

Chambers Applications in The Supreme Court

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Interim applications are only brought after an action has been started. The purpose of these applications is usually to provide a legal structure to the parties' relationship with each other and with their children. A typical interim application might be made to establish how the parties will share custody, guardianship and access to the children, to set out interim spousal or child support, or to freeze the family assets, for example.

The main Rules of Court about the application process and the forms used in this process are:

- Rule 1-1: definitions
- Rule 5-1: financial disclosure
- Rule 6-2: ordinary service
- Rule 7-1: Judicial Case Conferences
- Part 10: application process and procedure
- Rule 10-2: where applications are heard
- Rule 10-3: chambers proceedings
- Rule 10-4: affidavits
- Rule 10-6: normal application process
- Rule 10-9: urgent applications
- Rule 15-1: court orders
- Rule 16-1: costs
- Rule 21-2: time

To get a proper picture of the application process, the court forms and the deadlines, you should read all of this segment, whether you're bringing an application or defending one.

A. When to Make an Application

Generally speaking, interim applications are only brought after the Respondent has had a chance to file his or her Response to Family Claim and a Judicial Case Conference has been held. Applications can be brought earlier than this — sometimes on the same day that the action is started — when there is a very urgent problem that needs to be resolved immediately, as might be the case if a parent is threatening to leave the country with the children or torch the family home.

Rule 7-1(3) sets out the exceptions to the requirement that a JCC be held before any applications can be brought:

1. if the parties are married and the application is for a declaration that they have no prospect of reconciling;
2. when an application is being made for an order restraining either or both parties from disposing of family assets;
3. when the order will be made by the consent of both parties; or,
4. when the application is being made without notice being given to the other side (sometimes called an "ex parte application").

If you must bring an application before the JCC but your application doesn't fit into one of the exceptions described in Rule 7-1(3), you must ask the court for permission to have your

application heard before the JCC under Rule 7-1(4). To ask for permission, you must file a Requisition in Form F17 with a signed letter explaining why your application should be heard before the JCC.

Once a JCC has been held, interim applications can be made at any time, without the need for a further JCC.

JCCs are discussed in more detail in the chapter The Legal System > Starting an Action.

B. Making an Application

To start an interim application, you must prepare a Notice of Application and your Affidavit in support of your application. Unless your application is being brought without notice to the other party, the Application Respondent, you must deliver these documents to the other party's address for service by ordinary service under Rule 6-2.

The Notice of Application and supporting Affidavits must be served on the Application Respondent at least eight business days before the date you have picked for the hearing of the application, except in cases of urgency or where the application is to be heard ex parte. The timelines for interim applications are discussed below in more detail.

1. Notice of Application

The Notice of Application describes:

1. the orders and declarations the Applicant is asking for (also called the "relief sought");
2. the facts supporting the application;
3. the legal grounds on which the application is made;
4. the Affidavits or other evidence on which the Applicant relies on in support of the relief sought;
5. an estimate of the time the Applicant thinks it will take for the application to be heard; and,
6. the date picked by the Applicant for the hearing of the application.

The form which must be used is Form F31, set out in Appendix A of the Supreme Court Family Rules. The cost to file an application is \$80.00.

2. Supporting Affidavits

An Affidavit is a statement of fact given under oath or affirmation. The Affidavits filed with the Notice of Application should describe facts which relate to the relief sought in the application. The Affidavits filed in support of the application may be brand new or they may have been prepared previously for another application. The form which must be used is Form F30, set out in Appendix A of the Supreme Court Family Rules.

The process for drafting Affidavits and the rules about the content of Affidavits are discussed in the How do I ? section of this website.

C. Defending an Application

To defend an interim application, you must prepare an Application Response and your Affidavit in support of your position. You must serve these documents on the Applicant by ordinary service,

usually by delivering them to the Applicant's current address for service, which will usually be set out in the Claimant's Notice of Family Claim or the Respondent's Response to Family Claim.

The Application Response and supporting Affidavits must be filed in court and served on the Applicant at least five business days after the date you were served with the application materials. The timelines for interim applications are discussed below in more detail.

1. Application Response

An Application Response contains:

1. a list of the orders sought by the Applicant which the Application Respondent agrees to;
2. a list of the orders that the Application Respondent opposes;
3. a list of the orders to which the Application Respondent neither opposes nor consents (this is called "taking no position" on an order);
4. a statement of the facts supporting the Application Respondent's position;
5. a statement of the legal grounds on which any opposed orders are opposed;
6. a list of the Affidavits or other evidence on which the Applicant Respondent relies on in opposing the application; and,
7. an estimate of the time the Applicant Respondent thinks it will take for the application to be heard.

The form which must be used is Form F32, set out in Appendix A of the Supreme Court Family Rules. There is no fee to file an Application Response.

The Respondent can, at any time after being delivered with a Notice of Application, chose to file an application of his or her own for whatever relief he or she might want to claim against the Applicant, also by a Notice of Application. This is called a "cross-application." Depending on the circumstances and the timing of the cross-application, the parties will often agree to have the two applications heard at the same time.

2. Supporting Affidavits

An Affidavit is a statement of fact given under oath or affirmation. The Affidavits filed with the Application Response should give evidence relevant to the reasons why the application is opposed. The supporting Affidavits may be brand new or may consist of Affidavits that have been prepared for previous applications and are already in the court file. The form which must be used is Form F30, set out in Appendix A of the Supreme Court Family Rules.

The process for drafting Affidavits and the rules about the content of Affidavits are discussed in the How do I ? section of this website.

D. Responding to the Defence

The Applicant may prepare an Affidavit responding to the Application Respondent's Affidavit. This new Affidavit should be limited to responding to new issues raised by the Application Respondent; it is not an opportunity to give facts or raise issues that ought to have been raised in the Applicant's first Affidavit.

The Applicant must file any responding Affidavits in court and serve them on the Application Respondent by 4:00pm on the day that is one full business day before the date set for the hearing. The filed Affidavit must be served on the Application Respondent by ordinary service. The timelines for interim applications are discussed below in more detail.

The Application Respondent does not have an automatic right to reply to the Applicant's responding Affidavit.

E. A Short Note about Time Estimates

Time estimates are very important in applications before the Supreme Court. The length of time an application will take to be heard determines the time when the application will be heard on the date of the hearing and how the hearing date is set.

An application that will take longer than two hours must be scheduled with the trial coordinator at the Court Registry, and a hearing date may not be available for several weeks. Applications that will take less than two hours are heard on a day picked by the Applicant, although it's always best if the Applicant picks the date in consultation with the Application Respondent.

Note that the shorter an application is, the more likely it is to be heard sooner on the day of hearing than later. There could be two applications set to be heard in chambers on a particular day or there could be twenty. The chambers clerk will generally sort the applications in order of the time estimates, so that a five minute application will be heard fairly quickly while a ninety minute application won't be heard until much later in the day.

F. Application Records

The Applicant must prepare the Application Record for the application. When both parties have an application scheduled to be heard on the same day, the parties must cooperate and prepare a joint Application Record.

The Applicant must file the Application Record in court by 4:00pm on the day that is one full business day before the date set for the hearing. The Applicant must serve a copy of the index to the Application Record on the Application Respondent by ordinary service by the same deadline. The timelines for interim applications are discussed below in more detail.

An Application Record contains documents relating to the application in a bound format for the benefit of the judge or master hearing the application. Under Rule 10-6(14)(a), the materials in the Application Record need to be "securely bound," which usually means that they are assembled in a three-ring binder, although any other kind of secure binding will do, including a passing a couple of hex bolts through the left-hand margin.

The contents of the Application Record are listed in Rule 10-6(14)(b) and should be sorted, with tabs, in the following order:

1. an index to the Application Record;
2. the Notice of Application (Tab 1);
3. the Response to Application (Tab 2); and,
4. the Affidavits both parties will rely on at the hearing, each separated by a tab (Tab 3, Tab 4 and so on).

Following these documents, Application Records *may* also include things like written arguments and a draft of the order sought. Certain things *may not* be included in the Application Record, such as Affidavits of Service, copies of legislation and copies of cases.

You should tape a cover page to the front cover of the binder with the names of the parties and the file number of the action. This will assist the court clerk greatly.

G. The Hearing

The chambers courtroom will open at 9:45am. Everyone who is going to be heard that day walks up to the front of the courtroom and signs in with the court clerk, identifying themselves by their names and their number on the court list. (The court list will be posted somewhere outside the courtroom, and another copy is usually available inside the courtroom. All the applications that are going to be heard that day are listed on this list, but in no particular order.) The judge or master will enter the courtroom at 10:00am and will expect to begin hearing applications right away — don't forget to stand when the judge or master enters the courtroom! The court clerk calls each application by their number on the court hearing list and by the last names of the parties involved.

When a case is called by the court clerk, the parties walk up to the front of the court and identify themselves to the judge. The Applicant will speak first and present his or her case. The Application Respondent will then present his or her side of the case, following which the Applicant will have a chance to briefly answer the Application Respondent's argument. The Application Respondent *may* have the opportunity to address the Applicant's answer, but not every judge or master will permit this. As well, the judge or master may ask the Applicant and Application Respondent questions during their presentations to clarify things.

A discussion of courtroom protocol is available in the How Do I ? section of this website.

After the judge or master has heard everyone's arguments, the judge or master will give his or decision. Sometimes the judge or master will ask the parties to come back later for the decision. This called a "reserved decision."

H. After The Hearing

It is the job of the Applicant to turn whatever the judge or master has decided into a written order. Orders are very particular as to form and wording, so be careful and be accurate! Usually, both the Applicant and the Application Respondent review and sign the order the Applicant has drafted. Once that is done, the Applicant gives the draft order to the Court Registry for approval and entry into the court's book of orders.

The registry staff enter the draft order by checking it against the notes the court clerk made during the hearing. Assuming the registry approves of the form of the draft order and it matches the clerk's notes, the order is signed and stamped by the registry and entered into a book containing all of the various orders of the court.

Note that while the entered, stamped order is the "official" order of the court, the order is binding on both parties from the moment the judge or master makes the order, and each party must start behaving according to the terms of the order right away, regardless of whether it takes a day or a month to enter the order.

I. Timelines

The rules about the timelines for chambers applications changed on 29 July 2010. Time is now counted only in "business days," defined as days on which the court is open for business. This will exclude weekends and statutory holidays like Victoria Day, Canada Day, Christmas and my birthday. This segment summarizes the new rules.

1. Bringing an Application

The Applicant must file and serve the Notice of Application and supporting materials:

- for ordinary interim applications, within eight business days of the date picked for the hearing
- for summary trial applications, within twelve business days of the hearing
- for applications to change a final order, within twenty-one business days of the hearing

2. Defending an Application

The Application Respondent must file and serve the Application Response and supporting materials:

- for ordinary interim applications, within five business days of being served with the Notice of Application
- for summary trial applications, within eight business days of being served
- for applications to change a final order, within fourteen business days of being served

3. Responding to a Defence

The Applicant must file and serve any new supporting materials, usually limited to new affidavits:

- by 4:00pm on the business day that is one full business day before the hearing date

4. Application Records

The Applicant must file the Application Record in court and deliver a copy of the index to the Application Record on the Application Respondent:

- by 4:00pm on the business day that is one full business day before the hearing date

5. Sample Timelines

In this sample timeline for an ordinary interim application, the hearing is on Thursday the week after the Monday on which the application materials were filed and served. This sample shows the *minimum timelines* required by Rule 10-6; nothing stops you from having a more generous set of due dates.

Monday	Tuesday	Wednesday	Thursday	Friday
Applicant files and serves application materials on the Application Respondent.	<i>First business day after service.</i>	<i>Second business day after service.</i>	<i>Third business day after service.</i>	<i>Fourth business day after service.</i>
<i>Fifth business day after service.</i> Application Respondent files and serves reply materials	<i>Sixth business day after service.</i> Applicant files and serves responding affidavits, files Application Record and serves Application Record index by 4:00pm.	<i>Seventh business day after service.</i> <i>One business day before the date of the hearing.</i>	DAY OF HEARING	

The Application Respondent's materials are due on Monday on the second week, one week after the date of service, and the Applicant must file and serve any responding affidavits, file the Application Record and serve the Application Record index on the Application Respondent by 4:00pm the next day. The hearing is on Thursday in the second week.

This next sample timeline shows what happens when there's a holiday between the date the Applicant serves the application materials and the date of the hearing. All of the steps get bumped back by one day.

Monday	Tuesday	Wednesday	Thursday	Friday
Applicant files and serves application materials on the Application Respondent.	<i>First business day after service.</i>	<i>Second business day after service.</i>	<i>Third business day after service.</i>	<i>Fourth business day after service.</i>
HOLIDAY	<i>Fifth business day after service.</i> Application Respondent files and serves reply materials	<i>Sixth business day after service.</i> Applicant files and serves responding affidavits, files Application Record and serves Application Record index by 4:00pm.	<i>Seventh business day after service.</i> <i>One business day before the date of the hearing.</i>	DAY OF HEARING

The Application Respondent's materials are due on Tuesday on the second week, one week after the date of service and after the holiday Monday, and the Applicant must file and serve any responding affidavits, file the Application Record and serve the Application Record index on the Application Respondent by 4:00pm the next day. The hearing is on Friday in the second week.

J. A Short Note about Courtesy

One of the most significant changes in the new rules allows the Applicant to simply set the hearing date without consulting the Application Respondent. Although this gives the Applicant the right to pick a date unilaterally, it'll be better for everyone if the hearing date can be agreed upon by both parties. If the date you've picked isn't good for the Application Respondent, you can expect the Application Respondent to show up on the hearing date and ask the court for an adjournment (a delay) of your application.

If the Application Respondent is successful in getting the adjournment, which will usually be the case if you've been unreasonable or the Application Respondent has a genuinely good reason for needing the adjournment, you'll have wasted all the time and anxiety you spent preparing for the application, only to have to take another day off work and do it all again some other day.

It can be tough to call your ex (or his or her lawyer) to negotiate a hearing date, especially since you're likely fairly annoyed at having to make your application in the first place. However, if the subject of the application is important enough for you to pay the fee and jump through all the hoops, it's got to be important enough that you'll want to avoid delays and adjournment applications.

If you can make the call, try to reach an agreement on:

1. the date when you'll have the application materials to the Application Respondent;
2. the date when the Application Respondent will get the reply materials to you; and,
3. the hearing date.