

## Guide to Serving Documents

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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 the Small Claims Court, 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.

### Where to get more information:

The Ministry of the Attorney General has a series of **guides** to Small Claims Court procedures which are available at court offices and the Ministry of the Attorney General website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca):

- What is Small Claims Court?
- Guide to Making a Claim
- Guide to Replying to a Claim
- Guide to Serving Documents
- Guide to Motions and Clerk's Orders
- Guide to Getting Ready for Court
- Guide to Fee Schedules
- After Judgment - Guide to Getting Results

Small Claims Court **forms** are available at court offices and at the following website: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca). You can find tips on completing forms at the end of this guide.

The staff behind the counter at any Small Claims Court office are helpful. They will answer your questions about Small Claims Court procedures, but keep in mind that 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 the Small Claims Court**. 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](http://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 the Small Claims Court"

*Ce guide est également disponible en français.*

*Special thanks to the Province of British Columbia whose Small Claims Court self-help materials served as a model for this series of Guides.*

## 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 all other parties in a court case. Documents must be served at each step in the court process, unless the *Rules of the Small Claims Court* (after this, referred to as the *Rules*) 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.

The *Rules of the Small Claims Court* have specific requirements about service of documents. The *Rules* describe which party must serve a document, how service should be made, how particular kinds of entities (such as corporations or government) may be served, and the timelines for service.

Whether you are serving a **Plaintiff's Claim [Form 7A]** or **Defendant's Claim [Form 10A]**, or serving other documents (for example, a **Notice of Garnishment [Form 20E]** or **Notice of Motion [Form 15A]**) this guide will attempt to help you understand the importance of serving the documents properly (as set out in the *Rules*) and answer some general questions about serving documents.

This guide is divided into five parts:

**Part One:** Serving a Claim

**Part Two:** Personal Service and Alternatives to Personal Service

**Part Three:** Service of Particular Documents

**Part Four:** General Service Information

**Part Five:** Service Chart for Parties

Remember, in Small Claims 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 or agent 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 when the person prepares an affidavit of service. An affidavit of service is a sworn or affirmed statement that tells the court who was served, and when and how service was made. You can find more information on affidavits of service in Part Four of this guide.

**Note:** Throughout this guide, portions of Rule 8 of the *Rules* regarding service have been reproduced for your assistance. Additional information has also been provided to clarify this rule. However, you should always refer to the actual *Rules*. The excerpts from the *Rules* and the *Courts of Justice Act* are current as of the date of this guide. 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.

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

## Part One: Serving a claim

In Part One of this guide, we provide information on how a **Plaintiff's Claim [Form 7A]** and a **Defendant's Claim [Form 10A]** may be served.

### How does a plaintiff serve a claim?

A claim is the first official notice of the case that the defendant (the person you are suing) will have. For this reason, there are special requirements for serving the claim in the *Rules*. The *Rules* provide for several specific types of service of a claim. How you serve the claim, and on whom, depends on what type of defendant is being sued (for example, whether the defendant is a person or a company).

#### Excerpt from the *Rules*

##### Plaintiff's or Defendant's Claim

8.01(1) A plaintiff's claim or defendant's claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

### How long does the plaintiff have to serve the claim?

A plaintiff's claim and defendant's claim must be served on the defendant within six months after the date the claim is issued by the court. If there is more than one defendant in the case, all defendants must be served within this timeframe.

### How can the plaintiff extend the time for service of the claim?

A plaintiff can file a motion to request an order to extend the time for service. You must explain to the judge why you were not able to serve the claim within the six months.

#### Excerpt from the *Rules*

##### Time for Service of Claim

8.01(2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed.

Refer to the "Guide to Motions and Clerk's Orders" for more information on making a motion.

### What if I want to serve a claim on a party who is out of province?

If the person you are suing normally lives in Ontario but is away (for example, working on a job in Montreal), you can serve the claim on the person in Montreal just as you would if he or she were in Ontario.

If the person lives or carries on business outside of Ontario, you could serve your claim on the person outside of Ontario just as you would if he or she lived or carried on business in Ontario. If you request it, the court may award additional costs to you to cover any extra expense involved in serving the claim outside Ontario.

## When can a claim (and any other documents) be served?

A claim (and any other documents) can be served on any day of the week **except Sunday** unless a judge has ordered otherwise.

### Excerpt from the *Courts of Justice Act*

#### Service on Sunday

124. No document shall be served and no order shall be executed on Sunday, except with leave of the court.

## What if I am unable to serve my claim?

When you try to serve your claim, you might find that the party has moved and you cannot find a forwarding address. You might believe that the party knows you are trying to serve the claim and is avoiding you. In either case, you may file a motion to seek an order for substituted service under Rule 8.04. The method ordered by the court is substituted for the method(s) of service allowed for that particular document and on that particular party in the *Rules*.

### Excerpt from the *Rules*

#### Substituted Service

8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.

For more information about making a motion, refer to the “Guide to Motions and Clerk’s Orders.”

## What types of substituted service of a claim can I ask for?

The judge will decide what kind of substituted service will be permitted. Examples of substituted service you might request are:

- leaving the claim with a relative of the defendant;
- mailing the claim to the address of the defendant’s employer; or
- posting the claim on the door of a particular residence or other place.

Before asking for an order for substituted service, you should already have tried several times to serve the document by the method or methods provided by the *Rules*. Be prepared to give details of how you tried to serve the claim, what happened and why the method of service you are asking for will succeed.

### Example 1

Meera wants to serve Norman with a plaintiff's claim but she cannot find him. She makes a motion for substituted service requesting that the judge make an order allowing her to serve him by giving a copy (in an envelope addressed to Norman) to his mother.

In her affidavit, Meera writes that:

- she does not know where Norman lives, but knows where Norman's mother lives;
- she believes the claim will come to Norman's attention if it is served on his mother because she knows that he visits his mother each week and calls her regularly on the telephone; and
- Norman has indicated to mutual friends that he intends to be at his mother's anniversary party in two weeks.

If the court makes an order allowing substituted service, you must serve on the party:

- a copy of the order;
- the notice of motion and the affidavit in support of the motion; and
- the claim.

**Note:** In Small Claims Court, an order made by a judge is generally set out in an endorsement record.

## Part Two: Personal service and alternatives to personal service

In Part Two of this guide, we provide information on Rule 8.02 (Personal Service) and Rule 8.03 (Alternatives to Personal Service).

### What is personal service?

To serve a document by means of personal service, you, or someone acting on your behalf, will hand the document to the party (for example, the defendant). The person serving the document must first be satisfied that the person being handed the document is in fact the party. If the party refuses to take the document, you can drop it on the floor at his or her feet. The person who serves the document would note this in his or her affidavit of service because it is a related detail.

## **Excerpt from the Rules**

### **Personal Service**

8.02 If a document is to be served personally, service shall be made,

#### **Individual**

(a) on an individual, other than a person under disability, by leaving a copy of the document with him or her;

#### **Municipality**

(b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality;

#### **Corporation**

(c) on any other corporation, by leaving a copy of the document 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;

#### **Board or Commission**

(d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;

#### **Person Outside Ontario Carrying on Business in Ontario**

(e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person;

#### **Crown in Right of Canada**

(f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23(2) of the *Crown Liability and Proceedings Act* (Canada);

#### **Crown in Right of Ontario**

(g) on Her Majesty the Queen in right of Ontario, in accordance with section 10 of the *Proceedings Against the Crown Act*;

#### **Absentee**

(h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee;

#### **Minor**

(i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person;

#### **Mentally Incapable Person**

- (j) on a mentally incapable person,
- (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney,
  - (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,
  - (iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

#### **Partnership**

(k) on a partnership, by leaving a copy of the document with any one or more of the 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; and

#### **Sole Proprietorship**

(l) on a sole proprietorship, by leaving a copy of the document with the sole proprietor 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.

## What is an “alternative to personal service”?

If you are unable to serve a document by means of personal service, you may choose an “alternative to personal service.” This means that you are choosing another method of service (e.g. at place of residence) permitted by the *Rules*. See Rule 8.03 below.

### Excerpt from the *Rules*

#### Alternatives to personal service

8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a plaintiff’s claim or defendant’s claim, service may also be made in accordance with subrule (7).

#### At Place of Residence

(2) If an attempt is made to effect personal service at a person’s place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving 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
- (b) on the same day or the following day, mailing or sending by courier another copy of the document to the person at the place of residence.

#### Corporation

(3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Government Services, service may be made on the corporation

- (a) by mailing or sending by courier a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address and
- (b) by mailing or sending by courier a copy of the document to each director of the corporation as recorded with the Ministry of Government Services, at the director’s address as recorded with that Ministry.

#### When Effective

(4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed or verified by courier that it was delivered.

#### Acceptance of Service by Lawyer

(5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer’s office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client’s authority to accept service.

#### Service of Claim by Mail to Last Known Address

(7) Service of a plaintiff’s claim or defendant’s claim may be made by sending a copy of it by mail, or by courier, in an envelope showing the sender’s return address, to the last known address of the person to be served.

(8) Service under subrule (7) is deemed to have been effected on the 20th day after the date the document is mailed or verified by courier that it was delivered if an affidavit of service (Form 8A),

- (a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief;
- (b) indicates that the claim has not been returned to the deponent; and
- (c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim.

(9) The affidavit of service shall not be completed before the day referred to in subrule (8).

One example of an alternative to personal service is provided in subrule 8.03(2)(a) (service at place of residence), which allows you to serve a document in a sealed envelope addressed to the person at his or her residence by leaving a copy with an adult member of the same household. You must also, on the same day or the following day, mail or send by courier another copy of the document to the person at the place of residence. Service is effective on the fifth day after the document is mailed or verified by courier that it was delivered.

### Example 2

Meera wants to serve Norman with a plaintiff's claim. She knows where he lives and goes in person to his house to deliver the claim to him. In case Norman is not home, she puts the claim in a sealed envelope addressed to Norman.

When Meera knocks on Norman's door a woman answers. Meera asks if Norman is home, but the woman says no. Meera then asks the woman what her name is and if she lives there. The woman says, "I'm Susan Long and yes, I live here." The woman appears to be at least 18 years of age.

Meera hands the envelope containing the claim to Susan. Meera then mails another copy of the document to Norman at his home. Meera makes a note of Susan's name for her affidavit of service.

If Susan had refused to provide her name or say whether or not she lived at Norman's house, Meera could still leave a copy of the claim with her as long as Susan appeared to be a resident of Norman's household and at least 18 years of age.

In another example of an alternative to personal service, Rule 8.03(7) provides that a **claim** can be served by mail to the "last known address."

Service under this rule is effective on the twentieth day after the document is mailed or verified by courier that it was delivered, if the affidavit of service indicates:

- the person making the affidavit believes this to be the last known address of the person to be served and gives the reasons for this belief;
- the claim has not been returned; and
- the person making the affidavit has no reason to believe the person to be served did not receive the claim.

### Example 3

Meera wants to serve Norman with a plaintiff's claim. She goes to his house several times to serve it, but no one answers the door. Meera does not know of any other way to contact Norman to find him. She believes Norman lives there because he responded to mail she sent there before, so it is Meera's "last known address" for Norman.

Meera mails the claim to Norman at his last known address in an envelope which shows her return address. She waits 20 days from the date she mailed the claim to Norman. She receives no response of any kind from Norman and does not receive her letter back from the post office. She then completes her affidavit for service. In her affidavit she indicates that:

- she mailed the claim to Norman's last known address;
- she believes that he lives at that address because he responded to mail that she sent there before;
- the claim has not been returned to her by Canada Post; and
- she has no reason to believe that Norman did not receive the claim.

If Meera had sent the claim to Norman by courier, she would complete her affidavit of service on the 20th day after the date the courier verified that the claim was delivered to Norman's last known address.

## Part Three: Service of particular documents

### How are documents (other than the claim) served?

The *Rules* must be followed when serving court documents. In some cases it is the clerk of the court who will serve documents by mail. However, in most cases it is the party's responsibility to serve his or her own documents on the other parties. In this part of this guide, we will set out the remainder of Rule 8.01 beginning at subrule (3), which describes how specific documents are to be served. For a quick reference, refer to the chart in Part Five of this guide.

#### Excerpt from the *Rules*

##### **Defence**

8.01 (3) A defence shall be served by the clerk, by mail or by fax.

##### **Notice of Default Judgment**

(4) A default judgment (Form 11B) shall be served by the clerk, by mail or by fax, on all parties named in the claim.

##### **Assessment Order**

(5) An order made on a motion in writing for an assessment of damages under subrule 11.03(2) shall be served by the clerk to the moving party if the party provides a stamped, self-addressed envelope with the notice of motion.

##### **Settlement Conference Order**

(6) An order made at a settlement conference shall be served by the clerk by mail or by fax on all parties that did not attend the settlement conference.

##### **Summons to Witness**

(7) A summons to witness (Form 18A) shall be served personally by the party who requires

the presence of the witness, or by the party's lawyer or agent, at least ten days before the trial date; at the time of service attendance money calculated in accordance with the regulations made under the Administration of Justice Act shall be paid or tendered to the witness.

#### **Notice of Garnishment**

- (8) A notice of garnishment (Form 20E) shall be served by the creditor,
- (a) together with a sworn affidavit for enforcement request (Form 20P), on the debtor, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
  - (b) together with a garnishee's statement (Form 20F), on the garnishee, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

#### **Notice of Garnishment Hearing**

(9) A notice of garnishment hearing (Form 20Q) shall be served by the person requesting the hearing on the creditor, debtor, garnishee, co-owner of debt, if any, and any other interested persons by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

#### **Notice of Examination**

(10) A notice of examination (Form 20H) shall be served by the creditor on the debtor or person to be examined by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

#### **Financial Statement**

(11) If the person to be examined is the debtor and the debtor is an individual, the creditor shall serve the notice of examination on the debtor together with a blank financial information form (Form 20I).

(12) The notice of examination and, if applicable, the financial information form shall be served at least 30 days before the date fixed for examination.

#### **Notice of Contempt Hearing**

(13) A notice of contempt hearing shall be served by the creditor on the debtor or person to be examined personally as provided in rule 8.02.

#### **Other Documents**

(14) A document not referred to in subrules (1) to (13) may be served by mail, by courier, by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

## **Part Four: General service information**

### **What does the person making service have to provide to the party?**

The person making service will provide the party (by whatever method of service being used) with a copy of the document. 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 by mail or by courier, you must send a copy of the document to each party in separate addressed, sealed envelopes. Complete an **Affidavit of Service [Form 8A]** for each party.

## Do I, as a party, have to serve the document myself?

No. If personal service is not required under the *Rules*, often service of documents will be fairly simple - either sending it by mail or by courier, 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 documents. Sometimes it may be an awkward or potentially confrontational situation. If sending the document by mail or by courier is not allowed under the *Rules*, there are professional process servers who will serve the document for you, for a fee. You can get the name of a process server from the yellow pages of the telephone directory.

You could also ask a friend to do it for you. If the party you are serving is in another town, you might be able to mail it to a friend there and have him or her serve it for you.

Remember, you will have to file with the court an **Affidavit of Service [Form 8A]** that is signed and sworn or affirmed by the person who has served the document.

## Can I recover the cost of service?

If you are successful in your claim, you may be entitled to recover some costs. Refer to the "Guide to Getting Ready for Court" for more information.

If you served the document by mail or courier and you wish to recover the costs, you must provide the court office with a receipt showing what you paid.

If you hired someone to serve the document for you, you must provide the court office with a detailed invoice or statement setting out the amount paid to have the document served. You can ask for a maximum of \$20 per person to be served regardless of the amount paid or number of attempts made to serve the document, unless the court orders otherwise [Rule 19.01(3)].

## How does a party change his or her address for service?

It is up to you to be sure that the court and the other parties in the case always have your proper address so that they can serve documents on you. If your address changes, you must serve written notice of the change on the court and other parties within seven days after the change takes place. Make detailed notes of when and how you served your new address on each party and the court. The court may require an affidavit of service at some future time, so you will need to keep a record of these details.

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.

## What if a party did not receive a document or received it late?

If a party did not receive a document that was supposed to have been served on him or her under the *Rules*, or received it after the timeframe allowed under the *Rules*, the party can bring a motion to the court for the order he or she needs in the circumstances.

For example, where a defendant does not receive the claim but receives a default judgment from the court, he or she may wish to bring a motion to set aside the default judgment and extend the time to file a defence. In another example, if a party received a notice of motion less than 7 days

before the hearing date, he or she may request an adjournment of the motion in order to have more time to prepare. For more information, refer to the “Guide to Motions and Clerk’s Orders.”

## How do I serve a party under legal disability?

A party under legal disability may be:

- a minor (a person under 18 years of age);
- a mentally incapable person within the meaning of Section 6 or Section 45 of the [Substitute Decisions Act, 1992](#); or
- an absentee within the meaning of the [Absentees Act](#).

If a party in an action is a party under legal disability, then he or she must have a litigation guardian. Documents can be served on the party by serving the person named as the litigation guardian.

**Note:** A minor (a person under the age of 18) may be involved in an action for any sum up to \$500 without requiring a litigation guardian. In this case you would serve the minor as you would an adult.

## Can I serve a document by mail?

Rule 8.01 and the chart in Part Five of this guide can help you determine whether the document you want to serve can be served by mail. If it can, then the document is considered to be served on the 5<sup>th</sup> day following the date of mailing.

However, if you served the claim by an alternative to personal service by mailing it to the defendant’s last known address, is not considered to be served until the 20<sup>th</sup> day after it is mailed. See Part Two of this guide for more information on service of a claim at the defendant’s last known address.

You cannot file your affidavit of service until after the date the document is deemed to be served.

### Excerpt from the Rules

#### Service by Mail

8.07 (1) If a document is to be served by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person’s lawyer or agent that is,

- (a) on file with the court, if the document is to be served by the clerk;
- (b) known to the sender, if the document is to be served by any other person.

(2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.

(3) Subrule (2) does not apply when a claim is served by mail under subrule 8.03(7).

**Note:** Regular mail includes postal services provided by Canada Post, including Priority *Courier* and Xpresspost, unless otherwise ordered by a judge.

## Can I serve a document by courier?

Rule 8.01 and the chart in Part Five of this guide can help you determine whether the document you want to serve can be served by courier. If it can, then the document is considered to be served on the 5<sup>th</sup> day following the date on which the courier verifies to the sender that the document was delivered.

However, if you served the **claim** by an alternative to personal service by having it couriered to the defendant's last known address, it is not considered to be served until the 20<sup>th</sup> day after the courier verifies that it was delivered to the last known address. See Part Two of this guide for more information on service of a claim at the defendant's last known address.

You cannot file your affidavit of service until after the date the document is deemed to be served.

#### Excerpt from the Rules

##### Service by Courier

8.07.1 (1) If a document is to be served by courier under these rules, it shall be sent by means of a commercial courier to the last address of the person or of the person's lawyer or agent that is on file with the court or known to the sender.

(2) Service of a document sent by courier is deemed to be effective on the fifth day following the date on which the courier verifies to the sender that the document was delivered.

(3) Subrule (2) does not apply when a claim is served by courier under subrule 8.03(7).

**Note:** Although the service provided by Canada Post is called "Priority *Courier*" it is not courier service for the purposes of this rule. It is considered to be regular mail service.

## Can I serve a document by fax?

Rule 8.01 and the chart in Part Five of this guide can help you determine whether the document you want to serve can be served by fax. If it can, then the document is considered to be served on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday. If it is transmitted after 5 p.m. or on a holiday, it is considered to be served on the next day that is not a holiday. If the document is more than 16 pages long, read Rule 8.08 below to find out when you may fax it.

#### Excerpt from the Rules

##### Service by Fax

8.08 Service of a document by fax is deemed to be effective,

(a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday;

(b) on the next day that is not a holiday, in any other case.

(2) A document containing 16 or more pages, including the cover page and the backsheet, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance.

## How does a party prove that a document has been served?

The person who served the document must fill out an **Affidavit of Service [Form 8A]** setting out who was served, and when and how service was made. Generally, you are not required to file the affidavit of service with the court until you are ready to proceed with your next step, or a judge orders that it must be filed. For example, if you want to ask the clerk to note the defendant in default, you would file your affidavit of service of the claim at the time you make the request.

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.

## How do I fill out an Affidavit of Service?

- To fill out an **Affidavit for Service [Form 8A]** follow the instructions on the form. You must describe:
  - the name of the person who served the document (e.g. you or an agent or friend);
  - what document was served (e.g. a claim, defence, 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).
- 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 that the information in the affidavit is true.
- The affidavit must be signed in front of a person authorized to take oaths and affirmations (i.e. a commissioner for taking affidavits). 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 affidavits, see the “Tips” page at the end of this guide.

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

## Part Five: Service chart for parties

Remember, documents **cannot** be faxed or e-mailed to the court. Documents should be filed at the court office in person or mailed together with the appropriate filing fee. Refer to the “Guide to Fee Schedules” for more information about filing fees.

The chart below is a summary based on the *Rules* as they exist at the date of this guide. It is provided for your convenience only. You should always refer to the actual *Rules*.

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<b>Plaintiff's Claim (Form 7A)</b> <b>Defendant's Claim (Form 10A)</b>  r. 8.01(1), (2) r. 10.02	Party	<ul style="list-style-type: none"> <li>Personal service [r. 8.02]</li> <li>Alternative to personal service [r. 8.03]</li> <li>Substituted service (with leave of court) [r. 8.04]</li> </ul>	Within 6 months after date issued (or longer with leave of court)
<b>Summons to Witness (Form 18A)</b>  r. 8.01(7)	Party	Personal service [r. 8.02]	

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<b>Notice of Garnishment (Form 20E)</b>  r. 8.01(8) r. 20.08(6)	Creditor	On the debtor together with a sworn Affidavit for Enforcement Request (Form 20P), and On the garnishee together with a Garnishee's Statement (Form 20F) by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> </ul>	On the debtor within 5 days of service on the garnishee
<b>Garnishee's Statement</b>  r. 20.08(13)	Garnishee	On creditor and debtor	
<b>Notice of Garnishment Hearing (Form 20Q)</b>  r. 8.01(9) r. 20.08(15.1)	Party	On creditor, debtor, garnishee, co-owner of debt (if any) and any other interested persons by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> </ul>	
<b>Notice of Examination (Form 20H)</b>  r. 8.01(10), (11), (12) r. 20.10(3)	Creditor	On debtor (together with a blank Financial Information Form [Form 20I]) by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> </ul>	At least 30 days before the date fixed for the examination
<b>Notice of Contempt Hearing (Form 20I)</b>  r. 8.01(13) r. 20.11(3), (6)	Creditor	On debtor by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> </ul>	Affidavit of Service filed at least 7 days before the date of the hearing
<b>"Amended" claim or defence</b>  r. 8.01(14) r. 12.01(2)	Party making amendment	On all parties including parties noted in default by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	Filing and service at least 30 days before the originally scheduled trial date except with leave of the court or clerk's order on consent

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<b>Notice to Co-owner of Debt (Form 20G)</b>  r. 20.08(14) r. 8.01(14)	Creditor	On co-owners of the debt by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	
<b>Notice of Motion (Form 15A)</b>  r. 15.01(3) r. 8.01(14)	Party filing motion	<b>Prior to Judgment:</b> On every party who has filed a claim and any defendant who has not been noted in default,  or  <b>After Judgment:</b> On all parties, including those noted in default, by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	At least 7 days before the hearing
<b>Order on Motion made without Notice</b>  r. 15.03(2) r. 8.01(14)	Party obtaining order on motion without notice	On all affected parties by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	Within 5 days after order signed
<b>Other Documents</b>  r. 8.01(14)	Party	<ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	
<b>Request to Clerk (Form 9B)</b> (for a terms of payment hearing)  r. 8.01(14) r. 9.03(3)	Plaintiff	To defendant by: <ul style="list-style-type: none"> <li>• Personal service [r. 8.02]</li> <li>• Alternative to personal service [r. 8.03]</li> <li>• Mail [r. 8.07]</li> <li>• Courier [r. 8.07.1]</li> <li>• Fax [r. 8.08]</li> </ul>	Within 20 days after service of the defence
* Service by the party includes service by his or her lawyer or agent			

# Tips on Completing Forms in Small Claims 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. How to **COUNT DAYS FOR TIMELINES** in the *Rules of the Small Claims Court*:

When calculating timelines in the *Rules*, count the days by excluding the first day and including the last day of the period; 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.

The court can order, or the parties can consent to, the shortening or lengthening of the time prescribed by the *Rules*.

3. At the top of the forms, fill in the **NAME AND ADDRESS OF THE COURT** where you are filing the documents.
4. Once court staff provides a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
5. Make enough **COPIES** of your completed forms. The court will stamp and return your copy of the forms so you can make copies for service. Usually you will require one copy for each party who must be served and one copy for your own records. In most cases, the court will keep the original form. There is a fee to have copies made at the court office. Refer to the "Guide to Fee Schedules" for more information.
6. **COURT FEES** must be paid to issue and file specific documents. A listing of Small Claims Court fees can be viewed at the Ministry of the Attorney General website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca) or you can refer to the "Guide to Fee Schedules." Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance.
7. An **AFFIDAVIT** can be sworn before:
  - a Small Claims Court staff member who has been appointed a commissioner for taking affidavits (there is no fee for this service);
  - a lawyer who is entitled to practice law in Ontario;
  - a notary public; or
  - any other person who has been appointed a commissioner for taking affidavits in connection with court documents.

The affidavit must be signed in the presence of the person before whom it is sworn.

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

8. If your **ADDRESS FOR SERVICE** changes, you must serve written notice of the change on the court and all other parties within seven (7) days after the change takes place.

## Any Comments?

Your feedback is important. Tell us how we can we help you better by taking a moment to comment on this Guide.

Put your response in the Customer Comment Box at any Small Claims Court location.

Was this Guide helpful to you?

Yes

No

Why?

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What can we do to make this Guide better?

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**Thank you!**

*Your feedback is requested to help us improve these guides.  
Please do not provide any personal information.*