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Digitization of Court Processes in Canada

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The goal of the research underlying this report was to better understand the state of digitization of court processes in Canada, including wherever possible to determine where we are, where we've been and what has already been planned for the future. Our research was limited to an examination of the public online record that was initially performed by an amazing, dedicated group of University of Ottawa law student volunteers for the Centre for Internet Policy and Public Interest Clinic (CIPPIC) who scoured for information online in relation to their assigned jurisdiction. The research and this draft report focused on technologies being implemented in or by courts, rather than looking specifically for information about electronic/digital issues as between parties to litigation.

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DIGITIZATION OF COURT PROCESSES IN CANADA

by Jane Bailey*
23 October 2012

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INTRODUCTION

The goal of the research underlying this report was to better understand the state of digitization of court processes in Canada, including wherever possible to determine where we are, where we've been and what has already been planned for the future. Our research was limited to an examination of the public online record that was initially performed by an amazing, dedicated group of University of Ottawa law student volunteers for the Centre for Internet Policy and Public Interest Clinic (CIPPIC) who scoured for information online in relation to their assigned jurisdiction. The research and this draft report focused on technologies being implemented in or by courts, rather than looking specifically for information about electronic/digital issues as between parties to litigation. The research group encountered a series of challenges, including an asymmetry in online reporting between jurisdictions, a dearth of information about the specific software and hardware employed, and sometimes-frustrating differences in the arrangements between courts and provincial/territorial/federal governments in terms of how decisions about technology were made and who was responsible for carrying them out and reporting on them. Despite these limitations, we hope this necessarily partial sketch will be of use in terms of developing a better general understanding of the kinds of court processes being digitized in Canada, as well as in identifying areas where more research and information gathering is needed.

The report proceeds in 4 parts. Part I provides an Executive Summary of the overall contents of the report. Part II provides background information about the Canadian legal system and the administration of justice in Canada. Part III provides an overview of the digitization of court processes in Canada, looking at external websites, social media, other kinds of communications (e.g. public view terminals, public internet access in courtrooms, webstreaming, audioconferencing, videoconferencing and assistive technologies for persons with disabilities), electronic case administration and management (e.g. case management systems, electronic filing and electronic scheduling), e-courtrooms, and other systems (e.g. maintenance enforcement systems, online payment systems and jury management systems). Part IV briefly compares the experiences of Ontario and BC in implementing (or, in Ontario's case, attempting to implement) web-enabled case management systems, noting some of the issues and inquiries these case studies raise about the purposes and implementation of case management systems and the digitization of court processes more generally. The Conclusion suggests further areas for research, particularly with respect to the relationship between technology and pressing issues of access to justice.

I. EXECUTIVE SUMMARY

Geography and population - Canada is geographically large with a relatively small geographically dispersed, ethnically, culturally and linguistically diverse population that is heavily concentrated along its southern border.

Legal systems and traditions - Canada is a bilingual (French and English), bijuridical (civil and common law in Quebec, common law elsewhere) jurisdiction, with First Nations, Métis and Inuit legal systems and traditions increasingly being recognized both informally and formally (through negotiated self-government agreements).

Division of powers - Politically, Canada is a federal state, where legislative powers are divided between the federal Parliament, and the 13 provincial and territorial legislative bodies. While Parliament has jurisdiction over criminal law, provinces and territories have jurisdiction over civil law, as well as the administration of justice within their borders.

Role of courts - Canada is a constitutional democracy, so that courts are the ultimate arbiters over the limits of government authority pursuant to the *Constitution Act, 1867* (the division of federal/provincial/territorial powers) and the *Charter of Rights and Freedoms* (setting out the parameters of the government's relationship with individual rights and freedoms).

Court structure and administration - The federal courts include the Supreme Court of Canada (SCC) (the ultimate appellate court in the country), the Federal Court, the Tax Court of Canada and the Courts Martial. Each province and territory (generally) has a Court of Appeal (highest provincial/territorial appellate court), a Superior Court (court of inherent jurisdiction) and a Provincial/Territorial Court (court of more limited jurisdiction that generally deals with most criminal matters at first instance). Superior Court judges are appointed by the federal head of state, while Provincial/Territorial Court judges are appointed by the province/territory. There is a plethora of federally and provincially/territorially created administrative bodies handling specific areas of law by virtue of statute (eg labour, human rights), from whose decisions judicial review and/or a right of appeal may lie to the courts. Courts' administration is typically overseen by a court services branch or division of the respective provincial/territorial/federal Ministry of Attorney General/Department of Justice.

Access to justice challenges - The Chief Justice of Canada has said that Canada is facing an access to justice crisis. Canada's access to justice concerns include: the prohibitive cost of litigation (which is said to preclude all but the few who qualify for legal aid and the very wealthy from litigating) and an associated rise in the number of self-represented litigants, the physical inaccessibility of courts and court processes (relating both to issues of ability, as well as geographic remoteness), delays in case processing and resolution, and the particular failings of the unreformed criminal justice system in relation to indigenous populations. Technology has been proffered in many forms as an answer to access to justice issues on the basis that it may, among other things, reduce cost and delay, better connect the justice system with remote/under-served communities, and allow for widespread distribution of legal information and resources.

Technology and court processes - Our review of the online public record reveals the following about the status of technologies in Canadian courts and related processes:

1. **websites** - all federal, provincial and territorial courts have websites that provide access to a variety of basic information about the courts and related court processes (including searchable databases of their decisions), with some providing or having piloted linked webcasts of hearings or court events (e.g. SCC, BC, Ontario, Nova Scotia), and some providing access to forms that may be filled and filed online (e.g. Tax Court of Canada, Alberta CA);
2. **social media** – while most Canadian courts seem to have unofficial Facebook pages, other than a few courts that provide RSS newsfeeds (e.g. Ontario) and offer Twitter updates (e.g. Nova Scotia), we found little evidence of widespread engagement with social media, although the issue is clearly under study (e.g. BC);
3. **other communications** –
 - a. *public view terminals* have been piloted in Ontario, internet access is available in some courts, at least for counsel (e.g. Nova Scotia, Ontario);
 - b. *e-mail* is fairly widely used as a mechanism for communications between courts and litigants/counsel (e.g. Nunavut, Ontario, Alberta, New Brunswick, Quebec);
 - c. *intranets* have been developed to allow for more secure communications between judges and other members of the judicial community;
 - d. *webstreaming* – the SCC webcasts its hearings and archives them online, while others have piloted webcasting for hearings and court events (e.g. BC, Ontario, Nova Scotia);
 - e. *audioconferencing* – is expressly permitted by the *Criminal Code of Canada* for obtaining telewarrants and for certain kinds of appearances (e.g. bail hearings) under specified conditions, and it would appear that all jurisdictions use teleconferencing for those permitted purposes. In addition, certain jurisdictions permit teleconferencing for arguing motions (e.g. Alberta, BC, Manitoba, New Brunswick, NWT, Nunavut, Ontario, Québec, Yukon) and for attendance at certain kinds of case conferences (e.g. Newfoundland, PEI, Québec and Yukon), while whole cases may be argued this way at the SCC and in the Federal and Tax Courts. Its use for transmission of evidence at a hearing appears more limited;
 - f. *videoconferencing* – is also permitted for certain kinds of appearances under the *Criminal Code of Canada* and heavily used for bail hearings and other appearances by in-custody accused persons (e.g. Alberta, BC, Manitoba, Newfoundland Nova Scotia, Ontario, Saskatchewan). It is also used for transmission of remote witness testimony, entry of guilty pleas, case conferences (e.g. Ontario) and also for hearings in the SCC, Federal and Tax Courts. It has repeatedly been proposed as an access to justice solution for mediating distance in ways that allow for persons in remote communities (particularly Aboriginal persons) to appear at bail hearings without having to be removed from their communities. It has also been proposed as a cost saving and security risk reduction measure when used to allow for those in-custody to appear in court without the need to be physically transported there;
 - g. *assistive devices for persons with disabilities* – both the federal government and the Ontario government have developed accessibility

guidelines relating to government services, including court services. These guidelines are associated with uses of particular kinds of text reader technology allowing for shrinkage and magnification of text, as well as client-side cascading style sheet files allowing users to configure visual elements to meet their needs (e.g. SCC). Infrared and FM assistive listening devices are also available in Ontario courts.

4. **case administration and management** –
 - a. *case management systems* - while it appears that most or all Canadian courts have some form of digitized system for managing cases that sometimes integrates a variety of justice system players such as police, crown attorneys, etc. (e.g. Ontario, Manitoba, Newfoundland, Nova Scotia, Nunavut, Québec) we located only a few that have web-enabled systems that include e-filing and e-search functionality (e.g. BC Provincial and Supreme Courts, BCCA, Saskatchewan CA);
 - b. *e-filing* – although some jurisdictions allow or even require electronic copies of materials to be filed by e-mail and/or on CD ROM (e.g. SCC, Ontario CA, PEI), a few have implemented online e-filing systems, at least for certain kinds of matters (e.g. Federal Court of Canada, Tax Court of Canada, BC, Alberta Prov Ct and CA, Saskatchewan CA, Newfoundland Prov Ct and SC); and
 - c. *e-scheduling* – e-scheduling functionality is in place or in development in Manitoba, Newfoundland, Nova Scotia, Saskatchewan and Alberta;
5. **courtroom technology** – digital audio recording systems (DARS) are in place in Alberta, BC and Nova Scotia and are being implemented in Ontario. Document storage, viewing, manipulation and e-exhibit systems are available in a number of courts (e.g. Alberta, BC, Ontario, Nova Scotia), as are video display screens, and network connections for counsel; and
6. **other systems** – a variety of other digitized systems in Canada were revealed in our search, including: automated systems for recording and enforcing maintenance/support orders of family courts (e.g. Alberta, Manitoba, NWT), online fine payment portals (e.g. Alberta, Nova Scotia, Saskatchewan), and automated systems for jury selection that allow citizens to respond electronically to jury notices (e.g. BC, Ontario).

Case studies - Development and implementation of case management systems that are web-enabled to assist in information sharing between related agencies, as well as to support online public access have been very different experiences in Ontario and BC. A review of some of the basic facts relating to each raises interesting questions about the digitization of court processes more generally, including: how are the problems to which technology is proposed as an answer identified? What kinds of development processes are most likely to lead to “successful” implementation of technologies? How is “success” to be measured? Do digitized case management systems reduce delay? If so, how? If not, why not?

II. LEGAL SYSTEMS & THE ADMINISTRATION OF JUSTICE

A. Geography and population

Large land area, small but dispersed population concentrated along the southern border - Canada has the second largest land area of any country in the world (over 9.9 million km²)¹, but stands 36th in the world in terms of total population (about 34.4 million).² It is comprised of 10 provinces (Alberta, British Columbia (BC), Manitoba, New Brunswick (NB), Newfoundland, Nova Scotia (NS), Ontario, Prince Edward Island (PEI), Québec and Saskatchewan) and 3 territories (Northwest Territories (NWT), Nunavut and Yukon Territory). The 3 territories comprise most of Canada's most northerly territory, occupying 39% of the national land area,³ but only 3% of the total Canadian population.⁴ As of 2011, 86% of the Canadian population resided in the provinces of Ontario (38.4%), Quebec (23.6%), British Columbia (13.1%) and Alberta (10.9%).⁵ Although Canadians live in a number of northerly areas, Canada's population density is heavily concentrated along our southern border⁶ and the population overall is highly urban (80% in 2006)⁷, with significant variations from jurisdiction to jurisdiction (e.g. 2006 census respondents in PEI, Nunavut and NWT were more likely to live rurally, while 80% or more of the respondents from Quebec, Ontario, Alberta and British Columbia lived in an urban location)⁸.

Ethnically, culturally and linguistically diverse - Canada is also highly ethnically and culturally diverse. As of 2006, 3.8% of census respondents self-identified as Aboriginal (including First Nations, Métis and Inuit),⁹ 19.8% self-identified as having been born outside the country¹⁰ and 16.2% self-identified as members of visible minority groups.¹¹ Although Canada's official languages are French and English,¹² in the 2006 census 58.8% of respondents indicated English as their mother tongue, 23.2% indicated French and 18% indicated other languages, including over 80 indigenous languages.¹³ Respondents identified over 180 languages other than English or French as the languages most often spoken at home.¹⁴

B. Legal systems and traditions

The Canadian legal system is often reputed as a bilingual, bijuridical system in that it generally functions in both official languages, and both systems of common and civil law operate within its borders. The Quebec legal system incorporates both civil and common law systems, with the Quebec Civil Code governing civil matters and the common law governing criminal matters. All other provinces and territories operate under the common law system in relation to both civil and criminal matters.

Increasingly, however, as indigenous nations are properly recognized as founding members of Canada, so too are indigenous legal systems and traditions beginning to be formally recognized. Canada had concluded 25 comprehensive land claims and self-government agreements with First Nations, Métis and Inuit peoples within a number of jurisdictions including Newfoundland and Labrador, BC, northern Quebec, the Yukon Territory, the Northwest Territories and Nunavut.¹⁵ Although the terms of individual

agreements vary, self-government can include jurisdiction with respect to laws and the administration of justice.¹⁶ Conflicts between federal/provincial/territorial law and indigenous law can be subject to resolution processes provided for in agreements, although federal law governs in some instances of conflict.¹⁷ As more and more agreements are negotiated and as the FPT governments are increasingly forced to recognize the ways in which the FPT criminal justice system has failed indigenous persons, law and legal processes in relation to indigenous communities seem likely to continue to be reshaped.¹⁸

C. Constitutional, court and courts administration structures

1. Federal, provincial and territorial powers

Canada is a federal state. Federal parliament has an over-riding power to make laws for the “Peace, Order and good Government of Canada in relation to all Matters not coming within the Classes of Subjects” exclusively assigned to Provincial Legislatures in the *Constitution Act, 1867*, but also has express authority over a variety of matters, including immigration, marriage and divorce, and criminal law and procedure (but not the constitution of courts of criminal jurisdiction.)¹⁹ Provincial legislatures have exclusive jurisdiction over, *inter alia*, property and civil rights in the province, the administration of justice in the province (including provincial courts of civil and criminal jurisdiction and in matters of civil procedure), as well as the imposition of punishment for violations of provincial laws.²⁰ However, federal/provincial/territorial agreements (FPTAs) have facilitated a greater sharing of constitutional powers and responsibilities between parliament and the legislatures, including in relation to justice initiatives such as legal aid, and Aboriginal courtworker programs.²¹

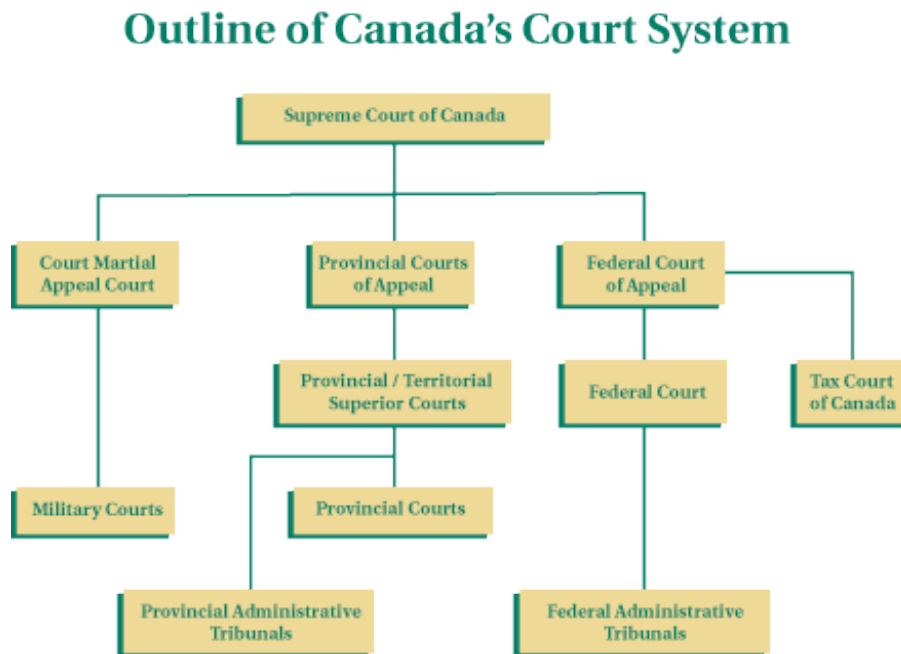
The courts are the ultimate arbiters of the limits of government power (subject to constitutional amendments and/or overrides in certain cases), both in relation to the respective jurisdictional capacities of the federal and provincial/territorial governments under ss. 91 and 92 of the *Constitution Act, 1867*, but also in relation to the parameters of government’s relationship with individual’s rights and freedoms pursuant to constitutional guarantees such as those in the *Canadian Charter of Rights and Freedoms*.

2. The courts and other legal decision-making bodies

Administration of the courts generally falls within the exclusive jurisdiction of the provinces to administer justice within the province under s. 92. Provincial courts include courts of inherent or “superior” jurisdiction,²² as well as courts whose mandates are limited by statute.²³ While the provinces have the power to appoint judges to the courts of limited jurisdiction, under s. 96 of the *Constitution Act*, the Governor General (the federal head of state) has the exclusive power to appoint judges to provincial courts of superior jurisdiction (including provincial Supreme/Superior Courts and Courts of Appeal). Further, judges of the superior and appeal courts of the provinces may only be removed from office “on address to the Governor General by both houses of Parliament”,²⁴ thus constitutionally enshrining the independence of the judiciary.²⁵

In addition to the provincial and territorial court systems, there are four federal level courts: the Supreme Court of Canada (the ultimate court of appeal in the nation); the Federal Court (which includes both trial and appeal divisions); the Tax Court of Canada; and the Courts Martial (for military offences). Further, a myriad of statutorily created administrative bodies and tribunals at both the federal and provincial/territorial level hold hearings and make decisions relating to a plethora of legal issues, including human rights, workplace health and safety, privacy, competition matters, copyright, labour relations, and patents, to name only a very few. These bodies are governed by statute and their decisions may be subject to a statutorily-provided appeal process and/or to judicial review by the courts. Figure 1 provides a general illustration of Canada's court system.

Figure 1: Canada's Court System²⁶



3. Subject matter jurisdiction of the courts

The Supreme Court of Canada is the final court of appeal in Canada with jurisdiction in all areas of law (civil, criminal, family, constitutional, etc.). Provincial appellate courts have a similar type of subject matter jurisdiction and typically hear appeals from decisions of their respective provincial superior courts of record. Provincial superior courts typically have jurisdiction in relation to all kinds of matters not exclusively reserved for other courts (including the most serious criminal cases, civil actions,²⁷ and divorce proceedings²⁸), as well as (in some cases) authority to hear appeals from the decisions of their respective courts of limited jurisdiction. Provincial courts of limited jurisdiction can deal with both provincial/territorial and federal laws, dealing predominantly with most kinds of criminal offences (including all preliminary inquiries), family law matters (excluding divorce), criminal offenders under age 18, traffic offences,

provincial regulatory offences and, in some jurisdictions, civil cases relating to matters under a specified dollar amount.²⁹

The Federal Court and Federal Court of Appeal are superior courts with jurisdiction limited to matters specified in federal statutes. The Federal Court may conduct trials and hear appeals or judicial review applications from certain federal administrative tribunals and deals with such issues as copyright, federal-provincial disputes and competition laws. The Federal Court of Appeal hears appeals from the decisions of the Federal Court, and also has jurisdiction to hear appeals or judicial review applications from certain federal administrative tribunals. In some cases (e.g. maritime law), a matter can be brought either before a provincial or territorial superior court, the Federal Court or the Federal Court of Appeal.³⁰

The Tax Court of Canada and military courts (including the Court Martial Appeal Court) are specialized federal courts dealing, respectively with disputes arising in relation to federal tax and revenue legislation, and cases arising from the Code of Service Discipline applicable to members of the Canadian forces and accompanying civilians.³¹

Lists reviewing some of the key steps typically found in civil and criminal litigation are included in Appendix “A”.

4. Administration of the courts

The operations of the courts are generally administered under the auspices of the respective federal or provincial/territorial Ministry/Department of Justice. A typical sort of provincial/territorial model is for the provincial/territorial Ministry of the Attorney General to include a Court Services Branch/Division that is responsible for delivery of court administrative services throughout the province/territory, which includes services such as registries (where documents are filed, collected and managed), clerks, security, prisoner custody and prisoner escort services.³² In at least one case, the Court Services Division includes a branch that is specifically devoted to planning, development and implementation of IT systems and supporting models.³³

In order to maintain judicial independence, it is also essential that judicial information (e-mails, draft judgments, bench memos, etc.) be housed and maintained separately and independently from the kinds of case-related information that a court services branch is in charge of administering. For some Ontario courts, this is dealt with by way of Memoranda of Understanding between the Chief Justice of the particular court and the provincial Attorney General.³⁴ Further, since 2008 the Judicial Information Technology Office (JITO) has operated in Ontario to ensure judicial oversight in keeping judges' confidential information separate and secure from other Ministry or government information.³⁵

D. Challenges facing the legal system

The Chief Justice of Canada has labeled “access to justice” a crisis facing the Canadian legal system,³⁶ raising the concern that public confidence in the justice system will wane if only the wealthy and those qualifying for legal aid can actually use the court system (although the availability of legal aid is increasingly limited in many Canadian jurisdictions, especially in relation to civil matters³⁷). Access to justice, then, has relatively recently been framed as a concern for the “middle class”, generating reports and initiatives to address this aspect of the issue.³⁸ Other access to justice concerns include the physical inaccessibility of courts and court processes (including for reasons related to geographic distance, as well as differences in ability); increases in the number of self-represented litigants; delays in the processing and resolution of both civil and criminal cases; and the particular failings of an unreformed criminal justice system in relation to Aboriginal persons.

To the extent that the prohibitive cost of litigation has been identified as a primary problem, various efforts have been made to simplify and expedite procedures, to involve judicial and court staff more directly in the management of cases, to require parties to participate in alternative dispute resolution mechanisms and to provide better information for self-represented litigants.³⁹ In addition, the increasing cost of providing justice services has become a source of strife between and amongst justice system participants.⁴⁰ Technology has also been looked upon as a mechanism not only for increasing the physical accessibility of courts and court processes, better distributing legal information and better connecting courtrooms with communities, but also for cutting labour, transportation and other justice system costs through mechanization. As will be discussed below in Part III, it is hoped that electronic case management systems and e-filing will improve operating efficiencies, that greater online access to court and legal information will improve the accessibility of the law, and that distance mediating technologies like videoconferencing will not only reduce the cost of prisoner transport for attendance at hearings, but also enhance access to justice in remote communities where courts may sit irregularly while “on circuit”.

III. DIGITIZATION OF COURT PROCESSES

Our online review of information about the state of digitization in the provincial, territorial and federal courts of Canada yielded both an inconsistent quality and quantity of information from one jurisdiction to the next. As a result, this section of the report is not an exhaustive inventory. Instead, relying on the limited information publicly available online it comments on general trends and notable examples in relation to various aspects of digitization/online presence.

A. External websites

All of Canada’s provincial, territorial and federal courts and the Supreme Court of Canada have websites that include address and contact information, court hours, general information about the function of the court, links to the rules of court (and usually

practice directions and forms), as well as a searchable database of the court's decisions and/or a link to the searchable CanLII database (or to SOQUIJ for Québec courts). Most also provide links to other resources, such as public legal information centres, legal aid offices and/or the Ministry of the Attorney General related to that particular court. However, there were certain types of features on various courts' websites that were noteworthy, generally in terms of providing more varied kinds of access to case and law-related information, including:

1. links to live webcasts and/or webcast archives of court hearings and/or to other types of public events taking place in the courtroom;⁴¹
2. links to fillable forms⁴² and/or online digital assistant technologies that provide step-by-step instruction to citizens on how to complete court forms;⁴³
3. links to a portal for filing electronic documents;⁴⁴
4. links to allow users to subscribe for RSS news feeds and/or tweets from the court;⁴⁵
5. links to instructional videos⁴⁶ providing public legal information and/or instruction, as well as video "ads" for certain kinds of court services;⁴⁷
6. links to online registration for media to request e-mail notice in advance of impending applications for discretionary publication bans;⁴⁸
7. websites specifically designed to maximize accessibility for persons with physical disabilities;⁴⁹ and
8. searchable online repositories of case information (sometimes including materials filed).⁵⁰

B. Social media

There are "unofficial" Facebook pages for most courts (and many judges) in Canada, although none of the official court websites refer to Facebook sites. As noted above, the Alberta Provincial Court has posted a YouTube video promoting the benefits of its online scheduling application, numerous courts offer subscriptions to RSS newsfeeds relating to court news and the decisions of Nova Scotia courts (as well as other court news) are available on Twitter.

C. Other Communications

A number of Canadian courts use and/or have piloted various kinds of technologies for other communications purposes, which are discussed below.

1. Public view terminals

In 2008, Ontario piloted public view terminals at 3 court locations, which allowed the public to search for and view case-based information, with the goal of reducing wait times at public service counters. The pilot was under consideration for province-wide expansion in 2008-2009, but it is unclear whether the expansion occurred.⁵¹

2. Public internet access in courtrooms

Provision of public internet access in courtrooms and court buildings appears to vary from jurisdiction to jurisdiction in Canada. In Nova Scotia courts, internet access has been available at counsel tables, as well as on the bench since 2005.⁵² Province-wide internet connectivity for court staff and counsel within Ontario courtrooms was reportedly an ongoing project in Ontario as of 2009-2010,⁵³ and as of 2010 court staff were able to schedule Court of Appeal matters from the courtroom using wireless technology and tablets.⁵⁴ Free wireless internet access is available to the public in the Supreme Court of Canada.⁵⁵

3. E-mail communication with lawyers/litigants

E-mail communication between Canadian courts and counsel or self-represented litigants appears fairly common, although the formal purposes for which e-mail is used vary. For example, litigants can use e-mail to file various types of documents with the Nunavut Court of Justice,⁵⁶ the Ontario Court of Appeal,⁵⁷ the Ontario Superior Court of Justice,⁵⁸ the Ontario Family Court,⁵⁹ the Alberta Provincial Court,⁶⁰ and the New Brunswick Court of Appeal,⁶¹ and to make hearing-date related requests from the Quebec Court of Appeal⁶² and the Newfoundland & Labrador Court of Appeal.⁶³ The Courts of Appeal in Ontario, Quebec and BC use e-mail to transmit their reasons for decision to the parties.⁶⁴ In PEI, Alberta and BC, registered media outlets receive notification of applications for discretionary publication bans by e-mail from the court.⁶⁵

4. Internal communications and training

Canadian courts use a variety of technological tools for internal communication purposes, including e-mail, telephones and fax. Internal communications technologies also include those relating to separating and securing judicial information, as well as those related to staff training/internal knowledge management.

In order to ensure that the judicial independence mandated by the Constitution is protected, certain technological solutions have been employed to secure and separate judicial information (e.g. judge's e-mails, draft judgments, etc) from government information. For example, JUDICOM is used by over "800 federal judges in Canada", and "more than 900 other members of the judicial community including judicial assistants, provincial judges and law librarians."⁶⁶ JUDICOM is described as a communications system "designed to facilitate and enhance communication, collaboration and knowledge sharing by connecting all members within a trusted online environment."⁶⁷ It was developed by the Office of the Commissioner for Federal Judicial Affairs and is powered by FirstClass v9.1 software, which "integrates a suite of applications, including: e-mail, calendars, contacts, instant messaging, workgroup collaboration, and file or document storage".⁶⁸ Access to and use of JUDICOM is limited to 10 judicially-related membership groups and court IT technicians. All users must first apply to use the system by faxing in a completed application. The JUDICOM portal online includes a help centre which, *inter alia* features "awareness" videos relating to the

newest version of FirstClass, as well as software and installation instructions. The courts of Quebec,⁶⁹ Ontario,⁷⁰ and Alberta,⁷¹ also appear to have their own intranets, although we have found little information relating to them online.

As of 2008, the Ontario Ministry of the Attorney General used the content management system Plone⁷² to maintain its Court Forms online. In addition, Plone was used to house training materials related to various other information management systems and applications to create a “knowledge environment for remote learning for staff.”⁷³ In addition, the Ontario Ministry of the Attorney General has used MicroSoft Live Meeting⁷⁴ and videoconferencing to convene remote training sessions, and used local shared training folders to provide materials for remote training on various information management systems.⁷⁵

5. Webstreaming

As noted above, Supreme Court of Canada hearings are webcast live and the recordings archived online. Hearings or aspects of hearings have also been webcast in Ontario, BC and Nova Scotia.⁷⁶

6. Audioconferencing

While teleconferencing seems likely to soon be eclipsed by videoconferencing in many jurisdictions, it is available (usually on request to the court) in courts across Canada for a wide variety of purposes, including:

1. applications for search warrants in circumstances where it is impracticable for a peace officer to appear in person before a justice;⁷⁷
2. certain preliminary motions/applications (e.g. Alberta,⁷⁸ British Columbia,⁷⁹ Manitoba,⁸⁰ New Brunswick,⁸¹ Northwest Territories,⁸² Nunavut,⁸³ Ontario,⁸⁴ Québec,⁸⁵ Yukon⁸⁶);
3. family mediations (e.g. Nunavut⁸⁷);
4. case management and pretrial conferences (e.g. Newfoundland,⁸⁸ Prince Edward Island,⁸⁹ Québec,⁹⁰ Yukon⁹¹);
5. bail applications (often outside of regular court hours or where the accused is in a remote community) (e.g. Nova Scotia,⁹² Nunavut,⁹³ Saskatchewan⁹⁴);
6. the whole or any part of a hearing in the Federal Court of Canada,⁹⁵ and the Tax Court of Canada,⁹⁶ and
7. oral submissions in the Supreme Court of Canada.⁹⁷

Audioconferencing is specifically available for use in the transmission of testimony and for purposes of cross examination in some jurisdictions (e.g. Nova Scotia,⁹⁸ Yukon⁹⁹), but is explicitly not for use in delivering vive voce evidence under the civil procedural rules in Nunavut.¹⁰⁰ Appearance of an accused by telephone is explicitly permitted in the context of judicial interim release (bail) hearings by s. 515(2.2) of the *Criminal Code*. However, if the evidence of a witness is to be taken during the bail hearing, the consent of the prosecutor and the accused is required “if the accused cannot appear by closed

circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication” (s. 515(2.3)).

Additionally, use of audioconferencing for providing remote interpretation is under consideration in Ontario.¹⁰¹

Teleconferenced oral submissions in the Supreme Court of Canada are transmitted by satellite, while in New Brunswick and Newfoundland teleconferences are convened using CourtCall.¹⁰²

7. Videoconferencing

Videoconferencing is available in courts across Canada, for a wide variety of purposes, although (like teleconferencing) the reported nature and extent of its use and availability varies from jurisdiction to jurisdiction. While videoconferencing is undoubtedly used for internal meetings and training, our focus here is on the information we have obtained relating to its uses in legal processes involving members of the public (as opposed to internal staff, the judiciary, etc.), which include:

1. bail hearings/remote first appearances (e.g. Alberta,¹⁰³ BC¹⁰⁴ Manitoba,¹⁰⁵ Newfoundland,¹⁰⁶ N.S.,¹⁰⁷ Ontario,¹⁰⁸ Saskatchewan,¹⁰⁹);
2. witness testimony from remote locations (e.g. Alberta,¹¹⁰ New Brunswick,¹¹¹ N.S.,¹¹² Nunavut,¹¹³ Saskatchewan,¹¹⁴ Yukon¹¹⁵);
3. solicitors’ meetings with clients in remote locations (e.g. Alberta,¹¹⁶ BC¹¹⁷ N.S.¹¹⁸);
4. attendance by accused persons on the hearing of appeals (e.g. Alberta,¹¹⁹ Saskatchewan¹²⁰);
5. search warrant applications (e.g. BC¹²¹);
6. arguing applications/motions or appeals (e.g. BC,¹²² New Brunswick,¹²³ NWT,¹²⁴ N.S.,¹²⁵ Nunavut,¹²⁶ Ontario,¹²⁷ PEI,¹²⁸ Quebec,¹²⁹ Saskatchewan,¹³⁰ Yukon¹³¹);
7. conducting mental fitness assessments of inmates in custody in non-urban locations (e.g. Ontario¹³²);
8. as an assistive technology to allow an in-hospital witness to testify (e.g. Ontario¹³³);
9. conducting solicitor/client assessments for clients in remote regions (e.g. Ontario¹³⁴);
10. entry of guilty pleas by in-custody accused persons (e.g. Ontario¹³⁵);
11. sentencing of accused persons in remote locations (e.g. Ontario¹³⁶);
12. case conferences/pretrial conferences (e.g. Ontario,¹³⁷ Yukon¹³⁸);
13. return applications under the Hague Convention on International Child Abduction (e.g. PEI¹³⁹); and
14. the whole or any part of a hearing in the Federal Court of Canada,¹⁴⁰ and the Tax Court of Canada,¹⁴¹ and
15. oral submissions in the Supreme Court of Canada.¹⁴²

Additionally, use of videoconferencing for providing remote interpretation is in use by the Immigration and Refugee Board of Canada,¹⁴³ and is under consideration in Ontario.¹⁴⁴

CCTV is also used to allow vulnerable witnesses (e.g. child witnesses and witnesses in high security trials) to testify from secure locations outside of the courtroom.¹⁴⁵

(i) Configuring and paying videoconferencing

As noted above, videoconferencing technology is frequently used in Canada to allow an accused person who is in custody to appear before a judicial officer for purposes such as a bail hearing. A typical configuration is for the accused to be located in a correctional facility or holding centre, while a judge or justice of the peace, a crown attorney and a defence lawyer are located in a courtroom. In addition to a camera in the courtroom and in the correctional facility, there may also be a camera in a courthouse interview room that allows defence counsel to meet privately with their client.¹⁴⁶

In Saskatchewan by 2011, video court suites were available in some 39 locations (including provincial courts, circuit courts, correctional centres and RCMP detachments) and 6 “victim services soft rooms”, of which approximately 11 had ISDN phone numbers, while others relied upon the GOS network. A bridge has to be set up in order to facilitate communication between locations with different types of installed video lines.¹⁴⁷ Videoconferencing, fax and phone equipment were also used to establish a “Northern Hub” for Justices of the Peace in 2010-2011, allowing for access to high level expertise during extended hours to serve 8 northern communities on matters such as remand and release hearings, telewarrant and search warrant applications.¹⁴⁸ The party that would normally bear the costs of an appearance would also be responsible for paying videoconferencing charges relating to private facilities or equipment other than the equipment available in the courts, but (as of 2011) no charges were payable for use of the courts’ equipment or communications system.¹⁴⁹

In BC, the costs of court-initiated videoconferences (for purposes such as appearances by persons in-custody and family cases) are absorbed by the Court Services Branch of the Ministry of Justice, but counsel and parties pay for use of videoconferencing technology “when they would have paid the costs for an in-person appearance”.¹⁵⁰ Counsel must file an application to request use of the technology (e.g. for remote witness testimony) and agree to pay the charges associated with use of the equipment, but the judge must approve use of the technology “in each specific court proceeding”.¹⁵¹ In addition, the requesting party must undertake to make the necessary arrangements and pay the costs associated with use of any private facilities (eg at the remote location of the witness) outside of the BC Courts’ Network, which as of October 2010 included 106 videoconferencing systems in court locations, 11 in police locations, 17 in judiciary locations, 38 correctional and penitentiary locations, as well as 31 CCTV witness testimony systems located throughout the province.¹⁵²

(ii) Goals underlying use of videoconferencing technology

Videoconferencing technology is consistently described as a way of offering more timely *access to justice* for those in remote communities. Distance mediation is a particularly important feature of videoconferencing technology for communities within provinces and territories that are only served by circuit courts that may only physically convene in those communities monthly (or which may not be accessible at certain points in the year due to weather).¹⁵³ In 2007, the Northern Access to Justice Committee in Saskatchewan recommended the expanded use of remote appearances as a means to:

- reduce the need to transport prisoners for routine court appearances;
- allow prisoners in RCMP cells to be dealt with on a more timely basis;
- reduce the length of dockets at busy circuit point locations;
- allow court at circuit point locations to proceed during bad weather days; and
- allow counsel to appear by telephone where appropriate.¹⁵⁴

Similarly, the National Council of Welfare joined with the Manitoba Aboriginal Justice Inquiry in recommending that “provincial and territorial governments use whatever means are necessary, including video conferencing, to conduct bail hearings with the accused remaining in the community where the offence was committed” in order to reduce the number of Aboriginal persons (including mothers and youths) who were jailed in southern detention centres, cutting them off from their homes, families and community support systems.¹⁵⁵ For similar reasons, the Nunavut Court of Justice has directed that bail hearings should take place in the community in which the arrest occurs either before a local Justice of the Peace or by teleconference (in the absence of videoconferencing equipment), rather than transporting arrested persons to the Iqaluit remand centre (which results in over-crowding, unnecessary expense and pre-hearing delay).¹⁵⁶

Additionally, videoconferencing is viewed as a way of *reducing costs and security risks* by obviating the need to transport persons in-custody to and from detention facilities in the criminal context. Similarly, it may also reduce the expense of witness and counsel travel to courts in the context of both criminal and civil cases.¹⁵⁷ However, for civil litigants requesting use of court videoconferencing facilities, the associated equipment, telecommunications charges,¹⁵⁸ any charges for use of other videoconferencing equipment and any costs associated with bridging external systems with court systems must also be taken into account.

In Ontario, videoconferencing is often used in the NE and NW regions where the distance between court sites can be 100-600 km, using the 2005-award-winning Criminal Justice Video Network developed in collaboration with CGI Group to link criminal courts, correction facilities and police stations.¹⁵⁹ Although by 2010 the project had not met its target of 50% of remand hearings by videoconference,¹⁶⁰ it has been credited with both access to justice and cost reduction successes. For example, videoconferencing allowed for a judge in Kenora to pass sentence on an Aboriginal person located in Keewaywin, which permitted the community and its Chief to participate in the sentencing process. The process was enabled by the establishment of linkages between the courts’ video

network and the Northern Ontario Network (developed through a federal/First Nations partnership).¹⁶¹ Roll out of a more robust Video Over IP platform was planned for Ontario in 2008-2009.¹⁶²

(iii) Protocols for use of videoconferencing

Guidelines and protocols relating to videoconferencing can perhaps best be understood in relation to the type of proceeding in which the technology is proposed for use, with significant distinctions between civil and criminal proceedings. Examples relating to both kinds of proceedings are set out below.

Civil – Rule 1.08 of Ontario’s Rules of Civil Procedure provides that where telephone or videoconference facilities are available “all or part” of any motion, application, status hearing, trial (including oral evidence and argument), reference, appeal or motion for leave to appeal, proceeding for judicial review or pre-trial or case conference can be conducted using phone or videoconferencing either on consent of the parties with court approval or by order of the court. Under R. 1.08(5) in deciding whether these technologies should be used for any particular matter, courts are instructed to consider:

- “(a) the general principle that evidence and argument should be presented orally in open court;
- (b) the importance of the evidence to the determination of the issues in the case;
- (c) the effect of the telephone or video conference on the court’s ability to make findings, including determinations about the credibility of witnesses;
- (d) the importance in the circumstances of the case of observing the demeanour of a witness;
- (e) whether a party, witness or lawyer for a party is unable to attend because of infirmity, illness or any other reason;
- (f) the balance of convenience between the party wishing the telephone or video conference and the party or parties opposing; and
- (g) any other relevant matter. O. Reg. 288/99, s. 2; O. Reg. 575/07, s. 1.”

Criminal - Remote appearances by convicted and/or accused persons in criminal matters are specifically provided for in the *Criminal Code of Canada*, although more specific requirements are mandated in relation to certain kinds of appearances. For example appearances by accused or convicted persons using CCTV or “other means” relating to the following kinds of issues are only permitted so long as the technology “allows the court and the person to engage in simultaneous visual and oral communication”:

1. orders authorizing the taking of bodily substances on the imposition of sentencing (ss. 487.053 and 487.055);
2. appearances relating to preliminary inquiries (s.537);
3. appearances relating to trial (s. 650(1.1));
4. fitness hearings (s. 672.5(13)); and
5. appearances relating to appeals (s. 688(2.1))

In these situations, equipment must be set up to ensure the “simultaneous visual and oral communication” required by the *Code*, including ensuring that the accused can always see the judge or justice as well as the party who is speaking. Additionally, remote appearances relating to some of these situations are also governed by other requirements, such as:

1. allowing for private communication between the accused/convicted person and their counsel (e.g. 487.053(2) and 487.055(3.01)); and
2. requiring advance agreement by the crown and the accused to the accused person’s appearance by video, rather than in person (e.g. s. 537(1)(f) and (k), s. 650(1.1) and (1.2)).¹⁶³

Further, a child witness or a witness under a disability in a criminal trial may testify outside of the courtroom provided that “arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the witness by closed circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony” (s. 486.2(7)).

Once any procedural or statutory requirements have been satisfied, practical considerations also come into play whether in criminal or civil proceedings. We understand that court staff members are trained in relation to equipment set-up (a part of which is obviously guided by any procedural or statutory requirements). Where the equipment in use is portable, the configuration of the rooms involved may change from time to time and the positioning of cameras may also vary. A typical requirement is to ensure that the person appearing remotely has no distinct advantage over participants in the courtroom (e.g. by being able to read material on the bench, or at the clerk’s or counsel’s table).

8. Assistive devices for persons with disabilities

Assistive devices for persons with disabilities are available in (or in connection with the services of) a number of Canadian courts. In addition to adjustable equipment such as desks and lecterns, these include:

1. FM and infrared listening devices (e.g. Ontario);¹⁶⁴
2. use of teletypewriter (TTY) equipment and software and Braille printers (e.g. Ontario);¹⁶⁵
3. use of text reader technology and using proportionality on websites to allow for magnification and shrinkage of text (e.g. Ontario,¹⁶⁶ Supreme Court of Canada,¹⁶⁷ Federal Court of Canada¹⁶⁸);
4. use of client-side cascading style sheet files to permit website users to configure visual elements to meet accessibility needs (e.g. Supreme Court of Canada¹⁶⁹);
and
5. e-filing requirements specifying use of PDFs to ensure translatability into Braille (e.g. Supreme Court of Canada).

D. Electronic Case Administration and Management

1. Case management systems

Our research indicates that electronic case management systems are at various stages of study, development, piloting and use in numerous courts across Canada, including:

1. *Supreme Court of Canada* – the current Case Management System is slated to be overhauled, with an enterprise architecture planned to permit an e-filing portal planned for the future, as well as an Electronic Records Management System;¹⁷⁰
2. *Federal Court* – a 2-year plan is underway to upgrade aging IT equipment and strengthen information security in order to pave the way for development of a Court Records Management System, and digital audio recording.¹⁷¹
3. *Alberta Provincial Court* – the Court Case Management Program, led by judges, is intended to better manage cases in the Edmonton and Calgary adult provincial criminal court system. Components of that Program are technology-based. Phase I of the program extended from February 2010-November 2011 and involved a related initiative in the Criminal Justice Division called “crown file ownership”, which assigned a file to one prosecutor “cradle-to-grave” to allow for tracking. Phase I included introduction of a remote courtroom scheduling system (RCS), allowing registered users to book matters online at <http://www.albertacourts.ca/ProvincialCourt/CourtCaseManagement/RemoteCourtroomScheduling/tabid/351/Default.aspx>. Phase II of the Program ran from July 2010-March 2011 and involved migration of the Prosecutor Information System Manager (PRISM), creating a User Portal and deactivating the subpoenas and scheduling sub-system of the old scheduling system Justice Online Information Network and expansion of the RCS to courts in Wetaskiwin and Okotoks. The case management system operates on Microsoft’s Dynamics Customer Relationship Management System and a key goal appears to be establishing a “single source of truth” for provincial court scheduling.¹⁷² The close-out report for Phase I identified a number of successes, but also areas for improvement, including: creation of more realistic time lines for IT aspects of delivery, importance of creating up-front awareness and early staff training around related processes, need for sensitivity to the potential limitations of videoconference meetings to address “the people side of change”, and the importance of procuring involvement of external stakeholders (including compensation or honoraria for participating).¹⁷³
4. *British Columbia Provincial Court and Superior Court* – JUSTIN is the BC Justice information system developed by Sierra Systems.¹⁷⁴ It provides “a single integrated database comprising almost every aspect of a criminal case, including: police reports to Crown counsel, Crown case assessment and approval, Crown victim and witness notification, court scheduling, recording results, document production and trial scheduling.”¹⁷⁵ The system, among other things, allows law enforcement real time access to an accused’s criminal court file history, real time access to court scheduling information, requires data entry only once and then is available to all authorized users, can produce standard format documents and

- reports, and features security and audit trails allowing tracking of changes and deletions of data.¹⁷⁶ It is accessible only to authorized users from groups such as law enforcement, crown's offices, etc. Integrated Courts Electronic Documents (ICED) links JUSTIN with the Sheriff Custody Management System (SCMS), the Corrections Offender Management System (CORNET) and allows for e-faxing between justice partners who are unable to link directly to the case management system. ICED uses an ORACLE database to store PDFs, Web Methods for workflow, uses i-keys with Entrust Software for digital signatures and authentication and signature pads to get the electronic signature of an accused.¹⁷⁷ Case management of information in civil cases relies on the Civil Electronic Information System (CEIS), which appears to be an Oracle forms application.¹⁷⁸
5. *British Columbia Court of Appeal* – WebCATS is a web-based tracking, scheduling and management system developed for the Court by OpenRoad. The system is built on Microsoft.NET technology that allows for case tracking, scheduling and an interface to the Court's Digital Audio Recording System (DARS). Data previously held in the Court's DOS-based system CATS was migrated over to the new system after 2004.¹⁷⁹ The goal is for all necessary documents (including reserve and oral judgments on file) to be part of the WebCATS system, and the system also allows for generation of monthly statistical reports on completion of cases (using an Excel spreadsheet).¹⁸⁰ As discussed below, an e-filing feature is currently be implemented by the Court.
 6. *Manitoba* – the Cooperative Justice Initiative goal in 2008-2009 was the integration of the Provincial Court system (CCAIN), the prosecution and victims services system (PRISM) and the corrections offender management system (COMS) to better enable information exchange between the Ministry of Justice and partner agencies such as police.¹⁸¹
 7. *Newfoundland* – in 2009, the TRIM system was implemented in the St. John's Office, allowing for electronic retrieval of files, electronic disclosure and part of an eScheduling initiative launched for the Provincial Court.¹⁸²
 8. *Nova Scotia* – the Justice Enterprise Integration Network was completed in 2005, providing support for court services, correctional services, victim services and other players including policing agencies and prosecutors. The system allows for offender tracking, court case management, corrections case management and fines recording and processing. The system is also linked to the Canadian Centre for Justice Statistics (to input NS-based crime statistics).¹⁸³
 9. *Nunavut* – in 2005 reported fully implemented automated systems for the civil registry (known as the Court Information System) and an Integrated Court Services Information System relating to adult and youth criminal cases.¹⁸⁴
 10. *Ontario* – as of 2009, the Ministry of the Attorney General proposed a Court Information Management System (CIMS) that would integrate the three existing systems: Integrated Court Offences Network (ICON) for criminal cases, FRANK for civil cases, as well as the Estates Case Management System, while also enhancing functionality by allowing for e-document management, court scheduling, financial and automated workflow capabilities and enable the introduction of online services. The first version of CIMS was expected in the spring of 2012.¹⁸⁵ Several phases have been involved, including: (i) converting

all courts in the province to either ICON or Frank; (ii) creation of ICON v. 2.2 to enhance web useability, streamline workflow processes and ensure municipal bylaw ticketing could be uploaded into the system;¹⁸⁶ and (iii) reconfiguration of FRANK to accommodate family and civil justice reform initiatives and make it searchable from all court locations province-wide and generate detailed reports for criminal and family cases linked with civil cases.¹⁸⁷ The Estates Case Management System, used in 49 Superior Court locations, is web-enabled and allows staff to enter and retrieve local estates data. A public access module was tested in Toronto, and the trial of an associated e-filing system was discontinued.¹⁸⁸

11. *Quebec* – an IT project called the Integrated Justice Information System (IJIS) was outlined as early as 2003, with the goal to connect different stakeholders in justice, public security, health, social services, the police, crowns and the public. The system was oriented toward criminal, penal, civil and youth matters, with trials to be in place in Outaouais for criminal matters by March 2013, and a stage 2 roll out for civil matters planned for March 2014, but was cancelled in early 2012.¹⁸⁹
12. *Saskatchewan* – the Criminal Justice Information Management System (CJIMS) has been initiated by the Attorney General, Corrections, Public Safety and Policy and the Information Technology Office. It is intended to create an integrated case management system for criminal matters and replace existing legal systems (including the Corrections Management Information System). Implementation is targeted for 2013.¹⁹⁰ The Court of Appeal implemented a new case management/document management and e-filing system in 2011, referred to as eCourt (which also allows others to search court files for a fee).¹⁹¹

2. Electronic filing

The Canadian Centre for Court Technology (CCCT) has compiled a series of “E-Filing Case Studies”, which is, to our knowledge, the most comprehensive and current analysis of this issue in Canada. The CCCT study provides detailed case-by-case information relating to the Federal Court, the Tax Court of Canada, the BCSC & Provincial Court, the BCCA, the Alberta CA, the Saskatchewan CA, the Ontario Superior Court of Justice and the Competition Tribunal (a federal administrative body) including the technologies involved, the costs, the key documentation and the “takeaways”.¹⁹² Here, we intend only to highlight certain aspects of that comprehensive ongoing research and to supplement it with any additional information gleaned during our online search processes, as follows:

1. *Supreme Court of Canada* – since 2008, the Court has required that all parties file electronic copies of their materials, but the filing is completed through deposit of a CD ROM, although facilitation of the e-filing process is a stated objective for the Court under the Court Modernization Project.¹⁹³
2. *Federal Court of Canada* – since 2005, litigants may file documents electronically through the court approved e-filing provider Lexis-Nexis Canada, with documents in PDF and graphic file attachments in PDF or TIFF.

In certain circumstances, paper copies of documents (eg documents over 500 pages) must also be filed.¹⁹⁴

3. *Tax Court of Canada* – litigants are encouraged to file documents electronically (including notices of appeal, applications for extending time to file notices of appeal and other documents) and are able to do so using an e-filing system directly accessible on the Court’s website, which was developed in 2001 in connection with creation of a new case management system;¹⁹⁵
4. *British Columbia Supreme Court and Provincial Court* – since full implementation in 2009, litigants may file most Supreme Court and Provincial Court documents in PDF form (using electronic signatures) after they have registered for an account with Court Services Online (CSO).¹⁹⁶ CSO is a JAVA application, whereas the customized case management system used in conjunction with e-filing is built in ORACLE forms using an ORACLE database. An online payment system for associated fees is available. The project cost approximately \$5 million (including numerous expenses in addition to systems development costs). This is part of a broader based strategic goal of the BC government to provide e-services to the public.¹⁹⁷
5. *British Columbia Court of Appeal* – since its “unofficial” implementation in summer 2011, litigants may file documents electronically using CSO (originally developed as a BCSC and BC Prov Ct project and enhanced at a cost of about \$75,000). The “backend” of the BCCA e-filing system is a customized case management system called WebCATS, which “is developed in JAVA, .NET against a SQL Server database.” Since September 2011, litigants have been required to file electronic versions of their facts and statements on CD ROM.¹⁹⁸
6. *Alberta Court of Appeal* – as a result of a project initiated in 1998, litigants may file transcripts, facts and supporting materials online at <https://www.albertacourts.ca/ca/efiling/>, which requires registration before use. From 2004 to 2007, facts and supporting materials for appeals from trials of ten days or longer were required to be e-filed unless otherwise ordered. As of 2007, however, e-filing became optional for all appeals, although the court “strongly supports the e-appeal initiative”, since certain technological infrastructure needed to be put in place to support e-filing. The project uses a custom-built application combining ASP.net and 1.1 on IIS 6.0 with Windows 2004 servers and an SQL Server 2000 database manages its content and cost approximately \$30,000.¹⁹⁹
7. *Alberta Provincial Court* – as of 2010, notices of application alleging a breach of the *Charter* and supporting material in Calgary Criminal, Calgary Regional and Edmonton Criminal Divisions may be e-filed by completion of a form available on the Court’s website. Counsel are required to create an account on the Court’s website in order to enable e-filing.²⁰⁰ Similarly, counsel who intend to apply for publication bans in the Criminal Division and Family & Youth Division may e-file notice of their intention to do so, thereby allowing them to provide notice to registered media outlets as required by a 2005 Notice to the Profession.²⁰¹

8. *Saskatchewan Court of Appeal* – as part of a 4 phase eCourts project initiated in 2008 (to include e-filing, case management and document management functions), approved filers may now file all documents for civil and criminal appeals, as well as related chambers applications online at <https://ecourt.sasklawcourts.ca/?q=faq#n245>, which is accessible from the Court’s website. A commercial product with web based e-filing, case and document management called eCourt was purchased at a cost of approximately \$275,000 (including “requirements documentation by the outside consultant”) from Sustain Technologies Inc. On-Base is used for the document management component of the system.²⁰² As of April 2012 e-filing of court of appeal documents was made mandatory.²⁰³
9. *Ontario Superior Court of Justice* – two e-filing projects (Toronto E-file and Ontario E-File) were piloted, but suspended in 2002. The Ontario Court Services Division (as discussed in part III below) is planning a modernization initiative called the Court Information Management System (CIMS), which will enable management of incoming and outgoing documents, including e-filing, with a first version of CIMS targeted for 2012.²⁰⁴
10. *Newfoundland Provincial Court* – since approximately 2009, registered users of the Judicial Enforcement Registry system may file documents online at <https://provincial.efile.court.nl.ca/>. The system operates on Adobe Reader and includes online fee payment, as well as for e-mail confirmation or rejection of filed documents.²⁰⁵
11. *Newfoundland Supreme Court* – allows for registered users of the Judicial Enforcement Registry system to file documents relating to wills, estates, and guardianship online at <https://supreme.efile.court.nl.ca/>, which also allows for registered users to search the registries for a fee.²⁰⁶

The Ontario Court of Appeal, Nunavut Court of Justice, New Brunswick Court of Appeal, and Prince Edward Island Supreme Court Appellate Division, allow for a form of “e-filing” through attaching PDF documents to e-mails sent to a specified address.²⁰⁷

3. Electronic docketing & scheduling

In many cases, as noted above, docketing and scheduling functions are components of integrated information management systems that are either in effect or under consideration in a number of jurisdictions in Canada. In addition, our research has revealed the following e-scheduling systems:

1. *Manitoba* – an eJudicial Information Scheduling System was reportedly under development in 2009-2010;²⁰⁸
2. *Newfoundland* – an eScheduling Initiative was launched in provincial court in 2009;²⁰⁹
3. *Nova Scotia* – eScheduling software was first introduced in Halifax courtrooms in 2005, with plans to roll it out to other courtrooms and staff;²¹⁰

4. *Ontario* – a pilot project that allowed parties on the Estates and Commercial Lists in Toronto to schedule dates for appearances online using OSCAR (developed by CourtCanada Limited) was discontinued in 2010,²¹¹ and
5. *Saskatchewan* – Ministry of Justice oversaw development and testing of an automated system for scheduling in 2010-2011, with options to be evaluated in 2011-2012.²¹²

E. Courtroom technology

More than one Canadian jurisdiction credits itself with having an “eCourtroom” and/or having run “eTrials”. Although these kinds of claims typically relate to the inclusion in the courtroom of certain kinds of technologies, no two “eCourtrooms” appear to be exactly alike. Our research turned up examples of technologized courtrooms in the following jurisdictions:

1. *Alberta* – in 2010, the Alberta Supreme Court held its first “e-trial”, which the Court identified as involving these sorts of features: the majority of documents filed on DVDs, CDs, and flash drives rather than paper with search engines such as Summation Software used to retrieve and display the exhibits; multi-page experts’ spreadsheets viewed electronically; judges able to attach their own comments and notes on electronic exhibits; and judges able to access the record from their laptops afterward for the purposes of judgment writing.²¹³ e-Trials take place in courtrooms where evidence is managed, presented and stored electronically in an “eCourt”, with the system designed to manage transcripts (including real time transcription, historic timelines, edited transcripts, realtime streaming to remote locations); manage evidence (repository of records and multi-media based evidence stored using images and native file formats imported from participants, marking as exhibit or for identification, court operator controlled broadcast channel allowing for public view); manage associated materials (eg pleadings, witness statements, audio, video, realtime audiovisual streaming); and integrate external resources (links to court’s website, internet website for research, court’s additional core systems (eg case management)).²¹⁴ Alberta switched to DARS in 2001.²¹⁵
2. *British Columbia* – the Attorney General, and all levels of court are involved in a joint eCourt Project, with the goal of providing for seamless coordination from e-documents created in law offices to the registry to the judicial desktop and the courtroom, which would include eCourtrooms that have a complete e-court file, an integrated DARS that allows for real time monitoring of the courtroom in the Registry, e-exhibit management, and links to the civil and criminal court information systems (CEIS and JUSTIN).²¹⁶ The BCSC held its first fully electronic proceeding in 2011, a case in which all of the evidence was documentary, as part of a pilot project in which a series of ehearings will be held in a number of different kinds of proceedings, including those with witness testimony.²¹⁷ BC converted to DARS in 2006.²¹⁸ As the host jurisdiction for the Air India trials, BC developed the beginnings of an eCourt infrastructure by 2005, with a courtroom including: a video display network with 25 screens, secure

- network connections for counsel, hyperlinking of e-exhibits to an e-exhibits list, touch sensitive LCD monitors allowing witnesses to manipulate digital images in order to augment their testimony.²¹⁹
3. *Nova Scotia* – By 2005, law courts in Halifax featured an “Elmo” video system to allow for enlargement and projection of physical evidence, audio systems designed to amplify testimony for the jury, and DARS.²²⁰
 4. *Ontario* – Although the AG conducted a 2008 study of mature in-court technologies used in other jurisdictions, adoption of the technology in Ontario courtrooms has taken longer than planned.²²¹ However, videoconferencing technologies, vulnerable witness testimonial aids and digital evidence display technologies are being expanded. Additionally, Ontario claims to have one of the largest high-speed videoconferencing networks in the world.²²² Two “e-courtrooms” are located in Toronto, featuring videoconference monitors on the dais, witness stand, counsel tables, as well as the clerk and registrar’s desks, with intended upgrades to plasma screens for jury viewing and a document project camera planned for 2009-2010.²²³ Ontario’s first fully electronic trial was reported in 2000, which included thousands of exhibits on CD, displayed to jurors through “strategically placed computers and monitors”.²²⁴ Ontario courtrooms began converting to DARS in 2008.²²⁵

F. Other systems

Our online research also revealed a number of other types of technological systems that did not fit neatly into the preceding categories. These included:

1. automated Maintenance Information Management and Enforcement Systems for support orders in family proceedings (e.g. Alberta,²²⁶ Manitoba,²²⁷ Northwest Territories,²²⁸ Nova Scotia,²²⁹ PEI,²³⁰ and Saskatchewan²³¹);
2. automated production of family court orders during maintenance enforcement proceedings in order to limit delay (e.g. Manitoba²³²);
3. online fine payment portals (e.g. Alberta,²³³ Nova Scotia,²³⁴ Saskatchewan²³⁵); and
4. automated jury management systems allowing for, *inter alia*, random selection for jury notices, and online responses by citizens receiving jury notices (e.g. BC,²³⁶ Ontario²³⁷).

IV. CASE MANAGEMENT CASE STUDIES: ONTARIO AND BC

In many ways, both BC and Ontario have been leaders with respect to the implementation of technology. However, the two jurisdictions have had *very* different experiences and levels of success in terms of the implementation of case management systems. Here I will set out some of the key facts available on the public record with respect to the development and implementation of case management systems in each jurisdiction. These two very different factual records seem to raise interesting questions about what it takes to make digitization of court processes successful, including how to define “success”, the importance of clearly identifying the “problem” that technology is meant

to assist in addressing and the related human processes through which problem definition and measurement of success are determined.

A. Ontario

In 1996 the Ontario Ministries of the Attorney General and Public Safety and Security initiated the Integrated Justice Project (IJP) with the objective of improving “the information flow in the [criminal] justice system by streamlining existing processes and replacing older computer systems and paper-based information exchanges with new, compatible systems and technologies” and creating a Common Inquiry System “to allow authorized persons in one justice area to access and thus link to files held in other areas on cases, victims, witnesses, suspects and convicted offenders”.²³⁸ The IJP was expected to affect 22,000 government employees at 825 different locations in Ontario, in addition to police forces, judges, lawyers and the general public. The IJP used a “Common Purpose Procurement” process under which the government and a private sector consortium led by EDS Canada Incorporated (EDS) would both provide human and financial resources, sharing in “resulting risks and rewards”.²³⁹

Unfortunately, the IJP was terminated in 2002 due to “significant cost increases and delays”, with the estimated cost of completion starting at \$180 million in 1998, and rising to \$359 million in 2001, while expected benefits in the same period declined from \$326 million to \$238 million and it was recognized that not all systems would be implemented by August 2002 as projected.²⁴⁰ The Ontario Auditor General stated that the original business case upon which approval had been based had an “aggressive schedule based on a best-case scenario”, failed to recognize the “magnitude of change introduced by the Project, the complexity of justice administration ... or the ability of the vendors [to deliver the computer systems on time].”²⁴¹ Further, project management and senior court management had never agreed upon whether the expected court benefits (70% of the overall projected benefits) were actually realizable.²⁴² Other problems identified by the Auditor General included that the billing rates by consortium staff were three times those charged by the Ministries’ staff “for similar work”, and security systems were weak so that access to confidential data about “suspects, victims, witnesses” etc. “was vulnerable to unauthorized access”.²⁴³

As a result, the Auditor General issued a series of recommendations for improvement in 2002, but the government and the private consortium were ultimately unable to renew their agreement and the work term for the project expired, at which time the IJP was unfinished and the government had invested \$265 million, while realizing only a \$9.6 million benefit. By that time, only the Computer-aided Dispatch and Records Management systems for the police and the Offender Tracking Information System for corrections had been implemented. The Digital Audio Recording, E-file and Civil and Criminal Case Management System was incomplete and would not be completed as originally planned, and the Common Inquiry System was never achieved.²⁴⁴ EDS ultimately sued the government. The case was reportedly settled by a government payment of \$63 million. As then Attorney General David Young said, “we spent a lot of money and had very little to show for it.”²⁴⁵

By 2007, the Ministry of the Attorney General had taken a different approach and focused on development of a court scheduling and reservation system called Online System for Court Attendance Reservations (OSCAR), which it hired the private contractor Court Canada to develop. However, the program was shut down in 2010, resulting in a \$14.5 million lawsuit being filed against the Ministry.²⁴⁶ Although online reservation of estates matters is still referred to in the Ontario Superior Court of Justice's estates list practice directions, linking to OSCAR from the CourtCanada website produces an error message.²⁴⁷

In the interim, in 2008, the Ministry announced that it has been studying mature IT systems relating to videoconferencing and digitized evidence display technologies in other jurisdictions and had determined that no single vendor could replace Ontario's existing criminal, civil, estates and family applications with a single unified court information management system.²⁴⁸ As a result, it decided to pursue a route that would involve integration of existing legacy systems (ICON, FRANK and Estates) through a Court Information Management System (CIMS) that would allow for enhanced functions such as e-document management, court scheduling, financial and automated workflow capabilities and the introduction of online services to the public.²⁴⁹ The Ministry approved \$10 million in funding in 2009 to create CIMS and the first version of the system was forecast for release in spring 2012.²⁵⁰

As discussed above with respect to case management systems, steps have been taken to implement CIMS, including: converting all courts to ICON and FRANK, updating ICON for enhanced web capability, and updating FRANK to reflect amendments to the Rules of Civil Procedure, allow for searches at courts province-wide and for production of detailed reports.²⁵¹ In all, it has been estimated that over a 15 year period, the Ontario government has spent almost \$350 million to implement changes to case management systems to allow web-enabled access to material and online services.²⁵²

In 2008, the Ministry of the Attorney General for Ontario launched the Justice on Target (JOT) strategy, which was intended to, among other things, reduce by 30% "the provincial average number of days and appearances it takes to complete a criminal case" over a four year period.²⁵³ Numerous related initiatives have been undertaken, including: making first appearances more meaningful by providing accused persons with more information earlier to assist them in decision making; dedicated prosecution to allow Crowns to better monitor cases; enhanced video-conferencing (including for pleas, as well as to facilitate secure consultations between defence counsel and in-custody clients); and on-site Legal Aid applications.²⁵⁴ Statistics from 1 January 2011 to 31 December 2011 show a 1.3% reduction in the average number of days needed to complete a criminal charge since 2007.²⁵⁵

The Ontario experience has been publicly contrasted with the comparatively low-cost success of web-enabled court management systems in British Columbia.

B. British Columbia

By comparison with Ontario's trajectory in terms of case management systems allowing for integration and public access, BC's trajectory has been rather straight-forward. In 2001, JUSTIN became operational, allowing for the management of information relating to criminal cases. In 2003, CEIS became operational, allowing for the management of information relating to civil, family and estates cases. In 2004, e-search technology was implemented, allowing for, among other things, public searches of publicly accessible information relating to criminal and civil (not family) matters. In 2005, e-filing for civil matters (excluding family matters) became operational, allowing, among other things for the public to both file materials online, as well as to conduct searches of publicly accessible case-related information. In 2009, ICED was implemented, allowing for integration of JUSTIN with legacy systems in partner agencies, including the police and corrections.

By April 2011, e-filing had been fully implemented for small claims matters, family and civil matters in the BCSC and for appeals in the BCCA. Further, a fully electronic court file existed for small claims matters and civil matters in the BCSC. Implementation of e-filing was in progress for family and criminal matters in the Provincial Court and for criminal matters in BCSC. Implementation of a fully electronic court file was in progress for family and criminal matters in Provincial Court and for family and criminal matters in the BCSC. Fully operational e-filing and electronic court files are to be implemented in all family, small claims, and criminal matters, as well as appeals in Provincial Court, the BCSC and BCCA by April 2013.²⁵⁶

It is estimated that the cost of integrating all registries into a single database, which was the first phase of taking civil court services online cost approximately \$3 million.²⁵⁷

The BC Attorney General has recently announced its continuing support for the use of video and teleconferencing as well as the eCourt initiative. However, it has also noted that although expenditures on adult criminal justice personnel and processes have increased by 35% over 6 years, delays have increased, the number of persons in-custody awaiting trial has increased and the number of cases it takes more than 3 or more days to resolve is growing, and the number of cases and crimes dealt with have decreased.²⁵⁸ It has resolved to attend to this "paradox" through investigation and issuance of a White Paper in September 2012.

C. Questions arising

This relatively superficial review of some of the key facts relating to case management technologies and web-enabled access to the information in case management databases in Ontario and BC obviously raises areas for further research and questions, including:

1. Is there anything about the relative size and/or complexity of the justice systems and/or case loads in Ontario and BC that make a direct comparison difficult/impossible/unfair?

2. What sorts of processes were followed in each jurisdiction in order to plan and implement case management in order to take services online?
3. What sorts of research about existing systems in other jurisdictions was done? Was it incorporated into planning and implementation? If so, how so?
4. Does the implementation of digitized case management systems reduce delay? If so, how? If not, why not?

CONCLUSION

Our online research on the digitization of court processes in Canada identified examples of many types of technologies at various stages of development and implementation in jurisdictions across Canada. In so doing, it also raised a number of additional areas for future research and inquiry:

1. Is further data collection about exactly which kinds of technologies are being implemented in Canada necessary/advisable? If so, should it be focused on particular jurisdictions and/or particular technologies? Which ones? What kinds of questions need to be asked? In light of that, should qualitative and/or quantitative methodologies be used?
2. What specifically would it help to know about successful vs. unsuccessful strategies for implementation of technology? (e.g. how were the purposes of the implemented technology defined? How is the performance being measured? For purposes whose outcomes are not easily measured quantitatively, what should the measures of performance be? Should data be collected from members of stakeholder groups beyond the courts and courts administration? (e.g. from indigenous communities whose access to justice was intended to be improved through use of remote appearance technologies?))
3. Can the implementation of technologies be used to assist in alleviating access to justice concerns? If so, which ones? Could technologies have unintended access to justice consequences, both negative and positive? If so, what might those consequences be?

APPENDIX “A”
KEY STEPS IN CIVIL AND CRIMINAL LITIGATION IN CANADA²⁵⁹

I. CIVIL LITIGATION

Civil litigation can involve law suits between natural persons, corporations, government and government agencies that do not include prosecution of charges under the *Criminal Code*, but may involve matters such as property or contract disputes, family matters and tort claims. Family law and child protection matters tend to involve specialized processes. The table below sets out some of the typical key steps in basic civil litigation, together with suggestions about the sorts of related functions with which technologies might be engaged to assist:

| STEP | POTENTIAL TECHNOLOGIZED FUNCTIONS |
|---|---|
| PRETRIAL | |
| 1. Initiating the proceeding – one party (plaintiff) initiates the process by having a proceeding issued by a court (at this stage, a court file is created). | <ul style="list-style-type: none"> - help people to transmit their pleading to the other party (eg e-mail); help confirm if/when pleadings have been received Technologies that allow the <i>court</i> to: <ul style="list-style-type: none"> - store the pleadings and other documents filed by the parties - access the materials on demand (possibly including court staff, judges, etc) - organize and cross-reference the materials - record key dates, deadlines, location etc. (calendar) - possibly allow public access to some or all of the materials filed, or just to access “case information” that indicates key dates (eg filing deadlines, upcoming hearings, etc.), whether a judge has been assigned to hear the case or part of the case, etc. - search its files overall to create statistical profiles of how long cases take to get to trial, how many cases a court handled in a given period, and other such data (eg databases of some sort) |
| 2. Serving and filing the pleadings – plaintiff serves the process on the other party (defendant). Defendant serves its written responding pleading on the plaintiff and files it with the court. (If the defendant fails to do this within the time provided for, the plaintiff may be entitled to default | <ul style="list-style-type: none"> - allow people to transmit their pleading to the court and allow the court to receive that pleading and store it (eg e-mail or specific online repository) Technologies that allow the <i>court</i> to: <ul style="list-style-type: none"> - store the pleadings and other documents filed by the parties |

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| <p>judgment without further notice to the defendant). The plaintiff may be afforded the chance to serve a reply pleading on the defendant and file it with the court.</p> | <ul style="list-style-type: none"> - access the materials on demand (possibly including court staff, judges, etc) - organize and cross-reference the materials - record key dates, deadlines, location etc. (calendar) - possibly allow public access to some or all of the materials filed, or just to access “case information” that indicates key dates (eg filing deadlines, upcoming hearings, etc.), whether a judge has been assigned to hear the case or part of the case, etc. - search its files overall to create statistical profiles of how long cases take to get to trial, how many cases a court handled in a given period, and other such data (eg databases of some sort) |
| <p>3. Documentary discovery – the parties exchange lists of relevant documents with each other and allow one another to inspect the listed documents (except those that are privileged). Documents can include not just papers, but also electronic information, videos, etc.</p> | <p>Technologies that allow the parties to:</p> <ul style="list-style-type: none"> - scan, organize lists of documents, identify documents that are privileged and so will not be produced as well as documents that are not privileged and so will be produced, store, search documents - transmit documents to the other side or give the other side access to the documents being produced (eg searchable databases of some sort and possible some sort of network allowing multiple people to access and work on the documents simultaneously) |
| <p>4. Examination for discovery – each party gets the opportunity to examine a representative of the other party (and sometimes other persons) under oath or affirmation, in the presence of a reporter who will typically record the examinations, and later prepare transcripts of them.</p> | <p>Technologies that allow the parties to:</p> <ul style="list-style-type: none"> - record the examination - prepare transcripts that are searchable and accessible - create a record of any documents that might be identified or referred to during the examination (usually marked as “exhibits” to the examination) |
| <p>5. Pre-trial motions/pre-trial meetings – the parties may have to seek dates from the court in order to go before a judge or master to have them assist in resolving a dispute between them about the litigation (e.g. a refusal to answer a certain question in examination for discovery), or they may be required to meet with a judge or master for a case management or</p> | <p>Technologies that allow the court to:</p> <ul style="list-style-type: none"> - store filed materials like motion records (eg including affidavits, written arguments, copies of case law, etc) as part of an overall case file (see above) - access the materials on demand (perhaps even to view them while the parties are in court making their arguments) - organize the materials by inserting dates, etc. |

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| <p>settlement conference (which can involve the filing of a pre-trial report). (The parties may also have to attend an out-of-court ADR session prior to trial.)</p> | <p>(eg databases or some sort, but also technology that allows the materials to be viewed by court staff and judges, possibly even in court or in a judge’s office depending where a meeting happens) - allow the parties and/or witnesses to “appear” in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence) - allow the judge to record notes</p> |
| <p>6. Pre-trial motions/hearings judgments issued or case notes prepared – the judge or master who hears a pre-trial motion or presides over a pre-trial settlement or case management conference may formally issue a judgment and/or make a note on the file in relation to the appearance. (Note that these judgments may also be subject to appeal, and parties may either be entitled to appeal “as of right” or first have to apply for leave to appeal.)</p> | <p>- allow the judge to write reasons for judgment, transmit the reasons for judgment to the parties when they are finalized and possibly to post those reasons for judgment online to make them publicly accessible and typically searchable (either through the court’s own website or through another online provider like QuickLaw)</p> |
| <p>7. Scheduling the trial – typically the case has to be “set down” for trial, which involves filing a trial record and will trigger a requirement to get a date for the trial of the matter from the court (sometimes by way of an appearance) and a trial date is set.</p> | <p>- allow the parties to file material electronically, set dates electronically, appear remotely - allow the court to receive material in electronic form, add it to an electronic record, set dates and assign judges and courtrooms electronically</p> |
| <p>TRIAL</p> | |
| <p>8. Hearing – parties go to trial where they produce documents, examine and cross-examine live witnesses, submit written arguments, provide copies of case law, etc. in order to support their case. (The plaintiff bears the burden of proof on the balance of probabilities.) The proceeding is recorded in some fashion, so that the parties may later order production of a transcript of the trial proceedings. Documents and other artifacts that are admitted into evidence become “exhibits” at trial, which are maintained by the court.</p> | <p>Technologies that allow the court to: - store materials filed by the parties (usually just some of the documents referred to in step 6 above) - access the materials on demand (perhaps even to view them while the parties are in court making their arguments) - organize materials, eg by officially marking them as exhibits (typically numbered in the order in which they are filed) - allow the parties and/or witnesses to “appear” in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence) - allow the judge to record notes</p> |
| <p>9. Trial judgment issued – the trial judge issues reasons for judgment, which are transmitted to the parties when finalized and (in most cases) posted online (on the</p> | <p>- allow the judge to write reasons for judgment, transmit the reasons for judgment to the parties when they are finalized and possibly to post those reasons for judgment online to make them</p> |

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| <p>court's own website and/or through another online legal reporting service like QuickLaw or CanLII).</p> | <p>publicly accessible and typically searchable (either through the court's own website or through another online provider like QuickLaw)</p> |
| <p>APPEAL²⁶⁰ (to an appellate court)</p> | |
| <p>10. Filing notice of appeal - parties may appeal the trial judgment by serving and filing a notice of appeal on the opposing parties.</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - a party to serve its opponents with & file notices of appeal (that set out the reasons for the appeal) - parties to file materials with the appellate court (eg written arguments, copies of cases, etc) |
| <p>11. Appeal file created – the appellate court creates a file for the appeal in which all subsequently filed documents will be maintained.</p> | <p>Technologies that allow the court to:</p> <ul style="list-style-type: none"> - create a court file possibly to allow public access to the materials in it, but certainly to allow court staff and judges to have access to the materials in it - make the information about the status of a file and/or the contents of a file accessible to the public - access documents and other filed material during hearings |
| <p>12. Preliminary motions/pre-appeal hearing meetings – the parties appear before a judge with respect to preliminary matters relating to the appeal (e.g. to resolve disagreements on the content of the appeal record, etc.).</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - parties to make submissions or appearances before the court without having to be physically present - the court to record and broadcast the hearing and even to archive it (eg on court's website) |
| <p>13. Pre-appeal hearing motions/conference judgments issued or case notes prepared - the judge who hears a pre-appeal hearing motion or presides over pre-appeal hearing conference may formally issue a judgment and/or make a note on the file in relation to the appearance.</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - parties to make submissions or appearances before the court without having to be physically present - the judge(s) to write reasons for judgment, possibly to transmit drafts of the reasons to their co-judges on the case before the reasons are finalized, transmit the finalized reasons for judgment to the parties and possibly to post those reasons for judgment online to make them publicly accessible and typically searchable (either through the court's own website or through another online provider like QuickLaw) |
| <p>14. Filing of appeal record and responding materials – the appellant serves on the respondent and files with the court an appeal record (including transcripts, the trial judgment, etc.) and a factum (written argument), and the respondent serves any</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - parties to serve other parties electronically and file materials with the appellate court (eg written arguments, copies of cases, etc) |

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| responding materials and a factum on the appellant and files that material with the court. | |
| 15. Hearing – the parties appear before a judge or panel of judges to argue their cases. Typically, no fresh evidence is presented and the parties are arguing based on the record as it was established through the documents filed and witness testimony at trial. | Technologies that allow the court to: - store materials filed by the parties (including transcripts which can be very lengthy) - access the materials on demand (perhaps even to view them while the parties are in court making their arguments) - allow the parties and/or witnesses to “appear” in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence) - allow the judge(s) to record notes |
| 16. Appeal judgment issued – the appeal court issues reasons for judgment, which are transmitted to the parties when finalized and (in most cases) posted online (on the court’s own website and/or through another online legal reporting service like QuickLaw or CanLII). | - allow the judge(s) to write reasons for judgment, transmit the reasons for judgment to the parties when they are finalized and possibly to post those reasons for judgment online to make them publicly accessible and typically searchable (either through the court’s own website or through another online provider like QuickLaw) |
| ENFORCEMENT | |
| 17. After all appeals are exhausted or the time for appeals has expired, judgments may be enforced, which can include filing judgments with the office of a local legal official (such as a sheriff), and/or involving that official directly in seizing property, etc. | Technologies that allow: - a party to register judgments against the property of their opponent - legal officials (eg sheriffs) to access court records or files and enter judgments in their enforcement databases |

II. CRIMINAL LITIGATION

Criminal litigation involves the prosecution of a natural person or corporation for a criminal offence, a process that is usually initiated by the state. The table below sets out some of the typical key steps in prosecution of a criminal offence, together with suggestions about the sorts of related functions with which technologies might be engaged to assist:

| STEP | POTENTIAL TECHNOLOGIZED FUNCTIONS |
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| PRE-CHARGE | |
| 1. Police investigation, including application for a search warrant (if necessary) – if a police officer wishes to conduct a search of the home (for example) of someone suspected of a crime, s/he can apply to a provincial court of limited jurisdiction to issue a search warrant. If the police | Technologies that allow: - police to create an electronic investigatory file - police to appear remotely before the judge or justice and to electronically file materials |

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| <p>officer’s supporting materials establish that the necessary threshold for issuing the warrant has been satisfied, then the court will issue the warrant. The police investigation will result in creation of a investigative file.</p> | |
| <p>2. Police report to Crown counsel – if based on their investigation, the police believe that the matter warrants being forwarded to the Crown, the police send a report to Crown counsel. Crown counsel examines the report and determines whether charges are warranted.</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - police to share their investigatory file electronically with the Crown - police and Crown to meet electronically if necessary |
| <p>CHARGE</p> | |
| <p>3. Charge formally laid – if Crown counsel determines charges are warranted, the accused will be asked to come to the police station and/or may be arrested and formally charged. The accused may be detained in custody, in which case they are entitled to a “bail hearing” within 24 hours of arrest.</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - communication between the Crown and police, and the police and the suspect - production of a formal charging document - justice ministries to assign a Crown to a case, track respective Crown caseloads and the progress of each case from time of charge until its ultimate resolution |
| <p>POST-CHARGE</p> | |
| <p>4. Bail hearing – the accused will be brought before a justice of the peace who will decide whether they are entitled to be released and, if so, on what terms. Those denied bail typically remain in custody until their trial (which can be months or even years in coming).</p> | <p>Technologies that allow:</p> <ul style="list-style-type: none"> - electronic transmission of documents to the court - remote appearances by the accused person if necessary |
| <p>5. Crown disclosure – the Crown is required to make full and ongoing disclosure to the accused (or their lawyer), including disclosure of the investigative file (subject to certain limited exceptions).</p> | <p>Technologies that allow crown to:</p> <ul style="list-style-type: none"> - scan, organize, search, make digitally accessible and transmit documents, witness statements, expert reports, the investigatory report of police, etc. to accused or her lawyer (not sure how it works with physical evidence (eg gun) but this would also be an issue) |
| <p>6. Pretrial proceedings – the Crown and accused’s counsel may appear before the court prior to trial for any number of reasons, including: (i) for the purpose of allowing the accused plead guilty and have sentence adjudicated (obviating the need for a trial); (ii) to plead not guilty and either set a date for trial, or if charged with an indictable offence to elect whether</p> | <p>Technologies that allow the court to:</p> <ul style="list-style-type: none"> - store and access Crown and accused’s submissions, written arguments, etc. - record and organize dates for matters to proceed - see and hear from witnesses, accused and/or counsel who are in remote locations (eg teleconferences, videoconferences) (for accused persons who are in custody pending trial, this sometimes means appearing by videoconference |

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| <p>to be tried by a provincial court judge, a judge of the provincial superior court or a judge of the superior court and a jury; and (iii) for a “preliminary hearing” before a judge to see if there is enough evidence to warrant sending the matter on for trial (only for certain of the most serious indictable offences).</p> | <p>from the detention facility)</p> |
| <p>7. Pretrial judgments issued - the court delivers its judgment (sometimes orally, sometimes in writing). Pretrial judgments may or may not be prepared in a form that is then posted online.</p> | <ul style="list-style-type: none"> - allow the judge to write reasons for judgment, transmit the finalized reasons for judgment to the parties and possibly to post those reasons for judgment online to make them publicly accessible and typically searchable (either through the court’s own website or through another online provider like QuickLaw) |
| <p>TRIAL</p> | |
| <p>8. Trial hearing – the Crown and the accused appear before the court where documents are introduced, live witnesses are examined and cross-examined and oral arguments are made. (The Crown bears the burden of proof beyond a reasonable doubt.) Documents and other artifacts that are admitted into evidence become “exhibits” at trial, which are maintained by the court.</p> | <p>Technologies that allow the court to:</p> <ul style="list-style-type: none"> - store materials filed by the parties - access the record of the case thus far - record the proceedings - access the materials on demand (perhaps even to view them while the parties are in court making their arguments) - organize materials, eg by officially marking them as exhibits (typically numbered in the order in which they are filed) - allow the parties and/or witnesses to “appear” in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence) - allow the judge to record notes |
| <p>9. Jury deliberations – if the trial is before a jury, the trial judge instructs the jury as to the related law and the questions they must answer and the jury retires to deliberate on these questions.</p> | <p>Technologies that allow the jury to:</p> <ul style="list-style-type: none"> - record notes - review exhibits, evidence given in the trial - access the internet (?) |
| <p>10. Verdict delivery – the judge (or jury if applicable) delivers the verdict of whether the accused is found guilty or not guilty. Sometimes a judge alone will issue the verdict, with reasons to follow. If found guilty, the accused may be remanded into custody until the date set for sentencing.</p> | |
| <p>11. Reasons for trial judgment – if the trial was by way of judge and jury, no written reasons for judgment will be issued. If the trial was by judge alone, the judge will</p> | <ul style="list-style-type: none"> - allow the judge to write reasons for judgment, transmit the finalized reasons for judgment to the parties and possibly to post those reasons for judgment online to make them publicly accessible |

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| <p>deliver his or her reasons for judgment (sometimes orally, sometimes in writing). Often transcriptions of oral judgments and written judgments are made available online through services such as QuickLaw or CanLII.</p> | <p>and typically searchable (either through the court's own website or through another online provider like QuickLaw)</p> |
| <p>SENTENCING</p> | |
| <p>12. Pre-sentencing reports – in some cases, judges may request pre-sentence reports to assist them in determining what the appropriate sentence should be.</p> | <p>Technologies that allow for:</p> <ul style="list-style-type: none"> - electronic filing of reports - court access to electronic reports - remote examinations of the person convicted by experts (?) |
| <p>13. Sentencing hearing – the Crown and counsel for the offender appear before a judge and make arguments about what the appropriate sentence should be.</p> | <p>Technologies that allow the court to:</p> <ul style="list-style-type: none"> - store materials filed by the parties - access the record of the case thus far - record the proceedings - access the materials on demand (perhaps even to view them while the parties are in court making their arguments) - organize materials, eg by officially marking them as exhibits (typically numbered in the order in which they are filed) - allow the parties and/or witnesses to “appear” in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence) - allow the judge to record notes |
| <p>14. Sentencing judgment - the court delivers its judgment (sometimes orally, sometimes in writing). Sentencing judgments may or may not be prepared in a form that is then posted online.</p> | <ul style="list-style-type: none"> - allow the judge to write reasons for judgment, transmit the finalized reasons for judgment to the parties and possibly to post those reasons for judgment online to make them publicly accessible and typically searchable (either through the court's own website or through another online provider like QuickLaw) |
| <p>APPEAL</p> | |
| <p>15. The steps on the appeal are similar in nature to steps 10-16 listed above under APPEAL for civil litigation (although obviously the particular kinds of issues addressed at each step may well differ).</p> | <p>See steps 10-16 above for civil litigation.</p> |

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¹ <http://www.canadafacts.org/size-of-canada/>

² <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm>

³ http://en.wikipedia.org/wiki/List_of_Canadian_provinces_and_territories_by_area

⁴ <http://www.pco->

[bcg.gc.ca/aia/index.asp?lang=eng&page=provterr&sub=difference&doc=difference-eng.htm](http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=provterr&sub=difference&doc=difference-eng.htm)

⁵ http://en.wikipedia.org/wiki/List_of_Canadian_provinces_and_territories_by_population

⁶ http://www.google.ca/imgres?q=canadian+population+dispersion+map&hl=en&sa=X&biw=1104&bih=1126&tbm=isch&prmd=imvns&tbnid=JmrbCAg0wMY0kM:&imgrefurl=http://mshallssocials10.blogspot.com/2010/09/population-density-map-canada.html&docid=fGOkIoDBiDbRtM&imgurl=http://3.bp.blogspot.com/_RFoqsCfUN8w/TJuuRcwMALI/AAAAAAAAAr8/xpk85gIra00/s1600/Population%252Bdesnity%252Bmap%252B2.gif&w=657&h=435&ei=YfKiT7eSEMaT6gHB6IS4BQ&zoom=1&iact=hc&vpx=118&vpy=163&dur=420&hovh=146&hovw=220&tx=95&ty=67&sig=116898737434535386593&page=1&tbnh=117&tbnw=176&start=0&ndsp=30&ved=1t:429,r:0,s:0,i:66

⁷ For 2006 census purposes, "rural" populations include those living outside centres with a population of 1,000 and outside areas with 400 persons per square kilometer. As of 2006, 80% of census respondents indicated that they lived in a census identified metropolitan area: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo62a-eng.htm>. In 2001, recent immigrants (94%) were more likely than those born in Canada (59%) to reside in an urban area:

http://www41.statcan.ca/2007/30000/ceb30000_000-eng.htm

⁸ <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo62k-eng.htm> Census respondents in all other provinces and territories not mentioned were also more likely to reside in an urban location, although the splits between urban and rural were somewhat less pronounced than in Quebec, Ontario, Alberta and British Columbia (Newfoundland 58% urban, Nova Scotia 56% urban, New Brunswick 51% urban, Manitoba 72% urban, Saskatchewan 65% urban and Yukon 60% urban.

⁹ <http://www.statcan.gc.ca/daily-quotidien/080115/dq080115a-eng.htm>

¹⁰ <http://www.statcan.gc.ca/pub/91-003-x/91-003-x2007001-eng.pdf> at 31. 13 million people immigrated to Canada from other parts of the world over approximately the last 100 years (largely from Europe in the first half of the twentieth century, with larger numbers of non-Europeans arriving in the latter half):

http://www41.statcan.ca/2007/30000/ceb30000_000-eng.htm.

¹¹ http://atlas.nrcan.gc.ca/site/english/maps/peopleandsociety/population/visible_minority;
<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo52a-eng.htm>

¹² *The Constitution Act, 1867* (UK) 30 & 31 Victoria, c 3; online:

<http://www.canlii.org/en/ca/const/const1867.html>, s. 133.

¹³ <http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/tbt/Rp-eng.cfm?TABID=1&LANG=E&A=R&APATH=3&DETAIL=0&DIM=1&FL=A&FREE=0&GC=01&GID=837928&GK=1&GRP=1&O=D&PID=94817&PRID=0&PTYPE=88971,97154&S=0&SHOWALL=0&SUB=702&Temporal=2006&THEME=70&VID=14928&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0>

¹⁴ *Ibid.*

¹⁵ <http://www.aadnc-aandc.gc.ca/eng/1100100031774>

¹⁶ See, for example: “The Champagne and Aishinik First Nations Self-government Agreement” (29 May 1993), s. 13, online: http://www.eco.gov.yk.ca/pdf/casga_e.pdf.

¹⁷ <http://www.aadnc-aandc.gc.ca/aiarch/mr/nr/s-d2004/02551dbk-eng.asp>

¹⁸ The disproportionate over-representation of indigenous persons among the accused and those incarcerated in the Canadian criminal justice system and the need for system reform has been documented for some time. See, for example: Jonathan Rudin, “Aboriginal Peoples and the Criminal Justice System”, online:

http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf.

¹⁹ *The Constitution Act, 1867* (UK) 30 & 31 Victoria, c 3; online:

<http://www.canlii.org/en/ca/const/const1867.html>, s. 91.

²⁰ *Ibid.*, s. 92.

²¹ <http://www.justice.gc.ca/eng/pi/pb-dgp/arr-ente/acces.html>;

<http://www.justice.gc.ca/eng/pi/pb-dgp/arr-ente/lap-paj.html>

²² Some provincial courts of superior jurisdiction have “Superior Court” (eg Ontario Superior Court of Justice) or “Supreme Court” (eg included in their titles (eg Ontario Superior Court of Justice and Alberta Supreme Court).

²³ Some provincial courts of limited jurisdiction have “Provincial Court” included in their titles, while in the Northwest Territories it is called “Territorial Court” and in Ontario it is called the Ontario Court of Justice. In Nunavut, the “provincial” level court and the provincial superior court are combined into the Nunavut Court of Justice.

²⁴ http://www.parl.gc.ca/About/Parliament/SenatorEugeneForsey/book/chapter_5-e.html
at 5.2.

²⁵ *Ibid.* For more information on judicial independence, see:

<http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

²⁶ <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

²⁷ Some provincial courts of superior jurisdiction have a specialized branch called Small Claims Court that deals with civil cases under a fixed dollar amount. In other provinces, Small Claims Court is a branch or division of the provincial court of limited jurisdiction.

²⁸ Some provincial courts of superior jurisdiction also have specialized family divisions that are set up to deal only with family matters such as divorce and support:

<http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>.

²⁹ <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

³⁰ <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

³¹ <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

³² <http://www.lawcentralcanada.ca/LawServices/court.aspx>

³³ Ontario, for example, has such a model: Ontario Court Services Division Annual Report 2009-2010, online:

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_FULL_EN.pdf at 20 [CSD 2010 Report].

³⁴ MOU's are in place for the Ontario Court of Justice and the Superior Court of Justice: http://www.auditor.on.ca/en/reports_en/en08/307en08.pdf.

³⁵ JITO, however, works with the Court Business Solutions Branch of the Court Services Division to identify and implement technological solutions relating to these issues: CSD 2010 Report p. 48; Ontario Superior Court of Justice, Annual Report 2008-2010, online: <http://www.ontariocourts.ca/scj/en/reports/annualreport/08-10.pdf> at 21.

³⁶ Tracey Tyler, "Access to justice a 'basic right'" *The Toronto Star* (12 August 2007), online: The Toronto Star <<http://www.thestar.com/News/Canada/article/245548>> [Tyler, "Basic Right"].

³⁷ Melina Buckley, "Moving Forward on Legal Aid: Research on Needs and Innovative Approaches", The Canadian Bar Association: 2010, online: <http://www.cba.org/CBA/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>.

³⁸ See, for example: The Middle Income Access to Civil Justice Initiative at the University of Toronto:

http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/18/0/0&contentId=2113.

³⁹ Jane Bailey, "Reopening Law's Gate: Public Interest Standing and Access to Justice" (2011) 44 UBC Law Rev 255, online:

<http://www.commonlaw.uottawa.ca/en/200909084059/publications-and-scholarship/academic-publications/selected-publications.html>

⁴⁰ For example, in 2010, the BC Provincial Court had issued a report noting that trial days were being lost because there were less judges of that Court in 2010 than there had been in 2005. In February 2012, the BC Attorney General released a green paper on modernizing BC's justice system, in which it noted that costs and delays in the operation of the justice system were increasing, although the number of crimes and cases was decreasing and suggested that new ways of delivering justice needed to be explored: Minister of Justice and Attorney General, Modernizing British Columbia's Justice System: Green Paper (Feb 2012), online:

<http://www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf>. The Chief Justices of BC, the Supreme Court of BC and the Provincial Court of BC responded with memoranda emphasizing the importance of judicial independence within the reform dialogue: <http://www.provincialcourt.bc.ca/downloads/pdf/Judicial%20Independence%20Final%20Release.pdf> and <http://www.provincialcourt.bc.ca/downloads/pdf/press%20release%20-%20February%208%202012%20-%20criminal%20justice%20review.pdf>.

⁴¹ Supreme Court of Canada hearings are webcast and archived, and a permanent live feed of its hearings are available to Parliament through CCTV: <http://www.scc-csc.gc.ca/case-dossier/index-eng.asp>. Similarly, BC ran a pilot program in 2011 in which presiding judges could allow a videorecording of them issuing sentence to be posted

online 1-2 days after the hearing, online:

<http://vancouver.24hrs.ca/News/local/2010/11/22/pf-16266291.html>. On a related note, broadcasters are increasingly requesting permission to televise court proceedings and, in some cases, have been permitted to do so. In Ontario, a 2007 pilot project involved webcasting of 21 cases argued before the Ontario Court of Appeal:

<http://www.lawyersweekly.ca/index.php?section=article&articleid=1383>. Nova Scotia permits live webcasting of some of its hearings on the court website, as well as providing an archive of webcast major events that took place in NS courtrooms:

http://www.courts.ns.ca/nssc_hearings_video_page.htm;

<http://www.courts.ns.ca/swearing->

[in_videos_archive/swearing_in_videos_archive_page.htm](http://www.courts.ns.ca/swearing_in_videos_archive/swearing_in_videos_archive_page.htm).

⁴² For example, certain downloadable, fillable forms are accessible on the websites of the Saskatchewan Provincial Court, the Alberta Provincial Court (including for civil, family, and certain criminal law-related matters) and Court of Appeal, the British Columbia Small Claims Court, the Nova Scotia Supreme Court, the Ontario Small Claims Court, the Saskatchewan Provincial Court, the Federal Courts of Canada, the Tax Court of Canada and the Supreme Court of Canada (efiling form).

⁴³ For example, the Ontario Small Claims Court website provides a link to the Ontario Court Services Division of the Ministry of the Attorney General where a digital “Forms Assistant” guides users through the process of filling out forms, allowing them to save their work and password protect it so that they can return to it later to complete or adjust it: <https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>.

⁴⁴ For example, users of the Tax Court of Canada website can click on electronic filing and be taken to a portal that allows them to file documents electronically (which is encouraged by the court and includes no additional expense beyond regular filing fees): http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/tcc-cci_Eng/Electronic_Filing, as can users of the Alberta Court of Appeal, for certain types of electronic documents (transcripts, “e-appeals”): <https://www.albertacourts.ca/ca/efiling/>.

⁴⁵ For example, RSS news feeds are available from the Alberta Court of Appeal, the Ontario Court of Appeal and Divisional Court, the Tax Court of Canada, the Federal Courts and the Supreme Court of Canada. The Nova Scotia courts website links to court news on twitter: <http://www.courts.ns.ca/>.

⁴⁶ See for example, Alberta Provincial Court online videos relating to civil and family mediation, as well as webinars on family proceedings (<http://www.albertacourts.ab.ca/ProvincialCourt/CivilSmallClaimsCourt/Videos/tabid/205/Default.aspx>); <http://www.albertacourts.ab.ca/ProvincialCourt/FamilyJusticeServices/FamilyLawAct/FamilyLawActAmendmentWebinar/tabid/396/Default.aspx>), the Saskatchewan Court of Appeal’s tour of the virtual court room (http://www.sasklawcourts.ca/default.asp?pg=ca_education_vr), the Nova Scotia courts’ “Courts and classrooms” materials that provide interactive presentations on how the court system works: <http://www.courts.ns.ca/courtsandclassrooms.htm> and the interactive videos relating to Tax Court of Canada hearings and preparation: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/tcc-cci_Eng/Process/Your_day_video.

⁴⁷ See for example, the Alberta Provincial Court's youtube video related to use of that court's remote scheduling system:
<http://www.albertacourts.ab.ca/ProvincialCourt/CourtCaseManagement/RemoteCourtroomScheduling/tabid/351/Default.aspx>.

⁴⁸ See, for example: Alberta Provincial Court (<http://www.albertacourts.ab.ca/ProvincialCourt/CriminalCourt/EFileNoticeofApplicationforPublicationBan/tabid/238/Default.aspx>); BC Supreme Court (http://www.courts.gov.bc.ca/supreme%5Fcourt/publication_bans/subscribe.aspx).

⁴⁹ For example, the Supreme Court of Canada, the Federal Courts and the Tax Court of Canada employ standards on accessibility set by the Treasury Board of Canada Secretariat (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=23601>), which can involve use of templates to improve compatibility with adaptive technologies, handheld devices and browsers, testing of various technologies and browsers to ensure access to web pages regardless of the technology used, as well as certain "look and feel" guidelines intended to simplify use of their websites (<http://www.scc-csc.gc.ca/help-aide/index-eng.asp>).

⁵⁰ For example, the Supreme Court of Canada website includes a searchable Case Information database through which users may access the docket of the proceedings (including filing dates), a list of the parties and counsel, a summary of the case, the facts filed and a webcast of the hearing (if applicable) (<http://www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=34645>). In BC, the Ministry of Justice administers Court Services Online through which users can search civil, appeal and traffic files for a fee, and search daily court lists for free, while also having the opportunity to file civil court documents online:
<https://eservice.ag.gov.bc.ca/cso/index.do>.

⁵¹ Ontario Court Services Division Annual Report 2008-2009 at 44, online:
http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_08/Court_Services_Annual_Report_CHAP5_EN.pdf.

⁵² John Piccolo, "The Courts in the Era of Information Technology" *The Society Record* (October 2005) at p. 16, online:
<http://nsbs.org/sites/default/files/cms/publications/society-record/sr-vol-23-no-5-october-2005.pdf>.

⁵³ Ontario Court Services Division Annual Report 2009-2010, online:
http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_FULL_EN.pdf;

⁵⁴ Ontario Court of Appeal Annual Report, 2010-2011, online:
<http://www.ontariocourts.ca/coa/en/ps/annualreport/2010.pdf> at 17.

⁵⁵ <http://www.scc-csc.gc.ca/media/acc/index-eng.asp>

⁵⁶ Litigants may e-mail forms, requests and documents in both civil and criminal matters. See, for example: Practice Directive #4, 1 Aug 2010, online:
http://www.nucj.ca/Directives/PD4_CivilCriminalMatters_AttendanceByTelephone.pdf;
Practice Directive #18, 1 February 2010, online:
http://www.nucj.ca/Directives/NCJ_PD18_ElectronicFiling_CivilCriminalChambers.pdf.

⁵⁷ Litigants must file certain documents (e.g. criminal and civil facts, civil transcripts) in electronic form (preferably by e-mail) and are encouraged to provide other kinds of

materials in electronic form as well. However, the filing of electronic copies is in addition to the requirement to file paper copies: OCA, Notice to the Profession Electronic Filing in Criminal Appeals (26 Jan 2011), online:

http://www.ontariocourts.ca/coa/en/notices/adminadv/ef_criminal_appeals.htm; Practice Direction Concerning Civil Appeals in the Court of Appeal (2004)

<http://www.ontariocourts.ca/coa/en/notices/pd/civil2003.htm>; OCA, Notice to the Profession, Electronic Filing (5 April 2000), online:

<http://www.ontariocourts.ca/coa/en/notices/adminadv/ef.htm>.

⁵⁸ For example, requisitions to note a defendant in default may be filed by e-mail:

Ontario Rules of Civil Procedure, R. 19.01(1.1)

⁵⁹ Support orders may be filed with the court by e-mailing them to the court clerk:

Ontario Family Law Rules, R. 25(11).

⁶⁰ Criminal/youth/regulatory case management forms, civil small claims pretrial conference forms and family/child protection case management forms can be filed by e-mail:

<http://www.albertacourts.ab.ca/LinkClick.aspx?fileticket=cV5g4TyO%2bNs%3d&tabid=321>

⁶¹ Counsel may file their appeal book, submissions and books of essential references with the court by e-mail in PDF format New Brunswick Rules of Civil Procedure, R. 92.20.2; Practice Directive - <http://www.gnb.ca/cour/03COA1/pdf/PD-AA-08.pdf>

⁶² Quebec Rules of Civil Procedure, R. 30(1), 35, 39 and Quebec Criminal Rules of Procedure R. 52, online: <http://www.tribunaux.qc.ca/c-appel/English/Rules/rcivil/rcivil.html>

<http://www.tribunaux.qc.ca/c-appel/English/Rules/rcriminal/rcriminal.html>.

⁶³ CAPN no. 2010-01

http://www.court.nl.ca/supreme/appeal/pracnotes/Practice_Note_2010_06_28.pdf

⁶⁴ OCA, Notice to the Profession, Electronic Delivery of Copies of Reasons for Judgment (Nov 2009), online:

<http://www.ontariocourts.ca/coa/en/notices/adminadv/electronicdelivery.htm>; Notice to Counsel (15 June 2010), online: http://www.tribunaux.qc.ca/c-appel/English/Current/new/docs/Notice_jugt_e-mail.pdf; BCCA Practice Note (Civil & Criminal) Release of CA Reserve Reasons for Judgment by E-Mail (19 Sep 2011),

online:

http://www.courts.gov.bc.ca/Court%5Fof%5FAppeal/practice%5Fand%5Fprocedure/civil_and_criminal_practice_directives/practice_notes/Release%20of%20Court%20of%20Appeal%20Reserve%20Reasons%20for%20Judgment%20by%20E-Mail.htm.

⁶⁵ Practice note 38 Discretionary Publication Ban – Common Law or Statutory (22 Sep 2005), online: http://www.gov.pe.ca/courts/supreme/practice_notes.pdf.

⁶⁶ <http://www.judicom.ca/home-eng.html>

⁶⁷ <http://www.judicom.ca/home-eng.html>

⁶⁸ <http://www.judicom.ca/home-eng.html>

⁶⁹ http://www.tribunaux.qc.ca/mjq_en/c-quebec/fs_administration.html

⁷⁰ <http://www.ontariocourts.ca/ocj/ocj/publications/2007-report-of-ontario-court-of-justice/>

⁷¹ This is a Novell based system:

https://intranet.albertacourts.ab.ca/_layouts/login_courtsIntranet.aspx?ReturnUrl=%2fCS%2fPages%2fProtocols.aspx.

⁷² <http://plone.org/support/sites/ontario-court-forms>

⁷³ Ontario Court Services Division, Annual Report 2007-2008, online:

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_07/Court_Services_Annual_Report_FULL_EN.pdf.

⁷⁴ <http://office.microsoft.com/en-ca/live-meeting-help/>

⁷⁵ Ontario Court Services Division, Annual Report 2009-2010, 2008-2009, 2007-2008, online:

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_07/Court_Services_Annual_Report_FULL_EN.pdf at 42-44.

⁷⁶ See above note 41.

⁷⁷ Ss. 487.1 and 529.5 *Criminal Code of Canada*.

⁷⁸ <http://www.albertacourts.ab.ca/Home/Contact/MasterinChambers/Masters/tabid/306/Default.aspx>; <http://www.albertacourts.ab.ca/provincialcourt/civilsmallclaimscourt/formspublications/tabid/167/default.aspx>;

⁷⁹ <http://www.albertacourts.ab.ca/CourtofQueensBench/PublicationsForms/AdjournmentConfirmation/tabid/266/Default.aspx>.

⁸⁰ R. 6.01 Manitoba Court of Queen's Bench Rules (Criminal), online: <http://laws-lois.justice.gc.ca/eng/regulations/SI-92-35/page-3.html>.

⁸¹ R. 37.09: <http://www.gnb.ca/cour/pdf/CourtCall-E.pdf>

⁸² Clerk's Practice Directive No. 13 (13 May 2011), online:

<http://www.nwtcourts.ca/directives/CPD13.pdf>; Territorial Court Practice Direction (10 Mar 2011), online: <http://www.nwtcourts.ca/directives/PDTC26.pdf>.

⁸³ 2007 Annual Report, p. 13, 21, Practice Directive #4, 1 Aug 2010, online:

http://www.nucj.ca/Directives/PD4_CivilCriminalMatters_AttendanceByTelephone.pdf

⁸⁴ R. 13.1.02(5)) Rules of Civil Procedure; R. 2(5); R. 17(16); R. 14(8)) Family Law Rules.

⁸⁵ R. 26; R. 40.

⁸⁶ R. 44, Practice Directive 2:

http://www.yukoncourts.ca/pdf/yukon_coa_civil_rules_2005_bilingual.pdf and

http://www.yukoncourts.ca/pdf/Yukon_Civil_Practice_Directives_2006.pdf

⁸⁷ 2007 Annual Report, p. 13, 21, Practice Directive #4, 1 Aug 2010, online:

http://www.nucj.ca/Directives/PD4_CivilCriminalMatters_AttendanceByTelephone.pdf

⁸⁸ However, the court reserves the right to require an in-person appearance:

<http://www.court.nl.ca/supreme/general/news.html>.

⁸⁹ http://www.gov.pe.ca/courts/supreme/practice_notes.pdf

⁹⁰ http://www.tribunaux.qc.ca/mjq_en/c-quebec/Modes_alternatifs_de_reglement_anglais/fs_CRAcivil_FonctionnementAng.html

⁹¹ On request by parties residing outside of Whitehorse:

<http://www.yukoncourts.ca/pdf/pd21.pdf>

⁹² http://nsbs.org/dbtw-wpd/exec/dbtwpub.dll?AC=GET_RECORD&XC=/dbtw-wpd/exec/dbtwpub.dll&BU=http%3A%2F%2Fnsbs.org%2Fnova-scotia-access-justice-inventory&TN=ATJ+Inventory+Revised&SN=AUTO10794&SE=179&RN=7&MR=10

[&TR=0&TX=1000&ES=0&CS=2&XP=&RF=1-BriefDisplay&EF=&DF=2-FullDisplay2&RL=1&EL=0&DL=1&NP=1&ID=&MF=WPENGMSG.INI&MQ=&TI=0&DT=&ST=0&IR=25&NR=0&NB=0&SV=0&SS=0&BG=&FG=&QS=ATJQBE2Test&OEX=ISO-8859-1&OEH=ISO-8859-1](#)

⁹³ http://www.nucj.ca/Directives/PD1_Communities_ShowCauseHearings.pdf

⁹⁴ Saskatchewan, Ministry of Justice, Annual Report 2010-2011, online:

<http://www.finance.gov.sk.ca/PlanningAndReporting/2010-11/201011JusticeAnnualReport.pdf> at 16.

⁹⁵ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/FullText.html>

⁹⁶ http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/tcc-cci_Eng/Process/Practice17

⁹⁷ <http://www.scc-csc.gc.ca/court-cour/sys/index-eng.asp>

⁹⁸ R. 25.03(1) & 25.04(1), R. 53.05

⁹⁹ On request for parties residing outside of Whitehorse to give evidence in small claims court http://www.yukoncourts.ca/pdf/New_Small_Claims_Regs.pdf);

¹⁰⁰ 2007 Annual Report, p. 13, 21, Practice Directive #4, 1 Aug 2010, online:

http://www.nucj.ca/Directives/PD4_CivilCriminalMatters_AttendanceByTelephone.pdf

¹⁰¹ Ontario Court Services Division, Annual Report 2009-2010 p. 44

¹⁰² <http://www.courtcall.com/ccallp/main?c=CCHOME>

¹⁰³ <http://www.gov.ab.ca/acn/200607/202113F88E0A6-9968-5D31-A381C35A069D35EB.html>

¹⁰⁴ Manitoba Provincial Court, Annual Report 2009-2010, p. 6

¹⁰⁵ <http://www.gov.mb.ca/justice/publications/annualreports/pdf/annualreport1011.pdf> at 45.

¹⁰⁶ Newfoundland Practice Direction 15 September 2010

http://www.court.nl.ca/provincial/goingtocourt/practice_note_video_hmp.pdf

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- ²⁵² Wilson, *supra*.
- ²⁵³ Ontario Ministry of the Attorney General, “A Brief History of JOT”, online:
http://www.attorneygeneral.jus.gov.on.ca/english/jot/a_brief_history.asp

²⁵⁴ http://www.attorneygeneral.jus.gov.on.ca/english/jot/jot_in_action.asp

²⁵⁵ http://www.attorneygeneral.jus.gov.on.ca/english/jot/a_brief_history.asp

²⁵⁶ British Columbia, eCourt (2011), online: ccct-cctj.ca/wp-content/.../CTC2011%20-%20BC's%20eCourt.pptx

²⁵⁷ Wilson, *supra* note 245.

²⁵⁸ Minister of Justice and Attorney General, Modernizing British Columbia's Justice System: Green Paper (Feb 2012) at 9-11, 13, online:

<http://www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf>

²⁵⁹ Although there is certainly variation across jurisdictions in Canada (as well as specialized processes for child protection and family law cases in particular), this section is intended to broadly define the differences between civil and criminal processes in Canada, as well as to outline some of the basic steps in these processes.

²⁶⁰ Note that it is possible that a case will proceed through more than one level of appeal. The Supreme Court of Canada is the last level of appeal in Canada and parties in civil litigation must first obtain leave from the Court to have their appeal heard there.