



COURT OF KING'S BENCH FOR
SASKATCHEWAN

CRIMINAL PRACTICE DIRECTIVE #4

OBTAINING A SUBPOENA FOR A CRIMINAL PROCEEDING OR TRIAL

REFERENCE: CRIM-PD #4

Effective: April 1, 2017

Revised: May 1, 2018; November 1, 2023; May 1, 2024

1. The purpose of this directive is to ensure that:
 - a) subpoenas are issued only to witnesses who can provide material evidence at a criminal proceeding or trial; and
 - b) persons receiving a subpoena are informed in advance of their choices concerning oaths.
2. Local registrars and deputies will not issue blank subpoenas.
3. Where the Crown applies for a subpoena, the Crown shall complete and file with the local registrar or deputy the attached Form A certificate together with the subpoena(s) to be issued. The name(s) of the witness(es) listed in the certificate must match the name(s) on the subpoena(s) being issued.
4. Where the defence applies for a subpoena, either counsel for the accused or a self-represented accused must complete and file with the local registrar or deputy, the attached Form B certificate together with the subpoena(s) to be issued.
5. All applications for a subpoena pursuant to paragraphs 3 and 4 must be made in the judicial centre where the criminal proceeding or trial is scheduled to take place.
6. Local registrars and deputies are authorized to question the person seeking the subpoena to ensure that the witness named in the subpoena can provide material evidence or testimony at the proceeding or trial. If a local registrar or deputy is not satisfied that the witness named in the subpoena can provide material evidence or testimony at the proceeding or trial, then they shall not issue the subpoena. In that event, the person seeking the subpoena may complete a brief written summary of the evidence the applicant believes the witness can provide at the proceeding or trial and ask the local registrar or deputy to refer the request with the written

summary to a judge.

7. In the case of subpoena requests by the defence, the written summary of the evidence referred to in paragraph 6, the Form B certificate, and any other documents containing the names of the defence witnesses to whom a subpoena is issued or sought must be sealed and not opened except on the order of a judge. The contents of the sealed documents and discussions with a registrar concerning the evidence a defence witness may provide are to be kept confidential.
8. No copy of any subpoena issued is kept on the court file. The only record on the court file of a subpoena being issued is the filed certificate(s) in Form A and/or B.
9. The party seeking the subpoena must print the following notice in a legible font at the bottom of all subpoenas to be issued by the court:

NOTICE ON CHOICE OF OATH: When you come to court you will be offered the choice of swearing an oath or making an affirmation. An affirmation is a non-religious promise to tell the truth. An oath can be taken in any way that is consistent with your religious beliefs, so long as you take an oath which binds your conscience to tell the truth. If you wish to give your evidence by swearing an oath upon a holy text, other than the Christian Bible, Jewish Bible, Koran or Bhagavad-Gita (which are readily available in all King's Bench court houses), contact the local registrar to confirm that the holy text of your choice is available at that court location. Alternatively, you may bring with you any religious symbol or holy text and advise the clerk of the court prior to court commencing, how you wish to take your oath.

10. Where a subpoena is sought from the court to compel a person located outside Saskatchewan to give evidence before a provincial court judge or a justice of the peace pursuant to subsections 699(2)(b) and (3) of the *Criminal Code*, the subpoena will not be granted except by order of a judge of the Court of King's Bench made on Application without Notice by a party to the proceedings.

Subsections 699(2) and (3) of the *Criminal Code*

Order of judge

(2) If a person is required to attend to give evidence before a provincial court judge acting under Part XIX or a summary conviction court under Part XXVII or in proceedings over which a justice has jurisdiction, a subpoena directed to the person shall be issued

(a) by a provincial court judge or a justice, where the person whose attendance is required is within the province in which the proceedings were instituted; or

(b) by a provincial court judge or out of a superior court of criminal jurisdiction of the province in which the proceedings were instituted, where the person whose attendance is required is not within the province.

Order of judge

(3) A subpoena shall not be issued out of a superior court of criminal jurisdiction pursuant to paragraph (2)(b), except pursuant to an order of a judge of the court made on application by a party to the proceedings.

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

FORM A

Court File Number

Judicial Centre of _____

In the matter of: His Majesty The King v _____

CROWN CERTIFICATE TO OBTAIN SUBPOENA

THE UNDERSIGNED HEREBY CERTIFIES:

- 1. That I am a Crown prosecutor.
- 2. That I have determined upon information and belief that the following witnesses are likely to give material evidence in the within proceeding.

(print full name of witness and city/town of residence)

- 3. That I provide this certificate in support of my request that a subpoena be issued to each of the above named persons to testify in the matter.

DATED at _____, Saskatchewan, this _____ day of _____, 20____.

(signature of Crown prosecutor)

(print name of Crown prosecutor)

FORM B

Court File Number

Judicial Centre of _____

In the matter of: His Majesty The King v _____

DEFENCE CERTIFICATE TO OBTAIN SUBPOENA

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am the _____
(defendant/lawyer for defendant)
2. That I believe that the witness(es) named in the subpoena(s) presented to the clerk of the court with this certificate are each likely to give material evidence in this matter.

DATED at _____, Saskatchewan, this _____ day of
_____, 2 _____.

(signature of applicant)

(print name of applicant)