

DIRECTOR OF PUBLIC PROSECUTIONS — DOWNGRADING OF CRIMINAL CHARGES

**371. Hon MATT BENSON-LIDHOLM to the minister representing the Attorney General:**

I refer to allegations in *The Sunday Times* of 5 April 2009 concerning the downgrading of criminal charges by officers of the Director of Public Prosecutions so that the charges could be remitted to the Magistrates Court.

- (1) What measures are being taken to investigate these allegations?
- (2) Will the Attorney General report to Parliament on the finding of this investigation; and, if so, by what date?

**Hon SIMON O'BRIEN replied:**

I thank the member for some notice of this question. Mr President, the answer is quite lengthy. I seek leave to table the answer and have it incorporated in *Hansard*.

Leave granted.

[See paper No 678.]

The following material was incorporated —

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The Attorney General advises the following:

(1-2) Under the *Criminal Code*, and other legislation including the *The Road Traffic Act 1974* and *Misuse of Drugs Act 1981*, there are some classes of offence which can be dealt with either summarily in the Magistrates Court or on indictment in the District or Supreme Court — these are colloquially referred to as 'each way' offences.

The propositions put in the *Sunday Times* on 5 April 2009 were two-fold being, in effect:

- i) That some charges, which because of the facts of the offending and the operation of the relevant law could not legally be dealt with by the Magistrates Court were being dealt with by the Magistrates Court; and second; and
- ii) That some charges, which because of the facts of the offending and the operation of the relevant law could potentially be dealt with by either the Magistrates Court or a Superior court (depending on how the charge was framed); were being dealt with by the Magistrates Court — in circumstances where police prosecutors held a view that it would be more appropriate for them not to be dealt with in the Magistrates Court

Point (i) above would be a matter of concern but as will be set out below, few, if any, of the examples fall into this category.

With respect to point (ii) above, this is a normal occurrence in many cases — the relevant section of the *Criminal Code* states that where an offence can be tried either summarily or on indictment, the starting point is that they should be tried summarily unless, for example, the gravity of the criminal conduct means they could not be appropriately punished by a Magistrate.

Most of the examples raised in the article published in the *Sunday Times* do not appear to disclose anything unlawful or even particularly unusual, other than perhaps a disagreement between police and DPP prosecutors about the best way of charging the matter and thereby which court should have heard the matter; in circumstances where, lawfully, the matters could be heard by either the Magistrates Court or a Superior Court depending on how the matter was charged or how the charge was pleaded.

For example, two instances were nominated where the possible charges were either simple possession of amphetamine or possession of amphetamine with intent to sell or supply. It appears, on the basis of the Attorney General's enquiries, that while a police prosecutor may have preferred another charge that these charges were likely framed with the agreement of the Police Officers in Charge of the relevant investigation). This choice was likely made because a view was taken that due to evidentiary difficulties, simple possession was the appropriate charge. Under the *Misuse of Drugs Act 1981* the latter charge is no longer an each way charge, so it would be entirely understandable that it would be dealt with in the Magistrates Court.

There was one example provided in the referred to article which appeared potentially unusual, notably the theft involving a boat or dinghy. The Attorney General is presently seeking briefings from the Director of Public Prosecutions as to the particulars of this case. He will then determine what occurred in this specific case in consultation with the Minister for Police.

Until the Attorney General has made that determination as to whether the information regarding the boat/dinghy matter objectively requires an investigation, and if so, what form of investigation would be necessary, it would obviously be unworkable to discuss time frames.

In the context of these matters it is notable that the 'each way' process has been in place since 2004, when the section mandating 'each way' offences was introduced by the previous government. After, initially, dropping dramatically when the relevant legislation was introduced, the number of charges now within higher courts, rather than the Magistrates Court, has actually increased by 5% over the last 2 years.

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