



Practice and Procedure

ACTION	NA	DATE DUE	DATE DONE	Notes
1. Receipt of Instructions <ul style="list-style-type: none"> • Initial contact by the client or agent <ul style="list-style-type: none"> • Verify the potential client's identity in accordance with the Law Society of Saskatchewan's Client Identification and Verification Rules 				
<ul style="list-style-type: none"> • Gather additional information from: <ul style="list-style-type: none"> ○ Caller: <ul style="list-style-type: none"> ➤ Name 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Address 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Telephone/cell number/e-mail address 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Relationship to the client 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ Caller/client: <ul style="list-style-type: none"> ➤ Name of client 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Date of birth 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Present location, including phone/cell number/e-mail address and number at which messages can be left (bearing in mind confidentiality, always determine who else might answer the phone or pick up messages) 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ The nature of the charge or issue facing the caller/client, including the relevant statute and section number (assess client's age as of the date of the alleged offence to determine relevancy of the <i>Youth Criminal Justice Act</i>, SC 2002, c 1) 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Information number and police file number if available 				

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➤ Date, time and location of court appearance				
<ul style="list-style-type: none"> • Decide whether to accept the case, considering: <ul style="list-style-type: none"> ○ The nature of the charge. 				
<ul style="list-style-type: none"> ○ Your assessment of actual and potential conflicts of interest. 				
<ul style="list-style-type: none"> ○ The duty to make legal services available to the public (Code of Professional Conduct, The Law Society of Saskatchewan, 2012, c 4.1-1). 				
<ul style="list-style-type: none"> ○ The complexity of the case and your experience in that area of the law. 				
<ul style="list-style-type: none"> ○ The amount of your fee and whether it will be paid. 				
<ul style="list-style-type: none"> ○ Whether it is an appropriate case to apply for court-appointed counsel. 				
<ul style="list-style-type: none"> • If you do not wish to act: <ul style="list-style-type: none"> ○ Advise caller and, if necessary/appropriate, suggest names of alternate counsel, lawyer referral or Legal Aid. 				
<ul style="list-style-type: none"> ○ Make record of advice given. 				
<ul style="list-style-type: none"> • If you are prepared to act: <ul style="list-style-type: none"> ○ If you were initially contacted by someone other than the client, get confirmation directly from the client that he/she wishes to instruct you or arrange to get this confirmation. 				
<ul style="list-style-type: none"> ○ Advise caller and the client of the scope and amount of your retainer and necessary arrangements. 				
<ul style="list-style-type: none"> ○ If the client (or someone on the client's behalf) is to deposit money into trust using a credit card, consider requiring the party making the deposit to sign the credit card authorization except in unique circumstances. Failing to do so can leave you open to a client later 				

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obtaining a reversal of the charge from the credit card company.				
<ul style="list-style-type: none"> ○ Prepare and obtain a signed written retainer agreement. 				
<ul style="list-style-type: none"> ○ If the scope of legal services to be provided is limited, ensure the client understands this and advise the court and other concerned parties of the limited nature of the retainer. Ensure that your retainer letter reflects scope of services. 				
<ul style="list-style-type: none"> ○ Arrange a time when you can confer with the client. 				
<ul style="list-style-type: none"> ● Initial general advice/precautions/considerations: <ul style="list-style-type: none"> ● Advise the client not to discuss the case with anyone and caution that anything said could be used as evidence in court. 				
<ul style="list-style-type: none"> ● Emphasize that both oral and written statements to anyone can be used against a client. 				
<ul style="list-style-type: none"> ● If you anticipate further police contact with your client, advise client of right to remain silent and right to counsel and advise him/her to exercise those rights. 				
<ul style="list-style-type: none"> ● Be cautious of discussing facts of the incident in question with the client over the telephone. 				
<ul style="list-style-type: none"> ● Determine whether you require a waiver of confidentiality/privilege in order to discuss the case with other family members or designated representatives, but be very careful with any waivers and in particular, waivers of confidentiality and privilege relating to the facts of the incident in question. 				
<ul style="list-style-type: none"> ● If the police have not yet charged the client, consider whether representations should be made to the police (by you) to prevent this. 				
<ul style="list-style-type: none"> ○ If the <i>Youth Criminal Justice Act</i>, SC 2002, c 1, applies, consider reminding the police of their duty under section 				

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6 of that Act to consider extra-judicial resolution without charges.				
<ul style="list-style-type: none"> • If the client is in custody: <ul style="list-style-type: none"> • Inquire of the police/Crown what charges have been or are expected to be laid. 				
<ul style="list-style-type: none"> • Inquire of police/Crown about other outstanding charges or warrants. 				
<ul style="list-style-type: none"> • Tell the police you have advised the client not to discuss the case with anyone, or to provide a statement. You may ask that the client not be interviewed, but understand that the police are not obligated to comply. 				
<ul style="list-style-type: none"> • Inform the client that the request to the police to refrain from questioning the client is not binding and police may still attempt to question. 				
<ul style="list-style-type: none"> • Advise the client not to discard anything that may contain DNA evidence (e.g., tissues, bandages, comb, hair, etc.). 				
<ul style="list-style-type: none"> • Obtain police/Crown position on interim release from custody. 				
<ul style="list-style-type: none"> • Gather information including: <ul style="list-style-type: none"> • Disclosure – diligently pursue your client’s right to full disclosure of all relevant information in the possession or control of the Crown and third party Crown entities, and/or the police that relate to the investigation of the charges at issue and the credibility of the parties or police witnesses (see Production and Disclosure checklist). Your written request for disclosure should include a request for, at a minimum: <ul style="list-style-type: none"> ○ A copy of the information/indictment. 				
<ul style="list-style-type: none"> ○ A summary of the circumstances of the alleged offence(s). 				

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<ul style="list-style-type: none"> ○ All police reports, including reports generated for internal purposes such as “use of force” reports and “drug disposition” reports. 				
<ul style="list-style-type: none"> ○ All police notes. 				
<ul style="list-style-type: none"> ○ Any statements attributed to your client, whether oral or in writing, and any audio/video recordings of same. 				
<ul style="list-style-type: none"> ○ Any statements made by any other parties including witnesses or accomplices, whether oral or in writing, including copies of the original written statement and any audio/video recordings, whether or not the Crown intends to call these people as witnesses. 				
<ul style="list-style-type: none"> ○ The names and addresses obtained from any other potential witness whether or not a statement was obtained. 				
<ul style="list-style-type: none"> ○ Any criminal record being alleged against your client. 				
<ul style="list-style-type: none"> ○ If a search warrant was used, obtain: <ul style="list-style-type: none"> ➤ A copy of the warrant. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ A copy of the Information to obtain the warrant. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Copies of the return(s) to justice. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Copies of any documents seized. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Any police reports generated by reason of the search. 				
<ul style="list-style-type: none"> ○ If any private communications were intercepted during the investigation, obtain: <ul style="list-style-type: none"> ➤ A copy of any judicial authorization. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ A copy of any affidavit filed to obtain the judicial authorization. 				

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<ul style="list-style-type: none"> ➤ Transcripts and recordings of the intercepted communications. 				
<ul style="list-style-type: none"> ○ Relevant disciplinary information pertaining to Crown police witnesses as per <i>R v McNeil</i>, 2009 SCC 3. 				
<ul style="list-style-type: none"> ○ Copies of all expert or laboratory reports. 				
<ul style="list-style-type: none"> ○ A list of any items the Crown proposes to introduce as exhibits and where practical, copies thereof. 				
<ul style="list-style-type: none"> ○ Any other material or information which may tend to or assist in establishing the client's innocence, assist in the impeaching or contradiction of any Crown witness, or may assist in mitigating the client's punishment, including, when necessary: <ul style="list-style-type: none"> ➤ Medical records. 				
<ul style="list-style-type: none"> ➤ Photographs. 				
<ul style="list-style-type: none"> ➤ 911 calls. 				
<ul style="list-style-type: none"> ➤ Breath testing equipment reports, maintenance and repair records, calibration records. 				
<ul style="list-style-type: none"> ➤ Radio transmissions. 				
<ul style="list-style-type: none"> ➤ Detention videos. 				
<ul style="list-style-type: none"> • Consider what evidence needs to be preserved by your client and/or you, including: <ul style="list-style-type: none"> ○ The client's memory of events. 				
<ul style="list-style-type: none"> ○ Photographs of injuries. 				
<ul style="list-style-type: none"> ○ Documentation of injuries by attending to a doctor. 				
<ul style="list-style-type: none"> ○ Photographs of a scene. 				

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<ul style="list-style-type: none"> ○ Surveillance videos not seized by the police. 				
<ul style="list-style-type: none"> ○ Whether you should attend at the scene. 				
<ul style="list-style-type: none"> ○ Preservation of client's clothing. 				
<ul style="list-style-type: none"> • Consider what evidence or information may be in the possession of third parties, other than third party Crown entities. <ul style="list-style-type: none"> ○ Bearing in mind the financial limitations, consider having an investigator interview other potential witnesses or consider other ways to obtain information from them. 				
<ul style="list-style-type: none"> ○ Consider whether relevant records may exist in the hands of a non-Crown third party and whether production of these records might be sought. 				
<ul style="list-style-type: none"> • Analyze information collected; look for defects in the Crown's case, including technical defects in the information, search warrants or supporting documents. 				
<ul style="list-style-type: none"> • Interview the client: <ul style="list-style-type: none"> • Insist on privacy. 				
<ul style="list-style-type: none"> • Confirm information such as: <ul style="list-style-type: none"> ○ Name, address, telephone number, e-mail address and date of birth. 				
<ul style="list-style-type: none"> ○ Charge. 				
<ul style="list-style-type: none"> ○ Outstanding charges. 				
<ul style="list-style-type: none"> ○ Court appearances (past and future). 				
<ul style="list-style-type: none"> ○ Indigenous clients. Consider the principles set out in <i>R v Gladue</i>, [1999] 1 SCR 688 and <i>R v Ipeelee</i>, 2012 SCC 13. Section 718.2(e) of the <i>Criminal Code</i>, RSC 1985, c C-46 sets out factors a judge must consider when 				

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<p>setting bail for, or sentencing an Indigenous person.</p> <p>Collect information including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Any indication as to whether your client is Indigenous; ▪ Gladue factors (e.g., residential schools, poverty in communities, FASD, etc.); ▪ Presence of a substance use disorder; ▪ Mental health concerns; ▪ Rehabilitative steps taken; and ▪ Employment and/or education. 				
<ul style="list-style-type: none"> • Complete any necessary steps in the client identification and verification procedure. 				
<ul style="list-style-type: none"> • Discuss with the client and obtain instructions as to whether you will be appearing as designated counsel on future appearances pursuant to section 650.01 of the <i>Criminal Code</i>, RSC 1985, c C-46. 				
<ul style="list-style-type: none"> ○ If so instructed, have client execute a designation of counsel for filing with the court. 				
<ul style="list-style-type: none"> • Bearing in mind what may have already been discussed with the client, explain the solicitor-client relationship, including: <ul style="list-style-type: none"> ○ Your duty of confidentiality and the law of solicitor-client privilege. Inform your client you cannot and will not disclose what he/she has informed you about the case without instructions. Inform the client you cannot and will not discuss his/her case with anyone without specific instructions. 				
<ul style="list-style-type: none"> ○ Your role as defence counsel. 				
<ul style="list-style-type: none"> ○ Review with the client general decisions counsel can and will make, and what decisions the client must make 				

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such as how to plead, and whether the client will provide evidence at trial.				
<ul style="list-style-type: none"> • If necessary, remind the client of retainer arrangements and conditions upon which you undertake to act as counsel. 				
<ul style="list-style-type: none"> ○ With respect to cash payment from the client or client's representative: <ul style="list-style-type: none"> ➤ Counsel must be familiar with the requirements set out by The Law Society of Saskatchewan when dealing with cash payments from, or on behalf of the client. Rule 909(1) sets out that a member shall not receive cash in excess of \$7,500 in respect of any one matter or transaction. However, this requirement does not apply when the member receives cash for "professional fees, disbursements, expenses, or bail" (rule 909(4)). 				
<ul style="list-style-type: none"> ➤ Further, there are stringent record-keeping requirements regarding receipts for cash payments. Under rule 909(6), for example, anything in excess of \$500 requires a receipt containing the signature from whom the cash is received and this may make it necessary for lawyers to carry a receipt book with them if monies are received outside an office setting. 				
<ul style="list-style-type: none"> ○ With respect to payments generally and potential proceeds of crime, be aware that: <ul style="list-style-type: none"> ➤ The disclosure and reporting requirements in sections 7 and 9 of the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>, SC 2000, c 17, section 10.1, do not apply to legal counsel nor legal firms while providing legal services. 				
<ul style="list-style-type: none"> ➤ Nothing in the reporting provisions of the <i>Proceeds of Crime (Money Laundering) and Terrorist</i> 				

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<p><i>Financing Act</i>, SC 2000, c 17, section 11, is intended to supersede solicitor-client privilege.</p> <ul style="list-style-type: none"> ➤ Nonetheless, defence counsel are not entitled to be paid out of the suspected proceeds of crime, except to the extent that a court authorizes application for release of seized funds for legal expenses pursuant to the <i>Criminal Code</i>, RSC 1985, c C-46, section 462.34(4)(c). 				
<ul style="list-style-type: none"> ○ With respect to applications under subsection 462.34(4) of the <i>Criminal Code</i>, RSC 1985, c C-46, for release of alleged proceeds of crime, counsel considering such an application must understand and advise the client that: <ul style="list-style-type: none"> ➤ Subsection 462.34(4) requires there be no other assets or means available for the purpose of paying legal fees. 				
<ul style="list-style-type: none"> ➤ To have seized funds released, the client must claim an interest in them and that may not be in the client's interest. 				
<ul style="list-style-type: none"> ➤ If the client should be successful in obtaining release of alleged proceeds of crime for legal fees and the client is later convicted and the amounts released for legal fees were proved to be proceeds of crime, then, if the Crown establishes the client did not divulge all his/her assets at the time of the application, the trial judge may impose a fine in lieu of forfeiture of the proceeds used for legal fees (subsection 462.37(3)) and impose mandatory imprisonment in default of payment of the fine under subsection 462.37(4) of the <i>Criminal Code</i>, RSC 1985, c C-46: <i>R v Smith</i>, 2008 SKCA 20, at paras 85–108. 				
<ul style="list-style-type: none"> • Discuss and make notes on: 				

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<ul style="list-style-type: none"> ○ Basic facts of alleged offence. Review the Crown's case as contained in the disclosure received. Make sure client is aware of all formal charges and obtain client's position on the facts relevant to each such charge. 				
<ul style="list-style-type: none"> ○ Arrest, warnings, statements, inducements and threats, including: <ul style="list-style-type: none"> ➤ Whether the client was informed promptly of the reasons for arrest. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Whether the client was informed of right to retain and instruct counsel and given appropriate opportunity. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Whether the client was searched; whether anything was seized. Determine whether search was by warrant or by consent. If by warrant, was the address where the warrant was executed the same as address on the warrant? 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Whether the client was arbitrarily detained or imprisoned. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Whether the client has made any statement to the police. If the disclosure attributes statement(s) to your client, determine the client's position on such statement(s) and ascertain all the circumstances in which the statement(s) was/were made. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Whether the client was arrested more than 24 hours prior to being brought to a justice. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ➤ Other available potential defences or <i>Charter</i> arguments. 				
<ul style="list-style-type: none"> ○ Potential witnesses and contact information. Determine who will contact them and confirm this in writing. 				

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<ul style="list-style-type: none"> Repeat advice not to make any statement or discuss matter with anyone. If identification is in issue, find out whether a lineup has already been done and whether the client was asked to participate. If not done, advise the client of consequences of refusal to participate. 				
<ul style="list-style-type: none"> If client is not in custody, familiarize yourself with the terms of your client's release. 				
<ul style="list-style-type: none"> If your client is in custody, gather information for the bail hearing. 				
<ul style="list-style-type: none"> Discuss the process and what you will be doing. 				
<ul style="list-style-type: none"> If appropriate, get instructions on the client's plea but remember the client has the right to full disclosure before being called upon to enter a plea. The client may wish to waive full compliance with this right but be careful as waivers have to be informed to be valid. 				
<ul style="list-style-type: none"> If, at this early stage, the client is determined to plead guilty and the client's instructions on the facts would permit it: <ul style="list-style-type: none"> Determine whether plea should be immediate or delayed. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Determine what information is necessary for sentencing submissions. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Review in detail section 606 (1.1) of the <i>Criminal Code</i> on pleading guilty (<i>Guilty Pleas</i>). 				
<ul style="list-style-type: none"> Follow up after initial interview or telephone conversation: <ul style="list-style-type: none"> Open a file and diarize relevant dates, including next court appearance. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Send a letter confirming retainer, instructions from the client and instructions to the client. 				

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<ul style="list-style-type: none"> ○ Gather information not already obtained, such as further disclosure, medical and psychiatric reports. 				
<ul style="list-style-type: none"> ○ If there is a co-accused, contact his/her counsel. 				
<ul style="list-style-type: none"> ○ If any professional responsibility issue arises (e.g., conflict), contact senior counsel or Benchers of Law Society of Saskatchewan. 				
<ul style="list-style-type: none"> ○ Review the effect of the present charge and any outstanding charges or charges expected to be laid. Consider whether to have charges grouped together or dealt with separately. 				
<ul style="list-style-type: none"> ○ Inquire as to the Crown position on sentence in the event of a conviction. 				
<p>2. Judicial Interim Release</p> <ul style="list-style-type: none"> • Can terms of release be negotiated with the Crown? Consider: <ul style="list-style-type: none"> • Appropriate conditions of release such as curfew, non-contact, non-attendance and residency 				
<ul style="list-style-type: none"> • Sureties 				
<ul style="list-style-type: none"> • Cash bail 				
<ul style="list-style-type: none"> • Electronic monitoring 				
<ul style="list-style-type: none"> • Advise Crown of: <ul style="list-style-type: none"> ○ Any indication as to whether your client is Indigenous; ○ Gladue factors (e.g., residential schools, poverty in communities, FASD, etc.); ○ Presence of a substance use disorder; ○ Mental health concerns; ○ Rehabilitative steps taken; and ○ Employment and/or education. 				

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<ul style="list-style-type: none"> Is a bail supervision report desired? 				
<ul style="list-style-type: none"> Preparing for and conducting a bail hearing: <ul style="list-style-type: none"> Ensure you have adequate and timely disclosure and review it very critically with a view to possibly highlighting obviously difficulties with the Crown's case. 				
<ul style="list-style-type: none"> Bearing in mind the difficulties inherent with your client being in jail, consider the need for client review (in some manner) of the initial disclosure. 				
<ul style="list-style-type: none"> Be mindful of the monitoring of all telephone calls from correctional facilities. 				
<ul style="list-style-type: none"> Determine whether offence is summary or indictable. 				
<ul style="list-style-type: none"> Determine who has the onus. <ul style="list-style-type: none"> Consider whether the Crown is applying to revoke any earlier bail granted to your client. While the onus on revocation is generally on the Crown, an application to revoke can complicate the bail hearing considerably as counsel must be prepared to deal with Crown allegations relating to potentially numerous prior charges. 				
<ul style="list-style-type: none"> Understand the grounds for detention and determine on which ground the Crown is relying to oppose release. <ul style="list-style-type: none"> Note: although bail is often determined on the basis of the primary or secondary grounds, bail can be opposed on any of three grounds. The third ground allows the Crown to oppose release "in order to maintain confidence in the administration of justice" (<i>Criminal Code</i>, RSC 1985, c C-46, subsection 515(10)(c)). 				
<ul style="list-style-type: none"> Determine whether the Crown will proceed by way of <i>viva voce</i> evidence or oral submission. 				
<ul style="list-style-type: none"> Determine whether the defence will call <i>viva voce</i> evidence or make submission. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Determine whether the accused will have sureties, employers or family members in support. 				
<ul style="list-style-type: none"> Once in court, make an application for non-publication of evidence given at the bail hearing. 				
<ul style="list-style-type: none"> If release is granted, seek an appropriate adjournment to consider next steps. 				
<ul style="list-style-type: none"> If release is denied, discuss possibility of a bail review in the Court of King's Bench. 				
<ul style="list-style-type: none"> Is there new evidence that was not available at the bail hearing? 				
<ul style="list-style-type: none"> Can the reviewing judge exercise independent discretion? 				
<ul style="list-style-type: none"> Can there be a review in light of any delay? 				
<p>3. Proceedings up to Election or Plea</p> <ul style="list-style-type: none"> If you have not already done so, determine whether the offence is summary or indictable. 				
<ul style="list-style-type: none"> If indictable, determine whether it is within the absolute jurisdiction of Provincial Court or whether it may be tried in Court of King's Bench. 				
<ul style="list-style-type: none"> If the offence is hybrid, find out how the Crown intends to proceed. 				
<ul style="list-style-type: none"> Continue to diligently pursue full disclosure. 				
<ul style="list-style-type: none"> Seek adjournments as necessary for this purpose and state on the record that the adjournment is for disclosure. Delays for disclosure are considered the responsibility of the Crown. 				
<ul style="list-style-type: none"> Consider whether the proceedings can/should be resolved by diversion to "Alternative Measures" or "extrajudicial sanctions" (<i>Criminal Code</i>, RSC 1985, c C-46, sections 716 to 717, <i>Youth Criminal Justice Act</i>, SC 2002, c 1, sections 10 to 12). 				

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<ul style="list-style-type: none"> • Client must be prepared to admit “responsibility” for the act or omission underlying the offence charged. <ul style="list-style-type: none"> ○ While the boundaries of this are not entirely clear or without debate, consider that, generally speaking, these programs are not designed for clients who believe they are innocent. 				
<ul style="list-style-type: none"> • Inquire whether the Crown will agree to diversion. <ul style="list-style-type: none"> ○ There must be sufficient evidence to otherwise proceed with a prosecution of the offence. 				
<ul style="list-style-type: none"> • Properly advise client of all the ramifications of proceeding with diversion and ensure the client’s consent is “fully and freely” given. <ul style="list-style-type: none"> • If the client wishes to participate in diversion but you are not satisfied the client is admitting “responsibility”, you should withdraw. 				
<ul style="list-style-type: none"> • If the client consents to diversion, have the court proceedings adjourned to an appropriate date to allow this to occur. <ul style="list-style-type: none"> ○ Diarize the file and appear on the return date to ensure charge is dismissed if diversion was completed or seek adjournment if further time is needed. 				
<ul style="list-style-type: none"> • If an election is to be made by client as to mode of trial: <ul style="list-style-type: none"> • Between Provincial Court and Court of King’s Bench, consider: <ul style="list-style-type: none"> ○ The client’s viewpoints. 				
<ul style="list-style-type: none"> ○ Desirability of preliminary hearing in relation to disclosure opportunities, and the opportunity to test credibility balanced against other factors such as giving the Crown an opportunity to “go to school”. 				
<ul style="list-style-type: none"> ○ Expense. 				
<ul style="list-style-type: none"> ○ Delay. 				

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<ul style="list-style-type: none"> ○ Whether the client may offer an early guilty plea. (It will be rare that an election would be made to the superior court for that purpose.) 				
<ul style="list-style-type: none"> • Between jury and non-jury trial in King's Bench, consider: <ul style="list-style-type: none"> ○ Type of offence and mandates of the <i>Criminal Code</i>, RSC 1985, c C-46. 				
<ul style="list-style-type: none"> ○ Nature of defence (e.g., emotional or technical). 				
<ul style="list-style-type: none"> ○ Complainant (e.g., age, credibility). 				
<ul style="list-style-type: none"> ○ Criminal record. 				
<ul style="list-style-type: none"> ○ Credibility of the client. 				
<ul style="list-style-type: none"> ○ Whether the client is going to give evidence. 				
<ul style="list-style-type: none"> ○ Are there other accused? 				
<ul style="list-style-type: none"> ○ Is there greater publicity? 				
<ul style="list-style-type: none"> • In all elections, consider as well (and advise your client), these decisions are rarely cast in stone. The <i>Criminal Code</i>, RSC 1985, c C-46, allows for re-election. Understand how and in what circumstances re-elections can be made. Generally speaking, it is easier to move down from King's Bench judge and jury than it is to move up from a Provincial Court election. 				
<ul style="list-style-type: none"> • Ultimately, canvass these choices with your client, provide your advice and obtain instructions. <ul style="list-style-type: none"> ○ Counsel must also be aware of certain developments in particular localities in Saskatchewan. Initiatives such as Mental Health Strategy, Drug Treatment Courts and Domestic Violence Courts have been implemented in certain Provincial Court locations. Counsel will need to be aware of the protocols and procedures in these special courts. 				

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<ul style="list-style-type: none"> • If your client will not be pleading guilty nor proceeding to diversion: <ul style="list-style-type: none"> • Decide how long a preliminary hearing/trial will take. 				
<ul style="list-style-type: none"> • Find out dates the client can attend. 				
<ul style="list-style-type: none"> • Once disclosure issues have been resolved as far as they can be at this stage, attend court to fix a date. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ If your client has instructed you to elect trial in the Court of King's Bench and to hold a preliminary hearing, you must request a preliminary hearing from the judge under section 536.3 of the <i>Criminal Code</i>, RSC 1985, c C-46, and then fix the date. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ Depending on local practice, you may be held to the <i>Criminal Code</i> requirement of filing a statement of issues and list of witnesses you wish to hear from (<i>Criminal Code</i>, RSC 1985, c C-46, section 536.3). 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ Once a date is set, the judge scheduled to preside over the preliminary hearing may order a hearing to identify the issues, witnesses, and any other matters (<i>Criminal Code</i>, RSC 1985, c C-46, section 536.4). 				
<ul style="list-style-type: none"> • If your client has instructed you to proceed directly to trial in the Provincial Court, you will attend court and, in consultation with the Crown and the court, pick a trial date. 				
<ul style="list-style-type: none"> • Advise the client of the date of the hearing and of the consequences of failing to appear. Several provisions of the <i>Criminal Code</i>, RSC 1985, c C-46, exempt an accused's personal attendance in court: 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> • Section 537(1)(j) and section 650(1.1) allow a judge to permit the accused to appear through his counsel, if the prosecutor agrees, and if no evidence is being taken. 				
<ul style="list-style-type: none"> • Similarly, section 650.01 allows the designation of counsel by an accused. If such a designation is filed with the court, an 				

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appearance by the designated counsel is equivalent to the accused's presence, subject to certain exceptions.				
<ul style="list-style-type: none"> The above provisions offer considerable flexibility and convenience to an accused on an Indictable matter. However, in the event your client's attendance is required and cannot be waived, secure the Crown's agreement to hold any warrant issued by the court and agree on a mutually agreeable date in the future for a voluntary appearance or the filing of a designation. 				
<p>4. Guilty Pleas</p> <ul style="list-style-type: none"> Advising a client to enter a guilty plea and/or agreeing on behalf of a client to do so, are common experiences but they are nonetheless critically important and sometimes problematic. Before engaging in these steps, counsel should: <ul style="list-style-type: none"> Review or remind oneself of the relevant provisions of the Law Society of Saskatchewan's Code of Professional Conduct, which sets out rules relating to guilty pleas (Chapter 5.1: <i>The Lawyer as Advocate</i>, and in particular, "Agreement on Guilty Plea"). 				
<ul style="list-style-type: none"> Understand the requirements of a valid plea as set out in section 606(1.1) of the <i>Criminal Code</i> and by the Court of Appeal in <i>R v Leonard</i>, 2007 SKCA 128, and in particular, that the plea must be: <ul style="list-style-type: none"> Voluntary. Unequivocal. Informed as to the nature of the charges, the legal effect of the plea and the consequences of the plea. 				
<ul style="list-style-type: none"> Advise the client: <ul style="list-style-type: none"> How the client pleads is the client's decision to make. Counsel may advise but not decide this issue. 				
<ul style="list-style-type: none"> That a guilty plea relieves the Crown of the obligation to prove guilt beyond a reasonable doubt. 				

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<ul style="list-style-type: none"> That a guilty plea brings to an end the client's rights to be presumed innocent, to remain silent and to make full answer and defence to the charge(s). 				
<ul style="list-style-type: none"> That if the client instructs counsel to plead guilty and subsequently changes his/her position at court, counsel cannot represent them at the trial. 				
<ul style="list-style-type: none"> Ensure that advice about the relative merits of a guilty plea is not given without prior "investigation" (Law Society of Saskatchewan, Code of Professional Conduct, which set out rules relating to guilty pleas in Chapter 5.1: <i>The Lawyer as Advocate</i> and in particular, "Agreement on Guilty Plea"): <ul style="list-style-type: none"> The extent of the duty to investigate is not always clear. One leading authority suggests counsel should not advise a client to plead guilty without having first conducted the same intensive investigation required to prepare for trial (Martin, GA, <i>The Role and Responsibility of the Defence Advocate</i> (1970), 12 CLQ 276, at 376). 				
<ul style="list-style-type: none"> Determine if the charge is legally appropriate. 				
<ul style="list-style-type: none"> Determine whether it is provable by the Crown's evidence but remember, the Crown does not need any evidence beyond that provided by a guilty plea. In other words, the client is entitled to know whether the Crown can prove the charge but, subject to the following bullet point, is entitled to plead guilty regardless. 				
<ul style="list-style-type: none"> Determine whether there are other viable defences. 				
<ul style="list-style-type: none"> If the client is inclined to plead guilty, ensure there is a legal and factual basis for the plea. Question your client about his/her recollection of the incident to determine this. <ul style="list-style-type: none"> If a guilty plea is not precluded by the client's instructions on the facts, the client is entitled to give up viable defences. 				

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<ul style="list-style-type: none"> Be wary of innocent clients who want to plead guilty. While the decision on how to plead is the client's, counsel are not permitted in this jurisdiction to participate in a plea of convenience. If the client insists, you must withdraw. 				
<ul style="list-style-type: none"> Consider obtaining a signed direction to pursue negotiations with the Crown. 				
<ul style="list-style-type: none"> Contact the Crown and discuss agreement (recognizing the court is not bound by any joint submission). See <i>R v Anthony-Cook</i>, 2016 SCC 43. 				
<ul style="list-style-type: none"> Advise Crown of: <ul style="list-style-type: none"> Any indication as to whether your client is Indigenous; Gladue factors (e.g., residential schools, poverty in communities, FASD, etc.); Presence of a substance use disorder; Mental health concerns; Rehabilitative steps taken; and Employment and/or education. 				
<ul style="list-style-type: none"> Discuss the Crown's position with the client. 				
<ul style="list-style-type: none"> Determine the client's position: <ul style="list-style-type: none"> If the client wishes to plead guilty, fix date and prepare for sentencing hearing. <ul style="list-style-type: none"> Consider obtaining a signed direction to plead guilty. 				
<ul style="list-style-type: none"> If the client does not wish to plead guilty, proceed with preparation for trial. 				
<p>5. Proceedings up to and Including the Preliminary Inquiry</p> <ul style="list-style-type: none"> Prepare for preliminary inquiry <ul style="list-style-type: none"> Collect fee for the preliminary hearing and ensure retainer arrangements are in place. 				

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<ul style="list-style-type: none"> • Ensure there has been complete disclosure. If anything is outstanding, remind the Crown early on before the file is put away. Preferably, you will have resolved disclosure issues before setting the preliminary hearing date (unless an application must be made and you are prepared to wait until the trial or bring the application while awaiting the preliminary inquiry. 				
<ul style="list-style-type: none"> • Prepare a brief for the preliminary inquiry: <ul style="list-style-type: none"> ○ Write out essential elements on which the Crown must offer some evidence. 				
<ul style="list-style-type: none"> ○ Prepare for the cross-examination of Crown witnesses considering: <ul style="list-style-type: none"> ➤ Who the Crown will call. 				
<ul style="list-style-type: none"> ➤ What each witness can say. 				
<ul style="list-style-type: none"> ➤ Weaknesses of each witness. 				
<ul style="list-style-type: none"> ➤ What testimony each can give that might help the client (such as a foundation for a <i>Charter</i> application). 				
<ul style="list-style-type: none"> ➤ How to frame questions to emphasize evidence positive to the client and minimize impact of evidence negative to the client. 				
<ul style="list-style-type: none"> ○ Arguments on evidentiary issues. 				
<ul style="list-style-type: none"> ○ Arguments on committal if any is likely. 				
<ul style="list-style-type: none"> • Consider whether to visit the scene of the alleged offence. 				
<ul style="list-style-type: none"> • Read relevant <i>Criminal Code</i>, RSC 1985, c C-46, provisions and key cases regarding offence, particulars and the Information, and consider: <ul style="list-style-type: none"> ○ Whether there are any defects in the Information. 				

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<ul style="list-style-type: none"> ○ Whether a motion for severance or joinder of counts should be made at trial. 				
<ul style="list-style-type: none"> ○ Whether any defences, <i>Charter</i> arguments or evidentiary issues should be canvassed at the preliminary inquiry. (Note: the foundation for <i>Charter</i> applications can be laid at the preliminary inquiry through cross-examination of Crown witnesses as part of the accused's right to make full answer and defence.) 				
<ul style="list-style-type: none"> • Research defences and evidentiary issues. 				
<ul style="list-style-type: none"> • Arrange for witnesses to be interviewed and statements obtained. 				
<ul style="list-style-type: none"> • Interview the client regarding witnesses and further details regarding alleged offence(s). 				
<ul style="list-style-type: none"> ○ Advise the client of potential defences and possibility of acquittal. 				
<ul style="list-style-type: none"> ○ Advise the client of the likely sentence or range of sentence in the event of a conviction. 				
<ul style="list-style-type: none"> ○ Advise client of any further cost ramifications of proceeding to preliminary inquiry or trial. • If the client wishes to plead guilty, refer to section 4, <i>Guilty Pleas</i> 				
<ul style="list-style-type: none"> • Review the relevant <i>Criminal Code</i>, RSC 1985, c C-46, provisions for preliminary inquiries. 				
<ul style="list-style-type: none"> • Preliminary inquiry: <ul style="list-style-type: none"> • When a case is called, advise the court whether your client is present and whether you are prepared to proceed <ul style="list-style-type: none"> ○ Remember subsection 537(j.1) allows the accused to be excused from a portion of the preliminary inquiry on any conditions that the justice considers appropriate. 				

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<ul style="list-style-type: none"> • If the Crown stays or withdraws the charge: <ul style="list-style-type: none"> ○ Explain this to the client. 				
<ul style="list-style-type: none"> ○ Send a reporting letter and statement of account. 				
<ul style="list-style-type: none"> ○ Close the file. 				
<ul style="list-style-type: none"> • Make the following initial motions: <ul style="list-style-type: none"> ○ Motion for non-publication of evidence pursuant to the <i>Criminal Code</i>, RSC 1985, c C-46. 				
<ul style="list-style-type: none"> ○ Motion for the exclusion of Crown witnesses other than at the time when they are actually testifying. 				
<ul style="list-style-type: none"> • During the presentation of the Crown's case: <ul style="list-style-type: none"> ○ Take notes. 				
<ul style="list-style-type: none"> ○ Be alert to irrelevant, hearsay or other objectionable evidence. 				
<ul style="list-style-type: none"> ○ Be alert to new issues that may arise through testimony that may require exploration. 				
<ul style="list-style-type: none"> ○ Section 540(7) allows the justice to admit any evidence considered "credible or trustworthy," including a written statement made earlier or recorded. However, subsection 540(8) requires reasonable notice and a copy of the statement. Subsection 540(9) authorizes the judge to direct the party whose statement was tendered under subsection 540(7) to appear for examination or cross-examination. 				
<ul style="list-style-type: none"> • If there is a <i>voir dire</i>: <ul style="list-style-type: none"> ○ Decide whether to waive it. If the <i>voir dire</i> is waived, secure an agreement from the Crown in exchange for the waiver that you have the right to cross-examine on issues relating to the <i>voir dire</i> in your cross-examination at large and advise the court this is a condition of the waiver 				

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(unless you do not propose to cross-examine in those areas).				
<ul style="list-style-type: none"> ○ Decide whether to cross-examine. If there is a possibility of excluding the evidence at trial, you should probably exercise your right to cross-examine on the <i>voir dire</i> to explore the relevant issues. 				
<ul style="list-style-type: none"> ○ Decide whether to call evidence. 				
<ul style="list-style-type: none"> ○ Decide whether to make submissions. 				
<ul style="list-style-type: none"> • Decide whether you wish to call any witnesses. <ul style="list-style-type: none"> ○ You may wish to put on witnesses as a means of securing their evidence on the record. 				
<ul style="list-style-type: none"> ○ Additionally, you may wish to call witnesses if: <ul style="list-style-type: none"> ➤ Witnesses not called by the Crown at the preliminary inquiry may be called by the Crown at the trial and you want to hear from them. 				
<ul style="list-style-type: none"> ➤ You want to get some evidence on the record for the pre-trial judge. 				
<ul style="list-style-type: none"> ➤ This is a case where you have a legitimate shot at a discharge. 				
<ul style="list-style-type: none"> ○ You will rarely, if ever, call your client. • If a statement is found admissible, decide whether to consent to evidence being applied on the preliminary hearing proper. 				
<ul style="list-style-type: none"> • Decide whether the client should say anything when questioned by judge (e.g., alibi defence) or whether you should advise the court instead. 				
<ul style="list-style-type: none"> • Decide whether to make submissions on committal. 				
<ul style="list-style-type: none"> • If the client is discharged: <ul style="list-style-type: none"> • Explain to the client. 				

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<ul style="list-style-type: none"> Send a reporting letter and statement of account. 				
<ul style="list-style-type: none"> Close the file. 				
<ul style="list-style-type: none"> If the client is committed to stand trial: <ul style="list-style-type: none"> Diarize for receipt of transcript and scheduling of pre-trial conference (review King's Bench protocol). 				
<ul style="list-style-type: none"> Explain to the client and ensure the client is aware of the necessity to keep you informed of an address and means of contacting him/her. 				
<ul style="list-style-type: none"> Follow-up: <ul style="list-style-type: none"> Await transcript. 				
<ul style="list-style-type: none"> Decide whether to re-elect mode of trial. 				
<ul style="list-style-type: none"> Await notification of pre-trial conference. 				
<ul style="list-style-type: none"> Obtain a copy of the Indictment once filed by the Crown. 				
<ul style="list-style-type: none"> Pre-trial conference: <ul style="list-style-type: none"> Determine whether client may plead guilty in light of evidence tendered at preliminary inquiry and consider how to best canvass settlement opportunities at the pre-trial. 				
<ul style="list-style-type: none"> Determine time needed for trial. 				
<ul style="list-style-type: none"> Determine when the accused and defence witnesses are available. 				
<ul style="list-style-type: none"> Determine appropriate trial date. 				
<ul style="list-style-type: none"> Consider whether any admissions can be made to shorten or simplify the trial. Can witnesses be admitted? Can continuity or identification be admitted? 				
<ul style="list-style-type: none"> Advise of any special applications, motions, or hearings: <ul style="list-style-type: none"> Charter application(s) including <i>R v Stinchcombe</i>, 1991 CanLII 45, disclosure applications. 				

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<ul style="list-style-type: none"> ○ Applications for third party records under the <i>Criminal Code</i>, RSC 1985, c C-46, <i>R v O'Connor</i>, 1995 CanLII 51 (SCC) and <i>R v McNeil</i>, 2009 SCC 3 (police disciplinary records) 				
<ul style="list-style-type: none"> ○ Will a <i>voir dire</i> be necessary for any <i>Charter</i> application or because the Crown intends to tender a statement of the accused? 				
<ul style="list-style-type: none"> ○ Is a separate hearing required on any evidentiary issue? 				
<ul style="list-style-type: none"> ○ Is a special hearing date necessary prior to trial? 				
<ul style="list-style-type: none"> • Consider and advise whether a re-election will be made, bearing in mind the Crown will usually consent to re-election later. 				
<p>6. Prepare for Trial</p> <ul style="list-style-type: none"> • Study the preliminary inquiry transcript, if any, and note important evidence. 				
<ul style="list-style-type: none"> • Interview the client in light of evidence obtained at the preliminary inquiry. 				
<ul style="list-style-type: none"> • Again advise the client of potential defences and the possibility of acquittal. 				
<ul style="list-style-type: none"> • Again advise the client of potential sentences if found guilty. 				
<ul style="list-style-type: none"> • If the client wishes to plead guilty, refer to section 4, <i>Guilty Pleas</i>. 				
<ul style="list-style-type: none"> • Research: <ul style="list-style-type: none"> • Research issues and defences and prepare briefs on each. 				
<ul style="list-style-type: none"> • Consider if any special pleas are appropriate. 				
<ul style="list-style-type: none"> • Factual investigations. 				
<ul style="list-style-type: none"> • Sentencing options and alternatives. 				

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<ul style="list-style-type: none"> • Witnesses: <ul style="list-style-type: none"> • Arrange for interviews and statements. 				
<ul style="list-style-type: none"> • Decide, on a preliminary basis, whom you may call, bearing in mind that your final determination will be made after the close of the Crown's case. 				
<ul style="list-style-type: none"> • Prepare witnesses for trial. 				
<ul style="list-style-type: none"> • Arrange for issuance and service of subpoenas. 				
<ul style="list-style-type: none"> • Prepare trial plan. 				
<ul style="list-style-type: none"> • Decide if an adjournment is required. If so: <ul style="list-style-type: none"> • Discuss with the client. 				
<ul style="list-style-type: none"> • Notify the Crown and determine if they will consent. 				
<ul style="list-style-type: none"> • Notify the court. 				
<ul style="list-style-type: none"> • Appear in court, if necessary, with the client and make application for adjournment. 				
<ul style="list-style-type: none"> • If adjournment is granted: <ul style="list-style-type: none"> ○ Fix date and diarize it. 				
<ul style="list-style-type: none"> ○ Explain to the client and ensure the client has noted appropriate date. 				
<ul style="list-style-type: none"> ○ Notify witnesses. 				
<ul style="list-style-type: none"> • Prepare trial brief including: <ul style="list-style-type: none"> • Essential elements of offence. 				
<ul style="list-style-type: none"> • Whether the client should testify. 				
<ul style="list-style-type: none"> • Direct examination. 				
<ul style="list-style-type: none"> • Cross-examination, considering: <ul style="list-style-type: none"> ○ Who will the Crown call. 				
<ul style="list-style-type: none"> ○ What each witness can say. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
○ Weaknesses of each witness.				
○ What testimony each can give that might help the client.				
○ How to frame questions to emphasize positive evidence and minimize negative evidence.				
○ Whether you can impeach, contradict or otherwise neutralize any or all of a witness' evidence.				
○ Footnote all references in the preliminary hearing transcript and/or any other Crown disclosure or materials that will allow you to impeach a witness on cross-examination.				
● Evidentiary arguments regarding admissibility of statements for <i>voir dire</i> s.				
● <i>Charter</i> arguments.				
● Opening address to jury, if any.				
● Closing argument or jury address.				
● Prepare for the possibility of having to make submissions on sentence.				
● Prepare the client for trial including: ○ Possibility of a Crown application for adjournment.				
○ Explain the trial process and procedure.				
○ What to wear.				
○ How to conduct himself/herself during the trial.				
○ The possibility he/she may have to testify. Take client through your anticipated examination-in-chief. Prepare client for cross-examination. Consider a mock examination/cross-examination in your office.				

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<ul style="list-style-type: none"> ○ Prepare client for possible sentencing by advising of the procedure and the possible sentences he/she could receive. Explore the client's preferences with regard to sentencing options. 				
<ul style="list-style-type: none"> ○ Consider written instructions that the client does or does not wish to testify. 				
<ul style="list-style-type: none"> • If any professional responsibility issues arise, contact the Law Society or a Bencher. 				
<ul style="list-style-type: none"> • If you are considering withdrawing as counsel, ensure it is for a proper purpose and do so as early as possible. Ensure the court and Crown are notified as soon as possible (<i>R v Cunningham</i>, 2010 SCC 10). 				
<p>7. Notices Prior to Trial or at Trial</p> <ul style="list-style-type: none"> • Ensure any notices that must be given to court or Crown are given within appropriate time periods. These may include: <ul style="list-style-type: none"> • Section 276 of the <i>Criminal Code</i> (application to cross-examine on previous sexual conduct) 				
<ul style="list-style-type: none"> • Alibi defences 				
<ul style="list-style-type: none"> • <i>Charter</i> applications 				
<ul style="list-style-type: none"> • <i>Charter</i> applications falling under <i>The Constitutional Questions Act, 2012</i>, SS 2012, c C-29.01 <ul style="list-style-type: none"> ○ Counsel must also be aware of certain rules in particular localities. Check to see if Provincial Court practice directives have come into use. 				
<ul style="list-style-type: none"> • Notices under the <i>Canada Evidence Act</i>, RSC 1985, c C-5, or <i>The Evidence Act</i>, SS 2006, c E-11.2 				
<ul style="list-style-type: none"> • Notice of expert witness <ul style="list-style-type: none"> ○ Sections 657.3(3 to 7) of the <i>Criminal Code</i> require at least 30 days' notice of intention to call an expert witness. 				

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<ul style="list-style-type: none"> ○ Further, there are requirements for the filing of a copy of the expert's report, or a summary of the opinion anticipated to be given by the expert, within prescribed times, usually no later than the close of the Crown's case. ○ Counsel must be careful to ensure compliance with these provisions. Consider whether to notify the Crown if you are calling and expert (in order to avoid Crown request for adjournment). 				
<p>8. Trial</p> <ul style="list-style-type: none"> • Advise the court that your client is present and you are ready to proceed. 				
<ul style="list-style-type: none"> • If the Crown seeks an adjournment: <ul style="list-style-type: none"> • Decide whether to object and get the client's consent. 				
<ul style="list-style-type: none"> • If an adjournment is granted: <ul style="list-style-type: none"> ○ Fix date and diarize. 				
<ul style="list-style-type: none"> ○ Explain to the client. 				
<ul style="list-style-type: none"> ○ Ensure the client notes the new date. 				
<ul style="list-style-type: none"> ○ Keep in mind the presumptive ceilings set out in <i>R v. Jordan</i>, 2016 SCC 27 (18 months in Provincial Court and 30 months in the Court of King's Bench) 				
<ul style="list-style-type: none"> • Tell the client how to respond when an indictment is read (pleading guilty or not guilty). 				
<ul style="list-style-type: none"> • Consider any preliminary motions: <ul style="list-style-type: none"> • Application for exclusion of Crown witnesses until they have finished testifying. 				
<ul style="list-style-type: none"> • Notifying the court of application for <i>Charter</i> motion or other related relief. 				
<ul style="list-style-type: none"> • If the Crown calls no evidence: <ul style="list-style-type: none"> • Apply for dismissal. 				

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<ul style="list-style-type: none"> Explain to the client. 				
<ul style="list-style-type: none"> Send reporting letter and statement of account. 				
<ul style="list-style-type: none"> Close the file. 				
<ul style="list-style-type: none"> During the presentation of the Crown's case: <ul style="list-style-type: none"> Take notes. 				
<ul style="list-style-type: none"> Be alert to relevant, hearsay or other objectionable evidence 				
<ul style="list-style-type: none"> Decide whether to cross-examine. 				
<ul style="list-style-type: none"> If there is a <i>voir dire</i>: <ul style="list-style-type: none"> Decide whether to waive it. 				
<ul style="list-style-type: none"> Decide whether to cross-examine, confine questions to voluntariness and circumstances of statement. 				
<ul style="list-style-type: none"> Decide whether to call evidence. 				
<ul style="list-style-type: none"> Decide whether to make submissions. 				
<ul style="list-style-type: none"> If a statement is found admissible, decide whether to consent that evidence on <i>voir dire</i> should be applied to the trial proper. 				
<ul style="list-style-type: none"> If motion is granted and a charge or charges are dismissed: <ul style="list-style-type: none"> Explain to the client. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> If the granting of the motion disposes of the whole case, send reporting letter and statement of account, and close the file. 				
<ul style="list-style-type: none"> Decide whether to call evidence: 				
<ul style="list-style-type: none"> If you call no evidence, argue for acquittal on grounds of insufficient evidence or if jury trial, present closing jury address following the Crown. 				
<ul style="list-style-type: none"> If you call evidence: <ul style="list-style-type: none"> Decide whether to make an opening statement to judge or jury. 				

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<ul style="list-style-type: none"> ○ Call witnesses. 				
<ul style="list-style-type: none"> ○ Consider getting written instructions that the client does or does not testify. 				
<ul style="list-style-type: none"> ○ Consider whether to re-examine after Crown has cross-examined. 				
<ul style="list-style-type: none"> • If Crown calls rebuttal evidence: <ul style="list-style-type: none"> ○ Decide whether to object. 				
<ul style="list-style-type: none"> ○ If rebuttal is allowed, decide whether to cross-examine. 				
<ul style="list-style-type: none"> • Make final argument or closing address to the jury. 				
<ul style="list-style-type: none"> • If the client is acquitted: <ul style="list-style-type: none"> • Explain to the client. 				
<ul style="list-style-type: none"> • Send reporting letter and statement of account. 				
<ul style="list-style-type: none"> • Close the file. 				
<ul style="list-style-type: none"> • If the client is convicted, proceed to sentencing. 				
<p>9. Sentencing</p> <ul style="list-style-type: none"> • Consider whether adjournment is required to get additional information or allow the client to be prepared for sentencing. <ul style="list-style-type: none"> • Section 722 of the <i>Criminal Code</i>, RSC 1985, c C-46, now provides that Victim Impact Statements shall be considered by the trial judge when sentencing. Counsel will need to be prepared to deal with these statements when making sentencing submissions; for example, <i>R v Bremner</i>, 2000 BCCA 345, and <i>R v Gabriel</i>, 1999 CanLII 15050 (ONSC). (Note: If a Victim Impact Statement is completed before the trial, the Crown must disclose it and there may be fruitful material in this for cross-examination.) 				
<ul style="list-style-type: none"> • Consider filing a written apology letter from the client in court and/or filing character references on behalf of the client. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> • Make submissions addressing: <ul style="list-style-type: none"> ○ The circumstances of the offence. 				
<ul style="list-style-type: none"> ○ The circumstances of the offender, including Gladue factors. 				
<ul style="list-style-type: none"> ○ The result you seek. 				
<ul style="list-style-type: none"> ○ Special factors, if any. 				
<ul style="list-style-type: none"> ○ Authorities: <ul style="list-style-type: none"> ➢ Is there a minimum sentence in the <i>Criminal Code</i>, RSC 1985, c C-46, or guidelines from the Court of Appeal for this type of offence? 				
<ul style="list-style-type: none"> ➢ The Court of Appeal Sentencing Digest should be consulted if necessary. 				
<p>10. Follow-up</p> <ul style="list-style-type: none"> • Discuss with the client the rights of appeal for the client (from conviction) or the Crown (from acquittal). 				
<ul style="list-style-type: none"> • Discuss the advisability of appeal, including possibility of success and cost. 				
<ul style="list-style-type: none"> • Consider whether the client should obtain new counsel for appeal and advise client of this right. 				
<ul style="list-style-type: none"> • Discuss with the client the rights of appeal of the client and Crown against sentence. 				
<ul style="list-style-type: none"> • Discuss the advisability of client appeal including possibility of success and cost. 				
<ul style="list-style-type: none"> • Advise of the right to seek release pending appeal. 				
<ul style="list-style-type: none"> • Notify the client of limitation period for his/her appeal from either conviction or sentence. 				
<ul style="list-style-type: none"> • Send reporting letter and statement of account. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
• If the client is not going to appeal, close the file.				

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