



THE NUNAVUT COURT OF JUSTICE

PRACTICE DIRECTIVE #31

ELECTRONIC SERVICE OF DOCUMENTS IN CIVIL CAUSES

Explanatory Note:

This directive provides a speedy and inexpensive alternative to the use of process servers or the post to serve counsel of record who are prepared to receive service of documents by electronic means. The effective use of technology can reduce the expense and delay associated with doing long distance litigation.

Effective February 1st 2010, any document except an originating process may be served by way of email attachment in accordance with this Practice Directive.

Where there is full compliance with this directive, electronic service upon a party to a civil proceeding before the Nunavut Court of Justice shall constitute valid service for all purposes.

All documents to be served under this directive shall be transmitted in Portable Document Format (PDF) as an attachment to an email directed to the intended recipient.

1. Notice of Consent

A party through his or her counsel must give consent in a specific proceeding to receive documents at an electronic legal service address by formal notice of that address included with the party's civic address for service in a document filed on the Court Record. The endorsement for electronic service shall be entitled "Notice of Consent for Electronic Service" and shall be inserted on the backer for the Statement of Claim, Statement of Defence or 3rd Party Notice.

An email address in letterhead or correspondence does not constitute consent to receive electronic service.

Once consent is given, the electronic legal service address is valid until the Court and all parties are notified in writing of its amendment or cancellation.

Formal notification of a change of counsel constitutes a withdrawal of consent to receive electronic service until a new Notice of Consent is provided.

2. Electronic Legal Service Address

This address may be either an account at an electronic legal service provider or an e-mail address.

3. Validation of Service

Where service is affected electronically counsel shall ensure that there is a validation of service available to the Court sufficient to establish that the document(s) came to the attention of the intended recipient. For this purpose, proof that the document(s) was received at the recipient party's electronic legal service address provided in the "Notice of Consent" may be established by:

- a. An email delivery or "read" receipt;
- b. Confirmation from an electronic legal service provider that the document(s) was delivered to the party's account at that service provider;
- c. Verbal confirmation of receipt by the recipient party, their counsel, or paralegal;
- d. Written confirmation by e-mail of receipt from the recipient party or their counsel;
- e. Other means sufficient to satisfy the Court that the document(s) came to the attention of the intended recipient.

4. Proof of Service

Where service is affected electronically, counsel shall file with the Court an affidavit of electronic service confirming:

- a. That service was affected electronically;
- b. The electronic legal service address to which the document was sent;

c. The manner in which the service was validated.

5. Date and Time of Service

The date and time of service shall be the date and time that the document is transmitted by the sending party.

Documents transmitted electronically on a holiday or after 5:00 p.m. based on the sender's local time (as determined by the sender's civic address for service) shall be deemed to be served at 9:00a.m. on the next business day.

6. Transmission Failure

Nothing in this Practice Directive precludes a party from offering proof that the electronic transmission was not received in a timely manner for reasons beyond the control of the intended recipient.

Where this is established, the Court in its discretion may extend the time for service or for the response by the intended recipient, or grant such other relief as the Court deems just and appropriate.

7. Electronic filing of the affidavit of service

The affidavit of service for documents served electronically may be filed with the Court in accordance with Practice Directive #18. Exhibits need not accompany the affidavit of service as long as the documents being served are fully described in the affidavit. This description must include the date of execution, the date of filing, and the date the document was sworn (if applicable).

Issued this 21st day of December 2009 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey

