

## PRACTICE NOTE 30

### CHANGE OF PLEA TO INCLUDED OR OTHER OFFENCE

1. Subsection 606(4) of the *Criminal Code* sets out the procedure for any change of plea to an included or other offence. It reads as follows:

Notwithstanding any other provision of this Act, where an accused or defendant pleads not guilty of the offence charged but guilty of the other offence arising out of the same transaction, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept that plea of guilty and, if such plea is accepted, the Court shall find the accused or defendant not guilty of the offence charged and find him guilty of the offence in respect of which the plea of guilty was accepted and enter those findings in the record of the Court.

2. Accordingly, when defence counsel indicates that there is going to be a change of plea, the clerk should arraign the accused on the original charge.
3. The accused should then enter a plea of not guilty to the original charge, and then say that he pleads guilty to another offence.
4. Next, the accused or counsel should specifically state what offence and section of the *Code* the accused is pleading guilty to.
5. At this point, the Crown should state that it consents and provide the Court with any statement of facts that the Court will need to accept the guilty plea.
6. The Judge may then question the accused as to whether he understands the nature of the charge, and understands what the effect of a guilty plea is. The Judge may then find the accused not guilty, as originally charged in the indictment, but guilty of the particular offence to which he has just pleaded. The Judge should specifically state which section of the *Code* the accused has pleaded guilty to.
7. Upon such finding, the Clerk shall endorse the indictment with a not guilty plea to the original charge but a finding of guilty regarding the offence to which the accused has just entered the plea.