

CROWN LAW

MEDIA PROTOCOL FOR  
PROSECUTORS

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*As at 1 July 2013*

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## PURPOSE

1. The purpose of this protocol is to assist prosecutors to take a common approach to public statements regarding cases pending or before the Courts. The protocol is for guidance only.
2. The protocol sets out the roles and duties of prosecutors in dealing with the media and is intended for the use of Crown Law and Crown Solicitors. The term “prosecutor” is used throughout.
3. Prosecutors in government agencies should be aware of and take into account the guidance provided in this protocol.
4. Each Crown Solicitor should have a media policy covering matters to do with communications with the media, including who may speak to the media and processes for dealing with a media situation of urgency and priority. Subject to this protocol and to their organisation’s media policy, prosecutors may respond, at their discretion, to media enquiries about cases for which they are responsible.

## PRINCIPLES

5. When communicating with the public through the media, prosecutors are guided by five principles. These are:
  - 5.1 Not making remarks that may prejudice fair trial interests or the perceived objectivity of the judge;
  - 5.2 Supporting the administration of justice and the integrity of the criminal justice system;
  - 5.3 Respecting the principle of open justice;
  - 5.4 Recognising the public interest in receiving accurate information about the criminal justice system and criminal prosecutions; and
  - 5.5 Treating victims of crime with courtesy and compassion, and respecting their dignity and privacy.
6. It is of primary importance that public statements do not prejudice a defendant’s right to a fair trial. The public interest in a fair trial is fundamental and can override other important principles such as open justice and freedom of expression. It is also necessary to bear in mind that while the law of contempt may apply in some circumstances, actions short of contempt can result in a trial being adjourned or stayed or may give rise to grounds for an appeal.
7. Prosecutors must be mindful of their obligations and duties as officers of the Court and their role in the administration of justice. They should be careful not to express personal opinions inconsistent with those obligations.
8. Open justice is regarded as a fundamental tenet of our justice system and is particularly important in criminal proceedings. The media plays a key role in upholding open

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justice. Public scrutiny is beneficial to the administration of justice and the community has a right to accurate information, subject to lawful restrictions and the defendant's right to a fair trial.

9. Assisting the public to understand the operation of the criminal justice system encourages public confidence that cases are being dealt with in accordance with the law. There will be occasions when prosecutors can assist public understanding by succinct and clear explanations of law or procedure.
10. At all times prosecutors must be sensitive to the rights and needs of victims of crime. Victims' addresses or contact details should never be disclosed without consent. If members of the media wish to contact a victim, it may be appropriate to advise the victim of the inquiry so that he or she may decide whether to contact the inquirer directly. Prosecutors may wish to discuss with victims the advisability of responding to media requests for interviews.
11. The Victims' Rights Act 2002 also requires that victims are kept informed of the progress of proceedings, ensuring that they are not taken unaware by information published in the media.

## OTHER MATTERS LIKELY TO AFFECT INTERACTION WITH MEDIA

12. In addition to these guidelines there is a range of relevant rules and provisions which may affect the release of information to the public. Nothing in these guidelines affects:
  - 12.1 The law relating to contempt of court;
  - 12.2 Any suppression orders;
  - 12.3 Any statutory provisions which regulate the disclosure or publication of information (for example, s 63 of the Criminal Procedure Act 2011, which makes it an offence to knowingly publish any information about a request for a sentence indication or a sentence indication that has been given, before the defendant has been sentenced or the charge has been dismissed);
  - 12.4 Legal professional privilege; and
  - 12.5 The law relating to defamation.
13. Prosecutors should also be aware of:
  - 13.1 The role of the judiciary in making decisions about the release of information held by the courts, including any rules of Court and media guidelines; and
  - 13.2 Any relevant professional rules (for example, Rules 13 and 13.12 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008).

## GUIDANCE

14. The paragraphs below set out some guidance about what information or statements may be publicly made available. These are matters of judgement and discretion and prosecutors should always have regard to the overarching principles and other rules referred to above.

### COMMENT PRIOR TO CHARGE

15. Comment by prosecutors prior to charges being filed will rarely be appropriate. Any comment should be limited to providing an explanation of the general issues raised and should not address the particular case or its circumstances.

### COMMENT DURING PROCEEDINGS

16. Once charges have been filed the obligation to avoid prejudice to a fair trial becomes acute. At this stage (including bail hearings) it is usually appropriate to provide information about the charges, the defendant and the progress of proceedings. In particular, the prosecutor may state:
- 16.1 The fact and location of the arrest and the general nature of the criminal charges;
  - 16.2 Once the defendant has appeared in Court, the name, age and residence (town or city or region only) of the defendant (subject always to name suppression or other rules);
  - 16.3 Date and location of next Court appearance;
  - 16.4 Guidance on the type of hearing – first or second appearance, plea, case review hearing, trial callover etc;
  - 16.5 Names of the prosecutor and the defendant’s lawyer who have appeared in Court;
  - 16.6 Information about what has happened procedurally with the case e.g. whether the prosecution has been discontinued, charges reduced etc;
  - 16.7 If relevant, confirmation that advice has been sought from Crown Law/the Crown Solicitor.
17. In general, the following information should not be provided or comment should not be made:
- 17.1 Any previous convictions of the defendant, whether directly or indirectly, unless these have been ruled admissible and referred to in open Court. For example, public comment that the defendant was on bail at the time of the offence would constitute contempt of court: *Solicitor-General v Wellington Newspapers Ltd* [1995] 1 NZLR 45. Referring to the fact a defendant is facing trial on other unrelated charges may also constitute a contempt: *Solicitor-General v APN New Zealand Ltd* [2012] NZAR 7;

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- 17.2 Personal information, address or telephone number of witnesses, victims and in some instances, defendants, unless there is express consent;
  - 17.3 Information concerning Chambers/*in camera* hearings including information provided during bail hearings;
  - 17.4 Personal opinions in relation to a particular case, especially about the outcome of a hearing, an individual's guilt or innocence, or a sentencing outcome;
  - 17.5 Comment on any judicial decision other than to summarise or explain the effect of the decision.
18. Requests for information that has been produced as an exhibit during criminal proceedings should be referred to the Court for consideration under Part 6 of the Criminal Procedure Rules 2012 (SR 2012/415).
  19. Occasionally, requests are received from the media for copies of the summaries of fact prepared by the Crown and provided to the court. Summaries of fact should not be made available to the media before the prosecution presents its submissions in open Court. Where there is a contest over the accuracy of the summary it should not be made available in that form until the contest has been resolved.
  20. Other information or documents which have been filed and used in open court, such as submissions, may be released to the media unless there are orders preventing such release or where the prosecutor intends to seek such orders.

#### COMMENT AFTER PROCEEDINGS

21. As discussed above, prosecutors may provide reasonable assistance to explain the law, procedure or the Crown's submissions on sentence to ensure accurate reporting but should avoid expressing any personal opinion about the outcome of a case.
22. Prosecutors should not comment on the likelihood of a Crown appeal but may advise that a matter has been referred to the Solicitor-General for a decision on whether an appeal should be filed.
23. Prosecutors are reminded that when they make comments to the media outside the Court, qualified privilege will be difficult to establish and they are potentially exposed to personal liability in defamation.

#### RESPONDING TO INACCURATE INFORMATION

24. From time to time prosecutors may be aware that inaccurate information about the proceedings has been published. Subject to the principles outlined above and any suppression orders, it may be appropriate to offer factual explanations of the relevant law or procedure to correct errors and ensure accurate reporting.

#### INFORMATION ON THE INTERNET

25. The widespread availability of information on the internet poses challenges for prosecutors. Information released to any person may be rapidly and widely available.

26. The enduring nature of information in that medium means that prosecutors may need to take steps more frequently and at an earlier stage of the proceedings to seek suppression orders. In addition, historical information on the internet may raise issues of contempt in the face of current proceedings, even though it did not raise such concerns when posted. One example is information concerning prior convictions.
27. Where a prosecutor becomes aware of the existence on the internet of information which may amount to contempt the prosecutor should consider drawing this to the attention of the Court and the Solicitor-General.

## RELATIONSHIP BETWEEN CROWN PROSECUTORS AND POLICE

28. New Zealand Police frequently seek advice from Crown Law or Crown prosecutors prior to the Crown assuming responsibility for the prosecution. Where that is the case, prosecutors should assist Police to observe the law of contempt and deal with the media in a way which protects fair trial rights.
29. When the Solicitor-General assumes responsibility for a Crown prosecution and until sentencing is completed, a prosecution is in the hands of the Crown Solicitor. The prosecutor is likely to be held responsible for any media comments by the prosecution or Police. Any media queries should therefore be considered in consultation with the prosecutor and decisions made about whether the prosecutor or the Police (Officer in Charge) should respond. These situations will need to be managed on a case by case basis depending on the nature of the query and the kind of information which is sought.
30. New Zealand Police employees are required to act in accordance with this protocol. They are also required to observe the general guidelines for communicating with the media set out in the Police Manual. In relation to prosecutions, these include:
  - (a) Officers in charge of investigations and operations are required to avoid making comment on an investigation/operation during pre-arrest interactions with the media that could later be construed as being prejudicial to the case when it goes to Court.
  - (b) Officers in charge of investigations and operations are required not to comment on matters (other than procedural matters) that are still in the Court process. This includes post conviction, pre and post sentencing and until any appeals have been completed. Where matters are in the hands of Crown Solicitors, officers in charge and operations should consult with the Crown Solicitor (if possible) before comments are made.
  - (c) Officers are reminded to avoid any comment that could be construed as criticism of judicial decisions.

## CRIMINAL CONTEMPT OF COURT

31. In New Zealand the Solicitor-General, by convention, is primarily responsible for prosecution at common law for criminal contempt of court. In practice it is usual for the Solicitor-General to make the decision and personally prosecute the resulting

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proceedings. When carrying out this function the focus is on conduct that is corrosive of the criminal justice system as a whole.

32. When a question concerning the effect of media coverage on a trial is formally raised with the Court, prosecutors are asked to advise the Solicitor-General. The Solicitor-General will be interested to ensure that the immediate public interest in the prosecution and in any future prosecution for contempt is adequately managed.