

- C. Comments [§3.24]
- D. Sample Rule 3-8(11) Order—Setting Aside a Default Judgment [§3.25]

I. RULE 3-2—SERVING AND RENEWING THE NOTICE OF CIVIL CLAIM [§3.1]

Renewal of Original Notice of Civil Claim

(1) An original notice of civil claim does not remain in force for more than 12 months, but if a defendant named in a notice of civil claim has not been served, the court, on the application of the plaintiff made before or after the expiration of the 12 months, may order that the original notice of civil claim be renewed for a period of not more than 12 months.

A. DEFINITION [§3.2]

A notice of civil claim is valid for 12 months after it is issued; it may be renewed before or after the expiry of that time for a period of up to 12 months. A renewed notice of civil claim may be further renewed for a period of up to 12 months, provided the application is made during the currency of the renewed notice of civil claim.

B. APPLICATION [§3.3]

The affidavit should state:

- (1) the date of issue of the notice of civil claim;
- (2) an outline of the claim;
- (3) whether a limitation period has expired; and
- (4) the reasons why the notice of civil claim has not been served.

C. COMMENTS [§3.4]

Now-repealed Supreme Court Rule 9(1) governed renewal of an original writ of summons. The terms of Rule 9(1) are substantially the same as the terms of Rule 3-2(1) of the Supreme Court Civil Rules. Accordingly, principles relating to the former Rule continue to apply: *Olsen v. Kurz*, 2013 BCSC 1026 at para. 14.

Notice of the application need not be given to a defendant who has not been served, because that person is not a party of record. Any defendant who has been served must be given notice. Following the granting of an order to renew a notice of civil claim, the court generally requires the plaintiff to serve the defendants with the application materials and the order made to permit the defendants to consider their position (*Singh v. Young*, 2020 BCSC 791 (Master) at para. 20).

The basic question facing the court in exercising judicial discretion whether to renew an original notice of civil claim is: what is necessary to see that justice is done? The interests of justice and any injustice or prejudice to the parties must be taken into account.

The criteria to be considered are as follows:

- (1) Was the application brought promptly?
- (2) Did the defendants have notice of the claim?
- (3) Have the defendants suffered prejudice?
- (4) Was the failure to serve the notice of civil claim attributable to the defendants?
- (5) Were the plaintiffs or their solicitors at fault?

(See *Olsen v. Kurz* at paras. 14 and 15, citing *Fast Fuel Services Ltd. v. Michelin North America (Canada) Inc.*, 2008 BCCA 216 at para. 9; *Weldon v. Teck Metals Ltd.*, 2012 BCCA 53 at paras. 14 and 37, citing *Seeliger v. Eagle Ridge Hospital*, 2007 BCCA 582 at para. 29; and *Pickton v. British Columbia (Minister of Public Safety and Solicitor General)*, 2011 BCSC 312 at paras. 3 and 4; all citing *Bearhead v. Moorhouse*, 1977 CanLII 346 (BC SC), affirmed 1978 CanLII 360 (BC CA) at para. 8.)

“[A]n application for renewal of a writ involves a consideration of the merits only in so far as it can be demonstrated by the defendant that it is plain and obvious that the action must fail”: *Koepke v. Morowski*, 2013 BCSC 54 at para. 28. The court in *Koepke* cited *Weldon v. Teck Metals* for the proposition that the court on a renewal application should not investigate the substantive merits unless it considers that the claim is bound to fail, calling it “the current state of the law”.

After the order is made and the defendant has been served, that defendant can apply to have the order set aside (Rule 8-5(8)). The defendant does not have to prove particular prejudice.

If the basis for the application for renewal of the notice of civil claim is difficulty in locating or serving the defendant, an application for leave to serve by alternative means should be brought at the same time (see Rule 4-4).

The court will not automatically renew the notice of civil claim for 12 months. Where the court is concerned about further delay, a shorter period may be set.

It is good practice to set out the date of renewal in the order.

The order and the renewed notice of civil claim must be served on the defendants who have not already been served.

An order under Rule 3-2 may be made by a judge or a master. In appropriate circumstances, this application may be made by requisition in Form 31 (see “Desk Orders” in chapter 1) and a desk order in Form 35.

D. SAMPLE RULE 3-2 ORDER—SERVING AND RENEWING THE NOTICE OF CIVIL CLAIM [§3.5]

Form 35 (Rules 8-4(1), 13-1(3), 17-1(2), and 25-9(2))

[style of proceeding]

ORDER MADE AFTER APPLICATION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

[Complete the form in accordance with the instructions found in the bracketed italicized wording and then remove all bracketed italicized wording so that it does not appear in the form when the form is filed.]

))
)	THE HONOURABLE JUSTICE <i>[name]</i>)
)	or)
)	A JUDGE OF THE COURT)
BEFORE)	or) <i>[month, day, year]</i>
)	MASTER <i>[name]</i>)
)	or)
)	A MASTER OF THE COURT)
))

[Select whichever one of the 3 following provisions is correct, complete the selected provision and remove the provisions that have not been selected so that they do not appear in the form when the form is filed.]

ON THE APPLICATION of *[party(ies)]* coming on for hearing at *[specify]* on *[month, day, year]* and on hearing *[name of party/lawyer]* and *[name of party/lawyer]*;

ON THE APPLICATION of *[party(ies)]* without notice coming on for hearing at *[specify]* on *[month, day, year]* and on hearing *[name of party/lawyer]*;

ON THE APPLICATION of *[party(ies)]* without a hearing and on reading the materials filed by *[name of party/lawyer]* and *[name of party/lawyer]*;

THIS COURT ORDERS that:

[If any of the following orders are by consent, indicate that fact by adding the words “By consent,” to the beginning of the description of the order.]

1. the notice of civil claim in this action is renewed for *[time period; e.g., three months]* from *[month, day, year]*.