

# Code for Prosecutors





## Message from the Attorney General

“True peace is not merely the absence of tension, it is the presence of justice.”  
*Dr. Martin Luther King*

Integral to this notion of justice is that those suspected of having committed criminal offences are properly dealt with, in a fair, consistent and transparent manner. Each and every person brought before the criminal courts should know the principles that will be applied in deciding whether a case will be brought or continued against him/her and that those principles will be applied regardless of their associations, family connections, wealth, or any other personal factor.

This Code establishes a two-stage test in deciding whether a prosecution should be initiated. First and foremost, there must be sufficient evidence to provide a realistic prospect of conviction. If this test is satisfied, a determination will be made as to whether a prosecution is in the public interest. If it is, the prosecution will be commenced. These tests will be applied throughout the duration of a case, because sometimes circumstances can change. The decision to prosecute an alleged offender will be the product of careful consideration, to ensure that the principles set out are vigorously applied. It is only by doing so that we can ensure that the interests of justice are properly met.

I am grateful to all the people who were involved in producing this Code. With the assistance of the Foreign and Commonwealth Office, a representative from the Crown Prosecution Service (England and Wales), visited the Legal Department in December 2011. She held several workshops, during which comments and observations on the draft Code were received from Crown Counsel, Police Officers and Customs Officers. That input led to the detailed provisions that are contained within this document. It is a Code for Prosecutors in Anguilla, created by the prosecutors in Anguilla.

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I fully endorse the application of this Code, which I hope will be read not only by law enforcement officers, lawyers, and their clients, but also by members of the public. It clarifies the basis upon which decisions in criminal cases will be made and presents an invaluable tool for ensuring that the right principles are applied fairly and consistently in every case.

**James Wood**  
**Hon. Attorney General**  
**ANGUILLA**

# Code for Prosecutors

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## 1.0 Introduction

**1.1** The Attorney General is responsible for prosecutions carried out in Anguilla. Prosecutions are conducted by Crown Counsel, employed by the Government of Anguilla, who work within the Attorney General’s Chambers (AGC). Trained police officers of the Royal Anguilla Police Force also prosecute cases.

**1.2** The Attorney General’s Chambers issues this Code to provide guidelines for prosecutors, both Crown Counsel and Police Prosecutors, on the general principles to be applied when making decisions about prosecutions.

**1.3** In this Code—

“defendant” is used to describe a person who has been charged or summonsed;

“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;

“police or other investigators” is used to describe members of all investigative agencies who prepare and present cases to the prosecutors;

“prosecution” means every aspect of criminal proceedings. This includes the investigative stage, advice, pre-charge advice, the decision to prosecute, the decision to discontinue a prosecution, the decision to re-charge, the decision for a retrial and proceedings ancillary to prosecution, such as forfeiture, restraint, confiscation and compensation;

“prosecutors” is used to describe Crown Counsel who work within the Attorney General’s Chambers (AGC) and trained police prosecutors;

“suspect” is used to describe a person who is not yet the subject of formal criminal proceedings.

### 2.0 Purpose of the Code

**2.1** It is the duty of the prosecutors when making decisions or advising about prosecutions that any advice given or decision made is in accordance with the principles set out in this Code.

**2.2** This Code lets the public know what prosecutors do; how they take their decisions; and the level of service that the prosecutors are committed to providing in every key aspect of their work.

### 3.0 General Principles

#### Prosecutions

**3.1** Each case is unique and must be considered on its own facts and merits. There are however, general principles that apply to each prosecution.

**3.2** Fair, effective and expeditious prosecutions are essential for the maintenance of law and order and the well-being of society. Justice must not only be done but be seen to be done.

**3.3** The decision to prosecute is an important one. It has serious implications for each person involved: that is, victims, witnesses, defendants, communities and the public. Decisions taken fairly, impartially and with integrity help to deliver justice for victims, witnesses, defendants, communities and the public.

**3.4** It is the duty of prosecutors to make sure the right person is prosecuted for the right offence and to bring those who commit offences to justice wherever possible.

#### Prosecutors

**3.5** Prosecutors must conduct prosecutions in accordance with this Code and apply it consistently.

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- 3.6** Prosecutors must apply the law properly and uphold the principles of the Anguilla Constitution Order at each stage of a prosecution.
- 3.7** Decisions taken by prosecutors must be taken fairly, independently, objectively and diligently.
- 3.8** Prosecutors must not permit any personal views about ethnic or national origin, disability, sex, religious beliefs, political views, culture, sexual orientation of the defendant, victim or any witness influence their decision.
- 3.9** Prosecutors must not be influenced by improper or undue influence from any source including favouring family and friends or influence from family and friends.
- 3.10** Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 3.11** Prosecutors shall have regard to all of the circumstances of a case, irrespective of whether they are to the advantage or disadvantage of the defendant.
- 3.12** Prosecutors must do their utmost to ensure cases progress expeditiously.
- 3.13** Prosecutors must advise the investigators throughout investigations and prosecutions.
- 3.14** Prosecutors must be pro-active in identifying and if possible rectifying evidential weaknesses or deficiencies during the investigation and prosecution.
- 3.15** Prosecutors must only bring prosecutions or maintain a prosecution if the evidential and public interest tests are met.
- 3.16** Prosecutors must bring to a timely conclusion, cases that do not meet the evidential and public interest test and which cannot be strengthened, in a reasonable time, by further investigation.
- 3.17** Prosecutors must not divulge to the public the facts and evidence of a case which is under investigation.
- 3.18** Prosecutors must not mislead the Court or the defendant.
- 3.19** Prosecutors must ensure that all relevant evidence is before the Court.

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- 3.20** In accordance with the law and the defendant's right to a fair trial, prosecutors must ensure that the rules of disclosure are complied with.
- 3.21** Prosecutors must be prepared to withdraw if their personal integrity is compromised or if there may be an appearance of partiality.
- 3.22** Prosecutors have a duty continuously to review their cases and that duty only ends when the case is concluded.
- 3.23** Prosecutors must review a case if there is a change in circumstances.
- 3.24** If the prosecutor is considering a material change in the charges, discontinuing the prosecution or accepting a plea to some, but not all of the charges on the indictment, then the prosecutor must inform the investigator to enable the investigator a reasonable opportunity to provide comments, or further evidence.
- 3.25** If the prosecutor is considering discontinuing proceedings in any court or accepting a plea to not all of the charges on the indictment in the High Court the prosecutor must obtain the authority of the Attorney General.

### **4.0 Duties during an investigation or prior to charge**

- 4.1** This Code also applies to prosecutors where they are involved in advising investigators before charge.
- 4.2** The functions of the prosecutor and investigator are separate and distinct. Prosecutors act independently of those responsible for the investigation.
- 4.3** Prosecutors must ensure that they have all the information they need to make an informed decision about how best to deal with the case. The prosecutor should not direct investigations, but he or she may provide 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 process. This can only be achieved by investigators seeking early advice from prosecutors.

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**4.4** A prosecutor must advise the early termination of investigations where the evidence does not meet the full Code test and cannot be strengthened by further investigation.

### **5.0 Decision to prosecute**

**5.1** Investigators and prosecutors are responsible for deciding whether a person should be charged with a criminal offence, and if so, what that charge should be. Investigators and prosecutors will make these decisions in accordance with this Code and where appropriate, seek advice, at an early stage, from Crown Counsel.

**5.2** A prosecutor must review each case and decide if it is right to prosecute.

**5.3** A prosecutor will only commence a prosecution if both the evidential and public interest tests are met.

**5.4** Prosecutors must review cases. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops.

**5.5** Prosecutors and investigators work closely together, but the final responsibility for the decision whether to prosecute or stop a case rests with the Attorney General.

**5.6** A limited number of cases require the consent of the Attorney General to prosecute. In such cases Crown Counsel shall apply this Code in deciding whether or not to give consent to prosecute.

### **6.0 The Code Test**

**6.1** This Code test has two stages: (i) the evidential stage, and (ii) the public interest stage.

**6.2** In the majority of cases prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has

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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.

**6.3** 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 continue and a decision taken later in accordance with the Code test set out in this section.

### **The Evidential Stage**

**6.4** Prosecutors must be satisfied that there is sufficient evidence for there to be a realistic prospect of conviction against each defendant on each charge. Prosecutors will consider what the defence case may be and how it may affect the prospect of conviction.

**6.5** A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be put forward by the suspect. It means an objective, impartial and reasonable jury or Magistrate properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply which is that a court may only convict if it is sure that the defendant is guilty.

**6.6** When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable. In particular, prosecutors will need to consider the following issues:

- a.** Can the evidence be used in court?
- b.** Is it likely that the evidence will be excluded by the Court? For example:

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- (i) is it likely that the evidence will be excluded because of the way it was obtained?
  - (ii) are there issues with the chain of continuity of evidence?
  - (iii) has the evidence been contaminated?
- c. What explanation has the suspect given? Is a court likely to find it credible in light of the evidence as whole? Does the evidence support an innocent explanation?
- d. Is there evidence which might support or detract from the reliability of a confession? Was there a breach of any rules in obtaining the confession?
- e. Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough?
- f. Are there concerns over the accuracy, reliability or credibility of the evidence of any witness? Does the witness have any relevant antecedents?
- g. 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? For example, does any witness have any motive that may affect his or her attitude to the case? Could there be any further evidence that could be obtained that would support the integrity of evidence already obtained?

### The Public Interest Stage

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

**6.8** If the Evidential Stage is met, 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

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or the offender's record of criminal behavior, the more likely it is that a prosecution will be required in the public interest.

**6.9** 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 a sentence is passed.

**6.10** The absence of a factor does not necessarily mean that it should be taken as a factor 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".

**6.11** 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 those cases worthy of prosecution.

**6.12** 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 list of public interest factors is not an exhaustive one and each case must be considered on its own facts and merits.

**6.13 A prosecution is more likely to be in the public interest if:**

- a.** a conviction and the proposed penalty is likely to be significant;
- b.** the offence involved the use of a weapon or the threat of violence;
- c.** the offence was committed against public officers in the course of their duty (for example, a nurse, a police or prison officer);

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- d.** the offence was premeditated or intended to cause serious harm;
- e.** the offence was carried out by a group;
- f.** the suspect was a ring leader or an organiser of the offence;
- g.** the offence was committed in the presence of, or in close proximity to, a child;
- h.** the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or beliefs, political views, sexual orientation or gender identity, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- i.** the offence was committed in order to facilitate or cover-up offending;
- j.** the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- k.** there was an element of corruption of the victim in the way the offence was committed;
- l.** there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- m.** there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- n.** the suspect was in a position of authority or trust and he or she took advantage of this;
- o.** the suspect's previous convictions are relevant to the present offence;

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- p.** the suspect is alleged to have committed the offence in breach of an order of the Court;
- q.** a prosecution would have a significant positive impact on maintaining community confidence;
- r.** there are grounds for believing that the offence is likely to be continued or repeated.

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

- a.** the Court is likely to impose a nominal penalty and the offence is not serious;
- b.** 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, which adequately addresses the seriousness of the offending;
- c.** the offence was committed as a result of a genuine mistake or misunderstanding;
- 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 misjudgment;
- e.** there has been a long delay between the offence taking place and the date of the trial unless:
  - i.** the offence is serious;
  - ii.** the delay has been caused wholly or in part by the suspect;
  - iii.** the offence has only recently come to light;

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- iv.** the complexity of the offence has meant that there has been a long investigation; or
- v.** new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified;
- f.** 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 on his or her physical or mental health;
- g.** the suspect played a minor role in the commission of the offence;
- h.** 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);
- i.** 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 balance of a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;
- j.** A prosecution may require details to be made public that could harm sources of information, international relations or national security.

**6.14** 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 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.

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**6.15** However, the prosecutor does not act for victims or their families in the same way a defence lawyer acts for his client, and prosecutors must form an overall view of the public interest.

### 7.0 Selection of Charges

**7.1** Prosecutors should select charges which:

- a.** reflect the seriousness and extent of the offence, as supported by the evidence;
- b.** give the Court adequate powers to sentence and impose appropriate post-conviction orders; and
- c.** enable the case to be presented in a clear and simple way.

**7.2** This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.

**7.3** Prosecutors should not go ahead with more charges or more serious charges than are necessary just to encourage a defendant to plead guilty to a few or less serious charges.

**7.4** 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.

### 8.0 Juvenile Offenders

**8.1** The provisions of the United Nations Convention on the Rights of the Child have been extended to Anguilla. Article 3.1 provides:

*“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.”*

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**8.2** In deciding whether or not it is in the public interest to prosecute a juvenile the prosecution shall take into account both the circumstances of the juvenile and the circumstances of the offence.

**8.3** The circumstance of the juvenile will include for example, the age, maturity and mental capacity of the child.

**8.4** Other relevant circumstances to consider will include the seriousness of the offence and the juvenile's past behaviour.

### 9.0 Accepting Guilty Pleas

**9.1** Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may wish to plead to a less serious offence.

**9.2** 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 offending, particularly where there are aggravating factors. Prosecutors ought not to accept a guilty plea just because it is convenient.

**9.3** In considering whether the pleas to a lesser offence offered are acceptable, prosecutors should ensure that the interest 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 final decision rests with the prosecutor.

**9.4** In all cases before the High Court, the prosecutor must obtain the authority of the Attorney General before accepting pleas that do not represent all counts of the indictment.

**9.5** 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's 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.

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**9.6** Particular care must be taken when considering pleas that will compromise the ability to confiscate the proceeds of crime.

### 10.0 Bail

**10.1** Prosecutors must ensure they are fully conversant with and apply all laws governing bail. In particular, if the trial of a defendant remanded in custody has not started within a reasonable time, then the prosecutor should not oppose any bail application, but may put forward reasonable conditions.

**10.2** Prosecutors shall always bear in mind that bail is not to be withheld as a form of punishment or pre-judgment of the case. Furthermore, bail conditions requested by prosecutors must not be excessive.

**10.3** When deciding whether or not to oppose bail, prosecutors must carefully consider:

- a.** the law;
- b.** the gravity of the offence charged;
- c.** the strength of the evidence;
- d.** the protection of the victims, witnesses and the general public;
- e.** the personal circumstances of the defendant including his personal safety;
- f.** the likelihood of the commission of further offences if granted bail;
- g.** the likelihood of the defendant absconding, failing to attend court and standing trial; and
- h.** any other relevant factors such as the likely penalty that might be imposed on conviction.

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**10.4** Prosecutors must take all reasonable efforts to ensure any views of the victim are put before the Court where an application for bail is made.

**10.5** Prosecutors must be fair and firm when considering a response to an application for bail. The prosecutor shall ensure relevant information is available for the Court when determining bail.

**10.6** 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.

**10.7** If legal or constitutional 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 Attorney General's Chambers (AGC).

## 11.0 Trial Fairness

**11.1** A prosecutor must do everything properly to bring about a fair trial within a reasonable period of time. Every effort should be made to ensure trials are not delayed at their commencement and continue on consecutive working days until conclusion.

**11.2** Prosecutors must, without compromising their professional obligations and public responsibilities, assist the trial court in the fair and prompt disposal of the prosecution.

**11.3** 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 or procedure.

**11.4** A prosecutor should not advise an unrepresented defendant, but as ministers of justice, the prosecutor shall ensure that the unrepresented defendant is fully informed of the prosecution's case and alert the Court to matters which will ensure the trial is fair.

**11.5** Prosecutors should seek to ensure that:

- a.** witnesses are available and attend court;
- b.** the number of witnesses called at trial is reasonably required;
- c.** each exhibit required by the prosecution is in court;
- d.** the prosecution case is known thoroughly;
- e.** they present arguments of fact or law on the basis of the evidence in the case and accurately reflecting the law;
- f.** they ensure the witnesses have had the opportunity to read their statements or depositions before they give evidence or have it read to them if appropriate;
- g.** they are courteous to everyone. In particular they must not intimidate, hector or question any witness oppressively and they should intervene to stop an attorney who attempts to do this to any witness.

### **12.0 The Role of the Prosecutor in the Sentencing Process**

**12.1** Sentencing is a decision of the Court. The prosecutor should not press for any particular sentence. The prosecutor should, however, ensure the sentencing court is aware of:

- a.** the previous character and conviction of the defendant;
- b.** any aggravating or mitigating factors disclosed by the evidence;
- c.** evidence of the impact on any victim and the family of the victim;
- d.** statutory powers and limitations on sentence;

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- e. any sentence guidelines;
- f. applications for ancillary orders (e.g. confiscation; forfeiture; compensation).

**12.2** If the mitigation put forward after a guilty plea is so different to the prosecution version of the facts that it would affect the sentence, then the prosecutor should ask for a hearing to determine the basis on which sentencing should take place.

**12.3** The prosecutor should challenge any significant assertion made in mitigation that is inaccurate or misleading. If the defence persists in the assertion then the Court should be invited to hear evidence before sentence is passed.

**12.4** If derogatory assertions of any person are made in mitigation, then the Court should be asked to consider if they are relevant to sentence and, if so, to hear evidence on them before sentence is passed.

### 13.0 Victims and Witnesses

**13.1** Victims and witnesses of crime in the Criminal Justice System are to be treated with respect, courtesy and compassion.

**13.2** Victims and witnesses should have explained to them the court processes and procedures, and victims should be kept informed of what is happening during the course of each stage of the proceedings.

**13.3** Prosecutors should seek to protect the interests of victims and witnesses as best they can whilst fulfilling their duty to the Court and in the conduct of the prosecution on behalf of the Crown.

**13.4** Prosecutors shall, wherever possible, meet the victim and witness before they give evidence at court and provide them with a copy of their statement or deposition.

### 14.0 Re-opening a Prosecution Decision

**14.1** 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.

**14.2** 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:

- a.** rare cases where reassessment of 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 near future can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again; or
- c.** cases which are stopped because of lack of evidence but where more significant evidence is discovered later.

### 15.0 Media

**15.1** Prosecutors should generally not communicate with the public through the media. On the rare occasions where this is done, prosecutors are to ensure that they:

- a.** avoid making remarks that may prejudice fair trial interests;
- b.** support the administration of justice and the integrity of the criminal process;
- c.** recognise the public interest in receiving accurate information about the Criminal Justice System and criminal prosecutions; and

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- d.** treat victims of crime with courtesy and compassion, and respect their dignity and privacy.

**15.2** In any instance where a prosecutor wishes to communicate with the public through the media, prior authority for doing so should be sought from the Commissioner of Police (for police prosecutors) or the the Attorney General (for Crown Counsel).