

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.
 - [Court contact information](#)
3. Please include an email address or phone number where you can be reached.
4. 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 including, if applicable, any supporting documentation 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, such as a copy of the new registration showing the “issue date” on the document.
 - 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 witness statement showing your police file number.
4. Please complete a **separate application** form for tickets with different conviction dates and different court locations.

Provincial Offences Procedures Act	
Trial Date	<p>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.</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>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.</p> <p>(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.</p> <p>(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.</p>
Conviction Set Aside	<p>38 (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>

RSA 2000 cP-34 s38;2009 c52 s10;2020 c37 s3



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

_____ Email address

_____ Telephone number

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 (CHECK ONE BOX ONLY):

A not guilty plea, understanding the late penalty will be cancelled, and

I request the Court to set a date for trial.

or

A guilty plea, understanding the late penalty will be cancelled, and

I will pay the fine within 30 days.

or

I will appear before a justice to apply to have the fine reduced or to be granted more than 30 days to pay the fine, or both. I understand I must appear in court on the date and time set by the court.

or

I will apply in writing, instead of appearing in a courtroom, to have the fine reduced or to be granted more than 30 days to pay the fine, or both by completing the appendix attached to this application. In doing so, I waive my right to appear before a justice.

Note: Whether you appear before a justice or apply in writing you must be prepared to provide valid reasons to support your application for a fine reduction or more time to pay. If applying for a fine reduction, reasons such as a negative interaction with the peace officer, a belief that reductions should be automatic, or personal financial hardships are not valid reasons in law.

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

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

Signature of Defendant or Defendant's agent (DIGITAL SIGNATURE NOT ALLOWED)

FOR COURT USE ONLY:

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. Failure to attend at the date and time set for the appearance may result in the entire application being deemed to have been abandoned (date to be set by court office).
- The conviction be set aside**, a not guilty plea entered, **and** a trial date set (date to be set by court office).
- The conviction be set aside**, a guilty plea entered, and the applicant be permitted to make submissions concerning the fine amount (date to be set by court office).
- 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

