

4 February 2015

Media Statement

R v Hoy

Today the Director of Public Prosecutions, Adam Kimber SC, issued a media statement, following the considerable public debate in the matter of *R v Hoy*.

“Criticism of a decision made by my Office is never inappropriate provided that it is done in a balanced way” Mr Kimber said.

“It had been my intention not to make any public comment about this matter. It is generally inappropriate for me to explain a decision to prosecute when a person has been found not guilty. It is difficult to do so without being seen to undermine the verdict of the jury and without being seen to be unfair to both the accused and the jury. The jury’s verdict must be respected.

However, since the verdict, debate about the decision has continued.

In light of the continuing publicity I have decided to comment. It is important that the community has some information that gives a more complete perspective.”

Mr Kimber said, in essence, there had been three criticisms of his decision.

1. That there was never a reasonable prospect of conviction.
2. That the prosecution was not in the public interest - and -
3. That if there had to be a trial, the matter should not have been tried in the District Court.

Reasonable prospect of conviction

“The essence of the allegation was that the accused, Constable Hoy, assaulted the complainant, Mr Shahin, when Mr Shahin was retrieving his keys from his vehicle having been directed by Constable Hoy to provide the keys to him” the Director said.

“As I understand it, it has never been disputed that Constable Hoy acted in a way that could amount to an assault. The only issue has ever been whether the prosecution could establish that Constable Hoy’s actions were unlawful.

It was my view, as well as that of others tasked with the responsibility of evaluating the matter, that it was open to a jury to find that the accused did not have the power to do what he did. This being so, I came to the view that there was a reasonable prospect of conviction.”

Public Interest

The Director advised that simply because there is a reasonable prospect of conviction does not mean that a prosecution must proceed. The prosecution must also be in the public interest.

“Where, as here, the alleged assault is at the lower range of seriousness the issue of whether a prosecution is in the public interest can be finely balanced. That was so in this case. On which side of the line a matter falls is a matter of judgment. It is a judgment to be made in light of all relevant information and in accordance with the Office’s written guidelines. Those guidelines are widely available.

Police Officers commonly conduct their duties in stressful situations and while dealing with members of the public dissatisfied with their approach. While police officers must be held to a high standard it is also the case that in such situations it is not difficult to see that a police officer might commit what is, as a matter of law, a criminal offence but nonetheless does not amount to something that warrants a criminal charge. There are occasions in which although there is a reasonable prospect of conviction, the proper conclusion is that it is not in the public interest to prosecute the matter. This is a consideration with respect to any accused. However, particularly when a police officer is concerned, it is also necessary to consider whether the matter can be adequately dealt with by disciplinary proceedings alone.

In this particular case I was aware of a matter that I would not discuss publicly had it not been made public by others. It is that the accused had been the subject of complaints by members of the public before this particular incident.

Where a police officer has a good disciplinary record, proceeding by way of disciplinary proceedings alone where the alleged conduct is at the lower range of seriousness will sometimes be appropriate. Where there have been previous complaints, a criminal charge might be appropriate. It is a consideration relevant to whether a criminal charge is in the public interest.”

The fact the matter was tried in the District Court

The matter was prosecuted in the District Court and before a jury because the accused exercised his right to be tried in that way.

The Director advised that he had no role in that decision.

“I do not have any power to oppose an accused exercising this right. Had the accused not done so the matter would have been tried in the Magistrates Court” he said.

In conclusion, the Director emphasised that the fact that he has chosen to make comment about the matter must not be viewed as in any way undermining the jury’s verdict of not guilty.