

## PROSECUTION POLICY

### INTRODUCTION

The Prosecution Service is a public representative service, which should be effective and respected. Prosecutors should adhere to the highest ethical and professional standards in prosecuting crime and should conduct themselves in a manner that will maintain, promote and defend the interests of justice.

The prosecution policy is designed to make sure that everyone knows the principles that prosecutors shall apply when they do their work.

Applying those principles consistently helps those involved in the criminal justice system to treat victims fairly and prosecute offenders effectively. The implementation of this policy increases the sense of security, law and order for all people.

### ROLE OF THE PROSECUTOR

Prosecutors must all times act in the interest of the community and not necessarily in accordance with the wishes of the community.

The prosecutor's primary function is to assist the Court in arriving at a fair and just decision/verdict and, in the event of a conviction, a fair sentence based upon the evidence presented. At the same time, prosecutors represent the community in criminal trials and they should ensure, therefore that the interests of the victim and the community are promoted, without negating their obligation to act in a fair and balanced manner.

The Prosecutor has discretion to make decisions that affect the criminal process. This discretion can be exercised at specific stages of the process, for example the decision whether or not to:

- Institute criminal proceedings against an accused person
- To withdraw charges or stop the prosecution
- To oppose an application for bail or release on bond by an accused person who is in custody following arrest
- About which crimes to charge an accused person with and which court the trial should proceed
- To accept a plea of guilty entered by an accused person
- About which evidence to present during the trial
- About which evidence to present during sentencing proceedings, in the vent of a conviction, and

- To appeal to a higher court in connection with a question of law, of mixed fact and law, an inappropriate sentence or the improper granting of bail, or to seek revision.

Prosecutors must act impartially and in good faith, without fear, favor or ill will. They should not allow their judgment to be influenced by factors such as their personal views regarding the nature of the offence or the race, ethnic, tribal, regional origin, religious beliefs, status, political views or sexual orientation of the victim, witnesses or the offender.

Prosecutors must be courteous and professional when dealing with the members of the public or other people working in the criminal justice system.

## CRITERIA GOVERNING THE DECISION TO PROSECUTE

### GENERAL

The process of establishing whether or not to prosecute starts when the police present a case file to the prosecutor, usually after preliminary investigations have been carried out. The case needs to be studied and directions given to ensure that it is properly investigated.

The prosecutor upon receiving the file should consider whether to:

- Request the police to investigate the case further after charging the suspect
- Institute a prosecution
- Decline to prosecute and to opt for a non-criminal resolution: or
- Decline to prosecute without taking any other action and closing the file to be put away.

The decision to prosecute is always to be taken with care, because it can have profound consequences for victims, witnesses, the accused and their relatives and friends. A wrong decision can also undermine the community's confidence in the prosecution system. Where the suspect has already been arrested, a quick decision is taken on whether to prosecute or not.

Resources should not be wasted pursuing inappropriate cases, but must be used to act vigorously in those cases worthy of prosecution.

In deciding whether or not to institute criminal proceedings, prosecutors should assess whether there is sufficient and admissible evidence to provide a reasonable prospect of

a successful prosecution. A prosecution should not be commenced or continued if there isn't a reasonable prospect of success.

### **FACTORS TO BE CONSIDERED WHEN EVALUATING EVIDENCE**

Prosecutors should take into account all relevant factors including:-

How strong is the case for the State?

- Is the evidence strong enough to prove all the elements of the offense?
- Is the evidence material sufficient to meet other issues in dispute?
- Is there a likelihood of getting further evidence?

Will the evidence be admissible?

- Will the evidence be excluded because of the way in which it was acquired or because of some other reason?

Will the state witnesses be credible?

- What sort of impression is the witness likely to make?
- Are there any matters which might properly be put by the defense to attack the credibility of the witness?
- If there are contradictions in the accounts of the witnesses, do they go beyond the ordinary and expected, thus materially weakening the prosecution case?

Will the evidence be reliable?

- If, for example the identity of the offender is likely to be an issue, will the evidence of those who purport to have identified him or her be regarded as honest and reliable?

Is the evidence available?

- Are the necessary witnesses available, competent, willing and if necessary, compellable to testify, including those who are out of the country?

How strong is the case for the defense?

- Is the probable defense of the accused likely to lead to his or her acquittal in light of the facts of the case?

### **PROSECUTION IN THE PUBLIC INTEREST AND ADMINISTRATION OF JUSTICE**

Once the prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, a prosecution should normally follow, unless public interest demands otherwise.

When considering whether or not it will be in the public interest to prosecute, all relevant factors must be considered, including:

***The nature and seriousness of the offence:***

- The seriousness of the offence, taking into account the effect of the crime on the victim, the manner in which it was committed, the motivation for the act and the relationship between the victim and the offender
- The nature of the offence, its prevalence and recurrence, and its effect on the public order and morale.
- The economic impact of the offence on the community, its threat to people or damage to public property, and its effect on the peace of mind and sense and security of the public.
- The likely outcome in the event of a conviction, having regard to sentencing options available to the court.

***The interests of the victim and the broader community:***

- The attitude of the victim of crime towards a prosecution and the potential effects of discontinuing it. Care should be taken when considering this factor, since public interest may demand that certain crimes should be prosecuted- regardless of the complainants wish not to proceed.
- The need for individual and general deterrence, and the necessity of maintaining public confidence in the criminal justice system.
- Prosecution priorities as determined from time to time, the likely length and expense of a trial and whether or not a prosecution would be deemed counterproductive.

***The circumstances of the offender***

- The previous convictions of the accused, his or her criminal history, background, culpability and personal circumstances, as well as other mitigating or aggravating circumstances.
- Whether the accused has admitted guilt, shown repentance, made restitution or expressed a willingness to cooperate with the authorities in the investigation and prosecution of others. (In this regard the degree of culpability of the accused and the extent to which reliable evidence from the said accused is considered necessary to secure a conviction against others is critical)

- Whether the objectives of criminal justice would be better served by implementing non-criminal alternatives to prosecution, particularly in the case of juvenile offenders and less serious matters.
- Whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date, taking into account the complexity of the offence and the role of the accused in the delay.
- The relevance of these factors and the weight to be attached to them will depend upon the particular circumstances of each case.
- It is important that the prosecution process is seen to be transparent and that justice is seen to be done.

## **WITHDRAWAL OF CRIMINAL CHARGES**

Criminal proceedings may be stopped at any time before judgment is entered. This would normally occur when it becomes clear during the course of the trial that it would be impossible for the state to prove its case or where exceptional circumstances have arisen which make the continuation of the prosecution undesirable.

## **REINSTATING OF CHARGES AFTER WITHDRAWAL OR DISMISSAL**

People should be able to rely on and accept decisions made by prosecutors. Normally, when a suspect or an accused person is informed that there will not be a prosecution or that charges have been withdrawn, that should be the end of the matter.

There may however, be special reasons why a prosecutor will review a particular case and reinstate the charges. These include:

- An indication that the initial decision was clearly wrong and should not be allowed to stand;
- An instance where a case has not been proceeded with in order to allow the police to gather and collect more evidence;
- A situation where a prosecution has not been proceeded with due to the lack of evidence, but where sufficient incriminating evidence has since come to light;
- Availability of witnesses;
- Availability of accused persons; and
- Other justifiable circumstances

## **CONSENT TO PROSECUTION**

A number of statutes provide that a prosecution for an offence under a particular law cannot be commenced or proceeded with unless the consent of the Director of Public Prosecutions has been obtained.

The inclusion of such requirements in legislation is intended to ensure that prosecutions are not brought in inappropriate circumstances.

Other reasons for these requirements may involve the use of the criminal law in sensitive or controversial areas where important considerations of public policy should be taken into account.

Similarly, rules of practice require that certain matters be referred to the Director of Public Prosecutions before a prosecution is proceeded with.

As a matter of policy, it is important that certain decisions are made at the appropriate level of responsibility to ensure consistency and accountability in decision making.