

# Edmonton Mental Health Court (EMHC) Info and Tip Sheet

## What is the Edmonton Mental Health Court?

The Edmonton Mental Health Court (EMHC) is a specialty criminal docket courtroom designed to address matters in which the client has mental health issues/diagnoses that are believed to have contributed in some way to their conflict with the law. The EMHC operates on Mondays, Wednesdays, and Fridays out of Courtroom #357 in Edmonton's Provincial Court. The court handles fitness hearings, bail hearings, summary dispositions and bail/probation check-ins but does not deal with trial matters. In addition to the designated Judges and Duty Counsel, this courtroom includes the involvement of a team of Recovery Alberta liaisons (including psychiatric nurses and a forensic psychiatrist) that can aid your client's case. It is important to note that EMHC is a collaborative courtroom where all parties work together so that matters are dealt with in a holistic fashion. For more information about the EMHC see: <https://albertacourts.ca/pc/areas-of-law/criminal/mental-health-court>

## How does the EMHC work?

This courtroom works as follows: If you or your client believes that they have a mental health issue/diagnosis, and you believe it may have contributed to their offences or could be of importance in fully assessing your client's release or culpability, then you should request, before a Judge, that your client's matter(s) be referred to **Courtroom 357** (the EMHC) and provide the court with some background in relation to their mental health diagnoses or issues. At your client's first appearance in the EMHC, the court will likely ask for clarification regarding **why your client's matters are in courtroom 357**.

To help answer this question, the EMHC has a consent form, which, when filled out and provided to Recovery Alberta, allows for your client's health and personal information to be shared with you. This consent form is available in Courtroom 357, at the Edmonton Remand Centre, Fort Saskatchewan Remand Centre, Alberta Hospital Edmonton, on the [Alberta Courts website](https://albertacourts.ca), or by emailing [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca). Information from your client's medical record can be received by either: A) emailing [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca) or B) asking one of the Recovery Alberta liaisons that appears in the court. On Mondays, Wednesdays and Fridays, a psychiatric nurse will be present, while a forensic psychiatrist attends Wednesday afternoons. Please note that the information that the Recovery Alberta liaison shares with you via email is shared only with you, the client's defense counsel. As such, it is up to your discretion whether you share your client's information with the Crown and court if you believe it will benefit your client's case. However, information requested from the Recovery Alberta liaisons in court will be heard by both the Crown and the Judge. Given that this is a collaborative court, this sharing of information should not deter you from requesting information from the Recovery Alberta liaisons during court.

Alternatively, if no information can be found by the Recovery Alberta liaisons, but you and/or your client are under the impression that there should be a history of mental health issue(s), the matter(s) may stay in this courtroom while you make efforts to contact your client's General Practitioner, or any psychologist/psychiatrist they may have seen in the past.

Finally, if your client has an active community supervision order, information about your client's progress may be obtained from the probation officer who attends Mental Health Court on Mondays and Wednesdays. Please consult with Probation and the crown if you require assistance for release conditions.

## What about fitness assessments?

If you have concerns about your client's fitness to stand trial or your ability to receive instructions and wish for a fitness assessment to be conducted, you can adjourn your matter from another courtroom to the EMHC for this purpose, as this courtroom is the most apt at dealing with fitness concerns. Fitness assessments can be ordered and will be completed by one of the forensic psychiatrists at the Edmonton Remand Centre, or by a psychiatrist at Alberta Hospital Edmonton.

The information that follows are some tips/suggestions to help you navigate defending your client in the EMHC:

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## 1) Are you wanting to move your client into the EMHC?

- If so, please verify whether or not the client meets the criteria required to be in the EMHC (i.e., they have a mental health issue/diagnosis, and you believe it may have contributed to their offences or could be of importance in fully assessing your client's release or culpability).
- If the case is already in the EMHC (e.g., it went there for a fitness assessment that has now been completed), but it does not fit EMHC criteria, please adjourn the case to the appropriate courtroom.

## 2) Do you want to obtain your client's health or personal records?

- If so, please review the EMHC consent form with your client and have them sign it. It is important to review the form on your own prior to explaining it to your client. This consent form is available at the Edmonton Remand Centre, Fort Saskatchewan Remand Centre, Alberta Hospital Edmonton, in Courtroom 357, on the [Alberta Courts website](#), or by emailing [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca).
- Please note that access to this information is a key feature of this value-added courtroom and, as such, it is expected that this **consent form be completed in order confirm that the matters meet the criteria and are suitable to remain in EMHC.**
- Please ensure that the signed consent form is sent to [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca). **Consent forms not sent to [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca) will not be acknowledged as completed.**
- It is possible that your client may have signed the consent form at a prior date. To check whether Recovery Alberta has received your client's consent form, you can ask the Recovery Alberta liaisons in court or by e-mail at [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca).
- Once Recovery Alberta has received the consent form, you can request that the Recovery Alberta liaisons (at [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca)) provide your client's relevant medical history. **Emails not sent to [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca) will not receive a response.** The liaisons may not respond immediately, so try to give a reasonable time to respond and **allow for 3 business days prior to sending a follow-up email.**
- Tips for defence counsel regarding consent forms:
  - You can ask correctional officers to assist your client in signing the form during their CCTV appearance in court.
  - Make efforts to have the consent form signed prior to your client's court appearance and reach out to the Recovery Alberta liaisons to get your client's relevant medical information prior to appearing in court, therefore reducing the number of adjournments.
  - When emailing [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca), be specific about what health/personal information you want, when possible. For example, if you want to verify whether what your client has told you is accurate as well as get any additional information (diagnoses, community connections, etc.) that might be beneficial, please write just that. Or, if you are specifically only wanting to know if they have been attending their appointments, please just ask that.
- Please be aware that it is possible that the Recovery Alberta Liaisons may not have any information to provide you or perhaps just not what you were looking for. However, also remember that the Recovery Alberta liaisons are not the only potential source of information. It is possible that your client has medical information in another province that you can try to obtain. Additionally, if your client has their own health care professionals/supports (e.g., a social worker, psychologist, or physician) you can obtain information from them by having them write a letter. Alternatively, you may allocate your resources to seek an independent assessment if you believed there are undiagnosed medical concerns.

## 3) Is there information in your client's medical history that may benefit their case?

- If so, you should consider sharing any mental health information that you believe will be beneficial to your client's case with the Crown Prosecutor. It is **entirely up to your discretion** to do so since any information provided to you about your client's personal and medical history is only shared with you. However, the value-added aspect of this court mostly comes from the collaborative process of information-sharing between Recovery Alberta,

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defense counsel, and the Crown. Without access to this information, the Crown may take the position that your client is not suited for this court or may make a less appropriate resolution offer.

## 4) Have you lost contact with your client?

- If so, you can contact both Cyndi Brand (the Justice Navigator) at [cbrand@legalaid.ab.ca](mailto:cbrand@legalaid.ab.ca) or (780) 935-6019 and the Recovery Alberta liaisons at [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca) (if consent has been signed and submitted), as either of these resources may have potential contact information or ways to follow up on your client's whereabouts.
- If your client has a supervised reporting condition, you can speak to the probation officer who is present on Mondays and Wednesdays.

## 5) Are you preparing a plan for your client's release (i.e., for bail or following resolution)?

- The EMHC team is compiling a comprehensive list of community resources that may be of benefit to your client and will be available on the Alberta Courts Website or by contacting EMHC Duty Counsel
- Cyndi Brand (EMHC Justice Navigator) is also an excellent source for this purpose (email: [cbrand@legalaid.ab.ca](mailto:cbrand@legalaid.ab.ca), phone: (780) 935-6019).

## 6) Are you awaiting a fitness assessment report for your client?

If so, you can email [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca) to let the Recovery Alberta liaisons know such that they can send the report to you as soon as it becomes available. Fitness assessments for clients whose lawyer is unbeknownst to Recovery Alberta are, by default, disseminated to Crown Prosecutor and duty counsel for that day, as well as to the courtroom email.

## 7) Do you plan on having your client appear in court (in person or by phone or CCTV)?

- If so, please ensure that you have informed your client in cases where they are required to appear in person or by phone (e.g., for bail or probation check-ins).
- Please note that **clients at AHE can only be called until 4p.m.**
- Please understand that the typical court process of prioritizing senior counsel may not be followed in the EMHC in order to address matters in the most appropriate order.
- Additionally, while you may have several matters in various courtrooms, it is best to prioritize clients appearing in court with mental illness(es) as these individuals are more likely to become anxious or unwell while waiting for their matter to be addressed, especially if they are sitting in the courtroom. Similarly, clients who may be released should be dealt with as early as possible in order to avoid them being released at night with no resources.

## 8) Do your client's matters need to be addressed early or do you have documents that the Judge needs to read?

- Please let the clerk know if your matter needs to be addressed earlier for any reason (e.g., so the translator or client doesn't need to wait in the courtroom for too long, or so the client doesn't get released too late, etc.) or if you will be sending any necessary documents to the court for the Judge to read.

## 9) Does your client have a check-in but cannot be present to speak to the Judge themselves (e.g., due to illness or any other circumstances)?

- If this is the case, please collect the important information for a check-in from your client such that you can update the Judge on their behalf (i.e., where they live, if they've been going to appointments, what resources they're connected to, if they're taking their medications, etc.).

## 10) Does your client wish to withdraw their consent for the court to access their records?

- If this is the case, please make a note of their withdrawal and inform the Recovery Alberta liaisons promptly by emailing [EMHC@recoveryalberta.ca](mailto:EMHC@recoveryalberta.ca), such that they know not to share any further information.

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## 11) Do you have any further questions about how the EMHC operates?

- If so, you are welcome to reach out to the EMHC duty counsel and Justice Navigator for information/clarification.
  - Amna Qureshi, EMHC Duty Counsel ([agureshi@legalaid.ab.ca](mailto:agureshi@legalaid.ab.ca))
  - Alyshah Somji, EMHC Duty Counsel ([asomji@legalaid.ab.ca](mailto:asomji@legalaid.ab.ca))
  - Desiree Syroid, EMHC Duty Counsel ([dsyroid@legalaid.ab.ca](mailto:dsyroid@legalaid.ab.ca))
  - Cyndi Brand, EMHC Justice Navigator ([cbrand@legalaid.ab.ca](mailto:cbrand@legalaid.ab.ca))

## 12) Can medical information be shared upon visual confirmation by Recovery Alberta staff that the EMHC-specific consent form has been signed by the patient attending court virtually during the court proceeding, but prior to the receipt of said form by Recovery Alberta?

- Yes, it can. As long as the liaisons from Recovery Alberta observe the EMHC consent form being signed and document the signing and the date it occurred, they can provide information prior to receiving the form.
  - This signing needs to be both:
    - On the record so that if the form never arrives the court transcript can be referred to in cases where the client's consenting is in question.
    - In the EMHC. Forms witnessed electronically elsewhere will not be witnessed by parties other than the EMHC liaisons will not be added to the records so counsel will have to wait until Recovery Alberta receives the physical form in these instances.
- All reasonable efforts should be made to ensure the form is received by Recovery Alberta.

## 13) When should I use the EMHC-specific consent form?

- The **EMHC-specific consent form** should be used if counsel believes that a client has mental health concerns for which they might be able to take advantage of the resources the EMHC offers.
  - It is also appropriate to submit the EMHC-Specific consent form and obtain medical information prior to applying to participate in EMHC to access eligibility.
- Counsel should use the **AHS Consent to Disclose Health Information** available [here](#) if they **intend on staying in a specific courtroom that is not the EMHC** and send that form to [disclosure@ahs.ca](mailto:disclosure@ahs.ca).
  - The wording of the EMHC-specific consent form (*I am choosing to participate in the Edmonton Mental Health Court (the "Court") freely and voluntarily*) and the form's "to whom" and "for what purposes" components limit its use to the EMHC.
  - Forensic Assessment and Community Services (FACS) is not a stakeholder of any non-EMHC courtroom.
  - Note that this will likely take additional time for acquiring information from Alberta Health Services (AHS) compared to the EMHC-Specific consent form.

## 14) Can medical information be shared in open court on the record?

- While there is a risk of other members of the public attending the EMHC while a client's health information is being shared by the various stakeholder parties, the EMHC-specific consent form explicitly states under Acknowledgement section: *"In particular, I understand that all courts, including Mental Health Court, are open to the public, and that documents that are filed in a court are generally a matter of public record."* Thus, by consenting, clients are agreeing they accept this risk.

## 15) Can a lawyer seek medical information about their client prior to the client's first appearance in the EMHC?

- Yes. See item 13 for more information.

## 16) What constitutes a completed consent form for EMHC?

- The EMHC-specific consent form meets the requirements of the Health Information Act (HIA) for consent to disclose identifying health information and has fillable components on the first and second page. For Recovery Alberta to provide health information, the form must have at minimum, the client's name, signature, and the date of which the form was signed. Please note: While the rest of the fillable information is not required by the Health Information Act (such as patient's DOB, PHN) it is often required by the Recovery Alberta liaisons to find and verify

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the client's electronic medical records. A witness is helpful but not required by law.

## 17) Can counsel adjourn their client's matters into the EMHC to get access to their health records but then have the matter heard in a different court (e.g., general courtroom or the Indigenous Court)?

- Yes. There is nothing prohibiting counsel from doing so. Once the patient and their counsel have received the patient's health records, it is up to them to decide whether to pursue the matter in EMHC or another court, and they may do what they wish with their copy of the records.

## 18) Can the EMHC liaisons ever provide a reminder to a client about an upcoming court date?

- Upcoming court dates can only be passed onto your client if your client is an **active client of FACS**. The liaisons can as a courtesy make a note on their FACS database.
  - Note this does not guarantee a message will be successfully delivered, this is just the only instance when this is acceptable.
- For counsel, whose client is **not a client of FACS**:
  - Information about the court date is not collected by Recovery Alberta during the provision of a health service; it is collected while Recovery Alberta is providing a service for the EMHC. If a court date is required to be documented, those providing services to the EMHC will document in the client's "legal record" in Connect Care.
  - Information about a client's upcoming court date is not required to provide the client with health services. Therefore, information about the court date does not belong in the patient's clinical record and must not be charted there. This means that there will inevitably be fewer providers who see that the client has an upcoming court date, and it is less likely this 'court date reminder' will successfully get to clients. As such the EMHC liaisons putting court date reminders in the client's clinical record is not a viable option.

## 19) What happens in instances where medical information is provided using the EMHC consent, but the client's matters never actually appear in the EMHC?

- Nothing about doing so puts counsel's actions "legally offside" and is therefore acceptable as counsel may decide after obtaining info that the EMHC is not the best path for their clients. Given this, Recovery Alberta as healthcare information holders should not impede the proceedings of these clients when appropriate consent is filed. Instances such as and those addressed in item 17 are also cause for Recovery Alberta to investigate the potential for additional resources that could amend operational procedures to ensure that requests from any courtroom are being overseen with the same response rate that EMHC currently receives.