



Legal Aid Alberta

A Just Alberta – one person at a time

Checklist of points to cover in court on a *Rowbotham Application*

Name: _____

(as set out in the documents charging you)

1. I have been denied legal aid

I was turned down by *Legal Aid Alberta*

- details of when and where

I had my file reviewed and was denied again (only if you had a review).

- details of when and where

- The reasons for refusing me legal aid
- details of what the *Legal Services Officer* said or told you

To prove point 1, I will use:

- My own testimony
- The *Legal Aid Alberta* service plan
- Other letters or forms from *Legal Aid Alberta*
- Evidence of my own witnesses

2. *I cannot afford a lawyer*

- Because of my job situation
- Job record
 - Proof of employment or layoff
- Because of my monthly income and expenses
- Personal financial statement
 - Cheque stubs
 - Support payment receipts
 - Bills (housing, utilities, etc.)
- (Please use a marker to black out any social insurance numbers, and dates of birth which may be used as identifying information)

- Because of my assets and debts
 - Personal financial statement
 - Bank statements
 - Cheque stubs
 - Income tax returns
 - Property tax statement
 - Bills (mortgage, rental agreement, taxes, etc)
- Because of my dependents (children or spouse I support)

To prove point 2, I will use:

- My own testimony
- My affidavit
- Documents (see lists above)
- Evidence of my witnesses

3. I face a serious charge

- I am likely to go to jail if convicted
 - Details of the charge (the court document also called the information or indictment)
 - Disclosure obtained from the prosecutor
 - The prosecutor's position on sentencing if I am convicted *after a trial*
 - *Referral for Counsel* received from Duty Counsel
 - My criminal record, if any
- Other penalties may have a serious impact on my life
 - For example, a driver's licence needed to work
 - Letter from employer

To prove point 3, I will use:

- My own testimony
- My affidavit
- Documents, such as paystubs that show what I do for a living
- Evidence of my witnesses

4. I cannot defend myself because the charge is too complex for me

- Technical legal issues are involved in my defence
 - Details from lawyer or ask the judge to explain
- The trial procedure is too difficult for me to follow because
 - My education level
 - My language ability
 - My knowledge of the legal process
- There is too much evidence, too many witnesses for me to handle

To prove point 4, I will use:

- My own testimony
- My affidavit
- Documents, such as letter from a lawyer about legal issues
- Evidence of my witnesses

The sample “Notice of Application” and “Affidavit of the Applicant” are attached below. You will need at least 4 copies of each of these documents.

Checklist of things to do for Rowbotham Application

- Gather required information
- Complete and swear the **Notice of Application** and **Affidavit of the Applicant**
- Obtain hearing date at CMO
- File the **Notice of Application** and **Affidavit of the Applicant** at Clerk’s Office
- “Serve” the prosecutor
- Go to Court for the hearing of your application

Docket #: _____

IN THE PROVINCIAL COURT OF ALBERTA

JUDICIAL DISTRICT OF _____

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

(print your full name)

Applicant / Accused

**NOTICE OF APPLICATION FOR FUNDING FOR UNREPRESENTED
ACCUSED (ROWBOTHAM APPLICATION)**

TO:

Crown Prosecutors Office
Suite 600, 332 6 Avenue S.W.
Calgary, Alberta T2P 0B2
(Provincial Prosecutions)

Public Prosecution Service of Canada
900,700 6th Avenue S.W.
Calgary, Alberta T2P 0T8
(Federal Prosecutions)

Crown Prosecutors Office
6th Floor, J.E. Brownlee Building
10365 – 97th Street
Edmonton, AB T5J 3W7
(Provincial Prosecutions)

Public Prosecution Service of Canada
EPCOR Tower
700, 10423 101 St.
Edmonton, AB T5H 0E7
(Federal Prosecutions)

TAKE NOTICE THAT on the _____ day of _____, 20____, in Courtroom #_____, at _____ a.m./p.m., the Applicant will apply to the presiding Judge of the Provincial Court of Alberta, sitting at the City of _____, for the following:

1. An order granting the Applicant funding for the Applicant's representation by a lawyer in this matter.
2. A finding that there has been, or that there is a substantial likelihood that there will be, a breach of the Applicant's rights as guaranteed by section 7 and section 11(d) of the *Canadian Charter of Rights and Freedoms* unless he/she is represented by counsel; and
3. An order for a conditional stay of proceedings of the charges before the court, pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, until such time as the Respondant makes arrangements to provide the Applicant with a state-funded lawyer.

AND FURTHER TAKE NOTICE THAT the grounds for this Application are as follows:

1. The Applicant has been charged with offences as listed in the Information filed in this matter.
2. The Applicant has applied for *Legal Aid Alberta* but was denied.
3. The Applicant is not currently represented by a lawyer and cannot afford to retain a lawyer privately.
4. The case is the result of an investigation by the police and the Crown and is so legally complex and involves such disclosure as to make it beyond the capability of the Applicant to act as the Applicant's own lawyer.
5. Sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* guarantee the Applicant the right to a fair trial within a reasonable time. Given the Applicant's circumstances and the nature of these charges, there is a substantial

likelihood that the Applicant will not receive a fair trial within a reasonable time in this matter if the Applicant is not represented by a lawyer.

6. Accordingly, the Applicant is entitled to a remedy pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, and the Applicant requests that a conditional stay of proceedings be imposed until such time as the Respondent makes arrangements to provide the Applicant with a state-funded lawyer.

AND FURTHER TAKE NOTICE THAT the Applicant intends to rely on:

1. The attached Affidavit of the Applicant made in support of this application; and
2. Such further and other materials as this Honourable Court may allow.

AND FINALLY TAKE NOTICE THAT the Applicant relies on the following authorities in support of this Application:

1. *R. v. Smart*, 2014 ABPC 175;
2. *Rowbotham v. The Queen*, [1988] OJ No 271, 41 C.C.C. (3d) 1 (Ont. C.A.);
3. *R. v. Rain*, 1998 ABCA 315; and
4. *R. v. Malik*, 2003 BCSC 1439.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of _____,
in the Province of Alberta this _____ day of _____, 20_____.

Applicant's Signature _____

Applicant's Name _____

Applicant's Address _____

Telephone _____

Email _____

Docket #: _____

IN THE PROVINCIAL COURT OF ALBERTA

JUDICIAL DISTRICT OF _____

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

(print your full name)

Applicant / Accused

AFFIDAVIT OF THE APPLICANT
IN SUPPORT OF APPLICATION FOR FUNDING FOR UNREPRESENTED ACCUSED
(ROWBOTHAM APPLICATION)

I, _____, MAKE OATH AND SAY AS
FOLLOWS:

1. I am the Applicant in this matter, and as such, I have personal knowledge of the matters set out herein, except where stated to be based on belief.
2. I make this Affidavit in support of my application that the charges against me be conditionally stayed until I am provided with a state-funded lawyer.

3. I applied to *Legal Aid Alberta* for coverage in this matter on the _____ day of _____, 20____. I have been advised by a *Legal Aid Alberta* representative that while my charges are serious enough to warrant legal aid coverage being granted, I have been found to be in excess of the financial income guidelines.
4. On _____, 20__, *Legal Aid Alberta* reviewed of the decision. The Legal Aid Alberta Administrative Reviewer reviewed with me my financial information and advised me that there was no error and that based on my financial information I did not qualify for coverage. I was told that there was no further way to review or appeal the decision unless I could show some error in the financial information. I have attached a copy of that decision.
5. I have attached the Service Plan from *Legal Aid Alberta* informing me of their assessment of my application and their decision in my application.
6. It is my belief that the criteria used by the *Legal Aid Alberta* to decide whether to fund counsel has no direct relationship to my ability to defend myself or whether or not the accused person will receive a fair trial if denied counsel.
7. I am currently: (*check one*)
- Residing at _____, _____, Alberta, _____.
- Incarcerated at _____.
- Of no fixed address.

8. I am I am currently _____ years old, I was born in _____,
and I am: (*check one*)

- A Canadian Citizen.
- A Canadian Permanent Resident.
- Not a Canadian Citizen or a Canadian Permanent Resident.

9. My first language is _____, and: (*check one*)

- I can read, write, and speak either English or French.
- I cannot read, write, and speak either English or French without help from someone else, and I need the following kinds of help reading, writing, or speaking English or French:

10. The highest level of schooling I have completed is: (*check one*)

- Less than High School. The last grade I completed was grade _____.
- High School.
- Technical or Trade School. The institutions I attended and certificates/diplomas I received are:

- College or University. The institutions I attended and certificates/diplomas I received are:

11. I am currently: (*check one*)

- Unemployed.
- Employed as a _____.

12. On a monthly basis, my current income and expenses are as follows:

<i>Income</i>	<i>Particulars</i>	<i>Amount</i>
Employment		
Employment		

Public Assistance		
Pensions		
Other		
Other		
Other		
	<i>Total Income</i>	
<i>Expenses</i>	<i>Particulars</i>	<i>Amount</i>
Taxes and other Deductions		
Housing		
Utilities		
Telephone		
Food		
Household Supplies		
Medical/Dental		

Transportation		
Child/Spousal Support		
Debts		
Other		
Other		
Other		
	<i>Total Expenses</i>	
	<i>Income Less Expenses</i>	

13. I have been employed in these jobs with these employers in the past five (5) years:

<i>Start Date</i>	<i>End Date</i>	<i>Employer</i>	<i>Job Title</i>	<i>Net monthly Income</i>

<i>Start Date</i> <i>(continued)</i>	<i>End Date</i>	<i>Employer</i>	<i>Job Title</i>	<i>Net monthly Income</i>

14. I have attached my Income Tax Returns from the Canada Revenue Agency for the following years, as Appendices to this Affidavit:

<i>Year</i>	<i>Net Income (Line 236)</i>	<i>Appendix</i>
Average Net Income		

15. I have contacted at least three (3) private lawyers who practice in or near _____, Alberta, and who practice criminal law. I asked them how much they would charge to defend me at a trial in this matter. They estimated it would cost about this much to defend me at trial, and requested a retainer of about this much:

Lawyer #1 - Trial: \$ _____ - Retainer: \$ _____,

Lawyer #2 - Trial: \$ _____ - Retainer: \$ _____,

Lawyer #3 - Trial: \$ _____ - Retainer: \$ _____.

16. I currently have the following **assets**:

<i>Asset</i>	<i>Estimated Value</i>

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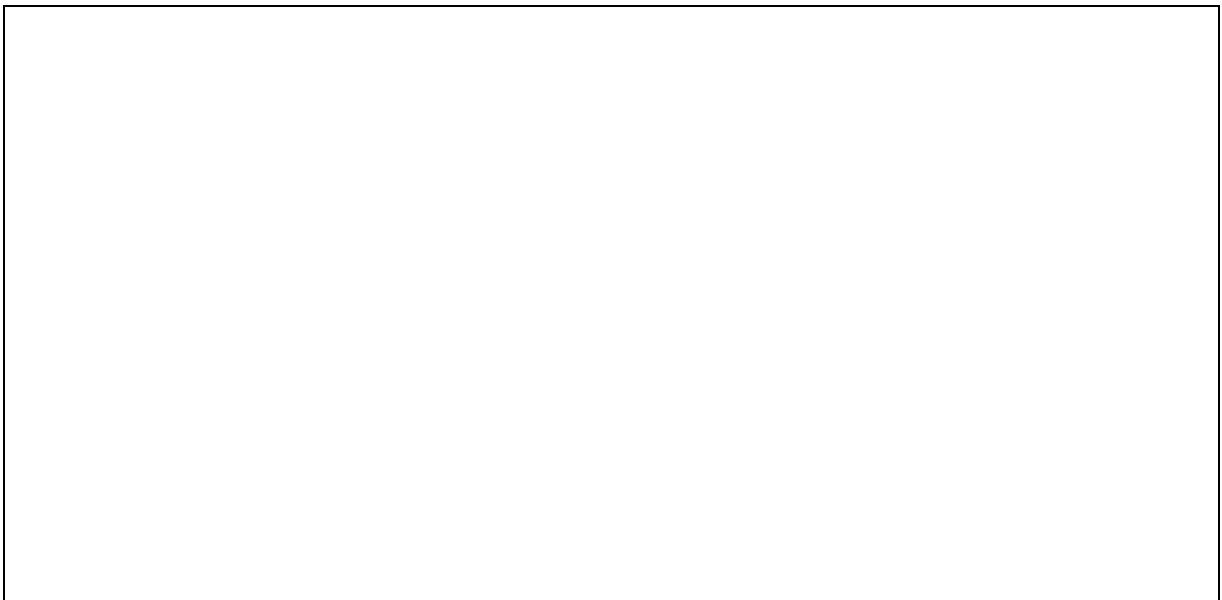
17. I currently have the following **liabilities**:

<i>Liability</i>	<i>Estimated Amount Owning</i>

18. I am not able to hire a lawyer because I cannot afford one. Since I was charged, I have not been able to save enough money to hire a lawyer to defend me because:



19. I believe that my case is serious because I may go to jail if convicted. My case is also serious because:



20. I believe that my case is too complex for me to defend myself because:

21. I make this affidavit in support of this application for funding of a lawyer for me and for no improper purpose.

SWORN BEFORE ME at the)
City of _____, in the)
Province of Alberta, this ____)
day of _____, 20__.

Applicant

A Commissioner for Oaths in and)
for the Province of Alberta)

