

# The Code for Prosecutors

March 2012

Published by the Joint Partnership Project Criminal  
Justice Programme.

Funded by the Government of Canada.



### **Message from the DPP**

The decision of whether or not to prosecute an individual is a most important one. It is vital for the suspect, vital for the victim and vital for the community as a whole. Great care must always be taken by those who decide these issues, always remembering that wrong decisions may destroy lives and undermine confidence in the criminal justice system. A decision to prosecute should only be taken after the evidence and the surrounding circumstances have been fully considered. Those who prosecute discharge a heavy responsibility on behalf of the community. The modern prosecutor is expected to discharge his or her duties with professionalism, skill and vision, and to operate within the parameters of defined and clear prosecution policy guidelines.

The modern prosecutor is expected to have and to display several qualities including good judgment, integrity and a keen sense of fair play. Fearlessness is also an essential quality, for prosecution decisions are often controversial and the prosecutor must have the strength of character to resist criticism from whatever quarter. No matter how strident or painful. The judgment of the prosecutor on a case must never be overborne by political, media or public pressure. The profession of prosecutor is an honourable one but is not for the faint-hearted.

The prosecutor occupies a formidable position in the administration of criminal justice. The decisions taken may profoundly affect the lives of others. In each case, the prosecutor must carefully evaluate the evidence and apply the law and decide if a prosecution is appropriate. The prosecutorial discretion should be exercised in a manner that is consistent, fair and objective. Difficult decisions must be confronted, not be side-stepped, and in deciding the way forward the prosecutor will apply professional judgment, legal competence and practical life experience.

The prosecutor is as independent as the judge, and his or her interest throughout is the just disposal of the issues. Rightly has it been said that the prosecutor secures no victories and sustains no defeats. This does not mean that the prosecutor should not firmly present the prosecution case, or use forensic skills to test the defence case.

The prosecutor should be vigorous in presenting the evidence, but restrained and courteous. Evidence should be properly marshaled and cogently adduced.

Without a fair prosecutor, there cannot be a fair trial. He or she may strike hard blows, provided they are not foul ones. The community has a vested interest in the proper conduct of its prosecutions, and the conviction of the guilty just as much in the public interest as is the acquittal of the innocent.

It has never been the position that those suspected of criminal offences must automatically be prosecuted. A charge is only ever appropriate if it is in the public interest to bring it. In deciding where exactly the public interest lies in a particular case the prosecutor must consider the justice of the situation and examine all the factors. These vary from case to case and the application of the prosecution discretion is not an exact science. The prosecutor does not operate as a rubber stamp, and it would not be right to prosecute every case without regard to the interests of justice. In general, the more serious the offence, the more likely is it that the public interest will require a prosecution to proceed.

The prosecutor is guided at all times by the public interest in the measured application of the rule of law. The prosecutor exercises an important discretion on behalf of the public (of whether or not to institute a prosecution of a suspect,) and how to conduct a prosecution once it has begun. There is a need to maintain public confidence in the administration of criminal justice, and the community has a legitimate interest in the work of its prosecution service. The purpose of *The Code for Prosecutors* is therefore not only to provide a code of conduct for prosecutors and to promote consistent decision making at all stages of the prosecution process, but also to make the community aware of the way in which the system of public prosecutions operate. Principled criteria are applicable at all times, and the people of Trinidad and Tobago need to be able to see for themselves what exactly these are. Transparency is essential for the modern prosecutor for a fair and effective criminal justice system.

## CONTENTS

1. Introduction
2. Application of the Code
3. The Role and Ethics of the Prosecutor
4. The Impartiality of the Prosecutor
5. The Prosecutor, Police and Other Investigators
6. Decision Making
7. The Full Code Test
8. Reopening a Prosecution Decision
9. Selection of Charges
10. The Consent to Prosecute
- 11 Youth Offenders
12. Accepting Guilty Pleas
13. Bail
14. Trial Fairness
15. The Role of the Prosecutor in the Sentencing Process
16. Proceeds of Crime
17. Victims and Witnesses
18. Appeals
19. The Prosecutor and the Media

## 1. Introduction

1.1 The Office of the Director of Public Prosecutions (ODPP) is the principal public prosecution authority for Trinidad and Tobago and it is headed by the Director of Public Prosecutions (DPP).

Section 90 (3) of the Constitution states:

The Director of Public Prosecutions shall have power in any case in which he considers it proper to do –

- 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.

1.2 The DPP is responsible for the issuance of a Code for Prosecutors (the Code). The Code gives guidance to prosecutors on general principles to be applied when making decisions about prosecutions.

1.3 In this Code, the term, “prosecutors” is used to describe members of the ODPP who exercise their powers in accordance with the instructions issued by the DPP and Police Officers designated by the Commissioner of Police and anyone authorised by the DPP to prosecute in any court.

1.4 In this Code, the term, “suspect” is used to describe a person who is not yet the suspect of criminal proceedings; the term, “defendant” is used to describe a person who has been charged or summonsed; the term, “offender” is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law; and the term, “appellant” is used to describe a person appealing a conviction and/or sentence. The Code lets the public know what prosecutors do; how they make their decisions;

and the level of service that the ODPP is committed to providing in key aspects of its work.

1.5 Prosecution means all aspects of a criminal prosecution and includes pre-charge advice, the decision to prosecute, the decision to stop a prosecution, the decision to re-charge and proceedings ancillary to a prosecution, for example, forfeiture, restraint and confiscation.

## 2. Application of the Code

2.1 The Code is not an instruction manual for prosecutors, nor does it necessarily cover every decision that must be made by prosecutors, police or other investigators. The Code does not purport to lay down any rule of law. However, as the Code reflects the aspirations and practices of prosecutors who adhere to the International Association of Prosecutors Standards (1999), it is the expectation that all prosecutions in Trinidad and Tobago will be conducted in accordance with the guidelines outlined in the Code.

## 3. The Role and Ethics of the Prosecutor

3.1 The prosecutor occupies a powerful and privileged position. The decisions the prosecutor takes may profoundly affect the lives of others. A prosecution must only be brought for good cause. No one should ever be prosecuted simply because he or she may have committed an offence.

3.2 The decision whether to prosecute is among the most important decisions the prosecutor has to make. Great care must be taken in each case to ensure that the right decision is made. A wrong decision to prosecute, as well as a wrong decision not to prosecute, may have the potential to undermine public confidence in the criminal justice system. There is little margin for error.

3.3 When at court, the prosecutor must at all times act independently. In the discharge of the prosecution function the prosecutor is as independent as the judge. The interest of the prosecutor at all times is to assist the court to achieve justice. A fair trial is one in which all relevant evidence is presented, tested and adjudicated upon according to law. As the representative of the public interest the prosecutor must guard against the

conviction of the innocent. The prosecutor should:

- Ensure that the prosecution's case is firmly and fairly put;
- Vigorously test the defence's case, but with courtesy and temperately;
- Avoid submissions of fact or law which are not soundly based;
- Prevent prejudice or emotion in the conduct of the case;
- Reveal the existence of material that may assist the accused;

Invite the court to stop the proceedings if the point is reached at which he or she concludes there is no longer a reasonable prospect of conviction. Such a decision should only be made on the advice of the DPP or someone delegated by him to act on his behalf for this specific purpose.

Use all legitimate means to achieve a just disposal of the issues in contention.

3.4 In a complex case, the prosecutor must fully marshal the evidence prior to trial. This makes the case both manageable and comprehensible.

3.5 The prosecutor acts independently, yet in the public interest. The prosecutor will wish to present a case on the basis of evidence which is cogent and credible. The duty of the prosecutor is not to obtain a conviction at all costs, but to place before the court the evidence relevant to the alleged crime. The prosecutor should not express a personal opinion as to the guilt or innocence of the accused, or as to the credibility of a witness.

#### 4. The Impartiality of the Prosecutor

4.1 The prosecutor must be fair, independent and objective. Recognised prosecutorial criteria must be applied at each stage of the decision-making process. A decision of whether to prosecute must not be influenced by:

The personal feelings of the prosecutor concerning the offence,

the suspect or the victim;

The possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct;

The race, religion, sex, national origin or political associations, activities or beliefs of the suspect or any other person involved;

Possible political advantage or disadvantage to the government or any political party, group or individual.

#### 5. The Prosecutor and Police and other Investigators

5.1 The functions of the prosecutor and the police and other investigators are separate and distinct. The prosecutor decides if a prosecution should be pursued and, if so, on what terms. He or she acts independently of those responsible for the investigation. Whilst the prosecutor may consider the views of the investigator where appropriate, in the end it is the responsibility of the prosecutor to decide whether or not to proceed.

5.2 The roles of the prosecutor and the investigator are interdependent. Whilst each has separate responsibilities in the criminal justice system, they need to work in partnership to enforce the law. The prosecutor cannot direct investigations, but he or she may request further investigation along additional lines of enquiries which are relevant to the decision-making process. Every case that prosecutors receive from the police or other investigators is reviewed. Prosecutors must ensure that they have all the information they need to make an informed decision about how best to deal with the case.

5.3 This will often involve prosecutors providing guidance and advice to the police and other investigators about lines of inquiry, evidential requirements, and assistance in any pre-charge procedures throughout the investigative and prosecuting process. The prosecutor also advises the investigator on the conduct of cases. This includes advice in relation to:

What criminal charges are warranted;

Whether there is sufficient evidence to support a charge;

The admissibility of evidence;

The most appropriate charge in the circumstances;

The present state of the law;

Whether a case should be tried summarily or on indictment;

The institution of appeals or reviews of sentence;

The disclosure of evidence;

Other or additional areas of investigation.

5.4 If the prosecutor and the investigator are not in agreement as to the conduct of a case, the issue may need to be resolved through discussion at successively more senior levels on both sides. It will be recognised that the DPP remains solely responsible for the taking of all prosecutorial decisions and the police remain solely responsible for the conduct of investigations.

## 6. Decision Making

6.1 The decision to prosecute is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Decisions taken fairly, impartially and with integrity help to deliver justice to victims, witnesses, defendants and the public.

6.2 All decisions to prosecute or not to prosecute require the express approval of the DPP or someone delegated by the DPP to act on behalf for these purposes.

6.3 It is the duty of the prosecutors to review, to advise on and to prosecute cases. Prosecutors must ensure that the law is properly applied; and

that all relevant evidence is put before the court in accordance with the principles set out in this Code and that each case is considered on its own facts and on its own merits.

6.4 In more serious or complex cases, prosecutors may decide whether a person should be charged with a criminal offence, and, if so, what that offence should be. They make their decisions in accordance with this Code.

6.5 Prosecutors should identify and, where possible seek to rectify evidential weaknesses. They should swiftly stop cases which do not meet the evidential stage of Full Code Test (see section 7) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution.

6.6 Prosecutors must only decide to continue a prosecution when the case has passed both stages of the Full Code Test (see section 7). When considering the institution or continuation of criminal proceedings the first question to be determined is the sufficiency of evidence. A prosecution should not be started or continued unless the prosecutor is satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person. The proper test is whether there is a realistic prospect of a conviction. This decision requires an evaluation of how strong the case is likely to be when presented at trial. When reaching this decision, the prosecutor will wish as a first step to be satisfied that there is no reasonable expectation of an ordered acquittal or a successful submission of no case to answer.

6.7 Prosecutors must make sure that they do not allow a prosecution to start or continue where to do so would be seen by the courts as oppressive or unfair so as to amount to an abuse of the process of the court.

6.8 Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops. Wherever possible, they should talk to the police and other investigators first if they are thinking about changing the charges or stopping the case.

6.9 Prosecutors, police and other investigators work closely together, but the final responsibility for the decision whether or not a case should be proceeded with rests with the Director of Public Prosecutions.

## 7. The Full Code Test

The Full Code Test has two stages:

### The Evidential Stage;

Followed by the **Public Interest Stage**

- 7.1 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However, there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these rare instances, prosecutors may decide that the case should not proceed further.
- 7.2 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken in accordance with the Full Code Test.
- 7.3 Prosecutors must follow any guidance issued by the DPP to ensure that decisions in these cases are appropriate and correct.

### The Evidential Stage

- 7.4 Prosecutors must be satisfied that a realistic prospect of conviction exists if, in relation to an identifiable suspect, there is credible evidence which the prosecution can adduce before a court and upon which evidence Magistrate or a jury properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt, that the suspect who is prosecuted has committed a criminal offence.
- 7.5 There must be sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. A prosecutor must consider what the defence case may be, and how it is likely to affect

- the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 7.6 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it 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. In particular, prosecutors will need to consider the following issues:
- Can the evidence be used in court?  
Is it likely that the evidence will be excluded by the court?
- 7.7 There are legal rules that might mean the evidence which seems relevant cannot be given at a trial. For example, it is likely that the evidence will be excluded because of the way in which it was obtained? Or are there issues with the chain of continuity of evidence: Or are there issues concerning the contamination of evidence (i.e. fruits from the poisoned tree)?
- 7.8 What explanation has the suspect given? Is a court likely to find it credible in the light of the evidence as a whole? Does the evidence support an innocent explanation?
- 7.9 Is there evidence which might support or detract from the reliability of a confession? Was there any breach of any rules in obtaining the confession?
- 7.10 Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough?
- 7.11 Are there concerns over the accuracy, reliability or credibility of the evidence of any witness?
- 7.12 Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness? Does any witness have any motive that may affect his or her attitude to the case? Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?

7.13 Prosecutors should not ignore evidence because they are not sure that it can be used or that is reliable. Instead, they should look closely at it when deciding if there is a reasonable prospect of conviction.

#### **The Public Interest Stage**

7.14 Where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

7.15 Having satisfied the Evidential Stage a prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour. The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest.

7.16 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider nonetheless whether a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.

7.17 The absence of a factor does not necessarily mean that it should be construed as tending in the opposite direction. For example, just because the offence was not "carried out by a group" does not transform the "factor tending in favour of a prosecution" into a "factor tending against prosecution".

7.18 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

#### **A prosecution is less likely to be required if:**

7.19 The court is likely to impose a nominal penalty;

7.20 The suspect has been subject to any appropriate regulatory proceedings or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, and which adequately addresses the seriousness of the offending;

7.21 The offence was committed as a result of a genuine mistake or misunderstanding;

7.22 The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment;

7.23 There has been a long delay between the offence taking place and the date of the trial, unless:

The offence is serious;

The delay has been caused wholly or in part by the suspect;

The offence has only recently come to light;

The complexity of the offence has meant that there has been a long investigation; or new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified; and

The prosecution of the matter would not be unfair.

7.24 A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution his or her physical or mental health:

7.25 The suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained);



- 7.26 The suspect 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. There must be a balancing of a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;
- 7.27 A prosecution may require details to be made public that could harm sources of information, international relations or national security.
- 7.28 In deciding whether a prosecution is required in the public interest, prosecutors should take into account any views expressed by the victim regarding the impact that the offence has had. In appropriate cases, for example, a case of homicide or where the victim is a child or an adult who lacks mental capacity, prosecutors should take into account any views expressed by the victim's family.
- 7.29 However, the prosecutor does not act for victims or their families in the same way a defence lawyers acts for his client, and prosecutors must form an overall view of the public interest.

#### **8. Reopening a Prosecution Decision**

- 8.1 People should be able to rely on decisions taken by prosecutors. Normally, if a prosecutor 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.
- 8.2 Occasionally there are special reasons where a prosecutor will restart the prosecution where that course is available under the applicable law, particularly if the case is serious.

#### **These reasons include:**

- 8.3 Rare cases where a reassessment of the original decision shows that it was clearly wrong and should not be allowed to stand;
- 8.4 Cases which are stopped so that more evidence which is likely to become available in the near future can be collected and prepared. In

these cases, the prosecutor will tell the defendant that the prosecution may well start again; or

- 8.5 Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.
- 8.6 Cases which are stopped, otherwise than on the merits/evidence.

#### **9. Selection of Charges**

- 9.1 Prosecutors should select charges which:
- Reflect the seriousness and extent of the criminality as supported by the evidence;
  - Give the court adequate powers to sentence and impose appropriate post-conviction orders; and
  - Enable the case to be presented in a clear and simple way.
- 9.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
- 9.3 Prosecutors should not 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 not go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 9.4 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.
- 9.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

#### **10. The Consent to Prosecute**

- 10.1 It is a condition precedent to the institution of some proceedings that the consent of the DPP be first obtained. In such cases the DPP will apply the Full Code Test.

10.2 Where legislation requires the obtaining of the DPP's consent in order to initiate a prosecution, the appropriate level of scrutiny of the case must be properly exercised. This is particularly so where the criminal law is to be deployed in a sensitive area, or where issues of public policy may arise.

### 11. Young Offender

11.1 Special considerations may apply to the prosecution of children. Long term damage which can be done to a child because of an encounter with the criminal law early in his or her life should not be underestimated and consequently in some cases, a prosecution may be regarded as a severe measure with significant implications for the future development of the child concerned.

11.2 The factors set out in 7.14 are relevant to any consideration as to whether a child should be prosecuted; however, the following matters are particularly important:

The seriousness of the alleged offence;

The age, apparent maturity and mental capacity of the child;

The available alternatives to prosecution and their likely efficacy;

The sentencing options available to the court if the matter were to be prosecuted;

The family circumstances and, in particular, whether the parents appear willing and able to exercise effective discipline and control of the child;

The child's antecedents, including the circumstances of any relevant past behaviour; and

Whether a prosecution would be likely to cause emotional or social harm to the child, having regard to such matters as his or her personality and family circumstances.

11.3 These principles support the United Nations Convention on the Rights of the Child article 3.1 of which states:

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".*

### 12. Accepting Guilty Pleas

12.1 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.

12.2 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 offence, particularly where there are aggravating features. Prosecutors ought not to accept a guilty plea just because it is convenient.

12.3 The ultimate decision to accept a guilty plea, in these circumstances, rest with the DPP or anyone delegated by him to act on his behalf for this specific purpose.

12.4 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.

12.5 It must be made clear to the court on what basis any plea is advanced and accepted. 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 (see Section 14.5).

### 13. Bail

13.1 Prosecutors must always bear in mind that bail is not to be withheld as a form of punishment or by way of the prejudging of a case. Before conviction, prosecutors should start on the basis that bail (with or without conditions) should be granted. They should only oppose bail

where they believe that it is in the interests of justice and society as a whole that bail should not be granted.

13.2 When deciding whether or not to oppose bail prosecutors must consider carefully:

- The law;
- The charges;
- The strength of the evidence;
- The protection of victims, witnesses and the general public;
- The personal circumstances of the defendant;
- The likelihood of the commission of further offences if granted bail;
- The likelihood of failure to attend court; and
- Any other relevant factors.

13.3 Prosecutors must be fair and firm when considering a response to an application for bail. In every case where there is an application for bail the prosecutor must evaluate the evidence before responding.

13.4 If legal issues arise concerning bail when a prosecutor who is not a lawyer has conduct of a case, then it must be referred immediately to the DPP or a person delegated by him to act on his behalf for this specific purpose.

13.5 The prosecutor must seek and accept police expertise as to any bail risks presented by the defendant. However, the ultimate decision as to what will be said to the Court about eligibility for bail is the responsibility of the prosecutor. This is not incompatible with the role of the police whose legitimate views as to bail must be placed before the Court.

13.6 The prosecutor will fairly consider any application for bail on appeal taking into account those matters raised at 13.3 and in particular the strength of evidence (on appeal against conviction) and the reasonable prospects of success of the appeal.

#### 14. Trial Fairness

14.1 Prosecutors must do everything they properly can to bring about a fair trial within a reasonable time. Prosecutors must endeavour to reduce

to a minimum the number of adjournments both, before and after the commencement of a trial.

14.2 Every effort should be made to ensure trials are not delayed at their commencement and continue on consecutive working days until conclusion. Applications to adjourn should be vigorously opposed unless they are absolutely unavoidable.

14.3 It is not the duty of a prosecutor to obtain counsel for a defendant or put forward a defendant's case. However, assistance must be offered to the court and a defendant if the interests of justice so require.

14.4 A prosecutor should only put a witness in the witness box when satisfied that the evidence provided will be relevant and credible. Prosecutors should ensure that witnesses are aware of what is required and also provide as much assistance as they legitimately can to secure the best evidence from witnesses.

14.5 Prosecutors must ensure that the prosecution case is fully ready for the time fixed for trial. This includes ensuring:

The prosecutor has a sound knowledge of the prosecution's case;

All legal, evidential and procedural issues are known, researched and ready for presentation to or argument before the court;

Every effort has been made to agree issues and evidence, adduce evidence without the necessity for witness attendance, prepare schedules, maps, diagrams for the better presentation of a case;

The proper and timely response to all requests and questions reasonably raised by the defence and the timely supply of all material reasonably requested by the defence and to which the defence is legally entitled, respecting and recognizing at all times the continuing duty to disclose evidence in the prosecution's possession;

That witnesses are available attend court, (see section 17);

All required exhibits held by the prosecution are at court, whether

for the prosecution or defence;  
Where considered appropriate, there are copies of all relevant documents for all persons;

An assessment has been made of the likely defences and how they may properly be countered.

Prosecutors represent the public and the public interest. Presenting the prosecution's case requires professionalism, objectivity and detachment. It also requires an appreciation of the reasonable needs of any victims of the crime.

Prosecutors must be courteous throughout to everyone. In particular, a prosecutor must not intimidate, harass or question oppressively any witness. A prosecutor must intervene to stop any advocate who attempts to do this to any witness, by making timely objections to the court.

Prosecutors must assist the court at all times as to the correct law and procedure and actively intervene if the court is being misled in any way or is not applying the correct law and procedure. Prosecutors must 'put the prosecution's case' to defence witnesses and ensure the defence's case 'is put' to the prosecution witnesses.

### **15. The Role of the Prosecutor in the Sentencing Process**

15.1 The prosecutor has an important role in the sentencing process. The responsibility to assist the court after conviction is part of the prosecutor's general duty in the administration of criminal justice.

15.2 The public interest requires the prosecutor to assist the court to have access to all relevant matters which might affect sentence. The prosecutor must seek to ensure that proceedings do not miscarry at a critical point, and to protect the court from appealable error. There are obvious ways in which the prosecutor should discharge the duty to place before the court the facts upon which reliance is placed.

15.3 On a plea of guilty, the prosecutor should supply the court with a summary of the facts which substantiate the case against the offender.

At the time of sentencing the prosecutor will, where appropriate, advise the court of the antecedents of the offender, and also deal with any ancillary issues. These may include costs, compensation, forfeiture, restitution and the disposal of exhibits.

### **The prosecutor has other important responsibilities:**

15.4 It is the duty of the prosecutor, where the offender has pleaded guilty, to ensure that the facts which are then placed before the court support each and ever ingredient of the charges laid, and that they provide a sufficiently comprehensive factual basis for sentencing;

15.5 Where there is a major difference between the factual basis upon which an offender pleads guilty and the case contended for by the prosecution, there is an adversarial role for the prosecutor in establishing the facts upon which the court should base its sentence (**R v Newton (1982) 4 Cr App R(S) 388**);

15.6 The prosecutor must be aware of any legal limitations on sentence, including the maximum sentence, and whether the court has jurisdiction to impose any particular sentence. This assists the court to avoid appealable error;

15.7 The duty of the prosecutor is to draw the attention of the court to any facts which may affect the assessment of sentence, and this applies equally whether it involves a mitigating or an aggravating factor. The former consideration is especially important when the offender is not represented;

15.8 The prosecutor should be familiar with the relevant 'tariff' or 'guideline' cases prior to sentencing.

15.9 When matters are advanced in mitigation of sentence which the prosecution can prove to be wrong, the duty of the prosecutor is first to inform the defence that the mitigation is not accepted. If the defence persists in the matter it becomes the duty of the prosecutor to invite the court to put the defence to proof of the disputed material and if necessary to hear any rebutting evidence.

15.10 The prosecutor must then decide whether the inaccuracies are of such

a nature as to require his or her intervention to prevent the court from proceeding on a wrong basis;

15.11 The prosecutor should not volunteer information about the prevalence of particular offences but should be ready to assist the court if he or she has reliable material which is called for by the court. Statistics which are accurate and up to date can properly be tendered if requested;

15.12 The prosecutor should bring to the attention of the court the victim's circumstances and views whenever this is appropriate;

15.13 If the offender has assisted the authorities, the prime responsibility for ensuring that the sensitive material to be advanced in mitigation reaches the court, in circumstances of strict security, lies with the prosecutor.

## **16. Proceeds of Crime**

16.1 The prosecutor seeks to ensure that the offender does not profit from his or her 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. Confiscation should not be viewed as a mere optional addition to sentence proceedings or to the conduct of a prosecution.

16.2 If it is necessary to prevent the dissipation of profits which might be required to satisfy a confiscation order, the prosecutor should apply at an early stage for a restraint order. After conviction, the prosecutor must apply, where appropriate, for a confiscation order.

## **17. Victims and Witnesses**

17.1 Victims and witnesses of crime in the criminal justice system are to be:  
Treated with courtesy and compassion; and with  
Respect for their dignity and privacy.

17.2 The key means of observing these principles is through the provision of information to ensure that victims and witnesses understand the process and know what is happening at each stage. So far as is possible, the

victim and witness should have explained to them the court's processes and procedures, and victims should be kept informed of what is happening during the course or the proceedings.

17.3 Prior to the hearing of matters in court, the prosecutor should as far as practicable, refresh the memory of each witness, as it pertains to the statements and depositions of that witness.

17.4 Under no circumstances should the prosecutor involve himself in the coaching of any witness.

17.5 Prosecutors should seek to protect the victim's interests as best they can whilst fulfilling their duty to the Court and in the conduct of the prosecution on behalf of the State.

## **18. Appeals**

### ***Appeal Against Conviction***

18.1 When there is an appeal against conviction the duty of the prosecutor is to assist the court, as required, to achieve a just disposal of the appeal.

18.2 The prosecutor should be familiar with, and observe the relevant practice directions.

18.3 Once the perfected grounds of appeal are received, together with the appellant's authorities, the prosecutor should decide upon, and serve such additional authorities as will assist the court in determining the issues raised by the appeal.

18.4 The invariable duty of the prosecutor to assist the court through the preparation of written submissions applies irrespective of whether the appellant is represented.

18.5 When an appellant is not represented, the prosecutor should scrutinize the papers with special care to determine whether there is any legitimate ground of appeal which has not been noticed. If he or she discovers such, the court should be informed.

18.6 Although the prosecutor will generally seek to have a conviction upheld, if the view is formed that the appeal should succeed, the prosecutor should acquaint the court of that view and explain the reasons for it. If the court disagrees, the prosecutor is entitled to adhere to his or her view and is not obliged to conduct the appeal in any way which conflicts with his or her own judgment. At the same time, it remains the prosecutor's duty to give assistance to the court if requested to do so.

18.7 When a conviction is quashed, the prosecutor should consider whether or not a retrial is required. It is incumbent upon the prosecutor to apply for a retrial if this is appropriate.

18.8 In deciding whether or not to make an application, regards should be had to the following:

The basis on which the appeal was allowed;

The seriousness of the offence;

The strength of the case against the accused, including the availability of witnesses;

The lapse of time since the alleged offence and since the trial;

The extent to which the sentence has been served;

The attitude of the victim and his or her family, and of the police or other investigators.

#### *Appeal Against Sentence*

18.9 The proper rationale for appeals by the State is to enable the courts to establish and maintain adequate standards of punishment for crime and occasionally to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience.

18.10 The prosecution's right to appeal against sentence should be exercised sparingly, and any appeal must not be instituted unless it can be asserted with some confidence that the appeal will be successful.

18.11 In considering a prosecution appeal against sentence it is to be borne in mind that the sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the offender, and the effect on the victim. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate Court will not interfere with the exercise of a Judge's or Magistrate's sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the Court must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterized as manifestly inadequate. Mere disagreement with the sentence passed is insufficient.

18.12 Where an offender appeals against sentence, the prosecutor should be in a position to assist the court as required. This may involve drawing its attention to the relevant 'guideline' or 'tariff' cases or the sentencing handbook. He or she should also, if required, be in a position to address the court on the prevalence of the offence and the customary range of sentences for a particular offence.

18.13 Applications for review of sentence must be decided by the DPP. No prosecutor is authorized to make any decision in relation to sentence or to give undertakings regarding sentence, without the DPP's input, guidance and recommendations.

#### **19. The Prosecutor and the Media**

19.1 The prosecution has an interest in the fair and accurate reporting of criminal cases by the media, and basic levels of assistance should be provided.

19.2 The reporting of criminal proceedings is important as it lets the community know who is being prosecuted and for what, and the sentences which are being imposed. 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.

19.3 There is no objection to a prosecutor confirming facts already in the

public domain. Subject to any court order, it is proper to provide details upon request, of matters presented in open court, such as a charge sheet or a summary of facts. Subject to any court order, the media may be advised what a case is about, what the charges are, who the defendant is and the number of witnesses likely to be called by the prosecution.

**19.4 Matters which should not be discussed with the media include:**

- The likely outcome of proceedings;
- The intended approach of the prosecution;
- The correctness or otherwise of a judicial decision;
- Any part of the trial conducted in the absence of the jury or not in open court;
- The name or identifying particulars of a protected witness, including a complainant in a sexual offence, a blackmail victim, or a juvenile defendant, unless authorised;
- The contact details of any victim or witness;
- Any information which might lead to the identification of a protected informant;
- Any privileged information, including legal advice and internal case discussions with colleagues or law enforcement officials;
- The existence of any plea negotiations or possibility of a plea of guilty or other disposition.

It is no part of the prosecutor's role to comment to the media on a verdict or sentence or the prospect of appeal or review proceedings being instituted. These are matters for the DPP, and nothing should be said which might affect the DPP's subsequent consideration of the case.

If the prosecution is to appeal or seek a review of sentence, the practice is not to release details to the media until the appeal has been filed and served on the respondent.

Questions from the media should be referred to the DPP when they concern:

Appeals against decisions of the courts;

Reviews of sentences;

General prosecution policy;

Decisions to terminate prosecutions.

When in doubt about a media inquiry, a prosecutor should seek the advice of the DPP.

**Conclusion**

The Code is designed to ensure prosecutors make reasoned decisions. The public are entitled to know what criteria prosecutors apply to make their decisions. This transparency enables the community to have faith in prosecutors to ensure that justice is accessible for all.

With the Code in the public domain the way prosecutions are decided and conducted will be plain for all to see. This allows for a criminal justice system that will be sensitive to the needs of witnesses and victims and ensure defendants are treated appropriately.

Through a consistent and principled approach to prosecution policy and conduct, prosecutors will advance the rule of law and successfully contribute to an effective criminal justice system in Trinidad and Tobago.

**Dated this 26th day of March, 2012.**

**Roger K. Gaspard, SC  
Director of Public Prosecutions**