

ONTARIO COURT OF JUSTICE

GUIDE FOR APPLYING FOR A PRIVATE PROSECUTION

Note: This Guide was developed prior to the COVID-19 pandemic. You can either attend the courthouse in person or contact a courthouse. Court addresses and contact information are available on the Ontario Court of Justice Website: <https://www.ontariocourts.ca/ocj/covid-19/contacts-and-courthouse-info/>. Prior to contacting or attending the courthouse in person please review this Guide and the [Private Prosecution Application form](#). This Guide may answer many questions that you may have. Please note that the courthouse staff and Justices of the Peace/Judges cannot provide you with legal advice. If you wish to obtain legal advice please contact a lawyer.

This Guide provides information about the court process for bringing private charges against another person under the *Criminal Code*. It does not cover every circumstance that might arise. This Guide does not provide legal advice.

What is a Private Prosecution?

A private prosecution is a court process in which a person, who has reasonable grounds to believe that another person has committed a criminal offence, seeks to have the person charged and brought to court. This is a criminal court proceeding. The person who applies for charges to be laid is called the “informant”. The person you are trying to get charges laid against is called the “accused”.

Can I Apply for Charges to be Laid Against Another Person?

Yes, if you have reasonable grounds to believe that a person has committed a criminal offence, you may apply to lay charge(s) against that person.

CONTACT THE POLICE IMMEDIATELY IF YOU ARE IN IMMINENT DANGER.

What is the First Step in Applying for a Private Prosecution?

Monday to Friday, during normal hours for Criminal Intake Court operations, go to the criminal service counter of your local courthouse and ask for a Private Prosecution Application. In some courthouses, you will meet with the Justice of the Peace soon after you complete the application form. In other courthouses, you will return the completed application to the criminal court staff at the service counter and they will provide your application to the Justice of the Peace for an initial review. You will then be contacted at a later date by the court staff to advise you of the outcome of that review. The court staff will let you know which process applies in your courthouse.

When you first attend at the courthouse, and if you need to attend at a later date to meet with the Justice of the Peace, bring with you photo identification with your signature and a list of your witnesses, relevant documentation, including dates, times, hospital records, photographs, police occurrence numbers/reports, etc.

What Do I Write in the Application and Tell the Justice of the Peace?

You must explain why you believe, on reasonable grounds, that a person has committed a criminal offence. You must provide sufficient details of the alleged offence. As well, list the names, addresses and telephone numbers of the witnesses you intend to call to the hearing. You will be asked if the police have investigated the incident, whether you previously swore an Information in this matter, whether another Justice of the Peace refused to proceed and, if so, whether you have any new evidence with respect to the offence(s).

What Happens After I Meet with the Justice of the Peace?

The Justice of the Peace will review the application to determine if an Information (criminal charge) can be sworn/affirmed which meets the requirements of the *Criminal Code*. If the Justice of the Peace is satisfied that the materials presented meet the requirements, the court clerk will prepare an Information to start the private prosecution process. You must sign the Information under oath and affirm or swear that it is true. You will receive the date, time and location of the “pre-enquête” hearing. At this future hearing, the Justice of the Peace will determine if there is enough evidence on the elements of the offence to summons the accused person to come to court. The Crown Attorney also will receive reasonable notice of the pre-enquête.

If the Justice of the Peace is not satisfied that the materials presented meet the requirements for receiving the Information, then the application will be denied. For example, your application will be denied if you have not provided enough information to identify who the accused person is, or if you have not provided information that

provides reasonable grounds to believe that the accused person has committed an offence found in the Criminal Code.

For certain criminal offences, consent of the Crown is required to start criminal proceedings. Also, no private prosecutions may be brought against a young person (a person under the age of 18) without the consent of the Attorney General.

The Crown may “stay” or halt the proceedings as soon as the Information has been laid, even before the pre-enquête is commenced or completed where, for example, the Crown considers that the Information is frivolous or unfounded.

Do I Need a Lawyer for the Pre-enquête Hearing?

You are responsible for presenting your evidence and relevant documents. You may appear at the pre-enquête hearing on your own without legal representation, or you may hire a lawyer or paralegal to represent you. The Law Society of Ontario has an online Referral Service at www.findlegalhelp.ca. This service will give you the name of a lawyer or paralegal who will provide a free consultation of up to 30 minutes.

Can I Bring Witnesses to the Pre-enquête Hearing?

Yes, you may bring witnesses to testify. A “subpoena” is an order by a Justice of the Peace ordering the person named to come to court. Once you know the pre-enquête date, you may obtain subpoenas, free of charge, by attending the Criminal service counter. It is your responsibility to arrange for your witnesses to attend at the time and place scheduled for the hearing, including by serving a subpoena on your witness(es) if this is necessary to make sure they attend.

What Happens at the Pre-enquête Hearing?

The pre-enquête is a formal hearing. It is *ex parte*, which means that the accused person is not given notice of the hearing and is not present at the hearing. It is also *in camera*, which means that the pre-enquête is not open to the public. The Crown Attorney is given the opportunity to attend.

The onus is on you to show that the accused person should be made to attend court to answer to the charge(s). You will testify under oath and tell the court why you reasonably believe the accused has committed a criminal offence. The Crown Attorney will be able to ask you questions about your evidence. If you have witnesses, they will testify under oath and then the Crown may ask them questions.

The Justice of the Peace will consider your allegations and evidence of the witness(es), to determine if there is a *prima facie* case, which means that there must be some evidence of the essential elements of the offence. If the Justice of the Peace is satisfied that a *prima facie* case exists, then “process” will issue. In other words, a summons or warrant will be issued for the accused to attend court to answer to the charge(s).

The Justice of the Peace is not required to issue any form of process to bring someone to court if he/she is not satisfied the allegations in the evidence presented at the pre-enquête support the charge(s). Also, the Justice of the Peace must be satisfied that the proceedings are not frivolous, vexatious or an abuse of the process. If the Justice of the Peace decides not to issue process, the Information is deemed never to have been laid.

What Happens After Process Issues?

The Crown Attorney has the ultimate responsibility to supervise all prosecutions. The Crown may continue with the criminal prosecution against the accused person or the Crown may discontinue the criminal proceedings.

If the criminal prosecution continues, the police will serve the accused with a summons or warrant for his or her arrest, to compel him or her to attend court to answer to the charge(s). The accused must be given the supporting materials presented at the pre-enquête.

The Private Prosecution Process

