

November 17, 2009

To Commercial Court Users and Stakeholders

Attention:

Dear:

Re: Commercial List Users Committee- Electronic Document Exchange Pilot Project (*"Pilot Project"*)

The Commercial List Users' Committee ("CLUC") is pleased to report that the Pilot Project for the electronic exchange of court documents for the Commercial List division of the Ontario Superior Court of Canada ("Commercial List") has commenced. We request that you circulate this letter to your membership.

As you are aware, the objective of the Pilot Project is to increase the efficiency of serving and filing materials, to decrease costs and to provide remote access to filed materials. The Pilot Project will be governed by CLUC with the Ontario Ministry of the Attorney General's knowledge. This is a voluntary Pilot Project which will operate parallel to the existing paper filing system.

Please find attached a copy of the Pilot Project Protocol giving you specifics as to how litigants may participate. CourtCanada Ltd is providing the technology, server and support services. CourtCanada Ltd will also be available 24/7/365 to support users via the telephone.

Ideally we would like to have 50 commercial litigation cases participate in the Pilot Project. Large insolvency cases will not be considered for the Pilot Project.

The Pilot Project Sub-Committee continues to look for a second provider of technology and related services required to operate a second online document exchange pilot project. We have been contacting and meeting potential second providers. A number of potential technology providers have been contacted and discussions are underway.

It is our hope that at the end of the twelve month period we will be in a position to demonstrate to the Attorney-General (Ontario) that the operation of an online document exchange system is not expensive, is efficient and will bring the Ontario Courts into the technological reality in which we practice.

Should you have any questions or concerns regarding the Pilot Project please feel free to contact the Sub-Committee members.

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Yours very truly,

Pilot Project Sub-Committee:

The Honourable Justice Sarah Pepall , Ken Rosenberg, Geoff Hall ,Robin Dodokin and Sharon Hamilton.

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COMMERCIAL LIST PILOT PROJECT TO PERMIT THE ELECTRONIC EXCHANGE OF COURT DOCUMENTS

The Commercial List Users Committee has proposed a voluntary pilot project to permit the exchange of court documents electronically on selected Commercial List cases, in a system which will (at least initially) be parallel to the existing paper filing system. The project has been endorsed by the Commercial List Users Committee on an experimental basis.

The purpose of the project is to increase the efficiency of serving materials, to decrease costs, and to provide remote access to those materials. The project is not to detract from the need to file materials on a timely basis.

The project is being undertaken with the assistance of CourtCanada.com. Proposals for a second service provider to participate in the pilot project alongside CourtCanada.com would be considered.

The project will be governed by the following protocol:

1. The project will commence on ●, 2009 and will run for 12 months.
2. The project will apply only to specific cases. To be included in the project, a case must be designated at the outset. All parties must consent to a case being designated, as participation in the project is voluntary. Parties who are willing to have their cases designated should so indicate on the Commercial List e-booking system which will be adopted in ● 2009 (the system will include a box which can be checked off for this purpose). The parties must then arrange for a 9:30 chambers appointment with Justice Pepall (the Commercial List Team Leader), who must approve the designation of all cases.
3. It is anticipated, at least at the beginning of the project, that the only cases that will be designated will be those involving a modest number of parties and counsel. Cases will only be assigned to Commercial List judges who have volunteered to join the project.
4. Once a case is designated:
 - (a) Justice Pepall will issue a consent order which will include provisions (i) approving the case for inclusion in the project; and (ii) providing that persons on the e-service list for the case website (described below) will, subject to the terms of this protocol, be entitled to serve and file documents through the case website. Attached is a model consent order.
 - (b) Counsel for the plaintiff or applicant will advise CourtCanada.com by e-mail at ● that the case has been designated. CourtCanada.com will then establish and maintain a case website for the designated case. Access to all case websites will be public, however, a password will be required to serve and file materials through case websites.

5. Counsel for the parties and any self-represented parties will register with CourtCanada.com. Upon registration, they will be added to the electronic service list (or “e-service list”) for the case. The e-service list will be maintained on the case website. Subject to paragraphs 10 and 11, persons on the e-service list will be entitled to serve documents through the case website.
6. Each case website will also maintain an “e-notification list” of persons who are not on the e-service list but who wish to receive electronic notification of court documents served in the case. Any person may request to have his or her e-mail address added to the e-notification list, however, persons on the e-notification list will not be entitled to serve documents through the case website.
7. When a registered counsel or self-represented party wishes to serve a document, he or she will upload a PDF version of the document to the case website. The document will immediately be posted on the case website, allowing for public access to anyone who accesses the case website. An e-mail will also immediately be sent to all counsel on the e-service list, all persons on the e-notification list, and to the court. The e-mail will advise that service has been made and will include a link to the document on the case website.
8. There will be no cost to those serving documents through a case website.
9. Frequently asked questions will be posted on CourtCanada.com’s website, and CourtCanada.com will maintain a helpline for those needing assistance. The helpline will be publicly available.
10. This protocol relates only to the electronic exchange of documents. It does not modify the requirements to file court documents. Documents must be filed with the court in accordance with the timelines prescribed by the *Rules of Civil Procedure*, unless a court order provides otherwise.
11. Documents which are subject to a sealing order or a motion for a sealing order cannot be served through a case website. All such materials must be served and filed in hard copy only, in accordance with existing practices for such documents.
12. A tracking memorandum will be filled out by counsel at designated times during a case, so that the project may be properly assessed by the Commercial List Users Committee at its regularly scheduled meetings. If the project is successful and refined, it is hoped that it will be extended past • 1, 2010 and expanded to more than just selected cases. Counsel are encouraged to make their comments on the project known to Ken Rosenberg of Paliare Roland Rosenberg Rothstein LLP at ken.rosenberg@paliareroland.com and Geoff R. Hall of McCarthy Tétrault LLP at ghall@mccarthy.ca. Comments forwarded to Mr. Rosenberg and Mr. Hall may be shared with all interested stakeholders, including the Commercial List Users Committee, the judges of the Commercial List, and the Ontario Ministry of the Attorney General.

ORDER

THIS MOTION, made jointly by the parties, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the consent of the parties, including their undertaking to register this proceeding for online service available at (insert internet address) (hereinafter referred to as the “Document Exchange”).

1. THIS COURT ORDERS that this proceeding is designated for participation in the Ontario Superior Court of Justice (Commercial List) electronic document exchange pilot project.
 2. THIS COURT ORDERS that the parties are to ensure that the contact information registered by them on the Document Exchange is accurate.
 3. THIS COURT ORDERS that service of all documents (except an originating process) in this proceeding shall be effected by forwarding a true copy of the document by electronic transmission using the Document Exchange and such transmission shall constitute good and sufficient service, effective on the day on which the document is forwarded to the Document Exchange.
 4. THIS COURT ORDERS that an affidavit of service by the person who has served a document pursuant to paragraph 3 shall constitute valid proof of service of the document, and that the requirement in Rules 16.05(1)(c) and 16.09(4) to date stamp the document is waived.
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