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**LegCo Panel on Administration of Justice and Legal Services**

**Prosecution policy and guidelines on the "public interest test"  
in some common law jurisdictions**

**Background**

On 17 October 2000, the Panel discussed whether a research project should be conducted to study how and to what extent is "public interest" a matter for consideration when prosecuting authorities decide whether or not to prosecute in some common law jurisdictions. It was agreed that the Secretariat should obtain information on prosecution policy and guidelines in some common law jurisdictions in this respect for members' consideration before deciding on the way forward.

**Prosecution and guidelines**

2. The prosecution policy and guidelines of the following common law jurisdictions are attached for members' reference -

- (a) "The Code for Crown Prosecutors" - Crown Prosecution Service, England and Wales (**Appendix I**);
- (b) The Decision to Prosecute - Department of Justice (Canada), January 1993 (**Appendix II**);
- (c) An extract from "Prosecution Guidelines" - Crown Law Office, New Zealand (**Appendix III**);
- (d) "Prosecution Policy of the Commonwealth - Guidelines for the making of decisions in the prosecution process" - Office of the Director of Public Prosecutions (Australia) (**Appendix IV**); and
- (e) An extract from "Prosecution Policy and Guidelines" - New South Wales on "discretionary factors which may give rise to a decision not to prosecute" (**Appendix V**).

3. To facilitate members' consideration, a comparison table on the public interest factors considered by prosecuting authorities in the above common law jurisdictions vis-à-vis Hong Kong is attached in **Appendix VI**.

**Advice sought**

4. Members are requested to consider how the matter should be taken forward.

Legislative Council Secretariat  
18 December 2000

**"The Code for Crown Prosecutors"**  
**Crown Prosecution Service, England and Wales**

In order to achieve these high standards, we will report on our performance, and respond to criticism positively.



The Crown Prosecution Service is a public service for England and Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. This is the fourth edition of the Code and replaces all earlier versions. For the purposes of this Code, 'Crown Prosecutor' includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.

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## **1. Introduction**

1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.

1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

## **2. General Principles**

2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

### **3. Review**

3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.

3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

### **4 Code Tests**

4.1 There are two stages in the decision to prosecute. The first stage is **the evidential test**. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

4.2 This second stage is **the public interest test**. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.

### **5 The Evidential Test**

5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates court should only convict if satisfied so that it is sure of a defendant's guilt.

5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

#### **Can the evidence be used in court?**

- a Is it likely that the evidence will be excluded by the court?

There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

### **Is the evidence reliable?**

**b** Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

**c** What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

**d** If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

**e** Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

**f** Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.4 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

## **6 The Public Interest Test**

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country I hope it never will be that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

**The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.**

### **Some common public interest factors in favour of prosecution.**

6.4 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a** a conviction is likely to result in a significant sentence;
- b** a weapon was used or violence was threatened during the commission of the offence;
- c** the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
- d** the defendant was in a position of authority or trust;
- e** the evidence shows that the defendant was a ringleader or an organiser of the offence;
- f** there is evidence that the offence was premeditated;
- g** there is evidence that the offence was carried out by a group;
- h** the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- i** the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- j** there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- k** the defendant's previous convictions or cautions are relevant to the present offence;
- l** the defendant is alleged to have committed the offence whilst under an order of the court;
- m** there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or
- n** the offence, although not serious in itself, is widespread in the area where it was committed.

**Some common public interest factors against prosecution**

6.5 A prosecution is less likely to be needed if:

- a** the court is likely to impose a nominal penalty;
- b** the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- c** the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- d** the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- e** there has been a long delay between the offence taking place and the date of the trial, unless:
  - o the offence is serious;
  - o the delay has been caused in part by the defendant;
  - o the offence has only recently come to light; or
  - o the complexity of the offence has meant that there has been a long investigation;
- f** a prosecution is likely to have a bad effect on the victim's physical or

mental health, always bearing in mind the seriousness of the offence;

**g** the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

**h** the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or

**i** details may be made public that could harm sources of information, international relations or national security;

6.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

### **The relationship between the victim and the public interest**

6.7 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim's family.

6.8 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

### **Youths**

6.9 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

6.10 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

### **Police Cautions**

6.11 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.

6.12 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.

## **7 Charges**

7.1 Crown Prosecutors should select charges which:

- a** reflect the seriousness of the offending;

- b** give the court adequate sentencing powers; and
- c** enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

## **8 Mode of Trial**

8.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the 'National Mode of Trial Guidelines issued by the Lord Chief Justice.) Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

## **9 Accepting Guilty Pleas**

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

9.3 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

## **10 Re-starting a Prosecution**

10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.

10.2 These reasons include:

- a** rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;

**b** cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and

**c** cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

The Code is a public document. It is available on the [CPS Website](#):

Further copies may be obtained from:

Crown Prosecution Service  
Communications Branch  
50 Ludgate Hill  
London  
EC4M 7EX  
Telephone: 020 7796 8442  
Fax: 020 7796 8351  
Email: [commsdept@cps.gov.uk](mailto:commsdept@cps.gov.uk)

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**THE DECISION TO PROSECUTE**

Department of Justice (Canada)  
January, 1993

## THE DECISION TO PROSECUTE

### *Introduction*

This chapter explains the criteria for deciding whether to prosecute. It is based on standards that have been developed over the years by Attorneys General in Canada and elsewhere in the Commonwealth.

Deciding whether to prosecute is among the most important steps in the prosecution process. Considerable care must be taken in each case to ensure that the right decision is made. A wrong decision to prosecute and, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.

Fairness and consistency are important objectives in the process leading to the institution of criminal proceedings. However, fairness does not preclude firmness in prosecuting, and consistency does not mean rigidity in decision-making. The criteria for the exercise of the discretion to prosecute cannot be reduced to something akin to a mathematical formula; indeed, it would be undesirable to attempt to do so. The breadth of factors to be considered in exercising this discretion clearly demonstrates the need to apply general principles to individual cases and to exercise good judgment in so doing.

Crown counsel must consider two main issues when deciding whether to prosecute. First, is the evidence sufficient to justify the institution or continuation of proceedings? Second, if it is, does the public interest require a prosecution to be pursued?

### *Sufficiency of the Evidence*

In the assessment of the evidence, a bare *prima facie* case is not enough; the evidence must demonstrate that there is a *reasonable prospect of conviction*. This decision requires an

evaluation of how strong the case is likely to be when presented at trial. This evaluation should be made on the assumption that the trier of fact will act impartially and according to law.

A proper assessment of the evidence will take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the trier of fact, as well as the admissibility of evidence implicating the accused. Crown counsel should also consider any defences that are plainly open to or have been indicated by the accused, and any other factors which could affect the prospect of a conviction.

Crown counsel are expected to apply this evidential standard throughout the proceedings -- from the time the investigative report is first received until the time of trial. When charges are laid, the test may have to be applied primarily against the investigative report, although it is certainly preferable -- especially in borderline cases -- to look beyond the statements of the witnesses. Later in the proceedings, especially after a preliminary inquiry, counsel may be able to make a more effective assessment of some of the issues, such as the credibility of witnesses. Assessments of the strength of the case may be difficult to make, and of course there can never be an assurance that a prosecution will succeed. Nonetheless, counsel are expected to review the decision to prosecute in light of emerging developments affecting the quality of the evidence and the public interest, and to be satisfied at each stage, on the basis of the available material, that there continues to be a reasonable prospect of conviction.

### ***The Public Interest Criteria***

If satisfied that there is sufficient evidence to justify the institution or continuation of a prosecution, Crown counsel must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued.

It is not the rule that all offences for which there is sufficient evidence must be prosecuted. Sir Hartley Shawcross, Q.C., then Attorney General of England (now Lord Shawcross), outlined the following principles which have since been accepted as correct by successive Attorneys General of Canada:

It has never been the rule in this country -- I hope it never will be -- that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute, amongst other cases: "wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest."

That is still the dominant consideration.<sup>1</sup>

The factors which may properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. Generally, the more serious the offence, the more likely the public interest will require that a prosecution be pursued.

The resources available for prosecution are not limitless, and should not be used to pursue inappropriate cases. The corollary is that the available resources should be employed to pursue with due vigour those cases worthy of prosecution.

In some cases it will be appropriate for Crown counsel to obtain the views of the investigative agency or client department when determining whether the public interest requires a prosecution to be commenced or continued. This can, in most instances, be accomplished through discussion with the investigators or the Departmental Legal Services Unit attached to the client department<sup>2</sup>. Ultimately, however, Crown counsel must decide independently whether the

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<sup>1</sup> U.K., H.C. Debates, vol. 483, col. 681, (29 January 1951).

<sup>2</sup> See Chapter I-8, "Consultation with Responsibility Centres".

public interest warrants a prosecution<sup>3</sup>.

Where the alleged offence is not so serious as plainly to require criminal proceedings Crown counsel should always consider whether the public interest requires a prosecution. Public interest factors which may arise on the facts of a particular case include:

- (a) the seriousness or triviality of the alleged offence;
- (b) significant mitigating or aggravating circumstances;
- (c) the age, intelligence, physical or mental health or infirmity of the accused;
- (d) the accused's background;
- (e) the degree of staleness of the alleged offence;
- (f) the accused's alleged degree of responsibility for the offence;
- (g) the prosecution's likely effect on public order and morale or on public confidence in the administration of justice;
- (h) whether prosecuting would be perceived as counter-productive, for example, by bringing the administration of justice into disrepute;
- (i) the availability and appropriateness of alternatives to prosecution;
- (j) the prevalence of the alleged offence in the community and the need for general and specific deterrence;

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<sup>3</sup> See chapter I-4, "The Independence of the Attorney General".

- (k) whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive;
- (l) whether the alleged offence is of considerable public concern;
- (m) the entitlement of any person or body to criminal compensation, reparation or forfeiture if prosecution occurs;
- (n) the attitude of the victim of the alleged offence to a prosecution;
- (o) the likely length and expense of a trial, and the resources available to conduct the proceedings;
- (p) whether the accused agrees to co-operate in the investigation or prosecution of others, or the extent to which the accused has already done so;
- (q) the likely sentence in the event of a conviction; and
- (r) whether prosecuting would require or cause the disclosure of information that would be injurious to international relations, national defence, national security or that should not be disclosed in the public interest.

The application of and weight to be given to these and other relevant factors will depend on the circumstances of each case.

The proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Mitigating factors present in a particular case can then be taken into account by the court in the event of a conviction.

***Irrelevant Criteria***

A decision whether to prosecute must clearly *not* be influenced by any of the following:

- (a) the race, national or ethnic origin, colour, religion, sex, sexual orientation, political associations, activities or beliefs of the accused or any other person involved in the investigation;
- (b) Crown counsel's personal feelings about the accused or the victim;
- (c) possible political advantage or disadvantage to the government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

**An extract from "Prosecution Guidelines"  
- Crown Law Office, New Zealand**

### 3.3 The Public Interest

3.3.1 The second major consideration is whether, given that an evidential basis for the prosecution exists, the public interest requires the prosecution to proceed. Factors which can lead to a decision to prosecute, or not, will vary infinitely and from case to case. Generally, the more serious the charge and the stronger the evidence to support it, the less likely it will be that it can properly be disposed of other than by prosecution. A dominant factor is that ordinarily the public interest will not require a prosecution to proceed unless it is more likely than not that it will result in a conviction. This assessment will often be a difficult one to make and in some cases it may not be possible to say with any confidence that either a conviction or an acquittal is the more likely result. In cases of such doubt it may be appropriate to proceed with the prosecution as, if the balance is so even, it could probably be said that the final arbiter should be a Court. It needs to be said also that the public interest may indicate that some classes of offending e.g., driving with excess breath or blood alcohol levels, may require that prosecution will almost invariably follow if the necessary evidence is available.

3.3.2 Other factors which may arise for consideration in determining whether the public interest requires a prosecution include:

- a the seriousness or, conversely, the triviality of the alleged offence; i.e., whether the conduct really warrants the intervention of the criminal law.
- b all mitigating or aggravating circumstances.
- c the youth, old age, physical or mental health of the alleged offender.
- d the staleness of the alleged offence.
- e the degree of culpability of the alleged offender.
- f the effect of a decision not to prosecute on public opinion.
- g the obsolescence or obscurity of the law.
- h whether the prosecution might be counter-productive; for example by enabling an accused to be seen as a martyr.
- i the availability of any proper alternatives to prosecution.
- j the prevalence of the alleged offence and the need for deterrence.

- k whether the consequences of any resulting conviction would be unduly harsh and oppressive.
- l the entitlement of the Crown or any other person to compensation, reparation or forfeiture as a consequence of conviction.
- m the attitude of the victim of the alleged offence to a prosecution.
- n the likely length and expense of the trial.
- o whether the accused is willing to co-operate in the investigation or prosecution of others or the extent to which the accused has already done so.
- p the likely sentence imposed in the event of conviction having regard to the sentencing options available to the Court.

3.3.3 None of these factors, or indeed any others which may arise in particular cases, will necessarily be determinative in themselves; all relevant factors must be balanced.

3.3.4 A decision whether or not to prosecute must clearly not be influenced by:

- a the colour, race, ethnic or national origins, sex, marital status or religious, ethical or political beliefs of the accused.
- b the prosecutors personal views concerning the accused or the victim.
- c possible political advantage or disadvantage to the Government or any political organisation.
- d the possible effect on the personal or professional reputation or prospects of those responsible for the prosecution decision.

#### 4. Consent to Prosecutions

4.1 A number of statutory provisions creating offences require that, before a prosecution is commenced, the consent of the Attorney-General is to be obtained. This is a function carried out in practice by the Solicitor-General (see section 2). The consent, if given, is signified by way of endorsement on the Information. Requests for consent should be directed to the Solicitor-General with ed.

**"Prosecution Policy of the Commonwealth  
Guidelines for the making of decisions in the prosecution process"  
- Office of the Director of Public Prosecutions (Australia)**

## The Prosecution Policy of the Commonwealth

### The Decision to Prosecute

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[Prosecution of juveniles](#) | [Choice of charges](#) | [Consent to prosecution](#)

#### Criteria governing the decision to prosecute

(2.1) Sir Hartley Shawcross QC, then Attorney-General, stated to the House of Commons [in the United Kingdom] on 29 January 1951:

*It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should...prosecute 'whenever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest.' That is still the dominant consideration. (H.C. Debates, Vol. 483, col. 681, 29 January 1951).*

This statement is equally applicable to the position in Australia. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution.

(2.2) The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.

(2.3) It follows that the objectives previously stated - especially fairness and consistency - are of particular importance. However, fairness need not mean weakness and consistency need not mean rigidity. The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.

(2.4) The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender.

(2.5) When deciding whether the evidence is sufficient to justify the institution or continuation of a prosecution the existence of a bare prima facie case is not enough. Once it is established that there is a prima facie case it is then necessary to give consideration to the prospects of conviction. A prosecution should not proceed if there is no reasonable prospect of a conviction being secured. In indictable matters this test presupposes that the jury will act in an impartial manner in accordance with its instructions. This test will not be satisfied if it is considered to be clearly more likely than not that an acquittal will result.

(2.6) The decision whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the alleged offender and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction. This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed.

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Indeed it is inevitable that some will fail. However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and the useless expenditure of public funds.

(2.7) When evaluating the evidence regard should be had to the following matters: (a) Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confession evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution.

(b) If the case depends in part on admissions by the defendant, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the defendant?

(c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the defendant, or may be otherwise unreliable?

(d) Has a witness a motive for telling less than the whole truth?

(e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?

(f) What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility?

(g) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?

(h) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?

(i) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad?

(j) Where child witnesses are involved, are they likely to be able to give sworn evidence?

(k) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the defendant?

(l) Where two or more defendants are charged together, is there a reasonable prospect of the proceedings being severed? If so, is the case sufficiently proved against each defendant should separate trials be ordered?

This list is not exhaustive, and of course the matters to be considered will depend upon the circumstances of each individual case, but it is introduced to indicate that, particularly in borderline cases, the prosecutor must be prepared to look beneath the surface of the statements.

(2.8) Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.

(2.9) The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While many public interest factors militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution (for example, the seriousness of the offence, the need for deterrence). In this regard, generally speaking the more serious the offence the less likely it will be that the public

## Prosecution Policy of the Commonwealth - The Decision to Prosecute

interest will not require that a prosecution be pursued.

(2.10) Factors which may arise for consideration in determining whether the public interest requires a prosecution include:

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a 'technical' nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;
- (d) the alleged offender's antecedents and background;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general;
- (l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the Commonwealth or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the likely length and expense of a trial;
- (q) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
- (t) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.

(2.11) As a matter of practical reality the proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the court at sentence in mitigation. Nevertheless, where the alleged offence is not so serious as plainly to require prosecution the prosecutor should always apply his or her mind to whether the public interest requires a prosecution to be pursued.

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(2.12) In the case of some offences, the legislation provides an enforcement mechanism which is an alternative to prosecution. Examples are the customs prosecution procedure under the *Customs Act 1901* and the administrative penalties that can be levied under various taxation Acts. The fact that a mechanism of this kind is available does not necessarily mean that criminal proceedings should not be instituted. The alleged offence may be of such gravity that prosecution is the appropriate response. However, in accordance with paragraph 2.10(j) above, the availability of an alternative enforcement mechanism is a relevant factor to be taken into account in determining whether the public interest requires a prosecution.

(2.13) A decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the alleged offender or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

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### **Prosecution of juveniles**

(2.14) Special considerations apply to the prosecution of juveniles. Prosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

(2.15) In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 2.10 as appear to be relevant, but particularly to:

- (a) the seriousness of the alleged offence;
- (b) the age and apparent maturity and mental capacity of the juvenile;
- (c) the available alternatives to prosecution, such as a caution, and their efficacy;
- (d) the sentencing options available to the relevant Childrens Court if the matter were to be prosecuted;
- (e) the juvenile's family circumstances, particularly whether the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile;
- (f) the juvenile's antecedents, including the circumstances of any previous caution the juvenile may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate; and
- (g) whether a prosecution would be likely to be harmful to the juvenile or be inappropriate, having regard to such matters as the personality of the juvenile and his or her family circumstances.

(2.16) Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

(2.17) The practice of the DPP is for any decision to proceed with a prosecution in respect of a juvenile to be made by a senior lawyer.

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### Choice of charges

(2.18) In many cases the evidence will disclose an offence against several different laws. Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence.

(2.19) In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, the probable lines of defence to a particular charge, and the considerations set out later in this Statement under Mode of Trial, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence.

(2.20) Under no circumstances should charges be laid with the intention of providing scope for subsequent charge-bargaining.

(2.21) A choice of charge will not infrequently arise where the available evidence will support charges under both a provision of a specific Act and one or more of the offences of general application in the *Crimes Act 1914*. One example is section 239 of the *Social Security Act 1947* which, in broad terms, overlaps with sections 29A - 29D and 67 of the Crimes Act. The penalties on summary disposition may be similar but the penalties for Crimes Act offences when prosecuted on indictment are often higher. In addition, prosecution under a specific Act may be subject to a time limit where a prosecution under the Crimes Act would not.

(2.22) Ordinarily the provisions of the specific Act rather than the general provisions of the Crimes Act should be relied on unless to do so would not adequately reflect the nature of the criminal conduct disclosed by the evidence.

(2.23) Charges should not be laid under the Crimes Act solely to avoid a time limit for a prosecution under a specific Act unless the conduct of the proposed defendant, or the circumstances in which the alleged offence was committed, contributed to the offence under the specific Act being out of time. In determining whether it would be appropriate to proceed under the Crimes Act in such a case, it may also be necessary to have regard to any delay on the part of the responsible investigating agency in making enquiries in respect of the suspected breach and/or in referring the case to the DPP.

(2.24) A number of judgments have highlighted the need for restraint in laying conspiracy charges. Whenever possible substantive charges should be laid. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where it is proposed to lay or proceed with conspiracy charges against a number of defendants jointly, those responsible for making the necessary decision must guard against the risk of the joint trial being unduly complex or lengthy, or otherwise causing unfairness to defendants.

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### Consent to prosecution

(2.25) A number of Commonwealth Acts provide that a prosecution for an offence under the Act cannot be commenced or, if commenced, cannot proceed except with the consent of the responsible Minister or some specified officer. There are a variety of reasons for the inclusion of such consent requirements in legislation, but all are basically intended to ensure that prosecutions are not brought in inappropriate circumstances.

(2.26) By various means, principally section 6(4) of the Act, the Director has been authorised to give consent to prosecutions for offences under a number of Acts. In appropriate cases the power to give consent has been delegated to senior DPP lawyers where that course has been available.

(2.27) Often the reason for the requirement for consent is a factor which will ordinarily be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that

## Prosecution Policy of the Commonwealth - The Decision to Prosecute

mitigating factors are taken into account or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. In some cases the consent provision will have been included as it was not possible to define the offence so precisely that it covered the mischief aimed at and no more. Other cases may involve a use of the criminal law in sensitive or controversial areas, or must take account of important considerations of public policy. In appropriate cases the decision whether to consent to a prosecution is made after consultation with a relevant department or agency.

(2.28) Mention should be made of those prosecutions which require the consent of a Minister or some officer other than the Director or a DPP lawyer. Although there are unlikely to be any differences of view between the person authorised to give consent and the DPP on a question whether a prosecution is required in the public interest, it is clearly desirable that there be prior consultation with the DPP where there appear to be difficult questions of fact or law involved.



**An Extract from  
"Prosecution Policy and Guidelines"  
- New South Wales**

discretionary factors will lead to a decision not to prosecute the closer the evidence approaches the point where it can barely be described as adequate to establish a "reasonable prospect of conviction".

The discretionary factors which may give rise to a decision not to prosecute are set out in existing guidelines and are accepted by all prosecuting authorities in Australia. They are as follows:

- (a) the triviality of the alleged offence or that it is of a "technical" nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, physical health, mental health or special infirmity of the alleged offender or a witness;
- (d) the alleged offender's antecedents;
- (e) the staleness of the alleged offence; including delay in the prosecution process which might be oppressive. In cases where the allegation relates to the sexual assault of a child the staleness relevant will be from the time the alleged victim attains an age or a position where there is freedom to bring the allegation to notice;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive;
- (j) the availability or efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both

personal and general;

- (l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the State or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the likely length and expense of a trial;
- (q) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
- (t) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

The significance, if any, of one or any combination of these factors will depend on the circumstances of each case.

In many cases the question will not be so much one of whether or not to proceed with charges against the accused but whether to proceed with a particular charge bearing in mind a conviction and sentence for other related offences. If a sentence has been imposed which adequately reflects the criminality of the episode the further charges relating to the same episode will not proceed

## Appendix VI

## Comparison table on "public interest" factors considered by prosecuting authorities

	England and Wales	Canada	New Zealand	Australia/New South Wales	Hong Kong
	<u>Some common public interest factors in favour of prosecution :</u>				
(1)	<ul style="list-style-type: none"> <li>a conviction is likely to result in a significant sentence;</li> </ul>	<ul style="list-style-type: none"> <li>seriousness or triviality of the alleged offence;</li> </ul>	<ul style="list-style-type: none"> <li>the seriousness or triviality of the offence;</li> </ul>	<ul style="list-style-type: none"> <li>the seriousness or triviality of the alleged offence or that it is of a 'technical' nature only;</li> </ul>	<ul style="list-style-type: none"> <li>seriousness of the offence;</li> </ul>
(2)	<ul style="list-style-type: none"> <li>the offence, although not serious in itself, is widespread in the area where it was committed;</li> <li>there are grounds for believing that the offence is likely to be continued or repeated;</li> </ul>	<ul style="list-style-type: none"> <li>the prevalence of the offence and the need for general and specific deterrence;</li> </ul>	<ul style="list-style-type: none"> <li>the prevalence of the offence and the need for deterrence;</li> </ul>	<ul style="list-style-type: none"> <li>the prevalence of the offence and the need for deterrence, both personal and general;</li> </ul>	<ul style="list-style-type: none"> <li>the prevalence of the offence and the need for deterrence;</li> <li>whether the offence is likely to be continued or repeated;</li> </ul>
(3)	<ul style="list-style-type: none"> <li>aggravating circumstances of the offence (Note 1 on page 7 refers);</li> </ul>	<ul style="list-style-type: none"> <li>significant mitigating or aggravating circumstances;</li> </ul>	<ul style="list-style-type: none"> <li>all mitigating or aggravating circumstances;</li> </ul>	<ul style="list-style-type: none"> <li>any mitigating or aggravating circumstances;</li> </ul>	<ul style="list-style-type: none"> <li>the surrounding and extenuating circumstances of the offence;</li> </ul>
(4)	<ul style="list-style-type: none"> <li>the defendant's antecedents and background (Note 2</li> </ul>	<ul style="list-style-type: none"> <li>the accused's background;</li> </ul>		<ul style="list-style-type: none"> <li>the alleged offender's antecedents and background;</li> </ul>	<ul style="list-style-type: none"> <li>the offender's character and criminal record;</li> </ul>

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
	on page 7 refers);				
(5)	<ul style="list-style-type: none"> <li>the victim was vulnerable, has been put in considerable fear, or suffered personal attack, damages or disturbance;</li> </ul>	<ul style="list-style-type: none"> <li>the attitude of the victim of the alleged offence to a prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the attitude of the victim of the offence to a prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the attitude of the victim of the alleged offence to a prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the attitude of the victim of the alleged offence to a prosecution;</li> </ul>
(6)	<p><u>Some common public interest factors against prosecution</u></p> <ul style="list-style-type: none"> <li>the court is likely to impose a nominal penalty;</li> </ul>				<p><u>Some public interest factors militating against prosecution :</u></p> <ul style="list-style-type: none"> <li>when the circumstances of an offence are not particularly serious, and a court would be likely to impose a purely nominal penalty;</li> </ul>
(7)	<ul style="list-style-type: none"> <li>there has been a long delay between the offence taking place and the date of the trial (balanced against other relevant factors such as the seriousness of the offence);</li> </ul>	<ul style="list-style-type: none"> <li>the degree of staleness of the offence;</li> </ul>	<ul style="list-style-type: none"> <li>the staleness of the offence;</li> </ul>	<ul style="list-style-type: none"> <li>the staleness of the alleged offence;</li> </ul>	<ul style="list-style-type: none"> <li>the staleness of the offence;</li> </ul>
(8)	<ul style="list-style-type: none"> <li>a prosecution is likely to have a bad effect on the victim's physical</li> </ul>				

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
	or mental health;				
	<ul style="list-style-type: none"> <li>the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health (balanced against the need to safeguard the general public);</li> </ul>	<ul style="list-style-type: none"> <li>age, intelligence, physical or mental health or infirmity of the accused;</li> </ul>	<ul style="list-style-type: none"> <li>the youth, old age, physical or mental health of the alleged offender;</li> </ul>	<ul style="list-style-type: none"> <li>the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;</li> </ul>	<ul style="list-style-type: none"> <li>old age and infirmity of the offender;</li> <li>mental illness or strain suffered by an accused or a person under investigation;</li> </ul>
(9)	<ul style="list-style-type: none"> <li>the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;</li> <li>the defendant has put right the loss or harm that was caused (but this must not be the sole cause for avoiding prosecution);</li> </ul>				<ul style="list-style-type: none"> <li>the stigma of a conviction which can cause irreparable harm to the future prospects of a young adult;</li> <li>the relative ages of the participants and whether or not there was any element of seduction or sexual corruption in sexual offences;</li> </ul>
(10)	<ul style="list-style-type: none"> <li>the offence was committed as a result of a genuine mistake or misunderstanding</li> </ul>				

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
	(these factors must be balanced against the seriousness of the offence);				
(11)	<ul style="list-style-type: none"> <li>the loss or harm was minor and was the result of a single incident caused by a misjudgment;</li> </ul>				
(12)	<ul style="list-style-type: none"> <li>details may be made public that could harm sources of information, international relations or national security.</li> </ul>	<ul style="list-style-type: none"> <li>whether prosecuting would require or cause the disclosure of information that would be injurious to international relations, national defence, national security or that should not be disclosed in the public interest.</li> </ul>			
(13)		<p><u>Other factors</u></p> <ul style="list-style-type: none"> <li>the accused's alleged degree of responsibility for the offence;</li> </ul>	<ul style="list-style-type: none"> <li>the degree of culpability of the offender;</li> </ul>	<ul style="list-style-type: none"> <li>the degree of culpability of the alleged offender in connection with the offence;</li> </ul>	
(14)		<ul style="list-style-type: none"> <li>whether the accused agrees to co-operate in</li> </ul>	<ul style="list-style-type: none"> <li>whether the accused is willing to co-operate</li> </ul>	<ul style="list-style-type: none"> <li>whether the alleged offender is willing to</li> </ul>	<ul style="list-style-type: none"> <li>what is the attitude of the suspect;</li> </ul>

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
		the investigation or prosecution of others, or the extent to which the accused has already done so;	in the investigation or prosecution of others or the extent to which the accused has already done so;	co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;	
(15)		<ul style="list-style-type: none"> <li>the entitlement of any person or body to criminal compensation, reparation or forfeiture if prosecution occurs;</li> </ul>	<ul style="list-style-type: none"> <li>the entitlement of the Crown or any other person to compensation, reparation or forfeiture as a consequence of conviction;</li> </ul>	<ul style="list-style-type: none"> <li>any entitlement of the Commonwealth or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;</li> </ul>	
(16)		<ul style="list-style-type: none"> <li>the likely sentence in the event of a conviction;</li> </ul>	<ul style="list-style-type: none"> <li>the likely sentence imposed in the event of conviction having regard to the sentencing options available to the court;</li> </ul>	<ul style="list-style-type: none"> <li>the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;</li> </ul>	<ul style="list-style-type: none"> <li>what were the practical effects of the offence;</li> <li>how serious a view would a court take of the offence if there were a conviction;</li> </ul>
(17)		<ul style="list-style-type: none"> <li>whether the consequences of prosecution or conviction would be disproportionately harsh or oppressive;</li> </ul>	<ul style="list-style-type: none"> <li>whether the consequences of any conviction would be unduly harsh and oppressive;</li> </ul>	<ul style="list-style-type: none"> <li>whether the consequences of any resulting conviction would be unduly harsh and oppressive;</li> </ul>	
(18)		<ul style="list-style-type: none"> <li>whether prosecuting</li> </ul>	<ul style="list-style-type: none"> <li>whether the</li> </ul>	<ul style="list-style-type: none"> <li>whether the</li> </ul>	<ul style="list-style-type: none"> <li>would the consequences</li> </ul>

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
		would be perceived as counter-productive, e.g. by bringing the administration of justice into disrepute;	prosecution might be counter-productive, e.g. by enabling an accused to be seen as a martyr;	prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;	of the prosecution be out of all proportion to the seriousness of the offence or to the penalty a court would be likely to impose;
(19)		<ul style="list-style-type: none"> <li>the likely length and expense of a trial and the resources available to conduct the proceedings;</li> </ul>	<ul style="list-style-type: none"> <li>the likely length and expense of the trial;</li> </ul>	<ul style="list-style-type: none"> <li>the likely length and expense of a trial;</li> </ul>	
(20)		<ul style="list-style-type: none"> <li>whether the offence is of considerable public concern;</li> <li>the prosecution's likely effect on public order and morale or on public confidence in the administration of justice;</li> </ul>	<ul style="list-style-type: none"> <li>the effect of a decision not to prosecute on public opinion;</li> </ul>	<ul style="list-style-type: none"> <li>whether the alleged offence is of considerable public concern;</li> <li>the effect on public order and morale;</li> <li>the necessity to maintain public confidence in such basic institutions as the Parliament and the courts;</li> </ul>	
(21)		<ul style="list-style-type: none"> <li>the availability and appropriateness of alternatives to prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the availability of any proper alternatives to prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the availability and efficacy of any alternatives to prosecution;</li> </ul>	<ul style="list-style-type: none"> <li>the availability or efficacy of any alternatives to prosecutions;</li> </ul>

	<b>England and Wales</b>	<b>Canada</b>	<b>New Zealand</b>	<b>Australia/New South Wales</b>	<b>Hong Kong</b>
				<ul style="list-style-type: none"> <li>• whether the alleged offence is triable only on indictment;</li> </ul>	
(22)					<ul style="list-style-type: none"> <li>• how would the decision to launch a prosecution affect other people;</li> </ul>
(23)					<ul style="list-style-type: none"> <li>• where an allegation involves several accused, inclusion of peripheral defendants can lead to additional delay and cost;</li> </ul>
(24)			<ul style="list-style-type: none"> <li>• the obsolescence or obscurity of the law.</li> </ul>	<ul style="list-style-type: none"> <li>• the obsolescence or obscurity of the law.</li> </ul>	

Note (Items (3) and (4) on page 1 refer)

1. There is evidence that (a) the offence was carried out by a group; was premeditated; was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation; was committed against a person serving the public; or if there is any element of corruption; (b) a weapon was used or violence was threatened during the commission of the offence; and (c) there is a marked difference between the actual or mental ages of the defendant and the victim etc.
2. The defendant is, for example, in a position of authority or trust; is a ringleader or an organizer of the offence; is alleged to have committed the offence whilst under an order of the court; or a person whose previous convictions or cautions are relevant to the present offence etc.