

**10th ANNUAL NATIONAL
PROSECUTORS' CONFERENCE**

**SATURDAY, 23 MAY 2009
DUBLIN CASTLE CONFERENCE CENTRE**

James Hamilton

**Director of Public
Prosecutions**

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Opening Address

Let me begin by welcoming you all to our annual conference which is the 10th in the series.

The year since we last met has been marked by the crisis in the national economy. This is likely to have major effects on the way the Office does its business, and indeed on the criminal justice system in general as well as on society as a whole. The year has also been marked by a number of important developments in the life of the Irish prosecution service. In addition, we are facing major legislative and operational developments in the continuing battle against serious crime.

Once again this year we have decided to use the conference to address a number of different topics rather than having a single theme. This has proved to be a successful formula in the past. I am sure that the issues we discuss today will provoke some lively discussion.

Sean Gillane BL, will talk about the Criminal Justice (Surveillance) Bill which has been recently introduced in Dáil Éireann with a view to attacking the serious problem of organised crime. In the light of the fact that Mr. Gillane's comments will be critical of the current proposal, I would like to make it clear that I personally believe that the use of covert surveillance is absolutely necessary if we are to obtain evidence in relation to organised crime. Having said that, however, it is very important that when the legislature introduces measures of this sort we ensure that there are necessary safeguards in place so as to ensure that evidence is obtained with the minimum interference with the rights, including the privacy rights, of citizens. I think it is fair to say that Mr. Gillane's paper raises a number of important issues and is a significant contribution to the debate on the legislation.

Achieving the correct balance between effective law enforcement and the protection of the rights of citizens is a difficult task. However, the use of extraordinary measures ought not to lead us to neglect necessary reforms within the ordinary criminal justice system nor ought the extraordinary become the norm. Trial by jury remains the constitutionally mandated method of trial in this country and under the Constitution the use of non-jury courts is permitted only for the trial of minor and military offences and

where it is determined in accordance with law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. I believe that we need a two-pronged approach – we should use Special Criminal Courts where they are necessary but we must also take such steps as we can to ensure that as far as possible the ordinary courts are adequate to ensure that justice is done. Nor should we forget the ordinary citizen participates in the criminal justice system through serving on juries and that this participation imports a degree of democratic legitimacy into the system as well as educating the citizen about the criminal justice system.

I have emphasized before, and I do so again, that the question of jury reform is of the greatest importance. The Law Reform Commission have embarked on the process of examining the law and practice relating to juries in this country and I very much welcome this. My Office has made preliminary submissions to the Commission in relation to the matter. Broadly, I believe that there is much more we need to do to ensure that juries are properly representative of society as a whole. At the moment far too many categories of people are excluded from jury service as a result of which juries are not as representative of modern Irish society as they might be. Secondly, we need to ensure a much greater degree of protection for individual juries, and if necessary to protect their privacy and ensure their anonymity. Even if we use Special Criminal Courts to a much greater extent than we have done in the past, it will still be the case that the vast majority of trials on indictment will be taking place in front of juries. In regard to the protection of jurors, I think the measures which I understand will be taken in the new criminal court complex in Dublin will represent an important tool in reducing the scope for the intimidation of jurors.

Kevin O’Connell of the Office of the Director of Corporate Enforcement will be speaking to us about disqualification orders following certain criminal convictions, and in particular about section 160 (1) of the Companies Act 1990. In the light of recent events in the financial services industry the Office of the Director of Corporate Enforcement has come under the spotlight and the average citizen has a new found interest in what up to now have been relatively obscure areas of company law. Our Office has always cooperated closely with the Office of the Director of Corporate

Enforcement and I anticipate that this is something which is likely to increase rather than diminish in the near future.

Notable events in the life of the Office during the year since the last conference included the holding of a second joint conference with the two Children's Hospitals in Crumlin and Temple Street. Following on from the successful first conference with the two hospitals in 2004 it was an opportunity for legal professionals and healthcare professionals to discuss issues of mutual interest and concern relating to the experience of child victims within the criminal justice system. I think I can fairly say that the debate had moved on from its starting point in 2004 and that there is now a much higher degree of understanding of the two profession's perspectives. However a lot more remains to be done and the Office remains committed to contributing in whatever way it can to improve the experience of children and their families as they go through the long process from initial complaint to conclusion of trial and beyond.

One of the improvements which have been implemented in the last year is the bringing into force of arrangements for a child to have his or her initial statement of complaint recorded on video and admitted as evidence at trial thus avoiding the need to give evidence in court. It remains to be seen how this evidence will be dealt with at the trial and the extent to which children may be subjected to cross-examination which of course is the defence's entitlement.

I am delighted that Úna Ní Raifeartaigh BL who spoke at our November conference has agreed to speak today on the child as witness.

Our fourth speaker this morning is Genevieve Coonan BL who has recently co-authored *The Judge's Charge in Criminal Trials* together with Brian Foley. Those of you who have seen the book will be aware of the quality of the scholarship contained in it and what a valuable addition it is to Irish legal publishing. We are very much looking forward to hearing Ms. Coonan speak on the subject of the judge's charge to the jury and statements under section 16 of the Criminal Justice Act 2006, a topic which is of vital interest to advocates.

Since we last met, the Office has introduced on a pilot basis a policy of giving reasons in relation to decisions not to prosecute in cases involving a death which occurred on or after 22 October 2008. It is only in the last few weeks that we are starting to make decisions in relation to such cases. Most of the cases dealt with to date where a decision has been made not to prosecute have involved fatal road traffic accidents, and in quite a high proportion of them the reason for non-prosecution is very straightforward, being single vehicle road accidents in which the only driver involved in the accident has been killed. When examining files which will be subject to giving reasons and taking a decision we are attempting to set out the reasoning behind the decisions in such a way as will enable us to transpose the decision into an answer to the family or household of the deceased person in the event that we are requested to give reasons. It is too early to say how the pilot project will turn out, but we have not so far encountered any significant difficulties. I would expect that by the end of 2009 we will have dealt with sufficient cases falling within this category to enable us to be more definitive about how the scheme is operating.

Before I conclude, I would like to say one or two thank-you's. First of all I want to thank our speakers in advance of hearing their papers. It is very generous of all of them to give up the time not merely to come to the conference today but to prepare papers which is a time-consuming business. Secondly, I want to thank the staff of Dublin Castle Conference Centre for providing us once again with this splendid venue. Thirdly I want to thank Orlagh Flood and all of the team who have been involved in the preparation and organization of this conference.

Finally, I want to thank all of the staff of this Office, and the State Solicitors who provide an essential service for us outside Dublin, as well as the members of the Bar who act as advocates for us in the courts. I am conscious that all of you have had to take a reduction in salaries or fees during the last few months and that for some time to come it is likely that this Office will have to attempt to maintain high standards on limited resources. I want to thank you all for the very positive spirit you have displayed despite these difficulties. And now, without any further formalities I will hand over to the Deputy Director, Mr. Barry Donoghue, who will chair the first session of the conference.