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<p>CHAPTER V – CHAPITRE V : Witnesses and Victims Témoins et victimes</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

CROWN IMMUNITY AND PUBLIC INTEREST AGREEMENTS

1. Introduction

Ordinarily the Crown will not grant immunity from prosecution or another benefit to a person for the purpose of obtaining information, cooperation or testimony concerning an investigation or prosecution.

In extremely rare situations, where it is in the public interest to do so, the Crown may provide prosecutorial consideration, including the reduction or staying of charges, an agreement to recommend a less severe sentence or an agreement concerning judicial interim release, to a person who is willing and able to give material evidence concerning the commission of a serious offence.

This Policy is intended to apply to benefits granted by Public Prosecution Services in circumstances where the offence involves death.

2. The Decision to Grant Immunity or Benefits

Only the Attorney General is entitled to grant immunity from prosecution. The Attorney General has delegated to the Director of Public Prosecutions the authority to grant benefits, with the exception of immunity from prosecution, in compliance with this Policy.

The Attorney General should only grant immunity from prosecution, and the Director of Public Prosecutions should only grant benefits, where the following conditions are met:

- (a) the information or evidence is crucial to the investigation or prosecution and the overriding public interest requires it;
- (b) there is no other viable means to obtain the information or evidence, or it is not practical in light of a significant risk to public safety for the police to simply continue the investigation;
- (c) the value of the information or evidence outweighs any risk to public safety or weakening of public confidence in the administration of justice that may result from the grant of immunity or benefits; and
- (d) the information or evidence offered by the person relates to criminal involvement of the accused that is more serious than, or, in exceptional cases is at least as serious as, the criminal involvement of the person offering the information or evidence.

3. Methods of Granting Immunity or Benefits

3.1 Public Interest Immunity Agreements

A Public Interest Immunity Agreement is an undertaking by the Attorney General to confer immunity from prosecution on a person in exchange for his or her information, cooperation or testimony concerning an investigation or prosecution.

As immunity from prosecution is an exception to the principle that those who have violated the law should be held accountable for their actions, factors in favour of a Public Interest Immunity Agreement must be extremely compelling for the Director of Public Prosecutions to recommend departure from the ordinary process.

3.2 Use Immunity Agreements

A Use Immunity Agreement is an undertaking by the Director of Public Prosecutions not to use the statement or testimony of the person or evidence derived from that statement or testimony in a subsequent prosecution against that person.

While the concept of use immunity is constitutionally entrenched and conferred as of right by section 13 of the *Charter of Rights and Freedoms*, it may sometimes be necessary for the Crown to give an undertaking not to attempt to use the statement against the person. In such circumstances the Director of Public Prosecutions may enter into an agreement stating that any statement or testimony given by a person, or evidence derived from that person's statement or testimony, will not be used against that person in a subsequent prosecution.

3.3 Public Interest Benefit Agreements

A Public Interest Benefit Agreement is an undertaking by the Director of Public Prosecutions to confer a benefit on a person in exchange for his or her information, cooperation or testimony concerning an investigation or prosecution involving death.

Examples of subject matter that might be included in a Public Interest Benefit Agreement include benefits to that person or to his or her family, prosecution on a lesser or included offence, favourable comments on sentence including reference to his or her cooperation with the police, recommendation of a particular sentence and favourable comments that could assist that person in parole deliberations.

4. Procedure for Granting Immunity or Benefits

Where it appears that it may be appropriate for the Crown to grant immunity or benefits to a person, the procedures set out in this section shall be followed.

4.1 Assessment of the Potential Evidence

The Regional Director, the Director of Specialized Prosecutions or the Director of Public Prosecutions shall appoint a Crown Prosecutor who is not directly involved in the prosecution of the case under review to undertake a comprehensive assessment of the person's potential evidence. Appendix A provides a checklist of issues that highlight specific matters to be considered in assessing whether a person should be called as a witness.

Upon completion of his or her assessment, the Crown Prosecutor shall forward the following to the Regional Director or the Director of Specialized Prosecutions:

- (a) the checklist in Appendix A;
- (b) his or her personal assessment; and
- (c) all other available information.

4.2 Recommendations

The Regional Director or the Director of Specialized Prosecutions, on receiving the assessment shall, after consultation with the Director of Public Prosecutions, prepare a recommendation and forward it to the Director of Public Prosecutions. The recommendation will be in the form of a legal opinion as outlined in Appendix B.

The Director of Public Prosecutions will enter into a Public Interest Benefit Agreement, or, in the case of a Public Interest Immunity Agreement, recommend to the Attorney General that such an agreement be entered into, only where the conditions set out in section 2 above are met, based upon the recommendation of the Regional Director or the Director of Specialized Prosecutions.

4.3 Negotiation

4.3.1 Negotiating Immunity or Benefits

Where the Director of Public Prosecutions or the Attorney General, as the case may be, is prepared to grant immunity or benefits to a person, the Director of Public Prosecutions or the Attorney General, as the case may be, shall cause a written agreement to be negotiated with that person.

The Director of Public Prosecutions shall assign a Crown Prosecutor not directly involved in the prosecution of the case under review for the purpose of negotiating the potential agreement. The Crown Prosecutor shall make every effort to ensure that the person has the assistance of counsel before entering into an agreement.

4.3.2 Terms of the Agreement

The immunity or benefit agreement must be in writing and signed by the person entering it and the Director of Public Prosecutions or the Attorney General, as the case may be.

4.3.2.1 Necessary Conditions

All immunity or benefits agreements shall include the following conditions:

- (a) the confirmation of the substantial truth of the written statement or “will-say” provided;
- (b) that the person will tell the entire truth and not withhold evidence of his or her involvement in any matters referred to in the statements or evidence provided to the police and the Crown Prosecutor;
- (c) that the person will testify truthfully at all proceedings in relation to any matter arising from the information he or she provided; and
- (d) that the person expect no further benefits than those documented in the agreement.

4.3.2.2 Remedy for Breach

In addition to the above conditions, the terms of the agreement should provide that the Attorney General may seek a remedy against the person in the following situations:

- (a) where the promised cooperation with the Crown is withdrawn or the person fails to be truthful when testifying;
- (b) where the person has willfully misled investigators or the Crown Prosecutor about material facts concerning the case; or
- (c) where the person has sought a benefit or immunity by conduct amounting to fraud or an obstruction of justice.

An immunity or benefits agreement shall not confer immunity or benefits directly or indirectly tied to the outcome of the case.

A sample agreement is included as Appendix C.

4.4 Disclosure of Agreement

Any immunity or benefits agreement must be disclosed to the defence in accordance with Policy 34, Disclosure. If the person is to testify as a witness, the immunity or benefits agreement should be entered in court as an exhibit.

5. Non-application of the Policy

This Policy does not apply in the following circumstances:

- (a) where a witness protection agreement is concluded pursuant to the *Witness Protection Program Act*, or
- (b) where a situation falls within the scope of the informer privilege rule respecting disclosure as *per R. v. Leipert*.¹

6. Related Documents

Policy 4	Specific Delegations by the Attorney General
Policy 34	Disclosure
Policy 35	In-custody Informant Evidence

¹ [1997] 1 S.C.R. 281.