

# Fast Track Litigation in Supreme Court – Rule 66

*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](http://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](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.

## Fast Track Litigation – Rule 66

**F**ast track litigation (Rule 66) allows you to shorten the entire litigation process if you have an action which needs only two days or less to have the trial heard. What this means to you is that, instead of taking several years to complete your lawsuit, you can do it in less than a year.

Many of the steps you take will be the same as in a regular lawsuit. You still have to file documents, do an examination for discovery, prepare a list of documents and attend the trial but every one of these steps is condensed and shortened, which may save you time and money.

Rule 66 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 which are started with a petition. Fast track litigation cannot be used in family proceedings.

Under the fast track litigation process:

- The trial must take less than 2 days and must be heard without a jury;
- The list of documents must be delivered very quickly;
- An examination for discovery cannot take longer than 2 hours per party (unless the parties agree otherwise);

- The registrar will set a date for the trial no more than 4 months after you apply for the trial date;
- Parties must file a trial agenda;
- Costs are set by Rule 66.

Make sure you adhere to the Rule 66 time limits or your proceeding might be sent back to the regular trial list, and your case will take longer to complete.

Rule 66 sets out the information you need to make sure that you take the appropriate steps to have your case heard under the fast track litigation process; however, you should be aware that it does not fully set out all the procedure that will be applicable to the trial of your action.

You will also need to be familiar with the time limits for filing trial certificates set out in Rule 39. If your trial certificate is not filed within the appropriate time limits, your trial date will be removed from the trial list without notice. Rules 39 and 66 (together with examples of any forms you might need), can be found at the website addresses and other locations set out at the beginning of this guidebook.

This guidebook, together with the guidebooks on *Starting a Civil Proceeding in Supreme Court*, *Defending a Civil Proceeding in Supreme Court*, *Discovery Procedure*, *Preparing for Trial and Trial*, will help you go through the fast track procedure.

## Starting fast track litigation

Either the plaintiff or the defendant can decide to carry on the proceeding under the fast track procedure. The plaintiff can do this by including Form 137 (set out below) on the

statement of claim. If you are the defendant, and the plaintiff has not included Form 137 on the statement of claim, you can include Form 137 on the statement of defence.

### **FORM 137 RULE 66 ENDORSEMENT**

The plaintiff (or defendant) hereby estimates that a trial of this action will be completed within 2 days and elects to have this action proceed in accordance with Rule 66.

**NOTE: AS A RESULT OF THIS ENDORSEMENT, THIS ACTION IS SUBJECT TO RULE 66, FAST TRACK LITIGATION. YOU MUST THEREFORE DELIVER YOUR LIST OF DOCUMENTS IN ACCORDANCE WITH RULE 66(11) AND (12) WITHIN 14 DAYS AFTER YOU RECEIVE THIS PLEADING.**

As well, the style of proceeding must include the words “SUBJECT TO RULE 66” right below the style of proceeding as follows:

	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
<b>SUBJECT TO RULE 66</b>	

If you choose to start your proceeding under Rule 66 by including Form 137 on your statement of claim, your writ of summons and statement of claim will be prepared, filed and served in the same way as a regular writ and statement of claim (see the guidebook on *Starting a Civil Proceeding in Supreme Court*). What is different is that you have to include Form 137 on the statement of claim and you have to serve your list of documents with the statement of claim.

## Delivering your statement of defence

Your statement of defence will be prepared, filed and delivered in the same way as a regular statement of defence (see the guidebook on *Defending a Civil Proceeding in Supreme Court*). What is different is that your statement of defence has to be delivered to the plaintiff within 14 days after you receive the statement of claim. If your statement of defence is not filed and delivered within the appropriate time limits, this may result in default judgment being taken against you (see the guidebooks on *Defending a Civil Proceeding in Supreme Court*).

If the plaintiff has not included Form 137 on its statement of claim and you want to use the fast track procedure, you have to include Form 137 on your statement of defence.

In either case, whether you choose fast track litigation or the plaintiff has already done so, you have to deliver your list of documents to the plaintiff together with your statement of defence.

## List of documents

Your list of documents will be the same as it would be in any other case (see the guidebook *Discovery Procedures* for information on preparing a list of documents). The difference is that your list of documents has to be

delivered very quickly. It is best to prepare it before you file your writ or statement of defence.

Rule 66 tells you exactly how long you have to deliver your list of documents to the other party. These time limits are very short.

- If you are the plaintiff and you choose to use fast track litigation by including Form 137 on your statement of claim, you have to deliver your list of documents to the defendant with your statement of claim.
- If you are the defendant and the plaintiff has not included Form 137 on the statement of claim but you include it on your statement of defence, you have to deliver your list of documents with the statement of defence within 14 days from the day you received the statement of claim.
- If you are the plaintiff and the defendant chooses to use fast track litigation and includes Form 137 on the statement of defence, you have 14 days from the day you receive the statement of defence to deliver your list of documents.

## Removing your proceeding from fast track litigation

There are three ways that you or the court can remove your proceeding from the fast track litigation process (see Rule 66(8)):

- All parties file a consent order saying that they wish to remove the proceeding from the fast track litigation process;
- The court, either on its own motion or on the application of any party, orders the proceeding removed from the fast track litigation process. You can apply by bringing a motion in chambers (see the guidebook on *Chambers*), on the basis that

the trial will likely take more than two days, or that it is otherwise not reasonable in the circumstances to continue the action as a fast track action (see Rule 66(9)). The judge or master has the discretion to allow or refuse the motion;

OR

- None of the parties has applied for a trial date within 4 months after the date when Rule 66 becomes applicable to the proceeding, that is:
  - o within 4 months after filing a writ of summons which includes Form 137; or
  - o within 4 months after filing a statement of defence which includes Form 137 (and the writ of summons did not include Form 137).

Remember that if your proceeding is removed from the fast track litigation process, you will have to revert to the regular trial list and your proceeding will take longer and may cost more to complete.

## Trial dates

You have to apply for a trial date (see the guidebook *Preparing for Trial and Trial* to see how to apply for a trial date) within 4 months of choosing to use the fast track procedure. That is, if you are the plaintiff and you have included Form 137 on your statement of claim, you need to apply for a trial date within 4 months of filing your statement of claim. The same goes for the defendant; if the plaintiff has not included Form 137 on the statement of claim but the defendant does, the defendant should apply for the trial date within 4 months of filing the statement of defence.

The registrar must give you a trial date that starts within 4 months after the date you apply for it.

## Examinations for discovery

Examinations for discovery are the same as they would be in any other procedure (see the guidebook on *Discovery Procedure*), except that each party has to complete their examination within 2 hours. The parties can consent to making the examination longer or the court can order that the examinations be longer. However, fast track litigation is meant to be just that – quick and inexpensive – and if examinations for discovery need to be too long, the purpose of fast track litigation will be defeated.

## Trial agenda

The trial agenda is a precise and complete outline of what will happen during the trial. It sets out estimates of the time required for opening statements, direct and cross examinations, closing submissions, and any other issues that might need to be dealt with. For further information on all these matters, see the *Preparing for Trial and Trial* guidebook.

The trial agenda may take some time to prepare and you may want to seek legal advice before preparing your agenda as it will be crucial to your case. You need to list:

- Exactly how long the trial will take;
- How many and what witnesses you are going to call;
- The order in which you will call your witnesses;
- How long you need to examine each witness (both your witnesses and the other party's witnesses).

Because the information on your trial agenda will be the core of your case, make sure it is as accurate and complete as possible. You must then send your completed trial agenda to the other side. They will complete the time estimates about how long it will take them to examine your witnesses and include the information about the witnesses they will call.

When the trial agenda comes back to you, finish completing the form to include your estimates about the time it will take you to examine the other party's witnesses.

The filed trial agenda, trial record and trial certificate need to be delivered to all parties.

- The trial agenda has to be filed at least 2 days before the trial.
- A trial record must be filed at the same time.
- A trial certificate must also be filed no earlier than 30 days before the first day of the trial and no later than 14 days before the first day of the trial. (See Rule 39 and the guidebook *Preparing for Trial and Trial* for further information about trial records and certificates.)

If the judge finds the time estimates in the trial agenda are too short and the trial will take longer than 2 days, your case will go onto the regular trial list and it will take much longer to bring your case to trial. Also, if you do not file the trial agenda, record and certificate as required, your trial may be removed from the trial list and you will have to start again to get another trial date.

## Costs

Fast track litigation only has two alternatives for costs. This means that even if you win, you will only get a very limited amount of money for costs. The alternatives are:

- If the trial is one day or less, you can claim \$3,600 in costs (not including disbursements);
- If the trial is more than one day, you can claim \$4,800 in costs (not including disbursements).

The court can order an increased amount if there are special circumstances. For example, courts have infrequently ordered an increased amount where there has been an offer to settle for more than the final award. This does not happen in every such case, however, and will depend on such factors such as the timing of the offer, the difference between the amount and terms of the offer and the result at trial, and whether the trial was heard within the two day time frame. The parties can also consent to an increased amount, but this too will happen very infrequently.

### For the next steps, see the guides called:

*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*

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



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# Appendix 1: TRIAL AGENDA

FORM 139 (RULE 66 (22) )

**[insert style of proceeding, including the words “SUBJECT TO RULE 66” at the bottom]**

**SUBJECT TO RULE 66**

**TRIAL AGENDA [(1)]**

	Plaintiff's time estimate	Defendant's time estimate
Plaintiff – Estimate time required for opening address .....		
Plaintiff – List the plaintiff's witnesses in the order they will be called and the time estimated for direct examination		
Defendant– Estimate the time required for cross-examination of each listed witness		
Witness #1 .....	.....	.....
Witness #2 .....	.....	.....
Witness #3 .....	.....	.....
etc.		
Defendant– Estimate time required for opening address.....		
Defendant– List the defence witnesses in the order they will be called and the time estimated for direct examination		
Plaintiff – Estimate the time required for cross-examination of each listed witness		
Witness #1 .....	.....	.....
Witness #2 .....	.....	.....
Witness #3 .....	.....	.....
etc.		
Plaintiff – Estimate time required for closing submissions .....		
Defendant– Estimate time required for closing submissions .....		
Estimate the time required for other matters such as evidentiary issues, reply, etc. ....		
sub-totals .....		
TOTAL .....		
.....		
Plaintiff	.....	.....
	Defendant	<b>[(2)]</b>

**(1) Be as accurate as possible when you think about these times. Insert anything that is not included, such as videos or other presentations.**

**(2) All parties should sign the agenda. Insert the name of the party under each line, e.g., Joe Smith, Plaintiff, Mary Brown, Defendant. Counsel will sign this document if the other party is represented by a lawyer.**

If a trial involves more than 2 parties, or if trial events other than those set out above are anticipated, the Trial Agenda should be modified to disclose the time estimated for all matters that the parties anticipate will occupy the time of the Court.