

EVALUATING THE PERFORMANCE OF A PROSECUTION AGENCY AND OF INDIVIDUAL PROSECUTORS

Satyajit Boolell SC

Director of Public Prosecutions (Mauritius)

IAP 19th Annual Conference

Conrad Hotel, Dubai

November 2014

The role of the prosecutor

- The function of prosecutor is to act as a minister of justice. He must ensure that the defendant is fairly tried, which constitutes an overriding requirement.

Prosecuting excludes any notion of winning or losing

- **The case of Boucher v R (1954) 110 Can CC 263:** "It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing;
- How then can the performance of a prosecutor and of the prosecution agency be assessed?

Evaluating the performance of a prosecution agency

- The assessment of the performance is not limited to an assessment of the performance of the individual prosecutors.
- Standards that must be considered when assessing the performance of the prosecution agency include:
 - (a) Independence
 - (b) Public confidence and accountability
 - (c) Effective collaboration with other law enforcement agencies
 - (d) Judicious exercise of discretion
 - (e) Effective case management and reduction of costs
 - (f) Treatment of victims
 - (g) Fairness of prosecution and disclosure

Independence

- The independence of the prosecution agency is a means to ensure public confidence in the agency and a safeguard against political interference.
- The prosecution agency being perceived as independent is equally important.
- The independence of the DPP guaranteed under sections 72(6) and 93 of the Constitution.

Public confidence and accountability

- Importance of public confidence in the prosecution agency.
- Communicating with the victims and the public and giving reasons for non prosecution are means to boost public confidence.
- The case of **Mohit v State 2006 UKPC 20**

Effective collaboration with other law enforcement agencies

- Tackling complex and sophisticated crimes require a multi-agency approach : avenues of cooperation must be opened
- Tackling transnational crimes require effective international cooperation between law enforcement agencies of different jurisdictions
- Eurojust : a model of successful international cooperation

Judicious exercise of discretion to prosecute

- **R v A [2012] EWCA Crim 434** , Lord Judge CJ: *When Parliament legislates to create offences, it does so on the basis that there is no duty to prosecute in each case, simply a discretion entrusted to an independent prosecutor.*
- evidential stage: the prosecutor must be satisfied that there is a realistic prospect of conviction. This requires an objective assessment of the strength of the available evidence
- public interest stage :If the case passes the evidential test, the prosecutor should consider the public interest tending both in favour of and against prosecution.
- Importance of uniformity of approach

Effective case management and reduction of costs

- Reduction of costs: a new challenge
- Effective case management as a means to reduce costs
- Effective case management strategies: early identification of the real issues; early identification of the needs of witnesses; discouraging delay, dealing with as many aspects of the case as possible on the same occasion, avoiding unnecessary hearings and making use of technology.

Treatment of victims

- Prosecutors must ensure that victims of crime in the criminal justice system are treated with courtesy and compassion and with respect for their dignity and privacy.
- The prosecution agency must ensure that victims understand the criminal process and know what is happening at each stage.
- The CPS Victim's Right to Review Policy

Fairness of prosecutions and effective disclosure

- Right of the accused to have adequate facilities to prepare his defence : a subset of the right to fair trial
- Disclosure strategies: moving towards e-disclosure to reduce costs

Performance of individual prosecutors

- Relevant information about the performance of prosecutors can be obtained from judges, defence counsel and senior prosecutors.
- Performance measured from the viewpoint of
 - (a) Ethics and decorum
 - (b) Assisting the court
 - (c) Effectiveness
 - (d) Competence and expertise
 - (e) Professional commitment and cooperation

Ethics and decorum

- Importance of application of the Code of Ethics.
- Breach of ethics by the prosecutor may lead to an acquittal
 - (a) **Mohamed v The State [1999] 1 WLR 552**, prosecuting counsel made a closing speech filled with inflammatory passages
 - (b) **Benedetto v The Queen [2003] UKPC 27**, some parts of the prosecutor's address to the jury crossed the boundary of robust but respectful speech, in that it was "xenophobic, inflammatory and [sought] to make use of inadmissible and irrelevant material

Ethics and decorum (contd)

(c) **Ramdhanie v State of Trinidad and Tobago [2005] UKPC 45**, prosecuting counsel in his closing speech not only described defence counsel's arguments in a series of pejorative and abusive epithets but he also made inappropriate comments.

(d) **Randall v The Queen [2002] UKPC 19**, badgering, bullying and browbeating behaviour from the prosecutor which the Board termed as insulting and overbearing conduct

Ensuring performance of prosecutors

- Use of guidelines, codes and policies
- Training and CPD to improve performance
- Review of performance
- Promoting the use of technology

Celebrating success of prosecutors

- Rewards
- Acknowledgements
- Promotions

Conclusion

- Improvement in the performance of prosecutors can only help in the administration of justice and serve the interest of the accused, the victim, the community and the state.
- Prosecution agencies should review the performance of their prosecutors periodically. Head of prosecution agencies should identify the strengths and weaknesses of their agencies as a means to improve the quality of service delivered.