

Petitions

Petitions Basics

Last Reviewed: March 2023

Reviewed by: JES



Petitions Basics

Steps in a Petition

A proceeding started by filing a Notice of Petition is called a “Petition”. The person who filed the petition is called the “Petitioner”. The person or persons responding to the petition is called the “Respondent”

1. **Petitioner** prepares and serves petition and supporting affidavits (see [Starting a Petition](#))
2. **Respondent** prepares and delivers response to petition, with supporting affidavits (see [Responding to a Petition](#))
3. **Petitioner** obtains a date for hearing the petition in court. Proceedings follow the rules for chambers applications (see [Chambers Applications](#))
4. **Petitioner and respondent** prepare for hearing in court (chambers) (see [Application Hearing](#))
5. **Petitioner and respondent** attend the court hearing and receive judgment and award of costs (see [Costs](#))
6. **Petitioner or respondent** (winning party) prepares and files court order (see [Orders](#))
7. **Petitioner or respondent** enforces judgment (see [Enforcing Court Orders](#))

It is up to the petitioner to move the petition through the court system. The Court does not on its own generally take any steps if a petition respondent is not meeting time limits.

Rather, as the petitioner, it is your job to make sure that the petition respondents comply with their time limits. You may want to let the other side know that you expect steps to be taken on time. If the other side is significantly late in getting a step completed, you may need to bring an application to court to get them to comply. For more information on how to bring applications, see **Chambers Applications**.

It can be helpful to keep a calendar with key dates and deadlines for your litigation.

Who Should Be Part of the Proceeding?

A critical part of planning your case is deciding who you want to make your case against and who might be on your side of the case. When you start an action with a petition, you are called the petitioner and the person you are suing is called the petition respondent.

The petitioner(s) and the petition respondent(s) are called the parties to the proceeding. The following list gives some examples who can be parties to a petition proceeding:

- Partnerships
- Companies
- Crown corporations (i.e., BC Transit or ICBC)
- Trade unions
- Aboriginal governments
- Cities
- Provincial governments or
- The federal government

There can be more than one person or business as either the petitioner or the petition respondent. Do your best to make sure you have the correct (and full) names of every person who will be named in the documents.

If you cannot find an address for a petition respondent, this does not mean that you cannot file your petition. If there is a **limitation period** (See **Limitation Periods**) that is about to expire, file without determining the address. You may list a petition respondent in the claim and say “address unknown”. However, you may not be able to serve the petition (see more information on service below) without an address. You will therefore need to figure out the address of each defendant

eventually, and if you can you should include this information in the Notice of Petition.

Consider getting legal advice to make sure the correct parties are included in the petition because if you include the wrong parties, it will cost you time and money to amend the petition later.

Preparing Your Documents

In order to start a petition proceeding you must prepare:

1. A **Petition to the Court (Form 66)**. The petition to the court is the document that sets out what happened, what you would like the Court to do about it, and why
2. One or more **supporting affidavits**. The supporting affidavit is where you provide the evidence that will prove the facts in your petition. For more information on preparing an affidavit, see [Affidavits](#)



Find the Form

[Form 66](#) Petition to the Court

Drafting the Petition

Prepare your petition ([Form 66](#)) only when you have all the information that you need to start the proceeding. The petition and affidavit together must include all the information that you want the court to consider.

The purpose of the petition is to set out the basis of your claim, including:

- The orders sought against each petition respondent
- A concise statement of the material facts giving rise to the claim
- A concise summary of the legal basis for the relief sought and
- The material you are relying on

The Petition to the Court might be the most important document in the case. It explains what happened, what you would like the Court to do about it, and why.

It may be worth getting a lawyer to help with the Petition to the Court, even if you do not plan on using a lawyer for the rest of the claim. For information about how to find a lawyer, see **Get Help**.

You should look at Petitions that have been prepared by lawyers in cases like yours before drafting. This will help you understand what you may want to include. After it is filed, unless the Court orders it secret, a Petition to the Court is a public document. You can get copies of Petitions to the Court through the registry, and the Courthouse library staff may be able to help you locate helpful examples.

Style of Proceeding

Begin by preparing a style of proceeding (also often referred to as a “style of cause”).

The style of proceeding is used on documents prepared for the litigation. It provides the key information that will identify your claim: the parties, the court, and the file number.

You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. Create it properly once, and you can copy and paste it into new documents as you prepare them.

Here is an example of a completed style of proceeding on a petition:

	No. 12345
	Vancouver Registry
IN THE SUPREME COURT OF BRITISH COLUMBIA	
BETWEEN:	
MARY SMITH	
	PETITIONER
AND:	
FRED BROWN	
	RESPONDENT

You will not yet have a file number. Rather, the file number (in the top right hand corner) will be stamped by the court registry when you file your claim.

However, on all future documents include the file number. It is important for the registry to identify the case.

Order Sought – What Do You Want the Court to Do?

The Petition to the Court has 4 parts: Order Sought, Factual Basis, Legal Basis, and Material Relied On.

Set out in clear terms exactly what you would like the Court to order. Think carefully about what you need. Do your best to make sure that the Court has the power to make the order you are asking for. Reviewing other filed petitions in similar cases may give you a good idea as to what to ask for.

You may want to include a claim asking for “costs”. This means that if you are successful, the petition respondents might be ordered to pay some money to cover some of your expenses in bringing the petition. For more information on costs, see **Costs**.

Factual Basis

This is your chance to tell the story. Your job is to explain what happened.

When drafting your factual basis section:

- Write in a chronological order
- Use a new paragraph for every sentence and
- Keep your sentences short

You do not need to explain how you are going to prove what happened. The rule is you need to plead facts, not evidence. You will provide your evidence in your affidavit.

For example, imagine a situation where you brought a petition challenging how an estate was administered. Say you did not receive a guitar that was promised to you. The fact that the guitar was never given to you is a fact you would state in your petition. That three people saw the executor playing the guitar at the beach is evidence that he kept the instrument, but not a fact that would have to be proven to establish your case. Whether or not he played the guitar does not change what is important – that he did not give it to you.

The facts that you need to prove in order to establish your claim are called “material facts”. Understanding what the “material facts” are for your claim can be tricky.

To provide an example between a fact and a material fact, in the guitar matter again, the fact that you love to play guitar is not a material fact needed to prove that you should get the guitar. If you had never played guitar once that would not change the essential facts that it was left to you in the will and the executor has held on to it. Therefore, why the instrument was left to you is not a material fact.

In thinking about what material facts to include, think about what you want the Court to order and the legal basis that will allow them to make that order.

You can find help with deciding what needs to go into your claim at the local courthouse library. One helpful resource available at the Courthouse is a book called “McLachlin & Taylor BC Practice”. This book has examples of what you need to include in your Petition to the Court to prove different claims in court, and has the exact language you could include.

You will need to prove every fact set out in Part 4 of your petition response through affidavit evidence. Make sure that you prepare affidavits that proves every fact set out in Part 4 of your petition response. For more information on preparing your affidavit, see [**Affidavits**](#).

Legal Basis

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](#).

Material Relied On

Finally, list the affidavits that you plan on relying on to support your petition. If possible, have all affidavits ready when you file your petition. Describe the affidavit by calling it, for example, the “Affidavit of John Smith, affirmed January 3, 2020”.



Key Terms

An **affidavit** is a form of evidence. It is a written statement of facts confirmed to be true.

If you do not have one or more of the affidavits you plan to file prepared yet at the time you file the petition, you may write, for example, “Affidavit of John Smith, to be affirmed”.

If you later need to rely on additional affidavits not listed in your petition, it may result in the hearing of your petition being delayed. It is important therefore to get all your affidavit evidence prepared as quickly as possible.

For more information on affidavits, see [Affidavits](#).

What Happens Next

Once your documents are filed, you must serve the petition respondents with a stamped copy of the petition and supporting affidavits to notify them that you have started a proceeding against them (see [Rules 4-1 to 4-6](#)).

See [Servicing Documents](#) for the full explanation of how to properly serve documents.

Once a petition respondent has been properly served, they have a certain amount of time to respond. The time varies according to the petition respondent's residence. A petition respondent who lives in Canada must file a response within 21 days. A longer period is allowed if the petition respondent lives outside Canada.

The petition respondent must file and serve on you a response in Form 67. The response must contain an address for receiving future documents in the lawsuit. Once the petition response is delivered to you, most documents can be mailed or faxed to the address provided by the petition respondent and do not have to be personally served.

See [Responding to a Petition](#) to learn more.

Responding to a Petition Basics

When you have been served with a petition, you might find it helpful to talk to a lawyer about what you need to do. 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. **Do not ignore a Petition!** If you do nothing, the petitioner can get a default judgment against you. Defending a lawsuit is complicated and time-consuming and the consequences of doing things late or incorrectly may be serious. For more information on how to find legal help, see [Get Help](#).



Key Terms

The person who started the proceeding is called the “**petitioner**”. You are called the “petition respondent”.

Generally, you must be personally served with the petition and supporting affidavits. Someone (usually a person called a process server) should have handed you the document either at your home or work.

However, if a person has difficulty serving you, the Rules provide for other ways for you to be served. If the claim is against a company, the company may be served through its registered office or its officers.

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

Once you have filed your response and affidavits with the registry, you need to serve them on the petitioner. You can do this by faxing or delivering the documents to the petitioner’s address for delivery set out in the petition. You can mail the documents by ordinary mail to the person’s address for service. You may fax or email the documents only if a fax number or email address is included in the address for delivery. Go to **Serving Documents** to learn more.

Important Time Limits

Once you have been served with a petition, you need to file a response to petition (**Form 67**) and supporting affidavits. For more information on preparing affidavits, see **Affidavits**.

These documents will tell the petitioner that you want to participate in the petition. They will also set out your side of the case. It also provides your address for service.

You will need to prepare, file, and serve a response to a petition 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.



Find The Form

Form 67 Response to petition

Failing to File a Response to a Petition

If you have been served with a petition and do not file a response, the petitioner is not obligated to give you notice of the time and date of the hearing of the petition. There may be a hearing without you. Once this happens, you may no longer have the opportunity to tell the court why you oppose the petitioner's claim against you.

Late Filing of a Response

If you wish to defend yourself but have filed your response late, the registry will still accept it for filing. When you file the response, ask the registry to check to see if a hearing has been held without you. If it has, you may be able to bring an application to the court to ask for the order to be set aside. For more information about bringing a court application, see [Chambers Applications](#).

You may be familiar with court proceedings and trials. However, proceedings commenced by petition are different in several ways. In a petition proceeding, there is no trial with witnesses. Instead, evidence is presented by affidavits. For more information on affidavits, see [Affidavits](#).



Key Terms

An **affidavit** is a form of evidence. It is a written statement of facts confirmed to be true.

Preparing Your Petition Response

The petition sets out certain information that you need to know. The petition will tell you:

- The style of proceeding and registry 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 also 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 petition
- The delivery address for the petitioner and
- How long you have to reply to the petition before default judgment can be taken against you

When you prepare your petition response, refer to **Rule 16-1(5)**



Read the Rules

Rule 16-1(5) Contents of response to petition

Your response must be in **Form 67**, which has 6 parts: Orders Consented To, Orders Opposed, Orders on which no position is taken, Factual Basis, Legal Basis, and Material to be Relied On. Each is discussed below.

Part 1: Orders Consented To

Here, you simply list if there are any orders asked for in the petition that you consent (agree) to. You need only to refer to the paragraph in the petition where the order is asked for.

Part 2: Orders Opposed

Here you list any orders that you say the Court should not make. Do not worry about explaining why at this point. You will do that below in the petition. You need only refer to the paragraph in the petition where the order is asked for.

Part 3: Orders on Which No Position is Taken

Here you list orders that you do not take a position on either way. If there is something that does not concern you, you may wish to just take no position. Again, you need only to refer to the paragraph in the petition where the order is asked for.

Part 4: Factual Basis

If you are opposing any of the relief, then you need to set out the factual and legal basis for your opposition.

While drafting the factual basis, stay organized. It is best to set out the facts in chronological order (that is, the order in which they happened). This helps make the document easier to follow.

You need to only state the facts you rely on. You do not need to explain the evidence that will prove those facts.

For example, imagine a situation where a petition is brought challenging how an estate was administered. Say you did not receive a guitar that was promised to you. The fact that the guitar was never given to you is a fact you could state in your petition response. That three people saw the executor playing the guitar at the beach is evidence that he kept the instrument, but not a fact that would have to be proven to establish your case.

You also only need to set out “material” facts. A fact is “material” if it is needed to decide the questions before the Court.

To provide an example between a fact and a material fact, in the guitar matter again, the fact that you love to play guitar is not a material fact needed to prove that you should get the guitar. If you had never played guitar once that would not change the essential facts that it was left to you in the will and the executor has held on to it. Therefore, why the instrument was left to you is not a material fact.

You will need to prove every fact set out in Part 4 of your petition response through affidavit evidence. Make sure that you prepare affidavits that prove every fact set out in Part 4 of your petition response. For more information on preparing affidavits, see [**Affidavits.**](#)

Part 5: Legal Basis

Next, set out the law upon which you rely on in opposing the relief.

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](#).

Part 6: Material to Be Relied On

Finally, list the affidavits that you plan on relying on to support your response to petition. If possible, have all affidavits ready when you file your petition response. Describe the affidavit by calling it, for example, the “Affidavit of John Smith, affirmed January 3, 2020”.

If you do not have one or more of the affidavits you plan to file prepared yet at the time you file the petition response, you may write for example “Affidavit of John Smith, to be affirmed”.

If you find you need to rely on additional affidavit evidence not listed in your petition response it may still be possible. However, if the Court finds that you do not have a good explanation for the delay it may refuse to allow you to rely on the evidence. Therefore, it is important therefore to get all your affidavit evidence prepared as quickly as possible.

Court Hearing of the Petition

The petition is heard by a judge in court. [Rule 16-1](#) sets out the special information you need to know about petitions. The hearing of petitions is a different procedure than a trial as there are no witnesses; instead, the evidence is presented by affidavits only. The steps and procedures you must follow are set out in the [Chambers Applications](#).



Read the Rules

[Rule 16-1](#) Petitions

Practical information on how to prepare for Court and what to expect at Court can be found in [Preparing for Trial](#).