

Service Outside Canada (Consent)

# Court of Queen's Bench

Application for Service  
Outside of Canada (with Consent)



**Resolution Services**



*Alberta*   
Government

## 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 ([www.albertacourts.ca/qb](http://www.albertacourts.ca/qb)).

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

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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.

## 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 ([www.albertacourts.ca/qb](http://www.albertacourts.ca/qb)).

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.

<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 ([www.albertacourts.ca/qb](http://www.albertacourts.ca/qb)).

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 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 ([www.albertacourts.ca/qb](http://www.albertacourts.ca/qb)) 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**

COURT FILE NUMBER \_\_\_\_\_  
*(File number, as on other court documents)*

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE \_\_\_\_\_  
*(City or town where court is located)*

PLAINTIFF / APPLICANT \_\_\_\_\_  
*(Print your full name, as on other court documents)*

DEFENDANT /  
 RESPONDENT \_\_\_\_\_  
*(Print the other party's full name, as on other court documents)*

DOCUMENT: **Affidavit –Service Outside of  
 Canada (with Consent)**

SWORN / AFFIRMED BY: \_\_\_\_\_  
*(Name of person making this Affidavit)*

SWORN / AFFIRMED ON: \_\_\_\_\_  
*(Date Affidavit sworn / affirmed)*

ADDRESS FOR SERVICE  
 AND CONTACT  
 INFORMATION OF PARTY  
 FILING THIS DOCUMENT \_\_\_\_\_  
*(Name of party filing this document)*

\_\_\_\_\_  
*(Full address of party filing this document)*

\_\_\_\_\_  
 ( )

I, \_\_\_\_\_, of \_\_\_\_\_, Alberta,  
*(Your name) (Name of City / Town)*

**SWEAR / AFFIRM AND SAY THAT:**

1. I am the Applicant. I have personal knowledge of the facts set out below, except where I say that they are based on information and belief. In that case, I believe the facts to be true.

**SERVICE OUTSIDE CANADA**

2. I am asking the Court for an Order allowing me to serve the Defendant / Respondent outside of Canada. Throughout the rest of this Affidavit, I will refer to the Defendant / Respondent as "the Respondent".

3. The Respondent lives in \_\_\_\_\_  
*(Name of city and country where Respondent lives)*

4. I have confirmed that the country where the Respondent lives is a Contracting State to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* by examining the:

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*(Identify resource reviewed by applicant)*

5. The documents that I want to serve are:

*(Check only those that apply and write in any additional documents.)*

- Statement of Claim for Divorce
- Statement of Claim for relief other than Divorce
- Application form
- Originating Application form
- Affidavit
- Claim
- Statement *(State what kind of Statement – e.g. “Parenting” or “Recipient’s Statement – Vary Child Support”)*

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- Disclosure Statement
  - 
  -

*(Choose one paragraph 6 and cross out the other)*

6. *(For Statements of Claim for Divorce)*

I have been ordinarily resident in Alberta for at least one year immediately before the date of filing of the Statement of Claim for Divorce.

6. *(For all other documents)*

There is a real and substantial connection between Alberta and the facts on which I base my claim because: *(Check off all that apply)*

- I live in Alberta.
- The respondent is resident in Alberta.
- This is a family matter and the child(ren) live in Alberta.
- Other: *(choose from the list included in the instructions, write the item out here, and explain how your facts fit that item.)*

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**SUBSTITUTIONAL SERVICE (Delivering the documents in a way other than personal service)**

7. I am also asking for an Order allowing me to substitutionally serve the Respondent.
8. I have received correspondence from the Respondent, a copy of which is attached as **Exhibit "A"**, indicating that they consent to receive the documents in the following manner: *(Choose one)*

Handing the documents to an adult person at the following address, or if there is no adult present, posting them to the documents to the door:

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Sending the documents to the Respondent by regular mail or by courier to the following address without the requirement of a signature:

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Sending the documents to the Respondent by Registered Mail (with a signature to prove receipt) to the following address:

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Scanning the documents and sending them to the Respondent by e mail at the following e mail address: \_\_\_\_\_.

By scanning the documents and delivering them to the Respondent through Facebook:

Other method: *(Describe how you propose to serve.)*

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9. I have the following other information in support of my application:

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**Sworn (OR Affirmed) before me**

at \_\_\_\_\_, Alberta  
on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Commissioner for Oaths in and for the Province of Alberta,  
Justice of the Peace or Notary Public

Print Name and Expiry / Lawyer / Student-at-Law



\_\_\_\_\_  
*(Signature of person swearing / affirming Affidavit)*

ID Verified \_\_\_\_\_

COURT FILE NUMBER \_\_\_\_\_  
(File number, as on other court documents)

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE \_\_\_\_\_  
(City or town where court is located)

APPLICANT \_\_\_\_\_  
(Print your full name, as on other court documents)

RESPONDENT \_\_\_\_\_  
(Print the other party's full name, as on other court documents)

DOCUMENT **Order for Service Outside of Canada (with Consent)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT \_\_\_\_\_  
(Applicant's Name)

\_\_\_\_\_  
(Full address)

( ) \_\_\_\_\_

DATE ON WHICH ORDER WAS PRONOUNCED: \_\_\_\_\_

LOCATION OF HEARING OR TRIAL \_\_\_\_\_

NAME OF MASTER WHO MADE THIS ORDER: \_\_\_\_\_

UPON REVIEWING the affidavit filed in support of this application;  
AND UPON NOTING that the Defendant / Respondent consents to service of the  
\_\_\_\_\_ by \_\_\_\_\_;  
(Identify type of commencement document) (Identify method of service Respondent has consented to)

THE COURT is satisfied that:

- a. the respondent has consented to the method of service set out in this Order; and
- b. (Choose one and cross out the paragraph that doesn't apply. Master, please initial any paragraphs crossed out.)
  - a real and substantial connection exists between Alberta and the facts on which the claim in this action are based;
  - (for Statements of Claim for Divorce only) the Applicant has been ordinarily resident in Alberta for at least one year;

**IT IS ORDERED THAT:**

*(Master, please initial all items checked off)*

1. The Plaintiff / Applicant is at liberty to substitutionally serve this Order along with the following documents in the within action outside Canada:

*(Select all that apply)*

- An Application Form and supporting Affidavit(s)
- A Claim and supporting Statement(s)
- An Originating Application and supporting Affidavit(s)
- Notice to Disclose
- Statement of Claim
- Other \_\_\_\_\_
- And all other documents in this action.

by the following method

*(Select the method of service and fill in the blanks)*

- by leaving the documents with an adult person at the following address:

\_\_\_\_\_  
*(Complete street address, including city/town and province)*

- by posting the documents on the door of the respondent's / defendant's home at:

\_\_\_\_\_  
*(Complete street address, including city/town and province)*

- by leaving the documents with \_\_\_\_\_

*(Name of person who will be given the documents)*

- by scanning the documents and sending them by e mail to the following address:

\_\_\_\_\_  
*(E mail address)*

- by registered mail (with a signature to prove receipt) to the following address:

\_\_\_\_\_  
*(Complete street address, including city/town, province/state, postal code, country)*

- by regular mail to the following address:

\_\_\_\_\_  
*(Complete street address, including city/town, province/state, country, postal code)*

- by scanning or photographing the documents and delivering them to the Respondent / Defendant through Facebook.

- Other: *(Describe method of service)* \_\_\_\_\_

2. Service is effective \_\_\_\_ days after the applicant has served the documents pursuant to paragraph 1. Where service is permitted by Registered Mail, service is effective on the date the receipt is signed. Service completed pursuant to paragraph 1 shall be deemed to be good and sufficient.

*(Cross out unless serving a Statement of Claim for Divorce)*

3. The requirement in Rule 12.57 that a photograph be attached to the Affidavit of Service is waived.

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Master of the Court of Queen's Bench of Alberta