

Resolving Your Case Before Trial

This booklet explains how you can resolve your case before it goes to trial. Only a small percentage of cases go to trial, as most disputes are resolved before reaching that stage. The ways that can happen are discussed in this guidebook. It is important to think about settling your case; lawsuits are time-consuming and expensive and your costs increase at every stage of the proceeding.

The most common way to resolve your claim is to negotiate a settlement with the other party or parties. Using a mediator to help settle your claim is also an excellent and efficient way to resolve a dispute. See the guidebook, *Alternatives to Going to Court*.

Stopping your claim against one or all defendants is called discontinuance and you may decide to do that at some point in your lawsuit if it appears that you have very little chance of succeeding in your action or little hope of collecting judgment against the defendant. Similarly, the defendant can end the lawsuit by withdrawing his or her response to the claim. This might happen if the defendant knows that the defence cannot be proved at trial, and makes a decision to save costs by withdrawing the response.

Striking pleadings is an option to have the court partially or completely disallow a notice of civil claim, response or other pleading if the pleading is scandalous, frivolous or vexatious (see Rule 9-5).

Default judgment may be taken against the defendant where the defendant fails to file a response to the notice of civil claim, does not comply with the rules, or withdraws a response to a civil claim.

Summary judgment is another way to resolve a lawsuit before trial. Such an application is brought where the plaintiff can prove that there is no reasonable defence to the claim, or the defendant can prove that the plaintiff has no reasonable claim against him or her.

Summary trials are based on written evidence (e.g., affidavits, interrogatories, expert reports, and written argument) rather than hearing the evidence of witnesses in court. You can have your case heard by a judge much sooner than a regular trial, but summary trials are complicated in other ways. It is always a good idea to talk to a lawyer about the best way to resolve your case before trial.

Settlement

If your dispute reaches the stage where an action has been commenced in the Supreme Court, you can still reach an agreement to resolve the dispute any time before the completion of the trial. A settlement ends or avoids a court proceeding. Cases are sometimes even settled after trial if a notice of appeal is filed.

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.

Why it's important to think about settling

Lawsuits are very expensive and your costs increase at each stage. If you are involved in a lawsuit, get as much information as possible early on in the process so you can think about settling your claim at the earliest opportunity.

When considering settlement, you need to think about the money you have already spent and the money you will spend if you take your case to trial. Think also about the possibility that you may lose the lawsuit and be ordered to pay the other party's costs. Making an offer to settle does not mean that you are admitting liability in the lawsuit. It simply means that you would like to resolve the lawsuit before it goes to trial.

Under the rules, the party who is unsuccessful in a lawsuit is generally ordered to pay the other party's costs. The costs of the other party are calculated in accordance with the rules (see Rule 14-1 and Appendix B of the Rules of Court). Although costs only cover a portion of the total expenses that someone must pay to take a case to court or defend a case, they can still be very significant. For more information about costs, see the guidebook, *Costs in the Supreme Court*.

In addition to the expense and the risk that you will be ordered to pay costs, you also need to think about the amount of time you will have to spend in:

- locating, listing and examining documents;
- preparing for and attending examinations for discovery;
- obtaining experts; and
- preparing for trial and attending the trial.

Consider also the emotional toll of taking your case to trial. You will be doing all this work in addition to your regular daily routine. It may take much longer than you expect and there is no guarantee that you will win.

Getting advice from a lawyer about your case can help you figure out what would be a reasonable

settlement of your claim. A lawyer may also be able to help you negotiate a settlement. If you can reach an agreement to settle the case, make sure that your settlement is documented so that it ends the dispute. A lawyer can give you advice on how to properly document a settlement so that the settlement agreement cannot be later questioned and reopened.

If you are unable to negotiate a settlement directly with the other side, a mediator may be able to assist you and the other party (or parties) to reach an agreement. See the guidebook, *Alternatives to Going to Court* for more information on mediation.

What documents do you need to settle a case?

Most of the documents that the parties prepare to settle a case are just exchanged between the parties and are not filed with the court. These may include:

- a letter to the other party setting out the terms of the settlement;
- an acknowledgement that the other party accepts the terms of the settlement;
- a release (this is a legal document which the parties sign to acknowledge that he or she is giving up all claims in connection with the matters giving rise to the dispute as part of the terms of the settlement); and
- any other documents required to complete the settlement and which might include:
 - share transfers;
 - property transfers; and
 - cheques.

Documents prepared in an effort to settle a claim often contain the term "without prejudice." This term means that the information contained in the document cannot later be used against that party in court if the parties are not able to settle the matter. Generally speaking, negotiations to settle disputes are conducted on a "without prejudice" basis to encourage parties to be forthcoming and to engage in productive discussions.

Where a settlement is reached after a court case has been commenced, a document called a consent order (Form 34) is usually prepared and filed with the court. This document tells the court that the case has been settled and that the parties have agreed to have the court dismiss the claim. A consent dismissal order has the same effect as if a judge heard the case on the merits and dismissed it. Once all the documents are signed and exchanged, the consent dismissal order can be filed with the registry, funds are exchanged and the settlement is complete.

Does the court assist the parties in reaching a settlement?

If you or the other party requests a Case Planning Conference (CPC) (see the guidebook, *The Case Planning Conference*), one of the topics for discussion will be the possibilities of a settlement and the most appropriate dispute resolution options for your case. The judge or master may direct the parties to attend a settlement conference. A settlement conference is an informal discussion between the judge and the parties to explore all possibilities of settlement. If a settlement cannot be reached, the judge who presided at the conference cannot preside at the trial, unless the parties consent. (Rule 9-2 provides more information about settlement conferences.)

Making a formal settlement offer

You can make an offer to settle a lawsuit by simply communicating the offer to the other side (either verbally or in writing) or you can deliver what is often called a “formal” offer to settle under Rule 9-1.

The significance of making a formal offer to settle under Rule 9-1 is that it provides for additional costs to be paid (beyond what would normally be paid under the rules) by a party who unreasonably fails to accept an offer to settle and proceeds to trial. The cost consequences are described in Rule 9-1(5) and (6). For example, if you unreasonably fail to accept an offer to settle, you may be responsible for paying your own lawyer’s fees for the trial, plus the lawyer’s fees for the other party after the offer to settle was delivered to you.

An offer under Rule 9-1 can be made in any form, as long as:

- it is in writing and made by a party to the proceeding;
- it is served on all the parties of record; and
- contains the following sentence:
 - The ___[party(ies)]_(plaintiffs or defendants)___, ___[names of parties]___, reserve(s) the right to bring this offer to the attention of the court for consideration in relation to costs after the court has pronounced judgment on all other issues in this proceeding.

Under the rules, the fact that an offer was delivered under Rule 9-1 cannot be disclosed to the judge until he or she makes a decision about the claim (see Rule 9-1(2)). So, if the case goes to trial, you cannot tell the judge anything about any offer to settle that was delivered under Rule 9-1 until the trial is over.

The purpose of Rule 9-1 is to encourage parties to settle claims rather than go to trial. By making an offer to settle, you are not admitting liability in your case. If you wish to make a Rule 9-1 offer to settle, or if one is delivered to you, it is a good idea to get some advice from a lawyer so that you fully understand what it means if the offer is not accepted.

Discontinuance and Withdrawal

After you start a proceeding, you may decide that you no longer wish to continue the action against one or more of the other parties. This is called discontinuance. Similarly, if you have been sued, and you filed the appropriate documents to defend the proceeding, you may decide to withdraw your response. This is called withdrawal.

Discontinuances and withdrawals apply to both proceedings started by notice of civil claim and to proceedings started by a petition. They also apply to counterclaims and third party proceedings.

Rule 9-8 deals with discontinuance and withdrawal. Discontinuance or withdrawal may:

- end the need for trial or hearing;
- shorten the time required for, or the complexity of, a trial;
- reduce the number of defendants through discontinuance by the plaintiff or withdrawal of the defence by one or more defendants; or
- allow the plaintiff to take default judgment against a defendant who withdraws a response.

There are cost consequences associated with discontinuance and withdrawal. If you discontinue or withdraw a claim against a party, Rule 9-8(4) requires you to pay the costs of that party. However, you may be able to negotiate an agreement with the other party so that costs do not have to be paid.

Discontinuance by the plaintiff

If you are the plaintiff, you can shorten a trial by discontinuing an action against a defendant who:

- is not capable of paying a judgment – that is, he or she might be bankrupt or live elsewhere, and it would be too expensive to try to collect on your judgment;
- is unnecessarily named in the action; or
- has agreed to a settlement.

Fewer defendants means that you have fewer documents to review and fewer witnesses at trial and your argument is likely to be less complicated. Petitioners may also discontinue proceedings against petition respondents.

When you can discontinue

A plaintiff can discontinue the case against any defendant and remove that defendant from the action any time before the notice of trial has been filed.

After the notice of trial has been filed, a plaintiff can discontinue the case against a specific defendant but

must have either the consent of all other parties or an order from the court to allow the discontinuance.

To discontinue a claim, prepare a document called a notice of discontinuance (Form 36). A copy of this document is attached to this guidebook. The same procedure applies to petitioners who decide to withdraw a petition.

Withdrawal by the defendant

The defendant can withdraw:

- all of his or her response against all of the plaintiffs;
- all of his or her response against one or more plaintiffs, leaving the response intact against the rest of the plaintiffs; or
- only part of his or her response against any or all of the plaintiffs, leaving the balance of the response intact.

If the defendant withdraws in part, the trial will be less complicated as there will be fewer issues that need to be resolved. If there is only one defendant, and he or she completely withdraws his or her response against the plaintiff, the plaintiff can then proceed to get a default judgment.

To withdraw a response, or part of it, the defendant prepares a notice of withdrawal (Form 37). The same procedure applies to a petition respondent who decides to withdraw from a proceeding commenced by petition.

Default Judgment

Default judgments are ordered when one party has failed to file and serve a response to the claim within the time allowed by the rules (Rule 3-8). A plaintiff can also apply for a default judgment if the defendant has withdrawn the response to civil claim.

If you are the plaintiff, the default judgment process will depend on the type of claim you have:

1. You have a claim for a specified amount of money. For example, if you are claiming damages because the defendant did not pay the full amount for the purchase of equipment, you can specify the amount of money still owed. In this case, you would file a default judgment seeking the amount you are owed, plus any interest payable under the *Court Order Interest Act*, plus your costs under Appendix B to the rules.
 2. You have a claim for money damages, but the exact amount has to be determined by the court. For example, if you claim an amount for pain and suffering arising from an injury, the court will need to consider evidence to determine the nature of the injury and what amount you are owed as a result of the injury. In this case, the court will grant a judgment that indicates the amount of the damages is to be assessed. The plaintiff will then have to schedule a further application to the court to have a decision made on the damages.
 3. You have a claim for detention of goods by the defendant. For example, the defendant has failed to return a painting to you at the end of an exhibit. In such a case you can either ask the court to enter judgment ordering the defendant to deliver the painting, or you can ask the court for judgment in your favour for the value of the painting, with the amount to be assessed at a later hearing.
- Proof that the documents (the notice of civil claim) that the defendant was required to respond to were served on the defendant. You do this by filing an affidavit of service. For more information on affidavits of service see the guidebook, *Starting an Action by Notice of Civil Claim*.
 - Proof that the defendant has not responded as required under the rules. If the defendant has not filed a response, you can obtain this proof by filing a document called a requisition (Form 17) that asks the registry to search the file for a response from the defendant. If there is no response, then the requisition will be returned with the word “nil” printed on it. This can then be filed as part of your application for default judgment. If the defendant has not served a response, then you can file an affidavit that states that you have not received a response;
 - A requisition that asks the court for a judgment on the basis that the defendant is in default. The search for a response can be requested on the same requisition used to file the application for default judgment.
 - A draft default judgment, prepared using Form 8, a copy of which is attached to this guidebook.
 - In cases where you are seeking final judgment, also prepare also a bill of costs that sets out the costs you claim you are entitled to under Appendix B of the rules. See the guidebook, *Costs in the Supreme Court*, for more information on this topic.
 - If you are claiming interest, you must include an interest calculation with your application.

If your claim does not fall within one of these three categories and the defendant has not filed a response, you can apply for judgment under Rule 3-8(10). Your application must be supported by an affidavit setting out the facts that verify the claim and that you know of no fact that constitutes a defence to the claim except as to amount. Generally speaking, in order to apply for a default judgment you must provide the following material to the court:

If you are applying for a default judgment against a party who is under a legal disability (for example, someone who has been declared to be incapable of handling his or her affairs by the court), you must appear before the court to apply for an order to allow

you to file a default judgment (Rule 20-2 (14)).

Summary Judgment

Summary judgment applications (Rule 9-6) are intended to weed out those claims and responses that have no merit and will fail at trial. In other words, if you can show that the defendant has no real defence, you may be able to obtain summary judgment against him or her, without having to go through a trial.

Summary judgment applications are called “chambers proceedings” and so they must follow the rules, time limits, and procedures set out in Rules 8-1 (Applications), 22-1 (Chambers Proceedings) and 22-2 (Affidavits). See the guidebook, *Applications to Court*, for information and documents about the procedure. Read that guidebook, together with this one, in order to prepare for a summary judgment application.

Generally speaking, a summary judgment application should be made only in those cases where it is clear that the other party cannot win because he or she has no case or defence. A common example of an appropriate case for summary judgment might be when you have a claim for a debt owing to you and you can prove that the debt was incurred and that it has not yet been paid.

The main question that the court considers on these applications is whether there is any genuine issue between the parties that requires a trial to resolve. If you are the plaintiff, a summary judgment allows you to resolve the issues in your case and get judgment against the other party early on, saving you time and money. If you are the defendant, it allows you to resolve the claim against you at an early stage. Typically, a summary judgment application is made only after a response has been filed and the defendant is defending the proceeding. However, in some situations a summary judgment application can be made where the defendant has not filed a response. Those situations are explained in this guidebook, under the heading, default judgment.

Either a master or a judge can hear summary judgment applications.

When you can seek summary judgment

If you are the plaintiff, you may apply for summary judgment under Rule 9-6 on the grounds that:

- the defendant does not have a defence against all or part of your claim; or
- the defendant does not have a defence against your claim except about the amount. In this case, you must be able to prove the amount you are owed.

If you are the defendant, you can apply for summary judgment on the ground that there is no merit to all or part of the claim that the plaintiff is making against you.

What evidence do you need?

Witnesses are not permitted in a summary judgment application. All evidence is set out in affidavits. This means that the information in your affidavit must be very clear and accurate.

You may want to consult a lawyer when you prepare your affidavits to make sure that you have included everything necessary and that they do not contain information that should not be included. The affidavits determine the success or failure of your summary judgment application.

The person who swears any affidavit supporting your application must have direct knowledge of the facts contained in the affidavit. In other words, the person swearing the affidavit should not give evidence about facts that someone else told him or her. Read the guidebook, *A Guide to Preparing Your Affidavit* for more information about preparing your documents. Keep in mind that if there is any genuine dispute about the facts of the case, summary judgment is probably not appropriate. Summary judgment is most appropriate when one side is entitled to judgement as a matter of law.

If you are the plaintiff, your affidavits must set out:

- the facts that prove the claim you are seeking judgment on; and
- confirmation that the person swearing the affidavit knows of no facts constituting a defence to the claim you are seeking judgment on, except possibly as to the amount of the claim.

If you are the defendant, your affidavits must set out:

- the facts that prove that there is no merit in the plaintiff's claim; and
- confirmation that the person swearing the affidavit knows of no facts that support the claim.

The guidebook, *Applications to Court* will give you further helpful information on what other steps you need to take to prepare for a summary judgment application.

Summary Trials

Summary trial applications (Rule 9-7) are intended to provide the parties with the ability to obtain a final adjudication by a judge without a traditional trial. Summary trials are appropriate in cases where the court is able to determine the facts of the case through written documents only and there is no need to fully present evidence through the testimony and cross-examination of witnesses.

Summary trial applications are considered “chambers proceedings” and must follow the rules, time limits, and procedures set out in Rules 8-1 (Applications), Rule 22-1 (Chambers Proceedings) and 22-2 (Affidavits). See the guidebook, *Applications to Court* for information and documents about the procedure. In a summary trial application, the judge must first determine that the case is appropriate for summary trial. If the case is suitable for a summary trial, evidence is given by affidavit rather than in person and the trial is dramatically shortened.

Like a summary judgment, a summary trial is based on affidavit evidence. However, in a summary trial, you may also present other written evidence to the court. This evidence could include:

- answers to interrogatories;
- selected questions and answers from examinations for discovery;
- admissions made in response to a notice to admit; and
- expert reports.

For information about all these types of documents, see the guidebooks, *The Discovery Process* and *Trials in the Supreme Court*. Because this evidence is so important to your case, you may want to consult a lawyer about how much and what type of evidence you should use at the summary trial. A lawyer will be able to advise you about whether you need an expert report or opinion, whether you should include interrogatories or examination for discovery questions and answers, and the form in which they should be presented.

A summary trial can result in a judgment even if there is a dispute between the parties about the facts behind the claim or the defence to the claim. This is different than a summary judgment, which is only given if there is no outstanding issue that needs to be resolved.

You can apply for a summary trial after the response to the claim that is the subject of the summary trial application has been filed.

Summary trials are heard by a judge and although they are meant to be short, they generally require more than 2 hours. This means that the date and time of the hearing must be fixed by the registrar and a written argument may be included in the application record. For more information on what is required in an application that will take longer than 2 hours, see the guidebook, *Applications to Court*.

Masters cannot hear summary trials. If you already have a trial date, note that a summary trial application must be heard by the court at least 42 days before the scheduled trial date (see Rule 9-7(3)). You will have to take this into account in scheduling a date to have the application heard.

Evidence in a summary trial application

Summary trials rely on written evidence, so make sure that your written evidence is complete and accurate. It is crucial to your case. Your evidence must not conceal any facts and be absolutely frank.

The court takes your evidence – affidavits, interrogatory answers, expert reports or opinions, examination for discovery questions and answers – and uses it to make a final judgment on the issues.

In a summary trial you are asking the court to make a final order. For that reason, the person who swears any affidavit supporting your application must have direct knowledge of the facts contained in the affidavit. In other words, the person swearing the affidavit should not give evidence about facts that someone else told him or her.

Make sure your affidavits:

- ✦ are organized in a way that makes sense;
- ✦ are easy to read and grammatically correct;
- ✦ are concise and to the point, but contain all the facts required; and
- ✦ set out the facts in chronological order.

You can also provide to the court relevant interrogatory answers and examination for discovery questions and answers. Do not include entire transcripts, but make sure that the information:

- ✦ is well organized;
- ✦ includes everything needed to prove your position;
- ✦ does not include anything that is not needed;
- ✦ puts the questions and answers together and numbers them; and
- ✦ is easy to read.

Bring the original discovery transcript with you in case the court requests it. You can also provide expert reports or opinions to the court. For further information about expert reports see the guidebook, *Trials in the Supreme Court*. Make sure they meet the requirements of Rules 11-1 to 11-7, which deal with expert reports. Expert reports or opinions may be crucial to your case.

What you need for your application

In general, you will need the following documents to apply for summary trial:

- ✦ a notice of application (Form 32);
- ✦ supporting affidavits; and
- ✦ an application record (see Rule 8-1(15))

The guidebook, *Applications to Court*, sets out further helpful information about how to prepare for a chambers application. All the documents and rules referred to in this guidebook can be found at any courthouse library or at the websites set out at the beginning of this guide.

What can the court order?

At the summary trial, the court may:

- ✦ grant judgment in favour of any party, on either part of the claim or all of the claim;
- ✦ impose terms about enforcement of the judgment (such as when it must be paid); or
- ✦ award costs.

If the judge is not able to grant judgment, the judge may order that a full trial be held or:

- ✦ order that the parties attend a case planning conference;
- ✦ make any order that could be made in a case planning conference; or
- ✦ make any other order that furthers the object of the Rules.

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 2

(Rule 3-3 (1))

[Style of Proceeding]

RESPONSE TO CIVIL CLAIM

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

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

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s(s’) Response to Facts

[Indicate, for each paragraph in Part 1 of the notice of civil claim, whether the fact(s) alleged in that paragraph is(are) admitted, denied or outside the knowledge of the defendant(s).]

- 1 The facts alleged in paragraph(s)[list paragraph numbers]..... of Part 1 of the notice of civil claim are admitted.
- 2 The facts alleged in paragraph(s)[list paragraph numbers]..... of Part 1 of the notice of civil claim are denied.
- 3 The facts alleged in paragraph(s)[list paragraph numbers]..... of Part 1 of the notice of civil claim are outside the knowledge of the defendant(s).

Division 2 – Defendant’s(s’) Version of Facts

[Using numbered paragraphs, set out the defendant’s(s’) version of the facts alleged in those paragraphs of the notice of civil claim that are listed above in paragraph 2 of Division 1 of this Part.]

- 1
- 2

Division 3 – Additional Facts

[If additional material facts are relevant to the matters raised by the notice of civil claim, set out, in numbered paragraphs, a concise statement of those additional material facts.]

- 1
- 2

Part 2: RESPONSE TO RELIEF SOUGHT

[Indicate, for each paragraph in Part 2 of the notice of civil claim, whether the defendant(s) consent(s) to, oppose(s) or take(s) no position on the granting of that relief.]

- 1 The defendant(s) consent(s) to the granting of the relief sought in paragraphs[list paragraph numbers]..... of Part 2 of the notice of civil claim.
- 2 The defendant(s) oppose(s) the granting of the relief sought in paragraphs[list paragraph numbers]..... of Part 2 of the notice of civil claim.
- 3 The defendant(s) take(s) no position on the granting of the relief sought in paragraphs[list paragraph numbers]..... of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

8

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

1

2

9

Defendant'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):

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 plaintiff.

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. This is where you respond to the facts that the plaintiff has set out in the notice of civil claim. There are facts that you may agree with (e.g., the date that the plaintiff fell down your stairs); disagree with (e.g., that your stairs were unsafe); or you don't know (e.g., that it was – 5 degrees Celsius on the day of the accident).
 3. State your own version of the facts here. Give details of the items that you disagree with in part 2 of the previous section.
 4. State other facts that are important to your case that were not raised by the plaintiff (e.g., that the plaintiff climbed over a locked gate to get into your yard).
 5. With respect to the orders that the plaintiff is asking the court to make, set out which ones (if any) you agree to.
 6. With respect to the orders that the plaintiff is asking the court to make, set out which ones you don't agree with.
 7. With respect to the orders that the plaintiff is asking the court to make, set out which ones (if any) you don't take a position on (e.g., are satisfied with whatever the court orders on that issue).
 8. Set out the legal basis of your claim, including the Court Rules, legislation, and case law that support your claim (e.g., the plaintiff trespassed on your property and is not entitled to damages for personal injury according to *Brown v. Smith*, 2009 BCSC 200).
 9. Set out your name. Your address must be a physical location (not just a post office box) where documents can be delivered.
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NOTES

Form 8

(Rule 3-8 (2), (3), (5), (6) and (7))

[Style of Proceeding]

1

BEFORE A REGISTRAR

DEFAULT JUDGMENT

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

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

[] The plaintiff(s) having filed and served a notice of civil claim and the defendant(s)[name(s)]..... having failed to file and serve a response to civil claim within the time allowed;

[] Pursuant to an order made by[judge/master]..... on[dd/mmm/yyyy]..... that this proceeding continue as if no response to civil claim had been filed by the defendant(s)[name(s)].....;

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

THIS COURT ORDERS that:

[] [if Rule 3-8 (3) is applicable] the defendant(s)[name(s)]..... pay to the plaintiff(s) the sum of \$.....;

[] [if Rule 3-8 (5) is applicable] the defendant(s)[name(s)]..... pay to the plaintiff(s) damages to be assessed;

[] [if Rule 3-8 (6) (a) (i) is applicable] the defendant(s)[name(s)]..... deliver to the plaintiff(s) the goods detained by the defendant(s), being[description of goods]....., or pay to the plaintiff(s) the value of the goods to be assessed;

[] [if Rule 3-8 (6) (a) (ii) is applicable] the defendant(s)[name(s)]..... pay to the plaintiff(s) the value to be assessed of the goods detained by the defendant(s)[description of goods]..... ;

[Check the correct box(es) and complete the required information.]

THIS COURT FURTHER ORDERS that the defendant(s)[name(s)]..... pay to the plaintiff(s):

2
3
4
5

[] interest as claimed in the amount of \$.....

[] interest under the Court Order Interest Act in the amount of \$.....

[] costs in the amount of \$.....

[] costs to be assessed

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

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.

File this form in the court registry and personally serve it on the party against whom you obtained default judgment.

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. 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. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 2. This amount is interest owing on your unpaid judgment.
 3. Court Order Interest rates are posted on the court's website. Go to About the Supreme Court – Registrar's Office – Court Order Interest Rates.
 4. Calculate costs by looking at s. 6(1) of Appendix B to the Rules, plus your disbursements.
 5. Check this box if your costs are still to be assessed.
-

NOTES

Form 17

(Rules 4-6 (1), 5-1 (4), 5-2 (4), 5-4 (1), 8-1 (21.1) and (22), 8-5 (2), 9-4 (1), 12-2 (6), 13-3 (25), 16-1 (16.1) and (17), 20-5 (3), 21-5 (4), 23-1 (9), 23-3 (10) and 23-5 (5))

1

[Style of Proceeding]

REQUISITION – GENERAL

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

Filed by:[party(ies)].....

2

Required:

This requisition is supported by the following:

[Include a description of supporting document(s). 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

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

Signature of

[] filing party [] lawyer for filing party(ies)

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

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. The Rules of Court will indicate if it must be served 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. Fill in what you are asking the court/court registry to do (e.g., search for an appearance; file a consent order; enter a default judgment, etc.).
-

NOTES

Form 17

No.....

.....Registry

In the Supreme Court of British Columbia

1

Between

Plaintiff(s)

and

Defendants(s)

Requisition – General

2

Filed by:.....[party(ies)].....

Required:

3

1. Application pursuant to Supreme Court Civil Rule 5-1 (3) to shorten the service period applicable to a notice of case planning conference.
2. Application pursuant to Supreme Court Civil Rule 5-2 (3) (a) exempting a person from attending a case planning conference.
3. Application pursuant to Supreme Court Civil Rule 5-2 (3) (b) respecting the method of attendance at a case planning conference.
4. Application pursuant to Supreme Court Civil Rule 12-2(4) for an order respecting the manner a person is to attend a trial management conference or exempting a person from attending a trial management conference.
5. Application pursuant to Supreme Court Civil Rule 23-5(4) for directions that an application be heard by way of telephone, video conference or other communication medium and the manner in which the application is to be conducted.

Term of order sought:

4

1. The notice of case planning conference must be served on the[name of party].....by[set out date]..... .
2. [name of lawyer or party]..... is exempted from attending the case planning conference in person and may attend by[set out method of attendance]... ..
3. [name of lawyer or party]..... may attend the case planning conference by[set out manner of attendance]..... .
4. [name of lawyer or party]..... may attend the trial management conference by[set out manner of attendance]..... .
or
.....[name of lawyer or party]..... is exempt from attending the trial management conference.

5

5. The application of[name of party]..... be heard by[set out method of hearing]..... . (If required) The application be heard in the following manner;[set out manner of hearing]..... .

6

This requisition is supported by the following: [include reasons why the order is sought]

Date:

.....

Signature of
[] filing party [] lawyer for filing
party(ies)

[type or print name]

7

Address of applicant:

Phone number: _____

8

Order granted []

or

Application denied []

Date:

Judge/Master of the Supreme Court

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.

Use this version of Form 17 when your application is made pursuant to Rule 5-1(4), 5-2(3)(a), 5-2(3)(b), 12-2(4), or 23-5(4). File this form in the court registry. The Rules of Court will indicate if it must be served 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. Your name goes here.
 3. Check the box that applies (i.e., what application you are making).
 4. Check off the order you are asking the court to make.
 5. Put your name here, and how the application will be decided (e.g., by a hearing in court, or without a court hearing).
 6. State why you are asking the court to make the order (e.g., I am requesting that I attend the case planning conference by telephone instead of in person because I will be away on vacation and not near the courthouse on the date set for the conference).
 7. Put your address here.
 8. The court will complete this section, depending on whether your application is granted or denied.
-

NOTES

Form 32

(Rule 8-1 (4))

1

[Style of Proceeding]

NOTICE OF APPLICATION

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

Name(s) of applicant(s):

2

To:*[name(s) of party(ies) or person(s) affected]*.....

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at*[address of registry in which the proceeding is being conducted]*..... on*[dd/mm/yyyy]*..... at*[time of day]*..... for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

3

[Using numbered paragraphs, set out the order(s) that will be sought at the application and indicate against which party(ies) the order(s) is(are) sought.]

1

2

4

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out a brief summary of the facts supporting the application.]

1

2

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

5

Part 3: LEGAL BASIS

[Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal arguments on which the applicant(s) intend(s) to rely in support of the orders sought. If appropriate, include citation of applicable cases.]

1

2

6

Part 4: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with the notice of application and any other affidavits and other documents already in the court file on which the applicant(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

7

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

[Check the correct box.]

[] This matter is within the jurisdiction of a master.

[] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

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

Signature of

[] applicant [] lawyer for applicant(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:[dd/mmm/yyyy].....

.....
Signature of Judge Master

Appendix

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

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

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 registry and serve it on the other parties, and anyone that is affected by the order (e.g., if you are seeking production of documents from a doctor (who is not a party to the action) the doctor must be served with the notice).

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 party that you want to be in court at the hearing of your application.
 3. List the orders that you are seeking in your application (e.g., That the defendant produce the financial statements of his company for 2009 within 21 days of the date of this order).
 4. State the facts you are relying on (e.g., The defendant's accountant has advised that the financial statements were completed on February 5, 2010, but the defendant has refused to produce them to me despite written requests on 15 February 2010, 28 February 2010, 15 March 2010, and 30 March 2010).
 5. State the legal basis of your application (e.g., the defendant is required to produce financial statements to me as a debenture holder of the company immediately upon demand pursuant to s. 201 of the *Business Corporations Act of British Columbia*, SBC 2002, Ch. 57).
 6. List the affidavits that you will be relying on in your chambers application (e.g., Affidavit #1, of John Brown, made June 3, 2010).
 7. Estimate the time it will take you and the other party to make submissions to the judge or master in chambers.
-

NOTES

Form 36

(Rule 9-8 (1))

[Style of Proceeding]

NOTICE OF DISCONTINUANCE

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

1

Filed by:[party(ies)].....

2

TAKE NOTICE that[party(ies)].....

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

discontinue(s) this proceeding against[party(ies)].....

3

discontinue(s) the following claim(s) in this proceeding against[party(ies)]..... :

(a)

(b)

(c)

[Check the correct box(es).]

Notice of trial has not been filed

Notice of trial has been filed and this discontinuance is

with the consent of all parties of record

by leave of the court

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

Signature of filing party lawyer for filing party(ies)

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

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 other parties of record.

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 your name if you are discontinuing the action.
 3. Identify the claim(s) that is being discontinued and the parties you are discontinuing it against (e.g., the claim for damages for breach of contract against the defendant, Joe Brown).
-

NOTES

Form 37

(Rule 9-8 (3))

[Style of Proceeding]

1

NOTICE OF WITHDRAWAL

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

2

Filed by:[party(ies)].....

TAKE NOTICE that the defendant(s),[name(s)].....,

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

withdraw(s)[his/her/their]..... response to civil claim in this proceeding

withdraw(s)[his/her/their]..... response to civil claim in respect of the following claim(s) in this proceeding:

3

(a)

(b)

(c)

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

Signature of filing party lawyer for filing party(ies)

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

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 other parties of record.

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 your name if you are withdrawing a response to a claim.
 3. Specify the response that is being withdrawn (e.g., The defendant's response regarding liability for the motor vehicle accident on August 10, 2007).
-

NOTES

Form 68 (Rule 16-1 (8))

1

[Style of Proceeding]

NOTICE OF HEARING

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

2

To:*[name(s) of petition respondent(s), if any]*.....

TAKE NOTICE that the petition of*[party(ies)]*..... dated*[dd/mmm/yyyy]*..... will be heard at the courthouse at*[address]*..... on*[dd/mmm/yyyy]*..... at*[time of day]*..... .

1 Date of hearing

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

- The parties have agreed as to the date of the hearing of the petition.
- The parties have been unable to agree as to the date of the hearing but notice of the hearing will be given to the petition respondents in accordance with Rule 16-1 (8) (b) of the Supreme Court Civil Rules.
- The petition is unopposed, by consent or without notice.

2 Duration of hearing

[Check the correct box(es) and complete the required information.]

- It has been agreed by the parties that the hearing will take*[time estimate]*..... .
- The parties have been unable to agree as to how long the hearing will take and
 - (a) the time estimate of the petitioner(s) is minutes, and
 - (b) the time estimate of the petition respondent(s) is minutes.
 - the petition respondent(s) has(ve) not given a time estimate.

3 Jurisdiction

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

3

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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

Signature of petitioner lawyer for
petitioner(s)

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

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 each petition respondent.

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 in the name of the person respondent whom you wish to notify about the application.
 3. Masters cannot hear applications that will make a final decision in your case. The matters that must be heard by a judge instead of a master are discussed in section 4 of this guidebook.
-