

# Expedited Litigation in Supreme Court – Rule 68

*This guidebook (updated January 2008) provides general information about civil, non-family claims in the Supreme Court of B.C. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it. Legal advice must come from a lawyer.*

## Where You Can Get Help With Your Case

### Information if You Represent Yourself

The BC Supreme Court Self-Help Information Centre ([www.supremecourtselphelp.bc.ca](http://www.supremecourtselphelp.bc.ca)) provides legal information, education, and referral services for family and civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Vancouver location of the Supreme Court of British Columbia.

### Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed under *legal advice* on the website for the BC Supreme Court Self-Help Information Centre.

### Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court of BC. Not only do they ensure fairness to all parties involved in a lawsuit, they will guide you through every step of your case and set time limits for when certain steps must be done. You can find these Rules at the courthouse library, or on the court's website at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca). (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

### Forms

Official court documents (called court forms) must be used when you bring a dispute to court. You can print out blank forms for use in your lawsuit from the Supreme Court website. Go to [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca). (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms).

For information about family law claims, go to [www.familylaw.lss.bc.ca](http://www.familylaw.lss.bc.ca).

Before you start your claim, you should consider talking to a lawyer to help you understand the law and the procedures that might apply to your case. You may be eligible to obtain free (pro bono) legal advice.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove;
- the possible legal arguments for your case.

You will also need to know about the Rules of Court and the forms that must be used in your lawsuit. If you do not understand these things, you might miss something (i.e. a deadline) and hurt your case. If you sue and lose, you might be ordered to pay the costs of the other party.

# Expedited Litigation

**T**his guidebook contains an overview of Rule 68, the Expedited Litigation Rule. Rule 68 applies to all actions started in Supreme Court Registries where the amount claimed is \$100,000 or less.

## What is expedited litigation?

Expedited litigation streamlines the process of bringing a lawsuit to court. It does this by limiting the pre-trial procedures and evidence that you can call at trial. It also requires you to disclose your information to the other party early in the litigation process. What this means to you is that your lawsuit can be resolved faster, may not be as complicated and, as a result, may cost less to complete.

Rule 68 can only be used if you have started your case using a writ of summons and statement of claim. It does not apply to originating applications, which are those cases started with a petition. Expedited litigation cannot be used in a family proceeding or a class action lawsuit.

Under the expedited litigation process:

- the amount claimed must be \$100,000 or less;
- the list of documents must be delivered soon after the case has been started;
- examinations for discovery are not allowed unless both parties agree or the court orders;
- any examinations for discovery are limited to 2 hours unless both parties agree or the court extends the time limit;
- pre-trial examination of witnesses and interrogatories are not allowed;

- early in the proceedings, each party must deliver a list of witnesses and a summary of what they expect each witness will say;
- the summary of evidence to be provided by a witness must include the name and address of the witness, a brief point-form summary of the evidence that the witness is expected to provide, and the identity and nature of any document, not yet disclosed, that the witness expects to refer to at trial.
- unless the court orders, a party cannot lead evidence from a witness unless that evidence is reflected in that witness's summary of evidence.
- each party may call only one expert witness;
- jury trials are not allowed;
- the parties may not make a chambers application unless a case management conference or a trial management conference has already taken place;
- a trial management conference must be held 15-30 days before trial;
- the parties must file and deliver a trial brief 7 days before the trial management conference.

Rule 68 sets out the steps you need to take to have your case heard under the expedited litigation project. However, you should be aware that Rule 68 does not fully set out all the procedures that will apply to the trial of your action.

This guidebook, together with the guidebooks on *Starting a Civil Proceeding in Supreme Court*, *Defending a Civil Proceeding in Supreme Court*, *Discovery Process*, *Preparing for Trial and Trial*, will help you through the expedited litigation process.

## How do I start expedited litigation?

Rule 68 applies to all actions where the amount claimed is \$100,000 or less (not including interest or costs). The claim may be for money, real property (land or a building), and/or personal property. If the amount

claimed is more than \$100,000, Rule 68 can still apply if all the parties agree. If Rule 68 applies to your action or you and the other parties have agreed that Rule 68 should apply, the style of proceeding must include the words "Subject to Rule 68" below the listed parties, as follows:

		<b>No. L000000 Vancouver Registry</b>
<b>IN THE SUPREME COURT OF BRITISH COLUMBIA</b>		
<b>BETWEEN:</b>	<b>JOE SMITH and FRANK JONES</b>	
		<b>PLAINTIFFS</b>
<b>AND:</b>	<b>000000 HOLDINGS LTD., FRED JOHNSON and MARY BROWN</b>	
		<b>DEFENDANTS</b>
<b>SUBJECT TO RULE 68</b>		

## How can my action be removed from expedited litigation?

Your action can be removed from Rule 68 if one of the parties makes an application to the court to ask that the case be removed and the court makes that order. Any party can make this application by bringing a motion in chambers (see the guidebook called *Chambers Applications*). Even if neither party has asked the court to remove the case from Rule 68, the court can remove the case if it decides that it is not an appropriate case for expedited litigation.

If your action is removed from the expedited litigation project, you will have to use the

usual Supreme Court Rules that apply to trials. Your proceeding will probably take longer and cost more to complete.

## How are documents disclosed?

Except for subrule 26(11), Rule 26 (*Discovery and Inspection of Documents*) does not apply to Rule 68 actions. Rules 68(15) to (22) apply to document discovery in expedited litigation cases.

Each party must prepare and deliver a list of documents to every other party. This list must be delivered very quickly. It is best to prepare your list before you file your writ of summons or statement of defence.

The list of documents must be delivered within 15 days after the close of pleadings or within 15 days after the action becomes an expedited action, whichever is later. The close of pleadings happens when there has not been a reply to a statement of defence, to a statement of defence to a counterclaim, or to a subsequent pleading delivered to the other party within the time limit as outlined in Rule 23(5).

The test for which documents have to be included on the list of documents is different from the test set out in Rule 26 for all other proceedings. The list of documents in a Rule 68 action must contain the following:

- all documents referred to in the pleadings;
- all documents you intend to refer to at trial;
- all documents under your control that could be used by any party at the trial to prove or disprove a material fact.

You must also deliver to the other party a copy of every document in the list. If you become aware that your list of documents is incomplete or inaccurate, you must revise the list and deliver it to the other party with copies of all the newly listed documents.

You must also make the original of each document on the list available for the other party to inspect.

## **Are examinations for discovery available?**

Rules 68(23) to (30) set out the procedure for examinations for discovery and other discovery processes in Rule 68 actions. In expedited litigation, examinations for discovery will only take place if both parties consent or if the court orders. Examinations for discovery are limited to 2 hours. This time limit may only be extended if the parties consent or if the court orders an extension.

Rule 27 (*Examinations for Discovery*) only applies if both parties agree to have examinations for discovery. However, even if you do agree, Rules 27(20) (production of documents), 27(21), and 27(22) (examination of a person) do not apply.

Rule 28 (*Pre-Trial Examination of Witnesses*) and Rule 29 (*Discovery by Interrogatories*) do not apply to an expedited action. That means that you cannot examine the other party's witnesses before trial or ask the other party's witnesses to complete interrogatories (written questions).

## **When do witnesses have to be disclosed?**

You must deliver to the other party a list of all the witnesses you intend to call at trial and a written summary of the evidence they expect to give.

You must use Form 141 for this list. A copy of this form is attached to this guidebook and can be found at the websites set out at the beginning of this guidebook. This list must be delivered to the other party within 90 days of the close of pleadings (see Rule 23(5) for an explanation of when the pleadings are closed) or when the action first becomes an expedited action, whichever is later.

Unless the court orders, you may not call a witness unless their name, address, and a point-form summary of the evidence they will give has been delivered to the other party. You must also disclose the identity and nature of any document that the witness is expected to refer to at trial.

## **What are the rules about expert witnesses?**

The rules about expert witnesses are set out in Rule 40A. This Rule applies to Rule 68 actions. For more information about expert

witnesses, see the guidebook *Preparing for Trial and Trial in Supreme Court*. The difference in Rule 68 actions is that you may only call one expert witness (see Rule 68(33)). However, if your expert does not have the expertise to respond to the other party's expert witness, you may call one additional expert to provide a response to the other party's expert witness' testimony.

In a Rule 68 action, the court may order that a jointly instructed expert be appointed (see Rule 68(43)). A jointly instructed expert is an expert who acts on behalf of both parties. Both parties may give instructions to the expert, but you must send a copy of any such instructions you give to the other party as well.

If the court appoints a jointly instructed expert, you and the other party must agree on who that expert should be. If you cannot agree, the court may select one for you.

The court may give directions about how the jointly instructed expert should be paid. Both parties are jointly and severally liable for the jointly instructed expert's fees. This means that both parties are responsible to pay the fee and if the expert is not paid, the expert can bring an action against both parties to the action, or against one party, in the full amount owing to him or her.

## What are the rules about chambers applications?

Chambers applications (also called interlocutory applications) in Rule 68 actions are made in the same way as in other cases. For more information about chambers applications see the guidebook called *Chambers Applications*. However, in Rule 68 actions, a party may not bring an interlocutory application unless a case management conference or a trial management conference has already occurred (see Rule 68(10)).

However, there are exceptions to this and you may bring an interlocutory application if:

- both parties consent;
- the application is for Rule 68 to no longer apply;
- the application is made under Rule 18 (*Summary Judgment in Action*) or Rule 19(24) (*Scandalous, Frivolous or Vexatious Matters*);
- the application is to add, remove, or substitute a party in the action;
- the application is for the judge or master to relieve the party from the limitation on interlocutory applications because the limitation is impracticable or unfair, or the application is urgent.

## What is a Case Management Conference?

A case management conference is a meeting with a judge or a master to deal with issues in your case, scheduling problems, or pre-trial matters.

Any party may request a case management conference by filing a Requisition for Case Management Conference (Form 142) and delivering a copy to the other party at least 7 days before the date set for the conference. A copy of this form is attached to this guidebook and can be found at the websites set out at the beginning of this guidebook.

You must bring a copy of each document in your list of documents to the conference.

It is very important that you attend the case management conference. If you or the other party does not attend the conference, the judge or master may decide to:

- proceed with the conference;
- postpone the conference to a later date; or

- order that the person who failed to attend pay the other party's costs.

At the case management conference, Rule 68(41) states that the judge or master may consider and make orders on any of the following matters:

- ways that the issues in dispute may be resolved;
- whether any of the pleadings should be changed, corrected, or closed by a certain date;
- discovery of documents and examination of parties;
- a timetable for the steps to be taken in the case before the trial;
- whether the parties should attend a mini-trial, settlement conference, or mediation;
- whether a jointly instructed expert is required;
- whether one or both parties are allowed to call an additional expert;
- whether an agreed statement of facts is to be filed;
- fixing a date for any interlocutory applications;
- fixing the date and length of trial;
- settlement of the action or any issues;
- any other matter that may help make the trial more efficient or help resolve the proceeding.

You must set out in the Requisition for a Case Management Conference Form (Form 142) what matters you want to discuss and what orders you want the court to make at the conference.

Any orders made at a case management conference may be in Form 143. A copy of

this form is attached to this guidebook and can be found at the websites set out at the beginning of this guidebook. If the judge or master signs the order at the conference, it does not need to be signed by the parties or their lawyers.

## What is a Trial Management Conference?

A trial management conference is a meeting with a judge to discuss how the trial of your case will proceed. It **must** occur between 15-30 days before the first day of the trial. You can arrange a time and date for the conference by contacting the registry.

You must file and deliver a trial brief to the other party at least 7 days before the day the trial management conference is to be held. A trial brief is a summary of your position on the issues and the evidence you will call at trial. There is no form in the Rules for a trial brief but, according to Rule 68(54), it must contain the following:

- a title page that shows the style of proceeding and the names of any lawyers;
- an index;
- a summary of the issues in dispute and your position on each of these issues;
- a list of all the witnesses that you intend to call at trial, including their names, addresses, and the evidence they will give;
- a list of the expert reports you intend to use at trial;
- a list of the witnesses that you intend to cross-examine and how long you think that cross-examination might take;
- a list of all the documents you intend to introduce at trial;
- time estimates for your opening statement and final submissions;

- the order you want the court to make; and
- a list of any cases, statutes, Rules or regulations you intend to use at trial.

It is very important that you attend the trial management conference. If you or the other party does not attend the conference, the judge may decide to:

- proceed with the conference;
- postpone the conference to a later date; or
- order that the person who failed to attend pay the other party's costs.

At the trial management conference the judge may consider and make orders on the following matters:

- anything a judge or a master may order at a case management conference;
- a planned schedule for the trial;
- facts to be admitted at trial;
- documents to be admitted at trial, including agreements as to the purpose for using the documents at trial or preparing a common book of documents;
- limits on how long witnesses can be examined and cross-examined;

- that the evidence of witnesses be presented at trial in affidavit form;
- that the opening statements and final submissions be presented in writing; and
- change the number of days set aside for trial.

If you are thinking about using Rule 68 you should read the information about the Rule in the practice direction and notice to the profession on the court's website at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca) (click on the Supreme Court page and then open the link for practice directions and notices).

For the next steps, see the guidebooks called:

*Discovery Process*  
*Chambers Applications*  
*Summary Judgment and Summary Trial*  
*Preparing for Trial and Trial*  
*Alternatives to Trial*

For definitions of common court terms, see the guidebook called *Common Supreme Court Terms*.

This guidebook is part of a series, *Guidebooks for Representing Yourself in Supreme Court*, produced by:



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## Appendix 1: NOTICE OF WITNESSES

FORM 141 (RULE 68(31)(a))

**[insert style of proceeding including registry number]**

### NOTICE OF WITNESSES

TAKE NOTICE that .....**[insert your name here (1)]**.....  
intends to call the following persons as witnesses at the trial of this action;

1. ....**[name of witness]**.....  
  
.....**[residential address of witness]**.....  
  
.....**[phone number of witness]**.....
  
2. ....**[name of witness]**.....  
  
.....**[residential address of witness]**.....  
  
.....**[phone number of witness]**.....
  
3. ....**[name of witness]**.....  
  
.....**[residential address of witness]**.....  
  
.....**[phone number of witness]**.....

AND FURTHER TAKE NOTICE THAT there is attached to this notice, for each of the above-named witnesses, a summary of the evidence **(2)** that .....**[insert your name here]** ..... believes will be given at trial by that witness.

Dated **[insert date signed]**

.....  
**[print or type your name under your signature]**

**(1) Set out your name and whether you are the plaintiff, the defendant or a third party (e.g., the Plaintiff, Jane Smith).**

**(2) On a separate page, prepare a summary of the evidence that you expect each witness will give at the trial.**

## Appendix 2: REQUISITION FOR CASE MANAGEMENT CONFERENCE

Form 142 (Rule 68 (34) and (37) )

**[insert style of proceeding including registry number]**

### REQUISITION FOR CASE MANAGEMENT CONFERENCE

A case management conference has been set for this proceeding:

At the request of **[insert your name here (1)]**.....

At the direction of the Court **(2)**.

The case management conference will be held at .....**[insert location (3)]** ..... ,  
at .....**[insert hour]** ....., on .....**[insert date (4)]**..... .

If this case management conference is requested by a party, the requesting party estimates that the case management conference will take ..... minutes **[5]**:

At the case management conference the following matters will be discussed **[6]**:

- 1.
- 2.
- 3.

At the case management conference .....**[insert your name here]** .....  
intends to seek the following order(s) **[7]**:

- 1.
- 2.
- 3.

Dated **[insert date signed]**.....

.....

**[type or print your name after your signature]**

**(1) If you are requesting the case management conference, check this box and insert your name and whether you are the plaintiff, defendant or a third party.**

**(2) Check this box if the court has directed that a case management conference should be held.**

**(3) Insert the location of the courthouse where the conference will be held. This is usually the courthouse where the action was started.**

**(4) Insert the date and time you have obtained from the registry for the case management conference.**

**(5) Insert your estimate of how long the case management conference will take. Consult with the other parties about this in order to figure out how long to estimate. It is important that your estimate be as accurate as possible.**

**(6) Refer to Rule 68(41) for the matters that can be discussed at a case management conference. You must list all the matters that you wish to discuss.**

**(7) If you want the court to make an order about one of the matters listed in Rule 68(41), you must set out the terms of the order you want here.**

**Appendix 3: CASE MANAGEMENT CONFERENCE ORDER**

FORM 143 (RULE 68(44))

No. ....

..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff(s)

and

Defendant(s)

**CASE MANAGEMENT CONFERENCE ORDER**

At a case management conference conducted on ..... **[date]** .....

by ..... **[judge/master]** ..... in the presence of

..... **[counsel parties]** .....

The following orders are made:

- 1.
- 2.
- 3.

.....

Judge/Master

.....

District Registrar

.....

Counsel, Etc.