

Use of Technology at the Supreme Court of Canada

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Introduction

The Supreme Court of Canada was an early leader in the use of technology and, in the last fifteen years, has come to rely heavily on automated tools to facilitate its work. In 1987, the Court's dockets were maintained in large blue ledger books and records of motions were contained in smaller red books. The Court's caseload increased with the enactment of the *Canadian Charter of Rights and Freedoms*, leading it to seriously examine how it processed cases. Changes were made. The Court had always conducted hearings of leave applications, but, in 1988, the *Supreme Court Act* was amended to have leave applications dealt with on the basis of written submissions. There were changes on the administration side. The Court began to use word processors, and within a few years, all staff had personal computers that were networked. An automated case management system (CMS) was under development in the 1980's, and in December 1988, the last entries in the blue docket books were made. In January 1989, the new system came into use and for the first time, case management was automated. Although the transition from paper to electronic dockets was initially challenging, the benefits were immediately evident and we could not now imagine working without the CMS.

A glance at the 1991-2001 Statistics Bulletin illustrates the need for our reliance on technology. There were a total of 642 new cases (applications for leave to appeal and appeals as of right) filed in 2001, as compared to 505 filed in 1990 - an increase of 27%. There were 668 leave applications submitted to panels of the Court in 2001, compared to 480 submitted in 1991 - an increase of 39%. (The 1991-2001 Statistics Bulletin is available at www.scc-csc.gc.ca under the link "Information on Cases.")

The future holds more innovation. The federal government encourages the delivery of services through the Web, and with the increasing use of the Internet by the legal profession, electronic filing of documents is not only possible, but is a feasible alternative to paper filing. The Supreme Court of Canada is a leader in this area. This paper will outline briefly our advances in electronic filing as well as some of the other uses of technology at the Court.

Electronic filing:

The goal of the Supreme Court of Canada electronic filing (e-filing) project, which received some limited funding from the federal government's "Government Online" initiative, is

to evaluate options for the transition from heavily paper-based to digital case files. The project has two modules which are being worked on concurrently. The first is the limited-scope electronic filing prototype which is currently being tested in a pilot project. Documents are filed via the Internet, using technology that was developed in consultation with various user groups, including members of the Bar. At this date, there are four digital case files working their way through the system. The lessons learned from the pilot will be made public and we hope they will be useful to other courts in the design and implementation of their electronic filing applications. The second module of the project is an investigation of the feasibility of a cross-jurisdictional private sector service provider approach to e-filing. The Federal Court of Canada, Quicklaw, SOQUIJ and Juricert are collaborating with the Supreme Court of Canada on this part of the project. The analysis resulting from the investigations will also be made publicly available.

There are technical issues relating to e-filing: the preparation of material, filing, management and hearing of cases, and the adjustments that may be required to Court rules and procedures. Also to be considered are questions relating to digital standards and the movement of cases through the various levels of the Canadian court system. As well, much of the documentation that is required to be filed in an appeal is not available electronically, although this will change in time. Currently, litigant's are required to provide the Court with a scanned image of documents. These are the types of issues that are being resolved as we proceed with the pilot project.

The Supreme Court of Canada's approach to electronic filing is innovative in that when a litigant electronically files an application for leave to appeal through the Internet, the information entered by the litigant is transferred to our Case Management System and a document management system. This type of integration between the e-filing web interface and a case management system is unique (although the Tax Court has a similar system). We are hoping that this will lead to more efficient processing of cases on the Court's part. On the litigants part, we have received preliminary observations from counsel that it takes less time to prepare a case for electronic filing than paper filing.

There are also broader policy issues that need to be resolved before the Court can make the conversion to electronic case files. Some of these relate to costs and access on the part of litigants to the technology needed to e-file documents. Of particular concern are those who may

not have the resources to hire a lawyer.

One of the most intriguing policy issue arises in relation to public access to electronic files. Supreme Court of Canada cases are often of great interest to the public. Should digital case files be made accessible through the web, in the same way that a paper file is accessible? The open court principle militates in favour of web access, but privacy concerns must be taken into account. While privacy is most significant in family law matters, criminal cases, and cases subject to publication bans, the appeal record in any case can potentially contain sensitive information. Sensitive information could be personal, for example, a taxpayer's Social Insurance Number included in the record in an income tax case. Sensitive information could also be proprietary. Currently, privacy concerns are dealt with through the practice of sealing records and imposing publication bans on a case-by-case basis. Where there is a publication ban or order sealing all or part of a file, clearly, the file should not be web accessible to the public. However, the question remains of what to do with files that contain sensitive information but are not subject to such orders. The Supreme Court of Canada is not the only court grappling with these issues and no final decision has been reached regarding web access to case files. Web access to case files also raises questions as to copyright, security of digital files and file preservation. We are beginning to examine how the main courtroom will have to be refitted to allow an appeal that has been electronically filed to be argued.

Other technology:

Case information on line:

The Supreme Court's Case Management System dockets can be accessed through the Internet at www.scc-csc.gc.ca. From the main menu follow the links to "Information on Cases," then click on "SCC Case Information". This will allow you to search the CMS database, by file number or party name, to find out what documents have been filed, and by whom, in any case. You will also be able to find out if a case has been decided, and what the decision was. Counsel information is also available. There are links to reasons for judgment. SCC Case Information is updated every day at 7 p.m. (Ottawa time), and is accessible at all times. It has proven to be very popular with counsel and has cut down on the number of calls to the Court Registry. This is a better service for counsel because they can search for the information they want, when they want.

Video conferencing:

Appeal hearings were not immune to change; the Court's experiments with satellite transmitted hearings in the 1980's led to today's video conferencing system. Used on appeals, and on Court motions, including applications for leave to appeal, the Court's video-conferencing service allows parties to make submissions on a case without having to travel to Ottawa. Judges communicate through television cameras, monitors and sound equipment installed in strategic and non-obtrusive locations in the Main Court Room. Counsel appearing via video conference present argument in remote locations equipped with technology compatible with that used in the Court. There is no cost to the parties for this service. Less popular for appeal hearings, video conferencing is more often used for motions in Court, particularly by counsel from the western provinces and British Columbia.

Videotaping and audio-taping of proceedings:

Proceedings in the Main Court Room are tape recorded and transcripts are produced of those cases in which judgment is reserved. Although the final version of the transcript of argument is prepared and provided to the Court within two weeks of the hearing of the appeal, transcript excerpts and/or rough copies can be made available to the Court within 24 hours. The transcripts are put on the Court file. Proceedings are also videotaped and copies can be ordered. Many hearings are later broadcast on CPAC.

Teleworking

Internet technology allowed the Supreme Court of Canada to provide employees with secure remote access to the Court's network, including access to electronic mail and research tools. With this technology, we are able to offer employees the option of working from home. In fact, two members of the Court's legal staff successfully telework on a permanent basis - one from southern Ontario and another from British Columbia.

Conclusion

This paper has briefly outlined the technological tools used by the Court Operations Sector (Registry and Law Branch) of the Supreme Court of Canada. The Court exploits technology in other areas, notably the Supreme Court of Canada Library, which is a leader among Canadian Law Libraries in the use of technology. There is no question that the Court has found that the automated tools enable staff to reduce the amount of time spent on routine tasks, freeing up time

to focus on the substantive aspects of case processing.