

Substitutional Service Outside Canada

Court of Queen's Bench

Application for Substitutional Service
Outside of Canada



Resolution Services

Alberta
Government



Instructions

Substitutional Service Outside of Canada

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 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.

WARNING: If the country where you need to serve the documents is a Contracting State to the Hague Service Convention, then you may not be able to obtain a Substitutional Service Outside of Canada order. Please refer to the "Service Outside of Canada – Hague Service Convention" booklet for more information.

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.

- If you are not sure if your application or action has a real and substantial connection to Alberta, talk to a lawyer.
- If you are filing for divorce, you can do so if you have lived in Alberta for one year, so you do not need to show a real and substantial connection to Alberta.
- You can apply for substitutional service if:
 - It would be **impractical** to serve personally or by recorded mail; and
 - The way the you are wanting to serve will **likely** bring the court forms to the attention of the Respondent.



Tips:

If you are able to personally serve the other party, then you should do so.

“Personal service” does not mean the YOU have to do the serving. It just means that someone has to hand the documents directly to the other party, and be willing to swear an Affidavit of Service setting out the date when they served and the address where the service took place.

- The application may be made to a special kind of judge called an Applications Judge, 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 Applications Judge or Justice as “the judge”.

Examples of cases of substitutional service outside Canada:

1. Amara wants to apply for a divorce. Her spouse, Emmanuel lives in Nigeria. Nigeria is not a Contracting State to the Hague Service Convention. Amara believes that there is a real and substantial connection between her divorce action and Alberta because she has lived in Alberta for more than one year. Amara looks into the cost of having the documents served, and the Affidavit of Service notarized in Nigeria, and finds that it is more than she can afford to pay. However, Amara is in regular contact with Emmanuel by email, and asks the judge to be allowed to serve him in Nigeria by email.
2. Jasmine wants to apply for a parenting order. Jasmine believes that there is a real and substantial connection between her parenting application and Alberta because she and the children have lived here for many years. Quinn, the father, lives in England, and Jasmine can't find out exactly where he lives. The United Kingdom is a contracting state to the Hague Service Convention, but since Jasmine does not know Quinn's address, she cannot serve the documents through England's Central Authority. Quinn's mother lives in England as well and is in regular contact with Quinn, but she won't give Jasmine his address. Jasmine asks the judge to let her serve Quinn in England by having a process server deliver the court forms to his mother.

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 (for example, to change your child support), 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 will need to give the other party.

Fill in the Affidavit form

- This form has 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 Order

- 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 Substitutional Service Outside of Canada, file the documents that you want to serve, then serve the Respondent:

- If you have not yet filed the court forms for the action or application that you want to make, file them. If a court date is required, the clerk can help you pick a date, keeping in mind the instructions in your Order for Substitutional Service Outside of Canada.
- Follow the instructions from the judge to serve the Respondent.
- In addition to the court forms (e.g. Statement of Claim, Application, etc.), you must also serve the Respondent with:
 - A filed copy of the Substitutional Service Order Outside of Canada
 - A filed copy of the Affidavit – Substitutional Service Outside of Canada



Tip:

Make a note of which documents you served – you will need to know when you fill in the Affidavit of Service.

After the other party has been served, fill in the Affidavit of Service form

- If someone else served the documents for you, they will need to sign the Affidavit of Service before a Notary Public in their country and send the Affidavit of Service to you for filing.
- If you served the documents via mail or registered mail, you will sign the Affidavit of Service before a Commissioner of Oaths and attach the proof of service as an exhibit.

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

Calgary

7th floor, Calgary Courts Centre
601 - 5 Street SW
Phone 403-297-6981

Edmonton

8th floor, Brownlee Building
10365 - 97 Street
Phone 780-415-0404

Grande Prairie

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

Lethbridge

1st 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 – Substitutional Service
 Outside of Canada**

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 reviewed _____ and I believe the country where the Respondent lives: *(Identify resource reviewed by applicant)*

(Choose one)

(If none of these options apply, then your application will be rejected. Please refer to the "Service Outside of Canada (Hague Service Convention)" booklet for more information.)

- ☐ Is not a Contracting State to the Hague Service Convention.
- ☐ Is a Contracting State to the Hague Service Convention, but I do not know the Respondent's mailing address.
- ☐ Is a Contracting State to the Hague Service Convention, but the document that I am serving is not a Commencement Document.
- ☐ Is a Contracting State to the Hague Service Convention, but the country does not object to personal service of document (see Article 10 of the Hague Service Convention).

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"):*

☐ 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.)*

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 believe it is impractical to personally serve the Respondent in the other country because: *(Explain why it is impossible or impractical for you to arrange to have someone in the other country personally serve the Respondent.)*

9. *(Choose one)*

- ☐ I know that the Respondent lives at the following address: *(Write out the complete address.)*

I know this is the correct address because:

- ☐ The Respondent has told me that this is the correct address.
- ☐ I have been at this address and have seen that the Respondent lives there.
- ☐ I have sent mail to the Respondent at this address and the Respondent has either told me that the mail was received or has responded to the mail.
- ☐ Other: *(Provide your reasons why you know this is where the Respondent lives.)*

- ☐ I know the Respondent works at the following address: *(Write out the complete address.)*

I know this is the correct address because:

- ☐ The Respondent has told me that this is the correct address.
- ☐ I have been at this address and have seen that the Respondent works there.
- ☐ Other: *(Provide your reasons why you know this is where the Respondent works.)*

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- ☐ The Respondent's e mail address is: _____
(Respondent's e mail address)

I know this is the correct email address because:

- ☐ I have received email from the Respondent, using that email address. I have attached, as Exhibit "_____", a copy of a recent email from the Respondent, showing that email address.
- ☐ I have sent email to the Respondent, using that address, and it was not returned "undelivered".
- ☐ Other: *(Provide your reasons for believing that this is an accurate e mail address for the Respondent.)*

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10. The way I would like to serve these documents is:

- ☐ Handing the documents to an adult person at the Respondent's residence, or if there is no adult present, posting them to the documents to the door.
- ☐ Sending the documents to the Respondent by regular mail or by courier to the address listed above without the requirement of a signature.
- ☐ Scanning the documents and sending them to the Respondent by email at the email address listed above.
- ☐ Other method: *(Describe how you propose to serve.)*

11. I believe that if I serve the documents in the way I have proposed, they will likely come to the attention of the Respondent because:
(Explain how you believe the other party will find out about the documents, if you deliver them in the way that you are suggesting.)

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

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 Substitutional
Service Outside of Canada**

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 APPLICATIONS JUDGE WHO MADE THIS ORDER: _____

THE COURT HAS REVIEWED the affidavit filed in support of this application and is satisfied that

- a. personal service of the court documents listed in this Order would be impractical;
- b. the method of service set out in this Order is likely to bring the documents to the attention of the Respondent;
- c. (Choose one and cross out the paragraph that doesn't apply. Applications Judge, 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;

- d. *(Choose one and cross out the paragraphs that don't apply. Applications Judge, initial any paragraphs crossed out.)*
- ☐ the country in which the Respondent resides is not a Contracting State to the Hague Service Convention;
 - ☐ the country in which the Respondent resides is a Contracting State to the Hague Service Convention, but the Respondent's mailing address is not known;
 - ☐ the country in which the Respondent resides is a Contracting State to the Hague Service Convention, but it does not object to the method of service set out in this Order; or
 - ☐ the document being served is not a Commencement Document, so the Hague Service Convention does not apply;

IT IS ORDERED THAT:

(Applications Judge, 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 and province)

- ☐ by regular mail to the following address:

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

- ☐ by scanning or photographing the documents and delivering them to the Respondent / Defendant through Facebook.
- ☐ by posting an advertisement in the _____ newspaper for _____ day(s), with the wording of the advertisement as set out in Schedule A to this Order.
- ☐ 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.

Applications Judge of the
Court of Queen's Bench of Alberta