

Guide to Serving Documents in Divisional Court Appeals

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About this guide:

The information contained in this guide is simply an overview of the relevant legislation and rules of procedure. It is not intended to be a substitute for the *Rules of Civil Procedure*, which should be examined for specific information. Nothing contained, expressed or implied in this guide is intended as, or should be taken or understood as, legal advice. If you have any legal questions, you should see a lawyer.

Special thanks to the Divisional Court, whose [Appeal Information Package](#) provided valuable information for this series of Guides.

Ce guide est également disponible en français.

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Where to get more information:

The Ministry of the Attorney General has a series of **guides** to Divisional Court procedures which are available at court offices and the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca:

What is Divisional Court?

Guide to Appeals in Divisional Court

Guide to Serving Documents in Divisional Court Appeals

What can I do if my appeal to the Divisional Court is dismissed for delay or dismissed as abandoned?

Guide to Fees in Divisional Court Appeals

The guide entitled "What is Divisional Court?" includes a helpful overview of Divisional Court services, as well as a glossary of legal terms you may find helpful when reading the other guides.

Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. Please note the forms must be formatted in accordance with the *Rules of Civil Procedure*. You can find tips on completing forms at the end of this guide.

The staff behind the counter at any Divisional Court office are helpful. They will answer your questions about Divisional Court procedures, but keep in mind they cannot give legal advice and they cannot fill out your forms for you.

For more detailed information, you should refer to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. It is a regulation made under the authority of the *Courts of Justice Act*. To view the *Rules* on-line, go to www.e-laws.gov.on.ca and follow these steps:

- Choose English or French
- Click on "Current Consolidated Law"
- Click on the letter "C"
- Click on the plus sign to the left of "Courts of Justice Act"
- Click on "Rules of Civil Procedure"

Introduction

A lot of paperwork is involved in most court cases, and it is important that copies of documents get to everyone who needs them.

"Serving" documents means providing copies of documents to other parties in an appeal. Documents must be served at each step in the appeal process, unless the *Rules of Civil Procedure* (after this, referred to as the *Rules*) or the court provide otherwise. By serving the other parties, you are **notifying** them of the step you are taking and of the information you will be presenting to the court, and giving them an opportunity to respond. Rule 16 of the *Rules* sets out the specific procedures that must be followed when serving documents including the manner of service and the time frames within which service must occur.

Remember, in Divisional Court parties arrange for service of their own documents. You can:

- serve the documents yourself;
- have a friend, a business associate, or a private process server serve the documents for you; or
- have your lawyer arrange for service of your documents.

The person serving the documents should make careful, detailed notes regarding the name of the person served, the date, time, and manner of service made, and any other related details. This will assist later with proof of service. You can find more information on proof of service in Part Two of this guide.

If your address changes, it is up to you to be sure the court and the other parties in the case always have your proper address so they can serve documents on you. If you do not advise the court and the other parties of your change of address, they are entitled to serve you with documents at your old address. That will mean you are not fully informed about what is happening in your case. Orders may be made without your knowledge and in your absence.

Note: This guide only provides an overview of service in Divisional Court appeals.

- You should always check the *Rules* and the *Courts of Justice Act* and ensure your information is current.
- Instructions for viewing the *Rules* on-line are provided at the front of this guide.
- This guide only deals with service **within Ontario**.

For more information about procedures in Divisional Court appeals, please refer to the list of guides at the front of this guide.

Part One: Service of Documents

Do I have to serve documents before filing them?

Yes. Where a document must be served, court office staff cannot accept the document unless it is properly served before filing.

If there is more than one party being served, each party must be served with his or her own copy of the document being served. For example, if you are serving two parties at the same address, you must send a copy of the document to each party in a separate addressed, sealed envelope.

What if a party does not receive a document or receives it late?

If a party does not receive a document that was supposed to have been served on him or her under the *Rules*, or receives it after the timeframe allowed under the *Rules*, the party can bring a motion to ask the court for the order he or she needs in the circumstances. For example, the party might ask for an order to be set aside (if the order was made as a result of the party not receiving documents), for an extension of time, or for an adjournment.

When can I serve my documents?

Documents can be served on any day of the week **except Sunday** unless a judge has ordered otherwise. See section 124 of the *Courts of Justice Act*.

How do I serve my documents in a Divisional Court appeal?

If the party you are serving has a solicitor of record (i.e. a lawyer that is representing the party at court in your matter), your documents must be served on that solicitor rather than the party. Information on how to serve a solicitor is provided below, under "How do I serve a solicitor of record?".

If the party you are serving does not have a solicitor of record, you can mail your documents to him/her at the last address for service the party has provided. If no address has been provided, you can mail your documents to his or her last known address. If you serve documents by mail, service is considered to have taken effect on the fifth day after you mail the documents (**note:** weekends and holidays are not included in the count of 5 days). This means that if you are going to serve a party by mail, you must do so at least five days prior to the expiry of any applicable deadline. For more information about how you count days, see the "Tips" page at the end of this guide.

Although generally not required in Divisional Court appeals, another option available to you is to hand your documents directly to the party. This method of service is called "personal service." It can be a good way to ensure that your documents are received. It is also a quicker way of serving documents. You can serve your documents by "alternatives to personal service," which are outlined in Rule 16.03. In some circumstances, outlined in Rule 16.04, the court may make an order for substituted service or may dispense with service.

How do I serve my documents in a Divisional Court appeal if I decide to serve them by “personal service”?

If you want to serve your documents by personal service, the *Rules* have different requirements on how this can be done, depending on who you are serving. The chart below provides a quick overview, as well as references to individual rules you can refer to for further detail.

Person being served	Personal service requirement	Rule
<i>Individual: other than a person under disability</i>	By leaving a copy with the individual. <i>Note: If you try to serve someone personally at their place of residence and you are unable to hand them your document, you can leave your document in a sealed envelope addressed to the person with anyone who appears to be an adult member of the same household. On the same day or the following day, you must mail another copy of the document to the person at their place of residence. Service is considered effective on the fifth day after you mail the document. See Rule 16.03(5) for more information.</i>	16.02(1)(a)
<i>Municipality</i>	By leaving a copy with the chair, mayor, warden or reeve, a clerk or deputy clerk or a solicitor for the municipality.	16.02(1)(b)
<i>Corporation</i>	By leaving a copy with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be control or management of the place of business.	16.02(1)(c)
<i>Board or commission</i>	By leaving a copy with a member or officer.	16.02(1)(d)
<i>Person outside Ontario carrying on business in Ontario</i>	By leaving a copy with anyone carrying on business in Ontario for the person.	16.02(1)(e)
<i>Crown in right of Canada</i>	On Her Majesty the Queen in right of Canada, pursuant to s. 23(2) of the <u>Crown Liability and Proceedings Act</u> (Canada).	16.02(1)(f)
<i>Crown in right of Ontario</i>	On Her Majesty the Queen in right of Ontario, pursuant to s. 10 of the <u>Proceedings against the Crown Act</u> .	16.02(1)(g)
<i>Attorney General of Ontario</i>	By leaving a copy with a solicitor in the Crown Law Office (Civil Law) of the Ministry the Attorney General.	16.02(1)(h)
<i>Absentee</i>	By leaving a copy with the absentee's litigation guardian if there is one, or if not, with the Public Guardian and Trustee.	16.02(1)(i)
<i>Minor</i>	By leaving a copy with the litigation guardian if one has been appointed, or if not, with the minor. Where the minor resides with a parent or other person having the care or lawful custody of the minor, another copy must be left with the parent or the person. Where a proceeding is in respect of the minor's interest in an estate or trust, by leaving a copy with the Children's Lawyer (including the name and address of the minor).	16.02(1)(j)
<i>Mentally incapable person</i>	By leaving a copy with a guardian or attorney if there is one acting under a validated power of attorney for personal care with authority to act in the proceeding; <ul style="list-style-type: none"> • If there is no such guardian or attorney, by leaving a copy with an attorney under power of attorney with authority to act in the proceeding; • If there is no such attorney by leaving a copy bearing the person's name and address with the Public Guardian and Trustee and an additional copy with the person. 	16.02(1)(k)
<i>Partnership</i>	By leaving a copy with one or more of the partners or a person at the principal place of business who appears to be control or management of the place of business.	16.02(1)(m)
<i>Sole proprietorship</i>	By leaving a copy with the sole proprietor or a person at the principal place of business who appears to be in control or management of the place of business.	16.02(1)(n)

How do I serve a solicitor (lawyer) of record?

First call the lawyer's office or otherwise confirm that the solicitor (i.e. the lawyer) is still representing the party. If that is the case, you may serve the lawyer by any of the methods listed below:

Method of service	Special considerations	Rule
<i>Mailing a copy to the lawyer's office</i>	Service is effective on the fifth day after the document is mailed.	16.05(1)(a)
<i>Leaving a copy with the lawyer or an employee in the lawyer's office</i>	Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor or an employee in the solicitor's office.	16.05(1)(b)
<i>Depositing a copy at a document exchange of which the solicitor is a member or subscriber</i>	Service is effective only if a copy of the document and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy. Service is effective on the day following the day on which the document was deposited and date stamped, unless that following day is a holiday, in which case service is effective on the next day that is not a holiday.	16.05(1)(c)
<i>Faxing a copy to the lawyer's office</i>	Where the document is faxed between 4 p.m. and midnight, it will be deemed to have been served the following day. See Rules 16.05(3), (3.1) and (3.2) for more special considerations on faxing. <i>Note: This option is not available for the motion record, application record, trial record, appeal book and compendium or book of authorities unless the party to be served has given prior consent.</i>	16.05(1)(d)
<i>Sending a copy to the lawyer's office by courier</i>	Service is effective on the second day following the day the courier was given the document, unless that second day is a holiday, in which case service is effective on the next day that is not a holiday.	16.05(1)(e)
<i>Emailing a copy to the lawyer</i>	Service is effective only if the lawyer provides by email an acceptance of service and the date of acceptance. If the email acceptance is received between 4 p.m. and midnight, service is deemed to have been made on the following day. See Rule 16.05(4) for additional requirements.	16.05(1)(f)

Part Two: Proof of Service

What is “proof of service”?

“Proof of service” is documentary evidence that proves you have served the documents in a manner that conforms with the *Rules*. Proof of service is usually, but not always, in the form of an **Affidavit of Service** (Form 16B) indicating when, where and how the documents were served. You must file proof of service with all documents that have been served. If a copy of a document has been served on more than one person, then you would need to complete an affidavit of service for each person served.

What is an affidavit of service?

An **Affidavit of Service** (Form 16B) is a sworn or affirmed declaration describing the manner in which the documents were served on the other party.

How is an affidavit of service completed?

1. To fill out an **Affidavit of Service** (Form 16B) follow the instructions on the form. The affidavit will describe:

- the name of the person who served the document;
- what document was served (e.g. Notice of Appeal or Notice of Motion);
- when the document was served (day, month and year);
- the name of the person who was served;
- where the document was served (e.g. house number, apartment number, street name, city, and province); and
- how the person was served (e.g. by personal service, alternative to personal service, mail, courier or fax).

2. If you served the documents, then you must swear or affirm that the information in your affidavit of service is true. If you had another person serve the documents, then that person must fill out the affidavit of service and swear or affirm the information in the affidavit is true.

3. The affidavit must be signed in front of a person authorized to take oaths and affirmations (e.g. a commissioner for taking affidavits or a lawyer). The commissioner will ask the person making the affidavit to swear or affirm that the information in the affidavit is true, will ask that person to sign the affidavit, and will sign the affidavit as sworn or affirmed. Do not sign the affidavit before going to the commissioner. For more information about swearing or affirming affidavits, see the “Tips” page at the end of this guide.

Note: It is a criminal offence to knowingly swear or affirm a false affidavit.

What is acceptance of service?

When you are serving a solicitor of record (i.e. a party’s lawyer), the lawyer’s written admission or acceptance of service is sufficient proof of service and does not need to be verified by affidavit: see Rule 16.09(3) of the *Rules*. When you are delivering a document to the lawyer personally, you can have the lawyer endorse the back of the document with acceptance of service and indicate the date of acceptance of service: see Rule 16.03(2).

Tips on Completing Forms in Divisional Court

1. **BE NEAT.** These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read.
2. Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. This content is not formatted. It is your responsibility to ensure that the form complies with the *Rules of Civil Procedure* (see for example Rule 4.01 with respect to formatting). Many of the *Rules of Civil Procedure* forms contain the phrase "General heading." General headings are separate forms under the *Rules of Civil Procedure* and must be inserted where this phrase appears, with the proper content.
3. How to **COUNT DAYS FOR TIMELINES** in the *Rules of Civil Procedure*:

When calculating timelines in the *Rules of Civil Procedure*, count the days by excluding the first day and including the last day of the period; where a period of less than seven days is prescribed, holidays (including Saturdays and Sundays) shall not be counted; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

Holidays include:

- any Saturday or Sunday
- New Year's Day
- Family Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day
- any special holiday proclaimed by the Governor General or the Lieutenant Governor

NOTE: If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

4. You can **FILE** your documents by mail or in person. It is best to file documents in person, because if any are incomplete, the clerk may inform you, and you can avoid wasting time mailing the documents back and forth. If you file documents by mail, the date of filing will be the date the documents are stamped upon receipt by the court office. If the court office does not receive the documents, they will be considered not to have been filed, unless the court orders otherwise (see Rule 4.05). **All applicable fees and proof of service must be included with the documents when you mail them.** Documents **cannot** be faxed or e-mailed to the court. Keep a copy of all original documents you forward to the court for your records.
5. Once court staff gives you a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
6. Make enough **COPIES** of your completed forms/documents. Usually you will require one copy for each party who must be served and one copy for your own records. There is a fee to have copies made at the court office. Refer to the **Guide to Fees in Divisional Court Appeals** for more information.
7. **COURT FEES** must be paid to issue and file specific documents. A listing of Superior Court of Justice and Court of Appeal fees can be viewed at the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca or you can refer to the **Guide to Fees in Divisional Court Appeals**. Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance.
8. An **AFFIDAVIT** can be sworn or affirmed before:
 - a Divisional Court staff member who is a commissioner for taking affidavits (there is a fee for this service);
 - a lawyer who is entitled to practise law in Ontario;
 - a notary public; or
 - a person who has been appointed a commissioner for taking affidavits and who is authorized to commission the affidavit.

The affidavit must be signed in the presence of the commissioner, lawyer or notary public before whom it is sworn or affirmed.

NOTE: It is a criminal offence to knowingly swear or affirm a false affidavit.