

Guide to Document Service

**Department of Justice and Public
Safety**

Inspection and Enforcement Branch

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1. Court Documents Provincial - Document Service General

- A. Unless otherwise stated, only true copies will be served on Accused.
- B. The “original” certified copy must be retained to be entered as an exhibit.
- C. Where the original documents from which the certified copy is made will not be presented in court, a “Notice of intention to enter into evidence” must also be served **personally** on the accused 7 working days prior to trial.
- D. A certificate of service will be completed listing all documents served.
- E. Where a notice refers to “...the attached...” the document will be **STAPLED** to the notice OR the notice of intention will be **PRINTED** on the form being served.
- F. Only **BLUE INK** should be used on court documents so that originals are more easily distinguished.

Note: When serving “notices” **personally** means personally and there is no substitute. Unless expressly allowed in law, you can’t leave it with their lawyer, and you can’t leave it with someone at their residence who appears to be an adult. Some exceptions may be possible but only with the prior consent of the Crown.

2. Court Documents Federal - Document Service General

- A. Unless otherwise stated, only true copies will be served on accused.
- B. The “original” certified copy must be retained to be entered as an exhibit.
- C. Where the original documents from which the certified copy is made will not be presented in court, a “Notice of intention to enter into evidence” must also be served **personally** on the accused 7 working days prior to trial.
- D. A certificate of service will be completed listing all documents served and must be **SWORN** or **solemnly affirmed** before a commissioner of oaths.
- E. Where a Notice refers to “...the attached...” the document will be **STAPLED** to the notice OR the Notice of intention will be **PRINTED** on the form being served.
- F. Only **BLUE INK** should be used on court documents so that originals are more easily distinguished.

Note: When serving “Notices” **personally** means personally and there is no substitute. Unless expressly allowed in law, you can’t leave it with their lawyer, and you can’t leave it with someone at their residence who appears to be an adult. Some exceptions may be possible but only with the prior consent of the Crown.

3. Lab Test Results

A. General

- i. Lab tests generally fall into 2 categories:
 - a. tests recognized by regulation often referred to as a “Certificate of a qualified technician”;
 - b. tests which are not regulated.
- ii. **In the first case**, the regulation may give specific details outlining how the test may be served and giving a legal weight to the recognition of the test. Often, the people who conduct the test will not be required to testify unless requested by the defense.
- iii. **In the second case**, the test and the science, methods, and expertise of the experts are all arguable in court. Supporting documentation and witness must be present at trial.

B. Certificates of Qualified Technicians

- i. A “Certificate of qualified technician” typically has 3 requirements regarding service:
 - a. the document must be served 7 business days prior to trial on each defendant;
 - b. there must be an accompanying “Notice of intention to enter into evidence” served at the same time;
 - c. service must be personal and unlike a summons, you may not leave it with another adult, or send by registered mail. However, with prior consent of the Crown it may be possible to serve on a defendants attorney.
- ii. The original document received from the lab must be retained to be entered as an exhibit.
- iii. Notices of intention should be completed at the office on the original. Copies of the completed document are made, 1 for the crown, 1 for each defendant, and 1 for the file.
- iv. The certificate of service should be stapled to the original certificate qualified technician and Notice of intention (at the bottom of the certificate form) once service has been affected. A copy of this should be disclosed to the crown.

C. Lab Tests - unregulated

- i. Un-regulated lab tests will require the testimony of the technicians who performed the test. This means that in addition to the test results or report, you will also have to disclose the resume or curriculum vitae (CV) of those people who were involved in the

testing procedure. Because the original report will be present as will its creators; service does not have to be “personal” as in the case of a “Certificate of a qualified technician”, nor do we need a “Notice of intention”. The requirements are;

- a. disclosure can go through the crown;
- b. a true copy of the lab report must be available for each defendant;
- c. a copy of the technician’s CV must be provided for each defendant.

D. Continuity of Exhibits

In both cases above, samples must necessarily leave our custody and be transferred to another’s. Records of these transfers must be disclosed to the crown, or we will not be able to PROVE continuity of the exhibit at trial. While not strictly a requirement specific to the test, it must not be overlooked. Disclosure of chain of custody documents is done through the crown.

4. Supporting Documentation

A. General

- i. We can use many different types of documents to support our investigations. And in general they can be broken into 2 groups for legal purposes.
- ii. **The First group** are documents where we possess the original. Two common examples might be signed statements or seized documents. These will be referred to as original documents. And for this purpose it may also include copies, as long as it is a copy that was recovered, but not one that we make.
- iii. **The Second group** would be documents which are official documents, but where the “original” cannot be produced in court. These reproductions are commonly referred to as “certified copies”. Certified copies must be personally disclosed to the accused in the narrow sense listed above.

B. Surveyor Reports

- i. Surveyor’s reports often carry more than one type of document. Surveyor’s notes, field notes, copies of deeds and maps are all common in the file that will support their findings.
- ii. Any document which the surveyor creates should be brought to court by the surveyor if he is required to testify so the originals are present.
- iii. However, grant plans, registered surveys, and deeds found in the file will be copies. In these cases, you should consult the Crown for direction on how to deal with disclosure.
- iv. For files surrounding Crown lands issues, Conservation Officers must always request a certified copies of the grant plan for each accused, Crown, and file copies. Defendant copies MUST be personally served, along with a Notice of intention.

5. Notices

A. *Crown Lands Act* Notices

Section 56.5(4) Where a conservation officer in the course of conducting a lawful search in respect of an offence under this Act or the regulations seizes timber or other property belonging to the Crown or any equipment or vehicle that will afford evidence of the commission of the offence, he or she shall:

- (a) without delay, report the particulars of the seizure to the Minister, and
- (b) where he or she has knowledge of the person who was in actual or apparent possession of the thing seized at the time of the seizure, give notice to that person of the seizure, either by personal service or by registered mail.

B. *Quarriable Substances Act*

Section 34(1) Where a conservation officer in the course of conducting a lawful search in respect of an offence under this Act or the regulations seizes a quarriable substance or other property belonging to the Crown or any equipment or vehicle that will afford evidence of the commission of the offence, he or she shall:

- (a) without delay, report the particulars of the seizure to the Minister, and
- (b) where he or she has knowledge of the person who was in actual or apparent possession of the quarriable substance or other property at the time of the seizure, give notice to that person of the seizure, either by personal service or by registered mail.

C. Notice of Intention to Seek Increased Penalty

- i. Used when seeking more than a minimum penalty at trial. Frequently a record of previous offence will be submitted (repeat offender) thought it may be due to the circumstances of the case.
- ii. As with other Notices, personal service is required, and this is normally done prior to plea with the consent and knowledge of the Crown.

D. Expert Witnesses

Expert Witnesses always require their CV to be disclosed prior to trial. Additionally, when and expert will be called in relation to a federal prosecution a Notice of intention to call, and expert witness must be served personally on the accused 30 days prior to trial.

Note: When serving “Notices” personally means personally and there is no substitute. Unless expressly allowed in law, you can’t leave it with their lawyer, and you can’t leave it with someone at their residence who appears to be an adult. Some exceptions may be possible but only with the prior consent of the Crown.

Appendix A- Excerpts from POPA covering service of documents

6. Court Documents – Provincial

A. Document Service General

(All paragraphs in this section preceded by a number are excerpts from POPA)

101(1.1) Any document served under this Act may be served by serving:

- (a) the document itself, or
- (b) a true copy of the document.

101(2) A document that is served personally may be delivered to the person personally or, if that person cannot conveniently be found, by leaving it at that person's last known or usual place of residence with a person who appears to be an adult and who appears to reside there with the person to be served, in the case of a local government, to the Mayor, Deputy Mayor, Chief administrative officer, clerk, assistant clerk or other Chief officer of the local government or to the solicitor for the local government, in the case of any other corporation, to an officer, director, attorney for service or agent, or to the manager or a person who appears to be in control or management of any office or other place where the corporation carries on business in the province.

101(4) A notice or a document that is served by mail may be addressed:

- (a) where the person to be served is not a corporation, to that person's last known or usual place of residence or business,
- (b) where the person to be served is a corporation, to the corporation at its chief place of business or office or at any branch of the corporation or at the address of its attorney for service, or
- (c) where the person to be served is the holder of a licence or permit issued under an Act administered by the Minister of Transportation and Infrastructure, to the address on record with the Registrar of Motor Vehicles

101(5) Subject to subsection (6), where any document mailed in accordance with this section is received by the person to whom it was mailed, the date of receipt shall be deemed, in the absence of evidence to the contrary, to have been:

- (a) seven days after the date of mailing if the address to which it is mailed is within the Province, or
- (b) ten days after the date of mailing if the address to which it is mailed is outside the Province.

101(6) Where a document is mailed by certified mail, a post office receipt bearing a signature which purports to be the signature of the person to whom the document was mailed is evidence:

- (a) that the document was served on that person, and
- (b) that service was effected on the date indicated on the post office receipt.

101(8) Where a document is left at a person's last known or usual place of residence in accordance with paragraph (2)(a), the document shall be deemed, in the absence of evidence to the contrary, to have been served on that person.

101(9) For the purposes of this Act, a document may be served inside or outside the Province and the consequences and procedures that apply under this Act following service of a document apply wherever service is effected.

B. Document Service Specific

- i. Unless otherwise stated, only true copies will be served on Accused.
- ii. Where the originals will not be presented in court, a "Notice Of intention to enter into evidence" must also be served personally on the accused 7 working days prior to trial. A "certified copy" is not an original.

C. Summons (Form 7)

(A true copy is given to the defendant, the original is completed as proof of service)

7(2) A summons shall be served either by personal service in accordance with subsection 101(2) or by sending it by mail in accordance with subsection 101(4).

D. Service of witness statements (Form 15)

36(1) A prosecutor who intends to give the evidence of a witness by way of a witness statement shall serve on the defendant, no later than twenty days before the date fixed for trial, a copy of the witness statement together with a notice in prescribed form of the prosecutor's intention to give the evidence by way of a witness statement.

E. Certificate of Service (Form 39)

101(10) Service of any document, including a summons, may be proved:

(a) by a certificate in prescribed form of the person purporting to have served the document,

(b)...

(c)...

and in the absence of evidence to the contrary, the contents of any certificate under paragraph (a) shall be deemed true.

Appendix B- Excerpts from the Criminal Code of Canada covering service of documents.

7. Court Documents – Federal

A. Document Service General

(All paragraphs in this section preceded by a number are excerpts from the Criminal Code of Canada)

B. Proof of notifications and service of documents

- (6) For the purposes of this Act, the service of any document and the giving or sending of any notice may be proved:
- (a) by oral evidence given under oath by, or by the affidavit or solemn declaration of, the person claiming to have served, given, or sent it; or
 - (b) in the case of a Peace Officer, by a statement in writing certifying that the document was served, or the notice was given or sent by the peace officer, and such a statement is deemed to be a statement made under oath.

Note: Proof of service for federal documents is only valid if the serving officer completes the certificate of service by swearing it before a Commissioner of Oaths.

C. Proof of service in accordance with provincial laws

- (6.1) Despite subsection (6), the service of documents may be proved in accordance with the laws of a province relating to offences created by the laws of that province.

D. Summons

507 (1) Subject to subsection 523(1.1), a justice who receives an information laid under section 504 by a peace officer, a public officer, the Attorney General or the Attorney General's agent, other than an information laid before the justice under section 505, shall, except if an accused has already been arrested with or without a warrant;

- (a) hear and consider, ex parte,
 - (i) the allegations of the informant, and
 - (ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and
- (b) where he considers that a case for so doing is made out, issue, in accordance with this section, either a summons or a warrant for the arrest of the accused to compel the accused to attend before him or some other justice for the same territorial division to answer to a charge of an offence.

509 (1) A summons issued under this Part shall;

- (a) be directed to the accused;
- (b) set out briefly the offence in respect of which the accused is charged; and

- (c) require the accused to attend court at a time and place to be stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

E. Service on individual

- (2) A summons shall be served by a peace officer who shall deliver it personally to the person to whom it is directed or, if that person cannot conveniently be found, shall leave it for him at his latest or usual place of abode with a person thereof who appears to be at least sixteen years of age.

F. Subpoena

- 698 (1) Where a person is likely to give material evidence in a proceeding to which this Act applies, a subpoena may be issued in accordance with this part requiring that person to attend to give evidence.

i. Service

- 701 (1) Subject to subsection (2), a subpoena shall be served in a province by a peace officer or any other person who is qualified in that province to serve civil process, in accordance with subsection 509(2), with such modifications as the circumstances require.

ii. Personal service

- (2) A subpoena that is issued pursuant to paragraph 699(2)(b) shall be served personally on the person to whom it is directed. Add expert witness and Notice of intentions (section 28 Canada evidence).