

**CHAPTER 91A**

**CRIMINAL PROCEDURE (PLEA DISCUSSION AND PLEA AGREEMENT)**

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## CHAPTER 91A

### CRIMINAL PROCEDURE (PLEA DISCUSSION AND PLEA AGREEMENT)

**An Act to provide for the establishment of a system of plea discussions and for other matters incidental thereto.** *32 of 2008*

*[Assent – 19th December, 2008]*

*[Commencement – 22nd December, 2008]* *S.I. 118/2008.*

#### PART I - PRELIMINARY

1. This Act may be cited as the Criminal Procedure (Plea Discussion and Plea Agreement) Act. *Short title.*

2. In this Act — *Interpretation.*

“Court” means the Supreme Court or Magistrate's Court, as the context may require;

“improper inducement” includes —

- (a) the coercion of an accused person to enter into a plea discussion; and
- (b) the fraudulent misrepresentation of a material fact by the prosecutor either before a plea discussion is entered into or during the course of such discussion;

“plea agreement” or “agreement” means an agreement entered into —

- (a) between the accused person and the prosecutor; or
- (b) between the attorney for the accused person and the prosecutor,

whereby the accused person agrees to plead guilty and the prosecutor agrees to take a particular course of action;

“plea discussions” or “discussion” means a discussion —

- (a) between an accused person and a prosecutor; or

(b) between an attorney for an accused person and a prosecutor, either before the arraignment of the accused person, or at any time after the trial of the accused person commences, with the view towards arriving at an agreement;

“particular course of action” includes —

- (a) a recommendation to the Court to dismiss other charges;
- (b) a recommendation to the Court as to a particular sentence;
- (c) an agreement not to oppose a request by the accused person, or his attorney, for a particular sentence;
- (d) an agreement that a specific sentence is appropriate for the disposition of the case;

“prosecutor” means the Attorney-General or an attorney in the Office of the Attorney-General or a police officer being an officer to whom the Attorney-General has given written instructions to enter into a plea agreement;

“relative” means the spouse, parent or child of the victim.

Application of Act.

**3. (1)** This Act applies to a plea discussion and a plea agreement in respect of an indictable or summary offence.

(2) This Act does not affect the right of an accused person to plead guilty without entering into a plea discussion.

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**PART II - PLEA DISCUSSIONS**

4. (1) Subject to subsection (2), a prosecutor and an accused person or where the accused person is represented by an attorney, a prosecutor and the attorney for the accused person, may engage in plea discussions.

Plea discussions.

(2) A prosecutor other than the Attorney-General shall not conclude a plea agreement with an accused person or his attorney, unless he first obtains the written permission of the Attorney-General.

5. (1) A prosecutor who uses an improper inducement to encourage an accused person to participate in a plea discussion is liable on summary conviction to a fine of twenty-five thousand dollars and to a term of imprisonment of five years.

Improper inducement.

(2) A police officer or attorney for an accused person is liable to a fine of twenty-five thousand dollars and to imprisonment for five years where he —

- (a) conspires with the prosecutor in the commission of an offence under subsection (1);
- (b) attempts, incites, aids, abets, counsels or procures the commission of such an offence under subsection (1).

(3) No prosecution under this section shall be instituted without the written consent of the Attorney-General.

6. (1) Where an accused person has retained an attorney, a prosecutor shall not engage in a plea discussion directly with the accused person in the absence of his attorney.

Representation by attorney.

(2) A prosecutor shall inform an accused person of his right to representation, by an attorney, in the plea discussion.

(3) Where an accused person cannot afford to retain an attorney —

- (a) if the accused person is charged with an offence for which the punishment is death, the Court shall assign counsel for the defence at the public expense; and

(b) in any other case, the Court in its discretion may assign counsel for the defence at the public expense.

(4) In cases where an accused person who has indicated that he wishes to be assigned a counsel is not assigned a counsel, the prosecutor shall not have any discussions directly with the accused, unless the accused person waives in writing his right to be represented by counsel as set out in Form 1 in the Schedule.

Form 1,  
Schedule.

Prohibition  
against plea  
discussions.

7. A prosecutor shall not suggest, conclude or participate in any plea discussion that requires the accused person to plead guilty to an offence that —

- (a) is not disclosed by the evidence;
- (b) inadequately reflects the gravity of the provable conduct of the accused person unless, in exceptional circumstances, the charge is justifiable in terms of the benefits that will accrue to the administration of justice or the protection of society.

Victim to be  
consulted.

8. (1) A prosecutor may obtain the views of the victim or a relative of the victim before concluding plea discussions.

(2) A prosecutor who arrives at a plea agreement with the accused person may ensure that the victim is told the substance of, and reasons for, the agreement, unless compelling reasons, such as the likelihood of serious harm to the accused or to another person, requires otherwise.

### PART III - PLEA AGREEMENTS

Plea agreements.

9. (1) A plea agreement which has been concluded between the prosecutor and the counsel for the accused person shall be set out as in Form 2 of the Schedule and where such agreement is concluded, it shall be signed by them together by the accused and the prosecutor shall file the agreement in the registry of the Court.

Form 2,  
Schedule.

(2) A plea agreement which has been concluded between the prosecutor and an unrepresented accused person shall be set out as in Form 3 of the Schedule and where such agreement is concluded it shall be signed by both parties in the presence of the clerk of the court and filed in the registry of the Court.

Form 3,  
Schedule.

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(3) The clerk of the court shall, upon receipt and filing of the agreement, set the matter down for hearing before the Court.

(4) In this Act, “clerk of the court” means a person designated by the Registrar (or Chief Magistrate) as the case may be.

**10.** (1) When a plea agreement has been concluded the prosecutor shall disclose to the Court, in Chambers, in the presence of the counsel for the accused or, where the accused is unrepresented, in the presence of the accused —

Hearing in Chambers.

- (a) the substance of, and reasons for, the agreement; and
- (b) whether any previous agreement has been disclosed to another Judge or Magistrate in connection with the same matter and, if so, the substance of that agreement.

(2) The Judge or Magistrate shall, when sitting in open Court, before accepting a plea agreement determine to his satisfaction that —

- (a) no improper inducement was made to the accused person to enter into the agreement;
- (b) the accused person understands the nature, substance and consequences of the agreement;
- (c) the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused, unless in exceptional circumstances the agreement is justifiable in terms of the benefits that will accrue to the administration of justice or the protection of society.

#### PART IV - GENERAL

**11.** (1) Subject to subsection (2) the Judge or Magistrate may in open Court seek the views of the victim or a relative of the victim, before recording the terms of the agreement and passing sentence.

Views of victim in open Court.

(2) The Judge or Magistrate may, where he considers it prudent to do so, retire to chambers to hear the views of the victim or relative, as the case may be, and such views shall be heard in the presence of the prosecutor and the

accused and his attorney or, in the event that the accused is unrepresented, in the presence of the accused.

Offer of accused to plead guilty.

**12.** (1) Where an accused person, charged for an offence offers, at the commencement of the trial or at any time thereafter before its conclusion, to plead guilty to an offence if certain charges against him are dismissed, the Judge or Magistrate shall inquire of the prosecutor whether he agrees to accept the offer of the accused person.

(2) Where the prosecutor agrees to accept the offer of the accused person, the matter shall be disposed of accordingly.

(3) Where the prosecutor refuses to accept the offer of the accused person, the trial shall continue.

Withdrawal of agreement by accused person.

**13.** An accused person 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) it was entered into as a result of a misrepresentation as to the substance or consequences of a plea agreement; or
- (c) the prosecutor has breached the terms of the plea agreement.

Appeal against sentence.

**14.** (1) Where an accused person pleads guilty to an offence and, upon his conviction, receives a sentence that accords with, or is within the range anticipated by, the plea agreement, the prosecutor shall not be permitted to appeal against the sentence imposed by the Judge or Magistrate unless it is shown that —

- (a) the prosecutor, in the course of a plea discussion, was wilfully misled by the accused person in some material respect; or
- (b) the Court, in passing sentence, was wilfully misled in some material respect.

(2) Where the Attorney-General is of the opinion that the grounds described in subsection (1) (a) or (b) exist he may appeal against the sentence.



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(3) The Attorney-General shall give notice of appeal in such manner as is prescribed by the Rules of Court, within fourteen days of the date of sentencing.

(4) The Court of Appeal however, may extend the time within which notice of appeal may be given.

**15.** Evidence of a plea agreement later withdrawn or of an offer to enter into a plea agreement, or of a statement made in connection with any such agreement or offer, is inadmissible in any proceedings. Inadmissible evidence.

**16.** The Judge or Magistrate may reject a plea agreement entered into between the prosecution and the accused if he considers that it is in the public interest to do so. Plea agreement not binding on the Court.

**17.** A plea agreement may if the accused so desires include any outstanding matters that are the subject of information before a court or area being investigated and which the accused and the prosecutor agree to have taken into consideration at the time of sentencing. Taking outstanding offences into consideration.

**SCHEDULE**

**FORM 1**

*(This Form applies where the accused/defendant does not wish to be represented by an attorney in plea agreement)*

**THE COMMONWEALTH OF THE BAHAMAS**

**DECLARATION BY ACCUSED/DEFENDANT OF  
DESIRE TO REPRESENT SELF IN THE  
SUPREME/MAGISTRATE COURT**

A.B. - The State/Complainant

V

A.B. - The Accused/Defendant

Whereas the accused/defendant was on the ..... day of  
....., 20..... charged with the following  
offence(s):

- (a)
- (b)
- (c)
- (d)

And whereas the accused/defendant having been informed by the prosecutor as to his right to representation by an attorney, informed the prosecutor of his desire to represent himself in plea discussions.

Dated this .....day.of....., 20.....

(Signed)  
Prosecutor

(Signed)  
Accused/Defendant

**CERTIFICATION**

I .....Clerk to Justice/Magistrate.....hereby  
certify that the above declaration was signed by the prosecutor  
..... and the accused/defendant.....  
(name of prosecutor) (name of accused/defendant)  
in my presence on the ..... day of....., 20....

*(Signed)*  
*Clerk of the Court*

**SCHEDULE**

**FORM 2**

*(This Form applies when the accused/defendant is represented by an attorney)*

**THE COMMONWEALTH OF THE BAHAMAS IN THE  
SUPREME/MAGISTRATE'S COURT PLEA  
AGREEMENT**

No.

A.B. - The State/Complainant

V

C.D. - Accused/Defendant

WHEREAS the accused/defendant was on the..... day of  
....., 20 ..... charged with the  
following offence(s):

- (a)
- (b)
- (c)
- (d)

And whereas a plea agreement was on the .....  
day of ....., 20 ..... concluded between the  
prosecutor and the attorney for the accused/defendant:

And whereas it was agreed that the accused/defendant shall  
plead guilty to —

- (a)
- (b)
- (c)
- (d)
- (e)

and in consideration that the prosecutor shall take certain course  
of action mentioned hereunder;

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And whereas it was agreed that the prosecutor shall take the following course of action:

- \*(a) a recommendation to the Court to dismiss other charges; [        ]
- \*(b) a recommendation to the Court as to a particular sentence; [        ]
- \*(c) an agreement not to oppose a request by the attorney for the accused for a particular sentence; [        ]
- \*(d) an agreement that a specific sentence is appropriate for the disposition of the case. [        ]

Dated this ..... day of ..... 20.....

(Signed)  
Prosecutor

(Signed)  
Accused/Defendant

(Signed)  
Accused/Defendant

\* [  ] indicate by ticking particular course of action to be taken.

**SCHEDULE**

**FORM 3**

*(This Form applies where the accused/defendant is not represented by an attorney)*

**THE COMMONWEALTH OF THE BAHAMAS IN THE  
SUPREME/MAGISTRATE'S COURT PLEA  
AGREEMENT**

**No.**

A.B. - The State/Complainant

V

C.D. - Accused/Defendant

Whereas the accused/defendant was on the .....day  
of ....., 20..... charged with the following offence(s):

- (a)
- (b)
- (c)
- (d)

And whereas the prosecutor informed the accused/defendant that  
he should be represented by an attorney:

And whereas the accused/defendant informed the prosecutor that  
he did not wish to be represented by an attorney:

And whereas a plea agreement was on the

..... day of ....., 20 .....

concluded between the prosecutor and the accused/defendant:

And whereas it was agreed that the accused/defendant shall  
plead guilty to —

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

in consideration that the prosecutor would take a certain course  
as mentioned hereunder:

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And whereas it was agreed that as a result of the accused/defendant pleading guilty to the said offence(s), or testifying against any coaccused the prosecutor shall take the following course of action —

- \* (a) a recommendation to the Court to dismiss all or certain charges; [     ]
- \* (b) a recommendation to the Court as to a particular sentence; [     ]
- \* (c) an agreement not to oppose a request by the accused for a particular sentence; [     ]
- \* (d) an agreement that a specific sentence is appropriate for the disposition of the case. [     ]

Dated this ..... day of ..... 20.....

(Signed)  
Prosecutor

(Signed)  
Accused/Defendant

\* [ √ ] indicate by ticking particular course of action to be taken.

**CERTIFICATION**

I .....(Magistrate) for the District of..... , hereby certify that the above plea agreement was signed by the prosecutor....., and the attorney for accused/defendant (name of prosecutor) ..... , in my presence on the .....day of (name of Attorney) , ..... 20.....

(Signed)  
Clerk of the Court