



11 July 2006

The Convenor
EPOCH New Zealand
PO Box 11996
Manners Street
Wellington

Attention: Marie Russell

Dear Ms Russell

Section 59 Crimes Act - query about implications of repeal

I refer to your letter dated 31 May 2006 addressed to the Commissioner of Police concerning the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill. He has asked that I respond on his behalf.

The Official Information Act 1982 does not require the Police to answer questions, however, I will provide a brief response to the questions you have raised.

1. What would be the likely Police response to complaints to the Police about parents using physical punishment on their children?

As is the case with all assault investigations, in investigating a complaint of assault on a child, Police would consider the amount of force used in the circumstances before making a decision about whether a prosecution is required in the public interest.

2. What protections would parents who use minor physical punishment have against prosecutions?

As is noted above, each case would need to be considered on its merits. The Solicitor-General's Prosecution Guidelines (see below) are relevant in coming to a decision as to whether to prosecute.

If a person is prosecuted and found guilty of an assault on a child, the seriousness of the assault will be one factor that the sentencing judge will take into account when considering all sentencing options.

OFFICE OF THE COMMISSIONER

180 Molesworth Street, PO Box 3017, Wellington, New Zealand
Telephone: 64-4-474 9499 Facsimile: 64-4-498 7400 <http://www.police.govt.nz>

3. What other government agencies are [Police] working with in order to deal with parents in a manner that is educative rather than punitive where child punishment is concerned?

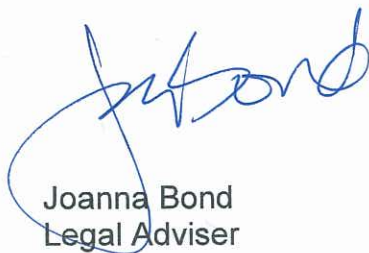
The Police Youth Education Service deals with issues of child abuse and family violence through its classroom programme, *Keeping Ourselves Safe* (KOS). This programme includes materials which go home to parents, caregivers and whanau. These are designed to raise awareness of abuse and encourage parents to look at the ways they treat their children.

Police have consulted widely with other government agencies in the development of KOS, for example Ministry of Education and CYF. Police are currently working with CYFS on the Everyday Communities strategy to combat family violence, in particular the Everyday Theatre working in schools.

4. [You asked for Police] comments on the relevance and effectiveness of [the] existing [Solicitor-General's Prosecution Guidelines]

The Solicitor-General's Prosecution Guidelines are recognised as applying to Police prosecution decisions and have been incorporated into the Police Manual of Best Practice. Relevant excerpts from the Manual of Best Practice are attached.

Yours sincerely



Joanna Bond
Legal Adviser

Attachments: Extracts from the Police Manual of Best Practice

INTRODUCTION

While the State has a duty to prosecute people who engage in criminal activity, it must also ensure that people suspected of such activity receive fair and proper process during all stages of the investigation and trial.

These dual responsibilities are often in tension. It is therefore essential that the decision to prosecute is made on a principled basis, and that the judicial process is both meticulous and fair.

This chapter outlines the responsibilities of prosecutors and gives the procedures for the courtroom situations they most commonly encounter.

The document "Prosecution Guidelines for Crown Solicitors" has been reproduced in its entirety as a section in this chapter, since the same guidelines apply to police prosecutors.

CROWN LAW OFFICE PROSECUTION GUIDELINES FOR CROWN SOLICITORS

1. Introduction

1.1 Almost invariably, it is the responsibility of officers and agencies of the State to investigate offences and prosecute offenders. It is the Attorney-General and Solicitor-General, as the Law Officers of the Crown, whose responsibility it is to ensure that those officers and agencies behave with propriety and in accordance with principle in carrying out their functions.

1.2 The State bears a dual responsibility in its administration of the criminal law. Behaviour classified as criminal has been deemed so harmful to society generally that the state, on behalf of all its citizens, accepts the responsibility to investigate, prosecute and punish those behaving in that way.

1.3 The State also accepts the responsibility of ensuring, through institutions and procedures it establishes, that those suspected or accused of criminal conduct are afforded the right of fair and proper process at all stages of investigation and trial.

1.4 Those dual responsibilities are often in tension. The individual subjected to the criminal justice process will rarely believe that it is working in his or her favour; the investigating and prosecuting agencies will not wish to see someone they believe guilty elude conviction.

1.5 The decision to begin a prosecution against an individual has profound consequences. The individual is no longer a suspect, but is formally and publicly accused of an offence. Even if eventually acquitted, he or she will be subjected to the

stresses of public opprobrium, court appearances and, possibly, a loss of liberty while awaiting trial.

1.6 It is of great importance therefore that decisions to commence and to continue prosecutions be made on a principled and publicly known basis. The purpose of these guidelines is to indicate, in a general way, the bases on which the Law Officers expect those decisions to be made.

2. Who may institute Prosecutions

2.1 Any person may institute a prosecution for an offence against the general criminal law, and, with some specific exceptions, for regulatory offences. Some prosecutions require the prior consent of the Attorney-General; the procedure for obtaining that consent is outlined in section 4. Every prosecution is commenced by way of an Information laid under the provisions of the Summary Proceedings Act 1957, and the person bringing the prosecution is known as the "informant". In practice, almost all prosecutions for offences against the general criminal law are brought by the Police, and those for regulatory offences by officers of government departments or local authorities.

2.2 In the case of prosecutions brought by Crown agencies for offences triable only on Indictment, or those on which the accused has exercised a right of electing trial by jury, the informant ceases to be the prosecutor from the point at which the accused is committed for trial. At that point the prosecution becomes a "Crown" matter, and only the Attorney-General, Solicitor-General or a Crown Solicitor may lay an Indictment. The laying of Indictments is dealt with in section 5.

2.3 The Attorney-General, as the Senior Law Officer of the Crown, has ultimate responsibility for the Crown's prosecution processes. Successive Attorneys-General, however, have taken the view that it is inappropriate for them, as Ministers in the Government of the day, to become involved in decision making about the prosecution of individuals.

2.4 In New Zealand, the Attorney-General and Solicitor-General have co-extensive original powers. With some specified exceptions, the Solicitor-General may perform any function given to the Attorney-General. In practice, the Solicitor-General exercises all of the Law Officer functions relating to the prosecution process.

2.5 The initial decision to prosecute rests with the Police in the case of the general criminal law, or an officer of some other central or local government agency charged with administering the legislation creating the offence. It is frequently the case that the Police or agency will consult a Crown Solicitor or the Solicitor-General for advice as to whether a prosecution would be well founded. It is, however, never for the Solicitor-General or the Crown Solicitor to make the initial decision to prosecute; it is their function to advise.

3. The Decision to Prosecute

In making the decision to initiate a prosecution, there are two major factors to be considered; evidential sufficiency and the public interest.

3.1 Evidential Sufficiency

The first question always to be considered under this head is whether the prosecutor is satisfied that there is admissible and reliable evidence that an offence has been committed by an identifiable person.

The second question is whether that evidence is sufficiently strong to establish a prima facie case; that is, that if that evidence is accepted as credible by a properly directed jury, it could find guilt proved beyond reasonable doubt.

3.2 The Public Interest

3.2.1 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 - for example, driving with excess breath or blood alcohol levels - may require that prosecution will almost invariably follow if the necessary evidence is available.

3.2.2 Other factors that 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; that is, whether the conduct really warrants the intervention of the criminal law.

b all mitigating or aggravating circumstances.

c the youth, old age, or 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 on public opinion of a decision not to prosecute.

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.

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

3.2.4 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 prosecutor's 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.