

Defending a Proceeding Started by Petition

This guidebook will assist you in responding to a proceeding started by a petition in the Supreme Court in British Columbia.

You may be familiar with court proceedings and trials, but proceedings commenced by petition are different in several ways. First, the person starting the proceeding is called the petitioner, and the person defending the proceeding is called the petition respondent. And, if a proceeding is started with a petition, there is no trial with witnesses. Instead, the matter is heard by a judge, and the evidence is presented by affidavits only.

When you have been served with a petition, you might find it helpful to talk to a lawyer about what you need to do. Defending a lawsuit is complicated and time-consuming and the consequences of doing things late or incorrectly may be serious. If you have any questions at all about your lawsuit, see a lawyer.

This chart sets out the major differences between the two types of court proceedings:

| | Actions | Originating Applications |
|--|---|--|
| Start the claim using: | Notice of civil claim | Petition |
| Parties are called: | The person or business starting the case is called the plaintiff and the person or business being sued is called the defendant. | The person or business starting the case is called the petitioner and the person or business being sued is called the petition respondent. (Note that in some cases, there may only be a petitioner, and no respondent.) |
| Type of hearing: | Full or summary trial | Hearing before a judge |
| Type of evidence to support the claim: | Witnesses come to court to testify in person and the court also considers documentary evidence. | Witness do not give evidence in person. All evidence is given in the in the form of affidavits. |

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

| | Actions | Originating Applications |
|------------------------------------|---|---|
| Process: | <p>More complicated</p> <p>The notice of civil claim is usually used when the facts of the claim are in dispute. Because the court may need to determine the facts so it can make a decision about the claim, a trial is often necessary.</p> | <p>Less complicated</p> <p>The petition is usually used in cases where the facts are not in serious dispute so that they can be determined by a judge reading the evidence set out in affidavits.</p> <p>In some cases, a petition must be used to start a claim.</p> |
| Facts are presented: | <p>The notice of civil claim (Form 1) is used to present the facts supporting your claim. It also sets out the relief that you want the court to grant against each defendant.</p> | <p>The petition includes a short statement of facts supporting the claim. Instead of a notice of civil claim, a sworn affidavit is filed with the petition. The person swearing the affidavit swears that the facts in the petition are true.</p> |
| Discovery of documents and people: | <p>Before the trial, the plaintiff and defendant are both entitled to see the evidence of the other party (document discovery) as well ask questions of the other side in a meeting called an examination for discovery.</p> | <p>Before the hearing, the petitioner cannot ask for documents from the petition respondent or ask him or her questions. All evidence is presented in the form of affidavits.</p> |

How to respond to a petition

A petition proceeding is started by a document called a petition. The person who started the proceeding is called the petitioner and you are called the petition respondent.

Generally, you must be personally served with the petition and supporting affidavits. Someone (usually a person called a process server) will have handed you the document either at your home or work.

However, if a person has difficulty serving you, the Rules provide for other ways for you to be served. If the claim is against a company, the company may be served through its registered office or its officers.

There is additional information on service of documents (including information about alternative ways for you to be served) in the guidebook, *Starting an Action by Notice of Civil Claim*.

You have been served once the document has been left with you. Once you have been served, procedural time limits relating to your lawsuit begin to run.

Important time limits

Time limits are important in legal claims in two ways: you must start your proceedings within a certain period of time (limitation periods) and you must be aware of time limits that apply to court procedure (procedural time limits).

Limitation periods

The first thing you need to think about are limitation periods. Limitation periods set limits, for example, on how long the petitioner can wait before starting the proceeding by filing a petition. If the limitation period expires before the petitioner files the petition, he or she may lose the opportunity to commence a lawsuit.

Here are some other things you need to know about limitation periods:

- Different types of cases have different limitation periods.
- The *Limitation Act* (a copy of this Act can be found in the courthouse library) sets out the different limitation periods for different types of cases.

You may want to talk to a lawyer who can explain limitation periods to you.

Procedural time limits

There are numerous procedural time limits that will affect your case. Some of these time limits are set out in the forms and others are set out in the Rules of Court. For example, if you are served with a petition and want to receive notice of the time and date that the petition will be heard, you must deliver your response to the petition within 21 days (if you live in Canada). If you do not respond in time, the petitioner may proceed to get judgment against you without the court hearing your side of the story.

Make sure you understand the time limits that apply in every step of the litigation process so you do not miss important deadlines.

Responding to a petition

The first thing you need to do is to file a response to the petition (Form 67), which tells the petitioner that you are going to want to respond to the factual statements that the petitioner has made and that you want to receive notice of the hearing of the petition. It also provides the petitioner with your address for delivery so the petitioner can mail or fax or deliver documents to you, rather than serving the documents on you personally.

The time frame that you have to prepare, file and deliver a response to the petition is set out below. If you live in Canada, you must file and deliver your response to the petition within 21 days after being served with the petition.

| Time Limit | If you live (and were served): |
|---------------------------|--------------------------------|
| Within 21 days of service | within Canada |
| Within 35 days of service | in the United States |
| Within 49 days of service | anywhere else in the world |

When you calculate the number of days you have to file a response, you do not include the day you were served.

Failing to file a response to a petition

If you have been served with a petition and do not file a response, the petitioner is not obligated to give you notice of the time and date of the hearing of the petition and there will be a hearing without you (Rule 16-1(8)). Once this happens, you may no longer have the opportunity to tell the court why you oppose the petitioner's claim against you.

Late filing of a response

If you wish to defend yourself but have filed your response late, the registry will still accept it for filing. When you file the response, ask the registry to check to see if a hearing has been held without you. If it has, you may be able to bring an application to the court to ask for the order to be set aside. For more information about bringing a court application, see the guidebook, *Applications to Court*.

Completing your petition response

The petition sets out certain information that you need to know. The petition will tell you:

- The style of proceeding and registry number. The style of proceeding is how the court registry identifies your file (it includes the court file number, the name of the registry, the level of court and the names of the parties). You must also include the style of proceeding on every document you prepare in the lawsuit;
- The location of the registry where all subsequent documents must be filed;
- The name and address of the person or lawyer who filed the petition;
- The delivery address for the petitioner;
- How long you have to reply to the petition before default judgment can be taken against you.

When you prepare your petition response, refer to Rule 16-1(5) and Form 67. The petition response must:

- indicate, for each order sought, whether you consent to, oppose, or take no position on the requested order;
- if you wish to oppose any of the relief sought in the petition:
 - briefly summarize the factual and legal bases on which the orders sought should not be granted;

- list the affidavits and other documents on which you intend to reply at the hearing of the petition; and
- set out your estimate of time the petition will take for hearing.

Remember that you must set out the facts that support the basis on which you say that the orders the petitioner is seeking should not be made. This is not the same thing as setting out the evidence. The evidence that you will rely on will be set out in the affidavits filed with the response.

Filing your documents

Once your petition response and affidavits are completed, it is time to file them. You will need:

- the original for the court registry;
- one copy for your file;
- two copies for each of the petitioners.

There is a filing fee for filing a petition response. You can call the court registry to confirm the current fee or check Schedule 1 to Appendix C of the Rules.

Court registry staff are extremely helpful and may be able to point out any small errors in the form of the document before you file it, but remember that they cannot give you legal advice – you will have to talk to a lawyer about legal issues in your case. When you submit your completed documents, court registry staff will check to make sure they meet the minimum standards before accepting them for filing. You are responsible for including all other information required by the court and ensuring that it is correct.

The registry will stamp each document with the date it was filed. The original documents will be placed in the court file. The registry will return the copies to you to deliver to the petitioner. You should bring along an extra copy of all your documents so the registry can stamp and return a copy for your own file.

The documents can be filed with some court registries by fax (see Rule 22-3). If you plan to file by fax, contact the court registry for further instructions.

If you can't afford the applicable filing fee, ask the registry staff for instructions on how to file an application with the court to have the fee waived. This is called an application for indigent status (see Rule 20-5 and Forms 79 and 80. You can find information about filing a requisition - Form 17 - in the guidebook, *Requisitions*). An order for indigent status only waives the fees payable to the Crown. There are many other fees (including court reporters and the costs of transcripts) that you will still have to pay.

Delivering your documents

Once you have filed your response and affidavits with the registry, you need to serve them on the petitioner. You can do this by faxing or delivering the documents to the petitioner's address for delivery set out in the petition. You can mail the documents by ordinary mail to the person's address for service. You may fax or email the documents only if a fax number or email address is included in the address for delivery.

You do not need to personally serve the petitioner with your petition response and affidavits. If the address for delivery is the residential or business address of the petitioner and he or she does not have a lawyer acting on their behalf, you can deliver your document:

- by leaving the documents with any adult at that address; or if that is not possible;
- by placing the documents into a mail box or mail slot at that address; or if that is not possible;
- by affixing the documents to a door of the residence or business.

You want to be sure that the petitioner gets your petition response and affidavits. The easiest way to do this is to:

- attach your documents to a letter (whether you mail, fax or deliver the document) to the petitioner;
- include an extra copy of the letter and ask the petitioner to acknowledge receipt on the copy of the letter and return it to you;
- keep the copy of the letter in your file with the acknowledgement of receipt in case you need it in the future;
- if the other party does not acknowledge receipt of the documents, you will need to file an affidavit of delivery setting out how, when and where you delivered the documents.

For further information about the service and delivery of documents, see Rules 4-1 to 4-6.

Court hearing of the petition

The petition is heard by a judge in court. Rule 16-1 sets out the special information you need to know about petitions. The hearing of petitions is a different procedure than a trial as there are no witnesses; instead the evidence is presented by affidavits only. The steps and procedures you must follow are set out in the guidebook, *Applications to Court*. It will tell you how to prepare for the hearing, how to serve your documents, and what will happen at (and after) the hearing.

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, *Alternatives to Going to Court*). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca.

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca.

The Supreme Court of BC's website has information for people who are representing themselves in court: http://www.courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: <http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac>

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court forms can be completed in 3 ways:

1. Completed online and filed at:
<https://justice.gov.bc.ca/cso/index.do>

2. Completed online, printed and filed at the registry

3. Printed, completed manually and filed at the registry

Court forms that can be completed online are available at: <http://www.supremecourtbc.ca/supreme-court-civil-forms> Printable court forms are available at: <http://www.supremecourtbc.ca/supreme-court-civil-forms>

Common legal terms

You can find out the meaning of legal terms at: www.SupremeCourtBC.ca/glossary

Family law

For information about family law claims, see: www.FamilyLaw.LSS.bc.ca

This guidebook is part of a series:

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NOTES

Form 66

1

(Rules 16-1 (2) and 21-5 (14))

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:

2

Re:*[State the person by whom, or the entity in respect of which, relief is sought.]*.....]

PETITION TO THE COURT

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

ON NOTICE TO:

3

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

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

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.

4

| | |
|-----|---|
| (1) | The address of the registry is: |
| (2) | The ADDRESS FOR SERVICE of the petitioner(s) is:[Set out the street address of the address for service for each petitioner. 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) of the petitioner(s): E-mail address for service (if any) of the petitioner(s): |
| (3) | The name and office address of the petitioner's(s') lawyer is: |

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

5

[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

6

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

1

2

Part 3: LEGAL BASIS

7

[Using numbered paragraphs, 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.]

1

2

Part 4: MATERIAL TO BE RELIED ON

8 [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[dd/mmm/yyyy].....".]

- 1
- 2

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

Date:[dd/mmm/yyyy].....

.....
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 petition

[] with the following variations and additional terms:

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

Date:[dd/mmm/yyyy].....

.....

Signature of [] Judge [] Master

NOTES

Court forms are available at: http://www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm .

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

File this form in the court registry and personally serve it on the respondent.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. The court registry will insert the registry number, which you must use on all your documents. Insert the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Use names only (not addresses) in the style of proceeding.
 2. Name the person you have started the proceeding against.
 3. Name and address of those you are bringing the claim against.
 4. Put the address of the court registry and your address.
 5. List the orders you are asking the court to make (e.g., that the respondent, John Brown, transfer the property held by the estate of Jane Brown to the named beneficiaries in the will).
 6. “Material facts” are the facts that relate to your claim. Set out your story.
 7. Set out the legal basis of your claim, including the Court Rules, legislation, and case law that support your claim (e.g., the respondent failed to pay a debt owed by the estate of Jane Brown to me, contrary to s. 65 of the *Estate Administration Act*; *Smith v. White*, 2009 BCCA 456, etc.)
 8. List the affidavits you are relying on to prove your claim (e.g., Affidavit #1 of Mary White, made January 5, 2010).
 9. Estimate the time you will need for the hearing (e.g., 90 minutes), the date, and your name.
-

NOTES

Form 67

(Rule 16-1 (5))

[Style of Proceeding]

1

RESPONSE TO PETITION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

2

Filed by:[party(ies)]..... (the “petition respondent(s)”)

THIS IS A RESPONSE TO the petition filed[dd/mmm/yyyy]..... .

3

Part 1: ORDERS CONSENTED TO

The petition respondent(s) consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the petition:[set out paragraph numbers]..... .

4

Part 2: ORDERS OPPOSED

The petition respondent(s) oppose(s) the granting of the orders set out in paragraphs[list paragraph numbers]..... of Part 1 of the petition.

5

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent(s) take(s) no position on the granting of the orders set out in paragraphs[list paragraph numbers]..... of Part 1 of the petition.

6

Part 4: FACTUAL BASIS

[Using numbered paragraphs, set out a brief summary of the material facts on which the orders sought in the petition should not be granted.]

1

2

7

Part 5: LEGAL BASIS

[Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal bases on which the petition respondent(s) intend(s) to rely in opposing the orders sought in the petition. In addition, a written argument may be provided to the court in opposition to the petition.]

1

2

8

Part 6: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with this response to petition and any other affidavits and other documents already in the court file on which the petition respondent(s) will rely. 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[dd/mmm/yyyy].....”.]

1

2

The petition respondent(s) estimate(s) that the application will take[time estimate]..... .

Date:[dd/mmm/yyyy].....

Signature of [] petition respondent

[] lawyer for petition respondent(s)

.....[type or print name].....

9

Petition respondent'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):

Name of the petition respondent's(s') lawyer, if any:

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

File this form in the court registry and serve it on the petitioner.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. Insert the court number, the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 2. Put your name here if you are filing the response.
 3. List the orders that the petitioner is asking the court to make that you consent to (e.g., Part 1 of the petition: paragraphs 2 and 3).
 4. List the orders that the petitioner is asking the court to make that you oppose (e.g., Part 1 of the petition: paragraphs 5 and 9).
 5. List the orders that the petitioner is asking the court to make that you take no position on – that is, that you will abide by what the court orders (e.g., an order for costs).
 6. “Material facts” are the facts that relate to your claim. Set out your story.
 7. Set out the legal basis of your claim, including the Court Rules, legislation, and case law that support your claim (e.g., the petitioner did not notify me that the deceased had given him an advance on his inheritance as set out in s. 92 of the *Estate Administration Act*; *Joe v. Silver*, 2001 BCSC 45; etc.)
 8. List the affidavits you are relying on to prove your claim (e.g., Affidavit #1 of Margaret Blue, made January 8, 2009).
 9. Your address must be a physical location (not just a post office box) where documents can be delivered.
-