CROWN LAW OFFICE

PROSECUTION GUIDELINES

As at 09 March 1992

Te Tari Ture o te Karauna
Crown Law

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INDEX

1. Introduction

1.1 Almost invariably it is the responsibility of officers and agencies of the State to investigate offences and prosecute offenders. It is the Attorney-General and Solicitor-General, as the Law Officers of the Crown, whose responsibility it is to ensure that those officers and agencies behave with propriety and in accordance with principle in carrying out their functions.

1.2 The State bears a dual responsibility in its administration of the criminal law. Behaviour classified as criminal has been deemed so harmful to society generally that the State, on behalf of all its citizens, accepts the responsibility to investigate, prosecute and punish those behaving in that way.

1.3 The State also accepts the responsibility of ensuring, through institutions and procedures it establishes, that those suspected or accused of criminal conduct are afforded the right of fair and proper process at all stages of investigation and trial.

1.4 Those dual responsibilities are often in tension. The individual subjected to the criminal justice process will rarely believe that it is working in his or her favour; the investigating and prosecuting agencies will not wish to see someone they believe guilty elude conviction.

1.5 The decision to begin a prosecution against an individual has profound consequences. The individual is no longer a suspect, but is formally and publicly accused of an offence. Even if eventually acquitted, he or she will be subjected to the stresses of public opprobrium, court appearances and, possibly, a loss of liberty while awaiting trial.

1.6 It is of great importance therefore that decisions to commence and to continue prosecutions be made on a principled and publicly known basis. The purpose of these guidelines is to indicate, in a general way, the bases on which the Law Officers expect those decisions to be made.

2. Who may Institute Prosecutions

2.1 Any person may institute a prosecution for an offence against the general criminal law and, with some specific exceptions, for regulatory offences. Some prosecutions require the prior consent of the Attorney-General; the procedure for obtaining that consent is outlined in section 4. Every prosecution is commenced by way of an Information laid under the provisions of the Summary Proceedings Act 1957 and the person bringing the prosecution is known as the "informant". In practice almost all prosecutions for offences against the general criminal law are brought by the Police and those for regulatory offences by officers of Government Departments or Local Authorities.

2.2 In the case of prosecutions brought by Crown agencies for offences triable only on Indictment, or those on which the accused has exercised a right of electing trial by jury, the informant ceases to be the prosecutor from the point at which the accused is committed for trial. At that point the prosecution becomes a "Crown" matter and only the Attorney-General, Solicitor-General or a Crown Solicitor may lay an Indictment. The laying of Indictments is dealt with in section 5.

2.3 The Attorney-General as the Senior Law Officer of the Crown has ultimate responsibility for the Crown's prosecution processes. Successive Attorneys-General however have taken the view that it is inappropriate for them, as Ministers in the Government of the day, to become involved in decision making about the prosecution of individuals.

2.4 In New Zealand the Attorney-General and Solicitor-General have co-extensive original powers. With some specified exceptions the Solicitor-General may perform any function given to the Attorney-General. In practice the Solicitor-General exercises all of the Law Officer functions relating to the prosecution process.

2.5 The initial decision to prosecute rests with the Police in the case of the general criminal law, or an officer of some other central or local government agency charged with administering the legislation creating the offence. It is frequently the case that the Police or agency will consult a Crown Solicitor or the Solicitor-General for advice as to whether a prosecution would be well founded. It is however never for the Solicitor-General or the Crown Solicitor to make the initial decision to prosecute; it is their function to advise.

3. The Decision to Prosecute

In making the decision to initiate a prosecution there are two major factors to be considered; evidential sufficiency and the public interest.

3.1 Evidential Sufficiency

The first question always to be considered under this head is whether the prosecutor is satisfied that there is admissible and reliable evidence that an offence has been committed by an identifiable person.

The second question is whether that evidence is sufficiently strong to establish a prima facie case; that is, if that evidence is accepted as credible by a properly directed jury it could find guilt proved beyond reasonable doubt.

3.2 (in the original there is no paragraph 3.2)

3.3 The Public Interest

3.3.1 The second major consideration is whether, given that an evidential basis for the prosecution exists, the public interest requires the prosecution to proceed. Factors which can lead to a decision to prosecute or not, will vary infinitely and from case to case. Generally, the more serious the charge and the stronger the evidence to support it, the less likely it will be that it can properly

be disposed of other than by prosecution. A dominant factor is that ordinarily the public interest will not require a prosecution to proceed unless it is more likely than not that it will result in a conviction. This assessment will often be a difficult one to make and in some cases it may not be possible to say with any confidence that either a conviction or an acquittal is the more likely result. In cases of such doubt it may be appropriate to proceed with the prosecution as, if the balance is so even, it could probably be said that the final arbiter should be a Court. It needs to be said also that the public interest may indicate that some classes of offending, eg driving with excess breath or blood alcohol levels, may require that prosecution will almost invariably follow if the necessary evidence is available.

3.3.2 Other factors which may arise for consideration in determining whether the public interest requires a prosecution include:

(a) the seriousness or, conversely, the triviality of the alleged offence; ie whether the conduct really warrants the intervention of the criminal law;

(b) all mitigating or aggravating circumstances;

(c) he youth, old age, physical or mental health of the alleged offender;

(d) the staleness of the alleged offence;

(e) the degree of culpability of the alleged offender;

(f) the effect of a decision not to prosecute on public opinion;

(g) the obsolescence or obscurity of the law;

(h) whether the prosecution might be counter-productive; for example by enabling an accused to be seen as a martyr;

(i) the availability of any proper alternatives to prosecution;

(j) the prevalence of the alleged offence and the need for deterrence;

(k) whether the consequences of any resulting conviction would be unduly harsh and oppressive;

(l) the entitlement of the Crown or any other person to compensation, reparation or forfeiture as a consequence of conviction;

(m) the attitude of the victim of the alleged offence to a prosecution;

(n) the likely length and expense of the trial;

(o) whether the accused is willing to co-operate in the investigation or prosecution of others or the extent to which the accused has already done so;

(p) the likely sentence imposed in the event of conviction having regard to the sentencing options available to the Court.

3.3.3 None of these factors, or indeed any others which may arise in particular cases, will necessarily be determinative in themselves; all relevant factors must be balanced.

3.3.4 A decision whether or not to prosecute must clearly not be influenced by:

(a) the colour, race, ethnic or national origins, sex, marital status or religious, ethical or political beliefs of the accused;

(b) the prosecutor's personal views concerning the accused or the victim;

(c) possible political advantage or disadvantage to the Government or any political organisation;

(d) the possible effect on the personal or professional reputation or prospects of those responsible for the prosecution decision.

4. Consent to Prosecutions

4.1 A number of statutory provisions creating offences require that, before a prosecution is commenced, the consent of the Attorney-General is to be obtained. This is a function carried out in practice by the Solicitor-General (see section 2). The consent, if given, is signified by way of endorsement on the Information. Requests for consent should be directed to the Solicitor-General with full details of the alleged offence and the evidence available to be called.

4.2 The reasons for requiring that consent vary. In general terms however the consent requirement is imposed to prevent the frivolous, vengeful or 'political' use of the offence provisions.

4.3 A list of the provisions creating offences for which the Attorney-General's consent is required is given in Appendix 1.

5. Indictments

5.1 The power of the Attorney-General and Crown Solicitors to present an Indictment is recognised in s 345 of the Crimes Act 1961. Almost invariably it is a Crown Solicitor who does so. In exercising that power, the Crown Solicitor acts entirely independently of the Police or other investigating agency and is not subject to their instructions.

5.2 A Crown Solicitor may present an Indictment "… for any charge or charges founded on the evidence disclosed in any depositions taken against such person…". A Crown Solicitor may therefore present an Indictment containing a charge different from, or additional to, that originally contained in the Information, so long as it is founded on evidence contained in the depositions. In exercising that power a Crown Solicitor is exercising, de novo, the discretion to prosecute. All factors affecting that discretion arise again for consideration.

5.3 Where the District Court has committed on some charges only, the prosecution has a number of options available if it wishes nevertheless to proceed to trial on the charges in respect of which there has been no committal:

(a) the Crown Solicitor may exercise the power of laying an indictment under s 345 notwithstanding the lack of a committal on those charges;

(b) an application may be made to a High Court Judge for written consent to present an Indictment notwithstanding the lack of a committal on that or those charges;

(c) the Attorney-General (in practice the Solicitor-General) may present an Indictment (known as an "ex officio Indictment") or give written consent to the presentation of an Indictment notwithstanding the lack of a committal on that or those charges;

(d) the Information or Informations on which there has been no committal may be re-laid and taken to depositions again.

5.4 The use of an ex officio indictment or the giving of consent by the Attorney-General has been very rare and is likely to remain so.

6. Stay of Proceedings

6.1 The common law right of the Attorney-General to intervene in the prosecution process and to stay any prosecution from proceeding further is recognised in ss 77A and 173 of the Summary Proceedings Act 1957 and s 378 of the Crimes Act 1961.

6.2 In New Zealand the power of stay has been sparingly exercised. That conservative approach is likely to continue.

6.3 Generally speaking the power of entering a stay will be exercised in three types of situation:

(a) Where a jury has been unable to agree in two trials. After a second disagreement the Crown Solicitor must refer the matter to the Solicitor-General for consideration of a stay. Unless the Solicitor-General is satisfied that some event not relating to the strength of the Crown's case brought about one or both of the disagreements, or that new and persuasive evidence would be available on a

third trial, or that there is some other exceptional circumstance making a third trial desirable in the interests of justice, a stay will be directed.

(b) If the Solicitor-General is satisfied that the prosecution was commenced wrongly, or that circumstances have so altered since it was commenced as to make its continuation oppressive or otherwise unjust, a stay will be directed.

(c) A stay will be directed to clear outstanding or stale charges or otherwise to conclude an untidy situation; eg where for instance an accused has been convicted on serious charges but a jury had disagreed on others less serious, or a convicted person is serving a substantial sentence and continuing with further charges would serve no worthwhile purpose.

6.4 The possible circumstances which may justify a stay under heads (b) and (c) above are almost infinitely variable. In general terms however the same considerations will apply as are involved in the original decision to prosecute, always with the overriding concern that a prosecution not be continued when its continuance would be oppressive or otherwise not in the interests of justice.

7. Withdrawal of Charges and Arrangements as to Charges

7.1 Circumstances can change, or new facts come to light, which make it necessary to reconsider the appropriateness of the charges originally laid.

7.2 If after a review against the relevant criteria it is clear that a charge should not be pursued, it should be discontinued at the first opportunity. The mode of discontinuance will depend on the court before which the charge is pending and the stage the proceedings have reached. Similarly, if it is plain that a charge should be amended, that should be done at the first opportunity.

7.3 If a charge is not to be proceeded with because a witness declines to give evidence and there are acceptable reasons why he or she should not be forced to do so, it will generally be preferable to ask the Court to dismiss the charge for want of prosecution. That course should be followed, rather than seeking a stay from the Solicitor-General, to ensure that the reasons for the discontinuance are publicly stated.

7.4 Arrangements between the prosecutor and the accused person as to the laying or proceeding with charges to which the accused is prepared to enter a plea of guilty can be consistent with the requirements of justice, subject to constraints which must be clearly understood and followed by prosecutors.

7.5 Those constraints are:

(a) No such arrangement is to be initiated by the prosecutor.

(b) No proposal to come to such an arrangement is to be entertained by a prosecutor unless:

(i) there is a proper evidential base for the charges to be laid or proceeded with and, conversely, there is not evidence which would clearly support a more serious charge;

(ii) the charges to be proceeded with fairly represent the criminal conduct of the accused and provide a proper basis for the Court to assess an appropriate sentence;

(iii) the accused clearly admits guilt of those charges which are to be proceeded with.

(c) The prosecutor must not agree to promote or support any particular sentencing option. In every case the informant or the Solicitor-General will reserve the possibility of an appeal against sentence if the sentence imposed is considered manifestly inadequate or wrong in principle.

(d) A prosecutor must not lay charges or retain them after it is clear that they should not be proceeded with for the purpose of promoting or assisting in any discussions about such an arrangement.

(e) In the case of summary prosecutions, every such arrangement must be approved by the Officer in Charge of the relevant Police prosecution section or, in the case of another Crown prosecuting agency, the senior legal officer of that agency. After committal for trial approval must be given by the relevant Crown Solicitor personally. In cases involving homicide, sexual violation or drug dealing offences involving class A drugs the approval of the Solicitor-General must also be obtained.

7.6 In addition to the matters outlined above a decision to enter into such an arrangement should be based on the following considerations:

(a) whether the accused is willing to co-operate in the investigation or prosecution of others or the extent to which the accused has already done so;

(b) whether the sentence that is likely to be imposed if the charges are pursued as proposed would be appropriate for the criminal conduct involved;

(c) the desirability of prompt and certain despatch of the case;

(d) the strength of the prosecution case;

(e) the likely affects on witnesses of being required to give evidence;

(f) in cases where there has been a financial loss, whether the accused has made restitution or arrangements for restitution;

(g) the need to avoid delay in the despatch of other pending cases.

8. The Role of the Prosecutor in Sentencing

8.1 Until relatively recently the "traditional" view of the prosecutors role at sentencing prevailed; ie the prosecutor should maintain disinterest in the sentence imposed. That view cannot survive in the face of the Crown's right to appeal against a sentence considered to be manifestly inadequate or wrong in principle.

8.2 At sentencing, counsel for the prosecution should be prepared to assist the Court, to the degree the Judge indicates is appropriate, with submissions on the following matters:

(a) the Crown's version of the facts;

(b) comment upon or, if necessary, contradiction of the matters put forward in mitigation by the accused;

(c) the accused's criminal history, if any;

(d) the relevant sentencing principles and guideline judgments.

8.3 Counsel for the prosecution should not press for a particular term or level of sentence. It is the Crown's duty to assist the sentencing Court to avoid errors of principle or sentences which are totally at odds with prevailing levels for comparable offences and offenders.

9. Witness Immunities

9.1 It is sometimes the case that the Crown will need to rely upon the evidence of a minor accomplice or participant in an offence in order to proceed against an accused considered to be of greater significance in the offending.

9.2 Unless that potential witness has already been charged and sentenced he or she will be justified in declining to give evidence on the grounds of self-incrimination.

9.3 In such a case it will be necessary for the Crown to consider giving the witness an immunity from prosecution. An immunity takes the form of a written undertaking from the Solicitor-General to exercise the power of stay if the witness is prosecuted for nominated offences. It thus protects the witness from both Crown and private prosecutions.

9.4 It is to be noted that the only person able to give such an undertaking is the Solicitor-General.

9.5 The purpose of giving an immunity must clearly be borne in mind. That purpose is to enable the Crown to use otherwise unavailable evidence. In

exchange for that it will, with reluctance and as a last resort, grant immunity on specified offences. In particular, the giving of an immunity is not to be seen as an opportunity for an informer to wipe the slate clean.

9.6 Immunities are given reluctantly and only as a last resort in cases where it would not otherwise be possible to prosecute an accused for a serious offence.

9.7 Before agreeing to give an immunity the Solicitor-General will almost invariably require to be satisfied of at least the following matters:

(a) that the offence in respect of which the evidence is to be given is serious both as to its nature and circumstances;

(b) that all avenues of gaining sufficient evidence to prosecute, other than relying upon the evidence to be given under immunity, have been exhausted;

(c) that the evidence to be given under immunity is admissible, relevant and significantly strengthens the Crown's case;

(d) that the witness, while having himself or herself committed some identifiable offence, was a minor participant only;

(e) that the evidence to be given under immunity is apparently credible and, preferably, corroborated by other admissible material;

(f) that no inducement, other than the possibility of an immunity, has been suggested to the witness;

(g) that admissible evidence exists, sufficient to charge the witness with the offences he or she is believed to have committed.

9.8 In order to preserve the integrity of the evidence to be given under immunity it will almost always be desirable for the witness to have independent legal advice. Preferably that advice should be obtained before the witness signs a brief of evidence or depositions statement. Counsel for the witness should, if the witness wishes to seek an immunity, obtain instructions to write to the officer in charge of the case or, if the Solicitor-General is already involved, to the Solicitor-General direct. The letter should set out in full detail the evidence able to be given by the witness but without naming him or her. If satisfied that an immunity is justified the Solicitor-General can then advise the witness's counsel that an immunity will be given. Counsel will then be able to name the witness in the knowledge that a formal immunity will be forthcoming.

10. Disclosure and Discovery

10.1 The aim of the prosecution is to prove its charge beyond reasonable doubt and it is therefore clearly in the interests of justice that accused persons are fully informed of the case against them. At present, voluntary pre-trial

disclosure of information relating to the Crown case is largely a matter for the prosecutors discretion to be exercised in accordance with the guiding principle of fairness to the accused. Nevertheless there are a minimal number of legal obligations with which the prosecution must comply.

10.2 Trial on Indictment

10.2.1 Before trial on indictment an accused person is entitled to peruse depositions taken on his committal for trial or the written statements of witnesses admitted instead of depositions. Section 183 Summary Proceedings Act 1957.

10.2.2 The prosecutor does not have to put forward all the evidence at depositions. However s 368(1) of the Crimes Act 1961 provides that the trial may be adjourned or the jury discharged if the accused has been prejudiced by the surprise production of a witness who has not made a deposition. Therefore in practice the prosecutor should provide adequate notice of intention to call any additional witness and provide the defence with a brief of the evidence that witness will give.

10.3 Information which the Prosecutor does not Intend to Produce in Evidence

10.3.1 The prosecutor must make available to the defence the names and addresses of all those who have been interviewed who are able to give evidence on a material subject but whom the prosecution does not intend to call, irrespective of the prosecutor's view of credibility (*R v Mason* [1975] 2 NZLR 289). It is for the prosecutor to decide whether the evidence is "material" (*R v Quinn* [1991] 3 NZLR 146) but that decision must be reached with complete fairness to the defence.

10.3.2 In the absence of an Official Information Act request there is no general common law duty placed on the prosecution to make available to the defence written statements obtained by the Police from persons the prosecution does not intend to call as witnesses at the trial. However in "truly exceptional circumstances" the Court may exercise its discretion to order production if it considers that a refusal to do so might result in unfairness to the accused and perhaps a miscarriage of justice. *R v Mason* [1976] 2 NZLR 122.

10.3.3 A statutory exception to the general principle against production of written statements is contained in s 344C Crimes Act 1961 which deals with identification of witnesses.

10.4 Statements made by Witnesses to be called by the Prosecution

10.4.1 In the absence of an Official Information Act request there is no general rule of law requiring the prosecution to supply defence counsel with copies of all statements made by persons who are to be called to give evidence. An exception to this general rule is where the witness has made a previous inconsistent statement. Where there is any conflict that may be material between the

evidence of a witness and other statements made by the witness, the defence is entitled to see those other statements. *R v Wickliffe* [1986] 1 NZLR 4; *Re Appelgren* [1991] 1 NZLR 431; *R v Nankervill* (CA 342/89 4 May 1990).

10.4.2 A second exception is where a statement is specifically shown to an accused for the precise purpose of noting his reaction thereto; in such cases the accused is entitled to obtain production of the statement. *R v Church* [1974] 2 NZLR 117.

10.5 Character of Witness

10.5.1 Before all defended trials the prosecution has a duty to disclose any previous convictions of a proposed witness where credibility is likely to be in issue and the conviction could reasonably be said to affect credibility. *Wilson v Police and Elliot* (CA 90/91 20 December 1991).

10.5.2 For trials on indictment a prosecuting agency entitled to access to the Wanganui computer should make a computer check as a matter of course. For summary trials the agency should make such a check if requested by the defence. If the prosecuting agency is in doubt about whether a conviction should be disclosed, counsel's advice should be taken. Any list of convictions should be supplied a reasonable time before trial (normally at least a week). If the prosecuting agency intends to withhold details of convictions, the defence should be notified in sufficient time to enable rulings to be sought from the trial court.

10.6 Disclosure of any Inducement or Immunity given to a Witness

The defence must always be advised of the terms of any immunity from prosecution given to any witness. Likewise the existence of any other factor which might operate as an inducement to a witness to give evidence should be disclosed to the defence. This includes the fact that the witness is a paid Police informer. *R v Chignell* [1991] 2 NZLR 257.

10.7 Identity of Informer

There will be good reason for restricting disclosure where the identity of an informer is at stake. The general principle is that the identity of an informer may not be disclosed unless the Judge is of the opinion that the disclosure of the name of the informer, or of the nature of the information is necessary or desirable in order to establish the innocence of the accused. *R v Hughes* [1986] 2 NZLR 129, 133.

10.7.1 A statutory restriction on disclosure of the true identity of undercover police officers is contained in s 13A Evidence Act 1908.

10.8 Preliminary Hearings

Special provisions for preliminary hearings in cases of a sexual nature are set out in Part VA Summary Proceedings Act 1957. Section 185C(4) requires

the prosecutor to give the complainant's written statement to the defence at least 7 days before the hearing.

10.9 Minor Offences

In the case of minor as opposed to summary offences, defined in s 20A Summary Proceedings Act 1957, the prosecution must serve on the defence a notice of prosecution which will provide information in a brief form as to the essential nature of the charge and other relevant matters outlined in the section.

10.10 DSIR Examinations

As a matter of ethical obligation the prosecutor is required to provide access to the defence to forensic evidence prepared by the DSIR. (New Zealand Law Society, Rules of Professional Conduct, Appendix 2.)

10.11 Obligations on Request under Official Information Act 1982

10.11.1 Crown Solicitors are not part of a 'department or organisation' and are not therefore subject to the Official Information Act 1982. While as a matter of practical convenience they may facilitate responses to requests for information, they are not as a matter of law obliged to do so. The responsibility to provide information rests on the Police or other prosecuting agency, and requests made of a Crown Solicitor should be referred to them. The Crown Solicitor should be advised of all information supplied to other parties.

10.11.2 Personal information ie that particular category of official information held about an identifiable person, is the subject of an explicit right of access, upon request, given to that person, unless it comes within some limited exceptions. Relevance is not the test under the Official Information Act.

10.11.3 The effect of the Court of Appeal decision in Commissioner of *Police v Ombudsman* [1988] 1 NZLR 385 is that the exercise of a defendant's right to personal information will not ordinarily prejudice the maintenance of the law (and fair trials), as shown by the traditional disclosure prosecution information for indictable trials. The practice should therefore be that there will be disclosure on request of briefs of evidence, witness statements or notes of interviews containing information about the defendant. Where briefs, statements or job sheets do not exist, the prosecution should as a matter of practice provide to the defence a summary of the facts on which the prosecution will be based.

10.11.4 The duty will generally apply only after criminal proceedings have been commenced, and information may be withheld if a specific risk (such as fabrication of evidence or intimidation of a witness) is shown. Any disputes should be determined as incidental or preliminary matters by the trial court.

10.12 The aim of pre-trial disclosure is to ensure fairness to the accused and to achieve efficiency in the prosecution process. Bearing those aims in mind,

any doubt as to whether the balance is in favour of, or against disclosure should be resolved in favour of disclosure.

11. Victims of Offences

11.1 Victims of offences are entitled to be treated by prosecutors with courtesy, compassion and respect for their personal dignity and privacy. Section 3 Victims of Offences Act 1987.

11.2 The prosecuting authority or officers of the court (to use the language of the Act) are required to make available to a victim information about the following:

(a) progress of the investigation of the offence;

(b) the charges laid or the reasons for not laying charges;

(c) the role of the victim as a witness in the prosecution of the offence;

(d) the date and place of the hearing of the proceedings; and

(e) the outcome of the proceedings including any proceedings on appeal.

11.3 For the purposes of the Victims of Offences Act, Crown Solicitors are not "prosecuting authorities".

11.4 Responsibility for notifying the victim of these matters has been allocated as between the prosecuting authorities and the officers of the court as follows:

(a) The Police accept that all information about actions before a prosecution is commenced is within their ambit.

(b) Before verdict:

In the case of a not guilty plea the prosecuting authorities are normally in contact with the victim until the verdict is given.

In the case of a guilty plea, the prosecuting authority which is laying the charge must inform the victim of the first date of a court appearance. At the same time it is required to hand to the victim information about the court process beyond that point, describing the processes of appeal, remand, adjournment, etc and informing the victim that it is his or her choice whether to follow the case through the court process. If the victim is unable to attend the hearing in person, he or she can obtain information from the court.

(c) After verdict:

Once a verdict has been reached the prosecuting authority will inform the victim of the outcome of the

case. The letter containing the information should give further information about possible actions after the outcome eg appeal and rehearing.

(d) After sentence:

The prosecuting authority should hand to the court information about the victim's name and address so that the court may notify the victim of any rehearing.

(e) Appeal:

In the case of an appeal after trial on indictment, the Crown Law Office will notify the victim of the date on which it will be heard, and after the appeal send a copy of the Judgment to the victim.

11.5 In addition to providing information about the proceedings, a prosecutor has responsibilities in relation to Victim Impact Statements. A sentencing Judge is to be informed about any physical or emotional harm, or any loss of or damage to property, suffered by the victim through or by means of the offence, and any other effects of the offence on the victim. Such information is to be conveyed to the Judge by the prosecutor, either orally or by means of a written statement. The courts have indicated that Crown Solicitors have a certain responsibility to ensure that Victim impact Statements fulfil their proper purpose ie a brief description of the impact on the victim and not a supplementary statement of facts adding additional offences and circumstances of aggravation.

11.6 The Victims of Offences Act also requires that in the case of a charge of sexual violation or other serious assault or injury the prosecutor should convey to the judicial officer any fears held by the victim about the release on bail of the alleged offender.

12. Crown Appeals against Sentence

12.1 It is for the Solicitor-General to determine in all cases whether an appeal against sentence should be taken. In respect of sentences passed on conviction on indictment, the appeal is taken in the name of the Solicitor-General; in respect of sentences imposed under the summary jurisdiction of the District Court the appeal is taken in the name of the informant, with the written consent of Solicitor-General.

12.2 The guiding principles for prosecutors in deciding whether a matter should be referred to the Solicitor-General for consideration of a Crown appeal are whether there are good grounds to argue that:

(a) the sentence is manifestly inadequate; or

(b) there has been a serious error in sentencing principle.

12.3 Manifestly Inadequate

12.3.1 The sentence imposed must be manifestly inadequate: – the Crown's right of appeal is not intended to be a corrective procedure for every sentence considered to be lenient.

12.3.2 The considerations justifying an increase in sentence must be more compelling than those which might justify a reduction. Even where a sentence is found to be manifestly inadequate, the court will increase it only to the minimum extent required in the interests of justice.

12.3.3 A particular sentence, or sentences generally for a particular type of crime, may be considered manifestly inadequate if they do not fulfil their deterrent or denunciatory functions. A Crown appeal may be considered where it is clear that the offence requires a heavier sentence in the public interest for the purposes of general or individual deterrence or to express community denunciation because of the nature of the offence.

12.4 Error of Principle

12.4.1 Where a sentence is based upon a wrong principle, the error involved must be one that is important in a sense that it is likely to have implications beyond that particular case in which it has arisen.

12.4.2 The court is reluctant to interfere if this would cause some other injustice to the offender, eg by changing what is generally deemed a wholly inappropriate sentence to which the offender is nevertheless responding. The court is also reluctant to uphold a Crown appeal if the prosecution did not do all that could reasonably have been expected of it to avoid the error at first instance. In no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at trial. Section 389 Crimes Act 1961.

12.5 Time Limits

Appeals against sentences imposed in the indictable jurisdiction must be filed within 28 days. The time limit for the summary jurisdiction is 28 days. Given the short time limits for filing an appeal, particularly to the Court of Appeal after trial on indictment, and the uncertainty which a Crown appeal poses for the defendant in question, the need to refer materials speedily to the Solicitor-General is paramount. For the same reason it is only in exceptional cases of unavoidable delay that the Solicitor-General will seek leave to appeal out of time.

12.6 The information required for consideration of appeals includes:

(a) Indictment or Information;

(b) notes of Evidence or Summary of Facts;

(c) copies of the Pre-Sentence Report, Victim Impact Report and any other reports made available to the sentencing Judge;

(d) a list of any previous convictions;

(e) a note of the Judge's or District Court Judge's remarks on sentence;

(f) the comments and recommendations of the Crown Solicitor or prosecutor.

12.7 In general the main purpose of a Crown appeal is to ensure that errors of principle are corrected and not perpetuated, and that sentences for offences of generally comparable culpability are reasonably uniform and appropriate having regard to the seriousness and prevalence of the offence.