

ATTORNEY GENERAL'S REVIEW



2008


ATTORNEY GENERAL'S REVIEW 2008

CONTENTS

	Page
Section 1	Introduction by H.M. Attorney General
Section 2	About the Law Officers' Department 1
Section 3	Objectives of the Law Officers' Department..... 5
Section 4	Statistical Report on the Work of the Department in 2007 7
	<i>Serious Crime Group</i> 8
	<i>Constitution, Human Rights, European and Legislation ('CHEL') Group</i> 12
	<i>General Group</i> 19
	<i>Office of the Legal Adviser to the Police</i> 34
	<i>Conveyancing Group</i> 36
Section 5	2007 Business Plan Activities – Report on Progress 39
Section 6	Accounting Officer's Statement 41
Appendix	Current Organisation of the Department

SECTION 1

INTRODUCTION BY H.M. ATTORNEY GENERAL



I have pleasure in introducing the Attorney General's Review of 2008. This will be the last such Review which I expect to introduce and it will therefore be a little more discursive and wide ranging than merely a review of a single year. Nonetheless the events of the year have brought to the surface many of the issues which we in the Law Officers' Department currently have to face.

The starting point was the historic child abuse investigation which hit the national and international media towards the end of February but which had been formally opened in 2007. Some cases still continue in the Courts, and comment thus must be of a more general rather than a specific nature. Nonetheless there are things which it is important to say.

The early part of the police investigation was adversely affected by distrust of the Law Officers and Crown lawyers by senior police officers. I believe some of this may be down to misunderstandings on either side, some of it down to some police officers losing their objectivity, some of it perhaps to an unfortunate willingness to believe theories which were not rooted in fact. Some of the problem must, I am sure, have been exacerbated by faults on the side of the Law Officers, whether of communication or otherwise. Whatever the cause, the result was that the law enforcement agencies did not work together as they should.

Because there is sometimes such a basic lack of public understanding, as to how law enforcement agencies should work, it is worth emphasizing this. Working co-operatively together does not mean abrogating your duty to perform the functions of your office. It does not mean you always agree. But it does mean that, unless there is a solid reason to do otherwise, you desist from criticism of your working partners' competence and integrity.

The police are an independent investigative force for whom the Minister for Home Affairs is politically accountable. It is not for the Attorney to try to direct what should or should not be investigated, and although the police have sometimes been asked to look into a particular matter, they have never been directed that no investigation take place. Indeed I would emphasize that had any such direction been given or attempted, it would undoubtedly have been met, and rightly so, with a firm rebuff.

The prosecution deal with the product of a police investigation. In deciding whether the evidential test is passed there is of course room for tension between professionals – the police who have investigated and the lawyers whose job it is to argue in Court if there is a prosecution. Sometimes the police and the lawyers might privately disagree

over a prosecution decision. That should only show that the checks and balances in the system work and that each agency is doing its job. Without more, it does not show that either the police or the lawyers do not carry out their functions professionally, objectively and with integrity. A public disagreement, however, is capable of damaging the public perceptions of the criminal justice system, and there was a risk of that last year.

I am very pleased to say that since the arrival of Acting Chief Officer David Warcup, there has been a return to the co-operative working relationship between police and lawyers which we had in the early years of this decade. That is in the interests of justice because there is no doubt that it is the best way the different agencies can fulfil their functions, independently and with integrity, so that those who commit criminal offences answer for them in accordance with the criminal justice rules which our society has adopted.

It is very important that the public should have confidence in the fairness and effectiveness of the criminal justice system, and this confidence has been challenged last year and this. It is for that reason that I have had to make public statements in circumstances where the normal approach would not be to give any explanation of the decisions taken. That is the normal approach because it is very difficult to make a meaningful public statement which is at the same time fair to both the suspect and the complainant or witnesses.

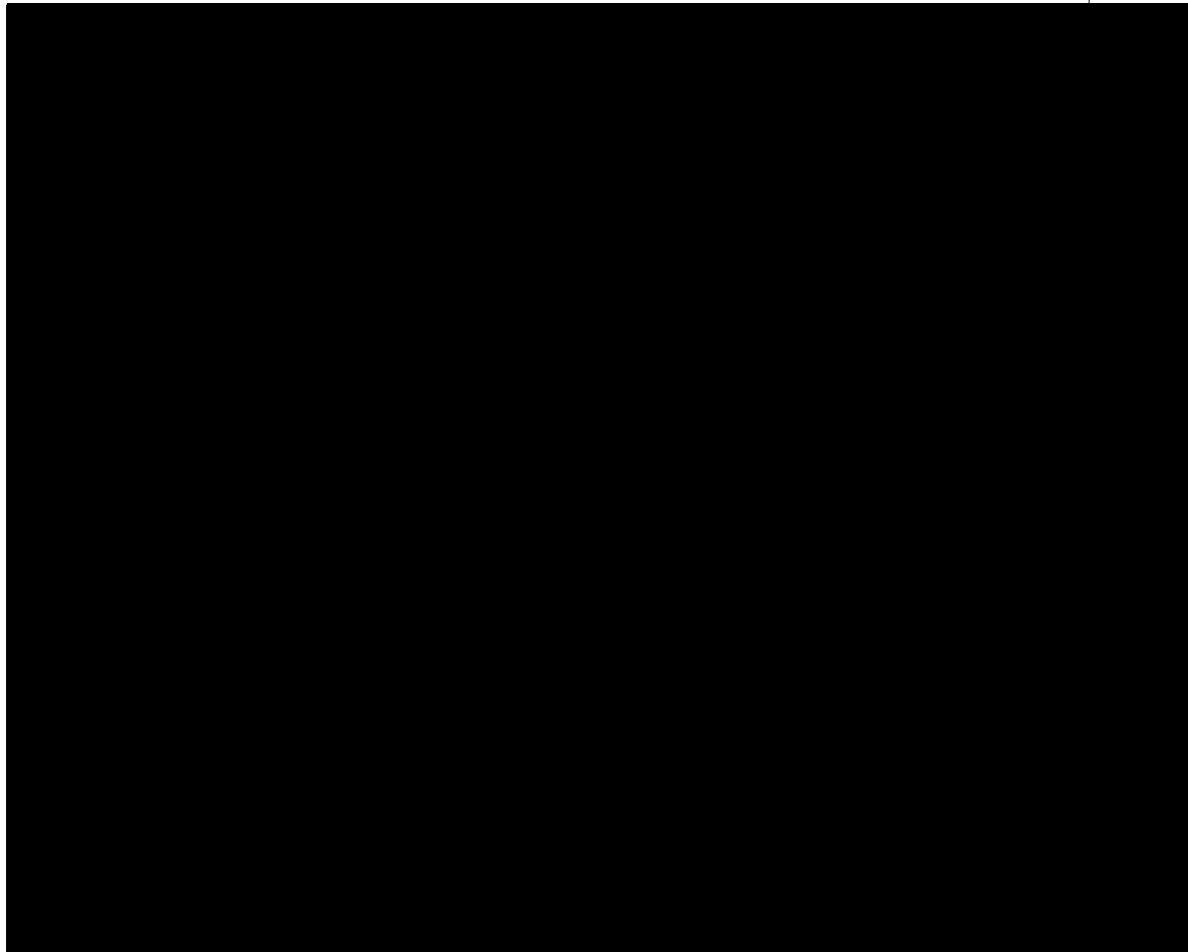
In this small place, some people seem to find it difficult to distinguish the criminal justice system from the individuals within it. However, the system is bigger than any one man or woman. Any impartial review of the prosecution approach to the historic child abuse enquiry immediately demonstrates that the system has included numbers of lawyers both within and outside the Law Officers' Department all of whom have examined the case files independently. This process demonstrates the prosecution system working objectively and, I hope, effectively, and I believe has persuaded the vast majority of the public that there is nothing in the challenges to the integrity of the prosecution service which have been made by some.


Before leaving the historic child abuse investigation, I would like to add this. While there have been some complaints of serious offences having been committed, the investigation has covered an enormous amount of ground, and perhaps has gone rather wider than was first intended when it was originally conceived. Certainly the completed investigation files which lawyers have had to consider in the context of deciding whether or not to prosecute, have quite frequently revealed complaints of alleged assault which would have been at the lowest end of the scale even if the case files had been produced a week after the incident in question. Complaints of slaps to the head, being flicked with a wet towel, or being made to take cold showers and the like, are so far divorced from the public's perception of the nature of this enquiry that it is right to say that at least in relation to a significant number of the case files received, the complaints, even if capable of being proved to the criminal standard, which in most cases has not been thought possible, are not matters which are suitable for the criminal courts even today, let alone 30 years after the event.

There have also been complaints which do not carry any intrinsic credibility because the complainant was not even present in the Children's Home in question at the time

the alleged assailant was working there, and therefore would not have come across him or her; or because the complaints match all too closely the lurid headlines of media reporting which are shown to be without foundation, and were made for the first time after those reports; or are not only without any form of corroboration, but simply on their own merits appear to have been significantly exaggerated.

Nonetheless, leaving those categories of case aside, there are case files, even where decisions are taken not to prosecute, where the complainants do carry credibility. In these cases, the decision not to prosecute is based upon the fact that there is no other sufficient evidence than that of the complainant, and if one has to satisfy at least 10 jurors out of 12 to the criminal standard of proof - beyond all reasonable doubt - that a criminal offence was committed by this particular accused 25 years ago, the evidence of one person against another is very rarely likely to be enough to pass the evidential test. The successes which prosecutors have had in historic child abuse prosecutions where these have taken place are a tribute to their ability, their determination and their care in working with their partner agencies to protect the public of the Island. However, when there is a decision not to prosecute, this does not mean that we have the evidential test wrong, nor that the analysis of the evidence is in any way flawed. What it does show is that the criminal law is a blunt weapon for the purposes of good administration of childcare homes, and that it is also not a good basis upon which to consider what, if any, wrongdoing might have taken place. Where a prosecution decision is that no charges should be brought, it is not necessarily that the case that the complainant's story is not believed; in the majority of cases, it is that there is not enough evidence to be satisfied to the criminal standard that a conviction is more likely than not.





I would like to finish therefore by thanking all the staff in the Law Officers' Department for all they have done both in 2008 and in previous years. I cannot however close without noting that 2008 also marked the appointment of a new Solicitor General, Timothy Le Cocq, QC. I was very pleased to welcome him in March last year and I am as pleased now to acknowledge his help with, and thoughtful contribution to, the workload we have. We have nearly worked together in private practice on a couple of occasions over the last twenty years and my current experience is such that I am only sorry that on neither occasion previously did it come to pass.

If there has been any downside in Tim's arrival, it lies in the fact that it was caused by the retirement of the former Solicitor General, Stéphanie Nicolle QC. Stéphanie gave exemplary service to the States for many years both in the Judicial Greffe and in the Law Officers' Department before becoming Solicitor General in 1994, and that onerous post she then filled for 14 years. While my Solicitor General, she not only routinely gave very good advice to Committees and Ministers but also to me. She was in addition a tremendous support to me personally and I am very grateful to her for that and I wish her a long and happy retirement.

William J Bailhache Q.C.
H. M. Attorney General