

## **RULE 13 – SERVICE OUTSIDE YUKON**

### **Service outside Yukon without order**

- (1) Service of a document on a person outside Yukon may be effected without an order if:
  - (a) the whole subject matter of the proceeding is land in Yukon (with or without rents or profits), or the perpetuation of testimony relating to land in Yukon;
  - (b) any act, deed, will, contract, obligation or liability affecting land or hereditaments in Yukon is sought to be construed, rectified, set aside or enforced;
  - (c) it is sought to construe a will affecting personal property, if the testator was, at the time of their death, domiciled in Yukon;
  - (d) relief is sought against a person domiciled or ordinarily resident in Yukon;
  - (e) the proceeding is for the administration of the personal estate of a deceased person who, at the time of their death, was domiciled in Yukon;
  - (f) the proceeding is for the execution (as to property in Yukon) of a trust which ought to be executed according to the law in force in Yukon and the person to be served is a trustee;
  - (g) the proceeding is in respect of a breach, committed in Yukon, of a contract wherever made, even though the breach was preceded or accompanied by a breach, outside Yukon, which rendered impossible the performance of the part of the contract that ought to have been performed in Yukon;
  - (h) the proceeding is founded on a tort committed in Yukon;
  - (i) an injunction is sought as to anything to be done in Yukon, or a nuisance in Yukon is sought to be prevented or removed, whether or not damages are also sought in addition;
  - (j) a person outside Yukon is a necessary or proper party to a proceeding properly brought against some other person duly served in Yukon;
  - (k) the proceeding is by a mortgagee or mortgagor in relation to a mortgage of property in Yukon and seeks relief of the nature of sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee, whether or not the mortgagee seeks personal judgment or an order for payment of money due under the mortgage;
  - (l) the proceeding is brought by or on behalf of the Crown or a municipality to recover moneys owing for taxes or other debts due to the Crown or a municipality;

- (m) the proceeding is founded upon a contract, or is in respect of a claim for child or spousal support, and the defendant has assets in Yukon;
- (n) the action is brought under the *Carriage by Air Act*, R.S.C. 1985, c. C-26;
- (o) the claim arises out of goods or merchandise sold or delivered in Yukon;
- (p) the proceeding is brought upon a foreign judgment and the defendant or respondent has assets in Yukon; or
- (q) the proceeding is
  - (i) a family law proceeding;
  - (ii) a *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp), proceeding; or
  - (iii) for an adoption.

- (2) Except in a family law or *Divorce Act* proceeding, a copy of an originating process served outside Yukon without an order shall state specifically by endorsement on the originating process for service outside Yukon upon which of the grounds referred to in subrule (1) it is claimed that service is permitted under this rule.

#### **Application for order to serve outside Yukon**

- (3) In any case not provided for in subrule (1), the court may order service of a document outside Yukon.

#### **Applications may be made without notice**

- (4) An application for an order to serve a person outside Yukon:
  - (a) may be made without notice; and
  - (b) must be supported by an affidavit or other evidence showing
    - (i) in what place or country that person is or may probably be found, and
    - (ii) the grounds upon which the application is made.

#### **Service of order**

- (5) Copies of the application for the order to serve, of all affidavits in support of the application, and of the order to serve shall be served with the document.

#### **Time for appearance**

- (6) Subject to subrule (7), if a person is served with a document outside Yukon, the time for appearance by that person, after service, is:

- (a) 21 days, in the case of a person residing anywhere within Canada;
- (b) 28 days, in the case of a person residing in the United States of America; and
- (c) 42 days, in the case of a person residing elsewhere.

#### **Time for appearance may be shortened**

- (7) The court may shorten the time for appearance on an application made without notice.

#### **Where service without leave valid**

- (8) This rule does not invalidate service outside Yukon without an order where the document could have been validly served apart from this rule.

#### **Contract containing terms for service**

- (9) Notwithstanding this rule, the parties to a contract may agree:
  - (a) that the court will have jurisdiction to hear a proceeding in respect of the contract; and
  - (b) that service of a document in the proceeding may be effected at any place, within or outside Yukon, on any party, or on any person on behalf of any party, or in a manner specified or indicated in the contract.
- (10) Service of a document in accordance with an agreement referred to in subrule (9) is effective service, but no contractual stipulation as to service of a document shall invalidate service that would otherwise be effective under these rules.

#### **Definition**

- (11) In subrules (12) to (15) "Convention" means the *Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters*, signed at the Hague on November 15, 1965.

#### **Manner of service abroad**

- (12) A document may be served outside Yukon:
  - (a) in a manner provided by these rules for service in Yukon;
  - (b) in a manner provided by the law of the place where service is made if, by that manner of service, the document could reasonably be expected to come to the notice of the person to be served; or
  - (c) in a state that is a contracting state under the Convention, in a manner provided by or permitted under the Convention.

### **Proof of service abroad**

- (13) Service of a document outside Yukon may be proved:
  - (a) in a manner provided by these rules for proof of service in Yukon;
  - (b) in the manner provided for proof of service by the law of the place where service was made regardless of the manner under subrule (12) by which service was effected; or
  - (c) in accordance with the Convention, if service was effected under subrule (12)(c).

### **Forms**

- (14) Where service is desired to be made in accordance with Article 5 of the Convention, a Request in Form 105 and a Notice and Summary of Documents in Form 106 shall be used.

### **Certificate**

- (15) Where an authority has, in accordance with Article 6 of the Convention, completed a Certificate in Form 107, then the certificate is evidence of the facts stated in it.