



SMALL CLAIMS COURT

# Serving Documents



MINISTRY OF JUSTICE

PROVINCIAL COURT OF BRITISH COLUMBIA



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To contact a court registry, consult your telephone directory under “Court Services” in the provincial government blue pages for the phone number of the registry or look for information online at: [www.gov.bc.ca/ag](http://www.gov.bc.ca/ag).

The PDF versions of forms can be filled out online, printed and then filed at the registry. You may wish to use the Filing Assistant on that website for the notice of claim, the reply and the third party notice. The Filing Assistant will prompt you through a series of questions that will help you complete the required forms. The results of your answers will be put in the form and you can print it and file it at the registry. You could also print the form and complete it manually.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Act and small claims rules. It is not intended as a substitute for the act or the rules, which should be examined for specific information. Also the information is not intended to be legal advice. If you have any legal questions, you should see a lawyer. You may also wish to consult Clicklaw at [www.clicklaw.bc.ca](http://www.clicklaw.bc.ca) for additional legal information.

## **Pilot Projects**

NOTE: From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve the small claims court. If the registry where your case is filed is running a pilot project, it might not follow the process in this guide. You can find more information on the pilot project processes from your court registry or online at: <http://www.ag.gov.bc.ca/courts/index.htm>.

# Serving Documents

A lot of paperwork is involved in almost any lawsuit and it's important that copies of documents get to everyone who needs them. That's why there are rules about what you must do to see that everyone actually receives those copies.

Getting the paperwork from one person to another is called "service of documents." This booklet explains the small claims court rules for service of documents and tries to answer some of the questions you may have.

If you are enforcing an order, go to the What About Other Documents section of this guide.



## How do I serve a notice of claim?

The notice of claim is the first official notice of the lawsuit that the defendant (the person you are suing) will have. For this reason, the rules require us to take extra care to be sure that the defendant actually receives the notice.

Also, at this point the person making the claim (the claimant) may not have the correct address for the defendant, so just mailing it by ordinary mail isn't good enough. What you have to do depends on what kind of defendant you have.

### **If the Defendant is an Individual**

If you are suing an adult, the two methods of service available are:

- personal service; and
- service by registered mail.

To serve a document personally, you or someone acting on your behalf will simply hand the document to the defendant. If the person refuses to take it, you can drop it on the floor at their feet.

To serve a document by registered mail, you will need to provide proof of service (see section 8 on how to prove the document has been served).

If the defendant is under the age of 19, different service procedures apply. You may need to seek legal advice, as the Supreme Court Rules guide this process.

### **If the Defendant is a Company**

You will already know the address of the company's registered office, because this is the address you got off the printout for the company search and put on the notice of claim. All you have to do is mail it there by registered mail. You will need to provide a proof of service (see section 8 on how to prove the document has been served). Or you can take it there personally and leave it at the registered office.

Another way to serve a company is to take it to the company's place of business and leave it with the person who appears to be in charge there.

You may also leave it with the director or officer of the company. And, finally, if the company has a trustee-in-bankruptcy, liquidator or receiver-manager, you can leave it with that person.

If the defendant is registered in B.C. as an extra-provincial corporation (its main place of business is outside the province), you can leave a copy of the notice of claim and blank reply form with the person who is appointed to be its attorney, under Section 389 of the Business Corporations Act. Alternatively, you may send these documents to the attorney by registered mail. You would get this information from the Corporate Registry (see small claims court booklet **#2: Making a Claim**).

### **If the Defendant is a Partnership**

A partnership doesn't have a registered office. To serve a partnership, you can take the copy of the notice of claim and blank reply form to its place of business and leave it

with a receptionist or with the person who seems to be in charge. Or, you can mail it by registered mail to, or leave it with, a partner. You will need to provide a proof of service (see section 8 on how to prove the document has been served).

### **If the Defendant is an Unincorporated Business**

If you are suing a business that is not an incorporated company and not a partnership, you will be naming the owner of the business as a defendant. This is the person you must serve and the rules for serving an individual apply.

### **If the Defendant is a Municipality**

If you are suing a municipality, you must leave a copy of the notice of claim and blank reply form with the clerk or deputy clerk or some official. The Municipal Act has special notice periods and limitation periods that are very short. The registry will not be able to provide this information and you may need legal advice.

### **If the Defendant is a Young Person, a Society, an Unincorporated Association or a Union**

If you are suing any of these, there are special rules about service. Registry staff can help you with these. (See the small claims court **civil rules**, Rules 2 and 18, for more specific information about serving documents.)

### **If the Defendant is a Strata Corporation or Strata Council**

Refer to the Strata Property Act (Section 64) for special rules regarding service.

### **If the Defendant is the Province of British Columbia**

If you are suing the Province of British Columbia, you may serve the notice of claim personally by leaving it during business hours at:

Legal Services Branch  
Ministry of Justice  
1<sup>st</sup> Floor, 1001 Douglas St.  
Victoria, B.C.

You may also serve the notice of claim by registered mail to the following address:

Deputy Justice  
PO Box 9280 Stn Prov Govt  
Victoria, B.C. V8W 9J7

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## **What do I have to give the defendant?**

You will give the defendant - by whatever method you are using - the defendant copy of the notice of claim and blank reply form. This is what the defendant will use to respond to your claim.

If there is more than one defendant, you must serve each one with their own copy of the notice of claim and a blank reply form. This means that if you are serving two parties at the same address by mail, you must mail the notices separately and get separate proofs of service for each defendant (see section 8 on how to prove the document has been served).

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## **What if the defendant is out of province?**

If the person you are suing normally lives in British Columbia but is away - for example, working on a job in Calgary - you can serve the notice of claim just as you would an individual in B.C.

If the person lives outside of B.C. but the transaction or event that led to the lawsuit happened in B.C., you can serve your notice of claim in the ordinary way.

A notice of claim can also be served on a corporation that has assets in B.C. but is incorporated outside B.C. and is not an extraprovincial company.

You can leave a copy of the notice of claim and blank reply form at the corporation's place of business with the person who appears in charge there. You can also leave a copy with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation. Finally, you can serve the notice of claim by registered mail. You will need to provide a proof of service (see section 8 on how to prove the document has been served).

In any other case, you will have to get the permission of the court registrar before you can serve a notice of claim outside B.C.

If you are serving a notice of claim outside the province, there is one important rule you must know: the notice of claim form is printed with a notice to the defendant that the time limit for filing a reply is 14 days from the date the notice is served. But the time limit is 30 days if the notice of claim and blank reply form is served on a defendant outside of B.C. You have to change this, so that your defendant gets the right information.

So, if you are serving a defendant outside of B.C., you must cross out the 14 and insert 30, before the notice of claim is served. You also must make a copy of this form, showing the change, and file it in the court registry.



## **How long do I have to serve the notice of claim?**

After you have filed your notice of claim, you have one year to serve it. It is possible to renew a notice after it has expired, but you would have to apply to the court and explain the reason. If you are having trouble serving the notice and the year is almost up, you should make your application to renew at that time, before the deadline.

## Do I have to serve it myself?

No, you don't. Often it will be a simple thing - either sending it by registered mail, or dropping it off at an office or having someone serve it for you.

Sometimes distance makes it inconvenient or impossible for you to serve your own notice of claim and blank reply form. Or it may be an awkward or even dangerous situation. In any of these cases, if sending it by registered mail does not work, there are professional process servers who will personally serve the defendant for you, for a fee. You can get the name of a process server from the yellow pages of your telephone directory.

Or, you can ask a friend to do it for you. If the defendant is in another town, you might be able to mail it to a friend there and have them serve it for you.

Just remember that if the defendant does not file a reply and you want to get a default order, you will have to file a certificate signed by whoever has served the document. If you are using registered mail, you must get a proof of service that you attach to your certificate of service which is filed in the registry (see section 8 on how to get a proof of service).

## What if I can't serve the defendant?

You might find that when you go to serve your notice of claim and blank reply form the defendant has moved and cannot be found. Or maybe the defendant knows you are trying to serve the notice and is avoiding you. In any case, there is something you can do.

You can make an application to the registrar of the small claims court to let you serve the notice of claim and blank reply form in some other way. What this other way is will depend on the circumstances. For example, if you know where the defendant lives but they refuse to come to the door, or arrange not to be there whenever you knock, you might get permission to serve the notice by taping it to the defendant's front door.

If you know that the defendant lives in a certain town but you can't find out the address, you might get permission to serve the notice by publishing a legal notice in the classified section of the local newspaper. (This can be an expensive option, so think twice before asking for it.) In some situations, the registrar might allow you to serve the notice of claim and blank reply form by:

- leaving it with a relative of the defendant;
- mailing it by regular mail; or
- leaving it at the defendant's last known address.

(Alternative methods of service are sometimes called substitutional service: that is, they are substituted for the normal method.)

The more you know about the defendant's circumstances the better. The registrar will make an order allowing service in whatever way is most likely to bring it to the defendant's attention. Before asking for some other method of service, you should already have tried several times to serve it in the normal way. Be prepared to give details of how you tried to serve the document and what happened and why the method of service you are asking for will succeed.

Normally, the registrar will make an order allowing for some other method of service and you must serve a copy of that order on the defendant along with the notice of claim and blank reply form, unless the method ordered is service by advertising in the newspaper.

The registrar who allows some other method of service very often will allow the defendant extra time to file a reply. If that happens, be sure to cross out the 14 days on the notice of claim and insert whatever number of days the registrar orders.

## What about other documents?

Once the notice of claim and blank reply form has been served, service of everything else becomes quite a simple matter.

If the defendant files a reply, their address will be on it. Then all you have to do with most documents after that is mail them by ordinary mail. (Exceptions are the third party notice, summons to a payment hearing and summons to a default hearing.)

From that point on, it is always up to each person involved in the case to make sure that the court and the other parties have their current address.

Each time you mail another document, you simply look at the **last** document you received from that person and mail it to that address.

Be careful about time limits. If you serve a document by ordinary mail, it is considered to be served 14 days after you mail it. So keep track of the date of mailing. Of course, you can always choose to serve a document personally or by registered mail if you wish.

## How do I prove that a document has been served?

That depends on who served the document and how.

If you or someone else served the document personally, you can prove it by filing a certificate of service. The certificate simply says who served the document and how and when it was served. A certificate of service is printed on the back of the service copy of most of your documents.

If the document was served on a lawyer or articulated student, it is enough to file a copy of the document signed by the lawyer or student or by a partner or employee of the firm. Most lawyers have a rubber stamp saying something like, "Service of the document is hereby acknowledged." The lawyer then signs and dates it.

If the document was served by registered mail, you must file a certificate of service, a copy of the document that was mailed attached to the certificate and a proof of service to show the document has been served.

A proof of service by registered mail can be obtained either by phoning toll free 1-888-550-6333 and asking for a signature copy or accessing the Canada Post internet site: [www.canadapost.ca](http://www.canadapost.ca) and printing the delivery confirmation form.

If there is more than one defendant, a separate certificate of service must be prepared for each defendant. You can ask the registry for additional copies of the certificate of service to attach to the service copy of the document you served.

If you served a summons to a payment hearing or a summons to a default hearing, you will file an affidavit of service instead of a certificate of service.

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### **How do I change my address for service?**

It is up to you to be sure that the court and the other parties in the lawsuit always have your proper address so that they can serve documents on you. If your address changes, write to the small claims registry to let them know. A postcard will do - just be sure to print clearly your name, your new address and the file number of your case. You will have to send the same thing to every other party in the case: that is, claimants, defendants and third parties, if there are any.

If you don't advise the registry and the other parties involved of your change of address, they are entitled to keep sending things to your old address and it will not be possible to keep you informed about what is happening in your case.

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# How can I get more information?

The Ministry of Justice has published a series of booklets that describe the court process. They are available from any small claims court registry. (If there isn't a small claims court near you, your local government agent may have the booklets.) The booklets can also be found under "Courts, Small Claims" through the provincial government website:

[www.gov.bc.ca/ag](http://www.gov.bc.ca/ag).

The other titles in the series are:

- #1 What is Small Claims Court?**
- #2 Making a Claim**
- #3 Replying to a Claim**
- #4 Serving Documents**
- #5 Getting Ready for Court**
- #6 Getting Results**
- #7 Court Mediation Program for Claims Up to \$10,000**
- #8 Mediation for Claims Between \$10,000 and \$25,000**

## **Civil Rules - September 2010**

The small claims court rules provide more detailed information. The rules have been written for non-lawyers. You can find a copy at some court registries, at your public library or online at:

[www.gov.bc.ca/ag](http://www.gov.bc.ca/ag).



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