



The Court of Appeal of Alberta

HOW TO PREPARE AND FILE A NOTICE OF MOTION, AFFIDAVIT AND MEMORANDUM OF ARGUMENT

This guide provides general information only and does not provide legal advice. You may represent yourself in proceedings before the Court of Appeal; however because the process may be complex, you may wish to consider hiring a lawyer. You cannot have another person who is not a lawyer speak on your behalf, unless you have permission of the Court. In addition, as staff members are not lawyers, they cannot provide any legal advice. It is recommended that you consult with a lawyer of your choice about your rights and the remedies available to you.

A list of agencies is provided in item #6 of the Frequently Asked Questions and can be viewed at <http://www.albertacourts.ab.ca/go.aspx?tabid=280>

General information on appeals can be located on the Alberta Courts' Website at <http://www.albertacourts.ab.ca>.

1. What is the Alberta Court of Appeal and where is it located?

The Court of Appeal is Alberta's highest court and sits in two locations, Edmonton and Calgary:

1A Sir Winston Churchill Square,
Edmonton, Alberta T5J 0R7
Telephone No. (780) 422-2416
Fax No. (780) 422-4127

2600, 450 - 1st Street S.W.,
Calgary, Alberta T2P 5H1
Telephone No. (403) 297-2206
Fax No. (403) 297-5294

Office hours are 8:15 a.m. to 4:30 p.m. Monday to Friday.

Note: As it takes considerable time to review and file documents please ensure that you take this into consideration when attending to file your documents.

2. What are the Rules that govern motions in the Court of Appeal?

The Alberta Rules of Court (ARC) and specifically Part F. of the Court of Appeal Consolidated Practice Directions deals with motions brought before the Court of Appeal. You can access:

- ◆ The Alberta Rules of Court at http://www.qp.gov.ab.ca/display_rules.cfm.
- ◆ Part F. of the Court of Appeal Consolidated Practice Directions at <http://www.albertacourts.ab.ca/go.aspx?tabid=230>.
- ◆ Hard copies of both at the Law Library in the Court of Queen's Bench in either Calgary or Edmonton.

3. Who hears motions?

Motions are heard by either a single Justice of the Court of Appeal sitting in Chambers (Justice Chambers), or by a panel of three Justices of the Court of Appeal sitting in Motions Court (Motions Court).

4. When are motions heard?

Justice Chambers:

Motions are heard every Tuesday, Wednesday and Thursday (statutory holidays excluded). These motions must be pre-booked in advance with the Registry.

Motions Court:

Motions are heard once per month, the dates are listed on the Alberta Court Calendar which can be viewed at

<http://www.albertacourts.ab.ca/calendar/casitting.htm>

5. How do I know if my motion must be heard by a Justice in Chambers or the Motions Court?

To determine where your motion should be heard:

Justice Chambers:

See Section M - Type of Applications, found on the Notice of Motion - Justice Chambers (One Justice) - Check/Return form.

Motions Court:

See Section K - Type of Applications, found on the Notice of Motion - Motions Court (Panel of 3 Justices) - Check/Return form.

Note: You can view the Check/Return forms at

<http://www.albertacourts.ab.ca/go.aspx?tabid=240> or if you need assistance call the Registry (see contacts in question #1 above) .

6. Are there time limits for filing my documents?

Refer to Part F.1 and F.2 of the Court of Appeal Consolidated Practice Directions which sets out the specific time limits for filing your documents. Part F.7 sets out the consequences for failing to file materials within the time limits. You can view Part F. of the Court of Appeal Consolidated Practice Directions at

<http://www.albertacourts.ab.ca/go.aspx?tabid=230>.

7. Does it cost anything to file a notice of motion?

There is no fee to file a notice of motion on an existing appeal file, however, where there is no existing appeal file, there is a \$600.00 filing fee to file a motion applying for Leave to Appeal. The filing fee is payable by cash, debit, credit card or certified cheque or money order made payable to the “Minister of Finance.”

8. How do I schedule my motion?

Justice Chambers:

If the motion must be heard in Justice Chambers, call the Registry where the file was commenced (see contacts in question #1 above) to obtain and pre-book the next available chambers date and time. When pre-booking the date ensure that the time limits for filing are considered (see question #6 above).

Note: A date must be pre-booked before you complete and file your documents.

Motions Court:

If the motion must be heard in Motions Court, review the Court Sittings Calendar <http://www.albertacourts.ab.ca/calendar/casitting.htm>, or call the Registry (see contacts in question #1 above) to determine the next available Motions Court sitting date and time. When selecting a date ensure that the time limits for filing are considered (see question #6 above).

9. What documents are required?

Part F. of the Court of Appeal Consolidated Practice Directions provides details on the required documents that must be filed.

The Applicant must file and serve (all at the same time) a notice of motion, affidavit (if applicable) and a memorandum.

Note: See Part F.6(b) of the Court of Appeal Consolidated Practice Directions for exceptions. You can view Part F. of the Court of Appeal Consolidated Practice Directions at <http://www.albertacourts.ab.ca/go.aspx?tabid=230>.

The Respondent must file and serve a memorandum, or a letter indicating that they will not be filing a memorandum.

Check/Return forms have been prepared to assist you with the preparation of documents for the Court of Appeal. You should review the applicable Check/Return forms prior to preparing the documents, specifically:

- ◆ Notice of Motion - Justice Chambers (One Justice),
- ◆ Notice of Motion - Motions Court (Panel of 3 Justices),
- ◆ Affidavits,
- ◆ Memorandum/Brief,

- ◆ Order Judgment, and
- ◆ General Format

The above Check/Return forms can be viewed at <http://www.albertacourts.ab.ca/go.aspx?tabid=240>, or copies can be obtained at the Court of Appeal Registry. Please ensure that you have the latest version as Check/Return forms are updated regularly.

10. Are there forms that I can fill out?

Sample documents have been included at the end of this document. In addition, interactive forms are available at <http://www.albertacourts.ab.ca/go.aspx?tabid=240>, or hard copies can be obtained from the Court of Appeal Registry:

- ◆ Notice of Motion (Schedule A),
- ◆ Affidavit (Schedule B), and
- ◆ Memorandum of Argument (Schedule C)

11. How many copies of the documents will I require?

You will be required to provide copies for the Court, the opposing party(ies) and yourself. The Court of Appeal Registry will keep:

Justice Chambers:

The original and two (2) copies of all documents.

Motions Court:

The original and four (4) copies of all documents.

12. Where do I file my documents?

Once all of the documents have been prepared, attend at the Court of Appeal Registry where the file was commenced (see addresses in question #1 above) to file your documents.

A Commissioner for Oaths is available at the Registry to commission your affidavit. If there are numerous exhibits attached to your affidavit, we suggest that you have the affidavit and exhibits sworn prior to making the extra copies.

13. Am I required to serve the opposing party(ies)?

Yes, once all of the documents are filed, you are required to serve (deliver) a copy of each filed document on the opposing party(ies) within the time limits. Refer to Part 3 (Service of Documents) in the Alberta Rules of Court for service requirements <http://www.qp.gov.ab.ca/documents/rules/02.CFM?type=html>.

14. Will there be a time limit to present my argument?

Yes, there are time limits on oral argument for all motions in Justice Chambers and Motions Court. The maximum time for oral argument (including reply) is 15 minutes per separately-represented party, except for motions for leave to appeal where the maximum time allowed is 30 minutes per separately-represented party.

15. What do I do on the day of my motion?

On the day of the motion, attend court at the specified time and be prepared to argue your motion.

Following the hearing of the motion, the successful party must:

- ◆ draft the form of order that was granted (Schedule D),
- ◆ forward the draft order to the opposing party(ies) for approval as to the contents (unless Rule 323 was dispensed with),
- ◆ upon the order being approved and returned, file the order with the Registry, and
- ◆ once the order has been filed, serve (deliver) a certified copy of the order on the opposing party(ies). The Registry will certify one copy for free. There is a \$10.00 per copy certification fee for any additional certified copies of the order that you request.

Schedule A

Appeal No. _____

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)

(Appellant or Respondent (indicate status at appeal))

-and-

(Insert Names)

Respondent(s)

(Appellant or Respondent (indicate status at appeal))

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of _____
(insert name of Applicant)

before the presiding _____, of the Court of Appeal,
(insert Justice Chambers or Motions Court)

_____, in the City/Town of _____
(insert address) (insert city/town)

in the Province of Alberta on _____, the _____ day of _____,
(insert day of week) (insert date) (insert month)

20____, A.D., at the hour of _____ o'clock in the forenoon/afternoon, or as soon
(insert year) (insert time) (select one)

thereafter as may be heard for an Order for the following:

(briefly state the relief sought, the grounds and material or evidence intended to be relied on, including any reference to any statutory provision or Rule sought to be invoked, and specify any irregularities complained of or objection relied on (ARC 384)),

AND FURTHER TAKE NOTICE in support of the application will be read the

Affidavit of _____ and _____
(indicate name of person swearing affidavit) (list the other documents being relied on)

and any other information as may be advised and this Honourable Court may allow.

DATED at the City/Town of _____, in the Province of Alberta, this _____ day of
(insert city/town) (insert date)

_____, 20 _____.
(insert month) (insert year)

Estimate of Time: _____
(insert estimate of time of argument)

(Sign name and clearly print name of Applicant underneath. ARC 5.1)

To: Registrar
Court of Appeal

And To: (Name of Respondent/Counsel and Law Firm (if applicable) of all parties you are required to serve)

NOTICE TO THE RESPONDENT

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument on the application, nor be entitled to costs of the application, unless otherwise ordered. Failure to appear may also lead to an order or judgment being made against the respondent in their absence.

Unless otherwise ordered at the hearing, the maximum time for oral argument (including reply) will be 15 minutes per separately-represented party; except for applications for leave to appeal where the maximum time allowed will be 30 minutes per separately-represented party.

Appeal No: _____

IN THE COURT OF APPEAL
OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)
(Appellant or Respondent (indicate status at appeal))

- and-

(Insert Names)

Respondent(s)
(Appellant or Respondent (indicate status at appeal))

NOTICE OF MOTION

(Insert Applicant's Name, Address,
Telephone No. and Fax No.)

Note: An address for service within 30 kilometres of the office of the Registrar must be provided. (R. 5(1)(b)(i) ARC)

Schedule B

(Insert full name of person swearing affidavit and the date sworn. ARC 298(1)(c))

Appeal No. _____

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)

(Appellant or Respondent (indicate status at appeal))

-and-

(Insert Names)

Respondent(s)

(Appellant or Respondent (indicate status at appeal))

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, _____, _____, of the City/Town of _____
(insert full name of person swearing Affidavit) (insert occupation) (insert city/town)

in the Province of _____, MAKE OATH AND SAY AS FOLLOWS:
(insert province)

1. That I make this affidavit in support of an application for _____
(indicate type of application)

(Insert the relevant information that should be brought to the Court’s attention. Information should be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject (Rule 304(1)).

Note: If you are attaching any exhibits refer to Section F(vii) and (viii) of the Affidavit Check/Return form at <http://www.albertacourts.ab.ca/go.aspx?tabid=240> (Rules 311 & 312).

Sworn before me at the City of _____)
_____, in the Province _____)
of _____ this _____ day of _____)
_____ 20____.) (Sign name and clearly print name underneath.
ARC 5.1)

A Commissioner for Oaths in and for the
Province of Alberta

(Insert full name of person swearing affidavit and the date sworn. ARC 298(1))

Appeal No: _____

IN THE COURT OF APPEAL
OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)
(Appellant or Respondent (indicate status at appeal))

- and -

(Insert Names)

Respondent(s)
(Appellant or Respondent (indicate status at appeal))

**AFFIDAVIT IN SUPPORT OF NOTICE
OF MOTION**

(Insert Applicant's Name, Address,
Telephone No. and Fax No.)

Note: An address for service within 30 kilometres of the office of the Registrar must be provided. (R. 5(1)(b)(i) ARC)

Schedule C

Appeal No. _____

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)

(Appellant or Respondent (indicate status at appeal))

-and-

(Insert Names)

Respondent(s)

(Appellant or Respondent (indicate status at appeal))

MEMORANDUM OF ARGUMENT

(Insert your information here. Refer to the Memorandum/Brief - Check/Return Form for requirements and suggested format <http://www.albertacourts.ab.ca/go.aspx?tabid=240>) (Court of Appeal Consolidated Practice Directions F.4).

Estimate of Time: _____ (required on Memorandum of Reply only)
(insert estimate of time of argument)

(Sign name and clearly print name underneath. ARC 5.1)

Appeal No: _____

IN THE COURT OF APPEAL
OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)
(Appellant or Respondent (indicate status at appeal))

- and-

(Insert Names)

Respondent(s)
(Appellant or Respondent (indicate status at appeal))

MEMORANDUM OF ARGUMENT

(Insert Name of Party Filing, Address,
Telephone No. and Fax No.)

Note: An address for service within 30 kilometres of the office of the Registrar must be provided. (R. 5(1)(b)(i) ARC)

Schedule D

Appeal No. _____

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)

(Appellant or Respondent (indicate status at appeal))

-and-

(Insert Names)

Respondent(s)

(Appellant or Respondent (indicate status at appeal))

Before the Honourable) At the Court of Appeal, in the City of
Mr./Mme. Justice _____) _____, Province of Alberta, on
(insert name of Justice(s))) (insert name of city)
In Chambers/Motions Court the _____ day of _____ 20_____.
(insert date) (insert month) (insert year)

ORDER

UPON THE APPLICATION OF _____;
(insert name of Applicant)

AND UPON HAVING READ the Affidavit of _____,
(insert the person's name who swore the Affidavit)

and _____.
(insert the other documents relied on at the motion)

AND UPON HEARING for the Applicant, _____, and for
(insert who appeared for the Applicant)

the Respondent, _____.
(insert who appeared for the Respondent)

IT IS HEREBY ORDERED THAT:

(insert the terms of the order given)

Registrar, Court of Appeal of Alberta

Approved as to form and content.

(print name and status of party approving - Applicant/Respondent or Appellant/Respondent)

Entered this ____ day of _____, 20 ____.

Registrar, Court of Appeal of Alberta

Appeal No: _____

IN THE COURT OF APPEAL
OF ALBERTA

BETWEEN:

(Insert Names)

Applicant(s)
(Appellant or Respondent (indicate status at appeal))

- and -

(Insert Names)

Respondent(s)
(Appellant or Respondent (indicate status at appeal))

ORDER

(Insert Name of Party Filing, Address,
Telephone No. and Fax No.)

Note: An address for service within 30 kilometres of the office of the Registrar must be provided. (R. 5(1)(b)(i) ARC)