

# COURT

## ATTIRE, COURTROOM CONDUCT, AND CHILDREN

- Unless your lawyer has told you that you will be a live witness or you have been ordered, you generally do not need to accompany your lawyer to family court. Your lawyer is there on your behalf and court may not proceed on that day. However, it's generally recommended that you do accompany your lawyer, as it shows that you're serious about the matter, there is often last-minute negotiation before or during court, and the Court may require information from you or want to know if you would be agreeable to a particular arrangement. It doesn't hurt for family members to accompany you to show support, but isn't necessary.
- I recommend that you arrive at the Courthouse at least half an hour in advance.
- Hats are generally prohibited in court, and chewing gum should be thrown out.
- I recommend wearing business casual attire, and avoiding jeans and t-shirts. Piercings should be removed if possible, and tattoos covered.
- If you've retained a lawyer, then unless you have been told otherwise, it is very unlikely that you will need to speak in court. Many judges will not allow you to speak to them directly, and you will not be able to speak to your lawyer while they are speaking to the judge.
- The chairs in the front row are reserved for lawyers. Please remain seated when our matter is called. You may only accompany your lawyer to the front with the permission of the judge.
- If any family members or friends accompanies you, please tell them not to speak to the judge unless they have been asked to do so by the judge.
- Please avoid bringing any of your children to court unless you have been asked to do so.

## MORNING CHAMBERS AND DOCKET

- Most applications are "interim", essentially meaning temporary, until the matter can be settled or resolved at a trial. They are primarily used to ask the Court for urgent orders, or to set the procedure to be used to resolve your matter. Examples include ordering the exchange of financial information, setting interim child or spousal support, confirming the status quo for parenting arrangements, safeguarding children or property which are at clear risk of imminent harm, ordering the sale of land, appointing an independent lawyer for children, appointing a psychologist to perform an assessment, deciding who can reside in a home until your matter is resolved, deciding whether the next step is Special Chambers or a trial, and so on.

- Applications are ordinarily first heard in morning chambers (Court of Queen’s Bench) or docket (Provincial Court).
- Here, each side will only have a few minutes to speak, and it is unlikely that the judge will have read any of our documents. The judge might be unlikely to grant an order unless it is urgent, procedural, agreed-upon, or obvious. It is very fast-paced, with many other matters waiting to be heard. Adjournments are common, especially if the other side is still trying to find a lawyer or needs more time to assemble their documents or affidavit/statement.
- On rare occasions we might ask you for additional information, whether you’d accept an arrangement, or our judge may ask you to acknowledge their advice, but otherwise, if you’ve retained a lawyer you will generally not be expected or asked to speak.
- If there is an application to add a guardian in Provincial Court, the Court may require the proposed guardian to take the stand to confirm that they are suitable to become a guardian, and understand the responsibilities of becoming a guardian.
- Court is often a very slow, time-consuming, and frustrating process, which is why I usually strongly encourage negotiated resolutions.

## TRIAL

- If the filed materials (affidavits or statements) disagree about important facts that could significantly affect the decision, and there is not a lot of information to corroborate either version of events, then disputes are often directed to go a trial or oral hearing, so that the judge can hear each person and assess their credibility, or potentially listen to third parties.
- In the Court of Queen’s Bench, trials are often over a year away, and require many steps to occur before a date can be set. In family law matters, often each spouse, new partners, extended family members, psychologists or other experts who have prepared reports, teachers, childcare workers, doctors, dentists, and other similar witnesses may testify. I have had judges direct 3 week trials.
- Oral hearings in the Provincial Court are sometimes closer to 6 months away, however the Provincial Court is limited to resolving only certain issues, for example it cannot grant divorces or resolve most property disputes.
- Given the delay, expense, and frustration of trial, it is rare that disputes go all the way to trial, often they are resolved before that time.
- If your matter proceeds to trial, we will discuss trial further.

## SPECIAL CHAMBERS, SUMMARY TRIALS, AND FAMILY RESOLUTION HEARINGS

- If there is not too much disagreement about the relevant facts, we can set a matter for Special Chambers (Court of Queen’s Bench), a Family Resolution Hearing (Edmonton Provincial Court), or a Summary Trial (Court of Queen’s Bench, most useful to settle disputes involving property to avoid a regular trial, but can also be helpful in other scenarios).
- These decisions are based on the filed Affidavits or Statements, and there are usually no live witnesses. If you’ve retained a lawyer, it is very unlikely that you will be expected or requested to speak.
- If there is disagreement about only a limited number of facts, we can ask for permission in advance to have live witnesses testify on only those facts, which might decrease the likelihood of the Court determining that we need to go to trial.
- To narrow the amount of disagreement on relevant facts, we can conduct a “Questioning”, to have each side answer questions, clarify their answers or provide further documentation. Questioning is usually completed in a law office boardroom, with someone present to transcribe (type) each question and answer.
- At Special Chambers or a Family Resolution Hearing, your judge will typically have read the filed documents, and might have read the transcripts (although portions of the transcript can still be read into court, especially if either side admits that they lied). At Special Chambers, our judge will have also read our Brief (Confirming Letter), which briefly sets out our position and legal arguments.
- We are generally given only one-hour for Special Chambers and Family Resolution Hearings, however we can request permission for longer periods, such as a half or full day. This might affect how quickly we can obtain a date though.
- Special Chambers and Family Resolution Hearings are generally scheduled roughly half a year away, or sometimes sooner, depending on the time of year.

## DECISION

- Once a judge makes a decision, that decision generally takes effect immediately, even if a written order isn’t drafted yet. The major exception is that if a person without a lawyer doesn’t appear, they need to be served with the order before they can be found to have breached it.
- Judges are human and sometimes make mistakes, or sometimes they are deciding on a unique area of the law that isn’t clear. Appealing a decision may be possible, but has varying degrees of difficulty depending on the type of decision. If you are interested in appealing, we should discuss this further. Appeal Notices must usually be filed within 30

days or one month of the decision, depending on the type of decision, meaning that we should decide whether or not to appeal well before this date.

- The judge may also order that one side pay “costs” to the more successful side. Although in theory this is meant to reimburse for legal costs, cost amounts are usually calculated in reference to a table in the *Rules of Court*, and are more akin to penalties than a full reimbursement, except in the case of egregious misconduct. In many family law matters no costs are awarded, as orders are complex enough that both sides often enjoy mixed success. My practice is to not request costs if I am of the opinion that no judge would grant them.

## ALTERNATIVE DISPUTE RESOLUTION

- The aim of the following out-of-court processes is generally to arrive at a resolution that each spouse can live with, faster, at a lower cost, and often attempting to preserve relationships. Participating in one of these processes before setting a matter to trial is now mandatory in the Court of Queen’s Bench. If you are interested in participating in any of these earlier, please speak to me.
- **Four-way meetings** are meetings where each spouse and both lawyers meet in the same room to cooperatively discuss the dispute, rather than miscommunicating or attacking each other through dozens of letters or court.
- **Collaborative Law** is designed as a series of four-way meetings outside of court. This formal process is for those who desire the lowest-stress and most-cooperative method to resolve disputes, without the constant threat of legal action.
- **Mediation** is when an independent person is in the room, who provides information, ideas, and pressures each side into being reasonable. This can be with or without lawyers, and there is a very broad selection of mediators from lawyers to psychologists. Parenting and support mediation through Family Justice Services is free if either parent earns less than approximately \$40,000.00 per year.
- **Arbitration** is where an independent party who is not a judge can make a decision which each side agrees to follow. Decisions can be reached much faster than through the courts, and the overall cost can be lower where each side agrees to relaxed procedures. Parties can agree upon who will arbitrate, so that they can choose a competent arbitrator who they trust. There is also **Med-Arb**, where mediation is first attempted, and if that fails, the process shifts to arbitration, so that a decision can be made.
- **Parenting Coordination** is essentially where a psychologist arbitrates minor ongoing parenting disputes.
- **Judicial Dispute Resolution (JDR)** is essentially mediation using a judge, at no additional cost. Everyone will be likely to take the judge and their interpretation of the law seriously. **Binding JDR** is also available, in which the judge makes a rough decision if we’re unable to come to an agreement, which typically cannot be appealed. JDR is generally available through all courts.

- **Psychologists, Appraisers, and Accountants** can also help to resolve disputes.

## LOCATION

- This is the map of Edmonton Courthouse, including entrances and common parking locations. The open-air lots to the East usually have available spaces and are a lower cost. The Canada Place parkade to the south is one of the lower cost underground parkades with pedway access to the Courthouse. The parkade underneath City Hall (accessible on the East side) is underground and the shortest pedway walk to the Courthouse, although it can be expensive.



- I suggest paying for three hours for morning/afternoon chambers or docket, although on the rare occasion more time may be needed.
- At the Edmonton courthouse, the North side of the building is the Provincial Court, and the South side houses the Court of Queen's Bench and Court of Appeal.
- Once you arrive to the correct side of the building, there will be electronic screens and individual search consoles to help you find our room number. The first digit of the room number corresponds to the floor number.

Court Notes: \_\_\_\_\_ v \_\_\_\_\_

Opp. counsel: \_\_\_\_\_ Court date: \_\_\_\_\_, 20\_\_ 10:00 a.m. / 2:00 p.m.

Cohabitation date: \_\_\_\_\_ Marriage date: \_\_\_\_\_

Separation date: \_\_\_\_\_ Children (including d.o.b./age): \_\_\_\_\_

Previous Orders/Agreements (incl. date): \_\_\_\_\_

Issues and relief sought: \_\_\_\_\_

Necessary facts: \_\_\_\_\_

Best arguments:

- 1.
- 2.
- 3.
- 4.
- 5.

Decision: \_\_\_\_\_

Your highest offer (for costs): \_\_\_\_\_

Quick Reference

Costs (Column 1): uncontested \$300, without notice \$100, contested adjournment \$150, abandoned 50%, other **contested \$500** (excluding Specials).

Clerk signing: opp. party didn't attend 9.4(2)(a), opp. party waived approval 9.4(2)(b), Court directs **approval not required 9.4(2)(c)**, Court **directs clerk to sign 9.4(2)(d)** (faster).

Legislation	Orders & Court Notes	ChildView & Budgets	Mat. Property Statements	Agreements & Important Docs.	Appraisals & Assessments	Application & Affidavit (ours)	Application & Affidavit (theirs)
Pleadings	Land Titles Certificates	Disclosure (ours)	Disclosure (theirs)	Questioning T. (our client)	Questioning T. (their client)	Undertakings (ours)	Undertakings (theirs)
Legislation	Orders & Court Notes	ChildView & Budgets	Mat. Property Statements	Agreements & Important Docs.	Appraisals & Assessments	Application & Affidavit (ours)	Application & Affidavit (theirs)
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COURT FILE NUMBER #####  
COURT COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
APPLICANT #####  
RESPONDENT #####  
DOCUMENT **FAMILY APPLICATION**  
**BY #####**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BARR PICARD LAW**  
1100, The Phipps-McKinnon Bldg.  
10020 – 101A Avenue  
Edmonton, AB T5J 3G2  
Phone No.: (780) 414-5400  
Fax No.: (780) 414-5509  
Attention: KENNETH J. PROUDMAN  
Email: [ken@barrpicardlaw.com](mailto:ken@barrpicardlaw.com)  
File No.: #####

**NOTICE TO THE RESPONDENT:**

This application is made against you. You are the Respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

**Court Date:** #####  
**Time:** 10:00 a.m.  
**Where:** Law Courts, 1A Sir Winston Churchill Square, Edmonton, Alberta  
**Before Whom:** Justice in Family Law Motions Court

Go to the end of this document to see what else you can do and when you must do it.

## Remedy claimed or sought:

### Parenting

1. An Order to vary the **Order** of the ##### granted #####, so that the child of the **relationship** shall **reside primarily** with the Applicant, **with reasonable and generous access** to the Respondent. Alternatively, if this Honourable Court does not find that residing primarily with the Applicant is not in the child of the **relationship**'s best interests, an Order to vary the Order so that parenting time shall be divided equally between the parties.
2. An equal division of major **holidays**, an equal division of the child's time out of school during Christmas break and spring break, and each parent to exercise up to three weeks of vacation per year.
3. An Interim Order specifying that until a resolution is reached with respect to parenting time, the Respondent shall **not remove** the child of the relationship from ##### without the written consent of the Applicant or Order of this Honourable Court.
4. An Order for a "**right of first refusal**", such that prior to either party leaving the child of the relationship in the care of any other person for any period longer than 3 hours, that party shall first offer such additional parenting time to the other party.
5. An Order that the child of the relationship shall **not be left in the care** of ##### without the Respondent being present.
6. An Order that both parties shall take all reasonable steps to obtain a **passport** for the child of the relationship, and shall not unreasonably withhold their consent for the child of the relationship to **travel** outside of Canada.
7. An Order that the parties shall both attend the Focus on Communication in Separation and High Conflict Parenting After Separation **courses**.

### Support

8. An Order that the Respondent pay ongoing **and retroactive section 3 and section 7 child support** to the Applicant, pursuant to the **Federal Child Support Guidelines**, commencing #####, ###, ####.
9. An Order directing the Respondent to pay to the Applicant ongoing **and retroactive interim spousal/partner support** in the range recommended by the **Spousal Support Advisory Guidelines**, or such other amount deemed appropriate by this Honourable Court, commencing #####, ###, ####.

10. An Order directing that a **lump sum** of retroactive **spousal/partner** support be paid to the Applicant for **spousal/partner** support owing during the period of ##### to #####.
11. An Order directing the Respondent to pay the Applicant's **medical costs** and pay for **her** supplemental **health benefits**.
12. An Order **staying** all **ongoing** enforcement of **child and spousal/partner** support **payments and** arrears, for a period of **9 months**, or such other period of time as this Honourable Court deems appropriate. An Order that any funds paid to the Director of Maintenance Enforcement before or after the granting of the Order, but not yet released to the Respondent, shall be returned forthwith to the Applicant.

Property

13. An Order for **exclusive possession** of the parcel of land located at #####, Alberta, and legally described as:

PLAN #####  
BLOCK #####  
LOT #####  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Lands")

14. An Order that the Respondent **not attend** at or near the Lands.
15. An Order for exclusive possession of the following **household goods**:
  - a. #####

16. An Order for **sale** of the parcel of land located at #####, Alberta, and legally described as:

PLAN #####  
BLOCK #####  
LOT #####  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Lands")

[Note service requirements for sale application pursuant to Section 25 of the *Law of Property Act*]

Procedural

17. An Order for **advance costs** in the sum of \$#####, or alternatively in any other such amount as may be determined appropriate by this Honourable Court for the purpose of:
  - a. Retaining an expert valuator/psychologist; and
  - b. Advancing to Special Chambers/trial.
18. An Order for **security for costs** in the sum of \$#####, or any other amount deemed appropriate by this Honourable Court.
19. An Order to permit the **amendment** of the Statement of Claim filed by the Applicant.
20. An Order **validating service** of this Application and Affidavit upon the Respondents by s. 10/r. 5.13 Notice; alternatively, an Order for **substitutional service** of this Application and Affidavit upon the Respondents by s. 10/r. 5.13 Notice;
21. An Order directing that prior to #####, or such other date as this Honourable Court deems appropriate, the Respondents by s. 10/r. 5.13 Notice, #####. and #####, shall provide and deliver the following **information and documentation** to the Applicant:
  - a. The current general ledger for ##### and for every year since inception;
  - b. The complete corporate Minute Books for #####;
  - c. The corporate bank account statements for ##### since inception;
  - d. The corporate credit card statements for ##### since inception;
  - e. Financial Statements for ##### for every year since inception;
  - f. Corporate income tax returns for ##### for every tax year since inception;
  - g. The current amortization/depreciation/CCA schedule used by #####'s accountant;
  - h. All tax slips, including T4s and T5s, and any pay stubs issued to #####, #####, #####, or any other non-arm's length party from ##### since inception;
  - i. Current Interim Financial Statements for #####; and
  - j. Any shareholders' agreements between any of the current or past shareholders of #####
22. An Order declaring the Respondent to be a **vexatious litigant**, or alternatively to have instituted **vexatious proceedings**, and such relief as this Honourable Court deems appropriate, including that the Respondent and the Respondent's immediate and extended family and employer shall all require leave of this Honourable Court to conduct any litigation, continue litigation, or take steps in any litigation, or institute any proceedings on behalf of any other person, against the Applicant and those associated with the Applicant, striking, amending, setting aside, or staying all or part of the Respondent's claim/defence/application, entering summary judgment in favour of the Applicant, restrictions on filing or continuing litigation pursuant to section 23.1 of the *Judicature Act* (Alberta), and/or procedural order(s) pursuant to Rule 1.4. An Order that the

aforementioned Order be binding upon the Provincial Court of Alberta, the Court of Queen's Bench, and the Alberta Court of Appeal.

Generic

23. An Order to set this matter for **Special Chambers** and determine the date thereof;
24. An Order that the **time for service** of the within Application shall be shortened, if applicable.
25. An Order for **Costs**.
26. Such **further and other** Orders as this Honourable Court deems just in the circumstances.

**Grounds for making this application:**

27. The child of the relationship was born on #####. The parties separated approximately **two** years later in #####.
28. #####

**Material or evidence to be relied on:**

29. In support of this Application will be read the Affidavit of #####, **the Spousal Support Advisory Guidelines**, and such other material as this Honourable Court may require and Counsel may advise.

**Applicable rules:**

30. Rules 1.4, #####, 12.44 and 13.5(2) **[vary time period]** of the *Alberta Rules of Court* and such other applicable rules as Counsel may advise and this Honourable Court permit.

**Applicable Acts and regulations:**

31. **Family Law Act (Alberta), Divorce Act (Canada), the Federal Child Support Guidelines, the Matrimonial Property Act (Alberta), the Law of Property Act (Alberta)**, and such other applicable Statutes as Counsel may advise and this Honourable Court permit in support of this Application.

**Any irregularity complained of or objection relied on:**

32. N/A

**How the application is proposed to be heard or considered:**

33. The Applicant proposes that this Application be heard before a Justice of the Court of Queen's Bench of Alberta in Family Law Motions Court.

**WARNING**

If you do not come to Court on the date and at the time shown above either in person or by your lawyer, the Court may give the Applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.