

Service of Process: More than a Formality

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Plaintiffs usually start lawsuits by serving the defendant personally with a statement of claim. While personal service is the “gold standard,” Ontario’s *Rules of Civil Procedure* permit alternative methods under certain conditions where personal service is impractical. Those alternatives may be crucial when dealing with an evasive defendant, especially where a limitation period is fast approaching.

In *Ampere Metal Finishing Inc v KenzoKai Metal Finishing Inc*,¹ the court set aside a default judgment and stayed enforcement proceedings against a corporation and its principal based on defective service. The court clarified the requirements for personal service on a corporation and an alternative to personally serving individuals that operates in a similar fashion.

Personal service on a corporation may be effected by leaving a copy of the document with a “person who appears to be in control or management of the place of business.” In *Ampere*, the process server allegedly left the claim with someone who was at the corporation’s legal address, which was coincidentally the principal’s personal residence. The court held that service was defective because the process server did not indicate whether he confirmed the individual had any role with the corporation or was authorized to accept service on its behalf.

With respect to the company’s principal, the plaintiff relied on an alternative to personal service that requires leaving the claim with “anyone who appears to be an adult member of the same household” and then mailing the claim to the household. In *Ampere*, the process server relied on the very same attempt to serve the corporation to satisfy the onus of serving the principal. The court found two problems with that approach. First, plaintiffs must attempt personal service *before* resorting to an alternative method. The attempts must be distinct. Second, the process server took no steps to confirm household membership.

Those shortcomings rendered service defective and the default judgment irregularly obtained. Judgment was set aside as of right (i.e., without the defendants having to meet the distinct test for setting aside a default judgment).

Litigants should consider the following lessons from *Ampere*:

- Service of a claim is more than a legal formality. Adequate service is crucial to a fair and just legal process, and parties can expect courts in Ontario to strictly enforce the rules.
- Process servers must take meaningful steps to confirm that someone “appears to be” in control or

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management of a business or a household member. An assumption is not enough. Those steps should be documented in the affidavit of service to fend off allegations that service was deficient.

- The court noted that, although not strictly required, “the far better practice is to serve a defaulting defendant with notice before seeking default judgment to avoid the risks associated with improper service.” That approach is also more likely to save all parties time and money.

[Jamie Arabi](#) and [Laura Cloutier](#) acted for the defendants in *Ampere Metal Finishing Inc v KenzoKai Metal Finishing Inc*.

¹ *Ampere Metal Finishing Inc v KenzoKai Metal Finishing Inc*, [2025 ONSC 3888](#).

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