Legal Aid Alberta

Criminal Court *Rowbotham* Applications for a Court Appointed Lawyer

If you can't get a lawyer for your criminal trial:

How to make an application to have a lawyer appointed *(Rowbotham* Application) if you have been denied representation through Legal Aid Alberta and cannot afford a lawyer.

The purpose of this document is to explain the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you need to get legal help. See page 9 for further information.

Steps:

- ❑ Read this package.
- ❑ Complete the **Notice of Application** and **Affidavit of the Applicant**
- ❑ Get supporting documents.
- ❑ Make 3 copies of the application and supporting documents.
- ❑ Bring to court to sign with the clerks.
- ❑ File 1 copy with the court, serve 1 copy to the Crown, keep 1 copy (details starting on page 6)
- ❑ At Court, if the Crown agrees, then the Justice will make an order. If the Crown does not agree, then a hearing will be booked.

When can I ask a Justice to appoint a lawyer for me?

The Court has the power, in limited circumstances, to require that a lawyer be appointed for you. This is called a "*Rowbotham Application*" and is named after an important Ontario case about the right to a government-funded lawyer.

IF YOU:

- have been denied legal aid,
- want a lawyer but cannot afford one, and
- are facing a serious criminal charge, and
- this serious criminal charge is too complex for you to run your own trial

Then you can ask a justice to appoint a lawyer for you.

Reading this document will help you to understand:

- why a justice can appoint a lawyer for you;
- what you must prove to the justice;
- when and how to ask the justice to appoint a lawyer for you;
- how to prepare for court; and
- what happens in court.

Why can a justice appoint a lawyer for me?

The Canadian Constitution (*Charter of Rights and Freedoms)* says you have the right to a fair trial.

Justices have a duty to protect your right to a fair trial. The courts have decided that sometimes a person can't have a fair trial without a lawyer.

If you want a lawyer and you have been denied legal aid, you can ask the justice to appoint a lawyer for you. You need to prove four things to the justice:

1. You have been denied legal aid.
2. You can't afford a lawyer.
3. You face a serious charge.
4. You can't defend yourself because the charge is too complex for you.

If the justice decides that you need a lawyer to get a fair trial, the justice can order a delay of your case, which is called a "stay." If the justice orders a stay, Alberta Justice may have Legal Aid Alberta appoint a lawyer for you.

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What do I have to prove to the justice?

You have to convince the Justice of 4 things.

1. ***You have been denied legal aid.***

You need to show the justice proof that you have been denied legal aid and whether any appeal of that decision has been denied by Legal Aid Alberta.

The justice will want to know why Legal Aid Alberta denied your application and whether any appeal has been denied. You will need to provide the letter you received from Legal Aid Alberta to prove this. If you do not have the documents from Legal Aid Alberta, contact Legal Aid Alberta at 1.866.845.3425 and ask for them.

2. ***You can't afford a lawyer.***

You must show the justice that you can't afford a lawyer. Give the justice a clear picture of your finances. Be prepared to tell the justice about such things as:

- your job situation;
- your monthly income and expenses;
- your assets and debts, if any; and
- your dependents (for example, a spouse or children that you support).

It helps if you have some documents to support what you tell the justice. For example, if you are on *Alberta Works* (welfare) or *Assured Income for the Severely Handicapped* (AISH), bring your recent payment stubs. You could also bring a personal financial statement along with income tax returns, payroll records, bank records, or the receipts for support payments.

If you don't provide enough information, it may affect the ability of the justice to order the appointment of a lawyer for you.

You will also have to estimate what it will cost to have a lawyer defend you. This will depend on how long your trial is expected to last and the type of charge. To help you figure this out, ask 3 lawyers for an estimate of time and fees for a case like yours (to find lawyers who can answer this question, see "Where can I get legal help?" on page 9).

3. *You face a serious charge.*

You have to show the justice that you are charged with a serious offence. Usually, "serious" means you will probably go to jail if convicted. If the prosecutor will seek a jail sentence if you are convicted, you are facing a serious charge.

Ask the prosecutor to give you (in writing if possible) the prosecutor's position on sentencing if you are convicted *after a trial*. This may be different from what is written on prosecutor's **initial sentencing position,** which may only state the prosecutor's position if you plead guilty to the charge. You may also ask Legal Aid Alberta Duty Counsel to obtain this information and to give you a *Referral to Legal Aid Alberta*. This form will indicate why Duty Counsel felt your case was serious and whether Duty Counsel believes that the prosecutor will be seeking a jail sentence.

Sometimes penalties other than jail can be serious too. For example, if you need a car to do your work, and a conviction might mean you lose your driver's license that would be a serious consequence, or a conviction may impact your immigration status.

You have to show the justice that the penalties you face if convicted will have a serious impact on your life.

4. *You can't defend yourself because the charge is too complex for you.*

You have to show the justice that your case is too complex for you to defend yourself. For example:

- your case may raise technical legal issues;
- the trial procedure may be difficult for you to follow; or
- there may be too much evidence or too many witnesses for you to handle on your own (this may be especially true if you are in jail).

Ask a lawyer to explain what is complex about your case (to find a lawyer who can answer this question, see "Where can I get legal help?", on page 9). Also ask the lawyer to help you identify what defenses you plan to use.

If you can, talk to a lawyer *before* you go to court. If you can't talk with a lawyer beforehand, ask the justice to help you identify what is complex about your case.

Let the justice know about your:

- education level;
- language ability; and
- knowledge of the criminal process.

This will help the justice decide if you are able to defend yourself.

When and how do I ask the Justice to appoint a lawyer?

To get the justice to order the appointment of a lawyer for you, you have to make a request for an order that you obtain a government-funded lawyer. This request is called a *Rowbotham* application for criminal cases.

Apply to the court where your trial will be heard.

Criminal trials in Alberta take place in the Alberta Court of Justice or the Court of King's Bench. Where your trial is heard depends on what kind of offence you are charged with. It may also depend on how you choose to be tried (you can ask Duty Counsel about this).

Do not wait to make an application even if you are not sure which court will hear your trial. Ask a lawyer or Duty Counsel to explain where you should apply (to find a lawyer who can answer this question, see "Where can I get legal help?" on page 9).

Apply as soon as possible.

Apply as soon as you know you cannot get legal aid.

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How to Make the Application

It **is best to make your application well before your trial starts.** To make a *Rowbotham Application* you have to complete two forms. A copy of a **Notice of Application** and an **Affidavit of the Applicant.** These forms are available from the Legal Aid website. Read them carefully and fill in the blanks with information about yourself and your case. The forms are:

- **Affidavit of the Applicant:** This is a sworn, written statement that gives the Court background information about you and your case. Carefully complete this form. Take this form to the court clerk in order to swear that the information is true. **You cannot sign the form until you are in front of the clerk**.

- **Notice of Application:** This is a document that tells the local prosecutor's office that you're asking for your case to be delayed until a government-funded lawyer is appointed to represent you (you are asking for a **stay of proceedings,** which you may be entitled to have granted under the Constitution). This is a constitutional issue based on your right to a fair trial.

Here's what you need to do:

1. Complete the form by filling in the blanks and attaching any documents you have gathered.
2. Take the Affidavit to the Court Clerks to be sworn and signed.
3. Make 4 copies of the signed **Notice of Application** and **Affidavit of the Applicant.**
4. Ask the clerk if your matter is prosecuted by the provincial or federal prosecutor. Check the appropriate box on the first page of the **Notice of Application.**

The Clerk will stamp four copies and will give you two copies. Your application is now **filed** with the court. *If your case is in Court on the same or a later date, you must go to the Courtroom and adjourn the matter.*

You must now serve the application so that the prosecutor knows you are making a Rowbotham Application.

1. All applications must be served on the Civil Law Department of Alberta Justice. **You can do this by email by sending your *Notice of Application* and *Affidavit of the Applicant* to: just.rowbotham@gov.ab.ca**
2. If you cannot send the documents by email, you will have to serve them in-person at the

Calgary or Edmonton offices.

In Calgary, the office is located at #1710, 639 – 5th Avenue SW, Calgary. This office will stamp both of your copies, keep one, and return one to you. You should bring this copy to court.

In Edmonton, the office is located at 9th Floor, Peace Hills Trust, 10011 – 109 Street, Edmonton. This office will stamp both of your copies, keep one, and return one to you. You should bring this copy to court.

3. If you are not in Calgary or Edmonton, you may take your application to the local Alberta Crown Prosecution Service office and ask them to accept service on behalf of the Civil Law Department. They will often do so as a courtesy. However, the preference is for the documents to be served by email at just.rowbotham@gov.ab.ca.

4. Make sure you keep one copy of each document for yourself. Bring the stamped copy to court with you.

How do I prepare for my Rowbotham Hearing?

If the Crown does not consent to your request, the matter will proceed to a hearing. A date for your hearing will be set by the Court. Think about what you are going to tell the justice.

Think about how you can prove the 4 points. Remember, you can use:

- your own testimony (what you say to the justice under oath);
- your Affidavit;
- other documents (letters, forms, bank statements, cheque stubs, etc.); and
- witnesses.

Meet with a lawyer or ask Duty Counsel for help.

Ask a lawyer to go over the 4 points and what to expect in court (to find a lawyer, see "Where can I get legal help?" on page 9).

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If you don't get legal help, you can still make a *Rowbotham Application.*

If you follow the instructions in this document, the justice will know what you are asking for.

What happens in court at a hearing?

Whether you apply before or after your trial starts, at some point the justice will hold a short hearing about your application to have a lawyer appointed for you.

You speak first.

You speak first. Call the justice "Your Honour," in the Alberta Court of Justice, or "My Lord/My Lady," in the Court of King's Bench. When you have finished, your witnesses speak.

You want to convince the justice that:

1. you have been denied legal aid;
2. you cannot afford a lawyer;
3. you face a serious charge; ***and***
4. you can't defend yourself before the charge is too complex for you.

You need to give evidence on all 4 points. To present your evidence, you can:

- testify under oath;
- use your Affidavit;
- present documents (for example, cheque stubs) during your evidence; ***and***
- call witnesses.

After you or your witnesses testify, the prosecutor may ask you or your witnesses some questions about your application to get a lawyer. The justice may have some questions too. Make sure they are answered truthfully. When you address the justice or the prosecutor, refer to your documents or the other parts of your evidence that support the 4 points that you must convince the justice of.

If the justice says you have made a mistake in the procedure, or that you are missing some documents, *don't give up.* Ask the justice for an adjournment so you can apply again. Also,

ask the justice to explain what you should have done in the first place.

Crown goes next.

The Crown will probably try to prove that you can defend yourself because the charge is not serious or complex, or that you can afford a lawyer.

You get the last submission.

You get a chance to speak again after the Crown has finished speaking. When you address the justice, refer to the parts of your evidence that support the points you are trying to make.

The justice decides.

After you and the Crown have presented evidence, the justice will decide whether to grant your application. Sometimes the court will adjourn before the justice gives the decision.

If the justice decides you should have a government-appointed lawyer, he or she will probably order a conditional stay of proceedings. This effectively means that Alberta Justice will be ordered to provide a lawyer for you. You should contact Legal Aid Alberta at 1.866.845.3425 a few days after the granting of the order to make arrangements for the appointment of counsel.

If the justice denies your application, you cannot appeal it. However, if your circumstances change, you can make another *Rowbotham Application* or reapply to Legal Aid Alberta.

Where can I get legal help?

Even if you cannot afford a lawyer to represent you in court, it is a good idea to talk to a lawyer before your application. Here are some suggestions:

- Speak to a Duty Counsel lawyer at the courthouse. Legal Aid Alberta has Duty Counsel available at all Alberta Court of Justice docket courtrooms in Alberta. If you don't have your own lawyer, Duty Counsel can give you advice about the charges

against you, court procedures, and your legal rights (if time permits). This service is free. If Duty Counsel does not have enough time, ask when a better time would be and come back. Duty Counsel can also speak on your behalf when you appear in court, but Duty Counsel is unable to act as your permanent lawyer.

- You can call Legal Aid Alberta at 1-866-845-3425.

- You can also hire your own lawyer. Even if you pay for just two meetings to get basic advice about your particular case, it could be worth the cost. Find out at your first meeting what kind of help the lawyer can give you and what it will cost.

- If you need assistance with making your application and live in Calgary, you may also be able to get help from Student Legal Assistance (SLA) at the University of Calgary or in Edmonton from Student Legal Services (SLS) at the University of Alberta. You don't need to be a student to ask for help.