

Attorney General, Members of the Judiciary, Garda Commissioner, fellow prosecutors, ladies and gentlemen, it gives me great pleasure to welcome you to our 15th Annual National Prosecutors' conference.

In my remarks this morning I want to look to the future for this office and indeed for the entire criminal justice system. I want to briefly consider how a few recent and forthcoming developments can contribute to maintaining public confidence in that system.

Before the end of the month it is expected that a new Court of Appeal will sit for the first time. Established by legislation following a referendum last year, this will, as the Chief Justice said last week, be a historic year as the first new court is created since the foundation of the state.

This is of course a very welcome and exciting development, but the task which the Court of Appeal faces cannot be underestimated. Speaking solely of the criminal business which it will take on, we have to remember that it will take over a very large caseload of cases pending before the Court of Criminal Appeal, which may take some considerable time to process.

The creation of a dedicated Court of Appeal with a fixed panel of judges will hopefully provide greater consistency. It was always difficult to achieve consistency when panels of judges sat on an ad hoc basis, as was necessarily the position with the Court of Criminal Appeal.

One of the advantages of consistency is that judges and practitioners in the trial courts can deal with legal issues that arise with greater dispatch. Consistency should over time assist in reducing the work load of the Court of Appeal. For example, in the area of sentencing consistency should reduce the number of undue leniency reviews taken by the prosecution or severity appeals taken by the defence.

In addition to promoting a degree of consistency in the area of sentencing, there is a real opportunity for the court to develop the criminal law across a broad range of areas. The new court will have a pivotal role in shaping the future jurisprudence of Ireland as the new court will have jurisdiction over many appeal matters which previously would have been heard by the Supreme Court. As the Chief Justice put it in a speech last year it is "likely to lead to more coherent development of criminal jurisprudence".

I want to pledge my full support to the operation of the Court of Appeal.

But what does the new court mean for us as practitioners?

It certainly means that prosecutors will be very busy getting appeals on and heard. I ask for maximum cooperation from counsel in ensuring that cases are prepared and ready to proceed on their allotted dates.

There will of course be a consequent increase in of the number of cases being processed by the new court as it will sit much more frequently than the Court of Criminal Appeal could. This will inevitably put pressure on the budget of my office in terms of fees payable in such cases and this is a matter we have raised with the Department of Public Expenditure and Reform.

My Office has put a lot of work in to getting ready for this new court, allocating more staff in the interests of making sure there is as smooth a transition as possible. However it remains to be seen how the new Court will arrange its sittings and thus what the true impact will be on this Office in terms of staffing and resources.

One area where we would hope the new court will give detailed and consistent guidance in the years ahead is of course in sentencing. This year there have been three important judgements by the Court of Criminal Appeal which Tom O'Malley B.L. will be discussing later in his presentation. They are *DPP v Z* and the related cases of *DPP v Fitzgibbon* and *DPP v Ryan*.

Arising from those judgments there is a very important discussion to be had about the prosecutor's role in sentencing and during the session at the end of this morning I would hope that we prosecutors can do just that.

I would just say for now that I consider that role to be important but limited, not least because of the need to strictly respect the independence of the judiciary and its sphere of competence in relation to sentencing. Accordingly, as a prosecutor I do not believe it would be appropriate for me to suggest the precise length of sentence to be imposed to the court. I do not favour the very detailed sentencing guidelines such as they have in England and Wales, much less sentence based plea bargaining common in a number of other common law jurisdictions.

While I accept that the historically neutral role of prosecutors at sentencing was altered somewhat as a consequence of the introduction of undue leniency reviews, quite how far that changed role can and should extend is a subject I look forward to discussing with you in the context of the CCA's recent judgements, and after we have had the benefit of hearing from Tom O'Malley. I would add that we could easily have a slot for Tom every year such are the many and complex issues that arise on sentencing. It is not long since he last spoke to this conference, so we are very grateful to him for agreeing to be here again today.

Another speaker who we are delighted to welcome today is Ellen O'Malley Dunlop CEO of the Dublin Rape Crisis Centre (DRCC). She is going to speak on the theme of myths about sexual offences, how and why they occur, and their impact at a societal and personal level. We have had a very constructive working relationship with Ellen and DRCC over several years which has led not only to formal processes under which we do our business in relation to disclosure, but also to a much greater mutual understanding of our respective roles. Most importantly, this has meant better experiences and outcomes for the complainants at the centre of these cases.

I look forward to hearing what Ellen has to say. As a society I think we still have some way to go in approaching rape and sexual assault cases with an entirely open and informed mind. Ellen will discuss research arguing that people's assumptions about rape can not only be inaccurate, but often wholly and completely wrong. We shouldn't be surprised by this. After all, myths have been burst in other spheres after decades or even centuries of total acceptance.

But it is also important to remember that even if there are no myths about rape, the criminal standard of proof is still extremely high. That is as it should be. The consequences of a rape conviction for a defendant are such that it must occur only after a jury is satisfied that the prosecution has proved its case beyond a reasonable doubt.

In order to maintain confidence in the prosecution system we must foster accurate public expectations of what our role is. As prosecutors we are primarily tasked with the role of 'gatekeeper' to the criminal justice system. It is important therefore that the wider society understands why certain cases get prosecuted and others do not. This applies right across the board, whether we are talking about murder, fatal road traffic incidents, white collar crime or indeed rape.

Every case is different but ultimately we have to be satisfied that not only is there sufficient evidence, but that there is a reasonable prospect of conviction. That means that a jury, properly instructed on the law by a Judge, when looking at that evidence could convict.

In most rape cases submitted to the Office the complainant will give a credible account of rape and the suspect will accept that sexual intercourse happened but say that the complainant consented. Usually there will be no other witnesses to the event itself, and memories of all parties may be impaired due to alcohol consumption or other factors. Thus it is often one person's word against another's. Sometimes we will prosecute such cases because of the quality and consistency of the account given by the complainant and because we believe that the complainant will make a good witness, able to withstand the rigours of

cross examination in the witness box. In other cases the complainant's account of events may be less clear and the account may not accord with what other independent witnesses recall, making it less likely that the complainant would make a good witness or be able to withstand cross examination.

In the cases where we decide that there should not be a prosecution it is important to emphasise that it is only very rarely that there is any issue about the credibility of the complainant. Of course sometimes we will have concerns for example that it would be unsafe to prosecute because of inconsistencies in what is alleged. But in the vast majority of cases it is not because we do not believe the complainant's account, it is just that there is insufficient evidence to justify charging a suspect and putting all parties through a trial when there is no reasonable prospect of a conviction.

Fostering confidence in the prosecution system is I believe as much about not prosecuting cases where it would be wrong to do so, as it is about prosecuting cases where it is right to do so.

It is timely to highlight reasons for decisions on prosecutions because of course next year we expect legislation to transpose the EU Directive on victims' rights into Irish law. I have spoken about this at previous conferences and I do not want to say very much today as we are awaiting the publication of draft legislation and much of the detail of how it will operate has yet to be determined.

The right of a victim to request the reasons for not prosecuting their case will undoubtedly help to foster accurate public expectations of our role. It will bring increased transparency to our decision making which I hope will also help to maintain public confidence.

The Directive will represent a major change for the way my office works. I would add that it is very clear to me as we prepare for this legislation that there will be significant implications for my office. It is essential that we have structures and procedures in place to ensure that victims and their families will get the service they are entitled to. To that end, I will be developing proposals in the next few months not only in terms of staffing but also around the way we organise ourselves.

The last thing that I want to mention in the context of confidence in the system is the accused's right to a fair trial. This is a constitutional right, central not only to a properly functioning criminal justice system, but also to the core of a true democracy. As my office continues to receive and prosecute increasingly complex and high profile cases I do not lose sight of the duty we have as prosecutors to vindicate that right of the defendant to a fair trial.

I have mentioned this previously. It is essential for the media and all persons who pass comment on, or discuss, in whatever forum, matters which are pending before the criminal courts, to exercise great caution and not trespass into areas that will result in prejudice for an accused. This risk increases as a trial date approaches. Where the banking trials are concerned this is particularly acute. At present there are trials pending until well into 2016. These trials have major resource implications for my office which is a separate matter, but for now I just want to emphasise the risks that are attendant on public discourse where matters the subject of criminal proceedings are concerned.

Finally in terms of recent significant developments within the criminal justice system I should mention the change in practice concerning interviews of suspects. Following on from an important Supreme Court judgement in March of this year I issued advice to the Garda Commissioner that if a suspect wishes to have his or her solicitor present while being interviewed during detention, that request should be acceded to. While the cases before the Supreme Court were decided on other bases, the court offered clear guidance as to its thinking on this issue for the future. It was in those circumstances that the advice was issued. It is important to emphasise however that suspect interviews during detention have for many years been required to be not only audio recorded but also video recorded so that it is possible to see what exactly happened during any interview.

There has been ongoing liaison between my Office and the Garda Síochána and other interested parties as to how this should work in practice.

Turning to our other two speakers who will be properly introduced in due course. I want to welcome Colm O'Briain BL and Garda Detective Sergeant Michael Macken of the Fingerprints Section. You will recall that last year Dr Maureen Smyth, now retired, took us through the scientific aspects of the then DNA database bill. This year with the Act now passed Colm O'Briain is going to discuss the statutory framework that has been created for DNA sampling and the procedures that will apply in the future. At this stage it seems hard to imagine that there was ever a world without DNA testing and it has contributed significantly to in criminal investigations and prosecutions.

Detective Sergeant Macken will speak to us about developments in the area of fingerprints. In contrast to DNA, it is a very old forensic technique but nevertheless one which is utilised in investigations and prosecutions on a daily basis. We therefore must keep abreast of international best practice. I thank both speakers for making themselves available today and look forward to hearing what they have to say.

I want just to mention that the Office has been successful in a bid to bring the Annual Conference and General Meeting of the International Association of Prosecutors to Ireland in 2016. The conference, which is typically attended by approximately 500 prosecutors representing about 100 countries, is the most significant international meeting of prosecutors held each year. I am very honoured to be hosting this conference which addresses important issues for prosecutors and promotes best practice internationally. The theme of the conference will be “The Prosecutor and the Investigator”.

In conclusion I want as ever to thank all prosecutors here for their various roles in the prosecution service. It is my central objective that we deliver that service to the highest professional standards and the commitment you demonstrate reassures me that you share that objective.

I hope you find the morning useful.