

THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS AND AGREEMENTS) ACT

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THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS AND AGREEMENTS) ACT

Acts
34 of 2005,
30 of 2010.

[1st November, 2010.]

Preliminary

1. This Act may be cited as the Criminal Justice (Plea Negotiations and Agreements) Act. Short title.

2.—(1) In this Act, unless the context otherwise requires— Inter-pretation.

“Director of Public Prosecutions” includes any attorney-at-law authorized in writing by the Director of Public Prosecutions to conduct plea negotiations and conclude plea agreements;

“plea agreement” means an agreement made pursuant to section 4;

“plea negotiations” means negotiations conducted pursuant to section 4.

3.—(1) Nothing in this Act affects the right of an accused to plead guilty to a charge without entering into plea negotiations or a plea agreement. Declaration of certain existing rights.

(2) Save as expressly agreed by the Director of Public Prosecutions in a plea agreement, nothing in this Act affects the powers conferred upon the Director of Public Prosecutions under section 94 of the Constitution.

Plea Negotiations

4.—(1) Subject to section 6, where the Director of Public Prosecutions considers it desirable in any case, he may, at any time before judgment and in accordance with the provisions of this Act, enter into plea negotiations with the accused for the purpose of reaching an agreement in accordance with the provisions of subsection (2) for the disposition of any charge against the accused. Plea negotiations.

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(2) An agreement under subsection (1) shall require that—

(a) the accused undertakes to—

(i) enter a guilty plea to an offence which is disclosed on the facts on which the charge against the accused is based; and

(ii) fulfill his other obligations specified in the agreement; and

(b) the Director of Public Prosecutions, having regard to the accused's undertaking under paragraph (a) agrees to—

(i) take a course of action consistent with the exercise of his powers specified in section 5; and

(ii) fulfil the other obligations of the Crown specified in the agreement.

Exercise by
Director of
Public Prosecutions of
certain powers.

5. The powers of the Director of Public Prosecutions referred to in section 4(2)(b)(i) are his powers—

(a) to withdraw or discontinue the original charge against the accused;

(b) to accept the plea of the accused to a lesser offence (whether originally included or not) than that charged.

Legal
representati

6.—(1) The Director of Public Prosecutions shall, before commencing plea negotiations, inform the accused of his right to representation by an attorney-at-law and of his right to apply for legal aid in respect of such negotiations.

(2) Plea negotiations shall be held by the Director of Public Prosecutions with the accused only through his attorney-at-law.

Plea Agreements

Plea
agreements.

7. Every plea agreement that is brought before a Judge or Resident Magistrate shall—

- (a) be in writing;
- (b) contain the information set out in the Schedule; and
- (c) be signed by the Director of Public Prosecutions, the accused and his attorney-at-law, being together in the presence of a Justice of the Peace.

Schedule. |

8.—(1) Subject to section 18—

Victim to be informed of plea agreement.

- (a) before a plea bargain is concluded the Director of Public Prosecutions shall permit the victim to make representation to him in writing and may take such representation into consideration in concluding a plea agreement;

- (b) where a plea agreement is concluded, the Director of Public Prosecutions shall, unless otherwise required by compelling reasons in the interest of justice, as soon as is reasonably practicable, communicate with the victim in respect of—

- (i) the substance of and reasons for the plea agreement; and

- (ii) the entitlement of the victim to be present when the Court considers the plea agreement.

(2) Where the victim has died or is incapacitated, the Director of Public Prosecutions shall communicate with a member of the victim's immediate family in respect of the matters set out in subsection (1).

(3) Where the victim is a child—

- (a) under the age of fourteen years, representation may be made by one of his parents or his guardian or where the parents or guardian cannot be located, the Children's Advocate or his nominee;
- (b) who has attained the age of fourteen years, representation may be made by the child and one of his parents or his guardian or where the parents or guardian cannot

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be located, the Children's Advocate or his nominee.

Director of
Public Prosecutions to
notify Court of
existence of
plea agree-
ment.

9.—(1) The Director of Public Prosecutions shall, in open court or, on a showing of good cause, in Chambers—

(a) before the accused is required to plead; or

(b) at any time after arraignment,

inform the Judge or the Resident Magistrate, as the case may be, of the existence of the plea agreement.

(2) The Judge or Resident Magistrate may, where the circumstances appear to so require, question the accused in order to confirm his knowledge of the existence of the agreement.

(3) The accused and his attorney-at-law shall be entitled to attend hearings held in Chambers.

Court not
bound by plea
agreement.

10. The Judge or Resident Magistrate shall not be bound to accept any plea agreement.

Matters for
consideration
of Court
before accep-
ting plea
agreement.

11.—(1) The Judge or Resident Magistrate shall, before accepting a plea agreement make a determination in open court, that—

(a) no improper inducement was offered to the accused to encourage him to enter into the plea agreement;

(b) the accused understands the nature, substance and consequence of the plea agreement;

(c) there is a factual basis upon which the plea agreement has been made; and

(d) acceptance of the plea agreement would not be contrary to the interests of justice.

(2) Where the Judge determines that a person has an interest in the outcome of the case, the Judge shall—

(a) warn himself and the Jury, if applicable, that it

is dangerous to convict the accused on the uncorroborated evidence of that person; and

- (b) identify what independent evidence, if any, is capable of confirming in some material particular the fact that the crime of which the accused has been charged was committed and that the accused committed the crime.

(3) In giving the warning to the Jury, it shall not be necessary for the Judge to use any particular form of words.

12.—(1) Subsection (2) shall apply where, upon a determination of the matters referred to in section 11, the Judge or Resident Magistrate decides that—

Refusal by Court to accept plea agreement.

- (a) the offence for which the accused is charged is not disclosed on the facts; or
- (b) there is no confirmation by the accused of the agreement or the admissions contained therein.

(2) The Judge or Resident Magistrate shall, in the circumstances described in subsection (1)—

- (a) refuse to accept the plea agreement;
- (b) inform the Director of Public Prosecutions of that decision and the reasons therefor.

(3) The rejection of a plea agreement shall not operate as a bar to the conduct of subsequent plea negotiations and the conclusion of a subsequent plea agreement in respect of the same case.

13. Where a plea agreement is accepted by a Judge or Resident Magistrate the accused shall be requested to plead to the charge.

Effect of accepting plea agreement.

14. Subject to section 18, any written representation made by the victim and the fact that a plea agreement has been accepted and the contents thereof shall be entered on the record.

Accepted plea agreement to form part of record.

Sentencing
where plea
agreement
accepted.
30/2010
S. 2(a).

15.—(1) Where a Judge or Resident Magistrate accepts a plea agreement he shall impose sentence in accordance with the provisions of this section.

(2) The maximum sentence of imprisonment which may be imposed in relation to any offence to which the accused has pleaded guilty shall, notwithstanding any other provision to the contrary, be two-thirds of the prescribed maximum penalty by which the offence would otherwise be punishable.

(3) Where the offence is punishable by life imprisonment then, notwithstanding any other provision to the contrary, the maximum sentence which may be imposed in relation to any such offence shall be fifteen years.

30/2010
S. 2(b).

(4) Where the offence is punishable by a prescribed minimum penalty, the Judge or Resident Magistrate may, notwithstanding any other provision to the contrary, impose sentence without regard to the prescribed minimum penalty.

Withdrawal
from agree-
ment.

16.—(1) An accused who enters into a plea agreement shall be entitled to withdraw from that agreement before sentence, or to appeal against a conviction based on the agreement, if—

- (a) it was entered into as a result of an improper inducement;
- (b) the Court determines that the Director of Public Prosecutions has breached the terms of the plea agreement; or
- (c) it was entered into as a result of a misrepresentation or misapprehension as to the substance or consequences of the plea agreement.

(2) The Director of Public Prosecutions shall be entitled to withdraw from a plea agreement before sentence where the Director of Public Prosecutions is satisfied that he was—

- (a) in the course of plea negotiations, misled by the accused or by his attorney-at-law in some material respect; or

- (b) induced to conclude the plea agreement by conduct amounting to an obstruction of justice.

17. Evidence of the following matters is not, in any civil or criminal proceedings, admissible against the accused who entered into the agreement or is a party to the plea negotiations—

Admissibility of plea agreement, etc.

- (a) a plea of guilty which was later withdrawn or any statement made in the course of any proceedings under this Act regarding the plea of guilty; or
- (b) any statement made in the course of plea negotiations with the Director of Public Prosecutions which does not result in a plea of guilty or which results in a plea of guilty that is later withdrawn or rejected.

18. The Judge or Resident Magistrate may upon application or in his discretion, as the case may be, order that the records of plea negotiations or a plea agreement be sealed, where the Judge or Resident Magistrate is satisfied that the sealing of such records is in the interests of the effective administration of justice.

Sealing of records of plea negotiations.

19.—(1) Every person having an official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential, all information relating to a plea agreement before it is presented to the Court or consequent upon the records thereof being sealed by the Court.

Obligation for secrecy.

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, who at any time communicates or attempts to communicate anything contained in such documents or records or any such information to any person otherwise than in accordance with this Act or pursuant to a court order, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

- (3) Any person to whom information is communicated in

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accordance with this Act shall regard and deal with such information as secret and confidential.

(4) A person referred to in subsection (3) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment..

General

Amendment
of Schedule.

20. The Minister may, by order subject to negative resolution, amend the Schedule.

Regulations.

21. The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act and such regulations shall be subject to affirmative resolution.

Minister may
amend
monetary
penalties.

22. The Minister may, by order subject to affirmative resolution, amend the monetary penalties in this Act.

SCHEDULE

(Section 7)

Contents of Plea Agreement

1. The name and jurisdiction of the Court in which the matter is held or to be held.

2. The Case Number and File Number.

3. The name, position, business address, e-mail address, business telephone and facsimile numbers of the prosecuting counsel.

4. The name, position, business address, e-mail address, business telephone and facsimile numbers of the defence counsel.

5. The proper name and alias, if any, of the accused.

6. The plea. The draft information or indictment shall be attached to the agreement.

7. The nature of the offence. The elements of the various offences to which the accused is pleading shall be set out.

8. The statutory maximum penalty for the offence to which the accused is pleading guilty.

9. The substantial facts relevant to any admissions made by the accused. A statement of facts may be attached and incorporated by reference. Any document containing any promise, agreement, understanding or inducement which has been incorporated into the agreement shall be attached.

10. A statement that the accused was informed of, and has waived, the following rights—

(a) the right not to be compelled to give self-incriminating evidence;

(b) the right to persist in a plea of not guilty;

(c) the right to confront and cross-examine witnesses against the accused;

(d) the right to pursue pre-trial motions and appeal preliminary points.

11. A statement that the provisions of the agreement are not binding on the Court and any other specified agencies of Government named in the agreement.

12. The obligations of the accused under the agreement.

13. The charges that are to be withdrawn or discontinued and the obligations of the Director of Public Prosecutions under the Agreement in relation thereto.

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SCHEDULE, *contd.*

14. A statement that the Director of Public Prosecutions is free to prosecute the accused for any other unlawful past conduct or any unlawful conduct that occurs after the date of the agreement.

15. A statement that the Director of Public Prosecutions may, in any case where he considers it desirable so to do, discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or any other person or authority.

16. The grounds for withdrawal from the agreement.

17. Consequences of any breach of the agreement.

18. Provisions relating to a right of appeal.

19. A statement that the agreement applies only to offences committed by the accused, has no effect on any proceedings against the accused not expressly mentioned therein, and shall not preclude any past, present, or future forfeiture actions.

20. The date on which the agreement was concluded.

21. That the agreement becomes effective upon signature by the accused, his attorney-at-law and the Director of Public Prosecutions, before a Justice of the Peace.

22. The following statement by the accused—

"I have read this agreement and carefully discussed each paragraph with my attorney-at-law. I understand the terms of this agreement and agree to it without reservation. I voluntarily and of my free will agree to those terms. I am pleading guilty to the charge(s). My attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the consequences of entering into this agreement. No promises, agreements, understanding or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I have had sufficient time to confer with my attorney-at-law concerning the plea agreement. I am satisfied with the representation of my attorney-at-law in this matter.

Name of Accused

Date *"*

SCHEDULE, *contd.*

23. The following statement by the attorney-at-law representing the accused—

“ I am the Attorney-at-law for _____
Name of Accused

“ I have read this agreement and carefully discussed each paragraph of this agreement with my client. Further, I have fully advised my client of his rights, of possible defences, of the penalties, and of the consequences of entering into this agreement. To the best of my knowledge and belief, my client's decision to enter into this agreement is an informed and voluntary one.

*Name of Attorney-at-law
representing Accused*

Date ”

24. A statement whether the accused communicated with the Director of Public Prosecutions through an interpreter. If the accused communicated through an interpreter, a certificate by the interpreter as to the accuracy of the interpretation during the negotiations and in respect of the contents of the agreement shall be appended to the agreement.

25. A statement that the parties shall have the right to full disclosure of any demands or admissions made by the accused during plea negotiations.

26. Such other provision as the Director of Public Prosecutions considers necessary or desirable.