

COURT OF APPEAL OF ALBERTA
PART J. - Procedural or Custody or Access Appeals - LEAVE TO APPEAL -
CHECK/RETURN FORM

This checklist return form provides an itemized summary of the most common problems when filing documents in the Court of Appeal. However, this form does not include each requirement of the Alberta Rules of Court and Practice Directions. Accordingly, you should rely on the appropriate authority when preparing a document for filing in the Court of Appeal.

- A. **General Format of Document:**
Refer to the General Format - Check/Return Form for formal requirements of all documents.
- B. **Copies Required (Part F.2(b) CPD):**
The Registry will keep the original and 2 copies of each of the required documents. Part F. of the Court of Appeal Consolidated Practice Directions (CPD).
- C. **Filing Fee:**
A **\$600.00** commencement fee is required for each notice of motion for leave to appeal filed. Payment may be made by cash, Visa, MasterCard, Interac, certified cheque or money order. Certified cheque or money order must be made payable to the "Minister of Finance".
- D. **Time Limits - ARC 516.1 Applies (Part F.2(b)(i) & (ii) & J.3(g) CPD):**
 - (i) **the applicant:** must file, all at the same time, a notice of motion and supporting documents, and except in urgent cases, all must be filed and served at least **21 business days** before the motion is heard.
 - (ii) **the respondent:** must file, an affidavit (if applicable) and either a memorandum, or a letter indicating that they will not be filing a memorandum, and all must be filed and served at least **14 business days** before the motion is heard. The respondent must also give notice to the applicant of any material which has already been filed and on which the respondent intends to rely (Part F.3(c) CPD).
 - (iii) **the applicant:** must file and serve a reply in the form of a memorandum or a letter indicating that they will not be filing a memorandum, and all must be filed and served at least **10 business days** before the motion is heard.
- E. **Notice of Motion (Part F.2(e) & 3(a) & (b) CPD):**
The notice of motion must:
 - (i) state that it will be heard before a Justice in Chambers, at the Law Courts, City of Edmonton, Province of Alberta, on (full date), at the hour of 9:30 a.m. (unless otherwise specified),
 - (ii) 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),
- (iii) contain, before the signature of counsel/party, an estimate of time required for oral argument including reply if under 30 minutes,
- (iv) provide the full name (and law firm) address, telephone and fax numbers of all parties you are required to serve with notice of this application, just below the signature line on the notice of motion, and
- (v) contain, on the left-hand side of the backer, a Notice to the Respondent which must state the following:

“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.”

F. **Supporting Materials (Part J.3(e) CPD):**

- (i) **the applicant's supporting material** must be bound in orange stock front and back covers and, unless otherwise ordered, must consist of:
 - (a) a table of contents describing each document along with corresponding page or tab numbers,
 - (b) a memorandum no longer than 10 double-spaced pages (refer to Sections F., G. and H. of the Memorandum Check/Return form for other requirements),
 - (c) a copy of the order or judgment upon which leave to appeal is sought, (including any order of the Queen’s Bench Master or Provincial Court Judge, if applicable),
 - (d) any reasons for the order or judgment,
 - (e) transcripts of the hearing before the court, board or tribunal to be appealed, if available in time,
 - (f) all other material, including but not limited to affidavits, transcripts of oral testimony and other documents, which was before the court, board or tribunal that made the order or judgment, and
 - (g) the record or return from the court, board or tribunal, as applicable.
- (ii) **the respondent's memorandum** must:
 - (a) be no longer than 10 double-spaced pages (refer to Sections F., G. and H. of the Memorandum Check/Return form for other requirements),

- (b) be bound with lilac coloured stock front and back covers, and
 - (c) include, before the signature of counsel/party, an estimate of time required for oral argument if under 30 minutes.
- (iii) **the applicant's** reply memorandum must:
 - (a) be no longer than 3 double-spaced pages (refer to Sections F., G. and H. of the Memorandum Check/Return form for other requirements).
- G. **Relying on Materials Already Filed (Part F.3(c) CPD):**

Where a party will be relying on material which has been previously filed, the materials must be contained in or attached to the notice of motion, affidavit, memorandum, or a separate covering letter. The party must provide sufficient copies of those documents to the Registry for distribution purposes, and must serve the other parties with same, all within the time periods set out.
- H. **No Oral Argument (Part F.5 CPD):**

The Court will, upon receiving signed letters from all parties or their counsel agreeing to the matter proceeding without oral argument, consider whether or not to entertain an application to hear and decide a motion by reading the materials without oral argument. See Part F.5 CPD for other details.
- I. **Scheduling a Motion (Part F.6(a) & (c) CPD):**
 - (i) Call the Registry at the number provided below to determine the available Chambers dates for a matter to be heard. A date must be prebooked before you send your notice of motion and supporting material for filing.
 - (ii) The clerks will not schedule motions on a hearing date too early for the required notice to be given, unless otherwise ordered. Instead, the clerks will insert the next available date for hearing on the notice of motion and schedule it accordingly:
- J. **Materials Filed Late (Part F.(7)(a)(b) & (c) CPD):**
 - (i) When materials are not filed within the time fixed, the party in default shall not be entitled to costs of the application, unless otherwise ordered.
 - (ii) When a respondent fails to file materials within the time fixed, the respondent will not be allowed to present oral argument on the application, unless otherwise ordered.
 - (iii) The late-filed materials will be marked accordingly by the clerk (red stamped).
- K. **Leave Application/Appeal Struck/Deemed (Part J.(h) & (i) & Part F.8 CPD):**
 - (i) Any failure by the applicant(s) to comply with filing deadlines in the Alberta Rules of Court and Practice Directions will result in the

- application for leave being struck.
- (ii) Where leave to appeal is granted, the appellant(s) shall file a notice of appeal in Form N and serve all parties within 14 days from the date the decision on the leave application is granted. Any failure to file within this time frame will result in the appeal being struck.
 - (iii) Where an application for leave has not been heard within 6 months from the date the notice of motion is filed (or from the extension date if granted by a judge), the motion will be deemed abandoned, unless otherwise ordered before the expiration of this 6-month period.

Calgary Registry: (403) 297-2206
Edmonton Registry: (780) 422-2416

Form Revised: October 25th, 2005

Access this form on the Alberta Court's website at
<http://www.albertacourts.ab.ca/ca/publication/index.htm>