

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 lawyer of record by serving the lawyer, 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; or
 - (c) may be served on a party who has a lawyer of record, or a party acting in person, by serving a copy of the document to the party's designated address for service as set out in Rule 16.05.1.

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 chair or mayor of the municipality, with the administrator or chief administrative officer of the municipality or with a lawyer 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 His Majesty the King 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 His Majesty the King 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, in the same manner as service is effected upon the Crown in right of Prince Edward Island;

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 decision-making responsibility in respect 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 current address of the minor ;

Declared Mental Incompetent or Incapable

- (k) on a person who has been declared mentally incompetent or incapable of managing their affairs,
 - (i) by leaving a copy of the document with the litigation guardian;
 - (ii) by leaving a copy of the document with the committee of the estate of the person where the person has been declared mentally incompetent under the *Public Trustee Act*;
 - (iii) by leaving a copy of the document with the guardian of the person where the person has been declared mentally incapable under the *Mental Health Act*;
 - (iv) by leaving a copy of the document with the attorney of the person where the person has been determined mentally incapable of managing their affairs and has a duly appointed power of attorney for financial affairs; or
 - (v) if there is no personal representative existing under clause (k)(i) to (iv), then service shall be made in accordance with clause (1);

Not declared Mentally Incompetent or Incapable

- (l) on a person who is under disability, but has not been so declared or determined:
 - (i) by leaving a copy of the document with the Public Trustee, which bears the name and current address of the person, where the proceeding relates to the financial affairs of the person, or by leaving a copy of the document with the Public Guardian, which

bears the name and current address of the person, where the proceeding relates to the personal affairs of the person; and

- (ii) by leaving a copy of the document with the person, except where 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 *Social 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 Lawyer

- (2) Service on a party who has a lawyer may be made by leaving a

copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

- (3) By accepting service the lawyer shall be deemed to represent to the court that the lawyer 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 and Public Safety, 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 LAWYER OF RECORD

- 16.05** (1) Service of a document on the lawyer of record of a party may be made,
- (a) by mailing a copy to the lawyer's office;
 - (b) by leaving a copy with a lawyer; or employee in the lawyer's office;
 - (c) by faxing a copy of the document in accordance with rule 16.06.1;
 - (d) by sending a copy to the lawyer's office by courier; or
 - (e) by emailing a copy to the lawyer's office in accordance with Rule 16.06.2.
- (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.

SERVICE TO DESIGNATED ADDRESS

- 16.05.1**(1) A party who commences or responds to an originating proceeding must designate addresses for service of documents

by completing, serving and filing a designation of address for service (Form 16A.1).

- (2) A designation of address for service shall contain a mailing address and an email address, unless the Registrar directs otherwise.
- (3) Repealed.
- (4) Unless a judge determines otherwise, a party that has not served and filed a designation of address for service shall not be entitled to:
 - (a) commence a proceeding;
 - (b) respond to a proceeding;
 - (c) file any documents in relation to the proceeding; or
 - (d) receive any further notice in respect of the proceeding.
- (5) Subject to subrule (9), documents may be served on a party at any one of the addresses contained in a designation of address for service unless and until a party designates different addresses for service by serving and filing a subsequent designation of address for service.
- (6) A document served by mail to a party's designated address shall be served in accordance with Rule 16.06.
- (7) A document served by fax to a party's designated address shall be served in accordance with Rule 16.06.1.
- (8) A document served by email to a party's designated addresses shall be served in accordance with Rule 16.06.2.
- (9) The court may, on motion, make an order directing the specific manner in which service shall be effected, on such terms as are just.

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 to the designated address contained in the receiving party's designation of address for service.

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.

SERVICE BY FAX

Manner of Service

- 16.06.1** (1) Where a document is to be served by fax under these rules, a copy of the document shall be transmitted to the designated address contained in the receiving party's designation of address for service.
- (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 party or lawyer 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.

Effective Date

- (3) Where service is made by fax after court office hours as defined in Rule 3.04(2) and before midnight it shall be deemed to have been made on the following day.

Deemed Receipt

- (4) A document served by fax to a party's designated address is deemed to be received by the party, unless the party serving the document receives notice that the document does not reach the recipient.

Fax of Certain Documents

- (5) A document of fifty 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.

SERVICE BY EMAIL **Manner of Service**

- 16.06.2 (1) Where a document is to be served by email under these rules, a copy of the document, or a link to retrieve the document, shall be sent to the designated email address contained in the receiving party's designated address for service.
- (2) A document to be served by email under these rules must be in PDF format, or another format approved by the court via practice direction.
- (3) The email message to which a document to be served is attached shall include,
 - (a) the sender's name, address, telephone number, and email 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.

Document Exchange Service

- (3.1) Service by email using a document exchange service is effective provided the receiving party's electronic security system does not prohibit the exchange of documents by the document exchange service used by the sender.

Effective Date

- (4) Where service is made by email after court office hours as defined in Rule 3.04(2) and before midnight it shall be deemed to have been made on the following day.

Deemed Receipt

- (5) A document served by email to a party's designated address(es) is deemed to be received by the party, unless the party serving the document receives notice that the document does not reach the recipient.

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 the person's notice; or
- (b) came to the person's 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).

Lawyer's Admission or Acceptance

(3) A lawyer'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.

Certificate of Service to Designated Address

- (5) Service of a document under rule 16.05.1 (service to designated address) may be proved by a certificate of service to designated address (Form 16D).

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.