

Attachment 1

Bill 177 Changes to section 5.1 of Provincial Offences Act as enacted and not proclaimed.

Section 5.1: Current Early Resolution Legislation

Availability of meeting procedure

5.1 (1) This section applies if the offence notice indicates that an option of a meeting with the prosecutor to discuss the resolution of the offence is available. 2020, c. 18, Sched. 18, s. 3 (1).

Requesting a meeting

(2) A defendant may, instead of giving notice of intention to appear under section 5, request a meeting with the prosecutor to discuss the resolution of the offence if, within 15 days after being served with the offence notice, the defendant,

(a) indicates the request on the offence notice; and

(b) delivers the offence notice to the court office specified in the offence notice by mail or in any other manner specified in the offence notice. 2020, c. 18, Sched. 18, s. 3 (1).

Specified court office

(2.1) An offence notice is not valid unless it is delivered to the court office specified in the offence notice. 2020, c. 18, Sched. 18, s. 3 (1).

Notice of meeting time

(3) Where a defendant requests a meeting with the prosecutor under subsection (2), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of their meeting. 2009, c. 33, Sched. 4, s. 1 (6); 2020, c. 18, Sched. 18, s. 3 (3).

Rescheduling the meeting time

(4) If the time for the meeting scheduled in the notice under subsection (3) is not suitable for the defendant, the defendant may, at least two days before the scheduled time of the meeting, deliver to the clerk of the court one written request to reschedule the time for the meeting and the clerk shall arrange a new meeting time to take place within 30 days of the time scheduled in the notice under subsection (3). 2009, c. 33, Sched. 4, s. 1 (6).

Notice of rescheduled meeting time

(5) Where a meeting time is rescheduled under subsection (4), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the rescheduled time and the place of their meeting. 2009, c. 33, Sched. 4, s. 1 (6); 2020, c. 18, Sched. 18, s. 3 (6).

Meeting by electronic method

(6) The defendant and the prosecutor may attend their meeting by electronic method in accordance with section 83.1. 2009, c. 33, Sched. 4, s. 1 (6); 2020, c. 18, Sched. 18, s. 3 (7).

Agreement on plea of guilty and submissions

(7) At their meeting, the defendant and the prosecutor may agree that,

- (a) the defendant will enter a guilty plea to the offence or a substituted offence; and
- (b) the defendant and the prosecutor will make submissions as to penalty, including an extension of time for payment. 2009, c. 33, Sched. 4, s. 1 (6).

Appearance before justice

(8) If an agreement is reached under subsection (7), the defendant shall, as directed by the prosecutor,

- (a) appear with the prosecutor before a justice sitting in court and orally enter the plea and make submissions; or
- (b) appear without the prosecutor before a justice sitting in court within 10 days, enter the plea orally and make the submissions in the form determined by the regulations. 2009, c. 33, Sched. 4, s. 1 (6).

Conviction

(9) Upon receiving the plea and submissions under subsection (8), the justice may,

- (a) require the prosecutor to appear and speak to the submissions, if the submissions were submitted under clause (8) (b); and
- (b) enter a conviction and impose the set fine or such other fine as is permitted by law in respect of the offence for which the plea was entered. 2009, c. 33, Sched. 4, s. 1 (6).

If no justice available

(10) If no justice is available after the meeting to conduct the proceeding under clause (8) (a), the clerk of the court shall, as soon as practicable, give notice to the defendant and the prosecutor of the time and place for their joint appearance before a justice. 2009, c. 33, Sched. 4, s. 1 (6); 2020, c. 18, Sched. 18, s. 3 (8).

Notice of trial

(11) The clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of the trial if,

(a) an agreement is not reached under subsection (7); or

(b) the justice does not accept the guilty plea and refers the matter to trial. 2009, c. 33, Sched. 4, s. 1 (6); 2020, c. 18, Sched. 18, s. 3 (8).

Rescheduling time of trial

(12) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to in subsection (11). 2009, c. 33, Sched. 4, s. 1 (6).

Transition

(13) This section applies to a defendant served with an offence notice before the day subsection 3 (1) of Schedule 18 to the *COVID-19 Economic Recovery Act, 2020* came into force, unless, before that day, the defendant,

(a) gave notice of intention to appear under section 5, requested and attended a meeting with the prosecutor in accordance with this section or pleaded guilty under section 8; or

(b) was convicted under subsection 9 (2). 2020, c. 18, Sched. 18, s. 3 (9).

Note: On July 21, 2021, subsection 5.1 (13) of the Act is repealed. (See: 2020, c. 18, Sched. 18, s. 3 (10))

Same

(14) Despite subsection (13), if the defendant requested a meeting with the prosecutor before the day referred to in that subsection and the meeting was not held but was scheduled before that day, this section applies to the defendant only if permitted by the clerk of the court. 2020, c. 18, Sched. 18, s. 3 (9).

Sections 5.1- 5.5: Proposed Early Resolution Legislation

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5.1 of the Act is repealed and the following substituted: (See: 2017, c. 34, Sched. 35, s. 3)

Early resolution meeting procedure

5.1 (1) This section applies where the offence notice indicates that an option of an early resolution meeting with the prosecutor is available. 2017, c. 34, Sched. 35, s. 3.

Request

(2) Instead of filing the notice of intention to appear, a defendant may request an early resolution meeting with the prosecutor to discuss the resolution of the offence by delivering that request to the court office, by mail or in any other additional manner specified on the offence notice, within 15 days after being served with the offence notice. 2017, c. 34, Sched. 35, s. 3.

Note: On the day section 3 of Schedule 35 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force, subsection 5.1 (2) of the Act is amended by striking out “Instead of filing the notice of intention to appear” at the beginning and substituting “Instead of giving notice of intention to appear under section 5”. (See: 2020, c. 18, Sched. 18, s. 3 (2))

Types of early resolution meetings

(3) The defendant may request that the early resolution meeting be conducted,

Note: On the day section 3 of Schedule 35 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force, subsection 5.1 (3) of the Act is amended by striking out the portion before clause (a) and substituting the following: (See: 2020, c. 18, Sched. 18, s. 3 (4))

Types of early resolution meetings

(3) The defendant may request to attend the early resolution meeting,

(a) in person;

Note: On the day section 3 of Schedule 35 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force, clause 5.1 (3) (a) of the Act is amended by adding “at the court office” at the end. (See: 2020, c. 18, Sched. 18, s. 3 (5))

(b) in real time by electronic method in accordance with section 83.1; or

(c) through the exchange of written electronic communications in accordance with the regulations, if the offence notice indicates that this option is available. 2017, c. 34, Sched. 35, s. 3.

Written electronic meeting

(4) If the defendant requests an early resolution meeting through the exchange of written electronic communications, the defendant, the prosecutor and the clerk shall comply with the procedure set out in the regulations instead of the procedure set out in subsections (5) to (7). 2017, c. 34, Sched. 35, s. 3.

Notice

(5) If a defendant requests an early resolution meeting described in clause (3) (a) or (b), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and, as applicable, the place or method of their meeting. 2017, c. 34, Sched. 35, s. 3.

Rescheduling of meeting time

(6) If the time for the meeting is not suitable for the defendant, he or she may, at least two days before the scheduled time of the meeting, deliver to the clerk of the court one written request to reschedule the time for the meeting, and the clerk shall arrange a new meeting time to take place within 30 days after the time scheduled in the notice. 2017, c. 34, Sched. 35, s. 3.

Notice of rescheduled meeting time

(7) If a meeting time is rescheduled, the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the rescheduled time and, as applicable, the place or method of their meeting. 2017, c. 34, Sched. 35, s. 3.

Transition

(8) The following rules apply to defendants who were issued an offence notice that requires the notice of intention to appear to be filed in person before the day section 3 of Schedule 35 to the *Stronger, Fairer Ontario Act (Budget Measures)*, 2017 came into force:

1. If the defendant did not meet with the prosecutor in accordance with this section as it read before those amendments came into force, the offence notice is deemed to indicate that an option of an early resolution meeting with the prosecutor is available and the defendant may request an early resolution meeting in accordance with this section.

2. If the defendant met with the prosecutor in accordance with this section as it read before those amendments came into force, their meeting and any agreement made at their meeting shall be dealt with in accordance with this Act as it read at that time. 2017, c. 34, Sched. 35, s. 3

Early resolution meeting agreements

5.2 (1) A defendant and prosecutor who participate in an early resolution meeting under section 5.1 may agree that,

(a) the defendant will plead guilty to the offence, a substituted offence or a substituted allegation related to the offence and,

(i) the defendant will pay the set fine and all applicable costs and surcharges fixed by the regulations within 15 days, or such other time as the defendant and prosecutor may agree to, after the conviction date that will be recorded in accordance with subsection 5.3 (4), or

(ii) submissions will be made as to the amount of the fine, the time to pay the fine, or both; or

(b) the prosecutor will withdraw the charge. 2017, c. 34, Sched. 35, s. 3

Withdrawal of charge

(2) If the prosecutor agrees to withdraw the charge, he or she shall indicate that the charge has been withdrawn on the agreement form prescribed under section 13 and file it with the clerk of the court as soon as is practicable. 2017, c. 34, Sched. 35, s. 3

Agreement on plea of guilty, no submissions

5.3 (1) If an agreement described in subclause 5.2 (1) (a) (i) is reached, the defendant shall sign the agreement form prescribed under section 13 and provide it to the prosecutor, who shall file the form with the clerk of the court within three days after receiving it. 2017, c. 34, Sched. 35, s. 3.

Failure to file

(2) If the prosecutor does not file a signed agreement form within three days after receiving it as required by subsection (1), the charge is deemed to be withdrawn. 2017, c. 34, Sched. 35, s. 3.

Recording of conviction

(3) Subject to an abandonment of the agreement under subsection (7), a clerk of the court who receives a signed agreement form under subsection (1) shall record the conviction in accordance with the agreement as soon as is practicable. 2017, c. 34, Sched. 35, s. 3.

Conviction date

(4) The clerk of the court shall record the conviction date as the earlier of the following days:

1. The day that is 15 days after the day the defendant signed the agreement.
2. The day the defendant pays the set fine and all applicable costs and surcharges.
3. The day the defendant makes the initial payment set out in the agreement. 2017, c. 34, Sched. 35, s. 3.

Fine imposed

(5) The fine is deemed to be imposed as of the conviction date. 2017, c. 34, Sched. 35, s. 3.

Notice

(6) If the defendant has not paid the set fine and all applicable costs and surcharges by the conviction date, the clerk of the court shall give the defendant notice of the fine and its due date and of the defendant's right to make an application for an extension of the time for payment under section 66.0.1. 2017, c. 34, Sched. 35, s. 3.

Abandonment of agreement

(7) The defendant may abandon the agreement within 15 days after the day he or she signed the agreement, if he or she has not made a payment referred to in paragraph 2 or 3 of subsection (4), by filing a notice of intention to abandon an early resolution agreement and appear at trial in the form prescribed under section 13 with the clerk of the court, and in such a case the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of the trial. 2017, c. 34, Sched. 35, s. 3.

Agreement on plea of guilty, submissions

5.4 (1) If an agreement described in subclause 5.2 (1) (a) (ii) is reached, the defendant shall sign the agreement form prescribed under section 13 and, as directed by the prosecutor,

- (a) immediately appear with the prosecutor before a justice sitting in court and orally enter the plea and make submissions;
- (b) appear with the prosecutor before a justice sitting in court within 10 days to orally enter the plea and make submissions; or

(c) appear without the prosecutor before a justice sitting in court within 10 days, enter the plea orally and make the submissions in the form determined by the regulations. 2017, c. 34, Sched. 35, s. 3.

If proceeding not immediate

(2) If the prosecutor does not direct the defendant to immediately appear before a justice or if no justice is available to immediately conduct the proceeding,

(a) the prosecutor shall indicate on the agreement form prescribed under section 13 that an appearance before a justice is required and provide it to the clerk of the court; and

(b) the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place for the proceeding. 2017, c. 34, Sched. 35, s. 3.

Conviction

(3) On receiving the plea and submissions under this section, the justice may,

(a) at the justice's discretion, require the prosecutor to appear and speak to the submissions if the defendant appears without the prosecutor; and

(b) enter a conviction and impose the set fine or such other fine as is permitted by law in respect of the offence, and if applicable the allegation related to the offence, for which the plea was entered. 2017, c. 34, Sched. 35, s. 3.

Notice of trial

5.5 (1) The clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of the trial if,

(a) an agreement is not reached at the early resolution meeting; or

(b) the justice does not accept a guilty plea under section 5.4 and sets the matter to trial. 2017, c. 34, Sched. 35, s. 3.

Rescheduling time of trial

(2) The clerk of the court may, for administrative reasons, reschedule the time of a trial under subsection (1) by giving a revised notice to the defendant and the prosecutor within 21 days after giving them notice of the trial. 2017, c. 34, Sched. 35, s. 3.