



**SUBMISSIONS OF THE CANADIAN BAR ASSOCIATION
(BRITISH COLUMBIA BRANCH)**

TO THE

BRITISH COLUMBIA COURT OF APPEAL

ON THE

**CONSULTATION PAPER
E-FILING FACTUMS AND STATEMENTS**

Issued By:

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British Columbia Branch
Legal Research Section
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PREFACE

Formed in 1896, the purpose of the Canadian Bar Association (British Columbia Branch) (the “CBABC”) is to:

- enhance the professional and commercial interests of our members;
- provide personal and professional development and support for our members;
- protect the independence of the judiciary and the Bar;
- promote access to justice;
- promote fair justice systems and practical and effective law reform; and
- promote equality in the legal profession and eliminate discrimination.

The CBA nationally represents approximately 38,000 members and the British Columbia Branch itself has over 6,900 members. Our members practice law in many different areas. The CBABC has established 77 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBABC has also established standing committees and special committees from time to time.

This submission was prepared by a special committee of members of the CBABC Legal Research Section (the “Special Committee”). The comments expressed in this submission reflect the views of the Special Committee only and are not necessarily the views of the CBABC as a whole.

The members of the Special Committee are:

- Laurel M. Courtenay, Chair of the CBABC Legal Research Section (WorkSafeBC Legal Services Department);
- Johanne Alison C. Blenkin, Legislative Liaison of the CBABC Legal Research Section (Courthouse Libraries BC);
- Carol Leigh Whittome, Secretary of the CBABC Legal Research Section (Koskie Glavin Gordon); and
- Do-Ellen S. Hansen, Treasurer of the CBABC Legal Research Section (Borden Ladner Gervais LLP).

Stuart Rennie, CBABC Legislation and Law Reform Officer, assisted the Special Committee.

SUBMISSIONS

Introduction

In February 2014, the British Columbia Court of Appeal (the “Court”) released its Consultation Paper E-Filing Factums and Statements (the “Consultation Paper”).¹

In the Consultation Paper, the Court proposes to implement mandatory e-filing of all factums and statements for civil and criminal appeals through Court Services Online (CSO). Self-represented litigants will be excluded from mandatory e-filing but it will be provided to them as an option. The timeline is for optional e-filing for factums and settlements in January 2015 and then mandatory in January 2016.

The Consultation Paper sets out the proposed process for e-filing in paragraphs 11 to 21.

Special Committee’s Comments on the Consultation Paper

The Special Committee appreciates the opportunity to comment on the Consultation Paper and agrees with the proposal in the main that e-filing for factums or statements be mandatory.

¹ See http://www.courts.gov.bc.ca/Court_of_Appeal/index.aspx.

The Special Committee appreciates learning of the Court's proposed process as set out in paragraphs 11 to 21 of the Consultation Paper.

Consultation Paper Paragraph 15: Features of Electronic Factums or Statements

Paragraph 15 of the Consultation Paper requires that no electronic copy of any of the appendices be attached to the electronic factum or statement; appendices can be submitted with paper copies.

Under the Court of Appeal Rules, the list of authorities follows the appendices and pages must be numbered consecutively.² The proposed process requires that page numbering of the paper and electronic versions must be identical. This will not be possible if electronic versions of the factums do not include appendices. Further, it is not possible to simply skip the numbering over the appendices and resume at the list of authorities because the pages are automatically numbered when saved as a pdf file. Consequently, the Special Committee recommends that an electronic copy of appendices be attached to the electronic factum or statement.

Paragraph 15 of the Consultation Paper provides that hyperlinking citations to Internet authorities: "CANLII, Lexum, **and** the Superior Courts' website **must** be included." (emphasis added) The Special Committee recommends that not all of these three Internet authorities be required to be included in electronic factums or statements.

² See section 40 and Form 21 of the Court of Appeal Rules (http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/297_2001a).

Consultation Paper Paragraph 18: Date-Stamp on Filed Electronic Factums or Statements

Paragraph 18 of the Consultation Paper proposes that, for an electronic factum or statement accepted for filing, staff will date-stamp it with the date it was accepted and it will be considered filed in CSO and filed for purposes of time calculation in the Rules as of that date.

The Special Committee recommends that instead, staff should date stamp the document with the date it was “received” and not with the date it was “accepted”. If the document is received but not accepted for filing, it gets no stamp at all. But if the document is received and then accepted on a later day, it should be stamped with the date it was received. Otherwise, the time frames set out in the *Court of Appeal Act* are eroded.

Consultation Paper Paragraph 19: Service of Filed Electronic Factums or Statements

Paragraph 19 of the Consultation Paper proposes that counsel will retrieve the factum or statement filed with CSO and then serve it electronically or conventionally within 5 (five) business days of the date it was date-stamped as filed. Within this 5 (five) business day period, parties will print the factum or statement and deliver 4 (four) true copies at the Court registry.

The Special Committee observes that the only way this proposal would work would be if CSO had a same day turn-around between receipt of a document and acceptance of a

document. In the event this is not the case, this paragraph should refer to 5 (five) business days from the date of acceptance, not the date the document was date-stamped as filed.

Other Matters for the Court to Consider

The Special Committee has identified other matters it wishes for the Court to consider:

- Factums or statements rejected for electronic filing by registry;
- Replies; and
- Extending time limits in event of CSO failure.

Factums or Statements Rejected for Electronic Filing by Registry

One of the advantages of the current process of paper filing is that a party knows almost immediately if a document has been refused for filing by the registry. One of the problems with the proposed system is that there is no specification as to how long it will take registry staff to review a document that has been received by CSO. The Special Committee recommends that a process be instituted for quick review of documents received by CSO. In addition, the Special Committee recommends that the registry should e-mail counsel when a document is accepted for filing rather than requiring counsel to check the CSO website every hour to see if counsel's document has been rejected for filing by the registry. That way, delays will be minimized and the risk of error reduced.

Replies

The proposed process set out in the Consultation Paper does not speak about Replies.

The Special Committee asks: Will an appellant filing a Reply incur another \$7.00 charge? The Special Committee recommends that parties not be required to pay for filing a Reply through CSO.

Extending Time Limits in Event of CSO Failure

The Special Committee recommends that there should be a process for extending time limits in the event there is failure of CSO. If, for reasons of CSO system failure, parties cannot access the network, they should not have to apply for an extension of time to file. The CSO technical staff should be able to indicate there was a system wide failure for a certain number of hours on a certain date and documents due for filing on that date should get an automatic extension of one or more days, depending on the length of time the system was inoperative. This is a complication that does not arise under a paper system but will almost certainly arise under an electronic system.

SUMMARY OF RECOMMENDATIONS

In these Submissions, the Special Committee has made the following recommendations:

RECOMMENDATION #1: *E-filing for factums or statements*

The Special Committee agrees unanimously with mandatory electronic filing for factums or statements.

RECOMMENDATION #2: *Features of Electronic Factums or Statements (Para. 15)*

The Special Committee recommends that an electronic copy of appendices be attached to the electronic factum or statement. Further, the Special Committee recommends that not all of these three Internet authorities noted in the Consultation Paper be required to be included in electronic factums or statements.

RECOMMENDATION #3: *Date-Stamp on Filed Electronic Factums or Statements (Para. 18)*

The Special Committee recommends that registry staff should date stamp the document with the date it was “received” and not with the date it was “accepted” so that the time frames set out in the *Court of Appeal Act* are not eroded.

RECOMMENDATION #4: *Service of Filed Electronic Factums or Statements (Para. 19)*

The Special Committee recommends that counsel serve the electronic factum or statement filed with CSO within 5 (five) business days of the date it was accepted.

RECOMMENDATION #5: *Factums or Statements Rejected for E-filing by Registry*

The Special Committee recommends that a process be instituted for quick review of documents received by CSO. In addition, the Special Committee recommends that the registry should e-mail counsel when a document is accepted for filing rather than requiring counsel to check the CSO website every hour to see if counsel's document has been rejected for filing by the registry.

RECOMMENDATION #6: *Replies*

The Special Committee recommends that parties not be required to pay \$7.00 for filing a Reply through CSO.

RECOMMENDATION #7: *Extending Time Limits in Event of CSO Failure*

The Special Committee recommends that there should be a process for extending time limits in the event of a failure of CSO and that documents due for filing should get an automatic extension of one or more days, depending on the length of time the CSO system was inoperative.

CONCLUSION

The Special Committee is pleased to make these submissions in this important area of law needing effective and efficient law reform.

We look forward to discussing these important matters further to assist the Court in finalizing the process for electronic filing of factums or statements. Communications in this regard can be directed to:

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