

Families and the Law

Resolving Family Law Disputes



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Who is this booklet for?

This booklet is for people involved in a family dispute. It will provide information on resolving disputes outside of court. If you must go to court, this booklet will provide information on starting or responding to a legal action. There are also some tips that will help you navigate the legal system.

This booklet is one of six in a series called **Families and the Law**. The other booklets in the series may help you further understand family law in Alberta:

- New Parents
- Separation and Divorce
- Parenting Time and Contact
- Financial Support
- Property Division for Married and Unmarried Couples

Family law is complicated. Finding out about the law and your options is a very good first step. There are a lot of people and organizations who can help you. There is a list of resources at the end of this booklet.

NOTE: This booklet is based on **Alberta** law. The law may be different in other provinces.

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. The Legal Resource Centre of Alberta will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

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The Legal Resource Centre of Alberta Ltd, operating as the Centre for Public Legal Education Alberta, is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations, and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referrals on many legal topics.

For more information, please visit www.cplea.ca.

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**LOOK FOR THE
FOLLOWING
SYMBOLS TO FIND:**



Additional resources and **useful links** where you can find more information.



Definitions of some of the common terms used throughout the document.



Tips and things to consider that may apply to your situation.

Resolving Disputes

There are two ways to resolve a family law issue:

1. You and the other party can make your own agreement. You can make one on your own or get a mediator, arbitrator or lawyer to help you come to an agreement.
2. You can let the court decide. The court will issue a court order that you and the other parties must follow.

There are pros and cons of each process.

MAKING AN AGREEMENT



A **consent order** is a court order decided upon by consent between the parties and submitted to a judge for review and signature. A consent order is different from other court orders where the judge makes the final decision.

PROS	CONS
<ul style="list-style-type: none">• More control over the process and outcome• Can change agreement if all parties agree to change• Can present agreement to the court to be included in a consent order• Court can enforce agreements about property division if agreement meets rules set out in the <i>Family Property Act</i>• Usually takes less time and money than going to court	<ul style="list-style-type: none">• Must go to court if parties cannot agree to change agreement• Courts are hesitant to change a legally binding agreement unless a child's well-being is an issue• Courts cannot enforce all types of agreements

The people involved in a dispute are the "parties".

GOING TO COURT

PROS	CONS
<ul style="list-style-type: none">• Court can ensure parties are on the same level if there is a history of family violence or where parties cannot effectively communicate with each other• Court can enforce all court orders	<ul style="list-style-type: none">• Judge who does not know you or your family makes decisions based on evidence before them• Must go to court to change a court order• Can be expensive and take a long time

The next section describes ways you can make an agreement without going to court. The rest of this booklet describes how to start a family law action if you must go to court.

Parenting After Separation is an online course for parents offered by the Government of Alberta. The course helps parents build relationships, communicate effectively and understand the adverse effect that conflict in separation may have on children's brain development and well-being. Anybody can take the course for free online.

Sometimes the course is voluntary. You must take the course before you file a divorce application or a *Family Law Act* application in the Court of King's Bench. A judge may also order you to take it.

For more information on Parenting After Separation, see the Government of Alberta's website:
alberta.ca/pas

and Family Law Practice Note 1 from the court:
albertacourts.ca/kb/areas-of-law/family/family-practice-notes

For more information on the impact of conflict in separation on a child's brain development and well-being, see: www.albertafamilywellness.org/

This booklet is not a do-it-yourself guide. See the Resources section at the end of this booklet for information on where you can get more help.

Making an Agreement

There are many ways to make an agreement to resolve a dispute without going to court. If you cannot agree with the other person, then going to court may be necessary.

Do-It-Yourself Agreement

You and the other person can work together to come up with an agreement. You should write down what you both agree to. Working together saves you time and money and gives you more control over the decisions you need to make. It is a good idea for each of you to talk to a lawyer independently to find out if the agreement is fair and legally enforceable.

You and the other person can present the agreement to a judge as a **consent order**. Once the judge signs the order, the agreement becomes a court order. This means that you can enforce it if the other person is not following the agreement.

Mediation

A mediator helps you work together to come up with a plan that works for everyone. A mediator should be a neutral person and should not take sides. A mediator won't force an agreement on you but can help you come up with an agreement that you both accept.

Arbitration

An arbitrator is a person the parties appoint to make a decision instead of a judge. You can choose someone who is very experienced in family law issues. The arbitrator will make a decision about the issues you present to them.

Mediation-Arbitration

Combining mediation and arbitration, a mediator has the power to make a binding decision (as an arbitrator) if the parties cannot reach an agreement.

Collaborative Processes

This is a type of negotiation where each person has their own lawyer but everyone works together to come up with solutions. Everyone signs an agreement saying they will all work together and no one will go to court. Most of the communication occurs in four-way meetings, with both sides and their lawyers present. Everyone is encouraged to be honest and openly share information.



There are lots of private mediators, arbitrators and collaborative lawyers. See the Resources section of this booklet for more information.



A **limited scope retainer** is an arrangement where a lawyer provides legal services for part but not all of your legal matter. You and the lawyer will agree ahead of time which parts they will do. Find a lawyer who will coach you or provide limited services at **Alberta Legal Coaches & Limited Services**.

<https://albertalegal.org>

If you have children and one parent makes less than \$40,000 per year, you might qualify for **Family Mediation** through Court and Justice Services (CJS): alberta.ca/family-mediation

The Law & Courts

If you have to go to court for a family law issue, you need to know ahead of time which legislation (law) you should use and which level of court you should go to.

Family Law Legislation

Three pieces of legislation (or laws) are commonly used in family disputes in Alberta:

- the *Divorce Act*
- the *Family Law Act*
- the *Family Property Act* (formerly the *Matrimonial Property Act*)



An **adult interdependent relationship** is a type of relationship for unmarried people. There are certain criteria you must meet for your relationship to be an adult interdependent relationship. These criteria are set out in the *Adult Interdependent Relationships Act*. The people in an adult interdependent relationship are **adult interdependent partners**.



If you don't know if you are in an adult interdependent relationship, see CPLEA's **Living Together** booklet for more information.

WHICH LAW SHOULD YOU USE?

<i>Divorce Act</i>	Married	Unmarried
<ul style="list-style-type: none">• Divorce• Decision-making responsibility, parenting time and contact• Child support• Spousal support	YES	NO

<i>Family Property Act</i>	Married	Unmarried
<ul style="list-style-type: none">• Division of property• Exclusive possession of the family home and household goods	YES	YES – if you are in an adult interdependent relationship

Family Law Act	Married	Unmarried
<ul style="list-style-type: none"> • Parentage • Guardianship • Contact • Child support • Partner and spousal support • Other issues 	YES	YES



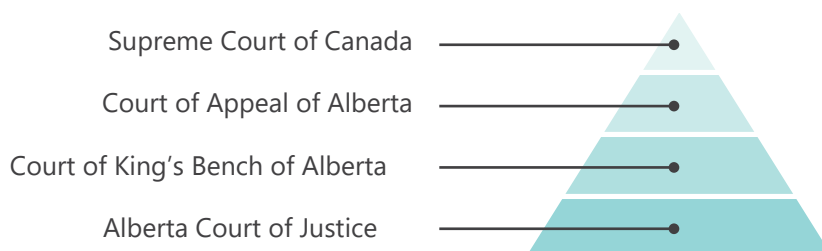
The old *Matrimonial Property Act* still applies to married couples who separated before January 1, 2020.

Levels of Court

There are three levels of court in Alberta. Each level of court has its own processes and rules. The Alberta Court of Justice is the lowest court and the Court of Appeal of Alberta is the highest court. Alberta does not have one family court that decides all family law cases.

The higher courts can sometimes hear appeals of decisions from the lower courts. The higher court can overrule a lower court decision if the higher court decides the lower court made errors. The Court of King's Bench hears appeals of decisions of Alberta Court of Justice judges. The Court of Appeal hears appeals of decisions of the Court of King's Bench justices. The Supreme Court of Canada is the highest court in Canada. It hears appeals from the Court of Appeal of Alberta and all other appeal courts across Canada.

THE LEVELS OF COURTS IN CANADA

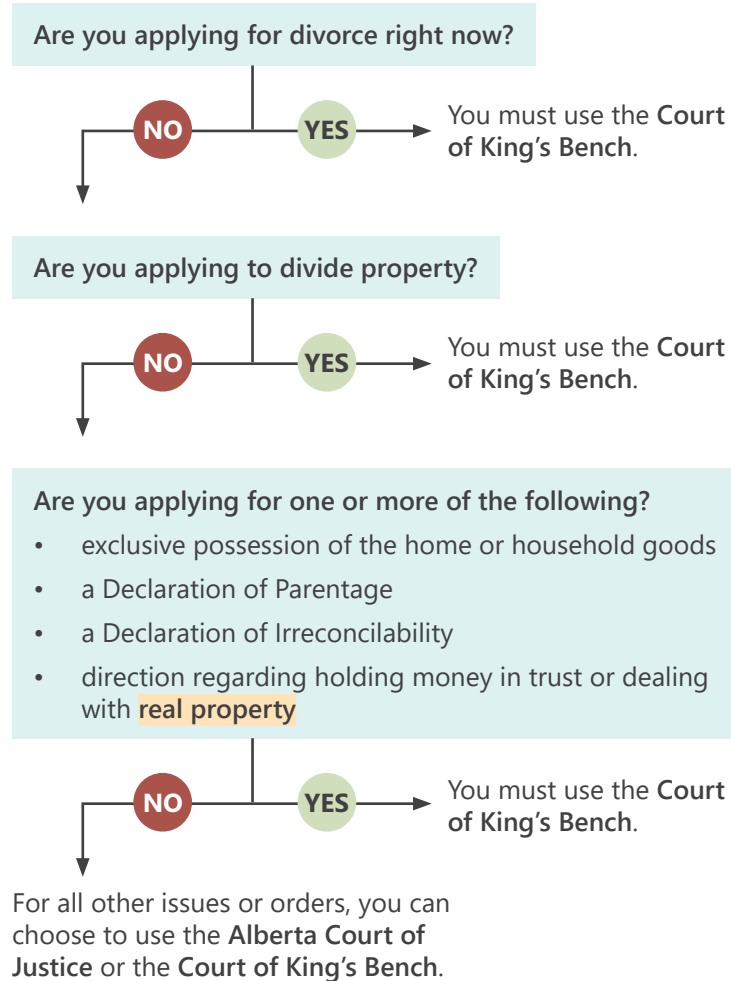


DIFFERENCES BETWEEN THE ALBERTA COURT OF JUSTICE AND THE COURT OF KING'S BENCH

Alberta Court of Justice	Court of King's Bench
Lower court in Alberta	Superior court in Alberta
Appeals are heard in the Court of King's Bench	Appeals are heard in the Court of Appeal
More locations across the province (73 locations)	Fewer locations in the province (13 locations)
More people represent themselves without a lawyer	More people are represented by lawyers
Judge may let you talk about your evidence in court	Not very common for you to talk about your evidence in court Evidence must be written and sworn in a <i>Statement</i> or <i>Affidavit</i>
Person starting the action is the applicant	Person starting the action is the plaintiff
Person responding to the action is the respondent	Person responding to the action is the defendant

All family law cases must start in either the **Alberta Court of Justice** or the **Court of King's Bench**. Use the following chart to figure out which level of court you should use.

WHICH LEVEL OF COURT SHOULD YOU USE?



There are usually fees for filing court documents. If you cannot afford these fees, you can ask the court to waive the fees before you file your documents. For more information on court fees and waivers, see CPLEA's tipsheet called **Court Fees & Waivers in Alberta**.



The **Alberta Court of Justice** is the lower court in Alberta.

The **Court of King's Bench** is the superior court in Alberta.

Real property means land and anything attached to it, such as a house or a condominium. Real property is different from **personal property**.

Personal property means everything you own that isn't real property and includes movable property (like a vehicle, furniture and other personal belongings) as well as financial assets.

If you are using the Family Law Act, you use the same forms in the Alberta Court of Justice and in the Court of King's Bench.

Separated but not yet divorcing?

If you are married but separated from your spouse and not yet applying for divorce, you can apply for parenting orders or child or spousal support in Alberta Court of Justice under the *Family Law Act*. Once you are ready to file for divorce, you must file divorce documents in the Court of King's Bench under the *Divorce Act*.

EXAMPLE

Taylor and Ashley are married but have decided to separate. They have to stay separated for one year before they can file for divorce. Taylor and Ashley have children and need to make a decision now about where the children will live and who will pay child support. Ashley files a *Claim* for a parenting order and child support and spousal support in the Alberta Court of Justice. The court can make an interim (temporary) order. After one year of separation, Taylor and Ashley can file for divorce. They must file for divorce in the Court of King's Bench.

Responding to court documents? Changing court documents?

If you are responding to court documents, you need to file your response documents in the same level of court where the original documents were filed. If you already have a court order and you are applying to change it, you need to apply to the same level of court that originally granted the order.

EXAMPLE

Brian applied for a child support order four years ago. He was divorcing his ex at that time, so he used the *Divorce Act* to apply. When a judge made that order, the children lived mostly with him. Now the children split their time equally between parents. To change the order, Brian or his ex would have to apply to change the original order using the *Divorce Act* in the Court of King's Bench.

Alberta Court of Justice

It is very important to know which court you must use. If you are dealing with your case in the Court of King's Bench, this section does not apply to you (unless you are applying under the *Family Law Act* because the *Family Law Act* processes are the same in both courts).

The Alberta Court of Justice is the more user-friendly court in Alberta. Some call it the court of the people. The Alberta Court of Justice has less formal rules than the Court of King's Bench. In family law cases, many people do not have lawyers represent them. There are more court locations across the province, making it more accessible. However, the Alberta Court of Justice can only hear certain family law cases. It **cannot**:

- grant a divorce
- divide family property
- give exclusion possession of a home or household goods to one person
- grant a Declaration of Parentage
- grant a Declaration of Irreconcilability
- give direction regarding holding money in trust or dealing with real property

It **can** deal with all other family law issues.

The person starting the legal process (called the "action" or "proceeding") in Alberta Court of Justice is the **applicant**. The person responding to the action is the **respondent**.

*The
applicant
and the
respondent
are the
"parties" to
the action.*



At any time in the process, the parties can make an agreement on their own and settle without going to trial. See page 6 for more information on resolving disputes outside of court.



For more information on service, see CPLEA's tipsheet called **Serving Court Documents**.

Overview of the Process

Every family law action is different. The following is a simple overview of a family law action in the Alberta Court of Justice. You may have to take additional steps in your unique case.

1. If you do not have a lawyer, contact a **Family Court Counsellor**.
2. The **applicant** starts the court action by filing a **Claim – Family Law Act** and the matching **Statements** at the courthouse. The court schedules a court date and writes it on the *Claim – Family Law Act* form.
3. The applicant **serves** a copy of the filed documents on each of the respondents.
4. Each **respondent** files a **Response – Family Law Act** and matching **Reply Statements** at the courthouse. Each respondent serves the filed documents on the applicant at least ten days before the court date shown on the *Claim – Family Law Act* form.
5. If the respondent brings up new issues in their *Response*, the applicant files *Reply Statements* in response. The applicant serves them on the respondent at least five days before the court date shown on the *Claim – Family Law Act* form.
6. All parties go to court on the date shown on the *Claim – Family Law Act*.
7. You and the other parties attend **Caseflow Conferences**, hearings in **Docket Court** or other meetings to help you resolve the issues and decide next steps.
8. If you and the other parties cannot resolve all your family issues through resolution processes such as mediation or court hearings, then a judge will make a final decision at a **trial**.

In family law actions, some things are never truly 'final'. The court always has the authority to change a previous decision if the change is in the best interests of the children.

If a judge makes a court order in the Alberta Court of Justice, the court clerk will prepare the order and mail it to the parties.

You may hear a court appearance called a "hearing" or "making an application".



Family Court Counsellors work for the Government of Alberta. They will help you prepare for court, navigate the court process, discuss your options and refer you to other resources. They will meet with you and the other parties. Family Court Counsellors are neutral – they will not take sides. The services that Family Court Counsellors provide may vary in different cities. To find a Family Court Counsellor near you, visit: alberta.ca/family-court-assistance

The **applicant** is the person who files the Claim and speaks first at the hearing.

To **serve** someone means to officially give them documents in a way that can be proven to the court. There are different ways to serve someone including in person, by recorded mail, by fax and by email.

The **respondent** is the other person involved in the hearing, who responds to the Claim.

A **Caseflow Conference** is a private, less formal meeting about the court hearing with an experienced Caseflow Conference coordinator and all the parties. This meeting is only available in Calgary, Edmonton, Grande Prairie and Red Deer.

Docket Court is a very busy courtroom where the judge only has a few minutes to talk about each case. There may be 30 or more cases on the schedule for the same day. Docket Court judges issue many orders. Sometimes the judge will feel there is not enough time in Docket Court to deal with what they are being asked to decide. If that happens, they may refer you to other resources or ask you to appear in court on another date.

A **trial** is a court process where a judge makes a final decision on all outstanding issues between the parties.



CJS stands for Court and Justice Services. Contact them for more information about finding forms and the court process generally.

A **Claim** is a court form requesting a judge to make a decision and grant a court order.

A **Statement** (or **Reply Statement**) is a court form containing facts that is sworn or affirmed before a Commissioner for Oaths and is evidence in court. There are different Statement forms for different types of family law issues.

Starting a Family Law Claim

The first person to file documents with the court for a family dispute has started a family law action.

If you do not have a lawyer, contact a **Family Court Counsellor** before you file your documents at the courthouse. Family Court Counsellors can help you navigate the court system. Contact **CJS** or visit: alberta.ca/family-court-assistance for more information.

To start a family law action in Alberta Court of Justice, you need to file the following forms at the courthouse:

1. **Claim – Family Law Act**
2. **Statement** (that matches the type of order you are asking for)

You can ask the judge for many different things in your **Claim – Family Law Act** form, including:

- guardianship
- parenting arrangements
- contact
- child support
- spousal or partner support
- enforcing time with a child

You can also ask to vary existing orders about these topics. In the *Claim* form, you include your contact info and check off what kinds of orders you want the court to make. You must summarize your evidence in a *Statement*. There are different *Statements* for different types of issues. If your *Claim* addresses more than one issue, you need to file a *Statement* for each issue.

When you file your forms, the court clerk will schedule a court appearance (sometimes called a “hearing”) in front of a judge. Before this date, you may have to attend a **Caseflow Conference**. This is a meeting with a Caseflow Conference Coordinator to make sure you and the other parties are ready for court.

Are you experiencing family violence?

Family Court Counsellors are trained to screen the parties for family violence. If there is a risk of **family violence**, some processes are not appropriate. Family Court Counsellors will provide support as necessary.

Once you have filed the documents, you need to **serve** a copy of the documents on the other side (the respondent). The respondent must receive the documents at least 20 days before the hearing, if they live within Alberta. If the respondent lives outside Alberta but within Canada, they must receive the documents at least 1 month before the hearing. If they live outside of Canada, they must receive the documents at least 2 months before the hearing.

More issues may come up during the legal action. You may need to file more *Claim* forms throughout the process to resolve these issues. The court keeps track of all these issues within one legal action by assigning a **Court File Number** when you first file a document with the court. You must use the same Court File Number when you file documents within the same legal action.

EXAMPLE

Mary and Bob have a child together but are not a couple. Bob is not paying child support. Mary completes and files two documents in the Alberta Court of Justice: *Claim – Family Law Act* and *Statement – Child Support*.

Mary receives a Court File Number. Mary is the applicant and Bob is the respondent. Bob files the following two documents in response: *Response – Family Law Act* and *Reply Statement – Child Support*. Bob files these documents in the Alberta Court of Justice under the same Court File Number as Mary's documents.

Several months later, Mary files another *Claim – Family Law Act* and *Statement – Parenting* to ask the court for a parenting order. Mary files these documents using the same Court File Number as before.



For more information on service, see CPLEA's tipsheet called **Serving Court Documents**.



You can find court forms online at the **Alberta Courts** website: www.albertacourts.ca

You can also contact **Court and Justice Services** for help locating these forms and to ask about the court process generally.

Responding to Court Documents

If someone gives you court documents, do not ignore them. Take steps immediately. One of the documents will usually give you information about what you need to do.



For more information on service, see CPLEA's tipsheet called **Serving Court Documents**.

There are short timelines for responding to court documents. If you do not respond in time, the court may grant the applicant what they want without hearing your side of the story.

First, you should contact a **Family Court Counsellor** for more information about the process.

If you are served with a ***Claim – Family Law Act***, you must file your response and serve it on the applicant at least 10 days before the court date. You can respond to the applicant's request for orders and you can ask the court for other orders.

To respond to a ***Claim*** filed in Alberta Court of Justice, you must file the following forms at the courthouse:

1. ***Response – Family Law Act***
2. ***Reply Statement*** (that matches the type of issue you are responding to)
3. ***Statement*** (that matches the type of new order you are asking for, if applicable)

You must summarize your evidence about the applicant's claims in a *Reply Statement*. If you are asking the court for orders the applicant did not ask for, include evidence about those claims in one or more *Statements*. There are different *Reply Statements* and *Statements* for different types of issues. Make sure you use the right ones. You must file all of your documents with the court.

Once you have filed the documents, you need to **serve** a copy of the documents on the other side. The respondent must make sure the applicant receives the documents at least 10 days before the court date.

Presenting Evidence

There are different ways to present evidence:

1. Oral Evidence

Evidence given by speaking under oath at a questioning, hearing or trial. It is sometimes called *viva voce* evidence (Latin for “by voice”).

2. Written Evidence

Evidence in a written statement that the writer makes under oath. This includes any documents attached to your **Statement** as exhibits.

In the Alberta Court of Justice, your evidence must be in *Statements* and *Reply Statements* that match the issues you are asking the court to deal with. Your *Statement* is evidence in court. The judge treats it the same way as if you were giving oral evidence. Include in the *Statement* all facts you want the judge to hear. You cannot try to prove those facts or add additional facts in court unless the judge gives you permission to. Before giving oral evidence, you must swear or affirm that the evidence you are about to give is true.

Evidence must be relevant and material to the orders you are asking for. Material means that the evidence connects to a fact that you need to prove in your case. Your evidence should help a judge decide the issues you raised. If your evidence is irrelevant, the judge can ignore it. Including inflammatory, prejudicial, useless or unrelated information in your *Statement* will not help.



A **Statement** (or **Reply Statement**) is a court form containing facts that is sworn or affirmed before a Commissioner for Oaths and is evidence in court. There are different Statement forms for different types of family law issues.



You can find the forms for family law actions on the Alberta Courts website: www.albertacourts.ca

You can also contact **Court and Justice Services** for help locating these forms and the court process generally.

Court of King's Bench of Alberta



You can read the *Alberta Rules of Court* at:
alberta.ca/alberta-kings-printer

Practice Notes issued by the Court of King's Bench for family law proceedings are available at:
albertacourts.ca/kb/areas-of-law/family/family-practice-notes



For more information on service, see CPLEA's tipsheet called **Serving Court Documents**.



To **serve** someone means to officially give them documents in a way that can be proven to the court. There are different ways to serve someone including in person, by recorded mail, by fax and by email.

Starting a Family Law Claim

It is very important to know which court you must use. If you are dealing with your case in the Alberta Court of Justice, this section does not apply to you.

This booklet provides only an outline of how to start or respond to a proceeding in the Court of King's Bench. If you are representing yourself, it is your responsibility to learn the rules and procedures that apply to what you are doing. The rules and procedures are set out in the *Alberta Rules of Court* and Practice Notes issued by the court.

In the Court of King's Bench, you can file documents under the *Family Law Act*, the *Family Property Act* or the *Divorce Act*. The court forms and processes are different depending on which law you are using.

If you are in Edmonton or Calgary

To start any type of family law action, you must file a **Notice to Attend Family Docket** at the courthouse. You are the applicant. When you file the *Notice*, the court clerk will schedule a hearing in **Family Docket Court** in the Court of King's Bench in Edmonton and Calgary. Family Docket Court is a first stop for all family law matters. At the hearing in Family Docket Court, the judge will give directions to the parties on what to do next.

Once you have filed the Notice, you must **serve** it on the opposing parties and all other parties involved (such as the lawyer for the children, the Director of Maintenance Enforcement, or the Director of Child and Family Services). You must serve a filed copy of the Notice on the opposing parties at least five days before the court date.

In Docket Court, the judge will tell you and the other parties what you should do next. The court will complete a **Family Docket Court Endorsement** and email you a copy. This document says what the judge wants you to do. The judge can:

- Encourage you and the other parties to agree on certain things and put them in a consent order
- Order you to attend Parenting After Separation by a specific date
- Order you to try other dispute resolution processes to resolve your issues, such as mediation or Early Intervention Case Conferences
- Refer you to **Resolution Counsel**, who are lawyers employed by the court to help you and the other parties reach an agreement or prepare a litigation plan for court
- Schedule the issue for a more formal court process, such as an **application**.

Resolution Counsel are lawyers employed by the court to help you and other parties reach an agreement or prepare a litigation plan for court. Resolution Counsel can help where one or more of the following exists:

- one of the parties is self-represented
- one of the parties earns less than \$90,000
- there are no other or limited forms of other dispute resolution processes available to the parties
- prior efforts at resolution have not been successful
- the parties are experiencing high conflict or prolonged litigation

An **application** is a request for a court order that is usually temporary (in place until a judge makes a final decision). The term “application” refers to two things:

1. The court documents you file to make your request (a **Family Application** and an **Affidavit**).
2. How the judge hears your request. Most applications are heard in court before a judge (sometimes called “making an application”). When you file your court documents, the court clerk will schedule a court date and write this date on the *Family Application*. Other applications are **desk applications**.

This booklet provides more information on filing a Statement of Claim, responding to court documents and presenting evidence. What you need to do depends on what the judge tells you to do.



For more information on **Family Docket Court**, visit the Alberta Courts website: albertacourts.ca/kb/areas-of-law/family/family-docket-court



A **desk application** is a written request, using proper court forms, to a justice in the Court of King’s Bench where you ask the justice to grant a court order. You do not have to go to court.



Protection orders are court orders that stop someone from contacting you, such as an Emergency Protection Order, King's Bench Protection Order, restraining order or peace bond.

The **plaintiff** is the person starting a legal action using a Statement of Claim.

The **defendant** is the person responding to a legal action started using a Statement of Claim.

EXCEPTIONS TO FAMILY DOCKET COURT

You **do not** need to go to Family Docket Court if:

- You are applying for a **protection order** without notice to the other party.
- Your issue falls under the **Simple Desk Applications** process.

Simple Desk Applications are desk applications for up to two issues. Only certain issues can be resolved through a simple desk application. See the list of issues and the process on the Court of King's Bench website: <https://bit.ly/2NOSMkX>

If you are anywhere else in Alberta OR If you are directed to file a claim

You need to figure out which law you are using if:

- you are not in Edmonton or Calgary (and so do not go to Docket Court)
- the judge in Docket Court directs you to file a claim (if you are in Edmonton or Calgary)

If you are using the **Family Law Act**, the court forms are the same and the process is similar to that in the Alberta Court of Justice. See the **Alberta Court of Justice section** for more information.

If you are using the **Family Property Act** or the **Divorce Act**, the person starting the legal process (called the "action" or "proceeding") is the **plaintiff**. The person responding to the action is the **defendant**. The plaintiff starts a legal action by filing a **Statement of Claim**.

Every family law action is different. The following is a simple overview of an action started with a *Statement of Claim* in the Court of King's Bench. You may have to take additional steps in your unique matter.

The plaintiff and the defendant are the "parties" to the action.

1. The plaintiff starts the court action by filing a **Statement of Claim** at the courthouse.
2. The plaintiff has someone else over 18 personally serve a filed copy of the document on the defendant.
3. The defendant files a **Statement of Defence** at the courthouse and serves it on the plaintiff.
4. The plaintiff files and serves a reply to any **counterclaim**.
5. The parties share information with each other (usually about finances).
6. One party may make an **application** to the court, such as for interim support or exclusive possession of the family home and household goods. A judge may make an interim order.
7. The parties may **question** each other to make sure everyone knows what evidence will go in front of the judge. The parties may also participate in settlement meetings, such as **Judicial Dispute Resolution conferences**.
8. Any issues that the parties cannot agree on go before a judge at a **trial**. The judge makes a final order.

In family law actions, some things are never truly 'final'. The court always has the authority to change a previous decision if the change is in the best interests of the children.

Questioning (previously called examinations for discovery) is a process where parties formally ask each other questions under oath at some point before a trial. A court reporter records the questions and answers and creates a written transcript. The purposes of questioning are:

- to help the parties learn about the other side's case (which can lead to settlement)
- to see if the other party will admit facts that are important to your case, and
- to prevent parties from changing their evidence at trial.



A **counterclaim** is a claim made to raise legal issues that the plaintiff did not raise in the Statement of Claim. It is not sworn.

An **application** is a request for a court order that is usually temporary (only in place until a judge makes a final order). For more information, see page 21.

A **Judicial Dispute Resolution conference** is facilitated by a judge and allows the parties to resolve all or part of their claim by agreement.

A **trial** is a court process where a judge makes a final decision on all outstanding issues between the parties.



At any time in the process, the parties can make an agreement on their own and settle without going to trial. See page 6 for more information on resolving disputes outside of court.



Family Court Counsellors

work for the Government of Alberta. They will not take sides but they will help you prepare for court, navigate the court process, discuss your options and refer you to other resources.

CJS stands for Court and Justice Services. Contact them for more information about finding forms and the court process generally.



You can find court forms online at the **Alberta Courts** website: www.albertacourts.ca

You can also contact **Court and Justice Services** for help locating these forms and the court process generally. See the Resources section of this booklet for contact information.

Filing a Statement of Claim

This section only applies to actions started using a Statement of Claim.

The first person to file documents with the court for a family dispute has started a family law action.

If you do not have a lawyer, contact a **Family Court Counsellor** before you file your documents at the courthouse. Family Court Counsellors can help you navigate the court system. Contact **CJS** or visit: alberta.ca/family-court-assistance for more information.

To start a family law action, you must file a **Statement of Claim**. There are different *Statements of Claim* depending on what your issue is.

TYPES OF STATEMENTS OF CLAIM

If you are:

Then use a:

Filing for divorce and dividing family property (and raising issues of parenting, child support and spousal support)

Statement of Claim for Divorce and Division of Family Property *

Filing for divorce only (and raising issues of parenting, child support and spousal support)

Statement of Claim for Divorce

Dividing family property only

Statement of Claim for Division of Family Property *

* If you are using the old *Matrimonial Property Act* because you separated before January 1, 2020, the court forms will have "Matrimonial Property" in the title instead of "Family Property".

The Court of King's Bench has more rules and is more expensive than Alberta Court of Justice. While you can represent yourself, a family law lawyer can help you. **If you cannot afford a lawyer, contact a community legal clinic to see if you qualify for free legal help.** See the end of this booklet for contact information.

Once you have filed the documents, you need to **serve** a copy of the documents on the defendants. You have one year from the date of filing to serve the defendant.

Filing a *Statement of Claim* only starts a legal action. You cannot speak to a judge or get a court order unless you file a **Family Application** form and appear before a judge in court on the scheduled date (unless it is a desk application). You must file and serve a copy of the filed *Family Application* with an **Affidavit** on the other party at least five days before the court date.

More issues may come up during the legal action. You or the other party may need to file many *Family Applications* to go to court throughout the process to resolve these issues. The court keeps track of all the issues raised within one legal action by assigning a **Court File Number** when you first file a document with the court. You must use the same Court File Number when you file documents within the same legal action.

EXAMPLE

Josiah wants a divorce. He prepares a ***Statement of Claim for Divorce*** and takes it to the Court of King's Bench of Alberta at the courthouse. By filing the *Statement of Claim for Divorce*, he has started a court action. He receives a Court File Number. In the claim for a divorce, Josiah is the plaintiff and his ex is the defendant.

Two months later, his ex applies for child support. She files a ***Family Application*** and ***Affidavit***. Josiah files an ***Affidavit*** in response to his ex's *Family Application*. Both Josiah and his ex must file their documents at the same courthouse using the same Court File Number from before. Josiah is a respondent and his ex is the applicant.



A **Family Application** is a court form that starts a family law court application. It is not sworn.

Affidavits are written statements of facts that are sworn or affirmed before a Commissioner for Oaths and filed with the court to be used as evidence in court.

Responding to Court Documents

This section only applies to actions started using a Statement of Claim.

If someone serves you with court documents, do not ignore them. Take steps immediately. One of the documents will usually give you information about what you need to do.



A **counterclaim** is a claim made to raise legal issues that the plaintiff did not raise in the Statement of Claim. It is not sworn.

A **Family Application** is a court form that starts a family law court **application**. It is not sworn.

An **application** is a request for a court order that is usually temporary (only in place until a judge makes a final order). For more information, see page 21.

Affidavits are written statements of facts that are sworn or affirmed before a Commissioner for Oaths and filed with the court to be used as evidence in court.



For more information on service, see CPLEA's tipsheet called **Serving Court Documents**.

There are short timelines for responding to some court documents. If you do not respond to a court document, the court may grant the other party what they want without hearing your side of the story.

To respond to a *Statement of Claim*, you need to file a **Statement of Defence** at the courthouse. In your *Statement of Defence*, you can respond to the claims made in the *Statement of Claim*. You can also file a **counterclaim** if you want the court to make an order about issues that the plaintiff did not raise in the *Statement of Claim*. If you live in Alberta, you must file and serve the *Statement of Defence* within 20 days of first being served with the *Statement of Claim*. If you live outside Alberta but within Canada, you have one month to file and serve. If you live outside Canada, you have two months to file and serve.

To respond to a **Family Application**, you must file an **Affidavit** at the courthouse. In this *Affidavit*, you can respond to the issues raised in the *Family Application* and *Affidavit* you received. You must file and serve your response on the applicant before the court date. The applicant can file another *Affidavit* that responds to the respondent's *Affidavit*. The applicant must also file and serve these documents before the court date.

Evidence for Common Court Applications

This section only applies to actions started using a Statement of Claim.

In a court action, you can give evidence orally under oath or in an ***Affidavit***.

You usually only give oral evidence during a questioning or at a trial. Most of your evidence will be in *Affidavits*. An *Affidavit* is a written statement of facts that is sworn or affirmed before a Commissioner for Oaths and filed with the court to be used as evidence in court. You may prepare many *Affidavits* over the course of your case.

You should read **Family Practice Note 2** for more information before preparing your *Affidavit*. There are sometimes limits for the length of your *Affidavit* and the number of *Affidavits* you can use for one court application. Practice Note 2 also sets out further formatting requirements for *Affidavits*.

albertacourts.ca/kb/areas-of-law/family/family-practice-notes

The list on the next page will provide you with ideas of what to include in your *Affidavit*, depending on what kind of court application you are making. **This list is simply a guide. You may need to include more or less information in your *Affidavit* depending on what you are trying to prove to the judge.**



For more information on presenting evidence in court, see CPLEA's tipsheets called **Evidence in Court**.

You can find court forms on the **Alberta Courts** website:

www.albertacourts.ca

You can also contact **Court and Justice Services** for help locating these forms and the court process generally.



This section has been adapted from British Columbia's Legal Services Society:
<https://bit.ly/2O4Gh51>

WHAT TO INCLUDE IN AN AFFIDAVIT

In your *Affidavit*, you must include the **Background** information at the beginning and the **Remedy Requested** information at the end. What you write in between these two sections depends on the type of court application you are making – partner or spousal support, parenting or child support.

Background

- Age and birthdates of you and your ex
- When and where you and your ex began living together or got married
- Where you lived as a couple
- Names and birthdates of children
- Date of separation
- Current living situation of you and your ex
- Education and current job for you and your ex
- Any previous court orders that relate to the court application

Partner or Spousal Support

- Roles and contributions of you and your ex during the relationship
- Your education and work history (including any periods you have been away from the workforce and why)
- Household budget, including any shortfalls
- Reasons why you cannot support yourself
- Steps you need to take to be able to support yourself
- Education and work history for your ex

Parenting

- Information about your children (names, birthdates, schools and daycares, activities, medical issues or special needs)
- Roles and contributions of you and your ex to the household (primary caregiver, how childcare work was shared, who did household chores)
- Children's bond with parents (Are the children more closely bonded with one parent and what makes you think this?)
- Steps taken, if any, to minimize the effects of the separation on the children
- Time the children have spent with both parents since the separation
- Things that affect you or your ex's ability to spend time with the children
- Special occasions you want to spend with the children

Child Support

- Any voluntary child support payments made by you or your ex
- Information about your children (names, birthdates, schools and daycares, activities, medical issues or special needs)
- Special expenses for the children (activities, medical issues, etc.)
- You and your ex's health care benefits for the children (through work or personally)
- Living arrangements for the children
- Financial information for you and your ex
- Any incorrect or missing financial information for your ex

Remedy Requested

- What kind of order you are asking the court to make

Resources

LEGAL SERVICES

Law Society of Alberta Lawyer Directory

The Lawyer Directory allows people to search for information on a specific lawyer or find a lawyer who can help you with your legal issue based on certain search criteria.

www.lawsociety.ab.ca/public/findalawyer/

Legal Aid Alberta

Toll-free: 1.866.845.3425

www.legalaid.ab.ca

Edmonton Community Legal Centre (ECLC)

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

www.eclc.ca

Student Legal Services (SLS)

Legal clinic in Edmonton. Call for hours and eligibility.

780.492.2226

www.slsedmonton.com/

Calgary Legal Guidance (CLG)

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<https://clg.ab.ca/>

Student Legal Assistance (SLA)

Legal clinic in Calgary. Call for hours and eligibility.

403.220.6637

<https://slacalgary.com/>

Community Legal Clinic – Central Alberta

Legal clinics in Central Alberta. Call for hours and eligibility.

Central Alberta: 403.314.9129

Fort McMurray: 587.674.2282

Lloydminster: 587.789.0727

Medicine Hat: 403.712.1021

www.communitylegalclinic.net

Grande Prairie Legal Guidance

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

<https://www.eclc.ca/grande-prairie-clinic>

Lethbridge Legal Guidance

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

www.lethbridgelegalguidance.ca/

Alberta Legal Coaches & Limited Services

List of lawyers offering legal coaching and limited scope retainers.

<https://albertalegal.org/>

Association des juristes d'expression française de l'Alberta

Centre albertain d'information juridique.

780.450.2443

www.ajefa.ca/

GOVERNMENT & COURT SERVICES

Alberta Court of Justice – Family

<https://albertacourts.ca/cj/areas-of-law/family>

Court of King's Bench – Family

<https://albertacourts.ca/kb/areas-of-law/family>

Court and Justice Services (CJS)

Resolution and court support services across Alberta.

1.855.738.4747

www.alberta.ca/court-and-justice-services

Family Court Assistance

Edmonton Family Court Counsellors: 780.427.8343

Calgary Family Court Counsellors: 403.297.6981

www.alberta.ca/family-court-assistance

Family Mediation

Government of Alberta mediation service for low income Albertans. Offices in Edmonton and Calgary.

Calgary: 403.297.6981

Edmonton: 780.427.8329

Elsewhere in Alberta: 403.355.2414

www.alberta.ca/family-mediation

OTHER RESOURCES

Alberta Law Libraries

Help with finding legal information. Locations across the province.

<https://lawlibrary.ab.ca/>

Alberta Family Mediation Society

Roster of family mediators.

Toll-free: 1.877.233.0143

<https://afms.ca/>

Arbitrations in Alberta

Find a family law arbitrator in Alberta.

<https://divorcearbitrations.ca/>

ADR Institute of Alberta

Roster of mediators and arbitrators.

Toll-free: 1.800.232.7214

<https://adralberta.com>

Collaborative Divorce Alberta Association

Directory of Collaborative Divorce professionals.

<https://collaborativepractice.ca/>

LawNow Magazine – Family Law Column

Recent articles on family law issues.

www.lawnow.org/category/columns/familylaw

Families and the Law

Resolving Family Law Disputes

Centre for
Public
cplea
Legal Education
Alberta

info@cplea.ca
www.cplea.ca



Edmonton Community
Legal Centre

intake@eclc.ca
www.eclc.ca