

# Instructions

## Service Outside of Canada (Hague Service Convention)

These instructions apply if you need to serve a commencement document<sup>1</sup> in a foreign country that is a Contracting State to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* [the “Hague Service Convention”] **and** if you know the address of the person or business to be served.

You can find a chart identifying the Contracting States and their individual requirements on the Alberta Court’s website (<https://albertacourts.ca/docs/default-source/qb/table-of-contracting-states-to-the-hague-service-convention.pdf>).

You will find the most up-to-date list of the Contracting States at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>

As of February 2021, the following countries were Contracting States under the *Hague Service Convention*.

Albania	Denmark	Moldova
Andorra	Egypt	Monaco
Antigua and Barbuda	Estonia	Montenegro
Argentina	Finland	Morocco
Armenia	France	Netherlands
Australia	Germany	Nicaragua
Austria	Greece	Norway
Bahamas (The)	Hungary	Pakistan
Barbados	Iceland	Philippines
Belarus	India	Poland
Belgium	Ireland	Portugal
Belize	Israel	Romania
Bosnia & Herzegovina	Italy	Russia
Botswana	Japan	Saint Vincent and the Grenadines
Brazil	Kazakhstan	San Marino
Bulgaria	Korea (South)	Serbia
China (People’s Republic of)	Kuwait	Seychelles
China (Hong Kong)	Latvia	Slovakia
China (Macao)	Lithuania	Slovenia
Colombia	Luxembourg	Spain
Costa Rica	Macedonia	Sri Lanka
Croatia	Malawi	Sweden
Cyprus	Malta	Switzerland
Czech Republic	Marshall Islands	Tunisia
	Mexico	

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<sup>1</sup> A commencement document is a statement of claim, an originating application, a counterclaim, a third-party claim, and a claim under the *Family Law Act* that starts a new proceeding (Form FL-10). Although a Joint Statement of Claim for Divorce is a commencement document, it doesn’t need to be served, so the Hague Service Convention process doesn’t apply.

Turkey  
Ukraine

United Kingdom  
United States

Venezuela  
Vietnam

### **Before you Begin:**

- You must be starting a court action in the Court of Queen's Bench to use these forms. If you do not know how to start your action, ask us.
- You can apply to serve a commencement document outside Canada if the application that you want to make, or the court action that you want to start, has a **real and substantial connection** to Alberta (Rule 11.25(1)).
- The real and substantial connection rule does not apply to claims for divorce or to combined claims for divorce and division of matrimonial property (Rule 12.58). If you are serving a claim for divorce or a combined claim for divorce and division of matrimonial property, it is enough that you have lived in Alberta for at least one year before filing.
- If you are not sure if your application or action has a real and substantial connection to Alberta, talk to a lawyer.

The Rules of Court say:

11.25(3) Without limiting the circumstances in which a real and substantial connection may exist between Alberta and the facts on which a claim in an action is based, in the following circumstances a real and substantial connection is presumed to exist:

- (a) the claim relates to land in Alberta;
- (b) the claim relates to a contract or alleged contract made, performed or breached in Alberta;
- (c) the claim is governed by the law of Alberta;
- (d) the claim relates to a tort committed in Alberta;
- (e) the claim relates to the enforcement of a security against property other than land by the sale, possession or recovery of the property in Alberta;
- (f) the claim relates to an injunction in which a person is to do or to refrain from doing something in Alberta;
- (g) the defendant is resident in Alberta;
- (h) the claim relates to the administration of an estate and the deceased died while ordinarily resident in Alberta;
- (i) the defendant, although outside Alberta, is a necessary or proper party to the action brought against another person who was served in Alberta;
- (j) the claim is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
  - (i) the trust assets include immovable or movable property in Alberta and the relief claimed is only as to that property;
  - (ii) the trustee is ordinarily resident in Alberta;
  - (iii) the administration of the trust is principally carried on in Alberta;
  - (iv) by the express terms of a trust document, the trust is governed by the law of Alberta;
- (k) the action relates to a breach of an equitable duty in Alberta.

## Hague Service Convention requirements:

- Under the Hague Service Convention, each Contracting State has identified the ways that documents can be transmitted for service to people in that country.
- Sometimes the commencement documents can be served by mail or through a lawyer or by a process server in the foreign country.
- Other times, the commencement documents will have to be served through the Central Authority in the foreign country.



### **Tip:**

The Central Authorities in some countries require translation of the entire package of documents (commencement document, affidavit and order for service outside of Canada) before they will accept them for service.

Also, some Central Authorities charge fees for their services.

You can find mailing addresses and other contact information for the foreign Central Authorities, as well as information about translation and fees at:

<https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17>

For your convenience, you can also find a summary of these requirements on a chart available on the Alberta Court's website

(<https://albertacourts.ca/docs/default-source/qb/table-of-contracting-states-to-the-hague-service-convention.pdf>).

The Rules of Court say:

11.34(1) A commencement document that is to be served in a Contracting State must be served

- (a) through the Central Authority in the Contracting State using the Request for Service Abroad of Judicial or Extrajudicial Documents, Certificate, Warning and Summary of the Document to be Served in the Model Form annexed to the Convention, as amended or replaced from time to time,
- (b) directly through Canadian diplomatic or consular agents, unless the document is being served on a national who is not Canadian and the Contracting State has declared that it is opposed to that method of service within its territory,
- (c) through consular channels where the Contracting State has designated an authority to receive requests for service through these channels,
- (d) through diplomatic channels,
- (e) by another method that is provided in the Convention and is set out in rule 11.26(1), unless the Contracting State has objected to that method, or
- (f) by a method that is set out in rule 11.26(1) and is not prohibited by the Convention.

(2) Despite subrule (1), a commencement document that is to be served in a Contracting State must be served in accordance with rule 11.26(1) if

- (a) the Contracting State has determined that the Convention does not apply, or
- (b) the address of the person to be served is unknown.

### **Which documents should I use?**

Since you are serving documents outside of Canada, you need to make an application for an Order for Service Outside of Canada. This application may be made to a special kind of judge called a Master, or it may be made to a Queen's Bench Justice. The Clerk can tell you who will hear your application in your location. In these instructions, we will refer to the Master or Justice as "the judge".

There are 3 different processes depending on your circumstances.

#### **(1) Order for Service Outside of Canada (Hague Service Convention - Central Authority)**

If the country where you need to serve your documents objects to all methods of service under Article 10, then you must serve through the foreign Central Authority in that country. Please see the chart on the Alberta Court's website to determine whether you are required to serve the documents through the foreign Central Authority.

Even if the other country accepts other methods of service, you may choose to serve your documents through the foreign Central Authority.

If this is the correct process for you, use the following documents:

- Affidavit – Service Outside of Canada (Hague Service Convention - Central Authority);
- Order – Service Outside of Canada (Hague Service Convention - Central Authority); and
- Affidavit of Service (Hague Service Convention - Central Authority).

**Example:** Lucy wants to file for divorce. Her spouse Nigel lives in Korea. Lucy has lived in Alberta for more than one year. Korea is a Contracting State under the Hague Service Convention and Lucy knows Nigel's address.

Since Nigel will not consent to be served with the statement of claim, and since Korea does not permit service other than through its Central Authority, Lucy must obtain an Order for Service Outside of Canada (Hague Service Convention - Central Authority). Lucy then must submit her request for service to the

Korean Central Authority through a Forwarding Authority<sup>2</sup> in Alberta. The Korean Central Authority requires the documents to be translated, so Lucy's document package must include two copies of her original court documents (Statement of Claim for Divorce, Affidavit, and Order for Service Outside of Canada) and a translated copy of these same documents.

The Forwarding Authority will fill out the Request for Service Model Form and ask Lucy for payment, if applicable, and then transmit the documents to the Korean Central Authority. The Korean Central Authority will then arrange for service upon Nigel and return a Certificate proving service to the Forwarding Authority, who will send it on to Lucy. Lucy will file an Affidavit of Service attaching the Certificate.

## **(2) Order for Service Outside of Canada – Not through the Central Authority**

If the country where you need to serve your documents allows other methods of service under Article 10 of the Hague Service Convention, then you can apply for an Order allowing you to serve using that other method of service. Please see the chart on the Alberta Court's website to determine which methods of service are permitted in the country where you need to serve your documents.

If this is the correct process for you, use the following documents:

- For personal service in the other country, use the "Application for Personal Service Outside of Canada" booklet (note that **you should hire a process server** in the other country, rather than having a friend or family member serve the documents because an official process server is required in some countries)
- For other methods of service, use the "Application for Substitutional Service Outside of Canada" booklet

**Example:** Joe wants to file a *Family Law Act* Claim for a parenting order. Joe believes that there is a real and substantial connection between his parenting application and Alberta because he and the children have lived here for many years. Pearl, the mother, lives in Australia. Australia is a Contracting State under the Hague Service Convention and Joe knows Pearl's address.

Australia does not object to Article 10 of the Convention and registered mail is one of the options under Article 10. After obtaining an Order for Substitutional Service Outside of Canada, Joe can serve Pearl with the commencement documents by registered mail with acknowledgment of receipt. Joe will file an

<sup>2</sup> At this time in Alberta, lawyers are the only available Forwarding Authorities. Please see the document "General Duties of Forwarding Authorities" available on the Alberta Court's website (<https://albertacourts.ca/docs/default-source/qb/general-duties-of-forwarding-authority.pdf>).

Affidavit of Service attaching the receipt showing that Pearl received the documents.

### **(3) Order for Service Outside of Canada (with Consent)**

If you can get the express consent, in writing, of the person you need to serve, you **may** be able to apply for an Order for Service Outside of Canada (with Consent), permitting you to serve the other party in the particular way you have agreed upon (e.g. by email). This may be possible, even if the country you are serving in does not allow that particular method of service.

The law on consent is unsettled. Each judge will decide whether or not this is possible based on that judge's interpretation of the law and the evidence in your application, so you should try to get as clear and express a consent as possible from the person you need to serve to increase your chance of obtaining this order. For example, the other party can send you an email clearly confirming that they will accept service of your Statement of Claim for Divorce by Registered Mail, and that they agree that the Court in Alberta can decide the dispute (called "attorning to the jurisdiction").

If this is the correct option for you, use the following documents:

- Affidavit – Service Outside of Canada (with Consent)
- Order – Service Outside of Canada (with Consent)

If the judge does not grant the order that you requested, your application will be rejected and you will have to make an application for permission to serve the documents using another method (see scenarios (1) or (2) above). To avoid the delay that would be caused by the rejection of your application, you are permitted to make both applications at the same time.

**Example:** Rose wants to file for a divorce. Her spouse Marco lives in the Philippines. The Philippines is a Contracting State under the Hague Service Convention and Rose knows Marco's address. Marco also wants to get divorced and has agreed to accept service of the commencement documents by email. Rose can apply for an Order for Service Outside of Canada (with Consent). Marco sent Rose an email confirming that he will accept service by email, and Rose needs to attach the email as an exhibit to her Affidavit – Service Outside of Canada (with Consent).

In case the judge decides not to grant the order allowing her to serve by email, Rose has decided to apply for an Order for Service Outside of Canada (Hague Service Convention - Central Authority) at the same time as she applies for an Order for Service Outside of Canada (with Consent).

### **Fill in the Court forms that you are wanting to serve**

- If you are filing for divorce, fill in and file your Statement of Claim.
- If you are making a court application under the *Family Law Act* using Form FL-10 that starts a proceeding, fill in the court forms that you will need to make that application. **Do not file them yet** – the judge will tell you how much notice you need to give the other party.

### **Fill in the appropriate Affidavit form**

- The model affidavits have been prepared with the information that the court is likely to want to see. You can, if you wish, change the content of the form to set out the information in a way that you think is best.
- **Do not make any changes to the Affidavit after it is sworn.**

### **Fill in the applicable Order(s)**

- Do not fill in the judge's name or the date, until you go to court.
- Ask the Resolution Services or court staff how much of the Order you should fill in. Judges in different court locations have different requirements.

### **After you get your Order for Service Outside of Canada**

- If you haven't filed the documents you need to serve, file them now. If a court date is required, the filing clerk can help you pick a date.
- Serve the documents in the manner described in the Order.

- If you must serve through a foreign Central Authority:
  - Translate all of the court documents if translation is required by the foreign Central Authority (see the chart on the Alberta Court's website (<https://albertacourts.ca/docs/default-source/qb/table-of-contracting-states-to-the-hague-service-convention.pdf>) and confirm the most up-to-date requirements on the Hague Service Convention website: <https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17>)
  - Make **two** copies of your entire package, which includes the documents you need to serve (e.g. Statement of Claim, Application, etc.), filed copy of the Order for Service Outside of Canada, filed copy of the Affidavit for Service Outside of Canada, and translated copies of these documents if required by the foreign Central Authority.
  - Submit all of the documents to the Forwarding Authority (a lawyer) along with the name, address, and other contact information of the person who needs to be served.
  - The Forwarding Authority will fill out the Request for Service Model Form and will ask for payment, if required, by the foreign Central Authority. The Forwarding Authority may also charge a fee for their own services.
  - The Forwarding Authority will then transmit the documents to the foreign Central Authority, which will arrange for service of the documents upon the respondent.
  - After the documents are served on the respondent, the foreign Central Authority will send the Forwarding Authority a Certificate proving the documents were served. The Forwarding Authority will forward this Certificate to you.
  - If you do not receive a Certificate from the Forwarding Authority within 6 months, contact us

### **Fill in the appropriate Affidavit of Service form**

- You will need to prove that the respondent was served by filing an Affidavit of Service.
- If the documents were served through the foreign Central Authority, then you will sign an Affidavit of Service attaching the Certificate proving service.
- If the documents were served personally in the other country, then the person that served the documents will need to sign the Affidavit of Service before a Notary Public, and then send the Affidavit to you for filing.



- If the documents were sent by email, fax, or registered mail, then you will sign the Affidavit of Service and attach proof of service.
- File the Affidavit of Service after it has been notarized or commissioned.

**These instructions have been prepared for you by Resolution Services.  
Contact us at:**

**Calgary**

7<sup>th</sup> floor, Calgary Courts Centre  
601 - 5 Street SW  
Phone 403-476-4730

**Edmonton**

8<sup>th</sup> floor, Brownlee Building  
10365 - 97 Street  
Phone 780-415-0404

**Grande Prairie**

Main Floor, Court House  
10260 - 99 St.  
Phone: 780-833-4234

**Lethbridge**

1<sup>st</sup> Floor, Court House  
320 - 4 St. S  
Lethbridge AB T1J 1Z8  
Phone: 403-388-3102

**Red Deer**

Main Floor, Court House  
4909 - 48 Ave  
Phone: 403-340-7187

**Medicine Hat**

Court House  
460 First Street SE  
Medicine Hat, AB T1A 0A8  
Phone 403-529-8716

**Outside these centres, call the  
Resolution Services Contact Centre at 1-855-738-4747**