

Policy:

Waiver of Criminal Charges Within Province

Policy Code:

WAI 1

Effective Date:

December 18, 2023

Cross-references:

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

Before deciding whether to approve waiver of a charge to another location within the province, Administrative Crown Counsel, or a delegate in the Crown Counsel office where the charge originated, should have a request for waiver form signed by the accused, indicating an intention to plead guilty. 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](#))).

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., when 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 prevent accused persons from requesting waiver to avoid media attention, local public accountability, or to select a particular court before which to enter a guilty plea.

Waiver should not be approved if the public interest requires that the prosecution remain in the community where the offence was committed.

When the accused has outstanding charges in different locations within the province, waiver may not be appropriate unless the accused agrees to waive all outstanding charges.

Procedure

In this policy, “receiving Crown Counsel” means Crown Counsel in the location to which the charge may be waived for guilty plea and “sending Crown Counsel” means Crown Counsel in the office where the charge originated.

Accused in Custody

When the accused is in custody, Crown Counsel must take all reasonable steps to ensure that the matter is dealt with as promptly as possible.

Request for Waiver by the Accused

When the accused requests waiver, the accused must sign a request for waiver form and deliver it to receiving Crown Counsel. Professional staff in the receiving Crown Counsel office should:

- obtain current addresses (mailing and residential) and telephone numbers, as well as the date of birth of the accused. If possible, an email address, place of employment, and any aliases used by the accused should also be obtained
- check the JUSTIN system for outstanding charges. It is desirable that all outstanding charges should be dealt with at the same time. When charges to which the accused has not signed a request for waiver are identified, a remand may be necessary so that the accused can consider whether an amended request for waiver form will be signed indicating an intention to plead guilty to the additional charges
- obtain a court date from the court registry at the receiving location. The date for that court appearance should allow enough time for the waiver process to be completed, including approval of the waiver by Administrative Crown Counsel or delegate in the sending Crown Counsel office, considering time factors such as whether the accused is in custody
- transmit the request for waiver form, containing the above information, to the sending Crown Counsel office

Approval of Waiver by Sending Crown Counsel

It is the responsibility of Administrative Crown Counsel in the sending Crown Counsel office or a delegate to review the request for waiver form and other information sent by receiving Crown Counsel and decide whether to approve the waiver according to the guidelines in this policy.

If sending Crown Counsel decides not to approve the waiver, they should promptly advise the receiving Crown Counsel office and the accused.

If sending Crown Counsel approves the waiver, they should transmit the relevant file materials to the receiving location at least one week before the proposed appearance date,

including the current criminal record and material that sets out the circumstances of the offence sufficiently to permit receiving Crown Counsel to conduct a sentencing hearing.

Sending Crown Counsel should ensure that:

- the requirements set out in the *Victims of Crime* ([VIC 1](#)) policy have been met
- if the waiver involves a plea resolution agreement, the requirements in the *Resolution Discussions* ([RES 1](#)) policy have been met
- the approval of waiver is made conditional upon the accused supplying fingerprints and photographs to the police, if appropriate
- when a failure to appear charge is waived, the circumstances and consequences of the non-appearance are described

Sending Crown Counsel should determine whether there are any outstanding warrants for the accused and ensure they are properly dealt with prior to waiver.

Sending Crown Counsel should ensure that the accused has a scheduled appearance date in the sending location for a time after the scheduled appearance date in the receiving location, to allow a warrant to be obtained in the sending location if the accused fails to appear at the receiving location. That appearance date should be cancelled once the accused has appeared in the receiving location.

After Consent to Waiver Received

If the accused fails to appear at the receiving location, the Crown file and the court registry file should be returned to the sending location.

When the accused appears as scheduled at the receiving location, receiving Crown Counsel should ensure that the sending Crown Counsel office is advised.

Having appeared at the receiving location, if the accused subsequently fails to appear, receiving Crown Counsel should request a warrant and should ensure that the Crown Counsel file and the court registry file are returned to the sending location, with the warrant.

When an accused is in custody, receiving Crown Counsel is responsible for arranging the attendance of the accused.

If the accused appears at the receiving location but refuses to plead guilty, receiving Crown Counsel should request that a date be fixed for the accused to appear in custody or on appropriate bail conditions at the sending location, and the file materials should be

returned to that location. Three weeks should be allowed for that court appearance unless the accused is remanded in custody.

When requested, receiving Crown Counsel should advise sending Crown Counsel of the disposition of the charge.

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 location.

Responsibility for Making Prosecutorial Decisions

Any circumstances or considerations, views of the victims, or sentencing position that sending Crown Counsel thinks appropriate for receiving Crown Counsel to consider should be outlined in writing and transmitted along with the file materials.

When any agreement has been reached between sending Crown Counsel and the accused, sending Crown Counsel must make it clear to the accused that the agreement is conditional upon acceptance by receiving Crown Counsel. Sending Crown Counsel should include with the file materials a memorandum confirming and describing any agreement.

Except for cases clearly falling within the rule in *Kienapple*,¹ receiving Crown Counsel must not stay or withdraw charges, nor accept pleas to lesser offences, without the approval of sending Crown Counsel.

If receiving Crown Counsel does not want to accept the waiver or sentencing position and sending Crown Counsel still wants the matter to proceed in the receiving location, the matter should be referred to the respective Regional Crown Counsel, Director, or their respective deputy for those locations, for resolution.

When a sentence imposed on a waived charge appears markedly unfit, receiving Crown Counsel should consider an appeal and should communicate this consideration to sending Crown Counsel who should make the decision whether to recommend appeal of the sentence (*Appeals* ([APP 1](#))).

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,

¹ *Kienapple v R*, [1975] 1 SCR 729

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.² The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.³

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.”⁴

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.

With respect to Indigenous offenders, Indigenous courts allow them to participate in sentencing that is culturally appropriate and trauma informed. Prior to waiving any matter to an Indigenous court, Crown Counsel should contact the Indigenous court Crown Counsel in the receiving region to determine capacity and suitability.

Indigenous Victims

If the matter involves an Indigenous victim or witness, Crown Counsel should consider whether the waiver would impede or enhance 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.

² *R v Ipeelee*, 2012 SCC 13

³ *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

⁴ *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