

PRACTICE NOTE
REMOTE OUT OF CUSTODY APPLICATION
INCLUDING GUILTY PLEAS
EDMONTON REGION
April 24, 2020

Purpose:

The purpose of this practice note is to create a process for the courts located in the Edmonton Region that permits the Court to remotely hear applications including out of custody guilty pleas by way of telephone or video conference.

This protocol will apply to those matters where Defence Counsel/Duty Counsel/Agent* (hereinafter referred to as Counsel) and the Crown have agreed that the matter should be addressed at this time and either leads to the conclusion of the matter or deals with an issue where there is a present need to address. This will include but not necessarily be limited to guilty pleas, peace bonds, and amendments to release conditions or other Court Orders.

With respect to guilty pleas, this protocol will only apply to matters where either a joint submission will be presented for the Court's consideration that does not involve a (further) period of incarceration, or should Counsel not be presenting a joint submission, the Crown will not be seeking a (further) period of incarceration.

Procedure/Guidelines:

Pre-Court:

1. Counsel who have an out of custody matter that they wish to address, will contact the assigned Crown Prosecutor to discuss and agree upon the following:
 - a. In the case of a multi-count Information or multiple Informations, the charges that will be addressed;
 - b. An Agreed Statement of Facts that will be presented to the Court supporting the application/guilty plea(s) either orally or in writing;

- c. Any supporting documents that will be referenced during the hearing. It will be the responsibility of Counsel relying on the document to ensure it is emailed to the Court in accordance with the practice set out below.
2. Counsel will be required to obtain their client's consent to proceeding under this protocol and to fully canvass the provisions of section 606(1.1) of the *Criminal Code* with their client(s) in advance of the court appearance.
3. The date set by the court for hearings under this protocol each week are as follows:

Hinton	Thursday
Stony Plain	Monday
St. Albert	Monday
Sherwood Park	Thursday
Leduc	Monday
Vermilion	Wednesday
St. Paul	Monday
Ft. McMurray	Thursday
Ft. Saskatchewan	Wednesday

4. Counsel and Crown Prosecutors are required to complete the information contained in the Remote Appearance Court Forms attached, and to forward the Forms together with the documents specified in the Forms, including the Agreed Statement of Facts and the terms of any proposed order (eg. Probation Order) to the proxy email address for the appropriate court, 2 full days in advance of the designated court sitting day.

Proxy emails for the Edmonton Region Courts are as follows:

Hinton	hinp@csadm.just.gov.ab.ca
Stony Plain	STOP@csadm.just.gov.ab.ca
St. Albert	STAP@csadm.just.gov.ab.ca
Sherwood Park	Shep@just.gov.ab.ca
Ft. Saskatchewan	FTSP@just.gov.ab.ca
Leduc	LEDP@csadm.just.gov.ab.ca
Vermilion	VERP@just.gov.ab.ca
St. Paul	STPP@csadm.just.gov.ab.ca
Ft. McMurray	FMM_ProvincialCourt@just.gov.ab.ca

5. The subject line of the email **must include** the date of the scheduled appearance.

Court Proceedings:

6. The designated courtroom clerk (clerk) will first contact the Crown Prosecutor(s) assigned to the courtroom by telephone or video conference. It is expected that the Crown Prosecutor will remain available on the telephone until all matters relevant to their prosecution service have been completed.
7. All Counsel must be ready to proceed with their matters as of court commencement at the relevant location.
8. The clerk will begin calling Counsel at 9:30 a.m. using the telephone number provided. The Clerk will then call the accused at the number provided. Counsel will ensure that the accused is aware that they must be prepared to deal with their matter when contacted. Counsel are asked to be prepared to speak to all of their matters when contacted by the clerk.
9. In the event the presiding Judge hearing the matter rejects the joint submission and determines that a fit sentence may include a period of incarceration, the hearing will be adjourned and the accused directed to appear in person before the Court on a fixed date and time.
10. Nothing in this protocol prevents Counsel from applying to the Court to proceed in the absence of the accused or in any way fetters the discretion of the presiding Judge to direct the accused to appear in person. If it is contemplated that the sentence will include the imposition of an Order (eg. Probation Order) the accused shall be present by telephone or video conference and if unavailable, the matter will be adjourned until the accused can attend.

Pre-Sentence Reports, Gladue Reports, Victim Impact Statements

11. In the event it becomes necessary to order a Pre-Sentence Report, a Gladue Report, or other reports for the purpose of sentencing, or if a Victim Impact Statement is received and the

victim has requested that their statement be read in court, then the matter shall be adjourned for that purpose.

Post Court:

12. In the event the presiding Judge imposes an order, the Judge will state the terms of the Order on the record and confirm with the offender that the Order is in effect and that the offender is bound by the terms of the Order. The Judge will communicate on the record how to request changes to the Order and the repercussions of failing to comply as described in ss 732.1, 734.2 or 742.3 of the *Criminal Code* as applicable to the offender. The Order will be prepared by the clerk and forwarded to counsel for the offender who will in turn forward it to the offender. Should the Order require a signature, Counsel will provide the Order to the offender for signing and return the Order forthwith to the Court.

Irregularities:

13. All parties must be prepared to waive procedural irregularities that may arise as a result of the use of this protocol.

*Agents are those persons permitted to appear before the Court pursuant to Section 802.1 of the *Criminal Code* including an agent as described under Alberta Order in Counsel 334/203.

REMOTE OUT-OF-CUSTODY APPEARANCE FORM (Crown)

At least 2 days prior to appearance, send completed form to appropriate court location proxy email

Case Information

Name: _____

Docket No: _____

Date Scheduled: _____ AM/PM: _____ Courtroom: _____

Crown Information (for remote appearance)

Name: _____

Email: _____

Phone: _____

Requirements for Guilty Plea and Sentencing

1. Will a joint submission on sentence be presented? Yes No

2. Victims:

Victims have been advised of the opportunity to provide a victim impact statement

One or more Victim Impact Statements have been filed with the Clerk of the Court

The Crown is not aware of a victim request to appear in person

People who suffered loss have been advised of the opportunity to request restitution

3. Is the Crown aware of any reason why this matter should not proceed under the Remote Out of Custody Applications protocol? If so, explain.

REMOTE OUT-OF-CUSTODY APPEARANCE FORM (Accused)

Where co-accused, complete one form for each person.

Case Information

Name: _____

Docket No: _____

Date Scheduled: _____ Courtroom: _____

Purpose of Appearance:

- Guilty plea and sentence
- Peace Bond
- Application to change release, probation or conditional sentence conditions
- Other: _____

Defence Counsel/Agent Information

Name: _____

Email: _____

Phone: _____

Accused Appearance

Accused will be present with defence counsel (by phone or WebEx)

Accused will appear by phone. Phone number: _____

Application to proceed in accused's absence.

Explain why the interests of justice will be served by proceeding in accused's absence:

Requirements for Guilty Plea and Sentencing

1. The accused's election, if required, is Provincial Court.
2. The accused will be pleading guilty to all charges, or to the charges as determined through negotiation between Crown and Defence
3. There is a written¹ Agreed Statement of Facts, acknowledgement of understanding the substance of s. 606(1.1) of the Criminal Code, and admission of criminal record (if any). These may be contained in one or more documents

Copies of the Agreed Statement of Facts, acknowledgement of understanding the contents of s. 606(1.1) and admission of criminal record (if any) must be provided with this Form.

4. Will a joint submission on sentence be presented? Yes No

At least 2 days prior to appearance, send completed form to appropriate proxy email.

¹ Where it is impracticable for the accused to sign the written documents, this requirement will be met where counsel has read the documents to the accused and received instructions to accept, or where counsel has provided electronic copies to the accused and the accused has provided an email response accepting the contents.