

## **THE PROSECUTION PROCESS**

### **The Director of Public Prosecutions**

The Director of Public Prosecutions (DPP), derives his powers from Section 72 of the Constitution. The DPP holds a public office and is appointed by the Judicial and Legal Services Commission. The powers which are conferred upon the DPP are, inter alia, the institution of criminal proceedings before any court of law (*not being a court established by a disciplinary law*), to take over and continue any criminal proceedings that may have been instituted by any other person or authority, the power to discontinue at any stage before judgment any criminal proceedings instituted by himself or other person or authority. The present Director of Public Prosecutions (DPP), is Mr Satyajit Boolell, Senior Counsel.

Section 118 of the District and Intermediate Courts (Criminal Jurisdiction) Act provides that the Director of Public Prosecutions may prosecute any offender and cause prosecution to be conducted, under his direction, by any officer of his department, or any person deputed by him. In this conjuncture, it is apposite to note that officers of the department of the Office of the DPP and who are under the direction of the DPP, are barristers who are styled State Counsels (with various ranks of seniority), but for ease of reference, will be referred to as state counsels.

### **The Decision to Prosecute**

#### **The code for prosecution**

There are some general principles which apply in the way state counsels approach cases referred to them and the way they are decided. Fairness, independence and objectiveness are the basic considerations. Any personal view, ethnic origin, gender, disability, age, religion or belief, or political views, sexual orientation, or gender identity of the suspect, victim or any witness must not influence the decision of the state counsel. It is therefore the duty of the state counsel to see to it that the right person is prosecuted for the right offence and that he acts in the interests of justice and not only for the purpose of securing a conviction.

#### **The decision whether to prosecute**

The primary duty of the police is to inquire into a case which has been reported. Cases which involve contraventions and misdemeanours may be decided by the police. In more serious or complex cases, the Commissioner of Police would seek the advice of the Director of Public Prosecutions. The officers of the Office of the DPP (state counsels) would

advise the case under the supervision of the DPP and decide whether a person should be charged with a criminal offence and if so what that offence should be.

The state counsel must be satisfied that there is sufficient evidence to ensure a "*realistic prospect of a conviction*" against each suspect on each charge. He/she must also take into consideration what defence the accused may have and how likely it is going to affect the prospect of conviction. The more serious is the offence or the offender's record of criminal behaviour, the more likely a prosecution will be required. On the other hand where there are factors which outweigh those factors tending in favour of prosecution, a prosecution may not follow.

### **The evidential test**

For each case which is forwarded to the office of the DPP, the state counsel will study the file and decide whether there is enough evidence and whether, in the public interest, prosecution is required. In that endeavour the Office of the DPP will see to it that the enquiry is not unduly delayed and prosecution promptly proceeded with. When deciding whether there is enough evidence to prosecute, the state counsel must assess the quality of the evidence from all the witnesses who may be called to depose and their reliability.

As stated earlier, the evidential test to prosecute is whether there is "*a realistic prospect of conviction*" against the defendant. This is an objective test, which is based solely on the prosecutor's assessment of the evidence and any defence which may have been put forward by the offender. This means that a court, i.e a judge sitting alone, a jury or a bench of magistrates, properly directed and acting in accordance with the law is more likely than not to convict the defendant of the alleged offence for which he stands charged.

When deciding whether to prosecute, the state counsel will consider, firstly, whether the evidence may be *used in court*; and secondly, whether it is *reliable*. On the first limb therefore, he must consider, whether the evidence is likely to be excluded by the court by the legal rules of evidence. This would mean that evidence which might seem relevant in the first place may not be relied upon at the trial (for example which might be excluded because of the (unfair) way in which it was obtained), or it may amount to hearsay evidence. In that case, the question that will arise is whether it will be allowed under the exceptions to the hearsay rule?

Is it *reliable*? The state counsel must take into consideration the evidence as a whole and decide whether it is reliable, or on the contrary does the suspect has any explanation which he may have given which supports his defence. Further, whether the suspect's identification is likely to be questioned? In such a case, the state counsel must see to it that a proper identification procedure has been carried out. Another factor which needs attention is whether there is supportive evidence which may be produced to strengthen the

prosecution case or on the other hand, whether the enquiring officers have reason to believe that there is evidence which might undermine the account of the complainant or of any witness. In those instances, the state counsel should decide whether there is sufficient information to suggest that the investigation should proceed and a decision taken at a later stage. If the state counsel does not have sufficient information to take such decision, then he may decide that the case should not be proceeded further. A case which has not passed the evidential test will not be proceeded with.

It is the duty of the state counsel to advise and to prosecute cases, to ensure that decisions taken fairly, impartially and with integrity and that the law is properly applied. The guidance issued by the DPP in that context is to ensure that decisions taken in all cases are appropriate and correct.

### **The Public Interest Test**

Public interest factors may affect the decision to prosecute and may vary from case to case. Not all cases will automatically lead to a prosecution. This has been the rule in most jurisdictions around the world. The state counsel must consider whether in the public interest, a prosecution must follow. A prosecution is not likely to ensue where the offence is a minor one and where the offender is a child or a young person. The decision to prosecute, therefore, is taken only when the prosecution considers that there is no other alternative to prosecution.

In deciding, therefore, whether a case should be prosecuted before a court of law, the State counsel may consider alternatives to prosecution where there are clear indications that it should be so. Section 3 (2) of the Criminal Procedure Act provides that the Director of Public Prosecutions, may, instead of prosecuting an offender, direct the police or any other person prosecuting an offender to administer a warning to the offender where the offence is a minor one and that such warning would meet the ends of justice, provided that the offender has not previously committed a similar offence and did not dispute his guilt when made aware of the offence.

### **Arrest and Bail**

The Bail Act describes a “detainee” as a person who is under arrest upon reasonable suspicion of having committed an offence. A “defendant” on the other hand is described as a person who is under arrest and who is charged before a court for having committed an offence. Where a person is arrested on reasonable suspicion of having committed an offence, he may be arrested and brought before a Magistrate under a provisional charge.

A detainee or defendant who has been arrested may be released on bail, if the police or the prosecution authorities have no objection to his release. If on the other hand, there is objection for his release, then the detainee or defendant may apply to the court where his provisional charge has been laid to have a hearing as to whether the court may order his release on bail.

The police will state the grounds on which bail is objected. The defendant or detainee on his part or through his legal adviser will have an opportunity to respond to what the police allege and to cross examine prosecution witnesses or give evidence himself during the course of the hearing.

The court will assess the relevant considerations, any history of offending, absconding or witness interference, any express or implied intention to continue to offend (any history of offending whilst having been released on a previous bail or whilst subject to other Orders of the Court, such as suspended or deferred sentences). Where the Judge or Magistrate has reasonable grounds to believe that the detainee or defendant is likely to fail to surrender to custody or to appear court as and when required, or interfere with witnesses, or commit other offences whilst on bail, he may deny bail to the applicant. In the absence of such belief, he may order the detainee or the defendant to provide a recognisance in such amount as he considers reasonable in the circumstances and impose such conditions of a general or specific nature and order his release on bail.

### **The Social Enquiry Report**

A Social Enquiry Report is a report which is made by the designated officers of the Ministry of Social Security. The basis of which is to provide the prosecution authority with the social background of the offender alongside with that of the complainant. The officers of the Ministry proceed by making personal contact with the offender involved in the case and record his family background, his occupation, and the circumstances within which the offence was committed and also recorded any conciliation and apologies, which the offender may have shown towards the complainant. The complainant's family background, his occupation and his views as regards to any conciliation with the offender.

A social enquiry report may be asked by the State counsel where first and foremost, the nature of the offence is not serious; secondly, where the parties are young or where the complainant and the offender are related. The social enquiry report will lay out the family background of the offender, any wish on his part to mend his ways and to make good the damage, destruction or loss of property he may have caused and any remorse and apologies he may have shown towards the complainant.

In deciding whether a prosecution is required in the public interest, the state counsel should take into account any views expressed by the victim regarding the impact the

offence has had and any views expressed by the victim's family. The Prosecutor may, in the proper circumstances, cause the child/young person to be given a "warning" instead of his case being prosecuted and a penalty inflicted.

## **Juvenile Courts**

The Juvenile Offender's Act describes a "juvenile" or "young person" as a person who is under the age of 18. Where a juvenile is being prosecuted for an offence, (unless the juvenile has been indicted for a criminal offence along with an adult, or has committed an offence under section 50 to 70, 216 to 223, 228(3) and 229 of the Criminal Code), the trial shall take place before a juvenile court.

Generally, therefore youths are tried in Juvenile courts, which are best designated to meet their specific needs. In the circumstances, the law provides that a parent or guardian shall be requested to attend at the court where the case is heard, unless the court finds that it is unreasonable for the parent or guardian to attend.

## **Conclusion**

The following passage which is of relevance is cited in the Code for Crown Prosecutors for England and Wales:

*"In 1951, Sir Hartley Shawcross who was then Attorney General, made the classic statement on public interest: "[I]t has never been the rule in this country- I hope it will never be- that suspected criminal offences must automatically be the subject of prosecution". He added that there should be a prosecution: "whenever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest" House of Commons Debates Volume 483, 29 January 1951").*