

WELFARE AND OUTSTANDING WARRANTS

DETAILED FACT SHEET

As of June 1st, 2010, there are new rules in B.C. about welfare eligibility for people with outstanding arrest warrants.¹

Under these rules, people with certain outstanding warrants may be cut off, or ineligible for, welfare until they take steps to deal with the outstanding warrant.

These rules are complicated, and there are some exceptions to them. It is important that you read this whole fact sheet so that you know all of the information that might apply to you.

TIP → The new rules about warrants apply to eligibility for income assistance, disability assistance, hardship assistance, benefits for Persons with Persistent Multiple Barriers to employment (PPMB), and other supplements from the Ministry of Housing and Social Development (“the Ministry”). In this fact sheet, we use the word “*welfare*” to refer to all these kinds of benefits.

1. What kinds of warrants affect eligibility for welfare?

The new rules say that, unless a person fits in one of the exceptions to the rules (explained below in question 11), a person is not eligible for welfare in BC if there is an outstanding warrant for that person issued under either:

- (a) the *Immigration and Refugee Protection Act* (“IRPA”); **or**
- (b) any other enactment of Canada **in relation to an indictable offence**.

**Note:* In this fact sheet we use “*relevant warrant*” to refer to an outstanding arrest warrant under IRPA or in relation to an indictable offence under another federal law.

¹ Resources:

- *Employment and Assistance Act*, [section 15.2](#); *Employment and Assistance Regulation*, [ss. 77.4, 77.5, and s. 81\(f\)-\(g\)](#); *Employment and Assistance for Persons with Disabilities Act*, [section 14.2](#); and *Employment and Assistance for Persons with Disabilities Regulation*, [ss. 70.3, 70.4, and 73\(1\)\(f\)-\(g\)](#). All of this legislation is online at <http://www.mhr.gov.bc.ca/ministry/leg.htm>.
- The Ministry’s Online Resource contains the Ministry’s policy on warrants and welfare: http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/warrants/
- For more general information on welfare, the Legal Services Society’s booklet *Your Welfare Rights*, at <http://www.lss.bc.ca/assets/pubs/yourWelfareRights.pdf>.

a) Relevant warrants under the Immigration and Refugee Protection Act

Having **any** outstanding warrant under IRPA may make a person ineligible for welfare. Warrants under IRPA can be issued for two basic reasons:

- Σ A warrant *may* be issued if a person fails to attend an immigration examination or other hearing (such an admissibility hearing) or fails to report as required to Citizenship and Immigration Canada, or
- Σ If a person is charged with one of the offences set out in sections 117-128 of *IRPA*, and fails to attend court as required in relation to those charges.

b) Relevant warrants under other federal laws

Most warrants are issued under the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act*.² Such warrants only affect welfare eligibility if they are “in relation to an indictable offence.” What does that mean?

Warrants can be issued in relation to three kinds of alleged offences:

- a) indictable offences – these are charges for very serious offences which can only be prosecuted by the most formal, “indictable” process.
- b) hybrid offences – the majority of offences are hybrid offences. When an offence is hybrid, the prosecution can choose whether to prosecute the charges by indictment, or by the summary conviction procedure.
- c) summary conviction offences – these are charges for less serious offences which can only be prosecuted by the least formal, “summary conviction” process.

The new welfare rules say that you are ineligible for welfare if you have an outstanding warrant in relation to a hybrid offence OR an indictable offence. Warrants relating to summary conviction offences do not affect your eligibility for welfare.

2. How do I know if I have an outstanding warrant for a hybrid or indictable offence?

There is no simple list of which offences fall into which category. If you know what specific charge a warrant relates to, you can check the *Criminal Code of Canada*³ and the *Controlled Drugs and Substances Act*⁴ to see if it is indictable, hybrid, or summary.

² Warrants issued for indictable or hybrid offences under any federal statute, not just the *Criminal Code* or *Controlled Drugs and Substances Act*, will also affect welfare eligibility.

³ Online at: <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.

⁴ Online at: <http://www.canlii.org/en/ca/laws/stat/sc-1996-c-19/latest/sc-1996-c-19.html>.

Many people are not sure exactly what they are charged with. If you have a copy of your "information" from criminal court, it will state what your charges are for.

3. I think a relevant warrant was issued for me a while ago. How do I know if it still exists?

Not everyone who has had a relevant warrant issued against them in the past necessarily *still* has a warrant. Sometimes charges are stayed and, when that happens, warrants are cancelled. A warrant can be cancelled without you knowing about it. As a result, you can't assume that you *still* have an active warrant.

Unless you are sure a relevant warrant is still outstanding, it may be most accurate, when asked, to tell the Ministry that you don't know if you have a relevant outstanding warrant. For more information about this, see question 7 below.

4. How does the Ministry ask if I have a relevant warrant?

The Ministry has said publicly that it is relying on people to voluntarily disclose whether they have relevant warrants. This is not fully accurate as the Ministry will also be checking to confirm whether people have warrants, as described below.

If you apply for welfare after June 1st: starting June 1, 2010 the application forms for welfare require you to state whether or not you have a relevant warrant. The actual question asked is:

"Is there an outstanding warrant for your arrest issued under the Immigration and Refugee Protection Act (Canada) or any other enactment of Canada in relation to an offence for which a person may be prosecuted by indictment?"

TIP → The application forms ask you to answer "yes" or "no" to this question. If you are not sure whether you have an outstanding relevant warrant, you can tell the Ministry worker your answer is "I don't know."

If you are already receiving welfare before June 1st, the Ministry has said it will ask you about relevant warrants in three situations:

- (1) **Self-reporting:** The monthly report stub is changing in June 2010. This is the report that most people must complete and hand back to the Ministry to get welfare benefits the next month. Starting with welfare cheques for July that are issued on June 23rd, the monthly report will ask you to declare whether you have a relevant warrant. The monthly report must be given back to the Ministry by July 5th. This

means that the welfare cheque for August is the earliest cheque that self-reporting under the new rules can affect.

TIP → Self-reporting if you receive disability assistance (PWD)

If you receive disability assistance (PWD) **and** think you *may* have a relevant warrant, you should complete the monthly report that comes with your benefits for July, and answer the question about warrants (you can answer "I don't know" if you have any doubt - see question 7). Then give the report to the Ministry by July 5th.

If you know that you do not have a relevant warrant, you do not need to complete the monthly report unless you have *other* changes to report to the Ministry. People who receive disability assistance must only fill out the monthly report when there is a change in circumstances that may affect their eligibility for benefits. Not having a relevant warrant doesn't affect your eligibility for welfare, so you don't need to report that. But you should answer the warrants question and return the monthly report if you think you **may** have a relevant warrant.

- (2) Random audits: the Ministry says it will do random checks on people who currently receive welfare benefits. If you are checked, the Ministry will ask you to sign an Employment and Assistance review form or Employment and Assistance for Persons with Disabilities review form, authorizing the Ministry to check whether you have relevant warrants. The Ministry may ask you to sign this review form at your annual review, or earlier.
- (3) Third party reporting: if a member of the public gives the Ministry a tip that you may have a relevant warrant, the Ministry will check into this. The Ministry will ask you to sign an Employment and Assistance review form or Employment and Assistance for Persons with Disabilities review form, authorizing the Ministry to check whether you have relevant warrants.

5. Do I have to consent to a warrant check by the Ministry?

Yes. If, when asked, you do not consent to the Ministry conducting checks to see if you have relevant warrants, you will not be eligible for welfare.

If you apply for welfare after June 1, 2010, as part of the application process, you will be asked to provide the Ministry with written consent to check with the RCMP and the Ministry of Public Safety and Solicitor General to confirm whether you have any relevant warrants.

If you are already receiving welfare, at your annual review the Ministry will require you to sign a review form giving written consent for the Ministry to check with the RCMP and the Ministry of Public Safety and Solicitor General to confirm whether you have any relevant warrants. The Ministry may also ask you to provide this written consent if your cheque is flagged because of a random check, a tip the Ministry has received, or because of information you included on your monthly report stub.

6. How will the Ministry check for warrants?

If you consent to the Ministry conducting a check for relevant warrants, the Ministry will ask the office of the B.C. Ministry of Public Safety and Solicitor General to check for relevant warrants in a computer information system called the Canadian Police Information Centre (CPIC).

If CPIC shows that you have an outstanding relevant warrant, staff at the Solicitor General's office will call the jurisdiction that issued the warrant to double check that the information in CPIC is correct. This step is taken because information in CPIC is not always reliable. For example, CPIC may show that someone has an outstanding warrant against them when in fact the person cleared the warrant last year. The police or others may sometimes forget to update information in CPIC. Similarly, CPIC may not include records of some indictable warrants that have been issued and are still in effect. If a person's indictable warrant is not recorded in CPIC, the Ministry will consider that that person does not have a relevant warrant (and is therefore eligible for welfare).

Once their check is done, the Solicitor General's office will tell the Ministry whether they found a relevant warrant for you and, if so, where and when the warrant was issued. The Ministry says that it will not get any other information about the alleged offence, or about you, from the Solicitor General's office.

7. What if I think I might have a relevant warrant, but I'm not 100% sure?

Many people think they may have a warrant or warrants from the past, but are not 100% sure if any of the warrants are still in force. Other people may think they have a criminal warrant, but may not be 100% sure whether the warrant is for an indictable or hybrid offence (that is, a warrant that affects welfare eligibility) or for a summary offence (a warrant that does not affect welfare eligibility).

TIP → If you are in either of these situations, we recommend that, when you are asked, you **tell the Ministry that that you do not know if you have a relevant warrant**. You can give this answer on your monthly report form if you already receive welfare, or on the Ministry's application form if you are applying for welfare. You can say "I don't know" even though the application form and monthly report do not list this answer as an option. Instead of ticking a box to answer "yes" or "no," you can write "I don't know" on the form or monthly report.

If you tell the Ministry that you don't know if you have a relevant warrant, the Ministry will probably require you to sign a consent form authorizing a warrants check (if you have not already signed one). Then the Ministry will ask the Solicitor General's office to run a CPIC check for outstanding relevant warrants.

If you are cut off welfare because an outstanding warrant turns up in that check, you can appeal that decision by making a Request for Reconsideration (see question 8 below). You can also request complete information about the warrant to help you understand your options.

8. What if the Ministry says I have a relevant warrant but I don't agree?

TIP → If the Ministry refuses you welfare or cuts you off welfare saying that you have a relevant warrant, and you don't agree that you have a relevant warrant, you can **appeal** that decision. **Get legal help with your welfare appeal**. If you need help with a reconsideration request or an appeal, we suggest you contact an advocate. To find an advocate in your area, use the Povnet "Find an Advocate" function at <http://www.povnet.org/find-an-advocate/bc>.

To appeal a Ministry decision, first request a "reconsideration" by the Ministry. If your reconsideration is not successful, you can file another appeal to the Employment and Assistance Appeal Tribunal (the "Tribunal"). During the appeal process, you are entitled to copies of all of the information that the Ministry used to make its decision, and this should include more information about the alleged relevant warrant.

If you were getting welfare and it was stopped because the Ministry says you have a relevant warrant, you should be able to get an "appeal supplement" while you are appealing. This means the Ministry would give you benefits while you are appealing; if you lose your appeal you will have to pay them back.

In your appeal, you could try and show that the warrant the Ministry says you have in fact no longer exists. Or, you could try to show that an existing warrant is in relation to a summary conviction offence (for example, if the prosecutor had already chosen to prosecute a hybrid offence by summary conviction). **You should seek legal help with any welfare appeal.**⁵

9. What are my options if I have a relevant warrant?

Here are **four** options for dealing with a warrant that disqualifies you from getting income assistance:

- (1) You can ignore the warrant, but you will be ineligible for welfare unless you fall into one of the exceptions in question 11 below. If you get welfare after June 1, 2010 despite having a relevant warrant, and the Ministry discovers this, you will likely be cut off welfare and you **MAY** be required to repay any welfare benefits you received while you were ineligible. You could also face criminal charges in relation to obtaining welfare benefits by fraud. If you are convicted of fraud in relation to welfare benefits under the Criminal Code, you will have a lifetime ban on receiving welfare in BC, unless your physical health is in imminent danger.
- (2) If you have a relevant warrant in another province, you can “waive in” your charges to B.C. so that you can attend court here to clear the warrant and deal with the charges. However, you can only waive charges into BC if you intend to plead guilty to them. **You should get legal advice from a criminal law lawyer before deciding to waive in any charges.** You may also need legal help to complete the waiving-in process.⁶

The Ministry says that if someone decides to waive in charges to BC, the Ministry will consider a relevant warrant resolved if the person gives the Ministry a copy of the one of the following court documents in relation to the charge:

- Request for waiver
- Undertaking
- Promise to appear
- Recognizance
- Appearance notice

If you apply to waive in charges to BC, the first document you should get is the Request for Waiver form. Give the Ministry copies of any of these documents as

⁵ If you need help with a reconsideration request or an appeal to the Tribunal, we suggest you contact an advocate. To find an advocate in your area, use the Povnet “Find an Advocate” function at <http://www.povnet.org/find-an-advocate/bc>.

⁶ If you need advice about waiving in a warrant, please contact Pivot Legal Society at 604-255-9700 or www.pivotlegal.org.

soon as you get them, to show you are taking steps to deal with an outstanding warrant.

- (3) You can try to negotiate with the prosecutor (also called Crown Counsel) in the place where the warrant was issued, to see if they will agree to “stay” (that is, agree to drop) the underlying charges.

This is more likely to happen in certain situations, for example: if the charges are old; witnesses are no longer alive or are not available; or there are other reasons why it is no longer in the public interest for your charges to go to trial. If Crown Counsel agrees to stay the charges, they should also cancel any warrants that were issued in relation to those charges. **You will probably need legal help to successfully negotiate with Crown Counsel about this.**⁷

- (4) You can go back to the place where the warrant was issued, so that you can report to Court there and have the warrant cleared.

If you choose to do this, the Ministry will provide a supplement to cover your basic transportation and living costs to get there. If the rest of your family unit chooses to go back to the other jurisdiction with you, then the Ministry can pay their basic transportation and living costs to get there, too. This supplement is **repayable**; it is like a loan from the Ministry that you will have to pay back later. While the Ministry should pay for you to travel back to the place where the warrant exists, **the Ministry will not pay for you or your family to return to BC once you have cleared the warrant.**

10. Will a relevant warrant affect my family’s eligibility too?

No. If an adult in a family unit has a relevant warrant, the rest of the people in their family unit will remain eligible for welfare.

11. Are there any exceptions to the new rules?

Yes. People under 18, pregnant women, and people “in the end stage of a terminal illness” can still get welfare even if they have an outstanding, relevant warrant.⁸

A person with a relevant warrant can still get two kinds of financial supplements where the Ministry considers that “undue hardship” will otherwise occur. See question 12 below.

⁷ If you need advice about dealing with a relevant warrant, please contact Pivot Legal Society at 604-255-9700 or www.pivotlegal.org.

⁸ See *Employment and Assistance Regulation* section 38.1; *Employment and Assistance for Persons with Disabilities Regulation* section Reg 34.1

12. Can I get *any* financial help if I'm ineligible for welfare due to a warrant?

You can apply for two types of financial help if you are ineligible for welfare due to a warrant.

1. You can apply for a **repayable monthly supplement**, if you can show that **without financial help you will experience undue hardship.**

This supplement can normally be paid for only 3 months in a row, unless the Minister authorizes payment for up to 3 additional months. You have to reapply for this supplement each month and show undue hardship each time.⁹

The maximum amount of this supplement is the difference between the amount of welfare your family unit would have received that month if you had no warrant, and the amount of welfare your family unit actually received.

2. You can apply for a **repayable transportation supplement** if your warrant was issued in a place (i.e. jurisdiction) other than where you live, and you want to return to that jurisdiction to deal with your warrant.

To be eligible for this supplement, you need to satisfy the Ministry that:

- you have no resources available to cover the cost of travelling to the jurisdiction that issued your warrant; and
- you will use the supplement money to travel to that jurisdiction to deal with the warrant.

The amount of this supplement is limited to the cost of “the least expensive appropriate” mode of transportation to the issuing jurisdiction, plus “the least expensive appropriate” cost of accommodation and meals required for you (or you and the other members of your family unit) to travel there. It does **not** cover the costs of your stay in the issuing jurisdiction, or the costs of returning home to B.C.

If the Ministry denies your application for either of these supplements, you can request a reconsideration of its decision. However, you cannot get an “appeal supplement” while your request for reconsideration is being decided. If the Ministry’s reconsideration decision denies your application for the supplement, the welfare laws say you cannot appeal the reconsideration decision to the Employment and Assistance Appeal Tribunal.

⁹ The purpose of this supplement is to prevent undue hardship while you are dealing with a warrant. For ways of dealing with your warrant, see options 2, 3, and 4 under question 9, “*What are my options if I have a relevant warrant?*” Technically, however, you do not actually have to deal with your warrant in order to qualify for this repayable monthly supplement.

13. What legal help is available from CLAS?

The Community Legal Assistance Society (CLAS) may be able to help you if you have been denied welfare due to a warrant **and** you have already made a request for reconsideration and you have lost your appeal to the Employment and Assistance Appeal Tribunal.¹⁰ CLAS may help in the following situations:

Situation #1

- You have a relevant warrant in another jurisdiction and you have been cut off or refused welfare;
- You choose not to waive the relevant warrant into BC because you do not want to plead guilty; **and**
- You will experience hardship if required to travel to the other jurisdiction to deal with the warrant (e.g. leaving family behind, or uprooting family in order to travel; mental health problems exacerbated by travel; etc.).

Situation #2

- The Ministry says that you have a warrant and has cut you off or refused welfare, but you think that the Ministry's information is incorrect (e.g. there has been an identification error, the warrant has already been resolved, or the warrant is in relation to a summary conviction offence, etc.).

If you are in one of these situations, please contact CLAS as soon as possible at **604-685-3425** or **1-888-685-6222**, and ask to speak to the intake assistant.

Before calling CLAS, **please get a copy of your reconsideration decision and, if you have it, your Tribunal decision** and any other documents that might help us to understand your case.

¹⁰ **Note to advocates and community workers:** If you are assisting a client in situation #1 or #2 with a reconsideration or appeal and you would like input on your submissions, CLAS may be able to provide you with assistance related to what arguments and evidence to submit.