PROVINCIAL COURT
OF SASKATCHEWAN

Guideline for Commencing a Private Prosecution

August 2026

This guide provides information about the Provincial Court process for commencing a private charge, known as a Private Prosecution, against another person under the *Criminal Code of Canada*.

Index

1. Background Information

2. Stages of a Private Prosecution
    a. The Investigative Stage
    b. Preparing Written Material
    c. Applying to the Provincial Court
    d. Laying an Information before a Judge or Justice of the Peace
    e. Notice to the Attorney General
    f. The *Pre-Enquete* Hearing
    g. Crown Counsel may Assume Control of Proceedings
    h. Service of Documents on the Accused
    i. Court Proceedings

3. Frequently Asked Questions

4. Index of Cases Cited

5. Appendices

Disclaimer:

This document does not cover all circumstances that can arise in a Private Prosecution. Rather, it aims to generally summarize the process and, where possible, provide context for the required steps. This document does not contain legal advice. Those interested in commencing a Private Prosecution should consult with a lawyer.

1. **Background Information**:

A Private Prosecution is a prosecution started by a private citizen, not someone who is a member of a law enforcement agency. In Saskatchewan, and the rest of Canada, citizens have the right to initiate a Private Prosecution for an alleged offence by laying an "Information" before a designated Justice of the Peace or a Provincial Court Judge. However, this right is subject to several significant procedural requirements. In addition, the provincial Attorney General has overriding and supervisory authority over any prosecution commenced in Saskatchewan, including Private Prosecutions.

One such procedural requirement is that the applicant must prepare a draft allegation (an "Information") that contains certain critical elements. One required element is that the allegation must claim an offence recognized by law, under the *Criminal Code*, or a federal or provincial statute.

The draft allegation must include:

- What act (or omission) was committed by the accused.
- When the act (or omission) was committed by the accused.
- Where the offence took place.
- The offence must be described with sufficient precision, so that the accused has a clear understanding of what they are being accused of.

As noted, the Attorney General has supervisory authority over all prosecutions commenced within Saskatchewan, including any Private Prosecution. The Attorney General's authority is exercised by Crown Counsel and includes the unilateral authority to intervene in any Private Prosecution. This means the Attorney General has the overriding authority to assume control of a Private Prosecution and make decisions with respect to the investigation and conduct of the proceedings. The Crown Counsel's authority includes the right to direct a stay of proceedings if such action is deemed to be appropriate – even over the objection of the private individual who originally commenced the prosecution.

While it is possible that Crown Counsel may decide to intervene and assume carriage of a Private Prosecution once commenced, it is also possible that Crown Counsel may decide not to take part. In that case, the applicant will be solely responsible for the prosecution of the matter through court. This will require the applicant to:

- Attend court each time the matter is scheduled before the court.
- Provide disclosure to the accused in accordance with the obligations set forth by the Court in *R v Stinchcombe, [1991] 3 SCR 326*.
- Subpoena and call witnesses, and tender evidence in court.

If the applicant does not attend to court, the matter could be dismissed by the presiding Judge or Justice of the Peace for "want of prosecution", which means the matter will be permanently ended, due to inaction by the applicant.

If the Crown, at any time during the below outlined process, intervenes and assumes carriage of the Private Prosecution, the applicant will no longer complete the Private Prosecution process.

2. <u>Stages of a Private Prosecution</u>:

There are several distinct stages to a Private Prosecution. Understanding these stages will help applicants seeking to commence a Private Prosecution to be better prepared.

(a) The Investigation Stage:

<u>Document the incident</u>

If a citizen (applicant) has reasonable and probable grounds to believe that another person (the accused) has committed an offence, the citizen should document their concerns. They should make notes of what happened, document who did it, when it happened, and where the incident(s) occurred. Make a list of witnesses, including their names, address and contact information.

Prosecutions take time to complete, and memories can fade over time. Detailed notes made at the time of the incident can help preserve memories and document the alleged offence in real time.

<u>Involve local police agency</u>

If there is a risk of imminent danger, the citizen (applicant) should immediately contact their local police. However, even if there is no risk of imminent danger, it is recommended that the citizen (applicant) contact police about their concerns. It is possible that the accused person is already under investigation by police or other authority.

It is not a requirement that the applicant contact police before commencing a Private Prosecution, but it is recommended.

(b) Preparing Written Material – Intake Form and a draft Information

The Court has prepared an intake form to assist applicants seeking to commence a private prosecution. Applicants are encouraged to complete the intake form and attempt to prepare a draft Information.

An "Information" is a written document containing one or more accusations, made under oath, by the applicant. An Information states that the applicant has personal knowledge or reasonable grounds to believe that another person (the "accused") has committed an offence. The citizen who believes that another person has committed an offence should prepare a draft Information, which is essentially a document setting forth the particulars of the offence.

For reference, a draft Information template is included as *Appendix D: Draft Information, Form 2.*

There are six (6) main components of an Information:

1. The Informant Area: The draft Information should include the applicant's (the informant's) name, address and occupation. At a minimum, the draft Information is required to state the applicant's name.
2. The Accused's Name: The draft Information should include the name, date of birth, and address of the accused. At a minimum, the draft Information is required to include the name of the accused. *See: R v Buchbinder (1985), 20 CCC (3d) 481.*
3. The Offence(s): The offence (or offences) that the accused is alleged to have committed must be specifically described. The applicant must succinctly describe the offence and yet at the same time include sufficient detail to notify the accused of the exact charges against them. This includes the date of the offence (day, month, year), the place of the offence (including the province), the substance of the offence, and the *Criminal Code of Canada* section or statutory provision that was violated.
4. The Informant's Signature and Jurat: The applicant must sign the Information, together with a declaration (the "jurat") swearing or affirming that the contents of the Information are true.

The offences alleged in an Information can involve violations of criminal law under the *Criminal Code of Canada*, or a federal or provincial statute. More than one offence can be set forth in one Information. However, each count should describe an offence arising from one discrete incident. As noted, each count should include a reference to the specific statutory provision alleged to have been violated from that incident.

When preparing a draft Information, section 581 of the *Criminal Code* requires that each allegation must contain a clear statement (without technical averments) of the offence or offences alleged to have been committed in words sufficient to give the accused notice of the offences alleged against them. A well-drafted allegation contains sufficient details of the circumstances of the alleged offence to allow the accused to identify the specific transaction, act or omission to be proved against them. Simply put, the purpose of section 581 of the *Criminal Code* is to ensure that the accused is reasonably informed of the offences alleged and is thus able to properly defend the matter.

If the applicant is alleging a *criminal* offence, it is recommended that they review the "Forms of Charges" in the *Criminal Code* for the particular offence alleged. The *Criminal Code* contains suggested wording for most *criminal* offences.

(c) Applying to the Provincial Court:

After completing an intake form and preparing a draft Information, the applicant should attend to a local Provincial Court courthouse. The applicant should bring their documents, together with identification.

Because of the many procedural and drafting requirements associated with preparing a draft Information, someone from the Provincial Court will conduct a pre-review of the applicant's material before it is presented to a Justice of the Peace. As a result, the applicant may receive a letter or email from a court official identifying problems that should be addressed before meeting with a Justice of the Peace.

While Court staff cannot give legal advice to private citizens, this pre-review can result in the identification of defects or deficiencies that may assist the applicant in completing their application.

(d) Laying an Information before a Judge or Justice of the Peace:

Once written down in the form of a draft Information, the allegations are presented to a designated Justice of the Peace. If there is no Justice of the Peace in the area, the applicant may be required to travel to another judicial center.

If the Justice of the Peace is satisfied that the proposed Information meets the requirements of the *Criminal Code of Canada*, the applicant (now the "informant") will be asked to "swear" the Information. Swearing is a solemn declaration wherein the informant swears - based on their direct knowledge or information and belief - that the facts and allegations outlined in the Information are true.

An Information is "laid" when it is sworn by the informant before a Justice of the Peace. A criminal proceeding is commenced once an Information has been sworn, but the Information is held in abeyance pending further proceedings.

(e) Notice to the Attorney General:

Section 507.1 of the *Criminal Code* provides that the provincial Attorney General must receive notice when any Private Prosecution is commenced. After the Information has been sworn, staff from the Provincial Court will send notice to Crown Counsel, including a copy of the Information, the applicant's intake form and an additional documentation that may have been provided to the Court by the applicant.

(f) The Pre-Enquete Hearing:

"*Pre-Enquete*" is a French term for "pre-inquiry". It is a formal hearing where a Judge of the Provincial Court will determine whether there is sufficient evidence (a *prima facie* case) to compel the accused to appear in court to answer the charges alleged in the Information. A *Pre-Enquete* hearing is not about the guilt or innocence of the accused. It is about the sufficiency of the information provided by the applicant (the informant).

The applicant and Crown Counsel will be informed of the date, time and location of the *Pre-Enquete* hearing. Unless informed otherwise, the applicant must be present at the hearing. Crown Counsel may or may not be present. The accused will not be present. A *Pre-Enquete* hearing is held "in camera" – meaning it is not open to the public.

During the hearing, the applicant will be called upon to give evidence in support of their application. Crown Counsel are permitted to cross-examine the applicant or any of the applicant's witnesses, to call its own evidence, and to make submissions to the presiding Judge. At this stage, the role of Crown Counsel is that of an officer of the court, with the goal being to assist the presiding Judge in determining if a case for issuing process has been made out.

Crown Counsel may contact the applicant prior to the *Pre-Enquete* hearing and may request copies of any evidence in their possession in support of the charges alleged. Crown Counsel may also contact any relevant law enforcement agencies to determine whether any other agency has been investigating the matters giving rise to the Private Prosecution. The applicant is encouraged to cooperate with Crown Counsel during this review of the matter.

At the completion of the *Pre-Enquete* hearing, if satisfied that a *prima facie* case exists, the presiding Judge will direct that "process" should attach to the Information. Process is the means by which the accused is compelled to attend court to answer the charges alleged in the Information. An arrest warrant may be directed; however, the more common form of process is a "summons". A summons is a document compelling the accused to attend court on a specific day and time at a specific courthouse.

If the presiding Judge is not satisfied that a *prima facie* case exists, the proceedings will come to an end.

***(g) Crown Counsel May Assume Control of Proceedings*:**

As noted, Crown Counsel has overriding authority over all prosecutions commenced within Saskatchewan, including any Private Prosecutions. If it is determined that the charges contained in a Private Prosecution are well-founded, Crown Counsel may decide to assume conduct of the prosecution and take it through to completion. On the other hand, Crown Counsel may decide to take over a Private Prosecution and stop the process; this is done through a "stay of proceedings".

Crown Counsel may also elect to allow the Private Prosecution to run its course through to verdict without involvement. If the Crown does not assume carriage of the matter, the applicant will be solely responsible for the prosecution of the matter through court. This will require the applicant to:

- Attend court each time the matter is scheduled before the court.
- Provide disclosure to the accused in accordance with the obligations set forth by the court in *R v Stinchcombe*, [1991] 3 SCR 326.
- Call witnesses and tender evidence in court.

Simply put, if the Crown does not intervene, the applicant controls the proceedings from start to finish.

***(h) Service of Documents on the Accused*:**

If it was determined during the *Pre-Enquete* hearing that a summons will be used to compel the accused to attend court, an original copy of the summons must be "served on" (provided to) the accused person. Unless Crown Counsel has agreed to prosecution the matter, the applicant is responsible for having the required documents served on the accused. The applicant may ask the local police to service the documents on their behalf, or the applicant may use a private process server.

If a third party is used, the applicant is also responsible for the preparation of an affidavit of the person who served the document on the accused. An affidavit is a legal document that must confirm that the accused was served with the documents and include where and when the service occurred.

An original copy of this affidavit (the "Affidavit of Service") must be filed with the courthouse where the matter is to be heard, prior to the assigned court date.

***(i) Court Proceedings*:**

As noted, unless Crown Counsel assumes carriage, the applicant will be responsible for prosecution of the allegations in court. This will require the applicant to:

- Attend court each time the matter is scheduled before the court.
- Provide disclosure to the accused in accordance with the obligations set forth by the Court in *R v Stinchcombe*, [1991] 3 SCR 326.
- Subpoena and call witnesses, and tender evidence in court.

If the applicant is not in court on a scheduled court date, the matter may be dismissed by the presiding Judge for want of prosecution – permanently ending the matter.

3. Frequently Asked Questions:

Q: What do I write in my application/draft Information?
Answer: You must explain:

- Who you are.
- Why you believe another person has committed an offence.
- Who committed the offence.
- When and where that offence was committed.
- Whether you have talked to the police about the matter.
- Whether you have previously applied for a Private Prosecution for this matter.

Q: Do I need a lawyer for the *Pre-Enquete* Hearing?
Answer: While it is recommended that an applicant obtain independent legal advice, you are not required to appear with a lawyer for any of the proceedings. If you do not have a lawyer, you are responsible for presenting your own evidence.

Q: Can I bring witnesses to the *Pre-Enquete* Hearing?
Answer: Yes. The witnesses may need to testify. It is your responsibility to arrange for your witnesses to attend court on the date, at the time and at the location scheduled for the hearing.

Q: If I swear an Information before a Justice of the Peace, are the police required to investigate my allegations?
Answer: No. The local police are under no obligation to conduct an investigation because a Private Prosecution has been commenced.

Q: If I swear an Information before a Justice of the Peace, are Crown Counsel required to prosecute the charges?
Answer: No. While Crown Counsel has the authority to assume carriage of a Private Prosecution, they are under no obligation to do so. You may be required to conduct the prosecution on your own.

Q: If a Judge is satisfied that a *prima facie* case exists, can Crown Counsel stop me from prosecuting the accused?
Answer: Yes. The Attorney General has overriding authority over all prosecutions in Saskatchewan, including Private Prosecutions. The Crown's authority includes the right to direct a stay of proceedings, even over your objection.

4. Index of Cases Cited

R v Stinchcombe, [1991] 3 SCR 326

R v McHale, 2010 ONCA 361, 256 CCC (3d) 26

R v Friesen, 2008 CanLII 12493, 229 CCC (3d) 97

R v Vasarhelyi, 2011 ONCA 397, 272 CCC (3d) 193

PC v Ontario (AG), 2020 ONCA 652, 396 CCC (3d) 216

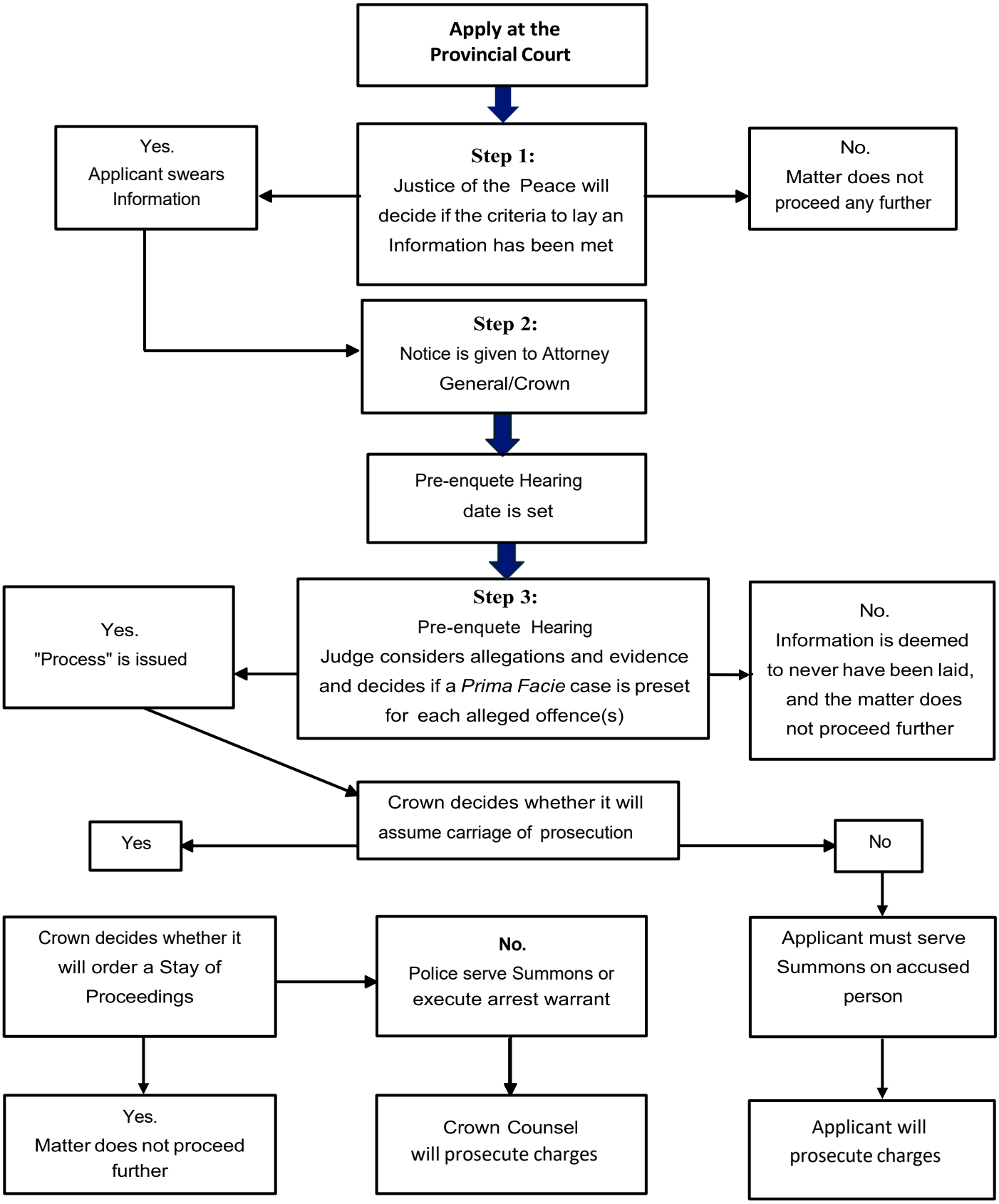
R v Pardo, (1990), 62 CCC (3d) 371

R v Buchbinder (1985), 20 CCC (3d) 481

5. Appendices

Appendix A – The Private Prosecution Process Flowchart
Appendix B – Private Prosecution Application Form
Appendix C – Summons
Appendix D – Draft Information Form

APPENDIX A - The Private Prosecution Process



APPENDIX B - Private Prosecution Application (Criminal Code)

Provincial Court of Saskatchewan

To be completed by the Informant:

The Parties Involved – The Informant and the Accused

Name of **Informant**: _____ Date of Birth: _____

Address: _____ City/Town: _____

Postal Code: _____Phone: _____ Email: _____

Name of **Accused**: _____ Date of Birth: _____

Address: _____ City/Town: _____

Postal Code: _____Phone: _____Email: _____

Relationship of the Accused to the Informant or victim (ie: spouse, neighbour, etc):

_____

Particulars of the Offence

Date: _____ Location: _____

Offence(s) alleged: (please provide sufficient details of the offence(s) alleged)

_____

_____

_____

_____

_____

_____

_____

_____

Witness Information

Name: _____ Name: _____
Address: _____ Address: _____
Phone Number: _____ Phone Number: _____

Police Involvement

Have the police investigated this incident? ☐ Yes ☐ No
What, if anything did the police say or do as a result of your complaint?
_____

Previous Proceedings:

Have you previously sworn an Information / filed a statement of allegation regarding this matter?
☐ Yes ☐ No If
yes, when? _____
Where? _____
Has another Justice of the Peace refused to issue process for this offence? ☐ Yes ☐ No If
yes, when? _____
Where? _____
Do you have any new evidence with respect to this offence? ☐ Yes ☐ No If
yes give details: _____

Preferred Means of Communication:

I wish to receive correspondence from the Court in relation to this matter by:

☐ email at the following email address: _____
☐ mail at the following address: _____
☐ pick up at the criminal counter at the courthouse

_____ _____

Signature of Informant **Date**

APPENDIX C – Draft Information

Province of Saskatchewan
Province de Ja Saskatchewan
Canada

Form2
(Sections 506 and 788}

Informatlon: _____

Information

This is the Information of _____ Date of Birth: _____

of _____, Saskatchewan

hereinafter called the Informant. The Informant says that he/she has reasonable and probable grounds to believe and does believe that:

_____, Date of Birth: _____

of _____

on or about the _____ day of _____ A.D. 20 _____

at _____ in the Province or Saskatchewan

did (insert particulars of offence charged)

_____
Signature of Informant

SWORN before me

this _____ day of _____ A.D.

20 _____ at _____

in the Province of Saskatchewan.

.

_____
A Judge or Justice of *the Peace in and for Saskatchewan*

I hereby CONFIRM, CANCEL

☐ The Appearance Notice, ☐ The Undertaking.

Dale: _____

_____
AJudgeorJustice of *the Peace in and for Saskatchewan*

APPENDIX D - Summons

SUMMONS TO A PERSON CHARGED WITH AN OFFENCE/ SOMMATION Á UNE PERSONNE INCULPÉE D'INFRACTION

Form/Formule 6
Section/Article 2

CANADA
Province of/de la Saskatchewan

Information Number:_____

Occurrence Number: _____

To/Á _____ Date of Birth/Date de naissance:(dd/month/yyyy):_____

Of/de _____

Because you have this day been charged with/ATTENDU que vous avez, ce jour, été inculpé d'avoir:

THEREFORE, you are ordered, in His Majesty's Name: /En conséquence, les présentes vous enjoignent, au nom de Sa Majesté:

to attend Court on/ d'être présent au tribunal le:

Date: _____ **Time**/Heure**:** _____ ☐ AM ☐ PM

Court number/*N. de la sale d'audience*: _____

Court Address/*Adresse du tribunal*: _____, Saskatchewan

or before any Justice for Saskatchewan who is there, and to attend court at any time after as required by the court, in order to be dealt with according to law. *Ou devant un juge de paix pour Saskatchewan qui s'y trouve et d'être présent par la suite selon les exigences du tribunal, afin d'être traité selon la loi.*

You are warned that, unless you have a lawful excuse, it is an offence under subsection 145(3) of the *Criminal Code* to fail to appear for the purposes of the *Identification of Criminals Act* or to attend court, as required in this summons.

Vous êtes averti que, à moins d'avoir une excuse légitime, vous commettez une infraction en vertu du paragraphe 145(3) du *Code criminel* si vous omettez de comparaître pour l'application de la *Loi sur l'identification des criminels* ou d'être présent au tribunal en conformité avec la présente sommation.

If you commit an offence under subsection 145(3) of the *Criminal Code*, a warrant for your arrest may be issued (Section 512 or 512.1 of the *Criminal Code*) and you may be liable to a fine or to imprisonment, or to both.

Si vous commettez l'infraction prévue au paragraphe 145(3) du *Code criminel*, un mandat pour votre arrestation peut être décerné (articles 512 et 512.1 du *Code criminel*) et vous êtes passible d'une peine d'emprisonnement et d'une amende, ou de l'une de ces peines.

If you do not comply with this summons or are charged with committing an offence after it has been issued to you, this summons may be cancelled and, as a result, you may be detained in custody (Subsection 524(4) and (6.2) of the *Criminal Code*).

Si vous ne vous conformez pas à la présente sommation ou si vous êtes accusé d'une infraction après qu'elle vous a été délivrée, la présente sommation peut être annulée et, par conséquent, vous pourriez être détenu sous garde (paragraphe 524(4) et (6.2) du *Code criminel*).

DATED/ FAIT le_____, at/à _____,
in the Province of Saskatchewan/dans la province de la Saskatchewan.

_____

Signature of judge, justice, clerk of the court or chairperson of the Review Board
Signature du juge, du juge de paix, du greffier du tribunal ou du président de la commission d'examen