

Traffic Court

What you need
to know when
you've been
charged with a
provincial
offence

website at: www.albertacourts.ab.ca

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This booklet provides general information about proceedings in Traffic Court. For legal advice and advice on possible defence strategies relating to the charges against you, you should consult a lawyer.

Traffic Court is part of the Provincial Court of Alberta. It deals with offences (commonly referred to as *provincial offences*) under provincial statutes such as the *Traffic Safety Act* and Regulations under this Act, municipal by-laws and a few federal statutes. Traffic Court does **not** deal with charges under most federal statutes, including the *Criminal Code*.

Trials in Traffic Court are generally heard by a sitting justice of the peace (usually referred to as a *Traffic Commissioner*). However, Provincial Court judges hear trials at some locations in the province. A Provincial Court judge should be addressed in court as *Your Honour*, and a Traffic Commissioner, as *Your Worship*.

1

You Have Been Charged With an Offence. Now what?

If you are charged with a provincial offence, the peace officer will give you one of the following documents:

- violation ticket
- summons to a person charged with an offence
- appearance notice

In most cases the peace officer will give you a violation ticket, which will tell you

- what you have been charged with
- the date and time you are required to attend court
- the court's address.

It is very important that you carefully read the front and back of the violation ticket.

Unless you are otherwise directed, all your court appearances will be at the court location indicated on the violation ticket. You should also direct any correspondence or telephone calls to this court location.

There are two types of violation tickets:

- violation tickets that contain a summons (summons violation ticket)

- ❑ violation tickets that contain an offence notice (offence notice violation ticket)

Each ticket type uses different procedures, which are described below.

1a

Summons Violation Tickets (pink)

Your copy of a summons violation ticket will be pink and it will have the words “Part 2, Summons” in the upper right hand corner.

If the officer has marked the “Court Appearance Required” box, you must appear in court (in person or by agent) on or before the date specified in the ticket. If you do not appear in court as required, a warrant for your arrest may be issued.

If the officer has marked the “Voluntary Payment Option” box with a fine amount, you have the option of paying the specified voluntary payment amount in full or appearing in court (in person or by agent) on or before the date set out in the ticket. By paying the voluntary payment amount you are deemed to have pled guilty to the charge. If you do not pay the voluntary payment amount and you do not appear in court when required to do so, a warrant for your arrest may be issued.

1b

Offence Notice Violation Tickets (yellow or white)

Your copy of an offence notice violation ticket will be yellow or white and it will have the words “Part 3, Offence Notice” in the upper right hand corner.

Read both sides of the ticket carefully. The back provides detailed information on your options.

If you fail to respond to an offence notice violation ticket on or before the date set out on the front of the ticket, you may be convicted in your absence. The amount set out on the front of the ticket (the Voluntary Payment Option) will be assessed as your fine. The fine and any applicable late payment charge will be recorded at the Motor Vehicle Registry and you will be mailed a Notice of Conviction. The Motor Vehicle Registry may not provide you with services until you pay all fines in full. An accumulation of unpaid fines may result in the suspension of your operator’s licence.

2

Do You Need an Interpreter?

If you or your witnesses are not fluent in English, you can request an interpreter. The court will then appoint an interpreter (at no cost to you) to assist you in all proceedings before the court.

3

Lawyers and Agents

You may appear in Traffic Court in person or have an agent* appear on your behalf. If you want a lawyer or paid agent to represent you, you should arrange for one as soon as possible, preferably before you enter a plea to the charge or set a date for trial. The lawyer or agent will need time to prepare your case. If you do not have a lawyer or agent on the day set for the trial, the Traffic Commissioner might not grant you an adjournment to get one, and might require you to represent yourself.

*An agent is someone whom you authorize to represent you in court. An agent might be a friend, relative or associate or might be a lawyer or a non-lawyer who represents individuals in court for a fee. Paid agents who are not lawyers are not allowed to represent persons in some court locations in Alberta.

4

How Do You Get a Lawyer or Agent?

Look through the Yellow Pages under “Lawyers” and call a lawyer who is listed as practicing criminal law or practicing in traffic court. Or call the Lawyer Referral Service and ask for the name of a lawyer who practices in Traffic Court. The province-wide phone number for the Lawyer Referral Service is 1-800-661-1095. If you are in Calgary, the number is 403-228-1722. Lawyer Referral Service will give you the names of three lawyers who deal with this area of the law. You can make an appointment with any or all of the three lawyers. There is no charge for the first half-hour interview with one of these lawyers, after which you can decide whether you want to hire that lawyer to represent you. You should discuss fees.

For paid agents, look in the yellow pages under paralegal services, court agents, traffic law representation or traffic ticket agents.

If you cannot afford a lawyer or paid agent, there may be other services that can assist you.

5a **Legal Aid**

If you cannot afford a lawyer, call the nearest Legal Aid office (listed in both the White pages and Yellow pages directories) to see if they can help you. You can also contact us at www.legalaid.ab.ca under “Contact Us”. Legal Aid does not normally cover provincial offences, but may consider making an exception when there is the likelihood of a jail sentence or job loss associated with a conviction.

Legal Aid is not free. You will be asked to pay back the cost when you are able to.

When you apply to Legal Aid, you must give financial information so that they can determine whether you are eligible. Your eligibility depends both on your financial situation and on the type of legal problem you have.

If Legal Aid cannot assist you, they may suggest other agencies or services that might be able to help.

5b **Alberta Law Line** (a program of Legal Aid of Alberta)

A program of Legal Aid Alberta, Alberta Law Line provides free legal services to Alberta residents and to other people with legal issues in Alberta. These services are by telephone only. The Law Line provides detailed legal information to callers and can provide free legal advice to callers who qualify for advice. The Law Line can be reached toll free at 1-866-845-3425.

Other Services

6a

Student Legal Assistance Edmonton

Student Legal Assistance of Edmonton can give legal information and may assist low-income people in Provincial Court with a number of criminal charges, including breach of probation, certain driving offences, common assault, impaired driving and certain provincial offences. They will not assist persons charged with traffic violations with specified penalties (Voluntary Payment Option). Their hours of operation change during the school term. You can phone them at 780-492-2226 for further information.

6b

Student Legal Assistance Calgary

Student Legal Assistance (SLA) is a non-profit charity that, through law students at the University of Calgary, provides free year-round legal assistance and representation to low-income people in the Calgary area. They work with summary conviction matters under the *Traffic Safety Act* and Regulations under this Act in Provincial Court Traffic, including speeding, driving without insurance, driving without due care and attention (careless driving), etc. If SLA is able to assist, a \$30.00 disbursement charge is levied. Their phone number is 403-220-6637.

6c

Calgary Legal Guidance

Calgary Legal Guidance is a non-profit organization and runs a free evening legal clinic staffed by volunteer lawyers to provide information and advice on a wide range of legal matters. Staff lawyers and law students (when appropriate and on a case by case basis) sometimes provide further assistance. To attend a free evening legal advice clinic, you must pre-book an appointment at 403-234-9266. If Calgary Legal Guidance staff provide further help, you will be charged a \$50.00 fee.

Please Note: Unless there are exceptional circumstances, Calgary Legal Guidance does not represent people in Traffic Court, and they refer these matters to Student Legal Assistance.

6d

Dial-A-Law

Dial-a-Law is a service you phone to listen to pre-recorded tapes containing general legal information, including information about Traffic Court matters. There is no charge to listen to a tape; you can obtain a transcript of a tape for \$2. The phone number is 1-800-332-1091 or in Calgary, 403-234-9022 or 403-228-1722.

6e

Native Counselling Services Of Alberta

Native Counselling works to ensure that Native people receive fair and equitable treatment in the justice system. Their Native Courtworker Program provides Aboriginal people with information about court procedures, their rights and responsibilities under the law, and advocacy, support and referrals to Legal Aid and other resources. Courtworkers also may attend court with their clients.

Native Counselling Services of Alberta:
Edmonton 780-451-4002 • Calgary 403-237-7850
www.ncsa.ca

7

Your First Court Appearance

Your first court appearance date and time is specified on the front of the violation ticket. If the peace officer checked a box that indicates that you must appear between 9:00 a.m. and 3:30 p.m., you must appear between those times. If a particular time, such as 9:30 a.m. or 2:00 p.m. is specified, you must appear at that time.

In Calgary and Edmonton, you attend the “Justice of the Peace” counter to enter your plea. In other locations, you may be required to go into the courtroom. The charge against you will be read out. You will be asked if you plead guilty or not guilty. Before entering a plea of guilty or not guilty you may ask to reserve your plea. If you do not fully understand the charge against you, this will give you time to get additional information or legal advice. If you do not have a lawyer or agent, reserving your plea will give you time to talk to one. If you reserve your plea, you will be given another date to return to court.

First Appearance Centres

Alberta Justice operates First Appearance Centres at Traffic Court in various locations in the province. Provincial Crown prosecutors at these offices are available to speak to persons charged with an offence within that Court location. No appointment is necessary.

If you believe there are extenuating circumstances that should be considered or simply wish to obtain general information regarding the charge against you, you can speak to one of the prosecutors at the First Appearance Centre. They have the authority to review and deal with the matter.

The Calgary office is open from 7:30 a.m. to 12:30 p.m.; the Edmonton office is open from 8:30 a.m. to 3:00 p.m. Contact the Court location listed on the violation ticket for similar services in other communities.

7a

What if you cannot attend court on the appearance date?

If you are unable to attend court on the appearance date, you may do the following:

- You can arrange to have a lawyer or an agent appear for you.
- Offence notice violation tickets have a mail-in option available (see the back of the violation ticket for further instructions or options)
- You may go to the court before the specified appearance date. The clerk at the counter may be able to deal with your ticket right away or give you a new date to appear.

7b

Transfer of charges to another court location for guilty plea

If the officer gave you a summons violation ticket and you intend to plead guilty (see “If You are Thinking of Pleading Guilty”), you may request to have the charge transferred (waived) from the Traffic Court location shown on the violation ticket to a location that is more convenient

for you. For example, if you were charged in Lethbridge and live in Red Deer, you may be able to have the charge waived to Traffic Court in Red Deer for a plea of guilty.

If you want a charge transferred from one Traffic Court location to another for a guilty plea, see the counter clerk at the Traffic Court location to which you want the charge transferred. You will be asked to sign a request for waiver form. You should do this well before your next appearance date, because it will take several days for your request to be processed and documents to be transferred. A Crown prosecutor must approve the request for waiver.

It is not normally possible to transfer the charge to a different court location if you intend to plead not guilty. When you plead not guilty, the trial must normally be held at the location shown on the violation ticket.

What is a Crown prosecutor?

In court proceedings in Canada the government is usually referred to as the Crown, so the person who puts forward the government's case is often referred to as a Crown prosecutor.

8 If You Plead Not Guilty

If you plead not guilty, a trial will be scheduled. See “Where and When Will the Trial Be?”, “Getting Ready For Trial When You Have Pled Not Guilty”, “What Happens at Trial?” and “Sentencing” for information about your trial.

9 If You are Thinking of Pleading Guilty

Find out the possible consequences of a conviction before you plead guilty. What is the maximum fine? Is there a possibility of being sent to jail? Is there a minimum fine? Will you get demerits? Will a conviction affect your insurance rates? Are there any consequences that you may be unaware of? You should consider seeking legal advice prior to entering a guilty plea, particularly in serious cases.

If you plead guilty, several things will happen. Once the guilty plea is entered, the prosecutor will tell the Traffic Commissioner about the offence, often reading from the police report. Make sure the facts the prosecutor presents are correct, since you will be asked if you agree to these facts. If you do not agree with something that is said, you will have a chance to tell the Traffic Commissioner why you disagree. You cannot plead guilty unless you agree that you committed the offence. If you disagree with many of the facts, you should plead not guilty.

If you have a record of prior convictions, the prosecutor should show you a copy of the record before showing it to the Traffic Commissioner. Make sure it is your record and that there aren't any mistakes in it. If there are any mistakes, tell the Traffic Commissioner.

See "Sentencing" for more information.

10 Where and When Will the Trial be?

The violation ticket contains the address for the courthouse. When you plead not guilty, you will be advised of the trial date and the number of the courtroom where the trial will be heard. On the trial date, arrive at least 15 minutes early and look at the appearance list outside the courtroom. Let the Crown prosecutor know you are there. The prosecutor can usually be found sitting at one of the tables in the front of the courtroom.

If proceedings were commenced by a summons violation ticket and you are late or do not attend for trial,

- the court may issue a warrant for your arrest and you can be charged under the *Provincial Offences Procedure Act* with the offence of failing to appear, or
- the trial may be held in your absence.

If the proceedings were commenced by an offence notice violation ticket, and you are late or do not attend for trial, you may be convicted in your absence.

11

Getting Ready For Trial When you Have Pled Not Guilty

If you entered a plea of not guilty at your first appearance and you want to change it to guilty at the trial date, you must tell the Traffic Commissioner that you wish to change your plea to guilty. If you know before the trial date that you want to plead guilty, you should go to Traffic Court and have your matter brought forward and dealt with. Dealing with the matter before the trial date gives time to cancel the witnesses and saves everyone inconvenience.

11a

Find out what evidence there is against you.

You can ask the Crown Prosecutors' Office for disclosure. Disclosure means you can have copies of all the evidence in your case, such as witness statements and the peace officer's notes. The process and time required to get this information vary across the province. You should confirm the exact procedure with the Crown Prosecutors' Office. You can obtain information about how to contact the Crown Prosecutors' Office from the clerk at the counter in Traffic Court, by speaking to the Crown prosecutor in traffic court, or by looking for "Crown Prosecutors" in the Alberta Government section of the blue pages of your telephone directory.

11b

Preparing your defence.

You are presumed innocent until proven guilty beyond a reasonable doubt. Before you can be convicted, the Crown prosecutor must prove, beyond a reasonable doubt,

- that the offence was committed,
- that you are the guilty party, and
- the time, date and place of the offence.

During the trial, the prosecutor will present evidence to the Traffic Commissioner to establish these things. You will be given a chance to question (cross-examine) the prosecutor's witnesses, and you will have a chance to call your own witnesses to give evidence.

11c

Bring your witnesses to court.

Your witnesses must be physically present in court to testify. Letters or written statements from witnesses (even if sworn) will not be accepted as evidence. You can subpoena (compel) a witness to come to court if they are unwilling or if they need it to get time off work. You may pick up copies of subpoena forms at the clerk's office. Fill out one subpoena for each witness and ask the clerk to have it authorized. You may be asked questions about the subpoena. After the subpoena has been authorized, arrange for the police or a private document-service company serve it. You may have to pay a fee for this service. You should allow enough time for the subpoena to be served (at least two weeks).

12

What Happens at Trial?

The rules around trial procedure are too complicated to explain in detail in this booklet. However, this section provides an outline of what happens during the trial.

The Crown prosecutor calls witnesses and is required to present the Crown's case first. You or the prosecutor can ask the Traffic Commissioner for an order for exclusion of witnesses so that all witnesses must leave the courtroom until called back in to testify. This will reduce the chance that witnesses will be influenced by each other's evidence. After the prosecutor is finished asking a witness questions, you will have a chance to ask questions. This is called cross-examination. If you disagree with something that one of the prosecutor's witnesses has told the court, ask the witness questions about the testimony you disagree with.

The prosecutor may also have documents, photographs or other items to show the Traffic Commissioner. This could include things like a certificate of suspension or a certificate of registration. The prosecutor will ask the Traffic Commissioner to have the item introduced as an exhibit. Photographs, diagrams, maps and other visual aids are

admissible as evidence if they are relevant and properly identified.

After you have finished your cross-examination of a witness, the prosecutor can ask the witness further questions that have come up for the first time through your questions. This is known as redirect.

After the prosecutor has finished presenting the Crown's evidence, you will have an opportunity to put forward a defence (something you do not have to do). If you choose to put forward a defence, you do it through your own testimony, by calling witnesses and by introducing exhibits. Remember, you are not required to call any evidence or to testify yourself. Further, the prosecutor can cross-examine you if you testify and can cross-examine any of your witnesses. If you do decide to testify and you have a record of prior convictions, for either provincial or criminal offences, the prosecutor can ask you about your record. If you do not give evidence, the prosecutor can only mention your record if and when the Traffic Commissioner finds you guilty.

After hearing each side's case, the Traffic Commissioner will ask for argument. If you called witnesses, you will go first. If you did not call witnesses, the prosecutor will go first. Argument gives both sides a chance to persuade the Traffic Commissioner. The Traffic Commissioner will then decide whether to find you guilty or not guilty.

13

Sentencing

If you are found guilty, your sentence could include a monetary fine, probation, imprisonment or a combination of these, depending on the offence. In some situations, the Traffic Commissioner may order you to pay compensation for loss or damage to property suffered by a person as a result of the commission of the offence.

Before the Traffic Commissioner sentences you, you will be given a chance to tell the Traffic Commissioner something about yourself, the offence and any special circumstances

that might affect the sentence. The Traffic Commissioner may ask you questions such as how old you are, whether you are married, whether you have a job, how many children you have and whether they live with you. You may want the Traffic Commissioner to know how much income you have and your plans for the future. Remember always to be absolutely honest with the Traffic Commissioner.

If you do not have enough money to pay a fine, tell the Traffic Commissioner that you will need time to pay. The Traffic Commissioner may grant you time to pay. If you cannot pay your fine by the due date, you can apply for an extension at the clerk's office. This must be done before the due date.

On very rare occasions, the Traffic Commissioner may also ask for a pre-sentence report to get more information about you. If that happens, you will not be sentenced until the Traffic Commissioner has had a chance to review the assessment. A probation officer prepares the pre-sentence report. The probation officer may interview you, your family, your employer or anyone else who can provide relevant information. This process usually takes a number of weeks.

If the Traffic Commissioner sentences you to go to jail, you can ask the Traffic Commissioner to allow you to serve your sentence on weekends. In some circumstances, this request will be granted.

14 Victims of Crime Surcharge on Offenders

If you are found guilty and the Traffic Commissioner imposes a fine, a victims surcharge under the *Victims of Crime Act* will automatically be assessed against you (unless you have been convicted of a by-law offence). If you were given a violation ticket with a Voluntary Payment Option, the amount shown on the face of the ticket will already include the applicable surcharge. The victims surcharge is collected by the provincial government and is used to provide programs, services and assistance to victims of crime. The victims surcharge is automatic. The surcharge amount is 15% of any fine imposed.

