

MAKING AN APPLICATION WITH 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.

Note on Family Matters

This Guide is not intended to provide guidance on applications related to family law. There are a number of other specialized guides and resources available at no charge for applications related to family law actions and applications. This includes:

- A number of self help kits on a variety of family law related matters from The Family Law Information Centre. Contact them at:

Family Law Information Centre
Ministry of Justice - Family Justice Services Branch
Phone: (306) 787-5837
Toll-Free (in SK) 1-888-218-2822
Fax: (306) 787-0107
E-mail address: syp@gov.sk.ca
- Detailed information on family law, including on-line assistance in completing family law application forms offered by **Public Legal Education Association of Saskatchewan (PLEA)** at its website: <http://familylaw.plea.org>.

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

- **What is a Notice of Application?**
- **What is Chambers?**
- **What should I know before making an application?**

- **How can I find the law or rules that authorize making an application with notice as well as the law that supports the order sought?**
- **What is filed with a Notice of Application?**
- **What are the steps for making an application?**

What is a Notice of Application?

A Notice of Application is a document that asks the Court for an order to be made. The Notice of Application must be served upon the opposing side or other persons affected by the order sought. The Notice of Application contains the date when the application will be argued before a Judge of the Court sitting in Chambers.

Typically Notices of Application are used in actions that have already been commenced and deal with issues that may need to be resolved before the trial. Occasionally, a Notice of Application may be used to commence an action but only where an Act or rule specifically states that the action may be commenced by Notice of Application (formerly known as a Notice of Motion).

What is Chambers?

Most applications are heard and argued before a Judge of the Court of King's Bench in chambers. A chambers Judge does not hear oral evidence. Instead, a chambers Judge makes his or her decision based upon the written application, any affidavit filed in support of or in response to the application, and the arguments each party may make to the Judge in chambers or in a written brief of argument.

Each judicial centre has a schedule of when chambers is held. At each chambers date a number of applications are scheduled to be heard. A chambers list is prepared and each application on the list is dealt with in turn. When an application is being dealt with each party to the application, or their lawyers on their behalf, are invited to speak to the application in turn and make argument on whether the application should be allowed, modified or dismissed. The parties may also agree to re-schedule (adjourn) the matter to another date, or if there is no agreement either party may ask the judge to determine whether the matter may be adjourned.

Chambers are held regularly at each judicial centre ranging from once per month to as much as four times per week in the larger centres. In some centres chambers involving family related matters are scheduled separately from regular chambers.

To see a schedule of when Chambers hearings are held in each judicial centre visit the Courts' website at: www.sasklawcourts.ca. Under the King's Bench menu, select 'Court Locations and Sittings' to see each centre's schedule.

What should I know before making an application?

1. The remedy or order you seek
2. The grounds for making your application. The grounds are a very brief summary of the factual and legal reasons why you should be granted the order you seek. Sometimes the Act or rules will set out the grounds for making a particular application.
3. The law and rules that apply or that are relevant to your matter. This includes, the applicable 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.
4. The chambers date and location when and where the application is to be heard.

How can I find the law or rules that authorize making an application with 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 free 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 King's Printer website located at www.qp.gov.sk.ca. Here you can find and download all the Statutes of Saskatchewan and their related regulations as well as the rules and forms of Court. Reading the sections of the Act and regulations that apply to your matter is always the first place to start.

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.

If the only remedy you seek is an order requiring the opposing party to comply with the rules of court, or if you and the opposing party mutually wish to seek the direction of the court on the management of a court proceeding, then instead of a Notice of Application, consider making an Appearance Day Application pursuant to KB Rules 6-24 and 6-25.

What is filed with a Notice of Application?

1. Notice of Application Form KB#6-5
2. Affidavit(s) in support
3. Draft Order (optional)
4. Brief of Argument or Law (optional)

What are the steps for making an application and obtaining a court order?

STEP 1 – **Determine the remedy** or order you seek and research the rules or law that may support your application, if any?

STEP 2 – **Prepare your documents.**

- Notice of Application Form KB#6-5

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 may file their application at any judicial centre.

The Court of King's Bench has 10 judicial centres. Their locations and contact information can be found on the Courts' website at: www.sasklawcourts.ca

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, you may refer to yourself as Applicant and the opposing party as Respondent.

Date of Hearing

Go to the Court's website to select a chambers date. The chambers date you select should be far enough in the future to permit you serve your application on the other side and file it with the Court at least 14 days before the chambers date you select.

If there are emergent circumstances that require you to bring your application sooner than 14 days after service of the application on the opposing side, then your application should include a request to the court to allow the application to be heard on short notice to the other side.

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.

Date and sign the application

Contact Information and Address for Service

Your address for service should include a street address or land location in Saskatchewan where a document may be served upon you, as well as a phone number where you can be reached during day time hours. If you provide a fax number or email address, the opposing party may serve you with documents by fax or email.

- Affidavit

See *Guide to 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.

STEP 3 - Serve a copy of the completed documents together with an Acknowledgement of Service on the opposing side at their address for service. The documents must be served upon the opposing side at least 14 days before the hearing date.

See *Guide to Service of Documents*

STEP 4 - File the original documents with proof of service in the Office of the Local Registrar at least 14 days before the hearing date.

STEP 5 - Attend Court

It is best to attend court in person. However, if that is not possible or practical you may contact the local registrar to request to appear by phone.

FORMS

The attached forms have been edited to reflect that they have been prepared by a self-represented party instead of a lawyer on their behalf. The page numbers should be deleted. Alternatively, MS Word versions of the forms are available from the Law Society of Saskatchewan website at: <http://www.lawsociety.sk.ca/for-lawyers-and-students/practice-resources/Kings-bench-forms-2013.aspx>

Form 6-5
(Subrule 6-5(1))

COURT FILE NUMBER _____

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE _____

PLAINTIFF(S) _____

DEFENDANT(S) _____

NOTICE OF APPLICATION

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where

Date

Time

(Read the Notice at the end of this document to see what else you can do and when you must do it.)

Remedy claimed or sought:

1.

Grounds for making this application:

2.

Material or evidence to be relied on:

3.

Applicable rules:

4.

Applicable Acts and regulations:

5.

DATED at _____, Saskatchewan, this _____ day
of _____, 2_____.

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by self-represented party:

or

Name of party: _____

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

Telephone number: _____

Fax number (*if any*): _____

E-mail address (*if any*): _____

Form 13-31

(Rule 13-31)

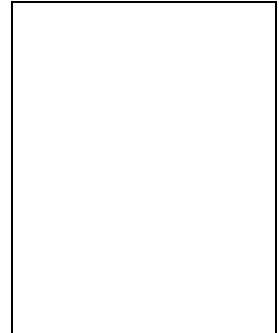
COURT FILE NUMBER _____

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE _____

PLAINTIFF(S) _____

DEFENDANT(S) _____



AFFIDAVIT

AFFIDAVIT OF _____
(name of deponent)

I, _____, of the _____ of _____,
(full name) (city, town, village, etc.)

Saskatchewan, (if the deponent is a party or the lawyer, officer, director, member or employee of a party, set out the deponent's capacity), MAKE OATH AND SAY (or AFFIRM):

1 (Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)

SWORN (OR AFFIRMED) BEFORE ME

at, _____ Saskatchewan,
this _____ day of _____, 20__.



(signature)

Commissioner for Oaths
for Saskatchewan

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 _____, 2____.

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.