



Family Chambers Application Procedures 101

Desk Reference Manual

Section 1 Introduction

General Information

Chambers is a term used to describe courtrooms that have been set aside to hear interim (sometimes still referred to as interlocutory) applications to resolve issues that arise prior to a matter going to trial.

An interim order is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.

Supreme Court Family Rules Part 10 sets out the procedure when bringing an application to “obtain orders other than at trial”. **Rule 3-1** sets out what matters must be obtained by way of a Petition under **Part 17**, which is discussed later in the manual.

Chambers hearings differ from trial in that trial evidence is provided through witnesses and is of a final nature, while chambers’ evidence is generally provided by Affidavits and is usually not of a final nature.

Chambers can be set on any day the court sits, whereas trial dates must be reserved. Lawyers and judges do not wear robes in chambers, as they do in trial.

Applications are used to seek orders to resolve issues arising in an action prior to trial. For example, orders can be sought to:

- enable a party to do something (i.e. amend a pleading);
- compel a party to do something (i.e. produce documents);
- stop a party from doing something (i.e. restraining and/or protection order).

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Applications can also be used to seek interim orders for:

- relief under the *Family Law Act* for parenting arrangements, guardianship, and contact with a child; and child and spousal support;
- relief under the *Divorce Act* for child and/or spousal support, and custody;
- sale of the former family home.

Regardless of whether or not you will be making applications in any file, be sure to document everything you do. Keep a record of all phone calls from / to clients, opposing parties, agents, court reporters, experts, witnesses, etc. Be sure your notes are legible, and include the date and time. Send follow up letters to confirm the content of your discussion to and from parties, as well as to your client. Give deadlines in which to comply. This information may become the content of a supporting Affidavit and the correspondence may become an exhibit to an Affidavit.



When fixing a faxed stamp on letters, be sure to always leave space for an exhibit stamp.

With respect to requesting production of documents, if a party does not comply or respond to your first two requests, send a third and final letter advising counsel that if they do not respond by a specific date you will seek instructions to set down a court application compelling the other party to provide the information, documents, etc. Your letter can then be attached to an Affidavit in support of your application. A typical amount of time between requests might be one to two weeks, depending on the nature of the request.

You may also want to inform the other side of your client's intention to seek costs against them if an actual application becomes necessary.

Once you have advised the opposing party that you are filing a chambers application, follow through with it. It is embarrassing to your counsel if you write five letters advising them that you are going to have the courts intervene, and then wait months to finally do it.

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In cases of urgency, you may not have as much time between your requests or you may only have time to make one request. For example, a mediation might be scheduled for the near future and the information is required in advance. In these circumstances, write one strongly worded letter, keeping the approaching hearing and other dates in mind. Regarding last minute applications, the court will ask why the information was not requested earlier and you will need a good reason for any delay, or the court may not hear your application on an urgent basis and may not allow your request for costs.

The information you provide to the court should be contained in either the pleadings or in the Affidavits filed in support of the application.

Throughout this manual, references are made to Practice Directions and Administrative Notices which are found on the court's website. Practice Directions relate to procedures of the Supreme Court, which are issued by the chief justice from time to time. They are not enforceable in law, but are intended as a direction supplementary to the Rules. Administrative Notices provide direction or information relating to administrative matters, which are issued by the chief justice or registrar from time to time.

Finally, in an effort to increase access to legal services, the Law Society of British Columbia expanded the roles of articulated students, paralegals and the new position of designated paralegals to assist those who cannot afford the high cost of lawyers. Designated paralegals now have a limited right of appearance in family law chambers in limited registries on non-contentious procedural matters.

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Limitations

You should be aware of some of the following limitations when contemplating applications:

Pursuant to the *Family Law Act*:

- a) s. 198(3) to apply to set aside or replace an order or agreement respecting property or spousal support, it must be no later than two years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- b) s. 233 to appeal a Provincial Court order to the Supreme Court, it must be brought within 40 days beginning the day after the order was made.

Pursuant to the Supreme Court Family Rules:

- a) Rule 4-2(1) & (3) sets out that an application to renew an original Notice of Family Claim where the Respondent has not been served, must be made by the Claimant before or after the expiry of 12 months from the date the Notice of Family Claim was issued.
- b) Rule 22-7(9) sets out that to file a Notice of Appeal of a Master's Order, it must be done within 14 days of the order or decision.

Pursuant to the *Interjurisdictional Support Orders Act* S.B.C. 2002, c. 29:

- a) s. 19(2) states that to apply to set aside the registration of a foreign order, it must be done within 30 days after receiving notice of the registration.
- b) s. 36(5) states that to appeal an order of any BC court, it must be within 90 days after the date the ruling, decision or order is entered as a judgment of the BC court.

Miscellaneous

In *JCP v JB* 2013 BCPC 297, Provincial Court Judge Merrick, found that the father's failure to pay child support on time and in the full amount, combined with his other actions and words, constituted family violence. This case also supports a claim that a fine be issued regarding failure to provide financial disclosure.

Any application pursuant to s. 51 under the *Family Law Act* for guardianship requires a number of forms to be completed, such as criminal record check, Ministry background check, etc. Be sure to review this section of the *Act* and have all necessary forms included in the supporting Affidavit.

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s. 7 of the *Family Maintenance Enforcement Act* requires that FMEP be served with any application seeking to vary an order enrolled with FMEP.

Judicial Case Conferences

A Judicial Case Conference (“JCC”) gives both parties an opportunity to resolve issues and to obtain as many consent orders as possible, as well as to set procedural goals. A JCC should be scheduled as soon as possible, as very few interim applications can be heard without obtaining exemption.

This is a good time to consider what orders may be necessary.

Both parties must file their F8 Financial Statement *at least 7 days* before the date set for the JCC. As well, by the time of the JCC both parties should have exchanged their Lists of Documents. The JCC is also a good opportunity to obtain orders for production of those if they have not been produced by the JCC, and/or a good time to obtain an extension of the time periods for upcoming Examinations for Discovery.

Rule 7-1(15) sets out what the court can do at the JCC and what orders can be made. At the JCC the court can also make any orders that can be made at a Trial Management Conference as set out under **Rule 14-3(9)**. It is important to review both Rules when preparing for a JCC to see what orders may be made and may be required for trial purposes for the case at hand. This could save the necessity of having to bring on an interim application in the future.

Rule 7-1(2) sets out the requirement to hold a JCC and states that subject to sub-rules (3) and (4), unless a Judicial Case Conference has been conducted in a family law case, a party to the family law case must *not* serve on another party a notice of application or an affidavit in support.

Rule 7-1(3) sets out the exemptions regarding what applications may be brought before a JCC has been heard as follows:

- (3) A party to a family law case may file and serve a notice of application and supporting affidavits in respect of any of the following applications even though a judicial case conference has not been conducted in the family law case:
 - (a) Repealed (was a declaration under section 57 of the *Family Relations Act*);
 - (b) an application for an order under section 91 of the *Family Law Act* restraining the disposition of any property at issue;

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- (c) an application for a consent order;
- (d) an application without notice;
- (e) an application to change, suspend or terminate a final order;
- (f) an application to set aside or replace the whole or any part of an agreement, or;
- (g) an application to change or set aside the determination of a parenting coordinator.

Rule 7-1(4) sets out that an application can be made to seek an order that the court relieve a party from the JCC process if:

- (a) it is premature to require the parties to attend a judicial case conference,
- (b) it is impracticable or unfair to require the party to comply with the requirements of subrule (2),
- (c) the application referred to in subrule (2) is urgent,
- (d) delaying the application referred to in subrule (2) or requiring the party to attend a judicial case conference is or might be dangerous to the health or safety of any person, or
- (e) the court considers it appropriate that the party be relieved from that requirement.

Rule 7-1(5) sets out how to apply for an order for **JCC exemption**, whereby a party must file:

- (a) a requisition in Form F17, and
- (b) a letter signed by the party or his or her lawyer setting out the reasons why the relief is sought.

Requisition applications are discussed later in this manual and provide details on how to obtain an order to relieve a party from the requirement of a JCC prior to filing and serving an application.

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Preparing for Applications

The question one must consider before making an application is whether or not the application is necessary considering the time and expense involved.

Be aware of the costs associated with applications to court and weigh these costs against the real benefit to your client. Remember even if you seek an order for costs, the costs awarded are not the client's out of pocket cost, but the costs allowed under the Tariff (which will be discussed later).

Always consider whether an application can be done by consent via a desk order rather than an application involving a court appearance. Be prepared to answer this question as the judge or master may very well ask why any application which appears by consent was not done by desk order.

Applications are made for various reasons, including:

- compelling the other party to comply with requests for documents,
- requests made at an Examination for Discovery, further particulars, and
- anything else that might be needed to move the litigation forward.

Applications can also provide interim relief against a party pending final determination of an issue a trial.

Keep in mind that seeking an order in an application does not mean the order will be granted. However, having well prepared application materials will help make the job easier to convince the judge or master to provide the orders sought.

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Drafting Essentials

Drafting documents is a skill that is fine-tuned over time with effort and attention to detail.

This section provides a brief overview of some basis drafting elements you should keep in mind such as:

- a) planning stage;
- b) plan the content;
- c) legislative sentence; and,
- d) revision of drafts.

As well, you may want to purchase the *Modern Litigation Correspondence Handbook* published by Law Courts Center.

Planning Stage

a) **Instructions:** Are your instructions clear? Never guess at what you are being asked to do. Always clarify your instructions. Attention to detail is essential in law.

b) **Thinking:** Clients pay for your thinking skills, which includes spending time thinking about the documents you compose. Always take time to think about what you have been asked to do. You should devote the majority of your time to this stage in the writing process.

c) **What, Why, Who, How, Where and When:** The planning stage incorporates these essential elements. You need to analyze each one:

What – what are you trying to say?

Why – why are you trying to communicate this information?

Who – who is your audience?

How – how will you communicate information to your audience?
- how will the document you create be useful?

Where – where is the document you create to be used?
- where will you get the information you need to prepare the document?

When – when will the document be used? Is timeliness a factor?

d) **Audience:** Who is your reader? How many people will see or use this particular document and what do they hope to get out of it? Try to draft your document for your most significant audience.

e) **Purpose:** What do you hope to achieve by producing this document?
Obtain information? Compel action? Persuade?

f) **Writer's Block:** The key to overcoming writer's block is getting something down on paper. Do not stop to edit your work, just write.

g) **Precedents:** Precedents are a great resource. They save time and money, and they provide clues as to what your documents should contain.

Extreme caution, however, should be exercised when using precedents. In particular, you should ensure that they are still current. If you change the wording in a boilerplate clause, always look at what effect the changes made on the clause and the entire document.

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Plan the Content

Take the time to prepare an outline. If your thoughts are disorganized, then your words will be too. Topics can be organized in a number of different ways that include:

- Most important to least important;
- General to specific;
- Chronological;
- Alphabetical;
- Substantive to procedural;
- Most frequent to least frequent occurrence; and
- Permanent to temporary.

Legislative Sentence

Legal drafting uses the “Legislative Sentence” to convey information. The sentence contains the six essential elements (who, what, where, when, why and how) in 25 to 35 words.

a) **Vagueness and Ambiguity:** there is NO place in law for vagueness and ambiguity. The exception is when you are purposely trying to avoid providing information or answering a question. A sentence is ambiguous when you must assume what is meant.

For example: When Max went to the store with David, a can fell on his head. (whose head?)

b) **Brevity:** when sentences are brief, their accuracy is usually improved. Try to convey the most information in the fewest words.

c) **Jargon:** jargon is language that is peculiar to a certain profession or trade. Lawyers tend to use Latin words and old words to convey information. You should not have to use a dictionary to read a sentence. Try to write for a non-legal audience.

d) **Eliminate Redundancy:** you should strive to convey your point in one simple sentence or paragraph. If you say it well the first time, you should not have to repeat yourself. This applies to words as well.

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Revising Your Work

If you revise your writing as you go, you may lose your train of thought. Revise your work only when you have completed your document. Timothy Perrin in "*Better Writing for Lawyers*" suggests the following six steps when revising your work:

1. Check the truth and accuracy of what you have said;
2. Revise the structure - do you have a beginning, a middle, and an end?
3. Fix weak paragraphs;
4. Deal with your sentences - are they as powerful as they can be?
5. Pay particular attention to your choice of words and the diction.
6. Concentrate on the grammar, spelling, and punctuation.

If possible, leave your first draft for a few hours and concentrate on something else before coming back to it.

The key to writing well is taking the time to think about what you have been asked to do, to organize your thoughts, and then to simplify their expression.

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Law Courts Center Desk Reference Manual Price List.xls

<http://tinyurl.com/lccpublications>

Current to: 7/15/14

Title	Code	Last Updated	Price
BC Civil Litigation Guide v9.0	BCCLG	140625	750
Bills of Costs 101	BOC 101	130701	225
Business Corporations Act 101	BCA 101	130808	225
Case Planning Procedures	CAP 102	120108	225
Chambers Application Procedures	CHA 101	140801	225
Civil Litigation 102	CIV 102	131122	225
Clinical Records 101	CRS 101	131203	225
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Discovery Procedures 101	DIS 101	130601	225
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