
A Guide to Making an (*Ex Parte*) Motion for an Order for Substituted Service in the Supreme Court of Nova Scotia (Family Division)

It is strongly recommended that you get legal advice from a lawyer before requesting substituted service. Court staff cannot provide legal advice.

When to use this guide:

Use this guide when you need to serve the other person in your family court proceeding (called the “respondent”) but, after making reasonable and diligent efforts, you cannot find them OR you believe they are avoiding being personally served with (i.e. handed) the court documents.

This guide gives information on how you can ask a judge for permission to serve the respondent another way, called “substituted service.” You do this by filing a “Motion” which requires filing specific forms. A judge can only grant your request if they are satisfied you have met the conditions for substituted service.

Examples:

- *Josephine wants to apply for a parenting order. Marc, the other parent, works in fishing and is hard to track down during fishing season. Marc’s mother lives nearby and is in regular contact with Marc. Josephine asks the court to let her serve Marc by delivering the court forms to his mother.*
- *Alexandre wants to apply for a spousal support order against Eva. He has tried to serve her at her house, but she refuses to answer the door. Alexandre asks the court to let him serve Eva by taping the court forms to her door.*

Step 1 - Before you begin

1. Educate yourself about how to serve the other person in your court proceeding, including ways to try to find them before making a motion. Read *Nova Scotia Civil Procedure Rule 31.10*. You are also encouraged to read these 2 cases: ***Dacey v. Dacey***, [2018 NSSC 260](#) and ***Gaudet v. Crossman***, [2020 NSSC 204](#). (A copy these documents are included with this package.) More information is available online at:



[Giving the other person notice of the proceeding](#)

[Personal service for a divorce proceeding](#)



2. You must have already started a court proceeding in the Supreme Court of Nova Scotia (Family Division), or will be starting a court proceeding the same time you file your motion.

3. You must pay a fee of \$66.00 for your Motion (subject to change without notice), unless you qualify to have this fee waived.
4. You can apply for substituted service if:
- You have **tried but cannot locate** the respondent, OR you **have tried unsuccessfully to have them personally served and you believe they are avoiding** being handed the court documents on purpose, OR there is another very good reason.

AND

- You want to serve them another way, which you believe will bring the court documents to the respondent's attention or presents the best possibility of doing so.

Keep in mind:

- "Personal service" means that an adult *other than you* hand-delivers the package of court documents directly to the respondent. Personal service cannot be done by mailing documents, using a courier, fax, email, etc. If the respondent has a lawyer, the lawyer may be able to accept service for their client. Contact their lawyer to find out.
- If you can have the respondent personally served, then you must do that.
- If you do not know where the respondent is, you must try to find them before asking for substituted service. Try different ways.

STEP 2 - Gather the required documents

You can apply for substituted service with the following documents and fee (a blank copy of each form is included in this package):

- ☑ **Affidavit (Request for substituted service in a family proceeding)**
- ☑ **Affidavit(s) of attempted service (if applicable – using Form 39.08)**
- ☑ **Draft Order for Substituted Service (Family Proceeding)**
- ☑ ***Ex Parte* Motion (Family Proceeding) for Substituted Service**
- ☑ **Personal Representation Form**
- ☑ **Filing fee of \$66.00**

These forms are available online:



[A Guide to Making a Motion for Substituted Service](#)
(Click on "Step 2")

STEP 3 – Complete the required documents

Check off the documents as you complete them.

☐ **Affidavit (Substituted Service)**

This document contains *your* evidence to help the court understand what facts may support your request, such as:

- the efforts you have made to locate and, or serve the respondent, and
- why or how your proposed method will bring the court documents to the respondent's attention, or provides the best possibility of doing so.

This affidavit includes prompts to help you explain your evidence to the court and references *Civil Procedure Rule 31.10*. It is important you read this rule, a copy of which is included in this package.

You will see that you may attach documents to your affidavit as part of your evidence. If so, be sure that all documents are referenced in your affidavit at paragraph 16 as exhibits. More information about how to attach exhibits is found online (see FAQs # 2, 8 & 9):



[Affidavits and Exhibits | Nova Scotia Family Law](#)

Do NOT sign the affidavit by yourself. To be considered evidence, the affidavit must be sworn or affirmed in-person in front of a lawyer, Notary Public, or Commissioner of Oaths. (They will also ensure that any attached documents are properly marked as exhibits.) This is important. If you have a lawyer, you can do this with your lawyer. If not, you can do this at the courthouse with a court officer when you file your documents for no extra charge.

Tips:

- Affidavits are meant to outline facts – for example, they describe ‘who, what, when, where’ types of information, and things that you have seen, heard yourself, or have good reason to believe.
- It is not appropriate to put your opinions in an affidavit, or to include information you heard from someone else, do not know, or did not see yourself. This is called ‘hearsay.’

☐ Affidavit(s) of attempted service (if applicable)

If you hired a professional to try to personally serve the respondent, they will give you an affidavit of attempted service which you can file with the court. If someone (who is not a professional) has tried to serve the respondent but was unsuccessful, they can complete an Affidavit explaining their efforts. You cannot do this for them. They can complete Form 39.08

(Affidavit) and have it sworn or affirmed as explained above. Information about what an Affidavit should look like is available at:



[Affidavits and Exhibits | Nova Scotia Family Law](#)

☐ **Draft Order for Substituted Service**

This document sets out what you would like the judge's order to say. It explains how the court documents will be served and what you need to do to prove that the judge's instructions have been followed. Complete as much as you can based on the method of service you have asked for in your affidavit.

☐ **Ex Parte Motion (Family Proceeding) for Substituted Service**

This document summarizes what you are asking for and references *Civil Procedure Rule 31.10*, the legal authority which allows a judge to approve substituted service in certain circumstances. The Motion is called "Ex Parte" because the other party is not being notified of your request.

Read and complete this document carefully. Sign and date before filing.

☐ **Personal Representation Form**

Read and complete this document carefully. Sign and date before filing.

☐ **Filing fee of \$66.00**

You can pay your filing fee at the courthouse by cash, debit, credit card or cheque. If your income is low, you may qualify to have this fee waived. To apply for a waiver, complete and bring the Waiver of Fees form, including all required supporting documents. More information is found online at:



[Waiver of Court Fees | Nova Scotia Family Law](#)

STEP 4 – File the required documents

Ensure you have all of the required documents and fee from Step 3. File these at the same courthouse where you started your family court proceeding. (Alternatively, you can start your family court proceeding at the same time as you file these documents. More information on how to start a court proceeding is found online at:



[Application Guides | Nova Scotia Family Law](#)

STEP 5 – Wait for direction from the Court

Once your documents are submitted, they will be reviewed by a court officer, a judge, or both. A court appearance may or may not be required. If yes, you will be told the date and time when the judge will hear and decide your motion. The court will tell you if you must attend this court appearance in-person, by video conference, or telephone. If the judge decides to approve your request (i.e. grants your Motion), the court will complete the Order for Substituted Service and return it to you. The judge may make adjustments to your request and impose additional steps for you to take.

STEP 6 – (if your Motion is approved) Serve the documents

If your motion is granted and an Order for Substituted Service is issued, follow the steps in the order carefully. Once you have done so, an affidavit must be completed to prove the steps in the order were followed. If you do not have a lawyer, you can use the *sample* Affidavit (of Substituted Service) to help. You can get a copy from the duty conciliator at your local courthouse.

Remember that you cannot sign the affidavit by yourself, you need to swear or affirm this document in-person in front of a lawyer, Notary, or Commissioner of Oaths (this is further explained in Step 3 under Affidavit).