**CONSULTATION PAPER**

**E-FILING FACTUMS AND STATEMENTS**

# Invitation to Provide Feedback

1. The B.C. Court of Appeal is inviting comments from the legal profession as well as the public on plans to implement mandatory e-filing of all factums and statements for civil and criminal appeals through [Court Services Online](https://eservice.ag.gov.bc.ca/cso/index.do) (CSO). Self-represented litigants will be excluded from mandatory e-filing. It will be provided to them as an option.
2. It is proposed that the e-filing of a factum or statement will become mandatory by January, 2016. To give litigants time to become familiar with the new process, e-filing for factums and statements will become optional in January, 2015.
3. Currently, only a small number of documents may be e-filed in the Court of Appeal. A list of the documents that cannot be e-filed can be found in [Court of Appeal Rule 54.1](http://www.bclaws.ca/Recon/document/ID/freeside/297_2001a#section54.1).

# Use of Electronic Filing in the Court of Appeal

1. The Court of Appeal has been collecting electronic factums and statements since 2005. They have been filed on CD-ROM at the same time the paper copies are filed. (see [*Filing of Electronic Factums and Statements* (Civil & Criminal Practice Directive 19 September 2011).](http://www.courts.gov.bc.ca/court_of_appeal/practice_and_procedure/civil_and_criminal_practice_directives/PDF/(C%20and%20C)%20Filing%20of%20Electronic%20Factums%20and%20Statements.pdf) The practice directive does not require the filing of electronic factums but notes that the Court prefers to have electronic factums.
2. With the further implementation of e-filing, the Court will require all factums and statements, except those filed by self-represented litigants, to be filed through [CSO](https://eservice.ag.gov.bc.ca/cso/index.do).

# Working in a Hybrid Electronic/Paper Environment

1. The Court of Appeal currently functions in a hybrid electronic/paper environment. As much as possible, and within the Court’s budget, the goal is to begin to implement processes that maintain the integrity of the court record and appeal process while reducing the amount of paper used in conducting an appeal.
2. The transition from a paper to an electronic court record is less easily done than simply requiring litigants to file electronically. Many members of the judiciary and counsel are used to working with paper. The transition from electronic to paper records must reflect this fact, allowing all to become familiar with appropriately managing electronic records and following legislative requirements without imposing unfamiliar processes and delaying an appeal.
3. E-filing factums is a step forward in developing effective and efficient processes in today’s digital age. If the use of electronic records is adopted too rapidly by the Court, there are risks that the Court may lose the integrity of electronic court records and be required to absorb excess printing costs and that unfamiliarity with processes will lead to delay. If electronic processes are not adopted rapidly enough there is a risk that Court processes will become obsolete or less effective. The Court recognizes that there may be a period of reduced efficiency as these competing priorities are balanced and all participants adjust to working in a new environment.
4. The goal is to have access to trustworthy, accurate, and authentic electronic court records while paper is reduced over a number of years. The reward will be greater overall efficiency in managing electronic court records once processes are streamlined over time.
5. The model outlined below will require counsel to file electronic factums within set timelines. This will benefit the legal profession and public by allowing for electronic service. However, the court will still require 4 (four) true paper copies of factums for archival purposes (long term preservation) and for use by Judges. It is hoped that the need for multiple paper copies of factums or statements may be reduced once processes have been tested and are accepted.

# Proposed Process

## Step #1: Obtain A Court Services Online Account

1. [CSO](https://eservice.ag.gov.bc.ca/cso/index.do) is the electronic system for searching court files online as well as e-filing factums and other court documents. It functions as the Court’s electronic registry.
2. To e-file, a litigant becomes a registered user of the CSO system by opening a [BCeID account](https://www.bceid.ca/). On becoming a registered user, e-filing transactions are conducted securely by entering the user ID and password, allowing the Court to dispense with the need for signatures.
3. For those who would prefer to outsource e-filing, third party providers will provide e-filing services on a litigant’s behalf. A list of those agents will be provided by the Court.
4. Using CSO, litigants will submit their factum or statement by uploading the PDF version of the document in CSO. There will be a $7.00 fee per e-filed document.

## Step #2: Prepare a Factum to be E-Filed

1. Electronic factums or statements shall have these features:

* **No signatures:** The only requirement will be the typed name of the counsel who drafted the factum or statement on both the electronic and paper copies.
* **No Appendices:** No electronic copy of any of the appendices attached to the factum or statement. Appendices can be submitted with paper copies.
* **PDF and OCR Scans only:** Factums or statements must be submitted in searchable PDF format which has been created by using the “save as pdf” feature in any word processing program or through the use of scanning with optical character recognition (OCR) technology (must be scanned at 300dpi.) Scanned records without the use of OCR will not be accepted.
* **Identical Page Numbering:** An electronic factum or statement must have the same page numbering as the paper version.
* **Bookmarking & Hyperlinking:** PDF bookmarks must be used for the various sections of a factum or statement (Index, Chronology, Opening Statement, Statement of Facts, Errors in Judgment, Argument, and Nature of Order Sought). Hyperlink citations to internet authorities, specifically [CANLII](http://www.canlii.org/en/index.html) , [Lexum](http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/en/nav.do), and the [Superior Courts’ website](http://www.courts.gov.bc.ca/) must be included.
* **Security Features:** All security features that might prevent the Court from commenting or archiving the factum or statement should be turned off. The Court will provide a specific list of these requirements in the future.

## Step 3: E-File Factum or statement

1. Electronically filed factums or statements will be filed within or by the timelines in the *Court of Appeal Rules* or *Criminal Appeal Rules.*
2. The factum or statement must be received by CSO on or before 4 p.m. on the date the factum or statement would otherwise be due. Any document received after 4 p.m. will be considered received on the next day that the registry is open. See [Court of Appeal Rule 54.1(13).](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/297_2001a)
3. Once a factum or statement is electronically received, staff will review the factum or statement and, if it is accepted, 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.
4. Counsel will check CSO, retrieve the factum or statement and 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.
5. Electronic factums or statements will be in 12 Point Arial font, limited to 30 pages, with 2.5 cm margins and 1 ½ line space except for quotes, which can be single-spaced and indented.
6. The paper copies must follow the civil or criminal rules and have the appropriate colour covers (buff for appellant, green for respondent, yellow for intervenors) and be bound on the left-hand side except for the index.

# Public Access to Factums or Statements

1. If electronic filing of factums or statements is permitted, the public may also want to electronically access factums or statements through CSO.
2. Currently, the [Court of Appeal Record and Courtroom Access Policy](http://www.courts.gov.bc.ca/court_of_appeal/practice_and_procedure/record_and_courtroom_access_policy/index.aspx) allows access to all civil factums except family factums and those with restrictions on rights of access or publication.
3. Access is permitted to all criminal factums and statements filed after 1 October 2013, except where there is a restriction on rights of access or publication, usually in the form of a publication ban issued by the Provincial or Supreme Court.
4. The Court proposes to allow access to these factums and statements online through CSO. To allay copyright concerns, potential copyright interests will feature prominently on CSO and/or on the cover of the factum or statement itself. As CSO is not indexable by Google or other search engines, copies of individual factums or statements may be retrieved and viewed only by those who have paid for access and have searched for and viewed a specific file.
5. The process for accessing a file is as follows:

* A litigant conducts a search of the file through CSO “Search Appeal,” searching by name or by Court of Appeal file number.
* Once the file is located, click the yellow “View” tab, for which you will be charged $6.00 (to search a file, registration is not required, a litigant just enters a credit card number).
* The litigant then navigates to the “Filings” screen which displays a list of filings on the file. The accessible documents on the file have, in the “Document Request” column, a “View” button. By clicking the “View” button, the document will be displayed in PDF. The litigant will be charged $10 for this and may print or save the document.

# How to File a Submission

1. The Court of Appeal is interested in receiving your comments on this proposal before April 30, 2014. Comments may be emailed to: [FactumConsultation@courts.gov.bc.ca](mailto:FactumConsultation@courts.gov.bc.ca) .
2. Any comments contained in a submission may be used by the Court in creating a report on the consultation. However, the source of the quote will not be identified.
3. By filing a submission to this consultation you agree that some of your comments may be used anonymously in a public report.