



# Resolution Services



## Court Procedure Booklet

# **MAKING A COURT APPLICATION IN THE COURT OF QUEEN'S BENCH**

**(With an Application Form)**



# MAKING A COURT APPLICATION IN THE COURT OF QUEEN'S BENCH (With an Application Form)

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***Resolution Services and Court Staff cannot give you legal advice, or predict the outcome of your case.***

***This booklet provides general information only. You should speak to a lawyer for legal advice about your own situation.***

# MAKING A COURT APPLICATION (With an Application Form)

## INTRODUCTION

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This booklet has been prepared for you by the staff at Resolution Services. You can reach us at:

### Calgary

7<sup>th</sup> floor, Calgary Courts Centre  
601 - 5 Street SW  
Phone 403-297-6981

### Edmonton

8th floor, Brownlee Building  
10365 - 97 Street  
Phone 780-415-0404

### Grande Prairie

Main Floor, Court House  
10260 - 99 St.  
Phone: 780-833-4234

### Lethbridge

1<sup>st</sup> Floor, Court House  
320 - 4 St. S  
Lethbridge AB T1J 1Z8  
Phone: 403-388-3102

### Red Deer

2nd Floor, Court House  
4909 - 48 Ave  
Phone: 403-340-7187

### Medicine Hat

Court House  
460 First Street SE  
Medicine Hat, AB T1A 0A8  
Phone 403-529-8716

**Outside these centres, call the  
Resolution Services Contact Centre at 1-855-738-4747**

## Do I Need to Go to Court?

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You may be able to solve this problem without going to court. You could:

- Talk to the other party to see if you can reach an agreement; or
- Come to mediation with the other party – you will discuss the problem with a professional who can help the two of you to reach an agreement.
- If your application deals with child support and your court file is in Edmonton or Calgary, you can attend a Child Support Resolution or Dispute Resolution appointment.

If you are interested in mediation, Child Support Resolution or Dispute Resolution, talk to us about how to set that up.



### **Tip:**

Always put your agreements in writing.

**Remember:** If you have agreed to change a court order, you will need to do a new court order. Talk to us about a consent order.

## When to Use This Booklet

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This booklet tells you what steps to take when:

- You are making an application in the Court of Queen’s Bench of Alberta;
- You already have a court file (e.g. divorce, matrimonial property, common law property);
- The application you want to make is NOT under the Family Law Act; and
- You have chosen not to get a lawyer and will be representing yourself throughout the court process.



### **Tip:**

The instructions in this booklet are general and apply to most cases. There are cases where different rules apply. The Alberta Rules of Court tell you the process and procedure for all kinds of cases in the Court of Queen’s Bench. You can find the Rules of Court in the library in your courthouse or at : [www.qp.alberta.ca](http://www.qp.alberta.ca)

## Should I Hire a Lawyer?

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The staff at the court house cannot give you legal advice and cannot do your work for you.

Lawyers can help with steps along the way. They can:

- Tell you about your legal rights and obligations;
- Give you an opinion about what your chances are, or how the judge might decide;
- Tell you which option is the better choice for you;
- Complete the court forms and other necessary paperwork;
- Do legal research to find case law to help convince the judge;
- Tell you which court documents would be helpful to your case;
- Help you decide which facts the judge will want to hear;
- Negotiate with the other side;
- Rehearse the court hearing with you;
- Represent you in meetings or in court;
- Go to court for you if you can't go yourself;
- Prepare the Order after court;
- Prepare any letters needed as your matter goes through court; and/or
- Prepare any follow up documents.



### **Tip:**

Many lawyers are willing to give “unbundled legal services.” This means that you can choose which steps the lawyer will do and which steps you will do yourself. If you are interested in this, talk to a lawyer about how unbundled legal services can work in your case.

In many court locations, Duty Counsel is available at court (if your case is scheduled in regular chambers). The Duty Counsel program is funded by Legal Aid. The Duty Counsel Lawyers (or students) will speak with you on the day you are in court, and will help you present your case to the judge. If both parties do not have a lawyer, Duty Counsel will present both sides to the judge.

You should hire a lawyer if:

- You don't want to or can't do the paperwork yourself.
- You don't want to or can't make several trips to the courthouse during business hours.
- You will have problems speaking for yourself in the court hearing.
- The judge recommends to you that you hire a lawyer.

## The Court File

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The court keeps a file folder with all of the court documents that have been filed in your case. That folder is labeled with a court file number. You must put the court file number on all of your court forms, so that they can be properly filed.

If you need to get copies of any of the documents on your court file, you can ask for them. You will be charged \$10 to pull the file, plus \$1 per page for photocopying. If you want a certified copy of any of the court documents, there will be an extra \$10 fee for each certified copy.

To get copies from your court file, you must go to or contact the court where your file is located. For example, if your court file is in Red Deer, you must make your request for copies of the documents to the courthouse in Red Deer.

Other provinces' courts also keep court files, and will give you copies of court documents if you ask. Their fees may be different. If you are asking for a copy of an Order from another province, always ask for a certified copy.



***Tip:***

A certified copy of a court form has a stamp on it saying that it is a certified (or true) copy of the original. It is signed by a court official under the stamp. To be a certified copy, the copy must have this original stamp and signature.

## Parenting After Separation Seminar

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In most cases, if you want to ask the court for an order dealing with children, you must take the Parenting After Separation (PAS) Seminar. If you are not sure if you need to attend the seminar, check with the staff at your courthouse. Please note that you might not be able to file a court application if you have not attended the seminar.

PAS is a free 6 hour seminar offered at many court locations. It is also available as a free online course at <http://pas.albertacourts.ab.ca/>.

To register for an in person course, see the information on our website at <https://www.albertacourts.ca/educational#pas>.

Once you're done the course, you will get a certificate, which you must file at the court.

## Find the Other Party

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In almost every court application, the other party must be given notice of the application. You do this by serving them, which is by handing them copies of the court forms that you have filed.

If you do not know where the other party is, you must try everything you can think of to find them. Some ideas:

- Talk to their friends or family members.
- Talk to the staff where they worked.
- Look them up in the phone book or on [www.canada411.com](http://www.canada411.com).
- If you know their phone number, try a reverse search at the phone company's website.
- Look them up on social networking sites. Even if they do not reply to you, see if you can contact their friends for information.



### **Tip:**

If you can't find the other party, but are registered with Maintenance Enforcement, you may be able to serve the other party through Maintenance Enforcement. Talk to us about how to do this.

## Getting Ready

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Before you start to prepare your court forms, you should think about what kinds of documents you will need to prove your case. You will have to attach all of the documents as exhibits to your Affidavit, so you will need to collect them ahead of time.

**In all cases, if you want to change a court order, you will need a copy of that court order.**

There will be other documents that you will need. Think about what information the judge will want to see to make a decision. Have all of those documents ready before you start preparing your court forms.

Look at the instructions that are with your court forms for a more specific list of documents you should be attaching.



***Tip:***

You only have one chance to make your case to the court. The judge makes their decision using only the documents that are on the court file. Make sure you have all the information that the judge will need.

## Getting Help

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It is always a good idea to get legal advice before you start.

**Legal Aid 310-0000**, then ask for the Legal Aid office near you.

If you are a low income Albertan, and need a lawyer to take your case, you can apply for help from Legal Aid.

***Pro Bono (Volunteer) services by lawyers***

Calgary Legal Guidance	403-234-9266
Lethbridge Legal Guidance	403-380-6338
Grande Prairie Legal Guidance	780-882-0036
Central Alberta Community Legal Clinic (Red Deer)	403-314-9129

Check the Pro Bono Law Alberta website [www.pbla.ca](http://www.pbla.ca) to see if there are any other services that can help you.

### ***Lawyer Referral Service 1-800-661-1095***

This service will refer you to lawyers in private practice. When you call, ask for a family law lawyer. You will be given the names of 3 lawyers who practice in the area of family law, and in your area. You can speak to any of them for the first ½ hour for free.

There are other services that may be able to help you with legal information (not advice) and the filling in of forms. Some of these are:

Student Legal Services (Edmonton)	780-492-8244
Student Legal Assistance (Calgary)	403-220-8637
Immigration Services in your area	
Paralegal Companies in your area	

### ***Alberta Law Libraries***

There are libraries located in most courthouses in Alberta. You can go to the library to:

- Do research on cases with facts similar to yours;
- Find sample court forms for other kinds of court applications; or
- Look for specific procedures in the Alberta Rules of Court.

The library has reference librarians who can answer questions and get you started, however, they can not give you legal advice.

## PREPARING YOUR COURT DOCUMENTS

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When you are making an application to the Court of Queen's Bench, you must prepare two court forms – an **Application** and an **Affidavit**. These two forms let the Court know "what" you want, and "why". An **Application** is a brief summary for the Court of "what" you want. The Court wants to know, on one or two pages, what kind of an Order you are asking for. The **Affidavit** is your story. It is a summary of the "why" that supports what you are asking for.

**NOTE:** When you are making an application that deals with child or spousal support, or filing an Notice to Disclose, you must also complete a **Disclosure Statement**, to which you will attach all of the financial information that the court requires for that type of application.

If you want the Court to know something, it has to be in your court forms. For example, you can't ask the Court for something that you haven't already asked for in your Application. Also, you can't say anything to the Court that you haven't already written in your Affidavit.

**At the beginning of every form**, fill in the following:

- Court File Number – Your file number as written on your other court documents.
- The Judicial Centre, e.g. Edmonton
- Both parties' full names.
- Your complete address and phone number.

**When filling in your Application**, complete the sections that apply to you:

1. *Remedy claimed or sought:* List everything that you are asking for
2. *Grounds for making this application:* Once your Affidavit is sworn, fill in that date. If you want the court to look at Affidavits that you filed for previous applications, list the dates of those Affidavits too.
3. *Material or Evidence to be relied on:* Again, fill in the date(s) that your Affidavit(s) were sworn.
4. *Applicable Rules:* Check off a box if it applies. If you check off "other", fill in applicable rule number.

Note: Rule 13.5 allows you to ask the court to hear your application even though you have not given the respondent the required number of days to respond.

5. *Applicable Acts and Regulations:* Check off the boxes that apply. If you check off "other", fill in the name of the Act or Regulation.
6. *Any irregularity complained of or objection relied on:* Check off "not applicable" unless you have items to list.
7. *How the application is proposed to be heard or considered:* In most circumstances, this section will be left blank. But, if you are asking for your application to be heard in a different way (such as videoconference, or teleconference) you must speak with the Clerk about what to write in this space.

**When filling in your Affidavit**, be sure to:

- Only state the facts that you know are true.
- Only state the facts that are relevant to what you are asking for.
- If you are typing the Affidavit yourself, be aware that there are limits to the number of pages.
  - If you making your application in Regular Chambers (see the Information Box on page 14), your Affidavit can be no more than 5 pages long.
  - If you are making your application in Special Chambers, your Affidavit can be no more than 8 pages long.
  - If you are using the fill-in-the-blank forms provided to you by Resolution Services, you are not limited to 5 or 8 pages if the form is longer than that.
- Number all of your pages of your Affidavit, starting with the first page and ending at the signature page.

How to choose and attach **Exhibits** to your Affidavit:

- Exhibits are documents that you attach to your Affidavit because they support what you have said in your Affidavit. For example, if you are asking for the other parent to pay half of the cost of your child's hockey registration fees, you would attach a copy of the receipt you received for paying these fees.
- Any documents that you want the court to see must be attached as an exhibit to your Affidavit (or your Disclosure Statement). You will not be allowed to show documents to the Judge in Court if they are not attached.
- Make sure your exhibits are relevant, that is that they have a logical connection to the application that you are making.
- Do not attach documents that are already on the court file except for the Order that you want to change.

- Think before you attach copies of text messages, e mails, diaries, or social media postings. If they are not relevant, the court may order you to pay costs.
- Exhibits are labeled - Exhibit "A", Exhibit "B", etc.
- Your exhibits must be legible and the photocopies must also be legible. The font must be about 12.
- The total number of pages of exhibits can be no more than 40.
- Number all of the pages of your exhibits, starting with the first page of Exhibit "A" and finishing with the last page of your exhibits.
- You must tab each exhibit, and label the tab with the exhibit letter. You can buy divider tabs at a stationary store, or you can use "post it" (or similar) notes to tab the exhibits.
- You must have a "Table of Exhibits" inserted between the signature page of the Affidavit and the first page of the exhibits. Your "Table of Exhibits" will contain a brief description of each exhibit, for example, Exhibit "A" – 2015 Hockey Fee Receipt, and will state the page number that the exhibit starts on.

Your Affidavit is your evidence and the judge will use this to help make their decision. There may be serious consequences for not telling the truth in your Affidavit.

***When filling in your Disclosure Statement***, be sure to:

- Read the instructions that come with the Disclosure Statement.
- Choose the right schedule, depending on which type of application you will be filing.
- Check off all of the items on the Schedule that you will be attaching.

Once you have finished filling in your Application, Affidavit and Disclosure Statement, you must have your Affidavit and Disclosure Statement sworn before a Commissioner for Oaths.

You may come to the Resolution Services office or the Clerk's office to have your Affidavit and Disclosure Statement sworn. Bring photo identification with you when you come.



### ***Tips:***

Remember that you want your court documents to be as neat and easy to read as possible. The easier you can make the job for the judge, the better.

Make sure all of your pages have print only on one side (no double sided printing or copying!).

Your Affidavit must explain what each exhibit is.

If some of the documents you want to attach are smaller than a letter sized piece of paper (e.g. receipts or pay stubs), tape them to a piece of paper. You can tape more than one similar document to a sheet of paper, so long as they will all show when being photocopied.

You can group related documents as one exhibit. For example, all of your paystubs can be grouped as one exhibit.

Make sure that your exhibits are complete. For example, don't attach one page of a two-page letter, or a single page from your tax return. (However, if your tax return includes every page printed out by your tax preparation software, sort through and pull out the parts that don't apply to you.)

Make sure to bring a photocopy of your exhibit(s) with you when you have your Affidavit sworn if you want to keep the original.

**DO NOT** photocopy your Affidavit or Disclosure Statement until **AFTER** they are sworn.

## **FILING AND SERVING YOUR COURT DOCUMENTS**

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Once you have had your Affidavit sworn, there are several steps you need to follow to get ready for court.

- Step 1:** Make copies of your Application, Affidavit and Disclosure Statement
- Step 2:** Go to the Court of Queen’s Bench Chambers Clerk’s office to speak to the clerk about a court date and to file your court documents
- Step 3:** Serve your court documents on all other parties
- Step 4:** Prepare your Affidavit of Service

**Step 1- Make copies of your Application, Affidavit and Disclosure Statement**

Remember that you should not make photocopies of your Application, Affidavit and Disclosure Statement until after you have had your Affidavit and Disclosure Statement sworn. After this is done, you should make **2 copies** of each document (including all exhibits and attachments).



***Tips:***

If there is more than one Respondent, then you will have to make one more copy for each extra Respondent.

If you are making an application to change child or spousal support or for a stay of enforcement, then you may need to serve the Director of Maintenance Enforcement as well. See the court forms for these types of applications for more information.

**Step 2 – Go to the Court of Queen’s Bench Chambers Clerk’s office to speak to the Clerk about a court date and to file your court documents**

Go to the Chamber’s clerk’s office in the Court of Queen’s Bench and hand them your completed court documents. You will speak to the clerk about setting a court date.

When you set a court date, you are not just picking a date that is convenient for you. You must provide the other party (the Respondent) with enough notice of the court date or else the judge may refuse to hear your application. The clerk at the Chambers office can help you pick a date but be aware that the Respondent must have **5 days notice or 20 days notice** of your application, depending on the type of application.

When you are setting your court date, make sure you allow enough time for service. It may take a few days for you to get the documents to him/her. Keep this in mind and don't schedule your court date too soon.

After you have picked a suitable court date, make sure the court date is written on the first page of all copies of your Application.

The clerk will stamp and keep the original copies of your court documents and return 2 copies to you. These copies are what you will need for the next step.



***Tip:***

**Counting the days for service:** You do not count the day you serve the document when you are counting the number of days' notice you are giving. If you must give 5 days' notice and you can serve on Thursday, Friday is day 1, and Saturday is day 2, so the earliest court date you can pick is Tuesday.

***What's the difference between regular and special chambers?***

**Regular Chambers** (sometimes called Family Chambers) is intended for applications that can be heard and decided within 20 minutes. This might be asking for a change to access or permission to travel or to deal with simple support issues, etc.

You choose your court date when you go file your documents, and the date is usually not too far away.

**Special Chambers** is intended for applications that will take more than 20 minutes. This might be asking to have the child come to live with you, asking to move with the child, asking for support when a party is self employed or asking for a retroactive change to a support order.

You must talk to the other party and agree on a date before you file your documents. Available court dates will be several weeks or months away.

Sometimes an application will be scheduled into regular chambers and the parties or the judge may decide that it will take more time. It can be adjourned from regular chambers to special chambers.

**Step 3 – Serve your court documents on all other parties**

You or another person over the age of 18 must serve the Respondent with copies of all the court documents you have filed.

Service means a person must hand-deliver the documents directly to the Respondent (this is called personal service).

If you want the judge to hear your application on the court date you've selected, then you must be able to show the judge that the Respondent was given enough notice. If you do not give the Respondent the required amount of notice then the judge may refuse to hear your application.

When serving the court documents:

- Think about having someone else serve the documents for you. Ask a friend or family member or hire a process server.
- Have whoever is delivering the documents make a note of the address where the Respondent is when they hand-deliver the documents;
- Make sure the person that serves the documents knows that they will have to swear an Affidavit of Service.



### ***Tips:***

You should think about hiring a **process server** to serve the Respondent for you. You can find one by internet searching “Process Servers” and the nearest city to where the Respondent lives. Process servers can sometimes help you find the Respondent, will serve the court documents, and will complete the Affidavit of Service for you. They do charge a fee for their services.

If you cannot find the Respondent to serve, then check out the tips for finding the other party on page 6 of this booklet.

## **Step 4– Prepare your Affidavit of Service**

After you have served your court documents on the Respondent, you have to prepare your Affidavit of Service. This is the court form that proves to the judge that the other party was properly notified of your application.

Just like your Affidavit for your application, your Affidavit of Service must be sworn. Your Affidavit of Service must be completed and sworn by the person who served the documents.

The Affidavit of Service will:

- Explain who delivered the documents;
- List the documents that were delivered;
- Say the date the documents were delivered; and
- Say the address of where the Respondent was served.

You must be sure to **file** the original Affidavit of Service at the clerk’s office before the court date and bring a copy of it with you to court.



### ***Tip:***

The Respondent is allowed to file an Affidavit setting out the facts they want the judge to know. They must serve you with a copy a reasonable amount of time before your court date. If you want to respond to anything in their affidavit, you must ask the court for permission to file a supplementary affidavit. Ask us how to do that. You may need to adjourn your application.

## PREPARING FOR COURT

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Your court application will be heard by a Justice of the Court of Queen's Bench in Regular Chambers. Regular Chambers is where one judge sits in an open courtroom and hears several court applications on a list. The judge goes through the list, starting at 10:00 a.m. or 2:00 p.m.

Because there can be many applications on a list for the judge to get through, you want to be sure not to waste any of the Court's time. For this reason, there are some things you should think about before you go to court:

- Make sure you know what you want to say to the Court;
- Make sure that everything you want to say to the Court is in your Affidavit;
- Make sure you have filed your Affidavit of Service and that you bring a filed copy of it with you;
- Try to talk to the Respondent to find out if they are coming to court; and
- If you and the Respondent agree that you need more time, phone the Chamber's clerk's office to ask about adjourning your application.

Remember that you have put a lot of work into preparing and filing your court documents, and serving the other party. You want to be as ready as you can on the court date.

The Court of Queen's Bench can seem quite intimidating. Although the staff and judges try to make the court system as open and friendly as possible, there are still some basic things you should know going in:

- Dress for court in a neat and respectable manner;
- Be on time;
- Do not eat, drink or chew gum/tobacco in the courtroom;
- Remove your hat;
- Turn off cell phones, pagers and music devices;
- Make sure you have copies of all of your filed court documents;
- Make sure to bring a pen and paper to write down the judge's decision, name, room number and the date;
- Speak clearly and loudly when talking to the judge;
- Stand up when the judge is speaking to you or when you are speaking to the judge;

- Be respectful of the judge and refer to him/her as “My Lord or My Lady”; and
- Be respectful of the other party and do not interrupt them while they are speaking.



***Tips:***

Regular Chambers is set up to do quick applications (less than 20 minutes). If you think your matter is going to take more than 20 minutes, it should be adjourned to **Special Chambers**. Ask us how to do that.

You can go in and watch regular chambers, so you can see how applications are made and what information the judge wants to hear when making a decision.

## GOING TO COURT

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On your court date, plan to arrive early, especially if you want to talk to Duty Counsel before court.

Bring with you:

- Copy of your Application
- Copy of your Affidavit(s)
- Copy of your Disclosure Statement (if you filed one)
- Copy of your Affidavit of Service
- Pen and paper

Find out which courtroom you are in by asking security staff and checking the docket lists or boards. Make sure you are in the right courtroom – there may be several courtrooms where family matters are heard.

In most court locations, Duty Counsel will be outside the courtroom. If you would like their help, speak to them before court.

There will be a list of all of the matters in your courtroom either outside the door or on a table inside the courtroom. The list will not necessarily be called in order. Expect to be in the courtroom for at least 2 hours.

Sit in the gallery area of the courtroom. All conversation in the courtroom is recorded, so it is best to have any discussions outside. Once the judge comes in, you should not talk.

When your name is called, go to the front of the courtroom. The usual order of the speakers is as follows:

- The applicant speaks first. If you are the applicant, stand up to speak.
  - Introduce yourself and the respondent (or their lawyer).
  - Tell the judge briefly what you want (e.g. "I am wanting more time with the children" or "I am asking to increase my child support").
  - Next, talk about the facts that you have set out in your Affidavit.
  - Then make your arguments.
- The respondent speaks next. If you are the respondent, stand up to speak.
  - If the applicant did not introduce you, introduce yourself.
  - Tell the judge briefly what your position is (e.g. "I am OK with the applicant having more time with the children, but the

times he wants them won't work for me" or "I don't agree with the child support being increased").

- Next, talk about the facts that you have set out in your Affidavit.
- Then make your arguments.
- The applicant may then respond to what has been said by the respondent.
- The judge may ask questions of either party.
- At this point, both parties will have made all of the arguments they want to make, and should not make any further arguments.
- The judge then gives their decision. You should write down the judge's decision (along with their name and the courtroom number).
- We have staff that will type up the Order for you. You will be told what you need to do to get your copy of the Order.



***Tips:***

Regular chambers is a busy place and the judge will not be familiar with your file. Make sure you cover all of the important points when you are given your chance to speak.

If the respondent has a lawyer, the judge will sometimes reverse the order of speaking, allowing them to go first.

When the judge is giving their decision, make sure they have addressed everything you want decided. If they did not, politely ask the judge about it. It may help to have a checklist with you before you start, so you can make sure the judge has dealt with all of the issues.

## **AFTER COURT**

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Make sure your Order is filed. It should have a "Clerk of the Court" stamp on the first page. If you are the applicant, you should also receive a certified copy of the Order.

If the Respondent did not come to court, or if they did not wait for their copy of the Order, it is up to you to serve them with a copy.

Serve the Respondent with a filed copy of the Order.

Ask us for an Affidavit of Service for the Order.

File the Affidavit of Service with the Clerk's office.

If your Order is registered with the Maintenance Enforcement Program, make sure you mail, deliver or fax a copy to:

The Director of Maintenance Enforcement  
7th Floor, J.E. Brownlee Building,  
10365 - 97 Street  
Edmonton, Alberta T5J 3W7  
Fax: (780) 401-7575

## **Any Questions?**

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If you have questions about the steps in the booklet or the court forms given to you, please contact us. Our addresses and phone numbers are on page 2 of this booklet.