

**COURT OF QUEEN’S BENCH OF ALBERTA**  
**FAMILY LAW PRACTICE NOTE 2**  
**FAMILY LAW CHAMBERS**  
**EFFECTIVE October 1, 2015**

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## A. GENERAL

1. This Practice Note applies to anyone applying for a Court order, before or after trial, in proceedings mentioned in rule 12.2 of the Alberta Rules of Court, including proceedings under the *Divorce Act*, RSC 1985, c 3 (2<sup>nd</sup> Supp), the *Matrimonial Property Act*, RSA 2000, c M-8, or the *Family Law Act*, SA 2003, c F-4.5. Applications that may be heard in Queen’s Bench Family Law Chambers include, but are not limited to, applications for such orders as:
  - a. parenting and contact orders, custody and access orders, and guardianship orders;
  - b. child support and spousal support orders;
  - c. restraining orders and protection orders under the *Protection Against Family Violence Act*, RSA 2000, c P-27; and,
  - d. *Matrimonial Property Act* orders.
2. All parents seeking orders concerning children must take the Parenting After Separation Course: See Family Law Practice Note 1.
3. Self-represented litigants (SRLs) in Edmonton applying for an order dealing with parenting, guardianship or contact with children must have secured an appointment with a Family Justice Service counsellor before they apply under the *Family Law Act*.
4. SRLs in Calgary applying for an order dealing with parenting, guardianship or contact with children must consult with an intake counsellor about options and referrals as set out in Family Law Practice Note 9 before they apply under the *Family Law Act*.

## B. SCHEDULING AN APPLICATION

### **Estimate how long the hearing will take**

5. To determine the appropriate Court venue, the Applicant must estimate the time required to hear the application, taking into account the time it will take for the Applicant and the Respondent to state their argument, and for the Court to ask questions, deliberate, and, in some circumstances, provide a decision. If it is unclear how long the application will take, err on the side of caution and estimate more time.
6. The Applicant must specify a date for **Morning Family Law Chambers** on the application form if the application is estimated to take 20 minutes or less.

7. The Applicant must obtain a date for **Special Chambers** if the application is estimated to take more than 20 minutes.
8. The application must be filed with the appropriate court office in each judicial district for Morning Family Law Chambers or Special Chambers, as set out in Appendix A.

#### **Restrictions on Morning Family Law Chambers**

9. Applications for a change of custody or substantial changes to a parenting arrangement will not be heard in Morning Family Law Chambers; rather, these applications must go to Special Chambers.

### **C. SCHEDULING CROSS APPLICATIONS**

10. A cross application is an application by the Respondent for a different order, rather than simply arguing that the Applicant's order should not be granted.

11. If:

- a. the cross application is **directly related** to the original application; and
- b. the original application was estimated to be one hour or less; and
- c. the cross application is expected to extend the time required for argument beyond one hour, the Court may decide:
  - i. to set a new date for both the application and the cross application;
  - ii. to hear the application and cross application; or
  - iii. to hear only the application and require the cross applicant to secure a new date for the cross application.

12. If:

- a. the cross application raises an issue **unrelated** to the original application; and
- b. the original application was estimated to be one hour or less; and
- c. the cross application will extend the time required for argument beyond one hour, the cross applicant must secure a new date for the cross application, and the cross application will not be heard at the same time as the application.

13. If it is unclear whether the cross application raises an unrelated issue, either party can apply, or the clerk can direct the parties to apply, in Morning Family Law Chambers for a direction from the Court as to whether the cross-application can be heard at the same time as the application.

#### **D. THE MATERIALS**

##### **Morning Family Law Chambers – Applications that will take 20 minutes or less Application and Affidavit**

14. The Applicant must file a family application form [Form FL-18 for applications under the *Divorce Act* and FL-10 for applications under the *Family Law Act*] and a supporting affidavit.
15. Once a date is selected and the documents are filed, the application must be served on the Respondent in accordance with the Rules of Court.
16. The Respondent may file a form FL-11 or an affidavit for responses under the *Family Law Act* and the *Divorce Act*.
17. Except with leave of the Court, or unless there has been a relevant change in circumstances between the time the Affidavit and Application were filed and the date of the hearing each party may file only one affidavit. If filing a Supplementary Affidavit, either with leave or because of a change in circumstances, the Supplementary Affidavit must deal only with the matter permitted by leave or with the relevant changes in circumstances and must conform to the requirements of paragraph 18-21.
18. Except with leave of the Court, all affidavits (excluding exhibits) must be no more than five pages, with one-inch margins. The font size must be at least 12 point, Times New Roman (or equivalent). Handwritten affidavits are acceptable, but they must be legible and are subject to the same page limits.
19. The exhibits appended to the affidavit must be relevant, material, and not repetitive of materials already on the Court file. Except with leave of the Court, exhibits must total no more than 40 pages, and those pages must be consecutively numbered. Exhibits must be separated from the others by tabs and must be preceded by a table of contents identifying each exhibit and its tab number. The relevant passages of exhibits must be highlighted.

20. The Court may award costs against a party who includes as exhibits non-relevant and extraneous documents. Exhibits such as diaries and social media extracts, text messages, and e-mails must be relevant.
21. Except with leave of the Court, electronic exhibits (CDs, DVDs, flash drives, etc.) must not be included in an affidavit.

### **Special Chambers - Applications that will take more than 20 minutes**

#### **Application and Affidavit**

22. The Applicant must file a family application form [Form FL-18 for applications under the *Divorce Act* and FL-10 for applications under the *Family Law Act*] and a supporting affidavit.
23. The Respondent must file a form FL-11 for responses under the *Family Law Act* and may file a form FL-11 for responses under the *Divorce Act*. The Respondent also may file a cross application [Form FL-10 under the *Family Law Act* and Form FL-18 under the *Divorce Act*].
24. The Respondent must file an affidavit in response to the application and an affidavit in support of the cross application, if any.
25. Except with leave of the Court, the parties may file only one affidavit each in relation to the application and one affidavit each in relation to the cross application. Affidavits in support of and in response to a cross application must relate only to the cross application.
26. The provisions of paragraphs 17 through 22 apply to Special Chambers hearings, with the exception that all affidavits (excluding exhibits) must be no more than eight pages.

#### **Confirming Letters**

27. The Applicant and Respondent must file and serve upon each other written argument in the form of a Confirming Letter addressed to the attention of the scheduler or Court Coordinator with whom the hearing was booked (see Appendix A). The Confirming Letter is a short statement explaining what each party seeks and the basis for the request.
28. The parties' Confirming letter must be no longer than five pages, unless there is a cross-application. If there is a cross-application, each Confirming Letter must be no longer than 10 pages: five pages in support and in response to the application, and five pages in support and in response to the cross-application.

29. All Confirming Letters must be in 12 point font, Times New Roman (or equivalent), with one-inch margins.

30. The Confirming Letter must:

- a. identify the parties and their counsel, if any, with a clear statement indicating which counsel is acting for which party;
- b. identify the order(s) sought;
- c. identify the issues raised in the application and cross application, if any;
- d. identify the relevant facts, as verified by the affidavits filed in relation to the application and cross application, if any;
- e. explain the party's position on the issues; and,
- f. cite any relevant cases.

31. The following may be appended to the Confirming Letter and will not count in the page limit:

- a. copies of the **current** affidavit and **relevant** portions of previously filed affidavits, with the relevant portions highlighted;
- b. copies of **relevant** previous Orders, with the relevant portions highlighted;
- c. copies of up to date relevant financial information;
- d. copies of any **relevant** portions of transcripts;
- e. copies of the relevant cases (other than the leading cases set out in Appendix C), or depending on their length the relevant excerpts only, with the relevant portions highlighted;
- f. any information sheets designated by the Court from time to time; and
- g. an estimate of the time required for argument on both sides.

Please note that in some judicial centres, the Chambers Justice will not receive the entire file before the hearing, therefore the appended documents should provide the necessary information and evidence for the application.

## **E. FILING DEADLINES FOR SPECIAL CHAMBERS**

### **General rules**

32. To file after the deadlines set out below, a party must seek leave by applying to the assigned Justice (if one has been assigned) or the supervising Justice for a fiat permitting late filing (a fiat is an order granting permission to file a document that does not comply

with the rules). The party must obtain the consent of the opposing party to bring an application for late filing or provide notice of the application for late filing. The Court may permit or refuse late filing and may award costs, if sought.

33. If a party does not meet the filing deadlines, the Court Coordinator, Chambers Clerk, or equivalent, will strike the application or cross application.

34. If any of these deadlines fall on a holiday, the deadline is the working day immediately **before** the holiday

35. Appendix B sets out the filing deadlines in table format.

#### **Application and Affidavits**

36. The Applicant's application and supporting affidavit must be filed and served upon the Respondent by 4:30 p.m. on the 6<sup>th</sup> Friday before the hearing.

37. The Respondent's response and cross application, if any, and supporting affidavit(s) must be filed and served upon the Applicant by 4:30 p.m. on the 4<sup>th</sup> Friday before the hearing.

38. The Applicant's reply affidavit in relation to the cross application, if any, must be filed and served upon the Respondent by 4:30 p.m. on the 2<sup>nd</sup> Friday before the hearing.

#### **Confirming Letters**

39. The Applicant's and Respondent's Confirming Letters are due by 4:30 p.m. on the Wednesday of the week before the hearing. Judicial centres outside Edmonton and Calgary may direct that Confirming Letters be filed earlier.

### **F. OBTAINING LEAVE**

40. A party seeking leave of the Court to file
- a. affidavits or exhibits exceeding the page limits,
  - b. additional affidavits, or
  - c. electronic exhibits,

must bring an application for a fiat in Morning Family Law Chambers or before the duty justice, with notice to the other party.

41. A party may not present oral evidence in Morning Family Law Chambers.

42. A party seeking leave of the Court to present oral evidence in Special Chambers must seek leave of the justice assigned to the hearing. If a justice has not been assigned, the party must seek leave of a justice in Morning Family Chambers. In both cases, compliance with Notice to the Profession 2014-2 is required.
43. When applying for leave of the court in any of the above circumstances, the party must obtain the consent of the opposing party to bring a leave application or give notice so that the opposing party has an opportunity to respond.

#### **G. ADJOURNING APPLICATIONS**

44. If the parties agree to adjourn before the filing deadline for the Confirming Letter, the application may be adjourned by telephoning the Court Coordinator, Chambers Clerk or equivalent to advise of the adjournment.
45. If the opposing party does not consent to the adjournment, the party seeking an adjournment must apply for an adjournment in Morning Family Law Chambers as soon as possible, with notice to the opposing party. Contested adjournment applications are subject to the same Rules of Court as all other applications.
46. If either party or both parties seek an adjournment after the filing deadline for the Confirming Letter, an application to adjourn must be made to the Justice assigned to hear the application, or if no justice has been assigned, to the presiding supervising Justice or the Morning Family Law Chambers Justice.

#### **H. FILING ORDERS**

47. All orders filed with the Court should be on pale green paper (pale enough that it can be photocopied) so that they are easy to find in Court files.

#### **I. FAILURE TO COMPLY WITH THIS PRACTICE NOTE**

48. If a party does not comply with this Practice Note,
  - a. the Court Coordinator, Chambers Clerk, or equivalent may remove the application from the schedule; or
  - b. the presiding Justice may refuse to hear the application; or,
  - c. the presiding Justice may award costs against the offending party.

**APPENDIX A: Appropriate filing venues for Morning Family Law Chambers and Family Law Special Chambers applications in each judicial centre**

**All Judicial Centres other than the Judicial Centre of Edmonton:**

If your application will take **20 minutes or less**, you must file your application and supporting affidavit, if any, with the Chambers Filing Clerk in your judicial district.

If your application will take **more than 20 minutes**, you must find a date that is agreeable to all parties and then schedule that date with the Special Chambers Court Coordinator (Calgary), the Court Coordinator (Drumheller, Ft. McMurray, Grande Prairie, Lethbridge, Red Deer and Wetaskiwin, or the booking clerk/clerk's office (Medicine Hat, Peace River and St. Paul).

If you are in Calgary and your application will be more than ½ day, you must book with the Civil Court Coordinator. It would be wise to obtain several mutually agreeable dates from the parties in case the date chosen cannot be booked.

If you are booking Special Chambers in Fort McMurray, lawyers must contact the Court Coordinator who will find a date agreeable to both parties. If you are a Self Represented Litigant (SRL), you will appear first in morning chambers where the presiding Justice may set the application for Special Chambers.

**In the Judicial Centre of Edmonton:**

Applications less than <1 hour (20 minutes - 60 minutes) are to be scheduled with the Family Law Centre booking line 780 638 3637

Applications between 1 hour - 1/2 day are to be scheduled with the Special Chambers Court Coordinator 780 422-2313

Applications over >1/2 day are to be scheduled with the Civil Court Coordinator 780 422-2311

All applications and supporting documentation are to be filed with the Family Law Centre filing clerk.

**The phone numbers for these clerks and contacts are listed below:**

<b>Location</b>	<b>Contact</b>	<b>Phone number</b>
Calgary	Special Chambers Court Coordinator	(403) 297-7405
	Civil Court Coordinator	(403) 297-6528

<b>Location</b>	<b>Contact</b>	<b>Phone number</b>
Drumheller	Special Chambers Court Coordinator	(403) 820-7317
Edmonton	Special Chambers Court Coordinator Family Law Centre Booking Line Civil Court Coordinator	(780) 422-2313 (780) 638 3637 (780) 422-2311
Fort McMurray	Court Coordinator	(780) 743-7136
Grande Prairie	Court Coordinator	(780) 538-8921
Lethbridge	Court Coordinator	(403) 381-5455
Medicine Hat	Clerk's Office	(403) 529-8710
Peace River	Booking clerk	(780) 624-6385
Red Deer	Court Coordinator	(403) 340-5360
St. Paul	Clerk's Office	(403) 645-6324
Wetaskiwin	Court Coordinator	(780) 361-1258

## APPENDIX B: Filing Deadlines for Special Chambers

<b>Party</b>	<b>Document(s)</b>	<b>Deadline</b>
Applicant	Application and affidavit in support	4:30 p.m. on the 6 <sup>th</sup> Friday before the hearing
Respondent	Affidavit in response to the application Cross application, if any, and affidavit in support	4:30 p.m. on the 4 <sup>th</sup> Friday before the hearing
Applicant	Reply affidavit to the cross application, if any	4:30 p.m. on 2 <sup>nd</sup> Friday before the hearing
Applicant and Respondent	Confirming Letters	4:30 p.m. on the Wednesday of the week before the hearing, unless specified otherwise by the court coordinator of your judicial district

## APPENDIX C: Leading Family Law Cases

### A. Parenting & Access

1. *Gordon v Goertz*, [1996] 2 SCR 27
2. *Young v Young*, [1993] 4 SCR 3
3. *Van de Perre v Edwards*, 2001 SCC 60

#### A.1 Mobility

*RJF v CMF*, 2014 ABCA 165

### B. Emergency Protection Orders

4. *LL v DG*, 2009 ABCA 387 (EPO hearing)

### C. Child Support

5. *Francis v Baker*, [1999] 3 SCR 250
6. *Chartier v Chartier*, [1999] 1 SCR 242
7. *Contino v Leonelli-Contino*, 2005 SCC 63
8. *DBS v SRG; LJW v TAR; Henry v Henry; Hiemstra v Hiemstra*, 2006 SCC 37
9. *Haisman v Haisman* (1994), 157 AR 47 (CA)
10. *Hunt v Smolis-Hunt*, 2001 ABCA 229
11. *Middleton v MacPherson* (1997), 204 AR 37 (QB)

### D. Spousal Support

13. *Moge v Moge*, [1992] 3 SCR 813
14. *Bracklow v Bracklow*, [1999] 1 SCR 420
15. *Leskun v Leskun*, 2006 SCC 25
16. *Boston v Boston*, 2001 SCC 43
17. *Hickey v Hickey*, [1999] 2 SCR 518
18. *Miglin v Miglin*, 2003 SCC 24
19. *Rick v Brandsema*, 2009 SCC 10
20. *Willick v Willick*, [1994] 3 SCR 670

### E. Matrimonial Property

21. *Peter v Beblow*, [1993] 1 SCR 980
22. *Pettkus v Becker*, [1980] 2 SCR 834
23. *Hartshorne v Hartshorne*, 2004 SCC 22
24. *Klinck v Klinck*, 2008 ABQB 526
25. *Hodgson v Hodgson*, 2005 ABCA 13
26. *Harrower v Harrower* (1989), 97 AR 141 (CA)

27. *Mazurenko v Mazurenko* (1981), 30 AR 34 (CA)

**F. Child Protection**

27. *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315

28. *Winnipeg Child and Family Services v KLW*, 2000 SCC 48

29. *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46

30. *K(SD) v Alberta (Director of Child Welfare)*, 2002 ABQB 61

31. *TS v Alberta (Director of Child Welfare)*, 2002 ABCA 46

32. *KVW v Alberta (Director of Child Welfare)*, 2006 ABCA 404

**G. Unjust Enrichment**

33. *Kerr v Baranow*, 2011 SCC 10

34. *Rubin v Gendemann*, 2012 ABCA 38