FEDERAL COURT

STRATEGIC PLAN

(2014-2019)

Introduction

As a national, bilingual and bijural superior court, the Federal Court occupies a unique position in Canada's justice system. Its jurisdiction[1] is exclusive in a number of areas and concurrent in others. In addition to dealing with cases involving the common law and the civil law legal systems, the Court applies its procedures flexibly to accommodate aboriginal law approaches to delivering justice and resolving legal disputes.

As with other courts, the Federal Court faces two particularly pressing challenges. The first is to improve access to justice in an era of rising legal costs and increased demands on scarce judicial resources. Although much progress has been made to reduce the time required to resolve legal disputes, existing timelines continue to present an impediment to justice for some parties.

The second pressing challenge is to modernize the Court and continue to keep pace with technological change.

This Strategic Plan describes the steps that the Court intends to take to address these challenges over the period 2014 – 2019, while maintaining its commitment to excellence in serving the public.

In addressing these challenges, the Court will work closely with the Courts Administration Service [CAS], which was established in 2003 to provide administrative services to the Federal Court, the Federal Court of Appeal, the Court Martial Appeal Court of Canada and the Tax Court of Canada. CAS provides those services in a manner that is at arm's length from the Government of Canada and that enhances public accountability for the use of public funds in support of court administration, while safeguarding the independence of the judiciary. Additional information regarding CAS is available on its website.[2]

The Court's ability to achieve some of the objectives identified in this Strategic Plan will be a function of the resources available to the Court and to CAS.

[1] See: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Jurisdiction.
[2] See: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/CAS/.

Statutory Mandate

The Federal Court was established under section 101 of the *Constitution Act, 1867* for "the better Administration of the Laws of Canada." Pursuant to section 4 of the *Federal Courts Act*, the Federal Court is "an additional court of law, equity and admiralty in and for Canada" and is a "superior court of record having civil and criminal jurisdiction."

The Court schedules regular sittings in the capital cities of each province and territory across the country, as well as in Montreal, Ottawa, Saskatoon, and Calgary. It also sits in other locations and holds hearings by videoconference and telephone conference, where appropriate.

As a statutory court, the Federal Court has jurisdiction over the matters described in sections 17-26 of the *Federal Courts Act* as well as over those matters assigned by other federal statutes.[3] Broadly speaking, the Court spends most of its time adjudicating and resolving:

- Applications for judicial review of decisions made by federal boards, commissions or other tribunals – this includes decisions made by ministers of the federal Crown and persons exercising delegated ministerial authority, including with respect to:
    - immigration and refugee protection
    - federal elections and First Nations band elections
    - official languages
    - privacy and access to information
    - prisoners in federal institutions
    - war veterans
    - human rights
    - environmental assessments
    - public works
    - national defence
    - public service employment
    - private sector employment in federal works, undertakings and businesses
    - aeronautics and transportation
    - oceans and fisheries

- Applications for injunctions, *mandamus* and declaratory relief against federal boards, commissions or other tribunals

- Actions against and by the federal Crown; for example, relating to asserted aboriginal and treaty rights, contractual disputes involving the provision of goods

[3] There are over one hundred federal statutes that assign jurisdiction to the Federal Court. See: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Jurisdiction_legislation.

and services to the federal government, and civil claims for injury caused by agents of the federal government

- Legal disputes involving intellectual property:
    - Patents and patented medicines
    - Copyright
    - Trademarks
    - Industrial designs
    - Integrated circuits
- Legal disputes involving navigation and shipping:
    - Collisions at sea
    - Accidents involving fixed and floating objects
    - Salvage operations
    - Cargo claims
    - Ship building and repair
    - Charterparty disputes
    - Reparations
    - Marine insurance coverage claims
    - Ship arrests
    - Conflicts of law
- Appeals brought under certain federal statutes, including the *Citizenship Act*
- National security matters, including reviews of security certificates, warrants and classified information that a party may want to introduce as evidence in proceedings before another Court

Mission

To deliver justice and assist parties to resolve their legal disputes throughout Canada, in either official language, in a manner that upholds the rule of law and that is independent, impartial, equitable, accessible, responsive and efficient.

Vision

Looking out to the future, the Court will place a high priority on promoting increased access to justice and modernizing its practices and procedures. In pursuing these two objectives, the Court will:

- Safeguard the independence and impartiality of the Court
- Conduct its business in accordance with the *Official Languages Act* and actively cultivate the bilingual and bijural nature of the Court
- Be accessible in all regions of the country
- Be committed to excellence in serving the public
- Promote greater awareness of the Court and its processes throughout the country, including by providing more user-friendly information about the Court's procedures
- Facilitate the just, expeditious and efficient resolution of matters, among other things by:
    - pursuing innovative ways to reduce litigation costs, shorten backlogs and expedite the resolution of matters, including by making greater use of technology
    - making greater and timely use of mediation and other dispute-resolution tools
    - making greater use of oral decisions and short written Endorsements, where appropriate
    - simplifying the Court's Rules and processes
    - embracing increased flexibility and responsiveness

Part I – Access to Justice

Access to justice, an essential pillar of the rule of law, has become the single biggest challenge facing courts across Canada. As legal costs, the time required to resolve disputes, and other barriers to accessing the court system have increased, that system has gradually evolved beyond the reach of a growing segment of the public. The Federal Court is committed to addressing this challenge as an urgent priority and in a meaningful manner.

The actions identified below are intended to address each of the three principal obstacles to accessing the justice system, namely: (i) legal costs, (ii) the time required to resolve disputes, and (iii) qualitative barriers to accessing the Court.

Given the strong link between the first two of those components, they will be discussed together, before dealing separately with the third component.

Many of the actions described in Part II below, which deals with the modernization of the Court, are also intended to address one or more of these obstacles to access to justice. The Court is optimistic that the collective impact of the actions described in each of the two parts of this Strategic Plan will make justice significantly more accessible to the public.

A. Reducing Time and Costs

(i) Revising and Simplifying the *Federal Courts Rules*

As part of the Court's broad initiative to streamline and simplify its procedures and processes, the Federal Courts Rules Committee [Committee] is pursuing several initiatives that will significantly assist to achieve this goal. Those initiatives will also reinforce the objective of securing the just, most expeditious and least expensive determination of every proceeding on the merits, as set forth in Rule 3 of the *Federal Courts Rules* [Rules].

The Committee is a statutory body comprised of several judges of each of the Federal Court of Appeal and the Federal Court, a Prothonotary of the Federal Court, five members of the bar from across Canada, a representative of the Attorney General of Canada, and the Chief Administrator of CAS.

At the time of writing, much of the work of the Committee is being conducted in the subcommittees identified below:

(a) The Subcommittee on Implementation

This subcommittee was formed to study and advise the Committee on the implementation of 26 findings and recommendations that were made in the *Report of the Subcommittee*

on Global Review of the Federal Courts Rules.[4] That Report was issued in October 2012 and approved the following month by the Committee.

The Report included a broad recommendation to assess all existing Rules from the standpoint of access to justice, particularly by self-represented parties, with a view to identifying where simplification or clarification may be warranted.

Examples of more specific recommendations that are directed towards increasing access to justice include the following:

- Introducing a principle of proportionality, and reinforcing that principle throughout the Rules, to provide the Court with greater flexibility to intervene to ensure that costs being incurred and procedures undertaken by parties are not disproportionate to what is at stake in the proceeding.

- Reinforcing informal practices that assist to streamline and expedite proceedings.

- Strengthening the provisions that deal with abusive use of the Rules.

- Strengthening the provisions dealing with vexatious litigants.

- Amending the provisions on costs, to allow parties who are successful in particular motions and in the proceeding as a whole to recover amounts much closer to what they actually incurred. Among other things, this will provide a disincentive to bringing abusive or questionable motions and will provide a greater incentive to resolve disputes earlier in the process.

The Committee has formed an Implementation sub-committee, tasked with consulting with various groups of stakeholders and ultimately proposing specific means to implement the recommendations in the Report. The sub-committee is working towards submitting specific proposals to the Committee in 2014.

(b) The Subcommittee on Technology

This subcommittee's mandate is to identify obstacles to the use of new and existing technologies in the Rules and to propose changes to facilitate their use without altering the substantive content of the Rules. For example, Rules that contemplate paper-based documents will be changed to technology-neutral language.

A discussion paper entitled *Information Technology and the Federal Courts Rules* was published in May 2011 and posted on the website of the Federal Court. Comments were received from various sources, including members of the private bar. Proposed amendments were drafted and discussed by the subcommittee and plenary Committee.

[4] Available at: http://cas-ncr-nter03.cas-satj.gc.ca/fct-cf/pdf/ENG_Global%20review%20report%20FINAL.pdf.

The proposed amendments will be pre-published in early 2014 in Part I of the *Canada Gazette*, for further consultation with the public over a period of 60 days.

(c) The Subcommittee on Enforcement

The mandate of this subcommittee is to identify Rules pertaining to the enforcement of Court orders which may be causing practical, procedural or legal difficulties, and to suggest amendments to enhance efficiency and access to justice.

In July 2013, the subcommittee issued a discussion paper in which it recommended making amendments to the Rules concerning the enforcement of orders and sought feedback from the bar. After reviewing the comments received, the subcommittee submitted its report, including specific proposed Rules amendments, to the Committee in December 2013. The Committee endorsed those proposals, which will now be forwarded to Legislative Drafting branch to draft the new Rules for review by the subcommittee.

(d) The Subcommittee on Substantive Amendments

The mandate of this subcommittee is to consider potential amendments to the Rules and to the *Federal Courts Immigration and Refugee Protection Rules* that are more substantive in nature. Amendments under consideration include measures to: enhance accountability when litigants are assisted by someone other than a lawyer; require parties to file a notice of intent to defend against a lawsuit; reduce the printing burden for books of authorities; increase the monetary limit in simplified actions; require parties to file public (expurgated) versions of confidential documents; and reduce duplicate filings for citizenship appeals. A draft of potential amendments will be presented to the Committee in mid-2014.

(e) The Subcommittee on Non-controversial Amendments

This subcommittee conducted the groundwork which led to various amendments to the Rules that were endorsed by the Committee in November 2012 and published in the Canada Gazette on February 7, 2013. Those amendments were designed to reduce duplication, avoid unnecessary expense and provide greater flexibility to parties and the Court, thereby enhancing access to justice.

(ii) Case Management

In 2009, the Court embraced the goal of scheduling complex trials involving intellectual property disputes within two years of the initiation of proceedings in the Court. That objective has now been substantially achieved. In the process, a large backlog of matters that had been in the Court's system for many years has been eliminated. This achievement is largely attributable to the Court's successful use of case management.

The bulk of the Court's case management work is conducted by its six prothonotaries. As a result of the substantial increase in the Court's workload over the last decade, and the fact that its complement of prothonotaries has not increased, the Court's ability to

substantially expand the use of case management is constrained. Nevertheless, the Court is committed to exploring ways to make greater use of this critical tool.

Among other things, experience has demonstrated that case management assists to:

- move proceedings toward a hearing much more expeditiously;
- narrow the number and nature of issues in dispute;
- substantially reduce legal costs;
- facilitate a mediated or other non-litigious resolution of disputes; and
- make scarce Court resources available to the public for other matters.

To achieve these objectives wherever possible, having regard to available resources, the Court will continue to refine its use of case management and assess how it can improve at:

- involving the trial judge earlier and perhaps at more frequent intervals in case managed proceedings;
- exploring the prospects for settlement, mediation and other forms of resolution, as well as for narrowing the number and nature of issues in dispute, early in the process;
- assessing the prospects for resolving or narrowing issues in dispute at subsequent stages of the case management process;
- placing matters into case management at an early stage;
- fixing hearing dates early in the process;
- exploring the prospects for reducing the number of witnesses to be heard; and
- expanding the use of case management to a broader range of matters, such as complex judicial reviews.

(iii) Court Assisted Resolution of Disputes

Regardless of whether a matter has been placed into case management, the Court will assess and actively monitor the prospects for court assisted resolution of disputes, short of full-blown litigation. Where the Court identifies the potential to resolve a dispute without the need for contested proceedings, it will offer the services of a judicial officer for that purpose. Of course, where the Court's effort to settle or mediate the dispute is not successful, a different judicial officer will be assigned to hear the case, unless the parties consent to the same judge presiding, in accordance with Rule 391.

(iv) Expediting the issuance of decisions

Historically, the Court has been known as a "writing court." In contrast to the other superior courts in Canada, the Federal Court has seldom issued oral decisions. In addition, it does not make the same use of short written "Endorsements" as other courts. The Court recognizes that this can adversely impact upon access to justice.

Going forward, the Court will endeavour, in appropriate circumstances, to make greater use of written Endorsements (also somewhat inaptly referred to as "speaking orders") and oral decisions. Consistent with the principle of judicial independence, the determination as to the appropriate manner in which to render a decision will rest solely with the judicial officer who is seized with the case.

(v) Accommodating Differences in Practice Areas

The Court intends to make greater use of practice directions to explain how the Rules will be flexibly applied, subject to the discretion of the Court's judicial officers, to accommodate differences in practice in particular areas of the law.

The Court will also explore other initiatives to enhance access to justice in specific practice areas. Two examples of these areas are immigration & refugee law and aboriginal law.

(a) Immigration & refugee law

1. Expediting the review of certain types of proceedings

Some applications in the immigration & refugee area are much more straightforward than others. Pursuant to internal discussions and consultations with representatives of the bar and the Department of Justice [DOJ], the possibility to significantly shorten the time it takes to schedule a hearing and issue a final disposition for those types of applications was identified.

The Court launched a pilot project in 2013 to expedite applications to be heard in Toronto in respect of decisions under sections 6, 7, 8 or 9 of the *Immigration and Refugee Protection Regulations*. The initial experience in individual proceedings under that pilot project has been promising: proceedings have been completed well within the scheduled 45 minute time-frame and decisions have been issued by the Court either on the same day as the hearing, or within a few days afterwards. If the pilot project is successful, the Court will consider expanding it to other cities and to certain other types of decisions.

2. Shortening the default hearing time for Judicial Reviews

In an effort to allocate Court time more efficiently, the Court will replace the existing two hour default hearing time for judicial review with a new 90 minute default. Of course, the judge granting Leave will continue to retain full discretion to establish a different hearing time in the Order granting Leave. As a practical matter, the duration of most judicial

review proceedings in the immigration and refugee area in recent years has been approximately 60-75 minutes.

3. Reducing the variation in Leave grant rates

In late 2011, the Court became aware of the initial results of a study which indicates that there is a significant variation in the rate at which individual judges of the Court grant Leave for judicial review under the *Immigration and Refugee Protection Act*.

Variation in judicial outcomes is a common feature of our system of law. However, the Court recognizes that there is a point at which the variation in judicial outcomes may raise questions of predictability, certainty and consistency.

Since becoming aware of this issue, the Court has actively endeavoured to achieve a better understanding of it and the extent to which it may engage these types of questions. The Court also continues to assess whether there may be steps that can be taken to address this issue in a manner that does not encroach upon the judicial independence of individual members of the Court.

(b) Aboriginal law

1. Streamlining and increased flexibility to facilitate access to justice

In November 2009, the Court issued its *Aboriginal Litigation Practice Guidelines* [Guidelines]. The Guidelines are directed towards streamlining and introducing more flexibility into the manner in which aboriginal law actions are handled by the Court, from the pre-filing stage through case management, trial management, the trial itself, and post-trial. Since the Guidelines were issued, they have been a helpful resource to parties, counsel and the Court.

In October 2012, the Guidelines were expanded to include a new chapter that addresses litigation practice issues involving oral history testimony and the role of Elders.

2. Early screening to explore the scope for resolution/narrowing of issues

Shortly after the initial release of the Guidelines, the Court's Aboriginal Law Bar Liaison Committee began to explore the prospects for extending the application of the Guidelines to applications.

As a first step, the Court internally initiated a pilot project for judicial review applications dealing with First Nations governance disputes in early 2012. The objective of that pilot project, which was officially launched in October 2012, is to facilitate more expeditious, cost effective and satisfactory resolution of such disputes. A key component of this project is an initial screening assessment to identify the approaches that hold the greatest prospect for resolving the dispute in the most cost-effective, timely and satisfactory manner for those involved. The initial experience with the pilot project has been quite positive. While some applications ultimately required adjudication, a number successfully progressed to dispute resolution at different stages in the proceedings.

3. Guidance on applications

The Aboriginal Law Bar Liaison Committee is also working on providing guidance to engage First Nations communities directly in the resolution of election and governance disputes. For example, the committee is exploring how First Nations Elders, indigenous legal traditions, and Court-assisted mediation may play a role in promoting resolutions to disputes that are less costly, more expeditious, and more effective over the long-term than conventional litigation.

4. Promoting a better understanding of the Court and its processes

The Court established the Aboriginal Law Bar Liaison Committee in 2005. It now consists of members of the Court, the Indigenous Bar Association, the Aboriginal Law Section of the Canadian Bar Association and the Department of Justice. The committee developed the Guidelines, including the recent chapter on Aboriginal oral history and Elder testimony. As part of the latter exercise, the Federal Court consulted with Aboriginal Elders, including in a historic session in September 2010 hosted by the Elders at Turtle Lodge on Sagkeeng First Nation, Manitoba. A follow-up session, focusing on Aboriginal forms of dispute resolution, was held on October 31 and November 1, 2013, at the Cultural Centre at Kitigan Zibi First Nation, Quebec. As a result of those discussions, the Court is exploring the extent to which one or more changes to the Rules could assist to expand the successful use of the above-mentioned pilot project. In addition, members of the Court are engaged in events around the country that focus on Aboriginal issues.

(vi) Physical Accessibility

The Federal Court of Canada, the predecessor of the Federal Court, was established in 1971. At that time, it was recognized that, as a national institution, the Court should be physically present and accessible in each of the regions of Canada. In addition to contributing in important ways to the national character of the Court and to promoting greater awareness of the Court, a physical presence assists to facilitate access to justice, particularly in core areas of the Court's jurisdiction.

The Court is committed to working with CAS to ensure that each of the Court's offices throughout the country is accessible to the people in those regions and is responsive to their needs.

Together with CAS, the Court is also in the process of ensuring that each of its facilities is wheel-chair accessible, is equipped with assistive listening devices, and is accessible to people who are visually challenged.

(vii) Promoting a Better Understanding of the Court

An important component of increasing access to justice is to promote a better understanding of the Court and its services.

The Court is not well known or understood by the Canadian public, or even by many legal practitioners across the country, who often choose to file proceedings with

provincial superior courts with which they are more familiar, when they have the option to do so. As a result, parties who might be able to resolve their disputes with the assistance of the Court may not be availing themselves of the opportunity to do so.

Two constituencies that are critical to any effort to promote a greater understanding of the Court are law schools and bar associations. In addition, the Court continues to provide information through the media and participation at various public forums. These stakeholders are addressed in greater detail below. The Court is also exploring ways to promote a better understanding of its jurisdiction and procedures among other segments of the public.

When liaising with Francophone audiences, the Court will make a special effort to draw attention to French resources, including the recently released text entitled *Recours et procédure devant les Cours fédérales*.

(a) *Law Schools*

1. Twinning program

A key pillar of the Court's relationships with law schools is the twinning program. Over the course of the next year, the Court will take steps to strengthen and reinvigorate this program.

2. Judicial review hearings

Based on past experience, one effective way to promote a greater understanding of the Court within a law school is to hold a judicial review hearing [JR] at the university. Among other things, such hearings help to give students a very practical experience with the Court, its processes and one of its core areas of jurisdiction.

Subject to available resources and applications to be heard at mutually convenient times, the Court will endeavour to organize one JR each academic year at law schools in the larger cities across the country, and bi-annually at the other law schools.

In addition, the Court will look for opportunities to invite students to attend judicial review proceedings that are held in the Court's facilities across the country.

3. Course modules

Each year, law clerks indicate that there is very little content regarding the Court and its processes in the required and optional courses offered at their *alma maters*.

To address this issue, the Court will develop modules that can be given during all or part of a single class during courses on civil procedure, public law, administrative law, intellectual property law, aboriginal law and maritime law. These modules would then be available to judges, for example, to present a lecture when assigned to sittings in locations that have a nearby law school.

4. Meet and greets

The Court will also strive to organize "meet and greet" receptions or panels with faculty members and students, either on the margins of a JR hearing, during a class that may be given by one of the members of the Court, or on a separate occasion, such as a Court retreat.

5. Moot Court programs

The Court will continue to maintain a strong level of involvement in the Fox and Laskin moots, and to participate in other moots (e.g., the Jessup Moot) that deal with areas falling within the Court's core areas of jurisdiction.

(b) Bar associations

Through its many bench and bar liaison committees, the Court currently has strong relationships with the Canadian Bar Association, the Law Society of Upper Canada, the Intellectual Property Institute of Canada, the Canadian Maritime Law Association, the Indigenous Bar Association, the Advocates' Society, le Barreau du Québec, le Barreau de Montréal and other representatives of the general bar or various practice areas across the country.

The Court will explore ways to develop and strengthen its relationships with other local and regional bar groups by establishing frameworks for regular dialogue, perhaps on the margins of other meetings and assigned hearings.

(c) Media

The Court's *Policy on Public and Media Access* [Media Policy], issued in November 2010, is based on the following two fundamental principles:

1. Both the justice system and the public interest are well-served when media coverage of the courts is accurate, balanced and complete.

2. The Court and CAS have a duty, consistent with their roles, to assist the media in performing their important role of providing coverage of the Court's work.

Among other things, the Media Policy provides that:

- With certain exceptions, hearings of the Court are open and accessible to the public and media, as are documents filed in Court.

- For the purpose of note-taking or electronic communication, laptop computers and hand-held devices are generally permitted in Court, including for "tweeting," provided they do not cause any disturbance to the proceedings.

- Communications devices, such as cell phones, pagers and similar devices, are permitted in Court, provided they are set on silent mode and never used for voice communication.

- Members of the media holding valid credentials may record proceedings to verify their notes of what was said or done in Court, but not for broadcast. Others, including counsel, must seek the permission of the presiding judge.

- Upon request with reasonable notice to the Chief Justice, members of the media may also record (audio or video) or photograph judicial review proceedings for publication or broadcast.

Going forward, the Court will explore how to reinforce the Media Policy to promote a greater understanding of the Court and its cases. This will include evaluating the potential use of: (i) social media to communicate information, (ii) briefing sessions in advance of the release of important decisions, and (iii) providing access to high profile hearings through teleconference, video conference and digital recording. As discussed below, the Court will also be making digital audio recordings of its proceedings available to the media, subject to certain terms and conditions.

(d) Public Forums

The Court has a history of supporting the participation of its members in fora to discuss the role of the Court, as well as broader issues, especially relating to the administration of justice. The Court will explore how it can increase its involvement in these types of activities, having regard to its workload and the nature of the forum.

B. Ease of Interaction with the Court (Reduction of Barriers)

After the time and costs associated with Court proceedings, the most significant barrier to access to justice is the aggregate impact of a substantial number of impediments to interacting with the Court. These include certain aspects of the current Rules, existing paper-based processes, the nature of the information that is made available to the public regarding the Court's processes, shortcomings associated with the Court's existing technologies, and the nature of the resources that are made available to self-represented litigants.

Many of those impediments will be addressed through measures discussed above. These include:

- Streamlining and simplifying the Rules;

- Establishing the principle of technological neutrality in the methods of communicating with the Court, including by amending the Rules, for example, by eliminating requirements to file paper documents or to communicate with the Court by paper; and

- Adopting measures to deter abuses of the Court's processes.

In addition, the Court will assess the appropriateness of formal recognition of certain informal practices. The Court will also assess the scope for providing greater flexibility and guidance through the more effective use of practice directions.

Additional measures to facilitate a greater ease of interaction with the Court are identified below:

(i) Tables of concordance for the Rules

Members of the Court regularly hear from practitioners across the country that they are unfamiliar with the Rules and that this is a factor which contributes to their decision to file cases in the provincial superior courts, when they have a choice.

One step that the Court will take to address this issue will be to develop a table of concordance between the Rules and their counterparts in each province and territory. These tables of concordance will be put on the Court's website and sent to bar associations and other groups, including law schools, throughout the country. They will also be available for inclusion in the module that will be developed for civil procedure or other courses in law schools.

In developing these tables of concordance in the French language, the Court will draw upon the recently released *Recours et procédure devant les Cours fédérales.*

(ii) Making More User-friendly Information Available on the Court's Website

The Court's website is a unique communications channel for making helpful information available to the public and for generally demystifying the Court and its processes.

The Court intends to take a number of steps to assist the public to better understand its practices and procedures and to provide helpful information regarding those matters and the Court in general. These include (a) developing various user-friendly interfaces for the Rules and other Court notices/documents, (b) simplifying, indexing and improving access to the Court's practice directions, and (c) providing easy-to-follow steps for filing proceedings and navigating them through to the hearing stage.

Additional measures that will be taken include:

- Preparing and uploading online information kits and easily understood checklists;

- Developing one or more multi-media presentations to provide people with a better sense of how proceedings before the Court are conducted; and

- Making more helpful web-searching tools available on the Court's website.

(iii) Special Resources for Self-represented Litigants

In addition to the foregoing, the Court will refine the existing guidance and resources that it makes available to self-represented litigants [SRLs].

Initial steps that will be taken in this regard will include:

- Updating and, where possible, simplifying the existing resources that have been developed for SRLs;
- Developing interactive programs and pre-filled forms to assist SRLs to better understand and follow the Court's processes;
- Providing information regarding local legal services, including by adding links on the Court's website to:
    - legal aid clinics;
    - *pro bono* organizations;
    - public legal education and other sources of potentially helpful information; and
    - translation and interpretation services;
- Making hard copies of certain resources available to SRLs at the Court's Registry offices, including a list of coordinates for local legal aid clinics and *pro bono* organizations;
- Making a computer available for SRLs to use at the Court's registry offices; and
- Providing specialized training to Registry staff to help them to assist SRLs to understand and follow the Court's processes, and to access local legal services.

(iv) Ongoing Development of Best Practices

To be truly committed to removing barriers to access to justice, the Court must establish processes to stay on top of best practices in this field. As a first step in this regard, the Court will establish regular liaison contacts with other courts in Canada and abroad.

The Court will also add this topic as a regular agenda item for meetings of the Rules Committee, the Bench & Bar Liaison Committee and other groups with which representatives of the Court regularly meet.

Part II – Modernizing the Court

Access to justice can be significantly improved by modernizing the various technologies used by the Court.

Although many of the Court's users keep pace with technological progress and are increasingly moving towards an electronic information environment, the Court remains largely a paper-based organization.

As the technological gap with its users continues to widen, the manner in which the Court is perceived by the public may suffer. And as the Court falls increasingly out of sync with the way in which the majority of its users are now conducting their affairs, perceived and actual barriers to access to justice may increase.

A failure to keep pace with technology will also result in lost opportunities to realize potential cost savings and achieve "more with less." In an era where CAS's ability to deliver on its mandate is strained, these foregone opportunities have significant implications.

It is therefore critical that the Court and CAS seek ways to modernize the Court with available resources, as an urgent priority.

A. CAS's Modernization Planning

CAS is developing a long term strategy for modernizing the Court's technological infrastructure and related processes. To assist it in this regard, CAS retained the services of Indicium Legal Consulting (Sandra Potter), to prepare a discussion paper on how to approach this task. Ms. Potter's initial report draws upon a second discussion paper, entitled *Court Information Policy Framework to Accommodate the Digital Environment*, prepared for the Canadian Judicial Council by Jo Sherman, of Azure Pty Ltd. These reports emphasize the need for leadership and involvement by the judiciary in modernization. They also highlight the importance of fully understanding the difference between the paper and electronic processes.

The judiciary is leading a Working Group on Electronic Management of Court Information, with CAS participation, to review the two reports and assess their implications for the courts and CAS. It may take several months before the long term strategy can be finalized.

Key decisions that will need to be made, in consultation with the judiciary, will concern matters such as:

- The basic service-oriented architecture within which the various components of the Court's modernization strategy will be integrated and aligned with the principal categories of Court information;

- Whether to embrace a centralized, regional or local IT service model;

- How to benefit from products developed elsewhere, and the experiences of other courts, to avoid "reinventing the wheel" and "making the same mistakes";

- How to minimize the risk of cost-overruns;

- The target dates for mandatory e-filing, if implemented, and the switch-over from paper to electronic documents as the "official" format of court records;

- How to facilitate electronic access to Court records by the public in a manner that safeguards privacy (including risks to vulnerable people) and security;

- How to ensure interoperability and integration between the various modernization components;

- How to avoid steps that do not add value;

- The optimal critical path/roadmap for rolling out the longer term strategy, both with respect to specific modernization components and the order in which they will be rolled out to each of the four courts supported by CAS;

- Whether to outsource components of the plan, and how to do so in a way that maintains judicial control over Court records and data;

- Who will be responsible for doing what, and by when;

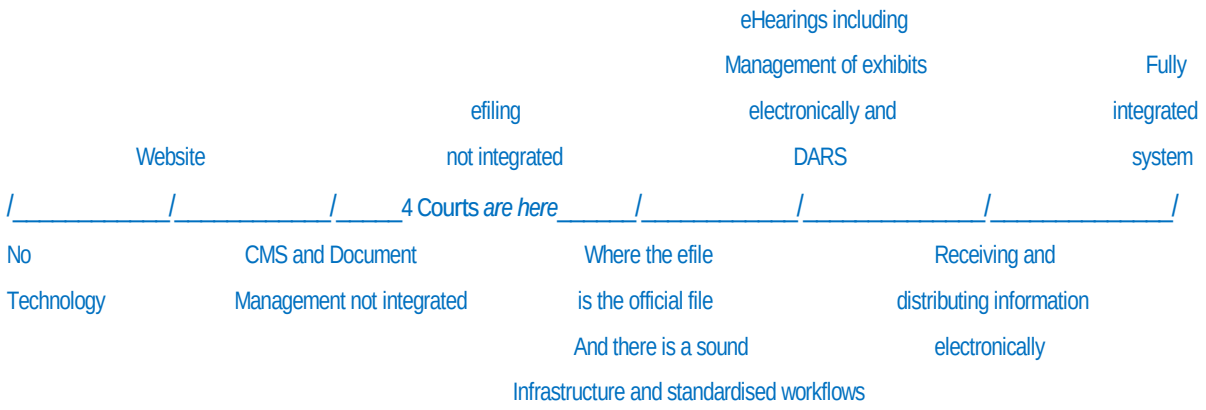
- Engagement of the judiciary and CAS personnel in the court's modernization strategy through effective change management;

- Training of the judiciary and all personnel within CAS who will be using specific new technologies; and

- How to safeguard judicial independence throughout the modernization process.

To put the foregoing into context, Indicium has estimated that, at the present time, the four courts supported by CAS are at a fairly early point on the continuum from having no technology to having a fully integrated system, as reflected in the following depiction:

Continuum from No Technology to Fully Integrated System



Among other things, shortcomings identified in the existing IT system of CAS include:

1. Inconsistency of processes
2. Lack of system integration
3. Inconsistency of the format in which electronic information is held
4. Inadequate network and hardware infrastructure

CAS has estimated that it requires approximately $26M in new funding over the next 5 years, and an ongoing $3.5M per year thereafter, to support the basic modernization requirements of the four courts. This includes a new Court and Registry Management System [CRMS] complete with electronic filing, and the integration of the digital audio recording system [DARS] as well as e-copy and e-scanning into the CRMS.

The Court understands that there is broad support for CAS's funding request. However, given the current fiscal environment, this request remains to be endorsed by the Government. As a result, the ability of CAS and the Courts to modernize remains constrained.

B. The Principal Components of the Court's Current Modernization Vision

Given the current state of the Court's IT infrastructure, modernization initiatives cannot continue to be postponed indefinitely. Pending the receipt of funding for a comprehensive overhaul of its IT capabilities, the Court will work with CAS on discrete projects, as funds become available, and on the assumption that the funds which have been requested

for a new CRMS will be received within the five year period covered by this Strategic Plan.

In this regard, and subject to available funding, the Court's priorities, in order of importance, are as follows:

(i) Digital Audio Recording System [DARS]

In 2013, approximately 45 stand-alone (no network dependency) DARS units were rolled out across the country. Registry staff and contract registrars in each of the Court's offices have been trained to operate those units. The initial feedback from members of the Courts has been positive. DARS has helped CAS to reduce court reporting and transcript costs. It also facilitates the delivery and transcription of oral judgments, enhancing timely access to justice. Going forward, each Court hearing will be recorded by DARS.

The next major step is to integrate DARS units into the Court's IT network. Work on this project will run in parallel to the CRMS project (as detailed below). Once the DARS recordings are networked, they can be uploaded to a central server and accessed by members of the Court anytime and anywhere. This will permit next day transcripts to be generated from digitally recorded hearings anywhere in the country. In addition, a networked solution will provide the Court with a simpler method to record confidential hearings in a secure manner. It is also expected that greater cost savings will be realized as transcription services can be provided from any location across Canada, thus increasing the competitiveness of these services.

(ii) E-filing and e-service

In late 2012, CAS's third party e-filing service provider informed CAS that it no longer considered the Federal Court's e-filing services to be commercially attractive.

Shortly afterwards, a free service developed "in-house" by CAS was launched. However, that service is unstable and temporary in nature, and is not able to accommodate a large volume of filings. In addition, it is not fully integrated with the existing CRMS and requires Registry staff to manually link e-filed documents into the CRMS. CAS has therefore requested that the Department of Justice refrain from using the service until a mutually satisfactory solution is developed. In the interim, CAS and the Court will remain vulnerable to a system breakdown if there is a material increase in the number of e-filers. To reduce this risk, a size limit of 10 megabytes has been placed on all documents.

The current situation is unsustainable and unacceptable. The Court is committed to working with CAS to find a solution that will enable CAS to launch a more robust e-filing system that will be interoperable, and interface smoothly, with the planned CRMS.

An integrated e-filing and CRMS system also would allow users simultaneously to file *and* serve documents and then view those documents online. Currently, only docket

entries are accessible by parties online, limiting access to justice and creating a burden on parties (in terms of copy costs) and the Registry (in terms of staff time).

The Court and CAS are committed to a solution that will not only integrate e-filing and e-service, but will also increase the breadth of functionality of those services.

(iii) Electronic communication as the default mode of communication with the Court

Counsel who frequently appear before the Court have identified significant problems and inefficiencies with the existing default mode of paper and facsimile communications between the Court and parties.

Among other things, it takes much longer for communications to be exchanged with the Court, and from time to time documents are sent to addresses where parties or their counsel are no longer located, or to facsimile numbers that are no longer valid.

To address this situation, the Court is investigating the possibility of expanding the use of electronic communications with parties, where consent is provided. This electronic form of communication is dependant on upgrades to CAS's existing IT infrastructure, as bandwidth is currently limited and the network is unstable.

When these steps have been taken, e-mail or another form of electronic communication will be the default mode of communication with the Court. The Court will also explore other forms of communication such as SMS (text) messages.

The Court currently provides e-mail notifications of court bulletins, decisions and media releases to subscribers, in addition to an RSS news release feed on the Court's website. The Court is also exploring a public alert management tool, which would provide the judiciary, litigants, counsel and the media with the ability to select a hearing or class of hearings (or other functionality) for alerts via e-mail, text message, etc. Once the new CRMS is fully operational, it is expected that subscribers will be able to sign up for updates on files that they have flagged to be of interest (rather than having to consult the docket of each file daily on the Court's website).

In addition to electronic communications with parties, the Court is also exploring the use of e-initiatives with tribunals. Once the Court's IT infrastructure is upgraded and stabilized, the Court should be able to deliver its orders to tribunals (e.g., orders pursuant to Rule 14 of the *Federal Courts Immigration and Refugee Protection Rules*) and to receive certified records from tribunals electronically. This will greatly reduce the financial and human resource burden on the Registry and on the tribunals.

(iv) Enhanced video-conferencing

The Government's 2012 Budget Speech highlighted the importance of videoconferencing as a measure to reduce government spending. CAS is seeking funding to increase the number of videoconferencing facilities and to enhance the quality of those services.

The Court has been using video-conferencing for a number of years. However, experiences across the Court have been inconsistent. In some cases, the technology has worked well while on other occasions there have been disconnections, long interruptions and poor quality transmissions.

Being able to offer a higher quality and reliable video-conferencing service is a priority for the Court and an important part of facilitating greater access to justice.

While the Court is committed to maintaining a physical presence in the regions, there is much support for making greater use of video-conferencing in high volume offices (i.e., Toronto, Montreal and Vancouver). Good candidates for video conferencing include case management conferences, short motions, and other hearings that do not reasonably justify the travel expense that would likely be associated with the hearing.

Another variation of videoconferencing being explored is a national secure video-call network. This would allow the judiciary to participate in meetings with their colleagues, Registry staff and litigants. It would also help to realize savings in terms of time and cost.

The Court has been exploring a simplified version of this system for use with its Law Clerk recruitment program. Experience to date indicates that this enables candidates from across the country to be interviewed efficiently and at a lower cost.

(v) Electronic Courtooms

Technology-enabled courtrooms that provide cabling and network connectivity for computer equipment, videoconferencing, evidence display, digital audio recording and internet access are increasingly being sought by the judiciary and users of the courts as a standard service for court hearings. This is in part being driven by convenience considerations and in part by the important efficiencies that can be realized.

CAS has attempted to meet these demands in an *ad hoc*, piecemeal fashion with improvised installations. These do not meet requirements for reliability, quality of service or security of information. Steps are required to bring about an orderly and efficient transition to fully integrated electronic courtrooms.

In response to requests from members of the bar, the Court is launching a pilot project, using technology similar to that now being used by the Competition Tribunal. Among other things, this technology allows parties and the Court to display exhibits and other evidence, as well as legal submissions, on courtroom screens, instead of having to direct the Court to one of many volumes of materials in the Court's record. This will reduce the length of hearings and the costs of producing a paper record.

(vi) CRMS

CAS requires robust IT systems to support the judicial process properly. The current paper-based registry systems, which were obsolete when CAS was created in 2003, are not only inefficient and unreliable but fall far short of the requirements of the judiciary and court's users.

Implementation of a new CRMS is critical for CAS, the courts and their users. This is the central element of the various initiatives needed to transform the Court and the Registry through the application of modern information technology. This initiative is endorsed by the National Judges Committee on Information Management and Information Technology. Among other things, the new CRMS will make possible the efficient receipt, processing, storage and retrieval of electronic court documents and the automation of court and registry workflow rules, processes and procedures.

The new CRMS is essential to fully integrate electronic filing, scanning, copying, and DARS. Among other things, the CRMS will enable electronic filing, workflow automation, hearing and courtroom scheduling, electronic signatures, issuance of decisions, DARS networking, and compilation/reporting of performance measures and statistics needed for the efficient functioning of the Court.

While the new CRMS will use off-the-shelf software elements, developing the integrated system will require use of both external consultants and internal resources in the form of Project Management, Business Analysis, IT, Registry and Judicial staff.

(vii) Electronic Access to Court Records

At the present time, it is not possible to access Court records electronically. Instead, one must physically travel to a Court location. In addition, one must pay 40 cents per page to copy documents, pursuant to the *Federal Courts Rules*. This presents a significant barrier to public access to the Court's records. Practitioners and others who may wish to review particular filings or other Court records electronically from their offices or elsewhere may find it difficult to justify (i) the time and effort required to travel to the Court, and (ii) the cost per page for photocopying. In addition, costs are incurred by the Registry to send files to various locations for viewing and photocopying by the public. Electronic access to documents filed on the Court's website will meaningfully increase access to justice.

Other courts of record have offered this service for many years. For example, the Competition Tribunal has offered electronic access to most documents filed in a proceeding since 2000.

The Court recognizes the desirability of offering the public electronic access to its records on a priority basis, including from tablets and other mobile devices. However, given that this will be a feature of the CRMS system, it does not make sense to incur the time and expense associated with developing a temporary stand-alone product.

(viii) Tools for the Judiciary

The results of a recent internal survey indicate that members of the Court have a wide range of familiarity with and usage of the technology currently available today in the market-place to assist with managing and communicating information, conducting research and writing.

As in the private sector, judicial officers are adopting technology and devices that are not supported in the workplace. This is in part because they are not compatible with CAS's outdated computer and telephone networks. Planning for modernization, including the new CRMS, should take into account (i) the diversity of platforms, tablets, smart-phones and other devices now available, (ii) the growing desire of members of the Court to "bring their own devices to work", (iii) the fact that a standardized solution for all is not optimal and may entrench existing inefficiencies, and (iv) the need for CAS's IT infrastructure to be able to accommodate different products, as is happening in both the private and public sectors.

In addition, some judicial officers have expressed interest in new cloud-based services, such as Dropbox, to transmit their judicial information. This has security implications that will need to be considered more closely in the coming year.