

PROCEDURES FOR APPLICATIONS TO SET ASIDE CONVICTIONS DURING THE COVID-19 PANDEMIC

In order to make an application to set aside a conviction under section 38 of the *Provincial Offences Procedure Act* you must:

1. AFTER you have read and considered sections 33, 35 and 38 from the *Provincial Offences Procedure Act* set out at the foot of the Affidavit, complete the Affidavit to Set Aside a Conviction form (CTS1931);
2. Swear or affirm it before a Commissioner for Oaths and file it with the court where the conviction was entered.
3. If you are unable to find a Commissioner for Oaths, fax or email, to the court where the conviction was entered:
 - your affidavit, completed and signed on the line above, "Signature of Person Swearing/Affirming Affidavit",
 - a copy of your government issued picture ID and
 - a telephone number you can be contacted at.
4. A court clerk will call you to swear or affirm your affidavit via telecommunication.

IMPORTANT INFORMATION WHEN MAKING AN APPLICATION TO SET ASIDE A TRAFFIC CONVICTION:

5. **You must tell the truth, the whole truth and nothing but the truth.** If you are not truthful in your affidavit, you could be charged with a criminal offence.
6. **Dates are essential.** You must apply to have the conviction set aside within **15 days** of the conviction coming to your attention. Provide clear evidence about what day you found out about the conviction, whether it be due to notice in the mail, a visit to Alberta registries or some other reason.
7. **You should provide ALL relevant information.** For example:
 - If you did not receive the original ticket by mail, include any relevant information such as a recent move and the date you changed your address with Alberta Registries;
 - If you were sick and couldn't attend or contact the court, provide information such as type of illness, medical or hospital visits, and dates;
 - If you were a victim of identity theft, provide a detailed explanation such as how you found out about the identify theft and your additional steps to clear your record, including your police report file number.

The Provincial Court of Alberta

Affidavit on Application to Set Aside a Conviction

Provincial Offences Procedure Act Section 38

I, _____ Name in Full Date of Birth yyyy-mm-dd

of _____ Address in Full Postal Code

Fill in _____ Place and Date of Conviction Operator's Licence No. Violation Ticket No.

MAKE OATH/SOLEMNLy AFFIRM AND SAY:

The date I found out that I was convicted in absence was on _____ Date month-dd-yyyy

State How: How I became aware of the conviction in absence was

Explain (See below) The reason I failed to dispute or appear on this charge(s) is

SWORN/AFFIRMED BEFORE ME

on _____ Signature of Person Swearing/Affirming Affidavit at _____, Alberta.

Justice of the Peace, Commissioner for Oaths or Notary Public in and for Alberta Expiry Date ID Verified

Appearance date and time for your Application: _____ at _____ a.m/p.m in _____ Courtroom #

Under Section 38 of the Provincial Offences Procedure Act, I order that:

- The conviction stands.
The conviction be set aside and a trial be set for _____ Date
The conviction be set aside and the applicant be permitted to make representation concerning the fine to be imposed.
The defendant's guilty plea is accepted and a fine of \$ _____ is imposed.

Judge / Justice of the Peace in and for Alberta

Please Read Carefully

- Trial Date 33 (1) If an offence notice is served on a defendant, the defendant may plead not guilty by signing the not guilty plea on the offence notice and delivering it to the Court office indicated on the offence notice for that purpose.
(2) On receipt of an offence notice under subsection (1) the clerk shall, as soon as is practicable, give notice to the defendant of the time and place of the trial by ordinary mail at his address for service.
Plea of guilty with representations 35 (1) If an offence notice is served on a defendant and the defendant does not wish to dispute the charge but wishes to make submissions as to the penalty, including the extension of time for payment, the defendant may attend at the time and the place specified in the notice for that purpose and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to penalty.
(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.
(3) On accepting a guilty plea under subsection (1), the justice shall enter a conviction and impose a fine equal to the specified penalty or a lesser fine permitted by law and indicate the amount of any applicable surcharge.
Conviction set aside 38 Where a defendant has an excuse for failing to dispute the charge or failing to appear in person or by agent at a trial, the defendant or the defendant's agent may, if not more than 15 days have elapsed since the conviction first came to the attention of the defendant, appear before a justice and the justice on being satisfied by affidavit that the defendant has established on a balance of probabilities that the defendant's excuse is reasonable shall set aside the conviction and
(a) give the person appearing a notice of trial in accordance with section 33, or
(b) proceed in accordance with section 35.