



Manitoba Court of Queen's Bench

How to Obtain an Order for Substitutional Service

If you have given your evidence of service under oath before a court officer and the court officer granted an *Order for Substitutional Service*, skip **STEP 1**.

STEP 1

Prepare your *Affidavit of Attempted Service* outlining all the attempts you have made to try to serve the defendant. Each paragraph should state one fact. Do a separate paragraph for each attempt you have made. You should also state how you know where the defendant resides. A Deputy Registrar can witness your signature when you attend the court office.

Follow Sample 1.

Prepare an *Order for Substitutional Service* and state how you intend to serve the Small Claim. The *Order for Substitutional Service* must be filed in triplicate.

Follow Sample 2.

STEP 2

Attend the court office with your *Affidavit of Attempted Service* and *Order for Substitutional Service*. If the Deputy Registrar is satisfied with the attempts you have made, they will witness your signature on your Affidavit and sign the Order. If you need more time to serve your documents, the Deputy Registrar will also issue an *Order Extending Time*.

You must now serve the Small Claim/Amended Small Claim with the attached Notice of Intention to Appear, any Orders Extending Time that have been issued, and the Order for Substitutional Service on the defendant using the method granted in your Order.

STEP 3

After you have served all the documents substitutionally, prepare your Affidavit of Service of Small Claim by Substitutional Service stating how you served the documents, based on the Order.

Follow Sample 3.

File your Affidavit of Service of Small Claim by Substitutional Service with the court office at least 10 days before your hearing date.

THE QUEEN’S BENCH
Winnipeg Centre

BETWEEN

Claimant’s name(s)

Claimant,

-and-

Defendant’s name(s)

Defendant.

AFFIDAVIT OF ATTEMPTED SERVICE

I (Your Name) of the (City) of (Winnipeg) in the province of Manitoba, MAKE OATH AND SAY:

1. That I am a (your occupation), and as such have personal knowledge of the matters hereinafter deposed to by me.
2. That I do verily believe that the defendant resides at (defendant’s full address).
3. That on the _____ day of _____, 20____, I did mail a copy of the Small Claim and Notice of Intention to Appear by Registered Mail, to (the defendant’s address) and it was marked (Refused, Moved, Unknown). Attached to my Affidavit and marked as Exhibit “A” is the envelope.
4. That on the _____ day of _____, 20____, at (time, i.e. 2:00 p.m.) I did personally attend at the residence of the defendant located at (defendant’s address). There appeared to be no one home.
5. That on the _____ day of _____, 20____, at (time, i.e. 10:30 a.m.) I did personally attend at the residence of the defendant located at (defendant’s address). A vehicle was in the driveway but no one answered the door.
6. That on the _____ day of _____, 20____, at (time, i.e. 4:15 p.m.) I did personally attend at the residence of the defendant located at (defendant’s address). I observed the lights on in the residence, but, no one answered the door. I spoke to a neighbour who advised that the defendant does indeed reside there.
7. I make this affidavit in support of my request to obtain an order of substitutional service.

SWORN BEFORE me at the _____)
of _____, in the Province)
of Manitoba this _____ day of)
_____, 20____.)

Deputy Registrar, Queen’s Bench
(or) Commissioner of Oaths

(Your Signature here must be witnessed
by a Deputy Registrar or a Commissioner of
Oaths

PLEASE NOTE:

Above paragraphs 2 to 6 are for illustration purposes only.

Your own information must be provided showing each attempt you have made to serve the defendant. You must have 1 attempt by registered mail and it is suggested that you have at least 2 attempts at personal service.

Also, indicate

- steps you have taken to ensure you have the defendant’s proper address
- attempts you have made to locate the defendant
- how you intend to serve the defendant substitutionally

THE QUEEN’S BENCH
Winnipeg Centre

BETWEEN

Claimant’s name(s)

Claimant,

-and-

Defendant’s name(s)

Defendant.

ORDER FOR SUBSTITUTIONAL SERVICE

Upon application of the claimant in this matter and on having read the affidavit of (**claimant’s name**), (**sworn/affirmed**) (**date**) filed: (*paragraph 1 used when seeking an Order for Substitutional Service prior to Small Claim Hearing*)

or

Upon application of the claimant in this matter and on having given evidence under oath before the Court Officer on _____ (date of last appearance). (*paragraph 2 used when Order for Substitutional Service has been granted by court officer at Small Claim Hearing*)

It is ordered that the defendant (**state defendant’s name if more than one defendant**) in this matter be served with the (**Small Claim/Amended Small Claim**) and attached Notice of Intention to Appear, and Order Extending Time (**state all Orders Extending Time and dates issued**) in the following manner:

1. By posting a copy of the (**Small Claim/Amended Small Claim**) and attached Notice of Intention to Appear, and Order Extending Time (**state all Orders Extending Time and dates issued**), bringing this matter on for hearing, and a copy of this Order on the front and back doors of the residence of the defendant (**defendant’s name**) located at (**defendant’s residence**).
2. By sending a copy of the (**Small Claim/Amended Small Claim**) and attached Notice of Intention to Appear, and Order Extending Time (**state all Orders Extending Time and dates issued**) bringing this matter on for hearing, and a copy of this Order to the defendant (**defendant’s name**) by ordinary mail to (**defendant’s residence**).
3. By placing an advertisement under “Legal Notices” in one edition of (**state name of local newspaper**).
4. Service in this manner is effective on the fifth day after the compliance of this Order.

DATE: _____ (**Date of filing**) _____ (**Do not sign**)
Deputy Registrar

PLEASE NOTE:

Above paragraphs 1 and 3 are suggestions only.

- You must indicate how you will be serving the defendant substitutionally. The method you are proposing should be one that will likely bring your claim to the defendant’s attention. The deputy registrar will sign the Order if they are satisfied you have made sufficient attempts to serve and locate the defendant, as indicated in your affidavit of attempted service.
- Order for Substitutional Service must be filed with and signed by a court official before you proceed with alternative service steps.

THE QUEEN’S BENCH
Winnipeg Centre

BETWEEN

Claimant’s name(s)

Claimant,

-and-

Defendant’s name(s)

Defendant.

AFFIDAVIT OF SERVICE OF SMALL CLAIM BY SUBSTITUTIONAL SERVICE

I, (claimant’s name), of the (City) of (Winnipeg), in the Province of Manitoba, (Occupation),
MAKE OATH AND SAY:

1. I did on the _____ day of _____, 20____, personally attend at the residence of the defendant (defendant’s name) located at (defendant’s residence) and did affix to the front and back doors a copy of the Small Claim (Small Claim/Amended Small Claim) and attached Notice of Intention to Appear, Order Extending Time (state all Orders Extending Time and dates issued) bringing this matter on for hearing, and a copy of the Order for Substitutional Service.
2. I did on the _____ day of _____, 20____, personally mail to the defendant (defendant’s name) by ordinary mail a package containing the Small Claim (Small Claim/Amended Small Claim) and attached Notice of Intention to Appear, Order Extending Time (state all Orders Extending Time and dates issued) bringing this matter on for hearing, and a copy of the Order for Substitutional Service to (defendant’s full address).
3. By placing an advertisement under “Legal Notices” in one edition of (name of local newspaper). Attached to my affidavit and marked as Exhibit “A” is the tear sheet from the newspaper.

SWORN BEFORE me at the _____)
of _____, in the Province)
of Manitoba this _____ day of)
_____, 20____.)

Deputy Registrar, Queen’s Bench
(or) Commissioner of Oaths

(Your Signature here must be witnessed
by a Deputy Registrar or a Commissioner of
Oaths

PLEASE NOTE:

- You should file your Affidavit of Service of Small Claim by Substitutional Service with the court office at least 10 days before your hearing date.
- A copy of the tear sheet from the newspaper must be attached and marked as Exhibit “A” to your Affidavit of Service of Small Claim by Substitutional Service.
- All documents previously filed need to be served with the Order for Substitutional Service.

Precedent Advertisement for Substitutional Service

TO: **Name of Defendant**

TAKE NOTICE that a Small Claim No. **00-01-99999** has been filed against you by **John Jones** for **\$2,500.00** involving **a loan of money on Jan. 10, 2000.** The hearing of the claim will take place at: **3rd Floor, 373 Broadway, Winnipeg.,** on **Wednesday April 12, 2000** at **9:00 a.m.** If you do not appear to defend this claim, Default Judgment may be given against you. Enquiries may be made to: Small Claims, Main Floor, 408 York Avenue, Winnipeg MB R3C 0P9, phone 204-945-3138.

Thank you

PLEASE NOTE:

The above sample has been provided as an example of the wording for an advertisement to appear under "Legal Notices" in one edition of a local newspaper. Prepared advertisement copy should be double-spaced as shown. A copy of the tear sheet from the newspaper must be attached and marked as Exhibit "A" to your Affidavit of Service of Small Claim by Substitutional Service.

The **bold and underlined** portions in the above samples should reflect the information relevant to your claim.