

PLEA BARGAINING

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TERMINOLOGY

The practice of what has come to be known as "plea bargaining" has been the subject of considerable debate over the last few decades. In Canada, the discussion has centered on the exact nature of the practice and on the term by which it should be known¹. In 1975, the Law Reform Commission of Canada defined "plea bargaining" as "any agreement by the accused to plead guilty in return for the promise of some benefit"². But over the years, considerable objections grew against designating the practice in any way that implied that justice could be purchased at the bargaining table. Consequently, there was a movement away from the use of the term "plea bargaining" and toward more neutral expressions such as "plea discussions", "resolution discussions", "plea negotiations" and "plea agreements". The use of such expressions marked an evolution in the practice itself, since they implicitly acknowledged it to be much more wide-ranging than simple bargaining and to involve the consideration of issues beyond merely that of an accused pleading guilty in exchange for a reduced penalty. For the purposes of this paper, we will mainly use the expression "resolution discussions" because its very vagueness reflects in our view the diversity of the practices it covers. It is, however, generally interchangeable with any of the other terms just mentioned.

Resolution discussions embrace several practices, including charge discussions, procedural discussions, sentence discussions, agreements as to the facts of the offence and the narrowing of issues in order to expedite the trial. Although they may sometimes involve a judge, these private discussions occur primarily between the prosecutor and the accused and his lawyer.

Charge discussions may include the following :

- the reduction of a charge to a lesser or included offence³
- the withdrawal or stay of other charges
- an agreement by the prosecutor not to proceed on a charge
- an agreement to stay or withdraw charges against third parties
- an agreement to reduce multiple charges to one all-inclusive charge⁴

- the agreement to stay certain counts and proceed on others, and to rely on the material facts that supported the stayed counts as aggravating factors for sentencing purposes⁵

Procedural discussions may include the following :

- an agreement by the prosecutor to proceed by summary conviction instead of by indictment⁶
- an agreement to dispose of the case at a specified future date if, on the record and in open court, the accused is prepared to waive the right to a trial within a reasonable time⁷
- an agreement to transfer charges to or from a particular province or territory, or to or from a particular jurisdiction in a province or territory⁸

Sentence discussions may include the following :

- a recommendation by a prosecutor for a certain range of sentence or for a specific sentence
- a joint recommendation by a prosecutor and defence counsel for a range of sentence or for a specific sentence
- an agreement by a prosecutor not to oppose a sentence recommendation by defence counsel
- an agreement by a prosecutor not to seek additional optional sanctions, such as prohibition and forfeiture orders
- an agreement by a prosecutor not to seek more severe punishment
- an agreement by a prosecutor not to oppose the imposition of an intermittent⁹ sentence rather than a continuous sentence
- the type of conditions to be imposed on a conditional sentence¹⁰

When an accused decides to plead guilty, the prosecutor should advise the sentencing court of the facts that could have been proven if the matter had gone to trial. For the court to accept a plea of guilty, the facts alleged by the prosecutor must be accepted by the accused as being substantially accurate, and they must be sufficient in law to constitute an offence. Discussions regarding the facts may include the use of an agreed statement of facts and an agreement by the prosecutor not to include embarrassing facts that are of little or no significance to the charge.

Discussions may also take place in criminal cases that actually proceed to trial in order to narrow the issues that will be litigated¹¹. In Canada, the evidentiary burden rests entirely on the prosecutor to prove a criminal

charge beyond a reasonable doubt. There is no obligation on the accused to demonstrate his innocence. As a result, criminal trials can be long and heavy. Resolution discussions may, therefore, include concessions by the defence of certain legal issues in order to reduce the onus on the prosecutor. These may include the defence's concession of non-contentious issues such as the jurisdiction of the court, the identity of the perpetrator of the crime or the voluntary character of a statement made by the accused to the authorities¹². In limited cases, the defence may be legally required to prove an assertion, such as in an application to exclude evidence¹³. In these cases, the prosecutor may also make concessions that are legally sound in order to reduce the burden on the accused during a trial. Finally, discussions may involve identifying witnesses whose evidence may not be necessary, so that they are not needlessly requested to appear.

All this to say that the concept of resolution discussions is a rather loose one. A definition that seems to capture the scope of the notion is that proposed by the Director of Public Prosecutions of the province of Saskatchewan :

A proceeding whereby competent and informed counsel openly discuss the evidence in a criminal prosecution with a view to achieving a disposition which will result in the reasonable advancement of the administration of justice.¹⁴

CRITICISMS OF THE PRACTICE

Plea negotiation has been a controversial subject among members of the judiciary, the practicing bar, law enforcement agencies and the academic community¹⁵. The primary criticism of the practice is that it subverts many of the values of the criminal justice system, such as those entrenched in the *Canadian Charter of Rights and Freedoms*, by allowing the circumvention of the rigorous standards of due process and proof imposed during criminal trials¹⁶. Detractors further tend to characterise the plea negotiation process as unnecessary and degrading to the criminal justice system. In particular, the process has been criticised as being, or appearing to be, an irrational, unfair and secretive practice that facilitates the manipulation of the system and the compromise of fundamental principles¹⁷. Another criticism of the concept of plea bargaining is that it allows offenders to receive lenient sentences. The concern about this result is that the practice undermines the deterrent effect of criminal

sanctions and perpetuates the image that offenders can evade the law, provided they are willing to bargain. This concern is exacerbated by the significant differences that may sometimes exist between the sentences imposed after guilty pleas and those imposed after trials.

The most serious concern with the plea-bargaining process relates to the possibility that an accused who is in fact innocent will be induced to plead guilty. While it is a requirement of law that an accused admit his guilt before a court accepts a plea¹⁸, other pressures may frustrate this principle.

Every person charged with a criminal offence has the constitutionally protected right to a legal counsel under the *Charter of Rights and Freedoms*¹⁹. The duty of defence counsel in a criminal proceeding is to protect the client as far as possible from being convicted except by a court of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged²⁰. But in spite of this duty, the possibility exists that an accused will be pressured by his counsel to plead guilty to a crime, even though he may be factually or legally not guilty. Some accused are vulnerable and often rely heavily on the advice of their lawyer. Defence counsel is obligated to take instructions from his client²¹, but this obligation is not always observed. In some cases, defence counsel may make all the decisions and compel a client to act in a manner that is inconsistent with the intentions of the latter. There may also be economic demands on the defence counsel to be financially efficient in order to survive professionally. In that perspective, it is easier and more lucrative to plead a high volume of clients guilty than it is to litigate every case. Furthermore, a great deal of a defence counsel's professional success depends on the working relationships established with the police, prosecutors and judges. Accordingly, defence counsel may sometimes be inclined to improperly balance his own personal interests against the best interests of his client. Pleading an innocent client guilty in order to maintain good relations with state officials, although unethical, may be a sacrifice that some defence counsel are willing to make.

Other pressures that an accused may face come from the actions of state officials. The power of the state to determine what offence someone will be prosecuted for can provide a broad range of options for officials. For example, the police may overcharge an accused or the prosecutor may

threaten to pursue the most severe penalty if the accused decides to proceed to trial²². The harsher sanctions associated with a conviction after trial may provide a prosecutor with significant power to bring an accused to plead guilty. As a result, there is a real concern that people will plead guilty to crimes they did not commit, or for which they have a defence, in order to avoid the risk of a substantially harsher punishment after trial. A troubling example of this result is to be found in the correlation between arguably wrongful guilty pleas and mandatory minimum sentences in cases of murder²³. In 1997, a judge reviewed cases involving the convictions of women who were imprisoned for spousal homicide in circumstances that raised the possibility of invoking self-defence or the "battered woman" defence²⁴. In her report, the judge acknowledged the pressure placed on women to plead guilty to manslaughter to avoid a mandatory life sentence for murder despite an available defence :

I have seen, over the course of my Review, cases where the accused person faced irresistible forces to plead guilty even though there was evidence that she acted in self defence. In some cases, this evidence was very strong. These irresistible forces are the product of the *Criminal Code's* mandatory minimum sentences for murder. A woman facing a murder charge risks imposition of a mandatory sentence of life imprisonment with parole eligibility after between 10 and 25 years. By contrast, a woman who pleads guilty to manslaughter will generally receive a sentence between three and eight years with eligibility for full parole after serving one-third of her sentence. This would obviously be a difficult choice for *any* person accused of second-degree murder to make. However, there may be additional factors that exert even more pressure on a woman to plead guilty, including the fact that she may have a young family to care for (...).²⁵

THE PRINCIPLES GUIDING RESOLUTION DISCUSSIONS

Resolution discussions can nonetheless be advantageous to all the parties involved in a criminal case — including the prosecution, the defence, the accused, the police and the victim — and to the administration of justice generally.

The propriety in principle of such discussions flows from the very nature of the criminal justice system in Canada. The adversarial system accords to the parties of a criminal prosecution wide discretion in determining the manner and form of proceedings, and it expects this discretion to be exercised with a high standard of integrity and responsibility. In such a system, there is a corresponding expectation on lawyers to resolve issues

before trial by mutual agreement. Adversarial proceedings must be flexible in order to function.

But practical considerations also make plea bargaining a necessity. The total cost of crime in Canada is estimated to be close to 59 billion dollars per year²⁶. The costs of crime include the expenditures required for protection²⁷, those incurred by victims²⁸ and those associated with the functioning of the justice system. Justice system costs alone amount to 20% of the total, or close to 12 billion dollars²⁹. These costs include expenditures on police, prosecution, legal aid, courts and prisons. Measures such as resolution discussions can help reduce expenditures. Resolving a criminal case either through a plea of guilty or by reducing the length of a trial alleviates the workload of prosecutors, reduces the need for judicial resources and courtroom facilities and decreases all the other expenses necessitated by a trial.

The reality is that the vast majority of criminal convictions are secured through pleas of guilty. In 1998, a study conducted within the province of Ontario concluded that 91.3% of all criminal cases were resolved without the necessity of a trial³⁰. Without the practice of resolution discussions, the administration of justice could not operate efficiently and would in fact grind to a halt³¹. This does not mean however that the public interest in the proper administration of justice should be sacrificed in the interest of expediency³².

Prosecutors are vested with a great deal of responsibility in the criminal justice system³³, for they represent the public interest in the broad sense of the term and must see that justice is properly done³⁴. They have a professional obligation to conduct resolution discussions, and they must execute this duty based on the principles of fairness, openness, accuracy, non-discrimination and the public interest in the effective and consistent enforcement of criminal law³⁵. Due to the benefits that flow to the administration of justice from early guilty pleas, prosecutors are obliged to initiate, as well as respond to, plea discussions, and they should make the best offer to the accused as soon as practicable³⁶. In cases that proceed to trial, it is also incumbent on prosecutors to attempt to narrow the issues to be litigated as much as possible³⁷. Prosecutorial offices often operate with limited resources and have to deal with a heavy workload. In such a context, resolution discussions can provide greater flexibility in the disposition of cases³⁸.

Every accused person in Canada has extensive constitutional rights under the *Charter of Rights and Freedoms*. These rights include the right to be presumed innocent and to have a fair and public trial. Other protections afforded govern the investigative stages of the criminal process. One pivotal right that greatly affects resolution discussions is that of full disclosure. It is a duty³⁹ of the prosecutor to disclose to the accused, or counsel for the accused, the evidence on which the prosecutor intends to rely at trial, as well as any relevant and non-privileged information that may assist the accused, whether intended to be adduced or not⁴⁰. The purpose of disclosure is twofold : to ensure that the accused knows the case to be met and is able to make full answer and defence ; and to encourage the resolution of facts that are contentious, including, when appropriate, the entering of guilty pleas at an early stage in the proceedings⁴¹. Once an accused is fully informed of the criminal case against him, he may decide to plead guilty. However, the accused must be willing to acknowledge his guilt unequivocally⁴². Finally, the plea of guilty, to be lawful, must always be a free and voluntary act by the accused himself, untainted by any threats or promises to induce the accused to admit he committed the offence when he does not wish or intend to do so⁴³. It is also essential that the accused be prepared to admit the necessary factual and mental elements of the offence charged at the time that a plea of guilty is entered⁴⁴. A trial judge is not legally bound to conduct in all cases an inquiry into the validity of a guilty plea after it has been entered. It is within the trial judge's discretion to hear evidence for the purpose of satisfying himself that the charges are well founded or in order to have a factual background prior to imposing sentence. Should the evidence indicate that the accused never intended to admit a fact that is an essential component of the offence, or show that he may have misapprehended the effect of the guilty plea or never intended to plead guilty at all, the judge has the power to direct that a plea of not guilty be entered or permit the accused to withdraw his original plea and enter a new one⁴⁵.

There are a number of benefits that an accused may reap upon deciding to admit criminal liability through an early guilty plea. In exchange for pleading guilty and avoiding a lengthy trial, an accused may receive sentence concessions by the prosecutor or the reduction, withdrawal or staying of some charges. Moreover, Canadian courts have recognised that a guilty plea generally indicates genuine remorse on the part of the

offender, and that it should be considered as a mitigating factor by the court during the sentencing hearing⁴⁶. A guilty plea may also provide an element of certainty which is often absent at trial. In a properly conducted resolution discussion, the prosecutor, the defence counsel and the accused will know the agreement reached and the position of all parties regarding the potential disposition of the criminal charges. It is important to remember, however, that the sentence that will be ultimately imposed is entirely within the discretion of the judge assigned to hear the guilty plea. A joint submission or recommendation by the prosecutor and defence counsel regarding the disposition in a criminal case is not binding on the judge⁴⁷. However, judges are legally obligated not to reject a joint submission unless it is contrary to the public interest and the sentence recommended would bring the administration of justice into disrepute⁴⁸. This high threshold is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission obtained in return for a plea of guilty will be respected by the sentencing judge⁴⁹.

In circumstances where a sentencing judge finds that a joint submission would result in an unlawful sentence, the accused will not be allowed to withdraw his guilty plea. To permit a plea withdrawal at this stage would result in judge-shopping in the most reprehensible way⁵⁰. The Court of Appeal of Ontario has stated in this regard that :

The power of the trial judge to impose sentence cannot be limited to a joint submission, and the joint submission cannot be the basis upon which to seek to escape the sentencing judge when it appears that he chooses to reject the joint submission. (...) [A]n accused who could thus withdraw his plea could simply keep doing so until he found a trial judge who would accept a joint submission (...). To permit an accused to withdraw his plea when the sentence does not suit him puts the court in the unseemly position of bargaining with the accused⁵¹.

This places a heavy onus on the prosecutor and defence counsel to conduct resolution discussions competently and ethically in order to ensure that the accused, who relies on their legal expertise, is not misled regarding what the sentencing judge might do. Among other things, the prosecution and the defence must therefore know the principles of sentencing and the ranges of sentence established by the courts of appeal⁵².

Witnesses and victims may also benefit from resolution discussions. It can be traumatising for witnesses who have been victimised in extremely brutal crimes, such as sexual assault or domestic violence, to be required to testify in a public court. Resolution discussions aimed at exploring the possibility of dispensing with the need for their testimony can be advantageous. In this regard, victims can be relieved from the burden of becoming witnesses in a criminal trial⁵³. Discussions aimed at resolving substantive trial issues may also lead to the accommodation of the personal schedules of witnesses, and therefore minimise the inconveniences of testifying at trial. The responsiveness to the personal needs of victims, witnesses and accused persons that these types of discussions may allow can help to maintain a high level of confidence in the administration of justice among those directly affected by its processes⁵⁴.

ROLE OF THE JUDICIARY IN RESOLUTION DISCUSSIONS

Most resolution discussions occur solely between the prosecutor and defence counsel. The judge does not generally take part in this process. Resolution discussions are often most effective when they can be conducted informally, in private and at the convenience of the lawyers involved⁵⁵. It is important to ensure that the courtroom proceedings that follow serve to verify the propriety of the discussions, and to enhance the public's understanding of both the nature and limits of the latter. Counsel are required to advise the court that a resolution agreement has been made, and the circumstances that led to it must almost always be fully disclosed in open court⁵⁶. Except in rare and compelling situations⁵⁷, it is not acceptable for the lawyers to discuss a resolution agreement privately with the trial judge in advance of the hearing to determine the court's reaction to it⁵⁸. This restriction, however, does not prevent lawyers from participating in a judicially supervised resolution discussion conducted pursuant to legislation. Such a system of judicially supervised discussions does exist : it is known as the pre-trial conference. A pre-trial conference is defined as an informal meeting conducted in a judge's office at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any proceedings thereafter taking place⁵⁹. The *Criminal Code* of Canada provides that a pre-trial conference between a prosecutor and the accused or defence counsel that is presided over by a judge may take place in order to consider any matters that would promote a fair and expeditious hearing⁶⁰.

A pre-trial conference may be initiated on application by the prosecutor, the accused or the court. In the case of jury trials, these pre-trial conferences are mandatory⁶¹.

The role of the judge during a pre-trial conference is to remain fair and impartial. It is inappropriate for the judge to become involved in plea bargaining, in the sense of bartering to determine the ultimate sentence, or in pressuring any counsel to change his position⁶². The inherent dangers of this practice have been acknowledged :

[T]he appearance of justice is part of the substance of justice and it will not do if a prisoner or the general public derive the impression that it is possible, either openly in a pre-trial review (...) or by private discussion between counsel and judge, to achieve a bargain with the Court.⁶³

The presiding judge may, however, assist in resolving the issue of sentence by expressing an opinion as to whether a proposed sentence is too high, too low or within an appropriate range. As a neutral guide, the judge may also be of great assistance in helping the parties identify their differences, and, where appropriate, reconcile them. For example, a judge may draw out salient points, ensure that they are fully explored, direct the discussion to important issues, and keep matters on the topic⁶⁴. It should be noted that the pre-trial conference judge will not preside over subsequent substantive courtroom proceedings related to the matter without the consent of both parties. The purpose of this principle is to ensure that the resolution discussions that take place at the pre-trial conference are wide-ranging, informal and without prejudice to the parties, and to preserve judicial impartiality in the courtroom⁶⁵.

HONOURING RESOLUTION AGREEMENTS

The prosecutor holds a very special place in the administration of justice in Canada. Prosecutors are not considered simply as advocates but also as officers of justice. The role of prosecutor excludes any notion of winning or losing. The prosecution function is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings⁶⁶.

Prosecutors are vested with very substantial discretionary powers, and they must exercise their discretion fairly, impartially, in good faith and according to the highest ethical standards⁶⁷. This requirement is

especially relevant where decisions are made outside the public forum, such as during resolution discussions, as these decisions may have a far greater practical effect on the administration of justice than the public conduct of counsel in court. There is a general obligation on prosecutors to honour resolution agreements. These agreements are analogous to undertakings and must be strictly and scrupulously carried out⁶⁸. In addition to being ethically imperative, the honouring of resolution agreements is a practical necessity. These agreements dispose of the majority of the contentious issues that arise during criminal prosecutions. Accordingly, if they are not binding and therefore cannot be relied upon, then the corresponding benefits that resolution discussions can produce are rendered unattainable⁶⁹.

It is extremely rare for a prosecutor to attempt to repudiate a resolution agreement. Moreover, the court will not allow a prosecutor on appeal to repudiate the position taken at trial⁷⁰ except for the gravest possible reasons, such as the sentence imposed was illegal, the prosecutor at trial was misled or it can be shown that the public interest in the orderly administration of justice is outweighed by the gravity of the crime and the gross insufficiency of the sentence⁷¹. The seriousness of the obligation to keep an agreement may be illustrated through an examination of prosecution of one of the most dangerous criminals in Canada and his accomplice wife.

Between May 1987 and December 1992, Paul Bernardo, a diagnosed psychopathic sexual sadist, murdered three women and sexually assaulted at least eighteen⁷². During that period, the authorities did not have any admissible evidence identifying Bernardo as the perpetrator of these crimes. On 1 February 1993, the first clue was discovered. The Centre of Forensic Sciences advised the police that there was a match between Bernardo's DNA and some of the rapes⁷³. However, this was not enough to connect Bernardo to the three murders. There was only one way : through his wife Karla Homolka. Homolka was both a victim of her husband's abuse and an accomplice to his crimes. On 11 February 1993, Homolka retained a lawyer who negotiated with the prosecutor on her behalf⁷⁴. She had invaluable information that would assist the police in apprehending Bernardo, but she wanted a deal. The prosecutor and police faced a serious dilemma. They had a strong case against Homolka but nothing to convict Bernardo. The authorities were faced with the unpleasant fact that if Bernardo was to be prosecuted for the murders, it

was essential that they have Homolka's evidence and cooperation. On 14 May 1993, the prosecutor entered into an agreement with Homolka after months of discussions with her lawyer⁷⁵. In exchange for her cooperation and testimony against Bernardo, she would plead guilty to two counts of manslaughter and receive a sentence of 12 years imprisonment⁷⁶. Homolka was sentenced on 6 July 1993⁷⁷. Over one year later, the community at large was shocked by the discovery of critical new evidence. On 22 September 1994, videotapes made by Bernardo were discovered by the police⁷⁸. These videotapes captured the vicious sexual assaults that were perpetrated by both Bernardo and Homolka against a number of victims, including the deceased young women⁷⁹. Consequently, Homolka's deal with the prosecutor came under heavy public scrutiny as she no longer could be portrayed as the abused wife who was manipulated by a sadistic killer : rather, she was now seen as a willing participant to the crimes. Had the authorities been in possession of the tapes on 14 May 1993, the prosecutor would never have entered into the resolution agreement with Homolka⁸⁰. On 1 September 1995, Bernardo was convicted of two counts of first-degree murder and sentenced to life imprisonment without eligibility for parole for 25 years⁸¹. He was also found to be a dangerous offender and sentenced to be detained in a penitentiary for an indefinite period of time⁸².

Due to a profound and widely felt sense of public outrage at the fact that Homolka was only sentenced to 12 years for her part in the commission of horrific offences, the Attorney General of Ontario established an inquiry⁸³. The inquiry examined the propriety of the decisions made by the prosecutors respecting Homolka. The 14 May 1993 resolution agreement and the prosecutor's decision not to charge Homolka with murder after the discovery of the crucial videotapes were reviewed. The result of the inquiry was that the conduct of counsel on both sides was professional and responsible, and that the process surrounding the resolution agreement was unassailable :

It is my firm conclusion that, distasteful as it always is to negotiate with an accomplice, the Crown had no alternative but to do so in this case. The Crown has a positive obligation to prosecute murderers. It is (...) often the "lesser of two evils" to deal with an accomplice rather than to be left in a situation where a violent and dangerous offender cannot be prosecuted.⁸⁴

The inquiry also concluded that the appropriate criminal sanction for Homolka's involvement was in the range of ten to fifteen years of

imprisonment⁸⁵. Therefore, the sentence of 12 years was held to be adequate.

In respect of the prosecutor's decision not to charge Homolka with murder after the videotapes were discovered, the inquiry held that it was not feasible for the prosecutor to charge Homolka⁸⁶. Such action would have violated the terms of the resolution agreement⁸⁷ and is barred by the *Criminal Code* of Canada⁸⁸. Homolka had not committed a fraud upon the Crown or the Court that sentenced her⁸⁹. From the very beginning, she had advised the authorities that the videotapes existed but that she did not know where Bernardo had hidden them. Homolka made full, complete and truthful disclosure of all of the criminal activity in which she participated or of which she had knowledge⁹⁰. She had lived up to her end of the resolution agreement⁹¹. Finally, the inquiry found that this was not one of those very rare cases where the prosecutor would be entitled to repudiate the resolution agreement. It stated that to set aside such arrangements so long after the fact was more likely to bring the administration of justice into disrepute than uphold it⁹². This notorious and unusual case illustrates the tremendous obligation on the prosecutor to honour resolution agreements.

INTRODUCING A SYSTEM OF PLEA BARGAINING

For plea bargaining to be effective, it is absolutely imperative that the judicial system and its players operate with integrity. A judicial system plagued with corrupt practices cannot support such a scheme without introducing the consequential disadvantages that would inevitably transcend any of the potential benefits. Accordingly, any state considering the introduction of a plea-bargaining system must conduct a self-analysis and determine whether it could sustain such an initiative. The following chart provides some considerations as a starting point in this process.

ADVANTAGES	CRITICISMS	SAFEGUARDS/PRINCIPLES
<ul style="list-style-type: none"> • contributes to the efficiency of the criminal justice system • reduces the cost of the operation of the criminal justice system • reduces prosecutors' workload • provides an element of certainty for the parties • guilty plea is a mitigating factor on sentence • may dispense a traumatised witness from testifying • may avoid disrupting the professional and personal life of a witness 	<ul style="list-style-type: none"> • leads to manipulation of the judicial system and compromises legal and constitutional principles • encourages abuses of power by prosecutors and judges • creates a situation in which defence counsel may be tempted to give precedence to his own interests rather than to the best interests of the accused • results in offenders receiving lenient sentences • increases the risk of wrongful conviction 	<ul style="list-style-type: none"> • complete and timely disclosure of prosecution's case • competent and ethical defence counsel • prosecutor to initiate plea discussions and communicate best offer to accused early in the process • comprehensive knowledge of principles of sentencing and appropriate ranges of sentences by court, prosecutor and defence • prosecutor to maintain complete and accurate record of discussions to promote consistency and transparency • openness : prosecutor to solicit views of victim and investigative agency and ensure their understanding of the agreement ; prosecutor to formally advise the court of the agreement reached • fairness : agreements to be honoured by the prosecutor • judicial independence and impartiality

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NOTES

¹ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (generally referred to as the "Martin Report", since the committee in question was chaired by Mr. G. Arthur Martin), 1993, page 275.

² Law Reform Commission of Canada, *Criminal Procedure : Control of the Process* (Working Paper No. 15), Ottawa, Information Canada, 1975, page 45.

³ An "included" offence is part of the main offence. The main offence must contain the essential elements of the offence said to be included (see *Regina v. Beyo*, Decision of the Ontario Court of Appeal, [2000] *Canadian Criminal Cases*, Third Series, volume 144, pages 15-35, at page 15, paragraph 29 (leave to Supreme Court of Canada dismissed). The included offence must be a "lesser" offence than the main offence. In other words, a lesser and included offence is part of an offence that is charged, and it must necessarily include some elements of the main offence but be lacking in some of the essentials without which the main offence would be incomplete (see *Fergusson v. The Queen*, Decision of the Supreme Court of Canada, [1961] *Canadian Criminal Cases*, volume 132, pages 112-116, at page 114.)

There are four ways in which an offence may be included in another offence (see *Regina v. Beyo*, Decision of the Ontario Court of Appeal, [2000] *Canadian Criminal Cases*, Third Series, volume 144, pages 15-35) :

1. A statute may expressly prescribe that a certain offence is an included offence ; for example, section 662(3) of the *Criminal Code* includes manslaughter or infanticide within the offence of murder.
2. The offence described in the enactment creating it includes the commission of another offence ; for example, assault is a lesser and included offence within the offence of assault causing bodily harm created by section 267 of the *Criminal Code*.
3. The description or wording of the offence charged in the charging document may include the commission of another offence ; for example, a count charging attempted murder may particularise the offence of wounding.
4. Section 660 of the *Criminal Code* provides that the offence of attempt to commit the offence charged is an included offence of the main offence charged.

Finally, section 606(4) of the *Criminal Code* provides that an accused may plead not guilty to the offence charged but guilty to any other offence arising out of the same transaction, whether or not it is an included offence, with the consent of the prosecutor. For example, a possible resolution discussion may involve an accused agreeing to plead guilty to the lesser and included offence of possession of a controlled substance but not guilty to the offence charged of possession of a controlled substance for the purposes of trafficking, which would carry a higher sanction (see section 5(2) of the *Controlled Drugs and Substances Act*, Statutes of Canada, 1996, volume 1, chapter 19).

⁴ Often an accused may be charged with a number of related, similar or identical counts where, for example, the criminal conduct transpires over a lengthy period of time, or the impugned conduct has many criminal facets. In cases involving illegal drug sales, a suspect may be charged with five counts of trafficking of a controlled substance where the investigation discloses that he sold illegal drugs over the course of a number of days to different purchasers in different locations. A resolution agreement may involve the accused pleading guilty to only one count of trafficking and the prosecutor withdrawing the remaining four counts. In this case, the accused would admit to trafficking over the course of five days but only plead guilty to one "all-inclusive" count of trafficking that would include the criminal conduct that transpired over five days. Another example may involve an accused who is charged with a number of offences, such as sexual assault, forcible confinement and sexual exploitation, that arise out of one incident, pleading guilty to the one "all-inclusive" count of sexual assault. In this case, the prosecutor may withdraw the counts of forcible confinement and sexual

exploitation, if the accused admits to those acts through the plea of guilty to the one count of sexual assault.

There is also the case of an accused engaging in conduct that constitutes a "continuing offence". A continuing or continuous offence is a concept well known in Canadian criminal law and is often used to describe two different kinds of crime. There is the crime that is constituted by conduct which goes on from day to day and constitutes a separate and distinct offence each day the conduct continues. There is, on the other hand, the kind of conduct, generally of a passive character, that consists in the failure to perform a duty imposed by law. Such passive conduct may constitute a crime when first indulged in, but if the obligation is continuous the breach — though constituting one crime only — continues day by day to be a crime until the obligation is performed (see *Regina v. Rutherford* [1990] Ontario Judgments No. 136 (Ontario Court of Appeal), Quick Law citation). A resolution agreement may include the prosecutor agreeing to prosecute the accused for one count that encompasses a number of occurrences or acts taking place over a period of time as one continuing offence or transaction. For example, acts of theft occurring over a period of time involving the same victim may be treated as one continuous offence and could be covered in one single count of theft. See *Regina v. Barnes*, Decision of the Nova Scotia Supreme Court (Appeal Division), [1975] Canadian Criminal Cases, Second Series, volume 26, pages 112-127.

⁵ The Ontario Court of Appeal in the decision of *Regina v. Garcia and Silva*, [1970] Canadian Criminal Cases, volume 3, pages 124-127 stated the following : "We agree that frequently it is a sensible and proper thing for a Judge to take into consideration other convictions and on occasions and under proper safeguards other charges laid against a convicted person. If other charges are taken into consideration, it seems to us those safeguards should at least include the conditions that they are charges with respect to which the accused will plead guilty or will otherwise be proved guilty and that the Crown commits itself not to proceed with those other charges in the event that they are taken into consideration in sentencing on the conviction before the Court."

⁶ In Canada there are two types of criminal offences. The less serious criminal offences are classified as summary conviction offences and are generally punishable by a maximum penalty of a fine of \$2,000 or six months imprisonment, or both (see section 787 of the *Criminal Code*). The most serious criminal offences are classified as indictable offences and include offences such as murder and robbery. Some criminal offences may be classified as either summary conviction or indictable and are known as Hybrid or Dual Procedure Offences. Examples of these offences include the offences of theft, fraud and assault. The prosecutor is solely responsible for electing whether to proceed by summary conviction or by indictment when prosecuting a hybrid or dual procedure offence. Consequently, this is an extremely important issue raised during resolution discussions, as it has a serious impact on the potential criminal sanction.

⁷ Under section 11(b) of the *Canadian Charter of Rights and Freedoms*, Schedule B, *Constitution Act, 1982*, Part I (cited hereafter as *Canadian Charter of Rights and Freedoms*) any person charged with an offence has the right to be tried within a reasonable time.

⁸ Pursuant to sections 478(3) and 479 of the *Criminal Code*, a criminal charge once instituted by the state can be transferred to another jurisdiction if the Attorney General consents to the transfer and the accused pleads guilty to the charge. This procedure does not apply to many serious offences mentioned in section 469, including murder, treason, piracy, bribery by a judicial officer and war crimes.

⁹ Pursuant to section 732 of the *Criminal Code*, an offender may serve a term of imprisonment of ninety days or less on an intermittent basis. This form of sentence is often imposed to permit the offender to continue employment and, for example, will permit the offender to live at home during the week and serve the sentence on weekends.

¹⁰ A conditional sentence is a penal sanction that is tantamount to a term of imprisonment ; however, the offender is allowed, by operation of law, to serve the term of imprisonment in the community. Pursuant

- to section 742.1 of the *Criminal Code*, where a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years and is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental principles of sentencing, the court may order that the offender serve the sentence in the community, subject to the offender complying with conditions of a conditional sentence order.
- ¹¹ Section 655 of the *Criminal Code* provides that "where an accused is on trial for an indictable offence, he or his counsel may admit any fact alleged against him for the purpose of dispensing with proof thereof."
- ¹² In Canada, the burden rests on the prosecutor to prove the voluntary nature of a statement made by an accused beyond a reasonable doubt before it will be admitted into evidence at trial.
- ¹³ For example, section 8 of the *Charter of Rights and Freedoms* states : "Everyone has the right to be secure against unreasonable search or seizure." The burden rests on the accused to establish on the balance of probabilities or through a preponderance of the evidence that the state violated this right. Part of this burden requires the accused to establish that he has a reasonable expectation of privacy in the subject matter of the search or seizure. (*Edwards v. The Queen*, Decision of the Supreme Court of Canada, [1996] Canadian Criminal Cases, Third Series, volume 104, pages 136-160. The prosecutor may agree to dispense with the accused's requirement to establish his reasonable expectation of privacy in a case where it is absolutely clear that the accused did have such an expectation when the state conducted a search or seizure, such as the search of the accused's dwelling house.
- ¹⁴ This definition is found in D.W. Perras, "Plea Negotiations", *The Criminal Law Quarterly*, volume 22, 1979-1980, pages 58-73, at pages 58-59, and was accepted as an apt definition in the Martin Report. It must be noted that there is no formal definition of the concept of plea bargaining in the *Criminal Code* (Revised Statutes of Canada, 1985, chapter C-46).
- ¹⁵ Law Reform Commission of Canada, *Plea Discussions and Agreements* (Working Paper 60), Ottawa, 1989, page 5.
- ¹⁶ "Should We Really "Ban" Plea Bargaining? : The Core Concerns of Plea Bargaining Critics", *Emory Law Journal*, volume 37, pages 753-783, at page 768.
- ¹⁷ Law Reform Commission of Canada, *Plea Discussions and Agreements* (Working Paper 60), Ottawa, 1989, page 6.
- ¹⁸ Sections 606(1) and 607(1) of the *Criminal Code* states that an accused who is called on to plead may plead guilty or not guilty, or the special pleas of *autrefois acquit*, *autrefois convict* and pardon, and no others.
- ¹⁹ Section 10(b) of the *Charter of Rights and Freedoms* provides that : "Everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right".
- ²⁰ The Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 4.01, "The Lawyer as Advocate", Commentary on Rule 4.01(1). Available at www.lsuc.on.ca/services/contents/rule4.jsp
- ²¹ The Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 4.01(9)(c) and (d) (available at www.lsuc.on.ca/services/contents/rule4.jsp) state that the lawyer may enter into an agreement with the prosecutor about a guilty plea only where the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged ; and the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea.

- ²² "Should We Really "Ban" Plea Bargaining? : The Core Concerns of Plea Bargaining Critics", *Emory Law Journal*, volume 37, pages 753-783, at page 771.
- ²³ Dianne L. Martin, "Mandatory Minimum Sentences : Law and Policy", *Osgoode Hall Law Journal*, volume 39, 2001, pages 513-527, at paragraphs 8 and 23.
- ²⁴ In the Supreme Court of Canada's decision of *Lavallee v. The Queen*, Decision of the Supreme Court of Canada, [1990] Canadian Criminal Cases, Third Series, volume 55, pages 97-133, the accused shot her husband in the back of the head as he left the room. Evidence at trial established that the accused had been repeatedly physically abused by her husband and that he told the accused that he was going to kill her. The accused wife successfully raised the defence of self-defence and was acquitted. The Court held that expert testimony regarding the "battered-wife syndrome" was admissible and relevant and necessary in respect of the issues of the accused's mental state and elements of the defence of self-defence.
- ²⁵ The Honourable Justice Lynn Ratushny, *Self Defence Review : Final Report submitted to the Minister of Justice of Canada and to the Solicitor General of Canada*, Ottawa, 11 July 1997. Available at <http://canada.justice.gc.ca/en/dept/pub/sdr/rtush.html>
- ²⁶ More precisely : \$58.91 billion (Canadian dollars)
Department of Justice of Canada, Research and Statistics Division, JustStats (No.2002-01), October 2002.
- ²⁷ Protection costs are estimated to be 13% of the total cost of crime or \$7.49 billion (Canadian dollars). They include expenditures on security and insurance administration.
- ²⁸ Victim costs are 67% of the total cost of crime or \$39.44 billion. These costs include property that is stolen or damaged, emotional and physical impact on victims, lost output, health services, victim support services and drug-related costs.
- ²⁹ More exactly : \$11.97 billion.
Department of Justice of Canada, Research and Statistics Division, JustStats (No.2002-01), October 2002.
- ³⁰ The 91.3% figure includes all charges that are resolved by guilty pleas or withdrawn by the prosecutor. (See The Commission on Proceedings Involving Guy Paul Morin, Testimony of Peter Griffiths relating to Exhibit 292, *Statistical Monitoring Report of Ontario Court, Provincial Division*, 12 December 1997, available on Quick Law in database "CRCM".) Of the 91.3% of cases, 75.5% were resolved before trial, while the other 15.8% remained unresolved until the day set for trial. (See *The Investment Strategy Report*, Ontario Ministry of the Attorney General, Third Quarter of 1998, referred to in the *Report of the Criminal Justice Review Committee*, February 1999, Chapter 6, Part 4, available on Quick Law in database "CRCM".)
- ³¹ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution* Discussions, 1993, pages 1-523, at page 277.
- ³² The Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 4.01(9). Available at www.lsuc.on.ca/services/contents/rule4.jsp
- ³³ *Re Skogman v. The Queen*, Decision of the Supreme Court of Canada, [1984] Canadian Criminal Cases, Third Series, volume 13, pages 161-185.
- ³⁴ *Regina v. Power*, Decision of the Supreme Court of Canada, [1994] Canadian Criminal Cases, Third Series, volume 89, pages 1-39.

- ³⁵ Canada, Department of Justice, *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-1.
Available at www.canada.justice.gc.ca/en/dept/pub/fpsdeskbook.pdf
- ³⁶ *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-5.
- ³⁷ *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-8.
- ³⁸ "Should We Really "Ban" Plea Bargaining? : The Core Concerns of Plea Bargaining Critics", *Emory Law Journal*, volume 47, 1998, pages 753-783, at page 765.
- ³⁹ The duty on the prosecutor is triggered by a request from the defence. There is, therefore, an obligation on defence counsel to request disclosure from the prosecution. See *Stinchcombe v. The Queen*, Decision of the Supreme Court of Canada, [1992] Canadian Criminal Cases, Third Series, volume 68, pages 1-18. In cases where the accused is not represented by counsel, the prosecutor is obligated to arrange to have the accused informed of the right to disclosure and that disclosure is available, and to determine how disclosure can best be provided to the accused. (See also *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 18, pages V-18-1 to V-18-22, at pages V-18-15 to V-18-17).
- ⁴⁰ *Stinchcombe v. The Queen*, Decision of the Supreme Court of Canada, [1992] Canadian Criminal Cases, Third Series, volume 68, pages 1-18.
- ⁴¹ *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 18, pages V-18-1 to V-18-22, at page V-18-2.
- ⁴² *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-2.
- ⁴³ *Lamoureux v. Regina*, Decision of the Quebec Court of Appeal, [1984] Criminal Reports, Third Series, volume 40, pages 369-375, at page 373.
- ⁴⁴ *Regina v. S.K.*, Decision of the Ontario Court of Appeal, [1995] Canadian Criminal Cases, Third Series, volume 99, pages 376-383, at pages 381-382.
- ⁴⁵ *Regina v. S.K.*, Decision of the Ontario Court of Appeal, [1995] Canadian Criminal Cases, Third Series, volume 99, pages 376-383, at pages 381-382.
- ⁴⁶ *Regina v. Layte*, Decision of the Ontario County Court, [1984] Criminal Reports, Third Series, volume 38, pages 204-208, at page 208.
- ⁴⁷ *Regina v. Cerasuolo*, Decision of the Ontario Court of Appeal, [2001] Canadian Criminal Cases, Third Series, volume 151, pages 445-448, at page 447.
- ⁴⁸ *Regina v. Dorsey*, Decision of the Ontario Court of Appeal, [1999] Ontario Appeal Cases, volume 123, pages 342-346, at page 345.
- ⁴⁹ *Regina v. Cerasuolo*, Decision of the Ontario Court of Appeal, [2001] Canadian Criminal Cases, Third Series, volume 151, pages 445-448, at page 447.
- ⁵⁰ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 279.

- ⁵¹ *Regina v. Rubenstein*, Decision of the Ontario Court of Appeal, [1988] Canadian Criminal Cases, Third Series, volume 41, pages 91-95, at pages 94-95, leave to appeal to Supreme Court of Canada refused, [1988] Canadian Criminal Cases, Third Series, volume 41, page VI.
- ⁵² In Canada, the principle of *stare decisis* or common law precedents are adhered to. These concepts involve a doctrine that, when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same, regardless of whether the parties and property are the same. Once a decision is made by a court, it is an authority or a binding precedent in the same court or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy. (See *Black's Law Dictionary*, 6th Edition, West Publishing Co., 1990).
- ⁵³ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 289.
- ⁵⁴ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 289.
- ⁵⁵ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 316.
- ⁵⁶ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 98.
- ⁵⁷ In certain circumstances, it may be necessary to discuss some aspects of a resolution agreement with the trial judge privately. This should be done only in rare and compelling situations involving facts that, in the interest of the public or the accused, ought not to be disclosed publicly. Common examples include cases where the accused is terminally ill or has acted as a confidential informer for the police.
- ⁵⁸ *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-10.
- ⁵⁹ *Ontario Court of Justice Criminal Proceedings Rules*, Rule 28.03(1). Available at <http://laws.justice.gc.ca/en/C-46/SI-92-99/82202.html>
- ⁶⁰ Section 625.1 of the *Criminal Code*.
- ⁶¹ Section 625.1(2) of the *Criminal Code*.
- ⁶² Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 365.
- ⁶³ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 366. (See also *Regina v. Atkinson*, Decision of the English Court of Appeal, [1978] Criminal Appeal Reports, volume 67, pages 200-203, at page 202).
- ⁶⁴ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 367.
- ⁶⁵ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 368.
- ⁶⁶ *Boucher v. The Queen*, Decision of the Supreme Court of Canada, Canadian Criminal Cases, volume 110, pages 263-280, at page 270.

- ⁶⁷ *Federal Prosecution Service Deskbook*, "Principles Governing Crown Counsel's Conduct", Chapter 9, pages III-9-1 to III-9-14, at page III-9-5.
- ⁶⁸ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 313.
- ⁶⁹ Ontario Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions*, 1993, page 313.
- ⁷⁰ *Regina v. Agozzino*, Decision of the Ontario Court of Appeal, [1970] Canadian Criminal Cases, volume 1, pages 380-382, at page 381 ; *Regina v. Brown*, Decision of the Ontario Court of Appeal, [1972] Canadian Criminal Cases, Second Series, pages 227-228, at page 228.
- ⁷¹ *Attorney General of Canada v. Roy*, Decision of Quebec Queen's Bench, [1972] Criminal Reports New Series, volume 18, pages 89-93 at page 93 ; also cited in *Federal Prosecution Service Deskbook*, "Proceedings at Trial and on Appeal", Chapter 20, pages V-20-1 to V-20-11, at page V-20-11, and Law Reform Commission of Canada, *Plea Discussions and Agreements* (Working Paper 60) (Ottawa : 1989), page 30.
- ⁷² *Bernardo Investigation Review : Report of Mr. Justice Archie Campbell*, June 1996, page 1.
- ⁷³ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 231.
- ⁷⁴ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 55-64, 71-76, 84-89, 232.
- ⁷⁵ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 89.
- ⁷⁶ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 90-93.
- ⁷⁷ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 97-109.
- ⁷⁸ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 46, 50.
- ⁷⁹ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 46, 193.
- ⁸⁰ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 89.
- ⁸¹ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 51.
- ⁸² The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 51.
- ⁸³ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 2, 7.
- ⁸⁴ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 111.

- ⁸⁵ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 112-113.
- ⁸⁶ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, pages 192, 201, 203-204.
- ⁸⁷ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 201.
- ⁸⁸ Section 610(2) of the *Criminal Code* states that a conviction for the offence of manslaughter bars a subsequent indictment for the same homicide charging it as murder.
- ⁸⁹ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 201.
- ⁹⁰ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 199.
- ⁹¹ The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 197.
- ⁹² The Honourable Patrick T. Galligan, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, 15 March 1996, page 203.