



Type of law:  
**CIVIL LAW**

A 2022 Alberta Guide to the Law

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# Small Claims



**Student Legal Services**  
of Edmonton

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# SMALL CLAIMS

## What is a Small Claim?

A civil claim is where one party chooses to sue another party because they believe they need to be compensated for a wrong done to them by that party. In Provincial Court Civil, you can only file civil claims up to \$50,000.

## Examples of Small Claims



Damages to Property



Return of Security/Damage Deposit



Amounts owing for goods and services



Debt Claim



Motor Vehicle Accident



Breach of Contract



Wrongful Dismissal



Return of Personal Property



Personal Injury

## Beginning a Small Claim



### 1. File a Civil Claim Form

### 2. Serve each Defendant

Deliver proper notice to them that they are being sued.



### 3. Swear that the documents have been served

Complete an Affidavit of Service

### 4. Respond according to the Defendant's action

For example, you may accept their payment, settle, attend mediation, or prepare for trial.



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## The Basics of Small Claims Court

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### What is a Civil Claim or Small Claim?

A civil claim is where one party chooses to sue another party because they believe they need to be compensated for a wrong done to them by that party.

Small claims are civil actions that can start in Provincial Court Civil. Provincial Court Civil is a simpler, less expensive way to resolve disputes. There are many Provincial Court locations in Alberta. You may hire a lawyer, but it may not be necessary in Provincial Court Civil.

In Provincial Court Civil, you can only file civil claims up to **\$50,000**. If your claim is for more than this limit, then you can either drop the excess amount (this is called **abandonment**) or you can go to the Court of Queen's Bench to sue for the total amount.

You must be at least 18 years old to begin a Civil Claim on your own. If you are under 18, you must find someone to accept responsibility for the lawsuit, including its costs. This person is called a **litigation representative**, and an Affidavit of Litigation Representative must be completed and filed at the court.

There is a time limit to sue called a **limitation period**, after this time limit is passed, the Defendant is entitled to immunity from the claim. In general, the limitation period for small claims are as follows:

- For debt claims like a breach of contract, unpaid loans, damage deposits, and rent owing, the time limit is **two years** from the time the debt began. There is an exception to this if the Defendant acknowledges in writing that the debt is still owing or makes a partial payment during the two-year limitation period. In those cases, the two-year limit begins when the debt was last acknowledged or partially paid;
- For injuries or damages caused to yourself or your property, like from an assault or car accident, for example, the time limit is **two-years** from the date of injury or damage;
- If you are suing your own insurance company for failing to pay you as a result of an accident, the time limit is **two years**.

The following are some types of matters that can be filed in Provincial Court Civil:

- Amounts owing for goods and services;
- Debt claim;
- Motor vehicle accident (which can include personal injury);
- Return of security/damage deposit;
- Damages to property;
- Personal injury other than motor vehicle accident;
- Payday loan;
- Breach of contract;
- Wrongful dismissal;
- Return of personal property (also called **replevin**).

The following are some types of claims that cannot be filed in Provincial Court Civil:

- Matters involving the ownership of land;
- Matters involving wills, malicious prosecution, false imprisonment, or defamation (also called libel or slander);
- Criminal conversion or breach of promise of marriage;
- Claims against a judge, Justice of the Peace, or peace officer for anything done by that person while executing the duties of that position;
- Claims against a local authority or school board for the recovery of taxes, other than taxes imposed because of the occupancy of or an interest in land that is itself exempt from taxation.

Claims that cannot be filed in Provincial Court Civil will likely have to be dealt with in the Alberta Court of Queen's Bench.

Alternatives to the Court Process

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If you have a dispute with someone else, there are alternatives to the court process. These alternatives may be preferable to going to court. Going to court can be costly in terms of time and money spent.



## Costs of Going to Court

Some fees associated with filing a civil claim include:

- Filing fees;
- Witness fees;
- Potential fees to serve the Defendant with the claim and/or a witness with a Notice to Attend;
- Time taken off work to file paperwork with the court & attend court processes (e.g., trial).

If you choose to pursue a court action, you will have to go to the courthouse during business hours to file your Civil Claim. You will also have to attend all hearing and trial dates. For any time taken off work, you will not be able to include your lost wages in the amount you are suing for. A judge may, or may not, award costs for your time and efforts spent pursuing the claim if you are successful. If you are unsuccessful, you may have to pay the costs of the other party.

When weighing your options, you can also think about the person you want to sue. Do you know where that person is? The court does not help you in finding a Defendant. If you win, will you be able to collect the Judgement? The court cannot help you enforce your judgement.

You can also think about the strength of your case - do you have enough evidence to support your claim and prove your case?

The following outlines some basic filing fees associated with filing a Civil Claim in Provincial Court:

Civil Claim – valued at \$7,500 or less	\$100
Civil Claim – valued over \$7,500	\$200
Dispute Note without a counterclaim	\$25
Dispute Note with a counterclaim valued at \$7,500 or less	\$75



Dispute Note with a counterclaim valued greater than \$7,500	\$125
Third Party Claim	\$50
Notice of Application (in the course of an action or proceeding)	\$50



If you cannot afford to pay these filing fees, you can apply to waive them if you provide financial documents with your application that show you cannot afford to pay. There might be other costs you will still have to pay, such as fees for search requests or photocopying.

#### How to Waive Filing Fees

##### Step 1: Check to see if you qualify

You do not qualify if you are representing a business or an estate. To qualify, the average income of your household must be below specific thresholds. For example, if there is just you in your household, your gross monthly income must be below \$2,230 and your gross annual income must be below \$26,760. If there are four people in your household, the average family income must be below \$4,144 (gross monthly income) and below \$49,727 (gross annual income).

##### Step 2. Gather your documents

The court needs a copy of your:

- Most recent tax return or notice of assessment for the most recent tax year, or pay stubs or other proof of income from the last 3 months for all of your sources of income;
- Spouse/common-law partner/adult interdependent partner's pay stubs or other proof of income from the last 3 months for all their sources of income;
- Any other documents to establish your financial situation.

If you are not employed, bring proof of the source and amount of your income, such as your most recent Employment Insurance or AISH statement.

### Step 3. Fill out the form

Fill out the Application for Fee Waiver found at the courthouse, or at this website: <https://www.alberta.ca/assets/documents/rcas-fee-waiver-application.pdf>

### Step 4. File your application

File your Application at the same court where you are filing your documents that you want the fees waived for.

#### Alternatives to Court

While this pamphlet focusses on Provincial Court Civil processes, below are some alternatives to court, which may be more appropriate in some circumstances.

- You can contact the other party and come to a resolution;
- You can write a written demand to ask the other party for the compensation you are looking for;
  - A demand letter includes the reason why the money is owed and a deadline for that party to make the payment to you. The demand letter can also tell the party that if they do not pay, you may file a Civil Claim in Provincial Court Civil. Demand Letters should be dated and include the name and address of the party it was sent to. It can be helpful to keep a copy of the letter in case you need to file a claim and trial becomes necessary.
- You can use an agency designed to solve your type of problem (see page 27 for contact information);
  - **Alberta Employment Standards Branch** if you are owed money for wages;
  - **Service Alberta – Consumer Information** can help resolve some consumer related problems;
  - The **Residential Tenancy Dispute Resolution Service** may be able to help in landlord/tenant matters;
  - The **Worker’s Compensation Board of Alberta** may be able to help you if you are injured at work, missed work because of your injury, and have not been paid;
  - You can request **mediation** when you file a Notice of Claim or a Dispute Note, where a mediator helps parties reach a settlement which can be drafted into an agreement. If you do not reach a settlement, you can choose to go to trial. Mediation may also be required if your case is selected for mediation or if the court directs you to it.

## Beginning a Small Claim

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### Who Can I Sue?

Suing the wrong person or naming the person wrong when filing can result in a lost case. The Provincial Court Office cannot assist in naming a Defendant. Naming the parties correctly will also assist you later in collecting a judgment if you are successful. You are allowed to sue all the persons and companies involved in the problem with the same claim form.

### When Suing Individuals:

- Use the first and last names of each person you are suing and any other name by which they are known. Use the person's legal name, do not use nicknames, initials, or prefixes. Include addresses for each person you are suing;
- If you are naming an individual that is a minor (under 18 years old);
  - Use the full first and last name of the minor and the full first and last name of the minor's litigation representative. Usually, a minor's litigation representative is their parent or guardian. If there is no automatic litigation representative and no one is willing to be one, an application must be made to the court to appoint one.

### When Suing a Business:

- You must use the proper legal name. The name on a business card, invoice, or contract might not be the legal name of the business. Do not use abbreviations unless it is part of a registered name. Abbreviations such as COB should appear fully as "carrying on business;"
- To find the proper legal name, you need to search with an Alberta Registry Agent office. Fees may vary from one office to another. There are different types of searches:
  - **Corporate search;**
  - **Trade name search;**
  - **Partnership search.**
- By keeping a copy of any searches you complete and the receipts of payment, you will have the information ready when completing and filing the Affidavit of Service.



The costs of the search might also be recoverable as part of the Judgement if you are successful;

- There are different types of businesses: incorporated and unincorporated. The differences between them are important for properly naming the business in the Civil Claim;
  - **Incorporated:** Can only be sued in the name of the business. An incorporated business usually has one of the following after its name: Limited, Ltd, Incorporated, Inc, Corporation, or Corp;
  - **Unincorporated:** An unincorporated business could be a business that is not incorporated and operates as a trade name (often called a proprietorship) or it could be a partnership (often called a firm). There can be more than one person operating under a trade name or partnership.
- For insurance companies;
  - You cannot search for the proper legal name of an insurance company at an Alberta Registry Agent office;
  - The office of the Alberta Superintendent of Insurance maintains the list of insurance companies operating in Alberta (see page 29 for contact details).

#### If you do not have a name for the Defendant

If you do not know the identity of a Defendant you can file a Civil Claim using “John Doe” for a male, “Jane Doe” for a female, or “ABC Corporation” for a business. This practice is usually used so that the limitation period does not expire before you file your Civil Claim. It can only be used as a temporary measure. Once you find the proper name of the Defendant you will be required to file and serve an Amended Civil Claim and blank Dispute Note.

#### Amending a Civil Claim

Once you have the proper name of the Defendant, you must put the word AMENDED in red underlined writing before the words Civil Claim. On this form you will also put the proper name of the Defendant and underline it in red. If the claim made any reference to the Defendant as “John Doe” etc., you need to replace it with the proper name and underline it in red.

Any other changes you make to the Amended Civil Claim must also be underlined in red. The Defendant must be served with the Amended Civil Claim and a blank copy of the Dispute Note.



## Filing a Civil Claim

### Overview of the process:

1. File a Civil Claim form;
2. Serve each Defendant;
  - To serve someone means to deliver proper notice to them that they are being sued.
3. Swear that the documents have been served (complete an Affidavit of Service);
4. Respond according to the Defendants' actions or inaction.
  - For example, you may accept their payment, negotiate, settle, attend mediation, prepare for trial, or ask for a default judgment.

### Filing a Civil Claim Form

1. Go to the Provincial Court Civil Division Office downtown, or to any other Provincial Court location in Alberta, and fill out a Civil Claim form. You can also download the Civil Claim form from this website: <https://albertacourts.ca/pc/areas-of-law/civil/forms>.
  - a. Complete the first three sections of the Civil Claim and the applicable attachment. Do not attach anything else to the Civil Claim. On the form, you will need to include:
    - i. Your name, address, and phone number;
    - ii. The Defendant's full name, address, and phone number;
    - iii. The amount of money you are asking for;
    - iv. The reason for suing (the reasons should be detailed, but not long or complex);
    - v. The time & place of the incident.
  - b. There are many types of Civil Claims that can be filed in Provincial Court Civil. Below are the attachments to file with your Civil Claim form, depending on your specific situation.
    - **General Claim (Attachment A):** a claim for something other than or different from what is listed in the attachments below;



- **Amounts owing for Goods and Services (Attachment B):** A claim for monies owing for goods or services provided;
  - Include a date for the repayment for the goods or services provided and indicate if the party has made any attempts to pay.
- **Debt Claim (Attachment C):** A claim for money owed for an amount that was agreed to between the parties and has not been paid in full;
- **Motor Vehicle Accident (can include Personal Injury) (Attachment D):** A claim for property damage, personal injury, or both, caused by a motor vehicle accident;
  - If you do not know the identity of the driver or the owner of the motor vehicle, or if they are uninsured, contact the Administrator of the Motor Vehicle Accident Claims program after filing the Civil Claim (see page 29 for contact information).
- **Return of Security/Damage Deposit (Attachment E):** A claim for the return of a damage deposit that you paid and has not been returned or partially returned to you;
- **Damages to Property (Attachment F):** A claim for damages to property to cover injury or monetary loss and typically includes repair or replacement of the property;
- **Personal Injury (other than Motor Vehicle Accident) (Attachment G):** A claim for injury not caused by a motor vehicle accident;
- **Payday Loan (Attachment H):** A claim for money owing on an unpaid Payday Loan made by a licensed payday lender;
- **Breach of Contract (Attachment I):** A claim for damages caused when a contract is broken;
- **Wrongful dismissal (Attachment J):** A claim for damages caused by the loss of your job;
- **Return of Personal Property (Replevin) (Attachment K):** A claim for the return of personal property (also called replevin) that you own or are entitled to and has been taken or kept by the Defendant.



2. File the Civil Claim. You will need to bring at least three copies of the form: the original (which the Court will keep for the Court file), a copy for your records, and a copy for each named Defendant. The Clerk will return copies of the filed Civil Claim and attach a blank Dispute Note for you to serve on each Defendant.

#### Serve the Defendant

After you file your Civil Claim form, you must file a copy of the Civil Claim and a blank Dispute Note on each of the Defendants that you named in your claim. This needs to be done within **one year** after the date the Civil Claim is filed. If a Plaintiff is unable to serve a Defendant within one year, the Civil Claim can be renewed within that year with an order of the Court for another 3 months. A Dispute Note is for the Defendant to fill out if they decide to dispute the claim.

To properly serve a Defendant, you can:

- Deliver it to them in person (you, a friend, or family member can do this);
- Hire a process server to deliver it;
  - If you hire a process server, it can be helpful to keep your receipts because you may be able to recover those expenses if you are successful.
- Send the documents by recorded mail.

You can serve the Defendant on any day of the week, but it is very important to keep track of the date when the documents are served, as this information is needed to complete the Affidavit of Service.

If you need help locating an address for a defendant, you can pay for a limited demographic search at an Alberta Registry Agent office. Fees and services vary depending on the registry office. Some offices require a filed copy of the Civil Claim and two identifiers of the defendant, such as the legal name of the person, the date of birth, or last known address.

If you are having difficulty serving a defendant and have tried all the regular methods, you can apply for an Order for Substitutional Service. You will need to complete and file an Affidavit in Support of Substitutional Service, which needs to specify how the documents will be substitutionally served and why they would come to the attention of the other party if served in that way. Some Court locations also require a Court appearance before a judge to grant an Order.

When an Order for Substitutional Service is granted, the party must serve a copy of this order along with the other documents to the party using the method ordered by the judge. These methods may be regular mail, e-mail, social media, or a newspaper advertisement.

If a Defendant lives outside of Alberta, you can still serve them, but the Defendant will have additional time (30 days) to file a Dispute Note.

#### Serving an individual:

- You can deliver the documents to the Defendant at any location (note the address and date where you served them in your Affidavit of Service);
- You can leave the documents for the Defendant at their most usual place of residence with someone who lives there who is apparently over the age of 16. You must leave it with someone – you cannot just post it to the door;
- You can send the documents by recorded mail to the Defendant. If sending the documents by recorded mail, you must include the original receipt and a signed acknowledgement of receipt in your Affidavit of Service.

#### Serving a corporation:

First you must obtain a Corporate Search from an Alberta Registry Agent office to prove to the Court that you have served the registered office or a director of the corporation.

- You can leave the documents at the registered office of the corporation (note the date and address where you served the Defendant in your Affidavit of Service);
- You can send the documents using recorded mail to the registered office. You must include the original recorded mail receipt and a signed acknowledgment of receipt in your Affidavit of Service;
- You can serve a director of the corporation in the same way an individual is served;
- You can serve an individual who appears to have management and control responsibilities for the corporation at either its principal place of business or its place of business where the claim arose.



If the defendant is a partnership, you can serve a partner who is an individual in the same way an individual is served or by serving the partnership in the same way a corporation is served.

There are also different rules and procedures if the Defendant is a corporation in another province, if the Defendant is a branch of government, if the defendant is an insurance company, or if the defendant is in jail.



### Swearing an Affidavit of Service

Once a Defendant has been served, you will need to prove that service has been completed. To do this, you will need to complete an Affidavit of Service of Commencement Documents and file it with the Provincial Court office. This form can be found at the courthouse or online at <https://albertacourts.ca/pc/areas-of-law/civil/forms>.

After filling out the Affidavit of Service, take it in person to a Commissioner for Oaths, Justice of the Peace, or Notary Public, who will read you an oath. You must swear that you served the documents. This may be done at any Court office by a clerk for no charge, but you will be required to produce photo identification. If you served the Defendant using recorded mail, give the person performing the oath the postal receipt and acknowledgment of receipt documents. They will attach the receipts to the Affidavit and mark them as exhibits.

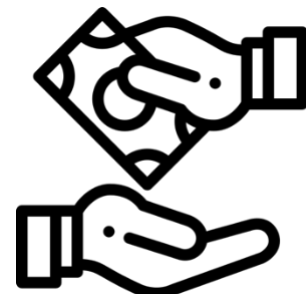
There are other types of Affidavits to file if you served documents other than a Civil Claim and Dispute Note. If you served a Notice to Attend as a Witness on a witness you want at trial, you will need to serve an Affidavit of Service of Notice to Attend as a Witness. For other documents, including orders, applications, affidavits, and trial statements, you need to file an Affidavit of Service of Non-Commencement Documents.

### Respond

Next you will wait for the Defendant respond.

The Defendant may choose to:

- Pay you the amount you asked for;
  - They may pay you directly or pay the Court office.
- Attempt to negotiate a settlement;



- You and the Defendant can agree to a different amount or payment arrangement. This is often beneficial because it saves legal costs, time, and is less risky. If a settlement is reached, a Notice of Withdrawal form must be filled with the Court.
- Do nothing;
  - If the Defendant does not pay or file a Dispute Note within **20 days** of being served, you can file a Request to Note in Default and eventually obtain Judgment in Default. A Default Judgement is a Judgment against the Defendant without having a hearing.
- File a Dispute Note;
  - The Defendant may dispute the claim by saying they owe you a different amount, nothing, or that you owe them;
  - The Defendant has 20 days from the date they are served to file a Dispute Note, or 30 days if they are served outside of Alberta. A Dispute Note can only be filed after this time limit if the Plaintiff has not filed a Request to Note in Default or a Request for Default Judgement.

After a Dispute Note is filed the parties will receive a Notice or letter setting out the next step in the action. Your attendance is required at the time, date, and place set out in the Notice. Next steps may include:

- Mediation;
- Pre-trial conference;
- Simplified Trial;
- Trial;
- Binding Judicial Dispute Resolution.



See page 15 for more information on the trial process.

## Being Sued

If someone has filed a Civil Claim against you, you are called the **Defendant**. You will receive a Civil Claim that tells you why you are being sued, by whom and for how much. Ignoring a Civil Claim will not make it go away. If you ignore a Civil Claim, the Plaintiff can apply for a Judgement against you, which allows them to begin collection proceedings against you.

If you have been served, you can:

- Negotiate a settlement;
- Pay the claim;
- File a Dispute Note;
  - Do not miss the deadline - you can always continue negotiating.
- If you ignore a Civil Claim, the Plaintiff can apply for Judgement against you.

### Negotiating a Settlement

If you feel that you do owe money to the other party (the Plaintiff), but not as much as claimed, you can offer what you feel is reasonable by negotiating a settlement. You can also do this if you are unable to pay it all at once where you try to arrange a repayment plan through settlement. If an agreement is reached, the Plaintiff should immediately inform the Court office in writing that the matter has been settled or complete and file a Notice of Withdrawal.

If settling fails, you will go to court to resolve any unresolved disputes.

### Paying the Claim

You can pay the Civil Claim and costs directly to the Plaintiff or to the Court. A Court appearance is unnecessary if you choose this option. If you pay the Plaintiff directly, make sure you get a receipt with the date, amounts, and signatures of all the parties involved. A Notice of Withdrawal should be filed with the Court once the money has cleared the bank. Only cash, certified cheque, money order, or debit card where available, can make payment to the Court office. If the money is paid to the Court, the Court will send the Plaintiff a Notice of Payment and Statement of Acceptance or Refusal. The Plaintiff has **30 days** to respond.

### Filing a Dispute Note

If you feel that there are some facts in your favour, you can defend yourself by completing a Dispute Note and delivering it personally by mail or by fax (where available) to the Court **within 20 days** of being served with the Claim (30 days if you are outside of Alberta). You can file your Dispute Note at any Provincial Court Office, but it is recommended by the courts to file it at the same court where the Civil Claim was filed. There is a fee to file a Dispute Note which varies based on the type of the Dispute Note. You can apply to waive the filing fee if you can show that you cannot pay because of financial hardship.

You need to bring at least three copies of the Dispute Note for filing: the original (which the Court will keep), a copy for your records, and a copy for each named party.

You may include in the Dispute Note any claim you may have against the Plaintiff if you feel the Plaintiff owes you money. This is called a **counterclaim**.

If you do not have a legitimate reason for disputing a claim, filing a Dispute Note may result in increased costs against you.

Do not send books, papers, or other material relating to the matter with your Dispute Note.

## Trial

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Remember that there are other resolution tracks, and your matter may not go to trial for a long time, or at all. If your matter is set for trial, you can still continue negotiating to reach a settlement.

Trials can last for half day to multiple days, depending on the complexity of the claim and the number of witnesses. All parties must present their case within the timeframe scheduled by the Court.

All parties will be sent a Notice of Trial to their address. This Notice identifies the time, date, and location of the trial.

All the parties involved will attend trial as well as any witnesses required by the parties to attend.

### How Do I Prepare for Trial?

All the documents that you want to present in court should be prepared for trial.

- You need to have the originals and two other copies. Originals will be submitted to the court. One copy will be for you, the other for the other party.

You also need to send **disclosure** to the other party at least **30 days** before trial. Disclosure is all the records, documents, and other evidence that each party has.

Examples of what may be included in disclosure include written contracts, repair bills, IOU's, bad cheques, letters, receipt of payment, and any other materials that relate to the action.

You can also prepare your testimony and the questions you are going to ask your witnesses.

Any requests for special requirements like hearing assistance or TV and video equipment must be made on the Courtroom AudioVisual Request Form at least **30 days** before trial.

### Courtroom Etiquette

Arrive half an hour early and check in with the court clerk before court begins. You can ask them if you are not sure which court room you are in.

- Suits are not required, but a courtroom is a formal place;
- When the Judge enters and leaves the room, everyone must stand up to show respect. You can sit again when the Judge tells you that you can;
- Every time you speak to the Judge, you must stand up;
- In Provincial Court, the Judge is addressed as “Your Honour;”
- Don’t wear a hat;
- Don’t argue with the Judge;
- Be respectful to others;
- Turn off all electronic devices;
- Don’t bring children;
- Don’t eat, drink (except water), or chew gum.

If you do not understand what the Judge has said, you can ask them to explain.

### Basic Courtroom Procedure

#### Step 1. Opening Statements

1. The Plaintiff introduces themselves and the other party or the other party’s lawyer;
2. The Plaintiff gives an opening statement and explains to the judge what they are asking for;
3. The Defendant gives an opening statement.

#### Step 2. Evidence and witnesses

1. The Plaintiff gives their evidence;
2. The Defendant can cross-examine the Plaintiff;
3. The Judge might ask questions of the Plaintiff;



4. The Plaintiff calls each of their witnesses in turn and asks them questions;
5. The Defendant can cross-examine the witnesses;
6. The judge might ask questions of the witnesses;
7. The Defendant follows the above steps for their own evidence and witnesses.

### Step 3. Closing arguments

1. The Plaintiff gives their closing statement, summarizes their evidence, and makes arguments about why the Judge should decide in their favour;
2. The Defendant gives their closing statement, summarizes their evidence, and makes arguments;
3. The Plaintiff can respond to any arguments from the Defendant.



### Step 4. Decision

1. The Judge decides in favour of one of the parties (or the Judge may make this decision at a later date);
2. Both parties thank the Judge.

## Evidence

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At trial, you need to prove two key points: (1) that the other party did something wrong and (2) the amount owing. Evidence is information you provide to the Court to prove your case.

### Types of evidence:

- Oral testimony is where a person comes to court and answers questions;
- Documentary evidence can include records like documents, contracts, cheques, letters, repair estimates, printouts of emails, or any other materials that relate to the action. If you choose to display text messages or emails on your personal device, the Court may keep the device until the end of the appeal period as an exhibit;
- Electronic evidence is any materials not in paper, like flash drives, videos, or recordings.

If you require special devices, like television or video equipment, you must make the request with a Courtroom Audiovisual Request Form at least 30 days prior to the trial.

Examples of evidence:

### Contract

- That there was a contract or that there was not;
- Details of the contract;
- How the other party broke the contract or how you did not break the contract;
- Exact amount of money you are suing for and how that amount was determined;

### Car Accident

- That the accident happened;
- Identity of the driver or owner of the car;
- How the accident happened and who caused it;
- Reason for the amount you are suing for or why you should not have to pay.

### Debt

- That debt exists or does not exist;
- The debt is paid or unpaid (partially or fully).

### Damage/Security Deposit

- That a deposit was made;
- That the deposit was returned or not returned;
- The condition of the premises.



### Witnesses

You can call on witnesses if it is applicable to your case. A witness is someone that appears in Court to give evidence to support your case.

Your case may be stronger if you have witnesses to back what you say. In addition, they can testify about something that they have heard or saw that you did not.

If you have witnesses, they may agree to come to Court voluntarily. If you want to ensure they attend court, you can file a Notice to Attend as a Witness and provide a witness allowance. Serve this notice on the witness at least **21 days** before the trial date.

A Notice to Attend as a Witness is an order issued by the Court office stating that the witness must appear in court on your appearance date.

It must be served by personally delivering a copy to the witness or mailing it to the witness with recorded mail.

There are no expenses to file a Notice to Attend as a Witness, but you will be required to pay a witness allowance to the witness and serve it along with the Notice to Attend as a Witness. If you are the losing party, you may have to pay for the other side's cost of bringing their witness(es) to court. The Judge will determine this at your court date.

After serving the witness, the persons who delivered the Notice must complete an Affidavit of Service before a Commissioner for Oaths, Justice of the Peace, or Notary Public. Completing an Affidavit of Service can be done at any Court office. The sworn Affidavit must be filed at the court location where the trial is being held.

An expert witness is the only witness who is allowed to give evidence about their opinions. They may include mechanics, doctors, repairmen, appraisers, psychiatrists, or others.

#### The Hearsay Rule

**Hearsay evidence** is second-hand evidence given about something that another person has seen or heard. The Court requires that only people with personal knowledge of events be brought forward as witnesses, or expert witnesses. As such, hearsay evidence is not allowed.

Written statements of anyone not present in court are unlikely to be accepted because the parties who make them cannot be questioned further.

Any documents used in court should be originals. If you only have a copy, be prepared to explain to the Judge why you do not have the original. You should also bring copies for the Judge and other parties.

Remember that all parties must exchange all documents and records they intend to use in Court before the trial.

#### Preparing Evidence

It can be helpful to have all of your documents organized and prepared before Court. The following are some things you can do to help you in Court:

- Review the Claim, Dispute note, and any other documents that have been filed or provided to you by the other parties;



- Gather any records or documents you are using for evidence and organize them in a logical order;
- Contact any witnesses you want to bring to Court;
- Plan the testimony that you will give in Court. Usually, you are not able to read from a prepared statement;
- Plan the questions you want to ask your witnesses and any you may want to ask the other parties' witnesses;
- Arrive early on the day of the trial.

## Judgements

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If you are successful at trial, you will be issued a Certificate of Judgement, but this is not the end of the process. You still need to enforce your Judgement. If the party that owes you money (the debtor) does not voluntarily pay, you (the creditor) must take steps to enforce and collect the judgement. The court does not pay the amount awarded in the Judgement and does not assist in collecting the judgement.

### Applicable Law

#### *Civil Enforcement Act*

Gives information on legal procedures for civil enforcement of a judgment.

#### *Personal Property Security Act*

Contains provisions affecting creditor rights and remedies.

### Costs

The winning side will often be awarded "**costs.**" Costs are expenses of bringing the lawsuit to court, and can include filing fees, hiring a lawyer, and more. They may not cover all of a party's expenses but can cover many of them. Whether costs are awarded or not is up to the judge.

### Court Judgement

If you are successful at trial, you will be issued a Certificate of Judgement. If you filed a civil claim and the Defendant did not dispute it, you will be issued a Certificate of Default Judgement.

Default Judgements are given after:

- You have filed an Affidavit of Service of Commencement Documents proving that the Defendant was served;
- The time limit for which the Defendant had to file a Dispute note has lapsed;
- You have completed and filed either a Request to Note in Default or a Request for Default Judgement (depending on the type of claim filed).



All parties are sent the Certificate of Judgement or Certificate of Default Judgement to their address for service.

A court Judgment is valid for **10 years** from the date of Judgment and may be renewed for an additional 10 years on application to and by Order of the Court of Queen's Bench or by the Provincial Court depending on where the order originated. This application must be made prior to the expiry of the judgment.

#### Collecting or Enforcing Judgements

If the party you got the Judgement against (the debtor) does not voluntarily pay, you (the creditor) must take steps to enforce the Judgement. The court does not assist you or pay the amount owed to you, but there are some enforcement remedies available at your expense. Some expenses can be added to the amount the party owes you, but you still must pay these expenses up front.

All enforcement steps are taken through the Court of Queen's Bench. You will need to file the Certificate of Judgement with the Court of Queen's Bench in the Judicial Centre (city) where the Judgement was obtained if you want to use either of the below enforcement processes – garnishment or seizure. You will then prepare a Writ of Enforcement.

If you obtained your Judgement from a Provincial Court office not located in a Queen's Bench Judicial Centre, or if you obtained your Judgement in a different Judicial Centre from the one in which you reside, you can request the Clerk's office to allow you to fax file your Judgement and Writ of Enforcement to the Queen's Bench Judicial Centre in which you reside.

A Writ of Enforcement is a document filed with the Clerk of the Court of Queen's Bench and then registered with the Personal Property Registry which allows you to enforce your Judgment.

It also entitles you to share in money paid to the Clerk as a result of garnishment, or to a Civil Enforcement Agency as a result of seizure. You will require a minimum of four copies of the Writ of Enforcement.

What to include in the Writ of Enforcement:

- Court location (where the Judgement was entered);
- Court file number;
- Full name of the debtor, their address, and whether the debtor is an individual;
  - If the debtor is an individual, you must identify their sex, and if known, the occupation and date of birth.
  - List each debtor separately if there are more than one.
- Full name of creditor, the creditor's address, the Personal Property Registry party code if they have one already, and if the creditor is an individual;

**Note:** If more than one creditor or debtor is involved, use an Addendum page and attach it to the Writ of Enforcement.

- Date of the Judgement as shown on the Certificate of Judgment;
- Total amount of Judgement, including interest awarded at the time of Judgement as shown on the Certificate of Judgement;
- Post-judgement interest which may have accrued since the date of the Judgement.
- Any taxed costs which are specifically ordered by the court as shown on the Certificate of Judgement;
- Current amount owing as of the date the Writ is being filed. This amount is obtained by adding all that is owed and subtracting any payments received;
- Write the name, Personal Property Registry party code, address, telephone, and fax number of the person filing the writ.

Garnishment

Garnishment is a process where money that is owed by the debtor is diverted to their creditors. In other words, someone who owes the debtor money, like a bank or an employer, pays the creditor instead of the debtor. The person or business owing money to the creditor is called a Garnishee.

A Garnishee Summons is addressed to the Garnishee (person or business owing money to the creditor) and directs that the money be paid into court rather than to the creditor.



For example, you can serve a Garnishee Summons on a bank where the debtor has an account. The amount can be in the name of the debtor only or it can be a joint account. The bank must pay the money in the amount up to the amount of all the related Writs into Court.

For a joint account, the bank will pay in that portion which is considered to be the debtor's (i.e., if there are 2 people named on the account, one of whom is the debtor, ½ of the funds would normally be attachable by the Garnishee Summons).

A Garnishee Summons is in effect for **two years** from the date it was issued in all instances except for where a bank account is garnisheed. For a joint bank account, the Garnishee Summons ends the first-time money is paid into court. For all other bank accounts, the Garnishee Summons expires **60** days from the date it is issued. A Garnishee Summons is effective against money owed at the time the Garnishee Summons is served, as well as any future obligations which may arise while the document is current.

A Garnishee Summons issued for a term of two years can be renewed for a further two-year period by filing a Garnishee Summons Renewal Statement within 60 days before the expiry date of the Summons. There is no limit to the number of times a Garnishee Summons can be renewed.

#### What to Include in a Garnishee Summons

- The date the Garnishee Summons is issued by the Clerk of the court;
- The money owed by the debtor, including the total amount owed by the debtor to you and all other related Writ holders;
- The type of obligation (money owing from employment earnings, deposit accounts, etc.);
- Affidavit in Support of Garnishee Summons;
  - Here you state that a Judgement has been obtained against the debtor and the Writ of Enforcement has been registered at the Personal Property Registry. Also include a brief description of the anticipated obligation and state that the Garnishee is within Alberta;
  - This document must be sworn before a Commissioner for Oaths;
- To the Clerk (page three of the form);
  - Registration number and include the Personal Property Registry Writ of Enforcement Registration Number;

- Current amount owing;
- Money still owing to you as of this date;
- The total of any related writs, which includes the total of any related writs as indicated on the Distribution Seizure Search from the Personal Property Registry. Do not include your Judgment amount in this total;
- Probable costs that you might be entitled to. This may include service costs or search costs, for example, but must later be proven by a taxed and filed Subsequent Bill of Costs;
- The sum total which includes all of the above;
- The Certificate of Service on the Debtor will remain blank to be completed by the Garnishee after the service of the Garnishee Summons on the debtor.

### Service of a Garnishee Summons

You must serve three copies of the Garnishee Summons on the Garnishee and provide the Garnishee with an administration fee.

When the Garnishee is an individual, you can serve them with personal service or send it by recorded mail to the individual's residence or to the name and address of any business of the individual.

When the Garnishee is a corporation, you can personally serve an officer or director of the corporation or person in charge of a place of business of the corporation. You can also serve it by recorded mail addressed to the registered or head office of the corporation.

The Garnishee must then serve the debtor with a copy of the Garnishee Summons and complete the Certificate of Service on the debtor. If the Garnishee is unable to serve the debtor, they must state why in their response to the Clerk. The Garnishee will forward the money and Certificate of Service to the Clerk of the Court. The Clerk of the Court will advise you by letter if any funds are paid into Court on your Garnishee Summons, or if the Garnishee does not serve the debtor and complete the Certificate of Service. If this happens, you must serve a copy of the Garnishee Summons on the debtor either personally or by recorded mail. If you cannot serve the debtor using these methods, you can apply for a Court Order allowing you to serve the debtor in a different way or dispense with service and have the money paid out of Court.

## Seizure

Seizure is another process used to enforce a Judgement. After you have registered your Writ of Enforcement at the Personal Property Registry, you may instruct a Civil Enforcement Agency to seize the property of the debtor. You may sell the seized property and divide the proceeds amongst the creditors unless the debtor pays the creditor in the meantime.

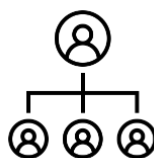


You need to prepare and provide the Civil Enforcement Agency with the following documents:

- **Search:** A Distribution Seizure Search from the Personal Property Registry which can be obtained through an Alberta Registries Agent. This document verifies that your Writ of Enforcement was registered with the Personal Property Registry and that it is active;
- **Warrant:** A document which authorizes the Civil Enforcement Agency to enforce your Judgement by seizing the property of the debtor. The warrant must be filled out and signed by the creditor or their agent with the exception of Related Writs and Seizure Fees and Costs portion at the bottom of the form. This document can be obtained from the Civil Enforcement Agency;
- **Notice of Seizure of Personal Property:** You need four copies. This document notifies the debtor of the seizure of the property to satisfy the debt. This document can be obtained from the Civil Enforcement Agency;
- **Bailee's Undertaking:** This document is used by the Bailiff (the person who takes away the debtor's property), to have a responsible person agree to keep the seized property and deliver it to the Civil Enforcement Agency when instructed (you do not complete any part of this form). This document can be obtained from the Civil Enforcement Agency;
- **Notice of Objection to Seizure of Personal Property:** You need one copy for each debtor to be used by the debtor to object to the seizure. You must write the name and address of the Civil Enforcement Agency;

## Other Creditors

- It is possible that another creditor may have a priority claim against the property you wish to seize. You can conduct a Distribution Seizure Search (for a fee) at Personal Property Registry before instructing the Civil Enforcement Agency to make the seizure.



This type of search determines if there are any registrations of individuals and/or businesses that may have a stake in the distribution proceeds. Performing this search will determine if enforcement proceedings are an option for you and may save you a needless expense;

### Sale

The creditor must instruct the Civil Enforcement Agency to conduct a sale of the seized property. The Civil Enforcement Agency can only do this **15 days** after the Notice of Seizure of Personal Property (in case the debtor wants to object) has been served on the debtor.

If the Enforcement Debtor serves a Notice of Objection, a Court Order must be obtained prior to the seized property being sold. This is a complex process and involves a court hearing. You may want to consult a lawyer to assist in the preparation of the documents and the court application.

### Appeals

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Sometimes, you can appeal a Judgement to a higher court for review. You cannot appeal simply because you disagree with the decision. You can only appeal if:

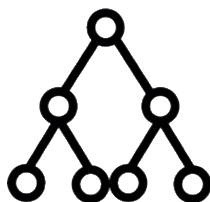
- There was an error about the facts surrounding the action and/or;
- There was an error in how the law was applied in your action;

The party who is appealing the decision is called the **appellant** and the opposing party is called the **respondent**.

How Do I Appeal a Judgement?

Step 1: Within 30 days after the Judgement was given:

1. Complete and file a Notice of Appeal at the Provincial Court where the Judgement was given;
2. Contact the Provincial Court Civil Clerks' office to get details of the trial (date, courtroom number, times, name of the Judge, etc.). You need this information when filing the Notice of Appeal;
3. Order a transcript of evidence. You must pay for this in advance. You will receive a receipt for payment of the transcript. If your appeal is successful, you may be able to recover these expenses;



4. Serve the Notice of Appeal on all of the Respondents. The Notice of Appeal needs to be served personally, by recorded mail, or as directed by the Court of Queen’s Bench;

**Step 2:** Within 37 days after the Judgement was given:

1. File a copy of the Notice of Appeal, copy of the transcript order or invoice showing receipt of payment, and a completed Affidavit of Service proving that the Notice of Appeal was served on all of the Respondents at the Court of Queen’s Bench in the same judicial district where the Judgement was issued;
  - a. Alberta has 11 judicial districts. For example, if your Judgement was issued at the Stony Plain Provincial Court, you will file the Notice of Appeal at the Edmonton Court of Queen’s Bench.

**Step 3:** **Within 3 months** of the date that the Notice of Appeal is filed in the Court of Queen’s Bench:

1. File the transcript of evidence at the Clerk’s office at the Court of Queen’s Bench;
2. Serve the copies of the transcript on all Respondents and any other person the Court of Queen’s Bench directs;
3. File the Affidavits of Service proving the transcript has been served;

Once the transcript has been filed, the Clerk’s office of the Court of Queen’s Bench will send out notice of the hearing which will be set on the next available time.

If the Appellant does not file the transcript within 3 months, the Appeal may be dismissed.

Where Can I Get More Help or Information?

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<b>Alberta Ombudsman</b> 9925-109 Street, Suite 700 Edmonton, AB	<b>Ph: 780-427-2756</b>
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Works independently from the government to receive and investigate complaints made by the public regarding the fairness of public services.



<b>Civil Claims Duty Counsel</b> 2 <sup>nd</sup> floor South, Room 262, Law Courts Edmonton, AB	<b>Ph: 1-800-465-7166</b>
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Provides basic legal advice, procedural information, help with trials, and more

<b>Edmonton Community Legal Centre</b> Telus House, South Tower: Second floor, 10020 – 100 Street Edmonton, AB	<b>Ph: 780-702-1725</b>
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Free legal information, clinics, and advice for some matters to people with low income.

<b>Employment Standards</b> Main Floor 9700 Jasper Avenue Edmonton, AB T5J 4C8	<b>Ph: 780-427-3731</b>
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Government agency that enforces compliance to the employment standards.

<b>Lawyer Referral Service</b>	<b>Ph: 1-800-661-1095 (Toll Free)</b>
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The Lawyer Referral Service can connect you with lawyers who can help with your issue. When you call, you will speak to an operator and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure to let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be a free consultation and brief advice session. **Note:** It is not intended for the lawyer to provide free work.

<p><b>Motor Vehicle Accident Claims Program (MVAC)</b></p> <p>Suite 600, Sun Life Place</p> <p>10123 99 Street NW</p> <p>Edmonton, AB</p>	<p><b>Ph:</b> 780-427-8255</p> <p><b>Toll free:</b> 310-0000 before the phone number</p>
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Ensures victims injured by uninsured or unknown drivers have a place where they can sue and receive payment for their personal injuries.

<p><b>Office of the Alberta Superintendent of Insurance</b></p> <p>402 Terrace Building</p> <p>9515 107 Street</p> <p>Edmonton, AB</p>	<p><b>Ph:</b> 780-643-2237</p> <p><b>Toll free:</b> 310-0000 before the phone number</p>
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Maintains a list of insurance companies operating in Alberta and provides other insurance industry information for consumers.

<p><b>Provincial Court Clerks – Civil (Edmonton)</b></p> <p>1A Sir Winston Churchill Square</p> <p>Edmonton, AB</p>	<p><b>Ph:</b> 780-422-2508</p>
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Can assist in providing information on Provincial Court Civil matters and procedures.

<p><b>Residential Tenancy Dispute Resolution Service</b></p> <p>44 Capital Boulevard, Main Floor</p> <p>10044 108 Street NW</p> <p>Edmonton, AB</p>	<p><b>Ph:</b> 780-644-3000</p>
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An alternative method for going to court for resolving disputes between landlords and tenants.

<b>Resolution and Court Administration Services</b> 9925-109 Street, Suite 700 Edmonton, AB	<b>Toll-free: 1-855-738-4747</b>
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Can provide help navigating the court system and accessing civil mediation.

<b>Service Alberta</b>	<b>Ph: 780-427-4088</b>
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Where you can file a complaint against a business for consumer related issues.

<b>Student Legal Services – Civil Law Project</b> 11036-88 Ave NW Edmonton, AB T6G 0Z2	<b>Contact:</b> <b>Ph: 780-492-8244</b> <b>Web: slsedmonton.com</b>
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The Civil Law Project of Student Legal Services consists of law students and who provide basic legal information on various topics in civil law, such as landlord-tenant matters, employment, and certain small claims. They can also provide information on various resources if you require more in-depth assistance. The caseworkers are also able to act as an agent in certain civil law matters, such as with Residential Tenancy disputes, wrongful dismissal, and WCB hearings. These caseworkers are able to provide free assistance and will work on your matter under the guidance of an advising lawyer. Keep in mind that the services available are subject to eligibility criteria, except for legal information and referrals.

<b>Workers Compensation Board</b> 9912 107 Street Edmonton, AB T5K 1G5	<b>Ph: 780-498-3999</b> <b>Toll Free: 1-866-922-9221</b> <b>Canada Wide: 1-800-661-9608</b>
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Supports employees when an injury occurs on the job. If you have been injured on a job, you may have a right to a claim.