

CHOOSING THE CORRECT FORM OF PROCEEDING

If you are considering commencing a proceeding in Supreme Court it is recommended that you seek legal advice.

Supreme Court Civil Rule 2-1 – Choosing the Correct Form of Proceeding, sets out the various options for commencing proceedings in the Supreme Court. The fee for commencing a Supreme Court proceeding is \$200.00 and it is the responsibility of the filing party to ensure they commence their proceeding with the appropriate document. Registry staff are not legally trained and cannot give advice as to the form of proceedings.

If you decide to represent yourself the Justice Education Society has prepared many different guidebooks that may be of assistance. The link for a list of the guidebooks that are available is, <https://supremecourtbc.ca/civil-law>

Supreme Court Rule 2-1 reads as follows;

Rule 2-1 – Choosing the Correct Form of Proceeding

Commencing proceedings by notice of civil claim

- (1) Unless an enactment or these Supreme Court Civil Rules otherwise provide, every proceeding must be started by the filing of a notice of civil claim under Part 3.

Commencing proceedings by petition or requisition

- (2) To start a proceeding in the following circumstances, a person must file a petition or, if Rule 17-1 applies, a requisition:
 - (a) the person starting the proceeding is the only person who is interested in the relief claimed, or there is no person against whom relief is sought;
 - (b) the proceeding is brought in respect of an application that is authorized by an enactment to be made to the court;
 - (c) the sole or principal question at issue is alleged to be one of construction of an enactment, will, deed, oral or written contract or other document;

- (d) the relief, advice or direction sought relates to a question arising in the execution of a trust, or the performance of an act by a person in the person's capacity as trustee, or the determination of the persons entitled as creditors or otherwise to the trust property;
- (e) the relief, advice or direction sought relates to the maintenance, guardianship or property of infants or other persons under disability;
- (f) the relief sought is for payment of funds into or out of court;
- (g) the relief sought relates to land and is for
 - (i) a declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,
 - (ii) a declaration that settles the priority between interests or charges,
 - (iii) an order that cancels a certificate of title or making a title subject to an interest or charge, or
 - (iv) an order of partition or sale;
- (h) the relief, advice or direction sought relates to the determination of a claim of solicitor and client privilege.

Estate proceedings

(2.1) Without limiting any other provision of this Rule, a proceeding to which Part 25 applies may be started by

- (a) the filing of a submission for estate grant under Rule 25-3 (2),
- (b) the filing of a submission for resealing under Rule 25-6 (2),
- (c) the filing of a requisition under Rule 25-12 (2) or 25-14 (1) or 25-14(1.11), or

(d) the filing of a petition under Rule 25-14 (1.1), (2) or (4).

Procedures applicable to particular proceedings

(3) Without limiting subrules (1) to (2.1), the following provisions apply to the following applications and proceedings:

(a) Rule 8-3 applies to an application for an order by consent;

(b) Rule 8-4 applies to an application of which notice need not be given;

(c) Rule 10-3 applies to a proceeding brought to obtain relief by way of interpleader or in which such relief is sought;

(c.1) Rule 14-1 (21) applies to an appointment for a review of a bill or an examination of an agreement under the *Legal Profession Act*;

(d) Rule 15-1 applies to a fast track action;

(e) Rule 18-2 applies to a stated case;

(f) Rule 18-3 applies to an appeal that is authorized, by an enactment, to be made to the court;

(g) Rule 19-3 applies to a proceeding to register a reciprocally enforceable judgment within the meaning of Rule 19-3;

(h) Rule 21-1 applies to a proceeding brought in rem against a ship or other property;

(i) Part 25 applies to a proceeding in relation to the administration of an estate;

(j) Repealed. [B.C. Regs. 149/2013, s. 1 (d); 149/2013, s. 1 (c) and (d).]

(k) Rule 21-7 applies to a proceeding for foreclosure of the equitable right to redeem mortgaged property, for redemption or for cancellation of an agreement for sale.

All of the Supreme Court Civil Rules may be accessed from the Supreme Court website at <https://www.bccourts.ca/supreme-court/practice-and-procedure/acts-rules-and-forms/>.

Included in this package are the following documents;

- 1) Form 1 – Notice of Civil Claim
- 2) Form 31 – Requisition for Consent Order or for Order Without Notice
- 3) Form 66 – Petition to the Court

Form 1

No.
..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff(s)

and

Defendant(s)

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to a civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff(s)

Part 1: STATEMENT OF FACTS

[Using numbered paragraphs, set out a concise statement of the material facts giving rise to the plaintiff's(s') claim.]

- 1.
- 2.

[If any party sues or is sued in a representative capacity, identify the party and describe the representative capacity.]

Part 2: RELIEF SOUGHT

[Using numbered paragraphs, set out the relief sought and indicate against which defendant(s) that relief is sought. Relief may be sought in the alternative.]

- 1.
- 2.

Part 3: LEGAL BASIS

[Using numbered paragraphs, set out a concise summary of the legal bases on which the plaintiff(s) intend(s) to rely in support of the relief sought and specify any rule or other enactment relied on. The legal bases for the relief sought may be set out in the alternative.]

- 1.
- 2.

Plaintiff's(s') address for service: *[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]*

Fax number address for service (if any):

E-mail address for service (if any):

Place of trial:

The address of the registry is:

Date:

.....
Signature of

plaintiff lawyer for plaintiff(s)

.....
[type or print name]

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods and services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

No.
..... Registry

In the Supreme Court of British Columbia

Between

Applicant(s)

and

Respondent(s)

REQUISITION FOR CONSENT ORDER OR FOR ORDER WITHOUT NOTICE

Filed by:
[party(ies)]

Required:

An order by consent

[OR]

An order without notice

1. The rule or other enactment relied on is
[set out rule or enactment relied on]

2. Attached to this requisition is a draft of the order required.

[Check whichever one of the following boxes is correct and complete any required information.]

3. Each party affected has consented to the order.

The evidence in support of the application is

[Check whichever one of the following boxes is correct and complete any required information.]

4. No party is under a legal disability.

..... is under a legal disability,
[name of party]

namely
[set out legal disability]

This requisition is filed by, the applicant in
[name]

in this proceeding, whose address for service is as follows:

[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]

Fax number address for service (if any):

E-mail address for service (if any):

Date:

.....
Signature of
 filing party lawyer for filing party(ies)
.....
[type or print name]

No.
..... Registry

In the Supreme Court of British Columbia

Between

, Petitioner(s)

and

, Respondent(s)

*[or; if there is no person against whom relief is sought:
Re:[State the person by whom, or the entity in respect of which, relief is sought.].....]*

PETITION TO THE COURT

ON NOTICE TO:

.....
[name and address of each person to be served]
.....
.....
.....

The address of the registry is:

The petitioner(s) estimate(s) that the hearing of the petition will take*[time estimate...]*

[Check whichever one of the following boxes is correct.]

- This matter is an application for judicial review
- This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by

[Check whichever one of the following boxes is correct and complete any required information.]

- the person(s) named as petitioner(s) in the style of proceedings above
- (the petitioner(s))
[name(s)]

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner(s) is: <i>[Set out the street address of the address for service of each petitioner. One or both of a fax number and an e-mail address may be given as additional addresses for service.]</i> Fax number address for service (if any) of the petitioner(s): E-mail address for service (if any) of the petitioner(s):
(2)	The name and office address of the petitioner's(s') lawyer is:

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

[Using numbered paragraphs, set out the order(s) that will be sought at the hearing of the petition and indicate against which respondent(s) the order(s) is(are) sought.]

- 1.
- 2.

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out the material facts on which this petition is based.]

- 1.
- 2.

Part 3: LEGAL BASIS

[Using paragraphs numbered sequentially from Part 2 above, specify any rule or other enactment relied on and provide a brief summary of any other legal bases on which the petitioner(s) intend(s) to rely in support of the orders sought.]

- 3.
- 4.

Part 4: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with the petition. Each affidavit included on the list must be identified as follows: "Affidavit #[sequential number, if any, recorded in the top right hand corner of the affidavit]..... of[name]....., made[date].....".]

- 1.
- 2.

Date:

Signature of
 petitioner lawyer for petitioner(s)

.....
[type or print name]

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

.....
.....
.....
.....

Date:

Signature of Judge Associate
Judge