

Policy:

Waiver of Criminal Charges Within Province

Policy Code:

WAI 1

Effective Date:

March 1, 2018

Cross-references:

[APP 1](#) [APP 1.1](#)

[RES 1](#) [VIC 1](#)

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.

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, for instance, where 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 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.

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

Procedure

“Receiving Crown Counsel” means Crown Counsel in the location to which the charge may be waived for guilty plea.

“Sending Crown Counsel” means Crown Counsel in the office where the charge originated.

Accused in Custody

Where 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 Crown Counsel. Administrative staff in the receiving Crown Counsel office or assisting Court Registry staff should do the following:

- obtain current addresses (mailing and residential) and telephone numbers, as well as the date of birth of the accused. If possible, a fax number, email address, place of employment, and any aliases used by the accused should also be obtained
- check the CPIC, JUSTIN, and PCF (CORNET) systems for outstanding charges. It is desirable that all outstanding charges should be dealt with at the same time. Where 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, taking into account 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 sending Administrative Crown Counsel 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 current criminal record and material 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 policy *Victims of Crime – Providing Assistance and Information to* ([VIC 1](#)) have been met
 - If the waiver involves a plea resolution agreement, the requirements in the policy *Resolution Discussions* ([RES 1](#)) have been met
 - The approval of waiver is made conditional upon the accused supplying fingerprints and photographs to the police, if appropriate
 - Where 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.

Procedure to be followed by Receiving Crown Counsel after Consent to Waiver

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.

Where 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.

Where 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.

Where requested, Receiving Crown Counsel should advise Sending Crown Counsel of the disposition of the charge.

Where 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.

Where 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* (*Kienapple v. R.*, [1975] 1 S.C.R. 729), 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.

Where 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 by Crown to the Court of Appeal and Supreme Court of Canada* ([APP 1](#)) and *Appeals by Crown of Summary Conviction Matters* ([APP 1.1](#))).