

**COURT OF APPEAL OF ALBERTA
NOTICE OF MOTION - JUSTICE CHAMBERS (One Justice) -
CHECK/RETURN FORM**

This checklist 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) & (c) CPD):**
The Registry will keep the original and 2 copies of the notice of motion and all supporting documents pursuant to Part F. of the Court of Appeal Consolidated Practice Directions (CPD).
- C. **Supporting Materials (Part F.2(a), (b)(i) & (c)(i) CPD):** An affidavit (if applicable) and a memorandum must be filed at the same time the notice of motion is filed. The only exception is on leave applications where a preservation of time is being requested (see Part F.6(b)). Refer to the separate check/return forms for requirements of each of these documents.
- D. **Time Limits - Where ARC 516.1 Applies (Part F.2(b)(i) & (ii) CPD):**
 - (i) **the applicant:** must file, all at the same time, a notice of motion, an affidavit (if applicable) and a memorandum, 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. (Refer to Memorandum Check/Return Form for requirements). 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 applications that can be made to one justice that fall under ARC 516.1 are as follows:
 - (a) leave to appeal (refer to item K. below),
 - (b) dismissal of an appeal, (where the appellant has done nothing effective to advance the appeal for more than one year),
 - (c) restoring an appeal to the general list, or
 - (d) extending time to appeal, and
 - (iv) these deadlines supersede those set out in ARC 516.1 and 384(4).
- E. **Time Limits - Where ARC 516.1 Does Not Apply (Part F.2(c)(i) & (ii) CPD):**
 - (i) **the applicant:** must file, all at the same time, a notice of motion, an affidavit (if applicable) and a memorandum, and except in urgent cases, all must be filed and served at least **7 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 **5 business days** before the motion is heard. (Refer to Memorandum Check/Return Form for requirements). 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), and
 - (iii) these deadlines supersede those set out in ARC 384(4) and 386.
- F. **Notice of Motion (Part F.2(a)(b) & (e) & 3(a) & (b) CPD):**
 The notice of motion must:
- (i) state that it will be heard before a Justice in Chambers, on (full date), at the hour of 9:30 a.m. (unless otherwise specified), (and insert one of the following addresses based on where the appeal was filed: “at the Law Courts Building, 1A Sir Winston Churchill Square, Edmonton, Alberta” or “at the TransCanada Pipelines Tower, 2600, 450 - 1st Street, Calgary, Alberta”).
 - (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 (motions filed prior to October 1st, 2004) or an estimate of time required for oral argument including reply if under 15 minutes for a regular motion or 30 minutes for an application for leave to appeal (motions filed October 1st, 2004 or later),
 - (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.”

- ❑ 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 in Part F. CPD.
- ❑ 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:
 - ❑ (a) the only exception to this direction will be for leave to appeal applications where the leave application must be made before the expiration of a limitation period, and the expiry of that limitation period falls inside the notice period for filing and serving documents set out in F.1(b) or 2(b)(i) CPD and
 - ❑ (b) in these instances only, the clerks will accept only those leave to appeal applications brought for the purpose of meeting the limitation period and with respect to which the applicant is seeking an adjournment. If the adjournment is granted, the application will be adjourned over to a day which will allow the parties to comply with the notice provision Parts F.1(b) or 2(b)(i) CPD.
 - ❑ (iii) Applications to preserve time on leave applications may be scheduled to be heard by the duty judge, in person or by way of telephone or video conference call. Counsel/party must be prepared at that time to discuss filing deadlines for all materials which are to be filed for the leave application, and should take into consideration subpart 8 of this practice direction, as a timetable will be set by the duty judge at that time.
Note: The hearing of leave applications on Summary Conviction Appeals can be adjourned by way of letter of consent without appearance if the transcript has been ordered and has not yet been completed.

- J. **Materials Filed Late (Part F.(7)(a)(b) & (c) CPD):**
 - (i) When materials are not filed within the time fixed by Part F. CPD, 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 by Part F. CPD, 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 to Appeal:**
 - (i) **Need Leave to Appeal a Judgment/Order Made by One Justice of Appeal (ARC 505(6)):** No judgment given or order made by one justice of appeal shall be subject to an appeal, except by leave of the justice giving the judgment or making the order,
 - (ii) **Need Leave to Appeal a Judgment/Order Made Under the Family Law Act (ARC 580.92(1)):** No appeal lies from a decision of the Court sitting as an appeal court for decisions made under the Act except to the Court of Appeal on a question of law or jurisdiction, or both, with leave of a judge of the Court of Appeal.
 - (iii) **Filing Fee Required on Civil Leave to Appeal Applications (Schedule E.2(1)):** A \$600.00 filing fee must be paid at the time the notice of motion is filed on all civil leave to appeal applications, and
 - (iv) **Deemed Abandoned (Part F.8 CPD):** Where an application for leave to appeal 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.
- L. **The following applications will be placed before the List Manager, or their alternate:**
 - (i) extend time limits,
 - (ii) file supplementary factum,
 - (iii) restore a deemed abandoned matter (factum must be completed to make this application), or
 - (iv) expedite an appeal.
- M. **Type of Applications that may go before one Justice in Chambers:**
CIVIL:
 - (i) **stay of judgment pending appeal** (pursuant to ARC 508(3) - if an application to the Queen's Bench judge appealed from is granted, refused, made but not heard, or is impractical, a judge or the Court of Appeal may de novo stay enforcement or proceedings of the decision being appealed),
 - (ii) **extend time for leave to appeal/serve a notice of appeal,**
 - (iii) **dismiss for want of prosecution** - on the application of any party where the appellant has done nothing effective to advance the appeal for more than one year,
 - (iv) **settle contents of appeal book,**

- (v) **leave to appeal and preserve time** (e.g.: Development Appeal Board, a notice of motion is the commencement document. Normally an application to preserve time is requested and the leave application is adjourned sine die in open court so that further supporting materials can be filed prior to the leave application being heard on its merits),
- (vi) **security for costs,**
- (vii) **advice and/or directions,**
- (viii) **case management,**
- (ix) **strike an appeal off list,**
- (x) **restore an appeal to list that was previously struck,**
- (xi) **consolidate files/appeals to be heard together,**
- (xii) **leave to file an E-Appeal if trial under 10 days and consent of all parties has not been obtained, and/or**
- (xiii) **leave to file application to adduce further/new evidence** when the party's factum has already been filed (ARC 516.2) and the appeal hearing materials have not been distributed to the panel.

CRIMINAL:

- (i) **judicial interim release (bail) pending appeal** (see separate check/return form),
- (ii) **direct review of a decision on interim release** (refer to 680 CCC),
- (iii) **stay of licence suspension pending appeal,**
- (iv) **extend time for leave to appeal or serve notice of appeal,**
- (v) **restore to the list** (deemed abandoned by Registrar ARC 840.1),
- (vi) **advice and/or directions,**
- (vii) **leave to appeal** - summary conviction or certificate of importance. See Part F.9 CPD for further details.
- (viii) **revoke judicial interim release (bail),**
- (ix) **leave to file an E-Appeal if trial under 10 days and consent of all parties has not been obtained, and/or**
- (x) **leave to file application to adduce further/new evidence** when the party's factum has already been filed (ARC 516.2) and the appeal hearing materials have not been distributed to the panel.

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

Form Revised: November 3rd, 2006

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