

Court of King's Bench of Alberta

Citation: Stephen David Smith RRSP Plan Number 143059 v Walker, 2026 ABKB 171

Date: 20260309
Docket: 2503 25694
Registry: Edmonton

Between:

**Olympia Trust Company in trust for (RRSP Plan Number 143059 Stephen David Smith)
and Stephen David Smith**

Applicants/Plaintiffs

- and -

Ronald Walker

Respondent/Defendant

**Memorandum of Decision
of the
Honourable Applications Judge S. Wanke**

[1] This application demonstrates why technical compliance with a contractual notice provision may not constitute good service. It also serves as reminder that an order validating service is not appropriate in the absence of evidence of actual notice or evasion of service.

[2] The Applicants (**Olympia**) are foreclosing on Mr. Walker's land, approximately 125 acres of vacant land north of Edson (**Property**). Olympia applies by way of desk for an order validating service of a statement of claim (**Claim**), amended Claim and statutory notices under s 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (**BIA**) (**244 Notice**) and s 21 of the *Farm Debt Mediation Act*, SC 1997, c 21 (**FDMA**) (**FDMA Notice**).

[3] Olympia's process server taped all the documents to the handle of a child's push car sitting in an open sea can in the Property's open field in late 2025: November 26 for the 244 Notice and *FDMA* Notice, December 15 for the Claim and December 22 for the Amended Claim. Olympia seeks to validate service of each of the documents as of the date they were taped to the toy.

[4] The law firm also emailed the Claim and Amended Claim on December 15, 2025 to an email address used by the Defendant in July 2025 when corresponding with Olympia.

[5] The legal assistant's affidavit advises that Olympia does not know where Mr. Walker is. The affidavit does not disclose the efforts to ascertain his whereabouts.

I. Service by Agreement (Rule 11.3)

[6] Olympia relies on a clause in its mortgage and r 11.3(1) of the *Alberta Rules of Court*, Alta Reg 124/2010 (**Rules**), which allows commencement documents to be served as agreed to by the parties in the contract that is the subject of the action:

11.3(1) If, in a contract that is the subject of an action, the parties agree on

- (a) a place for service,
- (b) a mode of service, or
- (c) a person on whom service may be effected,

service of a document may be made in accordance with the agreement, and service is effected when so made.

[7] Applications judges have long rejected technical reliance on boilerplate notice provisions by mortgagees, creditors and landlords to prove personal service. Little, however, has been written to explain why this is consistent with r 11.3 and its predecessor, r 21 (*Alberta Rules of Court*, Alta Reg 390/1968 (**Old Rules**)).

[8] Statutory interpretation requires the *Rules* to be read in their entire context and in their grammatical and ordinary sense harmoniously with the statutory scheme, object and the intention of Parliament.

[9] The object of service is notice. Notice of proceedings is an integral part of the right to be heard (*audi alteram partem*), which is a rule of natural justice and a tenant of our legal system (*A.(L.L.) v B.(A.)*, [1995] 4 SCR 536 at para 27). Fittingly, then, the caselaw is clear that service exists for one purpose: to give a respondent actual notice. It is practical and substantive, not a mere formality. (*Sandhu v MEG Place LP Investment Corporation*, 2012 ABCA 266 at para 19 (*Sandhu*))

[10] Part 11 of the *Rules* deals specifically with the service of documents, but those provisions exist within the *Rules* generally, which confirm a fair and just court process is a foundational principle of the *Rules* (r 1.2(1), *Rules*).

[11] Formulaic reliance on generic notice provision in mortgages or similar documents is antithetical to actual notice. Borrowers move, abandon properties, and change phone numbers and email addresses. Some notice provisions, like the one at hand, are thinly veiled efforts to dispense with meaningful service altogether.

[12] The grammatical and ordinary meaning of r 11.3 must then be read to only include contractual provisions that clearly contemplate service of legal process, in a manner truly agreed to by the parties, designed to give actual notice.

A. Clear Language

[13] Notice provisions often fall short of being agreements that contemplate the service of legal process as opposed to simply notices under the agreement.

[14] Master Funduk considered r 21 of the Old *Rules* and, on careful reading of the terms of a lease, concluded the provision for service of notices in the lease did not extend to an agreement for service of a statement of claim (*Aero Aviation Centre (1981) Ltd v 210698 Investments Ltd*, 45 Alta LR (2d) 17 at para 10).

B. Enforceable Agreements

[15] Boilerplate notice provisions that are indifferent as to actual service, particularly in contracts of adhesion or consumer contracts, cannot be agreements for service as intended by r 11.3(1).

[16] The Supreme Court of Canada, in declining to enforce an otherwise valid forum selection clause, noted that contractual terms between private parties that implicate the court, cannot bind the court. Further, while parties should generally be held to their bargains, there is a difference between sophisticated negotiated commercial contracts and consumer contracts or contracts of adhesion. (*Douez v Facebook, Inc*, 2017 SCC 33 at paras 26 – 34).

[17] In Alberta, foreclosures are a judicial process overseen by the Court of King's Bench. The Court cannot be bound to enforce contractual provisions between parties that make a mockery of service and would deprive a party of natural justice.

C. Olympia's Notice Clause

[18] Olympia's application to validate service primarily relies on this clause in its mortgage (Clause):

8. (e) The Mortgagee may sell and dispose of the said lands with or without entering into possession of the same and **with or without notice to the Mortgagor or any party interested in the said lands**; and all remedies competent may be restored to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this mortgage may be exercised; **and any notice may be effectually given by leaving the same with a person of the age of majority on the said lands if occupied, or by placing the same thereon, or on any part thereof, if unoccupied, or at the option of the Mortgagee by publishing the same in some newspaper published in the Province of Alberta; and such notice shall be sufficient through not otherwise addressed than "To whom it may concern"**, and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the said lands hereunder ... [emphasis added]

[19] If this clause were enforceable, it would effectively change Alberta's court-supervised foreclosure process into a foreclosure system by power of sale.

[20] In short, this clause is not an agreement between the parties that:

- (a) Extends to the service of commencement documents, a 244 Notice or a *FDMA* Notice;

- (b) Reflects an agreement between the parties as to place, mode or person to be served.

[21] Overall, the clause undermines the importance of personal service, including by purporting to dispense with the requirement to serve altogether. The result of relying on this clause speaks for itself: documents taped to a toy in a vacant field in the middle of winter.

[22] I decline to validate service of the Documents under r 11.3(1) of the *Rules*.

II. Validating Service

[23] Under r 11.27, the Court may validate technically deficient but substantively sound service. This codifies the Court's long-standing recognition that actual knowledge, in a manner that engages legal rights, is good service (*Post v Alberta Occupational Health & Safety Council*, 2005 ABCA 390 at paras 5 and 6, *Ball v 1979927 Alberta Ltd*, 2022 ABKB 814 at para 24).

[24] This application, however, conflates validating service with substitutional service.

[25] To validate service, the Court must be satisfied that the method of service used brought or was likely to have brought the document to the attention of the person to be served or would have done so but for the evasion of service.

[26] In the absence of actual evidence of evasion or that the party received the document, orders validating service should not be used when a substitutional service order is available. Substitutional service orders, by default, must be served along with the documents being served. That additional step helps address the requirement in *Sandhu* that service must be done in a way that the respondent understands their legal rights are being engaged.

[27] In this case, with an appropriate affidavit, substitutional service by email may be appropriate. An order validating service of the prior emails is not.

III. 244 Notice

[28] 244 Notices must be served or sent by registered mail or courier, or if the parties agreed, electronically (r 124, *Bankruptcy and Insolvency General Rules*, CRC c 368 (*BIA Rules*)). Neither the *BIA* nor the *BIA Rules* provide specific rules around service. Provincial court procedure expressly applies, to the extent that procedure is not inconsistent with the *BIA* or the *BIA Rules* (r 3, *BIA Rules*).

[29] Service under the express provisions of the *BIA Rules* has not occurred. Validating service of the 244 Notice under the *Rules* is inappropriate for the same reasons set out above for the Claim.

IV. FDMA Notice

[30] I do not know if Mr. Walker is a farmer, only that Olympia has asked the Court to validate service of a notice that is only needed if he is a farmer. *FDMA* Notices must be given 15 business days before commencing an action or enforcing any remedy against a farmer. Failure to do so cannot be cured retroactively and makes the improperly commenced action a nullity (ss 21 and 22, *FDMA* and *Intec Holdings Ltd v Grisnich*, 2003 ABQB 993 at para 65).

[31] Unlike the *BIA*, the *FDMA* does not expressly import provincial rules or procedure. The specifics are set out in the regulations: *FDMA* Notices must be given to natural person farmers in person or left with an adult at their residence, with a copy mailed the next day or sent by priority post, courier or registered mail addressed to the farmer. If notice is sent, it is deemed to be given seven business days after it is sent (s 17(1) and (2), *Farm Debt Mediation Regulations*, SOR/98-168 (***FDMA Regulations***)).

[32] The Saskatchewan Court of Appeal held substitutional service of notices under similar provisions of the predecessor legislation to the *FDMA*, the *Farm Debt Review Act*, RSC 1985 (2nd Supp.), c 25, was not permitted. The intent of the legislature was clearly expressed in the specified methods of service and resort to the rules of court or the court's inherent jurisdiction was inappropriate to allow for other methods (***Royal Bank of Canada v Wright***, (1989), 74 Sask R 215 (Sask CA) at para 12).

[33] Olympia has not served the *FDMA* Notice in any of the ways set out in the *FDMA Regulations*. In addition to the general issues with validating service set out above, Olympia needs to satisfy the Court that the *Rules* respecting service can be applied to *FDMA* notices.

V. Service on Mr. Hill

[34] Olympia also seeks to validate service of the Claim on a subsequent encumbrancer, Mr. Hill. Mr. Hill acknowledged receipt of the documents by email. No order validating service is required: ***Toronto Dominion Bank v Halliday***, 2022 ABKB 764.

Desk application filed the 2nd day of February, 2026.

Dated at the City of Edmonton, Alberta this 9th day of March, 2026.

S. Wanke
A.J.C.K.B.A.

Appearances:

Ian Mahood, Kenny Law
for the Applicants

No Appearance (Without Notice)
for the Respondent