

# Serving Documents

## Small Claims Court Guide #5

It is important that you have read Small Claims Court guide #1, What is Small Claims Court?, prior to reading this guide.

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 guide 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 question #7 "What About Other Documents" in this guide.

**Note:** From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve 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 about the pilots underway online the Government of BC ([www.gov.bc.ca](http://www.gov.bc.ca)) website by searching for [Small Claims Court](#).

### **1. How do I serve a notice of claim or notice of civil resolution tribunal claim?**

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

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

#### **If the Defendant or Other Party 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 or other party. 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 question #8 in this guide for details).

If the defendant or other party 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 or Other Party is a Company**

You will already know the address of the company's registered office. This is the address you got off the printout for the company search and put on the notice of claim or notice of Civil Resolution Tribunal claim. All you have to do is mail it there by registered mail. You will need to provide a proof of service (see question #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 or other party is registered in B.C. as an extra-provincial corporation (its main place of

business is outside the province), you can leave the documents 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 guide #2: *Making a Claim for Proceedings Initiated in Small Claims*).

### **If the Defendant or Other Party is a Partnership**

A partnership doesn't have a registered office. To serve a partnership, you can take the documents to the place of business and leave it with a receptionist or with the person who seems to be in charge. Or, you can mail documents by registered mail to, or leave it with, a partner. You will need to provide a proof of service (see question #8 on how to prove the document has been served).

### **If the Defendant or Other Party 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 or Other Party is a Municipality**

If you are suing a municipality, you must leave a copy of the documents 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 or Other Party 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 1.1, 2 and 18, for more specific information about serving documents. The small claims civil rules can be found on the [BC Laws website](#).

### **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 with a lawyer during business hours at:

Legal Services Branch, Ministry of Justice  
1st Floor, 1001 Douglas Street, Victoria, B.C.

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

Deputy Attorney General  
Ministry of Justice  
P.O. Box 9280 Stn Prov Govt  
Victoria, B.C. V8W 9J7

## **2. What do I have to give the defendant or other party?**

If you are serving a notice of claim:

You will give the defendant, by whatever method you are using:

- the defendant copy of the notice of claim; and
- a blank reply form (Form 2). This is what the defendant will use to respond to your claim.

If you are serving a notice of Civil Resolution Tribunal claim:

You will give the other party(ies), by whatever method you are using:

- the other party copy of the notice of Civil Resolution Tribunal claim;
- a copy of the following documents filed with the notice
  - all initiating notices received by the filing party; and
  - all responses received or made by the filing party; and
  - one of the following:
    - i. a certificate provided by the CRT indicating that the CRT process is complete; or
    - ii. a notice provided by the CRT that the CRT refuses to resolve the claim; or
    - iii. a copy of the order from the Provincial Court that the CRT not adjudicate the claim; and
- a blank reply form, if applicable. This is what the other party(ies) will use to respond to your claim.

If there is more than one defendant or other party, you must serve each one with their own copy of the appropriate documents. 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 or other party (see question #8 in this guide on how to prove the document has been served).

### **3. What if the defendant or other party 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 documents 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 documents in the ordinary way.

A notice of claim or notice of Civil Resolution Tribunal Claim can also be served on a corporation that has assets in B.C. but is incorporated outside B.C. and is not an extra-provincial company.

You can leave a copy of the appropriate documents 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 or notice of Civil Resolution Tribunal by registered mail. You will need to provide a proof of service (see questions #8 in this guide 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 or notice of Civil Resolution Tribunal outside B.C.

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

So, if you are serving a defendant or other party outside of B.C., you must cross out the 14 and insert 30, before the documents are served. You also must make a copy of documents, showing the change, and file it in the court registry.

### **4. How long do I have to serve the notice of claim or notice of Civil Resolution Tribunal?**

After you have filed your notice of claim, you have one year to serve it. If you filed a notice of Civil Resolution Tribunal, you have 28 days 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 time limit is almost up, you should make your application to renew at that time, before the deadline.

## **5. Do I have to serve it myself?**

No, you don't. You can send it by registered mail, drop it off at an office or have someone serve it for you. Sometimes distance makes it inconvenient or impossible for you to serve your documents. 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 or other party for you, for a fee. You can get the name of a process server from the yellow pages telephone directory or from an online search. Or, you can ask a friend to do it for you. If the defendant or other party is in another town, you might be able to mail the documents to a friend there and have him or her serve them for you.

Just remember that if the defendant or other party 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 question #8 in this guide on how to get a proof of service).

## **6. What if I can't serve the defendant or other party?**

You might find that when you go to serve your documents the defendant or other party has moved and cannot be found. Or maybe the defendant or other party 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 documents in some other way. What this other way is will depend on the circumstances. For example, if you know where the defendant or other party lives but they refuse to come to the door, or arranges not to be there whenever you knock, you might get permission to serve the notice by taping it to the defendant or other party's front door.

If you know that the defendant or other party 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 or notice of claim, attachments and blank reply form, if appropriate, by:

- leaving it with a relative of the defendant or other party;
- mailing it by regular mail; or
- leaving it at the defendant's or other party'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 or other party'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 or other party'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 or other party along with the documents 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 or other party extra time to file a reply. If that happens, be sure to cross out the 14 days on the notice and insert whatever number of days the registrar orders.

## **7. What about other documents?**

Once the notice of claim and blank reply form or notice of Civil Resolution Tribunal, additional documents and blank reply form, if appropriate, have been served, service of everything else becomes quite a simple matter.

If the defendant or other party files a reply, his or her 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.

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.

## **8. 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 or other party, a separate certificate of service must be prepared for each defendant or other party. 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.

## **9. 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. You must ensure that your correct address is included on the notice of claim form or notice of Civil Resolution Tribunal form (if you are the claimant or filing party) or on the reply (if you are the defendant or other party). If your address changes sometime after you file and serve these documents, you should fill out a [Notice of Change of Address](#) form. You should then send this form to every other party in the case; that is, claimants, defendants, other parties and third parties, if there are any, and the court registry.

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.

## 10. How can I get more information?

This is one in a [series of guides](#) available. The titles in the series are:

1. What is Small Claims Court
2. Making a Claim for Proceedings initiated in Small Claims Court
3. Making a Claim for Proceedings initiated Before Civil Resolution Tribunal
4. Replying to a Claim
5. Serving Documents
6. Getting Ready for Court
7. Getting Results
8. Mediation for Claims between \$10,000 and \$35,000

The people behind the counter at any small claims registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer many of your questions about small claims court procedures.

To contact a court registry, consult your telephone directory under “Court Services” in the provincial government blue pages in the phone book or search for Courthouse Locations on the BC Government website ([www.gov.bc.ca](http://www.gov.bc.ca))

This guide provides an overview of the significant provisions of the *Small Claims Act* and the Small Claims Rules. It is not intended as a substitute for the act or the rules, which should be examined for specific information.

You can find links to the *Small Claims Act* and rules at [www.gov.bc.ca/smallclaims](http://www.gov.bc.ca/smallclaims).

This 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.

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