

**COURT OF APPEAL OF ALBERTA
NOTICE OF MOTION - MOTIONS COURT (Panel of 3 Justices) -
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 (Parts F.1(b) & (c) CPD):**
The Registry will keep the original and 4 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 (Parts F.1(a) & (b) CPD):**
An affidavit (if applicable) and a memorandum must be filed at the same time the notice of motion is filed. Refer to the separate check/return forms for requirements of each of these documents.

- D. **Time Limits (Part F.1(b) & (c) 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, and
 - (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).

- E. **Notice of Motion (Part F.2(a) & (b) & 3(a) & (b) CPD):**
The notice of motion must:
 - (i) state that it will be heard before the Motions Court, on (full date), at the hour of 10:00 a.m., (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 (Rule 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 (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.”

- F. **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.
- G. **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.
- H. **Scheduling a Motion (Part F.6(a) CPD):**
 - (i) The Motions Court dates are listed in the Alberta Court Calendar which can be found on the Alberta Courts’ website at www.albertacourts.ab.ca under Court of Appeal > Court Calendar > Sitting Dates.
 - (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.

- ❑ I. **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).

- ❑ J. **Leave to Appeal (ARC 505(6)):** No judgment given or order made by one justice of appeal shall be subject to any appeal, except by leave of the justice giving the judgment or making the order.

- ❑ K. **Type of Applications that may go before the Motions Court (panel of 3 justices):**
 - CIVIL:**
 - ❑ (i) **adduce further/new evidence** - when filed on or before the party's factum is filed, the application must go before the Panel hearing the appeal. 5 copies of the fresh evidence, contained within 5 sealed envelopes, must be filed at the time the motion is filed. Each envelope must be labelled as fresh evidence and set out the appeal number and style of cause,
 - ❑ (ii) **leave to file application to adduce further/new evidence** - when the party's factum has been filed (ARC 516.2) and the appeal hearing materials have been distributed to the panel, a notice of motion for leave to file an application to adduce further/new evidence must go before the panel hearing the appeal,
 - ❑ (iii) **dismiss for want of prosecution** - at any time before or after 6 months from the date when a notice of appeal was filed, on the application of any party or on the Courts own motion,
 - ❑ (iv) **intervene**, and/or
 - ❑ (v) **reconsider a previously decided case.**
 - CRIMINAL:**
 - ❑ (i) **adduce further/new evidence** - when filed on or before the party's factum is filed, the application must go before the Panel hearing the appeal. 5 copies of the fresh evidence, contained within 5 sealed envelopes, must be filed at the time the motion is filed. Each envelope must be labelled as fresh evidence and set out the appeal number and style of cause,
 - ❑ (ii) **leave to file application to adduce further/new evidence** - when the party's factum has been filed (ARC 516.2) and the appeal hearing

materials have been distributed to the panel, a notice of motion for leave to file an application to adduce further/new evidence must go before the panel hearing the appeal,

- (iii) **dismiss for want of prosecution,**
- (iv) **intervene,**
- (v) **reconsider previously decided case,**
- (vi) **withdraw as counsel of record, and/or**
- (vii) **appoint counsel.**

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>