

Court Appearances & Orders

You may have to appear in court for many reasons.

- Maybe you are in the middle of a divorce and you need to ask the judge to make a temporary order about child support while you and your spouse figure out long-term plans.
- Maybe you cannot find the person who caused the car accident you were in, and you need to serve them court documents to start a lawsuit.
- Maybe you have stopped paying your mortgage, and the bank foreclosing on your home sent you court documents with a court date.
- Maybe you are leaving an abusive relationship and need a protection order to keep your abuser away from you.

These examples all have one thing in common: someone is asking the judge to make an order about something. Sometimes the court order will be temporary (an interim order), other times it will be final. Usually court appearances are short and deal with one issue that is part of a larger court action or proceeding.

Trials are different. They deal with resolving the whole court action or proceeding (or at least the issues the parties still have not agreed on).

In all court appearances, there is an **applicant** (the person asking the judge for the order) and a **respondent** (the person responding to the request). There may be more than one applicant or respondent. The applicant and the respondent are the **parties**.

We sometimes call court appearances hearings or applications.

Asking an Alberta court for an order generally follows the same process.

If you are the applicant, you will need to figure out:

1. what type of issue you have
2. which court you are in
3. what documents you need to fill out
4. if you need to give notice of the request to the other parties involved in the issue
5. how the court will receive your request
6. if the court grants the order, who prepares the order

Each of these steps will be discussed below. If you are the respondent, the applicant starts the process. But you still have a role to play! If you disagree with the applicant's request, you can file your own evidence or file a **cross-application** asking for your own order. If you agree with the applicant's request, you and the applicant can discuss a **Consent Order**.

*A **cross-application** is a request by the respondent for an order different from the applicant's request. Usually, you must make your request in a separate form from your response to the original application. It depends on the court and type of issue.*

*A **Consent Order** is a court order decided upon by consent between the parties and submitted to a judge for review and signature. A consent order is different from other court orders where the judge makes the final decision.*

“What type of issue do I have?”

You need to figure out what type of issue you have.

1. Is your issue substantive or procedural?

A **substantive** issue is about the law or the facts.

EXAMPLE You have a parenting order that says when you and your ex each spend time with the children. Your ex is moving cities, and you need to update the order. You and your ex file documents with the court, serve the documents on each other and schedule a hearing – all following the court's rules. You appear in court on the scheduled date to ask the judge to change the order.

A **procedural** issue is about the court process.

EXAMPLE You filed a claim against someone who owes you money. You have tried unsuccessfully to serve the other party with the court documents by registered mail and in person. You need an order for substitutional service to serve them in a different way. The court clerk tells you to appear in court on a certain day at a specific time to ask for the order. There are many other people in the courtroom or online waiting. You wait until the judge (or **Master**, if you are in the Court of Queen's Bench) asks for “without notice applications” (usually at the beginning). Then you make your request.

*A **Master** is a judicial officer in the Court of Queen's Bench with authority to hear and decide on certain types of court applications. A Master is not a judge or justice.*

2. If your issue is substantive, what area of law is it about?

Generally, the court divides into family law, civil law and criminal law issues.

Family Law	Includes issues about divorce, separation, parenting time, child support, spousal or partner support, dividing property, adoption, child welfare, guardianship, EPOs
Civil Law	Includes issues about personal injury, breach of contract, restraining orders, employment, unpaid debts, wills and estates
Criminal Law	Includes issues about peace bonds and criminal charges

Figuring out the type of issue and area of law will help you decide which court will hear your request and what court forms you need to fill out.

“Which court do I use?”

There are three courts in Alberta:

1. **Provincial Court**
2. **Court of Queen’s Bench**
3. **Court of Appeal**

Each court deals with certain family, civil and criminal issues. Most times, you will make your request in the Provincial Court or the Court of Queen’s Bench. The Court of Appeal only hears appeals from the Court of Queen’s Bench and has very formal processes.

If you or someone else have already filed court documents in the court action or proceeding, you will make your request for the court order to the same court using the same court file number.

If you are filing court documents for the first time, you will need to do a bit more work! You will need to find information about the law for your issue.

CPLEA has lots of good free information about different areas of the law. You can also talk to a lawyer, legal clinic or **Resolution and Court Administration Services (RCAS)**. Contact information is included at the end of this document.

Appearances before a judge in Provincial Court are sometimes in “docket court”. **Docket court** is a very busy courtroom where the judge only has a few minutes to talk about each matter. There may be 30 or more cases scheduled for the same day. There are docket courts for criminal and traffic issues, family issues, civil issues and more.

FAMILY DOCKET COURT

Family Docket Court is a first stop for family law issues in the Court of Queen’s Bench in Edmonton and Calgary. Court is not always the best way to resolve a family law dispute. Family Docket Court directs Albertans to options to resolve their issue, in or out of court. Find more info at www.cplea.ca/courts and <https://bit.ly/3fl9htA>

Requests to a justice in the Court of Queen’s Bench are “applications”. The process is “making an application.” In the Court of Queen’s Bench, applications are in “Chambers” – courtrooms that are open to the public with many people

present. There are different Chambers depending on what kind of application you are making:

- Masters Chambers (procedural issues and foreclosures heard by a Master)
- Justice Chambers (non-family issues heard by a justice)
- Family Justice Chambers (family issues heard by a justice)

In Regular Chambers (Masters, Justice or Family Justice), applications can only take up to 20 minutes. For longer applications, you will have to schedule an appearance in Special Chambers.

“Which court forms do I fill out?”

All requests for a court order start with an application form. This document tells the court the issue you have and the remedy (outcome) you are asking for, usually a court order. The **application form** you use depends on which court you are in and what issue you have.

You must also file evidence to support your application. Your evidence must be in an **affidavit**.

*An **Affidavit** is a written statement of facts that you swear or affirm before a Commissioner for Oaths or Notary Public. It is evidence in court.*

For more information about affidavits, see CPLEA's **Evidence in Court: Affidavits** tip sheet at www.cplea.ca/courts.

You can find court forms on the Alberta Courts' website: www.albertacourts.ca. Choose the court you are in and then the area of law. You will find a page with court forms. For more help on finding the right forms, contact RCAS.

After you fill out your forms, you must usually file them with the court clerk. Make sure you go to the right counter at the courthouse! For example, family court documents must be filed at the family counter for the right court. Keep reading to find out when to file the documents.

Terms can be confusing! The term “application” refers to two things:

1. The court documents you file to make your request (**an Application form** and **Affidavit**).
2. How the judge hears your request – either in court or as a desk application. We sometimes call this “making an application”.

“Do I have to give notice to the other parties in the disputes?”

Usually you must give notice of your request to the other parties involved. This means you must **serve** (give) them filed copies of the court documents (application plus affidavit) before the court date so that they know when to come to court. Giving them notice also lets them know what you are asking the court for and lets them respond to your concerns. The other parties can file their own evidence in an affidavit before the court hearing.

The amount of notice you must give depends on the type of request you are making. Sometimes you will need to give up to 10 days' notice (including weekends). Remember, the notice period starts once the other party has received the documents. You must account for the time it will take to serve the documents. The clerk at the courthouse will help you choose an appropriate court date. For more information on serving documents, see CPLEA's **Serving Court Documents** tip sheet at www.cplea.ca/courts.

Sometimes you can appear in court **without notice** to the other parties. You do not have to give notice if you are applying:

- for a protection order in an emergency (such as a restraining order, Emergency Protection Order or Human Trafficking Protection Order)
- for an order for substitutional service
- to waive notice requirements of a move under the *Divorce Act* where there is a concern of family violence
- for default judgment

If you appear in court without giving notice to the other parties when you should have, the judge can refuse to hear your application.

“Do I have to go to court?”

You may or may not have to appear in court to ask for an order. It depends on the type of order you are asking for.

Desk Applications

Sometimes, you can submit your documents at the courthouse for a judge to review on their own. This is a **desk application**. The court will contact you once the judge grants your order. The court will also contact you if the judge needs more information or refuses to grant the order.

You can use the desk application process if:

- You are applying for divorce where both spouses agree to get divorced. You can apply jointly or one spouse can apply without the other challenging it. However, you must already have written agreements or court orders dealing with parenting, and child and spousal support.
- You are dealing with a family law issue in the Court of Queen’s Bench and your application is a ‘simple application’. You can find the list of simple applications in a Notice to the Profession & Public on the Court’s website: albertacourts.ca/qb/areas-of-law/family. The Notice also has important information about what your application must look like (page limits, etc.).
- You are applying for a grant of probate or grant of administration to manage the estate of a deceased person under Alberta’s *Estate Administration Act*, and no one is challenging your application.
- You are applying for a co-decision-making order, guardianship order or trusteeship order for an adult under Alberta’s *Adult Guardianship and Trusteeship Act*, and no one is challenging your application.

Other kinds of applications may be available as desk applications, depending on the court and the location. For example, you can apply for an order for substitutional service as a desk application in some court locations but not in others. If you have questions about whether you can use a desk application process, contact RCAS.

Going to Court

Most of the time, you will have to appear in court. Court can be in person, online or by telephone. On the day of your court appearance, make sure you are in the courtroom or logged in online at least 15 minutes before the hearing time. Make sure you also check in with the court clerk so they know you are present.

The judge will hear many applications in one session. There will be a list of applications (with numbers) to be heard that day. For example, if your court date is Wednesday at 10am, there will be several other applications scheduled for that time. Yours might be number five.

If your application is “without notice”, your name will not be on the list. The judge will hear without notice applications first. The judge will ask if there are without notice applications. If this is you, you can step forward. Then the judge will start hearing the applications on the list. If you do not speak up when the judge asks for without notice applications, you will not be able to speak to the judge until the end of the list.

The judge may not go in order of the list. You must stay in the courtroom or online until the judge hears your application.

Sometimes one party will ask for an adjournment – a suspension or postponement of the hearing or application. For more information about adjournments, see CPLEA’s **Adjournments** tip sheet at: www.cplea.ca/courts.

Judges have different names in the different courts:

- The **Provincial Court** has judges. You should address the judge as “Your Honour” or “Sir/Madam”.
- The **Court of Queen’s Bench** has justices and Masters. You should address the justice as “My Lord/Lady” or “Sir/Madam”. You should address the Master as “Sir/Madam”.

For more information about going to court, see CPLEA’s **Tips for Going to Court** tip sheet at www.cplea.ca/courts.

“Who prepares the court order?”

If you are making an application in the Court of Queen’s Bench, usually you must take a template of an order with you that the judge can change or fill in. For example, if you are applying for an Order for Substitutional Service in the Court of Queen’s Bench, fill in the template from the Alberta Courts’ website and bring it with you to court. It is best to use a computer to fill in the templates. Many templates are fillable PDF files.

If your hearing is online, you can take the filled in template with you when you file your court documents. You can also drop it off or mail it to the courthouse before the hearing. The court clerks will give it to the judge and let you know when it is ready.

WHERE TO FIND TEMPLATES

Court of Queen's Bench templates:

- Civil: <https://bit.ly/3us2MRt>
- Family (*Divorce Act*): <https://bit.ly/3oJz6vQ>
- Family: <https://bit.ly/3rc9KIq>

Other times the court clerk will prepare the court order after the appearance and mail it to you. This is more common for hearings in Provincial Court. If you have questions about whether you need to prepare a court order, contact **RCAS**.

Wonder what happens after the judge makes a decision?

See CPLEA's **After a Judge Makes a Decision** tip sheet at: www.cplea.ca/courts

Resources**CPLEA**

Information booklets, FAQs and videos on many areas of the law and court process in Alberta.

cplea.ca/resources

**LawCentral Alberta
(a CPLEA website)**

List of legal clinics and organizations in Alberta providing free or low-cost legal services.

lawcentralalberta.ca/clinics

List of more resources for preparing for court.

lawcentralalberta.ca/preparing-court

Alberta Courts

Information about the courts in Alberta, including forms and court processes.

www.albertacourts.ca

**Resolution and Court
Administration Services (RCAS)**

Government service providing resolution and court support for Albertans.

www.alberta.ca/rcas.aspx

Alberta Law Libraries

Access to legal information and resources.

lawlibrary.ab.ca