

Starting an Action

Steps in an Action

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Steps in Actions Started by Notice of Civil Claim

If a matter is started by a Notice of Civil Claim it is called an “Action”. The person who starts an “action” is called a “plaintiff”. The person defending an action is called the “defendant”.

1. Decide whether to bring an action in the Provincial Court (small claims division) or the Supreme Court (see [Where to File](#)).
2. **Plaintiff** starts the action by filing and serving a notice of civil claim (see [Preparing your Documents](#)).
3. **Defendant** files and serves a response (see [Responding to an Action](#)).
4. **Defendant** files and delivers a counterclaim or third-party claim, if applicable.
5. If required, **plaintiff** files and delivers a response to the counterclaim.
6. If required, **third party** files and serves a response ([Third Party Claims](#)).
7. **Plaintiff and defendant** consider if the matter will proceed as fast-track litigation (see [Fast Track Litigation](#)).
8. **Plaintiff and defendant** start discovery process (See [Discovery](#)).
9. **Plaintiff and defendant** may need to make pre-trial applications in chambers to obtain directions or assistance from the court (see [Chambers Applications](#)).
10. **Plaintiff and defendant** consider resolving case without going to trial (see [Negotiation](#) and [Avoiding Trial](#)).
11. **Plaintiff and defendant** prepare for trial by setting trial date; considering expert opinions; and preparing documents for trial (see [Trial](#)).
12. **Plaintiff and defendant** attend the trial and receive judgement and award of costs (see [Costs](#)).

13. Plaintiff or defendant (winning party) prepares and files court order (see **Orders**).

14. Plaintiff or defendant enforces judgement (see **Enforcing Court Orders**).

Who Should be Part of the Action?

The people or organization directly involved in an action, either by suing or being sued, are often referred to as “parties” or “parties to the action”.

The person who brings a claim is called a “**plaintiff**”. A Plaintiff is a person who goes to Court and says that something unlawful happened to them. There can be more than one plaintiff. However, other people can be added as plaintiffs only if they agree to being plaintiffs.

A “**defendant**” is a person who the Plaintiff says is responsible for the unlawful thing that happened. There can be more than one defendant in an action. Defendants named in an action must participate, or judgement can be made against them without their participation.

It is not only people who can be a party to an action. Rather, parties to an action may be groups or organizations, such as:

- A partnership
- A company
- A Crown corporation (i.e., BC Transit or ICBC)
- A trade union
- An aboriginal government
- A city
- A province or
- The Federal Government

Who Should I Name as Defendants?

Think carefully about who has caused your loss. Was it a person? Was it a business? Was it a government?

If more than one person or organization was responsible for your loss, you can name more than one person as a defendant.

It is important when naming defendants to think about who will have the ability to pay you if you succeed. Simply winning a lawsuit does not automatically mean you get paid. Rather, once the Court has found in your favor, it is your responsibility to collect. For more information on the collection, see **Enforcing Court Orders**.

Think about whether the person you are planning on suing will likely pay if they lose. Are they insured? Are they big organizations like a corporation or a government that can be trusted to pay debts?

If there is nobody named as a defendant who you expect will actually be able to pay if you succeed, you may want to reconsider starting a lawsuit at all.

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 defendant, this does not mean that you cannot file your claim. If there is a limitation period (See **Limitation Periods**) that is about to expire, file without determining the address. You may list a defendant in the claim and say “address unknown”. However, you may not be able to serve the claim (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 Civil Claim.

Consider getting legal advice to make sure the correct parties are included in the document because if you chose the wrong parties, it will cost you time and money to change the documents later.

Counterclaim

The defendant has the option in their reply to sue the person making the claim for a related incident. For example, if you sue a contractor for failing to complete the agreed-upon work, they may decide to sue you for money owed for the work done. If they sue you, you are also a defendant and must take steps to reply. See **Counterclaim** for more information.

Preparing your Documents

Once you have decided on the type of document to use, the parties, and the registry location, it is time to prepare your document. Copies of the documents are

included at the end of this guide. You can also get copies from any court registry or download them from the website addresses at the end of this guide.

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 notice of claim.

	No. 12345
	Vancouver Registry
	IN THE SUPREME COURT OF BRITISH COLUMBIA
	BETWEEN:
	JOE SMITH and MARY SMITH
	PLAINTIFFS
AND:	
	FRED BROWN AND BROWN
	BUILDING CONTRACTORS
	DEFENDANTS

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

How to Draft a Notice of Civil Claim

A Notice of Civil Claim 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 Notice of Civil Claim, even if you do not plan on using a lawyer for the rest of the claim.

You should look at Notices of Civil Claim 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 Notice of Civil Claim is a public document. You can get copies of Notices of Civil Claim through the registry, and the Courthouse library staff may be able to help you locate helpful examples.

The Notice of Civil Claim has three parts: Statement of Facts, Relief Sought, and Legal Basis.

Statement of Facts – What Happened?

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.

For example, if you sue a store for a slip and fall, the fact that the store's walkway was covered in ice would be a very important fact. You would want to include that fact in your pleading. However, you would not include that you heard 3 other customers complain about ice. This is just evidence that might help prove that the walkway was slippery. The important fact is whether the walkway was slippery.

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

To provide an example between a fact and a material fact, in the slippery walkway case referred to above, that there was ice on the walkway is a material fact. That you were going to the store to buy toothpaste is not a material fact. Though it may come out in trial as you tell your story, it is not something that you have to prove to establish your case. If you were going to buy detergent and slipped and fell, what you want the Court to do, and why would not change? Therefore, why you went to the store 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 Notice of Civil Claim to prove different claims in court and has the exact text you need to include.

Relief Sought – What Should the Court Do About It?

The second part of the claim is where you set out what you would like the Court to do about the facts you have described. Do you want money? Do you want an order that the defendant stops doing what you are complaining of? Do you want both?

Money: If you would like money, you need to include a claim for “damages”. Damages in law simply mean money to compensate you for a loss.

The law recognizes different types of damages.

- **General Damages:** Also called “non-pecuniary” damages. This is money to compensate for a loss that is not easily given a dollar amount. For example, pain and suffering, or loss of ability to do something, can lead to an award of general damages
- **Special Damages:** Also referred to as “pecuniary” damages. This is money to compensate for a specific loss. For example, if you have already had to pay medical bills, these bills might be claimed as “special damages”
- **Aggravated Damages:** This is money aimed to compensate for extra injury caused by how a wrongful act is done. For example, they could provide some compensation for hurt feelings arising from a cruel wrongful dismissal
- **Punitive Damages:** Punitive damages are not aimed at compensating for any loss suffered, but are aimed at punishing the wrongdoer

The Defendant to do, or stop doing, something: If you would like and order the defendant(s) to have to do, or stop doing, something, then you have to make a claim for **an injunction**.

Key Terms

Injunction: An injunction is an order given by the Court requiring that something be done (called a mandatory injunction) or not done (called a prohibitory injunction).



Costs: “Costs” are amounts of money that the Court awards to someone who has succeeded in litigation to cover some of their expenses. Ordinarily a claim for costs is included in almost every notice of civil claim. See **Costs**.

Legal Basis – Why Can the Court Help?

The legal basis is where you set out the law. You need to say what law that allows the Court to give you the relief you are asking for.

Determining the law that applies to your case is 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 researching the law applicable to your case, see **The Law**.