

Responding to an Action

Responding Basics

Last Reviewed: March 2023

Reviewed by: JES



Responding to an Action Basics

If you have received a Notice of Civil Claim, and you are named as the defendant, you are being sued. You only have a short time to file your reply with the court. Be sure to review the whole document carefully as soon as you get it. The Notice of Civil Claim form includes a blank Reply form with instructions to help you fill it out. ***Do not ignore a Notice of Civil Claim!*** If you do nothing, the claimant can get a default judgment against you.

A notice of civil claim is a document that starts a lawsuit against you. The person who started the action is called the plaintiff and you are called the defendant. For more information on what a notice of civil claim is, review **Starting a Claim**.

Generally, you must be personally served with the notice of civil claim.

Key Terms



Personal service usually means that someone (normally a process server) will have personally handed you the document or will have left the document with an adult 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.

Once you have been served, procedural time limits relating to your lawsuit begin to run.

Time limits

Once you have been served with a notice of civil claim, you need to file a Response to Civil Claim.



Find the Form

Form 2 Response to civil claim

A response to civil claim lets the plaintiff know that you are going to defend the claim started against you. It also provides the plaintiff with your address for service.

You will need to prepare, file and serve a response to civil claim within 21 days (if you live in Canada). How long you have to respond depends on where you live and were served:

Time Limit	If you live (and were served):
Within 21 days of service	within Canada
Within 35 days of service	in the United States
Within 49 days of service	anywhere else in the world

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

What Happens If You Are Late, or Do Not File a Response?

If you wish to defend yourself but have filed your response late, the registry will still accept it for filing. However, there is a risk that a “default judgment” may have been



Key Terms

A **default judgment** is when the Court awards the plaintiff what they claimed because the defendant did not file a response in time.

See Rule **3-8**. A default judgment means you lose the chance to tell the Court your side of the story before they give the other side an order for what they asked.

For more information on default judgment, see **Avoiding Trial**.

If a plaintiff obtains default judgement against you, it may still be possible to mount a defence. However, you would have to make an application to the Court to set aside the default judgment.

In order to set aside a default judgment, you must convince the Court that:

1. You did not willfully or deliberately fail to file a defence to the plaintiff's claim.
2. You made the application to set aside the default judgment as soon as reasonably possible after learning that judgment had been given (or providing an explanation for the delay); and
3. That you have a defence to the claim worth investigating.

You need to prove this with affidavit evidence. For more information on preparing an affidavit, see **Affidavits**. For more information on bringing an application, see **Chambers Applications**.

Remember

Having a lawsuit started against you is stressful. However, it is important to remember a few key things:

- **Most lawsuits never go to trial:** Just because you were served with a claim does not necessarily mean that you are going to a trial. In fact, most lawsuits either settle, are withdrawn, or are abandoned without going to trial. For more information on how to settle a lawsuit, see **Alternatives to Going to Court**
- **You have not told your side of the story:** You may feel like unfair allegations are being made about you. However, at this point, they are just allegations, not proven. You have not had your chance yet to tell the other side of the story
- **You do not have to tackle all of the lawsuits at once:** There are a lot of steps leading up to trial in order to respond to a lawsuit. However, you do not have to do them all at once. Rather, as long as you stay organized, you can take the challenges one at a time as they arise

If it is possible, it is a good idea to get professional legal advice as soon as possible after you are served with a lawsuit. A lawyer can let you know if the lawsuit has any merit, and can tell you the next steps. For more information on how to find a lawyer, see [Get Help](#).

Preparing a Response to Civil Claim

Before you set out to prepare a response to civil claim, you should carefully consider whether you will hire a lawyer. Defending a claim can be tricky and mistakes made in preparing a response to civil claim can have serious consequences. For more information on how to seek legal help, see [Get Help](#).

If you are going to prepare a response to civil claim on your own, the first thing you need to do is carefully review the Notice of Civil Claim.

The document will tell you:

- The style of proceeding and registry file number. The style of proceeding (also called the “style of cause”) 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 service address for the plaintiff
- How long you have to reply to the document before default judgment can be taken against you

When you begin preparing your response to civil claim, refer to [Rule 3-3\(2\)](#).



Read the Rules

[Rule 3-3\(2\)](#) Contents of response to civil claim

Your response must be in [Form 2](#), which has three key parts.

Part 1: Response to Notice of Civil Claim Facts

The Notice of Civil Claim you are responding to will set out a series of facts. These will be set out in “Part 1” of that document. You need to create a responding “Part 1” that responds to the facts alleged, sets out your version of the facts, and offers any additional facts.

Generally, part 1 of a Response to Civil Claim is divided into three:

Division 1 – Admit, Deny, or state outside your knowledge

Specifically, you need to indicate whether the facts set out in each paragraph of the notice of civil claim are:

- Admitted
- Denied or
- Outside of your knowledge

Learn More



Be careful with admissions. If you admit a fact it can be difficult to later withdraw that admission. If part of a paragraph is true, but you do not agree with another part, do not admit that paragraph. Instead deny that paragraph, and provide a new paragraph in your version of the facts.

Division 2 – Set out your version of the facts

For facts that are denied, you need also set out your own version of the facts. When you cannot agree with how the plaintiff has stated the facts, this is your chance to restate the facts from your perspective.

You only have to set out the facts. You do not have to set out how you will prove the fact. A response to civil claim needs to include “fact” but not “evidence”.

For example, if paragraph 1 of the notice of claim states that it was raining on the day of the accident, and you believe it was not, you would simply deny the allegation in paragraph 1 and state that the weather was clear on the date of the accident. You would not attach weather reports or indicate which witnesses could testify about the weather on that day.

Division 3 – Set out additional facts

Finally, you should include any additional facts that may be important to the case. It can be hard to draw a line between what are “additional facts” (Division 3) and what is the defendant’s version of the facts (Division 2). It is not overly important to worry about where to put a fact; what matters is that all the important facts are in your response at some point.

Part 2: Response to Relief Sought

In Part 2 of the notice of civil claim, it will set out what the plaintiff is asking the Court to order. You need to respond to each thing the plaintiff is asking from the Court by saying whether you consent, oppose, or take no position.

This is done by setting out three paragraphs:

- In the first paragraph you say what relief sought your consent to
- In the second paragraph you say what relief sought you oppose
- In the third paragraph you say what relief sought you take no position on

It might look like this:

1. The Defendant consents to the granting of the relief sought in paragraph 3 of Part 2 of the Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in paragraphs 1, 2, 4-8 of Part 2 of the Notice of Civil Claim
3. The Defendant takes no position to the granting of the relief sought in paragraph 9 of Part 2 of the Notice of Civil Claim

If you do not consent to any of the relief, you can write “NIL” or “NONE” instead of listing any paragraphs.

Part 3: Legal Basis

In Part 3, you must summarize the legal basis behind your opposition to the relief requested by the plaintiff. You should specify any rules, regulations or legislation that you are relying on.

Often, when responding to a claim, it may be adequate to simply deny that any duty or obligation existed, then deny that any was breached, then deny that you caused any loss. Many responses to civil claims set out in the “legal basis” something like:

1. The defendant denies that they owed the plaintiff any duty, as alleged or at all
2. In the alternative, if the defendant owed the plaintiff any duty, which is denied, they deny breaching any duty, as alleged or at all
3. If the defendant breached any duty owed to the plaintiff, which is alleged, they deny the breach caused the plaintiff any loss, as alleged or at all

This sort of pleading is appropriate in many cases. However, you may also need to research the law that applies to your case in order to create a complete response to civil claims.

Determining the law that applies to your case can be hard. Learning to decide what law applies where is a large part of what is taught in law school. There are many helpful resources at the Courthouse libraries that may assist. However, getting up to speed on what law applies will take time and effort.

For more information on how to research the law that applies to your case, see [Legal Research](#).

Do you Have a Counterclaim?

A counterclaim sets out any claim you might have against the plaintiff or another party related to the lawsuit started by the plaintiff.

For example, if the plaintiff is suing you for money owing on a piece of dry cleaning equipment that you purchased from them, your counterclaim against the plaintiff may be for the damage caused to your customers’ clothing by the malfunctioning equipment.

It is possible that the counterclaim raises questions between yourself and a person other than the plaintiff. In that case, you may join that other person as a party against whom the counterclaim is brought (see [Rule 3-4\(2\)](#)). In this example, you may want to sue the company that manufactured the equipment in addition to the person who sold it to you.

The counterclaim contains the same information as a notice of civil claim, so if you are preparing one, see **Preparing your Documents** for information that must be included in this document.

The counterclaim may be attached to your response, or it may be prepared and filed separately, but it must be in **Form 3** and it must be served within the time allowed for the response.



Read the Rules

Rule 3-4 Counterclaim



Find the Form

Form 3 Counterclaim

You can file a counterclaim even if the limitation period for that counterclaim has expired. For more information on limitation periods, see **Limitation Periods**.

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. 12345
	Vancouver Registry
IN THE SUPREME COURT OF BRITISH COLUMBIA	
BETWEEN:	
	JOE SMITH and FRANK JONES
	PLAINTIFFS
AND:	
	XYZ HOLDINGS LTD., FRED JOHNSON AND MARY BROWN
	DEFENDANTS
AND:	
	JOE SMITH AND FRANK JONES
	DEFENDANTS BY COUNTERCLAIM

Third-Party Claims

If you believe that another person, company, or organization (called the “third-party”) is partly responsible for the claim being made against you, you can file a third-party claim under **Rule 3-5**. For example, if you are a dry cleaner and you’re being sued for ruining a customer’s expensive suit, you might want to file a third-party claim against the manufacturer of the dry-cleaning machine, alleging that the machine was defective.

A third-party claim must be filed in **Form 5** within **42 days** after being served with the notice of civil claim or a counterclaim. After that, it can only be filed with leave (permission) of court, which can be obtained by filing an application. For more information on bringing applications to Court, see **Chambers Applications**.



Find the Form

Form 5 Third Party Notice



Read the Rules

Rule 3-5 Third Party Claims