

THE 12TH ANNUAL CONFERENCE AND GENERAL MEETING OF
THE INTERNATIONAL ASSOCIATION OF PROSECUTORS

16-20 September 2007
Hong Kong

Keynote Address of
Mr. I. Grenville Cross, SC
Director of Public Prosecutions
Hong Kong Special Administrative Region
People's Republic of China

Opening Ceremony

17 September 2007

Chief Executive, Mr. President, Secretary for Justice, Distinguished prosecutors and guests, Ladies and gentlemen,

On behalf of the prosecutors of Hong Kong, China, and the Organising Committee of this Conference, I am delighted to welcome the International Association of Prosecutors (IAP) to Hong Kong for the Association's 12th Annual Conference and General Meeting. Many jurisdictions are represented here today, which is wholly appropriate as the topics we shall be examining are of great significance to prosecutors everywhere. We attach great importance to this Conference, and I am indebted to the Chief Executive for finding the time in his hectic schedule to be with us, and for the firm support he has provided ever since we decided to bid to host the event.

I am also grateful to the Secretary for Justice, who has fully endorsed our involvement in the work of the IAP, and has provided every support to this Conference, including the hosting of last night's President's Reception. A debt of gratitude is due also to the former Secretary for Justice, Dr. Elsie Leung, who, immediately after reunification, recognised the importance of Hong Kong asserting its credentials at the international level, and encouraged us to seek membership of the IAP. Dr. Leung, who is here today, supported us when we launched our bid to host this Conference in 2005.

It is, I believe, no exaggeration to say that the 12th Annual Conference marks a watershed for prosecutors. The Conference will examine the ways in which prosecutors relate to others at all levels, and will raise fundamental questions about our future. Few, if any, issues can be of more importance to prosecutors than the manner in which they interface with others, not least because the mandate which prosecutors exercise is based in the community, and it is from the public they serve that prosecutors derive their legitimacy. The nature of the relationship between the prosecutor and the various stakeholders has therefore to be identified with precision, and particularly so when the expectations which others have of us are great and increasing. This will not be an easy exercise, given that our relationships differ so markedly as between the different players. What might be an appropriate way of relating to the victim of crime or the investigator may have little relevance to the way in which we relate to the judge or the journalist. There are no simple answers to the questions we will be confronting, and the coming week promises to be a challenging one for us all. At the root of our discussions must lie the proposition that in all we do as prosecutors, we represent the interests of people who are often in no position to represent themselves.

It is appropriate, therefore, at the outset, to pose questions for ourselves which are as old as criminal justice itself. How much should the prosecutor say about decisions of whether or not to prosecute, and when? Does transparency inspire public confidence? Can the prosecutor be held to account in a way which does not impair the independence which is crucial to the successful discharge of the prosecutorial function? How should the position of the prosecutor be safeguarded? These questions, simple on their face, are fraught with sensitivity, and it is only if we confront them satisfactorily that we will be able to appreciate the parameters within which we should be operating in our societies.

Whatever else we may have learned in recent times, I suggest that transparency should now be seen as central to our role. Until quite recently, the public were told little about the decision-making process, and had little involvement in it. When questions were asked, the shutters came down, and the victim of crime had, at most, a walk-on part in the criminal process. That, in many places, has now changed, and this, I believe, is for the better. Secrecy for its own sake does little to inspire confidence, and I consider that, at the very least, a rebuttable presumption of openness should guide the modern prosecutor. Such transparency cannot just be case-specific, but has to be multi-faceted. The victim, the suspect, the investigator, the concerned group, the journalist, the politician, the lawyer, the judge and the public at large all need to know that objective and principled criteria guide prosecutors throughout the course of criminal proceedings,

and they need to be able to see for themselves what exactly these are. This may be achieved in different ways.

Some jurisdictions now issue codes of conduct for prosecutors to which the public have access, and in Hong Kong we have published detailed prosecution policy guidelines, which are subject to periodic review. An obvious case exists for expanding transparency through the publication of annual work reviews, as we now do in Hong Kong, as this enables the public to see what their prosecutors are doing on their behalf on a regular basis. If such reviews are subject to detailed analysis at media briefings, so much the better, as this helps to project the message that we are keen to display our wares and have nothing to hide. I would say that anything that we as prosecutors can do to de-mystify the decision-making process and to promote understanding of prosecution practice is healthy and has much to commend it, particularly as it places our activities in a proper context, free of misconception. It also keeps prosecutors on their toes, for they will proceed with care and in accordance with established policy guidelines if they know they may be called upon to account for their deeds.

All too often, our decisions attract debate and controversy. But if people accept we have acted in good faith and in accordance with principle, then we will have won at least a part of the battle, even if they do not necessarily endorse our conclusions. Transparency, effectively deployed, can defuse tensions, and dispel myths. The challenge, therefore, is to apply and, where necessary, to devise initiatives which are imaginative, sensitive and attuned to the needs of our communities, as well as to particular victims and victim groups. General prosecution policy guidelines alone may not suffice, and they may need to be refined, to cater for particular types of crime, such as domestic violence or offences against children.

The patterns of offending are constantly changing and a challenge for the modern prosecutor is to be conscious of the situation of all of those affected by crime, and not only of those whose voice happens to be the loudest or who have the greatest clout. The prosecutor who is afraid of transparency, reluctant to explain the basis of decisions, and unwilling to reach out to the public may be out of touch, not least because effective communication strategies are an integral part of the modern prosecution process. Such communication involves a two-way approach, and we must be prepared to receive victim groups and concerned citizens and to let them address prosecutors directly upon matters of which they feel we should be aware, and then to be as responsive as the circumstances allow. The trust of many is reposed in us, and if we fail them confidence in criminal justice as a whole may suffer.

In recent years, much has been said about the accountability of those who prosecute. Accountability has an obvious role to play, be it internal, within the prosecution service itself, or external, in terms of open justice. But there have to be limits. We may, of course, be held responsible by the courts if our decisions are taken in bad faith or are contrary to announced policy. At the public level, we may be asked to explain our decisions to elected representatives, although this must never be to the detriment of the suspect. The integrity of our processes must be protected from improper interference or instruction, and the fact that prosecution services are publicly funded can never provide a justification for an interference with the principled application of prosecution policy. As Daniel Bellemare QC, our Association's former Vice President, explained when he visited Hong Kong in 2005, *'to be accountable is to be able to describe and justify the decisions made in the exercise of the discretion, and, where appropriate, to explain the measures that have been taken to correct past errors and/or to prevent future ones'*.

If it is properly deployed, accountability can buttress the independence of the prosecutor. If we explain particular decisions to those with a legitimate interest, or if we indicate in a general way what our approach is in a given area, or if we discuss with investigators our thinking and seek to carry them with us, or if we brief the media upon important cases, then we are equating accountability with transparency, and in the process we are providing an account of our actions which is voluntary, measured and principled. I consider that no more than that can ever be required of us. Openness of this type betokens not only accountability, but also maturity and a confidence in the decisions we believe to be just. Provided people can see that we are sensitive to their concerns and acting fairly in accordance with established criteria, then we will have succeeded in giving an account of ourselves which is not inconsistent with our independence. And such independence may well be the key to public confidence in our operations.

Various modules exist to safeguard the independent exercise of the prosecutorial discretion. Some jurisdictions treat this as a matter of legal convention. In other places independent prosecution services are created by legislation. Constitutional guarantees of prosecutorial freedom undoubtedly also have much to commend them, and in Hong Kong the Basic Law makes specific provision for such. But whatever mechanism is deployed, the prosecutors themselves must have the courage of their convictions, and be prepared to hold to the decisions they believe to be right. They must, that is, be resistant to extraneous pressures and in a position to act without fear of reprisal. An essential part of this independence is our role in protecting the interests of those suspected or accused of crime, which is why, whether in the name of transparency or accountability, we must be scrupulous to avoid doing anything which might

damage the interests of such people. Just as the judge protects the interests of the accused who stands trial, so must the prosecutor safeguard the interests of the suspect who does not.

It may be that the Conference will ultimately conclude that accountability, transparency and independence are values which have to co-exist, even if, at times, they make difficult bedfellows. If they are, in fact, inter-related, as I believe, then the successful development of the one will serve to enhance the interests of the others and this will, thereby, strengthen the whole. If we can reach consensus on these points, this will help us to come to terms with the challenges we face, and enable us to assist one another to develop strategies to facilitate our dealings with our societies. These are obviously crucial issues for prosecutors, and the way in which we use this Conference to define the future development of our relationships with others promises to be not only fascinating for the participants, but also of fundamental importance for criminal justice in the 21st century.

As we wrestle with these challenges, let us not lose sight of where we come from. When all is said and done, we should recall the eternal truths which must inform our actions, whatever the exact parameters of our dealings with others may be. The sacred duty of the prosecutor is to safeguard the position of all of those who find themselves caught up in the criminal justice system, in whatever capacity. As prosecutors, we yield to no one in our commitment to the defence of individual rights.

Thank you.