Chambers Applications

Chambers Applications Introduction

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A chamber application is the process used to request a decision from the court, before trial begins or sometimes, during a trial before a final decision is made. The name "chambers" refers to a time in the past when a judge's office was called their chambers. Certain applications would be heard by the judge and decided in their chambers.

You may need to submit or respond to an application to court before a decision is made in your trial.

NOTE: This Guidebook does not provide legal advice and must not be used as a substitute for the advice that a lawyer may provide. This Guidebook provides general information to help people with matters in the BC Supreme Court.

Key Terms

An **application** is when a party asks the Court to make an order to resolve issues that arise before or during your trial.

Usually, applications are made to deal with issues that come up on the way to the trial. However, sometimes applications are made that could result in a final decision in your case.

The Supreme Court of British Columbia has strict rules and requirements for applications. You will need to review the rules and use the correct forms. Typically you need at least two – a **Notice of Application** and an **Affidavit**. The evidence presented at chambers applications are submitted in sworn written statements, called affidavits.

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.

For example, a party in a family law case may submit a chambers application to request an interim order for child support.

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.

Chambers proceedings differ from trials in these ways:

- Evidence is generally presented in the form of affidavits, which are written statements (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 (trial dates have to be reserved with the trial scheduling division of the registry)

In proceedings that start with a Notice of Family Claim, applications usually deal with procedural issues, parenting concerns or property issues that come up as your case proceeds through the steps leading to trial.

For example, you may believe another party has documents that have not been 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 shows 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.

Before making family law applications, the parties must participate in a Judicial Case Conference as per **Rule 7-1(2)**, unless they fall within an exception under **Rule 7-1(3)**.

Read the Rules

Rule 7-1 Judicial Case Conference

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 need to make an application to court.

Your application will be heard by a judge or master. Before you submit an application to the court, take these steps:

- Know that the problem you're trying to solve is one that can be resolved by an application
- Understand the law and the rules governing your application
- Follow all the rules and meet all the deadlines governing applications
- Complete the correct documents
- Be prepared to argue your application before a judge or a master

Remember that preparing for and attending at a chambers application will cost you time and money. First, try to resolve the problem without resorting to a court application.

What Rules Apply?

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

Part 10 of the *Supreme Court Family Rules* covers procedure and affidavits for chambers applications.

Read the Rules

Part 10 - Obtaining orders other than at trial.

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.

Key Terms

A **Master** is appointed to the Supreme Court of BC similar to a Justice; however, Masters have different authority than Justices under the *Supreme Court Act* (see **Section 11.3**) and cannot make decisions on all the matters that Justices can. You can address a Master by saying "Your Honour".

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.

Learn More

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

Scheduling a Chambers Hearing

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

Discuss with the other parties: You need to discuss two things with the other parties: (1) when they are available, and (2) how long they think the hearing will take.

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.

Time Estimates: 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 two hours, you can set it down for any day that the Court will sit in Chambers.
- If your matter is estimated to take more than two 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.

File the Notice of Application: Once you have a Court date, you can file your Notice of Application (see the next section of this Guidebook), which will set out the date of the hearing and the time estimate.

Preparing for an Application

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 **the Family Law Guidebook: 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.

Complete the Notice of Application

You begin an application by preparing, filing, and delivering a notice of application to the other parties (**Form F31**). 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.

Key Terms

The **Applicant** is the person asking the court for certain orders in the Notice of Application.

There are specific rules around filing a Notice of Application. There rules are found in **Part 10 of the *Supreme Court Family Rules*** titled “Obtaining Orders Other Than at Trial”.

Read the Rules

Part 10 - Obtaining Orders Other Than at Trial

Find the Form

Form F31- Notice of application

A notice of application must be in **Form F31**. It must not exceed 10 pages (other than any draft order you attach) and must set out the following information:

Who, where, and when: 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, and the date and time of the hearing.

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 family claim was filed. If you want to have the application heard somewhere else, see **Rule 10-2** for information about the place of hearing.

What you are asking for: Part 1 of the notice of application requires you to set out the order you are asking the court to make. This information should be set out 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.

Facts: Part 2 of the notice of application asks you to set out the factual basis of your application. You need to set out, in numbered paragraphs, a brief summary of the facts supporting the application.

Law: In Part 3 of the notice of application, you must set out the legal basis of the application, including the rule or enactment (i.e., 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.

Evidence: Part 4 of the notice of application 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. See **Rule 10-3(6)**.

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.

Judge or Master: You will have to indicate if your application is within the jurisdiction of a master, or if it must be heard by a judge. When selecting if the matter is within the jurisdiction of a master, you should consult **Practice Direction Masters' Jurisdiction PD-50**. Often if you end up in Chambers (court) for an Application, you will be before a Master.

Key Terms

A **Master** is appointed to the Supreme Court of BC similar to a Justice; however, Masters have different authority than Justices under the *Supreme Court Act* (see **Section 11.3**) and cannot make decisions on all the matters that Justices can. You can address a Master by saying "Your Honour".

Read the Rules

Rule 10-6(3) Contents of notice of application

It is important to fill in all parts of the notice of application. If you do not fill it in completely, a judge may refuse to hear your application and there could be cost consequences against you.

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 (written statements). Both applicants and respondents will probably prepare and deliver affidavits.

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.

Read the Rules

10-4 Affidavits

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 10-4(8)** for further information on 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 him or her. 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 10-4(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.

Find the Form

F30 Affidavit
F8 Financial Statement

For more information, see the **Family Law Guidebook: Affidavits**.

Prepare the Application Record

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 10-6(14)** deals with the application record.

Read the Rules

Rule 10-6(14) 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 a.m. 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.

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

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
6. If it is a summary trial under rule 11-3, a copy of each filed pleading
7. A copy of each filed order that the applicant seeks to vary or rescind or that is otherwise relevant to the relief sought

The application record may contain:

- A draft of the proposed order
- A written argument
- A list of authorities
- 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.)
- 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). A business day means a day on which the court registries are open for business (see **Rule 10-6(17)**).

Serving Documents

You must serve these documents on all parties of record, and on every other person who may be affected by the orders sought. **Rule 10-6(6)** lists what you are required to serve:

a. A copy of the filed notice of application;
b. A copy of the filed version of each of the affidavits and documents, referred to in the notice of application under subrule (3) (d), that has not already been served on that person;
c. In addition to the documents referred to in paragraphs (a) and (b), if the application is brought under rule 11-3, any notice that the applicant is required to give under rule 11-3 (9);
d. In addition to the documents referred to in paragraphs (a) to (c), if the application is in relation to an agreement filed in, or to start, a family law case, a copy of the filed agreement;
e. In addition to the documents referred to in paragraphs (a) to (d), if the application is in relation to a determination of a parenting coordinator filed under rule 2-1.1 (1),
    . A copy of the filed determination, and
    i. If the parenting coordinator was engaged under an agreement filed under rule 2-1 (2), a copy of the filed agreement;
f. In addition to the documents referred to in paragraphs (a), (b) and (d), if the application is in relation to an arbitration award filed in, or to start, a family law case, a copy of the filed arbitration award.

Read the Rules

Rule 10-6(6) Service of application materials

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.

If the application is to change, suspend or terminate a final order or to set aside or replace the whole or any part of an agreement filed under **Rule 2-1(2)**, the documents must be served by personal service at least 21 business days before the date set for the hearing of the application.

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

Read the Rules

Rule 10-6(7) Service requirements

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 your spouse has listed your home for sale, 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, without notice to the other party. The full procedure is described in **Rule 10-9**. You should read and follow **Practice Direction 6 - Short Notice Applications - Family.**

Read the Rules

Rule 10-9 Urgent applications

Prepare the Response

If you intend to respond to an application by another party, you must complete an application response in **Form F32** 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 32 Application response

If you wish to respond to a notice of application, you must do so within the time limit. The time limits vary depending on the nature of the application.

1. If it is a regular application, you must file your application response within **5 business days** (days on which the court registries are open for business) after service.
2. If the application is for a summary trial, you must file your application response within **8 business days** after service.
3. If it is an application to change, suspend or terminate a final order, to set aside or replace the whole or any part of any agreement filed under Rule 2-1(2) or to change, suspend or terminate an arbitration award filed under Rule 2-1.1(1), you must file your application response within **14 business days** after service.

Read the Rules

Rule 10-6(8.1) Time for filing and service

The application respondent must do the following within the time limitation of filing their response:

- 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 family law case;
- 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 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 11-3(9)**

Your application response must be in **Form 32** and cannot exceed 10 pages. It must contain the following information:

- In Part 1, which, if any, orders requested that you consent to.
- In Part 2, which orders you oppose being granted.

- In Part 3, which orders you take no position on (neither consent, nor oppose)
- In Part 4, you summarize the factual basis for your opposition to the application.
- In Part 5, you summarize the legal basis for your opposition to the application, including any statute or regulation relied upon.
- In Part 6, you set out the affidavits or other material that you will be relying on at the hearing of the application.
- Your estimate of time the application will take for hearing.

Read the Rules

Rule 10-6(8) Application response

Responding to the Response

An applicant may respond to any document that the application responded has served by filing and serving 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.

Read the Rules

Rule 10-6(12) Applicant may respond

Resetting an Adjourned Application

If the application gets adjourned and a new hearing date is not scheduled, **Rule 10-6(19.1)** 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. 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 10-6(20)**). A business day means a day on which the court registries are open for business.

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.

The applicant will speak first and explain their position.

The person or persons responding will then explain their position.

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:

- First, for each issue, tell the court what order you are seeking.
- Second, outline the facts necessary to support your application.
- Third, set out the law on the subject.
- Fourth, explain how the law applies to the facts of your case.
- Fifth, 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. Address a male judge as "Mister Justice" and address a female judge as "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 **Family Law Guidebook - Your Day in 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 15-1** for more detailed information about preparing your order.

Read the Rules

Rule 15-1 Orders