



**NEW LAW**



## **Facebook Notification: You've been served!**

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Social media platforms: Not only a medium for sharing pictures or circulating humorous memes, but also a method of serving documents in civil litigation proceedings?

Earlier this year, we acted in the case of *Braet v Ramputh* as counsel for one of the Defendants.<sup>1</sup> Our client sought to defend the action, as well as to commence a Crossclaim against another Defendant. However, the Defendant against whom we sought to commence a Crossclaim had not delivered a Notice of Intent to Defend, or a Statement of Defence, bringing the Defendant



the case, we decided that there was a “reasonable possibility” of bringing the action to the attention of the Defendant through Facebook and to bring a Motion for substituted service. The Defendant was an active user of Facebook, and there was no question that the accountholder of the Facebook account was the one and the same individual as the Defendant who was to be served. There were several indicia making it plainly obvious, including the profile name (which was not a common name), and the biographical and professional information provided on his Facebook page. At one point, the Defendant had even reached out directly to our client via Facebook Messenger regarding the main action commenced against it.

Ultimately, in our case, the Ontario Superior Court made an Order permitting substituted service of the Statement of Defence and Crossclaim by way of private Facebook message on the Defendant.

Service through social media accounts may present unique challenges, but such challenges can be overcome with creative solutions. For example, in *Jewish Family and Child Services of Greater Toronto v KB*, the Court astutely recognized that the individual who was being served could have taken steps to block the sender from being able to send messages through Facebook.<sup>2</sup> The Court remedied this problem by permitting substituted service to be sent through a different Facebook account.

This Order is a step forward for the Courts in embracing unique, yet also practical, ways to approach substituted service in today’s world where social media platforms are ever growing in usage and popularity.

After all, many people check their social media accounts more often than their mailboxes! ■

#### Notes

1. *Braet v Ramputh* (14 July 2021), Sarnia CV-20-00000124-0000 (Ont Sup Ct.).

2. *Jewish Family and Child Services of Greater Toronto v KB*, 2016 ONCJ 259 at para 22.

within Rule 28.04(2) of the *Rules of Civil Procedure*. Under this Rule, the Defendant shall be served with the Statement of Defence and Crossclaim personally, or by an alternative to personal service.

And yet, serving the Statement of Defence and Crossclaim personally, or by an alternative to personal service, posed significant challenges. The Defendant who was to be served was a pilot living a nomadic lifestyle. His physical address was unknown and his whereabouts could not be ascertained.

Rule 16.04(1) allows for the Court to make an Order for substituted service where it is impractical to effect prompt service personally or by an alternative to personal service. The standard set in prior cases for substituted service to be permissible is that such service must have “some likelihood” or a “reasonable possibility” of bringing the action to the attention of the party being served.

Although there is a limited body of case law where the Court has permitted substituted service over a social media platform, based on the facts of