#).
9. All documents must be filed either by email (with attached documents or a link to a file sharing service) or through delivery of a USB key by mail or courier. The email or USB key must be labelled with the court file number. The court will automatically acknowledge receipt of email filings. If there are problems with any electronic filing, the court will contact the affected party.
10. Unless otherwise advised by the court, parties may serve and file documents by email, either by attaching the documents to an email or by using any file sharing service that provides shared links to online or cloud drives. Parties bear responsibility for ensuring that any such file sharing services employ necessary safety, security and confidentiality protocols. The Court of Appeal cannot access cloud-based, file sharing services that involve two-stage verification, require online registration, or are blocked by the court's network due to firewall restrictions. This includes WeTransfer. The court can access OneDrive, provided the documents are shared with a direct link. Parties must be prepared to resubmit their documents should the court advise that an alternative mode of transmission is necessary.
11. Electronic service under this Practice Direction constitutes proper service unless the intended recipient shows otherwise.
12. All documents that are served and filed electronically must be labelled with the court file number using the appropriate naming convention as set out in the [Guidelines for Filing Electronic Documents at the Court of Appeal of Ontario](#). Documents that are not covered by the naming conventions in the existing Guidelines must be given a naming convention that will identify their contents with sufficient clarity.
13. The size of filing by email is limited to 35MB. Documents that are larger than 35MB must be divided into smaller parts and labelled accordingly, e.g. Appeal Book Part I, Appeal Book Part II, etc. Parties should be aware that their internet service/email provider may have stricter limitations on the permitted size of attachments.

C. Publication Bans and Sealing Orders

14. Documents which, if filed in hardcopy, would be required to be filed under seal must be designated as under seal and password-protected when filed electronically. The party filing the sealed documents must communicate the password by telephone to

the Deputy Registrar and Manager of Court Administration at 416-327-6017. This is a confidential phone line.

15. If there are any particular concerns regarding sealed documents, parties should seek direction from the court.

D. Electronic Materials

General Rules Applicable to All Electronic Materials

16. Electronic materials containing text must be filed in text-searchable format (e.g., using an Optical Character Recognition format for scanned PDF documents) only.
17. Electronic materials containing page number references to a PDF document must use the PDF page numbers. For greater clarity, the PDF numbering system governs.
18. Electronic materials with bookmarks must use bookmarks with descriptive names. Materials with bookmarks with generic names such as “Tab A” will not be accepted.
19. Electronic signatures are acceptable on documents requiring signature and are deemed to have the same effect as a physical signature. Acceptable forms of electronic signatures include: (i) a scanned copy of a physically-signed document; (ii) a scanned signature pasted in the signature block of an electronic document; or (iii) a signature created using a touchscreen and pasted in the signature block of an electronic document.

Factums

20. Factums must contain hyperlinks to the authorities cited. The hyperlinks must link to either: (i) the party’s book of authorities; or (ii) the judgment databases found on the websites of Canadian courts or www.canlii.org/en/index.html, and where not available on these, to LexisNexis Quicklaw or WestlawNext Canada. Where possible, factums should also contain hyperlinks to the documents cited.
21. Factums must be signed. Electronic signatures are acceptable and are deemed to have the same effect as a physical signature.

Books of Authorities

22. Electronic books of authorities are required containing copies of the cases and relevant extracts from secondary sources referred to in the factums.
23. The cases cited in a party’s factum must be hyperlinked to the party’s own book of authorities or to judgment databases. A party may include copies of authorities in another party’s book of authorities to allow for hyperlinking in their factum. If a party hyperlinks to their own book of authorities, the factum and book of authorities must be filed together when the factum is due.

24. Each authority in a book of authorities must be bookmarked with the name of the case. Hyperlinking the authorities to the book of authorities' index is encouraged, but not required.

25. Relevant passages in books of authorities must be highlighted or side-barred.

Appeal Books

26. Appeal books must be bookmarked. Hyperlinking the documents in the appeal book to the appeal book's index is encouraged, but not required.

Exhibit Books

27. Exhibit books must be bookmarked. Hyperlinking the documents in the exhibit book to the exhibit book's index is encouraged, but not required.

Motion Records

28. All panel motion records must be bookmarked. Hyperlinking the documents in the motion record to the motion record's index is encouraged, but not required.

29. Single-judge motion records that are 100 pages or more must be bookmarked and hyperlinking the documents to the motion record's index is encouraged, but not required. It is not necessary to bookmark or hyperlink single-judge motion records that are less than 100 pages.

Compendiums of Argument

30. Before an oral hearing, parties are encouraged to file an electronic "Compendium for Argument" comprised of: (i) extracts of those documents or cases essential to the hearing of the matter which counsel intend to refer to during argument; and/or (ii) any slide presentation which counsel intend to refer to during argument. The Compendium for Argument must be filed at least two business days before the scheduled hearing by email to COA.E-file@ontario.ca. If a party does not file a Compendium of Argument at least two business days before the scheduled hearing, the party may seek leave at the hearing to file one. If leave is granted, the party may file the Compendium of Argument by email to the address provided by the courtroom registrar.

31. Counsel who file a Compendium for Argument may include a two-page outline of their anticipated oral argument.

IV. REVOCATION OF PRIOR PRACTICE DIRECTION

32. The Amended Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Emergency is revoked and replaced effective October 26, 2020 by this Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Pandemic.



Chief Justice George R. Strathy

October 26, 2020

Date

Effective: October 26, 2020

Revisions: November 5, 2020; December 16, 2020

APPENDIX OF RESOURCES

The following third-party resources may provide assistance in preparing electronic materials. The list is provided for informational purposes and this Practice Direction governs to the extent of any inconsistency. The resources include:

- The Court of Appeal for British Columbia’s “PDF Instructions for E-filing” available at https://www.bccourts.ca/Court_of_Appeal/practice_and_procedure/pdf_instructions.aspx. The PDF Instructions for E-filing include instructions on matters such as how to add a bookmark to a PDF document or a hyperlink to a Word document and how to run the text recognition (“OCR”) function in Adobe Acrobat DC;
- The Ontario Bar Association’s “Preparing Your Electronic Filings and Hearings” available at https://www.oba.org/2020_COVID_19/OBA-Member-Services/Electronic-Filings-and-Hearings-Checklist. The checklist includes links to a variety of videos on preparing electronic documents; and
- The Adobe Acrobat’s “User Guide” available at <https://helpx.adobe.com/ca/acrobat/user-guide.html>. The user guide includes a search function which can be used to locate articles on matters such as creating bookmarks (<https://helpx.adobe.com/ca/acrobat/using/page-thumbnails-bookmarks-pdfs.html>) and hyperlinks (<https://helpx.adobe.com/ca/acrobat/using/links-attachments-pdfs.html>).