

Service ex juris

Applicable Rules:

Service of Documents Outside Alberta

11.25 and 11.26 in Division 5 of Part 11

Service in a Contracting State under the Hague Convention

11.33 to 11.35 in Division 8 of Part 11

**An order for service ex juris is only required
for service outside of Canada**

Materials to be downloaded in support of the Application will be the Statement of Claim, supporting Affidavit, written submissions (in the Application document), if appropriate and a draft order.

There must be an Affidavit in support of the Application

The affidavit must show a real and substantial connection between Alberta and the facts on which the claim is based.

The Affidavit should specifically identify the connection in reference to the list in subrule 11.25(3). Examples:

“The claim relates to a tort committed in Alberta;” or

“The Defendant , although outside Alberta, is a necessary or proper party to the action brought against another person was served in Alberta;”

Application for service ex juris with respect to divorce proceedings

Note Rule 12.58 that provides Rule 11.25 [real and substantial connection] does not apply to service of a Statement of Claim for Divorce or a Statement of Claim for Divorce and Division of matrimonial property.

Rather, subsection 3(1) of the Divorce Act applies: “...if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of proceeding.” (this must be in the Affidavit).

Do not forget that Rule 12.57 requires a picture of the person to be served in the Affidavit of Service unless the Court orders otherwise.

Method of Service

If the commencement document is to be served in a jurisdiction to which the *Hague Convention on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters* applies, service must be made in accordance with Division 8 of the Rules of Court (ie Rules 11.33 to 11.35).

Otherwise service of the commencement document in the foreign jurisdiction must be made in a manner provided under the Alberta Rules.

Division 8 Service in a Contracting State under the Hague Convention

As of July 27, 2020, there were 78 “Contracting Parties” to this Convention. See the “Status Table” on the Convention’s website.

Rule 11.34 directs how service may be made in a Contracting State. However, reference will need to be made to the Convention and the Status Table for Contracting Parties to determine if the Convention applies and if there are exclusions or limitations for that Contracting State.

**Beware of significant time delays
when serving through the Central Authority
for the receiving jurisdiction**

Rule 11.35 sets out special rules for obtaining default judgment where there has been service in accordance with paragraphs (a) to (e) of subrule 11.34(1).

(This is brought about by a recognition that it is very common to not have any response from a Central Authority within six months of delivery to the Central Authority).

**Does the supporting Affidavit need to address
Hague Convention issues?**

- Generally, the answer is “no”. The Order simply authorizes service *ex juris* in a country outside of Canada. It will be up to counsel to ensure that the method of service complies with Rule 11.26 and Division 8 of Part 3 of the Rules.

The draft order for service *ex juris*

- Recitals should refer to all materials submitted in support of the Application.
- The draft order will authorize service in a particular country, but will not refer to method of service.