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.