



*Manitoba
Department of Justice
Prosecutions*

Guideline No. 2:PLE:1

Policy Directive

*Subject: Plea Bargaining
Date: May 2009*

POLICY STATEMENT:

Crown Attorneys should facilitate discussions with defence counsel with a view to avoiding unnecessary litigation through plea bargaining.

PROCEDURE:

The following principles should govern plea bargaining:

1. A Crown Attorney's actions in relation to plea bargaining must always be guided by the public interest and the need to promote confidence in the administration of justice.
2. A plea bargain may involve acceptance by the Crown of guilty pleas to lesser charges or to the staying of some charges in exchange for guilty pleas to the balance of charges.

Crown Attorneys may also agree with defence counsel to adopt a particular position on the matter of sentence. This may involve agreeing to make no recommendation respecting sentence, agreeing to recommend a certain type of sentence (e.g. a fine), agreement to recommend a sentence within a certain range or agreeing to recommend a specified term of imprisonment.

Other kinds of agreement may be made as well depending upon the circumstances of the case (e.g. firearms prohibition, conditions of probation), provided that the *Criminal Code* does not require a certain minimum order.

3. A Crown Attorney who is doubtful about the appropriateness of a contemplated plea bargain should consult with senior prosecutions staff. In particular, all homicide cases in which a reduction of charge is being considered must first be discussed at a case conference.
4. Crown Attorneys are reminded of their statutory obligations under *The Victims' Bill of Rights* with respect to providing information to victims and receiving input from them. See: Victims' Policy (2:VIC:1).
5. Consultation with the investigating police officer concerning a prospective plea bargain is often worthwhile.

6. Where a plea bargain proposal from the defence involves an agreement by the Crown to recommend a conditional sentence on a serious matter, Crown Attorneys are reminded of the direction contained in the Conditional Sentence policy (4:CON:1).
7. It is proper for a Crown Attorney to make agreements respecting pleas or sentence with a view to avoiding an unsuccessful prosecution. Thus, for example, where witnesses do not perform as expected or where there are other deficiencies in the available evidence, it is appropriate for a Crown Attorney to agree to a plea bargain. However, such an agreement must not bring the administration of justice into disrepute.
8. Subject to paragraph 18, a Crown Attorney should not agree to sanitize or play down certain facts in exchange for a guilty plea. All of the facts that can reasonably be proved and that are of significance must be disclosed to the judge.
9. The Crown Attorney must not agree to withhold information regarding the offender's criminal record in exchange for a guilty plea.
10. A Crown Attorney should not make any agreement regarding sentence where it is understood that a pre-sentence report will be ordered. In such a case, it is premature to discuss the appropriate sentence. A prior agreement by the Crown to seek a lenient sentence will put the Crown in an awkward position if the PSR indicates serious concerns about the risks presented by the accused. Conversely, an indication that the Crown will seek a harsh sentence may be unwarranted if a very favourable PSR comes back.
11. The judiciary should generally not be brought into the plea bargaining process. Thus, it is generally not appropriate for a Crown Attorney and the defence to make representations outside of court. Rare exceptions may exist where information critical to the sentencing process must be disclosed to the judge but should not be disclosed in open court. Such situations might include instances where a psychiatric report adversely affects an innocent person or the accused, where there is medical information that should remain confidential (e.g. the accused has a terminal medical condition), or where the safety of certain individuals would be endangered by the public disclosure of information.
12. A Crown Attorney should not agree to deal with a matter at a time other than the normal court time in order to avoid media coverage. Similarly, a charge should not be remanded from the location in which the incident arose to another court location (e.g. remanded into Winnipeg for a guilty plea) in order to avoid local attention.
13. A Crown Attorney must not agree not to appeal whatever sentence the Judge may impose in exchange for a plea of guilty.
14. There is an overarching duty of fairness expected of a Crown Attorney. The accused should not be overcharged, or a plea extorted on the basis of a more serious charge, which may have a skimpy factual underpinning.

15. No plea bargains should be made on the basis of convenience or expediency. However, a Crown Attorney may enter into a plea agreement in order to avoid a trial where this is done for the purpose of limiting the backlog of criminal prosecutions provided the agreement is reasonable in light of the circumstances of the offence and the background of the offender.
16. Though very rare, there are situations where a Crown Attorney may properly decide to stay proceedings or recommend a particular sentence on compassionate or humanitarian grounds.
17. A Crown Attorney prosecuting a matter in Provincial Court should not attempt to bind the Crown Attorney prosecuting the matter in the Court of Queen's Bench. However, the Crown Attorney in Provincial Court may agree to the committal of the accused to Queen's Bench without a preliminary hearing where defence counsel undertakes that the accused will plead guilty to an agreed charge or charges. In such a case, no agreement should be made regarding sentence by the Crown Attorney in Provincial Court.
18. The benefits and practicality of plea bargaining are apparent to those who work in the criminal courts. However, the public and the news media often seem to regard plea bargaining with suspicion and some may even regard it as unseemly. This attitude may be attributable, at least in part, to the fact that plea bargaining occurs in private and often seems to result in the accused receiving what, at first glance, appears to be an unwarranted benefit (e.g. convicted of a reduced charge or receiving a lenient sentence). In an effort to reduce this inaccurate perception, Crown Attorneys should, where it is reasonable to do so, attempt to make the plea bargaining process more transparent by providing an explanation on the record of the factors that led to the plea bargain. This is especially important when dealing with a sensitive case.¹ The explanation may involve pointing out the exigencies of the case or explaining what compromises or concessions have been made by the Crown. The explanation need not be lengthy but it should be sufficient for the judge and the public to understand why the Crown is accepting the plea bargain.

Further, an explanation need not be provided every time a case is resolved through a plea bargain. In minor cases, the providing of detailed explanations is

¹ A sensitive case, as defined in the Sensitive Cases policy (2:REP:1), is one that is likely to attract public attention and includes any case:

- (a) involving a death as a consequence of alleged criminal conduct;
- (b) in which a police officer or public official will be or has been charged with committing a criminal act;
- (c) in which an individual has been killed or seriously injured as a result of police activity (e.g. high-speed chase);
- (d) involving an issue of Native Rights;
- (e) likely to be of concern to the Minister of Justice;
- (f) involving issues which are currently or potentially a matter of substantial public scrutiny; or
- (g) designated as sensitive by the appropriate Director.

not expected – it will only serve to delay the sentencing process. In addition, there are situations where the public disclosure of factors leading to a plea bargain must not be made. This could include cases where an explanation would jeopardize the safety of witnesses, reveal sensitive information about organized crime, compromise ongoing investigations, etc.

One of the common situations in which the Crown may feel that it is best not to go into detail about the exigencies of the case is where the victim is a weak witness and the Crown is prepared to accept a plea bargain rather than risk an acquittal at trial. In such a case, an explanation that the complainant is a “terrible witness” only serves to embarrass the complainant. In such a case, it is best to indicate that, on speaking to the complainant, the Crown is satisfied (and the defence is prepared to admit) that certain facts can be established.

RATIONALE:

Plea bargaining avoids unnecessary litigation, decreases public expense, minimizes inconvenience to witnesses and reduces the backlog of cases within the court system. Crown Attorneys should participate in plea negotiations with defence counsel in accordance with the guidelines provided above.