

Inquiry Board Releases Report on Dairy Farm Case

A Board of Inquiry set up by the Director of Public Prosecutions, Mr Grenville Cross, SC, following criticism By the Court of Appeal in May this year of the conduct of the prosecution of The Dairy Farm Company Limited, released its report today (October 28).

The board, headed by Mr Cross, was established to inquire into the investigation and prosecution of the Dairy Farm and to formulate recommendations, if appropriate, to regularise the situation for the future.

The board concluded that the prosecution of the Dairy Farm was, on the totality of the evidence, justified.

It noted that the trial was stayed before the prosecution had been able to present its case in full and, as a result, three important witnesses were not able to testify.

Their evidence was crucial because they revealed that in the days leading up to the operation on December 22, 2003, the Food and Environmental Hygiene Department (FEHD) had taken special steps at the slaughterhouse to ensure that each carcass was properly stamped, the board noted.

The board also noted that the FEHD acted appropriately in prosecuting the Dairy Farm. The board felt that because the Dairy Farm was the licensee of the Fresh Provision Shop in Wellcome Supermarket it was responsible for an alleged offence of this type arising in its Fresh Provision Shop, and which was operated for it by Supermaster, a concessionaire.

The board nonetheless concluded that had the FEHD investigated Supermaster, it might, depending on the outcome of any investigation, have been possible to have prosecuted Supermaster as well.

On the non-disclosure of surveillance operation material to the defence, the board noted there was no proof that FEHD and the prosecuting counsel on-fiat deliberately decided to conceal the existence of the surveillance operation from the defence, or to act in defiance of law or principle.

Both the legal adviser of FEHD and the fiat counsel were of the opinion, held in

good faith, that material related to the surveillance operation was not relevant, and therefore did not need to be disclosed to the defence, the board observed.

Nonetheless, the board felt that it was not a view which fully reflected the extent of the duty of disclosure which the law now places upon those who prosecute.

“The board therefore considers that the fact of the surveillance operation should have been disclosed to the defence prior to trial as it could have assisted those responsible for the defence,” the report said.

On the two defence statements which the defence solicitors served before the trial began, the board concluded, having reviewed in detail the precise terms of section 65B of the Criminal Procedure Ordinance, that the two defence statements did in fact satisfy the criteria specified for their reception into evidence.

In so concluding, the board felt that the purpose for which the statements were served should have been stated explicitly so that the receiving party was placed on notice.

The board added that the significance of the two defence statements lay in the fact that they provided the Dairy Farm with a possible line of defence based on an honest belief reasonably held that proper procedures were used in the processing of the meat supplies.

The board thus concluded that the more prudent course for fiat counsel to have adopted would have been to have sought a review of the decision to prosecute in light of the two defence statements.

The board recommended that in future, fiat counsel should be reminded of their duty to ensure that the continuation of a prosecution which has been instituted remained in the public interest.

“As The Statement of Prosecution Policy and Practice (2002) makes clear, if new material comes to light, the original decision to prosecute may have to be re-visited. The interests of justice require that this be done even at a late stage, and even if the case has to be adjourned in consequence,” it said.

The board also recommended that specially-tailored guidelines on disclosure for

the use of prosecuting departments should be prepared by the Prosecutions Division of the Department of Justice.

Prosecutors in various government departments should be reminded of the ambit of the duty of disclosure. Increased emphasis should be placed on disclosure requirements in training courses for departmental prosecutors organised by the Prosecutions Division, the report noted.

The Report of the Board of Inquiry into the Prosecution of The Dairy Farm Company Limited and a summary of the report have been placed on the Department of Justice website: <http://www.doj.gov.hk/eng/new/index.htm>.

Ends/Friday, October 28, 2005

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