

**THE OFFICE OF  
THE DIRECTOR OF PUBLIC  
PROSECUTIONS (DPP)**



# WHAT IS THE OFFICE OF THE DPP?

The Office of the Director of Public Prosecutions is the Criminal Law Department of the Ministry of the Attorney General (AG).

The current DPP is Mr. Roger Gaspard, S.C. who has been an attorney-at-law for over 20 years.



# **ESTABLISHMENT OF THE OFFICE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)**

Section 90 of the Constitution of  
Trinidad and Tobago Chap. 1:01

(1) The provisions of this section shall, subject to section 76(2) have effect with respect to the conduct of prosecutions.

(2) There shall be a Director of Public Prosecutions for Trinidad and Tobago whose office shall be a public office.

## **POWERS OF THE DPP**

- (3) The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—
- (a) to institute and undertake criminal proceedings against any person before any Court in respect of any offence against the law of Trinidad and Tobago;
  - (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;
  - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

# RELATIONSHIP BETWEEN THE AG & DPP

The responsibility of the Attorney General for the administration of Prosecutions would ordinarily include the following:

1. Financial matters including the approval and submission of budgets to Parliament;
2. The provision of adequate accommodation and facilities and other administrative matters necessary for the efficient running of the office of the DPP;
- 3- Accounting to Parliament for the affairs of the DPP's office, for which purpose the DPP would have a duty to keep the Attorney General informed of major and important matters of public interest or which affect the public interest.

**However, so far as the exercise of any of his prosecutorial powers under section 90 of the constitution is concerned, the DPP is under no obligation to obey any instruction or direction from the Attorney General whether arising out of such discussions or otherwise.**

**The State v Seeromanie Maraj-Naraynsingh & Elton Ramsir a/c Pat (Crim. App. No. 5 of 2006, Paragraph 34)**

## **DELEGATION OF DPP POWERS**

Section 90 of the Constitution of Trinidad and Tobago Chap. 1:01

(6) The functions of the Director of Public Prosecutions under subsection (3) may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

# LEGAL STAFF FOR THE OFFICE OF THE DPP?

The professional (legal) staff comprises approximately Forty (40) attorneys-at-law.

To join the department, an applicant must satisfy the following criteria:

1. Completed a bachelor of laws degree (LLB)
2. Attained a legal education certificate (LEC)
3. Admitted to the Bar to practice as an Attorney at Law
4. Pass background and security checks (conducted by the Trinidad and Tobago Police Service Special Branch)

# MAIN FUNCTIONS OF THE DPP

- Undertaking criminal prosecutions in the High Court and Appeal Court.
- Briefing counsel in the United Kingdom on the conduct of appeals before the Judicial Committee of the Privy Council.
- Undertaking prosecutions in complex matters and matters of public interest in the magistrate's courts throughout the country. (Less complex matters are handled by police officers of the rank of sergeant or higher, who may or may not be lawyers.
- Advising and coordinating with government, non governmental and international agencies, such as the police, defence force, Customs and Excise, Board of Inland Revenue and Town and Country Planning, the United States Department of Justice, the Crown Prosecution Service in the UK, and other prosecuting agencies in the Caribbean.

## **POWERS NOT ENJOYED BY THE OFFICE OF THE DPP**

The Office of the DPP has no investigative powers. Prosecutors do not detect crime nor control the police.

Unlike what we might see on American TV dramas, prosecutors do not visit fresh crime scenes, interview suspects, or call up judges in the middle of the night to get urgent search warrants.

Prosecutors are not crusaders, legal representative of victims, or “police lawyers”.

# **THE RATIONALE BEHIND THE FUNCTION OF A PROSECUTOR (Classic Position)**

“It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness, and the justness of judicial proceedings.”

**R. v Boucher (1954), 110 C.C.C. 263 at 270 (S.C.C.)**

# **ORGANIZATION & DEPLOYMENT OF LEGAL STAFF**

State attorneys are assigned to prosecute matters in the magistrate's court (low courts), the High Court and the Court of Appeal.

Senior staff comprises two Deputy Directors; two Assistant Directors; and several Senior State Counsel.

The more junior attorneys ( State Counsel I, II & III) are grouped into smaller teams, with each team headed by a senior prosecutor.

# COURTS IN TRINIDAD AND TOBAGO



**Top Left:** Hall of Justice

**Top Right:** Arima Magistrates Court

**Bottom Left:** San Fernando High & Magistrates Court

**Bottom Left:** Port of Spain Magistrates Court



# GOVERNMENT AGENCIES EMPOWERED TO LAY CRIMINAL CHARGES

- **Trinidad & Tobago Police Service (TTPS)**
  - Police Service Act. Chap 15:01, Common Law, Most Criminal Statutes. For example Proceeds of Crime Act. Chap. 11:27, Prevention of Corruption Act. Chap. 11:11,
- **Customs & Excise Division**
  - Derives its powers from the Customs Act. Chap. 78:01 & Proceeds of Crime Act. Chap. 11:27
- **Financial Intelligence Unit (FIU)**
  - Established by the Financial Intelligence Unit of Trinidad and Tobago Act [Act 11 of 2009]. Also derives its powers from the Proceeds of Crime Act. Chap. 11:27
- **The Board of Inland Revenue**
  - Established by and derives its powers from the Income Tax Act. Chap. 75:01
- **Town & Country Planning**
  - Derives its powers from the Town and Country Planning Act. Chap. 35:01

# WHY NOT MORE PROSECUTIONS FOR PROCEEDS OF CRIME OFFENCES

- DPP's Office does not investigate and thus is dependent on investigative agencies to inform the department on matters that may potentially have a financial crime component. Thus timely advice and assistance that can be given at an early stage in an investigation is not obtained by investigative agencies.
- No clear, settled procedures or guidelines to direct all the investigative agencies. Memoranda of Understanding (MOU) are still being developed.
- Lack of co ordination, assistance and information sharing between investigative agencies. Relationships between the agencies are often characterized by a degree of competition, suspicion and antagonism. There is also a degree of myopia by each agency.

**EXAMPLE OF THE REASON THERE IS A LACK OF  
SHARING BETWEEN AGENCIES  
THE POSITION OF THE BOARD OF INLAND REVENUE**

4. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of the income of any person, **as secret and confidential**, and shall make and subscribe a declaration in the form prescribed to that effect before a Magistrate.

(2) Any person having possession of or control over any document, information, returns, or assessment lists or copies of such lists relating to the income or items of income of any person who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorised by the President to communicate it; or

(b) otherwise than for the purposes of this Act or any other written law administered by the Board, is guilty of an offence.

(3) Where, under any law in force in any Commonwealth country provision is made for the allowance of relief from income tax in respect of the payment of income tax in Trinidad and Tobago, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that Commonwealth country of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in Trinidad and Tobago or from income tax in that Commonwealth country aforesaid.

**Section 4 of the Income Tax Act. Chap. 75:01**

# WHY NOT MORE PROSECUTIONS FOR PROCEEDS OF CRIME OFFENCES CONT'D

- The Financial Intelligence Unit (FIU) is a relatively new agency (established by the Financial Intelligence Unit of Trinidad and Tobago Act, 2009, [Act 11 of 2009]) and is not fully staffed. There is a need for experienced legal staff and financial analysts. Information requested by investigators takes a long time to be received.
- Changes need to be made to the Proceeds of Crime Legislation. The overload in the court system means such cases may not get to trial quickly.
- There is a high incidence of homicides. Murders are given priority in the court system because murder accused do not get bail.

# DIFFICULTIES WITH PROCEEDS OF CRIME LEGISLATION - NEED FOR A SPECIFIED OFFENCE

- 43. A person is guilty of an offence who conceals, disposes, disguises, transfers, brings into Trinidad and Tobago or removes from Trinidad and Tobago any money or other property knowing or having reasonable grounds to suspect that the money or other property is derived, obtained or realised, directly or indirectly from a **specified offence**.
- 44. A person is guilty of an offence if he—
  - (a) conceals or disguises any property which is, or which, in whole or in part directly or indirectly represents, his proceeds of a **specified offence**; or
  - (b) converts, transfers or disposes of that property or removes it from the jurisdiction

for the purpose of avoiding prosecution for a **specified offence** or the making or enforcement in his case of a confiscation order or a forfeiture order.

# DIFFICULTIES WITH PROCEEDS OF CRIME LEGISLATION - NEED FOR A SPECIFIED OFFENCE

- 45. A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person's proceeds of a specified offence, he—
  - (a) conceals or disguises that property; or
  - (b) converts, transfers or disposes of that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for a **specified offence** or the making or enforcement of a confiscation order or a forfeiture order.
- 46. (1) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any money or other property is, or in whole or in part directly or indirectly represents another person's proceeds of a specified offence, he receives, possesses or converts that money or other property.

# WHY NOT MORE PROSECUTIONS FOR PROCEEDS OF CRIME OFFENCES CONT'D

- The need to prove a specified offence creates *inter alia* the following difficulties:
  - Before proving an offence under the Proceeds of Crime Act the prosecution must first prove each element of the specified offence. Moreover the specified offence must be specific in terms of date, time, place and subject matter of the charge.
  - Failure to prove any element of the specified offence will cause the Proceeds of Crime (i.e. Money Laundering Offence etc) to fail
  - Difficult to prove how much an individual has obtained as proceeds from a specific offence. How does one prove that proceeds are from a specific drug trafficking transaction (specific date, time & place) as opposed to another drug trafficking transaction or murder for hire or importing prohibited goods?

# COMPARISON BETWEEN T&T LEGISLATION AND UK LEGISLATION

UK Proceeds of Crime Act 2002,

s.327

(1) A person commits an offence if he -

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property;
- (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

# COMPARISON BETWEEN T&T LEGISLATION AND UK LEGISLATION

Proceeds of Crime Act 2002,  
340. Interpretation

- (1) This section applies for the purposes of this Part.
- (2) Criminal conduct is conduct which -
  - (a) constitutes an offence in any part of the United Kingdom, or
  - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (3) Property is criminal property if -
  - (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
  - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

The prosecution may prove that property is "criminal property" (a) by showing that it derived from conduct of a specific kind or kinds and that conduct of that kind was unlawful, or (b) by evidence that the **circumstances in which the property was handled were such as to give rise to an irresistible inference that it could only have been derived from crime**:R. v. Anwoir[2008] 2 Cr.App.R. 36, CA.

**Archbold Criminal Practice 2012 paragraph 26-11**

## PRACTICAL EXAMPLE

A Trinidadian woman returns from Canada at the airport and is found to have packages of cocaine strapped to her body. The Customs & Excise officers at the airport charge the woman for importing a prohibited good. The police at the airport charge the woman for drug trafficking under the Dangerous Drugs Act.

The woman, who is unemployed, had her ticket purchased by a Mr. Nar Cotic who owns a small boutique in a rural area. Customers are rarely seen entering or purchasing items from his boutique. However, Mr. Cotic has large sums of foreign and local currency in a vault at his home, owns several bank accounts with millions of dollars, owns a number of mansions, condominiums, townhouses and other properties as well as a several luxury cars.

Police officers sent a request to the FIU to begin financial investigations on both the woman and Mr. Cotic but they have not received any information in the past six (6) months.

The police have not been able to obtain any information from the Board of Inland Revenue to determine how much income either the woman or Mr. Cotic has declared to have earned over a period of years.