

Drafting Orders

An order needs to be prepared when the court hearing is complete (after a hearing in chambers or a trial) and the court has made an order. The order is the document, filed in the court registry, which sets out the decision of the judge or master. The parties, not the judge, are usually responsible for preparing the order. Any party can prepare the order, but usually it is the successful party.

Rule 13-1 sets out important information about court orders. You can find more information about drafting court orders, as well as examples, in two books located in the courthouse library: *Supreme Court Chambers Orders*, published by the Continuing Legal Education Society of BC, and *The Conduct of Civil Litigation in British Columbia*, by Fraser, Horn, and Griffin.

Types of orders

Before you start a lawsuit, you should have a clear idea of what, exactly, you will be asking the court to order. In general, you will be asking the court to order someone to do (or stop doing) something. You should have the terms of your draft order in mind right from the start.

The most common types of orders are:

- orders made after an application to the court, before trial (a chambers application);
- orders made after a trial; and
- consent orders, where the parties agree on the terms of the order without actually having to appear before a judge or master of the court;

Orders after court applications

You may make an application to court to ask for an order to resolve issues that come up before the trial of your case. These kinds of applications are generally called “chambers proceedings” and they do not result in a final decision of your case. For example, you might want to make an application in chambers to get an order for the other party to produce certain documents for you to inspect. The guidebook, *Applications to Court*, provides detailed information about these types of applications.

When the judge or master makes a decision on your application, the decision has to be set out in writing. The parties, not the judge or master, are responsible for preparing the written order and getting it signed by the judge or master, as well as by the parties who appeared at the hearing. You can do this in one of three ways:

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.

1. You can prepare a draft order (Form 35) before the hearing, setting out the terms of the order that you are asking the court to make. If you are successful in your application to court, you can ask the judge or master who heard the application to sign the order. The court clerk will hand up the order to the judge or master and, if it is accurate, the judge or master will sign it at that time. In these situations, you don't need to get the other parties to sign your draft order (see Rule 13-1(2)).
2. If you don't have a draft order in Form 35, but the court orders what you were asking for in your application, show the judge or master where your application asks for that order. In some cases the judge or master may initial your application (Rule 13-1(4)). You can file that initialled document in the court registry and it has the same effect as a formal court order. This saves you the steps of drafting the order and getting signatures from the other parties.
3. If the judge or master does not sign the order in chambers, one of the parties must draft the order (Form 35). Any party can draft the order. Usually the party who won the application will draft the order, but if one party has a lawyer, that lawyer might agree to draft the order. In some cases the court might rely on Rule 13-1(15) and ask the registry to draft the order.

As a final step, you file the signed order in the court registry.

Orders after trial

After trial, one of the parties (usually the party who won) will draft the order for the judge to sign. These orders are drafted using Form 48 and it records what the judge decided in your case.

Consent orders

Parties sometimes agree on an outcome to the dispute without going to court. In some cases you will want an order from the court even though you have agreed on the terms of the order. In such cases, you file a requisition (Form 17) and a draft of the order that you are asking the court to approve. This draft order is in Form 34. More information is set out in Rule 13-1(10).

If there is a problem with your order, the registry might ask you to redraft your order or to appear in court and explain your case. If your order is approved, the registry will return it to you, stamped and ready to be enforced.

A consent order is not complete until each party affected by the order indicates his or her consent. If a party is represented by a lawyer, the lawyer can sign the consent order. If a party is not represented by a lawyer, the litigant can consent in writing, or orally at the court hearing.

Other orders

You may need to prepare other orders, and they are described in other guidebooks:

- An order for costs and an order to settle a bill of costs are described in the guidebook, *Costs in the Supreme Court*.
- A default judgment, given when the other party does not respond to your notice of civil claim, is described in the guidebook, *Resolving Your Case Before Trial*.
- You may want to get an order from a court in another jurisdiction (e.g., other parts of Canada or another country) registered in a BC court so you can enforce the order. In such cases, you need to use Form 77. Rule 19-3 and the *Court Order Enforcement Act* give you information about foreign judgments. Dealing with foreign jurisdictions is complicated and you should seek assistance from a lawyer. You may also need to consult a lawyer in the foreign jurisdiction.

Drafting your order

An order needs to be prepared when the court hearing is complete (after a hearing in chambers or a trial) and the court has made an order. The order is the document, filed in the court registry, which sets out the decision of the judge or master. Read Rule 13-1 for more details on how orders should be prepared.

It is very important to prepare the order with the exact terms that the judge stated or the court registry will not accept the order. The book, *Supreme Court Chambers Orders* (published by the Continuing Legal Education Society of BC), is available in the courthouse library. It is a useful resource to help you draft your court order.

The parties, not the court, are usually responsible for preparing the order. Any party can prepare the order, but usually it is the successful party. This means that if you prepared the application and the court granted you the order, you will prepare the order and send it to the other parties to have it signed. If, on the other hand, you prepared the application but the court did not grant you your order, the other party should prepare the order and send it to you to be signed.

Listen carefully to the judge or master when he or she makes the order, and take notes of the terms as accurately as possible. If the judge or master says something you do not understand, ask him or her to clarify it right away. If there is something in your application that hasn't been covered, bring it to the attention of the judge or master.

The court clerk also takes notes of the order made and you can request a copy of these notes from the registry if you are not certain about what the judge or master ordered.

When drafting your order, keep in mind two basic principles: the order should accurately reflect the court's decision and it should speak for itself. In other words, the order should be understood without having to refer to any other documents.

Using the correct form for the order you are drafting, start with the style of proceeding at the top. The style of proceeding is the information that identifies your case within the court system with the court file number and names of the parties. It is the same on all your court documents. The order also sets out:

- the name of the master or judge who heard the application or trial;
- the date of the hearing;
- the place of the hearing;
- the names of the lawyers or other representatives who appeared at the hearing;
- the names of other parties, such as those acting on their own behalf (e.g., the defendant in person);
- who was served with the application, or if the matter proceeded without notice or by consent; and
- if judgment was reserved to a later date.

If you are not sure how to spell the judge or master's name, you can find a list of names on the Supreme Court website: www.courts.gov.bc.ca. In a written order, the judge is named as "The Honourable Mr. Justice ____ (last name)", or "The Honourable Madam Justice ____ (last name)."

You must set out, in numbered paragraphs, exactly what the judge, master, or registrar ordered after the hearing of the application or at the end of the trial. Deal with only one matter in each paragraph. Those matters might be the decision about the relief granted, any directions (such as deadlines or specific items) for carrying out the decision, and the disposition (who gets what) of costs.

For example, the judge may have ordered that the defendant must pay you the sum of \$32,000 as the balance owing under a contract for the sale of a piece of machinery, with interest from the date of default on 21 March 2005, payable within 4 weeks. You may also have been awarded full costs of the trial. In that case, your order would say something like the following:

1. The defendant will pay the sum of \$32,000 to the plaintiff as the balance owing under a contract for purchase and sale, dated February 3, 2004, for a bulldozer with serial number 123456.
2. The defendant will pay interest on the amount of \$32,000 to the plaintiff at the rate set under the *Court Order Interest Act* from the date of default under the contract, 21 March 2005, to the date of payment.
3. The amount of \$32,000, plus interest, is payable to the plaintiff within 4 weeks of the date of this court order.
4. The plaintiff is entitled to his costs of the trial.

When you have prepared your draft order, take it to the court registry where a registry clerk will review the order to approve the format. Then the other parties who appeared at the hearing or trial must sign the order.

Settling the terms of your order

After a hearing or trial, send your draft order to the other parties for their signatures. All parties who appeared at the hearing need to sign the order. You do not need signatures if the judge or master signed the draft order at the end of the hearing. Nor do you need the signature of any party who does not consent but did not appear at the hearing (see Rule 13-1(1)(c)).

The parties' signatures confirm that they agree that how you have drafted the order accurately expresses what the court said. If you are the unsuccessful party, signing the order does not mean that you agree with what the court has ordered. If, for any reason, you suspect that the other party may refuse or delay signing the order (thus delaying the filing of the order), you may ask the judge or master at the hearing to waive the requirement that the other party must approve the form of the order.

If the parties cannot agree on the terms of the order, the order can be settled by a registrar (Rule 13-1(11)). Transcripts of the original court hearing are not required, but the registrar will need a copy of the court clerk's notes. In some cases the judge may direct the order to be provided to him or her for approval. In other cases, the judge may direct the registrar to draw up and enter the order (Rule 13-1(15)).

Registry Approval

When you have the signatures you need, or if the judge or master signed your draft order, take it to the court registry. The registry staff will then compare the order with the notes taken by the court clerk to make sure that the order accurately states what was ordered. This process is called entering an order.

The registry stamps the order and sends you a copy of the entered order. This is the document you will use to enforce your judgment.

If you and the other party cannot agree on what was said in court, you may need to book a hearing before the registrar to clarify the terms of the order, using Form 49 (see Rule 13-1(12)). The registrar may decide that the matter must go back to the judge or master who heard the matter.

Amending an Order

Mistakes happen. You may have made a mistake in drafting the order. For example, the order may contain an incorrect address or an error in calculation. You may need to redraft the order to correct the error. Rule 13-1(17) allows the court, at any time, to correct a clerical error.

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: 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: www.JusticeAccessCentre.bc.ca.

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: www.CourtServicesOnline.gov.bc.ca
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: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm

Printable court forms are available at: www.SupremeCourtBC.ca/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 34

(Rules 8-3 (1), 13-1 (3) and 17-1 (2))

1

[Style of Proceeding]

CONSENT ORDER

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

2

BEFORE } A JUDGE OF THE COURT
 } or
 } A MASTER OF THE COURT }[dd/mmm/yyyy].....
 } or
 } A REGISTRAR

3

ON THE APPLICATION of[party(ies)]....., without a hearing and by consent;

4

THIS COURT ORDERS that:

1

2

3

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:

5

[A signature line in the following form must be completed and signed by or for each consenting party.]

.....

Signature of party lawyer for[name of party(ies)].....

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

.....

Signature of

party lawyer for[name of party(ies)].....

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

By the Court.

.....

Registrar

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.

This must be typed. It must be signed by all affected parties and then filed in the court registry for entry; once entered it is returned to the submitting party who is responsible for serving copies on the other parties.

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. Insert the name of the judge or master who heard the application and the date of the application.
 3. Insert the name of the party who made the application.
 4. List the court orders (e.g., The defendant produce a list of documents in his possession within 7 days).
 5. All parties who consented to the orders must sign the order.
-

NOTES

Form 35

(Rules 8-4 (1), 13-1 (3) and 17-1 (2))

1

[Style of Proceeding]

ORDER MADE AFTER APPLICATION

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

BEFORE THE HONOURABLE JUSTICE

2

} or A JUDGE OF THE COURT }[dd/mmm/yyyy].....
or }
MASTER
or A MASTER OF THE COURT

3

ON THE APPLICATION of[party(ies)].....

4

- coming on for hearing at on[dd/mmm/yyyy]..... and on hearing[name of party/lawyer]..... and[name of party/lawyer].....;
- without notice coming on for hearing at on[dd/mmm/yyyy]..... and on hearing[name of party/lawyer].....;
- without a hearing and on reading the materials filed by[name of party/lawyer]..... and[name of party/lawyer].....;

5

THIS COURT ORDERS that:

[If any of the following orders are by consent, indicate that fact by adding the words "By consent," to the beginning of the description of the order.]

1

2

3

6

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each approving party.]

.....
Signature of

party lawyer for[name of party(ies)].....

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

.....
Signature of

[] party [] lawyer for[*name of party(ies)*].....

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

By the Court.

.....
Registrar

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.

This order must be typed. It must be signed by all affected parties and then submitted to the court registry for entry; once entered it is returned to the submitting party who is responsible for serving copies on the other parties.

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. Insert the name of the judge or master who heard the application and the date of the application.
 3. Insert the name of the party who made the application.
 4. Check off the box that applies to your case, and complete the information (e.g., the date of the hearing, the names of the parties or lawyers who presented material at the hearing).
 5. List the court orders (e.g., The defendant produce a list of documents in his possession within 7 days).
 6. Every party who was at the hearing must sign the order.
-

NOTES

Form 48

(Rule 13-1 (3))

1

[Style of Proceeding]

ORDER AFTER TRIAL

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

2

BEFORE THE HONOURABLE JUSTICE[dd/mmm/yyyy].....

3

THIS ACTION coming on for trial at, on[dd/mmm/yyyy]....., and on hearing[name of party/lawyer]..... and[name of party/lawyer]....., [add the following if applicable: AND JUDGMENT being reserved to this date]:

THIS COURT ORDERS that:

4

- 1
- 2
- 3

[If any of the following orders are by consent, indicate that fact by adding the words “By consent,” to the beginning of the description of the order.]

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each approving party.]

.....
Signature of [] party [] lawyer for[name of party(ies)].....

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

.....
Signature of [] party [] lawyer for[name of party(ies)].....

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

By the Court.

.....
Registrar

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.

This order must be typed. It must be signed by all affected parties and then submitted to the court registry for entry; once entered it is returned to the submitting party who is responsible for serving copies on the other parties.

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. Insert the name of the trial judge.
 3. Insert location, date, and the names of the parties (or their lawyers) who made presentations at trial.
 4. List the court orders (e.g., the defendant will immediately pay the money the plaintiff spent on repairs to his damaged motor vehicle).
-