

Part 7 - Notice and Place of Proceeding

Rule 31 - Notice

Scope of Rule 31

- 31.01** (1) This Rule supplements other Rules that require a party to give notice, or that provide a consequence of receiving notice.
- (2) A person who starts a proceeding against another person, or who makes a claim in an existing proceeding against another person, must notify the other person of the proceeding or claim, in accordance with Rules 31.02 to 31.11.
- (3) A party is entitled to notice of further steps in a proceeding in accordance with Rule 31.14, unless the party becomes disentitled to further notice in accordance with Rules 31.12 and 31.13.
- (4) A party may give notice of a step in a proceeding, in accordance with Rules 31.15 to 31.18.
- (5) A party must give notice of a constitutional question to the Crown, in accordance with Rule 31.19.

Notifying party of proceeding

- 31.02** A party who starts a proceeding, or makes a third party claim in an action, may notify the party against whom the proceeding is started, or the third party, by causing a certified copy of the originating document to be served personally in accordance with Rules 31.03 to 31.05, or by giving notice by an alternative method in accordance with Rules 31.06 to 31.10.

Person to whom personal service is made

31.03 (1) Personal service must be effected as follows:

- (a) **individual** - to an individual, by handing the document to the individual unless the party is a child or a person who is not capable of managing their affairs;
- (b) **person not capable of managing affairs** - to a person who is not capable of managing their affairs, by handing it to the person's guardian under the *Incompetent Persons Act*, the person's litigation guardian, or a person as directed by a judge;
- (c) **child** - to a child, by handing it to a parent or guardian with whom the child resides, a person exercising care and control over the child, or a person as directed by a judge;
- (d) **corporation registered under the *Corporations Registration Act*** - to a corporation registered under the *Corporations Registration Act*, by handing it to the recognized agent or, in the absence of the agent, as provided in the service of documents provisions of that legislation;
- (e) **partnership registered under the *Partnerships and Business Names Registration Act*** - to a partnership registered under the *Partnerships and Business Names Registration Act*, by handing it to the recognized agent or, in the absence of the agent, as provided in the service of documents provisions of the *Act*;
- (f) **unregistered corporation, partnership, or society operating in Nova Scotia** - to an unregistered corporation, partnership, or society operating in Nova Scotia, by handing it to a director, officer, or apparent manager;
- (g) **unregistered corporation or society not operating in Nova Scotia** - to an unregistered corporation or society not operating in Nova Scotia, in accordance with the law of the place of incorporation for notifying the corporation or society of an originating civil process against it;
- (h) **municipality** - to a municipality, by handing the document to the municipal clerk, solicitor, mayor, warden, chief executive officer, chief financial officer, or similar officer of a municipality;
- (i) **board or commission** - to a board or commission, by handing it to a member or officer of the board or commission;

- (j) **Her Majesty the Queen in the Right of Nova Scotia** - to Her Majesty the Queen in the Right of Nova Scotia, in accordance with the *Proceedings Against the Crown Act*;
 - (k) **Her Majesty the Queen in the Right of Canada** - Her Majesty the Queen in the Right of Canada, in accordance with the *Crown Liability and Proceedings Act* (Canada).
 - (l) **another province or territory of Canada** - to Her Majesty the Queen in the Right of another province or to a territory of Canada, by following the provisions of the Crown or territorial proceedings legislation in the province or territory for service of an originating civil process, or for other notification of an originating civil process against the Crown in the right of the province or against the territorial government;
 - (m) **any other state** - to any other state, by following the domestic law for service or delivery of an originating civil process, or of notification of an originating civil process, against the state;
 - (n) **generally** - alternatively, by following the directions of a judge for effecting personal service.
- (2) For the purpose of Section 49 of the *Judicature Act*, provincial legislation that provides a method for service of an originating process in conflict with Rule 31.03(1) is modified by that Rule, and legislation that provides an additional method is not modified.

Method of personal service

- 31.04 (1)** A literate person who is not a party, or an officer, director, or employee of a party, may effect personal service in Nova Scotia, at any time, on any day, and at any place.
- (2) In a place outside Nova Scotia, personal service may be effected by a person and at a time, date, or place permitted by the laws of that place.

Proof of personal service

- 31.05 (1)** A party who causes a document to be personally served must obtain an affidavit of service that proves all material facts of the service.
- (2) The affidavit of service must contain all of the following:
- (a) the name of the person swearing or affirming the affidavit and of the community where the person resides;

- (b) a reference to an attached certified copy of the notice;
 - (c) a statement that the person personally delivered a certified copy of the notice to the person to be notified;
 - (d) the name of the person to whom delivery was made;
 - (e) the hour, date, and place of delivery;
 - (f) how the person swearing or affirming the affidavit identified the person as the one to whom delivery is to be made.
- (3) The affidavit may be in Form 31.05.

Acceptance of service as notice of proceeding

- 31.06 (1)** A lawyer entitled to appear before the court may endorse an acceptance of service on a certified copy of an originating document.
- (2) The endorsement must include the name of the party on behalf of whom it was made, the date of acceptance, and the lawyer's name printed legibly.
- (3) An endorsement signed by a lawyer is proof of acceptance of service for the party, and proof the party was notified effective the date of the acceptance.

Filing responding document as proof of notice of proceeding

- 31.07** A party who has not been notified in accordance with other provisions of this Rule 31 and who files a document in response to the originating document is taken to have notice of the proceeding as of the day the responding document is filed.

Notice of proceeding under agreement

- 31.08 (1)** A party who starts a proceeding in connection with a contract made by the party and another party may notify the other party of the proceeding by following a provision in the contract for notice of a proceeding in connection with the contract.
- (2) A person in dispute with another person, who makes a written agreement with the other person for giving notice of a proceeding in connection with the dispute, may notify the other person of the proceeding as provided in the agreement.

Notification out of jurisdiction

- 31.09 (1)** A party against whom a proceeding is started and who is in Canada, and outside Nova Scotia, may be notified of the proceeding without an order for service outside the jurisdiction.

- (2) A party against whom a proceeding is started and who is outside Canada may be notified without an order for service outside the jurisdiction, if the person is in a state that is bound by the *Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters*, 15 November 1965, Can.T.S. 1989/2.
- (3) A party who wishes to give notice by personal service in any other state must make a motion for an order for service outside the jurisdiction.
- (4) A party to an action or application who maintains that the court does not have jurisdiction over the subject of a proceeding, or over the party, may make a motion under Rule 4.07 to Rule 4 - Action to dismiss the action, or Rule 5.10 of Rule 5 - Application to dismiss the application.
- (5) A party in a state that is bound by the *Convention* may be notified by personal service, unless the state objected under Article 10 to personal service within its territory.
- (6) A party in a state that is bound by the *Convention* may be notified through the Central Authority of the state, as provided by Articles 2 to 7 of the *Convention*.
- (7) A party in a state that is not bound by the *Convention*, but entered into a bi-lateral treaty with Canada on service of civil documents, may be notified in accordance with the bi-lateral treaty or directions given by the judge who grants the order for service outside the jurisdiction.
- (8) A party in a state that is not bound with Canada by a treaty on service of civil documents may be notified in accordance with directions given by the judge who grants the order for service outside the jurisdiction.

Order for substituted method of giving notice of proceeding

- 31.10** (1) A judge may order a substituted method of notification if the judge is satisfied that the party cannot be located, the party is evading service, or justice requires a substituted method for another reason.
- (2) The following are examples of efforts to locate a party that, if made and proved, may establish that an order for substitute notification is to be granted on the basis that the party cannot be located:
 - (a) making inquiries of persons at the other party's places of recent residence or work;
 - (b) making inquiries of acquaintances of the other party;

- (c) searching the records of the party who makes the motion to locate information about recent residences, places of work, and acquaintances of the party to be notified;
 - (d) engaging a trace service;
 - (e) performing searches on the internet;
 - (f) searching records of other actions against the party to be notified;
 - (g) engaging the services of a local process server, lawyer, detective, or other person to advise on locating a party who resides in an unfamiliar place.
- (3) The following are examples of evidence that may establish that an order for substitute notification is to be granted on the basis that the party is evading service:
- (a) evidence of places the party is likely to be found, such as a place of residence or work, and efforts to locate the party;
 - (b) evidence the party is likely at a place when service is attempted;
 - (c) attempts to effect service at the party's likely place of residence, place of work, or otherwise;
 - (d) efforts to identify persons in communication with the party;
 - (e) attempts to communicate with acquaintances to arrange personal service.
- (4) An order for substitute notification made on the basis that the party cannot be located may include terms for advertising, service of a certified copy of the order and the originating document on a person who might communicate with the party, delivery or mailing of the order and document to a place from where it may be received by the party, and any other terms for bringing the proceeding to the notice of the party.
- (5) An order for a substitute notification made on the basis that the party is evading service may contain terms for notification that assume the evading party will receive a certified copy of the order and the originating document left for the party with persons and at places associated with the party.

Counterclaim, crossclaim, and added party

- 31.11 (1)** A plaintiff must be notified of a counterclaim by delivery of a certified copy of the notice of defence with counterclaim to the plaintiff's designated address, or delivery by agreed electronic means.
- (2)** A defendant must be notified of a crossclaim in one of the following ways:
- (a)** if the defendant crossclaimed against has not filed a notice of defence, notification in accordance with Rules 31.02 to 31.10;
 - (b)** if a notice of defence is filed, delivery of a certified copy of the notice of defence with crossclaim to the designated address of the defendant crossclaimed against or delivery by agreed electronic means.
- (3)** Unless a judge directs otherwise, a party who is added to a proceeding by a party's amendment or by an order on an *ex parte* motion must be notified by personal service of certified copies of the notices in the proceeding, in accordance with Rules 31.03 to 31.05, or by an alternative method of notice, in accordance with Rules 31.06 to 31.10.
- (4)** A party who is added to a proceeding by order made on notice must be notified as the judge making the order directs.
- (5)** The following documents are the originating documents for the purpose of giving notice, respectively, of a defence with a crossclaim, the addition of a party by amendment, or the addition of a party by order:
- (a)** the notice of defence with crossclaim;
 - (b)** the amended notice, and all previous notices, and, if the proceeding is an application, all filed affidavits;
 - (c)** the order adding the party, a notice with the amended heading, all previous notices, and, if the proceeding is an application, all filed affidavits.

Disentitlement to further notice in an action

- 31.12 (1)** A defendant or third party must file a notice of defence, with or without counterclaim or crossclaim, or a demand for notice no more than the following number of days after the day the defendant or third party is notified of the proceeding:
- (a)** fifteen days, if notification is by personal service in Nova Scotia or by other means completed entirely in Nova Scotia;

- (b) thirty days, if the notification is by personal service elsewhere in Canada or by other means completed entirely in Canada;
 - (c) forty-five days, if the notification is by personal service elsewhere in the world or by other means completed elsewhere in the world.
- (2) A party claimed against by counterclaim or crossclaim must file a notice of defence, with or without further counterclaim or crossclaim, defending the counterclaim or crossclaim in the following times:
 - (a) no more than ten days after the day of delivery, if notification is made by delivery to the defendant's address for delivery;
 - (b) the same time as for a defence to an action, if a notice of crossclaim is delivered to a defendant who has not filed a notice of defence or demand for notice designating an address for delivery in the main action.
- (3) The time between the day a demand for particulars of a claim is delivered and the day an answer to a demand for particulars is delivered is not counted among the days for filing a notice of defence or demand of notice.
- (4) A party who does not file a notice of defence when required is taken to have admitted, for the purposes of the action, the claims made against the party, and the party making the claim may move for judgment under Rule 8 - Default Judgment.
- (5) The party who does not file a notice of defence or a demand for notice is disentitled to notice of anything in the proceeding after the expiry of the deadline for filing the notice, unless a Rule expressly provides, the parties agree or a judge orders otherwise.
- (6) The parties may agree to, or a judge may order, longer or shorter times than those provided in Rules 31.12(1) and (2).
- (7) A party may file a notice of defence, with or without counterclaim or crossclaim, or a demand for notice anytime before default judgment is granted, and the following consequences apply:
 - (a) the party is no longer disentitled to notice;
 - (b) the party who files a notice of defence is no longer taken to have admitted the claims made against the party.
- (8) A judge may order that a party need not be given further notice.

Disentitlement to further notice in application, judicial review, or appeal

- 31.13 (1)** A judge who is satisfied that a respondent fails to file a notice of contest, or to appear at a hearing, after having been notified may order that the respondent is disentitled to further notice.
- (2)** A judge may order that a party to an application, judicial review, or appeal need not be given further notice.

Interlocutory notice

31.14 A party is entitled to notice of everything done in a proceeding, every written communication with a judge or the court, and every document filed, unless one of the following apply:

- (a)** the party is disentitled to notice;
- (b)** a motion is made *ex parte*;
- (c)** the parties agree, or a judge orders, that notice is not required.

Delivery or filing

31.15 (1) A party who files a document must deliver a copy of the document to each other party immediately before or immediately after it is filed, unless one of the following apply:

- (a)** the other party is disentitled to notice;
 - (b)** a motion is made *ex parte*;
 - (c)** the parties agree, or a judge orders, that notice is not required.
- (2)** Delivery to a party who is entitled to notice, but has not yet filed a document designating an address for delivery, may be made by personal service or such other means as satisfies a judge that the party receives sufficient notice.
- (3)** In all other cases, delivery may be made to the party's designated address.

Delivery to designated address

31.16 (1) A party entitled to further notice must do everything that is reasonable to allow for quick and economical delivery of documents to the party, including:

- (a)** designate an address for delivery of documents at which the party is assured of receiving a document when it is delivered;

- (b) designate a new address for delivery of documents by filing a notice of change of designated address, if the party ceases to be assured of receiving a document when it is delivered to the former designated address;
 - (c) maintain the place at the address in such a way that there is no danger of a document being taken away by others or lost.
- (2) A document may be delivered to a designated address by mail, hand, or, if both of the following apply, by electronic transfer, such as e-mail or fax:
 - (a) the transfer is by a method regularly used for delivering communications to the designated address;
 - (b) the receiving party does not, in writing, require that another method be used.
- (3) A document delivered by mail to a designated address is taken to be received by the party three days after the date of mailing.
- (4) A document delivered to a designated address by hand, fax, or e-mail is taken to be received immediately by the party.
- (5) A judge may order that a party who fails to maintain a designated address is disentitled to further notice and grant judgment against the party, unless an injustice would result.

Other methods of interlocutory notice

31.17 The parties may agree in writing, and a judge may order, another method of giving notice to a party.

Form of designation of address for delivery

- 31.18** (1) A party who is not required to file a document that includes a designation of an address for delivery and a party who must designate a new address for delivery may file a designation of address for delivery.
- (2) A designation of address for delivery must include the standard heading, be entitled “Designation of Address for Delivery”, be signed by the party or their counsel, designate an address, and acknowledge that the party is taken to have received a document delivered to the designated address.
 - (3) A designation of address for delivery may be in Form 31.18.

Notice of constitutional question

- 31.19 (1)** A party who, in a proceeding to which the Crown is not a party, asserts that legislation is unconstitutional must give notice of the constitutional issue by one of the following means, depending on the following conditions:
- (a) delivery to the Halifax office of the Attorney General of Canada, if the legislation is an Act of Parliament, a regulation under an Act of Parliament, or part of either;
 - (b) delivery to the main office of the Attorney General of Nova Scotia, if the legislation is an Act of the Legislature, a regulation under an Act of the Legislature, or part of either;
 - (c) delivery to the main office of the attorney general of another province or a territory, if the legislation is that of another province or territory.
- (2)** A notice of constitutional issue must contain the standard heading, be entitled “Notice of Constitutional Issue”, be dated and signed, and include all of the following:
- (a) notice to the appropriate attorney general that the party asserts legislation is unconstitutional;
 - (b) the citation for the legislation;
 - (c) a concise statement of the reason the party asserts the legislation is unconstitutional;
 - (d) an attached copy of the pleading or other document in which the party asserts the legislation is unconstitutional;
 - (e) a statement that the attorney general may file a demand for notice of all steps in the proceeding or the Crown may make a motion to become a party;
 - (f) a statement that delivering the notice to the Attorney General of Nova Scotia does not relieve the party of the obligation to give further notice under the *Constitutional Questions Act*.
- (3)** The notice must be delivered immediately after the filing of a pleading or other document in which a party asserts legislation is unconstitutional.
- (4)** A notice of constitutional issue may be in Form 31.19.

- (5) A party to a proceeding in which an attorney general files a demand for notice in response to a notice of constitutional issue must give the same notice to the attorney general as a party is entitled to.
- (6) Nothing in this Rule 31.19 allows the Crown to participate in a proceeding without being joined as a party.
- (7) This Rule 31.19 is additional to, and does not modify, the *Constitutional Questions Act*.

Rule 32 - Place of Proceeding

Scope of this Rule

32.01 A party may select the office of the prothonotary at which documents may be filed in a proceeding or request a change in the place of the proceeding, in accordance with this Rule 32.

Place of proceeding

32.02 (1) The party who starts a proceeding may select the place of the proceeding by inserting one of the following sets of initials before the abbreviation “No.” in the heading of the document that starts the proceeding and filing the document in the corresponding office of the prothonotary:

“Amh”	Amherst
“Ann”	Annapolis
“Ant”	Antigonish
“Bwt”	Bridgewater
“Dig”	Digby
“HFD”	Halifax Family Division
“Hfx”	Halifax, except Family Division
“Ken”	Kentville
“Pic”	Pictou
“PtHFD”	Port Hawkesbury Family Division
“PtH”	Port Hawkesbury, except Family Division
“SFD”	Sydney Family Division
“Syd”	Sydney, except Family Division
“Tru”	Truro
“Yar”	Yarmouth.

- (2) All documents filed in a proceeding must be filed at the office of the prothonotary in the selected place.
- (3) A party may make a motion to change the place of a proceeding.
- (4) A prothonotary may make a motion to a judge to change the place of a proceeding, a class of proceeding, or all proceedings, from the office of one prothonotary to that of another.
- (5) An order changing the place of a proceeding must provide for the amendment of the heading to replace the initials of the former place with those of the new place.