

SUPREME COURT OF CANADA RULES CHANGES

05 December 2016

This is a special SCC Bulletin to alert our readers to amendments to the Rules of the Supreme Court of Canada and new Guidelines for Preparing Documents to be Filed with the Supreme Court of Canada (Print and Electronic), which will come into force on Jan. 1, 2017.

The not-yet-in-force amendments to the Rules can be found by clicking [here](#) which will take you to the Government of Canada's Justice Laws Website and the text of the specific amendments. The new Guidelines, for documents filed after Jan. 1, 2017 can be found [here](#).

Summary of the Changes

The Court has described the key changes as:

The amendments include a new process for giving notice when an appeal raises a constitutional issue, as well as new deadlines for serving and filing appeal documents.

Other amendments will reduce costs to parties and further modernize the Court's processes. Hyperlinks to cited authorities are to be provided in the factum and books of authorities are only necessary for those authorities that are not available electronically. Documents may be served by e-mail, with some exceptions. In addition, the number of print copies required for parts of the record will be significantly reduced.

The amendments include a number of significant changes, including:

1. Changes to the Time Limits for Filing Documents:

- the appellant's materials must be filed 8 weeks after the notice of appeal is filed (down from 12 weeks) (R. 35(1))
- the materials of an Attorney General intervening on a constitutional question must be

filed 16 weeks after the AG's notice of intervention is filed (down from 20 weeks) (R.37)

- the materials of an intervener granted leave to intervene by order of the Court must be filed 6 weeks after the AG's notice of intervention is filed (down from 8 weeks) (R.37)
- the electronic version of all materials must be filed simultaneously with the print versions (the 5 day grace period for filing has been removed)

2. Changes to the Number of Documents to be Served and Filed:

- all documents (except originating documents) can be served by email without the requirement for prior consent (R.20(1)(d.1);
- service of an electronic version of all materials will now be the norm; there will be no need to serve paper copies of any materials unless specifically requested by the recipient, in which case the paper copy must be delivered within one week (R.20(2))
- only 2 copies of the print version need to be filed with the Court (down from 11 copies) (R. 35 and 36)
- Part VI of the factum must include hyperlinks to electronic versions of the cases and statutory provisions relied upon; the Book of Authorities will now only include cases that are not available electronically somewhere (R. 42 and 44)

3. Changes to the Process for raising Constitutional Questions:

- there is no longer a motion to the Court to state a Constitutional Question as there was previously with the constitutional questions then set by the Chief Justice;
- instead, if an appeal raises an issue in respect of the constitutional validity or applicability of a statute, regulation or common law rule, or the inoperability of a statute or regulation, the appellant must append to the notice of appeal a Notice of Constitutional Question (new Form 33B) in which the party asserts that the appeal raises a constitutional question (which question is then described) (R.33(2));
- if the respondent is the party raising the constitutional question, the respondent must serve the Notice of Constitutional Question within 30 days after leave to appeal has been granted or after the filing of the notice of appeal in respect of an appeal for which leave is not required;
- the Notice of Constitutional Question must be served the same day on all parties to the appeal and all Attorneys General (R.33(3)); and
- an Attorney General who wishes to participate in the appeal must serve and file a notice of intervention (new Form 33C) within 4 weeks (R.33(4)).
- at the leave stage, if a proposed appeal raises a constitutional issue, this has to be set out in Part II of the leave application by including a concise statement of the

constitutional question(s) in issue.

Document Preparation

The new Guidelines for Preparing Documents to be Filed with the Supreme Court of Canada (Print and Electronic) also implement a number of changes to the technical requirements for document preparation. It is important to consult the new version of the Guidelines and/or speak with an experienced SCC Agent when preparing documents for filing with the Court after Jan. 1, 2017. Some of the new requirements include:

- Filing of electronic appeal and application for leave to appeal documents: electronic and printed versions must now be filed by the deadline set out in the Rules, even if they are filed separately (previously the electronic versions could be filed up to five working days after the print materials were filed).
- Footnotes in a factum: the font must be 12-point and if the footnote contains an explanation or a comment (i.e. anything other than a “pure citation”), then it must be one and one half lines apart instead of single spaced (previously there was no specific rule for footnotes and many word processing programs default to 10-point font).

Transition

The Rules Amending the Rules of the Supreme Court of Canada (SOR/2016-271) come into force on Jan. 1, 2017. The amendments will apply to all cases as of that date. For cases involving leave applications or notices of appeal filed after Jan. 1, 2017, the new Rules and Guidelines will apply. For cases commenced prior to Jan. 1, 2017, the new filing deadlines will not apply but the Court would appreciate any documents filed after Jan. 1, 2017 to use the new formatting rules, if possible.

The transition in appeals that involve constitutional issues may not be as clear cut. If a leave application has been filed but not yet decided as at Jan. 1, 2017, parties may be required to file amended materials to comply with the new process.

If complying with any new requirement would cause delay, counsel are asked to please contact François Desrosiers, Case Analyst at the SCC, at 613-992-3202.

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