

HOW DO I ISSUE, SERVE & FILE DOCUMENTS IN THE SUPERIOR COURT OF JUSTICE?

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This publication contains information of a general nature intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer for advice on your particular situation. This publication is not a substitute for you or your lawyer's own research, analysis and judgment.

INTRODUCTION

In order to start a civil proceeding under the *Rules of Civil Procedure* (referred to in this document as "*Rules*") at the Superior Court of Justice, there are three (3) basic steps that you must follow.

First: You must have the document that is going to be used to start your proceeding (called the originating process), such as a Statement of Claim (Form 14A), a Notice of Action (Form 14C) or Notice of Application (Form 14E), **issued** by the court office.

Second: You will have to **serve** your **originating process** on the other parties to the proceeding so that these other parties know that you have started a legal proceeding against them. Service gives them the opportunity to respond to your claim or application.

Third: You will have to **file** your **proof of service** with the court. In most cases, this will mean filing an Affidavit of Service (Form 16B) with the court office.

TIP: Before you start your legal proceeding, it is recommended that you read the guidebook called **Starting a Civil Proceeding in the Superior Court**. You can find this guidebook on Law Help Ontario's website at www.lawhelpontario.ca. You should also consider obtaining advice from a lawyer to help you prepare the required documents to start your proceeding.

HOW DO I GET MY DOCUMENTS ISSUED?

Once you have completed your originating process, such as the Statement of Claim (Form 14A), Notice of Action (Form 14C), or Notice of Application (Form 14E), it is time to go to the court office to have the document issued by the court.

An originating process is issued by the court registrar's act of dating, signing and sealing it with the seal of the court and assigning to it a court file number. A copy of the originating process must be filed in the court file when it is issued.

You will need to bring with you:

- i) The original and one copy of your originating process, such as the Statement of Claim, Notice of Action, or Notice of Application. The court will give you back one copy with the court seal. Keep this copy in your file and make copies from it to serve the defendant(s)/respondent(s).
- ii) One copy of an Information for Court Use (Form 14F) to be filed with the court office (you should keep one copy for your files).
- iii) The filing fee. For a current listing of fees, go to www.e-laws.gov.on.ca. Choose your preferred language and click on "Search or Browse Current Consolidated Law." Click on "A" and then click on the plus sign to the left of "Administration of Justice Act." Click on "Superior Court of Justice and Court of Appeal – Fees" (O.Reg. 293/92).

If you are not able to afford court fees, you may be eligible to have fees waived. For more information on fee waiver, go to www.attorneygeneral.jus.gov.on.ca. Click on your preferred language, and then click on "Court Services." Scroll down to "Court Fees" and click on "A Guide to Fee Waiver Requests."

TIP: You should take your documents into the court in person. If there is a problem with the documents, court staff will inform you and you may be able to fix the problem on the spot. This way, you will avoid wasting time sending documents back and forth to the court. If you can't go in yourself, you can send a representative to file the document for you. You or someone on your behalf must go in person to the court office to have a document issued.

HOW DO I GET MY DOCUMENTS SERVED?

Almost all documents generated during the course of litigation must be served on someone. Sometimes the document will have to be served on all other parties and sometimes only certain parties need to be served. There are some situations where even persons who are not parties to the proceeding must be served.

The purpose of serving your documents is to notify the other parties of the steps you are taking and the information you will be presenting to the court. It is very important that service of documents is done in accordance with the *Rules*. The correct way of serving a document on a defendant (if an action) or a respondent (if an application) in Ontario is set out in Rule 16. If not done properly, then the service may be invalid.

Information to assist you in accessing the *Rules* and the court forms that apply under the *Rules* are set out at the end of this Tip Sheet under the heading “*Where Can I Get More Information?*”

TIP: *There are special rules for how to serve a court document. You can serve the documents yourself or have someone else do this for you. If you think you may have trouble serving a party, you may want to use a professional document server called a process server. Names of process servers can be found in the telephone book.*

The kinds of documents that need to be served fall into three (3) main categories:

- i) Documents which must be served personally or by an alternative to personal service;
- ii) Documents which must be served personally and **not** by an alternative to personal service; and
- iii) Documents which are not required to be served personally or by an alternative to personal service, but may be served by other means, such as by mail or fax.

WHAT DOCUMENTS MUST BE SERVED PERSONALLY OR BY AN ALTERNATIVE TO PERSONAL SERVICE?

In all instances, an ***originating process*** must be served personally or by an alternative to personal service. Originating process means a document that starts a proceeding which could be a Statement of Claim (Form 14A), Notice of Action (Form 14C) or Notice of Application (Form 14E).

Under Rule 16, you can serve a Statement of Claim (Form 14A), a Notice of Action (Form 14C) or a Notice of Application (Form 14E) by ***personal service*** (Rule 16.02) or by an ***alternative to personal service*** (Rule 16.03).

You must *serve* all of the defendants or respondents with a copy of the document that was issued by the court staff.

HOW DO I EFFECT PERSONAL SERVICE?

Personal service under Rule 16.02 is made on:

- an **individual**, by handing a copy to them personally (*Note*: that there are special rules for serving a person under disability: see Rule 16.02 for more detail);
- a **corporation**, 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 in control or management of the place of business. If you do not know the address of the corporation, you may, for a fee, order a copy of the Corporation Profile Report from the Ministry of Government Services, which shows the last known mailing address of the corporation;
- a **partnership**, by leaving a copy with a partner or partners, or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business;
- a **sole proprietor**, by leaving a copy with that person, or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business;
- a **municipality**, by leaving a copy with the chairman, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality, or with the lawyer for the municipality;
- a **Board or Commission**, by leaving a copy with a member or officer of the board or commission;
- the **federal government** (Her Majesty the Queen in right of Canada), by leaving a copy with the Deputy Attorney General of Canada, or the chief executive officer in whose name the proceedings are taken (see subsection 23(2) of the *Crown Liability and Proceedings Act* (Canada)). At the time of the date of this guidebook (February 2009), the Deputy Attorney General of Canada may be served in Toronto at the Department of Justice Canada, Exchange Tower, 130 King Street West, Suite 3400;
- the **Ontario government** (Her Majesty the Queen in right of Ontario), by leaving a copy with a lawyer in the Crown Law Office (Civil Law) of the Ministry of the Attorney General (see section 10 of the *Proceedings Against the Crown Act*). At the time of the date of this guidebook (February 2009), the office is located at 720 Bay Street, 8th Floor, Toronto; M5G 2K1;
- the **Attorney General of Ontario**, by leaving a copy with a lawyer in the Crown Law Office (Civil Law) of the Ministry of the Attorney General. At the time of the date of this guidebook (February 2009), the office is located at 720 Bay Street, 8th Floor, Toronto M5G 2K1; and

- a **person outside Ontario carrying on business in Ontario** by leaving a copy with anyone carrying on business for the person in Ontario.

Note: The above list does not include personal service on an absentee, a minor or a mentally incapable person. Please refer to the rules on personal service where the person to be served falls within one of these three categories.

WHAT ARE THE ALTERNATIVES TO PERSONAL SERVICE?

If you have difficulties with serving your originating process personally, you may consider an alternative to personal service (Rule 16.03). Service by an alternative to personal service may also be effective where permitted by the *Rules* or an order of the court.

There are four (4) acceptable alternatives to personal service.

- **First alternative (Rule 16.03(2)) – Acceptance of Service by Lawyer:** If you know that the person to be served has a lawyer representing them, you can leave a copy of the document with the lawyer or an employee in the lawyer’s office. Service is effective only if the lawyer writes on the document or a copy of it that he or she accepts service and the date of the acceptance. Bring at least two copies of the document with you. You will file a copy with the lawyer’s *admission of service* at the court office to prove that the document was served.
- **Second alternative (Rule 16.03(4)) – Service by Mail to Last Known Address:** You can serve the document by sending a copy along with an Acknowledgment of Receipt Card (Form 16A) by mail to the last known address of the person (the document must be mailed by regular lettermail or by registered mail). Your document will only be considered served on the date you receive the Acknowledgment of Receipt Card back from the person you are serving.
- **Third alternative (Rule 16.03(5)) – Service at Place of Residence:** If you have made an attempt to personally serve a person at their place of residence and for some reason you can’t, you can serve the document by taking the following steps:

First, leave a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and then

On the same day or the following day, mail another copy to the person at the place of residence (the document must be mailed by regular lettermail or by registered mail).

Your document will be considered served on the fifth business day after you mail the document.

- **Fourth alternative (Rule 16.03(6)) – Service on a Corporation:** This manner of service only applies to service of corporate parties and is available only where the head office, registered office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the lawyer for service in Ontario cannot be

found at the last address recorded in the Corporation Profile Report with the Ministry of Government Services. You may serve the corporation by mailing a copy of the document to the corporation or to the lawyer for service in Ontario, at the last address shown on the Corporation Profile Report.

TIP: *It is important to note that when serving a document, it is not the original document that is served but rather a photocopy of the original document. The person doing the service of document is not required to possess or produce the original at the time of service. The original of any document is retained by you or your lawyer.*

WHAT IF THE PERSON OR PARTY TO BE SERVED HAS A LAWYER?

Where a person or party is represented by a lawyer and the document does not need to be served personally or by an alternative to personal service, the acceptable methods of service are set out in Rule 16.05. The methods of service set out in Rule 16.05 are **not** available where a person or a party is not represented by a lawyer. In Rule 16.05, a person's or party's lawyer is called the "lawyer of record."

The following are the permissible methods of service on a lawyer of record:

- i) mailing a copy to the lawyer's office (the document must be mailed by regular lettermail or by registered mail);
- ii) leaving a copy with a lawyer or an employee in the lawyer's office;
- iii) depositing a copy of the document at a document exchange of which the lawyer is a member or subscriber (*Note: service in this manner is effective only if the document or a copy of it and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy*);
- iv) faxing the document to the lawyer's office in accordance with Rules 16.05(3), (3.1) and (3.2) (*Note: where service is made in this manner between 4 p.m. and midnight, it is deemed to have been made on the following day*);
- v) sending a copy of the document to the lawyer's office by courier; and
- vi) e-mailing the document to the lawyer's office in accordance with Rule 16.05(4) (*Note: service in this manner is effective only if the lawyer of record provides by e-mail an acceptance of service and the date of the acceptance, and where the e-mail acceptance is received between 4 p.m. and midnight, service is deemed to have been made on the following day*).

WHAT IF THE OTHER PERSON OR PARTY TO BE SERVED DOES NOT HAVE A LAWYER AND IS SELF-REPRESENTED?

If the other party does **not** have a lawyer, the methods of service set out in Rule 16.05 are not available. If the documents are not required to be served personally or by an

alternative to personal service, the documents may be served on the party or on a person who is not a party by:

- i) mailing a copy of the document to the last address for service provided by the party or other person or, if no address has been provided, to the party's or person's last known address (Rule 16.01(4)); or
- ii) personal service; or
- iii) an alternative to personal service

This means that even if a self-represented person has a fax machine or e-mail, documents cannot be served by these methods unless, a) the person consents, or b) there is a court order authorizing this method of service.

TIP: *Where the document may be served by regular lettermail or by registered mail, the document is considered to have been served on the **fifth** day after the date of mailing. Note that this does not apply to documents that are mailed under Rule 16.03(4) (see above under alternatives to personal service) where an acknowledgment of receipt card is required.*

WHAT IF I AM HAVING TROUBLE SERVING MY DOCUMENTS?

Sometimes it is difficult to serve documents that are required to be served personally or by an alternative to personal service. The person to be served might try to avoid being served. If you have tried to serve someone with an originating process or any other document required to be served personally or by an alternative to personal service, but are still having difficulty serving your document, in some circumstances, the court may, i) make an order for **substituted service**, or ii) may **dispense** with service (allow you to not have to serve the person) (see Rule 16.04).

WHAT IS SUBSTITUTED SERVICE?

You must get a court order to use a different method of service if you are unable to serve an originating process or any other document required to be served personally or by an alternative to personal service under the *Rules*. To get an order you may bring a motion to the court for an order for substituted service (see Rule 16.04). The court may allow a different method of service if it is satisfied that it is impractical to carry out prompt service of the documents.

In general, a court will not grant an order for substituted service unless it is satisfied that:

- i) Reasonable attempts have been made to carry out personal service or an alternative to personal service in accordance with Rule 16; and

- ii) The proposed method of service will result in the document coming to the attention of the person or party to be served.

If the court makes an order for substituted service, the court will specify in the order when that service will be effective.

WHAT IS DISPENSING WITH SERVICE?

In exceptional cases, the court may, on a motion, **dispense** entirely with service of an originating process or any other document required to be served personally or by an alternative to personal service. This means that you will be exempted from having to serve that party or person. This does not occur frequently and is done only where it is necessary in the interests of justice. If you do obtain an order from the court that dispenses with service, the document is deemed to have been served on the date of the order (see Rule 16.04).

WHAT IF I SERVE THE DOCUMENT IN A WAY THAT IS NOT AUTHORIZED BY THE RULES?

A court may, on motion, make an order **validating** the method of service (see Rule 16.08). This means that service will be deemed to be effective even though it was not done according to the *Rules*.

A court may make an order validating service where satisfied that: i) the document came to the attention of the person to be served, or ii) the document was served in such a manner that it would have come to the attention of the person to be served, if it had not been for the person's own attempt to evade service.

WHAT DO I DO IF I HAVE TO SERVE SOMEONE WHO LIVES OUTSIDE OF ONTARIO?

On occasion, a party to be served with an originating process is located or lives outside of Ontario. In this case, different rules apply. You should refer to Rule 17 under the *Rules*.

You may or may not have to get a court order to serve a party or person outside Ontario. It depends on the nature of the claim as set out in the originating process. If the proceeding falls within any of the claims listed in Rule 17.02(a) to (r), you do not need a court order to serve the originating process outside Ontario. If the proceeding does not fall within the specific claims listed in Rule 17.02, then you must get a court order to serve the originating process outside Ontario.

Also, a party may bring a motion before the court to set aside service of an originating process outside Ontario that was not authorized by the *Rules*, where an order granting leave to serve outside Ontario should be set aside, or where Ontario is not a convenient forum for the proceeding (see Rule 17.06). The party must bring their motion to set aside service before they deliver a Statement of Defence (Form 18A), Notice of Intent to Defend (Form 18B) or Notice of Appearance (Form 38A).

TIP: *The rules relating to service outside Ontario are complicated. You should read Rule 17 carefully. If you have to serve a party or person who is located or lives outside of Ontario, you should speak to a lawyer.*

HOW DO I FILE MY DOCUMENTS?

Once a document has been served in accordance with the *Rules* or a court order, it is necessary for the party who served the document to **file proof of service** (see Rule 16.09).

The *Rules* allow for the following forms of proof of service:

- i) An Affidavit of Service (Form 16B) sworn by the person who provided the service;
- ii) A Sheriff's Certificate (Form 16C) (if personal service or service at place of residence (Rule 16.03(5)) was carried out by a sheriff or sheriff's officer);
- iii) The lawyer's written admission or acceptance of service of the document; and
- iv) Date stamp on the document or a copy of it (if a document has been served by document exchange under Rule 16.05(1)(c)).

An Affidavit of Service (Form 16B) is the most commonly used form for proof of service. Form 16B sets out the various ways that service can be done. You should carefully review Form 16B in order to select the type of service that is applicable to your situation and only include that description in your Affidavit of Service. You do not need to type out all of the types of service in Form 16B in order to file your proof of service at the court.

WHEN DO I FILE MY DOCUMENTS?

If you served a Notice of Application (Form 14E) you must file proof of service at least four days before the hearing date in the court office where the application is to be heard.

Where an action is started by a Statement of Claim (Form 14A), the statement of claim must be served within six months after it is issued. Proof of service should be filed with the court after serving the statement of claim, as this may be necessary at some point later in the case, such as if you ask for a noting in default (see Rule 19).

If you started an action with a Notice of Action (Form 14C), you will need to file your original Statement of Claim (Form 14D) with the court office within 30 days of when the court issued your Notice of Action (or get the defendant's consent or the court's permission to file it later: see Rule 14.03(3)), along with proof of service.

WHERE CAN I GET MORE INFORMATION?

The Ministry of the Attorney General has a series of guides that are available at court offices and at the Ministry of the Attorney General website. The site also has general information on civil cases: www.attorneygeneral.jus.gov.on.ca. Choose your preferred language, click on "Court Services" at the left side of the page, and scroll down to "Civil Cases".

Legal research resources are accessible to the public through CanLII available through the following: <http://www.canlii.ca>

To obtain forms under the *Rules of Civil Procedure*, visit the Ontario Court Forms website at: <http://www.ontariocourtforms.on.ca>. Choose your preferred language and click on "Rules of Civil Procedure Forms".

The "Guide to Ontario Courts" is available through: <http://www.ontariocourts.on.ca/>

The *Rules of Civil Procedure* are available through the e-laws website. Go to www.e-laws.gov.on.ca and follow these steps:

1. Choose your preferred language.
2. Click on "Search or Browse Current Consolidated Law"
3. Under "Browse Current Consolidated Law", click on "C"
4. Scroll down to "Courts of Justice Act"
5. Click on the "plus" sign to the left of "Courts of Justice Act"
6. Click on "Rules of Civil Procedure".