

**9<sup>th</sup> ANNUAL NATIONAL  
PROSECUTORS' CONFERENCE**

**SATURDAY, 24 MAY 2008  
DUBLIN CASTLE CONFERENCE CENTRE**

***James Hamilton***

**Director of Public  
Prosecutions**

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***Opening Address***

Once again it is my great pleasure to welcome you all to our Annual Prosecutors Conference. It is very gratifying to find so many people willing to give up a precious Saturday morning in May to attend this conference. It is, of course, the participation of so many people from different organizations who have in common an interest in criminal prosecution which has made this conference a successful event in the past and I am sure that today's conference will be no different.

I would like to pay particular thanks to our four speakers, none of whom I think need any introduction to this audience. Paul Anthony McDermott will speak to us about undercover investigation and human rights. This is a subject which is of particular interest in the light of the Minister for Justice's recent announcement of his intention to bring in legislation in this area. Secondly, Dr. Maureen Smyth of the Forensic Science Laboratory is going to update us in relation to recent developments in DNA. It is now some years since we last had a speaker from the Forensic Science Laboratory to address our conference and the subject of DNA is one which has been of increasing importance to criminal lawyers and indeed which has led to controversy in a number of cases in the recent past.

Thirdly, Micheál P. O'Higgins will speak to us about reviewing prosecution decisions. We are, I believe, one of the few prosecution authorities which have given a public undertaking to review decisions on the request of interested parties and the process by which we do this is one which has on occasion led to litigation. Finally, a subject which is of perennial interest, that of sentencing, will be discussed by Tom O'Malley, the leading Irish authority on the subject. I feel sure that these four papers will be of great interest and will generate some lively discussion.

The last year has been yet another year of significant change for my Office as we continue to modernise and develop our organisation. At the last conference I was able to announce the transfer of the state solicitors' contracts from the Attorney General to myself. The first anniversary of that transfer fell last week and I believe the new arrangements are working well to the mutual benefit of this Office and the state solicitors. I am very conscious of the enormous contribution that both state solicitors and the county prosecutors make in the prosecution of offences nationwide and I thank you all for your efforts on the Office's behalf. In the past year, as a result of the allocation of additional Circuit Court judges to criminal business, individual state solicitors and county prosecutors have come under pressure to deal with a greater number of cases at sittings than would ordinarily be the case. While I welcome the commitment of

the President of the Circuit Court and of the Courts Service to reduce backlogs in criminal cases in some areas I am also conscious that in some parts of the country at least there is still a long way to go. I very much appreciate the positive attitude that state solicitors and counsel have adopted in response to the additional work created by the extra hearings, but I know that we are all committed to getting more cases on and clearing the lists.

Within my Office we are also facing into another major change when we take on a new case management system in the Autumn. We are in the final stages of preparation for this system which will be rolled out in two phases to be completed in May of 2009. This will be the first time that the entire organisation, both Directing and Solicitors Divisions, will work off one system and should I hope assist in the efficiency with which we respond to queries and deliver services to the citizens of this State.

On 28 January this year I launched the public consultation element of the Reasons Project. A Discussion Paper on Prosecution Policy on the 'Giving of Reasons for Decisions' was posted on our website and the paper received a great deal of media coverage. We received over 80 written submissions from a very broad range of interests. I would like to thank all of those who took the time to make their views known. Many of the submissions offered unique and insightful perspectives that have greatly enhanced our understanding of the issues to be considered and it is clear that they were the product of a great deal of thought and effort.

Following the receipt of these submissions, a representative group of interested parties were invited to a seminar held at Dublin Castle in April to engage in further debate. This event was attended by 72 people from a wide range of backgrounds including victims groups, the Law Society and the Bar Council, individual lawyers, civil liberties organizations, as well as other organizations in civil society and staff from my Office. The event was chaired by Mrs Justice Catherine McGuinness. Mr. Jim McHugh, Chairman of the Commission for the Support of Victims of Crime, spoke from his experience of supporting a broad range of victims' organisations. Ms. Sue Moody, Deputy Head of the Policy Division of the Crown Office and Procurator Fiscal Service in Scotland and Mr. Barry Hancock, formerly of the Crown Prosecution Service, England and Wales and more recently General Counsel to the International Association of Prosecutors addressed the seminar from the perspective of their respective jurisdictions, both of which give reasons for prosecutorial decisions.

Perhaps unsurprisingly, on the question of whether or not reasons ought to be given, the overwhelming majority of the submissions received were in favour of the giving of reasons in some form or other. Most submissions recognized the primacy of the interests of victims and their families in knowing reasons. There were not so many submissions advocating the giving of reasons to the press or the public generally.

However, many of the submissions recognized the need for caution with respect to the delicate balancing act that would be required to ensure fairness to all parties involved if there is any alteration to our current policy. A significant minority, most of whom were from the legal profession, were opposed to any alteration of the current policy. This minority felt that the preservation of the presumption of innocence and the protection of informants could only be effectively maintained by a continuation of the current policy.

As well as the external consultation process the Office sought the views of all legal staff from both the Directing and the Solicitor Divisions. Two internal seminars afforded staff an opportunity to debate the issues raised by a potential change in office policy on the giving of reasons. Just as with the public consultation, this internal consultation provided a rich source of different perspectives and views on the issues.

I intend this summer to publish a final report on this project. As well as a statement of our proposed policy on reasons for decisions that report will provide an overview and analysis of the submissions received and the main arguments advanced during both the external and internal consultation processes.

My inclination remains that we should implement a change in policy. However, I am convinced of the argument that any change should be made very carefully and gradually. There are many issues to be considered in a potential policy change of this magnitude including the potential operational, training and resource implications as well as consideration of the manner of such communications, whether such communications have sufficient protection under the existing application of the law of qualified privilege or whether further legislation would be required, and the report will address these issues.

The reality is that in the vast majority of cases the decision not to prosecute is based on the fact that the Office has decided that the available evidence is not such that a case could be proved to the very high standard required in criminal cases, namely, proof beyond a reasonable doubt. The decision is based on the professional assessment of the lawyer dealing with the case on questions such as

the admissibility of evidence and the weight to be attached to particular evidence.

Apart from the issue of whether and how to explain prosecution decisions the Office is committed to improving communications with victims. Most of the early communication with victims is done via the Garda Síochána at present. I appreciate the arguments made by many victim organizations that it would be better if legal issues were communicated by lawyers rather than police officers but to do so would have major resource implications for our Office. I welcome the development of the Family Liaison Officer Service within the Garda Síochána which we believe will greatly enhance the efficacy of communication with victims. In cases where we decide not to prosecute my Office frequently receives letters from victims or families of deceased victims expressing dissatisfaction with some aspect of the decision and seeking a review of that decision.

The availability of the option to ask for a review is not something that is always known about by victims but it is nevertheless there and we have given a commitment to victims to take their views into consideration when having the file looked at again.

Where cases are prosecuted, of course, the prosecuting solicitors and counsel have regular dealings with victims and their families particularly in the run up to the trial and during the trial itself. I very much appreciate the sympathetic way in which these legal professionals deal with victims on my behalf. I think it is fair to say that as a profession we have come a long way on this matter and while we are always operating within legal constraints on what can be discussed with victims and their families we recognise that the proper treatment of victims is vital to the successful outcome of a trial. Of course, no matter what we do the trial will be a stressful process for the victim who is very often both hurt and angry. But it is essential that we do our best to minimise that stress, not only because an overstressed victim may make a poor witness, but more importantly when dealing with people it is a good rule to ask how we would like to be treated if we were in that situation ourselves.

By way of an advance advertisement I am pleased to say that we will be holding another joint conference with the two Children's Hospitals, Children's University Hospital Temple Street and Our Lady's Hospital Crumlin in November of this year. This is a follow-up to the very successful conference held in November 2004 when we brought together health and legal professionals to discuss cases involving child victims.

The November conference is likely to focus on the theme of how to get the best evidence from children and the best expert evidence on children within our adversarial legal system which tends to be very daunting for children. I might add that one of the issues that came up in 2004 was the fact that the provision in the Criminal Evidence Act, 1992, which allowed for the videoing of child witnesses' initial interviews with the Garda Síochána (or any other competent person e.g. healthcare workers), and this could be used in place of direct examination in the court room where the child is under 14 years of age. I understand that this section is finally about to be brought into force. Some considerable preparatory work has been done in the last 18 months or so to ensure that the facilities necessary and accommodation were provided and training carried out.

A significant development during the year was the creation of a prosecution policy unit within the office. The unit came into being at the start of this year. Kate Mulkerrins, previously Legal Coordinator of the Rape Crisis Network, was selected as head of the Unit and took up her position on 2 January 2008. Rebecca Coen, formerly a researcher with the Office, was appointed to the post of deputy head of the unit.

As anticipated, the development of a business plan and an agreed strategy has been the primary focus of the Unit in the first months of establishment. To that end Kate and Rebecca have visited and reviewed the work being undertaken by the policy units in England and Wales, Scotland and Northern Ireland. Those fact finding missions have thrown into sharp relief a number of areas where I am sorry to say we lag behind our neighbours. These include our staff training, victim initiatives and information management systems. While significant resources have been provided for the Office to develop its IT system, I believe that in the near future significant additional resources will be required to improve and develop staff training and initiatives relating to how we deal with victims. Improvements to IT are of necessity an ongoing process. Among its work to date the policy unit has taken a lead role in the Reasons Project and has commenced work on asset seizing (jointly with the Gardaí).

Finally, and for the practising barristers among you, no doubt the most important thing I have to say, I want to refer to fees in cases sent forward on signed pleas. As you are aware fees payable to counsel are always kept under review. Where appropriate we seek sanction from the Department of Finance for increases or restructuring of fees. When an accused is sent forward on a signed plea a fee of €600 is payable at present to prosecution counsel. It is of course a rare event for an accused to go forward on a signed plea. We have therefore looked at that fee

to see whether it should remain. Because of the extra duties on prosecution counsel at sentencing stage there may not be any less of a burden on counsel who is dealing with a signed plea than there is on counsel dealing with an accused who was sent forward for trial after service of a book, where the fact of the plea was indicated at an early stage. The Department of Finance has therefore sanctioned the payment of the ordinary case fee (€1,502 for Junior Counsel at present) in any case where an accused goes forward on a signed plea. Because under the Criminal Legal Aid Scheme the defence is paid on the basis of parity with the prosecution there is at least the possibility that the restructuring of the fees in this way may result in greater use being made of the signed plea. If this were to happen there should be considerable savings both in time and money across the criminal justice system, particularly by reducing the number of contested cases in court lists and freeing up courts and witnesses to deal with other matters.

Finally, I would like to thank the Communications and Development Unit in my Office, headed by Helen Cullen for their work in organising the conference. In particular I want to thank Orlagh Flood and Lorraine McHugh for their calm and efficient organisation of the event. I also want to thank Dublin Castle Conference Centre for the use, once again, of this wonderful venue.

Thank you to you all for coming this morning and I hope that you find the day informative and beneficial.

*James Hamilton*  
*24 May 2008*