


PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 443

, Approved and Ordered July 12, 2021



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective August 16, 2021, the Small Claims Rules, B.C. Reg. 261/93, are amended as set out in the attached Schedule.



Attorney General and Minister Responsible for Housing



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Court Rules Act, R.S.B.C. 1996, c. 80, s. 1; Small Claims Act, R.S.B.C. 1996, c. 430, s. 21*

Other: *OIC 1030/93*

R20494055

SCHEDULE

- 1 *The Introduction and Rules 9 (9) (a), 9.1 (1), 12 (1) and (13) to (15) and 14 (5) of the Small Claims Rules, B.C. Reg. 261/93, are amended by striking out “justice of the peace” wherever it appears and substituting “justice”.*
- 2 *The Introduction is amended by adding the following definitions:*
 - “**justice**” means a judicial justice or a justice of the peace;
 - “**remotely**”, in relation to attending a conference, hearing or mediation session, means by telephone, video conference or other means of electronic communication, rather than in person;
 - “**tribunal accident claim**” means
 - (a) an accident claim, as defined in the *Civil Resolution Tribunal Act*, and
 - (b) a claim purported to be an accident claim, as defined in the *Civil Resolution Tribunal Act*;
 - “**virtually**”, in relation to conducting a conference, hearing or mediation session, means by telephone, video conference or other means of electronic communication, rather than in person, with at least one participant attending remotely.
- 3 *Rules 1 (1) and 1.1 (3) and (21) are amended by striking out “following the instructions on the form” and substituting “and an address for service (Form 38), following the instructions on the forms”.*
- 4 *Rule 1 (2) is amended by adding “and an address for service” after “a notice of claim”.*
- 5 *Rule 1.1 (8) is amended by adding the following paragraph:*
 - (c) an address for service (Form 38).
- 6 *Rule 1.1 is amended by adding the following subrule before the heading “Serving a Notice of Civil Resolution Tribunal Claim”:*

**Claimant who is not the filing party
must file an address for service**

- (9.1) If a claim is continued under subrule (9) and the claimant is not the filing party, the claimant must file an address for service (Form 38) and serve a copy on each of the other parties.
- 7 *Rule 1.1 (10) is amended by adding the following paragraph:*
 - (d) a blank address for service form (Form 38).
- 8 *Rule 1.1 is amended by adding the following subrule before the heading “Replying to a Claim Continued under this Rule”:*

If a party has not filed an address for service

(17.1) Until a party files an address for service (Form 38), documents must be served on the party at the address for service, if any, that the party provided to the civil resolution tribunal.

9 Rule 1.1 is amended by adding the following subrule:

Defendant who is not the filing party must file an address for service

(18.1) If a defendant's response is continued under subrule (18) as a reply to a claim and the defendant is not the filing party, the defendant must file an address for service (Form 38) and serve a copy on each of the other parties.

10 Rules 1.1 (22) and 3 (3) are amended by adding "and an address for service" after "a reply".

11 Rules 1.1 (24) and (33) and 3 (5) are amended by striking out "a reply is filed" and substituting "a reply and an address for service are filed".

12 Rule 1.1 (32) is amended

(a) in paragraph (a) by striking out "following the instructions on the form." and substituting "and an address for service following the instructions on the forms.", and

(b) in paragraph (b) by adding "and the address for service (Form 38)," after "the reply".

13 Rule 1.1 is amended by adding the following subrule:

Third party must file an address for service

(38.1) If a response made by a third party is continued under subrule (38) as a reply to a claim made against the third party and the third party is not the filing party, the third party must file an address for service (Form 38) and serve a copy on each of the other parties.

14 Rule 2 (1) is amended

(a) by striking out "and" at the end of paragraph (a), and

(b) by adding the following paragraphs:

(c) the claimant's address for service, and

(d) a blank address for service form (Form 38).

15 Rule 3 (2) is amended by striking out "following the instructions on the form" and substituting "and an address for service (Form 38), following the instructions on the forms".

16 Rule 5 (3) is amended by adding the following paragraphs:

- (g) a blank address for service form (Form 38);
- (h) a copy of each party's address for service.

17 Rule 7.3 (15) is amended by striking out “he or she” and substituting “the mediator”.

18 Rule 7.3 (24) is amended by striking out “by telephone” and substituting “remotely”.

19 Rule 7.3 (25) is repealed and the following substituted:

Application to attend mediation remotely

(25) The registrar may authorize one or more persons who are required or permitted to attend a mediation session under subrule (17), (18) or (23) to attend the mediation session remotely if an application for that authorization is made to the registrar under Rule 16 (3) at least 7 days before the date set for the mediation session.

20 Rule 7.3 (26) (a) is amended by striking out “the person in relation to whom the authorization is given does not reside or carry on business within a reasonable distance from the location where the mediation session is to be conducted and”.

21 Rule 7.3 (27) (b) is repealed and the following substituted:

(b) may order the person requesting to attend the mediation remotely to pay for the telephone call, video conference or other cost of that person's remote attendance.

22 Rule 7.5 (11) (c) (i) is amended by striking out “his or her” and substituting “the party's”.

23 Rule 7.5 (12) is amended by striking out “in person”.

24 Rules 7.5 (17) and (18), 9.1 (26) and (27), 9.2 (11) and (12) and 10 (9) and (10) are amended by striking out “either personally or by a representative” and substituting “either themselves or by a representative”.

25 Rule 9 is amended by adding the following subrules:

Witness may be ordered to attend remotely

(3.1) A party or a witness may apply to a judge, including a judge other than the trial judge, who may order a witness to attend court remotely.

Trial judge may vary order to attend remotely

(3.2) Even though a judge has ordered a witness to attend court remotely under subrule (3.1), the trial judge may order a witness to attend in person or in another manner that the trial judge considers appropriate in the circumstances.

26 Rule 9 (9) is amended

(a) by striking out “still required” and substituting “still required,” and

(b) in paragraph (b) by striking out “his or her” and substituting “the witness’s”.

27 Rule 11 is amended by adding the following subrule:

Address for service form

(11.1) A creditor who wishes to collect payment under subrule (11) and has not yet filed an address for service (Form 38) must, in addition to doing anything set out in subrule (11), file an address for service and serve a copy on each of the other parties.

28 Rule 12 is amended by adding the following subrule:

Address for service form

(10.1) A debtor who wishes to ask for a payment hearing and has not yet filed an address for service (Form 38) must file an address for service and serve a copy on each of the other parties.

29 Rules 12 (15) and 13 (9) are amended by repealing paragraph (b) and substituting the following:

(b) present before a judge, either in person or remotely, when the judge ordered the person to attend.

30 Rule 16 (2) is amended

(a) in paragraph (c.1) by striking out “permitting a hearing to be conducted by telephone” and substituting “authorizing a person to attend a hearing or conference remotely (see Rule 17 (16.1))”, and

(b) in paragraph (c.3) by striking out “by telephone” and substituting “remotely”.

31 Rule 16 is amended by adding the following subrule:

Applicant must file and serve address for service

(3.1) If an applicant has not yet filed an address for service (Form 38), the applicant must also file an address for service and serve a copy on each of the other parties.

32 Rule 16.1 (1) is amended by adding “or a tribunal accident claim” after “a tribunal small claim”.

33 Rule 16.1 (2) (a) and (3) is amended by adding “or the tribunal accident claim” after “the tribunal small claim”.

34 Rule 16.1 (4) is amended by adding “or tribunal accident claims” after “all tribunal small claims”.

35 Rule 16.1 (7) is repealed.

36 Rule 17 (16) and (16.1) is repealed and the following substituted:

Hearings may be conducted virtually

(16) A conference, hearing or mediation session may be conducted virtually.

Application for remote hearing

(16.1) An application to remotely attend a conference or hearing, other than a trial, payment hearing or default hearing, must be made under Rule 16 (3) to a registrar and, if granted, the registrar

(a) must order that all documents relevant to the conference or hearing be sent to the court and the other parties before the conference or hearing, and

(b) may order the person requesting to attend the conference or hearing remotely to pay for the telephone call, video conference or other cost of that person's remote attendance.

Application for remote trial, payment hearing or default hearing

(16.2) An application to remotely attend a trial, payment hearing or default hearing must be made to a judge under Rule 16 (7).

Parties may be required to appear in person

(16.3) A registrar, justice or judge who is conducting a conference or hearing virtually may adjourn the conference or hearing at any time and require participants to appear in person.

37 Rule 18 (12) (c) is repealed and the following substituted:

(c) by emailing it to the person's email address for service, unless the document is a notice of claim, a notice of civil resolution tribunal claim, a third party notice or a summons to a payment hearing, to a default hearing or to a witness (see Rules 1.1 (10) to (17), 2, 5 (4), 9 (1), 12 (7) and 13 (5)).

38 Rule 18 (14) is amended by adding the following paragraph:

(c.1) for service by email, a certificate of service (Form 4) with the following attached to the certificate:

(i) a printout of the first page of the email message that includes the sender's name, the recipient's email address, the date the email was sent and the time the email was sent;

(ii) if the printout of the first page of the email message does not list the name of the document as an attachment to the email, a copy of the document; .

39 Rule 18 (16) is repealed and the following substituted:

Change of address

(16) If a party's address changes, the party must file a new address for service (Form 38) and promptly serve a copy on each of the other parties.

40 Rule 18 (17) is repealed and the following substituted:

Types of addresses for service

- (17) A party must, on an address for service (Form 38), give both of the following types of addresses:
- (a) an address for personal service that must be
 - (i) the party's residence, place of business or solicitor's office, if the party is not incorporated and not a partnership, or
 - (ii) the party's registered office, place of business or solicitor's office, if the party is incorporated or a partnership;
 - (b) an address for service by mail or email that must be
 - (i) a mailing address, or
 - (ii) an email address.

41 Rule 18 is amended by adding the following subrules:

When service by email is deemed to be completed

- (18) A document transmitted for service by email under this rule is deemed to be served as follows:
- (a) if the document is transmitted before 4 p.m. on a day that is not a Saturday, Sunday or another holiday listed in the definition of "holiday" in the *Interpretation Act*, the document is deemed to be served on the day of transmission;
 - (b) if the document is transmitted on a Saturday, Sunday or another holiday listed in the definition of "holiday" in the *Interpretation Act*, or after 4 p.m. on any other day, the document is deemed to be served on the next day that is not a Saturday, Sunday or holiday.

If document does not reach a person

- (19) If a document was served by email in accordance with Rule 18 (12) (c), a person may show, on an application to set aside the consequences of default, on an application for an extension of time or on an application in support of a request for an adjournment, that the document
- (a) did not come to the person's notice,
 - (b) came to the person's notice later than when it was served or effectively served, or
 - (c) was incomplete or illegible.

Transition

- (20) If a person wishes to file a document and has not yet given an address for service (Form 38), the person must also file an address for service and serve a copy on each of the other parties.

42 Rule 22 (1) is amended by striking out "Rules 4-2 (6) and 23-3 (1) to (3), (4) (a), (6) to (11), (12) to (14) and (16) to (18) of the Supreme Court Civil Rules apply" and substituting "Rule 23-3 (1) to (3), (4) (a), (6) to (14) and (16) of the Supreme Court Civil Rules applies".

43 *Schedule B is amended by adding the attached Form 38.*

FORM 38

**ADDRESS FOR SERVICE
IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)**

Registry File Number:
Registry Location:

In the case between	
_____	CLAIMANT(S)
and _____	DEFENDANT(S)
_____	THIRD PARTY

FILL in the name(s) of person(s)/party(ies) filing this form.

I/we, _____

confirm that my/our address for service is:

MUST select one or both of these options. **SELECT** how you want to receive notice from the Court and other parties. **If both options are selected**, you will be served by one of the two options, not both. **ENTER** email address or full mailing address or both.

Service by email: _____
EMAIL ADDRESS

Service by mail:

STREET ADDRESS	APT NO.	BOX/RR NO.
CITY, TOWN	PROVINCE	POSTAL CODE
		TELEPHONE

MUST complete this section. **ENTER** the address of your residence or registered office, your place of business, or your solicitor's office.

I/we confirm that my/our address for **personal service** is:

Same as "service by mail" address noted above, or

STREET ADDRESS	APT NO.	BOX/RR NO.
CITY, TOWN	PROVINCE	POSTAL CODE
		TELEPHONE

CHANGE OF INFORMATION: **ENTER** date on which the new email, mailing or personal service address comes into effect.

Change of information:
 My/our address has changed and the new address(es) are effective on:

(mm/dd/yyyy)

INFORMATION for person filing this form.

Small Claims Rule **18(16)** provides if an address for service changes, the party **must file** a new Address for Service (Form 38) with the Court Registry and mail or email a copy to all other parties.

By submitting this form, I/we acknowledge and agree to receive notice from the Court and the other parties by one of the methods selected above.

Dated: _____

(mm/dd/yyyy)

Party or Party's Solicitor
 Sign, print or type name