

July 20, 2021

How documents may be given – Do you track history of registered mail?

A recent Ontario Superior Court case has highlighted the importance of tracking your registered mail. Under section 87 of the *Construction Act*, documents may be given by registered mail.

In *Quadform Ltd. v. Rock Con Forming Ltd.*¹, the motion judge set aside a default judgment on the basis that the plaintiff, who served its statement of claim in a lien action by registered mail, should have checked the tracking history to see whether the defendant actually received delivery of the registered mail containing the statement of claim and certificate of action. The motions judge had also opined that the plaintiff ought to have disclosed the tracking history to the court when moving for default judgment.

Although Section 87(1) of the *Construction Act* allows for a statement of claim to be served by registered mail, Section 87(2) provides that it is only deemed to have been received in the "absence of evidence to the contrary".

The tracking history for the registered mail item revealed that:

1. The statement of claim and certificate of action were sent by registered mail on December 18, 2019;
2. On December 19, 2019, Canada Post left a registered mail notice followed by a final notice on December 27, 2019;
3. The final notice indicated that the item would be returned to the sender if the item was not collected within 10 days; and
4. On January 5, 2020, the item was not claimed and therefore returned to the sender.

Although the motion judge found that there was no intention to mislead the court, it was found that the tracking history was "readily available" and that a party seeking relief from a court without notice is obliged to make full and fair disclosure of all material facts. The Plaintiff's failure to review the tracking history and subsequently disclose it to the court was fatal. As a result, service by registered mail was found not to be effective. Our recommendation: always serve a statement of claim by personal service.

¹ [2020 ONSC 7903 \(Ont. Sup. Ct. Jus.\)](#), leave to appeal refused [2021 ONSC 3379](#) (Ont Div. Ct.)

When personal service is not possible and service by registered mail is used, ensure to track the delivery and be ready to disclose the tracking history when seeking default judgment.



[Darina Mishiyev](#), Senior Law Clerk
T. 647-294-7279
dmishiyev@margiestrub.com



[Joshua Strub](#), Partner
T. 647-924-2264
jstrub@margiestrub.com

This article is for informational purposes only and is not intended to constitute legal advice or an opinion on any issues contained therein.