





Office of the Director of Public Prosecutions

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FOREWORD



This is the eighth Annual Report of the Office of the Director of Public Prosecutions. It presents a welcome opportunity for me to report on the work undertaken by my Office during 2005; to look at some of the legal developments that occurred during the year which impacted on our work; and to review the developments we have undertaken to enhance the delivery of a prosecution service that is independent, fair and effective.

The core work of the Office is the prosecution of criminal offences. During 2005 the number of prosecution files received remained relatively constant compared to the previous three years. However, cases continue to increase in complexity.

Chapter 7 of this report is devoted entirely to the provision of statistical information in relation to the volume of prosecution files dealt with and how those files were disposed of. The statistics are based on our own classification and categorisation systems and are not therefore directly comparable with statistics published by other organisations such as the Courts Service or the Garda Síochána.

Since the establishment of the Office, professional staff have devoted almost all of their time either to prosecution file work or to presenting cases in court. With the increasing complexity of the criminal justice system my professional staff are now regularly being called upon to address matters of legal policy. To date this has been managed from within existing resources. However, I am of the opinion that it is now time to establish a dedicated legal policy unit to address these issues in a more structured and focused way. This is an area I intend to prioritise in our Strategy Statement 2007 – 2010.

A very significant development in the area of new legislation took place in 2005 with the introduction of the Garda Síochána Act, 2005. Section 8 of the Act confers on members of An Garda Síochána the power to institute and conduct criminal prosecutions in courts of summary jurisdiction in the name of the Director of Public Prosecutions. The Act also confers on me a statutory power to grant both general and specific directions in respect of such prosecutions.

At time of writing section 8 is due to be enacted in mid 2006. The effects of its implementation, which will be significant for my Office, will be reported on further in the Annual Report 2006.

Chapter 2 of the report highlights progress made in a number of areas during 2005 that have enhanced the service we provide. The service will be further enhanced with the transfer of responsibility for the State Solicitor service from the Attorney General to me, as was recommended in the Report of the Public Prosecution System Study Group. While I am disappointed that the transfer has not yet taken place, negotiations are currently going on. It is hoped that they will reach a conclusion during 2006 and I look forward to the positive impact that this will have on the prosecution service generally.

I have drawn attention in previous reports to the difficulties which arise from my Office being split over two locations. I am pleased to now announce that a decision has been taken to site my Office in one building next to the new criminal courts complex which is currently under development. Unfortunately, however, this move to a single headquarters is still some years away. I am concerned that in the intervening period the fact that my Office will remain split over two locations, together with the generally inadequate nature of our accommodation, will continue to have an adverse impact on the service provided.

I would like to conclude by thanking all my staff, together with the people and agencies with whom the Office works, for their continued dedication and commitment during 2005.



James Hamilton
Director of Public Prosecutions
May 2006

MISSION STATEMENT

To provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective.

1 THE GENERAL WORK OF THE OFFICE

1.1 The fundamental function of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters.

1.2 The majority of cases dealt with by the Office of the Director of Public Prosecutions are received from the Garda Síochána, the primary national investigating agency. However, some cases are also referred to the Office by specialised investigative agencies including the Revenue Commissioners, Government Departments, the Health & Safety Authority, An Post, the Competition Authority, the Director of Corporate Enforcement, the Environmental Protection Agency and local authorities.

1.3 The Office of the Director of Public Prosecutions has three divisions:

The Directing Division determines, following an examination of an investigation file, whether there should be a prosecution or whether a prosecution commenced by the Garda Síochána should be maintained. The direction which issues indicates the charges, if any, to be brought before the courts. In some cases further information and investigation may be required before a decision can be made. The decision to prosecute is based on a *prima facie* case - evidence which could, though not necessarily would, lead a court or a jury to decide, beyond reasonable doubt, that the person is guilty of the offence.

The Solicitors Division, headed by the Chief Prosecution Solicitor, acts as a solicitor for the Director and the Garda Síochána in the preparation and presentation of cases in the Dublin District and Circuit Court, the Central Criminal Court and Special Criminal Court, the Court of Criminal Appeal and the High and

Supreme Courts. Outside of the Dublin area this function is carried out by 32 local state solicitors who deal with cases in their respective regional areas.

The Administration Division provides organisational, infrastructural, administrative and information services required by the Office and also provides support to both the Directing and Solicitors Divisions.

1.4 The work of the Office includes:

- the consideration of criminal investigation files submitted to the Office
- deciding whether or not a prosecution should be initiated or whether a prosecution already initiated by the Garda Síochána should be maintained and the advising of any further investigations necessary for the commencement or continuation of a prosecution
- the determination of the charges to be preferred and the consideration of any charges already preferred
- the determination of the proofs and other materials to be tendered to the court and to the accused, including issues regarding the disclosure to the defence of unused material
- presentation of criminal prosecutions in the district courts of the Dublin Metropolitan District and appeals there from to the Circuit Court

- preparation and presentation of all indictable criminal prosecutions listed in Dublin - this includes trials in the Circuit Criminal Court, Special Criminal Court and the Central Criminal Court
- the nomination and instruction of Counsel in the various trial courts as well as the High and Supreme Courts and the Court of Criminal Appeal
- the giving of instructions regarding the conduct of the prosecution of criminal trials including the issuing of decisions regarding the many questions of law and of public policy which can arise in the course of criminal proceedings
- conferring as necessary with counsel, local state solicitors, members of the Garda Síochána and professional witnesses
- the determination and discharge of the fees of Counsel who are instructed to act on behalf of the Director
- deciding whether appeals, including appeals by way of case stated, should be brought or contested, and bringing and defending proceedings for judicial review
- defending bail and *habeas corpus* applications arising out of criminal proceedings
- the referral of sentences considered to be unduly lenient to the Court of Criminal Appeal
- the consideration of complaints and allegations of the commission of criminal offences received from members of the public and, where appropriate, their transmission to the Garda Commissioner
- the consideration of files submitted by the Garda Síochána Complaints Board
- the drafting or settling of documents necessary for the processing of requests for extradition into the State
- the drafting and making of requests for international mutual assistance in criminal matters
- participating in and contributing to committees and working groups in relation to criminal law and procedure; facilitating specialised training programmes on aspects of the prosecution of crime for the Garda Síochána; and organising conferences on criminal justice topics for the benefit of our stakeholders
- cooperating with and participating in joint initiatives with other agencies with an interest in and responsibility for aspects of criminal justice, including the Garda Síochána; the Revenue Commissioners; the Competition Authority; the Director of Corporate Enforcement; the Health and Safety Authority; other prosecution agencies; the Courts Service; the Department of Justice, Equality and Law Reform; the Law Reform Commission; the Forensic Science Laboratory; the State Pathologist; the Medical Bureau of Road Safety; the Office of the Attorney General; as well as organisations representing the interests of victims.

2 THE YEAR IN REVIEW

2.1 The decisions made by the Office are of great importance and can have the most far-reaching consequences for an individual. It is therefore essential that our work is carried out to the highest professional standards and that we have in place the necessary resources, structures, processes and systems. We must also ensure that these supports are developed in line with principles of best practice employed across the public service.

2.2 Our three year Strategy Statement 2004 – 2006 identified the key objectives that the Office must achieve in order to deliver a high level prosecution service. This chapter outlines the progress made during 2005.

Governance

2.3 The Office is conscious of the power vested in it on behalf of the People of Ireland and recognises that this places a responsibility on it to ensure that it has appropriate control and governance procedures in place. The Office also recognises that there is an onus on it to provide as much information as possible to the public with regard to how it discharges its functions. In this regard Annual Reports, Strategy Statements and Guidelines for Prosecutors have been published and made available on its website.

2.4 However, the Office recognises that those who make assessments with regard to its performance weigh the information they receive, either consciously or unconsciously, against how reliable they believe it to be. For this reason the Office places great importance on having its control and governance practices independently monitored by its Audit Committee. The Audit Committee has external members from outside the public service, one of whom serves as Chairman.

2.5 The Audit Committee's Charter sets out that the role of the committee is to systematically review the control environment and governance procedures in the Office and provide reports and advice to top management.

2.6 During the year Audit Reports on General Procurement; Procurement of Barristers' Services and Computer Controls were completed under the direction of the Audit Committee. The Committee also considered progress reports on the implementation of recommendations from previous audits.

2.7 The Office continued in 2005 to build on work commenced in 2004 in identifying key risks facing it and developing strategies to deal with these. The Audit Committee reviewed progress on the Business Risk Management Process at their March and June meetings and indicated that it was satisfied with the process.

Legal Environment

2.8 Our Office operates in a constantly changing legal environment. It is essential therefore that we keep abreast of national and international legal developments and ensure that our staff have the necessary knowledge to meet the continuing demands of increasingly complex and new areas of criminal law. It is also important that we work closely and consult with other agencies involved in the criminal justice system.

2.9 The continued development during 2005 of our Library Management Services ensured the availability of timely, relevant and up-to-date legal information through both the Digital Media Archive and iLink systems. Desktop access to court judgements, Garda circulars, legal research papers and counsels' opinions in electronic format has proved to be a valuable and easily accessible resource for our legal staff.

- 2.10** Attendance at national and international conferences on legal topics is a key focus of our Training and Development Plan. In 2005 36% of our legal staff attended such conferences, which continue to be a source of vital information in the ever-changing legal environment within which we operate. Training needs identified through the Performance Management & Development System have also been met through participation in external continuing legal education programmes and in-house training sessions on specialist areas of criminal law. A Legal Training Steering Group was established in 2005 to oversee the development and implementation of a legal training programme for both new and established legal staff.
- 2.11** Our participation in the provision of training to the Garda Síochána was also a priority for us during the year. Members of staff from the Office participated in training sessions for members of the Garda Síochána at Sergeant, Inspector and Superintendent level. Our programme of Regional Training Seminars continued in 2005 and provided an excellent forum for liaison between the Office and senior members of the Garda Síochána who prosecute summary cases on our behalf in District Courts nationwide.
- 2.12** In January 2005 we hosted the Annual State Solicitors' Seminar. This annual event provides an opportunity for the Office to meet with members of the State Solicitor Service and to discuss legal issues of mutual interest. One of the topics for discussion this year was Breath Test Prosecutions under Section 49 of the Road Traffic Act.
- 2.13** In May 2005 we organised the 6th Annual National Prosecutors' Conference which was attended by approximately 200 delegates. In attendance were prosecutors from the Office, members of the Bar, the State Solicitor Service, the Garda Síochána, the judiciary, and specialised investigating agencies. Presentations were given on the Scottish DNA Database; The Impact of Human Rights Act, 2003 on Criminal Law; Historic Sexual Abuse Cases: The Defence Experience; and Recent Developments in Sentencing Law. The annual conference has proved to be an extremely successful initiative and it enables the Office to take a lead role in raising issues of concern within the criminal justice system and seeking solutions to them through discussion and consultation.
- 2.14** On an international level we co-hosted the Heads of Prosecuting Agencies Conference (HOPAC) in association with the Public Prosecution Service of Northern Ireland. The conference is a biennial conference for Heads of Prosecuting Agencies from certain common law countries at which matters of mutual interest are discussed in a frank and open manner. The conference opened in Belfast and then continued in Dublin. This was the first occasion on which the two prosecution services engaged in a project of this nature and in doing so we built on the solid working relationship that has been established over the years. The conference was a tremendous success both in terms of sharing of views in relation to criminal law issues on an international level and also in terms of co-operation between the Office and our colleagues in Northern Ireland.
- 2.15** While working independently of each other it is crucial that the various agencies involved in the criminal justice system consult on and discuss cross-functional issues. The involvement of the Office in inter-agency working groups and committees has contributed to the delivery of an effective prosecution service. During 2005 we participated in and contributed to various inter-agency groups including the Criminal Justice Inter-operability Group; the Supreme Court Computerisation Group; the District Court Efficiency Committee; the Criminal Court Users Group; the Courts Service Customer Forum; the Garda Liaison Group; and the Criminal Justice Liaison Committee. On an international level we continued to contribute to and participate in the work of international bodies and organisations including EUROJUST; GRECO; OLAF; Eurojustice; the International Association of Prosecutors; HOPAC and the International Bar Association.

Efficient Use of Resources

- 2.16** The efficient use of resources is a key focus for the Office. During the year the Office continued to develop systems to provide managers with the information necessary to manage work and to ensure that our resources are allocated and utilised as efficiently as possible.
- 2.17** The most significant development during 2005 was the award of a contract for the development of a new Case, Document Management and File Tracking (CDMFT) system. Following a tender process, contracts were signed in December 2005 with Axxia Systems Limited, a company based in the United Kingdom that has a proven track history in the provision of case management systems to the legal profession.
- 2.18** The CDMFT system will act as a single point of access for all of our legal cases and will provide an integrated system for management of prosecution files across the organisation. All outgoing case-related correspondence will be generated on the system and stored there for future reference. The system will also have a digital dictation facility.
- 2.19** The first stage in the development of the CDMFT is planned to commence in January 2006. This will entail a comprehensive analysis of our business needs and will involve meetings with staff in all sections. The analysis phase is due to be completed by November 2006 and will be followed by system design, system testing and user acceptance testing. The system will be phased in over a six month period, with the first phase planned to go-live in July 2007.
- 2.20** The accounting system installed in 2004 continued to provide an improved service and greater efficiencies. The system underwent a significant upgrade from Integra 2 to Integra 3 in November 2005. This represents a major revision of the software and should improve the robustness and functionality of the system.
- 2.21** Under section 44 of the Public Service Management (Recruitment and Appointments) Act 2004, the Office was granted a general Recruitment Licence in July 2005. The licence has enabled the Office to target particular groups of

potential employees and has also facilitated the running of recruitment campaigns as the need arises. This has greatly enhanced our ability to fill positions in a more timely fashion. Since the licence was granted the Office has conducted three open competitions to recruit appointees to temporary positions at Prosecution Solicitor, Legal Researcher and Legal Executive levels.

Quality Service

- 2.22** Quality service has always been a core value of the Office of the Director of Public Prosecutions. In 2004, in consultation with our stakeholders, we developed a Quality Service Charter and Action Plan which outlines the standards of service that can be expected from the Office. The delivery of those standards is, for the most part, evidenced in the prosecution file statistics which are set out in Chapter 7 of this report and which represent the core work of the Office.
- 2.23** The co-ordination of liaison with victims of crime, the families of victims of crime and victim support groups was a key focus for the Office during the year. We are fully committed to working with the Garda Síochána to ensure that victims and the families of deceased victims are kept informed of progress in cases in which they are involved. We also continue to liaise with the Garda Síochána to ensure that victims are offered a pre-trial meeting at which the prosecution team have an opportunity to explain the court process.
- 2.24** The Office has emphasised the necessity for support to be provided to victims, particularly in court. Courts can be an extremely stressful environment for victims and their families. To this end we have made a number of submissions to the Commission for the Support of Victims since its establishment in March 2005 and have also made submissions in various fora regarding the facilities and arrangements for victims in court. We have also made submissions in relation to the giving of evidence by victims.
- 2.25** Members of staff from the Office met with a number of victim support groups including ADVIC, Support after Homicide and the Crime Victims Helpline. These meetings proved to be extremely beneficial and served to explain

how the prosecution system operates and the standards of service that victims of crime can expect from the Office.

- 2.26** In order to foster a better understanding of the work of the Office we have continued to provide information through the distribution of Office publications such as Annual Reports, Guidelines for Prosecutors and Information Booklets. Our website has also provided us with the means to disseminate information to a wide audience in an easily accessible and timely manner. In developing the website during the year particular emphasis was placed on ensuring that it is fully compliant with accessibility guidelines.
- 2.27** During 2005 in excess of 50,000 visitors accessed our website which represents a 50% increase on the previous year. In the interests of diversity, copies of Information Booklets on 'The Role of the DPP' and 'Attending Court as a Witness' were also made available on our website in Chinese and Russian.
- 2.28** In fulfilment of our obligations under section 11 of the Official Languages Act 2003, the Office published an Irish Language Scheme which was approved by the Minister for Community, Rural & Gaeltacht Affairs in July 2005 and which is now available on our Office website. The Scheme details the services that the Office will provide through the Irish Language. During 2005 we continued to maintain our website bilingually and all publications issued by the Office are produced in both Irish and English. The Irish language is promoted internally through the provision of a dedicated Irish section on our intranet and through staff participation in Irish language schemes and courses. Correspondence received in the Irish language was replied to in Irish and three judicial review cases were conducted through Irish during the year.

Internal Stakeholder

- 2.29** The Office recognises all our staff as internal stakeholders and commits itself to providing a supportive working environment for them. A number of initiatives were undertaken in 2005 in response to this commitment.
- 2.30** The Performance Management Development System is now an integral part of our management framework. We further developed

the system during 2005 in preparation for the introduction of Upward Feedback. All staff completed an Upward Feedback Training Programme and the scheme will commence operation in January 2006.

- 2.31** A review of our Induction Training Programme was carried out during the year as a result of which procedures were revised and a new approach is now operational. A total of 18 staff availed of Induction Modules I and II in 2005.
- 2.32** A total of 3.52% of payroll costs was invested in staff training and development in 2005 - amounting to €335,235.22 in total. This expenditure included €102,331.59 on seminars, conferences and training courses; €35,708 on refund of educational fees; and €19,975 on external trainers.
- 2.33** Under our Staff Care Training Programme a number of Stress Management Sessions were provided to staff during the year. As a result of a survey carried out by our Partnership Committee in 2004 stress management was recognised as an area warranting attention, with particular focus on potential stress relating to the nature of the work of the Office.
- 2.34** The Partnership process facilitated a number of initiatives during the year which have benefited the Office as a whole. A sub-group of the committee carried out a survey on internal communications and in March 2005 submitted a report outlining recommendations for improvement in internal communications. The report was adopted and a number of the recommendations have now been implemented while others will be introduced on an incremental basis. The Merit Award and Long Service Award Schemes were once again co-ordinated through the partnership committee. A total of 75 staff received individual or group awards which were presented in December 2005. An Office Clean initiative was implemented by the Health & Safety sub-group of the Partnership Committee. The initiative, which encouraged staff to dispose of unneeded paper or equipment, took place between June and September 2005. It proved to be extremely successful in achieving a healthier and cleaner working environment for staff.

3 LEGAL DEVELOPMENTS 2005

3.1 The purpose of this chapter is to give a brief review of the more important or interesting decisions in the area of criminal law in 2005.

3.2 As in previous years, the cases are chosen to give a flavour of the type of legal issues which arise in the area of criminal law. The chapter is not intended to give a comprehensive review of all developments in criminal law during the year. Readers who are interested in such a review may wish to refer to *Binchy and Byrne's Annual Review of Irish Law 2005*.

Serious Harm

3.3 The meaning of 'serious harm' was considered by the Court of Criminal Appeal in the case of *Director of Public Prosecutions v. Keith Kirwan* (No. 2), (unreported, 28 October 2005). Section 1 of the Non Fatal Offences Against the Person Act, 1997 defines serious harm as "injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ". The issue in the case was whether the statutory definition required a degree of permanency. The Court noted that the wording in the legislation did not contain either the words 'permanent' or 'protracted' and concluded that the Oireachtas was consciously removing requirements of permanence or even long term consequences from the definition of serious harm.

3.4 In the case of an alleged disfigurement however the court concluded that 'disfigurement' connotes an outcome rather than an immediate effect. A court or jury must take into account the outcome of any medical treatment actually given or received, and not just the appearance of the

injury in the immediate aftermath of the assault, in assessing whether or not there has been a serious disfigurement.

Sentencing - whether death as a consequence of careless driving is itself an aggravating factor

3.5 In *Director of Public Prosecutions v. Peter O'Dwyer* (unreported, 28 July 2005) the Court of Criminal Appeal considered whether when death results as a consequence of careless driving, the death is an aggravating factor to be taken into consideration at sentencing. The applicant had been found not guilty of dangerous driving causing death but was convicted by a jury in the Circuit Court of careless driving and was sentenced to one month imprisonment, suspended for 18 months on bond. His licence was also endorsed. On examination of the applicant's motor vehicle, after an accident in which a motorcyclist was killed, Gardaí discovered that the tyres were bald and below the legal limit. The applicant sought leave to appeal the custodial element of his sentence on the grounds that the trial judge erred when imposing sentence in taking into account the death in circumstances where the applicant had been convicted of careless driving only. The Court held that the fact that a death occurred may in itself be a factor to be taken into account in sentencing but that would depend on the court's finding regarding the primary issue of the degree of carelessness and culpability of the driving. In the circumstances of the present case it would be disproportionate to regard the death as an aggravating factor in itself.

Delay - Road Traffic Offences

3.6 The issue of delay was considered in the road traffic context in a number of cases. In *Cillian Fennell*, High Court, (unreported, 26 April 2005)

a delay of two years and five months, while undesirable, was held not to be excessive where there are reasonable grounds for the delay. The delay was occasioned by a number of adjournments due to lengthy court lists and the unavailability of a garda witness on the dates fixed for the trial.

- 3.7** Similarly, in *Director of Public Prosecutions v. Colin O'Sullivan*, High Court (unreported, 11 October 2005), while a delay of two years and three months from the date of the offence to the date of hearing was found to be excessive, there had not been an invasion of the accused's constitutional right to an expeditious trial.

Access to Solicitor in Custody

- 3.8** The parameters of the rights of a detained person to access to legal advice while detained in Garda custody were explored in *O'Brien v. Director of Public Prosecutions*, Supreme Court (unreported, 5 May 2005). During the appellant's detention the Gardaí recommended a solicitor, who was unable to attend the Garda station for a period of almost five hours. The appellant made statements prior to the arrival of and consultation with his solicitor, which the trial judge ruled were inadmissible, the appellant's constitutional right to be advised by a solicitor having been infringed. The Court of Criminal Appeal certified as a question of law of exceptional public importance whether the entire period of detention was unlawful by virtue of the deliberate and conscious breach of his right of access to a solicitor, and whether all of the statements made by the appellant during the course of that detention were inadmissible in evidence or whether only such statements as were made prior to the appellant being afforded access to a solicitor ought to be excluded. The Supreme Court dismissed the appeal, finding that it was the delay in providing the appellant with legal advice which was unlawful; however, his constitutional rights were restored when he received legal advice, and thereafter he remained properly arrested and in detention under section 4 of the 1984 Act. Accordingly, the applicant was in lawful detention at the time he made the statements subsequent to the arrival of his solicitor and those statements were rightly admitted in evidence.

Arrest under section 30 of the Offences Against the State Act, 1939

- 3.9** In *Director of Public Prosecutions v. Tyndall* (unreported, 3 May 2005) the Supreme Court considered the requirements for a valid arrest under section 30 of the Offences Against the State Act, 1939, in circumstances where no evidence was led as to the suspicion of a member of the Garda Síochána that the appellant had committed a scheduled offence at the time of the arrest. The section clearly requires that a suspicion is held by the arresting member and evidence of that suspicion may be given by either direct evidence or indirect evidence. The Court held that suspicion, while not defined in the act, is an essential proof, and should be bona fide and not irrational. It is a fact to be proved by direct evidence, or it may be inferred from the circumstances. The circumstances of this case were not such as to enable a court to infer the suspicion.

Forensic Evidence

- 3.10** In *Director of Public Prosecutions v. Boyce* (unreported, 21 December 2005) the Supreme Court considered the taking of bodily samples for forensic and DNA testing. The Gardaí had obtained a blood sample with the full and free consent of the appellant, without regard to the formalities of the Criminal Justice (Forensic Evidence) Act, 1990. It was argued that the failure to take the sample in accordance with the Act rendered the sample inadmissible. The Supreme Court held that the Act does not limit the right of Gardaí to take or accept forensic samples from persons that are voluntarily provided. If forensic evidence is lawfully obtained in relation to a particular offence which ultimately provides evidence in relation to other offences, this in principle does not preclude its admissibility unless there are other special elements such as oppression or bad faith.
- 3.11** The Court also considered whether forensic samples ought to be treated similarly to incriminating statements for the purpose of the law relating to self-incrimination. The Court endorsed the approach of the European Court of Human Rights in *Saunders v. United Kingdom* ([1997] 23 EHRR 313), in considering the right not to incriminate oneself, distinguishing between

self-incriminating statements made by the accused and other forms of forensic evidence which exist independently of the will of the accused. Matters such as forensic samples, documents and other property of an accused which may be obtained in the course of the gathering of evidence exist independently of the will of the accused, and their objective evidential value is not dependent on a self-incriminating statement or communication by the accused.

- 3.12** The parameters of cross-examination of expert evidence were also looked at. Extracts from the scientific literature had been quoted to the expert witness. It was emphasised that such citations or extracts do not form part of the evidence. If the proposition cited from the extract is not accepted by the expert witness then it is open to counsel for the defence, if they consider it appropriate to do so, to call expert evidence to support that proposition and such expert evidence may rely on or adopt the proposition cited from the textbook or treatise.

Garda Síochána Act 2005

- 3.13** The Garda Síochána Act represents the first major revision of the operation of the Garda Síochána since the foundation of the State, and contains a number of reforms in relation to the management and administration of the force. It also clarifies the functions and objectives of the force. Section 8 provides a statutory basis for the prosecution of summary offences by members of the Garda Síochána in the name of the Director of Public Prosecutions and enables the regulation of the practice by the Director. This will be effected by the giving of specific or general directions as to the institution and conduct of prosecutions, and by taking over any prosecution initiated by a member of the Garda Síochána and either proceeding with or terminating it.

4 SECTION 49(4) PROSECUTIONS (Use of Evidential Breath Testing)

4.1 The purpose of this chapter is to provide an update on case law arising out of breath specimen drunk driving prosecutions, which was introduced pursuant to the Road Traffic Act, 1994.

Constitutional Challenge

4.2 The High Court decision of Mc Kechnie J, delivered on 14 September 2004 in the case of *Ashley McGonnell, Oliver Quinlan and John Purcell v. The Attorney General and the Director of Public Prosecutions* remains under appeal. The High Court upheld the constitutionality of the intoxilyzer provisions.

The Twenty Minute Observation Period

4.3 A number of cases were heard by the High Court which addressed issues arising on foot of the decisions in the cases of *Director of Public Prosecutions v. Michael Finn* and *Director of Public Prosecutions v. Damien McNiece* regarding the 20 minute observation period.

The necessity for a 20 minutes observation period:

4.4 The case of *Director of Public Prosecutions v. Brendan Walsh*, Macken J, 16 March 2005, held that a 20 minute observation period is not a pre-requisite to making a requirement under section 13 of the Road Traffic Act, 1994 to provide a breath specimen.

4.5 The rationale of the *Brendan Walsh* judgement was approved by Quirke J, in his *ex tempore* judgement of 27 October 2005 in the case *Director of Public Prosecutions v. Patrick Finn* wherein he stated that there was no obligation on the prosecution to give evidence of the 20 minute observation period as a necessary ingredient of a section 49 prosecution.

Time over 20 minutes:

4.6 Following the *Finn* and *McNiece* judgements challenges were made to any time in excess of 20 minutes which was not accounted for by the prosecution.

4.7 In his *ex tempore* judgement of 25 July 2005 in the case *Director of Public Prosecutions v. Robin Fox*, Abbot J held that a seven minute detention beyond the 20 minute period without an explanation was unjustified and stated that in his view anything over 5 minutes would need justification. This case is under appeal.

4.8 The same issue was again considered by the High Court in the case *Director of Public Prosecutions v. Tim O'Connor*, Quirke J, 14 December 2005 in which it was held that 27 minutes detention could be justified and set out what the District Court needs to look at in deciding on the legality of the detention of an accused person. The *Robin Fox* case was opened to the High Court in this case.

Other Cases Regarding Section 49(4) Prosecutions

4.9 In the case of *Director of Public Prosecutions (at the suit of Garda Cathal O'Reilly) v. Andrew Barnes - O'Neill* J, 18 July 2005, the question of errors in section 17 certificates was considered, the particular error in this case being that the wrong offence had been typed into the intoxilyzer machine at the beginning of the process. It was held that such an error was not fatal to the prosecution and did not detract from the due completion of the statement in question.

4.10 Reference was made to the judgement of O'Flaherty J in *Director of Public Prosecutions v. Somers* (1999) 1.IR.115 wherein it was stated that "it is impossible to seek perfection at all stages

of life and when there is a tiny flaw in the filling out of a document such as this, which flaw is of no significance and cannot possibly work any injustice to an accused and is not in discord with the purposes and objectives of the legislation, then the courts are required to say that such a slip, as we have here, cannot be allowed to bring about what would be a manifest injustice as far as the prosecution of this offence is concerned".

4.11 The case of *Director of Public Prosecutions v. John Bourke*, Quirke J - 21 October 2005 addresses the issue of the presumption contained in Section 21(1) of the Road Traffic Act 1994 and the standard required to rebut same. In essence, the principle outlined in the case of *Director of Public Prosecutions v. Collins* (1981) ILRM 447 that mere suggestion is not enough to displace the presumption was reaffirmed. The facts of the case were that two specimens were recorded as having been provided in the same minute. The defence submitted that it was not possible for the machine to analyse two specimens within that period. Notwithstanding evidence from a scientist from the Medical Bureau of Road Safety that this was in fact possible, the District Judge decided that *"there was sufficient rebuttal of the presumed 'prima facie' evidence on the face of the statements supplied pursuant to section 13 of the Act of 1994"* and dismissed the charge. The High Court held that on the evidence before the court the charge should not have been dismissed. The submission from the defence was no more than a suggestion and as such was insufficient to rebut the presumption.

- That in order to comply with the section 13(a) requirement, the defendant must provide two specimens of breath which allow the concentration of alcohol to be determined.

4.13 In short the area of section 49(4) prosecutions continues to be the subject of judicial scrutiny in both the High Court and the Supreme Court.

Refusal Cases

4.12 On 28 July 2005, the Supreme Court gave judgement in the case of the *Director of Public Prosecutions v. Bridget Moorehouse* wherein the defendant had been charged with an offence of failing to provide a breath specimen *"in the manner indicated by the said member of the Garda Síochána"*. Two issues were dealt with in the Supreme Court judgement:

- Where the phrase *"in the manner indicated by the said member of An Garda Síochána"* is used in the charge the offence is not known to the law.

5 SENTENCE REVIEWS FOR UNDUE LENIENCY (Mitigating and Aggravating Factors)

- 5.1** A sentencing judge should have regard to any mitigating or aggravating factors which could affect the length and/or nature of the sentence imposed on a convicted person. Mitigating factors would include such matters as the young age of an accused, lack of previous convictions, remorse and family background.
- 5.2** A number of applications for reviews of sentence on the grounds that they were unduly lenient were brought by the Director in 2005 in which it was contended that the judge placed too much significance on the mitigating factors or not enough on the aggravating factors of an offence.
- 5.3** In *Director of Public Prosecutions v. Michael Maher & Anthony Whelan* the robbery and killing of a 17 year old man occurred when a co-accused (Christopher Dunne) inflicted a single stab wound on him. Anthony Whelan received an eight year sentence (with six years suspended) for manslaughter and six years (with four years suspended) for robbery. Michael Maher received a ten year sentence (with seven years suspended) for manslaughter and seven years (with four years suspended) for robbery. The Court of Criminal Appeal concluded that the sentences imposed were not in themselves outside the parameters of sentencing for a case of this nature. However it found that the portion of the sentence that was suspended was excessive.
- 5.4** The circumstances of each accused were considered by the trial judge and for Anthony Whelan the following mitigating factors were considered: his age, that he did not produce a knife, that he had no previous convictions and his remorse.
- 5.5** The following mitigating circumstances were identified in the case of Mr. Maher: that he made a full admission of his involvement to the Gardaí, had no prior convictions (other than for minor Public Order Act offences), his age, his family background and that he was remorseful.
- 5.6** The Court found that the sentencing judge placed far too much weight on these mitigating factors put forward by the applicants' Counsel and that there was no justification for the reduction in the sentences given. New sentences were substituted for both accused with ten years (with four years suspended) for manslaughter and seven years (with one year suspended) for robbery.
- 5.7** In the case of *Director of Public Prosecutions v. Patrick Gately*, the accused was convicted of the unauthorised use of a motor car and reckless endangerment in relation to the manner of its driving. The Director contended in applying to review the sentence that the trial judge had failed to give sufficient weight to the aggravating factors of the offence – a serious road traffic accident – that the offence occurred late at night, in a car taken without permission, driving at high speed and colliding with another car leaving two occupants injured. The prosecution contended that no weight was given to the record of convictions of the accused for similar type offences, his limited remorse and insight.
- 5.8** In this case the Court of Criminal Appeal was satisfied that the trial judge had placed too much weight on the mitigating factors which were heard at the sentencing hearing and had imposed too lenient a sentence of eighteen months (with six months suspended). A new sentence of four years (with twelve months suspended) was imposed.

- 5.9** The Court found that the sentencing judge should have had regard to the seriousness of the offence itself rather than the personal circumstances of the accused as being the overriding factor in imposing sentence.
- 5.10** In *Director of Public Prosecutions v. Julian Gilloughley* (unreported Court of Criminal Appeal, 7 March 2005), the Director lodged an application to review a five year sentence (with two years suspended) on two counts of possession of drugs to the combined value of €15 million contrary to section 15A of the Misuse of Drugs Act, 1977 as amended.
- 5.11** The Court of Criminal Appeal found that the mitigating factors referred to by the defence, such as an early plea, co-operation with the Gardaí, that the accused had been coerced, had no previous convictions and was a 'lesser player', are all factors that would be present in many cases of this nature and that too much weight was placed on these factors in mitigating the sentence. The Court concluded that an error in principle was made by the learned trial judge in giving too little weight to the statutory minimum sentence of ten years.
- 5.12** The Court concluded that the sentence was unduly lenient and increased the sentence to seven years. The Court held that the trial judge had had too much regard to the personal circumstances of the accused rather than the offence itself and the amount of drugs found should be an important factor in assessing the seriousness of the crime.
- 5.13** However, in *Director of Public Prosecutions v. NN* (*ex-tempore* judgement, 27 June 2005) the respondent pleaded guilty to the possession of cannabis contrary to section 15A of the Misuse of Drugs Act, 1977 as amended. The 20 kilos of drugs, with a street value of between €70,000 and €80,000, was concealed in picture frames which the accused arranged to have transported from Johannesburg to Dublin where she was arrested. The Court heard that she and her daughter were HIV positive and that she had pleaded guilty at the earliest opportunity. A six year sentence (with two years suspended) was imposed by the sentencing judge.
- 5.14** On hearing the Director's application to review the sentence for undue leniency, the Court of Criminal Appeal held that the judge took into account all the proper mitigating (illness and plea of guilty) and aggravating factors (value of the drugs and seriousness of the offence) of the case and therefore, did not make an error in principle in his sentencing.

6 FREEDOM OF INFORMATION

- 6.1** Section 46(1)(b) of the Freedom of Information (FOI) Act, 1997 provides a right only with regard to records which relate to the general administration of the Office. This in effect means that records concerning criminal prosecution files are not accessible under the FOI Act.
- 6.2** The Office continues to make FOI information available as readily as possible with our revised section 15 and 16 Reference Book widely available both in public libraries throughout the country and on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept.
- 6.3** The FOI Unit can be contacted by telephone or by e-mail at foi@dppireland.ie. This e-mail address can be used for general queries on FOI but cannot be used to submit a request where an application fee is required.
- 6.4** During 2005 a total of twelve requests were submitted to the Office. Seven of the twelve requests were refused under the Act and three requests were withdrawn or dealt with outside of FOI. Two requests were granted in full. The reason for the refusals was that the records sought did not relate to the general administration of the Office.
- 6.5** One of the requests was submitted by a journalist, the other eleven requests were by the general public with ten requests relating to criminal files.
- 6.6** In the seven cases where requests were refused, the person making the request sought an internal review of the original decision. In all cases the original decision was upheld. Two requesters then appealed the decision to the Information Commissioner who also upheld the original decisions.

Requests Received 2005	
Refused under section 46(1)(b)	7
Withdrawn/dealt with outside of FOI	3
Requests Granted	2
TOTAL REQUESTS	12

Requestors 2005	
Journalists	1
General Public	11

Reviews	
Requests for Internal Review	3
Requests to the Information Commissioner for Review	2

7 STATISTICS

Explanatory Note in Relation to Statistics

7.1 The statistics outlined in this report have been compiled from data taken from our IT systems which are primarily used as a case tracking system and were not designed for the principal purpose of generating statistics. The systems are subject to ongoing development in order to enhance the quality of the data produced.

7.2 This chapter is broken down into three distinct sections:

- Charts 1 to 6 relate to the receipt of files in the Office and include details on the types of directions made;
- Charts 7 to 11 provide details on the results of cases prosecuted on indictment by the Director in respect of files received in the Office between 2003 and 2005;
- Charts 12 to 14 provide statistics on Office expenditure.

7.3 All the yearly demarcations in the statistical tables refer to the year the file was received in the Office. The reason for going back so far in charts 7 to 11 is to take account of the time difference between a direction being made and a trial verdict being recorded. If statistics were to be provided in respect of 2004 case outcomes, a large proportion of the cases would still be classified as 'for hearing'.

7.4 In this report we have attempted in most instances to include updated versions of the data set out in the Annual Report 2004 in order to give a fuller account of the progress made since that data was previously published. Because of the continuous change in the status of data at any given time, e.g. files 'under consideration'

or cases 'for hearing', information given in this report will differ from that for the same year in last year's report. In addition, data from two years may not be strictly comparable because as time goes on more cases are completed so that information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated as of May 2006.

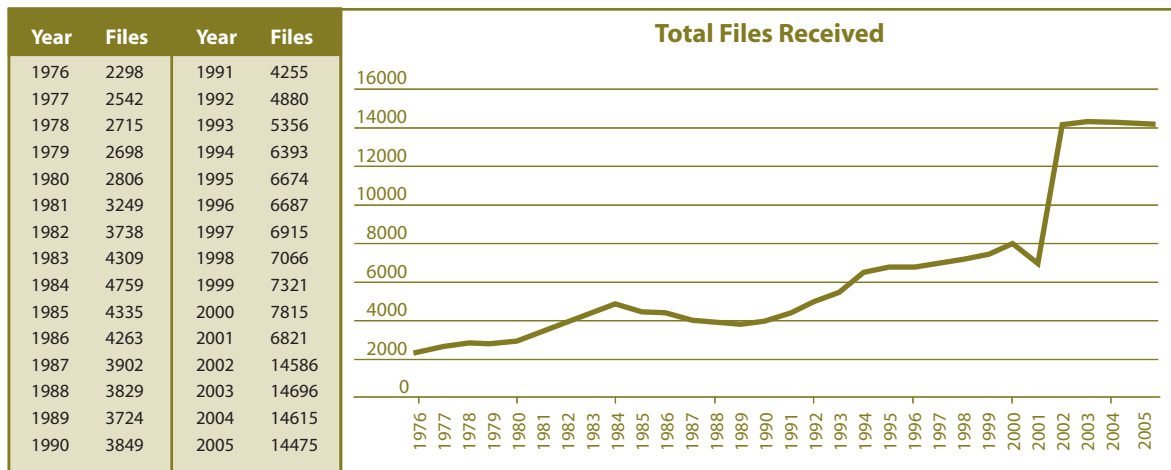
7.5 Caution should be exercised when considering these statistics in light of statistics published by other organisations such as the Courts Service or the Garda Síochána. The statistics published here are based on our own classification and categorisation systems and may in some cases not be in line with the classification systems of other organisations.

Chart 1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2005.

The vast majority of files received in the Office relate to the investigation of crime. The remainder deal with general queries, matters for judicial review or requests for legal advice from the Garda Síochána or local state solicitors. The caseload has increased generally on a year on year basis since the establishment of the Office both in terms of number of files received and in the complexity of the issues that have to be addressed.

The significant drop of over 1,000 files from 2000 to 2001 was the result of a change in administrative arrangements authorising the prosecution of certain offences by the Garda Síochána without the necessity for the prior submission of files to this Office for directions. The sharp increase in figures from 2001 to 2002 is due to the transfer of the Criminal Division of the Chief State Solicitor's Office to the Office of the Director of Public Prosecutions in December 2001 to form the Solicitors Division of the Office.

Chart 1 **TOTAL FILES RECEIVED**



The Solicitors Division of the Office of the Director of Public Prosecutions provides a solicitor service to the Director and acts on his behalf. The division also deals with cases which do not require to be referred to the Directing Division for direction.

Chart 2 represents the number of cases dealt with solely by the Solicitors Division and includes District Court prosecution files, appeals from the District Court to the Circuit Court and High Court Bail applications. The figure for District Court Appeals represents the number of files held, not the number of individual charges appealed. One defendant may have a multiplicity of charges under appeal.

The Solicitors Division also deals with judicial review applications. While some of these applications are dealt with solely by the Solicitors Division, others require to be forwarded to the Directing Division for direction. However, because the dedicated Judicial Review Section is based in the Solicitors Division the total number of judicial review applications dealt with are included in this chart. Those applications which required a direction are also included in the figures for the Directing Division (Chart 3) under the category 'other legal files'. Judicial reviews may be taken by the Director or be taken against him.

Chart 2 **FILES DEALT WITH BY SOLICITORS DIVISION**

	2005	%	2004	%	2003	%
District Court Prosecution Files	2357	37%	1820	25%	2422	34%
Appeals from District Court to Circuit Court	1830	29%	3117	43%	2333	33%
High Court Bail Applications	1727	27%	1958	27%	2002	28%
Judicial Review Applications	373	6%	299	4%	279	4%
TOTAL	6287	100%	7194	100%	7036	100%

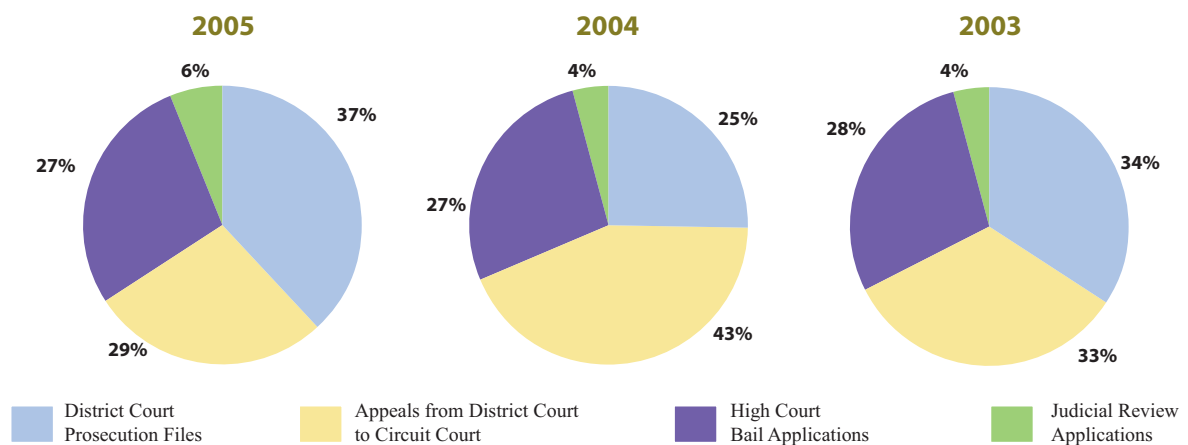
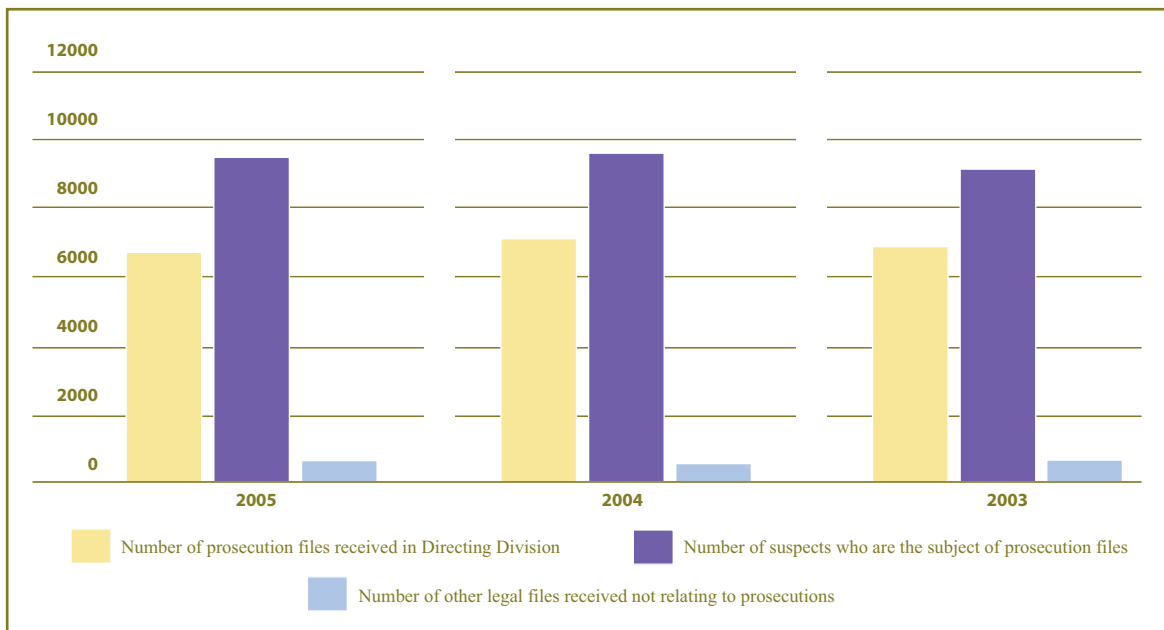


Chart 3 compares the number of files received in the Directing Division to the number of suspects who are the subject of these files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore, to look at the total number of suspects as well as the total number of files.

NOTE: There are also a number of files received in the Directing Division each year not relating to prosecutions. These include requests for legal advice from the Garda Síochána and local state solicitors, and judicial review applications received from the Solicitors Division for direction. These files are outlined in the chart as 'other legal files'.

Chart 3 **BREAKDOWN OF FILES RECEIVED IN DIRECTING DIVISION**

	2005	2004	2003
Number of prosecution files received in Directing Division	7499	6711	7010
Number of suspects who are the subject of prosecution files	9967	9487	9703
Number of other legal files received not relating to prosecutions	689	710	650



The following chart shows a breakdown of the disposal of files received in the Directing Division in 2003, 2004 and 2005 (as of May 2006). The Garda Síochána and specialised investigating agencies submit files either directly to our Solicitors Division or to the local state solicitor for a direction whether or not to prosecute. Depending on the seriousness of the offence and the evidence disclosed in the file, a decision will be taken as follows:

No Prosecution: A decision not to prosecute is made. The most common reason not to prosecute is because the evidence contained in the file is not sufficient to support a prosecution. The figures however, list all decisions not to prosecute.

Prosecute on Indictment: It is decided to prosecute in the Circuit, Central or Special Criminal Courts.

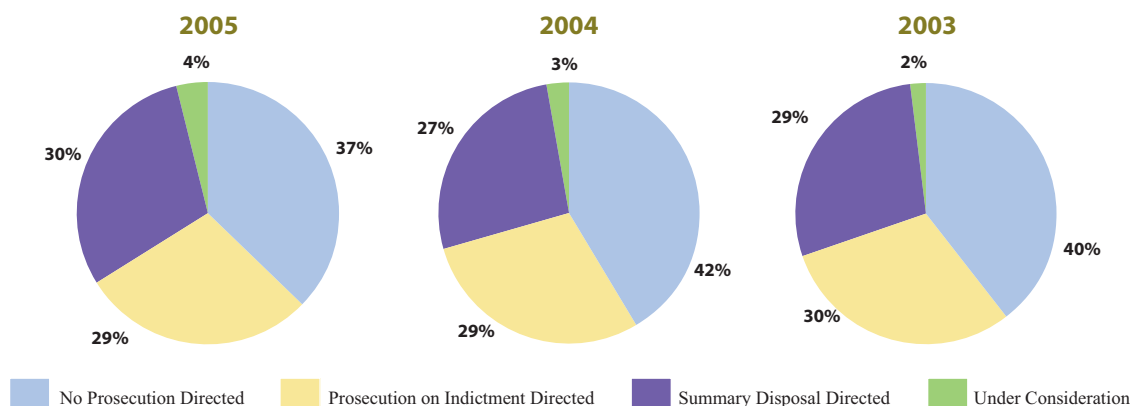
Summary Disposal: The offence is to be prosecuted in the District Court.

Under Consideration: Files in which a decision has not been made. This figure includes those files in which further information or investigation was required before a decision could be made. Further information is sought more often than not to strengthen the case rather than because of any deficiency in the investigation.

NOTE: The figures for 2003 and 2004 have been updated since the publication of previous Annual Reports. The reduction in the files 'Under Consideration' figures compared with those given in previous years reflect developments on those files since then. 'Prosecutions on Indictment' include those cases in which defendants elected for trial and cases where the judge of the District Court refused jurisdiction, notwithstanding the fact that the Director initially elected for summary disposal.

Chart 4 **DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF SUSPECTS SUBJECT OF FILES RECEIVED**

Direction Made	2005	%	2004	%	2003	%
No Prosecution Directed	3711	37%	3938	42%	3841	40%
Prosecution on Indictment Directed	2891	29%	2770	29%	2925	30%
Summary Disposal Directed	2981	30%	2531	27%	2769	29%
TOTAL OF FILES DISPOSED	9583	96%	9239	97%	9535	98%
Under Consideration	384	4%	248	3%	168	2%
TOTAL	9967	100%	9487	100%	9703	100%



A decision may be made not to prosecute in relation to a particular file for a variety of reasons other than the main reasons set out in this chart (referred to as 'other' below). Delay, the death or disappearance of the suspect, the death or disappearance of the complainant or the refusal of a complainant to give evidence are some examples.

Chart 4a **BREAKDOWN OF MAIN REASONS FOR A DIRECTION NOT TO PROSECUTE**

Main Reasons for no Prosecution	2005	%	2004	%	2003	%
Insufficient Evidence	2773	75%	2882	73%	2906	76%
Juvenile Diversion Programme	199	5%	224	6%	157	4%
Public Interest	192	5%	175	4%	198	5%
Sympathetic Grounds	72	2%	50	1%	54	1%
Time Limit Expired	192	5%	266	7%	287	7%
Other	283	8%	341	9%	239	6%
TOTAL	3711	100%	3938	100%	3841	100%

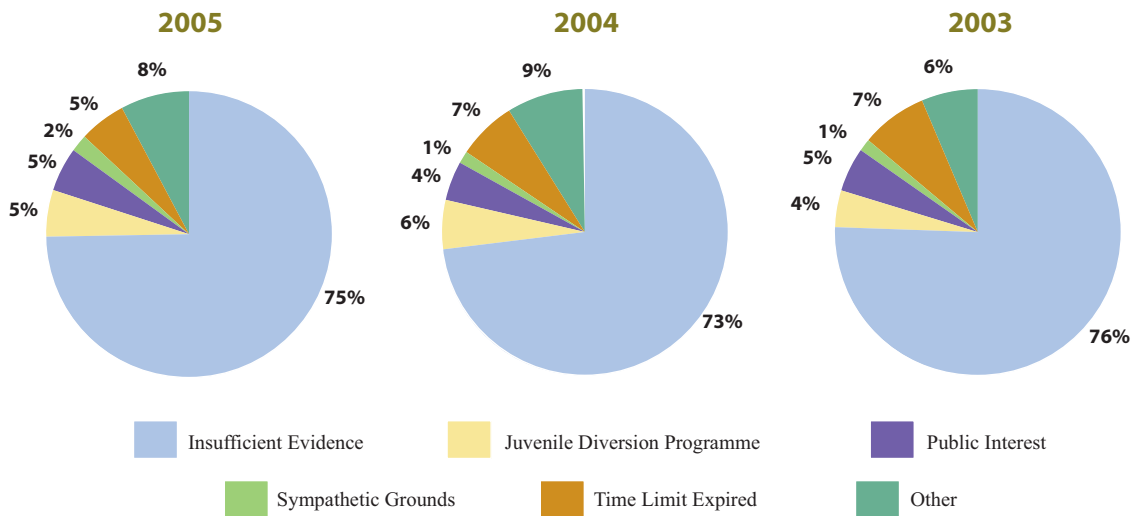


Chart 4b is a breakdown of directions to prosecute on indictment, by the county in which the offence was committed. It includes cases directed to be heard in the Circuit Criminal, Central Criminal and Special Criminal Courts. Please note that a number of cases for 2005 are still 'Under Consideration' (see Chart 4). It is not possible to determine how many of these cases may eventually result in a direction to prosecute on indictment.

Chart 4b **BREAKDOWN OF PROSECUTIONS ON INDICTMENT DIRECTED PER COUNTY OF OFFENCE**

Carlow	46,014	40	22	23	29	17	0.87	0.48	0.50	0.63	0.37	0.62	0.54	0.50
Cavan	56,546	28	29	31	45	26	0.50	0.51	0.55	0.80	0.46	0.52	0.62	0.60
Clare	103,277	69	62	68	51	28	0.67	0.60	0.66	0.49	0.27	0.64	0.58	0.47
Cork	447,829	308	248	303	295	275	0.69	0.55	0.68	0.66	0.61	0.64	0.63	0.65
Donegal	137,575	45	40	66	42	38	0.33	0.29	0.48	0.31	0.28	0.37	0.36	0.35
Dublin	1,122,821	1500	1419	1490	1525	1417	1.34	1.26	1.33	1.36	1.26	1.31	1.32	1.32
Galway	209,077	54	85	49	47	61	0.26	0.41	0.23	0.22	0.29	0.30	0.29	0.25
Kerry	132,527	58	58	69	45	42	0.44	0.44	0.52	0.34	0.32	0.47	0.43	0.39
Kildare	163,944	109	139	97	123	92	0.66	0.85	0.59	0.75	0.56	0.70	0.73	0.63
Kilkenny	80,339	30	56	26	22	41	0.37	0.70	0.32	0.27	0.51	0.46	0.43	0.37
Laois	58,774	25	33	20	30	17	0.43	0.56	0.34	0.51	0.29	0.44	0.47	0.38
Leitrim	25,799	13	4	18	2	4	0.50	0.16	0.70	0.08	0.16	0.45	0.31	0.31
Limerick	175,304	128	85	108	83	89	0.73	0.48	0.62	0.47	0.51	0.61	0.52	0.53
Longford	31,068	9	11	16	16	8	0.29	0.35	0.51	0.51	0.26	0.39	0.46	0.43
Louth	101,821	36	73	79	96	71	0.35	0.72	0.78	0.94	0.70	0.62	0.81	0.81
Mayo	117,446	46	52	27	29	18	0.39	0.44	0.23	0.25	0.15	0.35	0.31	0.21
Meath	134,005	60	49	55	48	54	0.45	0.37	0.41	0.36	0.40	0.41	0.38	0.39
Monaghan	52,593	40	22	30	40	40	0.76	0.42	0.57	0.76	0.76	0.58	0.58	0.70
Offaly	63,663	20	19	30	11	31	0.31	0.30	0.47	0.17	0.49	0.36	0.31	0.38
Roscommon	53,774	15	23	25	13	19	0.28	0.43	0.46	0.24	0.35	0.39	0.38	0.35
Sligo	58,200	45	40	41	19	45	0.77	0.69	0.70	0.33	0.77	0.72	0.57	0.60
Tipperary	140,131	55	46	49	49	43	0.39	0.33	0.35	0.35	0.31	0.36	0.34	0.34
Waterford	101,546	60	64	96	72	52	0.59	0.63	0.95	0.71	0.51	0.72	0.76	0.72
Westmeath	71,858	39	25	42	35	48	0.54	0.35	0.58	0.49	0.67	0.49	0.47	0.58
Wexford	116,596	38	41	49	34	54	0.33	0.35	0.42	0.29	0.46	0.37	0.35	0.39
Wicklow	114,676	21	25	18	22	20	0.18	0.22	0.16	0.19	0.17	0.19	0.19	0.17
TOTAL		2891	2770	2925	2823	2650								

*2002 Census Figures

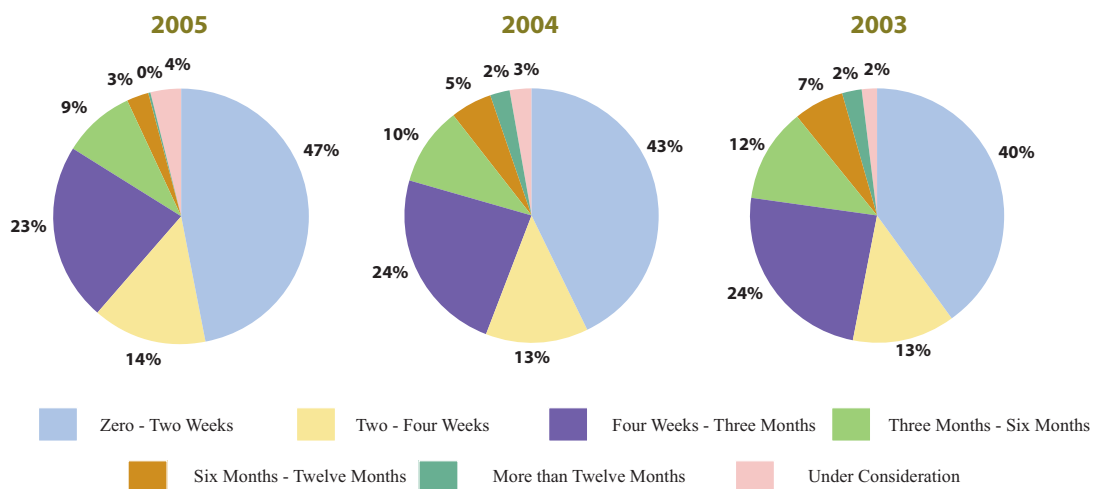
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple suspects, decisions in respect of all suspects may not be made at the same time.

Files vary in size and complexity. Also, in some cases, further information or investigation was required before a decision could be made. Further information may be sought to enhance the proofs in a case and does not necessarily imply any deficiency in the investigation.

The time taken to issue directions is calculated on the basis of only those files which have been disposed of. Files still under consideration are therefore shown as a separate category in the table below.

Chart 5 TIME TAKEN TO ISSUE DIRECTIONS

Time Taken	2005	%	2004	%	2003	%
Zero - Two Weeks	4684	47%	4081	43%	3904	40%
Two - Four Weeks	1438	14%	1223	13%	1258	13%
Four Weeks - Three Months	2249	23%	2234	24%	2332	24%
Three Months - Six Months	905	9%	960	10%	1159	12%
Six Months - Twelve Months	283	3%	508	5%	640	7%
More than Twelve Months	24	0%	233	2%	242	2%
TOTAL FILES DISPOSED	9583	96%	9239	97%	9535	98%
Under Consideration	384	4%	248	3%	168	2%
TOTAL	9967	100%	9487	100%	9703	100%



Section 2 of the Criminal Justice Act, 1993 provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal to have a sentence imposed by the trial court reviewed, if it appears that the sentence imposed was in law unduly lenient.

Chart 6 below details the number of applications made since the introduction of the Act.

In Annual Reports prior to 2004 the results of applications made were set out according to the year in which they were lodged. However not all applications lodged in the year for which the Annual Report was reporting were heard by the date of publication of the Annual Report and the results for such applications were listed as pending. It was therefore decided, from the year 2003 onwards, to set out the results of applications according to the year in which they were heard.

Chart 6a below outlines the results of applications, from the years 1994 to 2002, by the year in which the application was lodged (as appeared in previous Annual Reports).

Chart 6b outlines the results of applications, from the year 2003 onwards, by the year in which the application was heard.

Chart 6 APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

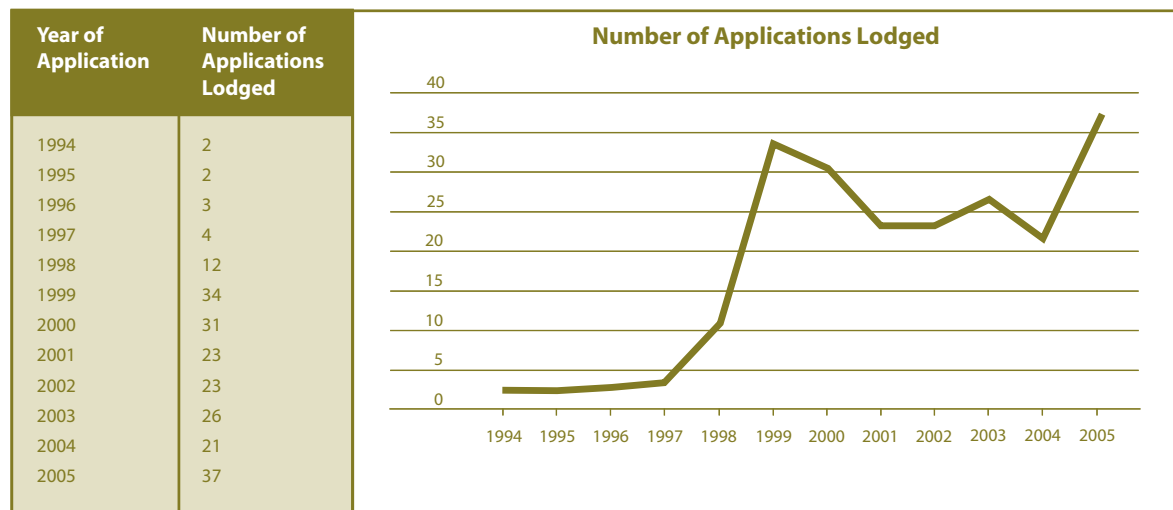


Chart 6a **RESULTS OF APPLICATIONS BY YEAR LODGED**

Year of Application	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
1994	-	1	1	2
1995	-	1	1	2
1996	1	1	1	3
1997	2	2	-	4
1998	6	3	3	12
1999	17	16	1	34
2000	15	13	3	31
2001	17	3	3	23
2002	14	9	-	23

Chart 6b **RESULTS OF APPLICATIONS BY YEAR HEARD**

Year of Application Heard	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
2003	11	8	1	20
2004	13	8	1	22
2005	18	9	2	29

OUTCOMES OF PROSECUTIONS TAKEN ON INDICTMENT

Charts 7 to 11 provide information for prosecutions on indictment taken by the Director in respect of files received in the Office between 2002 and 2004. As referred to in the initial explanatory note, care should be taken before a comparison is made to figures provided by any other organisation, as they are likely to be compiled on a different basis.

The figures in these charts relate to individual suspects against whom a direction has been made to prosecute on indictment. Statistics are provided on a suspect-by-suspect basis rather than on the basis of files received. This is because directions are made in respect of each suspect included within a file rather than against the complete file as an entity in itself. Depending on the evidence provided, different directions are often made in respect of the individual suspects received as part of the same file. References in these charts to 'cases' refer to such prosecutions taken against individual suspects. Although individual suspects on a file may be tried together where a direction is made to prosecute them in courts of equal jurisdiction, each suspect's verdict will be collated separately for the purpose of these statistics.

Statistics are provided on the basis of one outcome per suspect; this is irrespective of the number of charges that the suspect may have been prosecuted for in respect of that file. Where a suspect is convicted on any charge, he will be categorised as 'convicted' regardless of whether the conviction is in respect of the main charge or for a lesser charge or charges on the indictment. Where a suspect is categorised as 'acquitted', this means that the suspect has been acquitted of all charges. In respect of cases heard in the Central Criminal Court for rape and murder, a further breakdown is given in respect of convictions for a lesser offence (e.g. manslaughter instead of murder). This information is not available within our computer systems in respect of the other courts so care should be taken in interpreting their statistics. Suspects tried before these courts are categorised on the basis of the most serious offence they are charged with, but the offence or offences they are convicted for may be different from that under which they are categorised in the charts.

It should also be noted that statistics set out in these charts relate to what happened in the trial court only and not in a subsequent appeal court. In other words where a person is convicted and the conviction is subsequently overturned on appeal, the outcome of the trial is still shown in our statistics as a conviction.

Care should be taken in relation to interpreting the rates of conviction and acquittal in respect of later years, as a higher number of cases will not have reached a conclusion. The picture furnished by these statistics will be less complete and therefore less representative than those in respect of earlier years. Cases heard relatively early may not necessarily be a representative sample of the whole.

Chart 7 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2002 to 2004 (as of May 2006). The figures relate to:

Conviction: A conviction was obtained in respect of at least one of the charges brought in the case.

Acquittal: The defendant was acquitted on all charges.

Not Yet Heard: These are cases in which a decision to prosecute has been taken and the matter is before the courts.

NOTE: Figures have not been included for 2005 as the majority of these cases have yet to be dealt with by the courts and the outcomes for the few cases where results are available may not be representative of the final picture covering all the cases.

Chart 7 CASE RESULTS - PROSECUTIONS ON INDICTMENT

Outcome	2004	%	2003	%	2002	%
Conviction	1642	59%	1896	65%	2010	71%
Acquittal	110	4%	156	5%	132	5%
Not Yet Heard	883	32%	734	25%	570	20%
Struck Out/Discontinued	135	5%	139	5%	111	4%
TOTAL	2770	100%	2925	100%	2823	100%

