



## *Child, Youth and Family Enhancement Act*

This Instruction sheet provides general information only.

**You should speak to a lawyer for legal advice about your own situation**

### **BEFORE YOU BEGIN ANY PAPERWORK**

#### **Consider talking to a lawyer**

- A lawyer may give you options for solutions that you may not have considered.
- If you do not have a lawyer, you must put in the time and effort. You will be doing the work of a lawyer without a lawyer's training.

### **GENERAL INFORMATION ABOUT APPEALS**

1. An **appellant** is the person appealing a decision of the Provincial Court. The **respondent** is the other party in the original application.
2. An appeal of a Provincial Court decision is brought in the Court of Queen's Bench located in the judicial district where the order to be appealed was made.
3. To appeal, you must do the following **within 30 days of the date the order was made**:
  - prepare the notice of appeal
  - file the notice of appeal with the clerk of the Provincial Court
  - file a copy of the notice of appeal with the clerk of the Court of Queen's Bench; and
  - serve the respondent(s) with a filed copy of the notice of appeal.

Only in very rare cases will the court allow an appeal to be started after that time. Note that time runs from when the judge makes the decision, not from when the order is filed.

4. The Court of Queen's Bench will generally not look at new evidence for an appeal. They will only look at the documents that were filed in the Provincial Court in the original application and the transcript of the hearing in Provincial Court.
5. If you believe that circumstances have changed since the order was granted, you should apply to vary or change that order rather than appealing the order.
6. If you wish to apply for a stay of the Provincial Court order before filing your notice of appeal (to suspend the order until your appeal is heard), you will need to apply to the Provincial Court judge that granted the order or a Queen's Bench Justice. As with any legal matter, you may wish to speak to a lawyer about your options for applying for a stay of the order pending the hearing of the appeal by the Court of Queen's Bench.

### **A. Complete the Notice of Appeal**

7. Do not complete the section of the form which sets the date and time of the initial court appearance, as this will be done by the clerk of the Court of Queen's Bench.
8. In the section which asks for the "grounds for this appeal" you must describe why you want the decision to be reconsidered:
  - list any errors you think were made in the granting of the order;
  - be specific – just saying the order is "wrong" will not be sufficient.

9. Identify the evidence or documents you will be relying on.
10. Describe the order or other relief you are asking from the Court of Queen's Bench. The Court may do one or more of the following:
  - confirm the order (or refusal) given by the Provincial Court;
  - set aside or vary the order of the Provincial Court;
  - make any order that the Provincial Court could have made;

## **B. File the Notice of Appeal**

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11. File the Notice of Appeal at the Provincial Court (Family) location where the initial application was heard.
12. File a copy of the Notice of Appeal with the Court of Queen's Bench located in the judicial district where the Provincial Court hearing took place.
13. The clerk of the Court of Queen's Bench **will set a date for an initial appearance** by the parties before a Queen's Bench Justice to receive further direction about how the appeal will be heard and to address any other preliminary matters which may need to be resolved before the appeal hearing date (see item D below).
14. You should tell the clerk if you are going to ask for a stay of the order granted by the Provincial Court at the initial court appearance. The clerk will help you obtain a date for the initial court appearance to ask for a stay as soon as possible.

## **C. Serve the Notice of Appeal**

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15. The Notice of Appeal must be served on (given to):
  - the guardian(s) of the child; and
  - the child, if he/she is 12 years of age or over, or if he/she is the subject of a secure services order; and
  - a director (Child, Youth and Family Enhancement Act). To serve the Director - Child, Youth and Family Enhancement Act, give a copy of the Notice of Appeal to your caseworker.
16. The Notice of Appeal must be served in one of the following ways:
  - personally, by leaving the document with the person;
  - by prepaid registered mail to the person's address for service; or,
  - as directed by the Court of Queen's Bench.

Make sure that you record the date and location that each person was served and the method of service used.

17. Once the required parties have been served with the Notice of Appeal, **prepare and file your sworn Affidavit(s) of Service** at the Court of Queen's Bench.

## **D. Attend the Initial Court Appearance**

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18. **At the initial court appearance** the parties may ask for direction from the Queen's Bench Justice about:
  - the date and time for the appeal hearing, and how it will be heard;
  - timelines for the filing of any further documents or written submissions; and/or
  - any other preliminary matters which may need to be resolved before the appeal hearing, including
    - the evidence the court may permit or require to be given, and
    - whether transcripts of the Provincial Court proceedings will be needed, and which party will be responsible for ordering and paying for the transcripts, if you have not yet done so, or if the parties cannot otherwise agree.

You should also be prepared to **give an estimate of the time you will need** to present your position on the appeal hearing date.

## E. Scheduling the Appeal Hearing

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19. If a Queen's Bench Justice has not already set a date for the appeal to be heard, the clerk will set a date for the appeal hearing and will notify the parties of the time and place of the hearing, provided that:
- all necessary documents and Affidavits of Service have been received by the Court of Queen's Bench and the parties have complied with any further directions given by the court at the initial court appearance, or
  - the appeal has not been heard within 90 days from the date the Notice of Appeal was filed, unless the court has extended the time for the appeal to be heard.

## F. Attend the Appeal Hearing

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20. Bring with you
- all of your paperwork and documents, including copies of the documents you have filed with the court;
  - pen and paper to take notes;
21. On the appeal hearing date, the Queen's Bench Justice will hear the appeal on the basis of the material filed with or forwarded to the Court of Queen's Bench and any further evidence that the court requires or permits to be given.
22. The judge may confirm the order (or refusal), set aside or vary the order made, or make any order the Provincial Court could have made in the hearing before it.

**Remember to keep the Queen's Bench Clerk's office informed of any change of address for you or the Respondent(s), as absence of such information may result in you not receiving notice of the hearing date and the appeal proceeding in your absence.**

## HELP IS AVAILABLE

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### 1. Lawyers

LAWYER REFERRAL SERVICE (ALBERTA)  
& DIAL-A-LAW

Toll Free: 1-800-661-1095  
Tel: (403) 228-1722 - **Lawyer Referral, Calgary**  
Tel: (403) 234-9022 - **Dial-A-Law, Calgary**

LEGAL AID SOCIETY OF ALBERTA

Tel: (403) 297-2260\* - **Calgary**  
Tel: (780) 427-7575\* - **Edmonton**

ALBERTA LAW LINE

Toll Free: 1-866-845-3425  
Tel: (780) 644-7777 - **Edmonton**

### 2. Family Justice Services

FAMILY LAW INFORMATION CENTRES

Tel: (403) 297-6600\* - **Calgary**  
Tel: (780) 415-0404\* - **Edmonton**  
Tel: (780) 833-4234\* - **Grande Prairie**  
Tel: (403) 388-3102\* - **Lethbridge**  
Tel: (403) 755-1468\* - **Red Deer**

FAMILY MEDIATION SERVICES

Tel: (403) 297-6981\* - **Calgary**  
Tel: (780) 427-8329\* - **Edmonton**  
Tel: (403) 340-7187\* - **Elsewhere in Province**

### 3. Websites

[www.albertacourts.ab.ca](http://www.albertacourts.ab.ca)  
<http://acjnet.org/abservices/legal.aspx>

**\* call any of the numbers toll-free through the RITE line by dialing 310-0000**  
**Check your courthouse for more detailed information about services available in your area.**



**Child, Youth  
and Family  
Enhancement Act**

**Appeal to Court of Queen's Bench**  
Not more than 30 days after the order is made [CYFEA s.114(1)].

Complete Notice of Appeal setting out the grounds of appeal.

Not more than 30 days after the order is made, file the completed Notice of Appeal with the clerk of the Provincial Court (Family) at the location where the order was made, and then file a filed copy of the Notice of Appeal in the Court of Queen's Bench [CYFEA s.116(1)]. At the time of filing, the clerk of the Court of Queen's Bench will fix a date for an initial appearance by the parties before a Queen's Bench Justice (within 40 days of the filing date).

Either party may apply for an order staying the execution of the order appealed, pending the hearing of the appeal by filing a Notice of Motion and supporting Affidavit in the Court of Queen's Bench [CYFEA s.116(2)].

Not more than 30 days after the order is made, the appellant must serve a filed copy of the Notice of Appeal on the following individuals:

- 1) the guardian(s) of the child
- 2) the child, if he/she is 12 years of age or older, or if he/she is the subject of a secure services order
- 3) a director (Child, Youth and Family Enhancement Act) [CYFEA s.116(3) and Rule 510(1)].

Within 7 days of the filing of the Notice of Appeal by the appellant, the Provincial Court shall forward to the Court of Queen's Bench the record of the evidence taken and all other materials in possession of the Provincial Court that pertain to the matter being appealed, which will include any written transcripts of the evidence in existence on the Provincial Court file, and may include an electronic record in the form of tapes, disks, or such [CYFEA s.116(4) and L.S. v. Alberta (Director of Child & Family Services), 2006 ABCA 319].

At the initial court appearance, the presiding Justice will set a date for the appeal hearing, and provide directions to the parties regarding any preliminary matters, including whether transcripts of the Provincial Court proceedings will be required, and which party is responsible for the cost of the transcript [L.S. v. Alberta (Director of Child & Family Services), 2006 ABCA 319].

If an appeal hearing date has not yet been fixed by the Court, once all necessary documents and Affidavits of Service have been received by the Court and the parties have complied with any directions given by the Court at the initial court appearance, the clerk of Court will set down the appeal for a hearing at the first available sitting, and will notify the parties of the time and place of the appeal hearing [CYFEA s.116(5) and (6)].

If the appeal has not been heard within 90 days after the filing of the Notice of Appeal (unless the Court grants leave to extend the time within which the appeal shall be heard) the clerk of Court will set down the appeal for a hearing at the first available sitting, and will notify the parties of the time and place of the appeal hearing [CYFEA s.116(7)].

Appeal is heard by the Court of Queen's Bench on the assigned appeal hearing date, as an appeal on the record [CYFEA s.117(1)].

Court of Queen's Bench may confirm the order or refusal, revoke or vary the order made, or make any order the court could have made in the hearing before it [CYFEA s.117(2)].

Clerk's Stamp

QB COURT FILE NUMBER \_\_\_\_\_

PC DOCKET NUMBER \_\_\_\_\_

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE \_\_\_\_\_

APPELLANT \_\_\_\_\_

RESPONDENT \_\_\_\_\_

DOCUMENT **Notice of Appeal**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
\_\_\_\_\_  
*Appellant's Name*

\_\_\_\_\_  
*Full address*

( ) \_\_\_\_\_

**TAKE NOTICE** that the Appellant appeals to the Court of Queen's Bench of Alberta, the decision of the Provincial Court Judge \_\_\_\_\_ of the Family Division, sitting at  
*Name of Judge*

\_\_\_\_\_, Alberta, on \_\_\_\_\_, 20\_\_\_\_\_.  
*City/Town of Provincial Court* *Date of Provincial Court Hearing*

**AND FURTHER TAKE NOTICE THAT YOU ARE REQUIRED TO ATTEND** at the Court of Queen's Bench, at \_\_\_\_\_  
*Address of Court of Queen's Bench*

on \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ a.m. / p.m. for the Presiding Justice to set a date for  
*Hearing Date* *Time*

the appeal to be heard, to provide further direction regarding the manner in which the appeal will be heard, and to address any other preliminary matters which the parties may wish to raise with the court in advance of the appeal hearing, including any evidence the court may permit or require to be given.

**If you do not attend, the Court may still make an order in your absence.**

**AND FURTHER TAKE NOTICE** that the grounds for this appeal are as follows:

- 1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AND FURTHER TAKE NOTICE** that the Appellant shall rely upon the following documents:

1. The record of the evidence taken and all other material in the possession of the Provincial Court that pertains to the matter being appealed, and
2. Any further evidence that the court may require or permit to be given, such as:
  - the transcript of the evidence and proceedings taken before the Provincial Court (Family), to be filed;
  - Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AND FURTHER TAKE NOTICE** that the Appellant shall also be requesting an order for the following relief:

- a stay of execution of the order appealed until the hearing of the appeal;
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Appellant's address for service is as stated at the beginning of this document.

The addresses for service of all persons required to be served with this Notice of Appeal are:

| Name  | Address | City | Province | Postal Code |
|---|---------|------|----------|-------------|
| Director (Child Youth and Family Enhancement Act) |         |      |          |             |
| Name  | Address | City | Province | Postal Code |
|   |         |      |          |             |
| Name  | Address | City | Province | Postal Code |
|   |         |      |          |             |

**DATED** at \_\_\_\_\_, Alberta on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Appellant's signature*