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Shane Murphy SC
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The Trial of Complex Fraud Cases

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Shane Murphy SC

Complex Fraud Cases

Introduction

Irish Society has been buffeted by a recurring series of financial scandals. A widespread and popular perception exists that the Irish Criminal Justice System has failed to deal with the issue of White Collar Crime effectively. There is also a widely held view that An Garda Síochána has been swamped by the challenges presented by allegations arising from the trauma of the recent financial crises which have rocked our economy and society.

These perceptions carry with them certain dangers. The biggest danger lies in the fact that Regulatory Agencies, Investigating Gardaí, DPP all find themselves under a mounting degree of pressure to respond to public expectations that individuals or corporations who may be responsible for financial mismanagement including fraud, should be made amenable to the Criminal Justice System immediately and if that convicted, they should be subject to swift and condign punishment.

The Great American President Theodore Roosevelt noted that in his experience, whenever a financial crisis occurred, The People would strike out like a rattle snake at the first available target. We are witnessing some of that same angry public spirit, from Taxpayers who face enormously increased burdens of taxation as a result of the recent financial crisis.

It is stated frequently that the Irish Criminal Justice System fails to compare with the efficacy and thoroughness of the Criminal Justice System in the United States of America. But is that perception correct? In my view, the prosecution of fraud is and always will remain a difficult task which requires criminal investigators to act swiftly, thoroughly and with great attention to detail and which requires lawyers assisting those investigators in the prosecution of crime, to apply meticulous attention to detail in relation to the preparation and conduct of criminal prosecutions.

In my view one of the dangers of the current debate is that both The People and the Political Establishment may feel that the answer to public unease can be met by the enactment of more Laws. While there is always room for legislative refinement, I would like to suggest that as things stand, the prosecuting authorities in this jurisdiction have ample powers at their disposal contained in the existing Statute

Books both in relation to the substantive criminal law and in relation to the procedures applicable to the prosecution of crime.

I suggest that renewal is needed to simplify our criminal code and to harmonise the laws which apply to White Collar criminality in order to make them more effective. In addition there are question marks about whether existing Statutory Powers are being used effectively by the DPP to facilitate greater efficiency in the disposal of Criminal Trials involving complex frauds.

A Quote

> *"Fraud cases are very difficult to prove. Prosecutors have to devote massive amounts of time and energy to bring a major white collar case to Court. Even then prosecutors run a high risk of losing, for upper middle class white collar defendants tend to have much greater jury appeal that the average drug dealer or robber, and their high priced white collar defence lawyers' often former federal prosecutors themselves are usually excellent advocates in Court. Given these "high entry costs" many US Attorneys' Offices charge only slam-dunks. They leave more challenging cases to the SEC and the defendants get off with fines."*

That quotation is not an extract from a recent correspondent to the Irish Times, it is a quotation from John Kroger the author of an excellent book on Prosecutions in the USA called *"Convictions"*. Mr. Kroger is a former Assistant United States Attorney who prosecuted a wide range of cases including high profile trials against Mafia, killers, drug dealers and also participated in the Enron Investigation. Mr. Kroger recognised (as any lawyer with experience in this area must), that in order to satisfy the burden of proof beyond a reasonable doubt in a criminal trial, a prosecutor requires cogent proof in support of his case. Mr. Kroger's book was written in 2008. He acknowledged that there had been substantial reforms in the United States from 2002 onwards but he lamented the fact that the number of prosecutions in the United States in relation to white collar crime continued to drop in the period leading up to 2008. He stated at Page 433 that:

> *"If you look back at recent American business history you see that white collar crime occurs in boom - bust cycles. In the 1970's we saw a major wave of big accounting fraud cases; in the 1980's the savings and loan debacle, insider trading a junk bond fraud; in the 1990's rampant Enron-Style earnings manipulation. With each new crisis political leaders called for tough new rules and the Department of Justice indicted a few high profile cases then attention lagged, regulators got lazy and enforcement budgets were cut once again. Soon the incentives for executives to cheat returned. Today this cycle continues..... In the post Enron environment major companies were scared and that helped to keep large-scale fraud in*

check. But even as we speak things are returning to normal. Another wave of white collar fraud is inevitable".

Thereafter along came Bernie Madoff

The Madoff case has been touted by many proponents of reform in this country, to support the proposition that the Irish white collar crime investigative model is an embarrassment. It is important to understand, as Mr. Kroger outlines in this book, that the really decisive change which took place in America was the extension by the United States Sentencing Commission of the Federal Sentencing Guidelines to increase jail sentences for white collar crime. Indeed, right across the spectrum of serious criminal offences in the United States, the single biggest factor assisting the successful prosecution of crime is the influence of the US Federal Sentencing Guidelines. These Guidelines operate in effect to limit judicial discretion in relation to sentencing. They operate to reduce Judicial Discretion drastically. A similar Reform in this Country would be problematic. Would it be constitutionally permissible to Legislate to control Judicial Discretion in this way? The guidelines are structured to incentivise accused persons to consider pleading guilty at the first available opportunity. The longer a plea of guilty is deferred, the less discretion will be afforded to a trial Judge in relation to sentencing at a later stage. The speed with which Mr. Madoff, was prosecuted and sentenced to a lengthy term of imprisonment, was contingent on two things. First, a swift and excellent investigation by the law enforcement agencies in the US. Second, the capacity of the prosecuting authorities working in tandem with the law enforcement agencies to incentivise the accused to accept responsibility at an early stage. In addition the American system of plea-bargaining which is unknown in this jurisdiction provides considerable assistance to the prosecuting authorities in relation to the successful completion of criminal investigation.

Raj Rajaratnam

Although the Madoff case attracted intense media attention in this country, there is another case which I would like to draw to your attention which received far less coverage. However, it is an instructive precedent about the reality which confronts prosecutors of White Collar Crime in the United States. The case I am going to discuss also demonstrates just how similar are the difficulties which confront prosecutors in both jurisdictions. Amidst the hue and cry and media outrage concerning the Madoff case, very little attention has been paid to the case of ***Raj Rajaratnam***. Mr. Rajaratnam was arrested in Manhattan in October 2009. The District Attorney for the Southern District of New York was investigating what was suspected to be a complex network of Insider Dealing which stretched from New York Hedge Funds to Companies in the Silicon Valley. The District Attorney for the Southern District of New York marshalled all the resources he could to secure a conviction against the persons who were under investigation. Mr. Rajaratnam

allegedly stood in the middle of a complex network of Insider Trading. 26 people were charged, 21 pleaded guilty but Mr. Rajaratnam decided to fight. Mr. Rajaratnam's trial did not take place until 2011. The case nearly lasted two months. One independent legal observer in the United States was quoted several weeks before the trial as stating *"They (the prosecution) have committed huge resources to the case and it is very high profile. If there is an acquittal it will be a significant blow"*.

If one looks at the methodology deployed by the American Investigation it included the deployment of wiretaps. In 2008 the Prosecutors sought permission from a Judge to tap Mr. Rajaratnam's phone. Wiretaps produced 3000 recordings. At the trial the Jurors were played more than 40 wiretaps as part of the evidence. 9 of the people who pleaded guilty to offences were called to testify against Mr. Rajaratnam. The case was considered by many American commentators as a potential turning point in fighting White Collar Crime in Wall Street.

In October 2010 the District Attorney Mr. Preet S. Bharara was quoted as stating *"We do not intend to stop or slowdown especially now with the economy down, public frustration up and epic frauds surfacing with increasing frequency"*.

As I read newspapers reports of the case coming into its final weeks, the anxiety of the prosecution was all too evident. It was clear to any outside observer that many of the traditional difficulties confronted by prosecutors in this jurisdiction having to satisfy a burden of proof beyond reasonable doubt in proving complex financial transactions in a Jury trial were being experienced by the Prosecutors in the Rajaratnam trial.

A study of the newspaper reports at that time clearly undermined any suggestion that White Collar Crime represents the soft underbelly of prosecutorial practice in the USA. Eventually, after an agonising wait for several days of Jury deliberations, the Jury convicted Mr. Rajaratnam and he is now awaiting sentence. Some commentators speculated as to whether or not he had made any efforts pre-trial to secure a plea bargain which would have put him in a position where he would have served a sentence of perhaps 8 to 10 years. Now Mr. Rajaratnam faces the sentencing guidelines which Congress revised in the 1990's and which doubled the maximum sentence for Insider Trading to 20 years in prison.

The under utilisation of existing powers in this Jurisdiction

There are a number of ways in which existing powers afforded to prosecutors in this jurisdiction are underutilised.

Section 22 of the Criminal Justice Act, 1984 provides for proof of evidence by formal admission. It states that:

> *"Subject to the provision of this Section any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of these proceedings by or on behalf of the prosecution or the accused and the admission by any party of such fact under this Section shall as against that party be conclusive evidence in those proceedings of the fact admitted."*

An admission made under this Section may be made before or at the hearing. If it is made in Court it may be made verbally. If it is made otherwise than in Court it shall be in writing. Section 22(2)(e) provides a safeguard for individuals by requiring that any admission under this Section must be approved by the accused's counsel or solicitor either at the time it was made or subsequently.

In practice this Section is not used as regularly as it should be. In my own experience I have found it very helpful to deploy this Section as a prosecutor. This Section is generally regarded as one which makes provision for admissions by the accused, whereas it provides a freedom for the prosecution to make admissions as well.

In my experience, the fact that the prosecution may be willing to offer certain admissions (which relate to acknowledgements of cooperation from the accused), incentivises accused persons to consider making admissions. Admissions reduce the number of witnesses who may need to give evidence at trial. In my view, prosecutors should, on a regular basis, as part of a pre-trial contact with the defence, take the initiative by providing counsel for the accused with a proposed draft series of possible admissions under Section 22 to be made by both the Prosecution and Defence. This should be done with the express stipulation that if the proposed admissions are made the prosecution will accept both in the presence of the jury at the trial, and expressly to the Sentencing Judge in the event of conviction, that the admissions made by the accused under this rubric had provided specific and valuable cooperation by reducing the number of persons who were required to be called to give evidence at the trial.

A willingness on the part of the prosecution to acknowledge the value of an accused's admissions, almost invariably, persuades Judges to provide a convicted person with an appropriate discount on his sentence.

Post Conviction Confiscation Powers

Perhaps the most underutilised power of all in the prosecutorial armoury is the power conferred upon the prosecution by Section 9 of the Criminal Justice Act, 1994. The DPP has a power to seek, post conviction, a Confiscation Order in respect of offences <u>other</u> than drug trafficking offences. A common perception is that the confiscation powers relate only to drug trafficking offences.

Section 9 of the Criminal Justice Act, 1994 confirms that where a person has been *"sentenced or otherwise dealt with in respect of an offence other than a drug trafficking offence of which he has been convicted on indictment, then, if an application is made, or caused to be made to the Court by the Director of Public Prosecutions the Court may, subject to the provisions of this Section make a Confiscation Order under the Section requiring the person concerned to pay such sum as the Court thinks fit sees fit"*.

In order to bring an application the DPP must be satisfied that the convicted person has benefited from the offence of which he has been convicted or from that offence taken together with some other offence (not being a drug trafficking offence) of which he was convicted in the same proceedings or which the Court has taken into consideration in determining his sentence.

The application should be made at the conclusion of the proceedings when the person is sentenced. Section 9(4) states that:

> *"For the purposes of this Act a person benefits from an offence other than a drug trafficking offence, if he obtains property as a result of or in connection with the commission of that offence and his benefit is the value of the property so obtained"*.

The word *"property"* is defined in the Act in the following terms:

> *"Property" – "includes money and other property real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property"*.

If the Court is satisfied that the accused has derived pecuniary advantage as a result of or in connection with the commission of the offence the accused is treated for the purpose of Section 9 as if he had obtained as a result of or in connection with the commission of the offences a sum of money equal to the value of the pecuniary advantage.

It is important to note that this is not a confiscation process without limits.

Section 9(6) requires that the Court can only order the recovery of a sum of money which should not exceed:

(a) The amount of the benefit or pecuniary advantage which the Court is satisfied that the Defendant has obtained or

(b) The amount appearing to the Court to be an amount that might be realised at the time the order is made.

This distinction can be an important one. The Court may be satisfied that, historically, a Company Director had benefited from fraud or from the commission of an offence under the Companies Acts. However the passage of time may have reduced his resources and in consequence, the Court must take into account the accused's financial circumstances at the time the Court is contemplating making a Confiscation Order.

The onus of proof in relation to these applications is the burden of proof applicable in civil proceedings.

In my experience the advantage of this prosecution took has not been given sufficient consideration over the years. Post conviction confiscation mostly takes place in the field of drug trafficking. In my view this is a mistake.

Investigative & Prosecutorial Strategy

There is an area where considerable public disquiet has been growing for some time about whether the prosecuting authorities in this country have upgraded or revised their approach towards strategy, tactics and resources in relation to the investigation of White Collar Crime.

On the 10th May 2011 Mr. Justice Kelly in the High Court delivered a Judgment in connection with an Application by the Office of the Director of Corporate Enforcement to extend the time prescribed by Section 20(2G)(a) of the Companies Act, 1990 as inserted by Section 5 of the Companies (Amendment) Act, 2009 to extend permission to retain of seized materials for a period of six months. Unusually in that case, the pace of the investigation was subject to review by the High Court. The Court dealt with the Application on its merits and granted an extension of time. However, at Page 10 of the Judgment, in an expression of Judicial disquiet. **Kelly J** said: *"This case may be unique as to its complexity and the volume of material that has to be assimilated but it is certainly not unique in its speed, or rather lack of it. Over the last few years I have sent papers for consideration by the relevant investigation and prosecuting authorities in a number of Commercial Court cases where Judgments for many Millions indeed tens of Millions of Euro were given against individuals where there was prima facie evidence of criminal wrongdoing on their part. In some such cases admissions of wrongdoing were made. Despite the fact that years had passed since the papers were referred to the authorities no prosecutions have ensued and little appears to have been done. I am not alone in my sense of disquiet in this regard. In his Judgment of the 13th April 2011 in* ***Kelly v Byrne*** *Clarke J said in respect of the Defendant in that case*

> *"It is of some relevance to note that Mr. Byrne made full and frank admissions in the witness box as to the practice in which he was engaged and his acceptance that those practices were unlawful under many headings.*

I do have to comment that in the light of those admissions it is very surprising indeed that no further action against Mr. Byrne seems as yet to have been taken".

There is a perception, that in an increasing number of cases where Civil Proceedings have taken place in the High Court, Criminal Investigations into the same circumstances are not being pursued vigorously. Disturbingly in recent times there is an indication that An Garda Síochána has on occasions indicated that proceedings cannot be investigated because Section 4 of the Criminal Justice Theft & Fraud Offences Act, 2001 requires a complaint to be made before an investigation can be commenced. This proposition is totally erroneous. There is no such impediment. Particularly in a case where the High Court transfers papers to An Garda Síochána it is incumbent on the DPP to rapidly analyse the situation and make a strategic decision about the manner in which the investigation should be progressed. In my view, there is a greater need for the involvement of Barristers and Solicitors in the early tactical assessment of Garda Investigations involving White Collar Crime. The experience of the Criminal Assets Bureau has shown since 1996 that the involvement of legal advisors at an early stage in the process compliments and assists the Garda Investigation and is not a hindrance or a burden or an unnecessary expense. On the contrary an early global assessment of strategic options is normally of incalculable benefit to the Gardaí in the conduct of their investigations and in my experience the Garda welcome such input. There is a need for the DPP and for the Director of Corporate Enforcement to seek litigation focused advice at an early stage. Unless there is a review of current procedures there is a real risk that public confidence in An Garda Síochána and ultimately in the prosecutorial system will be weakened.

In my view there is a real and urgent need for the prosecuting authorities at an early stage of each investigation to examine whether in the context of a suspects participation in civil litigation, or in correspondence or third party collateral communications, there exists any body of evidence containing voluntary admissions by the suspects which are so often the key to unlocking a complex criminal investigation.

Inferences to be drawn in certain circumstances

Since 1984, the Oireachtas has wrestled with the extent to which Statutory provisions could be framed to permit inferences to be drawn from a failure by an accused person to account for objects or marks identified in his presence at the time of his arrest. Section 30 of the Criminal Justice Act, 2007 which amended Section 18 of the Criminal Justice Act, 1984 permits inferences to be drawn by a Court or a jury from the failure of an accused person to mention particular facts when he was being questioned by the Gardaí prior to be charged with an offence or when he was being charged with an offence or informed by a Member of An Garda Síochána that he might be prosecuted for that offence.

Section 29 of the Criminal Justice Act, 2007 amended the provisions of Section 19 of the Criminal Justice Act, 1994 to permit inferences to be drawn from a failure or refusal to account for an accused's presence at a particular place. On any view, these provisions are somewhat cumbersome but they appear to be used rarely in the context of the investigation of corporate crime.

Presentation of Documentary Evidence

Section 57 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 permits a trial Judge on the application of the prosecution to order the copies of documents in particular categories can be given to a jury in a format that the Judge considers appropriate. Section 57 provides that this permission to introduce documentation can incorporate:

> *"(c) Any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial".*

The Section also makes provision for the provision of extracts from the transcripts of the proceedings to be given to the jury if the Trial Judge considers it appropriate to do so. But if one focuses on the provisions of Section 57(1)(c) often as the prosecution even attempt to introduce "*graphics*" schedules or to seek to agree summaries of evidence to be produced to jury's in complex fraud cases. We live in an increasingly visual culture. We lawyers tend to underestimate the impact of the visual presentation of evidence on Jurors and Judges. The proper presentation of exhibits including for examples:

(a) Copies of the C72 Form or

(b) Video Footage of the Crime Scene Investigation or

(c) Computer generated diagrams and maps portraying the summary of the evidence which was already contained for example, in the Book of Evidence or in Statements which were before the Court.

can have a very powerful impact on Jurors.

Amazingly this Section has <u>not</u> been commenced by Ministerial Order.

Most Irish Criminal Courts are now splendidly equipped with the most up-to-date audiovisual equipment and computer technology. Why is it used so rarely in the Prosecution of white collar crime?

It might be argued that the rule against hearsay has operated as an inhibition against the deployment by the prosecution of graphics, charts and interpretative documents.

In my view there is no reason why such documents should not be deployed provided that the prosecution (if challenged), is in a position to prove the raw material which gave rise to the creation of the graphic.

In the context of my experience in civil litigation, I was introduced in one recent case on behalf of an Insurance Company recently to new computer technology which enabled the parties to present enormous numbers of complex documents on screen. The case involved allegations of forgery. It was possible to present multiple documents containing genuine signatures and those containing disputed signatures side by side on the same screen for assessment by the Trial Judge. Why do we not use similar technology in complex fraud cases? The DPP should agitate for the deployment of this type of technology in Fraud trials.

Recording of the Questioning of Suspects

Section 57 of the Criminal Justice Act, 2007 provides that a Court may admit in evidence, a recording of the questioning of an accused by An Garda Síochána or a transcript of such a recording by a Member of An Garda Síochána at a Garda Station or elsewhere in connection with the investigation of an offence. This Section dispenses with the obligation to make a contemporary written note of interviews with persons in custody and allows a Court to admit into evidence recordings and transcripts of recordings of Garda interviews. Are these provisions being utilised to persist in the presentation of complex evidence to jurors?

The Capacity of Jurors to Try Complex Cases

In any criminal case it is critical for the prosecutor to clarify, simplify and distil the evidence to ensure that it is comprehended by the jury. It is essential, that the prosecution revise the manner in which it presents documentary evidence in particularly complex trials. We are all familiar with the fact that in the United Kingdom there have been some highly publicised trials which have ended inconclusively. Many commentators have suggested that juries are incapable of dealing with factual and legal issues in matters involving complex financial transactions. In my view Juries are capable of dealing with complex material so long as it is explained in simple and clear terms. In general, I would support the view that Juries should be retained in Fraud Trials.

It is likely in the future that there will be some cases of such complexity, that the ordinary jury trial system will be inadequate to secure the effective administration of justice. In these unusual circumstances the DPP should consider the possibility of transferring cases of this ilk to the Special Criminal Court. Article 38.3 of the Constitution acknowledges that offences may be tried by special courts *"in cases where it may be determined in accordance with such law that the ordinary courts*

are inadequate to secure the effective administration of justice and the preservation of public peace and order"

If, it became evident that particularly complex fraud trials could not be tried by juries, one wonders whether the scale of public anger at, the ineffectiveness of the prosecution system might yet give rise to issues of 'public order' of the type envisaged by Article 38.3. After all a real dilemma would present itself to the prosecution if ordinary courts are perceived as inadequate to deal with matters of immense complexity. In the English case of ***Kellard*** [1995] 2 CR. App R 134 Mahon L.J. stated at Page 144:

> *"The awesome timescale of the trial, the multiplicity of the issues, the distance between evidence, speeches and retirement and not least the two prolonged periods of absence by the jury (amounting to 126 days) could be regarded as combining to destroy a basic assumption. This assumption is that a jury determines guilt or innocence upon evidence which they are able as humans both to comprehend and remember, and upon which they will have been addressed at a time when the parties can reasonably expect the speeches to make an impression upon the deliberations".*

If such a drastic scenario existed in this jurisdiction it is my view that there could be real grounds to reconsider the desirability of invoking the provisions of Article 38.3 in connection with particularly complex fraud trials.

In the absence of such extreme circumstances I believe that it is imperative that the Irish prosecution authorities devote more time and resources to improving their capacity to present complex evidence in a more cogent and compelling fashion.

Immunity

In Ireland there has been a traditional reluctance on the part of the DPP, to grant immunity to prosecution witnesses. The investigation of complex white collar criminal cases can only be effective if the investigators and the prosecuting authorities can maximise cooperation from key witnesses. There have been some developments in the field of Competition Law, with the instigation by the Competition Authority of the Cartel Immunity Programme in 2001. There is a perception that the DPP is somehow a reluctant participant in this process. While this reticence is understandable in the light of the experience of Irish Criminal Law over the past 200 or 300 years, I believe that the DPP needs to recalibrate his views in relation to granting of immunity in the context of white collar crime. In order to present a case effectively it is essential that the prosecution can identify a cadre of reliable material witnesses.

If a complex financial crime has been committed it will almost invariably involve the participation of more than one person. In order to properly identify the history

of a conspiracy it is both necessary and desirable, to secure the cooperation of at least one member of the conspiracy to give evidence against his confederates.

Cultural Perspectives

People in the business community have an instinct to do deals if they want to complete their commercial arrangements. In many cases we lawyers have the experience of dealing with people who want to co-operate with the Gardaí or, who may want even to plead guilty and to do so at an early stage but their own legal advisors are not in a position to advise them about what to do because they can give their clients no assurances in relation to important issues such as immunity. In that regard we have lessons to learn from the American system.

The experience in the United States in relation to the prosecution of serious crime indicates that it is essential that the prosecution is willing in appropriate cases to offer some form of immunity to witnesses whose testimony may prove vital in securing the conviction of significant white collar criminal offenders. I believe that the DPP should signal his willingness to consider granting immunity in cases of white collar crime. In the current situation, it is difficult for the lawyers to advise suspects or defendants in criminal proceedings about the policies which might be applied by the DPP to a cooperating accomplice. While the manner in which the Witness Protection Programme operates is necessarily shrouded in secrecy, I suggest that there is no reason why the DPP could not formulate and publish the guidelines which he would be prepared to apply in relation to the consideration of an offer of immunity to witnesses in cases involving white collar crime. A reformulation of policy in this regard would almost certainly assist the DPP to prosecute white collar crimes successfully.

Presumptions

Section 12 of the Competition Act, 2002 provides for wide-ranging presumptions to be applied in both civil or criminal proceedings under the Competition Act which include inter alia that where a document purports to have been created by a person it should be presumed unless the contrary is shown that the document was created by that person and that any Statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

Section 12(3) provides that:

> "(3) Where a document purports to have been created by a person and addressed and sent to a second person it shall be presumed unless the contrary is shown that the document was created and sent by the first person and received by the second person and that any statement contained therein

(a) unless the document expressly attributes its making to some other person, was made by the first person and (b) came to the notice of the second person.

Section 13 of the Competition Act allows for special rules in relation to the admissibility of statements contained in certain documents in relation to the making of agreements or decisions engaging in concerted anti-competitive practices or doing acts which constitute abuse of a dominant position in the market. To what extent have these provisions been actively used in the context of criminal prosecutions under the Competition Act? Why are similar provisions not applicable to other categories of White Collar Crime involving fraud cases?

Documentary Evidence

The provisions of Sections 5 and 6 of the Criminal Evidence Act, 1992 have belatedly, come to be deployed on a more regular basis. These Sections permit the introduction of ordinary business records and documents compiled in the ordinary course of a business as an exception to the rule of hearsay. There has been a widespread deployment of these powers in connection with the introduction into evidence of:

(a) Telephone Records
(b) Computerised Records

These measures were designed to facilitate the reliance by the Prosecution on documentation in the conduct of criminal trials. There is a tendency to regard the deployment of these statutory principles as some form of arcane rarity in procedural terms. Prosecutors should be encouraged to give greater consideration to the use of these Sections and to Section 30 of the Criminal Evidence Act, 1992 which provides for the introduction into evidence of copy documentation subject to the proviso that the Court should be satisfied of the providence of the original document.

Conclusion

In conclusion I suggest that a number of areas of prosecutorial practice in the area of white collar crime require urgent review:

1. There should be a greater use technology (in which the State has already invested) in Irish Courtrooms to facilitate the presentation of documentary evidence to juries in complex Fraud Cases.

2. The provisions of Section 57 of the Criminal Justice (Theft & Fraud Offences) Act, 2001 should be commenced by the Minister for Justice & Defence in time for the 10th Anniversary of the Enactment of the Act.

3. The DPP should adopt a protocol for the purpose of encouraging informants to give evidence in cases of White Collar Crime. This protocol should also identify the material which the Director will rely upon in deciding whether or not to grant immunity from prosecution for a cooperating witness.

4. The DPP should involve Counsel at a much earlier stage in the investigative process in connection with white collar crime. The experience of An Garda Síochána in The Criminal Assets Bureau has demonstrated that independent professional advice in relation to legal, accountancy and tax issues can be invaluable to the Gardaí if they can access it during the early phases of their investigations into complex crimes.

5. Prosecuting Counsel should be encouraged (through the mechanism of Section 22 of the Criminal Justice Act, 1984) to attempt to achieve the maximum level of agreement possible with the Defendants' Legal Advisors (Pre Trial) in relation to formal admissions which would reduce the length of Criminal Trials.

6. The DPP should give greater scope to the deployment of his existing Post Conviction Confiscation Powers to ensure that they are deployed in connection with the prosecution of offences involving fraud or dishonesty.

7. The DPP should approach the President of the Circuit Court and if necessary, the Circuit Court Rules Committee to advocate a more formal system of Case Management in Complex Cases including White Collar Crime Cases, and the formulation of Circuit Court Rules which might assist in the development of enhanced pre-trial Case Management.

Shane Murphy SC