

Serving Documents on an Abusive Party

If you are thinking of leaving an abusive relationship, you may need to prepare family court applications for protection orders, financial support, or child custody. Usually, you will need to give a copy of your family court application to the opposing party, who is likely your spouse or partner. This is called **service** and you will be asked to show proof that the opposing party was served with your court documents.

If the party you have to serve is your abusive spouse or partner, this will most likely cause you to feel stressed and worried. However, you can help reduce your feelings of anxiety by learning more about your options for safely serving documents on an abusive party.

I am afraid of my abusive partner. Do I still need to serve my documents?

In most cases, yes, a copy of your court application needs to be given to your abusive spouse or partner, even if you are afraid of him or her. In Canada, every party in a court application is given the opportunity to tell the court his or her side of the story, which is why your application must be provided to the opposing party. However, there are ways to serve your court documents without having to see your abusive spouse or partner. These options are discussed in the next section.

You are required to serve all of the following applications on the opposing party:

- All family court applications in the Court of Queen's Bench under the *Divorce Act* or *Family Law Act*, including applications for divorce, child custody, child support, spousal/partner support, and division of property.
- All family court applications in Provincial Court under the *Family Law Act*, including applications for parenting orders, guardianship, child support, and partner support.
- Applications for a Queen's Bench Protection Order.

There are some applications that can be made *ex parte*, which means you do not have to notify the opposing party. However, you must be able to show a judge that the situation is urgent or your safety would be at risk if you had to serve the other party.

If your request for an *ex parte* application is granted, you will only receive an interim or temporary court order. A review hearing will be ordered shortly after the *ex parte* order is issued to give the opposing party the chance to tell the court his or her side of the story.

How can I serve documents without having to see or communicate with my abusive partner?

Even though most family court documents have to be personally served, you do not have to do the serving yourself. In fact, if you are serving your Statement of Claim for Divorce, you are not allowed to serve it yourself. You must use a third party such as a process server, friend, family member or lawyer. Here are your options:

1. **Hire a lawyer:** If you hire a lawyer to help you with your family court applications, he or she will serve your court application on your abusive spouse or partner. If you cannot afford a lawyer, check to see if you are eligible for legal assistance through Legal Aid Alberta (call 1-866-845-3425) or your local legal clinic (see full list of locations at www.pbla.ca/gethelp/item.5602-Help_for_Individuals).
2. **Hire a process server:** A process server is a person or company that will serve court documents on your behalf for a fee. You can find process servers by looking in the yellow pages or online at www.yellowpages.ca. Be sure to ask about the fees you will be charged by the process server.

You will need to provide the process server with the documents you need served as well as the name and a photograph of the person who needs to be served (the respondent). Once the documents are served, the process server will fill out the necessary paperwork for you to file with the court to show the documents were served (this is called the **Affidavit of Service**).

3. **Ask a trusted friend or family member:** You can arrange for anyone over the age of 18 to serve your documents for you. This individual will need to fill out paperwork to prove the documents were served.



Your court application will ask you to include your address and phone number. However, if you are worried about your abusive spouse or partner having your contact information, you can put down the address of a trusted family member, friend, or your employer. Just make sure the person or employer knows you used their contact information in case court documents are served to the address. You do not have to include your phone number.

How long do I have to serve documents?

There are different rules depending on whether you file an application under the *Divorce Act* or *Family Law Act*. It is important to know what rules apply to you because failing to serve your application on time could mean that a judge will refuse to hear your case.

To find out what rules of service you need to follow:

- Contact Resolution and Court Administration Services at 1-855-738-4747 or visit www.rcas.alberta.ca OR
- Ask the court clerk when you file your application OR
- Contact your local legal clinic (www.pbla.ca/gethelp/item.5602-Help_for_Individuals)

When you file your family court application, the court clerk should help you pick a court date that gives you enough time to arrange for a third party to serve your documents on the opposing party.

What is in an Affidavit of Service?

After your documents are served, an Affidavit of Service needs to be filled out by the person who served the documents on the opposing party (the respondent). The Affidavit of Service states what was delivered, who delivered the documents, the date they were delivered, and the address where the respondent was served. You can find the Affidavit of Service forms online at <https://albertacourts.ca/court-of-queens-bench/publications-forms/family-law-forms>



If you are serving a Statement of Claim for Divorce or a Statement of Claim for Divorce and Division of Matrimonial Property, you must include a picture of the person who was served in the Affidavit of Service.

What happens after my documents are served?

First, whoever served your application on the opposing party must fill out an **Affidavit of Service** form (available at <https://www.albertacourts.ca/court-of-queens-bench/publications-forms/family-law-forms>). Once it is filled out, you must file it with the court so that the judge knows the opposing party was served.

The opposing party will have a short period of time to respond to your application in writing. The rules around when the opposing party needs to respond varies depending on whether you made an application under the *Family Law Act* or *Divorce Act*.

Preparing for potential consequences of serving your application

When you decide to make a family court application, it is important to think about the potential consequences of serving the application on your abusive spouse or partner. If you have any concerns about your safety being at risk, take steps before serving the court application to ensure you and your family will remain safe.



Consider making a safety plan if you don't have one. More information about safety planning is available by visiting <http://www.humanservices.alberta.ca/abuse-bullying/15727.html>, calling the Family Violence Info Line at 310-1818, or contacting your local family violence information centre.

I need to serve documents, but I don't know where my abusive partner/spouse is living

If you need to serve court documents on your abusive spouse or partner, but don't know his or her current physical address, you can hire a process server to help you find your spouse or partner. You can find process servers by looking in the yellow pages or online at www.yellowpages.ca. Be sure to ask about the fees you will be charged by the process server.

There are other options to find your spouse or partner, but be cautious in taking some of these approaches, particularly if you have safety concerns:

- Check for your spouse or partner in the phone book, using directory assistance, visiting www.canada411.ca, or doing an online search.
- Try a reverse search of his or her phone number.
- Talk to friends, family members, or your partner's co-workers to see if they know where he or she is living.
- Check social media sites like Facebook.

If you have made a genuine effort to find your spouse or partner and have not been able to do so, then you may be able to make an application to a judge for an order for **substitutional service**.

What is substitutional service?

If you cannot find the physical location of the abusive party in order to have a third party serve your documents, you can apply to the court for an order for substitutional service. An order for substitutional service will enable you to have a third party serve your application in an alternative way, such serving it on one of the abusive party's family members or friends.

To get an order for substitutional service, you will need to write and file an affidavit with the court that includes the following information:

- The ways you tried to find the opposing party, including dates, times, and methods used.
- If you have evidence that the opposing party is deliberately avoiding service of the court documents, you can include this information.
- Suggest alternative ways to bring the court documents to the opposing party's attention, including putting a notice in the newspaper or serving the documents on one of the respondent's close family members, friends, or co-workers. If you can show evidence the respondent has been in contact with one of these parties, it will strengthen your application.

There are specific rules around substitutional service for emergency protection orders and you should consult Legal Aid Alberta's Emergency Protection Order Program at 1-866-845-3425 if you require this information.

What if my situation is urgent and I cannot locate my abusive partner/spouse?

If you need to have your court application heard right away and you cannot locate your abusive spouse or partner to have it served on them, you can ask the court to make the application *ex parte* or without notice. For example, if the health or safety of your children is at risk after fleeing an abusive relationship, you may be allowed to proceed with your family court application for child custody without serving your application on your spouse or partner. Courts will only grant these requests in exceptional circumstances.

Further Information

Download our free booklet, **Representing Yourself in Family Court** and read the rest of the resources in our **Domestic Violence Series** by visiting www.cplea.ca/publications.

Contact the Government of Alberta's **Resolution and Court Administration Services** for resources and assistance to help you understand the rules around serving family court applications. Call 1-855-738-4747 or visit www.rcas.alberta.ca.



Centre for Public Legal
Education Alberta
800, 10050 112 Street
Edmonton, Alberta T5K 2J1
Tel 780 451 8764
www.cplea.ca
www.willownet.ca

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