

# PROCEDURES FOR APPLICATIONS TO SET ASIDE CONVICTIONS

To make an application to set aside a conviction under section 38 of the  
*Provincial Offences Procedure Act*:

1. AFTER you have read and considered sections 33, 35 and 38 from the *Provincial Offences Procedure Act* set out below, you must complete and sign the form.
2. File it with the court office where the conviction was entered.
3. A court clerk will contact you with the decision.

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

1. **You must tell the truth, the whole truth and nothing but the truth.** Your statement is deemed to be under oath.
2. **Dates are essential.** You must apply to have the conviction set aside within **30 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.
3. **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.

Provincial Offences Procedures Act	
Trial Date	<p><b>33</b> (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.</p> <p>(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.</p>
Plea of Guilty with Representations	<p><b>35</b> (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.</p> <p>(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.</p> <p><b>(3)</b> 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.</p>
Conviction Set Aside	<p><b>38</b> (1) 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 30 days have elapsed since the conviction first came to the attention of the defendant, file a written application with the Court, deemed to have been made under oath, and a justice on being satisfied by the written application that the defendant has established on a balance of probabilities that the defendant's excuse is reasonable shall set aside the conviction and</p> <p>(a) cause a notice of trial to be given to the defendant, or</p> <p>(b) proceed in accordance with section 35.</p> <p>(2) A justice may direct the defendant or the defendant's agent to appear before the justice if the justice determines it necessary.</p>



The Provincial Court of Alberta

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.

STATE:

The date I found out that I was convicted in absence was on \_\_\_\_\_ Date yyyy-mm-dd

How I became aware of the conviction in absence was

State How:

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

Explain (See below)

If my conviction is set aside, I enter:

A not guilty plea and request the Court to set a date for trial.

A guilty plea, understanding the late penalty will be cancelled, and I will pay the fine within 14 days OR (please check one of the following options)

Request \_\_\_\_\_ months to pay the fine.

Request to appear before a justice to make submissions about the amount of the fine.

Note: When you appear, you must provide a valid reason in law to satisfy the Justice of the Peace the fine should be reduced. Reasons such as a negative interaction with the police officer, a belief that reductions should be automatic, or personal financial hardships are not valid reasons in law. If paying the fine will be a financial hardship, you may ask for time to pay above.

I certify the above statements are true and I acknowledged they are deemed to have been made under oath.

Dated at \_\_\_\_\_ City/Town \_\_\_\_\_ Province on \_\_\_\_\_ Date yyyy-mm-dd

Signature of Defendant or Defendant's agent

Court Decision

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

The conviction stands.

The defendant/defendant's agent appear before the justice to make representation on the matter. (Date to be set by requisite court office).

The conviction be set aside and a trial date set (date to be set by requisite court office).

The conviction be set aside, and the applicant be permitted to make submissions concerning the fine amount.

The conviction be set aside, the defendant's guilty plea be accepted and a fine of \$\_\_\_\_\_ is imposed with a payment due date of \_\_\_\_\_.

Justice of the Peace