

Defending a Civil Proceeding in Supreme Court

This guidebook 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.supremecourtselfhelp.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. (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. (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.

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.

How to defend yourself

This guidebook (along with the guidebook *Starting a Civil Proceeding in Supreme Court*) will assist you in defending a lawsuit started against you in the Supreme Court in British Columbia. The lawsuit may have been started by way of a writ of summons and statement of claim or by a petition. For further information about what these documents are, please see the guidebook on *Starting a Civil Proceeding in Supreme Court*.

When you have been served with a writ of summons and statement of claim or a petition, you might find it helpful to talk to a lawyer about what you need to do. Defending a lawsuit is complicated and time-consuming and the consequences of doing things late or incorrectly may be serious. If you have any questions at all about your lawsuit, see a lawyer. Court registry staff are not permitted to give you legal advice respecting your defence. They may only discuss procedures with you.

Service

Both a writ of summons and statement of claim or a petition are documents that start a case against you.

- If you are served with a writ of summons and statement of claim, you are called the defendant. The person who started the action is called the plaintiff.
- If you are served with a petition, you are called the respondent. The person who started the action is called the petitioner.

Generally, you must be personally served with the document. Someone (usually a person called a process server) will have handed you the document either at your home or work. However, if a person has difficulty serving you, the rules provide for other ways for you to be

served. If the claim is against a company, the company may be served through its registered office or its officers (see s.9 of the *Business Corporations Act*).

There is additional information on service of documents (including information about alternative ways for you to be served) in the guidebook on *Starting a Civil Proceeding in Supreme Court*. For further information about service, see Rules 11, 12 and 13.

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

Time limits

Time limits are important in legal claims in two ways.

Limitation periods

- Limitation periods set limits on how long someone can wait before they start a lawsuit.
- The *Limitation Act* (a copy of this Act can be found in the courthouse library or on their website) sets out the different limitation periods for different types of cases. Some limitation periods, however, are set out in other legislation.
- Most limitation periods vary from 2 to 6 years and start from the date that:
 - o The event happened that the lawsuit is about, or
 - o The date the person who has sued you found out about his or her possible claim.

- If the person who has started the case against you has not done so within the limitation period, you can use that as a defence to the lawsuit.
- If the limitation period which applies is not clear to you, consider consulting a lawyer.
- Registry staff cannot advise you on the applicable limitation periods.

limits exist to make sure that cases proceed in a timely way. To not follow or ignore them can result in costs or judgment against you.

- Some of these time limits are set out in the forms and others are set out in the Rules.
- Make sure you understand and meet these time limits so you can avoid unnecessary expense.

Procedural time limits

- There are numerous procedural time limits that will affect your case. These time

1 Filing an appearance

Whether the lawsuit against you has been started by writ of summons and statement of claim or by petition, the first thing you need to do is to file an **appearance**. An appearance is a simple form, but it is important to your defence. It tells the plaintiff or petitioner that you are going to defend the claim against you. It also provides them with your address for delivery so they can mail or fax or deliver documents to you, rather than serving them personally.

A writ of summons and statement of claim or petition sets out certain information that you need to know. The document will tell you:

- The style of proceeding and registry number. The style of proceeding is how the court registry identifies your file (it includes the court file number, the name of the registry, the level of court and the names of the parties); you must include the style of proceeding on every document you prepare in the lawsuit;

- The location of the registry where all subsequent documents must be filed;
- The name and address of the person or lawyer who filed the document;
- The delivery address for the plaintiff or petitioner;
- If you have been served with a petition, how long you have to enter an appearance and respond to the petition before the petitioner can proceed with the application without further notice to you;
- If you have been served with a writ of summons and statement of claim, how long you have to respond to the document before default judgment can be taken against you.

If you were served with a writ of summons and statement of claim, your appearance will be in Form 7. If you were served with a petition, your appearance will be in Form 8.

Copies of these forms are attached to this guidebook, and blank copies of the forms can be found at any courthouse library or at the following website:

www.courts.gov.bc.ca

(Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

A Form 7 or Form 8 appearance needs to be filed as follows:

TIME LIMIT	IF YOU LIVE (AND WERE SERVED):
within 7 days of service	in British Columbia
within 21 days of service	outside British Columbia but in Canada
within 28 days of service	in the United States
within 42 days of service	anywhere else in the world

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

Once you have prepared your appearance you must file it at the court registry listed on the writ or petition. There is no fee to file an appearance. If it is more convenient, you may file your appearance by faxing it to the registry. Contact the appropriate registry to get the fax number.

Once you have filed your appearance, you must send a filed copy of the appearance to the plaintiff or the petitioner as soon as possible. You do not need to serve the appearance personally. In the document that has been served upon you, there will be an address called the address for delivery. The appearance should go to this address by fax (if there is a fax number), by mail, or delivery.

For further information about appearances, see Rule 14.

2 What happens when an appearance is not filed or is filed late?

Serious consequences can result if you decide not to file an appearance or file your appearance outside of the time limits set out in the writ of summons or petition.

Appearance to a writ not filed

If you have been served with a writ and have not filed an appearance, the plaintiff can go to court to ask for a default judgment requiring you to pay the amount the plaintiff seeks (see Rule 17). Once this happens, you no longer have the opportunity to tell the court why you should not have to pay that amount.

Appearance to a petition not filed

If you have been served with a petition and have not filed an appearance nor delivered a response in Form 124 (for further information about the response, see the guidebook on *Chambers Applications*), the petitioner can proceed to a court hearing without notifying you of the date (see Rule 10). At the court hearing, the court may make an order against you without hearing your side of the story.

Late filing of an appearance

If you wish to defend yourself but have filed your appearance late, the registry will still accept it for filing. When you file the appearance, ask the registry to check to see if

a default judgment has been granted against you. If a default judgment has been granted, you can make an application to the court to ask for the default judgment to be set aside. For more information about bringing on an application, see the guidebook on *Rule 51A*.

3

Preparing a statement of defence (in response to a writ of summons and statement of claim)

Once you have filed your appearance, you will need to prepare, file and deliver a **statement of defence** (Form 14). A copy of a statement of defence is included in this guidebook.

A statement of defence must be filed and delivered to the plaintiff within 14 days after the later of:

- the day you were served with the statement of claim (this becomes critical if the plaintiff serves you with a writ of summons first and then later with a statement of claim). You must file your appearance to the writ of summons as noted above, but you do not have to file your statement of defence until 14 days after you receive the statement of claim;
- the end of the time you have to file your appearance as noted above (7, 14, 28 or 42 days, depending on where you were served) if the writ of summons and statement of claim were served on you at the same time.

It is important to follow these time limits. If you fail to file your statement of defence within the applicable time frame, the plaintiff can seek an order from the court that judgment be awarded against you (see Rule 25).

When you begin preparation of your statement of defence you need to remember:

- you must set out the facts of your defence. This is not the same thing as setting out the

evidence. Evidence is information that can prove the facts that you claim happened. You should only include the facts (not the evidence) that you will prove at trial in your statement of defence;

- if there are paragraphs in the writ of summons or statement of claim you agree with, say so in your statement of defence;
- you must respond to each paragraph of the statement of claim – the easiest way to do this is to go through the paragraphs one by one. Your defence might say: “in response to paragraphs 1 to 3 of the statement of claim” and then set out your response to those particular paragraphs. When you are finished your defence, make sure you have responded to every paragraph in the statement of claim.

This document will be critical to your defence. Once you admit something in your statement of defence, it is very difficult to withdraw that admission later on. You will want to make sure you get it right, and there may be defences available to you of which you are unaware or questions about the claim or your defence that you cannot answer.

It might benefit you to consult a lawyer at this point to make sure your statement of defence is correct and complete.

For further information about the statement of defence, see Rule 21.

4 Do you need to prepare a counterclaim?

A counterclaim (Form 15) is a document setting out any claim you might have against the plaintiff or another party related to the lawsuit started by the plaintiff. The counterclaim follows the same format as the statement of claim so if you are preparing one, please see the guidebook called *Starting a Civil Proceeding in Supreme Court* for the steps required to prepare this document. You will also need to prepare a document called a Notice to Defendant by Counterclaim (Form 16) if you counterclaim against someone who was not a party to the original action. Both of these documents are attached to this guidebook, and copies can be found at any courthouse library or the websites set out earlier in this guidebook.

For further information about counterclaims, see Rule 21.

The counterclaim can be attached to the statement of defence or can be prepared and filed separately.

Preparing and filing a counterclaim is a complicated procedure. It turns you into a plaintiff for part of the lawsuit and you will then have to take all the steps required of a plaintiff. It changes the style of proceedings by adding the plaintiff as a defendant by counterclaim. See the style of proceeding below:

		No. L000000 Vancouver Registry
	IN THE SUPREME COURT OF BRITISH COLUMBIA	
BETWEEN:	JOE SMITH and FRANK JONES	
		PLAINTIFFS
AND:	000000 HOLDINGS LTD., FRED JOHNSON and MARY BROWN	
		DEFENDANTS
AND:	JOE SMITH and FRANK JONES	
		DEFENDANTS BY COUNTERCLAIM

5 Preparing your affidavit (in response to a petition)

If you have been served with a petition, you must prepare a response in Form 124 and an affidavit responding to the evidence set out in the petition and the affidavit you received with it. Because the hearing of a petition is dealt with under Rule 51A, the rule dealing with chambers applications, you should read this section in conjunction with the guidebook on *Chambers Applications*.

As in a statement of defence, you should respond to each paragraph in the petition and the attached affidavits. The response sets out:

- what claims in the petition you do not oppose;
- what claims in the petition you do oppose;
- what claims in the petition you consent to (if anything);
- the material you will rely on at the hearing;
- how long (your time estimate) you think the entire hearing will take.

You will have to deliver a copy of your response to the petition and a copy of your

affidavit(s) to the petition on or before the 8th day after the date you filed your appearance. You may also need to prepare and deliver an outline in Form 125. For further information about this, see the guidebook on *Chambers Applications*.

The affidavit(s) is critical to your defence. Once you admit something in an affidavit, you cannot later change your mind and deny it. You will have sworn under oath to the truth of the facts in the affidavit. It is a serious offence to swear a false affidavit.

You will want to make sure you get the affidavit right, and there may be questions you cannot answer or possibilities you have not considered. It might benefit you to consult a lawyer at this point to make sure your affidavit is correct and complete.

For further information about affidavits, see the guidebook on *Starting a Civil Proceeding in Supreme Court* and *Chambers Applications*.

6 Filing your documents

Once your documents are completed, it is time to file them.

Filing an appearance

You will need:

- the original for the court registry;
- one copy for your file;
- one copy for each of the plaintiffs or petitioners.

There is no fee for filing an appearance.

Filing a statement of defence

You will need:

- the original for the court registry;
- one copy for your file;
- one copy for each of the plaintiffs and any other defendants.

You must pay the registry filing fee for filing a statement of defence or counterclaim. These fees change periodically. You can call the court registry to confirm the current fee or check Schedule 1 to Appendix C of the Rules.

Filing a response to a petition and supporting affidavits

You will need:

- the original for the court registry;

- one copy for your file;
- one copy for each of the petitioners and any other respondents.

The original response and affidavits must be filed in the court registry before the hearing is scheduled to take place.

There is no fee for filing the response or affidavits.

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

The documents can be filed with some court registries by fax (see Rule 67). If you plan to file by fax, contact the registry for further instructions.

If you can't afford the applicable filing fee, ask the registry staff for instructions on how to file an application with the court to have the fee waived. This is called an application for indigent status (see section S1(1) of Appendix C Schedule 1 to the Rules). An order for indigent status only waives the fees payable to the Crown. There are many other fees (including court reporters and the costs of transcripts) that you will still have to pay.

7 Delivering your documents

Once you have filed your document with the registry, you need to deliver it to the plaintiff or petitioner. You can do this by faxing or delivering the document to the plaintiff or petitioner's address for delivery set out in the writ of summons and statement of claim or petition. You can mail the documents only if their address for delivery is a post office box or the postal address of their solicitor of record. You may fax the documents only if a fax number is included in the address for delivery. You do not need to personally serve the plaintiff or petitioner with your appearance, statement of defence, counterclaim or affidavit.

If the address for delivery is the residential or business address of the plaintiff or petitioner and he or she does not have a lawyer acting on their behalf, you can deliver your document:

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

You want to be sure that the plaintiff or petitioner gets your document. The easiest way to do this is to:

- attach your document to a letter (whether

you mail, fax or deliver the document) to the plaintiff or petitioner;

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

For further information about the service and delivery of documents, see Rule 11.

For the next steps, see the guidebooks called:

Fast Track Litigation – Rule 66

Discovery Process

Chambers Applications

Summary Judgment and Summary Trial

Preparing for Trial and Trial

Alternatives to Trial

*Expedited Litigation in Supreme Court
- Rule 68*

For definitions of common court terms, see the guidebook called:

Common Supreme Court Terms

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Appendix 1: APPEARANCE TO WRIT OF SUMMONS AND STATEMENT OF CLAIM

Form 7 (Rule 14 (1))

[insert style of proceeding, including the registry number]

APPEARANCE [(1)]

Enter an appearance on behalf of

[insert defendant's name, address and address for delivery (2)]

Fax number for delivery (if any): **[include your fax number here if you have one]**

Dated **[Insert date signed]**

[Type or print your name here]

THIS APPEARANCE is filed by . **[Insert your name, address, telephone number and fax number]**

NOTICE TO DEFENDANT ENTERING THE APPEARANCE

The statement of claim may be endorsed on the writ of summons or it may be a document separate from the writ of summons.

IF YOU FAIL to file and deliver the statement of defence within the time allowed, JUDGMENT MAY BE TAKEN AGAINST YOU without further notice.

Rule 21 (5) states:

(5) Where a defendant has entered an appearance the defendant shall file and deliver a statement of defence and any counterclaim to the plaintiff within 14 days from the time limited for appearance or from the delivery of the statement of claim, whichever is later.

(1) Use this appearance when the document served on you is a writ of summons and statement of claim.

(2) Enter a separate appearance for each defendant.

Appendix 2: APPEARANCE TO A PETITION

Form 8 (Rule 14 (1))

[insert style of proceeding including the registry number]

APPEARANCE **[(1)]**

Enter an appearance on behalf of

[insert respondent's name, address and address for delivery (2)]

Fax number for delivery (if any): **[include your fax number here if you have one]**

Dated **[Insert date signed]**

[Type or print your name here]

THIS APPEARANCE is filed by **[include your name, address, phone and fax number here]**.

(1) Use this appearance when the document served on you is a petition.

(2) Enter a separate appearance for each respondent.

Appendix 3: STATEMENT OF DEFENCE

FORM 14 (RULE 21 (1))

[insert style of proceeding including the registry number]

STATEMENT OF DEFENCE [(1)]

The defendant denies **[set out the paragraphs from the writ or statement of claim you deny (2)]**.

The defendant says that **[set out your defence (3)]**.

Wherefore the defendant submits **[set out the defendant's submission (4)]**

Dated **[Insert date signed]**

[Type or print your name here]

THIS STATEMENT OF DEFENCE is filed by **[insert your name, address, telephone and fax number here]**.

(1) If there is more than one defendant, change the title to say STATEMENT OF DEFENCE OF and then include your name.

(2) Set the denials out in the same order as the statement of claim, e.g., the defendant specifically denies the allegations set out in paragraphs 1, 3, 5 and 7.

(3) Set out the defence in numbered paragraphs. Use headings and sub-headings if necessary. Make sure you respond to each paragraph in the statement of claim.

(4) This will often be the sentence: "The defendant submits that the action be dismissed with costs against the plaintiff."

Appendix 4: COUNTERCLAIM

FORM 15 (RULE 21 (6))

[insert style of proceeding including the registry number]

COUNTERCLAIM

[Set out allegations of fact in numbered paragraphs] **[(1)]**

1. ...

2. ...

The defendant claims as follows: **[(2)]**

(a) ...

(b) ...

Dated **[Insert date signed]**

[Insert name (3)]

THIS COUNTERCLAIM is filed by **[insert your name, address, phone and fax number here]**.

(1) Set out facts in numbered paragraphs. Each paragraph should contain only one fact. Use headings and subheadings if necessary.

(2) Set out the remedies you want in numbered paragraphs.

(3) Print the name of the defendant below the signature line.

Appendix 5: NOTICE TO DEFENDANT BY COUNTERCLAIM

FORM 16 (RULE 21 (11))

[insert style of proceeding and the registry number]

NOTICE TO DEFENDANT BY COUNTERCLAIM [(1)]

To **[insert name and address of defendant by counterclaim (2)]**:

This action has been brought by the plaintiff against the defendant. The plaintiff's claim against the defendant is set out in the writ of summons and statement of claim, copies of which are attached. The defendant's defence is set out in his or her statement of defence, a copy of which is also attached.

TAKE NOTICE that the defendant **[state name of defendant filing the counterclaim]** has filed a counterclaim, a copy of which is attached. In that counterclaim, a claim is made against you.

IF YOU INTEND TO DEFEND the claim made against you, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown on the writ, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the address for delivery of the defendant **[insert name of defendant]** which is set out in this notice, and
- (b) FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the defendant's address for delivery referred to in paragraph (a) above.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this notice and counterclaim are served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this notice and counterclaim are served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

(1) The counterclaim must be attached to this notice. A counterclaim can be filed separately or attached as part of a statement of defence.

(2) Use a separate notice for each defendant.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the defendant **[insert name of defendant filing the counterclaim]** within 14 days after the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

[Insert the address of the registry from the writ of summons you received]

(2) The defendant's ADDRESS FOR DELIVERY is:

[Insert your address for delivery]

Fax number for delivery (if any): **[Insert your fax number here if you have one]**

(3) The name and office address of the defendant's solicitor is:

[If you are acting for yourself, just repeat your name, address, telephone and fax number]

Dated **[Insert date signed]**

[Type or print your name here]

THIS NOTICE TO DEFENDANT BY COUNTERCLAIM is filed by **[insert your name, address, phone and fax number here]**.