

MAKING AN APPLICATION WITHOUT NOTICE IN THE COURT OF KING'S BENCH

This guide is only intended to provide legal information. While the guide is intended to provide correct information, it is not the law, and no judge of the Court is bound by any statement contained in this guide.

This guide is not a substitute for professional legal advice, including whether you should or should not make an application, what type of application you should make, whether there is law in support of your application and whether other legal options or strategies are available to you.

This Guide provides legal information in response to the following questions:

- **What is an application without notice?**
- **What is filed with an application without notice?**
- **When is it appropriate to make an application without notice?**
- **What should I know before making an application?**
- **How can I find the specific provisions and that authorize making an Application without Notice as well as the law that supports making the order sought?**
- **May a Court order made upon application without notice be varied or set aside?**
- **How do I complete the application without notice form #6-4?**

What is an application without notice?

An application without notice is an application to The Court of King's Bench that is not served on any other party. These applications are not heard or argued in chambers and there is no appearance before the judge. Rather, the judge makes his or her decision based upon the completed application form and the affidavit and other documents filed in support.

When is it appropriate to make an application without notice?

The general rule (Rule 6-3 of the Rules of Court) is that all applications to the Court should be brought with notice to the opposing parties, with some exceptions. These exceptions are:

- When any enactment or rule specifically allows an application to be made to the court by application without notice;
- When the Court is satisfied that delay caused by proceeding in the ordinary way would result in serious mischief.
- When the Court is satisfied that it is in the overall interest of justice to cure any irregularity or non-compliance with a Rule of Court.

Some rules that specifically allow an application to be brought without notice include:

- Rule 3-10 – Application to extend the time for service of the Statement of Claim
- Rule 12-10 – Application to dispense with service or to permit substituted service of a document.

Typically an Application without Notice is brought in an existing action when it is not possible or practical to give notice of the application to the other parties in the action. In certain rare cases an Application without Notice may be filed even though no court file or action has been commenced. This may occur when the applicant is seeking leave or permission of the Court to commence an action or allow an appeal to be filed when the Local Registrar has refused to accept the claim or appeal.

What should I know before making an application?

Before making your application to the court, you should know the following:

1. The provision authorizing the application to be made without notice;
2. The remedy or order you seek;
3. Whether the opposite party is represented by a lawyer or not, and if so the name of that lawyer
4. The law you are relying upon in support of your application. This law may be contained in sections of federal or provincial Acts, regulations, Rules of Court, or case decisions made by a Court in a similar case or one involving a similar issue.

How can I find the specific provisions that authorize making an Application without Notice as well as the law that supports the order sought?

Obtaining professional legal advice is always recommended. When this is not possible, there are a number of on-line sources which can provide you some legal information to assist you in your understanding.

One of the most helpful places to visit is the Publication Saskatchewan's website located at: <https://publications.saskatchewan.ca/#/categories/1505>. Here you can find and download at no charge all the Statutes of Saskatchewan and their related regulations. Reading the sections of the Act and regulations that apply to your matter is always the first place to start.

Also, you can find and download the Rules of Court and the Court's forms, including forms in an editable format on Publication Saskatchewan's website. The Rules of Court can be found on this webpage: <https://pubsaskdev.blob.core.windows.net/pubsask-prod/81637/25KBRules-Parts1-18.pdf>

The Forms of Court in an editable format can be found on this webpage: <https://publications.saskatchewan.ca/#/categories/5343>

Here are some commonly used provisions that allow applications without notice:

King's Bench Rule 3-10 – Extend time for service of statement of claim

King's Bench Rule 3-23 – To assess damages on undefended claim

King's Bench Rule 12-10 – Substituted Service

The Residential Tenancies Act, 2006 – Application to extend the time for bringing an appeal

In addition to legislation and rules, when a judge makes a decision on a case, the judge's decision can either set a precedent that must be followed in similar cases or make comments that may influence the decision of another judge in another case. One free source for court decisions rendered across the country including Saskatchewan is provided by the Canadian Legal Information Institute whose website is www.canlii.org. Here, you can search cases by name or topic.

May a Court order made upon Application without Notice be varied or set aside?

Yes. Any party affected by a Court Order made upon Application without Notice may apply to the Court to set aside or vary that order. In addition, all orders that are issued by the Court that were made upon an application without notice must carry a notice to that effect.

How do I complete the Application without Notice Form 6-4?

Usually you will have to complete the following three forms:

KB Form #6-4 – Application without Notice

KB Form #13-31 – Affidavit

KB Form #10-3 – Draft Order (optional)

As noted above, the Forms of Court in an editable format can be found on this webpage: <https://publications.saskatchewan.ca/#/categories/5343>. Copies of these forms are attached below.

Application without Notice

Court File Number

If the application is being brought in regard to an existing action, insert the court file number assigned to that action. Court file number is always found at the top of documents issued or filed with the Court.

Judicial Centre

If a court action already exists, the application must be filed at the Judicial Centre where the action has been commenced.

If a court action has not yet been commenced, then if the application involves an appeal from a lower court or decision of the Office of Residential Tenancies, then the application must be brought to the judicial centre closest to the Court or office where the decision was made. If the application involves land or rental property, then the application should be brought to the judicial centre closest to where the property is situated.

Otherwise, the applicant should file their application at the judicial centre nearest to the place where the cause of action arose or where the defendant resides.

The Court of King's Bench has 9 judicial centres. Their locations and contact information can be found on the Courts' website at: www.sasklawcourts.ca in the King's Bench section under the tab 'Locations & Sittings'

Applicant and Respondent

If an action has been commenced by statement of claim, insert the name of the Plaintiff and Defendant or Petitioner and Respondent as shown on the claim and indicate whether they are the applicant or respondent in this application. For example:

Applicant/Defendant Respondent/Plaintiff

Or, as the case may be:

Applicant/Plaintiff Respondent/Respondent

If an action has not yet been commenced and the matter involves an Appeal, insert Appellant (your name) and Respondent (name of opposing party in the matter being appealed). If it is not an appeal and no court action in the matter has yet to be commenced, you may refer to yourself as Applicant and the opposing party as Respondent. If there is no opposing party or proposed opposing party, you may just add your name as Applicant.

Provision authorizing the application to be made without notice

List the section of the Act, regulation or rule that allows for the application to be made without notice.

Remedy claimed or sought

Describe the order you wish the court to make.

Respecting opposite parties

Mark the applicable box as instructed and add name of lawyer representing other party if known.

Applicable Acts and Regulations

List any Act or regulation that is related to your application, even if that Act or Regulation does not contain any provision that supports your application.

Applicable rules

List the Rules of Court that you believe may be relevant. It is sufficient to refer to the rules by their number only.

Applicable cases relied on:

List any court cases that you believe are similar to the matters at issue in your application. You may leave this section blank if you have no cases that you rely upon.

Contact Information and Address for Service

Your address for service should include a street address or land location in Canada where a document may be served upon you, as well as a phone number where you can be reached during daytime hours. If you reside outside of Saskatchewan, you must also provide an email address as part of your address for service. If you provide a fax number or email address, the opposing party may serve you with documents by fax or email.

Affidavit

See Guide on Affidavits

Draft Order

A draft order is optional, but preparing the order will assist the court in understanding precisely the order you seek. The file number, judicial centre and names of the parties should be identical to how it appears on the application. Because it is a draft, leave the name of the judge and the date of the order blank.

Issuing Orders

If a judge grants the application, an order in accordance with the decision of the judge must be issued and served on the Defendant/Respondent in order to enforce it upon them. For example, an order that extends the time to serve a document must be served with that document.

If an order is issued pursuant to an application without notice, the following endorsement required by subrule 10-3(5) **must** appear at the bottom of the order.

NOTICE

Take notice that, unless the order is consented to by the respondent, or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights.

Form 6-4
(Rule 6-4)

COURT FILE NUMBER _____

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE _____

APPLICANT(S) _____

RESPONDENT(S) _____

APPLICATION WITHOUT NOTICE

This application is being made without notice.

Provision authorizing the application to be made without notice:

1.

Remedy claimed or sought:

2.

Respecting opposite parties (*mark applicable boxes*):

☐ none of the opposite parties is, to my knowledge, represented by a lawyer;

☐ the name(s) of the lawyer(s) representing the opposite party(ies) is(are):

Applicable Acts and Regulations:

3.

Applicable rules:

4.

Applicable cases relied on (*provide citations and designate the relevant passages*):

5.

DATED at _____, Saskatchewan, this _____ day

Of _____, 2_____.

Signature of Applicant

(If this form is to be signed by a lawyer or authorized person on behalf of a corporation, unincorporated entity, minor, or dependent adult, it must be adapted accordingly.)

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of firm: _____

Name of lawyer in charge of file: _____

Address of legal firm: _____
(set out the street address)

Telephone number: _____

Fax number (if any): _____

E-mail address: _____

or

If the party is self-represented:

Name of party: _____

Address for service: _____
(set out the street address)

Telephone number: _____

Fax number (if any): _____

E-mail address (see Notice): _____

Form 10-3
(Rule 10-3)

COURT FILE NUMBER _____

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE _____

APPLICANT(S) _____

RESPONDENT(S) _____

ORDER — GENERAL FORM

Order made this _____ day of _____, 20____.

Before the Honourable _____ in chambers

The _____ day of _____, 20____.

On the application of the applicant _____

and on reading (*here set forth all the material used on the application*) all filed:

The Court orders (*here state the terms of the order made*).

ISSUED at, Saskatchewan, this _____ day of _____ 20____.

Court Seal

Local Registrar

If an order is issued pursuant to an application without notice, the endorsement required by subrule 10-3(5) must appear here.

NOTICE

Take notice that, unless the order is consented to by the respondent, or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights.