Chambers Applications

Chambers Basics

Last Reviewed: March 2023

Reviewed by: JES

Chambers Application Basics

You may need to bring, or respond to, an application to Court before your trial or petition hearing. Usually, applications are made to deal with issues that come up on the way to the final trial or petition hearing. However, sometimes applications are made that could result in a final decision in your case.

Key Terms

An **application** is when a party asks the Court to make an order to resolve issues that come up in your case.

Petitions to the Court are also heard in chambers, including petitions for judicial review. Though these are often more complicated than an application, the process for setting them for hearing is the same as for an application.

What Are Chambers Proceedings?

Applications are a type of "chambers" proceeding. All applications are heard "in chambers." This does not mean that they are heard in the judge's "chambers" or office — they are still heard in open court and the hearings are audio taped.

Key Terms

The term "chambers" is used to describe a type of hearing that is different from a full trial where evidence is given through witnesses. It

includes applications to the Court and petitions, including petitions for judicial review.

Chambers proceedings differ from trials in these ways:

- Evidence is generally presented in the form of affidavits (instead of by witnesses)
- Lawyers and the judge do not wear robes
- If they are for less than two hours, they can be scheduled for any day on which the Court sits in chambers; trial dates have to be reserved with the trial scheduling division of the registry

In proceedings that start with a notice of civil claim, applications usually deal with procedural issues that come up as your case proceeds through the steps leading to trial. For example, you may believe another party has documents they haven't produced or you may be having trouble getting another party to show up at an examination for discovery. In this case, you can apply to the Court for an order that the party produce documents or show up at an examination for discovery. These are practical problems that can come up in moving your case forward and they are often the subject of applications.

If your action is under **Rule 15-1** for Fast Track Litigation, you are not allowed to make an application unless a case planning conference or a trial management conference has been held (subject to the exceptions listed in **Rule 15-1(8)**). For more information see **Fast Track**.

Who Can Make a Decision in the Application?

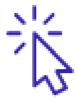
Both judges and masters hear applications; however, in most cases a master will hear your application.

A master has a job very similar to a judge. They sit in Court, hear applications, and make decisions. There are however some orders that a master can not do that a judge can. In general, a master cannot hear an application that results in a final order (one that ends the case). This means that you would not appear before a master for a summary trial.

When preparing the documents for your application, you must state whether your application is within the jurisdiction of (in other words, can be heard by) a judge or

master. Make sure that you know whether your application needs to be heard by a judge. If you appear before a master who cannot hear your application, you will be forced to reschedule your hearing.

The registry staff may be able to help you determine whether a judge or a master can hear your application.



Learn More

More information on the jurisdiction of a matter can be found in this **Practice Direction 50 – Masters' Jurisdiction**.

What Rules Apply?

There are several rules governing applications and you will need to understand how each of them applies to your case:

- **Rule 8-1**: Sets out what documents need to be prepared and delivered to the other parties and the time limits that apply
- **Rule 8-2**: Explains where the application should be heard
- **Rule 8-3**: Describes how you can get a court order if everyone consents to it
- **Rule 8-4**: Describes how to make an application when you do not need to notify the other parties
- **Rule 8-5**: Tells you how to make an "urgent" application, where you don't have to give notice to the other party
- If the judge at a case planning conference makes an order that an application can be made by written submissions, **Rule 8-6** tells you how to do that.
- **Rule 8-1(21.1)**: Tells you how to reset an application that has been adjourned without a new date set for it to be heard (e.g. adjourned generally)
- **Rule 22-1**: Sets out what happens generally in chambers proceedings
- **Rule 22-2**: Explains how affidavits must be prepared and filed with the Court
- **Rule 23-6**: Sets out what masters can deal with and how to appeal a master's decision

Learn More

Further, in addition to the Rules, you will want to review the **Practice Direction on Chambers Practice**. This sets out guidance from the Chief Justice concerning process at Chamber hearings.

Should You Make an Application?

If you think you have a problem in your case that could be resolved by a court order and you have been unable to agree with the other party on how to resolve it, you may have to make an application to Court.

Because you will have to appear before a judge or master in court, you will want to make sure that:

- You know that the problem you're trying to solve is one that can be resolved By an application
- You understand the law and the rules governing your application
- You have followed all the rules and met all the deadlines governing applications
- You have all the correct documents and
- You are prepared to argue your application before a judge or a master

A lawyer can help you determine whether you need to file an application. A lawyer can also find the law that applies to your problem and complete the proper forms. To learn more see **Get Help**. Remember that preparing for and attending a chambers application will cost you time and money. First, try to resolve the problem without resorting to a court application.

Scheduling a Chambers Hearing

There are several steps to take in order to schedule your hearing.

Step 1 Availability: Discuss with the other parties when they are available. It is important that you do not try to schedule a hearing for a day when another party is not available. If you do so, it is likely that the matter will simply be adjourned (postponed) and rescheduled. You could potentially even have a costs award made against you for wasting time.

Step 2 Get a time estimate: Discuss with the other party how long they think the hearing will take. Once the other parties have told you how long they expect the matter to take, decide if you agree. How long you estimate your matter will take will impact what happens next.

If your matter is estimated to take:

- **Less than 2 hours =** You can set it down for any day that the Court will sit in Chambers
- **More than 2 hours =** You need to get Supreme Court Scheduling to reserve a date for you. The process for reserving court dates varies for each registry. You can find the rules that apply in the registry where your case is going forward in by checking **here**.

Dates for lengthy chambers hearings go extremely fast. For example, in **Vancouver**, new chambers dates come available on the first Tuesday of the month at 8:30 am. The chambers dates are for the month after the next calendar month. So, for example, on the first Tuesday in January, dates for March become available. They go extremely fast. Often you will have to call multiple times to not get a busy signal. The new dates are generally all gone within an hour or so.

While it is inconvenient to set matters down for more than two hours, if you estimate too little time for your matter the Court may refuse to hear it. If the Court does hear the matter and it goes well over the time estimate the judge or master may get very cross at everyone involved. If you are asking the Court to do something, the last thing you want is to annoy the decision maker. Estimate your time accurately.

Step 3 File the notice of application: Once you have a Court date, you can file your notice of application, which will set out the date of the hearing and the time estimate.

Step 4 Petition hearings – file notice of hearing: If your chambers matter is a petition to the Court, you will have already filed your notice of petition before setting a court date. You therefore need to file and serve on the other parties a notice of hearing in **Form 68** to advise them of the Court date.

Find the Form

Form 68 Notice of Hearing

Resetting an Adjourned Application

If the application gets adjourned and a new hearing date is not scheduled, **Rule 8-1 (21.1)** tells how the applicant can reschedule the hearing. The applicant files a requisition (**Form 17**), setting out the date and time of the new hearing and serves a copy of the filed requisition on the application respondents at least 2 business days before the date set for the hearing.

Key Terms

A **business day** means a day on which the court registries are open for business.

If the applicant does not reset the application for hearing within a reasonable time after an application respondent has asked the applicant to do so, the applicant respondent may apply to the Court for directions on how to proceed, using a requisition in **Form 17**, and with 2 business days notice to the applicant (see **Rule 8-1(22)**). For more information on requisitions generally, see **Requisitions.**

Read the Rules

Rule 8-1 How to bring and respond to applications

Find the Form

Form 17 Requisition

Notice of Application

You begin an application by preparing, filing, and delivering a notice of application to the other parties. If you prepare and deliver the notice of application, you are the applicant. If you receive a notice of application from another party, you are the application respondent. A notice of application must be in **Form 32**. It must not exceed 10 pages (other than any draft order you attach).

Find the Form

Form 32 Notice of application

Before preparing the application, discuss the date of the hearing with the other party to choose a date when you are both available. If you set a date for the hearing when the other party is not available, you will both have to appear in Court when the other party applies to adjourn the hearing. This is an unnecessary waste of time and costs. However, if you cannot agree on a date, you can choose a date to put in the notice of hearing. If you expect the hearing to take more than 2 hours, the Court registry will fix the date and time of hearing.

In almost all cases, your application should be heard in the courthouse where the notice of civil claim was filed. If you want to have the application heard somewhere else, see **Rule 8-2** for information about changing the place of the hearing.

What is in a Notice of Application:

- **The top section** of the notice of application sets out
  - Who you are serving with the documents
  - The address of the Court where the application will be heard
  - The date and time of the hearing
- **Part 1** requires you to set out the order you are asking the Court to make. This information should be written in numbered paragraphs. The notice of application should clearly state the order you want because you will use this to draft your order. Remember that you can ask for more than one thing in your application. For example, you may want to get further documents and an order requiring a party to attend an examination for discovery. However, each thing you are asking for should be set out in a separate paragraph. You can also attach a draft of the order you are seeking
- **Part 2** asks you for the factual basis of your application. You need to write, in numbered paragraphs, a brief summary of the facts supporting the application
- **Part 3** you must set out the legal basis of the application, including the rule or enactment (e.g. regulation or statute) that gives the Court the power to make the order you are seeking. If you see a lawyer before preparing your notice of application, this is something you should ask about

- **Part 4** requires you to list the affidavits and any other material that you are going to rely on in making your application. You can also rely on other documents such as pleadings, answers to interrogatories, or examination for discovery excerpts
- **Time Estimate:** You are required to set out in the notice of application how long you think your application will take to be heard. In this estimate, you must take into account the time you think it will take the other side to respond to your submissions in Court. It is important to be as accurate as possible in giving this time estimate to the Court
- **Data:** You must complete the data collection information in the appendix to the form

If you are the plaintiff and you want to add someone as a party to the action after the case has already been started, then you would make reference to **Rule 6-2**, which gives the Court the power to add parties.

If there is no rule that deals with the order you want the Court to make, you need to rely on the inherent jurisdiction of the Court. The inherent jurisdiction of the Court is the power that judges have over and above the Rules to make orders to do justice between the parties. If you are relying on this power, you should say that in the notice of application. Remember that masters have limited jurisdiction. If you require the Court to make an order under its inherent jurisdiction, the matter may have to be heard by a judge.

Read the Rules

Rule 8-2 Place application Is heard

Rule 6-2 Change of parties

Written Argument

If your application will take longer than 2 hours, you may also submit written submissions, which include a summary of your argument, and an explanation of how the case law and legislation supports your position. This is done by including a written argument in the **Prepare Supporting Documents**.

If your application is set for less than two hours you are not allowed to file a written argument ahead of time. However, you are allowed to hand up a written outline of

the submissions you plan to make in Court orally. The idea is that this is not a separate submission from what you say, but it allows the Court to follow along.

If you have a chance to prepare written material for the Court, either in the form of a full written submission or an outline of your argument, it is generally a good idea to do so. The Court will find it easier to follow your argument if it has it in front of it. Further, if the judge takes some time to think about your case before deciding, if they have your written material they may be more likely to understand your key points.

Serving Your Documents

You must serve these documents on all parties of record, and on every other person who may be affected by the orders sought:

- A copy of the filed notice of application
- A copy of each of the filed affidavits and documents that have not already been served on that person
- If the application is brought in a summary trial, any notice that you are required to give under Rule 9-7(9)

You must serve the filed notice of application and all other filed affidavits and documents at least 8 business days before the date set for the hearing of the application. If the hearing is a summary trial, the documents must be served at least 12 business days before the date set for hearing (**Rule 8-1(7)**). A business day means a day on which the court registries are open for business.

Read the Rules

Rule 8-1(7) Service of application materials

There is a special procedure for urgent applications, which allows you to bring an application on less notice than you would normally require. For example, if the legal dispute is about a piece of your machinery that the defendant is about to sell, you could make an application to Court, on short notice, asking the Court to stop the sale.

A short notice application may be made by requisition in **Form 17**, without notice to the other party. The full procedure is described in **Rule 8-5**. For more information on requisitions generally, see **Requisitions.**

Read the Rules

Rule 8-5 Urgent applications

Learn More

It may be helpful to refer to **Practice Direction - 20 - Short Notice Applications - Civil**

Prepare a Response

If you intend to respond to an application by another party, you must complete an application response in **Form 33** upon receipt of the notice of application, and deliver it to the applicant. The application response tells the Court and the other parties how you intend to respond to the application.

Find the Form

Form 33 Application response

If you wish to respond to a notice of application, you must do the following within 5 business days (days on which the Court registries are open for business) after service, or in the case of an application in a summary trial, within 8 business days after service:

- File an application response
- File the original of every affidavit, and of every other document, that
  - Is to be referred to by the responding person at the hearing, and
  - Has not already been filed in the proceeding
- Serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- A copy of the filed application response
- A copy of each of the filed affidavits and documents, referred to in the application response under Rule 8-1(10)(b)(ii) (that you intend to refer to at the hearing), that has not already been served on that person
- If the application is brought in a summary trial, any notice that the application respondent is required to give under **Rule 9-7(10)**

Your application response must be in **Form 33** and cannot exceed 10 pages. It must contain the following information:

- In Part 1, which, if any, orders requested do you consent to
- In Part 2, which orders do you oppose being granted
- In Part 3, which orders do you take no position on (neither consent, nor oppose)

Responding to the Response

An applicant may respond to any document that the application respondent has served. To do so the applicant can file and serve responding affidavits no later than 4:00 p.m. on the business day that is one full business day before the date set for hearing. A business day means a day on which the Court registries are open for business.

Prepare Supporting Documents

Prepare the Affidavits

Any evidence (material that tends to prove something) that you wish the Court to consider in the application must be set out in affidavits. Both applicants and respondents will probably prepare and deliver affidavits.

Key Terms

An **affidavit** is a written statement made by a person under oath to a lawyer, a commissioner of oaths, or a notary public, to be used as evidence.

Before preparing your affidavits, consider:

- What facts your affidavit should contain to persuade the Court to make the order you are asking for
- Who is the best person to swear the affidavit; that is, who has the most direct knowledge of the facts you are setting out and
- How you want to present the information in the affidavit

The affidavits should include only evidence that relates specifically to the application in question. You should attach as exhibits to the affidavit any documents you have relating to the subject matter of your application, such as letters, courier slips, or fax records. See **Rule 22-2(8**) for further information on how to attach exhibits.

If you are asking the Court to make a final order in your 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 them. Information heard from someone else is called hearsay and the Court does not allow this kind of evidence in applications for final orders (see **Rule 22-(12)** and **(13)**).

If you are asking the Court to make an order that is not final in nature (in other words, an interlocutory order), then the person swearing the affidavit can include statements that someone else has informed them of, as long as the source of the information is also given. However, it is generally preferable if you can get an affidavit from a person who has the most direct knowledge of the information.

If you are the respondent and you want to respond to evidence in an affidavit filed by an applicant, you should prepare an affidavit setting out your response.

For more information, see **Affidavits.**

Prepare the Application Record

An application record is a binder you file with the Court before your application. It contains all the important documents the judge or master will need to make a decision. There are specific rules for what an application must contain and how it should be organized. You must always prepare an application record even when

the other party has consented to the application or if it is being brought without notice to the other party. **Rule 8-1(15)** deals with the application record.

Read the Rules

Rule 8-1(15) Application record

It is extremely important that you get your application record in on time. If you do not, your application will probably have to be rescheduled.

The applicant must provide an application record to the court registry, no later than 4 p.m. on the business day that is one full business day before the hearing date. A business day means a day on which the court registries are open for business. So, for example, if an application is to be heard on a Wednesday, the applicant must file the application record by 4 p.m. on Monday. If the application is to be on a Monday, it must be filed by the previous Thursday at 4 p.m. If it is to be heard on a Tuesday, it must be filed by 4 p.m. the previous Friday.

Further, you are not allowed to provide an application record any earlier than 9 am on the business day that is three full business days before the date set for the hearing.

When you provide your application record to the registry, you must also provide an extra copy of the notice of application or petition. On that extra notice of application, indicate the order in which the relief sought will be spoken to. That is, if you ask for two orders, but will talk about the second order sought before talking about the first order, make a note saying that on the extra copy.

The application record must be in a ring binder or other type of secure binding.

What to Put in an Application Record

The application record must contain, in sequentially numbered pages (or separated by tabs), the following documents, in this order:

1. A title page with the style of proceeding and the names of the lawyers, if any, for the applicant and the application respondents
2. An index
3. A copy of the filed notice of application
4. A copy of each filed application response

5. A copy of every filed affidavit and pleading, and of every other document other than a written argument, that will be relied on at the hearing and
6. If it is a summary trial, a copy of each filed pleading

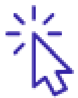
The application record may contain:

- A draft of the proposed order
- A written argument, if the application is estimated to take more than 2 hours
- A list of authorities and
- A draft bill of costs

The application record must not contain:

- Affidavits of service
- Legal authorities (e.g., copies of case law, legislation, legal articles, etc.) or
- Any other documents unless the other parties consent

Unless the court orders otherwise, the applicant must retrieve the application record at the end of the hearing (or the following business day if the hearing was adjourned).



Learn More

See **Practice Direction 28 – Chambers Practice**.

Application Hearing

A large part of preparing for an application is preparing the evidence that will be considered by the judge or master in deciding whether to grant the order requested in the application. All the evidence in chambers is presented to the Court by affidavit. See **Affidavits.**

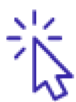
One of the most useful things you can do to prepare is to spend some time watching chambers hearings so you understand how applications are presented in court. In Vancouver and Victoria, chambers hearings are held every day or on set days throughout the week. At other courthouses they may be less frequent. You can contact the registry to find out when chambers hearings are scheduled in your

location. Courtrooms, while in session, are open to the public and you are welcome to attend to observe the proceedings.

Appearance List

In certain applications, the Court requires that the party prepare an Appearance List. This is a sheet which sets out the name of each party and their counsel. The names should be in the same order as they are listed in the style of proceeding (also known as style of cause). If possible an appearance list is to be typed.

Making an appearance list is generally a good idea, and it is required in certain situations, including where there are three or more parties, or six or more lawyers.



Learn More

For more information on Appearance Lists, see **Practice Direction 44 – Requirement for Appearance**

At the Hearing

At the chambers hearing, both parties will have an opportunity to present their cases to the judge or master. Do not interrupt the other side. You will have your opportunity to speak.

Steps in presenting your case:

1. The applicant will speak first and explain their position
2. The person or persons responding will then explain their position
3. The applicant may then have the last word, a chance to “reply” to what the respondents have said

When you are orally presenting your position on an application to the Court, the following general principles may assist your presentation:

- For each issue, tell the Court what order you are seeking
- Outline the facts necessary to support your application
- Set out the law on the subject
- Explain how the law applies to the facts of your case

- Indicate that the application of the law to the facts of your case requires the Court to issue the order requested
- Try not to switch back and forth between facts and law

The judge or master normally gives judgment right away. However, in some cases where the issues are complex, judgment may be reserved (delayed) and provided in writing at a later date.

Stand when you are making your presentation to the judge. A justice should be addressed as "Justice", "Mister Justice" or "Madam Justice." If you are appearing before a master, address both male and female masters as "Your Honour." Court clerks are addressed as "Mr. or Madam Registrar."

For more information on what to expect and what to do in court see **At Court.**

After the Hearing

When the hearing has completed and the Court has made an order, the order needs to be prepared. The order is the document that is signed and entered with the Court and sets out the decision of the judge or master. Review **Rule 13-1** for more detailed information about preparing your order. For more information on preparing a court order, see **Orders.**

Read the Rules

Rule 13-1 Orders

Orders After Applications

You may make an application to court to ask for an order to resolve issues that come up before the trial of your case. These kinds of applications are generally called "chambers proceedings" and they do not result in a final decision of your case.

For example, you might want to make an application in chambers to get an order for the other party to produce certain documents for you to inspect.

The parties, not the judge or master, are responsible for preparing the written order and getting it signed by the judge or master, as well as by the parties who appeared at the hearing.

You can do this in one of three ways:

1. You can prepare a draft order (**Form 35**) before the hearing, setting out the terms of the order that you are asking the court to make

Before the hearing, take the order to the registry to be "vetted". This means that the registry staff will have a look at it to make sure it is in the proper form. The registry staff will make a note on the order that it has been vetted.

If you are successful in your application to court, you can ask the judge or master who heard the application to sign the order. The court clerk will hand up the order to the judge or master and, if it is accurate and has been vetted, the judge or master will sign it at that time. In these situations, you don't need to get the other parties to sign your draft order.

2. If you don't have a draft order in Form 35, but the court orders what you were asking for in your application, show the judge or master where your application asks for that order

In some cases the judge or master may initial your application (**Rule 13-1(4)**). You can file that initialed document in the court registry and it has the same effect as a formal court order. This saves you the steps of drafting the order and getting signatures from the other parties.

3. If the judge or master does not sign the order in chambers, one of the parties must draft the order (**Form 35**). Any party can draft the order. Usually the party who won the application will draft the order, but if one party has a lawyer, that lawyer might agree to draft the order. In some cases the court might rely on **Rule 13-1(15)** and ask the registry to draft the order

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

The process of the registry filing the order may take some time. This is because the registry staff have to check the order you submitted as against the notes of the court clerk.

Find the Form

Form 35 Order made after application

Appeals from Master and Registrar Orders

This section of the Guidebook should be read along with **Information Package #2 - Appeal from a Master, Registrar or Special Referee**, which provides helpful .doc versions of some relevant Court forms.

Many applications are decided by a Master or Registrar of the BC Supreme Court. For more information on applications, see **Chambers**. Registrars often hear matters relating to costs awards. For more information on costs, see **Costs.**

Sometimes one or more parties will not be happy with a decision of a Master or Registrar. They can bring an appeal to a judge of the British Columbia Supreme Court. Generally, it is difficult to overturn a decision of a Master or Registrar. The Court ordinarily will not interfere with an order of a Master or Registrar unless convinced that the Master or Registrar was "clearly wrong". However, if the order is "vital to a final issue" in the case, then the judge will rehear the matter (that is, make their own fresh decision).

If a matter is decided by a Master or Registrar of the Court, then their order can be appealed to a judge of the British Columbia Supreme Court. These appeals are governed by **Rules 23-6 (8.1) – 23-6 (8.10).**

Read the Rules

Rules 23-6 (8.1) – 23-6 (8.10) - Appeals from an order of a decision of a master, registrar or special referee

A notice of appeal must be filed within 14 days of the order at issue (**Rule 23-6(8.1)**). The notice of appeal must be in **Form 121**.

Find the Form

Form 121 Notice of Appeal

If you are bringing an appeal, you must also prepare a Notice of Argument in **Form 121.1**. This is a document that sets out what mistake you say was made by the master or registrar.

Find the Form

Form 121.1 Notice of Argument

Further, if you are bringing an appeal, you must within 14 days of the order at issue, order a transcript of the reasons for decision of the master or registrar (if oral reasons were given), as well as a transcript of any evidence led at the Master or Registrar hearing (**Rule 23-6(8.5) and (8.6)**).

Both the notice of appeal and the Notice of Argument must be served on the all of the other parties within seven days of the notice of appeal being filed (**Rule 23-6(8.2)**).

A party who wishes to oppose the appeal must file a notice of interest, in **Form 70**, and prepare a Respondent's Statement of Argument in **Form 121.2**. The Respondent's Statement of Argument sets out the reason for opposing the appeal.

Find the Form

Form 70 Notice of interest

Form 121.2 Respondent's Statement of Argument

Both the notice of interest and the Respondent's Statement of Argument must be served on all the other parties within 14 days of receiving the Notice of Appeal and Notice of Argument.

The matter must be set for hearing. If the time estimate is less than 2 hours it can be heard in ordinary Chambers. If it will take longer than 2 hours then a hearing date must be fixed by Supreme Court Scheduling. For more information on setting matters in chambers, see **Chambers Applications.**

The appellant must file an Appeal Record with the Court by 4 p.m. one full business day before the hearing. The appeal record must be in secure binding (like a 3 ring binder) and contain:

- **I.** A title page
- **II.** An index
- **III.** A copy of the notice of appeal
- **IV.** A copy of the order of the master or decision of the registrar or special referee that is subject to the appeal
- **V.** A copy of the written reasons for judgment of the master, or reasons for decision of the registrar or special referee, or, if the reasons were given orally, a transcript of the reasons
- **VI.** A copy of the notice of application and application response, and for registrars' appeals, a copy of the appointment
- **VII.** Copies of any affidavits that were before the master, registrar, or special referee that will be relied on for the appeal
- **VIII.** A transcript of any oral evidence heard by the master, registrar, or special referee to be relied on for the appeal
- **IX.** The appellant's statement of argument, not to exceed 10 pages, and
- **X.** The respondent's statement of argument, not to exceed 10 pages