

## **SERVICE**

### **RULE 16**

#### **SERVICE OF DOCUMENTS**

#### **GENERAL RULES FOR MANNER OF SERVICE**

##### **Originating Process**

- 16.01** (1) An originating process shall be served personally as provided in Rule 16.02 or, except in the case of a divorce petition, by an alternative to personal service as provided in Rule 16.03.
- (2) A party who has not been served with the originating process but delivers a defence, notice of intent to defend or notice of appearance shall be deemed to have been served with the originating process as of the date of delivery.

##### **All Other Documents**

- (3) No other document need be served personally, or by an alternative to personal service, unless these rules or an order require personal service or an alternative to personal service.
- (4) Any document that is not required to be served personally or by an alternative to personal service,
- (a) shall be served on a party who has a solicitor of record by serving the solicitor, and service may be made in a manner provided in Rule 16.05;
  - (b) may be served on a party acting in person or on a person who is not a party,
    - (i) by mailing a copy of the document to the last address for service provided by the party or person or, if no such address has been provided, to the party's or person's last known address, or
    - (ii) by personal service or by an alternative to personal service.

#### **PERSONAL SERVICE**

- 16.02** (1) Where a document is to be served personally, the service shall be made,

##### **Individual**

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

##### **Municipality**

- (b) on a municipal corporation, by leaving a copy of the document with the chairman or mayor of the municipality, with the administrator or chief administrative officer of the municipality or with a solicitor 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 Prince Edward Island**

**Carrying on Business in Prince Edward Island**

- (e) on a person outside Prince Edward Island who carries on business in Prince Edward Island, by leaving a copy of the document with anyone carrying on business in Prince Edward Island 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 Prince Edward Island**

- (g) on Her Majesty the Queen in right of Prince Edward Island in accordance with section 10 of the *Crown Proceedings Act*;

**Attorney General**

- (h) on the Attorney General of Prince Edward Island, by leaving a copy of the document with a solicitor in the office of the Attorney General;

**Absentee**

- (i) 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 Trustee;

**Minor**

- (j) on a minor, by leaving a copy of the document with the

minor if over the age of 12 years, and, where the minor resides with a parent or other person having the care or lawful custody of the minor, by leaving another copy of the document with the parent or other person, but where the proceeding is in respect of the minor's interest in an estate or trust, the minor shall be served by leaving with the Public Trustee a copy of the document bearing the name and address of the minor;

**Mental Incompetent so Declared**

- (k) on a person who has been declared mentally incompetent or incapable of managing his or her affairs, by leaving a copy of the document with the committee of the person's estate if there is one or, if not, with the committee of the person. And, if no committee exists, then service shall be made in accordance with subclauses 1(i) and (ii);

**Mental Incompetent not so Declared**

- (l) on a person who is mentally incompetent or incapable of managing his or her affairs, not so declared,
  - (i) by leaving with the Public Trustee a copy of the document bearing the name and address of the person, and
  - (ii) by leaving a copy of the document with the person, except where the Public Trustee is committee of the person's estate and the person is,
    - (A) a patient or out-patient of a psychiatric facility under the Mental Health Act, or
    - (B) a resident of a community care facility or a nursing home under the Community Care Facilities and Nursing Homes Act, or
    - (C) a resident of a home for special care under the regulations of the Welfare Assistance Act,and the attending physician is of the opinion that leaving a copy with the person would be likely to cause that person serious harm;

**Partnership**

- (m) 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**

- (n) 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.
- (2) A person effecting personal service of a document need not produce the original document or have it in his or her possession.

**ALTERNATIVES TO PERSONAL SERVICE**

**Where Available**

- 16.03** (1) Where these rules or an order of the court permit service by an alternative to personal service, service shall be made in accordance with this rule.

**Acceptance of Service by Solicitor**

- (2) Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor or an employee in the solicitor's office, but service under this subrule is effective only if the solicitor endorses on the document or a copy of it an acceptance of service and the date of the acceptance.
- (3) By accepting service the solicitor shall be deemed to represent to the court that the solicitor has the authority of his or her client to accept service.

**Service by Mail to Last Known Address**

- (4) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 16A) by mail to the last known address of the person to be served, but service by mail under this subrule is effective,
  - (a) only if the acknowledgment of receipt card or a post office receipt bearing a signature that purports to be the signature of the person to be served is received by the sender; and
  - (b) on the date on which the sender first receives either receipt, signed as provided by clause (a).

**Service at Place of Residence**

- (5) Where 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 another copy of the document to the person at the place of residence,

and service in this manner is effective on the fifth day after the document is mailed.

- (5.1) Where 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 serving it on anyone who is known to the server as a person who is an adult member of the same household and such service shall be made at the server's place of business.

### **Service on a Corporation**

- (6) Where the head office, registered office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Prince Edward Island cannot be found at the last address recorded with the Department of Justice, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Prince Edward Island, as the case may be, at that address.

## **SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE**

### **Where Order may be Made**

- 16.04** (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

### **Effective Date of Service**

- (2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.
- (3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

## **SERVICE ON SOLICITOR OF RECORD**

- 16.05** (1) Service of a document on the solicitor of record of a party may be made,
- (a) by mailing a copy to the solicitor's office;
  - (b) by leaving a copy with a solicitor; or employee in the solicitor's office;
  - (c) by faxing a copy of the document in accordance with subrule (2), (2.1) and (2.2), but where service is made under this clause after court office hours as defined in Rule 3.04(1) and before midnight it shall be deemed to have been made on the following day;
  - (d) by sending a copy to the solicitor's office by courier; or
  - (e) by e-mailing a copy to the solicitor's office in accordance with subrule (3), but service under this rule is effective only if the solicitor of record provides by e-mail an acceptance of service and the date of the acceptance, and where the e-mail acceptance is received after court hours as defined in Rule 3.04(1) service shall be deemed to have been made the following day.
- (1.1) Service of a document by sending a copy by courier under clause 1(d) is effective on the second day following the day the courier was given the document, unless that second day is a holiday, in which case service is effective on the next day that is not a holiday.
- (2) A document that is served by fax shall include a cover page indicating,
- (a) the sender's name, address and telephone number;
  - (b) the name of the solicitor to be served;
  - (c) the date and time of transmission;
  - (d) the total number of pages transmitted, including the cover page;
  - (e) the fax number of the sender; and
  - (f) the name and telephone number of a person to contact in the event of transmission problems.

### **Fax of Certain Documents**

- (2.1) A document of sixteen pages or more inclusive of the cover page and the back sheet may be served by fax only between 4 p.m.

and 8 a.m. the following day, unless the party to be served gives prior consent.

- (2.2) A motion record, application record, trial record, appeal book or book of authorities may not be served by fax at any time unless the party to be served gives prior consent.

**E-mail, Required Information**

- (3) The e-mail message to which a document served under clause (1)(e) is attached shall include,
- (a) the sender's name, address, telephone number, facsimile number and e-mail address;
  - (b) the date and time of transmission; and
  - (c) the name and telephone number of a person to contact in the event of transmission problems.

**SERVICE BY MAIL**

**Manner of Service**

- 16.06** (1) Where a document is to be served by mail under these rules, a copy of the document shall be sent by regular letter mail or by registered mail.

**Effective Date**

- (2) Service of a document by mail, except under subrule 16.03(4), is effective on the fifth day after the document is mailed but the document may be filed with proof of service before service becomes effective.

**WHERE DOCUMENT DOES NOT REACH PERSON SERVED**

- 16.07** Even though a person has been served with a document in accordance with these rules, the person may show on a motion to set aside the consequences of default, for an extension of time or in support of a request for an adjournment, that the document,

- (a) did not come to his or her notice; or
- (b) came to his or her notice only at some time later than when it was served or is deemed to have been served.

**VALIDATING SERVICE**

- 16.08** Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order

validating the service where the court is satisfied that,

- (a) the document came to the notice of the person to be served; or
- (b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

## **PROOF OF SERVICE**

### **Affidavit of Service**

- 16.09** (1) Service of a document may be proved by an affidavit of the person who served it (Form 16B).

### **Sheriff's Certificate**

- (2) Personal service or service under subrule 16.03(5) (service at place of residence) of a document by a sheriff or sheriff's officer may be proved by a certificate of service (Form 16C).

### **Solicitor's Admission or Acceptance**

- (3) A solicitor's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

### **Proof of Service on Document**

- (4) The affidavit or certificate of service may be printed on the backsheet or on a stamp or sticker affixed to the backsheet of the document served.
- (5) Service of document under clause 16.05(1)(e) (e-mail) may be proved by a certificate of the person who served the document stating that he or she,
- (a) served the document by e-mailing a copy in accordance with sub-rule (3) and received by e-mail an acceptance of service, with the date and time of acceptance;
  - (b) has sworn an affidavit of service containing the particulars set out in the certificate of service;
  - (c) has kept the affidavit of service; and
  - (d) will, on the request of the court or a party, produce the affidavit of service.



## **SERVICE PURSUANT TO CONTRACT**

**16.10** Where the court has jurisdiction in a proceeding in respect of a contract, or a contract confers jurisdiction on the court, and in the contract the parties have agreed on,

- (a) a place of service;
- (b) a mode of service;
- (c) a person upon whom service may be effected,

service of an originating process in the proceeding may be made in accordance with the contract, and when so made the notice shall be deemed to have been personally served.

*Bagnall's and Tersteeg v. AWARD and Ors.* 2001 PESCTD 64

The plaintiffs commenced an action against the corporate defendant and a number of other defendants in their personal capacity. Before serving the originating notice on the individuals and without serving them with the notice of motion, the plaintiffs sought a declaration from the court with respect to the liability of the corporate defendant under a contract between it and the plaintiffs. The court dismissed the motion because the individuals had not been served as required by Rules 16 and 37.