



COURT OF KING'S BENCH FOR  
SASKATCHEWAN

## CRIMINAL PRACTICE DIRECTIVE #11

### PROCEDURE FOR INFORMING PARTICIPANTS OF THEIR RIGHT TO COUNSEL -- SS. 276, 278.3 AND 278.92 OF THE *CRIMINAL CODE*

**REFERENCE: CRIM-PD #11**

**Effective:** March 27, 2023

**Revised:** June 1, 2023

1. This Practice Directive describes the process by which the Court will perform its obligation to inform a complainant and/or witness of their right to be represented by counsel in relation to the following applications:
  - a) an application pursuant to [section 276 of the \*Criminal Code\*](#) to adduce evidence of a complainant's sexual activity;
  - b) an application pursuant to [section 278.3 of the \*Criminal Code\*](#) to produce third party records relating to the complainant and/or witness; or
  - c) an application pursuant to [section 278.92 of the \*Criminal Code\*](#) to adduce records relating to the complainant that are in the possession of an accused.
2. This Practice Directive also describes the process by which the Court will perform its obligation under [section 278.4\(2.1\) of the \*Criminal Code\*](#) to inform a person who has possession or control of a record that is the subject of an application under [section 278.3](#), and any other person to whom the record relates, of their right to be represented by counsel.

#### **Applications under Section 276 and Section 278.92**

3. Unless otherwise directed, the Prosecutor shall provide a general description of an application brought pursuant to [section 276](#) and/or [section 278.92 of the \*Criminal Code\*](#), including the nature of the evidence and its relevance to an issue at trial, to the complainant as soon as feasible.
4. If the Court directs a hearing pursuant to [section 278.93\(4\) of the \*Criminal Code\*](#),

the Prosecutor shall serve a copy of the application and any supporting materials on the complainant.

5. Notwithstanding paragraph 4, the presiding judge retains the discretion to direct when the complainant will be provided with the application or any redacted portion of it.
6. Unless otherwise directed, as soon as the hearing is set, the Prosecutor shall inform the complainant of their right to be represented by counsel pursuant to [section 278.94\(3\) of the Criminal Code](#). The Prosecutor shall also inform the complainant and/or witness that counsel will be appointed to represent them if requested and if they do not have private counsel.

### **Applications under Section 278.3**

7. An accused who applies for production of a record relating to a complainant and/or witness pursuant to [subsection 278.3 of the Criminal Code](#) shall serve a copy of the application on the Prosecutor, the person who has possession or control of the record, the complainant and/or witness, as the case may be, and any other person to whom, to the knowledge of the accused, the record relates, at least 60 days before the hearing referred to in [subsection 278.4\(1\)](#) or any shorter interval that a judge may allow. Notwithstanding the above, it is the Prosecutor who shall serve a copy of the application on the complainant and/or witness where they are to receive a copy.
8. Upon receipt of the accused's application under [section 278.3 of the Criminal Code](#) and/or as soon as feasible, the Prosecutor shall inform the complainant and/or witness, the person who has possession or control of the record, and any other person to whom the record relates of their right to be represented by counsel pursuant to [section 278.4\(2.1\)](#) and [section 278.6\(3\) of the Criminal Code](#). The Prosecutor shall also inform the complainant and/or witness that counsel will be appointed to represent them if requested and if they do not have private counsel.

### **Procedure for Appointing Counsel**

9. If a complainant and/or witness requests counsel to be appointed to represent them, the Prosecutor shall contact the Court Services Division of the Ministry of Justice to request counsel to be appointed in conjunction with Victim Services.
10. Upon request from the Prosecutor, the Court Services Division of the Ministry of Justice shall:
  - a) In conjunction with Victim Services, appoint counsel for the complainant

and/or witness; and

- b) Notify the Prosecutor of the appointment and provide contact information for counsel.

### **Procedure at Hearing**

11. In advance of a hearing pursuant to [section 278.4](#) or [section 278.94 of the \*Criminal Code\*](#), the Court may confirm on record:
  - a) that the Prosecutor has served a copy of the application and supporting materials on the complainant and/or witness, if applicable;
  - b) that the Prosecutor has informed the complainant and/or witness, a person having possession or control of a record, and/or any other person to whom the record relates of their right to be represented by counsel with respect to the application pursuant to [section 278.4\(2.1\)](#) and [section 278.94\(3\) of the \*Criminal Code\*](#); and
  - c) if applicable, that the Prosecutor has contacted the Court Services Division of the Ministry of Justice to facilitate a request by the complainant and/or witness for representation by counsel.

At the hearing pursuant to [section 278.4](#) and/or [section 278.94 of the \*Criminal Code\*](#), the Court may also confirm on record that the Court's obligations pursuant to [section 278.4\(2.1\)](#) and/or [section 278.94\(3\) of the \*Criminal Code\*](#) have been fulfilled through the process described in this Practice Directive.

This Practice Directive is issued in accordance with a protocol established between the Saskatchewan Court of King's Bench and Saskatchewan Provincial Prosecutions.

Chief Justice M.D. Popescul  
Court of King's Bench for Saskatchewan