Small Claims Court: Procedure and Practice, 5th Ed Update

In Force January 30, 2023

# Summary

On November 15, 2022, O. Reg. 521/22 was filed, which amended the *Rules of the Small Claims Court*. The regulation is posted on e-Laws at https://www.ontario.ca/laws/regulation/r22521. The amendments come into force **January 30, 2023.**

Essentially, the change permits lawyers and paralegals to use an unsworn certificate of service.

The summary of the regulation, available on Ontario’s Regulatory Registry at: [22-MAG014](https://www.ontariocanada.com/registry/view.do?postingId=43068&language=en), states:

This regulation, O. Reg. 521/22, makes changes to the procedural rules of the Small Claims Court to introduce a new unsworn lawyer or paralegal’s certificate of service. The new certificate can be used to prove service of a court document where service was effected by a lawyer or paralegal or caused to be effected by a lawyer or paralegal.

The regulation amends nine rules, creates one new form, and revises six forms.

The rule amendments:

* introduce a new unsworn lawyer or paralegal's certificate of service (Form 8B) to prove that a document was either served by the lawyer or paralegal or caused to be served by the lawyer or paralegal;
* update existing provisions that refer to the use of affidavits of service;
* move the provision about proof of service within the service rule (Rule 8) for better organization;
* update references to affidavits of service to clarify the applicable forms of proof of service;
* prescribe a revised version of the Form 8A affidavit of service to better capture existing service methods and to add information about using a lawyer or paralegal's certificate of service as an alternative form of proof of service; and
* prescribe revised versions of Forms 7A, 9A, 10A, 15A, and 20H to update their existing references to affidavits of service and make housekeeping updates (e.g. updated links to Ontario.ca pages).

# Changes to the book

* The new form, Form 8B, Lawyer or Paralegal’s Certificate of Service, may be used in place of Form 8A, wherever a lawyer or paralegal serves or causes the documents to be served. A sample filled-out Form 8B has been provided, with details for Chong v Kingman (Appendix 4.6) filled out.
* Ch 4, page 145, states “Rule 8.06 states that an affidavit of service (Form 8A) constitutes proof of service of a document.”
* This should now read: “Rule 8.09.1 states that an affidavit of service (Form 8A) or a certificate of service (Form 8B) constitutes proof of service of a document. The certificate of service is new as of January 30, 2023 and may be used if the lawyer or paralegal served the document or caused it to be served and is satisfied that service was effected.”
* Chapter 10, page 503 says “Proof of service of the garnishment documents on the garnishee and the debtor is by affidavits of service (Rule 20.08(6.3)).” However, Rule 20.08(6.3) is being revoked as of January 30, 2023 because the rule related to proof of service is captured in the new Rule 8.09.1. Proof of service can be made by an affidavit of service (Form 8A) or lawyer or paralegal’s certificate of service (Form 8B).