

Open Access: The Federal Court's Pilot Project for Online Access to Court Records

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On September 12, 2022, the Federal Court introduced Phase One of its pilot project to provide the public and litigants with online electronic access to Court records.^[1] The Courts are shifting to a more open public access that aligns with today's digital reality.

The Federal Court has been leading Canada with facilitating access to information and records about active matters before the Court. The Federal Court was among the first courts to introduce online court record search capabilities and has indicated an intention to continue to modernize its functionality and redouble its efforts to shift away from being paper-based.

Prior to this pilot project the general public and the legal community who wanted to obtain copies of documents filed with the Federal Court could contact a registrar and obtain those documents by fax or email. However, the wait times were unpredictable and you often had to know what you were looking for before making the request. The alternative was to physically travel to the Registry office to review the Court file and pay for each document they wanted to obtain. In practice, this was a procedural hurdle that more often than not kept allegations contained in Court documents confined to the Court room.

While the Court has recognized concerns about security as a result of the online access to materials and the loss of "practical obscurity", the Court anticipates that such cases will be rare.

During this initial phase, only pleadings, written arguments, and court-generated documents (orders, directions, reasons, judgments) for matters that are commenced after September 12, 2022 will be available online through the Federal Court's website.^[2]

If there are concerns that the materials being available online will create a serious risk that there will be a material adverse impact on personal dignity or security of an individual, then at the time of filing the material through the online platform the party filing the document may request that all or part of the records be exempt from online access. Such requests may be made informally in letter format, and other parties will have the opportunity to respond.^[3]

The Court member determining the request will have full discretion to determine the matter and may consider: the nature of the information and the proceeding; the extent to which the concerns raised exceed the usual discomfort or potential embarrassment inherent in involvement in litigation and the disclosure of information in open court; and the relationship between the concerns identified and the values underlying the open court principle.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] <https://www.fct-cf.gc.ca/Content/assets/pdf/base/2022-09-07-ENG-NOTICE-Pilot-Project-Online-Access.pdf>

[2] <https://www.fct-cf.gc.ca/en/court-files-and-decisions/court-files>

[3] The potential exemption from online access does not affect the availability of, or requirements for, a confidentiality or sealing order. Documents containing confidential information should not be filed through the online portal.

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