

FORM F5 (RULE 4-4 (2))

Court File No.:

Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

COUNTERCLAIM

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

Filed by:[party(ies)]..... (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.

1 Spousal relationship history [Check the correct box(es).]

The claimant,[name]..... and the respondent[name].....:

☐ Began to live together in a marriage-like relationship on[date].....

☐ Were married on[date]..... at.....[city or town; province or state; country].....

☐ Separated on[date].....

☐ Were divorced from each other by order made on[date].....

2 Counterclaim [Check the correct box(es) and complete and attach the required Schedule(s).]

The respondent is asking for the following:

- ☐ An order for divorce – [complete and attach Schedule 1]
- ☐ An order respecting child(ren) – [complete and attach Schedule 2]
- ☐ An order for spousal support – [complete and attach Schedule 3]
- ☐ An order relating to family property and family debt – [complete and attach Schedule 4]
- ☐ Another order – [complete and attach Schedule 5]
- ☐ An order for costs

An order to ☐ confirm or ☐ set aside [check whichever one of the following boxes is correct and complete the required information] a written agreement dated[date]..... in respect of

- ☐ spousal support
- ☐ child support
- ☐ division of property and/or debt
- ☐ other

for the following reasons:

.....

2.1 Official language choice for *Divorce Act* proceedings (see Notice to Respondent below) [Check whichever one of the following boxes is correct.]

The respondent intends to file documents, give evidence or make submissions in this proceeding in the

- ☐ English language
- ☐ French language
- ☐ English language and French language (bilingual)

3 The respondent's address for service is [Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]

Address for Service:

Fax (optional) E-mail (optional)

Date:

.....

Signature of

☐ filing party ☐ lawyer for filing party(ies)

.....[type or print name].....

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.

Notice to Respondent: under **section 23.2 of the *Divorce Act***, you may choose to file pleadings or other documents, including this form, give evidence or make submissions in any ***Divorce Act*** proceeding in either of the two official languages of Canada (English or French).

Rule 1-1(1) of the Supreme Court Family Rules defines “*Divorce Act* proceeding” as follows:

“*Divorce Act* proceeding” means a family law case in which an order is sought under the *Divorce Act*.

You may file a Notice of Extension – Official Languages in Form F86.2 and receive an additional 10 days to file this counterclaim (Form F5) in accordance with Rule 20-7 (8) of the Supreme Court Family Rules.

FORM F5 (RULE 4-4 (2))

SCHEDULE 1 - DIVORCE

1 Personal information

	Claimant	Respondent
Birthdate: <i>[date]</i>		
Habitually resident in British Columbia since: <i>[date]</i>		
Surname at birth:		
Surname immediately before marriage:		
Marital status immediately before marriage:	<input type="checkbox"/> never married <input type="checkbox"/> divorced <input type="checkbox"/> widowed	<input type="checkbox"/> never married <input type="checkbox"/> divorced <input type="checkbox"/> widowed
Place of marriage: <i>[city or town; province or state; country]</i>		

2 Grounds for the respondent's claim for divorce

☐ The respondent asks for an order for divorce on these grounds:
[If divorce is claimed as a result of having lived separate and apart, complete paragraph (i).]

(i) ☐ The respondent and the respondent's spouse have lived separate and apart since*[date]*.....

AND

[Check whichever one of the following boxes is correct and complete any required information.]

☐ the respondent and the respondent's spouse have not lived together since then

☐ the respondent and the respondent's spouse have lived together again during the following period(s), in an unsuccessful attempt to reconcile:*[give dates of period(s)]*.....

[If divorce is claimed on grounds other than having lived separate and apart, complete paragraph (ii) by checking both of the following boxes and completing the required information.]

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

☐ Adultery (the respondent has committed adultery)

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

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.

3 The respondent confirms that: *[The respondent seeking an order for divorce must check both of the following boxes.]*

- ☐ 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 *[Check whichever one of the following boxes is correct and complete any required information.]*

- ☐ 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*[state the reasons]*....., 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*[state the reasons]*.....

5 Children *[Check whichever one of the following boxes is correct and complete any required information.]*

- ☐ There are no children of the marriage as defined by the *Divorce Act* (Canada)
- ☐ The children of the marriage are:
- Full name: Birthdate: *[date]* Resides with:

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,*[name of party]*....., 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[*name of party*]....., 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
- (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.

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 birthdate [date]	Child's relationship to the claimant	Child's relationship to the respondent	Child habitually resident in BC since [date]	Child now living with

2 Orders sought

The respondent is asking for the following order(s): *[Check the correct box(es) and complete the required information.]*

☐ an order respecting arrangements for parenting *[Complete sections 3 and 4 below.]*

☐ an order for child support *[Complete sections 5 to 7 below.]*

3 Current arrangements for parenting

Current arrangements for parenting are:

4 Proposed arrangements for parenting

The respondent proposes the following arrangements for parenting:
.....*[set out terms of proposed order sought in relation to arrangements for parenting, including custody, guardianship, parenting arrangements or contact with a child]*.....

The respondent is asking for this order under *[Check one or both of the following boxes, as applicable.]*

☐ 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 *[Check whichever one of the following boxes is correct and complete any required information.]*

☐ 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 *[Check the correct box(es) and complete the required information.]*

The respondent is asking for:

☐ support in the amount set out in the child support guidelines table, commencing on.....[*date*]....., for the following child(ren):[*name(s) and date(s) of birth of child(ren)*].....

☐ special or extraordinary expenses in accordance with section 7 of the child support guidelines, commencing on.....[*date*]....., for the following child(ren):[*name(s) and date(s) of birth of child(ren)*].....

☐ an order for support in an amount different than the amount set out in the child support guidelines table, commencing on.....[*date*]....., for the following child(ren):[*name(s) and date(s) of birth of child(ren)*].....

The respondent is asking for an order for child support under *[Check one or both of the following boxes, as applicable.]*

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

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 *[Check the correct box(es) and complete the required information.]*

☐ The respondent is asking for an order for spousal support as follows:*[set out terms of proposed order sought in relation to spousal support]*.....

☐ The respondent is asking for an order for spousal support under *[Check one or both of the following boxes, as applicable.]*

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

3 Income of claimant and respondent

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

[Check whichever one of the following boxes is correct and complete any required information.]

☐ 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:

.....
.....

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.

FORM F5 (RULE 4-4 (2))

SCHEDULE 4 – PROPERTY

1 The respondent's claims

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

[Check whichever one of the following boxes is correct and complete any required information in relation to family property and family debt, as those terms are defined in 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:*[set out details of proposed unequal division and the grounds on which it is made]*.....

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 claimant 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):

.....

B. Other property claims

[Check the correct box(es) and complete the required information.]

The respondent claims:

☐ occupancy rent / occupational rent

☐ an interest in the following property:*[specify every interest claimed in property and if an interest is claimed in real property, provide the address and legal description of that real property]*

.....

☐ an order for compensation instead of an interest in the property described as*[identify every property for which compensation is claimed and if compensation is claimed for real property, provide the address and legal description of that real property]*

on the following grounds:.....*[set out the grounds on which any claim under this paragraph for interest or compensation is based]*.....

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):*[provide the legal description of every real property against which a Certificate of Pending Litigation is to be registered]*.....

FORM F5 (RULE 4-4 (2))

SCHEDULE 5 – OTHER ORDERS

The respondent is asking for the following orders:

[Check the correct box(es) and complete the required information.]

☐ an order under the *Name Act* that the respondent's name be changed from*[current full legal name]*..... to*[full new name]*.....

☐ the following additional orders under the *Family Law Act* *[Using numbered paragraphs, set out any orders sought under the Family Law Act that are not referred to in Schedules 1 to 4 and the sections of that Act under which those orders are sought.]*

1

2

☐ other orders *[Using numbered paragraphs, set out terms of other proposed orders and the authority under which those orders are sought.]*

1

2