

Policy:

Waiver of Criminal Charges Between Provinces

Policy Code:

WAI 1.1

Effective Date:

December 18, 2023

Cross-references:

[ALT 1](#) [CHA 1](#) [RES 1](#)
[VIC 1](#) [VUL1](#) [YOU 1.4](#)

Under section 478(3) of the *Criminal Code*, the waiver of a charge from British Columbia to another province requires the consent of the Attorney General of British Columbia and a guilty plea by the accused. Before deciding whether to approve waiver of a charge to another province, Crown Counsel should review the file to ensure that the charge assessment standard continues to be met (*Charge Assessment Guidelines* ([CHA 1](#))). Crown Counsel should also consider whether an alternative to prosecution is appropriate (*Alternatives to Prosecutions* ([ALT 1](#)), *Youth Criminal Justice Act – Extrajudicial Sanctions* ([YOU 1.4](#))).

When the Attorney General of another province has consented to waive charges to British Columbia under section 478(3) of the *Criminal Code*, Crown Counsel in British Columbia have exclusive conduct of the case, including decisions regarding appeal. Crown Counsel in British Columbia may consult Crown Counsel in the sending jurisdiction.

When Crown Counsel in British Columbia are considering a request to waive charges to another province under section 478(3) of the *Criminal Code*, the following considerations apply:

- the waiver should not be approved unless the accused has some valid connection with the location to which the charge is proposed to be waived (i.e., the accused is in custody at that location, lives at or near that location, or wants to dispose of other charges arising from that location). This is to discourage accused persons from requesting waiver to avoid media attention or select a particular court before which to enter a guilty plea
- the waiver should not be approved if the public interest requires that the prosecution remain in the community where the offence was committed
- the waiver should be processed on an expedited basis when the accused has been arrested in another province on a charge from British Columbia and is being held in custody on a six-day remand under section 503(3) of the *Criminal Code*

- when requested, any victim should be advised of the disposition of the charge, or if the accused fails to appear, or refuses to plead guilty, of the file being returned to the sending province, so that the requirements set out in the *Victims of Crime* ([VIC 1](#)) policy can be met
- when the waiver involves a plea resolution agreement, the requirements in the *Resolution Discussions* ([RES 1](#)) policy should be met
- when the accused has outstanding charges in different locations within the province, waiver may not be appropriate unless the accused agrees to waive all charges
- when the accused has a mental disorder that may or has resulted in a verdict of unfit to stand trial or not criminally responsible on account of mental disorder under Part XX.1 of the *Criminal Code*, Crown Counsel should contact the Administrative Crown Counsel, Review Board for assistance

Procedure

The following procedure applies to a request from an accused to waive British Columbia charges to another province:

- when a request for waiver is received, it should be forwarded to the Crown Counsel office where the charge originates. Provincial offences (e.g., under the *Motor Vehicle Act*) cannot be transferred outside of British Columbia
- Crown Counsel should cause a search to be conducted via JUSTIN to determine if the accused has any additional charges outstanding in British Columbia for which the accused has not signed a request for waiver. If there are other outstanding charges, the Crown Counsel office where those charges are located should be contacted to see if they have received a request for waiver. If not, the accused should be contacted and advised of the additional charges
- after waiver, the sending Crown Counsel office should bring forward the file to ensure that a final disposition has occurred and that the receiving jurisdiction has provided information about the final disposition (this may include sending back original court documents). Upon receiving the results of the disposition, the sending Crown Counsel office should promptly forward them to the original investigating agency, for recording in the Canadian Police Information Centre and enforcing any orders made by the court

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons,

whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.¹ The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.²

The continuing consequences of colonialism for Indigenous persons in Canada “must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.”³

Indigenous Accused

When deciding whether to approve a request for waiver from an Indigenous accused person, factors in favour of waiver may include a greater connection at the receiving location to their family or community, or more opportunities to attend Indigenous courts, or participate in Indigenous justice programs.

Indigenous Victims

If the matter involves an Indigenous victim or witness, Crown Counsel should consider whether the waiver would impede the victim’s ability to participate effectively in the criminal justice process, particularly if the matter is subject to considerations under the *Vulnerable Victims and Witnesses* ([VUL 1](#)) policy.

1 *R v Ipeelee*, 2012 SCC 13

2 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

3 *Ewert v Canada*, 2018 SCC 30 at paras 57-58; *R v Barton*, 2019 SCC 33 at paras 198-200, also [BC First Nations Justice Strategy](#), February 2020