

The Statement of Prosecution Policy and Practice
Code for Prosecutors

I am pleased today to release the new Code for Prosecutors, entitled *The Statement of Prosecution Policy and Practice* (2009) (*'The Statement'*).

2. The preparation of *The Statement* has been a significant criminal justice initiative of the Prosecutions Division of the Department of Justice for 2007-2009. *The Statement* has revised the earlier prosecution policy guidelines, and new areas of prosecutorial responsibility are incorporated. The opportunity has also been taken to modernise the guidelines in the interests of greater transparency and accountability. Whereas the first prosecution policy guidelines were issued in 1993, these were updated in 1998 and again in 2002.

3. In formulating *The Statement*, regard has been had to the experiences of prosecutors in recent years as well as to the interests of the community. Developments in other major jurisdictions have been examined, including Australia, Canada, Ireland, New Zealand and the United Kingdom. Regard was also had to the latest thinking of our counterparts in the International Association of Prosecutors. *The Statement* is a modern code which emphasises our common law traditions.

4. As a modern prosecution service, we are committed to openness in our dealings with the community. We believe in as much transparency as is consistent with our duty to protect the interests of those who are suspected of crime. Although we cannot usually enter into detailed discussions about the reasons for particular decisions, we can indicate the parameters within which we operate, the matters we consider when deciding whether to prosecute, and the public interest factors that may be relevant to the issue of prosecution in particular situations. *The Statement* explains the standards, policies and practices of the modern prosecutor.

5. New chapters to have been incorporated into *The Statement* include :

- **the prosecutor and the unrepresented accused** – this explains the care the prosecutor should exercise in dealing with an accused who is not legally represented. The duty of fairness requires the prosecutor to ensure that the unrepresented accused is fully informed of the prosecution case. The prosecutor should alert the court to matters which will ensure the unrepresented accused has a fair trial,

and at the sentencing stage the court should be advised of relevant matters, including mitigating factors which might not otherwise be apparent.

- **the conduct of domestic violence cases** – this explains the charges which are most commonly used in prosecuting those responsible for domestic violence, and how in selecting a charge the prosecutor should consider whether it reflects the seriousness and persistence of the accused’s conduct, the probable intent and the severity of the injury caused. The charge must provide the court with the capacity to impose a sentence which adequately reflects the seriousness of the crime. In taking decisions in domestic violence cases the prosecutor must fully consider the safety of the victim, the children and other persons involved. Once a prosecutor has identified the relevant charge, the public interest will normally require that a prosecution be instituted in a domestic violence case if the evidence provides a reasonable prospect of conviction and the victim wishes the case to proceed and is willing to give evidence. Once a decision to prosecute is taken, the prosecutor should ensure that the case proceeds expeditiously because delay may distress the victim, it may place the victim at risk, and it may affect the willingness of the victim to testify or to recall what happened.
- **the prosecutor and the recovery of costs** – this explains the circumstances in which the prosecutor should seek an order for the payment of the costs of the prosecution after an accused has been convicted or after an appeal has been dismissed. Alternatively, if an accused has been acquitted at trial, the prosecutor may resist an application for costs if there are positive reasons for a costs order not to be made.
- **the prosecutor and the proceeds of crime** – this explains that the duty of the prosecutor is to seek to ensure that the offender does not profit from criminal conduct. The confiscation of the proceeds of crime is an issue to be considered from the outset of all cases where profit is or may be involved. To prevent the dissipation of criminal profits the prosecutor should seek a restraint order at an early stage, and after conviction application must be made in an appropriate case for confiscation.
- **the prosecutor and the media** – this explains the levels of assistance which can properly be provided to the media in criminal cases, and how the prosecutor should relate to the media. The

prosecution have an interest in the fair and accurate reporting of cases by the media, as this lets the community know who is being prosecuted and for what, and the sentences that are passed. A policy of transparency ensures that the media have access to relevant material wherever possible, and at the appropriate time. The media help the public to understand how the legal system works, and public confidence in the administration of justice depends on access to accurate information on criminal cases. Whilst the prosecutor will wish to assist the media as far as possible, appropriate discretion must be exercised, in relation to comment on such matters as the likely outcome of proceedings, the correctness of a judicial decision, verdict or sentence and the prospect of appeal or review proceedings being instituted. The assistance the prosecutor provides to the media will relate to factual issues, and personal opinions on cases should not be given.

- **the judicial review of a prosecution decision** – this explains how the prosecutorial independence of the prosecutor is fundamental to criminal justice, and that, as a matter of principle, decisions on the merits of a prosecution must be freely made without political pressure or judicial encroachment. The judicial review of a prosecution decision is highly exceptional, and a decision will only be judicially reviewable if it is taken in bad faith, or if it results from an unlawful prosecution policy, or ignores established policy or is perverse. Even if successful, judicial review can only require a prosecutor to reconsider a decision, and cannot compel a change of view.
- **the statement of principle** – this contains a vision statement for the prosecutor. Its function is to supply the prosecutor with a ready reminder of the high standards to be expected of those who conduct public prosecutions. The prosecutor must maintain public confidence by upholding professional integrity and acting at all times without fear or favour.

6. In addition to incorporating new chapters, *The Statement* develops the guidance provided to prosecutors in such areas as role and ethics, the sentencing process, and appeals against conviction, and two important chapters have been expanded :

- **the prosecution's duty of disclosure** – this explains that the prosecution's duty to disclose relevant matters to the defence is proactive, and it extends to material or information in the possession

or control of the prosecution, including the investigating agency, which may undermine its case or advance the defence case, subject to relevance, privilege and public interest immunity. The duty is not limited to the disclosure of admissible evidence. Information not itself admissible may lead by a train of inquiry to evidence which is admissible. This may be relevant and useful for cross examination of a prosecution witness on credit. It is for the court, not the prosecuting counsel, to decide whether to withhold or disclose relevant material.

- **the prosecutor and the victim of crime** – this explains the need for the prosecutor to safeguard the position of victims of crime and to make applications to assist vulnerable witnesses to give evidence in court. Such measures include evidence by live television link, video recorded evidence, priority listing, no postponement of trial, avoidance of delay, arrangement of support persons, removal of gowns and wigs, appropriate security for witnesses in fear and the use of screens to shield witnesses from the accused or the public. *The Statement* recognises that the prosecutor should seek to ascertain if the victim wishes to claim compensation and/or restitution for the harm or loss that has been sustained, and if so, to ensure that sufficient information is supplied to the court before the order is made.

7. *The Statement* will be issued to Public Prosecutors, Court Prosecutors, Departmental Prosecutors and Counsel who prosecute on fiat. It will guide prosecutors at all levels in the conduct of cases and in the exercise of the prosecutorial discretion. *The Statement* will be made available to the general public from today, and it will be placed on the departmental homepage (<http://www.doj.gov.hk/eng/public/pubsoppaptoc.htm>). *The Statement* will become operational on 2 January 2009.

8. *The Statement* is a thoroughly modern document which will make a valuable contribution to our criminal justice system in the years to come. It emphasises our commitment to engagement with the community, and will promote an understanding of our operations. I commend it to the people of Hong Kong.

Thank you.

Director of Public Prosecutions
Department of Justice
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