

Instructions

Counterclaim (Form F5)

Use this form if you received a Notice of Family Claim (Form F3) and you want to ask the court for different and/or additional orders, whether it's for child or spousal support, for parenting, or about family property or debt. You must also file a Response to Family Claim (Form F4). This document tells the court more about you and your spouse, the details of your relationship and separation, and everything that you want the court to order. You must serve and file the Counterclaim within 30 days of receiving the Notice of Family Claim. Usually, you file and serve the Response to Family Claim and the Counterclaim at the same time.

If you're filling this out on-screen, use the **Tab** key to go from grey field to grey field. This will ensure dates are formatted correctly, and that if, for example, you fill in your name, it automatically appears elsewhere in the form.

If you print a blank form to fill in by hand and there isn't enough space:

- Open the Word form to add more space on-screen. Put the cursor in a grey box and press **enter/return** to create a new blank line, and print the form again.
- Or write "See attached" on the form and attach a page with the additional text. Clearly label the attachment; e.g., "Attachment to Schedule 2—Children."

As stated on the Notice of Family Claim (Form F3), you're the **respondent** and your spouse is the **claimant**. Insert your full legal names as stated on that form. Your spouse should have inserted your full legal names as listed on your marriage certificate, or your birth certificates if you weren't married, along with any other names you usually go by ("**also known as**").

(To add a party, such as a litigation guardian acting on a party's behalf: Hit **enter/return** in the grey box to start a new line, type the role (e.g., "Respondent"), and then **Ctrl-Tab** (Mac: **control-tab** or **option-tab**) before the name to centre the cursor.)

Form F5 (Rule 4-4(2))

Court File No.:
Court Registry:

In the Supreme Court of British Columbia

Claimant:
Respondent:

COUNTERCLAIM

Filed by: (the "respondent")
This counterclaim has been made by the above-named respondent(s) for the relief set out in section 1 below.

If you intend to respond to this counterclaim, you or your lawyer must

- (a) file a response to counterclaim in Form F6 in the above-named registry of this court within 30 days after the date on which a copy of the filed counterclaim was served on you, and
- (b) serve a copy of the filed response to counterclaim on all parties.

Orders, including orders granting the relief claimed, may be made against you if you fail to file the response to counterclaim within the 30 day period referred to above.

Fill in the same court file number and court registry as what's on the Notice of Family Claim (Form F3). The top section—with the file number, registry, and your names—of all your court forms for this case must be identical.

Fill in your name again (or *names* if there is more than one respondent). Don't include "also known as" here. Hit **tab** after filling in your name so it shows up elsewhere in the form.

Instructions for the claimant (your spouse) once they get this form from you.

This section lets the court know whether you agree or disagree with your spouse about when the relationship began or ended.

Fill in the city, province/ state, and country

What do you want that's not listed in (or that's different from) the Notice of Family Claim? Make sure you check off the right box(es). For each box, fill out a schedule—they're at the end of the form.

An order for divorce: Only if you've been legally married. Fill out [Schedule 1](#).

An order respecting child(ren): About parenting and child support. Fill out [Schedule 2](#).

If you want to set aside (change) all or part of an agreement, it may be easier to first try to deal with this outside of court (like at a [JCC](#)). Otherwise, see our guide [Set aside all or part of an agreement in Supreme Court](#).

A mailing address that's not a PO box where you can regularly receive mail so that the other person can send court documents to you. It can be your lawyer's office if you have a lawyer.

The other person may send you court documents by fax or email instead if you add this optional information.

1. Spousal relationship history

The claimant, [REDACTED], and the respondent, [REDACTED],

- ☐ began to live together in a marriage-like relationship on [REDACTED]
- ☐ were married on [REDACTED] at [REDACTED]
- ☐ separated on [REDACTED]
- ☐ were divorced from each other by order made on [REDACTED]

2. Counterclaim

The respondent is asking for the following:

- ☐ An order for divorce
- ☐ An order respecting child(ren)
- ☐ An order for spousal support
- ☐ An order relating to family property and family debt
- ☐ Another order
- ☐ An order for costs
- ☐ An order to ☐ confirm or ☐ set aside a written agreement dated in respect of
 - ☐ spousal support
 - ☐ child support
 - ☐ division of property and/or debt
 - ☐ other

for the following reasons:

[REDACTED]

3. The respondent's address for service is

Address for Service: [REDACTED]

Fax (optional): [REDACTED]

E-mail (optional): [REDACTED]

Insert the claimant's name; don't include "also known as" here. Fill in your name again if you're filling this out by hand.

Use the date format **dd/Mmm/yyyy (01/Jan/2021)**, or hit **Tab** after filling it in to autofill.

An order for spousal support: For payments to support *you*, not the children. Fill out [Schedule 3](#).

An order relating to family property and family debt: Fill out [Schedule 4](#).

Another order: Includes a name change or a protection order. Fill out [Schedule 5](#).

An order for costs: To get the other person to pay a portion of your legal expenses after the court has made the orders you asked for. Fill out [Schedule 5](#).

If the court registry is more than 30 km away, you must also list an email address, fax number, or PO box (in addition to your street address).

Date of signature: Use the date format **dd/Mmm/yyyy (01/Jan/2021)**, or hit **Tab** after filling it in to autoformat.

The box explains whether you have to file a Financial Statement. The intro to [Complete a Supreme Court Financial Statement \(Form F8\)](#) has a version of this box that's easier to understand.

Date: _____

Signature of
☐ filing party ☐ lawyer for filing party(ies)

[Type or print name]

If you have a lawyer, they'll sign the document. Otherwise, check off "filing party." The signature can't be separate from the rest of the form, so lines from the preceding paragraph will automatically move to this page.

Note to Claimant AND Respondent

You must file **financial information** (Form F8) if any of the following apply:

- there is a claim against you for spousal support or you are claiming spousal support;
- there is a claim by either party for the division of property and/or debts under Part 5 or 6 of the *Family Law Act*;
- there is a claim against you for the support of a child, OR
- you are claiming child support **unless all** of the following conditions apply:
 - (a) you are making no claim for any other kind of support;
 - (b) the child support is for children who are not stepchildren;
 - (c) none of the children for whom child support is claimed is 19 years of age or older;
 - (d) the income of the person being asked to pay child support is under \$150 000 per year;
 - (e) you are not applying for special expenses under section 7 of the child support guidelines;
 - (f) you are not applying for an order under section 8 of the child support guidelines;
 - (g) you are not applying for an order under section 9 of the child support guidelines;
 - (h) you are not making a claim based on undue hardship under section 10 of the child support guidelines.

If you do not file the financial information that is required, the court may attribute an amount of income to you, and make a support award against you, based on that amount.

Schedule 1

Attach this schedule if you're applying for a [divorce](#).

Form F5 (Rule 4-4(2))

SCHEDULE 1—DIVORCE

1. Personal Information

	Claimant	Respondent
Birthdate:		
<u>Habitually resident in British Columbia since:</u>		
Surname at birth:		
Surname immediately before marriage:		
Marital status immediately before marriage:		
Place of marriage:		
Date of marriage:		

This means "Living in BC since . . ." If you don't know the exact date you started living in BC, estimate.

Either use the date format **dd/Mmm/yyyy (01/Jan/2021)** or hit **Tab** after filling in the date to autofill.

Choose either *never married*, *divorced*, or *widowed*.

Include the city, province or state, and country.

2. Grounds for the respondent's claim for divorce

☐ The respondent asks for an order for divorce on these grounds:

☐ Divorce is claimed as a result of having lived separate and apart.

☐ Divorce is claimed on grounds other than having lived separate and apart.

(i) ☐ The respondent and his or her spouse have lived separate and apart since

AND

☐ the respondent and his or her spouse have not lived together since then

☐ the respondent and his or her spouse have lived together again during the following period(s), in an unsuccessful attempt to reconcile:

(ii) ☐ **Other grounds**, under section 8(2)(b) of the *Divorce Act* (Canada):

☐ Adultery (the claimant has committed adultery)

☐ Cruelty (the claimant has treated the applicant with physical or mental cruelty of such a kind as to make continued cohabitation intolerable)

First box: Usually the grounds for divorce are you've been living separate and apart for a year. If this is the case, check off the relevant boxes under (i).

OR

Second box: You can also apply for a divorce on the grounds of adultery or physical or mental cruelty (ii). You don't have to live apart for a year for a divorce on these grounds. However, you must present evidence of the adultery or cruelty. This is more complicated, and our [online step-by-step guides](#) don't cover this. Please seek legal advice.

Format the date ranges as "From 1/Jan/2020 to 1/May/2020."

AND

- ☐ The respondent has not condoned any act relied on under section 8(2)(b) of the *Divorce Act* (Canada) as a ground for divorce

You must check both boxes:

- First box: It's not possible you'll get back together with your spouse.
- Second box: You and your spouse haven't lied or tried to deceive the court in any way, e.g., saying that you've been separated for longer than you have been.

3. The respondent confirms that:

- ☐ There is no possibility of reconciliation.
- ☐ I do not know about and I am not involved in any arrangement to make up or to hide evidence or to deceive the court to obtain a divorce.

4. Proof of marriage

- ☐ A certificate of marriage or of registration of marriage [] has been filed
- ☐ A certificate of marriage or of registration of marriage is not being filed with this counterclaim because [], and the certificate will be filed before this claim is set down for trial or an application is made for an order of divorce
- ☐ It is impossible to obtain a certificate of marriage or of registration of marriage because []

See [Getting a copy of your marriage certificate](#).

- First box: You plan to file the marriage certificate with this form. If you're filing a translation from a foreign language, select "and translation" from the drop-down list or add it by hand.
- Second box: You plan to file the marriage certificate in the future. For example, "we are waiting for the certificate to come from another country." You'll also have to give a good reason why you're filing this claim without a marriage certificate.
- Third box: For example, you married in a country where marriage certificates aren't commonly issued because of religious or traditional practices. But the marriage was conducted according to that country's laws and is recognized as a valid marriage. If this box applies, please get legal advice.

Children of the marriage = under 19, or 19 or over but you're still supporting them because they're in school or they have an illness or disability that prevents them from becoming independent. Check the first box if your children are over 19, working full-time, self-supporting, and living independently.

- If the children live part-time with each parent, mention this.
- If you have more than five children, place the cursor at the end of the line in the fifth row and hit **enter/return** to start a new line. After typing in the name, hit **ctrl-Tab** (Mac: **control-tab** or **option-tab**) to move the cursor to the birth date column.

5. Children

- ☐ There are no children of the marriage, as defined by the *Divorce Act* (Canada)
- ☐ The children of the marriage are:

Full name	Birth date	Resides with
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

Fill this out since you're applying for a divorce under the Divorce Act.

The following certificate must be completed by each party to a divorce claim.

PARTY'S CERTIFICATE
(DIVORCE ACT (CANADA), S. 7.6)

- ☐ By checking this box, I, _____, certify that I am aware of my duties under sections 7.1 to 7.5 of the *Divorce Act* (Canada), which say:
- 7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.
- 7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.
- 7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.
- 7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.
- 7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

The following certificate must be completed for each party to a divorce claim who is represented by a legal adviser.

LEGAL ADVISER'S CERTIFICATE
(DIVORCE ACT (CANADA), S. 7.7(3))

- ☐ By checking this box, I, _____, legal adviser for _____, certify that I have complied with section 7.7 of the *Divorce Act* (Canada), which says:
- 7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding
- (a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and
- (b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.
- (2) It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act

For your legal adviser (e.g., lawyer) to fill out, if you have one. It says that they've talked to you about different ways to resolve your dispute (e.g., mediation). If you don't have a lawyer, leave this blank.

- (a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;
- (b) to inform the person of the family justice services known to the legal adviser that might assist the person
 - (i) in resolving the matters that may be the subject of an order under this Act, and
 - (ii) in complying with any order or decision made under this Act; and
- (c) to inform the person of the parties' duties under this Act.

Schedule 2

Attach this schedule if you're asking the court for any order related to children. See [Parenting apart](#) and [Child support](#).

Form F5 (Rule 4-4(2))

SCHEDULE 2—CHILDREN

1. Identification of child(ren)

The respondent is asking for an order in respect of the following child or children:

Child's full legal name	Child's birth date	Child's relationship to the claimant	Child's relationship to the respondent	Child habitually resident in BC since	Child now living with

Child's relationship to the claimant/ respondent: e.g., daughter, son, stepdaughter, stepson.

Child habitually resident in BC since = has been living in BC since.

Child now living with: e.g., claimant; claimant and respondent; respondent. If the children live part-time with each parent, mention this.

Either use the date format **dd/Mmm/yyyy (01/Jan/2021)** or hit **Tab** after filling in the date to autofill.

To add more rows to the table, put your cursor in the last cell in the bottom row and press **Tab**.

If checking off the first box, complete questions 3 and 4.

If checking off the second box, complete questions 5 to 7.

2. Orders sought

The respondent is asking for the following order(s):

- ☐ an order respecting arrangements for parenting
☐ an order for child support

This should include:

- who the children live with and when
- who makes decisions about the children

[Parenting apart](#) will help you with the words to use and the concepts behind them. Describe how children spend time with people who aren't parents or guardians, if necessary.

Describe what you're asking the court, and be as descriptive as for #3 above.

3. Current arrangements for parenting

Current arrangements for parenting are:

E.g., "The claimant and the respondent share parenting time of the children, [name(s)], equally. The children spend one week with the claimant and then one week with the respondent. We each make day-to-day decisions about the children when they're with us. We share all major decision-making."

4. Proposed arrangements for parenting

The respondent proposes the following arrangements for parenting:

If you or the claimant currently pays child support, say how much and how often. If you have a written agreement about this, write down what it says and what is actually being paid.

Even though there's a check box to indicate that you don't know the person's income, you should, at least, make an estimate. State the gross income (total income before taxes and deductions).

If unsure, make your best estimate and what you based your estimate on—**e.g.**, "The claimant earned \$500 a week when we lived together and is still working at the same job."

List the full names and birth dates of children you want child support for and the date you want or wanted the support to start. See [Child support](#), which explains how much would be paid under the Federal Child Support Guidelines, and what **special or extraordinary expenses** are.

The respondent is asking for this order under

- ☐ the *Divorce Act* (Canada) ☐ the *Family Law Act*

5. Current child support arrangements

Current child support arrangements are:

6. Income of person being asked to pay child support

- ☐ The respondent does not know the income of the person being asked to pay child support
- ☐ The respondent believes that the income of the person being asked to pay child support is \$, based on these facts:

7. Proposed child support arrangements

The respondent is asking for:

- ☐ support in the amount set out in the child support guidelines table, commencing on , for the following child(ren):
- ☐ special or extraordinary expenses in accordance with section 7 of the child support guidelines commencing on for the following child(ren):
- ☐ an order for support in an amount different than the amount set out in the child support guidelines table, commencing on , for the following child(ren):

The respondent is asking for an order for child support under

- ☐ the *Divorce Act* (Canada) ☐ the *Family Law Act*

Decide which law you're asking for your order for parenting arrangements under. If you didn't marry, you should use the Family Law Act. If you're married, you have a choice. [Which laws can you use for your family law issue?](#) and [Parenting apart](#) explain the difference between the two laws.

Decide which law you're asking for your order for child support under. If you didn't marry, you should use the Family Law Act. If you're married, you have a choice. [Which laws can you use for your family law issue?](#) and [Parenting apart](#) explain the difference between the two laws.

Schedule 3

Attach this schedule if you're asking the court to make an order for spousal support—payments to support you, not the children. (See [Spousal support](#) for more information.)

Form F5 (Rule 4-4(2))

SCHEDULE 3—SPOUSAL SUPPORT

1. Current arrangements for spousal support

The current arrangements for spousal support are:

2. Proposed spousal support arrangements

☐ The respondent is asking for an order for spousal support as follows:

☐ The respondent is asking for an order for spousal support under

☐ the *Divorce Act* (Canada) ☐ the *Family Law Act*

3. Income of claimant and respondent

→ The respondent's gross annual income is \$.

☐ The respondent does not know what the claimant's income is

☐ The respondent believes that the claimant's gross annual income is \$, based on these facts:

If you or the claimant currently pays spousal support, say how much, how often, and when it will end (if it will). If you have a written agreement about this, write down what it says and what is actually being paid.

Spousal support orders are often made according to the federal Spousal Support Advisory Guidelines. For more information, see [Spousal support](#).

Decide which law you're asking for your order for spousal support under. If you didn't marry, you should use the Family Law Act. If you're married, you have a choice. [Which laws can you use for your family law issue?](#) explains the difference between the two laws.

Fill in your gross income (your total income before taxes and deductions).

Even though there's a check box to indicate that you don't know your spouse's income, you should, at least, make an estimate.

If unsure, make your best estimate and say what you based your estimate on—**e.g.**, "The claimant earned \$500 a week when we lived together and is still working at the same job."

If you're asking for spousal support or the claimant is asking you to pay spousal support, you must file a Financial Statement. See [Complete a Supreme Court Financial Statement \(F8\)](#).

Note to Claimant AND Respondent

You must file **financial information** (Form F8) if there is a claim by you or against you for spousal support.

If you do not file the financial information that is required, the court may attribute an amount of income to you and make a support award against you, based on that amount.

Schedule 4

Attach this schedule if you're asking the court for any order that has to do with property and debts. The BC Family Law Act says that all **family property** and **family debt** must be divided equally between you and your spouse after you separate unless you have an agreement that says otherwise. See [Dividing property and debts after you separate](#) and [Dealing with debts after you separate](#).

Form F5 (Rule 4-4(2))

SCHEDULE 4—PROPERTY

1. The respondent's claims

A. Property and debt claims under the *Family Law Act*

The respondent is asking for an order for:

- ☐ equal division of family property and family debt
- ☐ unequal division of family property and family debt, as follows and on the following grounds:

Identify any relevant debt to the extent that it is known at this time:

The address and legal description of any real property (land and buildings) in which the respondent claims an interest as a family property is:

The respondent pleads the following property as excluded from family property under section 85 of the *Family Law Act* (explain the basis for the exclusion):

Check either box. Remember, the court will only order an *unequal* division when an *equal* division is **significantly unfair**.

A **legal description** is used in legal documents to describe a piece of land—and it isn't a street address. You can get the legal description from your tax assessment or your state of title certificate.

List the **excluded property** you own. This includes property you already owned when you moved in together, and gifts or inheritances you received during the relationship. The other person usually wouldn't get a share of excluded property.

This section is for property claims not covered by the Family Law Act—property that is *not* family property. This includes:

- *excluded property*, such as gifts or inheritances your spouse received while you were together, and property they already owned when you moved in together
- property owned by a third party
- property you're claiming on the basis of *unjust enrichment* (a legal concept used when you're not entitled to get a share of property under the Family Law Act)

If you think your spouse might sell or borrow against property that you think you should have a share of, you can take steps to prevent that from happening—by registering a **Certificate of Pending Litigation** against the property. This tells anyone interested in buying or loaning money against the property that ownership is being decided by a lawsuit.

B. Other property claims

The respondent claims:

☐ occupancy rent / occupational rent

☐ an interest in the following property:



☐ an order for compensation instead of an interest in the property described as



on the following grounds:



2. Certificate of Pending Litigation

☐ The respondent is applying for a Certificate of Pending Litigation to be registered against the following real property (land or building):



Occupancy/occupational rent is the rent your spouse pays you if they continue to live in the property you both own after you move out or are forced to move out.

If you want **interest in** land and buildings (part ownership or a share), give the address and legal description (from your tax assessment or your state of title certificate).

If you don't want an interest, you can ask for **compensation** (money). If the property is real estate, give the **legal description**. (This description is used in legal documents to describe a piece of land—and it isn't a street address. You can get the description from your tax assessment or your state of title certificate.)

Schedule 5

Attach Schedule 5 if you're asking the court for any other orders, including name changes, [family law protection orders](#), annulments, and an order for [costs](#). You don't need to ask for a legal change of name if you're just going back to the last name you used before marriage.

Form F5 (Rule 4-4(2))

SCHEDULE 5—OTHER ORDERS

The respondent is asking for the following orders:

☐ an order under the *Name Act* that the respondent's name be changed from to

☐ the following additional orders under the *Family Law Act*

1.

☐ other orders

1.

List orders under the Family Law Act that you're requesting (orders that weren't listed in any of the previous schedules). Use numbered paragraphs. Include the sections of the law that apply. **E.g.**, "a protection order under s. 183."

List any other orders you're requesting. Use numbered paragraphs. Say what the **legal authority** for the order is—usually the name of the law. **E.g.**, "an order for [describe] under s. [section number] of the *Divorce Act*." If you want costs, just write "an order that I have my costs in this proceeding."