

Substitutional Service

Governed by Rule 11.28

Application **must** be supported by an affidavit:

- (a) Setting out why service is impractical;
- (b) Proposing an alternative method of service;
- (c) Stating why the alternative method of service is likely to bring the document to the attention of the person to be served.

Also download Statement of Claim, Extension Order if one has been granted, draft order for substitutional service and Application document containing submissions (which are not evidence) will be helpful to the Master. (note: do not download blank Application forms).

The standard is actually higher than
impractical:

The Applicant must show reasonable efforts to locate and personally serve the Defendant.

Exception to requirement of reasonable efforts required: Contact has been made with the Defendant and she/he has requested an alternate mode of service, such as email or text.

State the basis for believing a particular address is that of the Defendant

Sometimes affidavits of attempted service simply state attempts to serve Defendant at a particular address. State why it is believed that is address of the Defendant: location of mortgaged property; information from the client; demographic search; police report etc.

The affidavit needs to state how recent is the information on the address or location of the Defendant. Obviously, the older the information, the less reliable it is. The Masters will give little weight to dated information.

If repeated attempts to serve at an address fail, there must be evidence confirming basis for belief that Defendant can still be served at that particular location.

Example: Confirmation from a neighbour or resident of the property.

Acceptable methods of Alternative Service

1. Leaving with adult person at location where the evidence indicates the Defendant resides or attends regularly (or in the absence of adult person, posting to the door);
2. Leaving with a person (example: relative, friend or roommate) who has advised that they will see that the Defendant gets the document;
3. Leaving with a responsible person at place of employment;
3. By electronic means, such as email, text or social media, (example Facebook) where the evidence reasonably shows that the Defendant has used this means of communication **recently**;
4. Advertising.

If a physical address for the Defendant cannot be determined, do social media searches such as on Facebook.

If an alternative method of service has been determined, the affidavit in support must propose that method of service and state that it is likely to bring the document to the attention of the Defendant.

Service by Advertising

This is considered as a last resort since its effectiveness is questionable.

If this method of service is proposed, the affidavit in support must indicate all other searches made for the Defendant and that the Applicant has exhausted all known possibilities.

The affidavit in support must show a reasonable basis for believing that the Defendant (or possibly family connected to the Defendant who may communicate with the Defendant) resides in the community where advertising is proposed.

If service outside of a large city is proposed, evidence on the area of circulation of the newspaper is required.

The draft order for substitutional service

Recitals need to: (1) accurately refer to the supporting affidavit(s) that have been supplied. If there is reference to something not provided, it will be rejected; (2) use "Having Read" rather than "Having Heard" (counsel are not there!); (3) if written submissions have been provided, reference that fact; and (4) if Ministerial Order 27/2020 is relevant, put it in the recital.

Where there is more than one alternative method of alternative service, generally the draft order should require both be done (and not as alternatives).

The draft order must provide that the order is to be served with the Statement of Claim (unless the Court excepts, which is very unlikely).

The draft order must state the effective date of service: ie the number of days after the actual service that it is deemed effective.

If the best information of the Applicant is that the Defendant is outside of the province of Alberta, a paragraph should be added stating the number of days that the Defendant has to file a Statement of Defence, Demand for Notice or Address for Service (even if service of the Defendant is to be electronic).

The draft order for service by advertising

Either include the form of advertising in the draft order, or attach the draft advertising as a schedule for the Master to approve (with place for the Master to approve).

The draft advertising must contain a reference to the order for substitutional service (subrule 11.28(3)).

Size of advertisement need to be addressed??

If service is urgent because the Plaintiff is running into one year deadline

As there may be a time delay between the time that the application for an order for substitutional service is submitted and it is returned by the Court, submitting a request for a three month extension at the same time is acceptable and prudent.

An application for an order for substitutional service may be made on an urgent basis—just follow protocol directed by the Court.